

Report of
The Special Panel on
Corporate Concentration in
the Newfoundland and Labrador
Fishing Industry

ACKNOWLEDGEMENTS

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The Panel also expresses its sincere appreciation and thanks to Mr. Brian Delaney, our Director of Research and Ms. Rose Ledwell, our executive secretary, for their dedicated and professional commitment which enabled the Panel to finalize its report in a timely manner.

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1.0 INTRODUCTION AND OVERVIEW

Terms of Reference

The Special Panel on Corporate Concentration in the [Newfoundland and Labrador] Fishing Industry was appointed by the Government of Newfoundland and Labrador on September 5, 2001. The Panel was directed to report its findings to the Minister of Fisheries and Aquaculture by October 31, 2001. With the approval of the Minister, the reporting time frame was extended by approximately two weeks.

Pursuant to the Terms of Reference, the Special Panel was given a mandate to:

1. “Examine corporate concentration in the fishing industry in Newfoundland and Labrador. Specifically, the Panel shall make recommendations to the Government of Newfoundland and Labrador that are consistent with the Government’s objective of mitigating any negative social and community consequences which may arise from corporate concentration in the industry. The Panel may also make recommendations on the appropriate role of the Government of Canada and the industry related to corporate concentration.”
2. “In their deliberations, the Panel shall consult with key industry participants. The Panel, in discharging its mandate, shall take into account the need to maintain, promote and foster a positive overall business and investment climate in the province, for the benefit of the people of the province.”
3. “In particular, the Panel is mandated to:”
 - (a) “assess the degree to which corporate concentration, including foreign ownership, has changed over time in the fishing industry in Newfoundland and Labrador, and the degree to which corporate concentration has impacted the structure of the fishing industry;”
 - (b) “assess the extent to which corporate concentration in the industry is consistent with the Jobs and Growth Renewal Strategy, particularly as it relates to social and community impacts, taking into specific consideration fisheries development objectives and policies including but not limited to:”
 - (i) “an economically viable, diversified and internationally competitive industry;”
 - (ii) “a sustainable fishery, including a balance between industry capacity and resource availability;”

-
- (iii) “a regionally balanced approach to industry development within the province;”
 - (iv) “the potential negative impacts on people and communities arising from high corporate debt levels in the fishing industry; and”
 - (v) “an approach which ensures the fishery resources off Newfoundland and Labrador are available for the maximum benefit of coastal rural communities in Newfoundland and Labrador, in keeping with the long standing principle of adjacency.”

Over the course of its deliberations the Panel conducted a series of meetings and consultations with key industry stakeholders in both the processing and harvesting sectors of the fishing industry. Additionally, the Panel consulted with a number of individuals outside the industry who could bring a perspective to bear on its mandate. In addition to meeting with the Fisheries Association of Newfoundland and Labrador, the Independent Fish Processors Association, the Fish Food and Allied Workers/Canadian Auto Workers (FFAW/CAW), the United Food and Commercial Workers Union (UFCW), the Panel also met with a broad cross-section of processing firms active in the Province’s fishing industry. The Panel also made contact with a number of fish harvesters to obtain their views on issues which directly or indirectly impacted the Panel’s Terms of Reference. The Panel also met with the executive of the Newfoundland and Labrador Federation of Mayors and Municipalities given the Federation’s special interest in the Panel’s mandate.

The Panel, in its deliberations, also deemed it necessary to consult with a number of other interested parties, including officials in the Department of Fisheries and Aquaculture, the Department of Fisheries and Oceans, representatives of the banking sector, and the Chair in Resource Conservation, Memorial University of Newfoundland and Labrador. In total the Panel consulted with a cross-section of approximately fifty or more groups, firms and individuals.

The Panel’s Terms of Reference were confined to an examination of corporate concentration in the processing sector of the fishing industry. This did not preclude the Panel from examining linkages between the processing and harvesting sectors of the industry. However, the Panel did not have a mandate to investigate anti-competitive behaviour within the fishing industry since this falls within the jurisdiction of the Competition Bureau of the Government of Canada. The Panel found it necessary, however, to draw linkages between corporate concentration generally and its likely impact on competition within the industry, especially in terms of the sourcing of raw material from inshore fish harvesters.

The Panel’s Terms of Reference are not company specific. It will be noted, however, that the Minister of Fisheries and Aquaculture, in announcing the Panel, indicated that the proposed acquisition by Fishery Products International Ltd. (FPI) of the seafood assets of Clearwater Fine

Foods as announced on September 6, 2001 would be addressed by the Panel. The Panel, wishes to emphasize that this review was undertaken in the broad context of corporate concentration and in the context of the public policy objectives which drove the 1983 restructuring of FPI and its subsequent conditional privatization in 1987. The Panel did not have a mandate to undertake a financial analysis of the proposed acquisition in question.

The true measurement of corporate concentration at any point in time or over time can be addressed from a number of perspectives and likewise quantified. In the final analysis the relative industry share of any given firm's output measured by production volume or production value perhaps best captures this degree of concentration. In a broader context, these same factors are also relevant when corporate concentration, as evaluated through alliances of inter-locking companies, is assessed. The Panel therefore elected to use volume output as a relative percentage of industry output by total production, individual species production, and species category in its examination of corporate concentration in the Province's fishing industry.

The Panel believes that the following report brings an objective perspective to bear on its Terms of Reference. In making this observation the Panel cannot overestimate the sector challenges which the harvesting and processing sectors have encountered and adjusted to over the past decade. The industry continues to play a critical role in the Province's economy. The strength which it brings to communities and regional economies in every region of the Province, especially in the context of regional economic development, was reinforced time and again during the Panel's deliberations. The industry is very dynamic and quick to avail of emerging fisheries development opportunities. Its future performance will obviously be impacted by changing resource and market circumstances and in turn will impact the changing corporate dynamics within the industry.

In conclusion, the Panel can observe that the public policy challenges within the Newfoundland and Labrador fishing industry call for the effective harmonization of provincial and federal fisheries policies. From this perspective, and within its broader Terms of Reference, the Panel hopes that its report will, in some small measure, lead to a broader understanding of the industry's challenges and to the implementation of those policy measures which are necessary to strengthen the industry for the benefit of industry stakeholders, communities and the Province's economy as a whole.

Leslie J. Dean
Chair

Harold L. Wareham
Panel Member

D. Sam Walters
Panel Member

2.0 A RETROSPECTIVE OVERVIEW OF CHANGE AND TRANSITION IN THE NEWFOUNDLAND AND LABRADOR FISHERY 1949-2001

The Panel on Corporate Concentration in the Newfoundland and Labrador Fishery fully recognizes the present structure of the fishing industry has its origins in the major changes which have occurred over the past 50 years. Indeed, there has been unprecedented change in the fisheries sector. An industry dominated for almost 400 years by a labour intensive family and community based saltfish industry has given way to an industry dominated by the production of a wide variety of fresh frozen fish and shellfish products. For the most part, this was driven by the same industrial/corporate imperatives as any other resource sector of the province's economy.

This shift in the overall structure of the province's fishing industry over the 1949-2001 period was propelled by a number of internal and external forces not the least of which has been the changing dynamics of competitive forces at play in changing international markets. The performance of the industry down through the years has been driven largely by its ability to respond to export market opportunities and challenges. These, when combined with changing resource dynamics, has given rise to cycles of relative prosperity and financial instability requiring a large measure of policy and financial intervention at specific times in the evolution of the fishery in the post-Confederation period.

The extent of public intervention in the fishery took on new dimensions with the rapid expansion of the capital intensive fresh frozen sector. In a developmental context, considerable federal and provincial funding was also provided to modernize the inshore and offshore fleet sectors concurrent with the modernization and growth of the offshore sector after 1950 and the rapid transformation in the inshore/longliner fleet sector after the mid-1960s. This is also evidenced by a periodic infusion of substantial federal price support funding particularly in the mid-1970s, by major federal/provincial restructuring funding for the offshore sector of the industry in the early 1980s, and unprecedented loan guarantee assistance to the fish processing sector by the province throughout the 1980s. Similarly, the expansion of the fish processing sector was facilitated by public funding during the rapid expansion of this sector immediately after the extension of fisheries jurisdiction.

The extension of fisheries jurisdiction to 200 miles in 1977 followed a period of considerable resource uncertainty as a result of sharply increased foreign overfishing in Newfoundland and Labrador waters in the 1960s and 1970s. As a result, this province's cod landings declined from 221,000 tonnes in 1960 to 83,000 tonnes in 1974. The optimistic expectations associated with the extension of Canadian fisheries jurisdiction to 200 miles in 1977 were driven, in large measure, by equally optimistic resource projections which fuelled the expansion of the harvesting and processing sectors with a large concurrent increase in the number of individuals employed in these sectors. This optimism was also driven in part by federal/provincial fisheries development funding, and by the general understanding that unless the coastal state could demonstrate a capacity to harvest and process available quotas within its economic zone, there was an obligation to share any resource

increases with foreign fleets having a historic presence in the Northwest Atlantic. It is not surprising, given these two principal considerations, that the province's fishing industry expanded quite rapidly in the post-1977 period. Moreover, the opportunities for fishery generated employment outweighed alternate opportunities for employment in other sectors of the rural economy further driving the expansion of the fisheries sector in this period.

The broad public policy objectives which were outlined for the fisheries sector at that time clearly reflected this new promise of prosperity. In the case of the 1976 Federal Policy for Canada's Commercial Fisheries three clear objectives were outlined:

- (a) the creation of a climate of prosperity and security for all who participate in the commercial fisheries;
- (b) a shift in fisheries management from the fishery being regulated in the interest of fish to a fishery to be regulated in the interest of the people who depend on the industry; and,
- (c) fundamental decisions about resource management would be reached jointly by industry and government.

The broad fishery policy expectations of the Government of Newfoundland and Labrador at that time, as reflected in a comprehensive fisheries planning document entitled Setting a Course: A Regional Strategy for the Development of the Newfoundland Fishing Industry (1978), and the related White Paper on Strategies and Programs for Fisheries Development to 1985 (1978), were highlighted as follows:

- (a) a need to follow a balanced course of development which would see the various industry sectors achieve economic viability in their own right and fishermen earn a fair return for their labour and investment;
- (b) a need for coordinated federal and provincial strategies which would ensure continued stability in every sector of the fishing industry and which will also ensure ongoing prosperity in those communities which have a dependence on fishery-generated employment and income; and,
- (c) a need for an effective resource management strategy to sustain fisheries growth potential in the wake of extended fisheries jurisdiction in which the province(s) plays a meaningful role in decisions respecting resource management and all fisheries related matters.

The political and public policy environment which emerged relative to resource allocation and resource access policies in the wake of extended fisheries jurisdiction was another significant dynamic which helped shape and drive the evolution of the fishing industry in the post-1977 period. Indeed, much of the debate which occurred at the time centered around such issues as access to northern cod and northern shrimp by non-Newfoundland and Labrador offshore fleet sectors. This was to have a significant bearing not only on the overall performance of the industry in subsequent years, but also on the economic base of many of those communities in this province which had a strong linkage with the fishery. In retrospect, it can be observed that neither the province nor individual communities held very little influence, other than the power of persuasive argument, over many of the fundamental resource management decisions which were taken in the post-1977 period.

The Panel notes there has been no formal bilateral structure in which the province and the Government of Canada have coordinated overall fisheries policies and strategies for the province's fishery. From time to time since 1977 bilateral discussions have led to joint initiatives such as the restructuring of the deep sea sector in 1983, the joint implementation of a number of cost-shared fisheries development agreements, and the co-ordination of certain aspects of the post-moratoria adjustment programs. However, these were driven by specific responses to specific issues rather than in the context of a formal consultative framework, the absence of which in the Panel's view, resulted in a fragmented public policy approach to some of the fundamental structural issues in the Newfoundland and Labrador fishery since 1977. In general, this can be largely attributed to a conflict between the province's vision of its role in the fisheries and the federal government's Atlantic-wide perspective on fisheries policy. This is enunciated through its guarded jurisdictional role in resource management, resource access and resource allocation.

One clear message that emerges from the overall performance role of the fishing industry in the province's economy in the post-Confederation period is that the economic base of most rural coastal areas continues to be shaped by developments in the fisheries sector. In this context, the continued regional and community dependence on the fishery, even in the wake of the groundfish collapse of the early 1990s, clearly demonstrates the public policy challenges associated with further diversifying rural regional economics which have been shaped by a historical attachment to the fishery. This, in large measure, explains the deep community expectations relative to fisheries generated employment notwithstanding the volume of fish landings now available is at best a small fraction of pre-moratoria levels. Landings of groundfish species such as cod, redfish and flatfish, which primarily drove the industry's expansion in the post-1977 to 1992 period, have seen the greatest declines.

The change and transition which has occurred in the Newfoundland and Labrador fishery over the post-1992 period has had a major impact on the structure of the industry and corporate interaction. For example, the role of the offshore fishery has declined sharply and much of the corporate dynamics are being driven by changing circumstances in the inshore sector, especially in terms of raw material supply. The competitive forces at play in the industry generally will continue to shape

the structure of the industry and will also impact the degree to which further consolidation will occur. This, from a public policy perspective will present further policy challenges to the extent that such change will continue to impact the future of those communities and regions with a major dependence on the fishery.

3.0 ROLE OF THE FISHERY IN THE NEWFOUNDLAND AND LABRADOR ECONOMY

The Province's, March, 2001 Final Report on the Renewal Strategy for Jobs and Growth highlighted the significant structural changes which occurred in the fishery over the past decade. This Report also identified the fishery as a central part of the province's future and that *"With stock rebuilding and effective resource management, combined with an increasing global demand for high quality premium seafood products, the fishery offers a solid opportunity for sustainable economic development over the long term."*

The dramatic changes which have occurred in the Newfoundland and Labrador fishing industry since the initial 1992 northern cod moratorium have served to reinforce the contribution which a properly managed fishery can bring to the province's economy. These changes also have brought into sharp focus the extent to which the province's rural economy remains entwined with ongoing developments in the fishing industry notwithstanding major initiatives to diversify the province's economy in the post-Confederation period. The fishery, even with its many challenges, remains the principal employer of those regions of the province which evolved around fishery generated opportunities.

3.1 Industry Adjustment

The Panel fully acknowledges the degree to which the collapse of the groundfish sector impacted the private sector and the lives of those who participated directly in the harvesting and processing sectors of the fishery and the direct impact which this collapse had on the economic base of fishery dependent communities and regions. This impact meant an adjustment outside the fishery for many and continued uncertainty for those who held out hope groundfish stocks would quickly recover.

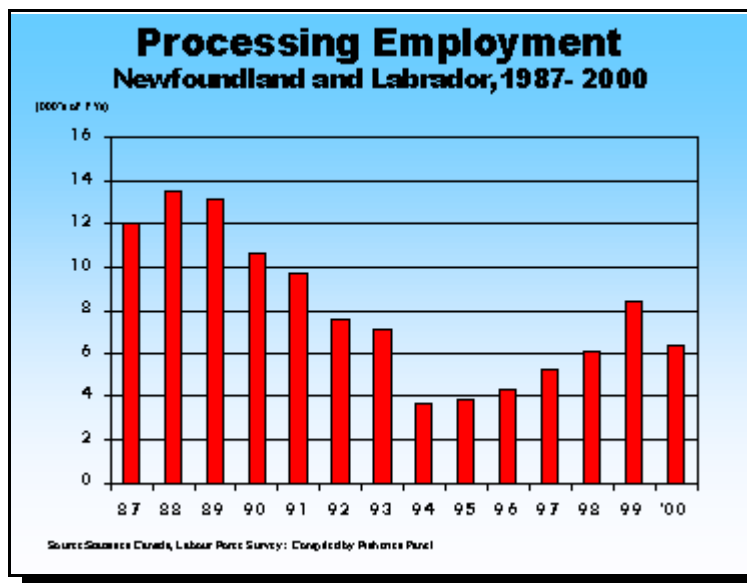


Figure 3.1

Despite the very limited increase in groundfish landings since 1992, the fishery generated record landed and export values of approximately \$1 billion in 1999 and 2000. This level of economic activity was driven primarily by the shellfish sector with crab and shrimp accounting for approximately 70 percent of the industry's production/export value.

The post-moratoria period saw employment levels in the processing sector decline sharply by approximately 7,000 person years from 13,500 person years in 1988 to 6,400 person years in 2000. The impact was greater in the early post-moratoria (1992) period as evidenced by a record low employment level of 3,700 person years in 1994. Similarly, the number of taxfilers with processing income has declined from 30,620 in 1988 to 16,420 in 1999. These sharp declines in processing sector employment were primarily the result of the near collapse of the once labour intensive groundfish processing sector, together with increased mechanization throughout the industry in the post-moratoria period, and product changes arising from shifting market opportunities and species processed.

The adjustment for those engaged in the offshore harvesting sector, because of its groundfish dependency, paralleled that of groundfish workers in both the inshore and offshore processing sectors. As a result some 90 percent of the approximately 1,000 individuals engaged in the offshore sector were displaced as the offshore sector declined in number from approximately 75 vessels in the 1980s to approximately 10 active offshore groundfish vessels at present. For those engaged in the inshore sector, particularly the fleet sector less than 35 feet in length, the opportunity to participate in federal licence buyback programs eased the immediate impact of the groundfish collapse for some. Under these programs approximately 3,370 vessel licences were retired. As a result the number of groundfish licence holders in the fishery has declined from 9,440 in 1992 to 4,600 in 2001.

From a global employment perspective the number of individuals now directly employed in the Newfoundland and Labrador fishery has declined sharply from a peak level of approximately 37,000 in the late 1980s to a peak level of approximately 22,000 in 2001 (Labour Force Survey). This represents approximately 10 percent of the province's employed workforce. The reality, however, is in the more fishery dependent regions of the province, the fishery accounts for a far greater percentage of total regional employment and for many of the larger processing centres, the fishery is their sole economic mainstay.

From this perspective, and in the absence of diversification opportunities, the collapse of the groundfish sector has eroded the economic base of a number of once "strategic" fishing towns such as Burgeo, Ramea, Gaultois, Harbour Grace, Trepassy, Fermeuse, Port Union/Catalina, Twillingate, LaScie and Englee, and once year round plants at Harbour Breton, Marystown and Fortune now operate seasonally. Moreover, the changing face of the fishery has seen fishery related activity in regions such as the Burin Peninsula, the South/Southwest Coast, the Northwest Coast, the Bonavista Peninsula, and the Baie Verte Peninsula, decline sharply. This had major negative implications for community and regional economic stability arising from greatly reduced groundfish landings and minimal opportunities for gainful regional employment both within and outside the fishery.

The role of the fishing industry in the province's economy over the 1966-1986 period, for example, is captured in its contribution to employment in the goods producing sector. In 1966, fishery

employment accounted for only 22.5 percent of employment in this sector whereas by 1986 it accounted for 45 percent and this change reflects the industrialization of the fishery over that period. In 1999, notwithstanding the changed groundfish resource circumstances after 1992, the fishing industry still accounted for 35.6 percent of employment in the goods producing sector. Clearly, this indicates the fishery continues to remain a significant part of the Newfoundland and Labrador economy.

The most fundamental question which remains unanswered is the extent to which the rebuilding of groundfish stocks is likely to occur and in what time frame. In the absence of any solid scientific reference point it is virtually impossible for individuals, communities and regions as a whole to plan their future role in the fishery. This is further accentuated by the uncertainty associated with the sustainability of current shellfish harvests. As well, there is uncertainty whether key groundfish stocks, which shaped the pre-moratoria fishery, will rejuvenate within a reasonable time frame.

In the February, 2001 the Department of Fisheries and Oceans policy discussion document entitled The Management of Fisheries on Canada's Atlantic Coast, it was stated that "...*the worst stages of the groundfish crisis are perhaps behind us...*" Some may interpret this to suggest there may be little urgency in taking effective conservation measures to rebuild those stocks which have collapsed, including those NAFO managed stocks still under moratoria. Any approach that would lead to these stocks being "managed" at current quota or biomass levels into the longer term will simply not serve sustainable fisheries objectives nor will this approach lead to sustainable economic development over the long term and should be forcibly resisted by the Government of Newfoundland and Labrador. Clearly the challenge of rebuilding groundfish stocks must be a priority for both governments.

The Panel, during the course of its discussions with key industry stakeholders, was struck by the measure of concern expressed over the vulnerability of the industry's dependence on snow crab. This single species now accounts for approximately 40 percent of the industry's export value and is "driving" the overall performance of much of the inshore harvesting and processing sectors. In 2000, snow crab represented approximately 45 percent of the total inshore landed value and also accounted for approximately 45 percent of processing sector employment within the industry. Industry stakeholders indicate however, that the crab fishery represents 80 percent of industry margins. This snow crab dependency is especially pronounced along the East/Northeast Coast and Coastal Labrador.

The shrimp fishery has taken on added significance since 1997 in the inshore harvesting and processing sectors on the Great Northern Peninsula, along the Northeast Coast, and in Coastal Labrador. This emerging fishery, at least from a resource perspective, offers a new fisheries diversification opportunity and with further market development, will likely make a significant contribution to the province's fishing economy. The success of this fishery, given the capital investment in new plant capacity and new harvesting capacity, hinges largely on new market

development and co-ordinated and consolidated marketing initiatives by the processing sector. In 2000 this inshore fishery generated landings of 45,000 tonnes with a landed value of approximately \$55 million. Market development challenges resulted in lower landed and export values in this fishery in 2001 and impacted significantly on processing sector employment as well for the approximately 2,000 workers employed in shrimp processing plants, including Labrador based capacity.

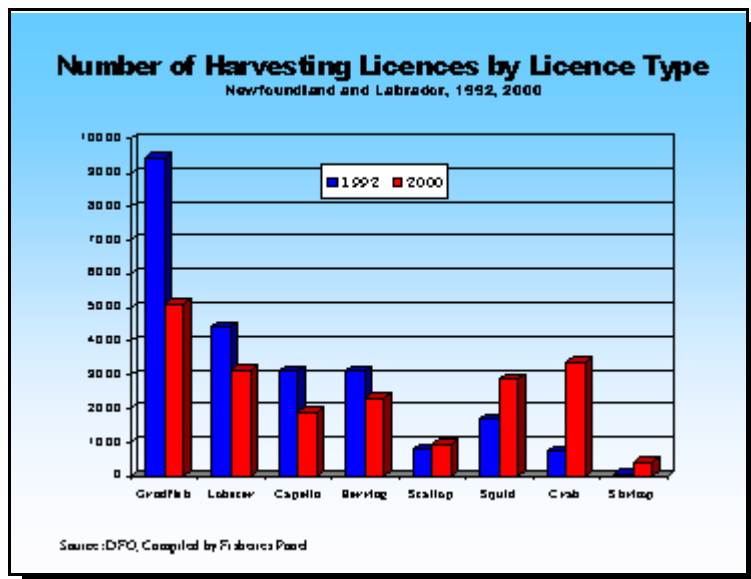


Figure 3.2

3.2 Fishery Dependence and Expectations

Prior to the collapse of the groundfish sector and, more specifically in the initial year of extended fisheries jurisdiction, the fishing industry was generally promoted as an employer of last resort. It is not surprising, therefore, that employment maximization became so enshrined in fisheries policy as to constrain the implementation of those policy measures that would lead to the emergence of a more viable and dynamic fisheries sector. In retrospect, this policy approach was driven largely by income security considerations and limited substitute employment opportunities outside the fishery in regions and communities with a strong fisheries dependence.

From the early 1980s onwards federal fisheries policies increasingly promoted the emergence of a limited entry harvesting sector in which priority access would be reserved for those individuals with a full-time attachment to the industry. This policy was driven by a need to

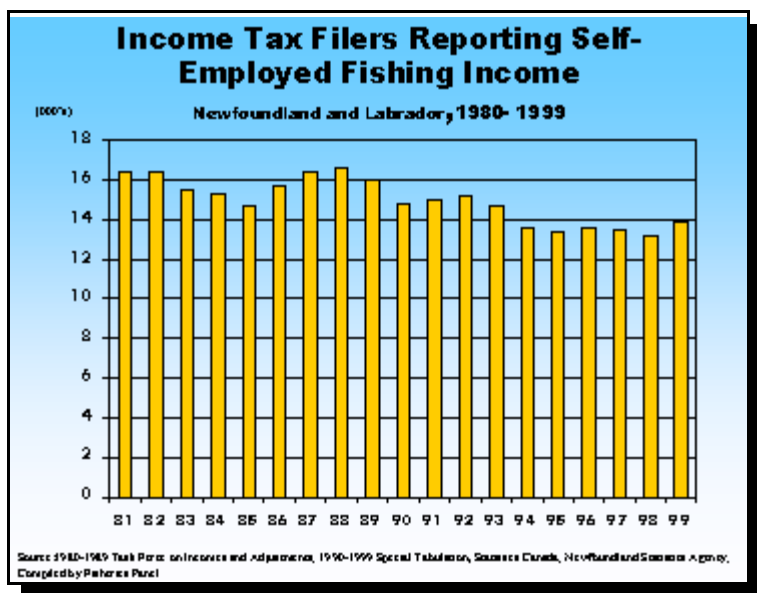


Figure 3.3

minimize overcapitalization in the industry's harvesting sector and a need to improve average annual incomes for those with a committed attachment to the industry. As a result of this policy approach, the number of casual industry participants declined sharply by the early 1990s.

In the post-1992 moratoria period further harvesting adjustment measures were taken by the federal government to reduce the number of fishing enterprises in the inshore sector of the industry. These increases included licence buy back and early retirement programs under which 3,300 inshore groundfish licenses were retired and a separate initiative to cancel groundfish and other restricted licenses held by casual industry participants. As a result the number of licensed groundfish enterprises, primarily vessels under 35 feet, declined from approximately 9,440 in 1992 to 4,600 in 2001. The number of self-employed fishermen from taxfiler information has declined from 16,560 in 1988 to 13,940 in 1999.

In 2001, there were 14,700 fish harvesters registered with the Professional Fish Harvesters Certification Board. This consisted of 5,000 apprentices, 900 Level I, 7,850 Level II, and 940 people who were temporarily classified.

These harvesting sector initiatives, together with the professional fish harvesters certification initiative, have led to a more streamlined and viable harvesting sector. The implementation of fleet sector IQs in

most inshore sector fisheries has also had a positive impact on a more orderly pattern of fishing activity and a more equitable distribution of available resources across the various fleet sectors. Average earned net income levels in the inshore sector have risen substantially and have reached record levels since 1995. This, in large measure, reflects the greatly increased contribution of the shellfish sector, especially snow crab. The Panel notes, however, income levels of fishermen and individual fleet sectors vary considerably throughout the province because of regional resource availability considerations especially in the small boat sector.

The Panel further notes the new Final Offer Selection Model for inshore fish prices, first implemented in 1998 on a pilot basis, and then given legislative effect in 2000, represents one of the most progressive policy instruments adopted in the fishing industry over the years. This model has been endorsed by both the harvesting and processing sectors. This model is critical to the ongoing

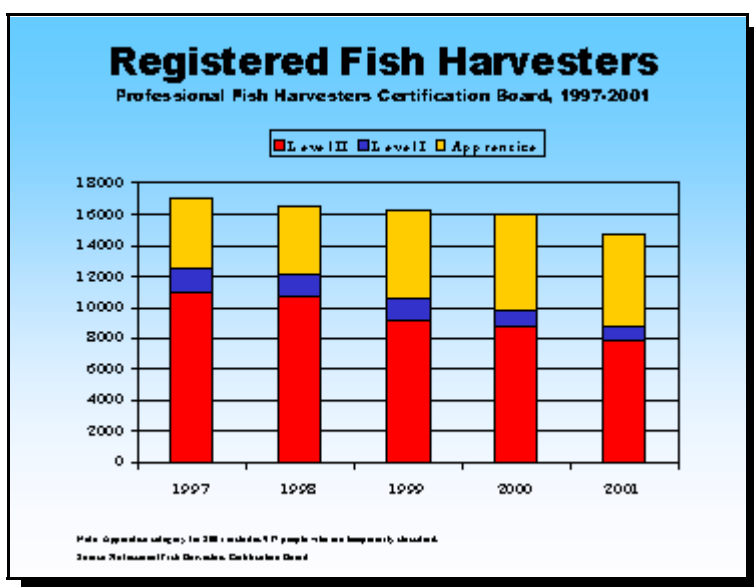


Figure 3.4

conduct of the fishery, especially from an orderly and timely harvesting perspective, and the strengthening of the province's position in international markets. It is evident from the 2001 inshore shrimp price negotiations, that the transparent process associated with this model must be given every opportunity to take its course. Otherwise, there is a real danger there will be unnecessary instability from time to time and this would essentially compromise the model's demonstrated effectiveness, and hence, industry and market stability.

