STANDING FISH PRICE-SETTING PANEL

LOBSTER FISHERY 2021

The Standing Fish Price-Setting Panel, hereinafter referred to as "the Panel", issued its Schedule of Hearings for 2021, on February 25, 2021. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the "*Act*", the Panel set Thursday, April 8, 2021, as the date by which collective agreement(s) binding on all processors in the province that process Lobster must be in effect.

The Panel also noted, at that time, that it had been advised by the Department of Fisheries, Forestry and Agriculture that the Association of Seafood Producers, hereinafter referred to as "ASP", represented processors that process the majority percentage of the species Lobster. As a result, under Section 19(11) of the Act, should a hearing be required for Lobster, the parties appearing before the Panel would be the Fish, Food and Allied Workers' Union, hereinafter referred to as 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 Lobster was scheduled to take place at 10:00 a.m. on Friday, April 9, 2021. The Panel convened its hearing for the species Lobster at 10:00 a.m. on Friday, April 9, 2021, 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.

The parties and the Panel had the benefit of Urner Barry price reports as well as information provided by the Department of Fisheries, Forestry and Agriculture, including data on NL landings, production and export statistics and recent published articles related to Lobster markets.

Landings information shows that Newfoundland Lobster landings and landed value has shown dramatic growth in recent years. Landings peaked in 2020 at 4,915 tonnes (10.8 million pounds) which is more than double the landings in 2014 (up 230%). By 2019, landed value reached $62M, an increase of 330% over 2014. However, in 2020 landed value declined to $48.2M because of depressed prices resulting from the emerging Covid-19 pandemic.

The Urner Barry pricing information shows that market prices during the Newfoundland fishery peaked in 2017 and remained high until 2019. Factoring in the exchange rate, market prices were in the range of $9 to $10 Canadian. However, in 2020 there was a significant decline in market prices. The Urner Barry index indicates that during the 2020 fishery, market returns declined by approximately 25% from 2019 levels. This is despite some strengthening of the USD during this period. DFO data shows that average annual landed prices to fish harvesters also declined to $4.46/lb. in 2020. This is down from $6.03 in 2019 and a record high of $6.95 in 2017.

There is a more positive outlook for 2021. The Urner Barry price index recovered in the last half of 2020 to the high levels seen in the 2017 to 2019 period. U.S. prices reported in February and March 2021 are the highest in the time series for these months (albeit on low volumes and inventory). Opening prices in 2021 will likely be high. If they follow historical trends, they will decline during the first six weeks of the fishery and begin an upward trend as supply declines toward the end of the fishing season. There is no disagreement between the parties that the market is likely to be strong in 2021.

At the hearing, ASP put forward its position that changes were required to the price to market formula that has been in place since 2011. The ASP discussed the history of the formula and the many failed attempts to change the formula and to move to a receipts-based index. It indicated it was abandoning attempts to move to a receipts-based model but feels that the existing formula needs to be adjusted to ensure the Urner Barry index better correlates to the market. To achieve this, ASP is proposing to move to a methodology whereby the Urner Barry price quotes of Tuesday and Thursday in the same week will be used to establish the harvesters' price for Lobsters landed in the preceding week. Last year, Tuesday only prices were used. During the prior eight years, Thursday/Tuesday price quotes were used. ASP's contention is that the Tuesday/Thursday approach is more in line with the reality of the shipping pattern for Lobster and their timing to market.

FFAW put forward a position that the formula's fifteen (15) cent reduction from Urner Barry pricing, used to calculate the harvesters' price, be reduced to eleven (11) cents. As well, they maintain that the longstanding methodology of using Thursday and Tuesday prices in the formula should be maintained. The FFAW contend that the current harvesters' share of market returns is inadequate when compared to the increasing export value for Lobster and with harvester prices being paid elsewhere in Atlantic Canada. The FFAW maintained that the concession in 2020 to use only Tuesday prices was a one-year special agreement between the parties. This was agreed to facilitate a fishery in the face of the emerging Covid-19 pandemic. They believe processors made significant gains in 2020 as a result. Given that 2021 is expected to be a year of high market prices, the industry should revert to the longstanding pricing formula. They also maintain that the harvesters' share has additionally been eroded over the years through two previous significant concessions. One involved instituting the 15¢ deduction from Urner Barry prices while the other was the Mother's Day provision to drop Thursday from the pricing index for that week.

The FFAW contends that the price to market formula was never intended to track processors' sales but to track changes in the market and to adjust the price to harvesters accordingly. Lobster is held and sold at different times of the year and prices are often negotiated independent of shipping times. They point to export statistics which show that a significant portion of Newfoundland Lobster is exported after the fishery is closed and prices to harvesters are set. The FFAW feel that the ASP proposed changes are solely intended to increase the processors' share.

Overall, the parties are not far apart. They both feel that markets and prices in 2021 should be at historically high levels. They both propose to maintain the price to market formula based upon the Urner Barry index. The Panel is of the view that given the positive market outlook, under either offer, both the harvesters and processors will achieve high returns. The respective final offers would serve to enhance one or the others' share of the market returns, albeit not dramatically.

