

PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. ALS Fisheries Ltd.*, 2022 NSPC 30

Date: 20220902

Docket: 8503921, 8503922, 8503924
8503925, 8503926, 8503927
8503928, 8503931, 8503932
8503934, 8503935, 8503939
8503940, 8503942

Registry: Halifax

Between:

Her Majesty The Queen

v.

Als Fisheries Ltd.
Law Fisheries Ltd.
Casey Henneberry
Samer Zakhour

Judge:	The Honourable Judge Elizabeth Buckle,
Heard:	May 2, 3, 4, 5, 18, 19, 20, 2022 in Halifax, Nova Scotia
Decision	September 2, 2022
Charge:	Section 78 x 7 of the Fisheries Act Section 43.4(3) x 7 of the Fisheries Act
Counsel:	Trevor McGuigan, for the ALS Fisheries Ltd. Michelle James for Law Fisheries Ltd. Stan MacDonald and Jack MacDonald for Casey Henneberry Michelle James for Samer Zakhour Angela Nimmo, Lee-Ann Conrod for the Court

By the Court:

Introduction

[1] The four accused, two corporations and two individuals, were charged upon a single Information alleging various joint and separate offences under the *Fisheries Act* (the Act). All charges relate to the regulated, quota-based halibut fishery.

[2] In 2019 and 2020, officers with the Department of Fisheries and Oceans (DFO) were investigating vessels involved in the halibut fishery, including the Ivy Lew.

[3] During this period, the Ivy Lew was permitted to fish halibut under a licence held first by A.L.S. Fisheries Ltd. (ALS) and then by Law Fisheries Ltd. (Law Fisheries). The Crown alleges that Casey Henneberry was the Captain of the Ivy Lew on seven fishing trips during which he violated conditions of those licences by providing inaccurate hails, failing to keep an accurate log book and failing to have landings verified by a dockside observer. ALS and Law Fisheries are charged with failing to ensure compliance with the conditions of the licence for the trips occurring when they each held the licence.

[4] The investigation of the Ivy Lew culminated on June 12, 2020 when fisheries officers went to a dock in Sambro, NS, seized halibut and the Ivy Lew and made arrests. Some of the seized halibut was already skinned and fileted with heads removed, so Casey Henneberry and Law Fisheries are also charged with possessing fish, the weight of which cannot be readily determined. One of those arrested on the dock was Samer Zakhour, whom the Crown alleges was present to buy the halibut from the Ivy Lew. The Crown alleges that this is one of the landings that occurred without a dockside observer, so, for this landing, he was a party to the offence of failing to comply with that condition of the licence. Upon arrest, he gave a statement to fisheries officers which the Crown alleges included false or misleading information. As a result, he is also charged with making a false or misleading statement to a fisheries officer.

Charges

[5] Prior to trial, at the request of the Crown, some counts were dismissed entirely or as against specific accused. Seven counts remain:

Count 2 – A.L.S. Fisheries Ltd. and Casey Henneberry did on or between February 26, 2019 and June 20, 2019, at or near Sambro, Nova Scotia, while carrying out any activity under the authority of a licence, contravened or failed to comply with any condition of the licence by providing an inaccurate hail, respecting the fishing vessel Ivy Lew, contrary to s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the Fisheries Act, R.S.C. 1985, c. F-14

Count 3 - A.L.S. Fisheries Ltd. and Casey Henneberry did on or between February 26, 2019 and June 20, 2019, at or near Sambro, Nova Scotia, while carrying out any activity under the authority of a licence, contravened or failed to comply with any condition of the licence by failing to maintain a true and up to date record of his fishing activities and all catch respecting the fishing vessel Ivy Lew, contrary to s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the Fisheries Act, R.S.C. 1985, c. F-14

Count 4 - Law Fisheries Ltd., Casey Henneberry and Samer Zakhour did on or between June 21, 2019 and June 12, 2020, at or near Sambro, Nova Scotia, while carrying out any activity under the authority of a licence, contravened or failed to comply with any condition of the licence by not having the weight and species of all groundfish landed from the vessel named Ivy Lew, verified by a dockside observer, contrary to s. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act, R.S.C. 1985, c. F-14

Count 5 - Law Fisheries Ltd. and Casey Henneberry did on or between June 21, 2019 and June 12, 2020, at or near Sambro, Nova Scotia, while acting under the authority of a licence, contravened or failed to comply with any condition of the licence by providing an inaccurate hail, respecting the fishing vessel Ivy Lew, contrary to ss. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act, R.S.C. 1985, c. F-14

Count 6 - Law Fisheries Ltd. and Casey Henneberry did on or between June 21, 2019 and June 12, 2020, at or near Sambro, Nova Scotia, while acting under the authority of a licence, contravened or failed to comply with any condition of the licence by failing to *accurately* complete the Fixed Gear Monitoring Document, respecting the fishing vessel Ivy Lew, contrary to ss. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act, R.S.C. 1985, c. F-14 (*added on consent, March 31, 2022)

Count 8 - Law Fisheries Ltd. and Casey Henneberry did on or about June 12, 2020, at or near Sambro, Nova Scotia, have in their possession fish that had been skinned, cut, packed, or otherwise dealt with in such a manner that the weight of the fish cannot be readily determined, contrary to ss. 36(2)(c) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the Fisheries Act, R.S.C. 1985, c. F-14; and

Count 9 – Samer Zakhour Fishery did on or about June 12, 2020, at or near Sambro, Nova Scotia, make a false or misleading statement to a Fishery Officer carrying out duties or functions under the Fisheries Act, R.S.C. 1985, c. F-14, contrary to s. 63(1) of the Fisheries Act, thereby committing an offence under s. 78 of the Fisheries Act, R.S.C. 1985, c. F-14.

Legislation and Licence Conditions

[6] Section 78 of the *Fisheries Act* makes it an offence to contravene the Act or regulations.

[7] Five of the charges allege failures to comply with a condition of a licence. The legislation and specific wording of the conditions in the licences changed during the period covered by the Information.

[8] During the period captured by Counts 2 and 3, the failure to comply with a condition of a licence was dealt with as an offence under s. 78 of the *Fisheries Act* resulting from a contravention of s. 22(7) of the *Fisheries (General) Regulations*:

s. 22(7) No person carrying out any activity under the authority of a licence shall contravene or fail to comply with any condition of the licence.”

[9] During the period captured by Counts 4, 5 and 6, the requirement to comply with a condition of a licence and the resulting offence for failing to comply were both addressed in s. 43.4 of the *Fisheries Act*:

s. 43.4 (1) Every person acting under the authority of a ... licence ... shall comply with any terms and conditions of the ... licence that are imposed under the authority of this Act.

[10] Section 43.4(3) makes it an offence to contravene ss. 43.4(1).

[11] The licence held by ALS that applied during the period captured by Counts 2 and 3 (Ex. 14, Tab 3) and those held by Law Fisheries that applied during the period captured by Counts 4, 5 and 6 (Ex. 14, Tabs 6 - clause 6.6, 9 – clause 19 & 20, & 11 – clause 19 & 20), all had a similar requirement that “the licence holder or vessel operator” must hail-in to a dockside monitoring company “the accurate round weight of fish on board the vessel by individual species”.

[12] The wording of the logbook requirement changed. The licence held by ALS that applied during the period captured by Counts 2 and 3 (Ex. 14, Tab 3) and the licence held by Law Fisheries that applied during part of the period captured by

Counts 4, 5, and 6 required that, “the licence holder or vessel operator ... maintain a true and up to date record of his fishing activities and all catch, in a fishing logbook...” and that the “logbook” be “completed accurately” (clause 6.4).

[13] For the remainder of the period, the condition required that the “licence holder/operator” complete portions of the “fixed gear monitoring document 2011” in accordance with the instructions described in a schedule and that the entries always “be accurate” (Ex. 14, Tabs 9 & 11, clause 29). More specifically, the instructions required that that the “round weight of fish caught by species” be entered, that the entries be an accurate record of all fish on board the vessel” and include the “accurate round weight of the fish caught, and the species” (clause 29 (a) & (c)).

[14] The licences for the entire period covered by the Information included a condition that the licence holder or vessel operator must not offload fish without a dockside monitor being present who must verify the weight and species of the fish, be provided with the logbook or fixed gear monitoring document and have a right to inspect the hold (Ex. 14, Tabs 3 & 6 - clause 9.1 and Tabs 9 & 11 – clause 27).

[15] Count 8 alleges a violation of s. 36(2)(c) of the *Fishery (General) Regulations*:

s. 36(2) No person who catches and retains a fish under the authority of a licence issued for the purpose of commercial fishing shall have the fish in possession if the fish is skinned, cut, packed or otherwise dealt with in such a manner that

(c) the weight of the fish cannot be readily determined.

[16] Count 9 alleges a violation of s. 63(1) of the *Fisheries Act*:

s. 63 (1) No person shall make a false or misleading statement, whether orally or in writing, to an inspector, a fishery officer, a fishery guardian, any authority designated by a fishery officer or a fishery guardian or any authority prescribed under paragraph 38(9)(a) or (b) who is carrying out duties or functions under this Act.

[17] There are also provisions in the *Fisheries Act* that address matters of proof:

s. 78.4 In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a person in respect of any matter relating to any operations under a lease or licence issued to the accused pursuant to this Act or the regulations, whether or not the person is identified or has been prosecuted for the

offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

s. 78.5 In any prosecution for an offence under this Act, where a question arises as to whether a person was issued a licence, the burden is on the person to establish that the licence was issued.

s. 78.6 No person shall be convicted of an offence under this Act if the person establishes that the person

(a) exercised all due diligence to prevent the commission of the offence; or

(b) reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent

Positions of the Parties

[18] Counts 2 and 5 allege inaccurate reporting of weight in hails. Counts 3 and 6 allege inaccurate recording of weight in what is commonly referred to as the 'logbook'.

[19] There is no dispute that the licences under which the Ivy Lew was fishing during the relevant time periods all required the licence holder or vessel operator to 'hail in' to a dockside monitoring company prior to returning to port and that the hail must include "the accurate round weight of fish onboard the vessel" by species. There is also no dispute that licences required that the licence holder or vessel operator accurately record the weight of fish onboard.

[20] Count 3 particularizes the default as failing to maintain "a true and up to date record". This reflects the wording in the applicable licence condition and regulation. All counsel argued the case on the basis that 'true' means 'accurate' and no argument was made that it imports a requirement to prove deceit. This is consistent with how similar terms have been interpreted in the caselaw (eg. *R. v Petten*, 129 Nfld. & P.E.I.R. 37 (Nfld. S.Ct. – TD), where the Court found that 'false statement' did not require proof of deceit) and with the fault requirement for a strict liability offence.

[21] As such, for counts 2, 3, 5 and 6, the Crown must prove that the weight in a hail or logbook was not accurate. The Crown acknowledges that 'accurate' does not mean exact and argues that the weights reported for the seven trips were sufficiently inaccurate to attract liability, that Casey Henneberry was the Captain/vessel operator of the Ivy Lew when inaccurate hails or log entries were made so is responsible for the failure to comply with the respective licence

conditions and that ALS or Law Fisheries are responsible because they failed in their duty as the respective licence holder to ensure the conditions of the licence was complied with by anyone who acted under it. The Defence argues that the Crown has not proven that Casey Henneberry was the Captain for all seven trips and that the weights reported for those trips when he was Captain were not sufficiently 'inaccurate' to attract liability. No due diligence defence was put forward by the corporate accused and they essentially concede that if the Crown proves the reports/logs were inaccurate, they would also be found guilty of the related offences.

[22] Count 4 alleges a failure to comply with a condition of a licence by offloading halibut without a dockside observer and specifically relates to three dates: March 17; May 8; and, June 12 of 2020. There is no dispute that the applicable licence conditions required the licence holder or operator of the vessel to have the weight and species of all groundfish landed verified by a dockside monitor (DSM) and prohibited offloading unless a DSM was present. Captain Henneberry, Law Fisheries and Mr. Zakhour, who is implicated in the alleged offload on June 12, 2020, argue that the Crown has not proven that halibut was actually landed without a DSM on any of these dates. They dispute the Crown has proven that any fish observed on March 17 and May 8 were groundfish and that any fish observed on any of the dates was landed from the Ivy Lew. Captain Henneberry also argues that the Crown has not proven he was the Captain/vessel operator of the Ivy Lew during any illegal offload on those dates. Mr. Zakhour argues that if the Crown does establish there was an illegal offload on June 12, 2020, because this offence is statutorily limited to those acting under the licence and Mr. Zakhour was not, the offence does not capture him and the Crown has not proven he was a party to that offence. This requires consideration of whether party liability under the *Fisheries Act* is strict liability. The Crown argues it is, meaning that they are not required to prove that he had any illegal knowledge or intent. The Defence argues it is not, so the Crown would have to prove both.

