STANDING FISH PRICE-SETTING PANEL

HERRING FISHERY 2026

Background

1. The Standing Fish Price-Setting Panel, hereinafter referred to as "the Panel," consulted with the parties on January 26, 2026. Thereafter, in accordance with Section 19 of the *Fishing Industry Collective Bargaining Act*, (the "*Act*"), the Panel issued its Schedule of Hearings for 2026. The parties agreed that if Collective Bargaining for the species occurred, it would take place between August 17-20, 2026. Both parties agreed that should an agreement not be reached in bargaining, they would exchange their final offers and submissions to the Panel on Thursday August 20, 2026, with a hearing before the Panel on Friday, August 21, 2026.

2. On February 27, 2026, the Minister of Fisheries and Aquaculture (the "Minister") set the dates by which the price of Herring would be set. Known as the "Minister's date", August 31, 2026, is the date by which the price and conditions of sale for Herring must be set. Under the *Fishing Industry Collective Bargaining Act*, ("*FICBA")* and its regulations, the Panel is required to provide the Minister with the price and conditions of sale of Herring no later than August 28, 2026, three days before the Minister's date.

3. The Panel has been advised by the Department of Fisheries that the Association of Seafood Producers ("ASP") represents processors that process the majority percentage of the species Herring. As a result, under Section 19(11) of the *Act*, should a hearing be required for Herring, the parties appearing before the Panel would be the Fish, Food and Allied Workers' Union ("FFAW"), and ASP. Section 19.11(1) of the *Act* and regulations made thereunder 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 it and should other representatives of this species wish to attend the hearing concurrence from both parties to the collective bargaining must first be obtained.

4. The parties were unable to come to an agreement on all aspects of the price and conditions of sale for Herring for the 2026 season. Therefore, the Panel conducted a hearing on Friday, August 21, 2026, at 2:00 p.m. via videoconferencing.

5. In keeping with the Panel's Rules of Procedure and an agreement between the parties and the Panel, FFAW and ASP provided their written submissions prior to 2:00 p.m. on August 20, 2026. They appeared before the Panel and provided their arguments in support of their final offers, as well as rebuttal to each other's

arguments, and answered the Panel’s questions. The Panel thanks them for their submissions and attendance.

Setting the price of Herring in 2026

6. The information relied on by the Panel in reaching its decision in this matter included the Parties’ submissions for the hearing, the *Act,* and the data and Herring industry reports provided to the Parties and the Panel by DFA. The information provided to and considered by the panel included:

- Atlantic Canada Bait Imports 2021-26 (June)
- Atlantic Canada Herring Exports 2021-26 (June)
- Atlantic Canada Herring Imports 2021-26 (June)
- Atlantic Canada Monthly Herring Exports 2021-26 (June)
- Herring Production 2021-25
- *FICBA (particularly but not limited to s. 12 and s. 19)*

The issue in dispute

7. The primary issue in this final offer arbitration is the price per pound of Herring in the 2026 season. However, ASP raised a preliminary objection with respect to FFAW’s submission. In particular, FFAW’s submission specifically carved out Placentia Bay harvesters from this decision. ASP objected to this carve-out as being an improper submission for the board’s consideration and as such, argued that the Board should reject FFAW’s proposal on that basis.

8. The Panel considered the objection as well as the totality of the parties’ submissions at the hearing. Its decision is below.

Herring fishery information

9. The parties agreed that price and conditions of sale of Herring was last negotiated in 2019. Negotiations went so poorly that the largest Herring purchaser left ASP, causing ASP to lose its majority processor status. As a consequence, four parties appeared at the Panel’s 2019 hearing: ASP, Seafood Processors of Newfoundland and Labrador (SPONL), Barry Group (“BGI”), and FFAW.

10. In 2019, hearings before the Panel were not final-offer arbitration as a result of the particular circumstances at that hearing. The Panel was able to fashion a decision that it deemed appropriate. As the parties are aware, the Panel operates in a final-offer selection process, where the Panel is required to choose one final offer or the other where the ASP represents the majority of Herring processors and FFAW represents the harvesters in the bargaining unit. There is no discretion

in a FOS arbitration for the Panel to fashion its own remedy for the parties.

11. In the years since the 2019 hearing, the parties have operated under a different pricing model than that fashioned by the Panel, with the price of Herring determined between individual buyers and sellers. This is known as a “floating price.” The Herring fishery has operated with considerable price consistency since 2019 in spite of the absence of a fixed minimum price.

