STANDING FISH PRICE-SETTING PANEL

MACKEREL FISHERY - 2012

The Standing Fish Price-Setting Panel, hereinafter referred to as "The Panel", issued its Schedule of Hearings for 2012 on March 09, 2012. Pursuant to Section 19, of the "*Fishing Industry Collective Bargaining Act*", hereinafter referred to as "*The Act*", the Panel set, Tuesday, August 14, 2012, as the date by which collective agreement(s) binding on all processors in the Province that process the species Mackerel, must be in effect. In the absence of such collective agreement(s), the Panel set Wednesday, August 15, 2012, as the date on which the Panel would conduct a hearing with respect to prices and conditions of sale for the species Mackerel.

It was noted by the Panel at that time, that it had been advised by the Department of Fisheries & Aquaculture that the Association of Seafood Producers (ASP) had been identified as the processors' organization that represent the processors in the Province that process the majority of the species Mackerel. Accordingly, should a hearing be required for the species Mackerel, the provisions of Section 19.11 of the Act are to apply. Submissions would be accepted by the Panel from ASP and the Fish, Food and Allied Workers (FFAW) representatives at the hearing.

The Panel further advised that the parties intending to make presentations to the Panel on the species Mackerel were to provide the Panel with written submissions not later than 24 hours before the scheduled hearing time and date. The Panel also advised that it shall decide on all matters in dispute between the parties relating to price and conditions of sale for the species Mackerel. This decision of the Panel is final and binding on the parties and all other processors that process that species of fish to which the decision of the Panel relates and constitutes a collective agreement or part of a collective agreement between them.

The Panel convened the hearing on Mackerel at 2:00pm, on Wednesday, August 15, 2012, at the Labour Relations Board Hearing Rooms, Beothuck Building, 20 Crosbie Place, St. John's. The parties appearing before the Panel, having exchanged submissions earlier (copies attached), were ASP and the FFAW. The written submissions were supported by an oral presentation, in the main argument and rebuttal.

The Panel and the parties have the benefit of the market pricing reports from the Department of Fisheries and Aquaculture. The "Haram Report" has become the one most favoured as providing the best market information available at the time it is submitted.

As noted in previous reports by the Panel, at the time we deal with Mackerel prices, the higher volume landings elsewhere later in the Fall have yet to occur. As a result, the Parties and the Panel have to make decisions based on market projections which as we have stated: "...are somewhat speculative, although based on a comprehensive analysis of the landings anticipated in producer countries and demand in the prospective markets."

The Haram Report in previous projections has generally been prophetic in terms of predicting whether the market is going to be stable or go up or down. The amount of the change in either direction is much more difficult to predict. This year the conclusion is that mackerel prices will maintain the price levels of 2011 in the export markets or decline. Also, in previous years, the parties and the Panel are left in a position of not having the information to determine what the prices to harvesters should be, with a great deal of precision. As the Panel noted in its 2010 report at p.3: "…the results lack any precision with respect to the reasonableness of the magnitude of the increase or the decrease in the harvesters price". Again, and perhaps more importantly, the Panel also noted that: "…the complexities in determining a price for Mackerel that is fair and equitable between the harvesters and processors have not been addressed."

This year, the parties declared that they have irreconcilable differences in their approach and spent less than a day in negotiations. The result is their submissions to the Panel are far apart. The Panel must choose one of the two positions presented, under the Act and the Regulations.

The FFAW has expressed its dissatisfaction with the methodology of setting prices for Mackerel since the Panel first became involved in 2006. It uses the figures in Table 1, of it's submission each year to show the anomalies that have occurred each year, based on what has happened in the previous year and years.

Year	Avg. Export Price	Expor ts	Landings	Negotiated	Ave Negotiated	Ave Price/Lb	Harvester
	(CAD/LB)	(t)	(DFO)	Prices (Cents)	Min Price	(DFO)	% Share
2002	0.58	10,101	18,016	10, 15, 20	0.133	0.127	21.90%
2003	0.51	15,964	26,694	N/A	N/A	0.117	22.94%
2004	0.71	20,795	40,005	N/A	N/A	0.121	17.04%
2005	1.02	26,700	42,712	12, 20, 27	0.171	0.228	22.35%
2006	0.73	26,280	44,277	10, 15, 20	0.133	0.150	20.55%
2007	0.66	27,639	44,584	8, 14, 18	0.117	0.130	19.70%
2008	0.94	20,343	23,030	10, 15, 20	0.133	0.123	13.09%
2009	0.73	22,801	34,261	8.5, 14.5, 19	0.123	0.120	16.44%
2010	0.80	22,468	33,160	10, 15, 20	0.133	0.200	25.00%
2011	0.98	7,642	7,337	11.5, 17.25, 24	0.153	0.447	45.61%

The Panel has used market projections either up or down as the basis of determining which position it must choose, except in 2010, when final offer selection was not in effect. In the absence of the two parties being able to agree on an approach, the Panel has considered a number of alternatives by which to assess the reasonableness of the outcome. The process is not specifically related to the positions of the parties, but an abstract exercise.

If one were to assume that at a market return of .70¢/lb harvesters should receive an average 20% of that market return, the average price to harvesters would be .14¢/lb. If the market return increased to 90¢/lb – that would be an increase of 28%. If the price to harvesters were increased by that amount it would result in a price of 18¢. That appears to be a significant increase in the price to the harvester, but is it really? On 1 million lbs at 14¢, the harvesters share is $140,000; at 18¢, the harvesters share is $180,000 an increase of $40,000. However, the market return has increased from $700,000 to $900,000, an increase of $200,000, with $40,000 to the harvester and an extra $160,000 going to the processor.

