STANDING FISH PRICE-SETTING PANEL

MACKEREL FISHERY - 2014

The Standing Fish Price-Setting Panel, hereinafter referred to as "The Panel", issued its Schedule of Hearings for 2014 on February 11, 2014. Pursuant to Section 19, of the "*Fishing Industry Collective Bargaining Act*", hereinafter referred to as "*The Act*", the Panel set, Tuesday, August 19, 2014, as the date by which collective agreement(s) binding on all processors in the Province that process the species Mackerel, must be in effect. In the absence of such collective agreement(s), the Panel set Wednesday, August 20, 2014, as the date on which the Panel would conduct a hearing with respect to prices and conditions of sale for the species Mackerel.

It was noted by the Panel at that time, that it had been advised by the Department of Fisheries & Aquaculture that the Association of Seafood Producers (ASP) had been identified as the processors' organization that represent the processors in the Province that process the majority of the species Mackerel. Accordingly, should a hearing be required for the species Mackerel, the provisions of Section 19.11 of the Act are to apply. Submissions would be accepted by the Panel from ASP and the Fish, Food and Allied Workers (FFAW) representatives at the hearing.

The Panel further advised that the parties intending to make presentations to the Panel on the species Mackerel were to provide the Panel with written submissions not later than 24 hours before the scheduled hearing time and date. The Panel also advised that it shall decide on all matters in dispute between the parties relating to price and conditions of sale for the species Mackerel. This decision of the Panel is final and binding on the parties and all other processors that process that species of fish to which the decision of the Panel relates and constitutes a collective agreement or part of a collective agreement between them.

The Panel convened the hearing on Mackerel at 10:00am, on Wednesday, August 20, 2014, at the Labour Relations Board Hearing Rooms, Beothuck Building, 20 Crosbie Place, St. John's. The parties appearing before the Panel, having exchanged submissions earlier (copies attached), were ASP and the FFAW. The written submissions were supported by an oral presentation, in the main argument and rebuttal.

The Parties and the Panel have the benefit of a marketing report prepared by AM Haram for the Department of Fisheries and Aquaculture, dated August 13, 2014 (copy attached).

The pricing of mackerel is arguably the most difficult of all the species negotiated between the Parties and referred to the Panel. The higher volumes of landings from Europe, Greenland and Iceland have yet to occur. Neither the parties nor the Panel have a specific market return price for the opening of the fishery here. As noted in our 2012 decision:

"the parties and the Panel have to make decisions based on market projections which... are somewhat speculative, although based on comprehensive analysis of the landings anticipated in producer countries and demand in perspective markets."

It is generally agreed that the Harum Report has been able to predict the direction market prices may go, either up or down, but it is far more difficult to predict the magnitude of the price moves in any direction. This year the market report is conclusive that mackerel prices are going down, the key question is by how much, the report states at P.1:

"The huge increase in mackerel quotas for 2014 and the subsequent expected increases in supply puts solid downward pressure on mackerel prices in the upcoming season".

In addition to an increase in quotas in excess of 50% over last year, two events have occurred in major importing markets. In October of last year Nigeria established an import ban on seafood products and implemented a trade regime with import quotas. Russia has introduced a one year ban on seafood imports from the EU, Norway, the United States and Canada.

The combination of these three events is expected to push market returns lower. Offsetting the downside pressures are lower inventories, and demand in Japan, China and other Asian markets. Newfoundland and Labrador exports of mackerel are relatively miniscule, less than 1% of the anticipated production, prices will be determined with no influence from our exports. The market report concludes that it is difficult to assess at this stage:

"... by how much prices will fall."

The uncertainty with respect to market price returns at this time is not new to our industry. What is definite is that prices will be lower than last year as a result of the three factors mentioned earlier. The other factor is that we have no market price related to this month or for the start of our fishery. The most reliable information statistically, used by the parties and the Panel, are those produced by DFO and set out in the FFAW submission at Page 6. This table indicates that the average export price for mackerel was $1.04 lb. in 2013. The table also points out that landings have decreased substantially since 2010.

