

## LICENCE HOLDERS' RIGHTS IN THE BC FISHING INDUSTRY

Sponsored by: Fishing for Freedom

Seminar Minutes  
December 2, 2007

### Opening:

The seminar on License Holder's Rights in the BC Fishing Industry was called to order at 9:00 AM on November 25, 2006 in Richmond by Gerald Dalum.

### INTRODUCTION

The purpose of Fishing for Freedom is educating industry (fishermen and government). A successful fisherman is no longer simply someone who can catch a lot of fish. To be a successful fisherman you need a good accountant, economist, and lawyer.

### CO-MANAGEMENT IN THE MARITIMES AND BC

*Speaker: Mr. Robert Haché*

Topic: The Story of the Southern Gulf of St Lawrence Snow Crab Fishery and how it illustrates similarities between East and West coast industries

- One of the main characteristics of snow crab is that the biomass fluctuates based on an unexplained natural cycle. This has nothing to do with over fishing.
  - o 1994: 5,000 / sq km
  - o 1997: 3,000 / sq km
  - o 2002: 1,500 / sq km
- In 1978, DFO stopped issuing licenses in Area 12. At the same time, it established 6 new zones.
- In 1978, 138 new licenses were issued in those zones.
- In 1979, 110 new licenses were issued in those zones.
- Further division occurred in subsequent years

### The Boom and Bust Period

- From 1979 onward, there was a boom for a while.
- There was an increased catch rate. DFO attributes this to an increase in supply. Fishermen attribute the increase to improved techniques and more efficient harvesting.
- The erroneous perception of available biomass of crab by the DFO leads to over exploitation. In 1985, catches declined and the stock collapsed in 1989 Fishermen voluntarily stopped fishing.
- In 1990, there was rebuilding in the industry and strong conservation measures.
- Between 1994 and 2002, the fleet invested \$10 million. DFO froze the issuance of additional licenses and incorporates crabbers' know-how into management.

### 1990 Snow Crab Agreement

- Crab resource divided into fixed quotas.
- TAC not to exceed 70% of lowest scientific assessment and landings are independently monitored.

- Molding crab protocol is put in place to protect future recruitment.
- In 1993, Minister Crosbie indicated that the industry should be admired for protecting its resources.

#### **Return of Abundance – 1994**

- Fund for research and new areas to fish.
- In 1994, more than 554 licenses were issued.

#### **1995 Crisis**

- First crab lottery draw. There were numerous temporary allocations of 10,000 lbs. each that was made available to fishers of other species.
- New fishing Areas were established without the crabbers consent
- In 1995, Minister Tobin stated, "Conservation remains our principal goal."
- Temporary permits to expire at the end of 1995 and won't be re-issued.
- In 1996, Minister Mifflin re-issues temporary permits.
- Crab and shrimp fleets fear for the future of the industry.

#### **First Partnership Agreements**

- Area 12 Snow Crab Agreement & Gulf of St Lawrence Shrimp Agreement
- There are natural cycles of increases and decreases in stocks.
- Temporary allowance when stocks are abundant.
- DFO incorporates fishers' know-how in management of respective industries.
- No new permanent licenses are to be issued.

#### **Marshall Decision 1999**

- Agree to integrate First Nations fishers into fishery.
- Existing commercial crab licenses must be acquired on a voluntary basis. First Nations must fish their allocations themselves.
- By the end of 2002, the 1990 Snow Crab Agreement had held for 12 years.

#### **Second Partnership Proposal**

- Same proposals made to DFO by crab fleet and shrimp fleet

#### **2003 Crisis**

- Fisheries & Oceans honors the shrimp agreement but not the snow crab agreement.
- Numerous non-crabbers were given permanent access. Each crabber lost 26.5% of individual share without compensation.
  - o 10.35% to First Nations
  - o 12.64% to lobster & ground fish fleets
  - o 3.37 to inshore fishers from Nova Scotia
- Even worse, the DFO cancels crabber's influence in co-management.
- Before 2003, 8 crabbers associations held 100% of the harvesting sector's representation on the various management committees. This eventually gets reduced to 20%
- The consequences were that essential components of the sustainable snow crab fishery were shattered
  - o The 1990 restrictions to the fleets' capacity were eliminated.;
  - o The co-management process was broken
  - o The cohesion between fishers' organizations was broken
- After 2003, the fishers were generally ignored and threatened by the DFO. Thank you for your help – we will give your fish to others.
- June 4, 2003, RDG of Fisheries Management refused to explain why he decided to increase excessively the number of crab traps allocated to new fishers.
- Jan 2004: FRAPP – RDG refuses to explain to the crabbers' reps the rationale behind the 2003 Area 12 Management Plan.
- Winter 2004: DFO tries to undermine the unity of 4 groups. DFO attempts to bypass legit crabbers reps to extract 3<sup>rd</sup> party validation of the department's own views.

