

**STANDING FISH PRICE-SETTING PANEL
RECONSIDERATION DECISION
SNOW CRAB FISHERY - 2020**

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 May 1, 2020, 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 May 11, 2020, requesting that the Panel reconsider its decision dated May 1, 2020, concerning the price and conditions of sale for Snow Crab in 2020.

The Panel reviewed the FFAW’s rationale for requesting a reconsideration and conducted a preliminary review of the market information available on short notice. On May 11, 2020, the parties were advised by the Panel, that given the market prices reported over the past 13 days since the initial Crab hearing, we are prepared to reconsider our 2020 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 2020.

In the event the parties were unable to agree on a common position through negotiation, a Crab hearing was scheduled to take place at 2:00 p.m. on Wednesday, May 13, 2020, 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 May 1, 2020, provide their price positions for Final Offer Selection by 10:00 a.m. on Wednesday, May 13, 2020.

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 making a decision 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 2:00 p.m. on Wednesday, May 13, 2020. 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 a number of reports compiled by the Department of Fisheries and Land Resources, hereinafter referred to as the “DFLR”, including Urner Barry price reports, Seafood Datasearch (Sackton), hereinafter referred to as “Sackton” updates, an update from Meros Consulting and recent articles from Undercurrent News on Crab markets.

At the hearing, both parties offered differing perspectives on market change. The FFAW claims that market prices have risen, and the market outlook has improved over the past two weeks since the Panel’s initial decision on May 1, 2020. ASP maintains that there has been no change.

Market updates obtained by DFLR over the past two weeks, particularly those from Seafood Data Search (Sackton) and Urner Barry, indicate that there has been some sales activity and price improvement. In his April 23, 2020 Market Update, Sackton indicated that: “Offers are going out to retailers at \$7.00 (US) for 5-8 Snow Crab: with prices at the \$6.50 level FOB plant”.

The Urner Barry index for 5-8 oz. sections, which comprise an important segment of the Crab business in Newfoundland, has consistently posted a price of \$6.95 USD over the past two weeks – on three occasions – May 4th, May 7th and May 12th.

In his April 30, 2020 update (which was only available to the Panel after its initial decision) Sackton explains that: “On the market side, the first week of crab sales has been successful, at wholesale prices in the \$6.75 range, and plant sales at \$6.50 FOB”.

On May 7, 2020, Sackton stated that:

“There is some good news around Snow Crab, which is that the market is functioning, and Maritime plants are processing and selling what is being landed. Prices to US retail customers are around \$6.50 for 5-8’s, with higher prices for larger size Crab. In Newfoundland and Labrador, most Japanese interest is in raw frozen Crab, which is sold at a significant premium to boiled Crab”.

Considering the FFAW’s reconsideration request, Sackton was asked to provide an interim market update on May 12, 2020. He noted that: “The problem faced by the Crab fishery in Newfoundland is how to open in a manner that allows the maximum amount of sales possible at prices that can

be maintained to retailers, and yet does not overshoot demand so much that large unsold inventories accumulate".

Sackton also notes that:

"The marketing strategy of pricing Crab at a point where retailers would commit has been successful so far. It has led to steady sales without any buildup of inventories".

"There is little new information about changes in the market. The strategy for opening the season with stable pricing has been successful so far. The biggest test of whether wholesale pricing stays at current levels will be the opening of the fishery in Newfoundland which will very quickly put more Crab on the market. We will not know the answer to this until the end of next week".

Sackton further added:

"Prices have moved up just a bit under the influence of retail demand for Mother's Day and weather. Also, operations have gone very smoothly in the Gulf". He notes that: "About 30% of the Crab has been taken in the Gulf. 8 million lbs. have been landed so far The whale sightings in the Gulf also spurred buyers to commit, leading to a rise in price of around \$.10 [per pound].

Sackton summarizes stating that:

"the market is unlikely to make a big move upward while so much additional Crab remains to be landed".

At the hearing, the FFAW made a final offer of \$3.50, consistent with their original price offer on April 29, 2020. Similarly, the ASP made a final offer of \$2.90, (\$3.00 less workers compensation and EI benefits), consistent with their April 29, 2020 offer which was accepted by the Panel.

In its submission, the FFAW contended that market activity in the past two weeks has demonstrated a strengthened market in relation to that considered by the Panel at that time of its May 1, 2020 decision. In the past couple of weeks, there has been an active market for landings from Alaska and other Maritime Provinces. They contend that not having any landings or sales from the Newfoundland fishery is no different than the situation in a normal (non-COVID-19) year. In a normal year, prices are set around the end of March and prior to the start of the annual fishery here and in the Maritimes. The FFAW also produced information from harvesters and buyers in the Maritimes and Quebec which indicates that prices to harvesters in these jurisdictions have recently risen to \$3.50 per pound or higher.

