

Report of the Ministerial Advisory Panel

*External review of the Department of Fisheries and Oceans'
Last-In, First-Out policy (LIFO) for the Northern shrimp fishery*

June 22, 2016

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Dear Minister LeBlanc,

The Ministerial Advisory Panel (MAP) established to provide advice on whether the Last In, First Out (LIFO) policy specific to the Northern shrimp fishery is pleased to enclose our final report. This provides our observations and consensus based recommendations in response to our task and as required by our Terms of Reference.

The Panel has worked hard to seek a comprehensive understanding of the issues important to LIFO and to follow a public process that was inclusive, open and extensive. In the report we set out the approach we have taken to receive advice from the Public, outlining its transparency and robustness, starting with seeking views in pre-consultative sessions on how best to engage the public, undertaking public meetings, and augmenting these with site visits throughout Atlantic Canada and Nunavut. Over the course of our work, we went on inshore and offshore vessels, toured shrimp plants and cold storage and transshipment building and met with a broad range of people cutting across all sectors and interests.

Over 1000 people attended our meetings and we listened to more than 100 presenters and received 41 additional written submissions. Our Panel could not help but be struck by the importance of this issue to all concerned, and by the thoughtful and respectful efforts of many to inform the Panel of their views. The presentations were often passionate, and our Panel heard first-hand the impact and benefits of the different sectors and their importance to the individuals, organizations, communities and governments of Atlantic Canada, Quebec, and Nunavut.

We were frequently told that our task was challenging, and we believe this is simply an acknowledgement that in the end there are no villains in this issue, no good and evil, just people, often living side by side, trying to make do the best way they can.

Our Panel would like to thank the Department of Fisheries and Oceans staff who supported our efforts, undertaking in an exemplary manner the many administrative and operational duties that were so crucial in allowing the Panel to focus on its charge.

Finally, we would like to extend our appreciation for being asked to provide advice on what is clearly a crucial and compelling issue for so many.

Yours truly,

Paul Sprout, Chair, Ministerial Advisory Panel

Barbara Crann, Member, Ministerial Advisory Panel

Wayne Follett, Member, Ministerial Advisory Panel

Trevor Taylor, Member, Ministerial Advisory Panel

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I. Introduction and Purpose

On April 18, 2016, the Honourable Hunter Tootoo, Minister of Fisheries, Oceans and the Canadian Coast Guard (DFO) announced a Ministerial Advisory Panel to undertake an external advisory process on DFO's Last-In, First-Out policy (LIFO) for the Northern shrimp fishery. Specifically, the Panel was tasked with providing advice on whether the LIFO policy in this fishery should be continued, modified or abolished for the 2016 season and beyond. Further if LIFO is to be modified or abolished, our Panel was asked to provide advice on what are the elements of an appropriate access and allocation tool/mechanism for this fishery.

This is our Panel's report to the Minister. It describes our findings and outlines our recommendations and suggestions for the future consistent with our Terms of Reference.

The Panel was formed in response to concerns about the potential implications of the LIFO policy; particularly in consideration of recent significant declines in the Northern shrimp resource and the subsequent reductions in the Total Allowable Catch (TAC). These reduced TACs triggered the removal and/or reductions in allocations of quota holders. Recently observed ecological conditions are creating an environment that is less conducive to shellfish and DFO anticipates these conditions are likely to continue for the foreseeable future.

The application of the LIFO policy and its potential implementation in 2016 has resulted in widespread and divergent public reaction, extensive media coverage, and public education campaigns by various industry representatives. As our Panel observed, LIFO is a controversial policy that provokes deeply held views and raises concerns that are troubling and vexing. The complexity of this issue and the importance it plays to all involved was never lost on us. Numerous presenters emphasized the importance of the task of the Panel. The remarks of many were perhaps best summarized by one presenter when he stated "You have a very important job to do and you can expect to find advice on all sides of this issue. I don't envy your task."

This report provides background information, details on public engagement and the viewpoints expressed during this process. The report also takes into consideration Aboriginal Land Claims Agreements (LCA) potentially affected by LIFO. Lastly, our Panel has identified key conclusions resulting from our deliberations and we provide a number of recommendations for tackling this matter.

2. Background

2.1 Shrimp Species

The Northern shrimp fishery is comprised of two species dominated by Northern (or pink) shrimp (*Pandalus borealis*) and secondarily Striped shrimp (*Pandalus montagui*).

The 2015 Total Allowable Catch (TAC) for both species combined was 112,775t with the TAC for Northern shrimp at 105,797t (94%).

Striped shrimp is not found in all Shrimp Fishing Areas (SFAs), has a lower commercial value and is taken as by-catch in the Northern shrimp fishery.¹

The 2015 landed value of Northern shrimp was approximately \$450 million. The landed value of Striped shrimp was in excess of \$19 million. The 2015 total export product value of the Northern shrimp sector was in excess of a half a billion dollars.

2.2 Location of the Fishery

The Northern shrimp fishery takes place off the coast of eastern Canada from 47°15' N (Flemish Cap and the northern edge of the Grand Banks) to 75° N (Baffin Bay).² A map of Shrimp Fishing Areas is included in Appendix 8.3.

The fishery is divided into seven SFAs (0-7). These management units are based on differences in rates of growth and maturation observed by science which are attributable to different habitat conditions across the geographic range of the species.³

The TAC for each area varies significantly with SFA 4-6 comprising approximately 75% of the overall TAC in 2015.

2.3 Participants

Fishery participants include offshore vessels (>100') and inshore fleets as well as Special Allocation holders comprised of Aboriginal Land Claimants, Aboriginal Non Land Claimants and other groups.

Between 1978 and 1991, 17 licenses were issued in the offshore fleet sector and are held by 14 corporations. Three of these corporations hold two licenses each. Eleven licenses were issued at the start of the fishery in 1978. One additional license was added 1979, four licenses were added in 1987 and final license was issued in 1991. The offshore fleet sector has allocations in SFAs 0-7 which are fished by 10 large factory freezer trawlers (FFT) >100' in length.

¹ Northern shrimp Integrated Fisheries Management Plan (IFMP), 2007, Department of Fisheries and Oceans

² Northern shrimp Integrated Fisheries Management Plan (IFMP), 2007, Department of Fisheries and Oceans

³ Ibid

In the inshore fleet sector, there are currently approximately 225 inshore license holder. Following the initial entry of the inshore fleet in 1997, there were 385 licenses. Through industry funded self-rationalization (enterprise combining), the number of licenses has been reduced to the current level. Based on area of residence, the majority of the inshore fleet is licensed to fish in SFA 6 and 7 (SFA 7 is currently closed to directed fishing) with limited effort in SFA 4. The inshore fishery is undertaken by vessels primarily in the 60'-75' in length. The largest 2015 quota for Northern shrimp for the inshore fleet was in SFA 6 with 31,637mt.

Aboriginal Land Claimants that hold Special Allocations include Nunavut (Nunavut Wildlife Management Board) in SFA 1, Nunavik (Nunavik Marine Region Wildlife Board) in SFA 1, and the Nunatsiavut Government in SFA 4-5. The Miawpukek First Nation held an allocation in SFA 7 prior to the closure.

Aboriginal Non Land Claimants that hold Special Allocations include the Innu Nation in SFA 4-5, the NunatuKavut Community Council in SFA 5. The Northern Coalition represents six individual companies in SFA 5 some of which are Aboriginal and others that are non-Aboriginal.

Other Special Allocation holders in the 2015 Northern shrimp fishery included the Cartwright Fishers in SFA 5, Inshore Affected Cod/Crab Fishers in SFA 5 and St. Anthony Basin Resources (SABRI) in SFA 6. There are some Special Allocation holders that have exited the fishery through the application of LIFO and the closure of SFA 7.

In 2013, DFO allocated 1700t of the TAC in SFA 4 for Use of Fish under Section 10 of the Fisheries Act to complete scientific surveys. This allocation has remained in place but is not a fixed amount and is subject to the annual approval of the Minister.

2.4 Resource Status

In May, 2016, DFO published a Science Advisory Report; *An Assessment of Northern Shrimp (Pandalus borealis) in Shrimp Fishing Areas 4-6 and of Striped shrimp (Pandalus montagui) in Shrimp Fishing Area 4 in 2015*.⁴

This report noted that:

“Environmental conditions and increasing predation pressure appear as important drivers for the recent decline. However, recent departures in environmental conditions from the decadal trend may lead to increased shrimp per-capita production over the medium term but are unlikely to trigger a rapid rebuilding of the resource. (page 2)”

⁴ Science Advisory Report; An Assessment of Northern shrimp (*Pandalus borealis*) in Shrimp Fishing Areas 4-6 and of Striped shrimp (*Pandalus montagui*) in Shrimp Fishing Area 4 in 2015.
http://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2016/2016_028-eng.html

In southern SFAs, there have been recent significant declines in Northern shrimp.

The Northern shrimp fishery in SFA 7 corresponds to NAFO Divisions 3LNO and is managed by the Northwest Atlantic Fisheries Organization (NAFO). In 2000, NAFO established a Northern shrimp fishery. The initial Total Allowable Catch (TAC) was 6000t and the Canadian allocation of the NAFO quota is 83%. This TAC for this stock rose steadily through the mid-2000s reaching a high of 30,000t in 2009-2010. The stock subsequently underwent a sharp decline with corresponding significant reductions in the TAC until the stock was closed to directed fishing in 2015.

For Northern shrimp in SFA 6, the “Fishable biomass index declined from 785,000 t in 2006 to 138,000 t in 2015 which is the lowest in the time series.” There was a 41% decline between 2014 and 2015” with significant declines in the female stock spawning biomass (SSB) also noted.⁵

For Northern shrimp in SFA 5, both the fishable biomass and the female SSB have been relatively stable since 2010.⁶

For Northern shrimp in SFA 4, the fishable biomass index varied without trend from 2005 to 2015 with a decrease of 13% from 2014 and an 18% decrease in the female SSB.⁷

2.5 Last In-First Out (LIFO) Policy

As defined most recently in the 2007 Integrated Fisheries Management Plan (IFMP) for Northern shrimp, LIFO is defined as:

“The overall 1996 quota for all SFAs combined (37,600t) is used as a threshold to determine sharing. Thus, a major decline in one or more SFAs could preclude further sharing in any SFA. Should there be a decline in the abundance of the resource, new participants/allocations will be removed from the fishery in reverse order of gaining access – last in, first out (LIFO).”

The LIFO policy was introduced as a means of managing new entrants to the Northern shrimp fishery. Following the 1992 Northern cod moratorium, temporary inshore licenses were introduced for the under 65' fleet and Aboriginal groups in 1997.

In 2007, DFO announced a three-year management plan under which both the offshore and inshore fleet sectors received significant quota increases.

⁵ Science Advisory Report; An Assessment of Northern shrimp (*Pandalus borealis*) in Shrimp Fishing Areas 4-6 and of Striped shrimp (*Pandalus montagui*) in Shrimp Fishing Area 4 in 2015.

http://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2016/2016_028-eng.html

⁶ Ibid

⁷ Ibid

In that same year, in an effort to promote stability, temporary inshore fleet licenses were converted to regular licenses.⁸

The 2007 Northern shrimp Integrated Fisheries Management Plan noted:

In 1997, the Minister of Fisheries and Oceans announced increases in the TACs for Shrimp Fishing Areas 2, 5 and 6, and sharing of these increases with new, temporary entrants. Public consultation with interested parties took place to obtain views on sharing principles and the majority of responses indicated that the quota increases should be used to provide new access to fishers adjacent to the resource. Priority was given to individual fishers in adjacent areas of Newfoundland and Labrador, Nunavut and Quebec.

To ensure that the viability of the traditional offshore fleet was not jeopardized, the 1996 quota levels in each SFA were set as thresholds. Sharing would only take place in a particular SFA, if the quota rose above the 1996 threshold in that SFA. If future quotas declined back down to the thresholds, then the sharing would end and the temporary entrants would leave the fishery.

The overall 1996 quota for all SFAs combined (37,600t) is used as a threshold to determine sharing.⁹

In 2011, DFO announced it would undertake an independent review of the allocation of Northern shrimp in advance of the 2012 season. The primary purpose of the review was 1) “to consider if the appropriate departmental policies, principles and methodology were used in the decision-making process” and 2) “to examine if the policies, principles and methodology were interpreted and employed correctly.”¹⁰

This review included the application of the LIFO policy. The review was conducted by Ernst & Young and concluded “that it appears that the policies, principles and methodology have been interpreted and employed correctly and consistently with the definition of the last in, first out principle as defined in the 2007 Integrated Fisheries Management Plan for Northern shrimp” although there are instances of lack of clarity regarding DFO’s intent and rationale.¹¹

⁸ Northern shrimp Integrated Fisheries Management Plan (IFMP), 2007, Department of Fisheries and Oceans

⁹ Ibid

¹⁰ Review of the Application of Rules and Management Policies in the Northern shrimp Fishery, DFO, 2012, Ernst & Young Report

¹¹ Ibid

Further, the report concluded that clarification of how significant or moderate TAC reductions may be applied would be beneficial.¹²

The LIFO policy was first applied to the Northern shrimp fishery in 2010. Both reductions and increases in SFA 6 were applied based on 90% for the inshore fleet and 10% for the offshore fleet.

Since 2010, the quota for the inshore fleet in SFA 6 has been reduced from 59,613t in 2009 to 31,637t in 2015.

Since 2010, the quota for the offshore fleet in SFA 6 has been reduced from 16,612t to 13,559t in 2015.

Since 2010, Special Allocations in SFA 6 for Inshore Affected Cod Fishers – Northern Peninsula, North 50-30 (3000t), Inshore Affected Cod Fishers - LNS North 50-30 (1000t) the Innu Nation (1500t) and the Fogo Island Co-op (1500t) have been removed.

Subject to further stock declines in SFA 6, potential reductions in the TAC and the subsequent application of LIFO may completely remove the inshore fleet and all Special Allocation holders.

¹² Review of the Application of Rules and Management Policies in the Northern shrimp Fishery, DFO, 2012, Ernst & Young Report

3. Background of the Ministerial Advisory Panel

3.1 Introduction

The Terms of Reference for our Panel were developed by the Department of Fisheries and Oceans (DFO) and approved by the Minister and are included in Appendix 8.1. In addition to providing advice on the future of the LIFO policy, our Panel was asked to consider the elements of an appropriate access and allocation regime for this Northern shrimp fishery if LIFO was modified or abolished. Our Panel was directed to directly engage stakeholders on this question.

