

Independent Panel on Access Criteria

For the Atlantic Coast Commercial Fishery



Report of the Independent Panel on Access Criteria

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1 Introduction

The Independent Panel on Access Criteria (IPAC) was established by the Minister of Fisheries and Oceans on June 28, 2001, within the context of the Atlantic Fisheries Policy Review (AFPR). IPAC was established to accelerate a portion of the review process originally planned for Phase II of the AFPR.

The Minister gave IPAC the mandate of recommending a solution to the following problem:

The current criteria that govern decision-making when providing access to 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 for making these decisions is unclear.

The AFPR discussion document, *The Management of Fisheries on Canada's Atlantic Coast*, defines access as follows:

the opportunity to harvest or use the fisheries resource, generally permitted by licences or leases issued by DFO [Department of Fisheries and Oceans] under the authority of the Minister of Fisheries and Oceans. Opportunities are affected by the requirement of DFO to take into account Aboriginal and treaty rights to fish when providing those opportunities.

It distinguishes between *access* and *allocation*, defined as:

the amount or share of the fisheries resource or allowable catch that is distributed or assigned by the Minister of Fisheries and Oceans to those permitted to harvest the resource.

IPAC interpreted its mandate to mean that it must examine criteria for granting access to two types of fisheries: (i) new, or emerging, fisheries hitherto not subject to commercial exploitation, and (ii) established (commercial) fisheries experiencing a substantial increase in resource abundance and/or landed value.

The two types of fisheries are clearly not the same. Granting access to an established (commercial) fishery experiencing an increase in resource abundance and/or landed value is concerned with the sharing of wealth. Granting access to a new fishery, in the scientific and exploratory stages, is concerned with allowing participation in a high-risk activity potentially leading to the creation of wealth.

IPAC's terms of reference stipulate that the Panel's work is not to replace existing processes for accommodating Aboriginal rights to commercial access, nor is it to address specific issues emerging from increased Aboriginal involvement in the commercial fishery. However, in the Panel's view, the question of Aboriginal participation can be addressed generally, as part of the overall examination of access. The Panel's work is based on the understanding that Aboriginal peoples' participation in the commercial fishery is being increased.

The Panel's terms of reference also required it to examine how the issue of access is dealt with in other countries and in other agricultural or natural resource industries. It commissioned research to address this part of its mandate.

IPAC's terms of reference also make it clear that there are certain issues and matters IPAC was *not* to address:

1. IPAC was not to address issues pertaining to allocation of harvests; it is to concern itself solely with matters of access.
2. IPAC was not to address the question of fisheries re-opening after having been subject to moratoria.
3. IPAC was not to address the issue of determining when a commercial fishery has undergone a substantial increase in resource abundance and/or landed value.
4. IPAC was not to provide recommendations to remedy perceived wrongs in the current access arrangements.
5. IPAC was not to disturb any arrangements arrived at under Integrated Fisheries Management Plans (IFMPs).

In fulfilling IPAC's mandate, the members of the Panel participated in two intensive briefing sessions in Ottawa, and absorbed many volumes of background reports and documents. From August through October 2001, the Panel held some 66 consultation meetings in Nunavut, Newfoundland and Labrador, Quebec, Prince Edward Island, New Brunswick, Nova Scotia and Ottawa. Those consulted included fishers' organizations, processors' organizations, employees of fish plants, unions, recreational fishing and aquaculture groups, environmentalists, academics, officials and Ministers from the provincial and territorial governments, officials from the Department of Fisheries and Oceans (DFO) and 11 organizations representing Aboriginal people. In addition, letters were sent to 205 other groups/individuals explaining IPAC's mandate and inviting them to submit written comments. Details on IPAC's consultations are to be found in Appendix A. Members of the Panel also made presentations in response to invitations from the House of Commons and Senate Committees on Fisheries and Oceans. Finally, Panel members devoted many hours of deliberation to assessing findings from the consultations and developing their recommendations.

2 Plan of the Report

The main body of the report begins with an overview of the history of fisheries management in Canada, including the department's recent efforts to encourage conservation by giving participants in the industry a substantially increased role in decision making.

The next sections include a summary of the messages conveyed to the Panel during its consultations, a description of three specific decisions about access taken in recent years and an account of progress towards co-management.

A further section describes how access to fisheries, including access by Aboriginal people, is governed in a number of other jurisdictions and also describes approaches to access in other agricultural or natural resource industries. Some specific observations are offered on Aboriginal participation in the fishery and on Nunavut.

The final two sections of the report set out the Panel's conclusions concerning access criteria, and the decision-making process.

3 The Development of Canadian Atlantic Fisheries Management Policy: An Overview

Since granting access to fisheries is an integral part of fisheries management in Atlantic Canada, an examination of access criteria requires that the stage be set by briefly reviewing the evolution of Canadian fisheries management policy and recent developments in Atlantic Canada in particular. It is important to note that the problems encountered in managing fishery resources in the waters off Atlantic Canada are by no means unique to the region, or to Canada. Rather, the same problems are found in capture (wild) fisheries worldwide. Moreover, the evolution of fisheries management policy in Canada reflects the way that policies have evolved in many other fishing nations.

Atlantic Canadian fisheries are pursued in waters off the provinces of Newfoundland and Labrador, Nova Scotia, Prince Edward Island, New Brunswick and Quebec, as well as the territory of Nunavut. DFO manages the Atlantic fisheries through four regional administrations: Newfoundland, Maritimes, Gulf and Quebec, with headquarters in St. John's, Halifax, Moncton and Quebec City respectively. These administrative regions do not coincide with provincial boundaries. Nunavut fisheries are managed by DFO subject to the provisions of the *Nunavut Land Claims Agreement*, as explained more fully in Section 8.2 below.

Until recently, participation in the fishery by Aboriginal peoples was on an individual basis. Over the past decade, Aboriginal peoples have begun to participate as communities.

It has been recognized for almost 50 years that the heart of the problem of managing capture fisheries lies in the "common property" or "common pool" nature of wild fisheries. In pure "common pool" fisheries, access is open, property rights to the resources are virtually non-existent, and therefore fishers have no incentives to conserve the resource. On the contrary, they are given a powerful incentive to mine the resource down to the level at which it ceases to be profitable. To quote the department's 1976 White Paper, *Policy for Canada's Commercial Fisheries*, "in an open access ... fishery, competing fishers try to catch all the fish available to them ... Unless they are checked, the usual consequence is a collapse of the fishery ..."

When the management of ocean fishery resources began to be taken seriously after World War II, measures in Canada and elsewhere followed the obvious course of attempting to check, or block, fishers from

overexploiting the resources. Restrictions were imposed on global harvests in specific fisheries through setting Total Allowable Catches (TACs) or similar measures.

However, checking overexploitation of the resource brought with it a new set of undesirable incentives, leading to excess capacity in the fisheries. The restricted harvests became more valuable, giving rise to what was known as “the race for the fish.” As fishers competed with one another for greater shares of the restricted harvests, overcapacity both in terms of fleets and fishers inevitably emerged. Overcapacity not only led to obvious economic waste, but also served to undermine attempts to conserve the resource. The larger the fleets, the harder it was for resource managers to monitor the catch. In addition, and perhaps of greater importance, calls to reduce TACs to maintain the resources more often than not met intense resistance from a heavily committed industry. The TAC reductions, when and if they came, often proved to be too little, too late to prevent collapse of the resource.

The response to overcapacity consisted of resource management programs designed to limit entry to fisheries. These programs were often accompanied by buyback schemes.

This approach to fishery resource management, which the United Nations’ Food and Agriculture Organization (FAO) refers to as the “incentive blocking approach to management” and *The Management of Fisheries on Canada’s Atlantic Coast* refers to as “top down management,” has generally produced disappointing results. Overexploitation has remained a constant threat, while overcapacity has proven to be a chronic problem. Consequently, there has been a gradual shift, in Canada and elsewhere, towards what the FAO terms the “incentive adjusting approach to management.” As the term implies, the new approach endeavours to adjust incentives, such that fishers will willingly conserve the resource.

The AFPR discussion document reflects this new approach to resource management in its call for co-management and shared stewardship of Atlantic fisheries. The new approach, to cite the AFPR document, involves changing the incentives for fishers to adopt an enhanced “conservationist ethic” by giving them a feeling of ownership of the resources.

A conservationist ethic encourages participants to cease to regard fishery resources as resources to be mined for short-term gains, and instead to regard the resources as valuable assets to be maintained over time. It further implies a willingness, not only to forgo ongoing depletion of the resources, but also to make the sacrifices required to rebuild — to “invest in” — fishery resources overexploited in the past.

The development of a conservationist ethic among stakeholders is a demanding undertaking. It is obvious that attempts to establish such an ethic cannot possibly succeed if the future returns from investment in conservation are clouded in uncertainty.

Later in the report, it will be argued that, if access criteria are poorly defined and if the process by which the criteria are implemented lacks transparency and consistency, the returns to stakeholders from investment in conservation will be highly uncertain. Should attempts to establish a conservationist ethic prove to be unsuccessful, DFO will find itself being forced to revert to the top-down approach to resource management with all that it implies.

In Atlantic Canada, fisheries have been of long-term economic importance to the region. The history of the management of Atlantic Canada fisheries from the middle of the 20th century can be divided into two phases, marked by Canada's implementation of the 200-nautical-mile Exclusive Economic Zones (EEZs) in 1977. Prior to 1977, Canada's power to manage fishery resources off its Atlantic coast was geographically limited. After the advent of the EEZ regime, the bulk of the fishery resources off Atlantic Canada came under Canadian jurisdiction.

As in other parts of the world, Canadian fisheries management in Atlantic Canada, which came into full bloom in the 1960s, was top-down in nature. Indeed, Canadian fisheries management was a particularly strong version of top-down management, with the Minister of Fisheries and Oceans having *absolute* discretion in issuing rights to harvest the resource. The Minister and the department were expected to draw upon numerous advisory boards and panels, comprising industry and regional representatives, in drafting fisheries management plans — later Integrated Fisheries Management Plans (IFMPs), discussed below. Nonetheless, the final decisions rested — and still rest — solely with the Minister. As a former Minister of Fisheries impressed upon Panel members, this absolute discretion confers a great deal of power on the Minister, but it also imposes an immense burden.

As elsewhere, the top-down approach to resource management did not prevent overexploitation and resulted in chronic overcapacity. The two most significant reports on Atlantic Canada fisheries in the last quarter of the 20th century are the *Report of the Task Force on Atlantic Fisheries* (Kirby Report, 1982) and the *Report of the Task Force on Incomes and Adjustments in the Atlantic Fishery* (Cashin Report, 1993). Both reports stress the problem of overcapacity. The Cashin report states that overcapacity in Atlantic fisheries has been greatly exacerbated by the fact that fisheries have been seen as employers of last resort in a region of Canada that has historically had high rates of unemployment.

One consequence, according to the Cashin report, has been the existence of a large number of fishery-dependent communities that have had difficulty surviving without government assistance, even when fishery resources were abundant. This situation, in turn, has given rise to what IPAC and others perceive as two competing visions of the fishery.

The “economic” vision sees the fishery as a self-reliant activity run on business lines, with sufficient depth and means to weather periods of low

harvests and weak markets, without government subsidies. In simple terms, this vision seeks to maximize returns on investment and regards the fishery the same as any other natural resource industry. The other perspective, the “social vision,” seeks to maximize employment and regards the fishery as a way to sustain the large number of Atlantic fishing communities. The social vision is based on reliance on subsidies and dependence on government assistance to help the fishery and dependent coastal communities survive difficult times. The tension between these competing visions of the fishery extends into the questions around access in particular and fisheries management in general.

Historically, Atlantic Canada’s fisheries were considered to be dominated by groundfish, according to the Cashin Report and others. Groundfish resources had been depleted by foreign fleets prior to 1977. The advent of the EEZ regime provided Canada with an opportunity to rebuild groundfish resources, especially the Northern cod stocks off Newfoundland and Labrador. The top-down approach to resource management did not, however, yield the promised results. The Northern cod resource collapsed and was subject to a harvest moratorium in 1992, which has yet to be lifted. The moratorium on Northern cod was followed by harvest moratoria in other major Atlantic Canada groundfish fisheries.

The groundfish disaster did not, however, lead to a corresponding steep decline in Atlantic Canada fisheries in terms of value of landings. Between 1987, when the decline in Atlantic groundfish fisheries became alarmingly apparent, and 2000, the value of landings in Atlantic Canada actually grew at a respectable average rate slightly above 3.5 percent annually, in real terms. The growth was due to the dramatic increase in shellfish harvests, and reflected a radical transformation occurring in Atlantic fisheries.

Since 1980, shortly after the advent of the EEZ regime, the rough breakdown of the total value of landings in Atlantic Canada was as follows: groundfish 45 percent; shellfish 40 percent; and pelagics (e.g., herring) 15 percent. This pattern continued with some variation until the late 1980s. By 2000, the rough breakdown of the total value of landings had become: shellfish 84 percent; groundfish 11 percent; and pelagics 5 percent.

Four main shellfish species are harvested off Atlantic Canada: lobster, scallops, shrimp and crab. While the value of lobster and scallop landings has grown substantially in real terms over the past two decades, the most striking growth has been in the value of landings of shrimp and crab. In 1980, shrimp and crab were relatively minor species, together accounting for less than 10 percent of the total value of landings in the region. In contrast, shrimp and crab combined accounted for almost 45 percent of the total value of landings in 2000. The granting of access to the valuable shrimp and crab fisheries has constituted the primary focus of IPAC’s enquiry.

According to the Cashin Report, overcapacity was particularly prevalent in the groundfish sector. Many of the fishery-based communities referred to earlier, which had difficulty surviving even when fishery resources were abundant, were and are groundfish dependent. Needless to say, these communities were devastated by the groundfish collapse. Their devastation might have been short-lived if the economic benefits flowing from the rapidly expanding shellfish fisheries could have been evenly distributed throughout the region. However, such was not the case, and many fishing communities continue to face grave economic difficulties.

Conflicts that arise between the “ins” and the “outs” when there is an increase in the quantity and/or the value of a stock is a recurring problem that bedevils decision making about granting access. In such situations, there can be a sharp increase in disparities between the incomes of those who have licences and quotas, and those — often resident in the same communities — who do not. Increased social tensions, demonstrations, and sometimes violence have been known to result.

When such situations arise, the department and the Minister can be faced with a serious dilemma. On the one hand, the pressures to bring about a sharing of the increased resources can be all but irresistible. On the other, granting a large number of new participants access to the fishery can create several problems. Existing licence holders are likely to resent being denied the full benefits of increased prices or stocks. In addition, severe difficulties can arise if it later becomes necessary to withdraw access because of a decline. Most serious of all, strong resistance to reductions may result in allowing excessive harvesting to continue, thereby putting the stock at risk, as has often happened in the past.

The question that must be addressed therefore is not just one of finding a means to share wealth from resources equitably. Rather it is a question of finding a means to share the wealth from resources equitably, which does not at the same time imperil the resources themselves and lead to another Northern cod disaster. This challenge will be a recurring theme throughout this report.

4 What the Panel Heard

The Panel found that poorly defined criteria for granting access, combined with flawed implementation processes, pose a serious threat to effective resource management, and also lead to inequities. The Panel's next step was to determine the extent of the problem: the degree to which criteria are poorly defined and processes flawed. The report now turns, therefore, to the evidence presented to the Panel in its consultations and in written briefs.

Not surprisingly, many of the responses IPAC received were similar to those put forward during the broader consultations DFO conducted within the framework of the AFPR. However, because the Panel had a much narrower focus, it could probe more deeply and discuss issues concerning access in much more detail than was possible in the broader consultations.

The Panel's mandate addresses issues concerning access to two types of fisheries: access to new or emerging fisheries hitherto not subject to commercial exploitation, and access to established fisheries experiencing an increase in resource abundance and/or landed value. Access to new fisheries, which the report addresses first, was much less controversial than access to established fisheries that are expanding. Intervenors also discussed a number of other issues, the most salient of which are summarized at the end of this section.

4.1 Access to New Fisheries

Access to new and emerging fisheries is governed by the 1996 Emerging Fisheries Policy, recently revised as the New Emerging Fisheries Policy (September 2001). New fisheries proceed through three stages: scientific, exploratory and commercial. The New Emerging Fisheries Policy (posted on the DFO Web site) describes procedures for the application and licensing process at each of the three stages. The scientific stage involves determining whether a biomass worthy of exploitation exists, while the exploratory stage involves determining whether the prospective fishery has the potential to become economically viable. If the fishery proceeds to the commercial stage, then, by definition, it is deemed to have become an established fishery.

Intervenors expressed little criticism of the policy, although its application did not appear consistent across DFO administrative regions. Most agreed that priority in granting commercial licences at the third stage should be given to those who developed the fishery through its first two stages. In other words, those who take the risks should reap the first benefits. However, some Aboriginal groups stated that the skills and investments required to initiate a new fishery put them at a disadvantage. On the other

hand, other Aboriginal groups had entered into partnerships with established fishing enterprises to explore new fisheries.

