



SPORTFISHING DEFENCE ALLIANCE

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REPORT ON LEGAL ACTION AS AT NOVEMBER 27, 2005

Bill Otway

On November 22nd prior to my returning home following our successful fundraising dinner I had an opportunity to meet with our legal counsel Keith Lowes and Ed Saferik, the president of Ocean Fish and the key person in delivering support from the commercial industry to our cause.

We went over the current situation and discussed the outlook for 2006 and beyond. Keith had prepared a brief outline of key issues on the horizon. Specifically as they relate to legal issues.

The first is the Kapp Appeal due for hearing on December 5th. This is primarily a case dealing with a commercial fishing issue but the Crown has taken the position in their submission that the Canadian "right to fish" no longer exists and has been replaced by the "Fisheries Act". It is on this issue that the Sportfishing Defence Alliance has taken an active part as an intervener in this case. Currently the Crown is giving indications that they are withdrawing their position regarding the "right to fish" but there is nothing definite on this and we are still scheduled to be in court on the 5th of December. Our presentation could come as early as the afternoon of the 5th or the morning of the 6th. This case is open to the public and any members or friends who can make it would be most welcome and provide an indication of the fact there is support out there for our position.

On January 16, 2006 the case of R vs Hunt is slated for hearing. This is a claim dealing with the Northern portion of Vancouver Island. This is the first of 4 such cases slated for 2006. Hunt and other named chiefs are taking action on behalf of themselves and the Kwakiutl Nation. Their claim is basically that they have ownership of all land and marine resources within their claimed territory and they have the right to harvest and dispose of these resources as they see fit. This would include the commercial sale of any and all marine resources. In addition the claim is made that they and only they have the right to decide which if any and how much of any resource may be harvested and by whom. No harvest could be undertaken within their territory without their express permission. They are taking the position that the Douglas Treaty, to which they are signatories, affirms these rights and the governments of Canada and B.C. have failed to live up to the terms of this Treaty.

On March 30th, 2006 a similar case brought by the Ahousaht Band and 9 others on the West Coast of Vancouver Island is slated to be heard. As noted the claims here are similar to those of the Kwakiutl except that there is no Douglas Treaty involved and the

Bands here are claiming only the marine resources. They are claiming these rights over the land and waters from Kyuquot Channel, southeast along the height of land on Vancouver Island to Sheringham Point south of Port Renfrew and west into the Pacific Ocean. The claim is that “At or before the time of Britain’s assertion of sovereignty over the Territories (Sovereignty”) , each of the plaintiff Nations (the “Nuu-chah-nulth Nations”), owned and occupied to the exclusion of others, offshore and inshore water bodies, foreshore areas, rivers lakes and streams within that Nation’s Territory (the “Fishing Territories”). Since Sovereignty, each Nuu-chah-nulth Nation has held aboriginal title to its Fishing Territory.”

On May 8th 2006, a criminal case R. vs Reid is slated for court and deals with specifically fishing for and selling Black Cod but has been expanded by the defense into a broader issue similar to the previous 2 mentioned. This is a criminal case and as noted is centered on members of the Heiltsuk Band fishing for and selling Black Cod without a licence. Members may remember that this Band is the only one to date who has won a Supreme Court ruling giving them the “right” to harvest and sell roe on kelp. As noted this case is being expanded to cover all manner of marine resources and so falls in with the other cases noted.

Then on October 30th 2006 the Lax Kw’alaams Indian Band claim is slated for court. This deals with the Skeena River and foreshore areas in the Prince Rupert area and all the marine resources therein as well as land based fishing sites. The claims are similar to all the others noted and basically advises that the Band in question owns the resource and the rights to harvest and sell as they see fit.

All these cases are critical and if we lose one we could lose them all. More importantly we would lose our “rights” as Canadians. We know the governments, both Federal and Provincial will not be fighting for our rights in these cases, they have not done so in the past and in fact have been, as in the Kapp case, working to take away our rights. This leaves us with very little choice but to get involved and stay involved.

We and everyone in B.C. needs to understand that this is not just about Salmon, and in one case at least not just about marine resources. It covers forest resources, water rights, minerals and in each case, control of all the marine resources; clams, oysters, prawns, crabs, cod, halibut, steelhead, trout and salmon. There is just too much at stake here for the Sportfishing Defence Alliance not to be involved.

We are trying to set up a meeting with Keith and all the key representatives of the commercial industry during the week of December 5th while the Kapp case is on so we can map out our firm plans.

Other issues we see we have to deal with currently are of the course the Treaty Process wherein the government is working hard to give away everything we win in court, the so-called “Reform” of the commercial fishery which is nothing more than a back door deal to turn the whole of the commercial fishery over to First Nations and exclude the “other” Canadians.

And finally, recent developments on the Fraser River, I believe make it imperative that we hold DFO to the actual numbers of fish the First Nations have agreed to as their FSC needs and hold them accountable for failing to do that in 2005.

If it can be arranged I am hoping to be able to set up a meeting for the SDA executive and Keith Lowes the week of December 5th so we can all get our information first hand and make some informed decisions about the future.

I have to check with Keith regarding the likely free time from the court case that week and then get back to the members. I would appreciate if members could advise me of their availability that week.

Bill Otway, President
Sportfishing Defence Alliance.