Despite the urging from the Panel beginning in 2006, the parties have not been able to achieve a consensus or agreement on a fair and equitable way to share the market return from mackerel. The Panel finally arrived at some conclusions on its own in its 2012 decision on mackerel pricing to harvesters. Since the Panel will be relying heavily on its 2012 decision in this instance it is worth noting what the Panel said in 2012, with respect to the harvesters share of the market return. The Panel stated at Page 2:

"If one were to assume that at a market return of 0.70¢ lb. harvesters should receive on average 20% of that market return, the average price to harvesters would be 0.14¢ lb. If the market return increased to 0.90¢ lb. that would be an increase of 28%. If the price to

harvesters were increased by that amount it would result in a price of 0.18¢. That appears to be a significant increase in the price to the harvester, but is it really? On 1 million lbs. at 0.14¢, the harvesters share is $140,000, at 0.18¢ the harvesters share is $180,000 an increase of $40,000. However the market return has increased from $700,000 to $900,000, an increase of $200,000, with $40,000 to the harvester and the extra $160,000 going the processor. If the increase were to be shared equally at $100,000 to each side, the price to the harvester would have to increase by 0.10¢ lb., which would result in an overall price of 0.24¢ lb."

The Panel also noted that the prices to harvesters are further distorted over time as a result of final offer selection based on market price projections. The FFAW agreed with the approach taken by the Panel in principle, but wanted 22% of a 0.58¢ lb. market return, and at least 65% share of any price increase beyond that. It must also be noted that none of the figures in the price table are precise and the Panel figures were used for illustrative purposes. In the absence of any agreement between the parties, and the gap between the positions advanced by the parties, the Panel was satisfied in 2012 that it had adopted a more realistic approach in assessing the merits of the prices proposed by the parties relative to a projection of market returns. As the Panel stated at page 4:

"There needs to be a change in approach. Even by making a huge allowance for the unknowns, the Panel is satisfied that the average minimum price for mackerel with export values in the 0.90 range should be at least in the mid 0.20¢ range."

The Panel then made its decision in 2012 on the principles outlined to determine the more reasonable of the two positions advanced. In the present case ASP reviewed all the pertinent factors related to the projected market decline and submitted a final offer of 0.12¢, 0.20¢ and 0.27¢ for the agreed size ranges at 45%, 45% and 10%, resulting in an average price to harvesters of 17.1¢ lb., a decrease from last year's average price of 22%.

ASP further points out that actual market returns will not be known until later in the season. They are exposed to financial risk if market returns do not in fact support a higher price to harvesters. If successful on an appeal to the Panel, based on lower market returns they will not be able to recover the price paid to harvesters up to that point. The Panel agrees that processors are exposed to risk as actual market returns will not be determined for some period after the commencement of the fishery. The factors involved are complex involving the timing of the landings, volumes and size of the fish.

The FFAW contends that they are not in a similar position to appeal the Panel decision if the market does not fall as precipitously as suggested by ASP. The Panel cannot accept a reconsideration unless there has been a significant change in the market price or currencies since the date of its decision. If the market returns do not go down significantly the harvesters would be stuck with a lower price. The FFAW maintains that its price proposal of an average price of 21.86¢ accommodates a significant decline in the market and is within the range of the principles applied by the Panel in 2012.

ASP stated in its submission at Page 3:

"The point is this: it is challenging – to say the least – to price NL mackerel for September and October based on market returns for April and May."

It is for this reason that the Panel has so repeatedly in the past encouraged the parties to take a different approach to the setting of mackerel prices. When market prices are higher competition will ensure that prices above the minimum will most likely be paid. In a time of lower prices that is most unlikely to be the case. The point in fact is, that at this date, neither the parties nor the Panel have a price reference on which to base a decision or support a position. The price proposed in each submission is neither right nor wrong.

