

# **Written Submission**

to the

## **Ministerial Advisory Panel**

on the

**Department of Fisheries and Oceans**

Northern Shrimp

**Last In, First-Out (LIFO)**

Fisheries Policy

Maurice E. Adams  
Paradise, NL  
Interested Party

2016.05.10

## PREAMBLE

This submission focuses on just two of the Ministerial Advisory Panel's (MAP) tasks:

1. to pronounce on the **validity** of applying LIFO to reduce allocations in SFAs, and
2. to **offer advice** if LIFO should be continued, modified or abolished for the 2016 season and beyond, and if LIFO should be modified or abolished, what are the elements of an appropriate access and allocation tool/mechanism for this fishery?

## PART I

### VALIDITY

*Validity* is the extent to which a concept, conclusion or measurement is well-founded and corresponds accurately to the real world (Wikipedia)

#### 1. Well-founded

The MAP terms of reference itself provides no explanation as to whether LIFO is a well-founded conservation and management measure, or that it indeed contains what the MAP's own terms of reference suggests that it should contain --- "the **elements** of an **appropriate** access and allocation tool / mechanism for this fishery".

What are the elements of LIFO? How is LIFO an appropriate access and allocation tool?

#### 2. Accurate correspondence to the real world

Canada became a signatory to the United Nations Convention on the Law of the Sea (UNCLOS) in 2003 --- and in certain aspects of the 'real world', UNCLOS (often referred to as the "Constitution of the Oceans") rules.

On becoming a signatory to this extraordinary international legal instrument, Canada became not only a recipient of certain rights, but also of certain international legal duties and obligations.

UNCLOS, Part V, Article 61 states, in part, that coastal states such as Canada have a duty and obligation "*to design conservation and management measures...which can produce the **maximum sustainable yield**, as qualified by relevant environmental and economic factors, including the economic needs of **coastal fishing communities**" (emphasis added).*

What evidence is there, (what are the elements of LIFO) that demonstrate that Canada's northern shrimp 'last in, first out' (LIFO) policy was and is a "conservation and management measure ...(that) can produce the maximum sustainable yield"?

Furthermore, and according to UNCLOS, it is mandatory that the maximum sustainable yield be qualified by relevant **environmental** and **economic** factors, and these factors **must include** the economic needs of coastal fishing communities.

While 'real world' international law has evolved, to a large extent, from ecosystem and 'spatial' principles such as 200-mile EEZs, PSSAs, special emphasis on "coastal" communities, etc., Canada's "last in, first out" policy [and even the LIFO terminology itself] describes a measure that is narrow, linear, and "time-based" --- and is a disconnect from the spatial principles contained within, and from which, international law evolved.

### 3. Supplementary Evidence

The May, 2005 interim (Senate) Report on Canada's New and Evolving Policy Framework for Managing Fisheries and Oceans said that the United Nations Convention on the Law of the Sea requires that states such as Canada *"has a DUTY to safeguard the interests of its fishery-dependent communities, and put into practice and make good on these commitments"*.

The above-referenced Report also stated that *"The UN Food and Agriculture Organization's Code of Conduct for Responsible Fisheries ...expressly calls for states to protect the rights of fishers and FISH WORKERS...to secure a just livelihood, as well as PREFERENTIAL ACCESS, where appropriate, to traditional fishing grounds and resources in waters under their national jurisdiction"*.

Furthermore, in 1997, Canada's Oceans Act stated among other things, that its purpose was and is not only to enshrine in domestic law matters related to Canada's 200 mile Exclusive Economic Zone, but the Act specifically requires that there be no inconsistency between the Oceans Act (domestic law) and Canada's international obligations.

