

# STANDING FISH PRICE-SETTING PANEL

## SPRING 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 May 1, 2023, as the date by which collective agreement(s) binding on all processors in the province that process Spring Shrimp 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 (“DFA”), that the Association of Seafood Producers (“ASP”) represented processors that process the majority percentage of Spring Shrimp. As a result, under Section 19(11) of the Act, should a hearing be required for Spring 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 Spring 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 Spring Shrimp, if required, was scheduled to take place at 10:00 a.m. on Friday, April 14, 2023. On Friday, April 14, 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 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. In addition to its written submission, ASP provided appendices including purchase reports showing shrimp purchases in 2022; inshore settlement price check sheets for gulf shrimp; affidavits from two processors as to the financial losses suffered in their shrimp plants over 2019-2022; press clippings from July 2022 concerning gulf shrimp fishery in Quebec; receipts showing shipping costs for shrimp, including fuel surcharges paid by processors in August and September 2022; and 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”).

4. The parties and the Panel had the benefit of a market report prepared by Gemba Seafood Consulting, ("Gemba") 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. 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 Spring shrimp fishery for 2023.

#### **The Panel's jurisdiction and role: final offer selection**

6. 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 agreement are the Association of Seafood Producers and FFAW-Unifor. 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).
7. The Act provides the Standing Fish Price-Setting Panel with the power, authority, and responsibility to set the minimum price for fish (in this case, Shrimp in the Spring fishery), by way of final-offer 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.
8. 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 spring 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 price for the first-hand sale of fish rests with this Panel in the event the parties fail to do so. 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.
9. It is important to note that this process has worked for the determination of disputes between these parties for more than a decade. 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 Spring Shrimp matter, the parties have submitted prices that are vastly different.

10. It appears clear to this panel – unanimously – that FFAW’s position does not reflect a reasonable price that they may anticipate that each side might be able to live with. The Panel concludes below that the ASP offer more accurately reflects the realities of the Shrimp industry in NL currently, and has therefore accepted their final offer.
11. Neither party has brought any allegation of bargaining in bad faith to this Panel. Allegations of bargaining in bad faith would be addressed by the Labour Relations Board and not the SFPSP, as it is the Labour Relations Board whose enabling legislation allows it to hear applications concerning bargaining in bad faith.
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 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 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.

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

14. The Panel was provided with Gemba’s April 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, p3).
15. Gemba reports that prices were increasing in the latter part of 2022 but “flattened out” in early 2023. Through the first months of 2023, there has been a small decline. The current price for 150-250 pcs/lbs. is 74 DKK/kg and the forecast for up to June 2023 is predicted to decline to 70-71 DKK per Kg.

16. Gemba reports that the prices of cooked and peeled shrimp are set at a global level “due to the high transparency in the market and that, especially shell-on shrimp is considered a commodity.”
17. Gemba also reports that inventories are high at the moment, and it expected trade in the Easter season would be normal; however, the number of Easter Campaigns was low compared to previous years (Gemba, *supra*). Gemba also notes that inventories are “high.: In the UK particularly, inflation is high and shrimp is seen as a luxury item.
18. From October 2022 – March 2023, central currencies have gained on the CAD, which is favourable for Canadian exporters. ASP notes in its submission that since March, the CAD has gained on central currencies and therefore this more positive outlook based on currency exchange is not material at this time.
19. Gemba reported on three main European markets for shrimp: the UK, Denmark, and Sweden. The UK market is slow. “The market is depressive leading to a downward tendency in demand and prices” (Gemba, p. 3). In Denmark, consumption of cooked and peeled shrimp is at a normal level. They note, “the prospects for consumption are not high and the Easter season is not expected to give any extra bloom this year.” With respect to Sweden, Gemba noted that the market reflected the same trends as Denmark. Overall, they remarked, “The prices are expected to have a slight downward tendency despite the upward price impact from the general inflation” (Gemba, p. 3).
20. Gemba reported that due to the dominance of Danish / Greenlandic and Norwegian companies in the shrimp sector, the currencies of DKK and NOK are typically used as the inter-company price. For UK companies, the preferred currency for cooked and peeled shrimp are GBP.
21. China is the main market for Canadian unprocessed shrimp. Canadian export of processed shrimp to Denmark has decreased by 44% primarily due to the fact that there is less unprocessed shrimp available to processors.
22. Gemba notes that inflation is at a high level. This is having a negative influence on shrimp price. Overall, Gemba notes that while current prices may be slightly higher than this time last year, nevertheless, Gemba is predicting a decline in shrimp prices globally to June 2023. Noting high inventory rates, Gemba opines that the summer season is expected to reduce inventories, so any uptick in demand would not occur until late in the summer season.
23. Both parties agree that the spring shrimp fishery is the most lucrative. The yield per shrimp is much higher. Spring shrimp are caught in colder water. The shrimp are bigger, redder, and firmer, which is more desirable to consumers. In spite of this, there has not been a spring shrimp fishery since 2019.

