



The NunatuKavut Case for Fairness and Meaningful Participation in the Northern Shrimp Fishery.



A Submission to the Minister's Advisory Panel on LIFO: June 3, 2016

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Executive Summary

This submission by the NunatuKavut Community Council (NCC) on the Last in First Out (LIFO) Policy and for fairness and meaningful participation in the Northern Shrimp Fishery contains the essential elements of submissions to Minister Tootoo in early 2016. This version is revised and brings greater focus on the Minister's Advisory Panel on LIFO in the Northern Shrimp Fishery. The NCC has chosen to use the word aboriginal in this document as it is consistent with DFO's usage.

A brief history of the development of the Northern shrimp fishery is provided to put the NunatuKavut Community Council case in context. It illustrates that existing allocation policy has failed the NCC, but steps can be taken to diminish inequities and to allow for meaningful and equitable participation in the adjacent northern shrimp fishery. NCC provides concrete recommendations on LIFO. The recommendations are based on Department of Fisheries and Oceans (DFO) own policy principles and grounded in sound management measures. They provide for NCC's increased and stable presence in the fishery

The allocation principles/criterion in descending order of rank are as follows:

- **Adjacency**
- **Recognition of Aboriginal and Treaty rights**
- **Historical Attachment**
- **Conservation**
- **Equity**
- **Economic Viability**

The paper also reiterates the NunatuKavut Community Council's position that it must achieve participation to a level of 2,600mt, which is:

- **effectively a license equivalent,**
- **on par with other Labrador aboriginal groups,**
- **comprised of allocations predominately in SFAs 4, 5 & 6 in its home waters off the Labrador Coast, and,**
- **secured against LIFO**

Introduction

The NunatuKavut Community Council represents 6,000 southern Inuit of NunatuKavut (See Figure 1), a people who have occupied and utilized resources off the Labrador coast and interior since ancient times. The Inuit of southern Labrador are seeking Land Claims negotiations on a similar basis as the northern Labrador Inuit in Nunatsiavut, the Innu of Labrador, the Inuit of Nunavut and other aboriginal peoples on Canada's who have settled land claims agreements with the Government of Canada.

The NCC was first provided access to the northern shrimp fishery in its traditional territory in the form of a 750t temporary allocation in Shrimp Fishing Area 5 in 2003. Despite regular and large increases to the Total Allowable Catches in SFAs adjacent to NunatuKavut thereafter no greater participation was accorded, and in 2014 the NCC experienced a 28% reduction of its allocation to 533mts. In 2014 resource prospects were discouraging, showing an overall declining trend, with precipitous declines in SFAs 6 & 7 since 2010, and contraction in SFA 5. By contrast the 2015 Zonal Assessment Process indicated SFA 5 biomass levels on par with those seen prior to the reductions in 2014, suggesting an anomalous survey led to last year's requirement for a TAC reduction. The SFA 5 TAC was subsequently restored to its prior level. Nonetheless, the reduction in 2014 illustrated NCC's precarious position in the fishery as a result of the application of the LIFO policy.

The NCC has been availing of fishing and fishery development opportunities provided to it through the Department of Fisheries and Oceans' Aboriginal Fishery Strategy, and allocations immediately adjacent its coast that, in reality, pale in comparison to other aboriginal and non-aboriginal participants with no ties or claim to pre-existence in the region. With the Department's support the NCC completed a Comprehensive Fishery Strategy in 2014 that outlines options for establishing a modest foothold in the fishery. A significant pillar of that strategy is a significant and sustained NCC shrimp allocation, as northern shrimp is the last large scale resource and allocations generate revenues that enable business prospects and investment both inside and outside the fishery. As the umbrella organization whose prime motive is to represent and advance the interests of the aboriginal people in southern Labrador, the quota is critical on the one hand for sustaining the region's fishery agenda, while on the other it supports NCC's pursuit of opportunities for once vibrant fishing communities that must without doubt diversify their economies.



Figure 1 The NunatuKavut Lands Claim Area (Source: NCC)

The NCC has temporary access to the northern shrimp resource situated in its traditional area of occupancy and resource use. It is difficult to conceive that its presence is now threatened predominantly by a LIFO policy that is subordinating pre-existing access and allocation principles, as well as specific policy measures and jurisprudence that obligates increased aboriginal participation in the fishery. In comparison, Nunavik and Nunavut enjoy permanent licenses (providing incremental shares with each quota increase), special allocations to shrimp resources off Labrador in SFA 5 (through the Northern Coalition) where by any measure it is difficult to make an adjacency argument, and added benefits provided by settled land claims, and in recent years 100% of quota increases for turbot and shrimp in NAFO 0A and 0B.

It is the NunatuKavut Community Council position that its presence in the northern shrimp fishery must be increased to one of equivalency and meaningfulness. If the allocation precept of adjacency, and policies established to increase aboriginal participation in the Canadian fishery hold weight in resource access (as well as historical dependence/attachment, economic need) they must be recognized expressly and implemented in respect of NunatuKavut’s continued presence in the northern shrimp fishery.

This document presents the rationale to support this position, and management options for consideration by the MAP as it deliberates on the future of LIFO.

