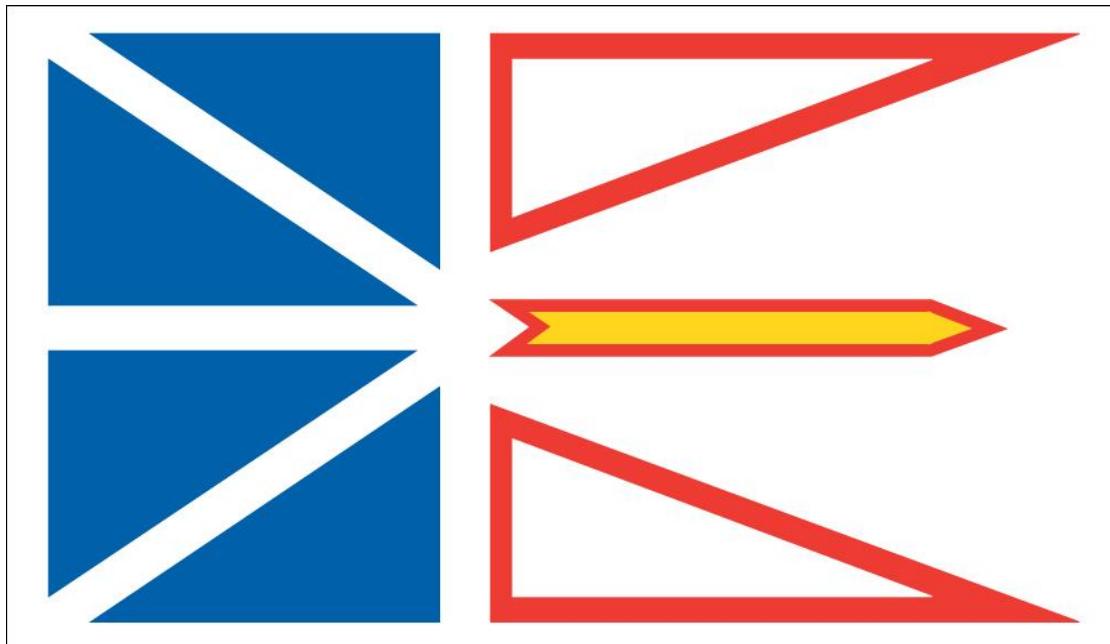




**REVIEW OF SECTIONS 19.1 THROUGH 19.14 OF THE  
*FISHING INDUSTRY COLLECTIVE BARGAINING ACT***

**Fishing Industry Collective Bargaining Model:  
Past, Present and Future**



David G. Conway, Independent Review Consultant  
September 2022

**VOLUME 1: REPORT**

**VOLUME 2: APPENDICES**

**REVIEW OF SECTIONS 19.1 THROUGH 19.14 OF THE  
*FISHING INDUSTRY COLLECTIVE BARGAINING ACT***

**VOLUME 1:  
REPORT**

**David Conway, Independent Review Consultant**

**Submitted to:**

**The Honourable Bernard Davis  
Minister of Environment and Climate Change and Minister Responsible for  
Labour Province of Newfoundland and Labrador**

**September 2022**



## Review of Sections 19.1 through 19.14 of the *Fishing Industry Collective Bargaining Act*

**David Conway**  
Independent Review Consultant

September 18, 2022

The Honourable Bernard Davis  
Minister of Environment and Climate Change and Minister Responsible for Labour  
P. O. Box 8700  
St. John's, NL A1B 4J6

Dear Minister Davis:

In accordance with the Terms of Reference for Review of the Fishing Industry Collective Bargaining Model ("Review") I am pleased to present you with this Report.

The results of the Review have been produced in two Volumes. The Report itself is contained within Volume 1, and the Appendices are contained within Volume 2. Recommendations are being submitted for your consideration as part of the Report.

I would like to thank the individuals and organizations that participated in the Review and who made written and verbal submissions as part of the Review. Without their participation this Report would not have been possible.

In the Public Advisory of the Review dated July 28, 2022, which is included in the Appendices, it was noted that:

*The review will involve consultations with fish harvesters, processors, their respective organizations and any other interested parties. A written report of the Fishing Industry Collective Bargaining Act Review will be submitted to the Minister Responsible for Labour outlining the results of the review and any recommendations. A final report will also be made publicly available.*

I trust that this Report and its recommendations will assist the Government of Newfoundland and Labrador and the stakeholders in the fishing industry of the Province.

Yours truly,

A handwritten signature in blue ink, appearing to read "David G. Conway".

---

DAVID G. CONWAY  
Independent Review Consultant

---

## ACKNOWLEDGEMENTS

This Report builds upon the hard work of other individuals, many of whom prepared documents that are referenced in the Appendices. The fishing industry collective bargaining model in Newfoundland and Labrador is unique and it has evolved over a period of decades. It is hoped that this Report and its recommendations will serve to enhance and improve upon this collective bargaining model now into the future.

I would like to extend my sincere thanks to Keith Sullivan of FFAW-Unifor and Derek Butler of the Association of Seafood Producers for their participation in the Review process. Without their cooperation, insight and expertise on behalf of their respective members this Report would not have been possible.

I would also like to extend my sincere thanks to Minister Davis and the officials within his Department for their assistance and support in making this Report possible.

Finally, I would like to extend my sincere thanks and appreciation to all of the individuals and organizations who gave freely of their time to be interviewed or to provide submissions as part of the Review process. I trust that this Report will make a positive ongoing contribution to the fishing industry collective bargaining model in Newfoundland and Labrador.

Yours truly,



---

DAVID G. CONWAY  
Independent Review Consultant

---

## TABLE OF CONTENTS

TOPIC	PARAGRAPH
Introductory Comments .....	1
Terms of Reference .....	6
<i>Fishing Industry Collective Bargaining Act</i> .....	7
Key Collective Bargaining Sections .....	11
Sections Under Review .....	12
The Past .....	15
The Vardy Task Force Report .....	16
The Jones Report .....	21
The Cashin Report .....	27
The Present .....	34
Collective Bargaining Model .....	41
Composition of the Standing Fish Price-Setting Panel .....	43
Negotiations .....	48
Final Offer Selection .....	51
Reconsideration .....	53
Other Jurisdictions - Alaska .....	56
Other Jurisdictions - Quebec .....	59
Other Jurisdictions - Iceland .....	65
The Future .....	68
Written Submissions .....	74
Periodic Reviews .....	80
Collective Bargaining Model .....	84
Standing Fish Price-Setting Panel .....	96
Final Offer Selection .....	113
Reconsideration .....	121
Increased Focus on Negotiations .....	127
Pricing Formula for Snow Crab .....	133
Fishery Information and Market Risk/Exposure .....	141
Practices and Procedures of the Panel .....	144
List of Individuals Interviewed in the Review .....	147
Summary of Recommendations .....	150

## **INTRODUCTORY COMMENTS**

1. This is a pragmatic Report that reviews the fishing industry collective bargaining model in Newfoundland and Labrador, identifies issues with the present model and makes recommendations for change.
2. The current fishing industry collective bargaining model, while by no means perfect, is preferable to alternative collective bargaining models that have failed in the past, are not realistic or pose significant risks.
3. Even if a “better” alternative collective bargaining model exists, which is debatable, there is not widespread stakeholder support at this time to abandon the current model.
4. Furthermore, and even if a better alternative collective bargaining model potentially exists, there are no guarantees that such a model would work in practice in this Province and it could cause considerable harm.
5. In light of these conclusions, along with the need for labour relations stability, it is recommended that changes be made to the current fishing industry collective bargaining model before any consideration is given to an entirely different model.