Further, our Panel was asked to pronounce on the validity of applying LIFO to reduce allocations in SFAs which are subject to any of the three Land Claims Agreements included in the commercial shrimp fishery. These included: the Nunavik Inuit Land Claims Agreement, the Nunavut Land Claims Agreement and the Labrador Inuit Land Claims Agreement.

3.2 Members of the Ministerial Advisory Panel

The Minister appointed five individuals with diverse backgrounds to the Panel. However, one Panel member, Dr, Sean Reilly withdrew citing personal reasons shortly after his appointment. Collectively, the Panel represented a broad range of experience and expertise in fisheries management, policy and science, Aboriginal issues, land claims and public policy. A biography of each member of the Panel is included in Appendix 8.2.

In the interest of meeting its tight timelines, our Panel arranged for operational and logistical support from the Department in accordance with the Terms of Reference.

3.3 Timeline

Our Panel was announced on April 18, 2016 and tasked to deliver its final written report containing its' observations and recommendations no later than June 15, 2016 although limited additional time would be considered as necessary.

4. Public Consultation Approach

From the outset, our Panel structured its approach to ensure its independence was maintained. We operated as a team with decision-making on a consensus based approach.

In an effort to seek advice on the planned public consultations, our Panel held pre-consultations during the week of May 2, 2016. This included discussions with a range of concerned parties to obtain feedback on our proposed overall consultation approach. Our Panel outlined the proposed locations for site visits and public consultation sessions, scheduling of meetings, the key questions to be addressed, the pre-registration of presenters and the deadlines for written submissions. Our Panel did not seek the views of any group regarding LIFO during the pre-consultations.

Generally, we found there was widespread concurrence with the proposed public consultation approach. While some expressed a point of view that the process would benefit from the inclusion of additional or alternate locations, there was general appreciation that this would be difficult to accommodate under such a compressed timeline. Most of those we consulted with agreed the selected locations would provide adequate opportunity for input.

The Northern shrimp fishery includes stakeholders throughout Atlantic Canada, Quebec and Nunavut. A public notice was issued regarding the planned consultations and details of the public consultation sessions were also posted to the DFO website in both official languages under the Consultations and Reviews section. This information was updated as specific meeting locations and times were confirmed.

Public consultation sessions were held in St. John's, Gander, St. Anthony, Mary's Harbour and Happy Valley-Goose Bay in Newfoundland and Labrador, Iqaluit, Nunavut and Halifax, Nova Scotia.

For planning purposes, those interested in making a presentation to the Panel were asked to register in advance and provide the location at which they planned to make their presentation. The public consultations also provided our Panel with an opportunity to ask questions of each presenter for clarity, accuracy and to focus the discussion on key elements. An open microphone session was included in each of the public consultation sessions to provide an opportunity for those who had not registered in advance to offer their point of view.

Written submissions from the public were also encouraged with a deadline of June 3, 2016. These written submissions were posted to the website following the last public consultation on June 10, 2016 to ensure fairness to all those making a written submission. Alternately, those choosing to provide a written submission could request that their presentation be posted in advance of June 10, 2016 if that was their preference. The presentations and written submissions provided to our Panel are publicly available.

Our Panel expanded the public consultation process beyond the scheduled sessions to include numerous site visits. The purpose was to further strengthen our level of understanding and listen to additional points of view from a wide variety of those directly involved. These site visits included inshore and offshore shrimp fishing vessels, shrimp processing plants and cold storage/transshipment ports and facilities. These site visits included Fogo Island, Old Perlican, Harbour Grace, Anchor Point, Black Duck Cove, St. Anthony, Charlottetown and Mary's Harbour in Newfoundland and Labrador; Caraquet and Lamèque in New Brunswick and Iqaluit, Nunavut.

Meetings were well attended and over 1000 people are estimated to have come to the public consultation sessions. Our Panel listened to 104 presentations at these sessions and received an additional 41 written submissions.

Our Panel gathered viewpoints from those working in both the inshore and offshore fisheries, Aboriginal groups, industry stakeholders and others. For each source of information, the focus of our Panel was to directly listen to these view points, seek clarification as needed and use this information in our deliberations and recommendations.

There were a number of interests who made it known they would have preferred the Panel comprise more members with more provincial and Aboriginal representation and we understand this preference. However, what was concerning was that others have alleged the Panel was biased. This is false. It ignores the fact that all Panel members are independent and without any vested interest and all recommendations of this report were reached based on a consensus based approach. It is truly unfair to all those who came out to the public meetings and have participated with so much passion and respect.

The Panel was inspired by the level of intensity and emotion attached to the LIFO issue and also by the high quality of presentations by both umbrella groups and individuals. Despite widely disparate views, the level of decorum was exemplary at most of the meetings. It was evident to our Panel that a high level of professionalism exists in all sectors of this industry.

5. What We Heard

5.1 Introduction

During this process, we listened and reviewed a range of opinions from those who deeply depend on the Northern shrimp fishery. Many people took the opportunity to remind us of the importance of our task and noted it was one they did not envy. The various site visits gave us additional opportunities to talk with those directly involved in this industry. We spoke with community residents, harvesters (inshore and offshore), plant workers, Aboriginal leaders, business owners and industry stakeholders. We wanted to hear their opinions, their concerns and their ideas of what the future of this fishery might look like.

During the public consultation sessions, we heard words spoken against a backdrop of fear and desperation and some words spoken in anger and frustration. Many people presented logical and well-reasoned arguments. Others expressed their disappointment with what they believed was deliberate misinformation put forward from both sides of the debate. In the end, the majority of positions left little room for compromise. This made our task much more difficult.

Within the discussions, many expressed the need to end the conflict and to bring stability to those working in this fishery and the communities where they live. Some expressed that there was little opportunity for progress if the fishery continued to pit harvester against harvester, fleet against fleet, community against community or province against province. Many felt that the future of this industry should be based on working together on sustainable management with a focus on maximizing the economic benefits that are critical to many communities in Atlantic Canada, Quebec and Nunavut. One presenter summarized the feelings of many when he stated "It's time to stop looking over the stern and throwing rocks at each other. Let's look forward and navigate into the future."

The high level of attendance was a clear indication of the importance of the LIFO policy to all involved in this fishery. To quote one attendee "I was supposed to be sailing to the fishing grounds today but I'm here before this Panel because the issue is too important".

What follows is our attempt at summarizing and capturing the key themes that we heard from everyone during this process.

5.2 Economic Benefits of the Fishery

We listened to different points of view on which fleet sector generated greater economic value supported by a variety of measures including impact on GDP, wages, employment and economic spin-offs to various regions and communities. The economic benefit to communities was also fiercely contested. Both the offshore and inshore fleets noted the value of the resultant onshore employment which was spread widely across all regions that participate in this fishery. Although differing metrics were presented to quantify the economic contributions of the various interests, it was evident that both fleet sectors are significant economic contributors to communities in Atlantic Canada, Nunavut and Quebec. This includes crew wages, vessel construction, repair, maintenance and re-supply, trucking, cold storage, support workers, on-shore processing, personal and commercial income tax, municipal taxes, port fees and financial support for the continued development of other industries and others.

Many presenters noted examples of the negative impact of LIFO that have already occurred. These included bankruptcies, job loss, plant closures and out-migration. Both sides of the debate suggested that it was likely that either the continuation or the abolishment of LIFO could see these impacts continue. Both sides noted that recommendations of our Panel could have potentially devastating impacts on rural and coastal communities that were already facing significant economic challenges. In addition, both sides of the debate noted the attraction and retention of skilled labor could become much more difficult.

It was noted that business decisions and significant investments had been based on stability of access and allocations. Others noted that DFO policy had encouraged large investments on either an individual or corporate basis. Significant debt loads had been incurred by many stakeholders in good faith and the economic viability of fishing enterprises were now being threatened. Others noted, that community programs supported by revenue from the shrimp fishery are similarly threatened. Some presenters felt the focus needed to be on producing the highest value product that matched current market demands and examined new opportunities for onshore processing.

5.3 Historic Attachment and Dependence

This was one of several themes in which variations of how it could or should be defined were expressed. Some groups maintained their own history extended hundreds of years and that permanent sharing should be based on historical participation over time as tradition involves much more than recent history. Others felt that having an almost 20 year history clearly showed an attachment.

Offshore interests pointed to a longer history noting that low catches in the initial years should be recognized as part of a developing fishery. Supporters of the inshore fleet noted that 99% of the fleet fishes in SFA 6 with limited access to other areas.

Supporters of the offshore fleet noted that access to SFA 6 was critical to a year round operation. They noted that ice, weather and resource constraints severely limit their fishing access in other areas. Others noted that over time, increases in TAC and the quota allocations that resulted, were issued to groups without a history or an adjacent attachment to the resource.

Some argued that historic dependence should be applied based on a specific stock. Others maintained that it should be considered as the resources in the adjacent waters upon which coastal communities were dependent regardless of specific species. Representatives of the offshore noted their long history and that this history was formally recognized in 1997. Representatives of the inshore noted while they only gained access in 1997, their history predated 1997 and their initial efforts to gain access were denied.

Others noted that the rapid expansion of the fishery both created a dependency for new user groups and hurt traditional markets. In addition, the increase in supply had lowered market prices and threatened the viability of other groups that had been active for a longer period.

5.4 Adjacency

This was another theme in which the definition and application was widely interpreted. These included definitions based on a very specific geographic area to much broader definitions such as any land area with a North Atlantic coastline should be considered adjacent. Some suggested the most appropriate approach would be to develop a new sharing arrangement that considered both adjacency and historic attachment. The details on how such an arrangement would be weighted or implemented was less clear.

Several presenters felt that DFO's Independent Panel on Access Criteria (IPAC 2002) ceded priority of access to those closest to the resource. They expressed this followed a longstanding principle of fisheries management and was a key principle in the establishment of Exclusive Economic Zones (EEZ). Adjacency was the key principle applied when the increases in the Northern shrimp were allocated in 1997, although some argued that not all adjacent groups were included. Others felt that adjacency was endorsed by the Liberal Party of Canada that identified it as a principle that provided maximum benefit for resource reliant coastal communities. Others noted this was further underscored by a related motion on adjacency at a recent Liberal Party convention. Some felt that recognizing adjacency in allocations spurs economic growth, facilitates vibrant and sustainable communities and promotes stewardship.

Others felt that those who earned their living from allocations held by non-adjacent groups deserved the same recognition as they who lived adjacent to the resource and were a part of those communities. Still others noted that adjacency does not trump the historic attachment and economic dependence that others have established.

Those speaking on behalf of interests in Labrador and Nunavut noted that adjacency was not sufficiently recognized by an appropriate level of allocation and in fact other non-adjacent users held allocations in adjacent areas.

Others felt adjacency was a direct concept and could be clearly defined while others felt adjacency was both relative and somewhat fluid as shrimp concentrations can shift within a SFA. Others suggested that adjacency has been used excessively in quota allocations with the end result of some groups gaining access without suitable consideration of other criteria.

5.5 Economic Viability and Dependence

Some presenters suggested a more balanced approach to quota reductions would better recognize the viability and contributions of both fleets as the resource declines. This was often referred to as “share the pain” scenario that would see quota reductions shared equally. Every user group made a strong case that access to Northern shrimp was a key part of their enterprise model and quota reductions would likely significantly harm their viability with broader economic repercussions. Opinions on the suggestion by some that the offshore should be removed from SFA 6 and the offshore allocation transferred to the inshore were also split. The inshore maintained it was critical to their economic survival as access to other species, including a stronger Northern cod stock was limited. Others noted that quota reductions were also occurring in other fisheries. The offshore maintained that having their SFA 6 quota moved to the inshore provided little economic benefit when spread across the number of inshore vessels. In addition, such an action would force the offshore fleet to tie up for part of the year when it currently operates on a year round basis.

On the point of fleet mobility as a factor in economic viability, there was little agreement. The inshore believes the offshore gained initial access because they had the capacity to fish further from shore and their mobility provides them opportunity in other areas in which the resource remains healthy. The offshore maintains that the majority of the allocations of Northern shrimp in SFA 0 and SFA 1 is “paper fish” and is not fishable. Further, the offshore maintains that Northern shrimp in SFAs 2-5 is not accessible for parts of the year due to the presence of ice. They also contended that the inshore sector would be more accurately described as a mid-shore fleet given the increased range of vessels in the fleet.

Several presenters noted the potential opportunity presented by the pending Comprehensive Economic and Trade Agreement (CETA). This agreement would remove the current EU tariff on Canadian shrimp and thereby make Canadian producers more competitive. In addition, it could potentially open new opportunities for co-operation on industrial shrimp and further development of value added products by the Canadian industry.

Many noted that the potential job losses that could result from maintaining or modifying the LIFO policy could disproportionately impact certain groups. Some of the examples provided were employment for Aboriginal groups, women who occupy a substantial portion of on shore processing jobs, and those in areas where alternate employment opportunities were very limited. On the point of employment opportunities for women, it was noted that the Government of Canada has committed to policy development that considers gender specific impacts.

5.6 Evolution and Application of the LIFO Policy

Throughout our public consultations, two significant announcements by DFO were widely cited; the principles of the 1997 decision that first granted access to the inshore and the 2007 decision that changed inshore temporary permits to regular licenses and enabled enterprises to self-rationalize through the combining of enterprises and licenses.

Inshore interests maintain they had been denied access and there was no discussion of LIFO as a part of the 2007 decision. Others noted that the 2003 Integrated Fisheries Management Plan (IFMP) placed emphasis on coastal communities but this emphasis was later dropped from the 2007 IFMP. Some argued the right policies were not in place at the time the fishery was expanded. Others viewed LIFO as a modern approach to fisheries management that is ideally suited to reduce capacity in periods of resource decline. The inshore sector maintains that applying LIFO ignores both the 2007 decision that made inshore licenses permanent and the significant investment that followed to facilitate enterprise combining. It was further noted that enterprise combining was promoted and enabled by DFO.

There was clearly some division on the interpretation of the terms and conditions under which new entrants were added to the fishery. The inshore maintains it never agreed to the conditions, was never properly consulted and the amendments they had proposed were never adopted. Further, the definition of LIFO in the 2007 IFMP is too vague to be applied in any case. Some felt the conditions of entry and expansion were imposed upon their fleet sector at a time it was still reeling economically and socially from the effect of the Northern cod moratorium.

Further, many inshore license holders noted that business decisions had been made based on licenses being permanent and as licenses were used as collateral to secure financing, it was clear to them that their access was permanent.

One inshore license holder expressed this as "DFO led us down the garden path on combining." Furthermore, the revised rules on combining were intended to provide a tool for the inshore fleet sector to self-rationalize and strengthen the long term viability of those that remained.

Some expressed the opinion that they recognized the offshore had a right to be part of this fishery but it was ultimately unfair to force the inshore to exit the fishery entirely in SFA 6.

