

**STANDING FISH PRICE-SETTING PANEL**

**RE-CONSIDERATION DECISION**

**SNOW CRAB FISHERY - 2021**

In the matter of the Fishing Industry Collective Bargaining Act, hereinafter referred to as the “Act”, and an application by the Fish, Food and Allied Workers’ Union requesting that, pursuant to Section 19.14 of the Act, the Standing Fish Price-Setting Panel reconsider its decision of March 31<sup>st</sup>, 2021, setting price and conditions of sale for the species Snow Crab.

The Panel received an application from the Fish, Food and Allied Workers’ Union, hereinafter referred to as the “FFAW”, dated April 21, 2021, requesting that the Panel reconsider its decision dated March 31, 2021, concerning the price and conditions of sale for Snow Crab in 2021.

The Panel reviewed the FFAW’s rationale for requesting a reconsideration and conducted a preliminary review of the market information available on short notice. The parties were advised by the Panel on April 22, 2021, that it had reviewed the market information available on short notice, specifically Urner Barry pricing (i.e., Russian Crab), Urner Barry commentaries and the April 21, 2021 Sackton Crab Market Update. Based upon the review, the Panel concluded that the Crab market is significantly higher than considered at the time of the initial Crab hearing. Therefore, the Panel was prepared to reconsider its 2021 Crab pricing decision. The parties were requested to meet, with the assistance of the Facilitator, to exchange perspectives on the market and positions on pricing going forward in 2021.

In the event the parties were unable to agree on a common position through negotiation, a Crab hearing was scheduled to take place at 9:30 a.m. on Saturday, April 24<sup>th</sup>, 2021, via Microsoft Teams virtual meeting capabilities. The Panel, pursuant to Section 19.14(1) of the Act also requested that the Association of Seafood Producers, hereinafter referred to as the “ASP” and the FFAW, the parties to the decision of the Panel on March 31<sup>st</sup>, 2021, provide their price positions for Final Offer Selection by 10:00 p.m. on Friday, April 23<sup>rd</sup>, 2021.

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 deciding 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 9:30 a.m. on Saturday, April 24<sup>th</sup>, 2021. Appearing before the Panel were representatives of the parties who supported their written submissions (copies attached) in argument and rebuttal. The Panel and parties had the benefit of two reports compiled by the Department of Fisheries, Forestry and Agriculture, including Urner Barry price reports, and the Seafood Datasearch (Sackton) April 21, 2021 Crab Market Update Report.

At the hearing, both parties agreed that markets are at unprecedented highs warranting a significant adjustment of the price to harvesters. However, they differ on the level and sustainability of market prices over the coming weeks. The FFAW is seeking \$7.60/lb. This is an increase of \$1.77/lb. (39.5%) from its offer of March 25, 2021, which was accepted by the Panel. The ASP is offering \$6.82/lb. This is an increase of \$1.09/lb. which represents an increase of \$1.57 (30%) from its offer on March 25, 2021. While both sides are offering a significant price increase from their original offers, there remains a significant gap in final offers of .78¢ (approximately 10% of the FFAW offer).

Market updates obtained by the Department of Fisheries, Forestry and Agriculture over the past two weeks from Seafood Data Search (Sackton) and Urner Barry indicate there has been significant price improvement in Crab markets. Markets are up from the unprecedented winter prices that preceded the spring fisheries. The market updates note that these prices are based upon limited sales activity in a market with strong demand and tight inventories.

In respect of general economic conditions Sackton states that:

*"Unless there is a very unexpected worsening of the pandemic that would make vaccines ineffective, there is widespread consensus that in 2021 we will see heavy consumer spending with the lifting of the pandemic restrictions. This is lifting prices on many commodities including most shellfish. So, for 2021, we will likely see an increase in price for the new season Snow Crab compared to the price in January of this year, similar to 2018's supply contraction. We cannot yet predict whether the higher price will be carried through to January 2022 because we don't have enough market information yet".*

Sackton believes “this years’ wholesale price level for Snow Crab will be determined by strong demand in a healthy economic environment which means significant price increases over what customers paid in 2020”.

In respect of market prices Sackton reports “... they have been able to clear their products at the current asking price of \$12.25 for 5-8 sections. With the tight supply, quotations are widely variable, and no general price has been established. Urner Barry also reports quotes between \$12.25 and \$12.50, but on not enough trade volume to establish a quoted price”. In respect of Alaska, he says “Alaskan Snow Crab is now widely available for foodservice street business, and is moving at the same price levels, i.e., over \$12.00 for 5-8’s”.

