

STANDING FISH PRICE-SETTING PANEL LOBSTER FISHERY 2017

The Standing Fish Price-Setting Panel, hereinafter referred to as “the Panel”, issued its Schedule of Hearings for 2017, on March 2, 2017. Pursuant to Section 19 of the Fishing Industry Collective Bargaining Act, hereinafter referred to as “the Act”, the Panel set Tuesday, April 4, 2017 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, 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 there to; 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 am on Wednesday, April 5, 2017.

The Panel convened the hearing for the species lobster at 10:00 a.m. on April 5, 2017. 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 the benefit of two market reports prepared for the Department of Fisheries and Land Resources. The market reports included the Lobster Outlook 2017 delivered by John Sackton, New Brunswick, March 27-28, 2017, as well as the Urner Barry Lobster Insider’s Report, February 2017. Market research was also conducted by the Department of Fisheries and Land Resources which included Globefish Highlights for the species lobster. All reports are comprehensive, providing very detailed information as to the current market situation, supply and demand, competitive forces and economic factors that could influence the market and lobster prices for the duration of the year.

The reports' assessment of the current conditions for lobster suggest that market demand and values range steady to higher than in 2016 and, in Europe and China, demand for lobster appears to be growing. The European Commission has decided that it will not propose that American Lobster be listed as an invasive species and thus be banned on the European market. In addition, the popularity of lobster in the UK is increasing as a result of the successful launch of the inexpensive 'Burger and Lobster' restaurant chains and the strong demand is pushing prices upwards. Prices for Newfoundland and Labrador lobster remain high and thus the price trend over the past two years continues. In early November 2016, there was a slight reduction in prices, but they bounced back, and as of December 2016 were higher than at the same time in December 2015. US lobster prices increased significantly in 2016 and along with an improved USD exchange rate market, returns are currently at a very high level. Both the FFAW and SPONL informed the Panel that they believe market prices are expected to be higher in 2017 than 2016.

During the course of the negotiations, the parties were not able to reach an agreement on a number of proposals presented by either side. In their final offers, they each propose changes to the 2016 lobster schedule. The proposals deal with different issues and are not directly related. The current lobster schedule has been in place since 2011, with minor modifications. It contains a formula to determine the price to be paid to harvesters, on a weekly basis, based on published Urner Barry market prices for 1¼ pound live Lobster FOB New England. The essential points as set out in the 2016 Schedule are:

1. The price paid to harvesters for a week is the average USD price reported by Urner Barry for the Thursday of that week and Tuesday of the following week.
2. There is 15¢/lb. reduction from that average USD price.
3. After the deduction, prices are converted to a Canadian dollar market price.
4. The minimum price paid to harvesters is \$3.25/lb. CAD for all Urner Barry price listings up to and including net Canadian \$5.00/lb.
5. The minimum price shall be increased by 70% of any incremental amount between \$5.01 and \$6.00 and by 80% of any incremental amount greater than \$6.00.

This formula, derived by the use of Urner Barry price listings, has been the basis for setting the price to harvesters since the inception of collective bargaining on lobster prices. Both parties are in agreement that the system is not ideal and attempts have been made to agree on an alternative approach without success. The issues have been reviewed and reported on by the Panel extensively in its previous decisions.

At the hearing, it was again apparent that both parties are interested in pursuing a revised formula that would be based on actual market outcomes rather than the Urner Barry index. Both also recognize there are complexities unique to the lobster business and these need to be analyzed thoroughly before a new formula could be developed based upon actuals. In this regard, the FFAW reiterated during negotiations that they were prepared to support a rollover of the existing formula if SPONL members agreed to submit 2017 actual market invoices to an independent third party. This would allow for the collection of data to support the analyses required to further the discussion of a new formula. However, a rollover was conditional on SPONL agreeing to a 15¢/lb. penalty to apply to those buyers who do not submit their information in 2017. SPONL indicated that they needed more time to consult members and therefore could not make such a commitment.

In light of the higher prices, the FFAW proposed a change to the 2016 lobster price sharing proposal that would see the 15¢ USD deduction from the Urner Barry price eliminated when the US weekly price is \$7.00 CAD or more. The deduction would continue to apply when prices are below \$7.00 CAD.

The FFAW's contention is that the deduction had been agreed to in 2012, when market prices were much lower and it was needed to ensure buyers could afford to buy. This is no longer the case. Also the gap between the prices paid to Newfoundland and Labrador harvesters, relative to harvesters in similar areas in Atlantic Canada, has grown and is too large. Workers Compensation costs have declined significantly in recent years. It was also noted that other adjustments to the formula by the Panel in recent years (moving to the low point on the weekly price range and the Mother's Day adjustment) were also in favor of the buyers.

