



A REVIEW OF FOREIGN INVESTMENT IN THE NEWFOUNDLAND AND LABRADOR FISH PROCESSING SECTOR

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INTRODUCTION

The review into foreign investment and external risks in the Newfoundland and Labrador fish-processing sector stemmed from a recommendation made by the Fish Processing Licensing Board (FPLB) to the Minister of Fisheries, Forestry and Agriculture. The Board's recommendation was in the context of the Change of Operator applications submitted in 2019 to transfer the processing licenses of two local fish processing companies, Quinlan Brothers Limited and St. Anthony Seafoods Limited, to Royal Greenland, a crown corporation of the Government of Denmark. These Change of Operator requests, which were approved, represented an expansion of Royal Greenland's presence in the Newfoundland and Labrador processing sector, as the company had acquired Quin-Sea Fisheries Limited in 2016.

The review included an analysis of information provided to the Department of Fisheries, Forestry and Agriculture (FFA) by fish processing companies in the province; a jurisdictional scan of the prevalence and regulations around foreign investment in other fishing regions; consultations with key industry stakeholders; public consultations through EngageNL; consideration of external risks to the sector; and, consideration of the province's obligations under international trade agreements and their impact on its engagement with foreign investors. The objective of this review is to determine whether fish processing licensing could benefit from changes to reflect current realities and risks in the sector. The culmination of this work is a series of actions for implementation by the Department of Fisheries, Forestry and Agriculture.

BACKGROUND

In 2001, The Special Panel on Corporate Concentration in the Newfoundland and Labrador Fishing Industry was appointed to look specifically at corporate concentration and to make recommendations to the Minister (Newfoundland and Labrador Department of Fisheries, Forestry, and Agriculture, 2001). The Panel found that foreign investment had not, up to that time, resulted in structural changes to the industry and recommended, among other things, that an arm's length Fish Processing Licensing Board be established to oversee processing applications, and that a regional balance approach be taken in regard to industry development. The Panel concluded that there were a sufficient number of industry players to maintain a healthy competitive atmosphere, but forecast that additional consolidation and growth of fewer, larger companies could lead to raw material pricing issues in the future.

The 2003 Fish Processing Policy Review (Dunne Report) was initiated to review provincial licensing policies, access to raw materials for processing plants, and quality standards (Newfoundland and Labrador Department of Fisheries, Forestry, and Agriculture, 2003). The review recommended, again, that a Fish Processing Licensing Board be established, that crab production be monitored and tracked, that the Quality Assurance Program and fish inspection enforcement programs be continued and expanded, that the core-non-core plant classification system be discontinued, and that unused or inactive licenses be cancelled, with production thresholds for license renewal. The report also made a series of recommendations regarding a pilot Raw Material Sharing program to ensure an acceptable level of corporate concentration and competitiveness.

The FPLB was established in 2005 with the enactment of the **Fish Processing Licensing Board Act**.

PROFILE OF THE FISH PROCESSING SECTOR

Since the 1992 groundfish moratorium, the Newfoundland and Labrador fishery has transformed from a predominately groundfish to shellfish industry, and the number and type of fishing vessels, processing plants, and employment levels have adapted. Figures 1 and 2 show that landings decreased roughly by two-thirds, while landed value increased by two-thirds when comparing the 1987-1991 average landed volume and value to that of 2020. The industry is landing much less raw material, but the value is much greater.

