

INTRODUCTION:

The Standing Fish Price-Setting Panel, hereafter referred to as "the Panel", was established under the Fishing Industry Collective Bargaining Act, hereafter referred to as "the Act". The duties of the Panel are clearly defined in Section 19.2, they are:

- (a) to facilitate access by parties to collective bargaining to market information in relation to the sale of fish;
- (b) to establish criteria that are not inconsistent with this Act relating to collective bargaining under this Act;
- (c) to provide assistance to parties engaged in collective bargaining under this Act;
- (d) to set prices and conditions of sale for a fish species where parties have engaged in collective bargaining and have been unable to agree or where parties have refused to engage in collective bargaining;
- (e) to review and report on matters related to the price and conditions of sale of a fish species that may be referred to it by the minister responsible for fisheries and aquaculture; and
- (f) to make recommendations on matters falling within its mandate to the minister responsible for fisheries and aquaculture and the minister responsible for fisheries in the Government of Canada.

The Act also provides prescriptive time limits to ensure collective agreements are in place and prices and conditions of sale established in relation to the normally scheduled opening dates of a fishery. Panel members are acutely aware of the enormous responsibility of the Panel to aid parties involved in collective bargaining under the Act by first assisting the parties in arriving at a timely settlement of prices for a species of fish and further to set prices and conditions of sale, in the absence of an agreement, which are binding on all harvesters and processors. In the exercise of its duties the Panel will strive to be a positive force in assisting the parties engaged in collective bargaining to meet the requirements of the legislation.

The Panel was constituted and held its first meeting on March 20. Given the time constraints related to the normal opening dates for shrimp and crab fisheries, during the week of March 20th the Panel conferred with the representatives of the principal stakeholders including the: Department of Fisheries and Aquaculture; Department of Fisheries and Oceans; Labour Relations Agency; Fish, Food & Allied Workers; Association of Seafood Producers Inc. and Seafood Producers Association of Newfoundland and Labrador Inc. Mr. Herb Ebsary, Senior Mediator with the Labour Relations Agency, was assigned to the Panel to facilitate in collective bargaining and provide administrative support to the Panel. The results in terms of process have been remarkable due in no small part to the cooperation received by the Panel from all the stakeholders.

SNOW CRAB:

Snow Crab is the second species for which prices have to be determined and therefore the subject matter of the Panel's second report. Notice to bargain having been served, the Panel was advised on March 24, 2006, that the Fish, Food and Allied Workers and the Association of Seafood Producers Inc. would commence negotiations on March 30th, 2006. It was also confirmed that in the absence of a collective agreement, matters in dispute would be referred to the Panel on April 3, 2006. The Panel and the parties to negotiations further had mutually agreed that they would be proceeding in the collective bargaining process under Section 19:11 of the Act with a decision to be rendered by the Panel based on the flexibility discussed between the parties and the Panel on a season opening date.

On April 3rd, the Panel was advised that the parties had reached agreement on all points in a collective agreement with respect to crab with the exception of price. The parties having earlier exchanged positions, the Panel convened the hearing at 2:00 p.m. Written submissions were tabled by the parties (copies of which are attached to this report) supported by oral presentations and rebuttal of the other submission. The remainder of this report relates to the decision of the Panel in accordance with Section 19 of the Act.

BACKGROUND - SNOW CRAB FISHERY – 2006:

For more than a decade the most important segment of the inshore fishery has been the snow crab fishery. While markets and inshore prices have been volatile it has provided the best returns for participating harvesters and processors.

Over the past two years there has been a precipitous drop in market prices with corresponding declines in the prices paid to harvesters for raw material. From \$2.47 a lb at the start of the 2004 season prices to harvesters declined to an average price of \$1.40 a lb in 2005. Within a two year period the total return to harvesters and processors has declined by approximately \$200,000,000 dollars. This has resulted from a combination of price declines in the market place, reduced quotas and the impact of the higher Canadian dollar on exchange rates, especially in the United States market.

While there are other well known factors that impact the positions of harvesters and processors, from the perspective of the Panel and the parties involved in setting opening prices in 2006, the focus is on market prices.