The Development of the Canadian Northern Shrimp Fishery

A lengthy description of the origin, growth and present location of the northern shrimp fisheries in Atlantic Canada is not required for this exercise as integrated management plans provide general overviews (i.e. the Gulf and Scotian Shelf shrimp fisheries, which are an order of magnitude smaller than the fishery which occurs in DFO Newfoundland Region, are not considered herein). It is necessary in respect of the Northern Shrimp Fishery to emphasize:

1. The fishery originated off the coast of Labrador in Hopedale and Cartwright Channels immediately adjacent to NunatuKavut (see Figure 2),
2. Most of the biomass and best catches/catch rate over its history, and recent growth has occurred in NAFO Divisions 2GH and 2J: SFA 4 (Saglek Bank and slope edge) the Hopedale & Cartwright Channel in SFA 5 and Hawke Channel and St. Anthony basin in SFA 6 (the latter which spans the 2J/3K boundary line). See Figure 3
3. The expansion southward through the 1990s to commercially unproductive marginal areas of SFA 6 & 7 is now in precipitous contraction, and
4. The fishing areas north of 60 (i.e. SFA’s 0, 1, 2 & 3)

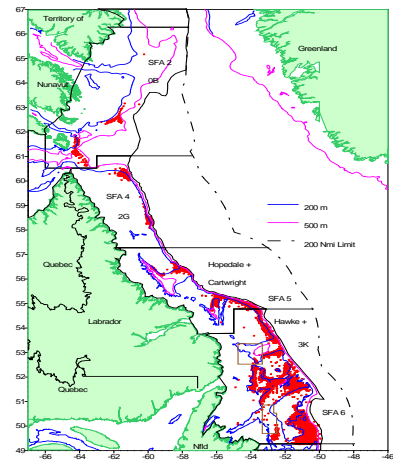


Figure 2 Shrimp fishing grounds on the Labrador Coast (Source: DFO)

have been insignificant to the fishery; nominal quotas only opportunistically fished, plus industry claims of economic unattractiveness and variable catch rates.

5. The resource is reverting to its original distribution and areas of high productivity (i.e. to the main areas of production off the Labrador Coast where the resource persists despite climatic, environmental or anthropomorphic perturbations).

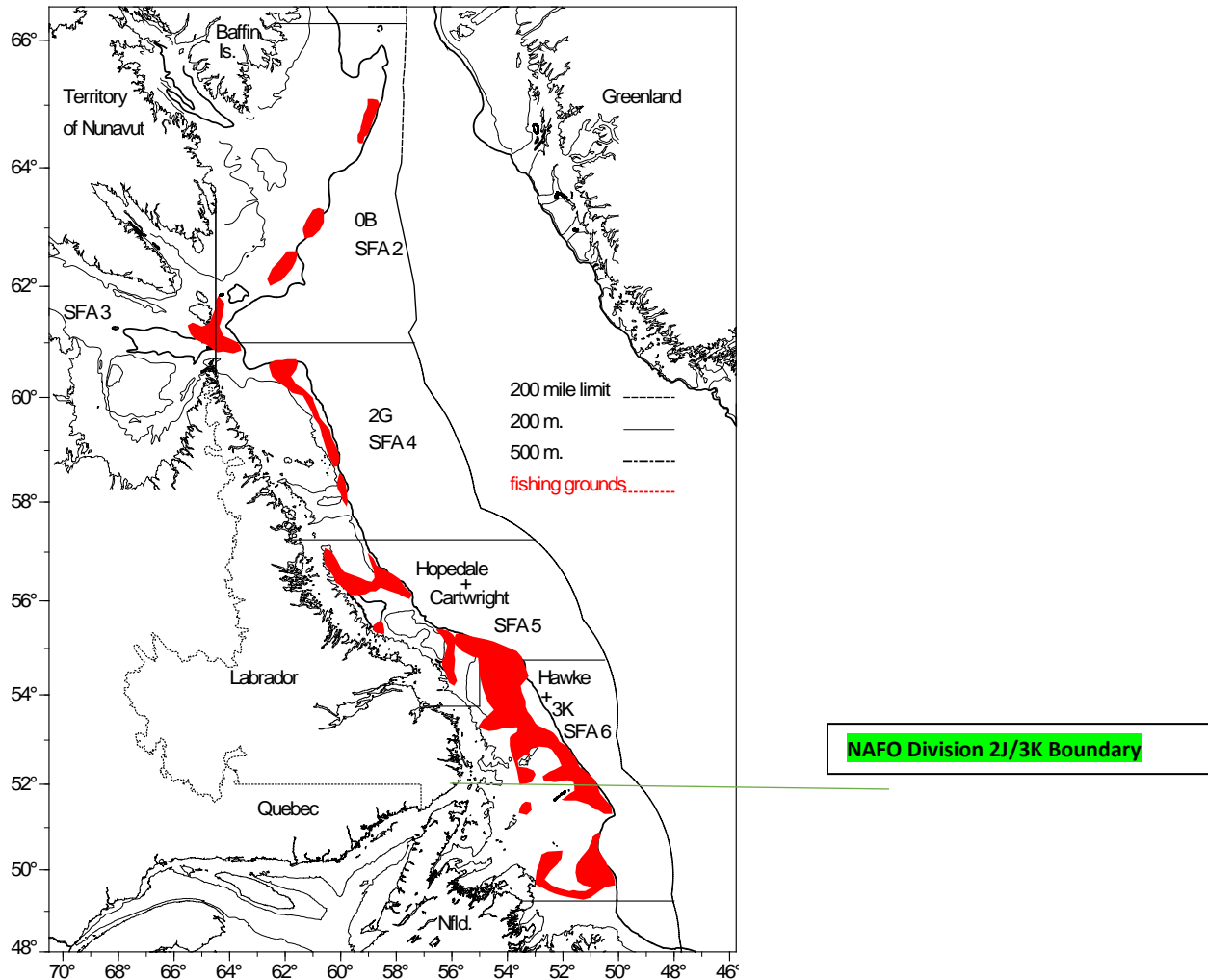


Figure 3 Northern Shrimp Fishing Grounds with NAFO 2J/3K Boundary line indicated. Source DFO

Hence, similar to the history of northern cod, it is the highly productive areas of the Labrador coast that is the source and sustenance of the largest biomass and fisheries. Figure 4. Illustrates this point clearly.