Others felt it was critical that fisheries management policies had to demonstrate flexibility as resource status and availability, market demands and economic viability changed over time. Further, LIFO should not be applied in such a manner that gives one particular fleet sector an exclusive monopoly in perpetuity. Others noted that even if successive Ministers had maintained the LIFO policy, it did not bind the Minister permanently.

Others noted that LIFO is not a stated policy in any other fishery in Canada. It should not be used in the management of Northern shrimp because the end result is coastal communities are separated from their adjacent resources.

Others countered these points by stating there was no ambiguity and the conditions for new entrants were clear, understood and accepted. The application of the LIFO policy has been supported by all successive Ministers since 2010. As well, there are instances in the past in other Canadian fisheries where allocation holders have been removed in order of the last-in (Resource Short Plant Program and Scandinavian longliners in the Northern cod fishery and in the Gulf crab fishery). The offshore noted a comparison to the fact that the inshore maintains that exclusive access to the first 115,000t in the Northern cod fishery should continue to be respected and this is inconsistent with the inshore's view of removing the offshore from SFA 6. Further, the offshore sector pointed to potential significant job loss, the likely transition from a year round fishery becoming a more seasonal one, and a reduced ability to make royalty payments under current partnerships that supported many northern communities. This sector also maintains that by modifying or abandoning LIFO, the Government of Canada will fail to honour the social contract established with stakeholders. Additionally, it is their view that this could potentially lead to the destabilization of access and allocation rules in other fisheries and a return to politically driven decision making.

Those who support LIFO feel it is the foundation of a strong and viable industry. Further, if LIFO is applied in times of increasing resource, then it should also be applied as the resource declines. They maintain that reverse order cannot be perceived as a vague term and thresholds were clearly defined in each SFA.

Finally, the offshore thought significant overcapacity remained in the inshore sector, in both harvesting and processing. They contended it was unfair the offshore should suffer to fix problems specific to the inshore.

5.7 Potential Impact on Spawning and Implications of a Year Round Fishery

While opinion was divided, there seemed to be agreement that the potential impact of fishing on spawning shrimp was something that DFO should examine more closely. Some felt that year round fishing activity simply places too much stress on the stock. Others suggested it can disrupt spawning activity and poses a greater threat to the ecosystem as a whole. Others were of the view that temporal and spatial factors played a greater role. There was no commonality on the impact of a particular fishing fleet; some opposed larger vessels and others felt the volume of smaller vessels could have a similar or greater disruptive impact.

5.8 Conservation

Most stated that conservation of the resource was critically important although opinions on the best conservation strategy were varied. Generally, there was agreement with the most recent DFO science results although some inshore harvesters noted that recent catch rates in SFA 6 had been very high. Some proposed that efforts to maintain a healthy ecosystem were essential and could be accomplished with a renewed focus on a smaller scale, multi-species inshore fishery. It was also suggested that a better understanding of the ecosystem is needed including the impact of climate change and warming water temperatures, the predator-prey relationship of cod on shrimp and crab, the impact of spring/summer fishing on reproductive shrimp and the rate of exploitation in reference to biomass. The research value of the data collected in the offshore was noted and some felt the fishery could benefit from increased observer data from the inshore. Finally, there was general agreement that having fleets and user groups competing over access and allocations does not foster the principles of conservation.

5.9 Transition to Deal with Declining Resource

We listened to some interesting views on what future fisheries of Atlantic Canada could look like. Most acknowledged that changing ecological conditions were likely to dictate the primary species in future commercial fisheries. Some expressed a view that simply reallocating current allocations was a short term fix and could not save shrimp dependent sectors.

Others felt more equitable allocations could provide the time needed to transition to resurgent groundfish fisheries and build the markets that would make these fisheries economically viable. Some argued that transition would be particularly difficult when there was limited or no access to other fisheries or the access available was in fisheries with limited quota and lower market value. Others suggested that more emphasis was needed on developing new resource opportunities.

5.10 Link to Other Fisheries

Some expressed the view that Northern shrimp should not be considered in isolation. Changes in abundance of other stocks should be considered from the perspective of the overall mix of species that make an enterprise viable. Many noted the increase in groundfish stocks could potentially provide future opportunities although the recovery of these species was not occurring at the same rate as the decline of others. As a result some in the inshore felt shrimp was their only meaningful fishery for the near future. More significantly, it was noted that the resurgence of Northern cod in particular would likely trigger further discussions on adjacency and allocations in a potentially re-opened commercial fishery.

5.11 Aboriginal Issues

Beyond the specific application of the LIFO policy, some Aboriginal groups noted that the consultation process undertaken by our Panel did not meet the consultation requirements of Section 35 of the *Constitution Act, 1982*. Both Aboriginal and non-Aboriginal groups noted the importance of the rights of Aboriginal peoples being respected, in particular as outlined in established Land Claim Agreements (LCA). Many felt that the policy of LIFO should in no way override the provisions of these LCA.

In the case of the Labrador Inuit Land Claims Agreement (LILCA), it was suggested that this agreement provided legal certainty and clarity of rights. This was a federal framework for modern treaties. Further, the Government of Canada was legally bound to uphold the honour of the Crown as per a recent report of the Office of the Auditor General (OAG) which stated obligations must be interpreted in a reasonable and purposeful manner. Further, the OAG noted the potential for litigation if the provisions of Aboriginal land claims were not upheld. Others noted the importance of the Government of Canada's commitment to a nation to nation relationship with Aboriginal peoples. The specific reference to this relationship in both the mandate letter to Minister Tootoo and the Terms of Reference of this Panel were also highlighted in discussions.

Several Aboriginal groups expressed their view that Aboriginal rights should come before adjacency, historic attachment or any other criteria. It was noted by one presenter "There is no greater historic attachment than that of our Indigenous people".

Many noted that Special Allocations play a critical economic and social role in the development and sustainment of Aboriginal communities in Labrador, Nunavut and Quebec. It was noted by some Aboriginal groups in Labrador that they hold only Special Allocations and a disproportionately low share of quota compared to other participants fishing in their adjacent waters.

Several presenters noted that resource sharing with Aboriginal groups is recognized in many other industries and impact benefits agreements should be applied to fishery resources.

Inshore Aboriginal interests felt they should be protected from any potential quota reductions under LIFO as the allocations were already inadequate and the application of LIFO would remove recent gains.

Some noted the inherent contradiction of government policy in determining allocations when the original and subsequent issuance of licenses excluded some Indigenous groups entirely and since that time, Aboriginal groups have been told that existing allocations were fully subscribed. This is further compounded by the fact some Special Allocations had been reduced under LIFO in one SFA.

In another SFA, one Aboriginal group expressed that they did not receive a share of the recent allocation to support Northern shrimp research.

Others felt that LCA obligations were sufficiently recognized under existing allocations in both adjacent and non-adjacent areas. Additionally, the provision of the LCA would apply only to the issuance of new licenses. Others noted that there are already a number of Government of Canada policies in place that support Aboriginal participation in fisheries. It was also suggested that there are no provisions in the LCAs that would invalidate the application of LIFO as the fishery was beyond the settlement area. Further, that it in no way should the Panel attempt to interpret or re-negotiate these provisions.

Many spoke of the importance of the Special Allocations and royalty charter agreements to Aboriginal groups and their communities. The benefits included employment in crewing and the implementation of valuable community programs. One presenter told our Panel "the partnerships that we established help develop a highly skilled, highly trained workforce who have become role models for Aboriginal youth"

These royalty charters were also making important contributions to scientific research on Northern shrimp.

It was noted by some that the greatest success for Aboriginal groups has come through full participation in management, harvesting and processing which fostered sustainable communities.

Some Aboriginal groups noted the limitations of the Allocation Transfer Program (ATP) under the Aboriginal Fisheries Strategy (AFS) as a barrier to expanded participation in this fishery. In addition, some expressed the view that this program does not fulfill the constitutional obligation.

It was expressed by some that quota increases in recent years were a missed opportunity to correct the imbalance felt by Aboriginal groups. Further, had these same Aboriginal groups been exempted from the application of LIFO, then progress could have been made to address the disparity. Others that currently hold Special Allocations recognized that the review was unlikely to see them gain an increase in allocation but at a minimum their current allocation needed to be maintained.

In the North, it was suggested that to achieve equity and fairness, a more balanced approach was required. Aboriginal groups in Nunavut believed that the application of LIFO would prevent it from receiving its fair share. It was suggested that LIFO may well be a workable policy in southern fishing areas but it should not be applied in SFA 0-3.

It was also referenced that IPAC had determined that Nunavut was a special case. Nunavut does not have the same access to adjacent fisheries as the Atlantic Provinces and therefore it was suggested that no additional access to non-Nunavut interests be considered until Nunavut has achieved access to a majority share.

It was also noted that the application of LIFO could significantly impact the funding of scientific research on the stock currently being undertaken in northern areas.

Section 6 Strategic Issues

In this section our Panel focusses on issues that have been brought to our attention in the public discussions and written submissions that we find particularly relevant in considering our task. We briefly describe our understanding of the issues, note any observations we may have on these matters and in a number of instances, outline the conclusions that we have drawn.

6.1 Changing Northern Shrimp Abundance and Possible Regime Shift

We are aware that from the high point of shrimp abundance in 2009 there has been a significant decline in shrimp abundance on the southern end of the range in SFA 6 and 7. While some have characterized this as a shifting of the distribution of the resource northward, it is more accurately described as a depletion of the resource in the south and the expected return to what has been described as “normal levels” of abundance. This depletion, as determined by science, results from changing environmental conditions leading to reduced spawning success and lower recruitment to the fishery. Additionally, the changing environmental conditions, again according to science but generally supported by the industry, is thought to be creating circumstances that are more favourable for groundfish and less so for shellfish. Increased groundfish abundance can also expect to result in increased levels of predation on shellfish. The combination of these factors is leading many in the industry and science to believe that SFAs 6 and 7, may be on the cusp of a “regime shift”.

Inshore fishing interests have noted the impacts of further shrimp reductions in SFA 6, and have extolled the merits of transferring the offshore fishery catch shares in SFA 6 to the inshore fishery. However, we think it important to be frank about the challenges faced by the inshore fishery no matter the sharing arrangements in SFA 6. Further catch declines in SFA 6 seem inevitable although what a return to “normal levels” of shrimp may mean in terms of abundances is unclear. A decision to change LIFO that results in increased access to shrimp in SFA 6 may not actually result in more shrimp catch or if it does it may be a temporary reprieve. This is particularly challenging given the large number of vessels fishing shrimp in SFA 6, the many plants dependent on shrimp landings and the lack of immediate and near term fishery alternatives. It seems most likely that fishers will need to sustain themselves on lower shrimp catches over an extended period. While groundfish stocks appear to be recovering, the rate of the recovery is unlikely to align well with the decline in shrimp availability and, if so, will create a period of high uncertainty for fishing enterprises, processing operations and the communities they support. This leads us to the view that a transition strategy needs to be developed that addresses, to the extent practicable, the implications of a likely gap between the expected shrimp declines and possible increased groundfish harvest.

We conclude that the expected decline in shrimp will further intensify the spotlight on the LIFO issue. What this means long term for SFA 6 and shrimp production is unclear and in our view argues for finding an outcome that minimizes or avoids an ongoing and destabilizing debate on the merits of LIFO.

Moving from this disruptive debate over LIFO to one where participants are focused on managing their shares more effectively and cooperatively and extracting as much value from the diminishing resource base is required. Certainty of allocation will help industry adjust to the new realities and to make further progress on the significant self-rationalization that is already evident within the inshore.

6.2 Conduct of Fisheries

Several issues and concerns under this category have been brought to our attention from both the inshore and offshore interests. More specifically, it was suggested that the shrimp resource may benefit by having a 'rest period' from harvesting in SFA 6. The offshore group suggests the inshore fleet, which fishes during the summer period, is adversely impacting the shrimp during the egg extrusion and moulting, a particularly sensitive period for setting the year class strength. Conversely, the inshore fishery contends that the offshore fishery, which harvests during the late winter months, catches egg bearing shrimp prior to or while they are releasing their eggs and thus disrupts its reproduction. They point to the precipitous decline of shrimp in SFA 7, which also had a winter fishery, as further anecdotal evidence to support their view on the problem of fishing during this period. From the inshore perspective, closing the winter fishery on shrimp in SFA 6 is a common sense way of protecting the resource. From a science perspective, DFO's view is neither of these concerns affect the shrimp population given that this fishery is managed to an overall exploitation rate that factors in the total abundance of shrimp and which takes into consideration the fishing effects.

We have no information to judge this matter and regardless, providing an opinion on the merits of a fishing period is outside our Terms of Reference. However, our Panel has observed how strongly this issue has been advanced, particularly by the inshore interests, and we have concluded that this matter would be well served by undertaking a more careful review of its concerns. Any review would need to involve the affected interests in considering the perspectives and ideally designing an experiment to test the validity of the premises that inform the respective views.

On a separate matter, yet related to the fisheries conduct, our Panel has been told by offshore interests that the inshore fishery does not have the same standard of fishery monitoring and catch reporting as the offshore fleet. In one presentation, it was observed that there were serious reporting issues and compliance concerns within this fishery. Our information indicates that the offshore fishery has observers on each of the 10 offshore vessels. The 244 inshore vessels aim for a 10% observer coverage while 100% of the landings are monitored at dockside.

We were informed that a risk based approach has been taken to establish the monitoring and reporting levels for both fisheries and, at this point, the Department had not made us aware of any enforcement issues specific to either of the fisheries in SFA 6.

We are unsure as to the validity of the concerns raised about fishery observer and catch monitoring. However, we think it timely that the program be reviewed to ensure that it is robust and its coverage levels are suitable under whatever decision is taken on LIFO.

6.3 Value of the Fisheries

During our public deliberations, we have been made aware of the importance of the recent high shrimp prices. More broadly, the value of the shrimp to the offshore fishery was a key consideration in establishing the threshold levels in 1997. On the high prices, we were advised that these have contributed to the ongoing viability of the fleets in the face of lost fishing opportunities and effectively have masked the effects of the reduction in quota to the inshore fishery in SFA 6. Regarding the setting of the thresholds in the SFAs in 1997, we have been informed that the levels took into consideration the value of the fishery to the offshore and this was influenced importantly by the price of shrimp. The information we have been provided indicates that prices for shrimp in 2015 are higher per tonne, after allowing for inflation, compared to those experienced when the threshold levels were set in the late 1990's. The higher prices combined with the significantly higher quotas suggest that the offshore sector landed values are currently substantially higher than when the thresholds were established in 1997.

