

Snow Crab 2007

The Standing Fish Price-Setting Panel hereinafter referred to as: "the Panel" issued its Schedule of Hearings for 2007 on February 12, 2007. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as: ("the *Act*"); the Panel set Wednesday, March 28, as the date by which collective agreement(s) binding on all processors in the province that process Snow Crab must be in effect. In the absence of such collective agreement(s), the Panel set Friday March 30, 2007, as the date on which the Panel would conduct a hearing with respect to Snow Crab.

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 Snow Crab. Accordingly, under Section 19(11) of the *Act*, should a hearing be required for Snow Crab, 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 require 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 process must be obtained. The hearing, if required, for Snow Crab was scheduled to take place at 2:00 p.m. at the Battery Hotel and Suites, 100 Signal Hill Road, St John's.

On March 29, 2007, the facilitator reported to the Panel on the progress made in collective bargaining on Snow Crab between ASP and the FFAW and advised inter alia, that the parties were unable to conclude a collective agreement and, pursuant to the Panel's Rules and Procedures, would be making submissions to the Panel regarding; opening price, price calculation for the balance of the season and frequency of price adjustments. At the time of the facilitator's report the parties were still engaged in collective bargaining.

ASP and the FFAW exchanged final positions and filed their submissions on Snow Crab (copies attached) with the facilitator at 9:00 a.m. on March 30 as required under the Panel's Rules and Procedures and the hearing convened at 2:00 p.m. as scheduled. The written submissions received by the Panel were supported by oral presentations and rebuttals.

Fortunately, as reflected in the submissions of the parties, the market conditions for Snow Crab in 2007 are much improved over the circumstances that prevailed in 2006. The Panel and all participants in the Snow Crab fishery have had the benefit of a detailed market outlook prepared by Mr. John Sackton (copy attached) who gave a presentation to all parties in St. John's on February 28, 2007. The Panel and the parties to these proceedings also have the benefit of a brief update by Mr. Sackton dated March 26 (copy attached) which essentially confirms the conclusions of the earlier report noting no

significant change. Since 1998 harvester and processors in this province have relied on Mr. Sackton to provide market information on which they rely to set opening prices, and the provision of bi-weekly price reports on which basis price adjustments to harvesters are made based on an agreed "price to market" formula which is included in the collective agreement between the parties.

The primary objective of the parties to these negotiations with respect to the prices to be paid to harvesters for their catch is to agree on the opening price for the season, thereafter prices are adjusted by the application of the "price to market" formula as noted above. The establishment of that initial price has proven to be extremely difficult in previous years both in times of higher market prices and less favorable market conditions. The final positions of the parties on the opening price for 2007 is fairly close, the difficulty in concluding an agreement this year is complicated by the issue of changes proposed by the FFAW to the "price to market" formula.

The parties are essentially agreed on the market situation. The Sackton Report notes the current high prices prevailing in the current dry market. Everyone expects prices to come down, the question is by how much. Buyers don't want to be stuck with higher cost inventory and see competitors benefiting from lower prices. To the extent that prices at the harvesting end influence the market, this province is the high volume producer. Their objective is to set a price that the market will accept as reasonable under current circumstances. It is a matter of sending the right signal as ASP noted in its submission. In the view of the FFAW it is a question of how best to position ourselves in the market, maximize our overall return and assist in stabilizing market prices. The best result is to quickly establish a market clearing price and avoid the development of a downward spiral in prices that is more negative than it need be. Generally, the market is much improved from 2006 and significantly higher returns are anticipated.

The opening prices submitted by the parties reflect the similar views of the market. ASP proposed an opening price of \$1.65/lb. In its view, this represents the upper range of the \$3.50-\$4.00 window of opportunity to establish a clearing price identified in the Sackton report. The FFAW position on the opening price is \$1.72. This again falls within the opening range suggested but at a higher level. In fact, during questioning by the Panel, it was stated that the market price relationship between the two positions is \$3.83 compared to \$3.97. It could be argued that either position if accepted would not unduly prejudice the potential returns from the market as the season moves forward.

The factors that precluded the parties from reaching an agreement on opening prices results from the position taken by the FFAW during negotiations in attempting to achieve what was termed as: "two fundamental goals ... bringing the minimum price more in line with prevailing wharf prices here and in other provinces, and trying to find an alternative to frequent in-season price adjustments that paint a picture of price instability to our customers."

