

**SUBMISSION
TO THE MINISTERIAL ADVISORY PANEL
FOR THE
LIFO REVIEW**

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CANADIAN ASSOCIATION OF PRAWN PRODUCERS

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EXECUTIVE SUMMARY

The DFO Minister, the Hon. Hunter Tootoo, has created an external Ministerial Advisory Panel to examine the Last In, First Out ("LIFO") policy in the Northern shrimp fishery. This results from advocacy by the FFAW that the terms of the temporary quota-sharing rules announced and accepted nearly 20 years ago should not be followed from this time forward, in an attempt to confiscate shrimp quotas that are held by traditional year-round shrimp harvesters.

The Canadian Association of Prawn Producers ("CAPP"), representing frozen-at-sea ("FAS") shrimp licence-holders, opposes in the strongest terms any changes to the application of the threshold quotas and the LIFO provisions set out in the 1997 Management Plan. LIFO has been the blueprint to share the benefits from the surplus as abundance expanded and remove participants each year since 2010 as the resource contracted.

This submission buttresses and underpins this position by substantiating strong, principled arguments in favour of the >100' sector threshold quotas and the application of LIFO for surplus allocations above these thresholds, and countering untrue claims and fear-mongering advanced by those who take an opposed view.

The **policy basis** for the original decision to establish a sharing mechanism is strong and resulted from a well-implemented policy development exercise by the Liberal Ministers of Fisheries and Oceans of the day (Ministers Tobin and Mifflin) to seek views on a principled approach to sharing.



Four key principles emerged: to ensure conservation, protect existing viability, not increase capacity permanently, and use adjacency for allocation of increases. The LIFO policy for managing Northern shrimp access built on these principles is nested within and significantly supports DFO's broader policy and program agenda for stabilizing access and allocations in the Atlantic commercial fisheries. This foundational policy of stability of access and allocation has successfully quelled debate between fleet sectors and provincial

jurisdictions and provides an important level of certainty to all Canadian fisheries that their investments are protected from capricious action.

As a result, the policy platform for the LIFO mechanism in this case is crystal clear. Viability of the existing fleet is to be protected; the regular licence-holders will retain their traditional allocation;

sharing will be conducted on a temporary basis above established thresholds, and adjacency recognized as an important factor in allocating quota increases above the 1996 thresholds. As the resource continued to increase and the number of temporary entrants grew, LIFO commitments were made to those new entrants for the purpose of bringing order when resources returned toward more familiar levels. This policy-based mechanism has been reiterated by all eight subsequent DFO Ministers and has been applied since 2010 to declining fisheries in three Shrimp Fishing Areas ("SFAs") including the complete closure of SFA 7. There is simply no credible dispute about the policy intent in this case.

Consequences of making any change to threshold quotas and the LIFO approach to surplus quotas
<p>Impacts on Canada's Fishery Policy for Sustainable Use:</p> <ul style="list-style-type: none"> - Fails to honour the "social-contract" between all stakeholders and the government on which the temporary access program was built; - Casts aside pre-established entry and exit rules on which we relied; - Fails to respect historic attachment and economic viability principles; - Fails to respect fleet and provincial shares; - Undermines government's commitment to access and allocation stability; - Re-ignites efforts to change quota shares in other fisheries; - Undermines investor and lender confidence.

The **economic case** is equally strong. The economic benefits to Newfoundlanders and Labradorians and to other Canadians from the FAS shrimp fishery are substantial. Annual exports exceed \$300 million; there are 700 well-paying jobs for workers, most from 116 coastal communities in Newfoundland and Labrador. The FAS fishery directly supports about 2,000 additional shore-based jobs, purchases over \$89 million in local goods and services and provides \$30 million in "royalty fees" to northern-based holders of >100' shrimp licenses and holders of special allocations, to finance their infrastructure and developing economies, including inshore shore-based facilities. Contributions to GDP and incomes from FAS operations are respectively 24% and 23.5% higher than seasonal harvesting and processing operations combined. Moreover, the FAS shrimp sector produces these benefits without any financial investment or support from any government and contributes over \$2.5M to government each year in the form of access fees.

The specific proposal to re-allocate the quota threshold amount in SFA 6 (11,050mt) to the seasonal fleet has no economic merit. Due to its over-capacity, that amount would maintain the seasonal fleet for an additional 7 to 8 days on the water and properly support just 2 plants with 290 seasonal low paying jobs earning about \$8,000. This would be in exchange for the immediate loss of 127 year-round, high-paying jobs at sea and putting at risk an additional 575 full-time jobs, as FAS vessels tie up for a portion of the year. On balance, this "solution" would represent a net

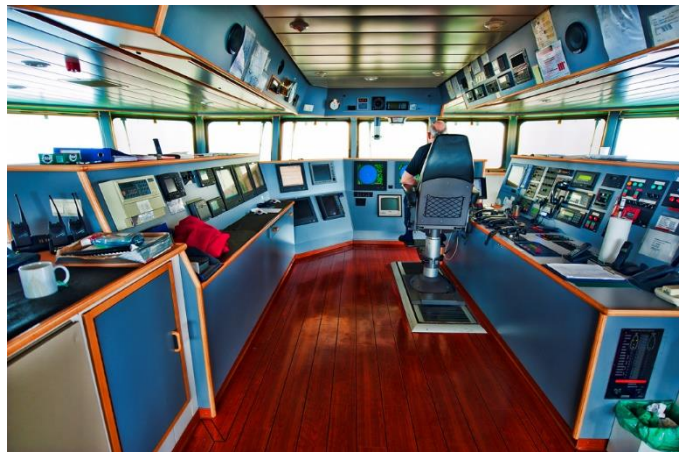
loss to Newfoundland and Labrador, without correcting the well-described problems associated with this seasonal fishing sector.

Consequences of <u>excluding</u> the year-round fleet from SFA 6 and re-allocating the threshold quota to the seasonal sector	
<p>Seasonal Sector Impacts:</p> <ul style="list-style-type: none"> - Extra 7-8 fishing days per average vessel; - 650 extra hours for 290 seasonal workers earning \$8-\$9,000 each by maintaining 2 plants (equivalent to 97 FTE). 	<p>Year-round Sector Impacts:</p> <ul style="list-style-type: none"> - Immediate loss of 130 high paying jobs and place 570 more direct jobs at-risk; - Lose access to ~25% of recent catch; - Lose an ice-free fishing zone critical for 12-month operation (forcing vessel tie-ups); - Lose skilled personnel (Captains and engineers); - Reduce financial ability to replace vessels; - Reduce financial ability to provide “royalty payments” ~ \$30 M/year that supports inshore fishery and community infrastructure (especially in far north); - Reduces NL GDP and income by 24%/mt.

The FAS shrimp sector includes Aboriginal licence-holders, inshore fishermen’s cooperatives, and other Canadian companies, including those who are adjacent to one or more SFAs (or both of the above). The year-round shrimp fishery has been and remains an important vehicle supporting the development of local fisheries in northeastern regions of Canada. The courts have affirmed that its access to adjacent and more distant shrimp resources is an important measure of Aboriginal entitlement under certain **Land Claim Agreements**. In addition, these same court rulings affirm the legitimacy of historic attachment by traditional year-round harvesters in adjacent waters outside the Land Claim areas. With this as a basis, we assert that the application of threshold quotas and LIFO provisions is not in contravention of the terms of either of the three modern Land Claim Agreements in the area.

In addition to the policy imperatives and the economic arguments, there is an issue of **basic fairness** associated with the government's respecting its commitments to LIFO and the 1996 quota thresholds of the traditional year-round shrimp sector. The terms for sharing were announced and accepted in good faith. The FAS shrimp fleet understood the imperative to have wider sharing of the hyperabundance of the stock that developed in the mid-1990s. They acquiesced to the established terms, based on a clear commitment from the Minister of the day and his eight successors, that those who benefit temporarily while the shrimp bloom lasts would leave the fishery as and when it contracts. While not usurping the Minister's legislated authority, a clear **social contract** was put in place and endorsed over 20 years.

If that contract is not respected, many people's lives will be hurt and hundreds of millions of dollars of investment will be placed at risk, simply because licence-holders followed the established rules in good faith. People working in the year-round shrimp companies will suffer a decline or loss of livelihood. Businesses especially in Newfoundland and Labrador which have developed to support this industry will suffer. Investors and lenders



who believed their assets were secure will be proven wrong. Very importantly, the credibility of the federal government will be seriously undermined: a distressing alarm bell will be heard by all other fisheries across the country that they too cannot count on their established quota allocation policies and that provinces cannot expect their historic shares to be respected.

We have examined the rationale and are not compelled in the least by arguments of those who ask the federal government to cast aside secure threshold quotas for the year-round harvesters and to ignore the LIFO mechanism. There are ongoing problems with the seasonal harvesting and processing sector in Newfoundland and Labrador. The FAS shrimp harvesters have no desire to dictate solutions for those other sectors. However, we have examined alternative options to address their situation and observe that there is no legitimate case made to solve these problems at the expense of the thousands of people and many businesses who rely on the on-going viability of the year-round shrimp sector. We have also examined the claims that a re-allocation of the >100' shrimp quotas is necessary to avert a disaster in the seasonal fishery in NL. Based on the facts, there is not a crisis in the seasonal fishing industry in the province of Newfoundland and Labrador; claims of such a crisis are exaggerations and mis-directions.

The Canadian year-round shrimp industry is proud of its history of having developed a world-class industry over the past 40 years and of its ability to maintain a sound, self-financing and sustainable business model. Prior to 1997, it was the pioneers of the >100' fleet that located and explored harvestable shrimp resources, while surmounting numerous challenges. Since the

beginning, government has worked with us to realize the benefits that are possible through the production of high-quality, cooked and raw, frozen-at-sea shrimp products for a discerning world market, attracting highest value from every tonne for Canadians.

Abandoning quota thresholds and changing the terms of LIFO at this juncture would damage this sector and the thousands of people supported by it, in ways that cannot be remedied by such facile solutions as "Just fish more in the north". Year-round operations to supply markets and maintain skilled crews in fulltime employment are what stabilized this industry and made it successful. These important features cannot be lost.

Licence-holders have worked hard to build this fishery into the type of successful and sustainable operation that Canadians expect their government to cultivate and support. We look to continue our success in building a strong economy for Canadians and in particular, benefitting the economy of Newfoundland and Labrador.

CHAPTER 1 - INTRODUCTION

The Canadian year-round (offshore) Northern shrimp fishery is one of the most successful fisheries in the country and provides Canadians with lasting benefit from an important portion of the coldwater Northern shrimp resources (*Pandalus borealis*, *P. montagui*) that have been so abundant off our northern and eastern shores. The fishery is ecologically sustainable, having secured certification by the Marine Stewardship Council. Since becoming a year-round operation, the >100' shrimp fleet has been financially sustainable over the long term, with the capacity to adjust to shifting economic conditions at home and abroad. The fishery produces a suite of high quality Northern shrimp products that compete very favourably in a highly discerning world marketplace for those products. The Canadian year-round Northern shrimp fleet consists of some of the world's most technologically advanced fishing platforms. The fleet employs a crew and shore-based labour force of about 700 people from eastern and northern Canada in year-round employment, many with advanced fishing and processing skills. The sector also directly supports maintenance of about 2000 shore-based jobs (not including spin-off jobs) and generates a full suite of direct and indirect benefits to local communities and Regional economies, particularly within Newfoundland and Labrador.

This success was not assured, nor has it been easily realized. The story of this fishery is one of dynamism and adaptability in the face of many challenges. There have been both glowing successes and unfortunate failures. The period since the mid-1970s witnessed the collective effort of Canadian fishermen and entrepreneurs who saw the opportunity to develop a new world-class enterprise and were prepared to invest the time and resources necessary to achieve it. This spirit was fueled initially and has since been supported by a federal fishery management regime and Atlantic Provincial governments that collectively recognized the unique benefits of prosecuting a modern, year-round shrimp fishery and who, when needed, supported measures to promote the long term viability of this industry.

The first twenty years of this fishery was a classic new-fishery development process involving exploration, risk-taking, investment, skills development, market penetration and industry capitalization. Through this development phase, there were both business rewards and failures, but by the mid-1990s, the Canadian shrimp fishery had grown and matured into a year-round, stable fishery of the most modern and advanced standard. In contrast, the last twenty years have witnessed both an explosive growth and a steep decline in the abundance of coldwater shrimp in the more southern areas of the species range. Accordingly, all levels of government, various sectors of the fishing industry and Aboriginal groups with an interest in community support and development have worked together to manage through this period of unusual and dramatic change, and to share the pulse of additional resource more broadly with non-traditional interests. While there have been stresses and strains among parties through the process, the

year-round shrimp sector accepted the need to allocate this hyper-abundance of resource and, throughout this period, has continued to utilize its share in a sustainable and businesslike manner. Through this period, the year-round industry has continued investment in more efficient harvesting systems and at-sea processing technology, developed a wider, more diverse range of products responding to world markets, and working cooperatively has prudently maintained its capacity in balance with its fishable resource.

Now, as the hyper-abundance of shrimp seems to be coming to an end and resource availability is expected to return to levels reminiscent of earlier times, there are important discussions about future access and allocation in this fishery. In spite of crystal-clear entry and exit rules established when temporary sharing was introduced, seasonal temporary allocation holders now advocate that those policies not be followed, and propose that they be permitted to retain their temporary access and allocations.

Such advocacy raises fundamental concerns for the basis on which Canadian marine fisheries across the country have come to be managed. In order to provide a firm basis for sustainable and successful fishing businesses and sectors, the federal government has done much over the last 20 years to stabilize traditional and historic access and allocations in Canadian fisheries. This broad policy direction has worked to reduce conflicts over resources and attendant economic benefit and conflict between enterprises, between industry sectors and among Provinces. As a result, battles of this type have largely been removed from the discourse about managing and distributing benefit from the Canadian fishery. Stability of access and allocations has become a widely accepted foundational policy for management of Canadian fisheries – supported and frequently referenced by industry representatives, Provincial governments and the Department of Fisheries and Oceans for its enabling of a modern, adaptive and sustainable fishery.

Of course, there are at times when unusual increases in resource abundance and/or value occur and it is also good public policy to make accommodations for such circumstances. This has been the case in the Northern shrimp fisheries on the Newfoundland and Labrador Shelf since 1996 – measures that, at least conceptually, the year-round industry considered appropriate and fair. To ensure the stability of traditional access and allocation while managing through this period of unusual abundance, the government established a temporary sharing arrangement that is based on two distinct elements: (i) defining quota thresholds above which temporary sharing of the Total Allowable Catch will take place; and (ii) rules for entry /exit (or scaled reduction) of new temporary participants to the fishery for the duration. It is the threshold that ensures traditional access and allocation is protected over the long term; it is the entry/exit rules that allow for benefits to be more broadly distributed while surplus resource is available.

The thresholds were established in 1997 and the entry/exit rules, soon tagged as "Last In, First Out", were delineated. As the resource continued to grow over the next decade, these provisions did not have to actually be applied until the TACs in the more southern areas began to decline in

2010; they have been followed each year since. Now that the resource in these areas is rapidly returning toward earlier levels of abundance, certain non-traditional participants in this fishery are challenging both elements of this management arrangement. With such a clear record of all but the finest details regarding entry/exit provisions having been established and implemented over a near twenty-year period, it is unnecessary and unfair to now modify those entry/exit rules. Even more alarming and serious is the proposal that the established 1996 quota thresholds themselves should not be respected. Such a decision would be counter not just to a clearly elaborated management decision dating back nearly 20 years and reiterated regularly since, but would mark a clear departure by the government from its long-established policy of achieving secure traditional access and allocations in the Canadian fishery generally.

The consequences of breaking the thresholds would be profound and would be felt across fishing enterprises of all sizes and types on all coasts. As natural resources and economic conditions ebb and flow, what assurance would any Canadian fishers and fishing enterprises have that the rule changes could not similarly occur for them? Breaking this policy in this case would send a chill throughout the fishery and set back a generation of personal and financial investment, not to mention the belief of fishers and the Canadian public in the government's commitment to a secure and sustainable Canadian industry.

Thus, as the available resource shrinks, it is essential that the terms of temporary sharing be respected in order to protect the original and foundational prosecutors of this important fishery, the traditional year-round licence-holders. To do otherwise would severely weaken the viability of the year-round industry, undermine a modern fleet's ability to self-finance its operations and capital renewal, and destroy year-round, high-quality jobs. It would also compromise broader sustainability objectives in the Canadian fisheries and cause a net reduction in the substantial and highest benefit that accrues to Canadians from the year-round shrimp industry.

CHAPTER 2 - BACKGROUND BITES

2.1 Relevant biology

Regular assessments of the Northern shrimp populations and associated research documents summarize the relevant biology of the *Pandalid* species in Eastern Canadian waters (Siferd, 2015; Orr and Sullivan, 2013).

Northern shrimp may be widely present on the bottom but concentrate in commercial abundance in localized areas where they find favoured depths (150-600 m), temperatures (1C-6C) and soft substrates. Off eastern Newfoundland and Labrador, these grounds tend to be in and among the various channels that cut across the shallower banks and along the scalloped edge of the continental shelf (figure 1). This creates a challenging fishing operation that depends on having specialized high-lift trawls, good navigational aids, and sufficient size and power to operate effectively and efficiently.

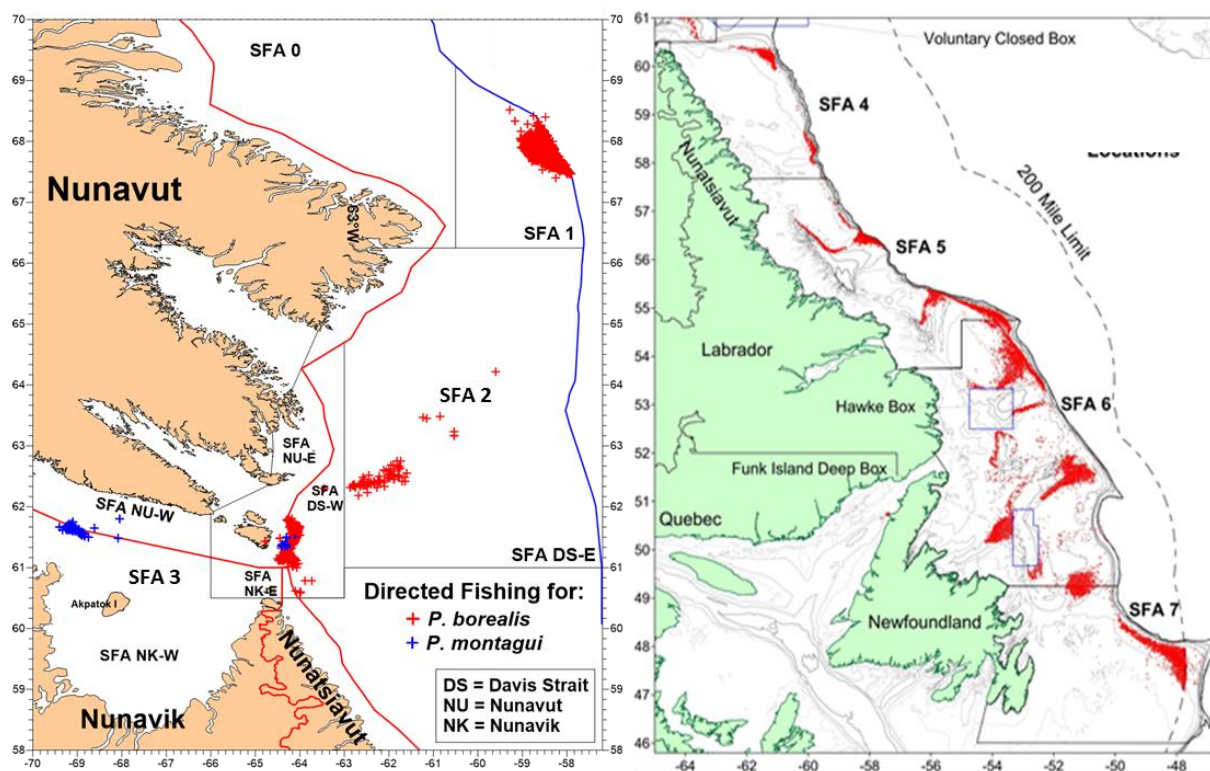


Figure 1. Canadian northern shrimp fishing areas, indicating fishing locations, 2010

Within their general distribution, shrimp move by larval drift and there can be a short-range migration of juveniles that settle in shallower waters to deeper areas in the vicinity (Koeller, 1996). Although it is reported anecdotally, there is no well-known practice of wholesale

displacements of concentrations of animals at a commercial scale over long distances nor any likely mechanism to explain it. Like other invertebrates including American lobster, there is a genetic relationship among shrimp over wide areas such as the eastern Canadian seaboard but also localized aggregations (stocks) that, as juveniles and adults, are sufficiently discrete to appropriately manage on the basis of divisions such as SFAs. Key characteristics such as abundance, stock productivity, size composition and growth rates can and do vary across management units (Koeller, 1996). There has been consideration of whether these stocks should be managed on a broader population level, with the conclusion that the current system of managing Canadian Northern shrimp separately by SFA – but under common or similar management approaches – should remain in place. To do otherwise would risk critical protection for local concentrations and could compromise overall population integrity.

The reproductive cycle of Pandalid shrimp (figure 2) is interesting in several respects, not least their maturing to be male for several years then, after a transitional phase, becoming female for the remainder of their life (Koeller, 1996). As larger-sized individuals (hence, females) are harvested preferentially, exploitation rates are kept in a conservative range, relative to other invertebrate resources.

In SFA6, eggs are developed internally through the summer. In late summer-early fall, the shrimp mate and the eggs “spawn” to be carried under the tail of the female for up to 10 months, hatching in the spring-early summer. (DFO, 2016b). Quality of the raw product varies in relation to these events; the internal ovary produces ‘coloured heads’ prior to the late summer-early Fall mating/moulting/spawning and a lower yield of tail meat follows the moult. Warmer waters in summer can exacerbate poor meat quality.

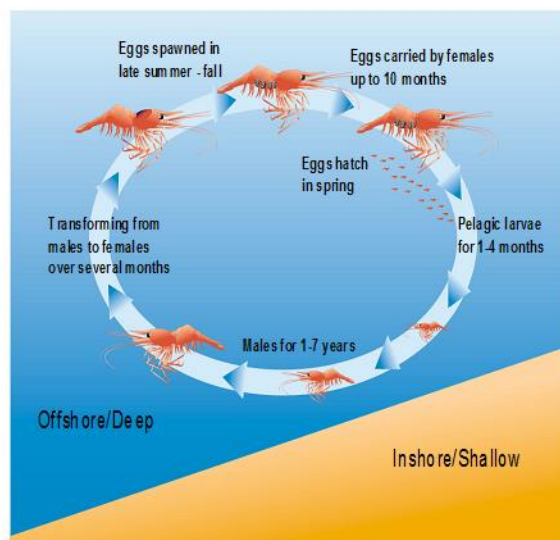


Figure 2. Life cycle of *Pandalus borealis*

2.2 Resource Growth and Contraction

Northern shrimp population productivity is significantly influenced by environmental conditions, especially water temperature, prey availability for larval stages and predation levels (DFO, 2016a). Though they are generally cold-adapted species, the predictive power of this relationship is poor to date and may only be useful at the scale of large shifts in ambient environmental

conditions and prey species abundance currently being observed in the Newfoundland Shelf ecosystem.

As a result of exploratory and experimental fishing efforts over the earlier developmental period of the fishery, knowledge of the distribution of shrimp and particularly commercial concentrations improved over time. But it is also clear that the actual abundance of shrimp had been changing as well. While the population levels in SFAs 4 and 5 may have been more stable over time, the population available in SFA 1 has clearly declined over a long period dating from the early 1980s. Even though that stock abundance, which is assessed by NAFO, has been high throughout much of that period, its distribution has shifted towards the Greenland portion of the continental shelf, to Stor-Hellefisk Bank and the coastal fiords (Kingsley, 2014). It has distinctly shrunk away from that portion of the Bank that crosses the Canadian marine boundary, where the earlier important fishery for Canadian vessels took place in SFA1.

