

STANDING FISH PRICE-SETTING PANEL

SNOW CRAB FISHERY - 2023

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 Friday, March 24, 2023, as the date by which collective agreement(s) binding on all processors in the province that process Snow Crab must be in effect.
2. The Panel also noted at that time, that it had been advised by the Department of Fisheries, Forestry and Agriculture, that the Association of Seafood Producers, hereinafter referred to “ASP” represented processors processing the majority percentage of the species Snow Crab. As a result, under Section 19(11) of the *Act*, should a hearing be required for Snow Crab, 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 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 Snow Crab, if required, was scheduled to take place at 10:00 a.m. on Friday, March 24, 2023. On March 17, 2023 representatives of ASP and FFAW jointly requested to move the Standing Fish Price-Setting Panel hearing for Snow Crab from March 24, 2023 to March 31, 2023, to allow for more time for the parties to bargain and work towards a deal. The Panel granted this request and set the hearing for March 31, 2023.
4. On March 31, 2023, the Panel convened the hearing via Zoom videoconferencing and, having noted the parties’ ongoing efforts to reach a mutually-acceptable agreement, requested that the parties return to bargaining and attempt to make material revisions to their final offers, if possible. The hearing, if required, was then scheduled for Saturday, April 1, 2023 at 10:00 a.m., via Zoom videoconferencing.

5. The Panel reconvened its hearing for the species Snow Crab at 10:00 a.m. on Saturday, April 1, 2023 via Zoom videoconferencing. Appearing before the Panel were the FFAW and ASP. The parties, having previously attended exchanged their final offer submissions, and filed copies with the Panel, (copies attached) supported their submissions in main argument and rebuttal.

Point of Order

6. At the commencement of the hearing, ASP called a point of order with respect to public commentary by FFAW about negotiations. In particular, it was alleged that FFAW's social media platforms had released to the public the parties' final offers in bargaining. This is highly irregular in collective bargaining and final offer arbitration. FFAW and ASP, through their representatives, agreed that they would not comment publicly or disclose the substance of the closed Panel hearings, as the matter was considered to be before the Panel once bargaining had broken down and final offers had been exchanged. Both parties acknowledged that negotiations to the point of the hearing, as per the Panel's rules, were confidential.
7. At the hearing, the parties were reminded and the parties agreed, that this final offer arbitration hearing is a closed hearing. All parties, through their representatives at the hearing, agreed that proposals made during the negotiating process were to remain confidential, and the only two proposals before the Panel were those final offers provided by each party. The parties agreed not to publicly comment about the proceedings or negotiations while the matter was before the Panel.
8. For clarity: ASP confirmed at the commencement of the hearing, that it was not making any allegations of bargaining in bad faith with respect to FFAW's online commentary to that point.

Information before the Panel

9. In addition to the parties' written submissions, the parties and the Panel had the benefit of two market reports prepared by Meros Consulting ("Meros") and John Sackton Seafood Datasearch, hereinafter referred to as "Sackton", as well as information provided by the Newfoundland and Labrador, Department of Fisheries, Forestry and Agriculture, including data on NL landings, production and export statistics and recently published articles related to Snow Crab markets.

Overview

10. There was consensus between the parties that 2022 saw a substantial decline in the Crab market and that the market this year is volatile. FFAW was optimistic that prices will improve in 2023, noting that Atlantic Canada is in a position to supply 90% of the US Snow Crab market, that prices will increase when this season's crab comes on the market, and that there are signs in the marketplace that returns to casino and cruise ship travel in particular will increase Snow Crab sales as the season progresses.
11. ASP is of the view that there are risks in the market, that the market has shown continued decline, and that the market has not yet hit the bottom. They flag significant holdings of 2022 season crab throughout Canadian, US and Japanese cold storage. The US market, in particular, is continuing to show reduced demand at continually reducing prices. Quotas have increased, contributing to the highly saturated market. The price of crab has experienced the largest price decline ever. From a high in of \$16.80 in late 2021, the price has reached \$5.75 USD on March 31, 2023. ASP expressed concern that given the high volumes of unsold 2022 crab in inventory, high volume in cold storage, inflationary pressures, turmoil in the US banking industry, increased costs of borrowing, the price of crab could continue to drop and has shown no signs of stabilizing as yet.