Expansion of the new fisheries beyond the initial commercial stage makes them subject to the rules that govern access to established fisheries, about which intervenors had much to say.

4.2 Access to Established Fisheries Experiencing an Increase in Resource Abundance and/or Landed Value

This section presents the responses to the seven questions that the Panel asked intervenors to address in their oral presentations or written briefs.

4.2.1 Question #1. The nature of the criteria that are currently being employed in making access decisions.

The traditional criteria identified in the Panel’s mandate, which have been invoked by DFO in making decisions regarding access in the past, include adjacency, historic dependence, economic viability and equity. Some intervenors introduced additional criteria or alternate wording, speaking for example of reciprocity, fairness, community and social benefits, economic need, capacity to pursue the fishery and process the harvest, fleet mobility, catch history and dependence of fleet sectors, and conservation.

Many intervenors considered the traditional criteria to be vague and ill-defined. There was considerable confusion, for instance, as to the meaning of adjacency. While many agreed with the idea that “those living nearest to the resource have priority,” interpretations of adjacency ranged from immediate proximity, relevant only in the near-shore sector, all the way to the outer boundary of Canada’s Exclusive Economic Zone (EEZ) and, in the case of sedentary species, to the edge of the continental shelf. Several intervenors complained that adjacency, as well as the other traditional criteria, had been used inconsistently. Some sceptics went so far as to say that there are no guiding criteria except expediency and that criteria are merely invoked to fit the desired political outcome of the day.

That said, criticisms of the criteria and the process for granting access were not universal. The criteria used in granting access within some regions caused no apparent difficulty, as outlined in Section 5 below, which describes some recent access decisions. An important reason for the satisfaction was that these criteria were tailored to the circumstances of a particular fishery and had been worked out by participants. Indeed, fishers’ organizations within those regions expressed concern that the Panel might put forward recommendations that would upset these effective regional mechanisms.

In contrast, complaints about lack of clarity and inconsistent implementation were vigorous and incessant with respect to access decisions involving more than one administrative region.

4.2.2 Question #2. The process by which the aforementioned criteria are being applied.

Once again, the answer to this question depended, in part, on whether intervenors were talking about regional or Atlantic-wide decisions. In some regions, the implementation process was, according to most intervenors, both transparent and consistent. On the other hand, in other regions, and in cases involving more than one administrative region, many intervenors responded by asking, “What process?” Others described the process as simply: “direct intervention with senior DFO officials up to and including the Minister.” While a few intervenors representing large enterprises and fishers’ organizations expressed a certain degree of satisfaction with the status quo, the great majority deplored the lack of formal procedures and the level of political lobbying that characterize the decision-making process. The Panel heard a litany of complaints about lack of transparency and inconsistency in the process of granting access. Applicants want to know the rules of the game so as not to waste their time and money in futile efforts. They want to know that their applications are being treated fairly and according to consistent principles and criteria. Some intervenors said they would welcome clear and consistent rules for the sake of stability and predictability, even if these rules did not particularly favour them. Aboriginal groups for their part expressed concern that they were not significantly represented in some decision-making processes.

4.2.3 Question #3. The effectiveness of the aforementioned criteria in serving the broad objectives of fisheries management, such as resource conservation.

From what the Panel heard, the shortcomings of the current process represent a systemic threat to resource conservation. Moreover, the lack of precise definitions of criteria and the capriciousness with which they are applied appear to create an atmosphere of mistrust and insecurity that works against the AFPR’s stated objective of participatory decision making. Furthermore, the continuous turmoil created by the uncertainty in decision making was reported to waste time and detract from effective management of the fishery.

4.2.4 Question #4. What should, in fact, be the criteria to be employed in making access decisions?

Intervenors generally focused their comments on the traditional criteria of adjacency, historic dependence, economic viability and equity. Those

criteria, as well as a few others, were deemed relevant, but to varying degrees and with a variety of meanings. At one extreme, some intervenors stated that sharing should be rare and additional access only granted to those who already had access, making the definition of criteria irrelevant.

Many intervenors considered adjacency to be most relevant to near-shore resources. As one speaker put it, “Adjacency is all-important inshore; offshore, it’s all historical shares.” For instance, it was argued that adjacency plays a dominant role in the lobster fishery and none at all in the tuna fishery, which is pursued well offshore. A formula was suggested whereby the weight accorded to adjacency would decrease gradually with distance from home port or fishing base, until a point at which fleet mobility would be invoked as a competing criterion. Some intervenors favoured a wider interpretation of adjacency, whereby it would apply undiminished from the shore of a province all the way to the outer edge of the Canadian 200-mile limit. Other intervenors linked adjacency to conservation, claiming that attachment to place would lead to better stewardship of the resource. Adjacency to provincial shores was invoked to support claims for provincial shares, while other interpretations favoured a more local application of adjacency to give fishers from one area of a province priority over those from another area of the same province.

Many intervenors considered historic dependence and historic shares (of provinces, regions, fleet sectors and/or gear types) important criteria. People were either concerned about maintaining their share, or about expanding it if they felt it was unfairly small. Some also argued that the concept of historic shares does not apply to relatively new fisheries such as Northern shrimp, which do not have a long history.

The Panel also heard two different interpretations of historic dependence. In one view, it pertains to a specific stock (Northern cod for example): those that have fished it in the past have a right to fish it again in the future. In the other view, historic dependence relates to the waters where fishing takes place: if a stock such as Northern cod becomes depleted, those who historically depended on it have a historic right to other species (snow crab, for example) in the same waters. Another common problem in determining historic shares was disagreement on the period of time over which history is relevant.

Economic viability also has different meanings to different people. To those with a social vision of the fishery, the economic viability of coastal communities is of paramount importance. Access should be given either to the most needy applicants or to those who can demonstrate the greatest benefits to the community (for example, by maximizing employment in both harvesting and processing sectors). Those with a more business-oriented view of the fishery were more

concerned with the viability of fishing enterprises, which they felt should be able to weather the ups and downs of stock and market fluctuations without government intervention. Access should go to those enterprises most likely to run a successful fishing business, maximizing return on their investment.

All agreed that equity is important, but equity, like beauty, seems to lie in the eye of the beholder. The Panel heard little agreement on how to define equity or apply it as a practical criterion. While equity was not considered a useful criterion in some areas, it was of primary concern in others and for particular groups. For example, a number of intervenors from the Gulf region stated that the current geographical division of crab areas was inequitable and gave to some groups more than they deserved.

Finally, while conservation was not on the list of traditional criteria, there was considerable discussion about it during consultations. No one questioned the importance of conservation and many speakers maintained that conservation could safely be taken as a given as an implicit criterion. Indeed, one group stated that the Panel should regard the problem of conservation as having been solved. Others, however, expressed strong concerns about the impact on conservation of granting temporary licences without a clear mechanism for removing them from the fishery when stocks decrease. Without such a mechanism, “the cod collapse will be repeated with shrimp,” one intervenor warned. Others expressed the same concerns about depletion of crab stocks, and feared that political interference in decisions regarding access will have an equally ominous effect on conservation.

4.2.5 Question #5. What should be the relative weight given to each of the criteria referred to in Question #4?

Opinions as to the relative weight of the criteria varied widely according to differing interpretations of their meaning. To some, adjacency is paramount, even to the outer limit of national jurisdiction in some views. In that view, the application of the adjacency criterion would exclude granting additional access to expanding fisheries by out-of-province enterprises. Other criteria would then come into play to determine access for fishers within the province. One intervenor suggested a point system, with rules for weighing the importance of each of the criteria.

However, the general view was that it is nearly impossible to devise a single formula that establishes definite weights for all criteria in all fisheries, from the inshore to the offshore, at all times. Adjacency would, according to most intervenors, be most important near-shore, its importance decreasing as fisheries progressed offshore. Access to

different fisheries would have to be assessed using different weights on a case-by-case basis: one set of rules would not fit all. The Panel was also warned of the dangers of a case-by-case approach: if one rule cannot fit all cases, who is to exercise judgement in applying the criteria and how can consistency in decision making be assured? Many intervenors agreed that the answer to that question lies in a well-defined and solidly guided process to achieve fair and transparent decisions; otherwise, decisions regarding access would revert back to the existing system of political lobbying.

4.2.6 Question #6. What in your view would be the most useful contribution IPAC could make?

Most groups consulted thought the Panel's work was very important in that it could contribute to improved management of Atlantic fisheries and assist the Minister in making difficult decisions. Given the complexity of the issues, many intervenors agreed that it is unrealistic to expect definite solutions to all problems regarding access in the short time frame allowed for in IPAC's terms of reference, although some had unrealistic expectations of what the Panel could achieve. A number of issues brought to the Panel's attention were clearly outside the terms of its mandate. A few intervenors argued that the distinction made in the Panel's mandate between access and allocation was specious since the two were too closely linked to be discussed separately.

In answer to the question, many intervenors stated that clarifying the meaning of the criteria used in determining access would be the most useful contribution, and might help de-politicize and improve the decision-making process.

Most intervenors agreed that a more formal process, following clear procedures and operating in a transparent fashion, was needed and that the Panel could make a useful contribution by recommending such a process to the Minister. However, they disagreed as to whether this process should be carried out at the departmental level, in the Minister's office, or through an external advisory or regulatory body. The Panel was also told that it could help by moving the system towards a process that creates a better balance between competing interests, including new users of ocean resources, most notably aquaculture, eco-tourism and salt-water recreational fisheries.

Finally, the Panel was reminded of examples in which successful sharing of expanding resources had been achieved and whereby DFO officials had worked with industry in arriving at agreements that are held to be equitable and sustainable. The panel was told its recommendations should support such local successes and not try to replace or change them.

4.2.7 Question #7. How should access decisions be arrived at in the future? Would it be desirable to establish some kind of advisory process?

Almost everyone consulted wanted a reasoned process and clearly articulated rules explaining the criteria to be considered, and specifying their relative weight, for determining additional access. It was suggested that this process should function in a transparent fashion and produce decisions in keeping with generally accepted principles.

Intervenors expressed a variety of views on how to achieve these results. Some thought that clearly defining the criteria and specifying their relative weight would be sufficient. Others suggested that the decision-making process was at least as important as the criteria themselves. A significant number agreed that an advisory body to the Minister might help create a more transparent process, while others were opposed to the creation of another body on the grounds that too many already exist and a board would simply add yet another tier to the bureaucratic hierarchy.

The Fisheries Resource Conservation Council (FRCC) was often invoked as a possible model. Most intervenors agreed that it had been largely successful in de-politicizing the quota-setting process, although they were not sure that a similar process would be equally effective in dealing with issues regarding access. The FRCC is currently concerned only with groundfish quotas; the Panel heard some suggestions that the council's mandate should be expanded to include other species to enhance its effectiveness in conserving resources. While many insisted that the Minister should continue to have the last word, a few went so far as to suggest that the final decision should be taken away from the Minister and given to a quasi-judicial tribunal. The question of composition and functioning of an independent board, whether advisory or regulatory, raised serious concerns for many intervenors, who feared that appointments might be made on partisan grounds or as patronage rewards, or that vested interests of provinces and stakeholders might render appointments of disinterested but knowledgeable parties difficult and the functioning of such a board impractical.

4.3 What the Panel Heard from Provincial and Territorial Governments

The four Atlantic provinces, Quebec and Nunavut have a strong interest in fisheries as an important element of their economies. The Panel met twice with provincial and territorial governments: once early in its consultations (August, September) and later, in a final round (in October). These governments made strong oral presentations to the Panel on issues regarding access, usually accompanied by written briefs. Their responses to the above questions are summarized below, using quotes from written briefs where appropriate.

4.3.1 Newfoundland and Labrador

In its formal presentation to the Panel, the government of Newfoundland and Labrador was quite explicit in its view that “the current application of access criteria lacks transparency, predictability, stability and most importantly, consistency.” Its position with respect to access criteria was that:

Adjacency should be the only criterion for access to new and emerging fisheries. Any *new* access to existing fisheries should be based solely on adjacency. However, historical participation will be respected and, as a result, community dependence will be recognized and respected.

It advanced the following definition of adjacency:

When a border of a NAFO [North Atlantic Fisheries Organization] area is defined by a land area, that land area is adjacent to the NAFO area. Where no border of a NAFO area is defined by land, then the land area geographically closest to these areas would be identified as the adjacent province or territory.

Accordingly, waters are adjacent to a province or territory if they touch its shores or are closer to it than to any other province or territory, and should be treated as adjacent all the way to the 200-mile limit.

The government of Newfoundland and Labrador expressed the view that the criteria it proposed should be entrenched in legislation. It did not support an Atlantic-wide access board; a Canada–Newfoundland and Labrador Fisheries Management and Development Board would be preferred.

4.3.2 Prince Edward Island

The government of Prince Edward Island (PEI) stated that “the past and current manner in which access decisions are made are inappropriate in several substantive ways ...” The province agreed that

“the shortcomings of the current access decision-making process constitute a systematic threat to resource conservation.”

On the subject of criteria, representatives of PEI advocated “a more considered approach than choosing any single criteria such as adjacency or history.” They also argued that “fairness and equity should apply to the extent that no jurisdiction can be denied meaningful benefit ...”

The province of PEI is a staunch advocate of a strong federal role in Atlantic fisheries; however, it proposed that future decisions would be more widely accepted if they “respected an established set of guidelines” and were arrived at by a process that is “public and transparent.” PEI also supported, in principle, the idea of an advisory board on issues regarding access.

4.3.3 Quebec

The government of Quebec stressed the importance of establishing clear, precise, equitable criteria for access and allocation on the grounds that the stability of the fishing industry depends on such criteria. Officials deplored the lack of clarity and consistency in the decision-making process, particularly with respect to the recent decision on sharing the Gulf turbot with Newfoundland and Labrador fishers.

They were adamant that IPAC should examine the criteria and mechanisms to determine access and allocation in other countries and in other sectors of activity, such as agriculture and forestry. Provincial historic shares constitute the most equitable criterion for Quebec because it takes into account other criteria, such as adjacency, fisheries development and socio-economic dependency. They underlined the exercise conducted by the Federal–Provincial Atlantic Fisheries Committee Working Group on provincial shares of groundfish (1997) and shellfish (1999). They also defended the principle of respect of historic shares in the process of bringing Aboriginal fishers into the commercial fishery.

In their view, the creation of a permanent structure with quasi-judicial powers is an option that should be explored, drawing on the dispute resolution frameworks of Canadian and international trade organizations. However, they anticipated that development of more clearly defined, prioritized criteria would limit the need for recourse to such a body.

4.3.4 New Brunswick

The New Brunswick government was dissatisfied with the inconsistency with which criteria regarding access were applied, and stated that “whichever criterion fitted the desired outcome” seemed to be used. Representatives were concerned that lack of consistency and political pressures “have had and will continue to have a detrimental

effect on conservation, sustainability, stability and co-operation in the fishing industry.”

In New Brunswick’s view, “the provincial share, consistent with the fleet’s sharing arrangements, should be the first criterion for ensuring the stability of the industry and of communities” and the available surplus should first be distributed on the basis of provincial share. The province also argued that temporary access that does not respect pre-1995 historic provincial shares should not be factored into the calculation of provincial shares.

New Brunswick also maintained that criteria should be uniform and precise, with appropriate guidelines for gray areas. In its view, “Criteria and guidelines should be administered by a national quasi-judicial body.” New Brunswick felt that the principle of adjacency has consistently worked against its interests in the past.

4.3.5 Nova Scotia

Nova Scotia expressed concerns about the selective use of criteria to achieve desired results and the lack of a transparent process. Nova Scotia officials argued that adjacency was an important but not a paramount criterion, since its strength diminished in relation to historic shares in the case of fisheries farther offshore. Nova Scotia does not support the concept of provincial shares as a criterion for access.

The province proposed that criteria should be well defined and ranked so as to be applicable to the majority of cases, and that local issues should be resolved at the local level by DFO managers. Officials doubted whether the process could ever be completely de-politicized or appeals to the Minister completely eliminated. They argued that if the Minister were to make decisions under a well-established set of criteria and guidelines, and to provide reasons for the decisions, there should be no need for an access board.

4.3.6 Nunavut

The new territory of Nunavut is discussed in detail in a separate section, since it is a special case (see Section 8.2). Nunavut officials emphasized adjacency as the “primary decision-making criterion when dealing with access to the Atlantic fishery,” and emphasized “priority access as opposed to exclusive access.”

Officials pointed out that Nunavut’s share of adjacent resources, most notably turbot and shrimp, was unfairly small compared to the Atlantic provinces’ share.

4.4 Other Issues

It is a truism that it is impossible to confine fisheries consultations to a single topic, and IPAC's were no exception. The Panel heard about many other issues, not all related directly to access.

4.4.1 Trigger levels

The Panel's mandate explicitly excluded consideration of the criteria for determining when a commercial fishery has undergone a significant increase in resource abundance and/or landed value. Therefore, the Panel can only report that many intervenors were very concerned about this issue and would like it to be part and parcel of agreements about sharing and granting additional access, as is the case in some existing IFMPs.

