

**THE IMPLICATIONS FOR ABORIGINAL GROUPS IN
NEWFOUNDLAND AND LABRADOR REGARDING CHANGES
TO ACCESS/ALLOCATION PROVISIONS CONTAINED IN
THE PROPOSED FEDERAL FISHERIES ACT.**

by

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Abstract

As Caddy noted, “access to and allocation of fish resources remains one of the most difficult and controversial aspects of fisheries management in Canada and abroad” (Dooley, 2004). It is generally agreed that access and allocation issues associated with harvesting rights remains a divisive and contentious issues for participants in the province’s fishing industry. This is particularly true for Aboriginal groups in the province who have been challenged to capitalize on economic development opportunities associated with the fishery.

The Department of Fisheries and Oceans (DFO) has the challenging responsibility of responding to the demands of a range of provincial and territorial jurisdictions while at the same time considering the access/allocation needs of Aboriginal groups throughout the country. Various mechanisms have been introduced over the past decade to assist DFO with these access decisions. The Independent Panel on Access Criteria (IPAC) introduced in 2001 was one of these initiatives. IPAC was tasked with finding a solution to the decision making process involving access and the associated ranking or weighting, and defining access criteria. IPAC was successful in identifying various access principles and criteria but it did not fully address some of the outstanding problems related to access. It is important to note that the IPAC suggested that the issue of Aboriginal participation and access to the fishery required special consideration in the Panel’s deliberations, due to the constitutional position of Aboriginal peoples.

The Aboriginal Fisheries Strategy (AFS) was the other initiative designed to respond to the needs of the Aboriginal people in the country. Introduced in 1992, the AFS was intended to help DFO manage the fishery in a manner consistent with the Sparrow decision. It was intended to serve as a bridging arrangement in fisheries management during the negotiation of comprehensive land claims and self-government agreements. It applies where DFO manages the fishery and where land claim settlements have not already put in place a fisheries management framework.

This paper attempts to illustrate how various Aboriginal groups have been marginalized over decades as it relates to the fishery and presents a series of court decisions to illustrate this point. The paper also offers a comparison of the access and allocation criteria associated with the proposed Federal Fisheries Act and those currently in place under the AFS. A significant part of the paper addresses the historical perspective of how Aboriginal groups have been treated by the Federal Government, the Courts, and by society in general. These historical references are essential to fully appreciate the plight of the Aboriginal people and their frustrations in experiencing their rightful place in the country and their right to achieve a reasonable livelihood from the fishery.

The paper will also highlight some of the experiences of other Aboriginal peoples in other parts of Canada, in order to provide a clearer picture of how Aboriginal rights have evolved in Canada.

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1.0 Introduction

“Aboriginal people” is a collective name for the original people of North America and their descendants. Three groups of Aboriginal people are recognized in the Canadian constitution, Indians (commonly referred to as First Nations), Metis, and Inuit. These three distinct peoples represent unique histories, languages, cultural practices and spiritual beliefs. According to the 2006 Census, more than one million people, or approximately 4% of the population in Canada, identify themselves as an Aboriginal person. About 53% are registered Indians, 30% are Metis, 11% are Non-Status Indians and 4% are Inuit. Over half (54%) of Aboriginal people live in urban areas (INAC, 2010).

“First Nations people” refers to Status and Non-Status “Indian” peoples in Canada. Many communities use the term “First Nation” in the name of their community. There are currently about 615 First Nation communities, representing more than 50 nations or cultural groups and 50 Aboriginal groups (INAC, 2010). Canada was home to Aboriginal people long before Europeans settled in North America. Aboriginal rights and land title stems from this longstanding and prior occupancy (to the Europeans). It is not just prior occupancy that constituted Aboriginal rights – the rights accorded Aboriginal people were a result of longstanding use and occupancy of the land. Under the law, the unique legal and constitutional status of Aboriginal people is derived from the fact they are the descendants of the people who were resident in North America long before Europeans arrived (INAC, 2010).

As far back as the 18th century, Britain acknowledged that Aboriginal people had claims to the land in Canada, and major treaties were signed as settlement movement continued westward across the country. There are areas remaining in Canada where treaties have not been signed and Aboriginal claims have not been resolved or settled. Some Aboriginal people believe that since they did not surrender their traditional lands to the Crown, they still hold Aboriginal title to these lands (Ibid).

Aboriginal people in Canada have had a long connection to the fishery but have been challenged in accessing the fisheries in the post limited-access era. Some factors contributing to difficult access to the fishery include Canada's system of limited entry and the associated high capital costs of entry (McGaw, 2003).

It is clear to many observers that Aboriginal peoples have had a troubled relationship with Canada. For most of the country's history, there has been very little recognition or protection of their fundamental human rights and personal freedoms (Borrows, 2001). This has resulted in their individual and collective lives being unduly "susceptible to government interference". Governmental interference is evidenced through the suppression of aboriginal institutions of government, the denial of land, the forced taking of children, the criminalization of economic pursuits, and the negation of the rights of religious freedom, association, due process and equality. The people who created this country and those who subsequently presided over its growth did not ensure that as a vulnerable group, Aboriginal peoples were "endowed with institutions and rights necessary to maintain and promote their identities against the assimilative pressures of

the majority” (Ibid). As a result of this treatment, Aboriginals became “uncertain citizens”. They were loosely associated with the Canadian political community but denied the institutions, rights and/or resources necessary to meaningfully participate in the life of the country, either collectively or as individuals (Ibid).

After close to one hundred years of near silence on the issue of Aboriginal peoples’ place in society, a few key developments forever changed the framework of Aboriginal citizenship in the country. These included the *Constitution Act* of 1982 and the Supreme Court of Canada decision, *Calder vs. A-G (BC)*. The Court’s recognition that Aboriginal title was a justiciable right, and not solely a moral or political concern, placed the relationship of Aboriginal peoples to the rest of society squarely in the public eye. The passage of the *Constitution Act* and the redrafting of the Canadian Constitution were generally considered by many to be good for Aboriginal people, though all Aboriginal people may not agree. Section 35 of the *Constitution Act* stated that the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada were recognized and affirmed. In this act, the “Aboriginal peoples of Canada” included the Indian, Inuit and Metis peoples of Canada. All three groups had been included in the constitution and their rights were guaranteed. The battle, however, was far from over (Coates, 2000).

In recent times, Aboriginal people in Newfoundland and Labrador were beginning to see and realize on the potential of the fishery for economic and social development. Some Aboriginal people in the province have made progress capitalizing on opportunities from the fishery. The Innu of Labrador have recognized the value and contribution of the

commercial fishery and the associated opportunities related to revenue generation and employment and skills development (Coombs, 2002). The Innu were able to dedicate resources to an economic development agenda through revenues received from Northern shrimp allocations. A progressive approach of forming partnerships with established participants in the fishing industry has helped the Innu by providing financial benefits and a knowledge transfer of business and resource management expertise (Borrows, 2001). Some of these partnerships are noted below:

“Aboriginal interests to the Northern shrimp resource hold four of the seventeen commercial offshore licenses, including: Torngat Fish Producers Co-Operative Society Ltd., Makvik Corporation, Oikiqtalluk Corporation, and Unaaq Fisheries Incorporated. The Pikalujak Fisheries Ltd. licence contains an Aboriginal component through the Nunatsiavut Government interest in this license. Temporary allocations also exist for the Innu and Nunatsiavut Government. Increased access to the resource for Aboriginal people was a priority in 2003, resulting in temporary allocations to the Innu, the Nunatsiavut Government, the Labrador Metis Nation and the Conne River First nation. There are also special allocations to Makivik Corporation and for Nunavut interests, taking into account decisions of the NWMB with respect to allocations within the Nunavut Settlement Area and considering recommendations of the NWMB with respect to allocations in Zones I and II as defined in the Nunavut Land Claims Agreement. No Aboriginal food fishery for food, social or ceremonial purposes exists within the Northern shrimp fishery” (DFO Backgrounder 2010G).

Several significant legal cases involving Aboriginal fishing rights were heard in the 1990s and helped contribute to improved access by Aboriginal people to the commercial fishery as described in the example of the Innu of Labrador. The 1992 Sparrow decision of the Supreme Court of Canada confirmed the aboriginal right to fish for food, social and ceremonial purposes. The 1999 Marshall decision of the Supreme Court of Canada confirmed the treaty right of Mi’Kmaq and Maliseets to access fisheries for ceremonial purposes.

In response to the *Sparrow* decision, the Department of Fisheries and Oceans introduced the Aboriginal Fisheries Strategy (AFS) in 1992 which was largely made up of financial support for entering the fishery (McGaw, 2003). The AFS was seen as the federal government's response to the need to expand aboriginal peoples role in the fisheries while at the same time conserving fish stocks and maintaining a stable environment, predictable resource-sharing and profitable fisheries for all parties concerned (Allain, 1993). According to DFO, the AFS is designed to provide economic opportunities to Aboriginal groups primarily in coastal areas of Canada. The strategy contributes substantially to enhancing Atlantic salmon stocks and responds to the Supreme Court of Canada's decision in the *Sparrow* case, which recognized an Aboriginal right of access to the fishery for food, social and ceremonial purposes (DFO Backgrounder 2010A).

Increased Aboriginal participation in fisheries provides economic development and employment opportunities to improve the economies and social structure of Aboriginal communities. Approximately \$5.0 million annually is directed towards aboriginal communities in the Maritime Region for their participation in the Aboriginal fisheries strategy (Ibid).

Appendix 1 contains a "Glossary of Terms – Aboriginal Peoples and Communities" to assist with definitions and terminology.

2.0 Background

The *Sparrow*, *Van der Peet*, and *Marshall* decisions did not suddenly appear without past significant incidents and developments involving aboriginals and treaty rights. Some background relating to the plight of Aboriginals and their fight for recognition of their treaty rights is helpful to put things in context.

Aboriginal people have been expending considerable effort for some time to have their Aboriginal and treaty rights recognized and honored (Coates, 2000). The issue of Aboriginal and treaty rights for Aboriginals, however, was not upper most in the minds of most people in the Maritimes. Occasionally, the Mi'kmaq and the Maliseet people of the Maritimes would speak out about old treaties which were foreign to most people. The Innu and Montagnais of Labrador were fighting for land rights and opposing the use of their lands by the military. There were other notable developments in other parts of Canada such as the James Bay treaty in northern Quebec and the Oka standoff in the Montreal area.

In the mid 1970s, the Cree of James Bay went to court to stop the James Bay hydro-electric project. The Cree argued they had title to the land that would be flooded by the project and the project would threaten their traditional way of life by damaging the environment. In 1973, the Quebec Superior Court ruled in favour of the Cree, noting they had been occupying and using the land to a full extent. This decision was reversed by the Quebec Court of Appeal in 1974. The legal claims brought forward by the Cree were subsequently resolved through negotiation and the signing of a treaty with the

Governments of Canada and Quebec (INAC, 2010). The aforementioned agreement (with the Cree) came to be known as the **James Bay and Northern Quebec Agreement**, an Aboriginal land claim settlement, approved in 1975 by the Cree and Inuit of northern Quebec, and later slightly modified by the Northeastern Quebec Agreement, (at which time Quebec's Naskapi First Nations joined the treaty). This agreement covered economic development and property issues in northern Quebec, and established various cultural, social and governmental institutions for Aboriginals who are members of the communities involved in the treaties (James Bay and Northern Quebec Agreement).

The James Bay and Northern Quebec agreement has been further modified by some 20 additional accords affecting the implementation and details of the original agreement, as well as expanding their provisions. The *Constitution Act, 1982* entrenched in the Constitution of Canada all the rights granted in native treaties and land claims agreements, giving the rights outlined in the original agreement the status of constitutional rights. The James Bay agreement covers a number of subjects and established a number of provisions in the following areas: Lands; Environmental and Social Protections; Economic development and financial compensation; Education; Local government; Health and Social Services. As the first Canadian native treaty since the 1920s, it bears little resemblance to previous treaties but has become the prototype of the many agreements made since then (Ibid).

Ontario also saw its share of conflicts relating to harvesting rights and logging, however it was the West and the North which experienced the most intense struggles. Aboriginal

people demanded attention to their outstanding grievances through their many court cases during the 1980s and 1990s and were occasionally successful with some of these (Ibid). Prior to WWII there was little global interest in the legal and treaty rights of indigenous peoples (Coates, 2000). Indigenous people were often marginalized or removed from their lands and generally dealt with by countries as they saw fit. At the time, there was growing interest in the “primitive” peoples of the world, however this was a time when the rights of minorities were usually violated in favour of the rights of the majority. The plight and interests of indigenous people received little attention during this time.

There were many significant developments beginning to occur which changed conditions for Aboriginal people and other minorities. The end of the Second World War contributed to changing intellectual and political currents. The exposure of Nazi death camps, the revelations of barbaric treatment of the Jews, the founding of the United Nations and continued decolonization all heightened concern for minority populations. The content of the Universal Declaration on Human Rights caused many nations to revisit policies that discriminate against specific groups, such as the First Nations (Ibid).

Amid this new climate of concern for Aboriginal people, the protests of Aboriginals soon received a receptive ear from Government. Paternalism on the part of a number of countries was the general response to these Aboriginal protests and most Government's including Canada chose to respond to the needs of Aboriginal people by expanding government programs.

Government responded to the needs of the Aboriginal people in a broad fashion, but it wasn't clear they really understood the needs of Aboriginal people. In Canada, residential schools grew in size and number, primarily in the North and Western regions of the country. Attempts were also made by Government to integrate Aboriginal people into the wage economy. Government also responded to the needs of Aboriginal people by introducing new housing programs, mother's allowance and various other initiatives intended to offer the benefits of national citizenship to indigenous people. There was, at this time, much political concern expressed for Canada's poorest citizens and the response was a significant increase in expenditures and programming for Aboriginal people.

It is interesting to note that around the 1960s the level of Aboriginal activism increased and much of the activism was funded by the Canadian Government. In response to sustained criticism of the programs and efforts directed to aboriginal people by the Federal Government, Government decided to rethink the high level of intervention instituted since the end of the Second World War. The Department of Indian Affairs and Northern Development funded organizers to establish Aboriginal associations. The Federal Government was beginning to move away from the previously adopted paternalistic approach in dealing with Aboriginal people and now believed it was important for Aboriginal people to have a consistent and professional say in their own affairs.

The Aboriginal people of Canada in 1960 still had many restrictions imposed on them. With very few exceptions, Aboriginal people were not permitted to vote or drink alcohol. Few indigenous people attended university or graduated high school and Aboriginal people experienced limitations on owning land or businesses. The reality was that the schools of the day did not adequately respond to the needs of indigenous people and the *Indian Act* further restricted personal development and financial opportunities for Aboriginal people (Coates, 2000).

Another example of the restrictions and attitude towards indigenous people during the 1960s involved the Department of Indian and Northern Affairs. At this time, the Department had the authority to remove individuals from the status Indian rolls if the Department felt that they were becoming too adapted to the dominant society (Ibid). Discrimination against Aboriginal people during the early 1960s, sanctioned by all levels of Government, was very common. In many cities throughout Canada the Aboriginal people were subject to curfews restricting their movement. . The Aboriginal people's potential for personal development and financial success were stymied by ineffective schools and the restrictions of the *Indian Act*. At this time, Aboriginal people had little protection of their harvesting rights. They continued to hunt, fish and trap in keeping with tradition but they had few rights and no real assurances that these activities would continue.

In the face of increasing non-Aboriginal interest in land and resources, Aboriginal people frequently were being punished for pursuing generations-old harvesting activities and were denied access to resources that had sustained their peoples for generations. The pursuit of Aboriginal rights was a painfully slow process. The *Indian Act* received a major revision in 1951 which reduced federal powers and amended the Act which previously enabled the Government to undermine Aboriginal culture (Ibid).

Voting rights were extended to Aboriginal people throughout Canada in a limited and inconsistent manner. Only in 1960 were all Aboriginal people accorded full federal voting rights. Provincially, Nova Scotia had no formal restrictions on Aboriginal voting. Aboriginal people secured the right to vote in New Brunswick and Prince Edward Island in 1963 (Ibid). The 1960s also saw the Federal Government making new and expanded efforts towards acknowledging the rights of Aboriginal people. The Federal Government acknowledged that their interventions in Aboriginal affairs had been unsuccessful. In 1969, the White Paper on Indian Affairs introduced by then Minister of Indian and Northern Affairs, Jean Chretien, called for the elimination of special status for Aboriginal people and the integration of Aboriginal services with the general population.