3.3 Processing Sector Expectations and Adjustment

The rapid expansion of the Newfoundland and Labrador processing sector in the post-1977 period led to a sharp increase in processing sector employment primarily in the inshore sector of the industry. This increase flowed from an increase in the actual number of fish processing plants in all regions of the province as well as from the additional workforce requirement associated with increasing volumes of groundfish and other species.

Prior to the restructuring of the offshore sector of the industry in 1983, some 5,000 workers were employed on a near year-round basis in the offshore processing sector.

Based on the Labour Force Survey, the peak number of processing sector workers, primarily seasonal, declined from about 20,000 in 1988 to approximately 12,400 in 2001. It is noted, however, the average duration of employment in the processing sector has declined reflecting, in part, the challenge of allocating the available work amongst the workers employed by any given processing plant.

This Panel notes the expectations for employment in the processing sector of the industry far exceeds the level of employment that can be economically sustained under present resource circumstances. In drawing this conclusion, the Panel fully understands that an active or inactive community fish plant is seen as the one and only possibility of employment available in many communities and regions throughout the province. In this context the dependency on highly seasonal fish processing sector employment for earned income and income security attachment is a firmly entrenched characteristic of the province's fisheries sector. In 1992 for example, there were 16,630 processing

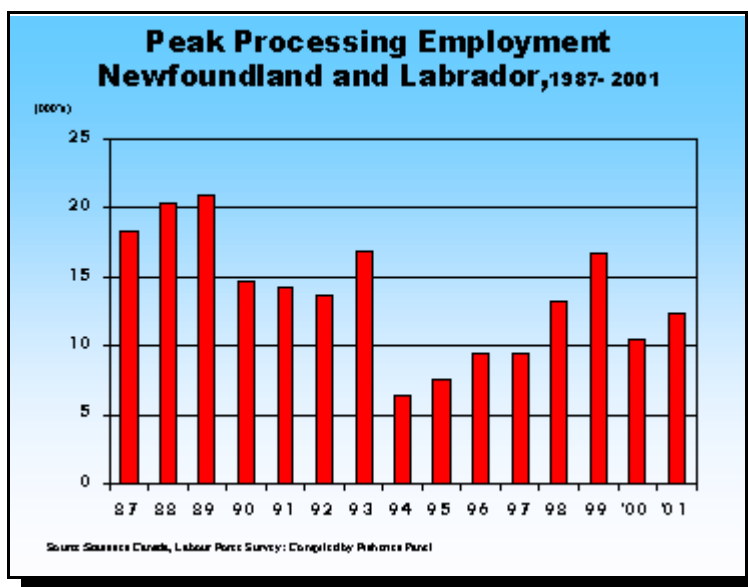


Figure 3.5

claimants eligible for EI, however, by 2000 this had declined to 9,540. This decline reflects the relative declines in employment in the industry, but clearly, EI remains a central component of income support for processing workers.

There are a small number of plants in the industry which provide extended periods of employment but technological innovation will continue to have a major bearing on the level of employment available. Such innovation is critical to the ongoing viability of the processing sector given the ever changing competitive market dynamics within the international seafood industry.

The regulation of the fish processing sector, which falls within the full jurisdiction of the province, has met with the same relative challenges as the regulation of the harvesting sector by the federal government. Competing sectoral interests usually have differing perspectives on how the industry should be managed and these perspectives often conflict with public policy objectives. In the final analysis the competitive forces at play within the processing sector, for example, also conflict with community and public expectations. From a public policy perspective, the challenge always is to balance the objective of building a viable, sustainable and competitive fishing industry and processing sector, with community and regional economic development realities.

The quality initiatives undertaken by the province and industry over the past five years have had a profound effect on markets and market reception of Newfoundland and Labrador products. The province's quality assurance program has introduced standards for handling and storage of raw material. As well, these initiatives have been incorporated into negotiated price settlements between harvesters and processors and grading programs are mandatory for crab, shrimp, and cod. Government, however, has had to be diligent in its enforcement efforts. Long term quality initiatives should remain central to provincial fisheries policy and should also be central to the operational philosophy of processors and harvesters alike, as well as the Department of Fisheries and Oceans.

In the case of the fish processing sector an industry structure comprised, for example, of a multiplicity of undercapitalized firms with a limited marketing capacity, will not generate stable employment and income levels. However, firms which are financially strong, well-managed, have solid linkages to the marketplace, which have a deep sense of commitment to the communities and employers in which they operate, as well as a strong business relationship with fishing enterprises, can provide this stability. All too often in the past the expectations of many communities and community plant employees have been dashed by commitments which have been made but not met. This was certainly the case prior to the moratoria period and has continued to varying degrees since then. In the final analysis, however, the question arises as to what measure of due diligence is necessary before fish processing licenses are approved and what measure of private sector accountability is required once processing licenses are approved. Equally important to this question is the processing license management and regulatory process that is necessary to give real public policy effect to this process without compromising the need to maintain a positive investment climate.

Without stable and long term employment it will be difficult to attract new workers to the industry. This has been a common theme raised in the Panel's consultations and is of concern for many processors. This difficulty in attracting workers is further compromised by an aging workforce (See Figure 3.4). While the age distribution of processing workers is slightly younger than the working population as a whole, challenges associated with an ageing workforce will have to be addressed. This will include providing secure and extended employment at attractive income levels.

In summary, the Panel holds a view the policy approach which has been taken since the initial 1992 moratorium towards the evolution of a fishery which is driven by viability imperatives, will shape a more dynamic fishery. The extent to which this will be achieved will, however, depend largely on stock rebuilding and effective and harmonized fisheries management policies for both the harvesting and processing sectors. Equally important is the need for government and industry to show real leadership on quality enhancement measures and for industry to take a more collective and consolidated approach to marketing.

Further industry and community adjustment is inevitable but this adjustment, if driven by solid public policy objectives and a coordinated commitment by governments and industry, will enhance the role which the fishing industry will play in the province's economy over the longer term. The approach the province elects to take on the future management of the fish processing sector will have an equally important bearing on whether or not a viable and self-sustaining industry will emerge and help sustain ongoing diversification and strength within the Newfoundland and Labrador economy. This in turn will have a significant impact on corporate concentration in the industry and the overall structure of the fishing industry.

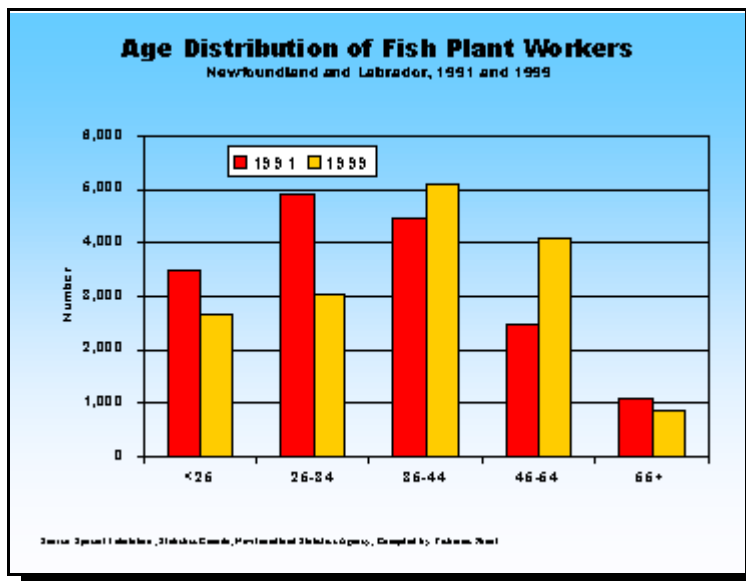


Figure 3.6

4.0 REGIONAL RESOURCE AVAILABILITY AND REGIONAL RESOURCE PROCESSING CAPACITY LINKAGES

Figure 4.1 shows the changing pattern in fish landings within the province by major species grouping (groundfish, pelagics and shellfish) over the 1977-2000 period. A further breakdown of landed value by species grouping for this same period is given in Figure 4.2 and the breakdown of total landings by the inshore and offshore fleet sectors is given in Figure 4.3. These resource changes have had a major impact on the corporate structure of the Newfoundland and Labrador fishery and the degree of corporate concentration which emerged in their wake.

The principal changes which are evident in this data can be summarized as follows:

- (a) relative stability in overall landings during most of the decade following the extension of fisheries jurisdiction in 1977 with groundfish being the dominant contributor to the province's fisheries sector during this period;
- (b) a dramatic decline in groundfish landings after the 1990 culminating in the northern cod moratorium in 1992 and subsequent moratoria in 1993 in the West Newfoundland (4RS 3Pn) cod fishery and the South Coast (3PS) cod fishery as well as for key NAFO managed stocks such as 3NO cod, 3LNO American plaice and 3LNO yellowtail flounder.
- (c) a dramatic decline in both the inshore and offshore landings resulting from the above referenced moratoria together, in the case of the Newfoundland and Labrador offshore sector, with sharply reduced landings in overfished NAFO managed groundfish stocks on the Southern Grand Banks;
- (d) a cyclical pattern of landings for pelagic species driven for the most part, by variable market opportunities for capelin in particular; and,

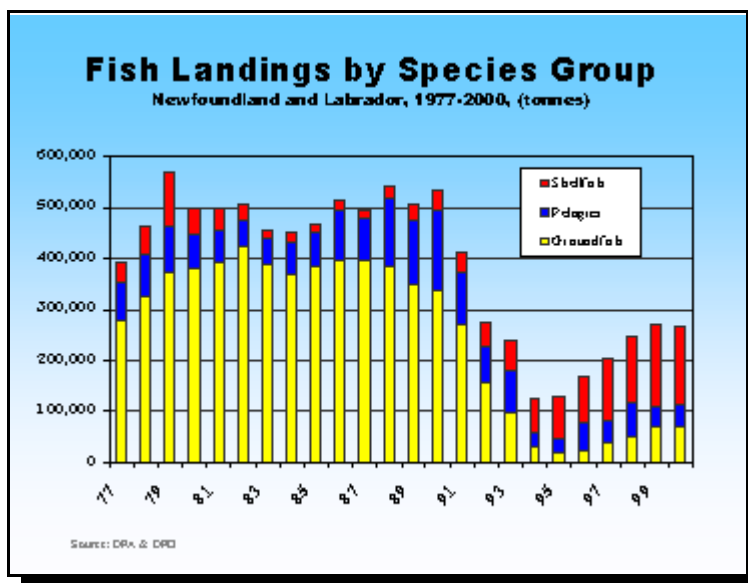


Figure 4.1

- (e) a sharp increase in both the volume and landed value of shellfish species (crab and shrimp) in the post-1992 period.

In more specific terms the total volume of groundfish landings in the province increased from 278,000 tonnes in 1977 to 383,000 tonnes in 1988 to a record low of 17,000 tonnes in 1995. The offshore sector which accounted for almost 50 percent of total groundfish landings in most years showed the same sharp downward collapse by the early 1990s as did the inshore sector. In 2000 total groundfish landings in the province totalled 70,000 tonnes or approximately 18 percent of 1988 levels.

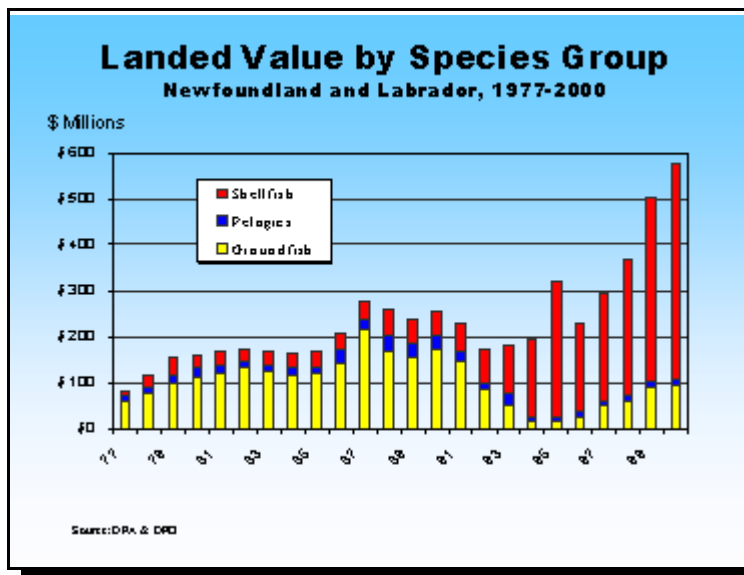


Figure 4.2

The sharp decline in groundfish landings in the post-1988 period in both the inshore and offshore sectors impacted severely on the overall structure of the province's fishing industry. This severe impact was manifested in a dramatic reduction in the number of processing plants that could be sustained after the groundfish collapse as well as by a dramatic reduction in the number of individuals who could find meaningful employment in the processing sector of the industry.

By 1994 the number of individuals employed in the processing sector had declined sharply when compared to employment levels achieved in 1988. In 1994 only 3,700 person years of employment were generated in the processing sector which compares with approximately 13,500

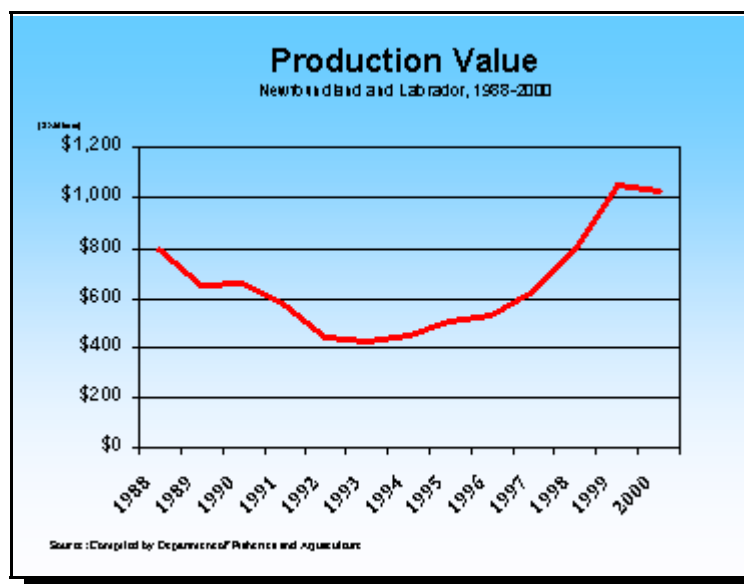


Figure 4.3

person years in 1988. This number increased to approximately 8,400 person years in 1999 and declined to approximately 6,400 in 2000 as a result of quota reductions and ongoing mechanization in the processing sector.

4.1 West/Southwest Coast

The Panel notes the collapse of the West/Southwest (4RS+3Pn) cod fishery severely impacted the West Coast/Labrador Straits regional economies and resulted in a near total collapse of the region's groundfish dependent processing sector. Total landings for this

stock decreased sharply from 106,000 tonnes in 1983 to 44,000 tonnes in 1988 and subsequently to a moratorium in 1994. The impact on the inshore harvesting sector was equally evident given this sector's dependence on the 4RS+3Pn cod stock. The corporate structure of this regional fishery was dominated by twenty or more small community based plants operated by small, independent firms together with a number of larger plants operated by several regionally based corporate entities and FPI.

The dominant role played by the 4RS+3Pn cod fishery in the West Coast regional economy particularly in the post-1977 period was complemented by other important sub-regional fisheries for species such as lobster, herring, scallops, capelin and inshore 4R shrimp. The inshore fishery in the region underwent considerable transformation from the early 1970s onwards with the evolution of the mobile groundfish/shrimp fleet centered to a large degree along the Northwest Coast. Nevertheless, the small boat sector under 35 feet in length continued to play a significant role in the region's fishery as was the role played by the mobile pelagic seiner fleet centred primarily in the Bay of Islands.

Some eight years after the 1993 moratorium the quota for the 4RS+3Pn cod stock remains at approximately 7,000 metric tonnes and most of the region's former groundfish processing plants remain closed or are operating at a small fraction of pre-moratorium levels. A large number of small boat fishers have elected to participate in the federal licence buy-back program. The development of the inshore northern shrimp and the snow crab fishery has provided some opportunities for the region's harvesting and processing sectors over the past several years. However, like other

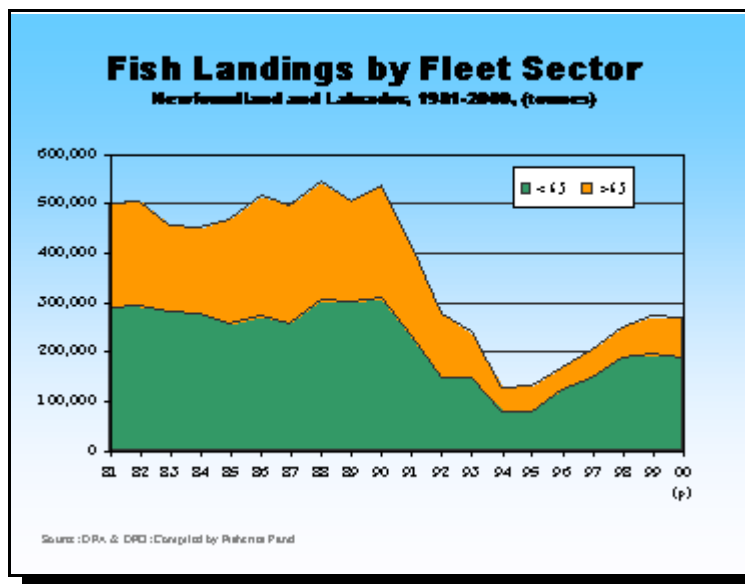


Figure 4.4

groundfish dependent regions of the province, this regional fishery continues to experience a very difficult period of adjustment.

4.2 South Coast

The industry structure along the province's South Coast in the post-Confederation period was characterized by two distinct fleet/plant structures - the vertically integrated offshore sector which evolved at a small number of strategic, year-round centres at Burgeo, Ramea, Harbour Breton, Gaultois, Grand Bank, Fortune, Burin, Marystown and Trepassey. These plants were supplied primarily by company owned trawlers as well as by the inshore fleet sectors in season.

The offshore fleet sector, prior to 1977, primarily accessed groundfish stocks on the Southern Grand Banks, on St. Pierre Bank (3PS), in the Gulf of St. Lawrence and on the Scotian Shelf. Flatfish and redfish were the principal species processed at these plants with cod being of relative importance as well. By the early 1980s the offshore fleet sector was severely impacted by sharp reductions in NAFO managed stocks on the Southern Grand Banks as a result of severe foreign overfishing and the sharp decline in the Gulf of St. Lawrence redfish stocks.

Northern cod provided some measure of raw material supply to several of these plants over the 1978-1990 period but by 1994 the region's offshore groundfish fishery had virtually collapsed and has shown little signs of recovery. There has been some recovery in the 3LNO yellowtail fishery, and a limited participation in the partially recovered 3PS cod stock. Subsequently, offshore plants at Marystown, Fortune and Harbour Breton owned by FPI have operated only seasonally with offshore surf clams sustaining Clearwater's Grand Bank plant. Plants at Burgeo, Ramea and Gaultois developed a major dependence on offshore redfish and were severely impacted by stock declines for this species. Burgeo was further impacted by the transfer of its redfish quota to Canso, Nova Scotia when Seafreez acquired these two plants from National Sea Products together with a portion of National Sea's offshore groundfish allocations.

The inshore fleet sector along the South Coast evolved primarily around the 3PS cod stock as well as the inshore lobster fishery in Fortune and Placentia Bays in particular. Over the past five years access to snow crab has taken on increased importance in this inshore regional fishery relative to a historical dependence on the 3PS cod stock which has shown some recovery since it was placed under a moratorium in 1993. However, the quota for 3PS cod was reduced to 15,000 tonnes in 2001 from 20,000 tonnes in 2000 and 30,000 tonnes in 1999.

A number of new small, medium and larger size plants took on added importance in this regional fishery after 1977 including plants at Hermitage, St. Lawrence, Southern Harbour and Arnold's Cove with the latter being supplied by a combination of inshore and offshore landings. In an historical context, the offshore plants referenced above dominated the South Coast regional economy with upwards of 4,000 or more individuals employed on a near year round basis before the resource and

financial circumstances of the early 1980s led to the restructuring of the deep sea fishery. By 1984, total employment in all plants in the region totalled 6,000 people. At current harvest levels peak seasonal employment in the region's offshore groundfish sector has been reduced sharply to approximately 1,000 individuals.

4.3 East/Northeast Coast

In the post-Confederation period the inshore groundfish fishery along the East/Northeast Coast of the province accounted for upwards of 60 percent or more of all inshore groundfish landings in the province and upwards of 60 percent or more of all inshore fishermen in the province. Similarly this region, by 1977, accounted for 64 percent of all groundfish capacity throughout the province. This preponderance of fishermen, plant workers, landings and plant capacity reflected the region's adjacency to, and dependence on, one of the largest cod stocks in the North Atlantic. This stock generated annual inshore landings of approximately 200,000 tonnes prior to its initial collapse over the 1968-1974 period as a result of severe foreign overfishing before the extension of fisheries jurisdiction in 1977.

The structure of the fishing industry along the East/Northeast Coast of the province in the post-Confederation period was dominated by the inshore groundfish sector with a dominant focus on cod. As the fresh frozen sector expanded several offshore trawl based groundfish operations emerged at St. John's, Fermeuse, Harbour Grace and Port Union/Catalina all of which, except Fermeuse are no longer operated as groundfish plants. It should be noted this region of the province, especially the Trinity/Conception area, also played a dominant role in the saltfish industry with major mechanical drying facilities located at Fogo, Catalina, Carbonear, Brigus, Bay Roberts, Cupids and St. John's before the collapse of the saltfish sector by the 1980s.

As the fresh frozen sector of the groundfish industry expanded in the post-Confederation period, a number of strategic regional fresh fish processing plants emerged along the East/Northeast Coast. By 1974 the processing sector was dominated by the production of fresh frozen groundfish products at relatively large plants located at St. Anthony, Englee, LaScie, Twillingate, Valleyfield, Fogo, Bonavista, Port Union/Catalina, Old Perlican, Bay de Verde, Harbour Grace, Carbonear, Dildo, St. John's, Witless Bay and Fermeuse. These geographically "strategic" plants were located in close proximity to inshore supplies of fish and their relative positions were enhanced in some measure with the improvement in highway networks that facilitated the ready movement of fish from satellite fishery communities to these strategic plants, especially during the peak summer fishery.

The optimism associated with the extension of fisheries jurisdiction in 1977, especially that surrounding the recovery prospects of the large northern (2J+3KL) cod stock, led to a rapid expansion in the region's processing capacity over the 1977-1980 period throughout the entire East/Northeast Coast region. By 1981, when a general processing licencing "freeze" was implemented by the province, the number of processing plants, particularly new fresh frozen plants,

had increased and the processing capacity of older plants was greatly expanded. This was done prior to the implementation of “restrictions” on the expansion of freezing capacity. This expansion was driven by a number of older established firms as well as by an increasing number of new corporate players.

Some diversification had occurred in the industry over this period in terms of shellfish and pelagic species but this region’s processing sector remained dominated by groundfish, with cod and, to a far lesser extent Greenland halibut (turbot) being the key species fisheries. The expansion of the region’s fish processing sector was accompanied by a significant transformation in the structure of the inshore harvesting fleet which saw, the expansion of the 35' - 65' inshore vessel sector dominated by gillnet effort. However, in absolute numbers, the small boat sector (< 35') retained its dominant presence in the harvesting sector particularly in terms of its role in the inshore codtrap fishery. The expanded inshore fleet sector did bring about increased fishing effort outside the traditional and highly seasonal inshore cod fishery. The largest percentage of groundfish landings continued to be taken during the peak late spring-summer fishing period. This gave rise to highly seasonal processing capacity, quality, marketing and employment challenges in the region’s fishery.

The major structural challenge associated with this region’s inshore fishery after the recovery of the 2J+3KL cod stock in the post-1975 period, was the general inability of processing capacity to handle peak inshore cod landings particularly in June and July. In this context, the expansion of the processing sector throughout the region gave rise to increased competition for available landings among those plants licensed for any given species. However, during peak landing periods the volume of groundfish available in most years often had a neutralising impact on competition for raw material simply because most plants could readily access adequate volumes of raw material. This contrasts sharply with the rapid expansion of the region’s crab fishery in the post-1992 moratoria period which has seen snow crab replace cod as the dominant regional fishery and where the competition for reduced quotas over the past two years has increased sharply.

4.4 Labrador

From a resource perspective the Labrador resident fishery before 1977 was shaped primarily by access to 4RS+3Pn and 2J+3KL cod and salmon and, in the case of the North Coast, Arctic char as well. Turbot and crab landings took on added significance in the region’s fishery after this date as did Icelandic scallops in recent years in the Nain area. Since 1977, the region’s fishery has been positively impacted by access to offshore shrimp licenses which has provided the mechanism to support a much stronger regionally based processing structure. The Labrador Fishermen’s Union Shrimp Company (LFUSC) and the Torngat Fish Producers Co-operative have a dominant presence in the Labrador fishery. The development of the inshore northern shrimp fishery over the past four years has also seen an expanded presence by Labrador residents in this fishery.

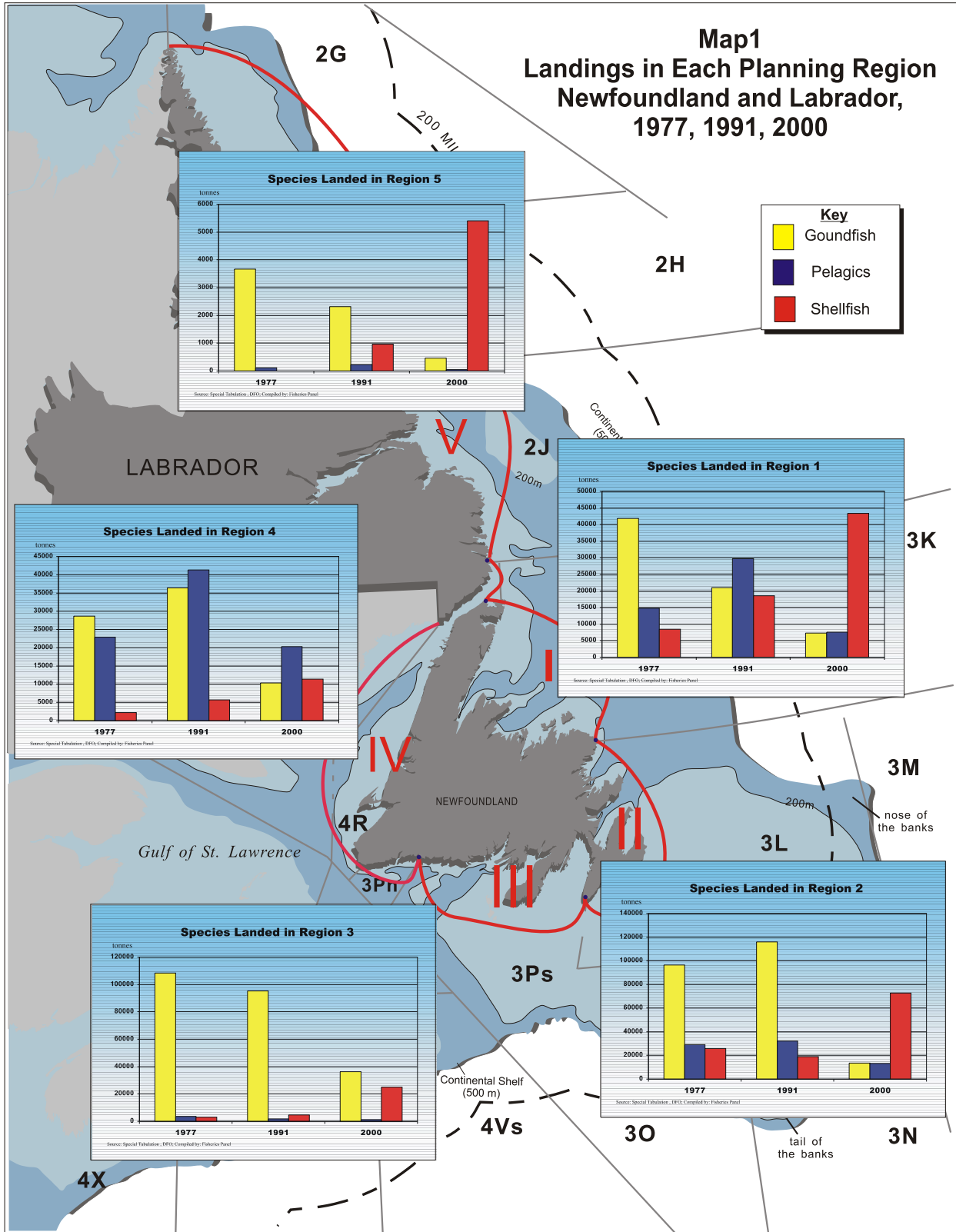
The island based processing sector presence in Labrador declined sharply with the decline of the

saltfish sector but several island companies have a presence in the region's crab fishery with plants at St. Lewis and Black Tickle. In 2001 the LFUSC, in a joint venture with the Barry Group, opened a state of the art shrimp processing facility at Charlottetown. The Innu Nation in conjunction with several island based fishing companies established Katsheshuk Fisheries Ltd. in 2000 to access an offshore shrimp allocation given that year. The LFUSC continues to operate its consolidated groundfish plant at L'Anse au Loup together with crab processing plants at Mary's Harbour and Cartwright with Torngat operating a multi-species crab/groundfish plant at Makkovik and freezing plants for char, scallops and turbot at Nain and Hopedale, respectively. In the Labrador Straits access to 4RS+3Pn cod has been severely impacted by very low quota levels for this stock since the stock was placed under moratorium in 1993.

