

STANDING FISH PRICE-SETTING PANEL

ACTIVITY PLAN 2007/08



CHAIRPERSON'S MESSAGE

The *Fishing Industry Collective Bargaining Act* is the legislation that regulates collective bargaining between fish harvesters and processors in our province. This is a very important piece of legislation to the fishing industry, as issues related to fish prices have historically led to disputes and have often caused disruption to the industry and to those depending on it. Accordingly, an effective collective bargaining regime is essential to promoting and maintaining the stability of the fishing industry.

In February 2006, amendments were made to the *Fishing Industry Collective Bargaining Act*, based on recommendations in the Cashin Report, establishing the legislative framework for Government to appoint a Standing Fish Price-Setting Panel. Since its appointment, the three member Panel has worked with industry stakeholders to facilitate collective bargaining, provide market information support to the process and act as an arbitration panel for the parties in situations where they were unable to achieve binding collective agreements on their own.

As a Panel, we believe that the emphasis, however, should not focus on the arbitration role the Panel is mandated to play in the collective bargaining process. Arbitration can be an essential piece in the process; however, our preference would be to see a more collaborative approach between industry stakeholders, where the parties to collective bargaining show the necessary leadership and initiative to work collectively in cooperation with the Panel. We believe this approach would create a more effective collective bargaining regime, bringing further stability and profitability to the industry. This is in keeping with the Minister's strategic direction for the Labour Relations Agency to promote effective relationships between employees and employers creating a recognized stable employment relations climate conducive to economic growth. The Panel has considered this strategic direction and, while it can contribute to the overall outcome of stable employment relations, the Panel does not have a direct role to play in the specific areas of focus identified by Minister.

In this regard, we were pleased to receive input from industry stakeholders in the development of our Rules and Procedures. We look forward to continued cooperation to make this framework succeed for the benefit of everyone dependent on the province's fishing industry.

The Panel was established in legislation in February 2006 and is a category 3 Government entity. It continues to evolve with the development of its Rules and Procedures and legislative mandate. In this context, we have selected to prepare a one year Activity Plan during the transition phase and will prepare a three year plan in 2008. The Panel reports to the Minister of Human Resources, Labour and Employment and is accountable for the preparation of this document and the achievement of the goals and outcomes contained within it.

Joseph P. O'Neill
Chair

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1.0 OVERVIEW

Background

The *Fishing Industry Collective Bargaining Act* regulates collective bargaining between fish harvesters and processors. It has been amended a number of times since 1971 in response to disputes over price settlement in the collective bargaining process.

In February 2006, in response to the Cashin Report, amendments to the legislation were passed resulting in the creation of the Standing Fish Price-Setting Panel, whose main functions include: establishing the parameters for negotiations; facilitating collective bargaining; acting as an arbitration panel in the setting of fish prices and the conditions of sale; and ultimately setting fish prices when the parties to negotiations are unwilling or unable to agree.

Current membership of the Standing Fish Price-Setting Panel

The present Panel is comprised of Joe O'Neill, Chair, Bill Wells, Vice-Chair, Max Short, member and two alternates, Edwin Hussey and Rosalind Walsh Perry.

Financial Information

Funding to support the Panel's activities is allocated within the Department of Human Resources Labour and Employment under the heading of the Labour Relations Agency. The Annual budget for the Panel in 2007/08 was \$245,000. This funding covers such areas as salaries for administration support, facilitation, professional fees, travel, accommodations and related office expenditures.

Contact Information

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2.0 MANDATE

The Mandate of the Standing Fish Price-Setting Panel is to annually identify, in consultation with the stakeholders, particular fish species for collective bargaining and to ensure that binding collective agreements containing price and conditions of sale are in place prior to the normal opening date for these particular fish species. The Panel establishes parameters to facilitate collective bargaining, acts as an arbitration panel where the parties to negotiations fail to agree and has the authority to set prices when negotiations do not occur.

The legislative authority establishing the Standing Fish Price-Setting Panel and the Panel's role and responsibilities are contained in Section 19 of the *Fishing Industry Collective Bargaining Act* and is outlined in Appendix A.