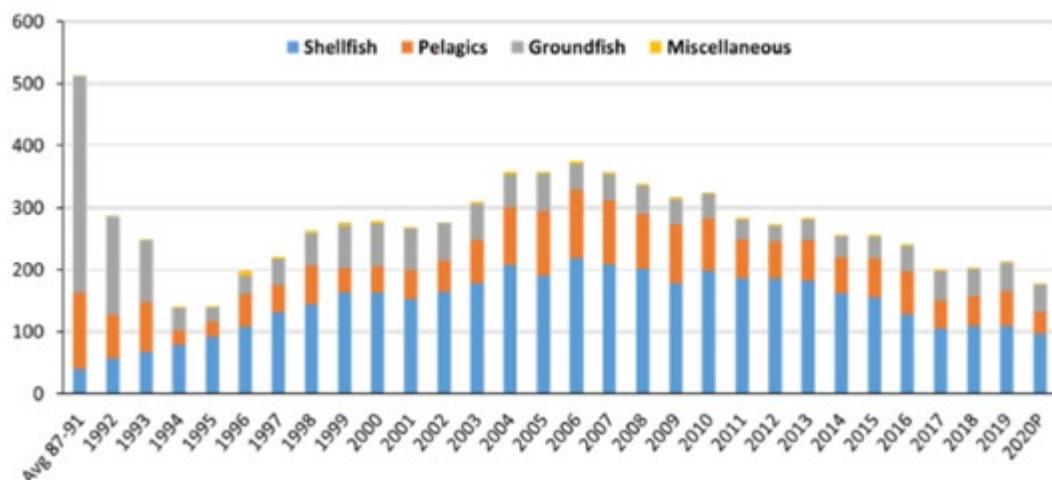


Figure 1

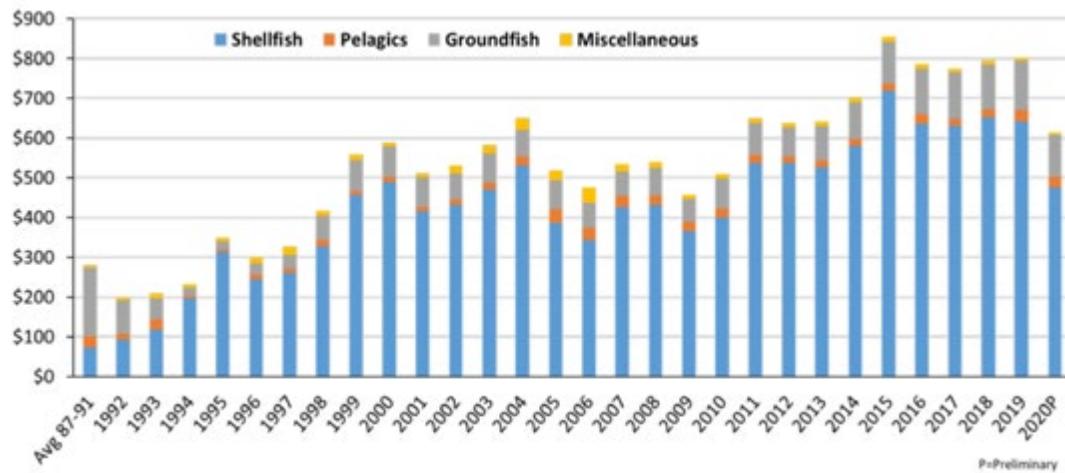


Figure 2

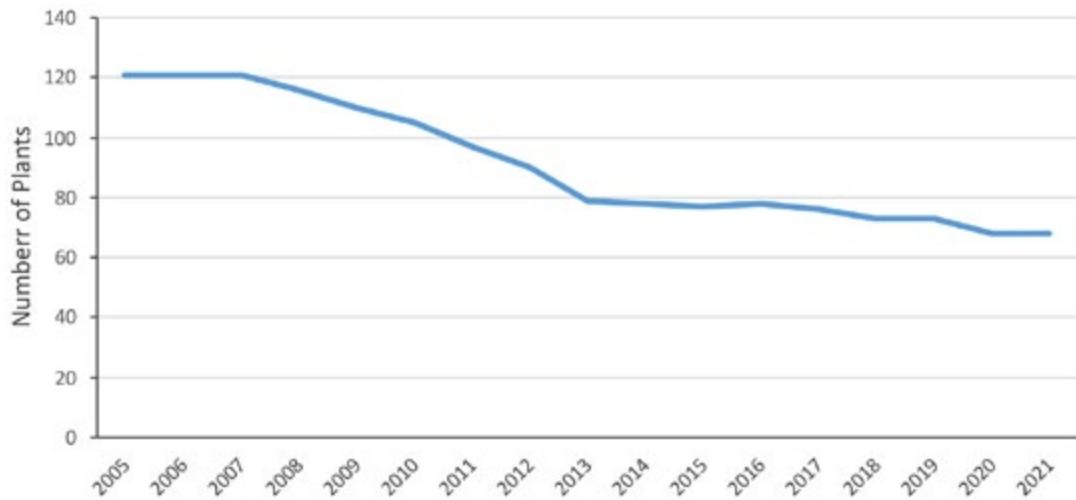


Figure 3

As can be seen in Figures 3 and 4, the lower landings have resulted in fewer processing facilities and less people employed. The number of processing plants declined from 2005 to 2021, dropping from 121 to 68. There were fewer licensed plants across all species categories (snow crab, shrimp, groundfish, pelagics, lobster, and sea urchin) except sea cucumber. The number of people employed in fish processing plants declined from 13,758 in 2005 to 6,188 in 2021.