In a fisheries development context and notwithstanding the collapse of the 2GH and 2J+3KL cod stocks, the Labrador fishery has undergone considerable transition and growth over the past 10-15 years both in terms of the level of onshore processing, species diversification, and capacity levels in both the harvesting and processing sectors. These developments have been supported by specific fisheries policy measures of both levels of government which have seen Labrador communities derive increased benefits from resources available in adjacent waters. For example, offshore shrimp royalties have been instrumental in developing inshore processing for the LFUSC and Torngat Fish Producers Co-op. The Native Land Claims initiatives provide a further public policy context in which fisheries resource access and management issues will be addressed.

Map 1 summarizes the changes in the volume of regional fish landings over the 1977-2000 period. Clearly, the sharp reduction in overall groundfish landings in every region of the province over this period gave rise to unprecedented structural adjustments throughout all sectors of the fishing industry. It also gave rise to a corporate structure with a principal focus on shellfish development opportunities, especially for snow crab. Crab landings ranged from 7,000 to 16,000 tonnes over the 1978-1992 period but increased sharply to 38,000 tonnes by 1996 and to approximately 69,000 tonnes in 1999. By this date crab represented some 45 percent of the industry's overall landed value and approximately 40 percent of the industry's production value. This development shaped much of the competitive dynamics within the industry in the post-1992 moratoria period and also fuelled debate over major public policy issues relative to licensing and corporate concentration in the processing sector of the fishery. Similarly, developments in the inshore northern shrimp fishery over the 1997-2001 period have also further shaped the corporate and competitive dynamics at play in the industry generally.

Map1 Landings in Each Planning Region Newfoundland and Labrador, 1977, 1991, 2000



Note: Scales on graphs are different
Source: Department of Fisheries and Oceans;
Prepared by: Fisheries Panel

5.0 MANAGING THE FISH PROCESSING SECTOR

As noted in previous chapters, one of the most significant structural changes in the fishing industry in the post-Confederation period was the dramatic decline of the labour intensive saltcod industry and transformation to an industrial fresh frozen multi-species fishery. This rapid transformation in the industry led to the expansion of the capital-intensive vertically integrated deep sea trawler sector and considerable transformation in the composition of the inshore fleet sector under 65 feet in length. These developments led, by 1977, to the emergence of a fish processing sector dominated by a small number of firms in the offshore sector with some inshore linkages, and the emergence of an inshore processing sector dominated by an increasing number of small and medium sized firms, some of which had a history as family based operations in the declining saltfish industry.

5.1 Structural and Regulatory Considerations

Several observations can be drawn from the evolution of the fish processing sector structure in the post-Confederation period and more specifically over the 1977-1991 period. Firstly, government assistance, initially by way of direct and indirect loans, and laterally through loan guarantees, helped shape the very structure of the industry. The large federal/provincial government commitment to the restructuring of the deep sea sector in 1984 and the myriad of loan guarantees during the 1980s are best illustrative of this intervention. A second observation that can be drawn when assessing this level of financial intervention, is that the province and communities alike have been most reluctant to see processing plants remain closed even when the evidence spoke to high levels of overcapacity in the industry.

Thirdly, the province's fish processing sector, particularly the groundfish sector, has experienced major challenges over the years at sustaining consistent profitability. A fourth observation that can be made is the industry's very structure gave rise to an industry focussed primarily around the volume production of lower value fish products with little overall commitment to consolidated marketing and quality enhancement measures. A fifth conclusion that can be drawn is the highly capitalized deep offshore groundfish sector, in the past, experienced considerable challenges in sustaining high debt levels and consistent profitability levels.

The rapid transformation of the processing sector and the fishing industry generally from a fresh frozen groundfish dominated industry prior to 1992 to an industry now dominated by shellfish, particularly crab and shrimp, has brought additional challenges. The industry's dependence on shellfish in the absence of any significant growth in virtually all key groundfish stocks, brings a far greater measure of resource uncertainty from year to year than that which generally held for most groundfish species over the 1977-1991

This transition has also seen the emergence of a processing sector in which fewer firms now account for a much larger percentage of the industry's total output. This level of corporate concentration,

especially in the shellfish sector, has emerged through corporate growth and acquisitions within the processing sector regulatory framework in the post-1975 period. This is discussed in more detail in Chapter 8. It can be concluded, however, the impact of the groundfish collapse on the processing sector of the industry has been far more severe and longer lasting than earlier anticipated. From this perspective, shellfish alone cannot sustain capacity levels within the processing sector and with continued uncertainty over the recovery prospects for key groundfish stocks, the industry will face further adjustment over the foreseeable future.

5.2 Policy Considerations/Approaches

The Newfoundland *Fish Inspection Act* of 1954 made provision for the licencing of fish processing plants and its regulations also covered the buying of fish throughout the province and its subsequent processing. The 1954 *Act* also made provision for regional processing considerations. However, the Province choose not to exercise its legislative jurisdiction over the fish processing sector until 1975 at which time processing/buying licenses were issued on a request basis. In 1979, a form of limited entry was introduced and, with some policy adjustments in the intervening years, access to the fish processing sector has been restricted to the present. Capacity increased quickly after the 1977 extension of fisheries jurisdiction to a degree that required the implementation of a general freeze on new licences and plant capacity expansion in 1981. With some policy exceptions, this limited entry approach was continued without major modification until March, 1997 at which time the present core/non-core processing licensing regime was implemented.

The province's 1978 White Paper on Strategies and Programs for Fisheries Development stated that "*Government must create the climate for private sector investment to ensure the following appropriate processing sector objectives are realized:*

- i) the development of an appropriate regional balance between processing and harvesting capacity consistent with social and economic considerations;*
- ii) the development of a competitive processing sector which will enhance the acceptance of the province's fish exports in various export markets;*
- iii) the reduction, insofar as harvesting strategies permit, of the seasonality and underutilisation of plant capacity;*
- iv) the promotion of realistic levels of processing activity to ensure that maximum product values and maximum levels of employment are generated by any given volume of fish landings; and,*
- v) the provision of sufficient support infrastructure to facilitate the holding and distribution of fish landings and fish products, particularly during "peak" production periods."*

As noted above, the limited entry processing licence regime first implemented in 1979, restricted access to the industry by individual species and was followed in 1981 by a freeze on principal

species licences and a restriction, without prior approval, on increases in plant freezing capacity. The number of all category fish plants (freezing, salting, pickling) increased from 95 in 1975 to 169 in 1980 with little formality associated with the financial assessment of individual licence requests. An additional 60 or more plants in various categories were issued licences over the 1980-1990 period, however, most of these additional plants were relatively small community based operations. Nevertheless, seasonality in the processing sector continued with raw material supply being increasingly challenging outside the peak inshore fishing period for groundfish.

The processing sector structure in 1977 was comprised of a diverse mix of plants with fresh frozen groundfish fillets and blocks accounting for approximately 70 percent of the industry's production value which totalled \$252 million. In 1977, there were 150 licensed plants of which only 51 had freezing capacity, including 12 offshore plants which accounted for 40-50 percent of the industry's total production. The other 99 licensed plants only accounted for approximately 20 percent of the industry's total export value with an emphasis on fresh fillet production for other freezing plants, and salted and pickled production, mainly saltcod and pickled herring. At this time the crab industry was essentially based around canning and the production of meat with the processing sector confined to plants at St. Anthony, Little Bay Islands, Valleyfield, Bonavista, Bay de Verde, Hant's Harbour, and Bareneed/Port de Grave.

The rapid increase in processing capacity over the 1977-1980 period gave rise to policy concerns within the provincial government as reflected in its October, 1980 planning document Managing All Our Resources. Three specific targets were identified at the time to enhance the competitiveness of the processing industry:

- i) *“to encourage a balance within the processing industry such that an atmosphere of healthy commercial rivalry exists among individual firms;*
- ii) *to achieve a position whereby the Province's fish products are competitive on world markets; and,*
- iii) *the implementation of a plan for either the sale or long-term lease of government-owned processing facilities to the private sector”... (given that such facilities are leased at fees that bear no resemblance to true market costs).*

This planning document stated that the first target would be achieved through Government's program of licensing fish processing establishments and, in awarding processing licences cognizance would be taken of appropriate regional levels of processing capacity. It further stated that:

“The objective is to prevent excessive processing capacity, which would endanger the commercial viability of all firms, while ensuring that enough capacity exists to

provide healthy competition among fish buyers and processors. The licensing policy will attempt to avoid regional monopolies or oligopolies among fish buyers and processors either through interlocking company relationships or through the presence of an insufficient number of operators in a particular region.”

The regulation of the fish processing sector following the implementation of a limited entry processing regime was not without its public policy challenges. It became increasingly difficult for government to address structural issues relative to seasonality, quality, and an emphasis on lower value production primarily because employment generation pressures drove much of the industry's expansion during this period. (A measure of administrative control did exist in the implementation of the processing licence policy in effect at the time, including the establishment of an external Licence Appeals Committee in 1979.) However, the pressure for new licences, new plant capacity, and increased plant freezing capacity did not end with the measures to limit processing capacity following the initial general freeze on additional licences in 1981.

During the late 1970s the female capelin fishery based on new market opportunities in Japan and driven by much the same pressure for additional capacity took its course as well. Depending on market opportunities in any given year, a relatively low capital investment in blast freezing capacity could generate very attractive operating margins. Indeed, for some firms, capelin proved to bring higher margins than groundfish. From this perspective the pressure for new plant capacity and new processing licences was driven largely by forces of opportunity. Each firm in the industry or new firms seeking access, with full community support, made representation for access even though existing industry-wide capacity was only being utilized at less than 40-50 percent of available capacity and then only in a well-defined summer fishing period.

The province's Royal Commission to Inquire into the Inshore Fishery (1981) in its report to government addressed the expansion occurring in the industry quite bluntly. It stated:

“With regard to the distribution of processing facilities, the Commission suggests that a rural economy rooted in numerous separate communities and existing continual political pressures tends to produce industrial fragmentation and many small processing plants. Communities which land fish and have no processing facilities press for a feeder plant. Those communities which have feeder plants frequently attempt to keep more of the processing by installing freezer capacity. Local pressures together with generous grant, loan and [plant] lease policies by government tend to accentuate the fragmentation which geography introduces and consequently increase the number of processing facilities. The effect of such fragmentation is to produce a situation where the systems necessary to control processing can be developed only through cooperative

effort which in turn is made more difficult by the conditions which make it necessary.”

The 1981 Royal Commission Report, together with the financial difficulties in the early 1980s, led to the restructuring of the offshore sector of the industry in 1984. This provided only a marginal measure of discipline in the groundfish capacity expansion in particular throughout the 1980s. By 1987 it had become even more evident the processing licensing regime had not achieved public policy objectives established for the fish processing sector. An exhaustive review of processing licensing policies undertaken for the province by an independent consultant in 1987 (the Link Study) concluded that:

“Despite the freeze on the issuance of new licences for groundfish and all other main species in [1981] it is clear that between 1981 and 1986, a growth in capacity, mainly through plant expansions, has continued to occur thereby putting into doubt the effectiveness of the licensing system in controlling capacity.”

The Link Study pointed to the province’s public policy objectives for its licensing policy and observed that these objectives covered “such a broad range of social and economic policy objectives that conflicts and inconsistencies are not uncommon. The Study recommended the following ranked set of objectives guide the management of the processing sector:

- i) *“to develop a viable, internationally competitive processing sector;*
- ii) *to optimize [not maximize] employment generating opportunities; and,*
- iii) *to achieve maximum utilization of the available fish resource.”*

In putting forward a number of options, for a range of licensing regimes, the Link Study recommended the continuation of a limited entry regime. Under this option an overall ceiling would be placed on processing capacity and new entrants/expansions would only be permitted on a replacement basis and government financial assistance would not be provided to support any growth in capacity. The recommendations of the Link Study were not formally implemented by government but subsequent to this study the province took a more disciplined approach to the granting of loan guarantees to the fish processing sector on which there were \$26.8 million in loan guarantee defaults over the 1980-1994 period.

It is clearly evident the policy objectives established by government for the processing sector and the fishing industry generally over the 1977-1992 period did not lead to the evolution of a viable and self-sustaining industry structure prior to the collapse of the inshore groundfish sector in the early 1990s. Entry into the capital intensive offshore fishery was far more difficult. The introduction of

Enterprise Allocations into the offshore fishery in 1982, increased foreign overfishing of stocks on which this sector depended, and the restructuring of the deep sea sector in 1983 led to a major transformation of this sector over the 1981-1992 period. The capacity realignment which occurred in both the offshore harvesting and processing sectors was not so much a result of the licensing framework. It was the result of unprecedented levels of overcapacity arising from structural adjustment related to the virtual erosion of this sector's offshore raw material supply.

5.3 Managing the Processing Sector in the Post-Moratorium Period

In short, the challenges associated with the management of the processing sector in the post 1992 moratorium period, were driven by the very survival of individual corporate entities and those communities with strong linkages to the fishing industry and the processing sector itself. Immediately after the initial 2J+3KL cod moratorium industry took a view government(s) should pro-actively remove processing capacity with direct or indirect financial measures. However, this approach was not accepted by the province primarily because it would be difficult politically for it to participate in a formal process that would essentially determine which plants remained open and which plants were to be closed permanently.

Since the moratorium, capacity utilization in the groundfish sector of the industry declined to less than 10 percent of effective available capacity. The inshore groundfish processing sector, for the most part, has remained largely inactive with the exception of those plants that avail of limited landings related to 3PS cod, 4RS+3Pn cod, 2J+3KL cod and several other groundfish species including Greenland halibut. Several, including the Arnold's Cove plant, have continued to source frozen groundfish from offshore areas such as the Barent's Sea however raw material costs make this activity marginal at best. For the remaining offshore based plants at Marystown, Harbour Breton, and Fortune, seasonal activity is being primarily sustained through a combination of inshore and offshore landings from 3PS cod, 3LNO yellowtail flounder and Unit 2 (South Coast) redfish. The preoccupation of many fishery-dependent communities is now focused around fish plant retention notwithstanding the groundfish resources which led to their establishment remain at less than 20 percent of pre-moratorium levels nearly a full decade after the initial 1992 cod moratorium. Moreover, this uncertainty is compounded by the stark reality that the scientific community can give no real assurance of the extent and time frame for further stock recovery.

Following its decision in the early 1990s not to implement a proactive financial program of processing capacity realignment, the province requested the Fishing Industry Renewal Board to report on policy measures to facilitate capacity realignment in the processing sector. The Board, in its August, 1996 report, recommended the continuation of a limited entry policy for the processing sector. Its principal recommendation, which government implemented, was the development of a licensing regime based around core and non-core plant concepts. Plants that could demonstrate having processed, on average, 1,000 tonnes of groundfish over the 1988-1991 period, were designated core and were eligible to process all fish species, except 4R shrimp and crab, which were

restricted licences in 1996. Plants that did not meet core status were classified as non-core and were restricted to the complement of licences which they held in 1996. It also recommended no new snow crab licences be issued until such time as groundfish stocks had recovered but this recommendation was not accepted by government.

This new licensing framework permitted non-core plants to be combined to achieve core status provided plant consolidation occurred in the process. In addition, core licences could be transferred to non-core plant locations through a transparent public notification process. The new framework also provided for regional balance considerations in that licence transfers could be made between regions under certain conditions. It was generally recognized at the time that any significant realignment of capacity under this framework would occur over an extended time frame.

This framework, which remains in place, has resulted in a small measure of groundfish plant consolidation but processing capacity levels on both a province-wide and regional basis far exceed the limited volume of fish landings in the groundfish sector in particular. Over the 1992-2001 period the number of active licensed primary plants has declined sharply to approximately 124 in 2001, including crab, shrimp and pelagic plants. However, most of the inactive plants remain. A 1992 Peat Marwick Study had concluded that as many as 50 percent of processing companies would likely go bankrupt in the wake of the groundfish collapse. Indeed, few bankruptcies occurred, largely because of relatively low debt levels in many of the small and medium sized independent firms in the industry. For those with access to crab their overall financial position improved in the wake of the moratorium largely because of quota increases and changing market dynamics.

5.4 Managing the Crab Processing Sector

In relative terms, the management of the crab processing sector under the limited entry licensing regime implemented in 1979 met with a greater measure of stability than did the management of the groundfish sector. The crab resource at the time sustained relatively low annual catches that ranged from 3,900 tonnes in 1977 to 13,500 tonnes in 1982 and to 9,600 tonnes in 1988. However, annual quotas increased significantly after 1992, and it was this increased level of catch that was the primary basis for the increase in the number of crab processing licences over the 1996-97 period. The first three new licences issued on the island after 1983 were issued in 1996 primarily to give regional effect in the distribution of crab processing growth since virtually all the capacity had evolved along the east/northeast coast and in Labrador. By 1997, there were 22 crab processing licences throughout the province held by 14 companies.

The development of the crab industry had its origins with P. Janes and Sons of Hant's Harbour in 1967. By 1979 and, in the absence of any restricted entry processing licensing regime, the industry was confined to a small number of companies including Fishery Products (St. Anthony), S. J. Jones & Sons (Little Bay Islands), Beothic Fisheries Limited (Valleyfield), Bonavista Cold Storage Ltd. (Bonavista), P. Janes and Sons (Hant's Harbour/Jackson's Arm), Quinlan Brothers Ltd. (Bay de

Verde), and Jason Enterprises Ltd. (Bareneed), and Moorfish Ltd. (Port de Grave). Over the 1977-1981 period the industry expanded further at different locations along the east/northeast coast where most of the identified crab resource was located.

By 1983, the total number of licensed crab plants had increased to 16 with several new plants approved over the 1977-1981 period. Additional licences were issued after the 1981 licence freeze to Fogo Co-op on the basis of new harvesting licences issued to its members by federal fisheries and to plants at Cartwright, St. Lewis and Mary's Harbour in Labrador on the basis of regional crab resource development opportunities. A new licence was also issued in 1982 to facilitate the reactivation of the Witless Bay plant under a new operator.

The development of this industry, based primarily on canned crab and combination meat/salad production in the first decade or more of its development, was not without its challenges, both market and resource related. Indeed, an impasse over crab prices linked to depressed markets in the spring of 1981 led to the establishment of the 1981 Royal Commission referenced above. Market challenges also led to periodic price support requests to the Fisheries Prices Support Board by processors in Newfoundland and Labrador and the Maritimes during this period as well. In 1976, for example, the province paid a 2 cents per pound subsidy to get the crab fishery underway as a result of depressed market conditions.

In the late 1980s, the crab resource in Newfoundland and Labrador waters, particularly in 3K north of Cape Freels, declined at which time a number of licences along the northeast coast became inactive and were transferred to other locations. Notwithstanding, requests for new crab licences continued but with several exceptions, primarily Fogo and Coastal Labrador, the number of crab processing licences remained stable throughout the 1980s and no new licences were issued until 1996 when three additional licences were issued at St. Lawrence, Burgeo and Benoit's Cove. During this period a number of inactive licences were reactivated and a number of licences were transferred to new locations. In the late 1980s and into the 1990s, a number of new players expanded their presence in the crab fishery through the acquisition of existing licensed crab processors. For example, the Barry Group acquired ownership of the Trouty Seafoods crab operation at Trouty and the crab operation of Witless Bay previously owned by Shawmut Fisheries Limited. Daley Brothers Limited acquired separate crab operations at Bareneed and Port de Grave previously owned by Argosy Seafoods and Moorfish, respectively.

Following the initial 1992 northern cod moratorium, and subsequent moratoria in 1993 in the 3PS and 4RS+3Pn cod stocks, additional pressure arose to open up the crab fishery to offset the groundfish collapse in the inshore sector. There was a general measure of concern, however, that this could lead to a repeat of what occurred in the groundfish sector. Moreover, there was a fair measure of scientific uncertainty over its ability to predict the likely catch levels from year to year. Consequently, a policy decision was taken by the province not to increase the number of licences

albeit quota levels continued to increase. The total allowable catch for all regions increased from 12,000 tonnes in 1990 to 29,000 tonnes by 1995.

In early 1995 the Fishing Industry Renewal Board undertook a review of the fish processing sector for the province. In its August 1996 Report it put forward a number of options relative to the crab processing sector including the option of issuing crab processing licences to those “strategic” plants which had a long history in the fishery. However, in its final report the Board recommended against the issuance of any additional crab licences until such time as the groundfish stocks recovered. This recommendation reflected a concern of the Board that crab alone could not address the consequences of the groundfish collapse.

Three additional crab licences were issued early in the spring of 1996 by the province and a decision on any additional licences was held until the report of the Fishing Industry Renewal Board was fully discussed with all sectors of the industry. These discussions were held over the late fall of 1996 and early winter of 1997 with the processing sector taking opposing views on the Report’s recommendations. Most small independent operators continued to oppose a limited entry system and rejected outright the core/non-core concept. However, most of the medium and larger firms supported limited entry and were generally supportive of the core/non-core proposal. On the issue of additional crab licences, those with licences generally opposed any new entrants and those without crab processing licences pressed for the granting of additional licences.

The core/non-core licensing framework was announced by the Minister of Fisheries and Aquaculture on March 31, 1997 following which a call for crab licence proposals was invited from core licence holders. The decision to review such proposals was made less difficult for Government since the 1997 crab management plan made provision for a further increase in crab quotas which by now had increased from 14,500 tonnes in 1992 to 44,500 tonnes in 1997. In 1997, fourteen additional crab licences were approved which increased the number of approved crab processing licences to 37 exclusive of several conditional licences for value-added production which were issued in 2000/2001. A new licence was approved for Black Tickle in 2000 as well. All but 6 of the 38 approved licences were active in 2001 by which time the overall crab quota, which peaked at approximately 69,000 tonnes (including exploratory quotas) in 1999, had decreased to approximately 54,000 tonnes. Two licences issued in 1997 were subsequently cancelled because they did not meet activation requirements.

The Panel notes that the changing market dynamics of the crab fishery over the past five or more years have been driven largely by the opportunity to supply sections to the U.S. market. This, together with limited market opportunities for meat production and other product forms at prices competitive with the section markets, has reduced employment opportunities in the industry. From this perspective, the licensing policy framework has provided the flexibility for the industry to respond to changing market opportunities. This in turn, has enabled the crab harvesting sector to

share the benefits of these new opportunities under the final offer selection price negotiation framework.

The evolution of the snow crab industry and the processing licensing framework under which it expanded in the post-1979 period clearly highlights the challenges associated with finding the appropriate balance between public policy objectives and industry viability imperatives. The corporate dynamics at play in the crab industry, especially as they relate to issues of corporate concentration and corporate accountability are addressed in Chapter 8 of this report. In many respects there are also similarities with the evolution and expansion of the shrimp processing sector.

5.5. Managing the Inshore Shrimp Processing Sector

The inshore shrimp fishery in this province had its origins in the late 1960s to early 1970s along the province's northwest coast and was based around a relatively small shrimp resource in the northern Esquimen Channel. Fishery Products Ltd. developed a multi-species groundfish/shrimp plant at Port aux Choix around this period and together with its successor company Fishery Products International, became the only player in this regional shrimp fishery and it was supplied by inshore vessels. In the early 1980s, a second smaller plant was erected at Anchor Point by Conpak Seafoods Ltd. Total landings in this regional fishery generally fluctuated in the 1,500 - 4,600 tonne range for most of this period.

Following the implementation of the restricted entry processing licence framework in 1979, access to this 4R shrimp fishery was restricted to these two plants and this policy measure for 4R shrimp remained in place until 1999 at which time temporary access was given to new 4R shrimp to shrimp plants at Black Duck Cove and St. Anthony. These had been constructed in 1998 to capitalize on the new northern shrimp fishery off the northeast coast and Labrador. This limited access was granted these two plants as part of a pilot project for plant production quotas in the northern shrimp fishery. This quota system was implemented by the province in (1999) but not officially enforced because of concerns by shrimp fishermen represented by the Fish, Food and Allied Workers Union (FFAWU). The union was concerned the quota system would result in less competition for raw material, thereby potentially impacting on raw material prices. The restricted entry policy for 4R shrimp is best illustrative of government's policy to match regional processing capacity with regional resource availability in the post-1979 limited entry period.

Subsequent to the 1994 4RS+3Pn (Gulf) cod moratorium, FPI embarked on a major modernization of its Port aux Choix plant to a state of the art cooked and peeled shrimp operation. Before making a major capital investment in this plant, FPI sought an assurance of the province that the restricted access policy for 4R shrimp would remain in place. Government responded by giving full support to this expansion and by indicating it did not envisage any circumstances which would lead to a change in the restricted entry policy in question. The development opportunity in the inshore northern fishery had not materialized at this time and it was only after the rapid expansion of this

fishery after 1997 that the policy for 4R shrimp conflicted with developments on the Great Northern Peninsula in particular relative to the inshore northern shrimp fishery. Access to 4R shrimp and the vessels participating in this fishery would prove critical in the strategic positioning of the St. Anthony and Black Duck Cove shrimp plants in the northern shrimp fishery.

The rapid expansion of the inshore northern shrimp fishery after 1997 coincided with the implementation of the province's core/non-core fish processing licensing framework which was announced on March 31, 1997. Under this policy all core plants in the province would be eligible to process shrimp from this new fishery. By 1998, a number of groundfish plants had been converted to cooked and peeled shrimp operations and plans were in progress for several new plants. This expansion was primarily driven by firms with a major presence in the crab industry including Daley Brothers, Quinlan Brothers, the Barry Group, Fishery Products International, the Fogo Co-operative, the Penney/Janes/Breakwater Group, and the Labrador Fishermen's Union Shrimp Company. The Black Duck Cove shrimp plant was initially operated by James Doyle & Son and the St. Anthony plant is operated by St. Anthony Seafoods Limited Partnership, a consortium including Clearwater Fine Foods, St. Anthony Basin Resources Inc. and an Icelandic partner. As of 2001, ten shrimp processing plants had been constructed, exclusive of Port aux Choix and Anchor Point. These plants are located at Charlottetown (Labrador), St. Anthony, Black Duck Cove, Jackson's Arm, Fogo Island, Port Union/Catalina, Clarenville, St. Joseph's, Bay de Verde and Old Perlican. Several other plants, including Fogo, also involved joint ventures with either Danish (Royal Greenland) or Icelandic interests.

