

## **Government of Nova Scotia**

### **Response to an External Review of the *Last In, First Out (LIFO)* Policy In the Northern Shrimp Fishery June 3, 2016**

#### **Introduction**

Seafood is a critical part of Nova Scotia's economy and is our highest export product by value. The livelihood of thousands of Nova Scotians depends on the harvest, processing, and export of seafood products. It is a core component of our rural coastal economy.

Shrimp is an important part of our fishery. Nova Scotia reports the second highest shrimp landings in Canada. Nova Scotia license holders employ hundreds of year-round, well-paying jobs, investing in millions of dollars in onshore infrastructure in the form of processing facilities and logistics.

In 1997, the fundamental principles by which a new access agreement was based (later referred to as the LIFO policy), had the support of all sectors. It provided a secure climate to conduct business, attract investment, instill confidence in investors, and mitigate risk associated with uncertain resource access.

At its core, it protects the traditional fleets who took risks to finance and pioneer a fishery to develop it into the established viable commercial sector it is today, particularly in Shrimp Fishing Area (SFA) 6. It is a Canadian resource and the government of Canada has the responsibility to manage it in a manner benefiting Canadians. The Northern Shrimp fishery management plan including the LIFO policy provides the appropriate balance of fisheries management policies and should remain fundamentally unaltered.

Within their Terms of Reference, the Ministerial Advisory Panel (MAP), were tasked to solicit and examine feedback from stakeholders on three central considerations. The Government of Nova Scotia provides the following rationale in response to these key questions.

#### **1. Should LIFO be continued, modified, or abolished and why?**

LIFO should be continued. It is a fair mechanism by which the wealth of an expanding resource can be shared, while at the same time protecting those who incurred a significant level of risk and capital investment in the resource. To support this argument, the history of the Northern Shrimp fishery should to be considered.

### ***Basis for Building the Industry***

In the early years, the Northern Shrimp resource was exploited by international factory vessels. With the establishment of Canada's 200 mile EEZ in 1977, the resource fell within Canada's control. With little capacity to harvest this resource, the minimal benefits flowing to Canada came by way of royalty charters with foreign vessels. In the late 1970s, the private sector, with the support and encouragement of Fisheries and Oceans Canada took the risk to invest in an opportunity to "Canadianize" the Northern Shrimp industry. This investment and development initiative maximized the value of the industry to support Canada's interests, in stark contrast with the benefits that were reaped from the fisheries by overseas interests before 1978. The Canadianization initiative was largely led by Mersey Seafoods, a Nova Scotia based company.

In the 1980s, an enterprise allocation regime was used to manage the stock. All of the licences would share in any resource pulses, and the allocations were determined based on the total allowable catch (TAC). The level of capital investment in the offshore vessels dedicated for harvesting these allocations (from 1978 to 1991 offshore licenses) "was at least 13M\$, with many investing as much as 16 million to 18 million dollars". (Shotton, 2001)

### ***Stocks Increase***

The catch in the shrimp fishery rose from 5,000 metric tonnes in 1985 to 30,000 mt in 1996. Due to the continued stock growth, the TAC in 1997 was set for 59,050 mt. For a sharing arrangement to take place in an equitable manner, there was a need to protect those parties that invested so heavily and developed the first Canadian commercial Northern shrimp fishery 40 years ago.

### ***Transparent Ground Rules for Sharing***

On April 23, 1997, Minister Fred Mifflin announced that there were four fundamental principles by which investments in the traditional fleets could be protected, yet allow for new entrants to share in this growing stock. These principles were:

1. Conservation would be paramount.
2. The viability of those who were first to operate the commercial fishery (the offshore fleets) will not be jeopardized. The current license holders would retain their full allocation of 37,600 mt.
3. There would be no permanent increase in harvesting capacity.
4. Adjacency would be respected; those who live near the resource will have priority fishing it.

In this press release, Minister Mifflin stated that "in regard to the allocation increases in SFA 5 and 6 . . . I have been guided by the long-standing principle of adjacency". (DFO, 1997) His statement was not in conflict with the second fundamental principle – preserving the viability of offshore fleet. It was fully recognized that that his statement about adjacency only applied to

TAC increases in SFAs 5 and 6, and that the offshore fleet would retain and have priority access to their original allocations in those areas.

The record from time reflects that representation from the seasonal inshore sector understood that their share could go to zero in the event of a TAC decline.

In 2007 the temporary inshore permits were converted to permanent licenses; a controversial decision that violated one of the original conditions of the 1997 expansion. The justification for this change was to facilitate a rationalization within the inshore fleet. However, DFO's Integrated Fisheries Management Plan (IFMP) of that same year re-confirmed that LIFO would be maintained as the key principle which would guide allocations when quota reductions occur. LIFO's functionality was not attached to the temporary access to the resource.

