

In the matter of the Fishing Industry Collective Bargaining Act and an application from Association of Seafood Producers (ASP) pursuant to section 19:14(1) of that act for a reconsideration of its decision dated 31 March 2009 on price and conditions of sale for snow crab for 2009 .

DECISION OF THE STANDING FISH PRICE SETTING PANEL

For

**Request from Association of Seafood Producers for
Reconsideration of the Fish Price-Setting Panel's March 31, 2009 Decision**

25 June 2009

**Decision of Request from Association of Seafood Producers for
Reconsideration of the Fish Price-Setting Panel's March 31, 2009 Decision**

INTRODUCTION

In the matter of the *Fishing Industry Collective Bargaining Act* and an application from Association of Seafood Producers (ASP) pursuant to section 19:14(1) of that Act for a reconsideration of the Panel decision on the price for snow crab.

Following the receipt of the above noted request on 09 June, 2009 from the Association of Seafood Producers, the Panel met on the following day, 10 June, 2009, to review and consider this application. The Panel also met on 11 and 12 June for detailed discussions and analysis of the contents of the application, as well as, other information the Panel had requested in order to assist it in reaching a decision on the ASP request. On 15 June the Panel requested a meeting with Mr. Derek Butler from ASP and with Mr. Earle McCurdy from FFAW to accord them an opportunity to state their positions on this matter directly to the Panel. Unfortunately due to the very serious situation unfolding in the shrimp fishery, both representatives were unavailable to meet with the Panel until 23 June.

Essentially ASP is requesting the Panel to reduce the raw material price paid to crab harvesters to give processors relief from the rapid rise in the currency exchange between the Canadian and U.S. dollar. The strengthening of the Canadian dollar since the commencement of the Crab fishery has, in the view of ASP, represented a large portion of the challenge facing processors in 2009. ASP submits that this rapid rise in currency would have been reflected under the old price-to-market formula that was in place until 2008. Given the fact this is no longer in place, ASP is asking the Panel to grant relief by reducing the price paid to harvesters.

The FFAW is requesting the Panel dismiss the ASP request. In its submission the FFAW states, *inter alia*, that ASP has not respected the Panel's decision of 28 May where it ordered the parties to engage in detailed discussions on the price of crab with the assistance of the Panel's facilitator. The FFAW also requested that the ASP request be declined on the basis that the Section of the FICBA under which the application is made provides that the Panel :

"shall only reconsider its decision where it believes the failure to do so would jeopardize the conduct of the fishery to which its decision applies."

The FFAW advised the Panel in its submission that crab plants have operated throughout the period where there was a rapid rise in currency with in excess of 12 million pounds of crab landed since 21 May. A point raised by FFAW of particular note for the Panel was that a number of processors are currently paying \$1.55 a pound for crab at the same time

ASP is asking the Panel to reduce the price below \$1.35. The submissions of ASP and FFAW are attached to and form part of this report.

In reaching its decision on this latest request from ASP, the Panel, in addition to meeting with both Mr. Butler and Mr. McCurdy and considering very carefully the points made in their respective submissions also sought market information from Mr. John Sackton, analysed the crab landing statistics in the province, and sought information on the state of the crab industry in the Maritimes.

THE MARKETS

According to Mr. Sackton, whom the Panel spoke with on 11 June, 2009, the markets have stabilized with prices in the 3.10 to 3.20 range with expectations that the prices will remain around that range for the remainder of the season. There may be a possibility of prices in the 3.25 range, however it is not expected they will go any lower than current market prices. Mr. Sackton advised that while the market prices for 2009 crab is down from 2008, the trend for the crab industry is relatively the same as it has been in previous years. Accordingly it appears that the elusive floor price that was being sought earlier in the season has finally manifested itself and we are seeing market stabilization. Overall the update from Mr. Sackton , from the perspective of the Panel, was a positive picture with optimism that the market for crab has now stabilized and is expected to hold for the remainder of the season.

CRAB LANDINGS

A review of the crab landing statistics in the province immediately prior to the ASP application reveals that total landings as of 08 June, 2009, at 31,021 tonnes, is slightly below landings for the same date in 2008 with 33,286 tonnes landed, and slightly ahead of 2007 landings at 29,041.. The Panel also noted that according to the statistics in the 6 day period leading up to the ASP application , a total of 5,475.4 tonnes of crab were landed representing 17.6 % of total 2009 landings to date. It is interesting to note that the total landings for NAFO area 3K in 2008 were 12,201 compared to 5992 for the same period in 2009. The Panel is advised that harvesting of 3K crab which, next to 3L, has the highest quota of all NAFO divisions, has been delayed this year because of ice conditions. It is the understanding of the Panel that crab harvested from area 3K is among the best quality in the province and therefore should market well with U.S. and Japanese buyers. In analyzing the crab landings and comparing those landings to the same period in the previous two years the Panel notes that, despite the delay in harvesting in the second largest region due to ice conditions, the landings are still on par. Had ice conditions not prevented harvesting in area 3K it would be reasonable to assume that total landings in 2009 would be ahead of 2008 despite the poor market outlook earlier in the season. The most recent information on 2009 landings indicate that as of 22 June in excess of 91 million pounds of crab (76%) of the total 2009 quota has been landed with large landings occurring daily.

