

Lobster Fishery 2013

The Standing Fish Price Setting Panel hereinafter referred to as "The Panel", issued its Schedule of Hearings for 2013, dated March 5th, 2013, for inter alia the species Lobster. In the event that no binding collective agreement was in effect by Monday, the 25th day of March, 2013, the Panel set Tuesday, the 26th day of March, 2013, as the date for a Panel Hearing on prices and conditions of sale for the species Lobster. The aforementioned dates were determined following notification from the Minister of Fisheries and Aquaculture dated the 5th day of February, 2013, that April 5th, 2012 had been set as the date by which price and conditions of sale for the species Lobster must be in place.

The Panel had been earlier advised by the Department of Fisheries and Aquaculture that the Seafood Producers of Newfoundland and Labrador, hereinafter referred to as "SPONL" represents processors that process the majority percentage of the species Lobster.

The Panel advised in the Schedule that in the absence of a collective agreement, and in accordance with Section 19(11) of the Fishing Industry Collective Bargaining Act, hereinafter referred to as "the Act", the Panel would conduct a hearing on price and conditions of sale. The Panel further advised that the only parties entitled to appear before the Panel were the Fish Food and Allied Workers, hereinafter referred to as the "FFAW", and "SPONL". No other submissions would be accepted by the Panel and should any representative of this species (Lobster) wish to attend the hearing, concurrence from both parties to the collective bargaining process must be obtained.

A hearing, if required, was to take place at 2:00 p.m., on the date indicated, at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John's. At the request of the parties, the Panel consented to delay the hearing to 5:00 p.m. The Panel convened the hearing for the species Lobster at 5:00 p.m. on the 26th day of March, 2013. The parties appearing before the Panel, having exchanged positions earlier, were the FFAW and SPONL. The Parties supported their written submissions (copies attached) in main argument and rebuttal.

This is the third year that the parties have appeared before the Panel on the issue of Lobster prices. Regrettably, while the parties have been aware of the circumstances preventing an agreement being negotiated between them, there is little evidence of the required effort having been made since last year.

The lobster fishery and the marketing of the catch is a volatile affair, prices fluctuate on a daily basis. It is essential that the collective agreement contain a, "price to market formula". In the two previous seasons, following a cessation of business dealings, the parties have agreed on a minimum price and a Lobster Schedule containing, in part, a pricing formula based on Urner Barry price reports for 1¼ lb. (hard shell) lobster sales in the Boston market. The price reports were the index used to calculate the "ups and downs" of the market place.

The Urner Barry price reports were first proposed by the FFAW in 2011 as an acceptable barometer to be applied in making price adjustments in the local fishery throughout the season.

In 2011, the FFAW cited a report by Gardiner Pinfold which suggested that there was a correlation between prices in the various markets and the Urner Barry price reports could be used as an index of market behavior. It is recognized that those prices quoted by Urner Barry are not the prices received by SPONL members, nor are they necessarily participants in that particular market.

SPONL has consistently rejected the use of the Urner Barry listings in the development of a "price to market" formula. To quote from the Panels 2012 report at page 3:

"In its view, the Urner Barry index relates to a secondary market formula (wholesale list) based on a graded system for Lobster. The industry in this province does not sell lobster in accordance with the Urner Barry system. SPONL members act on the basis of supply and demand with a fluctuating daily market price, for four categories of purchases. In their view, the application of the Lobster Schedule in 2011, to which they had agreed, contributed to instability in the industry and a financial loss for many buyers."

SPONL maintains its position in this regard in its 2013 submission to the Panel. It is stated on page 2 of the submission:

"This comparison and the formula based on the Urner Barry price system contributed to the instability in the industry in 2011 and 2012. Should the Urner Barry index be implicated in 2013 further instability will continue."

While not stated in the written submission, it was alleged at the hearing that SPONL members had suffered losses in 2012, as they had in 2011.

The FFAW is of the opinion that the Urner Barry prices do reflect the adjustments in market prices, not only for the fishery in this province but in other maritime fisheries as well. However, the FFAW has consistently stated since 2011, that they are prepared to explore alternatives to determine the variability in prices. In 2011, the parties approached a local accounting firm and following their joint submission, received a proposal related to compiling a database for lobster market information. The FFAW accepted and signed the proposal, SPONL did not.

In 2012, the parties appeared before the Panel in the same situation that applies today. In the interim, no effort had been made to deal with the issues related to the adjustments required in lobster pricing.

In 2012, SPONL, in its submission to the Panel, proposed that adjustment in prices would be determined by an independent agency. All processors or buyers would submit the amount and price paid for all lobster purchased from harvesters on a daily basis. Harvesters would also provide receipts for sales to respective buyers. The minimum price would be calculated by the independent entity based on the weighted average daily price multiplied by 95%. This minimum price would be posted for the previous day and buyers would have to adjust any lower prices paid the previous day to minimum price.

In 2012, the parties had met one day in March prior to the hearing before the Panel. No substantive discussions had taken place to permit the exploration of and consideration of an alternative price adjustment mechanism. At the Panel hearing, there was no indication of who would act as an independent agency and on what terms and conditions were to apply. The proposal if anything was an abstract proposition. As the Panel noted at the time if it ever come to fruition, the minimum daily prices would be: "derived solely from the prices paid by its (SPONL) members. There was no correlation to any external market prices".

