

**STANDING FISH PRICE-SETTING PANEL  
RECONSIDERATION DECISION  
2018 CRAB FISHERY**

**In the matter of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the "Act", and an application by the Fish, Food and Allied Workers Union requesting that, pursuant to Section 19.14 of the Act, the Standing Fish Price-Setting Panel reconsider its decision of April 4, 2018, setting price and conditions of sale for the species Snow Crab.**

The Standing Fish Price-Setting Panel, hereinafter referred to as "the Panel", released its decision on the request for reconsideration prior to 6:59 p.m. on May 15, 2018. In its decision, the Panel accepted the request for reconsideration by the Fish, Food and Allied Workers Union, hereinafter referred to as the "FFAW", and accepted the Final Offer of the Association of Seafood Producers, hereinafter referred to as "ASP". The Panel also advised that it would issue a more detailed report on its decision at a later date.

The Panel noted in its decision dated May 15, 2018 that the Regulations made pursuant to the Act, state at Section 3(3): "*A decision respecting reconsideration shall be made by the Panel within 48 hours from the time the Panel has acknowledged receipt of the application for reconsideration*". The Act and Regulations also stipulate that in making a decision under Section 19.14(2) of the Act: "*...final offer selection shall be the only form of arbitration used*".

The Panel received an application from the FFAW on May 13, 2018, requesting that the Panel to reconsider its decision dated April 4, 2018, concerning the price and conditions of sale for Crab in 2018. The application is based on the claim that current market prices are significantly higher than were known and anticipated at the time of the initial Panel decision on April 4, 2018. The Panel acknowledged receipt of the application at 6:59 p.m. on May 13, 2018.

The Panel, pursuant to Section 19.14(1) of the Act, requested the FFAW and ASP, the parties to the decision of the Panel on April 4, 2018, provide their price positions for Final Offer Selection by 4:00 p.m. on Monday, May 14, 2018. With the concurrence of the parties, the deadline for submissions was extended to 6:00 p.m. The Panel also advised the parties that it would convene a hearing on the request for reconsideration on Tuesday, May 15, 2018, at 9:00 a.m. at the Ramada Hotel, 102 Kenmount Road, St. John's.

The Panel convened its hearing on the application at 9:00 a.m. on Tuesday, May 15, 2018, at the Ramada Hotel, 102 Kenmount Road, St. John's. Appearng before the Panel were representatives of the parties who supported their written submissions (copies attached) in argument and rebuttal.

The first issue the Panel was required to address was whether the request for reconsideration of the Panel's decision of April 4, 2018, met the requirements of the Act and the Regulations. At the hearing, ASP, despite having made a price offer for Final Offer Selection, objected to the action of the Panel to reconsider its initial decision. This objection is based upon their assertion that, despite there being a change in market prices, the conduct of the fishery is not in jeopardy.

Under Section 19.14(3) of the Act; "the Panel shall only reconsider its decision; (a) where it believes the failure to do so would jeopardize the conduct of the fishery to which its decision applies; ...". The Regulations made pursuant to the Act state at Section 3(1): "*In determining whether the conduct of the fishery to which its decision applies is in jeopardy under subsection 19.14(3) of the Act, the Panel shall consider whether market or currency factors have changed significantly from the time the Panel made its initial decision*".

With respect to the preliminary objection of ASP, the Panel has accepted the position of the FFAW that reconsideration of our initial decision on 2018 prices is warranted under the current circumstances. The FFAW submission is that current price levels are a significant change from what the Panel must have concluded from the market reports. In its initial decision, the Panel stated: "We are not able to forecast a significant price increase throughout the year, as occurred in 2017. A climate of stable higher prices, at current levels, appears to be the most reasonable projection". That obviously did not happen.

