

**STANDING FISH PRICE-SETTING PANEL
RECONSIDERATION DECISION
LOBSTER FISHERY - 2020**

In the matter of the Fishing Industry Collective Bargaining Act, hereinafter referred to as the “Act”, and an application by the Seafood Processors of Newfoundland and Labrador (SPONL) requesting that, pursuant to Section 19.14 of the Act, the Standing Fish Price-Setting Panel reconsider its decision of April 30, 2020, setting price and conditions of sale for the species Lobster.

The Panel received an application from the Seafood Processors of Newfoundland and Labrador Inc., hereinafter referred to as “SPONL”, dated May 21, 2020, requesting that the Panel reconsider its decision dated April 30, 2020, concerning the price and conditions of sale for Lobster in 2020. The application is based on the assertion that landings are at an all time high, markets are difficult to find, prices are declining at a rate faster than the Urner Barry index can monitor and the current market price formula model is not working.

The Panel conducted a preliminary review of the market information available on short notice. On May 21, 2020 the parties were advised by the Panel that on the basis of the developments in the market factors of price, supply and demand in the face of the pandemic, it was prepared to reconsider the 2020 Lobster pricing decision. The parties were requested to meet with the assistance of the Facilitator, to exchange perspectives on the market outlook and positions on pricing, going forward in 2020.

In the event the parties were unable to agree on a common position through negotiation, a Lobster Reconsideration hearing was scheduled to take place at 10:00 a.m. on Saturday, May 23, 2020, via Microsoft Teams virtual meeting capabilities. The Panel, pursuant to Section 19.14(1) of the Act also requested that the SPONL and the Fish, Food and Allied Workers’ Union, hereinafter referred to as the “FFAW”, the parties to the decision of the Panel on April 30, 2020, provide their price positions for Final Offer Selection by 10:00 p.m. on Friday, May 22, 2020.

The Regulations made pursuant to the Act state at Section 3(3):

“A decision respecting reconsideration shall be made by the Panel within 96 hours from the time the Panel has acknowledged receipt of the application for reconsideration.” The Act and Regulations also stipulate that in making a decision under Section 19.14(2) of the Act:

“...final offer selection shall be the only form of arbitration used.”

The Panel convened its hearing on the application at 10:00 a.m. on Saturday, May 23, 2020. Appearing before the Panel were representatives of the parties who supported their written submissions (copies attached) in argument and rebuttal. The Panel and the parties had the benefit of reports compiled by the Department of Fisheries and Land Resources including Urner Barry price reports and Seafood Datasearch, hereinafter referred to as “Sackton”, as well as, a number of recent market commentaries.

Urner Barry price reports indicate that prices have fallen from \$7.25 on May 7, 2020 to \$5.50 on May 21, 2020. In his update, Sackton states on page 3 that:

“For whatever reason, landings have been incredibly strong... Lobster prices are very sensitive to high volumes of landings, and this has been pushing the price down Prices quickly came down after Mother’s Day, and the volume of landings is reported to be very strong.”

In his summary on page 7, Sackton notes that:

“The most serious Lobster glut in many years has arrived in Eastern Canada. Heavy landings, good weather, an excellent quality product, have run into a situation where the US market for live Lobster is crippled..... The result has been strong downward pressure on live prices, with some concern that current price levels may not be sustained.”

On a positive note, Sackton explains on page 5 that:

“China has a large demand for live Lobster, and that is beginning to come back to life. There are increasing air cargo flights from Halifax, and a couple from Moncton.... Last year China purchased 5.8 million lbs of live Lobster in May. This year it is likely to reach, or potentially exceed that goal.”

With respect to foodservice in the US, Sackton states on page 6:

“There was improvement in foodservice sales by seafood distributors this past week. What appears to be happening is that major restaurant chains and national buyers are gearing up for reopening in some areas, so they are buying inventory and making preparations.”

At the hearing, SPONL put forward its position that changes were immediately required to the price to market formula. It contends that Urner Barry is not relative to the sale of Newfoundland Lobster as it does not monitor either the product form (full loads) or the markets into which Newfoundland and Labrador buyers sell. Newfoundland Lobster are sold by full container or truck loads while the Urner Barry is reflective of less-than-truck loads.

SPONL also maintains that markets are aware that Newfoundland and Labrador’s pricing is in relation to the Urner Barry Index and thus await release of the Urner Barry to take advantage of that knowledge to influence their offers to buy. The pandemic has resulted in the disappearance of traditional markets and uncertainty among both processors and harvesters as to the future viability of their enterprises. They claim that the difference between the Urner Barry price, and the actual market price received by processors, results in an unfair sharing of the market return for processors.

SPONL’s final offer was that the current use of the Urner Barry Tuesday data be continued. It requested that an amendment be made to the current agreement to change the deduction made against the Urner Barry price to \$0.50 and that the minimum price of \$3.25 be maintained. SPONL’s offer also requested a clause that should prices drop below \$3.25, and, SPONL buyers determine that it is not financially sound to continue buying, then a 48 hour notice will be given for industry players to prepare for an industry shut-down.

