

STANDING FISH PRICE-SETTING PANEL

ACTIVITY PLAN 2011 - 2014



CHAIRPERSON'S MESSAGE

In the province of Newfoundland and Labrador, the Fishing Industry Collective Bargaining Act regulates collective bargaining between fish harvesters and processors. This act has been in place since the early 1970's. The FFAW was certified as the official bargaining agent for fish harvesters in the province, making that organization the legal bargaining agent for fish harvesters in collective bargaining with fish processors.

Collective bargaining throughout the late 1980's and early 1990's had its challenges, resulting in labour disputes in a number of fish species. However, it was a long and protracted dispute in the crab fishery in 1997 that spurred the government of the day to act to address this growing concern in the provinces' fishing industry. In September 1997, government appointed a task force to examine fishing industry collective bargaining and make recommendations with a view to providing a level of stability in the industry. The result of that task force was a model based on the mandatory use of final offer selection by a single arbitrator where the parties were unable to resolve their differences in time for the orderly opening of a fishing season. This model remained in place until 2003 when the processors' association exercised its legislated right to opt out of this particular collective bargaining model. The following two years, 2004 and 2005, were once again characterized by uncertainty over a timely start of the fisheries, especially crab.

The Standing Fish Price Setting Panel that is in existence today is a category 3 Government entity, and is the result of government's decision in 2006 to establish a permanent structure with a legislated obligation to ensure price and conditions of sale are in place in time for the start of the fishery in the various species. The panel acts, however, only where the parties have been unable to reach agreements on their own. Should the parties be successful in collective bargaining, the panel would not be required to act.

The result of this legislated process has been timely decisions on prices and conditions of sale for the normal opening dates for most fisheries since 2006. While these decisions have not meant that all fisheries have commenced on time, they have given certainty over price and conditions of sale for all stakeholders in the industry affected by these decisions. Decisions of the Standing Fish Price Setting Panel do not mandate that harvesters and processors must engage in fishing. Many other factors impact the decision to engage in fishing, such as currency rates, state of market, fuel costs, and so on. The panel simply sets price and conditions for sale that are binding on all parties. It is an enterprise or business decision whether to commence fishing or processing.

Perhaps an unintended impact of the decisions of the panel has been the strong signal these decisions have sent to the international markets with respect to the prices that are to be paid for Newfoundland and Labrador products. The panel has been informed anecdotally that as a result of the stability created by the panel process it is becoming the norm that market contracts are being finalized following the release of the panel's decisions.

The view of the panel following its appointment was that the best outcome was a situation where the panel did not have to be called into action to make any decisions on price and conditions of sale; that the parties would resolve these issues on their own. Unfortunately the experience in the first five years of the panel process has not seen this situation materialize. Accordingly the panel has had to exercise its legislated obligation to ensure prices and conditions of sale are in place at the opening of a particular fishery.

The panel will continue to carry out its legislated obligation and will accord every opportunity for the parties to work out their own settlements and will make every effort to engage the parties in areas where the panel is called upon to exercise its mandate. The Panel reports to the Minister of Human Resources, Labour and Employment. The Panel considered the strategic directions of Government during the preparation of this Activity Plan, and is fully accountable for the preparation of the Plan and the achievement of the objectives contained within it.

A handwritten signature in blue ink, appearing to read 'Joe O'Neill', with a stylized flourish at the end.

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, most recently in January of 2011, 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, and Max Short, member. Alternate members include Rosalind Walsh and Edwin Hussey.

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. As per the *Estimates of the Program Expenditure and Revenue of the Consolidated Revenue Fund 2011-12*, the annual budget for the Panel in 2011/12 is \$244,700. 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, following 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 by the date established by the Minister of Fisheries and Aquaculture. 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 the particular fish species to be bargained under the *Fishing Industry Collective Bargaining Act* for the coming season.

The Minister of Fisheries and Aquaculture, on an annual basis, sets the dates by which prices and conditions of sale for the species to be bargained, must be in effect. The Panel will then 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 provides support to the parties by helping to identify outstanding issues and mediating/facilitating the collective bargaining process to assist the parties in reaching a collective agreement. The facilitator also coordinates activities between the Panel, the parties to negotiations, and relevant Government departments.

Market Support

The Market Intelligence Unit of the Department of Fisheries and Aquaculture provides support to the Panel in the context of making available current international market information to assist the parties during the collective bargaining stage and to further provide the Panel with a market knowledge-base to utilize in their decision-making process should things progress to the hearing stage.

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 are committed to the highest professional standards and attitudes in fulfilling their mandate. 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 respect, 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. The Panel endeavors to engage industry participants in processes whose outcomes will ultimately affect them. It is the Panel's objective 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 Department of Fisheries and Aquaculture, both of which provide administrative and consultative support to the Panel.

