

NWMB Study of Transparency vs Confidentiality in Nunavut's Commercial Marine Fisheries

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Background

This study has been completed to provide the Nunavut Wildlife Management Board (NWMB) with recommendations on how to address, in a practical manner, the requirement to be open and transparent in the management and development of Nunavut's fish resources, while respecting necessary business confidentiality and privacy interests. This requirement to balance the competing interests of transparency vs confidentiality was highlighted as an area of concern for industry at the NWMB Allocation Policy Consultations in Iqaluit in November 2006.

This report is comprised of five sections:

- *The Issue:* To set the stage, a brief review of why there is a public interest in disclosure of sector-wide and even enterprise-specific information is provided;
- *Transparency Requirements in the Fishing Industry:* This section provides a review of existing transparency requirements within the fishing industry. In general, the requirements for disclosure in the industry are limited, this section outlines the current requirements and what is being used or proposed in other jurisdictions (provinces, Alaska (CDQ program), etc.);
- *Transparency Requirements in the Forestry and Mining Sectors:* A brief review of transparency requirements in other industries involving industry's use of a public resource is provided in this section. This analysis includes whether other industries—specifically the forestry and mining sectors—are more advanced in terms of their transparency requirements and how they balance the issue of transparency vs confidentiality;
- *Industry Input:* This section provides a review of industry input on the matter (industry's views on the importance of the issue of confidentiality) as expressed in their written submissions to NWMB and their input at the November 2006 consultation meetings;
- *Conclusions and Recommendations:* This final section of the report provides an analysis of the information gathered in the prior three sections and development of policy recommendation(s) on the issue of transparency vs confidentiality. This includes recommendations on the type of information that can be publicly released and the information that should remain confidential.

The Issue

The value of improved transparency in Nunavut's fishing industry will ultimately depend on the use of the information that is made available to the public. However, a brief consideration of how information might serve the public interest may help to crystallize what is at stake.

Accountability to the Public: There is a fundamental expectation that information about how the fishery is managed, who is using the resource, and who is benefiting from this use should be available to the public. This expectation arises from the fact that the fishery is a public, not a private, resource. Transparency must be adequate to allow for public understanding and debate as to whether those entrusted with the resource are generating an acceptable socio-economic return.

Assessing environmental impact: The fishery is just one part of a complex marine ecology. Activities of the commercial marine fishery may have implications for marine mammals through effects on habitat, food chains, and perhaps through the process of fishing itself. It is therefore in the public interest to know details about fishing levels-of-effort, location of fishing activity, fishing methodology used, and the environmental records of the fishing enterprises. Access to information about the economic viability of the sector may also be relevant in this context.

Accountability through independent information: Ownership of much of Nunavut's fishing enterprise is broadly based through priority allocation of fish quota to beneficiaries, primarily by way of the HTOs and their corporations. This broad ownership base should have access to information about how their fishery is being managed on their behalf, what benefits are being generated, and how costs are structured. They should know that their enterprises are generating an "industry standard" return so they can make appropriate decisions about corporate management and operations. This information typically flows through generally accepted "corporate governance" structures and knowledgeable owners. Nunavut organisations are working on strengthening governance capacity. Publicly available data could provide an independent source of information and thereby improve accountability.

Establishing industry norms: As relative newcomers to the commercial fisheries sector, some Nunavut quota-holding organisations may not have the level of "trade knowledge" that is typically held by participants in fisheries elsewhere in Canada. The potential for sub-standard deal-making therefore arises. Access to better information about the commercial fishery could help Nunavummiut catch up in their efforts to acquire "common" knowledge of the sector.

The information of value to achieve these "public goods" is wide-ranging. It may include general industry-wide information, information that is specific to a

particular fishery, and also information that relates to a particular enterprise. This may include, as some examples only, information about:

- who is involved and who is seeking to be involved in the fishery;
- what is the harvest plan—who, how, where, when;
- corporate structure, management and control;
- corporate track record—profitability, best-practices, compliance...
- what are enterprises willing to pay for access to the fish;
- how much benefit is returned to Nunavut from different fisheries and different fishing strategies/models;
- market value information (summary data that does not reveal the sources of information); and
- typical industry costs and returns.

