

First Nations Fisheries Council

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FIRST NATIONS
FISHERIES COUNCIL

November 16, 2010

David McCallum
Aquaculture Management Branch
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Dear Mr. McCallum,

The B.C. First Nations Fisheries Council (FNFC) has been attempting to working with DFO on the transfer of jurisdiction for aquaculture from British Columbia to Canada for the past year. Our organization has been working in good faith to provide the best advice possible on how to increase the opportunities for B.C. First Nations to contribute to, and participate in, all aspects of the B.C. aquaculture regulatory development process and the eventual implementation of a new management regime. This participation has been driven by the overarching goal of promoting a process with meaningful First Nations engagement and contributions to develop regulations which will be respectful of the Constitutional rights of First Nations and which are informed by those involved and affected by this industry. As part of this process, the FNFC co-hosted a series of nine community sessions with DFO around B.C. to disseminate information to First Nations communities, and to facilitate discussions between DFO and communities to support the drafting of the new B.C. specific regulations.

The FNFC has repeatedly expressed concerns to DFO about the process being used to develop the Pacific Aquaculture Regulations, and its potential to impact the rights of First Nations in B.C. Our concerns are also applicable in the context of the development of new license conditions. Information related to the proposed license conditions was mailed out to coastal First Nations at the end of October, leaving less than two weeks for communities to provide comment on hundreds of pages of highly technical license condition information. Many First Nations were in Prince Rupert with DFO for meetings for one of these two weeks, further shortening the window available for comment. Requested resources for First Nations to develop a capacity to respond to information relating to aquaculture, both at the community and aggregate scale, have not been fulfilled. Also, it should be noted that although numerous interior B.C. First Nations have articulated their interests in the development of the new regulatory and management framework for aquaculture, which includes freshwater aquaculture and salmon enhancement, there has been no distribution of the draft license conditions to these First Nations.

Although no dedicated resources have been made available to the First Nations Fisheries Council or to the joint First Nations Fisheries Council/ DFO Aquaculture Working Group at this point, the Fisheries Council is taking the step of attempting to provide a very preliminary response to the draft license conditions. Again we would like to stress that this response has been prepared under extremely tight timeframes, with no dedicated support for the capacity required to undertake such a review. Given these limitations we will focus our comments on previous comments which have been provided to the Council, which will focus (due to the nature of the comments previously received) on finfish aquaculture. This should in no way be construed as being a complete or comprehensive summary of First Nations

recommendations on the license conditions, and the Council continues to urge DFO to meet its constitutional obligations and its own policies (including **Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult**; INAC Feb 2008 (specifically pp 15 – 17)).

Attached are specific comments with respect to the development of license conditions which the Fisheries Council hopes will be incorporated into the development of the new license conditions by DFO. These are divided into the following categories:

- General feedback on license conditions;
- Initial comments on the tabled DRAFT Aquaculture License and Conditions; and
- Specific Technical Comments on the Tabled Draft License conditions.

In addition, we feel it is important to note, once again, the concern of many First Nations that DFO seems to be proceeding with issuing licenses for the aquaculture industry under the new federal regime without any specific consultation with First Nations on these licenses. This process will not identify areas where rights infringements have already been identified by First Nations. In some cases First Nations will not even be aware that there are licenses for aquaculture operations within their territories. This is unacceptable. DFO is strongly urged to develop an approach which engages First Nations in a specific and direct manner with respect to any current or future applications for licenses under the new federal regime.

Sincerely,



Brenda McCorquodale
Executive Director



General feedback on License Conditions:

Feedback on the potential content of aquaculture licenses was gathered at a very general and high level from the community sessions in February and March 2010. It should be noted that this was the first exposure that most B.C. First Nations had to specific details related to aquaculture regulation and management, and most articulated that they the initial sessions were really a very initial step in building a capacity for local First Nations to participate in a meaningful way on these issues.

In terms of licenses specifically, First Nations noted that licenses and license conditions needed to be established with the overarching goal of protecting the ecosystem in which a farm or farm associated facility is located. Any activity associated with aquaculture should be regulated by a license, whether marine or freshwater farms, land-based aquaculture, hatcheries, freshwater grow-out operations, gear and maintenance facilities and operations, or processing plants and associated waste disposal.

