PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. A.L.S Fisheries Ltd*. 2023 NSPC 43

Date: 20230808
Erratum Date: September 13, 2023
Docket: 8503921, 8503922, 8503924
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8503935
Registry: Halifax

Between:

HIS MAJESTY THE KING

v.

A.L.S. Fisheries Ltd., Law Fisheries Ltd., Casey Henneberry

Revised Decision

Judge:	The Honourable Judge Elizabeth Buckle
Heard:	March 21, 2023
Oral Decision:	August 16, 2023
Charge:	43.4(3) x 3 *Fisheries Act*; 78 x 2 *Fisheries Act*
Counsel:	Angela Nimmo, Lee-Ann Conrod for the Crown Trevor McGuigan, for ALS Fisheries and Law Fisheries Stan MacDonald, Jack MacDonald for Casey Henneberry

This decision has been corrected according to the attached erratum dated September 13, 2023.

By the Court:

Introduction

[1] Following a trial, I found Casey Henneberry and two corporations, A.L.S. Fisheries Ltd. (ALS) and Law Fisheries Ltd. (Law Fisheries), guilty of offences under the *Fisheries Act*. I now have to determine a fit and proper sentence for each.

[2] Mr. Henneberry was the captain of a fishing vessel, the Ivy Lew, on fishing trips between May of 2019 and June of 2020. During that time, the Ivy Lew was permitted to fish groundfish under a licence held first by ALS and then by Law Fisheries. I found that Mr. Henneberry violated the conditions of those licences during four trips. On each trip, he inaccurately recorded the weight of groundfish in his logbook and inaccurately reported the weight in his hail-ins. On one of the trips, he also illegally off-loaded halibut by failing to have the landing verified by a dockside monitor (DSM). This resulted in convictions for five offences.

[3] I also found ALS and Law fisheries guilty, as licence holders, for failing to ensure that the licence conditions were complied with. For ALS, the two convictions resulted from one trip where Mr. Henneberry inaccurately recorded and hailed the weight of his catch. For Law Fisheries, the three convictions resulted from four trips: Mr. Henneberry's inaccurate logbook and hail-ins on three trips, his failure to have a landing verified by a DSM and an inaccurate logbook and hail-in on one trip where I was not satisfied that Mr. Henneberry was the captain.

[4] At the sentencing hearing, I had the benefit of written and oral submissions from counsel, testimony from Penny Doherty, a senior advisor for ground fish for the Department of Fisheries and Oceans (DFO), Affidavit evidence relating to how DFO manages groundfish, and information from ALS relating to costs associated with the seizure and continuing detention of the Ivy Lew.

[5] In addition to forfeiture of approximately $40,000 which was the proceeds of the illegally off-loaded catch and a small fine relating to the value of under-reported fish, the Crown seeks the following sentences: for Mr. Henneberry, fines totaling $140,000 and a licence suspension/prohibition from fishing for two years; for Law Fisheries, fines totaling $180,000 and a licence suspension/prohibition for two years; and, for ALS, fines totaling $30,000.

[6] The issues in dispute are: whether some charges should be stayed pursuant to the principles in *Kienapple*; the quantum of fine that should be imposed against each offender; and, whether Law Fisheries and/or Mr. Henneberry should have their licences suspended and be prohibited from engaging in the fishery.

Applicable Penalty Provisions

[7] The Crown elected to proceed by summary conviction on these matters. Therefore, the maximum fine for each offence is $100,000 (ss. 43.4(3)(b) and 78, *Fisheries Act*).

[8] Additional fines can be imposed where the offender acquired a monetary benefit as a result of committing the offence (s. 79, *Fisheries Act*).

[9] The *Fisheries Act* also requires that, upon conviction, any related fish or proceeds from the sale of fish must be forfeited (s. 72, *Fisheries Act*).

[10] In addition to fines and forfeiture, where a person is convicted of offences relating to licences, the court may issue an order cancelling or suspending the licence and prohibiting the person holding the licence from applying for any new licence under the *Act* for any period the court considers appropriate (s. 79.1, *Fisheries Act*).

[11] Finally, in addition to any other punishment, the court "may, having regard to the nature of the offence and the circumstances surrounding its commission" make an order: prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence; and/or, requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act (s. 79.2 (a) and (i), *Fisheries Act*).

Position of the Parties

[12] Mr. Henneberry and the corporate offenders were each convicted of violating licence conditions requiring an accurate hail-in and an accurate log for the same trips. They submit that either the counts relating to the inaccurate hail-ins (counts 2 and 5), or the inaccurate log entries (counts 3 and 6) should be stayed pursuant to *Kienapple v. The Queen* (1974), 15 C.C.C. (2d) 524 (SCC). The Crown disagrees.

[13] For Mr. Henneberry, the Crown seeks:

- A combined fine of $140,000 under ss. 43.4 and 78 of the Fisheries Act:
- A fine of $209.25 under s. 79 of the *Fisheries Act* relating to under-reported hake on the April 22 – May 8 trip;
- A forfeiture order under s. 72 of the *Fisheries Act* for $39,916.35, the proceeds from the sale of halibut seized on June 12, 2020, and of 213 pounds of unsold halibut seized on June 12, 2020;
- An order under s. 79.1 canceling all fishing licences or permits held by Mr. Henneberry and prohibiting him from applying for any new licences or permits for two years; and,
- An order under s. 79.2 prohibiting Mr. Henneberry for a period of two years from: being on board any vessel licenced to engage in any commercial or aboriginal fishery in Canadian or American waters; from possessing or acquiring any interest, legal or equitable, absolute or contingent, in any such vessel or licence; and, from possessing any fishing gear of any kind.

[14] For ALS, the Crown seeks a fine under s. 78 of the *Fisheries Act* of $30,000.

[15] For Law Fisheries, the Crown seeks:

- Fines under s. 78 of the *Fisheries Act* of $180,000;
- A forfeiture order under s. 72 of the *Fisheries Act* of the proceeds and halibut seized on June 12th;
- A two-year suspension of Law Fisheries' groundfish licence # 103552 under s. 79.1; and,
- An order under s. 79.2 prohibiting Law Fisheries for a period of two years, from using, transferring or selling groundfish licence # 103552.

[16] The Crown argues that these sentences are necessary to satisfy the applicable sentencing principles. The Crown submits that there are many aggravating factors relating to the offences and the offenders and few mitigating factors.

[17] The Defence does not dispute that a fine and forfeiture of fish and/or proceeds from the sale of unreported fish is required for both Mr. Henneberry and the corporate offenders.

[18] Mr. Henneberry submits that in addition to the forfeitures, a total fine of $40,000 would be appropriate and that no licence suspension or prohibition is required.

[19] ALS submits that a fine of $2,000.00 would be appropriate.

[20] Law Fisheries submits that a total fine of $22,000 would be appropriate and that no suspension or prohibition is required.

[21] The Defence generally submits that the Crown's sentencing recommendation is disproportionate and not supported by precedent, specifically disputes the Crown's characterization of the offenders' culpability, and disagrees with the Crown's analysis of aggravating and mitigating factors.

Circumstances of the Offences

[22] The circumstances of the offences are detailed in my trial decision, and I will only refer to them here in summary and as necessary to address specific sentencing principles.

[23] I found ALS guilty of Count 2 (reporting an inaccurate weight in a hail-in) and Count 3 (recording an inaccurate weight in a logbook) for failing, as the licence holder, to ensure compliance with conditions of a licence, contrary to s. 78 of the *Fisheries Act.* Those convictions related to one trip (May 16 - 30, 2019) where 6,709 pounds of halibut was landed. However, Mr. Henneberry, the captain of the Ivy Lew, logged and hailed 10,000 pounds. This difference of 3,291 pounds resulted in the recorded/reported weight being 49% over the landed weight.

[24] I found Casey Henneberry guilty of the following:

> Count 2 (reporting an inaccurate weight in a hail-in) and Count 3 (recording an inaccurate weight in a logbook) for failing, as Captain of the Ivy Lew, to comply with conditions of a licence, contrary to s. 78 of the *Fisheries Act.* These violations related to the May 2019 trip described above;

Count 4 (illegal offload) for failing, as Captain of the Ivy Lew, to comply with a condition of a licence by landing halibut without having the weight and species verified by a DSM, contrary to s. 43(4) of the *Fisheries Act*. On June 12, 2020, after a monitored landing of halibut, Mr. Henneberry off-loaded a further 7,674 pounds (dressed weight) of halibut after dark and without a DSM. The surrounding circumstances establish that he intended to sell that catch to an unlicenced fish buyer. The illegally landed halibut was valued at $39,916.35. DFO officers were observing the Ivy Lew and intercepted the illegal off-load. During the attempted arrests of those involved, Mr. Henneberry fled and was arrested later.

