

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. H & H Fisheries Ltd.*, 2014 NSPC 61

Date: July 16, 2014

Docket: 2508606; 2508608; 2508610

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

H & H Fisheries Ltd.

Judge: The Honourable Judge Theodore Tax,
Heard: July 16, 2014, in Dartmouth, Nova Scotia
Decision July 16, 2014
Charge: FA 78; FA 78; FA 78
Counsel: Paul Adams, for the Crown
Victor Goldberg, for the Defence

By the Court:**INTRODUCTION**

[1] H & H Fisheries Limited, a provincially licensed commercial fish buyer and processor located in Eastern Passage, Nova Scotia has entered guilty pleas to three charges of having purchased, sold or possessed any fish, to wit: ground fish that has been caught in contravention of the **Fisheries Act** or **Regulations**, contrary to section 33 of the **Fisheries Act** R.S.C. 1985, c. F-14 as amended. The three offences related to three separate time periods being between June 23, 2007 and December 13, 2007, between January 1, 2008 and December 31, 2008 and finally, between January 1, 2009 and July 31, 2009. The Crown had proceeded by way of summary conviction in these matters.

[2] The issue before the Court today on this sentencing hearing is to determine a fit and appropriate fine under section 78(a) of the **Fisheries Act**, which for a first offence proceeded by summary conviction must not exceed \$100,00.00. In addition, the Crown also submits that the Court should order an additional fine under section 79 of the **Fisheries Act**, as they allege that H & H Fisheries Limited has, as a result of committing the offences in question, “acquired monetary benefits” or that “monetary benefits accrued to the company.” Therefore, the

Crown asks the Court to exercise its discretion to order H & H Fisheries Limited to pay an additional fine in amount equal to the Court's finding of the amount of those "monetary benefits".

SUBMISSIONS OF COUNSEL:

[3] The Crown Attorney and Defence Counsel have presented the Court with an agreed Statement of Facts (Exhibit 1) relating to the facts and circumstances of the commission of the three separate offences by H & H Fisheries Limited between June 2007 and July 2009. Although the parties have agreed on the underlying facts and circumstances of the three separate offences, there is a significant difference in their sentencing submissions to the Court.

[4] It is the position of the Crown that the regulatory licensing requirements of a commercial ground fishery, which included the halibut fishery, were subject to strict license conditions which required that all ground fish, including halibut, that was caught, be landed, offloaded and accurately recorded and verified in the presence of a federal Department of Fisheries and Oceans [hereafter "DFO"] "Dockside Monitor". Based upon the detailed investigation conducted by DFO, during the period in question, the evidence established that H & H Fisheries Limited illegally purchased halibut from four ground fishers on 67 separate

occasions, and as a result thereof, the company illegally possessed 144,100 pounds of halibut with the total value of approximately \$681,000.00. The Crown Attorney submits that specific and general deterrence must be the primary sentencing principles to be considered by the Court in this case, since the regulatory framework was designed for the protection and conservation of a valuable resource and to ensure that the natural resources will not be depleted or destroyed by overfishing.

[5] It is the position of the Crown that, given the paramount consideration of specific and general deterrence, the Court's sentence will also ensure compliance with the regulatory framework of the **Fisheries Act** and its **Regulations** and therefore, the section 78(a) **Fisheries Act** fine to be imposed should be close to the maximum amount of \$100,000.00 for each offence. The Crown Attorney submits that given H & H Fisheries Limited's concerted efforts to work with the license fishers in underreporting 67 halibut purchases over a two-year period and taking into account the other aggravating factors, the fine for the three offences ordered under section 78(a) for the **Fisheries Act** should total at least \$270,000.00. In addition, the Crown Attorney seeks an "additional fine" under section 79 of the **Fisheries Act**, equal to the gross profit or "monetary benefit" obtained by H & H Fisheries Limited from the sales of this unreported halibut, which the Crown

Attorney submits should, at a minimum, \$218, 000.00, based upon the financial information tendered as an exhibit by H & H Fisheries Limited.

[6] Defence Counsel does not dispute the fact that specific and general deterrence are the paramount considerations to be kept in mind in imposing a fit and appropriate sentence in the case. However, Counsel also submits that other sentencing principles including parity, totality, and proportionality must also be considered. It is the position of the Defence that H & H Fisheries Limited was a buyer and not vertically integrated to also conduct the fishing themselves, and while they did process some fish, the halibut was resold, but not processed. As such, H & H Fisheries Limited's culpability is only in relation to its illegal purchases of halibut during the three fishing seasons outlined in the Information.

[7] It is the position of the Defence that, since this is the first offence for H & H Fisheries Limited, the section 78(a) **Fisheries Act** fine should be the area of \$25,000.00. If the Court concludes that an additional fine should be ordered under section 79 of the **Fisheries Act** for forfeiture of the "monetary benefit" obtained by H & H Fisheries Limited, Defence Counsel submits that that amount should not be more than \$100,000.00 based upon the financial information provided to the Court in an exhibit, which in his submission, should be based on the net profits of the company during the relevant time period, not the gross profits as submitted by the

Crown. Furthermore, in considering the quantum of the fines and any “additional fine”, it is the position of the Defence that the Court should take into account the financial viability and profitability of H & H Fisheries Limited to pay the fines.

Defence Counsel seeks five years to pay any fines.

AGREED FACTS & CIRCUMSTANCES OF THE OFFENCES:

[8] An agreed statement of facts was filed as exhibit 1 in these proceedings to outline the background of this case, the regulatory requirements and license conditions in effect and the details of the three separate offences committed by H & H Fisheries Limited during the period between June 23, 2007 and July 31, 2009.

[9] The charges against H & H Fisheries Limited relate to the company’s purchase and possession of ground fish, in particular halibut, from four commercial ground fishers who had been licensed by DFO during the relevant time periods.

The halibut in question had been caught and retained by the four licensed ground fishers in violation of the **Fisheries Act** and **Regulations** between June 2007 and July 2009.

[10] Halibut is the highest valued groundfish species available to licensed commercial fishers in the Atlantic region. During the relevant time period between 2007 and 2009, the average purchase price was approximately \$5 per pound. By

comparison, other groundfish species generally sold for less than \$1.00 per pound during the same time period.