The Government was not prepared for the Aboriginal response to the White Paper proposal. A storm of protest from Aboriginals quickly followed the proposal which helped create a strong national Aboriginal organization. The Government decided not to proceed with Chretien's White Paper. About four years later, the Federal Government felt compelled to change its position on not addressing outstanding Aboriginal land claims in the face of a near-loss of the *Calder* case in the Supreme Court. Recognizing

that they may lose other Aboriginal cases, the Federal Government reluctantly agreed to negotiate new Treaties with the indigenous people (Ibid).

Quebec began developing their hydroelectric resources in the 1960s. In 1971 the province created the *James Bay Development Corporation* to develop mining, forestry and other resources beginning with the James Bay Hydroelectric Project. This development was undertaken by the Quebec Government without consulting native people and was opposed by most of northern Quebec's Cree and Inuit. The *Quebec Association of Indians* sued the Quebec Government and in November 1973 won an injunction in the Quebec Superior Court blocking hydroelectric development until the province negotiated an agreement with the natives. The judgment was overruled by the Quebec Court of Appeal a week later and Quebec's efforts to quickly negotiate an agreement failed. It is important to note that the legal requirement to negotiate a treaty covering the territory had not been overturned and construction on the James Bay project continued. Exactly a year later (November 1974) after the Superior Court decision, Quebec made the first move and an agreement-in-principle was signed between the governments of Canada, Quebec, publicly owned Hydro-Quebec, the Grand Council of the Cress and the Northern Quebec Inuit Association (James Bay and Northern Quebec Agreement). Aboriginal people evolved from political and legal irrelevance in the 1960s to national significance and importance just a short decade later. Aboriginal groups were beginning to receive greater attention from provincial and federal governments and a number of new social and economic programs were introduced to respond to difficulties expressed by the Aboriginal community. It was clear now that Governments would be

forced by political and legal necessity to recognize and respond to historical grievances of various Aboriginal groups throughout the country.

Some Aboriginal groups in the 1970s, particularly the Dene and some other groups, were demanding recognition of indigenous sovereignty. In essence, they were seeking increased autonomy and self-government. They wanted to:

“reduce the power of the Department of Indian and Northern Affairs; empower individual First Nations and bands; recognize indigenous rights to co-manage resources; and acknowledge the historical or treaty rights of First Nations to fish, hunt and trap” (Coates, 2000, p. 77).

First Nations people availed of an opportunity to further their interests when the federal and provincial governments were forced to amend and patriate the Canadian constitution in response to the growing Quebec separatist movement. The First Nations people presented themselves as a founding people and national organizations such as the National Indian Brotherhood (later the Assembly of First Nations), the Inuit Committee on National Issues, and the Native Council of Canada (later Congress of Aboriginal Peoples) demanded a place at the constitutional bargaining table (Ibid).

The constitutional discussions and negotiations began in a significant way in the 1970s, though it took some time for the interest of Aboriginal people to be taken seriously. For a time, Aboriginal rights were considered a part of the Canadian constitution, and then they were not. This movement back and forth between being in, and then out, of the Constitution went on for some time. It took the loud and persistent protests of the First Nations for the Federal Government to finally include them in the Constitution. It is

doubtful this progress would have occurred without the protests of the First Nations people.

2.1 - The Newfoundland and Labrador Fishery

The fishery in Newfoundland and Labrador can be traced back almost 10,000 years to the Maritime Archaic people who found their way to our shores along the edge of retreating glaciers (School of Fisheries, Marine Institute, October 1993).

The descendants of the Maritime Archaic people, and later migrations of Aboriginal people, survived by harvesting resources on land and sea. The earliest information on the province's fishery showed that the island portion of the Province was inhabited by the Beothuks and Labrador was inhabited by the Innu and Inuit. The earliest European connection with Newfoundland and Labrador remains somewhat of a mystery.

Indications are that the first European contact can be traced back to the sixth century by St. Brendan of Ireland (Ibid). The generally accepted first contact of Europeans to Newfoundland and Labrador involves a band of Norse adventurers who built the first recorded settlement in L'Anse aux Meadows on the Northern Peninsula in 1000 A.D.

On or about 1001 AD, the Vikings were attributed to have landed in a natural harbour and a land of grassy meadows which they called Vinland. They eventually settled in Vinland, an area which archeologists and historians agree is now called L'anse aux Meadows in northwestern Newfoundland (Ricketts, 1998-2011). The official discovery of Newfoundland is attributed to John Cabot from England, reported to have come ashore at Cape Bonavista on June 24, 1497. Cabot's message to his countrymen upon his return from Newfoundland about the indescribable volumes of fish off its shores spread quickly

to other countries. Explorers and fishers from Portugal, Spain and France soon followed Cabot to Newfoundland to participate in this fishery. Their arrival contributed to the start of the commercial fishery and the beginning of our significant and long history as fishers. By the 16th century, Newfoundland and Labrador was familiar territory to the Basque whalers who built North America's first whale oil factory at Red Bay, Labrador.

During the first half of the 16th century, the fishery in Newfoundland was primarily an international resource exploited mainly by Portugal and France. Spain became a presence in the Province around this time but England shifted their focus to the Icelandic fishery, however the English presence was about to become more significant. A successful English fisher, Anthony Parkhurst, who fished in Newfoundland in the late 1500's thought it would be a great idea if the British government would colonize Newfoundland. The idea took hold. On August 5, 1583, Sir Humphrey Gilbert took formal possession in England's name. It is interesting to note that during this time, there were 36 fishing ships in waters off our coast, 16 of which were from England. These 16 vessels grew to approximately 150 ships by 1610 (School of Fisheries, Marine Institute, October 1993).

At this same time, John Guy settled in Cupids, Conception Bay, however the conditions were brutal with the majority of his colonists dying the first winter, due to poor agriculture and a severe winter (Ibid). This first attempt at settlement failed. The importance of the fishery to migration and settlement in Newfoundland was easy to see. The failure of a settlement effort inevitably resulted in subsequent settlement efforts. By

1675, census information indicated that 30 communities were established along the migration patterns of the northern cod (Ibid). The English presence and influence remained strong for the next 150 years, as the laws by which Newfoundland was governed were determined by the powerful fishing interests in England. The fishery at that time came to be known as the Transatlantic Fishery as it benefited the West England merchants more than Newfoundland's residents.

The early English presence in the fishery in Newfoundland focused on the east coast of the Island. Fast forward to the 1600s, and the French claims to fishing rights and territories were centered in the South to West coasts regions of the Island. The French presence was reinforced by the fortification at Placentia. France's fishing rights in Newfoundland continued after many wars off our coasts and on the French Islands of St. Pierre and Miquelon. The Treaty of Versailles signed in 1763 gave the French the French Shore and the Island of St. Pierre and Miquelon. It also gave the United States fishing and landing liberties in Newfoundland.

The late 1780's saw the offshore bank fishery prosecuted by larger vessels and supplemented by inshore vessels known as the bye boat fishers. Trinity in Trinity Bay became an important community to service the Banker Fishery with supplies, unloading, ship repair/servicing and shipbuilding.

Up to this time, seals were a small part of the province's fishery however the fishery experienced a transformation in 1863 when the first steamers went to the ice. Another

significant milestone occurred in 1871 with the invention of the cod trap by William Whitely (Ibid). Originally from Boston, he eventually moved to Newfoundland to pursue the fishery.

The banker fishery began to decline in the 1900s as the trawler fishery began to take over. The trawler fishery evolved from a beam-trawl, to an otter trawl, to a side trawler and then the stern trawler. The beginning of the 20th century saw great changes in fish processing. Salt fish production fell significantly after World War II with the advent of a new filleting and freezing industry. The main reason for the fall in salt fish production was the advent of refrigeration which allowed product to be held in a frozen form prior to be shipped to market.

Canada's East coasts were consistently occupied by foreign fishing fleets and by the 1960s European nations had significantly increased their fishing efforts. The early 1970s saw the northern cod stock so badly over fished that in response Canada extended the country's marine boundary from 12 miles to 200 miles in 1977 (Ibid). This marked a new era for the fishery suggesting that the full potential of the fishery was not being realized. During this time, an increased emphasis was directed towards value-added processing, and the large scale commercial fishing of previously underutilized species like crab and capelin began.

The 1980s and early 1990s saw the Newfoundland fishery evolve into a dynamic, multi-species industry. New processing techniques and methods were being developed which

enabled processing companies to produce many new and different seafood products. Despite improved diversification and improvement in the management of fish stock, the industry reliance on northern cod continued. As the cod resource declined in the late 1980s, conservation became the hue and cry for many communities, fish harvesters, processors and governments. The cod moratorium announced by Federal Fisheries Minister, Hon. John Crosbie, in July 1992 resulted in the closure of the northern cod fishery in zones 2J, 3K and 3L. Originally intended to be a two year closure, the moratorium remains in place some 18 years later.

2.2 – Traditional Aboriginal Fisheries

- The Atlantic Fishery

Prior to Jacques Cartier sailing into the Strait of Belle Isle in 1534, Port au Choix in Newfoundland had been a major fishing and sealing site for thousands of years. Cartier referenced Indians in birch bark canoes catching seals in the Straits, while others fished mackerel using nets in Gaspé Bay. Aboriginal fishers in the Atlantic region, used many other methods to fish: spears; jigs; set-lines with baited hooks of bone or hardened wood; gillnets to entangle fish and seine nets dragged from shore or under the ice to encircle fish (Gough, 2007).

Aboriginal people in the Atlantic provinces were also known to have gathered shellfish by hand in significant quantities. This included large amounts of lobster, mussels and crabs caught without utilizing boats or nets. Throughout Canada, long before other civilizations landed on our shores, the Aboriginal people prosecuted the fishery. Fish was plentiful and the Aboriginal people moved about the country in their quest for food. Fish was about survival and was a key element of the Aboriginal religion and culture.

The Aboriginal people have a long connection to the fishery. Aboriginal people depended on fishing for survival for centuries prior to the Vikings landing on Canada's shores (Gough, 2007). Fish was very plentiful but fish catches and concentrations of fish in the bays and rivers were cyclical. Fish could be absent for long periods and during spawning were barely edible. There were many challenges for Aboriginals participating

in the fishery during this early period. Air drying or smoking fish required many weeks of work. Contributing to their problems was the tendency for wild animals to steal the caches of dried or frozen fish. Most Aboriginal groups were nomadic moving from place to place in response to the fluctuations and availability of wild game and fish (Ibid).

The Aboriginal people were very industrious and creative in their fishing practices and techniques, utilizing almost all of the basic fishing techniques of today. They constructed nets from kelp, roots, plants, and caribou thongs to entangle or entrap fish, while developing many types of hook and spear. They also made torches and used these to attract fish. In the extensive fishery on the Pacific coast of Canada, Aboriginals in this part of the country constructed river and tidal weirs to catch fish (Ibid).

It is interesting to note that for many centuries, the fishing practices and policies of the Aboriginal people contributed to a level of conservation that sustained them for centuries. “The Ameridians, (for example) lacked the paraphernalia of modern fisheries management, with multiple rules controlling size of nets and gear, type or volume of catch, seasons, fishing permits, and so. Fish were plentiful, conservation problems few” (Ibid, pgs. 3-4). Diane Newell wrote, “...all systems of resource management in Aboriginal Canada relied on communal property arrangement...” (Ibid, p. 4).

The anthropologist Diamond Jenness wrote of the importance of community as it relates to Aboriginal fisheries. “Every man contributed his labour to the building and maintenance of the weir or pound, and every man was entitled to his share of the

booty...At the weirs each man retained whatever fish he caught, but allowed no family to remain in want” (Ibid, p. 4).

Newell references other success stories related to the manner in which the Aboriginal people managed the fishery. The Aboriginal salmon management system in British Columbia “sustained yields for several thousand years.” It not only produced large harvests, but also “assured everyone adequate stocks of fish over the long term” (Ibid, p. 5).

It has been well established that the early contact with the Europeans had a profound impact on the Aboriginal people. European contact with Aboriginal peoples in the 15th and 16th centuries resulted in social, cultural and technological changes that had irreversible economic and social effects on their lives and the fish resources (Aboriginal Fishing in Atlantic Canada). Despite the introduction of trade items like copper pots and iron tools beginning in the 15th and 16th centuries, traditional fishing methods and practices changed little until the 20th century. There was however, increasingly limited access or total inaccessibility to traditional fishing places, and restricted mobility due to the creation of the Indian reserve system, which resulted in the loss of fishing resources for many First Nation communities (Ibid).

Robert Coombs, in his paper, “*Innu Capacity Building in the Atlantic Canadian Fishery: Community Revitalization Through Renewable Resource Development*” speaks to more recent challenges the Innu faced in accessing fisheries resources. He notes,

“When time and resources allowed diversion from more immediate issues, the Innu attempted to establish a presence in the commercial fishery. However, the level of commitment necessary to advance Innu interests simply could not be sustained. This is clearly in evidence today by the virtual absence of Innu harvesting capacity, fishery infrastructure and resource allocations that are substantially less than those held by other aboriginal and non-aboriginal groups” (Coombs, 2002, p. 10).

Coombs references two distinct periods when the Innu attempted to develop commercial fishery operations in Labrador, the first involved the Innu of Davis Inlet in the 1940s and the second happened in the 1970s at the Smallwood Reservoir and involved Sheshatshiu. Regrettably both these efforts never really gained traction. The small-scale commercial fishery attempted at Davis Inlet in the 1940s with the assistance from the local missionaries, who imported punts and larger motorboats so the Innu could pursue a saltwater fishery, was unsuccessful in the long-term because of their relative inexperience in modern fish harvesting practices. The efforts of the Innu from Sheshatshiu to establish a whitefish fishery in the Smallwood Reservoir in the 1970s and 1980s also proved difficult to sustain due to the Innu’s inexperience with modern fish harvesting and processing practices and their lack of technical and management support to transition to commercial operations and lack of surveys to determine the potential resource to be harvested (Ibid).

Coombs also indicated that “the Innu have not been treated equitably in the sharing of resources in immediately adjacent areas of NAFO Divisions 2GHJ” (Ibid, p.13). He went on to explain that this inequitable treatment of the Innu was due in part to resource allocation policies and priorities that favoured non-adjacent interest groups. He suggested that some allocations (to the Innu) of adjacent resources which could have

provided a revenue stream to support economic initiatives were not provided or were meaningless. Increasing Innu participation in the fisheries will be a challenge in an era where many fisheries are fully subscribed and over-capacity is the most significant structural problem facing the industry (Ibid).

Prior to contact with Europeans of Newfoundland and Labrador, there were three established aboriginal groups in Newfoundland and Labrador: the Innu and Inuit in Labrador and the Beothuk on the Island. Contact between Europeans and the Labrador peoples gave rise in later years to the Labrador Metis. The interior of Labrador itself was mainly unsettled by Europeans and undeveloped prior to World War II, which brought the construction of an airbase in Goose Bay. Prior to the early 1940s, the Labrador coast served mainly as seasonal fishing grounds for fishermen resident in Newfoundland and the main Labrador coastal communities were those of the Inuit (Drover, 2007).

As for Aboriginal communities on the Island portion of Newfoundland, there is a small reserve of Mi'kmaq resident in Conne River on the south coast who claim various rights. The Newfoundland Court of Appeal, however, rejected the Mi'kmaq claims of indigenusness to the Island finding that the Mi'kmaq were not in Newfoundland at the date of European contact (Ibid). The approximately one thousand Beothuk resident exclusively on the Island at time of contact succumbed primarily to disease and genocide. The last Beothuk, Shanawdithit, died in captivity in St. John's in 1829 (Ibid).

The Beothuk of Newfoundland and Labrador were one of the earliest Aboriginal groups encountered by Europeans however there was little formal interaction with them for over three centuries (Ibid). One example of limited interaction between the Beothuk and Europeans involved the excavation of naturally occurring and European raw materials excavated from a mid-late 18th century Beothuk house in the western interior of Newfoundland. The Beothuk had scavenged discarded metal used by the Europeans and reworked it into traditional fishing and hunting tools. Other examples of the Beothuk benefiting from the presence of these European traders are very scarce. The interaction between the European traders and the Beothuk remained largely hostile until Shanawdithit's death in 1829 (Aboriginal Fishing in Atlantic Canada).

In the centuries after Columbus, Cabot, and Cartier, European settlers introduced new diseases and enormous dislocation to the Aboriginal people (Ibid). These Europeans were also said to have sometimes interfered with food supplies from the fishery, a situation which worsened over time. An example of this was the extensive whale and walrus hunting in the Arctic by non-Aboriginals in the late 19th century contributing to widespread starvation among the Inuit (Ibid). Diamond Jenness reinforced this observation in the 1930s, noting that after decades of European influence "over large parts of the Arctic and sub-Arctic, the Eskimo are now worse clad, and more ill-nourished, than in the days of their isolation" (Ibid, p. 5).

