

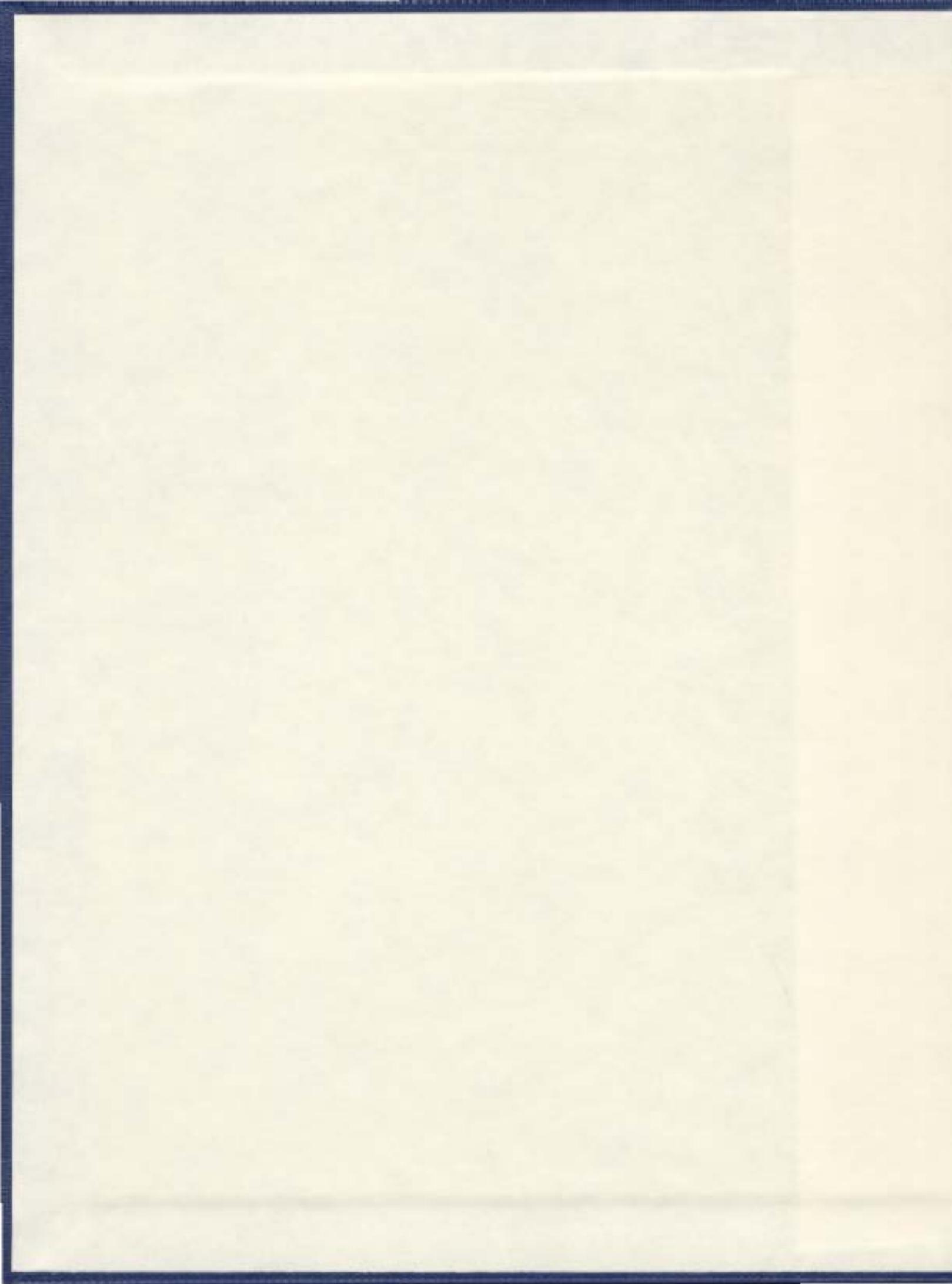
THE EVOLUTION OF FISH TRADES ASSOCIATIONS
AND THEIR CHANGING ROLE IN THE COLLECTIVE
BARGAINING PROCESS IN NEWFOUNDLAND
AND LABRADOR

CENTRE FOR NEWFOUNDLAND STUDIES

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PAUL G. GRANT



**The Evolution of Fish Trades Associations and
Their Changing Role in the Collective Bargaining Process
in Newfoundland and Labrador**

By

Paul G. Grant

**Submitted to the School of Graduate Studies in partial fulfilment
of the requirements for the degree of Master of Marine Studies**

**Memorial University of Newfoundland
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Abstract

In the Province of Newfoundland and Labrador, the evolution of Fish Trades Associations and their Union counterparts has been greatly impacted by the historic relationship between the processing sector and the harvesting sector. Processors, or merchants as they were traditionally referred to, have gone through a cycle over the past 60 years or more from holding tremendous power over fishers through what was known as the truck system, to today's environment characterized by legislation aimed at protecting the independence of fishers.

The fishing industry has also undergone widespread change since the late 1940s when saltfish was king and the frozen fish sector was in its infancy. Since then the frozen industry has become the dominant sector. Until the early 1990s cod was the primary species, but since the decline of cod stocks throughout the 1980s and early 1990s and the resulting closure of the Northern cod fishery, shellfish had become the dominant sector. Trade unions have become a significant factor affecting all aspects of the conduct of the fishery from price issues with buyers to international issues such as the Northwest Atlantic Fisheries Organization (NAFO) stock regulations and foreign overfishing. Processor associations on the other hand have seen their position of power erode beginning with the collapse of Newfoundland Associated Fish Exporters Limited (NAFEL) and its exclusive right to market saltfish, to the Fisheries Association of Newfoundland and Labrador's (FANL) inability to gain accreditation as the sole bargaining agent for all processors in the Province.

There are many notable milestones in the evolution of processor and harvester organizations. Included in these milestones are the formation of the first fishermen's benevolent organization, the Society of United Fishermen (SUF) in 1873, the formation of the Fishermen's Protective Union in 1908, the formation of the Frozen Fish Trades Association (FFTA) in 1944, the formation of the UFFAWU, the predecessor to today's FFAW, and introduction of the Fishing Industry Collective Bargaining Act in 1971 as a means of governing the collective bargaining between the harvesting and processing sectors. There have also been other significant events that have influenced the development of the fishery and have also impacted on both the harvesting and processing sectors in a significant way. These events include Newfoundland joining Canada in 1949 and the resulting change in jurisdiction over the harvesting sector away from Newfoundland to Ottawa. Following the change in jurisdiction came the introduction of fishermen's Unemployment Insurance to the Province. Other significant policies have evolved including the Federal government's Fleet Separation Policy which prevents processors from controlling licences for vessels under 65' LOA.

Although groundfish stocks have collapsed and no recovery is in sight, the value of the fishery is now higher than it has ever been in the past. Today's fishery has evolved into one that is dominated by shellfish, primarily snow crab and shrimp. These species have yielded significantly greater economic benefits to participants and have afforded the harvesting sector the opportunity to significantly increase its power base within the industry. While many fishers remain at the low end of the economic ladder, fishers with access to crab and shrimp are

generally better off than they have ever been. In fact, many of these fishers have developed their businesses into multi-million dollar enterprises.

The collective bargaining system in which raw material prices are determined has serious flaws which place processors at a serious disadvantage to fishers. Fishers remain independent and have the ability to sell their product to those local firms who offer the highest price. While this has always been the system, problems in the crab and shrimp sectors associated with it have been masked by increased quotas since the moratorium on cod was announced in 1992. While the number of processing licences has increased 3-fold since then, so has the resource base. However, we are now seeing significant reductions in the abundance of crab and processors have been pitted against one another as they compete for sufficient raw material to maintain businesses in which they have invested so heavily.

The most immediate issue facing the processing sector is the high cost of raw material generated by the increased competition. Fishers are now able to demand unprecedented prices from processors who are competing with long-established processing companies, as well as new entrants to the fishery for sufficient raw material to viably operate their plants. Plants are unable to vertically integrate their businesses by buying harvesting licences. The Fleet Separation Policy which was introduced by the Federal Government in 1976 prevents processing companies from owning licences for inshore vessels, except those which were “grandfathered” when the policy was implemented.

As with any system that favours or appears to favour one group or another, pressure gradually mounts for change and the political opportunity to make the change. Perhaps it is time for change to the fishing industry collective bargaining system and to Federal and Provincial fishery regulations. Many of the regulations currently in place are aimed at protecting the independence of fishers from large processing companies, but it appears that processing companies may be in jeopardy by the ineffectiveness of these rules and regulations. History has played a large part in shaping the current regulatory regime, but perhaps the system has outlived its usefulness. However, given Newfoundland and Labrador’s continued reliance on the fishery for the survival of many rural communities and the lack of prospects for employment generation in other industries, it is recognized that change won’t come easily.

The future role in collective bargaining of Fish Trades Associations such as FANL, which represents the majority of the processing capacity in the Province, continues to evolve. FANL continues to push for accreditation and the right to negotiate a maximum price for raw material for the entire industry. Until processors and fishers can negotiate on an equal footing the collective bargaining process currently in place will continue to generate problems for both sectors. While the industry continues to experience serious problems relating to raw material price and distribution, it is difficult to see a future role for FANL that does not involve collective bargaining. Negotiating raw material prices for the thousands of fishers and the plants they sell to will remain an important task. It remains to be seen what changes are implemented to the collective bargaining system and the timing of these changes to make the system less problematic

for the industry as a whole.

Acknowledgements

It has been a tremendously rewarding experience researching this report. The topic chosen was due in large part to the encouragement of the late Dr. Susan McCorquodale who encouraged me to do further research into the evolution of fish trades associations and fisheries unions, such as the FANL and the NFFAWU. I also must gratefully acknowledge the sound advice and industry specific insight of Mr. Alastair O’Rielly and Mr. Glenn Blackwood. These individuals made themselves available repeatedly over the past few years as this report began to come together. Their advice and insight were invaluable to its completion. Finally, I wish to acknowledge the patience and understanding demonstrated by my wife Penny and my children Caroline and Thomas through my period of study and research.

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List of Abbreviations and Symbols

SCA	-	Salt Codfish Association
NAFEL	-	Newfoundland Associated Fish Exporters Limited
NFTA	-	Newfoundland Fish Trades Association Limited
FFTA	-	Frozen Fish Trades Association Limited
NFFAWU	-	Newfoundland Fishermen, Food and Allied Workers Union
NFF	-	Newfoundland Federation of Fishermen
NFU	-	Northern Fishermen's Union
FFAW	-	Fishermen, Food and Allied Workers Union
FANL	-	Fisheries Association of Newfoundland and Labrador Limited
IQF	-	Individually Quick Frozen
CAW	-	Canadian Auto Workers Union
IQ	-	Individual Quota
DFO	-	Department of Fisheries and Oceans
FCC	-	Fisheries Council of Canada
FRCC	-	Fisheries Resource Conservation Council
CAFSAC	-	Canadian Atlantic Fisheries Scientific Advisory Council
FICBA	-	Fishing Industry Collective Bargaining Act
DFA	-	Department of Fisheries and Aquaculture
LOA	-	Length Overall
FOS	-	Final Offer Selection
IPAC	-	Independent Panel on Access Criteria

- TAC - Total Allowable Catch
- TGNIF - Task Group on Newfoundland Inshore Fisheries
- AGAC - Atlantic Groundfish Advisory Committee

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1.0 INTRODUCTION

The current relationship between fish harvesters and processors in Newfoundland and Labrador is substantially governed by laws, by-laws and regulations at both the Provincial and Federal levels of government. The history of the fisher-processor relationship, particularly during the period from 1900 to the late 1960s, has had a tremendous impact on the structure of the industry today. During this period, the dominance in the fishery of large, family-owned firms predominately based in St. John's and the primarily rural-based fishers who depended on these firms for virtually everything required for daily life helped create a deep rooted desire for independence among fishers. As processing firms became more organized through the establishment of industry associations, their control of the fishers also increased.

This report outlines the development of processor organizations and the eventual development of trade unions in support of the rights of fishers. By reviewing the history of this evolutionary process this report helps explain the evolution of the current legislative environment. The historical perspective details the primary reasons why the fishing industry is characterized by mistrust among fishers and processors and why governments have legislated rules and regulations governing the fishery which may seem to be at best unnecessary and, in many cases, seem to strongly favour one sector over another.

The objective of this paper is to present some of the major government policy milestones that have affected the evolution of fish trades associations and unions in Newfoundland and Labrador

from the 1930s to today. It also outlines the role these associations currently play in collective bargaining of raw material prices with fishers. The negotiation of fish prices has been the single most important function of trade associations and unions during the past three decades. Moreover, this paper recognizes the role of trade associations in the advocacy of policy on other issues such as conservation, marketing, and other labour issues, but it is not within the scope of this report to investigate the role of trade organizations these areas. This report also attempts to assess the current and future role of processor organizations especially in their role as price negotiators. Table 1 shows a list of significant milestones in the history of the fishery since the late 1800s. The formulation of many of these policies has been significantly affected by processor organizations.

Newfoundland's fishing industry has undergone significant change since the 1930s, and at the same time there are also some characteristics that have not changed much at all. Since its inception, Newfoundland's fishing industry was largely dependent on the saltfish trade with Europe and the Caribbean. However, the collapse of saltfish markets and the development of refrigeration technology in the 1940s lead to a shift to new markets and new processing plants in the 1950s and 1960s. The focus today is on the production of frozen fish and high value shellfish, and the markets have been broadened considerably. Nevertheless, the fishery can still be characterized (albeit to a lesser extent) by low incomes, seasonal employment, inconsistent quality, and dependence on government assistance in the form of Employment Insurance. The evolution of trade associations is illustrated through the use of a flow chart in Figure 1. Similarly the evolution of government bureaucracy during a similar period is illustrated in Figure 2.

TABLE 1

SIGNIFICANT MILESTONES FOR NEWFOUNDLAND'S FISHING INDUSTRY

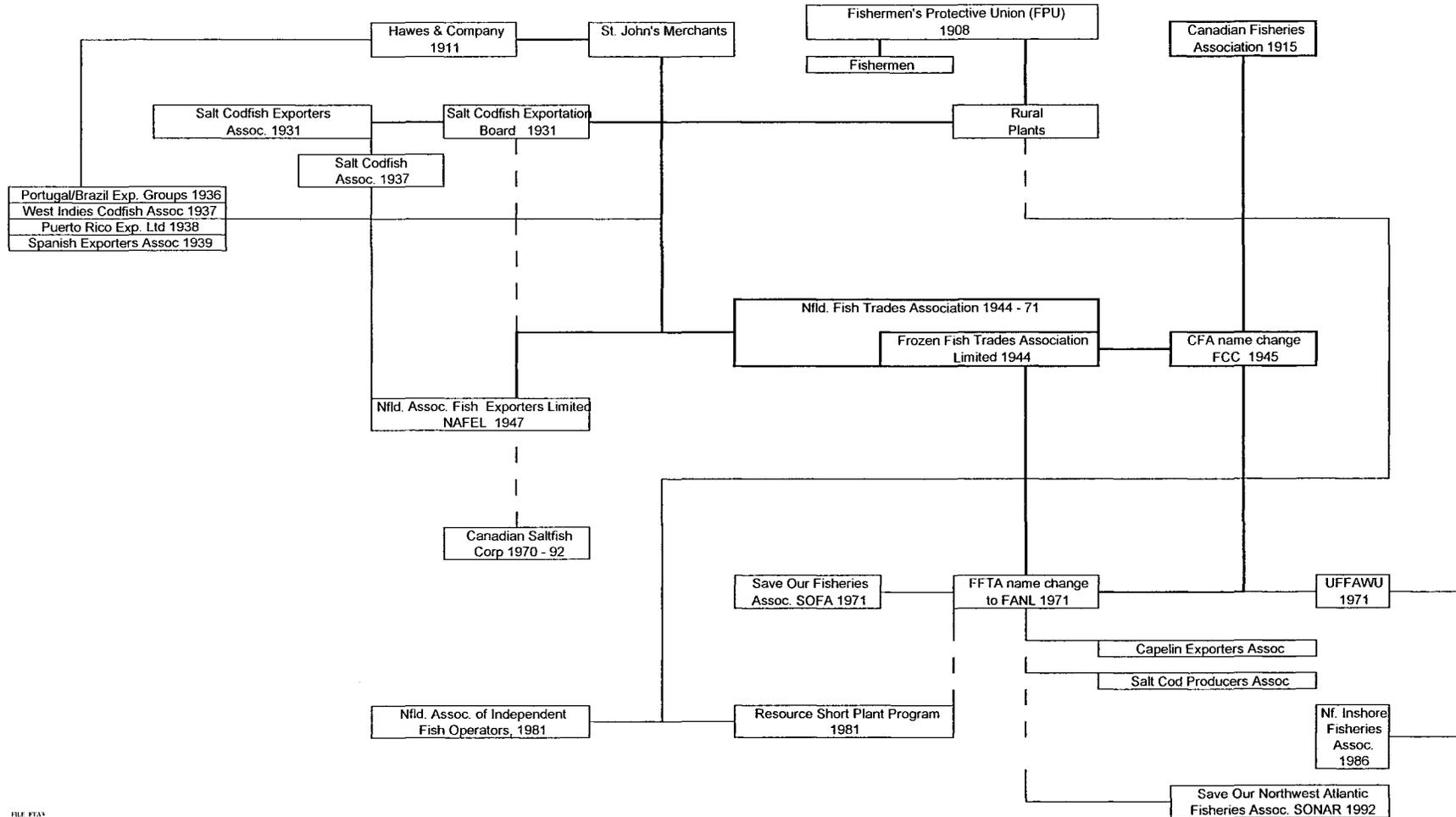
YEAR	MILESTONE	SIGNIFICANCE
1873	Formation of the Society of United Fishermen (SUF)	First Significant Fishermen's Organization
1888	Department of Fisheries and Marine Formed	First Department of Fisheries for Newfoundland
1908	Formation of the Fishermen's Protective Union (FPU)	20,000 Members at Peak/Established Standards for Fish Exports
1915	Canadian Fisheries Association Formed	First National Processors Lobby Group
1933	Amulree Commission	Concluded Industry too Restricted By It's Saltfish Specialization
1934	Commission of Government Established	Weakened Control/Influence of Merchants Over the State
1936	Creation of Newfoundland's Fisheries Board	Regulated All Aspects of Production, Culling, Inspection, and Distribution of Fish
1938	Creation of Newfoundland's First Fish Freezing Plant	Beginning of Freezing "Revolution" Which Now Dominates the Industry Worldwide
1940	Fishery Worker Unemployment Insurance Introduced	Allowed Fishermen to Earn Adequate Incomes After Confederation
1944	Frozen Fish Trades Association Formed	First Fish Processors Organization Dedicated to Those Producing Frozen Fish
1947	Newfoundland Associated Fish Exporters Limited (NAFEL) Formed	Had Exclusive Right to Export/Market Saltfish
1949	Newfoundland Joins Canada	Industry Came Under Regulations of the Dominion of Canada
1951	Walsh Commission	First Joint Federal-Provincial Enquiry into the Newfoundland Fishery
1953	Federal/Provincial Agreement on the Future of NAFEL	Reduced the Power of NAFEL
1959	NAFEL's Exclusive Saltfish Export Licence Expired	The "Cartel" Was Broken
1971	Fishing Industry Collective Bargaining Act	Outlined the Rights of Fishermen and Processors to Negotiate Fish Prices
1976	Introduction of The Fleet Separation Policy	Inshore Processors Restricted from Controlling Licences for Vessels , 65'LOA
1977	Establishment of 200 Mile Exclusive Economic Zone	Canada Gains Right to Manage Fish Stocks on the Grand Banks
1979	Northwest Atlantic Fisheries Organization (NAFO) Formed	Replaced ICNAF in Management of Fisheries Outside 200 Miles/Seta Int'l Quotas
1983	Collapse of Offshore Fishery	Optimism Associated with Establsihment of 200 Mile Limit Proves Unfounded
1983	Kirby Task Force	Attempt to Identify and Correct Cronic Problems Affecting East Coast Fishery
1984	Fishery Products International Formed	Formed From Many Bankrupt Companies/Renewed Optimism for Rural Nfld
1992	30,000-person Protest Against Foreign Overfishing	Largest FFAW/FANL/Government Protest Undertaken
1992	Announcement of Moratorium on Harvesting Northern Cod	Largest Layoff In Canadian History - Est. 30,000 Fishers/Plant Workers Out of Work
1993	Formation of the Fisheries Resource Conservation Council	Introduction of an Independent Body Making Recommendation on TAC's
1995	Snow Crab Dominates the Fishery	Snow Crab Becomes the Primary Source of Revenue for Industry
1997	Labour Dispute - FFAW/FANL (Crab)	Government Interference in Collective Bargaining/Final Offer Selection
2001	FPI Board of Directors Replaced	Serious Uncertainty Created in Rural Communities
2002	Gov't Introduces Bill 31	Makes Final Offer Selection Mandatory for 2003

