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## Review of the NWMB's *Allocation Policy for Commercial Marine Fisheries*

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## Introduction

The Nunavut Wildlife Management Board (NWMB) has initiated a review of the *Allocation Policy for Commercial Marine Fisheries* (Policy). Initially established in 2007 to establish a “fair, open and transparent process to determine access and allocations” in Nunavut’s fisheries, the Policy was revised in 2012 following extensive stakeholder consultations. Since the revision, three rounds of applications have since been submitted and evaluated. During the most recent application process, which began in late June 2015 and concluded with a Minister of Fisheries and Oceans decision on May 26, 2016, a number of challenges with the Policy and how it was being implemented were identified.

A working group meeting was held in Iqaluit on May 17, 2016 with stakeholders to identify the sections of the Policy that required review. Ten days later, the NWMB issued an invitation to provide written comments on those sections. As one of Nunavut’s four offshore commercial license holders, Arctic Fishery Alliance Limited Partnership (AFA) participated in the working group. The following document contains AFA’s response to the NWMB’s May 27 invitation for written comments on the Policy. The guiding questions identified by the working group have been integrated into the response.

## Arctic Fishery Alliance

Established in 2008, AFA is a 100% Inuit owned and controlled partnership consisting of Hunters and Trappers Associations (HTAs) and the Community Trusts for the non-decentralized communities of: Qikiqtarjuaq, Grise Fiord, Arctic Bay, and Resolute. Since its formation, AFA has been committed to ensuring that any benefits distributed from its quotas are returned to the advantage of its owner communities, Nunavummiut, and Nunavut. These benefits include Inuit employment, annual contributions to the Nunavut Fisheries and Marine Training Consortium (NFMTC) and the Nunavut Offshore Allocation Holders Association (NOAHA), as well as investing in voluntary strategic socio-economic development initiatives. The partnership is committed to investing one-third of its profits annually to these projects.

In addition, AFA has deliberately managed its growth to ensure its operations aligned with the objectives of the Policy, as well as Nunavut’s Fisheries Strategy. Consequently, the partnership has progressed from a new applicant for quota in 2009 to the second largest offshore turbot quota holder. In addition, AFA

acquired two 99' fishing vessels within the first five years of its existence without compromising on 100% ownership of its fishing assets.

## Section 7 – Allocation Guidelines

### What guidelines should be used to allocate commercial marine fisheries resources?

The guidelines established in Section 7 of the current Policy are a good foundation for allocating commercial marine fisheries resources. However, there is insufficient detail in these guidelines to ensure they can be objectively applied in the evaluation of all applications. In particular, there is ambiguity in the provided definitions as well as a lack of clarity with respect to how points should be awarded. As a consequence, this had led to differences in interpretation of the Policy between industry and the Fisheries Advisory Committee (FAC) on the definition of criteria such as “direct benefits” or “proper governance”. In addition, it has led to instances where the evaluation scores have differed between one application and the next, despite there being no change made by the applicant (e.g. the points awarded for Inuit ownership decreased for an enterprise with 100% Inuit ownership by multiple HTOs and communities). Such inconsistency demonstrates the need for clear definitions of criteria so both the FAC and quota applicants have the same understanding of allocation criteria.

Furthermore, there is incongruence between the required *Governance, Business, Benefits and Stewardship Plans* and the allocation guidelines. Specifically, the *Plans* primarily contain information on an applicant’s business projections and goals based on its requested quota. In contrast, the allocation guidelines and the *Evaluation Form* are structured such that they only evaluate past performance and not the merit or feasibility of the applicants’ plans.

Consequently, the allocation guidelines as they are currently written inhibit the primary objective of the Policy, which is to establish a fair, open and transparent process for allocating quotas. **It is strongly recommended that the guidelines, FAC evaluation process and evaluation form be revised to include quantifiable metrics that can be objectively assessed.** These issues are further discussed later in this document with respect to Appendix A, Section 5 – Evaluation Process – and Appendix D – Evaluation Form.

Finally, consideration should be given to adding a guideline that promotes the development of capacity within Nunavut. Although this is indirectly measured in the current guidelines, enterprises should be encouraged to own their own harvesting capacity (e.g. vessels), as well as support career growth for Inuit and Nunavummiut on the vessels and in management. As Nunavut's industry matures, profits based on royalties should be discouraged (however, this should not extend to quota exchanges that enable year-round operations). In addition, the use of royalties to subsidize shore-based processing facilities should be limited as this leads to acceptance of such inefficiencies without any incentive to become more efficient and viable.

## Section 10 – New Applicants

### Under what circumstances should new applicants to the fishery be considered?

In general, new applicants to the fishery should be discouraged. Although the current policy states that the “best opportunities for new applicants will likely arise in the case of an increase in Nunavut commercial marine fisheries allocations” (S.10, p. 12 of 21), there is a significant concern that this will lead to overcapacity in the fishery. By allowing new entrants during periods of quota increases, the Policy will likely re-create a situation similar to that seen in the southern groundfish fisheries in the early 1990s and most recently in the Newfoundland shrimp fishery. When the total allowable catches were reduced, the original participants' percentage allocations could be eroded, due to the inclusion of new entrants, to such an extent that their operations are no longer viable. **If, as the Policy states, the NWMB “recognizes a responsibility to protect the financial investment of existing Nunavut-owned ventures”, Clause 10 of the Policy must be amended to include a provision to protect the current allocation holders' viability in the event of a quota decrease before new applicants are considered.** Otherwise the Nunavut industry will inevitably face similar problems to those currently faced by the shrimp industry in the LIFO debate. The NWMB has the opportunity to avoid making the same mistakes the fishery in the south has been plagued with, which in the end, appear to centre around the introduction of too much harvesting capacity in the fishery.

