

## **Snow Crab 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 Monday, March 8, 2010, as the date by which collective agreement(s) binding on all processors in the province that process crab 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 snow crab. Accordingly, under Section 19(11) of the Act, should a hearing be required for crab, 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 regulations made pursuant thereto required 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 positions 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 hearing for crab, if required, was scheduled to take place at 2:00 pm on Monday, March 8, 2010, at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John’s.

The Panel received a letter from the FFAW dated February 19, 2010, on February 23, 2010 (copy attached). 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 17<sup>th</sup> 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.

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.

As a result of the withdrawal of ASP from collective bargaining, the Panel issued a notice, dated March 3, 2010 to all crab processors in the province, copied to ASP, advising of the changed circumstances (copy attached). The parties before the Panel may now include a processor, processors' organization and the FFAW. Parties were to provide the Panel with written submissions not later than 24 hours before the scheduled hearing time. The notice also specified that the hearing would take place at Salon D, Delta St. John's, 120 Gower Street, on Tuesday, March 9, 2010.

The Panel was in receipt of a written submission from the FFAW. No other written submissions were received. The Panel convened its hearing at 2:00 pm on Tuesday, March 9, 2010. The FFAW appeared before the Panel, to support its written submission (copy attached), with an oral presentation. No other party appeared before the Panel. For the record, the Panel confirms that the hearing was conducted pursuant to section 19.10 of the Act.

The FFAW and the Panel had the benefit of a market presentation by Mr. John Sackton of Seafood.com and Seafood Datasearch, on March 3, 2010 (copy attached). The Panel also had an opportunity to discuss the market issues for snow crab in 2010 with Mr. Sackton. There is no doubt that market prospects and higher prices for snow crab, in the all important US market, are better in 2010 than last year. The problem is that increases in market prices will be offset by the strength of the Canadian dollar. The exchange rate will impact on the market return to processors.

In 2009, there had been a "huge" increase in the supply of snow crab in the United States market, resulting from more product being available, and the fact the Japanese buy of sections was reduced. The effect of the increased market supplies, the recession, and lower foodservice sales resulted in steep declines in market prices for snow crab.

One positive outcome was that the retail sector in the US was able to move significant volumes through promotions. In March 2009, Mr. Sackton had forecasted the range for 5-8 oz sections in the US to be \$3.25 lb - \$3.50lb. The US market had already priced in a reduction on crab from US \$4.25lb for 5-8 oz sections. In the end the price for 5-8 oz sections averaged \$3.15 in the US market from May through July 2009. For crab processors from Canada the situation on market return was made worse due to the fact the Canadian dollar strengthened from \$1.25 to \$1.10 vs the US dollar between April and May.

The positive result of the lower prices in the US market was the fact that it stimulated retail demand. Larger volumes of crab were moved through the market and there is no inventory overhang facing the industry at the start of the 2010 season. Attached is a summary of 2009 Newfoundland Crab Market Experience by Mr. Sackton, dated January 10, 2010 which provides a summary of what happened in 2009. In addition to an update

of 2009, Mr. Sackton's presentation of March 3<sup>rd</sup> outlines what might be expected in 2010.

On the positive side, the Japanese are expected to be back in the market with a normal volume buy. This fact, and the expected reductions in quotas, and therefore a lower volume of snow crab available to the US market, should help to increase prices. To quote Mr. Sackton; "modestly" and "not significantly". Given the current state of the US economy, while things are improving in the foodservice sector, volumes of crab will have to depend on retail sales. These sales are price sensitive for promotions, and expectations of significantly higher prices may prove to be optimistic.

In 2009, ASP submitted a final offer to the Panel of \$1.50 lb. on March 28, 2009. That offer was based on a market price for 5-8oz sections at US \$3.38 with an exchange rate of 1.25, which resulted in a return of \$4.22 Canadian. The offer included an adjustment for changes in the exchange rate and a price re-opener if 5-8 oz sections were to go lower than US \$3.20lb. The FFAW proposal was a \$1.50 lb with an exchange rate of .83¢ or \$1.55lb with an exchange rate lower than .83¢.

The minimum price to harvesters in this province was eventually reduced by .20¢ lb. to \$1.35lb as a result of the Panel lowering the price to reflect market conditions and the effect of the difference in the exchange rate in the FFAW final offer.

One fact, to which we will refer later, is the persistent drop in prices for snow crab in the US market between March and May, after the opening of the snow crab season. However, the Panel prefers to start with an outline of what has changed between March of 2009 and March of 2010. Using the information outlined in Mr. Sackton's review and the FFAW submission, the issue becomes clearer if we look at the US market prices for 5-8oz sections, and the impact of the rate of exchange.

In March 2009, 5-8oz sections were in a range of \$3.70 to \$3.90 with an exchange rate of 1.25 Canada vs US dollar. As noted in the ASP offer, the return at US \$3.38 was in excess of \$4.00 Canadian. At the end of May the average price for 5-8oz sections was \$3.15, the Canadian dollar had strengthened considerably, the result in terms of the market return in Canadian dollars, as calculated by Mr. Sackton and the FFAW, was \$3.62.

