

Standing Fish Price-Setting Panel

Rules and Procedures

Revised – March 2020

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Forward

Section 19.2 of the **Fishing Industry Collective Bargaining Act** “the Act,” outlines the duties of the Standing Fish Price-Setting Panel pursuant to the Act and Section 19.4 of the Act specifically provides; “The Panel may establish Rules and Procedures for the purpose of carrying out its duties under this Act”.

Where there is a conflict between any provisions in these Rules and Procedures and the Fishing Industry Collective Bargaining Act and Regulations, the Act and Regulations prevail.

The Panel may, from time to time, add to, delete from, or modify these Rules and Procedures. In doing so, the Panel shall, prior to any modifications consult with the parties to whom these Rules and Procedures apply to solicit their input for consideration.

Issues to be Established Prior to Annual Collective Bargaining

- In accordance with Section 19.01(1) and Section 19.01(2) of “the Act”, the Minister responsible for Fisheries and Land Resources shall set the dates by which price and conditions of sale for all fish species shall be set in a year.
- Subsequent to that, the Panel will consult with the parties to collective bargaining to establish a deadline to have collective agreements in place for all fish species, and, to establish a schedule of hearings should collective agreements not be achieved.
- Copies of the schedule for negotiations shall be provided to the Department of Fisheries and Land Resources (DFLR), and the Labour Relations Division, by the Standing Fish Price-Setting Panel.
- The Rules and Procedures of the Panel will form the basis on which the Panel and the parties conduct themselves in the process of negotiations, discussions and presentations on matters to be addressed by the parties and/or the Panel.

The Schedule for Negotiations

The Schedule for Negotiations shall contain the following information:

1. Identification of species for which collective bargaining will occur prior to the normal opening dates of the fishery.
2. Identification of parties to be involved in collective bargaining and the respective positions of those parties. (i.e., accredited, majority status as identified by DFLR records).
3. Date by which parties are to have a binding collective agreement in place.
4. Date on which a hearing will be held in the event the parties to collective bargaining are unsuccessful in reaching a collective agreement.

Facilitation

Facilitator's Role

The Facilitator shall meet with the parties to identify outstanding issues and provide mediation services to the parties to assist them resolve all outstanding issues. The Facilitator shall:

- Ensure the parties have access to all market material that has been requested by the Panel.
- At the request of both or either party to negotiations, chair collective bargaining sessions, and maintain communication between the parties during the collective bargaining process.
- Liaise between the parties during all phases of the collective bargaining process.
- Coordinate activities between the parties, the Panel and relevant government department(s) regarding matters that come within the scope of those departments relevant to the bargaining process.

The Facilitator shall have the following documentation available for review by the Panel and the parties, should it be requested.

- Copy of all material tabled by the parties at the negotiations (to be provided to the Facilitator by the parties).
- Copy of all written proposals tabled by the parties at the bargaining table (to be provided to the Facilitator by the parties).
- Materials/information provided by government departments.
- Such other relevant material that the Panel may require from time to time.

Market Briefing Session Prior to Collective Bargaining

Market information for species that have been identified in the annual Schedule for Negotiations released by the Panel, shall be made available to the parties to the negotiations and the Panel, prior to the commencement of collective bargaining.

The Panel shall make every effort to ensure the parties to collective bargaining have the latest updated market information available to them on any species subject to negotiations.

Collective Bargaining

Collective bargaining for the respective fish species identified in the Schedule for Negotiations shall be conducted in accordance with the requirements of “the Act”.

- The parties to negotiations shall comply with the legislative requirements for the appropriate number of bargaining team members to participate in the negotiation process.
- The parties to negotiations shall bargain in good faith with a view to reaching an agreement on all outstanding issues prior to the specified cut-off date for negotiations.

- The parties shall provide the Facilitator with copies of all appropriate documentation tabled during the negotiation phase for the information of the Panel.

Hearing Procedures

Where negotiations for a particular fish species outlined in the Schedule for Negotiations released by the Panel at the beginning of each calendar year do not result in an agreement, a hearing shall be conducted by the Panel in accordance with that Schedule and the applicable legislation.