But the biggest change in overall Northern shrimp abundance in Canadian waters in recent times has been on the Newfoundland Shelf and outer Grand Banks, i.e. SFAs 6 and 7. Increases in abundance were likely occurring there in the later 1980s, along with a slow exploratory fishing expansion across the Shelf. In the early 1990s, it was obvious that abundance was increasing and this was confirmed by 1996. Similarly, commercial concentrations in SFA 7 were becoming evident at this same time and a commercial fishery opened there in 2000. It is likely that some combination of factors was controlling these changes, including reductions in principal predators such as cod and changes in environmental conditions that control timing of the phytoplankton and zooplankton blooms, on which larval shrimp must feed to survival at critical earliest lifestages. Peak abundance in these areas was reached in 2006 and biomass began to decline (Orr 2015). Starting in 2009, these declines were reflected in the total allocations.

Over the period 2006-2010, it was apparent that the shrimp resource was changing again in SFAs 6 and 7 – this time a decline in abundance. Again, these changes were coincident with important changes in the east-coast ocean ecosystem and the onset of an expected extended period of warming of bottom water temperatures. These conditions are and will be less suitable for the production and survival of cold-water adapted species such as Northern shrimp. The transboundary fishery in SFA 7 was reduced from its peak in 2010, declined rapidly and was closed to commercial fishing by all countries by 2015. The TAC for SFA 6 has now been in a declining trend since 2010 and current DFO scientific advice is that the biomass declined by 43% between 2014 and 2015 (DFO, 2016a). Future prospects suggest continued declining stock productivity on the Newfoundland Shelf in at least the near term. For now, corresponding changes have not been observed in SFAs to the north of SFA6.

CHAPTER 3 - A HISTORICAL PERSPECTIVE (1977-1997)

3.1 Earliest days

The two commercial pandalid shrimp species in the east coast Canadian fishery, *Pandalus borealis* and *P. montagui*, have been known in the Atlantic Canadian waters since earliest scientific expeditions. Contemporary anecdotal accounts of this resource date from the 1950s, when Norwegian freezer longline vessels ranged in deep water along the Labrador and into the Gulf of St. Lawrence and observed numerous shrimp in the stomachs of groundfish (U. Snarby, pers. comm). Records from Canadian and foreign research vessel catches and some attendant sense of localized concentration in certain parts of the Labrador shelf were beginning to emerge by the 1960s (Sandemann, 1978). By 1970, scientists suggested that the channels between the banks along the Labrador were areas where concentrations should be expected (Fontaine, 1970). In the early 1970s, Scandinavian freezer trawlers were making tentative exploratory efforts in several of these areas but were hampered by rough grounds and spotty navigational aids. This was prior to declaration of the Canadian 200nm limit of 1977 and so these were international waters.

Confirmation of likely commercial abundance in the offshore grounds was secured in 1975 when DFO conducted an exploratory fishing cruise to Labrador channels and reports circulated that a Norwegian trawler had fished successfully in Hawke Channel. Fishery Products Limited ("FPL") fished Cartwright Channel successfully with the Norwegian vessel Koralen in 1976. With this impetus, as many as six vessels further tested the commercial feasibility of fishing Northern shrimp in the offshore Labrador channels in 1977, including a DFO research vessel, another commercial vessel chartered by DFO. Together, 2,765mt of commercial shrimp were caught, the first reported landings in the Canadian shrimp fishery in this area.

The late 1970s brought significant changes for the Greenland fishery that had also been developing and by extension for the nascent Canadian one as well. Greenland gained home rule and introduced a 200-mile fishing zone. Then Greenland chose to step out of the EC (now EU), which triggered import quotas in Europe for shrimp from the fishery in Greenland. Shortly after, Greenland began to nationalize its freezer trawler shrimp fishery and Scandinavian vessels turned to Canada to seek additional access to resources. This interest was a good match for Canadian interests in this fishery at that time. The Canadian fishery had effectively no experience in freezer trawler operations at that time and so mutually beneficial collaborations were established between a number of Canadian and Scandinavian partners, to bring modern freezer trawlers into the shrimp fishery relatively quickly.

By the mid-1980s, the Canadian industry was being 'Canadianized' as a matter of federal policy, about the same time as the freezer shrimp fishery in Eastern Greenland and Svalbard was developing (S.Engeset, pers.comm.). Many Scandinavian vessels moved their efforts to those

fisheries closer to home and a number of foreign vessels were purchased by Canadian companies, starting as early as 1980.

3.2 Early commercialization

The first eight Canadian Freezing-At-Sea ("FAS") shrimp fishing authorizations were issued in 1978, two to interests in each of: Newfoundland and Labrador; Quebec; Nova Scotia; and New Brunswick (Table 1). Later in 1978, three additional authorizations were issued, all to interests in Newfoundland and Labrador. In 1979, a twelfth authorization was issued to Quebec Inuit.

This original FAS fleet of 12 vessels undertook commercial fishing activities initially focused on the mid-Labrador coast (SFA 5) and in the Davis Strait (SFA 1), where a burgeoning offshore shrimp fishery was continuing to develop on both sides of the maritime boundary. Landings in the early period to about 1986 fluctuated in accord with TACs but also linked to market and operational conditions, as the young fleet dealt with a series of challenges. Interest rates spiked in the early decade, at a time when many in the fleet were making or considering substantial capital investments. Currency exchange rates with European countries through which products moved to market were at recent peaks. Market prices in Canadian dollars were low and operating costs were high (Orr, 2006). As a result, quota utilization rates were low and freezer operators and licence-holders struggled through a number of difficult years. Several FAS vessels went out of business during this period.

Nevertheless, continuing its practice of exploratory fishing, the fleet continued to test this new resource and search for new fishing grounds off east Baffin Island (SFA 2), in Ungava Bay and Hudson Strait (SFA 3), and off Northernmost Labrador (SFA 4) and Northern Newfoundland SFA 6). Early fleet operators worked closely with scientists from DFO to understand the resource and collect data and information used to guide vessel operations (S. Engeset, pers.comm.).

By 1987, there was a new outlook in the Canadian FAS shrimp fishery. Financial conditions had improved and additional Canadian flagged vessels were entering the fishery (S. Engeset, pers.comm). Exploratory efforts combined with advances in navigational aids had found new commercial concentrations of shrimp in SFAs 2, 3, 4 and 6 (figure 1). With a more favourable resource and business outlook, the federal government in 1987 awarded four new FAS licenses to predominantly Northern interests, bringing the total number of licenses to 16. The final licence was added in 1991.

Year	Original license holder	Current license holder	Current vessel(s)	Vessel Owner	Direct Aboriginal interest	Inshore fishery interest
1978	Fishery Products Limited, St. John's, NL	Ocean Choice International Inc., St. John's, NL	Newfoundland Lynx	Ocean Choice International Inc., St. John's, NL		
1978	Fishery Products Limited, St. John's, NL	Ocean Choice International Inc., St. John's, NL	Katsheshuk II	Ocean Choice Seafood Inc., St. John's, NL		
1978	Bickerton Industries (Mersey) Liverpool, N.S.	Mersey Seafoods Ltd., Liverpool, NS	Mersey Venture/Mersey Phoenix	Mersey Seafoods Ltd., Liverpool, NS		
1978	Atmar Marine (UMF), N.S.	Mersey Seafoods Ltd., Liverpool, NS	Mersey Venture/Mersey Phoenix	Mersey Seafoods Ltd., Liverpool, NS		
1978	Pandalus Nordique, N.B.	Lameque Offshore Limited, N.B.	Northern Eagle	M.V. Osprey Ltd., North Sydney N.S.		Yes
1978	Pêcheurs Unis du Québec, Québec	Crevettes Nordiques, Bedford, NS	Atlantic Enterprise	Clearwater Ocean Prawns Joint Venture, Lunenburg, NS		
1978	Eastern Quebec Seafood, Quebec	Atlantic Shrimp Co. Ltd., Lunenburg, NS	Atlantic Enterprise	Clearwater Ocean Prawns Joint Venture, Lunenburg, NS		
1978	Carapec, New Brunswick	Caramer Ltd., Caraquet, NB	Acadienne Gale II	Davis Strait Mgt. Ltd., Halifax, NS		Yes
1978	Torngat Fish Producers Coop Society Ltd., Labrador	Torngat Fish Producers Coop Society Ltd., Labrador	Mersey Venture/Mersey Phoenix	Mersey Seafoods Ltd., Liverpool, NS	Yes	Yes
1978	Labrador Fishermen's Union Shrimp Co. Ltd., St. John's, NL	Labrador Fishermen's Union Shrimp Co. Ltd.	Northern Eagle	M.V. Osprey Ltd., North Sydney N.S.		Yes
1978	Labrador Fishermen's Union Shrimp Co. Ltd., St. John's, NL	Labrador Fishermen's Union Shrimp Co. Ltd.	Northern Eagle	M.V. Osprey Ltd., North Sydney N.S.		Yes
1979	Imaqpiq, Quebec	Makivik Corp, Lachine, Quebec	Newfound Pioneer	Newfound Resources Ltd., St. John's, NL	Yes	
1987	Pikalujak Fisheries Ltd., Labrador	Pikalujak Fisheries Ltd., Labrador	Ocean Prawns	Clearwater Ocean Prawns Joint Venture, Lunenburg, NS	Yes (1/2)	
1987	Baffin Region Inuit Assoc., Baffin Island, NU	Qikiqtaaluk Corporation, Iqaluit, NU	Saputi	Qikiqtaaluk Corporation	Yes	
1987	Harbour Grace Shrimp Co., Harbour Grace, NL	Harbour Grace Shrimp Co., Harbour Grace, NL	Ocean Prawns	Clearwater Ocean Prawns Joint Venture, Lunenburg, NS		
1987	155877 Inc.	Unaaq Fisheries Inc., Kuujuaq, Quebec	Saputi (50%) Newfound Pioneer (50%)	Qikiqtaaluk Corporation Newfound Resources Ltd., St. John's, NL	Yes	
1991	Newfound Resources Ltd., St. John's, NL	Newfound Resources Ltd., St. John's, NL	Newfound Pioneer	Newfound Resources Ltd., St. John's, NL		

The interests of year-round shrimp licence holders are diverse and their roots cover a broad range of constituencies, including Aboriginal organizations in Nunavut, Nunavik and Labrador, inshore fishermen's cooperatives in NL, NB and NS, traditional offshore companies in NL and NS and inshore fish plant owners in NL and NB. Of the 17 licences (figure 3), 4.5 are held by Aboriginal groups and 5 are rooted in inshore harvest and processing interests. Adjacency also is a prevalent characteristic of the year-round group of licenses; fully 13 of 17 are adjacent to at least one SFA, and eight have head-offices in Newfoundland. Seven of the 10 vessels currently in this fishery

operate from Newfoundland ports, bringing important benefits to local businesses and communities. The majority of the total fleet's crew reside in 116 communities across NL.

Although it was not formally introduced until 2001, the New Emerging Fisheries Policy followed previous practice to explicitly recognize the important role that entrepreneurial early entrants to a fishery play

in its successful development, by giving them priority in successive development phases, including the full commercial phase. The year-round (offshore) shrimp licence holders embody those characteristics, as substantiated by their exploratory, experimental and developmental efforts to create a fishery from scratch and with significant investment on their part.

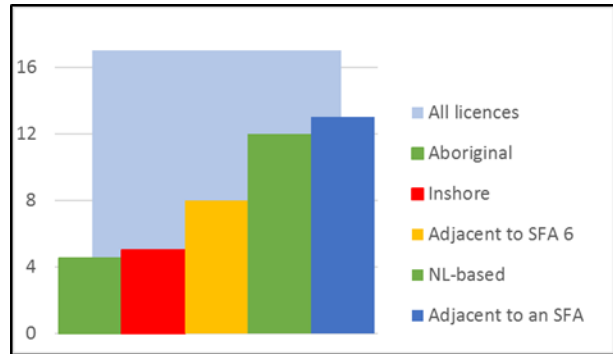


Figure 3. FAS Shrimp Licence Affiliations

3.3 Canadianization

Canadianization of the FAS shrimp fishery was both a federal policy and an industry commitment from the earliest days of the commercial fishery. The first licences in 1978 were issued on the condition that licence-holders engage a Canadian-flagged vessel for operations within 90 days of issuance and that 50% of the catch be landed in Canada for further processing ashore (S. Engeset, pers.comm.). Canadianization focused on three aspects of harvest operations: nationality of the vessel, nationality of the crew and landing requirements in Canada. The latter requirement was predictable and had no consequence in the early period because the Canadian shrimp industry had been entirely focused on landing shrimp wet on ice to a shore facility for peeling. This landing stipulation was set aside relatively quickly, as it became clear that a range of products distinct from the traditional cooked and peeled shrimp was emerging and growing on European markets, which offered the opportunity for significantly higher value and return. These products were the cooked and frozen-at-sea shrimp which remain the foundation of the sector today. With the advent of freezer trawlers, only the smallest sizes of shrimp sorted from the catch were frozen and retained for shore-based cooking and peeling operations.

Bringing Canadian flagged vessels into the fishery and crewing them solely with Canadian fishermen was a more complicated matter. As today, early FAS shrimp vessels used in this new fishery were technologically advanced in comparison to the traditional Canadian wetfish fleet. The factory machinery, freezing equipment, freezer storage, and other onboard infrastructure such as freshwater generators needed for trips of extended duration in northern waters was not necessary for the traditional fisheries. Crew who had training and/or experience in FAS shrimp fishing operations were almost non-existent in Canada at that time. This was less of a hindrance for positions such as deckhand/factory worker and galley crew but was a serious issue for more technical positions such as wheelhouse officers, engineers, and factory and trawl bosses. Beyond

the skills necessary, many potential Canadian crew were not accustomed to trips of extended duration: often two 30-day voyages at sea before making a crew change. This type of schedule placed an additional strain on crews and their families and it was a challenge for many to move to a new and unfamiliar venture, when more secure traditional posts remained available with established Canadian companies. However, compensation for crews on FAS shrimp vessels was very high relative to traditional crew opportunities and a complement of capable deck and factory crew members and some at mid-level assistant positions began to develop. Early licence-holders and operators with ties to Aboriginal organizations began immediately to recruit crewmembers from their constituent communities as a means to bring economic benefit and experience home to those communities. Again, early low retention improved over time due to experience, training and increased familiarity with this unusual opportunity for Northern residents.

Virtually all crew on Canadian FAS shrimp vessels have been Canadian since the 1990's

Canadianization of key skills-based positions – such as skippers, mates, engineers, factory bosses and bosuns to tend and repair the unfamiliar trawls used – took more time. A number of experienced crew from other nations (mostly Scandinavia) immigrated to Canada. In accordance with Canadian labour programs and policies, exemptions were made available for key personnel at the most advanced technical levels where no Canadians could be recruited. Over time, more Canadian crews at these positions developed, both as a result of migration from other fisheries and through the ranks from lower shrimp-vessel positions. By 1990, the vast majority of crews were Canadian and today only three specialists out of 529 crew are non-Canadian. (CAPP Member Survey)



Licence-holders were immediately required as a condition of issuance to demonstrate their commitment to acquire the services of a Canadian-flagged vessel within 90 days – a short period of time. This requirement drove a rapid vessel acquisition process in the Canadian FAS shrimp fishery. The majority of early vessels were previously foreign that were ‘flagged-over’, a process that required modifications for full compliance with Canadian Steamship Inspection standards. In several cases, new operators had or arranged for the services of a Canadian vessel, generally for a short term. Dedicated construction of Canadian vessels for the fleet commenced in 1980, with construction of the Mersey Viking. In the period since, there have been several periods of fleet replacement. The current fleet of 10 vessels (consolidated from a peak of about 13 vessels) is listed in Table 1.

3.4 Stability and maturation

The decade between 1988 and 1997 was a period when the industry managed to stabilize its operations into a full-fledged, year-round, world-class coldwater shrimp fishery, with landings well distributed across all Shrimp Fishing Areas from the Grand Banks to the Arctic Circle.

Landings from SFA 6 in particular improved in the late 1980s into the 1990s (figure 4) and through continued explorations, additional commercial concentrations were located south of the previously known grounds in the Hawke Channel and further south to the St. Anthony Basin. Through this period, the first Nordmore grates were introduced, to deflect groundfish and other untargeted catch out of the net, unharmed. This innovation greatly assisted fishing operations in more southerly grounds, where groundfish could be mixed with shrimp. By 1994, it was clear that the resource available in SFA 6 was abundant and growing, and TACs there were increased to nearly 12,000mt. During that same period, utilization in SFA 1 in the Davis Strait dropped off, due primarily to resource declines on the Greenland Shelf, exacerbated by poor market prices in the face of booming world production and higher operational costs of fishing the north from a southern base.

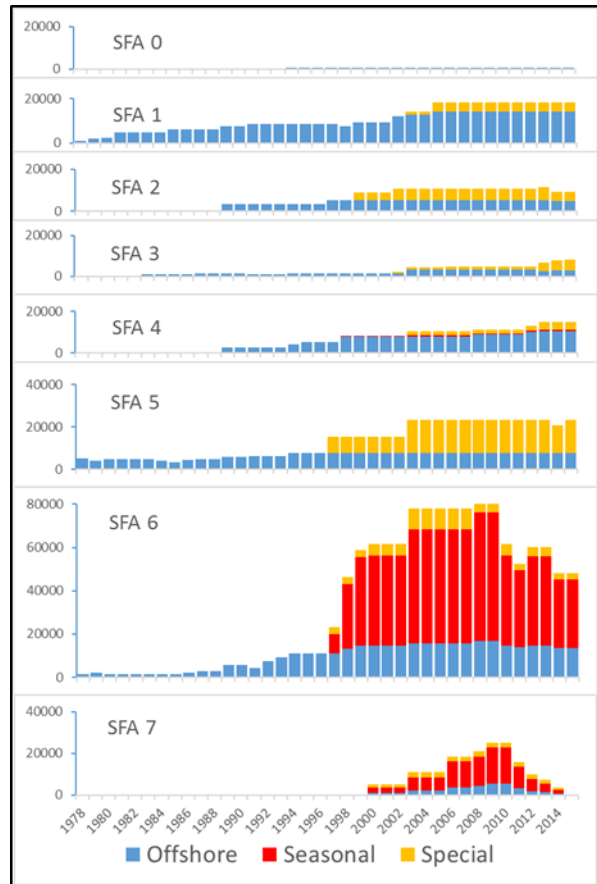


Figure 4. History of allocations in northern shrimp, 1978 - 2015

3.5 Foreign involvement

The origins of the coldwater shrimp industry rest in Norway and expanded from there to other Scandinavian countries. The more specialized FAS shrimp technology and operations were originally developed by Scandinavian fishermen and engineers. This highly mobile fishery rapidly expanded into new offshore grounds, including Canadian grounds, through the 1970s and early 1980s. It was natural and essential that the nascent Canadian fishery benefit from the knowledge and experience these individuals and companies brought to our shores, as well as their willingness to invest in the development of this industry.

Foreign investment in the Canadian economy was then seen as a valuable contribution, and it remains so today.

“Working with my fellow G20 leaders, we can strengthen the global economy and, in turn, ensure all Canadians have a real and fair chance to succeed. When the middle class has more money to save, invest, and grow the economy, we all benefit, and I am proud to share a new and positive Canadian vision for stronger growth and investment.”

- Prime Minister Justin Trudeau, Antalya, Turkey – November 15, 2015

And then, as now, there were important safeguards in place to ensure this foreign involvement was appropriate both in nature and extent. As outlined by DFO in 1985 in the discussion paper Foreign Investment in the Canadian Fisheries (Department of Fisheries and Oceans, Ottawa, 1985), “The Canadian fishing industry has much to gain from foreign investment. Two obvious benefits are new sources of financial capital and potentially improved market access around the world.” While Canadian fishing licences were excluded from foreign ownership from 1974, to protect Canadians' access to their common natural resources, the government recognized and appreciated opportunities where expertise, experience and investment from other countries was aligned with Canadian interests for mutual benefit.

The Canadian year-round Northern shrimp industry was the beneficiary of such involvement in early days, and some foreign investment remains today in both the seasonal and year-round shrimp sectors. Royal Greenland A/S recently purchased 100% of Quin-Sea Fisheries Ltd, one of the largest processors of seasonal shrimp, crab and groundfish in Newfoundland and Labrador. Other inshore fish processing facilities throughout Atlantic Canada are owned wholly or in part by foreign investors. Minority non-Canadian equity or joint-venture interest is also present in some year-round shrimp companies, some among whom operate inshore shrimp, crab and groundfish processing plants and cold storage facilities in NL. It is important to note that minority investors do not control these Canadian companies and these businesses are making a positive contribution to the provincial and regional economies, and maintaining well-paying jobs for 100% Canadian crew and shore-based employees.

The frozen-at-sea coldwater shrimp industry today remains a pan-North Atlantic one where Canada and the Scandinavian countries are the main players and there is considerable information-sharing in the fields of harvesting and processing technology, vessel construction and sales, as well as product development and marketing. The very modest levels of minority foreign equity investment in both the seasonal and year-round shrimp fisheries is beneficial, and is far less than in other natural resource sectors in Newfoundland and Labrador, such as hydrocarbon and mineral extraction.

CHAPTER 4.0 - TODAY'S YEAR-ROUND NORTHERN SHRIMP INDUSTRY

4.1 The annual operational cycle

With the maturation of the fishery in SFA 6 in the late 1980s to mid-1990s, the FAS fleet was able to implement a year-round harvest operation. The pattern of operations typical of the fleet today became fully developed during this period. The importance of access to SFA 6 in maintaining year-round operations is made clear in figure 5. Due to extensive pack-ice coverage elsewhere, SFAs 5, 6 and 7 are the only zones in Canadian waters that permit access during the late winter-early spring period – and SFA 5 is often blocked by ice. Large modern FAS vessels provide the capacity to maneuver and fish in partial pack ice, to become more cost-effective. As a result, shrimp became regularly available throughout the year without interruption, to service the demanding world market for high-end, shell-on cooked and raw coldwater shrimp products. Canadian shrimp companies are able to offer and fill custom orders for specified products even while harvesting and can have them delivered to customers around the world more or less “on demand”. Dependence on cold storage to provide ongoing supply to overseas markets has been reduced, and operators have become price-setters more than price-takers. This ability to serve discerning markets effectively and efficiently is an important factor in the success of the high-quality coldwater shrimp sector.

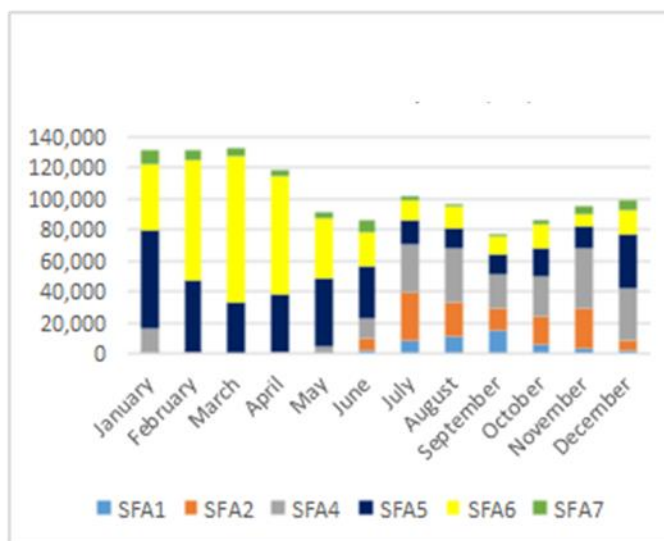


Figure 5. Average monthly landings (mt) by >100' shrimp vessels, 1996-2015, by SFA

The FAS shrimp sector has developed into a year-round fishery with significant fishing activity in all 12 months (figure 5). In turn, the economics associated with the procurement of modern FAS vessels now rely on 12-month utilization of this capital asset. Shrimp fishing for the FAS fleet became a full-employment model with no winter closure and with much-reduced utilization of the Employment Insurance program. It became easier for companies to build a lasting relationship with vessel crewmembers at all positions, but especially at the demanding engineering and wheelhouse posts. Investment in skill development of crews both personally and on a corporate basis was facilitated.

To maintain this pattern, fishing operations are distributed across all available SFAs in an annual cycle (figure 5) which is influenced by ice coverage, tidal conditions, and the intrinsic quality profile of the shrimp’s biology.