If the increase were to be shared equally at $100,000 to each side, the price to the harvester would have to increase by 10¢/lb, which would mean on overall price of 24¢/lb. The difference is significant on landings of 40 to 60 million pounds. There appears to be some merit in the FFAW contention that the present pricing regime is unfair.

The numbers chosen by the Panel are only illustrative, of what is in issue. There is a point where what appears to be a high percentage increase in the price to harvesters is really not reflective of the true value in the catch, beyond the basic costs of harvesting and processing.

As we have noted in the previous reports, the numbers in Table 1, are not precise, there are inconsistencies, but they do show a pattern of illogical results, where the set prices have been the same for the three size ranges at 10, 15, 20, related to market returns ranging from 58¢ to 94¢/lb. As noted by the Panel in previous reports, prices are further distorted by the result of applying final offer selection based on market price projections. However, as an abstract proposition if 20% of the market return should go to harvesters at a certain market price level, then increases beyond that return should provide a better overall return to harvesters.

The FFAW contends that 22% at a market return of 58¢, arising from the 2002 negotiations is a proper base. Increases in the market return beyond that should go to the harvesters at a level of not less than 65%.

It is absolutely impossible to be precise on any of these figures, but the Panel is comfortable with an assumption that if harvesters were to get 20% of the market at 70¢, they should at least get 50% of the return for anything beyond that. This allows some flexibility for differences, if any, between export returns and domestic bait sales, and other factors that impact the market returns.

If these principles are applied to the current situation what would have been the result in 2011 on the average export price of 98¢, using the 45-45-10 ratio on size. On the first 70¢, the price at 20% would be 14¢. The additional price return of 28¢ would give, at 50%, a further 14¢/lb to harvesters for a total price of 28¢.

These numbers highlight the fact that the Panel assessment of the situation in 2011 was well off the mark, which was increased by accepting the ASP position which had an average price on the assumed ratios of 15.3¢. The Panel calculation would have resulted in an average price of 15.90 calculated on the same basis. The FFAW price proposal would have resulted in an average price of 20.35¢/lb.

At that time no one knew precisely what the level of the projected increase in the market return would be. The fact that DFO figures indicate a market return of 98¢ and an average price paid to harvesters of .44¢/lb, is not determinative of the issue. Undoubtedly in 2011, prices to harvesters were almost three times the minimum set price, on the lowest volume of landings, by a substantial margin, in this decade.

The parties and the Panel are agreed on the marketing report conclusions for 2012, prices will most likely remain the same or drop. Any changes will reflect a down market. ASP proposed no price change, based on the approach used in the past in determining prices. The FFAW has abandoned that approach this year. While advocating a change in the sharing arrangements since 2006, they have been restrained in their approach in previous years due to the final offer selection process. The parties have not been able to negotiate a new basis for the settlement of mackerel prices, and in fact, have not put in any effort to deal with the issue. The Panel has reported on the issues in detail and urged the parties to negotiate, to no avail. In the absence of all the pertinent data, the Panel has not dealt with the sharing arrangement between harvesters and processors. As a result, the process has produced the seemingly illogical results set out in Table 1. The FFAW for the reasons stated has totally abandoned the old methodology, presumably influenced by the prices actually paid in 2012, and its long held conviction that harvesters were not being properly compensated from the market return for Mackerel.

The Panel is in a difficult position. The parties are 14¢ apart and their positions are irreconcilable. The Panel must choose one of the two positions. As the Chair noted at the conclusion of the hearing, one side is going to be extremely upset with the result, no matter which position is chosen. The exercise carried out by the Panel above does point out that price increases beyond a certain level from the market are not shared in an appropriate or reasonable way, even for a lower value product such as Mackerel. What that point should be could be better defined based on the facts related specifically to the harvesting and processing of Mackerel, which is within the knowledge of the parties.

There needs to be a change in approach. Even by making huge allowances for the unknowns, the Panel is satisfied that the average minimum price for Mackerel with export values in the 90¢ range should be at least in the mid 20¢ range. On this basis, the FFAW's position, is more reflective of where the price should be then the price proposed by ASP. The Panel acknowledges it is departing from past practice in taking this view. However, it can not in good conscience ignore the realties of what has been happening in setting the minimum price for Mackerel.

The Panel also acknowledges that it does not know if, or by how much the price may drop in 2012. Prices are not expected to rise. There is also the question of volume in the 2012 fishery. The anomally of the high prices paid in 2011, on significantly lower landings does not mean that these price levels can be maintained on high volumes. A average minimum price at 25¢ would provide a seemingly significant margin to cover a market drop on higher volumes. The FFAW minimum of 29.15¢ may work out, depending on how events unfold, in the markets and the fishery.

Given the magnitude of the difference between the parties and the totally different approach to setting prices, the Panel could not, even if it had the opportunity, arrive at a position both sides would accept.

The Panel again encourages both parties to met well in advance of the 2013 mackerel fishery to determine whether an acceptable process for a fair sharing of market price returns can be achieved for harvesters and processors. The Parties have been able to achieve this process in the lump roe fishery. From the Panel's perspective there are similarities between both fisheries given that the prosecution of both lump roe and mackerel are speculative at the outset of those two fisheries. It is not until both fisheries are completed that the actual numbers are determined, both in terms of volume of catch and market returns.

The following schedule of minimum prices will apply for the 2012 Mackerel Fishery effective August 22, 2012.

SIZE (GM)	Price ¢/lb
200-399	22
400-599	33
600 plus	44

The prices and conditions of sale are binding on all processors of the species Mackerel and will form a Collective Agreement or part of a Collective Agreement with FFAW.

Dated at St. John's, this 20th day of August, 2012.

JOSEPH P. O'NEILL **BILL WELLS** **MAX SHORT**