- June 29, 2004: DFO directs crabbers cod allocation to other fishers.
- Nov. 2004: Region's senior staff renews their attempt to bypass the official reps of 2 New Brunswick associations.
- Kinship between the fishing fleets is broken.
- 2003: Minister Thibault launched unsustainable increase in fleet capacity.
  - o 31 vessels from Area 18
  - o 66 vessels from First nations
  - o 116 vessels from lobster and groundfish sectors
- Minister also launched a dangerous escalation of the fishing effort – a 75% increase from 19 500 traps to over 34 000 traps
- Why the crabbers went to Court:
  - o DFO reinstated over-capacity in their fleet
  - o DFO reinstated over-capitalization in the harvesting sector
  - o DFO confiscated the crab stock for its own interest

### Questions & Answers

#### Question 1:

What was the reason for the split between shrimpers and crabbers? The shrimpers seemed to get their way but the crabbers did not. Were there economic reasons?

Answer:

Permanent access to crab was given to those fishers for political reasons. Economics was not a factor. There was no economic study done by the government

#### Question 2)

As they increased the quota, was there a market decrease in price?

Answer:

No. The crab market does not work that way. There is competition with the Alaska Opilio (snow crab).

### THE LAROCQUE DECISION

Speaker: Ms. Brigitte Sivret

Topic: Impacts of the Larocque Decision

#### Why is the Larocque Decision important?

1. **Decision F** from the second highest court in Canada
  - The only other place to go is the Supreme Court of Canada
  - 2. Creates a precedent that applies to all fisheries in Canada
- Based on both the **Fisheries Act** and the **Financial Administration Act**
- Distinction made between general powers and specific powers conferred to **DFO's** Minister of the DFO
- The source of the Minister's **general** authority is the Department of Fisheries & Oceans Act (1978-1979 CF115) which provides that:
  - Powers, duties, functions of Minister also extend to and include such other matters relating to oceans and over which Parliament has jurisdiction and has assigned by law to the Minister.
- The Minister **held** both powers and DUTIES to Canadians.
- Sources of Ministers Specific Powers:
  - o Fisheries Act and R.S.C. F-14
  - o Series of Regulations May designate fishery offices / guardians.
  - o - The discretionary power to issue May issue fishing licenses is a specific power but is often used as a general power to justified management decisions. This power has resulted in many abuses during in the past years.

### 3. Imposes a new limit on the Minister's decision making power

#### Background

- Spring 2003: Negotiation of co-management agreement with traditional crabber trade fleet failed.
- DFO wanted fishers' money but was not willing to deny fishers of other species permanent access to snow crab.
- DFO decided to use specific powers to issue fishing licenses with an allocation of crab to Mr. Deveaux those who would carry out the trawl trial survey for DFO.
- According to DFO, nothing was illegal and licenses were issued for scientific activities which was within DFO mandate.

#### DFO's scheme

- DFO's scheme: Most of the time, DFO broadens its interpretation of the Minister's discretionary powers.
- Fishersmen disagree – discretionary power is simply a tool for management and conservation of resources.
- The Minister can't use its power to issue licenses as a means to finance its activities. This is the This issue that was raised in court.
- Does the Minister have the power to finance DFO's scientific research activities by selling the fisheries fish that he has the duty to manages?

#### Court Conclusion

- The minister does not have the power to use or sell the resources to finance its activities;
  - The Minister knowingly misappropriated and blundered resources.
4. Establishes a solid legal ground for other legal battles
- General discussion on the application of the Larocque case on other legal challenges and issues raised by fishers in Court. Example: The decision rendered by Justice Martineau of the Federal Court on October 2006.