The position taken by the FFAW in support of its objectives and the attempt to achieve what is termed: "a fair price to harvesters" focuses on the bonus prices paid by

processors, beyond the minimum price in the collective agreement, and what are in its view more appropriate prices paid in the Maritimes. The bottom line is that the FFAW wanted to secure at least a 7.4% better share from the market return for harvesters within the negotiated minimum price. In the absence of agreement with ASP the final offer of the FFAW attempts to achieve this result by proposing a change in yield for crab sections used in the Weighted Average Market Price (WAMP) calculations. In the view of the Panel, the inclusion of this position in the final offer of the FFAW is fatal to its submission.

The calculation of prices paid to harvester as determined by the "price to market" formula is set out in the Crab Schedule which forms part of the collective agreement. A copy of the 2006 schedule is attached. The FFAW argued that the current yields for crab sections are outdated and did not properly reflect the raw material equivalent. To support this argument a report from the Department of Fisheries and Aquaculture (DF&A), which provides the information on purchases and production, was cited. The FFAW concluded the yield conversions were wrong for the reasons detailed in their submission. In its submission, the FFAW had stated that they had requested DF&A to explain in writing how this table is composed. The response to this request (copy attached) was copied to ASP and the facilitator in a letter dated March 30, 2007, from the Deputy Minister. Two points emerge that are contradictory to the FFAW position on section yields, the actual yields, and the fact that the study performed by the Marine Institute in determining the yields used was as recent as the fall and winter of 2006/7.

In the determination of the WAMP the higher the yields the higher the resulting price to harvesters will be. The FFAW proposed a change to yields for sections, not on a precise determination of the actual yields, rather it was based on a number calculated to increase prices determined under the formula by 7.4%. The "price to market" formula has been an essential element in the setting of crab prices for a decade. The yields used in the calculation of price were intended to be actual yields as determined by an appropriate and acceptable methodology for all parties. The yield figures are one component that can not and should not be changed arbitrarily to produce a different price.

The FFAW submission clearly outlines its final offer, the Panel must accept it as it is presented and can not alter or modify it in any way. If it were to be accepted it would increase the price paid for crab, in all subsequent calculations, solely on the basis of a change to sections yields that have no basis in fact.

The Panel should note that the FFAW is concerned that the prices in the collective agreement, which are minimum prices, do not reflect what in their view are fair prices. The FFAW point is that bonus prices paid to harvesters, in addition to the minimum prices in the collective agreement, are too high a percentage of the minimum price. Bonus payments have existed since the beginning of collective bargaining on crab prices and have been explicitly accepted by the FFAW. Since the actual amounts paid and to whom they are paid form no part of the collective bargaining neither the FFAW nor the Panel is in a position to exercise any control over what actually occurs. The practice is embedded in the current system. In theory, the higher the minimum price the less there is

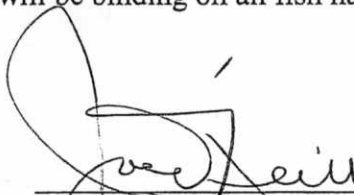
available for bonus payments. Other than the season opening price, the price is determined by the formula. The calculation of the prices could be changed by agreement to changes to the formula, or by the settlement of a dispute in the event of no agreement. However, the Panel has difficulty in contemplating any change in yields other than one resulting from actual experience as appropriately determined. Other components may be less rigid.

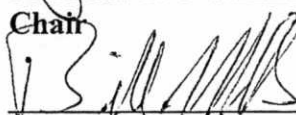
The decision of the Panel is to select the final offer submitted by ASP.

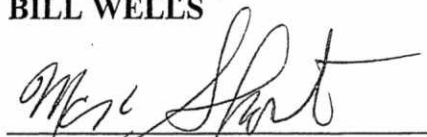
"The final price offer is \$1.65, to be the opening price for the first two weeks of the fishery. The Sackton Market Reports will then commence in the third week, at two week intervals for the balance of the season. The initial Sackton Market Price report will produce a raw material price that will be retroactive if it higher than the initial opening minimum price".

By virtue of the *Act*, the opening price or a higher retroactive price, and any subsequent price adjustments as a result of the "price to market" formula, together with the agreements arrived at between ASP and the FFAW with respect to Snow Crab, constitute a collective agreement between the parties for the conduct of the 2007 Snow Crab fishery; which collective agreement will be binding on all fish harvesters and processors in the province.

St. John's, April 2, 2007.


JOSEPH P. O'NEILL
Chair


BILL WELLS


MAX SHORT