Shrimp Fishing Area 0 is north of the northern extreme of geographic range of shrimp. The small TAC enables exploratory activity; to the extent any vessel captain may wish to try his luck in the area. Shrimp Fishing Area 1 is farthest from home ports but is still explored every year to monitor whether the distribution of shrimp may have changed back to its pattern of decades ago. Due to extremely sparse resource availability in the past one to two decades, this SFA cannot support a viable fishery in other than an occasional year – 2010 being the exception in recent history. This lack of availability is the case even though that stock’s biomass has been above its maximum sustainable yield (MSY) in recent years. Unfortunately, the biomass has contracted to areas within Greenland’s continental shelf (the fishable part of Canadian SFA 1 is located on a small portion of the continental shelf of Greenland, just outside Greenland’s maritime boundary). Ice conditions generally limit access to SFA 1 to the July-to-October period.

The traditional year-round shrimp sector has no quotas in SFA 3. Fishing in SFA 2 is targeted during the low-ice/ ice-free period from June to November and SFA 4 is generally available to be fished from June to December with a nominal window of access in January. During this period, fishing operations shift between SFA 2 and the northern aggregation in SFA 4 to deal with changing tides in this area that can significantly impact fishing success. It is important to note that SFAs 0 to 4 inclusive are inaccessible between February and May, fully one-third of the year and the fishable quotas are fully utilized during the remainder of the year in any event.

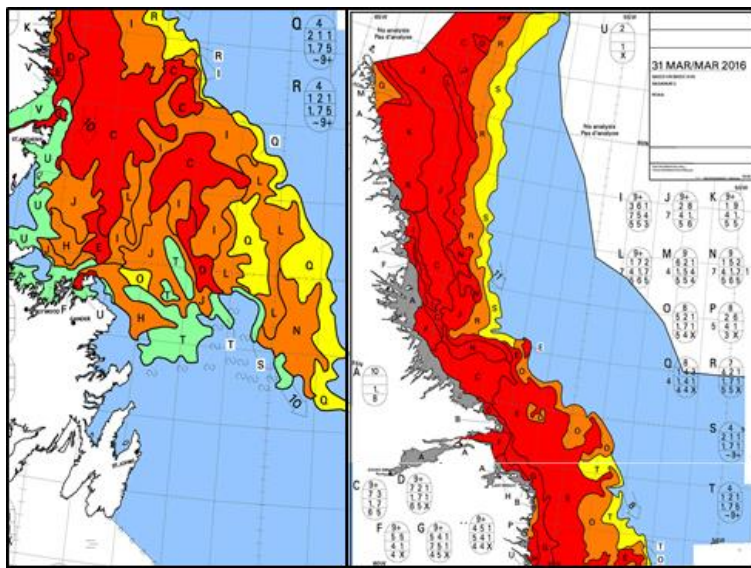


Figure 6. Recent late winter pack ice coverage off eastern Newfoundland (left) and the coast of Labrador (right)

Shrimp Fishing Areas 5 and 6 can be accessible in every month, though access to either or both of these areas can be interrupted in some years of heavy ice (this situation was actually experienced in March 2016, see figure 6). The majority of effort is focused in the January-to-May period when other areas to the north are not available. Shrimp Fishing Area 6 is especially important in late winter-early spring when other areas (including SFA 5) may be inaccessible. Without its quotas in SFA 6, the year-round fleet does not have sufficient SFA 5 quota to carry it through the months of February-

May (when SFAs 0 to 4 are ice-bound), even if the shrimp fishing areas of SFA 5 were ice-free for that entire period. The year-round fleet prefers not to harvest SFA 6 in the summer months because of poorer quality, soft-shelled shrimp during these months, the likelihood of gear conflict with the inshore shrimp and snow crab sector and the need to harvest available quotas in more northern SFAs when these areas are accessible.

While it was open, Shrimp Fishing Area 7 was an attractive option during the February-to-June period, but quotas available to the >100' sector were limited.

In summary, the year-round fleet spreads its fishing activity across widely separated areas where fishable quota is available, thereby maintaining vessel utilization, crew employment and timely market supply. The role that access to SFA 5 and especially SFA 6 plays during the first half of the year cannot be overstated. Without such access, there are no areas where the year-round shrimp vessels can fish, with the inevitable result that these vessels would tie up, significantly impacting the economics of their operations that are now dependent on a 12-month operation. (Imagine how the economics of an offshore oil rig would be affected by being forced to tie-up for 25-35% of the year.) While the number of vessels in the year-round shrimp sector can, to a point, be designed to deal with overall quotas that are available, the need to access these quotas on a year-round basis is paramount. To the extent that one or two of these >100 shrimp vessels have historically harvested turbot quotas as part of their fishing plan, it is important to note that turbot in OA and OB cannot normally be accessed during this same February-May period, even if these quotas remained available to them. (This option has been significantly curtailed if not eliminated for any vessel that had previously been harvesting quotas held by Nunavut.)

4.2 A world-class fishery

From earliest days, innovation and entrepreneurship, in support of high quality products and maximizing returns on the resource, have been a hallmark of the Canadian year-round shrimp fishery. Each vessel is a plant registered with the Canadian Food Inspection Agency and as such is subject to all inspection and food regulations of a shore-based processing facility. Whole shrimp are cleaned and sorted for size, most often cooked according to market demand, and then frozen on board within minutes of being caught. The largest shrimp are frozen raw in smaller packages for discerning sushi markets in Asia (mostly Japan), and the smallest shrimp are frozen raw in larger packages for further shore-based processing. Quality of the product (processed and frozen within an hour of harvest) is at the highest level possible.

The Canadian year-round shrimp sector competes head-on with similar year-round vessels from Greenland, Faroe Islands, Norway, and Russia. Markets are global, principally in Scandinavia, China, Russia (when not under embargo), Japan and Europe. The export value of the Canadian FAS shrimp fishery in 2015 was over \$300 million.

Licence-holders in the Canadian year-round shrimp sector continue to innovate and invest in modern technology, without which the considerable benefits to Canada cannot be maintained. Markets continue to demand ever more specialized products in terms of shrimp size grades, quality grades, packaging sizes, and product forms. Providing what markets demand is essential in a competitive world fishery and enables Canadian producers to survive if not to flourish in the fishery of the future. Correspondingly, there is a constant pressure to perform in the most efficient manner available. This pressure is extreme in a fishery where distances to some important grounds necessitate up to six days of sailing just to access the grounds. Additionally, Canadian >100' shrimp areas are covered by pack ice for a significant portion of the year, which requires Canadian vessels to be of adequate size, ice-strengthened and specially-equipped for operations in ice-infested waters. These lessons have been hard-learned; six FAS vessels have been lost completely during fishing operations since the onset of the fishery, most commonly due to ice damage.

Some of these operational requirements are unique to Canada's >100' shrimp sector and have pushed this fleet into an ongoing process of vessel development and renewal with more modern and technologically advanced vessels. Collective investments in the year-round fishery were in excess of \$400 million (circa 2009). Vessel size has increased over time, not only due to safety concerns but also to make room for more and better onboard factory facilities and greater freezer hold capacity, to reduce the steaming-to-fishing ratio. To attract and maintain well-trained and highly skilled crews, and to maintain health and fitness onboard while working extended trips, crew accommodations and other onboard amenities must be of the highest quality.

Capital investments in the FAS shrimp fishery were in excess of \$400 million (circa 2009). Current vessel replacement cost is \$600 million



New vessels now under construction for the fleet will have the latest technology designed into them. Onboard systems will recover electrical and kinetic energy from numerous points for reuse. Advanced hull designs and hybrid shaft generation technology will reduce fuel requirement and attendant greenhouse gases and carbon footprint, an increasing consideration for vessel operations around the world. This Canadian FAS fleet has demonstrated a consistent ability to maintain a workable balance between the

resource available for harvest and the fleet capacity to harvest it efficiently. At one point early in the development of the fishery, as many as fifteen vessels were utilized to harvest the >100' fleet

allocations. Over time, this number has become smaller until now 10 vessels service the traditional licence-holders licences, as well as harvesting special allocations in the temporary sharing program. Most adjustments in capacity were planned and exercised in an orderly fashion, with vessels being retired or re-purposed into other Canadian fisheries, such as groundfish. Things didn't always go smoothly; in addition to bankruptcies during the developmental period, in recent time (2006) the owner of the Aqvik and Kinguq went bankrupt. But in all cases, these capacity adjustments were done in a completely industry-financed manner. Vessels have become generally larger through this process, driven by efficiencies of scale; larger next-generation vessels will produce value-added product with a similar crew complement.

The Canadian year-round shrimp sector is also a strong partner with DFO in several integral elements of the management of their fishery. Since 1987, through the Canadian Association of Prawn Producers (CAPP), the year-round sector has co-managed the enterprise allocation ("EA") system established for this fleet. 100% of their trips carry independent at-sea observers at the harvesters' cost



(compared to <5% for the seasonal fleet), largely relieving DFO of the need to employ costly surveillance systems. In addition, through the Northern Shrimp Research Foundation (NSRF), the sector completes a substantial annual resource survey in more northerly waters that are not covered by the regular DFO ecosystem survey. These surveys, along with catch records and onboard sampling of catch, provide the principal source of information with which to track distribution and abundance in a non-biased, fishery-independent manner. They thus support and inform stock assessments and interim status updates on the stocks. Costs are partially offset by an allocation of fish in SFA 4 that is used to generate revenues from the fleet for scientific purposes. The NSRF is responsible for the survey logistics and works with the DFO to integrate data into the assessment. In the face of recent cost constraints of the Department, through the

New vessels coming to the >100' fleet will have reduced greenhouse gas production and carbon footprint, an important consideration for fishing operations around the world

NSRF the >100' shrimp licence-holders have also underwritten costs of engaging scientific expertise to develop an assessment model for Northern shrimp, to benefit all participants in the shrimp fishery across all SFAs. CAPP members have also invested in a continuous process of skills development, providing significant scholarships for marine engineering students at the Marine Institute in Newfoundland and Labrador.

The year-round shrimp fleet contributes substantial funds to departmental revenues. With access fees at the rate of \$66.50/mt, the sector pays in the order of \$2.6 million to DFO each year, a figure that well exceeds DFO's costs of science, management and surveillance that can be

attributable to this sector. It is noteworthy that the <65' seasonal shrimp sector contributes no access fees to the department, preferring to informally allocate individual quotas rather than contribute towards the cost of the science, management and surveillance of their fishery.

CHAPTER 5.0 - EMERGENCE OF SEASONAL FISHERY AND SPECIAL ALLOCATIONS

5.1 A management approach for the temporary period of hyperabundance

In 1995, pressure grew for DFO to allow inshore vessels to access a fishery for Northern shrimp. At that time, the year-round shrimp sector was informed by the Minister that he had no intention of doing anything that would adversely affect the viability of the existing fleet (CAPP). Exploratory licenses were issued both for pot fisheries and small vessel trawler fisheries on grounds within 12 nm and 25 nm respectively for Quebec and Newfoundland and Labrador vessels.

By 1996, it was evident that a major ecosystem shift had occurred on the Newfoundland and Labrador Shelf and that major changes were being observed in the mix of fishery resources over a wide portion of the Canadian Atlantic coast (Parsons and Veitch, 1997). FAS fleet experience and catch rates, as well as government research surveys showed that in the wake of sharp bottom temperature changes and declines in groundfish, a major expansion of coldwater-adapted species, most prominently Northern shrimp and snow crab, was occurring. While management measures that limit and shape resource removals remain important, environmental conditions and predation are considered to be influential in determining productivity and abundance in shellfish resources such as Pandalid shrimp (DFO 2015).

A 1996 study on the economic feasibility of the >100' year-round shrimp sector (Gardner Pinfold 1996), showed that at recent resource levels and market values the industry was marginally viable, and that an increase of quota to 3,100mt per vessel (from 2210mt) would be needed to support fleet replacement with modern vessels.

In 1996, DFO Minister Tobin entertained a round of discussions with the year-round sector about permitting new access to the fishery for <65' seasonal vessels, more specifically to allow a small group of seasonal vessels to service a new shrimp plant to be built in St. Anthony (U. Snarby, pers.comm.). At that time, there was general acknowledgement of this approach by the year-round harvesters, but as events were to show, this is not what happened.

In April 1997, scientific advice (DFO 1997) summarized the situation: "The current high level of shrimp abundance, particularly in the Hawke + 3K management area, is unprecedented ..." and "An opportunity now exists to expand the shrimp fishery substantially with a minimum risk of over-exploitation". Advocacy regarding how to best take benefit from these increased resources increased sharply, particularly by seasonal harvesters from Newfoundland and Labrador and Quebec who had been displaced by the cod moratoria.

In November 1996, DFO Minister Mifflin commissioned a consultation process to seek industry views on sharing increases in Northern shrimp. On February 18 1997, Minister Mifflin wrote to CAPP that "... only if quota increase above current levels will sharing be contemplated. This should ensure that the viability of the current licence-holders is not threatened by any sharing that takes place."

On April 23 1997, Minister Mifflin increased the quota in SFA 2 by 50% and in SFAs 5 and 6 by 100%. The quota levels remained unchanged in the other four areas. In making the decision to expand the East Coast Northern shrimp fishery, the Minister established the following four principles:

- The conservation of the resource will be paramount.
- The viability of the existing enterprises will not be jeopardized. Current Northern shrimp licence-holders will retain their full 1996 allocation in all Shrimp Fishing Areas: 37,600 tonnes. Existing licence-holders will share the increase in SFA 2 and some will share the increase in SFA 5.
- There will be no permanent increase in harvesting capacity. Participation by new entrants will be temporary and will end for those SFAs where quotas decline in the future and the established thresholds are reached. The thresholds will be defined as the 1996 quotas in each of the six shrimp fishing areas.
- Adjacency will be respected, which means that those who live near the resource will have priority in fishing it.

In elaborating on how principles would be applied in this case, the Department (Backgrounder B-HQ-97-24) made it even more clear **that adjacency was being applied only to the increase in the TAC** [emphasis added], while reiterating that *'Current northern shrimp license holders will retain 37,600 tonnes that was allocated to them in 1996.'*

There followed immediately a process of consultation on how best to apply those principles to the 1997 season and beyond. The 1997-1999 Management Plan details how allocations to new temporary entrants were to be managed into the future:

"To ensure that the viability of the traditional, offshore fleet was not jeopardized, the 1996 quota levels in each SFA were set as thresholds. Sharing will only take place in a particular Area, if the quota rises above the threshold in that Area. If quotas decline in future years back down to the thresholds, the sharing will end and the new, temporary entrants will leave the fishery. The overall 1996 quota for all Areas combined will also be used as a threshold to determine sharing.

Thus, a major decline in one or more Areas could preclude further sharing in any Area.” (DFO, 1997)

This management approach for entry/exit was referred to colloquially in discussions as "Last In, First Out" or LIFO, although this nomenclature was only reflected in Management Plans starting in 2003. The tenets of the approach were clear to all involved from earliest days.

Correspondence from the President of the Fisherman, Food and Allied Workers Union in October 1997 clearly discusses the concept and application of

‘The viability of the existing enterprises will not be jeopardized’
- 9 DFO Ministers since 1997

threshold and the ‘per SFA’ characteristic of the approach. The Fisheries Management Plan for the Newfoundland seasonal fleet for 1997-1999 makes reference to the thresholds and required that inshore fishers sign a declaration that their allocations were

temporary. Discussions on LIFO (by name) are recorded in industry-wide NSAC minutes in 2000 and after. There was no confusion at the time of its introduction and in the period following of the nature and detail of the arrangement being used to manage the emerging hyperabundance of Northern shrimp available to this fishery.

In the years that followed this initial increase, increased stock abundance on the Newfoundland Shelf led to further increases in the Total Allowable Catch ("TAC"). Additional new entrants were introduced to the fishery, including individual inshore fishers affected by earlier declines in groundfish fisheries and Aboriginal groups and communities in areas adjacent to Northern shrimp grounds. New entrants also included <65’ seasonal vessels from non-adjacent fishing zones such as the Gulf of St. Lawrence. A temporary allocation in SFA 7 was made to a consortium of interests from Prince Edward Island, which province had not benefitted previously from any shrimp fishery.

As this pattern of preferential allocation to new entrants continued over the next few years, there is a consistent record of ongoing commitments to the policy of Last In, First Out, both by subsequent DFO Ministers and in key departmental policy publications. Management Plans from 2003 and 2007 (the current IFMP) retain clear statements about it. In 2007, the DFO Minister, the Hon. Loyola Hearn, replaced the temporary permits used to that point for the seasonal fleet with regular licences, as part of a suite of measures to facilitate rationalization and consolidation among vessels. In so doing, he explicitly re-iterated that this would not affect the use and application of the LIFO entry/ exit approach.

As a result, the relative shares of the total allocation between traditional year-round industry and new entrants changed dramatically (figure 7). By the period of peak landings in 2009, new entrants were allocated 66% of all Canadian allocations. The share of the inshore fleet alone in SFA 6 was 69.5% at its peak. In comparison, the share allocated to the traditional >100’ sector

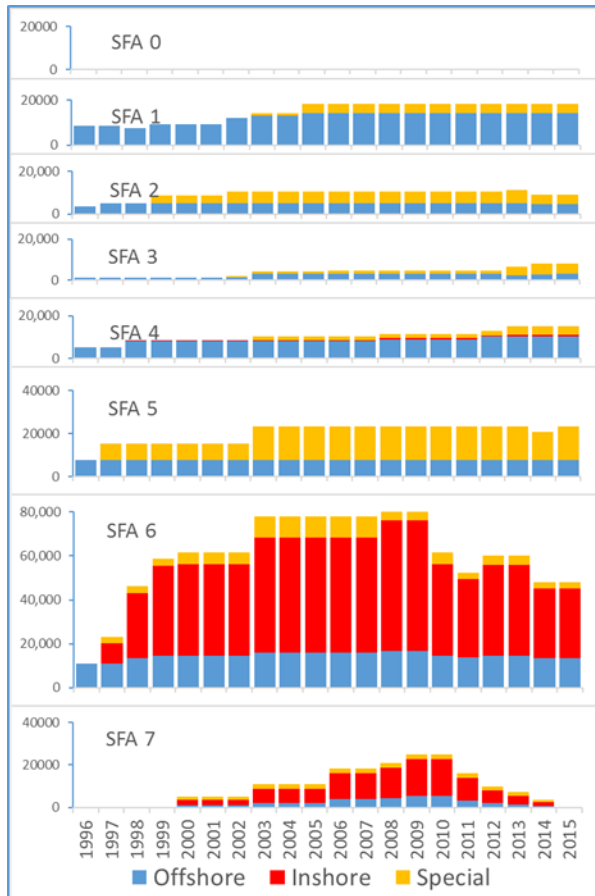


Figure 7. Traditional and temporary allocations in northern shrimp, 1978 - 2015

that developed the fishery rose modestly above the LIFO threshold established in 1997. TACs (and allocations) in SFAs 0 – 5 were more stable during this period relative to those on the southern Newfoundland Shelf and the Grand Banks (figure 7). The overall effect of this aspect of the government policy on sharing the shrimp resource was to provide a substantial opportunity to both the seasonal vessels and shore-based processing sector to adjust to the sharp ecosystem shift that contributed to declines in the traditional groundfish fishery.

5.2 The seasonal fleet and shore processing sector

Temporary allocations were provided to individual fishers licensed in other fisheries in the areas immediately adjacent to several SFAs, as well as to adjacent interests not part of the fishery at all, such as native organizations and communities. These latter "special allocations" were distributed across all SFAs from 1 to 7, but the biggest single temporary allocation by far was to the inshore fishers of Newfoundland and

Labrador who were affected by the closure of fisheries for cod in 1992. This opportunity followed on the heels of the \$2 billion Northern Cod adjustment expenditures provided by the federal government in the 1990s.

Though seasonal shrimp harvesters are presented by some as an "inshore" fleet, it is important to see this fleet clearly and objectively. At its peak, there were 362 active vessels in the seasonal shrimp fishery that had previously fished principally crab, cod, turbot and other groundfish. Many based in 2J3KL had been fixed-gear gillnetters that were allowed to convert to mobile-gear shrimp operations. Once entry was gained, substantial changes to the fleet structure were progressively introduced, contrary to the conditions that had been made explicit by Minister Mifflin when the temporary access had been created. Replacement of former fixed-gear vessels proceeded, with high-capacity trawlers coming into the fishery that pressed the length-overall limits that divide fleets at 65 feet. Eventually, some exceptions were made to the LOA limit and so-called "inshore" vessels up to 89 feet in length were allowed to enter the seasonal shrimp fishery. All these vessels were and remain eligible for support and assistance from the Newfoundland and Labrador Fisheries Loan Guarantee Program that provides a provincial

government guarantee on loans through local chartered banks for the construction or purchase of vessels and/or to purchase engines and fishing equipment at up to 100%.

Many if not all of these seasonal shrimp vessels have the capability to fish to the edge of the continental shelf off Newfoundland and some have ventured far to the north on charter arrangements for several special allocation holders there.

Rather than "inshore", this fleet is best described as the seasonal wet trawler fleet that harvests shrimp in a fishery that mostly takes place 60-380 miles from their home port (figure 8). Catches are iced onboard and brought to shore for processing in plants. At the peak of the seasonal fishery in SFA 6, there were 13 plants located across Newfoundland and Labrador processing landings of the seasonal fleet and a portion of the small-size frozen-at-sea whole shrimp from the year-round fleet. With the size and mobility of these 250-350 so-called "inshore" vessels, they criss-cross over huge tracts of the ocean floor, producing an enormous harvesting effort that is far greater than the 10 year-round vessels, albeit without nearly the same efficiencies.

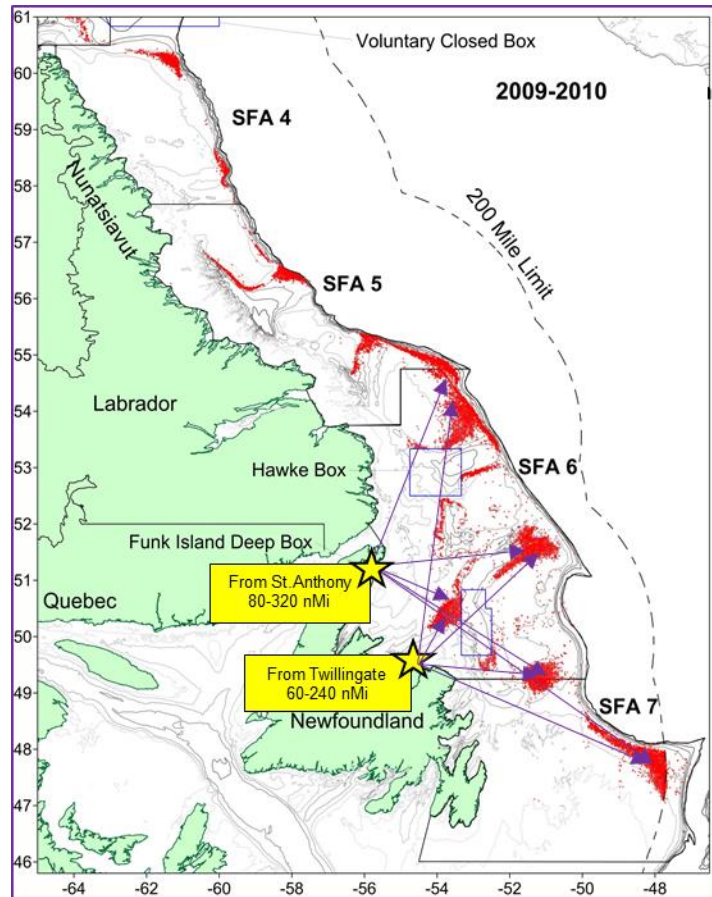


Figure 8. Sailing distances for seasonal vessels from top ports

The "seasonality" of the seasonal shrimp fleet is not determined on the basis of a well-thought-out plan to harvest their allocations in the manner that would bring the best possible value from the resource. The timing of the fishery is in the summer months, largely as this is the window available once the more lucrative crab fishery is completed in early summer. This channels the fleet's activities into a time when the shrimp in SFA 6 are moulting, followed immediately by mating and "spawning" which occurs generally late in the summer (figure 2). The effect of this enormous short-term focus on the resource is unknown but it is a practice that is to be avoided in other fisheries. It is in this same period that water temperatures are higher on the Newfoundland Shelf, which further diminishes flesh quality in the landed catch. As a point of contrast, the FAS fleet is normally leaving SFA 6 at this time, due in part to the much-reduced quality of the shrimp in this zone at this time of year.

