



Monday, March 12, 2012

The Honorable Keith Ashfield, M.P.
Minister of Fisheries and Oceans
200 Kent Street
Ottawa, Ontario
K1A 0E6

Re: Torngat Joint Fisheries Board 2012 Recommendations on Northern Shrimp Co-Management In and Adjacent to Nunatsiavut

Dear Minister Ashfield:

We are pleased to attach the Torngat Joint Fisheries Board's 2012 recommendations on Northern Shrimp co-management in and adjacent to Nunatsiavut. These recommendations are made pursuant to Parts 13.11.1 (b) and 13.11.2 (b) and (h) of the Labrador Inuit Land Claims Agreement, in partial fulfillment of the Board's core mandate.

In 2010 and 2011 the Board recommended that the exploitation rate in Shrimp Fishing Area (SFA) 4 be increased to 14%, and that 75% of the corresponding increase be allocated to the Nunatsiavut Government. The recommendations to increase the exploitation rate were largely based on data collected, analyzed, and presented by the Department of Fisheries and Oceans at the annual Northern Shrimp Advisory Committee Meetings, and the recommended exploitation rate was in fact more conservative than that prescribed in the Precautionary Approach Framework of the Northern Shrimp Integrated Fisheries Management Plan (IFMP). Our recommendation to allocate 75% of the corresponding increase to the Nunatsiavut Government was grounded in sharing principles developed by the Department of Fisheries and Oceans over the course of years – principles now reflected in Annex F of the IFMP, Chapter 13 of the Labrador Inuit Land Claims Agreement, and elsewhere.

In 2010 and 2011 the Board's recommendations were rejected in favour of the status quo. Although the Board's recommendations were wholly consistent with the scientific and fishery performance indicators, there were some slight discrepancies with respect to implementation. In the attached recommendation we will outline a stepped approach towards an exploitation rate of 15% - an approach that will be consistent with our shared understanding of the resource, the Labrador Inuit Land Claims Agreement, the Precautionary Framework and Harvest Control Rules, and Departmental Sharing Principles.

Thank you in advance for considering our recommendations and we are available at your convenience to discuss this file in detail.



Yours truly,

John Mercer
Chairman
Torngat Joint Fisheries Board

Cc.

Hon. Glen Sheppard
Minister of Lands and Natural Resources, Nunatsiavut Government

Hon. Darin King
Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador



Torngat Joint Fisheries Board

Memorandum to the Minister of Fisheries and Oceans
Northern Shrimp Co-Management in and adjacent to Nunatsiavut
(March 12, 2012)

Issue: Management of the Northern Shrimp Fishery in the Labrador Inuit Settlement Area, and Waters Adjacent.

Recommendations:

- 1) Increase the Total Allowable Catch (TAC) in Shrimp Fishing Area (SFA) 4 by 15%, as a stepped approach towards an exploitation rate of 15%.
- 2) Allocate 75% of the SFA 4 increase to the Nunatsiavut Government.
- 3) Maintain the TAC in SFA 5 at 23,300 MT.

1. Background:

- Parts 13.10 and 13.11 of the 2005 Labrador Inuit Land Claims Agreement ('LILCA') establish the Torngat Joint Fisheries Board ('TJFB' or the 'Board') as the primary body advising the responsible Minister on the conservation and management of aquatic plants, fish, fish habitat, and fisheries (other than the Inuit domestic fishery) in the Labrador Inuit Settlement Area, with advisory powers in waters adjacent. Shrimp Fishing Areas 4 and 5 straddle the boundary of the Labrador Inuit Settlement Area, and are therefore both within and immediately adjacent to it.
- On 17 May, 2010, after consulting with the Nunatsiavut Government, the TJFB recommended that the Minister of Fisheries and Oceans increase the exploitation rate in Shrimp Fishing Area (SFA) 4 to 14%, and that 75% of the corresponding increase be allocated to the Nunatsiavut Government. The Board's 2010 recommendation was submitted 33 days after having received the scientific data at the Northern Shrimp Advisory Committee Meeting. In those 33 days the Board analyzed the scientific and fishery performance data, formulated and drafted a recommendation, and consulted with the Nunatsiavut Government. Never-the-less, the Ministerial response of 5 July, 2010, dismissed the recommendation as having been received too late to be considered.
- On 4 May, 2011, the TJFB submitted a second recommendation to the Minister of Fisheries and Oceans pertaining to exploitation rates and allocation principles in SFAs 2, 3, 4, and 5. The TJFB again recommended that the exploitation rate in SFA 4 be increased to 14%, and that 75% of the corresponding increase be allocated to the Nunatsiavut Government. The TJFB recommendations were made pursuant to Parts 13.11.1 (b), 13.11.2 (b) and 13.12.7 of the Labrador Inuit Land Claims Agreement.