(a) *Regulatory Requirements – License Conditions*

[11] During the relevant time period (2007-2009), the commercial ground fishery, which included the halibut fishery was then, and still remains, a “monitored fishery”. As such, all DFO licensed commercial ground fishers including the four fishers who were charged with fisheries offences at the same time as H & H Fisheries Limited, were subject to “*License Conditions*” which, among other things, required:

(a) that all groundfish [including halibut] caught by them, be landed and offloaded in the presence of a DFO designated “Dockside Monitor” with the species and the amount of groundfish offloaded to be accurately recorded and verified by the “Dockside Monitor”; **and**

(b) that the species and weights of the groundfish offloaded and sold be accurately reported to DFO. The report to DFO was done by way of a prescribed form issued by DFO entitled the “Fixed Gear Monitoring Document” which was required to be completed and verified by the DFO designated “Dockside Monitor” at the time of the offload. The individual species and accurate weight of the groundfish landed was to be recorded in the “Fixed Gear Monitoring Document” and subsequently submitted and reported to DFO.

[12] Violations of these or any other License Conditions is an offence contrary to section 22(7) of the **Fishery [General] Regulations** and is punishable under section 78 of the **Fisheries Act**.

[13] The data reported to DFO via the “Fixed Gear Monitoring Documents” is used by DFO for the management and control of the commercial ground fishery. In a letter filed as exhibit 2, Ms. Verna Docherty, Senior Advisor, Groundfish, Resource Management Division, DFO-Maritimes Region, stated that misreporting or failure to report catch has major consequences to the sustainability of the stock, the integrity of the management and monitoring systems, and the economics of the fishery. She added that, based upon their knowledge of the fish population, the stock biomass and how much that biomass is mature and able to reproduce, DFO sets a Total Allowable Catch to be taken from the fish population in a specified period [usually one year] in a management plan. The object of the management plan is to maintain the mature biomass at or near the level that will provide maximum sustainable yield. If biomass drops below that level, negative consequences follow, including a necessary reduction in the Total Allowable Catch which has an economic impact and the serious consequences of the possible failure in producing enough young fish to replenish the stock.

(b) Inspection/Investigation:

[14] The circumstances of the charges before the Court came to light in 2009, as a part of DFO’s ongoing compliance monitoring of the commercial ground fishery. DFO requested documentation relating to the purchase and sale of halibut from

various commercial fish buyers / processors, including H & H Fisheries Limited pursuant to section 61(4) of the **Fisheries Act**. Subsequent analysis of the documentation obtained from H & H Fisheries Limited provided evidence that the company had purchased halibut caught in contravention of the **Fisheries Act** and **Regulations** from four different licensed commercial ground fishers on a number of occasions between 2007 and 2009.

(c) *Offence Summary:*

[15] After obtaining the documentation from H & H Fisheries Limited, subsequent investigation by DFO established that between 2007 and 2009, H & H Fisheries Limited had , on a total of 67 occasions, purchased and possessed quantities of halibut from four licensed commercial ground fishers that had not been caught/retained in compliance with the *License Conditions* contained in their *Commercial Groundfish Licenses*. More specifically, the DFO investigation revealed that, on each of those 67 occasions, H & H Fisheries Limited had purchased quantities of halibut landed by the four licensed commercial ground fishers which were not offloaded and verified in the presence of a DFO designated “Dockside Monitor”. In addition, those quantities of halibut offloaded and sold were not recorded and reported to DFO in the commercial fishers’ “*Fixed Gear Monitoring Document*” as was required by the fishers’ *Commercial Groundfish*

License Conditions. All of these 67 transactions in contravention of the **Fisheries Act** took place at or near Eastern Passage, Nova Scotia.

[16] In each instance, some of the commercial ground fishers' halibut catch was offloaded and verified by the DFO designated "*Dockside Monitor*" as required by the License Conditions. That portion of the commercial ground fishers' halibut catch was properly recorded in the "*Fixed Gear Monitoring Document*" and then reported to DFO. The properly reported halibut catch was then sold to H & H Fisheries Limited, which had a representative present at the time of the off-load by the commercial fisher, and that representative of H & H Fisheries Limited also "signed off" on the accuracy of the halibut catch reported to DFO in the same "*Fixed Gear Monitoring Document*".

[17] However, as a result of DFO's investigation, it was also determined and the evidence established that, in each of the 67 transactions which contravened the **Fisheries Act** and **Regulations**, the four licensed ground fishers who were involved in this investigation also offloaded and sold an additional quantity of halibut, which had not been offloaded in the presence of or verified by the DFO designated "*Dockside Monitor*" nor recorded by the applicable "*Commercial Groundfish License Conditions*". Those additional quantities of halibut which were offloaded by the four commercial groundfishers in contravention of their

“*Commercial Groundfish License Conditions*” were contemporaneously sold to H & H Fisheries Limited by the same commercial groundfisher.

[18] During the relevant time period between June 2007 and July 2009, H & H Fisheries Limited representatives had “signed off” on the accuracy of the halibut catch that was offloaded and purchased by them through the report to DFO contained in the “Fixed Gear Monitoring Documents” In each of the 67 illegal transactions involved in this prosecution, H & H Fisheries Limited was aware of the legal requirements that all groundfish caught [including halibut] was required to be monitored and accurately reported to DFO in accordance with the “*Commercial Groundfish License Conditions*”.

[19] Furthermore, the DFO investigation established that H & H Fisheries Limited kept separate business records relating to the purchase and sale of the additional halibut catch, which had neither been recorded nor reported to DFO as required by the applicable *Commercial Groundfish License Conditions* of the four ground fishers involved in this investigation. In the separate records which were kept by H & H Fisheries Limited, entries related to the “*unreported halibut catch*” were labeled as either “*Other Fish*” or as “*OF*”.

(d) Offence Particulars

[20] As previously indicated, H & H Fisheries Limited purchased additional unreported halibut catch which was not offloaded or verified by a DFO designated “*Dockside Monitor*” or recorded and reported to DFO as required by the *Commercial Groundfish License Conditions* in violation of the **Fisheries Act and Regulations** in the “*Fixed Gear Monitoring Document*” of the four commercial ground fishers who caught and sold “*unreported halibut catch*” to H & H Fisheries Limited during the period between June 2007 and July 2009. The four commercial ground fishers who caught and sold “unreported halibut catch” to H & H Fisheries Limited were:

1. Kelly Osborne

[21] At all material times between 2007 and 2009, Kelly Osborne was the holder of a DFO issued *Commercial Groundfish License*, who fished out of the port in Eastern Passage, Nova Scotia.

[22] In 2007, Mr. Osborne sold unreported halibut catch to H & H Fisheries Limited on two occasions. On those two occasions, he properly reported landing a total of 4,433 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those two occasions, H & H Fisheries Limited contemporaneously purchased additional quantities of “unreported halibut

catch” from Mr. Osborne totaling 2,390 pounds for a total purchase price of \$10,454.00.