In its proposal, SPONL makes the case that the 15¢ deduction is still needed. In particular, it was very important to the viability of some of the smaller and more marginal buyers and thus should remain in place across all price levels in the formula in 2017. They point out that the gap between prices to harvesters in Newfoundland and Labrador compared to other harvesters in Atlantic Canada, is due to the fact Newfoundland and Labrador buyers are further removed from the final market, as well as, distribution center for crates. This adds significant transportation costs compared to the others. Collection costs are also much higher due to distribution from many remote ports in Newfoundland and Labrador. They noted that, unlike the others, Newfoundland and Labrador buyers also have to pay Workers Compensation and EI premiums on the amounts paid to fish harvesters.

SPONL makes the case that they are seeing, and expect to see, increased numbers of lower valuable lobster in the harvesters' landings. They feel this reflects the shifting of effort to lobster from traditional fisheries (crab, shrimp, etc.) as a result of resource declines. This means harvesters are fishing nontraditional grounds and larger boat fishers are moving into the

lobster fishery where they are inexperienced. SPONL's proposal is to make the following amendment to the pricing formula:

"The inclusion of a clause to the 2016 Lobster Agreement addressing excessive levels of less valuable lobster landed by specific fishers. Once the combined weight of less valuable lobster exceeds 10% of a given single landing a deduction in the raw material price of \$2.00/lb. is to be applied to the less valuable weight. Less valuable lobster will include: one claw, bullets (no claws), oversize (greater than 3 lbs.). Lobster would have to be sorted at the time of purchase with the fisher being present."

The Panel carefully evaluated both final offers in terms of rationale and impact on fish harvesters and buyers in terms of the equitable sharing of market values in the lobster fishery. In relation to the SPONL proposal, little independent factual information exists as to the number of fish harvesters that would be impacted. SPONL feels that the vast majority of fish harvesters would not be affected. The Panel shares this view in that most harvesters are experienced and fish lobster grounds that have been heavily exploited for many years. Based upon anecdotal information, the Panel believes most harvesters would have a percentage of low value lobsters in their landings which are below or, well below, the 10% level. Similarly, while it may significantly improve the viability of a small number of marginal operators, it is not expected to have a material effect on the overall industry results.

The FFAW offer calls for an adjustment to the pricing formula only when market prices are above \$7.00 CAD. In that sense, it affords buyers some protection in the event markets deteriorate significantly from the levels of the past two years. The bigger question is, whether the FFAW proposed adjustment to the formula, results in a more equitable sharing of market returns to harvesters and buyers, and, how well it functions in practice. To evaluate this question, the Panel reviewed relative sharing at a number of market prices.

At a price of \$5.23 USD and exchange of 1.336, the market price is \$6.99 CAD. This generates a price of \$4.58 to harvesters, while leaving \$2.41 for buyers. With a one cent gain in USD price to \$5.24, the CAD price is \$7.00 and the 15¢ reduction applies. This gives harvesters \$4.75 (an increase of 17¢), while buyers drop to \$2.25 (a reduction of 16¢ on a one cent gain in the market). At a market price gain between \$7.00 CAD to \$7.83 CAD, the buyers would not receive any share of the incremental value. There would be no incentive for buyers to pursue market prices above \$7.00 CAD under this range of prices. Under the 2016 formula, buyers would have received a 20% share of the incremental value.

At a market price of \$9.00 CAD, the buyers would receive a 12% share of the incremental gain in value after the \$7.00 threshold (versus a 20% share under the existing formula). At \$10.00

CAD, it is a 15% gain versus 20% under the existing formula. Two things are apparent; the relative sharing of the incremental value over \$7.00 changes significantly in favor of harvesters, and, the abrupt change by 15¢ USD at the \$7.00 threshold results in distorted outcomes for buyers and fish harvesters. The Panel appreciates the desire of the FFAW to improve sharing given the climate of higher prices. However, it doesn't find the proposed changes to the price setting formula to be equitable or justified by the current market.

In light of this and following a review of the market reports and the submissions of the parties, it is the decision of the Panel to accept the final offer of SPONL. That is to adjust the 2016 formula to implement a deduction of \$2.00/lb. to the weight of less value lobsters when their percentage of the catch exceeds 10% of the total landing as observed in the presence of the fish harvester.

This adjustment will form a collective agreement or part of a collective agreement binding on all processors that purchase the species lobster.

Dated the 7th day of April, 2017.



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