

## **Standing Fish Price Setting Panel**

### **Mackerel Fishery – 2009**

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2009 on February 13, 2009. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as “the Act”, the Panel set Thursday, August 13, 2009 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 Friday, August 14, 2009, 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 and Aquaculture that the Association of Seafood Producers had been identified as the processors’ organization that represent 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 19.9 of the Act are to apply. Presentations would be accepted by the Panel from the Association of Seafood Producers and the Fish Food and Allied Workers 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.

At the request of the parties to negotiations, the Panel deferred the date of the Hearing, if required, to August 28, 2009. The Hearing was scheduled to take place at the Labour Relations Board Hearings Room, 1<sup>st</sup> Floor, Beothuck Building, 20 Crosbie Place, St. John’s, NL.

In the absence of an agreement on prices and conditions of sale, the parties exchanged submissions and submitted them to the Panel on the morning of August 28, 2009. The Panel commenced the Hearing on the species mackerel at 12:00 noon, on the 28<sup>th</sup> of August, 2009, at the Labour Relations Board Hearings Room. The written submissions of the parties (copies attached) were supported by oral representations in main argument and rebuttal.

In addition, the Panel and the parties had received a report, Mackerel Season 2009/2010 prepared by Ann-Mari Haram AS, for the Department of Fisheries and Aquaculture. (copy attached).

### **Market Outlook**

The process of trying to determine in August what eventual market prices might be later in the year when major volumes of supply are landed, is very much a speculative exercise, for the parties and the Panel. The availability of mackerel from year to year is highly unpredictable and the determination of market prices, prior to the fall fishery, is almost as elusive as the mackerel, when attempting to harvest them.

The marketing reports provided by the Department of Fisheries and Aquaculture, are the principal source of information available in common to the parties and the Panel. The Haram report last year concluded, for the reasons stated therein that: "It is likely that the market prices will increase for the upcoming 2008/2009 season..." This year the conclusion expressed is: "The most likely scenario is that prices will be reduced in USD and Yen."

The problem is that actual market prices in the major markets for our processors, will not be defined until later in the fall. Volumes actually landed, currency exchange rates, and general economic conditions will eventually decide what actual market prices will be.

With respect to volume, there are significant increases in mackerel quotas in the European Union and Norway. This is offset to some extent by quota reductions in Japan. Last year Japan increased its quotas later in the season. Norwegian production has benefited from exports to Japan as a result of the exchange rate.

Of extreme significance for our fishery in terms of market are prospects in Russia and eastern European countries. The relative importance in terms of volume, of various markets is set out in Appendix "E" of the FFAW submission, sourced from Department of Fisheries and Oceans. While inventories are reported to be low, the fact remains that important market outlets have suffered a severe economic setback in the global financial crisis. Any reductions in supplies to Japan put additional pressures on the Russian and eastern European markets, which are critical for our production.

### **Issues:**

The FFAW contend that the market outlook, while not a positive one, is not so negative that there should be a drop in market prices that would necessitate a drop in raw material prices in 2009. In Appendix "A" attached to its submission, the FFAW outline the average market price, the price paid to harvesters and volumes landed. They propose no change in the prices that were set by the Panel in 2008. That decision accepted the FFAW submission in 2008, increasing the prices from 2007, based essentially on a market outlook that, as noted above, forecast that prices would likely increase.

ASP relies on the fact that the market report clearly concludes, having weighed all the factors, both positive and negative in the balance, that the more likely scenario is price reductions. Anticipated higher volumes of supply and the general economic uncertainty combine to project a volatile market which is clearly trending down. If we are to have a successful fishery, ASP is of the view their proposal as a minimum price is more reflective of the market outlook in 2009.

While both parties may agree that DFO export statistics indicate a general trend, they are not to be taken as being exact. ASP took great exception to the figures set out in Appendix "E" attached to the FFAW submission, which indicate an average market price return of 94¢ lb in 2008. As indicated in their submission, this number is well off the mark. The FFAW counter that in previous years DFO figures were not questioned.

As well, FFAW has contended in its previous submissions to the Panel, that the harvesters' share of the market return for mackerel is lower than it should be. They point to the fact that there is little involved in terms of processing of mackerel for the market. There is also the fact that the bait market, especially for the smaller mackerel, provides a good return for processors.