Our Panel has observed that while shrimp prices could remain strong with a declining resource, it appears unreasonable to expect the market to increase sufficiently, given the current high price levels, to offset the quota reductions expected regardless of the status of LIFO. This leads us to conclude that shrimp harvests in SFA 6 alone, no matter what changes may be made to LIFO, are unlikely to support the fishery and its communities in the manner they may hope. In terms of the thresholds set in 1997, the Panel is of the view that the value of the threshold when established and compared to today's value is a valid factor when considering the implications of possible changes to the LIFO policy which may affect the thresholds.

6.4 Aboriginal Considerations

Special Allocations have been provided to Aboriginal groups in Nunavut, northern Quebec and Labrador that have entered into land claim and other arrangements with the Government of Canada. In addition, Special Allocations of Northern shrimp have been provided to Aboriginals outside of land claims. The Aboriginal views on LIFO are complex, and varied on the merits of LIFO, but they have noted that LIFO, or any changes to LIFO, are superseded by commitments and obligations stemming from agreements with the Federal Government. Aboriginal interests observed that their current Northern shrimp shares fall far short of a reasonable amount given their adjacency to the resource or even those levels envisaged in the various agreements.

Some groups have grave concerns about LIFO, noting the vulnerability of their Special Allocations if shrimp abundance continues to decline requiring their exit from the fishery.

Yet other groups supported LIFO, while still others contended that LIFO should be a flexible concept and apply in some SFAs but not others. The differences of opinions regarding LIFO can be characterized as one where those Aboriginal organizations who have one or more of the “traditional” offshore licenses support LIFO with or without modifications, while those who depend mostly or solely on Special Allocations for their access, oppose LIFO.

It is the view of DFO that LIFO is compatible with the agreements that have been entered into between the Aboriginal groups and the Federal Government and that the policy, as it is currently applied, respects these arrangements. That is to say, the Department believes LIFO can be applied to Aboriginal groups, removing their access as threshold levels are reached without contravening the land claims, other agreements or legal obligations.

Our Panel is mindful that it is not our role, as we were not asked in our Terms of Reference, nor are we equipped, to provide any legal assessment of LIFO and its implications on Aboriginal agreements that some groups contend is not consistent with their rights. Nevertheless, some Aboriginal interests, when discussing the apparent ongoing provisions of LIFO, have observed that governmental policies can be expected to be adjusted and changed over time as conditions and circumstances evolve. This they observe should be an important consideration in reviewing LIFO and considering Aboriginal interests.

We too have concluded that this is an important policy question. How long should provisions established to protect those that developed the fishery be in place? Particularly, in view of Canada’s changing relationship with Indigenous peoples and the unfolding legal environment, we believe that this be re-evaluated in a timely manner. Along these lines, we are particularly concerned about the effects of LIFO on Aboriginal access to shrimp, especially those that are derived from Special Allocations. Should shrimp populations further decline in other SFAs, provisions of LIFO would require the exit of the later entry Aboriginals. This seems inconsistent with stated government policy in support of Aboriginal access and would, if implemented, further exacerbate what is already very low participation by those most adjacent to the resource.

6.5 Impacts and Benefits

The return to Gross Domestic Product (GDP) of the two sectors to the Provincial and Canadian economies, the associated services or multiplier effects these provide, along with the relative impacts and importance of the fisheries to the rural communities are important considerations. Our Panel received substantial documentation on these matters and heard numerous personal stories on the benefits of the fishery and the implications as a consequence of the continuation of, or changes to, LIFO.

We observe that both sectors are important to the local and regional economies and help support the social structure and coherence of its communities. The Panel has been made aware of the debate over which sector within this fishery produced more economic benefits. It is our view that both sectors are significant contributors to the economy and have concluded that little would be gained in further parsing out the analyses on this question, nor is it practical at this point to conduct more research on this matter.

Moreover, based on information provided to us in the public meetings, it is evident that reductions in shrimp catch will have negative impacts in terms of employment and revenue on both the offshore and inshore fisheries and by consequence, on the communities that benefit from the services and taxes stemming from this industry. However, we have arrived at the conclusion that the impacts of further catch reductions on communities will be disproportionate. Aboriginal communities who often have very little alternate employment opportunities and/or use royalties from shrimp catches to bolster local development will be especially hard hit. As well, we have concluded that the inshore fishery reductions will have an obvious impact on the rural communities, especially in Newfoundland and Labrador, and this will likely be greater than those impacts experienced by the offshore fishery. This is due to the concentration and higher numbers of inshore fishers living in these communities, and the associated benefits, in contrast to the fewer participants in the offshore fishery who tend to be dissipated, residing in numerous communities, mostly in Newfoundland and Labrador but also outside the Province.

To expand on this important issue, we observe that while the weighing of impacts and benefits has in large part been a polarizing debate, we are struck by the similarity of importance of the inshore and offshore sectors in some regions. Although, in most areas where the inshore fleet lands its shrimp, the offshore's impact in this same area is modest relative to the size of the inshore impact on the local economy. In southern Labrador however, it is clear that each sector has had, and continues to have, a resoundingly positive impact on the local economy. It is hard to overestimate the importance to the coast of Labrador (from Cartwright to L'ance-au-Clair) of the Labrador Fishermen's Union Shrimp Company and the associated two offshore shrimp licenses that it holds. We have been advised that the benefits from the offshore fishery are extremely important. These benefits could not have occurred absent the two offshore licenses, the ability to fish a year round operation and to generate the revenues that have provided profits to the company and incomes to the local people. These benefits are certainly more visible.

Similarly, given its adjacency to the resource in SFA 6, it is hard to imagine a reasonable scenario where the 2J inshore fleet would be removed from the fishery and the processing plant at Charlottetown forced to close, while an offshore fishery continued virtually on its doorstep.

While it is our view that there will be a disproportionate effect of further shrimp catch decreases on the inshore fishery dependent communities, we are mindful of the fact that the offshore fishery has provided real and lasting positive economic returns to communities.

The Panel has concluded that based on impacts and benefits there is no compelling reason to remove one or the other sector from the fishery, on the contrary there is a strong argument to be made for policies that facilitate the continuation of both.

6.6 Interpreting and Applying Principles of Adjacency, Historic Attachment, and Economic Viability

There is little doubt on what key principles most participants to our public process raise as crucial in explaining their position on LIFO. Our Panel has taken guidance on the definition of the principles from the Department's policy on New Access Criteria derived from the Independent Panel on Access Criteria. We elaborate further on this in our recommendation section. For our purposes, here we note the key observations we have drawn from the public discussion on the principles.

We observed that the intensity and diversity of views on LIFO, frequently could be linked to the interplay and differences in definition and weight, given to adjacency, historic attachment and economic dependence. It is our view that these three principles tended to be interpreted and applied in ways that reinforced perspectives - either to support or retain existing historical access to shrimp, and hence continue with LIFO, or to encourage its transfer to others and thus, abolish the policy. Of the three principles, adjacency was most often stressed as the primary consideration in determining access, and this was mostly advocated by those in closest proximity to the fishery and often with the least opportunity to fish outside their immediate area. Conversely, those situated more distantly from the fishery, were more inclined to emphasize historic attachment as a key consideration. Regardless, all interests emphasized the economic benefits of their access and the impact of any share reduction.

Some further comments on this key issue are warranted. We note that on more than one occasion participants in the public meetings, when considering current allocation outcomes, asked, "How did it get to look like this?" Our Panel asks the corollary: "Would it look like this if the fishery were to start today?" While the IPAC report suggests that adjacency should have more weight inshore, and in the north, and historic attachment given more weight for the offshore, our observation in reviewing the allocation results is that this has not been historical practice nor consistently applied in more recent times. For example, our examination of allocation tables clearly points to historic attachment taking precedence in the Gulf of St. Lawrence and in the north but elsewhere, adjacency, which should be a deciding criteria, has been applied in a less consistent and predictable manner. Moreover, access to Northern shrimp licenses occurred prior to residents along the Labrador coast, Nunavik and Nunavut having much awareness of or capacity, if any, to prosecute the fishery.

However, the information provided to us from Aboriginal interests suggest that this has changed and they seek greater access consistent with the adjacency principle.

Our Panel has concluded that the differences in how these principles are perceived and the inconsistency in how they are applied, are fundamental and can explain, to a large extent, the strongly held and invested views we observed on LIFO. We have further concluded that long held grievances over access to adjacent fishery resources, particularly by Aboriginal groups, cannot be reconciled within DFO's current allocation policy approach.

The current approach addresses allocation sharing principally in the context of increasing TAC's and it is our perspective that this will be exacerbated by a LIFO policy that takes away access when quotas decrease.

6.7 Industrial Shrimp

The future availability of industrial shrimp to process in Canadian processing plants was noted on several occasions in our meetings as an important opportunity to mitigate the declining shrimp harvests and directly benefit the inshore plants while still respecting the LIFO arrangements.

Some background information on this idea is necessary. While the offshore factory freezer trawler fishery results primarily in product forms that are ready for the market once the product is landed, there is a substantial component of the catch, commonly referred to as industrial shrimp, that requires further processing onshore before it is market ready. The amount of industrial shrimp in the landings varies by area, season and year but is roughly 20% of the landings. This shrimp, once landed, proceeds to a shrimp peeling factory where it is thawed, cooked, peeled, refrozen and then packaged for market. Due to prohibitive tariffs in the European Union, the vast majority of this shrimp has historically gone to shrimp processing factories in Denmark, Norway and Iceland for processing. Those jurisdictions enjoy preferential access due to low or non-existent tariffs when entering the EU that is not available to Canadian processors. The recently negotiated free trade agreement between the European Union and Canada is yet to be ratified by the member states of the EU and Canada. Once implemented, this agreement will eliminate those tariffs over time and provide Canadian processors the same access to the EU market as Denmark, Norway and Iceland.

Our Panel's observation is that the removal of the tariffs could provide important opportunities for the inshore plants to acquire shrimp that otherwise would not be available and this could be used to round out production in processing operations during slow periods. This could be a positive development and one we hope would come to fruition. However, it is also our observation that this possibility, if realized, is still some ways off and would not have immediate effects on the issues that many have brought to our attention given our review of LIFO.

Importantly, our Panel suggests that a process needs to be put in place to bring the key domestic interests on this matter together to develop a strategy and action plan in preparation for changes that reflect the possibility of increased availability of Industrial shrimp.

6.8 The Claims of “Paper Fish”

The issue of unharvested offshore shrimp in the far northern areas of SFA 0 and 1 (between Nunavut and the Greenland border) was repeatedly raised in our public discussions. Many have contended that this shrimp quota is being “left in the water” due in part to the offshore having more easily accessible and lucrative allocations in the south, primarily referring to SFA 6.

Proponents of this view further maintain that the offshore license holders have ample quota on which to conduct their fishery and that any decrease in their access to more southerly areas, such as SFA 6, will have little or no effect on their business. For their part, the offshore interests have noted that the unharvested quota can be attributed to three aspects: the ongoing negotiation position of Canada regarding its view on appropriate share arrangements for shrimp populations straddling the border between Canada and Greenland; the availability of shrimp in the Canadian area due to changes in distribution in SFA 1 and the exploratory nature of SFA 0.

To further expand on this issue, Canada and Greenland disagree over the sharing of shrimp in SFA 1 with both sides setting their respective quotas based on what each believes is the appropriate sharing arrangement. Further, due to the lack of harvest, DFO has kept the individual license allocations at a level that in total exceeds the TAC for SFA 1 with the caveat that the fishery will be closed when the overall TAC is caught. Regarding the issue of why shrimp catches have been low or non-existent in recent years, we are told this is a matter of shrimp distribution and availability. The shelf, the area where the shrimp mostly occur is almost entirely within the Greenland EEZ. As such, the Canadian fishery has been by force of nature an opportunistic one. Canadian vessels have occasionally been able to access the resource when water, ice and environmental conditions generally cause a portion of the shrimp resource to reside temporarily on the Canadian side of the line, within the Canadian EEZ.

We note that, on average over 20 years, the offshore fishery has taken approximately 28% of the TAC in SFA 1 or 3600t annually. This is with wide variability year to year. We note that negligible catches have occurred in the last three years. This is at a time when it would have been helpful in offsetting quota reductions in the south.

Additionally, in SFA 0, there is a 500 ton TAC that has never been fully caught. This area is at the very top of Baffin Bay and is one of the most remote regions of the Northwest Atlantic. The Panel was advised that access to this area is, even in the best of years, limited by seasonal and multi-year pack ice to a short window of time measured in weeks.

While some exploratory fishing has taken place, success has been very limited. Given its distance from other proven, viable fishing grounds, the cost of exploration and the short season in which to operate, the potential of SFA 0 is probably very limited.

Our Panel accepts the explanation that access to the available quota is opportunistic and have concluded that it is erroneous to assume, as a matter of course, that offshore harvesters have unused quota that could be caught in SFA 0 and 1. Changes to access in the south cannot reliably, in the current resource context, be made up by utilization of unused TAC's in the north, these allocations will frequently be unavailable to be caught and in this way are "paper fish".

Furthermore, the panel has to ask, "Is it appropriate to resolve one group's adjacency argument by moving effort to an area that is adjacent to another jurisdiction with a lesser share of its adjacent resources?"

6.9 Precedence – Stability of Access and its Implications

Some have advised the Panel that LIFO has brought stability of access and has allowed proper business decisions to be made in the Northern shrimp fishery. Further, offshore interests have suggested that any changes to LIFO would have the effect of not only destabilizing the access and allocation arrangements within the shrimp fishery but would also set a precedent with other species arrangements, provoking an unravelling of the securities that may currently be in place.

In considering this matter, the Panel has sought information on how wide spread the LIFO policy is within fisheries under the responsibility of the Department of Fisheries and Oceans. To our knowledge no other LIFO arrangements exist in Canadian fisheries, outside of Northern shrimp. At least one of the presenters opined that a crab fishery in the Gulf and the 2J3KL cod fishery could be considered as examples of fisheries where LIFO applied. However, in the Panel's view this is a stretch as neither of these fisheries are defined by the Department as having LIFO provisions and the temporary nature of some licenses associated with these fisheries did not have the provisions that are described as LIFO in the Northern shrimp fishery.

We understand the importance of stable access and allocation arrangements, and the necessity of having a sound business environment. Stability in access and allocations has been a pursuit of DFO, provinces, territories and fleets for many years. Although there is no disputing that LIFO indeed provides security of access and therefore security, in our opinion, the offshore fishery is the principal beneficiary of this stability.

