

STANDING FISH PRICE-SETTING PANEL TURBOT FISHERY 2020

Pursuant to Section 14 of the Fishing Industry Collective Bargaining Act, hereinafter referred to as the “Act”, where the board has under this Act certified an association as a bargaining agent of fishers in a unit and no collective agreement with the processors concerned binding on, or entered into on behalf of, fishers in a unit, is in force; (a) the bargaining agent may, on behalf of fishers in the unit, by notice, require the processor concerned to commence collective bargaining with a view to the conclusion of a collective agreement.

Pursuant to Section 16 of the Act, where notice to commence collective bargaining has been given under Section 14, the certified bargaining agent and the processor, or processors’ organization representing the processor shall, without delay, but within 20 clear days after the notice was given or the further time that the parties may agree upon, meet and commence or authorize representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude a collective agreement; and (b) the processor shall not, without consent by or on behalf of the fishers affected, alter rates of pay for fish or alter other terms or conditions respecting the purchase of fish then in force in respect to fishers in the unit for which the bargaining agent is certified until (i) a collective agreement has been concluded that is binding on all the processors who process the species of fish to which the agreement relates, or (ii) the matters in dispute between the processor and the certified bargaining agent have been decided on by the Panel and an agreement imposed that is binding on all the processors who process the species of fish to which the agreement relates, whichever is earlier.

On June 19, 2020, the Fish, Food and Allied Workers’ Union, hereinafter referred to as the “FFAW”, served notice to the Association of Seafood Producers, hereinafter referred to as “ASP”, of its intent to immediately meet and negotiate prices and conditions of sales with respect to the species Turbot. The Panel was advised by the Department of Fisheries and Land Resources that “ASP” represented processors that process the majority percentage of the species Turbot. As a result, under Section 19(11) of the Act, should a hearing be required for Turbot, the parties appearing before the Panel would be 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 Turbot was scheduled to take place on Thursday, July 9, 2020. The Panel convened its hearing for the species Turbot at 10:00 a.m. on Thursday, July 9, 2020, via Microsoft Teams virtual meeting capabilities. 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.

Engaging in the Panel process to set the price and conditions of sale for the species Turbot is unprecedented and, in this case, essentially requires the Panel to set price and conditions of sale during an ongoing fishery. Given that the species Turbot was not included in its Schedule of Hearings for 2020, issued on February 27, 2020, it did not allow sufficient time for extensive market analysis. The parties and the Panel did have the benefit of data on landings and production information provided by the Department of Fisheries and Land Resources, hereinafter referred to as the "DFLR". DFLR also provided monthly and annual export data (export volumes and value) by product type and country receiving the exports. However, the Panel was heavily reliant on information contained in the submissions and presentations by both parties.

At the hearing, the FFAW made a final offer of \$1.70/lb., which represents an approximate 15% reduction in the 2019 price to harvesters. The FFAW claim that processors have used the threat of COVID-19 on markets to reduce the price unfairly and arbitrarily to harvesters in 2020. They contend that the evidence of recent months in other species (i.e. Crab) has shown that the forecasted impact of the pandemic on export markets has not been as severe as feared by processors. They maintain that Turbot is marketed to the same regions (Asia and US) as Crab and Crab prices have held at remarkably high levels this summer. They contend that processors have not produced any market analysis or pricing information to support their position of a major collapse of Turbot prices.

In its submission, the FFAW provided an historical analysis of export values and pricing to fish harvesters which demonstrates that the price to harvesters has been consistently around \$2.00/lb. the last three years. Sharing, as established by the competitive market on the wharf, has resulted in two thirds of export value going to harvesters. They contend that in some cases landed prices were as high as \$2.25 in 2019 and submitted a landing receipt to confirm it. They claim that consistently high prices reflect good quality fish, high yields and minimum processing on the part of producers. The FFAW also provided documentation and analysis to show that 2020 Turbot prices to harvesters in Quebec, Iceland and Norway have held at levels consistent with 2019 despite the pandemic. They also point to strong export prices thus far in 2020 despite the

pandemic. The FFAW feel that 2019 prices could be rolled over but in consideration of some market risk, and the nature of final offer selection, made an offer of a reduced price in 2020.

At the hearing, the ASP made a final offer of \$1.25/lb., which represents an approximate 37.5% reduction from the 2019 price to harvesters. They contend that COVID-19 market risk is real and significant, and that processors reacted appropriately to that risk by setting the price at \$1.25 in the ongoing fishery. They also maintain that while processors paid, on their own volition, \$2.00/lb. last year it was not necessarily the right price, and some processors likely overreached in price due to competition for raw material.

The ASP further contended that the strong export prices recorded up to April 2020 were not reflective of the current 2020 market, but likely reflects deals that were made prior to the full onset of COVID-19. They feel the free market continues to work in the current fishery and that prices have gravitated to \$1.25 at the wharf because this is what processors can afford to pay. They point to a 30% drop in Spain in farmed Turbot prices as an indicator of the market (while acknowledging Spain is not a market for Newfoundland wild caught Turbot). The ASP claim that there are significant inventories of Turbot in the marketplace as is being reported to them from their buyers/brokers. They further maintain that past Turbot export values reflect a blended price of frozen-at-sea product and product landed by inshore vessels. They contend that frozen-at-sea products fetch a premium, so the export values of the inshore derived product are lower than the overall average.

The Panel finds itself in an unprecedented situation of having to decide an inaugural collective agreement price for Turbot and in an active, open fishery. There is a consensus among the parties that the prevailing price paid by processors during 2017 to 2019 period was approximately \$2.00/lb. to harvesters. This has worked well for both sides despite the fact this price level was established between individual processors and harvesters based solely upon port market competition. There is also little disagreement on the past sharing of export values. Therefore, the key question for the Panel is whether the evidence exists for the Panel to find that port market pricing is now out of balance with fair sharing of projected export returns and market risk. There are no specific market studies to guide the Panel, and the parties, so the Panel must rely on the evidence presented by the parties, along with published export data, to assess the potential Turbot market and sharing during the remainder of 2020.