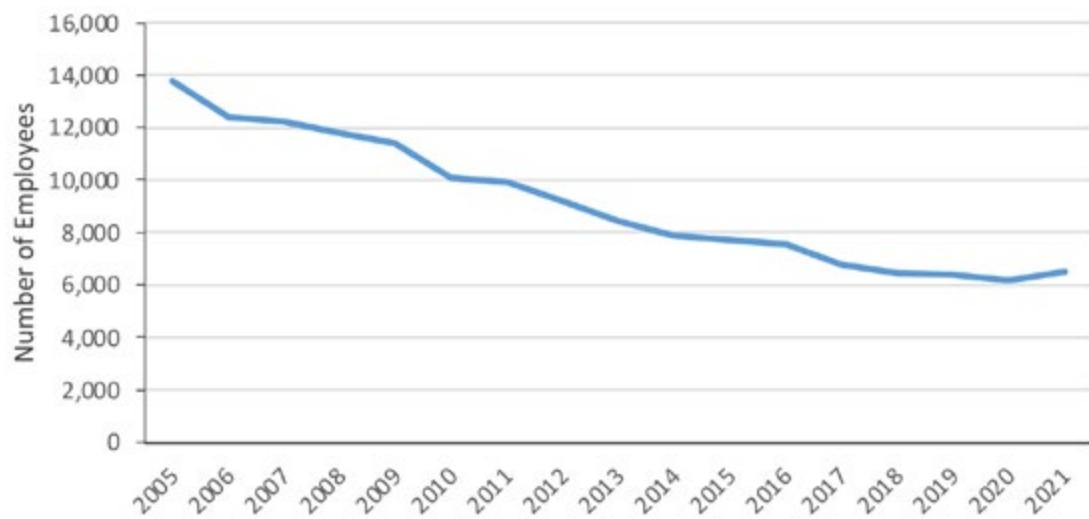


Figure 4



FISH PROCESSING LICENSING IN THE PROVINCE

The licensing of fish processing in Newfoundland and Labrador is authorized under the **Fish Inspection Act** and the **Fish Inspection Administrative Regulations**. The **Fish Processing Licensing Board Act** established the Board in 2005, with the objective to assess and make recommendations to the Minister of Fisheries, Forestry and Agriculture regarding:

- Licensing applications, including applications for new licences, change of operator for existing licences, and the consolidation and transfer of licences;
- Applications for the addition of new species categories to existing fish processing licences, and where appropriate, make recommendations regarding licensing on a regional basis;
- Corporate concentration, merger and acquisition issues in the context of fish processing licensing matters; and
- Appeal for reinstatement of licences cancelled due to inactivity.

The Board considers applications according to the Fish Processing Policy Framework or other policy guidelines, criteria or directions given to it by the Minister. The following list of six criteria are currently used in the assessment of applications (Newfoundland and Labrador Department of Fisheries, Forestry, and Agriculture. 2020):

1. Resource Thresholds: the target amount of raw material that should be available, on average, to each active holder of a species category authorization before the issuance of additional species category authorizations will be continued. The resource threshold approach is intended to provide a balance between the available resource and the ability of plants to process fish harvested.
2. Resource Availability: applicants for new licences, licence transfers or changes of operator must clearly demonstrate that they have access to the fish resources they plan to process. This access should not negatively affect other processing operations or regions within the province.
3. Viable Business Plan: applicants must demonstrate in their licensing application the viability of the proposed venture and provide detailed information on raw material sources, physical plant, production plan, marketing plan, management, employment, financing, previous year's financial information, pro-forma financial information, and copy of articles of incorporation and confirmation of good standing with Registrar of Companies.
4. Regional Balance: matching processing capacity to adjacent resources in a geographical area.
5. Location Criteria: including, proximity to resources; proximity to adequate area labour pool; existing processing facilities; existing harbour facilities; existing industrial infrastructure; proximity to social; and educational, health, telecommunications, and commercial services.
6. Corporate Concentration: the intent of this policy is to ensure that any one company or corporate group does not acquire a position within the industry that could result in it having an undue influence in day-to-day dealings with harvesters or other processors.