The FFAW's proposed 4¢ adjustment to the 15¢ reduction is straightforward to quantify. At current exchange rates and market pricing levels it will amount to approximately 4.5¢ extra per pound. The result will be a modest increase in the overall harvesters' share of market returns of less than 1%. The impact of the ASP proposed change to the Tuesday and Thursday pricing is more uncertain and will depend upon the trajectory of prices during the season. ASP has not offered any estimate. The FFAW performed a retrospective analysis of pricing in 2017 and 2018 which showed that it would have resulted in a reduction in price of 19¢ in 2017 and 6.6¢ in 2018. The ASP reported that the same analysis in 2019 would indicate a reduction of 4.8¢ in that year. The magnitude of the reduction in 2021 is uncertain and will depend upon the rate of decline of opening prices and the subsequent recovery in the latter part of the season. Given the high opening prices expected at the start of the season, it is likely the reduction will be more in line with the 2017 and 2018 levels (7 to 19¢). This would result in an increase in processors' share in the range of 1.0% to 3.0%.

In evaluating the offers the Panel focused on two key considerations. The first being the intent and functionality of the price to market formula while utilizing the Urner Barry index. The second being the appropriate sharing of market returns between the parties.

In terms of the functioning of the formula, ASP points out there is a lag between the time Lobsters are purchased from fish harvesters and when they are shipped and received in the marketplace.

This appears to be the case. Lobsters are usually held for a few days to purge their digestive system prior to being shipped. They are then transported to market and often shipped via commercial ferry to the mainland. The ASP further maintain this results in a time lag in terms of market pricing such that the Tuesday and Thursday Urner Barry prices are more reflective of the market than the Thursday and Tuesday prices in setting prices to harvesters for Lobsters landed in the previous week.

The underlining assertion is that Lobsters are priced when they arrive at the market destination. While this may often be the case, the ASP has not produced any market receipts or invoice tracking information to substantiate the percentage of Lobsters that are priced this way. There are likely instances where market contracts and pricing are established ahead of shipments and based upon earlier market conditions. The FFAW also points out that a substantial portion of the landings are exported after the Lobster fishery is closed, and fish harvesters have been paid. The Panel notes that these shipments to the market would normally be at a time when prices are rising since the supply from the peak fishery has ended. No evidence is provided by ASP to quantify the correlation between the time of product movements and actual pricing.

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. Both parties have made the case the Urner Barry model is only a proxy for actual market outcomes. Processors have repeatedly claimed that actual receipted market prices are lower than indicated by the Urner Barry index. The Thursday/Tuesday methodology has also been used for the past 9 years (except for 2020) in determining shares although the correlation of actual pricing and Urner Barry pricing has always been questionable. The 15¢ USD reduction in Urner Barry was a negotiated attempt to compensate for the gap between Urner Barry and actual market pricing. Again, over the past 9 years, with the increase in market prices and change in the USD/CAN exchange it is unlikely the 15¢ deduction has accurately tracked the price gap. For instance, 15¢ on higher prices in recent years is a lesser percentage reduction than when it was first implemented.

As a result of the negotiations and arbitrations over the past 9 years, weekly prices have been based upon a proxy model that attempts to broadly track market strength. This has resulted in the sharing of market returns depending upon market strength each year. Given the progressive percentage calculations in the formula, the harvesters' percentage share rises and falls with the market. Given the formula's calculations, the harvesters' overall share of the Urner Barry price index would normally be in the range of 65% to 70%, depending upon market pricing each year. ASP's claim, based upon the 2017/18 Quinlan and Taylor study, is that actual receipted prices are much lower than the index pricing. If that is the case, the percentage share accruing to harvesters would be significantly higher. However, the Quinlan and Taylor study methodology continues to be subject to much debate. The Panel's perspective is detailed in its 2018 decision report.

To change only one element of the model is to adjust the sharing between the parties. The ASP has not offered any calculations or suggestions as to the current sharing percentages. They have also not quantified the impact of their proposed change to Tuesday/Thursday pricing. The FFAW presented several analyses to support their assertion that, with the growth in the value of the fishery, and in exports of whole and processed Lobster, the harvesters' share has not been adequate. However, the ASP points to the significant discrepancy in Provincial production statistics and the Federal export statistics as evidence that their export values are overstated.

The FFAW also presented three years of weekly data comparing Newfoundland Lobster prices to those paid to harvesters in the various Lobster fishing areas (LFA's) in the other Atlantic Provinces. The relative pricing varies between LFA and by week. In some weeks, Newfoundland prices are higher than those in other areas. In other weeks, they are lower. The Panel has pointed out in previous decisions that there will be 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. However, based upon the data presented, it appears that overall prices to harvesters in other jurisdictions were somewhat higher than in Newfoundland. In the absence of information from processors, it is difficult to fully evaluate the relevance of this data since some of this price differential is likely accounted for by increased shipping and collection costs borne by Newfoundland processors. Newfoundland processors are also the only buyers in Atlantic Canada to pay workers compensation and EI benefits on top of wharf prices.

At a minimum, there is no evidence that Newfoundland processors are paying more than their counterparts in other Provinces. Similarly, there is no compelling argument that Newfoundland harvesters are being materially short changed. As well, the ASP has not provided evidence to fully assess the correlation between the timing of product movements and actual pricing. All agree that the current formula is a proxy instrument to establish sharing based upon the market level at the time. This makes it difficult for the Panel to conclude that it must be adjusted at this time. However, the Panel must choose one of the offers.

Considering the longstanding use of the price to market formula and the information available on sharing, and after a thorough review of the market and production information 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 Lobster will be determined by the established price to market formula and schedule with the exception that weekly prices will be based upon the average of Thursday-Tuesday Urner Barry prices minus 11¢ USD.

These prices will form a collective agreement or part of a collective agreement binding on all processors that purchase the species Lobster.

Dated the 14th day of April 2021.

Wayne Follett

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