



3 June 2016

Ministerial Advisory Panel for the LIFO Review  
Documentlifo2016.Documentlifo2016@dfo-mpo.gc.ca

**Re: Torngat Joint Fisheries Board Submission to the Ministerial Advisory Panel for the LIFO Review**

**1 PREAMBLE**

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Thank you for inviting us to participate in this important and timely advisory process. This document represents the Torngat Joint Fisheries Board's (TJFB or the "Board") submission to DFO's external advisory process conducted by the Ministerial Advisory Panel (MAP) to examine the Last-in, First-out (LIFO) policy in the Northern Shrimp Fishery. The Board would like to provide their perspectives on the modification of the LIFO policy and provide suggestions on what constitutes an appropriate access and allocation regime for the Northern Shrimp fishery.

The recommendations regarding access and allocation from the TJFB to the MAP are as follows:

- Because DFO has constitutional obligations to Aboriginal groups with Land Claim Agreements, such groups should be exempt from LIFO;
- The LIFO policy be modified to consider additional elements which are set out in the 2003 New Access Framework as criteria to consider both access into and out of the fishery.

**2 TJFB**

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The TJFB is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (LILCA or 'the Agreement'), with its roles, responsibilities, and powers outlined in Part 13.11. The Board is comprised of appointees from the Nunatsiavut Government, the Government of Newfoundland and Labrador, and the Government of Canada. The Board is the primary body making recommendations on the conservation and management of fish, fish habitat, and fisheries in the Labrador Inuit Settlement Area, and has advisory powers in waters adjacent to the 'Zone'. The TJFB has both the authority and the responsibility to make recommendations to the Minister in respect of issues surrounding the management of Northern Shrimp, as per 13.11.1 (a) and (b), and 13.11.2 (a) through (h) of the LILCA; and has done so annually since 2010.



### 3 SHRIMP FISHING AREA'S 4 AND 5

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In line with their mandate, the TJFB has submitted advice to the Minister annually regarding Northern Shrimp allocation in Shrimp Fishing Area (SFA) 4 and 5 since 2010. The LILCA defines "Waters Adjacent to the Zone" as those Canadian fisheries waters within the portions of Northwest Atlantic Fisheries Organization Divisions 2G, 2H and 2J adjoining and lying due eastward of the Zone (Part 1.1.1). Although the Zone established by the Agreement makes up 23.9% of SFA 4 and 33.7% of SFA 5, the Nunatsiavut Government receives only 2.0% and 5.4% of the Northern Shrimp allocations in SFA 4 and 5 respectively (Figure 1).

In SFA 4, the Nunatsiavut Government currently receives a 300 MT allocation for Northern Shrimp. Although the TAC in SFA 4 has increased by 4,651 MT since 2005, the Nunatsiavut Government's allocation has not changed. Prior to 2012, the Nunatsiavut Government did not receive any of the Northern Shrimp allocation in SFA 4, despite the Board's recommendation to do so. However, in 2012 the TAC in SFA 4 increased by 15%, and the Nunatsiavut Government was added as a special allocation holder with 300 MT. In 2013, the TAC in SFA 4 increased again, from 13,018 MT to 14,971 MT, however the Nunatsiavut Government's special allocation of 300 MT did not change. The Nunatsiavut Government currently has access to only 2.0% of the Northern Shrimp TAC in SFA 4 as a special allocation license holder.

The Nunatsiavut Government entered the Northern Shrimp fishery in SFA 5 in 1997 with a 510 MT allocation. In 2002, the TAC in SFA 5 increased, and as a result, the Nunatsiavut Government's allocation increased to 1,260 MT. This remained the case until 2014, when the Nunatsiavut Government's allocation was reduced based on reductions in the overall TAC and the LIFO policy. In 2015, the TAC returned to 2013 levels, and the Nunatsiavut Government's allocation returned to 1,260 MT. Currently, this represents 5.4% of the Northern Shrimp allocation in SFA 5.

In contrast to other Inuit regions, Nunavut and Nunavik have been the major beneficiaries of Northern Shrimp allocations adjacent to their Land Claim areas, and ironically, Inuit licence-holders in these regions hold more allocations off of the Labrador Inuit Settlement Area than do the Nunatsiavut Government. For example, in 1999, Nunavut received 50% of a 3,500 MT exploratory quota in SFA 2, and in 2004 they were provided a 3,722 MT increment in SFA 1. In 2015, they had access to up to 44% of the Northern Shrimp allocation in SFA 1, and approximately 20% in the Eastern Assessment Zone. Nunatsiavut and the Labrador Inuit Settlement Area are adjacent to and encompassed within SFA 4 and SFA 5. However, the Labrador Inuit have not benefitted to the same extent as other peoples, regions, or participants from resources adjacent to their traditional use and Land Claims areas.

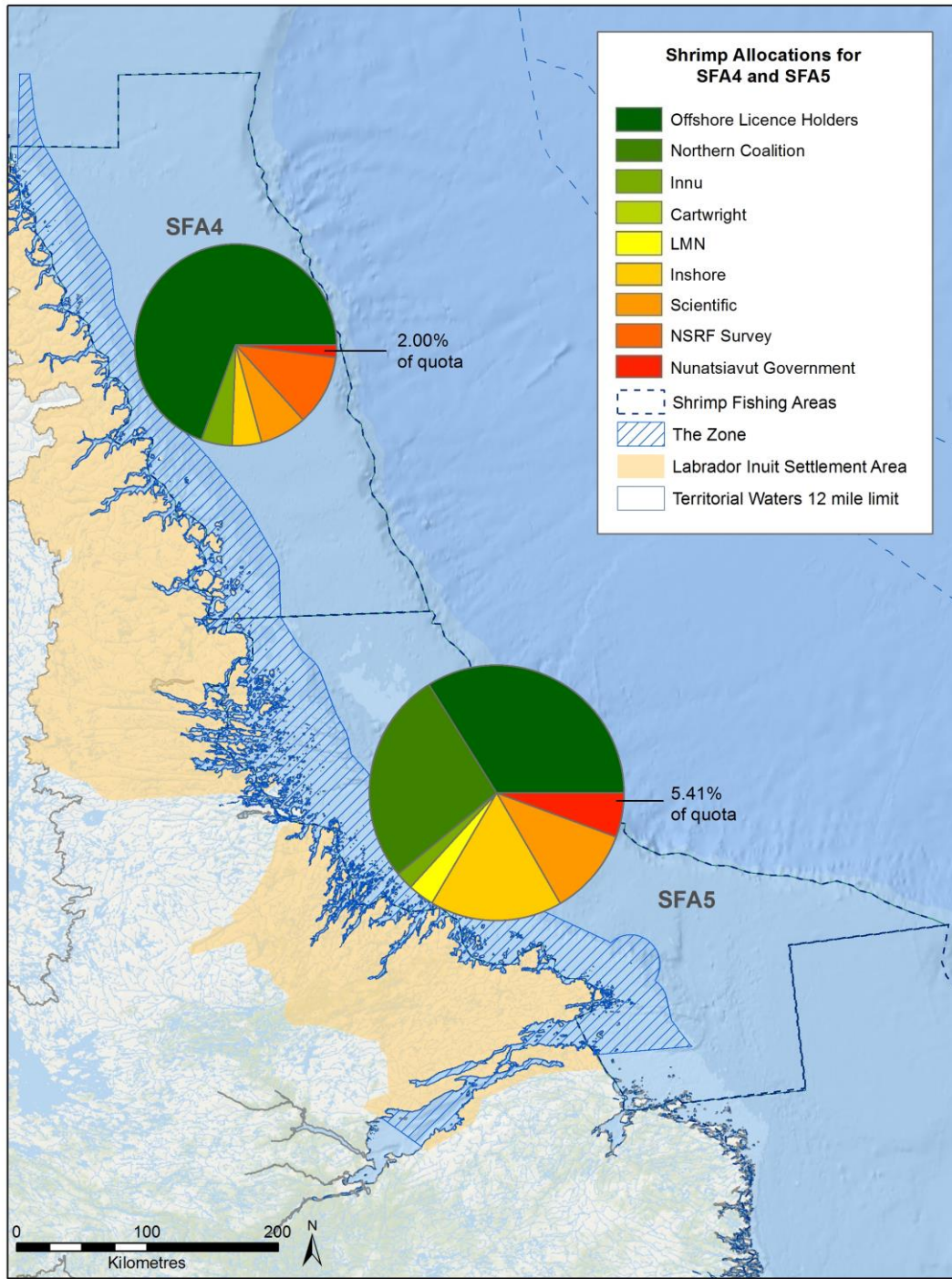


Figure 1 2015 Northern Shrimp Allocations in SFA's 4 and 5





## **4 TJFB'S POSITION ON ACCESS AND ALLOCATIONS**

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The Boards position on access and allocation, and the use of the LIFO policy has been consistent for many years. In line with the MAP's Terms of Reference and objectives, the TJFB would like reiterate its position, and provide their perspective the application of LIFO in areas which are subject to Land Claim Agreements, which include SFA 4 and 5. The Board will also provide suggestions on a modified LIFO policy, which adheres to Annex F of the Northern Shrimp Integrated Fisheries Management Plan (IFMP) which outlines sharing principles and arrangements.

### **4.1 THE LABRADOR INUIT LAND CLAIMS AGREEMENT (LILCA)**

The Labrador Inuit Land Claims Agreement is a constitutionally protected modern treaty and land claims agreement between the Inuit of Labrador and the Government of Canada. It was ratified in 2005, and constitutes a final settlement of the Aboriginal rights of the Labrador Inuit in Canada, and sets out the rights of the Labrador Inuit that are recognized by Section 35 of the 1982 Constitution Act.

As stated in the Northern Shrimp Integrated Fisheries Management Plan, the LIFO policy is "subject only to Land Claims obligations," and the fishery must fulfill obligations to fishery resources as define in the LILCA. However, the implementation of these responsibilities has been unclear and has been contested by the Board for several years.

At the time the LILCA was ratified, negotiations of the Agreement coincided with the rapid growth of the Northern Shrimp Fishery. Subsequently, Northern Shrimp is the only species specifically referenced in the final agreement, in Part 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."

As stated in Part 13.12.7 of the LILCA, the Nunatsiavut Government will be guaranteed 11% of new shrimp licences issued by the Minister. Although this has been a point of contention between the Nunatsiavut Government and DFO, the Labrador Inuit understood LILCA to be an avenue towards an increased share of the Northern Shrimp resource adjacent to the Zone. It is



our opinion, given the Crown's responsibility to uphold the honor of the Crown, that the language used be interpreted generously. The principle of 'honor of the Crown' is one that has evolved since the 19<sup>th</sup> century and is central to the historic relationship between Canada and Aboriginal groups with modern treaties. To uphold the honor of the Crown, Canada has been entrusted to act appropriately as fiduciary, to interpret treaties generously, and to negotiate and consult with Aboriginal groups to accommodate their interests. In compliance with the Crown's fiduciary obligations, narrow interpretation of the LILCA is counter to this principle which is meant to protect the interests and original intentions of Aboriginal signatories. We argue that the interpretation of Part 13.12.7 was intended to refer to 11% of the *quantity* available to be harvested; whether this is obtained by an increase in existing licences or "by some other means." Therefore, we maintain that Part 13.12.7 is intended to include *all new allocations* in order to increase the Nunatsiavut Governments participation in the Northern Shrimp fishery. Additionally, the 11% specified by Part 13.12.7 of the Agreement is not exhaustive, and there is nothing in the LILCA to suggest that the Nunatsiavut Government should be limited to any additional allocation rights. Part 13.12.7 is meant to function as an off-the-top minimum guarantee.

Moreover, the recent report from the Auditor General of Canada highlights ongoing differences in interpretation of the LILCA and the economic importance of the Northern Shrimp fishery for Nunatsiavut. Although the Northern Shrimp fishery is acknowledged as an important economic opportunity for Labrador Inuit, the Auditor General of Canada is concerned that disagreements of interpretation of the LILCA "may negatively affect the relationship between the two parties while creating the potential for litigation."<sup>1</sup> To date, the DFO has failed to comply with the terms and statutory duty set out in the LILCA.

The Board has long argued that the Nunatsiavut Government should be exempted from the application of the LIFO policy, as it undermines several DFO policies and initiatives, and more importantly the constitutional protection outlined in the LILCA. Various DFO policies and initiatives such as the Policy Framework for the Management of Fisheries on Canada's Atlantic Coast and the Aboriginal Fisheries Strategy were developed to increase Aboriginal participation in fisheries and to facilitate their participation in management decision-making; not to limit or restrict Aboriginal treaty rights including allocation rights. Considering this in light of the current inequitable allocation of Northern Shrimp to the Nunatsiavut Government, removing them per LIFO would further marginalize their participation. It is the belief of the Board that Aboriginal

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<sup>1</sup> Office of the Auditor General of Canada, "Reports of the Auditor General of Canada. Report 3: Implementing the Labrador Inuit Land Claims Agreement." *Office of the Auditor General of Canada (2015)*, 14



groups, especially those with Land Claims agreements, be exempt from the LIFO policy. Applying LIFO to Aboriginal participants in the Northern Shrimp fishery fundamentally undermines the Government of Canada's constitutional and legal obligations made to these groups.