Count 5 (reporting an inaccurate weight in a hail-in) and Count 6 (recording an inaccurate weight in a logbook) for failing, as Captain of the Ivy Lew, to comply with conditions of a licence on three trips:

- Trip 3 (February 7 – 21, 2020) - On that trip, 248.4 pounds of cod was landed. However, Mr. Henneberry logged and hailed 300 pounds. This difference of 51.6 pounds resulted in the recorded/reported weight for cod being 20.8 % over the landed weight. On the same trip, 1,415 pounds of hake was landed. However, Mr. Henneberry logged and hailed 800 pounds. Meaning he recorded and reported only 56% of his catch of hake and his estimated weight was 43.5% under the landed weight. The value of the under-reported hake was approximately $280 (615 lb = 280 kg @ $1.00/kg – evidence of Ms. Doherty);

- Trip 5 (April 3 – 16, 2020) - On that trip, 14,418 pounds of halibut was landed. However, Mr. Henneberry logged and hailed 18,400 pounds. This difference of 3,982 pounds resulted in the recorded/reported weight being 27.6% over the landed weight; and

- Trip 7 (May 29 – June 11, 2020) - The landed weight for this trip includes the weight of a legal landing and an illegal off-load that resulted in the conviction for Count 4. 26,446.14 pounds of halibut was landed (16,776.9 pounds landed legally and 9,669.24 pounds landed illegally, after conversion to round weight). However, Mr. Henneberry logged and hailed only 18,200 pounds, a difference of 8,246.14 lbs. Meaning, he recorded and reported only 69% of his catch and his estimate was 31.2 %

> under the landed weight. The value of this under-reported halibut is captured in Count 4.[1]

[25] I found Law Fisheries guilty of three offences contrary to s. 43.4(3) of the *Fisheries Act*:

> Count 4 – for failing, as the licence holder, to ensure compliance with conditions of a licence relating to illegal off-loads of halibut on May 8, 2020 and June 12, 2020. On May 8, 2020, an illegal off-load of an unknown quantity of halibut preceded a monitored landing. The June 12th illegal off-load is the one outlined above for Mr. Henneberry;
>
> Counts 5 and 6 – for failing, as the licence holder, to ensure compliance with conditions of a licence relating to inaccurately recording and reporting weight of ground fish in logbooks and hail-ins on four trips:
>
> - The three trips noted above where Mr. Henneberry was Captain; and,
> - Trip 6 (April 22 – May 8, 2020) - On that trip, 14,909.6 pounds of halibut was landed and 17,900 pounds was logged and hailed. This difference of 2900.4 pounds resulted in the recorded/reported weight of halibut being 20% over the landed weight. In addition, 165 pounds of hake was landed and only 100 pounds was logged and hailed, a difference of 65 pounds. Meaning that only 60% of the catch of hake was recorded and reported and the estimate of weight was 39.4% under the landed weight. The value of this under-reported hake was approximately $30 (29.5 kg @ $1.00 per kg).

Application of *Kienapple*

[26] Mr. Henneberry and the corporate offenders submit that the principles in *Kienapple* should apply to the counts involving inaccurate hails and inaccurate logbooks with the result that either count 2 or 3 and either count 5 or 6 would be stayed for all.

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[1] For this trip, there is a small error in my trial decision which would have no impact on either the decision or the sentence. In determining the weight of the illegal offload in my trial decision, I relied on the weight of the halibut that was sold by DFO as recorded in the purchase agreement (Ex. 21). I failed to note that counsel had agreed, in a Statement of Admissions (Ex. 36) that the actual weight of the seizure was higher because DFO had held back 17 fish.

[27] Application of the *Kienapple* principle "is designed to prevent multiple convictions arising from the same "matter", "cause" or "delict"" (*R. v. Deslisle*, 2003 BCCA 196, para. 12). It applies where there is both a factual and legal nexus between charges (*Wigman v. The Queen* (1987), 33 C.C.C. (3d) 97, at p. 103). The charges must arise from the same "cause", "matter" or "delict" and there must be no additional or distinguishing elements between the two.

[28] The Defence submits that this case is indistinguishable from *R. v. Lebreton*, 2019 NBPC 2, where the Court concluded that four fisheries offences were sufficiently factually and legally proximate to attract the *Kienapple* principle. Those offences were fishing in a closed area, placing gear in water during a closed time, possessing fish caught in contravention of the act and possessing lobster during a closed time.

[29] Further, the Defence submits that strict application of the *Kienapple* principles in this case is important to ensure a sentence that is ultimately fair because fines cannot be concurrent (*R. v. Ward*, 1980, ONCA, para. 9).

[30] The Crown submits that the *Kienapple* test has not been met since the inaccurate hail and inaccurate logbook offences relate to two different licence conditions, are not grounded in the same actions, serve a different purpose (the hail-in is used to alert the DSM company of the intended time and date of the landing so they can be there to monitor) and it is possible to commit one and not the other.

[31] In this case there is a close factual relationship between these offences. The inaccurate information related to the weight of the fish and was identical in the hail and the logbook, and the information in both forms went to DFO. Further, while I accept that log and hail serve a different general purpose, in this case, the inaccurate information related to weight and there is no evidence that the weight recorded in the hail-in versus the logbook was used by DFO for a different purpose.

[32] I agree that these offences do not meet the test for application of *Kienapple*. I say that because they relate to different licence conditions, they are committed through different actions, and it is possible to commit one and not the other.

[33] However, there is significant overlap between the offences and the additional culpable conduct is minimal. The primary culpable conduct for both offences is the negligent or careless estimate of weight. That estimate is then

recorded in the logbook and reported in the hail-in. By convicting of both offences and imposing 'consecutive' sentences for both, I recognize there is a risk of punishing the offenders twice for that same primary culpable conduct. That risk can be addressed and avoided through proper application of proportionality and the principles of totality and restraint.

Circumstances of the Offenders

Casey Henneberry

[34] Mr. Henneberry has worked as a commercial fisherman his entire adult life. He began full time employment at 15, has been licenced to fish since he was 17 and became a captain when he was 18. He is now 40 years old. He has been employed as a captain of fishing vessels but is not an owner of any fishing business. In recent years he has earned just over $150,000 per year.

[35] Over the past 22 years in the fishing industry, he has been the captain on hundreds of fishing trips. He has never had his fishing privilege suspended.

[36] At the time of these offences, he was 36 – 37 years old and was an experienced captain in the commercial groundfish industry.

[37] He has prior convictions for violations of fishing licence conditions while acting as captain:

> 2010 – failure to hail out – fine of $2,500;
>
> 2014 – possession of 24 undersize halibut, inaccurate logbook and using cod as bait – total fine of $17,000 and partial forfeiture of proceeds of seized catch ($22,217.25);
>
> 2017 –inaccurate reporting but admitted failures to hail, inaccurate logbook entries and other violations – fine of $10,000 and forfeiture of entire proceeds of unreported catch (13,000 pounds at $69, 276.33)

[38] He has not been charged with any additional offences after 2020.

[39] He has one son who is 12 years old. His son has significant developmental delay and requires constant care and regular hospitalization. Mr. Henneberry and his former spouse share custody of their son with Mr. Henneberry caring for him when he is not at sea. Mr. Henneberry also has significant financial obligations to

his family, paying $4,000 per month in child support. In addition, he pays for additional therapy and programming that his son requires.

ALS Fisheries Ltd.

[40] ALS is a limited company and holds a commercial groundfish licence. It owns the vessel, the Ivy Lew, which was used during the offences. She was seized by DFO on June 12, 2020. The Crown is not seeking forfeiture of the Ivy Lew, but she continues to be held by DFO, apparently as security against any fine that is imposed against the company. There was a mortgage registered against the vessel of almost $1,000,000 and ALS has continued to pay the mortgage. Over the past three years, they have paid approximately $300,000 (Ex. 6).

[41] ALS's annual quota for groundfish is a significant share of the fleet allowance and has substantial value.

[42] In 2019, ALS had four directors who were all related to Casey Henneberry. The Crown is not alleging any prior record for ALS. However, each of its four directors have prior convictions for *Fisheries Act* offences: one has a conviction in 2000; one has convictions in 2000 and 2006; one was convicted of two offences in 2006; and one was convicted in 2002 and of three offences in 2006.

[43] ALS was the licence holder and owner of the vessel that Mr. Henneberry was captain of when he committed his offence in 2017 (*R. v. Casey Henneberry*, 2019 NSSC 119, para. 3(6)).

[44] The Crown also submits that ALS held the licence and owned the vessel involved in Mr. Henneberry's 2010 conviction (Crown Brief, paras. 84 and 95). However, that submission is not supported by reference to evidence before me or a finding in another decision.

Law Fisheries Ltd.

[45] Law Fisheries is a limited company and holds a commercial groundfish licence.

[46] Its annual quota for groundfish is a significant share of the fleet allowance and has substantial value.

[47] The Crown is not alleging any prior record for Law Fisheries. However, two of ALS' directors are also directors of Law Fisheries and, as noted, they have prior convictions.

[48] The Crown also submits that Law Fisheries was the licence holder when Mr. Henneberry committed his offences in 2014 (Crown Brief, paras. 84 and 95). However, that submission is not supported by reference to evidence before me or a finding in another decision.

[49] In addition to sharing directors, Law Fisheries and ASL also share a corporate address and Law Fisheries was using the Ivy Lew to fish at the time it committed its offences.

Application of Principles of Sentencing

[50] The general purpose, objectives and principles of sentencing are set out in ss. 718 to 718.21 of the *Criminal Code*.

[51] These principles apply to sentencing in the fisheries context.

[52] The fundamental purpose of sentencing is to protect the public and contribute to respect for the law and the maintenance of a safe society.

Proportionality

[53] The fundamental principle of sentencing is proportionality (*Criminal Code,* s. 718.1).

[54] Proportionality is the starting point for sentencing. It requires that a sentence "reflect the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case" (*Criminal Code,* s. 718.1; and, *R. v. Parranto,* 2021 SCC 46, para. 12). It requires that a sentence not be more severe than what is fair and appropriate but severe enough to condemn the offender's actions and hold them responsible for what they have done (*R. v. LaCasse,* 2015 SCC 64; and, *R. v. Nasogaluak*, 2010 SCC 6, at para. 42).