[23] In 2008, H & H Fisheries Limited purchased “unreported halibut catch” from Mr. Osborne on six occasions. On those six occasions, Mr. Osborne reported landing a total of 17,253 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those six occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” totaling 10,316 pounds for a total purchase price of \$50,280.00. The amounts of the unreported halibut catch purchased by H & H Fisheries Limited from Mr. Osborne on the six occasions ranged from 561 pounds to 5,318 pounds.

[24] In 2009, H & H Fisheries Limited again purchased “unreported halibut catch” from Mr. Osborne on six occasions. On those six occasions, Mr. Osborne reported landing a total of 16,866 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those six occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” totaling 5,668 pounds for a total purchase price of \$28,056.00. The amounts of the “unreported halibut catch” purchased by

H & H Fisheries Limited on the six occasions ranged from 541 pounds to 1879 pounds.

[25] In summary, between 2007 and 2009, H & H Fisheries Limited purchased and possessed “unreported halibut catch” from Mr. Osborne on 14 separate occasions in contravention of the **Fisheries Act** and **Regulations** totaling approximately 18,000 pounds with a total value of approximately \$89,000.00.

2. John Silver

[26] At all material times between 2008 and 2009, John Silver was the holder of a DFO issued *Commercial Groundfish License*, who fished out of the port in Eastern Passage, Nova Scotia.

[27] In 2008, Mr. Silver sold unreported halibut catch to H & H Fisheries Limited on seven occasions. On those seven occasions, he properly reported landing a total of 9,021 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those seven occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” from Mr. Silver totaling 10,936 pounds for a total purchase price of \$49,757.00. The amounts of the unreported halibut catch purchased by H & H Fisheries Limited from Mr. Silver on those seven occasions ranged from 1,382 pounds to 2,792 pounds.

[28] In 2009, H & H Fisheries Limited again purchased unreported halibut catch from Mr. Silver on an additional two occasions. On those two occasions Mr. Silver reported landing a total of 2,830 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those two occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” from Mr. Silver totaling 2,481 pounds for a total purchase price of \$12,630.

[29] In summary, between 2008 and 2009, H & H Fisheries Limited purchased and possessed “unreported halibut catch” from Mr. Silver on nine separate occasions in contravention of the **Fisheries Act** and **Regulations** totaling approximately 13,400 pounds with a total value of approximately \$62,000.00.

3. Matthew McMaster

[30] At all material times between 2008 and 2009, Matthew McMaster was the holder of a DFO issued *Commercial Groundfish License*, who fished out of the port in Eastern Passage, Nova Scotia.

[31] In 2008, H & H Fisheries Limited purchased “unreported halibut catch” from Mr. McMaster on three occasions. On those three occasions, Mr. McMaster properly reported landing a total of 2,755 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those three

occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” from Mr. McMaster totaling 7,313 pounds for a total purchase price of \$33,698.00. The amounts of the unreported halibut catch purchased by H & H Fisheries Limited from Mr. McMaster on those three occasions ranged from 1,888 pounds to 3,032 pounds.

[32] In 2009, H & H Fisheries Limited again purchased “unreported halibut catch” from Mr. McMaster on six occasions. On those six occasions, Mr. McMaster reported landing a total of 6,141 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those six occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” totaling 19,842 pounds for a total purchase price of \$89,325.00. The amounts of the “unreported halibut catch” purchased by H & H Fisheries Limited on those six occasions ranged from 2,393 pounds to 5,759 pounds.

[33] In summary, between 2008 and 2009, H & H Fisheries Limited purchased and possessed “unreported halibut catch” from Mr. McMaster on nine separate occasions in contravention of the **Fisheries Act** and **Regulations** totaling approximately 27,000 pounds with a total value of approximately \$123,000.

4. Craig Hartlen

[34] At all material times between 2007 and 2009, Craig Hartlen was the holder of the DFO issued *Commercial Groundfish License*, who fished out of the port in Eastern Passage, Nova Scotia.

[35] In 2007, H & H Fisheries Limited purchased “unreported halibut catch” from Mr. Hartlen on six occasions. On those six occasions, he properly reported landing a total of 6,588 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those six occasions, H & H Fisheries Limited contemporaneously purchased additional quantities of “unreported halibut catch” from Mr. Hartlen totaling 15,732 pounds for a total purchase price of \$71,188.00. The amounts of the unreported halibut catch purchased by H & H Fisheries Limited from Mr. Hartlen on the six occasions ranged from 924 pounds to 5,296 pounds.

[36] In 2008, H & H Fisheries Limited again purchased unreported halibut catch from Mr. Hartlen on an additional 18 occasions. On those 18 occasions, he properly reported landing a total of 19,727 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However on those 18 occasions, H & H Fisheries Limited also contemporaneously purchased an additional quantity of “unreported halibut catch” from Mr. Hartlen totaling 37,931 pounds for a total purchase price of \$168,765.00. The amounts of the unreported

halibut catch purchased by H & H Fisheries Limited from Mr. Hartlen on those 18 occasions ranged from 3,322 pounds to 6,489 pounds.

[37] In 2009, H & H Fisheries Limited again purchased unreported halibut catch from Mr. Hartlen on an additional 11 occasions. On those 11 occasions, he properly reported landing a total of 20,981 pounds of halibut in the appropriate DFO documents which was sold to H & H Fisheries Limited. However, on those 11 occasions, H & H Fisheries Limited also contemporaneously purchased additional quantities of “unreported halibut catch” totaling 32,053 pounds for a total purchase price of \$167,457.00. The amounts of the “unreported halibut catch” purchased by H & H Fisheries Limited on those 11 occasions ranged from 3,467 pounds to 5,226 pounds.

[38] In summary, between 2007 and 2009, H & H Fisheries Limited purchased and possessed “unreported halibut catch” from Mr. Hartlen on 35 separate occasions in contravention of the **Fisheries Act** and **Regulations** totaling approximately 85,700 pounds with a total value of approximately \$407,000.00.

(e) *Summary of Offence Particulars*

[39] In total, between June 2007 and July 2009, H & H Fisheries Limited illegally purchased and possessed “unreported halibut catch” from four DFO commercially licensed groundfishers on 67 separate occasions which amounted to

approximately 144,100 pounds of halibut with a total value of approximately \$681,000.00.