[23] Count 8 alleges possession of fish that has been dealt with in such a way that the weight cannot be readily determined. There is no dispute that on June 12, 2020, halibut was seized from the Ivy Lew that was skinned, fileted and had the heads removed. Casey Henneberry was not one of those arrested at the wharf and was not physically in possession of the fish when it was seized. The focus of submissions on this count is whether the Crown has proven that Casey Henneberry had been onboard the Ivy Lew or was otherwise in constructive possession of the

fish and whether the Crown has proven that the weight of the fish could not be “readily determined”.

[24] Count 9 alleges that, on June 12, 2020, Mr. Zakhour provided a misleading or false statement to a fisheries officer carrying out duties. There is no dispute that fisheries officers were carrying out their duties and that he gave a statement which was false. The focus of submissions is on how this offence provision should be interpreted and whether the Crown’s interpretation is overbroad.

Issues

[25] While of course my task, in general, is for each count, to determine whether the Crown has proven the *actus reus* beyond a reasonable doubt. The real issues are more narrow:

1. Has the Crown proven that any weight reported in a hail or recorded in a log book was “inaccurate”?
2. Has the Crown proven that groundfish was landed from the Ivy Lew without a dockside monitor? Specifically that any fish were removed from the Ivy Lew and that it was groundfish.
3. Has the Crown proven that Casey Henneberry was responsible for any inaccurate hail or log entry and/or any landing without a DSM?
4. Has the Crown proven that the weight of fileted halibut found on board the Ivy Lew on June 12, 2020 could not be “readily determined”? If so, has the Crown proven that Casey Henneberry was in possession of it?
5. For Mr. Zakhour, if the Crown proves there was an unmonitored landing of groundfish from the Ivy Lew on June 12, 2020, does it capture him as a principal or party? Specifically, is the unmonitored landing offence statutorily limited to those who are “acting under the authority of a licence? Is party liability available for those who are not subject to the licence? Assuming it is, has the Crown proven that Mr. Zakhour was a party? Specifically,
 - a. Is party liability under the Fisheries Act strict liability?
 - b. If not, has the Crown proven the full mens rea requirements for party liability – that he committed some act with knowledge

and for the purpose of aiding or abetting an unmonitored landing?

6. What is the proper interpretation of the offence under s. 63(1)?

General Principles

[26] All offences are strict liability. As such, absent a defence of due diligence, each accused would be convicted if the Crown proved beyond a reasonable doubt that he or it committed the act. The Defence did not call evidence.

[27] The accused are presumed to be innocent of these charges. The Crown bears the burden of proof beyond a reasonable doubt. There is no burden on the accused except on the issue of due diligence or as otherwise provided in the Act.

[28] Proof beyond a reasonable doubt is a high standard. It is more than suspicion of guilt or probable guilt. It is not proof to an absolute certainty but falls much closer to absolute certainty than to proof on a balance of probabilities. It is not proof beyond any doubt nor is it an imaginary or frivolous doubt. It is based on reason and common sense, and not on sympathy or prejudice. (*R. v. Starr*, [2000] S.C.J. No. 40; *R. v. Lifchus*, [1997] 3 S.C.R. 320.).

[29] The charges can be proven through direct or circumstantial evidence or a combination.

[30] The burden on the Crown when proof of an element is based on circumstantial evidence is to prove beyond a reasonable doubt that the guilty inference is the only reasonable inference to be drawn from the evidence (*R. v. Griffen*, [2009] S.C.J. No. 28, paragraph 34). There is no burden on the Defence to persuade me that there are other more reasonable or even equally reasonable inferences that can be drawn. A reasonable doubt may be logically based on a lack of evidence (*R. v. Vilaroman*, 2016 SCC 33, at para. 36). I am permitted to draw logical or common sense inferences, but only where those inferences are grounded in or flow from the evidence (*R. v. Pastro*, 2021 BCCA 149). The question is “whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty” (*Vilaroman*, at para. 38). If so, then the accused must be acquitted.

Analysis

Counts 2, 3, 5, and 6 - Inaccurate Hails and Logs

[31] Both Crown and Defence focussed their submissions on whether the Crown had proven that the weights recorded and reported were sufficiently inaccurate to attract liability.

[32] ‘Accurate’ is not defined in the statute, regulations or licence conditions. Nor do those sources include any parameters such as a requirement that the reported weight be within a specified percentage of the actual weight.

[33] Courts that have been called upon to consider this issue have also not defined ‘accurate’ with reference to a specific margin of allowable error.

[34] I have interpreted ‘accurate’ as ‘reasonably accurate’ and concluded that it incorporates requirements of reasonable precision and care and must be assessed with reference to the general context and the specific circumstances. In reaching that conclusion, I have relied heavily on the decision of Judge Chisholm in *R. v. Henneberry* (2016 NSPC 6) and the comments of the Court in *R. v. Vanbuskirk* (2000 NSCA 11).

[35] In *Vanbuskirk*, the Court defined ‘accurate’ as meaning “careful, precise”. In that case, the licence condition in issue required the captain to hail an estimate of the fish on board but did not include any requirement that it be accurate. In convicting the accused, the trial judge had imposed a requirement that the reported weight of fish be reasonably accurate. In that context, the Court of Appeal concluded that the concept of reasonable accuracy or precision was the antithesis of an estimate, which required only an approximation. Because the licence condition in issue did not use the word ‘accurate’, the Court was not required to and did not further elaborate on what that standard would demand.

[36] In *Henneberry*, Judge Chisholm interpreted ‘accurate’ in a case where the licence condition under review required an accurate hail. After a comprehensive review of the caselaw, including *VanBuskirk*, he concluded that accurate in this context did not mean exact since that would be unreasonable. I agree. Relying on the definition of accurate provided by the Court of Appeal in *VanBuskirk*, he concluded that accurate incorporates requirements of both precision and care in completing the task (para. 137).

[37] The Crown has also relied on comments in other cases, including *Petten* and *R. v. Kavanagh* (214 Nfld. & P.E.I.R. 350 (Nfld. P.C.)). In my view, those cases

are of little assistance in deciding what ‘accurate’ means since, in both, the licence condition in issue required an ‘estimate’ of weight rather than an ‘accurate’ weight. In *Vanbuskirk*, our Court of Appeal said those two terms are not the same. With that caveat, some of the Court’s comments in *Petten* would also apply to ‘accurate’: the reported logged weight should be “as accurate as possible”; should not be simply a “guess”; and, based on experience and training the person making the report/log is expected to use his best skills and judgment to come as close as possible to the actually amount being estimated.” (para. 21).

[38] The cases, including those that have interpreted ‘estimate’ and ‘accurate’, have recognized that the level of precision and care required must be informed by the general context. That context is a highly regulated, quota-based industry, the purpose of which is to help achieve the important conservation and management objectives of the *Fisheries Act* (*VanBuskirk*, para 7; *Henneberry* (NSPC), paras. 96 - 97). There is some dispute about the importance of the hail and log requirements to those objectives, given the requirement for 100% monitoring by a dockside monitor. In *VanBuskirk*, the Court of Appeal said there “had been no evidence before the trial judge as to why an element of accuracy or precision in the weight of round fish hailed was necessary to achieve the objectives of the *Fisheries Act* and the Regulations, particularly in view of the requirement for 100% monitoring by dockside weighing of the catch.” (para. 25). The Court acknowledged that it is “of extreme importance, for the purpose of monitoring the fishery, that the Department of Fisheries have accurate information as to the weight of the fish by species actually landed.” However, the Court also suggested that, given there was 100 % dockside monitoring, the hailing of weight did not appear to be of critical importance (para. 10).

[39] In *Henneberry*, Judge Chisholm did have evidence about the importance of an accurate hail and found that:

The requirement for a captain of a vessel to make an "accurate hail" of the round weight of the fish on the vessel by individual species before returning to port is a tool used to enforce fishing quotas, (see evidence of F.O. Smith at p. 48). While the accused's vessel was subject to 100% dockside monitoring, I accept the evidence of F.O. MacDonald that the lucrative nature of the halibut fishery creates a risk of fraud or collusion. And further that the spot checking by Fisheries Officers of fishers and dockside monitors is the most effective tool to ensure the compliance with the fishing quotas (per F.O. Smith at p. 48)

[40] In *R. v. Henneberry*, 2019 NSSC 119, Justice Edwards, hearing a Crown appeal of sentence, said that dockside monitoring is not fool proof. He found that “it is very susceptible to being circumvented and does not address the many opportunities to cheat between when the fish are caught and when the DSM sees them.”. He provided examples of off-loading to another vessel and in an unmonitored location (para. 22).

[41] In the case before me, I also have evidence from Fishery Officer Jessica Belbin (FO Belbin) who testified that a proper hail-in and accurate log are integral parts of the regulatory scheme and used to prevent fraud and collusion. She said they ensure an accurate record of the catch before landing to deter illegal offloading.

[42] I accept that the hail and logbook are important tools in enforcing quotas, preventing fraud and essentially act as a check or back-up for the DSM requirements and other enforcement tools (evidence of FO Belbin; *Henneberry* (NSPC), para. 97; and, *Henneberry*, (NSSC), para 21 - 22).

[43] The cases, again including those that have interpreted ‘estimate’ and ‘accurate’, also recognize that the specific circumstances of the case have to be considered in determining how accurate the reported and recorded weights must be. In *R. v. Vanbuskirk* ([1999] N.S.J. No 215(SC)), the summary conviction appeal judge opined that reasonableness includes an assessment of both the ultimate number and the method by which it was obtained.

[44] In *Henneberry* (NSPC), Judge Chisholm said that the accurate hail condition in the fishing license “requires that the vessel operator make as precise a report of the round weight of the fish onboard the vessel by individual species as can be accomplished with the exercising of care in completing the task” and that “[t]he exercise of care involves consideration of factors including the method and equipment used in completing the task and the captain's knowledge and experience.” (paras. 137 – 138). In determining whether the Captain in that case had failed to meet the standard for accuracy, he considered the evidence before him of harsh weather, fatigue and long hours and the Captain’s actual method.

[45] In *Petten*, the Court referred to the skills, judgement, experience and training of the person making the estimate (para. 24). In *Kavanagh*, the Court considered the experience of the fisher.

[46] Finally, I have evidence from FO Belbin as to what she and DFO would consider to be relevant factors in their determination of whether to lay a charge relating to inaccurate reporting/recording of weight. She said that, other than the raw numbers, you have to look at “the totality of the circumstances” which would include the Captain’s experience, their familiarity with the vessel which would impact their knowledge of the holds (a captain who knew the size of the hold could see how full the hold was and estimate weight), the sea conditions during the trip, the number and experience of the crew, and the measures taken to try to get an accurate estimate of weight while at sea. For example, she has heard but never seen that some vessels have scales on board. These seem to be reasonable factors for me to consider and neither Crown nor Defence takes any issue with these factors or suggest others.

[47] So, with this this standard in mind, I will examine the evidence to determine whether the Crown has proven beyond a reasonable doubt that any of the logged/hailed weights were not accurate, that Casey Henneberry was the Captain for any trip where inaccurate weights were logged/hailed and whether each corporate accused is liable as the respective licence holder.

Evidence for Counts 2, 3, 5 and 6

[48] Counts 2 and 3 allege offences between February 26, 2019 and June 20, 2019, and encompass one trip: May 16 - 30, 2019 (trip 1).

[49] Counts 5 and 6 allege offences between June 21, 2019 and June 12, 2020 and encompass six trips: June 18 - 28, 2019 (trip 2); February 7 – 21, 2020 (trip 3); March 7 – 17, 2020 (trip 4); April 3 – 16, 2020 (trip 5); April 22 – May 8, 2020 (trip 6); and, May 29 – June 11, 2020 (trip 7).

[50] Various documents were entered as business records under the *Canada Evidence Act*. For ease of use, the Crown prepared separate exhibits for some of those documents, organized by category. Exhibit 15 contains records for the Ivy Lew for each of the seven trips in issue. Each tab relates to a different trip and contains the relevant documents for that trip, including: the ‘hail out’ details; the Fixed Gear Groundfish Monitoring Document (log book); the ‘hail report’; the ‘hail in’; the DFO Groundfish Tally; and, data from the vessel monitoring system (VMS).

[51] FO Belbin explained the process in which these documents are used, how they were created and provided some interpretation of the information they contain.

[52] Before a vessel departs on a fishing trip, she must 'hail out' to DFO. This is done by calling an automated, voice recognition phone line and reporting identifying information about the vessel and the date, time and port of departure. The information from the 'hail out' is then entered into the Fishery Officer Intranet Portal (FOIP). The 'hail out' details page is produced from that database.