We are of the understanding that new applications are coming from communities in geographical areas that are not adjacent to the OA and OB turbot resource. This is of concern because adjacency to a

resource is traditionally the primary criteria in allocating access to that resource. Furthermore, these communities have no historical dependence on the resource – another existing guideline in the Policy. If the OA and OB turbot resource is used to assist in development of communities in the Kivalliq and Kitikmeot regions, then we are concerned that the economic growth of the adjacent Qikiqtaaluk communities will be impaired or at a disadvantage.

Moreover, Nunavut must demonstrate consistency in its fishery policies if it is to convince the federal government of its allocation arguments. How can Nunavut present an argument for increased OB turbot and shrimp allocations on the basis of adjacency, but choose to ignore this criterion when administering its own Allocation Policy?

#### **How should new applicants be evaluated?**

If new applicants will be permitted to submit applications (subject to the addition of protections for the current allocation holders) they should be evaluated during the application process using the same objective criteria as existing allocation holders. This needs to be stated explicitly in the Policy.

## **Section 12 – Multi-year Allocations**

#### **For what time period should allocations be applied?**

The allocations should be applied for a period of at least five years. As is noted in the current Policy, multi-year allocations increase the stability and certainty for Nunavut's enterprises. In addition, the preparation of the application is a significant and expensive undertaking for the industry, as is the annual review process. A longer allocation period reduces this frequency and burden of this investment.

However, in 2012 and again following the most recent application, the Minister of Fisheries and Oceans (Minister) reduced the allocation period from the recommended five years to three and two years, respectively. In both cases, to AFA's knowledge, no justification for this decision was provided – in contravention of the Nunavut Land Claims Agreement (NLCA S.5.3.18) and the Policy. This is of significant concern to AFA. If the allocation period stated in the Policy will not be adhered to by the



Minister, what merit is there in including it in the Policy? **This review process must ensure that any DFO concerns regarding the allocation period are sufficiently addressed to end the repeated unilateral rejection of Section 12.1 of the Policy. The NWMB should seek a written commitment from DFO that this section of the Policy will be respected going forward.**

DFO representatives have always been participants in the development of the Allocation Policy, and they have never expressed any objection to the five year allocation period. It is therefore difficult to understand why these unilateral changes have been made by the Minister. This is especially true when virtually all Enterprise Allocations and ITQs issued by DFO in southern fisheries have been made without any time limit attached to them. This creates a much more stable business environment for harvesters in all other regions of Canada than exists in the Nunavut fishery.

Alternatively, the Policy could be altered so that the Call for Applications is only issued in the event of an increase or decrease in Total Allowable Catch (TAC) to a fishery. Historically, when the TAC has remained constant and a Call for Applications has been issued, there have been minimal changes to the distribution of quotas among recipients (generally less than a 10% change). In these cases, the allocation of quota is a “zero-sum” game – an increase for one recipient occurs due the loss of another’s. And it creates an added element of uncertainty, which makes it a more difficult business environment to operate in than is the case elsewhere in the fishing industry in Canada. In order for this scenario to succeed, a procedurally fair and objective method for corrective actions during the *Annual Reports* is critical to hold recipients accountable. Again, a commitment from DFO to respect the Policy’s allocation period is required.

### **How should increases or decreases in Nunavut allocations be managed?**

The current procedure for managing increases to Nunavut’s allocations is adequate. Perhaps the first sentence of Section 12.1.1 should be clarified slightly to read (changes underlined):

In years when allocations to Nunavut are increased, the NWMB will issue a Call for Applications to distribute the increase allocation for the particular fishery affected by that increase, regardless of the overall five-year allocation term.

The original wording is:

In years when allocations to Nunavut are increased, an application process will be necessary to distribute the increase allocation for the particular fishery affected by that increase, regardless of the overall five-year allocation term.

Section 12.1.2 (Decreases to Nunavut allocations) requires additional clarification. The first provision of this section is acceptable:

In years when one or more allocations to Nunavut are decreased, the NWMB will – for reasons of fairness – decide/recommend to apply proportional allocation decreases to each allocation holder in the affected fishery.

However, this sentence may need to be modified to include any provisions to protect the current allocation holders' viability in the event of a quota decrease if new applicants have been permitted. This would ensure consistency between section 10 and 12.1.2. (See section 10 comments on page 5)

The second part of this sub-section should be clarified further. It currently states:

However, if any Nunavut allocation reduction is equal to or greater than 15%, and would severely impede the economic viability of fishing efforts subject to the current distribution of allocations, the FAC will convene to review the issues and provide advice to the NWMB. After taking this advice into careful account, the NWMB may initiate a new application process for the affected fishery, regardless of the five-year term. However, once again, the five-year allocation cycle for all fisheries will continue to be maintained as per the original schedule.

Specifically, who will decide whether the quota reduction will affect the viability of fishing efforts? **This should be a discussion held between the NWMB and industry via the Nunavut Allocations Holders Association (NOAHA), before the issue is referred to the FAC.** The industry participants are in a much better position to determine the impact of a reduction on their viability than is the FAC whose members, in most cases, have limited business and fishing industry experience. Further, what is the nature of the advice that the FAC will provide to the NWMB? Consideration should be given to defining the scope of the advice permitted in this circumstance. For example, will the FAC be permitted to recommend disproportional reductions without a new Call for Applications – advice that would lack objectivity and transparency?

An alternative to this provision would be to remove the involvement of the FAC for advice. Potential wording for the second half of this sub-section could be (underlined):

However, if any Nunavut allocation reduction is equal to or greater than 15%, and would severely impede the economic viability of fishing efforts subject to the current distribution of allocations as determined by the NWMB in consultation with current allocation holders, the NWMB will initiate a new application process for the affected fishery, regardless of the five-year term. However, once again, the five-year allocation cycle for all fisheries will continue to be maintained as per the original schedule.