Relevant information considered – positive and negative

12. Crab prices declined throughout 2022 and have continued to decline through 2023, with the most recent Urner Barry reported price for Snow Crab sold into the US market at \$5.75/lb. USD as of April 1, 2023.
13. In his crab market review of March 17, 2023, Sackton provided a list of positive and negative factors affecting the anticipated price of Crab in the market in 2023.

Some positivity

14. There is evidence that lower prices will stimulate customer demand at retail. Sackton regards this as crucial evidence that it *"may be possible to dig out of the inventory hole and return to a more normal sales environment for crab."* This would be a scenario wherein prices would go up due to healthy demand once the season has ended. This "inventory hole" will be discussed further below.
15. Recovery of travel is anticipated to lead to more sales in casinos and cruise lines, neither of which has excessive inventory at this time so they may be responsive to price signals. The slightly weaker Canadian dollar will benefit exports and allow for a slightly higher domestic price (Sackton, p. 64).

16. According to Sackton, it is anticipated that Japan will return to the Crab market and should purchase 3,500 MT of crab from Canada this year. However, the Meros report estimates that there are approximately 2 years' worth of crab product in storage in Japan at this time and that it is highly likely that the only purchasing that will be done from Japan will be if there are very good deals to be achieved. Because Canadian stocks are healthy and quotas are high, this is reinforcing Canada's position as the largest global Snow Crab producer. This enables customers to plan for longer term availability of Snow Crab, which will in the long run reflect or predict healthy sales and sales of Canadian stocks being a strong selling point, which according to Meros leads to Japanese buyers acknowledging that they can wait for prices to fall before purchasing.

17. On a further positive note, Sackton notes:

Retail sales dollars and pounds for fresh crab (sold from the Deli case) declined continuously from the first quarter of 2021 until the 4th quarter of 2022 a period of 20 months. In the Oct-December period of 2022, crab pound sales increased 14% over the year ago period, but dollar sales remained -5.6% below the comparison period.

In February of 2023, lower prices finally produced increase volumes, with especially strong sales for valentines [sic] day/super bowl weekend. For last month, volume sales increased 61.4% and dollar sales increased 27.3%. This is the first indication we have that lower prices are in fact stimulating crab sales. (At p. 14)

Negative indicators

18. Notwithstanding the positive points articulated above, in his March 17, 2023 report, Sackton notes:

2023 has also started with a three month price decline, as of today down to \$6.00. Prior experience suggests that this means, first, that opening wholesale prices will be lower than current sales levels, and second, that whether prices can rise later in the year will depend on whether demand develops for both excess inventory and new season crab.

Last year we did not know whether the negative inventory signal would be affected by a change in supply, both with the cutoff of Russian snow crab, and the closure of the Alaskan crab fishery. The increase in Newfoundland production, along with a similar increase in the Gulf, meant a very large

increase in the snow crab supply, which more than offset any reduction of Alaskan and Russian snow crab. Crab production in Newfoundland increased 41% in 2021. Then it increased another 22% in 2022.

... The large increase in the snow crab supply in the US in 2020 and 2021 overwhelmed the market, so that 2022, as we have seen, saw a continuous decline in prices as the crab supply was greater than what was sold. Market prices never achieved a level to clear out inventory. This is in spite of the significant decrease in the US supply in 2022.

... None of this reduction in supply was sufficient to stabilize prices, as the demand for snow crab fell even more than the reduction in supply.

... Last year we estimated that the US market volume would contract by 17.5%. In fact it fell by 35%, to the lowest level since 2012. The reason for the excessive drop in US supply was that a significant amount of Canadian snow crab sections were stuck on the Canadian side of the border, since demand had collapsed. This is an indication of how much the collapse in demand in 2022 overwhelmed any possible increase in value due to a contraction in supply. (At pp. 18-19)

