

Inshore Shrimp Fishery – Spring 2010
Non Price Issues

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, March 26th, 2010, as the date by which collective agreement(s) binding on all processors in the province that process shrimp must be in effect.

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 shrimp. Accordingly, under Section 19(11) of the Act, should a hearing be required for shrimp, 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 the 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 must be obtained.

The Panel received a letter from the FFAW dated February 19, 2010, on February 23, 2010 (copy attached EM-1). The letter with attachments, outlined the events and correspondence exchanged between FFAW and ASP, commencing with an October 30, 2009 letter from ASP to the FFAW giving notice of intent to meet and re-negotiate the Master Collective Agreement. The parties met on November 23, 2009; however, nothing was resolved. ASP presented no proposals after that time and did not respond to subsequent messages of the FFAW with respect to the Master Collective Agreement or issues that the FFAW wished to address. ASP did respond to FFAW on February 10, 2010 indicating they would get back to them “mid-week”. There was no further communication received from ASP until the FFAW received a copy of a letter from ASP to the Minister of Human Resources, Labour and Employment, dated February 22, 2010 (copy attached).

The Panel was not copied on that letter, the gist of which is stated as “... ASP members agreed unanimously in a meeting of February 17th to notify you of our decision not to participate in any meetings, hearings or collective bargaining associated with the Standing Fish Price-Setting Panel.” Further ASP did not respond to any Panel correspondence including an invitation to respond to proposed amendments to the Panel’s Rules and Procedures, or the Schedule of Hearings for 2010.

However, prior to the receipt of the copy of the letter to the Minister, the FFAW had, by letter dated February 19, 2010 (copy attached EM-2) referred a number of matters, “...other than price...” requesting that the Panel consider and decide on the issues

outlined. FFAW also advised that they had proposed February 15-16, 2010 to ASP as dates for non-price shrimp negotiations. The response of ASP was noted above dated February 10, 2010.

The FFAW suggested that if the Panel wished to hold a hearing on non-price shrimp issues, that it be held on March 1, 2010. If the Panel decided that no hearing was required, the FFAW proposed a deadline of March 1, 2010 for written submissions.

The facilitator acting on behalf of the Panel contacted ASP with respect to the March 1st date proposed by the FFAW but received no response (copies of emails dated February 22nd, 2010 attached). Both letters of February 19th, from the FFAW to the Panel had been copied to ASP. ASP was advised by letter from the Panel dated February 24th, 2010, that the hearing on Shrimp non-price issues would proceed on March 1, 2010 (copy attached).

The reason for the lack of any response to either the FFAW or the Panel became clear when ASP wrote the Minister on February 22, 2010, noted earlier.

The Panel convened its hearing on shrimp non-price issues on the 1st of March, 2010 at the Labour Relations Board Hearings Room. The only party to appear before the Panel was the FFAW, who filed a written submission (copy attached) and made representations in support of that submission.

Despite the position adopted by ASP the FFAW stated its intention to appear before the Panel on any unresolved issues and in the absence of any negotiated settlements, to represent the interests of its members. In its February 19, 2010 letter to the Panel on non-price issues the FFAW had included a number of non-price items; however, it had decided, given the circumstances, only to proceed with two items. The first issue related to "broken shrimp" and an appropriate definition to be incorporated into the collective agreement. The second issue was the incorporation into the Shrimp Schedule of the items contained in the Master Collective Agreement.

The Panel will deal with the latter issue first. For some time, by mutual agreement and presumably as a convenience, collective agreements between the FFAW and processors or processors' organizations, have been comprised of a master agreement and the schedule for a particular fish species. Together they have constituted a collective agreement for the purpose of the "Act" and fulfilling the requirements of the "Act".

In the 2009 Master Agreement, article 14:01 states:

"The parties to this Agreement agree that this Master Agreement and any one schedule for a particular fish species together constitutes a collective agreement for the purposes of the Fishing Industry Collective Bargaining Act."

Similarly, the Shrimp Schedule of 2009 states:

"The parties agree that this Schedule and the Master Collective Agreement between the Association of Seafood Producers (ASP) of Newfoundland and Labrador and Fish, Food and Allied Workers Union (FFAW/CAW) dated May 4, 2006 (or any replacement Master Collective Agreement thereto) together constitutes a Shrimp Collective Agreement between the parties for the purposes of the Fishing Industry Collective Bargaining Act."

The issue of the form of the collective agreement arises as a direct result of the actions taken by ASP. The FFAW is concerned about the format of the collective agreement(s) for 2010 and wants to ensure that it has a complete collective agreement for each species. The position of the FFAW is detailed in its first letter of February 19, 2010 to the Panel (EM-1). The written submission of the FFAW requests that the letter be considered by the Panel as an attachment to its submission.