#### Questions & Answers

##### Question 1:

If the Minister doesn't own the resource - it belongs to Canada - what is our standing?

Answer:

You have a reasonable expectation that you will get your license each year. The Supreme Court said that the resource belongs to all Canadians. This doesn't mean that each and every Canadian should expect to get a license, but the Minister has to make sure that the people who depend on fishing to earn a living should get their quota. When fishermen get their quota each year, the communities they live in benefit economically.

The Minister has an obligation to that he manages the resources in the interest of all Canadians and primary toward the ones that have invested in and relied on to maintain viable fishing enterprises.

##### Question 2:

In 1999 we brought cameras in voluntarily due to theft. The RCMP & DFO refused to do anything about theft. In fact, they indicated I would be investigated if anything went wrong.

Answer:

You can put whatever you want on your vessels on a voluntary basis.

##### Question 3:

Re: User pay concept. If we can use product to pay for fish, can DFO increase fees to pay for research?

Answer:

License fees are regulated but it can be done if the proper steps are followed. It is the Government of Canada's responsibility to pay for the costs of managing fisheries.

Question 4:

Are the fees paid on licenses legal?

Answer:

Yes, it is provided for in the Act and Regulation. However, License fees don't necessarily go directly to the Fisheries department budget.

Question 5:

How does this connect back to the injustices faced by the snow crab industry?

Answer:

There's an action started on behalf of all of my (Ms. Sivret) clients individually. They are suing the DFO for different breaches of his duties and promises.

We want the court to force the DFO to deal with the First Nations buy back program and avoid expropriations of individual quotas to integrate First Nations.

There has been no management plan issued since the recent legal rulings such as Larocque. We are paying close attention to what DFO will propose to do in order to comply with the Court's ruling, happens next.

Question 6:

Back East, was it some there a specific regional directors that was creating the a problem?

Answer:

Yes. There were a couple of regional directors that seems to be against the crabbers.

Question 7:

Re: Trawl Licenses. When I started it cost \$10 / year to renew. Now it costs \$25,000 to renew, plus another \$25,000 in fees. Which of these fees are illegal?

Answer:

All management costs except but the licensing fees, should be paid by the department from its budget according to my interpretation of the recent court decisions.

Question 8:

If the snow crab association wanted, could they have taken 100,000 lbs of crab and designated it to a research program?

Answer:

There is no transferability of quotas. They can't pool. Anything can be done as long as it's voluntary.

The goal is to put an end to the abusive approach by DFO of pretending that they own the fish and fishermen.

Question:

After the Larocque Decision, the DFO issued part of salmon TAC to the Salmon Advisory Board for projects. Clearly this is not legal. What do you suggest?

Answer:

Ask DFO to reimburse the license holder them to pay for the quota they took away. Legal action should be taken, ask your lawyers to address the issue, and a lawyer should send a letter.

#### BC's TERMS OF UNION

Speaker: Mr. Chris Harvey, Q.C.

- Resource is a common property. Resource is not owned by the government or crown. Fish are not like trees or mining resources.

- When fish are caught, they are owned by the people who've caught them, as proven in the Larocque case.

### **Position of Fishermen in BC**

- Who pays for management in fisheries?
- Basic ground rules:
  - o 1871 Terms of Union: BC's Terms of Union for uniting with Canada included mail service, railway service, and that Canada will assume and defray charges for the protection and encouragement of fisheries.
  - o The burden of the above rests with the government and the taxpayers of Canada.
- To what extent do the Terms of Union help / affect fishermen's issues? The Terms of Union constitute a binding obligation in perpetuity until BC and Canada come to another agreement.
- Examples of other Terms of Union issues:
  - o Railway: Appealed to Supreme Court. The interpretation was that the railway was to be built, but the Terms of Union did not refer to maintenance of the railway.
  - o Ferry service strike in PEI: Ferry service in PEI was included in the Terms of Union. The Court of Appeal ruled that the Terms of Union held a legal duty binding on Canada. They had a statutory right to have something done. This established that the Province can sue and recover damages if the Terms of Union are breached. The PEI ferry case is similar to the BC case.
- Can an individual enforce the Terms of Union?
  - o A case in New Brunswick determined that an individual is a stranger to the Terms of Union. This is a complicated matter and Mr. Harvey believes that this is not the final word.
- The question of how much to spend is a Government issue. The Court won't determine financial amounts. It deals with questions of principle.
- To what extent can the Minister get around issues by increasing license fees rather than selling fish?
- The Minister can't impose a royalty on fish or act in a discriminatory way. License fees must be fairly applied and can't exceed the cost of running the Ministry.
- Important: The Terms of Union say that the Government should bear the cost, not fishermen. This includes the taxpayers of Canada, not just BC.
- Options to address problem:
  - o Class action
  - o Apply to Attorney General of Province

