

STANDING FISH PRICE-SETTING PANEL

MACKEREL FISHERY 2011

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2011 on April 12, 2011. Pursuant to section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as “the Act”, the Panel set Monday, August 8, 2011, 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 Tuesday, August 9, 2011 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(ASP) had been identified as the processors’ organization that represent the 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 ASP and the Fish Food and Allied Workers (FFAW) 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 the date for a hearing if required was changed to Thursday, August 18, 2011. The Panel convened the hearing on Mackerel at 2:00 p.m. at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John’s. The parties appearing before the Panel, having exchanged submissions earlier (copies attached), were ASP and the FFAW. The written submissions were supported by an oral presentation, in main argument and rebuttal.

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 Marie Haram, hereinafter referred to as the "Haram Report" (copies attached). For some years the Haram Report has been the primary source of information for the parties and the Panel. One of the difficulties in dealing with mackerel prices is the fact that the market prices for the high volume landings in the fourth quarter do not become available until late in the year, after the conclusion of our fishery. In that sense, the market price projections are somewhat speculative, although based on a comprehensive analysis of the landings anticipated in producer countries and demand in the prospective markets.

The Panel in previous decisions has remarked on this fact, and it is pertinent to repeat some of the conclusions of the past and for this year. 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 stated, "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".

This year the Haram Report concludes, "in 2010 the best case scenario materialized; stable prices despite higher total quotas in Europe. In view of the strong demand and exports so far in 2011, the expectations for the upcoming season go in the direction of higher prices".

In 2010 prices for the last half of the year rose, and have continued to rise in the first half of 2011. This is reflected in the DFO calculation of average export prices in cents per lb. for 2010 of 80¢, compared to 2009's 73¢ (see appendix A of the FFAW submission, page 9). This matches a general trend in rising food prices and seafood prices.

Generally, with the low volume of supply in the first half of the year, prices for mackerel are higher than later in the year when the higher volume of landings come in. This year inventory levels are low. While prices are variable between the higher return Japanese and Russian markets, and between larger high quality mackerel and smaller or lower quality product, the Panel accepts the proposition that the market returns for 2011 will reflect price stability at current or higher levels. It is recognized that there could be a change in this positive outlook going forward, in what appears to be a re-emerging financial crisis. However, at the present time the outlook for the mackerel market remains positive despite possible higher volumes in supply.

The parties appear to accept the fact of higher or stable market returns; both submissions propose an increase in the price to harvesters. There is however, a very large gap between the two positions. The Panel has to choose one of the two positions presented. In previous hearings on mackerel and for other species, the parties have emphasized the fact that the Panel must make its decision based on the change in market returns year over year.

Having said that, the parties include any number of arguments to support their submission on prices, other than the change in market prices from year to year. On the latter point, they have had and again this year widely divergent views on the market return and the related price to harvesters.

In its 2010 Decision the Panel dealt extensively with the history and manner in which mackerel prices have been set for harvesters. Not being bound by Final Offer Selection in making its decision, the Panel, for the reasons stated, increased the price of mackerel to more properly reflect what, in its opinion, that price should be at that time. This was done when the market projection was for stable or declining prices. Fortunately, as noted earlier, prices improved contrary to the forecast.

In applying Final Offer Selection with respect to mackerel prices, the results, as one can see from Appendix A in the FFAW submission, produce anomalies. The levels of increase or decrease do not appear to reflect the actual change in market prices. As the Panel noted in 2010, at page 3; "the results lack any precision with respect to the reasonableness of the magnitude of the increase or decrease in the harvesters' price".

The Panel sees no point in repeating its analysis of the situation in the determination of mackerel prices set out in detail in 2010. One sentence is worth repeating, at page 4; "the complexities in determining a price for mackerel that is fair and equitable between the harvesters and processors have not been addressed". At that time the Panel noted that there; "have not been any substantive negotiations between mackerel processors and the FFAW this year". The same may be said of the effort applied this year.

The Panel is left to choose which of the two submissions is the more reasonable in light of the market changes since last year and, in this instance, the year before.

Market prices had not been forecasted to increase in 2010. By increasing the price to harvesters, for other reasons, the Panel applied a new, if arbitrary, benchmark for prices to harvesters. Processors apparently paid even higher prices, as outlined by the FFAW and reflected in the DFO statistics. The latter indicates a change in export prices from 73¢ lb. on average in 2009 to 80¢ lb. in 2010; a 9.6% increase. Even if

one were to assume a further differential between 2010 and 2011 market prices, in the order of 10%, what is the result if a 20% market return increase were applied to the benchmark prices of 2010, of 10, 15 and 20¢ lb. The result is 12, 18 and 24¢ lb. Prices proposed by ASP are 11.5, 17.25 and 24¢ lb. FFAW proposes prices of 15, 24 and 32¢lb. Respectively, this represents an increase of 50%, 60% and 60%.

