

## Lobster Fishery 2014

The Standing Fish Price-Setting Panel, hereinafter referred to as the "Panel", issued its Schedule of Hearings for the 2014 fishing season as per Section 19 of the Fishing Industry Collective Bargaining Act, hereinafter referred to as "*the Act*", on February 11<sup>th</sup>, 2014, (copy attached). In the schedule, the Panel advised inter alia, that for the species Lobster, no majority processor or processors organization had been identified by the Department of Fisheries and Aquaculture. Accordingly, in the event a collective agreement binding on all processors that process the species Lobster had not been achieved by the date indicated in the schedule, the Panel would hold a hearing on the scheduled hearing date at which time it would hear presentations regarding price and conditions of sale. For the species Lobster, the date set for a hearing was May 7<sup>th</sup>, 2014. At the request of the parties and with the concurrence of the Minister of Fisheries and Aquaculture, the date for a hearing on the species Lobster was subsequently changed to April 24<sup>th</sup>, 2014.

It should be noted that the Panel hearing on April 24<sup>th</sup>, 2014 was held in accordance with Section 19(9) of the Act. Pursuant to this provision, any processor or processors organization who is engaged in the species Lobster had a right to appear before the Panel at the hearing and make a presentation on price and conditions of sale for the 2014 Lobster season. The Panel notes, as it did in its earlier decision dated April 24<sup>th</sup>, 2014, that no processor or processors organization availed of the opportunity to appear before the Panel and make a presentation. The only party to appear before the Panel to make a presentation on price and conditions of sale was the FFAW. The effect of this decision by processors and processor organizations not to appear at the hearing meant that the Panel was left, at the conclusion of the hearing, with only the position of the FFAW on prices and conditions of sale for the Lobster fishery in 2014 (copy attached). Faced with this situation of having just one submission on prices and conditions of sale for Lobster for 2014, which amounted to essentially a rollover of the 2013 price and conditions of sale, the Panel selected the position of the FFAW.

Following the release of the Panel decision (copy attached) on Lobster prices there was no feedback to the Panel from any processor or processors organization subsequent to the Panels decision on April 24<sup>th</sup>, 2014.

Pursuant to the Act, a party may request a re-consideration of a Panel decision based on a substantial change in currency or market conditions. No request had been made to the Panel from a processor or processors organization for a re-consideration of its original decision as provided for in the Act. Further it is understood by the Panel that Lobster buyers and harvesters have engaged in fishing under the terms and conditions set down by the Panel on April 24<sup>th</sup>, 2014. In its submission to the Panel on May 12<sup>th</sup>, 2014, the FFAW advised, "Harvesters sold and buyers bought, last year and for the first four weeks of this year, under the price to market formula which we are once again proposing."

On April 29<sup>th</sup>, 2014, the Panel was advised by the Department of Fisheries and Aquaculture that DFA had determined there was an error in Lobster production percentages that were provided to

the Panel prior to bargaining. Whereas the figure which had been provided to the Panel indicated that SPONL had 29.2 % of production, the correct figure should have been 65.9%.

The effect of this revelation was that SPONL was the majority processor for the species Lobster for the purposes of the 2014 fishery. Following receipt of this information the Panel advised SPONL the following day, April 30<sup>th</sup>, 2014, (copy attached) of the information received from DFA and invited SPONL to contact the Panel should further clarification be required. Upon receipt of this notice from the Panel, SPONL requested a private meeting with the Panel on this matter. SPONL subsequently on May 2<sup>nd</sup>, 2014 requested the Panel reconvene a hearing to decide prices by way of final offer selection as directed by the Act (copy attached). Following receipt of this request from SPONL, the Panel arranged a meeting between SPONL and FFAW to determine a course of Action. During that meeting, both parties agreed that the best course of action in the circumstances was to hold a hearing at which time both parties would present final offers. The Panel would then exercise its authority pursuant to section 19(11) of the Act and make a decision on prices and conditions of sale by final offer selection. On May 11<sup>th</sup>, 2014, the Panel received electronic copies of the final positions of the parties (copies attached). On May 12<sup>th</sup>, 2014 at 10:00 a.m., the parties appeared before the Panel and made their respective presentations.

The Panel must select either the position of the FFAW or that of SPONL. The Panel does not have the option of arriving at a position which might have been compatible to both parties.

In its presentation SPONL has proposed an amendment to Article 4 of the 2013 price schedule from the current .15¢ to .25¢. SPONL advised in its presentation that: "costs have been steadily rising over the past three years particularly in the following areas:

1. Higher freight rates (3%) brought on primarily by increases in Marine Atlantic ferry rates;
2. Fuel for trucks and wages for drivers who transport lobster to market have increased over the last three years (Appendix A). It is noted these incremental costs are also being added when buyers purchase and rent crates coming from Nova Scotia. Many buyers in this province use rented logtek crates which have to be brought in from depots in Nova Scotia. At the end of the season the crates have to be returned to Nova Scotia at the buyers expense, and
3. Collection costs are increasing. For example, most Lobsters in 3ps (area 11) come from Fortune Bay and are collected and transported to points on the Avalon Peninsula. Many of these areas have small catches which makes it uneconomical to make direct shipments."

