

RSNL1990 CHAPTER F-14

FISHERIES RESTRUCTURING ACT

Amended:

2001 cN-3.1 s2

CHAPTER F-14

AN ACT TO RATIFY, CONFIRM AND ADOPT AN AGREEMENT ENTERED INTO BETWEEN THE GOVERNMENT OF THE PROVINCE AND THE GOVERNMENT OF CANADA RESPECTING THE RESTRUCTURING OF THE NEWFOUNDLAND AND LABRADOR FISHERY

Short title

1. This Act may be cited as the *Fisheries Restructuring Act*.

1983 c28 s1

Agreement ratified

2. The Agreement executed and delivered by and between the government of the province and the Government of Canada and set out in the Schedule to this Act is ratified, confirmed and adopted from September 26, 1983 .

1983 c28 s2

Effect of law

3. The Agreement set out in the Schedule to this Act has the full effect of law for all purposes as if expressly enacted in this Act.

1983 c28 s3

Schedule

**AGREEMENT BETWEEN THE GOVERNMENT OF
CANADA AND THE GOVERNMENT OF NEWFOUNDLAND**

AND LABRADOR CONCERNING THE RESTRUCTURING
OF THE NEWFOUNDLAND FISHERY SEPTEMBER 26, 1983

Government's Objectives

The common objectives of both governments in participating in restructuring are:

- (a) 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 ;
- (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 especially in international markets;
- (d) Notwithstanding paragraph (c), the company may acquire assets outside of Newfoundland and Labrador provided that the acquisition of such assets represents a sound commercial business decision and does not disrupt the historical pattern of harvesting and 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 internally organized in a way which leaves open the option of a variety of innovative industry structures for the Newfoundland and Labrador fishery of the future.

1. New Company

It is the intention that a new operating company will be formed from the companies and assets set forth in Schedule A.

2. Corporate Structure

(a) Shareholdings

There would be two companies formed with head offices in Newfoundland -- an operating company incorporated under the laws of Newfoundland and a holding company incorporated under the laws of Canada . The operating company ("the Company") would hold the assets set forth in Schedule A. All the shares of the Company would be held by the holding company. Once restructuring is completed the shares of the holding company would be held in the following manner:

| | <u>Class A Preferred Shares</u> | | <u>Common Shares</u> | <u>Class B Preferred Shares</u> |
|----------------------------|-------------------------------------|------------|--------------------------|-------------------------------------|
| | Series (1) | Series (2) | | |
| Government of Canada | -- | (\$75.3M) | 60% | -- |
| Government of Newfoundland | -- | (\$31.5M) | 25% | -- |
| Bank of Nova Scotia | (\$14.8M) | -- | 12% | \$29.3M |
| Employees* (estimated) | -- | (\$ 4.0M) | 3% | -- |

*Represents an amount to be negotiated for first year of a 'social compact' with the union. It is assumed that additional shares may be issued over the period of the life of the social compact.

The investment by each of the participants as set forth above results from:

- (i) the Government of Canada investing \$75.3 million of cash;
- (ii) the Government of Newfoundland converting out standing loans and equity investment in the existing companies in the amount of \$31.5 million;
- (iii) the Bank of Nova Scotia converting outstanding loans in the existing companies in the amount of \$44.1 million;
- (iv) employees agreeing to enter into an employee deduction scheme to purchase shares.

(b) Redemption of Bank of Nova Scotia Shares

Regarding the purchase by the Government of Canada of the Class A Preferred Shares held by the bank as set forth in clause 6(b) of the letter addressed to the Bank of Nova Scotia by the Task Force on Atlantic Fisheries and dated June 24, 1983 the Government of Canada would give to the Government of Newfoundland a right to purchase, at the same time, up to 50% of such shares from it at the same price the shares were purchased from the Bank.

(c) Newfoundland Guarantees

Regarding the guarantees and Sub-charters set forth in Schedule B which have been provided by the Government of Newfoundland it would be the intention of Governments to obtain releases of such guarantees from the appropriate parties once restructuring has taken place.

(d) Board of Directors

The membership of the Boards of Directors of the Company and the holding company would be the same. Each Board of Directors would consist of 11 members; 5 members to be appointed by the Government of Canada; 3 to be appointed by the Government of Newfoundland; 1 to be appointed by the Bank of Nova Scotia; 1 to be selected by employee shareholders and the Chairman, who will also be the Chief Executive Officer of the Company, to be appointed jointly by both governments. In the event that after three months consultation, the two governments fail to agree on the Chief Executive Officer, the Chief Executive Officer shall be chosen by a panel consisting of one nominee from each government who shall agree on a third person to chair the panel.

