

**STANDING FISH PRICE-SETTING PANEL  
LOBSTER FISHERY 2016**

The Standing Fish Price-Setting Panel, hereinafter referred to as "the Panel", issued its Schedule of Hearings for 2016, March 9<sup>th</sup>, 2016, for inter alia, the species Lobster. In the event that no binding agreement was in effect by April 11<sup>th</sup>, 2016, the Panel set Tuesday, April 12<sup>th</sup>, 2016, as the date for a hearing on prices and conditions of sale for the species Lobster.

The Panel also noted it had been advised by the Department of Fisheries and Aquaculture that the Seafood Producers of Newfoundland and Labrador, hereinafter referred to as "SPONL", represents processors that purchase the majority percentage of the species Lobster. As a result, pursuant to Section 19(11) of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the "Act", should a hearing be required for the species Lobster, the parties appearing before the Panel would be the Fish, Food and Allied Workers Union, hereinafter referred to as "FFAW" and SPONL.

It was further noted that Section 19.11(1) of the Act, and the Regulations, 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. The Panel further advised that no other submissions would be accepted by the Panel, and should representatives of this species wish to attend the hearing, concurrence from both parties to the collective bargaining must be obtained.

The hearing for Lobster, if required, was scheduled to take place at 10:00a.m., Tuesday, April 12<sup>th</sup>, 2016, at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John's.

The Panel convened the hearing for the species Lobster at 10:00a.m., on April 12<sup>th</sup>, 2016. Having filed their submissions earlier, the parties appearing before the Panel were the FFAW and SPONL. The parties supported their written submission (copies attached) in main argument and rebuttal.

During the course of the negotiations, the parties were unable to reach agreement on a number of proposals presented by either side. In their final offers, they each propose changes to the 2015 Lobster Schedule. The proposals deal with different issues and are not directly related.

The current Lobster Schedule has been in place since 2012, with minor modifications. It contains a formula to determine the price to be paid to harvesters, on a weekly basis, based on published Urner Barry market prices for 1.25/lb live Lobster FOB New England. The essential points as set out in the 2015 Schedule are:

1. The price paid to harvesters for a week is the average price reported by Urner Barry for the Thursday of that week and Tuesday of the following week.
2. There is a .15¢/lb reduction from that average price.

3. Prices are converted to Canadian dollars.
4. The minimum price paid to harvesters is \$3.25/lb for all Urner Barry price listings up to and including \$5.00/lb.
5. The minimum price shall be increased by 70% of any incremental amount between \$5.01 and \$6.00 and by 80% of any incremental amount greater than \$6.00.

This formula, derived by the use of Urner Barry price listings, has been the basis for setting the price to harvesters since the inception of collective bargaining on Lobster prices.

Both parties are agreed that the system is not ideal and attempts have been made to agree on an alternative approach without success. The issues have been reviewed and reported on by the Panel extensively in its previous decisions. At this point, SPONL is prepared to submit sales receipts from some of the higher volume buyers to an independent third party, an accounting firm, and have those prices used as a base to create a formula for prices to harvesters. The FFAW agrees to the approach but wants SPONL to provide receipts from a prior year for review and evaluation before committing to the new methodology.

SPONL has contended that the New England prices are not necessarily relevant to their members who do not primarily sell Lobster in that market. Lobster prices in the market are variable throughout the season at times can be quite volatile. The parties do agree, or at least have accepted the fact that Urner Barry price listings generally reflect the variations in the market prices for Lobster.

The issue before the Panel this year is not the Urner Barry price listings, used as the basis of the formula to determine the price to harvesters. The issue is the proposed changes advanced by each of the parties.

The FFAW submit they have two "price related" issues which they wanted to address separately. The first is the Urner Barry price discount, the .15¢ reduction to the average Urner Barry price first applied in 2012. It is contended that market circumstances have changed, higher prices and a large differential in the exchange rate result in difference between a .15¢ reduction in 2012 equating to CAD 14.8¢ compared to CAD 19.6¢ today.

The primary issue for the FFAW is the fact that the Department of Fisheries and Oceans (DFO) has in effect downloaded a significant amount of the management of the Lobster fishery to the sector. In their words at p. 2:

*"The bulk of the work once conducted by DFO is now being done by the FFAW, with no financial and in-kind support from the processing sector."*

The list of the work now being performed by the FFAW is outlined in their submission. This cost born by the FFAW is offset to some extent by government funding which is inconsistent and

does not in any event cover the full cost. To continue its lobster management work, which is a benefit to the entire industry, the FFAW requires additional funds.

