



SUBMISSION TO THE
NUNAVUT WILDLIFE MANAGEMENT BOARD

NWMB Regular Meeting No. RM 004-2017

FOR: Information Decision

Issue:

Concerns over the delays revising the *Allocation Policy for Commercial Marine Fisheries*

Background:

Mandate of the NWMB

In the last two decades, Nunavut's fishing industry has grown exponentially in terms of available quota, revenue generation, number of enterprises, harvesting capacity, and Inuit employment. These improvements are remarkable and worthy of recognition. However, this industry operates in an environment of uncertainty and unpredictability found in no other fishery in Canada. As part of the commercial fisheries co-management processes outlined in the Nunavut Agreement, enterprises are subject to an allocation process that externally determines how much quota – and therefore revenue – a company is permitted. Elsewhere in Canada, most enterprises own their fishing quotas and are only affected by changes in the total allowable catch year to year.

The Nunavut Wildlife Management Board (NWMB) administers this process using the *Allocation Policy for Commercial Marine Fisheries* (Policy). Established in 2007, the Policy was written to create a “fair, open and transparent process to determine access and allocations”. Quota recommendations are developed by the NWMB for the Minister of Fisheries and Oceans and are in part based on the Fisheries Advisory Committee's (FAC) review of submitted applications and/or annual reports.

The Policy was revised in 2012 after undergoing extensive industry consultations, and minor revisions were included in 2015. In early 2016, a second major review of the Policy was initiated to address the various implementation challenges that had been identified. This revision was applauded by the Nunavut fishing industry as well as the FAC as all parties agreed that the Policy no longer met the needs of the Nunavut fishery and more importantly was not meeting its objectives.

This review began in May 2016. After receiving a second set of comments from stakeholders in the fall of 2016, the NWMB staff intended to begin drafting revisions. However, for more than a year no further progress on the Policy's revisions have been communicated to industry stakeholders.

There was significant optimism in the industry that the Policy's limitations and ambiguousness would be corrected before any further calls for applications were requested. Unfortunately, one call for applications and one for annual reports have been issued in the last year. A second call for applications was prevented at the last minute due to objections from industry.

Request for Stability for the Fishing Industry

The following submission to the NWMB is intended to outline how the continued delays to modifying the Policy are creating uncertainty in the industry and problems of past recommendations of the FAC are being repeated. Furthermore, Arctic Fishery Alliance L.P. (AFA) is requesting that the Policy's revisions be prioritized for completion by summer 2018 by the NWMB and that calls for quota applications or annual reports be suspended until the Policy is amended. Similarly, any recommendations made by the FAC should not be considered until a revised allocation policy is implemented.

Repeatedly issuing calls for these applications while the Policy is under review distracts each enterprise from its primary purpose of running a successful fishing business and requires a significant investment of resources by each company. While the NWMB has chosen to maintain the *status quo* after these

applications were evaluated – decisions that were completely correct given the challenges associated with implementing a flawed Policy – these calls still exposed all four quota holders to the risks of changes to their quotas.

Most Nunavut fishing enterprises have invested millions of dollars in vessels and other infrastructure to create this industry’s impressive growth. These capital purchases were made possible because both the quota holders and their lending agencies assumed that an enterprise’s quotas will remain reasonably constant if the Policy is fairly and objectively applied. As mentioned previously, nowhere else in Canada are fishing enterprises subject to such rigorous external oversight to receive and maintain their quotas and thus, their source of revenue generation. If we are to continue to develop and make investments as an industry, a stable foundation of reliable quotas and revenues is needed. Continuing to operate under Policy universally acknowledged as flawed has the opposite effect. If a “fair, open and transparent” process for earning and retaining allocations is the mechanism by which fishing access will be granted, then the Policy must be revised as soon as possible.

Direct Appeals to the NWMB Regarding Allocations

As a result of these Policy review delays and continuing calls for applications, some of the quota holders in Nunavut are now seeking alternative means to build a case for greater allocations. For instance, one quota holder made a direct appeal to the NWMB during the Board’s regular meeting in September 2017 (RM003-2017). After providing information on its history in the fishing industry, as well as some of its recent investments, the presentation explicitly stated that this quota holder was seeking to “persuade the NWMB that [its] request for higher fishery quota/allocations is justified”.

AFA strongly believes that such actions are wrong and undermine the system of fairness the Policy is meant to create. Hence, we felt we had no choice but to address this impropriety and appeal to the NWMB to refocus their efforts in building a more objective, transparent and equitable allocation process that will lead to greater stability in the industry.

