

## **STANDING FISH PRICE-SETTING PANEL**

### **SNOW CRAB FISHERY - 2025**

#### **Procedural history**

1. The Standing Fish Price-Setting Panel, hereinafter referred to as the "Panel", met with representatives of the Department of Fisheries, Forestry, and Agriculture ("FFA"), the Fish Food and Allied Workers ("FFAW" or "the union") and members of the Association of Seafood Producers ("ASP" or "producers") on January 23, 2025 to consult on dates for bargaining and to set hearing dates for setting the price of various fish species, including crab, in the event that the parties were unable to agree on price and conditions of sale for various species of fish.
2. Following that consultation with the parties, the panel issued its Schedule of Hearings for 2025. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the "Act", and with the input of the parties, the Panel set March 5, 2025, as the date by which collective agreement(s) binding on all processors in the province that process Snow Crab ("Crab") must be in effect or a hearing would take before the Panel to determine the price and conditions of sale of Crab.
3. The Panel also noted that it had been advised by FFA that ASP represented processors processing the majority percentage of the species Snow Crab. As a result, under Section 19(11) of the *Act*, should a hearing be required for Snow Crab, the parties appearing before the Panel would be FFAW and ASP.
4. On February 28, 2025, the parties (ASP and FFAW) jointly requested that the hearing for Crab be moved from March 5 to March 20, 2025. The Board granted the request.
5. On March 14, 2025 the parties jointly requested to move the hearing date for Crab from March 20 to March 23, 2025. The Board granted the request.

6. On March 28, 2025, the Minister cancelled the March 29, 2025 hearing date at the request of FFAW and moved the Minister's date (the date by which the Minister had to set the price and conditions of sale of Crab, based on a Panel decision) to April 13, 2025. This had the effect that the panel had to provide the Minister with its decision no later than April 10, 2025. The Minister also set the hearing date to April 7, 2025.
7. On March 31, 2025 ASP requested that the panel move the hearing date to April 6<sup>th</sup> from April 7<sup>th</sup>. On April 4, 2025 the FFAW also requested that the panel conduct the hearing on April 6<sup>th</sup>. Based on the parties' consent to the April 6<sup>th</sup> hearing date, the Panel moved the potential hearing date to April 6, 2025.
8. The Parties were unable to successfully negotiate the terms of the collective agreement for the price of sale of Crab for the 2025 season. The parties agreed on the conditions of sale of Crab, leaving the price to be the sole issue for the Panel's determination. The panel conducted the hearing into the price of Crab on Sunday, April 6, 2025.
9. The Panel is required to provide the Minister with its decision as to the price and conditions of sale of Crab no later than April 10, 2025.

### **Procedural change**

10. Until March 26, 2024, Section 19.11(1) of the *Act*, and regulations made pursuant thereto required 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. 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.
11. On March 26, 2024, the Government of Newfoundland and Labrador filed Regulation 15/24 *Amendment to the Fishing Industry Collective Bargaining Regulations, 2022* [The "new regulations"].
12. The new regulations amended Section 4. (3) to include, among other things, the following:

4. (4) Notwithstanding subsections (1) and (2), for the purpose of Subsection 19.11 (1) of the *Act*, in making a decision

**(a) on the price for crab, each party shall submit a proposed formula to be used to determine the price for crab and the panel shall select one party's proposal; and**

**(b) on the conditions of sale for crab, the panel shall proceed by way of arbitration.**

13. On Saturday, April 5, 2025, in accordance with the Panel's Rules and Procedures, the Parties provided their final offers with respect to the formula they proposed to be used to determine the price for crab, and their submissions and final offers on the conditions of sale for crab.
14. On Sunday, April 6, 2025 at 10:00 the Panel convened the hearing via online videoconferencing. Appearing before the Panel were the FFAW and ASP. The parties, having previously attended exchanged their final offer submissions, and filed copies with the Panel, (copies attached) supported their submissions in main argument and rebuttal.

### **Information before the Panel**

15. In addition to the parties' written submissions, the parties and the Panel had the benefit of a February 25, 2025 market report prepared by John Sackton Seafood Datasearch, hereinafter referred to as "Sackton," as well as information provided by the Newfoundland and Labrador, Department of Fisheries, Forestry and Agriculture, including Atlantic Canada crab exports: 2020-24 (Dec); Japan imports: 2020-24; USA imports: 2020-24; Snow crab production: 2019-24; MEROS market update (Japan); Les Hodges blog updates: December 2024-February 2025; Urner Barry crab market insight report (February 2025); various news reports on market conditions, tariffs, fisheries.

