Standing Fish Price Setting Panel

Mackerel 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, August 19, 2010, 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 20, 2010, 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 19.11 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.

The Association of Seafood Producers has chosen not to bargain fish prices in 2010. As a result the provisions of section 19.11 do not apply. The Panel is proceeding under the provisions of section 19.9 and the decision of the Panel is not subject to the process of Final Offer Selection. The Barry Group exchanged correspondence with the FFAW and one meeting was held between them. The date of the hearing was changed by agreement with the Panel to 10:00 am on August 12, 2010 at the Battery Hotel and Suites in St. John's. The only parties to appear before the Panel having earlier exchanged submissions were the FFAW and the Barry Group. The written submissions were supported by an oral presentation in main argument and rebuttal (copies attached).

The Panel and the parties have the benefit of market information received from the Department of Fisheries and Aquaculture, including the market report submitted by Ann Mari Haram (hereinafter referred to as the "Haram Report" (copies attached)). This report is the principle source of information on which the parties and the Panel rely. However, as the Panel noted in 2009, the process is very speculative. In 2008, the Haram Report concluded that prices would most likely increase. In 2009, the conclusion was that "most likely" the prices will be reduced. The 2010 report includes: "In view of the factors described above it is difficult to predict prices for the upcoming season. Nobody foresees higher prices than in 2009 and the risk is on the downside. There is a: "cautious optimism that prices on mackerel will be similar or close to 2009 prices."

The financial meltdown in 2008 undoubtedly led to a reduction in market prices and a significant drop in the average export market returns reported by DFO. Is there likely to be a further significant drop? The Haram Report notes that "demand appears strong across all markets", the issue is the question of additional supplies, most notably from the Norwegian fishery. The Norwegian quota is up by 80,000 tonnes. The quota in 2009 was up 70,000 tonnes from the previous year, yet the catches in 2009 were at the level of the previous year. For reasons noted, the Norwegians only caught 63% of their quota in 2009. It is anticipated they will catch up to 130,000 tonnes more mackerel in 2010 than in 2009. There is a strong demand across all markets and new markets are emerging. The Haram Report states at p.8: "Nonetheless, the key message is that the market demand is strong and that other markets besides Japan and Russia are growing in importance".

In 2009, in making its decision on the issue of the price to be paid to harvesters for mackerel, the Panel noted in its Report at p.3: "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. In the absence of a clear market trend or positive element to support a price increase the Panel chose the position submitted by ASP rather than the FFAW position that proposed a price increase over 2006 prices. In doing so the Panel noted that it might have been preferable to have the 2006 prices rollover into 2007. In 2008, the 2006 prices were reinstated as market indicators were positive, a fact which materialized. In 2009, the market factors were negative and the Panel accepted the ASP proposal of lower prices to harvesters.

While there may be a downside risk in 2010, there is no certainty. The Barry Group clearly emphasizes the risks relating to the issue of eventual market returns resulting from supply and demand. The downward trend in prices from 2008 into 2009 and the continuing of that trend for the first five months of 2010 is emphasized. It is acknowledged that prices in the first five months of the year involving minimum quantities do not necessarily reflect the average market returns for the year, as can be seen from the tables submitted. However, the Barry Group submission emphasizes the potential risk to justify its submission of a significant drop in prices to harvesters for 2010.

Conversely, the FFAW notes the inconsistency in prices to harvesters when compared to the average export prices of mackerel. The more positive elements of the Haram Report are emphasized as one would expect. Quite divergent views of the parties resulting from the same market information are a common thread in the submissions to the Panel.

The FFAW continues to point out that there is an issue with respect to the harvester's share of the total market return. It is contended that the price set as a result of the Panel's decision in 2006 resulted in a lower base price then it should have been. Since then, prices to harvesters have gone up or down dependant on the forecast of the marketing information. Compounding the problem was the FFAW proposal in 2007, which proposed an increase in prices despite negative market forecasts. At that time the Panel had to choose one of the two positions presented under Final Offer Selection (FOS). It chose the position of ASP as the more acceptable proposal in light of a declining market forecast. The result further reduced the price to harvesters and perhaps more than the market decline warranted.

