

Inshore Shrimp Fishery- 2011

INTRODUCTION

The Standing Fish Price Setting, hereinafter referred to as "the Panel" issued its schedule for hearings on shrimp and crab for the 2011 season on February 28, 2011. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as "the Act", the Panel set Wednesday, March 9, 2011, as the date by which a collective agreement binding on all processors in the province that process the species "shrimp" must be in effect. The Panel set the date for a hearing on shrimp, should one be necessary, for March 11, 2011. This schedule was issued following notification from the Minister of Fisheries and Aquaculture, pursuant to section 19.01 of the Act, that March 18, 2011 had been set as the date by which prices and conditions of sale for the species shrimp must be in place. Pursuant to the Act, the Panel shall decide on the matters in dispute between the parties not later than three days before the date set by the minister. The decision of the Panel therefore had to be made not later than March 15, 2011. Accordingly, the Panel issued its decision on spring shrimp prices on March 15, 2011 with a notification that a more detailed report would follow. (Appendix A).

The Panel also noted in its schedule that it had been advised by the Department of Fisheries and Aquaculture that the Association of Seafood Processors, (hereinafter referred to as "ASP") represented processors that process the majority percentage of the species shrimp. Accordingly, in accordance with 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 the "FFAW") and ASP. Section 19(11)(1) of the Act requires that the decision of the Panel 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.

The FFAW served its Notice of Intent to negotiate, *inter alia*, shrimp prices and conditions of sale to ASP on January 26, 2011. The parties met for three days in collective bargaining prior to presenting to the Panel on March 11, 2011. Following the first exchange of price offers the parties were 18¢ apart with ASP and FFAW at 54¢ and 72¢ respectively. By the end of collective bargaining the parties had narrowed the gap to the point where the final positions of the parties presented to the Panel at the hearing were 60.23¢ and 65¢ from ASP and FFAW respectively. The Panel acknowledges the effort made by the representatives of both parties in this round of collective bargaining for spring shrimp prices. The parties were successful in narrowing the gap on price positions from a difference of 18¢ to 4.77¢ at the time of their presentations to the Panel at the hearing.

Following its deliberations the Panel had to make a decision to select either the position of ASP or the FFAW using the mandatory Final Offer Selection (FOS) process. This means it has to accept, in its entirety, the position of one of the parties.

THE MARKETS:

Market conditions have a huge impact on prices and conditions of sale for fish products. Market conditions are influenced by many factors and subject to unusual shifts during the prosecution of a

particular fishery. This fact is acknowledged in the legislation of the province where provision is made for a reconsideration of a decision particularly where market conditions may have changed significantly from the time the Panel made its original decision.

The Panel and the parties have had the benefit of three market reports in preparation for negotiations for the 2011 fishing season for spring shrimp. In addition to the traditional market reports from Seafood.Com and Gemba Seafood Consulting, the Department of Fisheries and Aquaculture contracted Mr. Patrick Wood to provide a market analysis for cold water shrimp (CWS) for 2011. (Copies attached)

All three market reports are unanimous in their assessments that markets are stronger as the 2011 season approaches. The three market consultants are reporting that current market conditions are the best they have been in many years. Further they are projecting continued market strength at least in the short term. The FFAW and ASP acknowledge this fact in their presentations to the Panel. A number of factors are reported as giving rise to this positive turnaround in the shrimp industry. Among those outlined by the market consultants include:

1. There is little inventory currently in Newfoundland and Labrador and it appears there is little inventory on hand in Europe as well. One consultant reported that UK inventories are at record low not seen in a decade. Gemba reported that "Liquidity has eased and there is confidence in the market development for the coming months." Seafood .Com reports that "indications are that there is substantial early season demand for shrimp from major EU customers."
2. Concern over quota reductions resulting in shorter supply in 2011 may cause prices to remain high. Seafood.Com reports that most observers expect lower quotas in the Gulf, Greenland and Newfoundland and Labrador. Patrick Wood reports that "Supply and quota uncertainties will pressure prices upward by 10-15% in sterling terms in the first half of 2011."
3. There will be more pressure on EU buyers to secure supplies before the ATRQ is exhausted. The consultants report that this will result in pressure to secure contracts earlier than normal.
4. The recent increase in prices for comparable food products is making CWS more attractive in the market. For example, warm water shrimp (WWS) prices are at their highest level in ten years. Gemba reports that "The global price increase on food items will also be reflected in shrimp prices at the "end user" level." Patrick Wood states that "The era of cheap food is seemingly now over."

