

## **Inshore Shrimp Fishery - Summer 2007 ATRQ Reference**

This matter arises from the decision issued by the Panel, dated the 21st day of June, 2007. That decision resulted from a hearing held by the Panel, on June 20, 2007, to resolve an issue in dispute between the Association of Seafood Producers, hereafter referred to as "ASP" and the Fish, Food and Allied Workers, hereafter referred to as "FFAW".

A brief review of the background will assist in putting the current issue in perspective. ASP represents processors that process the majority percentage of the species shrimp. Under the provisions of Section 19 of the *Fishing Industry Collective Bargaining Act*, hereafter referred to as the "Act", the Panel is required to set a date by which a bargaining agent and a processor or processors' organization shall conclude a collective agreement that is binding on all processors in the Province that process that fish species.

In the event of a dispute, Section 19 11(1) of the Act provides that where a processors' organization represents processors in the province that process the majority percentage of a fish species, that processors' organization and the bargaining agent are to appear before the Panel under Section 19.9(2) of the Act. The Panel is to hear and consider the position of the parties. The decision of the Panel under Section 19.11(1) of the Act shall be in accordance with one of the positions submitted by the parties. In other words, the decision is to be based on final offer selection.

The FFAW and ASP were successful in concluding a collective agreement with respect to the species shrimp for the 2007 season. The Shrimp Schedule 2007 outlines the terms and conditions applicable to and binding on all processors and buyers of shrimp in the Province in 2007. The prices paid to harvesters for shrimp purchased are to apply in three different seasons in the year, spring, summer and fall.

The parties settled the spring prices for shrimp. Section 13 of the Shrimp Schedule 2007 provided that the spring prices would be in effect from April 1, 2007 to June 23, 2007. All other terms and conditions of the Schedule are to apply from April 1, 2007 to March 31, 2008.

The Panel issued a Notice, dated May 17, 2007, advising that in the absence of a collective agreement being in effect for summer shrimp prices, the Panel would conduct a hearing on June 19, 2007, a date subsequently moved by agreement with the parties to June 20, 2007.

The parties had reached an agreement on a price table for the summer shrimp fishery which was to be effective from June 24, 2007 to September 8, 2007. However, a continuing price table was not concluded since the parties were not able to agree on the impact on raw material prices of the impending increase in the amount of cooked and peeled shrimp that could be imported into the European Union, subject to a lower tariff. The Autonomous Tariff Rate Quota on shrimp imports into the European Union provides for a minimum 6%

duty for certain tonnages in a year, with imports beyond that having to pay a 20% duty. It had been anticipated at that time that up to 20,000mt might be excluded from the 20% tariff. Without any decision having been made or an effective date announced, the parties were not able to deal with the issue as to what, if any, impact this potential benefit to the industry could have on raw material prices paid to harvesters.

The FFAW wanted to ensure that when the ATRQ decision became effective that they would have the opportunity to negotiate price adjustments to the prices in the Shrimp Table for the summer shrimp fishery. ASP took the position that any benefits accruing from the improved tariff quota would be reflected in market prices and independent market price reports would provide the basis for the parties to negotiate. Such reports would properly be the subject of negotiations for the fall price table which would become effective on September 9, 2007.

At the conclusion of the hearing, and following discussion between the Panel and the parties, it was agreed that the Panel would not be bound by final offer selection in making its decision.

The Panel's decision included the following direction to the parties:

- "1) the parties to engage in discussions with respect to any revision to the ATRQ within two weeks of the date that any revision should come into effect, with the requisite expertise sought where appropriate and agreed; and
- 2) the Panel further directs that, in the absence of agreement within 10 days of the resumption of discussions, the parties shall refer the matters in issue to the Panel, for a decision on a go-forward basis as part of the price for raw material."

In the interim, the agreed prices in the Schedule for the summer fishery were to apply.

The effect of the Panel's decision was to ensure that when the ATRQ was announced and had become effective, the parties had a prescribed time in which to negotiate and conclude a final agreement on prices or, failing agreement, the matter was to be referred to the Panel.

The decision on the ATRQ became effective on July 17<sup>th</sup>, 2007. The parties held discussions on July 25<sup>th</sup>, and failed to resolve the issues. In fact, the differences between them were such that the matters in issue were referred to the Panel without any further attempt at resolution within the time frame permitted. It was mutually agreed that the Panel would hear the parties on July 31<sup>st</sup>, 2007. The parties, having exchanged positions earlier in the day, appeared before the Panel at 5:00 p.m. on July 31, 2007. The hearing was conducted under the provisions of Section 19.11(1) of the Act and, pursuant to the Regulations made thereunder, the Panel's decision was to be made on the basis of final offer selection. During the hearing the parties made oral representations in support of their submission and in rebuttal. Additional material was filed with the Panel and, with the written submissions of the parties, is attached.

