



**FFAW | UNIFOR**  
Fish, Food & Allied Workers

Submission to the  
Independent Review Consultant

**Submission for review of the collective bargaining model contained in sections 19.1 – 19.14 of the Fishing Industry Collective Bargaining Act (FICBA)**

September 9th, 2022

Mr. David Conway,

Please accept this submission, on behalf of the Fish, Food, and Allied Workers Union (FFAW) and our membership, for your review of Sections 19.1 to 19.14 of the Fishing Industry Collective Bargaining Act (FICBA).

### **FFAW and the Inshore Fishery**

The FFAW is the largest private sector union in Newfoundland and Labrador. FFAW represents approximately 10,000 inshore harvesters and many more fish plant workers that depend on the health and sustainability of the inshore fishery. FFAW members make up the heart and soul of thousands of rural provincial communities which depend on the effectiveness of the FICBA to support their families and way of life.

Since 2007, the inshore fishery has grown to a level beyond many expectations as the difference in total fishery value from 2007 to 2022 is astonishing. The total landed value of all fisheries in 2007 was \$514.3 million, of which \$177.5 million was attributed to the snow crab fishery. By 2021, total landed value jumped to an astonishing \$1.06 billion, with crab accounting for \$623 million. Into August 2022, over \$1.13 billion total landed value has been achieved with crab alone recording over \$762 million in landed value.

### **Introduction**

The Fish Price Setting Panel (the Panel) is much more than a decision-making body. This Panel is the independent price setting system that has the responsibility to ensure a billion dollar a year market runs on time and in line with global markets, ensuring a fair share of the market value is returned to harvesters. It is imperative that this Panel functions at the highest level to ensure our precious and valuable fisheries are maximizing their potential in the global markets but also providing for the communities and way of life that has survived for generations.

The Panel plays an essential role in ensuring timely pricing decisions for many of NL's fisheries. The three-person panel system currently in place provides a strong foundation for which independent pricing decisions are made. The collaboration of a diverse, three-person panel system is critical for establishing unbiased price selections.

Since the inception of the Panel in 2006, we have seen an improvement in the price setting process to establish minimum prices in a timely manner for many species. However, in recognizing the value of the current panel system, we must also examine the areas which need improvement.

### **Historical Reviews**

The provincial government passed the Fishing Industry Collective Bargaining Act (FICBA) in 1971, granting harvesters the right to regular collective bargaining for fish prices and related matters. The following year, the Newfoundland Fishermen, Food and Allied Workers Union (precursor to the FFAW) negotiated the first collective agreement for fish prices.

Over the last two decades, there have been two previous in-depth analyses of the FICBA: the Review of the Fishing Industry Collective Bargaining Act (2003) and the Report of the Chairman RMS Review

Committee – known as the Cashin Report (2005). As stated on the Standing Fish Price Setting Panel’s website, “*The need for a Panel was identified in the 2005 Cashin Report and the legislative framework was provided upon amendments to the Fishing Industry Collective Bargaining Act that passed in the House of Assembly on February 23, 2006*”.

### **Review of the Fishing Industry Collective Bargaining Act – 2003**

The 2003 Review of the FICBA by David Jones set the stage and tone for identifying issues, concerns, and recommendations for improving the act. The 2003 review was the second review of the FICBA in six years. Jones describes a challenging environment in the early 2000’s but also one with some hope for the future.

*The history of labour relations in this province’s fishing industry is long - the longest of any working relationships. It is equally steeped in mistrust, not all of it unwarranted. However, its evolution has brought us to the precipice of unlimited possibilities - as long as there is real interest in the mutual gains that have been realized and that can continue into the future.*

The recommendations brought forward from this report were wide ranging and included all aspects of the FICBA. The recommendations provided within this review included improving the process and method of arbitration, roles of facilitators and arbitrators, details and enforcement of the collective agreement, bonus payments, fines/penalties, and other matters including quality and grading. Final recommendations included the retention of the Final Offer Selection (FOS) system, an annual meeting of parties to discuss season issues/improvements and defining the governments’ role within the collective bargaining process.

It is important to share part of the conclusion to that report here. The quote below speaks to our current system today where things are not broken but certainly can be improved. Jones states:

*The Fishing Industry Collective Bargaining Act has not failed and does not now fail the industry parties, those who negotiate fish prices. Through it and the various opportunities to examine its efficacy, government has provided a framework for stability in the industry. That this framework may be strengthened should not be an indicator that it is faulty; rather the parties using it and the industry in which it is employed have evolved, and the framework must evolve with it. That is healthy, and should be encouraged.*

Even with all of the recommendations provided in this report, issues over the next two years continued in failing to produce timely starts to fisheries. It was not until the Cashin report two years later, where these and other recommendations, set the stage for our current panel system.

### **Report of the Chairman RMS Review Committee – known as the Cashin Report (2005)**

In 2005, the provincial government proposed an ill-conceived raw material sharing pilot project (RMS) - which resulted in two months of protests led by our union. Then Premier of Newfoundland and Labrador, Danny Williams, appointed Richard Cashin, former long-time president of the FFAW, to decide the future of RMS, with the commitment that government would abide by his findings and recommendations.

The conclusions and recommendations of the Cashin Report, ultimately led to the creation of the current panel system. In reviewing our current panel system in 2022, we must include a review of the Cashin Report and its findings to truly understand how we got here.

Cashin's Report identifies a number of issues with the system prior to 2006. Cashin described the Raw Material Sharing (RMS) pilot project in the crab fishery as "*a seriously flawed concept*" that "*did little or nothing to affect such outcomes of the 2005 crab fishery as: the length of operating times, improved product, or the levels of prices paid*". Though the RMS system was not implemented beyond a short trial period, Cashin concluded that "*in the changed nature of today's crab fishery, RMS will not provide the claimed stability or the necessary efficiency improvements. Therefore, it should be dispensed with immediately*".

Cashin highlights two very important terms in the statement above, stability and efficiency. Stability and efficiency were cornerstones for the adoption of the current panel system. The three-person panel system as is, provides the most stable form of pricing decisions under any potential model but leaves room for improvement in the efficiency of how their decisions are made and implemented.

### **Issues & Concerns within Inshore Fishery**

The Cashin Report relied on "extensive discussions" with representatives from all parts of the Newfoundland and Labrador fishing industry. Cashin's report, page 18-25, highlights many of those concerns and issues raised by harvesters and processors. Cashin states:

*The current claims for and against the RMS concept revolve around the "real" intentions of industry and government for industry stability, efficiency and rationalization, concentration or shift in control of the crab sector, the effect on prices received and paid, and the length of operating seasons.*

Cashin continues to state that "*the main concerns for the majority of harvesters are much the same as they have been for the past decade*".

Concerns of harvesters and plant workers highlighted in the Cashin report included:

- Increasing control of the harvesting sector by processing companies
- Lower prices
- Fewer jobs overall
- Loss of vessels to other operators or the shipping away of landings for processing elsewhere
- Told when to fish and where they can sell their catches
- Fear they would not be able to fish certain quotas in the only season they may be able to operate
- Denied sales by processors who no longer need or cannot process more raw material
- Fear a lessening of commercial services from processors and a "downloading" of certain operating costs

Cashin further details these issues in Section 5 of his report beginning on page 46.

*These include past actions or positions taken by government and industry members that have caused many of the chronic problems of this industry to persist and create the current state of the industry. In doing this, I will almost be assigning blame when it is deserved, which will be largely across the board. The causative factors include the development and maintenance of excess capacity in the harvesting and processing sectors, hidden corporate control of harvesting, the inadequacies that have developed in the collective bargaining and price setting arrangements, the problem of excess pools of processing labour and the “talqual culture” of the industry.*

These issues outlined by Cashin above are further detailed starting on page 47. The first major issue Cashin outlines is the Management of Processing Capacity. Cashin speaks on the actions of the provincial government in the late 1990's and early 2000's that led to an increase in crab processing licenses. Since 2006, the number of crab licenses has been significantly reduced while the snow crab quota has risen by over 30% in the last few years.

Cashin page 47 states:

*The additional processing licences were issued for both species with complete disregard for such basic factors as total resource requirements versus availability, economics of location and the general viability of processing operations. This was a singularly unprecedented ignoring of the processing over-capacity problems that still lingered in the industry from the groundfish collapses of the early 1990s.*

There is a very stark difference from Cashin's words in 2005 and the reality today. In 2022, there is not enough processing capacity. In the last 17 years we have seen a dramatic shift in corporate concentration and the removal of many former processing plants. The NL Fish Processing License Board's April recommendations (Appendix A) speak to this issue.

*In the last year, four of the previous snow crab applications were deferred while the Board did its due diligence on the health of the stock, including meetings with scientists from Fisheries and Oceans Canada both last year and last week. The Board also took the time to develop a protocol on how to move forward with additional licences. The Board's decisions have come after a year of carefully looking at the industry, discussions with scientists, and consultations with industry representatives. The Board is confident that these recommendations properly reflect our mandate for regional development of processing and take into account our responsibilities to address the issue of corporate concentration.*

*Overall, the outlook on the snow crab fishery is positive in most areas during the next 4 years and beyond, with pre-recruit abundance indices remaining favorable. The 2022 Total Allowable Catch (TAC), for snow crab is 50,471 tonnes, while in 2010 it was 56,064 tonnes. In 2010, there were 36 plants licensed to process snow crab and in 2022 there are 25. In 2019, the snow crab TAC reached its lowest point at 26, 894 tonnes. Since that time, the TAC has nearly doubled to 50,471 tonnes. In the last two years alone, the TAC has increased by 20,920 tonnes or approximately 46 million pounds. In 3Ps, the TAC has increased by approximately 10 million pounds in the last two years. We believe that these recommendations can easily be supported by this healthy biomass.*

The board ultimately recommended the approval of four new snow crab processing licenses to the provincial fisheries minister. As the board points out, there are 14 less plants to process snow crab than in 2010, when we had similar quotas. However, in May the fisheries minister only approved two of the four recommended snow crab licenses (Appendix B). As part of his reasoning, the Minister states:

*In addition, according to the Department of Fisheries and Oceans Canada, the outlook on the snow crab fishery is only projected to remain positive in most areas up to 2 to 4 years at which time there are potentially less favourable conditions for future productivity.*

Highlighted in the situation above, is the growing concern of corporate concentration that Cashin and the Fish Processing License Board flagged. Which was then met with complete disregard by the provincial fisheries minister. How can the Fish Processing License Board determine that “Overall, the outlook on the snow crab fishery is positive in most areas during the next 4 years and beyond, with pre-recruit abundance indices remaining favorable” and yet the provincial fisheries minister states a contradicting statement based on the same information from the Department of Fisheries and Oceans Canada?

We see that Cashin spoke of similar concerns on page 52:

*As I examined the various underlying causes of the present industry problems, it became apparent to me how many of these were the result of years of uncoordinated management decisions and actions by both levels of government. These were taken in isolation in each sphere of authority and resulted in excess capacity in both sectors with no immediate action underway to remedy them. It is obvious to me that this is a classic case calling for some form of coordinated management arrangement to address a jointly caused problem in a set of circumstance unique to this province. It is tempting to speculate, had such an integrated arrangement been in place over the last decade whether the industry and province would be facing the current problems caused by overcapacity in the harvesting and processing sectors.*

The overcapacity issue in the processing industry identified by Cashin has reversed itself in the last 17 years, as today, there is a significant under capacity issue in Newfoundland and Labrador. And yet the common factor between then and now is government action and/or inaction.

*The crab (and shrimp) processing sectors must be streamlined to correct the results of irresponsible licensing actions of the late 1990s. The current ability of more aggressive processors to increase direct control of harvesting capacity must be curtailed or eliminated to create a more even playing field in the acquisition of raw material and to remove an impediment to improving the efficiency of the harvesting sector. Then responsible leadership can encourage harvesters to design and adopt measures to improve the operating efficiency and financial circumstances of their individual enterprises and fleets.*

What we see in Cashin’s statement on page 59 above, is that processors gained greater control of the fisheries back in 2006 and the concerns highlighted by the Cashin Report still resonate with harvesters today.

One of the most significant aspects of this greater control is found in the controlling agreements used by companies to further erode the independence of inshore harvesters. Due to significant imbalances in corporate concentration throughout this province which has accelerated since Cashin's report, inshore harvesters are further behind in controlling their own enterprises than ever before.

Cashin outlines these concerns of corporate control and how government inaction has impacted the fisheries on pages ii, iii, and 50-51.

*I have concluded that instability in the crab industry is seriously affected by creeping corporate control of harvesting and the resulting predatory practises, and the levels of excess capacity in both the harvesting and processing sectors. (ii)*

*This is hampered because the lack of enforcement of Fleet Separation Policy is permitting more company control of fishing licences even though such ownership is supposed to have been frozen at the level it had reached in 1979. All of these matters have a connection back to the current instability, the dysfunctional state of collective bargaining and various destructive predatory practices. (iii)*

*In addition to FFAW members' unease with transferring and combining of fishing licences, some of the rationale and support for RMS by processors, also has been caused by the increasing corporate control of fishing enterprises through the use of "trust agreements" or "beneficial use" contracts. Some processors are reported to have used this approach rather successfully, and thereby increased their share of raw material at the expense of other processors who cannot, or will not, do the same. This "stealth approach" to acquiring control of raw material fuels the views of some processors that an uneven playing field exists in the procurement of raw material in addition to harvesters' concern of creeping corporate control of transferable licences or IQs. (50-51)*

Controlling agreements used by companies today dictate when and how many harvesters' fish. With the price of fishing licenses far above the price level any new enterprise owner can afford, companies are more regularly paying for fishing licenses to be put in a harvester's name while directly controlling all aspects of how that license is fished. In the 2022 crab fishery, these controlling agreements went a step further as we saw companies not only dictating fishing schedules but paying harvesters far below the provincially mandated minimum price of crab. In more than one case, separate companies were paying in the \$4.00 range for crab that carried a minimum price of \$6.15 or \$6.22 per lb.

In a greater effort to control harvesters, companies forced harvesters to sign erroneous and unlawful contracts removing a significant portion of their catch through newly devised deductions. These new deductions included offloading assistance, forklift time, and even ice that has always been supplied by companies before trips. Many harvesters who were victims of these company controlling actions were left without any options. Harvesters that sought legal grievances against the actions of these companies were threatened with no sale for the remainder of their crab quota, not purchasing other species for the remainder of the season, cutting off access to bait and ice, and/or not allowing the harvester to land at the plant in coming seasons.

Cashin's statement on the bottom of page 46, could be transcribed directly to sum up the current situation of today's fishery.

*When I accepted the invitation of Premier Williams to inject myself into the fishery after some considerable absence, I was not surprised, but unfortunately disappointed, to find that the more things had changed the more they remained the same. This is at least the fifth major fisheries crisis that I have been involved with in the past almost forty years. Many of the issues are still the same, except in some ways, they have gotten worse. Therefore, I am fearful for the future of this industry if we allow the significant underlying problems of the past to remain unsolved. This situation is exacerbated by the considerable and debilitating distrust that still exists between the parties and the uncoordinated management decisions and actions of both levels of government.*

The challenges of the past remain 17 years later. Today's struggles go beyond Sections 19.1–19.14 and are clearly identified by Cashin above. The statement, *"This situation is exacerbated by the considerable and debilitating distrust that still exists between the parties and the uncoordinated management decisions and actions of both levels of government"*, reflects the root of issues persistent today. To fully address the issues facing our system today, future review considerations of the Fishing Industry Collective Bargaining Act should be considered. However, at this time we focus on the language we can propose change on in sections 19.1-19.14.

We have been asked by the provincial government to determine how effective our current panel system is in performing its duties. The duties directed to the Panel include:

1. facilitating access by parties to collective bargaining to market information relating to the sale of fish;
2. establishing criteria that are not inconsistent with this Act relating to collective bargaining under this Act;
3. providing assistance to parties engaged in collective bargaining under this Act;
4. setting 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;
5. reviewing 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
6. making 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.



## Jurisdictional Scan

The most similar panel system to NL's, and most relevant to this review, is the Régie des marchés Agricoles et Alimentaires du Québec in Quebec. The Régie, abbreviated as RMAAQ, is an administrative tribunal and an economic regulatory body and its mission is to promote the efficient and orderly marketing of agricultural and food products as well as fish and private forest products. According to its website, the RMAAQ also intervenes for the development of harmonious relations between the various stakeholders. It promotes the resolution of difficulties that arise in the context of the production and marketing of the targeted products. It plays several roles including those of administrative tribunal, economic regulator, auditor, and administrator.

Although there are subtle differences in procedure and some rules that are Quebec specific, the general principle of the Régie and NL's price setting Panel are very similar. The Act Respecting the Marketing of Agricultural, Food and Fish Products (Appendix C) in Quebec states:

*The functions of the Régie are to foster the efficient and orderly marketing of agricultural and food products, the development of harmonious relations between the various intervenors, the settlement of problems arising in connection with the production and marketing of such products, taking into account the interests of consumers and the protection of the public interest. The Régie shall have the same functions in respect of the marketing of fish products.*

The Régie has a wide mandate and is more broadly associated with all agricultural products, while the Panel in NL is more informal and focused solely on fish and marine species. One significant difference in the two systems is the information provided to the Régie by processing companies. At present time, the average prices of three respected processing companies are provided to the Régie as part of their analysis into both parties pricing offers. This is a simple, yet effective tool to assist the Régie in determining a price offer that most reflects current market prices. This system could easily be installed within NL's panel system as the average export prices of certain products are already calculated and provided by the province.

However, often times numerous different product types and species from differing sources not directly relevant to parties at negotiations. This can be due to several factors such as products harvested by fleets outside of inshore Newfoundland and Labrador or some product sent to other provinces and exported or vice versa. Therefore, more accurate information, like provided to the Régie, would be most beneficial to the parties and the panel. This information along with other critical market data like yields and domestic sales could be incorporated into a similar system for our province. This would improve the Panel's understanding of respective species and current market at the time of FOS.

Other slight differences include the composition of the respective systems. The Régie consists of eight members including one chairman and three vice-chairmen appointed to a term not exceeding five years, and four alternate members. The Panel system in NL consists of five members, including one chair, two full-time members and two alternate members that have varying term limits.

Both systems are similar in that they rely on a decision-making body of three members. This three-person panel system is a key characteristic of the Panel and something that must remain intact going forward. The Régie three-person panel system was described in Jones 2003 review, page 35, of the FICBA.

*The closest thing to the model that exists here is the system in Quebec. There, under the authority of an act respecting the marketing of agricultural products, a board called the Régie has been created and given the power to set fish prices in areas and for fish species within that province where a marketing plan meeting the requirements of that legislation is approved by the Régie. In such an instance where the parties are unable to establish a fair price for fish by negotiations they may apply to the Régie which will establish a panel of three persons to hear the matter to determine a fair start-up price for that fishery.*

### **19.1 to 19.14 Review**

There are a number of key concerns and recommendations FFAW, and its members, would like to bring attention to. We will examine each section where these concerns exist and our recommendations to address these concerns.

#### **19.1 – Appointment to the Panel**

**The FFAW and its members fully support the current three-person panel system and would recommend the following revisions to the FICBA: the chair must be an independent, experienced labour arbitrator and ideally be knowledgeable of fisheries in Newfoundland and Labrador and the panel members (and alternates) would be formal representatives from each of the parties (harvesting and processing).**

FFAW supports the three-person panel system in its current form with some modifications. During our meeting on August 17<sup>th</sup>, we believe it was made clear, that given the timing and scope of this review, it would be vital to keep the three-person panel system. The notion to throw away this system or “blow it up” at this juncture would be ill-advised and to the detriment of Newfoundland and Labrador’s fishing industry.

We support the current appointment process and overall term lengths outlined in section 19.1. We support having an independent chairperson with a strong labour relations background. Ideally this person would also have some knowledge of fisheries within the province. Traditionally, the two other members have had ties to either the harvesting or processing sectors. We support this balance of ideas and approaches while maintaining some diversity that hopefully sparks meaningful discussion between panel members.

FFAW is recommending the formalization of the Panel to include one member representing each party along with an independent chairperson. The current panel system was originally setup in this manner and those affiliations are still loosely followed today. Formalizing the member’s affiliation would not change the dynamic or function of this panel. The role of the Panel is to work towards selecting the price that correlates best with current market conditions. Having members representing both sides of the negotiating table is critical to analysing the fishery and markets from all perspectives. FFAW further supports legislative language similar to that of the Labour Relations Act at Section 14 where “[a] person

shall not sit as a member of the board or of a panel in the hearing of a matter in which he or she has an undue interest.”

Section 19.1 is critical, if not, the backbone of the current panel system and must be maintained to ensure independent and fair pricing decisions. There are a number of reasons why the current three-person system is more advantageous than an alternative single arbitrator model. The first reason for a three-person panel over a single arbitrator is the increased diversity of industry knowledge and experience. As mentioned above, the diversity of each member and their unique experiences provide important perspective in the price-setting process. Removing the three-person panel system in favour of a single arbitrator would sacrifice the depth and breadth of knowledge that is present within the current system.

The second major reason for having a three-person panel is the promotion of discussion and expanded analysis that occurs within a group setting. Diverse group discussion would not be possible in a single arbitrator system. FFAW believes that losing that internal panel debate between the two price offers would be to the detriment of the system.

Thirdly, greater balance in the FOS is achieved through a three-person system. A critical element of this review is analyzing the Panel’s primary duty, final offer selection. The group dynamic supports finding the price offer that matches current market conditions. If we look historically at the Panel and its decision-making since 2006, we see a very strong pattern of finding consensus within the FOS model.

### **Panel Decisions**

In 2022, all decisions of the three-person panel were unanimous, with the exception of summer shrimp. Nine pricing decisions were unanimous including those of the two highest valued fisheries in NL, crab and lobster. Additionally, reconsideration requests put forward by ASP for sea cucumber and capelin, were both unanimously decided upon. Another Panel decision on a preliminary objection by ASP, although not price related, was a unanimous decision as well.

Historically, the Panel has been overwhelmingly unanimous in its decision-making. Evaluating decisions posted on the Panel’s website, we find that out of 178 panel decisions since 2006, only 11 have not been unanimous. Since 2006, **94%** of all panel decisions have been unanimous. That is an exceptional rate of building consensus among a three-person panel system, or any price selection system for that matter.

