

# Submission to External Advisor

## *Northern Shrimp Fishery*

Submitted by  
Fish, Food & Allied Workers  
February 29, 2012

## **1. Introduction**

FFAW/CAW is making this submission on behalf of the >300 inshore shrimp license holders and their crew members (about 1,500 fish harvesters in total) as well as plant workers employed in shrimp peeling plants in the province located at Charlottetown, St. Anthony, Port au Choix, Fogo Island, Twillingate and Port Union, all of whom are members of our Union.

## **2. History of Northern Shrimp Fishery**

Compared to most Atlantic Canadian fisheries, the Northern Shrimp fishery has a relatively short history. It commenced with an offshore fishery utilizing foreign vessels starting in 1978. The reason the fishery started with offshore vessels only is that the distribution of the shrimp was essentially in Canada's far North, well beyond the range of any existing inshore fishing fleets.

The areas known as Shrimp Fishing Areas 4-7 were traditionally very productive groundfish areas. A cooling trend in the ocean over roughly a 25 year period from 1970 to about 1995 provided environmental conditions that were poor for groundfish reproduction, but very favourable for shellfish production, particularly shrimp. Declining abundance of groundfish also reduced predation on shrimp. A combination of these factors gave rise to a phenomenal increase in abundance in the shrimp stocks in the 1990s and early 2000s, with the shrimp expanding its distribution much further south, into areas that were accessible to adjacent, inshore vessels. Abundance also increased significantly in the areas further north.

With this remarkable growth came an expansion of fishing opportunities to new users, notably the adjacent inshore fleet. While these were new participants in the shrimp fishery (apart from 63 Gulf-based vessels which had previously fished shrimp for many years in the Gulf of St. Lawrence), they were not new to the fishery generally. They were long-established fishing enterprises, many of them going back for several generations, which had fished cod, turbot and other groundfish stocks on the very fishing grounds now occupied by the abundant shrimp resource.

A pivotal date in the evolution of the still-young northern shrimp fishery was April 23, 1997, when then-Minister of DFO, Hon. Fred Mifflin announced a 57% increase in the Total Allowable Catch for northern shrimp, and provided access to new entrants, including the inshore fleet. He also laid out what he described as four “fundamental principles” to govern access to this stock, as well as eight “sharing principles” to guide future allocations. We will review the details of this very significant decision later in this submission.

In the years from 1997 to 2009, the TAC continued to increase, providing increased fishing opportunities for both offshore and inshore fleets, and adding additional participants via special allocations.

In 2003, the Independent Panel on Access Criteria report was released by DFO, and a new Integrated Fisheries Management Plan was implemented for Northern Shrimp.

On April 12, 2007, then DFO Minister, Hon. Loyola Hearn made a major policy announcement in conjunction with the Provincial Fisheries Minister from Newfoundland and Labrador. While a number of items dealt with were either matters of provincial jurisdiction, or overlapping federal/provincial responsibility, a number of new policies were matters of federal jurisdiction, including:

- Implementation of a new 2-for-1 enterprise combining policy for the inshore fishery in Newfoundland and Labrador.
- Increase in the maximum vessel length for the vessels involved in the inshore shrimp fishery (among others) from 64'11" to 89'11".
- A policy change to allow fishing license holders to use fishing licenses as collateral to help access financing through commercial lenders.
- Conversion of what had previously been temporary inshore shrimp permits to what the Minister described as “regular licenses”.
- Enhancement of the independence of the inshore fleet with measures to eliminate trust agreements that had eroded this independence.

Also in 2007, subsequent to Minister Hearn’s announcement, a new IFMP was adopted by DFO.

The Northern Shrimp TAC peaked in 2009, with significant decreases following in 2010 and 2011. A further reduction has already been announced for 2012 in SFA 7, which is managed by NAFO.

### **3. 1997 Press Release**

Minister Mifflin's April 23, 1997 press release and accompanying background material marked a major point of departure in the history of the Northern Shrimp fishery. In addition to announcing a 57% increase in the TAC and providing access to the inshore fleet in NL, among others, he laid out a number of principles to govern future access and allocations in this important fishery.

His four "fundamental principles" included conservation; TAC thresholds to protect existing license holders; respect for adjacency, "which means those who live near the resource will have priority in fishing it"; and priority to increase participation of aboriginal people in "the established commercial fishery".

He also laid out a number of principles to guide resource allocation, or sharing, including - in addition to the 37,600 m.t. "threshold" to protect the offshore fleet - respect for adjacency, increased aboriginal participation, priority access for <65' inshore vessels, and maximizing of employment in both the harvesting and processing sectors, "where possible".