16. The parties and the Panel also had the benefit of a report produced by the Fish Price-Setting Strategic Review Team (the "Review Team"), dated October 31, 2023. The report was authored by Gabe Gregory, Bill Broderick, and chair Glenn Blackwood (hereinafter, the "Blackwood Report"). The Review Team was provided with terms of reference by the Minister of Environment and Climate Change Minister Responsible for Labour on September 6, 2023 following significant upheaval in the crab industry in Newfoundland and Labrador in the 2023 season. A key recommendation of the report was that "formula-based pricing be adopted for all species where analysis determines that it is a more objective, independent and practical method of establishing pricing for a given species." It further stated, "such is the case for snow crab which should be undertaken immediately up to prior to the start of the 2024 season."
17. The Blackwood Report put forward a proposed formula for potential use by the parties. The formula was based on many factors, one of which was the historical UB 5-8 oz sale prices for crab, converted for applicability in this province. The proposed formula suggested that the parties enter into a sharing arrangement where the harvesters would be paid 80% of the value of their catch upon landing and, at the end of the season, there would be a settlement of the remaining funds, based on the average of the UB 5-8 oz price that actually occurred throughout the season. In that way, there would be no potential overpayment to harvesters that they would later have to repay, it would ensure that all harvesters received the same dollar amount per pound of crab landed regardless of when in the season they landed their catch (thereby potentially solving the problem of all harvesters fishing at the same time during period in the season when prices were slightly higher, thereby putting strain on processing), and it would share the risk and reward of the season between processors and harvesters. The Blackwood Report and its proposed formula were discussed in detail in the Panel's reasons for decision for the 2024 Crab season are not restated here. All parties have had access to that Report and have referred to it, to varying degrees, in their 2025 submissions.

## **Overview for the 2025 season**

18. The 2025 Crab Market Review report prepared by John Sackton of Seafood Dataresearch ("Sackton") noted that

For the entire history of the snow crab fishery in Newfoundland, the US has been the primary buyer. Since 2012, the US has on average purchased 62% of all Canadian seafood exports, and in 2025 this percentage rose to 65%. For snow crab, the figure is higher. The average during this period was 76%, but the trend has been to sell a greater and greater portion to the US. There were never significant tariffs on these sales except when precisely targeted tariffs were imposed, such as on Canadian salt fish in the 1980s. These tariffs were specific to a single product and came from an orderly process under US antidumping trade laws. Trump has upended this relationship. (Sackton, at p.4)

19. Sackton's report was written under the spectre of the US President's threat to impose across-the-board-tariffs against Canada, at a rate of 25%. These tariffs have not yet materialized, but all present at the hearing were aware that US tariffs and threatened tariffs continued to dominate global news headlines.
20. Sackton highlighted that "the mere threat of such tariffs has already upended the US snow crab market" and explained that buyers scrambling to purchase crab in advance of the implementation of tariffs pushed the price of crab up 12.3% in November and December, versus the twenty-year historical average price increase of 0.96% during the same months.
21. While at the time of the hearing the 25% across-the-board tariffs had not yet been implemented, both parties acknowledged that the threat of tariffs was affecting the price of crab. Sackton's report this year aimed to provide NL crab harvesters and processors with a new forecasting and economic model to understand possible tariff impacts on pricing, and what strategic options might exist if high tariffs were imposed. The research, with assistance from AI, provided economic modelling to do that. Sackton's report discussed how the models were built, then applied the model to historic prices, and then provided an analysis of possible tariff impact.

22. Sackton's report provided retail data, as well as analysis of the current US crab market and international markets, and then provided a market outlook and strategies for 2025.
23. Sackton considered three scenarios: a continuation of trends from 2024, disruption but an agreement that delays any tariff on crab, and the imposition of a 25% tariff in March or April 2025.
24. Sackton noted that it is "extremely likely" that buyers were responding to the threat of tariffs by buying as much crab as they could before the imposition of the tariffs. He predicted that if the tariff threat recedes, that behaviour will stop and we will **"expect a year of moderate crab sales in a relatively healthy market with no excess inventory coming into the new season."** (Sackton, p. 67-68, emphasis added).
25. Based on the indications of lower volume from New Brunswick due to anticipated quota cuts, Sackton noted that in a "normal" market we could expect the reduction in quota to support higher prices. However, because the current run up in prices is being driven by tariff fears, he cautions that we cannot take that as a valid signal of demand.
26. In his second scenario, Sackton considered that the disruption to markets is unchanged, with economic uncertainty and no final decision on tariffs. The result, he posited, is that buyers would remain uncertain of the markets and will have "great difficulty" forecasting sales and committing to contracts (p. 70). He expressed concern that volume is decreasing and consumer price sensitivity is increasing and therefore "in this climate buyers may demand a risk discount to purchase crab." If that situation develops, then one outcome could be a standoff between producers and major retail buyers. This could lead to heavy unsold production and a potential to reset at a lower price to convince buyers to commit. In that scenario, he predicted that prices are "more likely to reflect the behaviour of 2023-24" when price adjustments of that year between February and May represented a 30% decline. Sackton offered strategies for processors, including locking in the price in Japanese markets in order to get US buyers to commit.