It soon became evident by 1998 that the processing sector associated with the new northern inshore shrimp fishery would likely become overcapitalized in short order as did the harvesting sector participating in this fishery. Upwards of \$140 million has been invested in plant and harvesting capacity over the 1997-2001 period, with most of this commitment having been made by April, 1999. At this time industry participants agreed it was prudent for government to freeze further expansion. In retrospect it can be concluded that both governments and industry underestimated the developmental challenges associated with this new large volume, capital intensive industry. "Growing" the market for cold water shrimp, especially in the U.S. where there is no real market differential between warm and cold water shrimp has proved particularly challenging. Moreover, the tariff barriers in the EU, the principal market for cooked and peeled cold water shrimp, further hindered market development and market expansion as the quota available to the inshore sector from the inshore northern shrimp fishery increased from 10,000 tonnes in 1997 to 44,000 tonnes in 2001.

It is noted this rapid expansion within the inshore northern shrimp fishery was driven by private sector investment. It is also noted the investment decisions in this fishery, especially by crab processors, were also linked to the necessity to protect their raw material supply of crab since many of the fishermen participating in the shrimp fishery are also participants in the snow crab fishery. The cross corporation linkages between the shrimp and snow crab fisheries became a major dynamic

both in terms of corporate concentration in the industry generally and corporate concentration in the shellfish processing sector.

5.6 Restricted Entry in the Fish Processing Sector

The Panel notes the processing licensing policy now in place flowed from a policy framework for fish processing developed in 1996 by the Fishing Industry Renewal Board at the request of the Government of Newfoundland and Labrador. This restricted entry framework, with some adjustment, was implemented by the Government of Newfoundland and Labrador in April, 1997.

On the basis of the Panel's deliberations it is evident there remains a strong measure of support for the continuation of a restricted entry processing licensing policy albeit some hold the view the industry should be totally deregulated. From this perspective the Panel shares the position put forward by the Renewal Board in its 1996 Report that: "*...a totally unregulated, unlicensed processing sector would seriously undermine what have been identified by the Board as the two most critical objectives of public policy in the processing sector:*

- *To achieve a stable, self-sustaining and competitive industry with minimal requirement for public sector support; and*
- *To facilitate a balance between resource availability and industry [processing] capacity on a regional basis."*

It is evident there continues to be severe overcapacity in the processing sector of the industry particularly in the groundfish sector. This was generated by over-expansion of the processing sector after the 1977 extension of fisheries jurisdiction and compounded by sharp groundfish resource declines over the post-1992 moratorium period. This, together with the unprecedented level of employment adjustment, gave rise to highly seasonal employment levels throughout the processing sector. There is no compelling public policy imperative to approve any capacity expansion in the context of corporate concentration concerns. How government approaches concerns over any inter-corporate, interlocking behaviour raises a different public policy issue especially in the context of corporate accountability relative to the spirit of the province's *Fish Inspection Act* and the fish processing licensing framework encompassed by the *Act*.

5.7 Strategic Plants and Their Role in Regional Economic Development

The Panel finds itself obligated to pass comment on the relationship between regional economic development in rural regions of the province and the role which strategic "regional" plants can play in achieving this solid public policy objective, both in a fisheries development and regional economic development context. For many regions of the province regional economic development is synonymous with regional fisheries development and the two cannot be separated.

This Report (especially Chapters IV and VI) provides a concise overview of how resource opportunities and private sector investment together with government regulatory measures shaped the very structure of the Newfoundland and Labrador fishing industry in the post-Confederation period. It is clearly evident from this overview the evolution of the fresh frozen sector was strongly linked, both geographically and strategically in relation to resource availability, to a number of “strategic” communities throughout the province. This overview also shows that as the fresh frozen sector expanded a number of key “strategic” plants emerged in every region of the province before the proliferation in the number of plants and industry over-capacity in the post-1977 period.

One overriding conclusion that can be drawn from the post-1977 expansionary period in the fishery is this expansion effectively eroded the role which the “strategic” plants played in the industry and their regional economies especially those inshore strategic plants such as St. Anthony, Englee, La Scie and Twillingate. These plants were built to handle large volumes of inshore cod from the inshore fishery and depended on inshore landings from communities throughout their respective regions to sustain their operations.

The increase in the number of processing licences was driven largely by community pressures to include a plant in virtually every community where there was any volume of landings. The raw material available to the larger “strategic” regional plants was squeezed in the process. As competition for the available raw material increased at the regional level, the larger “strategic” regional plants with a far greater capital cost structure than a typical small or medium size plant, became less and less viable, and hence, their role in the regional economies was undermined. This model may not account for every factor which gave rise to the decline of certain “strategic” plants, however, it does highlight the need for prudent public policy approaches to regional economic development and fisheries development.

It is clearly evident the volume of raw material now available cannot come close to meeting the raw material needs of plants in the inshore and offshore sector or even the needs of every strategic plant in the industry. The Panel suggests, however, that Government should increasingly co-ordinate its fisheries development policy with its regional economic development policy especially in terms of advancing the role which “strategic” regional centres can play in anchoring regional economic development and stabilizing regional economies. This, in a fisheries development and a fish processing sector licensing context, will require a strong measure of public policy discipline. A clear policy is needed on how government proposes to strengthen the role which strategic plants, both inshore and offshore, play in the province’s economy as a whole and in specific regional economies throughout the province as resource circumstances change.

5.8 Corporate Accountability

The privilege of holding a fish processing licence issued under the province’s *Fish Inspection Act* brings a broad degree of corporate sector accountability to the spirit of the public policy objectives

which guide the processing sector. Also inherent in the holding of a fish processing licence is the need for a strong corporate sensitivity to the community in which the licence holder operates as well as to the employees of any given plant operation and its relationship with fish harvesters. In the absence of such a corporate philosophy the fish processing licence is taken for granted and the ambivalence which is associated with having the privilege of holding a fish processing licence all too often gives way to a total insensitivity to the regulatory process which gave rise to the issuance of the processing licence in the first instance.

The Panel holds the view this attitude can often undermine the corporate commitment of processors to the obligations that are linked to a fish processing licence. All too often in the absence of a corporate commitment to quality enhancement, for example, the energy is directed towards undermining the very regulatory process that gave rise to its necessity in the first instance. In some respects this also reflects a failing of the regulatory process itself.

Notwithstanding the continued critical role which the fishing industry plays in the province's economy, there is widespread public ambivalence towards the industry. This ambivalence gives rise to a general perception the industry is "different" from other resource sectors which, in part, probably reflects a perception that broad social policy considerations alone guide the management of the industry generally and the processing sector in particular. The Panel believes that industry leadership is critical to improving the industry's overall image.

5.9 Arm's Length Entity

The Panel is of the view there is a compelling need to bring a greater measure of discipline, both in the implementation of the *Fish Inspection Act* and in corporate accountability to the provisions of this *Act*. Some may consider the establishment of an arms length entity to be interventionist but its role would be fully consistent with the objective of creating a healthy investment climate within the industry. This is critical if consistency and transparency in the administration of the *Act* is to be achieved and maintained and if the accountability and responsibility that goes with the privilege of holding a processing licence, is to be sustained. In the final analysis the *Fish Inspection Act* and its regulatory provisions are instruments of public policy and are meant to safeguard the public good that is associated with the development of a common property or public resource.

The Panel is not recommending the day to day administration of the fish processing licensing program be assumed by an arm's length, quasi-judicial board. This function is best left to the divisional structure within the Department of Fisheries and Aquaculture that has responsibility for this program. The establishment of a quasi-judicial Fish Processing Licensing Board along the lines recommended by the Fishing Industry Renewal Board, still has a strong measure of industry support. The merits of this approach, especially in giving a quasi-judicial dimension to the management of the fish processing sector, will lead to a deeper level of confidence in the whole licensing process especially in terms of consistency, transparency, and predictability.

5.10 Socio -Economic Considerations

The large number of communities dependent on the fishery and community expectations of the role of the fishery make adjustments to current realities difficult. Most communities see work in their plant to be synonymous with community survival. From this perspective communities find it difficult to accept fish trucked from their community or region because of linkages between harvesters and processors. However, in an overall industry context the spreading of a limited resource over an increasing number of plants will further marginalize plant operations throughout the industry and will increase seasonality within the industry.

The challenge of responding to the socio-economic impacts arising from capacity consolidation and capacity realignment within the fisheries sector are made even more problematic when alternative employment opportunities are limited. The best possible alternate that could arise is where adjustment in the fishery occurs in tandem with emerging regional and community employment opportunities outside the fishery.

Industry leaders, in their representations to the Panel, have highlighted the importance to the industry of a skilled workforce given the changing technological developments in the industry. They further note that it will be extremely difficult to attract a highly trained workforce if the industry cannot offer secure and extended employment and attractive income levels. This will become increasingly challenging as the present aging workforce leaves the industry.

6.0 REGIONAL BALANCE IN THE PROCESSING SECTOR

The promotion of a regional distribution of processing capacity together with the maintenance of an appropriate regional balance between processing and harvesting capacity has been a principal public policy objective outlined in the province's processing licensing framework for the past twenty years or more. This objective has never been quantified in numerical terms and has been given effect primarily through the evolution of regional processing and harvesting capacity levels in response to regional resource opportunities. Moreover, there has been no coordinated strategy by the province, with jurisdiction over the processing sector, and the federal government, with jurisdiction over the harvesting sector, to match regional processing capacity with regional harvesting capacity.

6.1 Regional Capacity Considerations

As noted inshore related processing capacity along the East/Northeast Coast, for example, evolved in response to the development of various species fisheries such as cod, capelin, crab, and turbot largely in adjacent waters. Similarly, processing capacity on the West Coast evolved primarily on the basis of fisheries for such species as cod, herring, lobster and shrimp within the region. Processing capacity along the South Coast evolved primarily on the basis of resource availability, particularly for cod, flatfish and other groundfish species in inshore and offshore waters of 3PS and the Southern Grand Banks. Regional processing capacity in Labrador likewise evolved primarily in response to resource opportunities for such species as cod, turbot, crab and, more recently, shrimp in adjacent waters.

Notwithstanding these regional resource and regional processing dependency linkages within the province as a whole, the inter-regional movement of fish landings at certain times for certain species has been a salient characteristic of the industry's evolution especially in the post-1970s. This has been concurrent with improved transportation networks. In this context, the Province over the years, has not restricted where the processing sector can source its raw material supply in the province except for several exceptions. In the case of 4R shrimp for example, the Province, under its *Fish Inspection Act*, restricted the sourcing of 4R shrimp to two 4R shrimp plants over the 1979-1999 period. More recently, in 2000, the Province implemented a licensing policy for Labrador which required that crab sourced in Labrador in 2GH and 2J can only be processed in Labrador based crab plants. This policy for Labrador was similar to earlier policies applied in Labrador which were designed to ensure the processing capacity needs in Labrador had to be met before any surplus could be transported to Island based plants for processing.

Prior to the initial 1992 moratorium groundfish processing accounted for the greater percentage of total processing activity in all regions of the Province. At this time there was a relatively equitable distribution of regional processing capacity in relation to the regional volume of fish landings with the exception of Labrador. The rapid expansion in processing capacity over the 1977-1981 period in particular, and the large increase in the actual number of processing plants, gave rise to increased

processing activity in every region of the Province. Indeed, in most regions a significant imbalance between excess processing capacity, other than in relatively short peak production periods, and regional resource availability had a major negative impact on the industry's overall viability down through the years. Essentially, processing capacity on a regional basis, as well as on a Province-wide basis, expanded to accommodate these seasonal peaks, particularly in the inshore cod fishery.

This is illustrated in Table 6.1 which captures regional capacity and landings over the 1988-1991 period. Figure 6.1 shows the distribution of groundfish purchases by plant volume in 1991 in which year 50 (38%) of groundfish plants purchased less than 500 tonnes of groundfish per plant.

Table 6.1			
Capacity Utilization Based on Actual Groundfish Landings 1988-1990			
NAFO Area	Annual Capacity(mt)	Annual Average Landings (mt)	Utilization Rate
2J	66,200	16,136	24%
3K	214,200	29,210	14%
3L	375,500	67,282	18%
3Ps	67,200	19,231	29%
3Pn	52,400	10,466	20%
4r	163,100	21,018	13%
Subtotal- Inshore	938,600	163,343	17%
Offshore	298,800	147,367	49%
Total	1,237,400	310,710	25%
<i>Source: Defining the Realities, July 1993</i>			

In the context of promoting a healthy investment climate in the fishing industry, the issue arises as to whether or not there is a public policy imperative to restrict processing capacity access in any given region to only those fish stocks which are available in that region. This approach may find support in any region where there is a widespread movement of regional landings to other regional processing capacity. In most cases, however, the trucking of fish/shellfish is a two-way flow involving different species of fish/shellfish from season to season which provides benefits by volume or species diversity across regions. This is a different issue than in cases where a community plant may not be operational and where processor and independent fishing enterprise linkages results in fish being sold within the same region but outside the community.

There may, however, be special circumstances which may very well justify a level of intervention through the processing licensing framework to address specific regional development challenges. As noted, the policy context which restricts processing sector access to snow crab sourced in 2GH and 2J to Labrador crab processing plants was implemented to reflect government's priorities for fisheries development in Labrador. In the case of the 4R inshore shrimp restriction, the historical context for restricted access was to ensure a reasonable balance between a limited resource base and the level of onshore processing capacity required to help sustain a viable regional fishery. The challenge, always is to ensure against overcapacity on a regional and province-wide basis.

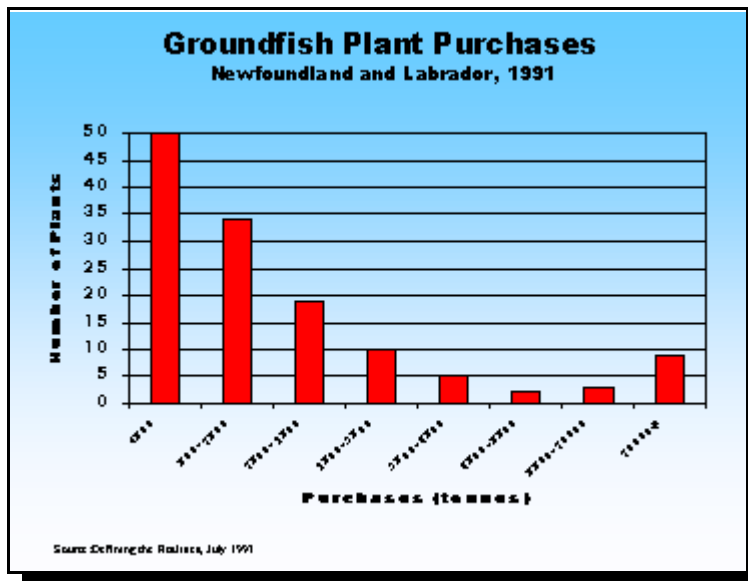


Figure 6.1

Much the same inter-regional trucking patterns that prevailed in the groundfish sector have emerged for example in the inshore northern shrimp fishery over the past four years. The shrimp fishery offers a special challenge to licensed processors in that the fishery is prosecuted over a wide geographic area from off the Eastern Avalon in 3L to areas of 2J in the north by vessels in which they may have a financial interest or other business linkages but are primarily based outside the region where they may find it strategic to land their catches.

For example, many of the vessels based in 3K and 3L find it more efficient to land part of their quota at ports on the Great Northern Peninsula from which shrimp is trucked to plants in the south. Likewise, there are times when vessels linked to plants on the Great Northern Peninsula may land in the south and have their landings trucked to shrimp plants in the north. This trucking brings a significant operating cost which cannot be easily absorbed in a fishery where present returns are marginal at best. From this perspective, there may very well be a need for an industry co-ordinated distribution mechanism which can address this issue without undermining individual company access to the resource and also ensuring the interests of those regions which have a presence in this developing fishery are safeguarded.

The Panel notes the issue of improved operating efficiencies reduced costs, and coordinated marketing will be addressed in conjunction with a production cap pilot project for the inshore northern shrimp fishery for the 2002 fishery. In the context of ensuring some reasonable balance between regional resource availability and regional processing activities, regional production caps may have merit as, for example, in the Northern inshore shrimp fishery. This is the type of public policy issue which could be addressed through a transparent industry consultation process in conjunction with an arms length entity especially in the context of promoting regional, strategic multi-purpose plants. The Panel also notes that government has indicated it will not be extending the production cap system to other species, including snow crab.

6.2 Regional Concentration of Capacity

The overriding public policy objective relative to regional balance should, first and foremost, be guided by a processing licensing policy framework that ensures against the concentration of overall processing capacity in any one region of the Province. There clearly is a continued role for well managed and soundly financed small and medium size firms in the industry and the contribution of such firms to the stability of the regional economies in which they operate cannot be underestimated.

Government's overall policy for the processing sector, and the implementation structure which gives effect to this policy, can ensure some appropriate balance is maintained between regional processing capacity and regional resource availability. For example, any approved processing licence transfer policy should provide adequate safeguards to ensure any given region's participation in the processing sector is not compromised, subject of course, to changing regional resource circumstances. Moreover, in the case of emerging fisheries, for example, there is a solid public policy basis for ensuring that regions adjacent to any given resource be given the opportunity to benefit from such resources.

There are two important aspects of fisheries management that flow from the federal jurisdiction over the harvesting sector that could impact directly or indirectly on the regional distribution of processing capacity. Firstly, the federal government (Department of Fisheries and Oceans) manages how any given resource is allocated amongst various fleet sectors both provincially and on an Atlantic-wide basis. This aspect of federal fisheries management has given rise to a broad measure of acrimony over the years between the Province and the federal government as highlighted by the allocation of 3L shrimp to a Prince Edward Island consortium in 2000. This allocation decision has resulted in an independent panel being appointed by the federal government to make recommendations on clear principles which should guide resource access in the future in the Atlantic fishery, especially for emerging fisheries.

These access principles are equally important to established fisheries. In 1982, Enterprise Allocations were introduced into the offshore fishery by DFO, and, as a result, this Province's access to offshore quotas based on adjacency and historical dependency, were reflected in the EAs assigned

to various offshore corporate entities such as Fishery Products. The Panel understands the offshore allocation holders in this Province have been assured these allocations will be respected in the future for all stocks, including those under moratoria. In the absence of such assurances there is no certainty, for example, the future of South Coast offshore communities will be secured concurrent with any stock rebuilding that may occur in those stocks on which they historically depended.

There is a related fisheries management issue that could have implications for a reasonable regional balance being sustained between regional harvesting capacity and regional processing capacity. The transfer of the former Burgeo linked offshore redfish allocation to Canso, Nova Scotia, removed the very resource base on which the Burgeo plant and the Town of Burgeo depended. Unless there is a clear sensitivity in the fisheries management process to these regional linkages between processing capacity and resource dependency, there will be no assurance these linkages will be safeguarded. In a similar vein, processing capacity on Fogo Island, for example, is driven by a strong linkage with this region's independent harvesting sector. This linkage would be compromised, for example, by any decision of independent harvesters to sell their enterprises to other harvesters outside the region. Effective public policy measures may very well be necessary in the harvesting licensing framework to address circumstances such as these without compromising the interests of independent fishery enterprises.

The Panel notes certain interest groups such as the Atlantic Institute of Market Studies (AIMS) have been actively promoting the concept of private property rights in the fisheries sector. In its most simplistic form this would effectively transfer public ownership and control of a public resource (i.e. fish stocks) to private, corporate ownership. A key aspect of this concept would, if implemented, give companies or enterprise allocation holders, the right to openly buy and sell these allocations. This policy, if implemented in the Atlantic fishery, would have major implications for those linkages that have evolved in this Province, for example, between the South Coast plants and those offshore stocks around which they evolved. The open trade in such allocations could easily result in the erosion of such linkages and could present major public policy implications in relation to the future management of the Newfoundland and Labrador fishery.

6.3 Regional Quota Allocations

Over the past several years a number of community and regional economic development entities, as well as certain private sector interests, have advocated community or regional quota allocations of a specific tonnage of such species as shrimp and crab to sustain individual communities/regions or individual plants. This is based on several approaches including, for example, accessing a specific regional quota of offshore shrimp, which would then be fished by the offshore shrimp sector on a royalty basis and the proceeds then utilized to fund fisheries development initiatives onshore. A more direct model would have a regional/corporate/community quota allocation harvested for the sole purpose of generating raw material for an onshore plant to create employment and related economic activity.

This concept had its origins in the late 1970s when the federal government awarded 12 offshore shrimp licences for access to a new shrimp resource distributed over the general area from the Funk Island Basin to Davis Strait. The greatest resource concentration is now in Labrador waters. By 1987, seven of 16 licences were awarded to Newfoundland and Labrador entities, including two to the Labrador Fishermen's Union Shrimp Company in Labrador, one to the Torngat Producer's Co-operative and one to the Labrador Inuit Association in Labrador in conjunction with National Sea Products Limited. Two other licences were issued in conjunction with Fishery Product's operation at St. Anthony at the time and another was assigned to the Harbour Grace Fishing Company Limited. The Labrador licence holders elected not to acquire their own vessels to access their quota but entered into successive royalty agreements with one vessel operator participating in the offshore shrimp fishery. In retrospect, it can be concluded that these allocations in Labrador, and the royalty agreements linked to these allocations, have been instrumental in the development of the processing sector throughout Labrador by Labrador community based entities.

In 1997, St. Anthony Basin Resources Inc. (SABRI) was granted a 3,000 tonne offshore allocation of shrimp in conjunction with the development of the new inshore northern shrimp fishery. In conjunction with this allocation, SABRI entered into a partnership with Clearwater Fine Foods and an Icelandic investor to form St. Anthony Seafoods Ltd. to construct a modern cooked and peeled shrimp plant at St. Anthony to be supplied primarily by inshore shrimp harvesters. Under this arrangement SABRI's shrimp allocation is being fished by Clearwater's offshore vessels and the royalty payments being used by SABRI to fund its fisheries and community development initiatives, including its equity in the St. Anthony plant. In 2000, two additional regional allocations of shrimp were made to the Fogo Island Co-operative and the Labrador Innu Association in conjunction with the allocation of 3L shrimp to a Prince Edward Island consortium. The Innu Nation, through a joint venture with Penny/Janes/FPI holds an equity portion in a joint venture company and shares in the royalty proceeds from its 1,500 tonne allocation. The Fogo Island Co-operative benefits from its 1,000 tonne offshore shrimp allocation through a royalty arrangement as well.

From a public policy perspective, a major challenge with regional/community quotas is the challenge of satisfying such quota expectations of competing interests even if resource opportunities can sustain such quotas without compromising the interests of other fleet and processing sector interests. Moreover, there is the issue as to whether entities with access to such quotas have an added leverage over competitors not holding such allocations. For example, the royalty payments could be used to compete with the inshore sector by offering higher prices for raw material. Balanced against these considerations, is a view that access to a regional quota of any given species may offer the only hope for a processing plant reopening or sustaining a minimum level of processing activity. Certain elements of this consideration arose in 1999/2000 when snow crab resource prospects in 3NO (the Tail of the Grand Banks) led to an expectation by the Town of Burgeo and the Falcon Group in late 1999 that they would get access to a certain tonnage of crab from this resource. A decline in the overall snow crab quota in 2000 generated a measure of debate amongst competing interests which resulted in 3NO crab landings being harvested by the existing fleet sectors and channelled through

existing crab processing plants.

Regional quotas can have positive regional impacts. They also have the distorting financial impact on competing private sector investment especially when there is already demonstrated capacity in place to harvest and process the volume of raw material associated with any given regional/community quota. This, however, should not preclude their consideration in cases where the resource/competitive impact on existing capacity is not at issue. The issue then becomes one of fairness and transparency in the quota allocation process.

7.0 PRIVATE AND PUBLIC SECTOR INVESTMENT AND PROCESSING SECTOR VIABILITY

The pattern of both private sector investment and viability in the province's processing sector over the past several decades has had a significant impact on both its structure and the degree of corporate concentration which has occurred in the fishing industry generally. These two factors together, combined with changing resource opportunities and changing market conditions, have shaped the structure of both the inshore and offshore harvesting and processing sectors of the industry.

7.1 Fresh Frozen Sector Expansion 1950-1959

During the further evolution of the fresh frozen groundfish sector in the 1950s Government, through direct and indirect loan assistance, promoted the development of this sector as a key component of its economic development platform concurrent with its reduced focus on a declining saltfish sector. By 1954 the Province had provided \$6 million to 13 fresh frozen plants and related offshore trawler capacity and by 1956 the industry had expanded rapidly to include additional plants and an integrated harvesting sector which was comprised of 34 vessels. Virtually all of this investment was by Newfoundland based companies such as Job Brothers Ltd. of St. John's, Bonavista Cold Storage Ltd., Fishery Products Ltd., H.B. Clyde Lake Limited and John Penney and Sons Ltd. being the leading firms in the industry on the basis of which large new plants were constructed at locations such as St. John's, Bonavista, Twillingate, Burin, Burgeo, Gaultois, Fortune and Ramea.

This rapid expansion of the fresh frozen industry, especially over the 1950-1955 period, helped contribute to a serious oversupply of frozen groundfish fillets and blocks in the U.S. market in particular by 1956 which led to falling market prices. As a result there was a period of stagnation in industry output over the 1956-1960 period. Several firms had already experienced financial difficulty including Fortune Bay Products Limited at Fortune which had constructed a modern new plant in 1952 with government assistance. This firm went into bankruptcy in 1956 following which government secured the assets and subsequently sold the plant to Booth Fisheries Corporation of Chicago in 1959 for a nominal price following which this large firm continued to operate at Fortune until 1978.

Developments in the industry over this period essentially established the basis for the emergence of the capital intensive offshore fishery which was to be dominated by a small number of companies with a significant dependence on government assistance. From this perspective, the capital required for firms to enter the offshore fishery were far greater than needed to enter the labour intensive inshore processing sector during this period and in subsequent decades. This explains, in large measure, why the number of firms engaged in the offshore fishery over the years has remained small whereas the expansion of the inshore fresh frozen sector was to see the industry structure comprised of a large number of small, medium and larger size operations.

This period of development is also instructive in that it saw the emergence of the vertically integrated offshore sector which was to be dominated by four or five firms until its restructuring in 1983. Government financial assistance in the 1950s also marked the true beginning of government intervention in the fishery including the ownership of plants, and its promotion of the fresh frozen sector as an instrument of economic development policy. Lastly, but not the least significant, this period marked the beginning of new market challenges for the province's fishing industry for its fresh frozen groundfish output from both the inshore and offshore processing sectors. By 1959 the saltfish industry was in rapid decline and was also encountering major challenges in responding to changing export markets.

7.2 Period of Foreign Investment, Overcapacity, and Resource Decline 1960-1976

The early 1960s saw a massive increase in foreign fishing activity in Newfoundland and Labrador waters led by large factory vessels from Europe and the USSR. The real impact of this increased activity on the province's fishery was not to manifest itself until the early 1970s. The weak market conditions in the U.S. for frozen groundfish production led to increased market demand by the early 1960s and this also resulted in a new wave of investment in the province's fishing industry principally by non-Newfoundland investors. Booth Fisheries of Chicago expanded its Fortune offshore groundfish operation; Atlantic Sugar Refinery Ltd. of Saint John, New Brunswick invested heavily with government assistance in a modern new offshore plant at Marystown in 1966; and British Columbia Packers Limited acquired and expanded the Harbour Breton plant into an integrated offshore operation.

In addition to the above outside investment, the Ross Group of England, through a joint venture with Steers Ltd. of St. John's, constructed a large integrated frozen/salted plant operation at St. John's in 1967 but this operation closed after only three months of operation and the Ross Group withdrew from the industry. This plant was sold to National Sea Products in 1970 with considerable federal/provincial government assistance and operated until it was impacted by the northern cod moratorium. In 1965 Northeastern Fisheries Limited of Harbour Grace entered into a joint venture with Birdseye Foods of the U.K. (A Unilever Subsidiary) and expanded its operations at Harbour Grace and Fermeuse. However, after three years and \$8 million in losses this joint venture failed and the assets were also acquired by the Newfoundland government. O'Donnell-Usen, a New England company, was also another foreign investor in the Newfoundland fishery by this time and operated plants at Witless Bay and Dildo until the 1970s at which time Rich-Sea Pak, another U.S. firm acquired the company's Newfoundland assets. They operated until 1982 at which time they terminated operations abruptly because of major operating challenges.