APPLICABLE SENTENCING PURPOSES & PRINCIPLES

[40] During their sentencing submissions, both the Crown Attorney and Defence Counsel agreed that the case law in this province and in other provinces has made it clear that the paramount principle of sentencing in regulatory prosecutions which involves legislation such as the **Fisheries Act** and **Regulations**, is deterrence, both specific and general. See for example: **R. v. Grandy and Bell** (1992), 113 NSR (2nd) 85 (N.S.Co.Ct.) at p.88; **R. v. Rideout**, 2005 NSCA 122 at para. 14; **R. v. Cox and Forsey**, [1999] N.J. No 264 (NLPC) at para. 20; **R. v. Labrador Sea Products Incorporated**, 2009 NLTD 163 at paras. 13 and 14; **R. v. MacKinnon** (1996), 154 NSR (2nd) 217 (NSSC) at para. 18 and **R. v. Ivy Fisheries Ltd.**, 2006 NSPC 26 at paras. 15-16; **R. v. Henneberry**, 2009 NSSC 95 at paras. 150-154.

[41] It is clear from those decisions that deterrence, both specific and general, is the paramount consideration in the determination of a fit and appropriate sentence for a contravention of the **Fisheries Act** and **Regulations**. In that regard, I find that it is also important to keep in mind that sentencing decisions of the Court ought to promote compliance with the **Fisheries Act** and **Regulations**. At the same time, I find that the Court should also keep in mind that the **Fisheries Act** and

Regulations are designed to provide for the conservation and protection of the natural resources through a framework designed for the orderly use, sharing and management of Canada's fisheries resources. In that regard, I find that it is also important to keep in mind that sentencing decisions of the Court ought to promote compliance with the **Fisheries Act** and **Regulations** which is essential for the conservation for the stocks and effective resource management.

[42] Moreover, I agree with the public policy rationale for the Court to focus on specific and general deterrence in sentencing decisions, like the matter before the Court today, which was very aptly and succinctly stated by Justice Edwards in **R. v. MacKinnon**, *supra*, at para. 18:

The need for penalties which strongly encourage statutory compliance are of particular importance within the context of regulatory offences such as those under the **Fisheries Act**. In such cases, natural resources are in danger of being depleted or destroyed and thus the effects of such violations have wide ramifications for society. Given the difficulties involved in enforcing Fisheries legislation and the expense involved in protecting the resource, it is extremely important for courts to do their utmost to encourage compliance with the legislation.

A fine must be substantial enough that it will send a message to the public that illegal activities will not be tolerated by the Courts. The amount of the fine should take into consideration both the seriousness of the offence and the general principles of sentencing. [**R. v. K-Mart Canada Limited** (1982), 28 C.R. (3rd) 271 (Ont. C.A.)]. A fine should not be so low that it will be seen as a license fee or as a mere cost of doing business. A low monetary penalty may also be considered an affront to those, the majority, who do comply with the Act.

[43] In terms of other sentencing principles which are to be considered by the Court in imposing a sentence, the Court must also consider the fundamental sentencing principle found in section 718.1 of the **Criminal Code** which reminds judges that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Pursuant to section 718.2(a) of the **Criminal Code**, Parliament requires the sentencing Court to take into consideration any relevant aggravating or mitigating circumstances relating to the offence or to the circumstances of the offender in considering whether or not the sentence should be increased or reduced.

[44] Section 718.2(b) of the **Criminal Code** stipulates that the Judge imposing a sentence should consider the so-called “parity” principle that the sentence imposed should be similar to sentences imposed on similar offenders for similar offences which were committed in similar circumstances. On this point, I simply note that it is often difficult to find those similar cases, as the sentencing process is highly individualized and it is based upon the circumstances of the offence and on the circumstances of the particular offender.

[45] In addition to the preceding principles of sentencing, in section 718.21 of the **Criminal Code**, Parliament has established additional factors that shall be taken into consideration by a court that imposes a sentence on an organization. Those

factors include: (1) any advantage realized by the organization by the commission of the offence [S. 718.21(a) **Criminal Code**]; (2) the nature and extent of planning involved in the offence, as well as its complexity and duration. [s. 718.21(b) **Criminal Code**]; (3) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees [section 718.21(d) **Criminal Code**]; (4) the investigative and prosecutorial costs associated with the offence [section 718.21(e) **Criminal Code**]. I will consider these additional factors relating to organizations in my analysis of the aggravating and mitigating factors present in the case.

AGGRAVATING AND MITIGATING FACTORS:

[46] There are several aggravating and mitigating factors to take into account in considering a fit and appropriate sentence in all the circumstances of this case and this offender. In terms of the aggravating factors, the Crown Attorney submits that the following should be taken into account:

1. H & H Fisheries Limited participated in this scheme with four different DFO licensed ground fishers over an extended period of time from June 2007 to July 2009 to contravene the **Fisheries Act** and **Regulations**;

2. H & H Fisheries Limited illegally purchased unreported halibut catches totaling 144,000 pounds, on 67 separate occasions between June 2007 and July 2009 for a total purchase price of \$681,000.00. Since some of the halibut catch on each and every one of the those 67 occasions was properly reported in the appropriate DFO documents and “signed off” by an H & H Fisheries Limited, representative, there can be no doubt that the company was fully aware of the fact that they were also buying unreported halibut catch in violation of the **Fisheries Act and Regulations**;
3. The fact that 144,000 pounds of unreported halibut catches were made between June 2007 and July 2009, which only came to light as a result of the subsequent investigation by DFO, skewed DFO’s effort to conserve the resource and sustain the stock in those years, since they relied upon inaccurate data due to this massive, intentional underreporting of the actual amount of the catch to prepare their fisheries management plans.
4. Given the magnitude of the overfishing and misreporting in which H & H Fisheries Limited played a significant role given the fact that they purchased the unreported halibut, the report of the Ms. Docherty

also established that the economics of the fishery would be affected as DFO's determination of the Total Allowable Catch in that local community would be reduced in the next year to ensure the sustainability of the resource through a process known as "quota reconciliation". As a result, once the overfishing was discovered, the entire fishing community in the local area would also suffer the consequences of these illegal transactions;

5. During the three fishing seasons involved in the charges before the Court, H & H Fisheries Limited provided the opportunity of a ready market to four ground fishers in order to sell their illegal halibut catch. The Crown Attorney submits that the only logical inference given the number of illegal transactions, the manner in which they were concealed and the massive nature of this underreporting, was that H & H Fisheries Limited's actions the two-year period, were planned and deliberate.