[55] Assessing proportionality requires me to consider the gravity of the offence. That includes both the objective gravity of the offence and the subjective gravity of the offenders' specific offending behaviour (*R. v. Friesen*, 2020 SCC 9, para. 96; and, *R. v. L.M.,* 2008 SCC 31, paras. 24 - 25).

[56] Dealing first with the objective gravity of the offences. As the Crown noted in their brief, these offences occurred in a licenced, highly regulated environment where people are privileged to hold a licence.

[57] Failures to comply with licencing conditions under the *Fisheries Act* and its Regulations are increasingly viewed as serious regulatory offences. Licencing conditions play a significant role in Parliament's approach to achieving the purposes of the *Fisheries Act* which include management and control of the fishing industry and protection and preservation of fish and fish habitat (s.2, *Fisheries Act*).

[58] The importance of regulatory compliance to a resource that is already strained was noted in *R. v. McKinnell Fishing Ltd.*, 2016 BCPC 466: "… it is only when everyone complies with the regulations and licencing requirements that we can ensure a sustainable fishery for the benefit and enjoyment of all… failure to comply with licence its licence and regulations has the potential to contribute to a failure of this fishery, particularly if all fishers were of the same view" (paras. 44 - 46).

[59] The balancing required to achieve the specific goal of a sustainable groundfish fishery is achieved, in part, through a quota system. That system limits the total catch of a given species that can be taken from a fish population in a specified period and allocates it amongst eligible fishers (testimony of Ms. Doherty; Ex. 1, Appendix C).

[60] This case involves inaccurate recording/reporting by both under and over estimating weight and non-reporting through the illegal off-load. I heard evidence during the trial and sentencing hearing about the potential impact of each of these categories of violations. I accept that compliance with the quota system and the rules and regulations that support it are necessary for the ongoing viability of the fishery. Recording, reporting and dock-side monitoring of catch are important tools used by DFO to monitor fish stocks and set and enforce quotas. The reliability of DFO's stock assessments is vital to their efforts to sustainably manage the resource. Those assessments rely, in part, on the accuracy of the information recorded in logbooks, reported in hails and confirmed by DSMs. So, any inaccuracy in recording or reporting impacts DFOs management of the resource and can ultimately impact the viability of the industry.

[61] This makes any failure to comply with licence conditions and regulations that impact the quota system more serious than some other types of violations and increases the gravity of these offences.

[62] Non-reporting and under-reporting/recording are more serious than over-reporting as they have the greatest, and most direct, potential negative impact on the resource. This type of violation can lead to DFO unintentionally allowing overharvesting which can result in depletion of stocks. The financial and social impacts of depletion or destruction of stocks is felt at the individual, family, community, regional and national level. It impacts and, in some circumstances, destroys people's entire way of life.

[63] Inaccurate recording and reporting catch by over-reporting also has potential negative consequences. It can result in DFO being overly conservative and unnecessarily limiting catches in the fishery. This could then have negative financial impact on fish harvesters and communities. However, in my view this category of offence is not as serious as non-reporting or under-recording/reporting. It is less likely to be a financially motivated offence or one that is motivated by a desire to avoid quotas and is less likely to negatively impact the stock.

[64] Mr. Henneberry and the corporate offenders have the privilege of being licenced to fish in the lucrative groundfish industry. The corporate offenders each hold a licence with an annual quota that is a significant share of the groundfish fleet's allowance.

[65] This case involves breaches relating to halibut, cod and hake.

[66] The quantity and value of halibut is significantly higher than that of the other species. According to Ms. Doherty, at present, Atlantic halibut is considered a healthy stock. However, that is the result of years of careful stewardship. Under-recording/reporting and non-reporting halibut potentially undermines that effort.

[67] Stocks of Atlantic cod and white hake are already depleted. As such, inaccurate reporting undermines DFO's ability to implement effective and fully informed management measures to rebuild the stocks and further reduces the chance of stock rebuilding. However, the quantity of cod and hake in this case is relatively small.

[68] I also have to consider each offender's level of responsibility and moral culpability for the offences.

[69] Mr. Henneberry was the captain so is directly responsible for the inaccuracies and the illegal off-load. The corporations were convicted as licence holders by virtue of s. 78.4 of the *Act*.

[70] They were not present on the vessel or the wharf and, as I will discuss later, I have not been persuaded that they were otherwise directly involved in the inaccurate logs, hails or the illegal off-load.

[71] Where each offender's conduct sits on the spectrum of intent is also relevant to their individual moral culpability (see *R. v. Terroco Industries*, 2005 ABCA 141; and *R. v. Paco Seafood Industries Inc.*, 2019 BCPC 228). That spectrum includes: deliberate and intentional acts; inaction in the face of actual knowledge of violations or gross negligence (generally equated with recklessness or purposeful indifference); simple negligence or lack of care where there is no evidence of diligence; and conduct that is negligent or careless but includes some effort at oversight that falls short of meeting the due diligence standard.

[72] Here, the Crown argues that the offences all demonstrate conduct that is, at minimum, gross negligence, but includes conduct that is close to deliberate acts and approximates intentional conduct. As such, the Crown submits they call for higher penalties than would be imposed for offenders who are merely negligent or who made some attempt to avoid the prohibited behaviour.

[73] First, dealing with Mr. Henneberry. For the illegal off-load on June 12th, I agree with the Crown. Landing the halibut without a DSM was a deliberate and intentional act by Mr. Henneberry. It would have required some planning and a series of choices. The only available inference from the evidence is that it was done for the purpose of avoiding the regulatory regime, including the quota system. The evidence also establishes that he intended to sell the illegally off-loaded halibut to an unlicenced buyer with the only available inference being that was for profit.

[74] Similarly, for the inaccurate log/hail relating to the June trip, I also agree with the Crown that the only rational inference, given the illegal off-load, is that Mr. Henneberry deliberately recorded a lower weight in the log and hail because he knew he would off-load part of the load illegally.

[75] However, for the other trips, I do not agree with the Crown's characterization of Mr. Henneberry's offending conduct. I am not persuaded those offences were anything other than simple negligence or carelessness. I concluded

the recorded/reported weights were not reasonably precise and not indicative of having been obtained through reasonable care. In reaching that conclusion I examined the available evidence about the surrounding circumstances and considered the extent of the discrepancies between Mr. Henneberry's estimate and the actual weight. That evidence does not establish that Mr. Henneberry was deliberately inaccurate or grossly negligent in his estimates. As I said in my trial decision, those who are estimating weight while at sea face significant challenges. Even the 'landed' weight, which is the standard against which the at-sea estimate is measured, has inherent inaccuracies due to subjective estimates for ice allowance and species-wide conversion factors to convert to round weight. No evidence was called during either the trial or sentencing as to how much of a variance between the 'landed' and 'at-sea' estimate of weight is typical in the industry. So, I cannot say that the discrepancies in this case were so great that they must have been the result of deliberate, intentional grossly negligent conduct rather than simple negligence/carelessness.

[76] Further, a deliberate act is generally motivated by some desire for a benefit or advantage. Here, the motive for under-recording/reporting in a quota-based industry is clear. However, except for trip 7 which I've already discussed, the under-recording/reporting related only to relatively small quantities of hake, a relatively low-value fish. The other inaccuracies, those that involved significant quantities of high-value fish were log/hails that were <u>over</u> the weight that was landed. Based on the evidence and submissions at trial and during the sentencing hearing, I have not been persuaded that there is any direct benefit or advantage from recording and reporting an estimate that is above the actual landed weight.

[77] There is a cost associated with due diligence. Obtaining an accurate estimate of weight might require more training of crew, hiring additional crew, taking time away from fishing and perhaps purchasing additional equipment. So, I accept that there may be an indirect financial benefit when those costs are not incurred. However, that indirect benefit does not logically ground an inference that the over-recording/reporting was deliberate or intentional.

[78] So, I also cannot say that the surrounding circumstances persuade me that the discrepancies were the result of deliberate, intentional, or grossly negligent conduct.

[79] Mr. Henneberry's culpability for later offences is greater than for earlier offences. After the first offence, he knew that he had inaccurately estimated the

weight of his catch by 3,291 pounds, an estimate that was almost 50% higher than the actual weight. That should have caused him to realize that he needed to revise his method and be more careful. It didn't.

[80] Turning now to the companies. The Crown also argues that the corporate conduct approximates intentional conduct and is, at the very least, gross negligence. This argument is based on several factors including: they took no steps to ensure the conditions of their licences were complied with; they knew that Mr. Henneberry had a prior record for fisheries offences; the directors of the companies had prior records for fisheries violations; and, one of the directors owned the wharf where the illegal off-load occurred leading to an inference that he was complicit. Ultimately, the Crown submits that the companies, through their directors, worked together with the purpose of thwarting the regulations.

[81] First, I agree that there is no evidence that the companies did anything to ensure the conditions of their licences were complied with, so this is not a case where there is evidence that they took some care which fell just short of due diligence. This means their moral culpability is higher than the minimum necessary for a finding of guilt.

[82] I also agree that the companies' lack of care is more blameworthy because they knew that Mr. Henneberry, the captain they hired, had a prior conviction for an offence under the *Fisheries Act*. Mr. Henneberry has convictions from 2010, 2014 and 2017. I accept that the companies, through their directors, would have known about the 2017 offence. As I have noted, ALS was the licence holder and owner of the vessel that Mr. Henneberry was captain of when he committed the offence. The directors of ALS would have known that their captain had been charged and convicted. Two of those directors were also directors of Law Fisheries so, by extension, Law Fisheries would also have known. I accept that the companies' knowledge of that relatively recent offence placed a higher onus on them to be more vigilant, less trusting of their captain and have a system to ensure their captain was complying with its licence conditions.