[53] The Fixed Gear Groundfish Monitoring Document 2011 (Monitoring Document) is part of the logbook which each vessel is required to have onboard during fishing trips. The licence conditions require that it be completed by the vessel operator or licence owner. It is typically completed by the captain who records their name and signs it. It is a daily record of the vessel's fishing activity, including if gear was set or hauled, fish caught and round weight of retained fish by species.

[54] At least three hours before landing in a port, the vessel operator, who is typically the Captain, must alert DFO that the vessel intends to land. This is done by calling the DSM company. Gregory Croft, a program coordinator with DFO, testified that it is not a specific requirement that the Captain on the vessel make the call directly. He said it is the licence holder's responsibility to make sure it is done and that it can be done by an intermediary. He agreed that someone on the vessel would either call the DSM company directly or call someone on land who would make the call. FO Belbin testified that the caller reports identifying information about the vessel, the anticipated date, time and port of landing, the weight and species of catch and the date and intended time of offload. The purpose of the 'hail-in' is to alert DFO of the landing and allow a DSM to be dispatched. When the call is received, a clerk with the DSM company records the information received into the "Hail Report", forwards the information to DFO and dispatches a DSM to the landing site.

[55] A data clerk inputs that information into the FOIP and the 'hail in details' page is produced from that database.

[56] Every vessel is required to have a vessel monitoring system (VMS) onboard. It provides the geographic location of the vessel. While on a fishing trip, the system must report its position every hour. The data contained at the end of each tab in Ex. 15, is produced from that system and includes the name of the vessel, the

date and time, vessel speed and position in longitude and latitude coordinates. Red text denotes that the location reporting was delayed.

[57] FO Belbin testified that the role of the DSM is to monitor the offload and verify the weights of all species. The DSM records the weights of all fish as they come off the boat into the “Groundfish Tally” document and calculates the weight of the offload.

[58] The DSM remains on the wharf the whole time. The DSM must be permitted to inspect the holds to ensure that all fish have been offloaded. Prior to Covid the DSMs always boarded the vessel but during Covid this practice was suspended. The DSM fills out the “Fixed Gear Weighout Slip” portion of the Monitoring Document, signs it, removes the original from the logbook (leaving a copy) and sends it to DFO who stamps it when received.

[59] FO Belbin calculated the differences between logged/hailed weight and the weights obtained by the DSM (landed weight) for each trip. She prepared a summary table (Hail Table, Ex. 16). This table was admitted as an aid only so I also did my own calculations.

[60] Before examining the differences, some explanation is required.

[61] The logged/hailed weights are ‘round weight’, meaning the whole fish, but once the DSMs weigh the fish, they have been gutted and the heads may have been removed. A conversion factor is used to obtain an approximate ‘round weight’. The conversion factors are found in the licence conditions. They vary depending on species and whether the head has been removed. In this case, the licence conditions include conversion factors for halibut and cod, with and without heads, but there is no conversion factor noted for Hake (eg. Ex. 14, Tab 11, p. 125). FO Belbin testified that she was not aware of the rationale for the conversion factors but understood they had some scientific basis.

[62] FO Belbin testified that when the DSM records the ‘form’ the fish is in on the Tally Document using acronyms: GHOF means gutted, head off; and, GHON means gutted, head on. This determines which conversion factor to apply. The DSM also uses discretion to apply an ice allowance depending on their opinion of how much ice is packed with the fish when weighed. FO Belbin testified that 2 % is usual but she has seen it be as high as 5% or as low as 0%. The Defence does not dispute the accuracy of the gross weights recorded in the Tally sheets. However, I accept that the discretionary ice allowance and species-based

conversion factors create a built-in lack of precision in the DFO calculation of landed weight which is relevant when assessing the discrepancies between logged/hailed weight and landed weight to determine if they are inaccurate.

[63] I accept the numbers in FO Belbin's summary table except for her use of a conversion factor for Hake. The Crown acknowledges that the conversion factor she used for that species is not in the licence conditions and there is no evidence of where it came from.

[64] For each trip, I have performed one additional calculation. FO Belbin reported the absolute difference between logged/hailed weight and landed weight and also calculated the difference as a percentage of the logged/hailed weight. For example, for trip 1, the logged/hailed weight was 10,000 lbs and the landed weight (after applying the conversion factor and ice allowance) was 6,709 lbs, for a difference of 3,291 which FO Belbin reported as a percentage difference of 32.9%. That number accurately reflects the percentage by which the landed weight was 'different' than the logged/hailed weight. However it does not reflect the 'error percentage' for the logged/hailed weight, meaning the percentage by which the logged/hailed weight (the predicted/estimated weight) was lower or higher than the landed weight (which approximates the actual/true weight). Again, using trip 1 as an example, the logged/hailed weight exceeded the landed weight by 49% (3,291 / 6,709). This method of calculation has been used in other cases (eg. *Petten*, and *Henneberry* (NSPC) where the Court used both calculations).

[65] The following chart compares the weights logged/hailed by the Ivy Lew to the landed weight (those recorded by the DSM/DFO). Unless otherwise specified, the species is halibut. 'Log/Hail' means weight in pounds recorded in the log book and hail. For each trip, these numbers are the same so are included as one number. Trip 1 does not specify pounds or kilograms, however I have assumed pounds as that is used for all other trips and FO Belbin testified that this was typical. This gives the benefit to the accused. 'Landed' means weight in pounds after conversion and ice allowance. 'Difference' is the raw number by which the logged/hailed weight was over or under the landed weight. '% Difference' is that number expressed as a percentage of the logged/hailed weight. '% Error' is that number expressed as a percentage of the landed weight.

Trip	Log/Hail	Ice %	Landed	Difference	% Difference	% Error
1	10,000	2%	6,709	+ 3,291	+ 32.9%	49% over
2	16,500	2%	11,438	+ 5,062	+ 30.7%	44% over

3	35,500 300 Cod 800 Hake	2%	31,153.5 248.4 1,415**	+ 4346.5 + 51.6 - 615	+ 12.2% + 17.2% - 76.9%	13.9% over 20.8% over 43.5% under
4	24,500*	2%	27,209.7	- 2,709.7	- 11.06%	10% under
5	18,400	0%	14,418	+ 3982	+ 21.64%	27.6% over
6	17,900 100 Hake	2%	14,909.6 165**	+ 2900.4 - 65	+ 16.71% - 65%	19.5% over 39.4% under
7	18,200	2%	16,776.9	+ 1,423.1	+ 7.8%	8.5% over

* Cumulative of two Hail Reports relating to one trip. The Ivy Lew was forced to make an unscheduled landing due to bad weather.

**After Ice Allowance only. Because I have no evidence of the source of the conversion factor used by FO Belbin in her table, I have not used it.

[66] On June 12, 2020, there was a seizure of 9,399 pounds of halibut from the dock which the Crown argues was part of the catch for trip 7 so should be included in the calculation of inaccuracy for that trip. If so, the comparison for that trip would be as follows:

Trip	Log/Hail	Ice %	Landed	Difference	% Difference	% Error
7	18, 200	*	26, 176	- 7,976	- 43/8 %	30.5% under

* The ice allowance for the landing was 2%, but it appears that the seized halibut was removed from the tubs for weighing so no ice allowance was required.

[67] I have limited evidence concerning the other relevant factors.

[68] FO Belbin acknowledged that the Ivy Lew was involved in 'off shore' fishing and that the seas would generally be rougher the further one goes off shore.

[69] She also acknowledged that halibut vary in size and weight from 81 cm and up and from 25 lb to as much as 150 lb, that it would very challenging to weigh fish if hauling in rough sea and that the DSMs are weighing on a stationary surface.

[70] FO Andre Roy, testified that he had been a fisheries officer with DFO for 14 years including some experience on an off-shore vessel, fishing halibut. He testified that the sea can be rough and the work is very dangerous. He agreed that the goal, in high seas, is to get the fish onboard and stowed. He acknowledged that

there would probably not be time to weigh individual fish and the practice he has observed is that weight is estimated after each string, using a chart which contains the estimated weight of a fish according to their length and those weights are recorded in a notebook to be later combined and recorded in the log for the day.

[71] FO Stephen Locke testified that he had been a fisheries officer with DFO since 2009. He agreed that it would be rare for a hail to be exact but it does happen. He said that if the hail was within 5 %, he would consider it “pretty good”. He acknowledged that he had some previous experience with Casey Henneberry but denied that he every told him it was better to hale over than under weight. He testified that to him, one wouldn’t be better than the other since both would be off.

[72] The evidence does not establish that, prior to trip 1, Casey Henneberry had a great deal of experience as a Captain or specifically with the Ivy Lew. FO Belbin testified that, based on the hails reviewed during this investigation, she believed he was a frequent captain of the Ivy Lew. However, there is no evidence of how many hails were reviewed by her beyond those for these seven trips and there is no evidence of whether any other trips occurred before or in the midst of these trips. Therefore, her evidence is of limited assistance in determining whether he was experienced with the Ivy Lew at the time of any specific trip. She also acknowledged that the Ivy Lew was “practically” a brand new vessel.

[73] FO MacLean testified that Casey Henneberry was the Captain of a vessel he inspected between 2018 and May 8, 2020. He also had some other dealings with him in the industry, but not as Captain.

[74] I accept that there are factors that make obtaining a precise weight at sea difficult - seas can be rough, halibut can vary in size and weight, most vessels would not have a scale to weigh individual fish as they are landed, and the work is dangerous.

[75] I also accept that Casey Henneberry had previously been the Captain of a vessel. However, based on that evidence, as of the first trip, I could not describe him as an experienced Captain and there is no evidence that he was familiar with the Ivy Lew.

[76] Using this evidence and the specific weights for each count, I have to determine whether the Crown has proven that Casey Henneberry reported

inaccurate weights in the logbook/hail. This requires me to consider whether he was the Captain/vessel operator for each of the trips relied on by the Crown.

[77] Counts 2 and 3 encompass Trip 1. Casey Henneberry does not dispute that he was the Captain for that trip. Counts 5 and 6, encompass trips 2 – 7. He does not dispute that he was the captain for trips 3, 4 and 5 but argues that the Crown has not proven that he was the Captain for trips 2 and 6.

[78] The evidence capable of establishing that he was the Captain is contained in the documents that were admitted as business records pursuant to s. 30 of the CEA. However, the information in those documents is not consistent. For the following reasons, I am not satisfied that Casey Henneberry was the Captain/vessel operator of the Ivy Lew for trips 2 and 6 and, by extension, I am not satisfied that he completed the logbook or was responsible for the hail for those trips.

[79] For trip 2, the Hail Out was called in by Cody Cameron. The Monitoring Document, prepared by the Captain / vessel operator, also lists that name as the Captain and the Captain's signature appears to be the same name.

[80] The Hail Report, prepared by the DSM company, lists the Captain as "Kasey Henneberry" and the name of the caller as "Andy Henneberry". The Hail In Details record from the FOIP, inputted by a clerk from the DSM company, also indicates that the hail was called in by "Andy Henneberry" and under "comments", the words "Captain Karsey Henneberry" appear. Finally, the Tally document, prepared by the DSM, lists the captain/licence holder as "Casie Henneberry".

[81] For trip 6, the Hail Out was called in by "Christopher Forbes", the Monitoring Document has that name printed as "captain's name" and the "captain signature" appears to be the same name on both pages. The Hail Report from the DSM company lists the Captain as "Casey Henneberry" and the name of the caller as Andy Henneberry. The Hail In Details record, which is created from the same information also indicates that the hail was called in by Andy Henneberry and under "comments", the words "Captain Casey Henneberry" appear. Finally, the Tally Document lists the captain/licence holder as "Casie Henneberry". Mr. Richardson was the DSM for this trip and had also been the DSM on trips 1, 3, and 4 where the Defence concedes that Casey Henneberry was the Captain.

[82] Neither Christopher Forbes nor Cody Cameron were called as witnesses, though I note that someone named Chris Forbes was arrested by fisheries officers on June 12, 2020.

[83] The Crown argues that I should accept the information in the Hail-In Reports, Hail in Details Forms and DFO Tallies as proof that Casey Henneberry was the Captain during these trips, and, as such, he is responsible for the logbook entries and the Hail-In. They submit that, the information about the identity of the Captain in these documents is more credible and reliable than that provided in the Hail-Out and Monitoring Document.

[84] The Crown argues that the Hail-In documents and Tally were created by independent actors whose job it is to record this type of information. In contrast, they submit that the Hail-Out and Monitoring Document were created by someone related to the Ivy Lew and that Casey Henneberry would have had a motive to identify someone else as Captain in those documents. Further, the identification of the Captain in the dockside Tally is particularly reliable as it was completed by the DSM who had just interacted with the Captain and would presumably know who they were.