FILE:MILE1

Source: FANL, Alexander, Task Force On Northern Cod, Hansard

FIGURE 1

Newfoundland Fishing Industry Organizations, 1908 - 2003



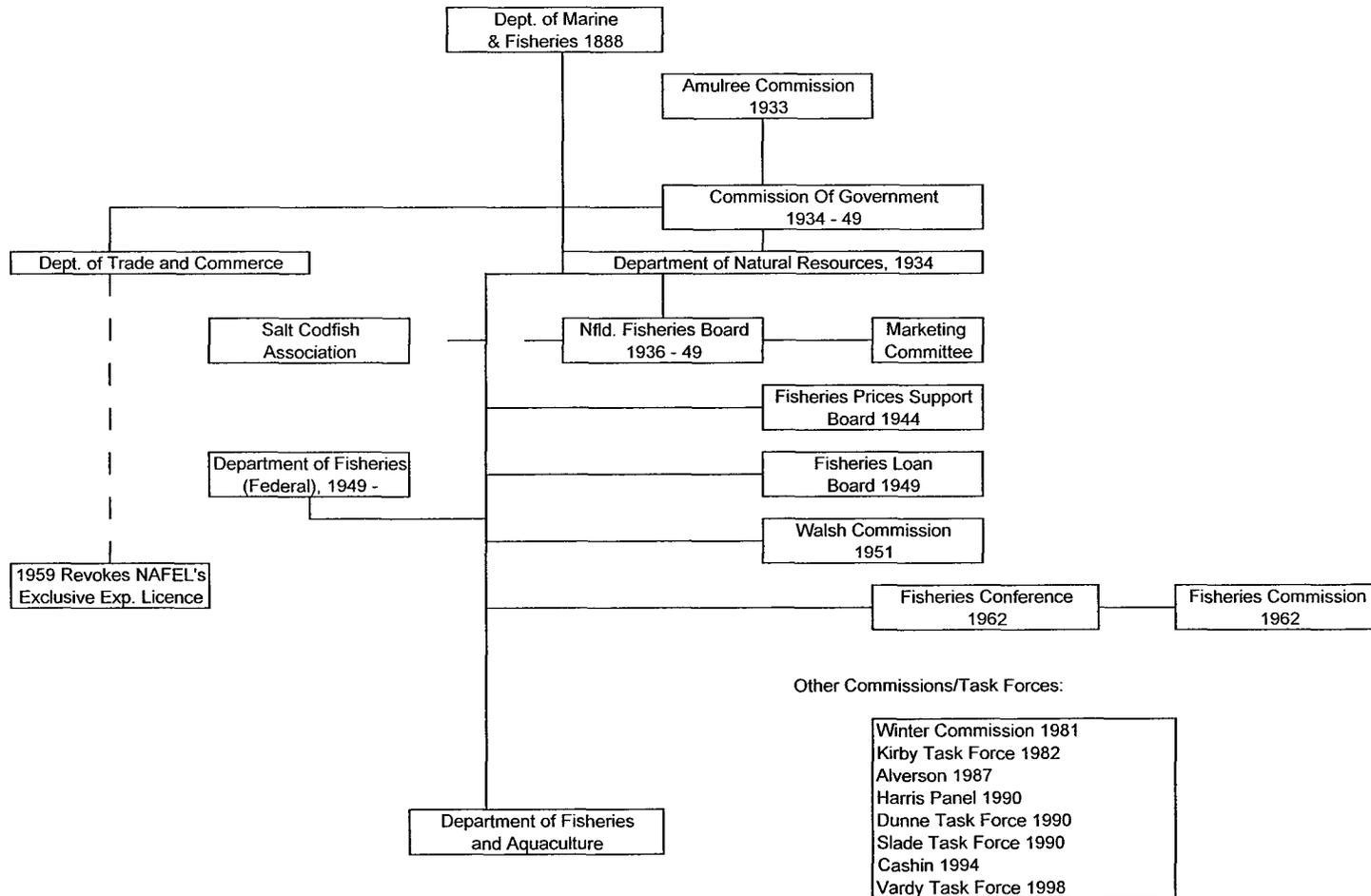
FILE: FTA

Prepared by: Paul Grant - "An Evaluation of Final Offer Selection As An Effective Long-Term Method of Resolving Price Disputes in the Snow Crab Industry"

Source: FANL Harris, M., Hamard

FIGURE 2

Newfoundland Fisheries Bureaucracy, 1888 - 2003



Due to its key role in the economy of Newfoundland and Labrador, many attempts have been made by government and industry throughout the period since the 1930s to bring about economic stability and reasonable living standards for plant workers and fishers.

The Royal Commission appointed by Britain in 1933 and headed by Lord Amulree had a tremendous impact on the industry. The Amulree Commission was highly critical of Newfoundland's mismanagement of its resources. The most significant criticism was directed at the commercial elite of Water Street in St. John's. The Commission found that the fish merchants of St. John's failed to cooperate in developing a fishing industry that could be "internationally competitive in the technology of catching, processing and marketing." (*Alexander, D. 1977, p. 2*)

The Commission recommended that the country establish a Department of Natural Resources to oversee all aspects of fisheries development and a Salt Codfish Board, reporting to the Department, responsible for developing better trade practices. The Commission also noted that the industry was undercapitalized and too dependent on the saltfish trade and the only remedy was a total overhaul of the industry. This represented the first significant shift in government policy aimed at forcing the industry to market saltfish in an organized fashion. In 1933, the House of Assembly passed an Act Relating to Saltfish which declared that individual firms could not export without a license. The Act also established an Exportation Board which devised grading and export regulations. The Exportation Board was comprised of government members recommended by a Salt Codfish Exporters Association which was open to all firms exporting 50 metric tonnes or more.

With the suspension of self-government in 1934, it became easier for government to develop and adopt regulations. The Exportation Board evolved into the Fisheries Board which was by all accounts one of the most effective fisheries regulatory bodies in North America at the time. (*Alexander, p. 30*) Government policy with regard to fish processing and trade practices had never been so restrictive. The Board was given the power to regulate virtually all aspects of fish trade and not just salt cod. It also had the power "to form groups or associations of licensed exporters to various markets and to admit or refuse membership ... in the absolute discretion of the Board...and to give to such groups...or members thereof the sole right to obtain licences for export to such markets. Nowhere else in North America or Europe had such an agency been developed to the level of sophistication of the Newfoundland Fisheries Board." (*Alexander, D. 1977, p. 29*)

The Royal Commission of Enquiry into the fishery established in 1935 was much more conservative in its recommendations than the Amulree Commission. It concluded that the saltfish industry would remain a significant part of the Newfoundland economy. It also argued that "the exploitative theories of the fishermen's and the country's problems were misleading and unhelpful." (*Alexander, D., 1977, p. 6*) According to a report by independent accountants, revenues reported by merchants did not justify a higher price to fishermen. It recommended some form of price subsidy to fishermen. It also concluded that the merchant credit system would always be needed due to the seasonal nature of the fishery which could not provide fishermen with regular wages.

After World War II, the National Convention was assembled to determine the country's future.

Although there were considerable differences of opinion in many areas, it was generally agreed that the saltfish trade with Europe would, and perhaps should, be replaced with the fresh/frozen fish trade with the United States. This was also the view of the Post-War Planning Committee chaired by Raymond Gushue. The Department of Natural Resources also concluded in 1944 that a "new industry must be created" (*Alexander, D., 1977, p. 29*) around the old saltfish industry to revitalize Newfoundland's economy.

2.0 COOPERATIVE MARKETING

Despite being subject to more than a decade of criticism from government on the subject of organized marketing of saltfish, it was not until 1947 that real progress was made. Sir William Coaker had made some advances in the area of marketing in the 1920s. As Minister of Marine and Fisheries and the founder of the Fishermen's Protective Union in 1908, he brought into law the Cod Standardization Act in 1920. That Act was the most significant legacy of the Coaker era. Its purpose was to force improvements in quality through various regulations governing processing, transportation, and storage of saltfish. The Act was amended to include establishment of an Exportation Board in 1933 which Coaker as the Minister chaired.

Merchants provided input to the Board through a Salt Codfish Association (SCA) which was established in 1931 as a direct result of the new government policy. The SCA had two elected members on the Board in addition to four licensed exporters appointed by the Minister.

Essentially the Board had the power to set minimum standards for the export of saltfish. Up until this time, fish merchants had never been subject to such government regulation, especially regulation which was put in place by a government Minister (Coaker) who was also a strong advocate of fishermen's rights. However, it must also be pointed out that the regulations introduced by Coaker were not universally rejected by merchants although the Amulree Commission failed to indicate this. (*Alexander, D., 1977, p. 26*)

Further regulation of the industry occurred in the 1930s with the Salt Codfish Board. Firms were

required to have an export permit and to provide sales contracts in advance of any shipments being made. The final step in the changing regulatory role of the government in managing the fishery came with the establishment of the Fisheries Board in 1936 under the Commission of Government. The Fisheries Board had the power to form groups of licensed exporters to various markets. Over the next few years exporters were organized into several groups organized around the market they were targeting. The Portugal and Brazil Exporters Groups were among the first organized marketing groups to be approved by the Board and as their names indicated they were made up of exporters selling to Portugal or Brazil. Other groups were also approved, including the West Indies Codfish Association (1937), Puerto Rico Exporters Limited (1938) and the Spanish Exporters Association (1939). All sales for these organizations were arranged by Hawes & Company of England - a firm that had been used by many of the fish merchants from St. John's since 1911. So significant was the dependence of many merchants on the marketing expertise of the Hawes organization that Hawes eventually established an office in Newfoundland managed by Mr. F.A.J. (Jimmy) Laws. (*Alexander, 1977*) (*Hallett, Personal Communication, 1998*).

Fishermen were sceptical of merchant-controlled organized marketing efforts. In order to appease them, the Fisheries Board established a committee to make recommendations on the future of the marketing system. The Committee recommended further rationalization of the marketing system. Mr. Laws was a member of the committee and had anticipated the recommendation with regard to marketing and had already established a limited liability, non-profit marketing company which became known as Newfoundland Associated Fish Exporters Limited (NAFEL). The Fisheries Board gave NAFEL the exclusive right to export fish from Newfoundland. Public policy had

been radically changed with the creation of what amounted to a marketing cartel. Any merchant wishing to export saltfish had to sell through NAFEL by law. However, government bestowed this right on the organization contingent on its Articles of Association which prohibited it from buying fish or involving itself in negotiations between fishermen and merchants over fish prices.

Members had to hold a general export licence from the Fisheries Board. Never before or since has there been such an organization. Establishment of "single-desk sales put an end to weak consignment sales and price cutting which prevailed up to the late 1930s"(*Alexander, D., 1977, p. 36*). However, given that NAFEL did not have any control over its members, it could not force its members to produce to market requirements. Rather it could only indicate to its members what the market requirements were in the hope that these requirements would be adhered to. In fact, all members who participated in filling a contract would be charged if a claim came back from the market even if the problem was caused by only one of the shippers. Essentially, there was no incentive to pay fishermen based on quality.

Newfoundland's Union with Canada was a major turning point for NAFEL. Although NAFEL's structure contravened Canadian law, the organization's exclusive export rights were guaranteed under the Terms of Union. Essentially, Newfoundland fisheries law was to remain in place for a period of 5 years or until both sides agreed that changes were necessary. Newfoundland's saltfish trade in 1949 was experiencing tremendous problems in the traditional European market. After World War II, the United States had established a European Recovery Program. Under the Program, European countries were given financial aid to reconstruct their devastated economies. This financial assistance helped develop the huge distant water fishing fleet which reduced

European dependence on saltfish from Newfoundland. NAFEL was now unable to effectively market Newfoundland's saltfish output. By 1959 NAFEL's exclusive right to export saltfish had expired, but by that time many companies had changed their focus to the fresh/frozen fish trade with the United States.

In 1944, the first of Newfoundland's fish trades associations representing the processing sector was formed. The Newfoundland Fish Trades Association (NFTA) was incorporated in that year as an organization to encompass primarily the larger fish merchants from St. John's who were engaged in the saltfish trade. In addition, the NFTA also included members from outside the merchant elite from St. John's. The Frozen Fish Trades Association Limited (FFTA) was a subgroup of the Newfoundland Fish Trades Association which was also incorporated in 1944 when some saltfish processors began to believe that the future of the fishery lay in the frozen fish trade with the United States. Appendix 1 lists the founding members of the FFTA and current FANL members (*FANL, 2002*).

NAFEL continued to operate until the early 1970s although Newfoundland's focus was more and more on the fresh/frozen trade with the United States. The Frozen Fish Trades Association Limited which had been formed in 1944 eventually surpassed saltfish organizations, such as NAFEL and the Salt Codfish Association (SCA), in terms of prominence in the industry. Table 2 shows the value of salted and fresh/frozen exports for selected years from 1948-72 and documents the progress of the fresh/frozen industry relative to the saltfish industry (*The NewLantic Group*). Trade organizations had become less focussed on marketing and more involved in lobbying in the

TABLE 2

Value of Salted and Fresh/Frozen Products, Selected Years, 1948-72

Year	Salted		Fresh/Frozen		Total
	\$000	%	\$000	%	
1948	16,831	87.1	2,496	12.9	19,327
1955	8,249	38.9	12,969	61.1	21,218
1960	12,855	46.1	15,017	53.9	27,872
1965	11,978	27.7	31,300	72.3	43,278
1972	5,069	7.0	67,627	93.0	72,696

FILE:SALT1

Note: Excludes pickled & canned products, fish meal, fish oil and fresh shellfish.

Source: Statistics Canada, Fisheries Statistics of Newfoundland; NAFEL Annual General Meeting, Chairman's Reports.

more uncertain government policy environment which came with Confederation. Communication and transportation infrastructure within the Province had been greatly improved with the addition of a coast-to-coast highway in 1965, improved telephone systems, a reliable electrical system, and a more developed airline system. No longer could the fishing industry be characterized as being controlled by St. John's merchants since fishermen were now able to sell to buyers beyond their own communities and communicate with other fishermen and markets outside their rural setting (*Inglis, 1985*).

3.0 THE BEGINNING OF THE UNION MOVEMENT

Given the long history of low incomes and complete dependence on the processing sector through the truck system, Newfoundland fishermen were ready for change. During the early 1970s, fishermen were beginning to organize into what would become one of the strongest labour unions in Atlantic Canada. Labour legislation would forever change the face of the industry and would give fishermen the necessary tools with which to seek a more equitable relationship and increased prices from processing companies. These changes forever changed the industry structure and they occurred at a time when other significant changes were occurring, including the Federal Government's decision to establish the Canadian Saltfish Corporation and the extension of Canada's Exclusive Economic Zone to 200 miles in 1977.

3.1 Newfoundland Fishermen, Food, and Allied Worker's Union (NFFAWU)

The widely held belief in Newfoundland is that fishermen had been for generations the subject of abuse at the hands of the fish merchant. It is unfair to characterize all fish merchants of the past or present as greedy and abusive towards fishermen. However, there are many stories documented in history that show how unjust and one-sided some fisher-merchant relationships were with merchants. One example of such greed was relayed to me through the course of research for this paper. A merchant from an outport community had fishermen from another community staying overnight. While the fishermen stayed in a separate area of the house, they ate breakfast with the merchant's family. Upon receiving their pay cheque from the merchant, they noticed that the cost

of marmalade which they had on their toast had been deducted. Other well documented practices highlight examples of injustice in the fishery. Undoubtedly, there are many examples of unfair treatment of fishers by the processing sector throughout history, but fishers are now well organized through their Union. Perpetuating a potentially exaggerated and historically biased opinion that portrays all St. John's-based merchants as unfair is surely open to debate. Equally, there may be numerous examples of solid relationships between the harvesting and processing sectors throughout history.

Historically, fishermen had made many attempts to organize themselves into an organization(s) that would give them strength in dealing with the merchants. The Society of United Fishermen (S.U.F.) was established in 1873 to provide sickness and death benefits to fishermen. In 1908, Sir William Coaker formed the Fishermen's Protective Union (F.P.U.) which also developed into a major political force in Newfoundland with approximately 20,000 members (*Inglis, G. 1985, p. 55*). Matters really began to improve for fishermen in the late 1960s. A group of fishermen in Port aux Choix on the Great Northern Peninsula had become dissatisfied with the effectiveness of the Newfoundland Federation of Fishermen (NFF) which Premier Smallwood established in the 1950s. The NFF could not bargain collectively with processors because labour law stated that the fishermen had to be employees. Throughout 1968 and 1969 there had been considerable labour unrest with wild fluctuations in the price of fish. By 1970, fishermen in Port aux Choix had organized into the Northern Fishermen's Union (NFU). The NFU, under the guidance of Father Desmond McGrath, the local parish priest, indicated its intention to seek amendments to the Labour Relations Act in order to gain the right to be certified as the bargaining agent for its

members. In 1971 an amalgamation of the NFU and the Canadian Food and Allied Worker's Union created the NFFAWU and a new era of fishermen-merchant relations was born.

3.2 The Burgeo Strike

In the spring of 1971, the NFFAWU tried to unionize the fish plant at Burgeo owned by the Lake Group. The move to organize plant workers was met with fierce opposition from plant owners and highlighted the poor relationship between processors and workers province-wide. The NFFAWU was successful in unionizing the plant and during their first collective bargaining session, the workers voted to strike. Although the Union was successful in organizing the Burgeo plant, the people of Burgeo were not overwhelmingly in favour of the Union. This led to violent confrontations on the picket line. Father McGrath said "What happens here in Burgeo will reflect the quality of life in Newfoundland for generations to come." (*FFAW/CAW, 1995, p.6*) Appendix 2 contains two interesting poems on the subject. The first was written by a columnist for the Daily News and the second is a response to the columnist's poem by a member of the Lake family. It provides a good snapshot of the sentiment and polarized views on both sides.

The Burgeo strike was a milestone in the history of the Union and of the processing sector. Comments made in the media by the plant's owner Mr. Spencer Lake had only provided fuel to the fire and enraged union members not only in Burgeo, but throughout the Province. The Union had to win in Burgeo and eventually they succeeded after the Provincial government purchased the plant from the Lake Group and signed an agreement with the Union in March, 1972. The

Provincial government retained National Sea Products Limited to manage the facility for a fee and built a new facility to replace the old one after it burned.

From the late 1960s to today the labour movement in the fishery has developed into a highly organized multi-sector union representing approximately 30,000 plant workers and fishermen throughout the Province and elsewhere in Atlantic Canada (*FFAW*). The strength of the union has placed a significant responsibility on the Fisheries Association of Newfoundland and Labrador Limited (FANL) to negotiate raw material prices with the FFAW. The Frozen Fish Trades Association Limited (FFTA) changed its name to FANL in 1971 and has evolved into a powerful, multi-function trade association representing processing companies which at one time accounted for approximately 90% of Newfoundland's fish production.

FANL's existence is legitimized by significant government policy changes in labour relations and other areas. The FFTA and its successor FANL has evolved from a relatively minor player in the fishing industry in 1944 into the most influential association of fish processors in the Province. The industry has also gone through a tremendous transformation in that period. Saltfish, which was once the most significant product of the fishery, now has a relatively minor impact on total Newfoundland production. Appendix 3 shows the transition that products have undergone from saltfish to individually quick frozen (IQF) portions during the 1950s to the 1980s. The transformation of the industry has continued in the 1990s with the collapse of the groundfish fishery and the expansion of more lucrative fisheries for shellfish such as crab and shrimp.

