

STANDING FISH PRICE-SETTING PANEL

ANNUAL REPORT 2006/07



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MESSAGE FROM THE CHAIRPERSON

The *Fishing Industry Collective Bargaining Act* (the *Act*) regulates collective bargaining between fish harvesters and processors. The *Act* is a very important piece of legislation to the fishing industry, as issues related to fish pricing have historically presented challenges to both the harvesting and processing sectors of the industry. Accordingly, an effective collective bargaining regime is essential to promoting and maintaining the stability of this industry.

In February 2006, amendments were made to the *Act*, based on recommendations in the Cashin Report, establishing the legislative framework for Government to appoint a Standing Fish Price-Setting Panel (the Panel). The Panel came into existence during a very challenging time for the fishing industry. The Panel member appointments were made at the beginning of the fishing season and the Panel had to evolve with the development of its rules and procedures and legislative mandate while the fishing season and collective bargaining for the 2006 fishing season progressed. Issues such as determining normal opening dates and having collective agreements in place at least three days prior to these dates were very challenging, and, in some cases, had to be adjusted with cooperation and flexibility shown from industry stakeholders, who were themselves, dealing with the challenges of new legislation and additions to the *Act*. In the same context, it was not until after the majority of fisheries concluded for the 2006-07 fishing season that the Panel, in consultation with industry stakeholders, had the opportunity to develop and establish its initial Rules and Procedures.

Since their appointment in March 2006, the Panel members and staff have 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.

The entities in the province's fishing industry subject to collective bargaining under this *Act* include two organizations representing fish processors, the Association of Seafood Producers (ASP) and the Seafood Processors of Newfoundland and Labrador (SPONL), as well as a number of independent fish processors. The Fish, Food and Allied Workers (FFAW) Union represents fish harvesters in the province.

This Annual Report is prepared on a fiscal year basis April - March. Accordingly, Panel activities contained within, cover the 2006 and the early portion of the 2007 fishing seasons.

In accordance with Government's commitment to accountability, as a Category 3 Government Entity, I hereby submit the 2006-07 Annual Report of the Standing Fish Price-Setting Panel. This is the first Annual Report of the Panel, and the comments and record of activities contained herein occurred during implementation of a new legislated collective bargaining regime. Panel members and support staff are confident that their efforts contributed to fisheries commencing on a timely basis and continued without disruption throughout the 2006-07 fishing season. This Report has been prepared under the direction of all members of the Standing Fish Price-Setting Panel and we are accountable for the results contained in it.

JOSEPH P. O'NEILL
CHAIR

PUBLIC BODY OVERVIEW

The legislative authority establishing the Standing Fish Price-Setting Panel and the Panel's role and responsibilities are contained in Section 19 of the *Act* and associated regulations. The Panel is classified as a Category 3 Government entity.

The present membership of the Panel includes: Joe O'Neill, Chair; Bill Wells, Vice-Chair; Max Short, member; and two alternates, Edwin Hussey and Rosalind Walsh Perry. Facilitation, administrative and secretarial support services in the first year were provided by the Labour Relations Division of the Labour Relations Agency. Market information support was provided by the staff at the Department of Fisheries and Aquaculture.

Funding to support the Panel's activities was voted in the allocation of the Department of Human Resources, Labour and Employment under the heading of the Labour Relations Agency. The Annual budget for the Panel in 2006/07 was \$245,000 covering such areas as administrative support, professional fees, travel, accommodations and related office expenditures. The Panel's office is located at 3rd Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 4J6, telephone: (709) 729-0625.

MANDATE

The Mandate of the Standing Fish Price-Setting Panel is to identify, in consultation with the stakeholders, particular fish species for collective bargaining, annually, 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 where negotiations do not occur.

LINES of BUSINESS

On an annual basis, the Panel consults with parties to negotiations to determine and establish normal opening dates for particular fish species to be bargained for the coming season. It provides written notice to applicable industry stakeholders of particular fish species subject to negotiations, the date by which binding agreements must be in effect, potential hearing dates, and locations where the Panel will hold hearings and receive submissions in the event binding agreements have not been achieved.

The Panel 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 these rules and procedures is to provide direction to the parties to negotiations in lead up to and through the various collective bargaining stages, including the hearing stage, if it becomes necessary.

The Panel provides the services of a facilitator to the parties to negotiations for all species identified in the schedule of negotiations, and with the support of the Department of Fisheries and Aquaculture, provides 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.

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 that 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.

MISSION/SHARED COMMITMENTS

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 thus contributing to the economic value of the province's fishing industry. While being an independent body, there is a definite contributing relationship with 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, thus ensuring work stoppages do not occur.

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 the harvesting and processing of high quality fish products that are supplied to markets on a consistent basis, thus strengthening and creating new economic opportunities for the province.

HIGHLIGHTS/ACCOMPLISHMENTS

Legislative Amendments

After the completion of the first full season of negotiations under the new legislative regime, the Panel conducted a review of activities. As a result of this review in October 2006, the Panel met with Government and advised of its concerns regarding the application of the mandatory Final Offer Selection (FOS) process contained in the new legislation. Specifically, the Panel advised that the experience in 2006 reflected price offers that were so far apart, that selecting one under the strict rules of FOS could be harmful to the industry.

