

**APPENDIX A TO THE ALLOCATION POLICY OF THE
NUNAVUT WILDLIFE MANAGEMENT BOARD
FOR COMMERCIAL MARINE FISHERIES:
TERMS OF REFERENCE
NUNAVUT FISHERIES ADVISORY COMMITTEE (FAC)
[DRAFT 14, May 23, 2007]**

1.0 BACKGROUND

The fisheries resource has been recognized historically as a common property that in general terms is owned by all and the responsibility of none. While the fishery is a common property resource, in Canada the federal government has exclusive legislative authority for the management of seacoast and inland fisheries for the benefit of all Canadians. These authorities were granted to parliament under the British North America Act (1867) and Section 34 of the Fisheries Act provides the federal government with the broad authority for “the proper management and control of the seacoast and inland fisheries”.

In 1993, the Nunavut Land Claims Agreement (NLCA) was signed into law as the most comprehensive land claim agreement in Canadian history. The NLCA clarifies the rights to ownership and use of land and resources both within and outside the Nunavut Settlement Area (NSA), and the rights of Inuit to meaningfully participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore fishery. The agreement also provides Inuit with wildlife harvesting rights and rights to participate in decision-making regarding policies of wildlife harvesting.

Article 5.2.33 of the NLCA clearly lays out the role of the Nunavut Wildlife Management Board (NWMB):

“Recognizing that Government retains ultimate responsibility for wildlife management, the NWMB shall be the main instrument of wildlife management in the Nunavut Settlement Area and the main regulator of access to wildlife and have the primary responsibility in relation thereto in the manner described in the Agreement”

Essentially the development of the NLCA in Nunavut has resulted in a form of co-management of commercial fisheries resources between the NWMB and DFO. With respect to commercial fisheries, the NWMB has extensive decision-making authority within the NSA (12 mile limit of Canada’s Territorial Sea Boundary). Outside of the NSA in the Nunavut adjacent waters of Zone I (Davis Strait and Baffin Bay not part of

the NSA or another land claim settlement area) and Zone II (James Bay, Hudson Bay and Hudson Strait not part of the NSA or another land claim settlement area), the NWMB has extensive advisory jurisdiction.

Commercial marine fisheries in Nunavut waters currently consist of two species, Greenland halibut (turbot) and shrimp. Although southern interests have largely controlled these resources over the past two decades, recent developments have resulted in improvements to Nunavut's share of its adjacent resources, especially the 2001 decision to allocate the full Division 0A turbot resource to Nunavut and recent decisions to maintain this full allocation for Nunavut as the quota has grown from 3,500 tonnes to 6,500 tonnes. However, at 45% in 2006, this share still pales in comparison to the 80-90% of adjacent resources common in other Canadian jurisdictions.

2.0 CURRENT CONTEXT

In 2005, significant developments in the Nunavut fishery included the adoption of a new *Nunavut Fisheries Strategy*, to guide future development and the completion of an independent *Organizational and Performance Review of Nunavut's Offshore Fishing Industry*. This *Offshore Review* recommended that a Fisheries Advisory Committee (FAC) be established to provide the NWMB with transparent and objective advice on access and allocation issues in the Nunavut fishery.

The ability to establish an open and transparent process in determining fisheries' access and allocations in Nunavut waters and the ability to tie continued access and allocations to performance goals and targets will establish Nunavut in a leading edge position in terms of Canadian fisheries' policy. This approach would ensure that over the long-term it will be possible to achieve the goals and objectives of fisheries' development as outlined in the *Offshore Review* and the *Nunavut Fisheries Strategy*.

The NWMB has recently revised its formal allocation policy with a clear purpose to “*set out the principles and guidelines to be considered by the NWMB in fairly determining individual commercial allocations of Nunavut's adjacent marine fisheries resources*”. To achieve this purpose it has established the following objective:

“To facilitate a co-operative, professional and diversified approach to ecosystem-based fisheries development, maintaining compliance with the principles of conservation, relying upon re-investment in the fishery by Nunavut fishers, and ensuring the wide distribution of tangible benefits to Nunavummiut”.