12. The data indicates that NL is a small player in the global supply of Herring. The majority of the global Herring supply is caught by European Countries, particularly Norway, Iceland, the Faroe Islands, and Denmark. These are reported to have highly industrialized fleets, and many are MSC certified. For example, in 2025, Norway’s two fisheries, Spring Spawning and North Sea Autumn Spawning, had combined landings of over 400,000 MT, whereas approximately 25,327 MT were landed in NL in the same period. Norway’s landings in 2025 were more than 16 times the volume landed in this province.

13. The Herring fishery takes place on all coasts of the province, with varying opening and closing dates for winter, spring, and fall by area. The Herring fishery in NL is conducted using purse and tuck seines, bar seines, and gillnets. Most of the landings come from seiners. There are active Herring fisheries in all NAFO divisions around NL. Some harvesters keep their own Herring for bait. Most sell to processors.

14. From 2022 to 2025, annual landings ranged from approximately 47.1 million pounds to 55.9 million pounds. Based on the data provided by DFA, we can see that of the 37.7 million pounds of Herring production in the province in 2025, less than 7.2 million pounds is exported. The data also shows that of the 7.2 million pounds that were exported, the US was the nearly exclusive export destination.

15. From 2022 – 2025, the landed price remained within a narrow range of 17.6 cents - 22.2 cents per pound, which is an average of 20.0 cents / lb over those years. The Herring market has been operating with limited price variability without a set minimum price.

16. ASP has highlighted that while prices of Herring have remained relatively stable in NL since 2019, the one significant change in the local market has been the increased availability of alternative bait, particularly Redfish. Herring is no longer the only readily available bait source for many harvesters, reducing its demand. Nevertheless, while demand may have decreased, ASP indicated that bait price paid by harvesters has remained stable at $0.85.

17. Herring production can be split into two basic categories: bait (not-for-human consumption) and food-grade. Herring landed in this province is sold for bait

provincially, is sold for bait in Atlantic Canada, is sold for processing for domestic food, and for processing for food export.

18. Quality has been highlighted as an issue in the Herring fishery. Maintaining a chain of cold is vital to ensure that histamine levels in Herring are kept to a minimum. These quality issues were discussed in the Panel's 2019 decision.

19. The quality and value of Herring are influenced by factors including fish size, fat content, maturity, freshness, handling, temperature control and the time between harvesting and processing. Herring is considered a highly perishable species that requires appropriate handling and rapid chilling to preserve quality and maximize the value of the landed product.

FFAW's offer

20. FFAW summarized their offer for herring as follows:

> In developing our offer and arguments, we use information available to us to propose a price that we believe is supportable and inline with the pricing decisions for other bait species in the province. It is a struggle to set a first price for a species. For that reason, this price should not be used a basis for future negotiations. **Additionally, HFA 10 (Placentia Bay) have a size grading program already in place and implementation of a minimum price could be detrimental to those harvesters. Therefore, our price offer excludes herring from Placentia Bay.**
>
> **Our offer for herring in 2026 is $0.27/lb.**
>
> **(Emphasis added)**

Preliminary objection

21. ASP objected to this exclusion. The Panel asked FFAW to explain the exclusion and to provide the Panel with legislative provision that would allow such an exclusion.

22. The response from FFAW was that their offer was inclusive of the exclusion. In other words, the offer of $0.27 / lb was for all areas outside Placentia Bay and was not to include Placentia Bay harvesters. There were no conditions of sale indicated in addition to the FFAW's offered price.

23. FFAW's offer was for $0.27 / lb, as a minimum price to harvesters for all Herring landed outside Placentia Bay.

24. ASP Argued that:

> FFAW's submission states its "price offer excludes herring from Placentia Bay" while proposing $0.27/lb. for herring generally, explaining that HFA 10 (Placentia Bay) "have a size grading program already in place and implementation of a minimum price could be detrimental to those harvesters". There is no basis to carve out a geographical area for exemption under the legislation, regulations, or the Panel rules and procedures, and as such, the FFAW's position is not in compliance with the binding scope of a Panel's decision.
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> Section 19.11 read together with s.19.10 of *FICBA* contemplates the Panel setting "a price and conditions of sale for the fish species" that is binding on the parties and "all other processors in the province that process that fish species". The price is set **for the fish species**, not a geographically defined subset chosen unilaterally by one party.
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> Section 12(d) of FICBA further confirms certification, and by extension collective bargaining, is designed to apply to "all processors purchasing fish within the specified geographical area applicable to the unit". Placentia is within the FFAW's geographical area applicable to the bargaining unit of fishers. It would be different if there were differing bargaining units at play, but that is not the case… the FFAW is the bargaining agent for all fishers in the province.
>
> (ASP Objection, filed August 21, 2026, 11:05 a.m.)