27. Finally, Sackton viewed the tariff scenario as the most difficult one to forecast and said "it is difficult to understand the impact of the tariff in real terms." He noted that the crab market recovery in 2023 and 2024 has shown strong gross margins, and this suggests that the industry as a whole is in a relatively good position to deal with a potential tariff. Overall, his analysis predicts a real-world impact of a 25% tariff would likely result in a smaller than 25% price increase. In the best case, he sees the tariffs being most likely absorbed by the market through a weakened Canadian dollar, a decrease in overall quota volume, and higher sales to Asia, but he cautions that if buyers act in a significantly more price-sensitive manner than they have historically, then the effects could be devastating on the crab market.
28. Overall, Sackton says that tariffs may not be a critical blow to the Newfoundland crab industry but highlighted circumstances where it could be "dangerous and devastating." Overall, he predicted an increase in price range from \$7.70-\$8.05 average wholesale prices per pound of 5-8 oz pieces. He cautioned that the 21% price jump from \$7.46 - \$8.99 /lb was ten times the historical average in a moderately strong market following President Trump's election. In a normal market, he would expect wholesale trading to be between \$8.00 - \$9.00 and a moderate rise in prices following the seasonal dip in prices a few weeks into the season. He considers this to be his "baseline forecast" with the tariff issue being settled by the time the season opens.
29. Urner Barry projections indicate that the price of NL 5-8 oz snow crab is expected to drop to approximately \$8.50 USD by Q 2 (June 2025) but with an overall average price between \$8.75 and \$9.00 USD, then rise to approximately \$10.50 USD in Q 3 (September 2025) before levelling out between \$9.00 - \$9.50 after the end of the season.

### **Final offer selection process for formula**

30. As discussed above, pursuant to the new regulations, this matter proceeded by way of final offer arbitration to determine price. FFAW and ASP each presented their positions.

31. Before delving into the proposals, it is important to note some defined terms about which the parties have agreed.
32. The parties refer to “FOB Boston” and “FOB Plant” in their proposals. “FOB” is “Freight on Board” a legal term used internationally. It requires a seller to deliver goods on board a shipping vessel. The seller is responsible for meeting the obligations relating to the goods to the point of the vessel. These include the costs associated with shipping the goods from the seller’s warehouse to the buyer’s store. There are many ways to calculate FOB to take different costs into account.
33. In 2024, FFAW and ASP agreed to use “FOB Boston” meaning the market-based price of crab reflected the value of snow crab at a common point of sale in the US market. The location chosen was FOB Boston, and according to the parties, this was done to capture the actual returns by NL processors from the US market for the 5-8 oz section product.
34. It was determined that FOB Boston pricing only captures product sold directly to the Boston market and not other geographic market segments in the US. Both ASP and FFAW have, for 2025, have each proposed to use net FOB plant, or equivalent, meaning that any freight costs are deducted from the price received by the processor.
35. Using FOB plant or equivalent to, ASP argued that all processors will be required to submit their sales invoices for 5-8 oz clusters, in the product form 30 lbs., regardless of destination, for the settlement purposes with the cost of freight deducted.
36. ASP argued that the cost of any tariffs would also be deducted.

### **FFAW Proposal – Final offer Section**

37. FFAW’s settlement mechanism is based on a three-tier price scale, as found at p 12 of their submission:

### **3.0 The Proposed System**



The proposed system consists of four components: 1) a floor price based on the most recent available Urner Barry information; 2) a year-end settlement mechanism that provides for proportionate increases to the share allocated to harvesters; 3) a contingent price on tariffs; and 4) a force majeure clause which requires reconsideration should the market drop below the price used in setting the floor price.

**3.0.1 Initial Start Price:** Currently, the UB index indicates that the start price of crab is between \$9.25 and \$9.75 USD. Projections from UB indicate that the price should not drop below USD \$8.50 once NL crab starts coming to market and is expected to stay between \$8.75 and \$9.00 in the early part of the season.<sup>5</sup> As we have historically done throughout the season, we propose to use the current conversion rate for the week prior: 1.42. At 8.75 USD, this would be \$4.97 CAD as a floor price.

**3.0.2 Year-End Settlement Mechanism (Market-Based Adjustment):** We propose determining the final settlement price at year-end based on a three-tier price scale as depicted in the table below.

Tier 1: final percentage market share to harvesters will be between 40% to 45% when average crab prices are between \$6.00 and \$8.50, using the formula  $Y = 0.02X^2 + 0.28X$ .

Tier 2: final percentage market share to harvesters will be between 45 and 48% when average crab prices are between \$8.51 and \$10.60 using formula  $Y = 0.0143X^2 + 0.3284X$ .

Tier 3: final percentage market share to harvesters will be fixed at 48% when average crab prices exceed \$10.60 (CAD).

Raw Material Price Range (\$CAD/lb)	Final Share to Harvesters (%)	Market-based Adjustment (%)	Formula	Comments
\$6.00 – \$8.50	40 – 45%	0 – 5%	$Y = 0.02X^2 + 0.28X$	X = Average Market Price  Y = Harvester's Share of market
\$8.50 – \$10.60	45 – 48%	5 – 8%	$Y = 0.0143X^2 + 0.3284X$	
Above \$10.60	48% (Flat Rate)		Maximum 8%	

...