4.4.2 Socio-economic problems

Discussions about access and allocation usually focus on the needs of harvesters. But there are also fish plants, onshore, with a labour force consisting mainly of women who depend on the availability of fish for their livelihood. In Newfoundland, the Panel visited Woodman Seafood Products in New Harbour, Conception Bay, where members acquainted themselves with the operations of a modern fish processing plant. In Moncton, the Panel heard from representatives of the Association des Employé(e)s d'Usine des Produits Marins about their problem with the short duration of the crab season, which provides too little employment for a moderate livelihood. While the plight of plant workers is not an issue directly related to access, Panel members are sensitive to their condition and to the idea that the consequences of decisions about access for dependent coastal communities, including plant workers, should be a significant consideration.

4.4.3 Enforcement

Although questions of enforcement are beyond the Panel's mandate, it heard numerous complaints about lack of compliance with regulations. Since compliance is arguably much easier to ensure in a co-management system in which users feel a sense of responsibility and ownership, decisions regarding access that enhance these characteristics would therefore reduce the need for policing the fishery. As a general comment, the success of any set of criteria for granting access is clearly dependent upon effective compliance mechanisms being in place.

4.4.4 The importance of science

Many intervenors spoke forcefully about the need for solid, current scientific information on fish stocks, and their biology and ecology. Just as solid science is necessary for conservation-minded quota setting,

it is also necessary for the development of new fisheries. Nunavut placed particular emphasis on the need for additional scientific studies in Northern waters.

4.5 Commentary

The extensive consultations in which the Panel engaged provided an invaluable sense of the complexity and diversity of the fishery in Atlantic Canada. They also underscored the difficulty of fulfilling the mandate the Panel was given.

Two overriding, and to some extent conflicting, messages were conveyed to Panel members. On the one hand, there was widespread criticism of the lack of transparency in the present system and the apparently arbitrary character of various decisions. As a corollary, there was a strong consensus in favour of establishing a system governed by clear criteria, an open process and consistent outcomes.

On the other hand, there was equally widespread recognition that the Atlantic fishery is far too diverse to be force-fitted into a single, universally acceptable set of operating rules or criteria. As the Panel was repeatedly reminded, “one size cannot fit all.” For example, the differing provincial positions concerning the traditional criteria for granting access cannot be reconciled with each other.

The conclusion implicit in these two messages is that criteria are needed, but have to be tailored to fit the specific characteristics of the situation at hand. In brief, judgement has to be exercised in each case. This conclusion gives rise to the question of how such judgements are to be made, and by whom? That question is addressed later in this report.

5 Recent Access Decisions

During its consultations, the Panel encountered many specific examples of decision making regarding access, with respect to both new and established fisheries. This section draws upon three examples, both positive and negative, that illustrate the importance of how criteria are applied. The examples considered are: Northern shrimp, Newfoundland snow crab, and Gulf Area 19 crab.

5.1 Northern Shrimp

The Northern shrimp fishery was developed in the 1970s. In 1977, four companies were licensed to determine the feasibility of harvesting Labrador shrimp stocks. Additional licences were issued in 1978, 1979, 1987 and 1991, for a total of 17. In 1997, access was given for the first time to temporary inshore participants (vessels under 65 feet) adjacent to the resource. The number of permits in 2001 is 355.

In the past decade or so, there has been a rapid growth in shrimp stocks, accompanied by high prices. Between 1989 and 1999, the volume of landings increased four-fold, while the value of catches went from \$78 million to \$280 million.

Criteria for sharing the increased stocks were developed through a public process in 1996, but did not include a formula for sharing annual increases in the Total Allowable Catch (TAC) between licence holders and new temporary entrants.

Consequently, decisions about such sharing had to be made by the Minister each year. In 2000, a decision to allocate 1,500 tonnes of Northern shrimp in North Atlantic Fisheries Organization (NAFO) Division 3L, southeast of Newfoundland, to a consortium from PEI gave rise to intense controversy in Newfoundland and Labrador.

The government of Newfoundland and Labrador firmly believed that, under previous Ministers of Fisheries and Oceans, adjacency had been the key criterion applied in granting access to temporary entrants to the Northern shrimp fishery. The PEI decision appeared to flout the adjacency criterion. PEI intervenors, in turn, maintained that, if adjacency was of prime importance in granting access to shrimp fisheries, the criterion had not been applied fairly or consistently to PEI, which found itself excluded from Gulf shrimp resources.

In any event, 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 to be capricious.

5.2 Newfoundland Snow Crab Fishery

Directed snow crab fisheries commenced in Newfoundland in the 1970s. They were, at the time, relatively minor fisheries, with annual landings in the province totalling less than 5,000 tonnes. A decade later, crab landings began to increase significantly and reached a peak of 69,000 tonnes in 1998. In 2000, landings decreased to 55,000 tonnes but still were over ten times the level of landings in the 1970s. The exponential growth of crab landings is considered to be related to the sharp decline in groundfish since groundfish prey on benthic crustaceans.

In the late 1970s and early 1980s, a limited entry fishery was established, with 71 full-time snow crab licences being issued. The vessels were in the 50- to 65-foot range. In the early to mid-1980s, groundfish resources were beginning their decline, while the snow crab resource was experiencing a steady increase. In response to the situation, the department made provisions for some Newfoundland groundfish vessels to supplement their income by granting them access to the snow crab fishery. In time, 700 supplementary crab licences were issued. Vessels in the Newfoundland supplementary crab fleet were in the 35- to 65-foot range.

The next step was to make provision for vessels of less than 35 feet. In 1995, the department granted temporary access to a limited number of core fishers owning vessels of less than 35 feet. The temporary nature of the access was due to the fact that there were serious doubts about the sustainability of the exceptionally large snow crab harvests.

Four hundred temporary seasonal permits were issued to such vessel owners by means of a lottery. Objections arose to the lottery system, to which the department responded in 1996 by granting temporary access to *all* core fishers owning a vessel of less than 35 feet who did not already have a crab licence. By 2000, the number of temporary seasonal permits had grown from 400 to approximately 2,500.

The following three points are worthy of note. In 2000, the supplementary licence and temporary seasonal permit fleets accounted for almost 85 percent of the Newfoundland snow crab harvest, with the full-time crab fleet accounting for the remainder.

The second point is that the importance of the crab harvest to Newfoundland vessels of less than 65 feet increased dramatically. In the period 1987 to 1990, snow crab accounted for just under 10 percent of the harvests of these vessels in terms of value. By 2000, this figure had increased to 80 percent of the harvests of these vessels in terms of value.

The final noteworthy point is that holders of temporary seasonal permits have been exerting pressure to have the temporary permits converted into permanent licences. In early 2001, the Minister appointed a two-person

panel to review the issue. The panel's report has been submitted and is, at the time of writing, under review by the Minister.

The Newfoundland snow crab fishery presented the Panel with the clearest example of how conservation, while being recognized as important, can be pushed into the background by other considerations. Many intervenors stressed the cyclical and volatile nature of crab (and shrimp) stocks. These intervenors argued that, if temporary access is to be granted when such stocks are abundant, a clear exit strategy must be in place and able to be implemented if or when the resource declines. Such an exit strategy for the Newfoundland snow crab fishery appears to the Panel to be worryingly absent.

5.3 Gulf Area 19 Crab

The snow crab fishery off northwest Cape Breton (currently known as Gulf Crab Area 19) provides a positive example of local solutions to the question of resource sharing. From its beginning in the mid-1970s, that fishery has been growing in volume as well as in value. The history of the management of this expansion shows DFO's struggle to accommodate new participants, ensure continued economic success for those already in the fishery, and at the same time prevent an explosion of fishing capacity in the interests of conservation. This process demanded considerable ingenuity and was not achieved without much turbulence: lobbying, demonstrations, inter-fleet rivalry, protests and blockades. Thanks in part to a co-management agreement, some stability was achieved in the years 1996–2000, during which time biomass and price rose sufficiently to trigger an agreed-upon sharing mechanism. A renewed nine-year co-management agreement was negotiated in 2001.

The 25-year history of Area 19 illustrates the difficulty of ensuring a fair process and provides an example of successful, gradual development of criteria (adjacency, bonafide fishermen) and mechanisms (lottery, industry agreements, co-management) for sharing access to ensure fairness and, at the same time, conserve the resource. Viewed overall, the experience in Area 19 demonstrates that a substantial degree of self-management by the industry is achievable. While a group of Area 19 crabbers consulted by the Panel were dissatisfied with the current situation, their concerns related to a decision by the Minister to reduce their allocations and bring in additional participants, rather than with the fundamentals of the self-management process.

6 An Increased Management Role for Industry Participants

For more than a decade, government policy has been to encourage the industry to play a greater role in the management of the fishery. After a turbulent start, significant progress has been made. As of early 2000, more than 161 fisheries were governed by management plans, including Integrated Fisheries Management Plans (IFMPs). These fishing plans, designed to promote co-management, are developed jointly by DFO managers and the industry. The plans describe fishing regulations (seasons, gear, quotas) in detail and include criteria for sharing expanding resources among participants, tailored to specific fisheries. The Panel heard criticism of some IFMPs, for which negotiations had not been completed before the fishing season opened; the plans appeared after the season was over, after regulated fishing had already taken place.

The Panel was instructed not to disrupt the success of IFMPs or agreements already reached. These successes have been achieved on a local scale through the leadership of DFO and industry participants. They illustrate the advantages of making decisions at the level closest to where they are implemented — the principle of subsidiarity, as one Nova Scotia academic described it. The only remaining question is whether the process can be improved by including representation on behalf of the public interest rather than limiting participation to those with vested interests in the fishery.

6.1 Developing Species Advisory Boards and Community Management

The history of management in Crab Area 19 of the Gulf region is one example of the trend, which has been actively encouraged by the department, to increase decision making by industry participants with a concomitant reduction in the number of decisions that have to be taken by the Minister.

The AFPR discussion paper proposes to carry this trend further, by giving industry participants greater latitude to set their own social and economic objectives, within reasonable constraints, and to decide on the use of fishery resources.

Many intervenors cited the developing species boards of the Maritimes region as examples of effective application of criteria for granting access to new, emerging species in a transparent manner at the local level.

As will be recalled, a developing fishery goes through three stages: scientific (or experimental), exploratory and commercial. At the scientific stage, work

is undertaken to determine whether or not a biomass worthy of exploitation does in fact exist. If the fishery advances to the exploratory stage, then work is undertaken to determine whether or not the fishery has the potential to become economically viable, which depends upon the costs of harvesting the resource, and the marketability of the harvested fish and resulting fish products. If the second stage is completed successfully, then a determination of sustainable harvest is made and the fishery enters the third (commercial) stage. Once the third stage is achieved, the fishery is deemed to have graduated from a “developing” to an “established” fishery.

The first two stages, which may take several years to complete, are very demanding in terms of both capital and knowledge. They also involve very high risks.

In the Maritimes region, three Area Developing Species Advisory Boards have been established, together with an overall Regional Developing Species Advisory Board that deals with cases that straddle the boundaries of the area boards and with offshore developing fisheries. The boards comprise representation from the processing industry, fishers’ organizations, Aboriginal groups, provincial governments and the department. Their decision-making rules appear to be transparent and consistently applied. Applications to engage in experimental fisheries are reviewed and recommendations forwarded to the department by the relevant board. If the fishery proceeds to the exploratory stage, calls for proposals based on participation are issued if the fishery is offshore. If it is mid-shore or inshore, a limited number of exploratory licences are open to application from all core fishers who are capable of prosecuting the fishery and who meet adjacency requirements. In the past, these licences have been awarded by lottery.

If the fishery reaches the commercial stage, licences are first issued to applicants who have met exploratory eligibility requirements. Increasingly, the issuance of scientific (or experimental) and exploratory licences has concentrated on professional fisher communities (to minimize windfalls from the transfer of eventual limited-entry licences) and Aboriginal communities.

Overall, the regime appears to be quite inclusive, although some Aboriginal groups expressed a preference for alternative processes. The rules, moreover, appear to be applied in a transparent and consistent manner. The Maritimes regime might be considered a model for decision making regarding access for other regions in Atlantic Canada. It should be added, however, that, for the boards to discharge their responsibilities adequately, they must be representative of all parties and all participants must have a full opportunity to put forward their views. This proviso is particularly important to Aboriginal people, given the constitutional status of their interest in the fishery. Consideration might also be given to broadening

representation on the boards by including knowledgeable individuals who represent the public interest, including environmental concerns.

Another area in which considerable progress has been made is community management, which was first undertaken in 1995. In this context, communities are defined either geographically or in terms of common interests among a particular group. Decisions are made by boards of elected representatives. Allocations arising as a result of increased resource abundance and/or landed value in fisheries (e.g., crab fisheries) are made to the boards by the department on the basis of catch histories. The boards then assume responsibility for determining who will gain access to the increased abundance on an individual basis. The community management schemes provided the Panel with examples of how the application of criteria for granting access, with respect to established intra-regional fisheries, can be transparent, consistent and perceived by all participants to be equitable.

7 Access Decision Making in Other Jurisdictions and in Other Natural Resource Sectors

7.1 Other Jurisdictions

IPAC's mandate called upon the Panel to examine decision making regarding access in other fishing nations and other natural resource sectors for insights that might prove valuable in addressing the question of access in Atlantic fisheries.

In examining decision making regarding access in other fishing nations, emphasis was placed on granting access to established fisheries, as opposed to new, emerging fisheries. This focus reflects the fact that the problems concerning access in Atlantic Canada lie primarily in expanding, established fisheries.

Five other jurisdictions were examined: New Zealand, Iceland, Australia, the European Union and the United States. The choice was governed, in part, by the availability of data and information. This section commences with New Zealand and Iceland, since these are two countries in which fisheries make a significant contribution to the Gross Domestic Product and in which fisheries management is highly developed.

7.1.1 New Zealand

New Zealand is noteworthy in that it has one of the most extensive fishing quota management systems in the world. When a new species enters into the quota management system (QMS), the initial distribution of quota is normally made on the basis of past catch history, with one major qualification to be discussed at a later point (see Section 7.3). Once the quota has been allocated, any increase in the TAC, or landed value, goes to the quota holders.

A fisher wishing to gain access to an established QMS fishery must first obtain a fishing permit and then must acquire quota. A fisher has one option in obtaining quota, namely buying it from an existing quota holder. He/she cannot enter the fishery free of charge.

The case of New Zealand interested IPAC because it involves the granting of access and the issuance of quota to Aborigines — the Maoris. After years of negotiations, the Maoris signed a Deed of Settlement with the New Zealand government that enabled the Maoris to purchase half of New Zealand's largest fishing company. This gave the Maoris approximately one-third of the country's existing fishing

quota. In addition, the Maoris were promised 20 percent of any new fishing quotas. Their fishing quota holdings are managed for the Maoris by the Treaty of Waitangi Fisheries Commission, which is Maori-controlled. Thus, if there is any increase in abundance in a QMS fishery in which the Maoris hold quota, or if new quotas are established, the Maoris automatically receive a share.

7.1.2 Iceland

Iceland can be dealt with summarily. Quota management in Iceland is very similar to that in New Zealand, except that there is no Aboriginal issue; it is also extensive. When new quotas are established, the initial allocation will normally be made on the basis of catch history.

Beyond that, a fisher wishing to gain access to a fishery must have a licence, which is easy to obtain. If the fishery that the fisher wishes to enter is under quota management (and very few are not), then the fisher can obtain quota by one means only, namely by buying it from an existing quota holder.

7.1.3 Australia

Australia is moving towards an extensive system referred to as Statutory Fishing Rights (SFRs). Once an initial allocation is made for a fishery, no additions to the number of SFRs are allowed. To gain access, a fisher would have to buy his/her way in.

Philip Marshall, General Manager of Strategy and Planning for the Australian Fishing Management Authority, was interviewed as part of the research on other jurisdictions. He explained that, in the Australian view, to grant access to additional participants to an established SFR fishery on the basis of increased resource abundance and/or landed value would be dangerous. As well as requiring the government to make arbitrary decisions on fishers' wealth, it would carry with it the distinct threat of overcapitalization, with all that implies for the conservation of the resource.

7.1.4 European Union

Fisheries management in the European Union (EU) is, not surprisingly, very complex because of the number of states involved. EU fisheries are governed by the Common Fisheries Policy, adopted in 1983 and amended in 1992. Fishing resources in the Exclusive Economic Zone (EEZ) (200 miles) are managed by the European Commission, except for the area inside the 12-mile zone of each member state.

