



SUBMISSION TO THE MINISTERIAL ADVISORY PANEL:

EXTERNAL REVIEW OF THE LAST-IN, FIRST-OUT (LIFO) POLICY FOR THE NORTHERN SHRIMP FISHERY

Prepared and Submitted June 3rd, 2016 by the:

- Government of Nunavut (GN),
- Nunavut Wildlife Management Board (NWMB), and
- Nunavut Tunngavik Inc. (NTI)

INTRODUCTION

Thank you for the opportunity to provide this written submission to the Ministerial Advisory Panel conducting an external review of the *Last-In, First-Out* (LIFO) Policy for the Northern Shrimp Fishery.

This submission has been jointly prepared by, and reflects the overall positions of, the Nunavut Fisheries Co-management Partners, including the:

- 1) *Government of Nunavut (GN)*: A democratic and responsible public government established to serve the needs and priorities of all citizens of Nunavut. The Territory of Nunavut was created under Article 4 of the *Nunavut Agreement*¹ and joined the Canadian Confederation on July 9, 1999.
- 2) *Nunavut Wildlife Management Board (NWMB)*: An institution established under Article 5 of the *Nunavut Agreement*, which serves as the main instrument of wildlife management in the Nunavut Settlement Area and is the main regulator of access to wildlife in the Territory (including all aquatic flora and fauna).
- 3) *Nunavut Tunngavik Inc. (NTI)*: The legal representative of Nunavut Inuit responsible for implementing Inuit obligations in the *Nunavut Agreement* and for ensuring that other Parties to the Agreement likewise meet their associated obligations.

This submission is intended to supplement, and provide further details regarding, the issues and perspectives that were outlined in our presentation to the Panel at the consultation meeting held on May 10, 2016 in Iqaluit, Nunavut. It initially provides some background on the previous and current involvement of Nunavut fishing enterprises in the Northern Shrimp fishery, including the growing importance of this fishery, the significant associated investments being made by fishers, and the resulting adverse implications of any continuation of the LIFO policy.

It also highlights a number of ways in which the LIFO policy in general is largely inconsistent with the Government of Canada's overall, stated priorities, policies and strategies for fisheries resource management, as well as with key aspects of the *Nunavut Agreement*. This submission does not provide detail on national partisan or international priorities, but be it recognized that the LIFO policy is inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and more recently also with the "Declaration of Adjacency" released by the Liberal Party of Canada.²

This submission concludes with our responses to each of the three questions that the Panel has identified to focus and frame these discussions.

¹ Nunavut Land Claims Agreement- full title "*Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada*"

² <https://winnipeg2016.liberal.ca/policy/adjacency-principle/>

Nunavut Involvement in the Shrimp Fishery: Increasing Interest and Investments, Yet Continuing Inequitable Resource Access and Allocation

The commercial fishery in general - including that for shrimp in particular - comprises a significant and vital component of the economy of Nunavut, and this sector is key to the current and future livelihoods and socioeconomic well-being of Nunavummiut. Although Nunavut-based interests have participated in the shrimp fishery since the late 1980s, for the first decade that involvement was characterized by relatively limited direct access to adjacent shrimp resources including no direct provision of any portion of shrimp quotas to fishers residing in the region.

As a result of increased quotas and other incentives for new entrants to the fishery in the late 1990s (at which time LIFO was not referenced or included), the involvement of Nunavut residents and businesses in the shrimp fishing sector has expanded considerably over the past nearly two decades. This has inevitably involved significant commercial investments by Nunavut-based fishing enterprises in that regard in recent years. However, Nunavut continues to lag behind other jurisdictions in terms of access to quotas in its adjacent offshore waters; since 2004, Nunavut's share of its adjacent shrimp stocks (both northern and striped) increased from 31% to 37%. There is no other example within Canada where the resources of an adjacent jurisdiction are granted primarily to interests far removed from the resource.

A key focus of Nunavut fishers, fisheries organizations and co-management partners, including those that are providing this submission, has been on developing and maintaining an economically sound and sustainable fishery - one that provides significant and equitable benefits for the people and businesses of Nunavut. These objectives are well reflected in the various principles and guidelines that the NWMB itself applies in making decisions about individual commercial marine fisheries allocations in the Territory, as summarized below.