The IFMP reiterated that to "ensure that the viability of the traditional offshore fleet was not jeopardized . . . new participants/ allocations would be removed from the fishery in reverse order of gaining access last in, first out". (Ernst & Young, 2012)

Consequently, LIFO has been applied. In 2010 and 2011, LIFO was upheld, impacting four allocation holders. This resulted in their full removal of allocations; North of Fifty Thirty Association, Association des pêcheurs de la Basse-Cote Nord, the Innu, and Fogo Island Co-op. The Prince Edward Island allocation was eliminated when SFA7 closed in 2015. To change course and remove or modify LIFO at this time would be disproportionately unfair to these license holders who have been significantly impacted by the sharing arrangement and exited the fishery based on stock decline.

### ***Commercial Offshore Fleet Viability Linked to SFA 6 Access***

The fundamental principle of protecting the viability of the offshore fleet would be compromised should access of SFA 6 be reduced.

Considering weather patterns and ice conditions, the southern zone of SFA 6 may be the only grounds accessible during the winter months. The offshore fleet has a business and operational model that is based on year-round fishing. Access to southern zones 5 and 6 is crucial for the economic viability and operational success of the offshore fleet. Continued offshore access to SFA 6 was promised and understood when the fishery expanded in 1997, and access continues to be essential for the fleet today.

## **2. What key considerations (principles, objectives, stock status etc.) should inform any decision to continue, modify, or abolish LIFO?**

The current sharing and policy development arrangements employed by DFO support continued application of LIFO principles for this fishery. When the fishery expanded, these

principles were used to rationalize the decisions announced. Today, the following four guiding considerations are used to validate continuation of LIFO application:

- Atlantic Fisheries Policy Review
- Independent Panel on Access Criteria for the Atlantic Coast Commercial Fishery (IPAC), 2002
- New Access Framework Principles and Criteria, 2002 rev. 2008
- The Constitution Act, 1867

### ***Atlantic Fisheries Policy Review, 2004***

The extensive work conducted by DFO in completing their Atlantic Canadian Licensing Policy Review zeroed in on four objectives – Conservation and Sustainable Use; Self-reliance; Shared stewardship; and A Stable and Transparent Access and Allocation Approach. The intent of these objectives is to make conservation the foundation for all fishery management plans.

Following that, the goal would be to engage industry to develop harvest plans that are guided by a principled-based approach that is fair and predictable. Industry engagement is key. To make this work, DFO and industry know that harvesters must be good stewards of the resource and partners in conservation. To get industry buy in, DFO must respect the viability of the fishery participants and be clear and transparent with the decisions that are being made or any changes that are being proposed. Partnerships and trust between the regulator and the industry are essential in managing a modern fishery; not the old system where different harvesters try to take the biggest share, with little concern for the resource or other users. Under the old system, DFO's job would be to try and catch the violators and manage around politically-fuelled access decisions.

The Northern shrimp plan follows a modern partnership approach to fisheries management. The offshore sector is actively engaged in implementing new conservation management approaches (implementing the Nordmore grate system across the fleet is a prime example). They contribute significant financial and other resources to help in the resource assessments. They worked with DFO to establish a principle-based plan for fishery expansion. They have followed the established plans and have put their trust in DFO to follow this plan going forward. <http://www.dfo-mpo.gc.ca/fm-gp/policies-politiques/afpr-rppa/framework-cadre-eng.htm>

### ***Independent Panel on Access Criteria for the Atlantic Coast Commercial Fishery (IPAC), 2002***

This criteria applies to additional access or new access only. It is important to this discussion, as it should govern the decisions of where the TAC above 37,600 mt would be allocated. However, the application of these principles would not apply to traditional access. More specifically, the application of IPAC would not apply to the 37,600 mt of Northern Shrimp allocation for the offshore fleet.

The IPAC document holds the LIFO concept as a good example for balancing the allowance of access with the interests of those industries and communities who benefited from investing in a fishery, and are considered to have traditional access.

### ***New Access Framework Principles and Criteria, 2002 rev. 2008***

DFO states that this framework will guide all decisions on new or additional access to Atlantic commercial fisheries which have undergone substantial increases in resource abundance or landed value.

#### **PRINCIPLES -**

##### ***Conservation***

Marine Stewardship Council certification has been obtained and maintained by the offshore and inshore of the Northern Shrimp Fishery 1-7. This internationally recognized standard holds the industry to a defined level of sustainability 'rigor' that is assessed by an independent third party audit process.