#### **4.2 MODIFICATION OF LIFO POLICY**

The Board would now like to provide suggestions on what constitutes an appropriate access and allocation regime for the Northern Shrimp fishery. In Annex F of the 2007 Northern Shrimp IFMP, there is reference to a process undertaken in 2003 by the Independent Panel on Access Criteria (IPAC) to develop principles to help determine how an increase in TAC should be allocated fairly. Although these criteria were originally intended to allocate new access into the fishery, the TJFB believes these elements can also be used to evaluate access as the resource declines. The Board believes that the LIFO policy can be modified to consider other elements other than solely relying on the timing of entrance into the fishery.

The IPAC developed the New Access Framework which resulted in three prioritized principles: 1) Conservation, 2) Recognition of Aboriginal and Treaty Rights, and 3) Procedural and Substantive Equity. These in turn are to be considered with three traditional criteria: 1) Adjacency, 2) Historic Dependence, and 3) Economic Viability.

The Recognition of Aboriginal and Treaty Rights is only second to Conservation (which is considered first and independently of the other criteria). When considered against the traditional criteria of adjacency and economic viability, for example, the Nunatsiavut Government is *the* adjacent user in SFA 4 and 5, and the commercial fishery in Nunatsiavut is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot) with Northern Shrimp being a keystone. The Northern Shrimp fishery represents an adjacent and important economic resource and opportunity for Labrador Inuit.

### **5 CONCLUSION**

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The LIFO policy is in direct conflict with numerous Government policies intended to increase Aboriginal access to economic and equitable opportunities. The Labrador Inuit are inarguably the most adjacent users in SFA 4 and 5, have historical attachment, and have indisputable economic dependence on the Northern Shrimp resources off their coast.

Furthermore, the Board has concerns regarding the potential continuation of the LIFO policy and its application on Aboriginal groups. The Nunatsiavut Government is the adjacent user in SFA 4 and 5, yet receives only a small portion of the Northern Shrimp resource. This inequity is will be



intensified if they are removed from the fishery using LIFO, as it did in 2014, it would further restrict their ability to participate and maintain economically viable fisheries in Nunatsiavut, and create the risk of litigation. Therefore, the Board believes that there is an opportunity for the LIFO policy to be modified to exclude Aboriginal groups entirely, and to include the elements set out in the 2003 New Access Framework as mechanisms for the consideration of increases *and* decreases in the Northern Shrimp resource.



## Appendix I

### Recommendations and Letters





Monday, 25 March, 2013

The Honourable Keith Ashfield, M.P.  
Minister of Fisheries and Oceans  
200 Kent Street  
Ottawa, Ontario, K1A 0E6

**Re: Northern Shrimp Total Allowable Catch and Allocation in Shrimp Fishing Area 4**

Dear Minister Ashfield:

The Torngat Joint Fisheries Board (TJFB or 'the Board') was established by the Labrador Inuit Land Claims Agreement (LILCA) as the primary body advising the Minister on matters relating to the conservation and management of fish, fish habitat, and fisheries in Nunatsiavut, with advisory powers in waters adjacent to the Labrador Inuit Settlement Area.

On March 12, 2012, the Board recommended a stepped approach towards an exploitation rate of 15% in Shrimp Fishing Area (SFA 4). Specifically, the Board recommended that the Total Allowable Catch (TAC) in SFA 4 be increased by 15%, and that 75% of the resultant increase be allocated to the Nunatsiavut Government. The recommendation was grounded in the Precautionary Approach Framework of the Northern Shrimp Integrated Fisheries Management Plan, and allocation principles developed and long espoused by your Department. In keeping with the same approach and principals, the Board hereby recommends that you:

1. Increase the TAC in SFA 4 by 15% (1,953MT) to 14,971MT;
2. Allocate 75% (1,465MT) of the increase to the Nunatsiavut Government;
3. Share the costs of the annual research survey in the Eastern Assessment Zone proportionally amongst all licence holders in all SFAs.

The Board learned by way of your Department's TAC announcement on May 23, 2012, that the TAC for SFA 4 was increased by 15% (1,698MT), and that the Nunatsiavut Government had been added as a special allocation holder with 300MT. Although the TAC increase was consistent with the Board's 2012 recommendation, the allocation of that increase was not. We respectfully note that at the time of this writing more than a year has passed and the Board has not received a response to its 2012 recommendation, other than an acknowledgement of receipt on March 21. Part 13.11.8 of the LILCA requires that you provide timely written reasons for not accepting a Board recommendation. Part 13.11.8, and our reference to it here, is intended to be constructive – your rationale will inform our research and analysis going forward, and will help us to fulfill our mandate to provide you



with the best possible advice on matters relating to fisheries conservation and management in and adjacent to the Labrador Inuit Settlement Area.

The stepped approach to an exploitation rate of 15% outlined in this recommendation is fully consistent with our shared understanding of the resource and our shared commitment to the IFMP, and accommodates a Departmental move towards multi-year consultations.

Yours truly,

John Mercer  
Chairperson  
Torngat Joint Fisheries Board



## **Torngat Joint Fisheries Board**

Memorandum to the Minister of Fisheries and Oceans  
Northern Shrimp Co-Management in SFA 4  
(March 25, 2013)

**Issue:** Northern Shrimp co-management in and adjacent to the Labrador Inuit Settlement Area.

### **Recommendations:**

1. Increase the TAC in SFA 4 by 15% (1,953MT) to 14,971MT;
2. Allocate 75% (1,465MT) of the increase to the Nunatsiavut Government;
3. Share the costs of the annual research survey in the Eastern Assessment Zone proportionally amongst all licence holders in all SFAs.

### **1.0 Background:**

#### **1.1 *The Torngat Joint Fisheries Board and the Labrador Inuit Land Claims Agreement***

- The Torngat Joint Fisheries Board (TJFB or 'the Board') is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (LILCA or 'the Agreement'), with its roles, responsibilities and powers outlined in Part 13.11. The Board is the primary body making recommendations on the conservation and management of fish, fish habitat, and fisheries in the Labrador Inuit Settlement Area, and has advisory powers in waters adjacent to the 'Zone'. The TJFB has both the authority and the responsibility to make recommendations to the Minister in respect of issues surrounding the management of Northern Shrimp, as per 13.11.1 (a) and (b), and 13.11.2 (a) through (h) of the LILCA.

#### **1.2 *Status of the Resource***

- Biomass and abundance indices have increased approximately 50% since 2010 to the highest level in the 8-year series.
- Based on the 2012 biomass estimate, the current TAC of 13,018 will give a projected exploitation rate of 6.8%. The exploitation rate has been between 6-10% since 2007/8, and trending downwards since 2010/11.
- The resource is assessed to be within the Healthy Zone of the Precautionary Approach Framework, and the Spawning Stock Biomass of 109,500MT is well above the Upper Stock Reference (56,300MT).

### **1.3 *The Precautionary Approach Framework and the Northern Shrimp Integrated Fisheries Management Plan***

- The Precautionary Approach Framework, which is embedded in the Northern Shrimp Integrated Fisheries Management Plan (IFMP) as Annex I, was developed by the Department of Fisheries and Oceans and stakeholders to serve as a framework for setting TACs for Northern Shrimp.
- The Precautionary Approach Framework establishes a base target exploitation rate of 15% for stocks assessed to be within the Healthy Zone.
- Harvest Control Rules embedded in the Precautionary Approach Framework establish a process for adjusting TACs to achieve the Base Target Exploitation Rate. Changes to the TAC are not to exceed 15% of the previous TAC, except in the event of a precipitous decline.
- Stability considerations limit TAC adjustments to every second year.

## **2.0 Total Allowable Catch**

### **2.1 *Alternative 1: TAC of 13,018MT***

- Rolling over the TAC of 13,018MT would be wholly consistent with the IFMP; the 15% increase in 2012 makes this an off year. Although the ‘every-second-year’ principle is, in part, a concession to industry requests for stability, it is also an important conservation tool in that it allows time to monitor any possible adverse effects of an increased TAC.
- However, rigid adherence to the ‘every-second-year’ principle will be very slow to close the gap between the current exploitation rate (7%) and the target exploitation rate (15%).

### **2.2 *Alternative 2: TAC of 14,971MT (Increase of 15% or 1,953MT)***

- Increasing the TAC by 15% will be a minor deviation from the stepped approach identified in the IFMP. The current exploitation rate (7%) is well below the target (15%) and has actually been decreasing, despite the TAC increase in 2012, as a function of an increasing biomass. There is very little risk in suspending the stability consideration and increasing the TAC by 15% in 2013.
- Moreover, the Northern Shrimp Advisory Committee (NSAC) is moving to a multi-year meeting schedule, and will not be meeting again until 2015. A TAC adjustment this year will synchronise biennial TAC adjustments with biennial NSAC decision-making.



- Based on the 2012 biomass estimate, a TAC increase of 15% will equate to an exploitation rate of 7.8%.

### **2.3 *Alternative 3: TAC of 19,018MT (Increase of 6000MT)***

- The Northern Shrimp Research Foundation is proposing that the TAC in SFA 4 be increased by 6000MT for an exploitation rate of 15%<sup>1</sup>.
- The 6000MT increase equates to a 46% increase over the 2012 TAC of 13,018MT, and a 68% increase over the 2011 TAC of 11,300MT.
- Based on the 2012 biomass estimate, a TAC increase of 6000MT will equate to an exploitation rate of 9.9% in 2013/14.
- The proposed increase exceeds the 15% adjustment cap specified in the Harvest Control Rules and would constitute a major departure from the IFMP. A TAC increase of this magnitude is a risk, with no opportunity to monitor the impact of stepped increases.
- A stepped approach is also a safeguard against TAC decreases exceeding 15%. A large increase now will greatly increase the likelihood of a proportionally large decrease in the future.

## **3.0 Allocation**

### **3.1 *Current and Projected Participation Rates.***

- The Nunatsiavut Government currently holds a special allocation of 300MT in SFA 4, out of a TAC of 13,018MT, for a participation rate of 2.3%. A TAC increase of 15% and an allocation of 1,465MT, as per this recommendation, would bring their participation rate in SFA 4 to 11.8%.
- The Nunatsiavut Government holds 1,260MT in SFA 5, out of a TAC of 23,300MT, for a participation rate of 5.4%.
- The Nunatsiavut Government holds a total of 1,560MT in combined Areas 4 and 5, for a total participation rate of 4.3%. An allocation of 1,465MT in SFA 4 would bring the Nunatsiavut Government's total participation in combined Areas 4 and 5 to 7.9%.
- In the event that there is a 6000MT increase, allocating 75% to the Nunatsiavut Government would bring their participation rate in SFA 4 to 25.2%, and their participation rate in combined areas 4 and 5 to 14.3%. Conversely, a TAC increase of 6000MT in SFA 4 without an allocation to the Nunatsiavut Government would

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<sup>1</sup> The 15% exploitation rate is based on an average of the 2010 and 2011 biomass estimates, and does not include the 2012 biomass estimate.

drop their participation rate in SFA 4 to 1.6%, and their participation rate in combined areas 4 and 5 to 3.7%.

### **3.2 Allocation History, Principles, and Criteria**

- In 2010 and 2011 the TJFB detailed what we interpret as inconsistencies between the Labrador Inuit Land Claims Agreement, Departmental allocation principles and criteria, and allocations in SFA 4 since 1996. Allocating 75% of the recommended increase to the Nunatsiavut Government would partially compensate for the past. However, the intention here is to recommend allocations that are consistent with the letter and spirit of the Labrador Inuit Land Claims Agreement and Sharing Principles specified in Annex F of the Integrated Fisheries Management Plan.
- Annex F of the 2007 Northern Shrimp Management Plan references a process undertaken in 1996/97 to develop sharing principles. The principles include conservation, the continued viability of existing enterprises, a threshold of 37,600MT, *priority access for adjacent users, increased Aboriginal participation in established commercial fisheries*, priority access to inshore fleets (and midshore and offshore fleets in more northerly areas), and increased employment in harvesting and processing.
- In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the plan, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability. These are discussed briefly below.

#### **3.2.1 Allocation Principles:**

##### *Conservation*

- There is no conservation concern. The Precautionary Approach Framework, if applied, will safeguard against conservation concerns.

##### *Aboriginal and Treaty Rights*

The Board argued in 2010 and 2011 that the Department does have an obligation stemming from Part 13.12.7 of the LILCA. The Agreement was ratified in 2005 and negotiations were coincident with the rapid growth of the northern shrimp fishery. It is reasonable to conclude that Labrador Inuit understood the LILCA to be an



avenue towards an increased share of Northern Shrimp resources in and adjacent to Nunatsiavut.