Time of Hearing:

The hearing shall be held, unless otherwise mutually agreed between the parties and with the concurrence of the Panel, at the time outlined in the Schedule for Negotiations, provided any revised hearing date meets the requirements of Section 19.01.1 of “the Act”.

Location of Hearing:

The hearing shall be held, unless otherwise mutually agreed between the parties and with the concurrence of the Panel, at the location outlined in the Schedule for Negotiations.

Attendance at Hearing:

The Panel hearing is a closed forum. When a hearing occurs, the parties appearing before the Panel shall be in compliance with Sections 19.9 and 19.11 of “the Act” and these rules and procedures.

Government officials from the Department of Fisheries and Land Resources, Fisheries and Oceans and the Department of Advanced Education, Skills and Labour, may normally attend with the ongoing consent of the parties to the hearing. The Panel Facilitator may attend the hearing.

Those attending on behalf of the parties include; members of the association or union making submissions at the hearing, individuals that participated in the collective bargaining negotiations in respect of the species in question and legal counsel of the

parties. Beyond that, attendance is at the mutual consent of the parties. As a best practice, at the commencement of a hearing the Panel will ask the parties if there is anyone in attendance that the parties do not consent to attending.

Copies of Formal Presentations:

Parties appearing before the Panel at a hearing shall provide copies of their written submissions to the Panel and other parties presenting to the Panel for a particular species. Where there is no accredited or majority processors' organization, copies should be provided twenty-four (24) hours prior to the hearing. Where there is an accredited or majority processors' organization, parties shall provide copies of their written submissions to the Panel and other parties presenting to the Panel not later than 4:00 p.m. on the day preceding a hearing.

Written presentations to the Panel shall contain an overview of the collective bargaining which occurred between the presenters to the Panel, matters discussed and resolved, and the parties' positions and supporting material on all matters in dispute between them relating to price and conditions of sale of a fish species.

Hearing Procedure:

A party to a proceeding before the Panel who perceives a position on price and conditions of sale as being not compliant with "the Act" and Regulations or the Panel's Rules and Procedures must raise that issue and place it on record with the Panel, as a preliminary objection.

Where the parties to collective bargaining are a certified bargaining agent and an accredited processors' organization or a processors' organization that represents processors in the province that process the majority percentage of a fish species and the two (2) groups appear before the Panel, the hearing proceedings and Panel's decision shall be governed by Section 19.11 of the "the Act" and Regulations. Where the processor or processors' organization is not accredited, or, does not meet the majority criteria of a fish species, and the parties appear before the Panel, the hearing proceedings and Panel's decision will be governed by Section 19.9 of the Act.

The initial presentation shall be followed by the presentation of the other party and its rebuttal of the initial presentation. This will be followed by rebuttal by the first presenting party. Initial presentations will be made by the two or three lead negotiators from each

party. Rebuttals would be by the lead negotiator. Additional presenters will be by mutual consent of the parties to the hearing.

Oral presentation of the parties shall be limited to the contents of the written presentations.

Rebuttals will be limited to comments on the contents of the other presentation.

The Panel shall have an opportunity to seek clarification on any matters contained in the parties' presentations at the hearing.

Should the Panel require additional information from the parties, or, if a matter needing clarification arises, or if pertinent market information becomes available that may substantially impact the parties' positions after the hearing, the Panel may reconvene a joint session of the presenting parties prior to making its decision.

The Panel may request additional written material/responses from the presenting parties for clarification purposes on matters raised at the hearing. In responding, the parties requested to do so, shall provide a copy of its written response to all other presenting parties to the hearing. The Panel may further determine whether additional input is required from the parties.

The decision of the Panel shall be distributed to the parties to negotiations and other industry stakeholders subject to the collective bargaining process.

Hearing Process when no Majority Processors Organization Exists for a Species

Under the Fishing Industry Collective Bargaining Act (FICBA), a "processors' organization" means; an organization of processors formed for purposes including the regulation of relations between processors and fishers. A processor; is defined as a person (i.e. company) licensed under the *Fish Inspection Act* to process or buy fish. There is currently no accredited processors' organization in Newfoundland and Labrador as defined by Section 13.1 of the FICBA and the FICBA does not provide for majority status for an individual processor.

