

# STANDING FISH PRICE-SETTING PANEL

## SUMMER SHRIMP FISHERY - 2023

### Background

1. The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel,” issued its Schedule of Hearings for 2023, on March 3, 2023. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the “Act”, the Panel set June 15, 2023, as the date on which any potential hearing would be conducted, if required. While there is no date set by which the price of Summer Shrimp must be set, the panel notes that in general it has ten days following any hearing in which to set a price, such that the collective agreement binding on all processors in the province must be in effect. The Panel has abided by that guide in this decision.
2. The Panel also noted on March 3, 2023 that it had been advised by the Department of Fisheries, Forestry and Agriculture (“DFA”), that the Association of Seafood Producers (“ASP”) represented processors that process the majority percentage of Summer Shrimp. As a result, under Section 19(11) of the *Act*, should a hearing be required for Summer Shrimp, the parties appearing before the Panel would be the Fish, Food and Allied Workers’ Union, hereinafter referred to as the “FFAW”, and ASP. Section 19.11(1) of the *Act* and 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 for the minimum price of Shrimp for the Summer fishery 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.
3. The hearing for Summer Shrimp, if required, was scheduled to take place on Thursday, June 15, 2023. At 08:30 on Thursday, June 15, 2023 the Panel convened the hearing via Zoom videoconferencing. Appearing before the Panel were the FFAW and ASP. The parties, having previously engaged in bargaining and having exchanged their final offer submissions, and filed copies with the Panel, supported their submissions in main argument and rebuttal. Each party answered the panel’s questions.
4. The parties and the Panel had the benefit of a report from Gemba Seafood Consulting entitled, *“Price Update: Current price situation and forecasts for cold water shrimp in key European markets With focus on cold water shrimp from Newfoundland and Labrador”* (hereinafter, the “Gemba” report), as well as information provided by DFA, including data on Newfoundland Shrimp landings, production statistics, export statistics, and recent published articles related to Shrimp markets.
5. In 2002, the government of Newfoundland and Labrador commissioned a review of the Shrimp industry in this province. The *Review of the Cooked and Peeled Shrimp Industry – Report of the Inshore Shrimp Panel* (Vardy, Peters & Delaney, 2002) (the “Vardy Report”) continues to be the only review of the Shrimp fishery in this province. It has been used by this panel and the parties since 2002. The Parties and the Panel recognize that this report is now more than 20 years old and that an updated report or review of the fishery would be timely. They encourage the

government of Newfoundland and Labrador to undertake a similar type of Review of the shrimp industry in this Province so that in future the parties may have a more up to date report on the industry. In spite of its age, the Vardy report remains the only credible source of for information on the entirety of the Shrimp industry in this province, and the only source for estimating yield in the industry.

6. Based on the Vardy Report's recommendations in 2002, three sets of price negotiations were set for shrimp in the province: Spring, Summer, and Fall. Prices were historically highest in the Spring, lowest in Summer, and between the two in the Fall, due to yield differences. This hearing deals with setting the minimum price the Summer shrimp fishery for 2023.

The panel's jurisdiction and role: final offer selection

7. Collective Bargaining in the Shrimp fishery of Newfoundland and Labrador is regulated by the *Fishing Industry Collective Bargaining Act* (the "Act" or "FICBA" herein.). Parties to the collective agreement ("CA") relevant to these proceedings are the Association of Seafood Producers and FFAW-Unifor. The Collective agreement states that "It is mutually agreed that this agreement is for the purpose of regulating the first-hand sale of fish and shellfish and the conditions under which it is sold." (Art 1.01 CA).
8. The Act provides the Fish Price Setting Panel with the power, authority, and responsibility to set the minimum price for fish (in this case, Shrimp in the Summer fishery), by way of final-offer selection arbitration in the event that the parties are unable to negotiate a mutually-acceptable minimum price for the sale / purchase of shrimp at the wharf in this province.
9. Generally speaking, the purpose of final offer selection to have an arbitration panel – in this case, the Standing Fish price Setting Panel – decide the minimum price to be paid for the first- hand sale of fish (in this case, shrimp) from harvester to processor. Parties only arrive at the Panel for final offer selection arbitration when they have been unable to negotiate a price between them. In this case, the parties collectively bargained to set the minimum price of summer shrimp in the week preceding this hearing. They were unable to settle their dispute. Pursuant to the terms of the collective agreement and the Act, the final authority to settle the minimum price for the first-hand sale of fish rests with this Panel in the event the parties fail to do so. The panel again reminds the parties that by the time this panel renders its decision on the minimum price, the time for negotiation has ended. Once the parties have been unable to negotiate further and have requested that this panel make a decision for them, the panel's decision is final and binding on the parties. Changes can only be made with the consent of both parties.
10. The purpose of final offer selection is to allow the parties to negotiate the best price they can, and if they are unable to settle their dispute, then to bring the parties as close together in their offers as they are able to negotiate. In the normal course of final offer arbitration, parties would put forward positions with respect to a reasonable price that they may anticipate each side might be able to live with. It is unfortunate that in this Summer Shrimp matter, like the Spring shrimp fishery, the parties have submitted prices that are vastly different, albeit closer than they were in the Spring.