## **TERMS OF REFERENCE**

6. The Terms of Reference for Review of the Fishing Industry Collective Bargaining Model (the “Review”) are as follows:

*PURPOSE:*

*To review the fishing industry collective bargaining model contained in Sections 19.1-19.14 of the Fishing Industry Collective Bargaining Act*

*BACKGROUND:*

*The Minister Responsible for Labour has initiated a review of the collective bargaining model contained in sections 19.1 to 19.14 of the Fishing Industry Collective Bargaining Act.*

*The Fishing Industry Collective Bargaining Act (FICBA) regulates collective bargaining between fish harvesters and processors. In 2006, Government authorized the creation of a three-person Standing Fish Price-Setting Panel (Panel) for the purpose of:*

- a. facilitating access by parties to collective bargaining to market information relating to the sale of fish;
- b. establishing criteria that are not inconsistent with this Act relating to collective bargaining under this Act;
- c. providing assistance to parties engaged in collective bargaining under this Act;
- d. setting prices and conditions of sale for a fish species where parties have engaged in collective bargaining and have been unable to agree or where parties have refused to engage in collective bargaining;
- e. reviewing and report on matters related to the price and conditions of sale of a fish species that may be referred to it by the minister responsible for fisheries and aquaculture; and
- f. making recommendations on matters falling within its mandate to the minister responsible for fisheries and aquaculture and the minister responsible for fisheries in the Government of Canada.

*FICBA prohibits the right to strike or lockout, and requires the Panel to use either final offer selection or conventional arbitration in making their decisions.*

**STATEMENT OF WORK:**

*In concluding the work, the Consultant will:*

- 1. *Review sections 19.1-19.14 of the Fishing Industry Collective Bargaining Act to determine if the collective bargaining model is still effective and responsive to the needs of the industry;*
- 2. *Conduct consultations with fish harvesters and processors and their respective organizations and any other interested parties with regard to the current collective bargaining model;*
- 3. *Report back to the Minister Responsible for Labour outlining the results of the review and, if deemed necessary, recommendations for change; and*
- 4. *Include in the report a list of all persons and groups who made representation during the consultation process and a summary of the information provided.*

**FISHING INDUSTRY COLLECTIVE BARGAINING ACT**

- 7. The fishing industry collective bargaining model in Newfoundland and Labrador stems from the *Fishing Industry Collective Bargaining Act*, R.S.N.L. (the “Act”) and its Regulations. The Act, among other things, sets out the right of harvesters to organize into a union, the right of processors to organize into an association and the right of both groups to collectively bargain over issues, including fish prices.

8. The *Act* was introduced in 1971, to allow harvesters to engage in collective bargaining with processors. Previously there was no legislation that allowed for collective bargaining in the fishing industry in the Province.
9. Once the *Act* was passed a number of certification orders were granted by the Labour Relations Board to certify the Newfoundland Fishermen, Food & Allied Workers Union as the exclusive bargaining agent for various groups of harvesters. The Newfoundland Fishermen, Food & Allied Workers Union is now known as FFAW-Unifor.
10. The Association of Seafood Producers is now the trade association that represents seafood processors in the Province.

### **THE ACT: KEY COLLECTIVE BARGAINING SECTIONS**

11. Some of the key collective bargaining sections of the *Act* are as follows:
  - Section 5 sets out the right of a fisher to be a member of an association and the right of a processor to be part of an organization;
  - Section 10 sets out the ability of the Labour Relations Board to certify associations of fishers;
  - Section 19.01 requires the Minister responsible for fisheries and aquaculture to set the date by which the price and conditions of sale for a fish species shall be set;
  - Sections 19.1 to 19.14 establish the Standing Fish Price-Setting Panel (“Panel”) and the powers and duties of the Panel. Section 19.12 specifies that there will be no strikes or lockouts;
  - Section 21.1 sets out the binding nature of agreements or decisions for a fish species on price and conditions of sale;
  - Section 35.2 states that the Minister of Fisheries and Aquaculture may establish an auction system for the sale of fish;
  - Section 2 of the Regulations under the *Act* states that final offer selection shall be the form of arbitration used by the parties unless the parties agree that another form of arbitration is acceptable to them; and
  - Section 3 of the Regulations under the *Act* sets out the considerations and conditions for reconsideration of decisions under the *Act*.

## **THE ACT: SECTIONS UNDER REVIEW**

12. The Terms of Reference for the Review state that the purpose is to review the fishing industry collective bargaining model contained in Sections 19.1 through 19.14 of the *Act*. Those Sections of the *Act* are as follows:

*Appointment of panel*

*19.1 (1) The Standing Fish Price-Setting Panel is established consisting of 3 members appointed by the Lieutenant-Governor in Council.*

*(2) The Lieutenant-Governor in Council shall appoint one of the members of the panel as chairperson.*

*(3) A member of the panel shall serve for a period of up to 3 years and is eligible to be reappointed.*

*(4) Where a member of the panel resigns or, due to absence, incapacity or other cause, is unable to carry out his or her duties as a member, the Lieutenant-Governor in Council shall appoint a person in his or her place who shall serve for the remainder of the term of the member being replaced.*

*(5) The members of the panel shall be paid remuneration and expenses related to carrying out their duties at a rate set by the Lieutenant-Governor in Council.*

*(6) The members of the panel shall elect one of their number to be vice-chairperson and during the absence or incapacity of the chairperson or during a vacancy in the office of the chairperson the vice-chairperson has and may exercise the powers of the chairperson and shall perform his or her duties.*

*(7) The Lieutenant-Governor in Council may appoint as many persons as the Lieutenant-Governor in Council considers appropriate to serve as alternate members of the panel for a period of up to 3 years and the persons appointed are eligible for reappointment.*

*(8) The persons appointed under subsection (7) shall be considered to be members of the panel only while serving on the panel.*

*(9) Notwithstanding subsections (3) and (7), a person continues to be and may serve as a member or alternate member of the panel until he or she is reappointed or replaced.*

*(10) Notwithstanding subsection (3), of the members of the panel first appointed*

- (a) the chairperson shall be appointed for a term of 3 years;
- (b) one member shall be appointed for a term of 2 years; and
- (c) one member shall be appointed for a term of one year,

and are eligible for re-appointment.

*Duties of the panel*

19.2 *The duties of the panel are*

- (a) to facilitate access by parties to collective bargaining to market information relating to the sale of fish;
- (b) to establish criteria that are not inconsistent with this Act relating to collective bargaining under this Act;
- (c) to provide assistance to parties engaged in collective bargaining under this Act;
- (d) to set prices and conditions of sale for a fish species where parties have engaged in collective bargaining and have been unable to agree or where parties have refused to engage in collective bargaining;
- (e) to review and report on matters related to the price and conditions of sale of a fish species that may be referred to it by the minister responsible for fisheries and aquaculture; and
- (f) to make recommendations on matters falling within its mandate to the minister responsible for fisheries and aquaculture and the minister responsible for fisheries in the Government of Canada.

*Matters beyond panel's authority*

19.3 *The panel shall not have authority with respect to*

- (a) raw material shares; or
- (b) production limits.

*Procedure of the panel*

19.4 *The panel may establish rules and procedures for the purpose of carrying out its duties under this Act.*

*Powers of the panel*

*19.5 The panel has all the powers that are or may be conferred on a commissioner under the Public Inquiries Act .*

*Decision of the panel*

*19.6 A decision of a majority of the members of the panel is a decision of the panel.*

*Costs*

*19.7 Each party to a proceeding before the panel shall assume its own costs.*

*Time limit for agreement*

*19.8 (1) The panel shall annually set a date by which a bargaining agent and a processor or processors organization shall conclude a collective agreement in relation to a fish species that is binding on all processors in the province that process that fish species.*

*(2) Where parties to collective bargaining in relation to a fish species conclude a collective agreement in relation to that fish species that is binding on all processors in the province who process that fish species prior to the date set for it by the panel under subsection (1), the parties shall so inform the panel.*

*(3) Where the panel does not set a date under subsection (1) for a fish species, a certified bargaining agent or a processor or processors' organization referred to in section 14 or a party to a collective agreement referred to in section 15 may apply to the panel for a date to be set.*

*(4) A party to collective bargaining with respect to a fish species may refer a matter other than price to the panel prior to the date set under subsection (1) and the panel may consider and give a decision with respect to the matter.*

*(5) A party referring a matter to the panel under subsection (4) shall, at the same time, give notice to the other party of that referral.*