In respect of Japan, he states “Sales to Japanese for brine bulk have been made at \$11.20 and \$11.25 FOB plant for 4 ups and 5-8 sections”.

On April 20, 2021 Urner Barry reported “The Canadian Snow Crab market remains unquoted. 5-8’s out of the Gulf look to be trading between 12.25-12.50”. Two days later on April 22, 2021 they reported that for Canadian Snow Crab, “Quotations have been established for 5-8’s out of the Gulf. The balance of the market out of the Gulf and all sizes in Newfoundland remain unquoted. 8-ups out of the Gulf look to be trading between 17.20-17.40. As trading continues and more product reaches the U.S. market, quotations will be established. Overall supplies currently in the market are building but are barely adequate amid an active demand”.

Sackton discusses the early indicators and market uncertainty:

*“Snow Crab is in between these two poles. So far supplies have remained tight, even as new season production began in Nova Scotia and the Gulf. The reason has been that there have been weather related holds on fishing, giving sellers more time to maintain their price, and buyers less opportunity to wait for more supply. This dynamic will be changing as the production volume in Newfoundland picks up with better weather”.*

He also says:

*“.....we expect that the overall average wholesale price levels for Snow Crab will be much stronger than they were in 2020, but because volumes have been constrained it is not possible to know whether the current spot price level will continue without changing as volume picks up in the next ten days. Pricing continues to be very dependent on how much volume the market thinks is still available. If the Gulf plants were to finish Crab earlier than expected, that could*

*provide a boost to NL producers as the supply situation would be more constrained”.*

In terms of uncertainty in the U.S. foodservice market Sackton notes: “*Because the foodservice market is in a reopening phase, we don’t know how much depth there is to this demand*”. He goes on to state: “*... the fact that buying is dominated by foodservice at this point means that we are at a higher risk of seeing price volatility*”.

In its submission, the FFAW contended that Snow Crab market activity in the past three weeks has demonstrated a rising and strengthened market in relation to that considered by the parties and the Panel at that time of its March 31<sup>st</sup> decision. They maintain that the market information available at this point in the season is much more complete now that significant quantities of spring Crab from Canada and Alaska have entered the market.

The FFAW contend that the market information points to increasing stability and strong fundamentals. The key markets in Japan and the U.S. are reporting unprecedented high prices which reflects exceptional demand for Snow Crab. They feel that Japanese contract prices (\$11.20 to \$11.40 U.S.) reflects a floor price which is traditionally lower than U.S. prices (is \$0.25 lower just based upon plant gate pricing and lower shipping costs). Pricing in the U.S. markets is north of \$12.00 U.S. for 5-8's. This is up from the pricing level of \$9.65 U.S. at the time of the initial hearing. In Canadian dollar terms this represents an increase in market prices of over \$2.50/lb. Prices on larger sizes have risen even more and are up by \$3.50/lb. They feel processors have the evidence on actual settlements by Newfoundland processors but have not produced it since it shows high market pricing.

The FFAW also focused a significant effort on comparing the situation in Newfoundland versus other areas of Atlantic Canada. They point to a historically strong correlation between Urner Barry pricing for Gulf and Newfoundland Crab as evidence they are comparable products in the marketplace. They also presented written testimonials from buyers and processors in other Provinces which they claim demonstrate that fish harvesters are being paid wharf prices in the \$7.50 to \$8.00 range. They also maintain that Crab quotas in the Gulf have been sold “in-the-water” for as high as \$7.40/lb.

The FFAW maintains that harvesters deserve an increase in share with such a strong market. The FFAW contend it doesn’t want to be caught in the same situation as last year where harvesters absorbed all the market risks and processors made a significant windfall in a rising market. Like last year, after this hearing, harvesters will have no further recourse on pricing through the Panel. They maintain that processors demonstrated last year and, thus far in 2021, they are not willing to pay any meaningful bonuses above the minimum price set by the Panel.

At the hearing, the ASP indicated they had no objection to a reconsideration of price and agreed that Crab markets have exceeded projections that were available at the time of the initial hearing in March. However, they disagree with the FFAW in terms of overall market strength and stability. They maintain the market remains volatile and, as was the case three weeks ago, is impossible to predict. The ASP claim that many Newfoundland fish harvesters have, with the encouragement of the FFAW, been holding off on commencing fishing. This means there will be a surge in landings starting next week which will significantly increase the amount of product entering markets. They maintain that the market prices reported to date reflect low, sporadic volumes from Canadian producers leading to spot pricing which inflates market strength. They reject any suggestion that the processors should share actual contract pricing information to help delineate markets. They feel price setting should be based upon third party information and there is no onus on processors to produce other evidence.