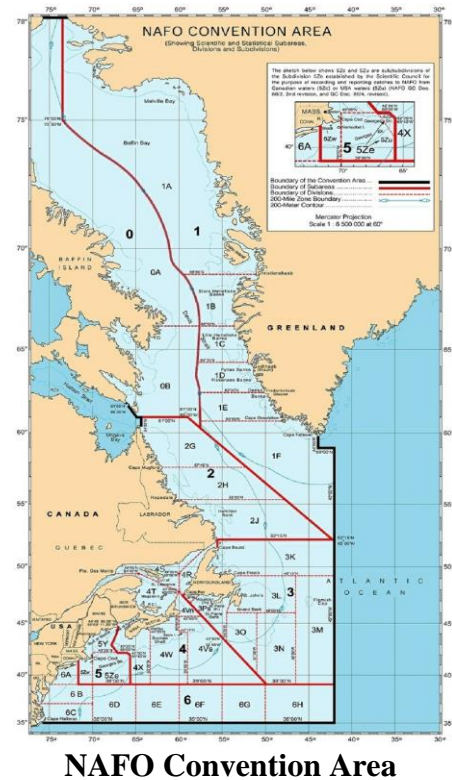
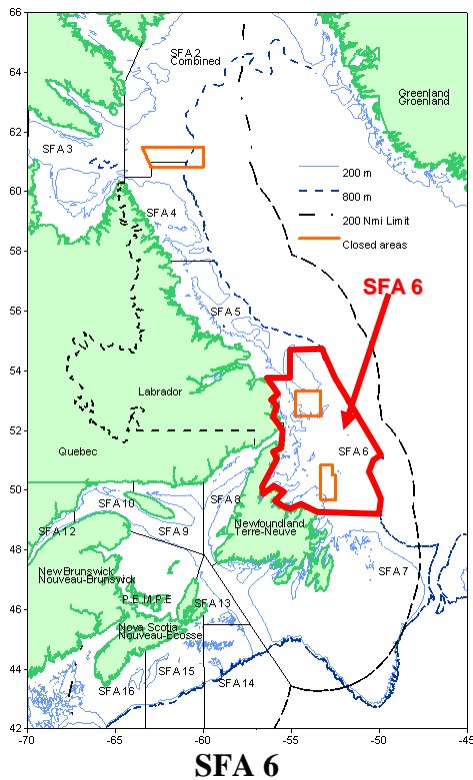
**It is submitted therefore that LIFO does not meet a rational, cohesive test for validity and is disconnected from Canada's international UNCLOS obligations --- and accordingly, from "the real world".**

## PART II

### NORTHWEST ATLANTIC FISHERIES ORGANIZATION (NAFO) Convention Agreement, as amended

#### 1. General

As a Contracting Party to the Northwest Atlantic Fisheries Organization Agreement, as amended, Canada has mandatory duties and obligations to implement and to further the objectives of the NAFO Convention --- and to give effect to it by applying NAFO principles.



#### 2. Excerpts

Article X – Contracting Party Duties:

*Each Contracting Party shall:*

(a) *implement this Convention and any conservation and management measures or other obligations binding on it... ;*

(b) *co-operate in furthering the objective of this Convention;*

Article III (a) and (b) -- General Principles:

*In giving effect to the objective of this Convention, Contracting Parties... shall:*

(a) *promote the **optimum utilization** and long-term sustainability of fishery resources;*

(b) *adopt measures **based on the best scientific advice** available to ensure that fishery resources are maintained at or restored to levels capable of producing **maximum sustainable yield***

### 3. Optimum Utilization

With respect to 'optimum utilization', the NAFO Agreement, Article I – "Use of Terms" states that:

For the purpose of this Convention:

(g) *"fishing activities" means harvesting or **processing fishery resources**, or transshipping of fishery resources or products derived from fishery resources, or any other activity in preparation for, in support of, or related to the harvesting of fishery resources"*

With respect to "processing fishery resources", the MAP's own Terms of Reference states that *"the fishery by vessels greater than 100 feet produces mainly frozen-at-sea products (cooked and raw) with the shell on, while vessels less than 100 feet land fresh shrimp that is processed in fish plants into a cooked and peeled product"* <http://www.dfo-mpo.gc.ca/fm-gp/sustainable-durable/fisheries-peches/shrimp-crevette-eng.htm>

Accordingly, as a Contracting Party to NAFO, Canada

- has a duty to "promote the optimum utilization" of fisheries resources,
- must give full weight to the economic benefits of "processing fishery resources" onshore, and
- as a key element in the development and application of any "appropriate" fisheries conservation and management measure (tool or mechanism), Canada must ensure that its policies/measures serve to "promote the optimum utilization" of the resource.

