

## STANDING FISH PRICE-SETTING PANEL

### LOBSTER FISHERY 2022

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2022, on March 18, 2022. Pursuant to Section 19 of the *Fishing Industry Collective Bargaining Act*, hereinafter referred to as the “Act”, the Panel set Wednesday, April 6, 2022, 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 Thursday, April 7, 2022. The Panel convened its hearing for the species Lobster at 10:00 a.m. on Thursday, April 7, 2022, via WebEX 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, 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 recently published articles related to Lobster markets.

The information shows that NL Lobster landings continued the strong growth of recent years, with record landings and landed value in 2021 of 11 million pounds and in excess of \$84.5 million, respectively. The export value was recorded at approximately \$121 million, which would not include domestic sales within the province which are unreported, as well as, Lobster which may have been transported to buyers and processors in the maritime provinces. In 2013, the export value was reported as approximately \$7 million.

A central issue of ongoing dispute between the parties is the significance of export statistics. ASP continues to describe the NL Lobster fishery, as essentially one in which buyers sell into the live

market in the week following the week in which they purchase raw material on the wharf. In a declining market, which tends to be the case for the bulk of NL Lobster purchases and sales, they believe the current structure of the pricing formula is punitive on buyers.

FFAW, for their part, tabled the Government of Canada export statistics, which show export sales spread over a number of months, not simply limited to the time the fishery occurs. These statistics showed that in 2021, September – three months after the majority of NL Lobster had been landed - was the second most valuable export month, while October came in fifth, just a little behind May and June. FFAW pointed to the substantial investment a number of large and medium-sized NL processors have made to significantly increase their holding capacity so they can sell into the market later in the year when prices have risen. *“Just because lobster exports were not an issue in 2011 (when the pricing formula was introduced) does not mean that we should downplay or ignore the importance of exports in assessing the fairness of the formula,”* the FFAW wrote in their submission. *“As exports increase, they need to be considered in ensuring that the formula remains fair.”*

The FFAW said in response to ASP’s dismissal of export statistics, *“If you provide no receipts and refuse to accept export numbers, how is the Panel to make a decision?”* The union noted there are data gaps in Snow Crab, but no one questions the export data.

Both parties presented graphs showing that prices in the US this spring are at record levels. There is an expectation by both parties that, prices will decline once the fishery starts, which is normal. The function of the formula, is to adjust the raw material price when this occurs. Nevertheless, if the US market follows its usual pattern, prices throughout the year may be somewhat above the corresponding 2021 levels. The other large market for Canadian Lobster is China. Several areas of China such as Shanghai and Guangzhou, are currently experiencing lockdown due to a significant increase in Covid-19 cases. If this were to persist, it could have a dampening effect on overall Lobster prices. However, China has generally been successful to date in taking aggressive measures to control Covid-19.

The Urner Barry Index, which provides information on the price of live Lobsters in the US retail market on a twice-weekly basis, has been used as the basis for determining the price for live Lobsters landed in Newfoundland for more than a decade. Although both parties acknowledge there are a number of issues with how reflective the Urner Barry Index is of the true market dynamics of our Lobster sector, they have been unable to date to arrive at a better alternative to the setting of raw material prices.

ASP continues to raise the findings of the Quinlan Taylor report, tabled at the Lobster Hearing in 2018. The objective of this report was to determine the actual returns of Newfoundland Lobster buyers in comparison to the corresponding Urner Barry prices. ASP submits that buyers in this province receive less than UB prices. As the Panel said then, *“The Quinlan and Taylor study appears to have followed a sound analytical methodology and results in a very informative*

