

STANDING FISH PRICE-SETTING PANEL

SEA CUCUMBER FISHERY - 2022

The Standing Fish Price-Setting Panel, hereinafter referred to as the “Panel”, issued its Schedule of Hearings for 2022, on March 18, 2022. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the “Act”, the Panel set Thursday, May 5, 2022, as the date by which collective agreement(s) binding on all processors in the province that process Sea Cucumber must be in effect.

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 as “ASP”, represented processors that process the majority percentage of the species Sea Cucumber. As a result, under Section 19(11) of the Act, should a hearing be required for Sea Cucumber, 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 Sea Cucumber, was, scheduled to take place on Friday, May 6, 2022. The Panel convened its hearing for the species Sea Cucumber at 10:00 a.m. on Friday May 6, 2022, via WebEX virtual meeting capabilities. Appearing before the Panel were the FFAW and ASP. The parties, having previously exchanged their final offer submissions, and filed copies with the Panel, supported their submissions in main argument and rebuttal.

This is the second year in the history of the Sea Cucumber fishery that, prices and conditions of sale, are subject to a hearing and a collective agreement between the parties, the previous year being 2021. There is very limited information available on sea cucumber markets, particularly as they relate to the species of Sea Cucumber found in NL. However, the Panel and the parties did receive information provided by the Department of Fisheries, Forestry and Agriculture, including limited data on production and export statistics.

The Sea Cucumber is a bottom dwelling sedentary animal, which retains a significant amount of water within its body cavity. When harvested from the bottom, it is engorged with water, which is gradually released over time. This aspect of the physiology of the animal is the major source of disagreement between the parties, specifically how the amount of water loss should be assessed and the amount of deduction that should result to determine net weight of product landed.

For many years, DFO provided harvesters with individual quotas of 260,000 lbs. of gross landed weight, which was considered 200,000 lbs. of net weight, amounting to a 23% deduction. Prices were set on this basis, with processors paying harvesters on the basis of 200,000 lbs. net weight.

In 2021, ASP put forward its price offer based on a grading regime, which they had developed. The premise was that the 23% deduction was inadequate, and grading would be used to determine actual net weight. As well, additional deductions would be implemented to address other aspects of the catch, including foreign material (e.g., rocks, starfish, etc.), undersized, and rejects (e.g., damaged, dead, etc.). The FFAW offer was based on the historical practice for dealing with water loss, that being a straight deduction of 23%.

Through Final Offer Selection, the Panel, based on the merits of each parties offer, and the legislated requirement for the Panel to select one of the offers, chose the offer of the ASP. This precipitated significant push back from harvesters, who felt the grading protocol put forward by ASP had been prepared unilaterally, was ambiguous, and was a source of great uncertainty as to the actual amount of Sea Cucumber, they would be paid for. There were public protests and the fishery did not commence on its usual schedule. Later in the season, out of concern that harvesters could lose their quotas if they were not utilized, the parties reached an agreement to enable the fishery to proceed. This agreement included the grading protocol put forward by ASP but increased the price to harvesters by \$0.10/lb., from \$0.60/lb. to \$0.70/lb. As a result, most of the Sea Cucumber quota, was landed in 2021.

This year, ASP has again put forward its price offer, on the basis of continuation of the grading protocol it used in 2021. Their offer is \$0.55/lb., a 9% reduction from its \$0.60/lb. offer in the spring of 2021, and a 22% reduction from the actual price agreement, which enabled the 2021 fishery (i.e., \$0.70/lb.). They indicate that the actual water percentage seen in 2021 was 34%, and that additional deductions for foreign material, undersized, and rejects totaled 2.42%. They justify their proposed price reduction this year, on the basis of declining markets which they say have been falling in terms of overall prices to producers on a continuous trend downwards since 2018. Furthermore, they indicate that inventories of NL product are high due to carry over of product that commenced in 2020 when exports of frozen product to China were very low. ASP also expressed concern that the market in China will be impacted again this year due to China's "zero Covid-19" policy, which is seeing the lockdown of major cities such as Shanghai and Beijing.