In the community sessions, DFO presented a list of areas in which a license could govern (see slide 16 of DFO community sessions PowerPoint). These included:

- Develop and implement preventive measures and risk reduction plans;
- Comply with bans on specified activities;
- Monitor for certain environmental impacts;
- Take action(s) if thresholds of environmental impact are approached;
- Immediately notify DFO if an escape, system failure or chemical spill occurs;
- Report on a regular basis of monitoring activity and/or results;
- Provide advance notification of transfer of new stock onto the site;
- Maintain records accessible to auditors, inspectors or enforcement officers;
- Undertake gear and site marking, gear placement and maintenance, etc;

First Nations in the community sessions strongly articulated that protection of ecosystems needed to be the top priority, and this was to include protection of all species and their ecological functions, populations, habitats and ecosystem functions. Thus defined, licenses would need to cover requirements for environmental impact assessment, monitoring, reaching beyond the immediate boundaries of the tenures and expanded in time and space to include cumulative effects and far-field effects on ecosystems components and indicators that are of value to First Nations and others, as well as to ecosystem health.

In order to meet these requirements, prospective licensees should be required to compile a thorough inventory of a set of area and ecosystem-based indicators that serve as a baseline for measuring future performance. The survey should include such data as diversity measures, population abundances, habitat description and levels of contaminants present in the habitat and species.

Second, a description of the effects or impacts of the proposed aquaculture operation must be undertaken both a local and more broad ecosystem scale, taking into account impacts on appropriately selected ecosystem components and indicators, existing activities and marine use plans (including social and cultural aspects), and how these meet pre-defined sustainability targets. Area-based environmental studies are needed to determine the carrying capacity of areas (in terms of number of farms the area can support) in order to better understand the potential for cumulative impacts. If a license is granted, it must be subject to meeting stringent conditions that apply to the same broadly defined set of indicators.

Numerous suggestions were made relating to what should be included in the license, and these included such elements as prohibiting the use of lights on farms at night, restricting locations where nets are cleaned, prohibiting any unauthorized by-catch in netpens or during transport, prohibition of escapes (in all stages of fish life cycles), a requirement for permanently tagging fish cultivated from imported eggs,

and monitoring of disease and presence of sea lice on wild fish as well as farm fish. Others restraints, such as establishing maximum production limits for industry as a whole were recommended. As these meetings were initial information sharing meetings, First Nations were not prepared with proposed comprehensive lists of license topics and conditions. Nonetheless, this is a section of the regulation that First Nations expressed as critical and therefore they desire to have the level of input they feel is appropriate to such an important task.

First Nations also urged DFO to ensure that license conditions clearly outline the penalties associated with a breach in conditions of the license. For example, if an aquaculture operation is expected to retain care and control over its animals at all times, clear financial and possibly criminal sanctions should be outlined as penalties for violating the conditions of license.

Initial comments on the tabled DRAFT Aquaculture License and Conditions:

In a brief review, the tabled draft license and conditions appear to FNFC staff to be similar to the previous licenses issued by the Province. On the November 16, 2010 conference call held by the FNFC to discuss the draft licenses and conditions, when asked how the new regime will address the shortcomings of the previous regime, Sharron Ford articulated that DFO is building off of the current regulatory framework, while enhancing enforcement, public reporting and information management. The conditions in the draft licenses do call for increased reporting to DFO, however issues related to the management of the aquaculture industry will not be addressed unless there is increased transparency of information. DFO needs to be clear that information related to the requirements of license conditions will become a matter of public record. Where there is any potential of an impact to asserted First Nations rights, there needs to be proactive notification to First Nations of this information.

Two of the key considerations for First Nations with respect to the license and license conditions are transparency and flexibility. The information contained in the licenses related to multiple and complex issues of management and reporting. It is essential that the flow of this information take place in a transparent manner. In addition, as First Nations develop capacity and as the science with respect to aquaculture evolves, First Nations want to ensure that there is enough flexibility built into the license conditions to allow for the inclusion of new requirements and changes to reflect and incorporate the principles of adaptive management. First Nations also have strong concerns with the lack of consultation to date with respect to aquaculture on a government to government basis. First Nations have strongly and repeatedly, affirmed to DFO the need for a higher level of consultation required between the Crown and First Nations in order to develop regulations which are in the best interest of all parties and the environments. FNFC reiterates that First Nations demand to be engaged in all aspects of aquaculture regulatory development, and the FNFC encourages DFO to act in good faith and engage First Nations in all decision making processes.

