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Herring roe fisheries disputes settled for this year - Patrick Brown

This year's fishery areas for the commercial roe herring fishery have finally been settled by a precedent-setting court action, followed by negotiations between commercial fishers and First Nations. The three areas in dispute were West Coast Vancouver Island, Haida Gwaii, and the Central Coast. There are five herring fishery areas on the coast.

Last December, the federal Minister of Fisheries & Oceans Gail Shea decided that the roe herring fishery in all five of BC's coastal areas should be opened this year.

It would have been the first time West Coast Vancouver Island, Haida Gwaii, and the Central Coast were opened since 2006.

Two other coastal areas, the Strait of Georgia and Prince Rupert, have already been open for the roe fishery in recent years, including 2014.

Officials Advise Against

However, also last December, in an internal document, Fisheries & Oceans officials had recommended to the Minister that commercial herring roe fishing in the three areas should remain closed until 2015; leaving the first nations 'spawn on kelp' fishery (see box, opposite) as the only catch. Staff cited the biological status of the stocks, the 'manageability' of the fisheries, and 'legal risk' around First Nations rights recognition as reasons.

Importance of Herring

Historically, large herring harvests have been an important part of the coastal economy, both for commercial fishers and first nations. Herring are also a foundation species for the coast, supporting the entire ecosystem.

An SFU archeological study of herring remains on the BC coast, as far back as 10,700 years, indicates massive abundance of stocks and widespread spawning. However, continued

overfishing with little attention to the renewal of the stock has led to inadequate stock levels, a 20-30 year downward trend in spawning biomass, and then the closure of the roe fishery.

Since 2006, the West Coast Vancouver Island, Haida Gwaii, and Central Coast stocks have shown signs of recovery, but forecasts indicate that stocks still remain very close to Fisheries & Oceans 'cut-off' level.

TWO FISHERIES

Roe Herring Fishery

The commercial harvest is carried out by large commercial fishing vessels: netting large quantities of herring, separating the males and the females, and removing the roe from the females, for sale. The remains of the females, and the males, are sold for fish meal. The female herring roe fetches a good price on Asian markets.

Spawn On Kelp Fishery

In contrast, the sustainable 'spawn on kelp' harvest is carried out in sheltered waters by submerging tree branches in the water so that the herring will lay their eggs on the trees, leaving the trees for a few weeks, and then raising the trees and harvesting the eggs. It also occurs on kelp and eel grass. The herring live to spawn another year.

SOK is a traditional BC coastal First Nations harvest for food, social, and ceremonial purposes as well as a commercial fishery.

The SOK fishery occurs in all of the major stock assessment areas for Pacific Herring except the Strait of Georgia, where there is a lack of suitable kelp.

A decision to open the roe fishery involves, first, the adequacy of biomass, which must be sufficient to provide roe for the renewal and growth of BC's coastal herring stocks. Secondly, the division of the herring so as to provide for adequate quantities for the 'spawn on kelp' commercial process, managed by First Nations.

First Nations Response

Once Minister Shea had announced the opening of the three fisheries, the Nuu-chah-nulth First Nations group initiated a Federal Court action, seeking an injunction opposing the Minister's decision covering the West Coast Vancouver Island region.

The Nuu-chah-nulth Tribal Council expressed the view that no commercial roe herring fisheries should occur on the west coast of Vancouver Island. They would only support food, social and ceremonial harvest, and the spawn-on-kelp economic harvest.

The Minister, for her part, claimed that her decision was 'a legitimate fishery backed by solid fisheries science.'

In ruling in favour of the Nuu-chah-nulth and against DFO, Federal Court Judge Leonard Mandamin prohibited DFO from opening the herring roe fishery on the West Coast Vancouver Island area. The minister's decision was not science-based, he said. He criticized DFO, accusing them of 'fudging the numbers'.

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A previous decision from the Supreme Court of Canada had confirmed the rights of the five Nuu-chah-nulth Nations (Ahousaht, Ehattesaht/Chinehkint, Hesquiaht, Mowachaht/Muchalaht, and Tla-o-qui-aht) to a commercial herring roe harvest.

Knock On Effect

Following the Federal Court decision against Minister Shea, the Haida Nation threatened similar court action and they subsequently reached an agreement with representatives of the commercial fishery to postpone any fishery for a year.

That left the Central Coast, where the Heiltsuk had indicated clearly that, in the absence of any agreement, they would be prepared to 'do what is required in order to protect herring stocks'.

Some twenty commercial fishing boats tied up in Shearwater, awaiting the opening. Over twenty RCMP officers, in six boats, arrived at Denny Island, clearly anticipating trouble. When five commercial vessels anchored in Kitsoo Bay, centre of the Heiltsuk 'spawn-on-kelp' harvest, letters were delivered to the boats by the Heiltsuk. Four left, with the fifth some time later.

DFO opened a fishery on the west side of Aristazabal Island, allowing the commercial fleet to harvest a good share of the 750 ton allowable quota.

Commenting on the Heiltsuk achievement, BC Green Party Leader Adam Olsen said, 'The Kitsoo Nation has stood firm in defending their land and water, and we applaud the peaceful resolution they have achieved.' 'Today marks an important victory for First Nations rights, and for the ecological integrity of our coast.' 