At the time the Panel was concerned about the impact of the drop; in making it's decision it stated: "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."

The differential in the average market returns from 2006 to 2007, see Appendix A of the FFAW submission, would not seem to justify the amount of the drop in prices to harvesters that occurred in 2007. In 2008, with a forecast rise in market returns, the Panel accepted the FFAW proposal for a price increase. This was a conservative proposal as the FFAW wanted to ensure it salvaged at least part of the ground lost in the previous two years.

The problem with all of this, in the view of the Panel, is that the results over the past five years, in the setting of mackerel prices in the absence of agreement between the parties, appear to defy any rational explanation. The best demonstration of this can be found in Appendix A of the FFAW submission. None of the DFO figures are assumed to be precise; they do however highlight the apparent inconsistencies in determining an appropriate price for harvesters, or their appropriate share of the average market return. The difficulties are also compounded by the setting of prices on the basis of FOS, which has resulted in further price distortions over time.

As the Panel pointed out in its 2009 decision at P.4, with respect to having to choose one of the positions submitted by the parties: "The Panel realizes that such conclusions beg the question of how much of a change in market prices should result in an increase or decrease from a previous raw material price. Had the FFAW proposed no change in price in 2007, it may well have been successful ... In 2009, a reduction based on a more negative market outlook would have come from a higher number."

The discrepancies in price setting in relation to the average export price set out in Table A of the FFAW submission are obvious. In 2006 the average market return dropped by 29¢ a lb. the prices to harvesters in the three different size categories dropped by 2¢, 5¢ and 7¢ a lb., respectively. In 2007, the average market return dropped by an average of 7¢ lb. and prices to harvesters dropped by 2¢, 1¢ and 2¢ a lb., respectively. In the 200-399 gm category, harvester's prices came down a total of 4¢ a lb. This is indicative of the inconsistency of the results. It also highlights the effect of the Panel having to choose one of two divergent positions based solely on a forecasted market trend and not on actual prices. One side or the other had their position adopted without question as to whether the level of increase or decrease proposed bore any relevance to the actual market price change, either up or down. The results lack any precision with respect to the reasonableness of the magnitude of the increase or decrease in the harvesters' price.

The Barry Group provided a reasoned summary of the Haram Report supplemented by their own information of the current market situation. In their view the Haram Report should have come to a positive conclusion that market prices will decline going forward. The Barry group is correct in stating that the Panel has decided the issue in previous years on the basis of change in the market prices year over year. However, it must be recognized that in Final Offer Selection, the Panel does not set the price. Rather it must chose between the prices submitted by the parties; which is the more reasonable in light of the market trend. This is not the same as deciding on what is the proper price in relation to market prices. They are also correct in stating that the economic position of either harvesters or processors is not relevant to the determination of price.

Since the Panel's inception, the position of the Association of Seafood Producers, agreed to specifically on occasion by the FFAW, has been that the Panel must make a decision based on the change on market prices year over year. Under FOS the Panel had to choose between two often quite divergent positions. The Panel could not consider what might be the more appropriate price related to the market price. That is why in it's previous decisions related to mackerel, all FOS determinations, the Panel applied the market forecast. In a rising market the FFAW would expect to be successful while in declining markets the processors proposals were selected. It begs the question of whether the starting point was correct and with the price set by FOS over time there can be a distortion between actual market prices and the price paid to harvesters. The mechanics of simply applying a market trend will distort the relationship between market and port prices over a series of years.

After the hearing, at the request of the panel, representatives of the Barry Group and the FFAW met with the Panel on August 16th, at the Panel office. Subsequent to those meetings the Panel received a further submission from the Barry Group to which the FFAW responded (copies attached).

