

Summary Report of the Aquaculture Community Meeting at Kamloops, BC

Co-Hosted by: The First Nations Fisheries Council and the
Department of Fisheries and Oceans
On: February 9, 2010

Introduction

Currently the management of the aquaculture industry in BC is being transferred from provincial to federal jurisdiction under the DFO. The shift in jurisdictional authority is a result of the February 2009, B.C. Supreme Court ruling in the *Morton* case. In this case, the judge ruled that fish reared in ocean cages qualify as a fishery, and are therefore under the jurisdiction of the federal government. It was ordered that the federal government enact legislation for the regulation of finfish farms within 12 months of the ruling. A recent extension has been granted, extending the jurisdiction of the Province until December 18, 2010. As a result of the *Morton* case, management of the aquaculture industry will require significant reform in order to balance the management responsibilities and jurisdictions of both the federal and provincial governments. DFO is engaging with First Nations and stakeholders as it prepares regulatory and policy documents.

Regional meetings between First Nations and Fisheries and Oceans Canada (DFO) were hosted by the First Nations Fisheries Council (the Council) in February and March 2010. The purpose of the meetings was two-fold. First, to share with First Nations the information and recommendations made in four reports on aquaculture commissioned by the Council¹. The second objective was to seek input and guidance from First Nations to inform the drafting of a discussion paper which will be presented to DFO expressing the views and priorities of BC First Nations.

To assist with the discussion, representatives from DFO's aquaculture office were invited to explain the proposed new regulation. Andrew Thomson, Director of Aquaculture Management Pacific Region and Elan Park of DFO presented the information. DFO had previously distributed a Discussion Document wherein proposed contents of a new aquaculture regulation were outlined. Thirteen 'strategic questions' were posed in this document to stimulate questions and discussion about the proposed regulation. The discussion component of the meeting was organized around the thirteen questions.

This report summarizes the comments that were made by First Nations participants at the February 9, 2010 meeting in Kamloops in response to DFO's thirteen strategic questions about the proposed federal aquaculture regulation. The meeting was divided into two sessions: the morning session was attended by First Nations only (Tier 1) and DFO attended in the afternoon session (Tier 2).

Presentation Highlights

First Nations Fisheries Council Presentation

The meeting led off with an explanation of the role of the Council. The Council's mandate is to advocate for the rights and title of First Nations, to build fisheries capacity, and to explore the development of a co-management regime with DFO to meet the future needs of the First Nations. The Council is not a consultative body and does not act as a consultative body for DFO, thus, these meetings with DFO did not in any legal way constitute consultation.

A summary of the findings of three legal and policy reports on aquaculture was presented by Alex Gagne, Policy Analyst with the Council. The Council commissioned these three reports to assist First Nations in thinking about aquaculture and regulatory reform. One report was a legal opinion of aquaculture and infringement issues. Another report summarized existing aquaculture policies and their limitations based on findings of aquaculture inquiry reports. The third report addressed the strategic questions

¹ The legal report, policy review report, aquaculture primer, and strategic questions report are available on the First Nations Fisheries Council website: <http://www.fnfisheriescouncil.ca/index.php/mission-a-work-of-council/working-groups/aquaculture-working-group/557-nasapi-workplan-dec-2009>

around aquaculture regulatory reform put forward in DFO's Discussion Paper. The fourth report was a primer on the basics of aquaculture.

Fisheries and Oceans Canada Presentation

Andrew Thomson, DFO, explained the aquaculture regulatory reform and strategic action plan initiative. The regulation will cover finfish, shellfish and freshwater farming. The new regulations will not apply to marine plants, as marine plants were specifically excluded in the judge's ruling. DFO is aiming to publish the proposed regulation in the Gazette Part 1 in May 2010. A 60 day consultation and review period will follow. Following, the regulations will be posted to Gazette 2 and subsequently enacted by the December 18, 2010 deadline.

In transferring responsibility for aquaculture to DFO, DFO will have to hire staff, including enforcement staff. (The province has a staff of 48-53 working on aquaculture.) DFO believes it can streamline the licensing process to 1 to 2 licenses from the 3 provincial licenses and 3 to 4 federal licenses now offered. DFO expects to receive Treasury Board funding to fund its aquaculture management activities. Some of the funding will be allocated to supporting First Nations engagement (staff and dollars).

