

## **Lobster Fishery 2012**

The Standing Fish Price Setting Panel hereinafter referred to as "The Panel, issued its Schedule of Hearings for 2012, dated March 9th, 2012, for inter alia the species Lobster. In the event that no binding collective agreement was in effect by Thursday, the 22nd day of March, 2012, the Panel set Friday, the 23rd day of March, 2012, as the date for a Panel Hearing on prices and conditions of sale for the species Lobster. The aforementioned dates were determined following notification from the Minister of Fisheries and Aquaculture dated the 9<sup>th</sup> day of February, 2012, that April 23rd, 2012 had been set as the date by which price and conditions of sale for the species Lobster must be in place.

The Panel had been earlier advised by the Department of Fisheries and Aquaculture that the Seafood Producers of Newfoundland and Labrador, hereinafter referred to as "SPONL" represents processors that process the majority percentage of the species Lobster.

The Panel advised in the Schedule that in the absence of a collective agreement, and in accordance with Section 19(11) of the Fishing Industry Collective Bargaining Act, hereinafter referred to as "the Act", the Panel would conduct a hearing on price and conditions of sale. The Panel further advised that the only parties entitled to appear before the Panel were the Fish Food and Allied Workers, hereinafter referred to as the "FFAW, and SPONL. No other submissions would be accepted by the Panel and should any representative of this species (Lobster) wish to attend the hearing, concurrence from both parties to the collective bargaining process must be obtained.

A hearing, if required, was to take place at 2:00 p.m., on the date indicated, at the Labour Relations Board Hearings Room, Beothuck Building, 20 Crosbie Place, St. John's. With the agreement of the parties and the consent of the Panel the hearing for the species Lobster was moved to the 26th day of March at 10:00 a.m. at the Battery Hotel and Suites, St. John's. The Panel convened the hearing for the species Lobster at 10:00 a.m. on the 26th day of March 2012. Having earlier exchanged submissions the parties appearing before the Panel were the FFAW and SPONL. The Parties supported their written submissions to the Panel (copies attached) in main argument and rebuttal.

This is the second year in the past decade that collective bargaining has taken place with respect to Lobster. In 2011 SPONL was not in the position of a majority processors organization, representing processors that processed 48% of the species Lobster, prior to the Panel hearing on April 11, 2011. At that time the only party to appear before the Panel was the FFAW. No other party made a presentation or

submitted documentation to the Panel regarding the prices and conditions of sale for Lobster for the 2011 fishery. The Panel accepted the position of the FFAW in its decision dated the 18<sup>th</sup> of April 2011.

The 2011 Lobster schedule initially set a minimum price for lobster at \$3.30lb for all market prices up to \$5.00. That minimum price could be increased by 70% of any incremental amount between \$5.00 and \$6.00 Canadian, and 80% of any incremental amount greater than \$6.00 Canadian. The market index price was to be based on Urner Barry listings, with an average price derived from the listings.

Following the release of the Panels decision a number of events occurred. SPONL achieved majority processor status, lobster buyers discontinued operations, and eventually, following negotiations between the FFAW and SPONL, and a further submission to the Panel, under Section 19. 14 of the Act, the Panel, issued a decision having a revised Lobster schedule to be effective on the 8<sup>th</sup> day of May 2011. The schedule reflected the agreement arrived at between the FFAW and SPONL.

That schedule, which changed the minimum price to \$3.25lb, had the same provisions for increasing the minimum price using the Urner Barry listings. It also had a new provision, Section 8, which provided for an alternative means of setting a price, and providing for the development of a database of accurate market information. The provisions of this Section were not implemented. Section 9 of the schedule set a minimum price of \$3.65lb to account for the unique circumstances following the cessation of business dealings.

This year, as recorded in their submissions the parties negotiated but were unable to conclude a collective agreement. The issue which has precluded their reaching an agreement is the index to be applied in calculating a variable market price, referred to as a, "price to market formula".

The parties have agreed on a minimum price, in this instance \$3.25lb. They have also agreed on the fact market prices for lobsters fluctuate on a daily basis. What they can not agree on is some independent market index of lobster prices, which could be used in a formula to produce prices to harvesters that reflected the fluctuation in the market throughout the season.

In 2011 the FFAW proposed the use of Urner Barry pricing reports, as a reliable index of the "ups and downs" of the market place. It is acknowledged by the FFAW that the Urner Barry prices are not the prices received by the members of SPONL, but that there is a good correlation between those prices and the changes in prices which would apply to the SPONL members, in their markets. In 2011 the FFAW referenced a Gardiner Pinfold study which suggested that there was a correlation between prices in the various markets and Urner Barry could be used as an index of market behavior.

The FFAW is prepared to look at other indices of market prices and participate in joint programs to obtain more particular market data. They agreed to a proposal,



made by a local accounting firm to collect data from processors, and relate it to market prices, in response to a joint request by the FFAW and SPONL. SPONL did not accept the proposal as presented and refused to sign it.