The Panel in an attempt to apply some framework for the determination of mackerel prices used the principles outlined above in 2012. Applying these same principles to the current situation at least provides some relativity between last year's market prices published by DFO and potential market returns for 2014.

The results may be summarized as follows:

	Market Price		**Average Harvesters Price**
2013	\$1.04	DFO	31¢
2014	0.85¢	FFAW	21.5¢
2014	0.76¢	ASP	17.1¢

The ASP offer on this table represents a 27% drop in the market price and a corresponding 44% drop in the price to harvesters. The FFAW offer on the same basis represents an 18% drop in the market price and a corresponding 30% drop in the price to harvesters.

None of these figures, except for the math, can be taken as precise or definitive of mackerel export return prices but they do provide a degree of relativity. As the Panel noted in its 2012 decision:

"...The Panel is comfortable with the assumption that if harvesters were to get 20% of the market at 0.70¢, they should get at least 50% of the return for anything beyond that."

The DFO Table indicates a drop in the negotiated price in 2012, following a reconsideration by the panel of its earlier decision. The decision issued in November was based on market reports of up to a 25% decline in the market prices. FFAW proposed no change in the price to harvesters. The Panel accepted the ASP proposal as it had to choose one of the two positions. There was very little mackerel landed after the reconsideration was made as it did not alter the average DFO export price in 2012. The Panel was not involved with the parties in 2013. The DFO export price of \$1.04 for 2013 would not have been known before the end of 2013.

In this instance, and in the absence of anything definitive, with the possible exception of the DFO number for 2013 prices, in following the principles outlined in 2012 the Panel is more inclined to accept the FFAW proposal. It accommodates a market return drop in prices in the range of 20%, say 18% to 22%. The ASP proposal has a range of 25% to 29% comparatively.

The principles outlined by the Panel are not precise and may be described as conservative. The fact that processors are allocated 80% of the first 0.70¢ return from the market is arbitrary. The fact that harvesters get 50% of the return above that is arbitrary as well. However if they are off the mark they most likely favour the processing sector.

The Panel is not exposed to the financial position of either harvesters or processors. It is the parties, and only the parties, who should develop a process based on their knowledge and expertise, to produce a more precise methodology to cope with the unique issues in the mackerel fishery. In the absence of that the Panel is left to its own devices to reconcile the differing positions. It is essential to have some benchmark or reference to determine prices for a fishery that precedes for some time the determination of the market return.

The Panel must pick one of the two positions presented. The Panel is of the opinion that a 18% reduction in the market return to 0.85¢ with a corresponding price to harvesters of 21.5¢ lb. is a reasonable action to take at this time. If the market returns get to that level and trend lower the processors will be the first to know. They have direct access to their customers and the markets and are privy to the market facts and realities well before they can become known to the harvesters or the Panel. The Panel is mindful of the fact that the processors are exposed to financial risk. This has been mitigated by a drop in the price to harvesters to reflect a drop from last year's market return.

Should prices decline further then contemplated the Panel will accept $1.04 as the starting point for price declines this year. Should ASP request a reconsideration the Panel will respond quickly to adjust the price to harvesters to reflect market price returns beyond that taken into account.

The Panel also continues to encourage the parties to address the issues related to the pricing of mackerel to provide a better and more flexible approach to setting port prices for mackerel given the unique situation in this fishery.

It is the decision of the Panel to accept the submission of the FFAW. The following schedule of minimum prices will apply for the 2014 Mackerel Fishery, effective August 25th, 2014.

Size (GM)	Price ¢ lb.
200 – 399	16.5
400 – 599	24.75
600 plus	33

The prices and conditions of sale are binding on all processors of the species mackerel and will form a Collective Agreement or part of a Collective Agreement with the FFAW.

Dated at St. John's, this 22nd day of August, 2014.

JOSEPH P. O'NEILL **BILL WELLS** **MAX SHORT**