



29 September 2017

Honourable Dominic LeBlanc
Minister of Fisheries and Oceans
Room 556, Confederation Building
Ottawa, ON K1A 0A6

Re: Northern Shrimp Co-Management in Shrimp Fishing Area 5

Dear Minister LeBlanc,

The Torngat Joint Fisheries Board ('the Board') here offers its recommendations for the 2017 Northern Shrimp fishery in Shrimp Fishing Area (SFA) 5. The Board is established by the Labrador Inuit Land Claims Agreement (LILCA), and is empowered to provide recommendations and advice on commercial fisheries (including Northern Shrimp) in and adjacent to the Labrador Inuit Settlement Area (LISA).

The Board has reviewed and reflected on your decision for the 2016/17 fishery, and would like to provide feedback prior to the 2017/18 Northern Shrimp Advisory Committee (NSAC) meeting. The Board's analysis and subsequent recommendations will be updated for the 2017/18 fishery and will be submitted following the Northern Shrimp Assessment and NSAC meetings.

The Northern Shrimp fishery in Labrador is an important economic sector for Inuit, and represents the keystone species of Nunatsiavut's fishery. So much so, that the LILCA makes specific reference to the Nunatsiavut Government's access to the Northern Shrimp resource. Part 13.12.7 of the LILCA states that the Nunatsiavut Government shall receive, at minimum, 11% of any new licenses issued adjacent to the Zone. The Board believes that the language used must be interpreted correctly to mean allocations. Furthermore, this Part is complemented by Part 13.12.9 which offers further protections to the Nunatsiavut Government's commercial fishing rights. 13.12.9 states that "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 favorable 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 [emphasis added]."

It is of the Board's view, that the change from the Last-In, First-Out (LIFO) policy to Proportional Sharing was a change in the allocation system. This would, therefore, entitle the Nunatsiavut Government to *at least* 11% of the allocations in SFA 5; presuming the Minister made a fresh start with all allocation holders with the creation of Proportional Sharing. Consequently, the new allocation regime raises concerns with the Board as the Nunatsiavut Government will receive only 9.9% of the TAC going forward, regardless of decreases or increases in the resource.



The current allocation regime will not ensure the above mentioned Parts are met – especially if there are decreases in the TAC which will lead to further inequality for the Nunatsiavut Government. This was the case with the application of the LIFO policy, and was the case with your decision for the 2017/18 fishing season – the Nunatsiavut Government received a proportional decreases in their allocation. We ask the Minister to exercise his unfettered power for Northern Shrimp allocations, make exceptions to the application of proportional sharing and exempt the Nunatsiavut Government – considering their comprehensive land Claim agreement which guarantees the benefits to the Labrador Inuit. It is our view, then, the Nunatsiavut Governments overall proportional share be increased to 11% at minimum. Additionally in situations for TAC increases, the Nunatsiavut Government be entitled to at least 11% of the increase, and shall not fall below this amount in situations of TAC decreases. In situations of TAC decreases, the Board believes that the Nunatsiavut Government must be exempt from reductions.

Considering the socio-economic value of Northern Shrimp, and its significant role in the foundational development of Nunatsiavut's inshore fishery, and considering the Prime Minister's mandate of strengthening relationships with Indigenous Peoples based on respect, partnership, and co-management, the Board is encouraged that our future advice and recommendations for SFA 5 will be fully considered.

Although there are no prescribed timelines within the LILCA for your response to our correspondence, we kindly ask for a timely reply with specific feedback on these points as they impact our future recommendations to your Department. The Board looks forward to continuing to strengthen our relationship with your Department as we work collectively towards our shared goals, and we are available, as always, at your convenience.

Yours truly,

John Mercer
Chairperson
Torngat Joint Fisheries Board

cc: Hon. Darryl Shiwak, Minister of Lands and Natural Resources, Nunatsiavut Government
Hon. Gerry Byrne, Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador



Torngat Joint Fisheries Board
Analysis presented to the TJFB
Northern Shrimp Co-Management in SFA 5
(29 September 2017)

Northern Shrimp Co-Management In and Adjacent to the Labrador Inuit Settlement Area.