- 2021 - 10 pricing decisions went before the Panel and all decisions were unanimous.
- 2017-2020 - All Panel decisions were unanimous.
- 2016 – All but one pricing decision was unanimous (spring shrimp).
- 2014-2015 - All Panel decisions were unanimous.
- 2013 – All but four pricing decisions were unanimous (Two spring and two summer shrimp).
- 2012 - All but one pricing decision was unanimous (lobster).
- 2011 - All but two decisions were unanimous (spring shrimp and mackerel).
- 2009-2010 - All Panel decisions were unanimous.
- 2008 - All but one pricing decision was unanimous (crab).
- 2007 - All Panel decisions were unanimous.
- 2006 - All but one pricing decision was unanimous (summer shrimp).

## 19.2 – Duties of the Panel

**The duties of the Panel are broad and can be improved. Under subsection (a), to facilitate access by parties to collective bargaining to market information relating to the sale of fish, more can be done to strengthen the quality and depth of market information to the Panel and all parties.**

Since the Panel's creation, FFAW, harvesters and the Panel have faced the uncomfortable truth of knowing that only one party, ASP, holds all the market information needed to accurately evaluate the markets. Yet, that information is never shared with FFAW or the Panel. There have been a number of instances and examples from 2022 and past negotiations where FFAW and the Panel have expressed concern surrounding the lack of information provided by ASP and its members on certain species.

The need for processors to be more transparent and provide additional market information to allow for informed, equitable price negotiations has been repeatedly brought before the provincial government but denied. The reason most often used is that proprietary company information cannot be shared amongst the parties. FFAW is not looking for sensitive company data but aggregate species-specific information that is pertinent to capturing the full market perspective. This would ensure all parties can negotiate from the same market information. The Panel should have the ability to judge and assess both price offers without serious concerns for a lack of information.

There is a large discrepancy in how much information ASP and its members have at their disposal compared to what is available to FFAW and the Panel itself. How is the Panel to ascertain which price offer is more in line with current market conditions if major pieces of the puzzle are missing?

At present time, the province does not require processors to share information such as yield, size distributions, grading information, sales information for specific product sizes and categories or domestic sales. However, these are extremely important aspects of understanding the entire market of any species. In a few species' negotiations, some of this information is selectively provided by ASP members, but it is not consistently and fairly provided for all species. This information is available to processors but is not shared willingly to facilitate good faith negotiations.

In Quebec, the Régie and harvesters are provided with sales information by specific product categories from processors as a requirement in their convention. The sharing of sales prices between parties and the Régie works well in facilitating more transparent negotiations and provides the Régie with a better understanding of the market when making a price-setting decision. This system could easily be expanded upon and put into practice immediately in Newfoundland and Labrador.

FFAW recommends that the legislation at Section 19.2(a) be amended to compel specific and proactive disclosure of market information on yields, size and grading distributions, sales market returns for specific product sizes and/or categories and domestic sales. A potential model to replicate and a consistency throughout negotiations is the provincially provided production data. We have attached an example, crab production for 2022, to this submission (Appendix D). FFAW and the Panel would benefit from a similar style aggregate approach to processors providing additional market information.

Information including yield, size distributions, grading information, and domestic sales, could all be collected, aggregated, and presented to all parties and the Panel in a similar production style format. This would eliminate the sensitivities of specific company information but provide a full scope of

Newfoundland and Labrador's seafood markets. This information will provide invaluable data to the Panel and help facilitate better negotiations.

A primary example of the Panel recommending additional and clarifying data was presented in the Panel's 2022 summer shrimp price decision (Appendix E). The Panel stated:

*In their price submissions, both parties presented schedules which developed notional Summer Shrimp prices by using the Weighted Average Market Prices of the three key markets (US, UK, and Northern Europe), and applying yield and sharing percentages to calculate 2022 prices based on changes from the 2021 price. The Panel examined and considered these schedules. Several weaknesses were identified which the parties may wish to consider in future submissions. Most notable, the input numbers were inconsistent, particularly with respect to the UK market. The market prices inputted for the UK market were different for each of the parties, not only for summer 2022 but also for summer 2021. It is the view of the Panel that the parties should make every effort to at least be consistent on prior-year figures. In addition, it would be beneficial for the parties to discuss whether the change in relative share for each of the three markets, which has shifted in favour of the UK market, is of a temporary or permanent nature, and whether this shift should be addressed in the development of pricing schedules. **A consideration of yield factors would also be beneficial, including the extent to which yields for shrimp vary by season. (Emphasis added)***

Characteristics of NL's seafood markets like yield are critical for all parties to have the same information. However, at this time only ASP has certain information at their disposal to use in negotiations. The Panel noted as much in ASP's original crab price submission in 2022.

*ASP continues to dispute suggestions by the FFAW that pricing in Newfoundland should be premised on events taking place in the Maritimes. **ASP maintains that Maritimes Crab have different characteristics than Newfoundland Crab. They submit that Crab landed in the Maritimes is much larger and cleaner (less barnacles), with higher yields and market prices. (Emphasis added)** They claim that, during negotiations, there appeared to be consensus that the price being paid to harvesters for snow crab in the Maritimes was \$8.50/lb.*

ASP regularly uses information not available to FFAW or the Panel in pricing submissions that benefit their arguments. FFAW and, more importantly, the Panel, have no way of fact checking these statements and submissions. Having this type of information provided to all parties would dramatically improve the bargaining process for both parties and assist the Panel in analyzing both offers.

In 2018, FFAW sent a letter to then Minister Gerry Byrne regarding greater transparency in the fish processing sector (Appendix F). FFAW submitted this letter detailing the issues surrounding the lack of transparency and how they impacted Panel decisions in 2017 and 2018. What was addressed to the minister below in 2018, still rings true today and that is evident in the previously stated Panel's comments from 2022.

*Dear Minister,*

*At our last meeting we discussed with you challenges in collective bargaining that result from a lack of transparency on the part of fish processors. This lack of transparency forces the Fish Price Setting Panel to use outdated, incorrect, and incomplete information and stats in making*

*decisions, which undermines the entire Panel process. This was apparent in several Panel decisions in 2017 and 2018. In June we also discussed the role that processing companies play in controlling agreements and steps that the province could take help enforce owner-operator and fleet separation.*

Increased transparency will improve negotiations but only when both parties are willing to negotiate. In 2022, we saw a number of poor-faith negotiations that led to serious issues in multiple fisheries. The Panel needs a mechanism in place to incentivise or outline minimum requirements of the negotiations process. For example, during squid negotiations in 2022, ASP refused to meet with FFAW despite many attempts by the union and mediator. This resulted in no progress being made towards an agreement and the Panel being faced with two very different proposals. The Panel noted such issues with ASP's action in their 2022 squid decision.

*The Panel is disappointed and concerned with respect to how the 2022 Squid negotiations unfolded, noting that ASP refused to engage in meaningful discussions on price and conditions of sale, despite a request by the FFAW to do so. The Panel believes that this undermines the Final Offer Selection process, which is designed to bring parties close together in their offers prior to a hearing, even if an agreement is unattainable. In this case, the initial and only offers exchanged represented an increase in price of 21% over 2021 proposed by the FFAW, and a decrease in price of 62% over 2021 proposed by ASP. While the final offers presented at the hearing were somewhat closer, there was obviously a significant gap in initial offers.*

Due to circumstances like this in 2022 and also in other negotiations in past years, FFAW is recommending the province adopt and strengthen measures for parties to participate in good faith negotiations. Such simple actions as requiring each party to meet both before and after an initial offer would at the very least bring parties together. The requirement of increased time at the negotiating table will attempt to promote and foster pricing offers more reflective of final submission offers. What happened during squid negotiations should not be allowed again. Not attempting good faith negotiations causes harm to the arbitration process, the integrity of the Panel, and the ability of the Panel to select a final offer most reflective of current market conditions.

### **19.3 – Matters beyond Panel's authority**

**FFAW recommends this section be left alone and not be amended. The reason for this section is clearly outlined and supported within the Cashin Report. Amending this section would be opening the issues that led to the creation of the Panel in 2006.**

### **19.12 – No cessation or lockout**

As per the FICBA, there were no strikes or lockouts in 2022, but numerous company actions could be viewed as lockouts. The 2022 season was a challenging year, with the tactics used by companies this year equating to a lockout of the inshore fleet in multiple species including crab, coldwater shrimp, sea cucumber, and capelin.

This was only possible due to the lack of competition in Newfoundland's processing industry. Corporate concentration has eroded the number of plants in the province and severely limited the options harvesters have in landing their catch. In many cases, harvesters only have one plant where they can land their catch. In the cases where harvesters have more than one option, plants have colluded with

each other to refuse landings if they do not give the plant all of their business. The reduction and scarcity of independent plants in the province has forced harvesters to unwillingly sell their catch below minimum prices set by the Panel's FOS rather than travel hundreds of miles to another province. The lack of competition driven by corporate concentration in Newfoundland and Labrador continues to expand beyond even the scope that Cashin mentions in his 2005 report.

Crab season this year was full of questionable actions that led to struggles for inshore harvesters. At various points in the season and throughout all of the fishing fleets, inshore harvesters were not granted an opportunity to fish as they would have in a previous year. Excessive wait times between trips took a large toll on many inshore operators, all while processing companies imported crab from other provinces to operate their plants. Many inshore harvesters waited weeks on the wharf for a chance to go fishing while hundreds of truckloads of non-Newfoundland crab were processed.

While these actions are not specifically labeled as a lockout, companies are essentially locking out the inshore fleet while operating as normal with out-of-province crab. This tactic, on top of companies not paying minimum prices, charging excessive fees for services that have never been charged before, and prioritizing company owned boats and licenses under controlling agreements, has led to serious financial losses for many fish harvesters in 2022.

Coldwater shrimp was a very similar tale this year. In the spring, processors refused to buy from our inshore fleet at the Panel minimum price, but instead opted to pay more for lesser quality twice frozen shrimp from offshore trawlers. Companies operating in other provinces paid inshore harvesters significantly more money than processors in this province to land the same product. And yet, inshore harvesters in our province were left without a buyer. How can these processors buy product from offshore and outside the province and not have a responsibility towards Newfoundland and Labrador's own fleets?

The provincial government has allowed these tactics to serve as "lockouts" while companies continue to operate at the expense of inshore operators and their communities. Especially in shrimp, there are very few plants throughout the province for harvesters to land their catch. This lack of competition puts harvesters at the mercy of processing companies and their willingness to buy. A lack of options to land product is an issue many harvesters face across multiple species.

FFAW recommends amendments to Sections 2.1(m) and 19.12 of the Act to clarify that a refusal of a processor or a processors' association to purchase fish at the price set by the panel constitutes a lock out for the purposes of the Act. Shipping in outside province crab and shrimp to operate plants while refusing to purchase the same species from Newfoundland and Labrador harvesters if allowed to continue, will cause significant damage to the labour relations environment between the parties and to the wider provincial economy.

#### **19.14 – Panel may reconsider decision**

FFAW has been asking for consecutive years that the province grant each party two reconsiderations. We ask that again in this review. Two price reconsiderations gives both parties an opportunity to match the minimum price paid to harvesters with the market price during a season. While having two price reconsiderations is not a perfect system, like a halibut receipt-based process, it will ensure parties have the ability to highlight market changes more swiftly. The goal with two price reconsiderations is for the minimum price to better correlate with actual market prices being achieved during the season.

The 2020 and 2021 crab seasons are prime examples of why two reconsiderations per species is needed. In 2020, harvesters took significant price cuts to their minimum prices to ensure fisheries began in the face of Covid-19. What happened throughout the year was prices for many species rose to new records while harvesters were left with price cuts. Millions of dollars were left out of our rural communities and harvesters' pockets because they had no option at capturing these market gains. A similar story could be told in 2021. Crab prices rose dramatically at the beginning of the season and FFAW and harvesters were forced to use our price reconsideration early to capture the market gains. The remainder of 2021, crab prices continued to new record highs and harvesters were once again left with no options to receive a fair share of market gains.

FFAW recommends a more time sensitive system where processors would provide receipts of sales in real time to a third party for verification, as in halibut, and that would ultimately determine prices paid to harvesters. At this time there is no system in place that requires companies to show receipts for all exports and domestic sales. However, a system like this would greatly improve the actual prices paid to harvesters as they would be based on actual sales and market prices. This would provide an increased transparency and clarity of the markets while allowing prices to ebb and flow with true market conditions.

Increasing transparency between parties and the Panel, as described in section 19.2, would greatly improve price offers and also cut down on price reconsiderations. The use of a price reconsideration is an attempt by one party to better correlate the minimum price with actual market prices. Having more data and useful market information would further reduce the need for reconsiderations.

### **Summary of Recommendations**

- Leave three-person panel in place rather than removing the Panel or replace with a single arbitrator.
- Formalize the representative structure of the Panel led by an independent, experienced chair with a strong labour relations background.
- Two reconsiderations per species per year.
- Leave criteria for reconsideration in place – reconsideration only to be heard by the Panel if a significant market or currency change occurs.
- Increased transparency of market related data from processors in an aggregate form, similar to production data, as it relates to factors impacting price negotiations including but not limited to yields, size distributions, grading results, and domestic sales.
- FFAW recommends amendments to Sections 2.1(m) and 19.12 of the Act to clarify that a refusal of a processor or a processors' association to purchase fish at the price set by the panel constitutes a lock out for the purposes of the Act.
- The province adopt and strengthen measures for parties to participate in good faith negotiations.



- FFAW recommends section 19.3 – Matters beyond Panel’s authority, be left alone and not be amended.
- Implementation of a review schedule of any changes made in three years time.

### **Summary**

The issues plaguing Newfoundland and Labrador’s fisheries today, are the same issues Cashin highlighted in 2005. The current panel system has worked to create some growth in stability for setting prices in a timely manner, but this has created other avenues for parties to delay, stall, or cancel a fishery. 2022 has been a perfect example of how limited the current panel system is when faced with issues beyond setting a minimum price and binding date. Just as Cashin reported in 2005, the corporate concentration within the processing sector, along with inaction of the provincial and federal government, has promoted a resurgence of problems. Cashin addresses this on page 60:

*The current ability of more aggressive processors to increase direct control of harvesting capacity must be curtailed or eliminated to create a more even playing field in the acquisition of raw material and to remove an impediment to improving the efficiency of the harvesting sector. Then responsible leadership can encourage harvesters to design and adopt measures to improve the operating efficiency and financial circumstances of their individual enterprises and fleets.*

The recommendations here represent only a small part of the overall FICBA but could have a significant impact on the effectiveness of the Panel and its decisions. FFAW is committed to a stronger, more transparent FICBA. There are significant needs for improvement and access to information for all parties and the Panel. The goal of the Panel should be to select the offer most representative of current markets and recommendations found here will assist in that goal.

We thank you for your time and consideration of our recommendations here today. FFAW looks forward to continuing the improvement and stability of our price-setting system.

Yours truly,

A handwritten signature in black ink that reads "K Sullivan". The signature is written in a cursive, flowing style.

Keith Sullivan  
President, FFAW-Unifor

DOC/2022/01875

## **Fish Processing Licensing Board Meetings**

**April 12-14, 2022**

**Board Recommendations**

Dear Minister Bragg:

The Fish Processing Licensing Board (Board), held a meeting in St. John's from April 12-14, 2022. The Board considered six applications that were comprised of the following:

- Transfer of a primary processing licence for sea cucumber from Labrador Gem Seafoods Inc., Ramea, to Barry Group Inc., Witless Bay;
- Addition of snow crab to an existing primary processing licence for Bay Roberts Seafoods Limited, Bay Roberts;
- Addition of snow crab to an existing primary processing licence for Codroy Seafoods Limited, Codroy;
- New primary processing licence for groundfish (all species), pelagics (all species), sea cucumber, lobster, snow crab, and whelk for St. Mary's Bay Fisheries Inc., St. Mary's;
- Addition of snow crab, sea cucumber, and sea urchin to an existing primary processing licence for HSF Ocean Products Ltd., O'Donnells;
- Increase in purchasing of snow crab from one million pounds per year to two million pounds per year for Dandy Dan's Fish Market Ltd., Argentia.

In the last year, four of the previous snow crab applications were deferred while the Board did its due diligence on the health of the stock, including meetings with scientists from Fisheries and Oceans Canada both last year and last week. The Board also took the time to develop a protocol on how to move forward with additional licences. The Board's decisions have come after a year of carefully looking at the industry, discussions with scientists, and consultations with industry representatives. The Board is confident that these recommendations properly reflect our mandate for regional development of processing and take into account our responsibilities to address the issue of corporate concentration.

Overall, the outlook on the snow crab fishery is positive in most areas during the next 4 years and beyond, with pre-recruit abundance indices remaining favorable. The 2022 Total Allowable Catch (TAC), for snow crab is 50,471 tonnes, while in 2010 it was 56,064 tonnes. In 2010, there were 36 plants licensed to process snow crab and in 2022 there are 25. In 2019, the snow crab TAC reached its lowest point at 26,894 tonnes. Since that time, the TAC has nearly doubled to 50,471 tonnes. In the last two years alone, the TAC has increased by 20,920 tonnes or approximately 46 million pounds. In 3Ps, the TAC has increased by approximately 10 million pounds in the last two years. We believe that these recommendations can easily be supported by this healthy biomass.

The Board's recommendations also took into account the history of the St. Mary's plant and the important role the crab plant always played in the economic growth of that region. They had a pelagics (all species), and snow crab primary processing licence until March 31, 2017. The Board believes that in today's industry, with the quotas as

high as they are, in particular with significant increases in 3Ps, that this licence should be issued. The proposal before the Board is sound and will provide economic stability to that region.

The Board is making the following recommendations:

1. Labrador Gem Seafoods Inc., Ramea, has a primary processing licence for groundfish (all species), pelagics (all species), scallop, whelk, sea cucumber, lobster, lumpfish, and sea urchin. Labrador Gem Seafoods Inc., has requested to transfer a primary processing licence for sea cucumber from Ramea to Barry Group Inc., Witless Bay. Labrador Gem Seafoods Inc., was approved for a sea cucumber processing licence in April 2019. It's the Board's view that sea cucumber is now fully utilized within the Eastern Region (resource availability and regional balance). After careful consideration, it has been concluded that there are no other mitigating circumstances that would warrant granting this species authorization at this time.

There were four letters of objection and no letters of support.

The Board recommends **not approving** the transfer of a primary processing licence for sea cucumber from Labrador Gem Seafoods Inc., Ramea, to Barry Group Inc., Witless Bay.

2. Bay Roberts Seafoods Limited, Bay Roberts, has a primary processing licence for groundfish (all species), pelagics (all species), lumpfish, and lobster. The company has requested the addition of snow crab to a primary processing licence. The company had previously applied to the Board to have snow crab added to their licence, which was rejected in December 2020. In the last two years, the snow crab TAC has increased by 20,920 tonnes or approximately 46 million pounds. After careful consideration, the Board is recommending granting a snow crab processing licence based on economic considerations for the company. There have been a great deal of mergers, acquisitions, and consolidations of production in the industry since the cod moratorium, resulting in very few small and medium sized operators remaining in the province. The Board felt that it would provide new revenue, increase business stability and viability for this company. The company has demonstrated its long-term commitment to the Newfoundland and Labrador Fishery, as a smaller, locally owned independent company.

There were three letters of objection and no letters of support.

The Board recommends **approving** a snow crab processing licence, with a restriction on purchases not exceeding two million pounds in round weight form, for Bay Roberts Seafoods Limited, Bay Roberts.

3. Codroy Seafoods Limited, Codroy, has a primary processing licence for groundfish (all species), pelagics (all species), salmonids (AQ), scallop, lumpfish, and lobster. The company has requested the addition of snow crab to an existing primary processing licence. The snow crab TAC in 4R3Pn was 1,067 tonnes in 2012 and 522 tonnes for 2022. It's the Board's view that snow crab is now fully utilized within this area (resource availability and regional balance). After careful consideration, it has been concluded that there are no other mitigating circumstances that would warrant granting this species authorization at this time.

There were three letters of objection and eight letters of support.

The Board recommends **not approving** a primary processing licence for snow crab for Codroy Seafoods Limited, Codroy.

4. St. Mary's Bay Fisheries Inc., St. Mary's; has applied for a new primary processing licence for snow crab, groundfish (all species), pelagics (all species), sea cucumber, lobster, and whelk. The newly formed company plans on using the formerly licensed plant Deep Atlantic Sea Products in St. Mary's. Deep Atlantic Sea Products had a pelagics (all species), and snow crab processing licence until March 31, 2017.

After careful consideration, the Board is recommending granting a snow crab, groundfish, and whelk processing licence. There have been a great deal of mergers, acquisitions, and consolidations of production in the industry since the cod moratorium, resulting in very few small and medium sized operators remaining in the province. In 3Ps, the snow crab TAC has increased by approximately 10 million pounds in the last two years. Granting these licences will help address corporate concentration in the fishing industry and provide economic stability to that region.

It's the Board's view that sea cucumber, lobster and pelagics are now fully utilized within this area (resource availability and regional balance). After careful consideration, it has been concluded that there are no other mitigating circumstances that would warrant granting this species authorization at this time.

There were four letters of objection and 25 letters of support.

The Board recommends **approving** a snow crab, groundfish, and whelk primary processing licence for St. Mary's Bay Fisheries Inc., St. Mary's.

The Board recommends **not approving** a sea cucumber, lobster, or pelagics primary processing licence for St. Mary's Bay Fisheries Inc., St. Mary's.

5. HSF Ocean Products Ltd., O'Donnells, has a primary processing licence for groundfish (all species), pelagics (all species), mussel (AQ), scallop, whelk, and lobster. The company has requested the addition of snow crab, sea cucumber, and sea urchin to an existing primary processing licence. Fire completely destroyed the facility in October 2018. In 2019, the Board rejected an application from the company for the addition of sea cucumber.

The Board has determined that there is sufficient processing capacity to accommodate current landings and that sea cucumber is now fully utilized within the Eastern Region (resource availability and regional balance). After careful consideration, it has been concluded that there are no other mitigating circumstances that would warrant granting this species authorization at this time.

After careful consideration, the Board is recommending granting a snow crab processing licence and sea urchin processing licence based on economic considerations for the company. There have been a great deal of mergers, acquisitions, and consolidations of production in the industry since the cod moratorium, resulting in very few small and medium sized operators remaining in the province. In 3Ps, the snow crab TAC has increased by approximately 10 million pounds in the last two years. The Board felt that it would provide new revenue, increase business stability and viability for this company. The company has demonstrated its long-term commitment to the Newfoundland and Labrador Fishery, as a medium sized, locally owned independent company.

