



PUHA NEWSLETTER

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PRESIDENT'S REPORT—MIKE FEATHERSTONE

There was hope that this season would get off to an early start. Industry worked closely with DFO and D&D to develop and approve the new management plan. Some processors forecast an early start and licences were ready for issue on August 1st. Unfortunately the market demand did not materialize and only Grand Hale Marine sent out a vessel to fish in the South coast. Landings in August totaled only 35,000lbs. September was lower with landings of only 33,000 lbs (again in the south coast). In October vessels commenced fishing in the North coast but landings still lag behind last season. There was around 90,000 lbs landed in the south and 50,000 lbs in the North.

It looks as if there will be only 4 or 5 processors participating in the BC fishery this year. Nautilus Marine Products have currently given no indication that they will be buying. Hi-To Fisheries have indicated they will not buy this year but are interested in custom processing. Sung Fish is talking of offering a co-packing service. Custom processing or co-packing involves the fisherman paying unloading, transportation and processing costs, and then selling directly to a Japanese buyer. Given the vagaries and uncertainty of the Japanese market it will be only for the more adventurous to venture into this rarely tested ground.

This leaves Grand Hale Marine, Paladin International, Seagate Fisheries and Territory Seafoods in their traditional roles. During the Annual General Meeting, held in Steveston in August, Spencer Cheung offered hope of a cooperative approach to benefit processors and fishermen. With the sea cucumber fishery winding down the sea urchin fishery should start to gain momentum.

The current global financial turmoil has very few positive points but the sea urchin companies exporting to Japan may garner a major benefit. The Canadian dollar is down against the \$US but the Yen is up against \$US. With the extreme volatility it is hard to pin down the numbers but the difference is currently 25 – 40% *more favourable* (on the currency side) than last season. We will monitor the situation and provide a more in depth analysis as the season progresses. Other positive fallout of the global downturn is the sudden drop in the price of oil. Oil has dropped over 50% since the high in the summer of \$150/bbl to around \$70/bbl currently. This should provide a significant saving over last season if and when the price decrease filters down the fuel dock. In both cases discussed the price benefits seem to transpire more slowly than any price increases.

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ILLEGAL, UNREGULATED & UNRECORDED FISHING

On 29 September the EU Council of Ministers passed the new regulation to control illegal, unregulated and unrecorded fishing, and to prevent IUU products from being sold on the EU market. From 1 January 2010, imports of fishery products from outside the EC (except freshwater and aquaculture products, and some bivalves) should be accompanied by a catch document which certifies that the consignment was caught in compliance with the laws of the flag state of the catching vessel. Flag states will be obliged to make arrangements for verification of catch certificates, and ensure that consignments are traceable to the vessel of origin through transshipment and processing. The Commission has commenced a program of information seminars for third countries, and in a speech on 13 October, Commissioner Joe Borg, promised a "serious response" to the need to assist implementation by less developed countries. A copy of the regulation is available from <http://www.megapesca.com>



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In early November PUHA representatives will travel to China to participate in BC Seafood Booth at the China Seafood Exposition in Qingdao. Look for a summary report in the next newsletter to be followed by a complete report which will be posted the website. As well, PUHA is currently applying to the Provincial Government for funding for a domestic marketing program. The program will focus on the local market and will include a Chef's night, the First Annual Uni Festival and a consistent supply of urchin for every Friday. The initial program is planned to launch in February.

Check the website for the minutes of the most recent Annual General Meeting and other news.

Fishing Licences as a Property Right

The Supreme Court has dismissed the appeal, upholding the decisions of the Nova Scotia Supreme Court, Trial Division and Nova Scotia Court of Appeal, albeit for somewhat different reasons. Like the Court of Appeal, the Supreme Court did not agree with the "commercial reality" analysis of Justice Kennedy of the Trial Division as a means of characterizing fishing licenses as property. However, the Court did recognize that commercial realities provide an appropriate context in which to interpret the statutory provisions.

Similarly, the Court did not accept the analysis of the Court of Appeal, which considered the administrative law rights afforded to a license holder as the basis for concluding that the license holder holds a form of property.

Rather, the Court reached its conclusion that fishing licenses do qualify as "property", for the purposes of the statutory definitions in the *Bankruptcy and Insolvency Act* and the *Personal Property Security Act*, because the rights afforded by a license, combined with the proprietary rights in the harvest from the license (ie. the fish) are sufficiently comparable to a common law property interest known as a "profit à prendre" **so as to fall within the statutory definitions. A profit à prendre is a right to enter a private party's land to hunt or harvest. While the Court did not characterize fishing licenses as an actual profit à prendre, or as conferring a common law property right, it considered the rights conferred by licenses to be sufficiently analogous to common law property rights as to fall within the statutory definitions.**

The survey season for red sea urchins has come to an end. This year we conducted surveys at our 3 research sites (Louise Island, Price Island and Tofino) as well as stock assessment surveys in Campbell River and Upper Principe Channel. Weather prevented the completion of the Upper Principe Channel survey this year however we will complete it next year together with a survey in the Larsen Harbour area. Data are being processed and incorporated into quota recommendations for the 2009/2010 fishing season.

