

STANDING FISH PRICE-SETTING PANEL CRAB FISHERY 2015

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, released its decision on Crab prices for 2015 on April 2nd, 2015. The Panel accepted the final offer of the Association of Seafood Producers, hereinafter referred to as “ASP”. The Panel also advised it would issue a more detailed report on its decision at a later date.

The Panel and the parties had the benefit of two market reports prepared for the Department of Fisheries and Aquaculture. The market reports were from Seafood.com, authored by Mr. John Sackton and Minato-Tsukiji.com, hereinafter referred to as “Sackton” and “Minato”. Both reports are comprehensive and detailed and provide as much relevant and detailed information as one could reasonably expect. The rationale for the conclusions in both the reports are remarkably similar.

The reports provide the background information and specifics relating to supply and demand for 2014 and the figures for 2015 which are the latest projections of supply available in 2015. As well, the reports review the take up of that supply by traditional markets, as well as others, the impact of supplies on market demand, and the effect of exchange rates.

There are two factors that predominate crab markets and pricing for 2015. The first is the significant increase in the supply of snow crab, and related crab species available to traditional, especially the US, and emerging markets. The second dominant factor is the rate of exchange.

Both market reports are clear and unequivocal, the significant increase in supply in 2015 will exert a downward pressure on prices for snow crab in the US market and elsewhere. Sackton in referring to the US market states at p. 6:

“Buyers in the US are excited about snow crab but expect that plentiful supplies will result in: ... a significant price reduction this year.”

The US market will also benefit from the food service and restaurant segment coming back into the market this year. However, he stresses that to clear the market in 2015, the appropriate price points must be met.

The Minato report at p. 4 notes that production this year is: *“...expected to increase sharply, thanks to greater quotas in Alaska.”* The report notes that despite the economic recovery in the US and Japan, our product is still price-sensitive in both retail and food services. It also concludes that buyers have the opportunity to put more pressure on pricing with “tough market conditions”.

Japan, as a major buyer of crab from this province, is negatively affected by the exchange rate. They purchase in \$US and the Yen has fallen further against the \$US dollar in the past year than the Canadian dollar. This could have a significant impact on purchase volumes and pricing of crab in the US market. The Japanese have already reduced purchases from Alaska. This, combined with a reduction in purchases from this province will put even more pressure on supplies to the US market.

Despite what has been said, the overall prospect for our industry, including both harvesters and processors, is favourable. The decline in market prices, in both the US and Japan, will be offset by the current rate of exchange on the US dollar.

In 2014, the parties arrived at an agreement on the price to harvesters of \$2.30/lb. Both parties are anticipating an equal or better year in 2015. ASP in its final offer has submitted \$2.34, the FFAW has submitted \$2.45, a difference of \$0.11/lb. In choosing one of the two positions presented, the Panel can only take into account the contents and details in the market reports and the submissions of the parties.

There are a number of important considerations. The first is that the parties are agreed on how to deal with fluctuations in the rate of exchange with the US dollar. Exchange rates can be volatile and move in either direction and have a significant impact on prices. The parties are to be commended on settling a very important issue.

The second is variability in the market price. Since the price to market formula for crab no longer applies, the parties and the Panel have had to settle on a price that would apply throughout the season, subject to, in the case of the Panel settling the price, a reconsideration of its decision. The market prices on which the decision is based are those prices projected to be paid during the fishing season when contracts on price are settled, and product from the fishery enters the markets. The range in prices for last year, which is used by the parties and the Panel, and projections for this year are set out in the market reports. The authors of both reports make it clear where they think the prices may settle out, but not with such a degree of precision that the Panel can determine on which side of an \$0.11 differential it should be. The parties are free to choose, within a range, figures that best represent their interest.

The FFAW has raised two issues which the Panel is obligated to address. The first is payment inequality. This is made in reference to the bonus system, which has been an integral part of the crab fishery for more than thirty years. The FFAW states at p. 6:

“There are two inter-related problems with the bonus system...they are not paid consistently...unequal system of payment to fishers.”

The FFAW further states:

“...the bonus system proves that processors would prefer to maintain a lower minimum price and maintain an unequal bonus system than negotiate a fairer minimum price...”

The FFAW further submits that the Panel should consider likely bonuses, and the likelihood that they will be inequitably applied. At p. 7 of the FFAW submission it states:

"We appreciate that the Panel sets a minimum price, but that does not mean that the minimum price should not be closer to the real price as established by the bonus system."

The issue of bonus payments is more complex than the view outlined by the FFAW. Processors contend that they are not exactly in control of the agenda as to what is paid as a bonus for crab. The higher volume license holders are members of the FFAW in the same bargaining unit as crewmembers. It is the license holder who receives the bonus and determines whether to keep it or share it with members of the crew.