[83] I am not satisfied that the companies, through their directors, knew about Mr. Henneberry's earlier convictions. As I said, I am not satisfied that either company was the vessel or licence holders during those offences. I also do not accept the Crown's submission that because there is a familial relationship between the directors and Mr. Henneberry, that they would have known about those earlier offences.

[84] The Crown further argues that the fact that ALS' four directors and two of Law Fisheries directors each also have a history of fisheries offences, supports their submission that the companies' conduct in this case were intentional, deliberate or grossly negligent.

[85] By virtue of s. 718.21(g), previous similar violations by "representatives" of a company who "were involved in the commission of the offence" are relevant when sentencing an organization. A director is a "representative" of a company (*Criminal Code,* s.2). The phrase "involved in the commission of the offence" is not defined and I have not located any cases where its meaning is discussed. In my view, the Crown is not required to prove direct involvement and being a director in a closely held corporation during the time the offences were being committed is sufficient to engage s. 718.21(g). The subsection also does not specify how the prior record should be taken into account and, again, I have not located any cases that are instructive. In my view, this information is like a prior record for an individual and would be relevant in the same way, to the need for specific deterrence and likelihood of successful rehabilitation.

[86] Here the Crown seeks to use the directors' prior records to assign moral blameworthiness and, specifically, to say that they acted with intent. I am not persuaded that the fact that the directors violated conditions of their fishing licences in 2006 makes it more likely that their conduct in this case was intentional, deliberate, the result of wilful blindness or grossly negligent.

[87] In their Brief, the Crown included an excerpt from the 2006 decision dealing with the conviction and sentence of three of the directors. The Crown noted that the judge in that case had found there had been a coordinated effort to maximize profits and that the three had "engaged in a pattern of behaviour which can only be described as a deliberate, concerted effort to catch the maximum number of tuna, regardless of the rules" (Crown Brief, paras. 80-81; *R. v. Ivy Fisheries Ltd.*, 2006 NSPC 26, paras. 37 and 89).

[88] The Crown then submits that, "given the history of these directors, turning a blind eye to the offences that are before this Court was not the product of negligence, but rather approximates intentional conduct or at a minimum gross [negligence]" and describes the conduct as willful blindness (paras. 82 and 85).

[89] It was not entirely clear to me how the Crown wanted me to use these excerpts in determining whether the corporate conduct was intentional or deliberate in this case. The case is useful as a precedent. It shows a reasoning path

which I could follow if the evidence and circumstances in this case were similar. However, the circumstances and evidence in the case before me are very different and do not lead me to the same conclusion. The way the Crown's argument was structured in its Brief suggests that the Crown was also arguing that the fact that these same individuals previously deliberately violated the *Fisheries Act* is probative of their intent in the case before me. In my view it is not, and it would be wrong for me to conclude that there conduct in 2020 is more likely to be intentional because their conduct was intentional in 2006.

[90] The Crown also points to the fact that one of the directors owns the wharf where the illegal off-loads on May 8th and June 12th were landed, suggesting that the director knew or was complicit in the illegal off-load. I do not agree that ownership of the wharf proves that the director was involved in or knew (including willful blindness) about the off-load. The off-loads occurred at night so not when the wharf would have been in use. There is no evidence of whether the wharf and building were secured, whether the owner lived close to the wharf or any other evidence to suggest that the owner's knowledge or consent would have been necessary for the wharf and building to have been used at night.

[91] The Crown makes further arguments based on the close relationship between the two companies. Specifically, that they share two directors, have the same corporate address and Law Fisheries fished its licence using the Ivy Lew which is owned by ALS. In their Brief, the Crown submits that "this tactic should not permit ALS to distance itself from this offence completely and is an aggravating factor." (Crown Brief, para. 96).

[92] I accept that the companies have a close relationship. However, the Crown has not submitted that there is anything inherently illegal about either their corporate structure or Law Fisheries use of ALS's vessel. It is not entirely clear to me how this legal business arrangement is an aggravating factor in any general way.

[93] The fact that Law Fisheries committed offences using a vessel that belonged to ALS does not make ALS responsible for those offences. I say that because I am not aware of any legal obligation on the vessel owner to ensure compliance with a fishing licence that belongs to another entity.

[94] I accept that the fact that ALS's directors were also directors of Law Fisheries when Law Fisheries committed its offences might increase ALS's moral culpability or remove a potential mitigating factor that would otherwise have been

available to ALS. ALS committed their offences during only one trip and could in some circumstances argue that this was out of character or a momentary lapse. The fact that two of their directors continued, as the directing mind of Law Fisheries, to fail to exercise due diligence during four trips over a one-year period, would remove that argument. Arguably, it also places ALS' moral culpability slightly higher on the spectrum of negligence.

[95] The Crown further submits that the two companies "are essentially one company operating in unison to defeat the requirements of the licencing regimen under which they operate" (para. 98).

[96] The Crown has not pointed to any evidence to show the companies were working together with the purpose of defeating the requirements of the licencing regime. I am not persuaded that the companies arranged their affairs in this manner for any nefarious purpose or that they worked together for the purpose of defeating the licencing regime. Both companies, whether treated as separate entities or one, were negligent or careless in circumstances where they knew or should have known that they should be even more careful. There close relationship does not convert negligent conduct to gross negligence or render their conduct intentional or deliberate.

[97] In summary, there is no evidence of any efforts by the companies to oversee their licences so no evidence of diligence. This was in circumstances where their knowledge of the captain's prior fisheries offence should have made them more diligent. Law Fisheries' lack of diligence continued for a period of a year and involved four fishing trips. ALS' lack of diligence was demonstrated during only one trip. However, the lack of diligence of their directors, the operating mind of the company, was not limited to that single trip. Their negligence is above the minimum necessary for conviction. However, I am not persuaded that they were involved in a deliberate effort to thwart the regulations, that they had intent or knowledge of the offences or were purposefully indifferent to their obligations.

Sentencing Objectives

[98] The overall purposes of sentencing are to be accomplished by imposing just sanctions that have one or more of the objectives that are set out in s. 718. Those include: denunciation; general and specific deterrence; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community. (*Criminal Code,* s. 718)

Deterrence – General and Specific

[99] General and specific deterrence are the paramount considerations when sentencing for fisheries offences in general and for breaches of licence conditions specifically (*R v Rideout*, 2005 NSCA 12, para. 14; *R. v. H. & H. Fisheries Ltd.*, para. 40; *McKinnell Fishing Ltd*, para. 46).

[100] Meaningful consequences are required to deter illegal fishing practices. If other licence holders are not deterred, illegal behaviour increases and stocks are placed at an even higher risk.

[101] The *Fisheries Act* allows for significant financial penalties. Courts in this and other contexts where fines are the primary sentencing tool have recognized the importance of imposing fines that are substantial enough to send a message. As has been repeatedly said in the regulatory context, "A fine should not be so low that it will be seen as a licence fee or as a mere cost of doing business" or that the penalty will be considered "an affront to the majority, who comply with the act" (*R. v MacKinnon*, (1996) 154 N.S.R. (2d) 217 (SC), paras. 18-19; See also: *R v Ivy Fisheries Ltd*, 2006 NSPC 26, para 15, (upheld on appeals, 2009 NSSC 95 and 2009 NSCA 112); and, *R v H. & H. Fisheries Ltd*, 2014 NSPC 61, paras 40-42).

[102] Given Mr. Henneberry's prior record, specific deterrence is also a relevant concern.

[103] He has convictions for related offences and the last conviction is quite recent, especially when one considers that the final decision affirming his sentence was not rendered until 2020. The recency of this conviction makes it highly relevant to the continuing need for specific deterrence.

[104] Mr. Hennebery's record can justify a harsher sentence against him than would otherwise be justified. However, he has already been punished for those earlier offences. I cannot punish him for them again and the fact of the prior record cannot justify a disproportionate sentence (*R. v. Angellillo,* 2006 SCC 55, para. 24; *R. v. Mauger,* 2018 NSCA 41, paras. 63 – 68; and, *R. v. Wright,* 2010 MBCA 80, para. 7)

[105] Remorse and acceptance of responsibility are also relevant to the need for specific deterrence. One way of demonstrating these is through a guilty plea. Mr. Henneberry did not plead guilty. The absence of a guilty plea cannot be equated with lack of remorse or refusal to accept responsibility, and both can be

demonstrated through other means. On application by Mr. Henneberry, I set aside settlement privilege to the extent of permitting Mr. Henneberry to advise me of his pre-trial offer to plead guilty to the illegal off-load that he was found guilty of and two of the four inaccurate hails that I found him guilty of.

[106] I accept that his pre-trial offer to enter guilty pleas is an indication that he accepted responsibility for that conduct and can be viewed as some indication of remorse. It does not have the same mitigation as a guilty plea. Mr. Henneberry could have entered guilty pleas to the offences he was admitting and proceeded to trial on the others. The absence of any guilty pleas in this case meant that there was a trial on all charges. So, Mr. Henneberry does not have the time/resource saving mitigation that might have resulted from actual guilty pleas.

[107] Neither of the two corporate offenders has a prior record. However, as noted above, the four officers/directors of ALS, two of whom are also directors/officers of Law fisheries have records for prior *Fisheries Act* offences. Their prior records are relevant to the need for specific deterrence. Their convictions are related but all are quite dated. The most recent conviction for one director was 2000 and for the other three it was 2006, about 14 years before these offences. This lessens the relevance.