Recommendations:

Pursuant to Part 13.11 of the Labrador Inuit Land Claims Agreement, the Torngat Joint Fisheries Board has recommended to:

- Amend the Proportional Sharing allocation regime as to address ongoing differences in the interpretation of the Labrador Inuit Land Claims Agreement, and make exceptions for the Nunatsiavut Government.

1.0 Background

1.1 The Torngat Joint Fisheries Board and the Labrador Inuit Land Claims Agreement

- The Torngat Joint Fisheries Board (TJFB or ‘the Board’) is established by Part 13.10 of the Labrador Inuit Land Claims Agreement (LILCA or ‘the Agreement’), with its roles, responsibilities, and powers outlined in Part 13.11. The Board is the primary body making recommendations on the conservation and management of fish, fish habitat, and fisheries in the Labrador Inuit Settlement Area, and has advisory powers in waters adjacent to the ‘Zone’. The TJFB has both the authority and the responsibility to make recommendations to the Minister in respect of issues surrounding the management of Northern Shrimp, as per 13.11.1 (a) and (b), and 13.11.2 (a) through (h) of the LILCA.
- The Zone established by the Labrador Inuit Land Claims Agreement makes up 33.7% of SFA 5. The Zone is both within and immediately adjacent to SFA 5.

1.2 Case History

- The TJFB has submitted recommendations on Northern Shrimp annually since 2010. Each year, until 2014, the Board recommended that the TAC for SFA 5 of 23,300 MT be maintained. In 2014, the Board recommended the TAC be decreased by 15% to 19,805 MT, but the Minister decreased the TAC by 10% to 20,970 MT.
- In 2015, the Board recommended that the TAC be increased by 10% to the 2013 TAC of 23,300 MT, and that 75% of the increase be allocated to the Nunatsiavut Government. The Minister affirmed the recommendation, and a TAC of 23,300 MT was reissued for SFA 5; however only 217 MT was reinstated to the NG, for a total NG allocation of 1,260 MT.

- In 2016, the Board made a submission to the Ministerial Advisory Panel on the Last-in, First-out (LIFO) Policy for Northern Shrimp. The MAP recommended to abolish the Last-in, First-out policy, and replace it with an allocation regime which includes permanent proportional sharing in all SFAs.
- Minister LeBlanc accepted the key recommendation of from the MAP for proportional sharing on July 7th, 2016 and increased the TAC for 2016/17 10% to 23,630 MT.
- For the 2017/18 season, the Minister decided to decrease the TAC by 14% to 22,000 MT to achieve a 20% exploitation rate. The Nunatsiavut Government's proportional share was maintained at 9.9% of the overall TAC (2,178 MT).

1.3 Quotas and Landings (2016)

- The TAC was set at 25,630 MT (a 10% increase from last year's TAC of 23,300 MT).
- The Nunatsiavut Government received 9.9% of the TAC going forward in proportional sharing (2,537 MT for 2016/17; a 1,277 MT increase from the previous year).
- In 2015/16, the Nunatsiavut Government received 5.41% (1,260 MT).
- 2,479 MT was landed (98% of quota) by 5 designates; 58 MT transferred to offshore for royalties.