Meeting Discussion Points

Before launching into the thirteen strategic questions, there was a discussion around the consultation process. First Nations in the Kamloops region want to participate with DFO in consultation around an aquaculture regulation. However, the main obstacles to effective consultation for these First Nations are an undefined consultation process, a lack of effective capacity and the unrealistically short timeline. Also noted was the difficulty accessing information about aquaculture and in particular, finding information about impacts to fish stocks that migrate into the Fraser River system. For First Nations in the interior of BC that do not deal directly with aquaculture issues, their low level of working knowledge on the subject of aquaculture would be a disadvantage. Comments made about the consultation process are listed as follows:

- A process must be created that meets a standard of meaningful consultation that is acceptable to First Nations.
 - First Nations are not 'stakeholders'.
 - It is unrealistic to expect First Nations to respond meaningfully in the short period given by DFO for this process.
- Before First Nations can engage in meaningful consultation they will require information about aquaculture and its social, economic and environmental impacts based on sound science and research.
 - Need information on the potential impacts of finfish aquaculture to stocks that migrate to the interior of BC
 - Resources are needed to support the necessary policy analyses that are required as part of this process.
- First Nations need to be part of the science process. Much science has already been conducted, but little gets disseminated to First Nations. A process should be created jointly with DFO whereby First Nations and DFO jointly review the existing science in order to establish a mutual understanding of foundational information.

Review of Strategic Questions in DFO's Discussion Document

Strategic Question 1. DFO's Vision of Aquaculture

1. Does the proposed vision appropriately address the principal challenges within the industry?

- The vision should recognize the Crown has a fiduciary responsibility towards First Nations. The vision statement needs to explicitly acknowledge consultation and accommodation as a means to meeting this responsibility.
 - A reference should be made to the potential for aquaculture to infringe the rights of First Nations through indirect or direct impacts to First Nations interests.
- There is an inherent conflict between promoting the growth of the current methods of the aquaculture industry (explicitly open-net finfish farming) and environmental sustainability. This should be addressed in the vision.
 - As it reads now, the vision appears to be more about pleasing the aquaculture industry.
- The vision commits to sustainable technologies and practices that are 'environmentally responsible', something that is not defined. Furthermore, it is not clear what 'sustainable' means to DFO.
 - Goals of co-management, long-term commitment, and new and emerging technologies and science should be captured in the vision.
 - Conservation of fish and fish habitat should be stated as a primary goal in the management of aquaculture.
- Other elements that are missing include an acknowledgement of the broader ecosystem effects, e.g., food web within the aquatic ecosystem, life cycle of the fish.

Strategic Question 2. Principles

2. Is there anything that you would add to or delete from these principles?

- As articulated in Principle 1, the protection of wild stocks is paramount. But the principle should extend beyond protection to restoration of habitat.
- A recognition of the rights and title of First Nations, including involvement in decision-making, should be written into the principles guiding the development of the federal aquaculture regulation. Such a principle would guide management of aquaculture operating within a First Nations territory. For example, the recent Ahoushahat decision (2009) outlines the rights of the plaintiff First Nations to 9 miles of sea floor.
- Consultation and accommodation with First Nations should be acknowledged by DFO as an activity that is distinct from consultation with third party stakeholders, including industry.
- The role of traditional ecological knowledge needs to be established in aquaculture planning and management.
- The commitment to transparency explicitly stated as one of the principle's guiding DFO's approach to aquaculture regulation must be followed through. DFO has been directed by the BC Supreme Court to increase transparency of how aquaculture is managed.
 - How will licencing measures be enforced if a company is international. Can the regulation ensure transparency in such a case?
- Managing risk should be guided by the precautionary approach. This approach should also be articulated as a principle.

Strategic Question 3. Application (Scope of the Regulation)

3. Is there anything that you would add to or delete from the scope of the activities that would be managed under the proposed regulation?

- The rules for aquaculture should apply equally to all forms of culturing aquatic species so long as there is any potential to impact wild stocks. That is, no exceptions to government owned facilities or hatcheries.
- More direct reference to First Nations rights and title and their accommodation must be made.
- The development of risk management measures to be managed under the proposed regulation should be added.