The FFAW tendered a draft of the proposed 2010 collective agreement format (copy attached FFAW-1) at the hearing, which included dates and wording changes, to properly reflect the joining of the two previous documents into one document. The former Shrimp Schedule is now Article 16 of the proposed new agreement. The FFAW had put a line through deleted items of the previous agreement and bold typed new language, to highlight the changes made. Article 16 inadvertently had all bold type. The FFAW offered to provide a second draft to the Panel, received on March 2, 2010 (copy attached FFAW-2) which kept the same format of identifying deletions and changes throughout the entire document, for ease of reference.

The Panel has no issue with the combination of the Master Collective Agreement and the Shrimp Schedule, to form one collective agreement. This approach would be acceptable for shrimp or any other of the species subject to collective bargaining.

The only issues remaining would be items involving a substantive change to either the previous Master Agreement or a Schedule. In this instance the FFAW is proposing new language and a substantive change which relates to their first proposal with respect to the definition of broken shrimp.

Broken Shrimp

The FFAW in its submission stated that: "...broken shrimp has been a bone of contention between the parties for years." The Panel is quite familiar with the issue and its history as a result of the hearing in 2009, Panel decision, Inshore Shrimp Fishery – Spring 2009 – Non-price Issues, March 11, 2009 (copy attached)."

The FFAW is now proposing to add a definition of broken shrimp to the collective agreement, by an amendment to what would be Article 16:03 of the revised document. Article 16 – Prices and Other Matters contains provisions that were formerly in the Shrimp Schedule. The existing language in the 2009 Shrimp Schedule reads:

“Reject Shrimp – shrimp graded at 2.0 grams and under will be excluded from the determination of price.”

The FFAW proposes the following:

“16:03 Reject shrimp – Broken shrimp and shrimp graded at 2.0 grams and under will be excluded from the determination of price.

Notwithstanding anything contained in grading manuals which are not explicitly incorporated into this Agreement, broken shrimp shall be defined as any shrimp that has fewer than four segments, with or without tail fins attached, or a whole shrimp with a break in the flesh, anywhere in the abdominal segments 1 to 4, greater than one third of the thickness of the shrimp at the place where the break occurs.

Left over shrimp pieces, such as telsons, heads, tentacles and antennae, shall be excluded from the sample, and shall not be considered broken.”

In support of their position as outlined in the submission, the FFAW attached a diagram outlining the specifications for broken shrimp in the Greenland shrimp fishery, and a copy of the Seafood Inspection Program of the US Department of Commerce.

In 2009 the decision of the Panel on the issue submitted was based on final offer selection. The Panel concluded, for the reasons set out in its decision, to accept the position of ASP, which effectively resulted in no change in the language of the collective agreement related to broken shrimp. The FFAW in its final offer in 2009 had proposed that the following wording be added as a second sentence to paragraph 1 of the 2008 Shrimp Schedule.

“ Processors shall not make any deductions from the gross weight of a shipment of shrimp by a harvester, except in accordance with the provisions of this Schedule.”

The arbitration decision issued in 2008 (attached to ASP submission to Panel in Spring Shrimp Fishery 2009 Report) had expressly found: “... that processors are authorized by the collective agreement to deduct the weight of broken shrimp from settlements paid to fishers.” The language of the collective agreement on this point has not changed since then. The 2006 language on which the arbitrator based his decision is the same in the 2009 agreement. The FFAW proposal would have, had it been accepted, resulted in no deductions for broken shrimp. It did not provide for a final resolution of the issues.

The current FFAW proposal does not change the right to make deductions for broken shrimp. Instead it provides a definition of “broken shrimp” to be included in the collective agreement.

The issue in question for the Panel is whether the FFAW definition of “broken shrimp” in its March 1, 2010 submission is reasonable. In its submission to the Panel in 2009, the FFAW stated at p.7:

“We contemplated including a definition of broken shrimp with this offer, but felt that a matter of such a technical nature should first be addressed by the parties with a view to finding a negotiated solution, before being referred to the Panel.”

ASP in its 2009 submission did not have to address a definition for broken shrimp before the Panel. In a review of the arbitrator’s decision, the definition of broken shrimp is set out in the 2005 Shrimp Booklet, which is not part of the collective agreement, under Reject Grading Specifications.

“Broken Shrimp – shrimp that have damage to the meat have no commercial value. Broken only occurs when the meat fibers of the shrimp have been damaged. A missing shell or carapace does not mean that shrimp is broken if the meat fibers are intact.”