In the absence of a majority processors' organization, as defined by the FICBA, the Panel hearing process is open to all licenced processors and processors' organizations that choose to engage in negotiations and make an offer on price and conditions of sale of the species in question. However, the FICBA stipulates in Section 19.9 (2.1) that, a

party who has engaged in collective bargaining may not make a submission to the Panel unless that party has submitted an offer respecting price and conditions of sale to the other party not less than forty-eight (48) hours before the scheduled commencement of the hearing. These Rules and Procedures also stipulate that parties are to provide the Panel with written submissions not later than twenty-four (24) hours before the scheduled hearing time in order to be allowed to make a presentation at the hearing.

In the event of a hearing, the Panel will set the price and conditions of sale taking into consideration the submissions of all parties appearing before the Panel. The Panel is not bound by the positions of the parties to the hearing. However, in setting the price and conditions of sale it will normally stay within scope of the positions of the attending parties. Final offer selection will not apply as the Regulations only stipulate the use of final offer selection when a majority processors organization exists and conditions under Section 19.11 (1) are met.

In the case of non-majority processor, there could be multiple parties making presentations at the hearing. The order of presentations will be determined by random draw at the start of the hearing of those in attendance and eligible to present. The initial presentation shall be followed by the presentation of next party on the list until all presentations are made. Once all presentations have been made there will be a round of rebuttals. Rebuttals will be limited to comments on the contents of the other presentations.

Time allotments for the presentations and rebuttals may be established by the Panel if required to ensure timely conclusion of the hearing. In any case, the harvesters' representative will be given time for presentation and rebuttals proportionate to the aggregate time taken by the parties presenting from the processors side and adequate time to rebut each of the processor's presentations.

Reconsideration Procedure:

The Act and Regulations allow that significant changes in market and currency can trigger reconsideration by either party to a decision of the Panel. They also prescribe that a reconsidered price will only be by final offer selection. The Panel has ninety-six (96) hours from the time of acknowledging receipt of a request for reconsideration to decide whether to hear the request for reconsideration and to render a decision on price.

Upon receiving a request for reconsideration the Panel will initially and promptly decide whether to proceed to hear proposals for a new price. The decision whether to hear will

be based upon the case put forward by the party requesting reconsideration and other market reports made available to the Panel. The Panel will decide whether markets and currency have changed significantly since the original decision to warrant a reconsideration process.

Should the Panel decide to reconsider its position, the Facilitator and/or Panel, will contact all parties to facilitate a discussion of positions and exchange of preliminary offers. If, after a reasonable period of negotiation between the parties no agreement is reached, then the parties will be requested to simultaneously submit final offers and associated submissions, by a deadline to be set by the Panel. The Panel will normally schedule a hearing to hear final submissions on reconsideration.

Withdraw of Request for Reconsideration

Within the ninety-six (96) hour period allotted for the Panel to make its decision, a party may ask to have its reconsideration request withdrawn. With the mutual consent of the other party, or parties, to the decision under reconsideration, the Panel will allow such a withdrawal and without prejudice to that party's right to only one request for reconsideration per species.

Early Commencement of a Fishery

- In the event a particular fishery identified in the Panel's Schedule for Negotiations commences prior to the normal opening date and in the absence of price and conditions of sale being in place, the Panel, at the request of a party, shall revise the date of a hearing in the absence of a collective agreement.

Criteria the Panel will Utilize in its Decision-Making Process

The Panel will base its decision on market conditions related to the fishery concerned to determine price(s) and/or conditions of sale. In arriving at its decision, the Panel may take into account:

- "the Act" and Regulations.
- Resource materials provided by the Facilitator to the parties and the Panel prior to and during the collective bargaining process.

- The written presentations of the parties at the hearings.
- The oral presentations made by the parties at the hearings.
- Previous Panel decisions and their impact, at that time, on a particular species.
- Market information requested by the Panel and all such materials as may be provided to the Panel and the parties from the Department of Fisheries and Land Resources.
- Any additional information the Panel determines to be necessary.

Dated this 10th day of March, 2020.