### 3.0.3 Tariff Contingency

... Generally, the FFAW adopts the approach that the burden of any tariff imposed should be divided equally between the harvesters, the processors, brokers, retailers, and consumers. That said, to avoid passing the burden along to consumers, we propose that the harvesters bear 30% of the tariff burden imposed: their original 20% plus half of the consumer portion (10%). If a tariff comes in at 25%, the harvesters agree to take 30% of that 25% (7.5%). If a tariff were to come in at 10%, harvesters would take 30% of that amount (3%).

...If Tariffs continue throughout the season that it be treated similarly on the final calculation: 30% of whatever amount is included in the invoice pricing.

**3.1.4. Force Majeure Clause:** The FFAW recognizes that the committee would find unacceptable any proposal which would leave harvesters owing money to processors at the end of the season. At a UB price of \$10.30 CAD (as calculated by the prevailing exchange rate at the time – currently \$7.25 USD) the final reconciliation amount paid to harvesters would be based on a price of below \$4.97, which is the proposed floor price. As such, for any amount below that, harvesters would end the season owing processors – an unacceptable outcome. Given that, the FFAW proposes a clause requiring reconsideration of the floor price should the market price drop below \$10.30/lb. CAD, based on any two consecutive Urner Barry quote prices.

38. To show how this proposal would compare, year over year, with the actual figures from last year's fishery (i.e. the rates and formula agreed between the parties after the Panel had made its decision) FFAW provided the following table:

Comparison between 2024 Actual and 2024 with Proposed Formula

		<u>Calculations With 2024 Formula</u>			<u>Calculations With Proposed Price Sharing Model</u>		
		Harvesters Share	% Market Share	% Market Share (65% Yield)	Harvesters Share	% Market Share	% Market Share (65% Yield)
	Market price 2024 (CAD)						

Floor Price (UB)	Approx \$8.10	\$3.45	42.6%	65.5%	\$3.24	40.0%	61.5%
Settlement Price (Receipts net FOB Boston)	\$8.29	\$3.75	45.2%	69.6%	\$3.70	44.6%	68.72%

39. FFAW noted that market prices are currently above \$10.60 CAD, which is where the proposed scale tops out. Should the market drop significantly, such that the average UB price is below \$7.25 (currently \$10.30 CAD) then, under FFAW's proposal, the force majeure clause would be triggered automatically in order to ensure there is no scenario where harvesters would be in a position where they would have to make a repayment to processors at the end of the season.
40. FFAW proposed a structured pricing system that has a basic price guarantee – a floor price of \$4.97, representing 40% of \$8.75, which is below the current Urner Barry 5-8 oz benchmark price, using the exchange rate from the 5 business days preceding the submission (1.42). the final price settlement is determined at year end based on a three-tier price scale based on actual market conditions. The pricing framework also includes a tariff contingency, whereby harvesters would accept 30% of any amount in principle. The floor price is to be recalculated based on the basis of the prevailing UB price at the time tariffs are introduced. Finally, given the unprecedented economic policies of the United States and their effect on global markets, FFAW proposes a "force majeure" clause. Should the price of crab on the UB 5-8 oz benchmark drop below \$10.30 CAD, it will trigger an automatic reconsideration of the base price, irrespective of whether either the FFAW or the ASP seeks a reconsideration at the Panel.
41. Included in the FFAW proposal is a recognition, for the first time, that a "yield deduction" forms part of its calculation. This is acknowledged by the FFAW solely for the purpose of this submission for this fishing season.
42. FFAW has also agreed, for the purpose of its submission, to acknowledge the use of the 5-8 oz NL sections as a proxy for all crab caught in NL.

They recognize that in accepting the 5-8oz as a proxy, they are undervaluing crab caught by harvesters because 8-10 oz crab, which are not the majority of crab in NL, but do form part of the catch, have a value greater than 5-8oz crab due to the difference in weight. Nevertheless, FFAW accepted the use of 5-8 oz as the proxy as acceptable for their purposes.

43. FFAW argued that ASP in 2024 and 2025 based its proposals on Urner Barry ("UB") metrics, and stated that "there is no better proxy to estimate the value of Newfoundland [and Labrador] snow crab" than the UB price. Recognizing that the Panel accepted the ASP proposals in 2023 and 2024, FFAW has this year based their submission on the UB index.
44. FFAW acknowledged that the UB index is indicating that the start price for crab this season is between \$9.25 - \$9.75 USD, but recognizes that this is largely based on Alaskan and Norwegian snow crab. Nevertheless, the data presented shows that there have only been a few months in the last 10 years where the price of NL or Norwegian crab has diverged from Gulf or Alaskan crab prices on the UB index. Even then, the divergence was "marginal."
45. ASP argued that there is currently no NL crab on the market. Unlike in previous years, there is no inventory remaining from the previous season and therefore, ASP argues that the price is artificially inflated. FFAW notes that current projections from UB indicate that the price of NL 5-8 oz is expected to drop to approximately \$8.50 USD by Q 2 (June) but will maintain an overall average price of \$8.75-\$9.00 USD, and then rise to approximately \$10.50 USD in Q 3 (September) before levelling out to approximately \$9.00 - \$9.50 after the end of the NL season. Therefore, FFAW based its submission on the assumption that the price of crab at the outset of the season will be above \$8.75 USD, so with a conversion rate of .71 USD or 1.42 CAD it would result in a base UB price of 12.43 CAD.
46. The panel notes that ASP's proposal bases its minimum \$4.50 starting price on a UB Price of \$8.94 USD x 1.40 exchange rate, which we calculate to be \$12.51 CAD.