ALLOCATION GUIDELINES FOR NUNAVUT'S COMMERCIAL MARINE FISHERIES³

- 1) *Governance and Business Capacity*
 - a) *Open, transparent and accountable operations;*
 - b) *Viable commercial venture; and*
 - c) *Positive history in the fishery.*

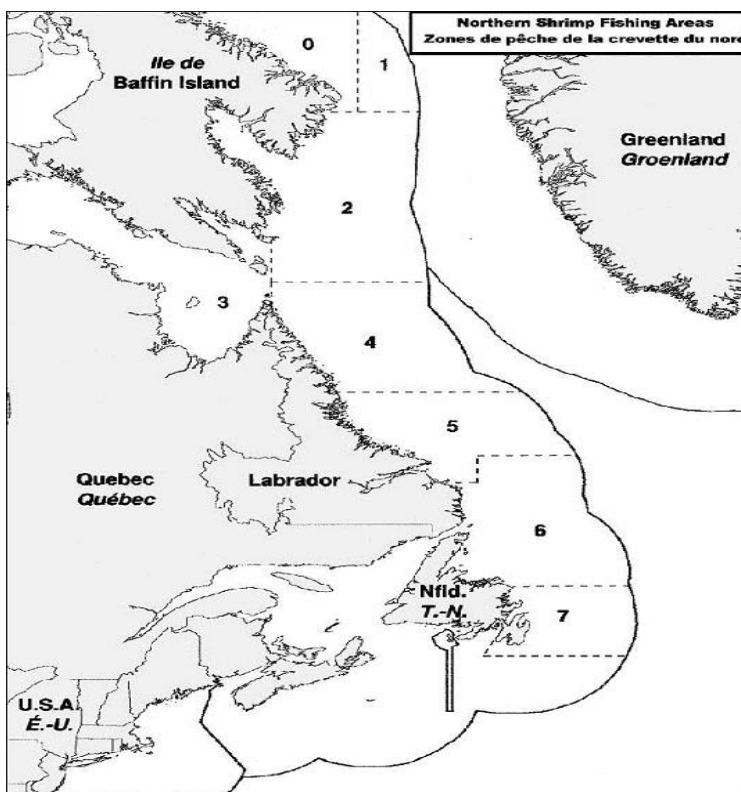
- 2) *Inuit Involvement*
 - a) *Regional Wildlife Organization / Hunters and Trappers Organizations / Nunavut Community ownership / sponsorship of the economic enterprise;*
 - b) *Inuit ownership of the economic enterprise;*
 - c) *Adjacency of the community to the fishing area; and*
 - d) *Economic dependence of the community on the resource.*

- 3) *Benefits to Nunavummiut*
 - a) *Employment of Nunavummiut, especially Inuit;*
 - b) *Ownership of the economic enterprise and/or the vessel(s) by one or more residents of Nunavut; and*
 - c) *The provision of direct benefits to Nunavut.*

³ NWMB Allocation Policy For Commercial Marine Fisheries (May 29, 2012)

A fair and consistent approach to addressing quota allocation among Nunavut entities has been largely achieved through the effective implementation of the NWMB Allocation Policy for Commercial Marine Fisheries. Nunavut's approach is unique and has co-management at the core of fisheries management. Fisheries co-management partners include the NWMB, NTI, the GN, Fisheries and Oceans Canada (DFO), the Regional Wildlife Organizations (RWOs), Hunters and Trappers Organizations (HTOs), and the general public and non-government organizations.

Nunavut's Fisheries Co-management Partners have been working to ensure adequate and appropriate access to fisheries resources over the near and long terms. Unlike the situation for other Canadian jurisdictions, who typically receive a large majority share of the shrimp quota in their adjacent waters (often up to approximately 80-90 percent), Nunavut currently holds a low proportion of the existing quota allocations in the various Shrimp Fishing Areas that overlap with the Nunavut Settlement Area. In 2015, for example, less than approximately 38 percent of the Total Allowable Catch (TAC) for shrimp in Shrimp Fishing Areas 0, 1, 2 and 3 was allocated to Nunavut.