[47] In terms of the mitigating factors present in this case, Defence Counsel submits that the following should be taken into account by the Court:

1. H & H Fisheries Limited entered an early guilty plea to the three charges before the Court prior to any trial date being set in this matter,

thereby saving the Crown from calling several witnesses, including expert witnesses to establish the charges in a document intensive case that Counsel estimated could have taken several weeks. As a result, a significant amount of court time did not have to be dedicated to hearing all of the very detailed evidence in this matter;

2. H & H Fisheries Limited had no prior convictions for any violations of either the **Fisheries Act** or its **Regulations**;
3. H & H Fisheries Limited Limited has accepted full responsibility for their actions and the representative of the company, Mr. Reginald Hartlen expressed his remorse for his company's actions;
4. H & H Fisheries Limited states that there are substantial costs involved in the fish buying and processing business which is challenging and that over the last few years the business has not been profitable. Therefore, the Court should take into account the potential financial strain on the company's future operations as a mitigating factor in assessing the quantum of the fines or if any additional fines are to be ordered;
5. The Court appearances of H & H Fisheries Limited have been the subject of media attention and they have had an impact on the

company's business and reputation. As such, the prior court appearances and the sentencing decision of the Court itself will have the effect of specific deterrence on H & H Fisheries Limited and, in addition, they will also serve as a general deterrent to others who may have been like-minded.

ANALYSIS

[48] As I indicated at the outset of this decision, the issue before the Court is to determine as fit and appropriate sentence in all of the circumstances of these offences and this particular offender. Since the Crown had proceeded by way of summary conviction, section 78(a) of the **Fisheries Act** stipulates that the maximum punishment, except where other punishments may be ordered in the **Fisheries Act**, shall not exceed \$100,000.00 for a first offence. There is no minimum punishment prescribed in section 78(a) of the **Fisheries Act**.

[49] During their submissions, both Counsel noted that H & H Fisheries Limited has not been convicted of any prior offence under the **Fisheries Act** and therefore, the three offences before the Court for which the sentence must be determined, represent H & H Fisheries Limited's first offences. Those three offences relate to the fact that H & H Fisheries Limited purchased, possessed and sold groundfish, in

this case halibut, that had been caught in contravention of section 33 of the **Fisheries Act** and as such, the company had committed an offence contrary to section 78 of the **Fisheries Act**. While there were 67 separate transactions during slightly over a two-year period, those transactions formed the basis of the three offences: (1) between June 23, 2007 and December 31, 2007, inclusive; (2) between January 1, 2008 and December 31, 2008, inclusive; and (3) between January 1, 2009 and July 31, 2009 inclusive. The three offences all occurred at or near Eastern Passage, Nova Scotia.

[50] As I indicated previously, it has been well articulated in numerous fisheries prosecutions before the Court, that specific and general deterrence are the paramount considerations of the Court with respect to this sentencing decision. In terms of the principle of proportionality which is articulated in section 718.1 of the **Criminal Code**, the monetary penalties or fines imposed by the Court must be proportionate to the gravity or seriousness of the offence(s) and the offender's degree of responsibility or moral culpability for the offence(s). Ultimately, any penalty imposed by the Court must communicate a message of deterrence to the offender or any like-minded individuals that there is a very high risk associated with their illegal activities, both for the natural resources that they are affecting and to themselves as a result of their conduct.

[51] Prior to assessing the gravity of the offences and H & H Fisheries Limited's degree of responsibility, it is important to understand the context of the facts and circumstances of these offences as they relate to H & H Fisheries Limited. In terms of count #1 in the Information, which related to the illegal purchases and possession of groundfish by H & H Fisheries Limited during the last half of the 2007 calendar year, the company made eight illegal transactions with two DFO commercially licensed ground fishers who were subject to the conditions in DFO's *Commercial Groundfish Licenses*. With respect to count #2 in the Information, which related to the illegal purchases and possession of groundfish by H & H Fisheries Limited during the full 2008 calendar year, the company made 34 illegal transactions with four DFO commercially licensed ground fishers who were subject to the conditions of DFO's *Commercial Groundfish Licenses*. Finally, with respect to count #3 in the Information, which related to the first seven months of the 2009 calendar year, H & H Fisheries Limited made 25 illegal purchases and possession of groundfish from the same four DFO commercially licensed ground fishers who were involved in the 2008 illegal transactions and who remained, in 2009, subject to the conditions of DFO's *Commercial Groundfish Licenses*.

[52] In terms of the magnitude of these illegal transactions by H & H Fisheries Limited, the eight transactions which occurred during the last half of 2007 and

were covered by count #1 of the Information represented a total unreported halibut catch of 18,122 pounds, with a value of \$81,642.00. With respect to the 34 illegal transactions which occurred during the 2008 calendar year and are covered by count #2 in the Information, the total unreported halibut catch was 66,496 pounds with a value of \$302,495.00. Finally, with respect to the 25 illegal transactions which occurred in the first seven months of the 2009 calendar year which are covered by count #3 of the Information, the total unreported halibut catch was 60,044 pounds with a value of \$297,468.00. As a result, the total amounts of the illegally caught and unreported halibut purchased and then sold by H & H Fisheries Limited amounted to 144,662 pounds with an approximate purchase price value of \$681,800.00 during the period between June 23, 2007 and July 31, 2009, both inclusive.

[53] Looking at the gravity or seriousness of this offence, I find that the 144,600 pounds of halibut which was not reported as being caught represents a very significant number of groundfish illegally caught and unreported to DFO which, no doubt, significantly skewed the scientific data upon which DFO based the groundfish biomass, mature adults and the resource ability to replenish stock at sustainable levels. Moreover, H & H Fisheries Limited's participation in this offence over the period of time covered by the three offences represents a

concerted effort through intentional underreporting by the company's representative who had "signed off" to confirm the accuracy of the weight of the halibut catch that had been purchased by them through DFO's "Fixed Gear Monitoring Documents" which were required to be signed by them in each of the transactions that formed the basis of the three charges before the Court.

[54] However, it bears repeating here that, on each and every one of these 67 transactions involved in the offences before the Court, the commercially licensed ground fishers and the representative of H & H Fisheries Limited did complete the proper DFO documents to report the legally caught portion of the halibut which was sold to H & H Fisheries Limited. However, contemporaneously with the completion of the proper reporting requirements and the legal purchase of that portion of the halibut catch, H & H Fisheries Limited purchased illegal and unreported halibut catches of varying significant quantities on each and every one of those 67 occasions and the records of those illegal transactions were maintained by the company in separate records under the heading of "other fish" or labelled in their financial information under the heading "OF".

