

## **Inshore Shrimp Fishery – Spring 2009**

### **Non Price Issues**

The Standing Fish Price Setting Panel, hereinafter referred to as “the Panel” issued its Schedule of Hearings for 2009 on February 13<sup>th</sup>, 2009. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*” hereinafter referred to as “the Act”, the Panel set Friday, March 20<sup>th</sup>, 2009, as the date by which collective agreement(s) binding on all processors in the province that process shrimp must be in effect.

The Panel also noted, at that time, that it had been advised by the Department of Fisheries and Aquaculture that the Association of Seafood Producers, hereinafter referred to as “ASP” represented processors that process the majority percentage of the species shrimp. Accordingly, under Section 19(11) of the Act, should a hearing be required for shrimp, the parties appearing before the Panel would be the Fish, Food and Allied Workers, hereinafter referred to as “FFAW”, and ASP. Section 19.11(1) of the Act and regulations made pursuant thereto required that the decision of the Panel must be in accordance with one of the positions on price and conditions of sale submitted to the Panel by the parties at the hearing. The Panel further advised that no other submissions would be accepted by the Panel and, should other representatives of this species wish to attend the hearing, concurrence from both parties to the collective bargaining must be obtained.

On February 4<sup>th</sup>, 2009, the FFAW sent a letter to ASP headed: “Notice of Intent to Negotiate” (copy attached). With respect to the species Shrimp it was proposed that non-price issues would be dealt with on February 26-27, 2009. It also proposed that price would be dealt with on March 18-20, 2009. This formal letter of intent to negotiate followed an e-mail from the FFAW to ASP, dated the 3<sup>rd</sup> of February, 2009, referring specifically to shrimp and crab and proposing dates for price and non-price negotiations. In the event of failure to reach an agreement on non-price issues for shrimp, March 2, 2009 was the date proposed for arbitration.

The Panel met with the parties on the 11<sup>th</sup> of February to review schedules for negotiations for the various species in which they would be involved, and the dates for potential hearings on non-price and price issues for shrimp and crab, if required. The Panel was aware that the FFAW intended to deal with the issue of broken shrimp as one of the matters for negotiations of non-price issues in the renewal of the 2009 Shrimp agreement. The Panel was copied on a December 9, 2008 letter from the FFAW to ASP, (copy attached).

The parties met on February 26 and 27, 2009, in the presence of the facilitator acting on behalf of the Panel. Subsequently, the Panel was advised that the issue with respect to broken shrimp remained outstanding and would be submitted to the Panel on March 2, 2009.

## **PRELIMINARY MATTER**

The Panel convened its hearing on non-price issues related to shrimp at 2:00pm at the Battery Hotel in St. John's. At the outset of the hearing it was obvious that the parties had a different view on the process to be followed and the section of the Act that applied to the proceedings. The FFAW was of the view that the issue was proceeding under Section 19.8(4) whereas ASP was of the view that the hearing was proceeding pursuant to Section 19.11(1). Under the provisions of that section, and the applicable regulations, the Panel must chose one of the positions submitted, and is precluded from arriving at its own decision based on the submissions of the parties. In other words the process to be followed was final offer selection (FOS).

It was clear to the Panel and the parties that there had been a genuine misunderstanding between them. It was agreed that the issue of process would be dealt with as a preliminary point, to be resolved by the Panel before proceeding on the merits of the case. The Panel heard the arguments of the FFAW and ASP on which section of the Act should properly apply in this instance. Following the presentations of the parties the Panel adjourned the hearing to consider its decision.

Prior to the Panel issuing its decision on the preliminary point, the parties advised they had agreed to proceed with the hearing on the basis of final offer selection. The parties, having exchanged their written submissions earlier (copies attached), the Panel reconvened the hearing for shrimp non-price issues at the Battery Hotel at 11:00am on March 05, 2009. The written submissions of the parties were supported by oral representation in main argument and rebuttal.

With respect to process, the FFAW submits it is proceeding on a "without prejudice" basis as to what is the appropriate dispute settlement mechanism under Section 19.8(4). It was further stated that they wanted to move the matter forward and facilitate the process. ASP stated there was no agreement between the parties with respect to a "without prejudice" position and the matter, in any event, was to be settled on the basis of final offer selection of one of the two positions. Given the agreement of the parties on the process to be followed by the Panel with respect to the settlement of the issue in dispute, the Panel is of the view that no further comment is required.

## **BROKEN SHRIMP**

The issue in dispute with respect to broken shrimp first arose between the parties in 2006. Grievances were filed by FFAW members relating to deductions from landed weights for broken shrimp. The FFAW and member harvesters claimed that the Collective Agreement did not permit or provide for the deduction of broken shrimp and/or shrimp were being improperly graded and harvesters should be paid for the landings without deduction for broken shrimp. The facts are clear that numbers of grievances were filed and the dispute remained unresolved until two grievances were taken to arbitration as a test case to provide a resolution for all similar grievances. The arbitrator issued his award on October 8, 2008. The Award is included in the submission of ASP.

In making his Award, the Arbitrator carried out an exhaustive review of the collective agreement and ancillary documents in force at that time. The hearing took place over six days and both the FFAW and ASP participated in the proceedings. The end result was that the arbitrator found: "...that processors are authorized by the Collective Agreement to deduct the weight of broken shrimp from settlements paid to fishers". The grievances were denied.