11. As occurred in the Spring fishery, it appears clear to the majority of this panel that FFAW's position does not reflect a reasonable price that they may anticipate that each side might be able to live with. The majority of panel concludes below that the ASP offer more accurately reflects the current realities of the Shrimp industry in NL, and has therefore accepted their final offer as the minimum price for shrimp landed in Summer 2023. That said, the majority does appreciate that the FFAW's submission for this hearing was substantially improved over the Spring submission.
12. The panel unanimously reminds the parties that there is a duty and a responsibility on both parties, by virtue of the provisions of *FICBA* and the *Labour Relations Act*, both of which apply to this hearing and the relationship between these two parties, to bargain in good faith. Both parties have duties and responsibilities to their membership and to the management of the fishing resources as a whole to work together for responsible harvesting and processing of this province's fish resources where harvesters and processors can thrive based on their risks – physical and financial – and the rewards therefrom.
13. In 2020, there was no spring shrimp fishery. As ASP explained, the parties were focused on starting the crab fishery during the pandemic. In 2021, harvesters refused to fish for the \$1.00/lb. price set by the Panel. In spring 2022, producers would not pay the \$1.42 price set by the Panel and argued that producing Shrimp based on that minimum price was not viable. The summer 2022 shrimp fishery was delayed because harvesters then felt that the price set by the panel for summer shrimp was too low. The \$0.90 / lb. set by the panel at that time was set as the minimum price, and producers purchased shrimp at a rate higher than the \$0.90 minimum set after a special mediator was brought in and the parties agreed to further mediate following the Panel's decision. It is important to note that any further mediation or negotiation following a Panel decision on the minimum price can only be done with the consent of both parties. In Spring 2023, the panel accepted ASP's final offer. Harvesters refused to accept the panel's decision and there was no spring shrimp fishery again in 2023. This lack of a fishery in the Spring and in previous years has affected statistics on the Shrimp market as they apply to this province: it becomes increasingly difficult to assess what the minimum price of an item might be if the parties do not buy or sell the item over a course of several seasons. This is reflected in the Gemba report, where it is noted that there is no data due to lack of a fishery.

#### Evidence before the Panel - the market research

14. The Panel was provided with Gemba's June 2023 report into the outlook of the tendencies and latest European market development of cold-water shrimp. The report provided a forecast of prices, inventories, supply/demand, and expected buying patterns among traders and processors (Gemba, p2). This year, at the Government of Newfoundland and Labrador's request, their report was focused on the UK shrimp market, as that market represents the vast majority (more than 80%) of our exports. This was not a simple conversion of DKK to GBP, but a report and forecast focused specifically on the UK shrimp market.
15. As an update to the April 2023 report, Gemba reports in June that the price for 150-250 pcs/lbs. count is approximately 67-70 DKK/Kg in early June 2023. The price is based on "low trading activity

and purchasers are reluctant to place great orders now,” (Gemba, p.2). The summary goes on to say that the forecast for August 2023 is “a stable price with small downward tendency around 68-69 DKK/Kg” for shrimp of the same size. By comparison, the Gemba report for Spring 2023 showed a then current price of 74 DKK/kg for 150-250 pcs./lbs. and predicted that the price up to June 2023 would likely decline to 70-71 DKK/kg. In fact, it declined to 67-70 DKK/kg for 150-250 pcs. Lbs. in June 2023.

16. Factors affecting the price of shrimp include high inflation rates in Europe, noting an annual inflation rate of 8%. Despite inflation, the price of shrimp has not increased but demand has not increased. In the UK, Gemba reports that the market is “calm” and if there is a long warm summer, Gemba predicts an increased consumption of shrimp in the HORESTA sector. Regardless of the weather, Gemba predicts a “Small upward demand in the market” towards the autumn.” Additionally, because the CAD has lost in the exchange rate on the EUR and GBP in May, the exchange rate “may create a slight tailwind” to CAD products in the European market.
17. In Denmark, Gemba reports that the market is “stable.” Gemba notes that operators are “optimistic” about consumption in the summer season. The prices in the consumer market have been “stable with slight downward tendency in last months.”
18. Gemba notes that inventory levels are “normal” and the last of the 2022 season shrimp is currently being sold. Total catch levels in Greenland, Canada, and Norway saw an increase of between 5-11% from 2021-2011 (Gemba, at p.4). The report also notes that the shrimp fishery in Greenland, Iceland, and Norway have had a “good start” to the 2023 season, but the Canadian fishery had a late start and the first 2023 Canadian shrimp will enter the European market in August / September 2023 (Gemba, p 5). As noted, this Province did not participate in the 2023 Spring fishery.
19. Gemba surmised that the supply situation for June 2023 “looks normal”. Although the Canadian fishery had a late start, the Norwegian and Greenlandic fisheries have started the 2023 fishery with “good catches” and there is now a “stable and adequate supply” of cold-water shrimp to the market.
20. Gemba also noted that there has been an “above normal catch of smaller sized shrimp” in 2023 and there is an abundance of these smaller shrimp in the market. This means that the 150-250 pcs./lbs. will see a larger price reduction than the larger sized shrimp. Shrimp exported from this province is primarily in that size range.
21. With respect to the effect of inflation on the price of shrimp, Gemba noted that although inflation rates appear to be on the way down (from 11.5% (EU) and 9.6 % (UK) to 8% (UK)), nevertheless, 8% inflation is “still a considerable add on to the price and will have an impact on the shrimp price development and the demand.” (Gemba, p.11)