[85] Based on the evidence, I cannot conclude that the Hail-In Report and Details sheet are more credible or reliable than the Hail-Out and Monitoring Document. Both the Hail-Out Document and Monitoring Document have some indicia of reliability. According to FO Belbin, the hail out system is an automated voice-recognition system, which would presumably accurately capture voice of the caller and identify Cody Cameron and Chris Forbes, not Casey Henneberry. The Monitoring Document must be completed by the Captain who then signs a declaration indicating it is accurate. It would be an offence to sign it as Captain if one were not. The risk of detection and prosecution adds to the reliability of the information identifying the Captain in that document. Further, Mr. Croft, testified that in his role as program coordinator for DFO, he would expect the name on that document to be the Captain. Both FO Hynes and FO Belbin agreed that the log book must be filled out by the Captain and that is where one would look to determine who the Captain is.

[86] I accept that if Casey Henneberry was intending to commit an offence on a trip, he may have been motivated to distance himself from it by having someone else listed as Captain on the trip. However, that motive would have continued or been even greater by the end of the trips. If he wanted to create a fiction that Cody Cameron and Chris Forbes were the Captains for those respective trips, one would think he would have maintained it by using that same name for the Hail-In as well. Since it is also an offence to make an inaccurate hail-in, presumably he would also want to distance himself from that. The Hail Report and Hail In Details form are

completed by a clerk from the DSM company based on information provided by the caller. Again, based on the evidence I have, it would seem simple for Casey Henneberry to call the DSM company himself or have someone else make the call and report that the Captain was Cody Cameron or Chris Forbes.

[87] Given the evidence about the process leading to the creation of the Hail-In Report and Details Form, I do not accept that the information is more reliable than that contained in the Hail-Out and Monitoring Document. I accept that the data clerk working with the DSM is independent and was making entries as part of his or her duties so would presumably be trying to be accurate. However, the information inputted was provided by telephone from someone who may or may not have been on the vessel. The documents establish that Andy Henneberry made the call. I have no evidence of whether Andy Henneberry was on the Ivy Lew and providing that information based on his own observations or if he was on-shore and reporting information he received from someone on the vessel. As such the information is potentially double or even triple hearsay.

[88] Further, the mis-spelling or misstatement of the first name in the Hail-In Report and Hail-In Details form is suggestive of some lack of attention to detail. Either the name was mis-spelled or mis-stated by Andy Henneberry or recorded inaccurately in the hand-written report and then mis-typed into the FOIP. This negatively impacts my assessment of the reliability of the information.

[89] The Tally Document for both trips was filled out by DSM - Brian Richardson. He was also the DSM for trips 1, 3 and 4 when the Defence concedes that Casey Henneberry was the Captain. The Crown argued that he was familiar with Mr. Henneberry, was on site and would have recorded the name of the Captain while or immediately after dealing with him, making this information particularly reliable and compelling.

[90] I don't have clear evidence as to how much interaction there is between a DSM and the Captain during a landing. Assuming there is some interaction, then Mr. Richardson would have had one previous interaction with Casey Henneberry before dealing with the Captain during trip 2 and three previous interactions before trip 6. I accept that at least by trip 6, he would have been familiar enough to recognize him during direct dealings.

[91] Mr. Richardson didn't testify. I infer that he would fill in the weights on the Tally immediately as each container is weighed. However, I don't have evidence as to whether the Captain's name is filled in at the same time. In my view, it

would not be an unreasonable inference that a DSM might ‘pre-fill’ that information based on the information from the DSM company. Further, the Tally sheet does not require the Captain to initial or sign the document to acknowledge the accuracy of the information in it so there is no ‘check’. Finally, for both trip 2 and trip 6, on the Monitoring Document, Mr. Richardson signed his name right next to where Cody Cameron and Chris Forbes are listed as Captain. I accept that in signing the document, Mr. Richardson was not attesting to its accuracy, but in my view a reasonably attentive and careful person would notice that the name on the document was not Casey Henneberry’s and realize there was a discrepancy.

[92] Given the conflict in the documents, I am not persuaded that the recording of the name of the captain in the Hail-In documents and Tallies is sufficiently reliable to establish that Casey Henneberry was the Captain / vessel operator for these trips. As such I am not persuaded that he was and, therefore, not satisfied that he is responsible for the log books and hail-ins for those trips.

[93] As a result, as against Casey Henneberry, Counts 5 and 6 rely only on evidence from trips 3, 4, 5 and 7. Law Fisheries is charged under Counts 5 and 6 as the licence holder. However, the Crown acknowledges that they did not hold the licence during trip 2 so does not rely on evidence from that trip against them. Since the licence holder’s obligation applies regardless of who is the Captain, as against Law Fisheries, these counts rely on evidence from trips 3 - 7.

[94] The summary conviction Appeal Court decision in *Petten* highlights the necessity of considering the evidence on each count separately – advising that trial judges address each count and specifically outline why the estimate is reasonable or unreasonable. In this case, both Crown and Defence addressed each trip individually but used evidence relating to other trips for context. For example, the evidence from all trips is relevant to my assessment of some factors and the Defence specifically argued that determining whether a specific number is reasonable requires consideration of the fact that some reported catches were over and some were under.

Analysis - Counts 2 and 3

[95] For trip 1, the landed weight was calculated as 6,709 pounds which Captain Henneberry had logged/hailed as 10,000 pounds. So the weight he logged/hailed (his estimate) was 48.9% higher than the landed weight and the landed weight was 32.9% less than his estimate.

[96] To determine whether the logged/hailed weight is reasonably accurate, I have to consider the numbers, the specific circumstances and the general context.

[97] In terms of the numbers, I have little frame of reference other than what has been said in other cases. I have no evidence of an industry standard or acceptable margin of error or any evidence from which I could determine what is a normal error rate in the industry (such as records of landings for this type of fishery in this sector for a period of time). I also caution myself about applying ‘common sense’ to an area that is far outside my experience. FO Locke testified that if the hail was within 5% it would be considered pretty good. That evidence is anecdotal and even if I could rely on it, would be of little assistance in determining what percentage error should be considered unreasonable.

[98] The Crown relies on a number of cases:

- In *Petten*, the accused was convicted of 16 counts of providing false information to DFO. He was required to record estimates of his catch. The Court concluded there were serious discrepancies between the estimates and the actual weight such that his actions were either reckless or deliberate and were not reasonable. The discrepancies that resulted in convictions included over-estimates and under-estimates, a variety of species of fish, a range of actual weights, and a range of percentage errors from 12 % to 100 %. The reported decision does not contain information about any other factors the Court considered.
- In *Henneberry* (NSPC decision), the accused was convicted of one count of failing to comply with a condition of a licence by hailing an inaccurate weight of halibut. The hailed weight was 17,450 lb and the landed weight was 22,371 lbs. So, the hailed weight was 22% less than the landed weight. The Court accepted that conditions while fishing accurate weights, but concluded that the reported weight was “far from precise” and said the degree of variance alone, might persuade a judge that the Captain had failed to exercise care in making the hail.
- In *Henneberry* (NSSC), the Court was dealing with a sentence appeal for an accused who had pleaded guilty to a charge relating to an inaccurate log. He had recorded a total of 10,000 pounds of halibut for a three day period. The landed weight was 33,000 pounds, so the logged weight was almost 70 %

under the landed weight. The summary conviction appeal judge made strong statements about that level of discrepancy.

[99] The Crown also referred to *Kavanagh*, primarily to assist with general principles. To the extent that the Crown seeks to use this case as a precedent to establish what level of inaccuracy would be unreasonable, I cannot rely on it. The catch in issue in that case was crab and I have no evidence of how estimating weight of crab might compare with estimating weight of halibut.

[100] I fully appreciate that, as Judge Chisholm said in *Henneberry*, the ‘process has inaccuracy built into it’. Given the realities of fishing, especially offshore fishing, requiring a fisher to provide an exact weight of thousands of pounds of fish would not be reasonable. Given the process used by the DSM to calculate weight (the species based conversion factor and discretionary ice allowance), even their weight would not be expected to exactly reflect the weight of the fish when caught.

[101] For trip 1, even if the ice allowance were 0 %, the disparity after conversion would be 3,153.2 (5,162 gross, 6,846.8 converted) with a percentage difference of 31.5 % and a logged/hailed weight that was 46% higher than the actual weight. Even allowing for a large margin of error for both the logged/hailed weight and the weight obtained by the DSM, the difference would still be significant.

[102] I have little information about the specific circumstances. I accept that the *Ivy Lew* was a relatively new vessel. I have no evidence of whether Captain Henneberry had previously operated her and some evidence that he had previously been a Captain on a fishing vessel on at least one occasion. I have no specific evidence about the weather during this trip, but accept that the seas off-shore can be rough and that fishing halibut is difficult dangerous work which would no doubt make it more difficult to obtain precise weights, especially when the catch is large. I have no evidence about the number or experience of the crew or the method used at sea to come up with the weight used for the log book and hail. I do have evidence from the fisheries officers that there are methods that can be used to estimate weight, including a chart that provides typical weights based on length and that Captains who are familiar with a particular vessel can calculate weight based on how full the hold(s) are.

[103] As I said, the context here is that of a regulated, quota-based fishery. I accept that the objectives of the system are important – conservation and resource management – and that accurate reporting of catch is an important part of the measures employed to obtain those objectives.

[104] The Defence argues that the real concern and the focus of the authorities in a regulated, quota-based setting, is under-hailing and there is no advantage to over-hailing so no nefarious motive. The Crown argues that an over-hail and overage in the log book is indicative of an illegal offload. The fisher accurately records the catch in the logbook and in the hail-in because of the risk of an at-sea inspection but then only legally offloads a part of the catch resulting in a disparity in the numbers. Based on the evidence in this case, I agree with the Defence that this would not be a sensible risk calculation since having the disparity discovered when the catch is weighed by a DSM is a virtually certainty whereas, the risk of having an inaccurate log-book and hail-in discovered during an at-sea inspection would be low

[105] However, in a strict liability offence, the relevance of this is limited. The Crown does not have to prove that Captain Henneberry intentionally over-hailed or that he had a specific purpose for doing so. The Crown only has to prove that the number is not reasonably accurate. Even if I accept the Defence suggestion that it would make sense for Captains to err on the side of over-reporting to avoid the risk of under-reporting which is more likely to be charged, the over-reporting must still be reasonable in the circumstances. It cannot be a guess. It must be reasonably precise and obtained through reasonable care.

[106] On the basis of the significant variance between the logged/hailed weight and the landed weight for trip 1, even if I accept that Captain Henneberry was inexperienced, had no previous experience with the Ivy Lew, had a small crew with little experience and allowing for what I accept are extremely difficult conditions at sea, I am persuaded beyond a reasonable doubt that the logged/hailed weight of halibut was not accurate. The discrepancy between the hailed/logged weight reflects a lack of precision and care in estimating the weight. I am also satisfied beyond a reasonable doubt that Casey Henneberry was the Captain during that trip, that he made the inaccurate entry in the log, is responsible for the inaccurate hail, and by doing so violated the two conditions of the licence.

[107] Therefore, I find Casey Henneberry guilty of counts 2 and 3.

[108] Section 78.4 of the *Fisheries Act* allows for conviction of a licence holder where it is proven that an offence was committed by a person in respect of any matter relating to any operation under their licence, “unless the accused establishes that the offence was committed without the knowledge or consent of the accused”.

[109] That provision has been interpreted as imposing an obligation on a licence holder even when the licence holder is not fishing and not onboard the vessel during the fishing (*R. v. Forsey*, 2003 NLSCTD 57). In *R. v. Pisces* (2016 ONSC 618), the Court set out what it considered would be minimum steps a licence holder should take to ensure compliance by a Captain and stated:

53 There is no question that the owner of the vessel must, to a large degree, repose its trust in the captain of the vessel. However, that trust cannot be blind trust. There must be a system of oversight by which the owner of the vessel can reasonably ascertain that the commitments made by it to the Ministry as a term of its licence are being met.

[110] I agree with this general statement.

[111] A.L.S. Fisheries does not dispute that it held the licence and was responsible for ensuring the conditions of the licence were followed. There is no evidence of any system of oversight by A.L.S. and they have not shown that the licence violation was committed without their knowledge or consent.

[112] So, applying s. 78.4 of the *Fisheries Act*, I find A.L.S. Fishery guilty of counts 2 and 3 in the Information.