47. FFAW argued that their proposal allows for a lower UB start price compared to actual market, and that by keeping the start price at 40% market rate their proposal allows for ~ 17% slippage (in accordance with UB's typical margin of error) and by using 40% instead of the 48% (which they argue was in line with historic receipts) they therefore allow for the possibility that the price may decrease throughout the season instead of increase and there won't be an adjustment at the end of the season.
48. FFAW argues that having a stable floor price throughout the season and the potential for profit sharing at the end of the season reduces conflict and disparity among harvesters (recognizing that some harvesters are unable to fish during early season environmental factors like ice, and some areas open later than others).
49. FFAW stressed the importance of establishing a fair price and getting the fishery started, given that rising water surface temperatures and air temperatures in the summer cause issues fishing later in the summer.

### **ASP's Proposal**

50. ASP proposed the following weekly minimum price "formula" for snow crab in 2025:
  - (a) The price to be paid for snow crab from the start of the fishery until Urner Barry quotes new 2025 supply in the US market is:
 

	Raw Material Price
4-inch carapace and greater (>4")	\$4.50 /lb
Less than 4-inch Carapace (<4")	\$4.20 /lb
  - (b) This start minimum price will be in place until adequate supply and trade allows UB to commence quoting 5-8 oz snow crab pricing from NL producers and from there, an established process to set the weekly minimum price will be used.

- (c) The \$4.50 starting minimum price is based on approximately 90% advance of an UB price of \$USD 8.94 at 1.40 US / CAD exchange rate. This starting market price would yield a final settlement price of \$5.00 to harvesters for the season if the seasonal price remained unchanged and prevailed at that average for the entire season. This start price is intended only to set a fair starting point and reflect the extraordinary risk that currently prevails generally in the US economy.
  - (d) For the remainder of the season, once UB commences quoting pricing for NL snow crab in 2025, the minimum weekly raw material price will increase to 95% of the average UB Crab, Snow, Newfoundland, Cluster, 5-8 oz, low of the Tuesday and Thursday Quotation, and then converted at the average weekly exchange rate to \$CAD equivalent, as per the following sample minimum price table. The entire minimum weekly pricing system can be found in Appendix A.
51. The second part of the proposal is the final season reconciliation price, which ASP argues is to be determined on a scale of 60%-64% harvester share (taking into account a production yield factor of 65%) of the market value, determined by an independent third party, of actual sales of 2025, 5-8 oz sections (wholesale product, packed 30 lbs. net weight), net FOB plant or equivalent, from the start of the fishery through three weeks after the fishery ends. The settlement will be paid to harvesters by October 31, 2025.
52. The formula-based settlement pricing is as follows:
- $$X = (y - 3.5939) / (1.4104)$$
- Where x is the raw material price, and y is the net FOB plant value.
53. ASP reminded the panel that the price decision for each species is the minimum price and the conditions of sale of each species. They remind the panel of article 3.04, which states:

*All purchases of fish shall be made in accordance with prices set forth in the Schedules executed between the parties, ...*

*3.04 Prices listed in the attached Schedules, unless otherwise indicated in the Schedule, are minimum prices. The buyers may pay more than the minimum price, but not less."*

54. ASP reiterated its previous arguments of 2024, that by setting a minimum price formula for the sale of crab in 2025, the Panel is deciding a fair and reasoned foundation. ASP argues that this foundation ought to reflect and only reflect that both harvesters and processors have basic costs which have to be met in order to make the industry economically feasible.
55. ASP's proposal has two key elements – a weekly minimum price and a final settlement mechanism to fairly compensate harvesters at the end of the season.
56. The "floor price" quoted by ASP is therefore \$4.50, based on that representing 90% of the "floor." It is important to note that this would mean that the actual floor price for ASP is \$5.00 / lb. to harvesters, based on the UB price of \$8.84 USD at 1.40 CAD exchange rate, and not what has been reported in the local news.
57. Both ASP and FFAW based their prices on FOB plant, as opposed to FOB Boston, in recognition of the fact that not all processors from Newfoundland deliver to Boston.
58. ASP also noted that the reason behind the increase to 95% of the UB quoted price up-front to the harvesters was a direct result of disputes that arose between harvester crews and harvesters at the end of the 2024 season. Members of ASP received complaints from crew members that while ASP "squared up" with harvesters at the end of the 2024 season in the form of a payment of the holdback, some crewmembers were not given any further income following that payment. ASP says it bought those concerns to the panel's attention to ensure that harvesters who raised the concerns with them in 2024 were aware that ASP was raising the concerns here. They reiterated that after the initial UB pricing

had started, their proposal would put 95% of the final settlement price in the harvesters' pockets on landing.