The entire issue of Total Allowable Catch (TAC) increases must be carefully considered as it is expected that DFO will soon move to implement a "precautionary approach" (PA) for NAFO subarea 0 turbot. A working group is currently developing a report that will be ready to present to stakeholders in the next few months. The PA will prescribe a set of harvest control rules that will result in a formula for determining TAC increases and decreases. The formula will be applied automatically on an annual basis. Any changes to the TAC are restricted to 15% in any given year, except in exceptional circumstances when there are indications that a possible resource collapse is likely.

The PA is likely to be implemented in the next year or so, as it is needed for sustainability certifications such as the Marine Stewardship Council (MSC). As the harvest control rules will require the use of the formula every year, this may increase the frequency of TAC changes. **As a result, the current Policy review should take this likely new PA into account so that it would not be necessary to make changes when the PA is introduced as part of the management regime.**

## **Section 14 – Allocation Applications, Annual & Verification Reports**

In general, Section 14.1 needs to be revised to more clearly outline the allocation application procedure. As it is currently written, only certain steps in the process are described. **In particular, section 14.1 should be modified to bind the NWMB and the FAC to the application schedule established in Annex 2.**

As was seen during the 2015 allocation application process, this schedule was significantly overrun. The current procedure and timeframe is already very lengthy. At best, a decision is reached in February of the following year by the DFO Minister. If all deadlines are met, it means an elapsed time of eight to nine months from start to finish. To have this timeframe extended is completely unacceptable from a business planning and management perspective as by February all harvesters have commenced

preparations for the coming fishing season. Thus, the earlier the quota allocation decisions are made, the less uncertainty all stakeholders will face.

To do so, the first sentence of the fourth paragraph should be revised to (change underlined):

The NWMB shall make its allocation decisions and recommendations no later than December of the preceding year.

In addition, a paragraph should be added (between the current third and fourth paragraphs) outlining the obligations of the FAC to the application process. Suggested wording is below:

The FAC may hold a public forum to hear comments and conduct in-camera sessions with applicants. Final evaluations and the initial percent allocations shall be prepared by the FAC no later than September 15<sup>th</sup>. The NWMB will provide applicants with the FAC recommendations and initiate a 30 day review period no later than September 30<sup>th</sup>. The FAC will then review all comments received and provide final recommendations to the NWMB no later than November 21<sup>st</sup>.

Please note that this suggested wording alters the timing of the flowchart presented in Annex 2. The current flowchart indicates that the 30-day applicant response period begins no later than September 30<sup>th</sup>. Thirty days later is October 30<sup>th</sup>. This provides the FAC just two days to review their responses and provide final recommendations to the NWMB, as these recommendations are currently required no later than November 1<sup>st</sup>. By extending the FAC review period to three weeks (i.e. to November 21<sup>st</sup>), this will provide sufficient time for considered review while still giving time for the NWMB to review the recommendations in advance of the December quarterly meeting. A similar correction for Annex 3's flowchart and section 14.2 is also required.

Finally, it is recommended that the fourth paragraph of section 14.1 be modified slightly to include an obligation of the NWMB to notify each applicant of the NWMB's final recommendation for their allocation to the Minister. This was done for the first time during the 2015 application process and it was found to be extremely helpful in allowing allocation holders to begin planning for the upcoming fishing season. Essentially, this notification will reduce (though not eliminate) each enterprise's uncertainty with respect to business planning and management during this lengthy allocation process. In addition, it will increase the transparency of the process – a key objective of the Policy. The suggested wording for this modification is underlined below (please note the word "normally" has been removed

from the first sentence as well). In addition, the NWMB's requirement to adhere to the application timeline has been strengthened:

The NWMB will make its allocation decisions and recommendations by no later than December 21<sup>st</sup> of the preceding year. If the Minister of Fisheries and Oceans has not yet announced regional allocations by that time, each individual allocation decision/recommendation will be expressed in the form of a percentage of the relevant regional allocation. The NWMB will notify all applicants by electronic and regular letter mail that it has forwarded its decisions/recommendations to the Minister. These notifications will contain the amount or percentage of allocation that the NWMB recommended for the applicant. An *Allocation Application Flow Chart* is attached as Annex 2 to the Allocation Policy.

Section 14.2 requires a slight addition to clarify that the NWMB's annual decisions and recommendations are subject to Appendix A, Section 5. This reference is provided in Section 14.3 with respect to the *Verification Reports*, but should also be included in 14.2 to reduce ambiguity. A suggested modification (underlined) for the third paragraph of this section is provided below. The date correction is also underlined:

By no later than November 21<sup>st</sup>, the FAC will have completed its review of the *Annual Reports*, the *Verification Reports* and industry comments. That review will then be followed by a careful NWMB consideration of the *Annual Reports*, *Verification Reports*, FAC recommendations and reasons, and industry comments. The NWMB's consideration may result in decisions and recommendations affecting one or more individual allocations, as outlined in Appendix A, Section 5.2. An *Annual Report and Verification Flow Chart* is attached as Annex 3 to the Allocation Policy.

Finally, references to the recommended formats for the *Governance, Business, Benefits and Stewardship Plan* and *Annual Reports* should be included. A simple note in both subsections guiding the reader to Appendix B and C, respectively, would be beneficial. The third section already outlines the format of the *Verification Reports* in extensive detail. No changes to section 14.3 are recommended.

## **Annex 2 – Application Flow Chart**

If the application process is followed as described in Annex 2, the timing of the FAC's final allocation recommendations and the subsequent allocation recommendations by the NWMB is generally acceptable. However, there is a timing error in the sixth and seventh boxes. Specifically, the 30-day

applicant response period is required to begin no later than September 30<sup>th</sup>. Thirty days later is October 30<sup>th</sup>. This provides the FAC just two days to review the applicants' responses and provide final recommendations to the NWMB as these recommendations are currently required no later than November 1<sup>st</sup>. By extending the FAC review period to three weeks – namely to November 21<sup>st</sup> – this will provide sufficient time for considered review while still allowing time for the NWMB to review the recommendations in advance of the December quarterly meeting.