The FFAW position as tabled addresses the concerns expressed in their submissions to the Panel since 2006, particularly the harvesters' percentage of the market share. However, as the Panel has consistently pointed out in past reports, many of the issues are outside the ambit of the Panel's decision making process. As well, there is no clear evidence on issues raised, such as the volume and price of mackerel sold for domestic bait. While there may well be differentials in prices paid to fishermen, there is no direct evidence addressing the size or quality of the mackerel being bought. To address those issues, the FFAW appears to have the average price paid in 2010, according the DFO statistics, established as the minimum price to be paid in 2011. The methodology and calculations to support this position are clear, but it is also clear they are a construct done by one party to the negotiations to reach an objective.

The reality confronting the Panel is that it has to choose one of the two positions presented. In making that choice it has to assess year over year market price differentials. Since the 2008 prices were set, the Panel has arbitrarily increased the prices to harvesters by 8% in 2010, unrelated to market price improvements. To that it has added, for discussion purposes, another 15% to the prices paid to harvesters.

The highest prices noted in Appendix A of the FFAW submission by DFO were in 2005, prior to the Panel becoming involved. At that time, the average market return was \$1.02 lb. The price to harvesters was 12, 20 and 27¢ lb. respectively, for an average price of .228¢ lb. Those prices are substantially less than that proposed by the FFAW on a market return that is at least 15 to 20¢ higher than the current expected market return.

If the Panel had full access to all the pertinent details related to the pricing of mackerel, and the freedom to apply a solution, it might well result in the establishment of a different benchmark for prices to harvesters. It is in no such position today.

As noted in previous decisions, the numbers and statistics available to the Panel are not precise. Information is lacking with respect to exports and mackerel used domestically. There is no grading of the quality of landed mackerel or determinations related to size and quality. In particular, there is no consensus between the parties as to what the percentage of market returns should be between them.

If DFO statistics are correct on past prices, the processors paid more than the minimum prices set by the Panel in 2010. That is good news and reflected in a more appropriate percentage of the market return.

The Panel must apply the test of which position is the most reasonable based on market price differentials expected between 2010 and 2011. Clearly the ASP position is the one more in line with the market projections.

That is not to say that the price proposed by ASP is the right price by any means. This is the fifth time the Panel has been required to make a decision on the price for mackerel. Each time we do not have finite figures on market prices, we have to proceed on the basis of projections or trends. The finite numbers, produced by DFO, as to what actually happened comes many month after the Panel's decision.

The harvesters prices have been adjusted up or down in each year, as can be seen in the DFO table, with no consistency in the result between the market price and the harvesters price. The Panel intervened on its own initiative in 2010 in an effort to adjust for the anomalies which are obviously apparent in the table.

The parties have not been able to address the issues. Given the constraints applied to the Panel and the lack of knowledge of the pertinent details, the Panel is not able to make an objective or credible assessment of what an appropriate share to harvesters of the market return should be.

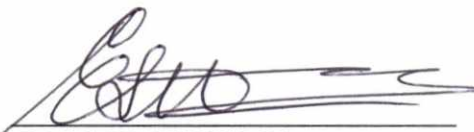
It is the decision of the Panel to accept the position submitted by ASP.

The following schedule of minimum prices will apply for the 2011 mackerel fishery, effective August 22, 2011.

<u>SIZE (GM)</u>	<u>PRICE ¢ LB</u>
200 – 399	11.5
400 – 599	17.25
600 plus	24

By the agreement of the parties, the prices specified shall apply retroactively to all mackerel purchases in 2011. The prices and conditions of sale are binding on all 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 on this 19th day of August, 2011.


BILL WELLS
EDWIN HUSSEY

ADDENDUM

Having not signed the majority report of the Panel, I want to express my concern that significant issues related to the setting of prices to harvesters are not being addressed. The fact remains that for five years the Panel has been aware of the issues and urged the parties to address these matters in negotiations. The fact that they have not been addressed in my view clearly is a benefit to the processors or buyers of mackerel. For proper negotiations to take place it requires the participation of both parties. If one side is unwilling to participate in issues related to the pricing to harvesters, what recourse is left for the settlement of the legitimate outstanding issues, and what is the appropriate forum? In my opinion, the current situation should not be allowed to continue without a resolution, as has been the case for the past five years.



MAX SHORT