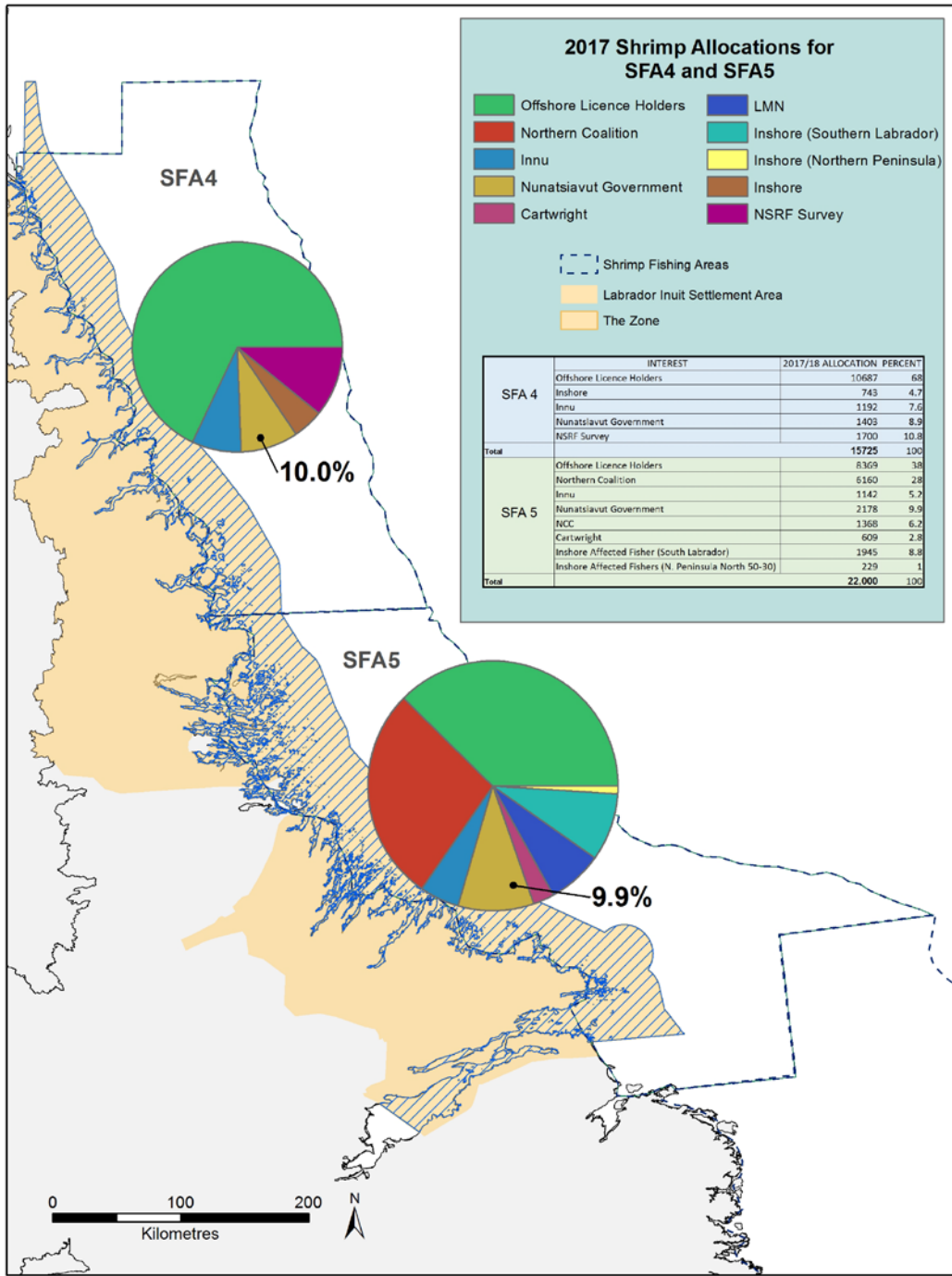


Figure 1 2016/17 Northern Shrimp Allocations in SFA's 4 and 5

2.0 Management Framework

2.1 Integrated Fisheries Management Plan

- DFO manages Northern Shrimp based on several objectives laid out in the Northern Shrimp Integrated Fisheries Management Plan (IFMP); including conservation and sustainable harvest, benefits to stakeholders, and the co-management of the shrimp resource (DFO, 2007).
- The IFMP states that primary consideration must be given to Land Claims such as of those of the Labrador Inuit.

2.2 Quota Sharing Arrangements

- Prior to 2016, all shrimp allocations since 1997 have been provided on a temporary basis, based on the "Last-In, First-Out" (LIFO) principle. As the TAC increased above the threshold established in the IFMP (7,650 MT for SFA5 and 37,600 MT for all SFAs) new participants enter the fishery based on an evaluation of 1997 criteria; and if the TAC dropped to the threshold, newest participants would leave the fishery based on a similar evaluation.
- In 2016, a Ministerial Advisory Panel (MAP) was created in response to expected declines in the Northern Shrimp fishery and the use of the LIFO policy, which would have significant effects by all stakeholders.

2.2.1 TJFB MAP Submission

- The TJFB submitted its recommendations regarding access and allocation (TJFB, 2016):
 - Because DFO has constitutional obligations to Aboriginal groups with Land Claim Agreements, such groups should be exempt from LIFO;
 - The LIFO policy be modified to consider additional elements which are set out in the 2003 New Access Framework of the IFMP as criteria to consider both access into and out of the fishery.
 - These criteria include: Conservation, Recognition of Aboriginal and Treaty Rights, Equity, Adjacency, Historic Dependence, and Economic Viability.