As the Panel noted in its decision of July 31<sup>st</sup>, 2007, the issues confronting the parties as a result of the expected changes in the ATRQ would be both complex and challenging. The FFAW's position is that an additional 5 cents per pound on the remaining quota would be required to recover what they calculated to be the value of the benefit. The methodology applied in the calculation had the effect of making the increase retroactive over the 2007 fishery. The ASP, for the reasons stated, proposed no increase to reflect any benefit from the tariff. The Panel was left to choose between two totally divergent positions, either of which had the potential to disrupt the fishery, or ensure turmoil in future negotiations.

The underlying objective of the legislation setting up the Panel is to ensure a timely conduct of a fishery. The dashing of expectations is often a more difficult issue to deal with than what may be termed an actual loss. The tariff change is seen by the FFAW as providing an immediate direct benefit. If the higher volume summer landings, in the order of 100 million pounds, are not to be included in the calculation of this perceived benefit, harvesters will be excluded from any share for the major portion of the landings in 2007. Undoubtedly, had the tariff changes been announced and become effective prior to the start of either the spring or the summer fishery this issue would have been addressed in settling the price table for either fishery.

The ASP had specifically indicated that the issue must be dealt with. In their view it would properly be addressed as part of the negotiations next following the effective date of the tariff change. In this instance that would be during the fall price negotiations setting fall shrimp prices to be effective on September 9, 2007. At that time there would be a minimal amount of the 2007 quota remaining. In the view of the FFAW, the bulk of any advantage, following the effective date of the tariff change, would remain with the processors. This is further aggravated by the fact that the lower tariffs actually apply to all imports from January 1, 2007 up to the limit of the reduced quota.

The ASP does not agree that the increased volumes, up to 20,000mt, subject to the lower duty should result in an immediate and specific increase on raw material prices. On principle, they do not view the tariff as a specific component related to a change in raw material prices. Bargaining is conducted on the basis of prevailing market prices and exchange rates. Prices for raw material were negotiated on the basis of the 6% duty, volumes beyond that resulted in no sales or, delayed sales waiting for additional reduced quotas in the next season, or the costs of the tariff were borne by the seller. In either event no extra money was available to processors, only additional costs. The increased quotas at the lower tariff only remove costs and permit higher volumes of sales. Any real gains will be reflected in future market prices. In referring to the position of the EU buyers, the ASP in its submission at page 8 stated: *"That is, they only pay what the market can justify, and the impact of the tariff falls on us"*.

It is important to recognize that collective bargaining is a process. It is not an exact science. It involves a complex set of strategic moves on the part of both parties in an effort to arrive at a result that, while less than ideal for each party, is nevertheless in their respective best interests both in the short and long term.

In collective bargaining there are no absolutes. The positions of the parties on this issue are irreconcilable. The Panel has no direct evidence to calculate what, if any, advantage processors may have gained since the announcement of the tariff. That being said, in the absence of a mutually acceptable collective agreement on this matter, the Panel is left to determine a result that to the greatest extent possible is fair to both parties.

There are however, a number of points to be addressed in the context of the shrimp fishery and the setting of raw material prices.

The FFAW position on the issue was clearly stated at the end of last year, and brought to the attention of the ASP in the summer price negotiations. It was noted in their submission at page 1, *"It was agreed that the value of the ATRQ would be negotiated when it came into effect"*. Then the issue became *"when"* it would be dealt with. ASP, in its response to the FFAW on June 20<sup>th</sup>, stated: *"...that the parties recognize that the matter must be dealt with"*.

This would reasonably leave the impression that the ASP was prepared to discuss the issue at a point in time. In the ASP submission to the Panel on June 20<sup>th</sup>, the proposal included the statement, *"The parties to be directed to engage in discussions related to the ATRQ increase pending in Europe as a subset to fall negotiations..."* Again, in an email to the FFAW on June 20<sup>th</sup>, it was stated, *"We appreciate it is an issue between the parties that must be dealt with, and we are prepared for that conversation in the context of, maybe even as a subset of, fall negotiations"*. The point being made by the ASP was that the ATRQ was only another issue for regularly scheduled negotiations on price, such as currency, and the next negotiations would provide a forum. What was not clear from that communication was that the ASP put zero value on the tariff change in terms of raw material prices.

As noted earlier, the positions of the parties are not reconcilable and the issue came to a head by the reference to the panel arising from the summer price negotiations. The issue must be settled, the question is how. There is no conclusive evidence before the Panel that processors have any returns or "pot of money" from prior sales. Going forward from the date the tariff reductions came into effect it is conceivable that some gains have been made on sales that otherwise may not have been accessible.