25. FFAW's response was:

> … it can be discussed further at the hearing. At first glance, there is at least one example of an area and species operating separately, and that is 4R capelin. I don't have the answer as to why that area operates outside of the collective agreement, it likely pre-dates both of us, but it does.
>
> But, like I said, we can talk about this further at the hearing.
>
> (FFAW response to objection, filed August 21, 2026, 11:14 a.m.)

26. During the hearing, FFAW brought no substantive arguments rooted in legislation, the Panel's rules, or any arbitral jurisprudence to support the proposition that FFAW could unilaterally carve out the Placentia Bay harvesters from the collective agreement. The Panel reiterated that this is "collective" bargaining and that FFAW is the bargaining agent for <u>all</u>. FFAW reiterated that their offer is only for those areas outside Placentia Bay and that any minimum price they proposed was to exclude Placentia Bay harvesters.

27. As a consequence of FFAW's position and lack of any legal principle that would allow the Panel to disregard the certification of FFAW as the bargaining agent for all harvesters in the bargaining unit, the Panel is unable to accept the FFAW offer as a viable or proper offer under a final-selection arbitration between these parties. FFAW cannot negotiate on behalf of some but not all of its members or argue that the price put in place by the Panel shall not apply to a certain section of the FFAW's membership. The Panel is mindful that this carve-out provision protects both parties. For the Panel to accept the FFAW offer in these circumstances could open the door to future offers from either party to exclude some members of the bargaining unit from coverage under a Panel decision, an outcome which the *Act* is clearly designed to avoid.

28. The Board then turned its mind to the ASP proposal.

29. The ASP proposal is:

$0.20/lb, landed to the plant.

- All herring must be fresh and wholesome.
- Herring must be of legal size as per DFO regulation and must not have red feed in the belly cavity beyond 10 percent.
- Herring with broken bellies are not acceptable.
- All herring delivered must not exceed 1 degree Celsius in temperature.
- Herring must be a minimum of 8% fat and not more than 20% fat.
- Herring must be transported in tight containers, containing no more than 60% fish, and 40% water and ice.

Any herring purchased which does not meet the above specification, the price will be determined between buyer and seller.

30. The Panel notes that the price put forward by ASP as a minimum price is approximately the average price per pound for Herring paid to harvesters by processors between 2022-2025. There is no information in the DFA data and no argument put forward by FFAW to indicate that the average raw material price has substantially changed since 2022.

31. The conditions listed are conditions that were raised as issues between the parties at the 2019 hearing when the Panel attempted to put in place conditions of sale of Herring that year. Parties are encouraged to read the 2019 Herring decision, as well as BGI's submissions thereto, as quoted by that Panel.

32. Each of the conditions listed in ASP's offer are matters of concern, and are not

unlike conditions used in the sale of Capelin with respect to size, sex, and roe count, for example. In the case of Capelin, the parties have negotiated a price table for Capelin that are not grade “A”. Here, ASP has left the offer open as “the price will be determined between the buyer and seller.”

33. While the Panel would have preferred to have seen the parties negotiate the conditions – such as whether the Herring should be no more than 1 degree Celsius versus some other temperature, or whether the requirement for “transportation in tight containers, containing no more than 60% fish and 40% water and ice” is for transportation to the plant via truck or has some other meaning – the offer put forward by ASP is a viable one. In the absence of a viable offer from FFAW, then the Panel accepts ASP’s offer.

34. ASP also provided the panel with the submissions of BGI from 2019, which contained substantial information on pricing, costs, and the viability of Herring processing in the province. It, in conjunction with the Panel’s decision of 2019, was a helpful and informative reminder of the very tight margins in Herring processing. These also provided useful information on the appropriateness of ASP’s minimum price offer.

Negotiations were limited

35. The Panel was advised during the hearing that the parties exchanged their offers during bargaining but that members of the ASP negotiating team failed to participate any further than to provide an offer and reject the FFAW’s offer, leading the negotiating lead to conduct negotiations on their own. The only explanation given by ASP was that their members were “hot-headed” with respect to this negotiation and that members were “tired,” as this was a long season of many negotiations and an unusually large number of hearings before the Panel.

36. In the Panel’s experience, many negotiations take place when parties are tired and where some parties can be described as “hot headed” and otherwise. The issue of price and of conditions of sale of Herring has been a live one since at least the 2019 hearing, where the parties before the Panel undertook to try to work out a price table concerning conditions of sale at that time. The Panel proposed three different pricing models, depending on the circumstances of that season. Ultimately, no pricing table was worked out. The parties had a price of $0.15 landed at the plant and $0.12 trucked.