- Notwithstanding the LICLA, it is clear that the Department has recognized increased Aboriginal participation in commercial fisheries as a fundamental goal of fisheries management. This goal has been incorporated into numerous Departmental policies, programs, strategies, and processes, including the Commercial Fisheries Policy for Eastern Canada, the Aboriginal Fisheries Strategy, the Allocation Transfer Program, the ongoing Fisheries Modernization process, and the Integrated Aboriginal Policy Framework (2007: 3), which states as a goal: “to contribute to the broader Government of Canada objective of greater economic development for First Nations by assisting with greater access to economic opportunities, such as commercial fishing”.

#### *Procedural and Substantive Equity*

- In 2012 the Board argued that the 1000MT increase in SFA 4 in 2008 was inconsistent with the principal of procedural and substantive equity. Allocating catch in SFA 4 per the Northern Shrimp Research Foundation (NSRF) proposal (discussed below in Part 4.0) will be inconsistent with the principals of procedural and substantive equity, as the Board has not had an opportunity to analyze a detailed proposal (procedural), and the costs of a regional survey would be born solely by SFA 4 (substantive).

#### *3.2.2 Allocation Criteria:*

##### *Adjacency*

- Nunatsiavut is the only stakeholder adjacent to SFA 4, and in fact a portion of SFA 4 lies within the Zone established by the Agreement.

##### *Historic Dependence*

- The Inuit of Nunatsiavut have relied on marine resources for thousands of years – this reliance has manifested itself in the Northern Shrimp fishery since 1997.

##### *Economic Viability*

- The commercial fishing industry in Nunatsiavut is precarious. It is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot). Snow Crab is near the northern extent of its range and resource fluctuations are



pronounced; competitive disadvantages severely limit participation in the Turbot fishery. Northern Shrimp are the keystone of the Nunatsiavut fishery.

#### **4.0 Northern Shrimp Research Survey**

- The NSRF is proposing that 1700MT in SFA 4 be allocated to offset the costs of the annual research survey in the Eastern Assessment Zone (SFA 2 and parts of SFAs 3 and 4). Recent amendments to the Fisheries Act permit such arrangements, and we understand that the Department is moving generally in this direction, where it is feasible to do so. The Board does not support a 1700MT 'off-the-top' allocation in SFA 4 to fund the survey. In the event science has to be funded with the resource itself, it is only equitable that the resource contribution be shared proportionally by all licence holders in all SFAs.

#### **5.0 Legislative and Policy Considerations:**

- The Labrador Inuit Land Claims Agreement, the Fisheries Act, and the Northern Shrimp IFMP provide the legal, constitutional and policy context to the supplied recommendations.

#### **6.0 Consultations and Meetings on Northern Shrimp**

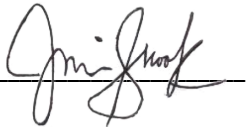
- Since 2008 the Torngat Joint Fisheries Board has invested considerable time and resources to gain a comprehensive understanding of the various issues and positions surrounding Northern Shrimp.
- The Board held consultations during the week of November 3-7, 2008, in the Nunatsiavut communities of Nain, Hopedale, Postville, Makkovik and Rigolet.
- In 2009 the Board finalized a report on the history of the Nunatsiavut and Canadian Northern Shrimp fishery.
- The TJFB has participated in NSAC zonal assessment processes and advisory committee meetings annually since 2009. The Board is also actively engaged on the Marine Stewardship Council (MSC) and the Precautionary Approach Framework working groups of the NSAC. However, it is the clear position of the Board that our participation in these processes is secondary to our responsibility to provide conservation and management advice to the Minister in accordance with Chapter 13 of the LILCA.

Prepared by: Torngat Wildlife, Plants and Fisheries Secretariat

Approved by:  Chairperson





Approved by:  Executive Director



Wednesday, March 27, 2013

The Honourable Keith Ashfield, M.P.  
Minister of Fisheries and Oceans  
200 Kent Street  
Ottawa, Ontario, K1A 0E6

**Re: Northern Shrimp Total Allowable Catch in Shrimp Fishing Area 5**

Dear Minister Ashfield:

The Torngat Joint Fisheries Board (TJFB or 'the Board') was established by the Labrador Inuit Land Claims Agreement (LILCA) as the primary body advising the Minister on matters relating to the conservation and management of fish, fish habitat, and fisheries in Nunatsiavut, with advisory powers in waters adjacent to the Labrador Inuit Settlement Area.

The Precautionary Approach Framework of the Northern Shrimp Integrated Fisheries Management Plan targets an exploitation rate of 15% for stocks assessed to be within the Healthy Zone. The Northern Shrimp resource in Shrimp Fishing Area (SFA) 5 is assessed to be within the Healthy Zone, and the Spawning Stock Biomass, the Fishable Biomass, and the Recruitment Index are all at or above the long-term mean. The exploitation rate has varied without trend between 15-20% for most of the time series, and the exploitation rate in 2013 is projected to be 16%, if the TAC of 23,300MT is maintained. Accordingly, and as per the Integrated Fisheries Management Plan, the Board recommends that:

1. the TAC of 23,300MT in SFA 5 be maintained through 2013/14.

The resource, and the industry built around it, has been relatively stable in SFA 5. This alone advocates for the continued application of the Integrated Fisheries Management Plan here, and in all areas.

Yours truly,

John Mercer  
Chairperson  
Torngat Joint Fisheries Board



Wednesday, March 26, 2014

The Honourable Gail Shea  
Minister of Fisheries and Oceans  
200 Kent Street, 8<sup>th</sup> Floor  
Ottawa, ON, K1A 0E6

**Re: Northern Shrimp Co-Management in Shrimp Fishing Area 4**

Dear Minister Shea,

The Torngat Joint Fisheries Board ('the Board') is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (2005), and is empowered by Part 13.11 to provide recommendations on fish, fish habitat, and fisheries in and adjacent to the Labrador Inuit Settlement Area. We here offer our recommendations for the 2014 Northern Shrimp fishery in Shrimp Fishing Area 4, in partial fulfillment of this mandate.

For the past several years, many of the processes that govern the management of Northern Shrimp have been changing: the Precautionary Approach Framework has been revised, but the revisions have not yet been adopted by the Northern Shrimp Advisory Committee; the Northern Shrimp Advisory Committee is moving to a two-year format, but there is nothing in place to automate decision making in off years; Section 10 of the *Fisheries Act* now permits the use of fish for financing purposes, but there are no policies in place to provide guidance as to when or how this will occur. Against this backdrop of change, the Labrador Inuit Land Claims Agreement (2005), and the allocation principles developed and long espoused by your Department, stand as constants. We take this opportunity to reflect on the Northern Shrimp fishery in SFA 4 generally, and we recommend specifically that you:

1. Increase the TAC in SFA 4 by 15% (2,246MT) to 17,217MT.
2. Allocate 75% of the increase (1,685MT) to the Nunatsiavut Government.
3. Establish a process to re-evaluate the 1,700MT allocation to fund the survey of the Eastern Assessment Zone, as per the National Policy on the Use of Fish for Financing Purposes.

We are confident that these recommendations are consistent with Land Claims obligations, allocation principles, and the changing face of Northern Shrimp management. The Board looks forward to continuing to strengthen our relationship with your Department as we work collectively towards our shared goals, and we are available, as always, at your convenience.



Yours truly,

John Mercer  
Chair  
Torngat Joint Fishery Board







## **Torngat Joint Fisheries Board**

Memorandum to the Minister of Fisheries and Oceans  
Northern Shrimp Co-Management in SFA 4  
(March 14<sup>th</sup>, 2014)

**Issue:** Northern Shrimp Co-Management In and Adjacent to the Labrador Inuit Settlement Area.

### **Recommendations:**

1. Increase the TAC in SFA 4 by 15% (2,246MT) to 17,217MT.
2. Allocate 75% of the increase (1,685MT) to the Nunatsiavut Government.
3. Establish a process to re-evaluate the 1,700MT allocation to fund the survey of the Eastern Assessment Zone, as per the National Policy on the Use of Fish for Financing Purposes.

### **1.0 Background:**

#### **1.1 *The Torngat Joint Fisheries Board and the Labrador Inuit Land Claims Agreement***

- The Torngat Joint Fisheries Board (TJFB or 'the Board') is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (LILCA or 'the Agreement'), with its roles, responsibilities and powers outlined in Part 13.11. The Board is the primary body making recommendations on the conservation and management of fish, fish habitat, and fisheries in the Labrador Inuit Settlement Area, and has advisory powers in waters adjacent to the 'Zone'. The TJFB has both the authority and the responsibility to make recommendations to the Minister in respect of issues surrounding the management of Northern Shrimp, as per 13.11.1 (a) and (b), and 13.11.2 (a) through (h) of the LILCA.

#### **1.2 *Case History***

- The TJFB has submitted recommendations on Northern Shrimp annually since 2010. In 2010 and 2011 the Board recommended that the exploitation rate in SFA 4 be increased to 14%, with 75% of the increase allocated to the Nunatsiavut Government; the TAC was not adjusted either year. In 2012 the Board recommended that the TAC in SFA 4 be increased by 15% (1,659MT), with 75% of the increase allocated to the Nunatsiavut Government; the TAC was increased by 15%, with 18% of the increase (300MT) allocated to the Nunatsiavut Government. In 2013 the Board recommended that the TAC in SFA 4 be increased by 15%

(1,952MT), with 75% allocation to the Nunatsiavut Government; the TAC was increased by 15%, with none of the increase allocated to the Nunatsiavut Government. In total, since 2010, the TAC in SFA 4 has increased by 3,648MT, with a total allocation to the Nunatsiavut Government of 300MT (8%).

## **2.0 Status of the Resource:**

- For the purposes of this recommendation the Board accepts without prejudice the biological information derived from the post-season trawl survey and presented to the Northern Shrimp Advisory Committee by the Department of Fisheries and Oceans on March 12<sup>th</sup>, 2014.
- Further, the Board endorses the proposal tabled by the Precautionary Approach Working Group (but not adopted by the Advisory Committee), that a two-year average of the Spawning Stock Biomass be used as the biomass signal. Using this criteria, the biomass signal is 101,939MT.
- Based on the 2013 biomass estimate, the current TAC of 14,971MT will give a projected exploitation rate of 9.9%. The exploitation rate has been between 6-10% since 2007/8.
- The resource is assessed to be within the Healthy Zone of the Precautionary Approach Framework, and the 2013 Spawning Stock Biomass of 94,337MT is well above the Upper Stock Reference (56,300MT).

## **3.0 Management Framework:**

- The Board grounded its 2012 and 2013 recommendations in a literal interpretation of the Precautionary Approach Framework, which is embedded in the Northern Shrimp Integrated Fisheries Management Plan as Annex I.
- The Precautionary Approach Framework establishes a base target exploitation rate of 15% for stocks assessed to be within the Healthy Zone.
- Harvest Control Rules embedded in the Precautionary Approach Framework establish a process for adjusting TACs to achieve the Base Target Exploitation Rate. Changes to the TAC are not to exceed 15% of the previous TAC, except in the event of a precipitous decline.
- The Board is represented on the Precautionary Approach Working Group of the Northern Shrimp Advisory Committee, which has drafted revisions to the existing Precautionary Approach Framework. The revised version, which has not been adopted, includes a mechanism to gradually increase the TAC in SFA 4 to achieve the base target exploitation rate of 15%, bringing SFA 4 on par with other areas. Through this process, and its annual recommendations, the Board has advocated, and continues to advocate, for a gradual or stepped approach to SFA 4 TAC adjustments.