It should be noted that in the 2015 five-year application process this schedule of events was significantly overrun. Please see the written comments on Section 14 that suggest wording to require that the NWMB and FAC follow the timings included in the flow chart.

### **Annex 3 – Annual & Verification Report Flow Chart**

The flow chart for the *Annual Report* and *Verification Report* is generally acceptable and the wording of sections 14.2 and 14.3 already oblige the NWMB and FAC to follow this schedule. A slight correction to the fifth box in the flowchart is required to ensure the FAC has adequate time to consider the review comments and provide final recommendations. Specifically, as the flowchart is written now, the 30-day allocation holder review period of the FAC's initial recommendations begins on September 30<sup>th</sup> and ends October 30<sup>th</sup>. However, the FAC must provide its final recommendations to the NWMB by November 1<sup>st</sup> – a period of just two days. As with Annex 2, the FAC's final recommendations should be due to the NWMB by November 21<sup>st</sup>.

### **Appendix A, Section 3 – Composition of FAC**

Under the current Policy, FAC members will be appointed “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”. This knowledge list is extensive and laudable.

However, it is widely acknowledged that there is a general lack of capacity in Nunavut and particularly in commercial fisheries. While the current members of the FAC have many of the knowledge requirements (e.g. social and development issues), some of the questions posed by the FAC during in-camera sessions have demonstrated a lack of understanding with respect to standard business practices in fisheries. There appears to be a tendency to appoint employees from the GN or NTI, despite their overall lack of business experience in the fisheries. We recommend that the current requirement for one representative from each organization to be an industry expert (defined as an individual with an expertise in the business of fishing as originally intended by “industry expert”) be enforced. NTI and GN should be prepared to retain outside expertise for the FAC if they do not have employees who meet this requirement.

Alternatively, advisory committees for southern Canadian fisheries always include industry representation. The current membership of the FAC lacks such a representative. The FAC’s composition could be amended to include an independent industry advocate appointed by NOAHA. This person will not be a representative of the quota holders, but a non-governmental individual with actual fishing and business experience. This will both broaden the knowledge base of the FAC and diversify the perspectives evaluating the allocation applications and *Annual Reports*.

The set five-year term of the FAC membership is acceptable. Consideration should be given to making the appointments on a rotating basis (e.g. 1-2 members terms expire in any given year) to avoid the potential for a 100% turnover of members in a single year. This will ensure that corporate knowledge (institutional memory) is retained over the long-term.

## **Appendix A, Section 5 – Evaluation Process**

### **What procedures in the Allocation Policy need to be clarified or added?**

Appendix A, Section 5 details the evaluation process for both allocation applications (S.5.1) and the annual performance review (S.5.2). However, both procedures fail to explain how the Fisheries Advisory Committee (FAC) is expected to evaluate the quota applications or *Annual Reports* and subsequently formulate its recommendations for allocations. In other words, there is no standardized process for the FAC to follow to ensure its evaluations remain objective, consistent and transparent. As a result, the

deliberations of the FAC are currently a mystery. It is unknown how the FAC decides what each applicant's score on the *Evaluation Form* should be, how the *Plans* and other information are reviewed, and even how the FAC determines how much quota each applicant deserves. As a result, the current process is directly opposed to the goal of transparency.

During the application process, the FAC has the following information available:

- *Governance, Business, Benefits and Stewardship Plan*
- *Evaluation Form*
- *Annual Reports*
- *Verification Reports*
- Allocation Policy
- Additional information as requested

However, there is no explanation of how these documents are to be evaluated individually, or how they should be weighted relative to one another (e.g. do the business projections in the *Plan* matter more than the *Evaluation Form* scores of past business success?). There is also no mention of how applicants' should be ranked or how quota amounts are to be determined. Essentially, the entire evaluation process is currently at the discretion of the FAC, resulting in an opaque, subjective and potentially unfair process that is far from "fair, open and transparent". **It is strongly recommended that an application process be developed that clearly articulates:**

- **How each document available to the FAC should be used during the evaluation process and what its relative importance is**
- **What quantifiable metrics will be used to evaluate each document during the evaluation process**
- **How a quota holder's overall application package will be measured relative to the other applications (i.e. ranked)**
- **How these objective evaluations and rankings will be used to determine quota allocations**

In particular, the process for determining the amount of quota to be allocated to an applicant needs to be carefully evaluated. At the present time, it is unknown how the FAC and NWMB determine the quantity of each allocation. Are these recommendations based on:

- An enterprise's existing harvesting capacity?



- The fleet's harvesting capacity?
- The merits of past performance and the proposed plans?
- Other factors?

Since this portion of the allocation process is unclear, it is important that clear and impartial criteria need to be established that define how the recommendations for allocation amounts will be determined. This information needs to be identified and included in Section 7, as well as Appendix A, Section 5. This will ensure that both the FAC and each applicant understand and can operate under a more consistent and objective evaluation process.

At the conclusion of the initial and final evaluation processes, the FAC should be able to explain precisely how it arrived at a particular quota amount for each applicant when its recommendations are delivered to the NWMB. Furthermore, there should be a requirement in this process that this rationale needs to be clearly transmitted to the applicants, including the disclosure of an applicant's score. Hopefully this will eliminate the recent experience where the FAC appeared to arbitrarily penalize some applicants with quota deductions without justifying why these changes were recommended or how the reduction amount was determined.

