

STANDING FISH PRICE-SETTING PANEL LOBSTER FISHERY 2020

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2020, on February 27, 2020. Pursuant to Section 19 of the Fishing Industry Collective Bargaining Act, hereinafter referred to as the “Act”, the Panel initially set Wednesday, April 8, 2020 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 and Land Resources, that the Seafood Processors of Newfoundland and Labrador Inc., hereinafter referred to as “SPONL”, represents processors that purchase 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 “SPONL”.

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 collective bargaining must be obtained.

The hearing for Lobster, if required, was scheduled to take place at 10:00 a.m. on Thursday, April 9, 2020. Due to the COVID-19 pandemic and concerns around the safe execution of a fishery, and through a joint request by SPONL and the FFAW, the Minister of Fisheries Land and Resources extended the date by which a binding collective agreement is to be in effect to May 13, 2020. The Panel agreed to extend the hearing date for Lobster and delay a hearing to a later date more in line with a potential opening of a fishery under COVID-19 protocols.

After consulting with parties, the Panel convened the hearing for the species Lobster at 2:00 p.m. on Monday, April 27, 2020, via Microsoft Teams virtual meeting capabilities. The parties appearing before the Panel were the FFAW and SPONL. The parties having previously exchanged written submissions, copies attached, supported their positions in argument and rebuttal. The Panel and the parties had been provided with several Urner Barry Lobster Insider’s Report market reports, dated around March 26, 2020. However, given the rapidly changing and unsettled markets, these reports were no longer current and of limited value.

In their written submissions, the parties were concise in their comments on the market outlook for 2020 and agreed that this year's negotiations are occurring under unprecedented circumstances and challenges. The FFAW referenced world markets that have been damaged and a US market that is still difficult to gauge. SPONL points to the fact that the worldwide shutdown of countries has resulted in the disappearance of traditional markets and uncertainty among both harvesters and processors.

SPONL put forward a proposal to fundamentally change the Lobster price setting formula for 2020. It proposed that, unlike previous years, there would be no minimum price. Prices paid harvesters would float based upon the sharing of market returns in accordance with the past sharing percentages. Market returns to be applied to the sharing formula would be based on actual company receipts submitted to an independent accounting firm, rather than upon the Urner Barry index prices used in past years.

SPONL indicated it was prepared to address deficits documented by the Panel in its 2018 decision as it relates to the use of actual market receipts. It would agree to audit provisions while giving the FFAW the right to select companies that would be used in calculating market returns. It also proposed to engage an independent accounting firm to develop a penalty mechanism for buyers that did not cooperate with the new system.

SPONL contended that because of COVID-19, Lobster markets are abnormally weak, and it can be expected that the North American supply of Lobster in 2020 would outstrip the market demand resulting in unsold inventories. There is also a strong likelihood the fishery would close prematurely due to low market prices and demand. As a result, buyers could be stuck with unsold inventory.

The FFAW position is that the 2019 sharing formula and minimum price of \$3.25 should remain intact for the 2020 season. It agreed to amend the use of the Urner Barry index to use Tuesday prices rather than the average of Thursday and Tuesday prices used in recent years. They contend this is a significant concession resulting in lower landed prices being paid by buyers. It also affords buyers some protection if market prices decline after the Lobsters were purchased during the previous week. It takes the position that the \$3.25 minimum price has been constant since 2012 and, with inflation, represents an absolute minimum that harvesters can sustain.

The FFAW was also concerned with the lack of process to convert to a new system as proposed by SPONL. They contend that while they like the direction signaled by SPONL, such sweeping changes would require considerable analysis and many months of negotiation. Dealing with such a proposal on such short notice is not possible given it is not fully developed.

The FFAW is also concerned that the 2020 market situation is uncertain and that the market may collapse as Lobster supplies come on stream from other jurisdictions. However, it feels that should the market plummet to a level that doesn't support the minimum price of \$3.25 per pound it is preferable that buyers stop buying to avert long term damage to Lobster prices which would take many years to reverse.

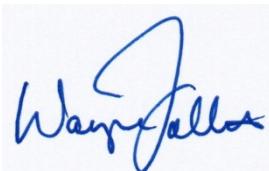
The parties share a common uncertainty about 2020 markets. However, their proposals to deal with it are far apart. The Panel is also concerned about the market situation and whether the fishery can be fully exploited in 2020 under either proposal. At a minimum price of \$3.25, as proposed by the FFAW, market returns may at some point, make it unfeasible for the buyers to continue purchasing Lobster.

The Panel is encouraged by the further development by SPONL of its proposed system of using actual received market returns. However, it remains concerned that the proposed system is still underdeveloped and has not been presented in time to give the FFAW the opportunity to adequately assess its implications and negotiate final design. This would normally take several weeks. The proposed elimination of a minimum price is a significant change that requires more negotiation. Given the COVID-19 pandemic market challenges facing the industry in 2020, now is not a time when the Panel could agree to establish a new pricing formula which has not been fully evaluated and negotiated.

Under the Final Offer Selection process, the Panel must select one offer recognizing that the right position might be somewhere in between. In light of this and following a thorough review of the submissions of the parties, it is the decision of the Panel to accept the final offer of the FFAW and a rollover of the 2019 schedule for Lobster pricing with the additional change of using Urner Barry pricing data from Tuesdays only.

This decision will be binding on all processors that purchase the species Lobster.

Dated the 30th day of April, 2020.



Wayne Follett



Bill Carter



Brendan Condon