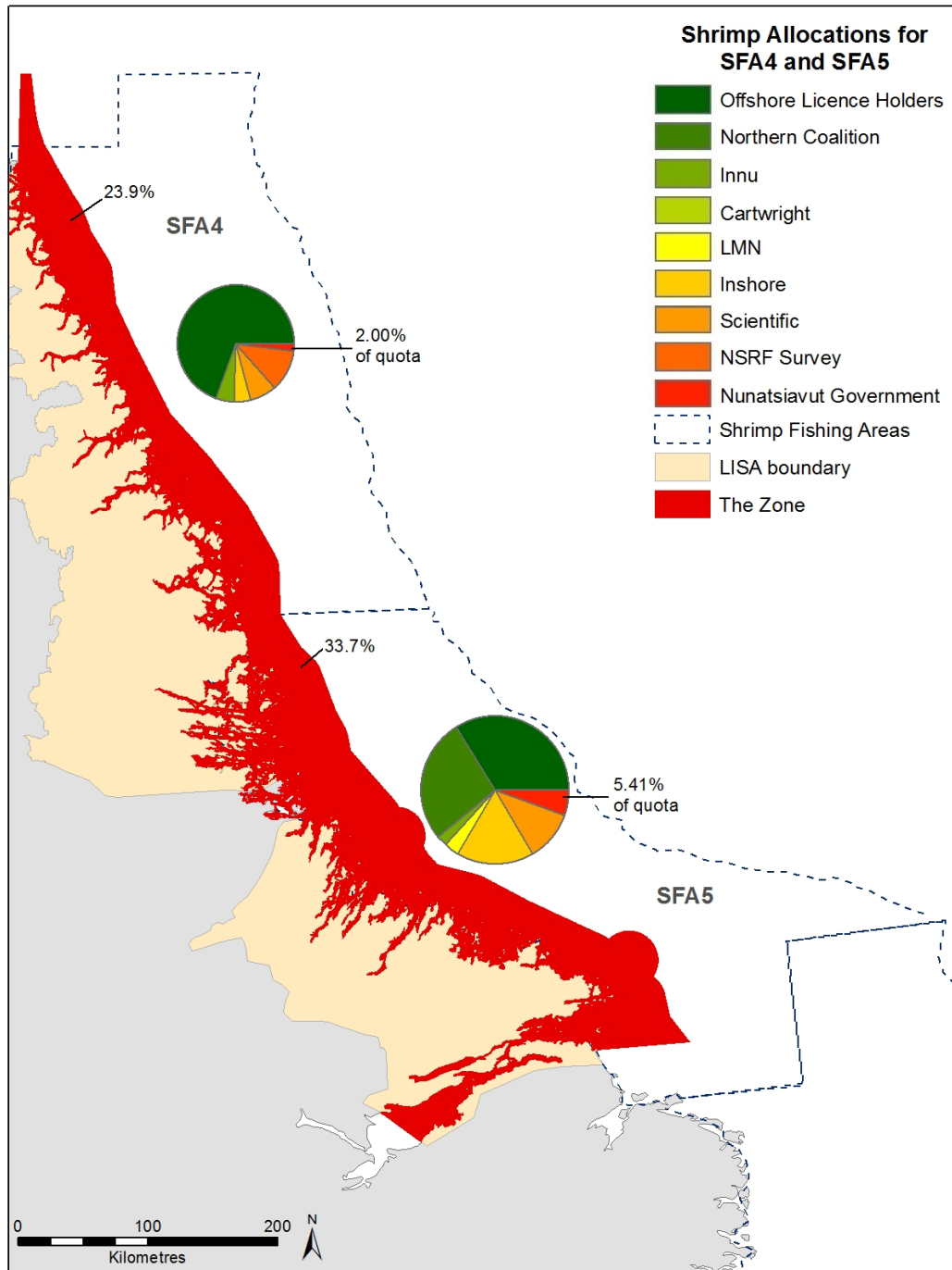
#### **4.0 Total Allowable Catch 2014/15:**

- The Board recommends that the TAC in SFA 4 be increased 15% (2,246MT) to 17,217MT. This recommended increase is completely consistent with our shared understanding of the resource, and our shared commitment to the Integrated Fisheries Management Plan.
- A TAC increase to 17,217MT will bring the exploitation rate in SFA 4 to 11.4%, using the 2013 fishable biomass.

#### **5.0 Allocation 2014/15:**

- Since 2008 the TAC in SFA 4 has increased by 4,648MT, to 14,971MT. The Nunatsiavut Government was allocated a total of 300MT (6.5% of the increases).
- Shrimp Fishing Areas 4 and 5 are both within, and adjacent to, the Labrador Inuit Settlement Area (See Figure 1). The Labrador Inuit Settlement Area accounts for 23.9% of SFA 4, and 33.7% of SFA 5. The Nunatsiavut Government has access to 2.0% of the resource in SFA 4, and 5.4% in SFA 5 (4.1% in combined SFA's 4 and 5).
- Allocating 75% of a 2,246MT increase in SFA 4 to the Nunatsiavut Government will bring their participation in that area to 11.5%, and their total participation in combined areas 4 and 5 to 8.0%

**Figure 1.** The Labrador Inuit Settlement Area and SFA's 4 and 5 showing Northern Shrimp Allocations.



## 6.0 Allocation History, Principles, and Criteria

- The Board included its assessment of interpretation of the Labrador Inuit Land Claims Agreement and Departmental allocation principles in 2013 – that analysis is reproduced here for ease of reference. The 2013 allocations – 1700MT to fund the Northern Shrimp Research Foundations Survey of the Eastern Assessment Zone, and 253MT split between the offshore and inshore fleets – are inconsistent with the Board’s interpretation of the Labrador Inuit Land Claims Agreement, and Departmental allocation principles.
- In 2010 and 2011 the TJFB detailed what we interpret as inconsistencies between the Labrador Inuit Land Claims Agreement, Departmental allocation principles and criteria, and allocations in SFA 4 since 1996. Allocating 75% of the recommended increase to the Nunatsiavut Government would partially compensate for the past. However, the intention here is to recommend allocations that are consistent with the letter and spirit of the Labrador Inuit Land Claims Agreement and Sharing Principles specified in Annex F of the Integrated Fisheries Management Plan.
- Annex F of the 2007 Northern Shrimp Management Plan references a process undertaken in 1996/97 to develop sharing principles. The principles include conservation, the continued viability of existing enterprises, a threshold of 37,600MT, *priority access for adjacent users, increased Aboriginal participation in established commercial fisheries*, priority access to inshore fleets (and midshore and offshore fleets in more northerly areas), and increased employment in harvesting and processing.
- In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the plan, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability. These are discussed briefly below.

### 6.1 Allocation Principles:

#### *Conservation*

- Although 2013 estimates for both fishable biomass and spawning stock biomass are down from those of 2012 (21% and 13.9% respectively), the stock is assessed to be within the healthy zone. The Precautionary Approach Framework, if applied, will safeguard against conservation concerns.

### *Aboriginal and Treaty Rights*

- The Board argued in 2010 and 2011 that the Department does have an obligation stemming from Part 13.12.7 of the LILCA. The Agreement was ratified in 2005 and negotiations were coincident with the rapid growth of the Northern Shrimp fishery. It is reasonable to conclude that Labrador Inuit understood the LILCA to be an avenue towards an increased share of Northern Shrimp resources in and adjacent to Nunatsiavut.
- This said, the interpretation of Part 13.12.7 has been contentious, and is unclear; it is clear that the Department has recognized increased Aboriginal participation in commercial fisheries as a fundamental goal of fisheries management. This goal has been incorporated into numerous Departmental policies, programs, strategies, and processes, including the Commercial Fisheries Policy for Eastern Canada, the Aboriginal Fisheries Strategy, the Allocation Transfer Program, the ongoing Fisheries Modernization process, and the Integrated Aboriginal Policy Framework (2007: 3), which states as a goal: “to contribute to the broader Government of Canada objective of greater economic development for First Nations by assisting with greater access to economic opportunities, such as commercial fishing”.

### *Procedural and Substantive Equity*

- In 2012 the Board argued that the 1000MT increase in SFA 4 in 2008 was inconsistent with the principal of procedural and substantive equity. The 2013 allocation to the Northern Shrimp Research Foundation is also inconsistent with the principals of procedural and substantive equity, as the Board never had an opportunity to analyze a detailed proposal (procedural), and the costs of the regional survey are now born solely by SFA 4 (substantive).

## **6.2 Allocation Criteria:**

### *Adjacency*

- Nunatsiavut is the only stakeholder adjacent to SFA 4, and 23.9 of SFA 4 lies within the Zone established by the Agreement.

### *Historic Dependence*

- The Inuit of Nunatsiavut have relied on marine resources for thousands of years – this reliance has manifested itself in the Northern Shrimp fishery since 1997.



### *Economic Viability*

- The commercial fishing industry in Nunatsiavut is precarious. It is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot). Snow Crab is near the northern extent of its range and resource fluctuations are pronounced; competitive disadvantages severely limit participation in the Turbot fishery, although the 2013 allocation has increased access. Northern Shrimp are the keystone of the Nunatsiavut fishery.

### **7.0 Use of Fish for Financing Purposes:**

- We recognize that recent amendments to Section 10 of the *Fisheries Act* permit the use of fish for financing purposes, and the Board has prepared comments on a Draft National Policy to guide the process. In 2013, in the absence of any guiding policies, 1700MT was allocated to the Northern Shrimp Research foundation to fund the survey in the Eastern Assessment Zone, for one year only. The Board has raised issues with respect to the allocation decision, and the process by which it was made. We recommend that allocation be reconsidered in accordance with the Draft National Policy.

### **8.0 Consultation and Deliberation**

#### **8.1 Workshop**

- The TJFB and the Nunatsiavut Government co-hosted a Northern Shrimp Workshop in Nain on November 20<sup>th</sup>, 2013. The workshop brought together fishers and representatives of the Board, the Torngat Co-operative Society, the Canadian Centre for Fisheries Innovation, the Nunatsiavut Government, the Department of Fisheries and Aquaculture, and the Department of Fisheries and Oceans. Much of the discussion focused on ways to increase the Nunatsiavut Government's participation in the Northern Shrimp fishery.

#### **8.2 Board Meetings**

- The Board meets quarterly and Northern Shrimp is an Agenda item at each meeting. This decision emerged from meetings held in Happy Valley – Goose Bay on January 21<sup>st</sup>, 2013, and St. John's on March 4<sup>th</sup>, 2014.

#### **8.3 Northern Shrimp Advisory Committee**

- The Board was represented at the Northern Shrimp Advisory Committee meeting held in Ottawa on March 12<sup>th</sup>, 2014, and is represented on the Precautionary Approach Working Group.

## 9.0 Other Considerations

- The Northern Shrimp fishery does not operate in isolation, but is part of an overall industry that faces significant challenges in Nunatsiavut. Snow Crab landings are down dramatically, access to Turbot has increased but is well below the 650MT the Board has recommended annually since 2010, and there are no other developed fisheries contributing to the overall portfolio in any significant way. Increased access to Northern Shrimp would have far-reaching social and economic benefits in Nunatsiavut.

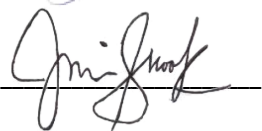
## 10.0 Summary and Conclusion

- Whereas the Precautionary Approach Framework specifies a base target exploitation rate of 15% for stocks in the healthy zone; and whereas the SFA 4 stock is assessed to be in the healthy zone; and considering the stepped approach specified by the Precautionary Approach Framework, which limits TAC adjustments to 15%, the Board recommends that the TAC in SFA 4 be increased by 15%.
- Whereas Departmental allocation principles prioritize land claims obligations; and whereas the Labrador Inuit Land Claims Agreement prioritizes Nunatsiavut Government access; and considering the Nunatsiavut Government's current access to be very low and disproportional to the size of 'the zone'; and whereas the Nunatsiavut Government is inarguably the most adjacent user, has strong historical dependence on marine resources, and is economically dependent on Northern Shrimp; and having considered recent allocations in 2008, 2012, and 2013 to be procedurally and substantively inequitable; and recognizing broader federal commitments to increased economic opportunities for Aboriginals, the Board recommends that 75% of the recommended increase be allocated to the Nunatsiavut Government
- Whereas amendments to the *Fisheries Act* permit the use of fish for financing purposes; but recognizing that the National Policy on the Use of Fish for Financing Purposes is still in draft; and recognizing also that the 2013 allocation to the Northern Shrimp Research Foundation was made for one year only; and having argued that an SFA 4 allocation to fund a survey that spans several SFA's is inequitable, the Board recommends that the allocation to the Northern Shrimp Research Foundation be re-evaluated in accordance with the National Policy.



Prepared by: Torngat Wildlife, Plants and Fisheries Secretariat

Approved by:  Chairperson

Approved by:  Executive Director





April 2, 2014

The Honourable Gail Shea  
Minister of Fisheries and Oceans  
200 Kent Street, 8<sup>th</sup> Floor  
Ottawa, ON, K1A 0E6

**Re: Northern Shrimp Co-Management in Shrimp Fishing Area 5**

Dear Minister Shea,

The Torngat Joint Fisheries Board ('the Board') is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (2005), and is empowered by Part 13.11 to provide recommendations on fish, fish habitat, and fisheries in and adjacent to the Labrador Inuit Settlement Area. We here offer our recommendations for the 2014 Northern Shrimp fishery in Shrimp Fishing Area 5, in partial fulfillment of this mandate.

The Northern Shrimp resource in SFA 5 has been more or less stable for over a decade, and the exploitation rate has fluctuated around the target of 15%. In this respect, Northern Shrimp management in SFA 5 can and should be considered a success story. This success is attributable, in large part, to the consistent application of the Precautionary Approach (PA) Framework and the Integrated Fisheries Management Plan (IFMP). Pursuant to the IFMP, the Board recommends that

1. The TAC in SFA 5 be decreased by 15% (3,495MT) from 23,300MT to 19,805MT.
2. Aboriginal participants be exempted from the application of the Last-In, First-Out policy.

We are confident that these recommendations are consistent with Land Claims obligations and Departmental allocation principles, and federal commitments to increase economic opportunities for Aboriginal peoples. The Board looks forward to continuing to strengthen our relationship with your Department as we work collectively towards our shared goals, and we are available, as always, at your convenience.