19. Sackton lists several negative factors affecting the crab market right now. He refers to “huge excessive inventories” of crab from 2022 (which he referred to as the “inventory hole” as quoted above) which are hurting sales. Mr. Sackton reiterates the common estimate that approximately 10,000 tons of Canadian Snow Crab remains unsold in Canada from last year (at p. 9). Therefore, producers have no pricing power *vis a vis* their customers and will not regain pricing power until that inventory situation has been resolved.
20. Sackton also notes that financing will be much more difficult to obtain this year due to higher interest rates, more caution on the part of banks, and weaker balance sheets of producers. He highlights that selling inventory at a loss from last year may increase turn-over from frozen storage and move product, but it will weaken balance sheets at a time when the banks are growing more stringent in their lending practices. This means there “very little runway” to get the season started and gave crab turn-over flowing. He cautions:

If crab is mis-priced and if customers balk at the established price level, a finance-induced shut down is a real possibility. It is highly unlikely in the

current fragile economic environment that banks will finance with credit lines product that is not moving.

21. Mr. Sackton also notes that logistics and warehousing problems still exist. Snow Crab has had *“the worst inventory problem among all seafood species.”* Therefore, warehouses that depend on turnover are reluctant to take on snow crab loads without a guarantee that they will quickly move.
22. Another negative factor is that *“a significant number of retail buyers felt burned by the runup in crab prices in 2021. People lost money up and down the supply chain.”* He predicts that this will make it difficult for some retailers to come back into the market until they have been convinced that crab prices will remain stable and they will not go lower. Mr. Sackton warns that *“it may take more than one season with good product movement before buyers will feel confident about revisiting pricing.”*
23. Sackton also notes that there is a significant chance for US recession and consumers may pull back further on their spending. He surmises that any US recession will put further downward pressure on crab prices
24. The large increase in the Snow Crab supply in the US in 2020 and 2021 overwhelmed the market. As a consequence, in 2022 we saw a continuous decline in price as the Crab supply was greater than what was sold. Sackton observed that *“market prices never achieved a level to clear out inventory.”* This occurred in spite of a significant decrease in the US supply in 2022 from Alaska and Russia. The shutdown of the Alaskan Snow Crab fishery meant that Canadian market share increased. The prohibition on the importation of Russian Snow Crab to the US also contributed to the increase in Canadian market share, and overall, the Canadian market share of Snow Crab sales in the US jumped from 60% to 90% of the US market. However, none of this reduction in American and Russian supply was sufficient to stabilize crab prices as the demand for Snow Crab fell even more than the reduction in supply.
25. In 2022, Sackton projected a total supply of approximately 58,000 tons, of which 49,000 would be from Canada. In fact, in his 2023 report he notes that the volume of Canadian US imports in 2022 fell to 39,000 tons because the “missing” ten thousand tons represented product produced in Canada that had not crossed the border as of December 2022. In January, 2023, total export to the US was 1,300 tons. This was far higher than in prior years, (which he opines is likely due to the embargo on Russian Crab exports to the US during the war in Ukraine) but it still leaves a surplus of inventory. Sackton notes *“if*

this big increase in shipment this winter continues through February and March, it will still mean only another 4,500 tons is shipped, still leaving inventory in Canada.” He surmises that the strong demand for Canadian Crab in January 2023 comes partly from buyers who have switched away from Russian crab, which was traditionally available for purchase in January – March due to their extended fishing season.

26. Sackton notes that 2022 saw a decline in crab sales at foodservices. *“In general, seafood is not performing as well as other categories, mostly due to its higher price... seafood was only up 0.25%, while every other item sold through Foodservice increased from 3% to 7% based on sales volume through broad line distributors. The poor performance of the seafood category was largely of a reflection of the decline in crab buying.”*
27. While Sackton notes that overall restaurant traffic is improving, it has not returned to its 2019 levels. Research shows that there remains a significant number of Americans who are not comfortable eating out. Further, he cites the biggest headwind facing restaurant usage as inflation, and inflation remains high in the US. The largest cohort of seafood consumers are the older baby-boomer generation and these are the group most reluctant to return to their prior frequency of dining out, in part due to the economy and inflation, their fixed incomes, and discomfort with attending restaurants post COVID-19 epidemic.
28. Mr. Sackton notes that there is uncertainty in the current economic situation, particularly in the United States. While the near-term forecast is for relative stability in Canada/US exchange rates, which means that the Canadian dollar will be slightly weaker and therefore is helpful to Canadian exporters, there is no certainty about whether or how much US consumers will pull back.
29. Compared to the 2020 report where Sackton stated, *“Within the frozen category, nothing did better than crab,”* by June 2022 Sackton reports *“crab was the worst performing retail item in 2022.”* This sales slowdown led to an excessive buildup of inventory and the rapid decline in price in 2022 (Sackton, p. 39). Promotional pricing has stimulated more retail sales. For 2023, the weighted average price is close to \$9.99, with promotional pricing ranging from \$6.50 - \$9.99. Current pricing, as referenced by Urner Barry’s update on March 31, 2023, is \$5.75/lb. Sackton cautions that the retail picture remains uneven, that some companies are not selling out their high-priced inventory from last season and significant loss as compared to last year’s purchase price. Sales velocity is only increasing in instances where retailers are able to clear their current inventory by way of reduced prices.

