

Friday, Sept. 9th, 2022

David Conway

Review of the Fishing Industry Collective Bargaining Act's collective bargaining model

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Dear Mr. Conway,

On behalf of Seaward Enterprises Association of Newfoundland and Labrador (SEA-NL), I wish to make this submission to the review of the collective bargaining model for setting fish prices in Newfoundland and Labrador.

I also request the opportunity to make a verbal submission.

Before getting into specific recommendations, SEA-NL takes issue with the fact this review is being conducted practically in secret, certainly away from the public eye, and, more specifically, the direct attention of the 3,200 enterprise owners who make up this province's inshore fleet.

The price of fish directly impacts their enterprises/lives, and they should have been afforded the opportunity to directly observe/participate in this review with public/virtual meetings, and in-person/virtual presentations.

As highlighted in correspondence between us over the summer, from SEA-NL's perspective this entire review should have been live-streamed, and all submissions delivered in person/virtually, as well as in writing.

All fishermen in all fleets must be better educated on the current broken-down collective bargaining model, and proposed repairs/alternatives.

If the interviews/submissions as part of this review were live-streamed through such free mediums as Facebook Live, fishermen could have tuned in, absorbed the information, and directly participated in the discussion of how to improve the collective bargaining model.

As conductor of this review, Mr. Conway, I realize you personally did not have a hand in setting the review's mandate, but it is hoped this message will get through to those who did.

An all-party committee is set to hold a series of public consultations across the province on changes to the Elections Act.

Consultations could have just as easily been arranged with this review of the collective bargaining model for fish pricing.

Indeed, that's what the province's Office of Public Engagement is there for.

Requesting submissions — without a high level of public engagement with the very inshore enterprise owners whose livelihoods hinge on fish prices — was a mistake.

The mandate of this review should also have been expanded to include competition in the processing sector, and the implications of weekly limits, trip limits, and fishing schedules on fish prices.

A review focused solely on the collective bargaining model outlined under the Act will not achieve the ultimate goal of fair market return and uninterrupted fisheries without investigating both price and market limitations/controls.

Price is irrelevant if there's no buyer, which is the other piece of the collective-bargaining puzzle.

In that light, the purview of this review could have been expanded to include the provincial government's ongoing review of foreign investment in the fish-processing sector, which also impacts fish prices.

SEA-NL also wishes to officially register concern over your appointment to lead this review, and your bias over the existing bargaining unit representing inshore enterprise owner-operators in collective bargaining.

In your Sept. 28th, 2018 decision to deny an application for certification by FISH-NL union, you wrote: "The Bargaining unit has existed for decades, collective bargaining has occurred for the members of this bargaining unit, and the bargaining unit is appropriate for collective bargaining."

As a non-profit association representing the distinct voice of licensed, independent, owner-operator inshore fish harvesters in this province, SEA-NL profoundly disagrees with your statement that the FFAW-Unifor is the appropriate bargaining unit to represent them.

Enterprise owners do not/cannot expect the union to negotiate the best possible price for their fish when the FFAW-Unifor also represents plant workers, and offshore trawlermen in collective bargaining.

Real or perceived, the conflict of interest has been undeniable from Day 1 — a problem that has generated so much of the distrust that permeates the fishing industry to this day, and is compounded by the fact fish pricing is exempt from the federal Competition Act.

Fish price negotiations in this province — the structure of which was described in 2021 by Premier Andrew Furey's own Economy Recovery Team as "anti-competitive by nature" — are excluded under Section 4 of the Act.

The federal government announced plans earlier this year to amend the Competition Act, and SEA-NL wrote Prime Minister Justin Trudeau this past April to request the exclusion of fish pricing be lifted.

No industry should be excluded from the Act.

The only industry in Canada that is excluded is the Newfoundland and Labrador fishery, and the inshore fleet pays the price in terms of less money for their fish.

Processors in this province can import fish from the Maritimes, Quebec, and even other countries like France (St-Pierre-Miquelon) for processing at local plants, while those same processors can order the inshore fleet — which can not access outside buyers — tied to the wharf on trip limits, and fishing schedules.

Owner-operators in this province cannot move freely between buyers/processors, and processing companies have been accused of working together as a cartel to keep fish prices down.

Those two common examples of unfair competition impact prices to the inshore fleet as surely as the collective bargaining model, so the limitations of this review will only result in an incomplete report/assessment.

If the federal government refuses to make an amendment to the Competition Act regarding fish pricing — or the provincial government fails to request one — they should be made to publicly explain their positions.

PROBLEMS RAISED FIRST IN 2021

In July 2021 SEA-NL called for a review of the province's panel system of fish pricing to determine whether inshore harvesters received a fair-market return from last year's record snow crab fishery.

The final 2021 price for snow crab to the inshore fleet was set at \$7.60/lb on April 25th, when market price continued to rise almost weekly until well into the fall, to the point that the price was described by international seafood news organizations as "inelastic."

When the market price of snow crab or any other species continues to rise after the final price to the inshore fleet has been locked in — with no way for harvesters to tap into the rising price as a means to realize a fair market return — the system is clearly broken.

Both processors and enterprise owners made money from last year's snow crab fishery, but both sides did not realize a fair market return.

SEA-NL wrote the provincial government on Nov. 5th to request that the regulation under the Standing Fish Price-Setting Panel that restricts each party to one price reconsideration per species be lifted, and the change be made prior to the start of the 2022 season.