It may be argued that LIFO provides certainty to the remainder of the participants in the sense that their participation in the fishery is subject to explicit TAC levels and that it will cease under other explicit TAC scenarios. However, this seems to us to be a false or at least misleading interpretation of what is meant by stability and runs counter to the fact that we have been asked to review LIFO because its arrangements for various reasons, including those listed above, are disputed. In short, at least to one major group, the arrangements do not provide the security of access they seek.

In terms of the potential consequential effects on other species access and allocation arrangements were LIFO to be changed, we are mindful of the numerous disputes, legal and otherwise, that are underway or have taken place over access and allocation arrangements. No evidence has been provided to us that these disputes have triggered the current concerns with LIFO.

Indeed, given that there is little or no application of LIFO outside of Northern shrimp, suggesting that changes to LIFO will affect other species allocation arrangements seems specious. Additionally, our Panel finds that allocation disputes arise for numerous and complex reasons, and that the evolving context, legal environment and other factors are all contributors at play in allocation disputes. In the Panel's view this further undermines the contention that changes to LIFO will automatically stimulate disputes in other arrangements.

6.10 Special Allocations

Our Panel has been struck by the plethora and complexity of the access arrangements for Northern shrimp, especially those that include the category of Special Allocations. The Panel has observations concerning this access category but first we provide some background on what the arrangements are, who is involved and how they came to be.

Special Allocations have been used by DFO since 1997 as a mechanism to grant temporary access to Aboriginal, community based groups and some inshore fleet sectors to the Northern shrimp fishery. The grouping of these diverse groups, often with divergent objectives, under the Special Allocations category seems to be based on not increasing "permanent" harvesting capacity while restricting that to the "traditional" offshore fleet. With few exceptions the harvesting of all Special Allocations has been done by the offshore fleet, primarily in exchange for royalty payments to the Special Allocation holder by the offshore license holder who harvested the allocation. The other important feature of Special Allocations is that they were fixed tonnage allocations, and not percentage shares of the fishery, and as such, did not increase or decrease as overall TAC's fluctuated until threshold levels were reached and then the access was removed under LIFO.

To facilitate our review, the Panel has organized the Special Allocation category into 4 groups: Adjacent licence holders, Community-based holders, Aboriginal holders, and Inshore affected harvesters.

1) Adjacent license holders, which include the Northern Coalition comprising 5 offshore license-holders holding six licenses who, according to their presentation to the panel at the Happy Valley-Goose Bay meeting, decided in 1996 to collaborate to get a greater share of the potentially increasing shrimp quotas in their adjacent waters. Their rationale being, because they are the “more adjacent” of the “traditional” offshore license holders, they should be looked on differently when any increases to the quotas were contemplated and should therefore receive a larger share than the other 8 “non-adjacent” offshore license holders. In 1997 they received 6120 tonnes in area 5. This allocation has been shared on a pro-rated basis amongst the license holders based on the share of licenses each entity holds and harvested by those license holders.

2) Community-based organizations, comprises groups such as the St. Anthony Basin Resources Inc. (SABRI), which received its allocations in 1997. In general, the allocations were tied closely (but not in all cases) to the local adjacent communities and all emphasized directing the proceeds of the allocations to the broad good of its communities. These allocations have been, with minor exceptions, harvested by the offshore in exchange for royalty payments, crewing arrangements, and sometimes participation in onshore processing.

3) Aboriginal organizations, including Inuit in northern Labrador, Quebec and Nunavut, Innu in Labrador, “southern Inuit” of southern Labrador and Miawpukek First Nation of southern Newfoundland, have received Special Allocations that cover all SFAs. These allocations were provided as part of the Federal government’s objective to increase Aboriginal participation in the Northern shrimp fishery. Aboriginal holders claim that their rights (both treaty and non-treaty) entitle them to access resources adjacent to their territorial home and further note the disparity between their share of the access with the non-adjacent and non-Aboriginal groups.

4) Inshore fishery interests include groups situated on the southern Labrador coast, the northern peninsula of Newfoundland and the Lower North Shore of Quebec who have received allocations in SFAs 5 and 6. These allocations have been provided to offset the impact of the loss of ground fish resources to those fishermen who did not have the capacity to harvest shrimp as part of the inshore less than 65’ fleet. The allocations have been primarily fished by the offshore with royalty revenues paid directly to fishermen in the form of income from the fishery.

Our Panel has several observations on the Special Allocations but notes overall that the allocations have been put in place to address the inequities and grievances that emerged with the development of the Northern shrimp fishery. It is our view that these arrangements have been beneficial and, for the most part, their merit continues to this day.

We therefore find it hard to understand why, short of a substantial commitment of funds to buy out existing license holders and transfer their share of shrimp to Aboriginals, a policy would require Aboriginal holders to leave the fishery if shrimp were to decline sufficiently while other non-Aboriginals would remain in the fishery. To our view, this potential outcome is inconsistent with the Federal government's stated views to support Aboriginal participation in the fishery never mind the Aboriginal view on the priority of their right to access shrimp.

We are persuaded that Special Allocations to adjacent licence holders and the community-based holders have resulted in significant economic benefit to the regions and we see little difference in the merits of the allocations to SABRI in Northern Newfoundland, the Labrador Fishermen's Union Shrimp Company in Southern Labrador or the Northern Coalition group.

The Special Allocations to "inshore-affected fishers" however, seems to us to have the least validity of the four groups. While temporary access to shrimp may have been appropriate at the time to compensate for the loss of the cod fishery, it is our conclusion that the continued access cannot be characterized as strategically important to the overall fishery. Nor, given that they are primarily in areas where community-based Special Allocations or license holders exist, are they providing the same regional economic benefits.

6.11 Science Research Allocations in SFAs 4 and 5

The Panel has been made aware, during our public consultations, of concerns regarding the allocations of shrimp set aside for science research in northern SFAs. To gain a better understanding of the status of shrimp resources in SFA 4 and 5, DFO and the offshore industry have collaborated to undertake scientific surveys. This was initially undertaken by the Department by allocating shrimp in SFA 4 and 5 to the offshore fleet, and using the proceeds from the allocations to cover the cost of the surveys. From 2003 to 2006, in SFA 4 there existed a 1125 tonne science allocation and in SFA 5 there was a 2500 tonne allocation. Subsequently, a court outcome (the Larocque decision) prohibited the Department using fish (including shrimp) to pay for government programs, such as research. In the aftermath, surveys were paid out of DFO funds and starting in 2007, the science allocations in SFAs 4 and 5 were converted to offshore quotas to be fished competitively amongst the fleet. By 2013, following amendments to the Fisheries Act, the Department gained the legal authority to allocate fish for scientific research purposes and 1700t was allocated to the Northern Shrimp Research Fund (NSRF). Meanwhile, the Department continues to undertake science surveys in SFA 5 using internal funds.

The policy followed by DFO in selecting the vessels to fish the NSRF in SFA 4 is that it must have the majority support of all quota holders in the SFA. In practice this has meant that the NSRF is harvested by the offshore fishery.

The offshore competitive quota and NSRF arrangements triggered various perspectives. Some interests raised concerns over the exclusive access by the offshore fishery to the competitive offshore allocations that were initially set up to support and carry out research but which are now allocations for the offshore sector. Representatives from Nunatsiavut noted their concerns that the decision to assign the increased shrimp TAC to the NSRF in 2013 was a lost opportunity to augment Aboriginal allocations whose shares were small while their adjacency indisputable. The Offshore representatives pointed to the value of the NSRF allocation for obtaining information critical for management of SFA 4 and the western and eastern assessment zones. They also observed the benefits of their collaboration with DFO and the shared stewardship the surveys have brought.

Notwithstanding the complexity of the recent history on how research has been undertaken and paid for in SFA 4 and 5, our Panel understands the need for the assessment of shrimp and the important role that the NSRF allocations serve. We also note that this level can change over time. At the same time, we appreciate the perspective provided by some Aboriginal interests that the decision to establish the NSRF underscored that an opportunity to increase their shares was forgone.

It is with this background in mind that we turn our thoughts to the offshore competitive quotas. These allocations were initially established in support of scientific surveys and since have been absorbed into the offshore's share and are fished as part of the sector's regular commercial fishery. Our Panel finds it difficult to understand how this outcome can be reconciled with the intent of setting up the allocations in the first place. Further, the decision to direct the research allocations to offshore appears, in hindsight, to be based on historic attachment and little, if any weight, was placed on the importance of adjacency. We have concluded that it is timely to review the competitive offshore allocations and to find a distribution outcome that is more balanced. In the Panel's view this should be one that allocates to all groups in a manner that reflects the importance of both historic attachment and adjacency and thus provides a more compelling and enduring rationale for why these allocations should continue.

6.12 Catching the SFA 6 Special Allocations

During the public consultations, particularly in Newfoundland and Labrador, the Panel was informed of the wide-spread support for the community-based Special Allocation provided to the St Anthony Basin Resource Inc. (SABRI) in SFA 6. At the same time, some of the presenters proposed the allocation be mandated to be harvested by the inshore fishery rather than the offshore fishery which has been the requirement, with few exceptions, to date.

In terms of background, as we have previously noted, the Special Allocations are, with few exceptions, harvested by the offshore fleet. This arrangement avoided any increase in fishing capacity and was also consistent with the Department's fleet separation policy as it applied to the inshore and offshore fisheries.

The SABRI allocation has primarily been harvested by an offshore license holder with royalties paid in exchange for access. In one year only, we are given to understand, the SABRI quota was harvested by inshore vessels and landed to the St. Anthony Seafoods shrimp plant, of which SABRI and Clearwater are the major shareholders. SABRI required an exemption to the policy that requires harvesting of Special Allocations to be carried out by one of the existing offshore license holders. Proponents of the view that the SABRI allocation be harvested by the inshore suggest that the allocation if made available exclusively to the inshore would help to mitigate the effect of declining quotas. Further, they maintain the inshore is capable of providing royalty revenue comparable to that coming to SABRI from the offshore.

Our Panel understands the history of how Special Allocations came to be harvested by the offshore fleet, however, it is our view that conditions that informed this decision have changed. The inshore fleet licences are now permanent, and on this basis we do not see the need to restrict the inshore fleet from being able to harvest the Special Allocations. However, we are troubled by the notion that the Special Allocations should be mandated to be harvested by the inshore fleet. This seems to be replacing one exclusionary arrangement with another and we are not persuaded that the rationale provided to us to support this suggestion justifies this outcome. Moreover, we don't see this as a balanced approach in responding to the underlying issues of LIFO which our Panel argues should guide changes to LIFO.

In considering the issue of allowing the inshore to harvest Special Allocations we are mindful of the requirements of the fleet separation policy and the concern over the competitive impacts on buying.

The concern is the ability of Special Allocation holders, who are involved in the processing sector, to leverage their allocations to increase their access to buy from individual fishers and thus provide the allocation holders with a competitive advantage that others do not have. The fleet separation policy is meant to prevent this and we are aware that depending on the instrument of access there is a possibility of this happening here.

We have concluded that the mandatory offshore harvesting requirement for allocations like SABRI's should be removed and the Special Allocations in SFA 6 have the option of being harvested by offshore or inshore. It is our view that the decision to harvest using inshore vessels should be the prerogative of the Special Allocation holder but any arrangements must respect the DFO fleet separation policies and vertical integration requirements in the inshore sector. Accordingly, should Special Allocation holders in SFA 6 decide to harvest their allocation with inshore vessels it should not be permitted at the allocation holder to individual fisher level. Since this could serve to upset the competitive buying environment of the inshore fishery, the allocation should be harvested in "block" through an arrangement with an inshore fleet sector such as 3Kn, 3Ks, 2J, and so on.

6.13 LIFO Policy Considerations

Ultimately, our task is to provide advice on the continuation, modification, or abandonment of LIFO and the background on the policy's evolution is briefly noted before we provide our observations on this issue.

The Northern shrimp fishery was developed in the late 1970's by the offshore sector using large trawlers able to fish more distant waters to explore and develop a new fishery. In 1997, with the entry of others from the inshore fishery, who were given temporary permits, provisions (i.e., catch thresholds by SFA below which the new entrants would exit the fishery) were put into effect. This arrangement recognized the personal and financial risks taken by the offshore interests in developing the fishery and protected their interests in the event that shrimp populations declined in the future. Subsequently, the permits were made permanent in 2007 and the new licence holders allowed to combine shrimp shares from other vessels on a 2 for 1 and then 3 for 1 basis. LIFO provisions were applied first in 2010 when declining shrimp populations resulted in some special allocation holders and inshore shares to be reduced or removed from the fishery.

The LIFO policy was regarded by some as vague, open to how it was interpreted and applied, and therefore lacked credibility and should have no standing. It is our observation, apart from the issue of whether the various interests agreed to LIFO which we discuss below, that the intent of the policy was clear. Although the rules on how LIFO are implemented, are in some instances, arguably imprecise or unclear, it is evident that the concept of the temporary nature of the later entrants, subsequently to be called LIFO, has been in place since 1997. There is little ambiguity in what was meant when this concept was introduced and its approach has been reiterated by the Department to the current period.

Some have made the argument that those rejecting LIFO supported its adoption. As it has been told to us "a deal is a deal". Regardless, the inshore and some Aboriginal interests have noted that any support for LIFO was coerced and/or not expressively agreed to. For example, we were advised that for a number of years' access to Northern shrimp had been blocked by the offshore and denied by DFO. Others have said that they were offered access but it was contingent on accepting thresholds. These groups have asked how could they fight the thresholds at the expense of continuing to be excluded.

Part of the rationale suggested by some to maintain LIFO has been the commitment to the policy by previous Ministers. However, the reality is that the Minister is not fettered by the policy decisions of previous Ministers. Policies are one of the means by which government's advance their interests and policies can and do change with new governments and Ministers.

Notwithstanding the assertions of the Minister at the time, and Ministers later, that LIFO was unaffected by the licensing changes adopted by the Department in 2007, it is the Panel's observation that LIFO is incompatible with the objectives outlined in this decision. Fishing interests were encouraged to be self-reliant and to be able to self-rationalize, important high level objectives that continue to be advanced by the Department for all commercial fisheries today. Revoking participation because of LIFO is, in our view, both inconsistent with this objective and runs counter to the stability of allocation goal that has been advocated by the Department in other policies such as the Atlantic Fisheries Policy.

The Panel, although understanding the reasons for safeguarding the investment and recognizing the risks taken by the offshore fishery in developing the fishery 38 years ago, has concluded that the LIFO policy is not sustainable. It seems to us that the Department's provisions have more than met the protections and security intended in their establishment. Moreover, LIFO seems to be at odds with recent Departmental policies, such as the "Emerging Fisheries" policy, which envisages steps in fishery development moving from early fishery management stages with tight controls on effort and catch to mature fisheries with stable effort and allocations.

Like protections given to patent holders for product development, which some have compared to LIFO, in time these expire.