**Finally, the evaluation process needs to be amended to include a requirement for a "holdback" of quota during the initial recommendation by the FAC.** Ten percent (or similar amount) of Nunavut's allocation for each fishing area and species should be held back to allow adjustments to be made to the initial recommendations after the applicants have the opportunity to respond. This will ensure that the FAC has the flexibility to alter one applicant's final recommended quota without penalizing another.

With respect to the annual performance reviews (Appendix A, Section 5.2), the current Policy also fails to explain how the FAC is expected to evaluate the *Annual Reports* and the *Verification Reports*. Although the Policy outlines the four possible recommendations the FAC makes to the NWMB, there is no process in place for standardizing the evaluation of these reports, or for how corrective actions are to be determined and applied. A procedurally fair process needs to be established to address this gap.

As the Policy is currently written, warnings are to be issued for "failure to meet all of [the allocation holder's] objectives". For example under this description, it is conceivable that the FAC would be obligated to penalize an allocation holder who cannot implement all of their objectives as they based their business plans on a requested 1,000 MT and only received 100 MT. Obviously, the corrective action

process for both written warnings and quota reductions needs to be more clearly defined during this review process. When developing this procedure, the following questions should be considered:

- How will the amount of quota that will be withdrawn be determined?
- Will infractions be determined in advance between the NWMB and industry and standard penalties established?
  - Will the FAC make determinations on a case-by-case basis? How will this be undertaken objectively?
  - Should penalties be applied cumulatively rather than by degree of infraction (e.g. first infraction = X% reduction, second = X+Y%, etc)
- How long will penalties be withdrawn (e.g. until compliance is achieved, for a set period, until the next quota application)?
  - Will there be a mechanism to “re-earn” quota back if conditions are met?
- What happens to withdrawn quota?
  - Is it reassigned to a compliant license holder? And for how long (should take into account the provisions for “re-earning” quota)?
  - How will the FAC determine who should receive the quota? Should this relate to the recommended increase in allocation as described in the current Policy?
- Should there be provisions for extenuating circumstances?
- Does the FAC have to take into consideration the ability of an applicant to meet their objectives after quota is awarded?
  - If they asked for X tonnes, but only received a fraction of X, will quota holders have an opportunity to revise their business goals to reflect their ability to generate revenue?

**The procedure should strive to be as transparent as possible and include provisions to ensure written warnings and corrective actions are communicated clearly.** For instance, when the FAC recommends to the NWMB to issue a written warning to an allocation recipient, the warning must include specific, clearly defined and quantifiable performance measurements and the timeline by which they must be achieved. In addition, an independent, third-party appeals process should be established for applicants to present their case if they disagree with the NWMB’s recommendations. The appeal process should be limited to quota reductions or the threat of quota reductions to ensure the appeal process is not protracted and cause delays in the allocation or review process.

## How should allocation guidelines be evaluated and scored?

The Policy is intended to create a transparent, open and fair allocation process. In order to achieve this aim, the evaluation process using the allocation guidelines should be made as objective as possible. The *Evaluation Form* in Appendix D of the Policy is a laudable first step towards this aim. However, as mentioned previously, the *Form* as it is currently written only assesses past fishing performance, rather than the validity of the plans and projections included in the *Governance, Business, Benefits and Stewardship Plans*. In addition the allocation guidelines and *Evaluation Forms* are insufficiently defined in order to be objective. As a result, it is unclear how the FAC assigns scores using the *Form*. **It is strongly recommended that the guidelines, as well as each score value in the *Evaluation Form*, be clearly and quantifiably defined.**

For example, under Section 1 of the *Form* (Governance and Business Capacity), the profitability of an applicant is scored on a 4-point scale. As the Policy is currently written, there is no explanation of how much profitability is required to earn a 4 out of 4, or even whether the profitability is measured in gross (absolute dollar value) or relative amounts (percentage of revenue). So there is a possibility that during one application process, applicant “A” with 10% profitability earns a 4 because it is the most profitable enterprise that applied for an allocation. Five years later during the next application, applicant “A” has improved its profits to 15%, but another applicant “B” now has 20% profits. So even though applicant “A” improved its profitability, it might only score a 3 because 15% profit is less than the applicant “B’s” 20%. Needless to say, this would be confusing to applicant “A” and call into question the fairness, objectivity and transparency of the process.

To address this significant concern, a table should be developed that objectively explains what is needed to earn every score on the *Evaluation Form*. This would be similar to other fisheries evaluation tools, such as the Marine Stewardship Council’s Fisheries Standard<sup>1</sup>. For example, profitability could be scored in terms of percentages as shown in the table below:

Demonstrate profitability of enterprise/business	1 – Not profitable	2 – Profits less than 5% of revenue	3 – Profits between 5 and 19% revenue	4- Profits equal to or greater than 20%
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<sup>1</sup> MSC Fisheries Standard available at: <https://www.msc.org/documents/scheme-documents/fisheries-certification-scheme-documents/fisheries-standard-version-2.0>

In order for this approach to have merit, some of the current evaluation metrics will need to be revisited to increase their objectivity. In other words, unlike profitability, some of the other guidelines are not easily measured. For example, how will “Demonstrate proper board and governance structure” in place be evaluated? It is currently scored out of 3. Nowhere in the Policy is the word *proper* defined. As a result, AFA has already encountered repeated and significant challenges demonstrating to the FAC that its Board of Directors is in fact governing its partnership, while management informs the Board of options and executes the decisions made by the Board. The written comments for Appendix D identify these ambiguous terms.

During this review, each allocation guideline needs to be defined in objective and easily measurable terms. These definitions need to be determined by consensus with all stakeholders. Furthermore, these guidelines should be modified to assess both an applicant’s past performance as well as their *Plan’s* projections (as mentioned previously, the *Evaluation Form* measures past performance only, while the *Plan* focuses on future projections). Once the guidelines are established, the *Evaluation Form* will need to be revised into a table format that objectively defines each score value (as suggested above) that is also developed with all stakeholders. Care should be taken to ensure that these measures are proportionate to allocation size to maintain a fair evaluation process.