The allocation process in Nunavut is generally a zero-sum game. Unless there is an increase in the total allowable catch of a fishery, the four existing quota holders and now the newly formed fifth fishing enterprise (Qikiqtani Fisheries Alliance) are in direct competition to secure access to a finite amount of turbot or shrimp quota. An increase in one applicant’s quota must be taken from one or more of the other enterprises. Therefore, each application and annual report represents the only opportunity to gain or lose part of a primary revenue stream.

Having each recent call end in a rollover of quota, no matter how justified, has clearly prompted some quota holders to ask why the applications were requested in the first place. It is therefore not surprising that one quota holder stood before the NWMB in September and made a direct appeal for quota. From their perspective, what incentive is there to follow a process that has been repeatedly proven to be incapable of being fairly applied?

Rewarding a direct appeal to the NWMB by recommending additional quotas will demonstrate that the allocation process outlined in the Policy can be circumvented. Furthermore, since one enterprise’s increase in quota generally requires a corresponding reduction from one or more other quota holders, the remainder of the industry will be strongly tempted to make their own presentations to the NWMB, if

only to level the playing field and protect their revenue streams. Instead, AFA asks that the NWMB recognize the dangers in encouraging direct petitions, and instead work with Nunavut's fishing industry and other relevant stakeholders to rebuild a fairer and more objective allocation Policy.

Continuing FAC Challenges

The repeated calls for quota applications and annual reports since the Policy workshop over a year ago have also reinforced industry's initial concerns regarding the Policy's implementation. First, the Policy currently requires that at least one appointee to the FAC by the Government of Nunavut (GN) and Nunavut Tunngavik Inc. (NTI) to be an "industry expert". Ensuring there are members who are experienced in standard fisheries business practices is critical to achieving a fair allocation process. At present, the membership of the FAC does not meet this "industry expert" standard. Why has the NWMB continually permitted this requirement in the Policy to be ignored?

Developing and retaining capacity in Nunavut is a recognized challenge across many fields. Thus, it was strongly recommended at the Policy workshop and in written submissions that an independent consultant be retained to support the FAC's review of any quota applications and annual reports when such expertise is unavailable "in-house" (i.e. by staff of the GN or NTI). The commercial fisheries affected by this Policy generate over \$100 million annually. Therefore, it is imperative that any recommendation made by the FAC regarding allocations is formulated with the fullest comprehension of how such decisions will impact the business plans and multi-million dollar harvesting infrastructure investments made by quota holders.

The second recurring concern lies with the challenges the FAC has encountered applying the Policy's evaluation guidelines. All stakeholders have reached the consensus that these criteria are too ambiguous to fairly and objectively use them. However, the FAC has been asked to use this unclear Policy three times over the last year. As a result, the committee has been forced to choose how they will interpret these broad guidelines to make their recommendations. This has resulted in a lack of transparency and sometimes inconsistency in these evaluations.

For instance, the NWMB recently released the FAC's preliminary recommendations on the 2016 annual reports. In these recommendations, the FAC has chosen to narrowly define and restrict the term "tangible benefit" to cash contributions to owner communities. Notwithstanding the fact that the evaluation form and allocation guideline use the term "direct benefit" not "tangible benefit", this narrow definition excludes most of the benefits the Policy defines as legitimate. Section 7.3 *Benefits to Nunavummiut* states that "[e]xamples of direct benefits are economic benefits to dependent communities, market development and investment in training, research, inshore processing and infrastructure."

This is the only definition provided in the Policy as to what constitutes a benefit. Nowhere in the definition is the phrase "cash contribution" even listed; it would arguably fall under the category of economic benefit to a dependent community. Furthermore, the FAC state they consider it "debatable" whether research should be considered a benefit despite its inclusion in the definition.

As a result of this and other interpretations like it, the FAC have exposed quota holders to the threat of loss of quota worth millions of dollars annually, despite the enterprises' best efforts to meet the requirements of the Policy. These real-world consequences resulting from differences in interpretation underline the ongoing instability the industry faces until the Policy revisions are completed.

The NWMB has overturned the FAC's preliminary recommendations and rolled over the existing allocations since 2015. This reinforces the perception that the allocation process resulting from the current Policy cannot be fairly or transparently implemented. In recognition of the Policy's flaws, AFA therefore reiterates its request that further calls for quota applications or annual reports be suspended until the Policy is amended. Similarly, any recommendations made by the FAC should not be considered until a revised allocation policy is implemented.