SPONL also made the point that, "in 2014 buyers have little choice again but to follow a schedule based on the (Urner Barry) formula that doesn't work for buyers."

SPONL provided a comparison of recent prices paid for Lobster in NL with those paid in the Lobster fishing regions of Atlantic Canada. This comparison showed the average price for Lobster in Atlantic Canada at approximately \$4.54 compared to \$4.93 in NL. SPONL's view is

that prices in NL for that period should have been no greater than \$4.30. The FFAW questioned these figures advanced by SPONL and suggested the spread was not as great as the numbers indicate. Since the hearing, the Panel has been advised that the actual share price for the NL Lobster for the period from May 4<sup>th</sup>, 2014 to May 10<sup>th</sup>, 2014, was \$4.25.

In its submission to the Panel the FFAW proposed the Panel, "confirm the existing 2014 Lobster Schedule (attached), as per its decision of April 24<sup>th</sup>, 2014. This schedule includes the price to market formula as well as various conditions of sale, including new wording dealing with soft-shell price quotes from Urner Barry.

The FFAW's rationale for taking this position before the Panel at this time is that, "if the formula was as problematic as the buyers claim from time to time, it is hard to understand why SPONL would not have appeared at the earlier hearing to seek a more favorable outcome. The fact it was not an FOS proceeding, is no reason not to participate, if a party feels the position of the other side is unreasonable. Their failure to do so, along with the ongoing buying by SPONL members and other Lobster buyers in 2013 and so far in 2014, suggests that the current formula is a reasonable basis for a fishery."

The FFAW therefore asserted to the Panel, "if it ain't broke, don't fix it."

It should be noted as well that the FFAW advised in its presentation that it was willing to consider an alternative approach to the use of the Urner Barry index for Lobster. However, in order to do that it would need documentation of actual prices received in order to calibrate any new proposed index. SPONL however advised the union that "there will be no past information provided."

It must be noted that the reason the parties are before the Panel for a hearing on Lobster prices at this time is not because of any indication from SPONL, or any other Lobster buyers, of concerns with the prosecution of the fishery following the release of the Panel decision on April 24<sup>th</sup>, 2014. Prior to the notification by DFA on April 29<sup>th</sup>, 2014, of the error in Lobster production percentages, and the Panels subsequent notice to SPONL the following day, no request had been made to the Panel regarding the April 24<sup>th</sup>, 2014 decision which was delivered to SPONL and all Lobster buyers in the province. The parties are before the Panel as a result of the correction by DFA, that SPONL is the majority processors organization for Lobster in 2014, and SPONL's request, and the unions concurrence, to reconvene a hearing.

In its submission to the Panel on April 24<sup>th</sup>, 2014, the FFAW advised the Panel that it had met with SPONL to try and resolve Lobster prices for 2014. This was before the revelation that SPONL was the majority processor organization. The FFAW also advised the Panel in its submission on April 24<sup>th</sup>, 2014, that while SPONL had proposed a .10¢ watering down of the formula, it provided no documentation to justify its proposal.

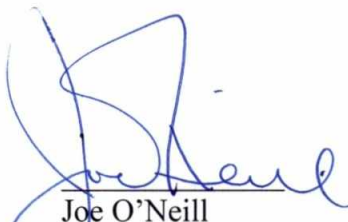
The Panel is aware that there have been in recent years, and continues to be, challenges facing the Lobster fishery in the province. The glut in the market brought on by, among other things, the huge increase in landings in the Maine fishery, competition from Atlantic Canada, and other factors make it increasingly difficult to maintain a viable Lobster fishery in NL.

The Panel understands, as stated by the FFAW in the hearing, that the Lobster fishery was prosecuted in 2103 and to date in 2014 under the provisions of the formula proposed by the union without incident. In fact the FFAW advised the Panel that, "last year, under the same formula, NL was the only one of the four Atlantic Provinces not to have a significant tie-up over Lobster prices." These assertions of the FFAW were not challenged by SPONL at the hearing. It is difficult therefore, in light of these matters, for the Panel to alter its original decision of April 24<sup>th</sup>, 2014. The Panel is however, encouraged by the seemingly willingness of both SPONL and FFAW to engage in further discussions on a possible alternative approach to the current pricing mechanism.

It is the decision of the Panel to accept the position of the FFAW for Lobster prices for 2014.

The prices for Lobster will be set in accordance with the 2014 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 16<sup>th</sup> day of May, 2014.



Joe O'Neill



Bill Wells



Max Short

### 2014 Lobster Schedule

The prices and related terms and condition for lobster for 2014 are set out in this Schedule.

- (1) The minimum price for lobster in NL in 2014 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 2014, the market price used in calculation as per paragraph (3) above will be 15 cents less than the Urner Barry listing for 1 ¼ 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.
- (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 shall meet as soon as possible to address the situation.
- (11) This Schedule is effective for the duration of the 2014 lobster fishing season.