Since 1998 harvesters and processors have relied on Mr. John Sackton of Seafood.Com to provide the market information on which they rely to set opening prices and the provision of bi-weekly price reports on which price adjustments to harvesters are made by an agreed "price to market" formula.

In setting the opening price for 2006 the parties and, through their submissions, the Panel have the benefit of the Sackton Market Report dated the 7th day of March, and an Update dated the 31st day of March, 2006, hereafter referred to as the ("market

report"). The market report provides a detailed and exhaustive review of the crab market in the United States, including the competition from other sources such as Alaskan King and Snow Crab. The content of the market report is not in dispute. The differences between the parties arise in their interpretation or application of the conclusions in the report with respect to market prices and the corresponding appropriate price for raw material to open the crab fishery.

It is extremely important to note that the parties to collective bargaining on crab have for some time applied a mutually agreed "price to market" formula to determine the price of crab based on bi-weekly reports of actual market prices provided by Mr. Sackton. In 2006 the first bi-weekly report will be issued on April 22. Effective April 23 the price paid for crab will be determined by the formula. If the price adjustment is higher than the opening price the harvesters will receive a retroactive payment on landings from the start of the fishery. If the price adjustment is lower than the opening price, the new price applies as of April 23, 2006. Each successive bi-weekly adjustment in price thereafter is a result of the application of the formula.

From the perspective of the Panel, the opening price which will now be determined on the basis of Final Offer Selection in accordance with Section 19:11 of the Act will only be in effect for a fishery of limited duration. During that period a relatively small percentage of the quota will be landed.

MARKET REPORT 2006:

As the Panel has previously stated setting the opening price for crab in 2006 for the parties and the Panel, is confined to the assessment of the market report. The market report for 2006 provides a range for Canadian snow crab prices between \$2.75 and \$3.00. This recommendation is based on the fact that we are currently in a market trough, and it is essential to provide stability of supply in that price range to induce the market to once again promote snow crab and rebuild its position in the market. The increased consumption and demand should result in increasing market share and higher prices going forward. That is the essence of the conclusion of the market consultant who also states that there is significant risk if the prices for product are not in line with market expectations.

There is, of course, an alternative view that the opening price for the inshore fishery in Newfoundland and Labrador can impact the market in terms of the buyer's perception of what they will have to pay. If true, it could act as a depressant to an upward movement of market prices.

CONSIDERATIONS:

While recognizing some merit on both sides of the argument the Panel is compelled to note that the market consultant has been retained for many years on the basis of his expertise in analyzing the market and providing advice which has been relied upon by industry participants. At this critical time in the industry, which must turn a

corner in the market place, one would have to be very cautious in second guessing the opinion of the consultant. The market report clearly warns of a risk in having the opening price set too high.


What is also clear to the Panel is that should prices improve in the market place the improvement will be reflected in the sales reports. Therefore, on the first price adjustment date, April 22, should market prices improve harvesters will benefit retroactively to the opening date due to the "price to market" formula.

DECISION:


Under the circumstances described, where the facts related to the determination of an opening price are basically agreed and, in the absence of some intervening factor, the Panel is perplexed as to why the parties were unable to reach an agreement on price on their own. The Panel is also compelled to comment that had it been able to engage with the parties directly in assisting in a settlement, that exercise would most likely have resulted in an agreement on the opening price. As matters now stand the Panel is left with no alternative and must choose one of the two submissions presented. Having reviewed both submissions and heard the parties in support of their respective positions the Panel accepts the position presented by the Association of Seafood Producers.

Accordingly, it is the decision of the Panel that the opening price for snow crab for 2006 is \$1.05 lb which price remains in effect until 12:00 midnight, April 22, 2006. This price together with the agreements arrived at between ASP and the FFAW with respect to crab constitute a collective agreement between the parties for the conduct of the 2006 snow crab fishery. By virtue of the Act the opening price and subsequent price adjustments as a result of the "price to market" formula will be binding on all fish harvesters and processors in the province excluding the Labrador Inuit Land Claims area.

St. John's, April 5, 2006.



JOSEPH O'NEILL
Chair



BILL WELLS



MAX SHORT