There were three letters of objection and one letter of support.

The Board recommends **approving** the addition of sea urchin and snow crab, with a restriction on snow crab purchases not exceeding two million pounds in round weight form, to a primary processing licence for HSF Ocean Products Ltd., O'Donnells.

The Board recommends **not approving** the addition of sea cucumber to a primary processing licence for HSF Ocean Products Ltd., O'Donnells.

6. Dandy Dan's Fish Market Ltd., Argentia, requested an increase in purchasing of snow crab from one million pounds per year to two million pounds per year. Dandy Dan's Fish Market Ltd., has a primary processing licence for groundfish (all species), pelagics (all species), snow crab (restricted to one million pounds in purchases per year), crab (other), lobster, lumpfish, and seal. The company also has an In-Province Retail Fish Processing Establishment in Argentia.

After careful consideration, the Board is recommending granting this increase based on economic considerations for the company. There have been a great deal of mergers, acquisitions, and consolidations of production in the industry since the cod moratorium, resulting in very few small and medium sized operators remaining in the province. In 3Ps, the TAC has increased by approximately 10 million pounds in the last two years. The Board felt that it would provide new revenue, increase business stability and viability for this company. The company has demonstrated its long-term commitment to the Newfoundland and Labrador Fishery, as a smaller, locally owned independent company.

There was one letter of objection and four letters of support.

The Board recommends **approving** an increase in purchasing of snow crab from one million pounds per year to two million pounds per year in round weight form for Dandy Dan's Fish Market Ltd., Argentia.

Sec 40



**Reg Anstey**  
Chair, Fish Processing Licensing Board

April 22, 2022

**Date**

# **Appendix B**

DOC/2022/02371

## **Fish Processing Licensing Decisions Report**

**Minister Derrick Bragg**

**May 2022**



On April 22, 2022, the Fish Processing Licensing Board (Board), pursuant to s. 10 (2) of the **Fish Processing Licensing Board Act**, advanced recommendations to me on six applications. Here are my decisions on these applications.

1. Labrador Gem Seafoods Inc., Ramea – application dated February 14, 2022, for the transfer of a primary processing licence for sea cucumber from Ramea to Barry Group Inc., Witless Bay. I am not approving this application for transfer of the licence. The Board did not recommend approval of this application as it was of the view that sea cucumber is fully utilized within the Eastern Region and that there are no other mitigating circumstances that would warrant granting this species authorization at this time. I agree with this rationale.
2. Bay Roberts Seafoods Limited, Bay Roberts – application dated May 1, 2021, for the addition of snow crab to an existing primary processing licence. I do not approve this application.

The Board recommended approval of this application with a restriction on purchases not exceeding two million pounds in round weight form. It was the Board's view that based on economic considerations for the company, the limited number of small and medium-sized operators remaining in the province, approval of a conditional crab licence would provide new revenue, increase business stability and viability for this company.

However, according to the Department of Fisheries and Oceans Canada, the outlook on the snow crab fishery is only projected to remain positive in most areas up to 2 to 4 years at which time there are potentially less favourable conditions for future productivity. In addition, the diversion of two million pounds of raw material from existing nearby processing facilities would have a negative impact on plant workers from other nearby facilities such as Nu Sea Products Inc. (Port de Grave), Independent Fish Harvesters Inc. (Brigus), Quin-Sea Fisheries Ltd. (Old Perlican), Quinlan Brothers Ltd. (Bay de Verde), Barry Group Inc. (Witless Bay), Aqua Crab Producers Inc. (Aquaforte) and Quin-Sea Fisheries Ltd. (Cape Broyle).

For 2022, the Federal Government has allocated 50,470 tonnes of snow crab to harvesters in the Province. The Province has no control over the annual quota allocated and it is the harvesters' decision in which processing facility they will sell their catch. With improvements in processing technology, many processing facilities require more raw material to enable plant workers to gain the required number of hours needed to qualify for Employment Insurance. As identified above, there are an adequate number of processors with snow crab processing licences in the region. The approval of additional snow crab primary processing licences to other facilities

in the immediate region would mean that another processor would have access to the same allotment of snow crab that is currently being sold to another processing facility in the same region. This may result in less weeks of employment for existing plant workers at the currently licensed facilities.

3. Codroy Seafoods Limited, Codroy – application dated May 27, 2021, for the addition of snow crab to an existing primary processing licence. I am not approving this application. The Board had not recommended approval of this application as it was of the view that the snow crab resource is fully utilized within the area and that there are no other mitigating circumstances that would warrant granting this species authorization at this time. I accept the Board's rationale.

For 2022, the Federal Government has allocated 50,470 tonnes of snow crab to harvesters in the Province. The Province has no control over the annual quota allocated, and it is the harvesters' decision in which processing facility they will sell their catch. With improvements in processing technology, many processing facilities require more raw material to enable plant workers to gain the required number of hours needed to qualify for Employment Insurance. There are an adequate number of processors with snow crab processing licences in the region. The approval of additional snow crab primary processing licences to other facilities in the immediate region would mean that another processor would have access to the same allotment of snow crab that is currently being sold to another processing facility in the same region. This may result in less weeks of employment for existing plant workers at the currently licensed facilities.

4. St. Mary's Bay Fisheries Inc., St. Mary's - application dated May 14, 2021, for a new primary processing licence for groundfish (all species), pelagics (all species), sea cucumber, lobster, snow crab, and whelk. I am approving the application for a new primary processing licence for groundfish (all species), whelk and snow crab for St. Mary's Bay Fisheries Inc. The snow crab licence will be restricted to purchase of raw material not exceeding 2.5 million pounds in round weight form. I am not approving licences for pelagics (all species), sea cucumber and lobster.

The Board recommended approving a snow crab, groundfish, and whelk primary processing licence and noted that the applicant plans on using the formerly licensed plant Deep Atlantic Sea Products in St. Mary's. Deep Atlantic Sea Products had a pelagics (all species), and snow crab processing licence until March 31, 2017. It was the Board's view that based on the limited number of small and medium-sized operators remaining in the province and the increase in raw snow crab material in the last two years in this area, that granting a licence to this applicant would help address corporate concentration and provide economic stability to the region. The

Board also stated that sea cucumber, lobster and pelagics were fully utilized within the area and there were no other mitigating circumstances that would warrant granting these species authorization at this time. I accept the Board's rationale regarding groundfish, whelk, lobster, sea cucumber and pelagics.

However, according to the Department of Fisheries and Oceans Canada, the outlook on the snow crab fishery is only projected to remain positive in most areas up to 2 to 4 years at which time there are potentially less favourable conditions for future productivity. The diversion of unrestricted amounts of snow crab raw material from existing processing facilities to the St. Mary's plant would have a negative impact on nearby processing facilities and plant workers such as Nu Sea Products Inc. (Port de Grave), Independent Fish Harvesters Inc. (Brigus), Quin-Sea Fisheries Ltd. (Old Perlican) Quinlan Brothers Ltd. (Bay de Verde), Barry Group Inc. (Witless Bay), Aqua Crab Producers Inc. (Aquaforte) and Quin-Sea Fisheries Ltd., (Cape Broyle).

A restricted licence for snow crab at 2.5 million pounds in round weight form provides the amount of raw material needed by the St. Mary's Bay Fisheries Inc. as identified in their business plan production projections.

For 2022, the Federal Government has allocated 50,470 tonnes of snow crab to harvesters in the Province. The Province has no control over the annual quota allocated and it is the harvesters' decision in which processing facility they will sell their catch. With improvements in processing technology, many processing facilities require more raw material to enable plant workers to gain the required number of hours needed to qualify for Employment Insurance. As identified above, there are an adequate number of processors with snow crab processing licences in the region. The approval of additional snow crab primary processing licences to other facilities in the immediate region would mean that another processor would have access to the same allotment of snow crab that is currently being sold to another processing facility in the same region. This may result in less weeks of employment for existing plant workers at the currently licensed facilities.

5. HSF Ocean Products Ltd., O'Donnells – application dated May 26, 2021 for the addition of snow crab, sea cucumber, and sea urchin to an existing primary processing licence. I am not approving the application for snow crab, sea cucumber or sea urchin.

The Board recommended approving the addition of sea urchin and snow crab, with a restriction on snow crab purchases not exceeding two million pounds in round weight form and not approving the addition of sea cucumber. It was the Board's view that there is sufficient processing capacity to accommodate current sea cucumber landings and there are no other mitigating circumstances that would

warrant granting this species authorization at this time. Given the economic considerations for the company, the limited number of small and medium-sized operators remaining in the province, the Board stated that approval of a conditional crab licence and sea urchin would provide new revenue, increase business stability and viability for this company. I accept the Board's rationale as it relates to sea cucumber.

As the Board notes, fire completely destroyed the facility in October 2018 and the owners have not yet rebuilt the facility despite maintaining licences for groundfish (all species), pelagics (all species), mussel (AQ), scallop, whelk, and lobster.

In addition, according to the Department of Fisheries and Oceans Canada, the outlook on the snow crab fishery is only projected to remain positive in most areas up to 2 to 4 years at which time there are potentially less favourable conditions for future productivity.

The diversion of two million pounds of raw material from existing processing facilities would have a negative impact on plant workers from other nearby facilities such as Nu Sea Products Inc. (Port de Grave), Independent Fish Harvesters Inc. (Brigus), Quin-Sea Fisheries Ltd. (Old Perlican), Quinlan Brothers Ltd. (Bay de Verde), Barry Group Inc. (Witless Bay), Aqua Crab Producers Inc. (Aquaforte) and Quin-Sea Fisheries Ltd. (Cape Broyle).

For 2022, the Federal Government has allocated 50,470 tonnes of snow crab to harvesters in the Province. The Province has no control over the annual quota allocated and it is the harvesters' decision in which processing facility they will sell their catch. With improvements in processing technology, many processing facilities require more raw material to enable plant workers to gain the required number of hours needed to qualify for Employment Insurance. As identified above, there are an adequate number of processors with snow crab processing licences in the region. The approval of additional snow crab primary processing licences to other facilities in the immediate region would mean that another processor would have access to the same allotment of snow crab that is currently being sold to another processing facility in the same region. This may result in less weeks of employment for existing plant workers at the currently licensed facilities.

6. Dandy Dan's Fish Market Ltd., Argentia – application dated March 30, 2022, for an increase in purchasing of snow crab from one million pounds per year to two million pounds per year. I am approving the application to purchase an additional one million pounds of snow crab.

The Board recommended an approval of an increase in purchasing of snow crab

from one million pounds per year to two million pounds per year in round weight form. It was the Board's view that based on company economic considerations, the limited number of small and medium-sized operators remaining in the province, approval of an increase in one million pounds of snow crab would provide new revenue, increase business stability and viability for this company. I accept the Board's rationale.

# Appendix C

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chapter M-35.1

## ACT RESPECTING THE MARKETING OF AGRICULTURAL, FOOD AND FISH PRODUCTS

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## TITLE I

### SCOPE

**1.** This Act establishes rules to allow orderly organization of the production and marketing of agricultural and food products and the marketing of fish products and of wild fur, whether or not such activities are carried on for purposes of sale.

1990, c. 13, s. 1; 1992, c. 28, s. 1; 1998, c. 48, s. 1.

**2.** This Act shall not be construed as a means to compete with cooperative marketing of agricultural or fish products. This principle must guide the application of this Act so as not to hamper cooperative action in regions and sectors where it can meet needs effectively and so as to ensure that the establishment and administration of joint plans may benefit as much as possible from the participation of cooperatives.

1990, c. 13, s. 2.

**3.** The word “marketing” means the classification, processing, labelling, storage, offering for sale, shipping for sale purposes, transport, penning, sale, purchase, advertising and financing of operations relating to the selling of the product and services of pollination by bees in respect of agricultural products.

1990, c. 13, s. 3.

## TITLE II

### RÉGIE DES MARCHÉS AGRICOLES ET ALIMENTAIRES DU QUÉBEC

#### CHAPTER I

##### ESTABLISHMENT AND FUNCTIONS OF THE RÉGIE

**4.** A body is hereby established under the name of “Régie des marchés agricoles et alimentaires du Québec”.

1990, c. 13, s. 4.

**5.** The functions of the Régie are to foster the efficient and orderly marketing of agricultural and food products, the development of harmonious relations between the various intervenors, the settlement of problems arising in connection with the production and marketing of such products, taking into account the interests of consumers and the protection of the public interest.

The Régie shall have the same functions in respect of the marketing of fish products.

1990, c. 13, s. 5; 1997, c. 43, s. 362.

**6.** The Régie shall have its head office in the territory of the Communauté métropolitaine de Montréal. It shall also have an office in the territory of the Communauté métropolitaine de Québec.

The Régie may sit anywhere in Québec.

1990, c. 13, s. 6; 1992, c. 28, s. 2; 2000, c. 56, s. 169.

**7.** The Régie is composed of eight members, including a chairman and three vice-chairmen, appointed by the Government for a term not exceeding five years.



The members of the Régie shall remain in office notwithstanding the expiry of their term until they are reappointed or replaced.

1990, c. 13, s. 7.

**7.1.** The Government may, if it considers that the dispatch of the affairs of the Régie so requires, appoint any supplementary member for the time it determines.

1992, c. 28, s. 3.

**8.** The Government shall determine the salaries and other conditions of employment of the members of the Régie. Once fixed, their salaries cannot be reduced.

1990, c. 13, s. 8.

**9.** The chairman is responsible for the administration and direction of the Régie.

1990, c. 13, s. 9.

**10.** No member of the Régie may, on pain of forfeiture of office, have any direct or indirect interest in any activity related to the production or marketing of an agricultural, food or fish product putting his personal interest in conflict with the interest of the Régie, or represent any group or sector contemplated by this Act.

However, forfeiture is not incurred if a member acquires such an interest by succession or gift, provided he renounces or disposes of it with diligence.

1990, c. 13, s. 10.

**11.** If a member of the Régie is unable to act, the Government may appoint another person to replace the member for as long as the member is unable to act.

If the chairman is to be absent at a sitting, the chairman shall designate a member of the Régie to replace the chairman.

1990, c. 13, s. 11; 1997, c. 70, s. 7.

**12.** The Régie may sit as a panel composed of not fewer than three members. In addition, the Régie may decide that any of the matters brought before it pursuant to sections 30, 37 and 41 is to be heard and decided by two members. However, a member of the Régie may hear and decide alone matters brought under the first paragraph of section 46 of the Farm Producers Act (chapter P-28).

1990, c. 13, s. 12; 1991, c. 29, s. 32; 1997, c. 70, s. 8; 1999, c. 50, s. 2.

**13.** Three members of the Régie constitute a quorum.

In case of a tie, the chairman has a casting vote.

1990, c. 13, s. 13.

**13.1.** If a member of the Régie before whom a matter has been brought is unable to act, disqualifies himself or ceases to be a member of the Régie, the remaining members shall decide the matter. The quorum is reduced to two and the presiding member has a casting vote in the case of a tie.

2006, c. 44, s. 1.

**14.** The members of the Régie cannot be prosecuted for any act performed in good faith in the performance of their duties.

1990, c. 13, s. 14.

**15.** The secretary and the other employees of the Régie are appointed in accordance with the Public Service Act (chapter F-3.1.1).

1990, c. 13, s. 15; 2000, c. 8, s. 242.

**16.** Every copy of a document emanating from the Régie is authentic if it is signed or certified by the chairman, the secretary or any person designated for that purpose by the Régie.

1990, c. 13, s. 16.

**17.** The Government may appoint and assign to the Régie any expert considered necessary and fix his salary.

1990, c. 13, s. 17.

**18.** The Government may, at the request of the Régie, appoint for a period not exceeding three months, any person to act as an inspector or investigator for the Régie. It shall fix the salary of any such person.

1990, c. 13, s. 18.

**19.** The Régie may review or revoke any of its decisions

(1) where a new fact is discovered which, if it had been known in due time, would have justified a different decision;

(2) where a person interested in the issue was, for reasons considered satisfactory, unable to present observations;

(3) where a procedural defect is likely to invalidate the decision.

Except in exceptional circumstances, the Régie shall not accept a request for review or revocation filed more than 180 days after the date on which the decision was made.

1990, c. 13, s. 19; 1997, c. 43, s. 364.

**20.** The Government may, of its own initiative and for reasons in the public interest, suspend, amend or annul any decision of the Régie.

1990, c. 13, s. 20.

**21.** Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be exercised nor any injunction granted against the Régie or any of its members acting in its or his official capacity.

1990, c. 13, s. 21; 1999, c. 50, s. 3; I.N. 2016-01-01 (NCCP).

**22.** A judge of the Court of Appeal may, on an application, annul summarily any decision, order or injunction made or granted contrary to section 21.

1990, c. 13, s. 22; I.N. 2016-01-01 (NCCP).

**23.** The fiscal year of the Régie shall end on 31 March each year.

1990, c. 13, s. 23.

**24.** Not later than 1 September each year, the Régie shall transmit to the Minister a report on its activities for the preceding fiscal year. The report shall be tabled in the National Assembly within 30 days after its receipt if the Assembly is in session or, if it is not sitting, within 30 days of resumption.

1990, c. 13, s. 24.

**25.** The Régie may adopt rules for its internal management; it shall submit the rules to the Government for approval.

The Régie may also adopt rules of procedure applicable to the matters brought before it. The rules shall come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date determined by the Régie.

1990, c. 13, s. 25; 1997, c. 43, s. 365.

## CHAPTER II

### POWERS OF THE RÉGIE

**26.** The Régie may settle any dispute arising in connection with the administration of a joint plan or the operation of a coordination and development chamber.

1990, c. 13, s. 26; 1997, c. 43, s. 366; 1999, c. 50, s. 4.

**26.1.** The Régie may, with the consent of the persons who have signed a homologated agreement or the persons to whom an arbitration award applies, designate a person to hear and settle a grievance arising from the carrying out of the agreement.

1999, c. 50, s. 5.

**27.** The Régie may, on the conditions and for the purposes it determines, and after giving the parties the opportunity to present observations, confer on a person, on an agricultural cooperative or on a fishermen's cooperative the rights and obligations of a buyer for the purposes of the joint offer for sale of a product marketed under a plan.

Similarly, the Régie may confer on any person who takes part in the production of an agricultural product the rights and obligations of a producer in respect of the product and on any person who takes part in the harvesting of a fish product, the rights and obligations of a fisherman in respect of the product.

1990, c. 13, s. 27; 1997, c. 43, s. 367.

**28.** The Régie may

(1) amend, replace or revoke any provision of a plan, by-law, the constituting instrument of a chamber or a decision of a board of producers or fishermen or of a chamber;

(2) terminate or suspend for any period it determines the application of a plan, by-law, agreement, the constituting instrument or a decision of a chamber or any provision thereof.

The Régie shall give prior notice of the date and place where the observations of interested persons are to be made.

It shall publish a notice in the *Gazette officielle du Québec* containing its decision under this section.

1990, c. 13, s. 28; 1997, c. 43, s. 368; 1999, c. 50, s. 6.

**29.** The Régie may reduce temporarily or permanently, suspend or cancel the quota of any producer who neglects or refuses to comply with any provision of this Act, or of a plan, by-law, arbitration award or homologated agreement or who ceases to produce the product for which he holds a quota.

Before making its decision, the Régie shall notify the producer in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the producer at least 10 days to present observations.

1990, c. 13, s. 29; 1997, c. 43, s. 369.

**30.** The Régie may, after giving the interested person the opportunity to present observations, order the removal from office of any director of a board of producers or fishermen who contravenes the provisions of section 89 or fails to comply with a notice of meeting or a request made under the second paragraph of section 76.

The Régie may cancel any decision related to the carrying out of the plan administered by the board and in which the director removed from office participated.

The Régie shall, before making a decision in either case, notify the board and the director concerned in writing of its intention and allow them at least 10 days to present observations.

1990, c. 13, s. 30; 1997, c. 43, s. 370; 1999, c. 50, s. 7.

**31.** The Régie may require a marketing board to submit any question relating to the application of this Act to the general meeting of producers or, as the case may be, fishermen, or of a group or particular class established under section 84.

1990, c. 13, s. 31.

**32.** The Régie may at any time submit to the referendum of the producers or fishermen subject to a plan held in accordance with section 54, any question concerning the plan and its administration.

1990, c. 13, s. 32.

**33.** The Régie may request that a marketing board negotiate with a certified association any matter which may be the subject of a by-law under section 92, 93, 97, 98 or 100 or, in the absence of certified association, to negotiate with any person interested in the marketing of a product designated by it. The Régie may determine that the conciliation and arbitration procedure provided in Chapter VII of Title III shall apply if no agreement is reached.

This section also applies to any matter regulated under a by-law already in force.

1990, c. 13, s. 33.

**34.** The Régie may make regulations to require persons or partnerships engaged in the production or marketing of a product subject to a plan or governed by a coordination and development chamber to register their names, addresses and occupations at the place and in the manner it determines.

1990, c. 13, s. 34.

**35.** If no association or group of cooperatives is certified in accordance with section 110, the Régie may, after giving them the opportunity to present observations, extend to persons interested in the marketing of a product marketed under a plan the effects of an agreement between the board administering the plan and the persons marketing the major part of the product, or of an arbitration award which is in lieu of such an agreement. The Régie may then exercise the powers set out in the second paragraph of section 117.

The decision of the Régie is an arbitration award that is in lieu of and has the same effects as a homologated marketing agreement.

1990, c. 13, s. 35; 1997, c. 43, s. 371; 2011, c. 28, s. 1.

**36.** The Régie may, on the conditions and for the period it determines,

(1) exempt any person or category of persons or any partnership engaged in the production or marketing of an agricultural product or the marketing of a fish product or any class or variety of such products from all or some of the effects of the constituting instrument of a chamber, a joint plan, a regulation, a by-law or an agreement;

(2) exclude from a joint plan, a regulation or by-law or from the jurisdiction of a chamber any class or variety of agricultural or fish products.

The Régie shall publish in the *Gazette officielle du Québec* any decision it makes under subparagraph 2 of the first paragraph.

1990, c. 13, s. 36.

**37.** The Régie may, on the conditions it determines and after having given interested persons the opportunity to present observations, exempt a marketing board or its directors from the application of sections 60, 89 and 128 if it considers such exemption necessary to facilitate orderly and efficient marketing of the product concerned in the general interest of the producers or the fishermen, as the case may be, without causing serious prejudice to the other intervenors.

The Régie may, in that case, restrict the exercise, by the marketing board, of certain powers under this Act.