There is also within the seasonal sector an unfortunate lack of any coordinated harvest planning, even within that summer window, to schedule and manage landings to shore-based plants to create a more balanced flow of product in those plants and thereby ease labour requirements, avoid gluts and attendant spoilage and facilitate the production of higher, more value-added products.

The difficulties of this seasonal temporary shrimp sector in Newfoundland and Labrador have been studied several times and were particularly well documented by Gardner Pinfold in 2006 and by the NL Independent Taskforce in 2011. **Landings are heaviest during the warmer water summer months and across relatively few fishing days; on average, seasonal vessels harvest shrimp for only 34 days per year (DFO Statistics 2014).** Shrimp are held in large bags on ice for

The full threshold quota (11,050mt) of the year-round harvesters in SFA 6 would supply the seasonal harvesters for only 7-8 days, and maintain only 2 plants with 225 seasonal workers

the duration of the trip that lasts several days. Without mechanisms to coordinate landings in accordance with the capacity of the shore-based shrimp processing plants, gluts develop in these plants and quality of the peeled products suffers further. The workforce needed to process large quantities of shrimp within a short time strains the availability of workers. Recruitment of young plant workers to a highly seasonal workforce has been

difficult. The average age of NL plant workers has increased by over five years in the last 10 years (DFA Statistics) and temporary foreign workers are becoming a feature of shrimp processing plants in NL as a result.

Clearly a reallocation of >100' shrimp quota is not any type of panacea for the seasonal sector in NL. The full threshold of the year-round fleet of 11,050mt in SFA 6 would, at the fleet harvest rate, supply the seasonal shrimp harvesting sector in NL for only about 7 or 8 days (statistics from Pisces Report 2015), and would supply the needs of only 2 plants, employing about 225 seasonal jobs (statistics from Independent Panel 2011). So, it is clear that the hue and cry that the SFA 6 shrimp quota from the year-round sector is needed to save the seasonal fishery and rural communities in NL is simple exaggeration: hyperbole designed to mask the internal problems and accountability for the failure of the FFAW and local government to convert the benefits of their temporary access to the shrimp fishery into a strong foundation for a sustainable seasonal fishery.

In 1997, an opportunity emerged for seasonal harvesters and processors in NL to benefit from an unprecedented increase in Northern shrimp abundance. These sectors, who had in the past struggled with matching their capacity to available resources and reducing seasonality, were presented with an opportunity to relieve economic pressure resulting from the collapse of the groundfish fisheries. Despite assurances from all corners that capacity would be managed and not be allowed to increase, it did. Participation in the expanded temporary fishery was set

purposely high to avoid the more difficult process of adjustment. The resultant capitalization of vessels and processing plants is difficult to understand, in business sustainability terms. It is evident that an important opportunity to make long-term changes while the revenues from Northern shrimp were temporarily available has been squandered. Nevertheless, opportunities still exist to make necessary changes to bring a measure of sustainability for these sectors, including both federal and provincial funding earmarked for mitigating the effects of the Canada-EU Comprehensive Economic and Trade Agreement ("CETA").

An opportunity to use revenues from temporary shrimp allocations to achieve sustainable re-organization of seasonal harvesters has been squandered.

A \$400 million CETA fisheries fund (\$280 M from the federal government and \$120 M from the government of NL) will soon become available as an "adjustment fund". These funds should be channeled and targeted to enable seasonal harvesters in NL to transition towards a sustainable, less seasonal, groundfish-dominated fishery, supplemented by a profitable crab fishery, and a smaller shrimp fishery to the extent that the SFA 6 resource decline slows or stops. Incentives can be designed for harvesters to change to fishing gear (hook and line) that is better suited to meet the quality and pricing demands of the 21st century premium-value markets in the UK and France, and, in tandem with unlimited "combining", to implement the fleet rationalization that is necessary to achieve a strong seasonal fishery for the future.

With respect to seasonal shrimp processing plants, CETA will also eliminate largely prohibitive EU import duties for twice-frozen shrimp. Tariff reductions will enable NL shore-based shrimp processing plants to be competitive to obtain raw, whole frozen "industrial shrimp" from the year-round fleet, for processing and export to EU markets. This could significantly offset reduced

The path forward must be a net gain for Newfoundland and Labrador, with all fishing sectors being sustainable and viable.

raw material supply from the seasonal fleet, if and when shrimp SFA 6 shrimp quotas decline. It is important to seek a path forward that produces a net gain for Newfoundland and Labrador, rather than eroding a strong sector of the fishery to prop up the chronic weaknesses of the other sector. Our fleet does not wish

to propose solutions nor to take any role in the decisions needed to be made concerning the seasonal fleet <65' in NL. However, we have a duty to point out that there are alternatives available to address their problems that will create a lasting net benefit to the social and economic fabric of NL, other than the alternative of taking quota away from the year-round shrimp sector. With these alternatives, it is critical that these problems of the seasonal harvesting and shore processing sectors in NL not be foisted upon us.

Despite its challenges, disaster for this sector is not inevitable. Several processes have been completed in recent years to examine the state of this fishery and there are options that can be pursued that do not involve reallocating resources upon which others depend. The harvesting sector has a multi-species resource profile, in that it has access to shrimp in the Gulf of St. Lawrence (~50 vessels), snow crab, turbot and other groundfish such as cod (figure 9). Snow crab, even more than shrimp, has been a lucrative and sustaining fishery for seasonal harvesters in NL and this should continue, even if at a reduced level. Snow crab landed value by this fleet is at an all-time high and shrimp remains at its second highest value (figure 10). While the Northern cod is not yet ready for the resumption of commercial fishing, this resource is growing once again and there are indications that we will see a commercial fishery in the next five years.

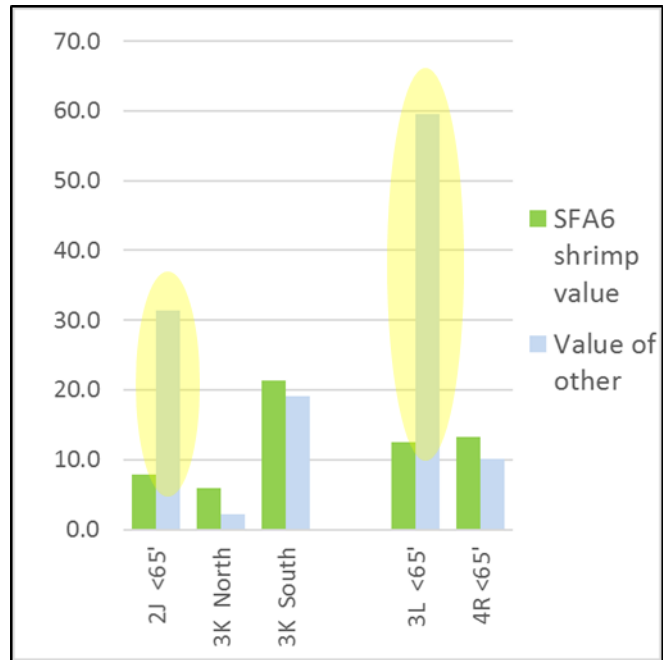
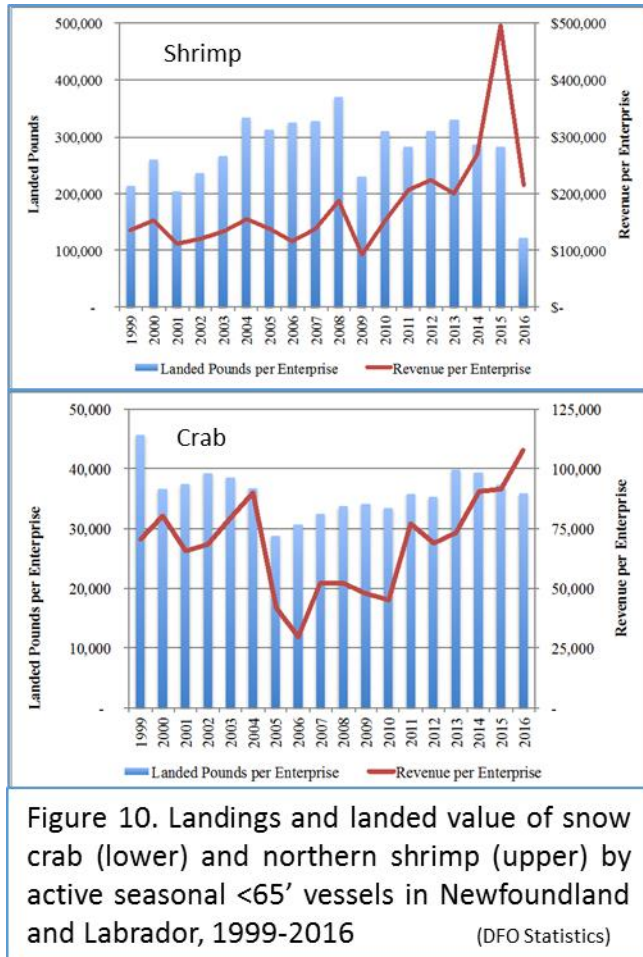


Figure 9. Landed value of shrimp (\$M) in relation to the landed value of other species landed by seasonal vessels, 2012-14

Analysis of DFO data shows over the 2012-2014 period that SFA 6 shrimp accounts on average for only about 1/3 of the total landed value for seasonal vessels that fish in SFA 6 for shrimp. Moreover, more than 40% of all seasonal fleet landings from SFA 6 were taken by non-adjacent vessels, principally from the Gulf of St. Lawrence (4R) and southern Newfoundland (3L). For these non-adjacent vessels, SFA 6 landings represented about one-quarter of their annual revenue. Given these relatively low levels of dependence during a period of hyperabundance and strong markets, declines of the magnitude now being experienced should be manageable and certainly accommodated without impacting others outside that fleet. There would seem to be an opportunity to reallocate within the fleet in favour of those truly adjacent to SFA 6, as this is clearly the favoured approach of the FFAW.

5.3 Special allocation holders

The other type of temporary entrants to the Northern shrimp fishery were the special allocation holders, entities that are not licence-holders. The Government adopted this approach as an



opportunity to spread economic benefit to a range of organizations that they deemed to be in need and deserving of it.

Most of these special allocations have been fished by the year-round fleet, a commitment from DFO in exchange for not receiving a greater share of the increased allocations directly. It may also be assumed that the year-round sector would be a preferred partner due to its ability to pay higher royalty fees than the seasonal fleet. At the peak of shrimp abundance and attendant TACs, over 40% of the year-round fleet harvest was derived from contractual operational arrangements with special allocation holders in the fishery. Fees that can be paid to acquire these quotas vary with market conditions but these arrangements provide an estimated \$30-million-dollar annual revenue to these special allocation holders. For the year-round shrimp sector, such payments are possible to harvest

quotas that are over and above our own quotas that are required to support the overheads of our capital investment. By their nature, quotas secured through expensive royalty fees cannot replace quotas allocated directly to the year-round sector and, by definition, these special allocations can disappear with reductions in TACs.

CHAPTER 6 - POLICY ISSUES

6.1 Introduction

The department's reliance on the LIFO principle – the requirement that those granted temporary access to Northern shrimp from 1997 onward should withdraw from the fishery as the resource returns to historic levels, to reduce pressures on the resource and maintain the economic viability of the original licence holders – has not arisen in a vacuum. It is part of a long effort by DFO to bring transparency and stability to access and allocations, in the interest of conserving the resource and creating a stable operating and planning environment for those dependent on the fishery.

This chapter makes the case for two important contentions:

- The >100' Threshold Quotas and Last In, First Out (LIFO) policy for managing Northern shrimp access are nested within – and significantly supports – DFO's broader policy and program agenda for stabilizing access and allocations in the Atlantic commercial fisheries.
- The department's plans for managing access in conditions of changing abundance were made clear to all industry participants in 1997, when temporary access was first granted, and the department's policy positions, actions and messaging have been consistent over the subsequent 19 years.

A third section examines the use of the adjacency principle in the Northern shrimp fishery since 1997 and particularly the claims made by seasonal fishers seeking to eliminate LIFO and reallocate quota shares permanently to their sector.

6.2 DFO's broader policy directions: the importance of allocation stability

In April, 1999, the Auditor General's report on Atlantic shellfish management noted shortcomings of Canada's fisheries management regime for most of its history:

"The absence of a fisheries policy that fully reflects sustainability concepts means that decisions are made on an ad hoc and inconsistent basis rather than as part of an overall framework for achieving a sustainable fishery. An open and transparent process in which clearly articulated and consistently applied principles guide decision making would provide all stakeholders with assurance that their interests are considered and that the resource is protected over the long term. (chapter 4, section 4.2). (emphasis added)

Historically, every decision related to the management of the common-property resource – who may fish, where, when, for how much fish – has been made by the Minister. Over the years, the consequences of an unstructured, overly politicized governance model became all too apparent: a chaotic operating environment for managers and users alike; persistent lobbying; squabbles and rivalry between user groups; and pressures to over-exploit the resource to secure short-term gains before stocks collapse or shares are reassigned.

Attempts over the past 25 years to reform the *Fisheries Act* – i.e. to replace unfettered discretion with fixed principles and structured processes that would maximize stability and predicability and put conservation first – were never adopted. Proposals for comprehensive overhauls were tabled in Parliament in 1993, in 1995-97 and in 2006-8.

DFO relies instead on administrative mechanisms to create a stable and predictable environment for ministerial decision-making and investment by licence holders. It has developed fixed policy frameworks and decision rules, standing advisory bodies and inclusive processes of public consultation and engagement. Fixed policy frameworks and documented “due process” bring a degree of rigour and discipline into the process and, to the extent they are applied consistently, add legitimacy to departmental decisions. Consistent application is not always easy. There are always stakeholders who, from self-interest, are prepared to re-open an old policy debate ...or to distinguish their case from the framework policy ...or to argue, on grounds of hardship or changed circumstances, for the department to walk away from its public commitments.

Achieving allocation stability, with clear rules and mechanisms for making adjustments when required, has been a cornerstone of DFO's policy agenda since the early 1990s. Allocation stability would remove the suspicion of political gerry-mandering and deal-making; reduce conflict among user groups; provide a stable environment for business planning and investment; and encourage all parties at the table to refocus their energies on ensuring resource sustainability and on longer-term planning.

The 2002 report of the Independent Panel on Access Criteria ("IPAC") noted the close links between stability of access and allocations and the cultivation of a conservation ethic among users. The panel declared (page 6) that DFO would need to change users' incentives to conserve “by giving them a feeling of ownership of the resources”. The panel also noted (page 54) that “this approach to resource management will work if and only if the stakeholders have good reason to take the long view and find it in their own economic/social interests to invest in conservation of the resource”. Furthermore, “if those who are being encouraged to invest in a resource know that returns on the investment will be significantly reduced through the granting of additional access, then obviously the incentive to invest in conservation will be lost.” (page 50)



The 2004 report of the Atlantic Fisheries Policy Review ("AFPR") outlined a vision for the Atlantic fishery and for future fisheries management, based on effective conservation, a more collaborative model of resource management and greater industry self-reliance. Allocation stability and stable, transparent decision-making were two key components of the discussion. Stabilization of shares was one of a suite of measures proposed to increase industry self-reliance and self-adjustment and to support "shared stewardship", a more collaborative approach to sustainable development in the fishery.

The report announced that "the department will extend the duration of fisheries management plans and require that current sharing arrangements be documented in those plans. [...] Depending on harvesting activities and the duration of cycles of resource abundance in particular fisheries, long-term sharing arrangements may last up to nine years. [...] Once they are established for longer periods, sharing arrangements will be reconsidered only in exceptional circumstances. These include changes deriving from best-use decisions or the emergence of new legal obligations." (S. 5.2.3) (emphasis added)

The AFPR report also addressed the question of new access to established fisheries, which had recently come under DFO's 2002 Policy Framework for New Access. To maintain a balance between harvesting capacity and resource availability, the report asserted, decisions to grant new or additional access in specific fisheries should include an up-front requirement that users develop self-adjustment mechanisms, for use in the event of a reduction in resource abundance or landed value. Such mechanisms could include "strategies incorporating clear and enforceable entrance and exit rules for new entrants. Examples are last-in-first-out, or the use of entry and exit thresholds." (S. 5.2.1)

The department's legislative proposal (2006-2008) to replace the 1868 *Fisheries Act* recognized in the Preamble "the importance of stable access to fisheries" and required the Minister, in making licensing rules and awarding allocations, to take into account "the importance of secure access to fishery resources and of allocation stability" (clause 25), along with other customary principles such as adjacency and historic dependence. The legislation empowered the Minister to make harvest "allocation orders", setting long-term allocations for fleets or harvester groups in Aboriginal, recreational and commercial fisheries. The allocation was made subject to the requirements of conservation and orderly management. Allocation orders could be amended or cancelled by a future Minister but only with notice to the users and after considering the statutory principles cited above.

While the legislation was under development, DFO began piloting long-term allocations across the Atlantic commercial fishery. The Hon. Geoff Regan announced DFO would maintain sharing arrangements in 88 of 98 Atlantic fisheries for five years from 2005. On April 12, 2007, the Hon. Loyola Hearn announced his intention to bring permanence and stability to sharing arrangements by 2010 and to implement stabilized shares for competitive fisheries where no arrangements existed (DFO Quebec Region "Infoceans", Vol. 10 Number 2, April-May, 2007).

It is interesting to note that as recently as April, 2016, the Government of Newfoundland and Labrador declared its support for the concept of stabilized shares "since it can enhance stability and predictability for the fleets operating in those fisheries and allows resource users to take more responsibility for the management of their fishery" (NL Government submission to the DFO Public review of halibut allocation decisions, April 18, 2016)

In January 2012, a DFO discussion paper, "The Future of Canada's Commercial Fisheries", renewed the department's commitment to implement long-term resource planning, based on "evergreen" Integrated Fisheries Management Plans that set out fixed allocations for harvest sharing and the jointly agreed measures for managing those shares.

The paper asserts that "[s]ustainability comes from taking a long-term view of things." An important element of the long-term approach will be "the broader establishment of allocation stability and a move toward market-based allocation adjustments. Establishing allocation stability in key fisheries where it does not already exist will help to instill greater certainty and confidence around the privileges tied to shares." (page 9)

The paper continues: "Fisheries and Oceans Canada aims to stabilize sharing arrangements in all key fisheries the Department manages. [...] If resource users want to change established arrangements they will do so cooperatively, negotiating among themselves rather than requiring Fisheries and Oceans Canada to intervene. [...] Only in exceptional cases, such as in response to legal obligations and obligations stemming from comprehensive land claims agreements, would the Department become involved in adjusting already established sharing arrangements." (page 11) (emphasis added).

6.3 DFO's consistent interpretation and application of the Last In, First Out principle

From the outset, it was apparent to scientists and managers that the "bloom" in Northern shrimp stocks was exceptional and could be short-lived. The IPAC panel succinctly summarized (page 9) the policy challenge and the attendant risks:

"On the one hand, the pressures to bring about a sharing of the increased resources can be all but irresistible. On the other, granting a large number of new participants access to the fishery can create several problems. Existing licence holders are likely to resent being denied the full benefits of increased prices or stocks. In addition, severe difficulties can arise if it later becomes necessary to withdraw access because of a decline. [...] Most serious of all, strong resistance to reductions may result in allowing excessive harvesting to continue, thereby putting the stock at risk, as has often happened in the past."

In the case of the Newfoundland snow crab fishery, the Panel noted with concern (page 50) "that holders of temporary seasonal permits are now demanding that their temporary permits be converted into permanent licences; that the vessels appear to have few, if any alternatives; and finally that the resource abundance is known to be cyclical [...] The potential consequences for

the resource are too obvious to need stating. The Panel therefore would argue that before access to abundant resources is granted on a "temporary" basis, where the abundance is recognized to be ephemeral, then proper application of the conservation criterion would dictate that a clear exit strategy first be put in place." (emphasis added)

The granting of temporary access to the Northern shrimp fishery dates from 1997, when the year's quota increased in Shrimp Fishing Area (SFA) 2 by 50 per cent and in Areas 5 and 6 by 100 per cent. Prevailing quota levels remained in effect in the other four zones.

In his April 23, 1997 press release, the Hon. Fred Mifflin announced that access to the expanded fishery would be granted to inshore "core" fishers adjacent to the areas where harvests were increasing. The awarding of access would be governed by four core principles developed through consultations with the fishing industry:

- The conservation of the resource will be paramount.
- The viability of the existing enterprises will not be jeopardized. Current Northern shrimp licence holders will retain their full 1996 allocation in all Shrimp Fishing Areas -- 37,600 tonnes. Existing licence holders will share the increase in SFA 2 and some will share the increase in SFA 5
- There will be no permanent increase in harvesting capacity. Participation by new entrants will be temporary and will end for those SFAs where quotas decline in the future and the established thresholds are reached. The thresholds will be defined as the 1996 quotas in each of the six shrimp fishing areas.
- Adjacency will be respected, which means that those who live near the resource will have priority in fishing it. (emphasis added)

Access was decided through the application of an eight-point set of sharing principles. A key principle among the eight was the entry and exit formula: capping at 1996 levels, both in the aggregate harvest and by SFA. Two conditions could trigger the phase-out of temporary access: a reduction in a single SFA or in the global TAC below the 1996 levels.

Harvesters receiving permits to fish in the 1997 fishery signed a declaration acknowledging that this permission to fish was temporary.

That this was broadly understood and accepted by inshore interests is underscored by an October 10, 1997 letter to DFO, in which the President of the Newfoundland union acknowledged "in the event of a decline in future TAC, the share for the inshore sector would be reduced accordingly, possibly to zero" (but the temporary permit-holders should not be automatically removed from the fishery). In the same letter, he declared "It was our understanding that the thresholds would be attached to each area", a position the FFAW now disowns as it argues for removing the offshore sector entirely from SFA 6.

In early years, DFO and successive Ministers returned often to the message that inshore access was temporary and would last only as long as the unexplained abundance persisted. On January

30, 1998 the Hon. David Anderson wrote to NL Minister John Efford: "I am concerned about the increasing processing capacity in this fishery. I have noted that shrimp processing enterprises have been eagerly gearing up for the inshore catches, with expectations that the current situation will continue for the long term. [...] The sharing formula set out for the 1997-99 northern shrimp management plan includes the proviso that participation by new entrants is temporary and will continue only as long as quotas are above the established thresholds."

And on June 16, 1998, he wrote to the President of FANL: "I am sure that the benefits that will accrue to your province from the Northern shrimp fishery will be of great assistance to fishers and communities affected by the groundfish moratorium. [...] I must reiterate, however, that it is not known how long this high abundance of shrimp will continue. These allocations are temporary, and I will not hesitate to reduce them in future years if the biomass of shrimp returns to more traditional levels."

In a May 13, 1999 appearance before the Standing Committee on Public Accounts, the new DFO Deputy Minister, Larry Murray, emphasized the temporary nature of the access and its neutral impact, over the longer-term, on harvesting capacity: "I want to stress that sharing of shellfish resources has adhered to the principle of 'no permanent increase in harvesting capacity'. New participants, who are existing core fishers, are in the fishery on a temporary basis only, while the resource is abundant and values are high." Later, he repeated: "There has been temporary access... with a clear understanding by everyone that it is temporary...."

Jacque Robichaud, Director General of Resource Management, explained: "You could bring in new permanent entrants but this is the mistake that was made for groundfish, so we didn't do that. A temporary form of access was looked at, whereby when the resource goes up, you share and when it goes below the threshold, it goes down."

At the 2000 Annual Meeting of the Northern Shrimp Advisory Committee, the Newfoundland union proposed that the temporary permits should be converted to regular licences with a permanent share of the harvest. Earle McCurdy "felt that temporary licences should be made into full licences with equitable shares of the allocation and fully incorporated into the fishery during this [fishing] plan." (Minutes of the 2000 NSAC meeting). This was opposed by the offshore licence holders who, according to the Minutes, "supported the threshold levels and the 'last in, first out' principle".