The creation of the Union in 1971 was a significant turning point in the relationship between processors and fishermen. The NFU and three locals of the Meat Cutter's union amalgamated to form a new union known as the Newfoundland Fishermen, Food, and Allied Workers' Union (NFFAWU). The Labour Relations Act of 1950 stated that inshore fishermen were "independent operators". i.e. plant operators could not legally be considered their employers and as such were not allowed collective bargaining rights. The strength of the Union came with the Fishing Industry Collective Bargaining Act of 1971. Labour law had been amended to allow fishermen in addition to plant workers to bargain collectively with fish companies. The NFFAWU has continued to strengthen into one the most powerful and complex labour unions in Atlantic Canada - see Appendix 4 for an organizational chart of the Union. The strength of the Union was further enhanced when it became affiliated with the powerful Canadian Auto Workers Union (CAW) in 1987 and changed its name to the Fishermen, Food, and Allied Workers' Union (FFAW). While the labour laws were enacted to facilitate bargaining between harvesters and processors, other key Federal policies such as the Fleet Separation Policy were developed to separate both sectors of the inshore fishery.

3.3 Fleet Separation Policy

The Fleet Separation Policy was introduced by the Department of Fisheries and Oceans (DFO) in the late 1970s. It prohibits corporations from owning fishing licences for fisheries where vessels less than 65' in length are used. This policy was a means of separating the harvesting and processing sectors in order to protect the interests of fishers and insure an independent harvesting

sector. In one sense introduction of the policy was a success in that competition for raw material increased, thereby driving up the price to fishermen. However, the policy left processors with no security of raw material supply and no means of controlling the timing of delivery and quality of raw material. In other jurisdictions, quality is rewarded by price, but not in Newfoundland. While Individual Quotas (IQ's) provide order to the harvesting sector and security to fishers through specific rights to specified quantities of raw material, the processing sector has not been given the same ability to secure raw material. Processing companies are required to spend an inordinate amount of time procuring raw material. This time and money could be better allocated to developing new products and markets for the benefit of companies, plant workers and fishermen.

Some would argue that the role of FANL as a negotiator may diminish if the Fleet Separation Policy were removed. Certainly the FFAW, representing fishermen, is vehemently opposed to its removal, claiming that licenses would become concentrated in the hands of a few powerful processing companies to the detriment of fishermen. However, FANL argues that fishermen, as true employees of processing companies, may be better off in that processors would have continuity of supply and consistently greater value for all to share. Crews would still be organized and able to collectively bargain with processors. This would effectively create a vertically integrated industry which is successful in the offshore sector.

3.4 Extension of Canada's 200 Mile Exclusive Economic Zone

The right to manage fish stocks on Canada's continental shelf within 200 miles was undoubtedly

positive for Newfoundland and Labrador, but the euphoria which surrounded the extension of fisheries jurisdiction in 1977 has contributed to many of the problems that continue to plague the industry today (Harris, M., 1998) (Blackwood, G., 1996). After the initial fishery resource crisis of the late 1960s and early 1970s which was brought on by excessive foreign fishing effort, the 200 Mile Limit was greeted with great fanfare and it was a substantial achievement since it gave Canada the legal right to restrict foreign fishing activity in much of the rich fishing grounds of the Grand Banks and within Canada's 200 mile limit.

A 1976 DFO policy document entitled *Policy for Canada's Commercial Fisheries* recognized that extended fisheries jurisdiction would not solve the industry's problems, particularly overcapacity and identified the need to control fishing effort, and address the distribution of the resource between the inshore and offshore sectors. This represented a significant shift in Canada's fishery policy. Other components of the document also highlighted the need to develop the inshore fishery. Fisheries Minister Romeo LeBlanc stated "We must give the inshore and nearshore fishermen a greater and assured amount of fish." (Fisheries Council of Canada, 1994, p.3) This statement had a tremendous effect on allocation and licensing policy and thus investment in harvesting and processing capacity. Unfortunately, the inshore sector in Newfoundland never fully benefited from the policy since overcapacity in the Gulf, Nova Scotia, and Newfoundland's South Coast was given the bulk of the Northern cod increases in 2J3KL. (Blackwood, G., 1996) It was believed that the resource abundance brought about by expanded fisheries jurisdiction would absorb any existing overcapacity as well as any future expansion. Although the Policy recognized the problem of overcapacity it also contributed to the problem. The Report of the Task Force on

Incomes and Adjustment (the Cashin Report) states:

"Paradoxically, concentration on management of the resource rather than on people and enterprises contributed to the collapse of the resource and the plight of the people. About 60 percent more people are claiming a place in the harvest than in the 1970's, despite limited entry. There is vastly more fishing power in the offshore, midshore and inshore sectors. Fish plants have nearly doubled in number, plant workers have increased by about 50 percent. And yet today, there are fewer groundfish than in the 1970's."

Clearly, additional supplies of raw material available to Canada as a result of extended jurisdiction did not offset excess harvesting and processing capacity. In fact, the extension of Canadian jurisdiction created pressure to increase processing capacity thereby further complicating matters. The fishery continues to suffer the effects of government policy which has sought to use the fishery as a means of accessing income assistance for those who could not be legitimately supported through other industries. The complete collapse of the groundfish fishery in the early 1990s has only served as a reminder of Newfoundland's heavy dependence on the fishery and its lack of economic diversification (*Cashin*, 1993, p. 24). Too much effort was put into short-sighted means of accessing unemployment insurance for fisheries sector participants than in developing new sectors of the economy.

The pressure on government to expand certain sectors of the fishing industry is as significant now as it ever was. Since the collapse of groundfish stocks, shellfish stocks, such as crab and shrimp,

have flourished, but not all fishers and plants have licenses to fish and process these lucrative species. The number of individuals employed in the harvesting sector has only decreased slightly from approximately 13,000 in 1992 to 12,200 in 2001 (*DFA, 2001*). Furthermore, those plants which traditionally relied on groundfish are now seeking licenses to process shellfish despite the fact that the number of licences has increased from 17 in 1992 to 44 in 2002 (*FANL, 1999*) (*Tripartite Committee-Nfld and Labrador Fish Processing Sector, 1992*) (*DFA, 2002*).

4.0 THE SHELLFISH BOOM

The most significant event this century in Newfoundland and Labrador has been the complete collapse of the Northern cod resource (i.e. 2J3KL cod) and most other important groundfish stocks. Although Newfoundland's fishery had experienced significant resource crises in the past, this was the most devastating. The resulting moratorium on harvesting announced in July 1992, put upwards of 30,000 (*FANL, March 1998*) people out of work and forced both levels of government and industry to take a long hard look at where changes could be made to prevent such a disaster from ever happening again. The Fisheries Resource Conservation Council (FRCC) was established by the Minister of Fisheries and Oceans in 1993 as part of a new conservation-oriented management approach.

The collapse of groundfish stocks may have contributed to a considerable rise in the biomass of certain shellfish species - most notably snow crab and shrimp. The value of these fisheries to Newfoundland's economy is enormous. In 2001, the landed value of shellfish was \$408 million, almost six times the value of groundfish (*Dept. Of Fisheries & Aquaculture, 2001, p.1*). Crab and shrimp licenses are now the most sought after by both fishermen and processors and the industry remains focussed on shellfish as groundfish stocks show no signs of recovery. The new shellfish dominated fishery is worth over one billion dollars annually to the Provincial economy and therefore any impasse in collective bargaining can be very costly to the Provincial economy and thus government has a strong interest in ensuring the fishery proceeds smoothly (*DFA, 2002*).

4.1 Fisheries Resource Conservation Council (FRCC)

The FRCC was established in 1993 as a partnership between stakeholders in the industry - fishermen, plant owners, the scientific community, and government.

"Its mission is to contribute to the management of the Atlantic fisheries on a sustainable basis by ensuring that stock assessments are conducted in a multi-disciplined and integrated fashion and that appropriate methodologies and approaches are employed.."
(FRCC, p. A9).

It is noted that the Minister of Fisheries and Oceans had initially declared a moratorium on harvesting of Northern cod in 1992. This fish population is generally found in NAFO Area 2J3KL and had been one of the richest fish stocks in the world. Appendix 5 contains a Northwest Atlantic Fisheries Organization (NAFO) map. A series of mistakes resulted in the collapse of this stock. According to the FRCC, these mistakes include *(FRCC, July 1997, p.1)*:

1. Over-estimation of the bio-mass;
2. Failure to recognize environmental changes and their impact on the fishery;
3. Failure of the management system to recognize the impact of technological change;
4. Under-estimation of foreign overfishing;
5. Pressures of our own Canadian industry which led to misreporting, dumping, discarding, and high-grading; and

6. Failure of the political system to make the necessary conservation decisions when the red flags did go up.

Foreign fishing effort in Newfoundland and Labrador waters had rapidly increased from the mid-fifties to the early 1970s. Fishing mortality was very high according to stock assessments of the time, but after extension of Canada's jurisdiction to 200 miles, the Government of Canada was convinced that rapid stock rebuilding would take place as a result of tightly controlled management of the stocks. In fact, stocks appeared to be rebuilding. Catch rates increased and was the reason for great optimism in the industry. Huge investments were made in technologically advanced vessels and more plants. Along with the capital investment came practices such as high grading which were anything but conservation oriented.

In the period leading up to the announcement of a moratorium on harvesting of Northern cod in 1992, both FANL and the FFAW remained focussed on maximizing the social and economic benefits derived from the fishery. Conservation issues were important to both groups, but foreign overfishing became a lightning rod for the frustrations both the processing and harvesting sectors were experiencing as stocks began to decline. Both FANL and the FFAW participated in the Northern Cod Scientific Advisory Committee which was charged with implementing the science recommendations of the Harris Panel. Both groups were dominated by members who depended on Northern cod for their existence. FANL's largest members were Fishery Products International (FPI) and National Sea Products Limited, both of whom had much to lose if Northern cod were under a harvesting moratorium. Furthermore, the FFAW was responsible for more than 20,000

plant workers most of whom were working in the larger groundfish plants operated by FPI and National Sea Products Limited.

The period leading up to the announcement of a moratorium and shortly thereafter was unique in that it was characterized by strong cooperation between both the FFAW and FANL as they began dealing with a common threat. In 1992, the FFAW and FANL jointly organized a protest on the waterfront in St. John's followed by a protest at sea with 8 vessels sailing beyond the 200 mile limit in a show of anger toward foreign vessels accused of overfishing the stocks which straddled Canada's 200 Mile Limit. In that year the Union and FANL also participated in talks aimed at developing a compensation package for plant workers and fishers. The program would become known as the Northern Cod Adjustment and Recovery Program (NCARP) (*Harris, M., 1998*).

With the complete collapse of the Northern cod fishery which put between 20,000 and 30,000 people out of work, it was clear that significant fisheries management changes were necessary (*FANL, March 1998*). When Minister Crosbie first hinted at the possibility of an arms-length board that would take the Minister out of the position of having to deal with stock assessment issues on a purely political level the industry was very keen to the idea. He proposed an independent board that would deal with industry and any other group or individual that wished to make representation. No longer would the Minister be bombarded with so many appeals for increased quotas from the largest companies and individual fishermen. The Minister would be allowed to concentrate on the larger issues related to management and conservation of fish stocks.

When the FRCC was set up in 1993 it replaced the Atlantic Groundfish Advisory Committee (AGAC) in its role of recommending levels of harvest. For trade associations, this was a significant change from the old system of advisory committee meetings held throughout the year in various locations. Lobbying on behalf of members on issues related to quotas and scientific advice was subsequently accomplished through a single body - the FRCC. Ultimately, the Minister has responsibility to accept or reject recommendations of the FRCC so there will always be a political element in dealing with such issues. However, it is arguably more difficult for stakeholders, some of whom are represented by trade associations, to put political pressure on the Minister to achieve favourable results. The current system of public consultations operated by the FRCC has opened the whole debate to public scrutiny more than in the past. As a result the general public, conservation groups, and all industry players have ample opportunity to influence and scrutinize recommendations on issues relating to the biological management of fish stocks. Unfortunately, the FRCC has no mandate to recommend harvest levels for shellfish, pelagics and marine mammals.

4.2 Independent Panel On Access Criteria (IPAC)

In 2001, the Federal Minister of Fisheries created an Independent Panel on Access Criteria (IPAC) partially in response to the public outcry particularly from Newfoundland and Labrador over government's decision to make an allocation of Northern shrimp to Prince Edward Island. It was intended that the Panel would assess ways to make the process of deciding who gets access to fishery resources and what the quota levels should be more open and transparent (*DFO*

Backgrounder, 2001). IPAC has three stated objectives:

1. To seek understanding about the context and history of DFO's fisheries management policies;
2. To undertake consultations with all concerned parties including DFO, provincial governments involved in the fishery, resource users, industry, and aboriginal groups; and
3. Provide specific recommendations to the Minister on access criteria, the practicality of current criteria, and how to accommodate the significant differences among fleet sectors.

To date, there has been little change in the process by which access and allocation decisions are made by DFO and the Minister and his staff continue to be lobbied by various interest groups, companies and individuals seeking access to fishery resources. The Panel's recommendations included applying adjacency, historic dependence, and economic viability principles to the decision making process. In addition, it also recommended that an independent board be established to handle all requests for access to fishery resources. The Minister accepted all recommendations except the recommendation to establish an independent board.

The procedure for gaining access has therefore remained the same with political lobbying at the forefront. It remains to be seen whether or not politics will remain the most important factor determining who receives access and who doesn't. As for unions and trade associations representing fishery groups, only those groups representing small interest groups have entered the lobby for access. Both FANL and the FFAW have such diverse membership that it is nearly impossible to reach a concensus. Therefore both groups have remained somewhat inactive on the direct lobby effort to gain access to the resource for members. The FFAW and FANL have

concentrated more on trying to influence government leaders on the overriding access criteria. For Newfoundland and Labrador it is in the interest of both sectors to support the principles recommended by the Panel particularly as they relate to Northern shrimp the bulk of which is adjacent to Newfoundland and Labrador.

4.3 The Vardy Task Force

The Vardy Task Force was appointed by the Newfoundland and Labrador Government in September of 1997 as a result of the strike in the crab industry that year which delayed the fishery for three months to the point where government intervention was necessary to get the fishery started. Essentially the primary purpose of the Task Force was to:

"Assess the impact, relevance, effectiveness and utility of the Fishing Industry Collective Bargaining Act to the collective bargaining process that exists in the fishing industry, its effect (if any) on the ability of the fishers and fish buyers and processors and their respective representatives to reach a negotiated price for crab/fish and to settle their labour differences, or if modifying, repealing, or replacing the said Act with other statutory or regulatory vehicle..." (*Vardy, 1998, p.1*)

Many factors had contributed to yearly strikes which seemed to get progressively longer and more complex. While FANL had been representing processors from all sectors and areas of the Province, the moratorium resulted in a significant rift among its members. Crab stocks began to

increase rapidly as a result of decreasing groundfish stocks. Coincidentally, market prices also did to a point where fishermen were paid as high as \$2.50/lb in 1995 in a fishery that prior to 1994 had paid between 35 cents and \$1.05/lb. Appendix 6 shows crab raw material prices from 1988 through 1998. While many groundfish fishers and processors were without raw material, crab processors and crab fishermen were experiencing unprecedented growth and profitability.

In the early years of the moratorium FANL was preoccupied with issues relating to rationalization/compensation of the processing sector. However in the latter half of the 1990s it became more and more involved in issues related to the increasingly powerful crab processing sector. Fishermen and processors were commonly referred to as the "crabs" and "crab-nots". The Union was faced with the same dilemma since it was pressured by its membership to support sharing the resource among more fishermen and more plant workers until the amount received was barely enough to survive.

The Fleet Separation Policy introduced by DFO in the 1970s ensured that processors would have to pay very competitive prices to secure their supply of raw material. With the expansion of the highly lucrative crab fishery in the mid-1990s and the increase in the number of harvesters, the fleets and processing sectors influence within each respective sector changed. Vessel owners moved from processor to processor as companies competed for raw material to the point where the processing sector's profitability was threatened. The future of some companies hung in the balance. FANL was the primary means of bringing order to the crab processing sector before the future viability of the companies and the Association were seriously impeded. The strength of

FANL depended on the strength of its members and, since the 1992 moratorium, the only significant bright spot in the industry was the crab fishery. FANL was successful in 1996 in fostering some degree of cooperation among processors which resulted in the inability of fishermen to move from company to company chasing higher and higher prices. Fishermen were outraged and accused FANL and its member crab companies with establishing a "cartel" to restrict the movement of fishermen as a means of keeping the price down. The stage was set for a major strike in 1997.

Fishermen had received unprecedented high incomes in 1995 primarily due to exchange rate fluctuations in Japan which temporarily gave the Japanese more buying power than the U.S. This was followed by an unwelcome reduction in price in 1996 as exchange rates stabilized and as market demand waned due to excessive market pricing levels. Fishers charged processing companies with trying to return to the old days when the merchants ran the fishery and fishermen had little or no say. Fishermen believed that the \$2.50/lb received in 1995 was an accurate reflection of what processors could pay and an indication that raw material prices in previous years were less than they should have been. In fact, the \$2.50/lb paid in 1995 exceeded what many processors could afford to pay.

Appendix 7 outlines market prices and currency exchange rates for Snow crab from 1992-1998. Fishermen were not prepared to accept another decrease in price in 1997, which resulted in a long strike which almost lasted longer than the required window of opportunity to harvest the crab. The Premier of Newfoundland and Labrador was concerned that the much needed revenues of the

lucrative crab fishery would be lost without immediate settlement of the dispute. With his direct intervention the dispute was settled. The Minister of Fisheries and Aquaculture, John Efford, promised that there would be an inquiry into the recent problems of the crab fishery. He wanted to get to the bottom of the accusations from fishermen of the existence of a "cartel". In the end, the Minister's promise of an industrial inquiry was down graded to a Task Force review of the industry with a view to avoiding any delay in the start of the crab fishery in subsequent years.

The FFAW has a province-wide certification order to represent fish harvesters. FANL on the other hand does not have province-wide right to bargain collectively for processors. Independent processors can engage in negotiations with the Union individually. The practice up until 1997 had been for FANL to reach a settlement with the FFAW on behalf of its member companies and for all independent processors to follow FANL's agreement.

FANL had made several prior attempts to gain accreditation as the sole bargaining agent for all processors in the Province. The majority of seafood production in the Province is represented by FANL and members are highly dependent on the organization as a single voice for the processing sector. However, there is an unwillingness on the part of the processing sector to allow FANL to become their sole bargaining agent. Some claimed that the whole process to review labour legislation relating to the fishery, particularly any accreditation of FANL as the industry's sole bargaining agent was an attempt by FANL and the FFAW to "legitimize, protect and promote" (*Hansard, Feb. 25, 1992, p. 26*) the bureaucracy of both organizations. Accreditation would also be easier if all processors were members of FANL.

The most important result that the Vardy Task Force had on the function of FANL and the Union was the implementation of a two-year Pilot Project for price settlement in the crab industry. For the 1998 and 1999 seasons, price agreements were to be reached by a process known as Final Offer Selection, a process proposed by FANL. Both the FFAW and FANL were required to submit their best price offer, with documented reasons, to an independent arbitrator who would weigh the arguments from both sides and choose one of the proposed prices, which then became binding on both parties. Throughout the season prices could be increased or decreased based on a formula which took into account fluctuations in market prices and currency exchange rates (*Seafood Datasearch, April 2001*). The procedure for adjusting prices based on market conditions and exchange rates was not a part of the Final Offer Selection process but was added to the structure for determining crab raw material prices because both the Union and FANL believed it made sense.

Final Offer Selection is a significant departure from the traditional method of collective bargaining. Negotiated prices in the past were merely minimum prices which usually increased shortly after the start of the fishery. Under the FOS model the current minimum price is determined every two weeks based on the prevailing market prices and the U.S.-Canada exchange rate. To some extent the risk associated with fluctuating market conditions and economic conditions has been negated, but also margins to processors were pegged. The irony of the situation in the first year of the Pilot Project was that after the price had been settled, processors immediately drove the price far above the negotiated price as they tried to secure raw material. Essentially the whole exercise of collective bargaining was all a waste of time, effort, and money.