Therefore other directions and measures would be required to help enable Nunavut to reach a fair share in its adjacent shrimp resources, particularly under situations of increasing, stagnant or declining quotas. These include, for example:

- Allocation of all increases in adjacent shrimp quotas should be provided to Nunavut until it obtains a fair share of its adjacent resources.

- Establish access to existing shrimp quotas until Nunavut has a 90% adjacent share of the total shrimp quota (90%=32,602.5t), which would require a re-allocation of 22,273.50t to Nunavut interests, as per 2015 shrimp quotas.
- Under stagnant resource conditions, it is also suggested that DFO should implement a “use it or lose it” policy for offshore license holders in Nunavut’s adjacent waters, such that those license holders not utilizing a reasonable share of their allocation would forfeit this allocation to Nunavut.
- The LIFO policy cannot be implemented under declining resource conditions.

Inconsistency of LIFO with Other Fisheries Management Policies and Principles

The above described situation and LIFO based management approaches are inconsistent with DFO’s stated policies and principles for fisheries resource management and the associated allocation of resource quotas for commercial fisheries in Canada. Indeed, documentation⁴ issued by the Government of Canada in 1997 when shrimp quotas were being substantially increased made direct and repeated reference to the principles of adjacency in the allocation of these resources, including that:

Certain fundamental principles underlie the sharing of the increase in the 1997 Northern shrimp Total Allowable Catch (TAC). One of the most important principles is adjacency.... Put simply, adjacency is the principle that those who reside next to the resource or have traditionally fished in those waters should have priority access to it. This principle is used throughout the Canadian fisheries and is recognized internationally.

DFO’s recognition of the importance and validity of the adjacency principle has also been reflected through other means and in other forums, including for example: its acceptance of the relevant Independent Panel on Access Criteria (IPAC) recommendations of November 2002⁵; DFO’s “New Access Framework” (November 2002)⁶ for decision-making on new or additional access to Atlantic commercial fisheries, which references the fundamental principles of conservation, Aboriginal and treaty rights and equity (including adjacency and historic dependence); and its overall commitments to Nunavut to progressively increase its share of adjacent resources. In the case of Nunavut access to shrimp in its adjacent waters, however, these recognized, widely accepted and often cited policies of adjacency in fish quota allocations have not been adhered to or implemented and Nunavut-based fishing enterprises continue to be secondary participants in the shrimp fishery in its adjacent waters.

As the LIFO policy that is part of the current management plan for shrimp essentially removes those newest to the shrimp fishery first when TACs are reduced, the implementation of this policy would directly target and negatively affect Nunavut-based fishers as these are relatively recent entrants to the commercial shrimp fishery in this region. Many Nunavut fishers would be particularly vulnerable to any upcoming loss of access to these resources at this time, as this industry remains very much at a developmental stage at present and given the significant commercial investments that have been made by these enterprises in recent years. Any upcoming decrease in access to the available shrimp resource – through quota allocation decisions based

⁴ April 23, 1997 DFO Press Release and Backgrounder

⁵ IPAC (2002). Report of the Independent Panel on Access Criteria for the Atlantic Coast Commercial Fishery

⁶ DFO (2002). New Access Framework - Atlantic Commercial Fisheries

on time of entrance rather than adjacency to the resource – would therefore be especially devastating to these fishers and to their families and communities.

Incompatibility of LIFO with the Nunavut Agreement

Notwithstanding the principles of resource adjacency and the potential negative effects of a LIFO policy on Nunavut residents, as described above, we would also submit that the obligations regarding consultation with, and the required involvement of, Nunavut interests in such resource management decisions have not been met.

The initial introduction of LIFO as part of the 2003 Integrated Fisheries Management Plan (IFMP)⁷ for the Northern shrimp fishery was, to our understanding, the result of extensive lobbying by existing offshore licence holders. Moreover, and notwithstanding the Plan's statement that "Management measures under this Plan will apply to Land Claim Areas (i.e. Nunavut Settlement Area...) when they are approved by the body responsible for the management of those areas (i.e. Nunavut Wildlife Management Board (NWMB)..." this has not occurred, nor has there been adequate or appropriate consultation with these parties or other industry participants and stakeholders.