3.0 LINES OF BUSINESS

Lines of Business

Establishing a Schedule for Negotiations

On an annual basis, the Panel will consult with parties to negotiations to determine and establish normal opening dates for particular fish species to be bargained under the *Fishing Industry Collective Bargaining Act* for the coming season.

The Panel will provide written notice to applicable industry stakeholders of particular fish species subject to negotiations, the date by which binding agreement(s) must be in effect, potential hearing date(s) and place(s) where the Panel will hold hearings and receive submissions in the event binding agreement(s) have not been achieved.

Providing Support to Collective Bargaining

Rules and Procedures

The Panel, in consultation with the major parties to negotiations, has established its Rules and Procedures, as provided under section 19.4 of the *Act*, for the purpose of carrying out its duties. The intent of its rules and procedures is to provide direction to the parties to negotiations through the various collective bargaining stages, including the hearing stage if necessary.

Facilitation

The Panel provides the services of a facilitator to the parties to negotiations for all species identified in the schedule of negotiations. The facilitator works with the parties to identify outstanding issues and mediates / facilitates a process whereby the parties may reach a collective agreement. The facilitator also coordinates activities between the Panel, the parties to negotiations and relevant Government departments.

Market Support

The Panel is provided with the support of the Department of Fisheries and Aquaculture in the context of making available current international market information to assist the parties during the collective bargaining phase and to further provide the Panel with a market knowledge-base to utilize in their decision-making process.

4.0 VALUES

The Standing Fish Price-Setting Panel's ability to establish parameters for negotiations, facilitate collective bargaining, act as an arbitration panel in the setting of fish prices and conditions of sale, and set fish prices when the parties are unwilling or unable to agree, requires that Government and industry stakeholders have a high level of trust and confidence in the independence of the Panel in its decision-making. To this end, the Panel promotes four key values:

Professionalism

Panel members believe in providing service with high professional standards and attitudes. This is achieved by maintaining and enhancing their technical and market knowledge and by focusing on good faith and objectivity in their behaviour and interactions and ensuring that decisions are arrived at in an unbiased manner.

Respect

Panel members will treat all people with courtesy and tolerance, and are committed to ensuring that the views of the Panel are fairly represented in a neutral and dignified manner.

Partnership

Panel members are committed to building collaborative and constructive relationships with stakeholders. Where possible, the Panel engages clients in processes, whose outcomes will ultimately affect them, in an effort to foster a positive and consensus-building environment.

Confidentiality

Panel members ensure that any relevant industry information provided to them on a confidential basis is respected and protected from disclosure.

5.0 PRIMARY CLIENTS

The *Fishing Industry Collective Bargaining Act* regulates collective bargaining between fish harvesters and processors.

The entities in the province's fishing industry subject to collective bargaining under this legislation include:

- two organizations representing fish processors: the Association of Seafood Producers and the Seafood Processors of Newfoundland and Labrador as well as a number of independent fish processors that are not members of either organization; and
- the Fish, Food and Allied Workers union which represents fish harvesters in the province.

The Panel also works in conjunction with the Labour Relations Agency and the Seafood Marketing and Support Services Division of the Department of Fisheries and Aquaculture, both of which provide administrative and consultative support to the Panel.

6.0 VISION

In acting as a default mechanism to the collective bargaining regime for the province's fishing industry, it is the Panel's hope that its work with industry stakeholders will help achieve the optimum economic value from the fishing industry and thus contribute to economic growth, competitiveness and prosperity for the provincial economy.

The vision of the Standing Fish Price-Setting Panel is of an optimal collective bargaining climate between fish harvesters and processors in the province to ensure that binding collective agreements are in place for the timely commencement of the fisheries on an annual basis.

7.0 MISSION

The mission statement identifies the priority area of the Panel over the coming year. As a category 3 Government entity, the Panel has the option of adopting the mission of the responsible department and indicating how they will be contributing to the results. The Standing Fish Price-Setting Panel has the unique mandate to facilitate and act as an arbitration panel to the collective bargaining regime for the harvesting and processing sectors in the province's fishing industry, ensuring that fish prices and conditions of sale are in place, and that the fisheries start on a timely basis.