[55] In these circumstances, I agree with the Crown Attorney that the role played by H & H Fisheries Limited in the three counts before the Court in the Information, were actions taken by the company that were planned and deliberate.

I find that that is the only logical inference which can be drawn from the agreed statement of facts which was presented to the Court, given the fact that the contraventions of the **Fisheries Act** occurred on 67 different occasions between June 2007 and July 2009. As a result, this case can in no way be equated to situations where the offences occurred due to some error in judgment, negligence or a failure to exercise due diligence by the accused in the contravening the **Fisheries Act**, which of course, creates strict liability offences. It is apparent that the company and the commercial fishers with whom they completed the 67 illegal purchases of groundfish, had intentionally decided that they would conduct a very significant number of their commercial transactions in their fishery business in a manner that ignored or at best, paid lip service to the rules and regulations that bound all of the others who were lawfully engaged in this fishery in the area of Eastern Passage, Nova Scotia.

[56] In these circumstances, given the very significant aggravating factors involved in the commission of the three offences before the Court, I find that the gravity or seriousness of the offences committed by H & H Fisheries Limited to be quite high and I also find that their degree of responsibility or moral culpability for these offences also to be quite high.

[57] Having determined the proportionality of the charges before the Court, it is also important to keep in mind that there are several mitigating factors which the Court must also factor into the determination of a fit and appropriate sentence. In particular, I find that the fact that H & H Fisheries Limited had no prior convictions for any violation under the **Fisheries Act** or its **Regulations**, and as a first time offender, it is appropriate to consider that factor in the final determination of a fit and appropriate sentence. Furthermore, I also regard H & H Fisheries Limited's early guilty plea without having to set a trial date for a trial that could have taken several weeks to conduct, given the very detailed nature of the evidence, including expert evidence that, in all likelihood, would have been introduced by the Crown to substantiate the charges before the Court.

[58] In addition to considering the principle of the proportionality in section 718.1 of the **Criminal Code**, I also find that it is important to consider the parity principle set out in section 718.2(b) of the **Criminal Code** which stipulates that the sentence imposed on similar offenders for similar offences committed in similar circumstances should be similar.

[59] During the submissions, both Counsel referred to **R. v. Ivy Fisheries Limited**, *supra*, a decision of Crawford J. of the Nova Scotia Provincial Court where the Court ordered a section 78 **Fisheries Act** fine of \$25,000.00 against the

corporation which was charged with selling the illegally caught fish. The corporation was also engaged in the fishing business itself. In that case, Ivy Fisheries Limited sold all of the 135 illegally caught Bluefin tuna, although the sentence only related to 70 Bluefin tuna which would not of been caught “but for” the offences committed by the individual fishers. The charges with respect to those 70 tuna were regarded by the Court as the “most serious charges before the Court” and on that basis, the Crown sought additional fines under section 79 of the **Fisheries Act** for the total amount of the gross monetary value from the sale of those fish equaling \$643,234.82. In the final analysis, Judge Crawford ordered Ivy Fisheries to pay a fine of \$25,000.00, plus a further additional fine under section 79 of the **Fisheries Act** with respect to the “monetary benefits” accrued by Ivy Fisheries Limited in the amount of \$625,909.15 and also imposed a suspension of Ivy Fisheries Limited’s fishing license for a period of one year.

[60] The Court noted that given the number of trips and the amount of fish involved in the incidents relating to the individual and corporate defendants, the circumstances of those offences were more than “mere inadvertence” on the part of the offender. Moreover, when the Court assessed the seriousness of the offence and the corporation’s degree of responsibility, Crawford J. noted, in **Ivy Fisheries Limited**, *supra*, at para. 89 that “when one looks at the totality of these offences, it

is apparent that there was a coordinated effort to maximize profits from the tuna fishery, even if that meant breaking the rules and regulations”. For that reason, Judge Crawford determined, *supra* at para. 89, that it was appropriate to impose “ a significant fine on the company over and above depriving it of the portion of the monetary benefits derived from the most serious of the offences”.

[61] During his sentencing submissions, the Crown Attorney also referred to the case of **R. v. Labrador Sea Products Incorporated**, 2009 NLTD 163 (SCNL-TD) which involved charges against the corporation, its Director who also happened to be the corporation’s plant manager and in that case, one of the skippers of the fishing vessels that were involved in the illegal underreporting of crab landings at the Labrador Sea Products processing plant. The case had come to light in a similar fashion to the H & H Fisheries Limited case, with DFO officials carrying out an inspection and obtaining over 3600 documents in relation to the crab fish landings at the defendant’s fish plant for the years 2001-2003. The agreed facts confirmed that, between 2001 and 2003, two fishing vessels had made 19 off-loads of crab which were deliberately underreported by the fishing vessels and the processing plant with the assistance of the Dockside Monitor who had falsified her records after receiving payments from the corporation’s plant

manager. Those 19 off-loads which were deliberately underreported totaled approximately 104,960 pounds of crab with a value of approximately \$200,000.00.

[62] The agreed statement of facts also outlined that the crab fishery in Newfoundland and Labrador is a quota-based fishery which requires the participants to be licensed by DFO and the conditions of that license required the commercially licensed fishers to maintain logbooks detailing their fishing activity, including the amount of crab caught and furthermore, that the crab off-loadings were to be monitored by a dockside monitor. The information recorded by the dockside monitors was then forwarded to DFO as the information was crucial to DFO's regulation and management of the fishery.

[63] In that case, the Crown had proceeded by indictment and therefore the maximum fine allowed under section 78(b) of the **Fisheries Act** for a first offence was \$500,000.00. The director of the company was charged with an offence (count #1) contrary to section 63(3) of the **Fisheries Act** for producing false and misleading information to DFO during the 2001, 2002, and 2003 crab fishing seasons and as a result, a conviction was entered under section 78(b) of the **Fisheries Act**. On a joint recommendation by the Crown and Defence which was accepted by the Court, the plant manager and director of the company [Mr. Hillyard] was fined \$50,000.00.

[64] The corporate defendant also pled guilty to contravening the **Fisheries Act** by producing, for examination by fisheries officers, records containing false and misleading information relating to the 2001, 2002, and 2003 fishing seasons. In **R. v. Labrador Sea Products Inc.**, *supra*, Goodridge J. stated at para. 27 that:

“The agreed statement of facts describe a complex and large-scale scheme designed to misrepresent crab catch. A scheme of this magnitude is unprecedented in this province’s fishery. The scale is such that it is likely to undermine the integrity of management of the crab fishery. LSP Inc. was the principal beneficiary and the principal player in this scheme. These serious and deliberate acts warrant that the principal player, LSP Inc., must receive a substantial fine.”