## **FFAW's Position**

24. The FFAW accepts the position that spring shrimp is “the best quality, size, and yield compared with other seasons.” They also note that there has been no spring shrimp fishery in 2022 or 2021. In 2022, processors declined to purchase shrimp from harvesters at the minimum price set by the Panel of \$1.42/lb. in 2021, harvesters refused to fish at the price set by the Panel.
25. 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 and agreed to a price of \$1.20/pound for summer 2022. The FFAW argues that due to that agreement, all shrimp landed was purchased at a minimum price of \$1.20/lb. in Summer 2022, and the minimum price paid for the fall fishery was \$1.25.
26. It is upon the basis of the Panel’s decision of Spring 2022 of \$1.42 (which did not result in a spring fishery because the buyers refused to buy at that price), that the FFAW bases its current offer in this final offer arbitration for a minimum of \$1.58/lb. landed at the plant, and \$1.55/pound with a trucking deduction for shrimp not landed at the plant. The starting point for this calculation is based on a fishery that did not occur following the Panel accepting the FFAW’s offer of a minimum price of \$1.42. The increase in price over last year's minimum shrimp price is justified by FFAW as follows:
  - Gemba reports (at p. 17) that the main source of inflation comes from the high energy prices and the larger the share of energy costs are for the product, the more severe the inflation is. Raw material (such as shell-on shrimp\_ that carries a larger share of energy costs in the price is more susceptible for inflation than more processed products.
  - FFAW notes that inflation in February 2023 is 9.9% in the EU and 9.2% in the UK. Therefore, they argue that inflation is coming down in the EU and UK markets
  - Exchange rates make trading from CAD more favourable
27. There was no Spring Shrimp fishery in 2022 or 2021. FFAW highlights that in 2022 the market price was lower than it is reported for 2023, according to Urner Barry. Inventory and inflation are having an impact on price.
28. FFAW uses a yield rate for spring shrimp of 35% and 38% in its calculations for setting price. When asked at the presentation how it came up with the number of 35% - 39% for yield (as compared to ASP’s yield of 32.2%, based on the Vardy report index of 32-34%) there was no clear answer provided, just that that is the amount that FFAW has used in the past and is using here in its calculations.
29. FFAW’s argument with respect to setting price amounts to a flat increase of 11% across the board based on last summer’s price, leading to the \$1.58 per pound offered.