The proposal is to have a .5¢/lb levy paid by the Lobster buyers in the province to the FFAW. To eliminate any financial impact on the buyers, the FFAW proposes that the Urner Barry deduction of 15¢/lb, noted above, be increased to 19¢/lb. The 4 cent increase is in USD and would be a 5¢ or better reduction in CAD terms. As a result, there would be no negative impact on buyers or SPONL members in the province.

To accomplish their objective, the FFAW is proposing the following changes in wording to the 2016 Lobster schedule:

- “(4) For all sales in 2016, the market price used in the calculation as per paragraph (3) above will be .19¢ less than the Urner Barry listing for 1¼/lb American Hard Lobster FOB New England.
- (9) All buyers shall remit .5¢/lb to the FFAW for every Lobster purchased from a harvester. The remittance, along with a statement declaring the total weight of Lobster purchased, shall be submitted by the buyers to the FFAW on a weekly basis.”

These proposed changes are the “final offer” of the FFAW.

The first part of the FFAW offer is “price related”. The second part however, (9) in the proposed Schedule, can not in any way be construed as an item or clause that is price related. The Act is clear in that price and conditions of sale apply to a fish species and relate to the sale by the harvester to the buyer. In FFAW submission it is a “levy” to be paid by buyers and remitted to the FFAW. What we are dealing with under the Act in these proceedings is the price harvesters are to receive for their catch.

The Panel takes no issue with the FFAW on the fact that its work and associated costs, in the management of the Lobster fishery are beneficial to the entire industry. SPONL stated at the hearing that they had rejected the proposal of the levy.

The fact that the FFAW is absorbing costs in the management of the Lobster fishery, and SPONL will not agree to contribute to those costs is not a matter related to “price and conditions of sale for the fish species”, as specified in the Act.

There are other issues arising from the implementation of the request that the Panel need not expand on in arriving at its decision. In the opinion of the Panel, the “final offer” submitted by the FFAW cannot be accepted. The Panel would be the mechanism whereby a non price issue between the parties is accepted as a price issue and given the force of law in a collective agreement. While it is contended that the buyers would not bear any cost, that is subject to the rate of exchange, and is not a guarantee. As well, the details of the costs incurred by the FFAW are not known. Whether or not SPONL were to agree to a contribution, they would certainly require a degree of detail on the costs incurred by the FFAW.

A final point to note is if the Panel were to accept the FFAW offer, and the decision of the Panel was appealed under Section 19.14(1) of the Act, the legislation requires that:

- 19.14 (3) notwithstanding subsection (2), 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; and
  - (b) where the criteria for reconsideration prescribed in the regulations made under paragraph 4 (a) have been met."

The Regulations under the Act state:

- 3(1) 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 market and currency factors relate to the market prices for the species, in this case lobster, and not to the levy to cover FFAW costs. The Regulations prescribe that in making a decision under Section 19.14(2) of the Act, final offer selection shall be the only form of arbitration used whether one or more of the parties appears before the Panel respecting the reconsideration application.

If the Panel were to choose the FFAW offer, SPONL would have no basis to appeal the decision to have the levy removed. Item "9" in the FFAW proposal is a stand-alone clause and not related to the deduction from the average Urner Barry price. Section 19.8(4) of the Act provides that a party to collective bargaining with respect to a fish species may refer a matter other than price to the Panel. The process and procedure is quite different from that related to determining the port price to harvesters.

For the reasons stated the only alternative for the Panel is to accept the final offer of SPONL. Similar to the FFAW, SPONL proposes a roll over to the 2016 Lobster Schedule with one amendment.

The issue is the Mother's Day effect on market prices as reported by Urner Barry. The issue has become more significant as a result of the higher market prices in recent years.

SPONL states at p. 4 of its submission:

"... the sudden drop in market prices after Mother's Day is not captured in the current Lobster pricing system, leaving buyers with substantial losses. Lobster purchased in Newfoundland the week before Mother's Day does not get to market until the following week... Lobsters have to be held for a minimum of three (3) days before shipping so that their digestive system is purged.

Transportation to the closest market requires two (2) to 3 (three) days... The market will not buy Lobster for four (4) days prior to Mother's Day, due to the fact that they will be holding high priced inventory before the inevitable price drop occurs."

In order to provide some relief to its members, SPONL proposes the inclusion of an Interruption Clause for Mother's Day. This would mean using the Tuesday price report from Urner Barry, instead of the Thursday/Tuesday report average to calculate the minimum price to harvesters for the week of May 1 to May 7, 2016.

While the Panel accepts the fact that SPONL has an arguable point that Lobsters purchased during the week of May 1 to May 6, will not be sold at the higher price points leading up to Mother's Day, the proposal effectively protects them, but precludes the harvesters from benefiting to any extent from what may be the highest prices for the season. Lobsters are sold in other than the New England market as well.