[65] In his decision, Goodridge J. took into account the “financial benefit” Labrador Sea Products Inc. received from the underreported crab catch which had a value of approximately \$200,000.00 and noted that the “financial benefit” was used as the basis for the starting point of the jointly recommended fine of \$275,000.00. In the final analysis, the Court accepted the joint recommendation, and ordered the fine of \$275,000.00 and also ordered the corporate defendant to pay \$25,000.00 of that fine within 30 days and thereafter, to make 48 equal payments of a approximately \$5200.00. No order was made for an “additional fine” under section 79 of the **Fisheries Act**.

[66] Looking at the facts and circumstances of the Labrador Sea Products case, there is no doubt that there are several similarities with respect to the nature of the

offence and the particular offender. It is evident that in the Newfoundland and Labrador case, the Court took into account the “monetary benefit” obtained by the corporate defendant in assessing the quantum of the fine, and given the fact that the Crown had proceeded by indictment, the maximum fine which could have been ordered was \$500,000.00. As a result, there was no requirement for the Court to determine whether there would be any “additional fine” under section 79 of the **Fisheries Act**.

[67] However, there are also important distinctions between the Labrador Sea Products case and the instant case, which must be considered. First, the agreed statement of facts in the Labrador Sea Products case stated that the underreporting occurred during a similar three season period, with a total of 19 off-loads of approximately 104,960 pounds of illegal crab. By comparison, during a similar time period, in this case there were about 3.5 times the number of intentionally underreported illegal transactions (67 in total) which involved 144,100 pounds of unreported halibut being sold by H & H Fisheries Limited. Secondly, the value of the illegal and unreported catch was also significantly different as the value in the Labrador Sea Products case was approximately \$200,000.00 compared to the very lucrative groundfish prices for halibut which resulted in a total value of the illegal catch being approximately \$681,000.00. Therefore, in this case, the value of the

unreported halibut was almost 3.5 times the value of the unreported crab purchased and processed by Labrador Sea Products Inc. Thirdly, the agreed statement of facts in the Labrador Sea Products Inc. case did not break down the number of illegal transactions by year. However, in this case, the agreed statement of facts revealed that the number of illegal transactions committed by H & H Fisheries Limited went from eight during the last half of the 2007 fishing year to 34 during the entire 2008 fishing year and remained at about that pace with 25 illegal transactions taking place in the seven months leading up to July 31, 2009. Finally, it is also important to note that the sentences imposed by the Court in the Labrador Sea Products case were jointly recommended by Counsel and accepted by the Court.

[68] During his sentencing submissions, the Crown Attorney also referred to some unreported sentencing decision which involved prosecutions of a similar nature where the corporation had breached section 33 of the **Fisheries Act**:

1. In **R. v. Deep Cove Aqua Farms Ltd.**, the offence dates were from 2007-2008, involving 28 transactions with three commercial ground fishers with a total unreported catch of 60,000 pounds, having a value of \$40,000.00. On July 15, 2013, the Court in Bridgewater, Nova

Scotia, imposed a \$35,000.00 fine in accepting the joint recommendation of counsel;

2. In **R. v. Fisherman's Market International Inc.**, the offence dates were from 2008-2009 involving 12 transactions with one commercial groundfisher with a total unreported catch of 9,750 pounds having a value of \$53,000.00. On December 4, 2013, the Court in Shelburne, Nova Scotia imposed a \$35,000.00 fine in accepting the joint recommendation of counsel;
3. In **R. v. Yarmouth Bar Fisheries Ltd**, there were three offences under section 33 of the **Fisheries Act** with the offence dates from 2007-2009 involving 74 transaction with four commercial ground fishers with the total unreported catch of 22,600 pounds, having a value of approximately \$100,000.00. On June 24, 2013, the Court in Yarmouth, Nova Scotia imposed a \$60,000.00 fine in accepting the joint recommendation of Counsel.

[69] Having considered the similar offences committed by similar offenders in similar circumstances, taking into account the seriousness of the offences and the offender's high degree of responsibility for those offences, the paramount consideration of specific and general deterrence as well as all of the aggravating

and mitigating factors referred to above and the totality of the fines into account, I hereby order the following fines under section 78(a) of the **Fisheries Act**:

1. with respect to count #1 which relates to contravention of the **Fisheries Act** by purchasing, selling or possessing groundfish caught in contravention of the **Fisheries Act** between June 23, 2007 and December 31, 2007, inclusive, H & H Fisheries Limited is fined an amount of \$35,000.00;
2. with respect to count #2 which relates to contravention of the **Fisheries Act** by purchasing, selling or possessing groundfish caught in contravention of the **Fisheries Act** between January 1, 2008 and December 31, 2008, inclusive, H & H Fisheries Limited is fined an amount of \$70,000.00;
3. With respect to count #3 which relates to contravention of the **Fisheries Act** by purchasing, selling or possessing groundfish caught in contravention of the **Fisheries Act** between January 1, 2009 and July 31, 2009, inclusive, H & H Fisheries Limited is fined a further amount of \$70,000.00.

**ADDITIONAL FINE PURSUANT TO SECTION 79 OF THE FISHERIES
ACT**

[70] During their sentence submissions, both Counsel referred to the possibility of the Court ordering an additional fine under section 79 of the **Fisheries Act**, notwithstanding the fact that there is a maximum fine of \$100,000.00 per offence that may otherwise be imposed under section 78(a) of the **Fisheries Act**. The amount of the additional fine that may be ordered by the Court under section 79 of the **Fisheries Act** is the amount equal to the Court's finding of the "monetary benefits" acquired by the defendant as a result of committing the offence(s). It would appear that the policy rationale for this provision is based on the principle of specific deterrence and the notion of depriving the offender of any "monetary benefits" from the illegal acts committed by the offender.

[71] Defence Counsel submitted that the Court should apply the reasoning of the Newfoundland and Labrador Court of Appeal in **R. v. Meade**, 2004 NLCA 11 at para. 23 and **R. v. Oates**, 2004 NLCA 6 at para. 19 that the term "monetary benefit" must be interpreted as requiring the deduction of expenses incurred in the activity involved in producing it. The Newfoundland Court of Appeal reasoned that "monetary benefits" cannot possibly be equated with the "gross product value" regardless of whether the activity that produced the benefit was legal or illegal.