The collective agreements for shrimp in 2007 and 2008 did not have any change to the language from the 2006 collective agreement which would have the effect of modifying or changing the result of the arbitrator's decision. The FFAW says they could not get any resolution in discussions with ASP or in collective bargaining negotiations in 2007. The arbitrator references an FFAW proposal in the 2007 negotiations at p.23 of his report, proposing a new definition for broken shrimp. There is nothing to indicate any other proposal related to this matter. The FFAW expected to have the issue resolved through arbitration; however, that process was not concluded until the receipt of the award in October 2008, following the completion of the fishing season. Having lost in arbitration, the FFAW is now proposing a change to become effective in the 2009 collective agreement which would resolve the issue of broken shrimp from their point of view.

ASP maintained that processors had the right to deduct the weight of broken shrimp from the landed weight under the previous collective agreements, and in fact that has been the practice since 1998. ASP's position is to retain that right as defined under the collective agreement and, in support of its' position, referred to the extensive practices carried out over the years as detailed in the arbitrator's report. ASP and its member processors, together with FFAW and its member harvesters have collaborated and agreed on extensive procedures and practices to ensure the quality of shrimp is maintained. The FFAW, as a participant, agreed to the language with respect to grading, established the forms and participated in the selection of the independent grading companies. Any problems with the grading protocol are subject to an agreed procedure set out in the collective agreement. The FFAW submission is proposing to eliminate any deduction for broken shrimp which, in ASP's view, would be the result if the clause proposed is incorporated in the collective agreement. ASP further stated the FFAW confirmed that would be the result during their discussions.

In arriving at a decision the Panel must determine what remedy is being sought by the FFAW in its submission.

Page 1 of the FFAW submission states:

*"The issue of broken shrimp has been a very contentious one for several years. We have repeatedly sought a negotiated resolution of the matter, but without success."*

The FFAW define the issue in dispute in Section 4 at p.4 of their submission as:

*"Fundamentally, this dispute centers on whether harvesters should be subject to deduction from their gross weight for reasons other than those negotiated."*

At p.5, the FFAW, in their submission, state:

*"We accept that broken shrimp can be a negotiated basis for weighback, if the breakage is sufficient to adversely impact the value of the shipment. We do not accept that harvesters should provide free shrimp based on standards that have no relationship to the product being packed or the market specifications."*

At p.6 it is stated:

*"They have never entered into any serious discussion of an appropriate definition of broken shrimp that would reflect the actual loss of value that might exist."*

Finally, the FFAW states at p.7:

*"We contemplated including a definition of broken shrimp with this offer, but felt that a matter of such a technical nature should first be addressed by the parties with a view to finding a negotiated solution, before being referred to the Panel".*

## **CONSIDERATIONS**

In the course of its deliberations and in reviewing the documentation submitted during the proceedings, the Panel agrees the matter at issue is indeed very technical in nature and a satisfactory resolution requires the type of frank and open discussion between the parties as would be expected in a normal collective bargaining process. While there is evidence before this Panel to clearly demonstrate the FFAW's desire to have this matter addressed in a timely fashion prior to price negotiations for the 2009 shrimp fishery, it is clear no such detailed talks took place on this important matter.

Evidence before the panel suggests that during the negotiations the approach taken by the FFAW was to provide ASP, two days prior to their meetings, language that would have completely eliminated the deductions for broken shrimp. The FFAW representation on broken shrimp consisted of a diagram outlining Greenland specifications for shrimp pieces. The day before the scheduled hearing on March 2<sup>nd</sup>, the FFAW forwarded an e-mail to ASP proposing, in addition to the Greenland specifications, either of two alternative definitions of broken shrimp.

On the basis of the evidence and information before the Panel it is clear that ASP did not wish to entertain any amendment to the current collective agreement language on this matter despite the FFAW's earlier notice to have this matter addressed and for the reasons outlined in the union's correspondence. It is also clear that in outlining their position in collective bargaining the FFAW fell short of making a detailed proposal on how the treatment of broken shrimp should be dealt with under the collective agreement.

The FFAW proposal as adduced would erase ten years of practice and processes and void other items that the arbitrator noted were part of the collective agreement. It does not of itself deal with the issue of change to the definition of broken shrimp. Rather the effect of the FFAW position would be to have negotiations for deductions of broken shrimp, and any ancillary items, start from a clean sheet.

## DECISION

The respective positions of ASP and FFAW before the panel remain as polarized as they were at the conclusion of collective bargaining. As earlier stated, the decision of the panel in this matter must be to accept, in it's entirety, either the position of ASP or the position of FFAW.


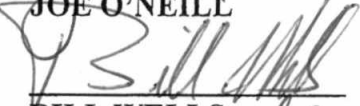
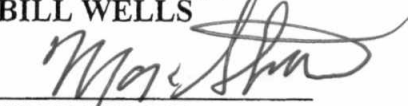
The position of ASP to maintain the current provisions of the collective agreement unamended is clear and while it does not resolve the matter, is clearly an accepted position to take in collective bargaining.

The position of FFAW if accepted would have the effect of completely shifting the onus for dealing with this issue from the FFAW to ASP and while the FFAW has indicated a willingness to enter into further negotiations with ASP on this matter; the proposal, if accepted, would not provide for a final and binding resolution of the issue. The FFAW presumes this in its submission. The panel as a third party to negotiations acting in the role of an interest arbitrator would give every consideration to any reasonable and rational proposal related to a legitimate issue for collective bargaining for a new agreement. Unfortunately in the matter before the panel what we have is a position on the one hand to leave the matter as is while on the other to make a major change to a collective agreement, in isolation of other related issues.

Had the FFAW outlined a detailed proposal reflecting the issues pertaining to an appropriate treatment for broken shrimp, it would have had to be met by equaling compelling arguments from the other side. An outright rejection would be made at ones peril.

For the reasons outlined above it is the decision of the Panel to accept the position of ASP.

Dated at St. John's, March 11, 2009.

  
JOE O'NEILL  
  
BILL WELLS  
  
MAX SHORT