#### **FFAW’s Position**

22. FFAW's offer in this final offer arbitration on summer shrimp 2023 is for a minimum of \$1.20 / lb. landed at the plant, and \$1.17/ pound trucked.
23. FFAW highlighted the statistics provided in the Gemba report, noted above. As they did in their Spring submission, they also argued that the yield calculation used by ASP, based on *Vardy* is not an accurate reflection of yield. Instead, they provided information from a manager at Norges Råfisklag, a Norwegian fisher-owned sales organization operating a marketplace for Norwegian seafood. FFAW argued that this organization has a well-developed service directly related to trading, sales, payments, and quality assurance of species including cold water prawns in Northern Norway. A copy of that email was put in evidence. The manager of that organization cited in their email that the average yield for cooked and peeled cold water prawns from two facilities processing in northern Norway is 38-40% . (*Vardy* estimates yield at 27.4%.) There was no information on the type of processing facility, the equipment used or any other information pertaining to the Norwegian plants or their location, or how they are similar to or differ from the facilities in Newfoundland and Labrador, nor was there any information on size or quality of the product. The panel determined that this information is of limited value.
24. The matter of yield calculation was discussed at length in the Panel's Spring 2023 Shrimp decision. Our reasoning for relying on the Vardy Report is contained therein. In short, the Board continues to rely on the Vardy report because (i) it is the only detailed report on the shrimp industry in this province, including matters such as yield (ii) it has been used in the calculation for prices for shrimp in this province since being authored in 2002 (iii) it continues to be the only reliable, albeit dated evidence on the overall shrimp industry in this province and (iv) the only evidence before this panel with respect to efficiency of shrimp plants has remained consistent since that time: the processing facilities have not measurably changed since the Vardy report was issued. Until there is a new report or further evidence on shrimp processing in this province, the panel can only use the evidence it has on production and facilities in this province. The Vardy report remains the best evidence we have.
25. FFAW reiterated that during the summer of 2022, the Panel set the minimum price of shrimp at \$0.90. Harvesters refused to fish for that price. Harvesters and processors apparently returned to mediation. Eventually, FFAW says that some processors paid up to \$1.25 / pound for summer shrimp in 2022.
26. It is upon the basis of the later negotiated price of \$1.25 / pound, and not the panel's decision of \$0.90 / pound, that the FFAW bases its current offer in this final offer arbitration for a minimum of \$1.20 / pound landed at the plant, and \$1.17/ pound "trucked." The starting point for this calculation is based on a price ultimately paid by some processors in 2022.
27. In coming to its price of \$1.20 / lb., FFAW relied on several factors:
  - Prices are expected to be stable or slightly decrease from now (Gemba)
  - They estimate a yield rate of 30% (based on Norwegian email)
  - The UK market converts to \$6.09/lb. CAD
  - The UK market comprises more that 80% of Canadian Shrimp exports

- Following the Panel decision of Summer 2022, processors eventually paid \$1.13-\$1.25/lb for shrimp last summer even though the minimum price set by the panel was lower than that range.
- A May 26 2023 decision on shrimp prices by the Regie in Quebec has set the price for Shrimp landed in Quebec at \$1.36/ lb.
- FFAW discussed the Gemba report, but used the February 2023 *Undercurrents* projections for 2023 as the basis of its price.

28. Based on the above, the FFAW presented its offer for summer shrimp as follows:

**FFAW Summer 2023 Offer:**

<b>Gemba Price and Share for August 2023</b>						
<b>2023</b>	<b>Season</b>	<b>Yield</b>	<b>Min Shore Price \$/lb</b>	<b>Raw Material Cost \$/lb</b>	<b>UK Market \$/lb</b>	<b>Harvester Share</b>
	July-Aug	30%	\$ 1.20	\$ 4.00	\$ 6.09	66%
	July-Aug	30%	\$ 1.17	\$ 3.90	\$ 6.09	64%
			<b>Aug-23</b>			
	Shrimp Market \$ GBP/lb		\$ 3.63			
	June 13 GBP/CAD Exchange Rate		1.676888	Source: Oanda		
	Shrimp Market \$ CAD/lb		\$ 6.09			

29. FFAW argued that this percentage “share” of the resource is based on the fact that after the minimum price for summer shrimp was set in the summer of 2022, processors in fact paid more than the minimum price to the harvesters. Therefore, the FFAW’s argument is that if higher than the set minimum was paid last summer, the percentage “share” of the resource at the rate paid ought to be comparable this year, based on the current market prices. To compare, the FFAW provided the following table:

<b>Gemba Price and Share for August 2022</b>						
<b>2022</b>	<b>Season</b>	<b>Yield</b>	<b>Min Shore Price \$/lb</b>	<b>Raw Material Cost \$/lb</b>	<b>UK Market \$/lb</b>	<b>Harvester Share</b>
	July-Aug	30%	\$ 1.25	\$ 4.17	\$ 5.83	71%
	July-Aug	30%	\$ 1.22	\$ 4.07	\$ 5.83	70%
			<b>Aug-23</b>			
	Shrimp Market \$ GBP/lb		\$ 3.72			
	June 13 GBP/CAD Exchange Rate		1.566618	Source: ofx.com		
	Shrimp Market \$ CAD/lb		\$ 5.83			

30. The panel noted that “minimum shore price” of \$1.25 in the table above is a mischaracterization of the data. Some processors paid some harvesters \$1.25/lb., but the minimum shore price was actually \$0.90 / lb. Some processors paid some harvesters less than \$1.25.
31. FFAW used these tables, containing the Gemba price predictions, and then made an overall offer. However, in the concluding offer, FFAW reverted to the *Undercurrents* predicted price for Shrimp for summer 2023 from February, 2023, instead of the Gemba report on the current market prices focused on the UK market for shrimp in 2023 and the more recent projections for August 2023. The table is below:

	<u>Summer 2022 Over Summer 2023 Standard</u>		
	<u>Summer 2022</u>	<u>Summer 2023</u>	<u>Change</u>
Market Exchange Rates			
Us Market			
Market: USD/lb			
150-250	6	5.65	-0.35
250-350	5.65	5.4	-0.25
(weighted 50/50)			
Exchange Rate (USD-CAD)	1.263889	1.338745	
Weighted Price in CAD	7.3622	7.3966	0.0344
	<u>Summer 2022</u>	<u>Summer 2023</u>	<u>Change</u>
Market/Exchange Rates			
<b>UK Market (Undercurrent)</b>			
Market GBP/lb			
150-250	3.95	4.13	0.18
250-350	3.67	3.86	0.19
(weighted 50/50)			
Exchange Rate (GBP-CAD)	1.576266	1.671026	
Weighted Price in CAD	6.00557346	6.67574887	0.67017541
	<u>Summer 2022</u>	<u>Summer 2023</u>	<u>Change</u>
Market/Exchange Rates			
Northern Europe Market			
Market: DKK/lb			
150-250	30.85	30.85	0.00
250-350	29.95	29.04	-0.91
Exchange Rate (DKK-CAD)	0.180811	0.192703	
Weighted Price in CAD	5.4967	5.7705	0.2738
<b>Overall avg market price CAD</b>	<b>6.0742</b>	<b>6.6710</b>	<b>0.5967</b>
<b>Change in Raw Material Price to Reflect Market Changes</b>		<b>(38% yield)</b>	<b>0.2268</b>
		<b>(35% yield)</b>	<b>0.2089</b>
		<b>(32.2% yield)</b>	<b>0.1921</b>
		<b>(30% yield)</b>	<b>0.1790</b>

