



Wednesday, May 04, 2011

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

**Re: Management Measures for Northern Shrimp in and Adjacent to Nunatsiavut**

Dear Minister Shea:

Pursuant to the provisions of the Labrador Inuit Land Claims Agreement, please find attached the Torngat Joint Fisheries Board's (TJFB) 2011 recommendations regarding the continuing co-management of northern shrimp in Shrimp Fishing Areas (SFA) 4 and 5 and the proposed re-zoning of SFAs 2, 3, and 4.

The Torngat Joint Fisheries Board was established by the three signatories to the Labrador Inuit Land Claims Agreement, with its powers and responsibilities defined in Chapter 13. The Board is established as the primary body advising the responsible Minister(s) on matters relating to the management of fish, fish habitat, and fisheries in Nunatsiavut, with advisory powers in waters adjacent to 'the Zone'. Shrimp Fishing Areas 4 and 5 overlap the zone and are therefore within, and adjacent to it. The proposed Davis Straight-West Management Unit lies partially within SFA 4 and the Zone.

On 17 May, 2010, the TJFB recommended increasing the exploitation rate on the northern shrimp fishable biomass in Shrimp Fishing Area 4 to 14%, with 75% of the corresponding increase in the Total Allowable Catch allocated to the Nunatsiavut Government. The TJFB also recommended that the Minister consult with the Board regarding allocation principles, as they apply to the northern shrimp fishery.

Your response of 5 July noted that the Board's submission was received too late to be considered for the 2010/2011 fishery, and you did not consider the Board's recommendation to consult regarding allocation principles. The TJFB has adjusted the scheduling of its own decision-making processes to approximate that of your Department, and I look forward to a more engaging and productive discussion of the northern shrimp fishery in and adjacent to Nunatsiavut.

In August of 2010 the TJFB was asked to consider and comment on a proposal to re-zone SFAs 2, 3, and 4. (The most recent iteration of the proposal was presented to the Board on 30 March, 2011). The Board considers both issues (inequitable allocation and proposed re-



zoning) to be linked, and addresses both herein. A separate recommendation dealing exclusively and more fully with the proposed re-zoning will follow in June of 2011.

We look forward to your timely response to this submission.

Your's truly,

John Mercer  
Chairman  
Torngat Joint Fisheries Board



## **Torngat Joint Fisheries Board**

Memorandum to the Minister of Fisheries and Oceans  
Northern Shrimp Co-Management in and Adjacent to Nunatsiavut  
(May 4, 2011)

**Issue: Management of the Northern Shrimp Fishery in the Labrador Inuit Settlement Area, and waters adjacent to the “Zone”.**

### **Recommendation:**

The Torngat Joint Fisheries Board recommends that the Minister:

- Increase the exploitation rate on the northern shrimp fishable biomass in Shrimp Fishing Area 4 (SFA 4) to 14% in 2011 and allocate 75% of the corresponding increase in the Total Allowable Catch (TAC) to the Nunatsiavut Government;
- Exempt the Nunatsiavut Government from any future quota reductions in SFA 5.
- Include the Torngat Joint Fisheries Board and the Nunatsiavut Government in negotiations pertaining to the re-allocation of northern shrimp quotas resulting from the proposed re-zoning of SFAs 2, 3, and 4.

### **Background:**

#### **1. The Torngat Joint Fisheries Board and management of the Northern Shrimp Fishery**

- The Torngat Joint Fisheries Board (hereafter the “Board”) is established by the three parties to the Labrador Inuit Land Claims Agreement (hereafter the “LILCA”), with its roles, responsibilities and powers outlined in parts 13.10 and 13.11 of Chapter 13. The Board is the primary body making recommendations on the conservation of fish and fish habitat, and the management of commercial fisheries in the Labrador Inuit Settlement Area.
- The TJFB has both the authority and responsibility to make recommendations and provide advice to the Minister on management and allocation decisions pertaining to northern shrimp, as per Sections 13.11.1 (a) and (b), 13.11.2 (b), 13.11.9, 13.12.7, 13.12.9, 13.14.3, and 13.14.4 of the Labrador Inuit Land Claims Agreement.