The Panel is of the opinion that it would not be in the best interests of the parties or the conduct of the fishery in the future to have, what should be a good news story, destabilize the fishery going forward. What is essential is that going forward, the parties are able to engage in normal collective bargaining. The issue of the tariff change mid-season in a fishery is a one time event. They must now position themselves to take advantage of improved market conditions and competitiveness offered by the tariff reductions.

The fact remains that there is a strongly held perception of some gain to processors that at the very least applies to tens of millions of pounds of raw material landed in the summer fishery. The ASP's acknowledgement that the issue must be dealt with during negotiations, albeit in the future, would only reinforce that conviction. The increase in raw material



prices by 2 cents per pound effective August 13<sup>th</sup>, by a major shrimp processor in the Province who is not a member of the ASP, adds additional support to the conviction that things are now better for processors. At this point, in the context of collective bargaining, perceptions become reality.

The ASP has to consider the possible resolution of the issue either now or in the future. If nothing is secured by harvesters, related to the large landings of the summer shrimp fishery, the issue will remain. It will eventually have to be resolved in future shrimp negotiations.

For the ASP it is a matter of cost. For the FFAW it is a matter of finally realizing a return from the tariff reductions that has, for many years, been characterized as an impediment to markets in Europe resulting in lower prices for harvesters. For the Panel, the risk of instability in the shrimp fishery now, or in the future, is a distinct risk.

The ASP has considered such risks in the past in the context of raw material pricing. As noted in its submission to the Panel at page 9, *"prices on raw material did not actually reflect the true value. On both occasions, we said either we are absorbing that cost because we are cognizant to do otherwise would risk closing the fishery, or that our price offer was made irrespective of the straight math which would have dictated a much lower offer"*. The ASP also states at page 9 that, *"producers maintain that the EU tariff relief of this year cannot be reflected on raw material prices by straight math"*. The circumstances, however, have created a risk for now or in the future. Had it been made clear to the FFAW and harvesters prior to or on July 17<sup>th</sup> that no benefit would come from the tariff changes, and in the absence of a Panel reference, the issue would have remained in dispute and would have had to be resolved before any further landings took place. The lack of any result now will undoubtedly affect future negotiations or result in action that could have the effect of creating, yet again, instability in the marketplace at the very time we should be taking full advantage of the ARTQ decision.

The Panel was of the opinion that a disruption in the fishery was likely to occur no matter the position chosen under FOS. The choice for the Panel under the rules of FOS was to select either zero cents per pound or five cents per pound. Had the Panel chosen five cents, the FFAW position, all processors would be paying an additional five cents per pound on all landings with effect from the normal date of the Panel's decision, August 3, 2007. Had the Panel chosen zero cents, the ASP position, a clear impression would have been sent to the fish harvesting sector, that despite all the discussions over the impediment caused by the EU tariff on the Newfoundland and Labrador fishery, as well as the combined efforts of both levels of Government and the industry to have it removed, the end result is that it would mean nothing for harvesters.

The Panel sought what had been termed the *"requisite expertise"* to assist in making a determination, none was forthcoming. Consultations with Mr. Sackton did not provide any additional facts or support to assist in providing a potential solution. The Panel consulted extensively with the parties after the normal time usually taken to make a decision. As a last resort, the Panel sought and obtained a regulatory change to get relief from having to

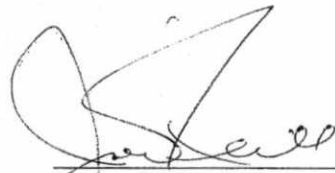
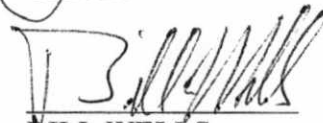
make a decision on the basis of FOS. Further consultations were held with the parties to permit them to react to the changed conditions resulting from the Panel's authority to exercise its discretion.

It might be said that the action taken by the Panel has been extraordinary. The Panel is prepared to accept full responsibility for the action taken. Its "*raison d'être*" is to ensure, to the best of its ability, that there is stability within a critically important sector of our fishing industry. In any event, the right remains with the individual harvester or processor to either fish or not fish, or process or not process.

The Panel earlier advised the parties that the effective date of its decision would be August 3<sup>rd</sup>. The Panel stands by that decision. The Panel's decision based on the current circumstances in the fishery is that harvesters are to be compensated by an adjustment to prices in the summer price table for the species Shrimp by 2.5 cents per pound to be effective as of August 3<sup>rd</sup>, 2007.

The summer price table as amended effective August 3, 2007 is binding on the parties and all other processors that process shrimp in the Province, for the period stated therein, and will form a collective agreement or part of a collective agreement with the FFAW.

DATED at St. John's this 24<sup>th</sup> day of August, 2007.

  
JOE O'NEILL  
CHAIR  
BILL WELLS  
MAX SHORT