Yours truly,

John Mercer  
Chair  
Torngat Joint Fishery Board



**Torngat Joint Fisheries Board**  
Memorandum to the Minister of Fisheries and Oceans  
Northern Shrimp Co-Management in SFA 5  
(March 31<sup>st</sup>, 2014)

**Issue:** Northern Shrimp Co-Management in Shrimp Fishing Area 5.

**Recommendations:**

1. Decrease the TAC in SFA 5 by 15% (3,495MT) from 23,300MT to 19,805MT.
2. Exempt Aboriginal participants from the application of the Last-In, First-Out policy

**1.0 Background:**

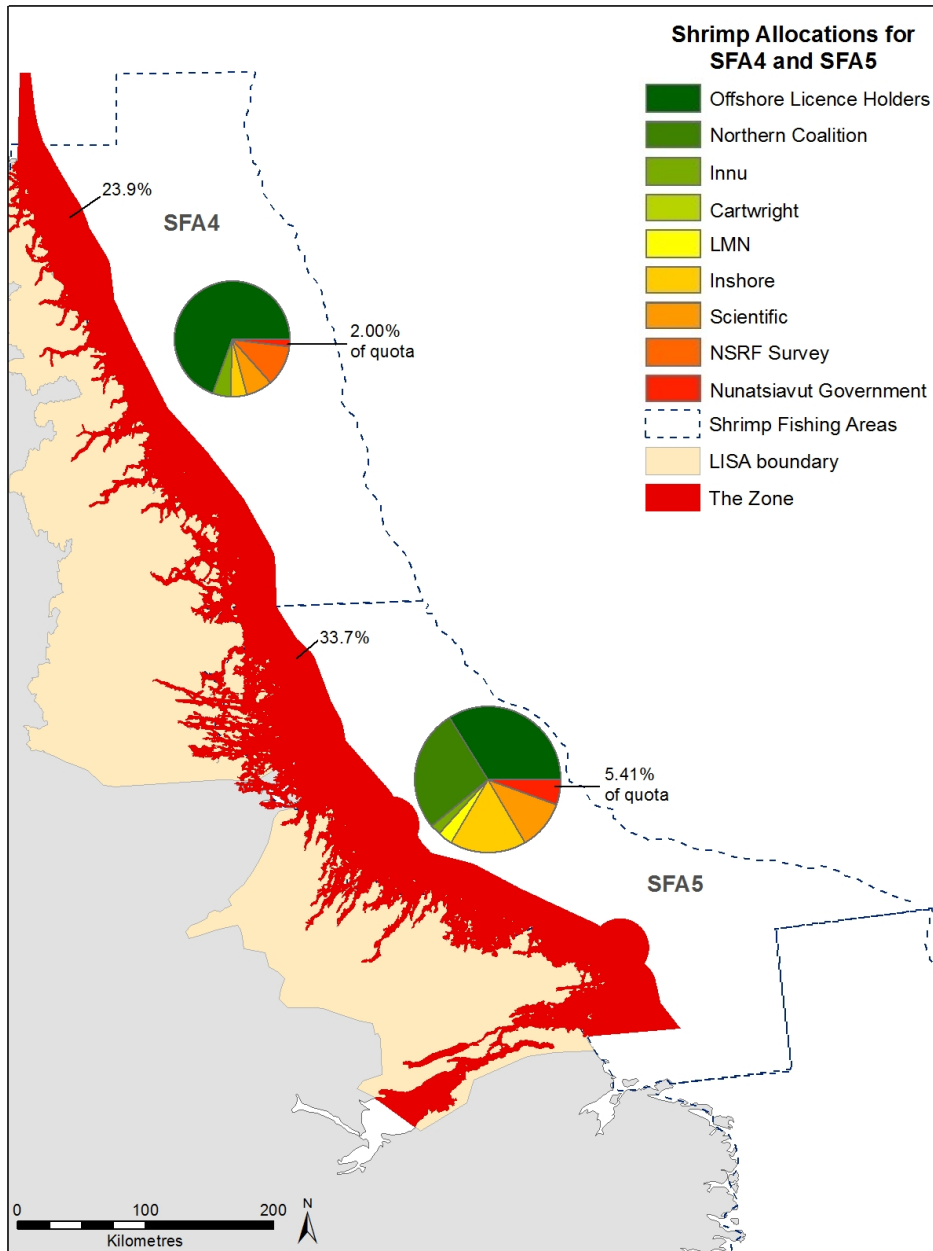
**1.1 *The Torngat Joint Fisheries Board and the Labrador Inuit Land Claims Agreement***

- The Torngat Joint Fisheries Board (TJFB or 'the Board') is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (LILCA or 'the Agreement'), with its roles, responsibilities and powers outlined in Part 13.11. The Board is the primary body making recommendations on the conservation and management of fish, fish habitat, and fisheries in the Labrador Inuit Settlement Area, and has advisory powers in waters adjacent to the 'Zone'. The TJFB has both the authority and the responsibility to make recommendations to the Minister in respect of issues surrounding the management of Northern Shrimp, as per 13.11.1 (a) and (b), and 13.11.2 (a) through (h) of the LILCA.

**1.2 *Case History***

- The TJFB has submitted recommendations on Northern Shrimp annually since 2010. Each year the Board recommended that the TAC of 23,300MT be rolled over.
- SFA 5 is within and adjacent to the Labrador Inuit Settlement Area. The zone makes up 33.7% of SFA 5. The Nunatsiavut Government has a Special Allocation of 1,260MT, which is 5.41% of the TAC of 23,300MT (See Figure 1).

**Figure 1: Northern Shrimp Allocations in SFA's 4 and 5.**





## 2.0 Status of the Resource:

- The Fishable Biomass Index (FB) and the Spawning Stock Biomass Index (SSB) have been relatively stable since 2001, and the TAC has been stable at 23,300MT since 2003. As a result, the exploitation rate has fluctuated without trend around the base target of 15% set out by the Integrated Fisheries Management Plan (IFMP).
- In 2013 the FB decreased by 48% (to 75,913MT) and the SSB decreased by 30% (to 44,098MT).
- The stock is assessed to be within the Healthy Zone of the Precautionary Approach (PA) Framework, with a 30% chance of being in the cautious zone. The Upper Reference Point (the threshold separating the Cautious Zone and the Healthy Zone) is set at SSB equal to 38,000MT.

## 3.0 Management Framework:

- The PA Framework establishes a base target exploitation rate of 15% for stocks assessed to be within the Healthy Zone. The exploitation rate can increase gradually as an artefact of a stable TAC strategy during a period of FB decline.
- Harvest Control Rules embedded in the PA Framework establish a process for adjusting TACs to achieve the Base Target Exploitation Rate. Changes to the TAC are not to exceed 15% of the previous TAC, except in the event of a precipitous decline.
- 'Precipitous Decline' is not defined in the existing PA Framework. The revised PA Framework, which was tabled at the 2014 NSAC meeting but not adopted, defines 'precipitous decline' as follows: "if the single year point decreases by more than 25% in the cautious zone; or by more than 15% in the critical zone, a special NSAC meeting will be held to discuss all available biomass signals and the recent stock trend to determine if further conservation measures are required." The 2013 decline would not qualify as 'precipitous' under this definition, but the NSAC meeting held in Ottawa on March 12<sup>th</sup>, 2014, should be considered a special meeting never-the-less, as no meeting was scheduled.

## 4.0 Total Allowable Catch 2014/15:

- A TAC decrease of 15% is completely consistent with the IFMP and the PA Framework. In the event of a 'precipitous decline', the NSAC would be expected to consider greater reductions, not lesser.
- The Board considered various TAC scenarios, ranging from a TAC rollover to a TAC set at 11,387MT (targeting an exploitation rate of 15%). The Board considered each of these scenarios relative to the 2013 FB estimate (75,913MT) and a two-year average of the 2012 and 2013 FB estimates (111,554MT).

- Assuming the FB remains stable, a TAC reduction of 15% would result in a 2014/15 exploitation rate of 26.1% based on the 2013 FB estimate, or 17.8% based on the two-year average.

**Table 4: Possible TAC Scenarios for SFA 5, and Resulting Exploitation Rates**

Scenario	TAC	Reduction (%)	Reduction (MT)	Exp. Rate (FB=75,913MT)	Exp. Rate (FB=111,554MT)
TAC Roll-Over	23,300MT	0	0	30.7%	20.9%
15% TAC reduction	19,805MT	15%	3,495MT	26.1%	17.8%
15% exploitation rate (FB=75,913MT)	11,387MT	51%	11,914MT	15%	10.2%
15% exploitation rate (FB=111,554MT)	16,733MT	27%	6,267MT	22%	15%
20% exploitation rate (FB=75,913MT)	15,183MT	35%	8,117MT	20%	13.6%
20% exploitation rate (FB=111,554MT)	22,310MT	4%	990MT	29.4%	20%
Apply 2013 exploitation rate (FB=75,913MT)	11,994MT	49%	11,306MT	15.8%	10.8%
Apply 2013 exploitation rate (FB=111,554MT)	17,626MT	24%	5,674MT	21.9%	15.8%
Return to 2002 fishery	15,300MT	34%	8,000MT	20.2%	13.7%

## 5.0 SFA 5 Allocation Background:

- The TAC was increased from 7,650MT to 15,300MT in 1997, and the Nunatsiavut Government entered the fishery with a Special Allocation of 510MT (later increased to 1260MT in 2003). There were three other entrants in 1997, and four more in 2003 when the TAC was increased to 23,300MT.
- The 2003 TAC increase included a 2,500MT allocation to fund research in northern areas:

“Due to the lack of research activities and scientific data in the north, industry participants made a recommendation in 2002 and 2003 to have a portion of any offshore TAC increases in SFAs 4 and 5 allocated to a "research quota". This would be used to fund a multi-year research proposal in the northern areas at a cost of approximately \$2 million annually...in 2003, it was recommended that a joint DFO/industry working group investigate the feasibility of this approach to science, and a quota was allocated for this purpose” (IFMP, 2003).

Although the *Laroque* decision (2006) effectively prohibited the use of fish for financing purposes, recent amendments to the Section 10 of the *Fisheries Act* grant the Minister the authority to allocate fish for the purposes of financing scientific or fisheries management activities. The Department of Fisheries and Oceans has developed a draft National Policy for Allocating Fish for Financing Purposes to add certainty as to when and how fish will be allocated for these purposes. The Board recommends that the 2003 allocation be re-evaluated in accordance with the National Policy when it is finalized.

## 6.0 Northern Shrimp Allocation Principles and Policies

- In 1997, after an extensive consultation process that included almost 160 submissions from across Atlantic Canada, the Minister established criteria for sharing access to the expanding Northern Shrimp fishery. These criteria prioritized conservation of the resource, the continued viability of the offshore industry, adjacency, increasing participation of Aboriginal peoples, access to inshore vessels less than 65 feet, and employment in both the harvesting and processing sectors.
- With respect to the continued viability of the offshore industry, the Minister established thresholds for each SFA (7,650MT for SFA 5), and for all SFAs (37,600MT). Thresholds were based on the 1996 TAC, and were intended to safeguard the viability of offshore license holders. For greater certainty, thresholds were the only mechanism specifically established to safeguard the offshore industry, and the 1997 criteria do not mention a Last in, First Out policy (LIFO). As the TAC expanded above the threshold new participants would enter the fishery based on an evaluation of the 1997 criteria, and if the TAC dropped to the threshold they would leave the fishery based on a similar evaluation. The 2003 IFMP makes this point explicit with respect to the 1997 allocations in SFA 5:

“In 1997, a total of 1,530t was allocated for the benefit of adjacent inshore fishermen (vessels less than 65ft.). This was shared equally (510t each) among the Labrador Inuit, the Innu Nation, and fishermen of Cartwright, Labrador. These three groups are permitted to use royalty charters to have their allocations harvested. *This regime will continue through future years providing offshore threshold levels are maintained*” (Emphasis added).

- LIFO emerged as a policy position of the DFO in the years following the development of the 1997 criteria, and the 2003 IFMP does explicitly state that in the event of “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.” The LIFO policy does not appear to have been a product of any extensive consultation process, as were the 1997 criteria, and yet LIFO runs counter to and is inconsistent with the 1997 criteria, notably with respect to adjacency and increasing Aboriginal participation.
- The offshore allocation is still at the 1996 threshold of 7,650MT.
- In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the IFMP, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability.
- The 1997 criteria and the 2003 criteria were intended to allocate access, and there is no reason they should be any less relevant as the resource declines – they were intended to foster equitable sharing, and equitable sharing is independent of the amount available to be shared. More than a decade has passed since LIFO first emerged, and the social-political context has changed fundamentally, and new priorities have emerged. Chief amongst these new priorities is increased Aboriginal participation in commercial fisheries, which the Department has recognized as a fundamental goal of fisheries management. This goal has been incorporated into numerous Departmental policies, programs, strategies, and processes, including the Commercial Fisheries Policy for Eastern Canada, the Aboriginal Fisheries Strategy, the Allocation Transfer Program, the Fisheries Modernization process, and the Integrated Aboriginal Policy Framework (2007: 3), which states as a goal: “to contribute to the broader Government of Canada objective of greater economic development for First Nations by assisting with greater access to economic opportunities, such as commercial fishing”.
- Increased Aboriginal participation (which can be achieved independently of resource trends) does not preclude partnerships with existing licences-holders. In fact, partnership is the trend across sectors within and adjacent to Aboriginal land claims areas. Applying LIFO to Aboriginal participants will potentially undermine National initiatives and the decision to do so should not be taken lightly, nor independently of the broader context.
- The Board recommends that the allocation criteria specified and prioritized in Annex F of the 2007 Northern Shrimp Management Plan be applied transparently as the resource and the TAC increases *and* decreases. Aboriginal and Treaty Rights are second only to Conservation; constitutional obligations and national priorities must not be superseded by antiquated management policies.

