

**In the Matter of the Fishing Industry Collective Bargaining Act and an Application by the Association of Seafood Producers requesting a reconsideration of the decision of the Standing Fish Price Setting Panel dated the 20<sup>th</sup>, day of August, 2012, setting the minimum prices to apply in the Mackerel fishery in 2012.**

The Application of the Association of Seafood Producers (hereafter referred to as "ASP"), copy attached, is made pursuant to Section 19.14 of the Fishing Industry Collective Bargaining Act, (hereafter referred to as the "Act"), and the Regulations made thereunder, specifically Section 3 of the Fishing Industry Collective Bargaining Regulations, (hereinafter referred to as the "Regulations").

The Application was copied to the Fish, Food and Allied Workers, (hereinafter referred to as the "FFAW"). The FFAW filed a response to the application with the Panel, copy attached.

The Act is prescriptive with respect to the jurisdiction of the Panel in any reconsideration of a decision of the Panel. Section (3), Subsection (2) 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 the decision applies..." and where the criteria prescribed in the regulations have been met.

Section 3.(1) of the regulations 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 decision."

The panel advised the parties that it would convene a hearing on the application on November 8<sup>th</sup>, 2012 at the Labour Relations Board hearing room. Appearing before the Panel were representatives of the parties who supported their written submissions in argument and rebuttal.

It is contended by the FFAW that until ASP filed the application for reconsideration they were unaware of any price issues related to harvesters or the markets. The fishery had carried on up to now the only factor being low landings. In their view the conduct of the fishery is not in jeopardy and the application should be rejected. No change in current prices is proposed.

It is clear from the information before the Panel (See Attachments), that there has been a significant change in the markets for mackerel since the date of the Panel's decision on price for 2012. A combination of inventory carryover at last years higher prices, increased supplies from Iceland and the Faroe Islands have combined to change market distribution patterns, slowed the movement of product and resulted in a significant decline in market prices compared to 2011.

The Panel noted in its decision on prices on August 20, 2012 that: "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." The Panel was of the view that market prices in the 90 cents lb. range would support average minimum prices to harvesters in the mid 20 cents lb. range. It chose the FFAW price proposal as being closer to that position than the proposal from ASP, under the prescribed process known as final offer selection.

There is sufficient information before the Panel at this time to indicate that market prices are down in the order of 25% and more. Again, the Panel is required to make a decision on the basis of final offer selection on a reconsideration of a previous decision. The minimum prices proposed by ASP are reflective of the market declines and the methodology proposed by the Panel to the parties in its decision of August 20, 2012.

The first issue before the Panel is whether or not it should reconsider its earlier decision and if a failure to do so would jeopardize the conduct of the fishery going forward. As well the conduct of the fishery may only be considered to be in jeopardy when market and currency factors have changed significantly. There is no doubt that had the parties and the Panel had the current facts on export market prices in August the decision on prices would have reflected those facts and the prices to harvesters would have been different. Given the facts of the current situation one could reasonably expect processors to request a reconsideration. Indeed 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. If the Panel were not able to provide any relief the consequences could very well jeopardize the conduct of the fishery.

It is the decision of the Panel to accept the position of ASP.

The following schedule of minimum prices will apply for the 2012 Mackerel Fishery effective November 9<sup>th</sup>, 2012.

Size (GM)	Price ¢ lb
200-399	16.5
400-599	24.75
600 plus	33.0

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 8<sup>th</sup> day of November, 2012.



JOSEPH P. O'NEILL



BILL WELLS



MAX SHORT