While the NWMB has a clearly defined role and resident expertise with respect to fisheries conservation and management in Nunavut, it does not have similar expertise or mandate in socio-economic, governance, business, employment and fisheries development issues. However, the Government of Nunavut and Nunavut Tunngavik Incorporated have led the recent developments of both the *Nunavut Economic Development Strategy (2003)* and *Nunavut Fisheries Strategy (2005)* and have a clear role in fostering the economic development of Nunavut's fishing industry.

The revised Allocation Policy recognizes the need to integrate fisheries conservation, management and development objectives in its decision making process. In accordance with the *Nunavut Fisheries Strategy* it seeks to encourage through its Allocation Policy:

- The conservation of marine resources and the protection of marine habitat through sustainable development and adherence to the precautionary principle;
- A balance over time between community-based inshore operations and co-operative offshore enterprises – all of which are owned and professionally operated by Nunavummiut;
- Substantial re-investment of revenues received from one of Nunavut’s most valuable common property resources; and
- The creation of wealth, employment, training and educational opportunities for Nunavummiut.

The Nunavut Fisheries Advisory Committee (FAC or Committee) has been established by the NWMB to assist in integrating the interests of fisheries management, conservation, governance and development and to provide advice to the NWMB on the allocation of fisheries resources in Nunavut adjacent waters. The following pages outline the Terms of Reference for the establishment and operation of the FAC.

3.0 FAC MANDATE

The primary mandate of the FAC is to provide advice to the Nunavut Wildlife Management Board (NWMB) on the allocation of commercial fisheries resources, i.e. Greenland halibut (turbot) and shrimp and any other fish species which may achieve commercial status, within the Nunavut Settlement Area (NSA) and within Nunavut adjacent waters outside of the NSA defined in the Nunavut Land Claims Agreement (NLCA) as Zones I and II.

Ancillary Committee mandates will also include the provision of advice to the NWMB on confidentiality issues and on allocations in emerging marine fisheries, and to the IWG (Industry Working Group) on the *Developmental Rebate* on levees applicable to individual enterprises with respect to their annual payments to the *Exploratory Fisheries Fund*.

4.0 ROLES & RESPONSIBILITIES

The roles and responsibilities of the Committee include:

- To review and assess applications, including Governance, Business, Benefits and Stewardship Plans, submitted to the NWMB for commercial marine fisheries allocations;

- To undertake a review and assessment of the annual reports submitted by each recipient of quota;
- To make recommendations to the NWMB on the allocation of Nunavut fisheries resources based upon the review and analysis of formally submitted applications and, where applicable, annual reports;
- To assist and provide advice to the NWMB, as requested, with respect to the assessment of applications for allocations in emerging marine fisheries;
- To assist and provide advice to the IWG (Industry Working Group), as requested, with respect to the implementation and administration of the *Exploratory Fisheries Fund* and the calculation of individual *Developmental Rebates*;
- To provide advice, as requested by the NWMB, GN and/or NTI, on overall fisheries development issues in Nunavut;
- To provide advice and recommendations on confidentiality issues, i.e. what information should or should not be deemed confidential; and
- Any other objectives that the NWMB may request the Committee to undertake.

5.0 COMPOSITION OF COMMITTEE

The membership of the Committee shall include five members appointed by the following organizations:

- Two members appointed by Nunavut Tunngavik Incorporated, one an industry expert and the other a Qaujimanilik (a person recognized by Inuit as having an in-depth knowledge of issues essential to the success of the fishery);
- Two members appointed by the Government of Nunavut, one an industry expert and the other a Qaujimanilik;
- One member appointed by the Nunavut Wildlife Management Board.

Members will be appointed by the respective organizations based upon their knowledge and experience of fisheries-related issues in Nunavut, including their knowledge of social, economic, governance, business, employment and development issues related to commercial marine fisheries. Upon selection, the Committee members will appoint a chairperson and vice-chairperson. Although members are appointed by the foregoing organizations, once appointed these individuals will perform their duties independently, impartially and in the public interest.