## 7.0 Summaries and Conclusion



- Whereas the SSB is assessed to be within the healthy zone; and whereas TAC reductions are generally not to exceed 15% of the previous TAC; and having considered greater and lesser reductions; and having also considered stability considerations; and recognizing an apparent decrease in the FB and the SBB; the Board recommends that the TAC in SFA 5 be reduced by 15% to 19,805MT.
- Whereas allocation criteria were initially developed in 1997 and further developed in 2003; and having noted that the LIFO policy is absent from both, and was never the subject of any significant consultation; and recognizing Federal initiatives to increase Aboriginal access to the commercial fishery specifically, and Aboriginal economic opportunities generally; and considering LIFO to be in conflict with these Federal initiatives; the Board recommends that Aboriginal participants be exempted from the application of LIFO, and that the 1997 and 2003 access criteria form the basis for allocations through periods of decline.



March 23rd, 2015

The Honourable Gail Shea  
Minister of Fisheries and Oceans  
200 Kent Street, 8<sup>th</sup> Floor  
Ottawa, ON, K1A 0E6

**Re: Northern Shrimp Co-Management in Shrimp Fishing Area 4**

Dear Minister Shea,

The Torngat Joint Fisheries Board ('the Board') here offers its recommendations for the 2015 Northern Shrimp fishery in SFA 4.

Since the Labrador Inuit Land Claims Agreement (LILCA) was ratified in 2005 the Total Allowable Catch (TAC) in SFA 4 has increased by 4,651MT, with a total allocation of 300MT to the Nunatsiavut Government. The exploitation rate is below, but approaching the target, and the opportunity to meaningfully integrate the Nunatsiavut Government into the Northern Shrimp fishery in SFA 4 is eroding. Since 2010 the Board has consistently recommended that the Northern Shrimp Integrated Fisheries Management Plan (IFMP) be applied to TAC-setting, and that allocations at minimum meet with Land Claims obligations.

Beyond the minimum guarantees provided by the LILCA, legal principals such as the Spirit and Intent of the agreement and the Honour of the Crown have been brought forward to the department. Finally, resource allocation principles of the Department warrant much stronger consideration of the Board's recommendations.

We can understand the political pressures as a result of this opportunity however it should be noted that during the Northern Shrimp Advisory Committee (NSAC) process there were no objections to any of these points. We would anticipate little negative feedback as a result of this recommendation. It could in fact help to facilitate and expedite additional aboriginal partnerships in the fishing sector in this region.

At this time the Office of the Auditor General is conducting an audit of the Federal Government's implementation of the LILCA and specifically examining the fisheries chapter and the application of the Last In First Out principal. We would certainly suggest following our recommendations this year would go a long way toward demonstrating a serious commitment to the LILCA and the departmental policies of adjacency and facilitating aboriginal involvement in the fishery.

Accordingly, we recommend that you:





1. Increase the TAC in SFA 4 by 15% (2,246MT) to 17,217MT.
2. Allocate 75% of the increase (1,685MT) to the Nunatsiavut Government.

With regards to the IFMP, since 2010 the Board has been engaged as a member of a Northern Shrimp Advisory Committee working group drafting revisions to the Precautionary Approach Framework. The group tabled revisions in 2014 – revisions that the Board endorsed both as a member of the working group and independently in follow-up correspondence. There has been no discussion of the Precautionary Approach since 2014, and it was absent from the agenda at the 2015 meeting of the Northern Shrimp Advisory Committee. We therefore recommend that:

3. The Precautionary Approach Framework working group be reconvened, and revisions tabled for adoption by the Northern Shrimp Advisory Committee in 2016.

Finally, the Board has raised issues with the 2013 process that resulted in a 1700MT allocation to the Northern Shrimp Research Foundation (NSRF) to finance surveys in the Eastern Assessment Zone. The Board provided comments and advice on the draft National Policy for Allocating Fish for Financing Purposes. It is our understanding that the policy is still in draft and it was clear from the most recent NSAC meeting that no formal consultation has occurred with the Nunatsiavut Government from the department or from the proposal's proponent. We recommend that you:

4. Eliminate the 1700MT allocation to the NSRF pending the formal adoption of the policy, and a review of the NSRF allocation as per the policy.

We thank you for considering this advice and request a meeting at your convenience to discuss the direction of Northern Shrimp management in SFA 4.

Yours truly,

John Mercer  
Chairperson  
Torngat Joint Fisheries Board



**Torngat Joint Fisheries Board**  
Memorandum to the Minister of Fisheries and Oceans  
Northern Shrimp Co-Management in SFA 4  
(March 17<sup>th</sup>, 2015)

**Issue:** Northern Shrimp Co-Management In and Adjacent to the Labrador Inuit Settlement Area.

**1.0 Recommendation 1:**

*Increase the Total Allowable Catch (TAC) in Shrimp Fishing Area (SFA) 4 by 15% (2,246MT) to 17,217MT*

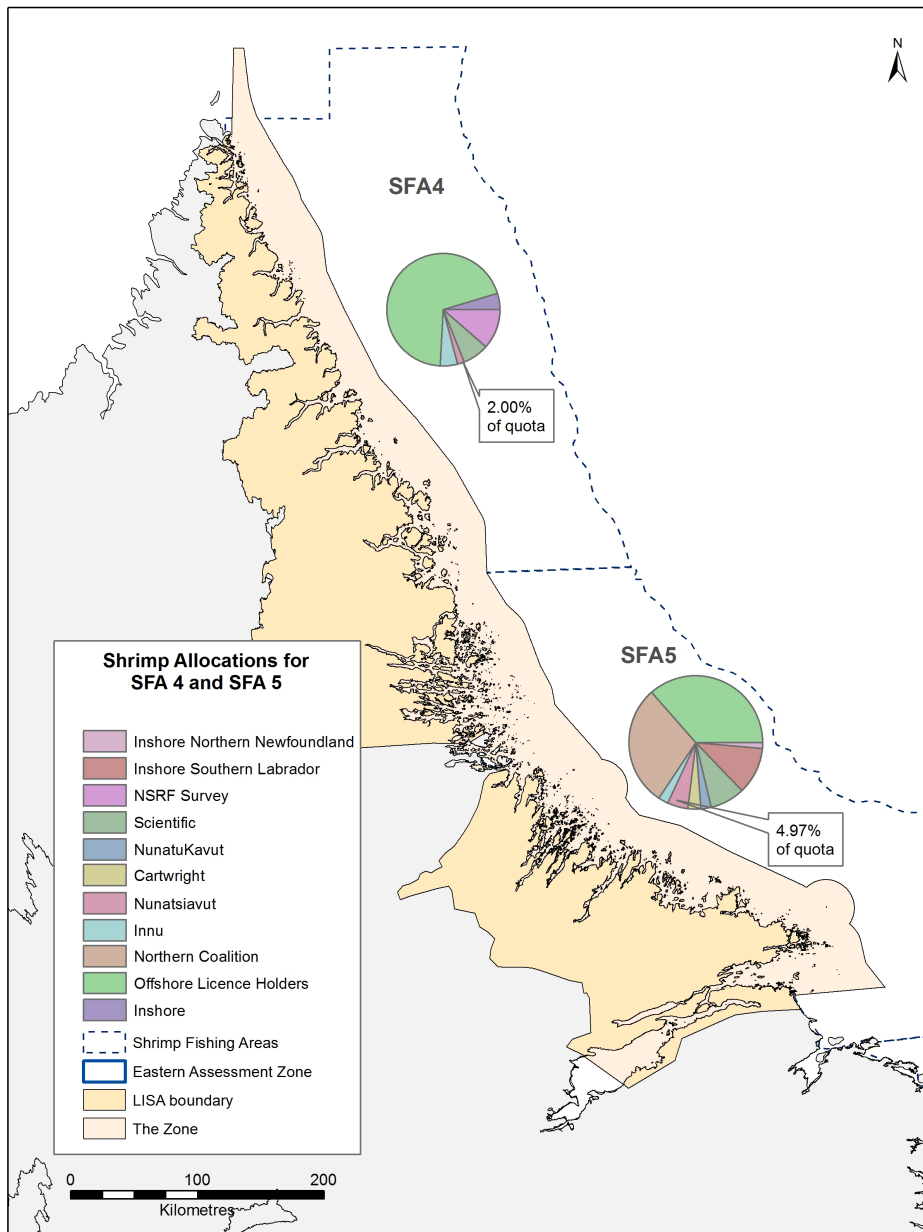
- The Spawning Stock Biomass in SFA 4 is within the Healthy Zone established in the Integrated fisheries Management Plan (IFMP).
- The IFMP establishes a base target exploitation rate of 15% for stocks assessed to be within the Healthy Zone.
- With the current TAC of 14,971 the 2015/16 exploitation rate is projected to be 11.2%. Increasing the TAC by 15% gives a 2015/16 projected exploitation rate of 12.8%.
- The IFMP limits TAC adjustments to 15% biennially.

**2.0 Recommendation 2:**

*Allocate 75% of the increase (1,685MT) to the Nunatsiavut Government*

- The Nunatsiavut Government currently has access to 2.0% of the Northern Shrimp TAC in SFA 4 (See Figure 1). Allocating 75% of the increase to the Nunatsiavut Government will bring their participation in SFA 4 to 11.5%.

**Figure 1. The Labrador Inuit Settlement Area and SFA's 4 and 5 showing Northern Shrimp Allocations.**



- Since the Labrador Inuit Land Claims Agreement was ratified in 2005 the TAC in SFA 4 has increased by 4,651MT, with a total allocation of 300MT (6.5%) to the Nunatsiavut Government.
- Annex F of the 2007 Northern Shrimp Management Plan references a process undertaken in 1996/97 to develop sharing principles. The principles include conservation, the continued viability of existing enterprises, a threshold of 37,600MT, *priority access for adjacent users, increased Aboriginal participation in established commercial fisheries*, priority access to inshore fleets (and midshore and offshore fleets in more northerly areas), and increased employment in harvesting and processing (emphasis added).
- Existing enterprises (offshore licences holders) are protected by a threshold of 5,200MT in SFA 4 (established as the 1997 TAC). Since 1997 the offshore allocation has doubled to 10,395MT.
- Since 1997, when sharing principles prioritized access for adjacent Aboriginal users, *the adjacent Aboriginal user*, the Nunatsiavut Government, has been allocated 300MT out of a total increase of 9,771MT (3.1% of increases).
- In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the plan, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability. These are discussed briefly below.

## 2.1 Allocation Principles

### *Conservation*

- The stock is assessed to be within the healthy zone. The Precautionary Approach Framework, if applied, will safeguard against conservation concerns.

### *Aboriginal and Treaty Rights*

- The Labrador Inuit Land Claims was ratified in 2005. Since 2005 the TAC in SFA 4 has increased by 4,651MT, with just 300MT allocated to the Nunatsiavut Government. This is inconsistent with the letter of the Agreement, the spirit of the Agreement, and the Honour of the Crown.
- The Auditor General has begun a review, which will include an assessment of the Agreement as it has been applied to the Northern Shrimp fishery. There is an opportunity now in SFA 4 to uphold the Honour of the Crown, and to transparently apply the letter and spirit of the Agreement.

- The Agreement (Part 13.12.7) specifically guarantees 11% of new licences to the Nunatsiavut Government. It is our opinion, given the Crown's responsibilities, that the language used should properly be interpreted to include all new allocations as another means. The Nunatsiavut Government has been allocated 6.5% of increases since the ratification of the Agreement. More specifically, the Nunatsiavut Government was allocated 0% of the 1000MT increase in 2008, 17.7% of the 1,698MT increase in 2012, and 0% of the 1,953MT increase in 2013.
- The 11% specified by Part 13.12.7 of the Agreement is not exhaustive, but is intended to function as an off-the-top minimum guarantee. In the event of a TAC increase, secondary allocation principles and criteria, discussed below, are to be applied to the remaining 89%, and the Nunatsiavut Government would be considered in their application.

#### *Procedural and Substantive Equity*

- In 2012 the Board argued that the 1000MT increase in SFA 4 in 2008 was inconsistent with the principal of procedural and substantive equity. The 2013 allocation to the Northern Shrimp Research Foundation is also inconsistent with the principals of procedural and substantive equity, as the Board never had an opportunity to analyze a detailed proposal (procedural), and the costs of the regional survey are now born solely by SFA 4 (substantive).