The ASP contend that comparisons between Newfoundland wharf prices and those in the Maritimes are misrepresented. They point to studies in the past that explain why Newfoundland prices to harvesters are lower than in the other Provinces. They maintain that the Newfoundland Crab is of lower value (size, barnacles, less RSW vessels, gas freezing, etc.). As well, Newfoundland processors are the only buyers in Atlantic Canada to pay workers compensation and EI benefits on top of wharf prices. They feel that the parties and Panel should not be setting prices in Newfoundland based upon hearsay and potentially biased evidence related to pricing in the other Provinces.

The ASP also claim that with the significant Crab quota increase in 2021 (29%), and the record prices, the landed value of Crab in 2021 will approach \$600 million. This will present a huge cashflow and inventory financing challenge for Newfoundland processors which will be compounded if banks perceive tight margins and high uncertainty. This will compound the risk of market volatility that must be borne by processors. They also feel that at the offer put forward by the FFAW, sharing will shift significantly in favor of harvesters when compared to average sharing over the past number of years.

Under the Final Offer Selection, the Panel only has the choice of picking one of the minimum price offers presented by the parties. The decision is extremely challenging given the unprecedented and uncharted territory for Crab markets since the beginning of the Covid-19 pandemic. The Panel is no better equipped than the parties and market analysts to forecast where the market will go in the next three months (the period during which most of the Newfoundland Crab will be landed, processed, and sold). No one can predict whether the steep upward trajectory will continue or whether it will stall or decline. As in the previous two Crab decisions, it comes down to an assessment of risk and sharing.

Based upon the market reports available and the significantly higher offers from both parties it appears the market is exceptionally strong and continues on an upward trajectory. Last year all parties felt the pandemic represented a serious downside risk. What we have seen since June 2020 is that the opposite is true. Demand for Crab products and market prices have continued to grow. In the past month, this steep upward trajectory has continued unabated. In our March 31<sup>st</sup> initial decision, the Panel enumerated the major market factors (upside and downside risks) influencing its decision to accept the higher offer of the FFAW. These are outlined in our earlier report. At this point, the downside risks have not materialized and only the positive factors seem to be in play. This could change as additional product enters the market, but no one can predict it with any certainty. There has already been significant market activity out of Alaska and the Gulf. As well, the fishing season in 2021 will be longer than last year which may help offset the 2021 quota increase and mitigate supply surges.

The FFAW offer appears to be within the band, albeit the upper end, of the band of pricing in the other Provinces. The Panel has, in the past, recognized there is an argument for some differential in wharf prices between Newfoundland and the other Atlantic provinces. However, in this market and at this level of pricing, it is probably a smaller percentage.

It does appear that in the competitive port market environment in these Provinces, prices to harvesters have been much higher in recent weeks than in Newfoundland (in the range of \$7.00 to \$8.00/lb.). This echoes the strong market assessment available to the Panel and probably reflects some level of market confidence by the industry in these Provinces. ASP has not brought forward any evidence to quantify wharf prices in these Provinces. Similarly, ASP has not provided any new marketing or sales information held by their members which would inform the market analysis.

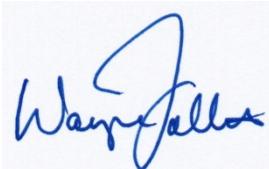
While parties agree that markets are strong, there are divergent views as to market trajectory and risks. The uncertainty in Crab markets has not gone away. A formula approach to dealing with the uncertainty would have been helpful but is not on the table. The Panel recognizes that whichever decision it takes, there is significant shift in sharing in one or the others favor. Any bonus payments, or lack thereof in 2021, will also affect sharing percentages and is within the control of processors. The right price is likely somewhere in between the two offers. There is also an opportunity remaining for ASP to seek a reconsideration if pricing trends should change.

Considering the unprecedented high market demand, the steep upward trajectory in Crab prices and after a thorough review of the market reports and submissions of the parties, it is the decision of the Panel to accept the final offer of the FFAW. The prices for the species Crab will be:

- \$7.60/lb. – 4" carapace and up.
- \$7.30/lb. – for legal size under 4".

These prices will form a collective agreement or part of a collective agreement binding on all processors that process the species Snow Crab.

Dated the 25<sup>th</sup> day of April 2021.



Wayne Follett



Bill Carter



Brendan Condon