

## SUBMISSION REGARDING ALLOCATION DECISIONS

### IN THE GULF ATLANTIC HALIBUT FISHERY

The Mi'kmaq Confederacy of PEI  
Representing  
Abegweit First Nation and Lennox Island First Nation

April 2016

The oral traditions of the Mi'kmaq people of Eastern Canada going back centuries show clear and abundant use of sGSL groundfish not only as part of the diet, but also utilization of skins and bones for a variety of uses in daily life. This includes the capture and use of what is today recognized as Atlantic halibut. There is no doubt that the harvesting of Atlantic halibut was a central part of the cultural and economic traditions of Mi'kmaq society prior to Contact. Since that time, with the implementation of the reservation system and the institutionalized poverty endured by the Mi'kmaq people, those traditions were eroded. Until, that is, acknowledgement by the Supreme Court of Canada of First Nations Aboriginal and treaty rights in *Sparrow*, *Marshall* and other decisions to hunt and fish for a moderate livelihood, including the right to sell fish on a commercial basis. Since that time, some 34 First Nations in eastern Canada now participate in the communal commercial fishery, including the sGSL halibut fishery.

The *New Access Framework* which was recommended and approved by the Minister of Fisheries and Oceans in November 2002, guides all decisions on new or additional access to Atlantic fisheries. The Framework consists of three principles and three traditional criteria. In order of priority, the three principles are:

1. Conservation – Sustainable use that safeguards ecological processes and genetic diversity for the present and future generations. If the principle of conservation is compromised, access will not be granted.
2. **Recognition of Aboriginal and Treaty Rights – Access to the resource will be managed in a manner consistent with the Constitutional protection provided Aboriginal and treaty rights.**
3. Equity – Equity has both a procedural and substantive component:
  - Procedural Component: Access criteria must be applied in a fair and consistent manner through a decision-making process that is open, transparent and accountable and ensures fair treatment for all.

2/...

- Substantive Component: The fishery is a common, public resource that should be managed in a way that does not create or exacerbate excessive interpersonal or inter-regional disparities.

In 2004, the *Policy Framework for the Management of Fisheries* on Canada's Atlantic coast offered a new vision of how the Atlantic fisheries can be managed and proposed four objectives and nine principles designed to realize this vision. The Department's vision for Atlantic fisheries is a future where:

The Atlantic fisheries will become a biologically sustainable resource supporting fisheries that:

- Are robust, diverse and self-reliant;
- Effectively involve all interests in appropriate fisheries management processes;
- Are sustainable and economically viable, contributing to the economic base of coastal communities; and
- **Provide for the constitutional protection afforded Aboriginal and treaty rights and where Aboriginal and non-Aboriginal resource users work collaboratively.**

Further, in 2007 the Minister of Fisheries and Oceans announced geographical fleet shares for 4RST Atlantic halibut based only upon historical landings between 1986 and 2004, resulting in the following division:

- Newfoundland and Labrador – 32.03%
- Scotia Fundy – 1.63%
- Quebec North Shore – 8.24%
- Magdalen islands – 5.44%
- Gaspé – 44.03%
- Eastern new Brunswick – 5.17%
- Prince Edward island -1.46%
- Gulf Nova Scotia – 2.01%

The *Ernst and Young report*, commissioned by the department in 2012 also used historical landings as the sole criteria for upholding the sharing arrangements for Atlantic halibut. We disagree with such an approach.

In the years between 1986 and 2004, harvesters located in the southernmost portions of the Gulf had little participation in the Atlantic halibut fishery as they were primarily engaged in the spring lobster fishery as halibut quota was being landed by fleets farther to the north. First

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nation communities were not participating at all in the halibut fishery at that time and consequently attained no history in the fishery. As the lobster fishery wound down, the halibut quota was fulfilled by others.

In 2001 the *Independent Panel on Access Criteria* argued that a much broader set of principles other than simple history should be evaluated when determining fleet access to fisheries. These were:

- Conservation
- Aboriginal and treaty rights
- Participation
- Equity
- Adjacency
- Historical Dependence
- Economic Viability

When these criteria are considered the Atlantic halibut fishery takes on a completely different look. Inshore fleets such as that of PEI with some 850 license holders and only 1.46% of TAC would certainly be deserving of a larger quota share.

With regard to Aboriginal access, *Ernst and Young* stated in its report that “Aboriginal representatives were given the opportunity to present their views on the issue, but given that they did not have a history of fishing 4RST Atlantic halibut at that time, they were not given shares when the establishment of the sharing arrangement was put in place. ***The use of historical catch as the sole consideration in establishing sharing arrangements appears to conflict with the principle to provide opportunities for increased Aboriginal participation and involvement, particularly in cases where Aboriginal participation has been limited. It is important for DFO to consider how to integrate the principle of increased Aboriginal participation and involvement in fisheries management while balancing a fair approach that considers the viability of individuals who have historical dependence on the resource. It would be beneficial for DFO to articulate to Aboriginal and non-Aboriginal stakeholders how increased Aboriginal participation will be applied to established fisheries when implementing a long-term/permanent sharing arrangement.***”

The DFO approach has been to simply include Aboriginal access in with those non-Aboriginal fleet shares. In the case of PEI, for example, two whole communities holding communal

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commercial groundfish licenses are grouped in with non-Aboriginal individuals with access to a mere 1.46% of the Total Allowable Catch. This obviously ignores the communal nature of First Nations fishery with its support of socio-economic needs whole communities; and certainly it does not consider equity, historical dependence or economic viability with regard to First Nations fisheries.

Accordingly, the Abegweit and Lennox Island First Nations of Prince Edward Island formally request that the Minister take this opportunity to redistribute a significant portion of the overall Total Allowable Catch of the Atlantic halibut fishery in 4RST to a designated Aboriginal Share based upon the Aboriginal and treaty rights to fish for a moderate livelihood and incorporating the seven criteria proposed by the Independent Panel on Access Criteria.