Change: Summer 2022 to Summer 2023	Yield	Harvester Share	Summer 2022		Current Price
	38	78	0.1499	1.09	1.24
	35	65.4	0.1366	1.09	1.23
	32.2	64	0.1230	1.09	1.21
	30	62	0.1110	1.09	1.20

32. Having used the Gemba data throughout its submissions, FFAW used *Undercurrents* data in its final table in an attempt to show the weighted average difference in price between Summer 2022 and Summer 2023. The panel found this WAMP table to be of little assistance in its deliberations, and a potential source of confusion for readers as to the actual market.
33. ASP’s position, below, discussed the fact that in prior years, some processors were able to cross-finance their shrimp processing by using other more lucrative fisheries such as crab. ASP provided affidavit evidence here, as they did in Spring 2023, showing multi-million-dollar losses by some shrimp processors in 2022 and preceding years, and indicated that the processors were no longer able or willing to cross- finance their shrimp fishery. ASP argued that they were not able or willing to sustain the level of financial losses in the shrimp fishery that they suffered by paying the rates they paid harvesters last year. FFAW’s position was that the panel should simply consider last year’s summer price paid by processors as an indication of what the minimum price ought to have been set at and, based on the data that this year’s shrimp prices are expected to remain relatively flat or have a potential decrease, we should set as a minimum the price the processors were willing to pay last summer. The panel asked FFAW to address these concerns. As in the case of the Spring 2023 submission, FFAW was unable to provide an answer, and held fast to its position that the minimum price ought to be set based on what was paid last summer.

FFAW relies heavily on the Régie decision

34. FFAW argued that in Quebec, Decision 12379, issued May 26, 2023 of the *Régie des Marchés Agricoles et Alimentaires du Québec* (“the Régie”) is that shrimp in 2023 will be purchased at \$1.36 / lb. and therefore, this panel’s decision setting the minimum price of shrimp in this province ought to reflect that. FFAW was unable to provide any data or argument as to the similarities or differences in the shrimp fishery and the shrimp market in Quebec versus Newfoundland. When asking the panel to support reliance on what’s happening in another fishery, it would be incumbent on the party making the assertion to show the relevance and comparability of the evidence from that other fishery to this one.
35. FFAW provided a copy of the Régie decision, which the Panel notes is the decision for the arbitration period April 1, 2023-June 30, 2023 in accordance with the Quebec Shrimp Marketing Agreement. FFAW did not provide a translation of the decision and did not request to provide its evidence in French. However, FFAW stated in general terms that the Régie held that the average price paid for Shrimp landed in Quebec for 2023 is \$1.36 / pound and that this panel ought to rely on that price when setting its price.



36. As author of this decision, I, as chair of the Panel admit that my French comprehension skills are not as fluent as my English. However, the panel has been provided with the FFAW's documents in French, without translation, so the panel has done its best to read and understand those documents as provided.
37. When one reads the actual Régie decision provided by FFAW, the conclusion one comes to is not that the Régie has set the price of shrimp for the Province of Quebec at \$1.36/lb. for the entire year 2023. Nor does one conclude that the decision is the minimum price for shrimp for the year. The decision has set the price of shrimp for Quebec from April 1, 2023 – June 30, 2023. This differs from our fishery, in that our shrimp fishery is divided into three distinct fisheries, for reasons set out in *Vardy*, for Spring fishery, Summer fishery, and Fall Fishery. We are currently dealing with the Summer shrimp fishery, for which prices are traditionally significantly lower than the spring fishery due to reasons like size, yield, roe sac, and other factors articulated by *Vardy* and discussed in our Spring 2023 decision referenced above.
38. The Régie decision acknowledged that the unfavourable conditions that existed in 2022 are still present in 2023 and affecting both harvesters and processors. Both fishers and processors are in “precarious” (my translation) situations. (At para 14). In such a context, the Régie’s reasoning was that the burden of proof is heavier on the party seeking to significantly change the price they set in the previous year, than it is for the party proposing to maintain *status quo* over last year’s set price. One significant difference between the 2022 season for the Quebec shrimp fishery versus that of this province is that last year, the price set for shrimp in Quebec was agreed to and bargained for by the parties. There was no Régie arbitration required. In 2023, the processors in Quebec sought to significantly decrease the price they had set in 2022, but the Régie was reluctant to consider a significant change without being provided with evidence by the processors to support their position. The processors in Quebec were in 2023 arguing for a significant decrease in price over last year without providing evidence or sources for their arguments. Because the processors did not support their request a change in the *status quo* with reliable evidence, the Régie explained that they would maintain the *status quo* and that was the basis for setting this year’s price (See paras 15-18). The Régie encouraged the parties to return with evidence in support of their positions.
39. The Régie took note of the fact that several of the items put into evidence by the parties may be difficult to verify. Specifically, they sat that some of the information put forward seems to “*fournir un portrait partiel de la réalité,*” [at para 19] which, loosely translated, is that the information put forward by the parties in support of their arguments formed only a partial portrait of reality. The Régie (as this Panel has done) encouraged the party proffering the evidence to flesh out its arguments and submissions with evidence it can rely on. Without credible and reliable evidence to rely on in a request to change the price from what had been set in the previous season, the Régie chose the price offered by the fishers for April – June 2023 so as to maintain the *status quo*.
40. The situation faced by the Régie in its May 2023 decision, the evidence considered by it and the timeframe for which the price was set in the referenced decision is far different than the circumstances in which this panel has been placed to make this decision on this province’s summer

shrimp fishery for this year. Therefore, the data from the Régie was of limited value when setting a minimum price for shrimp landed in the summer season in this province.