*(6) The panel may refuse to consider a matter referred to it.*

*Panel to establish agreement*

*19.9 (1) Where a bargaining agent and a processor or processors' organization have failed to conclude a collective agreement in relation to a fish species that is binding on all processors in the province that process that fish species by the date set for it by the panel under subsection 19.8(1), all the matters in dispute between them relating to price and conditions of sale for a fish species shall be considered to have been referred to the panel for decision.*

(2) *The panel shall hold a hearing in relation to the matters considered to have been referred to it under subsection (1) at which the bargaining agent and processor or processors' organization may make submissions.*

(2.1) *Notwithstanding subsection (2), a party who has engaged in collective bargaining may not make a submission under that subsection unless that party has submitted an offer respecting price and conditions of sale to the other party not less than 48 hours before the scheduled commencement of the hearing referred to in subsection (2).*

(3) *Immediately after the conclusion of the hearing referred to in subsection (2), but in any event not later than 3 days before the date set by the minister responsible for fisheries and aquaculture under section 19.01, the panel shall decide on the matters in dispute between the parties relating to price and conditions of sale for the fish species and the decision of the panel is final and binding on the parties and on all other processors in the province that process that species of fish to which the panel's decision relates and constitutes a collective agreement or part of a collective agreement between them.*

#### *Where no collective bargaining occurs*

19.10 *Where a date has been set by the panel under subsection 19.8(1) and parties do not engage in collective bargaining with a view to concluding a collective agreement relating to price and conditions of sale for a fish species, the panel, following the holding of a hearing at which the bargaining agent and a processor or processors' organization may make submissions, shall set a price and conditions of sale for the fish species that are binding on the parties and on all other processors in the province that process that fish species and that decision constitutes a collective agreement or part of a collective agreement between them.*

#### *Settlement of dispute by panel*

19.11 (1) *Notwithstanding subsection 19.9(3), where the parties to collective bargaining are a certified bargaining agent and an accredited processors' organization or a processors' organization that represents processors in the province that process the majority percentage of a fish species and those parties appear before the panel under subsection 19.9(2), the panel shall hear and consider their positions on price and conditions of sale and shall, in accordance with the regulations, make a decision with respect to the matters in dispute between the parties relating to price and conditions of sale.*

(2) *The panel shall notify the parties of its decision not later than 3 days before the date set by the minister responsible for fisheries and aquaculture under section 19.01 and the decision of the panel is final and binding on the parties and on all other processors in the province that process that species of fish to which the panel's decision relates and constitutes a collective agreement or part of a collective agreement between them.*

(3) *The minister may make regulations*

- (a) *establishing the method that the panel shall apply in making a decision under subsection (1) or delegating to the panel the authority to establish its own method; and*
- (b) *generally respecting the powers and duties of the panel in making a decision under this section.*

*No cessation or lockout*

19.12 (1) *A fisher shall not engage in a cessation of business dealings and a bargaining agent representing the fisher shall not take a vote as to cessation of business dealings between fishers and processors or authorize or participate in taking a vote or declare or authorize a cessation by that fisher.*

(2) *A processor or a processors' organization shall not lock out a fisher.*

*Facilitator not compellable*

19.13 *Except with the consent of the minister, and notwithstanding a law to the contrary, a person appointed by the panel as a facilitator shall not be required to give evidence before a court, board or other body or provide information that he or she has received in the course of carrying out his or her duties.*

*Panel may reconsider decision*

19.14 (1) *A certified bargaining agent, an accredited processors' organization or a processors' organization that represents processors that produce the majority percentage of a fish species may apply to the panel to reconsider a decision respecting price and conditions of sale.*

(1.1) *Notwithstanding subsection (1), a processor that does not produce the majority percentage of a fish species or a processors' organization that represents processors that do not produce the majority percentage of a fish species may apply to the panel to reconsider a decision respecting price and conditions of sale where either or both of the following apply:*

- (a) *the processor or processors' organization has engaged in collective bargaining with the certified bargaining agent; or*
- (b) *the processor or processors' organization has appeared before the panel at the original hearing under subsection 19.9(2).*

(2) *On an application under subsection (1) or (1.1), the panel may reconsider its decision and may confirm or vary the decision taking into consideration the criteria it may establish and in accordance with the regulations.*

(3) Notwithstanding subsection (2), the panel shall only reconsider its decision

- (a) where it believes the failure to do so would jeopardize the conduct of the fishery to which its decision applies; and
- (b) where the criteria for reconsideration prescribed in regulations made under paragraph (4)(a) have been met.

(4) The minister may make regulations

- (a) respecting the criteria which the panel shall consider in determining whether the conduct of the fishery to which its decision applies is in jeopardy under subsection (3);
- (b) respecting the method that the panel shall apply in making a decision under subsection (2);
- (c) restricting the number of applications under subsection (1) or (1.1) that a party may make respecting a fish species in a year; and
- (d) generally, respecting the powers and duties of the panel in reconsidering a decision under this section.

13. In addition to the preceding the Regulations under the Act reference Sections 19.11(1), 19.14(2) and 19.14(3) of the Act:

*Decision of panel*

2. (1) For the purpose of subsection 19.11(1) of the Act, the decision of the panel shall be in accordance with one of the positions on price and conditions of sale submitted to the panel by the parties at the hearing.

(2) Final offer selection, the process referred to in subsection (1), shall be the form of arbitration used by the parties referred to in subsection (1) unless those parties agree that another form of arbitration is acceptable to them.

*Reconsideration*

3. (1) In determining whether the conduct of the fishery to which its decision applies is in jeopardy under subsection 19.14(3) of the Act, the panel shall consider whether market or currency factors have changed significantly from the time the panel made its initial decision.

(2) In making a decision under subsection 19.14(2) of the Act, final offer selection shall be the only form of arbitration used whether one or more of the parties appears before the panel respecting the reconsideration application.

*(3) A decision respecting reconsideration shall be made by the panel within 96 hours from the time the panel has acknowledged receipt of an application for reconsideration.*

*(4) Each party may make only one reconsideration application respecting the panel's decision on a species in a year.*

14. The Regulations, given their reference to Sections 19.11 and 19.14 of the *Act*, also form part of the Review.

## **THE PAST**

15. The current fishing industry collective bargaining model arose from the creation of the *Act* in 1971, along with several reports and the legislative changes that followed. These reports include:
  - (i) The January 1998 *Report of the Task Force on Fish/Crab Price Settlement Mechanisms in the Fishing Industry Collective Bargaining Act*, Chaired by David Vardy (the “Vardy Task Force Report”);
  - (ii) The October 2003 Report *A Review of the Fishing Industry Collective Bargaining Act: A Framework for Stability*, by David Jones, Q.C. (the “Jones Report”); and
  - (iii) The November 2005 *Report of the Chairman RMS Review Committee*, Chaired by Richard Cashin (the “Cashin Report”).

### **THE PAST: THE VARDY TASK FORCE REPORT**

16. The Vardy Task Force was appointed by the Government of Newfoundland and Labrador in September 1997, in the wake of a snow crab strike that occurred earlier in 1997. The Vardy Task Force was comprised of several individuals with David Vardy as the Chair. The Vardy Task Force Report was submitted in January 1998.
17. The Vardy Task Force’s Terms of Reference included conducting an assessment of the fishing industry collective bargaining process along with an assessment of whether some other approach would be preferable.
18. Chapter 9 of the Vardy Task Force Report contains many of the key comments and recommendations with respect to the collective bargaining model. See pages 124 to 137 of the Vardy Task Force Report, a copy of which is included in the Appendices, in terms of this.

19. The Vardy Task Force Report recommended a pilot project for fishing industry collective bargaining that included, among other things, the following:
  - a schedule for negotiations;
  - a facilitator to assist in the fact finding and negotiation process;
  - an arbitrator in waiting to settle any disputes that arise from negotiations; and
  - the use of final offer selection by the parties and the arbitrator to settle any differences arising from collective agreement negotiations.
20. Certain recommendations of the Vardy Task Force Report were implemented. Notably, the two-year pilot project for collective agreement negotiations was put in place.