In terms of monitoring, on the November 16th call, DFO assured participants that “the industry will not be allowed to ‘self-monitor’, this is the responsibility of the Department.” This is an area where First Nations are pleased to see reform. To ensure a licensee is meeting the license conditions third party monitoring must be conducted. It was unanimously stated by First Nations in the community sessions that industry self-monitoring is unacceptable. Data must be evaluated to determine whether thresholds of environmental and socio-economic indicators are being met over time. First Nations believe there is a major role for them to play in monitoring the industry, in both on-site monitoring and far-effects monitoring, but note that as with other fisheries, the costs for this monitoring should be paid for by the aquaculture industry. Having First Nations conduct monitoring with provide capacity building opportunities for local First Nation people, and add legitimacy by having a party outside of the farm conducting the monitoring.

In terms of the act of issuing licenses, First Nations have expressed concern that since DFO is not participating at the Treaty tables during the Cohen Commission, licensing decisions are being made which do not reflect the marine use plans of First Nations and/or planning initiatives associated with treaty development. The FNFC strongly urges DFO to work with First Nations in order to develop a management system for aquaculture in B.C. that is developed in conjunction with First Nations, and which first and foremost protects the health of the marine and freshwater environment and the asserted rights of First Nations. Where priority areas have been identified as a part of planning or Treaty negotiation, these need to be recognized and respected within the activity of aquaculture licensing.

Finally, draft license conditions do not outline the penalties associated with a breach in conditions of the license. Clarification is needed on where this topic will be discussed, and where fines/sanctions will be outlined.

Specific Technical Comments on the Tabled Draft License conditions:

Below are some specific comments pertaining to the DRAFT finfish license and conditions. Given the short timeframe in which to evaluate and comment on the lengthy document, these comments are only preliminary and are not to be deemed as exhaustive. As noted above, these comments are in relation of the draft finfish license and conditions.

Section 3: Containment Array Requirements

Under section 3.2: Comprehensive Inspections – “The license holder shall have the facility inspected by a qualified individual who can confirm and attest in writing that the facility design, equipment and systems are designed and installed in such a way and using such equipment as to be able to withstand the prevailing oceanographic and/or meteorological conditions of the licensed location when:

- (a) The facility is first installed;
- (b) Alterations to the facility containment array are authorized under the license.”

In the community sessions, First Nations demanded more stringent monitoring and inspecting. As a measure of good faith and to be reflective of the increased capacity on the part of DFO to monitor farms, the new licenses should prescribe an inspection schedule that is more frequent compared to the previous provincial system.

Recommendation: *Insert an additional clause that stipulates the frequency for routine inspections to occur. From the community sessions, First Nations recommended on-site inspections of farm operations should be more frequent than the Province’s current schedule, be unannounced and be conducted by trained First Nations fisheries or enforcement officers in conjunction with DFO.*

Section 6: Sea Lice

Sections 6.1 and 6.2 specifically reference the monitoring of sealice on *Atlantic* salmon. There are no references to requiring the monitoring of sea lice on wild salmon or on the cultivation species if it is not an Atlantic salmon. As the marine finfish licenses apply to the farming of all authorized species in the marine environment, sea lice monitoring should not be limited to Atlantic salmon.

Recommendation: *Amend these sections to include Pacific species (Pacific salmon and groundfish), or alternately refer to the species present at the farm site.*

Secondly, as detailed above, in the community sessions, First Nations demanded that sea lice monitoring on farms and on wild fish on migration routes should be more frequent and stringent. As well, it was noted that in some regions, more science is needed on sea lice tracking on farms and in the wild. Further direction is needed under this section of the license to monitor, evaluate, understand and publicly report sea lice prevalence and intensity data and analyses.