The Panel has no authority to deal with the issue of bonus payments, no evidence is presented to the Panel on which it could decide an issue. The Panel is confined to the issues set out by the parties on prices related to market returns and the information in the market reports. That is what the final offers of the parties are based on, and it has been that way for the ten years of the Panel's existence. The Panel is expected to consider the average market return year over year, and make an assessment of the change in market prices and returns in relation to the final offers presented. The Panel then chooses what will be the minimum price. If the FFAW wants the Panel process to set the total price for the year it could propose that the Panel set a "maximum" price or a fixed price that cannot be added to or subtracted from.

The Panel is compelled to note that in 2014, when the parties agreed on the price in the collective agreement, without the involvement of the Panel, bonus payments were made to harvesters. Bonus payments have been an integral part of the crab fishery for a very long time, and cannot be correlated to the price setting process currently in place.

The FFAW has an issue that relates to its own membership. The sharing of bonus payments lies within the membership of the union. As a participant in collective bargaining, with all the attendant rights and obligations, it is in a position to deal with the issue of a minimum price.

The Panel cannot take into account the bonus that might be paid in making its decision. If harvesters are getting paid more than the minimum price in the collective agreement, the only way the Panel could make a credible decision, in relation to bonus payments, is to accept the FFAW final offer in every instance. As we have seen in 2014 when the FFAW agreed on a price, bonus payments were also made.

The Panel has no choice but to make its decision on the price of crab to harvesters on the same basis that it has in the past.

The second issue raised by the FFAW is what is termed an "unequal system". It is claimed that the Act and Regulations: "set a standard for reconsidering a Panel's

decision that the union cannot meet under any reasonable scenario". The FFAW quote an earlier decision of the Panel in 2013 on a request for reconsideration of a Panel decision and state: "Given those statements, reconsideration is a privilege essentially confined to the processors."

There is a basis for some concern by the FFAW on this issue, however, the decision of the Panel was based on the facts of that application. The very prescriptive process outlined in the legislation and regulations is not, in the view of the Panel, more or less favourable to the processors than the FFAW.

The rights of the parties under the Act should be in equilibrium. The question for the Panel is are they? Some confusion arises at the first glance due to the use of the term "Jeopardy." Section 3(1) states:

"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."

The Act Section 19.14(1)3 states:

"...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 FFAW concern is, that should market prices increase from the time of the Panel's decision, are they in a position to request a price increase to harvesters. In their view in the event of a decline in market prices, processors are in a much better position to get reconsideration and a reduction in the price paid to harvesters. Implicit in such a request is the fact that processors may stop purchasing from harvesters unless they get some relief on the price paid to harvesters. We have seen practical examples of this in the past.

Alternatively, harvesters requesting a re-consideration to achieve a better price are in no different position. The implicit in such a request, they might stop fishing, is just as reasonably applied to the harvesters as, they may stop buying is applied to processors. As the Panel noted above the parties subject to the legislation should have equal rights and obligations. In theory the benefits of relief under the Act and Regulations should work for both.

While the parties and the Panel have expressed reservations about the appeal process currently in place, the Panel is of the opinion that under the right circumstances the FFAW would have a basis to request and be granted reconsideration.

The Panel determines the market prices on which it based its initial decision. The Panel then can compare that price or range of prices to new price levels, at a subsequent

time, whether up or down. If the Panel can conclude that the change is significant and decide a lower price is more appropriate then surely it can make a similar decision if the price is higher.

There are inherent problems in that each party can only request one reconsideration in a season, and would have to wait until there is demonstratively a significant change in market or currency factors. The currency factors are easily defined, timing the market is more difficult.

The two issues raised by the FFAW are included in their submission to have the Panel lean toward their position on price. The Panel cannot be influenced by such factors or take into account matters that are not the subject of these proceedings.

Two factors influence the Panel in arriving at its decision. Unless there is some dramatic and unforeseen change in the markets, 2015 should be a good year for both harvesters and processors. Bench mark prices for crab, for the last number of seasons, in the US Market are at appropriate levels. For the benefit of processors and harvesters, it is essential that the industry maintain that relative good position.

A second factor the Panel has taken into account has been the trend in market prices for a particular season. It is clear from the market reports, and the position of the parties that, due to a significant increase in supply, taking all other factors into consideration, market prices year over year are trending down. Despite that fact, the price to harvesters will increase as a result of the further depreciation of the Canadian dollar against the US dollar since last season.

The Panel conclusion is as reported in its decision of April 2nd, 2015.

Dated the 21st day of April, 2015.



Joe O'Neill



Bill Wells



Max Short