### **THE PAST: THE JONES REPORT**

21. In 1999, Howard Noseworthy was appointed to conduct a review of the two-year pilot project implemented following the Vardy Task Force Report. Mr. Noseworthy subsequently submitted a Report entitled *An Evaluation of the Fishing Industry Collective Bargaining Act Pilot Project*.
22. In 2000, with the agreement of the parties at that time, the pilot project collective bargaining model was extended and placed into legislation under the *Act*.
23. In 2002, the Fisheries Association of Newfoundland and Labrador, a previous seafood producer association, gave notice that it would discontinue use of the pilot project collective bargaining model.
24. In December 2002, the Government of Newfoundland and Labrador announced that it would be conducting a review of the *Act*.
25. In March 2003, David Jones Q.C. was appointed by the Government of Newfoundland and Labrador to conduct a review of collective bargaining in the fishing industry. The Jones Report was submitted in October 2003, a copy of which is included in the Appendices.
26. The pilot project collective bargaining model using final offer selection terminated at the end of 2003. In 2004, collective bargaining reverted to individual targeted negotiations and the potential use of strikes or lockouts to settle differences.

## THE PAST: THE CASHIN REPORT

27. In March 2005, the Government of Newfoundland and Labrador announced that it would proceed with a two-year pilot project on Raw Material Sharing in the snow crab fishery in the Province. Issues and concerns arose with respect to that pilot project.
28. In May 2005, the Government of Newfoundland and Labrador appointed Richard Cashin to review the Raw Material Sharing pilot project and make recommendations. Mr. Cashin submitted his report in November 2005, a copy of which is included in the Appendices.
29. Part 4 of the Cashin Report is entitled “Collective Bargaining in the Inshore Fishery”. It provides a summary of the history of collective bargaining in the Province’s fishing industry leading up to that time. See pages 40 to 45 of the Cashin Report with respect to this.
30. The Cashin Report reached the conclusion that the collective bargaining provisions that were in place at that time were completely inadequate to ensure timely starts to the most critical fisheries of the Province.
31. The Cashin Report also reached the conclusion that the Government of Newfoundland and Labrador had two basic choices: let the parties fight it out or impose some orderly way to start and proceed with the fishery that would include compulsory arbitration in the settlement of the price.
32. The Cashin Report recommended the establishment of a “Special Standing Fish Pricing Panel” that would consist of three permanent members, including a chairperson.
33. Following the Cashin Report the Standing Fish Price-Setting Panel was established under the *Act* in February 2006, along with the framework for the current collective bargaining model.

## THE PRESENT

34. The Standing Fish Price-Setting Panel (“Panel”) has continued to operate since 2006, according to the legislative provisions in Section 19 of the *Act* along with the associated Regulations.
35. The Minister of Fisheries, Forestry and Agriculture establishes the dates by which prices and conditions of sale of all fish species must be set for each year. The Panel consults with the parties to negotiations to determine and establish normal opening dates for the particular fish species to be bargained for the coming season.

36. The Panel provides the parties with written notice of fish species that are subject to negotiations, the date by which binding agreements must be in effect, potential hearing dates and where hearings will be held in the event that binding agreements have not been reached.
37. The Panel has established *Rules and Procedures*, as per Section 19.4 of the *Act*, in terms of carrying out its duties. These *Rules and Procedures* provide direction to the parties in the lead up to and through the various collective bargaining stages, including the hearing stage, if it becomes necessary.
38. The Panel provides the parties with the services of a Facilitator for negotiations for all species identified in the schedule of negotiations. The Facilitator provides support to the parties by helping to identify outstanding issues and by mediating/facilitating the collective bargaining process. The Facilitator also coordinates activities between the Panel, the parties and the relevant Government departments.
39. The Panel has a website that contains a schedule of hearings, pricing decisions, a list of Panel members along with its Annual Reports, Activity Plans and news releases. There are currently five members of the Panel including a Chair, two regular members and two alternate members.
40. Further details on how the Panel facilitates negotiations and conducts hearings are set out in the Panel's *Rules and Procedures* and in a Powerpoint slide presentation prepared by former Panel Chair Wayne Follett, both of which are included in the Appendices. A copy of the 2020-2021 Annual Report of the Panel is also included in the Appendices.

### **THE PRESENT: COLLECTIVE BARGAINING MODEL**

41. The current collective bargaining model is intended to facilitate negotiations, the sharing of information and to provide a binding mechanism for the resolution of differences if agreements cannot be reached by the parties.
42. The mechanism used to impose agreements upon the parties, if it is necessary, is a hearing before the Panel and the use of final offer selection, unless the parties agree otherwise.

### **THE PRESENT: COMPOSITION OF THE STANDING FISH PRICE-SETTING PANEL**

43. Panel members are appointed by the Government through the Independent Appointments Commission and they are expected to act in a neutral and independent manner. There is an

understanding and practice though that, other than the Chair, members of the Panel will have a background in either the harvesting sector or the processing sector.

44. There are currently three regular members of the Panel consisting of the Chair and two Panel members. There are also two alternate Panel members.
45. There were concerns raised during the Review process about the way that the Panel is composed. These concerns are also reflected in several of the written submissions that were received as part of the Review.
46. Generally speaking, the concerns with the Panel's composition had to do with the potential biases or perceived conflicts of interest of individuals who are appointed to the Panel. These concerns have resulted in media coverage and formal challenges to the Panel's composition.
47. Even for those that did not have any concerns about the Panel's composition there was an acknowledgement that public disputes or formal challenges to the composition of the Panel were not helpful or productive in terms of the collective bargaining process.

### **THE PRESENT: NEGOTIATIONS**

48. There is a general perception that negotiations are not being conducted by the parties in the manner that was intended in the Cashin Report or otherwise. Some have said that there is no real bargaining or that bargaining is being treated as an obligatory step before proceeding to a Panel hearing.
49. There is also a general perception that negotiations under the Panel process worked better in the past or that they were more productive in the past. As to the reasons for this, various factors were cited; these included moving to online negotiations because of the pandemic, a lack of time to negotiate, a lack of relevant information and poor communications and relationships between the parties.
50. There was a widespread view by stakeholders that having meaningful and productive negotiations would be far preferable to what is occurring at the present.

### **THE PRESENT: FINAL OFFER SELECTION**

51. Generally speaking there continues to be stakeholder support for the final offer selection process, although there are dissenting views. The written submissions received as part of the Review demonstrate this.

52. The final offer selection process is generally viewed as being preferable to an arbitration system in which the Panel would select a price itself. As well, the final offer selection process is generally viewed as being preferable to the “fight it out” approach of strikes and lockouts.

### **THE PRESENT: RECONSIDERATION**

53. The current Panel hearing process only allows for one reconsideration per party per species in a year. This limit was imposed to prevent a revolving Panel hearing process.
54. Separate and apart from the limit on reconsiderations there is a view by stakeholders that there should be some mechanism for the Panel to address exceptional and unexpected circumstances in terms of fish pricing during a season.
55. It was noted that significant fluctuations in snow crab prices over the last two years resulted in unfair and unintended results for both harvesters and processors. It was generally accepted by the parties to negotiations and Panel members themselves that the single reconsideration approach could not adequately address these types of circumstances.

### **THE PRESENT: OTHER JURISDICTIONS - ALASKA**

56. There is a crab price setting model in Alaska that is not entirely dissimilar to the fish price setting model used in Newfoundland and Labrador.
57. The Alaska crab pricing model includes the sharing of market information with the parties and the use of a non-binding price formula to facilitate negotiations. The Alaska model also allows for the use of binding arbitration using a form of final offer selection (referred to as “last best offer”).
58. Further details of the Alaska crab price setting model that has been used are contained in pages 4 to 8 of the document entitled *Discussion Paper: Consideration of Operational Costs in the Crab Arbitration System*, which is included in the Appendices.

### **THE PRESENT: OTHER JURISDICTIONS – QUEBEC**

59. Fish prices in other jurisdictions within Canada are generally set by direct negotiations between harvesters and processors without the need for any binding arbitration process. One exception to that, other than Newfoundland and Labrador, is in Quebec.
60. In Quebec there is a fish pricing model that is, in part, similar to the model that is used in Newfoundland and Labrador. For some fish species harvesters and processors negotiate

prices under a system that is regulated by legislation but they also have recourse to third-party binding decisions if they disagree upon a price.