Concurrent with this expanded foreign investment other Newfoundland based firms emerged in the industry and existing firms also expanded their operations. By the end of the 1960s 12 integrated

offshore plants had emerged along the South Coast and the Avalon together with a total of 51 small and medium size inshore groundfish plants most of which were located along the East/Northeast Coast.

Between 1957 and the mid-1960s, the province provided approximately \$30 million assistance to the industry. By 1968 problems of overcapacity, low plant productivity, continued government funding, and the emergence of an increasing number of marginal processors led to widespread instability in the industry. In late 1968, Government reported to the Legislature that some 21 fish plants were nearing bankruptcy thereby leading to measures to adjust fish plant wages. By the end of this period the saltfish sector, still important in many remote, rural areas and still supporting centralized drying facilities at such locations as Fogo, Carbonear, Cupids and Brigus, was still in decline and calls were being made for a public marketing structure. This led to the establishment of the Canadian Saltfish Corporation in 1971. In 1947, the Commission of Government had set up the Newfoundland Association of Fish Exporters. This private sector monopoly marketing arm had been terminated in 1959 to comply with Federal anti-competition legislation.

By the early 1970s the Newfoundland groundfish sector was experiencing many of the same marketing and resource challenges being experienced in the Atlantic fishery generally. Over the 1970-1973 period, markets once again stabilized but the industry faced sharply reduced landings because of foreign overfishing. For example, inshore northern cod landings declined from approximately 150,000 tonnes annually in the 1960s to a record low of 34,000 tonnes by 1974. Conditions changed fairly abruptly in early 1974 requiring the implementation of special price support measures by the federal government as a whole for the Atlantic fishery with approximately \$130 million allocated for special aid between 1974 and 1977. The impact of foreign overfishing, a dramatic increase in fuel prices, and recessionary impacts on fish prices led to a severe crisis in the Atlantic groundfish industry during this period.

By the mid 1970s, the structure of the Newfoundland and Labrador processing sector had undergone further transformation and by 1976 the total volume of fish landings for the province approximated 340,000 tonnes of groundfish or 75 percent of all landings. The 51 freezing plants in the province by this date accounted for approximately 80 percent of total industry production. Production from the remaining 99 small fresh, salted or pickled, and canned products accounted for only 20 percent of the output value. It was during this period the industry became increasingly overcapitalized, a trend that was to increase further after the optimism associated with the extension of fisheries jurisdiction in 1977.

By this period, the province's processing sector had become principally dominated by those locally based companies which had pioneered the development of the fresh frozen sector in the 1940s and early 1950s. These companies expanded their industry presence by constructing new plants and trawlers and by also expanding their presence in the inshore sector. Moreover, they acquired the plants of those outside firms who departed the industry. For example, Fishery Products before the

1983 restructuring agreement, assumed ownership of the Atlantic Sugar plant and trawler operation at Marystown, the Fortune plant previously owned by the Lake Group and Booth Fisheries Limited, and the Harbour Breton plant previously owned by B.C. Packers Limited. This company, before these acquisitions had already become the largest firm in the industry with geographically dispersed plant operations at strategic inshore and offshore locations in the province such as St. Anthony, Port aux Choix, Twillingate, Trepassey and Burin. It had solidified its position in the market by developing a strong marketing organization in the U.S. and by establishing major secondary processing in New England as well.

Over this period smaller independent firms with a history in the fishery took on a greater presence in the fishing industry, a presence which was to expand further after the extension of fisheries jurisdiction in 1977. For example, firms such as Quinlan Brothers of Bay de Verde, P. Janes and Sons of Hant's Harbour, E. J. Green of Winterton, Earle Brothers of Carbonear, the O'Brien family of Tors Cove/Bay Bulls, Ocean Harvesters Ltd. (A. Moores) of Harbour Grace, T. J. Hardy of Port aux Basques, the Way/Hallet families of Valleyfield, and the Woodman family of New Harbour, expanded their presence in the fresh frozen sector of the industry. Most of these had a history in the saltfish industry as did other firms such as the Hiscock family of Brigus, the Mifflin family of Catalina and the Fogo Island Cooperative. For the most part these firms were to play a key role in the advancement of the industry, especially in terms of industry diversification and community stability.

7.3 Industry Expansion, Failed Expectations and Industry Adjustment 1977-1991

An unprecedented level of private sector and public sector investment occurred in the Atlantic fishery generally and in the Newfoundland and Labrador fishery as well following the extension of fisheries jurisdiction in 1977. This led to further capacity increases in both the inshore and offshore harvesting and processing sectors. In the inshore harvesting sector, for example, the annual value of loans provided by the Fisheries Loan Board increased from \$3.2 million in 1974/75 to approximately \$13.3 million in 1978/79. Increased levels of federal/provincial investment in the processing sector also followed.

For the initial year of extended jurisdiction markets remained relatively firm and new market opportunities for squid and pelagics moved the industry forward. However, by the early 1980s, the overcapitalized fishery, especially the offshore sector was burdened with expansionary debt, escalating interest rates and recessionary market conditions. From these developments, and the initial infusion of approximately \$252 million by the federal government, the provincial government, and the Bank of Nova Scotia, the deep sea sector was restructured. From this emerged Fishery Products International to operate the consolidated assets of a number of other companies including Fishery Products Ltd., the Lake Group, John Penney and Sons Ltd. and certain assets of H. B. Nickerson & Sons Ltd. of Nova Scotia. The company was privatized and \$185 million raised through a public share offering was used to repay the Bank and governments.

This also caused the restructuring of National Sea Products Ltd. of Nova Scotia. The company's plants at a number of Newfoundland locations, including Arnold's Cove, St. John's, La Scie and Burgeo, also survived the restructuring process. At this time H. B. Nickerson & Sons Ltd. of Nova Scotia had taken a keen interest in the province's fishery but their aggressive expansion initiatives were interrupted by the industry's financial crisis of the early 1980s.

In addition to the above companies, a number of other locally based and outside entities expanded their presence in the processing sector in the 1980s. These included Conpak Seafoods, the Fogo Island Co-Operative, the Labrador Fishermen's Union Shrimp Company, Torngat Fisheries Ltd. (Labrador), Daley Brothers, the George/Babb Group, the Barry Group of Companies, Allen's Fisheries, James Doyle & Sons Ltd., Connors Brothers Ltd. and a number of other independent operators, at various locations throughout the province. A number of these firms, some new entrants, expanded quite quickly and together with a number of the older established firms now have a dominant position in the fishing industry. More recently the Penney Group of Companies has expanded into the fishery and several Icelandic/Danish firms became minority partners with local companies in the shrimp processing sector.

In the three years following the restructuring of the deep sea sector in September, 1983 the industry, still groundfish dominated, experienced a period of record earnings driven largely by greater resource stability and buoyant market conditions in the U.S. It was in this environment that the privatization of FPI was finalized in 1986 with the principal objective of sustaining a company (FPI) whose primary objective was to strengthen the Newfoundland fishery and that was economically viable, efficient and modernized so that it could be highly competitive. Following the Restructuring Agreement of 1983 and the Privatization Agreement of 1987, FPI moved to divest itself of many of the 32 plants, both inshore and offshore, that it had inherited from the restructuring process. From the initial phases of the restructuring discussions, flowed the decision to remove capacity from the offshore which initially led to the closure of the Burin and Grand Banks offshore trawler plants.

The financial difficulties experienced by the offshore sector in the early 1980s were also experienced by many small and medium sized firms in the industry, most of which depended on loan guarantee assistance from the province to sustain their operations. The Task Force on the Atlantic Fishery (1983) concluded that a grossly inadequate equity base had plagued the fishing industry for many years and that the financing of assets had depended far too much on debt. During the 1980s over 60 loan guarantees were provided many of which were to default. A small number of financially stronger firms survived without financial help from the province during this period. A significant number of plants changed ownership, especially those plants which were divested by FPI following the 1983 Restructuring Agreement. The period of record earnings within the fishing industry in the mid-1980s was followed by another period of market challenges.

Industry profitability declined sharply towards the late 1980s as a result of lower capacity utilization, excess plant capacity, continued output of lower value product by many firms in the industry, and

continued fragmented marketing. By 1990 the number of plants in the industry, including secondary had increased to 232. A financial study of plants undertaken in 1990 in the 2J+3KL region, where most inshore plant capacity was located, showed more than fifty percent of those plants were in severe financial difficulty. Many had depended primarily on revenues from the capelin fishery to sustain their operations in the preceding four to five years or more. Resource declines in the offshore areas as a result of severe foreign overfishing was to have a major impact on the performance of the offshore sector, including FPI by the late 1980s. Moreover, towards the end of the 1987-1991 period there were increasing concerns over the capacity of the northern cod stock to sustain increased quotas, driven especially by the offshore sector interests outside Newfoundland. These concerns gave way to the northern cod moratorium which was announced on July 8, 1992 and which was to generate unprecedented uncertainty and change in the Newfoundland and Labrador fishery, particularly in the inshore and offshore groundfish harvesting and processing sectors, in the decade to follow.

The emergence of an industry structure primarily centred around fresh frozen groundfish production together with a range of shellfish and pelagic species from region to region before the 1992 post-moratoria period gave rise to a broad regional distribution of processing capacity. The diverse small, medium, and larger processing plant structure experienced various degrees of operational challenges and throughout the 1980-1991 period in particular there was a significant rotation of some plants from operator to operator. These operator changes were facilitated by a significant commitment of loan guarantees by the province as reflected in some \$58 million in loan guarantees provided over the 1980/81-1991/92 period. In the absence of these guarantees it is likely that market forces would have resulted in a greater level of business failures than was experienced over this period.

Employment considerations in the processing sector, and the attempted stabilization of the economic base of those communities with a presence in the processing sector, were the two underlying reasons which drove this measure of public funding. Invariably, this public funding provided unfair competition for the stronger and more efficient firms in the industry in the absence of which greater consolidation in the processing sector would have occurred. This public policy objective of capacity consolidation was to receive a greater processing licensing policy focus in the post-moratorium period.

7.4 Post-Moratorium Period 1992-2001

The sharp resource declines which led to the post-1992 moratorium in the groundfish sector essentially led to the virtual collapse of the inshore and offshore groundfish processing sectors and to a sharp reduction in processing generated activity in virtually all regions of the province. The viability of this sector following the 1992 northern cod moratorium, was severely impacted because of the sharp erosion of groundfish landings together with weakened opportunities for pelagic species. Those firms which had access to crab were far better positioned to survive the groundfish collapse and a number of firms without crab survived through strategic operational strategies. This included

focussing on niche market opportunities, accessing frozen groundfish from outside the province, or by investing in new processing technology to maximize their returns from the limited raw material available.

By this period the only publicly traded company in the Newfoundland and Labrador fishery, with the exception of FPI and National Sea Products was Conpak Seafoods Ltd. which expanded to include 18 small, medium and larger plants throughout the province. Following the failed merger of Conpak with Daley Brothers Ltd., in the mid 1990s Conpak ceased to be an operating company and most of its assets were acquired by other firms.

During this period FPI, for example, focused increasingly on sourcing foreign frozen fish from the Barent's Sea and Alaska to help sustain their Newfoundland operations as did National Sea Products, the Barry Group, E. J. Green Ltd., Woodman's Fisheries Ltd., as well as a number of other companies. Overall, however, the financial strength of many small and medium size firms in the industry was strained to their limit in the wake of the moratorium. For example, a 1992 Peet Marwick Study of the industry's viability showed that 50 percent of the processing companies in the inshore sector would likely go bankrupt. Few did, however, simply because of their very low debt levels and, for the greater part, those groundfish/pelagic plants that have operated since the 1992 moratorium have not achieved any measure of financial stability. Access to government loan guarantees was sharply curtailed as well from the late 1980s.

There were a small number of receivership/bankruptcies triggered in the industry prior to the 1992 moratorium and in the post-moratorium period as well. However, many of the firms that could not source sufficient raw material to sustain their operations ceased to operate and many of these plants remain idle to the present. For example in 2001, only 124 primary plant licences were renewed and a similar number remained idle.

It is clearly evident the majority of firms which have been able to remain viable have access to shellfish, particularly snow crab. The granting of additional snow crab processing licences in the post-1996 period concurrent with increased crab quotas fully enhanced the position of an additional ten or more small and medium firms that otherwise may have had difficulty in maintaining a minimal level of activity generated by other species. However, the final report of the Fishing Industry Renewal Board in November, 1996 concluded that "there simply is not enough crab available to permit a large number of plants to operate in a viable manner, providing a reasonable level of employment, even with a very high degree of consolidation."

A second significant development relative to the further evolution of the processing sector in the post-1992 moratorium period occurred with the development of the new inshore northern shrimp fishery after 1997. Over a very short time-line both the inshore harvesting and processing sectors invested heavily in gaining access to this new opportunity. It is estimated that upwards of \$100 million was invested by the private sector in new shrimp processing plants by 2000 and upwards of

\$40 million or more by inshore vessel owners, much of which was provided, directly or indirectly through loan guarantees, by crab processors who also wanted to safeguard their access to snow crab. However, the initial optimism associated with this new fishery, faced with market development challenges, gave way to major concerns over overcapitalization and structural challenges. It was in this context that government, the harvesting sector, and the processing sector entered into a September 21, 2001 Memorandum of Understanding which included an agreement on a plant production cap pilot project to facilitate an evaluation of the opportunity for improved operating effectiveness, reduced costs and coordinated marketing in the shrimp industry.

From an investment perspective, the increased private sector interest in Fishery Products International in the fall of 1999, marked another important milestone in the evolution of the fishing industry's corporate structure. NEOS Seafoods Ltd., a company consisting of Clearwater Fine Foods of Nova Scotia, Icelandic Freezing Plants Ltd. of Iceland and the Barry Group, a Newfoundland-based company, made a controversial takeover bid for Fishery Products International Ltd. Government elected not to introduce legislation in support of this proposal in the 1999 Fall sitting of the House of Assembly relative to the removal of the 15% share restriction in the FPI legislation. Government did indicate at the time that it would only consider any future proposal to remove this 15 percent ownership restriction if it had the full support of those regions/communities/workers directly impacted by FPI's operations and was in the best interests of the province.

The interest in FPI continued and by January, 2001, three non-Newfoundland based fishing companies and a local consortium had acquired a significant share ownership in FPI. One of the major original investors in FPI, Ontario Municipal Pension Plan, sold its full share complement of 1.7 million shares on January 08, 2001. This block of shares was purchased by Clearwater Fine Foods Inc, and Newfoundland Freezing Plants Corporation bringing their share ownership at the time to approximately 13 percent and 10 percent, respectively. Furthermore, by this time Icelandic Freezing Plants Ltd. and Sandford's Limited of New Zealand were each holding approximately 15% of FPI's shares. This brought total foreign ownership of the company to at least 30 percent.

Private sector funding has driven the expansion of the industry since 1992. As noted, this has included the construction of new shrimp processing facilities, the expansion of the shrimp harvesting sector, as well as the expansion of the crab processing and harvesting sectors over the same period. The Panel has not determined the actual levels of total debt in the industry. The Panel, however, understands that the processing sector has occurred significant debt during this expansion. As such this potentially limits the industry's ability to adjust to major resource or market challenges.

Should a financial crisis occur within the industry, it is unlikely that governments would be able to offer the types of financial assistance or restructuring that has been done in the past. Trade rules limit the level of government assistance that can be provided to industry. Government financial assistance, depending on the type used, could very well be subject to countervail or other trade remedies under

World Trade Organization rules or the North American Free Trade Agreement. Virtually all of the industry's production is exported and as such could be sensitive to any potential trade action.

It is evident from the above pattern of private and public sector investment in the province's fishing industry over the 1950-2001 period that no one single factor, but a collection of factors internal and external to the industry, shaped both the corporate and organizational structure of the industry. It is also evident the overall viability of the industry over this period was driven largely by changing market forces and changing fish stock dynamics over which the industry had very little direct control. Equally evident, however, is overcapacity in the processing sector of the industry together with a fragmented approach to marketing, particularly the output of the dominant groundfish sector, seriously compromised the industry's viability and gave rise to periodic industry instability over the 1950-2001 period. Overcapacity had major implications for community stability and for secure employment and income levels for those engaged in the industry.

8.0 CORPORATE CONCENTRATION

The Terms of Reference issued by Government required the Panel to assess the degree of corporate concentration including foreign ownership that has occurred overtime in the province's fishing industry and the degree to which corporate concentration has impacted the structure of the fishing industry. For the Panel and government, the concerns with corporate concentration focus on the impact or potential impact on competition in the harvesting and processing sectors and on the socio-economic impact at the community and regional level.

Corporate concentration, loosely defined, is the accumulation of productive and market power by firms through internal growth or by corporate acquisition. Both types of corporate concentration have occurred over the past twenty years or more in the province's fishery. These changes in corporate structure have been shaped by dramatic financial and structural changes that have occurred within the industry.

Firms with access to shellfish processing licences have led the expansion through the past ten years. Firms like the Quinlan Group (Quinlan Brothers & Quin Sea Fisheries), the Barry Group and Daley Brothers have emerged as significant players in the shellfish sector. Some companies such as Daley Brothers and Barry Group have expanded both internally and through acquisitions whereas companies such as the Quinlan Group have expanded mainly through internal growth. FPI and National Sea Products retain their dominant position in the groundfish sector, with FPI also emerging as a major shellfish producer.

Typically, one of the major concerns with corporate concentration is monopoly power and the impact a dominant firm can have in final product markets. Most of the output of our fishing industry is destined for export markets and the impact of Newfoundland and Labrador production in local or even national markets is minimal and as such is not considered significant at this time. Consequently, this is not a major concern for the Panel. Indeed, this approach is consistent with the *Federal Competition Act* which provides for exemptions when companies are exporting product from outside of Canada (Section 45(5)). The Panel is more concerned with the impact corporate concentration would have on port market competition and the structure of the processing sector and the fishing industry generally.

It must be noted in the context of the *Fishing Industry Collective Bargaining Act*, the structure of the industry is essentially designed to ensure a degree of corporate concentration. Harvesters combine to establish their bargaining position as do processors to develop their price position. Harvesters are self-employed business people who catch and sell fish and in turn are organized through the FFAW/CAW (accredited body) to negotiate fish prices. Processors, while not yet represented by an accredited body, usually meet as a group through the Fisheries Association of

Newfoundland and Labrador (FANL) to negotiate minimum prices for selected species. This process of harvesters and processors working to develop a price position requires a special exemption under Section 4 of the *Competition Act*.

The current processing licensing system also promotes increased corporate concentration. With the collapse of groundfish resources in the 1990s, there came a recognition there was too much processing capacity in the industry. Governments were not prepared to buyout companies and as such the industry was left to self-rationalize. To assist this, a core-noncore processing licensing policy was introduced in 1997. This policy provided core plants the opportunity to become multi-species plants and internal expansion was permitted. Non-core plants could only process those species that were on their original licence, and hence the opportunity for expansion was limited. Non-core plants, however, could achieve core status by combining licences from other non-core processing facilities. This policy framework would ultimately lead to fewer processing facilities over time.

In the March 1997 announcement of this processing policy, Government stated: "*Measures such as the designation of core/multi-species plants and the transfer of processing licences will have a positive impact on the future performance of the industry, as well as on capacity consolidation and realignment. And that... the policy will give industry greater flexibility to effect capacity realignment and capacity consolidation in response to changing resource and market opportunities.* Clearly, there was a recognition that consolidation and increased concentration in the industry would likely result.

8.1 Defining Corporate Concentration

Corporate concentration has been an issue for national and provincial governments for many years. Foreign ownership restrictions and legislation such as the *Competition Act* and the related merger guidelines have evolved as means of keeping corporate concentration under control and product markets working efficiently. Legislation to this effect was enacted as early as the late 1880s. Similarly, the precursor to current Canadian legislation was established in 1910 with major modifications in 1986-87. The main purpose of this legislation has been to maintain competition in the market place and ensure that fair trade practices prevail.

Most literature reviewed by the Panel concerning corporate concentration tends to centre on issues of corporate power. The federal Royal Commission on Corporate Concentration defined corporate power as the economic, political and social power that can be derived from the operations of a business. Economic power refers to the ability of an enterprise to influence market or supplier pricing, to affect the quantity of products produced, or because of its size, its ability to affect the price or supply of land, labour, capital and other inputs. Political power is of concern if an enterprise is large enough to have influence on bureaucrats or politicians. The social power component of corporate power is derived from the economic and political power that a company may have because

of its size, and the decisions made by the company that could have social consequences, such as impacts on communities or incomes.

Increased corporate concentration and any related market or competitive control has the potential for a company to use its corporate power to extract above normal profits and this is the focus of research that has been carried out in Canada. For the most part, research has shown that market concentration in Canada tends to be higher than in the United States. That is, in relative terms, firms in Canada tend to be larger than in the United States. As well, corporate concentration has been increasing since the early part of the last century throughout the western world.

Theory suggests the greater the concentration of activity in a few firms, the greater the likelihood of anti-competitive conduct amongst these firms. Anti-competitive behaviour can include such practices as predatory pricing, reciprocal buying practices, price leadership, and conscious parallelism (price matching), etc. The Panel believes that a review of corporate concentration in the fishing industry requires an inward look more so than an outward market review. For the Panel, corporate concentration has to be focussed on companies, their ownership, the impact they have on communities (employment versus unemployment), and the degree of competition for raw material in port markets.

Competition law in Canada deals primarily with monopoly or dominant firm situations and impact on final product markets. However, monopsony or hypothetical monopsony is within the mandate of competition legislation. In the Newfoundland and Labrador context, the Panel has concerned itself with monopsony and related power, that is few buyers or a dominant firm having the potential to influence input prices, or in the case of the fishery, over raw material prices.

Furthermore, increased consolidation also has the potential to result in plant closures as companies rationalize and seek the productive efficiencies that can be realized through greater capacity utilization rates and economies of scale. This could have significant impacts on rural communities.

It is the general view of industry stakeholders that met with the Panel that increased corporate concentration is likely to occur over the next five years. Increased concentration is likely to be a result of responses to shortages in raw materials they anticipate, especially in the crab sector. Furthermore, the Panel was told some firms may not be able to survive any severe resource downturns. Those companies with the financial ability to survive will likely emerge as leaders or at least as bigger players in an operating environment with fewer plants and fewer firms.

Others have told the Panel that companies have to be large to compete internationally. Small firms can be at a disadvantage when competing globally; they lack the volume of product to sell to large chains and do not have the corporate presence or research funds to be leaders in production methods. Generally, both harvesters and processors recognize the need for a strong corporate entity to ensure

the province's presence in the competitive international marketplace and to enhance the province's overall competitive position.

Research has shown companies which pursue acquisition strategies for corporate growth do so for many reasons. Some rationale given for mergers and acquisitions include the need to improve productivity, to improve marketing and distribution capability, to improve shareholder value, to improve entrepreneurial aspects of their company such as to reduce risk or improve company visibility; or to reap increased financial rewards due to unique characteristics of the company that is being acquired.

It is quite probable as firms get larger and concentration increases, the level of diversity in industry output could very well decline. As some firms get larger they can become less responsive to new or increased market opportunities and there could be less innovation. For this reason policies to ensure that small, medium and large firms co-exist in the fishing industry are important. Generally, small and medium sized firms can more readily meet the needs of niche markets or quickly respond to new opportunities.

In its study of the fishing industry, the Panel did not have access to the financial records of individual corporations. As such, final product output was used as a measure of corporate concentration rather than assets or actual revenues earned. While this measure assumes a degree of homogeneity of production and methods employed, the Panel believes it does provide a reasonable picture of what is being produced and the extent of corporate control in the industry.

8.2 Concentration in the Fish Processing Sector

In the global marketplace Newfoundland and Labrador is a relatively small player. Total fish produced in this province represents 26 percent of total Canadian seafood landings and just 0.3 percent of total world fish production. This province is, however, the world's largest producer of coldwater shrimp and currently is one of the world's largest producers of snow crab.

In general, the world food and fish distribution sector has seen increased consolidation in recent years. Indeed, since August 2001 there have been a number of major acquisitions and mergers in the international seafood community including; the purchase of the North American seafood divisions of *Unilever (Gorton's-US, Blue Water Seafoods-Canada)* by *Nippon Suisan (USA)*; the purchase of *Scotia Campbell Marine* in Scotland by *Brake Brothers UK*; the acquisition by *Pieters Group* (Netherlands) of three processing companies *Gebr Sterk B.V., Diepvries Monnickendam B.V.* and *Sterk U.K*; and, the merger of two shrimp processors *Finny Reker AS and Sirevaag AS* of Norway. These mergers and acquisitions illustrate the trend of seafood firms becoming larger to meet the ever increasing demands of today's marketplace.

The Newfoundland and Labrador fishery is comprised of many small and medium sized firms with

one large integrated company, FPI being the dominant player. Table 8.1 outlines the ten largest companies operating in the province based on final product output. FPI is the largest firm followed by the Barry Group, Quinlan Group and Daley Brothers Limited.

As previously noted, the financial collapse of the groundfish sector in the early 1980s resulted in government creating Fishery Products International. This company was formed by merging eight processing companies with a total of thirty-two processing facilities. Since that time, FPI has divested of all but nine of these facilities. A number of the divested facilities continues to be operated by other companies.

Despite the rationalization within FPI over the past ten years, FPI remains the largest fish company in the province and in Canada. As well, it is the largest publicly traded company headquartered in the province. Based on the *Report on Business* survey of the top 1000 companies in Canada, FPI ranked 313 in profitability in 2000 and 346 in 1999. Furthermore, *Seafood Business* ranks FPI as the 5th largest seafood company operating in the United States in 2000, however this is down from 3rd largest in 1997. If other international seafood companies continue their recent acquisitions strategies, then the relative position of FPI in North American markets could continue to diminish.

When FPI was established it was the view of government and industry alike that a large company was needed to more effectively market the volumes of material available from the offshore. At the same time, a company with a well established marketing arm was seen as critical for the long term survival of the company and for the long term growth of the province's fishing industry. The new FPI was seen primarily as an offshore company and as such the potential competitive impacts on smaller inshore companies were expected to be minimal except in those inshore areas in which they had a presence. Indeed, a strong marketing arm was seen as an advantage for smaller plants. The long term goal was that FPI would become the marketer of most of Newfoundland and Labrador fish products.

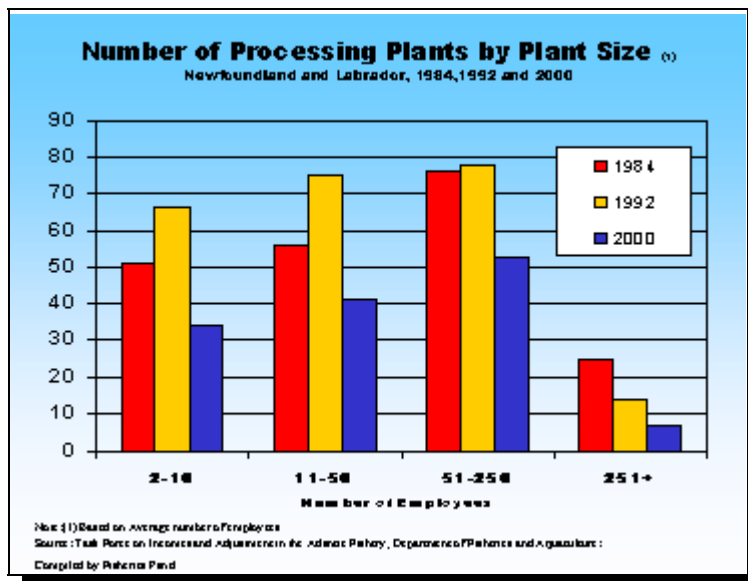


Figure 8.1

The collapse of groundfish stocks in 1992 changed the focus of FPI. The company suddenly found itself with little raw material and it had to rationalize its operations and look for other sources. Many

of its plants and most of its offshore trawler fleet were sold. Raw material was imported from other nations for processing in local plants. The company, however, found itself still seriously short of raw material and was forced to turn its attention to the inshore sector and to product harvested by vessels less than 65 feet in length.