On the cautious side, the market reports acknowledge that market demand has not yet reacted to the higher prices and that it may be approaching the turning point. This fact was addressed by ASP in its presentation to the Panel and supported by a number of quotes from the market analysts. (page 10 of the ASP presentation).

CURRENCY:

Currency is likely the second most important factor that contributes to the volatility of the fishing industry and is also a factor that is specifically outlined in the legislation as a factor the Panel shall consider in making a decision on a reconsideration request. The market analysts are reporting a

favourable currency situation at the time of writing their reports. Seafood.Com stated "Currency trends are slightly more favourable for Canadian producers than they were a year ago." Patrick Wood reports that "the CAD dollar (CAD\$) has had a downward trend over the past three years making exports more competitive." According to Gemba, "During the period under review there has been little change in the CAD/GBP rate."

THE POSITIONS OF THE PARTIES:

The presentations by the parties to the Panel at the hearing reflected, as would be expected, their views on the markets, the currency and other factors in support of their final submission on price and conditions of sale. As expected, ASP has taken a cautious approach to the trends in the market while acknowledging strong market growth. The FFAW, on the other hand, has portrayed a very positive picture of the market and the resulting benefits that should be derived by the industry. This is not a criticism of the parties or their positions. One would expect that strategy as it is a normal feature of the collective bargaining process. In the case of the FFAW, their overall position is that all the normal indicators point very clearly to a strong shrimp market and that raw material prices have to reflect that strength and confidence in the market. While ASP did not discount the positive market analysis, it did, as stated earlier, remind the Panel of a number of cautions offered by the analysts regarding a market backlash when prices reach a certain point. ASP advised the Panel that "The reports all acknowledge that the market 'demand' has not yet reacted to the higher prices and that it may be approaching the turning point." ASP also pointed directly to the Gemba report which advised that "Many players warn that CWS are approaching the limit of tolerance and that customers are reluctant to buy at this level."

The development of consumer backlash is indeed a real possibility. The question however is the timing and the extent of that backlash if and when it occurs. The consultants have noted in their reports that global food prices are on the rise. The rate and speed of this increase coupled with the impact on traditional competitive commodities to CWS is, at the present time, an unknown factor. What is certain and what is acknowledged by all players in the industry is that, **at the present time**, the markets for CWS are the strongest they have been in a long time. Should this situation change unexpectedly the parties have recourse through the legislation to seek re-consideration of the Panel's decision, particularly if the change is the result of market or currency factors.

In support of their final positions the parties have used a price comparison table in which they factor in markets and currency to arrive at a price position. Normally it would be expected that if two parties were working from the same set of numbers using the same formula, they would arrive at an identical result. Mathematics is, after all, a finite science. This however has not been the case in the matter involving prices for the various fish species over the past number of years. It is no different for spring shrimp price in 2011. The reason for the respective difference between the parties in price, albeit a difference of 4.77¢, is probably explained by the different interpretations placed on the information by the parties. Further in 2011, while the parties were in agreement on the base currency exchange rates, the parties had different views on the appropriate benchmark in which to compare current market conditions and to base raw material prices. The FFAW felt that 2008 was the most relevant baseline since it was the market level closest to the current situation and that it was a year that offered clear cut and stable market and raw material price information. ASP, on the other hand, argued the comparable time frame for the 2010 versus 2011 comparison is March 2011 to early May 2010. The parties have also had a long standing difference of opinion on the sharing of market changes in the shrimp fishery. This is in contrast to the lump roe and crab fisheries where the agreed sharing has been 78% and 90% respectively. The FFAW argues that 78% is the

minimum share that should be applied to spring shrimp prices in 2011 compared to ASP's figure of 65.4%.