In response to the Panel's expression of concern, Government brought forward further amendments to the legislation in December 2006 designed to: (1) provide the Panel with the authority to, on application, reconsider a decision it has previously given in relation to price and conditions of sale; and (2) provide the Minister of Human Resources, Labour and Employment authority to determine, by *Regulations*, the arbitration method the Panel shall apply in considering decisions (Section 19.11(3)).

The intent of the provision, granting the Minister regulation-making authority was to move the use of mandatory FOS to the *Regulations*, thereby allowing the Minister authority to grant the Panel the right to choose an alternate arbitration method should it become appropriate to do so.

Rules and Procedures

Section 19.4 of the *Act* provides the Panel the authority to establish rules and procedures for the purpose of carrying out its duties under the legislation. Time constraints did not permit this to occur for the 2006 season and it was obvious to all parties involved that, on a go forward basis for the 2007 season, foundation rules and procedures had to be established to give structure to the facilitation, collective bargaining and hearing processes.

The Panel, in consultation with the major parties to negotiations, finalized and published its initial Rules and Procedures on February 27, 2007. The intent of these rules and procedures is to provide direction to the parties to negotiations through the various collective bargaining stages for future fishing seasons. The Panel may from time to time, add, delete or modify its Rules and Procedures and in doing so, the Panel shall consult with parties to negotiations in an effort to solicit their input for consideration.

Collective Bargaining Facilitation and Hearing Results

For the 2006-07 fishing season, there was not sufficient time for the Panel to set hearing dates for Spring Shrimp and Crab negotiations. Accordingly, the parties to negotiations, as determined by the legislation, ASP and the FFAW and the Panel, mutually agreed to the hearing dates. The Panel did set hearing dates for additional fish species, such as cod, lumpfish and capelin. Additionally, the FFAW requested hearing dates for squid and mackerel under section 19.8(3) of the *Act*. Where hearings were held and there was a majority processors organization identified under the legislation, unless the parties to negotiations mutually agreed otherwise, the Panel was obligated to utilize Final Offer Selection in the decision-making process.

In 2006, the Panel conducted nine (9) price hearings, seven (7) of which involved majority processors organizations, thus requiring Final Offer Selection as the method for decision-making. In four (4) instances, the Panel selected the final offer of ASP and in three (3) other instances the Panel selected the final offer of the FFAW.

It should also be noted that, in 2006, the Seafood Processors of Newfoundland and Labrador challenged, in application to the Labour Relations Board, the decision of the Panel and the validity of the collective agreement on Spring Shrimp prices. The Labour Relations Board decision upheld that the collective agreement was in force, thereby dismissing the SPONL application.

The Panel also conducted a hearing in 2006 on the Final Offer Selection process pertaining to the appropriateness of an offer to be made as a final offer in Final Offer Selection, as well as, the intent of that particular methodology in arriving at a settlement in collective bargaining.

On February 12, 2007, after consulting with major parties to negotiations, the Panel issued notice for hearing dates to the industry for six (6) fish species for the 2007 season. On March 6, 2007, parties to negotiations (ASP & FFAW) achieved a Spring Shrimp price schedule through negotiations. A Panel hearing was held March 30, 2007 on Crab prices. The decision of the Panel released on April 3, 2007 accepted the position of ASP.

OPPORTUNITIES and CHALLENGES AHEAD

The Panel acknowledges that collective bargaining in this province's fish harvesting sector is somewhat unique. Collective bargaining in this environment is unlike typical labour relations collective bargaining frameworks where an employer/employee relationship exists with negotiations dealing mainly with issues such as wages and benefits. The collective bargaining regime in the fish harvesting sector requires negotiations between two groups, harvesters and processors, each having their individual operational costs and issues related to harvesting, processing and marketing of a common resource. The nature of the fishing industry is one which is very competitive between and within the individual groups themselves. Collective bargaining in this sector of the province's fishing industry deals specifically with how the financial returns are shared from their collective efforts to harvest, process and market various fish species.

During the first year of operation, the Panel was confronted with numerous issues brought forward by the parties to negotiations, including legislative interpretations, procedural issues, the validity of collective agreements and the challenges to the autonomy of the Panel and basis for decisions. While these issues may continue to exist and create challenges for the Panel and Government in general, the major issue for the Panel and the focus of its efforts, going forward, is to ensure a more harmonious relationship in the collective bargaining process whereby parties to negotiations value the aspects of cooperation and work collectively, in concert with the Panel, to achieve the maximum benefits and financial returns from the province's fishing industry.

FINANCIAL INFORMATION

Funding to support the operations of the Standing Fish Price-Setting Panel is contained within the Labour Relations Agency's annual budget. In the fiscal year 2006-07, the Standing Fish Price-Setting Panel, was allocated \$245,000 to support its operations and expenditures, including administrative support, professional fees, travel, accommodations, and other office expenditures.

The above-noted expenditures are contained within and are based on public information provided for the Labour Relations Agency in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund Fiscal Year ended March 31, 2007.