61. The third party that imposes fish pricing decisions in Quebec is known as the Régie des marchés agricoles et alimentaires du Québec (the “Régie”). The Régie deals with the marketing of agricultural food and fish products. An unofficial translated copy of the governing legislation in Quebec concerning the Régie is included in the Appendices.
62. Notably, for snow crab pricing the Régie is not bound by a final offer selection process, although the Régie does use final offer selection in setting shrimp prices.
63. For snow crab the Régie is able to independently set a price that differs from the requested prices of harvesters or processors. This information was confirmed during the Review process by the AQIP (Association Québécoise de l’Industrie de la Pêche).
64. A general explanation of the Régie and the fish pricing process in Quebec is contained in pages 16-20 of the Vardy Task Force Report.

### **THE PRESENT: OTHER JURISDICTIONS - ICELAND**

65. Iceland is notable for its use, in part, of an electronic “Dutch auction” system to set prices for fish species. The Icelandic auction system uses a “hail at sea” approach whereby harvesters call in their catch to an independent operator who runs the auction.
66. The possibility of using an auction system in Newfoundland and Labrador was canvassed in the Vardy Task Force Report and in the Jones Report. An explanation of the background and process for fish auctions in Iceland is contained in pages 14 to 16 of the Vardy Task Force Report.
67. A voluntary fish auction pilot project was implemented for cod in Newfoundland and Labrador on a limited basis in 2008. This pilot project was generally viewed as not being successful.

### **THE FUTURE**

68. There are no perfect collective bargaining models in labour relations except those that exist only in theory. Ultimately, the most appropriate collective bargaining model for the fishing industry will be the model that actually works best for the parties involved and the Province itself while allowing for fisheries to occur without strikes and lockouts.

69. To this end, and without entirely rejecting the possibility of using other models in the future, changes and improvements should be made to the current fishing industry collective bargaining model before consideration is given to replacing this model.
70. Some of the recommendations that follow in this Report may involve the need for additional resources but the value of an improved fishing industry collective bargaining model cannot not be underestimated. The total landed value of all fisheries in the Province is now in excess of \$1 billion dollars per year.
71. It should be noted that there were a number of issues brought forward by individuals and organizations that were beyond the scope of this Review. Many of these issues are noted in the written submissions that are included in the Appendices. Some of these issues include processor concentration, the federal *Competition Act* and when the opening dates for fisheries are set by the federal government.
72. This Report does not contain recommendations concerning issues that are outside of the scope of the Review. Nonetheless, this Report certainly acknowledges that there are many issues in the fishing industry beyond those related to Sections 19.1 through 19.14 of the *Act*.
73. This Report also does not contain recommendations with respect to additional enforcement mechanisms under the *Act*. There are already enforcement provisions in the *Act* that deal with cessation of business dealings and lockouts. This Report focuses on recommendations and measures that will help to avoid situations in which harvesters refuse to fish or processors refuse to buy.

### **THE FUTURE: WRITTEN SUBMISSIONS**

74. The following individual and organizations made written submissions as part of the Review. A full copy of each written submission is included in the Appendices. All requests for subsequent verbal submissions were granted:
  - Barry Darby (no verbal submission requested);
  - Barry Group Inc. (no verbal submission requested);
  - SEA-NL (verbal submission subsequently presented by Ryan Cleary);
  - FFAW-Unifor (verbal submission subsequently presented by Keith Sullivan); and

- Association of Seafood Producers (verbal submission subsequently submitted by Derek Butler).

75. The written submission of Barry Darby included the following points and suggested changes, among others:

- trying to fix a set price for fish is fundamentally flawed from the outset;
- any new fish pricing model must recognize that world prices are set by competitive forces;
- a fair and workable system would ensure genuine competition;
- processing capacity should be increased and corporate concentration should be regulated;
- the quota-based management system set by the federal Department of Fisheries and Oceans should be changed; and
- a regulated competitive market should be used like the models in Iceland and Norway.

76. The written submission of the Barry Group Inc. included the following points and suggested changes, among others:

- the Panel does not work and it is not imposed on any other industry in our economy; negotiations in the Maritimes take place based upon normal negotiations between buyers and sellers;
- minimum pricing should be negotiated in real terms between parties or, alternatively, it should be based upon the decision of an independent professional arbitrator, ideally a professional accountant, who can set a price;
- the Panel often establishes minimum fish prices beyond all market reasonableness and without regard to any quality criteria; the recommendations of the Vardy Task Force Report on quality, competition and outside buyers were not implemented;
- the Panel's composition has become conflicted and the Panel is ineffective in setting prices;

- full transparency as to the costs of fishers and processors and market returns is needed in order to set a fair price where both share in the wealth from the fishery;
- decision criteria for any price setting process should account for the levels of investment and market risk/exposure of the parties; and
- collective bargaining should be based upon good faith negotiations along with a return to potential strikes and lockouts.

77. The written submission of SEA-NL included the following points and suggested changes, among others:

- the entire Review should have been live-streamed and all submissions delivered in person/virtually as well as in writing;
- the mandate of the Review should have been expanded to include competition in the processing sector, the implications of weekly limits, trip limits and fishing schedules on fish prices along with the review of foreign investment in the processing sector;
- the Independent Review Consultant is biased since he determined in 2018 [as the then Chair of the NL Labour Relations Board], that the existing bargaining unit for harvesters was appropriate;
- fish price negotiations in the Province have been described as anti-competitive in nature and are excluded under Section 4 of the federal *Competition Act*;
- the single price reconsideration per species should be lifted and binding pricing decisions should be enforced;
- the system is an abomination of a free and open market and some fish prices, like those for halibut, are negotiated without the final offer selection process; and
- the Province should be open to outside buyers to operate on an even playing field with local buyers/processors and an electronic auction system pilot project should be implemented for the 2023 fishing season.

78. The written submission of FFAW-Unifor included the following points and suggested changes, among others:

- the Panel plays an essential role in ensuring timely pricing decisions for many fisheries in the Province;
- the three-person panel should be kept in place rather than removing the Panel or replacing it with a single arbitrator;
- the representative structure of the Panel should be formalized with harvester and processor representatives and the Panel should be led by an independent, experienced chair with a strong labour relations background, ideally one who is knowledgeable of fisheries in the Province;
- have two reconsiderations per species per year and leave the criteria for reconsideration in place; reconsiderations will only be heard by the Panel if a significant market or currency change occurs;
- increase transparency of market related data from processors in an aggregate form, similar to production data, as it relates to factors impacting price negotiations including but not limited to yields, size distributions, grading results, and domestic sales;
- amend Sections 2.1(m) and 19.12 of the *Act* to clarify that a refusal of a processor or a processors' association to purchase fish at the price set by the Panel constitutes a lockout for the purposes of the *Act*;
- adopt and strengthen measures for the parties to participate in good faith negotiations;
- leave Section 19.3, entitled "Matters beyond panel's authority", alone and do not amend it; and
- implement a review of any changes that are made in three years.

79. The written submission of the Association of Seafood Producers included the following points and suggested changes, among others:

- confidence in the Panel process and collective bargaining to provide the required solutions, negotiated or arbitrated, generally has eroded;
- a more comprehensive review is required to address the host of issues and challenges not included in this more limited review;

- the Panel should be comprised of a single professional arbitrator, preferably with a CPA designation, to be selected from a list of arbitrators for each arbitration;
- a mechanism should be implemented to bring the parties closer together on price offers; this could involve the Panel sending final offers back and asking the parties to negotiate again;
- no second reconsideration should be granted;
- a *force majeure* clause should be introduced, in which prices would change based on demonstrated financial loss under precise criteria;
- Panel decision criteria should be developed to represent the respective levels of market risk/exposure of the parties;
- a more comprehensive review of collective bargaining and price setting should be instituted; and
- a more robust collective bargaining regime as per traditional formats should be adopted, with full mediation.

