

## **LUMPFISH (ROE) 2006**

Pursuant to Section 19.8 of the *Fishing Industry Collective Bargaining Act* ("the Act"), by Notice dated the 19<sup>th</sup> day of April, 2006, the Panel advised all buyers and processors of the species lumpfish roe that the 28<sup>th</sup> day of April, was the date set by the Panel by which time collective(s) agreements must be in effect and be binding on all processors that process that species. The Notice was sent to the Fish, Food and Allied Workers (FFAW), and all licensed processors and buyers of lumpfish (roe) as determined by the Department of Fisheries and Aquaculture. The Notice further stated that in the absence of collective agreement(s), binding on all processors a hearing would take place on the 4<sup>th</sup> day of May, 2006, at the Battery Hotel in St. John's.

The parties were further advised by the Panel, by letter dated the 27<sup>th</sup> day of April, 2006, that, based on information provided by the Department of Fisheries and Aquaculture, the Association of Seafood Producers (ASP) represents processors that process the majority percentage of the fish species lumpfish (roe). The Panel also advised that should the hearings proceed with respect to lumpfish (roe) on Thursday May 4<sup>th</sup>, 2006 the parties before the Panel will be the FFAW and ASP, and that no other submissions would be accepted by the Panel. Accordingly, the provisions of Section 19.11 of the Act were to apply. Section 19.11(1) provides that the decision of the Panel shall be in accordance with one of the positions submitted to the Panel. In other words the Panel's decision is to be made on the basis of final offer selection.

On the 4<sup>th</sup> day of May, the Panel was advised that the parties to collective bargaining had reached agreement on all points in a collective agreement with respect to lumpfish (roe) with the exception of price. The Panel convened the hearing on the species lumpfish (roe) at 7:00 p.m. at the Riverhead Room of the Battery Hotel in St. John's. The parties exchanged their Final Offer Submissions to the Panel approximately one hour prior to the commencement of the hearing. The written submissions tabled by the parties (copies of which are attached to this Report) were supported by oral representations in main argument and rebuttal.

### **BACKGROUND: LUMPFISH (roe) FISHERY - 2006:**

The parties are essentially in agreement on all of the pertinent issues related to the production and sale of lumpfish (roe). Their submissions and attachments provide a wealth of information with respect to this industry. The Panel also had the benefit of information on markets and sales from the Marketing Branch of the Department of Fisheries and Aquaculture.

The salient points may be summarized as follows:

- Virtually all the lumpfish (roe) is landed in Canada, Iceland, Norway, Denmark and Greenland;
- All lump (roe) production is sold in the same markets and there is no distinction between producers;
- The annual demand for the roe is approximately 30-32,000 barrels;
- The demand, or consumption is relatively constant thus the fluctuations in prices paid to harvesters and producers is most influenced by supply.

Given the stable demand and consumption pattern, prices paid to producers and harvesters are essentially determined by the quantity of roe produced each season. An oversupply, or a perceived oversupply, of product will have a dampening effect on prices which as the statistics show can be quite dramatic.

The significant decline in prices for harvesters and producers over the past two years begs the question as to whether or not supply and demand will be in equilibrium following the 2006 production season. It is this issue that is the basis for the inability of the parties to come to terms on the minimum price for 2006.

Traditionally, harvesters and processors in the province agree on an opening price to be paid to harvesters. This price may be adjusted upward, never downward, dependant on final prices received by processors in the market, in accordance with the formulae in the collective agreement. This system has worked reasonably well and in four of the past five years the harvesters have benefited from, at times, substantial payments resulting from the application of the formulae. A market oversupply as a result of increased production in 2004 and a continuing overhang have resulted in sharply reduced prices to producers and harvesters in all the producing countries. In 2005 the agreed opening price was not increased and the processors have argued that in fact the opening price was in excess of the market return.

At the close of the Hearing both parties requested that the Panel defer its decision until the 12<sup>th</sup> of May, to permit certain meetings in Brussels to take place prior to the decision being made. The Panel was advised by the parties on the morning of May 12, that they had made no further progress in arriving at an agreement on price and that the Panel should decide the issue on the basis of the submissions received.

### **DECISION:**

There are a number of key points that have influenced the Panel in arriving at its decision. First of all, the facts as presented clearly indicate that the market for 2006 is still in decline from 2005. The positions of both parties reflect this fact. Whether or not prices have bottomed out and will improve going forward has yet to be determined. Secondly, the price to harvesters in this province is a minimum price. Should the market

prices deteriorate they are protected by the fact it is a minimum price. Should the market improve they will gain the benefit as agreed by the application of the formulae.

The FFAW position on current actual market prices is not supported by the facts available to the Panel. If anything, it overstates current prices substantially, up to \$100.00 CDN a barrel. On the other hand, the position of ASP on current sales may understate the actual prices; however, they are much closer to the mark. The Panel is compelled to choose the position that best reflects the current market conditions and price. The information supplied by the Department of Fisheries and Aquaculture confirms that sales to date are more in line with the ASP proposal.

It is the decision of the Panel that the minimum price for the species lumpfish (roe) for 2006 will be 90 cents per pound to harvesters, based on a reference price of \$600 CDN, or 430 E. This minimum price and other matters agreed upon between FFAW and ASP will constitute the collective agreement with respect to the species lumpfish (roe) for 2006. By virtue of the Act this price and the collective agreement between FFAW and ASP will be binding on all fish harvesters and processors of lumpfish (roe) within the province excluding the Labrador Inuit Land Claims area.

Due to the deferment of the Panel's decision at the request of the parties, and to ensure the lumpfish (roe) fishery could proceed on a timely basis the decision of the Panel was communicated to the parties and other processors on the afternoon of May 12, prior to the completion of this Report.


## **CONCLUSION:**

The Panel must once again express a concern with respect to the application of the Act and the position of the parties in this hearing in relation to Final Offer Selection as prescribed, in particular, under Section 19.11(1) of the Act. The primary purpose of Final Offer Selection is to eliminate extreme positions by either party involved and compel them to come within the range of a reasonable settlement as dictated by the circumstances. The Panel has previously remarked on the gap between ASP and FFAW in the submissions made in support of shrimp and crab prices. An even more obvious gap has been presented in the 30 cent differential on minimum price for lumpfish (roe). In each of the three species referred to the Panel by the parties under Final Offer Selection the Panel is of the view that a negotiated settlement should have been achievable or, at the least if not achievable, the gap between the parties should have more closely approximated a reasonable settlement. In the view of the Panel a reasonable range of settlement does not imply splitting the difference between two positions.

As arbitrators, mediators and academics have pointed out, Final Offer Selection, as a process to aid in the settlement of disputes, has its limitations and can only be effective to close a gap which is within the range of a rational or reasonable settlement of the issues in dispute. If not, it can result in extremely negative consequences for one or both the parties involved.

The intent of the Act in this case and the fundamental concern of the Panel is to ensure that a timely fishery actually takes place for a particular species. It is therefore a real concern that the settlement of the issues in dispute between the parties, under the provisions of the Act, ensures a timely conduct of a fishery. Otherwise, all participants in the industry are at risk notwithstanding the process, or the role, that Final Offer Selection may play in achieving a settlement.

St. John's, May 17, 2006.

  
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Chair  
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