- The northern shrimp fishery began off the coast of Labrador and the present day Labrador Inuit Settlement Area in the mid 1970's, primarily in the Hopedale and Cartwright Channels (present day SFA 5), and these areas along with Hawke Channel, St. Anthony Basin and the Saglek Bank slope off northern Labrador have been longstanding fishing areas.
- The development and management of the northern shrimp fishery has followed a different path than the other primary shellfish fisheries in Atlantic Canada, being the only such fishery where access is not limited by sector or regional management. Put simply, shrimp off Nova Scotia is limited to Nova Scotian fishing interests; Gulf Shrimp is limited to Gulf-based fishing interests, but northern shrimp off Newfoundland and Labrador has been made available to fishing and non-fishing interests throughout Atlantic Canada, including Nunavut and Nunavik.
- The 1990s marked a period of substantial growth of the northern shrimp resource (particularly in SFAs 5 & 6), quotas and landed value. The decline of groundfish and the moratorium on northern cod resulted in many requests and subsequent access to the burgeoning and lucrative northern shrimp fishery by groups throughout Atlantic Canada.
- Increased access to the shrimp resource for Aboriginal people was a priority for Fisheries and Oceans Canada in 2003, resulting in temporary allocations to the Innu, the Nunatsiavut Government, the Labrador Métis Nation and the Miawpukek First Nation. Access to the northern shrimp fishery has also been provided to special interest groups including the Fogo Island Cooperative in SFA 6, a PEI Consortium in SFA 7, and inshore cod fishers from the Quebec lower north shore. There are also special allocations to Nunavik and Nunavut interests in SFA 5, obtained through the Northern Coalition.
- The Board has found through its analyses that allocation principles have been inequitably and inconsistently applied in respect of Labrador Inuit access to the northern shrimp resource, particularly to those shrimp fishing areas situated within the Labrador Inuit Settlement Area, and the waters immediately adjacent to the Zone.



- The importance of northern shrimp to the Labrador Inuit is evident in the LILCA. Its prominence is marked by it being the only species for which there is a specific clause in the land claim agreement, to wit Section 13.12.7 (emphasis added):

*“If in any calendar year after the Effective Date the Minister decides to issue more Commercial Fishing Licences to fish for shrimp in Waters Adjacent to the Zone than the number available for issuance in the year of the Agreement, the Minister shall offer access to the Nunatsiavut Government through **an additional Commercial Fishing Licence issued to the Nunatsiavut Government or by some other means to 11 percent of the quantity available to be Harvested under those licences.**”*

## 2. The 2008 increase of the SFA 4 TAC and the Honour of the Crown

- The Board is concerned with the decision to increase the SFA 4 northern shrimp Total Allowable Catch by 1000t for the 2008 fishing season without consulting the Board, and the subsequent allocation process which ignored Section 13.12.7 of the LILCA.
- The allocation processes of the past decade have significantly limited Labrador Inuit opportunities, particularly in SFA 4. The allocation decisions run counter to the principle of the Honour of the Crown as it relates to interpreting language of a treaty, and Aboriginal case law such as *Haida v. B.C (2004)*, where the court clearly indicated that the duty of the Crown is to interpret treaties generously, and to consult and accommodate. Despite Ministerial authorization of new access, entrants, and multiple quota increases, the Nunatsiavut Government has been excluded from fishing areas within and immediately adjacent to the Labrador Inuit Settlement Area, perhaps as a result of an overly literal interpretation of Section 13.12.7.
- A 1000t increase to the SFA 4 quota in 2008 was distributed as per traditional sharing arrangements in the fishery. The Board was provided no opportunity to give advice on the allocation principles, scientific information and conservation measures, or the interpretation and application of Section 13.12.7 in respect of the traditional sharing arrangements and new processes or measures that could be invoked as a result of the LILCA. The coastal and marine region encompassed within SFAs 4 and 5 are *de facto* traditional Labrador Inuit occupancy and resource use areas. The Nunatsiavut Government has been provided no access to SFA 4 to date, and this is inconsistent with general allocation principles and the provisions of Section 13.12.7 of the Agreement.
- Had the Board been consulted, it would have advised of its understanding of case law on the Honour of the Crown in respect to Aboriginal rights and treaties. It would have recommended that the Nunatsiavut Government receive separate and distinct allocations of northern shrimp in SFA 4 and SFA 5 in each instance where there is an increase, as these areas are within and immediately adjacent to the Labrador Inuit Settlement Area.
- The fact that there is a stand-alone clause on northern shrimp in Chapter 13 provides insight to the substantive discussions around shrimp quotas and licences during land claim negotiations on the Fisheries Chapter, which were coincident with the rapid growth of the fishery. The Labrador Inuit had expectations that there would be opportunities with respect to northern shrimp.