To illustrate the issue, if we assume that the average market price in US dollars for 5-8oz sections in 2009 was \$3.15, and the average return to processors in Canadian dollars was \$3.62, we know the price to harvesters at that time was \$1.35. In 2010, if the price of 5-8oz sections remained at \$3.15, at the current exchange rate of 1.0148, the market return would be \$3.20 Canadian. The exchange rate is a major factor in any determination of prices for snow crab in 2010.

The forecasts with respect to exchange rates between the Canadian and US dollar are gloomy from the perspective of any Canadian exporter. Analysts are predicting the Canadian dollar will be at par with the US dollar this year, and may well exceed that.

There is nothing to offset that fact for harvesters and processors in this province unless the market price for snow crab in the US improves over 2009. The issue then is, how much one could reasonably expect that increase to be and, based on the assumptions, what is a comparable average price return in Canadian dollars for 5-8oz sections in 2010.

One view of the current situation is outlined by the FFAW in its presentation. The first, and fundamental point for the FFAW, is that there must be a: "minimum price which remains in effect for the entire season". The FFAW is not prepared to accept the perennial drop in price resulting from what is termed as a "temporary oversupply" to the market after the start of the fishery. The fact of increased sales to Japan, reduced quotas, and a lesser supply to the US market should not result in a drop in market prices in the US to correspond with the long term average detailed by Mr. Sackton. In any event, the FFAW attributes these early declines in price from the start of the fishery to the actions of "force feeding" the market."

The FFAW calculates the March return in Canadian dollars to be \$3.89. Even if the price in Canadian dollars for 5-8oz sections were to decline by .32¢ to \$3.57, that price could support a price to harvesters of \$1.50 lb. The rationale for this is outlined in their presentation and relates, in part, to the fact of minimum prices in the collective agreement and additional bonus payments made to harvesters.

The FFAW accepts that the average return to processors in 2009 was \$3.61 Canadian. The current price in the US is \$3.65-\$3.80 (based on an Urner Barry report dated March 2, 2010 attached to the FFAW submission). Applying the mid point of \$3.725 and an exchange rate of 1.04314, the current price in Canadian dollars is \$3.89. In the view of the FFAW the dramatic drops in price from March to May in 2008 and 2009 should not be included in any calculation of an anticipated drop in 2010 as a result of reduced supply to the market.

Mr. Sackton had calculated, (Slide 46 of his presentation) that since 2001 the May wholesale price has been lower than the March price by an average of .35¢ US. He was also of the view when questioned by the Panel that he would not advise making any projected reduction to be less than that average in 2010. The FFAW on this point, says the reductions in 2008 of .68¢ and .73¢ in 2009, should be excluded, and the average of .21¢, between 2001 and 2007 should be applied in 2010. The FFAW also submitted that Mr. Sackton's point, (slide 45) that US \$3.15 would return Canadian \$3.31: "would not support a fishery".

The FFAW's presentation is focused on the level of the current market, and what would be a permissible drop in that market to support a minimum price of \$1.50 for the fishing season. At p.6 it is stated:

*"Setting a raw material price at a reasonable level at this stage in the year would allow markets time to adjust, and government and industries to consider strategies – including inventory support to hold prices at a level that would allow the fishery to take place."*

The Panel has to deal with the reality of the current situation based on the facts as we know them. Using the available information we have two approaches to determine what may happen in 2010 with respect to March to May prices and average prices for the year.

The current March prices of 5-8oz sections at wholesale in the US are \$3.65-\$3.80. Taking a mid point, as the FFAW did, of \$3.73, what is the price likely to be. The FFAW conclusion that the March to May drop in price will not be more than .21¢/lb is, in the opinion of the Panel, overly optimistic. In the Panel's opinion, a drop of not less than .35¢, as suggested by Mr. Sackton, is the more prudent approach. That would result in a May price of \$3.38.

Another approach is to take the average price for 5-8oz sections in 2009 of \$3.15. This price is expected to improve based on factors referred to previously, a higher Japanese buy and reduced quotas, the question is by how much. Mr. Sackton says (slide 54) "modest, but not dramatic improvement". In slide 57 he states: "that means prices slightly higher than last year, but not significantly higher."

If the Panel chose a range of .10¢ to .25¢, the \$3.15 price of 2009 could increase to an average of \$3.325. The calculation above was \$3.38, a mid-point of the two calculations is \$3.35. There is nothing absolute about this, nor is it intended to be. Using that figure however, permits a starting point for the Panel to confront the real issue in 2010.

Applying the current rate of exchange 1.0148 to the March average US \$3.725 results in Canadian \$3.78. Using that rate with US \$3.35 for May results in Canadian \$3.40. The drop in the Canadian dollar return is .38¢. The FFAW, "hold the line" position of \$3.57 then becomes problematic, and the 2009 average of \$3.61 is even further away.