### **Questions & Answers**

#### *Question 1:*

What standing do Joint Project Agreements have? E.g. Pay \$100,000

*Answer:*

If it's purely voluntary, you're stuck with it. It's part of a process commonly seen in the Federal Government.

It's different if it's a condition of being allowed to go fishing. The Ministry has a duty to manage the fisher in the public interest.

#### *Question 2:*

At one time the Minister could increase license by Order in Council. Currently this can't be done without a full Order in House and they need input from Industry.

*Answer:*

All license fees and tax are strictly controlled by Parliament.

#### *Question 3:*

(Questioning the legal description of fish.) When fish are caught, are they the fisherman's property?

Answer:

Yes but they are subject to regulations. The government can regulate the sale of fish.

Some regulations are necessary to protect the resource.

There is no basis in law that if a fish is legally caught, it's the property of the government.

Question 4:

The DFO can't refuse to open if people don't pay. If they refuse to pay for science, can they sue?

Answer:

Yes. There are difficulties with suing the government, but you can do it for damages.

You have to show that the government knew what they were doing was wrong.

Question 5:

Re: Not opening a fishery with the excuse of no funds for research. How does this apply to Provincial fisheries? The ability of proving flows from the FA.

Answer:

Non-Tidal Fisheries are owned by the Province. The Province, as owner, can bring an action.

Question 6:

Re: Ability to set fees. The Minister does not have the power to set fees but the Cabinet does as per statute. Is there a limit in principle is another question.

Answer:

Question 7:

Re: Herring. Testing is necessary to establish TAC. What happens to us if the Government funds only a minimal amount of testing when more testing is required? Can they come back and say that due to uncertainty, we'll open, but only with a minimal amount of TAC? Can we force the DFO to do necessary science?

Answer:

This is a gray area. There's not a clear principle that they're transgressing. It's difficult for a lawyer to go to court in this situation and prove that they are abusing power.

The conclusion is that you are between a rock and a hard place if they don't fund properly.

Question 8:

Is there a limit to how far they can go with a user pay criteria they've come up with?

Answer:

It's a political decision. There's nothing you can do in a court of law.

Fisheries – directly contrary to the wording of the Terms of Union. It is different than user pay in other industries.

Question 9: *What about excessive fees & zero quota option?*

Answer:

Order in council.

Question 10:

Re: Larocque effects on salmon. The DFO indicated in a meeting that their way to deal with the Larocque Decision is to minimize and diminish salmon fishing opportunities and they will be more precautionary.

Answer:

Sounds like they are abusing their power.

Comment: *Brigitte Sivret*

We could add to the science if we all agree but they can't shove it down our throat.

If all industry agreed they could do more research. With integrated fishing it's not just on industry. It opens up a can of worms.

Question:

Re: Blackmailing by DFO. If the DFO has set standards, can we not hold them to that standard now?

*Answer:*

DFO has a duty to manage. You would need a strong court case to push it far.

*Question:*

Re: Ministerial Policy (wild salmon policy) which took a block of fish and elevated sport above commercial. Is this legal?

*Answer:*

The Gulf trawlers decision gave the Minister wide discretion of allocating between groups.

The challenge would have to be based on the expropriation of one group against another. The Larocque Decision has changed the Minister's ability to allocate based on socio-economic grounds.

*Question:*

What's going on in the East Coast after Larocque?

*Answer: (By Brigitte Sivret)*

The crabbers fear that the department will try to blackmail and go conservative if there is not appropriate scientific research to determine TAC.

They document heavily, continue to expect further court challenges. They (government) have in past years demonstrated how much research is necessary. They (crabbers) don't buy the "we'll have to be conservative" argument.

Documentation is important if you expect to have a court case.