- The language of Section 13.12.7 has proven controversial. There have been large quota increases and many new entrants to the northern shrimp fishery since 1996, but no Minister of Fisheries and Oceans has issued a shrimp licence adjacent to the Zone prior to or since the LILCA was officially promulgated. In this context, the literal interpretation of the clause has unduly restricted the Labrador Inuit from acquiring and developing opportunities from immediately adjacent natural resources, which is at odds with the spirit and tenor of the negotiations and the resulting land claim agreement. The interpretation is inconsistent with the Honour of the Crown and case law respecting the Crown's duty to consult.

### 3. Inequities in Northern Shrimp Allocations adjacent to the Zone

- Equitable allocation is an immediate and pressing issue for Nunatsiavut at this time, across all fisheries. The northern shrimp fishery TAC has increased significantly over the past decade, and particularly through the 1997 to 2003 period in SFAs 4, 5 and 6 off Labrador. It is this period that reflects the greatest increase in quotas and introduction of new users. Nunatsiavut Government participation in combined SFAs 4 and 5 has declined to 3.6% in 2011.
- In 1998 there was a 3,120t increase in SFA 4 TAC, the fishing area situated immediately off Nunatsiavut. Nunatsiavut-based enterprises in the offshore sector received nominal shares as traditional offshore users but there was no separate and larger increment for the Labrador Inuit to recognize their adjacency, historical attachment and need.
- New allocations announced for 3L (i.e. SFA 7) in 2000 were provided almost exclusively to the adjacent 3L inshore fleet and other southern interests. Despite substantial quota increases and resource sharing of shrimp adjacent to their communities in shrimp fishing areas 4 and 5, the same allocation criteria was not reciprocated for the Labrador Inuit.
- In recent years Nunavut and Nunavik have been the major beneficiaries of northern shrimp allocations adjacent to their land claim areas. In 1999 Nunavut received 50% of a 3,500t exploratory quota in SFA 2. In 2004, they were provided a 3,722t increment in SFA 1 - 66% of new allocations that year. Some of the greatest beneficiaries of the quota increases off the Nunatsiavut and Labrador coast in recent years have been the residents of Nunavut and Nunavik (notwithstanding allocation-holders from the Maritimes and Quebec).
- If key DFO allocation criteria of adjacency, need, historical dependency, and economic dependency (as referenced in the 2007 Northern Shrimp Management Plan) were applied for the new allocations to Nunavut and the 3L Inshore fleet a *quid pro quo* for the Nunatsiavut Government and the Labrador Inuit should be at least 50% of the available quotas in each of SFAs 4 and 5, and 20% of the SFA 6 quotas. The Labrador Inuit are inarguably the most adjacent users in the first two areas, have indisputable historical attachment and economic dependence on the marine resources off their coast, and have great need as a new and self-sustaining government. In SFA 4 the Nunatsiavut Government has no access to the 11,319t fishery, and in SFA 5 they were allocated a total of 1,260t of the 23,300t TAC - 0% and 5% respectively. Ironically, Inuit licence-holders from northern Quebec and Nunavut hold more allocations off Nunatsiavut than do the Labrador Inuit.





- The summary to this issue is that the Nunatsiavut Government and Labrador Inuit have not been the primary beneficiaries of resources within and most adjacent to their land claim area; in every other jurisdiction adjacency alone has sufficed as the rationale for providing the bulk of allocations to local users. The interests of the Nunatsiavut Government and communities have apparently been overlooked or discounted, to the benefit of ex-sector and extra-regional interests.



#### **4. Current Resource Status IN SFAs 4 and 5**

##### **I. SFA 5**

- In SFA 5 the resource situation is positive but uncertain; large vessel biomass indices, survey biomass indices, and large vessel CPUE data are conflicting. The 2011 exploitation rate, assuming catch is equal to the current TAC, will be 16% of the fishable biomass (equal to the long term mean). The spawning stock index is in the Healthy Zone identified in the Northern Shrimp Management Plan, but is approaching the Upper Stock Reference.

##### **II. SFA 4**

- In SFA 4 the resource status is positive. The commercial catch and CPUE have increased and are above the five-year mean. The exploitation rate of 9% is well below the 15% indicated in the precautionary approach framework outlined in the Northern Shrimp Management Plan. On the basis of this information, an increase of the TAC resulting from adjusting the exploitation rate to 14% of the fishable biomass in 2011 would be consistent with the management approach used in other areas. It maintains a conservative exploitation rate, and provides the opportunity to significantly increase Labrador Inuit participation in this adjacent area.