During their oral presentations and in rebuttal, both parties presented lengthy arguments in support of their position. The Panel does not intend to repeat the various arguments presented or the relative merits of any of the arguments made.

It has been made quite clear to the Panel by both ASP and the FFAW, that the economic position of either processors or harvesters is not relevant to the determination of the price for a particular species. The Panel must decide the issue on the basis of changes in the market prices year over year. While this point is not made in the submissions at this time, it has been contained in earlier submissions and confirmed orally at this Hearing.

The difficulty at times, and especially with respect to mackerel, is that the Panel must decide on the speculation of what prices may eventually be. In 2007, the Panel had to choose one of the two positions presented. There was no clear market trend but there was no positive element which could support a price increase. The FFAW submission proposed an increase over 2006 prices. The Panel, based on the market assessment could not find a basis to support an increase in prices. The Panel had to choose the submission of ASP which resulted in a drop in prices from 2006. The Panel noted at the time: "Given the current feedback from the market, in dealing with minimum prices, a rollover of the 2006 minimum prices might have been a better option for an agreement between the parties."

In 2008, the market outlook indicated a more positive trend and the Panel accepted the submission of FFAW which proposed the price schedule of 10, 15 and 20 cents per lb., a return to 2006 prices. In 2009, the current market outlook can not be described as positive, any more than the market outlook in 2008 could be described as negative. What is interesting to note about the DFO figures in FFAW's Appendix "A" is that previous outlooks have predicted the eventual outcome either up or down. The 2007 results were

lower than 2006 and the 2008 results better than 2007. On that basis one could reasonably conclude that 2009 is likely to produce lower prices than 2008.

The Panel realizes that such conclusions beg the question of how much of a change in market prices should result in an increase or a decrease from a previous years raw material price. Had the FFAW proposed no change in prices in 2007 it may well have been successful. In 2008 with a more positive market outlook the prices may have been increased by some reasonable amount if proposed. In 2009, a reduction based on a more negative market outlook would have come from a higher number.

There are issues related to the mackerel fishery that need to be addressed which are beyond the scope of the Panel's legislated role. The parties previously made presentations with respect to quality and grading and the determination of port prices relative to market prices. The Panel in earlier decisions has commented on these points, more recently on the lack of action by the parties. In the current submissions the parties have not commented on the issues of quality and grading.

There is one other factor which the Panel has yet to note. From 2004 to 2007, volumes landed were in excess of 40,000mt. In 2008, the volume declined to 23,000mt. In 2008 a significantly higher proportion of the landings went to export markets. In the three previous years approximately 30% of the landings supplied the requirements for domestic bait. The Panel notes that should the export markets perform as anticipated, the volumes generally available for the domestic bait requirements provide an alternative. There is, at least before the Panel, some uncertainty as to actually what is paid for mackerel as bait for specific volumes and a related average price for the year.

## **DECISION**

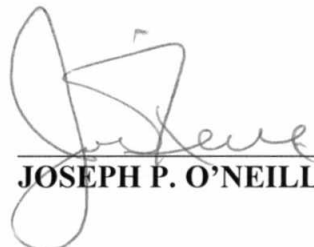

The Panel is aware of significant issues within the mackerel fishery which need to be addressed by the parties. While these issues may affect prices and conditions of sale, they are not within the ambit of the Panel. As to price and conditions of sale for the species mackerel in 2009, the Panel accepts the conclusion that the market trend is more likely to result in lower prices in 2009 than 2008. It is the decision of the Panel to accept the position submitted by ASP.

The following schedule of minimum prices will apply for the 2009 mackerel fishery, effective September 2, 2009.

| <b>SIZE (GM)</b> | <b>PRICE</b> |
|------------------|--------------|
| <b>200-399gm</b> | <b>8.5</b>   |
| <b>400-599gm</b> | <b>14.5</b>  |
| <b>600+ gm</b>   | <b>19.0</b>  |

These prices and conditions of sale are binding on ASP and all other processors that process mackerel, and will form a collective agreement or part of a collective agreement with the FFAW.

Dated at St. John's the 2<sup>th</sup> day of September, 2009.

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