30. FFAW was asked to provide feedback on the ASP's assertion, based on affidavit evidence, that processors have reported multi-million-dollar losses in shrimp processing for the past 2-3 years. Specifically, FFAW was asked how the Panel can accept the FFAW's request for an increase of 11% when the processors' evidence is that they were operating at a loss while purchasing shrimp at rates 11% lower than proposed this year. They declined to address that question on direct, and waited to discuss it in rebuttal, where they argued that not all shrimp processing facilities are stand-alone facilities. FFAW argues that some shrimp facilities in this province are multi-species facilities, whereas some of the harvesters only harvest shrimp and no other species. FFAW also questioned the validity of the affidavit evidence provided by two processors because there are only affidavits from two companies showing a loss, this is only 2 of 6 facilities reporting these losses. Arguably, they said, the other processors could have been showing a profit and not disclosing it.
31. The FFAW argued that therefore, the evidence is not reliable and the panel cannot consider that evidence. Instead, FFAW argued that the Panel needs to consider only sales of shrimp in order to fully evaluate the market. Put another way – FFAW argues that (i) the processors may be suffering a loss on shrimp, but they may not be suffering losses processing other species and (ii) the sworn evidence from two processors showing their financial losses in the 2022 season are unreliable because not all processors filed affidavits.
32. ASP explained that obtaining an affidavit from the controller of a fish processor is difficult, and not all shrimp processors operating in this province are NL companies – some may be foreign-owned companies and may not be willing to provide that data or participate in the hearings. FFAW has provided no cost analysis for harvesters.
33. FFAW further argued that the trucking receipts provided by ASP were unreliable data – in one case, a typed word had been scratched out and another word entered on the slip. This, the FFAW argued, made the entirety of the trucking receipts unreliable. However, in its submission at page 7, FFAW acknowledged the existence of a trucking deduction and therefore peg their trucking deduction as being the same as previous years. They believe that if a change is warranted in the trucking deduction, it should be discussed at great detail between the parties. They argued, "any increase in trucking costs should be analyzed and compared with increased fuel costs to harvesters so that both parties have a fair say in how these costs are distributed." (FFAW, p. 7). Respectfully, FFAW has been provided with ASP's calculations for increased trucking costs. FFAW has provided no evidence. Each had the opportunity to have a "fair say" at bargaining and at this hearing.
34. FFAW argued that its proposed yield rate is superior because the yield rate put forward by ASP was rooted in the 2002 Vardy report, which is more than twenty years old. The FFAW argues that because shrimp processing equipment is highly-specialized, surely there must be more efficient machinery being used currently by shrimp processors and the yields must be higher

now than they were in the past. The FFAW provided no data or evidence in support of that argument, other than to say that it is hard to believe that NL shrimp processors are not using newer equipment to attain higher yield rates than what were reported by Vardy in 2002.

35. FFAW further argued that ASP's stated yield rate of 32.2% (which ASP has been using since the Vardy report), is incorrect and should not be used because the FFAW has "heard" from "industry contacts in other countries" that a 38% yield is possible. FFAW provide no evidence in support of that argument. Such a comment does not constitute reliable evidence by any measure.
36. During rebuttal, FFAW was asked to explain their offer on minimum price and the distributions and methodology used to come up with that offered price. FFAW repeated that they are based on the Fall 2022 price of shrimp and the distribution was based on information provided by ASP.
37. FFAW was asked to explain how they arrive at the change from spring 2022 price to spring 2023 price, given there was no spring fishery for that price in 2022. FFAW argued that the three country markets (UK, US Denmark) are shown as weighted prices of each type in CAD. Therefore, they apply an overall price increase of 11% over last year. They note that the UK market is the primary market for cooked and peeled shrimp, and there is considerable growth in price and product, based on export values. A key indicator of the market, the FFAW argues, is that total exports are rising to countries other than Denmark. Danish exports are only 6% of our market and therefore not significant, as the US and the UK markets far outweigh that value. The FFAW used the following price table to show year over year, three pricing sections for the US, UK and Denmark.

Another key indicator of how the market is doing is looking at our largest markets for inshore shrimp product. These have been identified by both Gemba and Undercurrent News for which both parties through the years represented in pricing tables. The table below is total exports to these major countries from 2022-January of 2023. Other than Denmark in 2022, price growth within these countries has been strong and that trend continues into 2023 with the UK and USA markets.

<b>All NL exports 2020-2022</b>	<b>2020 \$/lb</b>	<b>2021 \$/lb</b>	<b>2022 \$/lb</b>	<b>2023 \$/lb</b>
United Kingdom	4.35	4.39	5.17	6.73
Denmark	3.37	5.23	2.86	-
United States of America	3.98	6.83	7.09	7.96

(FFAW, p. 6)