The FFAW submission states that they offered several solutions that are fairer than the solution proposed by SPONL. The FFAW says the current system is not ideal because the actual value of Lobsters to the market is not disclosed. They have no "idea" of the change in prices to the SPONL members in terms of the pre and past Mother's Day price changes to the buyers. The solution, in their opinion, are prices paid to harvesters based on the market return receipted to SPONL members. This would permit the parties to negotiate on the basis of facts.

While the Panel might have some misgivings with respect to the final offer of SPONL, it does not have the option to amend or alter any of the final offers presented.

It is the decision of the Panel to accept the final offer of SPONL for Lobster prices for 2016.

The prices for Lobster will be set in accordance with the 2016 Lobster Schedule attached, which will form a collective agreement or part of a collective agreement, binding on all processors/buyers that buy and process the species Lobster.

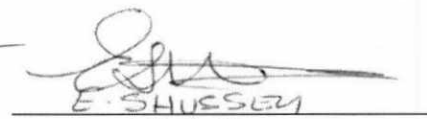
Dated the 15<sup>th</sup> day of April, 2016.



Bill Wells



Max Short



Edwin Hussey



## 2016 Lobster Schedule

The prices and related terms and conditions for Lobster for 2016 are set out in this Schedule.

This Schedule together with the terms and conditions of the Master Collective Agreement between FFAW-Unifor and the Association of Seafood Producers (ASP) shall together constitute a Lobster Collective Agreement for the purposes of the Fishing Industry Collective Bargaining Act.

- (1) The minimum price for Lobster in NL in 2016 shall be determined on a weekly basis, adjusted in accordance with the Urner Barry price listing for 1¼/lb live Lobster FOB New England.
- (2) The minimum price shall be \$3.25 for all Urner Barry price listings up to and including \$5.00.
- (3) The minimum price shall be increased by 70% of any incremental amount greater than \$5.00 Canadian, and 80% of any incremental amount greater than \$6.00 Canadian.

**Example:** Market Price = \$6.50 US  
 7 day average exchange rate: \$1.00 US = \$0.97 Canadian  
 ie. Market Price = \$6.50 x \$0.97 = \$6.30 Canadian

$$\begin{aligned}\text{Minimum Raw Material Price} &= \$3.25 + (.70 \times \$1.00) + (.80 \times \$0.30) \\ &= \$3.25 + .70 + .24 \\ &= \$4.19\end{aligned}$$

- (4) For all sales in 2016, the market price used in the calculation as per paragraph (3) above will be .15¢ less than the Urner Barry listing for 1¼/lb live Lobster FOB New England.
- (5) The minimum price for each week\* of the Lobster season shall be calculated based on the average of the Urner Barry listings on Thursday of that week and Tuesday of the following week, and shall apply retroactively to all sales from Sunday to Saturday, inclusive, payable no later than Thursday of the following week.

**Example:** The price payable for landings in Week 1 (from Sunday to Saturday inclusive) shall be calculated based on the average of the Urner Barry listings for Thursday of Week 1 and Tuesday of Week 2, payable no later than Thursday of Week 2.

\* For the week of May 1 to May 7 only, the Urner Barry listing for the following Tuesday will be used to calculate the minimum price, all other terms and conditions will apply.

- (6) All Urner Barry listings used for this purpose shall be converted to Canadian dollars based on the average exchange rate for the seven day period immediately preceding the Tuesday following the week in which the landings occurred, as per the Oanda website.
- (7) Should Urner Barry provide a listing on Thursday in a particular week, or on the following Tuesday, but not both, that listing shall be used as the basis of the calculation. Should there be no Urner Barry listing provided on either a Thursday or the following Tuesday, the most recent prior Urner Barry listing shall be the basis of the calculation.

- (8) In the event that Urner Barry provides a range of prices on a given day, the low end of the range shall be used as the price listing for the purposes of this Schedule.

**Example:** If Urner Barry reports a market range of \$6.00 to \$6.10, all calculations done for the purposes of this Schedule shall be based on \$6.00.

- (9) Prices are based on legal size Lobster.
- (10) Urner Barry occasionally lists prices for soft shell Lobster. These prices are not applicable to the calculations provided for in this Schedule. Minimum raw material prices provided for in this Schedule apply to hard shell Lobster. Should a problem arise with respect to incidence of soft shell Lobster in the NL fishery, the parties agree to meet as soon as possible to address the situation.
- (11) This Schedule is effective for the duration of the 2016 Lobster fishing season.