Public Servants would not be eligible to sit on the Board of Directors.

(e) Significant Corporate Decisions that could have a Negative Social Impact

Plant closures, plant mergers, mechanization or trawler transfers resulting in a significant permanent change in employment in excess of 100 people, or one-half the work force, as the case may be, associated with any single plant location would be subject to the approval of both governments.

In the event that one of the governments opposes the action contemplated, then the Government opposing that action shall assume the additional costs associated with the continuation of the existing level of operations, such costs, including the loss of income to the Company, to be determined by reference to a firm of Chartered Accountants, agreed to by both Governments.

3. Relations Between Government Shareholders and The Company

(a) Business Plan

Prior to the business plan being presented to the Board for approval, management would consult with the Governments and the Governments with each other, regarding the contents of the plan. Adoption of the business plan would require approval of at least seven members of the Board of Directors.

(b) Consultation

Management would consult with Governments on a quarterly basis regarding the companies' activities.

(c) Authorized and Issued Capital

There would be no change in the authorized or issued capital without the consent of both Governments. Where additional shares are issued, those shares that are taken up by Governments would be taken up by both Governments on a pro rata basis.

(d) No Material Change

The Company cannot engage in a business other than the fishery, without the consent of both Governments and the Bank of Nova Scotia.

(e) Dividends

Except as specified in the letter of understanding with The Bank of Nova Scotia dated June 24, 1983, there would be no dividends paid on the issued and outstanding shares of the Company without the approval of both Governments and The Bank of Nova Scotia.

(f) By-Laws

The by-laws of the Company would not be altered without the approval of both Governments and The Bank of Nova Scotia.

(g) Wind-up

The Company would not be wound up without the approval of both Governments and The Bank of Nova Scotia.

4. Divestiture of Shares or Assets

It would be the objective of both Governments to return the business either in whole or in part to private investors in the shortest possible time.

In the event that the Board of Directors of the Company approve the sale of plants or a significant portion of the trawler fleet belonging to the company, and such sale is unacceptable

to either Government, the Government opposing would have an option to purchase the assets referred to above at the same price and on the same terms.

In the event that the Directors of the holding company approve the sale of the shares in the operating company, each Government and the Bank shall have the right to veto such sale provided, however, that a Government or the Bank which approve such sale shall have the right to cause the vetoing shareholder to purchase their pro-rata interest in such shares and to have their holding company shares purchased for cancellation at a price equal to the sale price.

Without the unanimous consent of the two Governments and the Bank, no shares of the holding company shall be sold to third parties.

5. Corporate Organization

The operating company would be organized into three or more divisions consisting of a common services division including marketing, and two or more processing/harvesting divisions each with portions of the Company's enterprise allocation, as decided by management from time to time, and would have separate accounts. Each division would be run by a vice-president reporting to the Chief Executive Officer. The processing/harvesting divisions would be established so as to facilitate a possible sale of groups of plants and trawlers in the future. In the event of a sale the purchaser of the group of assets shall have the right to purchase services from the common services division subject to mutually agreeable terms and conditions.

6. Fishing Industry Structural Study

The two Governments agree to fund a study on a 70/30 basis (federal/provincial) to examine various organizational alternatives for the harvesting, processing and marketing sectors of the Newfoundland fishing industry.

7. Marketing

Notwithstanding Government objective (d), the marketing arm of the operating company would have as its first priority the marketing of the Company's own products; its second priority would be to act as a vehicle through which independent fish companies in Newfoundland, meeting certain standards of product quality and other commercial requirements, may market their product upon mutually agreeable terms and conditions; and as its third priority the Company could also market for non-Newfoundland based companies if to do so constituted a sound commercial business decision for the Company. The

Company would be charged with the responsibility of developing marketing strategies, techniques and standards on a non-discriminatory basis.

In order to ensure the fair and effective working of the marketing system for independent processors a Newfoundland Market Planning and Co-ordination Council will be established by the Company. At each Council meeting there shall be a report on the

marketing activity of the Company and an opportunity given to the independent processors to express their views on marketing strategies and related issues. The Council shall meet quarterly.