The application of the exchange rate produces an exact result. The market price projection is another matter. The assumption of a .20¢ lb improvement is not a guarantee of what may eventually occur at the wholesale level in the US for 5-8oz sections. It could be higher; however, the market improvement must be significant to offset the dramatic increase in the Canadian dollar which is the most important factor that negates all of the other positive factors. At the current exchange rates the wholesale price in US dollars would have to be \$3.55 to get to a \$3.60 Canadian return.

To accept the FFAW position of a minimum price for the season at \$1.50, based on the information that is available to the Panel at this time, would not, in the opinion of the Panel, be an appropriate response. In 2009, the FFAW reluctantly accepted a \$1.35 which we now know applied when the average market return was \$3.61 Canadian. ASP in 2009, was adamant that prices in 2009 should have



been lower. The Panel notes that by the end of the 2009 season, virtually all of the crab quota had been landed and processed.

The issue of what is an appropriate return to harvesters has been clouded in the past due to the "bonus payments" that are additional to the minimum price. The FFAW refers to some level of bonus payments made in 2009. The FFAW also notes that the Alaskan price to harvesters is based on a 42% share of the market price. They apply 42% to the \$3.57 market return to support their position for the \$1.50 minimum price. Applying 42% to \$3.40 would result in \$1.43.

A minimum price set by the Panel may not fit the FFAW position of a price that will "support" a fishery. The Panel has had no input from the processors and therefore no idea of their position on price.

The situation in 2010 is quite volatile especially in light of currency movements. Any price set for the season may have to be adjusted dependant on changed circumstances. To change what has been set as a price based on "average" market conditions may well lead to serious negative or positive consequences for either harvesters or processors. For example if the set price is later reduced, harvesters have lost out on the higher price that could have been in place at the start of the season.

The Panel is not required to determine what the actual price should be for snow crab, we are required to set a "minimum price". In the absence of a formula, the request from the FFAW is to set a minimum price for the season. Market prices for crab in each year are somewhat volatile and dependant on supply demand situations. The range of prices evident in the US market over the past six years supports this contention. The matter is further complicated by the variations in the rate of exchange between the Canadian and US currencies.

The Panel repeatedly cautioned the parties, that unless issues related to the "price to market formula" were addressed, it could result in serious problems. In its 2008 decision at p. 14 the Panel summarized its views as follows:

*"This Panel is clearly of the view that this very serious issue of "price to market formula" has the potential to become the lightening rod for future unrest in the fishing industry. It is for that reason the Panel is strongly advising all parties within this industry to address the matter on a timely basis and in an appropriate forum. To simply ignore it will be to our peril."*

These issues were not addressed and the formula was set aside to ensure a fishery continued in 2008. The development of the "price to market" formula in 1997, revised in 1998, was intended to assist the parties in reflecting market volatility in the raw material price. It did not resolve the major issues between the parties in the intervening years in their attempts to set the opening price.

The Panel remains convinced, despite the protestations of ASP, that the continued application of the "price to market" formula, would not have provided a solution in 2008 or 2009. It will most certainly not provide a solution in 2010.

In the view of the Panel, ASP did not appreciate the extent of the harvesters and FFAW grievance with respect to the application of the "price to market formula". For three years they had sought to make amendments to the formula and, while the Panel encouraged the parties to deal with the issues arising within the "price to market formula" it did not force a resolution by making any of the changes the FFAW was seeking. An insight into the frustrations experienced by the FFAW and its members is set out in the FFAW submission to the Panel on March 28, 2009 at pages 5 and 6, (copy attached as FFAW 3).

The challenge for the Panel in 2010 is to set a price for snow crab that hopefully will enable harvesters and processors to engage in the 2010 fishery thereby enabling Newfoundland and Labrador to continue to be a reliable source of snow crab to traditional markets.

There may be another approach to devising prices related to market return. If harvesters were to receive a percentage of the final market return in Canadian dollars, that figure could be calculated on the basis of wholesale price plus exchange rates by an independent source. Advance payments could be adjusted monthly, bi-weekly, or on some agreed basis. Any new methodology can only come about by the mutual agreement of the parties.


In looking at the range of market prices and prices to harvesters, the Panel has found that 40% of the Canadian market return to harvesters provides a reasonable result in most instances.

Obviously, the parties to collective bargaining on crab prices are the only ones to properly devise such a formula, based on a percentage of final market return. This approach would better align the interests of harvesters and processors. The exchange rate is beyond influence; however, the return from the market, once agreed, would result in the agreed equitable sharing of that return. Should a new formula be agreed along the lines suggested, there would be no basis for an opening season price dispute, or for that matter any price dispute arising during the course of the season.

### **Decision of the Panel**

1. The minimum price for snow crab for the 2010 collective agreement shall be \$1.35 lb. for crab with 4 inch carapace and over, and \$1.00lb for crab with less than 4 inch carapace.
2. The Crab Schedule of 2009 will be incorporated with the Master Collective Agreement, which document, without any substantive change unless approved by the Panel, or arrived at by mutual agreement between the parties, will form a collective agreement binding on all processors that process the species snow crab.

Dated the 18th day of March, 2010.

  
**JOE O'NEILL**  
**BILL WELLS**  
**MAX SHORT**