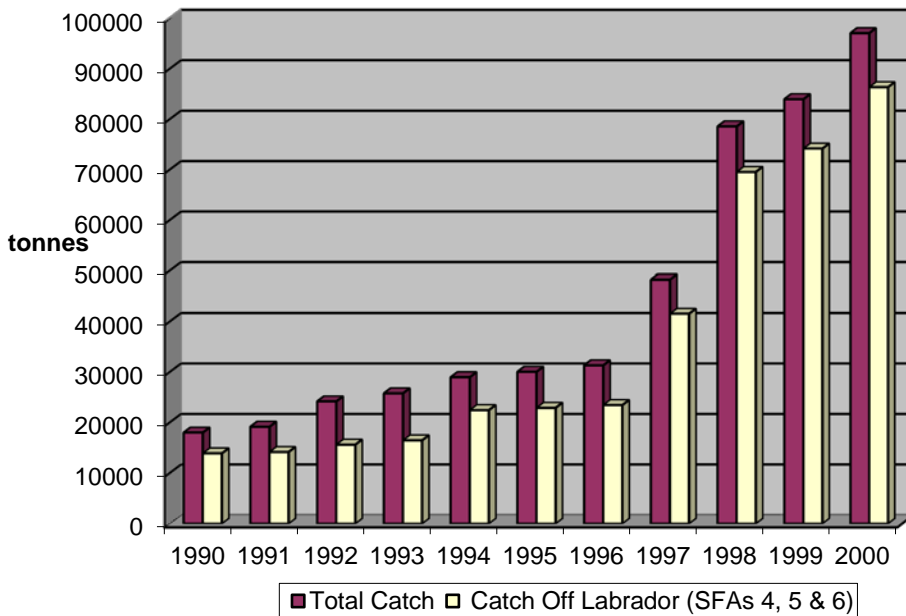


Figure 4 Catch in the Northern Shrimp Fishery (Source: DFO Statistics)

Note: Catch off Labrador refers to NAFO Subarea 2 (i.e. NAFO 2GHJ)

The northern shrimp fishery developed in response to factors that came into play during the mid-1970s:

1. Growing awareness of the pre-existing and expanding fishery in West Greenland waters,
2. Institutional programs aimed at identification of potentially exploitable deepwater resources,
3. Exploratory and fisheries development surveys off Labrador that identified potential commercial concentrations, and,
4. Federal government programs aimed at diversifying overcapacity in the offshore sector that was in recurrent crisis, *vis a vis* depleted ground fish stocks in southern fishing areas (See Parsons, 1993).

Initially, there was reluctance to fish in northern areas, and without government sponsored programs such as the Atlantic Ground fish Vessel Dislocation Program and Fisheries Rehabilitation measures introduced during the 1970s (Parsons, 1993), which included the chartering of foreign freezer trawlers, the northern shrimp fishery may not have developed until much later.

There are claims that the fishery was developed through offshore sector investment over the years. These claims must be placed in context; it is clear that significant credit must be accorded to the persistence of personnel within the fisheries development branch of the Department of Fisheries and Oceans, and directed government programs and sponsored exploratory fisheries. The ensuing allocations of shrimp were collateral for the investment that followed. It was and remains a heavily public supported fishery (*vis a vis* Northern Shrimp Science Foundation Quotas that are provided at preferable rates to industry, and modest resource rents relative to the value of the fishery).

The fishery expanded north and south through the 1980s, though northern quotas remain of nominal value due to the economics of harvesting north of 60 degrees where vessel supports are absent, variable catch rates discourage fishing, and cost per fishing day/trip escalates (Note: recent price increases, favourable currency exchange rates, and fuel cost reductions should encourage fleets expending greater effort in these quota areas, else the unused quotas should be reallocated to affected groups).

The Total Allowable Catch in the fishery increased from 8,200t in 1978 to over 176,000t in 2009; a precipitous decline began in southern areas thereafter. The SFA 6 TAC peaked at over 85,000mt in 2008 and has since declined by almost 50%.

The dedicated fishery for northern shrimp that commenced in NAFO Division 3L (Shrimp Fishing Area 7) in 2000, rapidly expanded to 30,000t in 2008. The resource was essentially pulse fished and has since declined as abruptly as it expanded just over a decade ago. No directed fishing is permitted since 2015.

It now seems clear that northern shrimp is disappearing from marginal habitats that enjoyed growth due to favourable conditions through the 1990s and early 2000s, and areas of primary and sustained productivity are expected to receive increased effort as fleets look to maintain catch rates.

[The Origin of Labrador Aboriginal Based Participation/Offshore Shrimp Licenses in the Northern Shrimp Fishery](#)

It is unclear whether Labrador based participation (3 of the now 17 offshore licences) in the northern shrimp fishery was the result of or simply coincident with the release of the Royal Commission on Labrador, a major policy document that highlighted the deplorable state of the fishery and economic conditions in Labrador during the mid-1970s. Foreign overfishing had decimated the staple cod fishery on the Hamilton Bank. Fishery and basic municipal infrastructure was nominal, and fishery and fleet development investment by governments lagged in comparison to the rest of the Atlantic Canadian fishery. Federal and provincial fishery administrations were pre-occupied with the offshore fleet crisis in southern fishing areas to the extent that the economic and social development along the entirety of the Labrador coast were, figuratively, as far away in contemplation as the centres of government are from the fishing grounds in Northern Labrador.

The 1970s marked a watershed for the region; aboriginal groups formed associations to advance their interests and address dismal social and economic conditions, and the Royal Commission on Labrador (1974) examined the depressed conditions faced by its inhabitants. Coastal Labrador in the 1970s was not measurably different than it was pre-confederation under colonial rule. As alluded, in 1978 Labrador interests were provided three of the original 11 licences (27%), and despite the phenomenal resource growth that ensued immediately off their coast in the wake of the groundfish collapse, no additional licences were issued to other adjacent aboriginal groups or communities, and this percentage share has remained essentially unchanged. This is not only contrary to allocation theory and practice, but also equitable allocation of surplus.

