

MEMORANDUM OF UNDERSTANDING

BETWEEN:

HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by the Minister of Fisheries and Aquaculture

(Hereinafter referred to as the “The Department”)

AND:

FISH, FOOD AND ALLIED WORKERS (FFAW/CAW) duly incorporated under the laws of the Province of Newfoundland and Labrador

(Hereinafter referred to collectively as “FFAW”)

AND:

ASSOCIATION OF SEAFOOD PRODUCERS duly incorporated under the laws of the Province of Newfoundland and Labrador

(Hereinafter referred to collectively as “ASP”)

1 Purpose

- 1.1 The parties recognize the difficult economic circumstances facing the fishing industry in Newfoundland and Labrador and commit to seeking solutions to the current and long standing problems in the industry as referenced herein.
- 1.2 The problems in the industry relate to a host of structural, resource, market and policy issues that compromise the long term economic viability of the industry. The current economic environment has exacerbated these problems and the parties commit to seek means to resolve the issues.
- 1.3 This is a continuation of work that began under Fishing Industry Renewal (“FIR”). The current environment requires an accelerated process to respond to the global challenges.
- 1.4 The Parties will establish working groups that will develop proposals for key areas including demonstrating the financial state of the industry, developing a long term marketing strategy, developing a rationalization model for the harvesting sector and developing a rationalization model for the processing sector.

2 Conditions Precedent

- 1 The FFAW and ASP agree to utilize their best efforts to finalize an agreement on the shrimp fishery.

- 2 The Department agrees to bring forward all proposals that are developed by the working groups and presented to the Steering Committee for consideration by the Government of Newfoundland and Labrador.
- 3 The FFAW and ASP and their members agree to fully cooperate and disclose all information necessary for this work including financial and operational information.
- 4 The Working Group reports will be submitted to all parties as completed and the Steering Committee must report no later than December 15, 2009.

3 Elements of the Agreement

The Parties agree to a plan of action utilizing four working groups. These will include: a working group on financial analysis, a working group to develop a seafood marketing strategy, a working group to develop a rationalization model for the harvesting sector and a working group to develop a rationalization model for the processing sector. Whenever possible, the working groups will work on a consensus basis and will be assisted by a Department facilitator.

The process will be directed and overseen by a Steering Committee consisting of two representatives each of the FFAW, the ASP, and the Department. An independent Chair will be appointed by government. As part of its role, the Chairperson will serve as liaison and facilitator to ensure that the work of the Working Groups proceeds on time and within the established terms of references.

A. The **Financial Analysis Working Group** will collect and analyze financial data from both the harvesting and processing sectors.

1. Members of the Working Group will include two representatives from each of the FFAW, the ASP, and the Department. Ex-officio members can participate by mutual agreement of all the parties.
2. A Terms of Reference and a Request for Proposals must be developed and approved by the Steering Committee.
3. For the analysis of the harvesting sector, the Working Group will prepare a plan to sample harvester costs and earnings on a statistically significant basis, including identification of the fleet/species/geographic breakdowns that are required. Time will be the constraining factor on the level of detail sought.
4. For the analysis of the processing sector, the Working Group will prepare a plan to sample processor costs and earnings on a statistically significant basis. Time will be the constraining factor on the level of detail sought.
5. Wherever possible, analysis to be based on audited financial statements.
6. Only aggregate information will be provided to the Working Group.
7. All individual information will be kept strictly confidential.
8. All the parties agree that this information is not for general disclosure.
9. An independent third party will be hired to undertake the reviews.

10. The financial costs of the reviews will be borne by the Department.
11. The Working Group will report its findings by October 1, 2009.

B. The Working Group on Harvesting Rationalization will develop a voluntary comprehensive cost-shared proposal on harvesting rationalization and any proposal developed must take into consideration the timing of other measures developed under this MOU and be complementary in nature.