Strategic Question 4 and 5. Licences and Licence Conditions

4. Are there items that should be added or deleted from this proposed list of licence conditions?

5. What type of activities should be ticketable offences instead of, or in addition to being subject to prosecution?

- Need to consider how licencing and licence conditions will affect First Nations' title and rights of those participating in aquaculture (Aboriginal tenure holders) and those with third party aquaculture tenures in their traditional territories. Participants discussed the idea of an 'aboriginal tenure' whereby farming operations in traditional territories would require some sort of approval from the First Nations whom territory is being infringed upon.
- First Nations need to be involved with DFO in drafting the licence and licence conditions, but there should be recognition that this is quite a technical area. First Nations will need resources to hire expertise to assist them.
 - First Nations Marine Use Plans should be respected in the course of a tenure application and licensing
 - Consideration of traditional ecological knowledge should be required during research and monitoring to determine licence conditions.
- Operational standards should be based on good science that takes into account broadly defined impacts.
- Imported eggs should be tagged and monitored for adverse impacts.
- Farm operators should not be allowed to self-monitor. Third party monitoring is an opportunity for First Nations to be involved.
 - Sea lice levels on farms and along salmon migration routes should be more stringently monitored.
- Few fines are handed out to fish farm operators for infractions (e.g., HADDs). More enforcement effort is needed.
 - The enforcement ticketing fine set at a maximum of \$1000 seems low and probably would not deter a large-scale farm operator, and could be seen as a 'cost of doing business' to large scale companies.

Strategic Question 6. Pollution Prevention Measures

6. Are there other categories of substances that should be managed under section 36 of the Fisheries Act?

- Pollution from aquaculture facilities should be managed on an area and ecosystem based level.
- Impacts of pollutants on wild stocks need to be understood in order to set meaningful standards.
- More understanding of the impacts of feed discharged to the environment on wild species is needed. This would include all species that are attracted by the food source (birds, mammals, fish, invertebrates, etc).
- The precautionary approach should be used in light of uncertainty about how a pollutant may impact species or the marine ecosystem.
- Wastes discharged by farm staff also needs to be regulated (e.g., grey water, detergents, sewage).

Strategic Question 7 and 8. Notification and Reporting

- 7. What information/documentation should be kept by companies and to what level of detail?*
- 8. What information should the Department make reportable to the public, recognizing that such requirements must be in accordance with the Privacy Act?*

- Traceability of fish from net to market should be a requirement placed on industry.
- Accurate counting of fish in pens is needed – fish placed into pens and fish harvested from pens, to allow for accurate reporting of escapees, morts, etc.
- By-catch reporting should be mandatory.
- Establishment of maximum production limits should be explored.
- Reporting of escapes to the public should be faster.
- Triploidy should be required for Atlantic salmon to remove the possibility of escapee Atlantic salmon reproducing in the wild environment.

Strategic Question 9. Enforcement

- 9. Are the powers of enforcement, as identified above, appropriate to the objectives of the aquaculture regulation?*

- Enforcement of aquaculture should be aligned with other fisheries enforcement regulations.
- First Nations want to be involved with all aspects of enforcement.
- Additional resources are needed for enforcement.
- Protection is needed for 'whistle-blowers'.

Strategic Question 10 and 11. Inspections, Audits, Attestations and Fees

- 10. Should verification of regulatory compliance and monitoring history be made available to others upon request by the licence holder?*
- 11. What would be an appropriate fee structure for aquaculture licences?*

- Third party inspections or auditing of the industry should be built into the regulation.
 - The First Nations Guardian or Watchmen program could provide third party inspections. Would require funding by DFO or industry on a user pay system.
 - First Nations inspectors would require capacity and training.
- On-site inspections should be unannounced.
- Fee structure could be set up according to farm size, similar to stumpage fee.

Strategic Question 12 and 13. Policies and Guidelines Supporting the Regulation

12. Is there anything that you would add to, or delete from, the proposed list of policies and guidelines that would support the implementation of the regulation?

13. Is there anything that you would add to the regulation beyond the regulatory provisions outlined above?

- Policies that should be considered include:
 - Requirement for non-reproducing fish (e.g., triploidy).
 - Code-wire tagging.
 - Use of lights on farms at night.
 - Traceability of product.
 - Monitoring of farm fish stomach contents.
- Once enacted, the new regulation should be reviewed within a set period of time and the contents should be revised using an adaptive management approach.
- Application for a new licence should trigger an environmental and First Nations impact assessment. Changes to an existing licence should trigger a 're-visiting' mechanism.

Other Comments

- Question of global sustainability of aquaculture when wild fisheries are used to manufacture fish feed. Continued research is needed into decreasing the amount of wild fish used.
- Need to improve the process of sharing research and research results between DFO, First Nations, industry and NGO's.
- Economic data on aquaculture is needed by First Nations to assess the economic impact of the industry.