The credibility of FANL and its member companies was seriously damaged since companies claimed that the Union's offer would put them out of business, but immediately after a settlement was reached they proceeded to bid the price up (*Vardy, 1998*). However, this was primarily due to a dramatic improvement in market conditions at that time.

Labour legislation has been a prominent factor in the evolution of fish trades associations in Newfoundland. While fishermen have a sole bargaining agent, processors do not. Prices negotiated even under the Pilot project outlined above are merely minimum. While FANL has the legislative authority to negotiate maximum prices, it has no legal means to enforce maximum prices. Without the ability to negotiate and enforce maximum prices on behalf of all companies and with no secure source of raw material for its members, processors compete with each other and solidarity within FANL suffers considerably.

5.0 THE FISHER-PROCESSOR RELATIONSHIP TODAY

The most important piece of legislation governing the relationship between harvesters and processors in Newfoundland and Labrador is the Fishing Industry Collective Bargaining Act (FICBA). The Act was introduced in 1971 and was modelled after the Labour Relations Act for the Province. (*Vardy Task Force, 1998, p.9*). Prior to 1971, there was no formal mechanism to determine the price paid to harvesters by processors for raw material. The Act provides for the following measures:

- the right of fishers to organize into a union;
- the right for processing companies to organize into an association;
- the right for fishers to bargain collectively with processors over many issues including the price paid for raw material; and
- the right to cease business dealings if a collective agreement could not be reached.

There is provision within the Act for accreditation of the processor's association as the sole bargaining agent for processors. To-date this has not been achieved by FANL, the association which represented over 70% of the production capacity in the Province until late 2002.(Several significant members have since resigned) (*A. O'Rielly, 2002*). However, the Union representing fishers, the Fishermen, Food and Allied Workers' Union, is the accredited body for harvesters in the Province. Each year both groups get together to negotiate raw material prices for many of the more significant species including Snow crab and shrimp, and various groundfish and pelagic

species. While FANL is not the exclusive bargaining agent for all processors in the Province, this organization has acted as an informal agent for the processing sector. More importantly, because FANL represents more than 50% of the industry, agreements with the FFAW are binding on all processors.

The reasons for FANL's inability to achieve accreditation are varied but some insight can be gained by reviewing documents relating to past and more recent attempts to gain accreditation. The subject of accreditation was raised in 1992 and transcripts from hearings of the Legislative Review Committee of the Provincial Government suggest that some processors, particularly non-FANL processors, were suspect of the motives for accreditation (*Hansard, Feb. 25, 1992*). Specifically, one processor suggested that by virtue of legislating FANL as the sole bargaining agent for processors, processors would "legitimize" the fishers Union. Furthermore, there was also a feeling expressed that perhaps "corporate employee survival" might be the reason for FANL's desire to achieve accreditation. (*Hansard Feb 25/92*). The subject of accreditation has been raised at various times since then, but it seems that the most significant move toward accreditation was taken in 2001-02.

To understand why FANL has placed increasing emphasis on accreditation one must look at the current environment in which processors and harvesters operate. Since the closure of the Northern cod fishery in 1992 both crab and shrimp stocks have increased significantly. Snow crab stocks continued to improve throughout the remainder of the 1990s, but now there are signs that there may be problems with the resource. Scientific assessments of certain areas indicate that

there may be problems associated with stock levels (*Stock Status Report C2-01, 2002*). The decreasing biomass may be brought on by fishing effort or by environmental factors.

Table 3 shows the relative importance to the industry of Snow crab compared to groundfish pre and post moratorium for the years 1988 and 2000. In addition to the tremendous change in the importance of Snow crab to the industry over this period, there was also increased political pressure to add both processing and harvesting capacity to the industry to allow more people and communities to enjoy the benefits of the lucrative crab industry. In 1992, there were 17 Snow crab processing licences on the Island and in Labrador combined. Today there are 44 Snow crab processing licences in the Province - this represents an increase of over 220% (*FANL, 2002*). Quotas during the period 1992 - 2002 have gone from 28,000 MT to approximately 57,000 MT. In addition to the increase in the number of processing facilities, the technology employed in 1992 to process crab cannot be compared to that used in processing today. Plants have become far more efficient with the use of large capacity automated cooking and freezing equipment. The end result is an industry with far more processing capacity than raw material to sustain that capacity.

On the harvesting side, the industry has also experienced a similar escalation in numbers. In 1994, there were 822 licences for vessels greater than 35' LOA and none in the under 35' LOA sector. In 2002, the numbers have increased to 922 for vessels greater than 35' LOA and 2,516 in the under 35' LOA category. The under 35' LOA category is now over 2.5 times the size of all other inshore vessel categories combined - a high factor for the Union in their voting structure. Table 4 shows the yearly increases in both harvesting and processing licences during that period

TABLE 3

THE FISHING INDUSTRY - PRE AND POST MORATORIUM

	PRE-MORATORIUM (1988)	POST-MORATORIUM (2000)
MAJOR SPECIES GROUP	Cod/Groundfish	Shellfish (Crab/Shrimp)
NUMBER OF OFFSHORE PLANTS	13	3
NUMBER FISHERS AT PEAK	15,000	11,300
NUMBER PLANT WORKERS AT PEAK	27,000	15,600
CATCH VALUE	\$270 million	\$584 million
PRODUCTION VALUE	\$800 million	\$1 Billion

FILE: EIINPRO1

Source: DFA/FANL

TABLE 4

**SNOW CRAB LICENCES (HARVESTING & PROCESSING) AND QUOTAS, 1994-2002
2J3KL, 3Ps, 4R3Pn**

	1994	1995	1996	1997	1998	1999	2000	2001	2002
< 35' Temporary	nil	407	1,805	2,499	2,499	2,516	2,516	2,516	2,516
Supplementary, Sm/Lg	686	686	686	700	700	690	690	690	690
Full-Time	72	72	72	71	71	71	71	71	71
Exploratory	64	64	63	70	70	161	161	161	161
Processing Licences	19	19	22	36	36	38	38	38	38
Quota, MT	28,178	31,464	37,902	44,714	52,180	68,995	55,532	52,256	56,981

FILE:LIC1

Source: DFO - Canadian Atlantic Quota Reports/Snow Crab Management Plans 1994-2002/"New Beginnings" - DFA

as well as corresponding quota levels.

Surprisingly, despite the FFAW's clout in the industry a significant number of both crab and shrimp processing companies operate with non-union labour. Table 5 summarizes unionized and non-unionized crab and shrimp processors in the Province. While this report focuses on the harvesting sector's relationship with FANL, processing workers may also play an important role in determining the industry's future structure particularly as quotas decline and employment becomes an issue. The motivation for FANL's most recent move toward accreditation has come from a realization that Snow crab stocks have perhaps peaked and may be in decline, and that the industry is now faced with an overcapacity situation reminiscent of the late 1980s following the Northern cod euphoria associated with the introduction of the 200 Mile Limit (*Blackwood, G., 1996, Harris, M, 1998.*). Early signs of the decline was the reduction in the TAC from 68,995 MT in 1999 to 55,532 MT in 2000 (*DFO, Canadian Atlantic Quota Reports 1999-02*). Concerns over the status of crab stocks in 2J and 3K are now being expressed.

With increased harvesting and processing capacity and a resource possibly at its peak or in decline, the relationship between fishers and processors is changing despite the current Provincial and Federal legislation governing the fishing industry. The Fishing Industry Collective Bargaining Act provides a mechanism to negotiate minimum prices for raw material. In the current environment with processing capacity far exceeding the resource base, competition for raw material is intense and preoccupies the processing sector. Fishers have enjoyed tremendously high prices for raw material as processors compete with one another for scarce raw material. The

TABLE 5

SUMMARY OF UNIONIZED & NON-UNIONIZED PLANTS - CRAB & SHRIMP

COMPANY	LOCATION	CRAB	SHRIMP	UNION	NON-UNION
CLEARWATER	ST. ANTHONY		X	X	
FPI	PORT AU CHOIX		X	X	
ANCHOR	ANCHOR PT.		X	X	
RJP	JACKSON'S ARM		X	X	
FPI	PORT UNION		X	X	
SEAFREEZ	CLARENVILLE		X		X
QUINLAN	BAY DE VERDE		X		X
QUINLAN	OLD PERLICAN		X		X
DALEY BROS.	ST. JOSEPH'S		X		X
3T'S	WOODY PT.	X			X
ALLEN'S	BENOIT'S COVE	X			X
AQUA FISHERIES	AQUAFORTE	X			X
ATLANTIC	TROUTY	X			X
BEOTHIC	VALLEYFIELD	X		X	
BREAKWATER	COTTLESVILLE	X		X	
CAPE BROYLE	CAPE BROYLE	X			X
COASTAL	ST. LEWIS	X		X	
CONPAK	TWILLINGATE	X		X	
DEEP ATLANTIC	ST. MARY'S	X		X	
DOYLE	NEW FEROLLE	X			X
FALCON	ENGLEE	X			X
FPI	BONAVISTA	X		X	
FPI	TRITON	X		X	
FOGO COOP	FOGO ISLAND	X		X	
GAULTOIS ISLAND	GAULTOIS	X		X	
GRAND ATLANTIC	ST. LAWRENCE	X		X	
NEWFOUND	PORTUGAL CV.	X			X
P. JANES	HANT'S HR.	X		X	
P. JANES	JACKSON'S ARM	X		X	
QUINLAN	BAY DE VERDE	X			X
QUIN-SEA	OLD PERLICAN	X			X
SEACREST	CARBONEAR	X			X
SEAFREEZ	BURGEO	X		X	
SEA TREAT	PORT DE GRAVE	X			X
SEA TREAT	LITTLE BAY	X			X
SEA TREAT	LA SCIE	X			X
SHAWMUT	WITLESS BAY	X		X	
SIMMONS	RAMEA	X			X
ST. LAWRENCE	CODROY	X			X
TORNGAT	MAKKOVIK	X		X	
TORS COVE	TORS COVE	X		X	
WOODMAN'S	NEW HARBOUR	X			X
LAB. SHRIMP	MARY'S HR.	X		X	
LAB. SHRIMP	CARTWRIGHT	X		X	
NOTRE DAME	COMFORT CV.	X		X	
HISCOCK	BRIGUS	X		X	

FILE: CST'NDON
Source: FANL/FFAW

Federal Fleet Separation Policy also prevents processors from owning licences for vessels less than 65' LOA. Effectively, processors have no legal way of securing raw material other than through direct competition with other buyers for raw material landed by “independent” fishers.

This competition has reduced processing margins significantly (*O’Rielly, A., 2002*) and has forced the processing sector to take action aimed at bringing order to the procurement side of their business. While competition is to be encouraged and is the cornerstone of western economies the fishing industry in Newfoundland and Labrador is somewhat unique in that processors accessing inshore landings are not permitted to vertically integrate their businesses as can be done in other industries except that the Province’s legislation prohibits the export of unprocessed fish and shellfish. Processors have no guaranteed supply of raw material. Fishers on the other hand have achieved special status over the years formally through legislation. Three significant examples are

- Enterprise Allocations which prevent competition among fishing enterprises;
- Federal Licencing Policy (specifically the Fleet Separation Policy); and
- the Provincial Workers Compensation Act which deems independent fishers to be employees of processors, placing the responsibility for premiums on processors.

In addition, certain actions taken by various Governments over the years can be arguably said to have favoured fishers. The most recent action involves the legislating of Final Offer Selection for an additional year at the request of harvesters and under protest from FANL.

5.1 Plant Production Quotas

During the past two years, FANL has again tried to achieve accreditation as the sole collective bargaining agent for the processing sector in Newfoundland and Labrador. FANL has indicated that accreditation alone is insufficient to allow the collective bargaining process for a particular fish or shellfish specie to be truly meaningful. Accreditation of FANL as the sole bargaining agent for the processing sector without the ability to enforce the terms of the Collective Agreement into which it enters is an exercise in futility. Furthermore, accreditation without a commitment from the FFAW that prices negotiated will be maximum rather than the minimum as indicated in current legislation, will not advance the process beyond where it is now. FANL already directly or indirectly fulfils the role of bargaining agent for the processing sector, however, FANL, not being accredited, cannot enforce any collective agreement. Accreditation of FANL would provide the organization the necessary legal authority to enforce sanctions on those companies not adhering to the collective agreement. In addition to accreditation and a negotiated maximum price, FANL is also seeking the implementation of a system of plant production quotas.

Plant production quotas would see prescribed quantities of raw material allocated to each plant. This, in FANL's view, would provide orderly landings and would allow plants wishing to retire their licence or sell its production quota to place a value on that portion of their business. Under the current system, the opening price as determined by the Final Offer Selection system is used as a mechanism to start the fishery and competition among buyers for raw material results in actual prices paid to fishers far exceeding the opening price. The FFAW has expressed concern that with

a negotiated maximum price, combined with production quotas, competition among buyers on the wharf will decrease. Limitation on competition, in their view, would lead to lower prices for raw material. (*Vardy 1998*).

A production quota system was recommended by the Vardy Task Force for the inshore shrimp fishery on a pilot basis in 2002. While FANL and the FFAW have been able to agree on how to implement such a pilot project for shrimp, FANL has not followed through. Therefore, it is unlikely the Plant Production Quotas will be implemented in the near future.

5.2 Competition Bureau Investigation

Quota sharing arrangements among processors that are fully sanctioned by government and industry are something that has eluded FANL to-date. Production quotas are generally perceived by harvesters as a way to reduce competition between buyers and thus reduce the price of raw material paid to fishers.

Proposed quota sharing arrangements among the processing sector have become the subject of considerable debate in recent years. The Task Force On Fish/Crab Price Settlement Mechanisms heard reports from many in the harvesting sector that some sort of “cartel” existed among crab processors. However, the Task Force was not able to determine whether or not any formal or informal quota sharing arrangement existed among processors.

Accusations of collusion among processors to limit competition began to surface again during the attempted takeover of FPI by NEOS Seafoods Limited - a consortium of seafood processing companies from Newfoundland, Nova Scotia, and Iceland (*Navigator Oct 2002*). Independent fish harvesters saw the attempted takeover as another way for these processors to limit competition within the processing sector by formally purchasing Fishery Products International. Moreover, accusations that many of the FANL members were engaged in activity specifically aimed at limiting competition between buyers was brought to the attention of the Federal Competition Bureau in 2001. The Provincial Opposition Party led by Mr. Danny Williams obtained documents from an undisclosed source that appeared to provide evidence that in fact a “cartel” of sorts did exist among crab processors. The documents were used as the basis for an application to the Competition Bureau to seek an investigation into possible violations of Federal law. The documents in question appear to show that some form of formal sharing arrangement may have existed among crab processors going back as far as 1994.

The timing of the Competition Bureau investigation was a big setback for FANL in its attempt to move towards accreditation. In the eyes of the harvesting sector, and to a lesser extent the general public, the last thing the processing sector needed was formal power to negotiate maximum rather than minimum prices. Furthermore, it was thought that accreditation was intended to be only the first step followed by a move to production quotas through a formally recognized quota sharing arrangement similar to what they were being accused of doing secretly among themselves.

In 2002, agents of the Competition Bureau raided offices of several large crab processing

companies, as well as the offices of FANL and Newfoundland Freezing Plants Corporation seeking additional evidence to support accusations of a formal price fixing arrangement. Media attention came from both national and local media at the same time FANL was publicly campaigning on the issue of accreditation of FANL. If there were reservations about FANL's intentions prior to the investigation, harvesters were even more sceptical once details of the investigation and related documents became known (*Navigator Oct 2002*). Concerns among fishers that existed about the potential downside of accreditation and production quotas were only magnified as details became known about alleged secret deals among processors to enter into quota sharing arrangements that would see specific quantities of crab allocated to each processor in much the same way that was being publically proposed by FANL during their campaign to implement production quotas.

6.0 FINAL OFFER SELECTION (FOS)

Final Offer Selection (FOS) is a form of compulsory arbitration and is widely regarded as a viable alternative to strikes in the resolution of labour disputes. There are two primary types of labour disputes which may require arbitration. First there are interest disputes which arise between an employer and a union in the course of negotiations for a new collective agreement. An interest dispute is a fundamental disagreement on one or more terms of a proposed collective agreement. Sometimes both the union and the employer agree to voluntarily refer the matter to arbitration. However, in other cases arbitration may be imposed by law, particularly where the general public may be harmed by a prolonged dispute. The second type of dispute is known as a rights dispute, which occurs between an employer and a union with regard to interpretation of their collective agreement. It is important to note that there is no employer-employee relationship between fishers and processors in Newfoundland and Labrador other than that created by the Fishing Industry Collective Bargaining Act. FOS is a form of compulsory arbitration in which the arbitrator must choose, without modification, either the final offer of the union or the final offer of the employer. FOS is most adaptable to situations in which the dispute centers around a single issue. It is much more difficult for an arbitrator to rule on a full package of issues put forward by both parties.

The concept of Final Offer Selection came about as a result of an article written by Carl Stevens in 1966 in which he argued that conventional arbitration would "chill the bargaining process" (*Labour Arbitration Yearbook, 1992, p.202*) and he suggested that an alternative procedure be required in which the arbitrator would have to select the offer of one side or the

other. FOS may provide an alternative to strikes and can contribute to relatively swift resolution of disputes which arise from what otherwise would be a very costly and time consuming collective bargaining process. However, FOS also has its critics and, in the case of the crab industry in Newfoundland and Labrador, may require some modifications to make the process more suitable to the characteristics of the industry.

6.1 A Critique of Final Offer Selection

Final Offer Selection as an effective dispute resolution mechanism has many proponents, but it appears that its critics may be more numerous. The most widely cited benefit of FOS is that it assumes individuals are risk averse and as such are unwilling to make unreasonable final offers for fear that they would jeopardize their chances of having their offer selected by the arbitrator (*Winmill, R.W., 1976*). Therefore both sides tend to make concessions in an attempt to develop the most reasonable offer that they can live with. Theoretically, both sides should not be far apart once each final offer is presented even though the arbitrator must choose one offer or the other.

There are many more criticisms of FOS that may or may not be relevant to the fishing industry. It is possible that the arbitrator may be faced with a choice between two extreme positions. These extreme positions can arise when union and management are faced with the political reality of not wanting to appear to have capitulated to the other side. Unions can often be faced with this situation where rank and file members put pressure on union executive such that the union leaders are unable to compromise without losing face. The same statement can be made for FANL and its

membership. In addition, sometimes arbitrators are faced with a choice between offers which may be incompatible with the public interest.

Under FOS both parties are putting the responsibility on a third party to resolve the dispute. While this may deflect much of the criticism from the "losing" side toward the arbitrator, arbitrated decisions also make both parties unaccountable for their decisions.

Under FOS the process enshrines a "winner" and "loser" (*Labour Arbitration Yearbook, 1992, p.213*) unlike collective bargaining where both sides come to an agreement that is acceptable to each other. Where compromises are necessary, particularly when multiple issues are involved, it would seem reasonable that both parties would be better able to reach compromises. In multiple issue disputes other than simple economic decisions such as rates of pay, the decision of the arbitrator can become extremely difficult, particularly when dealing with issues that are less tangible, such as pay equity or sociological factors (*Labour Arbitration Yearbook, 1992*).

When both parties know that they have a final step in the bargaining process in the form of compulsory arbitration, the incentive to reach a negotiated settlement is removed. Both sides become unwilling to make any compromise for fear their position may be compromised when and if they reach the arbitration stage.

While strikes and prolonged labour disputes can be very expensive, arbitration is also very expensive. Considerable costs are incurred by each party in the preparation of briefs, legal fees,

arbitrator and facilitator costs, and other services that may be necessary. Even though the repeated use of FOS as a settlement mechanism allows both parties to become more familiar with the process and therefore more efficient at preparing briefs and gathering data, there are high recurrent costs with any arbitration process (*Labour Arbitration Yearbook, 1992*).

There has been limited experience with Final Offer Selection in Canada. The limited enthusiasm for FOS is primarily because it is viewed that compulsory arbitration forces the arbitrator to choose the lesser of two evils rather than allow both sides to come to an agreement that they both can live with. FOS has been enshrined in only two pieces of labour legislation, the *Ontario School Boards and Teachers Collective Negotiations Act*, covering teacher bargaining, and the *Manitoba Labour Relations Act* (*Labour Arbitration Yearbook, 1992, p.217*).