It may, in the same manner, suspend, amend or revoke the exemption if, in addition to the reasons mentioned in the first paragraph of section 19, circumstances have changed to an extent which would justify such suspension, amendment or revocation. Where such a decision relates to the application of section 60, the Régie shall first notify the marketing board or its directors in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the marketing board at least 10 days to present observations.

1990, c. 13, s. 37; 1992, c. 28, s. 4; 1997, c. 43, s. 372; 1999, c. 50, s. 8.

**38.** The Régie may, if it considers such action necessary to ensure the efficient carrying out of a plan or by-law, entrust any person or body it designates with the carrying out of the plan or by-law or any provision thereof and, if need be, replace that person or body.

The Régie shall give prior notice, in a farm journal having general circulation, of the date and place where the observations of the persons subject to the plan or by-law are to be made.

In an emergency or to avoid irreparable harm, the Régie may designate the person or body mentioned in the first paragraph by an interim decision which it shall make public in any manner it considers appropriate. The Régie shall, as soon as possible, receive the observations of the persons to whom the plan or by-law applies, in a public sitting, before confirming, modifying or cancelling the appointment.

The person or body designated by the Régie shall succeed by operation of law to the marketing board until then responsible for the administration of the plan or enforcement of the by-law and shall have all the powers, duties and prerogatives of that board.

1990, c. 13, s. 38; 1997, c. 43, s. 373; 1999, c. 50, s. 9.

**39.** The Régie may take possession of the assets, books and documents used in the administration of a plan or application of a by-law to ensure the conservation and custody thereof or return them to the person or body responsible for the carrying out of the plan or by-law under section 38.

1990, c. 13, s. 39.

**40.** The Régie may, by regulation,

(1) determine the activities relating to the production and marketing of an agricultural product for which it requires a permit;

(2) determine the duration and the terms and conditions of issue and renewal of permits for persons or partnerships applying therefor;

(3) establish classes of permits according to the production and marketing activities it determines, categories, classes or varieties of products it identifies, and determine specific conditions of issue and restrictions for each category of permit;

(4) determine the charges and fees exigible for the issue or the renewal of permits.

(5) determine the conditions subject to which an activity authorized by a permit may be carried on.

1990, c. 13, s. 40; 1999, c. 50, s. 10.

**40.1.** Before refusing to issue a permit, the Régie shall first notify the applicant in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the applicant at least ten days to present observations.

1999, c. 50, s. 11.

**40.2.** The Régie may, by regulation,

(1) define a substance as grain ;

(2) establish grades of grain and determine the specifications, qualities and preservation conditions for the grain ;

(3) prescribe the qualifications required of a person assigned to the grading or inspection of grain ;

(4) establish standards relating to the grading of grain and the manner and circumstances in which samples of grain may be taken for the purpose of grading ;

(5) determine the conditions of issue of grain grading or grain inspection certificates ;

(6) establish the construction and maintenance standards for the buildings and equipment used in the processing, storage, handling or transport of grain.

“Grain” means wheat, barley, oats, corn, rye, faba beans, soybeans, field peas or colza seed and any other substance designated as grain pursuant to the first paragraph.

1999, c. 50, s. 11.

**40.3.** The Régie may, on the application of any interested person, designate a person to inspect grain facilities or to grade or inspect grain. After the inspection or grading, the Régie shall issue a grain grading or grain inspection certificate to the interested person.

1999, c. 50, s. 11.

**40.4.** The Régie may, by regulation, require any person who, for remuneration, offers to producers services related to the marketing of grain to post the rate charged for each service in public view in the establishment where the person carries on such a business.

1999, c. 50, s. 11.

**40.5.** The Régie may fix by regulation the price of any dairy product within the limits of any territory it designates. The Régie shall first invite, in the manner it considers appropriate, the interested persons to present observations according to the procedure it considers appropriate, including in a public sitting.

In making its decision, the Régie shall consider the value and nature of the product, the conditions of production, transport, processing and delivery of the product, the use made of the product by milk dealers, and the interests of producers, milk dealers, distributors and consumers.

The Régie shall also consider any regulation made under section 100.1, paragraph 7 of section 123 and paragraph 1.1 of section 124.

The Régie may establish a price, a minimum price, a maximum price or both a minimum and a maximum price in its regulation.

1999, c. 50, s. 11.

**40.5.1.** The Régie may determine by regulation any matter that relates to the payment of milk and cream by a milk dealer.

2000, c. 26, s. 57.

**40.6.** The Régie may, in making a regulation, determine the provisions the contravention of which constitutes an offence.

1999, c. 50, s. 11.

**41.** The Régie may suspend, revoke or refuse to renew the permit of any holder

(1) who no longer satisfies the conditions for issue prescribed in a regulation made under section 40;

(2) who has been found guilty of an offence under any provision of this Act or a plan, regulation or by-law, homologated agreement or arbitration award relating directly to the activity authorized by the permit.

Before making any such decision, the Régie shall notify the interested person in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the interested person at least 10 days to present observations.

1990, c. 13, s. 41; 1997, c. 43, s. 374.

**41.1.** The Régie may, by regulation, determine the tariff of duties, fees and costs in respect of the applications submitted to it and the services it provides.

1992, c. 28, s. 5; 1997, c. 43, s. 375.

**42.** Every regulation made by the Régie shall come into force on the date of its publication in the *Gazette officielle du Québec*, or on any later date determined by the Régie.

1990, c. 13, s. 42.

**43.** The Régie may, of its own initiative or at the request of an interested person, order a marketing board or any person engaged in the production or marketing of a product marketed under a plan, to perform or not to

perform a particular act where it is of the opinion that such act or omission may hinder the carrying out of the plan, a by-law, a homologated agreement or an arbitration award.

The Régie may also decide on the payability of a sum of money under a plan, a by-law, a homologated agreement, an arbitration award in lieu of an agreement or a decision in lieu of an arbitration award, and order its payment.

Any decision made by the Régie under the first and second paragraphs may be homologated by the Superior Court on an application by the Régie or an interested person, and after homologation it becomes executory as a judgment of the Court.

1990, c. 13, s. 43; 2011, c. 28, s. 2; I.N. 2016-01-01 (NCCP).

**43.1.** The Régie shall, at the request of the Minister, give the Minister the opinion required by section 10 of the Food Products Act (chapter P-29); the opinion shall pertain to the marketing conditions that exist in the sectors of activity covered by the application, the conditions governing milk supply to processing factories and the possible effects that the issue of the permit could have for the dairy industry and consumers.

1999, c. 50, s. 12; 2000, c. 26, s. 58.

### TITLE III

#### MARKETING OF AGRICULTURAL PRODUCTS

#### CHAPTER I

##### GENERAL PROVISIONS

**44.** This Title applies to the production and marketing of agricultural and food products.

“Agricultural product” means any agricultural, horticultural, avicultural, livestock or forest product in its raw state or partly or wholly processed by or for the producer, and any beverage or other food products derived therefrom; aquaculture products are considered to be agricultural products.

1990, c. 13, s. 44; 2003, c. 23, s. 73.

#### CHAPTER II

##### JOINT PLANS

**45.** Ten or more interested producers may transmit to the Régie a draft joint plan permitting the establishment of conditions for the production and marketing of an agricultural product originating from a designated territory or intended for a specified purpose or a particular buyer, and the constitution of a producer marketing board to administer the plan.

1990, c. 13, s. 45.

**46.** An association of producers may also transmit to the Régie a draft joint plan for the marketing of an agricultural product produced by all or some of its members. It shall append to the draft plan a duly certified copy of the resolution of its board of directors approving the draft and authorizing its transmission to the Régie.

1990, c. 13, s. 46.

**47.** The application accompanying the draft plan must set out

- (1) the names, addresses and occupations of the applicants;



(2) the objective pursued by the applicants and the means by which it can be achieved;

(3) the names, addresses and occupations of the directors of the marketing board which will be responsible for administering the plan;

(4) the reasons why, if any, the plan should not be submitted to a referendum under section 53.

1990, c. 13, s. 47; 1997, c. 43, s. 376.

**48.** The draft plan must set out

(1) the class of producers and the agricultural product subject to the plan;

(2) the territory from which the product may originate and the buyers for whom or the purpose for which it is intended;

(3) the composition of the marketing board which will be responsible for administering the plan;

(4) the method of election and replacement of subsequent directors of the board;

(5) the method for financing the administrative expenses which will be incurred by the marketing board in administering the plan;

(6) any power conferred on marketing boards under this Title but excluded at the request of the applicants;

(7) the particular formalities concerning the exercise by the marketing board of powers conferred under this Title;

(8) any other information required by the Régie.

1990, c. 13, s. 48.

**49.** The draft plan may also indicate the establishment, composition, term of office and method of appointment and replacement of members of an advisory committee which will be responsible for advising the marketing board on any matter relating to the administration of the plan and the enforcement of the by-laws made under this Act by the marketing board or the general meeting of producers.

1990, c. 13, s. 49.

**50.** In the draft plan, instead of specifying the composition of a marketing board, the applicants may designate, for the administration of the plan, a professional syndicate composed exclusively of producers of the agricultural product to be marketed under the draft plan, or a union or federation of such professional syndicates or an agricultural cooperative whose sole object is the marketing of such product.

1990, c. 13, s. 50.

**51.** The Régie shall cause a notice of the filing of the application and of the draft plan, containing the information referred to in paragraphs 1, 2, 5 and 6 of section 48 and indicating the date on which the Régie will receive observations from persons interested in the proposed plan, to be published in the *Gazette officielle du Québec* and in a farm journal having general circulation.

If the applicants requested that the draft plan not be submitted to a referendum, the Régie shall make mention thereof in the notice.

The Régie shall furnish, free of charge, a copy of the draft plan to every person who requests one.

1990, c. 13, s. 51; 1997, c. 43, s. 379; 1999, c. 50, s. 14.

**52.** After having received observations from the interested persons, the Régie may grant the application, reject it or make such amendments or restrictions as it sees fit to the draft plan.

In making its decision, the Régie shall consider, among other factors, existing cooperative marketing structures for the product concerned, existing and potential markets, economic conditions and the interests of producers, buyers, other intervenors and consumers.

1990, c. 13, s. 52; 1997, c. 43, s. 380; 1999, c. 50, s. 15.

**53.** Subject to section 56, where the Régie grants the application, it shall submit the draft plan as filed or as amended pursuant to section 52, where that is the case, to a referendum of the producers held in accordance with the terms and conditions it determines. At the same time, the Régie shall convey to the producers the information furnished pursuant to section 47.

1990, c. 13, s. 53; 1997, c. 43, s. 381.

**54.** To hold the referendum, the Régie shall determine by regulation the qualifications required of a producer and the conditions he must satisfy, on a specified date, to be considered an interested producer. Every interested producer is entitled to one vote, except where his operation has a legal status determined by regulation of the Régie, in which case the producer is entitled to two votes.

The Régie shall draw up a list of interested producers and shall determine

- (1) the places where the list may be consulted;
- (2) the time granted to any producer whose name may have been omitted from or included on the list by error to make the required corrections;
- (3) the time granted to oppose the inclusion of a person on the list on the grounds that the person does not have the status of interested producer;
- (4) the time granted to oppose the number of votes granted to an interested producer;
- (5) the procedure for making the final list of interested producers public.

After these formalities have been completed, the Régie shall draw up the final list of interested producers and make it public. The list cannot be contested.

1990, c. 13, s. 54; 1992, c. 28, s. 6; 1997, c. 43, s. 382.

**55.** A draft plan must be approved by not less than two-thirds of the producers having voted. Not less than one-half of the interested producers must have voted.

1990, c. 13, s. 55.

**56.** If, after an inquiry, the Régie is of the opinion that a referendum is not advisable in view, particularly, of the urgency of the situation, public interest considerations or the technical or financial difficulties involved in the holding of a referendum, it shall transmit the file, together with its recommendations, to the Government for approval.

The Government may approve the proposed draft plan with the amendments or restrictions recommended by the Régie, if any.

The draft plan shall in that case be deemed approved in accordance with section 55.

1990, c. 13, s. 56.

**57.** The Régie shall cause every approved draft plan to be published in the *Gazette officielle du Québec*. The plan becomes effective 15 days after its publication or on any later date determined by the Régie.

1990, c. 13, s. 57.

**58.** Any person or partnership engaged in the production or marketing of the product marketed under a plan is bound by the obligations provided for in this Act from the coming into force of the plan.

1990, c. 13, s. 58.

**59.** Any person who or partnership which is both a producer and engaged in the marketing of a product marketed under a plan has the rights and is bound by the obligations attached to both activities.

This section applies even where the person or partnership acts through an agent, mandatary, corporation or partnership of which he or it is a shareholder or partner. It also applies where the person or partnership agrees with any other person or partnership that the latter shall carry on the activity concerned on his or its behalf.

However, any person who or partnership which owns a private woodlot of at least 800 hectares in a single block, in respect of which he or it is a certified forest producer within the meaning of section 130 of the Sustainable Forest Development Act (chapter A-18.1), does not have the rights and is not bound by the obligations referred to in the first paragraph in respect of timber harvested on that woodlot and marketed under a plan, if such timber is harvested for himself or itself and processed in a plant which he or it owns.

1990, c. 13, s. 59; 1992, c. 28, s. 7; 1996, c. 14, s. 31; 2009, c. 52, s. 596; 2010, c. 3, s. 321.

**60.** No marketing board may trade in or engage in the processing of the product marketed under the plan administered by it.

Where a marketing board trades in or engages in the processing of the product marketed under the plan it administers, the producers subject to the plan shall, within the time determined by the Régie, replace the marketing board.

1990, c. 13, s. 60.

**61.** The alienation or transfer of the whole or part of the undertaking of a person or partnership engaged in the marketing of a regulated product shall not invalidate a joint plan, a homologated agreement, an arbitration award or any procedure relating to the approval or carrying out of a plan, agreement or arbitration award.

Notwithstanding the alienation or transfer of the whole or part of such an undertaking or the division or merger or any change in the legal structure of such an undertaking, the subsequent acquirer is bound by the plan, the agreement or the arbitration award as though he were named in it, and he shall forthwith be substituted for the transferor in any procedure relating thereto.

The Régie may render any decision it considers necessary to evidence the transfer of the rights and obligations arising from this section and to settle any dispute resulting from its application.

1990, c. 13, s. 61; 1997, c. 43, s. 383.

**62.** At the request of the Régie and not less than once every five years, every marketing board must demonstrate, before the Régie or the persons designated by the Régie to report to it, that the plan and its by-laws serve the interests of all the producers and promote the efficient and orderly marketing of the product.

The Régie shall give persons interested in the marketing of the product the opportunity to present observations on the administration of the plan and enforcement of the relevant by-laws.

1990, c. 13, s. 62; 1997, c. 43, s. 384.

**63.** A joint plan does not apply to sales made directly by a producer to a consumer.

Nevertheless, the Régie may, by regulation, on the conditions it determines, subject such sales to any provision of a plan, by-law, homologated agreement or arbitration award if it is of the opinion that such sales seriously affect their application.

1990, c. 13, s. 63.

## CHAPTER III

### PRODUCER MARKETING BOARDS

#### DIVISION I

##### FUNCTIONS AND POWERS OF A MARKETING BOARD

**64.** The producer marketing board is established upon the coming into force of a plan; it is responsible for administering the plan and may exercise every power conferred by this Title, subject to any restriction or condition set out in the plan or determined by the Régie.

The marketing board is a legal person.

1990, c. 13, s. 64; 1999, c. 40, s. 192.

**65.** The marketing board is the negotiating agent for the producers and the sales agent for the product marketed under the plan.

The marketing board may also, with the approval of the Régie, carry out any function with respect to the production and marketing of the product in order to promote, defend and develop the interests of the producers who are subject to the plan.

1990, c. 13, s. 65.

**66.** A body designated under section 50 to administer a plan is vested with the powers, duties and prerogatives of a producer marketing board; it shall exercise such powers, duties and prerogatives through its board of directors except those reserved for the general meeting of producers. It shall keep separate accounting records for the management of the plan. The body may apply to the Régie to be exempted from the requirement of keeping separate accounting records if it carries on no activity other than the administration of the plan.

1990, c. 13, s. 66; 1999, c. 40, s. 192; 1999, c. 50, s. 16.

**67.** No person or body may use the designation “producer marketing board” or any other designation including the words “producer marketing board” or “joint plan”, to designate any person, body or enterprise other than a producer marketing board or a joint plan.

1990, c. 13, s. 67.

**68.** A marketing board may pursue any remedy available to a producer under a homologated agreement, under an arbitration award or under any by-law made under this Title, without having to prove the assignment of the producer’s claim.

1990, c. 13, s. 68.

**69.** The remedies of several producers against the same person may be joined in a single suit and, notwithstanding the third paragraph of section 35 of the Code of Civil Procedure (chapter C-25.01), the total amount of the claim shall determine court jurisdiction in first instance and in appeal.

1990, c. 13, s. 69; I.N. 2016-01-01 (NCCP).

**70.** The directors of a marketing board cannot be prosecuted for any act performed in good faith in the performance of their duties.

1990, c. 13, s. 70.

**71.** Upon the coming into force of the plan it administers, a marketing board shall make by-laws to

(1) establish a file to register the name and address of each producer known to the marketing board as being subject to the plan. It is incumbent upon the producer to verify, in the manner stated in the by-law, that his name has been entered in the file;

(1.1) establish the procedure for verifying, adding, correcting or cancelling an entry in the file;

(1.2) determine the place where the file may be kept and examined;

(2) establish a retention schedule applicable to the documents relating to the administration of the plan. The marketing board may restrict access to certain documents it determines to the producers subject to the plan or to the members of its board of directors, and determine the fee exigible for the examination or reproduction of documents.

1990, c. 13, s. 71; 1992, c. 28, s. 8; 1999, c. 50, s. 17.

**72.** A marketing board may make rules consistent with this Act regarding any other procedural matter it is by law or by a joint plan authorized to regulate.

Within three months after the coming into force of the plan it administers, a marketing board shall make rules for its internal management. The rules come into force upon approval by the Régie.

1990, c. 13, s. 72.

## DIVISION II

### GENERAL MEETING OF PRODUCERS

**73.** A marketing board shall call a general meeting of producers at least once a year. The meeting shall adopt the annual report on the activities of the board, approve the financial statements for the preceding fiscal year and, when necessary, elect directors. It shall also appoint an auditor for the current fiscal year.

1990, c. 13, s. 73.

**74.** A marketing board may call a special general meeting whenever it considers it expedient.

A marketing board shall, however, call a special general meeting within 60 days of the filing of the written request of one-tenth of the producers registered in the file or of a request by the Régie.

1990, c. 13, s. 74; 1999, c. 50, s. 18.

**75.** A marketing board may also call a meeting of a class of producers established in accordance with subparagraph 2 of the first paragraph of section 84 whenever it considers it expedient.

The board must, however, call such a meeting within 60 days of the filing of the written request of one-tenth of the producers of that class in respect of an issue concerning them exclusively or of a request by the Régie.

1990, c. 13, s. 75; 1999, c. 50, s. 19.

**76.** If a marketing board fails to hold a general meeting, the Régie may call the meeting and designate a person to preside it.

The officers of the board and the auditor must comply with a notice requiring them to attend a meeting and must furnish any information they are requested to furnish by the Régie or by the designated chairman.

1990, c. 13, s. 76.

**77.** Not later than 20 days before a general meeting, the marketing board shall send a written notice of the meeting to every producer registered in the file on the date of sending. The notice shall state the place, date and time of the meeting as well as any matter which the marketing board wishes to submit to the producers.

The marketing board shall transmit to the Régie, within the time specified in the first paragraph, a copy of the notice of meeting and copies of the financial statements and of the auditor's report which will be submitted to the general meeting.

1990, c. 13, s. 77.

**78.** In the case of a meeting of a class of producers, the marketing board shall, not later than 20 days before the meeting, send notice of the meeting to every producer of that class whose name is registered in the file.

1990, c. 13, s. 78.

**79.** A general annual meeting, a special general meeting or a meeting of a class of producers shall consist of the producers or, where the marketing board has passed a by-law under subparagraph 1 of the first paragraph of section 84, the delegates present.

1990, c. 13, s. 79.

**80.** During the meeting, the producers may debate any issue concerning the plan and the conditions governing the marketing of the product concerned. However, by-laws may be passed only in respect of matters appearing on the agenda.

1990, c. 13, s. 80.

**81.** A general meeting of producers, duly called for such purpose, may, by resolution,

(1) replace the marketing board and entrust the administration of the plan to a professional syndicate composed exclusively of producers of agricultural products marketed under the plan or a union or federation of such professional syndicates, to an agricultural cooperative whose sole object is the marketing of such products, or to a marketing board the composition and method of election, replacement or appointment of members of which shall be decided by the general meeting;

(2) replace the negotiating agent or the sales agent;

(3) modify the powers, duties and prerogatives of the agents or of the marketing board;

(4) make any other amendment to the plan that does not affect its scope.

The resolution must be approved by two-thirds of the votes and submitted for approval to the Régie which shall publish a notice of its filing in a farm journal having general circulation and give the producers subject to the plan an opportunity to present observations.

The Régie may assess, in the manner it considers appropriate, the opinion of the producers on the resolution.

The Régie shall publish every resolution it has approved in the *Gazette officielle du Québec* and in a farm journal having general circulation. The resolution takes effect on the date of its publication or on any later date determined by the Régie.

1990, c. 13, s. 81; 1997, c. 43, s. 385.

**82.** The financial statements submitted to the annual general meeting must be accompanied with an auditor's report stating

(1) whether the financial statements accurately present the financial position of the marketing board according to the information given to the auditor and as shown by the books of the board;

(2) any other information required by the Régie.

1990, c. 13, s. 82.

**83.** The auditor shall have access to all books, registers, accounts and other records of the marketing board; the directors and officers of the board shall facilitate his examination thereof and provide him with any information necessary for the carrying out of his duties as auditor.

1990, c. 13, s. 83.

**84.** A marketing board may, by by-law,

(1) divide the producers into groups according to geographic criteria and determine, for each group, a procedure for the election of a specific number of delegates;

(2) divide the producers into classes according to their activity and set out the criteria governing such division and the procedure for settling any problem that may arise in connection with its application.

The board shall record in the file the class of activity carried on by each producer.

1990, c. 13, s. 84; 1992, c. 28, s. 9; 1997, c. 43, s. 386.