The parties have also had a long standing difference of opinion on yields on shrimp. The FFAW has argued that based on new technology and processes, and yield information from other jurisdictions, the actual yields are substantially above the 32.7% that has been used by ASP for many years.

CONSIDERATIONS AND DECISION OF THE PANEL:

For the purpose of its decision on the price and conditions of sale for the spring shrimp fishery the Panel has taken into consideration the market analysis of three market consultants; the currency trends, and the respective positions of the FFAW and ASP in their presentations to the Panel at the March 11, 2011 hearing. (Copies attached) The Rules and Procedures of the Panel outline the criteria the Panel will utilize in its decision making process. They include:

- The *FICBA* and Regulations.
- Resource materials provided to the Panel and the parties by the facilitator.
- Any written reports from the facilitator as per the Rules and Procedures.
- The written presentations of the parties.
- The oral presentations of the parties.
- Previous Panel decisions.
- Market information provided to the Panel and the parties.
- Any additional information the Panel determines necessary.

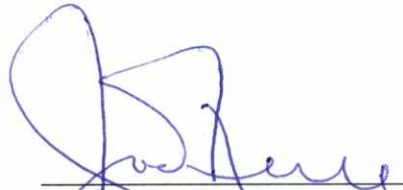
The market consultants are unanimous that 2011, at least the early part of 2011, represents one of the strongest market conditions for Newfoundland and Labrador CWS in some time. The one caution in the reports is the possibility of consumer backlash as prices continue to rise. This is mitigated somewhat by the fact that food prices in general are on the rise globally thereby possibly making normally competitive food products less attractive. Patrick Wood reports, "The ability to accept a higher price can be more easily "sold" to customers in the light of the general global food price increase and so re-processors are more willing to make the call to buy as the increase they pass on to their customers." Further, the decision of the Panel is for a spring price which will expire on June 25, 2011. The Panel is confident, therefore, that if a consumer backlash begins to emerge it will likely be beyond the duration of the spring price for shrimp.

The current trends in the currency exchange favour Canadian producers. The Panel is fully cognizant of the fact that currency patterns can change dramatically in a short period of time. Should that occur in the 2011 spring shrimp fishery, there is recourse to address any such change through a re-consideration application to the Panel. Should that occur and an application be made to the Panel, a decision must be made within 48 hours of receipt of that application.

The respective final offer positions of the parties are made using different benchmarks to compare current market conditions. The parties also use different percentages of yield for shrimp. Further, they use different percentages for the sharing of market changes as earlier outlined in this report. These factors as well as others such as a failure to agree on shift in market distribution year over year serve to make the calculation methods of the final position an imprecise instrument. Discussions on these matters in the future with a view to an agreed set of facts would, in the opinion of the Panel, advance the cause of setting prices in the fishing industry.

For the reasons outlined above it is the decision of the Panel to select the position of the FFAW for the spring shrimp fishery.

Dated this day of March, 2011.



Joseph P. O'Neill
Chairperson



Max Short
Member

MINORITY REPORT

In this instance I have a different opinion from that of my colleagues. While, as the parties admitted toward the close of the hearing, there are no criteria for the Panel to follow in making its decision, there are a number of factors that have always been taken into account in making a determination on price. In previous written submissions to the Panel the parties have clearly defined the following:

- The Panel is not to consider the financial circumstances of the parties.
- In each shrimp fishery; spring, summer and fall, the weighted average market price in the current year is to be compared to that of the previous year.
- The difference between the weighted average market prices, up or down, is used to determine the change in price to harvesters.

Two other factors have usually been applied to the price differential: the percentage yield on raw material, and the harvester's percentage of the price differential.