While all of this data may be in the public interest, it is noted that disclosure of some forms of enterprise data may actually harm an enterprise. Where harm to a corporation and/or its shareholders exceeds the public good that arises from a disclosure, then disclosure is unlikely to be warranted. Further, it is in the public interest to have strong, efficient, and competitive fishing enterprises. Therefore, a tension arises between transparency and disclosure.

Transparency Requirements in the Fishing Industry

This section addresses the current transparency requirements within the fishing industry, considering the type and amount of information that industry is required to provide to government and the information that is made available to the general public.

In general terms, the transparency requirements within the North American fishing industry are minimal, especially in terms of making individual company data available to the public. The only two examples available where a greater level of detail and transparency are required are for:

- Publicly traded fishing companies, who are strictly required by securities law to meet regular reporting requirements and to publicly announce any material changes that may affect their business. Examples include Fishery Products International (FPI), High Liner Foods Incorporated, and Clearwater Seafood Limited Partnership, all trading on the Toronto Stock Exchange, who file annual and quarterly reports, annual information forms, management information circulars and various other information on their websites and with the System for Electronic Document Analysis and

retrieval (SEDAR)¹. These are all very large corporate entities with sales in the hundreds of millions of dollars, for whom access to the public securities markets has warranted the extra transparency requirements of public listings; and

- The Western Alaska Community Development Quota (CDQ) Program², where a portion of the Bering Sea and Aleutian Island fisheries quotas, including pollock, halibut, Pacific cod, crab and bycatch species, are earmarked for distribution among a total of six regional community-based organizations participating in the program. Under this program these groups are required to submit detailed applications and reports outlining proposed projects and results. These documents are made publicly available.

The following paragraphs take a closer look at current transparency requirements in the Canadian harvesting and processing sectors and provide greater detail on the CDQ program, which is the closest example in terms of reporting requirements to that planned for Nunavut.

Harvesting and Processing Reporting Requirements

As previously indicated reporting requirements within the Canadian harvesting and processing sectors are minimal. In addition, any data that is collected is only provided in aggregate to the public, to prevent the identification of individual harvesting or processing operations.

The Department of Fisheries and Oceans (DFO) has responsibility for management of the marine harvesting sector in Canada. Harvesters are required to provide basic information to DFO on their enterprises as well as detail on their harvesting results. Data is used by DFO to ensure harvesters are following their license provisions and are within their quota allocations. This data is aggregated to provide fishery statistics. None of the individual data is made publicly available. DFO does not require harvesters to submit details in terms of their annual financial results or the use of revenues, this is all considered confidential information.

Processing operations fall under Provincial or Territorial jurisdiction. Other than processors trading on public exchanges or owned by public institutions (such as Nunavut's three primary processing operations, which are majority controlled by

¹ For greater information see the corporate and SEDAR websites: www.fpil.com/templates/investor.asp?id=19; www.highlinerfoods.com/inside.asp?cmPageID=71; www.clearwater.ca/investors-e.asp?cmPageID=81; www.sedar.com

² See program detail at: www.commerce.state.ak.us/bsc/CDQ/cdq.htm; www.cdqdb.org/program/program.htm; and www.fakr.noaa.gov/cdq/default.htm.

Nunavut Development Corporation), most processors are subject to very limited reporting requirements and public disclosure. Provincially designated reporting requirements for processors vary somewhat between provinces but in general are limited. The provinces of Newfoundland and Labrador and Quebec require the most information from processors but these and other provinces only make available summary statistical data to the public. In Newfoundland and Labrador, reporting requirements include the submission of an Annual Processing Plan (see Appendix 1) and the provision of detailed production data on a regular basis, which is used to produce summary statistical reports.

Western Alaska CDQ Program

The CDQ program has been in existence since 1992. Over this time period, over \$110 million in wages, education, and training benefits have been generated for over 25,000 residents. Over \$500 million in revenues have been generated. The CDQ program has been successfully contributing to fisheries infrastructure in western Alaska by funding docks, harbours, and the construction of seafood processing facilities. The CDQ program has allowed CDQ groups to acquire equity ownership interests in the pollock, Pacific cod, and crab sectors, which provide additional revenues to fund local in-region economic development projects, and education and training programs.