Although the Inuit have a long history of utilizing marine resources, they are relative newcomers to participation in commercial fishing operations. With the notable

exceptions of the Great Slave Lake Whitefish fishery, the char fisheries of Nunavut, and some activity with commercial salmon and cod stocks off Labrador, most commercial participation began only in the late 1980s (Gibbons, 2002).

Northern shrimp has contributed significantly to the economic welfare of the Innu, “placing the Innu on the contemporary fishing map”, as Coombs notes. Proceeds from the Northern shrimp allocations provided by the Minister of Fisheries in 1997 were instrumental in establishing Innu Development Limited Partnership (IDLDP) in May of 1998, which represented an important first step by the Innu to dedicate resources to an economic development agenda (Coombs, 2002).

Appendix 2 contains a profile of Northern Shrimp quotas from 1996-2010 which shows how Aboriginal access to this resource has evolved over this period. Appendix 3 contains Species Quota Reports (2010) for crab and shrimp.



INUIT WOMEN EMPLOYED IN BLUBBER PROCESSING.
PHOTOGRAPHER UNKNOWN.
COURTESY UNITY ARCHIVES, HERRIHUT.

Figure 1

2.3 - Description of Proposed Fisheries Act – Bill C-32

The federal *Fisheries Act* governs the management of the fisheries and the protection of fish habitat in Canada. The Act was first enacted in 1868, before all the provinces and territories on Canada's three coasts had entered Confederation and well before the advent of fishing technology that has significantly changed the fishery. Though the Act has been amended on occasion since it was enacted, the amendments have not been significant and it has never received a complete overhaul to reflect today's fisheries and how the country has changed over the last century and a half.

Why change the Act?

The fishing industry continues to be a vital contributor to the economies of many of Canada's coastal communities, providing livelihoods for generations of Canadians. More than 80,000 Canadians are employed at sea, on inland waters, in fish processing and aquaculture and the annual landed value of the fishery is approximately \$12 billion (DFO

Background, 2007C). The Federal Government, with support from industry, realized that the current Fisheries Act is not able to respond effectively to the rapid changes and challenges currently facing the fishery. These challenges include: environmental changes; dramatic market shifts; cyclical variations in the abundance of key stocks; and the rapid expansion of other users of the oceans.

The Federal Government has been working to revitalize the Fisheries Act over the past three to four years, with limited success. On November 29, 2007, then Minister of Fisheries and Oceans, Honourable Loyola Hearn, introduced a Bill to modernize the then 139-year-old Fisheries Act. Now almost four years later, the current Fisheries Act is still in place though the Federal Government is apparently not giving up on reintroducing a new Fisheries Act.

Over the past several years, the Department of Fisheries and Oceans has conducted dozens of consultation processes on a range of topics affecting the fishery and the conservation of fish and fish habitat. During these sessions, a diverse group of stakeholders and community representatives, including fish harvesters, resource industries, other levels of government, First Nations and other aboriginal groups, conservation groups and environmental groups identified issues that can only be remedied by amending the Fisheries Act (DFO Background, 2007A).

Government's first attempt to modernize the Fisheries Act dates back to December 2006, with the introduction of Bill C-45. This Bill died on the Order Paper with the prorogation of Parliament on September 14, 2007. DFO incorporated the input and feedback received

during their consultation sessions reintroduced Bill C-45 as Bill C-32. The new

Fisheries Act will:

- “Require that impacts on fish and fish habitat be factored into all licensing and allocations decisions, with conservation a cornerstone of fisheries management;
- Give fishers a greater voice in how their fisheries are managed, but also hold them jointly responsible for ensuring fisheries are well-managed
- Enable long-term access and allocation, increasing stability for fishers so they can better plan their operations; and
- Create an administrative sanctions tribunal to deal with the majority of Fisheries Act violations, reducing reliance on the criminal courts” (DFO Backgrounder, 2007B)

The importance of stability and predictability, particularly as it relates to access and allocations, is essential for participants in the fishery to plan for the future. Many commercial fishers describe the current process for determining access and allocation as unstable and unpredictable, however most want the Minister to retain authority over access and allocations. Fishers need to know they have long-term access to a specific fishery and must know what their share of the resource will be.

“The New Fisheries Act provides a legal mechanism to the Minister to set allocations for up to 15 years for fleets and groups in commercial, recreational and Aboriginal fisheries in marine waters. It would also allow the Minister to rescind, change or replace an allocation in certain circumstances, such as to meet conservation needs, subject to processes set by law” (DFO Backgrounder, 2006A).

3.0 – Aboriginal Fisheries Strategy (AFS) and Fishery Management

As noted in Section 4.3 of this Report, the Supreme Court of Canada *Sparrow* decision of 1990 confirmed that where an Aboriginal group has an Aboriginal right to fish for food, social and ceremonial purposes, that right has priority, after conservation, over other uses of the resource (DFO Backgrounder, 2010A). The Supreme Court also affirmed that the Federal Government can regulate the exercise of this right.

In 1992, the Department of Fisheries and Oceans introduced the Aboriginal Fisheries Strategy (AFS) to help DFO manage the fishery in a manner consistent with the *Sparrow* decision, among other objectives. The AFS applies in instances where DFO manages the fishery and land claims settlements have not been put in place a fisheries management framework (Ibid).

The AFS was intended to serve as a bridging arrangement in fisheries management during the negotiation of comprehensive land claims and self-government agreements. It applies where DFO manages the fishery and where land claim settlements have not already put in place a fisheries management framework (DFO Backgrounder, 2007F).

The AFS provides for the negotiation of mutually acceptable and time-limited Fisheries Agreements on harvest plans with about 250 Aboriginal groups. It also provides funding for fisheries management and economic opportunities, including the pursuit of commercial fishing opportunities.

The process associated with the AFS follows. When an agreement between DFO and an Aboriginal group is reached, the Minister of Fisheries and Oceans issues a communal fishing license to the Aboriginal group that is reflective of the agreement. If an agreement is unattainable with the Aboriginal group, the Minister issues a communal licence that is reflective of prior consultations between the two parties (DFO and the Aboriginal group).

It is interesting to note that in the Spring of 2002, DFO held a series of meetings with Aboriginal groups to review the Aboriginal Fisheries Strategy. Various improvements and revisions were put forth including the creation of longer term, simpler AFS agreements, more streamlined reporting requirements, improved communications and a more flexible approach to capacity-building to more effectively participate over the long-term in areas related to fisheries management. A renewed focus on the pursuit of economic opportunities was also explored during these discussions (DFO Backgrounder, 2009).

3.1 Labrador Inuit Association (LIA) Land Claims Agreement and Access/Allocation Provisions

The Labrador Inuit became a self-governing people and formed the Nunatsiavut Government on December 1, 2005 after settling their land claim agreement with the Government of Newfoundland and Labrador. The original land claim filed by the Labrador Inuit Association (LIA) in 1977 with the provincial and federal governments identified about 116,000 square kilometers of land and sea in northern Labrador. Negotiations began in 1988 and were successfully concluded on December 6, 2004, with the passing of the *Labrador Inuit Land Claims Agreement Act* by the provincial government. The Labrador land claim agreement reached in 2004 was the final one to cover Inuit in Canada and represented the culmination of more than 15 years of negotiations.

The Labrador Inuit Settlement Area (LISA), (See APPENDIX 4), consists of 72,520 square kilometers of land in northern Labrador and 48,690 square kilometers of sea. Of this, the Inuit people own 15,800 square kilometers of land outright, and have special mineral, marine, and land rights in the remaining areas (Higgins, 2008).

The Nunatsiavut Government has the power to establish its own justice system and pass laws regarding land and resource management, education, health, culture and language. Its Legislative Assembly is located in Hopedale and its administrative centre at Nain. There are also five Inuit Community Governments at Nain, Hopedale, Rigolet, Makkovik and Postville. All adult Nunatsiavut residents are eligible to vote in elections, and since

Nunatsiavut is part of Newfoundland and Labrador, residents of Nunatsiavut have to pay provincial and federal taxes.

The land claim agreement has enabled the Inuit people to exercise more power to preserve their language, culture, land and resources from outside threats. They can now determine the curriculum in their schools and the language of instruction for their children. As of 2008, the Nunatsiavut Government represented about 5,000 Inuit men and women (Ibid).

For generations leading up to the Agreement signed in 2004, the Labrador Inuit were engaged in an almost constant struggle to preserve their culture, language and society against increasingly intrusive outside forces. The land claims agreement represents hope to many Labrador Inuit that they will be better equipped to protect their traditional way of life (Ibid).

Prior to the 20th century, the Newfoundland and Labrador Government had limited contact with the Labrador Inuit. Unlike other regions in Canada, trade between Aboriginal peoples and European settlers in Labrador did not evolve to the point where formal legislation or significant government involvement was required. Labrador was also far removed from the center of political activity in St. John's. The provision of services to this small scattered population in Labrador would have been difficult and expensive. The province's government officials of that time delegated the day-to-day

administration of Labrador affairs to religious groups and commercial trading companies in the area, particularly the Moravian missionaries and the Hudson's Bay Company.

In 1935, the Commission of Government created the Newfoundland Ranger Force to police isolated and rural areas in the province, including Labrador. The Newfoundland Rangers performed a range of duties from enforcing game and other laws to distributing government relief payments and acting as a link or liaison between local residents and government officials. The arrival of the Rangers was well received in the 1930s, particularly since fur prices plummeted during the Great Depression and the need for Government relief payments was immense.

The 1940s saw a significant change in the Newfoundland Governments contact with the Labrador Inuit. In response to the withdrawal of the Hudson's Bay Company from northern Labrador in the 1940s, the Newfoundland Government assumed control of all company trading posts, which resulted in the Government having much closer contact with the Labrador Inuit. In contrast to Canada, the NL Government at this time did not have any special agencies to deal with Aboriginal affairs. It also had not developed a system of reserves or land claim treaties with the Inuit, Innu, Mi'kmaq, or Metis people. By contrast, the Indian Act made the federal government financially responsible for the delivery of health, education and other social services to much of the Aboriginal population throughout Canada.

Confederation with Canada in 1949 saw the Federal Government and the new province of Newfoundland and Labrador decide against extending the Indian Act to Newfoundland's Aboriginal population. It is interesting to note that the Terms of Union with Canada did not even mention Aboriginal peoples, despite recommendations from National Convention delegates that the Canadian Government accept full responsibility for the provision of social services to Newfoundland and Labrador's Aboriginal peoples, similar to other Aboriginal groups throughout Canada (Ibid).

Various explanations have been offered as to why the Indian Act was not extended to Newfoundland and Labrador in 1949. Federal and provincial politicians publicly expressed concerns that extending the *Indian Act* to Newfoundland would disenfranchise the province's Aboriginal population. It is interesting to note that prior to Confederation, Newfoundland and Labrador granted equal status to all its residents, including Aboriginals. Under the *Indian Act*, Aboriginal people in Newfoundland would lose their right to vote (Ibid). Some people today believe that the real reason the Indian Act was not extended to Newfoundland was purely financial. They speculate the high costs of providing services in Labrador may have proved unattractive to Ottawa, while the Newfoundland Government may have been concerned that the Aboriginals under federal care would receive a higher level of service than their non-Aboriginal neighbors, sparking tensions and conflict within the province.

When Newfoundland joined Confederation in 1949, the province continued to administer the Aboriginal peoples, with the federal government providing various grants to help pay

for services in Labrador. Under this arrangement, federal funding was available to all eligible Labrador communities not just the Aboriginal population.

Another significant development in 1969, that prompted the formation of Aboriginal political organizations across Canada to protect and promote Native concerns and cultural traditions, was the federal report, "*The Statement of the Government of Canada on Indian Policy*". This report suggested abolishing the Indian Act, which generated considerable protest from Aboriginal peoples, who felt their treaty and other rights were under attack. The report was withdrawn by the federal government in 1971.

After the 1969 report, various political organizations began to form to provide a unified voice for Aboriginal groups. Despite the fact that the federal government report and the Indian Act did not directly impact Aboriginal people in the province, the hype and publicity generated encouraged local Aboriginal people to form similar groups to better protect their rights and cultural traditions from outside forces. One of the first groups to form was the Labrador Inuit Association (LIA), which formed in Nain in 1973. The LIA expanded about 15 years later to include the Labrador Inuit Development Corporation. This corporation created jobs and focused on economic development for Inuit people. Various other health and social services (Labrador Inuit Alcohol and Drug Abuse Program, and the Labrador Inuit Health Commission) were provided by other groups.

3.1 Access and Allocation

The debate over the access and allocation policies of the Government of Canada is usually intense and has been the cause of conflict between users and regions (Dooley, 2004). These allocation decisions become even more critical and the debate more intense when there is little or no additional growth to allocate (Ibid). The federal Minister of Fisheries, at his absolute discretion, may issue or cancel fishing licences and thereby limit entry into fisheries and prescribe levels of effort (Ibid).

Access to and allocation of fish resources remains one of the most difficult and controversial aspects of fisheries management in Canada and abroad (Caddy, 1996).

A pivotal decision of the Federal Fisheries Minister in 2000 to allocate shrimp to PEI and Turbot to Nunavut brought the discussion on access and allocation to a head. The Minister at the time granted 60 percent of the Northern shrimp Area 3L shrimp allocation to PEI (Dooley, 2004). It is interesting to note that PEI is not contiguous, had no shrimp fleet and no history of fishing northern shrimp, yet received 30 percent of the Canadian allocation.

Also around this time, a new turbot fishery in NAFO Davis Strait (NAFO Area OA) was announced (Ibid). Nunavut, the only adjacent territory, received all the Canadian allocation of turbot in division OA. Fleets from Nova Scotia and Newfoundland, who fish immediately to the south in Area OB received no access to this resource.

It is possible that the decision to grant 100% of the Area OA turbot quota to Nunavut may have been related to their claims agreement or Aboriginal right, but no explanation was offered by the Government of Canada. There clearly was a lack of transparency associated with these allocations. The Independent Panel on Access Criteria (IPAC) noted:

“The Northern shrimp case provided the most striking example the Panel encountered of lack of transparency in implementing access criteria. This lack of transparency created a perception of access criteria being applied in a manner so inconsistent as to appear capricious” (IPAC, 2002:p. 25).

The aforementioned Panel was established by the Minister of Fisheries and Oceans on June 28, 2001 in response to a significant reaction and outcry from the Newfoundland Government, industry and general public to the Northern shrimp allocation to PEI. The Minister mandated the Panel to find a solution to the following problem.

The current criteria that govern decision-making when providing access to a new or additional entrants in a commercial fishery that has undergone substantial increase in resource abundance or landed value, or in a new or emerging fishery (Phase III Commercial Licences), remain poorly defined. Furthermore, the relative ranking or weight of each criterion in the decision-making process is largely unknown and the process of making these decisions is unclear (IPAC, 2002: p1).

The IPAC report suggested that special consideration be given to the issue of Aboriginal and Nunavut participation and access to the fishery. The Panel indicated that the issue of Aboriginal participation and access to the fishery required special consideration in the Panel's deliberations because of the constitutional position of Aboriginal peoples. It felt Nunavut required special consideration because of its newness as a participant in the fisheries management process.

The Panel referenced the historical under-representation of Aboriginal peoples as participants in the Atlantic fisheries and in many parts of the Atlantic economy.

“Mi’Kmaq, Maliseet and Passamaquoddy, Inuit and Metis leaders have worked tirelessly and diligently over the last two centuries to ensure that their way of life is respected and that they have the means to support individuals, families and communities. Regaining access to traditional activities such as fishing and hunting and ensuring that individuals and communities can participate in them as commercial activities has been an important objective of their development strategy. The department’s Aboriginal Fisheries Strategy (AFS) and the *Marshall* decision by the Supreme Court of Canada have assisted substantially in furthering these objectives” (IPAC, 2002: p 41).

The Panel also cited the importance of Section 35(1) of the *Constitution Act, 1982*...it recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples (Ibid, p. 4). It went on to stress the importance of the *Marshall* decision.

“The Marshall decision recognizes a constitutionally protected right to fish in pursuit of a moderate livelihood. This protection changes the nature of Aboriginal participation in the Atlantic fishery from that of individuals who enjoy a privilege like those of non-Aboriginal fishers, to communities who have a right to participate commercially and to earn a certain level of income from it” (Ibid, p 41).

The Panel noted in its deliberations that most Aboriginal fishing organizations wanted more access to the fishery stressing the importance of the fishery to economic development. Some Aboriginal organizations were deeply engaged in an expanding commercial fishery and were availing fully of new opportunities.