41. FFAW also provided some evidence from harvesters indicating the increased price of fuel this season over previous seasons. The panel thanks FFAW for providing it with some evidence of the increased operating costs borne by harvesters in recent years.

#### **ASP's position**

42. In ASP's submissions on Summer Shrimp for 2023, they provided appendices including, among other things, a copy of the *Review of the Cooked and Peeled Shrimp Industry – Report of the Inshore Shrimp Panel* (Vardy, Peters & Delaney, 2002) (the "Vardy Report"). The panel relied on that report in its decision on the Spring 2023 Shrimp fishery, found at <https://www.gov.nl.ca/fishpanel/pricingdecisions/2023/2023-Spring-Shrimp-Fishery-Decision-April-25.pdf>
43. As it did in its spring submission, ASP relied on the Vardy Report for yield estimates in this matter. The panel has discussed why it relies on the Vardy Report for yield calculations in its Spring Shrimp 2023 decision and above.
44. ASP offered \$0.92/ lb. as the minimum price to be paid for summer shrimp landed at the plant. ASP provided and relied on its spring submission for information outlining the fuel and transportation costs incurred in bringing shrimp to the processing plants in the province. For shrimp needing to be trucked to the plants for processing, the processors offered \$0.89/lb. for shrimp landed North of Port Saunders in Newfoundland, and \$0.84 per pound for shrimp trucked from elsewhere in the province to the processing plants.
45. ASP reiterated its prior submission that transportation costs have been recognized during the setting of the minimum price for shrimp for 15 years and haven't been adjusted or increased with the increasing price of trucking and fuel. The sought-after increase to the trucking costs previously charged amounts to less than one half of the increase in trucking costs currently incurred on the Northern Peninsula. The increase to trucking costs was allowed in the Spring Shrimp 2023 decision.
46. For the Spring fishery, ASP provided documentation showing average trucking prices, per pound of product, throughout the province. They also provided samples of trucking invoices for various times in 2022 and 2021 showing actual costs. In their offer, ASP reduced this amount by 50% and then calculated the deduction per pound for trucking. The deductions per pound – of \$0.03 per pound for shrimp landed north of Port Saunders but not landed at a plant, and \$0.08 per pound for shrimp landed south of Port Saunders and not landed at a processing plant, were done on an average basis, regardless of the location of the landing. The same deduction and rationale was offered in their 2023 Summer Shrimp submissions. ASP reiterated that setting a minimum price in accordance with the Collective Agreement and maintaining competitiveness in the market are matters being addressed here.

47. ASP argued that in the 2022 Summer Shrimp fishery, the industry saw true competition. The panel had set the minimum price for Summer Shrimp 2022 at \$0.90 based on the submissions put before it and the market conditions at the time. The Panel acknowledged that the price set may not have been the most accurate price, but in the final offer selection process, the price chosen was the one of the two offers that best reflected the market conditions at that time. FFAW members refused to fish at that price. Certain processors paid more than the minimum and there was a Summer 2022 shrimp fishery. ASP argued here that it is important to note that the amounts paid were in excess of the minimum set price, which resulted in competition among processors as to who could procure product from harvesters. This, ASP argued, is an example of the benefit of this panel setting a true minimum price and not a market average: the minimum price set was a true minimum that processors were required to pay, and the parties determined whether they would pay more than the minimum.
48. There are six shrimp processing plants remaining in the province. One in Labrador, where all shrimp is landed at the plant, and the remainder are in Fogo, Old Perlican, and three on the Northern Peninsula: Anchor Point, Port Aux Choix, and St. Anthony. As it did at the Spring Shrimp 2023 hearing, ASP argued that the higher than minimum price was paid in 2022, even while producers were operating at a loss, in order to provide employment for plant workers and sustain the workforce in the affected communities. The operating losses were confirmed in affidavit evidence provided by ASP. In particular, ASP provided affidavit evidence from the controllers of two of the province's shrimp processors. One processor suffered a financial loss of \$1.7 Million in last year's shrimp fishery. The other processor noted that between 2019-2021 they lost \$2 Million in the shrimp processing, with similar losses expected for 2022 (financial year end had not yet closed). Since the Spring Shrimp panel decision, the panel has been advised (through the Gemba report) that the last of the 2022 shrimp is currently being sold in the international markets.
49. ASP's submission included an analysis of the past and current state of the shrimp fishery in NL. This fishery had, in the past, included a 164,000 tonne TAC of shrimp (8,100 tonnes in 2022). Where there were once twelve production facilities, there are only 6 remaining.
50. ASP argued that in order to maintain work forces and long-term relationships with communities, the processors were trying to employ the workers in the plants in those communities. This has meant significant subsidization of the shrimp fishery from other fisheries for these corporations. As it argued in the Spring, ASP argued that processors can no longer sustain those losses.
51. As was the case in Spring 2023, the panel's job is to set the minimum price in order to have a fishery that is viable for both parties. Risk, cost, market, and price are factored into the price sought by ASP. ASP argued that the processors still bear a majority of the potential financial risk. ASP recognized FFAW's argument that harvesters have also faced increased operating costs, particularly fuel for their vessels. Harvesters sell their catch and are paid within days to a week after landing it. Processors then process it, store it, ship it, bring to market, and are subject to potential losses in the event of any market decline, as well as costs of storage should the product not move.

52. ASP argued that the yield rates used in their calculations are based on the best available evidence before the panel, that of *Vardy*, which they view as a legitimate study of the shrimp fishery in this province. It has been accepted by the parties and the Panel since it was written. There is no other evidence before us to support any other yield calculation, other than unverified commentary pertaining to two processing plants in northern Norway.
53. ASP argued that there is market data from Gemba indicating that prices ought to remain stable, but there is a potential slight downturn in the shrimp pricing, which places an increased risk on the processor, who may be forced to buy at one price and sell at a lower price.