CDQ groups are subject to extensive reporting and public transparency requirements. However, the regulations governing CDQ members also provide for the consideration of confidentiality concerns. "CDQ groups can request for good cause that records provided to the state be classified as confidential. Good cause is invoked when the disclosure of records might competitively or financially disadvantage CDQ participants, when a trade secret or proprietary business interest may be revealed, or when the need for confidentiality outweighs the public interest." A copy of the regulation governing confidential records is provided in Appendix 2.

Transparency in the Forestry and Mining Sectors

Forestry Sector

Freedom Of Information in BC Forest Industry

Public access to information about the forest sector in British Columbia is addressed under the framework of BC's Freedom Of Information And Protection Of Privacy Act. Under this legislation, every person has a right to see any record in the custody or under the control of a public body. Access is generally accomplished through application.

However, the Act sets out areas where it is *mandatory to disclose information without delay* where a real risk of significant harm to the environment or to the

health and safety of the public exists, or where disclosure is clearly in the public interest. Requirements for mandatory disclosure exist regardless of whether there is an access request and it overrides all exceptions to disclosure.

The scope of records related to the forest resource sector is broad. It includes, amongst other things information related to resource inventory; protection; research; harvesting and valuation; resource management.

Records are also kept of the kinds of requests and the origin of these requests—and these records are also publicly available. Requests for information about the forest sector are mostly made by media and special interest groups asking for information about the following things: environmental research; results of environmental testing, monitoring, compliance, non-compliance and compliance orders; prosecutions; spills, checks, contamination; applications for tenures; prices for tenures; tenure transfers; management and development plans; native land claims.

Exemption for information harmful to the business interests of a third party

The right to access exists unless three conditions allowing for non-disclosure all are met. These are: 1) the information was supplied implicitly or explicitly in confidence; 2) it is commercial information; financial; scientific; technical; labour relations; trade secret; and, 3) it could reasonably be expected to cause specified harms. In practice, experience suggests it is not easy to meet these tests. Tests for determining if information is *confidential*, constitutes a *trade secret* or would result in *significant harm* are set out and must be empirically met—not simply claimed.

A broad range of information is collected by the BC Ministry of Forests and Range and will be released. Of potential interest to the Nunavut fisheries context are the following:

- application to harvest; harvest licenses and permits;
- allowable annual harvest levels;
- five-year performance information;
- logging plan (information sent by companies to forest districts when requesting cutting permits);
- management plan (contains info on how the licensee plans to manage the area over a five-year period);
- estimated and actual costs for road construction (i.e. to access the timber resource);
- collection of stumpage revenues by government and a company's stumpage account history;
- market value information (summary data that does not reveal the sources of information);
- licensee logging cost survey;
- licensee milling cost survey.

Independent Forest Audits in Ontario

In Ontario, Independent Forest Audits (IFAs) are carried out on every major forest license-holder once every five years. Forest audits are a requirement of the Crown Forest Sustainability Act (CFSA), the Forest Management Class Environmental Assessment on Crown Lands in Ontario, and are a condition of Sustainable Forest Licences (SFLs). These audits are made available to the public. As indicated by the Ontario Ministry of Natural Resources³, the IFA must address the following eight principles:

1. **Commitment** - Commitment is reflected in vision, mission and policy statements of the company. Vision and mission statements are intended to provide long-term guidance for the organization. Policy statements reflect how the organization's vision and mission will be achieved. These statements must be reflected in the day-to-day operations of the organization.
2. **Public Participation** - The process of sustainable forest planning, implementation and monitoring is conducted in an open consultative fashion, with input from all members of the planning team, Local Citizens Committee, native communities, and other parties with an interest in the operations of the forest unit.
3. **Forest Management Planning** - The forest management planning process involves the input of a number of individuals and groups to describe the current condition of the forest, the values and benefits to be obtained from the forest, the desired condition of the forest in the future, and the best methods to achieve that goal. Certain minimum standards and procedures have been established upon which all management units are evaluated.
4. **Plan Implementation** - Verification of the actual results of operations in the field compared to the planned operations is required to be able to assess achievement of the plan objectives and compliance with laws and regulations. In conjunction with the review of operations, the reporting tables are tested to ensure accurate results are reported.
5. **System Support** - System support concerns resources and activities needed to support plan implementation so as to achieve the desired objectives. Appropriate control, documentation and reporting procedures must be in place and operational. Planned action should occur at planned times, in planned places and to the planned degree.
6. **Monitoring** - The activities and the effects of these activities in achieving management objectives must be regularly measured and assessed. In particular, the indicators of achievement must be assessed and their effectiveness reviewed.