FOREIGN INVESTMENT

Foreign direct investment occurs when an investor in one economy obtains a “lasting interest” in an enterprise resident in another economy (OECD, 2022). The lasting interest implies that a long-term relationship exists between the investor and the enterprise and that the investor has a significant influence on the way the enterprise is managed. There are various levels of foreign investment which range based on the type of companies involved and the reasons for the investments. An investor might purchase a company in the targeted country by means of a merger or acquisition, setting up a new venture, or expanding the operations of an existing one. Foreign investment can come from the private sector, or from foreign State-Owned Enterprises (SOEs).

In 2021, global foreign direct investment was estimated at USD \$1.65 trillion (UNCTAD, 2022). Canada attracted an estimated USD \$76.3 billion, the highest level since 2007, which was primarily directed toward manufacturing as well as the energy and mining industries (Statistics Canada, 2022).

Foreign investment can bring many benefits to the host country, including capital to finance new investments and enhance existing businesses, new technology and skills for local workers, boost international trade, and foster competition among domestic firms (Department of Small Business, Export Promotion and International Trade (SBEPIT), 2021). Negative impacts of foreign investment can include disruption of domestic investment and management issues.

While global lockdowns and the prospect of a recession resulting from the COVID-19 pandemic caused a significant drop in foreign direct investment in 2020, flows rebounded strongly in 2021, surpassing pre-pandemic levels (UNCTAD, 2022).



The Government of Canada promotes foreign direct investment as an important driver of innovation, competitiveness and economic prosperity. Foreign multinational corporations are essential to the Canadian economy, representing less than one per cent of companies, but 12 per cent of employment, 15 per cent of Gross Domestic Product (GDP), and over 60 per cent of trade in goods and services (SBEPIT, 2021). The United States, Japan and Germany are among the top investing countries to Canada and most of the foreign capital flowing into the country is directed towards manufacturing, mining and oil and gas extraction, and management of companies and enterprises (SBEPIT, 2021).

The Government of Canada encourages foreign investment on terms that are beneficial to Canadians. To that end, foreign investment in Canada is regulated by the **Investment Canada Act** (ICA). The purposes of the Act are “to provide for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security” (Department of Justice, 2022). Non-Canadians who acquire control of an existing Canadian business or who wish to establish a new unrelated Canadian business are subject to this Act, and they must submit either a Notification or an Application for Review.

A review is triggered when the investment value exceeds an established threshold. For 2022, the threshold for review is \$1.141 billion in enterprise value for investments to directly acquire control of a Canadian business by:

1. World Trade Organization (WTO) investors that are not state-owned enterprises; and
2. non-WTO investors that are not state-owned enterprises where the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, “controlled by a WTO investor” (Innovation, Science and Economic Development Canada, 2022).

The review threshold for 2022 for state owned enterprises is significantly lower, at \$454 million in asset value for investments to directly acquire control of a Canadian business by:

1. WTO investors that are state-owned enterprises; and
2. non-WTO investors that are state-owned enterprises where the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, “controlled by a WTO investor” (Innovation, Science and Economic Development Canada, 2022).



In 2007, in response to foreign SOE investment in the oil sands, the Government of Canada released guidelines that outlined some of the key considerations the Minister of Industry accounts for when reviewing foreign investments made by SOEs to determine if they are likely to be of net benefit to Canada. The considerations focus on concerns that foreign SOEs could present certain risks that do not apply to foreign private sector companies. First, foreign SOEs are, although to varying degrees, inherently susceptible to foreign government influence that may be inconsistent with Canadian national industrial and economic objectives. Second, SOE acquisitions of Canadian businesses may also have adverse effects on the efficiency, productivity and competitiveness of those companies, which may have negative effects on the Canadian economy in the longer term. (Innovation, Science and Economic Development Canada, 2012).

As with new, more restrictive screening measures related to national security, the ICA screening process generally, and the application of the “net benefit to Canada test” in particular, are covered by specific negotiated exceptions in Canada’s trade agreements. The ability to impose “net benefit” tests of this kind resides solely with the Federal Government and does not extend to provinces and territories.



FOREIGN INVESTMENT IN THE NATURAL RESOURCE SECTORS IN NEWFOUNDLAND AND LABRADOR

Investment attraction for the Government of Newfoundland and Labrador is managed by the Department of Industry, Energy and Technology (IET). This department promotes the province's major industrial projects, wealth of natural resources, modern infrastructure, quality of life, strategic location, availability of skilled labour, competitive taxes, attractive incentives, and other assets. In particular, IET touts the province's energy and mineral sectors as opportunities for growth and investment.

