

Capelin Fishery 2014

In the matter of the Fishing Industry Collective Bargaining Act and a referral by the Fish, Food and Allied Workers Union, dated June 12, 2014, made pursuant to Section 19.8(4), with respect to specifications for Capelin in the Collective Agreement.

The Fish, Food and Allied Workers, hereinafter referred to as the "FFAW", by e-mail, dated the 12th day of June, 2014, referred the matter of Capelin specifications to the Panel, under Section 19.8(4) of the *Act*. Specifically, the issue concerns the Capelin Specifications set out in the Collective Agreement which defined the treatment of female capelin less than 5.25" in length. The parties to the agreement are currently in the process of negotiating the price and conditions of sale for the 2014 Capelin Fishery.

Previous agreements have provided in the specifications that capelin have to be a minimum of five and one quarter inches (5.25") measured from the tip of the nose to the crux of the tail. The primary product from the capelin fishery is female roe bearing capelin.

The specifications defined any capelin less than 5.25" in length as male capelin, including female capelin that fell in that size category. Prices in the collective agreement agreed to by the parties do not apply to "male capelin", which by definition include female capelin under 5.25" in length. The price for the latter is determined between the individual harvester and the processor.

The schedule setting out the terms and conditions of sale for the capelin fishery are quite detailed and complex. For the purposes of dealing with the reference, the Panel does not have to review the process in detail. The issue for the FFAW arises from the fact that capelin have been decreasing in size, to such an extent that in 2013, 85% of 233 landings sampled by the FFAW did not fall within the scope of the price schedule in the collective agreement. From the FFAW's perspective, the bulk of the capelin being sold to processors is not being sold at a price determined by collective bargaining. When the bulk of the capelin, especially female, were larger than 5.25", it was not an issue.

During the course of the negotiations the parties were not able to agree on a change in specifications, which apply to female capelin less than 5.25" in length. The FFAW has taken the position that the specification is a non-price matter. The Association of Seafood Producers, hereinafter referred to as "ASP", representing processors, say the specifications are a price matter within the Act and the collective agreement.

If the FFAW were to succeed in this reference by having: "Capelin less than 5.25" in length", deleted from the Schedule, the parties would bargain on the price for female capelin less than 5.25" in length, which met the other criteria in the schedule applicable to "usable females".

The first issue for the Panel is whether this reference meets the requirements of Section 19.8(4) which states:

"a party to collective bargaining with respect to a fish species, may refer a matter other than price to the Panel prior to the date set out under subsection (1) and the Panel may consider and give a decision with respect to the matter."

ASP, as noted, in response to the referral contend that capelin are valued and priced on specifications and that any change in specifications is in effect a change in price.

The Panel agreed to hear the reference and provide the parties the opportunity to submit positions outlining their position on the matter in issue. The hearing took place at 10:00 a.m. on Friday, June 13, 2014. The parties filed positions and supported their positions in oral argument. The proceeding was informal and the parties agreed that the Panel should decide on the preliminary point of whether or not the reference as made dealt with a non-price issue. There are some time constraints on the parties and the Panel as capelin prices have to be determined and in place by the end of the week; by agreement of the parties, or set by the Panel following a hearing.

The FFAW submission outlines the history related to the specifications and the parties efforts to deal with the issue. They also cite a decision of the Panel on a "non-price" issue dated June 13, 2007. The FFAW contends the issue here is similar and the reference should be accepted as a non-price matter. In that instance, the Panel determined that the sampling and grading of the catch (capelin) was to take place at the wharf at which the capelin was landed, as opposed to taking place at a later time at the processing plant. The Panel stated at page 2:

"the process of sampling and grading only indicates what is actually being sold and bought, at specific prices that have to be determined by collective agreement."

In the 2007 reference the issue was clear, as noted in the outset at page 1:

"The FFAW wanted to ensure that the capelin schedule for 2007 made it clear that sampling and grading of capelin take place at the wharf at which each shipment is landed."

For the FFAW, the point of sale was where the catch was landed, the property in the capelin was transferred to the buyer, or his agent, who were then responsible for the catch and its proper handling.

The Panel concluded the issue was not a price matter. The Panel stated at page 2:

"The process of sampling and grading only indicates what is being sold and bought, at specific prices, that have been determined by collective agreement. That process does not of itself set the price per pound for each category of capelin sold."

In the present case, the issue is directly related to the price, in fact it commands the price to be paid. The issue of how much or how many pounds meet that price specification is clearly a distinct process to arrive at the value for that particular catch. However, it is the specification, in this instance the size, that determines the price.

The Panel is of the opinion that the reference must fail as the point in issue is a price issue and not an non-price matter.

The Panel is also of the view that a final resolution of the specifications and price is essential for the parties to have a capelin fishery in 2014. The parties have to be "ad idem" on what it is they are selling and buying between harvesters and processors. This would not change even if the Panel accepted the FFAW position. The price of what is being purchased from harvesters would have to reflect what is actually being paid for.

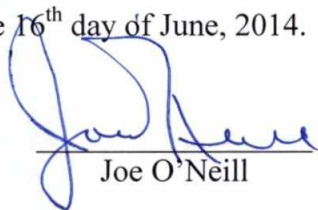
The FFAW has the right to bargain on the sale of fish on behalf of its members. The fact is that conditions have changed and they want to settle a price for otherwise usable female capelin that are under 5.25" in length. It is also a fact that processors have been buying these capelin at prices settled with harvesters individually. There is no solution to the issue by one party having the current specifications deleted from the agreement or the other refusing to negotiate a change.

The parties have had a very productive round of discussions and negotiations in preparation for the capelin fishery, complex and important issues, have been dealt with. If there is to be a transfer in the property of less than 5.25" female capelin between harvesters and processors, in 2014, a price will have to be negotiated, to reflect that fact.

The parties should immediately meet and bargain on the specifications and price. In the absence of agreement, the Panel will conduct a hearing in accordance with the provisions of the Act, and decide the issue.

It is the decision of the Panel that the reference of the FFAW does not fall within the ambit of Section 19.8(4) as a "non-price matter", and the reference is dismissed.

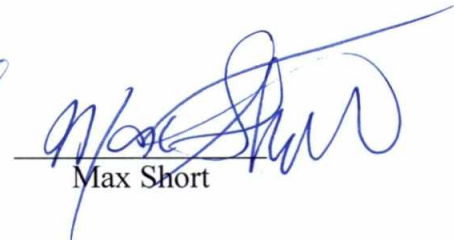
DATED the 16th day of June, 2014.



Joe O'Neill



Bill Wells



Max Short