In June 2000, communications materials published with the next multi-year Northern shrimp management plan (2000-2002) first applied the term Last In, First Out to the formula for reducing allocations and removing access privileges. The Hon. Herb Dhaliwal's press release stated: "In accordance with the principles developed in consultation with industry in 1997, access to the increased quota will be provided on a temporary basis. This ensures that there will be no permanent increase in harvesting capacity. Should there be a need to lower quota levels in the future, the removal of access privileges will be based on the "last in, first out" principle, as is the case in all fisheries."

Prepared to a standard template, the Integrated Fisheries Management Plan is a comprehensive, multi-year plan for each fishery, covering the biological outlook, management and enforcement measures, licensing and allocations. In 2003, DFO developed a new IFMP for the Northern shrimp fishery. The 2003 plan raised the shrimp TAC again. Additional access was granted in the form of special allocations, including to PEI fishers. The IFMP also introduced DFO's Atlantic-wide New Access Framework, which IPAC had developed, as the governing framework for future access decisions in the fishery.

The IFMP, in its chronology of the recent history of the fishery, noted (S. 6.3) under the rubric Quota Sharing: "Should there be a decline in the abundance of the resource in the future, temporary participants will be removed from the fishery in reverse order of gaining access – last in, first out (LIFO)."



Ernst and Young, in its 2012 audit of the application of the LIFO principle to quota reductions in 2010 and 2011, noted that the term LIFO did not appear in fishing plans before 2003 and that its meaning was prone to differences of interpretation. The auditors did not, however, support the view that this new terminology signaled a policy departure by the government, creating a new allocation rule where previous policy confined itself to questions of access. The Ernst and Young report made an explicit link between the LIFO references in the IFMP and the Minister's original policy declaration of 1997 respecting the conditions for loss of temporary access. The auditors concluded that "the principles regarding access are replaced by the New Access Framework. The principle in place that guides the quota reduction – last in, first out – remains the same as those set out in 1997 and continues to apply to the Northern Shrimp Fishery." (S. 2.1, subsection 4) (emphasis added)

The 2003 IFMP remained in effect through 2006, years of increasing abundance in the fishery. On April 12, 2007, following more than 40 meetings with communities and stakeholders convened by DFO and the Province, the Hon. Loyola Hearn and the Hon. Tom Rideout, the Minister of Fisheries and Aquaculture for the Government of Newfoundland and Labrador announced the outcome of the federal-provincial Fishing Industry Renewal Initiative. Measures to restructure the inshore fishery included the conversion of temporary inshore shrimp permits to "regular" licences; a combining policy, to allow licence holders to buy out another licence holder and stack their respective quotas; the use of licences as collateral; capital gains tax changes; and measures to restrict trust agreements on fishing licences.

What was the department's intent in this conversion: To alter the status of the inshore participants in the fishery – or to preserve the status quo? The department was quick to assure other stakeholders that the conversion was driven by practical needs internal to the inshore sector and would not affect the temporary nature of the access already granted, nor disrupt

existing plans for handling future reductions in resource abundance. The 2007 Northern Shrimp IFMP (in S. 5.2) described the changes thus:

"To address the structural problems in the harvesting sector, fleet rationalization was implemented as part of the Canada-Newfoundland and Labrador Fishing Industry Renewal Initiative. This provided vessel owners with sufficient quota to extend their fishing season. To support the fleet rationalization initiative, DFO converted the temporary shrimp permits to regular licences. Converting permits to licences increases the economic security, thereby giving stability to enterprises and allowing the industry to be more attractive to financing arrangements. This initiative does not affect current allocation principles that have been in place since 1997. These principles include a "last-in, first-out" (LIFO) provision that ensures the current offshore shrimp licence holders will be protected at the 1996 quota levels for six Shrimp Fishing Areas should the quotas fall in the future." (emphasis added)

The conversion of temporary inshore shrimp permits to "regular" licences was discussed at the April 3, 2007 meeting of the Northern Shrimp Advisory Committee (NSAC). In particular, the issue of LIFO was discussed at length. The Chair noted that "the conversion of temporary to regular licences would not affect allocations, i.e., LIFO principles are not being changed." (Minutes of April 1, 2007 NSAC meeting)

On April 12, 2007, the date of the joint DFO-NL inshore restructuring announcement, the Hon. Loyola Hearn wrote to the Canadian Association of Prawn Producers to "clarify the reasoning" behind the licence conversion. He first reassured Association members that "we are still committed to the long term viability of the traditional offshore licence holders, who developed this industry, and who in 1996 were willing to share this resource with others while resource levels were high." He then continued:

"The purpose of regularizing the temporary inshore licences is to facilitate fleet rationalization, which will result in the reduction in the number of participants and increased viability of the inshore fleet. This will also support allocation rollbacks under the existing allocation principles, should the TAC be reduced. It is our view that a rationalized inshore fleet will facilitate allocation reductions in this fleet when inshore quotas are reduced. It is important to note that the conversion of the inshore licences will not have an effect on current allocation arrangements." (emphasis added)

Asked by CAPP to clarify the status of the "last in, first out" provisions in the current Integrated Fisheries Management Plan (IFMP), the Minister responded (June 8, 2007):

"I would note that the allocation arrangements are outlined in the Northern Shrimp IFMP (Effective 2003). This includes, among other things, provision that should there be a decline in the abundance of the resource in the future, participants will be removed from the fishery in reverse order of gaining access – last in, first out. I can confirm that this provision will be in the new IFMP and will only be subject to Land Claim obligations." (emphasis added)

In later testimony before the Standing Committee on Fisheries and Oceans, (SCFO meeting of May 5, 2014) the Associate Deputy Minister, David Bevan, recalled:

“The RDG of Newfoundland region and the deputy minister of the Department of Fisheries of Newfoundland and Labrador went to those communities and asked, ‘What do you need to change in the fishery?’ [...] One of the things asked for was to move the shrimp fishery from temporary permits to permanent licences, so there could be combining, etc. At the time that took place, that's when Minister Hearn made it abundantly clear that, okay, it's no longer an access issue. You don't get out altogether, you don't lose your temporary permit, but rather you have your allocation of the resource linked to that kind of policy framework that became known as LIFO in 2003.

“[...] [I]f the stocks went back down, there would be a process for dealing with the decline in them; the whole issue of LIFO was reinforced to say that this does not mean you have permanent access to quota. It means that you have a licence, but it doesn't mean that you have permanent access to quota. In the event of declines, access will be applied according to LIFO as it evolved in 2003, 2007, and so on.”

He concluded: “It was a deal, I suppose, that people entered the fishery, taking 90%, on the understanding that they had some obligation to exit it or to give up quota on the way down.” (emphasis added)

At the same SCFO meeting, committee member Randy Kamp, MP for Pitt Meadows –Maple Ridge – Mission in BC, spoke in support of the department's contention that the licensing change would have no impact on the entitlement to a quota share: “I also have a letter from Minister Hearn, written in April 2007, in which he explains basically the same. It says in one paragraph, ‘It is important to note that the conversion of the inshore licences will not have an effect on current allocation arrangements.’”

The Minutes of the April 1, 2007 Northern Shrimp Advisory Committee (NSAC) bear out this interpretation: “The Chair noted that the conversion of temporary to regular would not affect allocations, i.e., LIFO principles are not being changed. All we are talking about is a name change, so that people can rationalize. “

In subsequent meetings with industry, DFO's messaging was very consistent. At the 2008 NSAC meeting, the Chair stated that in 2007, “the Minister reaffirmed that LIFO would apply, even though he provided long-term licences to the temporary allocations.” At the 2009 NSAC meeting, when the FFAW questioned the Minister's declared commitment to long-term stability in the shrimp fishery, the Chair responded that “the Minister's stability statement in 2006 dealt with access – it stated that there would be no new entrants to the shrimp fishery; not the stability of allocations.”

The change from temporary permits to “regular” licences came during a final surge in the resource. When the resource began showing signs of decline very shortly thereafter, there was a sudden and urgent need to reduce quotas, for both the inshore and the traditional harvesters in the offshore sector. Temporary allocations were reduced or eliminated as the harvest sank to the level at which the access was first issued.

At the 2010 NSAC meeting, the FFAW asked how planned reductions in SFA 6 would be applied. The Union argued that the cuts “should be looked [at] in the context of each sector's overall access to Northern shrimp, given that all other TACs are status quo.” The Chair “reminded members that there is an allocation policy, as stated at previous meetings – Last In, First Out (LIFO) – therefore the Department/ Minister would reduce access based on how it increased in reverse order. This is a topic not up for discussion.”

The Chair went further to state “...that as quotas went up, there were formulas created to decide who got the increases. In some areas, it was 90%-10%. When quotas go down, quotas would go down proportionally according to formulas as they increase. For somebody who came in at X level, and the quota goes below X, they would be out. This is how LIFO would be operationalized.”



There were questions in 2011 and 2012 whether these actions were consistent with established policy and took adequate account of such traditional values as adjacency and dependence. The independent review conducted by Ernst and Young in 2012 upheld the department’s position and actions. Among other findings and observations, it supported the department’s view that LIFO was intended to apply to the

distribution of quota reductions between categories of licence holders. As well, in reducing the quotas of recent entrants in the 2010 and 2011 fishing years, “[it] appears that the policies, principles and methodology have been interpreted and employed correctly and consistently with the definition of the last in, first out principle”.

Most recently, a 2015 DFO Backgrounder, “Northern Shrimp Fishery Management Decisions For 2015/2016”, summed up the departmental position succinctly:

“The Last In, First Out policy, known as LIFO, was introduced in 1997 after significant consultation and has been included in every Northern shrimp fisheries management plan for more than ten years. It has been consistently communicated to stakeholders that should there be a decline in the abundance of the resource, new participants/ allocations would be reduced or removed from the fishery in reverse order of gaining access – last in, first out. LIFO was also reviewed by a third-party independent reviewer in 2012 who confirmed that the Department was appropriately applying the policy when required, in a fair and transparent manner.”

6.4 The question of adjacency

"Adjacency" has been a central part of the discussion on Northern shrimp access and allocation since the earliest days. As mentioned above, the Hon. Fred Mifflin, announcing the opening of the Northern shrimp fishery to temporary entrants in April, 1997, established four "core principles" for sharing the temporary quota.

Access was to be decided through the application of an eight-point set of sharing principles, which remained in effect until the department's adoption of the 2002 New Access Policy:

- Conservation of the resource is paramount.
- Viability of existing enterprises will not be jeopardized.
- A threshold of 37,600 tonnes is established as the level of quota to ensure the continued viability of the 17 offshore licence holders. If the TAC exceeds 37,600 tonnes, temporary access will be given to new fishers.
- Adjacency will be respected, which means that those who live near the resource will have priority in fishing it.
- Priority will be given to increasing participation of Aboriginal people in the established commercial fishery.
- Priority access will be given to inshore vessels less than 65 feet in length.)Access by midshore and offshore fleets will be considered for the more northerly fishing areas.
- Existing licence holders will receive some of the increase in TACs.
- Employment will be maximized in both the harvesting and processing sectors where possible. (emphasis added)

Clearly, the needs of the Newfoundland and Labrador inshore groundfish sector were high on the government's agenda when considering how the temporary new access and increases in allocations would be granted. Those in need and adjacent to the resource were to have priority of access to, and priority for allocations of the unexpected resource surplus.

But there were caveats. Access and allocations were temporary, tied to the duration of the surge in the stocks. Second, the interests of the offshore would be protected by fixing a threshold for sharing, both globally and by fishing area. Third, the inshore sector's allocative priority was not exclusive. Some share of the incremental harvest would be made available to the existing (year-round) licence holders.

Adjacency, in other words, was a crucial consideration in the distribution of surplus abundance above the 1996 quota thresholds allocated to the year-round sector, but the historic attachment and economic viability of the year-round (offshore) sector would prevail when the resource returned to traditional levels.

Adjacency was central to the subject-matter of the 2002 IPAC panel. The IPAC panel's recommendations – which pertained to the granting of new access only, not the allocation of shares in established fisheries – were adopted verbatim by the department and promulgated in the 2002 New Access Policy. The New Access Policy guides "all decisions on new or additional access to Atlantic commercial fisheries which have undergone substantial increases in resource abundance or landed value". It was incorporated, in turn, into the Northern shrimp IFMP, starting in 2003.

According to the IFMP, access is to be decided on the basis of three principles, listed in order of priority: Conservation and sustainable use; Aboriginal and treaty rights; and Equity. Equity has both a procedural and a substantive component. The procedural dimension demands fair and consistent application of rules in an open decision-making process that seeks fair treatment of all participants. In its substantive dimension, equity required the careful balancing of three competing values: adjacency, historic dependence and economic viability. Under the policy, "the order of priority of these criteria will depend on the specific characteristics of the fishery in question".



The adjacency principle was defined thus: "Priority of access should be granted to those who are closest to the fishery resource in question. The adjacency criterion is based on the explicit premise that those coastal fishing communities and fishers in closest proximity to a given fishery should gain the greatest benefit from it, and on the implicit assumption that access based on adjacency will promote values of local stewardship and local economic development."

As the panel (and the Policy) noted: "In the case of near-shore and inshore fisheries, and sedentary species, the application of adjacency as the sole criterion is most compelling. However, as the fishery moves to the mid-shore and offshore, and as the species fished become more highly migratory and mobile, adjacency as the only criterion for decisions regarding access becomes harder to justify. In such cases, adjacency cannot serve as the exclusive criterion for granting access, but must be weighed along with other criteria, including historic dependence, in particular."

As detailed elsewhere in this submission, shrimp fishing activity by the seasonal harvesters has been conducted at distances ranging from 60 to 380 miles from the principal landing ports. Such an activity is clearly not an "inshore fishery" but is a mid-shore and offshore fishery being conducted on a seasonal basis, largely by 45-65' (mid-shore) vessels.

In deciding on who gets to fish, adjacency is therefore an important value but it is not paramount over other values, nor will it be the sole criterion used, in many cases. Moreover, the IPAC

definition nowhere ties "adjacency" exclusively to the inshore/seasonal fishery. Neither does the 1982 Groundfish Management Plan, a foundational document in Atlantic fisheries management. Nor did the Minister's 1997 statement on the new resource-sharing arrangements in the Northern shrimp fishery.

Year-round shrimp licence-holders/vessel operators can make their own case for "adjacency", as most of these are employers of crews and suppliers to processors in the very communities where inshore fishers live. Indeed, the criterion of "adjacency" was considered when the Department initially provided licenses in 1978-79 to the offshore sector. Thirteen of the 17 offshore licenses are linked to a province/ territory that DFO considers "adjacent" to the shrimp resource - Newfoundland and Labrador, Nunavut and Quebec. Eight of the licences are NL-based. Several northern offshore licence-holders owe their presence in the fishery to their role in providing benefits to adjacent Aboriginal communities.

Those in the seasonal fishery who, then as now, championed adjacency had few complaints in the first dozen years of rising abundance in the Northern shrimp fishery. Generous allocations were provided to large numbers of Newfoundland-based core fishers in SFA 6 and 7, who received an overwhelming share of the increased abundance in adjacent areas – 90% in SFA 6 and 80% in SFA 7 (figure 7, p31).

From early days, representatives of the seasonal fishery interpreted the government's commitment to "respect adjacency" as applying to distributional issues across the fishery, not merely to the granting of new access for the duration of the stock surge. This is a perfectly reasonable position to urge government to adopt, but it cannot possibly be construed as a government commitment – i.e. to "trump" the historic attachment and economic dependence of the year-round licence holders as manifested through the announced (1996) quota thresholds.

A 2015 FFAW paper entitled "The Northern Shrimp Fishery: The Socio-Economic Importance of Maintaining Adjacency in Allocation Decisions" declared: "When the inshore entered the northern shrimp fishery in 1997, DFO made two commitments: to guarantee an allocation threshold to the offshore fleet and to apply adjacency in the allocation of the northern shrimp fishery." (page 4)

The FFAW submission to the Ernst and Young review stated: "It is our contention that the principles laid down by Minister Mifflin should continue to be the basis for access and allocation decisions in the fishery. [...]Subsequent Integrated Fisheries Management Plans attempted to diminish some of the principles laid down by Mr. Mifflin...." (page 3)

It was only a small step for the FFAW, to then claim that the needs of adjacent communities and the commitment to "respect adjacency" should override and extinguish the temporary nature of the inshore's access to Northern shrimp.

The Union fleet, once admitted to the fishery, accepted no distinction or seniority between the established licence holders – those who had developed, conserved and co-managed the fishery

– and the recently admitted temporary permit holders. This attempt to re-write history continued with the 2007 conversion of temporary permits to regular licences. A supportive member of the NL All-Party Committee, appearing before the Senate Standing Committee in May 2014, explained that "what happened in 2007 put them all on an equal footing, and that's what was not there in 1997. I think it changed the whole game at that point in time." (Michael, Senate SCOF, May 6, 2014) This claim continues notwithstanding the department's assertion, documented above, that inshore access remained temporary and contingent on abundance and that the licensing change had no effect on sharing arrangements – that it was not an invitation to bid for a permanent share in the fishery.

Meanwhile, the FFAW treated the year-round sector's historic attachment and economic dependence dismissively. In assigning reductions, the 2012 FFAW paper argued, "[T]he Department should take into account the New Access Criteria, including the traditional weight applied to adjacency and historic attachment. For this purpose, no sector has a particularly long history of attachment to Northern shrimp, but the inshore sector has centuries of history fishing other species – notably cod – in the same waters." (page 9) (emphasis added)

Paradoxically, the FFAW argued a very different position when new access to crab stocks was under discussion in 1999. In a letter to the Hon. Herb Dhaliwal dated Sept. 10, 1999, the Union's President wrote:

"We support the concept of pursuing a supply of crab that will give these communities [Burgeon, Ramea, Gaultois] a new lease on life. [...] However, it cannot be done at the expense of existing participants in the crab fishery. Any decision to allocate crab to revitalize these communities would have to come from additional quotas, not from existing quotas. In other words, development in these communities cannot undermine the position of existing participants in the fishery." (emphasis added)

In a very recent case, the Gulf Groundfish Advisory Committee reviewed halibut allocation decisions made since 2007. In an April 22, 2016 press release issued in advance of the decision, the FFAW President complained that historical participation by NL fishers was being ignored and the resource re-allocated to other adjacent fleets. "The sustainability of coastal communities is reliant on a strong inshore fishery," said the FFAW President. "Fishery management policies must be more reflective of historical attachment and economic dependence." (emphasis added)

Meanwhile, the FFAW has argued with respect to a future reopening of the 2J3KL cod fishery that adjacent offshore license holders should only be allowed to participate in the harvest after the inshore and midshore seasonal quotas exceed their claimed threshold of 115,000 tonnes – despite the demonstrable reality of "adjacency" also being applicable to the >100' sector, through 91% of this sector's allocations being held by NL-based license holders. In this fishery, the Union promotes historic attachment and economic dependence as having higher priority than adjacency. It is also noteworthy that in the face of declining TAC's of Northern Cod in the

late 1980's, the Union argued that two of the "newer" and adjacent quota holders (the last in) should be the first quotas to be terminated (first out).

6.5 A Clarity of Policy

From the very first grant of temporary access to Northern shrimp in 1997, DFO has known – and has openly communicated to industry – that increased abundance was likely a time-limited phenomenon and that any new access must therefore be temporary, to avoid negative impacts on traditional harvesters and the resource.

The principle of Last In, First Out, as a mechanism for managing inevitable harvest reductions,



has been a fixed feature of Northern shrimp management for at least 16 years and links directly back to the Minister's 1997 announcement of the four principles for granting new access to Northern shrimp.

The conversion of temporary permits to regular seasonal licences did not alter these realities, nor was it intended to. DFO maintained at the time that the conversion was neutral in its impact on existing arrangements. Indeed, DFO agreed with representations from the FFAW and the NL

Government that conversion would facilitate capacity rationalization (and eventual quota reductions) – presumably by limiting the affected population and giving individuals a larger base quota with which to withstand them.

DFO and successive Ministers have consistently encouraged >100' licence holders in the expectation that LIFO will remain a cornerstone of allocation decisions in this fishery. This chapter has quoted written commitments and declarations of policy – in Ministerial announcements, in Ministers' letters, in IFMPs, in policy papers, in minutes of Advisory Committees, in testimony before Parliament – from 1997, 1998, 1999, 2000, 2002, 2003, 2004, 2007, 2009, 2010, 2014 and 2015.

Expectations that the department's policy will be robust through changing times and that the government is dealing in good faith have led licence holders to make planning and investment decisions that cannot easily be unmade.

Governments often find it necessary to adjust their policies. Policies are meant to be flexible in their application and to be adapted more fundamentally when changes in external circumstances demand it. This is a point the NL All Party Committee has frequently employed, when urging DFO to flip-flop on LIFO (see Minutes of the May 5, 2014 SCOF0 meeting).

But in this instance, the LIFO principle is the adaptation mechanism, devised precisely to manage a dynamic and fluctuating resource. It is the governor on the creation of new access, itself a very significant departure from the department's bedrock principle of limiting entry to the commercial fishery.

It is a long-established policy in the fishery – one that has weathered many changes of government – that those who develop a commercial fishery from the initial stages are entitled to the benefits that accrue from that investment of time, money and effort. Without this commitment to protect the interests of long-established enterprises and ensure the sustainability of the resource itself, inshore fishers might never have secured their temporary access to a fishery developed exclusively by offshore licence holders.

LIFO is the term that operationalizes the core principles of historic attachment and economic viability. It was intended to serve as the calibrating tool that protects the legitimate interests of harvesters historically dependent on the resource, who made the long-term investments and who responsibly practised "shared stewardship" and "co-management" from the fishery's inception.

The final word on the issue goes to the Government of Newfoundland and Labrador, which has supported the FFAW in opposing DFO departures from the 2007 sharing arrangements for the Gulf halibut fixed-gear fishery. DFO's actions, they say, have worked to the detriment of historically dependent NL inshore fishers and in favour of adjacent fishers from other provinces. Such actions "clearly do not promote the principle of historic dependency or DFO's objectives in relation to resource stability and predictability..." (page 10, NL Government submission to the DFO Public review of halibut allocation decisions, April 18, 2016)

"Ignoring the established sharing arrangement for Gulf Atlantic halibut, fleets' historical participation in the fishery, and principles and objectives for resource allocation calls into question all of the sharing arrangements that have been established for commercial fisheries across Atlantic Canada."

DFO must respect the 2007 sharing arrangements based, the official government submission concludes (page 11): "Otherwise, there is clearly no value in DFO establishing stabilized sharing arrangements for fisheries in Atlantic Canada or to continue promoting its desire for stable, predictable, and transparent decisions in relation to access and allocation." (emphasis added)

CHAPTER 7 - LAND CLAIMS ISSUES

7.1 Introduction

As per the Terms of Reference, the Panel has been mandated: "To pronounce on the validity of applying LIFO to reduce allocations in SFAs which are subject to any of the three Land Claims Agreements in the commercial shrimp fishery."

The present chapter will address the validity of the Department of Fisheries and Oceans' LIFO policy in light of the three Land Claims Agreements ("LCAs") that make stipulations relating to Inuit involvement in the Northern shrimp fishery. It will demonstrate that none of these LCAs has provisions that require the modification of LIFO, especially considering the protection that is offered through LIFO to the 4.5 offshore licences that are held by Inuit-controlled entities.

7.2 The land claims at issue

LCAs are described by Indigenous and Northern Affairs Canada as dealing with the "unfinished business of treaty-making in Canada."¹ They are, for the most part, designed to provide certainty to governments and Aboriginal parties by setting out the precise rights of the Aboriginal signatories on and over a defined the settlement area, while extinguishing or preventing any other exercise of other rights, including Aboriginal title, that the Aboriginal party could have asserted in or over these lands. LCAs are constitutionally protected by s. 35 of the *Constitution Act*, an issue that will be returned to in the subsequent parts of this chapter.

As the Terms of Reference indicate, there are three LCAs which may have an effect on the Department's ability to apply LIFO as presently conceived. Those agreements are:

- the *Nunavut Land Claims Agreement* ("NLCA");
- the *Labrador Inuit Land Claims Agreement* ("LILCA"); and
- the *Nunavik Inuit Land Claims Agreement* ("NILCA").

