

## Capelin Fishery 2014

The Standing Fish Price-Setting Panel, hereinafter referred to as "the Panel", issued its Schedule of Hearings for 2014 on the 11<sup>th</sup> day of February, 2014. Pursuant to Section 19 of the Fishing Industry Collective Bargaining Act, hereinafter referred to as "*the Act*", the Panel set Tuesday, the 17<sup>th</sup> day of June, 2014, as the date by which collective agreements binding on all processors that process Capelin must be in effect. In the absence of such collective agreement, the Panel set Wednesday, the 18<sup>th</sup> day of June, 2014, as the date on which the Panel would conduct a hearing regarding the prices and conditions of sale for the species, Capelin.

It was noted by the Panel at the time, that it had been advised by the Department of Fisheries and Aquaculture, that the Association of Seafood Producers, hereinafter referred to as "ASP", represents processors that process the majority percentage of the species, Capelin. As a result, under Section 19(11) of the Act, should a hearing be required for Capelin, the parties appearing before the Panel would be the Fish, Food and Allied Workers, hereinafter referred to as "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 collective bargaining must be obtained.

The hearing, if required would take place on the 18<sup>th</sup> day of June, 2014, at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John's. At the request of the parties, the Panel re-scheduled the hearing on the species Capelin for Friday, the 20<sup>th</sup> day of June, 2014, at 11:00 am at the Labour Relations Board Hearings Room.

The parties, having earlier exchanged final offer positions and providing copies to the Panel appeared before the Panel and supported their written submissions in main argument and rebuttal.

The parties and the Panel had the benefit of the market report for female roe bearing capelin prepared by A.M. Haram for the Department of Fisheries and Aquaculture.

Following a reference to the Panel, pursuant to Section 19.8(4) of the Act, the Panel issued its decision on the 16<sup>th</sup> day of June. The issue in that reference, dealt with the specifications for female capelin under 5.25" in length. The FFAW wanted to include a price in the collective agreement for female capelin under 5.25" and ASP had not agreed to a change in the specifications.

The matter was referred to the Panel as a non-price issue, a specific requirement of Section 19.8(4). The Panel dismissed the reference on the finding that the matter was a price issue. However, the Panel did advise the parties that if the FFAW insisted on a negotiated price for female capelin less than 5.25" in length to be in the collective agreement, the price for that specification would have to be negotiated.

The essence of the FFAW argument, is that circumstances have changed to the extent that the majority of the roe bearing female capelin supplied by harvesters to processors is less than 5.25" in length. Female capelin, less than 5.25" in length were not priced in the previous agreements, rather it fell in the category where the price was negotiated between the individual harvester and the processor.

For the purpose of this hearing, the issues for the Panel are clear and may be summarized as follows:

- The FFAW as the certified bargaining agent has the legislated right to bargain fish prices for species sold to processors, or their agents, on behalf of its harvester members.
- The fact that the price for less than 5.25" female capelin, as well as other capelin not meeting the defined specifications, could be negotiated between processors and harvesters, does not preclude the FFAW from now insisting that the price must be negotiated by them as the bargaining agent and included as a price in the collective agreement.
- ASP has bargained and made an offer based on the 2013 specifications. ASP has failed to recognize the fact that their offer does not address the issue having the price for less than 5.25" female capelin agreed and set out in the collective agreement.
- ASP has offered 11.5¢ for capelin that meet the specifications in the agreement of 2013. These specifications do not include female capelin less than 5.25" in length that otherwise would meet the specifications. Implicit in that offer is that the price for female capelin less than 5.25" in length would be agreed between the individual harvester and the processor, not as a result of collective bargaining and not as a price stipulated in the collective agreement.

The FFAW offer changes the specifications to the extent that female capelin less than 5.25" in length, that otherwise meet the specifications, are priced in the collective agreement. To achieve that, a two price schedule is proposed.

The "A" price for capelin will be for capelin that meet the specifications set out in the 2013 agreement with no change.

The "B" price, will apply to female roe bearing capelin, under 5.25" in length that otherwise meet the specifications set out in the 2013 Capelin Schedule.

Capelin that do not meet the specifications of either "A" or "B" above, will fall to the floating price to be determined between the individual harvester and a processor. The FFAW offer on price is .15¢/lb. for "A" capelin and .10¢/lb. for "B" capelin.

The Panel must choose one of the two offers presented and is not permitted to make any alterations and adjustments. The ASP offer fails to provide a price for the less than 5.25" for female capelin. The FFAW has identified less than 5.25" female capelin, that otherwise meet the specifications set out in the Capelin Schedule as part of the collective agreement, as a species and size for which it wants to bargain collectively on behalf of member harvesters. This is a legislated right and if harvesters are to sell and processors are to buy female capelin less than 5.25" in length, that price must be arrived at through collective bargaining and specifically stated in the collective agreement.

In the absence of a specific price offer for less than 5.25", female capelin from ASP, the Panel has little choice but to accept the FFAW offer.

The Panel is however, concerned about the impact of the price proposal of the FFAW. The "A" price offer, which provides for a 50% increase for capelin having the same specifications as last year, does not appear to be supported by the information in the marketing reports. While it may be as little as 15% of the total landings, the value in the product may not be supported by the market return.

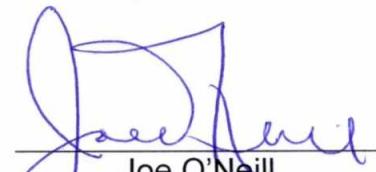
Neither of the parties or the Panel can determine precisely what will happen in 2014 with respect to the run of capelin. The Panel, with some concern, is obligated to accept the final offer of the FFAW. It does note that the offer included that the Panel remain seized of this matter in order to "adjudicate" any difficulties that may arise in finalizing the 2014 Capelin Schedule.

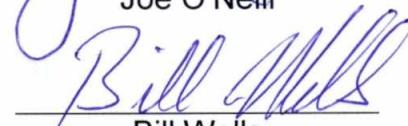
The Panel accepts that responsibility and is prepared to act immediately should the need arise. The parties are encouraged to deal fairly with the issues that may arise in the conduct of the 2014 capelin fishery which is now upon us. From the perspective of the Panel, issues may be brought jointly or severally by the parties to the Panel, and the Panel will provide assistance or adjudicate unresolved issues.

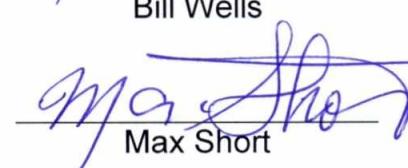
It is the decision of the Panel to accept the offer of the FFAW and the Capelin Schedule for the 2014 capelin fishery is to be amended to reflect the FFAW final offer.

By virtue of the Act, this decision is binding on all processors that process the species capelin in the province, the revised Capelin Schedule will form a collective agreement, or part of a collective agreement with the FFAW.

Dated at St. John's the 24<sup>th</sup> day of June, 2014.

  
Joe O'Neill

  
Bill Wells

  
Max Short