FFAW’s position was that the Panel maintain its decision of May 30, 2020 to support their initial offer. They do not agree with the Panel’s decision to hear the reconsideration given that the market based price formula already accounts for fluctuations in currency and market. They contend SPONL has not demonstrated the price paid to harvesters under the formula was out of line with the market. The FFAW maintain that buyers cannot shutdown the fishery and the Panel does not have the authority to approve such a request.

FFAW also contend that over the past nine years the Urner Barry formula has seen several adjustments in favor of processors and Lobster prices to Newfoundland harvesters still lag those in the Maritimes and Quebec. They feel that annual export values reflect market returns that are consistently higher than those reflected by Urner Barry. The market for Newfoundland Lobster is diverse with some Newfoundland buyers just selling through middlemen in the Maritimes. Those

marketing into the export markets achieve better returns and the minimum price needs to reflect this. The processing sector in the Maritimes is struggling with capacity issues but that is not the case in Newfoundland where most Lobsters are shipped live.

The Act prescribes when the Panel may reconsider an earlier decision.

Section 19.14 (3) states:

“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.”

Section 3(1) of the Regulations under the Act also state:

“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.”

In relation to Section 3.9(1) of the Act, the price to market formula for Lobster automatically adjusts the price to harvesters based upon weekly changes to market price and currency. With such a formula in place, there is a high threshold of evidence needed in order to demonstrate that market factors have significantly changed beyond that anticipated by the price to market formula. In making its decision to hear the reconsideration, the Panel was persuaded by the SPONL assertion that the exceptional circumstances of COVID 19 pandemic were sufficient to meet that threshold to hear it.

Upon making its decision to hear the reconsideration, the Panel asked the Department of Fisheries and Land Resources for a market update. This included a market overview from Sackton, the latest Urner Barry pricing and a compilation of other market intelligence that would allow further examination of the changes in market factors. The reconsideration process provided the opportunity for the parties to further explore the available evidence and further articulate their respective positions.

The Panel has carefully reviewed the market information and the submissions of the parties. There is a significant trend downward in market prices for Lobster. There is a downward trajectory which is consistent with normal seasonal patterns, when the supply of Lobsters increases due the reopening of all major Lobster fisheries in Atlantic Canada. The decline this year is concerning given the anticipated market demand challenges because of the pandemic. However, the price declines to date have been accounted for by the price to market formula.

There will be further declines, but these will trigger the formula's adjustment to harvesters' prices. How future prices will relate to landed prices in the Maritimes is yet to be determined.

While there may be some timing differences in the formula price adjustments compared with those of the other Atlantic Provinces, this is an inherent aspect in the functioning of the formula. This will apply when prices rise and fall. Making an arbitrary nominal adjustment to the Urner Barry price to \$0.50 will not address this timing issue. It will reduce the price and share to harvesters. Should prices fall precipitously within a given week, there may have some merit in addressing sharing. However, in times of rising prices the opposite is true. Therefore, the proposed increased deduction from Urner Barry prices is not a timing consideration but an adjustment to processors share under all price scenarios.

The arguments of the appropriateness of using Urner Barry has been the subject of several arbitrations and has been dealt with extensively by the Panel in previous decisions. The Panel is of a view that a reconsideration decision is not a venue to deal with this long standing issue. The Panel has indicated that it is persuaded that better options may exist. These need to be fully examined and negotiated over a period of months ahead of annual price negotiations. The Panel has also stated its view that no one party has a veto on change. A refusal to participate in the review and negotiation of a new option is not a reason for the Panel to continue with the current formula.

The Panel is also concerned with SPONL's condition that should prices under the formula calculation drop below the minimum price of \$3.25, processors would have the right to trigger a closure of the Lobster fishery. The shutdown would be a subjective decision of SPONL depending upon its view of viability of continuing with the fishery. This is a sweeping power which, with the effect of a Panel decision, would apply to all processors whether a member of SPONL or not. Under the Act, decisions of the Panel are binding on all processors/buyers of Lobster. It would also stop the fishery for all Lobster harvesters.

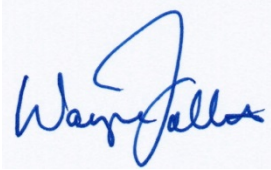
The Panel's powers are granted, and limited, by the Act. Under Section 19.2 (d), the duty of the Panel is to set prices and conditions of sale for a fish species where parties have engaged in collective bargaining and have been unable to agree. Also, under Section 19.12, the Act prohibits fishers or processors from any cessation or lockout. Under Section 19.12 (2), a processor or a processors' organization shall not lock out a fisher.

The proposed clause to give SPONL the right to trigger a closure of the fishery cannot be construed as a condition of sale. To give it effect would be to stop all selling of Lobster. It would also allow for a lockout of harvesters (and non-member processors). This clause, and by extension the SPONL offer, appears to be contrary to the Act. Indeed, the role of the Act and the Panel is avoiding jeopardy in the conduct of fisheries.

For the reasons stated above, it is the decision of the Panel is to accept the final offer of FFAW and maintain its original decision of April 30, 2020.

This decision will be binding on all processors that purchase the species Lobster.

Dated the 24th day of May, 2020 at St. John's, NL.



Wayne Follett



Bill Carter



Brendan Condon