One license was allocated for aboriginal peoples residing from Rigolet to Nain, and two were provided for the benefit of residents to the south. With the absence of an organized southern Inuit presence in the region south of Rigolet at the time of the license issuance, the two licenses became the principal assets of the Labrador Fishermen's Union Shrimp Company Limited (LFUSCL), and sustains in large part the corporation to the present day. There may, in some corners, be a view that the LFUSCL in some proportion represents southern Inuit and possesses aboriginal quota but this must be summarily dismissed. The LFUSCL is no more a southern Labrador Inuit entity and its two licences assets of the NCC then, technically the Stimpson surf clam harvest in NAFO Divisions 3LNO is a Newfoundland fishery.

There was some debate as to whether the Labrador Innu (Innu Nation) should share as a beneficiary in the "northern license" given their residence in the communities of Davis Inlet (now Natuashish) and Sheshatshiu. The license became the property of the Torngat Fisheries Cooperative Society Ltd, a recognized Nunatsiavut entity. The Innu Nation who are *de facto* terrestrial resource users were eventually provided temporary allocations in the fishery, an initial 1000mts in 2000 that increased to a maximum of 2760mts. The Innu have since have lost all of their SFA 6 allocations under the LIFO reduction formula, and now hold 1,260mts (i.e. 750mt in SFA 4, and 510mt in SFA 5).

The NunatuKavut Community Council representing the largest region, having the greatest number of aboriginal members, being most adjacent to the resource, and having the most significant historical dependence on commercial fisheries through antiquity also requested access to the fishery. Access was finally provided in 2003, with provision of a 750mt temporary allocation, which remained at that level until declining to 533mt in the announcement of 2014 quota reductions. The graphical representation of the foregoing history on the Northern Shrimp Fishery and TAC increases is presented in Figure 5 below, and illustrates:

1. How NCC participation has not evolved over time, and is so insignificant (0.6% at the height of the fishery in 2008) that it effectively doesn't register.
2. How generally accepted (and institutionally espoused) allocation principles have failed; how an aboriginal group whose communities are most adjacent, attached and

dependent on the resource not be provided participation in the fishery at least to the same extent as the other local aboriginal groups and non-adjacent full-licence holders?

- 3. How the retrograde LIFO policy will abrogate aboriginal participation policies of government arising from jurisprudence in the early 1990s, effectively removing aboriginal interests from a fishery immediately adjacent to their home territory.**

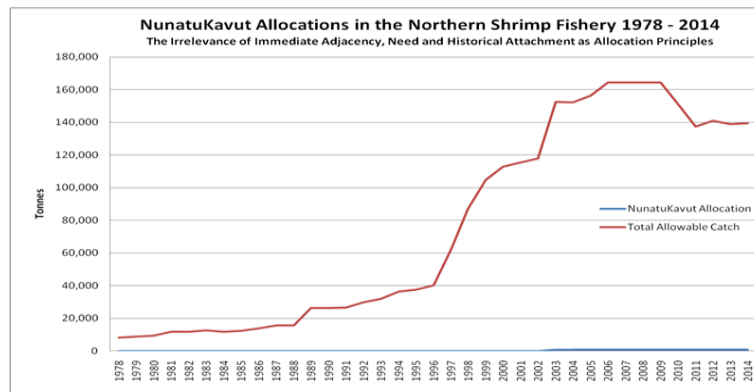


Figure 5 Northern Shrimp TAC and NunatuKavut Allocations over the History of the Northern Shrimp Fishery

Fishery Expansion during the 1990s and NunatuKavut Exclusion

Soft markets during the 1980s, the addition of extra licenses, and enterprise failures and realignment resulted in little growth in the early years of the fishery, but the 1990s marked a period of substantial growth of the resource, quotas and value (See Figure 6). With the decline of ground fish and the moratorium on northern cod, interest in the burgeoning and lucrative northern shrimp fishery spread widely throughout Atlantic Canada during the late 1990s.

A DFO proposal call for sharing significant increases after 1996 yielded 160 submissions. The Government of Newfoundland had long advocated for additional (i.e. inshore) entrants from the province, and was actively engaged in efforts to prevent “non-adjacent” interests from gaining access. Inshore sector access was finally granted in 1997. Allocations were also provided to a number of special interest groups; notable among these was the Northern Coalition; comprised of existing aboriginal groups and northern operators with offshore licenses, it was provided 6120mt in SFA 5 directly adjacent to NunatuKavut. NunatuKavut was provided nothing.

