

Federal Court



Cour fédérale

**Date: 20150601**

**Docket: T-1125-14**

**Citation: 2015 FC 683**

**Ottawa, Ontario, June 1, 2015**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**BRIAN GIROUX, WILLIAM HATT,  
WINFRED RISSER, JACK B. ALLEN,  
TOGETHER AS THE WEST 65 30 SCALLOP  
QUOTA GROUP ASSOCIATION**

**Applicants**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for judicial review pursuant to Section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, in which the Applicants seek injunctive relief and a writ of *mandamus* with respect to the Minister of Fisheries and Oceans Canada [Minister] decision to create a new

Scallop Fishing Area [SFA] by issuing conditions to existing licenses without lawful authority to do so.

[1] In addition, the Applicants filed a motion for leave to file an additional affidavit on April 23, 2015. The Respondent contested that motion but at the beginning of the hearing of the application for the judicial review on May 13, 2015, she agreed to the filing of the additional affidavit.

## II. Facts

[2] Following the collapse of scallop stocks in the 1970s and 1980s, the Department of Fisheries and Oceans created SFAs by way of amendments to the *Atlantic Fishery Regulations, 1985*, SOR/87-672. As a result SFAs 28 and 29 were created and were separated by the 43° 40' North Latitudinal line (see Schedule "A", page 205, Applicant's Record). The same *Regulations* were further amended in 1994 to divide SFA 28 into four parts, SFA 28A to 28D, see: SOR/94-59. As for SFA 29, it was never formally divided; however, five scallop production areas (SPA) were established for the better management of the fishery.

[3] The Applicants, collectively known as the West 65 30 Scallop Quota Group Association, are members of the East of Baccaro fleet who fish in SFA 29 East and West. They are opposed to the way by which members of the Full Bay Fleet, a term used for all fishers from the Bay of Fundy region, were allowed to fish in SFA 29 West.

[4] The Applicants allege that Full Bay Fleet fishers have historically fished in SFA 28. However, because of excessive fishing, they have since depleted the stock of scallops in SFA 28. As a result, the Minister gradually permitted the Full Bay Fleet to fish in SFA 29 West.

[5] According to the Applicants, in 2013 the Minister issued for the first time licenses for SFA 28 to the Full Bay Fleet fishers that included, as licence conditions, permission to fish in areas of SFA 29 West. The result was that in issuing licences for SFA 28 with licence conditions to fish in SFA 29 West, the Minister was in fact issuing a licence to fish in one SFA through the condition of a licence to fish in another SFA. These licence conditions according to the Applicants exceed the Minister's discretion to issue licences which is broad, but not unfettered.

[6] The Respondent raises three preliminary issues. First, she argues that the Court should dismiss the application because the Applicants have no standing. Second, she alleges that the Applicants are submitting a new ground for review that has not been previously mentioned in their Notice of Application. Third, she underscores that the Applicants' application is out of time.

### III. Analysis

[7] The Court is of the view that it is unnecessary to address the Respondent's preliminary issues because the application for judicial review cannot succeed. The Minister's decision is reasonable and is not in breach of a principle of natural justice and or viewed as being made in bad faith.

[8] Through the application of the *Department of Fisheries and Oceans Act*, RSC 1985, c F-15, the Minister is awarded broad discretion to manage the fisheries. This discretion includes the issuance of fishing licences; see *Fisheries Act*, RSC 1985, c F-14, s 7(1).

[9] In *Malcom v Canada (Fisheries and Oceans)*, 2014 FCA 130, the Court established the following general principles at para 3, 24, 40, 52:

Para 3: .... in exercising discretion to reallocate part of a TAC (Total Allowable Catch) from one fishery sector to another, the Minister may take into account social and economic considerations...

Para 24: the federal Court of Appeal agreed with a Federal Court Judge that "there is nothing preventing the Minister from favoring one group of fishermen over another"

Para 40: The *Fisheries Act*, R.S.C. 1985, c. F-14 grants the Minister wide and unfettered discretion to manage the Canadian fisheries taking into account the public interest. As noted by Major J. in *Comeau's Sea Foods* at pp. 25-26, Canada's fisheries are "common property resource" belonging to all the people of Canada, and it is the Minister's duty under the *Fisheries Act* to manage, conserve and develop the fisheries on behalf of Canadians in the public interest.

Para 52: As I have already noted, the Minister has broad authority and discretion under the *Fisheries Act* to manage the fisheries in the public interest..... the Minister may, among other factors, take into account social and economic factors in managing and allocating a fishery resource.

[10] In the case at bar, the Applicants are contesting the licensing of fishing in SFA 29 West on the basis of license conditions issued to the Full Bay Fleet fishermen.

[11] The Court agrees with the Respondent that the Applicants' argument that the Minister acted unlawfully is not supported by the Record, nor is it supported in law. In fact, the licences

submitted as evidence by the parties make it clear that the licences issued to the Full Bay Fleet are for SFA 28 and SFA 29 West. The licence conditions contained within the licences simply state the geographic boundaries within each SFAs where the Full Bay Fleet may fish. This approach is compatible with paragraph 22(1)(c) of the *Fishery (General) Regulations*, SOR/93-53, which provides that the Minister may specify in a licence any condition pertaining to “the waters in which fishing is permitted to be carried out”.

[12] It is well known that decisions of a discretionary or policy nature attract the standard of reasonableness, see: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 51. This standard provides for a range of possible and acceptable outcomes which are defensible in respect of the facts and the law see: *Dunsmuir* at para 47.

[13] Considering the facts and the law applicable to the case at hand, the Court finds that the Minister’s actions are within the powers she is given by the law and fall within the range envisioned in *Dunsmuir*. Also, the evidence presented by the Applicants does not support the characterization of a decision made in bad faith or in breach of a principle of natural justice.

[14] The parties agreed that a sum of \$2,000.00 for costs should be awarded to the successful party.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. The Applicants shall pay to the Respondent a sum of \$2,000.00 for costs.

“Michel Beaudry”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1125-14

**STYLE OF CAUSE:** BRIAN GIROUX, WILLIAM HATT, WINFRED  
RISSER, JACK B. ALLEN, TOGETHER AS THE WEST  
65 30 SCALLOP QUOTA GROUP ASSOCIATION AND  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HALIFAX

**DATE OF HEARING:** MAY 13, 2015

**JUDGMENT AND REASONS:** BEAUDRY J.

**DATED:** JUNE 1, 2015

**APPEARANCES:**

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