#### **5. Last In First Out Principle**

- The Last-In-First-Out concept was resurrected during the 2010 NSAC meeting and implemented later that year in SFA 6. The Northern Shrimp Management Plan references the use of the Last-In-First-Out concept as the primary policy guiding allocations when dealing with declines, subject only to land claims obligations. This principle and the 37,600t threshold quota to ensure the viability of 17 existing offshore licence-holders originated in response to the then-temporary allocations and access provided to inshore participants in the 1997 Northern Shrimp Management Plan. A review of NSAC minutes of the period will confirm the principle was implemented at the behest of existing offshore licence-holders.
- The Board is concerned that the Labrador Inuit may be impacted significantly by the Last-In-First-Out concept in a fishery where the evidence suggests they have not received equitable consideration. For the Labrador Inuit to be subject to the provisions of the Last-In-First-Out concept is tantamount to their being doubly penalized. In the absence of clear criteria and the process for the application of this concept, the Board recommends that the Nunatsiavut Government be excluded from any eventual decreases. In SFA 5 the Nunatsiavut Government is currently allocated

1,260t (or 5%) of the 23,300t TAC. A reduction may soon be warranted if current trends continue, but there is insufficient evidence to support a reduction in 2011. A reduction in SFA 5 would provide an opportunity to introduce some equity to the fishery in that area, provided the 5% allocation to the NG is not affected.

#### 6. Re-Zoning in SFAs 2,3, and 4

- In a letter dated 5 August, 2010, the Director General of Resource Management with the Department of Fisheries and Oceans Canada requested input from the Nunatsiavut Government and the Torngat Joint Fisheries Board regarding a proposal from the Northern Shrimp Advisory Committee to re-zone SFAs 2, 3, and 4 west of 63°W.
- A revised version of the proposal was released at a stakeholder meeting in November of 2010, and subsequently developed through to 30 March, 2011, when the Department of Fisheries and Oceans presented it to the TJFB at a meeting held in St. John's, Newfoundland and Labrador.
- The proposed re-zoning is intended to facilitate Marine Stewardship Council certification by re-aligning the boundaries of management units to better reflect jurisdictional boundaries between Nunatsiavut, Nunavik, and Nunavut, and ecological boundaries between *P. montagu* and *P. borealis*. The Redefined management units would have a target exploitation rate of 15%, in accordance with Annex I of the 2007 Northern Shrimp Integrated Fisheries Management Plan.
- The proposal stipulates that allocations in the new management units are to be negotiated by Makivik and NTI. As the proposed management units lie within or immediately adjacent to Nunatsiavut, the TJFB is disappointed at the exclusion of the TJFB and the Nunatsiavut Government from these negotiations, as it so clearly conflicts with the letter and spirit of the Labrador Inuit Land Claims Agreement, the Nunavut Land Claims Agreement, and the Nunavik Inuit Land Claims Agreement. The Labrador Inuit Land Claims Agreement specifies that:

#### 13.14.3

“Any Legislation implementing a Domestic Interjurisdictional Agreement that relates to any species or stock of Fish or Aquatic Plant, Fish Habitat or the management of fisheries in or affecting the Labrador Inuit Settlement Area shall be interpreted and administered to treat Inuit on at least as favourable a basis as any other aboriginal people of Canada affected by the Legislation.”

#### 13.14.4

“When Canada or the Province negotiates a Domestic Interjurisdictional Agreement or an amendment thereto, that relates to any species or stock of Fish or Aquatic Plant, Fish Habitat or the management of fisheries in or affecting the Labrador Inuit Settlement Area, the Torngat Joint Fisheries Board shall have a role in the negotiations commensurate with its status, functions and responsibilities.”

- The Minister and any allocation negotiations will have to satisfactorily address Section 13.12.9 of the Labrador Inuit Land Claims Agreement, which stipulates that:

#### 13.12.9

“If the system for allocating commercial opportunities in relation to a species or stock of Fish or Aquatic Plant changes from the system existing on the Effective Date, the Minister shall offer to the Nunatsiavut Government participation under the new system that is at least as favourable as that set out under sections 13.12.2 through 13.12.8 in relation to that species or stock of Fish or Aquatic Plant.

Re-zoning SFAs 2, 3, and 4 clearly represents a change to the allocation system in and adjacent to Nunatsiavut. Section 13.12.9 references 13.12.7, which entitles the Nunatsiavut Government to 11% of the quantity available to be harvested.