The FFAW offer for 2022 is \$0.68/lb., which is \$0.12 (15%) lower than their 2021 offer of \$0.80/lb. and \$0.02 (3%) lower than the \$0.70/lb. price which launched the 2021 fishery. Their offer is premised on a 27.5% deduction for water content. To support their offer they put forward a broad based market report on the global Sea Cucumber market, which projects significant growth in the overall market during the 2022 to 2027 period. In addition, in their view there is no real evidence of a significant carry-over of inventory. They believe there is a sizable domestic market, which pays high prices for dried product. In addition, they contend that NL Sea Cucumber is sold to Nova Scotian producers for further processing and export. In terms of exchange rates, they note that the Canadian

dollar is currently trading at \$1.28 per US dollar, compared with 1.22 last Spring, a 5% improvement for Canadian exporters.

Last year was the first time the Panel was required to assess final offers for Sea Cucumber and establish a collective agreement, on the basis of one of the offers. The Panel expressed frustration over the lack of information available to them to enable this decision, as shown below:

"The Panel has few historical references on the industry and notes that it is rapidly evolving considering the significantly expanded Sea Cucumber quotas in the past few years and the increasing number of processors involved. There is limited data on the industry, logistics, its products, and yields. Export statistics and product categories are general and offer few specific product characteristics. There is no market assessment from the Government or industry. The Department of Fisheries, Forestry and Agriculture is constrained by privacy legislation in providing much detailed information on product types or on the number of processors producing the various products. Processors have the best understanding of the industry and markets but have not offered sufficient information to convey this to the Panel.

There is no information on specific product mix, yields, production processes and costs that enable an analysis of the relative value of raw material and various product types. It is difficult to evaluate what constitutes a reasonable sharing of market returns."

For 2022, the Panel finds itself facing similar challenges. In addition, the Panel is presented with two offers which are premised on different "non-price" elements which ultimately impact on the costing of the offers and the impacts of the decision. On the one hand, there is continuation of the grading system, which purports to determine actual raw material weight landed, but was developed without adequate consultation between the parties, lacks specific details on how to assess and address certain elements of the schedule, and, was the source of considerable upheaval in the industry in 2021. On the other hand, there is an offer which puts forward a flat deduction of 27.5% for water although there is evidence that water actually constitutes a higher percentage, and which fails to address any additional deductions for rejects and foreign material.

The situation the Panel finds itself in, demonstrates how the inclusion of price and non-price matters, when lumped together, greatly complicates the issue. The Panel believes the grading system is largely a water deduction mechanism, as the other elements deducted through the grading process are relatively insignificant. It would have been very desirable for the parties to have dealt with their divergence on water content so that price offers could be put forward on the same basis. This was the case when both parties operated on the understanding of a 23% water deduction, which was the accepted adjustment for water content for approximately 20 years prior to collective bargaining and the involvement of the Panel. Even though the percentage was probably underestimated, as long as both sides used the same premise, their prices could be structured accordingly.

With the current situation, a great deal of uncertainty has been introduced to the process by having prices linked to differing non-price elements, and the lack of verified information further adds to the

complexity. Therefore, the Panel strongly urges that if a party wishes to deal with this matter, it should do so separately as a non-price issue in advance of future price negotiations for Sea Cucumber. Indeed, in any fishery in which one of the parties seeks a material change in non-price matters, it should first attempt to negotiate the same, with the help of the Panel if need be, as a separate matter in advance of price negotiations. To do otherwise, puts the Panel in an extremely difficult position in trying to compare final offers when dealing with a combination of price and non-price elements.

The Panel reviewed in detail the submissions of the parties and the limited information available. In addition to the lack of data on the industry and market, the key considerations relate to: (1) 2022 market outlook; (2) impact of currency changes; (3) inventory carryover, and (4) sharing.

NL Sea Cucumber production consists primarily of two product forms: frozen whole, and dried. The vast majority of production is exported to China and Hong Kong. The exception to this was Covid-related in 2020, when exports to the Orient were greatly reduced, and dried product was sold in the US. Therefore, 2020 is considered by the parties to be an anomalous year and is not given much consideration in examining market trends.

A review of export data shows that the volume of Sea Cucumber exported from NL increased significantly in 2021, to approximately 2,115 tonnes, nearly double the approximately 1,150 tonnes exported in each of 2018 and 2019. However, the export price per pound has been on a steady decline: \$4.43 in 2017; \$4.00 in 2018; \$3.49 in 2019, and \$2.61 in 2021.