[108] The Crown also notes that all the ALS directors were previously the directors of a defunct company which was convicted of fisheries offences in 2006, sentenced to pay fines of over $600,000 but discontinued operations and never paid its fines. I accept the Crown's submission that this is relevant to the need for specific deterrence and speaks to the effectiveness of corporate fines alone as deterrents. However, the fact that DFO holds the Ivy Lew as security makes it likely that any fine against ALS will be paid.

Rehabilitation

[109] Rehabilitation contributes to the long-term protection of society. It continues to be a relevant objective, even in cases requiring that denunciation and deterrence be emphasized (*Lacasse*, at para. 4).

[110] Neither the Crown nor Defence have suggested a rehabilitative sentence or identified any specific areas in which Mr. Henneberry requires assistance with rehabilitation. His prior record suggests diminished prospects for rehabilitation. However, his acceptance of responsibility and indication of remorse, albeit not

through guilty pleas, and his commitment to caring for his family, are indicative of some hope for rehabilitation.

Secondary Principles

[111] There are also important secondary principles that I am required to take into account: the principle that a sentence should be increased or reduced to account for relevant aggravating and mitigating factors relating to the offence and the offender; the principle of parity, meaning that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and, the principle of restraint.

Aggravating and Mitigating Factors

[112] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender. I have already discussed some of these.

Mr. Henneberry

[113] In summary, the aggravating factors I have considered for Mr. Henneberry are as follows:

- Mr. Henneberry was the captain so leader on the vessel and directly responsible for the offences;
- He was an experienced captain and fisherman;
- The licencing violations impact quotas so are more serious than some other types of licence violations;
- The number of offences and the fact that the conduct was repeated over approximately 16 months;
- Some of the discrepancies in weight were significant both as a percentage of the catch and in absolute terms;
- The illegal off-load and the associated under-reporting involved deliberate conduct with the only possible motive being to avoid the regulations and make a profit;
- The quantity and value of illegally off-loaded halibut was significant;

- The illegal off-load required planning and co-ordination;
- Following the illegal off-load, Mr. Henneberry fled from DFO officers when they attempted to make arrests; and,
- He has a prior record for related offences, including a relatively recent conviction, however, his record has to be viewed in the context of a lengthy fishing career.

[114] The mitigating factors I have considered are as follows:

- Through his pre-trial offer to plead guilty to some offences, he has shown some acceptance of responsibility and remorse. Through counsel, he maintains that he accepts full responsibility for these offences and is remorseful;
- He has been consistently employed from a young age; and,
- He is financially responsible for his family and fully engaged in his child's life.

ALS and Law Fisheries

[115] The Crown has argued that the corporate offenders' "total lack of care is an aggravating factor on sentencing" (Brief, para. 106. I agree with the Defence that the mere fact that the companies did not exercise due diligence is the essence of the offence and cannot be considered an aggravating factor. However, as I have said, where they sit on the spectrum of negligence is relevant. They do not have the mitigation that might be present if there was evidence of some effort to ensure compliance and their complete lack of diligence is more culpable because they knew about Mr. Henneberry's previous conviction.

[116] For ALS it is relevant that its directors' lack of diligence continued during the time that Law Fisheries was committing offences. This means that ALS' offence cannot be described as out of character or a momentary lapse of care. That is not an aggravating factor. I would consider it more as the absence of a potential mitigating factor.

[117] In addition to the general aggravating and mitigating factors, s. 718.21 of the Criminal Code sets out specific additional factors that must be taken into account

when sentencing organizations. I will address only those that the Crown and/or Defence have suggested are relevant.

[118] Under s. 718.21(a), I am required to consider whether the companies realized any advantage as a result of the offences. There is no direct evidence of any financial benefit to the company. The Crown asks that I infer some unquantified financial benefit. As I said previously, I accept that there are general cost savings from lack of care. Here, I have no evidence of the financial relationship between the captain, the licence-holder and the vessel owner. However, it is reasonable to infer that the owner of the licence benefits from the profitability of the venture so enjoys some indirect benefit from cost-savings. In the absence of specific evidence, this factor would have minimal impact on the sentence.

[119] Under s. 718.21((b), I am required to consider the degree of planning involved in carrying out the offence and the duration and complexity of the offence. I am not persuaded that the companies were involved in any planning or carrying out of the offences, and I have no evidence suggesting that these offences were complex. However, the offences involving Law Fisheries involved multiple trips over approximately one year. During that time, the company took no steps to ensure compliance with its licence.

[120] Under s. 718.21(e), I am required to consider the cost to public authorities of the investigation and prosecution of the offence. I accept that the cost to the public for the investigation would not have been negligible but I have no evidence of the actual cost. The trial ended with mixed results, the Defence made concessions and agreements that reduced the costs associated with trial time and some of the trial time was occupied with an unsuccessful Crown application to protect observation-post privilege. Any costs associated with the trial is a neutral factor.

[121] Under s. 718.21(j), I am required to consider whether the companies took any measures to reduce the likelihood of it committing a subsequent offence. I have no evidence that either company did.

[122] Under s. 718.21 (d), I am required to consider any impact that the sentence would have on the economic viability of the organization and the continued employment of its employees. The fines sought against the companies are high. However, both companies are significant players in the lucrative groundfish industry and there is no evidence that the fine sought would have fatal consequences for either company. The Crown also seeks a licence suspension and

prohibition against Law Fisheries. That would also have some economic impact on the company and its employees. It is not clear how many people Law Fisheries employs but it is a reasonable inference that a licence suspension would negatively affect the continued employment of any captains and crew it employs, at least during the period of the suspension.

[123] The aggravating factors for the companies are as follows:

- The licencing violations impact quotas so are more serious than some other types of licence violations;
- The moral culpability of the companies is higher than the minimum necessary for conviction. Knowing the captain had been convicted of violating a condition of a licence in 2017 should have caused them to be more vigilant;
- For Law Fisheries, the offences involved multiple trips, serious violations and continued for a one-year period;
- Each company would have enjoyed some indirect and unquantified financial benefit ((s. 718.21(a));
- The directors of each company have prior related records (s. 718.21(g). However, given the passage of time, the gap principle would reduce the relevance of this factor; and,
- The investigation was lengthy and resource intensive (s. 718.21(e).

[124] The only mitigating factor is that neither has a prior record.

[125] However, for ALS, the fact that the Ivy Lew was seized and has been held for three years while ALS has continued to pay a mortgage is a relevant collateral consequence. During that time, ALS has not had the use of her and has either lost revenue or incurred costs to replace her so has experienced a financial impact as a result of the offences.

Parity / Range of Sentences

[126] Section 718.2 also requires that I consider the principle of parity. Within reason, a sentence should be similar to sentences imposed on similar offenders for

similar offences committed in similar circumstances. The range of sentences imposed provide a reference for me when situating these offenders and their conduct on the spectrum of gravity.

[127] The Crown and Defence acknowledge that applying parity in a fisheries case is challenging because of the disparate factors and circumstances that can contribute to an appropriate sentence in any given case. An added challenge is that I have convicted the offenders of separate offences for overlapping conduct (inaccurate estimate of weight in the log and hail-in and an illegal offload that is incorporated into the inaccurate log and hail-in for the same trip). In contrast, in many of the cases that inform the range, the offenders were sentenced for one offence that encompassed breaches of multiple licencing conditions which may result in a higher sentence for a given offence. So in attempting to situate this case within the range of sentences imposed in other cases, it will be important to compare the overall offending conduct that resulted in a particular sentence.

[128] I have been provided with cases and summaries of unreported cases. The summaries are of more limited assistance. They do not provide a full outline of the facts, and many do not include the level of court, what offence or offences the offender was sentenced for, whether the offender pleaded guilty or whether the offender had a prior record.

[129] The cases involving sentences for individuals include the following:

- *R v Beau Bobby Gillis* (summary of unreported decision, Digby Court, July 7, 2016) – The summary does not indicate whether Mr. Gillis pleaded guilty and does not specify the offence(s) he was sentenced for. He off-loaded halibut without a DSM and the weight reported in his hail-in was under the actual weight of his catch. He hailed-in 430 lbs of halibut and 1,134 lbs was seized, a difference of 704 lbs. Meaning that he reported only 38% of his catch and his estimate was 62% under the actual landed weight. The seized halibut was valued at $11,340. Mr. Gillis had a prior record for Fisheries Act offences. He was sentenced to pay a fine of $2,500, his truck and the proceeds ($11,340) were forfeited, he was prohibited from fishing for groundfish for one year and required to have his VMS monitor ping every 30 minutes for 3 years.

- *R. v. Jared Halliday* (summary of unreported decision, Digby Court, June 1, 2015) – Cpt. Halliday pled guilty to one offence relating to an inaccurate hail. He hailed-in 250 lbs halibut but his actual catch was 1,020 lbs, a difference of 770 lbs. Meaning that he reported only 25% of his catch and his estimated

reported weight was 75% under the actual weight. The value of the unreported halibut was $5,775. He was sentenced to a fine of $8,000 and the catch was forfeited.

- *R. v Casey Henneberry,* 2019 NSSC 119, (upheld on appeal) – Mr. Henneberry pleaded guilty to a charge relating to an inaccurate log but admitted facts that would have supported other charges. He had recorded a total of 10,000 pounds of halibut for a three-day period. The landed weight was 33,000 pounds, a difference of 23,000 lbs. Meaning that he recorded only 30% of his catch and his estimate was almost 70 % under the landed weight. The value of the unreported halibut was $69,376.33. He had a record of prior Fisheries Act offences. The SCAC justice said that given Mr. Henneberry's record, he was not entitled to leniency and sentenced him to a fine of $10,000 and ordered forfeiture of the unreported catch.