The question that has been put to the Panel regarding LIFO is how long the original participants should be saved harmless? Our observation is that one may argue for an initial period of years but not indefinitely. To this point, the panel was struck by the following question raised by presenter Fred Hall of the Labrador Innu Nation "Is LIFO for 30 years or 100 years or 1000 years? Please let us know."

In considering an appropriate or reasonable period for the duration of a LIFO policy, the Panel briefly considered other business examples where past practice and law have dealt with the time frame reasonable to afford protection to companies that commence new commercial ventures. Two such examples are: patent protection for new pharmaceutical products, and, non-competition clauses.

In the case of patent protection, the policies are long standing in Canada and elsewhere. Prescribed periods defined in regulation, are provided for new drug manufactures prior to allowing the entry of generic drug makers in the market.

As a general rule, the courts in Canada have considered clauses which restrict a former employee from working in their chosen field as contrary to public policy. Non-competition clauses in the commercial context (sale of a business) tend to be more enforceable but again subject to a test for reasonableness as to scope. The advice is usually that those seeking a non-competition clause not overreach and the narrower scope, such as the geographical area it applies to the better. In terms of duration it is not considered acceptable to prevent someone from competing indefinitely. There needs to be an end date for when the agreement expires. Situations are different, but generally the shorter the restriction period, the more likely it will be to resist scrutiny.

Lastly, although we have concluded that the LIFO policy is not sustainable, it is also our perspective that this is not about eliminating the offshore fishery from SFA 6 but recognizing that both sectors are important. Our conclusion is that any approach to replace LIFO must find an outcome that balances the distribution of Northern shrimp shares between the inshore and offshore fisheries. This balance must encourage collaboration among the fisheries, provide for effective stewardship of the resource, and respect Aboriginal interests.

7 Options and Recommendations

7.1 The Options

Throughout the consultative process, the Panel asked all participants to focus on whether LIFO should be maintained, changed or abolished and if it were to be changed or abolished what would be the main tenants of a new allocation regime for the Northern shrimp fishery. As previously discussed, there were widely disparate views expressed with individual positions often influenced by the stakeholder's stance in the fishery (early or late comer, proximity to the resource, special allocation holder or license holder, inshore or offshore, etc.). In some cases, positions were clearly either to abolish or to maintain LIFO. In other cases, it was a hybrid involving eliminating LIFO in some SFAs and not others. More often than not, positions were taken to safeguard or maximize their respective shares of the fishery.

Most positions were shaped around a stakeholder's view of the relative weight to be given to adjacency versus historical participation in the fishery. As well, Aboriginal interests pointed to land claim agreements and a broader need to increase access. In all cases, conservation of the resource was top priority although the prescriptions for improving it varied depending upon whether you resided in the offshore or the inshore. Based upon what we heard, the Panel was able to condense the advice into five options to be evaluated, as follows:

A. Continue LIFO in all SFAs and adopt the status quo

- Exclusionary approach (thresholds and exit of others) in favour of the offshore.
- Acceptance of LIFO as a valid policy approach
- Preference given to historical participation in all areas

B. Modify LIFO by either:

- 1) Removing the offshore from SFA 6 and maintaining LIFO in other SFAs
 - Exclusionary approach in favour of the inshore and some Special Allocation holders in SFA 6.
 - Acceptance of LIFO as a valid policy approach in other SFAs outside of SFA 6
 - Preference given to adjacency in SFA 6. Historical participation in the North
- 2) Maintain LIFO in SFA 6 and permanent proportional sharing in SFAs 0 to 5
 - Exclusionary approach in SFA 6 in favour of the offshore.
 - Acceptance of LIFO as a valid policy approach in SFA 6 but not in SFAs 0 to 5
 - Preference given to adjacency in the North. Historical participation in the south

C. Abolish LIFO by either:

- 1) Removing the offshore from SFA 6 and establishing a permanent proportional sharing regime in the other SFAs.
 - Exclusionary approach in favour of the inshore in SFA 6 with balanced approach in the other SFAs
 - Rejection of LIFO as a valid policy approach
- 2) Establishing a permanent proportional sharing regime in all SFAs
 - Balanced approach in all SFAs
 - Rejection of LIFO as a valid policy approach

7.2 Evaluation of the Options: A Principle Based Approach

As we have previously noted, all stakeholders have a valid stake in the fishery and most have used their allocations to create viable undertakings which have generated employment and resource rent that benefit their respective regions and communities. In this sense, LIFO is not about good and evil. However, the poor resource outlook has generated intense debate as to how quota reductions should be shared. Naturally, there are polarized views as all sides attempt to minimize their share of the pain while viewing the issue through their respective lenses. The Panel was struck by the almost universal comment that we have a difficult and complex issue to resolve. Almost all wished us luck in our reconciliations..

Our Terms of Reference asks the Panel to recommend whether LIFO remains a valid management approach for the Northern shrimp fishery and, if change is necessary, what that entails. Our Panel concluded early in the process that the only path to a recommendation is through a principle based approach. In outlining the principles below we were informed by various Departmental policies, and particularly the New Access Framework, which in turn was derived from the work of IPAC. Our assessment of the key principles that have informed our recommendations is as follows:

A. Conservation

All participants agree, conservation must be the first priority and in the long run without a resource to fish, no enterprise or community is sustainable. The Panel notes that the Northern shrimp fishery is well managed under a modern, comprehensive framework which has scientific advice and the precautionary approach at its core. All participants fish with a common gear type (otter trawls) and protocols have been put in place to minimize, to the extent possible, its impact on the resource, the eco-system and other species. Total allowable catches have been reduced to reflect the observations of a declining biomass. However, a number of issues were raised throughout the process that the Panel feels needs to be further considered by DFO and the industry.

The first question relates to the level of exploitation and what is an appropriate exploitation level to achieve maximum sustainability as the resource returns to a 'new normal' level.

As well, the inshore contends the offshore winter fishery in SFA 6 is an issue due to the potential targeting of spawning shrimp. Offshore interests are concerned about the level of monitoring and control within the inshore fishery (10% observer coverage in the inshore) and whether it is sufficient to safeguard the resource in SFA 6. Further examining of these issues is warranted by DFO regardless of the allocation regime eventually chosen for the fishery. However, it is the Panel's view that there are not strong differences in how the options will perform relative to conservation assuming the current precautionary approach to the fisheries continues. Therefore, this principle is not a determinate in choosing amongst the options for the future of LIFO.

B. Aboriginal Rights and Obligations

In respect to Aboriginals, the Panel agrees not only should fisheries allocation decisions respect the provisions of Aboriginal land claim agreements, but moving forward we should consider how to improve Aboriginal access to fisheries resources. This is in the interest of bridging the access gap that exists as a result of the time lag between Aboriginal communities and others in developing adjacent fishery resources. Access to adjacent fish resources is seen as a significant driver for economic development for Aboriginal communities within these areas.

We were not mandated to seek an independent legal opinion on the consistency of LIFO with the existing agreements. However, it is the Federal Government's legal view that LIFO is compatible with the agreements they have entered into with the various Aboriginal groups. As well, the LIFO policy as it is currently applied respects these arrangements. As a Panel we have no evidence to the contrary and do not see land claims themselves as a determinate of the future of LIFO.

The Aboriginal views on the merits of LIFO are complex and varied. Some groups have grave concerns about LIFO, noting the vulnerability of their Special Allocations should shrimp stocks decline thus requiring their exit from the fishery. Yet other groups support LIFO. Most Aboriginal presenters observed that their current Northern shrimp shares fall far short of what would be reasonable given their adjacency to the resource. The Panel recognizes the validity of this assertion given that historically the Aboriginal communities were slow to develop the fisheries in the northern areas thus allowing more southern fleets to establish a historic attachment to these fisheries. Fully addressing this issue is beyond the immediacy of the LIFO question but is a directional consideration for the Panel in its evaluation of LIFO and its alternatives.

The Panel has also observed that governmental policies respecting Aboriginal groups can be expected to be adjusted over time as conditions and circumstances evolve. It is the Panel's view that LIFO, particularly if implemented in the northern areas during periods of stock declines, will serve to reduce the share to a number of Aboriginal groups and in that respect undermines the Aboriginal principle.

C. Historical Dependence

During the 1970's and 1980's the fishery was undertaken exclusively by the offshore sector, predominately in the North. The fishery expanded in the more southern areas in the 1990's with increasing participation by the inshore fleets and Special Allocation holders. The offshore position is that it was the first fleet in all SFAs 0 to 6 and thus has the strongest attachment to these fisheries and should be given exclusive access to pre 1997 threshold levels. This would be enshrined indefinitely within the LIFO policy. The adjacent Aboriginal and non-Aboriginal communities point to their economic dependence on Northern shrimp since 1997 and that inter-generationally they have been attached to these waters while fishing for other species. The inshore also maintains they have landed the bulk of shrimp catches from SFA 6 and built up a significant dependence on the fishery. Consequently, they see the offshore historic attachment claim in SFA 6 being more tenuous, based upon relatively lower levels of catch prior to 1997.

In the Panel's view, there is little doubt that the offshore historic attachment in the north is more pronounced having pioneered the Northern shrimp and established the catch history prior to 1997. This historical dependence is at the heart of the argument for LIFO which would enshrine pre 1997 thresholds indefinitely with the exclusion of all others if the stock declines. The Panel observes that with or without LIFO in SFAs 0 to 5, the offshore fleet will continue to be an almost exclusive fleet in these areas since they hold the 17 licenses. The question is whether they should share a portion of the economic rent from that access with the Special Allocation holders who are adjacent and mostly Aboriginal. In 1997 the principal argument against doing that was their need to amortize the pre-1997 investments that were made to develop and undertake the fishery at that time (the thresholds). In our opinion, it is reasonable to conclude that the passage of time and the expanded access since 1997 has allowed that to occur.

The Panel rejects the notion that LIFO should provide indefinite protection and that new and future investments be given the same guarantee. We note in SFAs 0 to 5 the current combined shrimp quota is 68,612 t compared to 26,550 t in 1997 when the thresholds were established (discounting SFA 0 and 1 as "paper fish", the comparison is 55,362 t in 2015 versus 17,550 t in 1997). Given the more stable resource outlook in these SFAs, it would take several more years before LIFO may come into play in any material manner. This provides considerable lead time for the offshore vessel owners and others to adjust to not having a LIFO guarantee in these SFAs. In that respect, the Panel is persuaded that now is the best time to address the question of LIFO in the northern areas and not wait for the issue to be precipitated by stock declines as is already the case in SFA 6.

In the Panel's opinion, while the offshore history in the more southern areas overlaps to a greater extent with the inshore and is more recent, it is important and cannot be ignored. This counters the claim by the inshore interests that the offshore should be removed entirely from SFA 6.

Conversely however, it does not present a compelling case why the inshore and other Special Allocation holders should be subject to expulsion from SFA 6 under the application of LIFO. Rather, it supports a more balanced approach.

D. Adjacency

The adjacency principle favours those coastal fishing communities and fishers in closest proximity gaining the greatest benefit from it while promoting values of local stewardship and local economic development. In the initial issuance of licenses and allocations, adjacency was not the priority consideration with less than half of the 17 offshore licenses being issued to those interests directly adjacent to the main fishing areas at the time. The remainder of the licenses was issued to organizations in the south of Newfoundland and the Maritime Provinces. This reflected the historically underdeveloped capacity in northern communities and the prior participation of the southern interests in the earlier offshore groundfish fishery.

In its implementation, LIFO would ensure this initial approach of favouring history over adjacency is carried forward indefinitely. However, the new entrants since 1997 were largely selected based upon being adjacent to some part of the resource and see their continued presence in the fishery justified based upon this adjacency. This is at the heart of the opposition to LIFO, and in the Panel's view contributes to the unsustainability of the policy. The Panel is of the view that the offshore sector overreached and DFO was at least complicit in thinking that access could be reduced or denied to adjacent interests after a long term continuous period of participation. In the case of SFA 6 this has proven to be extremely difficult after 19 years of participation, resulting in the need for this Panel. Implementing LIFO in the more northern areas in the future, after many more years of participation by post 1997 interests, will, we believe, be very unlikely. The Panel's view is that unwinding the participation of adjacent Aboriginal and non-Aboriginal communities is untenable given they have built up significant investment and attachment.

E. Economic viability

The economic viability criterion requires that decisions regarding access promote, rather than compromise, the economic viability of existing participants in a particular fishery. This was respected in 1997 by establishing thresholds to protect the economic viability of the investments in the offshore fleet at the time. As pointed out earlier, it is reasonable to conclude that the passage of time and the expanded access since 1997 has allowed that to occur. However, currently there is also considerable investment in inshore fishing enterprises and onshore processing plants that must be considered in evaluating the merits of LIFO.

This investment was further facilitated by DFO after 2007 when temporary permits were converted to licenses and self-rationalization within the inshore was promoted by way of the combining policy. Special Allocation holders, as well as some offshore license holders (those with a community development mandate) are reliant on shrimp royalties to support investments in their respective communities. The Panel recognizes where stocks are declining, viability will be downgraded.

However, we are of the view that the viability of all those who have built up business investments, including those that have come in since 1997, need to be considered.

F. Equity

The equity principle has both a procedural and a substantive dimension.

At a procedural level, we feel the process of establishing LIFO fell short in that the governance involved was inadequate. Proponents of LIFO maintain that the FFAW agreed to the establishment of the initial thresholds. We were informed that in the days preceding the decision to allow new entrants in 1997, the FFAW executive was asked by DFO to support the thresholds and expressed tacit approval. However, the question remained as to their mandate to commit all the individual enterprise owners that currently fish shrimp. At the time none were involved in shrimp fishing so consulting with affected members was not possible since who would be eligible was not known. Also, the FFAW did not have a sufficient mandate to commit Special Allocation holders, Aboriginals, communities, future investors and plant operators to a promise to leave the fishery at an unknown point in the future. That type of commitment would have necessitated a much more inclusive and transparent consultation process by DFO. Many presenters expressed the view they were coerced into agreeing or lose their long awaited opportunity to enter the fishery. LIFO was also not well understood and even DFO has had its challenges with detailed implementation. This was further highlighted by the need for the Ernst & Young review.

At a substantive level, LIFO is designed to indefinitely protect one group, the offshore, at the expense of the rest (Aboriginals, Special Allocations holders and the inshore sector). While initially there may have been a rationale for this, the long term implementation is that LIFO will serve to perpetuate and increase disparities that exist between the offshore and adjacent and Aboriginal interests. LIFO is destabilizing to the extent it threatens investments and communities allowing for disproportionate impacts when stocks decline. This in turn inhibits planning and orderly industry adjustment. In the Panel's view, this is an unsustainable public policy which does not meet any reasonable equity test. Similarly, removing the offshore sector entirely from SFA 6 given their historic dependence, is equally unfair. At this juncture only a balanced approach to reductions that treats all sectors proportionately can satisfy the equity principle.