## Appendix B – Governance, Business, Benefits & Stewardship Template

### How can the format of the *Governance, Business, Benefits and Stewardship Plans* be improved?

The information required in the *Governance, Business, Benefits and Stewardship Plan*, which functions as the application for quota, are listed as “key factors” in Section 4 of Appendix B of the Allocation Policy. Most of these key factors provide either context or projections for what an applicant will do with the requested quota. However, as noted previously, the *Evaluation Form* as it is currently written only evaluates past performance. Consequently, there is an inconsistency between what applicants are asked to submit and the evaluation tool. **If the allocation guidelines and *Evaluation Form* are rewritten to increase their clarity, transparency and objectivity, the *Plan* template should be revised to align it with the information required by the evaluation process.**

As it currently stands, the table of contents template only requires a small change to align it with the key factors. Currently the table of contents is:

- Executive Summary
- Background
- **The Company/Organization**
- Governance Section
- Governance Plan
- Business Section
- Operations Plan
- Financial Plan
- Implementation Plan
- Benefits Section
- Employment
- Training and R&D
- Fisheries Investment
- Other Investment
- Summary
- Stewardship Section
- Responsible Stewardship
- Stewardship Plan

The third section “The Company/Organization” (highlighted) would be better placed as a subsection in Governance, based on its description and a comparison to the key factors.

## Appendix C – Annual Report Template

### How can the format of the *Annual Reports* be improved?

The Table of Contents for the *Annual Report* currently requires the following order of information:

1. Executive Summary
2. Nunavut Benefits Plan Update
3. Governance Plan Update
4. Stewardship Plan Update
5. Business Plan Update
6. Detailed Financial Information

However, to maintain consistency with the five year applications it should be reordered to:

1. Executive Summary
2. Governance Plan Update
3. Business Plan Update
4. Nunavut Benefits Plan Update
5. Stewardship Plan Update
6. Detailed Financial Information

Finally, the Benefits Indicator Tables ask for employment in terms of “shifts or hours worked”. It may be more appropriate and simpler to quantify “days at sea” for vessel crews, and separately, the number of full-time jobs (defined as 50 weeks of employment per year or 1,500 hours of work per year)<sup>2</sup> for land-based employment (e.g. management).

## Appendix D – Evaluation Form

The *Evaluation Form* requires an update to ensure clarity, transparency and objectivity as well as consistency with the *Governance, Business, Benefits and Stewardship Plans*. As mentioned previously, the *Form* can only measure past performance as it is currently written instead of the projections included in applications.

In addition, several of the metrics lack sufficient detail in their definitions in Section 7 and on the *Form* to ensure the FAC can conduct a fair assessment. The *Form’s* ambiguous terms are highlighted below. The relevant commentary is provided in the bullets following each metric. **For all metrics, descriptions of how to assign scores needs to be included (please see Appendix A, Section 5 for more details).** Finally, the FAC and NWMB should be obliged to release an applicant’s scores for each item during the initial response period and after the final recommendations are submitted to the Minister.

### Governance and Business Capacity (30 points):

#### **Open, transparent and accountable operations:**

Demonstrate proper board and governance structure in place – 3 points

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<sup>2</sup> This would be consistent with the Nunavut Development Corporation’s definition of Direct Job.

- How is “proper” defined? What constitutes “proper” governance? Will only one corporate governance model be permitted or are there particular items of evidence that indicate a governance model is working and satisfies the criteria of the Policy? If so, these should be identified.

Demonstrate holding of a **regular number** of regular board and shareholder meetings, the regular and ongoing sharing of information with shareholders and the receipt and consideration of input from the board/shareholders in corporate decision making – 7 points

- How will regular number be defined? Weekly, monthly, quarterly? Should this be dictated in the Policy or can any frequency be considered acceptable if justified by the applicant? And what evidence will be needed to assess if a particular frequency is adequate?
- Without clear criteria, how can the FAC determine if there is sufficient information being supplied to shareholders? By extension, how will the FAC determine if there is adequate receipt and consideration of input from the board/shareholders in corporate decision-making?

#### **Viable commercial venture:**

Demonstrate profitability of enterprise/business – 4 points

- How much profitability is necessary to score full points? How is profitability fairly assessed if an enterprise only seeks royalties and does not seek its own harvesting capacity?
  - The measure of profitability needs to be proportional to quotas to ensure fairness in the evaluation process. Percentage of revenue is one possible measure.

Demonstrate adherence to and achievement of business plan goals and objectives – 8 points

- Relative to the actual quota held by the applicant? Is each applicant required to establish similar business plans and goals? How can this be judged fairly and consistently unless the Policy has established clear business plan goals and objectives that each applicant will be evaluated against?

#### **Positive history in the fishery:**

Demonstrate history of compliance with license conditions, fisheries regulations, and the *Mandatory Requirement for Responsible Stewardship* – 4 points

- Does a time period need to be established for this item (i.e. since the last allocation application)? If no time period is established, will applicants be punished by lower scores in perpetuity? How is this assessed for enterprises without their own harvesting capacity?

Demonstrate collaboration with other industry participants to **benefit** the industry and maximize **benefits** to Nunavut – 4 points

- How is benefit defined? Since NOAHA has been established and therefore has created a forum for industry collaboration, does this item need to be refined?

### **Inuit Involvement (40 points):**

#### **RWO/HTO/Nunavut Community ownership/sponsorship of the economic enterprise:**

Demonstrate ownership/sponsorship by one or more RWOs, HTOs or Nunavut Communities – 8 points

#### **Inuit ownership of the economic enterprise:**

Demonstrate **level** of Inuit **ownership** – 13 points

- Level would be better termed “percentage”.
- Ownership of what? Just the enterprise? Enterprise and fishing assets including vessels? Larger organizations that own the fishing company? This should evaluate Inuit ownership of the fishing enterprise only.