The Panel indicated that under AFS, certain steps have been taken to increase Aboriginal participation in the commercial fishery. They noted that after *Marshall*, some 200 inshore fishing licenses have been purchased and transferred to First Nations.

Though significant progress was achieved by Aboriginal groups during the 1990s, it is interesting to see that the Aboriginal groups who met with the Panel would like to see the

process (of accessing the fishery) speeded up. It notes the prospect of increased access to the commercial fishery has stimulated increased interest in Atlantic Aboriginal communities who see it as a way of reducing dependence on welfare and other government transfers (Ibid).

The Panel indicated that the Federal Government's policy is to continue to increase Aboriginal participation in the commercial fishery. Indeed in some cases, Aboriginals have been given preferential access when increased resources have become available. In order to avoid exacerbating the problem of overcapacity in the industry, the Government of Canada chose to purchase existing licences and transfer them Aboriginal communities rather than issue new ones (Ibid).

Most Aboriginal groups consulted by the Panel preferred to deal directly with DFO on matters related to access on a government-to-government basis as opposed to participating with non-Aboriginal parties in decision-making groups such as those formed under Integrated Fisheries Management Plans (IFMPS) (Ibid). The Panel understood the rationale for this approach but felt that when Aboriginal groups are well established in the commercial fishery, there would be advantages to them participating with all other parties in the access/allocation decision-making process. The Panel suggests this approach should be taken in the interests of an integrated approach to resource management, and in particular, conservation. The Panel also recommended that Aboriginal peoples be significantly and effectively represented in all decision-making processes related to access.

3.2 The Fisheries Act and AFS – Impact on NL Aboriginal Groups

Gibbins in his paper, “Assessing Newfoundland and Labrador’s Position on Canada’s Evolving Federalism Landscape” which was presented as part of the “Royal Commission on Renewing and Strengthening Our Place in Canada – Newfoundland and Labrador” suggests that Confederation with Canada has been good for Newfoundland and Labrador.

“From the perspective of an outside observer, Confederation has been an uncontested gain for the province and people of Newfoundland and Labrador. There is also no question in my mind that over the past 50 years the Canadian federal state has evolved in a manner that strengthens rather than weakens the province’s place in Canada” (Gibbins et al, 2003, p. 16).

Gibbins argues that the 1982 *Constitution Act*, including the Charter, has had an impact on federal values that will serve Newfoundland and Labrador well in the years to come (Ibid, pg. 10). “It promotes a pan-Canadian vision of rights that provides a potent weapon for relatively have-not provinces in the design of federal programs” (Ibid, p. 10).

He notes,

“in the final analysis the new constitutional framework captures the constitutional visions of Atlantic Canada (section 36), Aboriginal peoples (sections 25 & 35), francophones outside Quebec (sections 16 through 23), Western Canadians (the amending formula), multicultural communities (section 27), and English Canadians at large (the Charter in its entirety) far better than it captures the values and aspirations expressed across the nationalist spectrum in Quebec” (Ibid, p.10).

Gibbins indicates that the Constitution Act and the Charter will serve Newfoundland and Labrador well in the years to come. He notes that the “constitutional framework captures the constitutional visions of Aboriginal peoples through Sections 25 and 35 of the Constitution. The proposed Fisheries Act, however, is not law and the changes proposed to enhance access and allocation provisions may not have a significant impact on Aboriginal groups in the province. The lengthening of the allocation timeframe to 15

years is a positive step, but there doesn't appear there are many other initiatives in the proposed Act that will help Aboriginal people.

The Aboriginal Fisheries Strategy has been very proactive and focused on responding to the needs of Aboriginal people throughout the country. Section 3, *Aboriginal Fisheries Strategy (AFS) and Fishery Management*, spells out in greater detail the objectives and purpose of this strategy. DFO's willingness to continue to assess and revise the AFS (as was done in 2002) to include "longer-term, simpler AFS agreements, more streamlined reporting requirements, improved communications and a more flexible approach to capacity-building to more effectively participate over the long term in areas related to fisheries management" bodes well for Aboriginal groups in this province.

3.3 Haida Nation Case – Obligation for Government consultation

The decisions of the Supreme Court of Canada involving the Haida Nation and the Taku River Tlingit First Nation were released in November 2004 and represent two important cases which dealt with Aboriginal consultation and accommodation obligations related to resource development. Both decisions have provided greater clarity regarding the role and responsibilities of government, Aboriginal groups and industry in consultations with Aboriginal communities and accommodation of Aboriginal concerns (Lundell, 2005).

Both cases can be traced back to disputes between the Province of British Columbia and the Haida Nation and the Taku River Tlingit First Nation. In the first case involving the Haida Nation, the Haida challenged decisions by the Province of B.C. in the early 1990s to approve the transfer of a tree farm license from one forestry company to another. In the second case involving the Taku River Tlingit, they challenged the decision of the Province of B.C. in 1994 to grant a project approval certificate under the B.C.

Environmental Assessment Act to Redfern Resources for an access road to an old mine site (Ibid).

In both cases the First Nations asserted they had Aboriginal rights and title to the lands and resources affected by the government's decisions, but they had not proved these rights either by litigation or by treaties with government. Both the Haida and Taku took the position that these decisions would affect their Aboriginal rights and title and so the Province had to consult with them about those decisions. The Province of British

Columbia took an opposing position. It maintained it did not have to consult with either First Nation unless and until the First Nations prove the existence of their rights.

The B.C. Court of Appeal ruled in favour of the First Nations' arguments. They held that the Province should have consulted with the First Nations about the decisions, despite the fact that the First Nations had not legally proved the existence of their Aboriginal rights and title. The Court of Appeal went further in the Haida case, ruling that not only the Province, but the private company who held the tree farm license in question, Weyerhaeuser, shared the Province's duty to consult with the Haida Nation.

Both decisions were appealed and then heard by the Supreme Court of Canada. It represented the first time that the Supreme Court considered government's duty to consult when making land and resource use decisions that could affect Aboriginal rights and title (Ibid).

The Supreme Court of Canada ruled that in the Haida Nation case, "asserted Aboriginal rights can trigger government's obligation to consult".

"The Court said that the duty to consult arises when government knows about, or ought to know about, the potential existence of an Aboriginal right or title and contemplates a decision that might adversely affect it. It is not necessary for an Aboriginal group to prove the legal existence of its rights before the duty arises. The Court held that consultation obligations may be triggered by decisions ranging from the granting of tenures and project approvals to permitting and licensing decisions. The onus will be on governments to develop approaches to consultation that are proportionate to decisions being made and that do not impose unworkable burdens on government decision-makers, Aboriginal groups being consulted or oil and gas companies" (Ibid, p.1).

The Supreme Court ruled that governments will have to determine how much consultation is required on a case-by-case basis. The Court also indicated, in no uncertain terms, that the duty to consult rests solely with the Crown. They ruled the duty to consult is not shared by industry. The Court stated,

“The Crown alone remains legally responsible for the consequences of its actions and interactions with third parties that affect Aboriginal interests”, “the ultimate legal responsibility for consultation and accommodation rests with the Crown”, and cannot be delegated, and that third parties “cannot be held liable for failing to discharge the Crown’s duty to consult and accommodate” (Ibid).

It is interesting to note that while the Supreme Court confirmed that the duty to consult with Aboriginal groups rests solely with government, it stated it is open to governments to delegate “procedural aspects” of consultation to third parties. This seems to suggest that it may be possible for government to rely on industry consultations with Aboriginal communities to help determine whether any government obligations to consult and accommodate may be triggered.

Either way it appears that on a “go-forward” basis, Aboriginal groups will be consulted either by industry or government on important and relevant issues involving Aboriginals. The Supreme Court indicated that it will not hold government to a standard of perfection in judging the adequacy of consultation processes but the processes selected by government must be a reasonable means of considering Aboriginal rights in government decisions, and must represent a reasonable effort to consult and inform (Ibid).

4.0 – Analyses

In 1999, the Supreme Court of Canada ruled that the Aboriginals of Atlantic Canada had a treaty right to maintain a moderate livelihood through fishing (McGaw, 2003). In response to this decision, the Government of Canada implemented a plan to provide access to Aboriginals to the fisheries.

Aboriginal people in Canada had been extensively involved in fisheries for generations, but have experienced access challenges in recent years. This is primarily attributed to the country's system of limited entry in fisheries and the associated high costs of entry making access to the fishery difficult. There were many legal cases relating to Aboriginal fishing rights in the 1990s. The 1992 Supreme Court of Canada decision, known as the *Sparrow* decision, confirmed the right of a band in British Columbia to fish for food, social and ceremonial purposes. The 1999 Supreme Court decision known as the *Marshall* decision confirmed the treaty right of Mi'maq and Maliseets in Eastern Canada access to the fisheries for commercial purposes. The *Van Der Peet* decision specifically addressed the issue of whether the aboriginal fishing right includes the right to sell the fish for commercial purposes (Allain and Frechette, 1993).

4.1 Access/allocation under the Fisheries Act – Impact on Aboriginal groups

Regrettably, the references to new access and allocation provisions under the proposed *Fisheries Act* are short on specifics.

Notwithstanding that allocations (under the proposed *Fisheries Act*) for Aboriginals, and for other commercial and recreational groups, could be set for 15 years, it is difficult to see how

Aboriginals will be any worse off or better off should the new Act be implemented. The message that the new *Fisheries Act* will “enable

long-term access and allocation, increasing stability for fishers so they can better plan their operations” is sufficiently vague that it is hard to see how the proposed new legislation may provide any assistance to Newfoundland and Labrador Aboriginal groups and enhance their access to the fishery. The reality is that more Aboriginal groups are going to be seeking increased access and looking to expand their presence in the fishery. How the new *Fisheries Act* can help in a significant way to achieve this goal is, at this point in time, difficult to determine. Under the Act, the Minister will retain authority to rescind or replace any of these long-term allocations for cause.

Groups like the Innu, when faced with such uncertainties around improved access and allocation and an interest to extract more value and benefit from the industry, are choosing instead to explore partnership or alliances where their people can learn more

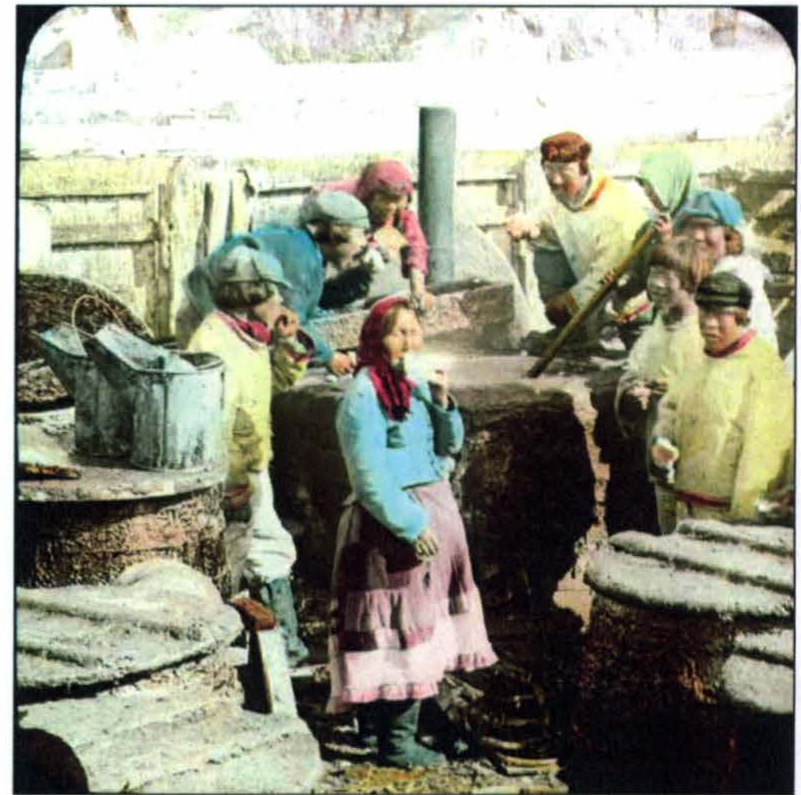


Figure 2 – Photographer unknown
Source: Maritime History Archive, MUN

Labrador Inuit – circa 1920s

about all aspects of offshore fishing. Despite the difficult times many others have experienced in the fishing industry, the Innu of Labrador are forging ahead and training their people to become active participants in a fishery they believe will continue to be a vital contributor to the province's economy (Pennell, 2009). In 2009, Ueueshuk Fisheries Limited, a company owned by the Innu Development Limited Partnership, bought *The Atlantic Optimist* to fish Greenland Halibut. Paul Rich, Chief Executive Officer of the Innu Economic Development Corporation described this activity as a unique business venture.

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INNU USING BOAT TO FISH TURBOT

From page 18

with the opportunity to experience this lifestyle and type of work, says Rich.

"It's a learning process for us but it's one of those times where we have to be involved in the business in order to generate revenue and enable our young people to be something other than hunters."

Ueueshuk Fisheries Limited has Greenland Halibut and Turbot quotas in the Davis Strait, as well as quotas for Atlantic Halibut in zone 3Ps off the south coast of Newfoundland. They hope to acquire more quotas and keep the vessel fishing year round. As time goes on, the Innu hope to get more and more of their people involved in the offshore commercial fishery. The long term goal, says Rich, is to have this vessel 100-percent operated by Innu people and to eventually expand their stake in the commercial fishery with the purchase of more vessels.



CHARTING THEIR OWN COURSE – From left, Deputy Grand Chief of the Innu Nation Peter Penashue, Grand Chief Mark Nui, Sheshatshiu Innu First Nation Chief Anastasia Qupee and Mushuau Innu First Nation member Prote Poker were on hand to welcome the *Atlantic Optimist* when it arrived in St. John's this fall. The vessel fishes for turbot in the Davis Strait and marks the Innu Nation's foray into the Atlantic fishery. Photo: Randy Dawe

Figure 3

As Rich notes, "It's important to be involved in what happens in your territory and to be involved in the business aspects for internal growth of the future of our nation" (Ibid, p. 18). The Innu are interested in learning more about the business aspect of the commercial fishery, but as well to learn the hands on trade associated with the fishery.

Though the vessel is captained and crewed by people from Newfoundland and Labrador and Nova Scotia, each trip sees about four or five Innu working on the vessel with a longer term goal to train the Innu in working on offshore vessels.

The Innu have a long and rich history as hunters, but they have not generally experienced life far out at sea or seen extended absences from land. The purchase of *The Atlantic Optimist* has enabled the Innu to experience the lifestyle and work of an offshore fish harvester. As Rich indicates, "It's a learning process for us but it's one of those times where we have to be involved in the business in order to generate revenue and enable our young people to be something other than hunters" (Ibid, p.20). Ueueshuk Fisheries Limited has quotas for Greenland Halibut and Turbot in the Davis Strait, and quotas for Atlantic Halibut in zone 3Ps off the south coast of Newfoundland. Their goal is to acquire more quotas and keep the vessel fishing year round. Rich indicates their long term goal is to have this vessel 100-percent operated by Innu people and to expand their stake in the commercial fishery by purchasing more vessels.

Coombs, in his report on "Innu Capacity Building in the Atlantic Fishery" acknowledges the role that recent court decisions have had to increase Aboriginal participation in the fishery. He points to policy statements from the Federal Government to increase Aboriginal participation in the fishery precipitated largely from the *Sparrow* and *Marshall* decisions of the Supreme Court of Canada. He notes that these landmark decisions are forcing change in the existing fishery management regimes. The release of the *Report of the Independent Panel on Access Criteria* on April 5, 2002, further

reinforced DFO commitments to increasing Aboriginal participation in the Atlantic fishery (Coombs, 2002).

4.2 Aboriginal and Treaty Rights

The rights of Canada's Aboriginal people are generally divided into two categories:

Aboriginal rights and treaty rights (Reiter, 2002).

Aboriginal rights are derived from the practices of indigenous peoples before the European occupation, while treaty rights are formally agreed to by the Crown and Canada's indigenous peoples (Ibid). It is also important to distinguish between Aboriginal rights and Aboriginal title. Both are communal (an individual cannot hold Aboriginal title) and Aboriginal title is site, fact and group specific (INAC Backgrounder 2010A). Aboriginal title, however, can be distinguished from other Aboriginal rights in that:

“Aboriginal rights refer to practices, traditions and customs that distinguish the unique culture of each First Nation and were practiced prior to European contact. The rights of certain peoples to hunt, trap and fish on ancestral lands are examples of Aboriginal rights.” (Ibid, p.1).

“Aboriginal title, as currently defined by the courts, is a right in the land itself – not just the right to hunt, fish and gather from it.” (pg. 1, Ibid, IANC Backgrounder). (Ibid, p.1).