ASP’s overall offer

54. In arriving at its offered price, ASP took several approaches to determine the minimum price.
55. ASP showed that a minimum price of \$0.92/\$0.89 translates into a \$3.36/\$3.25 raw material cost for producers, for every pound of shrimp sold at market price, using the yield rate of 27.4% as found in *Vardy*.
56. Taking the data from *Gemba*, and its projected price for August, 2023, the following table projects the harvester “share” being 55% landed at the plant and 54% landed north of Port Saunders:

<b>Gemba Price Data - Projected for August 2023</b>						
<b>Season</b>	<b>Yield</b>	<b>Minimum Shore Price \$/LB</b>	<b>Raw Material Cost \$/LB</b>	<b>United Kingdom Market \$/LB</b>	<b>Harvester Share</b>	
July - August	27.4%	<b>\$0.92</b>	\$3.36	\$6.07	55%	
July - August	27.4%	<b>\$0.89</b>	\$3.25	\$6.07	54%	
<b>June 12, 2023</b>						
<b>Shrimp Market Price per Pound in GBP</b>		£3.63				
June 12, 2023 GBP to CAD Exchange Rate		1.6728 Source: Bank of Canada				
<b>Shrimp Market Price per Kilogram in GBP</b>		£8.00				
Pounds to Kilograms		2.2046				

57. Harvesters in Area 4R Area 8 receive a premium, and their share becomes 58%.
58. Using the FFAW’s pre-hearing offer of \$1.22, ASP calculated the harvester share, based on 27.4% yield, Gemba predicted August price, and exchange rate, to be 73% for shrimp landed at the plant, 72% landed North of Port Saunders, and 76% for Gulf 4R area 8 shrimp. ASP argues that this is a

minimum price, not the maximum price, and not the market price. The processor would then need to receive, process, store, sell, and ship the product. The ASP reminds the panel that in NL the processor must also pay for the harvesters' WHSCC and EI contributions out of that amount. ASP argues that the FFAW's offer is untenable.

<b>Gemba Price Data - Projected for August 2023</b>					
Season	Yield	Minimum Shore Price \$/LB	Raw Material Cost \$/LB	United Kingdom Market \$/LB	Harvester Share
July - August	27.4%	\$1.22	\$4.45	\$6.07	73%
July - August	27.4%	\$1.19	\$4.34	\$6.07	72%
<b>June 12, 2023</b>					
<b>Shrimp Market Price per Pound in GBP</b>		£3.63			
June 12, 2023 GBP to CAD Exchange Rate		1.6728 Source: Bank of Canada			
<b>Shrimp Market Price per Kilogram in GBP</b>		£8.00			
Pounds to Kilograms		2.2046			

59. ASP then did the calculation based on a price of \$1.15, in the event that FFAW had made an offer of \$1.15. In that case, the harvester share, using the same calculation, is 69% / 67%:

<b>Gemba Price Data - Projected for August 2023</b>					
Season	Yield	Minimum Shore Price \$/LB	Raw Material Cost \$/LB	United Kingdom Market \$/LB	Harvester Share
July - August	27.4%	\$1.15	\$4.20	\$6.07	69%
July - August	27.4%	\$1.12	\$4.09	\$6.07	67%
<b>June 12, 2023</b>					
<b>Shrimp Market Price per Pound in GBP</b>		£3.63			
June 12, 2023 GBP to CAD Exchange Rate		1.6728 Source: Bank of Canada			
<b>Shrimp Market Price per Kilogram in GBP</b>		£8.00			
Pounds to Kilograms		2.2046			

60. Performing the analysis on the FFAW's proposed \$1.20/ lb. based on 27.4% yield at the same exchange rate, the Panel calculates the raw material cost to be \$4.37 / pound, resulting in a 72% share to the harvester and 28% share to the processor.

61. In case there was any question as to whether the Gemba prices were the best for use in calculation of the minimum shore price, ASP then conducted the calculation using the most current price available from *Undercurrent* of \$9.10 GBP / kilogram in February 2023. For transparency, ASP then took the *Undercurrent* price from February, with a yield of 27.4%, and using a minimum shore price of \$0.92 / pound, the ASP showed that the harvester share of the harvest is 49% - 47%, as shown below.

<b>Undercurrent Price Data - February 2023 Price</b>						
		<b>Minimum Shore Price \$/LB</b>	<b>Raw Material Cost \$/LB</b>	<b>United Kingdom Market \$/LB</b>	<b>Harvester Share</b>	
<b>Season</b>	<b>Yield</b>					
April - June	27.4%	<b>\$0.92</b>	\$3.36	\$6.90	49%	
April - June	27.4%	<b>\$0.89</b>	\$3.25	\$6.90	47%	
<b>June 12, 2023</b>						
<b>Shrimp Market Price per Pound in GBP</b>		£4.13				
June 12, 2023 GBP to CAD Exchange Rate		1.6728 Source: Bank of Canada				
<b>Shrimp Market Price per Kilogram in GBP</b>		£9.10				
Pds in KG		2.2046				

62. At \$0.92/lb. the harvester share is 49% using *Undercurrent's* February 2023 forecast, and 55% using Gemba's recently updated forecast. The ASP's offer will provide 49/47% to harvesters and 51/53% to producers (using *Undercurrent*) or 55%/ 54% to harvesters and 45%/46% to producers (using *Gemba*). As noted in the Spring 2023 decision, in the past, FFAW and ASP have brought arguments and this panel has considered the ability of the harvesters and the producers to fairly share the resource. While there has been no rule about sharing, the panel has continued to be alive to the issue of trying to ensure that the minimum price represents a fair sharing of the resource.

63. In its analysis, ASP also reminded the panel that the prices paid by producers resulted in at least two of the producers suffered multi-million-dollar losses in the shrimp fishery. At numbers closer to the price ultimately paid by producers last year, producers would have to continue to operate at a loss. The ASP made it abundantly clear that while their members may have been prepared to subsidize the shrimp fishery and operate at a loss in years 2019, 2020, 2021, and 2022 in order to maintain a workforce at their plants and support communities where those plants exist, they are not able or prepared to operate at a loss this year and will not do so.