In the following sections, we will briefly outline the history and context of each of these agreements, as well as their specific provisions that may have an effect of the implementation of LIFO.

It is important to note at the outset that the Northern shrimp fishery takes place, with perhaps one exception, entirely outside the waters which form part of each claim area. The only possible exception is the fishery which occurs in SFA 3, as it appears that this SFA is largely within either the Nunavut Settlement Area or the Nunavik Inuit Settlement Area. This chapter will therefore limit itself to examining the provisions of the LCAs that set out the rights of the Aboriginal parties

¹ Indigenous and Northern Affairs Canada, *Comprehensive claims*, online: <<https://www.aadnc-aandc.gc.ca/eng/1100100030577/1100100030578>>.

outside their respective settlement areas, to consider which of those rights which may affect the validity of LIFO.

7.2.1 The NLCA

General provisions, territory covered and extinction clause: The NLCA was first approved by the Inuit of Nunavut in a vote held from November 3 to 6, 1992. It was then signed on May 25, 1993 by representatives of Tungavik Federation of Nunavut, Canada and the Northwest Territories. Following ratification by Canada, the NLCA came in force on July 9, 1993.² Tungavik Federation of Nunavut was the organization mandated by the Nunavut Inuit to negotiate a LCA with Canada.³ Since the NLCA came in force, Tungavik Federation of Nunavut became known as Nunavut Tunngavik Inc. (“NTI”). NTI’s mandate is to ensure the implementation of the agreement and defend the rights of Nunavut Inuit.⁴

The NLCA’s preamble states the parties’ desire to negotiate “a land claims agreement through which Inuit shall receive defined rights and benefits in exchange for surrender of any claims, rights, title and interests based on their assertion of an aboriginal title.” The parties’ intentions in this regards have been translated in article 2.7.1, which stipulates that:

"2.7.1 In consideration of the rights and benefits provided to Inuit by the Agreement: cede, release and surrender to Her Majesty The Queen in Right of Canada, all their Aboriginal claims, rights, title and interests, if any, in and to lands and waters anywhere within Canada and adjacent offshore areas within the sovereignty or jurisdiction of Canada"

The Nunavut Settlement Area is described at article 3 and covers what is now known as Nunavut Territory. Canada’s internal waters are part of the settlement area⁵ and are referred to as “marine areas.”⁶ A map of the settlement area is included in the Annex. In general terms, the settlement agreement includes a large portion of the Hudson Strait and the territorial sea of Canada to the east of Baffin Island.

7.2.2 The LILCA

General provisions, territory covered and extinction clause: The LILCA was first approved by the Inuit of Labrador in a vote held on May 26, 2004. It was then ratified by the government of Newfoundland and Labrador on December 6, 2004.⁷ The LILCA was signed on January 22, 2005 by representatives of the Labrador Inuit Association (“LIA”), Canada, and Newfoundland and Labrador. Following ratification by Canada, LILCA became effective on December 1, 2005.⁸ The

² *Nunavut Land Claims Agreement Act*, S.C. 1993, c. 29.

³ Land Claims Agreements Coalition, *Nunavut Tunngavik Inc.*, online: <<http://www.landclaimcoalition.ca/coalition-members/nunavut-tunngavik-inc/>>.

⁴ Nunavut Tunngavik Inc., *About NIT*, online : < <https://www.tunngavik.com/about/>>.

⁵ Nunavut LCA, s. 3.1.1.

⁶ Nunavut LCA, s. 1.1.1. “marine areas”.

⁷ *Labrador Inuit Land Claims Agreement Act*, SNL 2004, c L-3.1

⁸ *Labrador Inuit Land Claims Agreement Act*, S.C. 2005, c. 27.

LIA represented the Labrador Inuit during the negotiation of the agreement. With the coming in force of the LILCA, LIA became known as the Nunatsiavut Government.⁹

The LILCA sets out the Labrador Inuit's rights within the meaning of s. 35 of the Constitution Act, 1982 and provides for the surrender of any other Aboriginal rights the Labrador Inuit may have asserted.¹⁰

The Labrador Inuit Settlement Area created by the LILCA is situated in the northern part of Labrador. It comprises 72,520 square kilometres of lands, tidal waters and islands,¹¹ as well as of 48,690 square kilometres of adjacent tidal waters.¹² The settlement area includes the tidal waters along Labrador's shore, from the McLelan Strait to the southern shore of Hamilton Inlet. A map of the settlement area is included in the Annex.

7.2.3. The NILCA

General provisions, territory covered and extinction clause: In a vote held from October 16 to 20, 2006, the Inuit of Nunavik approved the NILCA. It was then signed on December 1, 2006 by Makivik Corporation ("Makivik"), Canada and Nunavut representatives. The NILCA became effective on July 10, 2008, following its ratification by Parliament.¹³ Makivik is the Nunavik Inuit party to the *James Bay and Northern Quebec Agreement* (hereinafter "JBNQA").¹⁴ It also represented the Nunavik Inuit in the negotiation of the NILCA.



The NILCA is different from both the NLCA and the LILCA to the extent that it does not include the surrender of lands. Indeed, the major part of the Nunavik Inuit's land claim had been settled through the JBNQA, signed in 1975, which included the surrender of lands. However, the JBNQA did not settle the issue of the Inuit's offshore rights, especially since the waters were outside the boundaries of Quebec. Therefore, the objective of the NILCA is "to provide certainty respecting rights to ownership and use of lands and resources, including marine resources."¹⁵

The NILCA's effects on the rights of Nunavik Inuit are described in section 2.29, which sets out that: "Nunavik Inuit will not exercise or assert any aboriginal or treaty right other than the rights

⁹ Nunatsiavut Government, *Labrador Inuit*, online: < <http://www.nunatsiavut.com/visitors/labrador-inuit/>>.

¹⁰ LILCA, s. 2.11.1.

¹¹ LILCA, ss. 4.2.1.-4.2.2.

¹² LILCA, s. 4.2.3.

¹³ *Nunavik Inuit Land Claims Agreement Act*, S.C. 2008, c. 2.

¹⁴ Makivik Corporation, *Makivik Mandate*, online: < <http://www.makivik.org/corporate/makivik-mandate/>>.

¹⁵ NILCA, preamble.

set out in this Agreement.”¹⁶ While there are some important qualifications to this prohibition,¹⁷ they are not applicable to the northern shrimp fishery, which means that, for all intents and purposes, any Aboriginal or treaty rights that the Inuit of Nunavut wish to claim with respect to this fishery must be found in the text of the NILCA.

The Nunavik Settlement Area is adjacent to Northern Québec and Labrador. It comprises the Nunavik Marine Region and the Nunavik Inuit/Labrador Inuit overlap area of the Labrador Inuit Settlement Area.¹⁸ The Nunavik Marine Region can be described as covering approximately the waters starting south of Chisasibi, up to the middle of the Hudson Strait where it shares a border with Nunavut Settlement Area, including all of Ungava Bay and ending on the southeastern point of Killiniq Island.¹⁹ A map of the settlement area is included in the Annex.

7.2.4 Conclusion with respect to extinction clauses of the LCAs

As the above description of the three LCAs makes clear, they delineate, for all practical purposes, the possible rights or claims that the Inuit parties can make with regards to the offshore shrimp fishery. In other words, there are no Aboriginal or treaty rights that these groups can claim other than those that are outlined in the text of the LCAs.

7.3 The legal status and interpretation of LCAs

7.3.1 LCAs are constitutionally guaranteed

LCAs are given constitutional protection by s. 35 of the *Constitution Act*, the pertinent provisions of which read:

"35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired [...]"

The effect of this provision is to guarantee Aboriginal and treaty rights. In other words, s. 35 "has the effect of nullifying legislation that purported to abridge guaranteed rights."²⁰

As a matter of law, and as their respective provisions make clear, each of the three LCAs potentially at issue in the Northern shrimp fishery benefits from this constitutional protection. However, as with any agreement, to understand what is protected or guaranteed the LCAs must be interpreted.

¹⁶ NILCA, s. 2.29.3.

¹⁷ NILCA, s. 2.29.2.

¹⁸ NILCA, s. 3.1.

¹⁹ The Nunavik Marine Region's specific geographic coordinates are provided for by Schedule 3-2 of NILCA.

²⁰ Peter W. Hogg, *Constitutional Law of Canada*, 5th ed. (Toronto: Carswell, 2007), at p. 28-46.

7.3.2 The interpretation of modern treaties between the Crown and Aboriginal peoples

The Supreme Court has pronounced on multiple occasions on the principles applicable to treaty interpretation.²¹ They have ruled that treaties “should be liberally construed and doubtful expressions resolved in favour of the Indians.”²² The Court justifies this approach based on the unequal bargaining power between the Crown and Aboriginal peoples and the fact that “the representatives of the Crown typically created the written text and the written records of the negotiations, and those writings often differed from or did not fully express the Indians’ oral understanding of the arrangement.”²³

There is a distinction, however, between the principles applying to the “historic” treaties, and those that apply in the case of the “modern” treaties, the first of which is the JBNQA signed in 1975, which are sometimes referred to as “comprehensive claim agreements”.²⁴ In a Supreme Court case from 2010, which required the Court to interpret a modern treaty for the first time, Justice Binnie stated this distinction in the following terms:

"[7] In *R. v. Badger*, 1996 CanLII 236 (SCC), [1996] 1 S.C.R. 771, Cory J. pointed out that Aboriginal '[t]reaties are analogous to contracts, albeit of a very solemn and special, public nature" (para. 76). At issue in that case was an 1899 treaty. The contract analogy is even more apt in relation to a modern comprehensive treaty whose terms (unlike in 1899) are not constituted by an exchange of verbal promises reduced to writing in a language many of the Aboriginal signatories did not understand (paras. 52-53). The text of modern comprehensive treaties is meticulously negotiated by well-resourced parties. As my colleagues note, “all parties to the Agreement were represented by counsel, and the result of the negotiations was set out in detail in a 450-page legal document” (para. 118). The importance and complexity of the actual text is one of the features that distinguishes the historic treaties made with Aboriginal people from the modern comprehensive agreement or treaty, of which the James Bay Treaty was the pioneer. We should therefore pay close attention to its terms.”²⁵

He then stated that the following approach should apply to interpreting modern treaties: "If we are to proceed, as I do, on the basis that these provisions were drafted by skilled individuals to reflect the precise agreement reached by the Cree with the federal and provincial governments, we have no mandate to rewrite them. The Court ought to do the parties the courtesy of respecting the rights and obligations in the terms they agreed to."'²⁶

²¹ See, for example, *Nowegijck v. The Queen*, [1983] S.C.R. 29, at p. 36, *Simon v. The Queen* [1985] 2 S.C.R. 387, at p. 402; *R. v. Sioui* [1990] 1 SCR 1025, at p. 1035

²² *Ibid.*

²³ Hogg, *supra* note 20 at p. 28-38, referring to cases cited in note 3, above, as well as to *Ermineskin Indian Band and Nation v. Canada*, [2009] 1 S.C.R. 222.

²⁴ For a brief summary of the different types of treaties, see Aboriginal Affairs and Northern Development, “Treaties with Aboriginal people in Canada”, (document dated 2010-09-15) online: <<http://www.aadnc-aandc.gc.ca/eng/1100100032291/1100100032292>>.

²⁵ *Quebec (Attorney General) v. Moses*, [2010] 1 SCR 557.

²⁶ *Ibid.*, at para. 12.

In summary, modern treaties must be interpreted according to their explicit terms rather than according to a principle that would favour the interpretation preferred by the Aboriginal signatory. This principle applies to the interpretation of the three LCAs at issue in the northern shrimp fishery, as they were negotiated between sophisticated parties who were well-resourced and had access to extensive legal counsel at the time they were entered into.

7.4 The LCAs and LIFO

To assess the validity of LIFO in light of the three LCAs, the Panel must undertake a close examination of each, to determine whether its provisions have any bearing on the order in which licences will be removed, should the TAC in a particular SFA be reduced. This examination will be performed on a claim-by-claim basis in the following sections and will refer, where appropriate, to court decisions which have dealt with the interpretation of these LCAs. As will be seen, none of these LCAs has the effect of invalidating the application of LIFO to the Northern shrimp fishery,



especially considering the protection that is offered through LIFO to the 4.5 offshore licences that are held by Inuit-controlled entities.

As mentioned above, it is important to note at the outset that the following analysis will address only provisions of the LCAs which create rights and obligations with respect to fisheries resources outside the respective settlement areas. This is because the

Northern shrimp fishery takes place, with perhaps one exception, entirely outside the waters which form part of each claim area. The only possible exception is the fishery which occurs in SFA 3, as it appears that this SFA is largely within either the Nunavut Settlement Area or the Nunavik Inuit Settlement Area. Were the shrimp fishery to occur within one or more of the settlement areas, much different issues would arise, but those issues will not be discussed in the present chapter.

7.4.1 LIFO and the NLCA

The treatment of offshore fishing in the NLCA: The NLCA gives the Inuit of Nunavut a large amount of control over wildlife management within the Nunavut Settlement Area, through various organizations including the Nunavut Wildlife Review Board. The NLCA also, however, makes certain provisions for Inuit interest and involvement in waters which fall outside the settlement area.

Specifically, the NLCA requires that the government give special consideration to Inuit interests when issuing licences within two offshore zones: Zone I, which comprises the waters north of 61°

latitude subject to Canada's jurisdiction,²⁷ and Zone II, which comprises the waters of James Bay, Hudson Bay and Hudson Strait that are not part of any LCA.²⁸ Zone I covers SFAs 0, 1, 2 and possibly 4, while Zone II covers all those waters in SFA 3 not already included in the LCAs.

The government's obligation of special consideration is set out as follows:

"15.3.7 Government recognizes the importance of the principles of adjacency and economic dependence of communities in the Nunavut Settlement Area on marine resources, and shall give special consideration to these factors when allocating commercial fishing licences within Zones I and II. Adjacency means adjacent to or within a reasonable geographic distance of the zone in question. The principles will be applied in such a way as to promote a fair distribution of licences between the residents of the Nunavut Settlement Area and the other residents of Canada and in a manner consistent with Canada's interjurisdictional obligations."

This obligation will be examined in detail below, as it has been the subject of litigation and interpretation by the courts on at least two separate occasions.

The jurisprudence on s. 15.3.7: The Inuit of Nunavut have taken the government to court on the proper interpretation of the provisions of the NLCA related to fisheries in Zone I on at several occasions. These cases establish the correct approach to apply the NLCA to the various fisheries which take place in Zones I and II.

The Federal Court of Appeal's judgment in Nunavut Tunngavik Inc. v. Canada (Minister of Fisheries and Oceans): In 1998, the Federal Court of Appeal addressed the correct interpretation of s. 15.3.7 in the context of a challenge by NTI of the Minister's allocation of an increase in the TAC for the turbot fishery in the offshore area east of Baffin Island (NAFO sub-areas 0 and 1, and Zone I as defined by the NLCA) for 1997.²⁹ The question before the Court was what interpretation should be given to the words "special consideration" as these words are used in s. 15.3.7.

In its judgment, the Court is clear that "special consideration" does not mean priority access for the Inuit of Nunavut. Rather, the Court states that s. 15.3.7:

"[...] imposes a duty on the Government to give a special consideration to the adjacency and economic dependence principles. This duty aims at guaranteeing to the Nunavut Inuit that, in the allocation of commercial fishing licences, their commercial dependence on marine resources, in view of their proximity to these resources, will be considered by the licensing authority. Special consideration of these principles in the equitable context of Section 15.3.7 means that a particular and appropriate attention ought to be given to these principles when balancing the fierce competing interests at stake with a view to promoting a fair balance in the distribution of commercial fishing licences in these zones, that is to say one which either clearly reflects a proper

²⁷ Nunavut LCA, s. 1.1.1. "Zone I".

²⁸ Nunavut LCA, s. 1.1.1. "Zone II".

²⁹ [1998] 4 FCR 405, 1998 CanLII 9080 (FCA)

application of these principles or leads a reasonable observer to conclude that the principles cannot have been overlooked in view of the fairness of the end result, bearing in mind all the other factors that the Minister has to consider in the exercise of his discretion. In terms of result, this means that, barring exceptional or unusual circumstances, the application of these principles should be reflected in the final distribution of licences and quotas by the Minister, such distribution indicating a proportion which, in view of all the other constraints on the Minister, including those of Section 15.3.7, is fair in the circumstances."³⁰ (emphasis added)

The Court went on to note that, in that particular case, Nunavut interests had received only 9% of the increase in the TAC of turbot, while Newfoundland fishermen were allocated 55% of the quota. As these raw numbers did not appear, on their face, to have adequately accounted for Nunavut interests' adjacency to and economic dependence on the turbot fishery, and as the Minister had not provided any explanation as to how these allocations could be justified in light of those principles, the Court was forced to conclude that the allocation decision was contrary to law and set it aside.

NLCA in the context of the northern shrimp fishery: Nunavut (Attorney General) v. Canada (Attorney General): Some years later, the application of s. 15.3.7 to the Minister's decision on allocations in the northern shrimp fishery was addressed by the Federal Court.³¹ In that case, the Government of Nunavut, with the support of NTI, which was a respondent to the application, challenged the Minister's decision on the allocation of an increase in TAC in SFA 1 for 2003. The decision in question had increased the TAC by 2,127t and allocated it in the following manner: 1,000 t for Nunavut interests, 187 t for Makivik, and the remaining 940 t to the offshore licence-holders.



The Government of Nunavut and NTI argued that this decision failed to reflect the special consideration required by s. 15.3.7 of the NLCA, in particular because the Minister had previously accepted the recommendation of the Independent Panel on Access Policy ("IPAC") that, in view of the fact that Nunavut interests were underrepresented in waters adjacent to the territory, "no additional access should be granted to non-Nunavut interests in waters adjacent to Nunavut until the territory has achieved access to a major share of its adjacent fishery resources."³²

³⁰ *Ibid.* at p. 16 of 19.

³¹ 2005 FC 342 (CanLII)

³² *Ibid.*, at para. 65, quoting the Report of the Independent Panel on Access Criteria for the Atlantic Coast commercial fishery.

According to the Government of Nunavut, the Minister's special considerations should have included his own undertaking to remedy this underrepresentation.

The Court in this case refused to invalidate the Minister's decision. For the Court, the fact that Nunavut interests had received the largest part of the increase was sufficient to satisfy the requirement of "special consideration" in s. 15.3.7, particularly in light of the requirement in that section that there be a "fair distribution of [quota] between the residents of the Nunavut Settlement Area and other residents of Canada."³³ The Court went on to state that, with respect to the interaction between s. 15.3.7 of the NLCA and the Minister's acceptance of the recommendation that Nunavut interests should have a "major share" of the adjacent fishery:

"Article 15.3.7 of the Agreement provides no time frame for the achievement of that objective. On the contrary, it contemplates achievement of any such objective in a manner that not only respects the interests of the Inuit of Nunavut, but also the interests of others with an historically entrenched place in the fishery, as well as Nunavik interests. In the result, I conclude that the Applicant and Nunavut Tunngavik Incorporated cannot succeed on the basis of equity, or lack thereof, in the decision under review."³⁴

Conclusion on the jurisprudential treatment of s. 15.3.7: The two cases discussed above establish the following principles with respect to the interpretation of s. 15.3.7 of the NLCA:

- The "special consideration" of "the principles of adjacency and economic dependence of communities in the Nunavut Settlement Area" that the Minister must demonstrate when allocating commercial fishing licences within Zones I and II of the NLCA does not imply preferential access for Nunavut interests;
- Rather, s. 15.3.7 recognizes that there are other important interests at stake in the allocation of commercial fishing licences, including "the interests of others with an historically entrenched place in the fishery";³⁵
- In the final analysis, the effect of s. 15.3.7 is not to require that Nunavut interests receive a particular portion of any new allocation (or, by analogy, that these interests be exempted from any particular reduction in allocation), but rather that, after such allocation or reduction, Nunavut interests possess a proportion of "the final distribution of licences and quotas ... which, in view of all the other constraints on the Minister ... is fair in the circumstances."³⁶

In the next section, these principles will be applied to the northern shrimp fishery and, in particular, the application of LIFO in that fishery.

LIFO does not violate the NLCA: As the Federal Court noted in 2005, since 1997 the Minister has made extensive efforts to increase Nunavut's share of the northern shrimp fishery by allotting to

³³ *Ibid.*, at para. 70.

³⁴ *Ibid.*, at para. 71.

³⁵ *Ibid.*

³⁶ *Supra*, note 33.

interests based in Nunavut a large share of the TAC that became available in certain SFAs between 1997 and 2002.³⁷ Now, however, TACs are falling and the question is how LIFO applies to the present circumstances, in light of the constitutionally protected rights that the Inuit of Nunavut enjoy pursuant to the NLCA.

More specifically, the question is the following: Would it be a violation of the NLCA if the Minister reduced northern shrimp quotas held by Nunavut interests in SFAs falling within Zone I of the NLCA before certain other interests, including offshore companies, that were established before the Nunavut interest in question received its licence? The answer to this question is “no”, principally because Nunavut interests retain 1.5 licences among the 17 offshore licences whose basic quotas are protected by LIFO.

In 1987, the Baffin Region Inuit Association received a commercial offshore licence for Northern shrimp. This licence is now held by the Qikiqtaaluk Corporation, which is “an economic development corporation representing the Inuit of the Baffin Region of Nunavut.”³⁸ A second licence was also issued in 1987 to be held jointly by Nunavut and Nunavik Inuit interests; this licence is now held by Unaaq Fisheries Inc., which itself is half-owned by Qikiqtaaluk Corporation.

While it is true that these licences were issued prior to signature of the NLCA, the Federal Court has nonetheless recognized that their possession by the Qikiqtaaluk Corporation is possession by a “Nunavut interest”, and that this interest must be counted in any discussion of the extent of Nunavut’s involvement in the northern shrimp fishery.³⁹

As the Panel is no doubt aware, each of the 17 permits issued in 1991 and earlier gives the holder a right to 1/17 share of the TAC for offshore companies in every SFA. What this means is that Nunavut interests are able to fish in SFAs far beyond what would be justified by the principle of adjacency. Moreover, this means that even if Nunavut interests lose some TAC due to the application of LIFO, Nunavut interests will, through their 1.5 licences, nonetheless maintain an 8.8% interest in the fishery as a whole, regardless of how low stocks fall.

NTI may indeed argue that it would prefer to have a much greater portion of the TAC in Zones 0 through 2 than to have 1/17 of the TAC for offshore in every SFA, and that such an exchange would better reflect the “special consideration” that its adjacency to and economic dependence on the resource are due under s. 15.3.7 of the NLCA. While such an exchange would, at present, be favourable to NTI in terms of increased quotas, this proposal runs contrary to the principle that s. 15.3.7 does not establish that preference must be given to Nunavut interests. It would also run contrary to the principle that s. 15.3.7 recognizes the interest of the historically-entrenched industry.

³⁷ *Ibid.*, at paras. 20-25.

³⁸ *Ibid.*, at para. 10.

³⁹ *Ibid.*, at para. 20.

The effect of LIFO is to maintain an 8.8% share in the northern shrimp fishery for Nunavut interests, regardless of the distribution of the TAC by SFA. As the Federal Court of Appeal stated, when analyzing whether a decision with respect to allocation satisfies s. 15.3.7, what is important is whether the “the final distribution of licences and quotas ... is fair in the circumstances” in light of all the other constraints. A worst-case scenario of an 8.8% share of the northern shrimp fishery for Nunavut interests is clearly fair, especially considering the benefits to Qikiqtaaluk Corporation of the LIFO system, the fact that significant parts of the TAC for offshore licence holders is fished in SFAs that are not adjacent to the Nunavut Settlement Area, as well as the legitimate interests of the other offshore companies that have been working in the industry since 1978.