**85.** Every producer subject to a plan whose name is registered in the file on the date of sending of the notice of meeting may take part in the deliberations and is entitled to vote at a general meeting or a meeting of a class of producers. However, where delegates have been elected pursuant to section 84, they alone are entitled to vote.

1990, c. 13, s. 85.

**86.** At any meeting of producers, every producer is entitled to one vote, except where his operation has a legal status determined by by-law of the marketing board, in which case the producer is entitled to two votes. However, a producer acting as a delegate is entitled to only one vote.

Only legal persons may vote by proxy. No person may represent more than one legal person at the same time.

1990, c. 13, s. 86; 1992, c. 28, s. 10.

**87.** Decisions of the general meeting are taken by majority vote except where this Act provides otherwise.

1990, c. 13, s. 87.

**88.** A body designated to administer a plan pursuant to section 50 shall hold the annual general meeting of producers separately from that of its members.

Only the members of the body who are entitled to vote may elect the directors thereof and make decisions concerning matters not related to the carrying out of the plan.

1990, c. 13, s. 88.

**89.** No person whose commercial interests are incompatible with the mission of a marketing board may hold office as a director of that board.

1990, c. 13, s. 89; 1992, c. 28, s. 11.

**89.1.** Not later than ten days after the general meeting held in accordance with section 73, each director of a marketing board must disclose to the Régie any interest the director has, other than an interest as a producer, in the marketing of a product under the plan administered by the board.

1999, c. 50, s. 20.

**90.** A marketing board may consult a class of interested producers on matters concerning them exclusively or principally.

1990, c. 13, s. 90.

**91.** A marketing board may submit, to a class of producers duly called to a meeting for such purpose, any draft by-law that concerns them exclusively.

1990, c. 13, s. 91; 1992, c. 28, s. 12.

## CHAPTER IV

### REGULATORY POWERS OF A MARKETING BOARD

**92.** A marketing board may, by by-law,

(1) determine conditions governing the production, storage, preparation, handling and transport of the product marketed under the plan it administers, as well as standards respecting the quality, form and composition, container or packaging and the inscription which must appear on the product, its container or packaging;

(2) prescribe the classification and identification of the product marketed under the plan it administers, determine for that purpose particular grades, categories and appellation and determine the conditions on which such classification and identification must be made.

1990, c. 13, s. 92.

**93.** A marketing board may, by by-law, fix production and marketing quotas for the product marketed under the plan it administers and, for that purpose, subject production and marketing to the conditions, restrictions and prohibitions it determines.

Without restricting the scope of the first paragraph, a board may, by by-law,

(1) determine the times and places a product marketed under the plan it administers may be produced and marketed;

(2) require that every producer be the holder of an individual quota allocated by the board and authorizing him to produce or market the product marketed under the plan it administers, fix the minimum and maximum



quotas the producer may hold, individually or in association with other persons, and determine the proportion of the quota each producer must produce himself within his operation;

(3) determine the conditions governing the allocation, maintenance or renewal of an individual quota, and the manner in which it is issued;

(4) establish equivalences based on the area under cultivation or operation or the number of animals reared or marketed, for the purpose of fixing the quota of a producer;

(5) determine the manner and conditions applicable to the temporary or permanent reduction of the quota of a producer who produces or markets a larger or smaller quantity of the product marketed under the plan than is permitted by his quota;

(6) impose on any producer who contravenes a by-law made under this section, a penalty based on the volume or value of the product marketed or the area under cultivation or operation, and prescribe the use of this penalty for particular purposes;

(7) provide for the cancellation or use by another person of any part of a quota not produced or marketed during a specified period;

(8) determine the circumstances, the extent and the conditions on which a producer holding a quota may produce or market a product otherwise than according to his quota or a standard determined by the marketing board;

(9) establish an overall limit of individual quotas which may be allocated to producers by the marketing board, and prescribe standards for proportional reduction of the quotas when the limit has been or is about to be reached;

(10) determine standards for periodical adjustment of individual quotas according to market needs;

(11) determine the manner and conditions according to which the board may reallocate quotas which have been suspended, reduced or cancelled;

(12) determine any part of the overall quota and of individual quotas which have been suspended or permanently reduced that it may keep in reserve;

(13) establish the manner and conditions governing the allocation or reallocation of the reserve referred to in paragraph 12, and limit the allocation of quotas from the reserve to one or more classes of producers;

(14) determine the cases of and the conditions applicable to the transfer of a quota from one producer to another, set aside a part of that quota for the reserve mentioned in paragraph 12, determine the terms, conditions and modalities of such a transfer, and make any such transfer subject to its approval;

(15) determine the terms and conditions according to which a quota or part of a quota may be leased from a producer to another;

(16) determine the conditions subject to which an operation may be leased by a producer who wishes to produce all or part of his quota elsewhere than within his own operation, and make such lease subject to the approval of the marketing board;

(17) suspend any transfer of individual quotas for a specified period or for a period which may be determined according to the standards established by the marketing board;

(18) divide the territory covered by the plan into zones and restrict or prohibit the transfer of quotas from one zone to another;

(19) determine the length of time allowed to a new holder of a quota or the holder of a new quota to produce or market the product subject to the quota.

1990, c. 13, s. 93.

**94.** Where a marketing board makes a by-law under section 93, no person may produce or market the product concerned unless he holds a quota, except in the circumstances and on the conditions determined in the by-law.

1990, c. 13, s. 94.

**95.** Only the person or partnership producing the product marketed under a plan may hold and exploit a quota allocated by a marketing board.

However, this provision shall not prevent a new producer from becoming the holder of a quota.

The first paragraph does not apply to a creditor who temporarily holds a quota in execution of a guarantee, provided he disposes or takes measures to dispose of the quota within a reasonable time.

1990, c. 13, s. 95.

**96.** A marketing board may, by by-law, establish methods for fixing the price of the product marketed under the plan it administers, or of a class or variety thereof. The price may vary from one region to another.

1990, c. 13, s. 96.

**97.** A marketing board may, by by-law,

(1) require any producer of the product marketed under the plan it administers to register his operation in the manner and in accordance with the terms and conditions it prescribes;

(2) determine the information and documents that the producers of the product marketed under the plan it administers must keep and furnish for the purposes of the plan and the by-laws made under this chapter.

1990, c. 13, s. 97.

**98.** A marketing board may, with regard to the product subject to the plan it implements, make by-laws to

(1) establish a procedure of joint offer for sale permitting producers to receive, after deduction of all or part of the marketing costs determined by the board, the same price for an identical product of equal quality and in the same quantity marketed during a particular period on a particular market, independently of the variation in the sales price due to reasons unconnected with the actual value of the product;

(2) determine the method and conditions according to which a product may be marketed and offered for sale jointly;

(3) determine the standards for the fixing and payment of the sales price; these standards may provide for the fixing of a provisional price before sale and a final price after sale;

(4) determine the terms and conditions of payment of the sales price applicable to all buyers; these standards may provide for the payment of an initial instalment on delivery and subsequent instalments at intervals determined by the marketing board;

(5) determine the terms and conditions of apportionment among the producers of the net profit from the sale of the product or a particular class of it;

(6) require every buyer to pay the price of the product to the marketing board or to the sales agent designated for its apportionment among the producers;

(7) require every producer to sell the product to or through the board or designated sales agent;

(8) retain, out of the sales price, the amounts necessary for marketing the product, together with any other contribution imposed under this Title;

(9) determine what constitutes the net profit on sales for the purposes of this section.

1990, c. 13, s. 98.

**99.** A board may, by by-law, establish a procedure to apportion and pool the transport costs of the product so each producer, or each producer in a group determined in the by-law, pays the same price for the transport of his product, in equal quantity, independently of the distance between the production site and the place of delivery.

1990, c. 13, s. 99.

**100.** A board may, by by-law, determine what quantity of the product marketed under the plan constitutes a surplus of that product for any period it determines.

It may pay all or part of the expenses or losses resulting from the sale of the surplus out of the contributions referred to in sections 123 and 124.

1990, c. 13, s. 100.

**100.1.** To foster the reorganization of the conditions of production of an agricultural product, a board may, by by-law, grant financial assistance in respect of the product marketed under the plan administered by it to producers who satisfy the conditions determined in the by-law.

1992, c. 28, s. 13.

**101.** Every by-law made by a marketing board or a general meeting under this Act shall be submitted to the Régie for approval. The Régie may assess the opinion of the producers in respect of such a by-law in any manner it deems appropriate, and, if it considers it necessary in the case of a by-law made by a marketing board, it may require the marketing board to submit the by-law to the general meeting for ratification.

1990, c. 13, s. 101; 1992, c. 28, s. 14; 1999, c. 50, s. 21.

**102.** The Régie shall publish in the *Gazette officielle du Québec* every by-law it has approved. The by-law comes into force on the date of publication, or on any later date determined by the Régie.

1990, c. 13, s. 102.

**102.1.** The Régie shall, within 20 days after publication in the *Gazette officielle du Québec* of a by-law under paragraph 1 of section 71, cause that by-law to be published in a farm journal having general circulation in the territory where the joint plan applies.

1992, c. 28, s. 15.

## CHAPTER V

### AMALGAMATION OF MARKETING BOARDS AND AMALGAMATION OF PLANS

#### DIVISION I

##### AMALGAMATION OF MARKETING BOARDS

**103.** Marketing boards may amalgamate and make agreements therefor.

1990, c. 13, s. 103.

**104.** Producer marketing boards planning to amalgamate shall prepare a deed of agreement setting out

- (1) the terms and conditions of amalgamation;
- (2) the name of the marketing board resulting from the amalgamation and the name, address and occupation of each provisional director;
- (3) the method of election and replacement of subsequent directors;
- (4) any other measure necessary to effect the amalgamation and provide for the administration and operation of the marketing board resulting from the amalgamation.

1990, c. 13, s. 104.

**105.** The deed of agreement shall be submitted for ratification to a general meeting of the producers subject to the plans administered by each of the interested marketing boards.

If the deed of agreement is ratified by way of a resolution adopted by a majority of the producers present at each of the general meetings called for that purpose, the boards planning to amalgamate shall jointly submit the deed of agreement to the Régie for approval.

1990, c. 13, s. 105; 1999, c. 50, s. 22.

**106.** The Régie may approve the deed of agreement and, if it approves it, it shall publish it in the *Gazette officielle du Québec*; the deed of agreement comes into force on the date specified therein. The boards are amalgamated and form a single marketing board under the name appearing in the deed of agreement.

1990, c. 13, s. 106.

**107.** The marketing board resulting from the amalgamation shall have the rights and powers, be vested with the property and assume the obligations and duties of the amalgamated boards and suits to which they are party may be continued by or against it without continuance of suit.

By-laws and agreements made by the amalgamated boards are deemed to have been made by the marketing board resulting from the amalgamation and remain in force.

Within three months after the coming into force of the new plan, the marketing board shall transmit to the Régie a report on the transfer of assets.

1990, c. 13, s. 107.

## DIVISION II

### AMALGAMATION OF PLANS

**108.** Producers subject to different plans may, at a general meeting of producers subject to each plan specially called for such purpose, decide to amalgamate their plans.

The proposed amalgamation must be ratified by way of a resolution adopted by two-thirds of the producers present. The new plan, setting out the information prescribed by sections 48 and 49, and the resolution shall be filed with the Régie.

If the Régie approves the plan resulting from the amalgamation, it shall cause it to be published in the *Gazette officielle du Québec* and the plan comes into force on the date specified therein; the Régie shall terminate the amalgamated plans on the same date.

1990, c. 13, s. 108.

**109.** The marketing board resulting from the amalgamation of the plans shall have the rights and powers, be vested with the property and assume the obligations of the marketing boards which administered the amalgamated plans and suits to which the marketing boards are party may be continued by or against it without continuance of suit.

By-laws and agreements made by the marketing boards which administered the amalgamated plans are deemed to have been made by the marketing board resulting from the amalgamation and they remain in force.

All assets relating to the management of the amalgamated plans are transferred to the marketing board responsible for administering the new plan upon its coming into force.

Within three months after the coming into force of a new plan, the marketing board shall transmit to the Régie a report on the transfer of assets.

1990, c. 13, s. 109.

## CHAPTER VI

### CERTIFICATION

**110.** Any group of cooperatives or association of persons interested in the marketing of an agricultural product marketed under a plan may apply to the Régie for certification as the representative of all or a class of the persons interested in the marketing of the product or of a class of the product, or in the marketing of the product produced in a part of the territory covered by the plan.

If the Régie considers the association or group sufficiently representative, it may grant it certification, specifying the interested persons or class of interested persons that the group or association may so represent.

The group or association shall then represent all such interested persons for the purposes of negotiation or agreement with the marketing board or, as the case may be, conciliation or arbitration under this Title.

1990, c. 13, s. 110; 1999, c. 50, s. 23.

**111.** The Régie may also certify an association or body as the representative of the class of persons it determines, in respect of the plan or the chamber or with a view to forming a coordination and development chamber under Chapter X which it specifies and for the purposes which it determines.

Unless the Régie decides otherwise, such certification does not allow the association or body to act as representative for the purposes of negotiation and agreement with the marketing board, conciliation or arbitration under this Title.

1990, c. 13, s. 111; 1997, c. 43, s. 387; 1999, c. 50, s. 24.

**111.1.** The certification comes into force on the date of publication of a notice to that effect in the *Gazette officielle du Québec* or on any other date indicated therein by the Régie.

1999, c. 50, s. 25.

**111.2.** After giving the certified association or body an opportunity to present observations, the Régie may terminate the certification for any reason it considers valid.

1999, c. 50, s. 25.

## CHAPTER VII

### MARKETING AGREEMENT

**112.** At the request of a marketing board, every person or partnership engaged in the marketing of a product marketed under a plan must negotiate with the board or its negotiating agent all terms and conditions relating to the production and marketing of the product.

1990, c. 13, s. 112.

**113.** Where a marketing board negotiates with a person or partnership engaged in the marketing of the product marketed under the plan it administers, the Régie may require, if it considers it expedient, that the board also negotiate with all other persons and partnerships engaged in the marketing of the product.

1990, c. 13, s. 113.

**114.** Every agreement entered into pursuant to sections 112 and 113 must, to be valid, be homologated by the Régie. The agreement takes effect on the date specified therein or determined by the Régie upon homologating the agreement.

1990, c. 13, s. 114.

**115.** Failing agreement between a marketing board and any other person or partnership engaged in the marketing of the product marketed under a plan, the Régie, at the request of an interested party, shall appoint a conciliator to confer with the parties for the purpose of reaching an agreement.

The conciliator shall report to the Régie within the time determined by the Régie or agreed upon in writing by the parties.

1990, c. 13, s. 115.

**116.** If conciliation has not resulted in an agreement, the Régie, at the request of an interested party, shall arbitrate the dispute.

The Régie may establish an alternate mode of arbitration if it considers it expedient under the circumstances; it may, in that case, appoint one or more arbitrators and fix the time granted to render their decision.

1990, c. 13, s. 116.

**117.** An arbitration award is in lieu of a homologated agreement; it is executory on the date indicated therein and is binding on the interested parties until, at the request of one of the parties and after giving the other parties the opportunity to present observations, the Régie considers it expedient to suspend the application of the award or to terminate or amend it.

When the Régie makes an arbitration award, it may, at the request of one of the interested parties, include a penalty payable by any party bound by the award who does not comply with the obligations it contains and provide that the penalty be used for specific purposes. It may also require the payment of annual interest at the rate it sets. The Régie bases the penalty on, in particular, the volume, mass, quantity or value of the product marketed, or the area under cultivation or operation.

1990, c. 13, s. 117; 1997, c. 43, s. 388; 1999, c. 50, s. 26; 2011, c. 28, s. 3.

**118.** If a marketing board or a person or partnership subject to a plan refuses without due cause, in the opinion of the Régie, to negotiate the terms and conditions relating to the production or marketing of the product marketed under a plan, to appear for or participate in conciliation or arbitration after being called for such purpose, or to sign an agreement the terms of which it or he does not contest, the Régie may, after giving the interested parties the opportunity to present observations, prescribe the terms and conditions relating to the

production and marketing of the product. The Régie may then, at the request of one of the interested parties, exercise the powers set out in section 117.

The decision of the Régie is in lieu of and has the same effects as an arbitration award.

1990, c. 13, s. 118; 1997, c. 43, s. 389; 2011, c. 28, s. 4.

**119.** Where efficient marketing of a product marketed under a plan so requires, the Régie may authorize a marketing board to negotiate with another board agreements on matters within the competence of either board.

Every agreement entered into between such boards must, to be have effect, be homologated by the Régie. A homologated agreement is binding upon the bodies party to it and upon all the producers subject to the plans administered by them.

The arbitration procedure set out in sections 115 to 117 applies to negotiations under this section.

1990, c. 13, s. 119.

## CHAPTER VIII

### AGREEMENTS WITH OTHER GOVERNMENTS AND GOVERNMENT BODIES

**120.** The Government may authorize the Régie or, as the case may be, the Régie and a marketing board, to make agreements with the government of Canada or of another province, or with a body of any such government, respecting

(1) the production or marketing of an agricultural product;

(2) any matter within the competence of the Régie or a marketing board respecting an agricultural product.

1990, c. 13, s. 120.

**121.** The Government may, on the conditions it determines, allow a marketing board

(1) to act as an agent of the Governor General in Council;

(2) to entrust a body authorized under an Act of the Parliament of Canada to regulate the marketing of an agricultural product, with any function that the marketing board may exercise under this Act;

(3) to perform, on behalf of any body authorized under an Act of the Parliament of Canada to regulate the marketing of an agricultural product, any function which that body may perform under such Act.

The Government may, on the conditions it determines, amend a joint plan, a regulation or a by-law made under this Title, to ensure the carrying out of the provisions of or an agreement made under this chapter.

1990, c. 13, s. 121.

## CHAPTER IX

### CONTRIBUTIONS

**122.** The producers subject to a joint plan shall pay the expenses incurred for the purposes of the plan and by-laws by means of contributions prescribed in the plan or in a by-law made under section 123 or 124.

1990, c. 13, s. 122.

**123.** A general meeting of the producers, called for that purpose, may make by-laws

- (1) to vary the amount of the contribution prescribed in the plan;
- (2) to classify the producers into groups and fix for each group the level of contribution required from each producer who is a member of it for the purposes of the plan, the by-laws and this Act;
- (3) to impose a special contribution to pay the expenses related to the carrying out of a provision of a plan, a by-law or this Act;
- (4) to impose a special contribution to cover losses resulting from the marketing of the product marketed under the plan, whether or not such product is produced by the producer required to pay the contribution;
- (5) to impose a special contribution to permit the equalization or adjustment among producers of sums of money received from the sale of the product marketed under the plan, during such period as the board may determine;
- (6) to impose a special contribution to permit the board to pay its share of the activities and operating costs of a coordination and development chamber;
- (7) to impose, on all the producers or on those who meet certain criteria, a special contribution for the purposes of a by-law made under section 100.1 and to satisfy the obligations incurred in respect of the special fund established for the purposes of the by-law.

1990, c. 13, s. 123; 1992, c. 28, s. 16.

**124.** The producer marketing board, if authorized to do so by a general meeting of the producers called for that purpose, may, by by-law, establish

- (1) a reserve fund or working capital to pay expenses relating to the administration of a plan or the carrying out of a by-law;
  - (1.1) a special fund for the purposes of a by-law made under section 100.1;
- (2) a contribution, which may vary, to permit it to fulfil obligations contracted under Chapter VIII;
- (3) methods to be used for the collection or calculation of a contribution imposed under this chapter.

1990, c. 13, s. 124; 1992, c. 28, s. 17.

**125.** The contributions provided for in sections 123 and 124 may be calculated according to the volume of production marketed, the area cultivated or in operation, the units of production needed to market the product or other equivalent criteria accepted by the Régie.

1990, c. 13, s. 125.

**126.** Any producer who is late in paying the contribution prescribed in the plan or a by-law made under section 123 or 124, may be required to pay such amount of interest as is fixed by a by-law of the general meeting of producers.

1990, c. 13, s. 126.

**127.** *(Repealed).*

1990, c. 13, s. 127; 1992, c. 28, s. 18; 1999, c. 50, s. 27.



**128.** No marketing board may in any way use contributions collected from producers under any provision of a plan or by-law to finance the setting up or operation of a commercial undertaking, or to hold capital stock or any other form of interest in a commercial undertaking.

Any marketing board which, on 12 September 1990, has used contributions described in the first paragraph shall, within three months from that date, present to and have approved by the Régie a program for the recovery of such contributions. Failing presentation and approval of a program, the board shall be required to apply the program determined by the Régie.

1990, c. 13, s. 128.

**129.** The Régie may, by regulation made of its own initiative or at the request of a marketing board,

(1) require any person other than a consumer who buys or receives from a producer a product marketed under a plan, to withhold from the price or value of the product to be paid to the producer all or part of the contributions fixed under sections 123 and 124 and to remit the amounts so withheld to the board, according to the terms and conditions prescribed in the regulation;

(2) determine the information which must be furnished in respect of the amounts so withheld.

1990, c. 13, s. 129.

**130.** Any person who fails to comply with a regulation of the Régie made under paragraph 1 of section 129 becomes liable to the marketing board for the amount of the contributions that he should have withheld or remitted to it. He may also be required to pay annual interest at the rate fixed by regulation.

1990, c. 13, s. 130.

**131.** Any person bound by a homologated agreement, arbitration award or decision of the Régie which prescribes the terms and conditions governing the withholding or remitting of contributions, who does not comply with his obligation, becomes liable to the marketing board for the amount of the contributions that he should have withheld or remitted to it. He may also be required to pay annual interest at the rate indicated in the agreement, arbitration award or decision.

1990, c. 13, s. 131; 1992, c. 28, s. 19.

**132.** A producer bound by a plan who is a member of a professional syndicate which administers the plan is not required to pay the annual fee to be a member of the syndicate for a year in which he pays the contribution required of him for the administration of the plan.

The first paragraph also applies where the syndicate is part of a union or federation of professional syndicates which administers the plan and notwithstanding the provisions of sections 2 and 3 of the Professional Syndicates Act (chapter S-40).

1990, c. 13, s. 132.

**133.** The members of a certified association or a class of such members may, at a general meeting of the association called for such purpose, ratify a by-law made by the association to determine the amount of the contribution required to cover the costs relating to the duties and obligations deriving from certification or from their association's membership in a coordination or development chamber.

The association shall inform every person or partnership affected by the certification of its intention to pass such a by-law.