*report.*" The report claimed that producers paid \$0.79/lb. and \$1.08/lb. more based on UB in 2016 and 2017 respectively than they would have based on actual sales in each of these years. The Panel also said in its 2018 decision, that both parties bore responsibility for the lack of cooperation in advancing a receipts-based model of pricing: "*On the one hand, we feel the FFAW preconditions in order to participate in a study were excessive. On the other hand, it appears the Seafood Producers of Newfoundland and Labrador (SPONL), an association of smaller producers who collectively held the majority percentage of production of lobster at the time, did not counter the FFAW demands before it proceeded with its own study.*" Producers felt they were left with no option but to proceed, given the FFAW position at the time. The Panel maintains its 2018 position, that the Quinlan Taylor report was informative, but was not subject to any audit or review procedures, and therefore the lack of attestation as to its accuracy makes it difficult for the Panel to fully rely on the study findings. The Panel continues to encourage both parties to advance on a mutually agreed upon, receipts-based formula for the pricing of lobster in future years.

As noted by the FFAW, the UB formula only tracks changes in the market, it does not track when NL processors/buyers actually sell their product. The Panel concurs. While it is understood that buyers and processors may not obtain Urner Barry pricing early in the season due to price drops in the first four weeks, it is very comprehensible that processed Lobster or live Lobster held and sold long after the season has ended, will realize a significantly higher price than Urner Barry, albeit on lower volumes. It can be accepted that, in the early years when the formula was adopted, the Lobster purchased in one week was quickly shipped out the next. However, the timing of exports from Newfoundland now call this argument into question. As mentioned earlier and as demonstrated in the FFAW submission, September 2021, two full months after the close of the Lobster fishery, and three months after the majority of Lobster is landed, was the second most valuable export month for processors.

The UB Index does provide a picture of the overall trajectory of the live Lobster market, which is quite cyclical in response to supply and demand dynamics. In general, during the winter when there is little supply to the market, prices tend to be high, but when the peak fisheries activity commences in April prices start falling and drop dramatically until after Mother's Day. This is the period when most Lobster from Newfoundland is landed. Commencing in June, prices start to rebound as fisheries start to wind down, and gradually increase during the remainder of the year. The consequence of this dynamic is that most Newfoundland lobsters are being landed by harvesters while the market for live Lobsters is in decline, so their landed price falls for roughly the first four or five weeks of the season.

As previous Panel reports have outlined, the period of market decline presents significant issues with respect to the timing of the UB Index reports in relation to the purchase of Lobsters in Newfoundland and their eventual sale in the US. In general, the time lag from when a Lobster is landed, reconditioned prior to shipment, trucked to the US, reconditioned again prior to sale, and then sold, is usually a week or more. During our peak fishery, the price in the marketplace is

continuing to decline during this period. The UB Index is updated each Tuesday and Thursday; because the market is declining, the issue of which report dates to use in determining the price to the harvesters becomes relevant. For a given week, basing the raw material price on the average of the UB price for the Thursday of that week, and the Tuesday of the following week, will result in a higher price than if only the Tuesday UB price of the following week was used, which would in turn be higher, than if the average of the Tuesday and Thursday UB prices of the second week were used. This has sometimes been a focus of bargaining between the parties. Nevertheless, the only exceptions to the Thursday/Tuesday basis for the formula occurred in 2020, when the exceptional circumstances surrounding the outbreak of Covid-19, led the parties to take a different approach (Tuesday only) for the season. Regarding Mother's Day, in 2016 the Panel accepted SPONL's final offer, which included basing raw material pricing in the week immediately following the Mother's Day weekend on the Tuesday price only. This decision was based on SPONL's argument that a peak in market prices occurs in the run-up to Mother's Day, followed by a quick drop off, and the Mother's Day exception has remained in place ever since.

In 2021, ASP's final offer to the Panel proposed, changing the Thursday/Tuesday approach to using only the Tuesday Urner Barry price as the basis for the calculation for all sales under the formula. The FFAW, for their part, proposed a continuation of the Thursday/Tuesday approach, with a reduction in the deduction to \$0.11 from \$0.15. The Panel accepted the FFAW position.