The natural resource sector in the province, including mining, oil and gas, and aquaculture, has attracted significant investment from outside the province and country. Most of the major mining operations in the province, such as those in Labrador, like the Iron Ore Company of Canada, Tacora Resources, and Vale are owned by companies in Japan, England, Australia, the United States, and Brazil. Similarly, companies from other parts of Canada, the United States, Norway and others primarily own the offshore oil and gas sector in the province. In the aquaculture sector, the finfish sector is largely owned by companies from outside the province (New Brunswick) and country (Norway).

The mining and oil and gas sectors bring tremendous economic growth, diversity, and employment to the province. In 2020, mining generated 9.4 per cent of total Gross Domestic Product (GDP) and 2.1 per cent of all employment. That same year, oil extraction accounted for 13.7 per cent of total GDP and one per cent of employment. Supporting activities for both sectors combined contributed almost one per cent of total GDP and 0.8 per cent of employment in the province (Newfoundland and Labrador Department of Finance, 2021).

Royal Greenland is currently the only non-Canadian company that wholly owns a fish processing license in the province. The company, a Crown Corporation of Denmark, purchased Quin-Sea Fisheries Limited in 2016, including their plants in Old Perlican, Cape Broyle, Conche, Cupids, and Long Cove (destroyed by fire in 2016). Shortly after, the company purchased processing facilities in Southern Harbour and New Harbour. In 2020, Royal Greenland, in partnership with Clearwater Seafoods, purchased St. Anthony Seafoods Limited and received approval from the Fish Processing Licensing Board to acquire an interest in Quinlan Brothers Limited. All of the Royal Greenland facilities in the province have continued to operate and the company has made significant investments in infrastructure and technology, particularly at the lobster holding facility in New Harbour.



FOREIGN INVESTMENT IN THE FISH HARVESTING AND FISH PROCESSING SECTORS

In June 2020, the Department of Fisheries and Oceans (DFO) approved a review of foreign ownership policies to understand the extent of foreign control of Canadian fisheries, the implications of this control, and recommend potential amendments to the policies (Department of Fisheries and Oceans, 2021). In May and June 2021, the House of Commons Standing Committee on Fisheries and Oceans met to discuss and gather information on corporate concentration and foreign ownership in offshore fishing licenses. A report has not yet been tabled.

To determine who is benefitting from having access to commercial fishing licenses, which are limited in various ways by the Government of Canada, DFO launched a beneficial ownership survey in January 2022. The survey is mandatory and is intended to help the DFO determine who directly or indirectly owns or controls (in whole or in part) a corporation or an entity that holds Canadian fishing licenses (excluding the inshore fleet in Atlantic Canada, Quebec, and the Arctic).

Unlike access to fish harvesting licenses, rules around foreign ownership of processing facilities are generally less restrictive. In Atlantic Canada, foreign ownership is not a criterion used by Newfoundland and Labrador's FPLB in licensing decisions and there are no restrictions on foreign investment in processing licensing in Prince Edward Island, Nova Scotia, New Brunswick, or any other Canadian provinces.

There is a long history of foreign ownership in fish processing in the province. As detailed in the Report of the Special Panel on Corporate Concentration in the Newfoundland and Labrador Fishing Industry, there was significant foreign ownership in fishing processing in the province in the 1960s, including from other parts of Canada, the United States, and the United Kingdom.

Foreign investment in the processing sector is not unique to this province. Prince Edward Island's processing sector has a history of investment from the United States, primarily in the lobster industry, by companies that wholly own and operate the facilities. Similarly, the processing sectors in Nova Scotia and New Brunswick have long attracted investment from the United States, primarily in lobster and snow crab. The provinces are currently seeing some degree of investment from Asia in the live lobster trade, but most investment is coming from private equity investors from the United States and other parts of Canada. Royal Greenland also operates fish processing facilities in Nova Scotia and Quebec.

The province's experience with foreign investment in the fish-processing sector historically has been positive, leading to expanded fish processing operations and the increased global marketing of Newfoundland and Labrador seafood products. In addition, the province's experience with its only current non-Canadian investor in the sector has been positive. Royal Greenland has made beneficial contributions to the competitiveness and productivity of the sector due to the investments it has made in improving and upgrading its plant capabilities and providing longer-term meaningful work for its employees.