*Comment:*

These standards are already set. These standards are there and we have to protect them.

*Question:*

Is it legal for DFO to allocate 10% of halibut fishery for a certain purpose?

*Answer:*

Sounds like manipulation and like it would cross the line of power.

#### **PUBLIC RIGHT TO FISH**

*Speaker: Mr. Keith Lowes*

Topic: Summarize the practical application of the public right.

- The key is to give the Minister a problem AND a solution, not just a problem.
- Under Robert's co-management plan, who is the owner of the resource?

#### **Two Themes from Larocque Decision**

1. Where does the department get its money to fund operations? (E.g. User Pay)
  2. Public Right – the particular charter in the case was paid for by access to fishery, not simply cash.
- In a very, very broad term, what the Minister can and cannot do is determined is he acting as an owner or regulator.
  - If he acts as an owner, he can't do it. If he's acting as a regulator and acting in the public interest, he likely can do it.
  - The difference is a nuance.
    - o Most of the jurisprudence in BC developed not so much as fishers as public and Ministry but as conflict between public fisheries and aboriginal fisheries.
    - o Jurisprudence in New Brunswick developed by public fisheries.
    - o In BC, the jurisprudence developed around salmon fishery – not an individual quota industry.

#### **Historical View of Public Right**

- 1066 Normans invaded England

- At that time, the right to fish became whoever owned the river or lake owned the fish. Private right tied with ownership of the land – proprietary fishing.
- The exception was tidal waters, which was a public fishery.
- When King John signed the Magna Carta, the Crown promised not to prevent its subjects from exercising their legal right. The Crown became the trustee / steward of public fisheries.
- English Common Law, and therefore Public Right, was important in developing Canadian Law.
- There was originally resistance to establishing Aboriginal fisheries.
- The key point is the public in 'public management' does not mean state. Fishery and navigation are the only areas like this.

#### **Crown Asset vs. Common Property**

- They are not the same thing.
- This is more difficult to distinguish in a democracy than a monarchy. Regulation is more complicated but necessary. What allocation is / isn't legal is complicated in management.

#### **Regulatory Regime & Public Right**

- Regulatory Regime made up of DFO Act, Fisheries Act & Regulations.
- Legislation hasn't changed much since about 1900.
- Statutory / legislative policy is based on the premise that fishing is a common property resource to be managed in the interest of all Canadians.
- What's the difference between a right to fish and a license? Is a license a right?
  - According to FA Regulations, you have a right to fish but no one can exercise that right without permission. The license is the permission.
- Issue: if the restrictions that are put on exercise of right through license (conditions, limits) get to the point where they are onerous to a particular degree, the question if this is really a right comes into question. It starts to look like a privilege if you behave and comply (pay).
- What is the proper function and purpose of a fishing license?

#### **Current Effect / Function of Public Right in Ongoing Litigation in BC**

- In BC, the public right is being asserted in several different contexts:
  - Aboriginal Fishing: The public right serves to define the definition of Aboriginal right. It has to be in a modern context. It can't be defined in abstract by itself.
  - The public right will define limits of Aboriginal rights such as limits on the degree of protection / priority that's given to Aboriginal rights.
- How does the presence of public right limit the Government? The Government without legislative authority of Parliament can't limit public right. There's an assumption that if legislation doesn't specifically say it limits public right, then it doesn't.
- The Federal Government can't act as if it owns the fishery.
- If nobody owns it, nobody has a higher right than another.
- Self-interest can have detrimental effects on industry through biological and economic problems.
- How do you avoid tragedy / plundering of the commons by individual fishermen without destroying common property nature?

#### **Questions & Answers**

*Question to Robert Haché*

You've called the bluff of the Government. They're between a rock and a hard place. They have duties and obligations but they have an insufficient budget. How does Government solve this problem? We need your money? What do you want? Who is the

manager? Who is the steward? How is the public interest represented? What is the solution?

*Response from Robert Haché*

The Minister's first duty is to conserve the resource. That's its main function.

It is common sense that 20-30 million Canadians can't have access to the resources. It's not workable. The Minister must regulate so the resource stays viable and healthy so the public right keeps on generation after generation.

How do you prevent the collapse of resources? You don't over fish. Ways to prevent over fishing is to limit access. It's the role of the Minister to prevent over fishing by limiting access.