Analysis - Counts 5 and 6

[113] I will first address trips 3, 4, 5, and 7 which apply to Casey Henneberry. The discrepancies for halibut for these trips are lower than for trip 1. However, for these trips there is evidence that Captain Henneberry had increasing experience as a Captain and increasing familiarity with the Ivy Lew. Further, he had the experience from trip 1 which would have informed him that his estimate was far from exact.

[114] Relying on the same analysis that I applied for Counts 2 and 3 and taking into account the different numbers and circumstances, I have concluded that:

- Trip 3 - I am not satisfied the logged/hailed weight for halibut (13.9% over the actual weight) was inaccurate. I am not persuaded that, in the circumstances, this discrepancy reflects a lack of precision and care in estimating the weight. However, for cod and hake I am satisfied the logged/hailed weights were inaccurate. For the cod, the disparity in a much smaller quantity of fish was higher – the logged/hailed weight was 20.8 % higher than the landed weight. For hake, again in a relatively small quantity

of fish, the disparity was even greater – the logged/hailed weight was 43.5 % under the landed weight. In my view, these discrepancies reflect a lack of precision and care in estimating the weight, especially when one considers the smaller amount involved.

- Trip 4 – I am not satisfied the logged/hailed weight was inaccurate. Assuming the reasonable accuracy of the DSM calculation, the logged/hailed weight was 10 % lower than the actual weight. I am not persuaded that, in the circumstances, this discrepancy reflects a lack of precision and care in estimating the weight, especially given the large quantity of halibut and the evidence that there was a storm.
- Trip 5 – I am satisfied the logged/hailed weight was inaccurate. The logged/hailed weight was 27.6 % higher than the landed weight. In the circumstances, this discrepancy reflects a lack of precision and care in estimating the weight.
- Trip 7 – Without incorporating the seized halibut, I would not be satisfied that the logged/hailed weight was inaccurate. Assuming the reasonable accuracy of the DSM calculation, the logged/hailed weight was 8.5% higher than the landed weight. I am not persuaded that, in the circumstances, this discrepancy reflects a lack of precision and care in estimating the weight.
- Trip 7 with added seizure – If I conclude that the 9,400 pounds (converted weight) from the June 12th seizure was retained onboard the Ivy Lew after the monitored offload, then the discrepancy is much greater. The logged/hailed weight was 30.5 % lower than the landed weight. I would be persuaded, in all the circumstances, that the discrepancy reflects a lack of precision and care in estimating the weight and the logged/hailed weight is inaccurate.

[115] I am also satisfied beyond a reasonable doubt that Casey Henneberry was the Captain during these trips, that he made the inaccurate entries in the log, is responsible for the inaccurate hail, and by doing so violated the two conditions of the licence.

[116] Therefore, I find Casey Henneberry guilty of counts 5 and 6 based on the inaccurate log/hail of cod and hake for trip 3 and halibut for trip 5. If necessary, I will revisit trip 7 after providing my reasons for Count 4.

[117] The corporate licence holder, Law Fisheries, is responsible for ensuring that the conditions of the licence are complied with regardless of who the Captain is, so I will also consider whether the logged/hailed weights for trip 6 are accurate. For this trip, I have no information about the experience of the Captain in general or with the Ivy Lew specifically.

[118] Again, relying on the same analysis and taking into account the different numbers and circumstances, I have concluded that:

- Trip 6 – I am satisfied the logged/hailed weight was not reasonably accurate for both halibut and hake. The logged/hailed weight for halibut was 19.5% over the landed weight. The logged/hailed weight for hake was 39.4 % under the landed weight. In the circumstances, these discrepancies reflect a lack of precision and care in estimating the weight.

[119] Law Fisheries does not dispute that it held the licence and was responsible for ensuring the conditions of the licence were followed. There is no evidence of any system of oversight by Law Fisheries and they have not shown that the licence violations were committed without their knowledge or consent. So, applying s. 78.4 of the *Fisheries Act*, I find Law Fisheries guilty of counts 5 and 6 in relation to trip 3 (for cod and hake), trip 5 and trip 6. If necessary, I will revisit trip 7 once I consider Count 4.

Count 4 - Unmonitored Offloads

[120] Count 4 alleges a failure to comply with a condition of a licence by not having the weight and species of all ground fish landed from the Ivy Lew verified by a dockside observer on March 17, May 8th and June 11/12 of 2020. The Crown argues that each of these instances involves an unmonitored offload that preceded or followed a monitored landing.

[121] I am satisfied that no Hail-In was done for any of these dates and that no DSM was present on the dock other than those relating to the monitored landings. In addition to the evidence of fisheries officers who were conducting surveillance which I will review in some detail later, that conclusion is based on the evidence of Gregory Croft who reviewed records of DFO and produced Ex. 4 and Ex. 5.

[122] Mr. Croft's duties as program coordinator included overseeing the at-sea observer and dockside monitoring program, including the designation of the

companies that provided those services. He has access to DFO records for hail-outs, log books, and hail-ins, including the FOIP.

[123] He testified that when a Hail-In is received by the DSM company, they input the information into the FOIP. Their service standard for entry is 15 minutes. The company also scans their paper copy of the Hail-In and the DSM forms, including the Tally, and send them to him on a cd or USB once per month. These scans are kept on an encrypted hard drive in his office and he is the only person with access.

[124] He reviewed DFO records, including the FOIP system, searching for records relating to the Ivy Lew for the time period in question. He was specifically asked to search through FOIP and his own records for March 17, 2020, May 7 – 8, 2020 and June 11-12, 2020. He searched those dates and one day on either side by vessel registration, licence number and the FIN. He found no record of any Hail-In or other documents other than those contained in his Affidavits which relate to the monitored landings (Ex. 4 and 5). He testified that the technology and computer systems were working and that if there had been documents, he would have found them.

[125] He was asked about the possibility that the DSM company had failed to send the documents and said that it was possible they had not sent the Tallies but that the 'Hail-In' would be in the database and his search would have found them which would have shown a missing scan, prompting him to go ask. This did not happen.

[126] So, the remaining issues are whether there was in fact a landing of groundfish from the Ivy Lew on any of those dates, whether Casey Henneberry was responsible as the Captain/vessel operator, whether Law Fisheries is responsible as the licence holder, and whether Mr. Zakhour is guilty as a principal or party.

March 17, 2020

[127] The alleged landing on March 17, 2020 follows trip 4. The records for that trip (Ex. 15, Tab 4) show that Captain Henneberry sailed out of Sambro on March 1st, hailed in to Canso out of a storm on March 7th without offloading, hailed out of Canso on March 7th and then hailed in to Sambro on March 16th with an updated offload date and time of March 17th at 9:00 a.m. That offload proceeded at the Port of Sambro and was monitored by a DSM. There is evidence of more than one

wharf in Sambro and the documents do not specify which wharf the monitored offload occurred at.

[128] As I said, I am satisfied that there was no other Hail-In for that trip or for the Ivy Lew during that time period, so no other DSM was dispatched.

[129] The Crown alleges that a subsequent unmonitored offload took place later that day, between approximately 8:00 p.m. and 9:30 p.m. The Crown theory is that, after the monitored offload, Captain Henneberry retained halibut on the Ivy Lew to offload later without a DSM. As such, even if he was not personally present for the unmonitored offload, he facilitated it and aided because he made the arrangements for the earlier monitored offload and would be responsible for the retained catch.

[130] For the following reasons, I am not satisfied that halibut was offloaded from the Ivy Lew during the evening of March 17, 2020. In summary, I accept that FO MacLean observed halibut being moved on the wharf but not that it was being removed from the Ivy Lew.

[131] I find that the DSM checked the hold of the Ivy Lew after the monitored landing which was completed at 11:30 a.m. on March 17, 2020 and the holds were empty. FO Belvin testified the DSM has the right to inspect the hold and prior to Covid were required to. She said this was suspended after March of 2020, due to Covid. The Tally Document for trip 4, shows that the DSM circled “yes” next to “Was the hold checked after offload?” (Ex. 15, p. 33). FO Belbin confirmed the plain meaning of this, that it means the DSM had checked the hold after the offload.

[132] The evidence of a possible unmonitored offload comes from FO MacLean who conducted surveillance in Sambro between 8:00 p.m. and 9:30 p.m. on March 17, 2020. He testified that he made observations using binoculars and a spotting scope, weather conditions impacted his visibility at the beginning but for most of the time he had a clear view. He saw the Ivy Lew tied up at the Basinview Wharf in Sambro. He saw a vehicle arrive with a trailer, the trailer was moved onto the wharf which was closer to the vessel and its doors were opened. When the doors were opened, he saw boxes inside the trailer which in his experience are typically used to store fish. Over a period that exceeded an hour, he saw objects which he believed were halibut being thrown. Initially, in direct-examination, he said he saw the halibut being thrown from the Ivy Lew onto the wharf. Later in direct, he clarified that he could not see the deck of the Ivy Lew because his view was

obstructed, but saw people getting on and off the vessel. In cross-examination, he agreed that he saw halibut being thrown from the vicinity of the Ivy Lew and landing on the wharf so inferred or assumed that they were coming from the Ivy Lew. He then saw the halibut being moved from the wharf into the trailer and someone shoveling what he believed to be ice into the back of the trailer.

[133] I accept that the fish he observed being moved were halibut. He had been a fishery officer since 2014 and during that time had conducted numerous inspections of vessels and halibut - dozens of inspections and thousands of fish. He and other fisheries officers testified that halibut have a unique appearance. They are the largest member of the flat fish family, have a distinctive bright white underbelly and dark over and are flat, long and oval with a square / diamond shape tail.

[134] After approximately an hour of watching halibut being moved, a pick-up truck backed into the wharf area, the driver connected the trailer to the truck and drove away. After that, another truck drove onto the wharf, backed up to near the vessel and about a dozen halibut were thrown onto the back of the truck along with other objects that appeared to be oil gear. Then another truck arrived and both trucks left.

[135] He could not identify any of the people he observed.

[136] FO MacLean was cross-examined extensively on his observations, including his ability to make observations from his vantage point. After his specific location was disclosed and investigated by Defence, he acknowledged that his position was at least twice as far from the wharf as he had originally estimated. He originally estimated his distance at 200 yards but agreed it was more like 450 metres. He testified he was using binoculars and a spotting scope, but I have no evidence of the magnification of those devices. He acknowledged that the lighting at the wharf was not ideal, that snow interfered with visibility during the early part of his observations and his view of the Ivy Lew's deck was obstructed.

[137] I do not accept that halibut was retained onboard the Ivy Lew after the monitored offload. The evidence is that the Ivy Lew's holds were checked at 11:30 a.m.. I infer the holds were empty at that time or there would be some further comment, report or action. The Crown suggests that a substantial quantity of halibut would have been offloaded during the unmonitored offload. The photographs and video of the interior of the Ivy Lew do not show any location

where a substantial quantity of halibut could be hidden from a DSM inspection (Ex. 17, 32).

[138] There is no direct evidence that Casey Henneberry stayed with the Ivy Lew after the monitored offload or that he was present on the wharf in the evening. As such, the Crown has not proven that Casey Henneberry was involved in any unmonitored offload.

[139] If there was an unmonitored offload, the licence holder could still be liable.

[140] The Crown argues that under the licence conditions offloading any groundfish without a DSM is prohibited. So, even if the halibut were not retained after the monitored offload, even if it was previously legally offloaded and was being moved from one wharf to another, it would be a violation of the conditions requiring the presence of a DSM. I do not have to consider that argument because I am not persuaded on the evidence that the halibut observed by FO MacLean on March 17th, 2020 was being removed from the Ivy Lew as opposed to being moved on the wharf area.

[141] I say that because there is no evidence as to how any halibut came to be onboard the Ivy Lew and because of the frailties of FO MacLean's observations.

[142] There is no surveillance evidence of what the Ivy Lew was doing during the intervening 8 hours. There is evidence from the VMS, including the raw data and maps created by Sean Butler (Ex. 15 Tab 4, p. 34; Ex. 19, p.4). It appears that the data includes the Ivy Lew's movements, as GPS co-ordinates, during this time period. However, Mr. Butler was not asked about this time period and neither Crown nor Defence referred to this evidence in their arguments. Therefore, while it seems likely that this information would shed some light on the Ivy Lew's movements, in the absence of assistance from a witness or submissions, it would be dangerous for me to interpret the data or draw inferences from it.

[143] I have no evidence that that the Ivy Lew fished during that period so had a new catch of halibut onboard, no evidence that she offloaded part of the catch somewhere prior to the monitored offload and went back to get it in the intervening period, and no evidence that she moved fish from another wharf to the wharf where FO MacLean made his evening observations.

[144] Given the limits on FO MacLean's ability to observe, including the distance, and his own admission that he did not specifically see halibut leaving the Ivy Lew,

his evidence does not persuade me that groundfish were removed from the Ivy Lew. His observations are equally consistent with fish being moved from one part of the wharf to the trailer.