2.3 Proportional Sharing

- The LIFO policy was eliminated, and replaced with proportional shares.
- Proportional shares will be fixed going forward.
- The Nunatsiavut Government will receive 9.9% of the TAC in SFA 5. This proportion will be maintained going forward.

3.0 Status of Resource (DFO, 2017)

- Large-vessel standardized CPUE over the last five years has been stable at high levels.
- Fishable biomass index has decreased to 110,000 MT in 2016. This is a 27% decline since 2015.
- Female Spawning Stock Biomass (SSB) index has decreased by 35%, to 54,300 MT in 2016.
- The exploitation rate index has varied without trend around 15% from 1997-2016/17. If the 25,630 MT TAC is maintained and taken in 2017/18, then the exploitation rate index will be 23.3%.
- Female SSB index is in the Healthy Zone within the IFMP PA Framework, with a 6% chance of being in the Cautious Zone (Figure 2).
- An analysis of commercial and survey data indicate a contraction of the Northern Shrimp resource in southern areas, more specifically SFA 6.

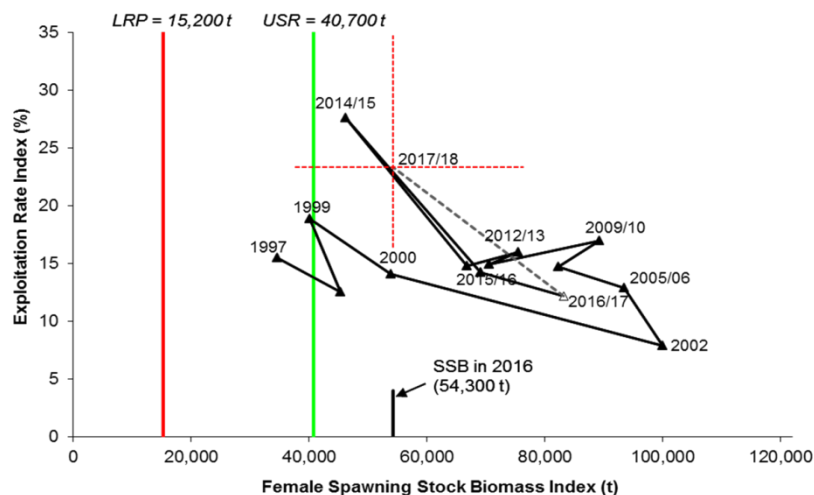


Figure 2 SFA 5 PA Framework with trajectory of exploitation rate index versus female SSB index. Point labels denote year of the fishery. The 2016/17 fishery was ongoing and based on reported catch as of February 8, 2017. The red cross on the 2017/18 point indicates 95% confidence intervals for the 2016 female SSB index (horizontal) and the exploitation rate index (vertical), assuming that the 25,630 t TAC is maintained and taken in the 2017/18 fishery (DFO, 2017).

4.0 Other Considerations

4.1 LILCA Interpretation

- The Board supports the Minister's decision to abolish LIFO, however believes that the proposed proportional sharing arrangement will not fulfill Canada's constitutional obligations outlined in the LILCA in times of increases or decreases.

- The Nunatsiavut Government received inequitable decreases in their allocation with the application of the LIFO policy, and with the current proportional sharing regime, they are also vulnerable to decreases which are counter to provisions outlined in the LILCA.

4.1.1 LILCA Part 13.12.7

- As stated in Part 13.12.7 of the LILCA, the Nunatsiavut Government will be guaranteed 11% of new licences issued by the Minister; specifically “If in any calendar year...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.”
- It seems the Department has taken an overly literal interpretation of the Part 13.12.7 because there has been no issuance of more commercial fishing licenses in SFA 5, and therefore there was no increases were provided to NG although overall quota has increased.
- It is our opinion, given the Crown’s responsibilities, that the language used should properly be interpreted to include all new allocations. This has also been highlighted in the Fall 2015 Reports of the Auditor General of Canada (OAG, 2015) The 11% specified by Part 13.12.7 of the Agreement is not exhaustive, but is intended to function as an off-the-top minimum guarantee.
- Additionally, similar language is used in the Nunavut Land Claim Agreement (NLCA) and in the IFMP. Article 15.3.7 of the NLCA states that the Federal Government must recognize the “importance of the principles of adjacency and economic dependence of communities in the Nunavut Settlement Area on marine resources, and shall give special consideration to these factors when allocating commercial fishing licences...”
- In 2016 there was a 15% increase in Northern Shrimp TAC in the Eastern Assessment Zone (EAZ). Although there has been no new licenses rewarded in the EAZ, Nunavut and Nunavik have received the large majority of this increase, which is counter to what has happened in Nunatsiavut since the ratification of the LILCA.