## **2.2 Allocation Criteria:**

### *Adjacency*

- In some cases there is legitimate uncertainty as to which interests are adjacent to which resources, but in this case there can be no uncertainty. The Nunatsiavut Government is *the* adjacent user. The Labrador Inuit Settlement Area accounts for 23.9% of SFA 4, and the rest of SFA 4 is immediately adjacent (See Figure 1).

### *Historic Dependence*

- The Inuit of Nunatsiavut have relied on marine resources for thousands of years – this reliance has manifested itself in the Northern Shrimp fishery since 1997.

### *Economic Viability*

- The commercial fishing industry in Nunatsiavut is precarious. It is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot). Snow Crab is near the northern extent of its range and resource fluctuations are

pronounced; competitive disadvantages severely limit participation in the Turbot fishery, although the 2013 allocation has increased access. Northern Shrimp are the keystone of the Nunatsiavut fishery.

### **3.0 Recommendation 3:**

*Re-convene the Precautionary Approach Framework Working Group of the Northern Shrimp Advisory Committee*

- The Board has been engaged as a member of a Northern Shrimp Advisory Committee (NSAC) working group drafting revisions to the Precautionary Approach Framework since 2010. After four years of work the group tabled revisions in 2014.
- The revisions tabled in 2014: 1) adjust the maximum exploitation rate to 20%; 2) establish the biomass signal as a two-year average of the spawning stock biomass; 3) establish a mechanism to achieve the target exploitation rate in SFA 4, and 4) provide a means of automatically adjusting the TAC in relation to the biomass signal in years when the NSAC is not scheduled to meet.
- The Board endorsed the proposed revisions both as a member of the working group and independently in follow-up correspondence.
- There has been no discussion of the Precautionary Approach since 2014, and it was absent from the agenda at the 2015 meeting of the NSAC.
- There is some indication of ecosystemic change, and there have been recent declines in both the biomass and the TAC in some areas. Meanwhile, the NSAC is moving to a biennial meeting schedule. In this context it is more important than ever to develop a Precautionary Approach Framework, including Harvest Control Rules, that links ecological indicators with management actions.

### **4.0 Recommendation 4:**

*Eliminate the 1700MT allocation to the NSRF pending a review of the draft National Policy on the use of Fish for Financing*

- Recent amendments to the *Fisheries Act* permit the use of fish to finance scientific and fisheries management activities, but there is no policy to provide guidance as to when or how fish will be used for these purposes.
- In March of 2014 the Board provided comments on the draft National Policy on the Use of Fish for Financing Purposes (the Draft Policy). That policy is still in draft.
- The Draft Policy outlines several criteria to be applied in considering project eligibility, including mandatory support from harvesters whose cumulative share of the resource amounts to 66% of the TAC. We have argued that a 66% majority



should not suffice, as it may serve to further entrench current inequities, and minority positions may have merit and should be considered.

- In 2013 and 2014 there was an allocation of 1700MT of Northern Shrimp from SFA 4 to fund the Northern Shrimp Research Foundation survey of the Eastern Assessment Zone. The brief consultation process that preceded that discussion occurred without a guiding policy and in the absence of key stakeholders. There has been no indication as to whether the criteria set out in the Draft Policy were met.
- Although there is precedent for the use of fish for financing purposes, and there is now enabling legislation, it is inequitable to use resource from one area to finance research in another, as is the case with the SFA 4 allocation.
- The 2013 and 2014 allocations were provided on an annual basis. It is our understanding that the NSAC will be recommending that the allocation be extended for an additional five years. A five-year commitment to an allocation that may be inconsistent with a policy, which is itself subject to revision, is not warranted.

## 5.0 Discussion and Conclusion

- Whereas the IFMP specifies a base target exploitation rate of 15% for stocks in the healthy zone; and whereas the SFA 4 stock is assessed to be in the healthy zone; and whereas the exploitation rate is projected to be 12.8% with a 15% TAC increase; and whereas the IFMP limits TAC adjustments to 15%, the Board recommends that the TAC in SFA 4 be increased by 15%.
- Whereas Departmental allocation principles prioritize land claims obligations; and whereas the Labrador Inuit Land Claims Agreement prioritizes Nunatsiavut Government access; and considering the Nunatsiavut Government's current access to be very low and disproportional to the size of 'the zone'; and whereas the Nunatsiavut Government is inarguably the most adjacent user, has strong historical dependence on marine resources, and is economically dependent on Northern Shrimp; and having considered recent allocations in 2008, 2012, and 2013 to be procedurally and substantively inequitable; and recognizing broader federal commitments to increased economic opportunities for Aboriginals, the Board recommends that 75% of the recommended increase be allocated to the Nunatsiavut Government.
- Whereas the Precautionary Approach working group of the NSAC was tasked with revising the Precautionary Approach Framework in 2010; and whereas revisions were tabled in 2014; and whereas there is currently no mechanism to guide decision-making in non-meeting years, the Board recommends that the Precautionary Approach working group be re-convened and revisions tabled in 2016.
- Whereas amendments to the *Fisheries Act* permit the use of fish for financing purposes; but recognizing that the Draft Policy is still in draft; and having no



indication that the allocation is consistent with the Draft Policy; and recognizing also that the 2013 and 2014 allocations to the Northern Shrimp Research Foundation were made for one year only; and having argued that an SFA 4 allocation to fund a survey that spans several SFA's is inequitable, the Board recommends that the allocation to the Northern Shrimp Research Foundation be eliminated.

Prepared by: Torngat Wildlife, Plants and Fisheries Secretariat



April 1<sup>st</sup>, 2015

The Honourable Gail Shea  
Minister of Fisheries and Oceans  
200 Kent Street, 8<sup>th</sup> Floor  
Ottawa, ON, K1A 0E6

**Re: Northern Shrimp Co-Management in Shrimp Fishing Area 5**

Dear Minister Shea,

The Torngat Joint Fisheries Board ('the Board') here offers its recommendations for the 2015 Northern Shrimp fishery in Shrimp Fishing Area (SFA) 5

After a long period of relative stability spanning over a decade, the Northern Shrimp resource in SFA 5 appeared to decline sharply in 2013 and the TAC was adjusted downwards by 10%. In 2014 both the fishable biomass and the spawning stock biomass increased to 2012 levels, and we therefore recommend that:

1. The TAC be increased by 10% to the 2013 TAC of 23,300MT.

We make this recommendation with a note of caution, as the projected exploitation rate after increase will be 20.1%. We will all be monitoring the SFA 5 resource very closely in 2015, and we are confident that the management system will be able to accommodate any adjustments that may become necessary.

The Board has long argued that the Nunatsiavut Government should be exempted from the application of the Last-In, First-Out (LIFO) policy, reasoning that there was no meaningful consultation, the policy conflicts with Land Claims obligations and with other Government of Canada policies intended to increase Aboriginal access to economic opportunities, and the 1997 allocation criteria do not mention LIFO, but do very clearly establish thresholds as a means of protecting offshore enterprises. Instead, the Board has argued that TAC increases *and* decreases should be allocated based on principles and criteria developed in 2003 and incorporated as Annex F of the Integrated Fisheries Management Plan. Accordingly, we recommend:

2. That 75% (1,748MT) of the increase be allocated to the Nunatsiavut Government

We note also that the Precautionary Approach Working Group of the Northern Shrimp Advisory Committee tabled revisions in 2014 that would have increased the maximum exploitation rate to 20%, clearly defined the biomass signal, clearly defined what constitutes a precipitous decline, and refined harvest control rules. The revisions have not been adopted, and the discussion



appears to have stalled. A revised Precautionary Approach Framework will add certainty and provide direction through periods of decline, and we therefore recommend that:

3. The Precautionary Approach Framework working group be reconvened, and revisions tabled for adoption by the Northern Shrimp Advisory Committee in 2016.

The Board looks forward to continuing to strengthen our relationship with your Department as we work collectively towards our shared goals, and we are available, as always, at your convenience.

Yours truly,

John Mercer  
Chair  
Torngat Joint Fisheries Board





**Torngat Joint Fisheries Board**  
Analysis presented to the TJFB  
Northern Shrimp Co-Management in SFA 5  
(April 1<sup>st</sup>, 2015)

**Issue:** Northern Shrimp Co-Management In and Adjacent to the Labrador Inuit Settlement Area.

**1.0 Recommendation 1:**

*Increase the TAC by 10% to the 2013 TAC of 23,300MT*

- The Spawning Stock Biomass in SFA 5 is within the Healthy Zone established by the Integrated Fisheries Management Plan (IFMP).
- With the exception of 2013, the Fishable Biomass Index (FB) and the Spawning Stock Biomass Index (SSB) have been relatively stable since 2001, and the TAC has been stable at 23,300MT since 2003. As a result, the exploitation rate has fluctuated without trend between 15-20%.
- In 2013 the FB decreased by 48% (to 75,913MT), the SSB decreased by 30% (to 44,098MT), and the TAC was decreased by 10% to 20,970MT, for a 2014/15 exploitation rate index of 27.6%.
- In 2014 the FB recovered to 116,000MT and the SSB recovered to 60,600MT.
- Reinstating the TAC of 23,300MT will give an exploitation rate index of 20.1% in 2015/16.
- A 2015/16 exploitation rate of 20.1% will be higher than the base target exploitation rate of 15% established in the IFMP, and will be slightly higher than the long-term average in SFA 5, but will be significantly lower than the 2014/15 exploitation rate.
- Reinstating the 2013 TAC is consistent with much of the discussion at the 2015 meeting of the Northern Shrimp Advisory Committee.

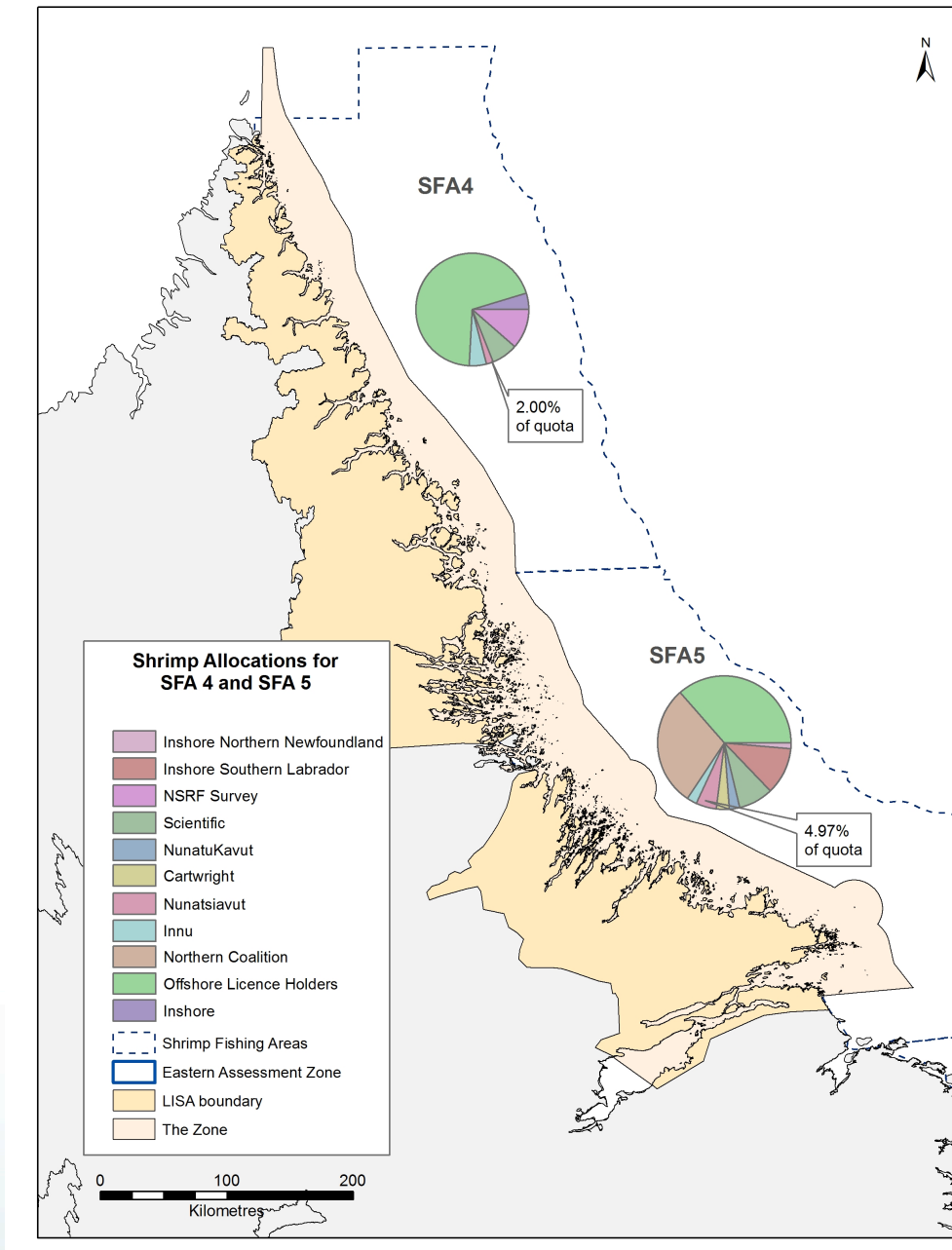
**2.0 Recommendation 2:**

*Allocate 75% of the increase (1,748MT) to the Nunatsiavut Government*

- The Nunatsiavut Government currently has access to 5.0% of the Northern Shrimp TAC in SFA 5 (See Figure 1). Allocating 1,748MT to the Nunatsiavut Government, as per this recommendation, would bring their participation in SFA 5 to 2,791MT, which is 12% of the TAC.