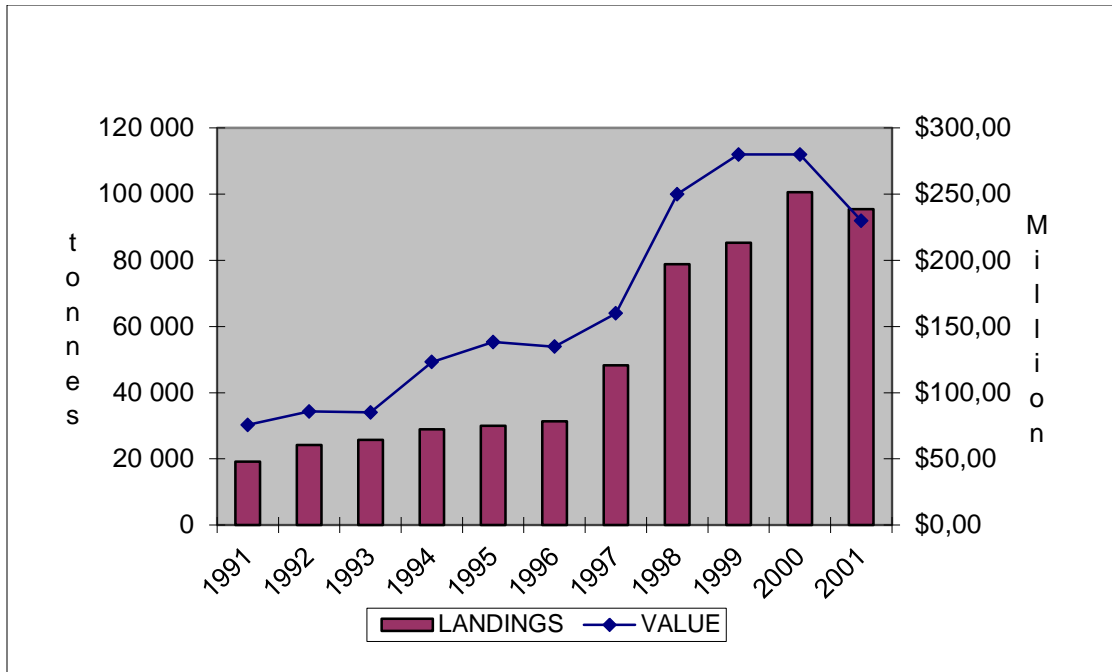


Figure 6. Shrimp Landings & Value 1991 – 2001

In the flurry of activity¹ arising from the new access and continuing growth of quotas ancillary discussions around the LIFO Policy were accorded short shrift. It was all a bitter pill for the aboriginal membership of the now NunatuKavut Community Council who are the most adjacent aboriginal group to SFAs 5 & 6. NCC member communities which primarily occupy NAFO Division 2J and were decimated and victimized by the years of overfishing of northern cod. They were provided no access, no mechanism by which to appeal or intervene against inequitable allocation policy save for civil disobedience. As a result of favourable environmental conditions that included colder water temperatures, strong year classes, and reduced predation, shrimp populations literally exploded in the late 1990s through to 2009. The TAC effectively quadrupled from 26,400t in 1990 to 110,000t in 2000, and with the most of the increases adjacent to NunatuKavut and within its Land Claims area.

Stock performance continued to improve despite annual removals and an intentionally conservative exploitation rate. Most of the growth in the stock and quota increases in this fishery from its origin and up to the present day has occurred in areas (SFAs 4, 5 & 6) immediately adjacent to the northern and southeastern Labrador coasts. Under standard application of allocation principles (and concomitant Supreme Court decisions on aboriginal fishery challenges) it would follow that immediately adjacent and aboriginal rights bearing communities would be the beneficiaries of allocations, with provision for equitable distribution

¹ There were numerous anecdotal accounts/complaints in 1997 -1999 of gear being trucked around Newfoundland (temporarily placed on vessels and then removed for the next vessel) to ensure maximum temporary permits were issued to Newfoundland based inshore harvesters before the gear-up deadline was imposed.

of surplus to other user groups in descending order of adjacency, attachment and economic need; the last being by far the most ambiguous criterion, as it requires a value judgment. Allocation and access practices in the northern shrimp fishery, however, have not followed standard operational and policy procedures. Moreover, “threshold levels”, and “Last in First Out” policy introduced ostensibly to protect those who had “invested” in developing the fishery are post-hoc policies never invoked in the northern cod or turbot fisheries that are inarguably the domain of the inshore sector.

Recent allocation decisions for resources off Nunavut provide a stark contrast. Nunavut has benefited from strict and proper application of allocation principles along its coastline, while still benefitting from loose interpretation of allocation principles for northern shrimp off the Labrador Coast. Nunavut needs access to its resources, as it is an *autonomous* region by virtue of its land claim agreement. It has few economic development opportunities, and rightly received exclusive allocation of the northern turbot resource adjacent its shores in NAFO 0A, and an increasingly larger share of the OB turbot resource in 2009 and SFA 1 shrimp in 2004.

If the above model were applied to NunatuKavut, it would be expected to receive at minimum 50% of any quota increases adjacent to its territory to support economic development so desperately needed in its communities, and would be enjoying a proportionate share with every successive quota increase (considering that most of the increases have been in SFAs 4, 5 & 6). This has not been the case.

NunatuKavut’s share amounted to a mere 0.6% of the TAC at the height of the fishery in 2008. Table 1 below illustrates the inequity that exists in relation to other aboriginal participants in the fishery as of January 2014, just prior to the reductions announced shortly thereafter in SFAs 5 & 6. *It is the NunatuKavut Community Council’s position that its participation level should be at 2,600mt threshold amount, which is:*

- effectively a license equivalent,
- on par with other Labrador aboriginal groups,
- comprised of allocations predominately in SFAs 4, 5 & 6 in its home waters off the Labrador Coast, and,
- secured against LIFO.

Additionally, it is the NunatuKavut Community Council position that aboriginal threshold quota levels must be established in the shrimp fishery (in fact, all fisheries) in fishing areas immediately adjacent to the land use areas (i.e. coastal areas occupied) of the respective groups. Immediate adjacency, aboriginal rights and participation, livelihood obtained from the sea, and attachment to the land since antiquity cannot be subordinated by other allocation principles.