This year, both parties submitted their final offers based on an "average of Thursday-Tuesday" UB prices, although this common position was not achieved during negotiations. The FFAW was advancing offers based on "Thursday-Tuesday" throughout negotiations, whereas ASP initially made an offer based on "Tuesday-Thursday". They subsequently advanced price offers based on "Tuesday only" UB prices at the time negotiations broke off, but then reverted to "Thursday-Tuesday" in their final offer. While this resulted in the parties being closer in their final offers than would otherwise be the case, in the view of the Panel if this issue had been resolved during negotiations, the chance of an agreement without the Panel's involvement might have been increased.

ASP noted that for some buyers, Lobster is their main species, and the structure of their business is to buy Lobster and then move it as quickly as they can. FFAW submitted that the Panel should not set the price based on what is called "*the lowest common denominator of a sector.*" It reminded the Panel of a provision in the Panel's Rules of Procedure: "*The Panel will base its decision on market conditions related to the fishery concerned to determine price(s) and/or conditions of sale.*" It is the FFAW's contention that it is the strong growth in export value that defines the strength of the Lobster market.

A similar debate took place in negotiations and in front of the Panel in 2021. The Panel said in its 2021 decision (Page 4):

*"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."*

Despite several discussions over the past several years regarding the desirability of using the actual sales receipts of Newfoundland producers as the basis for determining prices to harvesters, to date this has not been fruitful. In the Panel's view, this is unfortunate, as a similar approach has been quite successful in the province's Halibut fishery and could potentially resolve longstanding uncertainty regarding Lobster prices. The Panel, therefore encourages the parties to give serious consideration to development of a receipts-based pricing mechanism for future Lobster fisheries. The Panel recommends that Lobster be identified as a species that needs further study by an independent consultant, as is the case for Cod this year.

While the UB Index has been used as the basis to calculate raw material prices since 2011, in 2012 a 15-cent deduction from the Index price was implemented because SPONL asserted that members were not achieving UB prices. Since that time, a deduction from the UB price has continued, but dropped from \$0.15 to \$0.11 in 2021 due to its inclusion in the FFAW final offer submission which was chosen by the Panel. In 2019, the parties achieved a collective agreement for Lobster without Panel intervention, which included a \$0.15 deduction.

This year, both parties came to the Panel with final offers based on the Thursday/Tuesday basis for pricing under the formula. ASP's price position was to reinstate the \$0.15 deduction (a four-cent change from 2021), while the union's final offer called for the elimination of the deduction altogether. ASP said the four-cent change would reduce total payments to harvesters by approximately \$428,000 (0.5%) based on 2021 landings. The FFAW position is to eliminate the \$0.15 deduction, which would see harvesters paid an additional \$1,180,000 (1.4%) for their landings.

Determining a fair share is a fundamental consideration for the Panel in making price decisions. When the Lobster formula was established more than 10 years ago, exports were not significant.

The elimination of the \$.11 deduction to Urner Barry Pricing equates to about \$.14 Cdn at Fx 1.25. At high prices currently being experienced and witnessed over the past couple of years, the reduction will make very little difference in the share to harvesters. The Lobster sector is in a rising market with unprecedented high prices and, as a result, the full Urner Barry price with no deduction would only marginally increase the share to harvesters, by less than one percent at pricing levels anticipated for the 2022 season. Conversely, reinstating the \$0.15 deduction would erode the harvesters' share by a fraction of a percentage point.

The Panel once again finds itself with no agreement on the correlation between time of raw material purchase and time of sales in the final market, and no agreement on the reliability of the Government of Canada export data. In the Panel's view, given the significant shift in position after negotiations had ceased, had it been possible for the negotiating session between the parties to have been extended, the parties may have had the opportunity to achieve an agreement without Panel intervention. The Panel regards this as unfortunate, because it is only through negotiations that the parties have an opportunity to narrow their differences before calling on the Panel to settle them. In any case, it is the Panel's responsibility to weigh the various considerations and select one of the final offers put forward by the parties.

The Panel has selected 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 weekly prices based on the average of Thursday-Tuesday Urner Barry prices without deduction.

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

Dated this 13<sup>th</sup> day of April, 2022.



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David Lewis



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Bill Carter



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Earle McCurdy