59. The ASP proposal discussed its timelines for sales and the settlement mechanism, and went through the calculation showing that when market return reaches \$8.70 of higher CAD per pound, then the harvester share of the price will be 64% of the net FOB plant price, at an assumed 65% yield. The difference between the weekly minimum prices paid and the final settlement will be paid by October 31, 2025.
60. ASP highlighted that the agreed-upon price as set by the parties following last year's price-setting panel decision was a floor price of \$3.00 per pound for premium crab throughout the season, with a settlement price determined by actual 2024 sales of 2024 5-8 oz sections, FOB Boston, from the start of the fishery through three weeks after the fishery ended based on a statistically significant representative sample, determined by an independent third party. There, ASP argued, the settlement price was 38.5 % (59.2% when accounting for yield) of the value determined as the harvester's share. This year's proposal, they argued, provides the harvesters with an even greater share, as discussed above.
61. Highlighting the uncertainty in the US economy, which is impacting world stock markets and potentially increasing inflation, ASP is concerned that consumer resistance to spending and uncertainty for the price and consumption of crab sold to the US makes it "illogical" to propose a single price to last the entire season with only one opportunity for a price reconsideration before the Panel.
62. ASP provided calculations to support its argument that its formula accounts for the sharing of risk between processors and harvesters under all three of the possible scenarios identified by Sackton for the 2025 season- that the threat of tariffs recedes before the season; that the threat of tariffs looks throughout the season, and that tariffs take effect during the season. The first scenario, where the threat of tariffs recedes, Sackton predicts a moderate year of crab sales in a healthy market with no excess of inventory. Sackton also predicts a moderate



increased based on the reduction in quota out of New Brunswick, with a predicted price of \$7.70 - \$8.05.

63. If tariffs are introduced on snow crab entering the US market, ASP argues that US customs will tax the product and apply it on import. The example provided by ASP is as follows: if snow crab were sold to an importer at \$6.00 USD / lb., the tariffs at a rate of 25% would be \$1.20 USD / lb. ASP argued:

This calculation is the invoiced price to the customer, minus the invoice price divided by 1.25:

$$\$6 - (\$6/1.25) = \$1.20$$

This would result in a change in value return from \$USD 6.00 to the US customer and a net return of \$USD 4.80 where a 25% tariff is applied. Our formula accounts for risk equitably, providing a fair share for harvesters and offers protection in the event the price falls. (ASP submission, p. 14)

64. ASP's presentation also addressed the "distribution of risk" and "fair sharing" principles articulated by FFAW. ASP argues that fair sharing should consider product pricing and financial risks. As an example, they state the Alaskan pricing, which is based on FOB plant, is 50/50 split between harvesters and processors. They note that the percentage to harvesters in the Maritime Provinces and Quebec is less than in Newfoundland, but their processor costs are less and their crab is of a larger size than Newfoundland crab. From the ASP's perspective, what the FFAW is seeking is a sharing as high as 77% to harvesters and 23% to processors because the FFAW has based its sharing on raw material to market price. ASP relies on the Blackwood report and its discussion that comparing raw materials sold by harvesters to the section of crab sold by processors as an "apples to oranges" comparison:

The pound of live crab (the 'apple') has been taken by the processor and totally transformed into a section of crab (the 'orange'). One cannot compare the live crab to the section, one is but a part of the other. (ASP, p. 18 citing Blackwood, p.56)

65. From ASP's perspective, the volatility in the market and the threat of tariffs will require much higher working capital for processors to finance a 25% import tax upon entry of the product crossing the US border, and that risk, they argued, needs to be shared directly with the harvesters to the extent tariffs apply. ASP also highlighted that the risk to processors is high because the producers are typically not paid until 30 days or more after product delivery, or they carry inventory for months before it is sold. Disruptions in the market would affect producers disproportionately, because harvesters would have already been paid for their product and would be unaffected by this variance.
66. ASP's final argument was that because the panel accepted its proposal last year as a minimum price at \$4.44 at \$12.00CAD / lb., their current offer equates to \$4.99 at that same level and is therefore acceptable.
67. With respect, the panel recognizes that it is true that ASP's final offer for 2024 as articulated above was accepted by the panel in final offer arbitration. However, the Panel reminds the parties that the 2024 decision was final offer selection arbitration, and the reasons the panel selected that final ASP offer last year were clearly articulated in its published reasons for decision. The panel had to choose one offer or the other. The legislation as written does not allow the Panel to make a decision that was not one offer or the other, and the legislation as written does not allow the Panel to refuse to choose one offer or the other. Furthermore, the panel, indeed the entire Province, is keenly aware that harvesters refused to fish for the price set by the Panel in 2024. The 2024 crab season was significantly delayed, and no one fished until the parties negotiated a minimum price that was significantly higher than the final offer selection decision.
68. To argue that because the panel chose ASP's proposal last year, and ASP's proposal this year equates to the same level as last year's proposal so therefore the panel ought to set this as the minimum price formula for 2025, is not acceptable to the Panel given (i) the reasons provided by the panel for having chosen the ASP proposal last year (ii) the resulting delay to the start of the fishery following the choice of the

ASP formula and (iii) the subsequent agreement between the parties to start the fishery at a rate significantly higher than ASP's 2024 proposal.