The Régie may assess, in the manner it considers appropriate, the opinion of the interested persons regarding the by-law and grant its approval. The Régie shall publish every approved by-law in the *Gazette*

*officielle du Québec*. The by-law comes into force 15 days after the publication or on the date determined by the Régie. Every person or partnership affected by the certification is required to pay the contribution.

1990, c. 13, s. 133.

**134.** The Régie may, after giving a certified association the opportunity to present observations, revoke any by-law made under section 133. The association shall, in that case, submit to the Régie, for approval, a method of disposing of the balance of the contributions collected under the said section. Failing such approval, it must apply the method of disposal determined by the Régie.

1990, c. 13, s. 134; 1997, c. 43, s. 390.

## CHAPTER X

### COORDINATION AND DEVELOPMENT CHAMBERS

**135.** The marketing boards, associations or other persons interested in the production, marketing or distribution of an agricultural or food product, or the development of any such activity, may agree to request the Régie to establish a coordination and development chamber for the production or marketing of the product.

1990, c. 13, s. 135.

**136.** A chamber may take any action to promote, improve, coordinate and develop the production and marketing of an agricultural or food product.

For this purpose it may, among other things,

(1) study, coordinate and propose ways of planning the conditions of production and marketing of the product;

(2) seek and propose ways of improving the production and marketing of the product;

(3) prepare, finance or administer programs of research, quality improvement, promotion, advertising or sale of the product;

(4) propose training programs and more efficient ways of producing and marketing the product to producers, buyers, any person engaged in the marketing of the product and any other intervenor;

(5) seek and develop markets for the product;

(6) make representations on behalf of the members in connection with any matter related to the production or marketing of the product;

(7) establish standards specific to the product concerned and to its display, and engage in the promotion of the product;

(8) hold, on the conditions it determines, proprietary rights to a logo or trademark to identify the product whose marketing it coordinates and subject its use to compliance with the standards established under paragraph 7.

1990, c. 13, s. 136; 1996, c. 51, s. 25.

**137.** The applicants shall attach to their application a copy of their agreement and a duly certified copy of a resolution of their board of directors authorizing the presentation of the request and supporting the project.

The applicants must represent producers and at least one group of other persons interested in marketing the product in question.

1990, c. 13, s. 137; 1997, c. 43, s. 391.

**138.** The application shall specify

- (1) the name and address of every applicant;
- (2) the composition of the board of directors of the chamber and the method of appointment and replacement of the directors;
- (3) the objectives pursued by the chamber and the means by which they can be achieved;
- (4) the name under which the chamber will exercise its functions;
- (5) the financing method used by the chamber;
- (6) the method of apportionment among the members of the expenses incurred for the operation and activities of the chamber;
- (7) the terms and conditions of joining or withdrawing from the chamber;
- (8) the distribution of votes for decisions to be made by the board of directors of the chamber;
- (9) any other information required by the Régie.

1990, c. 13, s. 138; 1997, c. 43, s. 392.

**139.** The board of directors of a chamber shall consist of at least one director representing each of its members.

The Minister may appoint a person to represent the interests of consumers and delegate an observer to the proceedings of the board of directors of the chamber.

1990, c. 13, s. 139.

**140.** The Régie shall cause to be published in a farm journal having general circulation, a notice of the filing of a request for the establishment of a chamber containing the information mentioned in paragraphs 1, 3 and 4 of section 138 and specifying the date and place where persons interested in the matter may present observations.

1990, c. 13, s. 140; 1997, c. 43, s. 393; 1999, c. 50, s. 28.

**140.1.** The Régie may ascertain, in the manner it considers appropriate, the opinion of groups of interested persons on the proposed establishment of a chamber.

1999, c. 50, s. 29.

**141.** If it grants the request and authorizes a chamber to be established, the Régie shall cause a notice to that effect to be published in the *Gazette officielle du Québec* and in a farm journal having general circulation. The chamber shall be formed on the date of publication, or from any later date determined by the Régie.

1990, c. 13, s. 141.

**142.** If it considers it appropriate, the Government may entrust a chamber with any mandate related to its functions.

1990, c. 13, s. 142.

**143.** Upon being formed, the chamber is a legal person.

It may from that moment make rules respecting its internal management and the conduct of its business; these rules shall come into force upon being approved by the Régie.

1990, c. 13, s. 143; 1999, c. 40, s. 192.

**144.** The members of a chamber may request the Régie to change the composition and aims of the chamber as well as the apportionment of its operating expenses and expenses incurred for its activities. Sections 140 and 141 apply, with the necessary modifications, to such requests.

1990, c. 13, s. 144.

**145.** A chamber shall call a general meeting of its members at least once a year; the meeting shall adopt the report on the activities of the chamber, approve the financial statements for the preceding fiscal year, examine the estimates of expenses for the current fiscal year, elect the directors and appoint an auditor.

After the general meeting, the chamber shall forward to the Régie a copy of its report of activities, the financial statements for the preceding fiscal year and the estimate of its expenses.

1990, c. 13, s. 145.

**146.** No chamber may trade in or process any agricultural or food product.

1990, c. 13, s. 146.

**147.** No person or body may use the designation “coordination and development chamber”, or any other designation including the words “coordination chamber” or “development chamber”, to designate any person, body or enterprise other than a coordination and development chamber within the meaning of this chapter.

1990, c. 13, s. 147.

## CHAPTER XI

### GUARANTEE OF PAYMENT FOR AGRICULTURAL PRODUCTS

**148.** For the purposes of this chapter, “certified association” means a certified association within the meaning of the Farm Producers Act (chapter P-28).

1990, c. 13, s. 148.

**149.** The Régie may, by regulation,

(1) determine in which cases a person, other than a consumer, or a partnership that buys or receives an agricultural product designated by the Régie from a producer, either directly or through an agent, is required to deposit with the Régie, a marketing board or any other person designated by the Régie a guarantee of financial liability to secure payment of the amounts due to the boards or to the producers for the marketing of their products;

(2) fix the amount of guarantee exigible under paragraph 1, or establish standards which allow fluctuations in the amount of business transacted to be determined and taken into account;

(3) determine the requirement, other than deposit of the guarantee, which any person or partnership must fulfil to obtain a guarantee certificate or the renewal of a guarantee certificate, and the information and documents the person or partnership must furnish;

(4) determine the duration of the certificate and establish the fee exigible for its issue or renewal;

(5) determine the form or content of any certificate which it may issue to attest that a guarantee of financial liability has been deposited;

(6) determine the requirements to be fulfilled and the procedure to be followed by a producer or a marketing board so that a guarantee of financial liability may be applied to the payment of a debt, the time when such guarantee becomes exigible and the percentage of such debt the producer or marketing board will be entitled to claim;

(7) require the operator of an establishment referred to in paragraph *c* of section 30 of the Animal Health Protection Act (chapter P-42) to insure the animals kept by the operator in that establishment and determine the risks to be insured and the amount of the insurance.

The powers of the Régie under subparagraphs 1, 2, 3 and 6 of the first paragraph are exercised in the absence of an agreement homologated by the Régie, or of an arbitration award or a decision by the Régie made in lieu of an agreement, providing for the deposit of a guarantee of financial liability.

1990, c. 13, s. 149; 2000, c. 40, s. 44; 2006, c. 44, s. 2.

**149.1.** The Régie may, in a regulation made pursuant to section 149, allow, without invalidating any obligation imposed pursuant to paragraph 1 of section 149, any person or partnership to deposit with the Régie a guarantee of financial liability to secure payment of the amounts due to the producers for the marketing of their products.

1999, c. 50, s. 30; 2006, c. 44, s. 3.

**149.2.** The Régie may make a regulation requiring security to be given in the form of an insurance policy issued by the Régie for the purpose of guaranteeing the payments of the amounts owed or that may become payable by a milk dealer to producers or to the body responsible for the administration of a joint plan.

“Milk dealer” means any person purchasing or receiving milk or cream from a producer to resell it, to convert it for commercial purposes into other dairy products or to extract by-products therefrom.

1999, c. 50, s. 30.

**149.3.** The Régie may, in a regulation made pursuant to section 149.2,

(1) fix the security required according to the value of the products purchased or delivered to a milk dealer;

(2) establish standards permitting the fixing of the amount or value of the products purchased or delivered to a milk dealer;

(3) determine the qualifications required of a person applying for security in the form of an insurance policy, the requirements to be fulfilled and the information to be furnished by the person;

(4) fix the term of the security;

(5) determine the rates and the terms and conditions of payment of the premiums payable by milk dealers;

(6) establish the requirements to be fulfilled by the producer or marketing board to claim against the security;

(7) determine the maximum value of the products covered by the security.

1999, c. 50, s. 30.

**149.4.** The Régie shall deposit the premiums collected under a regulation made pursuant to section 149.2 with the Caisse de dépôt et placement du Québec on the conditions agreed between them; the premiums and the net revenue derived therefrom must be used exclusively for the payment of claims under the security.

1999, c. 50, s. 30.

**149.5.** The Minister of Finance, with the authorization of the Government and on the conditions the Government determines, may advance to the Régie the sums necessary to perform its obligations under the security referred to in section 149.2.

The sums necessary for the purposes of this section shall be taken out of the Consolidated Revenue Fund.

1999, c. 50, s. 30.

**150.** No person or partnership referred to in paragraph 1 of section 149 or bound by an agreement homologated by the Régie, or an arbitration award or a decision by the Régie made in lieu of an agreement, providing for the deposit of a guarantee of financial liability, may buy or receive an agricultural product from a producer, directly or through an agent, if the required guarantee of financial liability has not been deposited by that person or partnership.

No person shall act as a milk dealer without having given security in the form of an insurance policy issued pursuant to section 149.2.

1990, c. 13, s. 150; 1999, c. 50, s. 31; 2006, c. 44, s. 4.

**151.** The Régie may, after giving the interested parties the opportunity to present observations, exempt a person, a group of persons or certain transactions from the effects of a regulation made under section 149.

1990, c. 13, s. 151; 1997, c. 43, s. 394.

**152.** The Régie may revoke a certificate or suspend it for any length of time it determines if the holder no longer fulfils the requirements prescribed for its issue.

1990, c. 13, s. 152.

**153.** Before revoking or suspending a certificate, the Régie must notify the holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the holder at least 10 days to present observations.

However, the Régie is not bound by the requirements prescribed by the first paragraph where it suspends a certificate for not more than 15 days if it has reasonable grounds for believing that the holder is or is about to become insolvent.

The Régie shall send a certified copy of its decision, stating the grounds upon which it is based, by registered mail to the interested person and to the marketing board concerned or to the certified association, as the case may be.

1990, c. 13, s. 153; 1997, c. 43, s. 395; I.N. 2016-01-01 (NCCP).

**154.** A marketing board may pass a by-law to set up a fund to guarantee payment of all or part of any sum due to producers following the marketing of the product marketed under the plan it administers, and fix the terms and conditions governing the management of the fund.

The by-law may provide for

(1) the imposition of and methods of collecting from the producers contributions required to set up the fund;

(2) classification of producers into groups and the level of contribution to be paid by each producer according to the group to which he belongs;

(3) the requirements a producer must fulfil and the procedure he must follow to file a claim with the fund, and the percentage of the debt owed to him he will be entitled to claim;

(4) the time when the claim of a producer becomes exigible;

(5) the possibility for the board to pay a producer advances from the fund, toward the payment of his claim;

(6) the possibility for the board to determine the proportion of his claim to be received by each creditor when funds are insufficient to cover the claims of all the producers;

(7) the procedure applicable to the winding up of the fund.

The by-law shall be submitted for ratification to a general meeting of the producers subject to the plan held for that purpose.

1990, c. 13, s. 154.

**155.** A certified association may, by by-law, exercise the same powers in respect of all the farm producers it represents as those granted to a general meeting of producers under section 154, with the necessary modifications.

1990, c. 13, s. 155.

**156.** By-laws passed under section 155 require the approval of the Régie, which may assess the opinion of the producers in any manner it considers appropriate.

Every by-law so approved shall come into force on the date of its publication in the *Gazette officielle du Québec*, or on any later date determined by the Régie.

1990, c. 13, s. 156; 1992, c. 28, s. 20.

**157.** Sums collected from producers by a marketing board or certified association to set up a fund pursuant to section 154 or 155, shall be deposited with the Caisse de dépôt et placement du Québec on the conditions agreed between them.

The sums and the net revenue produced by them must be used exclusively for the payment of debts due by the fund and its administration costs.

No money may be withdrawn from the fund without the prior authorization of the Régie.

1990, c. 13, s. 157.

**158.** A marketing board or certified association shall be subrogated in the rights of a producer against a debtor for any debt paid out of the fund set up under section 154 or 155, and may recover from the debtor the sums paid on his behalf to the producer.

A marketing board or certified association may also pursue the remedies of a producer for the purpose of realizing upon a guarantee deposited under paragraph 1 or 2 of section 149.

1990, c. 13, s. 158.

**159.** The Régie, of its own initiative or at the request of a marketing board or certified association, may, by regulation,

(1) require any person other than a consumer who buys or receives an agricultural product from a producer, to withhold all or part of the contributions imposed under sections 154 and 155 from the price or value of the product to be paid to the producer, and remit the amount withheld to the board or association on behalf of the producer according to the terms and conditions prescribed;

(2) determine the information which must be furnished in respect of the amounts so withheld;

(3) fix and adjust the rate of interest payable where a person referred to in paragraph 1 is late in remitting a contribution to the marketing board or certified association.

1990, c. 13, s. 159.

**160.** Every person subject to a regulation made by the Régie under section 159 shall be liable to the marketing board or certified association for the amount of contributions which he should have withheld or remitted to it. He must also pay interest annually at the rate fixed in the regulation.

1990, c. 13, s. 160.

**161.** The Act respecting deposits with the Bureau général de dépôts pour le Québec (chapter D-5.1) does not apply to the Régie in respect of any amount it receives for or on behalf of producers in execution of a guarantee of financial responsibility furnished under section 149.

1990, c. 13, s. 161; 2016, c. 7, s. 183.

**162.** The Insurers Act (chapter A-32.1) and the Act respecting the distribution of financial products and services (chapter D-9.2) do not apply to the Régie or its members, to a marketing board or a certified association, or to their directors, officers and employees to the extent that they perform acts which relate to security issued in the form of an insurance policy pursuant to section 149.2 or to a fund established under section 154 or 155.

1990, c. 13, s. 162; 1989, c. 48, s. 257; 1998, c. 37, s. 578; 1999, c. 50, s. 32; 2018, c. 23, s. 811.

## CHAPTER XII

### INVESTIGATIONS AND INSPECTIONS

**163.** The Régie, or any person authorized by it, may investigate any matter relating to the production and marketing of an agricultural product and may require information from a marketing board or from any person or partnership concerning any matter to which this Act applies.

1990, c. 13, s. 163.

**164.** The Régie may, by regulation, require persons engaged in the production or marketing of an agricultural product, including marketing boards, to keep, for any length of time it determines, the books and registers it prescribes, to make reports to it and to provide it with information respecting their operations.

1990, c. 13, s. 164.

**165.** The Régie may, with the signature of its secretary or one of the members, summon any person for examination and require the filing of documents useful for the conduct of an investigation or any matter brought before it.

The secretary or a member of the Régie has the power to require any person examined by the Régie to take an oath.

1990, c. 13, s. 165; 1997, c. 43, s. 396; 1999, c. 50, s. 33.

**166.** Any person authorized by the Régie to make an investigation may



(1) stop a motor vehicle or other conveyance when he has reasonable grounds for believing that it is transporting an agricultural product, enter it and inspect the product;

(2) at any reasonable time, enter the office of a marketing board or an establishment or premises used for producing or marketing an agricultural product or the office of an undertaking producing or marketing an agricultural product, inspect the product and obtain a sample of it.

1990, c. 13, s. 166.

**167.** Any person authorized by the Régie to make an investigation or an inspection may, at any reasonable time, examine the books, registers or other documents relating to the production or marketing of an agricultural product and take extracts from or copies of them.

1990, c. 13, s. 167.

**168.** In the absence of any evidence to the contrary, every person in possession of an agricultural product in a quantity that exceeds the needs of his own consumption is presumed to intend it for sale.

1990, c. 13, s. 168.

**169.** A marketing board may appoint a person to make such investigations and verifications upon the producers subject to the plan it administers as may be necessary for the purposes of the plan, by-laws, homologated agreements and arbitration awards.

The person appointed may, at any reasonable time, enter an office, establishment or premises if he has reasonable grounds for believing that such place is used for the production of the product marketed under the plan, examine the production areas and the product, examine the books, registers or documents relating to the production and take extracts from or copies of them.

1990, c. 13, s. 169.

**170.** No person may, in any way, hinder a person authorized by the Régie or a marketing board to make an investigation or an inspection, or mislead him by inaccurate or false statements, or refuse to make available to him the books, registers or documents he is permitted to examine under this Act.

A person authorized by the Régie or a marketing board to make an investigation or an inspection shall, on request, identify himself and exhibit a certificate attesting his authority signed by the chairman of the Régie or of the marketing board, as the case may be.

1990, c. 13, s. 170.

## CHAPTER XIII

### WINDING UP

**171.** Where a plan is terminated by the Régie, the marketing board responsible for the administration of the plan shall continue to exist for the sole purpose of winding up its affairs. Within 30 days after the termination of the plan, the Régie shall appoint a liquidator who shall be entitled to immediate possession of the property of the marketing board.

1990, c. 13, s. 171.

**172.** The Régie shall, without delay, publish notice of the appointment of the liquidator in the *Gazette officielle du Québec* and in a farm journal having general circulation.

Any action or proceedings against the property of the marketing board must be suspended upon publication of the notice.

The costs incurred by a creditor after he or his attorney becomes aware of the winding up, shall not be collocated out of the proceeds of the property of the marketing board that are distributed in consequence of the winding up.

Nevertheless, a judge of the Superior Court in the district in which the corporate seat of the marketing board is located may, on such conditions as he considers proper, authorize the institution of proceedings or the continuance of any proceedings commenced.

1990, c. 13, s. 172; 1999, c. 50, s. 34.

**173.** The liquidator shall furnish to the Régie any information it may require respecting the affairs and the winding up of the marketing board.

The Régie may replace any liquidator who has become unable to perform his duties.

It may also take any step it considers necessary to ensure the protection of the rights of interested persons and the orderly liquidation of the property of the marketing board.

1990, c. 13, s. 173.

**174.** For the purposes of the winding up, the liquidator shall have all the powers mentioned in section 10 of the Winding-up Act (chapter L-4).

1990, c. 13, s. 174.

**175.** The liquidator shall pay the debts of the marketing board and the costs of winding up. He shall distribute the balance proportionally among the producers who were subject to the plan during the two years preceding the date of its termination, according to the terms and conditions fixed by the Régie.

However, when a new plan intended for the same group of producers replaces the cancelled plan, the liquidator shall remit to the new marketing board the balance resulting from the winding up.

1990, c. 13, s. 175.

**176.** When the winding up is completed, the liquidator shall submit a report to the Régie, and shall hand over to it the documents of which he took possession at the time of his appointment.

1990, c. 13, s. 176.

**177.** When the winding up is completed, the Régie shall cause a notice of the dissolution of the marketing board to be published in the *Gazette officielle du Québec*. From the date of the publication, the marketing board is dissolved.

In the case of a body designated under section 50, the notice shall indicate that the body has ceased to act in its capacity as administrator of the plan.

1990, c. 13, s. 177.

**178.** The provisions of sections 171 to 177 apply, with the necessary modifications, where the Régie terminates the activities of a coordination and development chamber.

1990, c. 13, s. 178.

## TITLE IV

### MARKETING OF FISH PRODUCTS

#### CHAPTER I

##### GENERAL PROVISIONS

**179.** This Title applies to the marketing of fish products.

1990, c. 13, s. 179.

**180.** “Fish product” means any marine mammal, fish, shellfish, crustacean, echinoderm, any part of such animals and any product derived therefrom.

1990, c. 13, s. 180.

**181.** The provisions relating to the marketing of agricultural products apply, with the necessary modifications, to the marketing of fish products, subject to the provisions of Chapter II.

1990, c. 13, s. 181.

**182.** The body responsible for administering a joint plan for the marketing of a fish product is a fishermen’s marketing board. It has the same powers and shall assume the same obligations in respect of fish products as a producer marketing board in respect of the marketing of the agricultural product marketed under the plan it administers.

1990, c. 13, s. 182.

**183.** A coordination and development chamber established for a fish product has the same powers and exercises the same functions as a coordination and development chamber in respect of the marketing of an agricultural or food product.

1990, c. 13, s. 183.

#### CHAPTER II

##### SPECIAL PROVISIONS

**184.** A joint plan may have as its object the marketing of a fish product originating from a designated landing site or harvested according to a determined method or intended for a specified purpose or particular buyer.

1990, c. 13, s. 184.

**185.** The draft plan shall indicate the landing site from which the product originates, the method according to which the product is harvested or the buyer or purpose for whom or which it is intended.

1990, c. 13, s. 185.

**186.** To come into force, a draft joint plan must be approved by

(1) the majority of the fishermen who have voted;

(2) the fishermen whose landed catches represent, in weight, more than half the landed catches of the product subject to the draft plan.

The approval is valid only if not less than half the interested fishermen have voted and if the weight of the products landed by them is equal to more than half the total weight of the fish product subject to the draft plan.

1990, c. 13, s. 186.

**187.** Any resolution to approve a proposal to amalgamate joint plans shall be adopted by a majority of two-thirds of the fishermen present.

1990, c. 13, s. 187.

**188.** The Régie shall, by regulation, establish the basis and method of computing the weight of fish products for the purposes of section 186.

1990, c. 13, s. 188.

**189.** No person or body may use the designation “fishermen’s marketing board” to designate any person, body or undertaking other than a fishermen’s marketing board within the meaning of this Title.

1990, c. 13, s. 189.

**190.** No fishermen’s marketing board may establish quotas for the marketing of a product marketed under the joint plan it administers.

1990, c. 13, s. 190.

**191.** Where Titles II and III provide that a notice shall be published in a farm journal, it shall, for the purposes of this Title, be published in a journal having general circulation in the territory covered by the notice.

1990, c. 13, s. 191.

### TITLE IV.0.1

#### MARKETING OF WILD FUR

1998, c. 48, s. 2.

**191.0.1.** This Title applies to the marketing of wild fur.

1998, c. 48, s. 2.