Some of the raw material the company sought from the inshore sector included crab and shrimp. As well, when the cod fishery was reopened on the South Coast in 1997, the company actively competed with other industry players. The Panel believes the company had the financial power to have sourced a larger share of raw material in the province. Such an aggressive strategy, however, would have likely met with resistance from other firms in the industry. Industry stakeholders indicate, however, that FPI has had a significant competitive presence in the inshore sector.

Many firms did not have the financial strength to continue to operate as did FPI and National Sea Products. As a result, the number of active licensed primary processing plants has declined by almost 35 percent since 1992 and by 40 percent since 1988. As illustrated in Figure 8.1, most of the absolute decline in the number of plants has occurred in the number of smaller processing facilities. A number of larger plants however have permanently closed their doors or downsized. The number of plants employing 250 or more people has declined from 25 in 1984, to 14 in 1992 and to just 7 in 2000. For example, the communities with large offshore plants most impacted include Catalina, Ramea, Burgeo, St. John's, and Trepassey.

Company	Species processed	Ranking
Fishery Products International Limited	Groundfish, Pelagics, Shellfish	1
Barry Group/Seafreeze.	Groundfish, Pelagics, Shellfish	2
Quinlan Group	Groundfish, Pelagics, Shellfish	3
Daley Brothers Limited.	Groundfish, Pelagics, Shellfish	4
National Sea Products Limited (Highliner Seafoods)	Groundfish, Pelagics,	5
Beothic Fish Processors Limited	Groundfish, Pelagics, Shellfish	6
Allen's Fisheries Limited	Groundfish, Pelagics, Shellfish	7
Woodman's Sea Products Limited	Groundfish, Pelagics, Shellfish	8
P. Janes & Sons Limited	Groundfish, Pelagics, Shellfish	9
Grand Bank Seafoods Inc.	Shellfish	10

Note: Rankings are based on final product output.
Source: Department of Fisheries and Aquaculture

The change in plant size is also a reflection in the changing corporate dynamics in the industry. Since

1980, there has been an overall increase in the level of corporate concentration within the province's fishing industry. By sector, however, there have been changes with new companies emerging as significant players. For the most part, the largest companies have fewer plants and lower production while several smaller companies have increased in size. Relative concentration of production has decreased in the shellfish sector while concentration has increased in the pelagic and groundfish sectors. At the same time, the number of active primary plants has declined from 220 in 1980 to 124 in 2001.

In 1980, the top ten companies with the largest percentage of production represented 65 percent of total provincial output and this decreased marginally to 62 percent in 1987. By 2000, the top ten companies represented 76 percent of provincial output of which eight held crab processing licences.

Similarly, production by the top four companies represented 52 percent of total provincial output in 1980 and this had increased to about 53 percent by 2000. In relative terms, production by the top four companies did not increase at the same rate as the production of the other 6 companies in the top ten group. This is due to the increasing size of the remaining players and is characteristic of the groundfish collapse and the increased landings of shellfish.

It is also interesting to note the change in production concentration rates also saw a change in the rankings of companies. For the most part, Fishery Products International, and its predecessor Fishery Products, remained the largest company throughout the study period followed by National Sea Products at number 2 in 1980 and 1987. In 2000, National Sea had declined to the 5th largest company in the province. The emergence of new companies, that is the increased percentage of production they represent, is partly a function of the change in production mix with lower harvests of groundfish and pelagic species and increased shellfish harvests. More importantly, however, is that many companies have grown through acquisitions and through internal growth.

Both the Barry Group and Daley Brothers have seen their operations grow considerably over the past twenty years. The Barry Group, for example, has expanded its pelagic operations through internal growth and through acquisitions. As well, it has expanded into the shellfish sector through acquisitions of crab facilities and expansion of facilities into shrimp production. The Quinlan Group has expanded its operations and shifted its production focus to processing mainly shellfish such as crab and shrimp. Daley Brothers has evolved as a significant player in the shellfish sector for both crab and shrimp.

National Sea Products has consolidated its operations in Atlantic Canada with its primary groundfish facility for the company being located in Arnold's Cove. The company's other seven Newfoundland and Labrador facilities have been either closed or sold. Beothic Fish Processors remains a pivotal company in its region and it has adjusted by expanding its crab processing facility and by processing other groundfish or pelagic species as market conditions warrant. P. Janes and Sons has been a shellfish processor since 1967 and has capitalized internally on increased opportunities in this sector.

Woodman's has emerged as a significant player as a result of internal corporate growth and diversification.

It is noted that the seal processing industry is highly concentrated with two companies, Carino Ltd., owned by Norwegian interests, and the Barry Group, controlling most of this sector. The sealing industry can be highly competitive from year-to-year and this competitive dynamic is driven by market conditions. This demonstrates that a small number of firms in any one sector can give rise to intense competition for raw material.

8.3 Concentration in Groundfish Production

As discussed throughout this report, the groundfish sector has seen dramatic changes over the past twenty years. Catastrophic declines in resource availability have forced substantial adjustments within this processing sector. For the most part the large offshore plants that existed in the 1980s have now become seasonal operations or remain inactive. Firms wishing to remain in groundfish have had to acquire raw material outside the province and country, introduce new technologies, and mainly source raw material from the inshore sector. FPI and National Sea have small offshore allocations of cod, redfish and turbot but yellowtail flounder is the only major offshore stock that was under moratorium which has shown some recovery.

In 1980, the top ten companies producing groundfish represented 74 percent of total groundfish production. By 1987 this had declined to 72 percent, however, by 2000, the top ten companies produced 88 percent of total production. Similarly, the four largest companies represented 61 percent of production in 1980, 60 percent in 1987 and 74 percent in 2000. (See Table 8.2)

The changes in production and rankings clearly is a function of the availability of raw material and changing market challenges. Many processors have not found it feasible to process the small volume of groundfish, and especially cod, that are available. As such, many plants, while they purchase the raw material from harvesters, have arrangements with the larger processors who actually do the processing.

The market for cod is very competitive and the competition from companies in China and other major competitors is significant. As a result, many companies with small volumes of raw material do not find it profitable to process cod. Therefore, a large proportion of raw material is forwarded to larger players such as National Sea, FPI, and Woodman's. These companies have installed flow-line technology and as such have a greater ability to compete in the marketplace with premium products.

It is likely the largest groundfish processors will retain their position within the Newfoundland and Labrador industry. Indeed, as groundfish resources recover companies with competitive technology will most likely continue to process the larger proportion of raw material. Cod block and fillets are

commodity items and current margins are low. As such, the value added producers will more than likely have a strong competitive edge in the medium term. Other major players will likely expand their presence depending on market conditions. However, it is likely only companies with sufficient raw material and financial strength will be able to justify expenditures in expensive flow-line technology.

Table 8.2	
Top Ten Groundfish Companies (1)	
Newfoundland and Labrador, 1987, 2000	
1987	2000
Fisheries Product International Limited	Fisheries Product International Limited
National Sea Products Limited	National Sea Products Limited (Highliner Seafoods)
Connor Brothers Limited	Barry Group/Seafreeze
Earle Brothers Ltd./The Earle Freighting Service Ltd.	Beothic Fish Processors Limited
Universal Multifoods	Woodman's Sea Products Limited
Beothic Fish Processors Limited	Sea Crest Corporation of Canada Ltd.
Eldorado Seafoods Ltd.	Labrador Fishermen's Union Shrimp co. Ltd.
Conpak Seafoods Ltd.	Daley Brothers Ltd.
Cape Pine Fisheries Ltd.	P. Janes & Sons Limited
Fogo-Island Co-op Society Limited	Eric King Fisheries Limited
Top Ten: 72 % of production	Top Ten: 88 % of production
Top Four: 60 % of production	Top Four: 74 % of production
Note:(1) Rankings are based on final product output and are from highest to lowest in descending order.	
Source: <i>Department of Fisheries and Aquaculture</i>	

Should groundfish stocks recover it could be more difficult for small operators to compete with larger companies. Companies that originally sourced raw material offshore such as FPI and National Sea Products will likely have to continue to source raw material from inshore vessels. This could mean that larger dominant firms will be competing with smaller companies to a greater extent but this will largely depend on market conditions and on the volumes of raw material available. It could also be affected by any business arrangements such as marketing between larger and smaller firms.

It is clearly evident the groundfish sector of the industry will undergo further structural adjustment in the absence of any significant resource recovery. Marginal plants will find it difficult to adjust to this circumstance. It can be assumed, however, that a sufficient number of firms will survive to give an effective distribution of regional capacity in relation to regional resource availability.

8.4 Concentration in Shellfish Production

Coinciding with the collapse of groundfish stocks was a sharp increase in the volumes of shellfish landings on a province-wide basis. At the same time there were favourable exchange rate changes for principal export destinations and stocks of crab in other jurisdictions such as Alaska collapsed. The end result was by 1995, unprecedented prices for crab and record harvest levels to this date. Some of the companies with crab licences suddenly went from low margin to high margin operations.

With increased profitability there came increased pressure by other operators for the issuance of new licences. As such, from 1996 to 1999 an additional 19 crab processing licences were issued. The end result is that there are now more players in the crab industry than previously. This should ultimately reduce the potential for any one firm from dominating the industry. Increased crab quotas in the post- 1996 period were the impetus for the increase in new licences.

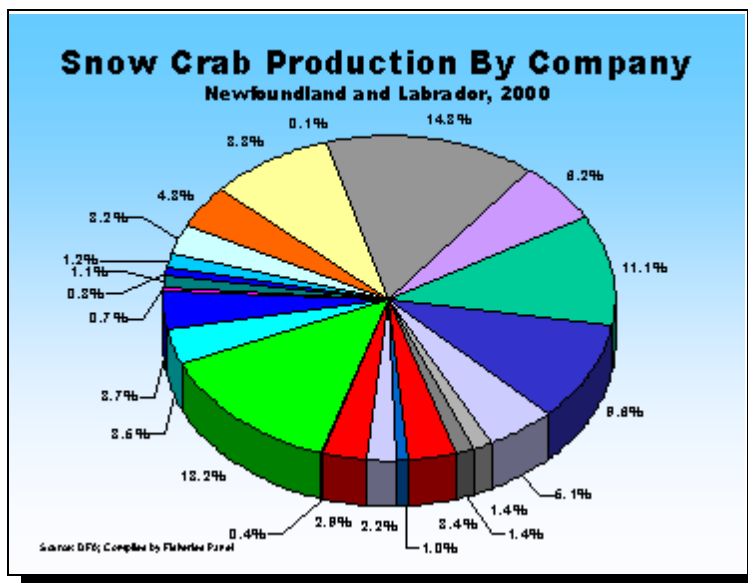


Figure 8.2

Figure 8.2 shows crab production by company. While the company names are omitted, it is evident that the industry consists of a number of small, medium sized and large players. In 2000, there were a total of 23 companies. Output ranged from six to 14.8 percent per company for the six largest companies. As well, there were 8 companies producing between two and five percent of provincial output, five companies produced between 1-1.9 percent and four companies produced less than one percent (based on raw material equivalent).

The Panel notes that allegations of cartel arrangements in the crab sector had their origin in the post-moratorium period when crab became increasingly important. Nineteen additional crab licences were issued over the 1996-1997 period together with an additional licence in Black Tickle in 2000. Several of these processing licences were issued to existing crab licence holders in response to a proposal call by the Department of Fisheries and Aquaculture in 1997. A number of these new entrants have now become significant players in the shellfish sector.

The shellfish sector does not only consist of crab producers. Other species processed by one or more

firms include Icelandic scallops, Stimpson surf clams, shrimp, whelk, and squid. Table 8.3 shows the top ten shellfish processing companies of which eight hold crab processing licences. In terms of corporate concentration, it is noted that Grand Bank Seafoods, a subsidiary of Clearwater Fine Foods Inc. Ltd., is the only surf clam producer in the province and this operation is supplied by the company's offshore surf clam allocation.

As previously noted, FPI is the largest seafood processor and it dominates the shellfish sector with two offshore shrimp allocations, two onshore shrimp processing plants, and two crab processing facilities. The Quinlan Group, Daley Brothers and the Barry Group are significant shellfish processors through their crab and shrimp operations. Beothic Fish Processors is a large player in snow crab but also processes other crab species.

Table 8.3	
Top Ten Shellfish Companies ⁽¹⁾	
Newfoundland and Labrador, 1987, 2000	
1987	2000
Fisheries Product International Limited	Fisheries Product International Limited
Notre Dame Bay Seafoods Ltd.	Quinlan Group
Quinlan Group	Daley Brothers Ltd.
P. Janes & Sons Ltd.	Barry Group/Seafreeze
Cape Pine Fisheries Ltd.	Beothic Fish Processors Limited
Argosy Seafoods Limited	Grand Bank Seafoods Inc.
Terra Nova Fisheries	P. Janes & Sons Ltd.
Labrador Fishermen's Union Shrimp Co. Ltd.	RJP Seafoods Ltd.
Canada Bay Seafoods Limited	Penney Group
Beothic Fish Processors Limited	St. Anthony Seafoods Ltd. Partnership
Top Ten: 82 % of production	Top Ten: 77 % of production
Top Four: 56 % of production	Top Four: 52 % of production
Note:(1) Rankings are based on final product output and are from highest to lowest in descending order.	
Source: Department of Fisheries and Aquaculture	

In 1987, 82 percent of total provincial shellfish production was produced by the top ten companies. By 2000, the top ten companies produced 77 percent of provincial output. Similarly, in 1987 the top four companies produced 56 percent of total provincial shellfish production, however, by 2000 this had declined to 52 percent. The decline in the relative share of total output of each company is a reflection of the number of new licences issued since 1995. These new licences include crab and an additional ten shrimp processing facilities.

The shrimp processing sector is dominated by six firms operating 10 processing facilities. FPI is the

largest cooked and peeled shrimp producer followed by the Quinlan Group, Daley Brothers, and the Barry Group. This is a new sector of the fishing industry and the expansion has been entirely funded by the private sector. Indeed, processors funded their own expansion and much of the expansion of the harvesting sector. As will be discussed later, this has solidified linkages between harvesters and processors for both crab and shrimp.

The corporate dynamics of the crab sector have changed significantly over the post-1992 period. A number of new players have entered the industry and several of the older players have either retained or expanded their presence in the industry. A number of industry alliances have also emerged from time to time to pursue common interests.

8.5 Concentration in Pelagic Production

Companies operating in the pelagic sector have in the past been small to medium sized firms. The Barry Group has emerged as the dominant firm in this sector. In 2000, there were 26 firms producing less than 0.5 percent of total output, 12 firms produced between 0.5 and 0.2 percent each, 6 firms produced between 2 and 6 percent each and 4 firms produced greater than 6 percent each of total provincial production. (See Table 8.4)

The main pelagic species processed in the province include capelin, herring, and mackerel with capelin being the most lucrative and important species for much of the industry throughout the late 1980s. Landings, however, have declined in recent years primarily in response to weakened market conditions. Herring and mackerel are harvested well below TAC levels and, as with capelin, current harvest levels remain below historical averages. The volume of capelin produced has declined substantially over the past ten years. Prices are low and only companies with strong market connections and an established client base have been able to remain profitable or at least operate within the margins available.

In 1987 the top ten firms produced 62 percent of total provincial output and by 2000 this had increased to 86 percent. Similarly, the top four firms produced 39 percent of total output in 1987 however, this had increased to 62 percent in 2000.

The change in corporate concentration evident in this sector is a reflection of both changing market conditions and growth through internal expansion and acquisition strategy that appears to have been followed by the Barry Group over this period.

The level of corporate concentration seen in this sector is greater than that found in other areas and this increase has occurred in the past decade. This sector, however, has been impacted by lower landings overall which in turn has affected industry participation. There are a large number of smaller players in this sector, and given the market requirements for products produced, it is unlikely that any one firm will completely dominate the industry. When market prices recover, the Panel

expects that many producers will return to historical production levels, especially for capelin.

Table 8.4	
Top Ten Pelagic Companies ⁽¹⁾	
Newfoundland and Labrador, 1987, 2000	
1987	2000
Barry Group/Seafreeze	Barry Group/Seafreeze
T& H Fisheries Inc.	Allen's Fisheries Ltd.
Northwest Fisheries Ltd.	Quinlan Group
P. Janes & Sons Ltd.	Beothic Fish Processors Limited
Notre Dame Bay Seafoods Ltd.	James Doyle (Sr.) & Sons Ltd.
Fisheries Product International Limited	Daley Brothers Ltd.
Quinlan Group	Woodman's Sea Products Limited
National Sea Products Ltd.	P. Janes & Sons Ltd.
Crimson Tide Fisheries Ltd.	Labrador Fishermen's Union Shrimp Co. Ltd.
Allen's Fisheries Ltd.	Terra Vista Limited
Top Ten: 62 % of production	Top Ten: 86 % of production
Top Four: 39 % of production	Top Four: 62 % of production
Note:(1) Rankings are based on final product output and are from highest to lowest in descending order.	
Source: <i>Department of Fisheries and Aquaculture</i>	

8.6 Corporate Linkages

Corporate linkages, that is alliances, partnerships, and other arrangements are also a form of corporate concentration and hence, corporate power. Indeed it is the perceived industry control that has resulted from corporate linkages that has generated the greatest amount of public debate in recent times. These linkages can be horizontal linkages between companies or vertical linkages through buyers and sellers.

In the previous analysis, corporate power and corporate concentration was discussed in terms of the output of individual companies. This, however, assumes that firms are behaving independently. If firms share ownership or management or have one or more of the same directors, then it is likely an assumption of independence may not be correct. Interlocking directorships and relationships that tie companies together effectively reduces the independence of companies.

Alliances of processing companies that have come together to further their interests, such as the sourcing of raw material are potentially increasing the level of corporate concentration in the industry. This type of alliance has the potential to increase the corporate power of its members and could directly or indirectly impact the competitive environment within the industry including

whether or not any premiums paid over and beyond the minimum negotiated fish price to any given enterprise or fleet sector. Moreover, such an association of firms could also impact on whether or not a plant may remain closed in certain circumstances.

The Panel holds the view in a normal business environment, any individual company should have the right to decide whether or not it is in its best corporate interest to keep a plant open or closed. However, it is highly probable that any alliance of interlocking companies could present a situation where corporate dynamics at play in the alliance could lead to the closure of a plant or present obstacles to the re-opening of a plant that would otherwise be operating. In situations where this occurs, there is a compelling public policy reason for government intervention to safeguard the public and community interest.

Through its consultations the Panel observed a general sense of mistrust within the industry. This mistrust consisted of mistrust between processors and between harvesters and processors. Over the past several years this has given rise to allegations of the operation of a cartel within the industry, especially within the crab sector. The Panel believes that certain linkages between companies and the increased investment by processors in the inshore harvesting sector have contributed to this mistrust.

8.6.1 Horizontal Linkages

Horizontal linkages refer to the relationships that develop between companies in the same or similar sector. They can include common directors, mergers, partnerships, contractual arrangements, and other alliances where businesses or their management develop strategies for business operations. Knowledge of operations within another company and the ability to influence corporate decisions could ultimately result in linked decision making.

There are a number of corporate alliances that have operated or are operating within the industry. Through these alliances, companies come together to complete projects, pursue common goals, explore new opportunities, share resources and to even share experience and expertise. From a business perspective, partnering reduces the risk associated with start-up or expanding existing operations.

For the most part, the Panel sees these arrangements as having the potential to benefit the industry. For example, in the past, fragmented approaches to dealing with markets have often resulted in local processors competing with themselves rather than facing world competition as a united Newfoundland and Labrador industry. Past studies have suggested this may have resulted in lower than expected returns being received in the marketplace resulting in a net economic loss to the industry and to processors in general.

Table 8.5
Corporate Alliances in the Fish Processing Sector
Newfoundland and Labrador, 1999-2001

Alliance	Affiliated/Member Companies
Atlantic Queen Seafoods Limited	Beothic Seafoods Ltd., Notre Dame Seafoods Ltd., FPI, plus 3 companies in New Brunswick and Quebec
Eagle Fisheries Limited ¹	Grand Atlantic Seafoods Inc., Sea Crest Corporation of Canada Ltd., P. Janes & Sons Ltd., Breakwater Fisheries Ltd.
Falcon Seafoods Limited ¹	Quinlan Group, Daley Brothers, Barry Group
The Glacier Group	Eric King Fisheries Ltd, Rocky Harbour Seafoods Ltd., Allan's Fisheries Ltd., James Doyle & Sons Ltd (Doyle Group).
Newfoundland Freezing Plants Corporation	Barry Group Inc., Daley Brothers Ltd. Quinlan Brothers Ltd, Quinsea Fisheries Ltd. P. Janes & Sons Ltd., Grand Atlantic Seafoods Inc., Higdon's Seafoods Ltd., Sea Crest Corporation of Canada Ltd., Allen's Fisheries Ltd., Tors Cove Fisheries Ltd., Cape Broyle Sea Products Ltd., Deep Atlantic Sea Products Ltd., Englee Seafoods Ltd., Aqua Fisheries Ltd., J.W. Hiscock and Sons Ltd.
Newfound Resources Ltd.	Quinlan Brothers Ltd., Sea Crest Corporation of Canada Ltd, E. J. Green Ltd., P. Janes & Sons Ltd., Woodman's Sea Products Ltd., Aqua Fisheries Ltd., Tors Cove Fisheries Ltd., Beothic Fish Processors Ltd., Fogo Island Co-op, Harbour Grace Fishing Company Ltd.

Source: Registry of Companies: Panel communication with companies.

Joint ventures are normal means of doing business in most segments of the Canadian economy. Joint ventures allow partners to share expertise, financial resources and risk. These have been a common feature of the Newfoundland and Labrador fishery for many years, and for the most part, have had a positive impact on many sectors of the industry.

On the negative side, alliances have the potential to change the balance of competitive forces operating in an economy. This depends on the types of relationships that develop between firms. If companies, by coming together represent a significant portion of a market or market segment, then they could potentially begin to act together and influence competitive forces in that market segment. This could provide the potential for anti-competitive behaviour. Alliances by themselves however, do not automatically ensure the ability to influence markets. The nature of business associations, however, could result in similar companies behaving similarly or at least influencing each other's behaviour.

There are many examples of alliances or business arrangements that have been formed in the Province. Companies forming alliances do so without having to seek approval from the Department of Fisheries and Aquaculture. It is the Panel's understanding none of the alliances listed in Table 8.5 have been issued licences under the *Fish Inspection Act*. Facilities are operated under the individual company's processing licence or a separate licensed company for the purposes of the joint venture. Alliances fall under the auspices of the *Corporations Act*, and competition law in general. The actual licensing of processing plants falls under provincial jurisdiction with the Canadian Food Inspection Agency playing a health and safety role primarily linked to the export of final products.

One of the oldest alliances in the Atlantic fishing industry is Atlantic Queen Seafoods Ltd through which six companies in Atlantic Canada market their crab output. FPI, which is a member of Atlantic Queen, has also been contracted by the Group to market on their behalf. Beothic Fish processors and Notre Dame Seafoods Limited are other members of the group in addition to three other crab processors in New Brunswick and Quebec. Atlantic Queen Seafoods Ltd. has an outward market focus and is not involved in raw material sourcing nor does it operate any processing facilities.

Falcon Seafoods Limited, a joint venture of principals of the Barry Group, Daley Brothers and the Quinlan Group, was initially formed in 1999 to jointly operate crab operations in Burgeo and Ramea in anticipation of an offshore source of crab being diverted for processing. On this basis an investment was made in a new crab operation at Burgeo and several crab vessels. The group also took steps to activate Ramea in the same context. In 2000, the overall provincial crab quota was reduced and neither Burgeo or Ramea received a special allocation. Consequently, the company did not activate either facility. In 1999, Falcon Seafoods Limited, together with Eagle Fisheries Limited made a joint proposal to acquire the inactive Twillingate fish plant. The Group also became involved in several other plant locations including Gaultois.

Eagle Fisheries Limited, an alliance of the principals of Grand Atlantic Seafoods Ltd., Seacrest Corporation of Canada Limited, P. Janes and Sons Ltd., and Breakwater Fisheries was also formed in 1999. The initial objective of the company was to acquire and operate the Twillingate plant. Subsequently, Eagle Fisheries and Falcon Seafoods made a joint venture proposal to acquire the plant in question. In February 2001, the companies advised government that because of further crab quota reductions, they would be prepared to relinquish ownership to another operator. These two alliances have entered into an agreement to sell their interests in the Twillingate facility to Notre Dame Seafoods Ltd.

The Glacier Group is a West Coast alliance of Eric King Fisheries Ltd, Rocky Harbour Seafoods Limited, Allan's Fisheries Ltd. and James Doyle and Sons Ltd.(Doyle Group) through which the group co-ordinates the marketing of lobster. The Group does not have any joint venture activity with respect to the operations of fish processing plants.

Newfound Resources Ltd. is a consortium of 10 inshore companies along the East/Northeast Coast

who were initially given an offshore allocation of northern cod in the 1980s to help reduce the seasonality of their plant operations. Following the decline of Northern cod, Newfoundland Resources was given an offshore Northern shrimp allocation which it harvests with its own vessel. Newfoundland has no day to day involvement in the operation of fish processing plants.

Newfoundland Freezing Plants Corporation (NFPC), is a consortium of fifteen inshore fishing companies which hold crab processing licences and licences for other species as well. It consists of eight companies

which were issued crab licences since 1996 and the seven other firms with a longer history in the crab industry. This consortium was formed in 1999 with the objective of advancing the common interests of its membership. It engages in the bulk purchase of packaging materials, bait, and other production inputs and is the vehicle through which its members hold an approximate 10 percent shareholder interest in FPI. In its consultations, the Panel was advised that NFPC helps facilitate the distribution of crab amongst its members especially during the peak and shoulder periods of the season but that NFPC has no direct involvement in price related matters. Furthermore, the Panel has been told that it has no involvement in the operation of fish plants.

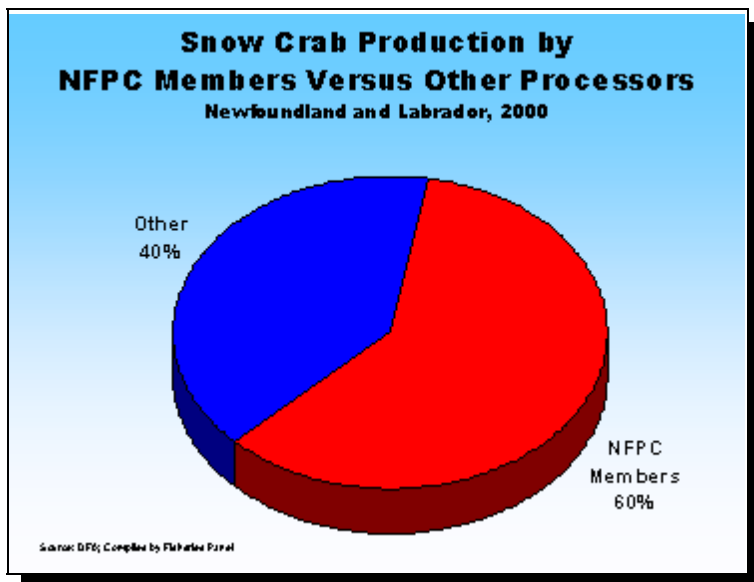


Figure 8.3

8.6.2 Vertical Linkages

As noted in earlier sections the inshore and offshore processing sectors evolved along two distinct lines. The inshore processing sector's raw material supply has been almost exclusively supplied over the years by independent fishing enterprises which, from the 1970s onwards, was given formal effect through the federal government (DFO) fleet separation policy. Under this current policy, which has been fully supported by the province, processors cannot hold licences to own and operate vessels less than 65 feet in length. This policy was implemented to give inshore fishers a measure of independence and to prevent the processing sector from controlling the inshore harvesting sector. In the offshore sector, however, vertical integration has been a structural element since the earliest days of the offshore fishery with firms operating integrated plant/trawler capacity. This was critical to the evolution of the capital intensive offshore fishery since secure access to raw material supply was critical to investment decisions.