Although this report is focussed on FANL's and the Union's roles in collective bargaining with specific emphasis on the use of Final Offer Selection to resolve disputes, it should be noted that there are several alternatives to FOS. These are outlined in Table 6 which is from the Task Force on Fish/Crab Price Settlement Mechanisms (*Vardy 1998*). It is clear that from a world fisheries perspective that Newfoundland is unique in its negotiation of minimum prices. Of these alternatives, the auction model has often been cited as a most likely candidate for a similar Pilot Project to the one undertaken with FOS. In fact, the Task Force recommendation of an auction system in Area 3Ps for the 1998 season was never acted upon (*Vardy 1998*).

While the fish/crab price settlement mechanism in the Province is considered unique in terms of

TABLE 6

SUMMARY OF PRICE SETTLEMENT MECHANISMS

COUNTRY/REGION	METHOD OF FISH SALES/PURCHASES
Australia	Free Market, Dutch Auctions, Direct Sales
Chile	Free Market, Direct Sales
Denmark	Free Market, Auctions, Direct Sales
Finland	Free Market, Auctions, Direct Sales
France	Free Market, Auctions, Direct Sales
Great Britain (UK)	Free Market, Auctions, Direct Sales
Iceland	Free Market, Auctions, Direct Sales (Suspended legislation for price setting)
Japan	Free Market, Two-tier auction System
Netherlands	Free Market, Auctions, Direct Sales
Norway	Legislation giving fish associations power to set price/evolving auction system
Peru	Free Market, Auctions, Direct Sales
Poland	State Control/Movement to Free Market/Auctions
Portugal	Free Market, Auctions
United States	Free Market, Auctions, Direct Sales
New Zealand	Free Market, Auctions
Canada:	
Nova Scotia	Free Market, Direct Sales
New Brunswick	Free Market, Direct Sales
Quebec	Direct Sales, Arbitration
British Columbia	Direct Sales, Mutual Gains Bargaining, Arbitration
Newfoundland & Labrador	Direct Sales, Collective Bargaining on Minimum Prices

Source: Task Force on Fish/Crab Price Settlement Mechanisms in the Fishing Industry Collective Bargaining Act.

FILE: FOSSM2

the negotiation of minimum raw material prices, the role of trade associations and unions in settling prices can be found in other jurisdictions as well. Two good examples of this are Norway and Iceland. Norway through its Raw Fish Act requires all raw material except farmed salmon to be marketed through a sales organization established and controlled by the harvesting sector. There are several of these organizations in Norway which are structured on a species and/or geographical basis and they have the right to set the conditions of sale and the minimum price. However, there is also an electronic auction system in place where raw material is electronically offered to the highest bidder.

Similarly, Iceland has a dual structure for determination of fish prices. The first is the Fishing Industry Price Determination Board which consists of equal representation from both the harvesting and processing sectors. The Board had the responsibility for setting prices for all species, but in the 1980s it came under considerable criticism and its role was somewhat diminished as a result. The Board still exists, but the establishment of wet fish auctions in 1987 has resulted in auctions being the most prominent price settlement mechanism. In fact, since 1991 raw material prices in Iceland have not been officially determined even though the Board remains in place should it be required. The use of trade associations and unions has been instrumental in bringing about the necessary changes that have brought stability to the fishing industry in both of these jurisdictions, but their role in price determination is now overshadowed by the rise in the use of auctions.

6.2 Final Offer Selection and Snow Crab

Under an FOS system, both parties (FANL and the FFAW) are required to formulate their respective final offers which, in this situation, is primarily focussed on the price of raw material. Both offers, including all relevant documentation, are submitted to an independent arbitrator who considers each side's proposal and has the duty to choose one proposal or the other. The arbitrator's decision is to be based on how reasonable the proposal is. The proposal which the arbitrator identifies as being the most reasonable is the one which is chosen.

The Pilot Project adopted in the Snow crab industry involved a three-phase FOS process (*Noseworthy, 1999, p.9*), as follows:

1. Phase 1 involves interest-based fact finding and issue identification;
2. Phase 2 is the collective bargaining phase in which both FANL and the FFAW try to reach agreement on price without assistance of an arbitrator; and.
3. Phase 3 involves mandatory settlement by arbitration should the Union and FANL fail to reach agreement in Phase 2.

In 2000, the use of FOS was formally recognized in an amendment to the Fishing Industry Collective Bargaining Act. The Amendment is contained in Appendix 8.

There are other procedures which have been put in place as a means of adapting FOS to the

resolution of price disputes in the Snow crab industry (*Noseworthy, 1999, Appendix E*). Not later than 60 days prior to commencement of the fishery both FANL and the FFAW are required to:

- establish a joint technical committee to review and discuss key issues likely to affect the crab fishery;
- nominate, for appointment by the Minister, a facilitator for the negotiations; and
- nominate, for appointment by the Minister, an arbitrator-in-waiting for the negotiations.

If both sides are unable to agree on a facilitator or arbitrator, not later than 60 days before the expected commencement of a fishery, they must agree upon and appoint a person not party to the negotiations to make the necessary recommendations to the Minister of Labour. (*Noseworthy, Appendix C*). If both parties fail to do this, the Minister will appoint a facilitator and an arbitrator. The arbitrator-in-waiting must review all documents relevant to the issues to be addressed should the arbitrator be called upon to assist in resolving any impasse. During the conduct of the fishery, the arbitrator-in-waiting is also responsible for resolution of any material disputes which may arise between FANL and the FFAW related to implementation of the collective agreement.

There are many resources available to the arbitrator which can assist in the decision making process. These include relevant legislation, most notably the Fishing Industry Collective Bargaining Act, the Vardy Task Force Report, expert advice from others perhaps more familiar

with issues relating to the fishing industry such as current market information, reports provided by the facilitator on the progress of negotiations, and, with approval of both parties, previous arbitration decisions reached during the course of the Pilot Project. The arbitration decision with respect to Snow crab must be based solely on commercial and economic considerations. During the initial stages of the collective bargaining process, both parties may request participation of the Department of Fisheries and Oceans (DFO) to provide information related to the status of the resource. Similarly, the Department of Fisheries and Aquaculture (DFA) may be called upon to provide input on quality issues.

While the primary objective is establishment of a raw material price, other related issues may also be subject to negotiation. These may include resource management issues and quality issues. A mechanism (*Noseworthy, 1999, Appendix C*): has been established to deal with resolution of non-price issues as follows:

1. the parties can mutually agree to refer any resource management issue to DFO or any quality-related issue to DFA for adjudication;
2. either party can refer the issues of opening dates, closing dates, trip limits or in-season conservation related closures to DFO for adjudication; and
3. either party can refer matters related to inspection protocols or maintenance/refinement of grading standards to DFA for adjudication.

Both FANL and the FFAW must make written representation to the appropriate government

department when a decision is requested. Government must then make their selection on an issue by issue basis, but are not required to provide supporting documentation for their decision.

6.3 Arbitration Procedures

FOS can be an efficient means of dispute resolution as a result of procedures put in place to ensure that a set timetable is met (*Noseworthy, 1999, Appendix C*). The use of FOS in the fishing industry provides for the following arbitration procedures:

- no later than 60 days prior to the expected commencement of the fishery, a facilitator and an arbitrator-in-waiting are appointed by the Minister of Labour;
- arbitrator familiarizes himself/herself with the issues - all documentation is received from FANL, FFAW and the facilitator;
- within 14 days of the anticipated start of the fishery, both sides prepare Final Offers for submission to the arbitrator, if they cannot agree on conditions under which the fishery will commence;
- both parties agree on the timetable for exchange of Final Offers in the event a collective agreement cannot be achieved. The exchange of offers should take between three to 24 hours in advance of presentation of Final Offers to the arbitrator. Both parties must

provide copies of their Final Offers to the facilitator and the arbitrator at the same time they exchange copies with one another. Both sides are also free to continue discussions aimed at reaching a final agreement up to the time they are required to make oral submissions to the arbitrator. If they are unable to agree, Final Offers are presented unchanged to the arbitrator. Once the Final Offers are in the hands of the arbitrator, both sides can continue to seek a collective agreement up to the time the arbitrator reaches a decision;

- not more than 7 days after receipt of Final Offers, the arbitrator must render a decision. In the absence of a written Final Offer, the final negotiating position of the party will be considered its Final Offer. The arbitrator's decision will form the basis of a collective agreement;
- both parties continue to negotiate if the arbitrator's decision establishes a minimum price of raw material for less than the full fishing season. In the event that they are unable to reach agreement within two weeks of the scheduled expiry of the interim price, the arbitrator will decide the price to be paid following the expiration of the interim price; and
- the arbitrator's decision is final unless both parties agree on a particular issue and express willingness to continue to negotiate toward alternatives to the arbitrator's decisions.

Over the past 6 years, 48 sets of negotiations have gone through the FOS process and of those 22

went to arbitration with 12 decisions in favour of the FFAW and 10 in favour of FANL (*The Telegram, January 8, 2003*).

6.4 Dispute Resolution During the Conduct of Fisheries

Disputes may occur even after the fishery has commenced and procedures have been put in place to deal with potential disputes (*Noseworthy, 1999, Appendix C*). To be material to FOS, disputes must involve more than one fishing vessel and more than one processing plant. However, both FANL and the FFAW may agree to deem a dispute involving one harvester and/or one processor a material dispute. These disputes may involve

- interpretation, meaning, application or administration of the collective agreement or provision of the agreement;
- a violation or alleged violation of the collective agreement; or
- a question of whether a matter is arbitrable.

In the event that both sides are unable to reach an agreement within 48 hours of the event which led to the dispute, then a party may refer the issue to the arbitrator. If the selected arbitrator is unavailable to deal with the matter, then another will be selected from the current year's pool of approved arbitrators. The selected arbitrator must deliver a decision within 48 hours from the

time notice was served. The decision is final and binding, and is based on presentations made by both sides. Neither FANL nor the FFAW are permitted to cause a stop in the fishery during the process of resolving material disputes during the conduct of the fishery. Although time periods are specifically outlined in the resolution procedures they are guidelines and not mandatory. Should FANL or the Union fail or refuse to abide by the arbitrator's decision then one party may take legal action against the other (*Noseworthy, 1999*).

6.5 The Mechanics of Determining Crab Raw Material Price

The price to be paid to fishers by processors is based on the weighted average market price for crab going into the three major product groups - U.S. Sections, Japanese Sections, and Combination meat. A diagram is provided in Appendix 9 which identifies the major parts of the Atlantic Snow Crab. For the purpose of understanding what these three products are the following definitions are provided (*Seafood Datasearch, 1999*):

- A. U.S Sections:** the left and right section of a crab are produced when the carapace is removed. They are the left and right groupings of legs and claw arms held together by shoulders. Minimal processing is required. Typically a 5 - 8 oz section is used as a benchmark for section prices in the U.S. market.

- B. Japanese Sections:** same as U.S. sections except Japanese specifications required a pack with benchmark weight of 5 oz. up. Typically these products are packed in larger cartons

as they are not destined for final consumer. They are generally sold to reprocessors who extract the meat or add value in some other way.

- C. **Combination Pack:** This is a meat extracted product which contains 60 % salad meat sandwiched between a top and bottom face of all-leg meat which accounts for the remaining 40 % of the pack weight. This product is sold in the U.S. and Europe.

The price to fishers is based on the weighted average price received in the market for these three products during a specified period - in this case market prices are reviewed every 2 weeks. The Provincial Department of Fisheries and Aquaculture reports the quantity of raw material directed toward each of the 3 products for the same 2 week period. A copy of the a DFA report is contained in Appendix 10. Raw material going to meat products generally yields approximately 27 % meat, raw material going to sections generally yields 60 % section weight. With these inputs the following formula is used to calculate a single weighted average market price expressed in raw material terms:

$$\begin{aligned} & \text{U.S. Combo Price} \times \text{U.S. Combo Market Share} \times 27 \% + \\ & \text{U.S. Section Price} \times \text{U.S. Section Market Price} \times 60 \% + \\ & \text{Japanese Section Price} \times \text{Japanese Section Market Share} \times 60 \% \end{aligned}$$

Once that price is determined, the price is converted to Canadian dollars for the same 2 week period. Each market price range has an associated price to fishers. The pricing table with ranges

of weighted average market prices and corresponding reference prices is arrived at through negotiation between FANL and the FFAW. The Pricing Table forms the basis for movement of raw material prices upward or downward. The Pricing Table is based on a mutually agreed benchmark which allows processors to recover costs. The fishers receive 80% of any increase or decreases in the raw material portion of the market price. The portion of the market price which is accounted for by raw material is what both sides must establish as part of their Final Offers and therefore can fluctuate somewhat from year to year. A copy of a pricing table can be found in Appendix 11 which contains a Crab Market Report prepared by John Sackton of Seafood Datasearch.

6.6 FANL's Current Position On Final Offer Selection

FANL members have generally seen Final Offer Selection under the Pilot Project as a definite advantage over the previous bargaining process used prior to 1998. The bargaining process according to members is quicker, more predictable and more manageable. However, their enthusiasm does not come without some concerns and recommended modifications to the system. Members would like to see the use of FOS continue with the following modifications (*O'Rielly, 2000*):

- A. Accreditation: Since the Fishing Industry Collective Bargaining Act was enacted in 1971, FANL has acted as the processing sector's bargaining agent. However, the Act does not recognize FANL as the sole bargaining agent for the processing sector. FANL would like

amendments to the Act to include accreditation of FANL as the sole bargaining agent for the processing sector. FANL has agreed to provide the opportunity for all processors, both FANL and non-FANL, to participate in the process on a cost recovery basis.

A similar attempt was made by FANL in 1992. (*Hansard, Feb. 25, 1992*). At that time, there was strong opposition from some non-FANL processing companies, most notably, Seafreez Ltd. Mr. Bill Barry, the owner of Seafreez, has a long history of public opposition to trade unions and he felt at the time that making FANL the sole bargaining agent for processors would legitimize the activities of the union. In addition, Barry also stated his belief that the proposed change to legislation was an attempt by FANL and Union executive to preserve and protect themselves (*Hansard, Feb. 25, 1992*).

- B. Dispute Settlement Mechanism: Although the Memorandum of Understanding signed between FANL and the FFAW outlines a Dispute Resolution procedure, it does not provide for sanctions that would act as deterrent to any party which breaks a provision of the agreement. FANL recommends that the sanctions apply specifically to FANL and the FFAW with provisions for either party to recover its costs from respective members/licence holders.

- C. Separation of Price Arbitration from Resource Management/Quality Issues: As mentioned previously, FOS works best with a single issue and this is also the view held by FANL. To make decisions less complicated FANL would like to see price considered separately

from resource management and quality issues. An added bonus of this change would be that the Federal Department of Fisheries and Oceans and the Provincial Department of Fisheries and Aquaculture could then participate in discussions related to resource management and quality issues.

- D. Union Fees and Revenues: FANL is completely opposed to any attempt by the FFAW to make the cost of the consultation process with processors, solely the responsibility of FANL. FANL's position is that this kind of attempt to push costs associated with the Union on FANL will only serve to undermine the entire process. The Union wants processors to pay them to lobby against processors.
- E. Selection of Arbitrators: FANL advocates further scrutiny of approved arbitrators since the current list has mostly arbitrators that approach the business of the fishery from a conventional labour perspective, not recognizing the unique issues facing the fishing industry. FANL suggests that approved arbitrators should have business backgrounds and training.
- F. Administration Expenses: FANL has recommended that Government continue to provide financial support for the Pilot Project.
- G. Auction Pilot Project: FANL has expressed a willingness to the Union and Government to look at an auction system as a potential alternative to collective bargaining.

As part of the FANL/FFAW agreement to participate in the one-year Pilot Project, both parties were given the right to continue to use FOS in subsequent years to settle price disputes.

Alternatively, either party could opt out of FOS within a specified period of notice. In late 2002, FANL exercised this option by providing written notice to the Department of Labour that it did not wish to continue to use FOS as a price dispute settlement mechanism for the 2003 fishing season. Reasons cited for this decision relate to FANL's accreditation initiative.

Accreditation under normal circumstances should be achieved by the party involved (the processing sector) as long as the party obtains the support of 50% of the processors determined by production throughput in the previous year. Due to strong opposition from fishers, Government decided to hold public hearings into the issue. Furthermore, these hearings were scheduled for March 2003 which is too late in the year from FANL's perspective given that price negotiations often begin in March. The delay in the hearings was seen as a deliberate attempt by Government to interfere with FANL's accreditation initiative, an initiative which most feel would have been successful. In protest, FANL decided to opt out of Final Offer Selection. Government countered with Bill 31, an Act to amend the Fishing Industry Collective Bargaining Act to force FANL to participate in FOS for the 2003 season. The Minister of Fisheries, Gerry Reid, cited a desire to preserve the stability that FOS has brought to the fishery and to avoid a return to the price disputes and strikes that were prevalent prior to 1998 when the Pilot Project was introduced. (*Hansard December 12, 2002*). FANL has since engaged the services of a consultant to survey industry participants on the structure of FANL, including the issue of FANL's role in collective bargaining. In early 2003 it also amended its by-laws to remove its collective bargaining mandate

at least until its consultant delivers his report (*O'Rielly, 2003*).

6.7 The FFAW's Current Position On Final Offer Selection

The Union also has expressed cautious optimism for the Pilot Project. They are cautious because support for the Pilot Project effectively supported a temporary removal of the right to strike on the part of fishers. Such a decision is something that is not taken lightly by any union (*Noseworthy, 1999, Appendix E/ Anstey, 2000*).

In any event, the FFAW supports an indefinite continuation of the Pilot Project subject to:

- A. Periodic Review at the Request of Members of the Bargaining Unit. The Union has suggested every 2 months over a 24-month period. A petition from a specified percentage of the bargaining unit submitted within any 2 month period would decide on the continued use of Final Offer Selection in the resolution of price disputes.
- B. Opting Out: The Pilot Project should continue as long as members have the right to opt out under predetermined procedures.
- C. Arbitration Costs: The FFAW recommends continued "investment" in the project by the Government of Newfoundland and Labrador, given the high costs associated with the arbitration process specifically, as well as associated costs involving information

gathering, travel etc.; and

- D. Terms of Reference of Arbitrators: Specifically, the Terms of Reference should exclude resource management issues such as opening and closing dates, trip limits, gear regulations etc..

Both FANL and the FFAW agreed to continue using Final Offer Selection through 2003. The Union appears perhaps more cautious than FANL over the issue of the right to discontinue the Pilot Project and this is to be expected, given the cessation of the right to strike. With the FOS thus far achieving its goal of resolving price disputes expeditiously and preventing unnecessary delays in the fishery, the Provincial Government is also pleased with the outcome. The changes recommended above are generally aimed at streamlining the system to make it better suit the needs and unique characteristics of the fishery as opposed to changes to fundamental principles of the Final Offer Selection process.

FANL's attempt to opt out of FOS has only strengthened the Union's position as the bargaining agent for fishers. While FANL had removed itself from collective bargaining by amending its by-laws, the Union indicated it would serve notice to processors individually. The vast majority of processors received notice from the FFAW that they were requested to attend a meeting on January 27th, 2003 at 10:00 a.m. to begin negotiating. All processors received the same letter and were requested to attend the same meeting. While FANL itself had intended to withdraw from collective bargaining, its members were essentially being forced to bargain collectively. Those

who refuse to participate in the process by law could be forced to accept a binding agreement that they had no part in negotiating. Since then, FANL has again agreed to collectively bargain on behalf of its members and the strategy of withdrawing from collective bargaining proved ineffective.

7.0 CONCLUSIONS

Trade associations have undergone a government-induced transformation from organizations primarily concerned with cooperative marketing to the role of lobbyists and price negotiators. The value of these organizations as negotiators of raw material prices will remain questionable as prices tend to be minimums which processors invariably bid up. This undermines the collective bargaining process and the credibility of the processing sector. Trade associations, along with other industry organizations, such as the FFAW, will continue to provide valuable advice to government policy makers. However, processors as individual companies or through their associations will continue to meet considerable opposition to any unilateral action that directly threatens the independence of inshore fishermen. In this regard, it is highly unlikely that the processing sector will succeed in changing government policy aimed at preserving the independence of inshore fishers. This is certainly evident in light of actions taken by the Provincial government through Bill 31 which removed FANL's right to withdraw from FOS for the 2003 season, and the longstanding Fleet Separation Policy of DFO.