Aboriginal and treaty rights are established in the Canadian system of law through Section 35 (in conjunction with Section 52) of the *Constitution Act*, 1982. At this time the Canadian Constitution was amended to recognize and affirm already existing Aboriginal rights, but the Constitution did not define them or indicate where they may exist. After 1982, the question of Aboriginal title began to receive judicial definition. Since these rights (Aboriginal and treaty rights) are recognized and affirmed in the Constitution, these rights are entrenched and are therefore protected against future

erosion by federal and provincial legislation. Apart from consent, only constitutional amendment can extinguish aboriginal or treaty rights. Section 35 of the *Constitution Act* outlines this:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

35.(2) In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada

35.(3) For greater certainty subsection (1) "treaty rights" includes rights that now exist by way of land claim agreements or may be so acquired.

35.(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons (Reiter, p. 1194).

When referring to the type of Aboriginal rights, many scholars start with the proposition that Aboriginal rights include all rights that Aboriginal people exercised before European contact, including: Aboriginal self-government; customary Aboriginal law; Aboriginal land rights; and land-based rights, such as hunting, fishing, and trapping.

Prior to the enactment of Section 35(1) of *the Constitution Act, 1982*, federal legislation could extinguish Aboriginal rights. It is important to note that no right or obligation is absolute. The rights guaranteed in the Charter are also not absolute in as much as they are limited by the balancing of various and sometimes competing interests. Aboriginal and treaty rights must also consider the balancing of competing interests. The *Sparrow* case referred to the necessity of balancing interests...

"Those regulations which do not infringe the Aboriginal food fishery, in the same sense of reducing the available catch below that required for reasonable food and societal needs, will not be affected by the constitutional recognition of the right.

Regulations which do not bear upon the exercise of the right may nevertheless be valid, but only if they can be reasonably justified as being necessary for the proper management and conservation of the resource or in the public interest. These purposes are not limited to the Indian food fishery” (Reiter, p. 1194).

A brief look at the direction taken by the Supreme Court of Canada over the last decade in resolving disputes over aboriginal and treaty rights may be helpful in better understanding Aboriginal and treaty rights. The Court concluded:

1) Aboriginal and treaty rights are not absolute; they must be understood in an historical, policy and legal context. *Sparrow* provided a three-fold test for the recognition and exercise of an Aboriginal right:

- a) The right must be proven to exist; there is no revival of an extinguished right;
- b) Prima facie interference must be established; and
- c) As no right is absolute, the Crown must satisfy the test for justification of the infringement.

2) The test for defining an Aboriginal right turns on establishing that the right in question was integral to a distinctive culture before European contact. This test sets a very high standard of proof since the exercise on the right must define the culture of the aboriginal people in question. The high onus set by this test severely restricts the number of commercial Aboriginal rights.

3) The case *Delgamuukw*, via *Adams*, asserts that Aboriginal rights exist on a spectrum from land-based rights to less tangible rights such as cultural practices and languages. The Supreme Court modified the test for Aboriginal title to require the evidence of exclusive occupation at the time the Crown asserted sovereignty. *Delgamuukw* attempts to balance Aboriginal title and consequent jurisdiction with the interests of non-Aboriginals. Constitutionally recognized Aboriginal rights are not absolute and may be infringed by the federal (as in *Sparrow*) and provincial (as in *Cote*) governments if the infringement is justified (for example, for the settlement of foreign populations or economic development).

4) The *Marshall* decision has created a means of dealing with treaty and Aboriginal rights that extend beyond mere sustenance-based rights because they have an intrinsic commercial component involving trade for cash. This case has set the stage for implementing a constitutional right of First Nations to participate in the economic development of Canada by balancing the interests of First Nations and other Canadians.

5) Treaty rights are relatively certain, whereas Aboriginal rights are inherently uncertain. *Sparrow*, *Delgamuukw* and subsequent Aboriginal rights cases focus on the tests for the recognition and exercise of Aboriginal rights. *Marshall* and

other treaty cases concentrate on how to interpret antiquated treaty provisions in a contemporary manner.

6) There are only two means of achieving certainty as to aboriginal and treaty rights: litigation and negotiation. In *Delgamuukw*, the Supreme Court concluded that because of their complexity aboriginal rights should be negotiated by the interested parties, First Nation and the provincial and federal governments. In the absence of a treaty addressing aboriginal title and providing certainty concerning Indian rights respecting traditional lands, case law has held that the Crown has underlying ownership of and jurisdiction over those lands (Reiter, pgs. 1222-1223).

4.3 Overview of Court Decisions

- Review of *Sparrow* decision

The explanation for this court action involved Ronald Edward Sparrow, a member of British Columbia's Musqueam band. Mr. Sparrow was charged with fishing with a net longer than that allowed by his subsistence fishing license, which was a violation of the Fisheries Act (Ibid).

Mr. Sparrow did not challenge the facts of the case but argued in court that he was merely exercising an existing aboriginal fishing right. He felt he was exercising a constitutional right protected under Section 35(1) of the supreme law of the country. His defense was unsuccessful as Sparrow was convicted at trial. The three judges ruled that that an aboriginal right could not be claimed unless that right had been ratified by a treaty or other official document. That decision was upheld by the County Court.

The Sparrow case proceeded to the British Columbia Court of Appeal which upheld the argument that Sparrow was exercising an aboriginal right, a right which Sparrow's ancestors held from time immemorial. The B.C. Court of Appeal recognized that the Federal Government/Parliament has the legislative authority to regulate the fishery to ensure the principle of conservation and sound management of the fishing resource. The Court of Appeal accepted that aboriginal people's right to fish could be regulated and also emphasized that any regulation imposed must be reasonable. The Court referenced Section 35 of the *Constitution Act, 1982* which stated that aboriginal people's right to fish for purposes of subsistence should from that point on have priority over the interests of

other fishers. The B.C. Court of Appeal quashed the Sparrow conviction ruling that his conviction was based on an error in law (Ibid).

Without fully exonerating Sparrow, the Supreme Court of Canada ruled in a similar manner as the B.C. Court of Appeal. The Supreme Court agreed that Sparrow had an existing aboriginal right but noted that certain constitutional issues should be referred back to the court of first instance (Ibid). It also established criteria that the trial-level judge should consider and suggested that federal government should open negotiations with Aboriginal people.

Several general principles arose from the Sparrow Supreme Court decision. The Court determined that Section 35 of the *Constitution Act, 1982* applies only to rights that existed at the time this provision came into force. The Court specified that the way in which the right was regulated up to that time does not dictate the extent of the right. The Court noted that the term “existing aboriginal rights” must be interpreted flexibly in order to allow these rights to evolve over time and it categorically rejected the “frozen rights” argument. The Court emphasized that Section 35 must be given a generous and liberal interpretation (Ibid).

Three main issues were raised in the *Sparrow* decision:

- 1) Is there an aboriginal or treaty fishing right?
- 2) If so, does the regulation or legislation concerned infringe on this right?
- 3) If there is an infringement of the right, is the infringement justified? (ibid)

In *Sparrow*, the Supreme Court noted that the burden to prove the existence of and infringement on the aboriginal right to fish was on the aboriginal people. The Crown had to prove justification or demonstrate DFO's legislative objective of adopting restrictive or limiting measures that were valid and justifiable.

Arriving at their decision on *Sparrow*, it is interesting to note that the Supreme Court considered the federal government's fiduciary duty to the aboriginal people and felt it was necessary to limit their legislative authority in response. They also decided that the final decision would depend completely on the findings of fact in each case and that individual cases should be considered on their own merit.

The Supreme Court, in the *Sparrow* decision, refused to consider the existence of an aboriginal right to fish for commercial purposes, reasoning that this issue or question had not been debated in earlier matters in the lower courts. The Supreme Court limited itself to addressing and analyzing aboriginal people's constitutional right to fish for food, social and ceremonial purposes. The Court did not rule out the possibility of the aboriginal people's subsequently claiming a commercial fishing right. Indeed the Court suggested that a claim of a commercial fishing right would be a contentious issue in the future. The comments of the Chief Justice in *Sparrow* highlight this point:

"It was contended before this Court that the Aboriginal right extends to commercial fishing. While no commercial fishery existed prior to the arrival of European settlers, it is contended that the Musqueam practice of bartering in early society may be revived as a modern right to fish for commercial purposes. The presence of numerous interveners representing commercial fishing interests, and the suggestion on the facts that the net length restriction is at least in part related to the probable commercial use of fish caught under the Musqueam food fishing licence, indicate the possibility of conflict between aboriginal fishing and the

competitive commercial fishery with respect to economically valuable fish such as salmon. We recognize the existence of this conflict and the probability of its intensification as fish availability drops, demand rises and tension increases” (Alain and Frechette, p.5).

Though the *Sparrow* case involved an Aboriginal person connected to the Musqueam Band, in another province in Canada, namely British Columbia, there is a connection to Newfoundland and Labrador. The court’s ruling reinforced the message that an aboriginal right to fish could not be claimed unless that right had been ratified by a treaty or other official document. The key message in *Sparrow* that has implications for Newfoundland and Labrador is that while the BC Court of Appeal acknowledged that *Sparrow* was exercising an Aboriginal right, they “recognized the Federal Government/Parliament has the legislative authority to regulate the fishery to ensure the principle of conservation and sound management of the fishery resource” (Ibid). Another key development in the *Sparrow* case that has implications for Newfoundland and Labrador Aboriginal people and other Aboriginal across the country is the suggestion from the Supreme Court that the federal government should open negotiations with Aboriginal people.

Review of *Van der Peet* decision

In late June 1993, the B.C. Court of Appeal made eight decisions relating to a review of the extent of rights protected by Section 35 of the Constitution Act, 1982. Aboriginals were seeking various remedies relating to formal recognition of their right to self-determination, right of ownership of and jurisdiction over the territories, and fishing and hunting rights. The *Van Der Peet* decision (and others including Gladstone and Smokehouse) specifically addressed the issue of whether the aboriginal fishing right includes the right to sell the fish for commercial purposes. In *Van Der Peet* (and Gladstone and Smokehouse) a majority of justices rejected the argument put forth by the Aboriginal people, and rejected the argument for the existence of constitutional protection of an Aboriginal right to fish for commercial purposes.

In *Van Der Peet*, the Judge considered that a custom does not become an aboriginal right unless it was, and still is, an integral part of Aboriginal distinct culture. Judge Macfarlane suggested that in order to claim a right now, an Aboriginal person is not required to prove he/she has exercised the right since time immemorial, but for a very long time. The Judge noted that a modernized form of an ancient custom would be protected and emphasized that a custom that was not formerly an integral part of an Aboriginal people's culture but that has developed from contact with Europeans, does not constitute a constitutionally protected aboriginal right.

In *Van Der Peet*, the Judge found that fishing had been an integral part of the Aboriginal people's distinct culture. He also concluded that conservation is also a part of Aboriginal

traditions and prevents aboriginal people from overusing the fisheries. The Judge referenced the Aboriginal practice of sharing the resource during times of surplus which is not to be construed as commercial use and he determined that the sale of fish to Europeans cannot be construed as the natural development of an aboriginal right. He felt that the nature of fish selling changed greatly after the Europeans arrived and the commercialization of the fisheries is not an aboriginal custom and further noted that Aboriginals can now participate in the commercial fishery but are then subject to the same regulations as other fishing groups (Ibid, p. 6).

A dissenting opinion by Justice Lambert provided a different perspective on *Van Der Peet*. He noted that Aboriginal rights are constantly evolving and were not frozen prior to the arrival of the Europeans. He provided a picture of Aboriginals exchanging fish for other food as the forerunner of commercial activity and trade introduced by the Europeans. Lambert felt therefore that the Aboriginal right to participate in the commercial fishery exists and was incorporated into common law. He noted that the regulations banning the sale of fish associated with a subsistence fishing licence do not impede the exercise of this Aboriginal right. Judge Lambert indicated that Aboriginal people interested in participating directly in the fisheries have a right to earn a modest living from this participation.

Lambert raised a key point relating to the importance of negotiation and consultation with users of the fish resource to determine resource allocation, particularly as it relates to the Fraser River. Specifically he notes:

“ The needs of conservation in the Fraser River fishery are very difficult to assess and administer. There are many Indian bands with Aboriginal fishing rights over sections of the river and over the estuary and perhaps over the returning fish. There are the needs of the commercial fishery which, subject to the true moderate livelihood needs of the aboriginal people on the river, must be protected through conversation of the whole Fraser River fishery. A complex process of negotiation, concession, sharing, administration and enforcement is required. In my opinion the administration of the fishery on the River must in the end be controlled by one single authority. That single authority would follow full procedures for consultation with all those interests affected by its decisions. I understand that steps have now been taken to consult with the aboriginal peoples who have fishing rights in the Fraser River system and to put in place an allocation system which reflects those rights and the rights of others. Perhaps further steps will be required” (Ibid, pgs. 6-7).

It is interesting to note that it was only the dissenting opinions in the B.C. Court of Appeal cases that favoured the kind of negotiations that resulted in the Department of Fisheries and Oceans developing the Aboriginal Fisheries Strategy. The role and history of the federal Department of Fisheries and Oceans is important to consider particularly in light of the development of the AFS.

It is generally agreed that Canada's fisheries never received the federal government's attention compared to the focus on the petroleum and other sectors that was required for the country's postwar development (Wright, 2001). The federal Department of Fisheries, which existed since 1868, underwent a transformation around the time Newfoundland and Labrador joined Confederation. Since its creation the federal Department of Fisheries was a relatively small operation whose primary mandate was enforcing fisheries regulations regarding length of seasons, type of gear used, and pollution control. When Newfoundland became a part of Canada in 1949, the federal Department of Fisheries underwent a bureaucratic “modernization” to reflect the Department's new role in encouraging industrial development in the fishery.

The federal minister at the time confided that Newfoundland's joining Canada and the responsibilities it brought, hastened the bureaucratic expansion and reorganization of the fisheries department. The key change was the centralization of functions and services in Ottawa. Prior to 1949 the Department was organized in geographical divisions, with local offices overseeing the Atlantic, Pacific and Inland districts. After Newfoundland and Labrador's merger with Canada, the geographical organization of the Department changed to "functional" divisions based in Ottawa. Local offices were retained to assist in the administering of programs and regulations.

This new structure came with new responsibilities for the Department including: technological development, economic and market analysis, conservation, and education and consumer information. A major priority was industrial development with many of the country's fisheries becoming more oriented towards helping Canada's fisheries becoming more competitive and efficient.

As Newfoundland quietly became a province of Canada on midnight, March 31, 1949, the Terms of Union dictated that the responsibility for Newfoundland's sea fisheries moved from St. John's to Ottawa. The British North America Act specified that the federal government had jurisdiction for regulating and conserving Canada's sea fisheries. As Canada did not claim public ownership of the fishing resource like it did with minerals, the province's retained control over processing and labour in the fishery (Wright, 2001).

The specific issue addressed by the *Van Der Peet* decision involved the issue of whether or not the Aboriginal right includes the right to sell the fish for commercial purposes. As was noted earlier in this paper, the Judge found that fishing was an integral part of the aboriginal people's distinct culture and conservation is also a part of aboriginal traditions and prevents aboriginal people from overusing the fisheries. Coombs in his report on the Innu of Labrador confirms this respect for conservation and the importance of fishery to the Innu way of life. He quotes Henrikson,

“The Innu traditional way of life is difficult for urban societies to comprehend. To the Innu all things are connected. Collective and individual harmony is linked spiritually to the land and respect for natural resources. Animals belong to animal kingdoms, which have an animal master. The animal masters and all the animals are to be respected, with the Innu hunter requiring the animal master's permission to seek daily subsistence” (Coombs, p. 7).

He goes on to note that very few non-Aboriginal resource users display this deep respect for land, plants, animals and fish. The Atlantic Canadian fisheries of the 1980s and 1990s, he noted, were characterized by: resource collapses, circumvention of conservation objectives and the economic force of discounting. Faced with this reality, it is understandable why aboriginal groups, who have conservation awareness embedded in their customs and lifestyle, are reluctant to participate in management processes where this resource imperative is espoused, but eventually ignored (Coombs, 2002). Aboriginal groups tend to see the intrinsic and long-term value of renewable resources first and experience conservation as a cultural artifact developed through the eons in a struggle for survival (Ibid). The *Van der Peet* decision in British Columbia did reinforce the message to the Aboriginal peoples in Labrador that their long association in the fishery and their commitment to conservation of this resource should be recognized.