69. ASP addressed the FFAW's concerns with respect to "Fair sharing" of the resource.

**Conclusion re price-setting formula:**

70. On the final offer arbitration for the formula to be used in the 2025 season for the price of crab paid by processors to harvesters for raw material landed, based on the formulas as worded, with their explanatory language, the Panel has accepted the FFAW's proposed formula.
71. The Panel is cognizant of the fact that final offer selection requires it to take an all or nothing approach to the proposals as put forward by the parties. The FFAW proposal this year puts forward a mechanism through a force majeure clause that allows the parties to return to the panel multiple times in the event that the current US Government continues with its on again-off again tariff threats and there is a significant or are multiple significant disruptions in the fishery. It is primarily for this reason that the panel has accepted the FFAW submission. The Panel reminds the parties that this decision is based on the presentations made solely for the 2025 fishing season. This formula is for the 2025 season only.
72. The panel is also aware that the price formula chosen last year had a minimum price and formula set in a manner similar to that of the ASP's formula this year. The Panel is keenly aware that there was a protracted period in which there was no fishery last year as a result of the refusal by harvesters to harvest for that minimum price, and the fishery did not begin until processors agreed to pay a minimum of \$3.45 and not \$3.00 per pound, as a minimum price, and that amount was inputted into the formula chosen by the panel.
73. For the reasons above, the Panel has determined that the raw material price paid to harvesters though the 2025 season shall be in accordance

with the formula proposed by FFAW to the Panel on April 5, 2025 and articulated above. We reiterate: this is the formula for the 2025 season only, based on the unique circumstances facing the fishery this season. Nothing should be read into this decision as setting the minimum price for crab in the future, or setting “THE” formula for price-setting for crab in future seasons.

### **Interest arbitration on the conditions of sale**

74. The parties agreed as to the conditions of sale to be included in the Collective agreement and settled any disputes for the 2025 season prior to this hearing. Therefore, the Panel has not made any determination concerning the conditions of sale of Crab for 2025.

### **Final comments to the parties**

75. The Panel would like to take this opportunity to commend the parties on their presentations, both written and oral. On the whole, presentations to the panel have become more fact and evidence-based over the past three years. While all recognize that the process under FICBA is not perfect, it is evident to the Panel that the parties are working together to achieve timely outcomes.
76. There were a number of matters raised in the submissions that do not deal with the task of setting the minimum price for crab. Nevertheless, these issues are concerns that parties have raised. One example was the end-of-season payments / settlements among crew and harvesters / license owners. The panel encourages the parties to work through these issues.

### **Conclusion**

Final offer selection re formula

77. Because this is a final offer selection process, the Panel was required to choose one of the two final positions presented, in their entirety. There was no ability for the panel to adjust or revise either party’s proposal.

78. The panel chose the following proposal on calculation of price, for the reasons articulated above. Therefore, for the 2025 crab season, the price for raw material in Newfoundland and Labrador shall be set as follows:

**Initial Start Price:** Currently, the UB index indicates that the start price of crab is between \$9.25 and \$9.75 USD. Using the current conversation rate for the week prior: 1.42, at \$8.75 USD, this would be **\$4.97 CAD as a floor price**.

**Year-End Settlement Mechanism (Market-Based Adjustment):**

Final settlement price at year-end will be based on a three-tier price scale as depicted in the table below.

Tier 1: final percentage market share to harvesters will be between 40% to 45% when average crab prices are between \$6.00 and \$8.50, using the formula  $Y = 0.02X^2 + 0.28X$ .

Tier 2: final percentage market share to harvesters will be between 45 and 48% when average crab prices are between \$8.51 and \$10.60 using formula  $Y = 0.0143X^2 + 0.3284X$ .

Tier 3: final percentage market share to harvesters will be fixed at 48% when average crab prices exceed \$10.60 (CAD).

Raw Material Price Range (\$CAD/lb)	Final Share to Harvesters (%)	Market-based Adjustment (%)	Formula	Comments
\$6.00 – \$8.50	40 – 45%	0 – 5%	$Y = 0.02X^2 + 0.28X$	X = Average Market Price  Y = Harvester's Share of market
\$8.50 – \$10.60	45 – 48%	5 – 8%	$Y = 0.0143X^2 + 0.3284X$	
Above \$10.60	48% (Flat Rate)		Maximum 8%	

All other details are articulated in the FFAW brief from pages 14-16.

