

STANDING FISH PRICE-SETTING PANEL

SNOW CRAB FISHERY 2020

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2020, on February 27, 2020. Pursuant to Section 19 of the Fishing Industry Collective Bargaining Act, hereinafter referred to as the “Act”, the Panel set Friday, March 27, 2020, as the date by which collective agreement(s) binding on all processors in the province that process Snow Crab must be in effect.

The Panel also noted at that time, that it had been advised by the Department of Fisheries and Land Resources that the Association of Seafood Producers, hereinafter referred to as “ASP”, represented processors that process 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.

The hearing, if required, for Snow Crab was scheduled to take place at 10:00 a.m. on Thursday, March 26, 2020, at the Ramada Hotel, 102 Kenmount Road, St. John’s, NL. Due to the COVID-19 pandemic and concerns around the safe execution of a fishery, and through a joint request by ASP and the FFAW, the Minister of Fisheries Land and Resources extended the date by which a binding collective agreement is to be in effect to May 4, 2020. The Panel agreed to extend the hearing date for Crab in line with a potential opening of a fishery under COVID-19 protocols.

On April 27, 2020, the Department of Fisheries and Oceans extended the start date of the Newfoundland and Labrador Crab fishery to May 11, 2020. In a request to the Provincial Minister of Fisheries and Land Resources, ASP sought to have the date by which a price was to be in place for Snow Crab extended as well, to a date closer to the new start date for the fishery, as is typically the case. The FFAW did not concur and, without joint agreement, the Minister did not change the scheduled hearing date. Hence, the Panel was required to proceed with the hearing time to meet the requirements of the Act.

The Panel convened the hearing for the species Snow Crab at 2:00 p.m. on Wednesday, April 29, 2020, via Microsoft Teams virtual meeting capabilities. The parties appearing before the Panel were the FFAW and ASP. The parties having previously exchanged written submissions, copies attached, supported their positions in argument and rebuttal. The Panel and the parties had been provided with several reports prepared for the Department of Fisheries and Land Resources, including one report from Seafood Datasearch Market Consulting, hereinafter referred to as "Sackton" and another from Meros Consulting, hereinafter referred to as "Meros", as well as weekly market updates from Seafood Datasearch. The Sackton report and weekly updates focus primarily on the US market whereas the Meros report focuses on the market in Japan. The market reports from both Sackton and Meros were prepared back in March. Given the rapidly changing and unsettled markets these reports are now no longer current and are of limited value.

From a US market perspective and its impact in Japan, the Meros report indicates that: "Japanese importers feel that they don't have much control over Newfoundland and Labrador Snow Crab price as it is mainly controlled by US buyers and the price they pay. In that sense, if demand in the US slows down (which is likely to happen in the current situation), importers will probably expect that the US price will go down as well".

Meros also mentions the potential impact of supply of snow crab from Russia to Japan. Specifically, it states; "There is currently a rumor that Snow Crab from Russia is expected to be cheaper (1-2 USD/kg cheaper) than in 2019. If so, importers may switch from NL to Russia."

The Sackton report, and specifically his weekly updates, provide insight as to how the US market is reacting and expected to react to the COVID-19 pandemic. On page 4 of the March 13, 2020 report, Sackton clearly indicates that: "*markets are going through historic stress never seen before*". He is specific in his outlook on the food service market. On page 6 of his report he indicates that: "*Foodservice and restaurant sales have collapsed..... the biggest portion of the market – casinos, cruise ships, amusement parks, hotels and many restaurants - has ceased buying, full stop.*" He also indicates on page 7 that; "*Retail sales are likely to continue to be strong, especially as some of the volume served at foodservice is replaced by eating at home. For the longer term, we do not know what price behavior at retail will look like. If we are looking at an extended period of economic hardship, it is hard to imagine that would not have some impact on retail pricing and customer buying choices.*"

Sackton explains on page 7 of his report that; "*the US is likely in a full-blown recession. Historically we know that in a major recession, the value of more expensive seafood items goes down as consumers cut back on purchases.*" In his March 23, 2020 Update, Sackton indicates that prices

for Eastern Canadian halibut have plunged by 50% from \$10 at the end of February to \$5 at the end of March. Similarly, Canadian salmon dropped 20% in three weeks.

In his April 2, 2020 update, Sackton suggests that; *“all major economic forecasts this week have moved from the idea of a short downturn and quick recovery to a longer extended downturn and a slow recovery. The collapse of foodservice sales has been nearly total Sales are down 70% to 90%”*.

In his April 9, 2020 update, Sackton references; *“significant value destruction of the industry”*. In terms of supply, he states that *“if left to market forces only, indications are that too many producers will rush in and quickly cause gluts and price collapses..... Japan’s situation is getting worse and the economic impact is widening; Retail will not take as much as thought”*. He makes further reference to Japan in his April 16, 2020 update, particularly because the country has now declared a national state of emergency. The Tokyo Olympics have been cancelled. Japan is going to follow other European and North American countries with a total shut down of restaurants and foodservice. In this update, he refers to the US retail sector and states that; *“Retail is becoming more difficult for seafood. Labor is the primary bottleneck. The result is that retailers are currently buying a reduced range of seafood items, and they are staying away from products like Lobster and Crab that require service support”*.