³ <http://ontariosforests.mnr.gov.on.ca/audit.cfm>

7. Achievement of the Management Objectives and Forest Sustainability - Periodic assessments of the management of the forest unit operations and the forest unit must be made in order to determine whether forest sustainability and other management objectives are being achieved. This includes comparing the actual values of the predetermined indicators against the planned values and assessing the reasons for any significant deviations.

8. Contractual Obligations - The licensee must comply with the specific licence requirements.

Of some interest here is the Principle, “Achievement of Management Objectives.” Ontario’s Crown Forest Sustainability Act (CFSA) has adopted six criteria that must be included as management objectives for every forest management plan. These are adopted from the Canadian Council of Forest Ministers (CCFM) and include:

- 1) Conservation of forest diversity;
- 2) Maintenance and enhancement of forest ecosystem condition and productivity;
- 3) Conservation of soil and water resources;
- 4) Forest ecosystem contributions to global ecological cycles;
- 5) Multiple benefits to society; and
- 6) Accepting society’s responsibility for sustainable development.

Thus, as a requirement, forest companies in Ontario are obliged to present insight to the public—through independent audits—about how they are succeeding in areas of conservation (Criterion 1), ecosystem condition/productivity (Criterion 2), providing socioeconomic benefits (Criterion 5); and, supporting community well-being and addressing Aboriginal rights (Criterion 6).⁴

Mining Sector

The mining sector is increasingly being called on to publicly address the environmental, social and economic impacts that major mining projects will have on the individuals and communities within a project’s “impact area.” There are several processes that contribute to improved transparency in the sector.

Environmental Assessment

In Nunavut, mine project proposals are reviewed for compliance to existing land use plans and are screened by the Nunavut Impact Review Board for a determination of what level of environmental assessment process is appropriate. To date, three mine projects have received project certificates from the Minister

⁴ See details about these six criteria for sustainable forest management at the CCFM web site, http://www.ccfm.org/current/ccitf_e.php

of INAC (Tahera's Jericho diamond mine; Miramar's Doris North gold project; and the Cumberland Resources' Meadowbank project) following a NIRB Part 5 review, as set out in the Nunavut Land Claims Agreement. The NIRB review process has included significant opportunities for community consultation and information-sharing prior to project approval. Under the Part 5 review, described under Section 12.5 of the NLCA, NIRB issues guidelines that the project proponent needs to follow in preparing an environmental impact statement. These are major submissions that include detailed descriptions of the proposed mine project; what environmental and socio-economic effects of the project are to be anticipated; what steps will be taken to avoid and reduce adverse effects, and to increase the benefits of the mine in terms of the values and preferences of affected communities.

In addition to the assessment of baseline conditions and anticipated impacts of the mine on these conditions, project proponents are required to address how they intent to monitor the actual environmental and socio-economic effects the project will have if and as it is carried out.

Socio-economic Monitoring

As noted, the NLCA addresses a role for NIRB to play in project-specific socio-economic monitoring. Section 12.7.1 establishes a mandate whereby NIRB may "provide for the establishment of a monitoring program for that project which may specify responsibilities for the proponent, NIRB or Government." Of relevance to socio-economic monitoring, Section 12.7.2 (a) indicates that the purpose of such a monitoring program shall be (a) to measure the relevant effects of projects on the ecosystemic and socio-economic environments of the Nunavut Settlement Area; (b) determine whether and to what extent the land or resource use in question is carried out within the predetermined terms and conditions; (c) to provide the information base necessary for agencies to enforce terms and conditions of land or resource use approvals; and (d) to assess the accuracy of the predictions contained in the project impact statements.