It is very clear from the Sackton market report and the Urner Barry price reports, that markets are stronger than expected and prices are higher than anticipated when the Panel made its initial decision on April 4, 2018. The Panel recognizes that the Crab fishery was proceeding normally at the time of application of the reconsideration request. However, we believe that failure to reconsider minimum prices in light of current market prices that represent a significant change upward, and the subsequent unfair sharing between processors and harvesters, would precipitate conditions and actions that would place the fishery in jeopardy.

The purpose of the Act is to avoid shutdowns. The Panel, given the basis of the FFAW's position for requesting reconsideration, is acting responsibly in the spirit of the Act, by

agreeing to the request for reconsideration so as to avoid possible jeopardy in the Crab fishery. To deny the request and provoke unnecessary action that would create jeopardy would be irresponsible and senseless. Indeed, this would undermine a key objective of the Act and Regulations which is ensure the timely prosecution of fisheries.

In its own correspondence to the FFAW dated April 10, 2013, regarding the 2013 Snow Crab Reconsideration, ASP noted that:

*“Clearly, the determination of jeopardy related to the conduct of the fishery is prescribed as being significant market or currency exchange. That is how jeopardy is defined. The legislation sets the basis of reconsideration to be significant market or currency change..... Again, as the Panel said in its reconsideration decision on Mackerel last year, “.... The right to apply for a reconsideration of prices to harvesters is set out in the legislation in contemplation of a significant change in market returns.”*

The second issue that the Panel had to address was whether to accept the final price offer of ASP or the FFAW.

There has been significant change (improvement) in the market situation and market prices since the Panel's initial decision on April 4, 2018. The market reports provide clear evidence that prices are up significantly, as the Japanese have been buying aggressively, driving prices up. However, given the extremely high price this may not be sustainable. Recent markets reports have indicated that Japanese volumes in the past couple years are down due to rising prices and this will likely be the case again in 2018. Once the Japanese fill their need, processors will likely switch to US markets and the current high prices will be challenging for US buyers. There is currently no evidence to suggest further price increases in the US market beyond current levels.

According to Urner Barry, 5-8 Snow Crab sections from Newfoundland were quoted this week at a high of \$8.65 to \$8.70, with a firming trend through the week. However, how that translates into returns to NL processors is uncertain given that Urner Barry is based on caseload and LTL versus container load and contract pricing for multiple loads as is normally the case for Newfoundland processors.

Sackton notes that the pattern of buying is different this year, with the Japanese purchasing a larger share of total sections. This is putting strong upward pressure on prices. Given the situation in the Gulf with severe ice, bad weather, and whale closures, the Japanese are

determined to maintain as much a market share in Crab as possible and are willing to pay higher prices to secure loads. He states: "The upshot has been a rapid escalation in prices where orders are now being placed for Japanese loads FOB Newfoundland at \$8.50 or higher". He further explains: "The pattern we see here on Snow Crab, in my opinion, is likely to set the tone for the season. It does not mean that price will go up further simply that the high prices in place will carry through for the next few months".

In its original decision of April 4, 2018, the Panel accepted the ASP offer and set the minimum price at \$4.55/lb. This was based upon the observation that markets were quite strong but would not likely increase throughout the year. In light of a strengthening market the past few weeks, this price decision no longer represents a fair share. However, the Panel must determine how much of an increase is warranted given the observed change in market prices to date and what the market will be for the rest of the year. In terms of the rest of the year, it appears markets are in uncharted territory and it is extremely difficult to forecast. Projecting further increases is likely not prudent.

In light of our review of these considerations, the submissions of both parties and the updated market information; on the final offers of price, it is the decision of the Panel to accept the position of ASP.

The minimum prices for the species Crab, effective from the time of release of the initial Reconsideration decision on May 15, 2018, will be:

- \$4.90/lb. – 4" carapace and up.
- \$4.70/lb. – for legal size under 4".

These prices will form a collective agreement or part of a collective agreement binding on all processors that process the species Crab.

Dated the 24<sup>th</sup> day of May, 2018.



Wayne Follett



Bill Carter



Rosalind Walsh