Sackton’s April 23, 2020 market update offers the most recent market outlook information available to the Panel. In terms of food service, Sackton states that: *“Foodservice sales seem to have reached bottom fine dining is down as much as 98% in some areas. Foodservice chains that have been the backbone of Crab and Lobster purchasing are now sitting on high priced inventories, as sales have totally stopped. This is going to weigh on their buying options going forward”*. He makes reference to his concern with an ‘oversupply’ issue and claims that “Landing the full quota will push prices to the absolute bottom, build unsustainable levels of inventory, carry the period of extremely low crab pricing well into the fall and next season. It could ‘permanently’, (i.e. for several years), lower the price of Crab by changing customer perception of its value.

Sackton notes that given what has happened with food service, “this means that the entire industry will concentrate on retail buyers, and of course exports to Japan and China. But there are only a limited number of retail chains, and if all the producers compete to sell to them, prices will quickly drop”. Furthermore, he explains that in this COVID-19 environment (labor shortages at retail, physical distancing requirements, etc.), there is no appetite for promotion, which is where 80% of Snow Crab is sold at retail overall there is every indication that Snow Crab promotions, along with other seafood promotions have fallen through the floor. He concludes

this update stating that; “we have begun to see a broad decline across many species, including frozen. Salmon, Scallops, Lobster, Crab for example, all saw significant price declines in the week after Easter”.

In their presentations, both parties emphasized that the normal negotiation process for pricing of Snow Crab had totally broken down in 2020 resulting in little or no negotiation, discussion of market outlook or an exchange of meaningful offers between the parties. Unfortunately, it is quite evident there is much acrimony between the parties with the majority of their energy the past few weeks being focused on COVID-19 Safe Operating Procedures, the public discourse over the buying of Crab from outside the province and a disagreement over when to open the fishery. This resulted in last minute offers to the Panel on minimum price only, with no attempt to deal with scheduling fishing activity to address the new market reality or to have pricing mechanisms that might address marketing uncertainty. Both parties cast serious blame on the other for this situation.

The ASP presented a final offer that the price be set at \$3.00/lb. for Crab equal to or greater than 4" carapace inclusive of benefits (workers" compensation and employment insurance) of \$0.10/lb. The net price to fish harvesters would be \$2.90/lb. for crab 4" carapace and up and \$2.60/lb. for legal size crab under 4".

In terms of market outlook, the ASP feels the market updates have confirmed that the food service market in the US and the Japanese market have all but collapsed. This means processors will have to sell almost all the Crab into the US retail market which, in past years, only absorbed about half of Newfoundland and Labrador exports of Snow Crab. This will require a high level of promotions in supermarkets (discounted prices) and the Newfoundland industry will need to be able to compete with the Gulf and Quebec industry for market share.

They also contend the uncertain and late start of the Newfoundland fishery means that, unlike in previous years, it will be a price taker rather than price setter since the Gulf and Quebec fisheries will be first to market in 2020. These jurisdictions have already set the price to fish harvesters at \$3.00/lb. and have the benefit of being able to adjust it up or down should market outcomes dictate it. They claim the processors in these other Provinces are also not responsible for paying several additional costs which are borne by Newfoundland processors including employee benefits such as workers compensation and employment insurance premiums. They also contend that COVID-19 will also increase production costs (physical separation, PPE, efficiency) and there is the risk of facility shutdowns should COVID-19 be detected amongst production workers.

ASP were also of the view that since the fishery is not scheduled to start until May 11, 2020, the FFAW should have agreed to delay the hearing by a week to allow more time for the parties to consider additional market and other information prior to making final offers.

The FFAW presented a final offer that the price be set be \$3.50/lb. for Crab 4" carapace and up and \$3.20/lb. for legal size Crab under 4".

The FFAW contends that while markets are down there is a good opportunity in US retail where demand remains strong. ASP has signaled this strength in the retail market by its willingness to buy Crab from non-resident fish harvesters. Also, in media interviews in recent weeks, ASP has talked of increasing retail markets and that they can market all Newfoundland Crab. The FFAW also feels that despite the cancellation of the Olympics, the Japanese market may still be an outlet for Newfoundland Crab and noted that in the case of some plants, Japanese technicians have been here long enough to work through a 14 day quarantine period. They also point to the fact that USD and Japanese currencies have improved relative to last year - in the order of 5%.

As it did in its 2019 submission, the FFAW points to the fact that the premium for products of larger sizes (8" and 10" and up) has increased in recent years and an increasing percentage of Newfoundland Crab is going into these products. The share of premium packs to the Japanese markets has been increasing over the past several years. This, combined with the fact product yields are much better over the past number of years, points to a need for better sharing of market returns. To illustrate this claim, the FFAW used the "price to market" formula which was used by the parties at one time to set prices but was abandoned in 2008. In their view, and especially with consideration of a higher yield than was previously used, the formula demonstrates that their current offer was more in line with a fair sharing of market returns in 2020 even if the US price for 5-8 oz sections dropped to \$5.50/lb.