Review of *Marshall* decision

The *Marshall* decision is generally considered one of the most significant Aboriginal rights court challenges in the history of the Maritime provinces (Coates, 2000). Like many Aboriginal cases, this case started in a very quiet manner. Donald Marshall Jr., a Mi'kmaq from Membertou Band, Cape Breton Island, and son of a grand chief of the Mi'kmaq people, was charged by DFO fishery officers in August 1993. He was fishing for eels in Pomquet Harbour and his catch was seized. Marshall was convinced that he had a right to fish and after consulting the Chief of his reserve, who advised him to keep fishing, DFO again prevented him from fishing. Marshall persisted and returned fishing. Marshall's catch, worth about \$790 was seized and DFO officers charged him with fishing without a licence and selling eels without a licence and fishing during a closed season (Ibid).

Marshall, with the support of a dozen Mi'kmaq chiefs and the Union of Nova Scotia Indians and the Confederacy of Mainland Mi'kmaq and his attorney, Bruce Wildsmith, a Dalhousie University Law Professor, fought the charges. The case quickly became the main legal fight for Aboriginal fishing rights.

The First Nations in the Maritimes, considered the charges an affront to their Aboriginal right to harvest food, and a breach of the Mi'kmaq treaty right to sell their catch. (Coates, 2000). First Nations secured state recognition of their "Aboriginal right" to harvest resources for subsistence purposes, through several court challenges in the 1970s and 1980s but the progress made was limited. First Nations could not legally sell their

harvests for commercial benefit, and government officials went to considerable pains to limit fishing and hunting to legitimate subsistence activities (Ibid). The basis for the Mi'kmaq court challenge was essentially a treaty argument, it was based on treaties signed with Britain in 1760 and 1761, which held that these eighteenth-century agreements guaranteed Mi'kmaq the right to fish for commercial purposes and to benefit substantially from their resource activities (Ibid).

Marshall was unsuccessful in the first phase of his legal battle. In June 1996, Judge John Embree ruled that the aforementioned treaties were valid but the eighteenth-century instruments of commercial rights, (truck houses and Indian trading agents) no longer existed, thereby eliminating the Mi'kmaq right to sell fish (Ibid). The reaction from the Aboriginal community was loud and swift, and the decision was appealed. The case was appealed to the Nova Scotia Court of Appeal in early February 1977. Marshall's lawyer continued to stress the importance of the original treaties as a basis to extend commercial fishing rights to Aboriginals, despite the fact that this right had been essentially ignored for two centuries (Ibid). His lawyer argued that these treaties are as relevant today as they were almost two hundred and fifty years ago, they just have to be considered in a modern context. The Nova Scotia Court of Appeal did not agree and refused to overturn Marshall's conviction. They ruled that the truck houses and such did not constitute that the Mi'kmaq had an open-ended guarantee they would have special and protected access to resources in perpetuity.

With this second blow, the only recourse was an appeal to the Supreme Court of Canada. The appeal was granted in October 1997 and arguments began in November 1998. This time there were other parties interested in the outcome of this case. The Government of New Brunswick worried about the expansive interpretation to other industries and activities intervened in the case as did various industry associations who were worried about the potential impact of extending Aboriginal treaty rights to the fishery.

This time, Marshall's lawyer took a somewhat more conciliatory and softer tone arguing that the Native's right to fish and to sell their catch was a clear treaty right...the government could regulate the fishery, but only after justifying the regulations (Coates, 2000).

The Supreme Court was tasked with reviewing the legal and constitutional status of the Marshall case and determining if the Mi'kmaq had an existing treaty right to harvest eels for commercial purposes. Their decision would also extend to other species and fisheries and to other natural resources such as timber and minerals.

The Supreme Court of Canada decision released on September 17, 1999 went further than even Marshall and the Mi'kmaq had anticipated. Marshall was acquitted by a vote of 5 to 2, and the Supreme Court ruled that the eighteenth-century treaties between the British and the First Nations covered the commercial use of resources. They ruled the right to use the resource was not unlimited and indicated that First Nations people could earn a "moderate income" (the level of this income was not defined) but were required to

operate within the framework of the federal government's rules. The Supreme Court believed that the right to fish extended beyond to other ocean resources and hunting. The Court also believed that maintaining the integrity of the treaty was of paramount importance in ensuring that Canada honoured its legal obligations to First Nations (Ibid).

As was noted earlier, the Marshall decision, at its outset, quickly became the main legal fight for Aboriginal fishing rights. While it is clear that this decision applies specifically to the Mi'kmaq in Nova Scotia, there was nevertheless, a moral victory for Aboriginal groups in Newfoundland and Labrador. The importance of maintaining the integrity of treaty rights and the message from the Courts that Canada should honour its legal obligations to First Nations was not lost on Aboriginal peoples in Newfoundland and Labrador. The Supreme Court reference that the right to fish to extended beyond to other ocean resources and hunting caused by many Aboriginal groups in Newfoundland and Labrador to question the extent of their own treaty rights. The *Marshall* case was instrumental and a key motivating factor in other Aboriginal groups in the province challenging and questioning their own Aboriginal and treaty rights.

5.0 – Conclusions

As previously noted, the proposed Federal Fisheries Act (Bill C-32) has been put on hold by the Federal Government. Though the Federal Government may re-introduce the Fisheries Act for consideration by Parliament at some time in the future, there appears to be no clear indication if and when this may happen. Another issue which also is unclear is the extent to which the provisions of Bill C-32 will enhance the opportunity for, or ability of, Aboriginal groups in Newfoundland and Labrador to enhance their access to the fish resources off our shores.

Some people believe the Federal Government has not been overly accommodating to various Aboriginal groups in the province as it relates to access to adjacent resources. Aboriginal groups in the province have generally not been guaranteed access to adjacent resources in areas such as NAFO Divisions 2GHJ. The Innu of Labrador have received inequitable treatment due to the Federal Government's resource allocation policies and priorities, which have favoured non-adjacent groups. The Labrador Inuit Land Claims Agreement, however, does contain constitutionally protected obligations to improve or enhance access to the fishery resource by Aboriginal people off Newfoundland and Labrador. One thing is certain and that is that Aboriginal groups in the province must remain vocal and resolute in making their case to DFO for improved access in the same manner they did with the Federal Government to encourage them to include Aboriginal people in the Constitution.

The proposed Fisheries Act, if enacted, will set allocations for commercial, recreational and Aboriginal fleets and groups for up to 15 years. The Minister, however, will retain the authority to rescind, change or replace an allocation, to meet conservation needs, for example.

Various court decisions (like *Sparrow* and *Marshall*), among others have played a significant role in advancing access and allocation opportunities for many Aboriginal groups. The Aboriginal Fisheries Strategy which was created in 1992 in response to these court decisions and in response to the escalating conflict with Aboriginal people over the management and regulation of the Aboriginal fishery. A significant aspect of the AFS is the Allocation Transfer Policy (ATP) which facilitates the voluntary retirement of commercial licenses and the re-issuance of licenses to eligible Aboriginal groups. The AFS represents probably the greatest asset Aboriginal groups have to enhance their access to the fishery. It is important to note that access to the ATP is restricted to Aboriginal organizations which are not beneficiaries of completed land agreements and who are in compliance with conservation and management measures contained in fisheries agreements.

It should be of some comfort to Aboriginal groups that IPAC in their recommendations acknowledged the recognition of Aboriginal and treaty rights as an overriding principle for access. The three overriding principles for access outlined by IPAC (in order of priority) are: 1) Conservation, 2) Recognition of Aboriginal and Treaty Rights, and 3) Equity. The fact remains that the current system of resource allocation does not work

very effectively. Most resource allocation decisions appear to be based on subjective criteria rather than analytical frameworks (Parsons, 1993). The IPAC noted in their report the “current definition of access criteria is open to wide and divergent interpretation” and “the process of decision making regarding access has often been characterized by a lack of transparency, consistency and perceived fairness (IPAC, 2002, p. 65).

Since IPAC has not really addressed the main problems or issues related to access and allocation and the proposed *Fisheries Act* does not really provide Aboriginal groups with any superior or better access than other groups, Aboriginal groups in the province should continue to lobby and advocate to DFO on the merits of obtaining better access. In the face of the uncertainty of obtaining improved access under the proposed *Fisheries Act*, the actions of the Innu prosecuting an offshore fishery (with the *Atlantic Optimist*) is an approach other Aboriginal groups may wish to emulate.

Another Aboriginal group which has demonstrated some success securing permanent access to resources in adjacent waters is the Inuit of Labrador. They have permanent offshore shrimp licenses and access to crab in NAFO region 2GH.

6.0 – References

Aboriginal Fishing in Atlantic Canada. <http://www.civilization.ca/cmc/education/teacher-reources/oracles-archaeology/dkeenlysi...>

Allain, Jane, and Frechette, Jean-Denis (1993). The Aboriginal Fisheries and The Sparrow Decision. Background Paper – Library of Parliament, Minister of Supply and Services Canada 1994

Borrows, John . Uncertain Citizens: Aboriginal Peoples and The Supreme Court. The Canadian Bar Review, pgs. 15-41, Vol. 80.

Caddy, J.F. (1996). An Objective Approach to the Negotiation of Allocation from Shared Living Resources. (pgs. 145-155) Marine Policy, Vol.20, No. 2

Coates, Ken. (2000) The Marshall Decision and Native Rights. McGill-Queen's University Press. Montreal & Kingston. London. Ithaca.

Coombs, Robert G. (2002). Innu Capacity Building in the Atlantic Canadian Fishery: Community Revitalization Through Renewable Resource Development. Masters of Maritime Studies, Major Report, October 2002

DFO – Communications Branch (2007). An Integrated Aboriginal Policy Framework

DFO Backgrounder 2006A. Modernizing the Fisheries Act. <http://www.dfo-mpo.gc.ca/media/back-fiche/2006/hq-ac469-eng.htm>

DFO Backgrounder 2007A. Benefits to Canadians of the Modernized Fisheries Act. <http://www.dfo-mpo.gc.ca/media/back-fiche/2007/hq-ac59-eng.htm> [November, 2007]

DFO Backgrounder 2007B. New Fisheries Act. <http://www.dfo-mpo.gc.ca/media/back-fiche/2007/hq-ac59a-eng.htm> [November, 2007]

DFO Backgrounder 2007C. Facts about C-45. http://www.dfo-mpo.gc.ca/media/back-fiche/2007/facts-faits_c45-eng.htm [July, 2007]

DFO Backgrounder 2007D. New Fisheries Act Tabled in Parliament. <http://www.dfo-mpo.gc.ca/media/back-fiche/2007/hq-ac59-eng.htm> [November, 2007]

DFO Backgrounder 2007E. Before and After: What Do the Fisheries Act Changes Mean? <http://www.dfo-mpo.gc.ca/media/back-fiche/2007/hq-ac59c-eng.htm> [November, 2007]

DFO Backgrounder 2008A. Aboriginal Fisheries. <http://www.dfo-mpo.gc.ca/fm-gp/aboriginal-autochtones/index-eng.htm> [July 2008]

DFO Backgrounder 2008B. Land Claims. <http://www.ainc-inac.gc.ca/al/lcd/index-eng.asp> [November 2008]

DFO Backgrounder 2009. Aboriginal Fisheries Strategy. <http://www.dfo-mpo.gc.ca/fm-gp/aboriginal-autochtones/marshall/afs-srapa-eng.htm> [October 2009]

DFO Backgrounder 2010A. Aboriginal Fisheries Strategy. <http://www.glf.dfo-mpo.gc.ca/e0004687> [October, 2010]

DFO Backgrounder 2010B. What DFO Does – Aboriginal Fisheries Division. <http://www.glf.dfo-mpo.gc.ca/e0004686> [October, 2010]

DFO Backgrounder 2010C. Acts, Agreements and Land Claims. <http://www.ainc-inac.gc.ca/al/index-eng.asp> [May 2010]

DFO Backgrounder 2010D. Backgrounder – Aboriginal Title in Canada's Courts. <http://www.ainc-inac.gc.ca/ai/mr/is/tcc-eng.asp> [November 2010]

DFO Backgrounder 2010E. First Nations. <http://www.ainc-inac.gc.ca/ap/fn/index-eng.asp> [February 2010]

DFO Backgrounder 2010F. Aboriginal Peoples and Communities. <http://www.ainc-inac.gc.ca/ap/fn/index-eng.asp> [May 2010]

DFO Backgrounder 2010G. Northern Shrimp – Shrimp Fishing Areas (SFAs) 0-7 and the Flemish Cap. <http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/ifmp-gmp/shrimp-crevette/shrimp-crevett...> [May 2010]

Dooley, Thomas (2004). A New Approach to Access and Allocation. Masters of Maritime Studies, Major Report, May 2004

Drover, J.F.E. (2007). Folklore and Worldview: Assisting the Courts in Understanding the Perspective of the Aboriginal People

Gibbons, R (2003) et al. Royal Commission on Renewing and Strengthening Our Place in Canada – Collected Research Papers of the Royal Commission on Renewing and Strengthening our Place in Canada. Research Volume 1-2. (2003). Office of the Queen's Printer, St. John's Newfoundland and Labrador, June 2003

Gibbons, Roy (2002). Aboriginal Participation in Commercial Fisheries of The Canadian North: The Inuit Experience. Masters of Maritime Studies, Major Report, July, 2002

Gough, Joseph (2006). Managing Canada's Fisheries: from early days to the year 2000. McGill-Queen's University Press

Higgins, Jenny (2008). Inuit Organizations and Land Claims. http://www.heritage.nl.ca/aboriginal/inuit_claims.html

INAC Backgrounder 2010A – Aboriginal Title in Canada's Courts. Retrieved from the www.ainc-inac.gc.ca/ai/mr/is/tcc-eng.asp

IPAC - Independent Panel on Access Criteria, (2002). Independent Panel on Access Criteria, for the Atlantic Coast Commercial Fishery, March 2002
Labrador Inuit Land Claims Agreement – Chapter 13: Fisheries

James Bay and Northern Quebec Agreement. Retrieved from [www.http://en.wikipedia.org/wiki?James_Bay_and_Northern_Quebec_Agreement](http://en.wikipedia.org/wiki?James_Bay_and_Northern_Quebec_Agreement)

Lundell, Lawson, LLP (2005). The Haida Nation and Taku River Tlingit Decisions: Clarifying Roles and Responsibilities for Aboriginal Consultation and Accommodation. http://www.hg.org/articles/article_527.html

McGaw, Richard (2003). Aboriginal Fisheries Policy in Atlantic Canada. Marine Policy 27 (2003) pgs.417-424

Parsons, L.S., (1993). Management of the Marine Fisheries in Canada: Canadian Bulletin of Fisheries and Aquatic Science Number 225, 763 p.

Pennell, Josh, (2009). Optimistic Approach – Innu Nation Stakes Ground in Atlantic Fishery (pgs 18-20) The Mariner News, Vol. 1, Issue 4, December 2009

Reiter, Robert A. (2002). Aboriginal and Treaty Rights: A Survey of Case Law and Future Directions in Law and Policies. Aboriginal and Treaty Rights (2000), Vol. 48, No 4, pgs. 1193-1231

Ricketts, Bruce (1998-2011), The Vikings in North America. Retrieved from the www.mysteriesofcanada.com/Newfoundland/vikings.htm

School of Fisheries, Marine Institute (1993). The Fishery of Newfoundland and Labrador – Module 1 – Overview of the Fishery – History [October, 1993]

Wilkins, Kerry (2004). Advancing Aboriginal Claims. Visions / Strategies / Directions. Purich Publishing Ltd. Saskatoon, Saskatchewan, Canada

Wright, Miriam (2001). A Fishery for Modern Times: The State and the Industrialization of the Newfoundland Fishery, 1934-1968, Oxford University Press

Appendix 1 – Glossary of Terms – Aboriginal Peoples and Communities

Terminology

The following terminology is intended to provide a general understanding of some terms generally used by Indian and Northern Affairs Canada (INAC). The list focuses on some of the important aspects of the relationship between INAC and the people it serves — First Nations, Inuit and Northerners.

These terms are listed in [Words First: An Evolving Terminology Relating to Aboriginal Peoples in Canada](#) , compiled by the Department's Communications Resources Directorate.

Aboriginal peoples: The descendants of the original inhabitants of North America. The Canadian Constitution recognizes three groups of Aboriginal people — Indians, Métis and Inuit. These are three separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.

Aboriginal rights: Rights that some Aboriginal peoples of Canada hold as a result of their ancestors' long-standing use and occupancy of the land. The rights of certain Aboriginal peoples to hunt, trap and fish on ancestral lands are examples of Aboriginal rights. Aboriginal rights vary from group to group depending on the customs, practices and traditions that have formed part of their distinctive cultures.

Aboriginal self-government: Governments designed, established and administered by Aboriginal peoples under the Canadian Constitution through a process of negotiation with Canada and, where applicable, the provincial government.