THE MARITIMES

The Panel had the benefit of an update on the current state of the crab industry in the Maritime region. The information provided to the Panel following the ASP application was that there was stability in the crab industry with market prices stabilized, a demand for crab, and harvesting continuing with no interruption. While not certain, there was some optimism that crab in area 19 may even command a higher price than currently being paid.

DECISION

The Panel is cognizant of the challenges facing the fishing industry players in 2009. The uncertainty of the markets earlier in the season coupled with the recent rapid rise in the Canadian dollar against the U.S dollar has made the prosecution of the crab fishery in 2009 a daunting challenge. However as indicated it appears the markets have finally stabilized thereby reducing that element of risk that was facing the industry early in the season. In addition, despite all the negative factors, crab landings in 2009 have, to date, been on par with the previous two years and arguably could have been ahead of the previous two years had it not been for ice conditions in area 3K. As recently as last week, crab landings were at record landing levels for 2009.

Against this backdrop the Panel is being asked by ASP to take currency adjustments into consideration and reflect that adjustment in a lower raw material price. The ASP position that the currency is creating mammoth challenges for the industry is certainly compelling. Further ASP is correct in asserting that the old price-to-market formula would have adjusted to take this factor into consideration and would have reduced the raw material price accordingly. The fact is however that in the previous two years of crab negotiations, 2007 and 2008, ASP had been requested to engage in discussions to amend the price-to-market formula but to no avail despite warnings from the Panel that this issue had the potential to be a lightening rod for unrest in the crab fishery. Had these discussions taken place it is conceivable an amended price-to market- formula would now be in place that would address these critical issues in a critical time.

A further factor that has complicated and frustrated crab negotiations and indeed the entire crab fishery is the matter of what has come to be known in the industry as “bonus payments”. It is the understanding of this Panel that the issuance of bonus payments is very well known by all industry players. In crab negotiations in 2008 an attempt was made by the FFAW to reduce the amounts of these bonus payments that were being paid to certain harvesters in return for a raw material price that more accurately reflected the “real” price to be paid. As previously stated this attempt failed.

Given the existence of this practice for quite a period of time it could be argued that it is not only accepted but demanded in certain instances and while the amount of the bonus payments may have been an issue, the fact they were a part of, and a cost of doing business in the crab fishery was not.

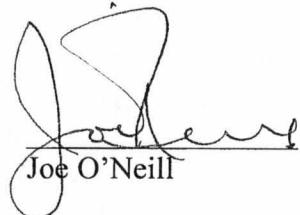
What is perplexing to the Panel is that it appears, based on the submission of the FFAW, that certain processors are still paying \$1.55 to certain harvesters despite the Panels amended price decision of 04 May which reduced the price by .15 a pound. A reasonable observation from that fact, if it is correct, is why ASP would make a request to the Panel to further reduce the raw material price when in fact certain processors have not taken advantage of the decision of the Panel of 04 May 2009 to mitigate their financial challenges in this time of uncertainty. Further a reduction in the raw material price at a time when markets have finally stabilized and the crab fishery is still being prosecuted could in fact create instability and risk the remainder of the crab fishery.

In the absence of a more detailed investigation into the issue of bonus payments the Panel has no way of knowing the extent to which this practice may be continuing in 2009. It would be reasonable to assume that in 2009, given the fact the industry is facing the greatest challenges it has faced in a long time both in the markets and with the currency, that no "bonus payments" would be made.

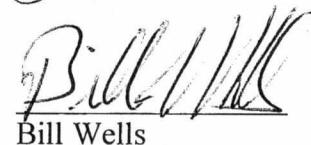
The ASP application dated 09 June was made pursuant to section 19:14(1) of the Fishing Industry Collective Bargaining Act. Section 19:14(3) of that act requires that the Panel, notwithstanding any criteria it may establish under section 19:14(2) of the act, in re-considering its decision, shall only re-consider its decision where it believes the failure to do so would jeopardize the conduct of the fishery to which its decision applies. Given the current circumstances in the snow crab fishery there is not, in the opinion of the Panel, a risk that the conduct of the crab fishery would be jeopardized should the Panel not amend its decision.

Based on the findings of the Panel as described above and the analysis of the respective submissions of the ASP and the FFAW, it is the decision of this Panel not to alter its latest decision on the price and conditions of sale for snow crab.

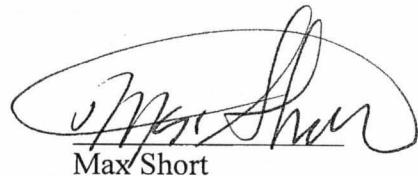
Dated this 25th day of June, 2009.



Joe O'Neill



Bill Wells



Max Short