**191.0.2.** The expression “wild fur” means the pelt of an animal that may be hunted or trapped under a regulation made pursuant to section 56 of the Act respecting the conservation and development of wildlife (chapter C-61.1).

1998, c. 48, s. 2.

**191.0.3.** The provisions of Titles I to III and of Title V of this Act apply, adapted as required, to the marketing of wild fur.

1998, c. 48, s. 2.

**191.0.4.** The body responsible for the administration of a joint plan for the marketing of wild fur is a marketing board. It has the same powers in respect of the product and assumes the same obligations as the producers’ board in respect of the marketing of the agricultural product it administers.

1998, c. 48, s. 2.

**191.0.5.** The coordination and development chamber established for the marketing of wild fur has the same powers and exercises the same functions as a coordination and development chamber in respect of the marketing of an agricultural or food product.

1998, c. 48, s. 2.

**191.0.6.** No person or body may engage in the marketing of wild fur while holding himself, herself or itself out as a marketing board referred to in this Title unless that person or body is such a marketing board.

1998, c. 48, s. 2.

**191.0.7.** Where Titles II and III provide that a notice must be published in a farm journal, the notice must be published, for the purposes of this Title, in a journal having general circulation in the territory covered by the notice.

1998, c. 48, s. 2.

## TITLE IV.1

### PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

1997, c. 43, s. 397.

**191.1.** Any interested person may contest a decision made by the Régie under section 29, 30 or 41, the second paragraph of section 111 or section 152 before the Administrative Tribunal of Québec within 30 days of notification of the decision.

1997, c. 43, s. 397; 1999, c. 50, s. 35.

## TITLE V

### PENAL PROVISIONS

1992, c. 61, s. 413.

**192.** Every person other than a producer or fisherman who seeks to hinder the establishment or administration of a joint plan or seeks to prevent a producer or fisherman from participating in the establishment or administration of a joint plan is guilty of an offence and is liable to the penalties prescribed in section 193.

1990, c. 13, s. 192.

**192.1.** Every person who markets grain knowing that its specifications do not correspond to the specifications entered on a grain grading or grain inspection certificate issued under section 40.3 is guilty of an offence and is liable

- (1) for a first offence, to a fine of not less than \$1,000 nor more than \$20,000;
- (2) for any subsequent offence, to a fine of not less than \$2,000 nor more than \$40,000.

1999, c. 50, s. 36.

**192.2.** Every milk dealer, distributor or food retailer who sells or offers for sale milk intended for consumption at a price that the dealer, distributor or retailer knows to be lower or higher than the price fixed by the Régie pursuant to section 40.5 is guilty of an offence and is liable to the penalty provided in section 193.

1999, c. 50, s. 36.

**192.3.** Every milk dealer, distributor or food retailer who grants to a person to whom the dealer, distributor or retailer sells or delivers a dairy product, goods, the right to obtain goods, a premium or an advantage, in consideration of the sale or delivery or of any sale or delivery including a dairy product knowing that a direct or indirect result therefrom will be a reduction in the price of the dairy product in relation to the price fixed by the Régie in accordance with this Act is guilty of an offence and is liable to the penalty provided in section 193.

1999, c. 50, s. 36.

**193.** Every person who contravenes any of sections 67, 147, 150, 170, 189 and 191.0.6 or who contravenes a provision of a plan, of a by-law made under section 92, 97, 98, 123, 124, 133, 154, 155 or 164, a provision of a regulation of the Régie the contravention of which constitutes an offence, or a provision of a homologated agreement or of an arbitration award, is guilty of an offence and is liable,

(1) for a first offence, to a fine of not less than \$350 nor more than \$2,000 in the case of a natural person, or not less than \$800 nor more than \$4,000 in the case of a legal person;

(2) for any subsequent offence, to a fine of not less than \$650 nor more than \$6,000 in the case of a natural person, or not less than \$1,400 nor more than \$13,000 in the case of a legal person.

1990, c. 13, s. 193; 1998, c. 48, s. 3; 1999, c. 50, s. 37.

**194.** Every person who refuses or neglects to comply with a summons or to file the documents required under section 165 is guilty of an offence and is liable,

(1) for a first offence, to a fine of not less than \$700 nor more than \$2,000 in the case of a natural person, or not less than \$1,600 nor more than \$4,000 in the case of a legal person;

(2) for any subsequent offence, to a fine of not less than \$1,300 nor more than \$6,000 in the case of a natural person, or not less than \$2,800 nor more than \$13,000 in the case of a legal person.

1990, c. 13, s. 194.

**195.** Every person who contravenes a by-law made under paragraph 1 of section 129 or paragraph 1 of section 159, or who purchases a product subject to a plan for a price less than the price agreed upon or fixed pursuant to a by-law made under section 96, shall be liable to the penalty provided in section 193.

Every contravener found guilty of an offence under the first paragraph shall, in addition, be required to pay to the Régie, an amount equal to the amount he has so refused or neglected to withhold or remit or equal to the difference between the price paid and the minimum price or as the case may be, the price agreed upon or prescribed.

1990, c. 13, s. 195.

**196.** No proceedings may be brought under section 195 unless the Régie has sent to the contravener, by registered mail, a notice of not less than 10 days describing the offence and enjoining him to perform his obligations.

Payment of the required amounts within the time fixed in the notice is a bar to penal proceedings.

1990, c. 13, s. 196; I.N. 2016-01-01 (NCCP).

**197.** Where proceedings are brought under section 195 against a person who refuses or neglects to withhold contributions payable to a marketing board or remit to it the contributions withheld from the producers or fishermen subject to a joint plan, it shall be sufficient to prove that the contributions were not

withheld or that the marketing board did not receive the sums that should have been remitted to it in accordance with section 129 to justify a conviction.

1990, c. 13, s. 197.

**198.** The Régie shall distribute the amounts collected under section 195 among the producers or fishermen who did not receive the equivalent of the price, proportionately to their respective losses or, in the case of contributions, it shall remit them to the marketing board to which they belong. However, where the marketing board has made a by-law under section 98, the Régie shall pay the amounts collected to the marketing board so that it may dispose of them in the manner prescribed in the by-law.

1990, c. 13, s. 198.

**199.** When an offence punishable by the penalty prescribed in section 193, 194, 195 or 201 is committed by a legal person, every director or officer of that legal person who prescribed or authorized the commission of the offence or consented to it, is deemed to have participated in the offence and is liable to the same penalty as that prescribed for a legal person, whether or not the legal person has been prosecuted or found guilty.

1990, c. 13, s. 199; 1999, c. 40, s. 192.

**200.** The pursuit of a penal remedy shall not affect the right of any interested person to apply for an injunction.

1990, c. 13, s. 200; 1992, c. 61, s. 414.

**201.** The court may, in respect of any offence under section 94, impose a fine established in consideration of the material damage suffered by all the producers or a class of them as a result of the offence, and the benefits and income gained by the person found guilty of the offence.

1990, c. 13, s. 201.

## TITLE VI

### MISCELLANEOUS AND TRANSITIONAL PROVISIONS

#### CHAPTER I

##### FINAL PROVISIONS, AMENDMENTS AND REPEALS

**202.** The Government may form, for the periods it determines, advisory committees to examine specific problems relating to the production or marketing of agricultural and food products or the marketing of fish products.

The members of advisory committees shall receive no remuneration except in such cases, on such conditions and to such extent as the Government may determine. However, they are entitled, on the conditions and to the extent determined by the Government, to reimbursement for expenses incurred in the performance of their duties.

1990, c. 13, s. 202.

**203.** The provisions of Divisions III and IV of the Regulations Act (chapter R-18.1) respecting publication and coming into force of draft regulations and regulations do not apply to the joint plans, draft by-laws or by-laws which may be made by a general meeting of producers, a marketing board or a certified association or the regulations which may be made by the Régie pursuant to sections 28 and 40.5 and the first paragraph of section 54.

1990, c. 13, s. 203; 1992, c. 28, s. 21; 1999, c. 50, s. 38.

**204.** The Minister of Agriculture, Fisheries and Food is responsible for the administration of this Act.

1990, c. 13, s. 204.

**205.** *(Omitted).*

1990, c. 13, s. 205.

**206.** *(Amendment integrated into c. G-1.1, s. 39).*

1990, c. 13, s. 206.

**207.** *(Omitted).*

1990, c. 13, s. 207.

**208.** *(Omitted).*

1990, c. 13, s. 208.

**209.** *(Amendment integrated into c. P-28, s. 1).*

1990, c. 13, s. 209.

**210.** *(Amendment integrated into c. P-28, s. 39).*

1990, c. 13, s. 210.

**211.** *(Amendment integrated into c. P-30, s. 11).*

1990, c. 13, s. 211.

**212.** *(Amendment integrated into c. P-30, s. 33).*

1990, c. 13, s. 212.

**213.** *(Amendment integrated into c. P-30, s. 35).*

1990, c. 13, s. 213.

**214.** *(Omitted).*

1990, c. 13, s. 214.

**215.** *(Amendment integrated into c. P-30, s. 48.1).*

1990, c. 13, s. 215.

**216.** *(Omitted).*

1990, c. 13, s. 216.

## CHAPTER II

### TRANSITIONAL PROVISIONS

**217.** *(Omitted).*

1990, c. 13, s. 217.



**218.** The term of office of the members and experts of the Régie des marchés agricoles du Québec in office on 11 September 1990 ends on that date; however they remain in office until they are appointed or replaced under this Act.

1990, c. 13, s. 218.

**219.** The personnel of the Régie des marchés agricoles du Québec shall become the personnel of the Régie des marchés agricoles et alimentaires du Québec, without further formality.

1990, c. 13, s. 219.

**220.** The records and documents of the Régie des marchés agricoles du Québec shall become the records and documents of the Régie des marchés agricoles et alimentaires du Québec, without further formality.

1990, c. 13, s. 220.

**221.** Every marketing board responsible for the administration of a plan on 12 September 1990, shall, within 30 days following that date, submit the rules respecting its internal management to the Régie for approval.

1990, c. 13, s. 221.

**222.** Every director of a marketing board who is also a director of an undertaking referred to in section 89 must, not later than 12 December 1990, renounce either his office of director of the marketing board or his office of director of the undertaking.

Failing this, the Régie shall demand formally that he choose one or other of the offices within a fixed time. If he refuses to comply with this demand within the time allowed, the Régie shall declare him removed from the office of director of the plan. Any decision of the board to which this person was a party, taken after he was declared removed by the Régie, shall be null.

1990, c. 13, s. 222.

**223.** Every plan approved, by-law made, agreement homologated or arbitration award rendered under any provision of the Farm Products Marketing Act (chapter M-35) shall continue to have effect until it is repealed, replaced or terminated in accordance with this Act.

1990, c. 13, s. 223.

**224.** Matters pending before the Régie des marchés agricoles du Québec shall be continued before the Régie des marchés agricoles et alimentaires du Québec in accordance with the provisions of the Farm Products Marketing Act (chapter M-35) as they read on 11 September 1990.

1990, c. 13, s. 224.

**225.** Subject to the provisions of section 29 and paragraphs 5, 7 and 10 of section 93 and notwithstanding the first paragraph of section 95, every holder of an individual quota on 12 September 1990 may continue to be the holder thereof until he disposes of it.

1990, c. 13, s. 225.

**226.** The Government may, until 12 September 1993, prescribe by order all or part of the conditions and modalities of production and marketing of the product contemplated in The Québec Milk Producers Joint Plan (1980) (O.C. 769-82, 31 March 1982, 114 G.O. 2, 1313). Such an order shall be binding upon the producers and any persons or partnerships engaged in the production or marketing of the product contemplated in that plan.

The said order shall be considered to be an arbitration award for the purposes of this Act.

Any such order shall cease to have effect three years after the date upon which the first order made under this section came into effect, unless it is terminated by the Government before that time.

1990, c. 13, s. 226.

**227.** Appropriations granted to the Régie des marchés agricoles du Québec shall be transferred to the Régie des marchés agricoles et alimentaires du Québec to the extent determined by the Government.

1990, c. 13, s. 227.

**228.** *(Omitted).*

1990, c. 13, s. 228.

**229.** *(Omitted).*

1990, c. 13, s. 229.

REPEAL SCHEDULE

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 13 of the statutes of 1990, in force on 1 March 1991, is repealed, except sections 217 and 229, effective from the coming into force of chapter M-35.1 of the Revised Statutes.

# Appendix D

## NL Snow Crab Production 2018-2021 (kg)

	2018	2019	2020	2021
Cooked				
Claws	47,460	55,415	137,860	87,165
Parts, shoulders/arms, claws/knuckles	1,377,511	1,500,760	1,463,844	1,474,334
Meat	10,559	4,112	8,927	9,601
Japanese Sections	3,344,974	2,482,974	1,053,050	607,494
U.S. Sections (4 oz +)	453,909	335,876	486,418	696,203
U.S. Sections (5 - 8 oz)	6,788,834	6,899,357	9,949,672	13,975,779
U.S. Sections (8 oz +)	3,138,439	2,657,367	2,372,930	3,312,530
U.S. Sections (10 oz +)	965,835	706,914	446,752	697,540
U.S. Sections (all other sizes)	473,230	243,209	213,007	279,545
Sections, Consumer Pack (all sizes up to 10 lb)	535,327	1,779,289	2,539,416	3,886,961
Raw				
Legs	1,010,492	1,287,714	1,219,802	936,569
Other	632,435	688,332	392,259	658,065
Other				
Snap and eat, secondary processing, whole cooked, etc.	702,678	525,524	924,260	634,153
<b>TOTAL:</b>	<b>19,481,683</b>	<b>19,166,843</b>	<b>21,208,197</b>	<b>27,255,940</b>

**CONFIDENTIAL AND NOT FOR DISTRIBUTION  
PRODUCTION VOLUME, NOT RWE**

# Appendix E

## STANDING FISH PRICE-SETTING PANEL SHRIMP (SUMMER) FISHERY – 2022

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2022, on March 18, 2022. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the “Act”, the Panel set May 2, 2022, as the date by which collective agreement(s) binding on all processors in the province that process Shrimp must be in effect.

The Panel also noted, at the time of setting the Schedule of Hearings, that it had been advised by the Department of Fisheries, Forestry and Agriculture that the Association of Seafood Producers, hereinafter referred to as “ASP”, represented processors that process the majority percentage of the species Summer Shrimp. As a result, under Section 19(11) of the Act, should a hearing be required for Summer Shrimp, the parties appearing before the Panel would be the Fish, Food and Allied Workers’ Union, hereinafter referred to as the “FFAW”, and ASP. Section 19.11(1) of the Act, and regulations made pursuant thereto, require that the decision of the Panel must be in accordance with one of the positions on price and conditions of sale submitted to the Panel by the parties at the hearing. The Panel further advised that no other positions would be accepted by the Panel and should other representatives of this species wish to attend the hearing, concurrence from both parties to the collective bargaining must be obtained.

The hearing, if required, for Summer Shrimp was scheduled to take place on Thursday, June 16, 2022. The Panel convened its hearing for the species Summer Shrimp at 10:00 a.m. on Thursday, June 16, 2022, via WebEX virtual meeting capabilities. Appearing before the Panel were the FFAW and ASP. The parties, having previously exchanged their final offer submissions, and filed copies with the Panel, supported their submissions in main argument and rebuttal.

The parties and the Panel had the benefit of one market report and an April to June market update report, provided by the Department of Fisheries, Forestry and Agriculture, from Gemba Seafood International. The Department also provided data on landings and export value, and recently published articles related to shrimp markets.

In its market update report, Gemba takes a generally positive view of the market and anticipates price increases during the coming months:

*“The shrimp prices in June 2022 shows that the 150-250 pcs/lbs. are traded around 67-68 DKK/kg. The price is expected to increase in the coming months to around 72-73 DKK/kg.” (page 6)*

However, Gemba notes that inflationary pressures are a contributing factor:

*“Information from the market state that the price increase is not driven fully by the shrimp market itself, but by the general upside on prices from suppliers and logistic costs based on expected inflation rates in the society in general.” (page 6)*

Gemba cautions that the level of general inflation has become significant and could potentially result in some product substitution in the UK sandwich market:

*“... the inflation rate has increased from approx. 0.5% in February 2021 to 8 % (EU27) and 9% (UK) in April 2022 which shows that an added cost is put on the general goods prices, also including shrimp.” (page 11)*

*“The price increase has hit the prices on shrimp in the end-user segment. Some operators in the market are aware of the possibility or risk for substitution in the shrimp sandwich market. This may interrupt the positive development in the “Grab and Go” market after the Covid-19 issues is cleared. As shrimp is a premium priced protein source the substitution from shrimp to chicken or vegan products may be paced by the price increase.” (page 12)*

The Gemba report also points out that the Canadian dollar has strengthened in 2022 to date, which could make Canadian shrimp slightly less competitive in European markets:

*“Since January 2022 the USD and EUR gains exchange rate in the first months but at the end of the period sketched out here, there is a net loss of two percentage point on the USD and seven percentage point on the EUR. The GBP follows the CAD for most of the period but loses terrain from March to May 2022 and ends up with an exchange loss of approx. seven percentage point over the period. The long-term and short-term figures illustrates that the strengthening of the CAD against GBP and EUR is significant in March to May of 2022 and is connected to the strong oil export from Canada that strengthens the CAD against these two currencies. The USD, however, is more stable compared to the CAD in these months.” (page 10)*

*“The strengthening of the CAD means that if you were to buy Canadian shrimp for 100 EUR in January 2022 you would need to pay 105 EUR by May 2022. From a Canadian export perspective, the strengthening of the CAD means that it becomes slightly more difficult to sell the shrimp leading to slightly weakened competitiveness for Canadian shrimp exporters.” (page 9)*

In terms of inventory, Gemba indicates that inventory levels are generally low with a roughly three to four month capacity from 2021 remaining. However, they caution that the closure of the Russian shell-on market may create some downward pressure on the cooked and peeled shrimp market in Europe:

*“A price reducing component could be the expected impact from the closed export of shell on to the Russian market. Market informant indicate this extra amount will hit the market in Europe.” (page 6)*

The ASP offer is \$0.90/lb., which is a 18.2% reduction from the minimum price of \$1.10/lb. in summer 2021. They point out that prior to 2015, shrimp prices closely tracked the prices in the Gulf of St. Lawrence and Quebec, but since 2015, the NL prices have almost consistently been the highest of the three, often by a significant margin. They note that this situation was not the result of Panel decisions, as in most cases during the 2015 to 2021 period, the NL price was the result of either agreements between the parties or a Panel decision favoring ASP. Nevertheless, they contend that a serious imbalance has developed which is rendering the shrimp processing sector in NL to be non-viable. Therefore, their proposed price is consistent with the belief that a recalibration of shrimp prices is necessary.

ASP also maintains that the Gemba report has inaccurately portrayed the market in Denmark and the UK over the past several years. They point out that the Gemba report is primarily focused on the Danish market, with an attempt to capture UK trends through conversion of Danish data. In particular they note that NL processors have fundamentally changed their sales focus, especially in 2021, such that the Danish market is now quite a small part of their overall market (down from over 40% to less than 10%) while direct sales to the UK have doubled, from roughly 40% to more than 80% of total sales. In this context, Gemba reports that the Danish market is up nearly 40%, which ASP contends is not credible.

ASP prepared a weighted average market price report comparing the 2021 Summer Shrimp price to the current 2022 market. Based on their standard yield factor of 32.7% and changing the weighting to reflect the actual market shares of the US, UK and Northern Europe in 2021, they generated a summer 2022 price of \$1.19/lb., which they indicated would not be viable for their operations as it would continue the price setting practice which has created an imbalance with the price paid by Canadian competitors and which they claim has resulted in losses in recent years. They also note that the price for smaller shrimp in Oregon, which is a well-established substitute product in the UK, is \$0.76/lb. CAD, compared with a NL price for similar sized shrimp of \$0.99/lb.

The FFAW offer is \$1.365, a 24.1% increase from the 2021 Summer Shrimp price. They note that the Canadian Ministry of International Trade (CMIT) export data shows that prices increased considerably in 2021 versus 2020. They also point out that the Gemba report indicates favorable market conditions for 2022, with prices expected to strengthen during the year. Undercurrent articles are also referenced which suggest that ongoing sanctions against Russia and the continued UK tariffs against Greenlandic product bode well for other producers, including Canada.

In terms of a recent price agreement between harvesters and processors in Quebec, the FFAW estimates that the average price in 2022 will be \$1.40/lb., a 16.7% increase over the 2021 average

price of \$1.20/lb. The FFAW prepared a weighted average market price schedule which compares summer 2021 prices with the current 2022 market situation, using commonly agreed market shares of 15% US, 42.5% UK and 42.5% Northern Europe; this schedule, using a 35% yield factor, produces a suggested 2022 price of between \$1.40/lb. and \$1.45/lb. Although the yield factor was set at 35%, the Union suggests based on informal commentary heard at industry fora that the real yield could be as high as 38-40%.

The FFAW also commented on the inflationary pressures facing harvesters and pointed out that costs have increased significantly, particularly for fuel and insurance. In addition, many harvesters have invested heavily in acquisition of additional quotas, which have resulted in considerable additional debt servicing costs.

The Panel finds itself in a challenging position in weighing the offers of the two parties and making its decision to choose one of the offers presented. The submissions and the commentary of the parties at the hearing suggest that neither of the two positions presented may result in a fishery this summer. The ASP price appears likely to be below the threshold at which harvesters will fish, and the FFAW price appears likely to be above the price at which processors would be prepared to buy to ensure a fishery. The Panel believes it has been presented with a choice between two offers which may not result in a fishery. The Panel notes that during the past several years, Summer Shrimp prices have usually been set by agreement between the parties or by the Panel choosing one of two offers which were relatively close together. In situations like the current one, where the price spread is wide, it would be desirable for the parties to continue bargaining to close the distance between offers so the Panel is presented with two options which are more likely to result in a fishery. Nevertheless, the Panel realizes its mandate is to choose one of the offers which best reflects the available information regarding market conditions, regardless of its implications for the conduct of the fishery.

With respect to the Gemba report, the Panel notes that this company appears to have a good knowledge of the Danish market for Shrimp, but less so for the UK market. The Panel's assessment is that the Gemba prices tend to be inconsistent with the CMIT data related to Newfoundland and Labrador exports of shrimp. To illustrate, Gemba is recording a continuing upward trend in prices in Denmark from December 2020 to June 2022, whereas the CMIT data is showing strong growth in NL exports to Denmark during 2021, but a year to date drop in prices of 12% in 2022. Conversion of the Danish prices from Kroner to Canadian dollars and comparing to the CMIT prices suggests the Gemba prices overstate the market. In terms of Gemba's statement of UK prices, they report that prices were more or less stable during 2020, but trended upwards during 2021 to end the year, some 20% higher. However, CMIT data for NL exports to the UK during 2021 show that on average, prices were roughly equal to those attained during 2020.