There is little doubt inshore fish enterprises, over the decades, depended on individual enterprise business linkages with processing firms to provide a line of credit from season to season. With the major transformation that took place in the inshore fishery, especially in the post-1960 period with the movement to larger longliner-type vessels, the capital requirements of inshore fishing enterprises increased dramatically.

From this perspective, the province's Fisheries Loan Board, established in 1949, provided a funding option for those fishermen upgrading their enterprises subject to their meeting specific loan/grant guidelines. Over the 1951 to 1978 period loan activity was confined to vessel/equipment loans and vessel bounties for vessels 35-65 feet in length and the annual value of loans increased from \$49,000 to \$13.3 million in 1978/79. By March, 1979 over 6,700 loans with a value of approximately \$48 million had been approved. In many instances, however, inshore fishermen still maintained their business linkages with local processors/merchants including loan arrangements to finance vessel fishing gear and equipment. In turn, these symbiotic arrangements helped the local processor secure the landings associated with any given enterprise.

The significant capital costs associated with the modernization and upgrading of larger vessels in the inshore sector after the late 1970s brought an expanded financial dimension to the fishery. The private banking sector was reluctant to fund the capital associated with fleet modernization in the inshore fleet sector before this date. Furthermore, the province was finding it fiscally difficult, to directly fund the increasing financial needs of inshore enterprises greater than 35 feet in length.

Following discussions with the banking sector in the 1979 to early 1980 period, a Bank Loan Guarantee Program was implemented in 1980 to fund those loan applications exceeding \$50,000 for vessels/equipment that previously would have been channelled through the Fisheries Loan Board. Under this program both the banks and the Board had to approve each loan application. The program remains intact with funding being provided by the banks and for each loan granted, 20 percent of the principal is added to a guarantee pool for each bank by the province.

This program proved to be extremely successful and was widely availed of by larger inshore fishing enterprise operators before the groundfish collapse. Over \$138 million was approved by the banking sector under this program over the 1980-2001 period with a total loan guarantee default rate of approximately 3 percent or \$3 million for this period. As of March 31, 2001, 119 loans totalling \$31.1 million were outstanding. In 1995 government took a decision to integrate the Fisheries Loan Board programs, including the Fishing Vessel Bank Loan Guarantee Program into programs of the then Department of Development and Rural Renewal. By this time, however, the groundfish collapse had led to a sharp reduction in loan activity for vessel construction and upgrading. This changed abruptly with the further expansion of the snow crab fishery after 1995 and the development of the new inshore northern shrimp fishery over the 1997-2001 period.

These developments brought new alliances between inshore harvesting enterprises and processing

companies as firms increased their funding support to fishing enterprises in the expanding shellfish sector as one major avenue to secure access to raw material supply. A number of companies had previously financed inshore vessels but the shellfish processing sector's investment increased dramatically in the post-1995 period. The Panel has not determined the level of recent processing sector financial support in the inshore harvesting sector. However, based on discussions with this sector it appears this investment exceeded \$50 million over the past 3-5 years. Most of this investment was associated with the rapid expansion of the inshore northern shrimp fishery which saw the number of licensed vessels in this fishery increase to approximately 350 vessels in 2001.

Much of this processing sector investment in shrimp vessels was to secure or safeguard access to crab landings harvested by these vessels as well. Under these financing arrangements entered into between inshore vessel licence holders and the processing sector, usually through legal agreements, the licence holder in return for this processing sector financial support either directly or secured by a guarantee through the banking sector, is obligated to sell the enterprise's catch to the processor party to any agreement for the duration of the loan repayment period agreed upon. It is also understood that licence holders have agreements which will give them the flexibility to terminate such arrangements and move to other processors if the loan obligations are met early. These arrangements, may or may not contain any linkage to fish price considerations other than those linked to minimum negotiated prices prevailing in the industry.

Corporate sector investment in the inshore harvesting sector does bring a measure of direct and indirect corporate control over access to raw material. In and by itself, however, any such agreements entered into by willing parties, help secure any given processor's raw material supply which is critical to any firm's stability especially when there is keen competition for available landings. The inshore vessel owner/operator also benefits materially especially if other financing options are not available. Moreover, the readily available financing through the processing sector associated with the expansion of the inshore northern shrimp fishery for example presented an alternative option for many vessel operators as opposed to a more rigid and disciplined loan approval process associated with the Bank Loan Guarantee Program. It is noted, however, that this Program's guidelines were amended in 1999 to permit the refinancing of loans, of inshore enterprises who met the loan requirements under the Program. Given these considerations, the Panel is not of the view that government intervention is necessary to restrict any vessel financing arrangements entered into by willing parties in the inshore harvesting and processing sectors. The Panel is of the view, however, that the fleet separation policy of DFO has a solid public policy basis.

Harvesters have freely entered into these agreements, however, it is important that an alternative funding source is available if so desired. The Panel has been told harvesters are free to move to another processor for the sale of raw material provided that the loan is paid in full. Some agreements may obligate the vessel owner/operator to sell the vessel's catch to the financing firm for a specific period of time. The Panel has been advised in this case a loan can be repaid in advance of this time but the obligation to continue selling the enterprise's catch remains. As long as another processor

is able or willing to provide funding harvesters have free movement. Other financing alternatives such as the Business Development Corporation (BDC), the Small Business Loan Act (SBLA), and the Bank Loan Guarantee Program provide access to funding for harvesters. Increasing the profile of the Bank Loan Guarantee Program could help alleviate some of the concerns raised by harvesters in this regard. Small boat harvesters face special challenges at securing financing under the Bank Loan Guarantee Program. The Panel suggests government, banks, and harvesters meet to review current guidelines.

8.7 Competition Within the Industry

On the surface, the number of companies operating within the industry should be sufficient to ensure a reasonable degree of competition for raw material. This of course assumes that companies are operating independently of one another. The vertical and horizontal linkages evident in the industry, however, suggests that there is a potential for reduced competition.

The Competition Bureau has the jurisdiction to review allegations of anti-competitive behaviour and has the necessary power to undertake such a review if a formal complaint is lodged. From consultations and media reports, it is the Panel's understanding that there is at least one reference to the Competition Bureau.

Section 45 of the *Competition Act* clearly outlines the prohibited acts. Penalties for violation of the Act are high with prison terms up to five years or ten million dollars or both. Specifically the Act states:

45. (1) Every one who conspires, combines, agrees or arranges with another person:

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(d) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

There is a view among some industry players that competition has been reduced in recent years and

this fishing season in particular. Harvesters, especially small boat fishermen, indicate that the level of competition within the industry has declined. They cite bonus payment changes to their fleet sector to be a key indicator. It appears, however, that most of the difficulty is found within the crab sector.

It can be observed that the greater the competition for raw material in the industry the greater is the probability that the minimum price established under the final offer selection mechanism will be exceeded. The Panel notes, for example, a schedule of bonuses has become a common characteristic of the crab fishery over the past several years. The Panel is aware that bonuses are paid for the most part to help safeguard the raw material supply of individual firms. In general terms, those enterprises with larger quotas have greater bargaining power and, as a matter of course, often receive a premium over and above the minimum price schedule. Smaller inshore enterprises with relatively smaller amounts of raw material tend to have less leverage and because of their limited mobility may have a limited choice of buyers. This in turn will impact their opportunity to receive prices beyond the minimum established price.

The Panel was advised, for example, that in one region in 2001 some small boat crab harvesters received an end-of-season bonus payment, while other small boat harvesters in a different community, in the same region did not receive this benefit from the same processor. On the surface, at least this suggests that competitive forces at play in any given community may also impact whether or not bonuses are paid. Conversely, there may be factors other than competitive forces which can explain price differentials within the same fleet sector as reflected through bonuses.

As part of its review of corporate concentration, the Panel conducted a review of landings to get an indication of the level of competition at port markets. For the largest ports there are a number of buyers. In 2000, crab was landed in 242 ports, the number of buyers ranged from 22 in the most active port, St. John's, to only one buyer operating in 73 ports. Landings in single buyer ports tended to be small quantities. Landings in ports with five or more crab buyers represented over 60 percent of total landings.

The distribution of landings can impact significantly on the degree of competition at the regional level. In regions with many buyers it is expected that there will be a greater degree of competition than in a region where there is only one or two buyers. This will not impact the minimum price paid for raw material under the present price settlement mechanism but it could impact whether or not harvesters receive additional benefits such as a price premium or in-kind benefits.

As previously noted, the vertical linkages associated with loans to harvesters have the potential to be a factor in reducing competition. This is especially true if processors are highly leveraged and anticipate a downturn in either markets or resource availability. There would then be a reluctance

for a processor to accept the transfer of a loan for a harvester knowing that this would increase their exposure should conditions change. This in itself could reduce the level of competition or at least affect the free movement of harvesters to different processors.

Further corporate concentration in the industry, if accompanied by reduced competition amongst players for available landings, could very well impact the prices paid to fish harvesters. In all probability, there will be a tendency for the minimum prices established to be the actual price paid. The extent to which this will likely occur will depend largely on the corporate dynamics at play but will be unlikely if the industry were to be characterized by a number of firms and alliances competing aggressively in the same markets.

8.8 FPI's Proposed Acquisition of Clearwater Fine Foods Inc.

The proposed acquisition of the seafood assets of Clearwater Fine Foods Inc. of Nova Scotia by Fishery Products International Limited announced on September 6, 2001, impacts directly on the mandate of the Panel. In an Atlantic-wide context FPI and Clearwater ranked first and second respectively in 2000 in volume sales. FPI would, if the merger were to be approved, rank number three in the North American seafood business and be a much larger player in the Newfoundland and Labrador fishing industry. From a corporate concentration perspective a principal public policy issue is whether the merged company would give rise to any significant structural and competitive changes within the Province's fishing industry. More specifically, a second principal public policy issue is whether the proposed merger is generally consistent with the common public policy objectives of both the Province and the federal government which gave rise to the September 26, 1983 *Fisheries Restructuring Act* (F-14) and the April 15, 1987 *Fishery Products International Limited Privatization Act* (F-15).

8.8.1 Background to Fisheries Restructuring and FPI Ltd. Privatization

The 1983 restructuring of the offshore sector of the Newfoundland and Labrador fishery, and those inshore operations within the corporate structure of the offshore companies, had their origins in the poor financial performance of this sector over the 1980 to 1983 period. During this period the financial performance of most companies in a groundfish-dominated industry weakened considerably. This financial deterioration was most severe among the various offshore groundfish processors with major operations in Newfoundland and Labrador including Fishery Products Limited, National Sea Products Limited, the Lake Group, and John Penney and Sons Limited. Certain Newfoundland and Nova Scotia assets of H. B. Nickerson & Sons Ltd. were also part of the agreement. It was against this background that the 1982 Report of the Task Force on Atlantic Fisheries (the Kirby Report) concluded that the bankruptcy of the offshore sector would occur unless public financial assistance was provided.

Given the role which the fishing industry played in the Province's economy at that time, particularly

the deep sea sector, there was a clear recognition by both the Province and the federal government that a planned and measured approach to industry restructuring was the most prudent public policy approach to pursue. The option of letting bankruptcy take its course was not pursued by government given the social and economic impacts would be too difficult to manage. This planned and measured approach essentially resulted in both governments, and the Bank of Nova Scotia, investing approximately \$252 million in the form of cash and equity in a newly created holding company, FPI Limited (FPI), and a new operating company Fishery Products International Limited (FPIL).

Under the September 26, 1983, **Fishing Industry Restructuring Agreement**, the assets of the new company were held by both governments and the Bank of Nova Scotia. This ownership structure resulted in the Government of Canada holding 60 percent of the company, the Government of Newfoundland and Labrador holding 25 percent, the Bank of Nova Scotia holding 12 percent, and employees holding 3 percent. Over the 1984-1987 period the new operating company FPIL, successfully adjusted to many challenges flowing from the *Fisheries Restructuring Act* and this established the principal reference point around which governments and the Bank of Nova Scotia agreed to the FPI Privatization Agreement of April 15, 1987.

This agreement was subsequently confirmed by the Province in legislation entitled *An Act Respecting the Return of Business of Fishery Products Limited to Private Investors* (the FPIL Act). A principal provision of this Act is that “no holder of Voting Securities and associates of such holder shall hold in aggregate Voting Securities to which are attached in excess of 15 percent of the total number of votes attached to all Voting Securities then issued and outstanding”. It is noted that FPI Limited public share offering in 1987 was fully subscribed and generated privatization revenues of approximately \$185 million. The Bank of Nova Scotia recovered its full \$18 million investment whereas the Federal Government received \$118 million, a \$50 million shortfall, and the Province received \$49 million, a \$17 million shortfall.

The Panel notes that certain public policy objectives drove the restructuring process. A key objective is found in the *Fisheries Restructuring Act* which states that a common objective of governments is: “*To find a just and lasting solution for the rebuilding of the deep sea fishery which recognizes the fundamental role which the fishing industry plays in Newfoundland and Labrador*”. Other core objectives also contained in Section 3 of the Act are as follows:

- b. *To see restructuring proceed in an orderly way with minimum disruption to harvesting, processing and marketing.*
- c. *To create a company whose primary objective is to strengthen the Newfoundland fishery a company that is economically viable, efficient and modernized so that it will be highly competitive in international markets.*
- d. *Notwithstanding paragraph b) the company may acquire assets outside Newfoundland and Labrador provided that such assets represent a sound commercial business decision and does not disrupt the historical harvesting and*

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- processing in Newfoundland.*
- e. *To ensure maximum employment stability and productivity through employee participation in the company.*
 - f. *To ensure that the company is well managed on a commercial basis with management being left to manage.*
 - g. *To pursue divestiture to the private sector of both governments' ownership in the company as soon as possible.*
 - h. *To provide new opportunities for independent processors to have effective access to international markets.*
 - i. *To have the company internationally organized in a way which leaves open the option of a variety of innovative structures for the Newfoundland and Labrador fishery of the future.*

The Panel understands the 15 percent ownership restriction was meant to ensure a measure of diluted ownership in FPI upon the Company's privatization. The 15 percent rule created by this somewhat unique piece of provincial legislation effectively gave a level of assurance that FPI, subsequent to its privatization, would be managed in a manner that would not be completely independent of public policy considerations.

The Fishery Products International Limited (Privatization) Act of April 15, 1987 (F15) contained a number of provisions which have more or less been guiding principles under which FPI has operated. These include:

- *The provision [relative to the 15 percent ownership restriction] set out in Schedule B to this Act shall form a part of the constating instruments of Fishery Products International Limited and shall not be amended or revoked by FPI Limited.*
- *Neither FPI Limited nor Fishery Products International Limited may apply to the appropriate official of a public body of another jurisdiction requesting continuance under the laws of that jurisdiction.*
- (1) *Neither FPI Limited nor Fishery Products International Limited shall sell, lease, exchange or otherwise dispose of all or substantially all of its property or business which relates to the harvesting, processing and marketing of seafood.*
(2) *Notwithstanding subsection (1), FPI Limited and Fishery Products International Limited may mortgage, pledge, charge or otherwise encumber their assets to secure their obligations.*
- *The provisions of this Act which apply to FPI Limited or Fishery Products International Limited shall also apply to a successor corporation of FPI Limited or Fishery Products International Limited whether formed by way of amalgamation, arrangement or otherwise.*

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- *A majority of the members of the board of directors of each of FPI Limited and Fishery Products International Limited shall be residents of the Province.*
 - *Only 1 member of the management of FPI Limited or Fishery Products International Limited shall be a director of either FPI Limited or Fishery Products International Limited.*

The response by governments to the financial circumstances which led to the restructuring of the Province's offshore fishery (and related inshore plant operations) in 1983 reflected, first and foremost the industry's contribution to the Province's economy. Essentially, FPI was created to provide long term stability in the offshore fisheries sector by consolidating the assets of a number of offshore and inshore linked companies into one large profitable company that could withstand the cyclical financial performance of the fisheries sector.

8.8.2 Company Performance vs the Act's Legislative Intentions

A number of significant events impacted the Company's performance in the initial years of privatization. Buoyant seafood market conditions of the mid-1980s gave way to a major weakening of market conditions with a sharp decline in the Company's profitability. However, FPI, largely because of its timely privatization prior to the stock market collapse of October, 1987, had a strong financial position, including a solid balance sheet with little long term debt, and successfully adjusted to these changing conditions.

The principal factor that impacted further on FPI's performance by the early 1990s was the changing resource conditions which led to significant reductions in the Company's offshore groundfish supply. The northern cod moratorium of 1992 was followed by closures in all other key groundfish stocks around which FPI's core business had been developed. Essentially, the Company, having lost approximately 95 percent of its core business as a result of the groundfish collapse, had little option but to explore other core business opportunities. To help compensate for the erosion of its groundfish supply FPI also sourced substantial tonnages of frozen-at-sea cod, primarily from the Barent's Sea to help sustain its groundfish operations in the Province. These initiatives were followed by substantial investments in the shrimp and crab sectors within the Province in the late 1990s.

In 1992, FPI acquired the U.S. food service and shrimp operations of National Sea Products and constructed a new plant in Danvers, Mass. for warm water shrimp and secondary groundfish processing. It had also acquired Clouston Foods, a major Canadian seafood brokerage firm in 1989 and expanded the sales of this operation from \$150 million to approximately \$300 million. It is noted that FPI's gross sales increased from approximately \$350 million in 1989 to \$723 million in 2000. From a marketing perspective, FPI has become a world class leader in the seafood business and is in a position to further advance the industry's competitive position in international markets.

The challenges which impacted the Newfoundland and Labrador fishery over the past decade also

impacted FPI's overall performance. Moreover, the Panel believes that FPI's performance has been generally consistent with the public policy objectives which were established during the restructuring and privatization process. For example, the improved financial performance of the Company in the post-1995 period was largely the result of prudent investment decisions taken subsequent to the groundfish collapse.

This view of FPI's past performance is also shared by the majority of firms and individuals consulted by the Panel in the conduct of its mandate. The company is seen as the flagship of the Newfoundland and Labrador fishery and the Canadian seafood industry; as a demonstrated industry leader on environmental and conservation issues; and as a company having also demonstrated a strong sensitivity to community, fish harvesters, employee and industry relationships. These considerations have strong public policy linkages in the context of FPI having been essentially established to be an instrument of public policy to maximize the fishing industry's benefits for the people and communities of Newfoundland and Labrador.

8.8.3 Elements of Proposed Acquisition

In May 2001, a new FPI Board of Directors was elected and a new management team put in place. Concurrently, FPI indicated its intentions to grow the company into a dominant player in the global seafood business. The company subsequently announced on September 6, 2001, its intention subject to regulatory and shareholder approval, of acquiring the seafood assets of Clearwater Fine Foods Inc. for \$510 million (Cdn.). This acquisition would enhance FPI's position as Canada's largest seafood company with pro forma consolidated revenues in excess of \$1 billion and assets of \$745 million. The transaction, according to FPI's release, would add accretive earnings before interest, taxes, depreciation and amortization (EBITDA) of \$75 million to the combined company. This acquisition will be financed through the issuance of up to 16 million non-voting common shares valued at \$200 million together with \$100 million in 5 percent redeemable retractable preferred shares and the assumption of \$210 million of Clearwater debt. Presently, Clearwater holds approximately 14 percent of the outstanding common shares of FPI and its president and major shareholder, Mr. John Risley, is a director of FPI.

This agreement reportedly is subject to regulatory approval of the Federal Competition Bureau, the Toronto Stock Exchange, and the Department of Fisheries and Oceans, as well as the shareholders of FPI. The Panel notes that the Government of Newfoundland and Labrador has a compelling public policy interest in this proposal as well. The acquisition of Clearwater by FPI constitutes a "related party transaction" under the Ontario Securities Commission Rule 61-501 which, among other things, requires formal valuations from a qualified and independent valuator and the approval of a majority of the minority shareholders of FPI. A committee of independent directors of FPI is in place to review the proposed transaction. FPI has announced that coincidental with receiving final approval to acquire Clearwater's seafood business, John Risley will join FPI's senior leadership team as Chief Executive Officer.

The seafood assets to be acquired in this proposed transaction are principally shellfish related and will see FPI emerge as a more diversified company and a more dominant shellfish producer. FPI currently holds two offshore shrimp licences/allocations and the proposal will see Clearwater's two offshore licences being acquired by FPI. FPI currently holds approximately 16.8 percent of the offshore scallop quota in Nova Scotia/George's Bank waters and this will increase to approximately 47.5 percent with the Clearwater acquisition. FPI does not have a presence in the surf clam industry where Clearwater is the dominant player at present, including its Grand Bank operation. This, together with Clearwater's large inshore/offshore lobster operation will also be acquired by FPI together with other assets including its international assets together with a relatively small groundfish operation in Nova Scotia. Clearwater's 50 percent interest in St. Anthony Seafoods shrimp processing operation at St. Anthony will also be included. The independent valuation of these assets will obviously have a direct material bearing on their contribution to FPI's future performance.

The proposed acquisition of Clearwater's Seafood business by FPI is clearly material in size and significance. If approved, FPI will be largely owned by one single shareholder holding approximately 60 percent of the Company's equity and approximately 14 percent of the voting shares who together, with three other fishery related interests from Iceland, New Zealand, and Newfoundland and Labrador, will control approximately 54 percent of the outstanding voting shares. Until the recent past FPI shares were widely held by institutional shareholders and this effectively diluted individual shareholder control as envisaged by the FPI Act.

8.8.4 FPI's Corporate and Competitive Position

Following the 1983 Restructuring Agreement and the subsequent privatization of FPI, the Company emerged more streamlined having divested of all but nine of the plants encompassed by the Agreement in question, and remained the most dominant company in the Province's fishing industry. Given its dominant position, FPI directly or indirectly impacts the competitive dimensions of the industry especially in terms of sourcing raw material from the inshore harvesting sector. From this perspective it is noted that FPI over the past several years has significantly increased its participation in the inshore crab and shrimp fisheries and has also accounted for an increasing volume of groundfish production sourced from the inshore harvesting sector as well. FPI has also strengthened its marketing relationship with a number of companies in the industry involving snow crab, inshore shrimp and groundfish. FPI has also been a significant player in the financing of inshore fishing vessels. The Panel believes strongly that its consistent policies relative to the sourcing of inshore fish have positively impacted competitive conditions in the industry. Its policy of maintaining a solid balance sheet and strong financial position has helped to provide the financial stability the industry so strongly sought in the pre-restructuring period.

In a public policy context the Panel is of the view that FPI, as a publicly held company, brings a competitive dynamic to the fisheries sector which is fully consistent with the objective of achieving a stable, self-sustaining and competitive industry. The Panel further believes that FPI has taken a

reasonable approach at balancing its corporate interests with the broader public interest, especially in terms of how it has interacted with other firms in the industry. However, several firms advised the Panel that they view FPI's expanded competitive position in the inshore sector to be at variance with the objectives of fisheries restructuring.

The Panel notes that the new management of FPI has stated publicly that one of the principal corporate objectives is to grow FPI both within Newfoundland and Labrador and globally. In the absence of any significant changes in the resource, FPI has acknowledged, that because of the competition for limited landings, local growth opportunities, other than through acquisitions, will be limited over the foreseeable future. This is an important consideration, in a competitive context, in that any aggressive future initiatives by FPI to capture a larger share of shellfish landings, for example, could compromise the role which small and medium size firms play in the industry.

The Panel also notes that FPI management has stated that all plants currently operated by FPI in the Province will continue to operate should the proposed Clearwater Fine Foods acquisition be finalized. FPI management have also stated that the two plants in this Province in which Clearwater Fine Foods Inc. has ownership (Grand Bank Seafoods Ltd.) and a joint venture interest (St. Anthony Seafoods Ltd.) will not be impacted. From this perspective the corporate concentration flowing from the proposed acquisition will not likely have any significant plant impact in the short term other than employment adjustment that may flow from productivity initiatives in any given plant. Moreover, FPI has given no indication that it will transfer any shore based processing activity to freezing at sea.

8.8.5 Objectivity of FPI's Role

In the Panel's view there are a number of tests that can define the future direction of FPI. The Panel, believes, for example, that a well capitalized FPI, operating in a healthy competitive environment, can continue to provide competitive balance in the Newfoundland and Labrador fishing industry particularly as it relates to inshore raw material sourcing. FPI is a public company subject to rules which impact its governance and it holds a measure of public trust that can positively impact the industry's overall image through linkages with other firms in the industry.

The Panel also holds a view the Province's fishing industry must have a strong and competitive position in the international seafood market and this need is more imperative today than ever. During the fisheries restructuring period governments saw the need for increased marketing consolidation but this is one area where, for a number of factors, including individual firm independence, FPI did not play a greater role. Positive shifts in this direction have occurred over the past several years and this will need ongoing enhancement. From this perspective FPI can build on the extremely positive image it has in the international marketplace for its benefit and that of the Province's fishing industry and economy as a whole. For this reason the Panel believes it is critical that FPI's marketing structure remain an integral part of its corporate structure.

It is also noted that foreign investors hold at least a 30 percent voting interest in FPI. It is further noted that the FPI Act, other than the 15 percent share restriction that applies to any one holder of voting stock, is silent on the issue of foreign ownership. This may give rise to concerns over the potential foreign control over FPI's quota allocations and the manner in which they may be utilized in the future or transferred to other jurisdictions.

The Panel notes that the licensing policy of the Department of Fisheries and Oceans contains restrictions on foreign ownership in the Canadian fishery and Section 14 of the 1996 Commercial Fisheries Licencing Policy states that:

- (1) *Subject to subsection (2) of the commercial fishing licensing policy, if foreign interests acquire over 49 percent of the common (voting) shares of a Canadian owned corporation which holds fishing licences, the licences will not be reissued to that corporation upon expiry of the licences.*
- (2) *If such a foreign corporation having a subsidiary in Canada which holds fishing licences is taken over by another foreign-owned corporation from the same country, the licences may be reissued to that corporation as part of its continuing Canadian operation (i.e. no net increase in foreign ownership).*
- (3) *If a foreign interest purchases a minority ownership interest in a Canadian corporation or establishes a jointly - owned subsidiary with a Canadian corporation in which the Canadian corporation owns more than half the voting shares, licence eligibility will not be affected."*

This policy applies to FPI and in this context, the licences and quota allocations held by FPI must remain under Canadian control. This would, therefore, prevent any foreign investor from acquiring control of FPI's fishing licences and quotas. The Panel understands that FPI is fully committed to maintaining the linkage between its offshore quota allocations and those plants/communities which are dependent on this linkage.

The Panel has not had the benefit of reviewing any comprehensive pro forma business plan(s) that may be associated with the proposed acquisition. It is noted, however, that FPI has indicated to the Panel it wants to grow FPI to become one of the world's "marquis" seafood companies to compete effectively against large multinationals in the rapidly changing global seafood and food business.

Any major growth in FPI will likely lead to increased investments outside the Province given the limited opportunity, other than through acquisitions, to grow its Newfoundland and Labrador presence over the foreseeable future. The extent to which this external growth does occur may diminish the relative contribution which the Newfoundland and Labrador operations may bring to FPI. This, in turn may diminish the Company's focus on its local operations but the Company has stated that it remains fully committed to sustaining and growing its Newfoundland and Labrador operations.

Company growth, including growth at the international level is not inconsistent with the public policy objectives explicit in the *Fisheries Restructuring Act*. Nevertheless, past history in the fishing industry in particular has shown that the industry's capacity to service debt obligations can vary substantially and quickly based on changing resource and international market conditions. It is the Panel's opinion that debt considerations factored heavily in the assumptions underlying the fisheries restructuring process and reinforced the need for a financially strong FPI to withstand the industry's cyclical performance. The Panel is not suggesting that risk be removed from the corporate decision making process in growing FPI but that the extent to which FPI is leveraged could impact significantly on its ability to sustain any given magnitude of debt. This, in turn, could give rise to public policy concerns especially in the context of those public policy objectives which led to the initial restructuring of the Company and which formed the foundation for strengthening the Newfoundland and Labrador fishing industry. Those public policy objectives in the Panel's view are as equally relevant to the present industry environment as they were when FPI was restructured and subsequently privatized.