This approach is also largely inconsistent with the objectives and principles outlined in DFO's Integrated Aboriginal Policy Framework⁸, as well as with both the spirit and terms of the *Nunavut Agreement*, which clarifies the constitutionally protected treaty rights to ownership and use of lands and resources within the Nunavut Settlement Area and in adjacent areas, and the rights of Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore. The NWMB, pursuant to Section 15.3.4 of the *Nunavut Agreement*, is responsible for providing advice to Government regarding the management of wildlife, including fish, in the waters adjacent to the Nunavut Settlement Area:

Government shall seek the advice of the NWMB with respect to any wildlife management decisions in Zones I and II which would affect the substance and value of Inuit harvesting rights and opportunities within the marine areas of the Nunavut Settlement Area. The NWMB shall provide relevant information to Government that would assist in wildlife management beyond the marine areas of the Nunavut Settlement Area.

LIFO was again first introduced as a DFO policy in the 2003 IFMP for Northern Shrimp. Neither the IFMP nor the policy was ever submitted to the NWMB for consideration or approval.

With regard to adjacency, Section 15.3.7 of the *Nunavut Agreement* also states specifically that:

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.

⁷ DFO (2003). Integrated Fisheries Management Plan - Northern Shrimp Northeast Newfoundland, Labrador Coast and Davis Strait.

⁸ DFO (2007). An Integrated Aboriginal Policy Framework. DFO/2007-1239

Relevant court decisions have also found that the *Nunavut Agreement* (including Section 15.3.7) imposes on DFO a duty to develop a policy in order to: 1) give special consideration to the principles of adjacency and economic dependence, and 2) ensure a fair distribution of licences between Nunavut Inuit and the other residence of Canada. The courts have also noted that in developing and implementing such a policy, it must consider and act upon allocation concerns raised by the NWMB.⁹

It is also noteworthy that the LIFO policy has certainly not been adopted or applied continuously or consistently in fisheries resource management decisions in Canada, and can therefore hardly be considered to be an established, accepted policy that can or should now be implemented in generic manner in all such situations. Clearly, and as reflected in the *Nunavut Agreement* section cited above, there are often specific, local issues and “special considerations” at play – such as those in Nunavut, as outlined above - which must be considered and addressed in making such management decisions at the local and regional levels.

Inconsistency with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Of particular importance in the discussion on access and allocation policy for the shrimp fishery in Nunavut waters, is Canada’s changing position on the United Nations Declaration on the Rights of Indigenous Peoples. On May 10th, 2016, the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs Canada, announced at the United Nations Headquarters that Canada will be a full supporter, without qualification, of the United Nations Declaration on the Rights of Indigenous Peoples. This statement sets a new benchmark upon which implementation of federal policies and programs will be considered where they have an impact on indigenous peoples, including policies that relate to resource and environmental management. Of particular significance to LIFO are the UNDRIP provisions related to Indigenous participation in resource management and governance, such as articles 21, 27, and 32.

Clearly, the effort and investment of Inuit-owned and operated fishing enterprises in the development of shrimp harvesting capacity can be compromised by the implementation of the LIFO policy. This is in direct contradiction of the UNDRIP, particularly Article 21 which states:

States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.

Furthermore, in accordance with the UNDRIP, continued processes involved with allocation of shrimp resources in areas 0, 1, 2 and 3 (and possibly 4) should involve institutions representing Nunavut Inuit. The declaration emphasises the importance of involving indigenous peoples’ institutions in decision-making on matters of resource development and management. It can be argued that the LIFO policy undermines the rights of Inuit to participate in decision-making related to management of shrimp resources in the Nunavut Inuit traditional waters. Specifically Articles 27 which states:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights

⁹ Nunavut Wildlife Management Board v. Canada (Minister of Fisheries & Oceans), [2009] F.C.L. No. 45

*of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. **Indigenous peoples shall have the right to participate in this process.***

While the UNDRIP should be considered in its entirety in the examination of the LIFO policy, other specific clauses highlight the relevance of the Declaration with respect to DFO's LIFO policy in waters within and adjacent to Nunavut. Article 32:

- 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
- 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*
- 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

Clearly, greater consideration must be made in determining the applicability of LIFO as a fair policy for the allocation of resources upon which the Inuit Nunavummiut shrimp fishery is managed.