6.0 PRINCIPLES AND GUIDELINES

In reviewing allocation applications submitted to the NWMB the Committee will follow the principles and guidelines established by the NWMB in its recently revised “Allocation Policy of the Nunavut Wildlife Management Board for Commercial Marine Fisheries”. The principles have been developed to complement Article 5 of the NLCA and are as follows:

1. Healthy marine populations and habitat are essential to sustain the economic, social and cultural harvesting needs of Nunavummiut, for both present and future generations (See NLCA Section 5.1.5(c));
2. The fishery is a valuable and vital common property resource to be managed in an open, transparent and accountable manner for the equitable benefit of all Nunavummiut;
3. There is a need for the fishery to be diversified, striking a healthy balance between inshore and offshore operations, and between community entitlements and entrepreneurial initiative;
4. In allocating commercial marine fisheries resources, preference needs to be given to Nunavummiut and to operations providing direct benefits to Nunavut's economy (See NLCA Section 5.6.45);
5. In order to achieve a prosperous Nunavut-controlled fishery, there is a need for people to work together in harmony (See the Inuit Qaujimajatuqangit principle of Piliriqatigiingniq);
6. A prosperous Nunavut-controlled fishery requires substantial involvement of viable commercial ventures sponsored or owned by RWOs and HTOs (See NLCA Sections 5.1.3(a)(iii) and 5.6.39);
7. There is a need to give special consideration to adjacency in the allocation of commercial marine fisheries resources, particularly within the NSA (See NLCA Section 15.3.7);
8. In allocating commercial marine fisheries resources, there is a need to give special consideration to the economic dependence of communities on those resources (See NLCA Section 15.3.7); and
9. In allocating commercial marine fisheries resources, there is a need to give special consideration to economically viable fishing enterprises and to fishers that have a successful history in a particular fishery.

To complement the above principles, three guidelines have been developed to assist decision-making with respect to individual allocations. These guidelines are organized as a cumulative point system, with a maximum possible score of 100 points. Every applicant will be required to achieve a minimum of 18 points (60%) in each of Guidelines 1 and 3 in order to remain eligible to receive any allocation. In addition, within Guideline 1, every applicant will be required to demonstrate open, transparent and accountable operations, subject to relevant confidentiality and privacy concerns. The guidelines are outlined below:

- 1. Governance and Business Capacity (up to 30 points).**
 - (a) Open, transparent and accountable operations;**
 - (b) Viable commercial venture; and**
 - (c) Positive history in the fishery.**

This guideline is in accordance with any or all of principles 1, 2, 3, 4, 5, 6, 8 and 9.

Points are awarded under subsection (a) to fishing enterprises that are able to demonstrate proper governance procedures - including openness, transparency and accountability in their operations.

Fishing enterprises that can demonstrate viability – including suitable business planning, capacity to fish, responsible stewardship, relative economic return, value added to the fishery, stability of employment, and economic benefits to Nunavut - are recognized through subsection (b).

A proven record in the fishery is appropriately acknowledged through subsection (c).

- 2. Inuit Involvement (up to 40 points).**
 - (a) RWO or HTO ownership/sponsorship of the economic enterprise;**
 - (b) Inuit ownership of the economic enterprise;**
 - (c) Adjacency of the community to the fishing area; and**
 - (d) Economic dependence of the community on the resource.**

This guideline is in accordance with principles 3 to 9.

More points are awarded under subsection (a) for ownership than sponsorship, with 100% ownership by an RWO or multiple HTOs receiving the highest scores.

Under subsection (b), the most points are awarded to fishing enterprises, owned/sponsored by RWOs or HTOs, whose communities are most adjacent to a particular fishing area.

Under subsection (c), the most points are awarded to fishing enterprises, owned/sponsored by RWOs or HTOs, whose communities demonstrate the greatest dependence on the resource.

- 3. Benefits to Nunavummiut (up to 30 points).**
 - (a) Employment of Nunavummiut, especially Inuit;**
 - (b) Ownership of the economic enterprise and/or the vessel(s) by one or more residents of Nunavut; and**
 - (c) Participation in the *Exploratory Fisheries Fund*, and the provision of other direct benefits to Nunavut.**

This guideline is in accordance with principles 1 to 9.

With respect to subsection (a), points are awarded for the number of people employed (including land-based employees), the level of position(s) filled (management and technical level positions receiving more points than entry-level positions), and a demonstrated record of retaining Nunavut employees, especially Inuit.

Nunavut ownership of an enterprise and/or vessel is recognized under subsection (b), with more points awarded for multiple Nunavut owners.

With respect to subsection (c), see Part 12 of this Allocation Policy regarding the *Exploratory Fisheries Fund*. Examples of other direct benefits are economic benefits to dependent communities, market development and investment in training, research, inshore processing and infrastructure.