Table 1 Aboriginal Group Participation in the Northern Shrimp Fishery as of January 2014

SFA	2014 Aboriginal Group Allocations & Special Allocations						
	Nunavut	Nunavik	Nunatsiavut	Pikalujak	Torngat Coop	Innu	NunatuKavut
0	44	44	0	15	0	0	0
1	4722	1449	0	333	667	0	0
2	3768	618	0	206	412	0	0
3*	3250	3250	0	0	0	0	0
4**	1517	1517	300	506	1011	750	0
5	1770	1770	2134	299	1471	510	750
6	1289	1289	0	430	859	807	0
7	63	63	0	21	42	0	0
Total	16422	9999	2434	1809	4462	2067	750

* *P. borealis* (1500t) and *P. montaguis* (5000t) in Hudson Strait divided equally between Nunavik/Nunavut

** NSRF, *P. montaguis* quotas divided equally among licence holders

***Half Labrador Inuit Licence

As discussed earlier, Labrador Fishermen’s Union Shrimp Company (LFUSCL) licenses are not included in the table² because they are not aboriginal allocations, while Pikalujak Fisheries is included because the Labrador Inuit Development Corporation (LIDC) is a bona fide Nunatsiavut corporate entity (it has a 50% stake in the license). The LFUSCL is a member of the Northern Coalition but DFO press releases/documentation describing this special allocation group refer to it as a coalition of northern fishing interests and aboriginal groups thus avoiding the policy implications. The LFUSCL is a corporation and its strategies and investments are driven by its own strategic imperatives, and do not extend to, or fall under the influence of the NunatuKavut Community Council, nor is there any funding of NCC initiatives through these licenses, or through allocations held by affected fishers in the region.

Primacy in Resource Allocation Policy: Pre-existing Principles and LIFO

The Fishery Management Plan is the primary tool for outlining specific measures and rules for a particular fishery. The perennial challenge to modern fishery management and decision makers is who gets access and to what level of harvest? The acrimonious debate around poorly defined allocation criteria (qualitative and quantitative aspects) around resource allocation beleaguers the consultation process and decision making outcomes. It is common practice to state and loosely define the criteria that guide resource access and allocation decision-making, but never to weight these principles comparatively and in total. Hence decisions become subjective and calls of meddling and influence precipitate, with lasting discontent and distrust of the process. Pre-existing principles and policies are common knowledge to most fishery participants, and follow basic economic theory and time tested traditional practices. The difficulty with these basic principles, in the absence of well-defined terms and set bounds, is that parties have advanced and are successful with cases that do not

² Nor are the Cartwright fishers or the inshore affected cod/crab fisher allocations for the same reason. These are for all purposes individual allocations and not aboriginal communal allocations/licenses as enjoyed by Nunatsiavut, Innu Nation, Nunavut and Nunavik.

stand the reasonability test. Once again, access and allocation in the Greenland Halibut fishery in NAFO 0A & 0B is offered to illustrate.

Presented through a Nunavut interest lens, a strong access and allocation case would be presented on the following grounds:

1. *Adjacency...* Nunavut is inarguably most adjacent to NAFO 0A/0B so it would have primacy on the grounds that no party that can substantiate being closer to the resource opportunity,
2. *Increased Aboriginal participation in the fishery....*vis Sparrow, Marshall, other jurisprudence, and ensuing policy instruments such as the Aboriginal Fishery Strategy and Land Claim Agreements,
3. *Historical Attachment....* Nunavut fishers have relied exclusively on marine resources in the immediate geographic area for eons,
4. *Conservation.....*The community has subsisted for generations on local resources; conservation is paramount, and a land ethic is intrinsic to the culture,
5. *Economic need/viability....* Nunavut is a new territory and there are few other economic development opportunities on which to create work and community well-being.

This would appear an iron-clad position to support significant allocations to Nunavut (*and, justifiably, it was, as Nunavut has received virtually 100% of all resource access and allocation in this area since 2000*³). But, a plausible (yet admittedly weaker?) countervail case can be made by an inshore or offshore turbot enterprise situated thousands of mile to the south. In brief,

- *Adjacency* - the resource (species) spans the entirety of Atlantic Canada (a Canadian resource) therefore the adjacency test is met.
- *Historical attachment* – One of the first license holders, longest attachment to the fishery.
- *Economic Need/viability* - the business has relied on the species for generations, to remain viable, therefore economic need test is met.
- *Aboriginal Canadian versus Canadian* - taxes, equals under the law, fair play, etc.
- *Conservation* – contribute to science directly and indirectly through industry programs, taxes and quotas for science (e.g. NSRF), and investment in conservation oriented gear, by-catch reduction, observers, etc.

Adjacency is the strongest of the resource allocation criterion. It is about place, geography and proximity. It is measureable, defensible and quantifiable. It is one of the pillars on which boundaries, resource chapters and impact benefits agreements of land claim agreements are settled. It is about an established presence and a

³ So the question has to be asked why the same circumstances in respect of NunatuKavut and Labrador coast resources did not garner an equivalent response?

community/group being on, immediately abutting, traversing, etc. a renewable or non-renewable resource in one's undisputed place of occupancy and traditional use. The NCC is not aware of any land claim that provides resource access to areas or places outside an aboriginal groups known and verified place of occupancy and traditional use. None of the settled land claims in Canada provides access to resources (fish/minerals/hydro) in traditionally unoccupied and non-adjacent areas. According to the federal government it is simply an indefensible position. *It is abundantly clear the federal government vigorously adheres to the policy of providing/constraining opportunities for aboriginals to those areas where the group can demonstrate history, attachment and land use (i.e. adjacent resources only).* Yet what it demands of aboriginal communities, it ignores in the practice of fisheries management. This diminishes respect for Department policies and rendered allocation decisions.

The NunatuKavut Community Council is struck by the irony of how the Department of Fisheries and Oceans fails on the one hand to rigidly apply adjacency in the allocation of resources off NunatuKavut, but on the other compels the NCC to adhere to adjacency in subscribing to the Allocation and Transfer Program of the Aboriginal Fisheries Strategy.