EXTERNAL RISKS IN THE FISH PROCESSING SECTOR

In 2021, Newfoundland and Labrador's seafood industry exports were valued at \$1.42 billion, up 61 per cent from 2020 with seafood products being exported to more than 40 countries worldwide. Since the early 2000s, global demand for key seafood products such as lobster and crab has grown significantly, and this has been a key driver of foreign investment in the fish-processing sector in the province and Atlantic Canada more broadly. While this growing demand presents a clear economic opportunity for the province, there are also risks that come with more globalized trade.

In December 2021, a Chinese-owned lobster company in Nova Scotia was fined \$50,000 for illegally shipping American lobsters primarily to China and claiming they originated from Canada. At the time, due to ongoing trade conflict between the Trump administration in the United States and China, lobster sourced from Maine was being charged a 49 per cent tariff upon entering China. This case demonstrates two potential risks in this sector that have become elevated in the current global environment: food fraud and trade disputes.

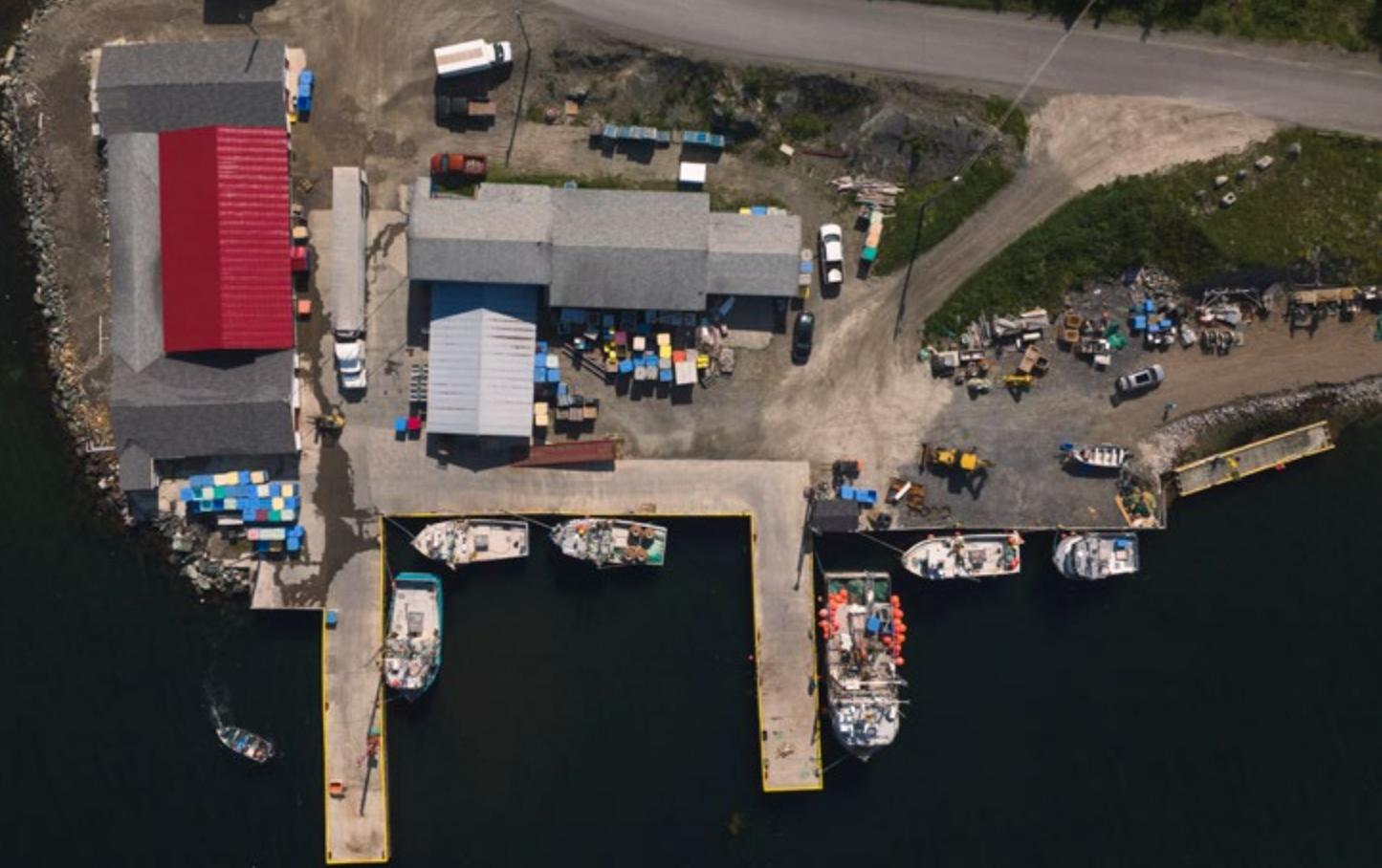
An analysis conducted in 2021 by The Guardian newspaper of 44 recent studies of over 9,000 seafood samples from restaurants, fishmongers and supermarkets in more than 30 countries found that 36 per cent were mislabelled. This result implies seafood fraud on a global scale. The United Kingdom and Canada were found to have the highest rates of mislabelling in The Guardian's study, at 55 per cent, followed by the United States at 38 per cent.