### **THE FUTURE: PERIODIC REVIEWS**

80. If there is anything that the key reports mentioned previously have in common it is that they each arose from times of troubles in the fishing industry;

- the near failure of the snow crab fishery in 1997, gave rise to the Vardy Task Force Report;
- the pending end of the final offer selection pilot project gave rise to the 2003 Jones Report; and
- issues with the Raw Material Sharing pilot project gave rise to the Cashin Report.

81. There is a need to be more proactive in assessing and potentially modifying the collective bargaining model in the fishing industry before serious issues arise. This can only be accomplished with periodic reviews of the collective bargaining system.

82. Within some legislation in Newfoundland and Labrador there are mechanisms for periodic statutory reviews. These types of reviews are included in the *Workplace Health, Safety and Compensation Act* (see Section 126 of that legislation) and the *Access to Information and*

*Protection of Privacy Act, 2015* (see Section 117 of that legislation). In those pieces of legislation reviews occur at least every five years.

83. **It is recommended that the collective bargaining model under the *Act* be subject to reviews on a periodic basis. These reviews should include a review of the practices and procedures of the Standing Fish Price-Setting Panel.**

### **THE FUTURE: COLLECTIVE BARGAINING MODEL**

84. The current fishing industry collective bargaining model has met its fundamental purposes, which are to start fisheries in a timely manner, set minimum prices and prevent strikes and lockouts. This is to be commended. That being said, there are significant issues with the present model.
85. Other models for collective bargaining have been suggested or used for the fishing industry in the Province. The first and perhaps most traditional of these is the free market system of bargaining. This was referred to in the Cashin Report as the “fight it out” approach involving potential strikes and lockouts.
86. There is no realistic hope that a return to the free market system of bargaining will result in anything other than periodic strikes and lockouts that cripple the conduct of fisheries in the Province. The collective bargaining relationship between the current parties to negotiations is similar to or arguably worse than the collective bargaining relationship that existed surrounding the snow crab strike in 1997.
87. The free-market approach is not a viable or acceptable model to consider given its failures in the past and the potential economic losses to both the parties and the Province.
88. If a strike and lockout model is to be avoided then other options include some form of auction system or a binding arbitration model.
89. While an auction system has great theoretical appeal there continues to be no significant interest by stakeholders in the Province to use such a system. Furthermore, the fishing industry labour relations model in the Province, including the *Act* itself, is unique in the world and totally different from that which exists in other jurisdictions such as Iceland. There are no guarantees that such an auction model would work in the Province.
90. If an auction system is ever to be implemented it should be preceded by another pilot project that helps determine whether implementing such a model could be viable.

91. Until such time, though, as the key stakeholders themselves wish to have a collective bargaining model using an auction system then there remains no realistic way to impose such a model. Imposing an auction model without stakeholder support could lead to massive economic and labour relations disruptions in the fishing industry.
92. If neither a free-market system nor an auction system is realistically appropriate then that leaves some form of binding arbitration as the only other realistic model.
93. The binding arbitration models in Alaska and Quebec are not dissimilar to the model used in Newfoundland and Labrador, other than the potential for a third party to fix prices without the use of final offer selection as in Quebec.
94. In light of the foregoing, and for the time being, the best fishing industry collective bargaining model for the Province continues to be the current model. Nonetheless, significant changes to the current model should be made.
95. **It is recommended that the current collective bargaining model be maintained, with changes, until such time as there is stakeholder support for a viable alternative collective bargaining model. In any future alternative collective bargaining model the prohibition on strikes and lockouts should be maintained.**

#### **THE FUTURE: STANDING FISH PRICE-SETTING PANEL**

96. The Panel is composed of three regular members at the present time. It has been suggested to move to a one-person format although it has also been suggested that the current three-person panel format should be maintained.
97. There are pros and cons of a one-person decision maker versus a three-person panel. Generally speaking, there has been a trend in labour arbitrations in the Province to move towards sole arbitrators. This has to do with the costs and scheduling challenges of having three-person arbitration panels.
98. There are benefits to having three-person panels in specialized areas of labour relations. This allows for different areas of expertise on a panel and it also allows for representatives of each party to be present on a panel. Furthermore, it brings credibility to the decision-making body itself.
99. The current composition of the Panel is somewhat unique. Normally, each party to a three-person panel arbitration proceeding would select one representative to that panel. Those two representatives of the respective parties, or the parties themselves, would then mutually select a third panel member to act as the neutral chair.

100. Presently, the Panel members are all appointed by the Government of Newfoundland and Labrador through the Independent Appointments Commission process. There is a neutral Chair along with two regular Panel members and two alternate Panel members.
101. The Panel members other than the Chair are expected to have backgrounds in either the harvesting sector or the processing sector, although this is not specified in the *Act* or Regulations. As such, there is currently an expectation and understanding that the Panel members other than the Chair are “representative” of either the harvesting sector or the processing sector.
102. There is a view that, historically, some “processor representatives” on the Panel have not been truly representative of the processing sector. There is also a view that some “harvester representatives” on the Panel have been too closely aligned with the Union.
103. While there is a view that the Panel’s composition has become politicized there have not been many pricing decisions with dissents during the Panel’s history. According to information from the Panel’s website there have been, to date, approximately one hundred and eighty pricing decisions by the Panel since 2006, with approximately a dozen dissents. That is a very low number representing, on average, about one dissent per fifteen decisions.
104. There may be a benefit in moving towards a sole adjudicator model instead of the Panel but that is a model that the parties should work towards by mutual agreement. Overall, and given the specialized nature of the fishing industry, it is preferable to maintain a three-person Panel system for the time being.
105. The parties should be able, in due course and when they determine it is appropriate, to drop their respective representatives from hearings and have the Chair render pricing decisions alone. This would have to be done by way of mutual agreement.
106. The parties to negotiations themselves are the best ones to determine who their actual representatives on the Panel should be. Allowing the parties to put forward their own representatives would align with other forms of labour arbitration in the Province.
107. Short of any Panel member having an undue interest in the outcome of a hearing, similar to the restriction noted in Section 14 of the *Labour Relations Act*, individuals should be able to act on the Panel. That being said, and even if the representatives are appointed by the respective parties, all Panel members should act in a neutral and independent manner.
108. In addition to the foregoing there appears to be a need to clarify the experience and qualifications required for the neutral Chair under a revised Panel model. In a perfect world

the Chair would have specialized knowledge of the fishing industry, be an experienced labour arbitrator and be an accountant. Unfortunately, it is not likely that there are many individuals in the Province with this type of background, let alone a pool of individuals.

109. The final offer selection process involves a form of labour arbitration. The negotiations by the parties leading up to the final offer selection process are labour negotiations. The FFAW-Unifor is certified under the *Act* to be the union that represents bargaining unit members in the fishing industry. These matters all relate to labour relations, labour negotiations and labour arbitration.
110. Given the overriding amount of labour relations that is involved in the Panel processes the Chair should, at minimum, be an experienced labour arbitrator. Ideally, this individual would also have a working knowledge of the fishing industry and/or an accounting background.
111. Finally, and in order to have a number of individuals available to form a three-person Panel, along with the need for succession planning and to share workload, there should be alternate Panel members. This would include Vice-Chairs in addition to the Chair.
112. **It is recommended that the Standing Fish Price-Setting Panel be maintained as a three-person panel but with the following changes:**
  - (i) **the three-person Panel should be made up of one processor representative, one harvester representative and one independent neutral Chair, with the Chair being appointed by Government but the representatives appointed by the respective parties to collective bargaining;**
  - (ii) **there should be alternate processor and harvester representatives and at least two Vice-Chairs who can act in rotation in making decisions along with the regular Panel members;**
  - (iii) **the Chair and the Vice-Chairs should be individuals with a strong background in labour relations and labour adjudication, potentially chosen from among the Roster of Arbitrators for the Province;**
  - (iv) **the parties should be able to mutually agree to a “Chair only” or a “Vice-Chair only” Panel hearing in which the Chair or Vice-Chair makes a binding arbitration decision in accordance with the *Act* for a fish species without any processor or harvester representatives on the Panel; and**

- (v) **the Panel should be provided with access to an accounting firm or a Certified Professional Accountant, as needed, in order to better understand, evaluate and potentially verify any market or pricing information from the parties.**