Aboriginal title: A legal term that recognizes an Aboriginal interest in the land. It is based on the long-standing use and occupancy of the land by today's Aboriginal peoples as the descendants of the original inhabitants of Canada.

band: A body of Indians for whose collective use and benefit lands have been set apart or money is held by the Crown, or declared to be a band for the purposes of the Indian Act. Each band has its own governing band council, usually consisting of one chief and several councillors. Community members choose the chief and councillors by election, or sometimes through custom. The members of a band generally share common values, traditions and practices rooted in their ancestral heritage. Today, many bands prefer to be known as First Nations.

Bill C-31: The pre-legislation name of the 1985 Act to Amend the Indian Act. This act eliminated certain discriminatory provisions of the Indian Act, including the section that resulted in Indian women losing their Indian status when they married non-Status men. Bill C-31 enabled people affected by the discriminatory provisions of the old Indian Act to apply to have their Indian status and membership restored.

custom: A traditional Aboriginal practice. For example, First Nations peoples sometimes marry or adopt children according to custom, rather than under Canadian family law. Band councils chosen "by custom" are elected or selected by traditional means, rather than by the election rules contained in the Indian Act.

First Nation: A term that came into common usage in the 1970s to replace the word "Indian," which some people found offensive. Although the term First Nation is widely

used, no legal definition of it exists. Among its uses, the term "First Nations peoples" refers to the Indian peoples in Canada, both Status and non-Status. Some Indian peoples have also adopted the term "First Nation" to replace the word "band" in the name of their community.

Indian: Indian people are one of three cultural groups, along with Inuit and Métis, recognized as Aboriginal people under section 35 of the *Constitution Act*. There are legal reasons for the continued use of the term "Indian." Such terminology is recognized in the *Indian Act* and is used by the Government of Canada when making reference to this particular group of Aboriginal people.

To change the name of Indian and Northern Affairs Canada a rigorous process would have to be undertaken, involving changing the legal term used in the *Indian Act* and *Constitution Act* to describe First Nation people in Canada. As long as the term "Indian" remains in these two acts, it will continue to be used when referring to Indian people in a legal context. However, Indian and Northern Affairs Canada uses the term First Nation in most instances.

Status Indian: A person who is registered as an Indian under the Indian Act. The act sets out the requirements for determining who is an Indian for the purposes of the Indian Act.

non-Status Indian: An Indian person who is not registered as an Indian under the Indian Act.

Treaty Indian: A Status Indian who belongs to a First Nation that signed a treaty with the Crown.

Indian Act: Canadian federal legislation, first passed in 1876, and amended several times since.

It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources. Among its many provisions, the Indian Act currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian lands and to approve or disallow First Nations by-laws. In 2001, the national initiative Communities First: First Nations Governance was launched, to consult with First Nations peoples and leadership on the issues of governance under the Indian Act. The process will likely take two to three years before any new law is put in place.

Indian status: An individual's legal status as an Indian, as defined by the Indian Act.

Innu: Naskapi and Montagnais First Nations (Indian) peoples who live in Northern Quebec and Labrador.

Inuvialuit: Inuit who live in the Western Arctic.

Inuit: An Aboriginal people in Northern Canada, who live in Nunavut, Northwest Territories, Northern Quebec and Northern Labrador. The word means "people" in the Inuit language — Inuktitut. The singular of Inuit is Inuk.

land claims: In 1973, the federal government recognized two broad classes of claims — comprehensive and specific. Comprehensive claims are based on the assessment that there may be continuing Aboriginal rights to lands and natural resources. These kinds of

claims come up in those parts of Canada where Aboriginal title has not previously been dealt with by treaty and other legal means. The claims are called "comprehensive" because of their wide scope. They include such things as land title, fishing and trapping rights and financial compensation. Specific claims deal with specific grievances that First Nations may have regarding the fulfillment of treaties. Specific claims also cover grievances relating to the administration of First Nations lands and assets under the Indian Act.

Métis: People of mixed First Nation and European ancestry who identify themselves as Métis, as distinct from First Nations people, Inuit or non-Aboriginal people. The Métis have a unique culture that draws on their diverse ancestral origins, such as Scottish, French, Ojibway and Cree.

the North: Land in Canada located north of the 60th parallel. INAC's responsibilities for land and resources in the Canadian North relate only to Nunavut, Northwest Territories and Yukon.

Nunavut: The territory created in the Canadian North on April 1, 1999 when the former Northwest Territories was divided in two. Nunavut means "our land" in Inuktitut. Inuit, whose ancestors inhabited these lands for thousands of years, make up 85 percent of the population of Nunavut. The territory has its own public government.

off-reserve: A term used to describe people, services or objects that are not part of a reserve, but relate to First Nations.

oral history: Evidence taken from the spoken words of people who have knowledge of past events and traditions. This oral history is often recorded on tape and then put in writing. It is used in history books and to document claims.

reserve: Tract of land, the legal title to which is held by the Crown, set apart for the use and benefit of an Indian band.

surrender: A formal agreement by which a band consents to give up part or all of its rights and interests in a reserve. Reserve lands can be surrendered for sale or for lease, on certain conditions.

tribal council: A regional group of First Nations members that delivers common services to a group of First Nations.

This general information is provided as a brief overview only. The provisions of the Indian Act, its regulations, other federal statutes and their interpretation by the courts take precedence over the content of this information sheet

Appendix 2 – Profile of Access to Northern Shrimp (1996-2010)

PROFILE OF ACCESS TO NORTHERN SHRIMP 1996-2010 (tonnes)

| SFA | Fleet/Interest | 1996 | 1997 | 1998 | 1999 | 2000-2001 | 2002 ³ | 2003 | 2004-2005 ⁴ | 2006-2007 ⁵ | 2008 | 2009 ⁸ | 2010 |
|--------------|--|--------------|---------------|---------------|---------------|---------------|-------------------|---------------|------------------------|------------------------|---------------|-------------------|---------------|
| 0 | Offshore | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 |
| 1 | Offshore | 8,500 | 8,500 | 7,650 | 9,350 | 9,350 | 12,040 | 12,980 | 14,246 | 14,246 | 14,246 | 14,246 | 14,246 |
| | Nunavut | | | | | | | 1,000 | 3,722 | 3,722 | 3,722 | 3,722 | 3,722 |
| | Makivik | | | | | | | 187 | 449 | 449 | 449 | 449 | 449 |
| Total | | 8,500 | 8,500 | 7,650 | 9,350 | 9,350 | 12,040 | 14,167 | 18,417 | 18,417 | 18,417 | 15,583 | 15,583 |
| 2 | Offshore | 3,500 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 | 5,250 |
| | Offshore Licence Holders (Expl. <i>P. borealis</i> E of 63°W) | | | | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 |
| | Nunavut (N of 63N and E of 63W) | | | | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 | 1,750 |
| | Nunavut (Exploratory <i>P. montagui</i> inside NSA) | | | | | | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 |
| Total | | 3,500 | 5,250 | 5,250 | 8,750 | 8,750 | 10,750 | 10,750 | 10,750 | 10,750 | 10,750 | 10,750 | 10,750 |
| w3 | Offshore Licence Holders (<i>Pandalus montagui</i> in SFAs 2/3/4 West of 63W) | 1,200 | 1,200 | 1,200 | 1,200 | 1,200 | 1,200 | 3,300 | 3,300 | 3,300 | 3,300 | 3,300 | 3,300 |
| | Nunavut (Exploratory <i>P. montagui</i> inside the NSA) | | | | | | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| | <i>Pandalus borealis</i> (bycatch) ⁶ | | | | | | | | | 400 | 400 | 400 | 400 |
| Total | | 1,200 | 1,200 | 1,200 | 1,200 | 1,200 | 2,200 | 4,300 | 4,300 | 4,700 | 4,700 | 4,700 | 4,700 |
| 4 | Offshore | 5,200 | 5,200 | 8,008 | 8,008 | 8,008 | 8,008 | 8,008 | 8,008 | 8,008 | 8,908 | 8,908 | 8,908 |
| | Inshore | | | 312 | 312 | 312 | 312 | 437 | 437 | 437 | 537 | 537 | 537 |
| | Innu | | | | | | | 750 | 750 | 750 | 750 | 750 | 750 |
| | Offshore competitive ⁷ | | | | | | | 1,125 | 1,125 | 1,125 | 1,125 | 1,125 | 1,125 |
| Total | | 5,200 | 5,200 | 8,320 | 8,320 | 8,320 | 8,320 | 10,320 | 10,320 | 10,320 | 11,320 | 11,320 | 11,320 |
| 5 | Offshore | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 | 7,650 |
| | Northern Coalition | | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 | 6,120 |
| | Innu | | 510 | 510 | 510 | 510 | 510 | 510 | 510 | 510 | 510 | 510 | 510 |
| | LIA | | 510 | 510 | 510 | 510 | 510 | 1,260 | 1,260 | 1,260 | 1,260 | 1,260 | 1,260 |
| | Cartwright | | 510 | 510 | 510 | 510 | 510 | 710 | 710 | 710 | 710 | 710 | 710 |
| | LMN | | | | | | | 750 | 750 | 750 | 750 | 750 | 750 |
| | Inshore Aff. Cod/Crab Fishers (Cartwright to L'anse au Claire) | | | | | | | 3,400 | 3,400 | 3,400 | 3,400 | 3,400 | 3,400 |
| | Inshore Aff. Cod/Crab Fishers (Northern Peninsula) | | | | | | | 400 | 400 | 400 | 400 | 400 | 400 |
| | Offshore competitive ⁷ | | | | | | | 2,500 | 2,500 | 2,500 | 2,500 | 2,500 | 2,500 |
| Total | | 7,650 | 15,300 | 15,300 | 15,300 | 15,300 | 15,300 | 23,300 | 23,300 | 23,300 | 23,300 | 23,300 | 23,300 |
| 6 | Offshore | 11,050 | 11,050 | 13,360 | 14,603 | 14,603 | 14,603 | 15,833 | 15,833 | 15,833 | 16,612 | 16,612 | 14,603 |
| | SABRI | | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 |
| | Innu | | | | | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 |
| | Fogo Island Co-op | | | | | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| | Inshore | | 9,050 | 29,840 | 41,029 | 41,529 | 41,529 | 52,599 | 52,599 | 52,599 | 59,613 | 59,613 | 41,529 |

| | | | | | | | | | | | | | |
|----------------|--|---------------------------|---------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | Inshore aff. Cod fishers (N Pensisula North 50-30) | | | | | | | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 0 |
| | Inshore affected Cod fishers (LNS North 50-30) | | | | | | | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 0 |
| Total | | 11,050 | 23,100 | 46,200 | 58,632 | 61,632 | 61,632 | 77,932 | 77,932 | 77,932 | 85,725 | 85,725 | 61,632 |
| 7 | NAFO Reg Area ¹ | | | | | 1,000 | 1,000 | 2,167 | 2,167 | 2,167 | 4,176 | 5,010 | 5,010 |
| | Offshore | | | | | 1,000 | 1,000 | 2,017 | 2,017 | 3,778 | 4,365 | 5,344 | 5,344 |
| | PEI Consortium | | | | | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 | 1,500 |
| | Inshore | | | | | 2,500 | 2,500 | 6,566 | 6,566 | 12,297 | 14,209 | 17,396 | 17,396 |
| | Miawpukek FN | | | | | | | 750 | 750 | 750 | 750 | 750 | 750 |
| Total | | | | | | 5,000 | 5,000 | 10,833 | 10,833 | 18,325 | 20,824 | 24,990 | 24,990 |
| Overall | | 37,600² | 59,050 | 84,420 | 102,052 | 110,052 | 115,742 | 152,102 | 156,352 | 164,244 | 175,536 | 176,868 | 152,775 |

¹ - NRA allocation is not included in total TAC

² - 1996 TACs represent "threshold levels" above which "temporary" access is provided

³ - 2002 increase because NAFO quota in 2001 was not taken. NAFO quota was increased from 65,000 to 85,000 in 2001 and Canada takes 17% of the offshore portion (5/6).

⁴ - In SFA 3, a catch limit of 3,800 t was in place from 2000 to 2002 pending further scientific assessment of the resource in this area. The official quota was set at 1,200 t.

⁴ - For SFAs 2 to 6 the season is Apr.1/2004 to Mar.31/2005 - For SFAs 1 and 7 the season is Jan 1, 2004/ Dec. 31/2004

⁵ - Includes 7,492t increase in 3L.

⁶ - The quota of 400t is for bycatch only in the *P. montagui* fishery.

⁷ - Prior to 2007, this was a Scientific quota

⁸ - In SFA 1, individual quotas remain the same with the caveat that once TAC reached, fishery is closed.

Appendix 3 - Species Quota Reports (2010) - Shrimp and Crab


 Fisheries and Oceans
Canada

 Pêches et Océans
Canada

Canada

[Home](#) > [Newfoundland and Labrador](#) > [NL Region Statistical Reports](#) > [Species Quota Reports](#)

Species Quota Report

Newfoundland and Labrador Region Preliminary Data - Subject to revision

 Quota Management Cycle beginning in Year:
(2010)

Run Date: Feb 09, 2011

 Species: (702) Shrimp, Pandalus Borealis
(Numbers may not add due to rounding)

Last Data Update: Feb 08, 2011 22:15

Landings as of : February 07, 2011

| NAFO | Licence Category | Quota Definition | Quota (M.T.) | Catch (M.T.) | % Taken | Remaining (M.T.) | Closed |
|-----------------|------------------|--|--------------|--------------|--------------|------------------|--------------|
| 0A | | Area 0 - Davis Strait >100' | 500 | 0 | 0 | 500 | DEC 31, 2010 |
| | | Area 1 - Davis Strait >100' | 18417 | 2542 | 14 | 15875 | DEC 31, 2010 |
| Total 0A | | | 18917 | 2542 | 13 | 16375 | |
| 0B | | Area 2 - (West of 63°00'W) >100' | 5250 | 3255 | 62 | 1995 | |
| | | Area 2 - (East of 63°00'W) >100' | 1750 | 453 | 26 | 1297 | |
| Total 0B | | | 7000 | 3708 | 53 | 3292 | |
| 2G | | Area 4 - Competitive Quota NAFO 2G | 1125 | 661 | 59 | 464 | |
| | | Area 4 - Innu | 750 | 0 | 0 | 750 | |
| | | Area 4 - Offshore >100' NAFO 2G | 8908 | 6651 | 75 | 2257 | |
| | | Area 4 - NAFO 2G <65' | 537 | 0 | 0 | 537 | |
| Total 2G | | | 11320 | 7312 | 65 | 4008 | |
| 2H | | Area 5 - Hopedale and Cartwright Channels >100' | 13770 | 10368 | 75 | 3402 | |
| | | Area 5 - Competitive/NSRF | 2500 | 817 | 33 | 1683 | |
| | | Area 5 - Innu | 510 | 0 | 0 | 510 | |
| | | Area 5 - Labrador Metis Nation | 750 | 0 | 0 | 750 | |
| | | Area 5 - NG Fishers <65' | 1260 | 380 | 30 | 880 | |
| | | Area 5 - Cartwright Fishers <65' | 710 | 0 | 0 | 710 | |
| | | Area 5 - Inshore Fishers - Labrador | 3400 | 0 | 0 | 3400 | |
| | | Area 5 - Inshore Fishers - Northern Peninsula | 400 | 0 | 0 | 400 | |
| Total 2H | | | 23300 | 11565 | 50 | 11735 | |
| 2J | | Area 6 (2J3K) - Hawke Channel, NAFO 3K >100' | 14603 | 12575 | 86 | 2028 | |
| | | Area 6 (2J3K) - Innu | 1500 | 0 | 0 | 1500 | |
| | | Area 6 (2J3K) - Offshore Special Allocation | 4000 | 0 | 0 | 4000 | |
| | | Area 6 (2J3K) - 2J Fishers | 5221 | 5126 | 98 | 95 | OCT 29, 2010 |
| | | Area 6 (2J3K) - 4R Fishers | 10650 | 10563 | 99 | 87 | |
| | | Area 6 (2J3K) - 4S Fishers | 1019 | 864 | 85 | 155 | |
| | | Total 2J | | | 36993 | 29128 | 79 |
| 3K | | Area 6 (2J3K) - 3K Fishers North of 50'30 | 4211 | 3350 | 80 | 861 | |
| | | Area 6 (2J3K) - 3K Fishers South of 50'30 | 12858 | 13442 | 105 | -584 | OCT 21, 2010 |
| | | Area 6 (2J3K) - 3L Fishers | 7570 | 7746 | 102 | -176 | OCT 29, 2010 |
| Total 3K | | | 24639 | 24537 | 100 | 102 | |
| 3L | | Area 7 - Offshore > 100' and Special Allocations | 5344 | 3033 | 57 | 2311 | DEC 31, 2010 |
| | | Area 7 - 2J Fishers | 739 | 139 | 19 | 600 | DEC 31, 2010 |
| | | Area 7 - 3K Fishers North of 50'30 | 739 | 7 | 1 | 732 | DEC 31, 2010 |
| | | Area 7 - 3K Fishers South of 50'30 | 4562 | 454 | 10 | 4108 | DEC 31, 2010 |
| | | Area 7 - 3L Fishers | 11353 | 7352 | 65 | 4001 | DEC 31, 2010 |
| Total 3L | | | 22737 | 10986 | 48 | 11751 | |
| 3M | | Area 7 - Flemish Cap > 100' | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total 3M | | | 0 | 0 | 0 | 0 | |
| 3Ps | | Area 7 - 3PS Fishers | 0 | 0 | 0 | 0 | DEC 31, 2010 |