37. The Panel strongly encourages the parties, through their bargaining groups, to work together to develop a pricing table that deals with the unique challenges of the Herring fishery.

FFAW's price proposal

38. This part of the analysis may be considered moot, given the Panel's determination above that FFAW's offer was not an acceptable offer for the Panel to consider. Nevertheless, the panel felt that a discussion of the proposal may be of assistance.

39. Even if FFAW's proposed price had not included a carve-out for Placentia Bay and had therefore been a price suggestion that was applicable to all members of the bargaining unit, the FFAW's price submission and the basis for it was found to be unacceptable.

40. There was no significant market information indicating a significant increase in the price of Herring for 2026. Bait prices have remained consistent at $0.85 for Herring, and the Panel notes that while FFAW provided evidence of prices paid by harvesters for Redfish bait, they provided no evidence of the price paid for Herring bait being anything other than the stated $0.85 / lb. There was no indication that harvesters were being sold Herring as bait at a significantly increased price in the following fish season, or that those prices had changed year over year. In the case of the 2026 price setting, FFAW was the party seeking a significant change in the status quo on a particular species.

41. A party seeking significant change in the status quo on a particular species should present compelling evidence or arguments in support of this significant change. The arguments put forward by FFAW were not compelling with respect to their arguments for a price increase from the $0.20 / lb average to $0.27 / lb.

42. FFAW argued that Herring is used for bait in the Lobster fishery and other fisheries in NL, such as Turbot and Whelk, and was sold to harvesters for 85 cents / lb. this year. Both FFAW and ASP made arguments that the price of Herring bait was $0.85 in 2026. The Panel accepts this as an agreed fact. There was no estimate of the volume of Herring that is used for bait, but FFAW argued that it was "substantial." Of the 43.5 million pounds that was landed by the inshore fleet (56 million pounds landed in total) in 2025, FFAW highlighted that less than 7.2 million pounds was exported for food. Even taking into account the percentage of yield, FFAW argued that we know anecdotally that some amount of Herring is shipped to other provinces for bait. FFAW argued that the only information it has access to is the price of Herring bait charged to its members, as well as the export data for human consumption (which represents less than 17% of inshore landings). For these reasons, their offer was based entirely on bait prices.

43. Because this was the first year in many for a decision on Herring pricing, FFAW argued that it is challenging to get a benchmark price from 2025 and therefore,

they looked to the 2026 Redfish fishery as a comparison for setting the price of Herring. FFAW provided harvesters' receipts for Redfish bait purchases in 2026. Harvesters were charged $0.95 / lb. to $1.00 / lb. by processors for Redfish bait. Anecdotally, FFAW says harvesters advised that they all paid between $0.90 and $1 / lb. for Redfish bait in 2026.

44. The Panel set $0.30 / lb. as the raw material price for Redfish for the 2026/27 season. Using an average Redfish bait price of $0.95 / lb. and based on the Panel's Redfish decision of $0.30 / lb. minimum RMP, FFAW calculated a "share to harvesters" for Redfish as 32%. FFAW then took that same "percent share" and applied it to Herring, where harvesters paid $0.85 / lb. for Herring bait in 2025. 32% of $0.85 is $0.27 / lb. Therefore, FFAW offered $0.27 / lb. as the minimum price for herring for 2026.

45. FFAW admitted that they "do not believe that 32% is necessarily the right share to harvesters" but said that it was the "best offer" they could calculate, based on the information available to them. The Panel did not accept this as a realistic and reliable price methodology for calculating a raw material price for Herring.

46. Therefore, even if the FFAW's price offer had been made without the proposed carve-out for Placentia Bay, the Panel was not satisfied that the FFAW had provided sufficient evidence or argument in support of such a material change in the average RMP of Herring.

<u>Decision</u>

47. The parties have submitted their final offers on the price to be paid for Herring in Newfoundland and Labrador for the 2026-27 season. The Panel has decided to accept ASP's proposal of a minimum price and conditions of sale for Herring for 2026 as follows:

$0.20/lb., landed to the plant

- All herring must be fresh and wholesome.
- Herring must be of legal size as per DFO regulation and must not have red feed in the belly cavity beyond 10 percent.
- Herring with broken bellies are not acceptable.
- All herring delivered must not exceed 1 degree Celsius in temperature.
- Herring must be a minimum of 8% fat and not more than 20% fat.
- Herring must be transported in tight containers, containing no more than 60% fish, and 40% water and ice.

Any herring purchased which does not meet the above specification, the price will be determined between buyer and seller.

Dated at St. John's this 26th day of August 2026.

Sheilagh M. Murphy K. C. Chairperson	Earle McCurdy Member	Art Dodd Member