

STANDING FISH PRICE-SETTING PANEL SPRING SHRIMP FISHERY 2016

The Standing Fish Price-Setting Panel, hereinafter referred to as "the Panel", issued its Schedule of Hearings for 2016, on March 9, 2016. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the "Act", the Panel set Wednesday, April 20, 2016, as the date by which collective agreement(s) binding on all processors in the province that process shrimp must be in effect.

The Panel also noted, at that time, that it had been advised by the Department of Fisheries and Aquaculture that the Association of Seafood Producers, hereinafter referred to as "ASP", represented processors that process the majority percentage of the species shrimp. As a result, under Section 19(11) of the Act, should a hearing be required for shrimp, the parties appearing before the Panel would be the Fish, Food and Allied Workers, hereinafter referred to as the "FFAW", and ASP. Section 19.11(1) of the Act, and regulations made pursuant thereto, require that the decision of the Panel must be in accordance with one of the positions on price and conditions of sale submitted to the Panel by the parties at the hearing. The Panel further advised that no other positions would be accepted by the Panel and should other representatives of this species wish to attend the hearing, concurrence from both parties to the collective bargaining must be obtained.

The hearing, if required, for shrimp was scheduled to take place at 10:00a.m. on Thursday, April 21, 2016 at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John's.

The Panel convened its hearing for the species shrimp at 10:00a.m. on Thursday, April 21, 2016, at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John's. Appearing before the Panel were the FFAW and ASP. The parties, having previously exchanged their final offer submissions, and filed copies with the Panel, (copies attached) supported their submissions in main argument and rebuttal.

The parties and the Panel have the benefit of two market reports provided by the Department of Fisheries and Aquaculture. They are from Gemba Seafood Consulting and Janet Farmer of Canada UK Partners, respectively referred to as "Gemba and Farmer." The two reports provide a detailed analysis of the current market situation in Europe and by Farmer specifically, the UK market.

As forecasted in each of the three market reports for the spring, summer and fall of 2015, prices would peak and eventually decline. The fact was that market prices rose throughout 2015 and had not in fact declined at the time of the Panel decision in September of 2015, for the fall shrimp fishery. In the Farmer report, this year at p. 3 it is stated: "...prices of CWP offered to the UK market have been in decline since November 2015 to the time of going press (April 15 2016)..."

The Gemba report states at p. 3:

"After top-level prices in December 2015 the prices since January 2016 declined. A slight downward tendency in the coming months is expected. It is a buyers' market rather than a sellers' market."

There had been a growing resistance in the markets to the higher prices paid for our shrimp. There has been a greater opportunity for substitution this year and increased supplies from our competitors. Compared to prices levels of four to five year years ago, we are in a relatively good position. For the purposes of this decision, the Panel does not need to review in detail the market reports. The parties are in agreement that the weighted average market price for this years spring fishery is down by over \$1.00/lb. CAD, FFAW at \$1.18, ASP at \$1.37.

The FFAW price proposal is focused on the sharing arrangement for harvesters used in the calculations in determining the change in the weighted average market price (WAMP) from year to year. Given the dramatic rise in the market prices over the past several years, the FFAW contends the percentage share to the harvesters should increase, as is the practice in some other fisheries.

The process the parties have directed the Panel to follow in arriving at a decision on the price of shrimp to harvesters has been clear for many years. It has been quoted by the Panel in many of its reports and confirmed by the parties. In each shrimp fishery; spring, summer and fall, the weighted average market price in the current year is to be compared to that of the previous year. The difference in the weighted average market prices, up or down, is used as a guide to determine the change in the price to harvesters.

For example, if the WAMP change in a year was a \$1.00, yield and a percentage share to harvesters, would be calculated, to get the price, in this case to be added to the previous years price. ASP from the onset has generally used a yield of 32.7% and a harvesters share of 65.4%. If those percentages were applied in this instance to harvesters share of the \$1.00 price increase in the WAMP it would be $1.00 \times 32.7 = 32.7$ $\times 65.4 = 21.38\text{¢}$. This would be added to the price paid to harvesters in the prior year. The WAMP is derived from the market reports that are available to the parties and the Panel.

The FFAW has never accepted 32.7% as the correct yield and used 35% at times arguing that it is the more likely yield. As well they have argued that 65.4% share to harvesters of the WAMP is too low and it should be in the 70% range and, given the higher market prices over the past several years, the share percentage for harvesters should be 78%. The parties seldom agree on the WAMP, yield or percentage share. Both parties have used the percentages noted in making final offers, or varied them and, at times, ignored them in presenting their position. The calculations related to the WAMP is set out in "price tables", included by the parties in their submissions.