	<u>Spring 2022 Over Spring 2023</u>				
	<u>Spring 2022</u>	<u>Spring 2023</u>	<u>Change</u>		
<b>Market Exchange Rates</b>					
US Market					
Market: USD/lb					
150-250	6	5.75	-0.25		
250-350	5.65	5.5	-0.15		
(weighted 50/50)					
Exchange Rate (USD-CAD)	1.253486	1.34817			
Weighted Price in CAD	7.3016	7.5835	0.2819		
			11%		
	<u>Spring 2022</u>	<u>Spring 2023</u>	<u>Change</u>		
<b>Market/Exchange Rates</b>					
UK Market (UCN)					
Market GBP/lb					
150-250	3.76	4.13	0.37		
250-350	3.52	3.86	0.34		
(weighted 50/50)					
Exchange Rate (GBP-CAD)	1.638254	1.674241			
Weighted Price in CAD	5.96324456	6.688592795	0.72534824		
			81%		
	<u>Spring 2022</u>	<u>Spring 2023</u>	<u>Change</u>		
<b>Market/Exchange Rates</b>					
Northern Europe Market					
Market: DKK/lb					
150-250	29.49	33.12	3.63		
250-350	28.58	32.67	4.09		
Exchange Rate (DKK-CAD)	0.184136	0.197185			
Weighted Price in CAD	5.3464	6.4864	1.1400		
			6%		
Overall avg market price CAD	5.9542	6.6411	0.6869		
Change in Raw Material Price to Reflect Market Changes		(38% yield) (35% yield)	0.2610 0.2404		
<b>Change: Spring 2022 to Spring 2023</b>		<b>Yield</b>	<b>Harvester Share</b>	<b>Spring 2022</b>	<b>Current Price</b>
		38	78	0.2036	1.42
		35	65.4	0.1572	1.42
					1.58

(FFAW, at p.9)

38. FFAW argues that the weighted rates and exports show the two yields and the two harvester shares. The “lower, more conservative price of \$1.58 proposed by FFAW” is based on increased price, basically a flat increase of 11 % based on the international price, at a yield of 35%.

39. On the one hand, FFAW argued that the lower relative Canadian dollar will be advantageous to a higher price of shrimp this spring season. However, it was noted by the panel that the Canadian dollar has strengthened in the last 30 days. FFAW then argued that currency fluctuates from time to time, and the Panel should not rely on currency *per se*.
40. The Panel also notes that at page 9 of the FFAW's proposal, it references Spring 2022 vs spring 2023 prices, but that is not actually spring shrimp that is being sold for those prices on the market – it is the shrimp that has been sold in that period of time. The Panel cautioned, as was clearly articulated in the Vardy report, that there are three distinct shrimp fisheries – Spring, Summer, and Fall. Fall shrimp cannot be used to determine the price of Spring shrimp due to the differences in shrimp from season to season, affecting catch rates and yield.
41. The Panel asked FFAW to explain the distributions / methodology used to come up with the prices. FFAW confirmed that on page 8, the offer with respect to minimum prices are based on the Fall, 2022 distribution. FFAW compared the three country markets – UK, Denmark and USA. The numbers are prices by UB, weighted, in CAD. It is the price for all export product, the change in the overall price year over year, and based on the yield.
42. FFAW failed to substantively comment on why it would use last year's price and export data upon which to show an overall market increase of 11% upon which to base its minimum price as a straightforward 11% increase over last year's minimum sale price when it was presented with evidence from the producers that they operated at a loss during those periods.

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

43. ASP offered \$1.08/lb. as the minimum price to be paid for spring shrimp landed at the plant. ASP provided significant 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 \$1.05/lb. for shrimp landed North of Port Saunders in Newfoundland, and \$1.00 per pound for shrimp trucked from elsewhere in the province to the processing plants.

#### **Trucking**

44. ASP submitted that trucking costs have been recognized as a part of the minimum price for 15 years and haven't been adjusted or increased with the increasing price of trucking and fuel. They note that it should have been provided in the submissions for 2022 and is being included here. 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 ASP's offer with respect to the trucking costs was tabled to FFAW during negotiations, but they received no response from FFAW with respect to the offer.
45. 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. ASP explained in their oral submissions that the rationale for these average deductions per pound based on location in the province was that there is no way, unless they have a price deduction per landing spot for every potential landing spot in the province, to calculate it otherwise. In an effort to make the price fair for all harvesters and processors, ASP first cut the trucking cost in half, and then suggested what they calculated to be a reasonable additional deduction based on the rough area in which the harvest is landed and where it has to be trucked. ASP reiterated that this being a minimum price and competitiveness are matters being addressed here, and emphasized that there is an option for processors to make payments above the minimum price for harvesters who offload product directly at a plant.