Final Offer Selection (FOS) has achieved short-term objectives of bringing about timely raw material price settlements in the Snow crab industry and for several other fisheries. The Pilot Project undertaken on recommendation of the Vardy Task Force in 1998 was deemed a success by processors, harvesters and government. Enthusiasm for use of FOS in negotiations resulted in an amendment to the Fishing Industry Collective Bargaining Act in 2000 to include FOS (see Appendix 8). The Union has expressed unqualified support for the continued use of FOS.

However, fishers have fought long and hard for the right to strike and have retained that right under legislation albeit with some restrictions aimed at protecting the effectiveness of FOS. Until the conclusion of the 2002 season, FANL had also expressed satisfaction with progress in settlement of price disputes. Since the introduction of FOS, the fishery has started on time to allow maximum selling time and to allow fishers, processors and buyers to make necessary business decisions based on the predictability of the new system. However, FANL, unlike the Union, had previously suggested that a threat to continued use of FOS could come in the form of quota cuts or rapid declines in market prices (*O'Rielly 2000*).

Since 1999, FANL has outlined its concerns to Government in several letters expressing concerns of the processing sector over the issuance of additional processing capacity by the Provincial government and the resulting increase in competition for raw material. The increase in capacity has had the same impact on the industry as a quota decrease. Production margins are squeezed more than ever as processors try to maintain their share of crab. After-season price rebates to harvesters have grown to unprecedented levels as processors try to maximize the satisfaction of fishers in the hope of securing raw material in subsequent years (*The Telegram, December 30, 2002*).

All concerned parties seemed satisfied with the new system until 2002, which is not surprising given the continuous upward trend in quotas and prices since 1989 (see Appendix 6). For fishers and processors, income is a function of price and/or volume. It is when we see a decline in both that the true test of FOS will occur. For fishers, reduced quotas may bring less quota to each

licence. However, if the past is any indication, competition among processors for raw material will help initially offset some, if not all, of the lost income resulting from lower volume by their paying increased prices.

One must not overlook a key benefit of using FOS to settle price disputes in the Snow crab industry. Regardless of whether competition for raw material pushes prices higher than those achieved through arbitration, a timely start to the fishery is also a major benefit to all. Even if FOS is used simply to get the fishery started, this is still a major achievement. The industry and government must continue to provide a degree of predictability to participants and to those in the marketplace, as key business decisions are made. Newfoundland and Labrador is better off with a market that knows that it can count on product at a particular time. Additional benefits can be achieved through a more extended fishing season, from a quality maintenance program and a scheduled system of landings.

It is inevitable that as production margins are squeezed by increased production capacity and/or a decreased resource base that fishers and processors will at some point be drawn together with a common problem - lack of resource. The current situation in the industry is allowing fishers to enjoy unprecedented wealth and attention brought on by the desire of the processing sector to secure raw material. Both the harvesting and processing sectors are highly capital intensive. While lending institutions such as banks have historically funded the processing sector, the harvesting sector was seen as high risk and often received special treatment from government through the Fisheries Loan Board and other programs. The end of these programs in the 1990s

has resulted in the financing of vessels and gear by the processing sector. At some point processors will not be willing to finance additional capital investment in the harvesting sector especially if the resource base does not warrant the risk. From a business perspective it is the desire of the processing sector to vertically integrate. However, the desire of the inshore harvesting sector is to maintain its independence while, at the same time, maintaining its special status in the context of the Employment Insurance Program (EI) and the Workers' Compensation Commission. Despite the Fleet Separation Policy it is ironic and highly prejudicial that fishers are permitted to own processing plants, yet processors are not allowed to control harvesting licences.

This report has analysed the historical development of the processor-harvester relationship to put into context why the industry is governed by regulations which appear to many in the processing sector to weigh in heavily in favour of the harvester. The history of the "truck" system and decades of poverty and abuse have instilled an image of the poor fishermen in our collective memories. There are many reasons why fishers have special status under the Employment Insurance Act and within the context of the Workers Compensation Commission to name two examples. The question remains as to whether this special status has outlived its need and whether or not it remains in place simply because it would be political suicide to tamper with it.

Given Newfoundland and Labrador's dependence on the fishery as a means of economic survival for most rural communities, one cannot diminish the need to balance business decisions with social and economic concerns. However, history has proven time and again that the fishery cannot cure all the social and economic ills of the Province. This fact must be formally

recognized through legislative changes at both the Provincial and Federal levels of government.

In this context it can be submitted that:

1. the Federal Fleet Separation Policy should be removed to allow processing companies to vertically integrate;
2. that processing companies and harvesters should offer one another shareholdings in their respective enterprises to reduce the emphasis on raw material procurement and the price of raw material;
3. that both harvesting and processing licencing decisions should be removed from the political arena and placed into the control of an arm's length allocation tribunal;
4. that in the short term FANL's accreditation initiative should be allowed to proceed without any direct or indirect interference from outside the processing sector; and
5. the Fishing Industry Collective Bargaining Act should be amended to reflect a negotiated raw material maximum price consistent with other similar forms of collective bargaining in other industries.

FANL remains a multi-function processors organization. In 2002, it opted to withdraw its membership in the Fisheries Council of Canada (FCC) because it wanted to concentrate its time

and financial resources on significant local issues such as collective bargaining. Appendix 12 provides a diagram outlining FCC members in 1945, 1980 and 2003. FANL's decision to withdraw from FCC has placed added pressure on FANL as its members face significant challenges nationally and internationally, such as EU tariffs on cooked and peeled shrimp.

The approach outlined above provides short-term and long-term solutions to the processing sector as it attempts to deal with immediate issues such as its place in the current collective bargaining framework. In addition, this approach recognizes the challenges within both the harvesting and processing sectors as the industry slowly evolves into a self sustaining business sector with less emphasis on curing Newfoundland and Labrador's social ills. This approach also focusses on the need for a strong closely linked partnership between the harvesting and processing sectors to maximize the value of the Province's fishery resources in the international marketplace.

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APPENDIX 1 - FOUNDING MEMBERS FFTA/CURRENT MEMBERS FANL

**Frozen Fish Trades Association Limited
Original Members, 1944**

Company	Representative(s)
Harvey & Company	Sir. L. Outerbridge; C. Noonan; K.C. Skuce
North Eastern Fish Industries/W. J. Moores Limited	S. W. Moores
Job Brothers & Company Limited	W. F. Hutchinson; H. A. Russell
Fishery Products Limited	A. H. Monroe; G. K. Laing

Source: FANL

File: FFTA1

**Fisheries Association of Newfoundland & Labrador Limited
Membership List, 2000**

Company	Representative(s)	Majority Owner
Allen's Fisheries Limited	R. Allen	Allen
Aqua Fisheries Limited	D. Graham	Graham
Atlantic Fisheries Limited	G. Mullowney	Mullowney
The Barry Group	B. Barry	Barry
Breakwater Fisheries Limited	R. Barnes	Barnes/White
Coles Fisheries Limited	T. Coles	Coles
Daley Brothers Limited	T. Daley	Daley
Dorset Fisheries Limited	D. Philpott	Quinlan
H. B. Dawe Limited	P. Hillyard	Hillyard
James Doyle (Sr.) & Sons Ltd.	Cliff Doyle	Doyle
Eric King Fisheries Limited	R. King	King
Fishery Products International Ltd.	K. Coombes	Publicly Traded
Grand Atlantic Seafoods Inc.	I. Petten	Penney
Grand Bank Seafoods Limited	L. Bungay	Risley
E. J. Green and Company Limited	D. Green	Green
Harbour Seafoods Limited	R. Payne	Payne
Harbour Grace Shrimp Company	B. Sheppard	Ingeset
Higdon Seafoods Limited	F. Woodman	Woodman
High Liner Foods Limited	B. Wareham	Publicly Traded
J. W. Hiscock & Sons Limited	D. Hiscock	Hiscock
P. Janes and Sons Limited	R. Janes	Janes
Quinlan Brothers Limited	P. Quinlan	Quinlan
Quin-Sea Fisheries Limited	F. Hopkins	Quinlan
Tors Cove Fisheries Limited	M. O'Brien	O'Brien
White Bay Ocean Products Limited	B. Janes	Janes
Woodman's Sea Products Limited	F. Woodman	Woodman

File:FANL2

Source: FANL

APPENDIX 2 - POEMS REGARDING BURGEO STRIKE

**RHYMES OF THE TIMES
BY NISH COLLINS**

BURGEO BLOOPER

It's hard to see why Spencer Lake,
A retrogressive step should take,
Because some men of enterprise,
Felt it was time to unionize.

When management opts out like this,
Then surely something is amiss.
Non-confidence, thinks he, what tripe,
Don't herring workers rate a gripe.

If union rights they now elect,
They should be treated with respect.
And management still in Natlake,
A little human interest take.

If not too busy Mr. Lake,
A Labour Relations course should take.
And viewing it objectively,
See what it means to industry.

Because a chap in Burgeo,
Is captive, where else can he go?
Why take advantage of these men?
Have servile days come back again?

Source: The Daily News, 14 November 1970

REPLY TO NISH COLLINS - BURGEO BLOOPER

In Rhymes of the Times by Poet Nish,
He takes on my brother and Natlake Fish.
His criticism is rather strong,
and in my opinion he is mostly wrong.

There are many people, whether right or wrong,
Who have opinions and views that are rather strong.
And if you are called to show your hand,
Your to be admired for taking a stand.

Spencer has chosen the Burgeo way of life,
Where the people are happy without unions and strife.
And if only a few want to change this lot,
Without hesitation he got off the pot.

Most people say unions are here to stay
And why should you buck them and get in their way.
But if you should live in an out of way place
Spencer feels outside unions should not show their face.

Spencer does not feel men should not have their say
About living conditions and the rate of their pay
And, may I remind the Poet called Nish,
He is also most interested in the price paid for fish.

Now if disinterested parties should come from afar,
Such as the Borsks and Cashins and Father McGrath,
And their message is not for the common good,
Then on his ground Spence has firmly stood.

So far in Burgeo it's been Natlake
And with an off season staff their vote did take.
The normal staff is fifty strong
And to vote on seventeen is entirely wrong.

We put our complaint to the Labour Board,
But up to date, we have not been heard.
We think out of courtesy they should have replied
But now we hear they have certified.

So Spencer, to make his point for sure,
Said this bad disease needs a drastic cure
And, feeling twould spread to another spot,
Decided to withdraw his lot.

In battle, the General he must decide
To advance or withdraw and take in his stride.
But the war it is won by taking a stand
On ground which you chose and a love for your land.

So, Nish, my friend, you don't make sense
In your sizing up of my brother Spence.
So criticize if you so chose
But before doing so walk a mile in his shoes.

APPENDIX 3 - EVOLUTION OF PRODUCTS - PRE 1960 THROUGH 1990S

PRINCIPAL NEWFOUNDLAND GROUND FISH PRODUCTS

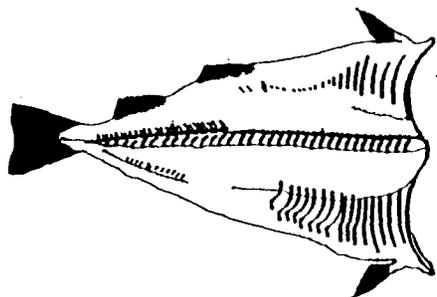
BEFORE 1960

1960-1980

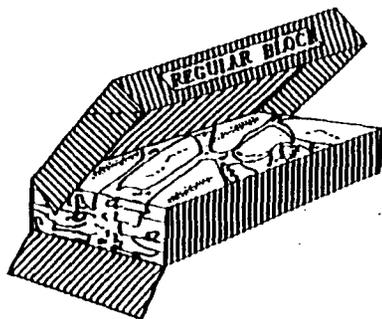
1981-1992

1993 - ?