If you manage responsibly to be the trustee of the resource in a reasonable fashion, your fishery will be healthy. There will be fish in the water and the fishermen will have enough to help you in their payments.

Leadership is lacking. The Minister will sometimes increase access or concentrate access, which is not healthy.

Suggestion: Allow 15-year access. Set a goal of a slight increase in biomass

Give the opportunity to make maximum use of rights and we will take on relevant responsibilities. Jeopardizing the industry itself doesn't serve anybody well.

*Comment*

There should only be enough licenses so that people can make a living. Sometimes the Government uses the public right against industries and allows more people than this to fish. The solution - it should be economical for fishing vessel owners and fishermen.

*Question 1:*

We have a system that worked but it fell apart. If you want to go back (before the 2003 Agreement), clearly that system is deemed to be illegal. What happens if someone complains that it's illegal?

*Answer:*

It's not illegal for fishermen to enter into contract with the DFO and pay out of pocket to support cause and industry. A voluntary agreement with the DFO is legal.

*Question 2:*

"Voluntary" is volatile.

*Answer:*

A problem is that some individuals won't pay. There is no answer. For example, 2003 co-management agreement to set aside quota. To get the quota, the fishermen would have to pay a co-management fee. The problem is that you try to make things better but the DFO turns around and makes things more difficult.

The solution is to develop a fishery where people see that there's an economic advantage to investing in it.

*Question 3:*

120,000 of the sockeye harvest was set aside to protect Cultus Lake. They assumed that everyone was in agreement. Is the funding raised by selling legal? They were caught with a scientific permit.

*Answer:*

This is a litmus question. Is the opening of that fishery for that purpose an act of regulation or ownership? It looks like an act of ownership; therefore, it's probably beyond the power of the Ministry to do it.

*Question 4:*

Re: Aboriginal perspective. The Magna Carta doesn't apply to Aboriginals. There is a disagreement about Provincial ownership versus Aboriginal ownership. Allocation is an issue. For example, the halibut agreement. Sport and commercial fishermen came together to allocate and forgot about Aboriginals. The Aboriginals were left out of the planning.

Management plans are designed by DFO and fishermen. Aboriginals are at a disadvantage in this agreement. It's difficult to make a living.

*Answer:*

This is a legal point. There are two fisheries (sec. 35 Aboriginal Rights) and public fisheries. It's a legal conflict between public and Aboriginal rights.

*Question 5:*

Clarification - the Crown is definitely not allowed to use any of our resources for testing. They hire guys out of their association (crab). This doesn't go through DFO. There are difficulties when not everyone is in agreement. Is one person against enough to destroy or is only a majority of say 2/3 required?

*Answer:*

No consensus within a group is a practical problem, not a legal problem.

*Question 6:*

DFO budget of \$1.5 billion to manage industry. The budget should cover all issues discussed today. Parliament has given them the budget. The DFO chooses how to spend this money.

*Question 6:*

First Nations people want a livelihood. We have the same desire as other fishermen. What do we all want? Fish. What is the solution? White and First Nations are not working together. We're all working separately to find a solution.

*Answer:*

The purpose of this is to bring everyone together.

#### **THE LAW ON CONFLICT OF INTEREST AND ETHICS FOR ADVISORY BODIES**

*Speaker: Mr. Chris Watson*

Topic: Potential conflicts of interest that exist and how those conflicts affect license holders and potential license holders.

- Once elected or selected, members of boards have privileged information.
- They can make suggestions for decisions and those decisions can affect the value of licenses.
- There are no ethical guidelines (except a conscience) that prohibit those people in buying or selling licenses and therefore using or exploiting this insider information.
- None of the DFO advisory boards has these ethical guidelines
- Should advisors step aside in obvious conflicts of interest? The answer is yes. The question is MUST they?
- Can a fisher sue a member of an advisory board if it's determined that person exploited their insider knowledge?
- There is legislation in both the corporate and securities sectors.
- E.g. Sinclair Stevens case. Found to be in conflicts of interest, but codes didn't define conflict of interest or give clear guidelines so he couldn't know where those lines were.
- Important lesson: If there was an allegation against a DFO advisory board, it would be quite difficult to make charges stick.
- Why aren't there guidelines that bind advisory board members?
- Solution: call for guidelines. It's in everyone's self interest to have guidelines. Information imbalance creates a power imbalance.
- The Pacific License Appeal Board does have ethical guidelines. It seems obvious that they should apply across all advisory boards.
  - o Board members should not have private interests that will be affected by the matters.
  - o If a conflict arises, it should be resolved in the public interest.
  - o Members should not knowingly take advantage and benefit directly.