30. According to Sackton, the inventory situation in the US “cannot be overlooked.” The price history of Snow Crab in 2022 shows an almost continuous decline. This is a signal that buyers have too much product on hand and sellers keep lowering their prices. His analysis is that this *“demonstrates that there is a significant problem in this year compared to others. The un-exported carry over volume in Canada was twice the average of the past 3 years. All of these data points strongly support the anecdotal evidence of excessive inventories.”*
31. As highlighted by the FFAW, Sackton noted two factors that are helping consumer confidence; falling gasoline prices and a continuing strong job market. *“However, as the recent bank panic illustrated, the economy is never far away from a shock that is unanticipated”* (Sackton, p. 43). He highlights that bank lending has begun to tighten in the US and the volume of bank deposits continues to fall. The industry will face tighter credit and more difficult loans this year.
32. Overall, Sackton notes, *“for our purposes, it will be important to live with uncertainty. There is simply no certainty about whether, or how much, US consumers will pull back.”* The Panel takes note of the comment: there is no comment about growth in the market. The question has become whether or how much consumers will pull back from the current market, and the current market is at \$5.75 USD.
33. With respect to price, Sackton noted that:
“... in 2022, prices fell until the end of the season, and then remained mostly flat.... 2023 has also started with a three-month price decline...prior experience suggests that this means, first, that opening wholesale prices will be lower than current sales levels, and second, that whether prices can rise later in the year will depend on whether demand develops for both excess inventory and new season crab.” (Sackton, p. 18).
34. ASP is of the view that there are risks in the market. It believes the market is highly concentrated and will continue to decline. The FFAW feels that the market has levelled and that there are positive signs for the future.

Gulf Crab pricing

35. Mr. Sackton notes that Gulf crab pricing is very similar to Newfoundland and has experienced the same decline since 2022 as has happened with Newfoundland Crab. The price spread on size is similar as well. According to Mr. Sackton, there is plenty of Gulf product being traded to establish quotes from Urner Barry.

36. The March 31, 2023 Urner Barry report quoted prices of Snow Crab at their lowest since 2016. 5-8 oz. sections are selling at \$5.75 USD or \$7.76 CAD, using a 1.37 two-week exchange rate average. This price level has not been seen since May, 2016.
37. In 2016, ASP and FFAW agreed to a minimum price of \$3.00. FFAW argues that the Urner Barry price quotes today are a result of inventory from the 2022 season that is being sold at a reduced price to prepare for new crab in April. FFAW argues that traditionally, the price of the new year crab increases significantly. The Panel notes this, but it has to be acknowledged that the current market conditions are what we are assessing. Currently, the UB price is \$5.75 USD, it has been continuously declining, there is significant product in cold storage yet unsold, and significant product from 2022 that has been sold and is still in storage, based on the market research provided to us.
38. Even in the two weeks leading to this hearing, the price fell from \$5.85/lb. as of March 28, 2023 to \$5.75 USD per pound as of the date of the hearing on April 1st.
39. ASP provided an email from Gilles Thériault, President of New Brunswick Crab Processors Inc. As of March 29, 2023, Mr. Thériault states that all processors from the respective processor associations in New Brunswick, Quebec and Nova Scotia are paying \$2.25/lb. for their ice boats and \$2.50/lb. for rsw vessels for the duration of the crab season. The email advises that if the market this season is worse than anticipated, they will consider lowering the price for the remainder of the season. At the end of the season, each processor will be adjusting the price to their fishers as they see fit if what they obtain for their crab during the season warrants and adjustment.
40. FFAW argued that one email from one individual is not reliable evidence of the price of crab in the Gulf, and reiterated that Gulf crab is differently priced than in NL. However, the Panel notes that Sackton in his report that Gulf Crab pricing is very similar to NL Crab pricing and has experienced the same decline in 2022-23 as has the Newfoundland Crab. We further note that this email is sent on behalf of all processors in three provinces.
41. As in other Snow Crab submissions, the FFAW repeated its assertion that harvesters have never fully benefited from yield improvements due to technological advancements over the past several years. ASP argued that the risk associated with purchasing the crab from the harvester lies with the processor and the investments made by the processors to increase yield lie with the processors.