- *R v Craig Hartlen* (summary of unreported decision, NSPC, Dartmouth, March 25, 2014 - see *R. v. H. & H. Fisheries,* 2014 NSPC 61, paras. 20-38) – Mr. Hartlen pleaded guilty to unspecified offence(s). Over a three-year period, he failed to report 85,700 lbs of halibut and sold it in 35 transactions for a total of $407,000. He had no prior record. On a joint recommendation he was sentenced to a fine of $100,000 and an18 month licence suspension.

- *R v Kelly Osborne* (summary of unreported decision, NSPC, Dartmouth, March 11, 2014 - see *R. v. H. & H. Fisheries,* paras. 20-38) – Mr. Osborne pleaded guilty to unspecified offence(s). Over a three-year period, he failed to report 18,000 pounds of halibut and sold it in 14 transactions for a total of $89,000. He had no prior record. On a joint recommendation he was sentenced to a fine of $60,000.

- *R v John Silver* (summary of unreported decision, NSPC, Dartmouth, October 9, 2013 - see *R. v. H. & H. Fisheries*, paras. 20-38) – Mr. Silver pled guilty to unspecified offence(s). Over two years, he failed to report 13,400 lbs of halibut and sold it in 9 separate transactions for a total of $62,000. He had no prior record. Following a joint recommendation, he was sentenced to a s. 78 fine of $42,000.

- *R v Matthew McMaster* (summary of unreported decision, NSPC, Dartmouth, March 11, 2014 - see *R. v. H. & H. Fisheries*, paras. 20-38) – Mr. McMaster pled guilty to unspecified offence(s). Over two years, he failed to report 27,000 lbs of halibut and sold it in 9 transactions for a total of $123,000.

Following a joint recommendation, he was sentenced to a s. 78 fine of $35,000 and a 6-month licence suspension.

- *R. v Stephen Goreham* (summary of unreported decision, Bridgewater Court, October 22, 2012) – Mr. Goreham committed two offences relating to fishing without a licence and illegal sale/possession of 1,392 lbs of halibut. The summary does not say whether he pleaded guilty or whether he had a prior record. He was sentenced to total fines of $10,000, however, the summary does not say whether these were under s. 78 or s. 79 or both and, was prohibited from participating in any form or manner of fishing or from being on a fishing vessel anywhere in Canada for a 5-year period. His fishing equipment (approximate value $5,000) and the proceeds of the sale ($7,035) was ordered forfeit.

- *R. v. Edward Glen Boutilier* (summary of unreported decision, Bridgewater Court, June 12, 2013) – Mr. Boutilier pled guilty to two offences for failing to comply with licence conditions and illegal sale of fish. Over two-years he was involved in 30 fishing trips where he failed to report and illegally off-loaded 65,549.41 lbs of groundfish. The summary does not say whether he had a prior record. Following a joint recommendation, he was fined $10,000 and prohibited from having a fishing licence for life.

- *R v Elmer Jollymore* (summary of unreported decision, Bridgewater Court, June 12, 2013) - Mr. Jollymore pleaded guilty to two counts of failing to comply with licence conditions, and once count of illegal sale of fish. Over a year, he was involved in six fishing trips involving 32,026.7 lbs of unreported groundfish which he illegally off-loaded. The summary does not say whether he had a prior record. He was fined $42,420.43 relating to the proceeds of the unreported fish and his licence was suspended for one year. No s. 78 fine was imposed.

- *R. v. Hatch*, 2009 NLTD 162 – a plant manager at a large fish plant pled guilty to submitting false reports to DFO and misreporting snow crab landings. He told fishermen and dockside employees how much crab to off-load in the absence of a DSM and how much crab to under-report to DFO. The scheme encompassed 56 fishing trips involving 12 vessels. He was responsible for the under-reporting of 218,700 lbs of crab, worth approximately $218,700. The Crown proceeded by Indictment, so the maximum fine was $500,000. He was sentenced to a fine of $50,000.

- *R. v. Noonan*, 2009 NLTD 163 – the skipper of a crab vessel pled guilty to intentionally misreporting 25,000 lbs of crab over a two-year period. The DSM had been paid to falsify her reports. The total value of the crab was about $50,000. The Crown proceeded by Indictment, so the maximum fine was $500,000. He was sentenced to a fine of $25,000.

  R v Steer, 2013 BCPC 323 - the offender pled guilty to three counts of failing to maintain harvest logs (later consolidated to 1 count) and was convicted after trial of: two counts of offering for sale illegal fish; two counts of failing to maintain the electronic monitoring system; and, three counts of landing ground fish (Halibut and sablefish) without a DSM. Each illegal off-load was estimated at 500-1000 pounds. He was a 36-year-old Captain with a record of two prior fishing offences as well as numerous tickets and warnings from DFO. The Court found a number of aggravating factors, including that he had a reputation for flouting the rules, that he had defrauded the company that employed him and the crew, including a crew member who was a recent immigrant who ended up working for three months for only food and lodging, and he minimized the seriousness of the violations. He had limited ability to pay a fine and only if he could continue fishing. He was sentenced to a licence suspension and prohibition on being engaged in the fishery for ten years, six months in custody, a restitution order of $15,000 to a crew member and forfeiture of a cell phone and seized fish.

[130] The following cases relate to corporate offenders:

- *R v H & H Fisheries Ltd*, 2014 NSPC 61 – The company, a fish buyer, pled guilty to three counts of purchasing illegally caught halibut. Each count related to a separate calendar year. In total, the conduct encompassed 67 separate purchases from four commercial fishers (Mr. Hartlen, Mr. Osborne, Mr. Silver and Mr. McMaster) who had landed the halibut without a DSM. The total quantity purchased was144,100 lbs, valued at $681,800. The company was found to have been directly involved in the scheme. Their conduct was described as “planned and deliberate” (para. 55). The company had no prior record. It was sentenced to monetary orders totalling $393,133.17 comprised of fines under s. 78, totaling $175,000 and a s.79 fine of $218,133.17.

- *R v Ivy Fisheries Ltd*, 2006 NSPC 26 – The company, some employees and directors were found guilty of various fisheries offences after trial. The company and directors were convicted of purchasing, possessing, or selling

illegally caught tuna, valued at over $1,000,000. The company had no prior record. The Court concluded there had been planning and a co-ordinated effort by the directors to maximize profits regardless of the rules and regulations (para. 89). Total fines under s. 79 were apportioned between offenders. The company's portion was $625,909. The company was also fined $25,000 under s. 78 and its licence was suspended for one year.

- *R v Deep Cove Aqua Farms Ltd*, (summary of unreported decision, Bridgewater Court, July 15, 2013 - see *R. v. H. & H. Fisheries*, para. 68) – The company pled guilty to purchasing, possessing or selling illegally caught groundfish. The offence(s) captured 28 transactions over a seven-year period involving three commercial ground fishers. The total unreported catch was 60,000 lbs with a value of $40,000. The summary does not include whether the company had a prior record. Following a joint recommendation, the company was sentenced to a fine under s. 78 of $35,000

- *R v Fisherman's Market International Inc,* (summary of unreported decision. NSPC, Shelburne, December 4, 2013 - see *R. v. H. & H. Fisheries*, para. 68) – The company pled guilty to purchasing, possessing or selling illegally caught ground fish. The offence(s) captured 12 transactions over approximately one year involving one commercial fisher. The total unreported catch was 9,750 lbs with a value of $53,000. The summary does not include whether the company had a prior record. Following a joint recommendation, the company was sentenced to a fine under s. 78 of $35,000.

- *R v Yarmouth Bar Fisheries Ltd*, (summary of unreported decision, NSPC, Yarmouth, June 24, 2013 - see *R. v. H. & H. Fisheries*, para. 68). The company pled guilty to purchasing, possessing, or selling illegally caught ground fish. The offence(s) captured 74 transactions over two years involving four commercial ground fishers. The total unreported catch was 22,600 lbs with a value of approximately $100,000. The summary does not include whether the company had a prior record. Following a joint recommendation, the company was sentenced to a fine under s.78 fine of $60,000.

- *R v Labrador Sea Products Inc*, 2009 NLTD 163 - The company pled guilty to falsifying documents relating to underreporting crab landings, a quota-based fishery. The offence captured 19 incidents of under-reporting over a three-year period. The total value was $200,000. The company had no prior record. The

> Court noted that the magnitude of the scheme was unprecedented in the industry. The plant manager was also a director of the company and was on site so the company was directly involved in the offence. The company's actions were serious and deliberate. The Crown proceeded by Indictment, so the maximum fine was $500,000. Following a joint recommendation, the company was fined $275,000 under s. 78 and the plant manager/director was fined $50,000.

[131] The Defence has also referred to sentencing cases from other regulatory contexts. Specifically noting that the fines sought by the Crown in this case are higher than those imposed in many Occupational Health and Safety cases involving fatalities. The Defence submits that it is not rational, legally or from a policy perspective, that Mr. Henneberry should receive a fine for these offences that would be higher than what would be imposed if he had been found guilty of an offence relating to the death of a crew member. I appreciate the superficial attraction of that argument and agree that the maximum penalties available for other types of regulatory offences is relevant to my assessment of the relative objective gravity of these types of offences. However, in my view, sentencing precedents from the Occupational Health and Safety context are not very helpful in determining the appropriate sentence in this context. The policy considerations, the purpose of the legislation and the impact of the offences are just too different from each other to allow for a meaningful comparison.