In making this ground-breaking announcement, Minister Mifflin noted that SFAs 5 and 6, where the bulk of the quota increases occurred in 1997, "are situated off the shores of Newfoundland and Labrador. I have been guided by the long-standing principle of adjacency. Those living closest to this stock will benefit from it."

It is our contention that the principles laid down by Minister Mifflin should continue to be the basis for access and allocation decisions in the fishery. Subsequent Integrated Fisheries Management Plans attempted to diminish some of the principles laid down by Mr. Mifflin, including adjacency, priority access for the <65' fleet and maximizing employment in the harvesting and processing sectors, but this was not based on any consensus at the Northern Shrimp Advisory Committee.

#### **4. Last In-First Out (LIFO)**

The 2007-11 version of the Northern Shrimp Integrated Fisheries Management Plan refers *ad nauseum* to what it calls the “Last In First Out Principle” (LIFO) as if there was some well defined and accepted principle in place. The facts are otherwise.

The seminal 1997 press release described above makes no mention of LIFO. It does say that those participants who entered the Northern Shrimp fishery in 1997 and beyond would be subject to having their participation end if the TAC should fall to the 37,600 m.t. threshold. The press release is not clear as to what would happen if the TAC was greater than 37,600 but the quota for a particular SFA fell below the 1996 quota for that area.

The first mention of LIFO in the Northern Shrimp IFMP was in 2003. It gave no indication of the quota point at which post-1997 entrants would lose their access, other than when the TAC drops to the level of the overall threshold (37,600 m.t.) It says (Page 31) that sharing in an individual SFA would take place only if the quota for that SFA was above the threshold for that SFA (i.e. the 1996 quota). The same wording was carried in the draft that was made available to stakeholders in March, 2007 (DRAFT v. 5) on Page 38.

But the 2007-11 IFMP carries very different wording. It says (Page 3) “*Use of Last In First Out principle as the primary policy guiding allocations when dealing with TAC declines, subject only to land claims obligations.*” And a brand new paragraph appeared on Page 12:

*“In accordance with the principles developed in consultation with industry, all allocations since 1997 have been provided on a temporary basis based on the Last In First Out basis. In other words, should there be a decline in the abundance of the resource in the future, quota allocations will be removed from the fishery in reverse order of their application.”*

**This fundamental change in wording was never debated at the Northern Shrimp Advisory Committee. There was no transparency whatsoever to the process whereby this wording was inserted to the IFMP. Allocation and access are two entirely different concepts, and this change fails to recognize the distinction.**

**There was never agreement at NSAC to move away from the allocation principles set out by Minister Mifflin in 1997. There is no definition of LIFO in the IFMP. We are aware of no definition of LIFO in published DFO policy. We are not satisfied with the process whereby LIFO was inserted into the IFMP, nor do we accept the application of LIFO that DFO has applied to the Northern Shrimp Fishery.**

We say the application of LIFO to the Northern Shrimp fishery, because we know of no other fishery where it is applied in such a manner. We are aware of fisheries where DFO departed from previously established thresholds.

In the Southern Gulf of St. Lawrence crab fishery, DFO Minister Gail Shea kept recent entrants in the fishery even though the TAC had fallen below a threshold that had existed in the Crab management plan to protect the traditional fleet.

In the crab fishery in NAFO Divison 3K in Newfoundland, the original participants, who had also been protected by a threshold contained in a footnote in the plan, took DFO to court when the TAC fell below that level and the more recent entrants remained in the fishery (at a reduced quota). The Supreme Court of Newfoundland said the Minister at the time the footnote was inserted in the plan had no right to bind a successor Minister, and that the later Minister was within his authority to manage the fishery in a manner that was different from what was expressed in the footnote.

Or, as the current Northern Shrimp IFMP says on Page 50, *“The New Access Framework in no way fetters the statutory authority of the Minister to determine access or allocations in any given fishery.”*

## **5. Conversion of Inshore Temporary Permits to Regular Licenses**

When the inshore fleet in Newfoundland and Labrador was first given access to Northern Shrimp, they were granted “temporary permits”. That remained the case until April 12, 2007, when the DFO Minister of the day, Loyola Hearn announced as part of a major policy announcement: *“I am also moving to re-structure the inshore shrimp fleet by converting temporary inshore licenses to regular ones.”*

The Chair of the Northern Shrimp Advisory Committee had previously (Minutes of March 3, 2007 NSAC meeting) said a “*change of name*” had been proposed, but the Minister’s announcement clearly involved more than a change of name.

His announcement, entitled “A New Approach to Canadian Fisheries”, also included introduction of an enterprise combining policy in the Newfoundland and Labrador fishery, greatly increased flexibility on vessel size regulations, measures to combat “*controlling trust agreements*” for the explicit purpose of strengthening the Owner-Operator and Fleet Separation policies, and creation of a new category of fishing enterprise called Independent Core.