Developing a scoring or weighting algorithm or matrix for adjacency is not a difficult exercise. It is simply a measure of who is closest and lowering rank/score with increasing distance from the point of interest. It can be applied/determined on a NAFO Division, SFA, resource distribution or geographic basis. Adjacency must figure heavy in times of surplus and times of scarcity. **The NCC insists that LIFO cannot remain and adjacent indigenous participants must be amongst the last to the leave.**

Aboriginal Rights must be accorded equally high priority in resource allocation, whether expressed by treaty or asserted section 35 rights . The jurisprudence on aboriginal rights cannot be ignored. Aboriginal rights, adjacency and historical attachment are typically attendant or intertwined concepts, one is rarely mentioned without reference to the others. Aboriginal populations tend to have a strong sense of place over time.

Historical Attachment requires careful consideration as a criterion, in part because there appears a disjunct understanding of historical attachment by industry and DFO vs the aboriginal community. The institutional perspective of historical attachment attributes value based on how long a party has been in a fishery (or held a quota/license), ergo NCC has only been in the northern shrimp fishery since 2003, so DFO and industry sees it as having only 13 years of history, as opposed to OCI's or Merseys Seafood's 38 years. The cultural or aboriginal perspective of historical attachment speaks to attachment to place borne of generations of traditional land/water use and occupancy (i.e. reliance on natural perturbations in marine resources over generations). Both are legitimate positions, yet the aboriginal perspective must be accorded primacy in any objective weighting/ranking.

Conservation is paramount, and espoused unanimously as an imperative in the fishery.

The NCC perceives conservation as set of moral and ethical practices established over eons and defined as a respect for land and sea and ice (land ethic). Unfortunately, the Atlantic Canadian fishery community does not have a positive track record. As an allocation criterion it could be scored by examining the number of infractions, use of conservation oriented harvesting gear, contribution to science, compliance with small fish protocols, participation in science programs and initiatives (NSRF, sentinel fisheries, post-season crab surveys). It is confounding as to how conservation could be employed as a determinant of whether one group is ranked over another in an allocation process for northern shrimp or in any fishery. Conservation is an “all or none” proposition, and, accordingly, it should be ignored for the purposes of awarding access and allocation.

The *Economic Need* (viability) criterion is the most difficult and most ambiguous of the criterion applied, as it largely driven by a subjective value judgment. That being the case by almost any reasonable measure or judgement indigenous communities have the greatest socio economic need. If such a criterion continues to be used there must be an agreement on the socio economic indicators to be used in their rank and weighting.

Providing resource access and allocation is challenging in times of plenty, but doubly so in times of scarcity. The resource manager’s role and objective is to assess often conflicting arguments; to achieve some distributional equity and economy while minimizing social tension. This resource management has resulted in the outcomes observed today in the Northern Shrimp fishery, and it is the NCC position that it has clearly resulted in distributional inequity. The invocation of the LIFO policy, which is an economic viability construct, at this time would be poor fisheries management practice. LIFO entrenches the status quo, is biased towards one particular group, and in effect subordinates fundamental resource allocation precepts and is contrary to specific policy measures and jurisprudence *vis a vis* aboriginal participation.

The Department of Fisheries and Oceans has promulgated and espoused a variety of resource allocation and licensing policies over the past four decades, with the 1976 Commercial Fisheries Licensing Policy for Eastern Canada being the initial compendium clarifying fishing sectors and homeports, the rules for licensing of fish harvesters, species licenses, vessel eligibility and restrictions, inshore-offshore splits, and a host of other measures to achieve good governance in the fishery. This has been followed by several more recent policy review initiatives including the New Access Framework (IPAC, 2002), and a *Review of the Application of Rules and Management Policies in the Northern Shrimp Fishery* (2012) conducted by the auditing firm Ernst and Young on behalf of Fisheries and Oceans Canada, excerpts from each follow.

“As a result of the IPAC review, the New Access Framework was recommended and approved by the Minister of Fisheries and Oceans in November 2002 and continues to be relevant presently (emphasis added). The Framework guides all decisions on new or additional

access to Atlantic commercial fisheries, including Northern Shrimp. The Framework consists of three principles and three traditional criteria. The three principles, in order of priority, include:

- 1. Conservation*
- 2. Recognition of Aboriginal and Treaty rights*
- 3. Equity*

The primary criterion, the conservation criterion, is to be considered first and independently of the other access criteria. Following the analysis of the access issue against the conservation criterion, the access issue will be further considered against the three traditional criteria. The order of priority of these criteria will depend on the specific characteristics of the fishery in question. The criteria include:

- 1. Adjacency*
- 2. Historical dependence*
- 3. Economic viability*

Although this Framework applies to access, it also describes LIFO within the definition of the economic viability criterion

“Economic Viability - Decisions regarding access promote, rather than compromise, the economic viability of existing participants in a particular fishery, as well as that of potential new entrants to that fishery. The economic viability criterion is based on the premise that decisions regarding access should contribute to the economic resiliency and stability of individual fishers and of the fishing industry as a whole. At the level of the fishing enterprise, economic viability focuses on factors such as capacity to fish, ability to comply with last in, first out rules and sound business planning. At a broader level, economic viability looks to factors such as relative economic return and value-added to the fishery, as well as at stability of employment in the processing sector and economic benefits to dependent coastal communities.”

This demonstrates the subjectivity around the economic viability criterion as described above, as it basically implies that for fisheries such as Northern Cod and 2+3KLMNO turbot where the inshore fleet had primacy and was struggling to survive, neither conservation of the resource nor the stability of inshore fleets mattered. The consulting firm also seems to perform *ex post facto* validation of LIFO in its review of the economic viability criterion.

and,

Prior to the issuance of this New Access Framework, the term “last in, first out” was only previously identified in the 2000 NSAC meeting minutes but had not been used in any official DFO press release or policy framework.