According to the Canadian Food Inspection Agency, it is prohibited to sell food that is falsely labelled or misrepresented. This impacts buyers by not providing what they expect, it impacts the sellers of authentic products, and can also pose health risks if, for example, undeclared allergens or hazardous materials are added to food products. The authenticity of food products is important for safety, and it helps Canadian businesses compete more fairly in the Canadian and global marketplace.



As food fraud has grown as a global concern in food-related industries, so have trade disputes between large trading countries. In recent years, both Canada and the United States have had significant trade disputes and disruptions with China, as have other countries in the Pacific region. Presently, sanctions on many goods from Russia arising from its invasion of Ukraine have disrupted global trade in strategically important goods from oil and gas to food, including seafood. As the Nova Scotia case demonstrates, efforts to circumvent tariffs or sanctions, and fraud in the fish processing sector, may occur in tandem in the current global environment.

It should be emphasized that Newfoundland and Labrador has not identified any illicit activities occurring in its fish-processing sector, including in relation to foreign investors. Nevertheless, such activities may occur, and the sector could find itself involved in disputes related to trade or sanctions that may involve foreign buyers or investors. It is therefore prudent for the province to review its licensing procedures to ensure that they appropriately account for emerging external risks to the sector.



WHAT WE HEARD

During January and February 2022, FFA officials held consultation meetings with six key fish harvesting and processing sector stakeholder representatives, including the FPLB, the Association of Seafood Producers (ASP), the Professional Fish Harvesters Certification Board (PFHCB), the Fish, Food and Allied Workers Union (FFAW) (both the leadership representatives and the inshore council), and DFO. Seaward Enterprises Association Newfoundland and Labrador's (SEA-NL) membership was invited to participate in an individual key stakeholder consultation meeting by FFA, but declined. The public was invited to express their views regarding foreign investment in the Newfoundland and Labrador fish processing industry through an online questionnaire at www.engageNL.ca.

Two common threads emerged from the foreign investment consultation feedback with industry stakeholders and the public. They were:

1. FFA should regulate foreign investment in the province's fish-processing sector; and
2. Foreign investment from state-owned enterprises is of greater concern to harvesters and processors than private sector foreign investment.

Stated concerns with foreign investment from state-owned processing enterprises were:

- State owned enterprises have access to more capital and resources creating an unfair advantage for domestic processors; and
- Potential exists for another country to gain access to the province's fisheries resources and its benefits.

TRADE CONSIDERATIONS

Canada has committed in its international trade agreements to refrain from imposing foreign investment restrictions on areas of the economy including the fish-processing sector. Restrictions would be inconsistent with current obligations under the **Canada-European Union Comprehensive Economic and Trade Agreement (CETA)**, the **Canada-United States-Mexico Agreement (CUSMA)** and the **Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)**. Restrictive measures would also offend a number of other international trade and investment agreements, such as most, if not all, of Canada's bilateral foreign investment protection agreements (FIPAs).

These agreements are designed in large part to provide foreign investors from countries that are Party to these agreements with fair and non-discriminatory access to markets in other Parties' jurisdictions. In practice, this obligates Parties to treat foreign investors in the same manner as domestic investors, and in Canada's case, such obligations extend to sub-national jurisdictions where responsibility for the fish-processing sector exists. There are some very limited exceptions to this general prohibition such as national security considerations administered under the ICA.



RECOMMENDATIONS

As a result of this review and based on all the considerations identified throughout this review, FFA will implement the following:

1. FFA will enhance the **Viable Business Plan** criteria for considering applications for new fish processing licences, change of operator for existing licences, and the consolidation and transfer of licenses as presented on page 8 of this report:

Viable Business Plan: applicants must demonstrate in their licensing application the viability of the proposed venture and provide detailed information on raw material sources, physical plant, production plan, marketing plan, management, employment, financing, previous year's financial information, and pro-forma financial information. Accordingly, satisfaction of this criterion is contingent upon the ownership and operation of provincial fish processing plants for commercial processing activities.