Final policy decisions pertaining to fisheries, including TACs, quotas and other related measures, are taken by the Council of Fisheries Ministers of the member states at their end-of-the-year meeting. The following principles govern the Common Fisheries Policy:

- EU fishers should have equal access to member states' waters, except for the coastal zone (12 miles) reserved for local fishermen who have traditionally fished in these areas.
- Each member state receives a fixed percentage of the TAC, or a national quota, for a particular species. This percentage was initially established in 1983. The main allocation formula used was to divide TACs according to past catch records.
- The only flexible element in the allocation of TACs is the possibility for states to exchange quotas.
- Member states define the right of access for their fishermen. The registration of a vessel in a national register affords the right to gain access to the national system of quota allocation. Each state has its own rules for the registration of vessels.
- Member states cannot restrict access to their national quotas to their citizens. Court decisions based on the right of establishment (*Treaty of Rome*) meant that a national from one state could buy a fishing vessel in another state, and officially pursue fishing from this second state by means of a secondary establishment, and then be entitled to get quotas from it.
- Quota management techniques vary between countries. Quotas can be kept in a national pool or allocated to producers' organizations, or even to individual vessel owners. In a few cases, quotas can be hired, bought or exchanged. Each member state has the responsibility to control its fishers' compliance with the quotas.

With respect to the granting of access and allocation on the basis of increased resource abundance and/or landed value, one need only note that, since TACs are determined by the Council of Fisheries Ministers, and given that the national percentages of TACs are constant, an increase in resource abundance and/or landed value of a fishery does not modify the basic allocation principles. Hence, individual EU member states share in any increase on the basis of a pre-determined formula.

7.1.5 United States

Fisheries management in the United States is also complex because individual states participate in fisheries management. Consequently, no generalizations are possible. The Panel focuses on one case study, the Alaska pollock fishery, which is the largest single-species fishery in the United States, of particular interest because it has Aboriginal involvement.

The Alaska pollock fishery was suffering from severe overcapitalization. Because Individually Transferable Quotas (ITQs)

were considered a politically unacceptable solution to the problem, alternative means had to be found.

While ITQs were not considered to be politically acceptable, community quotas were, and took the form of Community Development Quotas (CDQs), established through the Western Alaska Community Development Program. In addition, other pollock harvesters were encouraged to establish cooperatives under the *American Fisheries Act* (AFA), with the express hope that this would help alleviate the problem of overcapitalization.

The AFA defines a four-way division of the TAC. The Western Alaska Community Development Program receives a quota of 10 percent of the total TAC for CDQs. The remainder of the quota is shared among other participants in the following proportions: shoreside processors (50 percent), vessels delivering to offshore motherships (10 percent), and catcher/processors (factory trawlers) and vessels delivering to catcher/processors (40 percent). The AFA does not restrict who may harvest and process CDQ pollock. Those decisions are left up to the individual CDQ groups, which are composed of groups of Aboriginal coastal villages. However, the AFA sets in statute either the names of vessels or the qualification criteria for all of the vessels and processors that are eligible to participate in the three non-CDQ sectors of the fishery. Basically, the participants in these three sectors form three cooperatives that individually determine their respective quota allocations. Fishers are also restricted in the choice of processor they can deliver to, and new processors are barred from entering the fishery except under a specific condition described below.

The AFA has in effect closed access to the fishery, and no new entrants can be authorized except by amendment to the Act. However, the Act allows new shoreside processors to become involved in the relevant sector if the TAC for pollock increases above 110 percent of the 1997 level.

This section now turns to other natural resource or agricultural industries in Canada. The Panel selected as examples the British Columbia forest industry and the production of milk and dairy products.

7.2 Other Resource Sectors

7.2.1 British Columbia Forest Industry

Most of B.C.'s forest lands (95 percent) are Crown lands. Rights to harvest are based on a licensing system consisting primarily of 25-year tree farm licences for large companies and 15-year forest licences for small companies. In principle, the licences are not "renewable," but are only "replaceable" at the discretion of the government.

Of particular interest to IPAC was the provision made for new entrants, which are small companies. Successful new entrants are given 5-year harvesting rights under the government's small enterprise program. Importantly, harvesting rights are not granted free of charge. Rather, they are auctioned off among would-be new entrants that qualify under the small enterprise program. Bidders are expected to include in their offers stumpage (royalty) rates, the number of jobs they anticipate creating and the investments they contemplate undertaking (such as establishing a sawmill).

7.2.2 Milk Production

Milk production is divided into two broad categories: fluid milk (used for table milk and cream) and industrial milk (used to produce dairy products such as butter, cheese and yogurt). The federal government has delegated its authority to regulate the market of fluid milk in interprovincial and export trade to the provinces. The federal government does, however, retain jurisdiction over the marketing of industrial milk and dairy products in interprovincial and export trade.

While the fluid milk production target is set by individual provinces, a federal/provincial agreement, the National Milk Marketing Plan, sets out the methodology for calculating the national industrial milk production target required to meet the demand for domestic and certain planned export markets, consistent with Canada's World Trade Organization (WTO) commitments. Importantly, the plan also provides the basis for the allocation of quota among the provinces: Market Sharing Quotas (MSQs).

The Canadian Milk Supply Management Committee (CMSMC) oversees the application of the National Milk Marketing Plan. Chaired by the Canadian Dairy Commission (a federal Crown corporation that plays a central facilitating role for the Canadian dairy industry), the CMSMC has representation from producers and governments of all provinces. Representatives of national consumer and producer organizations also participate as non-voting members of the CMSMC.

Based on a formula established by the CMSMC, changes to MSQs are automatically determined using a 12-month rolling calculation of Canadian requirements. The formula triggers a change in MSQs when an increase of one percent or greater occurs in two consecutive months, or when a decrease of 0.5 percent or greater occurs in two consecutive months.

The CMSMC applies the terms of the National Milk Marketing Plan to establish the provincial shares of MSQs. Each province allocates its share of MSQs to its respective producers according to its own policies.

The basic criteria determining provincial shares are population and historical production. When shifts in MSQs occur, population is given a weight of 90 percent and historical production a weight of 10 percent. These criteria are subject to modification by minor criteria, such as special provincial considerations to ensure that quotas for small provinces do not fall below a certain minimum.

Individual provinces determine the criteria for individuals to obtain a quota for either fluid or industrial milk production. Typically, a family member of a milk producer is allowed to obtain quota through family transfer. All others obtain quota by buying it from existing quota holders.

7.3 Aboriginal Fisheries in Other Jurisdictions

The Panel reviewed the approach to access to fisheries for Aboriginal peoples in four jurisdictions, including the United States, Scandinavia, New Zealand and Australia, to determine if there were any approaches that might be instructive in Canada. While there were differences in approaches depending upon the legal status of the Aboriginal group under consideration, there were some similarities:

- All jurisdictions clearly differentiate between commercial and non-commercial access to the fishery. Non-commercial use for food and ceremonial use is, for the most part, recognized and protected. Aboriginal access for non-commercial use was generally ranked just after conservation and before commercial access in terms of priority.
- In all jurisdictions, Aboriginal fishers are free to participate in the commercial fisheries as individuals provided they can acquire the required licences and quotas. Access to fisheries by Aboriginal collectivities presented a clear problem for all of the countries reviewed.
- Collective access for commercial use is only beginning to be dealt with in a systematic fashion. Aboriginal peoples have increasingly used the courts to define rights to commercial access, and countries have increasingly had to come to terms with Aboriginal rights to fish.

In the United States, the *Boldt* decision provided up to 50 percent of the available harvest to tribes in the Northwest to ensure that tribal members could earn a moderate livelihood. Access is managed through a series of co-management councils that have a wide range of responsibilities in managing the resource. There appears to be no distinction made between commercial and non-commercial access. Aboriginal stewardship is provided for through co-management agreements.

In New Zealand, as described previously (in Section 7.1.1), the *Treaty of Waitangi (Fisheries Claims) Settlement Act* legislated a quota for Maori fishers and provided financing for Maori commercial participation as well as Maori stewardship of the resource. The Maori have since created a network of companies that participate very effectively in the commercial fisheries, under the supervision of the Treaty of Waitangi Fisheries Commission. Moreover, the success of Maori involvement in commercial fishing has translated into greater influence in the protection of customary fishing rights and the development of an increasing number of Maori-controlled *mataitai* fishing reserves.

In Australia, the *Mabo* decision of 1992 recognized native title to land and sea, but it did not stipulate whether this title translated into Aboriginal rights to natural resources, for either ceremonial or commercial purposes. The *Native Title Act* (1993) did, however, protect the Aboriginal right to resources, provided that it was used for “personal, domestic or non-commercial communal needs.” This has been interpreted to mean that the government cannot interfere with Aboriginal fishing activities, nor do Aboriginal fishers require any form of licensing as long as they are not fishing for commercial purposes.

In Scandinavia, both Norway and Sweden recognize the Aboriginal rights of Sami engaged in the reindeer herding industry. These rights include the non-exclusive access to Crown land for herding and the non-commercial use of resources on that land. As part of this right, each state is obligated to consult with the Sami when development initiatives (other than for the forestry industry) are perceived as causing “considerable inconvenience” to Sami activities. Furthermore, Sami have the option of participating on a county resource management board that decides on access and quota issues on Crown land. Importantly, the Sami participate in the fisheries as individuals. Finally, a Sami Parliament has been created in Norway, Sweden and Finland, as well as in Russia, to act as the main advisory body to those countries on all matters, including the fishery.

7.4 Commentary

The investigation into decision making regarding access in other jurisdictions and agricultural or natural resource sectors led to one major conclusion. Granting access, essentially free of charge, as is done in Atlantic Canadian fisheries experiencing an increase in resource abundance and/or landed value, is highly unusual in other jurisdictions and sectors. In other jurisdictions, fishers wishing to gain access to a fishery have to buy their way in. Similarly, in other agricultural or natural resource sectors in Canada, there is no free access. In the British Columbia forest sector, for example, although provision is made for new entrants (small companies), aspiring entrants are required to submit bids to purchase harvesting rights.

In a context whereby access to public fishery resources is provided free of charge (other than the regular licence fees), it is legitimate for government to consider how decisions regarding access could be used to achieve other policy objectives. Some have suggested, for example, that good corporate citizenship might be taken into account in making decisions regarding access.

More importantly, as is argued below, respect for conservation principles must clearly be imposed as a condition of access to the fishery.

8 Aboriginal and Nunavut Access

The issue of Aboriginal and Nunavut participation and access to the fishery required special consideration in the Panel's deliberations: Aboriginal participation because of the constitutional position of Aboriginal peoples, and Nunavut because of its newness as a participant in the fisheries management process. Aboriginal parties in the provinces and Nunavut require additional support to build capacity for effective participation.

8.1 Aboriginal Participation

Aboriginal peoples have been historically under-represented as participants in the Atlantic fisheries and in many parts of the Atlantic economy. Mi'kmaq, Maliseet and Passamaquoddy, Inuit and Métis 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.

The *Marshall* decision changed the waterscape of the Atlantic fisheries. Among other things, the decision stated that the Mi'kmaq have a treaty right to catch and sell fish and to earn a moderate living from the proceeds. As Justice Binnie of the Supreme Court put it: "the treaty rights are limited to securing necessities (which I construe in the modern context as equivalent to a moderate livelihood) and do not extend to the open-ended accumulation of wealth." The Supreme Court of Canada defined a moderate livelihood as "such basics as food, clothing and housing, supplemented by a few amenities but not the accumulation of wealth. It addresses day-to-day needs. This was the common interpretation in 1760. It is fair that it be given this interpretation today." This treaty right is a collective right.

Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples. 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 that of non-Aboriginal fishers, to communities who have a right to participate commercially and to earn a certain level of income from it.

The effect of the *Marshall* decision is to require that access criteria ensure that the Aboriginal right to fish in pursuit of a moderate income is recognized as a priority, and that decision-making processes regarding access involve significant, substantial and effective Aboriginal participation.

The Panel's mandate requires members to be cognizant of arrangements made for Aboriginal fisheries under the AFS and in the wake of the *Marshall* decision. Panel members were pleased to find among non-Aboriginal fishers a willingness to share the resources with native fishers. However, their support was often contingent on all commercial fisheries obeying the same rules under DFO's management and on the condition that new native fisheries not add to the existing fishing capacity. On the other hand, some native intervenors put forward the view that they have the right to manage their own fisheries independently of DFO, as a constitutional right.

The Panel heard concerns about food fisheries taking place outside regulated fishing seasons, as well as about food fish being sold commercially. Non-Aboriginal fishers also voiced complaints about the inflation produced in the value of licences by DFO purchasing them for the benefit of Aboriginal fishermen.

Most Aboriginal fishing organizations the Panel consulted wanted more access to the fishery, emphasizing its importance to their economic development. Some were already deeply engaged in an expanding commercial fishery and were taking full advantage of new opportunities. One example is the Eskasoni Fish and Wildlife Commission, which is described below.

Under the AFS, some steps have been taken to increase Aboriginal participation in the commercial fishery. In addition, following the *Marshall* decision, some 200 inshore fishing licences have been purchased and transferred to First Nations. It is estimated that Aboriginal fishers account for 3.3 percent of all commercial lobster licences in the Maritimes and Quebec, 7 percent of the crab quota in the southern Gulf of St. Lawrence and Scotian Shelf, and 5 percent of the overall quota for shrimp. According to a survey by the Atlantic Policy Congress, 1,282 members of First Nations now work in fishing and jobs related to fishing.

Although the past decade has seen significant progress, the Aboriginal groups with whom the Panel met would like the process to be speeded up. The prospect of increased access to the commercial fishery has stimulated considerable interest in Atlantic Aboriginal communities, which see it as a way of reducing dependence on welfare and other government transfers. In Labrador, Northern Quebec and Nunavut, the commercial fishery is seen as one of a very limited number of ways of providing increased economic opportunities to a rapidly growing population.

The government's policy is to continue to increase Aboriginal participation in the commercial fishery, and some decisions have given Aboriginal groups preferential access when increased resources became available. However, because of the need to avoid exacerbating the problem of overcapacity in the industry, the government has chosen to purchase existing licences and transfer them to Aboriginal communities, rather than to issue new ones. A difficult situation may arise in the future if a shortage of fishers willing to sell their licences to the government at reasonable prices constrains the government's ability to meet its constitutional obligations under the *Marshall* decision through a licence buy-back program.

Most Aboriginal groups consulted by the Panel expressed a strong preference for dealing directly with DFO on matters concerning access on a government-to-government basis, rather than participating with non-Aboriginal parties in decision-making groups such as those formed under Integrated Fisheries Management Plans (IFMPs). Because of their constitutional standing, they regard themselves as being in a materially different situation from other groups for whom access is a privilege rather than a right. The Panel recognizes the reasons for this approach but considers that, in the longer term when Aboriginal groups are well established in the commercial fishery, there would be practical advantages to their participation with all other parties in the decision-making process, in the interests of an integrated approach to resource management and, in particular, in the interests of conservation. In summary, the Panel recommends that Aboriginal peoples be significantly and effectively represented in all decision-making processes related to access.

8.1.1 Eskasoni Fish and Wildlife Commission

The Panel's visit to the Eskasoni reserve in Nova Scotia provided an instance of the opportunities offered to Aboriginal communities as a result of the AFS and the *Marshall* decision. Located on the shores of the Bras d'Or Lakes, Eskasoni is the largest reserve in Atlantic Canada; with a population of about 3,400 people, it benefits from a number of public services (health centre, community radio station) and a dynamic Fish and Wildlife Commission.

The Eskasoni Fish and Wildlife Commission (EFWC) was created in the 1990s with AFS funding. Its commercial fishing activities expanded after the *Marshall* decision: 100 people, on-reserve, are now fishing commercially on four vessels, two in the Bras d'Or Lakes, two in the open ocean. The EFWC is shopping for licences for more access to the fishery. The EFWC is well integrated into the Atlantic fishing world. Its director, Charlie Dennis, sits on the FRCC; it has a creditable research program in the Bras d'Or Lakes and it collaborates with Canso Fisheries on an exploratory fishing venture.

8.2 Nunavut

The new territory of Nunavut was created on April 1, 1999, after many years of discussion and negotiations between the Inuit of the Eastern and Central Arctic and the Canadian government. Nunavut comprises almost one-fifth of Canada's total area, with a population of approximately 28,000, of whom 85 percent are Inuit, and half are under the age of 25. Of the 26 communities in Nunavut, 25 are coastal, with a historic attachment to the sea and marine resources that pre-dates European contact.

Access to the fishery in Nunavut gives rise to distinct political and constitutional concerns that must be addressed prior to any consideration of access in the Atlantic fishery generally. At a governmental level, the new territory of Nunavut is a geo-political entity akin to the existing Atlantic provinces in legislative powers and economic development interests. As in the case of southern Aboriginal fisheries, however, claims to access in Nunavut must be understood in the context of Section 35 of the *Constitution Act, 1982* and land claims agreements. The *Nunavut Land Claims Agreement*, signed by the Inuit of the Nunavut Settlement Area and the government of Canada in 1993, grants the Nunavut Wildlife Management Board (NWMB) responsibility over issues regarding access and allocation in fisheries within the Nunavut Settlement Area, which extends to the 12-mile territorial sea. Outside the Nunavut Settlement Area, the Agreement requires the federal government to seek the advice of the NWMB with respect to decisions regarding access and allocations affecting Inuit harvesting rights within the settlement area. The Agreement recognizes the importance of access to the fishery, particularly the importance of adjacency as a criterion, for economic development in Nunavut.