### **THE FUTURE: FINAL OFFER SELECTION**

- 113. There has been no realistic suggestion from stakeholders that empowering the Panel to set prices itself would help with collective bargaining. In fact, there would be a considerable risk that allowing the Panel to set prices for itself would drive the parties further apart in their negotiations and lead to positional bargaining.
- 114. Allowing the Panel to set prices itself could lead to scenarios where both parties reject the pricing decision of the Panel and both refuse to conduct a fishery. The parties are free under the current model to mutually agree to the Panel setting prices without using final offer selection, as per Section 2(2) of the Regulations, but they have not chosen to do so.
- 115. The final offer selection process has some limitations but, at the present, it is the model that the key stakeholders continue to prefer.
- 116. There are nonetheless issues with the final offer selection process that should be addressed. Currently the Panel must accept one of the final offers without being able to reject both.
- 117. Allowing the Panel to potentially reject both final offers, with commentary and direction to the parties about making revised final offers, may help improve the process. In such a case, which would be the exception not the rule, the Panel would also help facilitate time-limited additional negotiations before further final offers are submitted.
- 118. The Panel could also consider requiring sealed final offers in its discretion from the parties. In that case neither party would be made aware of the ultimate final offer of the other party until after the Panel has selected a final offer or has rejected both final offers.
- 119. Finally, the Panel should consider receiving joint submissions on a final price from the parties when the parties have reached an agreement. This would allow the Panel to impose a price but also give the parties recourse to the reconsideration process. This would encourage the parties to reach negotiated agreements on price. Currently, if the parties reach a negotiated price by themselves without the Panel's involvement they are not able to seek reconsideration.
- 120. **It is recommended that final offer selection be maintained in the collective bargaining model but that the Panel be permitted, in its discretion, to reject both final offers and require the parties to continue to bargain for a limited period of time before**

**submitting further final offers. The Panel should also be able to impose a final price based upon a joint final offer selection request from the parties.**

### **THE FUTURE: RECONSIDERATION**

121. The key stakeholders acknowledge that there may be exceptional circumstances that should allow the Panel to revisit a previous pricing decision or even a reconsideration decision. Whether this is called a second reconsideration based upon exceptional circumstances or a “*force majeure*” scenario the result would be the same.
122. The last several years have brought incredible uncertainty and price swings in world markets. For the fishing industry in the Province there is no better or worse example of this than in the pricing of snow crab since 2019.
123. There should be some mechanism, other than the single reconsideration now present under the *Act* and Regulations, to address unexpected exceptional circumstances with respect to previous fish pricing decisions.
124. **It is recommended that the criteria for being granted a reconsideration under the *Act* and Regulations be kept the same, although removing the references to “jeopardy” or “jeopardize” is advisable, since those terms are not considered in practice.**
125. **It is recommended that an “exceptional circumstances” or “*force majeure*” clause be added to the *Act* and Regulations, in addition to the single reconsideration, in order to potentially revisit an existing pricing decision. The criteria for granting an “exceptional circumstances” or “*force majeure*” adjustment to prices would be high. Exceptional unforeseen economic or other circumstances that have significantly affected pricing (or something akin to that concept), should form the basis for granting this type of adjustment. A party should be limited in the number of these types of requests that it brings for a fish species in a season.**
126. **It is recommended that the decision to grant an “exceptional circumstances” or “*force majeure*” hearing should be at the discretion of the Chair or, if the Chair is unable to act, a Vice-Chair. If such a hearing is granted then that matter will normally be decided by the Panel that previously decided the pricing. If the request for such a hearing is denied by the Chair or Vice-Chair then that matter is thereby rejected.**

### **THE FUTURE: INCREASED FOCUS ON NEGOTIATIONS**

127. There is a widespread view that an increased focus on actual negotiations is the best way forward under the current collective bargaining model. It is nonetheless acknowledged that

having the Panel “waiting in the wings” to potentially impose a decision on the parties will always be a temptation to avoid negotiations.

128. The parties to negotiations must negotiate for themselves. The most that the Panel or the Facilitator can do is set the stage for negotiations and assist the parties in the negotiations process. In order to set the stage for negotiations and facilitate collective bargaining the below recommendations are being made.
129. **It is recommended that collective agreement negotiations revert to an in-person approach rather than an online approach, public health measures permitting.**
130. **It is recommended that the Panel consider using a Vice-Chair or use processor and harvester representatives to assist in negotiations at the discretion of the Chair. The Chair or Vice-Chair deciding a matter should not become directly involved in negotiations and should not become privy to any confidential discussions or confidential information concerning negotiations.**
131. **It is recommended that the Panel should, at its request, be made aware of the negotiating history of the parties leading up to the final offers at arbitration. This would not include any “without prejudice” offers between the parties or any prejudicial or confidential information.**
132. **It is recommended that the Panel resume facilitating in-person annual meetings to bring processor representatives, harvester representatives and their respective organizations together to meet and better understand the issues and challenges that they each are facing. This will allow for relationship building with respect to negotiations.**

#### **THE FUTURE: PRICING FORMULA FOR SNOW CRAB**

133. There are no simple solutions in collective bargaining related to the fishing industry. The only promise of stability and predictability comes from the use of pricing formulas.
134. The parties to negotiations currently use pricing formulas for some fisheries; these include the lobster fishery, the halibut fishery and the lump fishery. The formulas for each of these fisheries differ but they all use an agreed-upon method to determine price sharing.
135. The snow crab fishery has been wildly unpredictable in recent years. This has caused very significant issues between the parties to negotiations and their respective members in terms of the fairness and equitably of pricing. The total respective gains and losses to one party

of the other in the snow crab fishery per season can amount to tens of millions of dollars or more. These are incredibly high stakes.

136. A pricing system in the snow crab fishery was previously implemented in the Province. That price-to-market formula was abandoned after it was arguably manipulated by third parties to drive down snow crab prices.
137. If the parties themselves want to allow for more predictability and fairness in the pricing of snow crab then they should work towards another snow crab pricing formula. This formula could set an initial base price then require rebate payments to harvesters after-the-fact based upon actual sales information using a third-party auditor.
138. In addition to allowing for stability and predictability in terms of snow crab pricing a formula would also focus both harvesters and processors on obtaining the maximum market price possible for the product.
139. **It is recommended that Government facilitate discussions and negotiations by the parties towards a pricing formula for the snow crab fishery. Any eventual formula would have to be agreed upon by the parties with or without the involvement of the Panel.**
140. **It is recommended that snow crab pricing forumla discussions and negotiations commence in October or November of 2022, in order to conclude before the start of the 2023 season. An individual with experience in labour relations conciliation and fishing industry negotiations should be appointed by Government to facilitate these negotiations.**

## **THE FUTURE: FISHERY INFORMATION AND MARKET RISK/EXPOSURE**

141. There were issues raised about the sufficiency of information that is currently available to the Panel and to the parties in bargaining. This included information related to yield, size distributions, grading information, sales information for specific product sizes and categories or domestic sales. Whether or not the Panel and/or the parties to negotiations have sufficient information about fisheries and whether further information should be provided is a question best left to the Panel and the hearing process.
142. There were also issues raised about the decision criteria that the Panel takes into account in terms of the levels of investment and the market risk/exposure of the parties. It was suggested that the current approach is not fair. The decision criteria that the Panel should take into account in terms of levels of investment and the market risk/exposure of the parties is a question best left to the Panel and the hearing process.

143. **It is recommended that the Panel determine the types of fishing industry information that is needed in order for the Panel to fulfil its mandate and to make decisions. The Panel should consider and decide the decision criteria that it should take into account in terms of levels of investment and the market/risk exposure of the parties. The foregoing can potentially be specified in the Panel's *Rules and Procedures* or through the hearing process itself.**

### **THE FUTURE: PRACTICES AND PROCEDURES OF THE PANEL**

144. The practices and procedures of the Panel are integral to the collective bargaining process and the hearing process. The current practices and procedures of the Panel appear to be adequate but they will have to be revisited based upon the implementation of the recommendations in this Report.