Section 6.2(c) prescribes the license holder to carry out the sea lice monitoring program on Atlantic salmon if the average **motile** lice levels reach or exceed three (3) lice per fish. This trigger is too high. A more appropriate trigger is 0.5 motile lice per fish and/or three **total** lice per fish including all lice life stages, not just the motile or adult forms. Likewise, section 6.3 should be amended to reflect a trigger of three lice/fish (three lice of any life stage, expanded from three motile lice).

Recommendation: *Change the threshold for sea lice monitoring programs to a maximum of 3 **total** lice/fish.*

Section 6.2(c) (ii) refers to non-existent sections 6.6(c) iii or 6.6(c) iv. This is confusing as section 6 culminates at point 6.4, therefore this reference should be corrected.

Finally, Section 6.4 states “License holders shall examine Pacific salmon on their facility for sea lice at times when lice grazing blemishes are evident (i.e., during regular daily or weekly visual observations) and at times when lice have historically been documented, including during harvests or in large fish in the autumn of the year). Observations are to be documented.” Cultivated Pacific species should be subject to the same requirements as Atlantic salmon. There should be no differentiation on sea lice monitoring between farmed Atlantic and farmed Pacific salmon.

Section 7: Fish Health and Sea Lice Monitoring

The wording of section 7.4 is confusing. It states, “The license holder shall record any mixing of any treated fish into other groups of fish on site, and if this occurs to record the new mixed group of fish as being “treated.” If fish treated with a therapeutant are mixed with fish untreated with said therapeutant, it would not be accurate to characterize the new mixed group as fully treated as some fish were not subject to the treatment. On the November 16th call, the flip side of the argument was presented – namely in the case of an escape, some of the fish would be treated and should be handled accordingly. This is confusing and requires rewording.

Recommendation: *Reword section 7.4 to refer to the group of treated and untreated fish as “mixed” stocks.*

Section 8: Fish Health Emergency Event Response

This section should contain a methodology detailing how to quarantine and/or destroy infested fish in the case of a fish health emergency event. Likewise, this section should proscribe a methodology to share information pertaining to emergency fish health events with neighboring farms, the local First Nations and other necessary parties.

Recommendation: *Insert a clause to define how information on fish health emergency events is to be disseminated to First Nations and other necessary parties. Transparency of this information also needs to be stipulated.*

Section 9: Fish Health and Sea lice Reporting

This section outlines how a farm operator should submit monitoring info to the Department of Fisheries and Oceans. A process should also be in place for the sharing of this information with the First Nation(s) where the farming is operating. This could be through DFO or through a separate mechanism.

Recommendation: *Insert a clause to define how information pertaining to sea lice and fish health is to be disseminated to First Nations and other necessary parties.*

10. Escape prevention, reporting and response

Section 10.8 outlines how a license holder is to recapture escaped Atlantic salmon. There is no mention to the recapturing of cultivated species which are not Atlantic salmon. This section should be expanded to apply to the recapture of all cultivated species which are non-native to the waters in which they are being farmed.

Section 10.8 (e) and (f) state the distance range in which recapture efforts should occur (within one mile) and that only Atlantic salmon should be retained. It is recommended that recapture initiatives should require the presence of a qualified independent observer to be aboard the recapture vessel to enumerate the incidental catch of other species, and validate the numbers of escaped farmed fish

recovered. Likewise, under 10.9, the reporting of recaptured fish should be expanded to the reporting of recaptured farmed fish as well as the reporting of any incidental bycatch. Finally, the distance range of one mile appears artificially determined. Further clarification is necessary on why this range of distance was selected.

Recommendation: *insert a clause to which requires qualified independent observer to be aboard the recapture vessel to enumerate the incidental catch of other species, and validate the numbers of escaped farmed fish recovered.*

A recommendation from the community sessions was to explore the feasibility of farm operators working with local First Nations to recapture escaped farmed fish. First Nations have a good understanding of their territories and would be in a good position to help recover escaped fish. A reference to working with local First Nations and/or affording priority to local First Nations in recapture initiatives should be included.

Reporting of escaped fish needs to be expanded from reporting just to DFO to broader reporting with informs the First Nations around where an escape has occurred. First Nations must be made aware of all escapes in their territories and the progress of initiatives to recapture said escaped fish.

Fines and penalties need to be outlined in a manner which ensures accurate reporting of escapes and accurate numbers of escaped fish, and which create incentives for recapture.