The FFAW submission referenced a MAIA Research report on the global Sea Cucumber market, which showed a relatively consistent market over the 2017 to 2020 period, with a moderate increase in 2021. The report's projection is for continued growth in the market over the next five years. ASP pointed out that this report is not specific to NL's Sea Cucumber products, which are from just one species out of the approximately 1,200 species of Sea Cucumber throughout the world. Nevertheless, consideration of this report and the record export volume from NL in 2021 could lead one to conclude that there is no indication that the market for our products will contract in 2022. On the other hand, the current lockdowns which are occurring in some cities in China to combat Covid-19, could, if they continue, impact buying activity for Sea Cucumber in NL's largest market.

In terms of market prices, it is unclear whether the ongoing decline in prices since 2017 has reached a floor price. A comparison of the prices for modest export volumes from January to March, 2021 and January to February, 2022 shows an increase in the price of frozen sea cucumber from \$1.89/lb. to \$2.20/lb. (16%) and a decrease in the price of dried product from \$35.26/lb. to \$25.05/lb. (29%). It is noteworthy in this context, that the vast majority of our exports are shipped in frozen form.

With respect to exchange rates, the Canadian dollar has weakened by approximately 4.9% against the US dollar (\$1.28CAD vs. \$1.22CAD) and by 2.3% against the Chinese Yuan (\$0.192CAD vs. \$0.188CAD) compared with this time last year. If this shift in currency persists through 2022, it will have a positive impact on overall market returns to NL producers.

In terms of inventory carryover, ASP states that significant inventory exists. However, no detailed quantification of this inventory was offered by ASP. In last years' decision, the Panel reviewed the export data and found that in previous years, exports of Sea Cucumber from Newfoundland declined in the new year and essentially stopped during the April to June period. Their assessment was that "*While not conclusive, this suggests that any inventory carry over to the new year fishery is not normal*". An examination of the export data from 2021, since last years' Panel report, shows that a high volume of Sea Cucumber (approximately 1,000 tonnes) was exported during the April through June period last year. This would suggest an effort to clear inventories prior to the 2021 seasonal production period. The total export volumes for 2020 and 2021 amounted to approximately 2,600 tonnes, for an average of about 1,300 tonnes per year. This compares with an export volume of approximately 1,150 tonnes in 2019, and would suggest that the backlog of product from 2020 has been substantially reduced and that the current inventory level, while not quantified, is probably not extraordinary in comparison to previous years.

As outlined previously, the Panel is frustrated by the lack of undisputed information on the Sea Cucumber fishery. Consequently, the actual usable raw material landed in previous years and the associated average raw material prices cannot be accurately determined. This does not facilitate a reasonable evaluation of fair sharing.

There remains considerable uncertainty regarding this years' Sea Cucumber market. Global market requirements for Sea Cucumber appear to have been stable in recent years and may possibly increase somewhat over the next few years. The trajectory of market prices has been downward for the past four years, and it is unclear yet whether the floor has been reached. Inventory levels are not quantified but based on sales in 2021, are probably not greater than was the case last spring when 2021 prices were established by the Panel. Exchange rate shifts are more favorable to exporters than was the case in 2021.

The price offer of ASP is \$0.55/lb. which is \$0.05/lb. lower than their offer last spring, and \$0.15/lb. lower than the actual price of \$0.70/lb. which enabled a fishery in 2021. The ASP price is based on their determination of actual net weight of landed product, which they indicate in 2021 included a 34% average deduction for water, and 2.42% deduction for other unusable material. The ASP offer is 22% lower than last year's \$0.70/lb. price.

The FFAW offer is \$0.68/lb. based on a 27.5% deduction for water. Using the deductions ASP put forward for water and other factors, the FFAW price of \$0.68/lb. is roughly equivalent to \$0.74/lb., which is \$0.04/lb. (5.7%) above last years' price paid to harvesters. The Panel notes that a year-over-year comparison of exchange rates shows an improvement this year compared with the same time in 2021.

The Final Offer Selection Process requires that the Panel select one offer, although in the Panel's view the right price is probably between the two price offers submitted. Considering the above, it is the decision of the Panel to accept the final offer of the FFAW. The minimum price for the species Sea Cucumber in 2022 will be \$0.68/lb. with a 27.5% deduction for water.

These prices and conditions of sale will form a collective agreement or part of a collective agreement binding on all processors that purchase the species Sea Cucumber.

Dated at St. John's, NL, this 18th day of May, 2022.



David Lewis



Earle McCurdy



Bill Carter