145. The Panel itself can review its own practices and procedures but it may be helpful for the Panel to be assisted in this regard by an individual with significant labour relations experience along with knowledge of collective bargaining in the fishing industry.

146. **It is recommended that, at the request of the Panel, an individual with significant labour relations experience and knowledge of fishing industry collective bargaining, be assigned to work with the Panel on its practices and procedures.**

### **LIST OF INDIVIDUALS INTERVIEWED IN THE REVIEW**

147. The following individuals were interviewed as part of the Review:

- Wayne Follett
- David Vardy
- Rosalind Walsh
- Bill Barry
- David Barry
- Karl Sullivan
- Max Short
- Brian Delaney
- David Lewis
- Mike Dewling
- Bill Carter

- Gilbert Linstead
- Jason Everleigh
- Philip Quinlan
- Barry Darby
- Gabe Gregory
- Paul Grant
- Earle McCurdy
- Richard Cashin
- David Decker
- Loomis Way
- Kevin Hardy
- Trevor Jones
- Glenn George
- Greg Viscount
- Martin Sullivan
- Blaine Sullivan
- Carey Bonnell
- Andy Sullivan
- Bill Wells
- Tony Doyle
- Allister O'Reilly

148. In addition to those interviewed as part of the Review meetings were held with Keith Sullivan and staff members of FFAW-Unifor. An in-person meeting was also held with the FFAW-Unifor Inshore Council. The FFAW-Unifor Inshore Council is made up of over thirty fish harvester representatives.

149. Meetings were also held with Derek Butler of the Association of Seafood Producers and staff and Board members of the Association of Seafood Producers.

## **SUMMARY OF RECOMMENDATIONS**

### **Periodic Reviews**

150. **It is recommended that the collective bargaining model under the *Act* be subject to reviews on a periodic basis. These reviews should include a review of the practices and procedures of the Standing Fish Price-Setting Panel.**

### **Collective Bargaining Model**

151. **It is recommended that the current collective bargaining model be maintained, with changes, until such time as there is stakeholder support for a viable alternative collective bargaining model. In any future alternative collective bargaining model the prohibition on strikes and lockouts should be maintained.**

### **Standing Fish Price-Setting Panel**

152. **It is recommended that the Standing Fish Price-Setting Panel be maintained as a three-person panel but with the following changes;**

- (i) the three-person Panel should be made up of one processor representative, one harvester representative and one independent neutral Chair, with the Chair being appointed by Government but the representatives appointed by the respective parties to collective bargaining;**
- (ii) there should be alternate processor and harvester representatives and at least two Vice-Chairs who can act in rotation in making decisions along with the regular Panel members;**
- (iii) the Chair and the Vice-Chairs should be individuals with a strong background in labour relations and labour adjudication, potentially chosen from among the Roster of Arbitrators for the Province;**
- (iv) the parties should be able to mutually agree to a “Chair only” or a “Vice-Chair only” Panel hearing in which the Chair or Vice-Chair makes a binding arbitration decision in accordance with the *Act* for a fish species without any processor or harvester representatives on the Panel; and**
- (v) the Panel should be provided with access to an accounting firm or a Certified Professional Accountant, as needed, in order to better**

understand, evaluate and potentially verify any market or pricing information from the parties.

### Final Offer Selection

153. It is recommended that final offer selection be maintained in the collective bargaining model but that the Panel be permitted, in its discretion, to reject both final offers and require the parties to continue to bargain for a limited period of time before submitting further final offers. The Panel should also be able to impose a final price based upon a joint final offer selection request from the parties.

### Reconsideration

154. It is recommended that the criteria for being granted a reconsideration under the *Act* and Regulations be kept the same, although removing the references to “jeopardy” or “jeopardize” is advisable, since those terms are not considered in practice.
155. It is recommended that an “exceptional circumstances” or “*force majeure*” clause be added to the *Act* and Regulations, in addition to the single reconsideration, in order to potentially revisit an existing pricing decision. The criteria for granting an “exceptional circumstances” or “*force majeure*” adjustment to prices would be high. Exceptional unforeseen economic or other circumstances that have significantly affected pricing (or something akin to that concept), should form the basis for granting this type of adjustment. A party should be limited in the number of these types of requests that it brings for a fish species in a season.
156. It is recommended that the decision to grant an “exceptional circumstances” or “*force majeure*” hearing should be at the discretion of the Chair or, if the Chair is unable to act, a Vice-Chair. If such a hearing is granted then that matter will normally be decided by the Panel that previously decided the pricing. If the request for such a hearing is denied by the Chair or Vice-Chair then that matter is thereby rejected.

### Increased Focus on Negotiations

157. It is recommended that collective agreement negotiations revert to an in-person approach rather than an online approach, public health measures permitting.
158. It is recommended that the Panel consider using a Vice-Chair or use processor and harvester representatives to assist in negotiations at the discretion of the Chair. The Chair or Vice-Chair deciding a matter should not become directly involved in

**negotiations and should not become privy to any confidential discussions or confidential information concerning negotiations.**

159. **It is recommended that the Panel should, at its request, be made aware of the negotiating history of the parties leading up to the final offers at arbitration. This would not include any “without prejudice” offers between the parties or any prejudicial or confidential information.**
160. **It is recommended that the Panel resume facilitating in-person annual meetings to bring processor representatives, harvester representatives and their respective organizations together to meet and better understand the issues and challenges that they each are facing. This will allow for relationship building with respect to negotiations.**

#### **Pricing Formula for Snow Crab**

161. **It is recommended that Government facilitate discussions and negotiations by the parties towards a pricing formula for the snow crab fishery. Any eventual formula would have to be agreed upon by the parties with or without the involvement of the Panel.**
162. **It is recommended that snow crab pricing forumla discussions and negotiations commence in October or November of 2022, in order to conclude before the start of the 2023 season. An individual with experience in labour relations conciliation and fishing industry negotiations should be appointed by Government to facilitate these negotiations.**

#### **Fishery Information and Market Risk/Exposure**

163. **It is recommended that the Panel determine the types of fishing industry information that is needed in order for the Panel to fulfil its mandate and to make decisions. The Panel should consider and decide the decision criteria that it should take into account in terms of levels of investment and the market/risk exposure of the parties. The foregoing can potentially be specified in the Panel’s *Rules and Procedures* or through the hearing process itself.**

#### **Practices and Procedures of the Panel**

164. **It is recommended that, at the request of the Panel, an individual with significant labour relations experience and knowledge of fishing industry collective bargaining, be assigned to work with the Panel on its practices and procedures.**

## APPENDICES (SEE VOLUME 2)

TAB	DOCUMENT
1	Public Advisory: Notice of Review and Request for Submissions for the <i>Fishing Industry Collective Bargaining Act</i> (July 2022)
2	<i>Report of the Task Force on Fish/Crab Price Settlement Mechanisms in the Fishing Industry Collective Bargaining Act</i> , David Vardy, Chairperson (January 1998)
3	<i>A Review of the Fishing Industry Collective Bargaining Act: A Framework for Stability</i> , by David Jones, Q.C. (October 2003)
4	<i>Report of the Chairman RMS Review Committee</i> , by Richard Cashin (November 2005)
5	Revised <i>Rules and Procedures</i> , Standing Fish Price-Setting Panel (March 2020)
6	<i>Standing Fish Price Setting Panel Newfoundland and Labrador</i> , Powerpoint Presentation for DFO Policy and Economics Seminar Series, by Wayne Follett (January 2022)
7	Standing Fish Price-Setting Panel Annual Report 2020-2021,
8	<i>Discussion Paper: Consideration of Operational Costs in the Crab Arbitration System</i> , North Pacific Fishery Management Council (April 2017)
9	<i>An Act Respecting the Marketing of Agricultural, Food and Fish Products</i> (unofficial translation), Government of Quebec (current to May 2022)
10	Written submissions of Barry Darby to the Review on September 9, 2022
11	Written submissions of Barry Group Inc. to the Review dated September 9, 2022
12	Written submissions of SEA-NL to the Review dated September 9, 2022
13	Written submissions of FFAW-Unifor to the Review dated September 9, 2022
14	Written submissions of the Association of Seafood Producers dated September 9, 2022