A researcher from Bangladesh, Kalam Azad, is conducting experiments at the Pacific Biological Station on purple sea urchins. Observations on uni texture, weight, colour and taste are being taken to determine optimum food sources and water temperature for possible future aquaculture development. Aquaculture of urchins is currently underway in Japan and China.

Dan Leus – Dept. of Fisheries & Oceans Canada

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D. & D. PACIFIC — DARIN MACEY

Another season has started, slowly, but it has started. Minor changes have been made to the fishing plan that affects the day to day program, and we thought that they should be reviewed, as not all read the DFO management plan. Please read through the logbook handouts when you get them as they will hopefully answer most questions you have.

South Coast: There are no “reserved areas” for the holiday season as in past years. This decision was made at a PUHA meeting to enable fishing at any given time on the south coast when the north coast is inactive. PUHA agreed to keep costs to a minimum by allowing only 3 ports to be active at a given time. This is the hardest to achieve as fishers like to open something close to their own home, or fishing plans. This season alone we have opened almost everything just to get divers in the water. Sometimes the fisher requests an opening, then immediately changes the request to another area / port due to poor planning and communication with his buyer. Hopefully we can stabilize the south coast because having only one vessel land over a long period of time kills the program budget. The south coast has been active since August, with only one vessel active in a landing port since the start. See D&D’s website for landings by Management Area.

North Coast: There has been very little landed in the North Coast this season. Only one vessel was active randomly through the sea cucumber openings. More vessels are getting ready to fish, but a packer fleet has not yet materialized. There will be “on-ground Coordinators” this season as no On-Grounds Monitor is being funded. The requirement is to have a coordinator keep in communications with D&D on the day to day activities of the fleet, and what plans are anticipated next. This system works well in other fisheries D&D monitors, but has had trouble in the red sea urchin fishery last season.

This season started off with the same problems of poor communication with only one vessel active, but pressure from PUHA and D&D seem to have cleared up the problem. DFO has stated that if PUHA cannot achieve proper day to day communications via an on-grounds coordinator, then the fishery will have to fund an on-grounds monitor (observer).

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The block system is gone. Too many areas open last year that DFO decided to not support that system. At two separate times last year over 35 quota areas were open due to the last minute changes the fleet wanted. This management regime caused excessive travel expensive for vessels, and it was noticeable that most of the changes were to address personal agendas to fishing trips. It was difficult and time consuming for D&D to keep up with the changes and worse trying to keep DFO up to speed which we all know is impossible. We were lucky that Pauline Ridings of DFO was not shuffled to another job within DFO, as many other managers were in other fisheries causing delays etc.

Please read through the logbook handouts when you get them as they will hopefully answer most questions you have.

Fishing Licences as a property right—CONTINUED FROM PAGE 2

In concluding that fishing licenses fall within the definition of "property" in the BIA, the Court held that the bankruptcy trustee in the case at hand was entitled to require Saulnier to execute the appropriate documentation to effect a transfer of his fishing license to the third party purchaser that had been identified by the trustee. It also held that the trustee would have the same right as the original license holder to go to the minister to seek a replacement license and would have the same recourse, or lack of it, against the minister's decision if the request were rejected. Following its conclusion that fishing licenses also qualify as "property" for purposes of the PPSA, the Court gives less explanation as to the rights available under that legislation. It simply says that the secured lender is entitled to proceed with its PPSA remedies. However, this appears to be an endorsement of a secured lender's rights to step into the shoes of the license holder, for purposes of requesting issuance of a replacement license, in the same manner as the Court has expressly held would be available to a bankruptcy trustee.

The Court also rejected the concerns raised the Attorney General that characterizing fishing licenses of property would in any way fetter the minister's discretion regarding the issuance of licenses under the *Fisheries Act*. The Court appears to have accepted our position on this issue that this concern of the A.G. was not well founded.

Overall, this decision should give increased comfort to lenders concerning their ability to take security over fishing license assets and should accordingly enhance the ability of fishing industry interests to access financing by offering their licenses as collateral. Of course, lenders will still be faced with the uncertainty that arises from the existence of the ministerial discretion, such that there is no guarantee that a request for transfer of a license to a lender's nominee will necessarily be acceded to by DFO. As such, there will continue to be less certainty associated with security over fishing licenses than in relation to more conventional assets. However, as some elements of the uncertainty concerning financing of fishing licenses have now been eliminated by this decision, this should provide some increased comfort to lenders.