The primary guiding principles for the Northern Shrimp Fishery were announced in the release of the 1997-1999 Northern Shrimp Management Plan. In 1996, growing pressure from

harvesters and processors to allow additional entrants resulted in 160 requests for access from throughout Atlantic Canada. A mechanism was needed to filter through the various requests and establish order of priority. Consequently, principles (presented in no order of priority but emphasis added to key considerations) were adopted to guide allocation of quota increases:

- conservation
- no permanent increase; temporary access only
- threshold adopted for allowing new entrants (37,600t)
- **adjacent fishers have priority**
- **priority to the inshore fleets, and to Aboriginals**
- maximize employment in harvesting and processing

What is abundantly clear from the review of the various policy instruments is the abject failure to protect the interests of the preexisting traditional inshore fleets and immediately adjacent users, who had primacy in the fishery. It is also clear that all policies have been selectively applied over the years to validate unpopular decisions or to achieve prudent management. In this context, LIFO is not sacrosanct and can be overridden as circumstances warrant today.

[NunatuKavut Community Council Northern Shrimp Fishery Recommendations](#)

The message communicated in this review of the Northern Shrimp fishery and Canadian fisheries policy including LIFO as it relates to past and present circumstances in NunatuKavut is clear; virtual and continued marginalization. Fisheries and Oceans Canada touts continuing efforts to increase aboriginal in the participation in the fishery including that of the NunatuKavut Community Council and in so doing it must bring about change. There is a large gap to close in respect of equitable distribution of adjacent resources to the southern Inuit of NunatuKavut. The challenge in the current environment of resource decline and fully subscribed fisheries is how to reach this objective. In Canada, and other jurisdictions with mature governance and public institutions aboriginal peoples who have been negatively impacted discriminatory resource allocation decisions have recourse through compensatory or mitigation measures. In New Zealand, for example, the government provided the Maori ITQs and funds to purchase the community a significant stake in its domestic fisheries. In Alaska, the Inuit have been provided community development quotas. In Canada land claim negotiations are used to identify rights and title, and typically include fiscal arrangements. “Buying in” may be the only remaining alternative for Canada to assist those who have outstanding justified claims.

The NunatuKavut Community Council has few alternatives for community growth that do not include the fishery, and the importance of the SFAs 5 and 6 shrimp resource to the NunatuKavut Community Council and 2J resident fishers, compels the NCC to adhere to science and conservatism on all resources on the Labrador Shelf, and particularly in NAFO Division 2J,

which is in effect the bread basket for the entire ecosystem and species assemblages in the region.

Policy and Program Measures to Increase/Secure NunatuKavut Participation in the Northern Shrimp Fishery

The NunatuKavut Community Council proposes the following policy and program measures aimed at increasing NCC's presence in the northern shrimp fisheries.

1. Rejection of LIFO,
2. Adjacency and Aboriginal Rights are principle determinants/criteria for access and allocation

Adjacency would carry the heaviest weighting as it is touted/emphasized by essentially every group as the key allocation criterion for their continued access in the fishery. Adjacency is simply a measure of proximity to the respective SFAs and can be easily determined (e.g. the 3L inshore fleet is not as close to SFA 6 as the 3K north inshore fleet, etc. and similar such geographical/management unit variables could be quantified).

Aboriginal Rights would be equivalent in weighting to adjacency and is an "all or none" variable.

3. Establish an Aboriginal Minimum Threshold Quota Level in the Northern Shrimp Fishery

The majority of Canada's northern shrimp fishery occurs within the traditional land use areas of Canada's aboriginal populations. It is the NunatuKavut Community Council position that the immediately adjacent aboriginal groups, whether existing license holders or not, must be assured a minimum quota level in each Shrimp Fishing Area abutting their areas of occupancy until such time as a fishery is closed to all participants for conservation reasons. In respect of Northern Shrimp this minimum threshold level should be set at 2600 mts in respect of the combined fishing areas.

4. Historical attachment.

This can also be objectively measured as a blended score recognizing the institutional or cultural component that applies (as described above the formula would accommodate and quantify both components with aboriginal attachment given a heavier weighting).

Traditional occupants, migrant fleets and existing license holders would receive a score based on years of attachment.

5. Economic viability.

Needs based arguments are so subjective in nature that they would receive the lowest weighting. If used these criteria would require appraisal and valuation by socio-economic advisors/experts.

The sum total of scoring produced by the matrix would then determine each participant's rank and the order by which they have primacy in allocations and how they would be removed from the fishery.

If the above considerations are not adopted and existing or new criteria do not meet the objective of providing equity in the fishery for the southern Inuit as represented through the NunatuKavut Community Council we also recommend the following mitigation.

1. Access to Other Adjacent Resources

Where additional shrimp is not available for allocation to the NunatuKavut Community Council the Minister of Fisheries and Oceans would make other resource allocations available. For example:

- a. Turbot - In 2013 the Minister of Fisheries and Oceans extricated a 190 tonne quota of turbot from the 2+3K Management Unit for the exclusive benefit of Nunatsiavut. The NunatuKavut Community Council contends that the *quid pro quo* is for it to be provided a 250mt community quota on the same basis.
- b. Northern Cod – NunatuKavut proposes as a pre-emptive measure a special permanent allocation of at a minimum 5000t of northern cod for its use in NAFO 2J in recognition of the people's long attachment to this resource.

2. Transitional Funding

In the event of the termination of its allocation, the NunatuKavut Community Council be provided transitional funding for a 10-year period. The annual fund would be based on its current royalty charter amount.

3. Enhanced AFS/ATP

Provide enhanced funding to the Aboriginal Fishery Strategy expressly for the purpose of significantly increasing NunatuKavut presence in the fishery. The elements of an enhanced program can be negotiated using recent market indicators, enterprise transfers and quota/license sales.

In conclusion the NunatuKavut Community Council's position is one which responds to the questions laid out in the Ministerial Advisory Panel's Terms of Reference. The above position sets out a clear and reasonable allocation policy. It also addresses the most pressing and significant consideration which is aboriginal rights and how they must be applied in the context of fishery allocation policy.

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