The Council would have as its members the following:

- Representatives of the independent processors;
- 3 Representatives from the Board of Directors of the company including at least one provincial nominee;
- 1 Representative from the union;
- 2 Representatives from the management of the Company.

The Minutes of Council meetings will be circulated to members of the Board of Directors of the Company.

8. Fish for Resource Short Plants

Whenever part of the Company's trawler fleet is not fully utilized and is otherwise available such trawlers will be utilized for the harvesting and supply of fish at an agreed upon price, which shall be equivalent to the Company's harvesting costs, as determined by the management of the Company, to independently owned plants under the Resource Short Plant Program. If the owner of an independent plant disputes those costs, the Company shall ask an independent firm of chartered accountants to review management's determination of the costs and make a report to the Company's Board of Directors. This report shall be made available to the Governments on a confidential basis. No more than one report may be required each year.

9. Social Compact

The two Governments would jointly seek a 'social compact' with the Newfoundland Fishermen, Food & Allied Worker's Union recognizing the need for employees to contribute to the financial strength, stability and productivity of the Company. Provision would be made for: (a) equity participation by employees through cash contributions from payroll deductions; and (b) employee representation on the Board of Directors.

10. Resource Utilization Task Force

The two Governments would establish a Resource Utilization Task Force composed of equal representation. The first priority of the Task Force would be to review resource availability to fish plants on the Burin Peninsula and to report within one year.

The mandate of the Task Force would be to review and report upon the following:

- (a) the displacement of foreign fishing effort;
- (b) the harvesting of underutilized species and the development of markets for these species; and

(c)measures for the utilization of the resource in a manner which would promote local employment and would enhance the long term economic viability of the fishing industry.

11. Plant Utilization

(a)Recognizing the social importance of the plants at Harbour Breton, Gaultois, Ramea and St. Anthony due to the lack of alternative employment opportunity in the areas the Company would be obligated to keep the plants at Harbour Breton, Gaultois, Ramea and St. Anthony open for the foreseeable future.

(b)The company will reopen the Burin plant as a secondary processing operation and trawler refit centre. The existing secondary processing operation would be upgraded and expanded so as to meet the Company's further processing requirements for the Canadian markets. Capital improvements in this regard would begin immediately.

(c)Following the settlement of the present labour dispute the plant at Grand Bank would be reopened as a primary processing facility for at least 18 months during which time its future would be assessed by the Company in light of the work of the Resource Utilization Task Force and other factors pertaining to the operation of the Company.

(d)The plant at St. Lawrence would reopen as an inshore feeder plant and would process overflow offshore landings if available and appropriate.

(e)The plant at Fermeuse would operate as an inshore plant and would be eligible to receive fish under the 'Resource Short Plant Program'.

(f)The future of the plants at Hermitage and Belleoram will be assessed in light of their impact on inshore fish supply to Harbour Breton and Gaultois.

(g)Subject to the restructuring of the Nova Scotia fishing industry the obligation of H.B. Nickerson & Sons Limited to supply Triton with 6 million pounds annually of off shore northern cod will be honoured.

12. Factory Trawlers

Factory trawlers will not be permitted to harvest northern cod.

13. Plant Construction

The existing processing licence freeze will be continued.

14. Trawler Replacement

Both Governments shall employ every effort to ensure that a major share of the Atlantic trawler replacement program shall be undertaken at the Marystown shipyard.

15. Northern Fisheries Development Corporation

(a) The two Governments will work together to establish a Northern Fisheries Development Corporation (NFDC), and would consult regarding its scope, mandate, ownership and area of operation.

(b) NFDC could be created to include the plant at St. Anthony and those plants on the Labrador coast which the private sector is not prepared to operate including several now owned and operated by the Government of Newfoundland.

(c) NFDC would not operate as a monopoly; any plant now in the private sector would be free to remain outside the NFDC.

(d) A supply of offshore northern shrimp is important to the economic viability of NFDC and thus means shall be sought to provide such supply.

16. Burin Peninsula Development Fund

The two Governments will establish jointly (on a 70/30 basis -Federal Provincial) a multi-million dollar 'Burin Peninsula Development Fund' to diversify the economic base and to provide new employment opportunities for the people in the area.