To date in Nunavut, socio-economic monitoring arising from the mining sector is in its early days. Some lessons, therefore, have been identified from the Northwest Territories, where the track record is longer. One concern that has been identified there relates to whether common indicators are adopted across a sector, or if individual enterprises adopt their own, unique reporting systems. Experience from the NWT diamond mines suggests that when socio-economic monitoring emerges from specific projects, variation in the indicators and project-specific data presented by different companies occurs, even when the communities experiencing these effects are the same. This confounds understanding of cumulative effects and comparison amongst projects.

Efforts to develop socio-economic monitoring approaches that are based at the community/regional-level rather than at the project level are underway in various ways in Nunavut. This includes development of a "Socio-economic Monitoring &

Assessment Guide” developed by Michelle Boyle for the Nunavut Economic Developers’ Association (NEDA); efforts to collaborate in socio-economic monitoring within the GN; and continuing work towards improved monitoring practice supported by INAC.

IIBAs

Under the NLCA, proponents of major projects must negotiate Inuit Impact and Benefits Agreements with the appropriate Regional Inuit Organization. Parts of these agreements are generally withheld from public distributions, however, summaries of the IIBAs are sometimes released. For example, the agreement between Cumberland Resources Ltd., and the Kivalliq Inuit Association covers areas including training and education; Inuit employment; business contracting opportunities; and, economic, social and cultural wellness.

In other jurisdictions, socio-economic impact and benefit agreements have sometimes included independently facilitated, senior-level implementation committees to ensure that issues can be set out and addressed as they emerge.

Industry Input

Stakeholder comments and concerns have been expressed with respect to the proposed reporting and transparency requirements of the NWMB’s new Allocation Policy and the need to maintain certain information as confidential. The following paragraphs summarize the input received from written submissions and at the November 2006 consultation meetings.

Written Comments

- While we have no problem with this concept [transparency] there must be some degree of confidentiality. We are operating in a very competitive industry and it would be very difficult for any private sector company to compete if its competitors knew what its strategy was, and in particular its financial position.
- All companies who receive allocations would have to prepare reports, etc. and should they not provide standard information as agreed upon then they should not receive allocations in the subsequent year. (*Manasie Audlakiak, Chairman, Baffin Fisheries Coalition – August 15, 2006*)
- NTI is in agreement with the recommendations in this section as transparency and industry accountability will lead to the sound and sustainable management of our offshore fisheries. (*Nunavut Tunngavik Corporation, Wildlife Department – August 2006*)
- We are generally pleased ... with the requirement for submission of business, governance and business plans in order to access quotas and

the recommendation that quota recipients be held accountable to such plans. (*Samuel Nuqingaq, Secretary Treasurer, Nattivak Hunters & Trappers Organization – August 18, 2006*)

- From our perspective the recommendation that the group receiving the quota be required to submit a detailed Business Plan, Governance Plan and Benefits Plan with follow up reports at the end of the fishing season is reasonable given the benefits that will accrue to the quota holder (*Brian Zawadski, Business Advisor, Nunavut Development Corporation – August 21, 2006*)
- With respect to transparency and accountability, QC welcomes the proposed standards, which the company believes are reasonable and achievable. As a public company QC's Annual Report and consolidated financial statements are available on-line, and QC is quite prepared to provide the NWMB with a Business and Benefits Plan for QC's fishing operations.

QC was extremely critical of the "Operational and Performance Review of Nunavut's Offshore Fishing Industry" for a number of reasons, one of the most important being that it gave the appearance that QC was secretive and uncooperative, and the Corporation has been publicly chastised as a result... It is true that QC was unwilling to share commercial information in detail with the contractors, but only because the level of detail demanded was excessive - almost equivalent to that required in a CRA audit. QC is very satisfied that the NWMB draft Allocation Policy recognizes the need to balance a requirement for public accountability with any business's ordinary operating requirements for confidentiality. (*Qikiqtaaluk Corporation – November 8, 2006*)

- The GN strongly endorses an allocation policy that is open, transparent and accountable. As such, it supports the NWMB's decision to make documents publicly available.