The FFAW feels that a pricing mechanism (a rebate system) that would provide for a price increase to harvesters later in the year should markets improve would have been preferable for 2020 but they could not get the ASP to negotiate it.

The parties agreed that 2020 would be an unprecedented year due to the onset of the COVID-19 pandemic and its negative impact on the conduct of the fishery, logistics of processing and shipping Crab and on the serious curtailment of traditional international markets for Newfoundland Crab products. This is reflected in the fact both final offers are much lower than prices to harvesters in recent years. Prices to Newfoundland fish harvesters over the past decade have consistently improved with a sharp increase in the past three years driven by unprecedented market prices in the US and Japan. Per pound prices to fish harvesters

(agreements and initial Panel decisions) ranged from a low of \$1.35 to \$2.45 during the period 2010 to 2015. As with a number of shellfish species, Crab prices spiked in the past few years driven by an expanding appetite for these products in both the US and Asia, which is consistent with the strong economic growth that has occurred in these markets. Prices rose from \$3.00 in 2016 to \$5.38 in 2019. Either of the final offers of the parties will see the 2020 price to fish harvester fall to a level of the 2016 to 2017 period.

Given the presence of COVID-19 in Newfoundland and Labrador and in the major Snow Crab markets, these are unprecedeted times resulting in much uncertainty in terms of the market outlook. There is considerable economic disruption in the USA and Japan from COVID-19 and any significant economic downturn will have an impact on the buying of a high-end product like Crab. Likewise, any future waves of COVID-19 or disruption to the resumption of their economies would prolong or deepen the economic downturn. In Japan, they are dealing with the economic fallout of COVID-19 which includes a significant economic blow from the cancellation of the 2020 Olympics.

The fishery is late getting started and there are few sales which have provided price points for reference. In the Sackton weekly update, he reports hearing of a price of USD \$6.50 FOB plant in the Maritimes. More sales may emerge in the days/weeks ahead, but the Panel's decision is required by Friday, May 1, 2020, and the parties have been adamant it can only consider information available at the time of the hearing. As noted above, the market reports indicate that foodservice markets in the US and the overall Japanese markets appear to be critically weak at this point. This appears to leave the US retail market to absorb most of the Newfoundland and Maritimes production in 2020.

The question for the Panel is whether the retail market can absorb the Crab supply and at what price? What will happen to prices when all fisheries come on stream and competition ramps up? This year the ice coverage is quite minimal and should pose few challenges to harvesters. There may also be an understandable rush by fish harvesters to catch as much as possible in a shortened season and before soft shell issues emerge in late spring and early summer. There are normal trip limits in place but no special provisions to slow the pace of the fishery. This will likely mean landings will come on stream early and heavy.

The Sackton market analysis suggests that retail markets will be challenged to absorb the supply and are highly dependent on the promotions in supermarkets and this may be particularly relevant to 2020. There is a concern that pricing may need to stay low to serve as an incentive for promotions. Also, should there be price resistance, prices may fall creating a lack of buyer momentum while they wait to see where the bottom will be. This will aggravate the buildup of

inventories. In part, the pricing behavior of processors in the Maritimes will influence outcomes. They may have an advantage of not having fixed minimum pricing for the year. At this point, no one can foresee what will happen with prices but there is considerable uncertainty and downside risk. How low prices might fall is unknown.

The Panel is aware that the economics of fish processing and fishing operations will change this year. COVID-19 will increase processing and harvesting costs while low fuel prices will be beneficial. There is uncertainty whether the full Crab quota will be taken in a shortened season which may further impact both sides of the industry in terms of total revenue and the ability to service overheads and debt. At the timing of the hearing, it is still unclear what the impact of government support programs will be for plant operators and fish harvesters and whether one side of the industry will fare better than the other. The parties did not make this a key issue in their presentations and when asked could not provide much clarity. Similarly, the Panel is not able to evaluate the net impact of these considerations.

A formula approach to dealing with the uncertainty would have been helpful. However, under the Final Offer Selection, the Panel must choose one of the minimum price offers presented by the parties. The decision is quite challenging given the uncertainty and risk to both sides. The Panel recognizes that whichever decision it takes, there is an opportunity for the parties to seek a reconsideration in the next few weeks as more market information emerges. The Panel feels a reconsideration request(s) is likely and will be available to expeditiously deal with any that come forward.

Considering the review of the market information available, other extraneous considerations and the submissions of the parties, it is the decision of the Panel to accept the final offer of the ASP. The prices for the species Crab will be \$3.00/lb. for Crab equal to or greater than 4" carapace inclusive of benefits (workers" compensation and employment insurance) of \$0.10 per pound.

The net price to fish harvesters will be:

- \$2.90/lb. — 4" carapace and up.
- \$2.60/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 Crab.

Dated the 4th day of May, 2020.



Wayne Follett



Bill Carter



Brendan Condon