17. Fish Allocations

It is the understanding of the two Governments that the inclusion of the Riverport Scallop Operation in the Newfoundland based fishing company shall not be used as a factor in establishing the allocation of fish stocks adjacent to the Province of Newfoundland and Labrador .

It is also the understanding of the two Governments that neither the signing of this Agreement, nor any action of the new Company pursuant to this Agreement will be used as a factor in determining the allocation of fish stocks adjacent to the Province of Newfoundland and Labrador .

In summary, this Agreement shall not have any impact on fish stock allocation decisions.

IN WITNESS WHEREOF the Honourable A. Brian Peckford, P.C., M.H.A., Premier of Newfoundland and Labrador and Minister for Intergovernmental Affairs, and the Honourable James Morgan, M.H.A., Minister of Fisheries of Newfoundland and Labrador, have hereunto set their hands on behalf of Newfoundland, and the Honourable Pierre De Bane, P.C., M.P., Minister of Fisheries and Oceans of Canada has hereunto set his hand on behalf of Canada on the 26th day of September, 1983.

SIGNED on behalf of Newfoundland
by the Honourable A. Brian Peckford,
P.C., M.H.A., Premier of New-
foundland and Labrador and Minister
for Intergovernmental Affairs, and the

Honourable James Morgan, M.H.A.,
Minister of Fisheries, in the presence
of:

Sgd. A. Brian Peckford
Premier of Newfoundland
and Labrador and Minister
for Intergovernmental Affairs

Sgd. David G. Norris

Sgd. William Matthews

Sgd. James Morgan
Minister of Fisheries of
Newfoundland and Labrador

SIGNED on behalf of Canada by the
Honourable Pierre De Bane, P.C.,
M.P., Minister of Fisheries and
Oceans of Canada, in the presence of:

Sgd. Michael J. Kirby

Sgd. Pierre De Bane
Minister of Fisheries and

Oceans of Canada

Schedule A

Fishing Companies and Plants*

Fishery Products Limited North Atlantic Fisheries Limited

| | |
|----------------|---------------------|
| Catalina | Charleston |
| Twillingate | Dildo |
| Trepassey | Black Tickle** |
| Marystown** | Williams Harbour ** |
| Burin | Bridgeport ** |
| St. Lawrence | Port Albert** |
| Harbour Breton | Woody Point ** |
| Port au Choix | Rocky Harbour** |
| St. Anthony | |

The Lake Group Limited Triton Seafoods Limited

| | |
|------------|------------------------------------|
| Bide Arm | Triton |
| Englee | |
| Bonavista | <u>Great Harbour Deep Seafoods</u> |
| | <u>Ltd.</u> |
| Fermeuse | Great Harbour Deep |
| Grand Bank | |
| Fortune | <u>Riverport Scallop Fleet***</u> |
| Gaultois | |

John Penny & Sons

Limited

Ramea

T.J. Hardy Ltd.

Port aux Basques
Rose Blanche
Cow Head
Anchor Point**
Flowers Cove**

*This schedule is deemed to include all fishing vessels owned or leased by the companies.

**Plants leased from the Government of Newfoundland.

***Subject to agreement being reached on the restructuring of the Nova Scotia fishing industry.

Schedule B

GUARANTEES AND SUB-CHARTER S

| <u>Guarantor Lessor</u> | <u>Company</u> | <u>Financial Arrangement</u> | <u>Asset</u> | <u>Balance Outstanding (31-8-83)</u> |
|-----------------------------|---|----------------------------------|---------------------------------------|---|
| NIDC | Fishery Products Limited | Sub-Lease | 5 Vessels | \$5,070,244 |
| Province | Fishery Products Limited | Guarantee (Roy Marine) | Port-aux Choix Plant 3 Trawlers | 1,728,000 |
| Province | Fishery Products Limited | Guarantee (CIBC) | Hr. Breton – 3 Trawlers | 2,033,000 |
| Province | John Penny & Sons Limited | Guarantee (BNS) | Ramea Plant (2 nd) | 3,047,267 |
| Province | North Atlantic Fisheries Ltd. | Guarantee (BNS) | NAFL Plants (2 nd) | 1,000,000 |
| Province | Triton Seafoods Limited | Guarantee (Royal B) | Triton Plant | 1,000,000 |
| Province | Great Harbour Deep Seafoods Limited | Guarantee (BMO) | Floating | 50,000 |
| | | | | \$13,928,511 |