- The proposal further legitimizes the TJFB’s recommendation to increase the exploitation rate in SFA 4 from 9% to 14%, which would be consistent with, but still slightly more conservative than, the target exploitation rate identified in the Northern Shrimp Management Plan, and exploitation rates in SFAs to the north and south.

## 7. **Social-Economy of the Nunatsiavut Fishery**

- Given the precarious state of the Nunatsiavut fishery and a collective desire to address current challenges, the Nunatsiavut Government, the Labrador Inuit Development Corporation and the Torngat Fish Producers Cooperative Society Limited engaged consultants to undertake a review of their fishing assets, with a view to consolidating the various holdings into one viable fishing entity. The consultant’s analysis of the assets, resource allocations and licences held by the parties suggest an opportunity exists, but the resource package is deficient without a groundfish supply. The Board submitted a recommendation in respect of Turbot



in 2010, and a revised recommendation in April of 2011. The northern shrimp allocations currently held and any new allocations will be vital in the long-term planning and success of Labrador Inuit fishing operations.

- Resource opportunities are few along the northern Labrador coast, and Northern Shrimp is by far the staple of the Nunatsiavut Government and Inuit businesses, and will factor heavily in their ongoing fishery operations. Unlike areas to the south that have multiple fisheries, there are few other resource opportunities accessible to Nunatsiavut. Commercial aggregations of large pelagic species and small pelagic species such as capelin, herring and mackerel are virtually non-existent north of NAFO Division 2J, and there is no nearshore or offshore lobster or large aggregations of scallop or surf clams. Snow crab is near the extreme northern limit of its range off the Labrador Inuit Settlement Area, and in decline throughout Atlantic Canada. The balance of science data indicates that the 2H/2J boundary marks a natural boundary for the species, beyond which abundance is nominal and distribution becomes markedly discontinuous. The only true groundfish opportunity is northern turbot, and the Board outlined how past and very recent allocation decisions have resulted in the virtual exclusion of the Labrador Inuit and the Nunatsiavut Government from this fishery.
- Shrimp Fishing Area 4 offers a real opportunity for the Labrador Inuit in terms of available adjacent resources.

#### **Alternatives:**

- **Allocate Fishing Opportunities in the area adjacent to the Zone.** This is the recommended course of action. The allocation of northern shrimp in SFA 4 to the Nunatsiavut Government introduces some equity, and promotes the development of an Inuit enterprise that can sustain Labrador Inuit fishing operations in the long run.
- **Status Quo** – This is not recommended. Unless information to the contrary is provided, or a detailed explanation of current circumstances comes to light, this matter requires action and redress. On the basis of the available information, the Board can draw no other conclusion than the resource allocation decisions in respect of the Nunatsiavut Government and the Labrador Inuit in the northern shrimp fishery are contrary to the LILCA and the routinely applied resource allocation principles of the Department of Fisheries and Oceans.



- **Purchase of existing access and allocations** – This is a potential alternative, but the ability to allocate significant resource opportunities in SFA 4 at the present time precludes such a course of action.

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

- The Labrador Inuit Land Claims Agreement and the Fisheries Act provide the legal and constitutional basis to the supplied recommendation and the suggested course of action.

### **Consultations and Meetings**

- The Board was represented at the 2010 and 2011 Northern Shrimp Advisory Committee meetings held in St. John's on April 14, 2010 and March 2, 2011. The Crown's duty to consult with the Nunatsiavut Government and the Torngat Joint Fisheries Board is not satisfied through attendance in an industry advisory process - especially when the fisheries science necessary to formulate their recommendations is only released at the meeting. What is more, SFAs 2, 3, and 4 are not only immediately adjacent to Nunatsiavut, but also partially within. The TJFB is established as the *primary* body advising the Minister on matters relating to commercial fisheries within the Zone.
- The Board initiated research and analysis on the development and management of the northern shrimp fishery in 2009. Policy recommendations submitted on May 17, 2010, were subsequently developed during a meeting of the Board on May 13<sup>th</sup>, 2010. The recommendations - which were never fully addressed - were monitored and revised as needed through to March 2011, when they were approved by consensus of the Board for re-submission.
- On March 30, 2011, the Resource Management Division of Fisheries and Oceans Canada presented its re-zoning proposal to a meeting of the Board held at St. Johns, Newfoundland and Labrador.

Prepared by: Torngat Wildlife, Plants and Fisheries Secretariat

Approved by: \_\_\_\_\_ Executive Director

Approved by: \_\_\_\_\_ Chairman