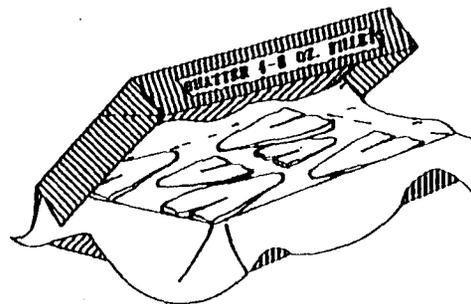
AS PRODUCED



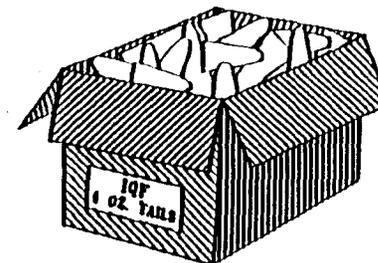
SALTFISH



FROZEN BLOCK

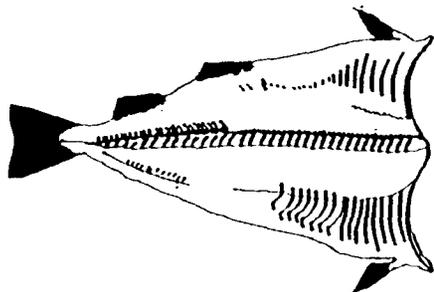


FROZEN WHOLE
FILLETS



FROZEN FILLET
PORTIONS

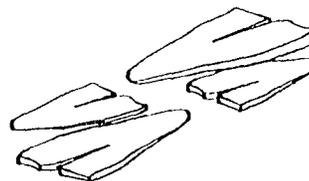
AS CONSUMED



SALTFISH



FISH STICKS

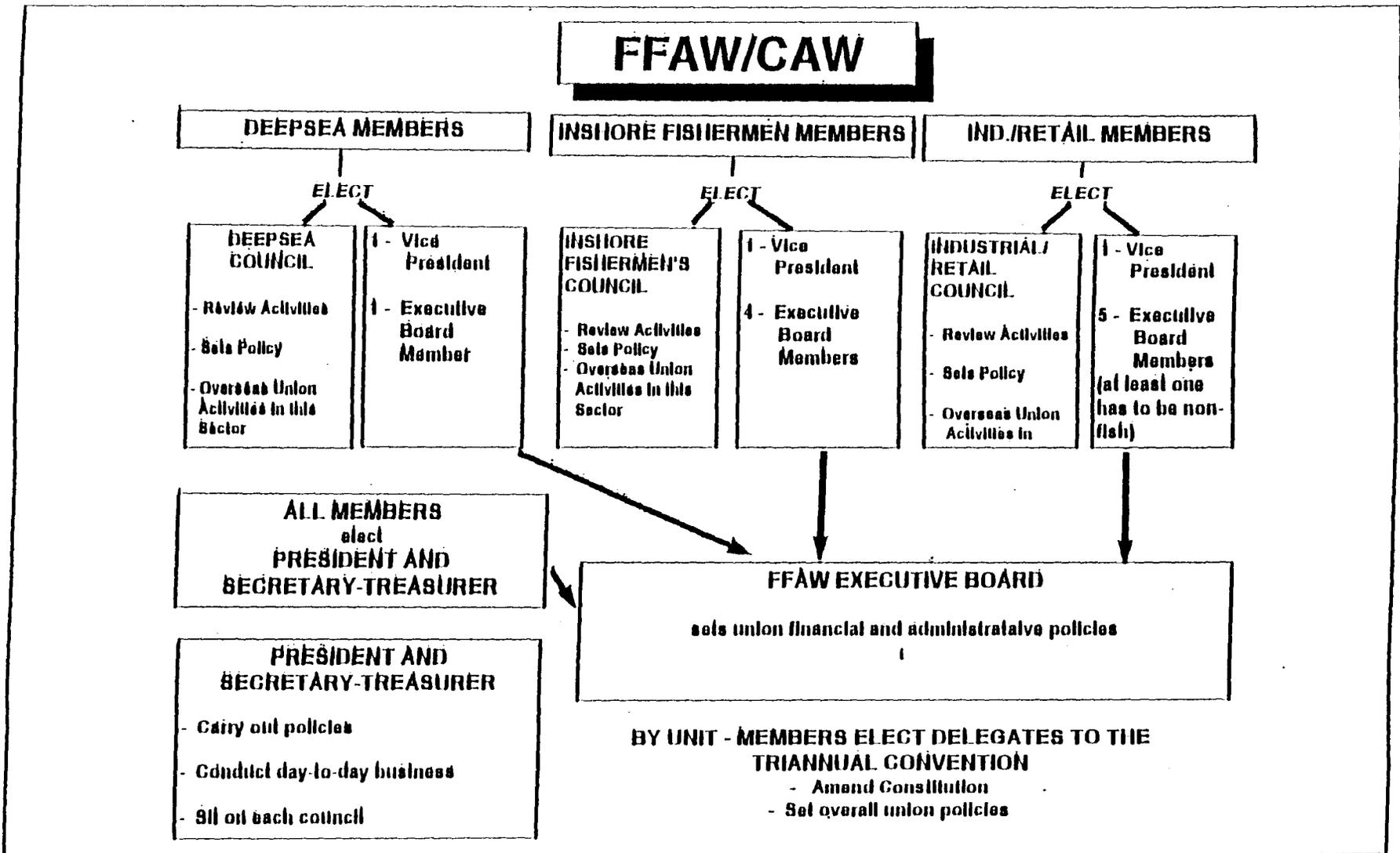


WHOLE FILLETS



IQF TAILS

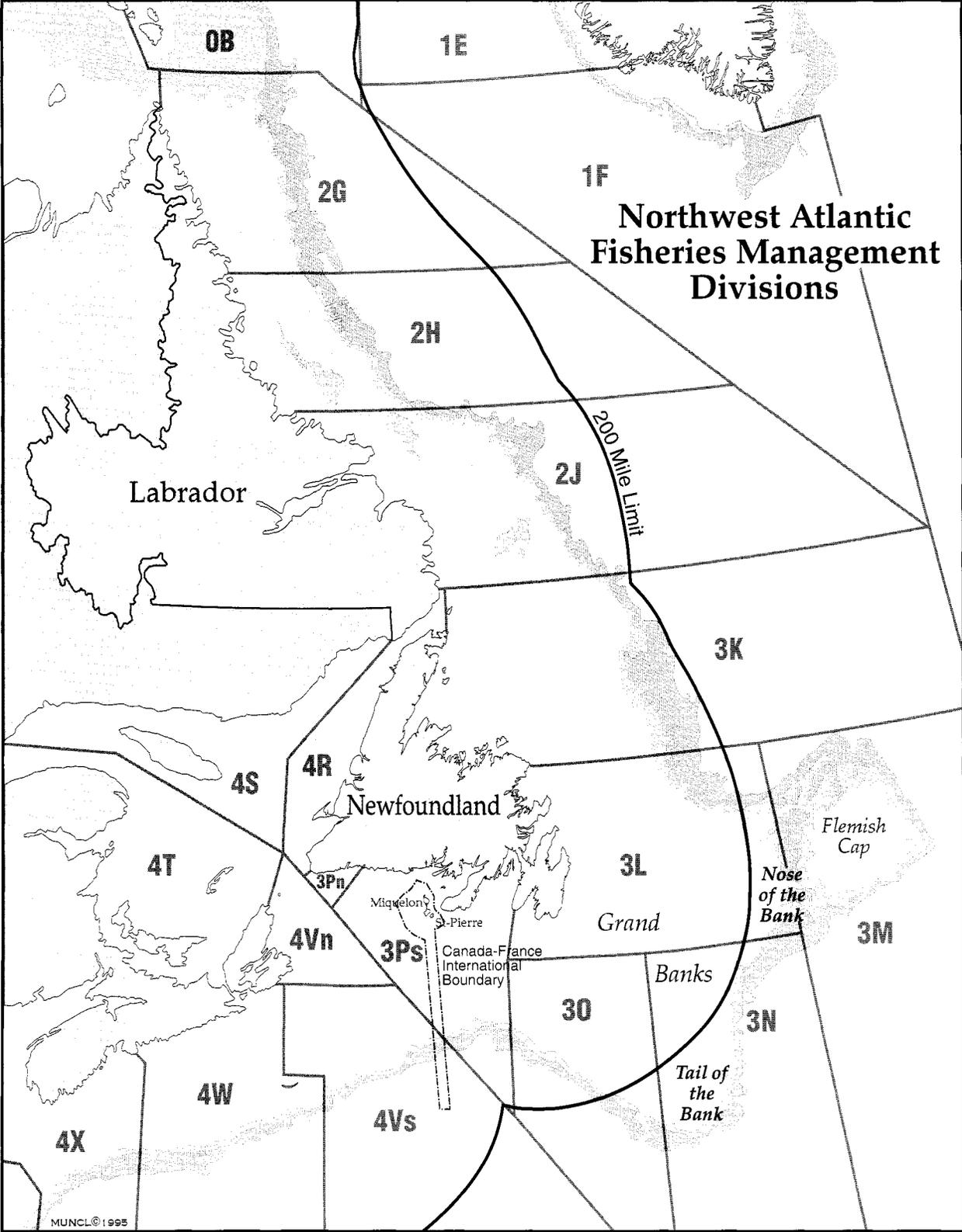
APPENDIX 4 - FFAW ORGANIZATIONAL CHART



Date: 2000

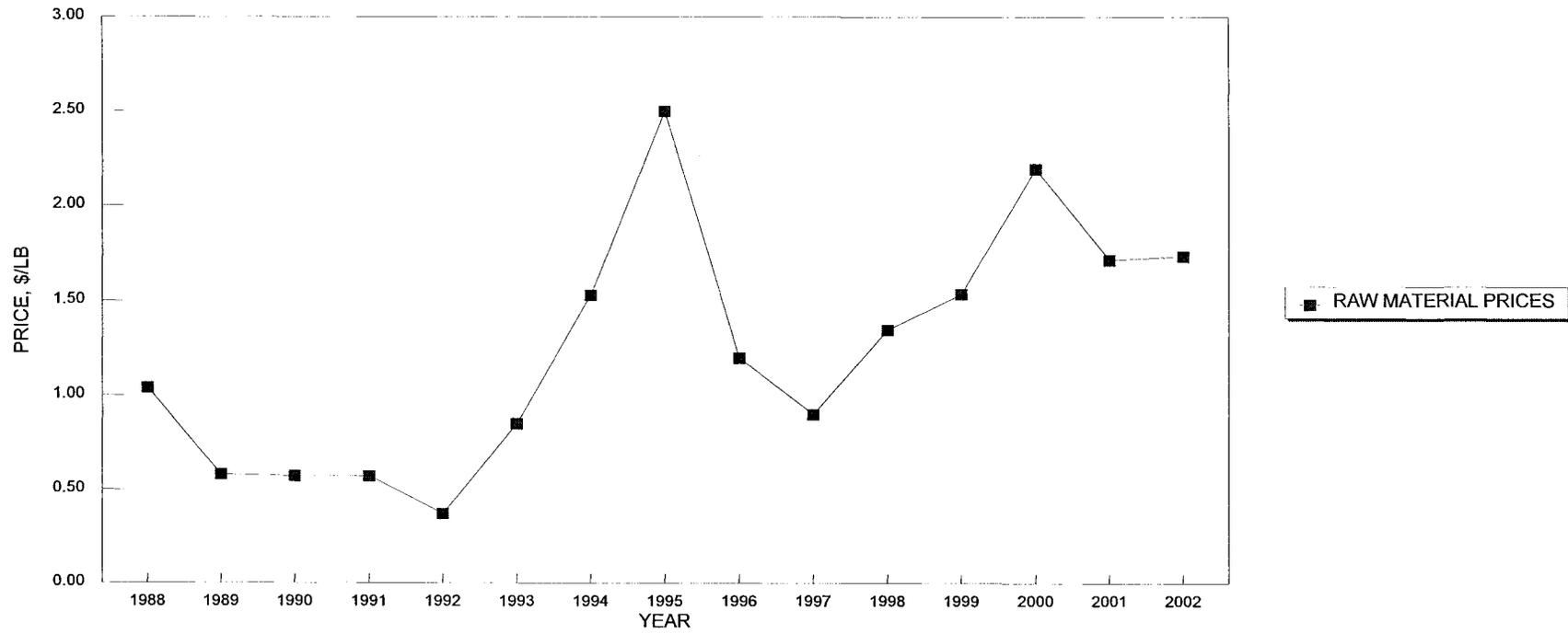
Source: FFAW

APPENDIX 5 - NAFO MAP



APPENDIX 6 - SNOW CRAB RAW MATERIAL PRICES, 1988 - 2002

CRAB RAW MATERIAL PRICES, 1988 - 2002



EXCHANGE RATES AND CORRESPONDING PRICES, SECTIONS AND COMBO 1992 - 1999

1992	1993	1994	1995	1996	1997	1998	1999
------	------	------	------	------	------	------	------

QUOTAS/LANDINGS, MT

	1992		1993		1994		1995		1996		1997		1998		1999	
	Q	L	Q	L	Q	L	Q	L	Q	L	Q	L	Q	L	Q	L
Newfoundland	14,370	15,597	16,710	21,718	23,750	28,499	31,895	31,986	37,640	38,000	44,315	45,743	44,500	52,645	65,000	69,194
Gulf, N.B.	11,200	11,235	14,500	14,336	20,000	19,995	21,000	19,944	16,100	16,100	16,526	16,531	12,500			
Alaska	140,700		92,987	99,338	47,991	64,411	25,265	34,014	23,000	29,000	53,070		102,059			
Russia	N/A	N/A	N/A	N/A	N/A	N/A	6,600	24,000	25,000							

CURRENCY

	1992		1993		1994		1995		1996		1997		1998		1999	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Yen to Canadian \$	97.66	111.51	85.95	98.04	72.73	74.15	61.77	76.34	75.93	80.00	82.44	92.00	74.00	89.00	69.00	79.00
U.S. \$ to Canadian \$	0.78	0.80	0.75	0.78	0.72	0.74	0.70	0.72	0.73	0.73	0.71	0.75	0.65	0.69	0.67	0.68
Yen to U.S. \$	124.30	133.30	103.71	125.28	98.98	102.63	84.60	102.75	104.37	108.51	115.00	128.00	114.00	139.00	101.00	119.00

RAW MATERIAL PRICES

Newfoundland	0.35	0.37	0.62	0.85	1.38	1.53	1.75	2.50	1/80-1.20	1/80-1.20	0.70/0.90		0.86	1.06	1.36	1.94
Gulf, N.B.							3.50	4.00	1.75	2.85	2.25					
Alaska, U.S.\$						1.85	2.25	2.60	1.20	1.40	0.65	0.90	.54	0.60		
Russia	N/A	N/A														

MARKET PRICES

Sections, 5/8, U.S.\$:																
Newfoundland					N/A	N/A	2.95	5.40	2.50	3.25	2.10	2.80	2.60	2.70	2.95	3.65
Gulf, N.B.					3.25	4.25	6.10	6.25	4.70	4.75	3.65	3.75				3.95
Alaska					3.50	4.75	5.25	5.35	3.00	3.25	2.25	2.35	1.90			3.35
Russia	N/A	N/A	N/A	N/A	N/A	N/A	4.10	4.50	3.70	3.95						
Combination, 5lb, U.S.\$		5.10	6.35	7.76	5.90	8.80	6.50	10.25	5.50	6.75		6.50	5.70	5.85	6.50	8.25

Note: 1. Currency values are averages. 1996 Russian section prices are for 8 oz. up.
2. Blank spaces indicate data unavailable/data unreliable.

FILE:CRABEN2

Source: Seafood Price Current/DFO/DA/Globe and Mail

Feb. 22/2000

CONFIDENTIAL
CONFIDENTIAL

EXPLANATORY NOTE

This Bill would amend the *Fishing Industry Collective Bargaining Act* to implement a new labour relations dispute settlement model known as final offer selection. This model has been the subject of a pilot project and is considered to be an effective mechanism by government, parties to negotiations and other industry stakeholders.

A BILL
AN ACT TO AMEND THE FISHING INDUSTRY
COLLECTIVE BARGAINING ACT

Analysis

*Be it enacted by the Lieutenant-Governor and House of Assembly
in Legislative Session convened, as follows:*

RSN 1990, c. F-18
as am.

1. (1) Paragraphs 2(1)(a) and (j) of the *Fishing Industry Collective Bargaining Act* are amended by deleting the number "1" and by substituting the word "one".

(2) Subsection 2(1) of the Act is amended by adding immediately after paragraph (l) the following:

(l.1) "groundfish" includes cod, turbot, flounder, redfish, hake, pollock, haddock, halibut, skate, monkfish, lumpfish, catfish and grenadier, and parts, products or by-products of them;

(3) Paragraph 2(1)(n) is repealed and the following substituted:

(n) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;

(4) Subsection 2(1) of the Act is amended by deleting the word "and" at the end of paragraph (p), by deleting the period at the end of paragraph (q) and substituting a semi-colon, and by adding immediately after that the following:

(r) "pelagics" includes capelin, herring, mackerel, tuna, and swordfish, and parts, products or by-products of them;

(s) "processor" means a person licensed under the *Fish Inspection Act* to process fish; and

(t) "shellfish" includes crab, shrimp, lobster, scallop, squid, sea urchins, clams, mussels, and whelk, and parts, products or by-products of them.

(5) Subsection 2(3) of the Act is amended by deleting the number "1" and by substituting the word "one".

2.(1) Subsection 8(1) of the Act is amended by deleting the number "1" and by substituting the word "one".

(2) Subsection 8(5) of the Act is amended by deleting the number "1" wherever it appears and by substituting the word "one".

3. Sections 13.1 to 13.7 of the Act are repealed and the following substituted:

Accreditation as
bargaining agent by
category

13.1 (1) Subject to the rules of the board, a processors' organization whose members produce the majority percentage by finished product weight, based on the previous calendar year's production, of the following category of fish species

(a) groundfish;

(b) pelagics; or

(c) shellfish

may, in the form approved under the *Labour Relations Act*, apply to the board to be accredited as the sole collective bargaining agent for all processors in the province for that category of fish species.

(2) The processors' organization whose members produce the majority percentage by finished product weight of category of fish species referred to in subsection (1) shall be determined on the basis of records submitted by processors to the Department of Fisheries and Aquaculture under the requirements of the *Fish Inspection Act* and the regulations made under that Act and the *Fisheries Act* in the context of obtaining licence renewal and reporting production for the calendar year previous to the application.

(3) This section applies to the processing of fish caught by inshore fishers only.

Membership in accredited processors' organization

13.2 An accredited processors' organization, or a person acting on behalf of an accredited processors' organization

- (a) shall offer membership to processors on terms that are no less favourable than the terms offered to existing members; and
- (b) shall not deny membership to a processor for whom it is the bargaining agent for a reason other than refusal or failure to pay the periodic dues, assessments and initiation fees ordinarily required to be paid by all members of the processors' organization as a condition of acquiring or retaining membership in the organization.

Expedited accreditation process

13.3 (1) Where an application is made to the board under section 13.1, the board shall, within one business day of the making of that application notify those other processors that are required to submit records to the Department of Fisheries and Aquaculture under the *Fish Inspection Act* and the regulations under that Act and the *Fisheries Act* in the context of obtaining licence renewal and reporting production of the receipt of that application for accreditation.

(2) A processor who has received notice under subsection (1) may, within 10 calendar days of receiving that notice, make representations to the board with respect to that application for accreditation, and subject to the merits of those representations, the board may, in its discretion, hold a hearing with respect to that application for accreditation.

(3) Where an application is made under section 13.1 and the board has fulfilled the requirements of subsections (1) and (2), and is satisfied that the processors' organization has met all the requirements as prescribed by the Act, the board shall, within 30 calendar days of the receipt of the application, accredit the processors' organization as the sole collective bargaining agent to bargain on behalf of all processors for the category of species of

- (a) groundfish;
- (b) pelagics; or

(c) shellfish

with a certified bargaining agent for fishers.

RSN1990 cL-1
Application

13.4 Sections 60, 62, 63, 64 and 65 of the *Labour Relations Act* apply, with the necessary changes, to all matters within the ambit of this Act and in applying those sections,

- (a) "council of trade unions" shall be replaced by the phrase "certified bargaining agent for fishers";
- (b) "employee" shall be replaced by the word "fisher"; and
- (c) "employer" shall be replaced by the word "processor".

Revocation

13.5 (1) Where an application is made by one or more processors within an accredited processors' organization for a declaration that the accreditation of that organization under section 13.3 be revoked, the board shall ascertain the processors in the accredited processors' organization who, within a 2 month period immediately preceding the date of the making of the application, have voluntarily indicated in writing that they no longer wish to be represented by that organization.

(2) Where the board is satisfied

- (a) that processors processing the majority of a category of fish by finished product weight have voluntarily indicated in writing that they no longer wish to be represented by the accredited processors' organization; or
- (b) it can be shown that the accredited processors' organization no longer fulfils the requirements of section 13.1 as determined on the basis of records submitted by processors to the Department of Fisheries and Aquaculture under the requirements of the *Fish Inspection Act* and the regulations made under that Act and the *Fisheries Act* in the context of obtaining licence renewal and reporting production from the previous calendar year

the board shall declare the accreditation of the processors' organization revoked.

(3) Where an application is made by one or more processors within an accredited processors' organization for a declaration that the accreditation of that organization under section 13.3 be revoked and the processors' organization informs the board that it does not desire to continue to represent those processors the board shall declare the accreditation of the processors' organization revoked.

Result of revocation

13.6 Upon the board making a declaration under subsection 13.5(2) or (3), all rights, duties and obligations of the processors' organization under this Act and under an unexpired collective agreement revert to the individual processors to whom a collective agreement applies.

Certain agreements void

13.7 A certified bargaining agent for fishers which has bargaining rights for fishers who sell fish to processors represented by an accredited processors' organization and a processor or person acting on behalf of the processor, shall not, as long as the accredited processors' organization continues to be entitled to represent the processors in an accredited processors' organization, enter into an agreement or understanding, oral or written, that provides for the selling of fish contrary to the terms of a collective agreement, and where that agreement or understanding is entered into, it is illegal.

4.(1) Subsection 18(1) of the Act is amended by deleting the number "1" wherever it appears and by substituting the word "one".

(2) Paragraph 18(2)(a) of the Act is amended by deleting the number "1" and by substituting the word "one".

5. Section 19 of the Act is amended by deleting the number "1" and by substituting the word "one".

6. Subsection 23(1) of the Act is amended by deleting the number "1" wherever it appears and by substituting the word "one".

7. Sections 35.1 to 35.12 of the Act are repealed and the following substituted:

Definitions

35.1 In sections 35.2 to 35.14

(a) "arbitrator" means an arbitrator appointed under section 35.4 or under section 35.5; and

(b) "party" and "parties", notwithstanding paragraph 2(1)(q), means a fisher, association or certified bargaining agent for fishers and a processor, a processors' organization, or an accredited processors' organization who may or may not be bound by a collective agreement.

Schedule

35.2 (1) The parties to a collective agreement shall, before February 1 in a year establish a negotiation schedule with respect to each fish species which will be subject to a collective agreement during that year.

(2) When a schedule has been established for a fish species under subsection (1), the parties shall, in writing, notify the minister of that schedule not later than 60 days before the expected opening date of the fishery for that species.

(3) Subject to subsection (1), the parties to a collective agreement may, by mutual consent, amend the negotiation schedule established under that subsection and shall notify the minister immediately of those changes.

Committee and
facilitator

35.3 (1) Where parties commence negotiations with respect to a fish species, those parties, not later than 60 days before the expected opening date of the fishery for that species

(a) may, by mutual agreement, establish a joint technical committee composed of persons who represent the interests of each party; and

(b) shall recommend to the minister, in writing, a person to be a facilitator for the negotiations.

(2) When a person is recommended to the minister as a facilitator under paragraph (1)(b), the minister shall, immediately upon receiving that recommendation, appoint that person as the facilitator.

(3) A joint technical committee established under this section shall compile factual material and identify issues with respect to the negotiations which gave rise to the establishment of that committee.

Arbitrator

35.4 (1) Where parties commence negotiations with respect to a fish species, those parties shall, not later than 60 days before the expected opening date of the fishery for that species recommend to the minister,

in writing, a person to be an arbitrator to, where called upon, arbitrate a matter under negotiation.

(2) Where a person is recommended to the minister as an arbitrator under subsection (1), the minister shall immediately upon receiving that recommendation, appoint that person as the arbitrator.

(3) An arbitrator appointed under subsection (2) shall not be a party to the negotiations or, where there is a collective agreement in place, a party to the collective agreement from which an issue arose to give rise to the negotiations.

(4) Where, due to absence, incapacity or other cause an arbitrator appointed under this section is unable to act, the parties may, by mutual agreement, recommend another person to be an arbitrator to, and where called upon, arbitrate the matter under negotiation, and upon receiving that recommendation the minister shall immediately appoint that other person as the arbitrator.

(5) When an arbitrator is appointed under this section, the facilitator shall inform the arbitrator of the facts and issues that pertain to the negotiations.

Default

35.5 (1) The parties shall, in a season, agree upon and appoint a person who is not a party to the negotiations to make recommendations to the minister where the parties fail to recommend

(a) a facilitator under section 35.3; or

(b) an arbitrator under section 35.4.

(2) A person appointed under subsection (1) shall make the recommendations to the minister under sections 35.3 and 35.4 that are required by the parties under those sections.

(3) Where the parties to negotiations fail to make the appointment required under subsection (1), the minister shall appoint a facilitator under section 35.3 and an arbitrator under section 35.4 where the required recommendations for a facilitator and an arbitrator had been made by the parties under those sections.

(4) Where the parties fail to establish a negotiation schedule under section 35.2 within the time required under that section, the

minister shall establish a negotiation schedule as required by that section.

Agreements not to be altered

35.6 Where parties are engaged in collective bargaining or have entered into a collective agreement under this Act, those parties shall not alter

- (a) the negotiated or arbitrated prices for a fish species; and
- (b) other terms or conditions of a collective agreement,

in place for that fishing season or a previous fishing season, except in accordance with sections 35.1 to 35.11 and where

- (c) a new collective agreement; or
- (d) a decision of an arbitrator appointed under section 35.4 or 35.5,

is made with respect to the negotiated or arbitrated prices for fish species and terms or conditions referred to in paragraphs (a) and (b).

Arbitration

35.7 (1) Where there are negotiations between parties with respect to the fishery for a fish species and agreement is not reached by those parties at least 14 days before the expected commencement of that fishery, those parties shall each submit a final position on prices for a fish species and on other matters to the arbitrator appointed with respect to those negotiations.

(2) Where final positions have been submitted to an arbitrator under subsection (1), he or she shall hear and consider those positions and shall make a decision with respect to the matter and that decision shall be in accordance with one of the final positions submitted under subsection (1) unless the parties who submitted those positions have agreed to another form of arbitration.

(3) Final offer selection, the process referred to in subsections (1) and (2) shall be the form of arbitration used by the parties unless, at the commencement of the negotiations, the parties to the negotiations determine by agreement that another form of arbitration is acceptable to them.

(4) The arbitrator shall notify all parties to the negotiations of his or her decision not later than 7 days after receiving the final positions submitted under subsection (2).

(5) Where a decision of an arbitrator made under subsection (2) provides for an interim price or interim price schedule for a fish species rather than a full season price, the parties in negotiation over that price shall continue to attempt to reach an agreement with respect to the full season price until not later than 14 days before the expiry date for the interim price or interim price schedule at which time the parties shall submit their final positions on the matter to the arbitrator who shall decide upon the matter and shall notify the parties of his or her decision not later than 7 days before the expiry of the interim price or interim price schedule.

(6) A decision of an arbitrator made under this section shall be considered to be a decision made in accordance with a collective agreement.

Memorandum of
Understanding

35.8. (1) The parties shall, by December 31 in a year, file with the minister a Memorandum of Understanding regarding the terms and conditions of collective bargaining for the upcoming year, and that Memorandum of Understanding shall be considered to be part of any collective agreement entered into by the parties.

(2) A Memorandum of Understanding negotiated under subsection (1) may be changed at any time over the course of the year to which it applies by mutual consent of the parties to it, and any changes made to it shall be filed with the minister immediately.