The code should spell out clearly where the line is drawn. This will make the guidelines binding. What needs to be done? Lobbying.

*Question 1:*

Is there a differentiation between an advisory board if it's DFO appointed or appointed by the Society Act? Is one more at risk?

*Answer:*

He's referring to DFO advisory boards. If Society Act appointed, your duty is to the members.

Sitting on a board with rules is different than sitting on a DFO board. The question to be asked is, are the decisions binding or advisory.

*Question 2:*

When you are on an advisory board and start working on co-management what's your liability when there is no directors insurance?

*Answer:*

If a member of an advisory board has gained personally, then the person could be sued in a personal capacity.

*Question 3:*

Clarify – You can be on an advisory board, not disclose all your information, and benefit a huge amount?

*Answer:*

This is untested. I'm not comfortable trusting the court to draw a line when the line hasn't already been tested, such as in the Stevens Case.

*Question 4:*

Re: Herring Advisory Board. In the US, there's a movement to not have fishermen on boards and having people who don't have any interest in the fishing boards. As it's written, everyone is in a conflict of interest.

*Answer:*

Members of license appeal board shouldn't have private interests. At best, you would have former license holders as members. You have the time and power to adopt them as appropriate. For example, you could have a freeze on licenses purchased or sold, while they are a member.

#### **DISCUSSION & CONCLUSION: GIPP AND DFO**

*Speaker: Mr. Gerald Dalum*

The purpose of this is to bring everyone under one roof.

#### **Integrated Fishing Plan**

- By-catch is not waste. Another species eat discarded by-catch. If the by-catch discards were not there, these other species would get it for themselves.
- There was no problem with rockfish until there was a target fishery. Halibut, sablefish dogfish and rockfish have different habitat.
  - o Discount rockfish by-catch and relinquish to fund research.
  - o Set a TAC based on rockfish habitat
- Being abused by advisory bodies set up for the purpose of environmental issues and endangerment of species.
- Question: Where do decisions come from? Likely from the environment industry.
- Last year the government gave back \$20 million in their budget because they didn't use it.
- The Government is supposed to protect the resource. They are not obligated to private industry, yet they have given billions to:
  - o Atlantic Canada Opportunities Agency (\$1.8 billion over a decade)
  - o Canada Economic Development (\$1 billion over 12 years)
  - o Western Economic Diversification (\$1.2 billion over 13 years)

- Industry Canada (\$5.8 billion since 1982)
- Much money is going to Canada's largest corporations, yet the Government can't afford to protect its fisheries.
- The current proposed plan does nothing.
  - The agenda has nothing to do with conservation.
  - Advisory boards are in conflicts of interest.
  - Set individual quotas improperly.
  - Denied transparency in management and advisory processes?
  - Allowed for transfer of fishing rights from one use to another without appropriate compensation. Nobody gets paid for his or her losses.
  - Unlawfully used a public resource to pay for fisheries management.
  - No money to be made by a lot of fishermen.

#### Fishing For Freedom Agenda

- Suggestion: Select a committee for establishing a map for where we want to go. To get members to fill the tank and buy the gas to protect our rights. To open the doors to all passengers who are willing to work together.
    1. Request to get the Government judiciary on the advisory process.
      - The advisory board process doesn't work. People are there with the right intention, but there are problems with the design. People are there in their own personal interest and for insider information. In fact, the main reason to be on advisory boards is for the insider information.
    2. To establish Government's responsibility to reimburse industry for their costs.
    3. To organize Pacific Fisheries Management Commission.
      - Make immediate design alterations to Integrated Plan.
        - Reduce redundant reporting and micro management
- All fishermen in BC should work together to work toward the common goal of having a strong industry.

#### **Adjournment:**

Seminar was adjourned at 4:15 by Mr. Gerald Dalum.

Minutes submitted by: Rachael Zimmerman

Approved by: Gerald Dalum