The price tables are not intended to provide an actual price that resolves the issue. As the Panel noted in its summer shrimp fishery 2014 at p. 2: *"The parties are agreed that the calculations provide a guide, not absolute or precise figures, to price adjustments and are a helpful tool in making the adjustment in price, in relation to the position of either party and the prevailing market situation set out in the market reports."*

The FFAW as noted, contends the price tables should now use the figure of 78% for the harvesters share, to more properly reflect the significant increase in the market prices. In their words: *"... past sharing considerations need to be rethought."* This requirement is all the more important due to emergence of major wharf or bonus payments, above the minimum price in recent years and especially so in 2015. In their view, the processors are using extra resources to secure more product to the wharf. While the additional payments, over the minimum price set in the bargaining process do benefit harvesters; *"they also fully undermine the collective bargaining system."*

At p. 4 of the FFAW submission it is stated:

"It must also be noted that many enterprises only receive the minimum prices and makes for an unstable environment, especially if these prices are over 30%, above the minimum. Over the past few years, the issue of extra payments or bonuses have been raised by the FFAW and the Panel has declined to take them into consideration when choosing a price."

The FFAW further claims at p. 4:

"Increased wharf prices and additional bonuses are the product of a sharing arrangement that no longer works. When prices were 40 or 50 cents a pound to harvesters the price tables were mostly indicative of reality."

In the opinion of the FFAW, the higher market returns without changing the share percentage to harvesters, and increasing the minimum price in the collective agreement, has permitted processors to pay bonuses that are too high and undermine the collective bargaining. The FFAW submits at p. 5: *"It is important for the Panel to consider the sharing arrangements that exist in other fisheries when trying to solve this issue."* They point to the sharing arrangements that exist in the lobster and halibut fisheries. In each case as the market price or return increase, the share percentage of the harvesters increases.

Since the Panel has not taken into account payments above the minimum price in deciding between final offers, processors can continue the practice. In their view, a new sharing arrangement must be established in determining shrimp prices. They submit at p. 6: *"A better sharing arrangement will solve the massive gap in wharf price and minimum price issue in the most efficient manner."*

In structuring their price proposal or final offer, the FFAW provided price tables using a 78% harvesters share in a recalculation of 2015 spring prices, and then applying the WAMP differential to show what the more appropriate minimum price should be for the 2015 spring fishery. They also use a 45¢ adjustment to the 2015 price based on the alleged bonus payment in the spring fishery, to outline the effect of what the price to harvesters should be as a price the market returns could support.

The Panel has focused extensively on the FFAW submission since it attempts to achieve, by other means, what the Panel has already decided, in other decisions, that it would not do. That is, the Panel has refused to take into account "bonus" payments or "wharf prices", in deciding what the minimum price should be in the collective agreement. The position of the Panel has been set out in its decisions specifically related to bonus payments in the crab fishery, which has been the practice for more than thirty years. Bonus payments in the shrimp fishery are relatively new.

To have the Panel accept a 78% harvesters share in the manner proposed by the FFAW to determine an adjustment in the price to harvesters, for the reasons outlined by the FFAW, is not the role of the Panel.

In the lobster and halibut fisheries, the sharing arrangements were negotiated and agreed to by the parties. A mandated sharing of market returns by the Panel is not a price specific issue. Sharing arrangements require the input and consideration between the parties to arrive at a formula or process relating to the appropriate share of market returns. As the FFAW said to the Panel, there is "no magic" to 78% it is appropriate to the market prices at this time. Lower market prices might produce a different result.

The Panel must decide on two final offers on "price and conditions of sale" made by the parties. It has no basis in fact to make a definitive decision on the non-price issue of sharing. It is clear from the FFAW submission that they want the Panel to accept the 78% market share to reduce, but not necessarily eliminate, the payment beyond the minimum price going forward in 2016.

In previous years, in deciding on shrimp prices, the parties have varied the percentage of the harvesters share. Most recently in the summer and fall of 2015, the FFAW final offer included a 78% share to harvesters on the difference between the WAMP year over year. That offer was accepted by the Panel as the offer was more reflective of the change in market prices when compared to the ASP final offer.

Throughout 2014 and 2015, market prices continued to increase, primarily due to lower supplies of cooked and peeled cold water shrimp and lack of competition in the UK market, especially from warm water shrimp. Prices to harvesters significantly increased in 2015 and the FFAW was successful in the final offer selection for the spring, summer and fall shrimp fisheries. This year, as predicted in the market reports of last year, the prices in our markets peaked and have now fallen. In the submission of both parties, prices are down on the WAMP of last spring by more than \$1.00/lb.

The Panel has two issues with the FFAW final offer. First, it would have to be accepted that the spring price for 2015 should be adjusted upward based on a 78% share to harvesters. This would permit the 78% share to harvesters in the price table of 2016 to be applied without reducing the minimum price for 2016 by more than 2¢/lb., based on the FFAW calculation of the WAMP.