As the Nunavut government pointed out in its May 2001 response to the AFPR, notwithstanding the terms of the *Nunavut Land Claims Agreement*, the territory's extensive marine coastline and the Nunavummiut's historic attachment to marine resources, Nunavut's involvement in the Atlantic fishery remains limited. When Nunavut came into existence in 1999, its involvement in the Atlantic fishery was limited to approximately 27 percent of the adjacent turbot and 14 percent of the adjacent Northern shrimp fishery. Since then, Nunavut has been granted 100 percent of Canada's share of the 4,000-ton exploratory turbot harvest in North Atlantic Fisheries Organization (NAFO) divisions 0A and 1A. However, the territory still holds no commercial groundfish licence and Nunavut fishers do not qualify for AFS funding. Nunavut officials expressed concerns about the low level of funding available for scientific research in their waters and about the lack of funding for port infrastructure.

The Minister's decision with respect to turbot in division 0A and the recent Canada–Nunavut Memorandum of Understanding on Emerging Species Development are positive steps in the right direction. Nevertheless, it is clear that Nunavut does not enjoy the same level of access to its adjacent

fisheries as do the Atlantic provinces. The Panel is of the view that every effort must be made to remedy this anomalous situation. In keeping with the spirit of the *Nunavut Land Claims Agreement* and the fair and consistent application of the adjacency principle, the Panel recommends that no additional access should be granted to non-Nunavut interests in waters adjacent to the territory until Nunavut has achieved access to a major share of its adjacent fishery resources.

9 Access Criteria

In previous sections of this report, the Panel concluded that the lack of clarity of criteria for granting access does not appear to be a source of significant difficulty for new, emerging fisheries or for some intra-regional established fisheries. However, the absence of clarity is a source of great difficulty for other intra-regional established fisheries and most, if not all, established fisheries that cross regional boundaries. The point has also been made that lack of clarity not only leads to inequities, but can also pose a threat to effective resource management and particularly to conservation. In keeping with its mandate, the Panel has endeavoured to the best of its ability to refine the definitions of criteria for granting access.

In its attempt to refine these definitions, the Panel came to the conclusion that access criteria for both established fisheries and new, emerging, fisheries must necessarily be guided by overarching principles that reflect fundamental social values and constitutional norms. In the Panel's view, these principles must inform, and indeed should be applied prior to the application of access criteria to ensure that decisions regarding access are both sound and widely acceptable.

9.1 Overarching Principles

The Panel proposes three overarching principles to guide decision making regarding access, listed in order of priority:

9.1.1 Conservation

The AFPR document, *The Management of Fisheries on Canada's Atlantic Coast*, defines conservation as "sustainable use that safeguards ecological processes and genetic diversity for the present and future generations." If the principle of conservation is ignored, there is little point in discussing the sharing of resource wealth, since whatever wealth may accrue will likely prove to be no more than temporary.

9.1.2 Recognition of Aboriginal and Treaty Rights

Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and Treaty rights of Aboriginal peoples of Canada. The *Marshall* decision recognizes a constitutionally protected right to fish in pursuit of a moderate livelihood. This constitutional recognition changes the nature of Aboriginal participation in the Atlantic fishery from that of individuals who enjoy a privilege, like that of non-Aboriginal fishers, to communities which have a right to participate commercially and to earn a certain level of income from the fishery.

9.1.3 Equity

The equity principle has both a procedural and a substantive dimension. At a procedural level, the equity principle requires the fair and consistent application of access criteria through a decision-making process that is open, transparent and accountable and that ensures fair treatment for all. At a substantive level, the equity criterion is premised on the concept of the fishery as a common, public resource that should be managed in a way that does not create or exacerbate excessive interpersonal or inter-regional disparities. Failure to respect both the procedural and substantive requirements of the equity principle will generate widespread perceptions of unfairness and exclusion.

The three principles have been listed in order of priority. The principle of conservation must be paramount: if the principle of conservation is violated, the other two principles are rendered meaningless.

Aboriginal and treaty rights are constitutionally sanctioned. Therefore, the recognition of Aboriginal and treaty rights must take precedence over the principle of equity.

Panel members believe that these three core principles must guide, and indeed should be applied prior to the application of any access criteria to specific decisions regarding access.

9.2 Traditional Access Criteria

IPAC's mandate refers to certain traditional access criteria, particularly adjacency, historic dependence and economic viability. These criteria figured prominently in the Panel's consultations. As described above, some intervenors who appeared before the Panel argued that if IPAC provided clear definitions of each criterion, this would be sufficient to resolve future disputes regarding access in the Atlantic fishery. The document summarizing the results of the AFPR consultations also reflects the view of a number of intervenors that problems regarding access to established fisheries could be easily resolved if only the criteria were clearly defined and applied in a consistent manner.

While acknowledging the importance of clarity of definition and consistency, the Panel found the following conclusions inescapable:

- Definitions of the traditional access criteria, regardless of how carefully crafted, must necessarily retain a considerable degree of elasticity.
- No single criterion or set of criteria can automatically and uniformly be applied to the many circumstances in which access issues arise.
- It is impossible to assign weights to the various criteria that would be applicable in all circumstances.

- No single criterion, set of criteria or assigned ranking would be universally acceptable.

As discussed above, differences about the meaning of historic dependence illustrate the difficulty of crafting hard and fast definitions. Some intervenors argued that historic dependence does not apply to relatively new fisheries, while others argued that even a few years of attachment to a fishery is sufficient to establish dependence (particularly in the context of the groundfish collapse). Some argued that historic dependence relates to a specific stock; others argued that dependence relates to the waters traditionally fished (again in the context of the groundfish collapse). Similar differences arose in defining adjacency. While some intervenors argued that adjacency is primarily relevant in the context of inshore fisheries such as the lobster fishery, where its application has never been in dispute, others argued that adjacency extends to offshore fisheries. Some argued that adjacency should apply to communities directly adjacent to the fishery, while others argued adjacency should apply to provinces adjacent to the fishery resource.

It follows that judgement must be employed in applying the criteria to specific cases and in weighing their importance. The central question then becomes the process by which judgement is exercised, which will be discussed in the last part of this report.

While the Panel recognizes the inherent difficulties in this exercise, it has attempted to address the crucial question set out in its mandate, of providing clearer definitions of the traditional criteria. The Panel agrees that established definitions of the criteria, interpreted and applied in a manner consistent with overarching principles of conservation, recognition for Aboriginal and treaty rights and equity, as set out above, should lead to better decisions regarding access.

The Panel therefore puts forward the following definitions of the traditional criteria.

9.2.1 Adjacency

The adjacency criterion requires that priority of access should be granted to those who are closest to the fishery resource in question. The adjacency criterion is based on the explicit premise that those coastal fishing communities and fishers in closest proximity to a given fishery should gain the greatest benefit from it, and on the implicit assumption that access based on adjacency will promote values of local stewardship and local economic development. In the case of near-shore and inshore fisheries, and sedentary species, the application of adjacency as the sole criterion is most compelling. However, as the fishery moves to the mid-shore and offshore, and as the species fished become more highly migratory and mobile, adjacency as the only

criterion for decisions regarding access becomes harder to justify. In such cases, adjacency cannot serve as the exclusive criterion for granting access, but must be weighed along with other criteria, including historic dependence, in particular.

9.2.2 Historic dependence

The historic dependence criterion requires that priority of access be granted to fishers who have historically participated in and relied upon a particular fishery, including those who developed the fishery. Depending on the nature and history of the fishery, the requisite period of dependence can vary from a few years to many decades. The historic dependence criterion is based on the premise that fishers who have historically fished a particular stock should enjoy privileged access to that resource to ensure their continued economic stability and viability, as well as that of the coastal communities from which they come. The historic dependence criterion is most compelling when applied to a particular species that has been fished over a significant period. When the reliance on a stock is relatively recent, or when the historic dependence is to fishing waters or the fishery generally rather than to a particular species, other criteria such as adjacency may be more applicable.

9.2.3 Economic viability

The economic viability criterion requires that decisions regarding access promote, rather than compromise, the economic viability of existing participants in a particular fishery, as well as that of potential new entrants to that fishery. The economic viability criterion is based on the premise that decisions regarding access should contribute to the economic resiliency and stability of individual fishers and of the fishing industry as a whole. At the level of the fishing enterprise, economic viability focuses on factors such as capacity to fish, ability to comply with last-in-first-out rules and sound business planning. At a broader level, economic viability looks at factors such as relative economic return and value-added to the fishery, as well as at stability of employment in the processing sector and economic benefits to dependent coastal communities. Properly applied, economic viability should complement other access criteria in ensuring an economically and environmentally sustainable fishery.

The Panel recognizes that the foregoing definitions are broad and require balancing. However, given the diversity of the Atlantic fishery, Panel members do not believe that a more precise set of definitions or rigid ranking would be workable or could gain widespread acceptance.

9.3 Conservation as an Additional Criterion

In addition to the three traditional criteria, the Panel proposes a fourth criterion, namely conservation. Conservation has been listed as one of three overarching principles; furthermore, all parties agree that conservation exists as an *implicit* criterion. Hence, it may appear to be unnecessary, if not redundant, to propose conservation as an *explicit* criterion. Indeed, many intervenors regarded conservation as a given (see Section 4).

The members of IPAC do not, however, accept that conservation can safely be left as a given, as an implicit criterion since implicit criteria are easily relegated to the background and ignored. The Panel therefore proposes the following definition of the conservation criterion:

The conservation criterion requires that decisions regarding access promote conservation, not only of discrete stocks, but of fish habitat and the ecosystem as a whole. The application of the criterion requires that priority be given to environmentally responsible fishers engaging in sustainable fishery practices, subject to verifiable assessment based on past practice, susceptibility to effective monitoring, direct and indirect contribution to the enhancement of knowledge and other factors related to conservation. In view of its pre-eminence as a principle underlying Canadian fisheries management, the conservation criterion should be applied to all access decisions independently of any other criteria which might also be appropriate.

The significance of an explicit conservation criterion is that it would require whatever group, body or individual that is called upon to pass judgement on requests for access to take certain specific actions. The group, body or individual would be required by the criterion to assess the likely impact on the conservation of the resource, in both the near and long terms, that could be expected to flow from granting the request. It goes without saying that the assessing entity would have to be able to call upon unbiased scientific expertise in responding to the requirements of the conservation criterion.

The granting of access can pose a potential threat to conservation in at least two ways. First, the granting of access may draw into the fishery both physical (vessels) and human capital which cannot be readily shifted out of the fishery should reduced harvests be called for. Needless to say, if there are few alternative uses for that capital, calls for reduced harvest levels, should the need arise, will be vigorously resisted. The consequences for conservation of the resource could prove to be disastrous.

The history of Northern cod is instructive, as reported by the Fisheries Resource Conservation Council (FRCC) (*A Groundfish Conservation Framework for Canada*, 1997). By the mid-1980s, it was realized that the

target rate of fishing mortality (percentage of the biomass taken through harvests) was being greatly exceeded. Achieving the target rate of fishing mortality would have required a substantial reduction in the TAC. Since fleets and fishers could not be readily shifted out of the fishery, proposed reductions in the TACs met with intense resistance. A compromise, referred to as the “50 percent rule,” was reached, whereby the planned rate of fishing mortality for the coming season would be set half-way between the current actual rate of fishing mortality and the “safe” target rate.

There is, of course, a long list of factors that led to the collapse of the Northern cod resource. Although the 50 percent rule was not the only cause of the collapse, it was a significant factor.

Another example of the threat to conservation posed by increased access, cited previously, is the Newfoundland snow crab fishery. It will be recalled that the number of temporary seasonal permits ballooned from 400 in 1995 to 2,500 in 2000. The Panel noted, with some concern, that holders of temporary seasonal permits are now demanding that their temporary permits be converted into permanent licences; that the vessels appear to have few, if any alternatives; and finally that the resource abundance is known to be cyclical. There is absolutely no guarantee that the current high level of abundance will continue indefinitely. It can be anticipated that, if there are calls for substantial reductions in the TAC due to fluctuations in abundance of the resource, the calls will be met with significant resistance. The potential consequences for the resource are too obvious to need stating.

The Panel therefore would argue that before access to abundant resources is granted on a “temporary” basis, where the abundance is recognized to be ephemeral, then proper application of the conservation criterion would dictate that a clear exit strategy first be put in place.

The second way in which the granting of access can pose a threat to conservation is somewhat more subtle. As has been noted elsewhere in this report, DFO has been attempting to foster a “conservationist ethic,” which can be seen as a willingness to invest in the resource. However, if those who are being encouraged to invest in a resource know that returns on the investment will be significantly reduced through the granting of additional access, then obviously the incentive to invest in conservation will be lost.

Needless to say, those already established in a particular fishery will maintain that *any* increase in returns due to increases in resource abundance and/or landed value constitutes a fair return on their investment in the resource. Once again, sound judgement has to be brought to bear on finding a balance.

In any event, Panel members believe that conservation must be more than a principle; it must be set forth as an explicit criterion, and as *the* overriding criterion. Not to do so runs the risk of ensuring that access programs

designed to share the wealth will instead prove to be the means of destroying the wealth from increased resource abundance and/or landed value.

10 The Decision-Making Process

The Panel has concluded that there are severe limits to the degree of precision that can be achieved in providing reasonable definitions and ranking of criteria for granting access. Judgement must be brought to bear in applying the criteria. Consequently, the way in which judgement is applied — the decision-making process — becomes crucial in resolving issues related to access. This section commences by examining the desired qualities of any decision-making process regarding access, as suggested by the Panel's research and consultations.

10.1 Desired Qualities of a Decision-Making Process

The Panel's consultations clearly revealed that the great majority of participants in the Atlantic fishery want a decision-making process characterized by the following qualities:

1. Expertise: the people making decisions about access are well informed about the fishery and about issues related to access.
2. Independence: the process of decision making, as well as the people responsible for its implementation, are not controlled by parties with a vested interest in the outcome, including governments.
3. Transparency: the process is open to scrutiny and does not include hidden or secret influences.
4. Fairness: the same rules apply to all.
5. Inclusiveness: all interested and affected parties are able to participate effectively.

In terms of operating procedures, intervenors generally agreed that any decision-making process should be:

1. Accessible: the process for applying for access to the fishery should be simple.
2. Principled: the principles and criteria for arriving at decisions should be known in advance and clearly guide the work of decision makers so as to lead to consistent outcomes.
3. Structured: the steps used in arriving at decisions, guided by principles and criteria, should be clear and explicit.
4. Accountable: the advice provided should be public and supported by reasons, and the decisions taken should be rational and clearly seen to follow the guiding principles and criteria, as well as agreed-upon procedural rules.

In general terms, these are the operating procedures to be expected from a fair and impartial public decision-making process within current Canadian administrative practice as outlined, for example, in the Auditor General's report to the House of Commons for 1999 (Chapter 23). The University of Victoria's Institute for Dispute Resolution heard similar views about the desired qualities of a decision-making process in its examination of a parallel issue, allocations in the Pacific salmon fishery. The Panel wishes to emphasize that, in its view, these qualities should apply to all decision-making processes in Atlantic fisheries, from local to Atlantic-wide processes.

The Panel has noted that *within* certain DFO regions, the process for granting access to fisheries experiencing increased resource abundance and/or landed value appears generally to be transparent, consistent and equitable. On the other hand, in some intra-regional fisheries, and in virtually all cases involving more than one province or territory, the process for granting access does not meet the desired characteristics. Throughout its consultations, the Panel heard a series of complaints about the politicization of the process, the "secret" manner in which decisions regarding access are made and the inconsistent manner in which the criteria are implemented, particularly with regard to inter-regional decisions regarding access.

The controversial Northern shrimp allocation for the year 2000 was a factor leading to the establishment of IPAC. As noted in an earlier section of this report, Panel members were struck by the fact that intervenors on both sides of the controversy complained about the seemingly arbitrary and illogical manner in which access criteria had been applied.

It is worth re-emphasizing why transparency, independence and fairness, as well as clearly stated rules of operation, do in fact matter. If a genuinely effective "top down" resource management system were in place, these characteristics would be of limited importance. There might be complaints from regions and industry groups, but the resources would be effectively protected.

However, an effective "top down" resource management system in the fishery has proven to be unattainable, as the AFPR discussion document makes abundantly clear. That is why the document sets forth an "incentive adjusting approach" to resource management, which emphasizes co-management, shared stewardship and the development of a conservationist ethic among stakeholders.

The point has already been made that this approach to resource management will work if and only if the stakeholders have good reason to take the long view and find it in their own economic/social interests to invest in conservation of the resource. A lack of transparency, consistency and perceived fairness in the decision-making process creates immense uncertainty in the minds of stakeholders. This uncertainty, in turn, is

severely damaging to any attempt to establish co-management regimes and a conservationist ethic. It can be stated without fear of contradiction that, if the decision-making process lacks transparency, consistency and fairness, the department's attempts to foster co-management and a conservationist ethic will be an exercise in futility.