7.0 EVALUATION PROCESS

The FAC will undertake evaluations of quota applications (for commercial or emerging fisheries), of annual performance reports and of *Developmental Rebates* under the *Exploratory Fisheries Fund*. The evaluation process for each of these responsibilities is outlined below.

Application Evaluation

Applicants for quota allocations to the NWMB will be required to submit an “*Application Form for Commercial Marine Fisheries Allocation*” (available from the NWMB), as well as a detailed Governance, Business, Benefits and Stewardship Plan (template attached as Appendix B to the *Allocation Policy of the Nunavut Wildlife Management Board for Commercial Marine Fisheries*). The purpose of this plan is to ensure that the recipient is capable of properly managing this benefit and that the public is fully informed of its use and of the benefits that have arisen.

The Committee will perform an initial evaluation of allocation applications using the criteria detailed in Section 6.0. To assist the Committee in this process, an evaluation form is attached as Annex 1 to these Terms of Reference. If it is determined that key items are missing from the application documents, the Committee will notify the applicant and provide them with a set period of time to submit the necessary information (see Application Approval Flow Chart attached as Annex 2 to these Terms of Reference).

Following the initial evaluation at least one public forum will be held by the Committee to provide an opportunity for applicant and stakeholder input into the process. In this forum, applicants will have the opportunity to provide a summary presentation on their application. Other stakeholders will also be provided with time to make presentations. The Committee may also hold in-camera sessions with applicants, to provide the Committee and applicant with the opportunity to ask questions and discuss confidential details of the individual applications.

Upon completion of these sessions, the Committee will proceed to complete its assessment and evaluation. When the evaluation is complete the Committee will provide the NWMB with its written recommendation on the percentage of the resource that should be allocated to each successful applicant. Justification will be provided for both accepted and rejected applications.

At this point individual quota applicants are provided with the FAC's recommendations regarding their application. Quota applicants that disagree with the recommendations of the FAC may provide written, substantiated documentation supporting their case to the NWMB within a 30-day review period following the initial allocation recommendations. The NWMB will share that documentation with the FAC, and will take it into consideration prior to providing their final recommendations to DFO.

As per NWMB's revised allocation policy, once the NWMB's final allocation decisions have been confirmed by DFO, the Committee's advice to the NWMB will be made public along with the justification for this advice.

Annual Performance Review

Each subsequent year the quota recipient will be required to submit an annual report to the NWMB fully detailing the previous year's operations and how they have met the commitments identified in their Governance, Business, Nunavut Benefits and Stewardship plan. A template for this Annual Report is provided in Appendix C to the *Allocation Policy of the Nunavut Wildlife Management Board for Commercial Marine Fisheries*. The Committee will review the annual plans against the recipient's commitments and make recommendations to the NWMB as to any corrective actions required. These recommended actions may include:

- Recommended increase in allocation, if available, based upon success of quota recipient in meeting its objectives and justified requirement for allocation increase to build upon this success;
- Recommend status-quo based upon success of quota recipient in meeting its objectives;
- Recommend warning be issued to quota recipient for failure to meet all of its objectives and provide them with a specified time period to comply (generally one year) or be subject to a specific reduction in allocation;
- Recommend immediate reduction, suspension or termination of allocation based upon a substantial failure to meet objectives. For the year in question where this allocation becomes available, it will be shared on a temporary basis among existing allocation holders. The Committee will make recommendations on the temporary redistribution of this allocation. This allocation will then become subject to a new Call for Applications for the following season.

With the introduction in 2008 of its revised Allocation Policy for Commercial Marine Fisheries, the NWMB is temporarily withdrawing its renewable policy until all

participating fishers have had sufficient opportunity to become familiar with the revised Allocation Policy and the requirement for a comprehensive Governance, Business, Nunavut Benefits and Stewardship Plan and Annual Reports. The NWMB will not make significant allocation changes during those years without persuasive and reliable evidence that a particular fishing enterprise has failed to meet, or has not properly met, the commitments set out in its Governance, Business, Nunavut Benefits and Stewardship Plan. The NWMB anticipates the re-introduction of a renewable policy – potentially covering up to a five-year period – for the 2010 harvesting season.