Recommendation: *insert a clause to define how information pertaining to fish escapements to be disseminated to First Nations and other necessary parties.*

Recommendation: *In terms of fines or penalties, mechanisms need to be put into place which will both a) require accurate reporting of the number of fish which have escaped, and b) which create legal and financial penalties which have enough strength to ensure compliance and which create an incentive to recapture escaped fish.*

In the past there have also been issues with escapes of juvenile Atlantic salmon from aquaculture hatchery and rearing facilities. In some cases the facilities were not aware these escapes had happened until they were brought to their attention by third parties. Regulations should be clear that aquaculture hatcheries and rearing facilities be required to complete regular downstream monitoring of their facilities in order to assess when/if escapes occur, and steps need to be taken to catch these fish as soon as possible, before they enter the marine environment.

Recommendation: *Licensing related to aquaculture and rearing facilities need to include provision for monitoring and planning for escapes.*

Section 11: Incidental Catch

In the community sessions, First Nations wanted increased information sharing in a variety of areas, including incidental/by catch reporting. It is recommended that a protocol be developed for the sharing of incidental catch information with First Nations.

License conditions need to be clear about what level of incidental by-catch is allowable including specific incidents and levels over time. Reporting requirements for any incidental bycatch (approved or not) needs to be clear. Instructions related to what steps need to be taken when incidental bycatch is encountered need to be clear (ie: bycatch must be retained and presented to a certified verifier before it is disposed of). Also, if there are repeated bycatch issues encountered there needs to be a mechanism

for reporting and review and an assessment of whether the bycatch levels encountered are acceptable from an industry-ecosystem impact perspective.

Recommendation: *Insert a clause to define how information pertaining to incidental bycatch is to be disseminated to First Nations and other necessary parties, and a mechanism for review of bycatch impacts where they occur.*

Section 12: Predator Control

Firstly, section 12.4 is welcomed and reflects a recommendation made by First Nations in the community sessions – namely prohibiting the use of acoustical deterrent for marine mammals.

Section 12.5 details how, when and where a sea lion and/or seals may be killed. To be clear, this section is only to apply to California Sea Lions and Harbour Seals. These two species are specifically referenced in 12.5(a) and it is inferred that the following clauses apply only to these two species. The wording in this section should be tightened up to reduce confusion. It would be unacceptable to permit the killing of other marine mammals protected by the Marine Mammal Regulations and/or by SARA. If any other species are accidentally killed, these incidences must be reported and information must be shared with the local First Nation(s).

Section 13: Fish Habitat

Protection of fish and fish habitat is of paramount importance to First Nations. This section contains a high level of technical information on acceptable pollution and/or nutrient levels which are deemed allowable. It is recommended that these thresholds and standards be reviewed by a scientifically defensible panel which includes representation from First Nations and/or biologists selected by First Nations. The operations of this panel should be transparent, and information should be freely shared with First Nations and the general public. Protecting the marine environment is a goal of all parties, and as such it is recommended that the standards/thresholds be reviewed prior to the final version of the license conditions being approved and subsequently at agreed upon time intervals (i.e. every year). This is to ensure that the thresholds/standards reflect, and are justifiable by, the current level of scientific understanding.

Recommendation: *Develop a scientific panel to set the thresholds for acceptable pollution and/or nutrient deposition levels. Ensure that there is adequate First Nation representation on the panel.*

Section 16: Annual Aquaculture Statistical Report

Under the license, a provision should be added that the annual report produced by farms should be shared, or at least be made available, to local First Nations.

Section 17: Use of Lights

Firstly, it is commended that the draft license conditions contain reference to the use of lights. This was a topic of great discussions in the community sessions. However, in the community sessions, the attendees strongly opposed the use of lights at night. It is not encouraging that the licenses only demand a recording of the types of lights, their intensity, and when they are used. It is strongly recommend that this section be modified to ban the use of night lights beyond that required for safe navigation and safety on net cage operations. Navigation and safety lighting must be directed away from cages and surrounding water to minimize attraction of other species.

Recommendation: *insert a clause to clearly outlines acceptable times of the day in which lights can be used, and describes how they should be positioned.*

Other comments:

- On page 62, footnote 5 reference is incomplete – references glossary “??”