10.2 Current Models

Decision-making processes that satisfy some of the qualities described above already exist within Canadian fisheries management. Others have been proposed.

For example, the Developing Species Advisory Boards, made up of industry participants, advise DFO managers on sharing expanding resources, in new and emerging fisheries and in established fisheries experiencing an increase in resource abundance and/or landed value. Resolution of issues related to sharing access is then included in Integrated Fisheries Management Plans (IFMPs) for specific stocks. Many intervenors expressed satisfaction with the work of these boards.

The Fisheries Resource Conservation Council (FRCC) was created in the wake of the Northern cod collapse as a mechanism for increasing transparency and reducing political influence in setting TACs in Atlantic groundfish stocks. The FRCC brings in industry participation and makes public recommendations to the Minister of Fisheries. While many intervenors expressed some criticism of the FRCC, virtually all agreed that its presence had led to a significant improvement in resource conservation. Some intervenors expressed doubt about whether the FRCC model, which works well for setting quotas, could be applied to the more controversial issue of access.

The Independent Review of the Pacific Salmon Fishery conducted by the University of Victoria's Institute for Dispute Resolution has already been mentioned. While the issues it considered — the management of the salmon harvest, a proposed Pacific Allocation and Licensing Board and policy development processes — are different from those addressed by IPAC, the Institute's report also emphasized the need for a consistent and transparent decision-making process.

10.3 Options

Under the current *Fisheries Act*, the Minister has absolute discretion in granting access. In light of this fact, it is not surprising that lobbying and political considerations play a major role in decisions regarding access. In examining how the process could be improved, the Panel examined four options.

10.3.1 Improved status quo

After examining whether the existing system could be improved simply by providing clearer definitions of the principles and criteria for determining access, the Panel concluded that it is not possible to provide a formula that would apply to all cases and/or satisfy all participants. Some measure of judgement, based on local knowledge and a holistic approach to issues, must be exercised. In regard to local and regional issues, the Panel has seen that DFO can sometimes lead the industry to satisfactory solutions for sharing access. In cases of inter-regional or interprovincial conflicts, however, issues can become extremely political and the process breaks down. Finally, because of the fundamental principle that recommendations made by government officials to the Minister must remain confidential, transparency is ultimately impossible and decisions are often seen as arbitrary and capricious.

10.3.2 Ad hoc panels

Special panels, composed of respected individuals without vested interests in the fishery, or at least in the outcome of decisions, could be appointed to advise the Minister on specific cases as the need arises. The final decision would continue to rest with the Minister, but the panels' work would be subject to operational rules as described above and, since their recommendations would be public, this option would satisfy transparency and accountability requirements.

This option has much to recommend it and could satisfy many of the requirements for a decision-making process regarding access. Members could be chosen as required for the task at hand and panels could achieve rapid results by focusing on a single issue; their ad hoc nature would also favour administrative simplicity.

On the other hand, a recent decision on the sharing of turbot stocks by an ad hoc panel did not meet universal approval. There is a risk that decisions by such arbitration panels may be perceived as regionally biased. Furthermore, ad hoc, single-issue panels could not easily acquire the experience necessary to ensure consistency and continuity in the application of the principles and criteria for granting access, or to gain the confidence of the fishing community.

10.3.3 An advisory board

Following the FRCC model, an advisory board dealing with issues of access to fisheries expanding in resource abundance and/or landed value could be mandated to advise the Minister through a consultative and deliberative process leading to public recommendations. The final word would still rest with the Minister.

Such a body could limit itself to issues that could not be resolved satisfactorily within individual DFO regions, or that involved multiple regions or the interests of more than one province or territory. A standing board could progressively acquire the experience to achieve a consistent approach in interpreting and applying principles and criteria regarding access. It could also ensure transparency and reduce the influence of lobbying.

The administrative requirements of a standing board would, of course, be greater than those of an ad hoc panel, but they would probably be no greater than those of the FRCC, which offers a working model. However, appointments to such a board would have to be made very carefully, on the basis of wide consultation, for the board to be truly effective and credible. A possible disadvantage is that the creation of a permanent structure could be perceived as adding to an already heavy bureaucratic process.

10.3.4 A quasi-judicial board

The final option would be to create a quasi-judicial body that would actually make final decisions in place of the Minister. Some experienced observers of the fishery spoke favourably of this option as the one most likely to eliminate political interference in decision making regarding access. Others insisted that the Minister, who is after all responsible to Parliament, should retain the final decision-making authority. Creating such a board would require a change in the *Fisheries Act*.

10.4 An Atlantic-wide Fisheries Access Board

As reported in Section 4, there was near-universal criticism of the lack of transparency, politicization and the role of lobbying in the present decision-making system. On the other hand, opinions were divided on the desirability of creating some kind of independent body to play a part in decisions regarding access.

In the Panel's view, those who oppose the creation of such a body cannot have things both ways. If they want better decisions, then there must be changes in the decision-making process and the institutions that play a part in it. If they oppose such changes, then they must expect that the well-established relationships between the participants in the industry, their various lobbyists, departmental officials and Ministers will continue to work the same way as in the past, with the same results.

Given the desired qualities of a process for granting access to new and emerging fisheries, or established fisheries expanding in resource abundance and/or landed value, and in support of the principles of both subsidiarity and continued Ministerial responsibility, the Panel has come to the following conclusions:

1. Intra-regional processes for granting access should be left untouched where they are transparent, seen to be fair, respect the principles of conservation and equity, and recognize Aboriginal and treaty rights. Indeed, the development of processes in Atlantic fisheries for the granting of access that do not require the constant submission of disputes to the Minister for resolution is to be strongly encouraged.
2. For those instances in which issues concerning access cannot be settled satisfactorily through existing processes, maintaining the status quo (i.e., direct appeals to the Minister) cannot be a way of getting better decisions. Transparency, consistency and fairness will continue to be forfeit, with all that implies for resource management.

The Panel therefore recommends that an independent, Atlantic-wide Fisheries Access Board (hereafter “the Board”) be established, with the following mandate and terms of reference.

10.4.1 Mandate

The Board would:

1. Provide advice to the Minister of Fisheries on issues regarding access which have not been settled satisfactorily by existing processes;
2. Review decisions about access at the request of the Minister;
3. Review intra-regional decisions about access where a party satisfies the Board that such decisions violate the principles of conservation, Aboriginal and treaty rights or equity;
4. Advise the Minister on policies concerning access; and
5. Consult with the FRCC on the consequences of decisions about access for conservation of resources.

The fifth component of the proposed mandate arises from the importance of the conservation criterion. That component would, however, be severely limited in usefulness if the FRCC’s advisory duties continue to be confined to groundfish. The FRCC’s terms of reference (4.4) state that “in the first instance, the Council will address groundfish, and then subsequently take on responsibility for pelagic and shellfish species.” Expansion of the FRCC’s duties was therefore clearly envisaged when the FRCC was put in place. As a subsidiary recommendation, therefore, IPAC urges that the FRCC now be called upon to take on responsibility for providing advice on the conservation of pelagic and shellfish species. The Panel notes, in passing, that pelagic and shellfish species combined now account for almost 90 percent of the value of landings in Atlantic Canada.

10.4.2 Membership

The Board should consist of people knowledgeable in the fishery without a direct vested interest in the outcomes of the Board's decisions. The Chair should be selected by the Minister in consultation with the five provinces and Nunavut on the basis of names submitted by participants in the industry, the provinces and Nunavut, and Aboriginal communities. Members (six or seven in number) should also be appointed by the Minister on the advice of the Chair, industry participants, Aboriginal groups, the department, and the provinces and Nunavut. Members of the Board should be appointed on their own merits and not as representatives of regions, provinces or fleet sectors. Nevertheless, membership should strive for a balance in terms of distribution of regional and other interests, and include Aboriginal representation as well as public interest participation. Membership could be for three-year staggered terms, renewable once.

An important question is whether governments should be members of the Board. The provinces and Nunavut do have membership on the FRCC and by all accounts play a very constructive role, for example in assessing the scientific evidence that is presented. However, the Board's main function would be to advise on who should be given access to wealth, from what region. Consequently, each provincial/territorial government would be duty-bound to protect its own interests, and would therefore be seriously constrained in giving due weight to broader considerations.

Insofar as the federal government is concerned, it would of course be inappropriate for federal officials to participate, other than as sources of factual information, in the deliberations of a body whose purpose is to develop advice to a federal Minister.

The Panel concludes, therefore, that governments should not be represented on the Board.

10.4.3 Procedures

Where the Board is required to address a particular issue regarding access, the following procedures would apply:

1. Affected parties would be notified that a recommendation was to be made on a particular issue regarding access;
2. Affected parties would also be informed of the principles and criteria to be applied;
3. The parties could make written submissions to and/or appear before the Board to explain their positions;
4. Following the Board's hearing of the issue, the parties could provide further clarification or information in support of their position; and

5. Following its decision, the Board would provide reasons for any decisions or recommendations which were made, and these would be made public at the same time as they are given to the Minister.

10.4.4 Meetings

1. The Board would meet as required to consult and deliberate on cases referred to it by the Minister.
2. It would also meet at least once a year to review and report to the Minister on policies regarding access.
3. The Board would consult, as needed, through public meetings, with the fishing industry, communities, Aboriginal groups and other interests concerned about access to marine resources, as well as with provincial and DFO officials.

10.4.5 Reporting

1. The Board would issue its recommendations to the Minister as a public report, available to all at the same time as it is submitted to the Minister.
2. The Board's reports would explain the reasons for its recommendations or decisions in light of the guiding principles and criteria.

10.4.6 Administrative support

The Board's offices should be located within the Atlantic area and should be supported by a small secretariat funded by DFO, but not housed in DFO offices.

11 Conclusions

IPAC's review of decisions regarding access in Atlantic fisheries found some instances in which processes for granting access work well; however, there are numerous instances in which concerns about criteria and processes for granting access are fully justified. Current definitions of access criteria are open to wide and divergent interpretations. The process of decision making regarding access has often been characterized by a lack of transparency, consistency and perceived fairness. The Panel also concluded that, in addition to leading to inequities, flawed mechanisms for granting access represent a threat to effective resource management.

11.1 Overarching Principles

The Panel noted the absence of explicit overarching principles for the granting of access, and argues that such principles, reflecting fundamental social values and constitutional norms that underpin the Atlantic fishery, are required.

Recommendation #1

As a first step towards improving mechanisms for granting access, the Panel therefore recommends that:

All access decisions should be based on three overarching principles, which are listed below in order of priority:

1. Conservation of the resource;
2. Recognition of Aboriginal and treaty rights; and
3. Equity.

11.2 Conservation

Conservation is of such importance that it should, in the Panel's view, stand both as an overarching principle and as an explicit criterion of access. Panel members were concerned that, while all parties recognize its importance, conservation is, at best, an implicit criterion of access that can easily be relegated to the background, with potentially disastrous consequences for the future of the resource.

Recommendation #2

The Panel therefore recommends that:

Conservation be made an explicit criterion of access, universally applicable in all decisions regarding access, and that conservation be recognized as the primary access criterion.

The Panel defines the conservation criterion as follows:

The conservation criterion requires that decisions regarding access promote conservation, not only of discrete stocks, but of fish habitat and the ecosystem as a whole. The application of the criterion requires that priority be given to environmentally responsible fishers engaging in sustainable fishery practices, subject to verifiable assessment based on past practice, susceptibility to effective monitoring, direct and indirect contribution to the enhancement of knowledge and other factors related to conservation. In view of its pre-eminence as a principle underlying Canadian fisheries management, the conservation criterion should be applied to all access decisions, independently of any other criteria which might also be appropriate.

11.3 Definitions of Traditional Criteria

IPAC was mandated to improve the definitions of the traditional criteria for granting access: adjacency, historic dependence and economic viability. The Panel was also asked to rank these criteria in order of importance.

Recommendation #3

The Panel therefore recommends the following definitions:

1. Adjacency

The adjacency criterion requires that priority of access should be granted to those who are closest to the fishery resource in question. The adjacency criterion is based on the explicit premise that those coastal fishing communities and fishers in closest proximity to a given fishery should gain the greatest benefit from it, and on the implicit assumption that access based on adjacency will promote values of local stewardship and local economic development. In the case of near-shore and inshore fisheries, and sedentary species, the application of adjacency as the sole criterion is most compelling. However, as the fishery moves to the mid-shore and offshore, and as the species fished become more highly migratory and mobile, adjacency as the only criterion for decisions regarding access becomes harder to justify. In such cases, adjacency cannot serve as the exclusive criterion for granting access, but must be weighed along with other criteria, including historic dependence, in particular.

2. Historic dependence

The historic dependence criterion requires that priority of access be granted to fishers who have historically participated in and relied upon a particular fishery, including those who developed the fishery. Depending on the nature and history of the fishery, the requisite period of dependence can vary from a few years to many decades. The historic dependence criterion is based on the premise that fishers who have historically fished a particular stock should enjoy privileged access to that resource, to ensure their continued economic stability and viability, as well as that of the coastal communities from which they come. The historic dependence

criterion is most compelling when applied to a particular species that has been fished over a significant period. When the reliance on a stock is relatively recent, or when the historic dependence is to fishing waters or the fishery generally rather than to a particular species, other criteria such as adjacency may be more applicable.

3. Economic viability

The economic viability criterion requires that decisions regarding access promote, rather than compromise, the economic viability of existing participants in a particular fishery, as well as that of potential new entrants to that fishery. The economic viability criterion is based on the premise that decisions regarding access should contribute to the economic resiliency and stability of individual fishers and of the fishing industry as a whole. At the level of the fishing enterprise, economic viability focuses on factors such as capacity to fish, ability to comply with last-in-first-out rules and sound business planning. At a broader level, economic viability looks to factors such as relative economic return and value-added to the fishery, as well as at stability of employment in the processing sector and economic benefits to dependent coastal communities. Properly applied, economic viability should complement other access criteria in ensuring an economically and environmentally sustainable fishery.

11.4 An Atlantic-wide Fisheries Access Board

The Panel concluded that it was impossible to provide definitions of the traditional criteria which were more precise and at the same time universal in both application and acceptability. It was equally impossible to produce a ranking of the traditional criteria that would be universal in both application and acceptability. The Panel concluded, therefore, that judgement has to be used in applying access criteria.

That conclusion led directly to the question of how such judgement is to be applied. The Panel could find no satisfactory means of addressing the problem by simply improving the status quo since it is not possible to recommend measures that would apply to all cases and satisfy all participants. At the same time, however, Panel members have no desire to recommend solutions that threaten decision-making mechanisms for granting access that are currently producing satisfactory results.

The Panel examined three possible options for a board that would address decisions regarding access:

1. Ad-hoc panels;
2. An advisory board; and
3. A quasi-judicial board.

Of these, the Panel concluded that the second option, an advisory board, was the best option.

Recommendation #4

The Panel therefore recommends that:

An independent Atlantic-wide advisory board be established that would serve as a default mechanism to address those decisions regarding access that cannot be resolved in a satisfactory manner within Atlantic Canada.

11.5 Fisheries Resource Conservation Council

The Panel has outlined the proposed mandate, membership, procedures and administrative arrangements that such a board would require to operate effectively. In addition, since the Panel recommends that conservation be made an explicit access criterion, the Board would be required to address itself to the consequences of decisions about access for conservation. It would be desirable for the Board to consult with the FRCC on such issues. The FRCC would, however, be of very limited value to the Board if its mandate continued to be restricted to groundfish.

Recommendation #5

The Panel therefore recommends that:

The FRCC be called upon, as allowed for in its original terms of reference, to take on responsibility for providing advice on the conservation of pelagic and shellfish species, as well as on groundfish species.

11.6 Nunavut

During the course of its consultations, the Panel examined the situation prevailing in Nunavut, which Panel members came to regard as a special case. The Panel found that Nunavut does not enjoy the same level of access to its adjacent fisheries as do the Atlantic provinces.

Recommendation #6

In keeping with the spirit of the *Nunavut Land Claims Agreement*, and the fair and consistent application of the adjacency principle, the Panel therefore recommends that:

No additional access should be granted to non-Nunavut interests in waters adjacent to Nunavut until the territory has achieved access to a major share of its adjacent fishery resources.

11.7 Aboriginal Participation

Recommendation #7

Finally, in view of the constitutional status of Aboriginal people's rights relating to the fishery, the Panel recommends that:

Aboriginal peoples be significantly and effectively represented in all decision-making processes related to access in Atlantic Canada.

Appendices

Appendix 1 – Terms of Reference

Independent Panel on Access Criteria for the Atlantic Coast Commercial Fishery

As a means to make more constructive progress towards achieving an open and transparent access and allocation decision-making process, the Minister of Fisheries and Oceans, with the concurrence of the Atlantic Council of Fisheries and Aquaculture Ministers (ACFAM), has agreed to accelerate a portion of the work on access and allocation decision-making originally planned for Phase II of the Atlantic Fisheries Policy Review (AFPR).