| | | | | | | |
|--|--|---------------|--------------|-----------|--------------|--------------|
| Total 3Ps | | 0 | 0 | 0 | 0 | |
| 4R | 4R3Pn - Esquiman Channel - Quebec North Shore | 709 | 379 | 53 | 330 | |
| | 4R3Pn - Esquiman Channel - W Nfld | 5266 | 5188 | 99 | 78 | |
| | 4R3Pn - Permanent Allocation - Quebec North Shore | 69 | 0 | 0 | 69 | |
| | 4R3Pn -Permanent Allocation - W Nfld | 962 | 880 | 91 | 82 | |
| | 4R3Pn - Esquiman Channel - NB and Quebec ITQ | 2076 | 550 | 26 | 1526 | |
| | 4R3Pn - Esquiman Channel - Nova Scotia and PEI | 226 | 78 | 35 | 148 | DEC 31, 2010 |
| | 4R3Pn - Esquiman Channel - Temporary Alloc Grp B | 259 | 0 | 0 | 259 | DEC 31, 2010 |
| Total 4R | | 9567 | 7075 | 74 | 2492 | |
| 4S | 4S - Sept Iles - Vessels <100' | 13864 | 157 | 1 | 13707 | DEC 31, 2010 |
| | 4S - Sept Iles - Groundfish ITQ (Temporary Allocation) | 1728 | 0 | 0 | 1728 | DEC 31, 2010 |
| | 4S - Sept Iles - PEI/NS | 378 | 62 | 16 | 316 | DEC 31, 2010 |
| | 4S - Anticosti - Vessels <100' | 9082 | 0 | 0 | 9082 | DEC 31, 2010 |
| | 4S - Anticosti - Groundfish ITQ (Temporary Allocation) | 1132 | 40 | 4 | 1092 | DEC 31, 2010 |
| | 4S - Anticosti - PEI/NS | 247 | 152 | 61 | 95 | DEC 31, 2010 |
| Total 4S | | 26431 | 411 | 2 | 26020 | |
| Total Shrimp, Pandalus Borealis | | 180904 | 97266 | 54 | 83638 | |

1. Landings, catch and quota data may not always match one another for any number of reasons including (but not limited to): quota management cycles differing from calendar year cycle, hall information being used to report quotas prior to landings, different document sources not yet reconciled with one another and delays in receiving documents from industry.

2. This report reflects only NL region landings against Regional and / or Canadian-wide quotas. To view catch information in other regions, please see Canadian Atlantic Quota Report at Fisheries and Oceans National Statistics Website, http://www.dfo-mpo.gc.ca/communic/statistics/main_e.htm

3. Additional information may be used by Fishery Managers to open and/or close fisheries under quota.

4. Due to Enterprise Combining, landings are allocated to the combined enterprise, which may result in the appearance of over/ under utilization of a quota.

Date Modified: 2011-02-09

Species Quota Report
Newfoundland and Labrador Region
Preliminary Data - Subject to revision

Quota Management Cycle beginning in Year: (2010)

Species: (705) Crab, Queen/Snow

(Numbers may not add due to rounding)

Run Date: Mar 17, 2011

Last Data Update: Mar 16, 2011 23:14

Landings as of : March 15, 2011

| NAFO | Licence Category | Quota Definition | Quota (M.T.) | Catch (M.T.) | % Taken | Remaining (M.T.) | Closed |
|-----------------------|------------------|--|--------------|--------------|------------|------------------|--------------|
| 2H | C-Communal | South of 55' 50 | 100 | 70 | 70 | 30 | DEC 31, 2010 |
| | | North of 55'50"N - Exploratory (2GHJX) | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total Communal | | | 100 | 70 | 70 | 30 | |
| Total 2H | | | 100 | 70 | 70 | 30 | |
| 2J | C-Communal | North of 54'40"N (2GHJ) | 362 | 348 | 96 | 14 | AUG 30, 2010 |
| | | Total Communal | 362 | 348 | 96 | 14 | |
| | F-Full-Time | South of 53'30"N (2JS) | 240 | 262 | 109 | -22 | JUL 24, 2010 |
| | | Total Full-Time | 240 | 262 | 109 | -22 | |
| | S-Supplementary | South of 54'40" N (2J) | 1200 | 1137 | 95 | 63 | JUL 24, 2010 |
| | | Total Supplementary | 1200 | 1137 | 95 | 63 | |
| | I-Inshore | South of 54'40"N (2J) | 325 | 314 | 97 | 11 | JUL 24, 2010 |
| | | Total Inshore | 325 | 314 | 97 | 11 | |
| | | 2J - Scientific Survey | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total | | | 0 | 0 | 0 | 0 | |
| Total 2J | | | 2127 | 2061 | 97 | 66 | |
| 3K | F-Full-Time | Nearshore 3K (4) | 2570 | 2694 | 105 | -124 | JUL 10, 2010 |
| | | Total Full-Time | 2570 | 2694 | 105 | -124 | |
| | S-Supplementary | Nearshore 3K (4) | 8430 | 6889 | 82 | 1541 | JUL 10, 2010 |
| | | Total Supplementary | 8430 | 6889 | 82 | 1541 | |
| | I-Inshore | Canada Bay (3A) | 425 | 349 | 82 | 76 | AUG 06, 2010 |
| | | White Bay (3B) | 520 | 304 | 58 | 216 | JUL 14, 2010 |
| | | Green Bay (3C) | 700 | 650 | 93 | 50 | JUL 14, 2010 |
| | | Fogo/Twilligate (3D) | 1500 | 1297 | 86 | 203 | JUL 14, 2010 |
| | | Inshore 3K (3BC) | 250 | 207 | 83 | 43 | JUL 14, 2010 |
| | | Nearshore 3K (35' - 44') (4) | 45 | 34 | 76 | 11 | JUL 10, 2010 |
| | | Total Inshore | 3440 | 2842 | 83 | 598 | |
| | | 3K - Scientific Survey | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total | | | 0 | 0 | 0 | 0 | |
| Total 3K | | | 14440 | 12424 | 86 | 2016 | |
| 3L | F-Full-Time | Midshore (MS) | 741 | 762 | 103 | -21 | AUG 15, 2010 |
| | | Midshore Extended (MSX) | 1618 | 1746 | 108 | -128 | AUG 15, 2010 |
| | | Outside 170 and Inside 200NM (3LX) | 1170 | 1320 | 113 | -150 | AUG 15, 2010 |
| | | Outside 200NM (3L200) | 667 | 721 | 108 | -54 | AUG 15, 2010 |

| | | | | | | | |
|-----------------------------------|--------------------------------------|---|--------------|--------------|------------|-------------|--------------|
| Total Full-Time | | | 4196 | 4550 | 108 | -354 | |
| SL-Supplementary Large | Midshore (MS) | | 692 | 605 | 87 | 87 | AUG 15, 2010 |
| | Midshore Extended (MSX) | | 1670 | 1589 | 95 | 81 | AUG 15, 2010 |
| | Outside 170 and Inside 200NM (3LX) | | 1652 | 1496 | 91 | 156 | AUG 15, 2010 |
| | Outside 200 NM (3L200) | | 1390 | 1222 | 88 | 168 | AUG 15, 2010 |
| Total Supplementary Large | | | 5404 | 4911 | 91 | 493 | |
| SS-Supplementary Small | Nearshore (NS) | | 5690 | 5813 | 102 | -123 | AUG 15, 2010 |
| | Midshore (MS) | | 3450 | 3338 | 97 | 112 | AUG 15, 2010 |
| | Southern Avalon Outside of 50NM (8B) | | 650 | 790 | 122 | -140 | AUG 15, 2010 |
| | 8Bx portion of 8B (8BX) | | 228 | 223 | 98 | 5 | AUG 15, 2010 |
| | 8Bx North/ South (8BXN/8BXS) | | 2547 | 2207 | 87 | 340 | AUG 15, 2010 |
| Total Supplementary Small | | | 12565 | 12371 | 98 | 194 | |
| I-Inshore | Bonavista Bay (5A Inner) | | 1012 | 1008 | 100 | 4 | AUG 15, 2010 |
| | Bonavista Bay (5A Outer) | | 625 | 616 | 99 | 9 | AUG 15, 2010 |
| | Trinity Bay (6A Inner) | | 577 | 566 | 98 | 11 | AUG 15, 2010 |
| | Trinity Bay (6A Outer) | | 653 | 605 | 93 | 48 | AUG 15, 2010 |
| | Conception Bay (6B Inner) | | 610 | 614 | 101 | -4 | AUG 15, 2010 |
| | Conception Bay (6B Outer) | | 710 | 709 | 100 | 1 | AUG 15, 2010 |
| | Eastern Avalon inside 25 Miles (6C) | | 1576 | 1500 | 95 | 76 | AUG 15, 2010 |
| | Southern Shore Inside 25 Miles (8A) | | 1060 | 1057 | 100 | 3 | AUG 15, 2010 |
| | St. Mary's Bay (9A Inner) | | 287 | 280 | 97 | 7 | AUG 15, 2010 |
| | St. Mary's Bay (9A Outer) | | 339 | 329 | 97 | 10 | AUG 15, 2010 |
| Total Inshore | | | 7449 | 7284 | 98 | 165 | |
| | 3L - Scientific Survey | | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total | | | 0 | 0 | 0 | 0 | |
| Total 3L | | | 29614 | 29116 | 98 | 498 | |
| 3N | F-Full-Time | Outside 200NM (3N200) | 640 | 617 | 96 | 23 | AUG 15, 2010 |
| Total Full-Time | | | 640 | 617 | 96 | 23 | |
| SL-Supplementary Large | | Outside 200NM (3N200) | 1310 | 962 | 73 | 348 | AUG 15, 2010 |
| Total Supplementary Large | | | 1310 | 962 | 73 | 348 | |
| M-Explor. > 65 Feet | | 3NO Fixed Gear >65' (3NO) | 720 | 725 | 101 | -5 | AUG 15, 2010 |
| Total Explor. > 65 Feet | | | 720 | 725 | 101 | -5 | |
| Total 3N | | | 2670 | 2304 | 86 | 366 | |
| 3Ps | S-Supplementary | CFA 10 Between 46'30"N to 45'35"N (10BCD) | 3300 | 3171 | 96 | 129 | JUL 14, 2010 |
| | | CFA 10 South of 45'35"N (10X) | 590 | 437 | 74 | 153 | JUL 14, 2010 |
| | | CFA 11 South of 46'30" N (11S) | 230 | 105 | 46 | 125 | JUL 14, 2010 |
| Total Supplementary | | | 4120 | 3713 | 90 | 407 | |
| I-Inshore | | CFA 10 North of 46'30"N (10A) | 560 | 467 | 83 | 93 | JUL 14, 2010 |
| | | CFA 10 North of 46'30"N Outside 12 miles (10A) | 1340 | 1408 | 105 | -68 | JUL 14, 2010 |
| | | CFA 11 East of Western Head < 35' (11E) | 0 | 248 | 0 | -248 | JUL 08, 2010 |
| | | CFA 11 South of 46'30"N > 35' (11S) | 55 | 44 | 79 | 11 | JUL 14, 2010 |
| | | CFA 11 S. of 46'30N / W. of 56'30W >35 Exp (11SX) | 130 | 117 | 90 | 13 | JUL 14, 2010 |
| | | CFA 11 West of Western Head Hare Bay (11W) | 0 | 37 | 0 | -37 | JUL 08, 2010 |
| Total Inshore | | | 2085 | 2321 | 111 | -236 | |
| | | 3PS - Scientific Survey | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total | | | 0 | 0 | 0 | 0 | |

| | | | | | | | |
|-------------------------------|-----------|--|--------------|--------------|-----------|-------------|--------------|
| Total 3Ps | | | 6205 | 6034 | 97 | 171 | |
| 3Pn | I-Inshore | LaPoile Bay (12A) | 8 | 1 | 13 | 7 | JUN 30, 2010 |
| Total Inshore | | | 8 | 1 | 13 | 7 | |
| Total 3Pn | | | 8 | 1 | 13 | 7 | |
| 4R | I-Inshore | Cape Ray to Johnsons Cove (12B) | 18 | 0 | 0 | 18 | JUN 30, 2010 |
| | | Johnson Cove to Cape St. George (12C) | 143 | 41 | 29 | 102 | JUN 30, 2010 |
| | | Cape St. George to Bear Head (12D) | 76 | 6 | 8 | 70 | JUN 30, 2010 |
| | | Bear Head to Cape St. Gregory (12E) | 56 | 13 | 24 | 43 | JUN 30, 2010 |
| | | Inside Bay of islands (12F) | 54 | 30 | 55 | 24 | JUN 13, 2010 |
| | | Cape St. Gregory to Broom Point (12G) MORATORIUM | 0 | 0 | 0 | 0 | JAN 01, 2010 |
| | | Broom Point to Table Point (12H) | 56 | 11 | 19 | 45 | JUN 30, 2010 |
| Total Inshore | | | 403 | 102 | 25 | 301 | |
| | | South of Table Point, Outside 8 Mile (Z12) | 418 | 33 | 8 | 385 | JUN 30, 2010 |
| | | Bay St. George (BSG) | 15 | 11 | 71 | 4 | JUN 30, 2010 |
| | | Bay of Islands (BOI) | 64 | 42 | 66 | 22 | JUN 13, 2010 |
| | | Area 13 (Z13) | 23 | 23 | 101 | 0 | DEC 31, 2010 |
| | | Area 13 Crab Fishers - Quebec (Z13) | 0 | 6 | 0 | -6 | DEC 31, 2010 |
| | | Area 12 Scientific Survey (Z12) | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| | | Area 13 Scientific Survey (Z13) | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total | | | 520 | 115 | 22 | 405 | |
| Total 4R | | | 923 | 217 | 24 | 706 | |
| 4S | | Area 14 Crab Fishers - Quebec (Z14) | 0 | 0 | 0 | 0 | DEC 31, 2010 |
| Total 4S | | | 0 | 0 | 0 | 0 | |
| Total Crab, Queen/Snow | | | 56087 | 52229 | 93 | 3858 | |

1. Landings, catch and quota data may not always match one another for any number of reasons including (but not limited to): quota management cycles differing from calendar year cycle, hail information being used to report quotas prior to landings, different document sources not yet reconciled with one another and delays in receiving documents from industry.

2. This report reflects only NL region landings against Regional and / or Canadian-wide quotas. To view catch information in other regions, please see Canadian Atlantic Quota Report at Fisheries and Oceans National Statistics Website, http://www.dfo-mpo.gc.ca/communic/statistics/main_e.htm

3. Additional information may be used by Fishery Managers to open and/or close fisheries under quota.

4. Due to Enterprise Combining, landings are allocated to the combined enterprise, which may result in the appearance of over/ under utilization of a quota.




Appendix 4 – Map – Labrador Inuit Land Claims Agreement

Labrador Inuit Land Claims Agreement

Schedule 12-E Areas outside the Labrador Inuit Settlement Area where Inuit rights under sections 12.13.10 and 12.13.13 apply.

This is not an authoritative map of the areas outside the Labrador Inuit Settlement Area where Inuit rights under sections 12.13.10 and 12.13.13 apply and has been prepared for illustrative purposes only. The authoritative maps of the areas outside the Labrador Inuit Settlement Area where Inuit rights under sections 12.13.10 and 12.13.13 apply are contained in the Map Atlas.

legend

-  areas outside the Labrador Inuit Settlement Area where Inuit rights under sections 12.13.10 and 12.13.13 apply.
-  Labrador Inuit settlement Area (land and Waters)
-  Labrador Inuit Settlement Area (Zone)



0 25 50
kilometres
scale
1 : 1,675,000