Restraint and Totality

[132] Finally, s. 718.2 requires me to consider the principle of restraint. This principle means that a sentence should not be more punitive than is required to respond to the principles of sentence (*Criminal Code,* s. 718.2; and, *Parranto,* para. 10). It requires, in both the criminal and the regulatory context, that a sentence be a measured response to crime (*R. v. Nova Scotia Power, Inc.*, 2008 NSPC 72, para 56). It "reflects the inherent notion of fairness that although sentencing must at times occur in the public interest, punishment should not be more aggressive than the public interest requires." (*R. v. New MexCanada Inc.*, 2019 ONCA 30, para. 82). This principle can influence the quantum of a fine, and "applies as much in sentencing for regulatory offences as it does in the criminal sphere" (*New MexCanada Inc.*, para. 82).

[133] The principle of totality is a form of restraint and a function of proportionality that applies when consecutive sentences are imposed. (*R. v. M.*

(C.A.), [1996] 1 S.C.R. 500, para. 42; and, *Parranto*, para. 251). It says that combined sentences should not be “unduly long or harsh” (s. 718.2(c)). The terms "long and harsh" as used in the *Criminal Code* are generally considered in the context of imprisonment. However, the principle of totality applies in a modified form to regulatory offences where fines are imposed (*Alberta Health services vs. Bhanji*, 2017 ABCA 126, para. 48). In that context, it means that, cumulatively, the fines for each offender should reflect the gravity of the whole of the offending conduct.

[134] When imposing a fine, I also have to consider the offender’s ability to pay. I have not been provided with any information suggesting the corporate offenders would not be able to pay the fines requested here. For Mr. Henneberry, I have information about his income and other financial obligations suggesting that the fines sought by the Crown, totalling almost his annual income, would have a significant impact on him.

[135] The Defence submits that the fines sought by the Crown here are harsh and excessive, especially when combined with the suspensions/prohibitions that would mean, for Mr. Henneberry, that he could not engage in the only employment he has ever known.

Application of Principles to Specific Sentencing Recommendations

[136] The only areas of dispute are the amount of the fine for each offender, whether there should be any suspension/prohibition and, if so, for how long.

Appropriate Fine for Mr. Henneberry

[137] The Crown submits that the appropriate fine for Mr. Henneberry is $140,000, broken down as follows:

- $20,000 for Counts 2 and 3;
- $50,000 for Count 4;
- $70,000 for Counts 5 and 6 (trip 3 - $20,000, trip 5 - $20,000, trip 7 - $30,000),

[138] When I examine Mr. Henneberry’s overall offending conduct, consider Mr. Henneberry’s circumstances and the principles I am required to apply, including

deterrence, proportionality, parity, and restraint, the fine sought by the Crown cannot be justified.

[139] First, a fine of $140,000 in these circumstances is outside the range demonstrated by the cases I have been provided with. I recognize that ranges "are guidelines rather than hard and fast rules" (*Nasogaluak*, para. 44). Ultimately, a sentence has to be proportionate. However, those concepts are not in conflict. As was said by the Supreme Court of Canada in *Friesen*, at para. 33:

> In practice, parity gives meaning to proportionality. A proportionate sentence for a given offender and offence cannot be deduced from first principles; instead, judges calibrate the demands of proportionality by reference to the sentences imposed in other cases. Sentencing precedents reflect the range of factual situations in the world and the plurality of judicial perspectives. Precedents embody the collective experience and wisdom of the judiciary. They are the practical expression of both parity and proportionality.

[140] Sentencing ranges are important. Situating a case within the range of sentences generally imposed for a given offence promotes consistency, fairness and rationality in sentencing.

[141] Mr. Henneberry's offending conduct is that he inaccurately logged and hailed weight of groundfish on four trips over approximately one year and on one of those trips, he illegally off-loaded $40,000 worth of halibut, intending to sell it.

[142] The inaccuracies included instances where he over-estimated weight and instances where he under-estimated weight. Most serious are the instances where he under-reported weight and the illegal off-load.

[143] While the comparative gravity of these offences includes consideration of many factors, one measure of seriousness of an offence involving an under-report or illegal off-load, is the value of the under or non-reported catch. For an over-report, the extent of the inaccuracy is a measure of seriousness.

[144] For Mr. Henneberry, the total value of the under-reported catch and the illegal off-load is approximately $40,280 (the under-reported hake in trip 3 and the under-reported and illegally off-loaded halibut in trip 7). For trip 3, the Crown seeks a fine of $20,000. For the illegal off-load during trip 7 (count 4), the Crown seeks a fine of $50,00. For the related under-report for the same trip and the same fish (Counts 5 and 6), the Crown seeks a fine of $30,000. I appreciate that trip 3 also included an over-report of 51.6 lbs of cod, a discrepancy of approximately

21%. However, for that conduct and the under/non reporting/recording of $40,280 worth of fish, the Crown is seeking a total fine of $100,000, more than twice the value of the unreported/recorded catch.

[145] As a percentage of value of the under and non-reported catch, that is well above the fines imposed in any of the cases provided to me.

[146] In all but one of the cases I was provided with, the s. 78 fines were lower than the value of the unreported or under-reported catch, even where the offenders had prior records. One exception is *Halliday*, an under-hail case. In that case, the value was $5,775 and the s. 78 fine was $8,000, however, there was no s. 79 fine, licence suspension or prohibition. In *Goreham*, a $10,000 fine was imposed where the value of the catch was $7,035, however, the summary does not indicate whether the fines were imposed under s. 78 or s. 79 or both.

[147] In the cases summarized above for individuals whose offending conduct included under reporting or illegal off-loads, the s. 78 fines ranged from 14% to 67% of the value of the illegally off-loaded/sold fish. The offenders in *Osborne, Silver, McMaster, Hartlen, Hatch, Boutilier* and *Noonan*, pleaded guilty and, other than Mr. Boutilier where his record is not included, had no prior record. However, each of their offences involved substantially more transactions and a higher value of illegally obtained/sold fish.

[148] The offenders in *Gillis* and *Casey Henneberry*, both had prior records and Mr. Henneberry did not plead guilty. Their s. 78 fines were, respectively, 22%, and 14% of the value of the illegal catch. In some respects their offences were less serious, involving only one transaction and, for Mr. Gillis, the value of the illegal fish was lower than in the present case.

[149] None of the cases provided deal with sentencing for inaccurate hails or logs where the recorded/reported weight is over that of the landed weight.

[150] Some of the discrepancies in the over-reporting in this case were high, indicating a higher level of carelessness by Mr. Henneberry. However, the quantities of cod and hake for trip 3 in counts 5 and 6 were low.

[151] Mr. Henneberry did not plead guilty, he has a prior related record, he breached conditions of licences during four trips, including the illegal off-load which is particularly serious. Even with those aggravating factors, the caselaw

simply does not support a fine that is more than twice the value of the illegally off-loaded/under-reported catch.

[152] Having regard to all the circumstances, Mr. Henneberry's overall conduct is most similar to that of Mr. Osborne, Mr. Silver, Mr. McMaster and Mr. Jollymore. They were each involved in more incidents with higher total values, but some had no prior records and all had the benefit of pleading guilty. Their fines ranged from $10,000 to $60,000.

[153] Given Mr. Henneberry's relatively recent sentencing for a similar offence, I also have to consider what is colloquially referred to as the 'jump principle'. That term incapsulates the principle that sentences for a repeat offender should increase gradually, rather than in large leaps (*Wright,* para. 7; adopted by reference in *Mauger,* para. 66). Of course, that principle is also subject to proportionality. A subsequent sentence for the same offender who commits the same offence may be increased more dramatically if the circumstances of the subsequent offence are more serious. Mr. Henneberry's last sentence was for a 2017 offence and, on appeal, resulted in a fine of $10,000, forfeiture of the catch/proceeds but no licence suspension or prohibition. The sentences sought by the Crown here are substantially above that sentence.

[154] The circumstances of Mr. Henneberry's last offence are summarized above. In the case before me, Mr. Henneberry has committed further offences within a relatively short period of time after conclusion of that matter and does not have the benefit of a guilty plea. However, his prior offence involved a more significant discrepancy and higher quantity of under-reported fish than any of the individual inaccurate hail or log offences I am dealing with here. In my view, the offences captured by Counts 2 and 3 are less serious than his prior offending conduct, the offences captured by Counts 5 and 6 are more serious since they encompass three trips. The illegal off-load in Count 4 is more serious and a significant escalation of his prior offending behaviour.

[155] Ultimately, I am required to impose a fine that, cumulatively, reflects the gravity of the whole of Mr. Henneberry's offending conduct and respects the principles of sentencing. To do that, I am instructed to first determine the appropriate sentence for each individual conviction. All fines will be cumulative not concurrent, so I must then take a final look at the total sentence and reduce it if required to reflect totality (*R. v. Adams*, 2010 NSCA 42; and, *R. v. Laing,* 2022 NSCA 23).

[156] Prior to consideration of totality, I would impose the following fines: Counts 2 and 3 – $9,000 per count; Counts 5 and 6 - $15,000 per count; and, Count 4 - $35,000. The total resulting fine would be $83,000. In my view that is harsh and excessive, given Mr. Hannebery's overall offending conduct, particularly in light of the significant overlap between counts 2 and 3 and between counts 5 and 6, and his personal circumstances. It would also result in a sentence that is above the range for similar offences when I compare the overall offending conduct.

[157] I have concluded that a proportionate fine for Mr. Henneberry's offending conduct, having regard to the principles of sentencing would be a fine of $60,000. To achieve that result, the fines will be reduced to $5,000 for each of Counts 2 and 3, $10,000 for each of Counts 5 and 6 and $30,000 for Count 4.