6.0 VISION

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 next three years. 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.

It is important to note that other factors may impact on the Panel's mandate, over which it has no control. These 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. While the Panel must 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 be outside of its control. The Panel's mission may 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, which is to provide improved labour relations supports conducive to positive workplace relations (to view the Agency's Mission statement in its entirety, including its measures and indicators, please reference the Labour Relations Agency Strategic Plan, April 1, 2011 – March 31, 2014), 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 dates established by the Minister of Fisheries and Aquaculture. 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

The Standing Fish Price-Setting Panel is a quasi judicial government entity. The Panel reports to the Minister of Human Resources, Labour and Employment and works in conjunction with the Labour Relations Agency. The strategic direction of the Labour Relations Agency is *stable employment relations climate conducive to economic growth*. The Panel provides stability to the fishing industry and collective bargaining process by providing facilitative support to the parties to collective bargaining during fish price negotiations, and by acting as an arbitration Panel, should the parties to collective bargaining be unsuccessful in negotiating prices and conditions of sale for particular fish species. The Panel has considered the strategic direction of the Labour Relations Agency. While it supports the direction of a stable employment relations climate conducive to economic growth, due to its quasi-judicial nature, the Panel's issues do not directly respond to the components of this direction. The Panel's responsibility and obligation is to ensure that prices and conditions of sale are in place for every species of fish that is subject to the collective bargaining process. These prices and conditions of sale are established and communicated to industry stakeholders in a timely manner, in accordance with a schedule established by the Minister of Fisheries and Aquaculture.

As such, the Panel's role and objectives have not changed since its inception, and are likely to remain constant as long as the Panel is in place.

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

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. The following objective and indicators applies to the 2011/12, 2012/13, 2013/14 fiscal years and will be reported on in the relevant annual reports.

Objective: By March 31, 2012, 2013, 2014, the Standing Fish Price-Setting Panel will have ensured that collective agreements were in place and prices and conditions of sale for fish species were established prior to the date established by the Minister of Fisheries and Aquaculture.

Measure 1: Ensured binding collective agreements were in place.

Indicators:

- Industry stakeholders responsible for collective bargaining of the fish species were notified of the dates by which binding collective agreements were to be in effect.
- Requisite facilitation/mediation services were made available to the

parties to collective bargaining through the Panel facilitator, to assist the parties in achieving a collective agreement.

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

Indicators:

- Industry stakeholders responsible for collective bargaining of the fish species were notified of hearing dates, where the parties did not achieve a collective agreement.
- Where collective agreements were not achieved, hearings were conducted to provide the parties to collective bargaining an opportunity to represent their respective positions to the Panel.
- Following a hearing, the Panel made timely decisions that established prices and conditions of sale for the particular fish species.
- The Panel advised all industry stakeholders affected by its decision for a particular species.

Issue 2: Ensure that there is adequate and reliable market information available to the parties to collective bargaining.

Through consultation with the parties to collective bargaining, the Panel determined that the availability of accurate and timely marketing information was a critical component of the collective bargaining process, and that it was an equally critical component of the Panel's decision making process. The following objective and indicators applies to the 2011/12, 2012/13, 2013/14 fiscal years and will be reported on in the relevant annual reports.

Objective: By March 31, 2012, 2013, 2014, the Standing Fish Price-Setting Panel ensured that the parties to collective bargaining had access to the best market information available with respect to the species under consideration.

Measure:

- Timely market reports for the particular species under consideration were made available to the parties to collective bargaining.

Indicator:

- Through the Panel facilitator and the Department of Fisheries and Aquaculture, the Panel provided timely and relevant market information to the parties to collective bargaining, prior to the start of negotiations for the particular species.

Issue 3: Recommend legislative or regulatory amendments that provide a realistic mechanism for price setting.

In the interest of continually improving upon the collective bargaining process and the process by which the Panel makes decisions that impact all fishing industry

stakeholders, the Panel regularly consults with those stakeholders to seek input on improving both. If the Panel identifies an area where changes are necessary to improve the collective bargaining and hearing process, and believes that improvements may be made through legislative amendments, the Panel may then make representation to the Minister responsible.

The following objective and indicators applies to the 2011/12, 2012/13, 2013/14 fiscal years and will be reported on in the relevant annual reports.

Objective: By March 31, 2012, 2013, 2014, the Standing Fish Price-Setting Panel, where in its opinion it was warranted, made representations to the Minister responsible, with respect to an amendment to, or modification of, the *Fishing Industry Collective Bargaining Act and Regulations*.

Measure:

- Appropriate representation made to the responsible Minister if necessary.

Indicators:

- The collective bargaining process was monitored.
- Where it was deemed necessary, made recommendations for changes to the legislation and regulations.

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*.