7.4.2 LIFO and the LILCA and the NILCA

The treatment of off-shore fishing in the LILCA: Most of the fisheries rights enjoyed by the Inuit of Labrador pursuant to the LILCA pertain to fishing within the settlement area itself. However, the LILCA also establishes certain rights with respect to fishing in waters adjacent to the tidal waters of the settlement area (the tidal waters of the settlement area are called “the Zone” for the purposes of the LILCA). One provision addresses shrimp specifically and states:

" 13.12.7 If in any calendar year after the Effective Date the Minister decides to issue more Commercial Fishing Licences to fish for shrimp in Waters Adjacent to the Zone than the number available for issuance in the year of the Agreement, the Minister shall offer access to the Nunatsiavut Government through an additional Commercial Fishing Licence issued to the Nunatsiavut Government or by some other means to 11 percent of the quantity available to be Harvested under those licences."

The LILCA specifies that the provisions with regards to fisheries, including those on the allocation of new licences, do not affect the Minister’s ability to continue issuing the existing commercial licences, i.e. licences issued prior to the LILCA’s effective date of December 1, 2005:

"13.12.10 Nothing in this part prevents the Minister from continuing to issue Commercial Fishing Licences available for issuance on the Effective Date."

The treatment of offshore fishing in the NILCA: Article 30 of the NILCA provides for Inuit of Nunavik’s rights with regards to fishing offshore Labrador, either in the “fishing area” extending between 12 and 40 nautical miles from the shore, or in the area lying due east from the fishing area, referred to as the “area adjacent to the fishing area.”⁴⁰ Those two areas cover a portion of Northwest Atlantic Fisheries Organizations Division 2G. With regards to shrimp fishing specifically, the NILCA provides:

"30.2.6 If in any calendar year after the effective date of this Agreement, the Minister decides to issue more commercial fishing licences to fish for shrimp in the area adjacent to the fishing area than the number available for issuance in the year of this Agreement, the Minister shall offer access

⁴⁰ NILCA, s. 30.1.1.

to Nunavik Inuit through an additional commercial fishing licence issued to Nunavik Inuit or by some other means to 8.8% of the quantity available to be harvested under those licences."

This provision has no effect on licences issued before the NILCA's effective date of July 10, 2008: "30.2.9 Nothing in this part prevents the Minister from continuing to issue commercial fishing licences available for issuance on the effective date of this Agreement."

LIFO does not violate the LILCA or the NILCA: As is clear from the text of the above-cited provisions, neither the LILCA nor the NILCA contains any stipulation that would invalidate the application of LIFO. In each case, the provision requires the Minister to offer to the Inuit groups an additional licence or equivalent additional quota applies only to those situations where the Minister issues new commercial fishing licences for Northern shrimp. These provisions are the only stipulations in these LCAs that have any bearing on the Minister's discretion with respect to access to and allocation of fisheries resources, and they clearly do not require any alteration or adjustment of the LIFO principles.

The above conclusion is supported by the principles of modern treaty interpretation, which were discussed previously. When the Labrador Inuit and the Nunavik Inuit finalized their respective LCAs, they had had the benefit of having operated in the Northern shrimp fishery since 1987, in the case of the LIA, via the licences held by Torngat Fish Producers Co-op Society and a half interest of Nunatsiavut Government in the licence held by Pikalujak Fisheries Ltd; since 1979 in the case of Makivik, via its own licence and a half-interest in another that was obtained later.

Moreover, as sophisticated parties with access to extensive negotiation support and legal advice, they must also be taken to be aware of the distinction drawn by DFO between access to a fishery, on the one hand, and allocation of the resources in that fishery, on the other, as this distinction had been clearly laid out in the IPAC Report of 2002. Finally, they must also be taken to have been aware of the confirmation by the Department of the application of LIFO to the Northern shrimp fishery in Integrated Fisheries Management Plan of 2003.⁴¹



⁴¹ Department of Fisheries and Oceans, (2003) online at: < <http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/ifmp-gmp/shrimp-crevette/shrimp-crevette-2003-eng.htm> > (dated

Nevertheless, Nunatsiavut has interpreted art. 13.2.7 as containing an implicit promise to “an equitable share” of a “highly valuable resource”.⁴² This assertion is questionable in light of the principles of modern treaty interpretation, which direct that the text of an agreement is the best indicator as to its effect, and in light of the findings by the court that the NLCA does not require that Nunavut interests receive any particular share of the fishery, but that rather the final result is fair for all parties.

In summary, it is doubtful that either of the two Inuit parties could argue they did not clearly understand that their rights with respect to shrimp licences arose only where the Minister issued a new commercial licence.

LIFO can therefore be applied without infringing any rights protected under the LILCA or the NILCA.

7.5 The Position

As the foregoing chapter has demonstrated, there are no provisions of the three LCAs in question that would invalidate the application of LIFO to the Northern shrimp fishery, as is currently the policy of the Department.

⁴² Torngat Wildlife, Plants, and Fisheries Secretariat, “Northern Shrimp Policy Paper: An analysis of the Development and Management of the Nunatsiavut *Pandalus borealis* fishery” (2010), at p. 44, online: <http://www.torngatsecretariat.ca/home/files/cat2/2010-northern_shrimp_policy_paper_an_analysis_of_the_development_and_management_of_the_nunatsiavut_pandalus_borealis_fishery.pdf>.

CHAPTER 8 - ECONOMIC IMPACTS

8.1 The economic contribution of the year-round fishery

The year-round offshore fleet produces more than \$300 million a year in exports (Stats Canada 2015). The industry provides 700 well-paying jobs (530 crew and 170 on shore) to workers, most of whom live in 116 coastal communities in Newfoundland and Labrador and supports about 2,000 additional shore-based jobs. (Survey CAPP members). The sector purchases over \$89 million in local goods and services. (Survey CAPP members).

Beyond that, there are well-developed business partnerships between a number of northern licence-holders and southern license-holders/vessel operators. These partnerships have matured to the extent that some northern licences have a direct investment in vessels, certainly a measure of the stability they rely upon. In many cases, revenue-sharing based on production and market conditions, make them true partners in the business. Revenues paid by vessel owners to >100' licence- holders and holders of Special Allocations from these relationships are in the order of

**FAS vessels purchase \$89 M
in local goods and services
annually**

**FAS vessels make \$30M in
annual royalty payments**

\$30 million annually (CAPP survey). This is a significant source of income that is used to maintain other ongoing fishing-related businesses and/or to fund more general community services and projects, as they see fit.

The payments are used for local fishery and community infrastructure. Recipients include:

Nunavut	Makivik
Innu	Nunatsiavut Government
Cartwright	Labrador Métis Nation
Inshore Aff. Cod/Crab Fishers (Northern Peninsula)	Inshore Aff. Cod/Crab Fishers (Cartwright to L'anse au Claire)
SABRI	Unaaq Fisheries Inc.
Torngat Fish Producers Co-operative	Labrador Inuit Development Corporation (Pikalujak)
Labrador Inuit Assoc.	

The year-round fishery makes full use of sophisticated, capital-intensive vessels required to harvest in the north when conditions permit. Year-round operations make it possible to pay good wages, to retain the highly trained crew needed for these vessels. The average wage for crew has varied slightly from year to year but has remained consistently above \$100,000/year (CAPP member survey).

A steady supply of product makes it possible to develop and serve the broadest range of markets. The geographical flexibility that comes from having access to all SFAs is essential to maintaining product supply. All of the catch is frozen-at-sea ("FAS"). The seasonal sector only produces cooked and peeled ("C&P") product. FAS shrimp commands a higher price than C&P shrimp. The average export price premium over the past four years has been 13%. (CAPP member survey)

Quota exported as cooked and peeled product (not FAS) represents a 13% revenue loss

8.2 Impact of the seasonal and year-round sectors on Newfoundland GDP and income

A report released by the Province of Newfoundland on the socio-economic impacts of shrimp quota reductions (Pisces 2015) was used to promote the idea of a transfer of SFA 6 shrimp from the year-round to the seasonal sector. One of its conclusions was that a reassignment of shrimp would have negligible effect on the provincial economy.

The table (data from Pisces) shows that there is a similar total impact from both the seasonal and year-round sectors on GDP. It also shows that the amount of shrimp used by the seasonal sector to achieve this result is about 25% greater than the year-round sector. The report also presented a number of models to evaluate the impact of transferring differing amounts of quota from the year-round sector to the seasonal sector.

If re-allocate 11,050 mt:
Gain seasonal sector jobs
Processing 290 @ \$8,000 (97 FTE)
Crew 335 @ \$23,800 (113 FTE)

Lose: Year-Round sector jobs
Crew 127 @ >\$100,000 ea
+
Risk 400 additional year-round jobs

Dr Wade Locke, Head of MUN Economics Department, was asked to evaluate the report (Locke 2015). He had two specific criticisms of the analysis. First, when the data used to reach the "equal impact" conclusion presented in the report are converted into per-tonne equivalent impact (a more useful way to evaluate a reallocation of quota between the sectors), it paints a much different picture. For each tonne of shrimp caught by the year-round sector, the contribution to GDP in Newfoundland and Labrador is 24% higher and the contribution to labour income is 23.7% higher than if that tonne were harvested by the seasonal sector. That represents a \$540/mt greater contribution to GDP by

the offshore fishery for every mt of shrimp caught or a loss of that amount if the shrimp was transferred to the seasonal sector. The income differential in favour of the year-round sector is

\$323/ mt. Dr. Locke also pointed out that the study did not consider the negative implications on other Canadian-based vessels that would be felt in other provinces and territories, making the economic loss of a transfer even greater for all Canadians. Overall, he found that the benefits attributed to the year-round sector were under-estimated and those of the seasonal sector were over-estimated.

Locke also identified a fundamental flaw in the quota utilization data used with models to determine the economic impacts from different levels of transfer, noting that, if the quota-caught assumption is wrong, then the conclusions that follow from it are also wrong. He recommends that the model analysis be redone.

Table 3. Impacts Per Tonne of Newfoundland Landings/Processing

Category	Sector	Economic Impact 2013 (\$M)	MTs Landed/ Processed 2013	Impact (\$) per MT Landed/ Processed 2013
GDP	FAS Fleet	\$113.00	40,571	\$2,785.27
	Seasonal Fleet	\$114.00	50,768	\$2,245.51
	Difference			+ \$540 (24% higher)
Income	FAS Fleet	\$68.50	40,571	\$1,688.43
	Seasonal Fleet	\$69.30	50,768	\$1,365.03
	Difference			+ \$323 (23.7% higher)

Source: Locke Analysis of Pisces 2015 Socio-Economic Report.

8.3 The economic impact of reallocating SFA 6 shrimp

There were an average of 265 active vessels in the seasonal fishery during 2012-2014 (DFO). The average vessel fishes 34 days during the season (DFO). The year-round sector’s threshold quota in SFA 6 is 11,050 mt. The break-even requirement for a seasonal shrimp boat getting on average one-third of its revenue from shrimp is 150 mt (Pisces). A reallocation from the year-round harvesters to the 265 active enterprises would provide each boat enough shrimp to fish an extra 7.6 days/year (DFO data).

Threshold Quota Transferred to Seasonal Sector
GDP loss \$6 M
Income loss \$3.6 M

An on-shore plant requires 6,000-7,000 mt of supply to maintain long-term viability (Pisces). The reallocation of the year-round sector’s threshold quota in SFA 6 would support at most two of the 10 seasonal plants and provide fewer than 290 seasonal jobs that pay \$8-9,000 per year. Not a compelling benefit for the reallocation, with its far-reaching consequences.

In recent years, SFA 6 has provided 24% of the average shrimp catch by year-round harvesters (Survey CAPP members). Reliance on the area varies and some licence-holders depend on SFA 6 for up to 30% of their catch. Loss of the area would dramatically impact the fleet’s fishing plans. by forcing tie-ups during the winter and early spring when these SFA 6 stocks are normally harvested. Fleet viability will be severely compromised, with some vessels forced out of the industry.

Threshold quota in SFA 6 supports only 2 of 10 plants and provides 7 to 8 fishing days

The year-round sector spends an average of \$36.7 million, including the wages paid to crew, for the goods and services needed to harvest SFA 6. Closure of the area to year-round harvesters would result in

the loss of 127 full-time, well-paying jobs (Survey CAPP members), reduce hundreds more to seasonal status and risk further job losses on vessels that will not survive on a seasonal basis.

The loss of access to SFA6 cannot be made up by the year-round fleet in areas further north in SFAs 0-5, as some propose. The fishable quotas there are fully subscribed and are not sufficient to replace the quota loss. This will deal a serious blow to the viability of the entire fleet and put many other secure year-round jobs at risk. Advocates of this proposal are in essence proposing an approach that will at best marginalize the fleet and at worse put it out of business.

Two new \$60 million vessels are under construction and are scheduled for delivery in 2016 - 2017 as part of continuous renewal efforts. Investors and lenders have relied upon the secure quota when underwriting these investments. Government loans and guarantees are not available to the year-round sector. Secure access to allocations is a critical element in securing investment and lender financing.

Access Fees for quota:
Seasonal sector \$0
Year-round sector \$2.5 M

8.4 Reallocation options within the seasonal sector

An analysis of DFO landings data over the 2012-2014 period by the active seasonal fleet indicates there are reallocation options within the seasonal sector. Enterprises based in 2J, 3K North, and 3K south are adjacent to SFA 6. Enterprises in 3L and 3R are adjacent to SFA 7 and 8 respectively.

The DFO data shows that SFA6 shrimp accounts, on average, for only about one-third of the total landed value for seasonal vessels that fish in SFA 6 for shrimp. Moreover, more than 40% of all seasonal fleet landings from SFA 6 were taken by non-adjacent vessels, principally from the Gulf

Table 2: Adjacency and relative importance of the SFA6 shrimp fishery to seasonal vessels, 2012-14 averages

Base	# of Enterprises	SFA6 shrimp landed	% of total landings	SFA6 shrimp value	Value of other	% value SFA6 shrimp
2J <65'	19	4,696,321	12.6%	7,804,724	31,437,072	19.9%
3K North	22	3,650,145	9.8%	5,928,805	2,144,789	73.4%
3K South	76	12,964,163	34.9%	21,380,484	19,145,166	52.8%
3L <65'	99	7,721,435	20.8%	12,506,770	59,570,789	17.4%
4R <65'	49	8,153,731	21.9%	13,227,420	10,093,861	56.7%
Adjacent	117	21,310,629	57.3%	35,114,013	52,727,026	40.0%
Not adjacent	148	15,875,166	42.7%	25,734,190	69,664,651	27.0%
All	265	37,185,796	100.0%	60,848,203	122,391,677	33.2%

of St. Lawrence (4R) and southern Newfoundland (3L). For these non-adjacent vessels, SFA 6 landings represented just over one-quarter of their annual revenue. Given these relatively low levels of dependence during a period of hyperabundance and strong markets, declines of the magnitude now

being experienced should be manageable and certainly can be accommodated without impacting others outside that fleet.

(DFO data)

These sub-fleets participate in the fishery through a Union-managed (as opposed to DFO-managed) “cap” system. There would seem to be an opportunity to re-allocate within the fleet in favour of those truly adjacent to SFA6, as this would be consistent with the approach advocated by the FFAW and the Province of Newfoundland and Labrador.



CHAPTER 9 - SUMMARY OF ISSUES

9.1 The temporary allocation program (*The agreement*)

From the very first granting of temporary access to Northern shrimp in 1997, DFO communicated to industry that increased abundance was a time-limited phenomenon and that any new access must therefore be temporary, to avoid negative impacts on traditional year-round harvesters and the resource. The main features of the sharing arrangement were a threshold and an entry-exit mechanism. The terms of the program were understood and accepted by all, including the President of the Newfoundland union. Harvesters receiving permits to fish in the 1997 fishery were required to sign a declaration acknowledging that this permission to fish was temporary. (Chair NSAC)

How sharing of the surplus (above the thresholds) would occur between the traditional year-round harvesters and new participants in each SFA, including SFA 6, was subject of debate. The final decision to provide 90% of the SFA6 surplus to temporary seasonal license holders was arrived at in large measure due to the threshold guarantee. The year-round harvesters accepted that by foregoing a larger share of the surplus, they would receive the guarantee represented by the thresholds.

As the surplus increased year by year, the number temporary participants was expanded and in 2000, the term Last In, First Out (LIFO) mechanism was first articulated by DFO (Minister Dhaliwal) and was included in the 2003 IFMP.

In April 2007 the Canada - Newfoundland and Labrador Fishing Industry Renewal Initiative made changes to inshore licensing policy that some claim altered the status of temporary allocations to the <65' seasonal fleet. Core enterprise holders were now allowed to buy out a second enterprise and consolidate individual quota or harvesting caps. There were provisions for retiring vessels and duplicate licences. Temporary shrimp permits were converted to regular inshore licences as part of the change but the temporary status of the shrimp allocation associated with the licence did not change. It was in essence a name change, insofar as the temporary allocation program was concerned. This fact was confirmed in letters from Minister Hearn and specifically incorporated in the 2007 Northern Shrimp IFMP (in S. 5.2).

The first reductions in resource abundance were in 2010 and with them came the need to apply the LIFO mechanism. The method of implementing the Last In, First Out provision by the department was challenged. However, following a review, an independent consultant concluded that "it appears that the policies, principles and methodology have been interpreted and employed correctly and consistently with the definition of the last in, first out principle". (Ernst and Young, emphasis added) LIFO was applied for every TAC reduction taken since 2010, in SFAs 5, 6 and 7.

From the program's origins in 1997 through to 2015, DFO officials and successive Ministers of Liberal and Conservative governments have consistently assured year-round licence-holders that

the temporary allocation program with thresholds and the LIFO mechanism will remain a cornerstone of access and allocation decisions in this fishery. They likewise advised the new temporary participants that their allocations were dependent on the availability of surplus quota (above the threshold) in each SFA.

In essence the groups of license holders received two distinct and clear messages on which to base plans and investment decisions:

- Year-round licence holders received specified threshold amounts and a small share of the surplus amounts (in SFAs 6 and 7) and they have been planning and investing within these rules.
- Seasonal temporary participants operating on Union-managed allocations in SFA 6 and 7 received a large share of the surplus (in SFAs 6 and 7) while surpluses continued to exist and they have been planning and investing within these rules.

Both groups were expected to, and in the case of the seasonal sector specifically advised to, plan operations within these parameters.

9.2 Security of access *(The policy imperative)*

Allocation stability between parties in the commercial fishery has been a cornerstone of policy since the days of DFO Reform in the early 1990s. It took years of acrimony and dispute over sharing the resource to arrive at the place where the majority of fisheries have stable allocations.



The value of security and allocation stability has been a lesson hard-learned in Canada and it should not be lightly cast aside. Use of a threshold and clear entry and exit rules such as LIFO is considered best practice when aiming to protect allocation stability while sharing the surplus in a hyper-abundant period in the resource cycle. (Independent Panel on Access Criteria).

The department's promotion of security of access in the period from 1997 to today has not wavered. Indeed, it has been reinforced by a number of comprehensive policy reviews and remains a fundamental pillar of fisheries management in Canada. The most recent review in 2012 goes so far as to say:

"Fisheries and Oceans Canada aims to stabilize sharing arrangements in all key fisheries the Department manages. [...] If resource users want to change established arrangements they will do so cooperatively, negotiating among themselves rather than requiring Fisheries and Oceans

Canada to intervene. [...] Only in exceptional cases, such as in response to legal obligations and obligations stemming from comprehensive land claims agreements, would the Department become involved in adjusting already established sharing arrangements." (page 11)

The Minister of Fisheries and Oceans can exercise wide discretion in making decisions over access and allocation but he should not do so capriciously. There is a very clear policy framework to guide his decision that we, as stakeholders, have relied heavily upon. In this case the Minister is asked to not only to cast aside a previous allocation decision made with due regard to longstanding and recently affirmed allocation policies but also to renege on an agreement between government and the parties involved that specified how an allocation issue - which was sure to arise - would be resolved.

9.3 Seasonal fishery and the lobby to terminate LIFO

The seasonal shrimp sector increased dramatically after 1997. Industry expansion spurred on by competition, a high level of seasonality, and the lack of vertical integration caused a level of overcapacity that continues to plague the industry today. A number of efforts to introduce fundamental change to the industry over the past 15 years met with great resistance.

The seasonal fishery was the primary beneficiary of the dramatic expansion in shrimp and crab abundance since the 1990s, receiving two-thirds of the shrimp and 100% of the crab. The undisciplined expansion of this sector's fishery was a wasted opportunity to rationalize and restructure into a more sustainable sector.

The highly seasonal shrimp sector (the average boat fishing only 34 days in 2014) relying on wetfish vessels to fish grounds that are 60 to 380 miles from shore, to serve on-shore plants, has not provided the kind of well-paying, year-round jobs that attract and retain young workers. The wage rate for plant workers is typically \$12-\$14/hr. The workforce in these automated plants is aging rapidly and is already being supplemented by temporary foreign workers. The pattern of seasonal work and high reliance on EI has drained rural communities of its young. This has happened during a period of hyperabundance of crab and shrimp that should have been used to build a more sustainable and resilient industry.

The most recent initiative by FFAW and the All Party Committee of the NL Legislature for addressing this overcapacity problem calls for diverting quota in SFA 6 from year-round harvesters to the seasonal harvesters. The proponents of this change make the claim that the reallocation will not damage the year-round industry because it can fish areas north of SFA 6; that the reallocation will be neutral economically; and that the quota in the hands of the seasonal fleet will be the salvation of coastal communities across rural Newfoundland.

The year-round northern shrimp fishery is one of Canada's most successful fisheries. But to continue to be so, the fleet requires access to SFAs 6 for twelve-month operation. The SFAs north of 6 can be targeted only when free of ice in the summer fall and early winter. The role that

access to SFA 5 and especially SFA 6 plays during the first half of the year cannot be overstated. Without that access, there are no areas where vessels can fish for months of the winter. SFA5 quotas held by year-round harvesters are not sufficient to avoid a tie-up. The re-allocation of SFA6 quotas will force year-round harvesters to tie up, significantly impacting the economics of this fishery.

In addition, there are no extra fishable allocations in SFA 0-5 that are available to replace the loss of the >100' SFA 6 quota threshold of 11.050 mt, which constitutes about 30% of the total threshold quota held by the year-round sector (figure 11). Special allocations in SFAs 0-5 totaling 15,900 mt, which are assigned to other interests, are already harvested by the year-round fleet under contractual "fee arrangements" and the returns from these arrangements in no way match those from the year-round sector's assigned quotas. Re-allocating these quotas to the >100' licence holders would save the cost of the "fee arrangements" but would not provide the ice-free fishing opportunity lost through the re-allocation of SFA 6 quota.

With respect to the alleged positive impact of a transfer to the seasonal sector, it is important to note that most of the remaining quota held by year-round harvesters is composed of its 11,060 mt threshold allocation. Re-allocating the year-round sector's entire threshold quota in SFA 6 would support two plants and employ fewer than 290 seasonal workers. It would provide seven to eight days of additional fishing per vessel per

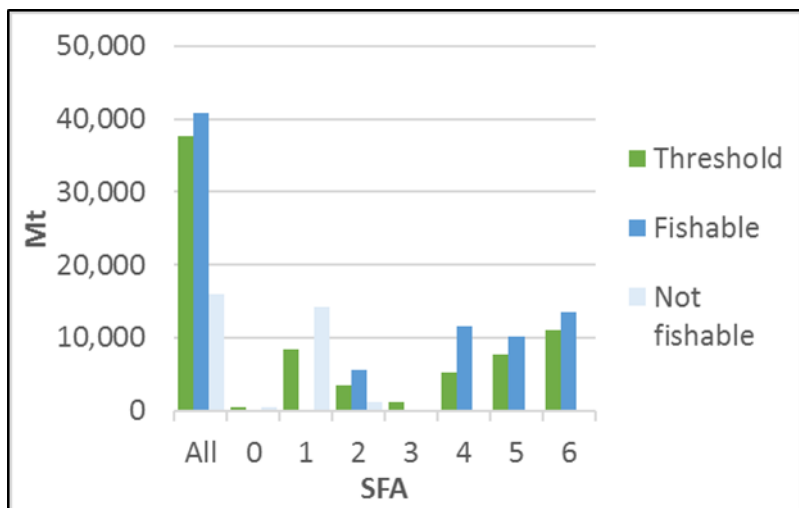


Figure 11. 2015 >100' allocations in relation to threshold x SFA

year for the active seasonal fleet. Claims by the FFAW and the Province that the health of the seasonal industry and the fate of rural Newfoundland rest on this proposal are just not credible. Most of the seasonal harvesters' quota reductions have occurred because of the fact that they hold such a large percentage of a declining TAC. The transfer of shrimp from the year-round fleet will do little to help. On the other hand, the damage this would do to the year-round fleet operation – due to loss of revenue from reduced quota, higher average operating costs, loss of a winter fishing ground, likelihood of vessel tie-up – would be significant.