64. In further support of its position, ASP produced a weighted average price table:

	Volume (kgs)	% of total exports	To equal 100% for Market Table
UK	2,368,820	81%	86.1%
US	204,417	7%	7.4%
Denmark	176,541	6%	6.4%
Total of US, UK, DK	2,749,778	94%	100%
Total Exports	2,938,922	100%	

Note: these volumes were derived from the HS codes specific to cold-water shrimp (03061620, 16052100, 16052900).

	Mkt Reports ASP Summer 2022	Mkt Reports Summer 2023	
<b>(US (7.4%))</b>	<b>USD</b>	<b>USD</b>	<b>Change</b>
150-250	6.00	5.65	-5.8%
250-350	5.65	5.40	-4.4%
<b>Exchange Rate</b>	1.2637	1.3387	5.9%
<b>Average Price in CAD</b>	\$7.361	\$7.397	0.5%
<b>(UK (86.1%))</b>	<b>GBP</b>	<b>GBP</b>	
150-250	\$3.92	\$3.65	-6.9%
250-350	\$3.65	\$3.33	-8.8%
<b>Exchange Rate</b>	1.5828	1.6728	5.7%
<b>Average Price in CAD</b>	5.991kr.	\$5.838	-2.6%
<b>(N. Europe (6.4%))</b>	<b>DK</b>	<b>DK</b>	
150-250	30.840 kr.	31.752 kr.	3.0%
250-350	29.940 kr.	30.845 kr.	3.0%
<b>Exchange Rate</b>	0.1816	0.1927	6.1%
<b>Average Price in CAD</b>	\$5.519	\$6.031	9.3%

<b>WAMP</b>	<b>\$6.6062.45</b>	<b>\$5.96633</b>	\$0.096
<b>TOTAL MARKET/EXCHANGE RATE Index CHANGE</b>	<b>\$</b>		0.096
	yield	27.40%	\$ 0.0263
	sharing	64.00%	\$ 0.017
	<b>Summer 2023</b>	<b>PRICE</b>	<b>\$ 0.900</b>
			<b>\$ 0.883</b>

65. The Panel has already expressed above that the weighted average price table year over year is of limited value. However, to the extent that each party presented one, this WAMP table would indicate that the minimum price to be set this year would be \$0.88 / lb. and not the \$0.92 offered by ASP.

**Decision**

66. The panel agrees with the parties that while the *Vardy* report is very good, it is dated and the writers were not provided with data on exact yield rates from processors at the time of writing the report, so the yield rates were estimates based on the data they had. It would be helpful for any future report to show anonymized data on actual yield rates in the spring, summer, and fall shrimp fisheries in this province. That said, there has not been a spring fishery here in a number of years, so such data would be unattainable until the parties actually conduct a spring fishery. Until there is a new study or report undertaken, the yield rates found in *Vardy* are the best evidence the panel has and it will continue to rely on it until it is provided with better evidence.
67. ASP argued that its price of \$0.92 presents (i) a fair balance of the proportional financial risk borne by harvesters and producers, (ii) sets a price where the shrimp producers can break (iii) sets a fair foundational price, above which harvesters who supply higher quality product may reasonably bargain for a premium, (iv) sets a price point that allows producers to absorb a potential decline in the market, (v) acknowledges market conditions such as ongoing inflationary pressures, consumer spending, and transportation costs, and (vi) is consistent across all the evidence provided. The majority of the panel agrees.
68. ASP argued that the preponderance of evidence presented favoured the panel selecting ASP’s position over that of FFAW. The majority of the panel agrees. The evidence provided by ASP was sound, rooted in the evidence provided and discussed above, supported by affidavit evidence as to the losses suffered by producers, and clear data with respect to actual transportation costs, and it reflected a more balanced sharing of the resource in setting the minimum price. The basis for ASP’s yield calculation has been within the range of the yield number provided in *Vardy*. The only data provided by the FFAW to support any other yield is an unverified statement by a producer in northern Norway. While that is evidence the panel can take into consideration, it is evidence that has not been tested. The reliability of the *Vardy* report and its in-depth analysis of the entire



shrimp industry in this province, dated as it may be, is higher than the reliability of an email stating the yield of two plants in northern Norway, when we have no evidence pertaining to the plants, their conditions and processes used.

69. Setting the minimum price where ASP has demonstrated that they will continue to suffer significant financial losses and will not be able to carry on a viable fishery in such circumstance but the harvesters will reap 72% of resource is unreasonable, in this majority's analysis. ASP's minimum price results in a more equitable sharing of the resource at that minimum price, with room for increases in price where the market allows and the parties choose.
70. The FFAW's position is based on a price paid by processors last year that has been proven to have resulted in losses to at least two processors in the millions of dollars. Processors chose to pay more and suffer losses in order to keep their workforces in rural areas of this province. The market price for shrimp this season is expected to remain steady or decline slightly. Based on the preponderance of reliable information provided at this hearing, and based on the arguments put forward by the parties, as discussed above, and in keeping with the Panel's reasoning in its decision on Spring Shrimp 2023, the majority of the Panel accepts the ASP's final offer with respect to the minimum price of Summer Shrimp for 2023.
71. The minimum price for Summer Shrimp in 2023 will be set as follows:
  - \$0.92 / lb. landed to the plant
  - \$0.89 / lb. trucked North of Port Saunders on the Northern Peninsula
  - \$0.84/ lb. trucked from elsewhere on the island of Newfoundland

All other terms and conditions of the schedule apply.

Dated at St. John's Newfoundland and Labrador this 30<sup>th</sup> day of June, 2023 for the majority,

Sheilagh M. Murphy   Brian Vallis

## DISSENT- 2023 SUMMER SHRIMP

I respectfully dissent from the majority decision of the Panel for summer shrimp. The main points of my dissent are outlined briefly below.

1. The majority gave insufficient recognition of the historic relationship between shrimp prices in this province and those in Quebec, as set by their tribunal known as the Regie, which recently set minimum prices expected to average \$1.36 per lb. (based on normal size distributions).