This involves the creation of an independent panel to review decision-making criteria for new or additional access in a commercial fishery that has undergone a substantial increase in resource abundance or landed value, or in a new or emerging fishery (Phase III Commercial Licences) on the Atlantic Coast. This panel will be known as the Independent Panel on Access Criteria (IPAC).

Background

The AFPR was launched in May 1999 to create a consistent and cohesive policy framework for the Atlantic Coast fishery. This policy review is being conducted in two phases:

- the first phase, now underway, focuses on developing the required direction and principles for managing Atlantic coast fisheries over the long term, including establishing general access and allocation principles to guide decision-making; and
- the second phase will focus on how to put the policy framework and principles into operation.

Proposed access and allocation principles are outlined in the AFPR discussion document, *The Management of Fisheries on Canada's Atlantic Coast*. Public consultations on this document will occur in March and April, 2001. More detailed discussions on specific elements of the issues discussed in the access and allocation section of the AFPR discussion document are scheduled for consideration in the second phase of the AFPR. DFO remains committed to the successful completion of the policy review. The creation of a panel to provide advice and recommendations on access decision-making criteria should not detract from the AFPR or prejudice the results of public consultations on the broader principles and issues.

Context

The current *Fisheries Act* authorises the Minister to issue licences or leases to harvest or use the fisheries resources. The Minister must take into

account relevant considerations in making these decisions while ensuring his/her legal responsibilities with respect to conservation are met and that there is compliance with obligations concerning Aboriginal groups and international agreements. This absolute discretion of the Minister to provide access to wealth from the fisheries, that is, the authority to alter existing shares or arrangements or to issue new fishing licenses or leases, is extraordinary within the Canadian system of government.

By access and allocation we mean:

Access: the opportunity to harvest or use the fisheries resource, generally permitted by licenses or leases issued by DFO under the authority of the Minister of Fisheries and Oceans. Opportunities are affected by the requirement of DFO to take into account Aboriginal and treaty rights to fish and international obligations when providing those opportunities.

Allocation: the amount or share of the fisheries resource or allowable catch that is distributed or assigned by the Minister of Fisheries and Oceans to those permitted to harvest the resource.

There are several related sources of tension surrounding the power of the Minister on access and allocation decisions.

- There is a concern that the objectives or principles that govern access and allocations are unclear and decisions are made “in secret”. Various factors are taken into account, but many argue that there is no consistency in the application of these criteria.
- There are controversies about access, allocations and sharing arrangements throughout the commercial fishery. In some cases, there is a concern about the perceived fairness of particular allocations and/or sharing arrangements, and about their duration.
- Because access to wealth in the form of fishing opportunities is distributed at the discretion of the Minister, it is not uncommon for people to try to improve their chances by lobbying the Minister and the department. This generates criticism that decision-making is “political” and non-transparent.
- Disputes over access and allocation arrangements and concerns about the fairness of the decision-making process have continued for some time, and there is disagreement about the role that DFO and its Minister should play in this area. These ongoing disputes over access and allocations detract the Minister, the department, resource users and others from the desired focus on conservation.

In 2000, the allocation of northern shrimp to PEI interests provoked strong opposition from the province of Newfoundland and Labrador, Newfoundland fishing interests and other provinces and fishing interests. This decision, and the reaction to it, has highlighted a more fundamental

lack of consensus about the criteria guiding access and allocation decisions, and the process for making decisions.

Direction to the IPAC

The Mandate of the IPAC

As indicated in the previous section on context, there are many problems associated with decision-making on access to, and allocation of, the resource in commercial fisheries. The IPAC is not asked to consider all of these problems. The Atlantic Fisheries Policy Review (AFPR) will consider the broader principles and issues associated with access and allocations.

The IPAC's role is to provide recommendations towards a solution to the following problem:

The current criteria that govern decision-making when providing access to 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 for making these decisions is unclear.

Scope

The mandate of the IPAC is to provide recommendations on decision-making criteria surrounding who will be granted new access to a commercial fishery that has undergone a substantial increase in resource abundance or landed value, or in a new or emerging fishery (Phase III Commercial Licences). It is not the mandate of the IPAC to determine when a fishery has undergone a substantial increase in abundance or landed value. What constitutes a "substantial increase" may vary from fishery to fishery, and is determined by DFO in consultation with stakeholders.

Fleets and license holders may be concerned that recommendations by the IPAC will take precedence over their own attempts to arrive at a solution on access and allocation issues. Industry should be reassured that, consistent with the goal of the AFPR, the department continues to promote industry development of workable and satisfactory solutions to access and allocation challenges. The results of this review of access decision-making criteria will apply when current processes do not produce satisfactory results and the issue is referred to government. It is likely, however, that industry stakeholders may find the additional clarity on these concepts useful as they arrive at their own solutions.

The IPAC is reminded that the direction in the AFPR points to fleets and license-holders one day having responsibility to solve many of their own

resource allocation problems including those dealing with new commercial participants. In some cases, Integrated Fisheries Management Plans have already established criteria for allowing new access. The recommendations of the IPAC are not meant to overturn these initiatives.

IPAC's recommendations will not apply to the re-opening of fisheries under moratoria. These fisheries are not considered to be new fisheries, and policies are already in place to deal with this issue.

Specific reference must also be made with respect to the IPAC's mandate on Aboriginal fisheries. The *Marshall* decision has served to clarify certain treaty rights related to access to the fisheries, and these are being addressed in specific treaty and rights processes led by the Department of Indian and Northern Affairs with specific direction from DFO on fisheries access initiatives. Neither the AFPR nor the work of the IPAC will replace these specific processes for interpreting and accommodating Aboriginal rights to commercial access, nor for addressing specific issues emerging from increased Aboriginal involvement in the commercial fishery. However, because of the expanded Aboriginal presence in the commercial fisheries, the IPAC's work must be common to all in the fishery.

Objectives

The IPAC will have three main objectives:

1. Seek Understanding

The IPAC will need to gain an understanding of the context and history of the DFO's fisheries management policies, especially those related to access and allocation. The IPAC will need to understand how previous access and allocation decisions were made, what decision-making criteria were used, and how those criteria were applied. However, it is not the role of the IPAC to provide advice with respect to previous access and allocation decisions nor is it their role to make recommendations to remedy perceived wrongs in the current access arrangements.

It will be important for the IPAC to develop an understanding of the different nature of the fisheries on the Atlantic coast and the differences in approaches to managing them, and providing for access to them.

The IPAC will also need to become familiar with the work of the AFPR and other relevant policy documents.

The IPAC should find it useful to examine access criteria and mechanisms used in other jurisdictions and natural resource sectors.

2. Undertake Consultations

The IPAC is expected to carry out and oversee consultations on access decision-making criteria. Consultations will be held in the form of meetings and discussions with the governments of the Atlantic Provinces, Quebec

and Nunavut; a broad cross-section of resource users; fishing industry organizations; and, Aboriginal organizations. The IPAC may wish to consult with the External Advisory Board to the AFPR.

A variety of consultative processes may be used and cost saving approaches are encouraged, but any approach will have to be impartial and allow concerned groups and individuals full access to IPAC members.

The IPAC will also be expected to operate in an open and transparent fashion. Summaries of consultations and all briefs and submissions received by the IPAC will be publicly available (subject to federal and provincial laws). The IPAC is expected to provide the Minister with a written public report. In addition, the IPAC is also expected to provide interim reports, either verbal or written, to the Minister of Fisheries and Oceans and senior DFO officials at regular intervals. The IPAC Chair will also be expected to provide a briefing as part of the regular ACFAM process to provincial and territorial ministers. Provincial officials will also be briefed through the FPAFC Working Group.

The IPAC will be expected to draw on the technical expertise of Fisheries and Oceans officials. Additionally, the members may wish to avail themselves of independent technical expertise.

3. Provide Specific Recommendations

The IPAC is expected to produce a public report to the Minister of Fisheries and Oceans with impartial, thoughtful and practical recommendations for access criteria to guide decision-making, including:

- Criteria to guide decision-making when providing access to new or additional entrants in changing commercial fisheries (where it has been determined there is a substantial increase in resource abundance or landed value) or in new/emerging fisheries (Phase III Commercial Licences), taking into consideration the direction proposed in the AFPR discussion document;
- The appropriateness of current access decision-making criteria;
- Practical definitions of the terms associated with those criteria including, but not limited to, adjacency, historic dependence, fairness, equity, and the economic viability of existing fleets;
- Advice on their relative ranking or weight in the decision-making process; and
- How those access criteria would be applied taking into consideration the profound differences among fisheries and fleet sectors on the East Coast. For example, adjacency might be weighted differently for a highly migratory species (tuna) than a sedentary one (crab).
- Based on the IPAC's examination of access criteria used in other jurisdictions and natural resource sectors, report on the

various mechanisms employed in making access decisions and their feasibility for use in the Atlantic fishery.

- Consistent with the direction outlined in the AFPR discussion document, the IPAC is asked to provide general advice to the Minister on the process used for taking access decisions in changing or new fisheries and on ways to ensure openness and transparency. This advice will be integrated into the AFPR exercise currently underway in DFO.

Operations of the IPAC

The IPAC will be supported by a small secretariat located in Ottawa who will report to the Director, Program Development and the Associate Assistant Deputy Minister of Fisheries Management. The secretariat will provide administrative support for the IPAC.

Departmental officials will provide technical advice and support where required. If necessary, the IPAC may contract with outside parties to develop additional analysis and administrative options.

Reporting Date

The IPAC is expected to provide a report to the Minister by October 31, 2001.

Appendix 2 – Membership

Chair

Mr. Arthur Kroeger (bilingual), *B.A., University of Alberta; M.A. (Rhodes Scholarship), Oxford*. Mr. Kroeger has, since 1993, been Chancellor of Carleton University. His appointment followed a distinguished career in the public service of Canada which spanned more than three decades and included a wide range of senior appointments. He has often been referred to as the “Dean of Deputy Ministers”, having served in that role for six key federal departments including Indian Affairs (1975–79); Transport Canada (1979–83); Regional Industrial Expansion (1985–86); Energy, Mines and Resources (1986–88); and Employment and Immigration Canada (1988–92). He retired from the public service in 1992 and since then has been teaching and serving as a consultant and a frequent media commentator. He was named Officer of the Order of Canada in 1989 and Companion of the Order of Canada in 2000.

Panelists

Dr. Paul LeBlond (bilingual), *Pacific Fisheries Resource Conservation Council (PFRCC); B.A., Laval University; B.Sc., McGill University; Ph.D., University of British Columbia*. Dr. LeBlond holds a Ph.D. in physics and oceanography from the University of British Columbia. Following a post-doctoral fellowship in Germany, Dr. LeBlond served as Professor of Oceanography and Physics at the University of British Columbia until his retirement in 1996. He is now active in a variety of local, national and international ocean science and conservation forums. Before joining the PFRCC, Dr. LeBlond was one of the original members of the Fisheries Resource Conservation Council for Atlantic Canada. Dr. LeBlond is a Fellow of the Royal Society of Canada.

Professor Martha Jackman (bilingual), *Vice-Dean and Professor, Faculty of Law (French Common Law Section), University of Ottawa; B.A., Queen’s University; LL.B., University of Toronto; LL.M., Yale Law School*. Professor Jackman has written and published extensively on constitutional and equality rights issues, with particular focus on social and economic rights. She has been actively involved in continuing legal and judicial education, litigation and other law reform activities at the provincial and national level. She is the Managing Editor of the *Canadian Journal of Women and the Law/Revue Femmes et Droit*, and a member of the Law Society of Upper Canada.

Professor Gordon Munro, *Professor Emeritus, Department of Economics, University of British Columbia; B.A., University of British Columbia; M.A., Ph.D., Harvard University*. Professor Munro is the former Deputy Director of Research, Fisheries and Marine Service, Environment Canada (1976). He

was Co-ordinator, Pacific Economic Co-operation Conference Task Force on Fisheries Development and Co-operation (1983–1996), Member of the Fisheries and Oceans Research Advisory Council (1985–1990), and Member of the Royal Society of Canada Panel on Global Change and Canadian Marine Fisheries (1995–1999). Professor Munro was also a Distinguished Research Fellow at the Norwegian School of Economics and Business Administration (1997–2000), Visiting Expert with the FAO (1997 and 2001) and a participant in the FAO Technical Working Group and Consultation on the Management of Fishing Capacity (1998–1999). Professor Munro has consulted for the OECD, FAO Fisheries Department and DFO Pacific Region (1999-2001). He teaches natural resource economics at the University of British Columbia and has done research and published extensively on fisheries management issues since the mid-1970s.

Professor David Newhouse, *Chair, Department of Native Studies; Associate Professor, Native Studies/ Administrative Studies, Trent University; B.Sc., M.B.A., University of Western Ontario.* Professor Newhouse is Onondaga from the Six Nations of the Grand River near Brantford, Ontario. Prior to joining Trent University in 1992, Professor Newhouse worked for the Department of Indian Affairs and Northern Development as the Director of Housing. He was also a lecturer in the School of Business Administration at Western University. He is Editor, CANDO Journal of Aboriginal Economic Development. In 1999, he was the IMC Aboriginal Scholar in Residence at the College of Commerce, University of Saskatchewan. Professor Newhouse's research interests focus on the interplay of traditional aboriginal thought and contemporary western thought in modern aboriginal societies, particularly in the area of governance and economics.

Appendix 3 – Consultations

Fishing industry organizations

| Organization | Spokesperson | Date and Location of Meeting |
|--|--|--|
| Fisheries Association of Newfoundland and Labrador | Alastair O’Rielly, President | August 22, 2001 St. John’s, Newfoundland and Labrador |
| Eastern Fishermen’s Federation | Norma Richardson, President | August 23, 2001 Halifax, Nova Scotia |
| Nova Scotia Fleet Planning Board - | Percy Hayne, President | August 23, 2001 Halifax, Nova Scotia |
| Seafood Producers Association of Nova Scotia | Roger Stirling, President | August 23, 2001 Halifax, Nova Scotia |
| Shelburne County Quota Group | Gary Detrick, President | August 23, 2001 Halifax, Nova Scotia |
| Canadian Association of Prawn Producers | John Angel, Executive Director | August 23, 2001 Halifax, Nova Scotia |
| PEI Fishermen’s Association | Rory McLellan, Managing Director | August 24, 2001 Charlottetown, Prince Edward Island |
| PEI Seafood Processors Association | Garth Jenkins, President | August 24, 2001 Charlottetown, Prince Edward Island |
| Fish, Food and Allied Workers Union | Earle McCurdy, President | August 24, 2001 Halifax Airport, Nova Scotia; September 11, 2001 St. John’s, Newfoundland and Labrador |
| Scotia-Fundy Mobile Gear Fishermen’s Association | Brian Giroux, Executive Director | August 27, 2001 Halifax, Nova Scotia |
| New Brunswick Seafood Processors Association | Joe Labelle, Executive Director | August 28, 2001 Moncton, New Brunswick |
| Fédération des pêcheurs semi-hauturiers du nord Québec | Gabrielle Landry, Directrice Générale | August 28, 2001 Moncton, New Brunswick |
| Maritime Fishermen’s Union | Mike Belliveau, Executive Secretary | August 29, 2001 Moncton, New Brunswick |

| Organization | Spokesperson | Date and Location of Meeting |
|---|---|--|
| Fédération régionale acadienne des pêcheurs professionnels | Jean St-Cyr, Directeur général | August 29, 2001 Moncton, New Brunswick |
| Association des employé(e)s d'usines de produits marins | Jeannine Paulin, Présidente | August 29, 2001 Moncton, New Brunswick |
| Regroupement des pêcheurs polyvalents d'Old Fort à Blanc-Sablon | Jean-Richard Joncas, Président | August 30, 2001 Québec, Québec |
| Regroupement des pêcheurs professionnels du nord de la Gaspésie | Rosaire Gauthier, Président | August 30, 2001 Québec, Québec |
| Fisheries Council of Canada | Ron Bulmer, President | August 31, 2001 Ottawa, Ontario |
| Area 19 Snow Crab Federation | Brian Adams, President | September 24, 2001 Sydney, Nova Scotia |
| North of Smokey Fishermen's Association | Osborne Burke, President | September 24, 2001 Sydney, Nova Scotia |
| Maritime Fishermen's Association Local 6 | Jeff Brownstein, President | September 24, 2001 Sydney, Nova Scotia |
| Area 30 Fishermen's Association/Area 23 Snow Crab Fishermen's Association | Gord MacDonald, President/Vice-President | September 24, 2001 Sydney, Nova Scotia |
| Regional Developing Species Advisory Board | Christine Penny, Clearwater Fine Foods; Don Hart, Sambro Seafoods Limited; Nelly Baker, Eastern Shore Protective Association; Chris Jones, Department of Fisheries and Oceans Canada, Senior Advisor, Pelagics | September 25, 2001 Sydney, Nova Scotia |
| Association des pêcheurs de poisson de fonds Acadiens | Alyre Gauvin, Président | September 27, 2001 Moncton, New Brunswick |
| Canadian Aquaculture Industry Alliance | David Rideout, Executive Director | October 4, 2001 Ottawa, Ontario |
| Groundfish Enterprise Allocation Council | Bruce Chapman, Executive Director | October 4, 2001 Ottawa, Ontario |
| Canadian Council of Professional Fish Harvesters | Daniel Bernier, Executive Director | October 12, 2001 Ottawa, Ontario |

| Organization | Spokesperson | Date and Location of Meeting |
|--|---|--|
| Canadian Sportfishing Industry Association | Rick Amsbury, Executive Director | October 17, 2001 Ottawa, Ontario |
| Northern Coalition | Rosalind Perry, Executive Director | October 19, 2001 St. John's, Newfoundland and Labrador |
| Fogo Island Cooperative | Bernadette Dwyer, Special Projects Manager | October 22, 2001 Iqaluit, Nunavut |