The Panel notes that there was a major shift in sales of shrimp from NL directly to the UK in 2021. In the years leading up to 2021 the split of total sales between Denmark and the UK was relatively equal at roughly 40% to each market. In 2021 the sales to the UK exceeded 80% with sales to Denmark



falling below 10%. This may be due to the favorable tariff treatment Canada has with the UK vis a vis the post-Brexit tariffs which the UK levies on Danish shrimp products, and if so, will be likely to persist in 2022. In any case, the Panel believes that additional direct market information on the UK market, the principal market for NL shrimp, would be very beneficial to the parties and the Panel in future collective bargaining.

In terms of the overall market outlook for Summer Shrimp in 2022, there are indications that some positive price growth may occur. To date in 2022 the average price of NL sales to Denmark has declined by approximately 12%, but the average sales price to the UK has risen by 11%. Gemba is projecting anticipated price increases but notes that this will not be fully from the dynamics of the shrimp market, but also from reflection of general inflationary trends which are currently running at 8-9% in the EU and UK. Gemba notes that there could be market resistance, particularly in the UK “grab and go” sandwich market, which could see substitution for alternative proteins. It is also noted that exchange rate shifts, which have been unfavorable to the UK and Denmark vis a vis the Canadian dollar (i.e., a roughly 7% slide from March to May, 2022) could impact the shrimp market as well.

In their price submissions, both parties presented schedules which developed notional Summer Shrimp prices by using the Weighted Average Market Prices of the three key markets (US, UK, and Northern Europe), and applying yield and sharing percentages to calculate 2022 prices based on changes from the 2021 price. The Panel examined and considered these schedules. Several weaknesses were identified which the parties may wish to consider in future submissions. Most notable, the input numbers were inconsistent, particularly with respect to the UK market. The market prices inputted for the UK market were different for each of the parties, not only for summer 2022 but also for summer 2021. It is the view of the Panel that the parties should make every effort to at least be consistent on prior-year figures. In addition, it would be beneficial for the parties to discuss whether the change in relative share for each of the three markets, which has shifted in favour of the UK market, is of a temporary or permanent nature, and whether this shift should be addressed in the development of pricing schedules. A consideration of yield factors would also be beneficial, including the extent to which yields for shrimp vary by season.

The Panel notes that harvesters and processors in Quebec recently submitted price offers for shrimp to the Regie des marches agricole et aliments du Quebec (the Regie) for an expedited decision by final offer selection.

The processors put forward an offer for a roll-over of the 2021 price schedule. Taking into account the typical NL size distribution which both the ASP and FFAW included in their submissions (10.19% for 0-150 count; 23.29% for 151-170 count; 65.9% for 171-200 count), the Quebec processor price offer would amount to an average price of approximately \$1.05/lb. It is possible that a deduction for “tail costs” (4R premium, license fees, offloading, transportation, Workers Compensation, and EI premiums) which are paid in NL but not in the Maritimes would further reduce the comparative price in relation to NL conditions of sale, although it is not clear whether certain NL restrictive policies (e.g.,

trip limits; delayed sailing) might result in at least a partial offset of costs. ASP indicated that “tail costs” would amount to \$0.16-0.17/lb.; the FFAW suggested that there would be offsets against these costs to compensate for more restrictive policies in NL but did not quantify these factors. The Quebec harvesters put forward a price offer which would equate, based on the above size distribution, to a NL price of \$1.44 before possible offsets for “tail” costs. The Regie selected the price offer of the Quebec processors.

Shortly following the Regie decision, the Quebec industry concluded that the price would not be adequate to enable a fishery. Consequently, the harvesters and processors negotiated a compromise agreement, which would equate to a NL price of approximately \$1.30 before possible offsets for “tail” costs.

Under final offer selection, the Panel may only choose one of the two offers to set the minimum price for Summer Shrimp. As the parties are aware, processors/buyers may pay more than the minimum price, but not less. The Panel is strongly of the view that the appropriate price for Summer Shrimp in 2022 is between the price offers of the parties.

Having reviewed the submissions and considered the available market information, it is the decision of the Panel to accept the ASP offer. This decision was a challenging one and, for the first time this year, the decision was not unanimous.

The Panel notes that this decision should not be construed as a declaration on recalibration of Summer Shrimp pricing or of overall sharing going forward, but rather is a decision to choose one of two disparate offers. The Panel has been unable to find adequate evidence that a 24% price increase is warranted, especially in light of the growing threat of recession as well as the significant trend downwards in the value of UK and Danish currencies in relation to the Canadian dollar.

Effective midnight on June 27, 2022, the average minimum price for the species Summer Shrimp, based upon 2022 summer size distribution, will be:

- \$0.90/lb. for shrimp landed at the plant.
- \$0.87/lb. for trucked shrimp.

These prices will form a collective agreement or part of a collective agreement binding on all processors that purchase the species Summer Shrimp.

Dated at St. John’s, NL, this 27<sup>th</sup> day of June, 2022.

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David Lewis

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Bill Carter

# Appendix F

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**KEITH SULLIVAN**  
*President*

**DAVID DECKER**  
*Secretary-Treasurer*

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July 25, 2018

Honourable Gerry Byrne  
Department of Fisheries and Land Resources  
Petten Building, 30 Strawberry Marsh Road  
St. John's, NL A1B 4J6

**Re: Greater transparency in the fish processing sector**

Dear Minister,

At our last meeting we discussed with you challenges in collective bargaining that result from a lack of transparency on the part of fish processors. This lack of transparency forces the Fish Price Setting Panel to use outdated, incorrect, and incomplete information and stats in making decisions, which undermines the entire Panel process. This was apparent in several Panel decisions in 2017 and 2018. In June we also discussed the role that processing companies play in controlling agreements and steps that the Province could take help enforce owner-operator and fleet separation.

Attached to this letter is a memo to you outlining steps the Province could take to support owner-operator and improve transparency and fairness in the fishery collective bargaining process. We have provided detailed explanations and specific recommendations to clarify our requests and the reasons for which they are made.

We look forward to further discussing this with you at your earliest convenience. Please do not hesitate to contact us with any questions that you may have.

Thank you for your attention to this important matter.

Yours truly,

Keith Sullivan  
President, FFAW-Unifor

## **Suggested Changes to the Licensing Conditions for Fish Processing in Newfoundland and Labrador**

Dear Minister Byrne,

Further to our conversation at our last meeting, this memo sets forth FFAW's suggested changes to licensing conditions for fish processing. It is our position that these changes will greatly benefit the sustainability of the inshore fishery and the coastal communities from where it is based. It is also our position that these changes will vastly improve collective bargaining; the current structure of the collective bargaining system – the Standing Fish Price Setting Panel – is very good, however the lack of accurate information being disclosed by processors undermines the credibility of the Panel's decisions.

The proposed changes detailed in this memo are designed to bring back balance to the collective bargaining process. The changes are not an attempt to require each individual processing company to divulge sensitive information to FFAW. With the exception of the owner-operator requests, we are seeking industry-wide information that provides accurate data on yield and prices for the NL processing sector, and not specific information from specific processors.

Included as Appendix "A" to this memo is an outline, though not exhaustive, of the information that should be provided by the processing sector to improve fairness in collective bargaining. As stated, this is not exhaustive and it is likely that other categories of information should also be considered.

### *Requiring Processing Companies to Respect Owner-Operator and Fleet Separation*

While Owner-Operator and Fleet Separation policies were created by the federal government, the policies biggest impacts are felt by the province. Both policies are established to ensure that those who live closest to the resource are the primary beneficiaries of the resource. The policies are directed specifically at processing companies, as fleet separation explicitly prohibits processing companies from acquiring fishing licenses and establishing vertical integration of the inshore fishery. Owner-operator further strengthens fleet separation by requiring that the license holder be present on the vessel when the quota attached to his/her license is being fished. This policy forbids resource rent and ensures that only active harvesters benefit from the right to harvest fish.

For the past twenty-five years, processing companies have been engaged in an ongoing effort to undermine or circumvent owner-operator and fleet separation. This has been done through a variety of legal instruments, all of which have the same effect of vesting the controlling interest of an inshore fishing license to the name of the processing company. For example, the recent *Elson* case heard in federal court involved a fishing license under the control of the Quinlan Brothers. In this case, Quinlan Brothers retained all control over the license, including when it was fished, who fished it, and when and how the license could be sold. In fact, if Mr. Elson died, Quinlan Brothers retained control over how Mr. Elson's estate could sell the license.

Quinlan Brothers are not the only processing company engaged in this activity. It is strongly believed that OCI and Royal Greenland also have harvesters in controlling agreements. In fact, Royal Greenland is thought to have the largest number of harvesters under controlling agreement, placing a sizable percentage of the inshore crab quota under its direct control.

Processing companies are able to establish these restrictive agreements in part because they are not subject to federal jurisdiction. The companies are not required to make a sworn statement, which carries the weight of law, attesting that they do not have harvesters in controlling agreements. Other tools for enforcement, such as strict auditing rules for processing companies, should also be considered.

Harvesters, however, have no jurisdictional shelter. Most harvesters are passive actors in a controlling agreement – it provides them with the opportunity to fish and earn some income – but they are not the driving force behind the agreement, nor are they the one in control. Despite this secondary role in the agreement, harvesters are the primary target of DFO. It is the harvester that gets placed before the licensing review board and whose future to earn a living from the sea is placed into doubt.

Meanwhile the processing company remains legally unscathed and can move on to the next controlling agreement. No one questions its role in the agreement or penalizes them for contravening a regulation.

The most distressing aspect of controlling agreements is how pervasive they are now in our fishery. Processing companies control a greater share of the inshore fishery with every year that passes and they are not held to account. The impact has been terrible for the fishery – the price of licenses is incredibly inflated, creating significant barriers for new entrants. These new entrants are the future of our fishery and rural NL. The pervasiveness of controlling agreements is setting up an environment whereby the next generation of harvesters will not see the benefits of owner-operator and processing companies will control the plants and the quota in the ocean.

Compounding this problem is that controlling agreements will exist in perpetuity because the company will not die and thus will never have to relinquish control. A controlling agreement essentially removes a license from the inshore fleet, moving it to a hidden asset of the company.

When Royal Greenland sought to acquire Quin-Sea in 2016, FFAW wrote the province stressing the numerous controlling agreements held by Quin-Sea that would now belong to a crown corporation of another country. We made this point not just to single out Royal Greenland, but also to bring attention to the role that the province can take in helping eliminate controlling agreements. Our concerns were not addressed at that time, but the issue is still pressing.

As the federal government takes steps to make owner-operator and fleet separation law, it is essential that the province reciprocate and close off any jurisdictional loopholes that will allow controlling agreements to continue.

**Recommendation: That all current and future holders of a license to process fish in Newfoundland and Labrador provide to the Department of Fisheries and Land Resources an affidavit, signed and sworn by the owner or CEO of the company, stating that the company and all of its subsidiaries are not a party to any controlling agreements, as defined by the Department of Fisheries and Oceans Policy for Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries. Operating licenses should also allow the province to use other tools, such as auditing, to enforce these new processing license conditions.**

### Processing Yields

The yield achieved by companies in the processing of fish is a fundamental issue for fair collective bargaining. Fish harvesters are paid a per pound price that is based both on the market and on the amount of product that a processor can produce from a pound of raw material.

For example, the yield accepted by the Panel in shrimp is 32.5%. This means that a company must process just over 3 pounds of raw material to produce one pound of shrimp for the market. The yield factors heavily into negotiations because it gets to the real cost of raw material on the processing side. Thus, it costs the processor \$4.50 (assuming a price of approximately \$1.45 per pound to harvesters) to produce a pound of shrimp. This cost makes sense in the current market where the price of shrimp to the market is over \$7.25 per pound.

The overall value of the above calculation is entirely dependent on the accuracy of the yield that is used. But the yield used in shrimp price collective bargaining is not accurate. This is a yield presumption that has been in place for almost 20 years, ignoring all advancements in processing and harvesting technology that have helped improve the yields attained by the companies in their pack-out.

The actual yield in the shrimp fishery is actually closer to 40%. This is accepted with a wink and a nod in the industry but never confirmed in any official capacity by the processors. As the processors are the only ones with this information, their refusal to disclose it means that the Standing Fish Price Setting Panel is confined to using outdated yield numbers that were agreed to by the parties in the 1990s.

Processors have been resistant to disclose any information on yield, which indicates that the yield information that is currently accepted in collective bargaining is inaccurate to their benefit (we are certain that if the yield percentages used in collective bargaining were too high the processors would seek a revision downwards).

Yields have a tremendous impact on the fairness of price negotiations and Panel decisions. To again use the example of shrimp, if the actual yield is 40%, then the cost to the processor to produce a pound a shrimp (assuming the same per pound price of \$1.45 to the harvester) decreases from \$4.50 to \$3.63. Under this scenario, which is likely fairly accurate, the harvester share of a \$7.25 marketplace is quite low. The harvester share drops from 62% in the previous example to 50% in the current example. A 50% share for harvesters has never been an acceptable benchmark in the shrimp fishery.

The impact of using inaccurate yields in collective bargaining is best understood on a macro level. In 2015, shrimp harvesters landed 80 million pounds of shrimp at an average price of \$1.76 per pound. The total landed value was \$146.2 million. The average per pound market price in 2015 was approximately \$8.06. Total exports based on 80 million pounds would be \$644 million.

At a yield of 32.5%, the raw material cost for shrimp to processors in 2015 was \$449.8 million. If a 40% yield was rightly applied, raw material costs would be \$365.5 million. The difference between the two figures based solely on yield is \$84.3 million, of which harvesters received no share despite harvester efforts over the years at improving quality and yield in the shrimp fishery.

Shrimp is just one example. Determining actual yield dominates collective bargaining in the crab fishery as well. Processors insist on a yield of 62% for snow crab, which was put in place in the 1990s. In studying crab processing in other jurisdictions where the processing equipment is similar, we know that

the yield for snow crab is in excess of 70%. The cost to harvesters because of this incorrect figure is easily tens of millions of dollars per year.

The lack of transparency on yields in the fishery is creating an unfair collective bargaining environment, which deprives harvesters of tens of millions of dollars, perhaps over a hundred million, on an annual basis. This is allowed to go on because there is nothing to compel transparency and the meaningful exchange of information in the collective bargaining process.

The Panel is frustrated by the ongoing arguments over yield, but it refuses to make a determination on the issue because it has no evidence to support making a change. Still, the Panel knows it needs to be sorted out. As one Panel member noted this year, “the yield issue has to be sorted out. This is a pretty fundamental question.”

Aside from collective bargaining, transparency on yields would be beneficial to the industry, in general. Processing companies in this province operate in secrecy from harvesters and each other. A plant has no outside benchmark upon which to gauge whether it is efficient or inefficient. The disclosure of yield information would allow plants to make comparisons against each other and develop the best practices used by other plants in achieving a strong yield.

**Recommendation: That, as a condition of license, all processing companies must disclose to the provincial government on an annual basis the yield they achieve for each species of fish they process. Overall industry information on yield shall be made available to all parties in the collective bargaining process.**

### Product Types

Negotiations and panel decisions are often made using one product type as being indicative of the market. For example, in crab the price is set by 5-8 ounce sections, and in shrimp it is made using 150-250 and 250-350 count shrimp. This is done year-over-year regardless of whether these product types are actually indicative of what was produced by processors over the past year.

In the snow crab and cod production reports, we are provided with a detailed breakdown of the various products and volumes produced in the province. This sort of breakdown is needed for all species.

Shrimp provides an excellent example of why detailed production reports need to be provided. In shrimp, there is an increasing price gap between larger and smaller shrimp. We have argued that our shrimp is relatively large and is used in pack outs of 125-175 count, which are much more valuable than pack outs of 250-350. The province, however, does not track this information and the processors will not disclose it. This needs to be disclosed so that harvesters can negotiate, and the Panel can deliberate, with a clear idea of the markets that are being served.

**Recommendation: That, as a condition of license, all processing companies must disclose to the provincial government on an annual basis the product forms it produces and the volume of these various product forms. Overall industry information on product forms shall be made available to all parties in the collective bargaining process.**

### Export Prices for Various Products

In both collective bargaining and at the Panel the parties rely heavily on export values. While exports can serve as a guide to the overall value of a fishery, they do not provide a breakdown for specific products. Export identifiers often together various products under one category, which blurs the actual value achieved in the export market for valuable products.

Cod provides a good example of how this is a challenge. In 2017 the value of cod exports increased by \$8 million over 2016 from a combination of increased quantity and value. All market indications pointed to further price increases in 2018. Under such circumstances, it was reasonable to expect that harvesters would receive a price increase to account for the stronger market.

However, the export table was both vague and confusing. This province produces a lot of high value once-frozen cod loins that are exported to the UK and France, but there was no line in the export table with that product. Instead, it was lumped in with other less valuable products, which hid the increased value achieved in 2017 for once-frozen loins. Processors were completely unwilling to turn over any specific export values for various products.

The Panel was left to operate in the dark. They had no information that addressed cod prices from this province. In the end, despite a clear international forecast for increased prices, the Panel was cautious and accepted a rollover of last year's price. If the real facts on the export values were disclosed, this same decision would not have been made.

There is no reason why the actual value received for specific products in the export market should not be disclosed. The value of exports is intended to be transparent, but in the fishery the transparency is lost in categorization and product grouping. The province can rectify this problem by requiring processors to disclose export values by individual product type.

**Recommendation: That, as a condition of license, all processing companies must disclose the value they receive in the export market for the various products produced by the plant. Overall industry information on export values for specific product forms shall be made available to all parties in the collective bargaining process.**

### The Value of Products Sold Domestically

For domestic sales, there is no information disclosed by the processing company. For certain fisheries, like mackerel, squid, and capelin, where large volumes are sold domestically, this leaves a large information gap that is very difficult to fill. Often times, we are required to make an educated guess as to the value of domestic sales, which usually results in the processing company saying there's no proof of this assertion.

The challenge from having no information on domestic sales is clear in capelin. In the capelin fishery, millions of pounds are sold domestically every year. We have long held that this capelin has a value and should be added to the export value to get an overall value for the capelin fishery.

Processing companies have fully resisted attributing any value to this capelin. In fact, at negotiations this year the companies tried to argue that this capelin actually had to value to processors and was instead sold or disposed of at a loss. This is a dubious assertion but it is impossible to disprove as no information is available.



Domestic sales information is also important with respect to bait prices in the squid and mackerel fishery. Every year at negotiations, we require harvesters to turnover bait receipts to prove to the Panel what is the actual price of bait. This is stressful for harvesters and makes no sense. The information should be disclosed so that the bait market is no longer hidden in the negotiation of prices.

**Recommendation: That, as a condition of license, processing companies must disclose the quantity and value of its domestic sales. Overall industry information on domestic sales and bait prices shall be made available to all parties in the collective bargaining process.**

## **APPENDIX 'A'**

- 1.** In the snow crab fishery, the following information shall be disclosed on an annual basis to DFLR as part of the condition of being granted a license to operate a crab plant:
  - a.** The average yield achieved in the processing of 4 oz, 5-8 oz, 8 oz, and 10 oz sections;
  - b.** The average price received for selling the following products into the market:
    - i.** US Sections (10oz+)
    - ii.** US Section (4oz+)
    - iii.** US Sections (5-8oz)
    - iv.** US Sections (8oz)
    - v.** US Sections (all other sizes)
    - vi.** Shoulders and arms
    - vii.** Sections, Consumer Packs of 10lb, 5lb, and 2lb
    - viii.** Raw legs
    - ix.** Japanese sections 4-8 oz
    - x.** Japanese Sections 5oz
    - xi.** Japanese Section 8oz
    - xii.** Japanese sections (all other sizes)
    - xiii.** Cooked parts
    - xiv.** Claws cap-on
  - c.** The type of pack out and the per pound value for all crab exported that does not meet the product forms set out in "b", above.
  - d.** The per pound price of all crab sold domestically.
- 2.** In the shrimp fishery, the following information shall be disclosed on an annual basis to DFLR as part of the condition of being granted a license to operate a shrimp plant:
  - a.** The average yield achieved in processing shrimp landed by inshore vessels in NL.
  - b.** The amount of shrimp packed out in the following size categories:
    - i.** 90 to 125 count
    - ii.** 125 to 175 count
    - iii.** 150-250 count
    - iv.** 250-350 count
    - v.** 350-500 count
    - vi.** Greater than 500 count
  - c.** The average price received in the market for each of the size categories listed in 3(b).

- 3.** In the cod fishery, the following information shall be disclosed on an annual basis to DFLR as part of the condition of being granted a license to operate a cod plant:
  - a.** List of all product forms, including by-products, produced at the processing plant.
  - b.** The total quantity of each product form exported to each individual country of destination.
  - c.** The average export price achieved for each product form in each country of destination.
  - d.** The total quantity of each product form sold domestically and the average price achieved for each product form from domestic sales.
  - e.** The quantity and average price for cod products that is sold as bait to harvesters directly from the processing company.
  
- 4.** In the capelin fishery, the following information shall be disclosed on an annual basis to DFLR as part of the condition of being granted a license to operate a capelin plant:
  - a.** The total value of all capelin that is sold domestically, including a breakdown of the quantity and overall value of various domestic markets, such as zoo/mink food, bait, fertilizer, fish meal, and any other product forms.
  - b.** The per pound cost charged to harvesters for the purchase of capelin bait.
  
- 5.** In the squid fishery, the following information shall be disclosed on an annual basis to DFLR as part of the condition of being granted a license to purchase squid:
  - a.** The amount of squid purchased domestically from harvesters.
  - b.** The quantity and per pound price of squid imported by the processor from outside Canada.
  - c.** The average per pound price for squid sold to harvesters for bait (exclude squid bait provided at no charge to harvesters in return for landing product at the plant).
  
- 6.** In the squid fishery, the following information shall be disclosed on an annual basis to DFLR as part of the condition of being granted a license to purchase squid:
  - a.** The amount of squid purchased domestically from harvesters.
  - b.** The average per pound price for mackerel sold to harvester for bait (exclude mackerel bait provided at no charge to harvesters in return for landing product at the plant).