The FFAW characterizes the issue as a battle between the "adjacent little guy" with the offshore "foreign operators" who bring little benefit to Newfoundland. Another untruth. The year-round shrimp fishery is operated and controlled by Canadians, having far greater local ownership than virtually all other resource-based industries in NL. There are some licence-holders that have

attracted investment from outside Canada, which speaks to the strength and stability of the year-round sector of the fishing industry. But our sector is no more "foreign" than the seasonal shrimp processing sector in NL simply because some of these plants and shore-based infrastructure also have investment from outside Canada.

The year-round shrimp sector takes exception to being called 'foreign'. The year-round vessels are owned by Canadian companies and are 100% crewed by Canadians, most of whom are residents of 116 communities in Newfoundland and Labrador. Pitting one group of NL fishermen against another with misleading and false information is not the way to make informed decisions about the future of the province's shrimp fishery. When combined with its exaggerated claims that a change to LIFO is necessary to save rural communities of this province, this demonstrates the irresponsible behavior of the FFAW, who prefer to attack and destroy the stronger parts of the fishery rather than fixing their own problems, which have largely been made worse by the Union's top-down control of its members.

9.4 Adjacency

The FFAW proposes to evict traditional license holders having economic dependence and historic attachment from SFA 6.

The FFAW also conveniently ignores the fact that many year-round licence-holders are equally or even more adjacent to SFA6 shrimp than many of the seasonal vessels. A majority of the vessels in the seasonal fleet are based in 3L adjacent to SFA 7 and in 4R adjacent to SFA 8 and are not adjacent to SFA 6. Nonetheless, the union justifies much of their argument for confiscating the year-round fleet's quota on the principle of adjacency, claiming this should override any other principle, agreement or past promise. In fact, there are a number of reasons why adjacency is not the operative principle in this circumstance. The highly mobile seasonal shrimp fishery takes place in the mid-shore and off-shore areas, 60 to 380 miles from the vicinity of their home ports closer to which the principle of adjacency might have had greater policy significance. At the distances where the shrimp fishery is prosecuted, historic dependence and economic viability, two other important principles, take on greater importance. Historic dependence requires that priority of access be granted to fishers who have historically participated in and relied upon a particular fishery, including those who developed the fishery (DFO, 2002).

It is noteworthy that the FFAW and the Government of NL use the "adjacency principle" only when it is convenient to support their position. Both of these organizations recently argued in favor of respecting a fleet's historical attachment in an allocation dispute in the Gulf halibut fishery, where a stabilized sharing arrangement that had been established in 2007 had been ignored in subsequent years. The Government of NL submission, arguing that the 2007 agreement must be respected, concludes (page 11): "Otherwise, there is clearly no value in DFO establishing stabilized sharing arrangements for fisheries in Atlantic Canada or to continue

promoting its desire for stable, predictable, and transparent decisions in relation to access and allocation."

Similarly, for the declining Northern cod resource of the 1980s, the FFAW argued in favour of a LIFO approach to terminate quotas held by new entrants when TACs declined. For this stock, they ignore the principle of adjacency when proposing an "inshore sector" threshold of 115,000t, before other adjacent licence-holders should be permitted to enter the fishery. It appears that the "allocation principle" most supported by the FFAW is "whatever works" to advance its own best interests.

9.5 Alternatives for the future of the seasonal shrimp sector

In spite of challenges facing the seasonal shrimp sector, disaster is not inevitable. There have been a multitude of studies in recent years to examine the state of this fishery, and there are options that can be pursued that do not involve re-allocating resources upon which others depend.

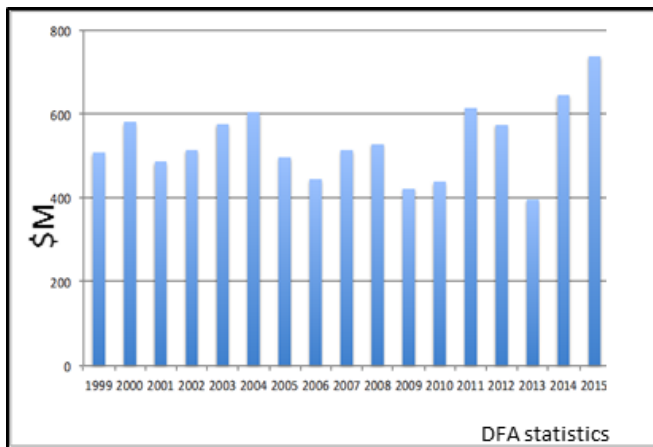


Figure 12. Total landed value of wild fisheries, Newfoundland and Labrador, 1999 - 2015

The seasonal harvesting sector has a multi-species resource profile, including access to shrimp in the Gulf of St. Lawrence (about 50 vessels), snow crab, turbot and other groundfish. The landings data for Newfoundland wild fisheries continue to be strong. (figure 12). The total value of crab, a mainstay for seasonal shrimp harvesters, is at the highest level in the time series. (figure 10, page 35)

Shrimp landings per active enterprise were relatively consistent over the time series and as they decreased in weight, strong prices have kept landed values high. Even with application of LIFO and a 42% reduction in TAC, the 2016 value of seasonal shrimp landings is expected to be among the highest in the time series (figure 10, page 35).

While Northern cod is not yet ready for the resumption of large-scale commercial fishing, this resource is returning as part of the ecosystem shift back to one favouring production of groundfish (DFO 2015). The spawning stock biomass is projected to double by 2018. There is good reason to believe that we will see a larger-scale commercial fishery in the next five years.

The seasonal harvesting and processing sectors will continue to struggle with matching industry capacity to available resources. As the hyperabundant cycle of shrimp and crab have proved, no amount of resource re-allocation can place a seasonal industry on a sustainable footing without some fundamental change. A number of things can be done. (1) Modest licence combining was

an important initial step in providing a self-rationalization mechanism for the seasonal fleet but constraints on the amount of combining should be relaxed or eliminated. Measures that would allow for better integration of harvesting and processing operations should also be implemented. (2) The seasonal sector can and should position itself to make best use of \$400 million in the federal and provincial "CETA fisheries fund". (3) Rationalization among seasonal harvesters can focus on fleet components where shrimp is a relatively small proportion of their total income and/or on fleet components that are not adjacent to SFA6, i.e. those based in SFA 7 or SFA 8.

For NL shore-based shrimp processing plants, lower EU tariffs resulting from CETA will facilitate the cooking and peeling of whole raw "industrial shrimp" from the year-round fleet. This could significantly offset reduced supply from the seasonal fleet if and as shrimp TACs in SFA 6 decline.

The year-round sector does not promote specific solutions nor want to take any role in the decisions concerning the seasonal <65' sector in Newfoundland and Labrador. However, we have a responsibility to note that there are viable alternatives available to this sector. It is critical that the problems of the seasonal harvesting and processing sectors in NL are not "solved" upon the back of a successful fleet that has done and continues to do all of the things that would be wished to be done in the seasonal sector in this province.

9.6. Land claims agreements issues

The Minister's Advisory Panel is asked among other things "[t]o pronounce on the validity of applying LIFO to reduce allocations in SFAs which are subject to any of the three Land Claims Agreements in the commercial shrimp fishery" – those being the Nunavut Land Claim Agreement ("NLCA"), the Labrador Inuit Land Claim Agreement ("LILCA"), and the Nunavik Inuit Land Claim Agreement ("NILCA").

Between them, organizations and companies aligned directly with these jurisdictions own 4.5 of the 17 regular licences in the year-round fleet. As such, they are equal partners in the established thresholds in each of the SFAs and globally. They also are beneficiaries of the temporary sharing program in several ways:

- They each receive their equal share (1/17) of increases (and decreases) in the regular allocation to the >100' through the period of hyperabundance;
- They, as members of the Northern Coalition of regular licence-holders, receive a special allocation under the temporary sharing program;
- Individually, they receive additional targeted access to localized stocks in waters adjacent to their land base, such as in the Hudson Strait and Ungava Bay (SFA 3) and the southern Davis Strait (SFA 1 and 2).

Several other special allocations have been made to non-licence-holders that have a base within the jurisdiction of these LCAs.

CAPP does not have full and final knowledge of what specific claims may be made to the Panel by any of these entities. However, the question to the panel is clear, in that it concerns the application of LIFO and whether any provisions of these three land claims would take precedence over that application of LIFO. We contend that LIFO can be applied as designed and intended without infringing any rights protected under either of the three LCAs in question, in fishing zones outside the settlement areas defined under them.

These LCAs are all modern treaties and the language in them is clear and precise and subject to more literal textual interpretation than in the case of "historic" treaties.

Two of these LCAs, the LILCA and NILCA, were negotiated, signed and brought into effect in the period following the establishment of the temporary sharing program, so the terms and conditions of that program would have been transparent to those negotiations. Equally, the provisions of key relevant policies such as developed by the Independent Panel on Access Criteria were well established prior to that time. The LILCA and NILCA both state that, in effect, Canada should increase their access to commercial fisheries (to 11% and 8.8% respectively) in specified zones off their settlement areas – but only where the Minister issues a new commercial licence. As no new licences have been created in these zones, there is no claim to be substantiated under these two LCAs.



The NLCA was in effect prior to the establishment of the temporary sharing program. It calls for the Government to give special consideration to Inuit interests when issuing fishing licences within two defined offshore zones to the south and east of Baffin Island – zones that could implicate some or all of SFAs 0 to 4. There is no specified target percentage of access to establish when this obligation has been met.

This provision has been tested in the courts on several occasions. The courts found the effect of the special consideration clause is not to require that Nunavut interests receive a particular portion of any new allocation (or, by analogy, that these interests be exempted from any particular reduction in allocation) but rather that, after such allocation or reduction, Nunavut

interests possess a proportion of “the final distribution of licences and quotas ...which, in view of all the other constraints on the Minister ...is fair in the circumstances.”⁴³

It was recognized that Nunavut interests who are regular licence-holders are equal participants in the threshold amounts and are able to fish in SFAs far beyond what would be justified by the principle of adjacency. Moreover, this means that even if Nunavut interests lose some TAC due to the application of LIFO, Nunavut interests will, through their 1.5 licences, nonetheless maintain an 8.8% interest in the fishery as a whole, regardless of how low stocks fall. Therefore, CAPP contends the final distribution of licences and quotas is fair in the circumstances, given the fact that significant parts of the TAC for offshore licence holders are fished in SFAs that are not adjacent to the Nunavut Settlement Area and given as well the legitimate interests of the other offshore companies that have been working in the industry since 1978.

So on the collective basis of these views, CAPP contends that there are no provisions of the three LCAs in question that would invalidate the application of LIFO to the Northern shrimp fishery, as is currently the policy of the Department.

9.7 Year-round shrimp fishery

The year-round FAS fishery is a superior model for the Northern shrimp fishery. It is more efficient and effective in converting the shrimp resource into benefits for Newfoundland and Labrador than is the seasonal shrimp sector. The claim that the seasonal sector provides as much or more



benefit to the provincial economy is not accurate. The year-round fishery produces 24% greater GDP and labour income per tonne of shrimp than does the seasonal sector. (Locke with reference to government statistics)

The year-round northern shrimp fishery not just a fishery – in contrast to the seasonal fishery, it is a fully integrated industry that operates from ocean to plate. By having access to year-round supply and exercising full control over product flows, it is able to maximize

quality. Even limited by space constraints, FAS vessels with on-board processing produce a wider range of products than can be produced by the seasonal fishery. Integrated operations are able to better align production with markets. The industry has a record of responding to market disruptions or opportunities caused by political events (e.g. managing solutions to the import ban

by Russia, which had been its #1 market), market conditions (e.g. collectively promoting Canadian coldwater shrimp since 2006 to re-shape its price position relative to larger-size and cheaper shrimp in the Chinese market) and currency fluctuations. As a result, the year-round shrimp sector extracts the greatest value for the economy from the shrimp resource. A simple reflection of this is in the price the two sectors receive for their product. Considered on a per quota tonne basis, the shrimp produced by the year-round, frozen-at-sea fishery commands a 13% export value advantage over the cooked and peeled shrimp produced by the seasonal fishery.

Calls for the transfer of SFA 6 quota from year-round harvesters to the seasonal fleet will do little to help the seasonal harvesters but would do significant damage to the year-round sector's viability, depriving it of an average of 24% of its recent catch (30% for some vessels), and depriving it of a critically important ice-free fishing ground in winter (figure 6, p23), forcing vessel tie-ups. Exclusion from its own SFA 6 quotas will mean that added direct costs and fleet overheads will have to be covered by up to 30% less throughput, the combined effect of which would be to reduce its ability to replenish the fleet and to generate benefits to licence-holders as well other quota-holders who depend on the revenue from the fishery. Perhaps as importantly, a decision not to respect the agreement reached in 1997 and the government's policies on stable and secure access and allocation will undermine confidence in fisheries elsewhere and reduce the value of allocations when seeking funding to invest in the fishery.

9.8 Fairness

The year-round fishery has a strong historical attachment and economic dependence on the shrimp resource. Year-round harvesters shared the shrimp resource when there was a surplus to share. This, in effect, constituted a "social contract" with other stakeholders and DFO that was approved by Minister Mifflin and reaffirmed on a regular basis by each and every subsequent Minister. This agreement must be honoured. The Government of Canada must stick by its word! It is the fair thing to do.

Stable, predictable and transparent quota-allocation policy is essential to enable businesses to invest and lenders to lend. The rules for how quota-sharing would occur during the temporary increase and the subsequent (anticipated) decrease in the shrimp resource were set and known and investments were made accordingly. It is patently unfair to penalize businesses and lenders who made their investments in accordance with the established rules.

A re-allocation in this fishery would also send a very bad signal to other fisheries across the country. Such action would undoubtedly undermine the government's commitment to policies of stability. It will embolden others to challenge allocations in fisheries where shares have been stabilized. It will negatively impact the growing confidence that financial institutions have been building around the treatment of EA and IQ shares as assets with which to secure the funding needed for investment in strong fishery. It is a step in the wrong direction.

Year-round harvesters cannot replace SFA 6 quota in SFAs 0-5. Proposals that the needs of the fleet can somehow be accommodated in northern SFAs by moving its operations farther north are specious if not also disingenuous.

Strong partnerships and interdependencies have formed between northern and southern peoples, through cooperation in this fishery. One result has been a flow perhaps exceeding \$30 million per year in financial benefits to communities throughout Labrador and the far North. Undermining the year-round sector's viability will slow or stop this stream of benefits that are crucial to development of isolated rural communities in these more northern areas.

Year-round harvesters pay the full DFO quota access fees totaling over \$2.5 million a year. The Union operates an informal harvest cap system that mimics the approach but is in part intended to avoid paying the quota access fees to DFO. Seasonal enterprises pay only a nominal licence fee to DFO. They have avoided paying their fair share of fees for 19 years; tens of millions of dollars of fees that would have contributed to science and management were not paid! That's never been fair. The year-round fleet is closely monitored at its own cost; the seasonal fleet is not. The year-round fleet pays for shrimp science and conducts surveys in areas DFO cannot reach. The seasonal fleet does nothing to help manage the resource. That's not fair.

A change to the existing quota-allocation policy would have a devastating impact on Newfoundland and Labrador businesses, on well-paying, year-round jobs and on the local economy, especially in Labrador. The era of a high-

“Do members know how Canadians know their government is working? ... They know it when we have well-paying, full-time jobs.”

- Prime Minister Justin Trudeau,
House of Commons,
April 22, 2016

volume supply of shrimp that supported a badly structured, bloated and inefficient seasonal industry is coming to a close. A decision to end or modify LIFO or to reallocate a relatively small SFA 6 year-round quota will not change that reality nor alter the rationalization and restructuring that need to be done. It will unfairly harm the year-round sector and the people who work in it. We cannot understand why government would support over-capacity in the seasonal fishery sector, at the expense of our year-

round jobs that make a greater contribution to the economy for every tonne of shrimp quota that is caught. It would be unfair and irresponsible to do so.



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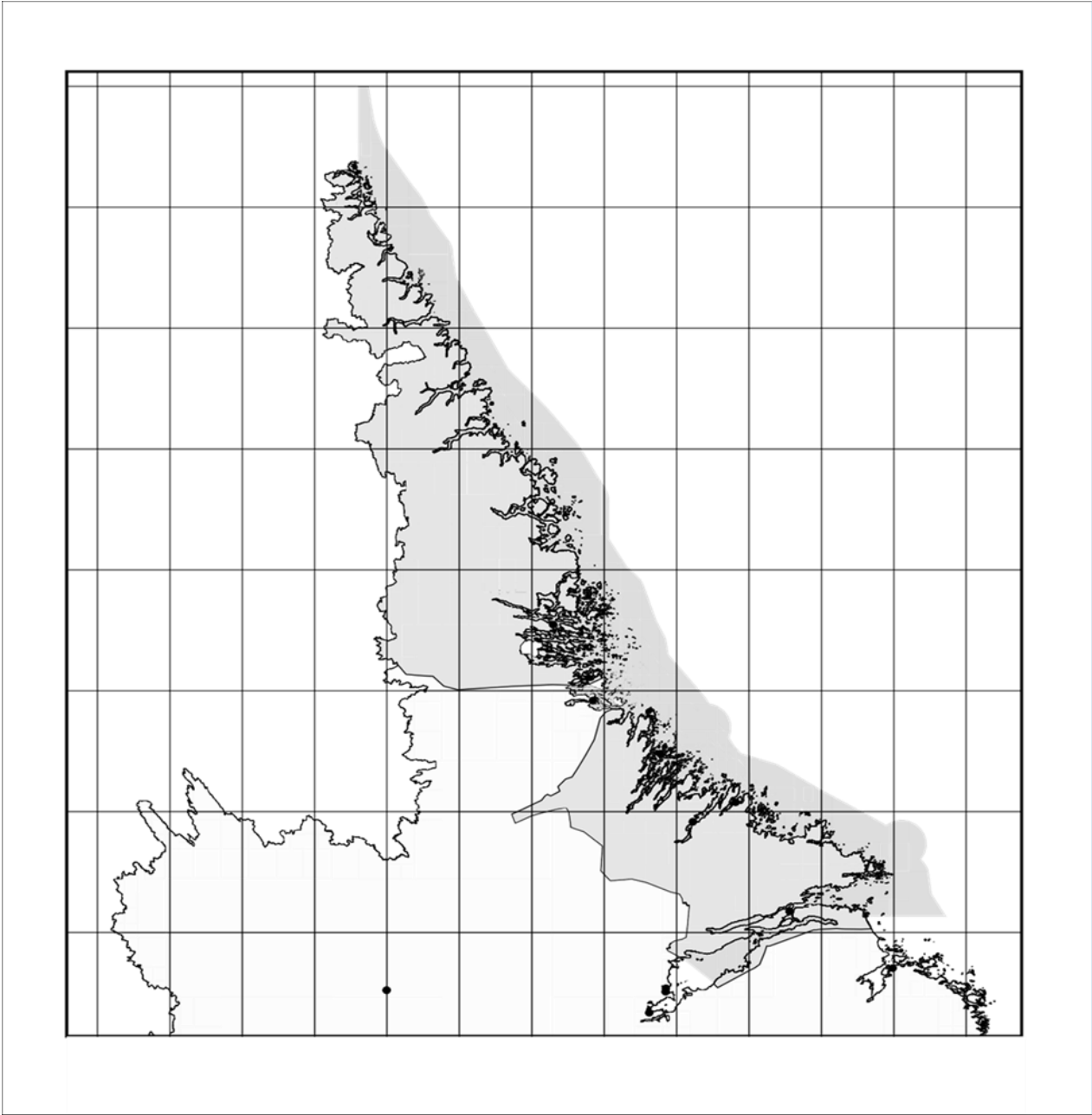
Steiner Engeset, President, Newfound Trading Ltd. Dartmouth, NS Canada

ANNEX

A: Nunavut Lands Claim Settlement Area

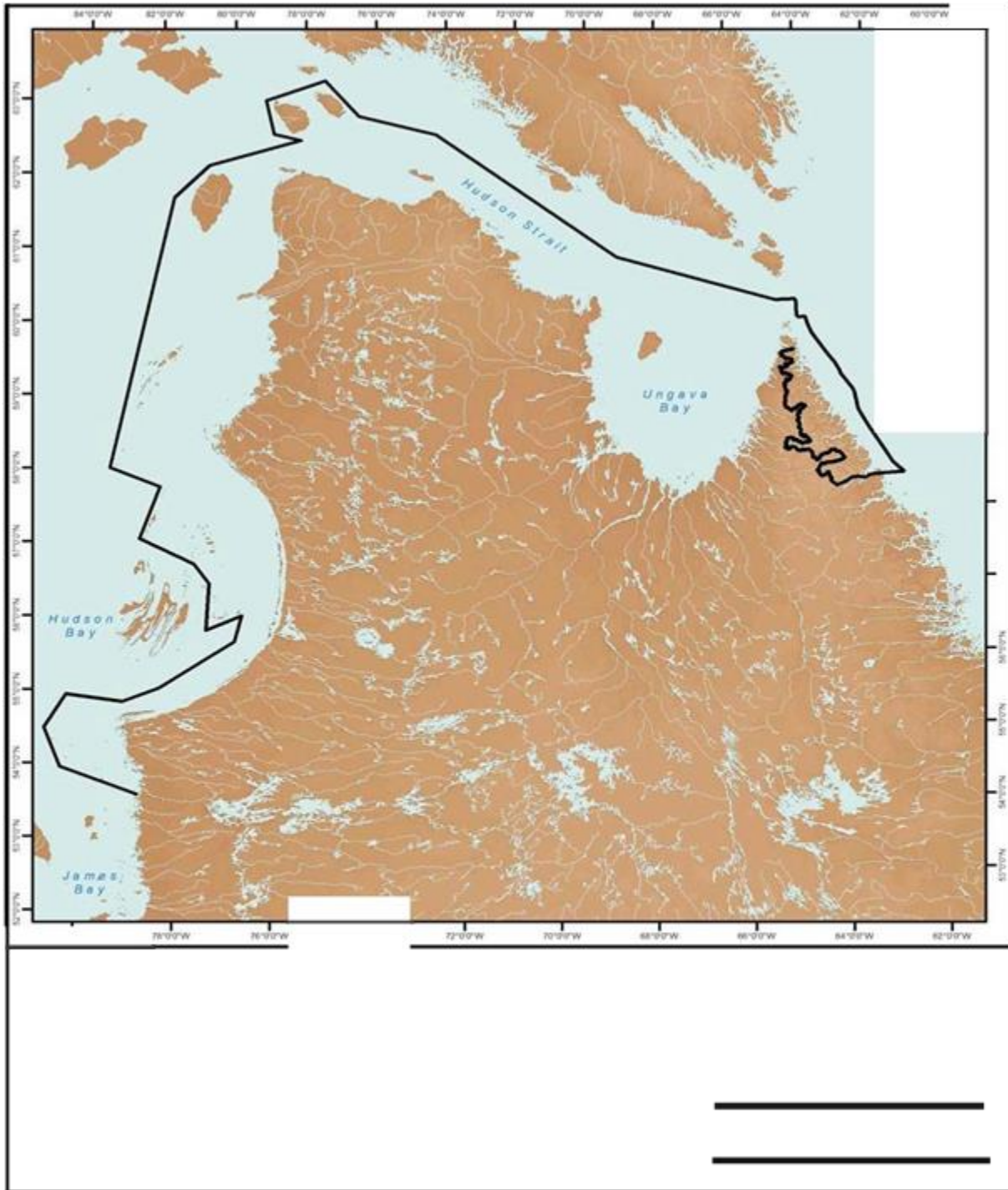


B: Labrador Inuit Lands Claim Settlement Area



C: Nunavik Inuit Lands Claim Settlement Area

- Nunavik Inuit Settlement Area



- Nunavik Marine Region