#### **Adjacency of the community(ies) to the fishing area:**

Demonstrate adjacency of community(ies) to the fishing resource – 11 points

- How will this be measured (e.g. in a straight line overland, or by sea calculating the sea route length)?

#### **Economic dependence of the community(ies) to the fishing area:**

Demonstrate the **degree** of economic dependence by the community(ies) – 8 points

- What is meant by “degree of economic dependence”? How should this be quantified (e.g. number of jobs, total employment income)? What about other benefits – e.g. food deliveries or scholarships created as a result of quotas?
- Will decentralized communities be treated differently than non-decentralized communities? Will a non-decentralized community, without access to local government jobs, be considered to have a higher degree of economic dependency on the fishery as a result?



- Similarly, will this evaluation process account for the higher costs of living in high Arctic communities as a measure of economic dependency? These factors need to be clearly articulated in this allocation guideline.

**Benefits to Nunavummiut (30 points):**

**Employment of Nunavummiut, especially Inuit:**

Demonstrate Inuit employment as total number of Inuit employees, total Inuit employment expense, and percentage of overall employment expenses – 10 points

- Are the absolute values of number of Inuit employees and Inuit employee expenses being assessed here? Or are they percentages of the total employment figures? The second is strongly recommended to ensure that each enterprise is fairly assessed and not penalized for its current quota amount (i.e. a large quota holder will generally have more employees than a small one, so absolute employment values will automatically favour large quota holders).
- Should these two values (number of employees and employment expenses) be assessed separately?

Demonstrate total Nunavummiut employment as total number of Nunavut employees, total Nunavut employment expense, and percentage of overall employment expenses – 3 points

- The comments from the metric above also apply here.

Demonstrate **improvements** made in Inuit and Nunavummiut employment – 5 points

- What will qualify as improvements? Just more employees or employee expenses, as measured above? Or will promotions of Inuit and Nunavummiut also qualify?

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

**Demonstrate ownership** of enterprise and assets by residents of Nunavut – 5 points

- This varies only slightly from the Inuit ownership in the second section of the *Evaluation Form*. Instead, it should evaluate the percentage ownership of the fishing assets (e.g. fishing vessel) to account for differences among enterprise and vessel ownership.
- The percentage of ownership should be measured here, rather than the ambiguous demonstrate ownership.

**The provision of other direct benefits to Nunavut:**

Demonstrate other **direct benefits** provided to Nunavut owner(s)/community(ies)/industry(ies), in total dollars and percentage of total revenues – 7 points

- “Direct benefits” is a particularly contentious ambiguity that requires resolution. Please see the discussion below for greater detail of AFA’s concerns.

In Section 7 of the Policy, this guideline is defined in terms of examples such as “economic benefits to dependent communities, market development and investment in training, research, inshore processing and infrastructure”. However, in the most recent allocation application process, the FAC determined that direct benefits meant cash distribution to shareholders only. This narrow interpretation appears to be in contradiction not only of the Section 7 definition, but also principles ten, three and two of the Policy. These principles enshrine and emphasize the return of revenues from Nunavut’s fishery to benefit Nunavummiut in the form of equitable socio-economic development:

10. A prosperous Nunavut fishery that contributes to the creation of wealth, employment, training and education opportunities for Nunavummiut requires substantial re-investment of revenues received from one of Nunavut’s most valuable common property resources.

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.

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.

Clearly, the FAC’s most recent interpretation of solely cash benefits is incorrect. Although the guideline indicates benefits should be measured in terms of total dollars and percentage of revenue, it should not be restricted solely to cash payments to select shareholders.

AFA has used the existing Section 7 definition to guide its benefit investments. In addition to meetings its mandatory funding obligations to NOAHA and the NFMTC, AFA has voluntarily and of its own imitative met all but one of the examples provided in Section 7 and has even leveraged its investment to secure an equal amount of funding from various agencies. For example, AFA’s benefits to Nunavut have included:

Section 7 Benefit Example	AFA's Initiatives (Please note this list is not exhaustive)
Economic benefits to dependent communities	<ul style="list-style-type: none"> <li>• Annual deliveries of groceries/hunting supplies at southern wholesale prices and minimal freight costs</li> <li>• Annual financial support of Christmas festivities and other community celebrations</li> <li>• Purchase of fishing gear for community use in the inshore</li> </ul>
Market development	<ul style="list-style-type: none"> <li>• Purchase and transportation of Arctic char from Pangnirtung Fisheries Ltd. to develop niche market in Atlantic Canada and eastern US</li> <li>• Development of innovative fishing gears to improve turbot product quality</li> </ul>
Training	<ul style="list-style-type: none"> <li>• Hiring of local community members as research assistants during exploratory fisheries</li> <li>• Funding of college-level courses for Community Development Officer</li> <li>• Inshore-based fisheries training for owner-communities</li> </ul>
Research	<ul style="list-style-type: none"> <li>• Annual inshore exploratory fisheries in Qikiqtarjuaq, Grise Fiord, Arctic Bay and Resolute Bay since 2013 using AFA-owned vessel as research platform</li> <li>• Baseline ecosystem data collection in these communities</li> <li>• Pilot studies to investigate alternative offloading opportunities</li> <li>• Gear selectivity impact studies</li> <li>• Research collaborations with Ocean Tracking Network, Earth Rangers, Marine Institute, etc.</li> </ul>
Infrastructure	<ul style="list-style-type: none"> <li>• Purchase, refitting and installation of refrigerated fishing containers as community freezers in each owner community.</li> <li>• Maintenance program for these freezers.</li> <li>• Repairs on GN-owned community freezers.</li> </ul>

All of these benefits were discounted by the FAC in the last quota application, despite the fact that they meet the existing benefit definition. **The benefits guideline must be clarified and its objectivity increased during the Policy review process.** If this issue is not addressed, a “cash to select-share holders only” interpretation of direct benefits cannot have any other result than to significantly impede the socio-economic development of Nunavut.