4.1.2 LILCA Part 13.12.9

- Part 13.12.7 is complemented by 13.12.9, and states that “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 favorable 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.”

- The shift from the LIFO policy to Proportional Sharing does constitute a change in the allocation system specified in Part 13.12.9, and therefore the Nunatsiavut Government is entitled to 11% of allocations in SFA 5 going forward.
- The application of both 13.12.7 and 13.12.9 will be hindered with the use of proportional sharing, and the Nunatsiavut Governments access will be limited.

4.2 Social and Economic Viability

- At present, the commercial fishing industry in Nunatsiavut is precarious. It is almost entirely dependent on just three species (Northern Shrimp, Snow Crab, and Turbot). This multispecies fishery would not be possible without the Northern Shrimp licenses and allocations that have created a foundation for inshore fishery development (Foley et al., 2017).
- Additionally, processing operations in Nain and Makkovik, Nunatsiavut, have been made possible with cross-subsidization from Northern Shrimp allocations (Foley et al., 2017).
- Together, hundreds of jobs within Nunatsiavut have been created for Labrador Inuit from the foundation that Northern Shrimp licenses and allocations have provided (Foley et al., 2017).
- Northern Shrimp are the keystone of the Nunatsiavut fishery, and represent an important economic sector and opportunity for Labrador Inuit, which has been recognized by the Auditor General of Canada (OAG, 2015).

4.3 Effects in Individual and Community Health

- Income distribution is a social determinant of health (Mikkonen & Raphael 2010).
- Dialogue with fishery participants highlight pride in the fishery, and happiness associated with being on the water, and connected to the marine environment.

4.4 UN Declaration and Recognition of Aboriginal and Treaty Rights

- In early 2016, Canada adopted the United Nations Declaration on the Rights of Indigenous Peoples (UN, 2007). This affirmation further supports the Prime Minister’s mandate of strengthening relationships with Indigenous Peoples based on respect, partnership, and co-management (Office of the Prime Minister, 2015).
- The Nunatsiavut Government’s access to the Northern Shrimp fishery in SFA 5 presents an opportunity for the Minister to uphold the Honour of the Crown, and to transparently apply the letter and spirit of the Agreement.



5.0 Consultations and Deliberations

- The Board meets quarterly and Northern Shrimp is an Agenda item at each meeting. This recommendation emerged from meetings held in Happy Valley -Goose Bay on January 31st to February 1st, 2017, and on March 29-30th, 2017.
- Northern Shrimp was an agenda item during the Nunatsiavut Fisheries Workshop which was held on November 22nd-23rd, 2016 in Happy Valley-Goose Bay, NL. Its purpose was to provide an overview of the past fishing season, discuss current and future management approaches, and provide stakeholders consultation
- The Torngat Secretariat presented to the MAP on behalf of the TJFB on May 31st, 2016. The Board maintained its position that Aboriginal Groups should be exempt from LIFO, and the LIFO policy be modified to consider additional elements which are set out in the 2003 New Access Framework as criteria to consider both access into and out of the fishery.
- Representatives of the Board attended the Northern Shrimp Advisory Committee meeting on March 9th, 2017 in St. John's, Newfoundland and Labrador.

6.0 Summary and Conclusion

- Whereas the current allocation regime of Proportional Sharing limits the Nunatsiavut Government's access to Northern Shrimp increases in SFA 5 as per 13.12.7 and 13.12.9 of the LILCA, the Board recommends that the Minister amend the regime to ensure the Nunatsiavut Government is constitutional protection as outlined in the LILCA, and make exceptions for the Nunatsiavut Government.



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