Rationale: To ensure that licenses are used exclusively for the purpose intended. This will help to ensure that all license holders are committed to the continuing productivity and health of the sector.

2. FFA will add the criterion of **Corporate Status and Conduct** to the criteria for considering applications for new fish processing licences, change of operator for existing licences, and the consolidation and transfer of licenses as presented on page 8 of this report:

Corporate Status and Conduct: Companies must provide a copy of articles of incorporation and confirmation of good standing with the provincial Registrar of Companies. Corporate entities from other jurisdictions registered with the Registrar of Companies for fewer than five years must provide equivalent, certified confirmation from a competent authority within their jurisdiction of origin. All companies must further submit self-declarations signed by a competent officer to confirm that neither the company nor any of its officials or subsidiaries have engaged in: food fraud or fraud of any kind; tax evasion; organized crime; money laundering; forced or child labour; trafficking of drugs, arms, humans, or protected species; or discrimination due to race, ethnicity, gender, or sexual orientation. They also must declare that neither the company nor any of its officials or subsidiaries appear on any United Nations or Canadian sanctions lists. Engagement in any such conduct or presence on any such lists will constitute grounds for the rejection of an application or termination of an existing license.

Rationale: This new criterion will ensure that only companies with a demonstrated history of good conduct will be eligible for a fish-processing license, whether domestic or foreign. As foreign investors may not have a history of operating in the province, an appropriate record of conduct may only be available from the investor's originating jurisdiction. This criterion will therefore ensure that the burden of this requirement will apply equally to domestic and foreign investors, and that the FPLB will have comparable and reliable background information for all applicants. The self-declarations provide a layer of protection for the province from conduct that is illegal under Canadian and provincial law. Linking prohibitions in these areas that domestic companies must follow to the procedure for awarding a processing license will also ensure that foreign investors are subject to equal stringency in this regard. This new criterion will therefore help to secure the fish-processing sector from companies that may engage in fraudulent or illicit activities.

3. FFA will replace the criterion of Corporate Concentration with the criterion of Competitiveness for considering applications for new fish processing licences, change of operator for existing licences, and the consolidation and transfer of licenses as presented on page 8 of this report:

Competitiveness: The intent of this policy is to ensure that any one company does not acquire a position within the industry that could result in negative impacts on prices, raw material, resources, and the overall competitiveness of the sector. Accordingly, fish processing license holders will be required to submit annual shareholder and corporate structure information, including on beneficial ownership, as part of the license renewal process and when applying for a new license, change of ownership, consolidation or transfer of ownership. Internal departmental annual audits will be conducted as to the competitiveness of the province's fish processing sector by examining factors such as access to raw materials, value of production, employment and subsidies, and to report results to the Minister of FFA. Should the audit identify substantive competitiveness concerns in the fish-processing sector, the Minister can request the Competition Bureau of Canada to undertake an investigation.

Rationale: During stakeholder consultations, maintaining competitiveness in the fish-processing sector was identified as a significant concern. Concern was expressed over how a single company gaining a dominant position in the sector could have negative impacts on prices, raw material, resources, and the overall competitiveness of the sector.

As such, changes to this criterion can help to ensure that no company, foreign or domestic, gains such a dominant position in the sector that it is to the detriment of all other companies. In order to better determine the existing competitiveness of the sector, new administrative processes must be adopted. Presently, shareholder and corporate structure information is only collected when a company applies for a license. While the information is valid upon submission, it quickly can become outdated. Additional information is therefore needed on an ongoing basis as to the entity or entities that are benefitting from having access to fish processing licenses in Newfoundland and Labrador.

Collecting beneficial ownership information will provide a more fulsome picture of the companies operating, and seeking to operate processing facilities in the province. This recommendation will require processing companies operating in the province to provide information on shareholder and corporate structure and beneficial ownership as part of the annual renewal package and when applying for a new license, change of ownership, consolidation or transfer of ownership. Section 3 of the Fisheries Act provides the Minister with the authority to collect such information.

4. FFA will undertake an internal review of the fish processing licensing with the goal of enhancing data collection, analysis and reporting.

Rationale: During the data collection and analysis stage of the review, opportunities for improvement were identified related to departmental data storage, categorization, analyses, and reporting, including retaining company historical information; enabling real-time data collection; enhancing licence categorization; and limiting product form weight conversions.

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