1. Members of the Working Group will include four FFAW/CAW representatives and two Departmental representatives. It will be mandated to develop a voluntary, cost-shared fleet rationalization program and a strategy to continue to pursue federal participation. Officials of the Department of Fisheries and Oceans will be requested to participate in the work of the committee to ensure compatibility between any fleet rationalization plan and federal fisheries licensing policy. Other ex-officio members can participate by mutual agreement of the parties.
2. A Terms of Reference must be developed by the Working Group and approved by the Steering Committee.
3. The parties agree that fleet rationalization is of such critical importance to policy objectives in both the harvesting and processing sectors, the Harvesting Sector Working Group will develop a comprehensive proposal for a fleet rationalization plan cost-shared by harvesters and Governments. The parties recognize that harvesting is a matter of federal jurisdiction, and note that the Provincial Government continues to press the federal government on the principles of licence buyout that would be cost-shared on a 70/30 federal-provincial basis.
4. The parties agree to pursue all possible avenues to compel the Federal Government to meet its responsibility to cost-share a fleet rationalization program.
5. The Province has already demonstrated its policy commitment to rationalization through its commitments under FIR.
6. The parties agree that a fleet rationalization program would contribute, along with the other elements, towards achieving Fisheries Renewal policy objectives directly in the harvesting sector and indirectly in the processing sector.
7. Any proposal developed must clearly articulate the specific costs for governments and harvesters.
8. The parameters of a rationalization plan will be developed taking into consideration the demographics of the harvesting fleet, the resource outlook, and economics and viability of the fleet. For example, the parties might agree that over a ten year period, an adequately funded, properly designed rationalization program could remove as much as 50% of the enterprises in some fleets, and 25 to 33% overall.
9. The Working Group will be mandated to develop a strategy to ensure that fishing enterprises acquiring additional quota through rationalization are able to minimize the risk associated with using their existing enterprise assets as collateral against the incremental quota/access.

10. Any rationalization program developed would be retroactive to the FIR announcement on April 12, 2007 to ensure eligibility for any enterprises that have already combined.
11. Each party shall be responsible for the costs of its own representatives on the Working Group. The Department will fund the hiring of a qualified independent third party to develop detailed proposals and otherwise carry out the work of the Working Group.
12. The Working Group would be mandated to ensure that any rationalization program is designed in such a manner that any Government funding improves the viability of those who remain in the industry, and best efforts will be made to design a program that does not inflate the cost of acquiring licenses/quotas.
13. The costs and benefits of any options considered will be developed as part of the final report.

C. The Working Group on Processing Restructuring will develop a comprehensive rationalization model for the processing sector. Any proposal developed must take into consideration the timing of other measures developed under this MOU and be complementary in nature.

1. Members of the working Group will include four representatives from the ASP and two from the Department. Other ex-officio members can participate by mutual agreement of the parties.
2. A Terms of Reference must be developed by the Working Group and approved by the Steering Committee.
3. The parties recognize that overcapacity, an aging workforce, recruitment and retention, out-migration, and an ongoing rationalization in harvesting enterprises will continue to impact processing operations and therefore processing restructuring is required in order to revitalize the processing sector and enable it to attract and retain processing workers.
4. The parties recognize that processing is a matter of provincial jurisdiction.
5. The Province has already demonstrated its policy commitment to rationalization through its commitment to funds for Fishing Industry Adjustment and funding for its 30 percent share of an early retirement program.
6. The parties agree that a rationalization program would contribute, along with the other elements, towards achieving Fisheries Renewal policy objectives.
7. The parameters of a rationalization plan will be developed taking into consideration the demographics of the workforce, the resource outlook, and economics and viability of the processing sector so that it continues to serve as an economic driver in vibrant, rural regions.
8. Any proposal developed must identify the potential impact on workers and propose measures to minimize these impacts. Parallel or subsequent to this work, the FFAW, the ASP and the Department will develop a Workers Adjustment Program to help mitigate any effects of processing restructuring on older and other affected workers.
9. Any proposal developed must take into consideration the potential impact on port market competition and services to harvesters and propose a strategy to minimize these impacts.

10. The Working Group would be mandated to ensure that any rationalization program is designed in such a manner that any Government funding improves the viability of those who remain in the industry.
11. Each party shall be responsible for the costs of its own representatives on the Working Group. The Department will fund the hiring of a qualified independent third party to develop detailed proposals and otherwise carry out the work of the Working Group.
12. The costs and benefits of any options considered will be developed as part of the final report.

D. The Working Group on Seafood Marketing will develop a comprehensive marketing strategy for the Newfoundland and Labrador Industry. Any proposal developed must take into consideration the timing of other measures developed under this MOU and be complementary in nature.