Provincial and Nunavut Governments and Other Governmental Organizations

| Government Organization | Spokesperson | Date and Location of Meeting |
|---|---|---|
| Nunavut Department of Sustainable Development | Carey Bonnell, Director of Fisheries and Sealing | August 20, 2001 Iqaluit, Nunavut |
| Nunavut Wildlife Management Board | Jim Noble, Executive Director | August 20, 2001 Iqaluit, Nunavut |
| Newfoundland and Labrador Federation of Municipalities | Mayor Derm Flynn, President | August 22, 2001 St. John's, Newfoundland and Labrador |
| Newfoundland and Labrador Department of Fisheries and Aquaculture | Mike Samson, Deputy Minister | August 22, 2001 St. John's, Newfoundland and Labrador |
| Nova Scotia Department of Agriculture and Fisheries | Peter Underwood, Deputy Minister | August 27, 2001 Halifax, Nova Scotia |
| New Brunswick Department of Agriculture, Fisheries and Aquaculture | Clair Gartley, Acting Deputy Minister | August 28, 2001 Fredericton, New Brunswick |
| Quebec Department of Agriculture, Fisheries and Food | Daniel Roy, Acting Deputy Minister | August 30, 2001 Québec, Québec |
| Prince Edward Island Department of Fisheries, Aquaculture and Environment | Lewie Creed, Deputy Minister | September 14, 2001 Charlottetown, Prince Edward Island |
| Fisheries Resource Conservation Council | Fred Woodman, Chair | September 28, 2001 Halifax, Nova Scotia |
| Nova Scotia Department of Agriculture and Fisheries | Peter Underwood, Deputy Minister | October 18, 2001 Halifax, Nova Scotia |
| Prince Edward Island Department of Fisheries, Aquaculture and Environment | Lewie Creed, Deputy Minister | October 18, 2001 Charlottetown, Prince Edward Island |

| Government Organization | Spokesperson | Date and Location of Meeting |
|--|---|---|
| New Brunswick Department of Agriculture, Fisheries and Aquaculture | The Honourable Rodney Weston, Minister; Clair Gartley, Acting Deputy Minister | October 19, 2001 Moncton, New Brunswick |
| Newfoundland and Labrador Department of Fisheries and Aquaculture | The Honourable Gerry Reid, Minister; Mike Samson, Deputy Minister | October 19, 2001 St. John's, Newfoundland and Labrador |
| Nunavut Department of Sustainable Development | The Honourable Olayuk Akasuk, Minister; Alex Campbell, Deputy Minister | October 22, 2001 Iqaluit, Nunavut |
| Quebec Department of Agriculture, Fisheries and Food | Aziz Niang, Director, Policy Analysis Division | October 23, 2001 Québec, Québec |
| Department of Fisheries and Oceans | Neil Bellefontaine, Regional Director General, Maritimes Region Jim Jones, Regional Director General, Gulf Region Jean-Guy Beaudoin, Regional Director General, Laurentian (now Quebec) Region Wayne Follett, Associate Regional Director General, Newfoundland Region | August 23, 2001 Halifax, Nova Scotia August 29, 2001 Moncton, New Brunswick August 30, 2001 Quebec, Quebec September 11, 2001 St. John's, Newfoundland |

Aboriginal organizations

| Name of Individual | Affiliation | Date and Location of Meeting |
|---------------------------|---|---|
| Peter Keenainak | Marine Development Manager, Qikiqtaaluk Corporation | August 20, 2001 Iqaluit, Nunavut |
| Glen Williams | Wildlife Advisor, Nunavut Tunngavik Inc. | August 20, 2001 Iqaluit, Nunavut |
| Peter Penashue | President, Innu Nation | August 21, 2001 Goose Bay, Newfoundland and Labrador |
| Bart Jack Sr. | Land Claims Negotiator, Innu Nation | August 21, 2001 Goose Bay, Newfoundland and Labrador |
| Greg Nuna | CEO, Innu Development Limited Partnership | August 21, 2001 Goose Bay, Newfoundland and Labrador |
| David Penner | Corporate Business Manager, Innu Development Limited Partnership | August 21, 2001 Goose Bay, Newfoundland and Labrador |
| Todd Russell | President, Labrador Métis Nation | August 21, 2001 Goose Bay, Newfoundland and Labrador |
| Shirley Pye | Executive Assistant, Labrador Métis Nation | August 21, 2001 Goose Bay, Newfoundland and Labrador |
| Tim Martin | Commissioner of the Metukulimkewe'l Commission, Maritimes Aboriginal Peoples Council | August 27, 2001 Halifax, Nova Scotia |
| Roger Hunka | Director of Intergovernmental Affairs, Maritimes Aboriginal Peoples Council | August 27, 2001 Halifax, Nova Scotia |

| Name of Individual | Affiliation | Date and Location of Meeting |
|---------------------------|---|--|
| Gary Hofkins | Manager of the Commercial Fisheries, Conne River First Nation | September 12, 2001 St. John's, Newfoundland and Labrador |
| Charlie Dennis | CEO, Fish and Wildlife Commission, Eskasoni First Nation | September 24, 2001 Sydney, Nova Scotia |
| Tom Johnson | Director of Operations, Fish and Wildlife Commission, Eskasoni First Nation | September 24, 2001 Sydney, Nova Scotia |
| Shelley Denny | Marine Biologist, Fish and Wildlife Commission, Eskasoni First Nation | September 24, 2001 Sydney, Nova Scotia |
| Brian Muise | Fisheries Consultant, Fish and Wildlife Commission, Eskasoni First Nation | September 24, 2001 Sydney, Nova Scotia |
| Adamie Alaku | Vice President, Economic Development, Makivik Corporation | September 25, 2001 Montreal, Québec |
| Neil Greig | Resource Manager, Economic Development, Makivik Corporation | September 25, 2001 Montreal, Québec |
| Mark Allard | Resource Manager, Economic Development, Makivik Corporation | September 25, 2001 Montreal, Québec |
| Leon Sock | President, Mawiw Council of First Nations | September 27, 2001 Fredericton, New Brunswick |
| Chief Second Peter Barlow | President, Union of New Brunswick Indians | September 27, 2001 Moncton, New Brunswick |
| Chief Michael Augustine | Red Bank First Nation | September 27, 2001 Moncton, New Brunswick |
| Chief Benjamin Peter Paul | Pabineau First Nation | September 27, 2001 Moncton, New Brunswick |
| John G. Paul | Executive Director, Atlantic Policy Congress of First Nation Chiefs | September 28, 2001 Halifax, Nova Scotia |
| Chris Milley | Fishery Advisor for Acadia First Nation | September 28, 2001 Halifax, Nova Scotia |

Others

| Name | Affiliation | Date and Location of Meeting |
|-----------------|--|--|
| Vic Young | Former Chair and CEO of Fishery Products International | August 21, 2001 St. John's, Newfoundland and Labrador |
| Richard Cashin | Chair, Fishing Industry Renewal Board | August 22, 2001 St. John's, Newfoundland and Labrador |
| Mark Butler | Marine Co-ordinator, Ecology Action Centre | August 23, 2001 Halifax, Nova Scotia |
| Anthony Charles | Professor of Finance and Management Science and of Environmental Studies, Saint Mary's University | August 27, 2001 Halifax, Nova Scotia |
| Donald Savoie | Director, Institut Canadien de la recherche sur le développement regional and Clément-Cormier Chair, Université de Moncton | August 28, 2001 Moncton, New Brunswick |
| John Crosbie | Former Minister, Fisheries and Oceans Canada | September 11, 2001 St. John's, Newfoundland and Labrador |
| Ray Andrews | Consultant, Andrews Port Services | September 11, 2001 St. John's, Newfoundland and Labrador |
| Eugene Tsoa | Professor and Head, Department of Economics, Memorial University | September 11, 2001 St. John's, Newfoundland and Labrador |
| Noël Roy | Professor, Department of Economics, Memorial University | September 11, 2001 St. John's, Newfoundland and Labrador |
| William Schrank | Professor, Department of Economics, Memorial University | September 11, 2001 St. John's, Newfoundland and Labrador |

| Name | Affiliation | Date and Location of Meeting |
|---------------|---|--|
| Frederic Wien | Professor and Co-ordinator of the Bachelor of Social Work program, Maritime School of Social Work, Dalhousie University | September 28, 2001 Halifax, Nova Scotia |

Organizations Invited to Meet with IPAC: No Meeting Took Place

- Abegweit First Nation
- Alliance des pêcheurs professionnels du Québec
- Area 18 Snow Crab Fishermen's Association
- Assemblée des Premières Nations du Québec et du Labrador
- Assembly of First Nations, Atlantic Vice-Chief
- Association Québécoise de l'industrie de la pêche (AQIP)
- Conservation Council of New Brunswick
- Labrador Inuit Association
- Lennox Island First Nation
- Louis Lapierre, Professor, Département de biologie, Université de Moncton; Chair, Institute for Environmental Monitoring and Research
- Robert Romain, Professor, Département d'économie agro-alimentaire et des sciences de la consommation (EAC), Université Laval

Appendix 4 – Written Briefs Submitted to IPAC

Fishing Industry Organizations

- Associations des Crabiers Gaspésiens Inc. (Octobre 2001)
- Association des Employé(e)s d’Usines de Produits Marins (29 août 2001)
- Association des pêcheurs de poisson de fond acadien (27 septembre 2001)
- Canadian Aquaculture Industry Alliance (October 24, 2001)
- Canadian Association of Prawn Producers (October 1, 2001)
- Coastal Labrador Fisheries Ltd. (October 9, 2001)
- Eastern Fishermen’s Federation (August 23, 2001)
- Fédération des pêcheurs semi-hauturiers du Québec (Octobre 2001)
- Fédération régionale acadienne des pêcheurs professionnels (FRAPP) (August 29, 2001)
- Fish, Food & Allied Workers (August 24, 2001)
- Fisheries Association of Newfoundland and Labrador Limited (September 30, 2001)
- Fisheries Council of Canada (August 31, 2001)
- Fogo Island Co-operative Society Limited (October 22, 2001)
- Groundfish Enterprise Allocation Council (October 4, 2001)
- Gulf Nova Scotia Fleet Planning Board
- Les Crabiers du Nord-Est Inc. (Octobre 2001)
- Lower North Shore Fishermen’s Association (May 31, 2001)
- PEI Groundfish Association (October 1, 2001)
- Regroupement des pêcheurs professionnels du Nord de la Gaspésie
- Seafood Producers Association of Nova Scotia (October 5, 2001)
- Shelburne County Quota Group (August 23, 2001)

Representatives of Aboriginal Organizations

- Atlantic Policy Congress of First Nation Chiefs Secretariat Inc. (October 16, 2001)

From Government Organizations

- Government of New Brunswick – Department of Agriculture, Fisheries and Aquaculture (October 29, 2001)
- Government of Newfoundland and Labrador

- Department of Fisheries and Aquaculture – Preliminary Presentation (August 22, 2001)
- Speaking Notes for the Honourable Gerry Reid (October 19, 2001)
- Department of Fisheries and Aquaculture – Second Presentation (October 19, 2001)
- Department of Fisheries and Aquaculture – Adjacency and Resource Access Position Paper (October 31, 2001)
- Government of Nunavut
 - Department of Sustainable Development – Presentation to the IPAC: “Building Nunavut’s Fisheries”
- Government of Prince Edward Island – Department of Fisheries, Aquaculture and Environment (October 3, 2001)
- Gouvernement du Québec – Ministère de l’Agriculture, des Pêcheries et de l’Alimentation (November 16, 2001)
- Nunavut Fisheries Working Group
 - Nunavut Department of Sustainable Development
 - Nunavut Wildlife Management Board
 - Nunavut Tunngavik Inc.
- Nunavut Wildlife Management Board

Other Interested Parties

- Paul Jagoe, “Overlooking Troubled Waters” (October 4, 2001)

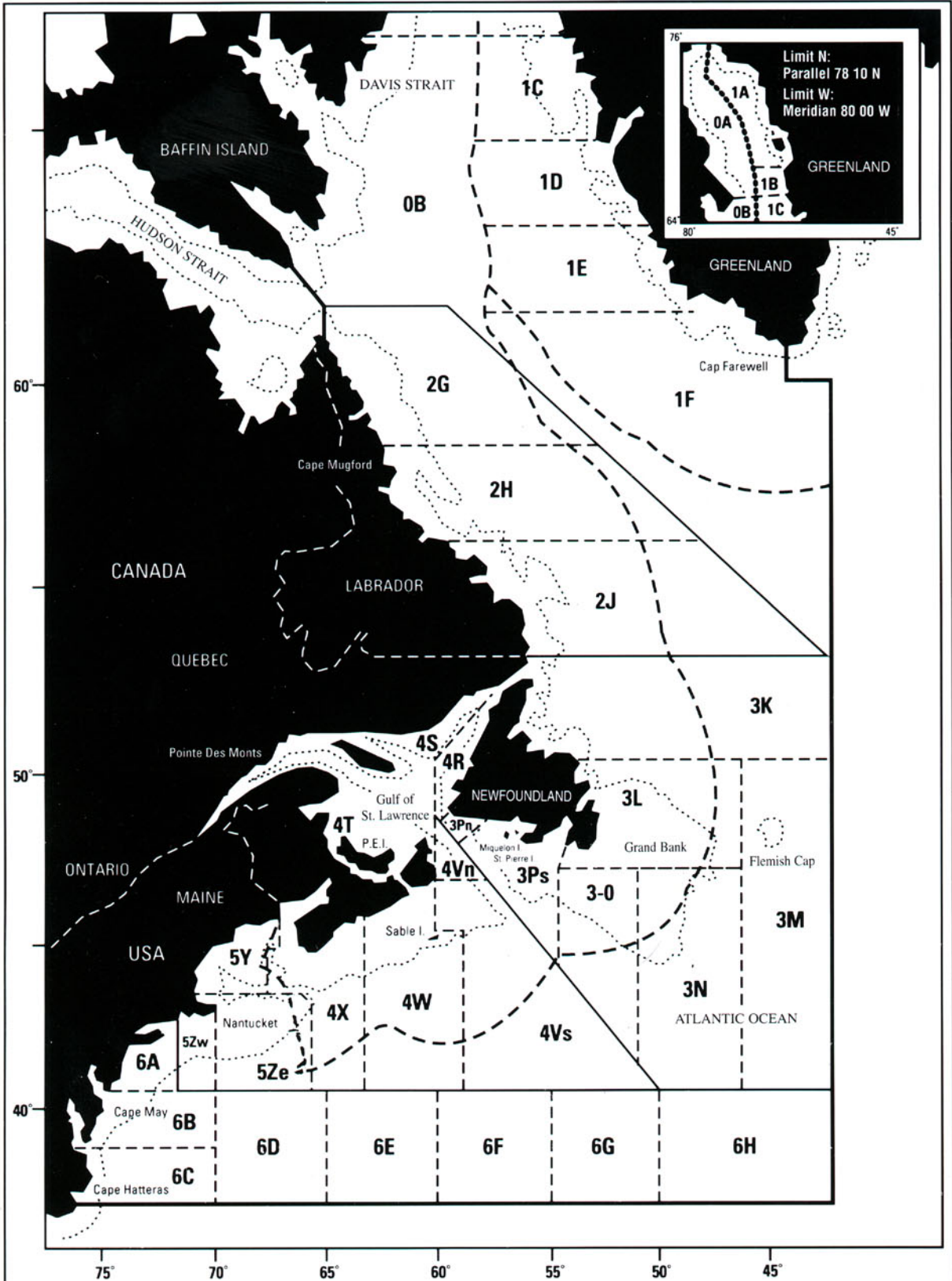
Appendix 5 – DFO Atlantic Coast Administrative Regions and Atlantic Fishing Zones

Department of Fisheries and Oceans
Atlantic Coast Administrative Regions

- Central and Arctic
- Quebec
- Maritimes
- Gulf
- Newfoundland



ATLANTIC FISHING ZONES



Subareas and Divisions of the NAFO Convention Area

Boundary of Convention Area
 Boundaries for Subareas
 Boundaries of Divisions
 Depth contour, 100 fath (188 m)
 200 mile Fishing Zone Boundary