[145] As such, I am not convinced beyond a reasonable doubt that there was a violation of the DSM condition on March 17, 2008.

May 8, 2020

[146] The alleged unmonitored offload on May 8, 2020 precedes the monitored landing for trip 6. The records for that trip (Ex. 15, Tab 6) show that Christopher Forbes hailed out on April 22nd, Captain Chris Forbes signed the Monitoring Document reporting the catch for the period April 25th to May 6th and Andy Henneberry called in the hail on May 7th with an estimated offload date and time of May 8th at 9:00 a.m. That offload proceeded at the Port of Sambro and was monitored by a DSM.

[147] I am satisfied that there was no other Hail-In for that trip or for the Ivy Lew during that time period, so no other DSM was dispatched.

[148] For the following reasons, I am persuaded beyond a reasonable doubt that on that date, halibut was landed from the Ivy Lew without being verified by a DSM. However, I am not persuaded that Casey Henneberry was part of it. In summary, as I previously stated, I am not persuaded that he was the Captain for that trip. I did, however, consider whether the Crown had proven that he was the vessel operator or otherwise present at the specific time of the alleged unmonitored offload. Given the frailties of the identification/recognition evidence, I am not so satisfied.

[149] The evidence connecting Casey Henneberry to the events on May 7, 2020 relies on identification offered by FO MacLean who testified he recognized him from previous dealings.

[150] This requires me to consider the law relating to recognition evidence (where a witness recognizes someone who is previously known to him) and pure identification evidence (where a witness is asked to identify a stranger never seen by him before).

[151] The law was summarized by our Court of Appeal in *R. v. Downey* (2018 NSCA 33). In that case, the Court accepted that many of the same concerns

still exist when dealing with recognition evidence and courts still have to treat the evidence cautiously. However, recognition evidence is generally considered to be more reliable and to carry more weight than identification evidence.

[152] The inherent dangers of identification evidence are well recognized. Cases involving wrongful convictions are full of honest but mistaken identification evidence. In assessing FO MacLean's evidence I have to consider both his credibility and the reliability of the evidence. Even if I were to find that he honestly believed he saw Casey Henneberry, I would still have to assess the reliability of that evidence. As the Court said in *Downey*, the correctness of the evidence concerning identification must be found from evidence of circumstances in which it was made or in other supporting evidence. FO MacLean's honesty or his confidence in his identification of Casey Henneberry would not elevate his evidence to the level required for conviction if the circumstances surrounding the identification or the supporting evidence was insufficient for proof beyond a reasonable doubt. When assessing the reliability of recognition evidence I have to consider both the level of familiarity between the accused and the witness and the opportunity for observation during the incident (*R. v. Miaponoose* (1996), 30 O.R. (3d) 419 (C.A.), at p. 424, citing *R. v. Smierciak* (1946), 87 C.C.C. 175, at p. 177)

[153] I have to pay careful attention to the case-specific factors that impact the recognition evidence. In this case, those include: the circumstances and duration of FO MacLean's opportunity to observe; his previous familiarity with Casey Henneberry; the risk of confirmation bias because of radio transmissions between FO MacLean and other fisheries officers; the presence or absence of distinguishing features; and, the level of detail in the description provided and whether the description is consistent or inconsistent with Casey Henneberry's appearance.

[154] FO MacLean testified that on May 7, 2020, he again conducted surveillance on the Ivy Lew. He began his observations at around 11 p.m.. He had an unobstructed view of the wharf. The weather was clear. It was dark. There was some lighting in the wharf area but the lighting was not ideal. At about 1:00 a.m., he saw the Ivy Lew arrive. He was using binoculars and identified her by the vessel registration number on the side of the wheelhouse. In direct, he testified he was about 150 yards away, however in cross, after his location was disclosed to Defence and they investigated, he acknowledged that he was probably 250 metres away.

[155] After the Ivy Lew tied up, he saw four people leave the vessel, enter a truck and depart. Later, he saw four people return, all wearing oil gear. They untied ropes associated with a crane and started to use the crane to remove loose halibut from the vessel. He could not clearly see who was on board but, through the scupper holes, he could see feet on the deck. He saw the crane move bundles of approximately 12 halibut from the deck, swing onto the wharf behind the vessel where he lost sight of the fish and then swing back over the vessel. This continued for 30 – 45 minutes. Later, he saw the crane with a trawl tub attached and halibut tails sticking out. He knows from experience that larger halibut are often tied together and moved by crane and smaller halibut are often moved in a trawl tub. Throughout this period he could see halibut being removed from the vessel, see the crane arm swing over the deck and lower. He testified he was confident the fish were halibut for the same reasons previously articulated.

[156] He watched halibut being removed from the vessel with the crane for about two hours, intermittently. When the activity paused, he saw activity inside the building. There was some lighting inside the building and a large, garage-style door that permitted him to see inside.

[157] After about two hours, he saw the vessel untie, one person left on foot, and the vessel left the wharf and exited the harbour.

[158] After the vessel left, he had a clear unobstructed view of the building. He saw a number of fish boxes and tails in the boxes that he could identify as halibut. He saw a person start a forklift. A short time later, a truck and trailer arrived. The driver exited and appeared at the back of the trailer, the trailer opened and the forklift operator placed the fish boxes inside. During the loading, another vehicle arrived and stayed for a short time and three people arrived on foot.

[159] FO MacLean said lights came on inside the building and when they did he could clearly see a number of people. He testified that with good certainty he could identify one of them as Casey Henneberry. The forklift continued loading boxes until six boxes had been loaded. Then the trailer doors were closed, one person went toward the truck and it drove away.

[160] FO MacLean said he could recognize Casey Henneberry because he had past experience with him having inspected him during two commercial offloads, had indirect dealings with him in the community where he passed by him on at least two occasions and had seen a picture of him in an intelligence package. These interactions all occurred between 2018 and May 8, 2020. During one of the

previous inspections, Casey Henneberry was the captain of the vessel, so FO Maclean introduced himself, asked for licence and logbook and had general conversation all of which would have taken about 15 – 20 minutes. Then, there would have been some interaction with him during the remainder of the inspection which would have taken about 30 minutes.

[161] During the second inspection, he did not have direct contact with Casey Henneberry but saw him in the wheelhouse and on the wharf interacting with fishermen and other fisheries officers.

[162] He could not recall when he had other interactions with Casey Henneberry, but said it was twice during inspections of an offload and Mr. Henneberry was present with other members of the community. He said Mr. Henneberry was there for a short time and he had no direct dealing with him.

[163] He described the person he believed was Casey Henneberry as 5' 10" to 6', slight build, short-cropped hair, and with minor facial hair. When he made the identification, he was using binoculars and the area was illuminated.

[164] FO MacLean identified Casey Henneberry in the courtroom. He was wearing a mask at the time.

[165] In cross examination, FO MacLean agreed that Casey Henneberry comes from a large family, has a number of uncles (counsel provided five or six names) and a brother who are involved in the fishery, that he has met them and there is a family resemblance.

[166] He could not recall if the person he identified as Casey Henneberry was wearing a jacket at the time, could not recall the colour of his pants, what his footwear was, whether he was wearing a cap and could not see any tattoos or distinctive marks on his face or body.

[167] He acknowledged that during surveillance that night, he called over the radio to other fisheries officers and asked if Casey Henneberry was on the Ivy Lew for that trip. A recording of the radio transmission was played. He agreed that he radio'd "you know, was Casey on this boat, the Lew?". He agreed that he asked that because he thought he may have seen Casey Henneberry in the building so sought confirmation that he was on the trip. He also acknowledged that he then radio'd "yea I'm pretty sure, got my spy glasses, but I can ... I just id'd him" (Ex. 45).

[168] He also agreed that when interviewed by the Crown to prepare for trial, he was asked to elaborate on his identification and told them he was 90% sure. He went on to say that he would not be comfortable saying he was 100 % sure without being face to face with a person.

[169] FO MacLean was not asked to look at a line up.

[170] I am not persuaded beyond a reasonable doubt that Casey Henneberry is the person FO MacLean observed. FO MacLean had previous interactions with Mr. Henneberry that would allow him to recognize Mr. Henneberry in better conditions. However, here, FO MacLean was observing events from a considerable distance at night. The people he was observing were moving around and the lighting was inconsistent. He was using binoculars and/or a spotting scope but I have no evidence as to their magnification. His description was consistent with my observation of Mr. Henneberry in court but not at all distinctive and he could not recall anything about Mr. Henneberry's clothing from that night. The radio transmissions give rise to a concern that he was not certain of his identification at the time of his observations, sought confirmation by asking if Mr. Henneberry was on the trip and the information he received may have bolstered his confidence that Mr. Henneberry was the person he was observing. Also, he told Crown counsel that he was only 90 % certain of his identification. In these circumstances, it would be dangerous to rely on his recognition/identification to found a conviction.

[171] Given that I am not persuaded that Casey Henneberry was the Captain for this trip or that he was present during the alleged unmonitored offload, I have a reasonable doubt that he had any role in the offload of halibut without a DSM on this date.

[172] However, I accept FO MacLean's evidence that halibut are a distinctive fish, that he saw them being removed from the Ivy Lew and there was no DSM present and am convinced beyond a reasonable doubt that there was an offload of halibut from the Ivy Lew in the absence of a DSM.

June 12, 2020

[173] The alleged unmonitored offload on June 12, 2020 happened after the monitored landing for trip 7. The records for that trip (Ex. 15, Tab 7) show that Casey Henneberry hailed out on May 29th, he signed the Monitoring Document, as Captain, and Andy Henneberry called in the hail, listing Casey Henneberry as

Captain, with an estimated offload date and time of June 11th at 9:00 a.m. That offload proceeded at the Port of Sambro and was monitored by a DSM.

[174] I am satisfied that there was no other Hail-In for that trip or for the Ivy Lew during that time period, so no other DSM was dispatched.

[175] It is not disputed that Casey Henneberry was the Captain for the trip that resulted in the monitored landing at 9:00 a.m. on June 11, 2020.

[176] The notation in the Tally indicates that the DSM did not check the Ivy Lew's hold after the offload. FO Belbin testified that the Tally directs that the DSM must complete an 'incident report' if the hold is not checked but the Covid restrictions after March of 2020 indicated that they did not have to check the holds so no incident report was required either. According to the Tally, the monitored offload began at 9:00 a.m. and was complete at 11:00 a.m..

[177] FO Oickle observed this offload. He testified it took place at the Amos and Andy Wharf in Sambro and marked it's location on an aerial photograph of the area (Ex. 23). He saw people leaving the vessel and later saw people boarding the vessel. At around 12:45 p.m., the Ivy Lew left the wharf. There is no evidence of whether Casey Henneberry was aboard and no surveillance evidence showing what the Ivy Lew did between that time and when she was seen by fisheries officers that evening during the alleged unmonitored offload. Again, it seems that the data from the VMS might shed light on that, but in the absence of assistance from a witness or submissions, I will not rely on it (Ex. 15, Tab 7, p. 63).

[178] The Ivy Lew was next seen by investigators about 10 hours later at the Basinview Wharf. FO Jonathan Hynes testified that he observed a vessel, which was later identified as the Ivy Lew, tied up at the Basinview Wharf. Around 1:00 a.m., he started to see activity around the vessel – a few vehicles came and went. Then, close to 2:00 a.m., he saw a small white car and a pick up arrive. The light wasn't good but he saw people getting out of the vehicles and going through the building and onto the vessel. The middle deck of the vessel was illuminated. He heard a noise from the vessel and believed it was turned on. He moved to where he had a partial view of the lower deck and observed three people. He was able to provide details of what each was wearing. He heard the sound of a winch starting and then observed halibut being 'hand bombed' (thrown by hand) from the vessel. He testified that he was close enough that he could see most things with the naked eye but was also using binoculars and had a good view. He said he knew it was halibut and described the distinctive features of the fish.

[179] During one period of observation he counted 35 fish removed from the vessel by hand. Later, he observed halibut being removed from the vessel with a winch. They were moved into a tub on the wharf and he could see the tails sticking out. Ice was added and as the tubs filled, they were moved into the building. Over about two hours, he watched four large tubs be filled and one smaller one.

[180] Later, he saw a pick up truck with a trailer arrive and back down to the building. The trailer doors were opened and a forklift loaded four tubs onto the trailer. He did not have specific times for these observations but testified that he saw other fisheries officers arrive at the wharf within about ten minutes of the truck arriving.

[181] After the other officers arrived, he saw movement on the vessel. One person jumped off the vessel and ran, fisheries officers pursued him.