42. FFAW argued that the Panel ought to consider the percentage “share” of the price and spent considerable time in its written and oral presentations discussing 2016 prices and similarities therein. While the market price of Crab may have been similar in 2016 to what Urner Barry currently reports per pound, the market conditions that existed in 2016 were not the same as current market conditions. More specifically, the Panel notes that inflation, interest rates, quotas, market share, and the amount of supply currently in storage are significant factors to be considered in determining the fair market value for the minimum price of Snow Crab this season.
43. While the Panel is not engaging in a “share” analysis of the fishery, Mr. McCurdy, in his dissent, wishes to comment on “share” allocation and provide rough calculations on such. In the majority’s view, there is insufficient data to provide an accurate calculation of the costs borne by processors vs. harvesters, and the financial risks taken. Any such “share” analysis should be cautioned against without sufficient empirical data with respect to yield, and does not account for production costs, transportation costs, the costs incurred to get the product to market or the risk associated with processors buying in a falling market while harvesters are selling in that falling market.
44. FFAW argued that the price of crab as being set by this Panel is the price of crab in the province. ASP reminded the parties and the Panel that price being set is the minimum price of crab. Due to significant differences in quality from harvester to harvester and catch to catch, the price as set is a minimum, as per the terms of the collective agreement. There is nothing preventing the processors from paying bonuses to harvesters who provide higher quality product, and the panel notes that such payments are specifically articulated and discussed in the Master Collective Agreement between the parties.


Conclusion

45. Because this is a final offer selection process, the Panel must choose one of the two final positions that it considers to be closer to likely outcomes. The Panel recognizes that the “correct” price may be somewhere between the two positions, but the parties have not negotiated this price, and the Panel is left with having to choose one position or the other. The Panel also recognizes there is much uncertainty ahead. There are some “bright spots” highlighted by the research that, if they materialize, may change this outlook. Predictions are difficult to make. We can only consider the market as it currently exists, and that the evidence provided to us with respect to how the market is currently behaving and will likely behave this season.

46. The Panel thanks the parties for their efforts to come together and reach their own negotiated price. Their willingness to return to the bargaining table was noted and their efforts to make material changes to their offers to meaningfully attempt to settle this matter are applauded.
47. In making its decision, the Panel is keenly aware of the fact that the parties have an opportunity to bring a request for a reconsideration to address any significant market changes that may arise once the 2023 fishery gets underway. We would encourage them to do so, should such changes materialize.
48. Considering the overall decline in Crab markets in the past year, inflation, financial instability in the US, significantly decreased demand in the market, increased quotas, and the significant probability that pricing trends will hold (i.e., that the price will continue to decrease at least until the substantial leftover holdings from the 2022 season have cleared and a demand is created in the market), and after a thorough review of the market reports and submissions of the parties, the Panel has accepted the ASP's final offer.
49. The minimum price to be paid for Snow Crab in 2023 will be:
- \$2.20/lb. — 4" carapace and up.
 - \$1.90/lb. — for legal size under 4".

These prices will form a collective agreement or part of a collective agreement binding on all processors that purchase the species Snow Crab in 2023.

Dated at St. John's, NL, this 6th day of April, 2023.