The collective bargaining legislative framework comes under the jurisdiction of the Department of Human Resources, Labour and Employment (Labour Relations Agency), and the legislation governing the processing sector comes under the jurisdiction of the Department of Fisheries and Aquaculture. The harvesting sector is governed by legislation which is prescribed by the Department of Fisheries and Oceans Canada regarding resource management issues and fisheries opening dates.

Further, it is also important to note that there are other influencing factors which impact on the Panel's mandate, over which it has no control. These could include resource requirements by international markets and international currency exchange rates. Any individual or combination of these elements, in a negative context, would impact heavily on the financial viability of harvesters and/or processors to harvest and process a particular fish species and, accordingly, may make it increasingly difficult for the Panel to establish prices and conditions of sale where parties have failed to engage in collective bargaining.

While the Panel should be accountable in the general sense of its mandate, it is difficult for the Panel to be responsible to identify targets and outcomes that may not be under its control. The Panel's mission may therefore be considered in the context of the missions of both the Labour Relations Agency and the Department of Fisheries and Aquaculture.

In the context of the Labour Relations Agency's mission, in relation to collective bargaining, it is the Panel's intent to work with relevant industry stakeholders to annually identify particular fish species subject to collective bargaining and ensure that binding collective agreements are in place prior to normal fishery opening dates. In the absence of such binding agreements, the Panel will establish hearing dates, receive submissions from industry stakeholders, and conduct hearings to establish such collective agreements, ensuring timely openings of the relevant fisheries.

In the context of interaction with the Department of Fisheries and Aquaculture, the Panel solicits advice and current market information to support the collective bargaining and arbitration processes. The result of collective bargaining in this context contributes to harvesting and processing high quality fish products that are supplied to international markets on a consistent basis, thus strengthening and creating new economic opportunities for the province.

8.0 ISSUES

Issue 1: Ensure binding collective agreements are established annually for particular species.

On an annual basis, the Panel will ensure that particular fish species are identified for collective bargaining purposes and where binding collective agreements are not achieved, Panel arbitration hearings will be conducted and prices and conditions of sale established.

Goal 1: By 2008, the Standing Fish Price-Setting Panel will have ensured that collective agreements are in place and prices and conditions of sale for fish species are established prior to the normal opening dates of each species.

Measure 1: Ensured collective agreements are in place.

Indicators:

- Industry stakeholders responsible for collective bargaining of the fish species are notified of the dates by which binding collective agreements are to be in effect.
- The Panel will identify hearing dates and conduct hearings as necessary.

Measure 2: Ensured prices and conditions of sale are established.

Indicators:

- Where collective agreements are not in place, hearings are conducted to establish prices and conditions of sale for fish species.

Issue 2: Recommend legislative or regulatory amendments that provide a realistic mechanism for price setting.

Under the initial legislative framework, when the Panel is required to make a decision between a certified bargaining agent and an accredited processors' organization (or a processors' organization that represents a majority of processors in the province), the Panel is obligated to select one position on price and conditions of sales, unless otherwise mutually agreed by the parties.

The Panel found that this was not always appropriate since it meant having to select between two positions, neither of which may have been in the best interest of the industry. Representation was made to Government to change this process, and as a result of legislative amendments being implemented, the Panel may now make representation to the Minister of Human Resources, Labour and Employment to either establish the method the Panel shall apply in making the decision, or delegate authority to the Panel to establish its own method.

Goal 2: By 2008, the Standing Fish Price-Setting Panel, if necessary, will have made representation to the responsible Minister regarding the modification of the *Fishing Industry Collective Bargaining Act and Regulations*.

Measure:

- Appropriate representation made to the responsible Minister if necessary.

Indicators:

- Monitored the collective bargaining process.
- Where it was deemed necessary, made recommendations for changes to the legislation and regulation.

9.0 APPENDIX A: MANDATE

(Source: *Fishing Industry Collective Bargaining Act*)

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 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 he or she considers appropriate to serve as alternate members of the panel and the persons appointed hold office for 3 years and 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 subsection (3), a person continues to be and may serve as a 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*.