In the absence of an agreement on any other indicators the FFAW has proposed the same formula based on Urner Barry listings, that applied last year. The FFAW also point out that the experience of 2011 indicates that lobster prices in this Province were not out of line with prices paid in Nova Scotia or, the Magdalen Islands which operates on the basis of a price setting formula between buyers and harvesters. Prices to harvesters in this Province are generally lower than those in the other areas, for certain specific reasons, but it is contended the prices resulting from the application of the Schedule in 2011, tracked the prevailing market circumstances, and could reasonably be compared to the prices in other jurisdictions.

SPONL has rejected the use of Urner Barry listings in the development of a price to market formula since it was first proposed by the FFAW in 2011. In its view the Urner Barry index relates to a secondary market formula (wholesale list) based on a graded system for Lobsters. The industry in this province does not sell lobsters in accordance with the Urner Barry system. SPONL members act on the basis of supply and demand with a fluctuating daily market price, for four categories of purchases. In their view the application of the Lobster Schedule in 2011, to which they had agreed, contributed to instability in the industry and a financial loss for many buyers.

SPONL has not been able to offer another external index on which to base a price to market formula. It is agreed that transparency is a guiding principle in determining a fair price. This, in their view, may be achieved by having an independent accounting firm provide a data base for lobster information. While they did not sign on to the agreed joint proposal in 2011, they are proposing to use an independent entity in deriving a fair price in 2012.

The SPONL proposal, submitted as a final offer, for the proposes of this hearing provides for a minimum price of \$3.25lb. Adjustment in prices would be determined by an independent agency. All processors or buyers would submit the amount and price paid for all lobster purchased from harvesters on a daily basis. Harvesters would also provide receipts for sales to respective buyers. The minimum price would be calculated by the independent entity based on the weighted average daily price multiplied by 95%. This minimum price would be posted for the previous day and buyers would have to adjust any lower prices paid the previous day to the minimum price.

The SPONL proposal results in a minimum daily price that is derived solely from the prices paid by its members. There is no correlation to any external market prices, even though SPONL members sell, in part, to external markets. Any variation in price beyond the stipulated minimum of \$3.25lb is based solely on the actions of the members of SPONL, which is their agent in the collective bargaining with the FFAW.

SPONL supports this proposal in that the competition between its members for lobster will ensure that minimum prices will reflect the market returns to its members.

Under the provisions of Section 19.11 of the Act, the Panel must choose one of the two positions presented. As matters now stand between the parties, it is the understanding of the Panel that, no matter the position chosen by the Panel, there is a possibility there may be a cessation of business dealings, or some disruption in the prosecution of the lobster fishery.

The parties have agreed on a number of substantive issues. A seasonal minimum price will not provide a solution. A base price \$3.25lb is agreed. Both parties are prepared to work with an independent party e.g. an accounting firm, in acquiring data, from the local fishery and perhaps from other sources.

It is the view of the Panel that the parties need to make a concerted effort to bridge the gap. If Urner Barry listings are not the solution, can that information be applied in a different manner or vetted against some other pertinent statistics or information. The price to market mechanism must be related in whole or in part to some external market factor.

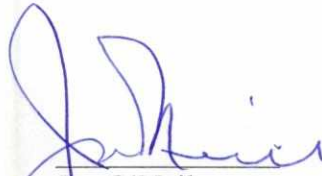
It is this last point which compels the Panel in making its decision. To accept the position of SPONL, which outlines a concept which would have to be further developed; for example the parties would have to agree on the independent agent and the method of compensation, and having no independent or external market correlation, is a step the Panel can not, in good conscience take. On the other hand, the FFAW proposal is clear, and has a track record of setting prices in 2011. There is no evidence to contradict the FFAW contention that the market prices in 2011 were unduly out of line. As well, the Gardiner Pinfold study, found a reasonable correlation between Urner Barry listings and other prices, involving product and pricings, It is not used to determine actual prices, it is only a barometer of market conditions generally.

The contention by SPONL that some members lost money in 2011 may be a fact. It does not however compel one to the conclusion that the prices for raw material were the cause of financial misfortune for any particular business entity.

It is clear to the Panel that SPONL and its members do have concerns about the present pricing methodology. The Panel is precluded from working with the parties in seeking a solution acceptable to both sides. The FFAW has appeared to be open to other suggestions or alternatives, and the Panel trusts that it will continue with that approach in seeking a mutually acceptable solution with SPONL. It is unfortunate that the proposed development of a data base that summarized market information was not put in place. The results may well have assisted the parties in arriving at a mutually acceptable solution for the 2011 lobster fishery.

It is the decision of the Panel to accept the submission of the FFAW. The prices for Lobster will be set in accordance with the 2012 Lobster Schedule attached, which will form a collective agreement or part of a collective agreement binding on all processors that buy and process the species Lobster.

DATED the 2<sup>nd</sup> day of April, 2012



Joe O'Neil



Bill Wells



Max Short