The request was denied, with the point made that both sides made money.

Government missed the point.

Both sides did make money from last year's snow crab fishery, but both sides did not realize a fair market return.

This year it is just the opposite for processors/buyers.

Derek Butler has stated publicly that record snow crab losses this year ("worse since the moratorium) by processors/buyers will impact prices next year ("if not even more years" (See COMMENTARY by Derek Butler: Fishery chaos, 2022: lather, rinse, repeat), July 11th edition of *The Telegram*.

The entire fishing industry should sit up, and take notice when threats are made that future seasons/prices will be impacted.

Ironically, both snow crab prices realized by the inshore fleet this year (\$7.60/lb, and, later, \$6.15/lb) were the ASP's final offers to the price-setting panel.

This past summer the existing collective bargaining model collapsed completely with processors refusing to buy for the prices that were set, and inshore fleets remaining tied to the wharf.

Most prices set by the panel this year resulted in severely delayed fisheries (northern shrimp, sea cucumber), cancelled fisheries (east coast capelin), or, in the case of the inshore shrimp fleet, boats landing in Nova Scotia.

On July 5th, SEA-NL called for the elimination of what had become by then a "farcical" system of fishing pricing — in favour of direct negotiations between the union and processors until prices/contracts were hammered out — before entire fisheries were lost.

There is no point in government being involved in negotiating the price of fish when its appointed panel does not have the power to enforce prices, and its decisions do not result in commercial fisheries.

Under the final-offer selection system of fish pricing, the provincial government-appointed panel steps in when the FFAW-Unifor, and ASP (generally) can't reach a deal on the price of a particular species.

The panel must choose one price or the other, with its final decision “binding” on both sides — when, as the price-setting panel so often points out — the true price is usually somewhere in the middle.

That is an abomination of a free market.

In the case of snow crab this past season, at one point at least one processor attempted to pay far less than the \$6.15/lb reconsideration price set by the panel on May 16th by charging owner-operators for services like trucking that in previous years were covered by the negotiated price.

Green's Seafood Ltd. distributed an agreement at the end of June for owner-operators to sign before the company would buy their crab.

The document stated that owner-operators agreed to a "service fee" of \$2.22/lb (plus HST) for services such as the supply of ice, offloading, discharging, freight, and logistics.

Such an action completely undermined the province’s “binding” system of fish pricing (in place since 2006), and was brought to the direct attention of the provincial Minister responsible for fisheries.

While the Minister told at least one enterprise owner the matter was being looked into, there was, in fact, no investigation by the Labour Relations Board, and no indication that the FFAW-Unifor had even filed a grievance.

The fact there were no repercussions to such a flagrant violation of the final-offer selection system of fish pricing is yet another example that the system is broken beyond repair.

Changes to the Act to allow for more price reconsiderations, or even legislative teeth to enforce “binding” decisions, won’t change the fact that the system, again, is an abomination of a free and open market.

It must also be noted that not all fish prices are negotiated using the final offer selection process.

Indeed, halibut prices are based on actual market returns of processors/buyers, and are set using a multi-step process that takes place over a period of four weeks.

Other fish prices like herring are negotiated between the enterprise owner and processor/buyer. (The going price for herring today is 15¢/lb.)

The 2021 report by the Premier’s Economic Recovery Team highlighted that the current collective bargaining model for fish prices was established as part of a review in 2003.

“The relationship between harvesters and processors is often negatively impacted by the collective bargaining structure. This is often at the expense of maximizing value from the market. One of the key recommendations of that review was to establish a fish auction so that market and quality issues are taken into consideration in the price paid for fish. This recommendation was rejected in preference of price setting by an independent panel and a mediation process between the fish harvesters’ union and plant owners.”

To further quote the report of the Economic Recovery Team:

“Harvesters negotiate sales prices to processors through a collective bargaining structure. Harvesters are organized under one bargaining agent and processors are typically represented by two associations. This structure is anti-competitive by nature and requires an exemption in the federal Competition Act (Section 4). This price-setting structure often isolates the industry from the market where quality and consistency of supply is required. The structure can also tarnish the relationships between harvesters and processors, making it difficult to collaborate on other important issues. As well, many of the decisions and policy positions brought forward harm fish processing workers, but the voice of harvesters overshadows these concerns.”

SEA-NL agrees with that assessment.

A 1998 Report of the Task Force on Fish/Crab Price Settlement Mechanisms in the Fishing Industry Collective Bargaining Act recommended modifications to the collective bargaining system (which resulted in the final offer selection system we have today).

However, the task force recommended that at the same time as modifications to the Act were introduced the government “experiment” with an electric auction system.

As the Task Force noted, “auctions and other free-market systems are common elsewhere.”

While the Task Force recommended a pilot project for implementation in 1999, the pilot project reportedly did not take place until a decade later, and some government officials say the option was not given a fair shake.

While the current final-offer selection process outlined under the Fishing Industry Collective Bargaining Act can be amended to make some improvements (including increasing the number of price reconsiderations), SEA-NL does not believe that’s the long-term solution.

Instead, SEA-NL recommends the provincial government open the province’s doors to buyers from outside the province to operate on an even playing field with local buyers/processors, and implement an electronic auction system pilot project for the 2023 fishing season.

Oil companies operating off the province’s shores are not ordered to process oil onshore in Newfoundland and Labrador.

The fact that inshore enterprise owners face such restrictions when they land fish is an unfair restriction that must be addressed.

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