**Tariff Contingency**

Harvesters will bear 30% of the tariff burden imposed: their original 20% plus half of the consumer portion (10%). If a tariff comes in at 25%, the harvesters agree to take 30% of that 25% (7.5%). If a tariff were to come in at 10%, harvesters would take 30% of that amount (3%).

...If Tariffs continue throughout the season that it be treated similarly on the final calculation: 30% of whatever amount is included in the invoice pricing.

**3.1.4. Force Majeure Clause:** At a UB price of \$10.30 CAD (as calculated by the prevailing exchange rate at the time – currently \$7.25 USD) the final reconciliation amount paid to harvesters would be based on a price of below \$4.97, which is the proposed floor price. As such, any amount below that triggers an automatic reconsideration of the floor price should the market price drop below \$10.30/lb. CAD, based on any two consecutive Urner Barry quote prices.

Included in this is the 2025 Snow Crab Schedule, attached for reference.

These prices will form a collective agreement or part of a collective agreement binding on all processors that purchase the species Snow Crab in 2025.




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Sheilagh Murphy




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Earle McCurdy

**DISSENT by member Vallis:**

I'd like to register my dissent concerning the choosing the FFAW submission for the 2025 crab season for the following reasons:

1. The sharing percentages (note on page 14) of the FFAW submission.
  - a. \$6. to 8.5. - 61.5 to 69%, with yield applied vs Blackwood of 56.7 -61.4%
  - b. \$8.5 to 10.60 – 69- 74% vs Blackwood of 61.6- 65.6%
  - c. \$10.60 + - 74% vs Blackwood of 65.6%

There is no evidence to support the FFAW sharing percentages, whereas Blackwood was an independent, third party, commissioned study over 18 years of actual sharing percentages. Despite the evidence of Blackwood, arbitrary higher percentages were accepted.

Furthermore, the prices noted from 2024, were 1) Incorrect, the minimum price set by the panel was \$3 and it was market forces, of supply and demand which drove the price to \$3.45, and 2) 2024 prices were FOB Boston, which would have included cost of shipping from NL to Boston and slippage, while both parties agreed to use FOB plant for 2025, the prices don't reflect cost of shipping or 'slippage'.

The FFAW representative's assertion that the difference between 40% and 48% sharing provides "allowance of 17% for slippage" is inaccurate and misleading and has nothing to do with slippage, which was noted during the panel as the difference between case lot pricing by UB and trailer load, actual invoice pricing paid to processors plus shipping costs to Boston.

Given the above and acknowledging, historical risk proportion being higher to the processors and over a much longer timeframe, 26% share of revenues appears unreasonable, and quite possibly unsustainable, unless processors can recoup losses from other species.

2. FFAW's starting price:
  - a. Used an average price of Alaska crab of \$9.5 on March 24 and Norway price of \$9.25 on March 3, so \$9.50 despite long recognized difference in quality and timing of these products having little to no comparison to NL crab products.

- b. It then applied the UB *percentage* of 8.48% for slippage, while the Sackton report calculated slippage at 15.7%. Using the lower slippage number generated the starting price of \$8.75.
  - c. Because FFAW used the average of the high and low for pricing, one would have assumed they would apply the same logic to slippage, or 12.09 % which would have resulted in a starting price of \$8.47, or \$.30 lower, had they used Sackton the starting price would have been, or \$8.21.
  - d. Both b and c would have lowered their starting price significantly which would have resulted in the ASP starting price being higher.
  - e. This price manipulation should be rejected, and a fairer and more transparent requirement should be demanded. Parties should be required to support their pricing modules with consistent, reliable, third-party evidence, and formulas should be required as part of the submission.
- 3. ASP offer was \$5.00, with a 90% paid immediately and 10% 'holdback', for the first 3 weeks until enough crab was sold to establish a reasonable price based upon supply and demand, at which point upfront payment increased to 95%. This approach was consistent with the Blackwood report, and enabled harvesters and processors to share some risk during the season and harvesters benefit at the end of the season when pricing on a seasonal basis is settled. Whereas the FFAW approach was to establish a high fixed price for the season, minimize risk to harvesters while still getting the benefit of any upside in pricing at the end of the season. Clearly a departure from the basis for formula pricing and shared risk and reward.
- 4. Tariff treatment
  - a. Tariffs are a tax on imported products paid by the importer, which is normally the processor, and as such is an additional cost of getting the product to market, not dissimilar to transportation to get crab to Boston. The FFAWs assertion that 20% of the import tariff/tax will be paid by the consumer is completely unfounded and without any evidence or support of any kind, and therefore should have been rejected.
  - b. This is another example of how the FFAW wants the risk shared, consumer 20% (which nobody can implement/enforce), 10% by FFAW and 70% by the processors who, by far, carry the vast majority of the financial risk. Again, this sharing arrangement



cannot be sustainable in the long term and will negatively impact the future of the industry if processors start closing their facilities.

Thank you

A handwritten signature in black ink, appearing to read 'B. Vallis', written in a cursive style.

Brian Vallis  
ASP Panel representative