- The Board's recommendations detailed new allocations and entrants since 1996, and a quota increase in SFA 4 in 2008 shared per traditional sharing arrangements. The TJFB has made the case that allocations to the Labrador Inuit Settlement Area since 1996 have not honoured the principles and criteria developed and espoused by the Department of Fisheries and Oceans, and allocations since 2005 have not honoured the Labrador Inuit Land Claims Agreement – we will not be re-stating that case here. The recommendations also outlined the Board's interpretation of Part 13.12.7 of the LILCA in the context of the Minister's responsibilities and obligations with respect to the Honour of the Crown.
- A Ministerial response dated 18 July, 2011, rejected the Board's 2011 recommendation, referencing a Departmental review of Harvest Control Rules. Ministerial correspondence on a related matter dated 1 September, 2011, reaffirms a precautionary exploitation rate of approximately 9% in SFA 4 because of an ongoing Management Strategy Evaluation into the impact of various harvest strategies, exploitation rates and TAC levels, and because shrimp are an important forage species for groundfish.

2. Exploitation Rates:

- The Total Allowable Catch in SFA 4 has remained at 11,320 MT since 2008/9; the exploitation rate in SFA 4 is approximately 9%, and has been below 10% since 2007/8.
- We recognize, as you have, that Northern Shrimp are an important forage species for groundfish. However, there is no indication that they are any more important in SFA 4 than they are elsewhere. Moreover, the Precautionary Approach Framework accounts for the ecosystemic value of Northern Shrimp: "Given that shrimp have a significant role as a forage species, the base target exploitation rate [15%] has been set lower than what might otherwise be the case".
- The Precautionary Approach Framework is intended to be reviewed through a Management Strategy Evaluation, but it is also intended to be implemented in the interim, until the evaluation is complete and the Framework amended.
- The Precautionary Approach Framework specifies a target exploitation rate of 15% for stocks in the Healthy Zone: "TACs for SFAs 4-7 should continue to be set using a conservative approach to exploitation rates. The base target exploitation rate when SSB is above the Upper Reference Point (URP) is 15% of exploitable biomass".
- The 2011 multi-species survey generated a Spawning Stock Biomass (SSB) index of 87,000 MT and a Fishable Biomass Index of 130,000 MT. With the current TAC of 11,300 MT, this will equate to an exploitation rate of 8.7% in 2012/13.



- The SSB is well above the Upper Stock Reference, in the Healthy Zone, and has been since 2006.
- We acknowledge a greater level of uncertainty in SFA 4 indices than elsewhere – uncertainty which is attributable primarily to differences in survey methodologies between Areas. However, we also note that the lower 95% confidence interval for the SSB Index is still in the Healthy Zone, and that uncertainty is inherent to fisheries research and management. Moreover, survey-generated indices can be complemented by fisheries performance indicators: Catch Per Unit Effort (CPUE) has been increasing since 2005/6 (significantly since 2008/9) and is well above the long term mean.
- The Precautionary Approach Framework specifies that changes in the TAC should generally not exceed 15% of the previous TAC.
- Whereas SSB and Fishable Biomass indices in SFA 4 have been stable and above the Upper Stock Reference in the Healthy Zone since 2007; and whereas the Precautionary Approach Framework specifies a base target exploitation rate of 15% for stocks in the Healthy Zone; and whereas the exploitation rate has been below 10% since 2007/8 and is projected to be 8.7% in 2012/13; and conceding that changes to the TAC should generally not exceed 15% of the previous TAC; and notwithstanding greater scientific uncertainty in SFA 4 than elsewhere, the Torngat Joint Fisheries Board recommends that the TAC in SFA 4 be increased by 15% (1,698 MT) to 13,018 MT, as a stepped approach towards an exploitation rate of 15%.
- The recommended increase will bring the exploitation rate in SFA 4 to an extremely conservative 10%, which is a more appropriate exploitation rate for a stock in the Critical Zone, not one which has been well above the Upper Stock Reference for five years.
- This recommendation is wholly consistent with the Precautionary Approach Framework, and will be a test of the Department's commitment to Integrated Fisheries Management Plans and Processes.
- The exploitation rate in SFA 5 has varied without trend between 15% and 20% for most of the time series (with exceptions and data gaps). The projected exploitation rate for 2012/13 will be 16%, which is equal to the long-term average. The management of Northern Shrimp in SFA 5 is consistent with the Precautionary Approach Framework, and suggests that 15% is an appropriate, sustainable, and

achievable exploitation rate in and adjacent to Nunatsiavut. The TJFB recommends that the 23,300 MT TAC in SFA 5 be maintained.

