

Mr. Paul Sprout
Regional Director General
Pacific Region
Fisheries and Oceans Canada
Suite 200 – 401 Burrard Street
Vancouver, B.C.
V6C 3S4

Re: Pacific Halibut Co-Management Agreement

Dear Sir:

My professional services have been retained by Mr. Gerald Dalum and other halibut fishers with regards to their fate under the current co-management regime of the Pacific Halibut fishery and more specifically with regards to their share of the 10% of the commercial halibut TAC allocated to the Pacific Halibut Management Association (PHMA) by your Department under that regime.

It is my understanding that, for a number of years, your Department has withheld and sold to PHMA 10% of the individual quota share of each of the 435 halibut license holders. I also understand that the proceeds from the sale of these halibut allocations has been used by DFO to finance various Departmental activities. Two Court decisions have confirmed that such usage of an allocation is illegal and constitutes a misappropriation of a resource that should have been distributed to the halibut license holders.

I refer you to the recent decision of the federal Court of Appeal in the case of Jean-Victor Larocque v. Her Majesty the Queen in Right of Canada 2006 FCA 237 and the most recent decision of the Federal Court of Canada in Association de crabiers acadiens and al. v. The Attorney General of Canada 2006 FC 1241.

Both judgments state clearly that the Minister of Fisheries and Oceans does not have the power to set aside a quota or sell an allocation of fish to a third party as a means of financing and that when he does so, he is misappropriating a resource that does not belong to him.

Therefore, I am putting DFO under notice that the proceeds from the sale of these allocations from 2001 to 2006 are the property of the halibut license holders and I am requesting, on behalf of my clients, that all funds acquired directly or indirectly by DFO as a result of the P.H.M.A. allocation be reimbursed to them on the pro-rata basis of their individual quota holdings.

P.H.M.A confirmed by letter from it's solicitor, Mr.Clifford G. Proudfoot, dated December 14, 2006 that halibut allocation is being used to fulfill obligations under a Joint Project Agreement concluded with your department under which fisheries management costs are being paid. This practice has been declared illegal by Justice Martineau in the above cited case. Moreover, Justice Martineau also declared the license issue to the organization (similar to P.M.H.A) invalid.

Therefore, I am also putting DFO under notice that the allocation of a co-management quota to P.H.M.A. must cease immediately in accordance with the legal obligations resulting from the above-mentioned Court decisions.

Refusal or failure to comply with the above will be considered as a breach of your fiduciary duties towards my clients and be advised that my clients will not hesitate to take legal action against DFO.

Please confirm receipt of this legal notice and inform me of the measures taken by DFO to rectify this situation within the next 30 days.

Brigitte Sivret
cc: Clients