#### 4. Basis for conservation and management measures

As quoted above, the NAFO Agreement, Article III (b) -- General Principles, states that

*In giving effect to the objective of this Convention, Contracting Parties ... shall:*

*(b) adopt measures **based on the best scientific advice** available to ensure that fishery resources are maintained at or restored to levels capable of producing **maximum sustainable yield***

While it is not disputed that the establishment of a Total Allowable Catch (TAC) is a "measure" to "maintain or restore" resource levels and that TAC increases or decreases are indeed "based on the best scientific advice", the establishment of a TAC is not the only "measure" to which the NAFO Agreement, Article III (b) applies.

Surely, conservation and management "measures", measures that differ from and/or in addition to TACs, must also contain what the MAP Terms of Reference itself refers to as "elements" of an "appropriate access and allocation tool / mechanism".

In the case of the NAFO Agreement, Contracting Parties must (shall) adopt such measures that are "***based on the best scientific advice available***".

While LIFO is a conservation and management "measure", what evidence is there that LIFO was ever "based on ... scientific advice"?

Where is the evidence that the LIFO policy complies with the requirements and principles of a NAFO Agreement to which Canada is a Contracting Party?

Accordingly, where is the evidence that the 'elements' of LIFO constitute an "appropriate access and allocation tool / mechanism"?

#### 5. Spatial element

While the NAFO Agreement, Article VI, section 12 is not intended to specifically apply inside 200 miles, it does state that:

*"Measures adopted by the Commission for the allocation of fishing opportunities in the Regulatory Area shall take into account the interests of Contracting Parties whose vessels have traditionally fished **within that area** and the interests of the relevant **coastal States**" (emphasis added).*

It should be noted that while this section applies to "Measures adopted by the Commission ... (and in the Commission's) "Regulatory Area" (outside 200 miles), the principles

contained/reflected within it are not based on (or restricted to) whether vessels were first in or last out or whether or not they were first in or last out **to fish a specific species**, but only whether vessels traditionally "fished **within that area**".

Furthermore, (and as also required by UNCLOS) it is mandatory for the Commission to "take into account the interests ... of the relevant **coastal** States". Here we have a separate international agreement again espousing the 'spatial' principle of **adjacency** (the language -- - 'coastal', again reflecting a spatial, not a "time"-based principle/element).

While Contracting Parties are not obligated to apply 'measures' (tools / mechanisms) within areas under their national jurisdiction that are the same as what the Commission applies in its Regulatory Area, Contracting Parties are nevertheless obligated to further the objectives of the Agreement and to promote its principles (principles such as whether other vessels fished "in the area" (a spatial element) and the interests of "**coastal** States" (a principle/spatial element that clearly reflects the principle of "adjacency").

It should also be noted (also as required by UNCLOS) that the objective of the NAFO measures are not merely to restore or maintain "a" sustainable level of resource --- but to maintain or restore the resource "*to levels capable of producing **maximum sustainable yield***".

What evidence is there that LIFO reflects or promotes NAFO principles and is designed to produce a "maximum sustainable yield"?

None.

## **PART III**

### **1. Advice and recommendation**

IN CONSIDERATION OF THE FOREGOING, and that LIFO does not meet a rational, cohesive test of validity [is not well-founded and does not correspond to the real world (i.e., relevant international laws, conventions and agreements)],

**IT IS RECOMMENDED** that LIFO be abolished and that the principle of adjacency, including the economic needs of coastal fishing communities, be appropriately reflected in the design and application of all fisheries policies, tools and measures.