[182] Shortly before 2:00 a.m., FO MacLean was observing events from Old Sambro Road and saw a dark truck hauling a trailer go past him. The trailer was a white, enclosed, goose neck trailer. He moved toward the Basinview wharf, arriving there at around 1:55 a.m.. He saw the truck that had passed him, a GMC truck, with a number people at the back of the trailer. His was the first DFO vehicle on scene. He saw individuals begin to run, identified himself as a fisheries officer and yelled that they were all under arrest. He followed two people who jumped onto the deck of the vessel, the Ivy Lew. He boarded and detained the two along with two others on the deck of the vessel.

[183] He heard FO Warren Pictou arrive and at the same time saw a person run from the bow of the vessel. FO Pictou pursued that person.

[184] FO Pictou testified that when he arrived at the wharf, he ran from his vehicle through the building and saw the Ivy Lew on the other side. FO Maclean was already there. He helped someone off the vessel and then saw someone running. He chased the person but did not catch them. He said at that time visibility was poor – there was thick fog.

[185] He described the person who ran as wearing jogging pants, about 5' 10" and slender.

[186] FO Stephen MacMullin testified that he arrived at the Basinview wharf at around 2:00 a.m.. He saw the GMC truck and forklift loading a blue box with halibut inside into the trailer. He arrested the forklift driver.

[187] FO Chadrick Symonds testified that when he arrived at the wharf there was a lot of commotion and some people had been arrested. He saw a person behind some tubs of rope. He told the person to step out. The person complied and was arrested. That was Samer Zakhour.

[188] All those arrested were brought inside the building. Casey Henneberry was not one of them.

[189] Boxes of halibut were found partially inside the building and in the goose neck trailer attached to the GMC Sierra truck. The total weight of halibut seized was 7,461 lbs - gutted, with head off, converted to 9,400 lb round weight (FO Kailum Rogers; Ex. 21; Ex. 36).

[190] Evidence, including the truck, trailer and boxes of halibut, were seized from the building. Further evidence was seized from the interior of the truck and the Ivy Lew and the Ivy Lew was seized. Witnesses described these items and photographs were entered as exhibits. I will not comment on this material except where relevant to an issue I have to decide.

[191] FO Pictou accompanied the Ivy Lew when she was moved. He found a wallet in the wheelhouse, just to the right of the Captain's chair. It was seized and photographs taken of the location from where it was seized and its contents (Ex. 17, pp. 51 – 54). It contained Casey Henneberry's drivers licence with photograph and \$1,090 in cash.

[192] FO Stephen Lock video-taped the walk-through of the Ivy Lew and photographed certain items (Ex. 17, Ex. 32). He found and photographed a duffel bag on an upper bunk in the accommodation area of the vessel. It contained various items associated with Casey Henneberry.

[193] The GMC Sierra truck was seized from the wharf area in Sambro. It was later searched. Its contents included a satchel containing \$34,960 in cash, and various documents in the name of Samer Zakhour, including a passport, fish buyer licenses, and business cards for XLZ holdings with his name as president.

Was Halibut Removed From the Ivy Lew?

[194] The Defence submits that given the conditions under which the observations were made, I cannot be certain that the halibut seized from the wharf was removed from the Ivy Lew.

[195] I disagree, I have no doubt that FO Hynes saw halibut being removed from the Ivy Lew and this was the halibut later seized from the wharf.

[196] I accept that there is some conflict between the evidence of FO Pictou and FO Hynes about the visibility. FO Hynes acknowledged that there was fog for part of the evening and at times it was heavy, but said that this was when there was no activity. Specifically, he said there was only light fog when he saw the person running from the vessel. In contrast, FO Pictou testified that there was heavy fog at that time. This does not cause me to have serious concerns about their credibility or the reliability of their evidence. They each had different vantage points and different perspectives. FO Pictou had just arrived, whereas FO Hynes had been watching the wharf for some time, so the fog may very well have appeared light to him, as compared to earlier in the evening. I accept FO Hynes' testimony that, from his position across the channel, he saw someone run. So, infer that the fog was not so thick that it obscured the wharf from his view. I accept there was fog that would have, at times, impacted FO Hynes' observations. However, he observed events for about two hours, during which time the fog conditions varied and at times he had a clear view. FO Hynes was relatively close to the wharf and made very detailed observations. These observations are generally corroborated by those made by other fisheries officers and by the physical evidence seized later. He clearly saw halibut leaving the vessel, both by hand and by winch, and could then see them in the tubs on the deck. He also identified the fish he saw as halibut and explained the distinctive features that allowed him to make that identification.

Is Mr. Henneberry Guilty?

[197] Casey Henneberry could be found guilty of breaching a condition of the licence by offloading halibut without a DSM if he was the Captain / vessel operator during the offload or if he aided or abetted it, for example, by retaining halibut on the Ivy Lew after the monitored offload with the intention of having it offloaded later without a DSM.

[198] He was not identified as being on the Ivy Lew or the wharf during the unmonitored offload and was not arrested when fisheries officers arrived.

However, someone fled the vessel and the Crown argues that the circumstantial evidence establishes beyond a reasonable doubt that he is the person who ran.

[199] The description of the person who fled is vague and incapable of proving identity, but is not inconsistent with Mr. Henneberry's appearance.

[200] Mr. Henneberry's belongings were found on the vessel. The fact that his duffel bag with an operators licence inside was found on a bunk is of little significance given that he was the Captain of the vessel during this and other trips. It is perfectly reasonable that he would leave some belongings onboard.

[201] However, his wallet, containing his drivers licence and over \$1,000 in cash was found in the wheelhouse. In my view, that is of significance and is indicative of a rapid departure.

[202] He was the Captain during the earlier monitored offload. However, there is no direct evidence that he was onboard when the Ivy Lew left the Basinview Wharf.

[203] There is also no direct evidence of where the halibut came from that was removed from the Ivy Lew during the unmonitored offload. The Crown argues that the circumstantial evidence establishes that it was retained onboard after the monitored offload.

[204] The Defence acknowledges that the Ivy Lew's holds were not inspected after the monitored offload but argued that it is not likely that the halibut was retained because of the risk that the DSM would have exercised his right to inspect. Given the Covid Directive that had been in place since March of 2020, there was virtually no actual risk that the DSM would have inspected the hold. It is also reasonable to infer that, by June 11, 2020, people in the industry, like Casey Henneberry, would have been aware that DSMs were not inspecting holds so also would have perceived the risk of an inspection as low.

[205] The Defence further argues that there are other equally rational inferences for how the halibut came to be onboard the Ivy Lew and, since there is no evidence that Casey Henneberry was onboard the Ivy Lew when she left the Basinview Wharf or during the intervening 10 hours, these alternatives do not involve Casey Henneberry. One theoretical possibility is that the Ivy Lew caught the halibut during that 10 hour period. I do not believe that is a reasonable possibility. The round weight of the seized halibut would have been almost 10,000 lbs, a larger

catch than that reported on any other single day for any of the seven trips. It is simply not reasonable that she would have had that kind of catch so close to Sambro. The other possibility is that the halibut was the same halibut that had been legally offloaded at the other wharf that morning and was simply being moved. In the circumstances, I do not accept that this is a rational inference. Even if I accept that there may be lawful reasons for moving fish from one wharf to another, I do not accept that there would be reasons for doing it in the middle of the night.

[206] A cell phone was seized from Mr. Zakhour upon arrest (Ex. 25) and was analysed. An extraction report which included text messages was entered into evidence (Ex. 20). There is no dispute that the phone was Mr. Zakhour's and that he authored the outgoing messages in the extraction report. Many of the messages are between Mr. Zakhour and a phone number associated in the phone's 'contacts' with the name "Casey Henneberry". This simply means that Mr. Zakhour, as the user of the phone, identified that number in his contacts using that name.

[207] The Crown submitted these text messages are admissible against Casey Henneberry and are corroborative of his involvement in the unmonitored offload.

[208] If it is proven that Mr. Henneberry authored the incoming messages associated with his name, then they would be admissible against him as admissions. All the messages are also potentially admissible under the co-conspirators/joint enterprise exception to the hearsay rule. That exception can apply even in cases where conspiracy is not charged (*R. v. Tran*, 2014 BCCA 343, at para. 88; *R. v. Koufis*, [1941] S.C.R. 481). To admit evidence under this exception, the Crown must meet the test set out in *R. v. Carter* ([1982] 1 S.C.R. 938).

[209] Based on the circumstantial evidence, I am persuaded that the contact identified as "Casey Henneberry" is the accused before the Court and that he authored the incoming messages associated with that contact and that Casey Henneberry was the person who ran from the Ivy Lew when the fisheries officers arrived.

[210] I base that conclusion on the following. Mr. Henneberry was the Captain during the earlier monitored offload, the Ivy Lew's hold was not checked after that offload, 10 hours later over 7,000 lbs of dressed halibut was removed from the Ivy Lew's hold, someone ran from the scene and Mr. Henneberry's wallet containing his drivers licence and a large sum of cash was found on a table in the wheelhouse.

Mr. Zakhour identified a phone number in his device as “Casey Henneberry”, he communicated with that person about buying fish that night in Sambro and brought boxes to the very wharf where the Ivy Lew was docked.

[211] I am satisfied beyond a reasonable doubt that the only reasonable inference is that the halibut that was removed during the unmonitored offload was retained in the Ivy Lew’s hold after the monitored offload, that Casey Henneberry was responsible for that and then was also the present at the unmonitored offload but ran before being apprehended. There is no evidence that is inconsistent with that conclusion and it is the only reasonable conclusion when the evidence is viewed cumulatively.

Is Mr. Zakhour Guilty?

[212] There are a number of legal issues to be resolved in determining whether Mr. Zakhour is guilty.

[213] First, s. 43.4 requires “every person acting under the authority of ... a licence” to comply with the terms and conditions of the licence. For this count, the licence(s) at issue are those issued to Law Fisheries Ltd. There is no evidence that Mr. Zakhour was acting under the authority of those licences so, in my view, was not directly required to comply with it.

[214] The next issue is whether he can be a party to the offence. This offence applies to a specific class of persons, those who are acting under the authority of the licence. I am satisfied that liability for an offence that only applies to a specific class of persons could extend to a party who was not a member of that class. Party liability under s. 21(1)(b) of the *Criminal Code* requires proof only that the person aided or abetted the principle and had the requisite *mens rea* - that the assistance was “for the purpose of” aiding the principle and with knowledge of what the principal was going to do.

[215] The Crown argues that for strict liability offences, secondary party liability requires proof only of the actus reus. In making that argument, they rely on the decision in *La Souveraine, Compagnie d’assurance generale v. Quebec (Autorite des marches financiers)* (2013 SCC 63) and the interpretation of that decision in *Halton Region Conservation Authority v. Ahmad* (2016 ONCJ 380). I do not agree that *Souveraine* stands for this proposition and to the extent that *Ahmad* says it does, I disagree with it.

[216] In *Souveraine*, the Court was interpreting a provision in a regulatory statute that imposed secondary party liability. As such, s. 21(1)(b) of the *Code* did not apply. The Supreme Court confirmed that the words “for the purpose of” in s. 21(1)(b) were synonymous with intention and did not change the common law requirement that *mens rea* be proven in cases where s. 21 is relied on to found secondary party liability. The Court simply said that this common law requirement does not apply to all cases of secondary party liability. The Court concluded that the provision under review was contained in a regulatory act so was presumptively strict liability and it was “an independent offence” which contained its own secondary party liability so did not rely on s. 21(1)(b). As such, it need not be subject to the common law rule that proof of *mens rea* is required for party liability offences.

[217] Prior to *Souveraine*, the Ontario Court of Appeal in *R. v. F.W. Woolworth Co.* (1974), 2 O.R. (2d) 629 (CA) and *R. v. Fell*, (1981), 34 O.R. (2d) 665 (CA) had explicitly held that where the Crown relies on s. 21(1)(b) to ground secondary party liability, “even where the offence is one of strict liability insofar as the liability of the principal is concerned, the liability of an aider or abettor to be convicted of the offence requires the existence of *mens rea* on the part of the aider or abettor.” (see *Fells*, para. 17).

[218] The Crown relies on a specific passage from *Souveraine* to argue, essentially, that the Court overruled *Woolworth*. In this passage, the Court was responding to concerns raised in *Woolworth* about implications of not requiring proof of *mens rea* for secondary party liability:

I agree with that comment in the criminal context and am of the opinion that s. 21(1)(b) of the *Criminal Code* addresses these concerns by requiring proof of *mens rea*. However, I consider the situation to be quite different in the context of regulatory offences. Those who engage in regulated activities agree in advance to adhere to strict standards, and they accept that they will be rigorously held to those standards, which are typical of such spheres of activity. (para. 49).