1. Member of the Working Group will include four representatives from ASP, two from the FFAW and two from the Department. It will make detailed recommendations for a new seafood marketing structure aimed at achieving a more coordinated and coherent Newfoundland and Labrador strategy in the marketplace and thereby optimizing returns from world markets. Ex-officio members may be added to the Working Group by mutual consent of the parties.
2. A Terms of Reference must be developed by the Working Group and approved by the Steering Committee.
3. DFA, FFAW/CAW and ASP agree that fundamental structural change to the marketing of our seafood products is essential to meet the objective of achieving optimal value from world markets and this change in marketing is required as part of overall structural change.
4. The Working Group will be mandated to propose a budget and implementation plan for the proposed new marketing structure.
5. The Working Group will be mandated to review the availability of federal programs, such as those under the marketing branch of the federal Department of Agriculture, which might be relevant to the development and funding of a new marketing structure.
6. A consultant with expertise in marketing will be hired to advise the group.
7. The costs of any options considered will be developed as part of the final report.
8. Any delay or failure in the harvesting or processing working groups from developing proposals will not prevent the marketing proposal from proceeding.
9. Each party shall be responsible for the costs of its own representatives on the Working Group. The Department will fund the hiring of a qualified independent third party to develop detailed proposals and otherwise carry out the work of this Working Group.
10. The Working Group will report its findings, including an estimate of the financial contribution required from the Provincial Government and the Parties, no later than October 1, 2009.

Timing

The Financial Analysis Working Group and the Working Group on Seafood Marketing will begin its work as soon as possible, with a deadline of October 1, 2009 to report its findings.

The Working Group on Harvesting Rationalization and the Working Group on Processing Restructuring will begin work at a time determined by mutual agreement of the parties and in any event no later than September 1, 2009. These Working Groups shall have a deadline of December 1, 2009 to report their findings.

The Parties agree that implementation of processing sector restructuring and harvesting sector restructuring are linked and one will not proceed without the other unless otherwise agreed by the parties. The objective of the Working Group is to develop restructuring proposals. The logical sequence would be that harvesting sector rationalization would commence before processing sector restructuring; however, the failure of one Working Group from developing a proposal should not be a barrier to the other proceeding.

4. General Terms

- 4.1 This Memorandum contains an outline of terms only and neither this Memorandum nor the negotiations conducted pursuant hereto are intended to, nor shall they create legally binding obligations on any of the parties except for the obligation of the parties as specified in 4.2-4.5. If a final agreement cannot be reached, no party shall be entitled to any form of relief whatsoever, including injunctive relief or damages, as a result of the failure to reach a final agreement. However, provisions 4.2 to 4.5 shall survive the termination of this Memorandum or the negotiations conducted hereunder and for greater certainty shall be legally binding upon the parties.
- 4.2 Each party shall keep any and all information disclosed to it by any other party, either to date or through the negotiations pursuant to this Memorandum, confidential, and shall not disclose same to any other person without the prior written consent of the disclosing party. This section shall not apply to information which:
 - 4.2.1 was generally known to the public prior to disclosure to the recipient;
 - 4.2.2 becomes generally known to the public other than as a result of disclosure to the recipient;
 - 4.2.3 was or becomes available to the recipient on a non-confidential basis from a source other than the discloser, which disclosure is not in breach or violation of any law or any obligation;

- 4.2.4 is disclosed by the Province in accordance with the mandatory disclosure requirements of the Freedom of Information Act (Newfoundland and Labrador), as amended, or any similar statute repealing or replacing that statute (the "Act") or contained in a record, within the meaning of the Act, that is subject to disclosure under the Act; or
- 4.2.5 is disclosed pursuant to an order or direction of a court, board, commission or other tribunal or competent jurisdiction, or in connection with legal proceedings (by discovery, oral question, interrogatory, requests for information or documents, subpoena or similar process), to the extent required to be disclosed;
- 4.2.6 provided, however, that in any of the cases described in 4.2.4 and 4.2.5 where a recipient is required to disclose any portion of the confidential information, the recipient shall give notice of such requirement to the discloser as soon as is reasonably practicable after such requirement becomes known to the recipient.
- 4.3 Negotiations pursuant to this Memorandum may be terminated by either party upon notice to the others.
- 4.4 Each party shall bear all expenses it incurs in connection with this Memorandum.
- 4.5 Parties represent that they have the necessary power and authority to execute this Memorandum.
- 4.6 This Memorandum shall be construed in accordance with the laws of the Province of Newfoundland and Labrador.

IN WITNESS WHEREOF the parties hereto have executed this Memorandum at the places and on the dates hereinafter indicated.

**DEPARTMENT OF FISHERIES AND
AQUACULTURE**

Place: _____

Date: _____

MINISTER

**FISH, FOOD AND ALLIED WORKERS
(FFAW/CAW)**

Place: _____

Date: _____

ASSOCIATION OF SEAFOOD PRODUCERS

Place: _____

Date: _____