8.9 Policy Considerations

The preceding analysis relative to corporate concentration suggests that FPI is the most dominant player in the industry followed by the Barry Group. There have been significant changes in the structure of the industry brought on by the collapse of groundfish and the subsequent increase in the availability of shellfish. Shellfish producers have emerged as the financially stronger firms during this period.

The Panel has been told throughout its consultations that corporate concentration is likely to increase as firms expand and the industry rationalizes in response to resource declines. If this is the case, then it is likely that there will be fewer plants operating in the province under the control of fewer companies. This is a survival option for companies when faced with the challenges of markets and raw material limitations.

Industry stakeholders indicate that increased concentration in Newfoundland and Labrador will likely be a result of acquisitions rather than internal expansions. This will be driven in the main by limitations on raw material supply. Groundfish stocks have been slow to recover and shellfish stocks are cyclical. It is likely that if crab were to further decline within the next few years, there would not likely be another species following that could contribute as much to industry margins as has been the case with crab.

World seafood companies are increasing in size and companies are becoming large in order to meet competition. The food service sector and the retail sector is increasing being controlled by large players. For example, the provincial grocery retail sector is dominated by just two companies, Sobey's (Empire) and Dominion (Loblaws). The Panel has consistently been told that firms selling to large companies must have both the financial resources and product quantities to compete. The

Panel is of the view that size alone will not ensure profitability.

Companies must be in a strong financial position to survive major shocks to supply or markets. Otherwise government financial support would continue to be required. In the past there have been major fluctuations in market prices, exchange rates and raw material supply and industry over-capitalization. These three key factors have been the driving force behind many of the changes seen in the industry from restructuring. Companies must be able to survive through these cyclical and structural challenges in order for the industry to remain a vibrant part of the economy.

As the size of the industry contracts there will remain concerns about corporate power and the influence of the larger players. Policy makers must ensure that there are checks and balances to ensure that the free market system operates. The *Competition Act* provides guidelines for company behaviour and there is a process in place for formal investigations and charges if warranted.

In addition to competition law there are inherent constraints to the power exerted by companies within the industry. These include industry competition for raw material, the power held by the FFAW/CAW, and the province's role in licensing of fish processing plants.

The number of companies that have been licensed by the province is more than enough to ensure a reasonable degree of competition in most sectors of the industry. In the past, competition has at times been fierce as companies competed for limited supplies of raw material. Normally, competition limits the amount of corporate power that can be exerted by any one company especially in an environment where there is substantial excess capacity. Similarly, it can be anticipated that the potential for the competitive environment to be impacted negatively by alliances sourcing the same raw material will likely hold as well.

The interest based bargaining system being used in the province has worked well over the past four years and helps to ensure that market returns are passed through to both harvesters and processors. This gives harvesters a degree of protection against undue market power being exerted by one or more dominant firms. This model, however, will only function effectively as long as both harvesters and processors are fully committed to the process. The Panel cannot overstate the role that the continuation of this model brings to price transparency in the inshore harvesting and processing sectors.

The Panel, has been told that ad hoc application of processing licence policies and the issuance of licences in the absence of transparent and predictable policy guidelines, creates a high degree of risk to companies and the capital employed. This contributes to mistrust as companies compete for raw material and creates a situation where businesses are forced to make decisions that are short term thereby resulting in companies extracting the costs of capital quicker than may be economically efficient. That is, firms are forced to generate cash flow quicker which can often result in discount selling. Furthermore, with this short term approach quality often suffers as processors operate on a

volume based production system rather than based on the optimization of value and the highest economic return.

If one of these objectives is to maintain strategic or regional processing facilities, then a process is needed to ensure that this objective is met. This implies that government needs to establish a clear framework for the transfer of licences, the reactivation of licences, the issuance of licences, the merging of companies, and the consolidation of plants. When rules are consistently applied, the restricted licensing system currently in place provides for a degree of security for processors while at the same time providing for a healthy degree of competition. For businesses to function properly, it is necessary to have a consistent, predictable and transparent licensing regime.

9. EFFECTIVE FISHERIES POLICY CO-ORDINATION

The management of the province's fishing industry in the post-Confederation period in its broadest context clearly speaks to a compelling need for an effective federal/provincial co-ordination and cooperation framework in which the fisheries policy objectives of both governments can be reconciled and implemented for the benefit of the industry and the economy as a whole. With the exception of a measure of co-operation on fisheries development initiatives in the initial decade or so of Confederation, the fishing industry has languished from crisis to crisis leaving government cooperation to be crisis responsive as was the case with the 1983 Fisheries Restructuring Agreement.

In discharging its jurisdictional responsibilities over fisheries resource management, resource access, and resource allocation, the Federal government has constantly taken an Atlantic-wide policy approach to the Atlantic fishery leaving little willingness to enter into an effective bilateral mechanism with the province that would ensure the harmonization of fisheries management and fisheries development objectives of the federal government and the province respectively. Clearly, the role of the fishery in the economy of Newfoundland and Labrador demands an effective federal/provincial policy coordination framework to provide a greater measure of assurance that the right policy measures will be taken for the right reasons for the benefit of the province's economy and those individuals and communities with a solid link to the fisheries sector. Critical to this consideration, in the Panel's view, is the need for clear, coordinated public policy objectives relative to resource management, resource access, fisheries and fleet sector development, the management of the processing sector quality enhancement, and market development requiring a close partnership with the harvesting and processing sectors.

The Panel is of the firm view that a fragmented and uncoordinated approach by the province and the federal government to the development and implementation of fisheries policy objectives will seriously compromise the industry's ongoing performance and the contribution it can make to the province's economy. In this context the panel shares the concern enunciated in the Royal Commission on Employment and Unemployment (1986) that there is no single Canada-Newfoundland body charged with the responsibility of developing and implementing fisheries policy for Newfoundland and Labrador. Such a coordinated approach is even more compelling given the dramatic impacts of the groundfish collapse on the very fabric of the province's society and economy. Put simply, an Atlantic-wide fisheries policy approach by the federal government will not serve the province's long term interests nor will such an approach effectively address the structural challenges within the Newfoundland and Labrador fishery.

The Harris Review Panel on Northern Cod (1990) and the Maloney Commission of Inquiry into the Alleged Erosion of the Newfoundland Fishery (1990) articulated and advocated joint management as an effective option to achieve federal/provincial policy harmonization. The federally appointed Harris Panel highlighted the race for resource access to the northern cod resource in particular by all

sectors of the industry, including the demands by the non-Newfoundland offshore fleet sector, led to demands for larger and larger volumes of fish. The Harris Panel also expressed a concern that this pressure was compounded by political and social desires to see the industry expand, and this ultimately created an environment driving the maximum exploitation of the resource. Somewhat ironically, eight years after the collapse of the northern cod resource the same pressures, political and otherwise, led to a frenzy for access to the northern shrimp fishery and a federal decision to put the interests of non-Newfoundland and Labrador interests on the same relative plane as those immediately adjacent to the resource and those which had been most severely impacted by the collapse of the northern cod resource. The Harris Panel further suggested that central to the resource crisis issues being experienced some two years before the announcement of the northern cod moratorium was the absence of a co-ordinated approach between federal harvesting sector responsibilities and the provincial responsibilities relative to the processing sector.

In a similar vein this Panel notes that the Maloney Commission of Inquiry into the Alleged Erosion of the Newfoundland Fishery (1990), established by the province, found that federal and provincial policies are often in conflict and recommended a joint federal/provincial authority be established to co-ordinate the policy objectives. It concluded that “such a body would offer management advice to both Ministers (Governments) without changing their respective constitutional responsibilities.”

This Panel also notes, for example, that a principal fisheries policy objective of the Government of Newfoundland and Labrador is to ensure a reasonable balance between regional resource availability and regional processing capacity and to ensure some appropriate regional distribution of processing capacity. This objective is clearly fully consistent with the province’s role in regional economic development and is extremely difficult to achieve in the absence of the effective harmonization of federal vessel licensing and resource allocation policies and the processing sector policies of the province.

In 2000, the Minister of Fisheries and Oceans, in the wake of a 3L offshore shrimp allocation to non-Newfoundland and Labrador based interests, established an Independent Panel on Resource Criteria (IPAC). Its principal mandate is to make recommendations on those criteria that should guide future access to emerging fisheries and for those stocks. Fisheries access issues have given rise to the greatest measure of conflict in the past between the province and the federal government as well as in an inter-provincial context. Any agreement on well-defined resource access principals would therefore help remove friction on access and allocation issues and would create a more effective climate for more effective cooperation between the province and the federal government on the harmonization of fisheries policy.

This Panel suggests that even in the absence of an agreement on resource access criteria the establishment of a Canada/Newfoundland Fisheries Policy Co-Ordination Council is fully consistent with a common federal/provincial view that fisheries policies should be focused on the rebuilding

of a viable and sustainable fishing industry. Clearly, such a Council would bring a more orderly approach to fisheries management and fisheries development and would be an effective framework around which to restore confidence in the ongoing management of all sectors of the industry. Such a co-ordinated approach would also ensure the province's fishery is managed and developed for the maximum benefit of coastal rural communities in Newfoundland and Labrador.

10. CONCLUSIONS AND RECOMMENDATIONS

10.1 Public Policy Challenges

The Panel takes special note of the current reality that the fishery, notwithstanding the severe impact of the groundfish collapse, continues to be seen as the principal economic opportunity for those regions of the province which evolved around either the inshore and/or offshore sectors of the fishing industry. Clearly, the level of resources available at present and which likely will be available over the foreseeable future will not sustain these expectations in all communities.

The Panel is of the firm view, nevertheless, that a well-managed fishing industry, can play a key role in the province's future economy. However, this industry's role can only be sustained if a greater measure of economic diversification throughout the province's rural economy can be achieved. Put simply, the fishery by itself cannot sustain the province's rural economy.

The Panel believes strongly that a fragmented and uncoordinated approach by the province and the federal government to fisheries management and fisheries development will seriously compromise the industry's ongoing performance. From this perspective the harmonization of federal/provincial fisheries policy is critical to achievement of a sustainable fishery.

The Panel notes that Government's strategy for economic development as outlined in its Jobs and Growth Strategy is based around the need to create a positive investment climate. The need to attract new investment and keep the business community competitive is given special focus in this strategy. The strategy also highlighted the need for government to maintain a responsive and balanced regulatory regime. The Panel, from this policy perspective, holds the view that a competitive fishing industry, driven by private sector investment and a responsive and balanced regulatory regime, is critical to the ongoing viability of the fishing industry.

The Panel finds itself obligated to make special reference note of the fact that the industry is characterized by high levels of mistrust within and across the harvesting and processing sectors. This unhealthy level of mistrust, is in part, driven by competition for the limited high value resources that are available, especially crab, and is giving rise to increased acrimony throughout the fishing industry.

The Panel, during the course of its discussions with key industry stakeholders, was struck by the measure of concern expressed over the vulnerability of the industry's dependance on snow crab. From a public policy perspective the challenge always is to balance the objective of building a viable, sustainable and competitive fishing industry with known resource realities. The most prudent policy approach to take in managing the harvesting and processing sectors is to give full recognition to these resource realities, especially when there is considerable scientific uncertainty over species recruitment and biomass levels.

10.2 Industry Performance and Structural Change

The Panel has concluded that a combination of factors, internal and external to the industry, shaped the organizational and corporate structure of the fishing industry over the 1950-2001 period. The Panel has further concluded that the overall viability of the industry over this period was driven largely by changing market forces and changing resource circumstances over which the industry had little control.

It is further evident that overcapacity in the processing sector of the industry, especially in the post-1977 period, hindered the evolution of a viable and self-sustaining processing sector. The Panel notes that the industry continues to be characterized by chronic overcapacity relative to raw material availability and that this overcapacity continues to negatively impact employment duration and income stability within the fish processing sector.

The single most important factors which have impacted the structure of the industry in the post-1992 period were the collapse of the groundfish sector of the industry and the emergence, in the post-1992 period, of a shellfish dominated industry. This shift generated record landed and export values and increased competition and positioning for raw material amongst firms in the industry. This shift also saw a number of relatively new companies together with a number of established companies playing a more dominant role in all sectors of the industry.

The Panel also notes that the strength which the fishing industry can bring to the province's economy will largely be influenced by resource circumstances and the financial strength and balanced entrepreneurial skills of firms participating in the fishery. Clearly, an industry built around marginal and undercapitalized firms will not have the capacity to shape a dynamic and internationally competitive industry.

The Panel is of the view that foreign investment has not played any major role in the structural change that has occurred within the province's fishing industry in recent decades. Over the past several years an Icelandic and a New Zealand firm has each taken a 15 percent ownership position in FPI and several Icelandic/Danish firms have invested with local processing companies in the inshore shrimp industry. Any further foreign investment in the industry will depend largely on emerging resource development opportunities. The Panel believes that foreign investment can play a role in the industry's ongoing development subject to harvesting licence and resource access controls as provided for in the licensing policies of the Department of Fisheries and Oceans.

10.3 Managing the Fish Processing Sector

The successive policies which were directed towards managing the fish processing sector in the post-1977 period gave rise to an overcapitalized industry structure focused primarily around the volume production of lower value fish products. This, together with a limited focus on consolidated

marketing and quality enhancement measures can probably best explain why this province's competitive position in the international marketplace has been compromised over the years.

The Panel has concluded that an effectively managed fish processing sector and fishing industry generally will present a solid opportunity for sustainable economic development over the long term. The Panel also notes that an amended *Fish Inspection Act* can be an effective public policy instrument at shaping the future structure of the fish processing sector including the corporate structure. **Given this consideration the Panel is recommending that:**

- **The Fish Inspection Act should be more appropriately renamed the Fish Processing Licensing and Inspection Act and that the amended Act give greater clarity to the objectives of the Act with respect to the management of the fish processing sector in an economic development and policy context.**

In the absence of a strong public policy commitment to clearly defined objectives for the processing sector there is every probability that a broad range of social and economic objectives will give rise to conflicts and inconsistencies in the ongoing management of the fish processing sector. This in turn will have significant implications for private sector investment. The establishment of a clear set of policy objectives for the processing sector will therefore foster private sector confidence in the regulatory process. **The Panel recommends that the following set of policy objectives guide the ongoing management of the processing sector.**

- **To develop a stable, self-sustaining, internationally competitive processing sector with minimal requirement for public sector support;**
- **To optimize (not maximize) employment generating opportunities;**
- **To ensure healthy competition amongst firms in the processing sector;**
- **To achieve quality enhancement objectives, and the optimum utilization of available fish resources;**
- **To ensure some reasonable balance between regional resource availability and regional processing capacity in a regional economic development context.**

The Panel in its deliberations found widespread support for the establishment of an arm's length entity to guide the management of the fish processing sector. The many challenges related to the fish processing sector, especially those driven by economic development considerations and corporate changes within the industry, will require new approaches to managing this sector.

The Panel is recommending that an arm's length Fish Processing Licencing Board be

established to give consistency, transparency and predictability to the implementation and management of the fish processing licensing framework. This Board would have, as its primary mandate, responsibilities for such matters as:

- **The review and assessment of license consolidation and license transfer requests;**
- **The review and assessment of new processing license proposals including new emerging fisheries;**
- **The review and assessment of proposals that may lead to the reactivation of a fish processing licence/plant;**
- **The review and assessment of proposals that will contribute to the optimization of the industry's output;**
- **The review and amendment of corporate acquisition/merger proposals; and,**
- **Any such matters that the Minister of Fisheries and Aquaculture may deem necessary consistent with well defined public policy objectives for the processing sector and the industry generally.**

The Panel is of the view that the Fish Processing Licensing Board, should make recommendations to the Minister on issues which fall within its mandate. The Board should be a three person Board comprised of knowledgeable professionals who have no direct linkage or association with the fishing industry with professional expertise in areas such as business management, professional accounting and the banking sector. This Board would be given legislative effect through an amendment to the Fish Inspection Act and each member would be appointed for an initial four year term with provisions, however, for the rotation of members to give the Board continuity. The Board would meet as required to review specific issues that falls within its mandate and would call upon the Licensing Directorate within the Department of Fisheries and Aquaculture for administrative support especially in terms of providing background information generally and any information specific to any given proposal/issue under consideration by the Board.

The Panel also notes that there is no well defined policy associated with the license renewal process that requires a corporate commitment to specific policy objectives of the *Fish Inspection Act*. From this perspective the Panel has a strong view that there is a compelling need for greater corporate accountability with both the issuance and renewal of fish processing licenses. The processing license

is an instrument to give effect to public policy and brings with its issuance responsibilities and obligations of the license holder. **The Panel therefore recommends that:**

- **The Fish Inspection Act be amended to specifically state that the Minister, before a license is initially issued or subsequently renewed, may require the applicant to demonstrate a commitment to specific policy objectives inherent in the Act, such as a demonstrated commitment to quality enhancement before any license is issued or renewed.**

The Panel further notes that the core/non-core processing license framework now in place is essentially a species-specific framework in that any given plant whether core or non-core is given authorization to process a range of species within any species limitations that may hold from time to time. In this context the Panel believes that if the optimization of the industry's output within raw material and market realities should continue to be a principal public policy objective for the fishery, with which the Panel agrees, the focus of the licensing framework over time should be increasingly focused on the attainment of this objective.

Therefore, the Panel recommends that:

- **The core/non-core licensing policy framework remain in place but, in full consultation with industry stakeholders, consideration be given to including non-core license holders in any call for proposals for new product development initiatives.**

10.4 Regional Balance

The Panel is of the view that the regional distribution of processing capacity in general is not primarily a function of increased corporate concentration in the industry. Other issues such as regional resource availability and the licensing policy framework have had a greater impact on the overall spatial structure of the industry over time.

The Panel has concluded that the processing licensing policy framework should promote a regional distribution of processing capacity throughout the province that builds on regional strengths and ensures against the concentration of processing capacity in any one region of the province. It is noted that the promotion of a regional distribution of processing capacity has been an explicit policy objective for the fish processing sector for the past twenty years or more and is a key element of the core/non-core processing licensing framework. **The Panel is of the view that this policy approach should be continued and recommends that:**

- **The processing license transfer policy should remain in effect to promote plant capacity consolidation on a regional basis in particular and that, subject to**

regional resource circumstances, adequate safeguards should ensure that any given region's participation in the processing sector is not compromised.

Closely linked to the issue of regional balance is the role that “strategic” plants have played and will continue to play in the fishery and the province’s economy generally. The role of “strategic” plants in anchoring regional economies in the context of regional economic development is also an equally important consideration. **It is the Panel’s view that the achievement of this solid policy objective will require public policy discipline and the panel recommends that:**

- **Government should increasingly co-ordinate its fisheries development policy with its strategic economic development policy to advance the role which “strategic” fish processing plants can play in anchoring regional economic development and the strengthening of regional economies.**

The Panel, in assessing the issue of regional processing capacity has identified the close linkages which exist between regional processing capacity and regional resource availability in both the inshore and offshore sectors of the industry. Decisions of the federal government, for example, relative to resource access can have a significant impact on any given region’s participation in the fishery. **For this reason the Panel recommends that:**

- **The Province seek an assurance from the Government of Canada that its resource allocation and access policies safeguard the historical linkages that have evolved between each regional fishery in Newfoundland and Labrador and those fish stocks which have sustained these regional fisheries and that the same assurance be sought for emerging fisheries.**

10.5 Corporate Concentration

The Panel’s terms of reference were principally directed towards an examination of the extent to which corporate concentration has occurred in the fishery, to identify the driving forces impacting on corporate concentration, and to also identify the implications of corporate concentration for public policy objectives for the fisheries sector. Essentially, this required an examination as to whether or not the degree of corporate concentration in the industry is negatively impacting competition in the industry for raw material, prices that are received by fish harvesters, and the socio-economic implications arising from any degree of corporate concentration such as plant closures.

The Panel has concluded that the collapse of the groundfish sector together with the dominant role played by the shellfish sector in the post-1992 moratoria period led to a significant shift in the corporate dynamics at play in the Newfoundland and Labrador fishing industry. These corporate dynamics saw the role of certain firms with a groundfish dependency decline. This change also saw the industry in the post-1992 moratoria period being dominated, in the main, by firms with a major

involvement in the shellfish sector, particularly snow crab. This change also saw the emergence of a number of alliances in the crab processing sector in particular.

It is also evident that a number of firms have expanded their presence in the industry, primarily through the acquisitions of other plant operations from other firms in the industry. This consideration, together with the limited entry licensing framework, has impacted the corporate structure of the industry. In the case of crab, for example, the top 10 firms in this sector, operating 19 crab plants, account for approximately 80 percent of the industry's total crab production. The remaining 13 firms operating account for the remaining 20 percent of production. The competitive forces at play in the crab industry, for example, are influenced largely by a limited raw material supply. In this context the major preoccupation of firms in the industry, in both individual and collective context, is to safeguard their raw material supply through relationships with individual enterprises in the harvesting sector of the industry.

The Panel is of the view that, all things being equal, there is a sufficient number of firms licensed in the groundfish, shellfish and pelagic sectors of the industry to generate a healthy measure of competition amongst individual firms on both a regional and province-wide basis. The extent to which there is healthy competition throughout the industry remains a topic of considerable debate both inside and outside the processing and harvesting sectors of the industry. The Panel was consistently reminded in its deliberations that the emergence of alliances of interlocking companies in the crab industry in particular in recent years has introduced a new competitive dynamic to the industry. This, many stakeholders believe, has given rise to much of the mistrust which permeates the industry as a whole.

It is the view of key industry stakeholders that further corporate consolidation is likely to occur in the fishing industry over the foreseeable future. This consolidation is likely to occur through mergers and acquisitions within the processing sector and it will be driven principally by the dynamics of the shellfish sector given that the prospects for any significant groundfish recovery are extremely low in the near term. Those firms which are financially sound will likely lead ongoing corporate consolidation within the industry. In the absence of any further growth in shellfish stocks, for example, this could lead to bigger players in an operating environment with fewer and fewer plants.

The linkage between corporate concentration and competition for raw material within the inshore sector has clear implications for fish prices. The Panel holds the view that the interest based/final offer selection price bargaining system now in effect has worked extremely well over the past four years and presents a solid basis for the province to enhance its competitive position in world markets. It also brings a healthy measure of transparency to price negotiations between the inshore harvesting and processing sectors and, for these, reasons **the Panel recommends that:**

- **Inshore harvesters and processors reaffirm their commitment to the interest based/final offer selection price bargaining system now in effect; and,**

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- **Government work closely with harvesters and processors to address any issues that will lead to the further strengthening of this price settlement model.**

The Panel notes that the corporate dynamics at play in the industry involve major linkages with the inshore harvesting sector. For example, processors have played an expanded role in the financing of inshore vessels, particularly those licensed for crab and shrimp. This, the Panel believes, is a matter that is best left to the business decisions of individual vessel owners. **Nevertheless, the Panel believes strongly that government should continue to provide an effective financing program in support of the inshore harvesting sector and recommends that:**

- **The Bank Loan Guarantee Program now in place be continued but that the effectiveness and efficiency of the Program at meeting the needs of the smaller vessel sector, particularly for loans less than \$50,000, be evaluated by a tripartite committee representing government, the banking sector, and the harvesting sector and that the Program's overall visibility be increased.**

The Panel believes that from a public policy perspective it is critically important that the processing sector be managed in a way that encourages and supports private sector investment but also promotes healthy competition amongst individual firms. The Panel also believes that corporate concentration is necessary to the extent that there is a healthy mix of small, medium and larger firms within the industry to safeguard against a monopoly or a monopsony. The Panel further believes that the province's competitive position in the international marketplace can best be met by a flagship company such as FPI with a close symbiotic marketing relationship with other firms in the processing sector. From this perspective the role of a dominant player in the industry is fully compatible with broad public policy objectives.

Government, through its processing licensing mandate can exert considerable control over the degree to which further corporate concentration occurs in the industry. Under the present licensing framework processing licenses cannot be transferred or assigned without the permission of the Minister. To date, however, in the case of acquisitions, mergers and share capital changes, there has been no rigid evaluation process followed and, the license(s) normally follows the new owner. The Panel believes that there is need for a more formal assessment process associated with mergers, acquisitions, and share capital changes if for no other reason that Government then will have a fuller appreciation in advance of any public policy concerns that may arise from any given proposal and consider whatever measures may be deemed appropriate to address specific policy concerns.

Given the above considerations relative to corporate concentration the Panel recommends:

- **That an amended Fish Inspection Act clearly state that a primary objective of the Act is to promote a competitive industry environment consistent with the**

spirit of the Fishing Industry Collective Bargaining Act and the Federal Competition Act;

- **That consideration be given to making a specific linkage in the Act between the revoking or suspension of a fish buyers/processor license and any anti-competitive practices determined to be inconsistent with the Competition Act; and**
- **That the Department of Fisheries and Aquaculture implement a more rigorous review and assessment process for mergers, acquisitions and share capital changes, within the fish processing sector and that companies be required, under an amended Fish Inspection Act to give the Minister of Fisheries and Aquaculture appropriate notice of any proposed merger or acquisition to allow for an adequate evaluation prior to the processing license being assigned to the new owner/operator and prior to the financial transactions associated with any acquisition or merger being concluded.**

The Panel has also been advised that there is no rigid evaluation process associated with the reactivation of a fish processing license for any given fish plant but that there is a requirement for the submission of a business plan. It is the Panel's view that a comprehensive evaluation is critical not only with respect to the specifics of each proposal but how the proposal will impact on broader fisheries policy objectives. Moreover, it is important, in the context of corporate concentration, that the Department of Fisheries and Aquaculture have a full appreciation of the corporate linkages that may be associated with any license renewal or activation request. **The Panel therefore recommends that:**

- **The Department of Fisheries and Aquaculture establish a clear and concise evaluation framework related to the reactivation of fish processing licenses.**

10.6 Fisheries Policy Integration

Decisions taken with respect to every aspect of fisheries management and fisheries development have a pervasive impact throughout all sectors of the Newfoundland and Labrador economy and determine whether communities will decline or thrive. This is best illustrated by the unfortunate legacy associated with the groundfish collapse and the difficult adjustment which continues in many communities throughout the province which were impacted by this collapse. The restoration and rebuilding of groundfish stocks is clearly the most pressing challenge that both governments must address over the foreseeable future and this calls for more effective collaboration between the Government of Newfoundland and Labrador and the Government of Canada. **The Panel is of the view, therefore, that the harmonization of fisheries policy is critical to the future performance of the province's fishing industry and recommends that:**

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- **A Canada/Newfoundland and Labrador Fisheries Policy Co-ordination Council be established to make recommendations to governments on major public policies relative to the harvesting sector, the processing sector, marketing, quality enhancement and fisheries development opportunities and strategies;**
 - **The Council also be mandated to present its views on fisheries science, resource management, resource allocation, and resource access policies specifically as they relate to, and impact on, the Newfoundland and Labrador fishery. The Fisheries Resource Conservation Council, which is an Atlantic-wide body, would continue its present role in making recommendations to the Minister of Fisheries and Oceans on total allowable catches and other fisheries management issues within its mandate;**
 - **The Council have a minimum of seven members, be co-chaired by governments, with two members each from the province and the federal government and three at large jointly appointed members from industry/key stakeholder interest groups;**
 - **The Council would meet at least quarterly with a formal agenda and recommendations would be made to governments and reviewed in a bilateral Ministerial context; and**
 - **The Council, in its early mandate, be charged with developing an effective policy framework for a comprehensive federal/provincial plan to strengthen and sustain the Newfoundland and Labrador fishing industry.**

In summary, the Panel offers a view that changing corporate, market and resource circumstances will continue to impact corporate consolidation in the province's fishing industry. The Panel believes that this adjustment and change should occur within a clear and concise fisheries public policy framework developed in close collaboration with industry stakeholders. This is critical if the inshore harvesting and processing sectors are to successfully adjust to the many challenges which will affect the industry's performance from year to year. To this end, the Panel hopes that a common sense of purpose, based around a stable, self-sustaining and competitive industry, will drive the industry's future performance and sustainability.