Sheilagh M. Murphy



Brian Vallis

MINORITY REPORT – 2023 SNOW CRAB

I respectfully dissent from the majority report of the Standing Fish Price-Setting Panel with respect to 2023 prices for snow crab. The following briefly summarizes the main points of my dissent:

1. It is clear that the market is in significant decline, and will no longer support the level of raw material prices that were in place in 2022. That being said, the magnitude of the reduction in wharf prices should bear some rough relationship to the decline in market prices.
2. At the time of the Panel's reconsideration of the minimum prices for snow crab on May 14, 2022, ASP projected that the market would settle out at \$9.50 U.S. With an exchange rate at the time of approximately 1.29, this amounted to \$12.25 Cdn. They proposed a minimum price of \$6.15 for crab of 4" carapace size and greater. In doing so, they noted that would be consistent with a "harvester share" of roughly 50% of the market price.
3. The current market for 5-8 oz sections, per the Urner Barry website, is \$5.65 US, with an exchange rate of approximately 1.3447, amounting to a price of \$7.60 in Canadian dollars. In other words, the market has declined by approximately 38% since the Panel's reconsideration decision in 2022.
4. FFAW's final offer of \$3.10 represents a 49.6% decline from last year's minimum wharf price of \$6.15. ASP's final offer of \$2.20 amounts to a 64.3% decline.
5. At 65% yield, for illustrative purposes, and a wharf price of \$6.15, the 2022 yield-adjusted wharf price would be \$9.46 ($\$6.15/.65$) at a time when ASP was basing its offer on a market of \$12.25 CDN. This left the processors in 2022 with a differential between the expected market return and the yield-adjusted raw material price of \$2.79 ($\$12.25 - \9.46 .) It is important to note that this was based on the ASP final offer in reconsideration, which was accepted by the Panel.
6. Applying the same methodology to the 2023 final offers gives the following differentials:
FFAW: $\$3.10 \text{ min. price} / .65 = \$4.77 \text{ yield-adjusted raw material price}$. Differential between market price and yield-adjusted RMP = \$2.83 ($\$7.60 - \4.77 .)
ASP: $\$2.20 \text{ RMP} / .65 = \$3.38 \text{ yield-adjusted RMP}$. Differential between market price and yield-adjusted RMP = $\$7.60 - \$3.38 = \$4.22$.
7. Put another way, the FFAW offer produces a very similar market to yield-adjusted RMP differential for processors as the 2022 reconsideration outcome, which was based on ASP's own offer (\$2.83 v. \$2.79). The ASP final offer increases this differential in their favour by roughly 50% (\$4.22 v. \$2.79) at the same time that the price to harvesters would decline by 64.3%.
8. I want to be clear that none of these calculations is intended to capture all the costs of the crab business. Both fishing and processing businesses are dealing with inflation and cost pressures. They were last year and they are this year. What the above paragraphs are

intended to do is show that the ASP offer to the Panel shifts the entire burden (and then some) of the difficult market circumstances onto the shoulders of fishing enterprises.

9. In the course of rebuttal to the FFAW presentation to the Panel, the chief spokesperson for ASP said "Sharing is not consistent with the concept of minimum price." Whatever the terminology that is used, I submit that the job of the Panel is to determine a reasonable price in relation to market and other relevant circumstances that may present themselves. As recently as last May, ASP was using the term "harvester share" in supporting their (successful) presentation to the Panel.
10. In support of their final offer, FAW cited the handshake agreement between the parties in 2016 on a \$3.00 minimum wharf price at a time when market prices were very similar to where they are today. The ASP chief spokesperson said what happened in 2016 is "not relevant unless all factors are identical". It would be unusual for all factors to be identical in any two different years, but it seems reasonable to me to use the relative wharf price to market price relationship in a prior year for at least some guidance as to what an appropriate price range would be in the current year.
11. ASP gave a lot of weight to an email from the New Brunswick Crab Processors Inc. In past years, ASP has been dismissive of email evidence FFAW produced in support of their position, and the Panel has tended to be equally dismissive.

In light of the foregoing, I cannot support the majority decision of the Panel in this matter.

Respectfully submitted,



Earle McCurdy

April 6, 2023