Developmental Rebates

The NWMB's revised allocation policy includes a provision for instituting an *Exploratory Fisheries Fund*, to help finance research into inshore and emerging marine fisheries development. This fund will be financed through levees collected from the holders of commercial marine allocations.

The Committee will provide the IWG (Industry Working Group) with advice on the level of *Developmental Rebate* to be provided to allocation holders on their levees. The Committee will review the Governance, Business, Nunavut Benefits and Stewardship Plan and Annual Reports of allocation holders and where these reports demonstrate substantial performance and commitment by the allocation holder in the fields of research covered by the *Exploratory Fisheries Fund*, the Committee will recommend that these allocation holders be provided with a specific *Developmental Rebate*.

8.0 SUPPORT FOR APPLICANTS

To assist quota applicants and recipients, support will be provided towards the costs of hiring qualified consultants/advisors capable of supporting organizations with their applications and annual reporting requirements. This support will focus primarily on newly established organizations and those with limited managerial/support capacity and will emphasize mentorship support towards the development of the necessary organizational and governance skills to achieve self-reliance. The GN, NTI, INAC, DFO, Kakivak, the NFTC and/or other agencies will be accessed to provide financial assistance to help offset these costs. Applications for funding support will be made to these groups/agencies by the IWG (Industry Working Group), who will in turn accept applications for assistance from quota applicants.

9.0 COMPLIANCE WITH NWMB POLICIES

In performing its key functions, the Committee must comply with any directions from the NWMB regarding the operation of the Committee, including requirements of confidentiality. In this respect each member must sign a code of conduct and confidentiality agreement.

10.0 CONFLICT OF INTEREST

Members of the Committee will be required to disclose direct or indirect interests that may affect their judgment, in the exercising of their duties and will not take part in any activities of the Committee relating to the matter in which the member has the interest.

11.0 TERM OF APPOINTMENT

Committee members will be appointed for a set term, to be in line with the term to be established under the NWMB's new renewable policy (expected to be five years). In order to maintain continuity on the Committee, i.e. such that the term of all Committee members does not expire at the same time, two of the appointees (one each from NTI and GN) will initially be appointed for shorter (likely three-year) terms.

To ensure the credibility, independence and impartiality of the FAC, each organization responsible for the appointment of a Committee member, or the NWMB, may only choose to terminate that Committee member's appointment prior to the expiry of his or her term based on just cause. Appointments may be renewed, at the discretion of the appointing organization, for a maximum of two terms.

12.0 ADMINISTRATION OF THE FAC

Individual organizations, i.e. NTI, GN and NWMB, will be responsible for all of the necessary costs associated with the participation of their appointed members on the Committee.

The Committee, if required due to excess workload, will have the capacity to hire qualified consultant(s), to assist the FAC in preparation of due diligence reports on quota applications and annual reports. The GN, NTI, INAC, DFO, Kakivak, the NFTC and/or other agencies will be accessed to provide financial assistance to help offset these costs.

ANNEX 1

Evaluation Form – Allocation Guidelines

1. Governance and Business Capacity (30 points):

Open, transparent and accountable operations

Score 1 2 3 4 5 6 7 8 9 10

Viable commercial venture

Score 1 2 3 4 5 6 7 8 9 10

Positive history in the fishery

Score 1 2 3 4 5 6 7 8 9 10

2. Inuit Involvement (40 points):

RWO or HTO ownership/sponsorship of the economic enterprise

Score 1 2 3 4 5 6 7 8 9 10

Inuit ownership of the economic enterprise

Score 1 2 3 4 5 6 7 8 9 10

Adjacency of the community to the fishing area

Score 1 2 3 4 5 6 7 8 9 10

Economic dependence of the community on the resource

Score 1 2 3 4 5 6 7 8 9 10

3. Benefits to Nunavummiut (30 points):

Employment of Nunavummiut, especially Inuit

Score 1 2 3 4 5 6 7 8 9 10

Ownership of the economic enterprise and/or the vessel(s) by one or more residents of Nunavut

Score 1 2 3 4 5 6 7 8 9 10

Participation in the *Exploratory Fisheries Fund*, and the provision of other direct benefits to Nunavut

Score 1 2 3 4 5 6 7 8 9 10

ANNEX 2

Application Approval Flow Chart