**It is important to note that Minister Hearn’s announcement pre-dated the finalization of the 2007 version of the IFMP. We are not satisfied that the final version encompassed the substance of the Minister’s announcement. If anything, changes from previous drafts to the final version of the IFMP ran counter to the thrust of the Minister’s announcement.**

## **6. Inshore Share of Northern Shrimp Allocations, 2000-2011**

Table 1 below shows the breakdown of Northern Shrimp Allocations in all areas combined, divided between Offshore, Special Allocation and Inshore. Throughout this time frame, the inshore share of the total ranged between 40.3 and 42 percent, with the exception of two peak years (2008 and 2009, when the SFA 7 TAC peaked) which were 44.6% and 45.8% respectively. Putting aside these two anomalous years, the inshore share averaged slightly more than 41% annually throughout this time period.

It was because we retained our traditional share of the overall TAC in 2010 that we did not challenge the allocation of the 2010 cutbacks. But in 2011, the inshore share was reduced to 36.6%, and the reduced TAC in SFA 7 for 2012 could further reduce this share, depending on how the cuts are allocated.

The offshore sector contended during consultations that some of their allocation is “paper fish” - i.e. quota on paper which does not necessarily translate into actual landings because of adverse economics. The inshore likewise has a fair bit of “paper fish” in SFA 7. If the “paper fish” argument is to be taken into consideration, it should be taken into account for all sectors.

**The fundamental problem with the management of changes in the distribution of northern shrimp and the relative weight of quota reductions in various areas (i.e. decline in the southern areas, stability in the northern areas) is that they are being applied on the basis of management areas rather than the overall stock area. Unlike the offshore sector, which has access in all management areas, the five regional inshore fleets in Newfoundland and Labrador have access only in SFA 6 and SFA 7.**

**Under this approach, if the overall TAC stayed the same, but 5,000 m.t. of quota was moved from SFA 6 to SFA 5, the inshore sector would lose 4,500 m.t. of quota to the benefit of offshore users, even though the overall stock status was unchanged and the TAC in each area was above the threshold. This is not reasonable.**

## **7. Terms of Reference for External Advisor Process**

Some participants in the consultation meetings tried to limit discussion to the question of whether LIFO was properly applied in 2010 and 2011. Indeed, the External Advisor tried to do likewise in the January 18 meeting before broadening the scope to that which was initially intended.

We would like to pay particular attention to the objectives set out in the TOR. Our comments with respect to the specific objectives are as follows:

- *To consider if the appropriate departmental policies, principles and methodology were used in the decision-making process.*

DFO implemented a particular definition of LIFO and gave special weight to LIFO beyond any consensus with respect to this matter at the Northern Shrimp Advisory Committee.

- *To examine if the policies, principles and methodology were interpreted and applied correctly.*

There was a total lack of transparency as to how changes in the IFMP were implemented. The Department gave undue weight to LIFO, without adequate consideration to such long-standing principles as adjacency.



- *To provide advice on whether other departmental policies, principles and tools should have been taken into consideration.*

In managing the allocation of quota declines in the Northern Shrimp fishery, the Department virtually ignored the allocation principles laid down in Minister Mifflin's April 23, 1997 press release. It applied its own interpretation of LIFO to the exclusion of several of the principles laid down in that release, including adjacency, priority access to less than 65 foot vessels and maximizing of employment in both the harvesting and processing sectors where possible. The Department also failed to adequately take into account the New Access Criteria which were adopted following the report of the Independent Panel on Access Criteria. These principles and policies should have been taken into consideration, not tossed to one side in favour of a single-minded adherence to the Department's northern-shrimp-only interpretation of LIFO.

- *To ascertain whether other factors or approaches should be considered in similar decline situations in the future.*
  - (1) The Department should take into account overall access to the northern shrimp resource for the various fleet sectors, rather than management unit by management unit micro-management.
  - (2) The Department should take into account the New Access Criteria, including the traditional weight applied to adjacency and historic attachment. For this purpose, no sector has a particularly long history of attachment to northern shrimp, but the inshore sector has Centuries of history fishing other species - notably cod - in the same waters.
  - (3) The Department should take into account the sharing principles laid out in the April 23, 1997 DFO press release.
  - (4) Much greater transparency is needed in the IFMP process.

## **8. Conclusion**

We recognize and respect the importance of northern shrimp to various users. We ask that others do likewise. The Department's approach to future sharing, including in 2012, should be based on the northern shrimp stock as a whole, not on a management unit by management unit basis, with the inshore share reinstated at the level of 41% of the overall TAC.