It has been said that "without the race for the fish . . . the offshore fleet takes a reasonable and mature approach to the fishery . . . fewer enforcement problems and significant progress has been made in harvest, processing, and marketing of the shrimp. In 1997, this fleet received an environmental award for its progress in groundfish bycatch controls." (Shotton, 2001)

Offshore shrimp interests pay substantial fees for their enterprise allocation, thereby helping to pay for the science and management of the resource. These access fees makes them true partners, not just in addressing the management and science work, but financing it. These industry contributions show a commitment to the resource and to work with DFO, rather than expecting that the total conservation responsibilities and costs should be borne by DFO and the taxpayers. Likewise, the industry-funded 100% observer coverage provides DFO with stock and compliance-related information.

##### ***Equity***

The fishery is a common, public resource that should be managed in a way that does not create or exacerbate excessive interpersonal or inter-regional disparities. Resource access criteria must be applied in a fair and consistent manner through a decision making process that is open, transparent and accountable, and that ensures fair treatment for all. The Northern Shrimp fishery and its expansion in the late 1990s, which included the LIFO policy, respected these principles of equity. Removing or altering LIFO at this time would violate these equity principles.

Regarding the procedural component of equity, LIFO respects access criteria application in a fair and consistent manner through a decision-making process that is open, transparent and accountable and that ensures fair treatment for all stakeholders. As for the substantive

component, LIFO is equitable in that the policy allowed for an appropriate balance of those with historical dependence, while allowing new access to a public resource.

## **CRITERIA –**

### ***Traditional Criteria***

a) Adjacency - The Canadian Association of Prawn Producers (CAPP) has pointed out many times during the LIFO discourse that, “We are adjacent too”. It is a hard argument to counter when one considers for example, that the fishery in SFA 6 occurs up to 380 nautical miles offshore, 75% of offshore fishermen are from Newfoundland and Labrador, and licence holders are based in the Atlantic Canadian Provinces.

The response to the IPAC report states that application of adjacency as the sole criterion is most compelling in the case of “near shore and inshore fisheries” and in the case of “sedentary species” (Hooley, 2005). IPAC was of the view that the further one moves offshore, the less influence adjacency should play in access decisions. This highlights the importance of giving additional consideration the other two traditional criteria: historic dependence and economic viability.

b) Historic Dependence – The traditional offshore fleet have developed and prosecuted a fishery for Northern Shrimp since 1978 in the waters affected by this LIFO review. By accepted definition of this criteria, priority access should be granted to fishers who have historically participated in, and relied on a particular fishery, including those who developed the fishery. Available historical information indicates that there were initially eleven offshore licences allocated to Canadian enterprises in 1978 and six additional licences conferred subsequently (for a total of 17). In contrast, the inshore fleet only gained temporary access in 1997, and subject to the LIFO policy conditions.

In terms of the application of the historic dependence criterion, IPAC notes that it is most compelling when applied to a particular species that has been fished over a significant period. When the reliance on a stock is relatively recent, or generally rather than to a particular species, other criteria such as adjacency may be more applicable.

c) Economic Viability – This criterion is to be used to complement the other two access criteria. The very definition of meeting the pre-requisites of economic viability holds those fishing enterprises seeking additional access to a commercial fishery responsible to “factors such as capacity to fish, ability to comply with last-in-first-out rules and sound business planning”.

### ***Canada's Constitutional Responsibility***

Under Section 91 of the *Constitution Act, 1867*, the federal government was given control over the fisheries. Even 150 years ago, fishing access was controversial, and in their wisdom, the founding fathers decided that this responsibility would be best accomplished with federal control. When Newfoundland joined Canada in 1949, the federal fisheries responsibility was recognized in the deal, and an agreement was made to transition control of the fisheries to the federal government within 5 years.

In the early days, protecting Canada's resources within three miles was a major concern. Eventually, that grew to 200 miles when Canada's EEZ was established in 1977. Sorting out the resource access fights between provinces and fleets was always a challenge for DFO. But the fish within our waters constitute a Canadian resource to be managed by DFO for the benefit all Canadians. There are some jurisdictions that believe all adjacent resources are for their priority use if not sole use.

There is no question that adjacency is one principle in play when resources are allocated, but it is clearly not the only one, and not the dominant priority, particularly when dealing with fleets that have an established history and dependence on a resource. It is DFO's responsibility to manage the resource in a fair and balanced manner with the interests of all Canadians in mind.

### **3. If LIFO were modified or abandoned, what are the elements of a new access and allocation regime for the Northern Shrimp Fishery?**

If LIFO was abandoned, the message to industry would be clear. How could the agreements made with DFO and the Government of Canada be trusted?

All resource access fights would end up back in the political arena. No industry sector would ever again agree to a principle-based approach for sharing the benefits of a pulse in their traditional resource. Why would they if they have no confidence or trust that the government will follow through with the agreed-upon sharing principles.

The established sector would risk their economic viability and their future existence if they agree to a sharing system that can be changed at any time. What would have happened in 1997 if instead of the established principles, the traditional industry was told that some new entrants will remain in the industry when the resource declines, or even worse, that some new entrants will totally displace them in all or parts of their traditional fishing areas?