Time Required to Present

AFA requests that they have 30 minutes to present this submission.

Consultations:

No formal consultations have been held on this issue. Informal discussions on the need for the completion of the Policy's review have been held with other members of the Nunavut Offshore Allocation Holders Association on several occasions over the past year. However, this submission reflects the views of Arctic Fishery Alliance and is not intended to be representative of the industry as a whole.

Recommendation:

It is recommended that the Nunavut Wildlife Management Board direct its Wildlife Management staff to prioritize the completion of the revision process for the *Allocation Policy for Commercial Marine Fisheries*. These revisions must be made in consultation with the fishing industry and other relevant stakeholders. Ideally, the timeline for completion should enable a Call for Applications to be issued in the summer of 2018. In the meantime, we request that the NWMB suspend any further calls for quota applications and annual reports and that any existing FAC recommendations should not be considered until the amendments are made.

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Concerns over the delays in revising the *Allocation Policy for Commercial Marine Fisheries*

**Presented to:
Nunavut Wildlife Management Board - RM 004-2017**

Role of NWMB

- NWMB administers *Allocation Policy for Commercial Marine Fisheries* (“Policy”)
 - Applies to turbot & shrimp, but not Arctic char
- Policy meant to create “fair, open and transparent process to determine access and allocations”
- Recommendations for allocations provided by NWMB to Minister for Fisheries & Oceans
 - Based in part on Fisheries Advisory Committee’s (“FAC”) review of quota applications



Policy Review & Delays

- Policy established in 2007 & revised in 2012
 - Significant stakeholder consultations both times
- 2nd major review launched in 2016 in response to challenges implementing Policy
- NWMB intended to make revisions to Policy following workshop
- No further updates provided for over a year



Calls for Applications Continue

- Industry hoped no requests for applications would occur while Policy under review
- But, 2 calls for applications & 1 for an annual report issued over last year
- Recommendations by FAC overruled by NWMB for applications & *status quo* maintained
 - Annual report process still underway



Instability for Industry

- Preparing applications requires significant time & resources by enterprises
 - Distracts from primary purpose of fishing
- Each application exposed applicants to risk of losing quota
 - This oversight is unique to Nunavut



Instability for Investments

- Most Nunavut enterprises have invested millions of dollars in vessels & other harvesting infrastructure
- Purchases made possible because quota holders & lending agencies trust quota will be retained if Policy guidelines met
- With Policy under review, quota stability in question



Concerns over Direct Appeals

- Some quota holders now seeking other ways to secure quota
- Presentation made by one enterprise to NWMB in September (RM 003-2017)
- Aimed to “persuade the NMWB that [its] request for higher fishery quota/allocations is justified”



Zero-Sum Situation

- Allocation process is zero-sum situation
- For one quota holder to gain quota, one or more other enterprises must lose quota
- 4 quota holders & the new fishing enterprise are in direct competition



Concerns over Direct Appeals

- Directly presenting to NWMB undermines Policy
- If this is rewarded with additional quota, it will demonstrate Policy can be bypassed
- AFA requests that the dangers of entertaining direct appeals be recognized



Industry Expertise on FAC

- Existing Policy requires Government of Nunavut & Nunavut Tunngavik Inc. to each appoint a member to FAC with “industry expertise”
- Experience in standard fisheries business practices critical to fair assessments
- Current membership of FAC not meeting this requirement



Importance of Industry Expertise

- Nunavut's turbot & shrimp quotas generate \$100 million annually in revenue
 - Enterprises have millions of dollars of investments
- Evaluations of complicated business plans difficult
- Recommendations to reduce quotas can have significant consequences



Allocation Guideline Ambiguity

- All stakeholders agreed that allocation guidelines not applied objectively
- FAC has chosen to use its own interpretation of these guidelines
- Such decisions are not transparent to industry & are sometimes inconsistent



Allocation Guideline Ambiguity

- FAC's interpretations sometimes differ from quota holders'
- Resulting recommendations have exposed enterprises to threat of losing millions of dollars annually
- Highlights instability of allocation Policy at present



Recommendation

- Prioritize completion of revision process for Policy
 - Aim for Call for Applications under amended Policy in summer 2018
 - Changes must be made in consultation with fishing industry & other relevant stakeholders
- Suspend further calls for applications & annual reports until revisions completed & approved
 - In the interim, FAC recommendations should not be considered until guidelines are made more fair, objective & transparent





Thank You

Questions?