The arbitrator stated at p.18:

“The 2005 Shrimp Booklet also describes the anatomy of the shrimp, and contains a diagram of the parts. It states that the meat fibers are contained in the six abdomen segments, which are numbered from one to six. The 6th segment is also know as the tail segment. There is no meat fiber in the telson or tail fin, and a missing telson or tail fin does not cause the shrimp to be graded as broken. However, a missing or damaged tail segment, which is one of the six abdomen segments, would cause a shrimp to be graded as broken.”

In the award at p: 23, a definition for broken shrimp was submitted by the FFAW to ASP, in the 2007 shrimp negotiations, worded as follows:

“Broken shrimp – shrimp that have damage to the meat have no commercial value. Broken only occurs when the meat fibers of the shrimp have been damaged in abdomen segments 1-5. A missing shell or carapace does not mean the shrimp is broken if the fibers are intact.”

“In determining the percentage of broken shrimp in a sample, separated, unconnected heads or meats shall be discarded from the sample prior to weighing and distribution of the sample.”

This proposal was not incorporated into the 2007 collective agreement.

The absence of ASP, or any shrimp processor, in the current discussion is not helpful in making a determination of what is a reasonable definition of “broken shrimp”. Since

November 23, 2009, ASP and its members have refused to meet and bargain with the FFAW, as they are required to do under the Act. The obligation to bargain is not removed, even if ASP objects to current settlement procedures.

Broken shrimp and the consequence of deductions in weight from the catch due to broken shrimp has obviously been an issue for some time. In the opinion of the Panel, their approach to the issue in 2009 would not have provided a resolution of the issues between the parties. However, the FFAW have every right to bring the issue forward in collective bargaining. The refusal of the members of ASP to bargain should not result in an automatic advantage in maintaining the status quo. If the parties can not agree, the Act provides for a resolution to disputes and the parties and Panel must adhere to the legislated requirements of the Act.

The proposal of the FFAW unlike its proposal in 2009 does not restrict the right of processors to deduct broken shrimp. The FFAW proposal does appear to change the current definition applied by graders. However, it is consistent with the approach taken in other jurisdictions including our major competitors in Greenland.

Under the circumstances the Panel is of the opinion that the definition of broken-shrimp proposed by the FFAW for inclusion in the collective agreement is such that it will not result in a material negative impact on processors. Shrimp portions that do not fall within the definition and are otherwise acceptable for processing will not be discarded. This should not result in any additional loss to the processor.

Decision of the Panel

1. The definition of broken shrimp as proposed by the FFAW will be incorporated into the 2010 collective agreement in Article 16.
2. The Master Collective Agreement and Shrimp Schedule will be combined to form one Collective Agreement for the 2010 agreement which, when finalized, will be binding on all processors that process the species shrimp in the province.
3. The FFAW during the course of the hearing expressed concerns with respect to the fact that prices for shrimp have been set for spring, summer and fall. In the past if the summer and fall prices were not settled by the parties, the matter was referred to the Panel. In the absence of processor participation they wanted to ensure that the practice on shrimp pricing was continued and specified in the collective agreement.

The FFAW in their revised draft, (FFAW-2) proposed wording in Article 16:13 to deal with seasonal price changes for the shrimp fishery.

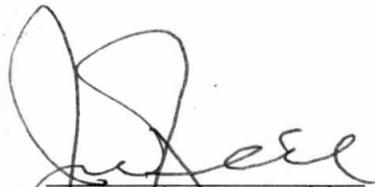
The Panel accepts the fact that shrimp prices have been set for the spring, summer and fall fisheries. In the event of no agreement on prices the dispute

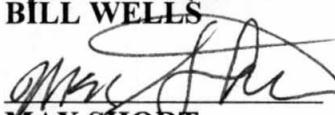
has been referred to the Panel for final settlement. The Act contemplates that there must be a collective agreement in force prior to the commencement of a fishery. The FFAW proposal conforms to a well established past practice and the Panel accepts the change proposed in Article 16:13.

4. A final point to note is the wording change set out in Article 16:12. Harvesting caps for 20:10 have yet to be determined. The Panel accepts the proposal on the basis that the treatment of harvesting caps will be no different in 2010 than provided for in the previous collective agreement.

The FFAW is to prepare a new draft to reflect the intent of this decision and return it to the Panel. After review the Panel will direct that copies of the draft be forwarded to all shrimp processors.

Dated at St. John's, March 9, 2010.


JOE O'NEILL

BILL WELLS

MAX SHORT