The Panel can only choose one of the two positions presented. In 2012, the Panel had to accept the position of FFAW, which clearly defined a pricing procedure that had a track record. The SPONL proposal if accepted would not have provided such a result. In 2012, the parties eventually settled a Lobster Schedule which included the Urner Barry prices, to adjust the prices throughout the season.

Despite all of this, another year has passed and the parties met on one day in March, prior to appearing before the Panel, followed by a brief exchange of e-mails. The FFAW position proposes a rollover of the terms and conditions of the "2012 Lobster Schedule - Revised", an agreement signed by both parties on May 4th, 2012.

The FFAW stated it is willing to negotiate with SPONL and remains open to other suggestions or alternatives, but they have to be based on a level playing field in the terms of market information. SPONL had proposed a market sharing formula based on the prices received by the buyers. The FFAW had requested information on how much a formula would have worked based on the 2012 market returns. SPONL rejected the request and declined to present any data related to 2012.

SPONL submission to Panel, page 2, states the parties are agreed that:

"... the principles of transparency and correlation to the market are principles that must be met in order to determine what constitutes a fair price for lobster."

SPONL submitted that an independent entity would be appropriate to provide an accurate picture of prices paid to the buyers of lobster. It is maintained that their position provides transparency and ties prices to actual market returns, which the FFAW has been looking for. The position, which for the purposes of the hearing, is their final offer is as follows:

1. The minimum daily price for lobster in NL for 2013 shall be \$2.50 lb.
2. Up to \$1.00 deductions for one claw and no claw lobster... no lower than a minimum of \$2.50 per lb.
3. Prices will be established on a weekly basis using a weighted weekly average price.
4. The top 5 buyers will submit to the independent entity the # of lbs. of lobster sold in the market and the price received per lb. This information will be submitted to the independent entity between Wednesday morning and end of Tuesday each week.

5. By Tuesday evening of each week, the independent entity will post the average price received based on the average of what the top 5 buyers received for the lobster.
6. Harvesters shall receive 70% of the share. Buyers shall receive 30%.

As a position, or more importantly as a final offer, as required in these proceedings, the Panel cannot accept this proposal as a settlement of lobster prices for the 2013 fishery. As submitted, the proposal does provide a basis for negotiations for the parties to explore a mutually acceptable method by which prices could be adjusted. Unlike the 2012 SPONL, the market price returns to the buyers, as opposed to the prices paid to fishermen, is the basis for the formula.

If this approach had been presented in a time frame that would have allowed the opportunity to explore the possibilities, including whom the top five buyers would be and, how determined e.g. purchases over one season or more; an agreement on the independent entity, and the development of a methodology and approach by that entity, it may well have provided a resolution of this principle issue. Such issues need time to be explored and developed and it is beyond the comprehension of the Panel, given the alleged seriousness of the situation in the fishery, why a concerted effort was not made during the past year to arrive at a solution. A meeting and a brief exchange of e-mails just do not cut it.

The Panel notes other changes proposed with respect to minimum price, deduction and the share-of market returns which have not been discussed by the parties. While important, these issues are relatively minor to coming up with a process that permits the parties to adjust prices in an organized and acceptable manner. For a number of years now the parties to collective bargaining have settled lump roe prices to harvesters based on the sharing of an agreed return from the market by representative processors.

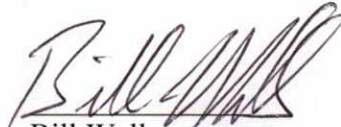
As the Panel noted in its 2012 decision:

"The Panel is precluded from working with the parties in seeking a solution acceptable to both sides. The FFAW has appeared to be open to other suggestions or alternative, and the Panel trusts that it will continue with that approach in seeking a mutually acceptable solution with SPONL."

It is all the more important that the parties address the issue to avoid further disruptions at the start of the lobster season. Identifying the buyers, who would provide the information on their market returns to an agreed accounting firm, and, confirming that process to be applied by that agency, could be the basis for an agreement on price adjustments to harvesters. The onus is on the parties to complete this task.

It is the decision of the Panel to accept the submission of the FFAW. The prices for Lobster will be set in accordance with the 2013 Lobster Schedule attached, which will form a collective agreement or part of a collective agreement binding on all processors that buy and process the species Lobster.

DATED the 2nd day of April, 2013.



Bill Wells



Max Short



Edwin Hussey

FFAW Final Offer 2013 Lobster Schedule

The prices and related terms and condition for lobster for 2013 are set out in this Schedule.

This Schedule together with the terms and conditions of the Master Collective Agreement between FFAW/CAW 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 2013 shall be determined on a weekly basis, adjusted in accordance with the Urner Barry price listing for 1 ¼ pound 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 U.S.

7 day average exchange rate: \$1.00 U.S. = \$0.97 Cdn.

i.e. Market price = \$6.50 x 0.97 = \$6.30 Cdn.

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

- (4) For all sales in 2013, the market price used in the calculation as per paragraph (3) above will be 15 cents less than the Urner Barry listing for 1 1/4 pound 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.

- (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.

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- (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) This Schedule is effective for the duration of the 2013 lobster fishing season.

DATED at St. John's, Newfoundland & Labrador this _____ day of _____, 2013.

Signed on behalf of the
Fish, Food and Allied Workers
FFAW/CAW:

Witness

Earle McCurdy
Fish, Food and Allied Workers
FFAW/CAW

DATED at St. John's, Newfoundland & Labrador this _____ day of _____, 2013.

Signed on behalf of the
Seafood Producers of Newfoundland & Labrador
SPONL:

Witness

George Joyce
Seafood Producers of Newfoundland & Labrador
SPONL