Summary and Recommendations

Based on the information and perspectives outlined above, the following provides our responses to each of the three questions that the Panel has posed to participants regarding the LIFO policy and its review:

SHOULD THE POLICY BE CONTINUED, MODIFIED, OR ABOLISHED?

The signatories to this submission are strongly of the view that the LIFO policy should be abolished. It must absolutely not be applied in Shrimp Fishing Areas 0-3, which are adjacent to the Nunavut Settlement Area. Nunavut fishing interests must be given equitable share of its adjacent marine fisheries resources.

Given that each Shrimp Fishing Area is unique - as are the communities and resources users adjacent to it - and that respecting land claims agreements and indigenous communities adjacent to each area is a priority, if applied to SFAs 4, 5, and 6, the policy should be modified to allow it to be applied only in individual areas where it makes sense to do so, and even then, only after full consideration of local issues and circumstances. It will be imperative that the policy addresses the economics of quota reductions and prioritizes local governance and access.

For Shrimp Fishing Areas 4, 5, and 6, each of which are adjacent to areas with land claims, the access and allocation regime in place prior to implementation of the Policy should be reinstated, reviewed and updated to align with land claims provisions and requirements.

WHAT KEY CONSIDERATIONS (PRINCIPLES, OBJECTIVES, STOCK STATUS, ETC.) SHOULD INFORM ANY DECISIONS TO CONTINUE, MODIFY OR ABOLISH THE POLICY?

The primary factors and key considerations that should guide and inform the decision to abolish (or at least, modify) the LIFO policy are as outlined previously, and include:

- The current and growing importance of the Northern Shrimp fishery for the people and communities of Nunavut;
- The traditionally inequitable access to the shrimp resource that has been provided to Nunavut fishers;
- The application of the principles and policies inherent in the United Nations Declaration on the Rights of Indigenous Peoples. The previous development and implementation of the LIFO policy contradicts the principles and statements of the UNDRIP, which undermines the internationally stated intentions of the Government of Canada;
- The significant commercial investments that have been made by Nunavut-based fishing enterprises in recent years as a result of increased quotas and other incentives that have sought to increase their involvement in this fishery;
- As relatively new entrants in the Northern shrimp fishery, implementation of the policy in waters adjacent to the Nunavut Settlement Area has the potential to considerably reduce the amount of shrimp resources allocated to Nunavut interests, and as result of the above, to have significant, adverse (and disproportionate) socio-economic effects on people and communities in the Territory;
- The inconsistency and incompatibility of the LIFO policy with overall policies and strategies for fisheries resource management by the Government of Canada, which have consistently made reference to the principle of adjacency and other measures to ensure appropriate and fair access to fisheries resources; and
- The previous development and implementation of the LIFO policy by DFO did not adhere to the relevant provisions and obligations of the *Nunavut Agreement*, including with regard to consultation with and involvement by relevant management bodies and stakeholders (e.g., Section 15.3.4), as well as its provisions related to the principles of adjacency, community economic dependence and the special consideration of these matters in resource management and licencing decisions within the Nunavut Settlement Area (Section 15.3.7).

IF YOU SUPPORT CHANGING OR ABOLISHING THE POLICY, WHAT WOULD BE THE ELEMENTS OF A NEW ACCESS AND ALLOCATION REGIME FOR THE NORTHERN SHRIMP FISHERY?

The various signatories to this submission support the establishment of a new resource allocation and sharing arrangement for the Northern Shrimp resource.

In the event of future quota reductions / fluctuations and associated TAC / licencing decreases in Shrimp Fishing Areas 0-3, which are adjacent to the Nunavut Settlement Area, the principles of adjacency, economic dependence and historical attachment to the resource should be key considerations in associated decisions about resource allocations within these areas. In all cases,

the principles of sustainability and conservation should be respected and paramount in all resource management decisions.

Conclusion

Thank you again for the opportunity to make this submission to the Ministerial Advisory Panel, reiterating our views and positions on the LIFO policy, and in advance for considering and addressing these perspectives in your eventual report and recommendations to the Government of Canada.

If you have any questions or require further information or clarification regarding our views and recommendations regarding the LIFO policy, please do not hesitate to contact the undersigned at any time.

Yours sincerely,



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