[219] The Crown argued before me that this language applies generally to party liability for strict liability offences. I do not agree. In my view, this paragraph simply recognizes the reality that regulatory acts frequently require only strict liability for primary and secondary liability. In doing so, in my view, the Court did not overrule *Woolworth* or say that party liability under s. 21(1)(b) when applied in the regulatory context did not require *mens rea*. It merely distinguished *Woolworth* because in *Woolworth*, secondary party liability relied on s. 21(1)(b)

which contains clear *mens rea* language and the provision it was interpreting did not (paras. 35 – 50).

[220] This interpretation of *Souveraine* is supported by comments in the widely relied upon text, “Libman on Regulatory Offences in Canada” (Libman, R., J., *Libman on Regulatory Offences in Canada*, loose-leaf (Earlscourt Legal Press Inc., 2002). In that text, Justice Libman states, “Where the principal is charged with a strict liability offence, the liability of an aider or abettor requires the existence of *mens rea*” and goes on to provide numerous examples of cases where this principle has been applied in the regulatory context (para. 6.10). Justice Libman concludes on this topic by addressing *Souveraine*, noting that the Supreme Court agreed that secondary party liability requires proof of *mens rea* in the case of s. 21 of the *Criminal Code*, but found that proof of *mens rea* is not required “in every case of secondary penal liability”” (para. 6.10).

[221] The situation before me is similar to that addressed in *Woolworth* and *Fells*. The underlying offence is clearly strict liability, however, the offence does not provide its own secondary party liability. As such, the Crown relies on s. 21(1)(b) of the *Code*. Therefore, the Crown is required to prove that Mr. Zakhour committed some act for the purpose of aiding or abetting and with knowledge of the factual circumstances that make up the offence. The Crown is not required to prove he knew that the circumstances were illegal or constituted an offence (*Fell*, para. 17; and, *Woolworth*, pp. 32 – 34). In this case, the Crown would at least have to prove he knew the offload was to take place without a DSM. Of course knowledge includes wilful blindness.

[222] There is no dispute that the outgoing messages on Mr. Zakhour’s phone were authored by Mr. Zakhour and, as admissions, are admissible against him for their truth. Where he acknowledged incoming messages by responding to them, they are also admissible against him as ‘adopted admissions’ (*R. v. Wood*, 2001 NSCA 38, at para. 114; and, *R. v. Bridgman*, 2017 ONCA 940, at paras. 68 - 70). There is ample evidence from the messages and other evidence that Mr. Zakhour knew there was to be an offload of fish, that he delivered boxes to be used for that offload and that he was the intended buyer.

[223] I acknowledge that the Hail-In for this trip does not list him or his company as the buyer. The Crown argues that this is because he did not have a licence to buy halibut. There is no specific proof of that but s. 78.5 of the *Fisheries Act* would seem to place the burden on Mr. Zakhour to establish that he had such a

licence. The fact that the hail does not list him as buyer does not overcome the very clear evidence in the text messages and the circumstantial evidence, all of which establishes that Mr. Zakhour was on the dock to buy halibut.

[224] On all the evidence, I am persuaded that Mr. Zakhour's actions in providing the boxes, agreeing to buy the halibut and coming to the wharf, would be sufficient to constitute 'aiding' in the offload. However, the evidence does not prove beyond a reasonable doubt that he knew or was wilfully blind that the offload would be unmonitored.

[225] The text messages do not establish that knowledge. FO Belbin testified that DSMs typically work during the day but sometimes start in the evening. She said she had never seen them work in the middle of the night but did not say that they never would. I have no other evidence as to whether monitored offloads ever occur at night. This may be a matter of common knowledge within the industry, but, again, I do not feel it is something I can take judicial notice of or apply common sense to.

[226] Mr. Zakhour's conduct when the authorities arrived on the dock, hiding behind a trawl tub, is consistent with guilt for something. However, it is not exclusively consistent with guilt about this. As the Crown points out, he did not have a licence to purchase halibut. His conduct is equally consistent with fear of being apprehended for violating a condition of his own licence.

[227] I have also considered whether the Crown would be required to prove that he knew that the Ivy Lew's licence had a condition requiring that a DSM be present. The Crown has not proven this, but I do not have the benefit of focussed submissions on whether a condition in a licence is a 'fact', the knowledge of which the Crown would have to prove to establish party liability, or a 'law', the knowledge of which the Crown would not have to prove to establish party liability. Given the limited argument on this issue and since it is unnecessary for me to decide it, I will not.

[228] Because I have a reasonable doubt that Mr. Zakhour knew the offload would be unmonitored, I am not satisfied beyond a reasonable doubt that he was a party to the offence.

Conclusions for Count 4

[229] I find Casey Henneberry guilty of violating the condition of the licence by offloading halibut without a DSM on June 12, 2020 (trip 7).

[230] I find Samer Zakhour not guilty.

[231] Law Fisheries does not dispute that it held the licence and was responsible for ensuring the conditions of the licence were followed. They would be responsible for ensuring the conditions of the licence are complied with regardless of who was the vessel operator so their culpability is not dependent on the Crown proving that Casey Henneberry was guilty.

[232] I have concluded that there was an unmonitored offload on May 8th and June 12th. There is no evidence of any system of oversight by Law Fisheries and they have not shown that the licence violations were committed without their knowledge or consent.

[233] Therefore, applying s. 78.4 of the *Fisheries Act*, I find Law Fisheries guilty of Count 4 in relation to the offloads on May 8, 2020 and June 12, 2020.

Count 8 - Possession of Fish

[234] When the Ivy Lew was searched, amongst other things, fileted halibut was seized in three clear cases (Ex. 17, p. 39 – 43).

[235] The photographs show that the fish was fileted but I have no evidence that weight cannot be readily determined from fileted fish. No witness was asked about this. This may be common knowledge in the industry, but, in my view, it is not something I can take judicial notice of or apply common sense to.

[236] As such, I find Law Fisheries and Casey Henneberry not guilty of count 8.

Count 9 - False or Misleading Statement to Fisheries Officer

[237] Mr. Zakhour was arrested, cautioned and advised of his right to counsel. He then provided a statement to FO McMullin and FO Collier which was recorded (Ex. 30). That recording includes the following statements which the Crown alleges are false or misleading:

- “I mean honestly, wrong place, wrong time. I came ... came down to say ‘hi’ to the guys and this happened.”

- He was asked what vehicle he was driving and responded “Nothing. I walked.”
- He was asked who owned the GMC truck that was there and responded “I have no idea”.
- “I have no idea anything was going on. Came down to say ‘hi’ to my buddy and then lights came flying so...”

[238] I agree these statements are false. Specifically, that he was only there to say hi, that he had walked and had no idea who owned the vehicle.

[239] The direct evidence and circumstantial evidence establishes that Mr. Zakhour was there to buy halibut, that the GMC truck was owned by him and he drove it there. The GMC Sierra truck was seized from the wharf area in Sambro. It was later searched. Its contents included a satchel containing \$34,960 in cash, and various documents in the name of Sam Zakhour, including a passport, fish buyer licenses, and business cards for XLZ holdings with his name as president. The key to the truck was later returned to him through his counsel.

[240] The text messages show that he was in Bedford, at 1:34 a.m. he was told to leave and responded “15 minutes”, then his truck was seen arriving at the wharf in Sambro shortly before 2:00 a.m.. Clearly he didn’t walk to the wharf.

[241] A short time after the truck arrived, Mr. Zakhour was found on the wharf.

[242] The only rational inference from this evidence and the content of the text messages is that he was there to buy halibut, the truck is his and he drove it to the wharf.

[243] There is also no doubt that the fisheries officers who took his statement were engaged in their duties.

[244] The only question is whether this is sufficient for conviction under s. 63(1) of the Fisheries Act.

[245] I agree with counsel for Mr. Zakhour that the plain language of the section is incredibly broad and would capture a wide variety of circumstances. It does not seem to require that the deceit cause any obstruction of the fisheries officer, cause them to go down an incorrect investigatory path or actually be misled. There is separate offence for obstruction of a fisheries officer. Anyone who gave a statement to a fisheries officer denying their involvement in the crime, who was later proven to have been involved, could also be found guilty of this offence. A

bystander who had absolutely no involvement in any fisheries offence but happened to be at the scene of an investigation could be caught by this provision if they lied to the fisheries officer.

[246] Counsel have not been able to locate any cases where this provision has been judicially considered. In one sentencing case, *R. v. Payne*, [2011] N.J. No. 147 (NLPC), a woman had pleaded guilty to the offence in circumstances where she was seen assisting her husband unloading nets from a vessel. Later the same day, fisheries officers asked her when the nets had been offloaded and she said “the day before yesterday”. The decision doesn’t include any discussion of the elements of the offence, but the plea had been accepted so presumably the judge believed her conduct met the elements of the offence.

[247] Given the plain language of the provision and when interpreted in the context of the Act, I conclude that the provision is intended to capture any deceit to a fishery officer who is acting in the course of his duties.

[248] In this case, the deceit was specifically in relation to the matter the officers were investigating so I don’t have to consider whether the provision might be overbroad in another context.

[249] Therefore I find Mr. Zakhour guilty of Count 9.

Conclusion

[250] In summary, I find ALS Fisheries guilty of:

Count 2 – failing, with respect to trip 1 (May 16 - 30, 2019), to comply with a condition of a licence by providing an inaccurate hail, contrary to s. 22(7) of the Regulations, thereby committing an offence under s. 78 of the Fisheries Act;

Count 3 - failing, with respect to trip 1 (May 16 - 30, 2019), to comply with a condition of a licence by failing to maintain a true and up to date record of catch, contrary to s. 22(7) of the Regulations, thereby committing an offence under s. 78 of the Fisheries Act;

[251] I find Casey Henneberry not guilty of Count 8, but guilty of:

Count 2 – failing, with respect to trip 1 (May 16 - 30, 2019), to comply with a condition of a licence by providing an inaccurate hail, contrary to s. 22(7) of the Regulations, thereby committing an offence under s. 78 of the Fisheries Act;

Count 3 - failing, with respect to trip 1 (May 16 - 30, 2019), to comply with a condition of a licence by failing to maintain a true and up to date record of catch, contrary to s. 22(7) of the Regulations, thereby committing an offence under s. 78 of the Fisheries Act;

Count 4 – failing, on June 12, 2020, to comply with a condition of a licence by not having the weight and species of all groundfish landed from the Ivy Lew verified by a dockside observer, contrary to s. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act;

Count 5 – failing, with respect to cod and hake for trip 3 (February 7 – 21, 2020), halibut for trip 5 (April 3 – 16, 2020) and halibut for trip 7 (May 29 – June 11, 2020), to comply with a licence by providing an inaccurate hail, respecting the fishing vessel Ivy Lew, contrary to ss. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act; and,

Count 6 - failing, with respect to cod and hake for trip 3 (February 7 – 21, 2020), halibut for trip 5 (April 3 – 16, 2020) and halibut for trip 7 (May 29 – June 11, 2020), to comply with a condition of the licence by failing to *accurately* complete the Fixed Gear Monitoring Document, respecting the fishing vessel Ivy Lew, contrary to ss. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries

[252] I find Samer Zakhour not guilty of Count 4, but guilty of:

Count 9 - on June 12, 2020, making a false or misleading statement to a Fishery Officer carrying out duties or functions under the Fisheries Act, contrary to s. 63(1) of the Fisheries Act, thereby committing an offence under s. 78 of the Fisheries Act.

[253] I find Law Fisheries not guilty of Count 8, but guilty of:

Count 4 - failing, on May 8, 2020 and June 12, 2020, to comply with a condition of a licence by not having the weight and species of all groundfish landed from the Ivy Lew verified by a dockside observer, contrary to s.

43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act;

Count 5 – failing, with respect to cod and hake for trip 3 (February 7 – 21, 2020), halibut and hake for trip 6 (April 22 – May 8, 2020), halibut for trip 5 (April 3 – 16, 2020) and halibut for trip 7 (May 29 – June 11, 2020), to comply with a licence by providing an inaccurate hail, respecting the fishing vessel Ivy Lew, contrary to ss. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries Act; and,

Count 6 - failing, with respect to cod and hake for Trip 3 (February 7 – 21, 2020), halibut and hake for trip 6 (April 22 – May 8, 2020), halibut for trip 5 (April 3 – 16, 2020) and halibut for trip 7 (May 29 – June 11, 2020), to comply with a condition of the licence by failing to *accurately* complete the Fixed Gear Monitoring Document, respecting the fishing vessel Ivy Lew, contrary to ss. 43.4(1) of the Fisheries Act thereby committing an offence under s. 43.4(3) of the Fisheries.

Elizabeth Buckle, JPC