The Turbot export markets are quite diverse with the majority of product going to several countries in Asia, the US and some in Europe (i.e. France). Market prices vary between the countries of import. A review of Newfoundland Turbot export data shows that the average annual export prices for Turbot have increased since 2014 and has been consistent around

\$3.00/lb. CAD during the past three years. There is considerable variation in monthly prices and between different countries. The lowest export value was recorded in April 2015 at \$2.09 CAD. The highest monthly average price was in May 2016 at \$3.90 CAD/lb. Since 2018, the lowest monthly export value was \$2.45 in May 2019 and the highest was this year in April 2020 at \$3.76 CAD/lb. While it varies year to year, there also appears to be a strengthening of export values as the calendar year progresses. In May 2020, the most recent month for which published export data is available, the average monthly export value was \$3.08 CAD on exports of 576 tonnes.

In the absence of any market studies, it is extremely difficult to forecast Turbot prices for the remainder of the year. ASP contend that inventories in the marketplace are higher than normal but provided no analysis of what the extra inventory volume might be, what countries have the inventory or how impactful the extra volumes might be on projected outcomes. ASP provided copies of emails that suggest the risks are significant. They claim these emails are from entities knowledgeable in Turbot markets. However, all information in the emails identifying who they are from, as well as to whom the emails were sent, was redacted in the ASP submission. Therefore, the Panel has no basis upon which to evaluate the validity of these emails or what weight it should give to this information. They do not meet any standard that would allow them to be considered as evidence.

ASP also suggest that frozen-at-sea prices are at a premium. This appears to the Panel to be a reasonable assertion. However, despite having the data, processors offered no factual evidence to quantify what the level of the premium is (i.e. 5%, 10%, etc.) or the impact of the premium on the question of inshore pricing. In the Panel's view, the only reasonable assumption is that the relative values of frozen-at-sea versus inshore Turbot would have a consistent impact on average export prices year over year. While the value for inshore landings may be somewhat lower, the average export values still reflect market trends and relative sharing.

Processors' set the current inshore price at \$1.25 in June 2020, several weeks prior to the FFAW notice to bargain and bring Turbot under a negotiated collective agreement. This price reduction was a unilateral action by processors, taken in the absence of any of the normal pressures of collective bargaining and final offer selection. As noted earlier, export prices in the preceding months, including April and May, were at or above the levels observed in 2019 and earlier years. At that point, there was no evidence of a significant decline in export prices. The relevant exchange rates in the key Turbot markets are also currently favorable for processors. The only conclusion for the Panel is that the drop in 2020 landed prices is due to the individual processors' perception of the market risk due to the ongoing pandemic. The reduced prices are in a short-lived fishery which will end before the end of August, while the true market impact will not be known for several months thereafter.

The uncertainty of the pandemic is real, but the full extent of its market impact is almost impossible to predict. COVID-19 is an unprecedented situation and one the Panel and parties have been grappling with since early spring in setting prices. As time has passed, we have seen varied impacts on different species and markets. Crab was the first species subject to negotiation and arbitration. The pandemic was in its early crisis stage and prices for Crab were negotiated and set to reflect the extreme uncertainty and a concern by all involved, including market analysts, that markets would significantly decline. What we have seen is that Crab markets have adapted to changing distribution (i.e. supermarkets versus food service) and prices have remarkably recovered to extremely high levels in recent weeks. In other species, like Atlantic Halibut and Lobster, the market impacts have been more negative. The price to market formulas in place for these species has resulted in lower prices to harvesters in the range of 15% for Halibut and 25% for Lobster compared to last year. In Cod, published Urner Barry, pricing suggests markets have held and are only marginally below 2019. All these species are marketed primarily in Asia and/or the US as is Turbot.

In terms of sharing, the question for the Panel is whether the risk premium for Turbot, set by processors, is at an appropriate level and whether adequate provision for sharing of the risk with harvesters was considered by the processors in dropping prices to \$1.25. As previously noted, the sharing in recent years of export values has been approximately at two thirds to fish harvesters and one third to processors. At the ASP offer of \$1.25/lb., that level of sharing would suggest a 2020 export value of around \$1.88/lb., which would mean market prices at a level significantly lower than any observed since 2014 and approximately 38% lower than last year. The FFAW offer of \$1.70/lb. would suggest an export value of around \$2.55/lb. which would reflect average market prices 15% lower than those in the past three years and lower than currently reported in export statistics to May 2020.

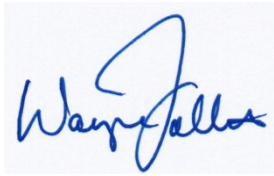
The Panel has no greater insight into the future than the parties, but must decide based upon the evidence presented and the balance of probabilities. It can only pick one of the two offers. Processors contend there is or will be a dramatic decline in Turbot prices but have not presented any hard evidence to support this claim. It is reasonable to expect some reduction due to the pandemic but \$1.25/lb. suggests that market prices will abruptly change and suffer a dramatic reduction. This is one possible outcome but on the balance of probabilities and reflecting on the experience with other species, it is at the lower end of the likely outcomes.

Considering this and the submissions of the parties, it is the decision of the Panel to accept the final offer of the FFAW.

Effective July 14, 2020 the minimum price for the species Turbot is set at \$1.70/lb. of landed weight.

This price will form a collective agreement or part of a collective agreement binding on all processors that process the species Turbot.

Dated the 14th day of July 2020.



Wayne Follett



Bill Carter



Brendan Condon