After reflecting on the forgoing, it is the Panel's view that LIFO fails to meet both the procedural and substantive requirements.

7.3 Recommendations on the LIFO Policy

After careful deliberation of the options and informed by a principle based review, our Panel is of the opinion that LIFO is not a sustainable instrument of public policy. It is unrealistic to expect that Government can indefinitely reserve the option to remove dependent and adjacent interests from a fishery to support those that had the privilege to enter the fishery first, no matter how long ago that occurred.

LIFO does not provide the basis for all sectors of the industry to plan and adjust to changing realities and does not promote sufficient ownership and stewardship of the resource by all involved.

In the case of Northern shrimp, LIFO also fails to satisfy the principles of adjacency, economic viability and equity. We are also of the view that fully removing the offshore sector from SFA 6 would similarly not satisfy the principles of economic viability and equity and would fail to respect the principle of historical dependence. Lastly, we are satisfied that any replacement to LIFO will meet the conservation principle given the continuing commitment to the Precautionary Approach and sustainable fisheries management. We have concluded only a balanced approach can satisfy all of the key principles of resource allocation.

Consequently, the Panel recommends that the Minister abolish the LIFO policy and replace it with an allocations regime which includes permanent proportional sharing in all SFAs.

7.4 Implementing Permanent Proportional Sharing

Permanent proportional sharing involves establishing for 2016 and beyond, percentage shares for all participants in each of the SFAs. Each quota holder would receive a fixed percentage of the resource which will allow the annual quota to rise and fall proportionate with the level of TAC established for each SFA. The percentage shares will be fixed indefinitely for those that are included in the fishery going forward.

In establishing the shares, choices are required as to what year or period of years are appropriate to calculate the percentages. Also, decisions have to be made as to who will be included. The Panel recognizes that these choices affect the relative sharing and thus there are as many disparate views on these as on LIFO itself. In making its recommendations in this area, the Panel has again maintained a principle based approach reflecting our review of the key allocation principles and what has transpired since LIFO came into effect post 1997.

The Panel has concluded that proportional sharing is less complicated in SFAs 0 to 5 as the quotas in these areas have remained well above threshold levels and LIFO has not yet had any effect. Thus fixing the current shares, based upon 2015 shares allocation, would appear the most equitable approach and the least disruptive in that the volumes the various interests will have to fish will be the same in 2016 and the foreseeable future as they would have been under LIFO.

Similarly, by carrying forward the current quota holders in SFAs 0 to 5, participation will not change (see below for a recommended exception related to the inshore affected fishers groups). The result is that future shares will reflect a reasonable balance of historical dependence, adjacency, equity and Aboriginal participation.

However the situation for SFA 6 and 7 is more complicated. With the decline in quotas in recent years in SFAs 6 and 7 the LIFO policy has already been implemented by removing some players and reducing the current shares for some of those who remain in the fishery.

It is the Panel's view that the effects of LIFO have to be reversed given that we have concluded it should be abolished and should not have been implemented in the first place. To do so necessitates disregarding the fishing and allocation history after 2009 in SFA 6 and after 2011 in SFA 7. Indeed, given the short and recent history in SFA 7 we believe all participants should receive a proportionate share based upon the allocation percentages that were in place in 2011 in that area. These shares would set allocations in SFA 7 should the fishery reopen at some point in the future.

In SFA 6, the Panel is of the opinion that choosing a single year would not adequately address all the principles that should be reflected in a balanced approach. Arguably, picking any time period can be viewed as arbitrary. However, after considerable analysis and reflection, the Panel believes choosing 1997 to 2009 would result in a selection of participants and relative shares that best reflects a balance of historical dependence, adjacency, equity and Aboriginal participation. Percentage shares in SFA 6 for each quota holder should be calculated based upon the total of cumulated annual allocations over the above referenced period.¹³ Quota holders would include all those in place in 2009 with the recommended exception related to inshore affected fishers groups.

The rationale for selecting 1997 to 2009 as a base period to calculate proportionate sharing in SFA 6 is as follows:

- allocations are more appropriate than landings given the inshore sector were at a disadvantage in the initial entry period and the fleet and onshore plants had to gear up and adjust its harvesting capacity to fully utilize expanding quotas
- assigning offshore landings to special allocation holders is likely more challenging than using allocations
- the effects of LIFO with the decline in quotas in recent years have to be reversed given that we have concluded it should be abolished and should not have been implemented in the first place. Therefore, utilizing allocations after 2009 would bring the effect of LIFO in play and on a permanent basis
- using 2009 peak allocations and the last year before LIFO took effect, would be biased against the offshore
- picking any other single year would be arbitrarily biased against given interests depending upon the year chosen

¹³ The SFA 6 annual quota, and the annual allocations assigned each allocation holder, would be totaled for the period 1997 to 2009 (some would have more years than others). Each allocation holder would receive a percentage share based upon its cumulative allocations over the 13 years divided by the cumulative total SFA 6 quotas over the 13 year period.

- incorporating the years before 1997 would be biased in favour of the offshore in that despite their repeated requests the inshore and others were denied access prior to 1997
- some Special Allocation holders came in later years when quotas were at their highest levels. Utilizing averages throughout the 1997-2009 period smooths out the effect of keeping them in at lower quota levels going forward
- using an average over the period when all players were involved better reflects the principles of adjacency, equity, viability and historical dependence which are the basis for the balanced approach in SFA 6

In the Panel's review of the history of the fishery and its impacts, the principles of historic attachment, economic viability and equity, the Panel was challenged to find a continuing rationale for the existence of two groups of Special Allocations. These include the inshore affected cod fishers group in SFA 6 and the inshore affected cod/crab fishers group in SFA 5.

In our view these groups appear to be outliers. The other participants in the Northern shrimp fishery have access that involves actual financial investment in harvesting or processing or the allocations are used in the economic development of Aboriginal and non-Aboriginal communities. The inshore affected fishers' allocations exist only to provide a direct benefit to a select number of individuals who in our opinion are difficult to identify and justify. Indeed, if left in the fishery, we feel these allocations would detract from achieving the objectives of supporting economic viability of existing fishing enterprises and the maintenance of viable communities.

This is particularly relevant given the pending further reductions of Northern shrimp allocations in SFA 6 and the fact they (inshore affected cod fishers) would be brought back into the fishery after been out since 2009. Also, in SFA 5 these allocations, if allowed, would reduce access by adjacent Aboriginal and community groups in Labrador.

The Panel is therefore of the view that these Special Allocation "inshore affected fishers" in SFA 5 and 6 should not be included in the future sharing of the resource. In SFA 6, we take the view that the shares that would have accrued to this group should be shared proportionately between the offshore and the inshore fleets based upon their relative shares over the period 1997 to 2009.

In SFA 5, we take the view that the shares that would have accrued to this group (cod/crab affected fishers) should be phased out over the next three years and transferred equally between the offshore, the Northern Coalition and the three immediately adjacent Aboriginal groups; Nunatsiavut, Innu, NunatuKavut. The shares to the Northern Coalition and the Aboriginal groups will increase Aboriginal participation and provide tangible evidence of the commitment to improving Aboriginal access. A one third share to the offshore recognizes their historical dependence in SFA 5.

Similarly, the Panel is of the view that the offshore competitive quotas in SFA 4 and 5 should be redistributed in the future sharing of the resource. As discussed in Section 6, these competitive quotas were established in 2003 when the quotas increased in these areas. The intent in allocating these to the offshore, and not sharing more widely, was to fund science activities by the offshore fleet. With the Larocque decision in 2006, this practice of using ‘joint arrangements’ to fund science was ended and the government funded these projects on an interim basis until the Fisheries Act was amended in 2012 to allow the quotas for science arrangements to continue. In 2013, a Special Allocation for science of 1700 t was established under the Northern Shrimp Research Fund which is fished by the offshore.

In SFA 4, we take the view that the offshore competitive quota be transferred to the existing allocation holders based upon their 2015 respective percentage shares. This will recognize the historical dependence of the offshore fleet (78.3% share) as well increase the Aboriginal participation in the fishery and provide tangible evidence of the commitment to improving Aboriginal access. In the end, almost all of these allocations (94%) will still be landed by offshore vessels.

In SFA 5, similar to our recommendation regarding ‘inshore affected fishers’, we take the view that the offshore competitive quota be transferred to the offshore, Northern Coalition and the three immediately adjacent Aboriginal groups (Nunatsiavut, Innu, NunatuKavut). The shares to the Northern Coalition and the Aboriginal groups will increase the Aboriginal participation and provide tangible evidence of the commitment to improving Aboriginal access. A one third share to the offshore recognizes their historical dependence in SFA 5. In the end, all of these allocations will still be landed by the offshore vessels.

7.5 Recommendations on How to Implement Permanent Proportional Sharing

The Panel recommends that:

7.5.1 DFO establish for the 2016/17 fishing year fixed percentage shares for all participants in each of the SFAs. The percentage shares will be fixed indefinitely for those that are included in the fishery going forward.

In SFAs 0 to 5, the permanent fixed shares be established based upon the 2015 allocations to various quota holders. With the exception of the inshore affected cod/crab fishers’ group, all existing quota holders will receive a share.

In SFA 6, the permanent fixed share be calculated based upon the total accumulated annual allocations over the 1997 to 2009 period. With the exception of the inshore affected cod fishers’ groups, quota holders would include all those in place in 2009.

In SFA 7, the permanent fixed share be calculated based upon the 2011 allocations to the various quota holders and that all 2011 quota holders be included.

7.5.2 In SFA 6, the shares that would have accrued to inshore affected cod fishers' groups be shared proportionately between the offshore and inshore fleets based upon their relative shares over the 1997-2009 period.

7.5.3 In SFA 5, the allocation currently held by the inshore affected cod/crab fishers' group should be phased out over three years and these allocations be redistributed by allocating one third to the offshore, one third to the Northern Coalition and one third to be shared equally between the three immediately adjacent Aboriginal groups; Nunatsiavut, Innu, NunatuKavut .

7.5.4 In SFA 4, the current offshore competitive quota be redistributed and shared by all the existing allocation holders based upon their 2015 respective percentage shares.

7.5.5 In SFA 5, the offshore competitive quota be redistributed by giving one third to the offshore, one third to Northern Coalition and one third to be shared equally between the three immediately adjacent Aboriginal groups; by Nunatsiavut, Innu, NunatuKavut.

7.5.6 We recommend that special allocation holders in SFA 6 have the competitive option to utilize either the offshore or inshore fleets to harvest their allocations. If the inshore is selected to harvest an annual allocation then the harvesting arrangement should be on a 'block' basis with an inshore fleet (i.e. 2J, 3Kn, 3Ks, etc.) and not be an arrangement between the special allocation holder and individual inshore enterprises.

The impact of recommendations 7.5.1 to 7.5.5 on the current allocation key for the Northern Shrimp fishery and under hypothetical resource scenarios for the futures is outlined in Appendix 8 4.

7.6 Other Considerations

As described in Section 6 issues, there are a number of issues that are not directly relevant to the Panel's Terms of Reference which the Panel feels needed to be noted for further consideration by DFO and the Federal government for possible follow-up.

These include:

Our Panel has observed that in SFA 6, a gap between the expected shrimp declines and possible increased groundfish harvest is likely. We are aware of work underway among some of the interests concerned about the outcome, but **believe that developing a transition strategy which addresses, to the extent practicable, its implications and has the support of governments and the affected constituencies should be a priority.**

The inshore fishery does not have the same standard of fishery monitoring and catch reporting as the offshore fleet. Further, the offshore does not have the same level of dockside monitoring as the inshore. **We are unsure as to the validity of the concerns raised but we believe the fishery observer, catch monitoring and dockside monitoring programs should be reviewed to ensure that they are robust and coverage levels are adequate to ensure conservation of the resource.**

Both inshore and offshore interests have described concerns about the level of exploitation and the lack of a "rest period" for shrimp from harvesting and the timing of the inshore and offshore fisheries in SFA 6 as it relates the spawning cycle for shrimp. The Department's science view is that this is not a concern given that the fishery is managed to an overall exploitation rate that factors in the total abundance of shrimp and which takes into consideration the fishing effects. **However, our Panel has observed how strongly the nature of this fishery issue has been advanced. We therefore conclude it is a matter deserving further review by DFO which should be undertaken in consultation with the industry.**

Our Panel's observation is that the removal of the shrimp tariffs once the new CETA agreement is ratified represents a significant opportunity for the inshore plants to competitively acquire industrial shrimp that otherwise would not be processed overseas. The repatriation of this economic activity is an important policy objective that should be expedited by the Government of Canada and the Canadian industry. **In this regard the Panel is of the view that the Government of Canada should establish a formal ongoing engagement process with all sectors of the industry to ensure that the repatriation of the processing of industrial shrimp becomes a reality.**

In the Panel's view LIFO has shown a spotlight on the growing modern day tension between historic attachment and adjacency. Southern fleets developed fisheries in more northern waters as the technology, human and financial capital was lacking or non-existent in northern adjacent and Aboriginal communities.

Perpetuating participation based upon historical involvement, unfortunately denies adjacent Aboriginal communities the ability to pursue economic development utilizing their adjacent natural resources. Tilting the imbalance in favour of adjacent communities is likely an inter-generational undertaking but it needs to be addressed in the development of fisheries policy. This is especially relevant given the commitment of the Government of Canada to a renewed relationship with Indigenous peoples.

Some means to amortize historic attachment in favour of adjacency needs to be found and this should be pursued by the Federal Government through the development of specific policies and programs to make this a reality .

Appendix 8.1

Terms of Reference

External advisory process to examine the last in, first out policy in the northern shrimp fishery

A. Introduction

The Minister will appoint a Ministerial Advisory Panel (MAP) that will be tasked with providing advice on whether the Last In, First Out (LIFO) policy specific to the Northern shrimp fishery should be continued, modified or abolished.

B. Background

After a period of substantive growth, the Department has used LIFO to implement Total Allowable Catches (TACs) reductions in the southern Shrimp Fishing Areas (SFAs) areas of the Northern shrimp fishery since 2010. LIFO prescribes that those who last entered the fishery would be the first removed should the TAC fall to a certain threshold. As a result of LIFO, the inshore fleet's allocation in this fishery has been reduced from more than 76,000t to less than half that amount in 2016. Northern shrimp stakeholders maintain polarized perspectives on the use of LIFO, with the inshore fleet and aboriginal groups, including Land Claimants, being of the view that adjacency should be the determining factor in access and allocation decisions. Science projects that the changing ecological conditions that have been observed in the past few years will continue possibility until 2035, creating an environment that is less favorable to shellfish including shrimp, and more favourable to groundfish species. Of note, the anticipated declines in this fishery are expected to be significant and regardless of the use of LIFO, access to the SFA 6 fishery by all stakeholders into the future is uncertain.