The majority report said *“FFAW was unable to provide any data or argument as to the similarities or differences in the shrimp fishery and the shrimp market in Quebec versus Newfoundland.”* It is not clear to me why the onus should be solely on the FFAW to address this matter. Should ASP not be expected to address it as well?

In any event, FFAW did provide a line graph prepared by the Strategic Services Division of DFO’s Quebec Region outlining comparative landed shrimp prices for NL, Quebec and the Gulf of St. Lawrence covering the period from 2010 to 2022 inclusive. This graph showed that Quebec and NL prices were very similar from 2010-2014, NL prices were higher from 2015-2018, including a major gap in 2015, then the prices were again relatively close until 2022, when the Quebec price was much higher. In other words, over a 13-year period, there were outlier year in 2015 and 2022; otherwise, prices were relatively similar as between Quebec and NL. This is strongly suggestive of comparable market value. *Pandalus Borealis* is the species in both cases, and the shrimp is going through the same cooking and peeling process.

FFAW also presented a receipt from a Newfoundland harvester, Calvin Gould, showing he received \$1.4952 per lb. for a trip landed at a Quebec plant. This is somewhat higher than the Regie minimum of \$1.36, probably because of a larger run of shrimp in that particular trip.

The Panel, of course, is not bound by Regie decisions. But given the 13-year history of similarities between Quebec and NL prices, a 44 cent per lb. gap ((\$0.92 v. \$1.36) is very difficult to justify.

2. With respect to the Panel’s summer shrimp decision in 2022, it is important to consider the Panel’s reasoning, some excerpts from which are outlined below:

*“The Panel is strongly of the view that the appropriate price for Summer Shrimp in 2022 is somewhere between the price offers of the parties...The Panel notes that this decision **should not be construed as a declaration on recalibration of Summer Shrimp pricing or of overall sharing going forward, but rather is a decision to choose one of two disparate offers.**”* (Emphasis added.)

There was a 46-cent difference between the respective offers of the parties last summer. In light of the Panel’s comments at the time, it would have been helpful to the Panel if both parties had made significant movement from last summer’s offers to appreciably narrow this gap. FFAW

moved 16.5 lower than their position last summer, to \$1.20. ASP, on the other hand, moved only 2 cents, while at the same time materially increasing trucking deductions.

The majority decision of the Panel accepting ASP's position to use their 2022 offer as a starting point for 2023 pricing runs the risk of a substantial, long-term recalibration of overall sharing, to borrow from the terminology of the Panel in 2022.

3. Another indicator of how far off base the ASP offer is from the historic price-to-market relationship is a comparison of various summer shrimp price decisions of the Panel with Danish market conditions at the time in question, as outlined on Page 7 of the Gemba update, prepared for the parties and the Panel.

There was no referral to the Panel in summer 2016 or 2018.

In 2017, when the Gemba table shows a market of 62 Danish Kroner (DKK) per kg., the raw material price (RMP) as determined by the Panel was \$1.25.

In 2019, when the market was slightly above the current level at 75 DKK, the RMP was \$1.65.

In 2020, when the market had taken a major dip to 50 DKK, the Panel's initial decision was \$1.18, dropping to \$1.08 following a reconsideration application.

In 2021, when the market remained at 50 DKK, the Panel accepted ASP's offer of \$1.10.

(Note: In each case, the price for trucked shrimp was 3 cents lower than the price cited.)

In other words, even in the years in which the market was about 30% lower than it is today, the RMP was in the order of 20% higher. When it was about 10% lower (2017), the RMP was 35% higher.

4. The ASP final offer, and the comments contained in the majority report of the Panel, continue to misrepresent the Vardy Report's commentary on seasonal yields. ASP claimed that Vardy "*found an average yield of...27.4 percent (July-August).*" Vardy said no such thing. What he did say was this: "***The actual yields are not available, but the seasonal change can readily be estimated given an assumption regarding the yield in April.***" (*Emphasis added.*) He referred to the information his Panel received from the chartered accounting firm NKHK as a "yield index." The summer yield index of 27.4 was based on an assumption of a 32% yield in April. Nowhere in his lengthy report does Vardy say the spring yield actually is 32%. In fact, he shows a graph with two illustrative, roughly parallel lines, one based on a spring yield of 32%, the other based on 34%. The purpose of the yield index was to show the advantage from an economic point of view of maximizing production outside the summer period. Vardy took considerable pains to make this clear.

None of this should be construed as a criticism of the Vardy Report. It is simply meant to clarify exactly what Vardy did say and didn't say on the matter of yields.

5. In Paragraph 31 of the Panel's majority report, reference is made to FFAW using *Undercurrents* market analysis "...instead of the Gemba report on the current market prices focused on the UK market for shrimp in 2023..." What is not clear – and should be clarified for the Panel and the parties in any future reporting by Gemba – is the nature of the UK reporting. On page 7 of its

report, at the top of a table showing Danish market price trends in Danish Kroner, Gemba says: *"The table with prices in GBP is found in the appendix."* That sounds very much like a currency adjustment to convert from DKK to GBP, as opposed to separate market intelligence from the UK market. Otherwise, one would expect wording along the following lines: *"A table showing prices in the UK market is found in the Appendix."*

6. The majority report contains references to "affidavits" declaring substantial losses on the part of tow shrimp processing companies. It should be pointed out that these were heavily redacted to the point that even the names of the company and the signing officer were blacked out.
7. Insufficient weight was given to the appreciable year-over-year improvement in the exchange rate between the GBP and the Canadian dollar, an improvement in the range of 6.3%.
8. Based on the relationship between RMP and market prices over the past several years, the historic relationship between raw material prices in this province and those in Quebec, and taking into account the Panel's Summer 2022 comments explaining the rationale for its decision, as well as the appreciable improvement in the exchange rate between the GBP and the CAD, it is my view that the final offer of FFAW is the more appropriate of the two offers before the Panel.

Respectfully submitted,

Earle McCurdy

June 30, 2023