[72] For his part, the Crown Attorney submitted that the decisions of the Newfoundland Court of Appeal are not binding in this province and they have not

been accepted in this province or elsewhere. In **R. v. Ivy Fisheries Ltd.**, *supra*, at para. 29, Crawford J declined to adopt the reasoning of the Newfoundland Court of Appeal and determined that the “monetary benefit” under section 79 of the **Fisheries Act** equated to the sale price of the illegal tuna.

[73] The decision of Crawford J. was supported by the Summary Conviction Appeal Court in **R. v. Henneberry**, 2009 NSSC 95 at paras. 162 and 163. In that case, Justice Stewart held that the monetary benefits for the purpose of an additional fine under section 79 of the **Fisheries Act** should be equated to the sale price of the tuna. Mdm. Justice Stewart went on to note that there was no suggestion in earlier British Columbia cases or a subsequent case in the Nova Scotia Court of Appeal where it was determined that the “monetary benefits” were limited to the net profits.

[74] I agree with the analysis of Judge Crawford and Justice Stewart and find that H & H Fisheries Limited received a “monetary benefit” from the gross sale price of the illegally possessed groundfish which was sold to third parties after the company purchased the illegally caught and unreported groundfish from the four ground fishers who were subject to the conditions of their DFO commercial groundfish licenses. Applying a purposive interpretation of the legislation and in particular, the term “monetary benefits” as utilized in section 79 of the **Fisheries**

Act, I find that H & H Fisheries Limited did receive a “monetary benefit” in an accounting sense by that amount being added into their income from “fish sales” for the years in question.

[75] Since deterrence, both specific and general is the paramount sentencing consideration in cases of this nature, it hardly seems logical that Parliament would have intended that the additional direct or indirect costs of doing illegal business would then be utilized to reduce or offset the potential penalty of the offender. A clear message has to be sent to this offender and others who are like-minded that they will likely be deprived of the entire benefit of their illegal catch and that they will have to absorb the direct and indirect costs of their illegal fishing activities from other sources of income. In the result, I respectfully decline to follow the decisions of the Newfoundland and Labrador Court of Appeal in **Meade and Oates** which are not binding on me.

[76] In this case, the evidence before the Court in the profit and loss statement for H & H Fisheries Limited from July 2007 through July 2009 [Exhibit 3] is that the revenue received by the company from the sale of the 144,100 pounds of the illegally caught and unreported halibut was \$899,933.17. After subtracting the purchase price paid by H & H Fisheries Limited to the four commercial fishers which amounted to \$681,800.00, the gross profit of H & H Fisheries Limited was

\$218,133.17. That number was consistent with H & H Fisheries Limited's efforts to make a profit margin of \$1.50 per pound on the sale of 144,100 pounds of halibut, which in this case, would amount to \$216,150.00

[77] In these circumstances, I find, for the purposes of an additional fine under section 79 of the **Fisheries Act**, that H & H Fisheries Limited acquired "monetary benefits" as a result of committing the offences before the Court in the amount of \$218,133.17. By ordering this additional fine, I find that H & H Fisheries Limited will not get any "monetary benefits" from their illegal activities and that the penalty imposed will send a message to this corporation, to other fishers and other corporations that taking a chance and contravening the rules and regulations governing the fishery does not pay and that the offenders will not benefit from their own wrongdoing. As a result of the foregoing, I hereby order H & H Fisheries Limited to pay an additional fine under section 79 of the **Fisheries Act** in the amount of \$218,133.17.

[78] Finally, I was urged to apportion the fines between the four ground fishers who had DFO Commercial Groundfish Licenses and H & H Fisheries Limited. In those cases where courts have apportioned fines between parties, there was generally a relationship between the parties whereby the captain of the fishing vessel determined shares that the other members of the crew would receive from

the catch obtained as a result of a fishing trip. In some cases, where the **Fisheries Act** or **Regulations** were contravened, the Court noted that in assessing the fine or the additional fine that the “monetary benefit” of a crew member was what the crew member actually received as his or her share of the catch.

[79] In this case, I am not prepared to apportion any amount of the “additional fine” between the four commercial ground fishers and H & H Fisheries Limited. The four ground fishers who illegally caught and sold groundfish to H & H Fisheries Limited all face separate charges in relation to their contraventions of the **Fisheries Act**. While the charges before the Court in relation to those four individual ground fishers are, no doubt, linked to the investigation and charges against H & H Fisheries Limited, they are separate prosecutions, which have alleged specific delicts against them and they will have to be determined after considering the facts and circumstances of their individual cases. As such, I do not find that it would be appropriate for me to apportion some part of H & H Fisheries Limited’s fine or additional fine to any one of the individual ground fishers who have also been charged with related offences. I have found that the “monetary benefits” which accrued to H & H Fisheries Limited in this case amounted to \$218,133.17 and I have ordered that amount to be paid by way of an additional fine under section 79 of the **Fisheries Act**.

[80] During his sentencing submissions, Defence Counsel also submitted that the fish buying and processing business is extremely challenging at this point and that the profit and loss statement of H & H Fisheries Limited for the period July 2007 to July 2009 [Exhibit 3] shows a bottom-line net income of \$-98,000.00 on total income of \$15,678,000.00. I was urged to consider the financial viability of the company as a mitigating factor in potentially reducing the fines and additional fine ordered in this case. Based upon my review of the financial information provided to the Court, I have no reason to believe that the fines ordered by me today will have a significant impact on the economic viability of the Corporation, particularly where I am prepared to grant a lengthy period of time to make payment of the fines. In addition, I have no evidence that the fines or additional fines ordered by me today will have an impact the continued employment of its employees. As a result, I am prepared to grant Defence Counsel's request that H & H Fisheries Limited have a lengthy period of time to make payment of the fines and additional fine ordered today. I hereby grant H & H Fisheries Limited a period of five years to make payment of the fines and additional fine. I have not been asked to, nor am I ordering any particular payment plan, as was ordered in the Labrador Sea Products Inc. case.

[81] In conclusion, I have ordered section 78(a) **Fisheries Act** fines totaling \$175,000.00 and I have also ordered an additional fine under section 79 of the **Fisheries Act**, equal to my finding of the “monetary benefits” which accrued to H & H Fisheries Limited as a result of committing the offences in question in the amount of \$218,133.17. Therefore, the total Fines and additional fine ordered by the Court are in the amount of \$393,133.17 and H & H Fisheries Limited shall have a period of five years to make payment of those fines.

Theodore K. Tax, JPC