

STANDING FISH PRICE-SETTING PANEL

CAPELIN FISHERY – 2010

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2010 on January 26, 2010. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as “the Act”, the Panel set Thursday, June 10, 2010, as the date by which collective agreement(s) binding on all processors in the province that process capelin, must be in effect. In the absence of such collective agreement(s), the Panel set Friday, June 11, 2010, as the date on which the Panel would conduct a hearing with respect to capelin.

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 capelin. Accordingly, under Section 19 (11) of the Act, should a hearing be required for capelin, the parties appearing before the Panel would be the Fish, Food and Allied Workers, hereinafter referred to as “FFAW”, and ASP.

At the request of industry representatives, the Panel rescheduled the dates for capelin by notice dated June 10, 2010 (copy attached). Again, at the request of industry representatives, the Panel rescheduled the hearing for capelin by notice dated June 15, 2010 (copy attached), to 11:00 am, Thursday, June 17, 2010. The Hearing was to be held at the Battery Hotel and Suites, 100 Signal Hill Road, St. John’s, NL.

The Panel convened its hearing for capelin at 11:00 am, on Thursday, June 17, 2010, at the Battery Hotel and Suites, 100 Signal Hill Road, St. John’s, NL. In the absence of ASP as an organization representing processors that process the majority percentage of the species capelin, the Panel is proceeding under Section 19(9) of the Act. This was confirmed with the parties at the commencement of the hearing.

The Barry Group and the FFAW filed written submissions on June 16th, 2010. Representatives of both groups appeared before the Panel at the hearing. The written submissions of the parties (copies attached) were supported by oral representation in main argument and rebuttal. The Barry Group filed a written rebuttal at the hearing and a copy of their June 15th email to the FFAW (copies attached).

The FFAW expressed its concern and frustration arising from the fact that the Association of Seafood Producers which represents the majority of processors processing capelin has continued to refuse to negotiate. There are issues which are not being properly addressed related to the conduct of the capelin fishery in the view of FFAW.

The Barry Group, a member of ASP and a major producer of capelin did correspond with the FFAW, and as noted filed a submission and appeared before the Panel.

The Panel and the parties also had the benefit of a market report prepared for the Department of Fisheries and Aquaculture by A.M. Haram, as well as, other statistics with respect to markets and prices (copies attached).

There is only one conclusion that may be drawn from the marketing information; matters are worse in 2010 than the seriously depressed market situation of 2009. The severe economic downturn of 2009 was exacerbated by the overwhelming volume of capelin that entered the market on the re-opening of the Barents Sea capelin fishery.

This year the situation is no different, the volumes available to the market continue to depress prices. The once lucrative Japanese market for roe bearing capelin is not available to our fishery as Norwegian supplies from the Barents Sea have filled the requirements. The Japanese have reserved practically nothing for product from this province. Another factor is that the market return from Japan is down substantially.

Other markets in Eastern Europe for male capelin, and the market for zoo food, have similarly depressed prices. In fact, sales of mixed, male and female, capelin are in the European markets as a result of the resources available. There is also an issue of inventory overhang from the 2009 fishery, as reported by Haram.

The Panel, in its 2009 report, assumed that it was dealing with a worse case scenario. Unfortunately, that was not the case, and the situation in 2010 is even more bleak.

In 2009, the Panel concluded at p.3 of its report: "At this point, we are in a no win situation for everyone involved. To select the processors offer would result in harvesters having to make a difficult choice as to whether or not to fish. Undoubtedly some would. That does not mean that they are being properly compensated for the effort. If the Panel selects the harvesters offer, processors must decide if it is still worth the risk to incur the initial expense in buying capelin, and take the chance that all subsequent costs, including the cost of carrying inventory, will not result in a loss. The implications of the actions taken by either side are of some consequence. The closure of the fishery, in whole or in part, affect the overall results of the fishing enterprise, the business of the processors, and those dependent on it."

At this time the Panel cannot ignore the realities of the marketplace and this has to be reflected in a change of position from 2009. In 2009, the Panel accepted the position of the FFAW. In so doing it was fully recognized that processors were in a difficult economic position. The rationale for the decision was simply put on p.3: "If the processors, individually or collectively, conclude that the risks are still acceptable at that level of pricing for the raw material proposed by the FFAW, they will buy. If not, there will be no fishery and harvesters will also lose any potential gain from the price proposal".

The Panel also stated: "Within the context of the fishery as now structured, neither harvesters nor processors, may have the means to secure a positive economic result."

The FFAW in 2009 had hoped to achieve a price in the range of .10¢ lb. However, the price was subject to conditions such as count per kilo, a percentage of usable females and minimum feed content. The result was an overall average in the range of .7¢ lb. This fact was essentially confirmed by the Barry Group.

The FFAW proposal, in an attempt to rectify the results of 2009 has proposed a minimum price of .10¢lb. based solely on a minimum of 10% redfeed content. The Barry Group proposal has tightened the specifications and offered a .7¢ lb. minimum price. The end result is that the parties are further apart then they were last year. Each side is trying to protect its position in very difficult circumstances.

The issue for the processors and harvesters in this province is not one of who stands to benefit the most from a capelin fishery. The preference of the Barry Group would be to allow processors and harvesters to negotiate sales on the wharf, between the buyer and the seller. This would allow those who want to participate in the fishery the opportunity to make their own decision.

The Panel is required by the Act to set a price, in the absence of agreement through collective bargaining. As noted, the Panel is not bound to select the position of one of the parties in 2010. In any event there is no decision that the Panel can make that will be acceptable to both sides. As the Panel noted in 2009 at p.2: "Even if the Panel had the freedom to set a price, there is no obvious ground on which to base such a settlement. The Panel has no appetite to ask harvesters in these circumstances to fish for less. Conversely, the Panel recognizes the risk processors would incur in proceeding with a fishery".

The Panel is not prepared to unilaterally change specifications for the conduct of the capelin fishery. The setting of specifications are really a matter for the parties to determine. If the specifications remain as they were in 2009, the average return to harvesters will not likely meet the minimum price in the contract. The market prospects are worse in 2010. The Panel realizes that the average return to harvesters will be less, but the realities of the market cannot be ignored and while the Panel's decision reflects the realities of the 2010 marketplace, the Panel fully appreciates that the price being set may make a capelin fishery in 2010 totally unviable for harvesters. In fact, the Panel is of the strong opinion that based on the information available to the Panel the stark reality may be that there is no commercial basis on which to conduct a capelin fishery in 2010.

The decision of the Panel is as follow:

Prices for capelin in 2010 will be:


“55 count kilo and under .8¢ per pound, based on the following conditions:

- (1) minimum 40% usable females;
- (2) maximum 10% feed content.

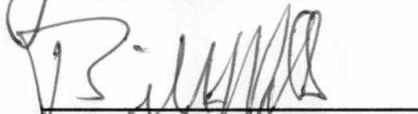
Where one or more of conditions (1) and (2) have not been met, or where the size of capelin exceed 55 count per kilo, the price shall be determined between the individual harvester and processors.”

By virtue of the Act, the prices and conditions are binding on the Barry Group and all other processors that process capelin in the province and will form a collective agreement or part of a collective agreement with the FFAW.


Dated at St. John's the 25rd of June, 2010.



JOSEPH P. O'NEILL



BILL WELLS



MAX SHORT