In most fisheries, the existing participants do everything in their power to keep new entrants out. They try to influence the science to show lower resource availability and they will use whatever economic means at their disposal to show that additional access is not possible. The Northern shrimp LIFO model attempted to break that pattern by showing that sharing can happen during very good times, while protecting the interests of existing participants.

There are no new elements that will work for the Northern Shrimp fishery if LIFO is abandoned. We will be back to a situation where provinces will aggressively pursue their specific interest – either traditional or new entrants, and political lobbying will be the approach used by all. DFO will be forced into a unilateral decision (perhaps with a panel providing cover), with negative fallout no matter which decision is made.

To use DFO's words, "it would force the federal government to re-implement the "ineffectiveness of top-down management". (DFO, 2004). It will signal a major setback to industry partnerships with the offshore shrimp sector, and beyond.

## **Summary**

DFO has the responsibility to manage the fishery effectively for the benefit of all Canadians. This task is often challenged by political lobbying and localized pressures to gain additional access to fish resources. These tactics have been going on for decades and often jeopardize conservation as well as the interests of other traditional users of a given stock. We see this same approach in play today. The inshore shrimp fleet was given generous temporary access to a fishery, under clear entry and exit rules. To get in, they fully agreed to those rules, and at the time were very appreciative of the temporary shrimp windfall.

Now that the stock is in decline, they want DFO to abandon the agree-upon entry rules which ensured fairness and economic viability for the traditional offshore fleet that developed the Canadian Northern shrimp fishery. Instead, the inshore fleet has pulled out all the political stops, has secured the support of their provincial government which is now lobbying on their behalf, and is putting forward every argument and reconstructed fishery principle to take away the resource and the fishery from the fleet that developed it.

DFO has made many efforts to move towards fishery management approaches that are based on principles that ensure stability of the resource and the economic viability for those who execute the fisheries. When too many fishermen chase too few fish, the resource is the first to suffer, so resource conservation has to be the foundation for fisheries management. For decades, resource access lobbies were relentless, even in the face of declining stocks, and Canadian fish resources suffered dearly. It is hoped that in 2016, DFO as well as all partners and stakeholders will learn from past lessons and support conservation.

The principles of economic viability and fairness pose additional challenges. When stocks that support a given fishery expand dramatically, the following question has been elusive – "How can the interests and viability of the traditional participants that are dependent of the resource be protected while being fair to other interests who want access to a resource that has room for more participants?" Adding participants has always been the path of least resistance, but the result has been over capacity, eventual resource decline, economic failure for all participants, and the need for government-financed rationalization.



The Northern shrimp fishery faced this “growing resource challenge” in the late 1990s. The interests of the existing fleet had to be protected, but it was socially and politically unacceptable for the benefits of the rapidly expanding resource to go exclusively to the existing fleet. Instead of the predictable cycle of fishery expansion, over capacity in the face of declining resources and eventual collapse, a new approach was established. LIFO was that approach.

All the DFO managers of the day as well as existing industry participants knew what they were doing and why they were doing it. The new participants understood as well. Most of them fully and honestly supported the LIFO approach. The big risk was taken by the traditional offshore harvesters. Developing a clear and fair plan was one thing, but the traditional offshore fleet had to rely on DFO and the Government of Canada to ensure it was carried out.

Since the Northern shrimp fishery expanded, DFO continued to struggle to remove themselves from the politically fueled resource access fights that plagued all sectors of the industry. The IPAC panel did very good work in the early 2000s, and their recommendations were largely adopted by DFO. IPAC referenced the shrimp fishery LIFO principle as an example of a good model for temporary access. DFO’s Atlantic Licensing Policy Review also addressed many of the challenges of resource access, economic viability, fairness and industry engagement. This policy work and DFO’s modern management approaches pointed to conservation as number one, followed by a management system that was predictable, respected economic viability, allowed for industry engagement, and was transparent.

The Northern shrimp fishery was an example of this new approach with its Canadian development, the significant sharing during the resource pulse and the clear principles that allowed the sharing without jeopardizing the existing participants.

DFO and the Government of Canada must stay the course with the existing LIFO access and exit plan for the Northern shrimp fishery. The panel and DFO should not be swayed by the effectiveness of the present inshore lobby, or the fisheries policy debating abilities of those putting forth their case.

The issue is quite simple. The Northern shrimp resource is in decline. The clear and transparent exit plan, which was based on fair and agreed-upon principles, is dictating that temporary participants, including the inshore fleet, will lose access to the resource. The legitimate fishery management plan and principles do not suit the inshore fleet’s interests, so once again political lobbying efforts are being deployed to gain additional and unfair access to the resource.

If DFO chooses to side with this lobby, efforts to bring fisheries management into a modern, principle-based transparent approach will face a dramatic setback.

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