The Panel is not prepared to retroactively recalculate the final offer in the spring of 2015, which in fact was the FFAW offer, to maintain the higher price level for 2016. The effect would be, as the FFAW states in its submission, to eliminate or really reduce the bonus payment allegedly made in the spring of 2015, and incorporate it in to the minimum price of 2015. As well, the Panel would be mandating that 78% is the proper share for harvesters when market prices were at 2015 levels and now when market prices in 2016 are more than \$1.00/lb. lower. Secondly, it is clear that the intent of the FFAW is to eliminate or reduce bonus or wharf payments, and in this case, have them brought inside the minimum payment.

It is also apparent from the FFAW submission that the level of premium payments over the minimum price creates a problem. In its 2014 submission on crab prices, the FFAW states at p. 7: *"We appreciate that the Panel sets a minimum price, but that does not mean that the minimum price should be closer to the real price as established by the bonus system."*

It is also stated by the FFAW at p. 6 of its 2014 submission:

"There are two inter-related problems with the bonus system... They (harvesters) are not paid consistently... unequal system of payments to fishers."

Even if the Panel accepted as fact that not all harvesters receive bonus payments, there is no evidence as to the numbers involved. It is also recognized that all harvesting enterprises do not share the bonus payments with crewmembers. Again, the Panel has no knowledge of how many harvesting enterprises do not share bonus payments. Indeed the Panel has no direct knowledge of how crewmembers are paid. If this is an issue for the FFAW, they can not expect any relief from the Panel. The owners of the fishing enterprises and crewmembers are all members of the FFAW.

There is a third point made by the FFAW, if processors can pay bonus or wharf payments in the amount of 40¢/lb. or more, the margins must be higher than they were thought to be. The collective bargaining process is not working and in their words, the process is put in disrepute. The parties are obligated by the Act to bargain in good faith. However, as ASP points out, the FFAW was the party that proposed the inclusion of the term of "minimum prices" in the Master Collective Agreement. Minimum prices presume the higher prices might be paid in addition to the minimum prices under the collective agreement.

The FFAW has indicated that as long as the bonus payments are not too high they do not present a problem. It may not put the results of the collective bargaining, in too bad a light.

However, it must be noted that the level of the bonus payments should not lessen the impact of not all harvesters receiving the bonus, or the non-sharing of the bonus with crewmembers.

There are a number of pertinent issues left hanging. How much is too much beyond the minimum prices. Are there hard numbers available with respect of the numbers of harvesting enterprises that do not receive bonus payments and the sharing of payments among crewmembers. What is the proper sharing arrangement between processors and harvesters on increases and decreases in the market returns.

Is it the role of the Panel to decide on these issues without having any facts or figures on which to make a definitive decision? Even the 40¢ bonus or wharf payments alleged by the FFAW is in doubt by their own admission. At p. 5 of their submission it is stated:

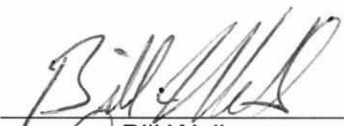
"We often ask for evidence to show what was paid at the wharf and our members note that such evidence could never be produced – the actual price, which is important for a variety of reasons is hidden through different payment methods."

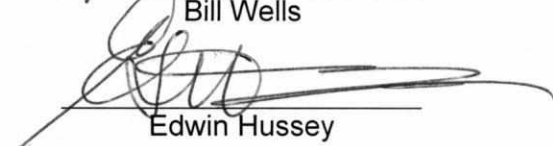
Following our past procedures it is clear that the WAMP for the 2016 spring shrimp fishery has declined by: according to the FFAW \$1.15/lb. according to ASP \$1.37. The FFAW final offer is \$1.38/lb., 2¢ less than the 2015 spring minimum price set by acceptance of the FFAW final offer. The ASP final offer is \$1.22/lb., 18¢ below the minimum price of spring 2015. If one were to take a yield of 32.7%, and a harvesters share of 65.4%, which favors the harvesters on price drops, an adjustment to the price would be at least .21¢ from last years price of \$1.40.

The Panel has little choice but to accept the final offer of ASP. That is not to suggest the Panel is not without concern over the issues raised by the FFAW. The Panel has previously expressed its concerns about the unresolved issues between the parties.

It is the decision of the Panel to accept the final offer of ASP. Under the provisions of the Act, the Spring price table (attached as Schedule "A"), is binding on all processors that process the species shrimp in the province and will form a collective agreement, or part of a collective agreement, with the FFAW.

Dated at St. John's the 26th day of April, 2016.


Bill Wells


Edwin Hussey

SCHEDULE "A"

Size Categories	Distribution Spring 2015	Plant Price
2.0-2.9	6.38%	0.451
3.0-3.9	8.37	0.763
4.0-4.9	11.03	0.932
5.0-5.9	12.66	1.102
6.0-6.9	16.62	1.298
7.0-7.9	19.39	1.391
8.0-8.9	13.56	1.490
9.0-9.9	7.11	1.632
10+	4.88	1.676
		1.22

* Prices for trucked shrimp are 3¢/lb. less.