3. Allocation:

- The TJFB recommends that 75% of the TAC increase in SFA 4 be allocated to the Nunatsiavut Government. This equates to 1,275.5 MT and leaves a balance of 424.5 MT.
- This recommendation is made pursuant to Parts 13.11.2 (b) and (h), which empower the Board to make recommendations respecting allocations to the Labrador Inuit Settlement Area, and the criteria for the issuance of commercial fishing licences.
- The Nunatsiavut Government currently holds 0 MT in SFA 4. An allocation of 1,273.5 MT would bring their participation rate in SFA 4 to 9.8%.
- The Nunatsiavut Government currently holds 1,260 MT in SFA 5, out of a TAC of 23,300 MT, for a participation rate of 5.4%.
- In combined areas SFA 4 and SFA 5 the Nunatsiavut Government currently holds 1,260 MT out of a Total TAC of 34,620MT, for a participation rate of 3.6%.
- The recommended increase and allocation would give the Nunatsiavut Government a total allocation of 2,533.5 MT out of a total TAC of 36,318 MT for a participation rate of 6.9% in combined SFAs 4 and 5.
- In 2010 and 2011 the TJFB detailed what we interpret as inconsistencies between the Labrador Inuit Land Claims Agreement, Departmental allocation principles and criteria, and allocations in SFA 4 since 1996. Allocating 75% of the recommended increase to the Nunatsiavut Government is consistent with the Labrador Inuit Land Claims Agreement and Sharing Principles specified in Annex F of the Integrated Fisheries Management Plan.
- Annex F of the 2007 Northern Shrimp Management Plan references a process undertaken in 1996/97 to develop sharing principles. The principles include conservation, the continued viability of existing enterprises, a threshold of 37,600 MT, priority access for adjacent users, increased Aboriginal participation in established commercial fisheries, priority access to inshore fleets (and midshore and offshore fleets in more northerly areas), and increased employment in harvesting and processing.

- In 2003 recommendations of the Independent Panel on Access Criteria were incorporated into the plan, resulting in three principles: 1) Conservation; 2) Recognition of Aboriginal and Treaty Rights, and; 3) Procedural and Substantive Equity. These in turn are to be considered against the three traditional criteria: 1) Adjacency; 2) Historic Dependence, and; 3) Economic Viability.

3.1 Allocation Principles:

3.1.1 Conservation

- There is no conservation concern. The Precautionary Approach Framework, if applied, will safeguard against conservation concerns.

3.1.2 Aboriginal and Treaty Rights

- The Board argued in 2010 and 2011 that the Department does have an obligation stemming from Part 13.12.7 of the Labrador Inuit Land Claims Agreement. The Labrador Inuit Land Claims Agreement was ratified in 2005 and negotiations were coincident with the rapid growth of the northern shrimp fishery. Northern shrimp is the only species specifically referenced in the final agreement (Part 13.12.7):

“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 through some other means to 11 percent of the quantity available to be Harvested under those licences.”

It is reasonable to conclude that Labrador Inuit understood the LILCA to be an avenue towards an increased share of Northern Shrimp resources in and adjacent to Nunatsiavut.

- The interpretation of Part 13.12.7 has been a point of contention. This point aside, the Department has recognized increased Aboriginal participation in commercial fisheries as a fundamental goal of fisheries management. The fisheries management modernization process which is currently underway has reaffirmed this commitment.

3.1.3 Procedural and Substantive Equity

- The 1000 MT increase in SFA 4 in 2008 is a good case study of procedural and substantive equity to date – the Board was not invited to comment on how the increase should have been allocated (procedural inequity), and the Nunatsiavut Government did not receive an allocation (substantive inequity). The Nunatsiavut Government has zero access to shrimp resources within and immediately adjacent to their Land Claims Area in SFA 4.

3.2 Allocation Criteria:

3.2.1 Adjacency

- Nunatsiavut is immediately adjacent to SFA 4, and in fact a portion of SFA 4 lies within the Zone established by the Labrador Inuit Land Claims Agreement.

3.2.2 Historic Dependence

- The Inuit of Nunatsiavut have relied on marine resources for thousands of years – this reliance has manifested itself in the Northern Shrimp fishery since 1997.

3.2.3 Economic Viability

- The commercial fishing industry in Nunatsiavut is precarious. It is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot). Snow Crab is near the northern extent of its range and resource fluctuations are pronounced, and competitive disadvantages severely limit participation in the Turbot fishery. Northern Shrimp are the keystone of the Nunatsiavut fishery.

Prepared by: Torngat Wildlife, Plants and Fisheries Secretariat

Approved by:  Chairman

Approved by: _____ Executive Director