The GN is also aware of industry's concerns regarding confidentiality and the potential competitive impact of making sensitive information publicly available. It agrees that such information should not be made publicly available and that a process is needed to identify and clarify what information will and will not be included in public releases. (*Wayne Lynch, Fisheries and Sealing Division, Department of Economic Development and Transportation, Government of Nunavut – January 31, 2007*)

- There may be privacy considerations with public release of the Governance, Business and Benefits Plans. It might be better to figure out beforehand the type of information that will be made public and ensure that applicants are made aware of this. (*Keith Pelley, A/Area Director –*

November 2006 Consultation

Following are stakeholder comments from the notes to the November 2006 consultation sessions that dealt specifically with transparency and reporting requirements.

- Peter Keenainak asked a follow-up question as to whether or not companies in Newfoundland and Labrador were required to submit statements of corporate objectives etc. when making their quota reports.

Ray Andrews said that very little was required of license holders in terms of accounting for their activity.

- Doug Brubacher sought clarification regarding the release of governance and business plans and the implication of making information about how business decisions were made was made public.

Michael d'Eca said that he recognized that there is tension between the need for confidentiality and transparency, but for example, information from unsuccessful applicants would not be made public – unless the unsuccessful applicant wanted to do so.

Jerry Ward said that it would be important to have really good people on the FAC, but it was also very important that confidential business information was not made available to competitors.

Michael d'Eca said it will become very important to work out what information will be made public.

Jerry Ward provided an example where a business plan might include how they were going to go out and aggressively increase the size of the Nunavut allocation in the OB area. He said that they not want this strategy revealed to outsiders.

Michael Nowinski said that he understands that they are proposing to protect more the people who are unsuccessful rather than those who are successful in getting allocation. He believed that the names and short explanations should be publicly released as they are now.

In the case with Pangnirtung, they do publish general information about sales etc. without giving specific details.

Conclusions and Recommendations

The previous sections have outlined the transparency requirements in place in the fishing industry and in other resource-based industries and stakeholder input into the proposed transparency requirements in the Nunavut industry. The following paragraphs summarize the major points from these sections and provide recommendations for the NWMB on how to deal with the issues of transparency and confidentiality.

Conclusions

Transparency in the fishing industry:

- The level of transparency and reporting requirements within the North American fishing industry is very low. In general, harvesting and processing operations are required to submit only minimal, mostly statistical, information to government. Public access to information is minimal and limited mostly to aggregate statistical information.
- Exceptions to the above in terms of public reporting are enterprises that are publicly traded or owned by public agencies.
- For the NWMB, the best example of transparency, reporting requirements and dealing with confidentiality issues is the Western Alaska Community Development Quota (CDQ) Program. Groups under this program are required to submit detailed applications and reports, which become publicly available. These groups also have the opportunity to request that some information remain confidential based on “good cause”. Good cause is invoked when the disclosure of records might competitively or financially disadvantage CDQ participants, when a trade secret or proprietary business interest may be revealed, or when the need for confidentiality outweighs the public interest.

Transparency in other industries:

- Exemption for information harmful to the business interests of a third party
- The right to access exists unless all of the following three conditions allowing for non-disclosure all are met. These are: 1) the information was supplied implicitly or explicitly in confidence; 2) it is commercial information; financial; scientific; technical; labour relations; trade secret; and, 3) it could reasonably be expected to cause specified harms.
- In practice, experience suggests it is not easy to meet these tests. Tests for determining if information is confidential, constitutes a trade secret or would result in significant harm are set out and must be empirically met—not simply claimed.

Industry Input:

- Stakeholder input on the issues of transparency and reporting requirements have been very supportive of implementing a system that requires transparency and detailed reporting requirements.

- Some stakeholders expressed concerns that confidentiality must be taken into consideration. This is viewed as critical when dealing with information that may impact negatively on the competitive position of Nunavut interests if it is made public.

The Public Interest:

- To support the wide-ranging public interest in the fishery, a breadth of information about the fishery should be available to the public. This may include information about:
 - who is involved and who is seeking to be involved in the fishery;
 - what is the harvest plan—who, how, where, when;
 - corporate track record—profitability, best-practices, compliance...
 - what are enterprises willing to pay for access to the fish;
 - how much benefit is returned to Nunavut from different fisheries and different fishing strategies/models;
 - market value information (summary data that does not reveal the sources of information);
 - typical industry costs and returns.
- The ability to balance these public transparency needs with legitimate enterprise needs for confidentiality is the issue that needs to be addressed.