C. Objectives

- The MAP will consist of up to 7 individuals.
- The MAP, guided by a Chair is to offer advice if LIFO should be continued, modified or abolished for the 2016 season and beyond. If LIFO should be modified or abolished, what are the elements of an appropriate access and allocation tool / mechanism for this fishery?
- To pronounce on the validity of applying LIFO to reduce allocations in SFAs which are subject to any of the three Land Claims Agreements in the commercial shrimp fishery.

- To engage stakeholders through written and oral forums to seek their perspectives, concerns and suggestions on what constitutes an appropriate access and allocation regime in this fishery, including views on LIFO, while directly considering the anticipated continued stock declines in the Northern shrimp fishery.
- To seek advice from other experts outside of the MAP as deemed necessary and appropriate.

D. Scope

1. The MAP will focus their activities on identifying the concerns of the Northern shrimp fleets, and through various processes will ensure that stakeholder submissions are factual and based on evidence that can be substantiated. Further to this, the MAP will also obtain the perspectives of relevant governments, agencies, special allocation holders, Land Claims Resource Management Boards and Aboriginal / Inuit organizations.
2. The MAP will not undertake research, but will instead rely on 1) existing documentation from the Department, 2) oral discussions and written submissions from stakeholders, 3) the specific expertise of individual MAP members and 4) the input and perspectives of specialists as deemed appropriate by the MAP.

E. Methodology / Approach

1. The MAP will solicit written submissions from interested parties, and at a later time the submitting parties will be invited to meet with the MAP in a public venue. This represents a forum in which the MAP may ask questions or challenge any detail of the submission to ensure that the MAP is basing its decisions on the best available and factual information. The following stakeholders / parties will be invited to participate:
 - The Offshore Shrimp Fleet
 - The Inshore Shrimp Fleet
 - Special Allocation Holders
 - Relevant provincial and territorial governments and agencies
 - Rights Holders
 - Relevant Land Claims Resource Management Boards
 - Relevant Aboriginal organizations
 - Other stakeholders in the Northern shrimp fishery
2. The MAP may consult other interests as required to ensure a proper and inclusive understanding of the issues, to validate points or to offer opposing perspectives.
3. The MAP will carry out interviews, obtain and examine relevant documents and information and consult with other experts to ensure a thorough understanding of the perspectives of all parties.
4. The MAP will organize meetings with the primary parties either individually, collectively or both at its discretion and likewise, with DFO staff.

5. The MAP will have access, as required and subject to Access to Information and Privacy Acts, to DFO documentation and DFO personnel when seeking information on the fishery.
6. The Chair will prepare and submit a written report to the Minister of Fisheries and Oceans on the MAP's observations and recommendations. The above written report to the Minister will be provided in French or English and a final copy will be provided to the Senior Assistant Deputy Minister (ADM) of Ecosystems and Fisheries Management (EFM) no later than June 15, 2016.
7. The MAP will determine an appropriate media spokesperson if required.
8. A package will be prepared for the reviewer outlining the official set of facts and figures related to this issue from the Department's perspective.

F. Considerations

- a. The need to clearly articulate if LIFO should be continued, modified or abolished. If modified or abolished, what would the altered / new regime look like?
- b. The need to consider LIFO in terms of aboriginal groups, and specifically with respect to each of the three Land Claims, in each of the Shrimp Fishing Areas.
- c. The need to obtain the most relevant information available to validate the issues and concerns raised by all parties.
- d. The need to ensure that all information upon which decisions are being made is factual and defensible.
- e. The need to give a strong rationale to support each of the recommendations and decisions of the MAP.

G. Costs

The MAP's costs including professional fees, travel, accommodations, translation services, and meeting facilities will be paid by Fisheries and Oceans Canada. Travel and meals costs associated with the work of the review will be paid at Treasury Board of Canada rates in effect.

Appendix 8.2

Members of the Ministerial Advisory Panel for the LIFO Review

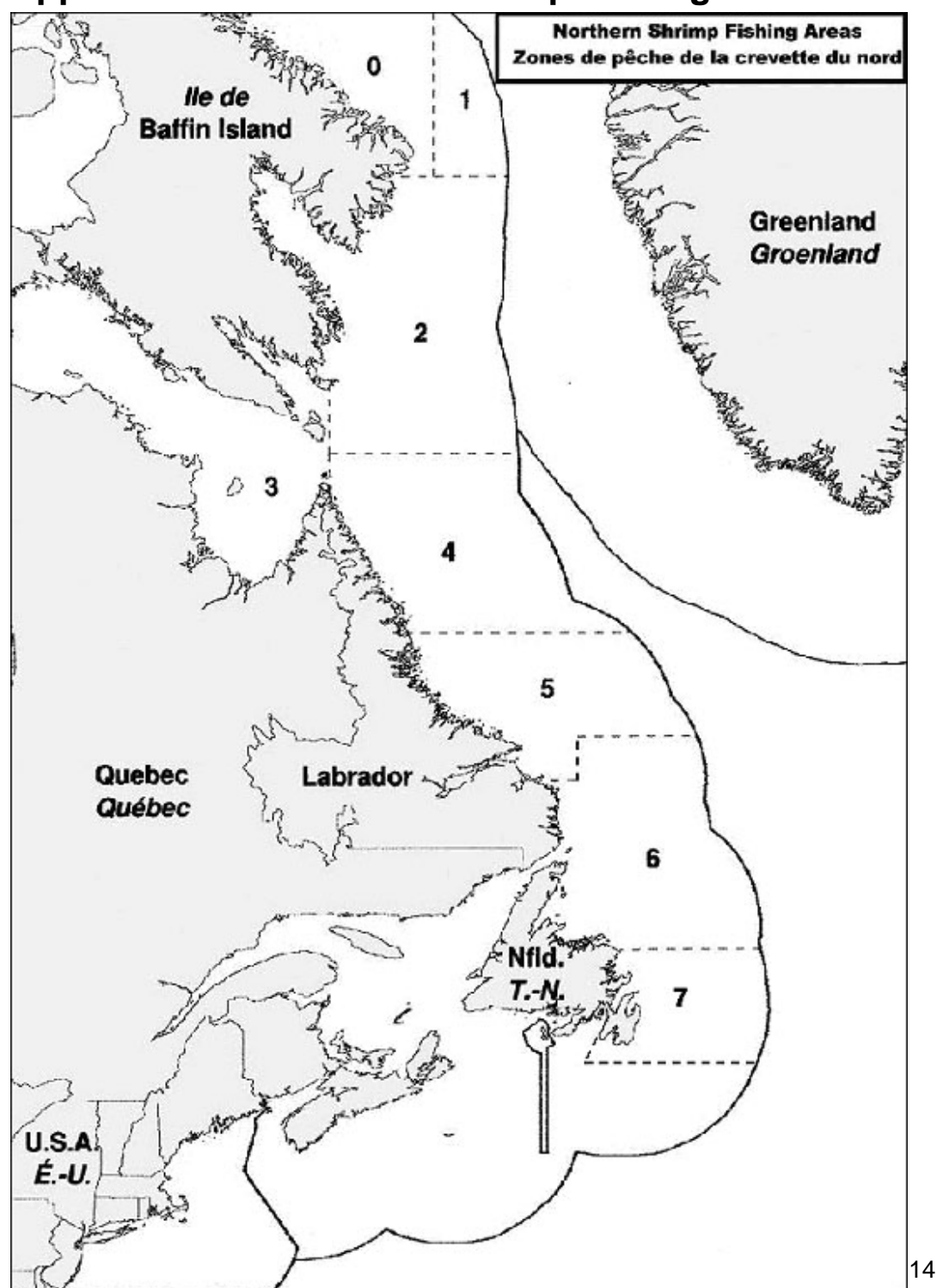
Barbara Crann - Barbara Crann has more than fifteen years of experience working with all levels of government in the field of employment counselling and political campaigning. She is currently a consultant and owner of BSC Consulting Services in Chapel Arm, Newfoundland and Labrador. Prior to this, Barbara was a Project Coordinator for many government funded programs and more recently Lead Employment Counsellor / Manager for an Employment Assistance Services office located in rural Newfoundland (funded under Advanced Education & Skills). After completing a Business Administrative Diploma in St. John's NL, Barbara went on to attend Memorial University of Newfoundland and completed her Bachelor of Arts in 1998.

Wayne Follett - Wayne Follett lives in Conception Bay South, Newfoundland and is a part-time consultant offering services in a variety of areas including business management, fisheries resource management, public policy and analysis and marine operations. Prior to this, Wayne was the President and CEO of Marine Atlantic Inc. Between 1980 and 2008, Wayne worked for the Department of Fisheries and Oceans including as a Regional Director of Program Coordination and Economics, Regional Director of Fisheries Management, Regional Director of the Canadian Coast Guard and seven years as a Regional Director General for the Newfoundland Region. Wayne has been a member of numerous boards including Marine Atlantic Inc., One Ocean, the Marine Institute and the Canadian Centre for Fisheries Innovation. Wayne attended the Memorial University of Newfoundland and is a Chartered Professional Accountant.

Paul Sprout - Paul Sprout lives in Nanaimo, British Columbia where he works as a Fisheries Management Consultant. Between 1976 and 2010, Paul worked for the Department of Fisheries and Oceans as a Fisheries Management Biologist, a Director of Fisheries Management, an Associate Assistant Deputy Minister and most recently as a Regional Director General. Paul graduated with an MBA from Simon Fraser University in Vancouver, British Columbia in 1995. Prior to this, Paul completed a Bachelor of Science from Simon Fraser in 1976 and a Diploma in Technology (Fish, Wildlife and Recreation option) from the British Columbia Institute of Technology in Vancouver, British Columbia in 1974.

Trevor Taylor - Trevor Taylor lives in Iqaluit, Nunavut where he works as a consultant with a focus on fisheries and marine conservation in the Canadian Eastern Arctic. Prior to this, he was a Senior Cabinet Minister and a Member of the House of Assembly for the Government of Newfoundland and Labrador. Trevor has more than ten years of experience as a fisherman and fishing captain on the waters off of Newfoundland and Labrador. He was also as a fishermen's union representative and served as a Member of the Fisheries Resource Conservation Council. Trevor volunteers as a fundraiser and expedition member of *Students on Ice* where he provides lectures on ocean and fisheries conservation, politics and governance.

Appendix 8.3 – Northern Shrimp Fishing Areas



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¹⁴ Northern shrimp Integrated Fisheries Management Plan (IFMP), 2007, Department of Fisheries and Oceans

Appendix 8.4 - Proposed sharing current, adjusted, and under various resource scenario

SFA 4 : Proposed sharing current adjusted and under various resource scenarios (see note 1)

Allocation	2015 MAP		Decrease Scenarios				Increase scenarios	
Holders	current	adjusted	20% MAP	40% MAP	20% LIFO	40% LIFO	20% MAP	20% LIFO
Offshore	10394	11357	8795	6233	8008	7283*	13920	11559
Inshore	702	767	594	421	434	0	940	831
Innu	750	819	634	449	734	0	1004	750
Nunatsiavut Govt	300	328	254	180		0	402	300
NSRF (see note 2)	1700	1700	1700	1700	1700	1700	1700	1700
Offshore Competitive	1125	0	0	0	1101	0	0	1125
Total	14971	14971	11977	8983	11977	8983	17965	16265

*below LIFO threshold (7650t)

Note 1. These numbers are preliminary and illustrative based upon the best available at the time of the report and are subject to refinement by DFO.

Note 2: The NSRF is neither guaranteed nor a fixed amount. It could increase or decrease in a given year. As per policy the NSRF comes off the top.

The proportionate shares are calculated after the NSRF is deducted from the total.

SFA 5 : Proposed sharing current adjusted and under various resource scenarios (see notes 1 and 2)

Allocation	2015	MAP	Decrease Scenarios				Increase scenarios	
Holders	current	adjusted (3)	20% MAP	40% MAP	20% LIFO	40% LIFO	20% MAP	40% MAP
Offshore	7650	9750	7800	5850	7650	7650	11700	13650
Northern Coalition	6120	8220	6576	4932	6120	5064	9864	11508
Innu	510	1210	968	726	510	422	1452	1694
Nunatsiavut Govt	1260	1960	1568	1176	822	422	2352	2744
Cartwright Fishers	710	710	568	426	593	422	852	994
Nunatuavut Com Council	750	1450	1160	870	312	0	1740	2030
Inshore Affected Fishers Cart	3400	0	0	0	1419	0	0	0
Inshore Affected Fishers N. Pen	400	0	0	0	167	0	0	0
Offshore Competitive	2500	0	0	0	1041	0	0	0
TOTAL	23300	23300	18640	13980	18640	13980	27960	32620

Note 1. These numbers are preliminary and illustrative based upon the best available at the time of the report and are subject to refinement by DFO.

Note 2: SFA 5 increases can't be determined under LIFO as it is subject to Ministerial discretion- in recent years all increases went to special allocations - not sharing arrangement;

Note 3. The MAP adjusted numbers and the scenarios are based upon 2018 amounts after the "Inshore Affected Fishers" are completely phased out over three years.

SFA 6 : Proposed sharing current adjusted and under various resource scenarios (see note 1)

Allocation	2015	MAP	Decrease Scenarios						Increase scenarios			
Holders	current	adjusted	20% MAP	40% MAP	60% MAP	20% LIFO	40% LIFO	60% LIFO	20% MAP	40% MAP	20% LIFO	40% LIFO
Offshore	13559	11119	8900	6671	4447	12596	11632	11050	13343	15566	14523	15049
SABRI	3000	2150	1721	1290	860	3000	3000	2044	2579	3009	3000	3000
Innu	0	829	664	497	332	0	0	0	995	1161	0	1500
FOGO	0	549	440	330	220	0	0	0	659	769	0	1000
Inshore	31637	33549	26853	20130	13419	22961	14286	6183	40259	46969	40312	45497
Inshore Affected Fishers N. Per	0	0	0	0	0	0	0	0	0	0	0	1076
Inshore Affected Fishers LNS	0	0	0	0	0	0	0	0	0	0	0	358
TOTAL	48196	48196	38577	28918	19277	38557	28918	19277	57835	67474	57835	67474

Note 1. These numbers are preliminary and illustrative based upon the best available information at the time of the report and are subject to refinement by DFO.