Appropriate Fine for ALS and Law Fisheries

[158] Both companies failed to do anything to oversee their licences in circumstances where they should have been extra vigilant. However, their directors were not on the vessel, and I am not persuaded they were otherwise involved in the offences, were purposefully indifferent to their obligations or knew the offences were occurring. Neither company has a prior record, but the directors of ALS and two of Law Fisheries' directors have related but dated records. There is no evidence of any direct financial benefit, and any indirect benefit is not quantifiable. They do not have the benefit of a guilty plea.

[159] ALS's offences relate to an inaccurate hail and inaccurate log of weight on one trip. On that trip, the recorded/hailed weight was over the actual weight by 3291 pounds. For that offence, the Crown seeks a combined fine under s. 78 of the *Fisheries Act* of $30,000. The Defence submits that a fine of $2,000.00 is sufficient to address the sentencing principles.

[160] Fines of $35,000, similar to the fine sought by the Crown for ALS, were imposed in *Deep Cove Aqua Farms* and *Fishermans Market International*. Both of those companies pled guilty; however, their offences were much more serious than those committed by ALS. Deep Cove Aqua was engaged in 28 transactions over a 7-year period involving the selling of 60,000 lb of unreported fish with a value of $40,000. Fisherman's Market International was involved in 12 transactions over a year relating to 9750 lbs of unreported catch with a value of $53,000.

[161] Further, ALS has the additional collateral financial consequence of having their vessel held by DFO for three years. The Crown submits that is not relevant

because the actions of DFO were lawful. Notwithstanding that, it is still a financial consequence born by the company.

[162] In my view, an appropriate fine for ALS for Counts 2 and 3, prior to totality would be $7,500 per count for a total of $15,000. However, given the significant overlap in conduct, I am satisfied that fine should be reduced to reflect totality and more accurately reflect the company's overall offending conduct. To achieve that, I will reduce the fine for each count to $5,000 for a total fine of $10,000.

[163] For Law Fisheries, the offences are more numerous, more serious and their lack of diligence continued for a longer period. Specifically, they are responsible, as licence holders for: two illegal off-loads of halibut, an unknown quantity on May 8, 2020, and $40,000 worth on June 12, 2020 (Count 4); and, four incidents of inaccurate reporting between February 2020 and June 2020, including over and under reporting (Counts 5 and 6). The under-reports relate to $280 worth of hake on trip 3, about $65 worth of hake on trip 6, and the under-report of halibut on trip 7 the value of which is captured in count 4. The total s. 78 fine sought by the Crown for Law Fisheries for these offences is $180,000.

[164] Again, that fine is not supported by the cases that have been provided to me. Fines of over $100,000 have been imposed against companies for fisheries offences. However, that has been in circumstances involving more transactions, higher value and/or where the company has been directly involved in the offending conduct: *Labrador Sea Products* – 19 incidents of under-reporting with a total value of $200,000 resulting in a fine of $275,000 where the company was directly and deliberately involved; and *H & H Fisheries Ltd*. – 67 incidents of purchasing illegally caught lobster valued at $681,800 where the company was found to be directly involved resulting in s. 78 fines of $175,000. In these two cases, the offenders pleaded guilty.

[165] Much lower fines have been imposed for similar or more serious conduct. For example: $35,000 fines against each of *Deep Cove Aqua Farms Ltd* and *Fisherman's Market International Inc*; and, a $60,000 fine against *Yarmouth Bar Fisheries Ltd* who was involved in 74 transactions relating to approximately $100,000 worth of illegally caught fish.

[166] Law fisheries did not plead guilty and at least some of these companies did. However, in my view the absence of a guilty plea cannot justify the disparity in sentence that would result between this case and those others if I were to impose the sentence sought by the Crown.

[167] Prior to consideration of totality, I would impose the following fines on Law Fisheries: Counts 5 and 6 - $20,000 per count; and Count 4 - $40,000. The total fine would be $80,000. In my view that is harsh and excessive, given the company's overall offending conduct, particularly considering the significant overlap between counts 5 and 6. It would also result in a sentence that is above the range for similar offences.

[168] I have concluded that a proportionate fine for Law Fisheries' offending conduct, having regard to the principles of sentencing I've addressed would be a fine of $55,000. To achieve that result, the fines will be reduced to $10,000 for each of counts 5 and 6 and $35,000 for count 4.

Licence Suspension / Prohibition

[169] The next question is whether a licence suspension is required for either Mr. Henneberry or Law Fisheries. For Mr. Henneberry, the Crown seeks a 2-year licence suspension and prohibition on being engaged in the fishing industry.

[170] Suspensions have been imposed for even first offenders where their offending conduct includes repeated violations (E.g. *McMaster* and *Hartlen*) and for *Boutilier* and *Jollymore*, where it is unknown whether there was a prior record. They were also imposed for less serious offences where there is a prior record (Eg. *Goreham* and *Steer*).

[171] Here, while I appreciate that Mr. Henneberry's offences are not as serious as many of the cases that have been provided to me, given his prior record, the number of incidents involved in this case and his level of personal culpability for the illegal off-load, I am satisfied that a licence suspension/prohibition is warranted to address specific and general deterrence. He has been fined in the past, including relatively recently, and has not been deterred.

[172] However, given that this will be his first suspension, the significant fines he will have to pay and the overall circumstances, I am not satisfied that a 2-year suspension is warranted.

[173] I recognize that lengthier suspensions have been imposed in some cases. For example, in *Steer* and *Boutilier*. In my view, *Steer* is an unusual case and not in line with sentences imposed in the Atlantic region. Mr. Steer had no ability to pay a s. 78 fine and was sentenced to 6 months in jail along with a 10-year suspension/prohibition. The quantity of fish involved was less than in this case.

However, there were aggravating factors that are not present here. The Court found that Mr. Steer was a "threat to the health of the fishery".

[174] Mr. Boutilier was prohibited from fishing for life as a result of a joint recommendation. His offences were serious, but the brief summary I've been provided with does not explain why that measure was considered appropriate.

[175] The closest case factually is that of *McMaster* who received a 6-month suspension. His offence(s) were more serious, involving 9 transactions with a total value of $123,000. However, unlike Mr. Henneberry, he had no prior record and had pleaded guilty.

[176] I am satisfied that the circumstances here warrant a suspension and prohibition from fishing for a period of 6 months.

[177] For Law Fisheries, the most relevant precedent for a licence suspension is *Ivy Fisheries* who was also convicted after trial. The other precedents provided for companies involve fish buyers and the Crown advises that the lack of suspension in those cases is explained because a fish buyers licence cannot be suspended under the *Fisheries Act.* In *Ivy Fisheries,* the company's licence was suspended for one year. However, the offences were more serious, and the company's conduct was found to be deliberate and coordinated.

[178] In my view, a licence suspension for Law Fisheries is not justified by precedent or required to satisfy the principles and purposes of sentencing in this case.

Summary of Sentences

[179] Therefore, the sentences will be as follows:

For Mr. Henneberry,

- A fine of $60,000 under ss. 43.4 and 78 of the Fisheries Act with five years to pay:
    - Count 2 – $5,000
    - Count 3 – $5,000
    - Count 4 – $30,000

- Count 5 – $10,000
- Count 6 – $10,000

- A fine of $209.25 under s. 79 of the *Fisheries Act* relating to the under-reported hake on the April 22 – May 8 trip (Count 6);
- A forfeiture order under s. 72 of the *Fisheries Act* for $39,916.35, the proceeds from the sale of halibut seized on June 12, 2020, and of 213 pounds of unsold halibut seized on June 12, 2020 (Count 4);
- An order under s. 79.1 canceling all fishing licences or permits held by Mr. Henneberry and prohibiting him from applying for any new licences or permits for 6 months (Count 4); and,
- An order under s. 79.2 prohibiting Mr. Henneberry for a period of 6 months from: being on board any vessel licenced to engage in any commercial or aboriginal fishery in Canadian or American waters; from possessing or acquiring any interest, legal or equitable, absolute or contingent, in any such vessel or licence; and, from possessing any commercial fishing gear of any kind (Count 4).

For ALS, a total fine under s. 78 of $10,000 with one year to pay:

- Count 2 - $5000
- Count 3 - $5000

For Law Fisheries,

- a total fine under ss. 43.4 and 78 of $55.000 with three years to pay:
    - Count 4 - $35,000
    - Count 5 - $10,000
    - Count 6 - $10,000
- A forfeiture order under s. 72 of the *Fisheries Act* of the proceeds and halibut seized on June 12th (Count 4).

Elizabeth Buckle, JPC.

PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. A.L.S Fisheries Ltd. NSPC 43

Date: August 8, 2023
Erratum Date: September 13, 2023
Docket: 8503921, 8503922, 8503924
8503925, 8503926, 8503927
8503931, 8503932, 8503934
8503935
Registry: Halifax

Between:

HIS MAJESTY THE KING

v.

A.L.S. Fisheries Ltd.

Law Fisheries Ltd.

Casey Henneberry

ERRATUM

Judge:	The Honourable Judge Elizabeth Buckle,
Heard:	March 21, 2023
Decision	August 16, 2023
Charge:	43.4(3) x 3 *Fisheries Act*; 78 x 2 *Fisheries Act*
Counsel:	Angela Nimmo, Lee-Ann Conrod for the Crown Trevor McGuigan for ALS Fisheries and Law Fisheries Stan MacDonald, Jack MacDonald for Casey Henneberry
Erratum	The following paragraph has been corrected: In paragraph, 169, reference to "the Defence seeks a 2-year license suspension and prohibition" has ben replaced with "the Crown seeks a 2-year license suspension and prohibition"