- The Zone established by the Labrador Inuit Land Claims Agreement makes up 33.7% of SFA 5. The Zone is both within and immediately adjacent to SFA 5.

**Figure 1: Northern Shrimp Allocations in SFA's 4 and 5.**





- Annex F of the 2007 Northern Shrimp Management Plan references a process undertaken in 1996/97 to develop sharing principles. The principles include conservation, the continued viability of existing enterprises, a threshold of 37,600MT, *priority access for adjacent users, increased Aboriginal participation in established commercial fisheries*, priority access to inshore fleets (and midshore and offshore fleets in more northerly areas), and increased employment in harvesting and processing (emphasis added).
- In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the IFMP, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability. These are discussed briefly below.

## 2.1 Allocation Principles

### *Conservation*

- The stock is assessed to be within the healthy zone. The Precautionary Approach Framework, if applied, will safeguard against conservation concerns.

### *Aboriginal and Treaty Rights*

- The Auditor General has begun a review which will include an assessment of the Agreement as it has been applied to the Northern Shrimp fishery. There is an opportunity now in SFA 5 to uphold the Honour of the Crown, and to transparently apply the letter and spirit of the Agreement.
- The Agreement (Part 13.12.7) specifically guarantees 11% of new licences to the Nunatsiavut Government. It is our opinion, given the Crown's responsibilities, that the language used should properly be interpreted to include all new allocations.
- The 11% specified by Part 13.12.7 of the Agreement is not exhaustive, but is intended to function as an off-the-top minimum guarantee. In the event of a TAC increase, secondary allocation principles and criteria, discussed below, are to be applied to the remaining 89%, and the Nunatsiavut Government would be considered in their application.

### *Procedural and Substantive Equity*

- In 2012 the Board argued that the 1000MT increase in SFA 4 in 2008 was inconsistent with the principal of procedural and substantive equity. The 2013

allocation to the Northern Shrimp Research Foundation is also inconsistent with the principals of procedural and substantive equity, as the Board never had an opportunity to analyze a detailed proposal (procedural), and the costs of the regional survey are now born solely by SFA 4 (substantive).

## **2.2 Allocation Criteria:**

### *Adjacency*

- In some cases there is legitimate uncertainty as to which interests are adjacent to which resources, but in this case there can be no uncertainty. The Nunatsiavut Government is *the* adjacent user. The Labrador Inuit Settlement Area accounts for 33.7% of SFA 5, and the rest of SFA 5 is immediately adjacent (See Figure 1).

### *Historic Dependence*

- The Inuit of Nunatsiavut have relied on marine resources for thousands of years – this reliance has manifested itself in the Northern Shrimp fishery since 1997.

### *Economic Viability*

- The commercial fishing industry in Nunatsiavut is precarious. It is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot). Snow Crab is near the northern extent of its range and resource fluctuations are pronounced; competitive disadvantages severely limit participation in the Turbot fishery, although the 2013 allocation has increased access. Northern Shrimp are the keystone of the Nunatsiavut fishery.

## **3.0 Recommendation 3:**

*Reconvene the Precautionary Approach Working Group to table revisions for the Northern Shrimp Advisory Committee in 2016*

- The Board has been engaged as a member of a Northern Shrimp Advisory Committee working group drafting revisions to the Precautionary Approach Framework since 2010. After four years of work the group tabled revisions in 2014.
- The revisions tabled in 2014: 1) adjust the maximum exploitation rate to 20%; 2) establish the biomass signal as a two-year average of the spawning stock biomass; 3) establish a mechanism to achieve the target exploitation rate in SFA 4, and 4) provide a

means of automatically adjusting the TAC in relation to the biomass signal in years when the Northern Shrimp Advisory Committee is not scheduled to meet.

- The Board endorsed the proposed revisions both as a member of the working group and independently in follow-up correspondence.
- There has been no discussion of the Precautionary Approach since 2014, and it was absent from the agenda at the 2015 meeting of the Northern Shrimp Advisory Committee.
- There is some indication of ecosystemic change, and there have been recent declines in both the biomass and the TAC in some areas. Meanwhile, the Northern Shrimp Advisory Committee is moving to a biennial meeting schedule. In this context it is more important than ever to develop a Precautionary Approach Framework, including Harvest Control Rules, that links ecological indicators with management actions.

#### **4.0 Discussion and Conclusion**

- Whereas the SSB in SFA 5 is assessed to be within the Healthy Zone established by the IFMP; and whereas the SSB and the FB increased from 2013 to 2014 despite an exploitation rate of 27.6%; and being conscious of the fact that a TAC of 23,300MT will give a projected exploitation rate of 20.1%, the Board recommends that the 2013 TAC of 23,300MT be reinstated.
- Whereas there was no consultation process in developing LIFO; and whereas the 1997 access criteria establish thresholds as the mechanism to protect existing enterprises; and whereas Land Claims obligations specify an 11% allocation to the Nunatsiavut Government; and understanding that an 11% allocation is a minimum guarantee and not exhaustive; and considering the Nunatsiavut Government to be the adjacent user; and considering also that the Zone established by the Agreement amounts to 33.7% of SFA 5; and considering allocation criteria and principles developed in 2003; and understanding that there are no other policies in place to govern allocation decisions other than policies with the general aim of increasing Aboriginal access to economic opportunities, the Board recommends that 75% of the 1,748MT increase be allocated to the Nunatsiavut Government.
- Whereas the Precautionary Approach working group of the NSAC was tasked with revising the Precautionary Approach Framework in 2010; and whereas revisions were tabled in 2014; and whereas there is currently no mechanism to guide decision-making in non-meeting years, the Board recommends that the Precautionary Approach working group be re-convened and revisions tabled in 2016.



**Torngat Joint Fisheries Board**  
Northern Shrimp Management in Nunatsiavut  
(February 23, 2012)

**Re: Torngat Joint Fisheries Board Submission to the External Northern Shrimp Review**

Thank you for inviting us to participate in this important and timely review. Our submission is grounded in our mandate, which is specified in Part 13.11 of the Labrador Inuit Land Claims Agreement. For added clarity, see specifically Parts 13.11.1 (a) and (b), 13.11.2 (b) and (h), and 13.11.4 (e). The Torngat Joint Fisheries Board (hereafter 'TJFB' or 'the Board') is established as the primary body advising the responsible minister(s) on the conservation of species and habitat and the management of commercial fisheries in the Labrador Inuit Settlement Area, with advisory powers in waters adjacent. In 2010 the Board recommended that the Minister of Fisheries and Ocean consult with the TJFB respecting the relevance of LIFO in Nunatsiavut, and in 2011 the Board recommended specifically that the Nunatsiavut Government be exempted from any eventual reductions/removals in Shrimp Fishing Areas (SFA) 4 and 5. We appreciate the opportunity to elaborate on these recommendations.

In 2010 and 2011 scientific and fishery performance indicators warranted reductions to the Total Allowable Catch (TAC) in SFA 6. The 28% reduction in 2010, and the further reduction of 15% in 2011 were necessary, and we all hope they will be sufficient. Taking that as a starting point, the TJFB has considered two questions: 1) were 2010 and 2011 removals carried out according to departmental policies and principles, and; 2) are departmental policies and principles appropriate in managing for reductions. The first is a lesser exercise, and simply requires a matter-of-fact assessment of how things are – the second is more difficult and more important, and requires an assessment of how things ought to be.

**Part I: 2010 and 2011 Removals**

In 2010 the TAC in SFA 6 was reduced by 28% and two special allocation holders who entered the fishery in 2003 – Northern Peninsula and Lower North Shore Inshore Affected Fishers – were removed. The inshore affected fishers were the most recent entrants (last in) and as such they were the first out. In 1997 sharing criteria were established to allow inshore access while ensuring the viability of the offshore industry in the event of quota decreases. We will leave it to the removed to argue their positions and the Department's application of the Last In – First Out (LIFO) policy. However, there is a note of relevance to the TJFB – namely, that no criteria other than LIFO were entertained (or if they were entertained, there is no public record of them having been).

In 2011 the TAC in SFA 6 was reduced by 15% and two special allocation holders who entered the fishery in 2000 – Innu and the Fogo Island Co-operative – were removed. Again, we will leave it to the removed to argue the particulars of their respective cases. However, the removal of the Innu has special relevance to the Board, and to future northern shrimp management in areas 4 and 5. The Board has not been privy to ongoing land claim negotiations between the Innu Nation, the Government of Newfoundland and Labrador, and the Government of Canada. We are not in a position to comment on the appropriateness of their removal, nor do we have a mandate to do so, but we did note that there was no rationalization beyond LIFO. The Innu are an Aboriginal group and the Crown does have a fiduciary responsibility to them stemming from the Constitution Act of 1982. Of the four removals, the Innu are in a special circumstance in that they are Aboriginal and they are in the process of finalizing a comprehensive land claims agreement – these criteria and others should have been weighted against LIFO (more on this below in Part II). In 1997 LIFO was established as the primary allocation tool, subject only to land claims obligations. Since 1997 the social-political context has changed, and new Provincial and National priorities have emerged, including initiatives intended to increase Aboriginal access to the resource. It is not good management practice to adhere strictly to a fourteen year old policy if it conflicts with more recent priorities and obligations. This brings us to consider how reductions ought to be shared amongst users.

## Part II: Equitable Sharing with Less

Annex F of the 2007 Northern Shrimp Management Plan references a process undertaken in 1996/97 to develop sharing principles. The principles include conservation, the continued viability of existing enterprises, a threshold of 37,600 MT, priority access for adjacent users, increased Aboriginal participation in established commercial fisheries, priority access to inshore fleets (and midshore and offshore fleets in more northerly areas), and increased employment in harvesting and processing. Some of these principles, or goals, are contradictory – you can not increase Aboriginal participation, and remove relatively recent Aboriginal entrants when the fishery contracts. You can not strictly enforce the threshold and increase processing employment – implementing the threshold will effectively eliminate the processing sector.

In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the plan, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability.





Although these criteria were intended to allocate new access, there is no reason they should be any less relevant as the resource declines – they were intended to foster equitable sharing, and equitable sharing is independent of the amount available to be shared. This review provides an opportunity for all stakeholders to revisit the question of equitable access – fourteen years have passed, the social-political context has changed fundamentally, and new priorities have emerged. Chief amongst these new priorities is increased Aboriginal participation. Increased Aboriginal participation (which can be achieved independently of resource trends) does not preclude partnerships with existing licence-holders. In fact, partnership is the trend across sectors within and adjacent to Aboriginal land claims areas.

This aside, the 2007 Northern Shrimp Management Plan does identify LIFO as the primary policy guiding allocations in the event of TAC declines, subject only to land claims obligations. The Labrador Inuit Land Claims Agreement was ratified in 2005 and negotiations were coincident with the rapid growth of the northern shrimp fishery. Northern shrimp is the only species specifically referenced in the final agreement (Part 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 through some other means to 11 percent of the quantity available to be Harvested under those licences.”

It is reasonable to conclude that Labrador Inuit understood the LILCA to be an avenue towards an increased share of northern shrimp resources adjacent to the Zone. Part 13.12.7 is complemented by 13.12.9, which protects the Nunatsiavut Government's negotiated share in the event of changes to the allocation system. The interpretation of 13.12.7 has been a point of contention between the Nunatsiavut Government and the Department of Fisheries and Oceans. There have been many new allocations and entrants since 1996, and a quota increase in SFA 4 in 2008 was shared per traditional sharing arrangements, but there have been no new licences. The TJFB has made the case elsewhere that allocations to the Labrador Inuit settlement area since 1996 have not honoured the allocation principles and criteria listed above, and allocations since 2005 have not honoured the Labrador Inuit Land Claims Agreement. Removing the Nunatsiavut Government per LIFO when it comes their turn would further marginalize their participation. The LIFO policy is subject only to land claims obligations, which in this case are unclear and contested. Removing the Nunatsiavut Government before the issue has been resolved may escalate the conflict, potentially to the point of a legal challenge. Applying LIFO to Aboriginal participants will potentially undermine National initiatives





and the decision to do so should not be taken lightly, nor independently of the broader context.

**Recommendation:**

The Board recommends that the allocation criteria specified and prioritized in Annex F of the 2007 Northern Shrimp Management Plan be applied transparently as the resource and the TAC increases *and* decreases. Aboriginal and Treaty Rights are second only to Conservation, and constitutional obligations must not be superseded by management policies.