Recommendations

- It is recommended that the NWMB proceed with its plans to implement an open and transparent system for allocating Nunavut's commercial marine fisheries resources. A system geared toward gaining the maximum benefit for Nunavut and Nunavummiut from the public fishery resource is progressive and leading edge for Canada. In most jurisdictions throughout North America very little is known about the benefits being achieved from this public resource and whether these benefits are being optimized due to the lack of transparency and reporting requirements.
- It is recommended that the NWMB implement a policy with respect to dealing with confidentiality concerns that is consistent with that being used in Alaska's CDQ program, which has been in place since 1992. The recommended policy and detail would be as follows:
 - *Policy:* Applicants can request for good cause that records provided to the NWMB be classified as confidential. Good cause is invoked when the disclosure of records might competitively or financially disadvantage applicants, when a trade secret or proprietary business interest may be revealed, or when the need for confidentiality outweighs the public interest. Decisions on these requests will be referred to the Fisheries Advisory Committee (FAC) for their recommendation.

- *Detail:* If, at the time of submission, a participating applicant wishes to protect a record being submitted, the applicant shall mark the record as "confidential" and show good cause to classify the record as confidential. Good cause to classify a record as confidential includes a showing that:

- (1) disclosure of the record to the public might competitively or financially disadvantage or harm the participating applicant with the confidentiality interest, or might reveal a trade secret or proprietary business interest; and

- (2) the need for confidentiality outweighs the public interest in disclosure.

If the FAC determines that good cause exists the recommendation will be made, in writing, to classify the records as "confidential" and restrict access to them. A record classified as confidential will not be made public or furnished to any person other than the FAC and NWMB, subject to any other legal requirements or obligations.

- *Conditions for Non-Disclosure:* It is recommended that the NWMB set out clear conditions under which non-disclosure of information, otherwise in the public interest, may be withheld. These could follow those used in the British Columbia forestry sector: 1) the information was supplied implicitly or explicitly in confidence; 2) it is commercial information; financial; scientific; technical; labour relations; trade secret; and, 3) it could reasonably be expected to cause specified harms. In practice, experience suggests it is not easy to meet these tests. Clear tests for determining if information is *confidential*, constitutes a *trade secret* or would result in *significant harm* need to be set out.

Appendix 1

**Annual Processing Plan – Department of Fisheries and Aquaculture,
Government of Newfoundland and Labrador**

If you are planning to make significant changes to your processing operation please submit a detailed description.

I certify that the information contained in this application and the related documents are true and correct.

Date

Signature

Print Name

Position in Company

Please affix Corporate Seal

Appendix 2

CHAPTER 093 WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM

6 AAC 93.070 CONFIDENTIAL RECORDS.

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 09.25.110 - 09.25.120 and are open to inspection by the public during regular office hours. (b) A participating community, applicant, CDQ group, or managing organization wishing to protect a record that was provided to the state under this chapter may file with the governor or CDQ team a written petition identifying the record to be protected and showing good cause to classify the record as confidential. If, at the time of submission, a participating community, applicant, CDQ group, or managing organization wishes to protect a record being submitted under this chapter, the community, applicant, group, or organization shall mark the record as "confidential" and show good cause to classify the record as confidential. (c) Good cause to classify a record as confidential under this section includes a showing that (1) disclosure of the record to the public might competitively or financially disadvantage or harm the participating community, applicant, CDQ group, or managing organization with the confidentiality interest, or might reveal a trade secret or proprietary business interest; and (2) the need for confidentiality outweighs the public interest in disclosure. (d) If the governor or CDQ team determines that good cause exists under (c) of this section, the governor or CDQ team will, in writing, classify the records as "confidential" and restrict access to them. (e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person other than the United States Secretary of Commerce, the North Pacific Fishery Management Council, the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

[AS 44.33.020](#) (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at [6 AAC 93.015](#) .