The FFAW points to the fact that Urner Barry have reported prices three times since May 1, 2020 with consistent market pricing reported at \$6.95 USD for Gulf crab 5-8 oz products. They contend this represents a stronger market than was portrayed by the initial market information. While market prices have dropped by approximately 26% year-over-year, there is nothing to suggest that market prices will further decline to a level that justifies the initial Panel decision. They contend that current market returns in Canadian dollars are higher than those in 2016, when there was an agreement by the parties on \$3.00 per pound. Market returns are currently at a level closer to the 2017 Panel decision of \$4.39 per pound and even with a further decline would justify their current offer before the Panel.

The FFAW maintains that while the Sackton market updates identify risks going forward, they do not predict a significant further decline. They also point to the fact that US and Japanese currencies have improved relative to last year - in the order of 5 percent. They feel the market may eventually support prices higher than their final offer, but they are seeking a reasonable price that supports stability for the rest of the fishery.

At the hearing, the ASP maintained that markets have not significantly changed and do not justify a reconsideration of the Panel's initial decision. They contend this is confirmed by recent Sackton updates which indicate the big picture has not changed since his original Crab update of March 23, 2020. The Newfoundland fishery has only just commenced and there are no market quotes for Newfoundland Crab.

The ASP contend that Urner Barry pricing is for less-than-truck loads and do not reflect full load pricing from Newfoundland. Japanese markets are still weak and Japanese buyers are waiting to see what happens with US pricing. Urner Barry has lowered their quotations on Russian snow crab by \$2.00 from \$8.75 USD in mid-April to \$6.85 USD last week. Newfoundland processors feel the retail market can absorb most of the Crab production, but it remains dependant on the ability of processors and wholesalers to offer promotions. The COVID-19 situation in the US is not improving and the economic fallout will be extremely challenging.

The ASP also contend that the reported increase of Crab prices to harvesters in the Gulf, to \$3.50 per pound, is not reflective of market strengthening but is reflective of low landings to date. Gulf processors take advantage of short-term purchasers with limited buying demand to complete small orders without inventory risk. They point to the fact that Gulf prices to harvesters are always higher than in Newfoundland. They reiterated that several government sponsored studies have documented that this is the result of a different industry structure with lower cost, different Crab characteristics and lower benefits payments on behalf of harvesters. Processors in those provinces also have the flexibility to reduce prices should market prices decline.

The question for the Panel is whether there has been a significant change in the market since its original decision. Also, if the current market information had been available would the Panel have accepted the ASP offer of \$2.90 per pound or supported the FFAW offer of \$3.50 per pound? The difference of \$0.60 per pound is significant. At a yield of 62% that equates to \$0.97 CAD in market pricing.

At the time of its initial decision, the Panel was concerned with the lack of market data and the uncertainty facing the industry as the Maritime and Newfoundland fisheries came on stream. This was particularly relevant in an unprecedented COVID-19 environment. At the time of the initial decision, there was no Urner Barry pricing for Canadian Crab and Sackton reported just one price of USD \$6.50 FOB plant in the Maritimes.

In its initial decision, the Panel noted its concern that pricing may need to stay low to serve as an incentive for retail promotions. Should there be price resistance, prices may fall creating a lack of buyer momentum while they wait to see where the bottom will be. In part, the pricing behavior of processors in the Maritimes would influence outcomes. How low prices might fall from that reported (i.e. \$6.50 USD) was unknown. The Panel noted at the time that more pricing information would emerge in the days/weeks ahead, but under legislation the Panel's decision was required by Friday, May 1, 2020.

The uncertainty in this year's fishery has not gone away and no one can predict what will happen. Pricing in the face of this uncertainty while addressing the fair sharing of risks between processors and harvesters was, and is, a key consideration for the Panel. This is quite challenging when prices set by the Panel must endure the full market cycle for Newfoundland Crab in this pandemic year.

Over the past couple of weeks market pricing has shown some resilience in the \$6.50 to \$6.95 USD range and market price declines have stabilized for now. There also appears to be a market opportunity in Japan, albeit at much lower levels than recent years. Landings in the Maritimes have been slower than anticipated and there is a level of uncertainty emerging around potential right whale closings. The fishery in Newfoundland will be shortened and not all available quotas will be taken. Market prices may fall when Newfoundland volumes enter the market. However, at current pricing levels there is room for a further market decline to happen before prices drop below \$6.00 USD.

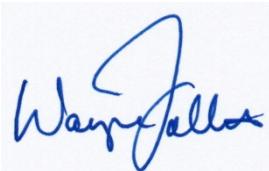
Under the Final Offer Selection, the Panel must choose one of the minimum price offers presented by the parties. The decision is quite challenging given the uncertainty and risk to both sides. Considering the more recent market data and stability, and on the balance of probabilities, it is now reasonable to anticipate a market outcome that would support the final offer of the FFAW. There remains an opportunity for the ASP to seek a reconsideration in the next few weeks if market developments warrant it.

On the final offers of price, it is the decision of the Panel to accept the position of the FFAW. The minimum prices for the species snow crab effective midnight, Thursday, May 14, 2020 will be:

- \$3.50/lb. – 4" carapace and up.
- \$3.20/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 14th day of May, 2020 at St. John's, NL.



Wayne Follett



Bill Carter



Brendan Condon