Auction

35.9 (1) Where an auction system is established for the sale of fish species, the sale price achieved by the auction process for a fish species shall be considered to be the price agreed upon for that fish species by the fisher who sells the fish and the buyer of that fish by collective agreement.

(2) A fish species offered for auction under subsection (1) may be offered for a price other than a price agreed upon by collective agreement or a price decided upon by an arbitrator under section 35.7.

(3) Where a fish species is auctioned in accordance with this section, the auctioneer shall deduct from the money received for the sale of that fish an amount equivalent to the dues owing to the

appropriate certified bargaining agent and shall remit that amount of money to that agent.

Binding where majority

35.10 (1) Where, under a collective agreement, a certified bargaining agent intends to negotiate a price for a fish species, that agent shall notify the accredited processors' organization for that category of fish species in the province, or another organization representing processors of the intended negotiations.

(2) Where a certified bargaining agent enters into a collective agreement with respect to the price of a fish species or where the price of a fish species is decided upon by an arbitrator under section 35.7 and that collective agreement or decision is binding upon the processors who produced the majority percentage by finished product weight of that category of fish species in the previous calendar year, the terms of the collective agreement entered into or an arbitrator's decision with respect to that fish species shall apply to and is binding upon all processors in the province who process that fish species.

Precedence

35.11 Sections 35.1 to 35.10 shall have precedence over a term of a collective agreement or another provision of this Act which conflicts with one or more of sections 35.1 to 35.10.

Prohibition

35.12 Notwithstanding another section of this Act, there shall be no strike, stoppage, lockout or cessation of business dealings between fishers and processors while sections 35.1 to 35.11 are in force.

Opting - out

35.13(1) Every two years from December 31 following the coming into force of this Act, a party may, after October 31 and on or before December 31 in that second year, signal its intention to opt-out of the requirements of sections 35.1-35.12 by writing a letter to the minister stating that intention.

(2) Notwithstanding the fact that a party has signalled its intention to opt-out under subsection (1), the parties remain bound by sections 35.1- 35.12 for twelve months following the signalling of that intention and there shall be no strike, stoppage, lockout or cessation of business dealings between fishers and processors at any time during that 12 month period.

Suspension of certain provisions

35.14 (1) The operation of sections 23, 26, 27 and 28 of this Act shall be considered to be suspended and are of no force and effect unless a

party has opted out of the requirements of sections 35.1 - 35.12 under section 35.13.

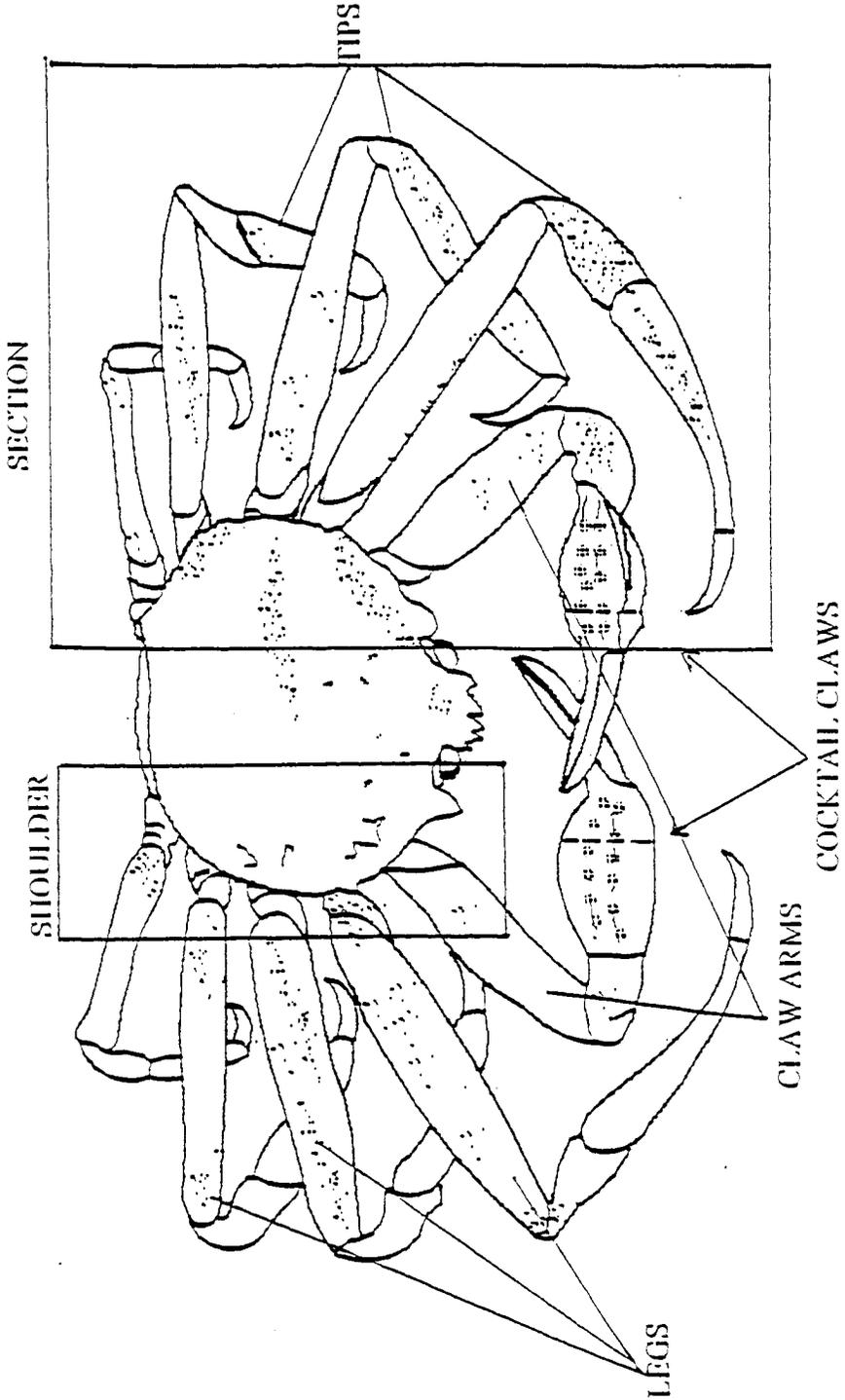
(2) Where a party has opted out under section 35.13, and at the end of the 12 month period referred to in subsection 35.13(2), sections 23, 26, 27, and 28 shall no longer be considered to be suspended and shall be of full force and effect but sections 35.1-35.12 shall be considered to be suspended and shall be of no force and effect.

8. Subsection 42(2) of the Act is amended by deleting the number "1" and by substituting the word "one".

9. Paragraph 44(c) of the Act is amended by deleting the number "1" wherever it appears and by substituting the word "one".

APPENDIX 9 - ATLANTIC SNOW CRAB ANATOMY

ATLANTIC SNOW CRAB



APPENDIX 10 - DFA SNOW CRAB PRODUCTION REPORT

Report # 14

CONFIDENTIAL: NOT TO BE RELEASED***Production Up to July 25, 2001 (Tonnes)***

US Sections		Japan Sections		Sections For Reprocessing Export	Total Sections	Sections For Reprocessing In NFLD (1)	Sections Reprocessed Into Meat (2)	Whole	Raw	Other	Total Semi-Processed (3)
5 - 8 oz.	Other	5 oz +	Other								
12,366	7,083	3,491	2,158	24	25,122	691	-482	10	256	0	25,388

Claws		Leg Meat	B. Leg Meat	Combination Meat	Salad	Minced	Total Meats	Total Production	RWE (4)	Purchases
Cap - on	Cap - Off									
136	131	42	36	677	116	4	1,142	26,530	46,147	42,672

- (1) It is assumed that the sections for reprocessing in Newfoundland will be reprocessed into meat.
(2) Product withdrawn from Sections For Reprocessing NFLD. Processed weight will show in the Total Meats and Total Production.
(3) Total Semi Processed does not include Sections For Reprocessing in NFLD nor Sections Reprocessed into Meat.
(4) RWE - Round Weight Equivalent

RWE will be slightly less than purchases, until such time as plants have processed the sections that they are holding for reprocessing into meat; also plants may purchase raw material for processing the following day.

209.000	Unprocessed Sections
344.884	RWE Of Unprocessed Sections
93.119	Approximate Meat Equivalent

Source: Department of Fisheries and Aquaculture

APPENDIX 11 - SEAFOOD DATASEARCH SNOW CRAB MARKET REPORT

Crab Market Update: May 5, 2000

This market update is provided pursuant to the terms of the Collective Bargaining Agreement between FANL and the FFAW/CAW for the 2000 Newfoundland Crab season. The purpose of this report is to determine the Weighted Average Market Price which has been accepted by the arbitrator as the basis of the Collective Bargaining Agreement.

The formula for determining the Weighted Average Market Price is as follows:

$$\begin{aligned} & \text{US Combo Price} \times \text{US Combo Market Share} \times 27\% + \\ & \text{US 5-8 Section Price} \times \text{US 5-8 Section Market Share} \times 60\% + \\ & \text{Japan 5+ Section Price} \times \text{Japan 5+ Section Market Share} \times 60\% \end{aligned}$$

Based on the best available market data, the inputs to the current formula should be as follows:

U.S. Combo Pack Price:	\$8.90
U.S. 5-8 Sections	\$4.00
Japan 5+ Sections	\$3.95

The production mix is still based on last years numbers, because in discussions with DFO, there are a number of plants not yet reporting, and the numbers did not seem to reflect production this week. The DFO will tighten up their reporting this week, and next report will be based on the new mix for this year

Combo Meat	2,440.20	tons	6.68%
U.S. 5-8 Sections	26,160.15	tons	71.66%
Japan 5-8 sections	10,347.74	tons	28.34%

*Production mix includes all products appropriate for each category, i.e. "meat" includes production of claws, leg meat etc., U.S. sections includes all sizes for the U.S. market.

The Formula for this period then becomes:

Ca Exch	1.47737	April 21 to May 4, 2000			
Product	Price	Market Share	Yield	Total	CA Exch
US Combo	\$ 8.90	6.27%	27%	\$ 0.15055	\$ 0.22242
US Section	\$ 4.00	67.17%	60%	\$ 1.61200	\$ 2.38152
Japan Section	\$ 3.95	26.57%	60%	\$ 0.62966	\$ 0.93024
				\$ 2.39222	
				Market Factor	\$ 3.53419

The average Canadian Interbank exch. rate for the period from 4-21 to 5-4, as published by the Currency Trading Firm Olson and Associates on their web site www.canda.com, is 1 \$US dollar =

1.47737
\$CA.

Date	1\$CA = \$US
04/21/2000	1.47430
04/22/2000	1.47350
04/23/2000	1.4730
04/24/2000	1.47420
04/25/2000	1.4760
04/26/2000	1.46780
04/27/2000	1.47480
04/28/2000	1.47620
04/29/2000	1.47970
04/30/2000	1.47980
05/01/2000	1.47950
05/02/2000	1.47780
05/03/2000	1.48410
05/04/2000	1.49250
Avg	1.47737

This gives a market factor of \$ 2.39222 X \$CA exchange Rate of 1.47737 = a price factor of 3.53419 and a reference price of \$2.20.

Pricing Table

Market Price range	Reference Price
2.4	2.424 \$ 1.30
2.425	2.449 \$ 1.32
2.45	2.474 \$ 1.34
2.475	2.499 \$ 1.36
2.5	2.524 \$ 1.38
2.525	2.549 \$ 1.40
2.55	2.574 \$ 1.42
2.575	2.599 \$ 1.44
2.6	2.624 \$ 1.46

2.625	2.649	\$	1.48
2.65	2.674	\$	1.50
2.675	2.699	\$	1.52
2.7	2.724	\$	1.54
2.725	2.749	\$	1.56
2.75	2.774	\$	1.58
2.775	2.799	\$	1.60
2.8	2.824	\$	1.62
2.825	2.849	\$	1.64
2.85	2.874	\$	1.66
2.875	2.899	\$	1.68
2.9	2.924	\$	1.70
2.925	2.949	\$	1.72
2.95	2.974	\$	1.74
2.975	2.999	\$	1.76
3	3.024	\$	1.78
3.025	3.049	\$	1.80
3.05	3.074	\$	1.82
3.075	3.099	\$	1.84
3.1	3.124	\$ -	1.86
3.125	3.149	\$	1.88
3.15	3.174	\$	1.90
3.175	3.199	\$	1.92
3.2	3.224	\$	1.94
3.225	3.249	\$	1.96
3.25	3.274	\$	1.98
3.275	3.299	\$	2.00
3.3	3.324	\$	2.02
3.325	3.349	\$	2.04
3.35	3.374	\$	2.06
3.375	3.399	\$	2.08
3.4	3.424	\$	2.10
3.425	3.449	\$	2.12
3.45	3.474	\$	2.14
3.475	3.499	\$	2.16
3.5	3.524	\$	2.18
3.525	3.549	\$	2.20
3.55	3.574	\$	2.22
3.575	3.599	\$	2.24
3.6	3.624	\$	2.26

Background Market Report: May 5, 2000

Crab Market still Unsettled as Japanese Negotiating Continues

There has still been very little product coming into the U.S. market in the past two weeks, and the market continues to be unsettled. The major factor right now is that there is a stand-off between Japanese buyers and Newfoundland packers, since they have not settled on pricing. At the same time, the U.S. market is resisting prices over \$4.00, and there has been signs of a weakening in the U.S. price. So the situation is one of the Japanese price and the U.S. price moving in different directions.

This has made for a difficult situation in the U.S., because some sellers report not knowing until the last minute whether a load is going to them, or to Japan.

It is going to take more time to straighten this out. However, several things seem obvious to most market participants:

- The Japanese are widely expected to increase their purchases from Newfoundland this year. So far, they have been resisting purchasing product in the Gulf because it is running smaller than last year, and because of the price. As a result, they will be looking to Newfoundland for their major purchases. However, few companies have settled on contracts yet, and at the same time, the Yen has moved unfavorably. This is making the Japanese more resistant to settling contracts at \$4.00, and they are currently making offers at \$3.90.
- The U.S. market is anxious for crab, and in general, it appears to be moving. However, we saw definite evidence of some slight discounting during the past week. At the beginning of the period, many sales were being made at the \$4.15 level fob Boston. By the end of the week, most of the \$4.15 prices were being quoted for delivered product. This trend shows some slight elements of market resistance.
- Some companies have been able to book substantial commitments at prices in the low \$4.00 range. Buyer interest in these loads was greater than the companies were willing to supply or contract for.

In summary, the market will continue to be somewhat unsettled, with contradictory trends involving the U.S. and the Japanese. Once the initial deliveries have been made in the U.S., there may be some price weakening. Many buyers are expecting to have slightly lower prices in the next three to four weeks.

On the other hand, sales to Japan may firm up, and if the Japanese are forced to buy at the \$4.00 price, this will help put a floor under the U.S. market, making it difficult for sellers to discount product 5 cents or 10 cents to get it to move.

One positive note is that retailers were among the companies booking truckload orders this week, although they certainly are not taking product in quantity. It shows that there is continuing interesting the market.

Also, Alaskan producers are still quoting prices over \$5.00, for case sales. However, the bulk of what was produced is still in transit to Seattle, or still in the Pribilof Islands, and Alaskan producers seem to think they will reevaluate their prices in 3 to 4 weeks. However, given the high cost of their crab, they will be very resistant to going down the 50 cents the market is demanding.

There was a late rumor today, unconfirmed so far, that Darden was offered Alaskan crab at \$4.50 and turned it down as too expensive.

Finally, there has been some strengthening of the U.S. dollar in relation to the Canadian dollar, and this has contributed to a change in the formula this period.

5-8 Sections

In determining the 5-8 section price in the U.S. this week, the concrete sales that were reported were in the \$4.10 to \$4.12 range, delivered, which equates to a price just over \$4.00. There continue to be some sales between \$3.95 and \$4.00 as well. As a result, there does not appear to be any reason to adjust the section price for the U.S. market, but the trend is for the price to decline slightly, and once more crab is in the market, there may be more reports of discounts.

Smaller crab, M size, 4 ups, or 3-5's, are generally selling for \$3.85 or less, and this also supports evidence that the true 5-8 section price is not over \$4.00.

Combo Meat

Combo meat is being offered at very high prices, over \$9.00, by companies that do not yet have any new production, while at the same time there are still a few companies with small amounts of cases of last years production selling at \$8.35. As a result, we have left the combo price unchanged for this reporting period.

There are some very significant crabmeat competitors appearing at food shows. For example, some producers have begun showing a rock crab combo pack, that has been very well received, at a price more than \$2.00 below snow crab combo packs. Furthermore, these are being packed in 2.5 lb boxes, in a ten pound master. This is

becoming a very popular pack with distributors, and will represent a competitive source of crabmeat.

Red crabmeat is also being offered, but at prices about \$4 below the snow crabmeat prices.

Japan Sections

The Japanese have increased their offers to \$3.90 with a number of packers, and at least one contract has been reported at \$3.95 for ocean run product. However, most packers have not concluded contracts with the Japanese, and are holding out for a \$4.00 price. At the same time, there is some attempt to get higher prices for 3 K crab, which the Japanese prefer the most.

As a result, the reported price for Japanese clusters has increased to \$3.95, which represents at least one contract, and also a compromise in the two negotiating positions.

The Japanese have seen some unfavorable movement in the Yen, which increased to 109 to the U.S. dollar at the end of the week, and this is causing them some difficulty in meeting the prices they are being offered.

Outlook:

The immediate outlook is for continued uncertainty in the market, as the different requirements of the U.S. and the Japanese market are played out. Because there has been less product shipped due to weather and fishing practices, there will be continued uncertainty in the U.S. market, until greater amounts of product can ship.

Finally, this period we did not use the new production figures from DFO, as it seemed that a number of plants were not yet reporting because they were just starting production, and the production figures appeared to be incomplete. This is being addressed by DFO, and for the next period we will use the newest production figures.

Note on Sources and how the Prices are calculated

This report is based on phone interviews with sellers of Crab in the U.S., with major distributors, and with major retail and foodservice buyers. In addition, phone interviews are conducted with Japanese buyers. The survey covers the sales representatives of virtually all the major Newfoundland producers and by far the great majority of crab sales by volume in the U.S., and the largest Japanese buyers as well.

The price for sections is calculated as the price for truckload sales of 5-8 sections, FOB Boston, with payment terms shorter than 30 days, and with commission included. When prices are quoted as delivered to the customer's cold storage facility in other parts of the country, a shipping allowance is deducted from the sales price of approximately 5 cents. Furthermore, because program sales are an important part of the total volume of section sales, the prices at which program sales are made are also taken into account in calculating the average price.

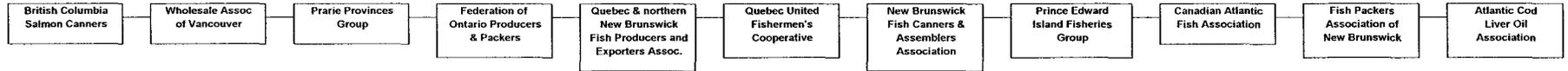
Japanese prices are calculated on the basis of the actual contract prices. If no contracts have been signed, prices are estimated on the difference between the most serious offers.

Combo meat prices are calculated on the basis of interviews with sellers. Because many combo meat sales are in less than truckload quantities, smaller quantities are considered when establishing the price, but the price attempts to reflect true truckload pricing for combo packs.

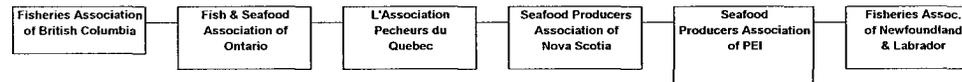
This report is prepared by John Sackton, President, Seafood.com. We welcome industry comments or questions. Tel: 781-861-1760,
email tsackton@seafood.com

APPENDIX 12 - FCC MEMBERS, 1945, 1980, AND 2003

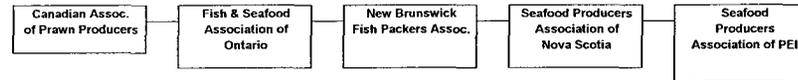
Fisheries Council of Canada, 1945



Fisheries Council of Canada, 1980



Fisheries Council of Canada, 2003



08/2/2013

Source: Fisheries Council of Canada/Fisheries Association of Newfoundland and Labrador Limited