## Miscellaneous Working Group Questions

### What procedures in the Allocation Policy need to be clarified or added?

In addition to developing clear evaluation procedures for the applications and *Annual Reports*, **the Policy requires an independent appeals process in the event there are procedural disputes between applicants and the FAC or NWMB.** It is critical that this appeals process involves individuals not associated with the original evaluation to ensure the appeal is fair and unbiased. Asking the FAC or NWMB to revise its recommendations will inevitably create tension and defensiveness. Furthermore, if an appeal is requested by an applicant there needs to be assurances that this will not result in retribution or penalties by the FAC or NWMB during later *Annual Reports* or application processes. The timing of the appeals process should be considered as well. Ideally, the Policy should permit the appeal to begin after the FAC delivers its initial recommendations to address any concerns early and avoid delaying the allocation process significantly.

### If an appeal process for the FAC's recommendations were to be implemented, what parts of the recommendations should be subject to this process?

An appeal should be permitted on the grounds of:

- Apparent deviation from the evaluation process as described in the Policy (particularly if these procedures are refined and articulated during this review). Examples of this would include (but not be limited to):
  - Creation of new evaluation criteria by the FAC
  - Failure to provide applicant's scores or justification for quota allocations during the initial response period or after the final recommendations are made
  - Unclear expectations for corrective actions communicated as written warnings after an *Annual Report*
- Perceived misinterpretations of an applicant's application that are not resolved between the initial review and final recommendations
- Substantive misapplication of the *Evaluation Form*

## How can, or should, existing allocation holders include all Qikiqtaaluk communities?

It is AFA's understanding that all Qikiqtaaluk communities are already represented by the existing allocation holders via Qikiqtaaluk Corporation. This appears to be a non-issue.

## Additional Comments

### Appendix A – Terms of Reference for the FAC

Section 2 of Appendix A of the Policy needs to be amended to explicitly state that the FAC members are bound to evaluate all applications for allocations solely by the processes outlined in the Allocation Policy and that no additional criteria may be devised by the FAC to assist their decision. This was an issue during the 2015 allocation application process, where the FAC unilaterally imposed eleven additional criteria to guide their decision. To include this provision, the first and fourth bullets of the roles and responsibilities of the FAC should be amended to (changes underlined):

- [1<sup>st</sup>] To review and assess applications, including *Governance, Business, Benefits and Stewardship Plans*, submitted to the NWMB for commercial marine fisheries allocations solely in accordance with the guidelines established in the Allocation Policy;
- [4<sup>th</sup>] 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* and *Verification Reports* solely in accordance with the guidelines established in the Allocation Policy;

This obligation should also be included in Schedules I and II to the Terms of Reference. As they are currently written, both these schedules bind FAC members to confidentiality. Equally important however, is the requirement to abide by the guidelines established in the Policy. Consequently, both the signed contract (Schedule I) and the solemn declaration (Schedule II) should be amended to include provisions to comply with the guidelines and processes established in the Policy.

## Summary and Conclusions

In its current iteration, the NWMB's Allocation Policy for Commercial Marine Fisheries highlights many commendable ideals for Nunavut's fisheries. However, during the three allocation processes since the Policy's last revision in 2012, a number of challenges and gaps have been identified. The 2016 Policy review offers the opportunity to improve the clarity and objectivity of the allocation process, increase the transparency of the FAC's and NWMB's decisions, and provide greater and much-needed stability to Nunavut's fishing enterprises.

The Policy is intended to establish a "fair, open and transparent" allocation process. However, the guidelines are too ambiguous to be fairly and consistently applied in an objective manner. They are open to interpretation. To improve this key concern within the Policy it is strongly recommended that:

- The guidelines, FAC evaluation process and evaluation form be revised to include quantifiable metrics than can be objectively measured
- A formula or procedure be developed to explain how these objective evaluations and rankings will be used to determine quota allocations
- The application's *Governance, Business, Benefits and Stewardship Plans* and the *Evaluation Form* be aligned to reflect the revised allocation guidelines

The transparency and accountability of the allocation process also requires improvement. At present, there are too many gaps in the evaluation process for applicants to understand how the FAC and NWMB arrive at their recommendations. Concurrently, there are too few obligations for the FAC and NWMB to communicate their recommendations to applicants in the Policy. By implemented the following recommendations, the Policy will not only increase in fairness and transparency, but also accountability:

- The FAC and NWMB should be obligated under the Policy to:
  - Articulate why each applicant was recommended that particular allocation amount
  - Ensure written warnings and corrective actions are communicated clearly and can be objectively evaluated
- An independent appeals process should be established in the event there are procedural disputes between applicants and the FAC or NWMB

Finally, the allocation process of the Policy only exists in Nunavut. By its very nature, the Policy creates greater uncertainty in business planning for Nunavut fishing enterprises than is found elsewhere in Canada. As a result, every effort must be made to address these concerns. By doing so, the stability and therefore long-term viability of these enterprises will be increased. Specifically, the current review of the Policy should address:

- The need to protect the current allocation holders' investments and viability in offshore fishery in the event of a quota decrease before new applicants can be considered
- DFO's repeated rejection of the duration of allocations and a written commitment of the five-year allocation period should be obtained
- The probable implementation of harvest control rules and precautionary approach to the turbot fishery's management
- The need to bind the FAC and NWMB to the application schedule

If these concerns, as well as the other issues addressed throughout this document, are resolved during the current review process, the Allocation Policy will not only have laudable ideals, but will include the mechanisms by which they can be achieved.