46. ASP admits there are many different ways to address the transportation cost issue, but in bargaining the answer from FFAW has been that the more complicated the calculation is, the harder it is to administer and accept. Therefore, ASP has tried to keep this offer and transportation deduction as simple as possible. In an ideal world, ASP suggests that the parties discuss this in bargaining again next year, take the trucking invoices and get an average price per landing site. In the absence of something else, ASP argues that its proposal is reasonable.

#### **Minimum price is a minimum for viability**

47. 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.
48. 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 of those processors provided evidence that 17% of the 2022 shrimp remains in their inventory at this time. That same processor has also 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) and also testified that 20% of their 2022 shrimp inventory remains in cold storage.
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. Two

of the major processors provided attestations of the millions of dollars in losses they have endured in the shrimp fishery since 2019.

50. ASP argued that in order to maintain work forces and long-term relationships with communities, the processors are trying to employ the workers in the plants in those communities. This has meant significant subsidization of the shrimp fishery from another fisheries sector for these corporations. ASP argued that processors can't sustain those losses any more. ASP recognized that the onus is on ASP and FFAW to "look at this for what it is" and to come up with a more responsible approach to a formula for setting the minimum price this year. ASP reiterated and emphasized that the submission is minimum price. They also emphasized for the panel that the minimum price being sought "is not a minimum price for making a lot of money;" rather, it is a minimum price in order to have a viable spring shrimp fishery this year. Risk, cost, market, and price are factored into the price sought by ASP. ASP notes that the processors still bear a majority of the potential financial risk. The cost related to this fishery is a risk: once you start these plants, you have to keep them going. Harvesters sell their catch and are paid within days to a week after landing it. Processors are then processing it, storing it, shipping it, getting it to market, and are subject to potential losses in the event of any market decline, and costs of storage should the product not move.

#### **Yield**

51. ASP argued that the yield rates used in their calculations are based on the best available evidence before the Panel, that of the Vardy report, which they view as a legitimate piece of work. 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 commentary that an unnamed and unverified processor told the FFAW that a higher yield rate can be attained.
52. ASP's position on yield is that the yield for shrimp articulated in the Vardy report remains accurate and is the best evidence before the Panel. When asked by the Panel to address the FFAW's comment that higher yields were being attained in Europe and ought to be applied here, ASP noted that NL quotas for shrimp have dropped from a TAC of 164,000 tonnes in 2007 to landings of 8,100 tonnes landed of a TAC of 9,528 tonnes in 2022. Last year (2022) roughly 15% of the shrimp quota was left in the water. As a consequence of the decline in the shrimp industry in this province, there hasn't been any significant capital invested in shrimp processing in order to increase yield. There has been money invested to maintain operations and "keep things up to code," but the technology being used has remained the same throughout the province. ASP argued that the yield range has remained the same for a very long time and there is no credible, reliable, or compelling evidence to change this yield range. The economics of the shrimp industry in this province are not sufficient to invest in new technology and processing facilities, so yield has not changed.

53. Additionally, ASP argued that there is market data from Gemba indicating that there is an anticipated downturn in the shrimp pricing, which places an increased risk on the processor, who may buy at one price and have to sell at a lower price.

**ASP's overall offer**

54. In arriving at its offered price, ASP took the premium prices from the market potential – not the Federal export data. They explain that they took the market price determined in the Gemba report projected for June 2023 - then took out the yield factor to come up with the minimum price in an effort to determine minimum price. At pages 13-15 of their submission, they show that in doing this, the ratios are roughly 50/50 processor/harvester for the associated raw material costs (page 15 ASP submission).

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**Gemba Price Data - Projected for June 2023**

Season	Yield	Minimum	Raw	United	Harvester
		Shore Price	Material Cost	Kingdom Market Share	
April - June	32.2%	\$1.08	\$3.35	\$6.38	53%
April - June	32.2%	\$1.05	\$3.26	\$6.38	51%

