

EXECUTIVE SUMMARY - Report on the Review of the “Limitation on 2 J Crab”



Eric Dunne Consulting
48 Terra Nova Road
St. John's, NL
A1B 1E6

Executive Summary

The regulation on the processing of 2J crab is contained in the provincial Fish Inspection Operations Regulations under the Fish Inspection Act and is as follows:

Limitation on 2J crab:

“15.1 A person who is licensed to buy or process snow crab under the Act and the Fish Inspection Administrative Regulations, purchasing snow crab sourced from fish harvesters fishing in NAFO Area 2J, south of Latitude 54 ° 40', and landed in Newfoundland and Labrador, must transport the raw material to a licensed snow crab processing facility situate in Labrador and adjacent to NAFO Area 2J for processing, except where the minister has issued an exemption in writing.”

This limitation has been in place since July, 1993. Under the initial restriction, all crab caught and landed in 2J had to be processed in a licensed crab processing facility situated in 2J. In 2000, to support the establishment of a crab processing facility in Black Tickle, this directive was tightened to require all snow crab from 2J, south of 54° 40'N, be processed in Labrador.

The history of the 2J crab fishery was reviewed in the context of the regulation itself, the reasons and factors leading to its implementation. The impacts, effectiveness and implications of the regulation were assessed through the views of licence holders, processors, plant workers and other stakeholders. This involved an extensive consultation process that included meetings with and/or information provided by licence holders, plant workers, processing companies, municipalities and other identified interest groups. Detailed information gathering was also conducted to provide other objective input into the review exercise.

The province's constitutional authority to impose such a rule or regulation on the fish processing sector was upheld by the Newfoundland and Labrador Supreme Court in 2004. That decision deemed the directive to involve only the regulation of fish processing in the province; that it was designed to protect the viability of the processing sector and to promote the economic survival of coastal communities in Labrador and not to control the activity of fishing. The Province's primary objectives were the beneficial effects upon the processing sector and coastal communities of Labrador. Any impacts on where fish is landed are incidental to this legitimate provincial purpose and the regulation is properly authorized by the Fish Inspection Act.

The policy basis for this regulation was confirmed and more fully stated in the March 31, 1997 announcement of a new Policy Framework for the Fish Processing Industry. That announcement accepted two specific recommendations made by the Fishing Industry Renewal Board (FIRB) in its 1996 report to government. These were to maintain the policy of requiring fish landed in Labrador be processed in Labrador and that benefits from emerging fisheries or existing fisheries in zones contiguous to Labrador be primarily for Labrador. These objectives were elaborated in the Province's affidavit to the NL Supreme Court in 2004 to include maintaining regional processing balance, industry efficiency, rural employment and special flexibility for Labrador. These objectives were confirmed again in the announcements of the Revised Seafood Policy Framework on February 23, 2005 and in changes/additions to that Framework announced on October 27, 2008.

By the time the regulation was first in place three crab plants were licensed in 2J, south of 54° 40'N and the catch had reached 1,529 mt. Total catches peaked in 1999 at 5,500 mt. The processing plant at Black Tickle began operation in 2000 when the current version of the regulation came into effect. By 2003, the annual catch had declined to 2,198 mt. Total catches continued on this downward trend to 2012 when they were just below the level of 1992. Also, the average crab catch for all licence holders is now half or less of the 2000 level in spite of some combining of fishing enterprises. The likelihood is that these trends may not be reversed as prospects for long-term crab recruitment are reported to be unfavourable due to a warming oceanographic regime.

Only two processing plants remained in operation in 2012 but the remaining processing capacity was more than adequate to handle the level of landings with no documented quality problems or unusual negative effects on harvesters. Considering the pace and level of landings, the period over which the open fishing season extends and the available daily processing capabilities, there is actually physical overcapacity in this area's processing sector. This capability is expected to increase by 25-30 percent in 2013 by investment in a new plant and renovations to another.

All interest groups around the 2J crab fishery, except for one Island-based processor and a small percentage of Supplementary licence holders, support continuation of the regulation requiring 2J crab to be processed in Labrador. Similar to community and other local interests, most licence holders support the regulation because of the incremental beneficial effects the associated processing has on the area communities. They are not convinced of the claimed improvements in harvesting earnings that would come from higher prices and lower costs if sales to Island plants were allowed. They also do not agree with a number of other arguments advanced by opponents such as lack of processing capacity, scheduling and trip limits causing under-utilization of quotas and higher operating costs. They seem

more than satisfied with the existing commercial arrangements in the 2J south crab fishery. They rate the overall impacts on licence holders as, at worst, neutral compared to what might be possible if sales to Island processors were permitted.

It is also argued that the resource has declined to less than half the level that existed when the current version of the regulation was put in place. There was adequate processing capacity to properly handle the supply available in 2012 and this capacity will be greater in 2013 (likely for a smaller available supply of raw material). Therefore, the 2J south processing sector cannot afford to lose raw material through sales to Island-based plants.

One part of the opposing case is based on expected but unproven positive impacts on harvesting costs and revenues and unproven claims of negative quality and extra fishing time caused by lack of processing capacity and available labour. Some of the other reasons advanced as to why the regulation should be lifted are internally inconsistent or contradictory or not completely factual. Another part of this case is based on little other than the fact that the closure of two plants removes the reason for the regulation and it should be therefore rescinded even though crab landings are now only 42 percent of the first year when four plants were in operation. Overall, the opposing case does not address the fishery policy parameters on which this regulation is based.

On balance, the regulation is deemed to be meeting its primary purpose of providing benefits from crab processing to 2J South while the overall impacts on licence holders cannot be quantitatively assessed. Based on examination of the origins of the 2J crab regulation; of the development/performance of the crab industry in 2J under it; of the legal and policy basis for the regulation; of received and assessed views, arguments and information from a range of interest groups and sources the following main conclusions emerged:

- that this regulation has a sound basis in law and is completely within the province's constitutional powers;
- it is based on valid, accepted and announced provincial fishery policy objectives;
- it has provided benefits directly to the area of 2J South that it would not have otherwise received;
- it is widely supported by area industry participants and community and related interest groups;
- supporters of the regulation claim the overall positive effects outweigh the few unproven possible benefits of removing it;

- the case of opponents has not been made in the context of the policy parameters on which this regulation is based. The claimed negative effects of it on harvesters are not quantifiable or even consistent in some cases;
- it provides real positive benefits to a far greater number of individuals, organizations and communities than the claimed negative impacts on a very small number of opponents;
- it is still needed to continue providing benefits to 2J South in the light of seriously declining crab resources and the processing desires of some Island plants;
- the basic rationale of the 2000 directive to make all 2J South crab available for processing in local plants is still valid in the light of the remaining processing capacity and the greatly diminished raw material supply;
- it is almost a certainty that a loss of raw material at least equal to pre-2000 level of sales to Island plants will occur if this regulation were rescinded. This may lead to the closure of one of the two remaining processing facilities in 2J South.

In this overall context, the only logical and pragmatic recommendations are the following:

1. That the provincial government maintain this regulation in its present form and re-affirm the policy basis on which it was first instituted and maintained since 2000.
2. Further review of this public policy should only occur when a clearly indicated majority of all 2J South crab fishing licence holders formally request it.
3. DFA should monitor the annual performance of the 2J South crab fishery in the context of the objectives stated for this regulation. This annual monitoring should address, in particular, the performance of the crab processing capacity in terms of such factors as quality of landings processed, quality of final products, wait times for offloading, quota utilization, labour shortages and any reduction of net returns to licence holders.