The latter submissions have not altered the approach or the conclusions arrived at by the Panel. They do highlight the fact that there have not been any substantive negotiations between mackerel processors and the FFAW this year. The Panel is aware, from previous submissions and hearings, of other important issues that remain outstanding as they have been for sometime.

The complexities in determining a price for mackerel that is fair and equitable between harvesters and processors have not been addressed.

The Panel commends the Barry Group for appearing and making its presentation on the market. However, it must point out that the Barry Group has relied on a negative or down market (in their opinion) to be determinative of the fact that their proposal should be accepted. As noted in their second submission: "… we were under the very clear impression that the decision of the Panel on prices would be made on the direction of the market, as advised by the marketing consultant, and that the Panel would rule on issues only in dispute." The latter point presumably refers to price. The main point is that the market trend is the definitive factor, allowing a lower, in this case, or higher price, to decide the actual price. This despite the inconsistent results that approach may and has produced.

The Panel has dealt with the examples of that approach above, and we have heard nothing new to change the rationale of the Panel's approach. The Panel's decisions have all related to export market prices and the marketing consultant's report. The issue is the relative change in prices over time in the market and the changes in the price to harvesters.

The Barry Group, on the basis of a declining market trend, again in their opinion, seeks to reduce the price to harvesters by 23%, 24% and 16% in each size category. In reason the Panel cannot support such a conclusion based on the Haram Report. The FFAW proposal represents an increase of 65%, 38% and 42% in each size category. While the FFAW does not base its case on the market report or any positive upward trend again, in reason, the Panel cannot support such a conclusion. Either of these two extreme would produce an unacceptable result. Admittedly, if FOS were to apply, the parties might well have proposed less extreme positions to the Panel.

As noted earlier in this report, these proceedings are not subject to FOS and the Panel can make it's own assessment of the situation. The Haram Report is not so definitive as it has been in recent years in providing a market trend. A summary of the issues in play is presented at p. 9 in the Report. The conclusion: "it is difficult to predict prices for the upcoming season." Prices are not likely to increase but it is not clear that they will fall or fall appreciably. In light of the Report, the proposals of the Barry Group and the FFAW are unacceptable to the Panel.

At this point the Panel could let the matter rest and have no change in price from last year. However, in the opinion of the Panel that would not be the right decision. The Panel has reviewed all the pertinent statistical information and consulted with the parties. In it's opinion, the right thing to do is to make an adjustment to the prices paid to harvesters. This adjustment is not related to the current market prices. It is also recognized that it is impossible to arrive at an absolute right number. However, in attempting to rebalance the equity in this situation, the Panel is of the opinion that an appropriate adjustment to the price to harvesters would be a return to the 10¢, 15¢ and 20¢ a lb., in the respective size categories. This adjustment results in a level of pricing that has applied at average market returns ranging from 58¢ lb., to 73¢ and higher. The 94¢ high has been subject to question. These numbers are not precise but they do provide a comparative base.

The highest level of landings in a year is in the 400-599 gm. category, at approximately 55%. The adjustment in this category is approximately 5% from last year's prices. It is an adjustment by one half as much as the price drop in this size range which occurred in 2007, under the events described earlier in this report.

Undoubtedly, the FFAW will be disappointed in this result as they have argued that the disadvantage to harvesters in the past was much larger. The Barry Group will no doubt be critical of the approach taken by the Panel. However, in reason they should recognize this attempt by the Panel to adjust the equities between the parties in this fishery. If they conclude that they are at a disadvantage now they should recognize that they were materially advantaged by the price relationship in previous years.

Finally it should be noted that if markets in 2010 "crash", in the words of the Barry Group, the Panel would react immediately upon any reference. The prices as now set should reasonably accommodate current market prices and moderate reductions, based on past market experience.

The following schedule of minimum prices will apply for the 2010 mackerel fishery, effective August 20, 2010.

SIZE (GM)	PRICE ¢ LB.
200-399	10
400-599	15
600 plus	20

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

Dated at St. John's the 19th day of August, 2010.

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