Jun-23

**Shrimp Market Price per Pound in GBP** £3.81

April 12, 2023 GBP to CAD Exchange  
Rate 1.6750 Source: Bank of Canada

**Shrimp Market Price per Kilogram in GBP** £8.40  
Pounds to Kilograms 2.2046

55. ASP argues that this is a minimum price, not the maximum price as put forward by FFAW. ASP provided a table showing the submission by FFAW, based on the shrimp market price per pound as shown by Gemba, less a yield rate of 32.2% (based on the Vardy report index of 32-34% yield), using the minimum shore price submitted by FFAW of \$1.58 per pound. This calculation shows that the FFAW's submission results in a harvester share of 77% (75% if using \$1.55/pound). If a Gulf 4R Area 8 harvester lands product at the plant, then the cost to the processor is \$1.62/pound, with a result that the harvester receives 79% of the market price for product. 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. The table below shows that calculation:

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**Gemba Price Data - Projected for June 2023**

Season	Yield	Minimum Shore Price	Raw Material Cost	United Kingdom Market	Harvester Share
		\$/LB	\$/LB	\$/LB	
April - June	32.2%	\$1.58	\$4.91	\$6.38	77%
April - June	32.2%	\$1.55	\$4.81	\$6.38	75%

<b>Shrimp Market Price per Pound in GBP</b>	<b>Jun-23</b>
April 12, 2023 GBP to CAD Exchange Rate	£3.81
	1.6750 Source: Bank of Canada

<b>Shrimp Market Price per Kilogram in GBP</b>	<b>£8.40</b>
Pounds to Kilograms	2.2046

56. 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. This calculation assumes that the price of shrimp would remain at the same level and not declined, as per Gemba's prediction.
57. Using the *Undercurrent* price, with a yield of 32.2%, and ignoring the prediction that prices will continue to fall this season, and using a minimum shore price of \$1.08/pound, the ASP showed that the harvester share of the harvest is 49%. At \$1.05/lb. the harvester share is 47%. The ASP's offer will provide 49/47% to harvesters and 51/53% to producers, prior to producers incurring any additional costs. 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 hard and fast rule, the panel has previously been alive to the issue of trying to ensure that the minimum price represents a fair sharing of the resource. Setting the minimum price where one party 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 other party's proposal would result in harvesters reaping 77% of resource is unreasonable, in this Panel's analysis.
58. In its analysis, ASP also provided an example of prices closer to those of last year, where we know that at least two of the producers suffered multi-million-dollar losses in the shrimp fishery. ASP showed that a minimum price of \$1.40/lb. would result in a harvester share of 63% and a producer share of 37%. They submitted that this would be less than what producers require to absorb the additional costs of processing and potential declines in the market. In other words, at numbers closer to last year's minimum price, 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.

The following table uses a possible lower submission price from the FFAW at \$1.40/\$1.37 but the share is still 68%/67% for non-Gulf harvesters.

<b>Gemba Price Data - Projected for June 2023</b>					
<b>Season</b>	<b>Yield</b>	<b>Minimum</b>	<b>Raw</b>	<b>United Kingdom</b>	
		<b>Shore Price</b>	<b>Material Cost</b>	<b>Market \$/LB</b>	<b>Harvester Share</b>
April - June	32.2%	<b>\$1.40</b>	\$4.35	\$6.38	68%
April - June	32.2%	<b>\$1.37</b>	\$4.25	\$6.38	67%

### **Decision**

59. ASP argued that its price of \$1.08 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 even on high quality products with better yields, (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 the anticipated declines 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 Panel agrees.

60. As a result, the ASP argued that the preponderance of cogent evidence presented favoured the panel selecting ASP's position over that of FFAW. 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. The basis for the ASP's yield calculation has been within the range of the yield number provided in the Vardy Report, which has been considered to be reliable evidence by this Panel in the past. The only data provided by the FFAW to support any other yield is an unverified statement by an unnamed source. Respectfully, that is not evidence the Panel can rely on when making a decision.

61. The FFAW's position started from an extreme position put forward in bargaining last year and built on it. It is an even more extreme position here. Based on the preponderance of reliable information provided at this hearing, the Panel unanimously accepts the ASP's final offer with respect to the minimum price of Spring Shrimp for 2023. The minimum price for Spring shrimp in 2023 will be set as follows:

- \$1.08 / lb. landed to the plant
- \$1.05 / lb. trucked North of Port Saunders on the Northern Peninsula
- \$1.00 / 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 25<sup>th</sup> day of April, 2023.



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Sheilagh M. Murphy



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Earle McCurdy



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Art Dodd