Our experience has been that the parties have never agreed on the current weighted average market price, or the market price differential. The parties have a different position on yield on raw material and have yet to agree on the harvester's share of the price differential. The history has been that the parties manipulate the facts and figures to favour their respective objectives, tempered only by the fact the Panel must chose one of the two positions presented.

The question for the Panel is which of the proposals is the more reasonable or, in the balance of probabilities, closer to the indefinable "right price" which is somewhere between the two positions.

The FFAW argued that the best previous year, for comparative purposes, is 2008. In that year the FFAW calculated the price differential to be 63¢. The price increase proposed for harvesters was 15¢; this was calculated by applying a harvester's share of 68.7% and a yield of 35%. The Panel accepted the FFAW position, as noted in the FFAW submission, by the "narrowest of margins". In

2011 the FFAW have calculated the market differential to be 59¢, the increase to harvesters is proposed to be 15¢. To arrive at that figure the FFAW has applied a yield of 35% and increased the harvesters share to 74%.

None of these numbers are precise; the FFAW weighted average market price for 2011 is 17¢ higher than the ASP calculation. We have no precise number on yield; ASP applies the standard of 32.7%, which the FFAW says is outdated and arbitrarily applies 35%. ASP has previously applied 65.4% to the harvesters share; the FFAW applied 74% this year.

In my view, in order to accept the FFAW proposal one has to accept, in each category the higher number proposed by it, it requires giving the benefit of the doubt to the FFAW on all points or factors in consideration. It then becomes a question of what is reasonable. On the balance of probabilities in this instance I think the ASP position is the more reasonable, even if by a narrow margin. In 2008 the FFAW offer of 52¢ was 14.6% of the weighted average price proposed by it. Accepting their 2011 weighted average market price of \$4.15, and applying the same 14.6% would result in a price to harvesters of 60.6¢. That is not necessarily the "right price" but it takes a stretch to get to the FFAW proposal.


Bill Wells

Inshore Shrimp Fishery – Spring Price 2011

The Standing Fish Price Setting Panel, hereinafter referred to as “the Panel” issued its Schedule of Hearings for 2011 on February 28th, 2011. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act* hereinafter referred to as “the Act”, the Panel set Friday, March 9, 2011, as the date by which collective agreement(s) binding on all processors in the province that process shrimp must be in effect.

In the absence of such agreements, the Panel held a hearing at 3:00 p.m. on Friday, March 11, 2011. The parties appearing before the Panel at that time were the Fish, Food and Allied Workers, hereinafter referred to as “FFAW” and the Association of Seafood Producers.

Following the filing of written submissions previously exchanged between the parties, and hearing the supporting argument and rebuttal of both parties, it is the decision of the Panel to select the position of the FFAW on price and conditions of sale for the 2011 Spring Shrimp fishery. (Appendix A)

Section 19.11(1) of the Fishing Industry Collective Bargaining Act provides 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.

By virtue of the Act, this spring price table, is binding on all processors that process the species shrimp in the Province and will form a collective agreement or part of a collective agreement with the FFAW.

The Panel will issue its full Report on the Spring Shrimp Fishery not later than the week of March 20, 2011.

Dated at St. John's this 15th day of March, 2011.


JOSEPH P. O'NEILL


MAX SHORT

Appendix "A"

FFAW Spring Shrimp Price Final Offer

Size	Distribution	Plant	Trucked	
Categories	Spring 2010	Price	Price	Price
2 – 2.9	6.54	\$0.263	0.2334	
3 – 3.9	15.48	\$0.445	0.4149	
4 – 4.9	18.16	\$0.544	0.5143	
5 – 5.9	16.33	\$0.644	0.6138	
6 – 6.9	15.74	\$0.758	0.7280	
7 – 7.9	13.17	\$0.813	0.7831	
8 – 8.9	7.96	\$0.870	0.8396	
9 – 9.9	3.89	\$0.954	0.9242	
10+	2.74	\$1.011	0.9807	
				0.650

FFAW final price offer is tabled above and 65 cents/lb landed at the plant based on spring 2010 distributions.