

**Department of Fisheries and Oceans**

**Policy on the Access to Wild Aquatic Resources as it  
applies to Aquaculture**

**Discussion Document**

**March 9, 2011**

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## A. BACKGROUND INFORMATION

### 1.0 INTRODUCTION

Throughout the world, the supply of fish and seafood is derived from four principal activities which comprise a continuum from wild capture through to intensive farming as described briefly in the following points:

- **Commercial Fisheries** consist of the capture of fish, shellfish and/or aquatic plants from public waters. Prior to their capture, the aquatic organisms are a crown resource. A commercial fishing licence is required to secure the privilege to capture these resources. Once captured, the aquatic organisms become the property of the licensed fisherman. (e.g. herring fishery)
- **Fisheries-Based Culture** consists of the live capture of fish, shellfish and/or aquatic plants (crown resources) from public waters and the subsequent transfer of these organisms into culture facilities. The organisms captured are usually juveniles. They are held in captivity where they may be fed and protected until such time that they reach a marketable size. The organisms are then harvested for sale. A fisheries licence may or may not be required to capture the juveniles. Once captured, however, the organisms become the private property of the person who has captured them. (e.g. mussel spat collection)
- **Culture-Based Fisheries** consist of the utilization of aquaculture (hatchery) technologies to produce juvenile aquatic organisms that are subsequently released into public waters for on-growing to market size. Once released, the organisms become a crown resource and a fisheries licence is required to secure the privilege to capture and sell them. (e.g. salmon enhancement)
- **Full-Life-Cycle Aquaculture** consists of culture activities in which all aspects of production are conducted within the control and management of the culturist. Gametes are collected from privately-held broodstock and spawning is conducted within a hatchery. The resulting juveniles are fed and protected until they reach market size, when they are harvested and sold. Culture may be conducted within totally privately owned facilities (i.e. land-based systems) or on leased premises (e.g. coastal and/or freshwater cage culture of finfish, suspended culture of shellfish, bottom culture of shellfish on intertidal and/or sub-tidal lands). At all times throughout their life cycle, the organisms remain the private property of the individual or corporation producing them. (e.g. trout)

The long-term goal of the aquaculture industry is generally to become self-sufficient and therefore, minimize the requirement for access to wild stocks for culture purposes. Nevertheless, all aquaculture populations are initially derived from wild stocks and, on occasion, it may be necessary to collect additional wild stocks to diversify the genetic composition of captive broodstock populations. For those species where the technology does not exist for hatchery production or when the cost of hatchery production is prohibitive, on-going access to wild stocks is essential to the development and expansion of the sector. As well, during the course of normal aquaculture operations, aquaculturists may collect wild fish or plants, on lease, to control predation or as a "by-catch" to the harvest of their crop. Under the *Fisheries Act* and associated regulations, these activities also constitute access to wild resources.

Typically, access to wild aquatic resources by the aquaculture sector falls into the following categories:

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- Access to Shellfish “Spat” and Seedstock On-Lease and Off-Lease;
- Access to Plants for Feed for “On-Growing” Operations;
- Access for Broodstock Development to ensure genetic diversity, to revitalize or expand existing broodstock, and/or to replace broodstock lost through catastrophic or natural events;
- Access for “On-Growing” and “Relaying” where hatchery technology does not exist or is cost prohibitive, where the harvest for “on-growing” is biologically and ecologically sound and economically viable, and/or where winter scouring may regularly kill animals, or where water quality issues prevent a fishery from taking place; and
- Collection of animals not deliberately placed on the lease, such as predators and by-catch.

DFO's policy on Access to Wild Aquatic Resources as it applies to Aquaculture was introduced in 2004 to provide a framework and criteria to facilitate access to wild fish and aquatic plants for aquaculture in situations where access to wild stocks is essential to the development and expansion of the Canadian industry. Since most fisheries are managed under limited entry rules - and recognizing that many fisheries are fully subscribed - the policy was designed to ensure that the requirements of the aquaculture sector are factored into Integrated Fisheries Management Plans (IFMPs). When the conservation limits and/or Total Allowable Catch (TAC) is fully subscribed in either competitive or individual quota fisheries, the policy is intended to accommodate requests from the aquaculture sector for small allocations (i.e., <0.1 per cent of the TAC). Since the numbers of fish required for aquaculture purposes are generally small relative to the stocks and are, therefore, not expected to adversely impact existing users, resource allocations for aquaculture purposes may be in addition to existing allocations. The policy deals exclusively with direct access to wild aquatic resources for aquaculture purposes where DFO manages that access; and it outlines how DFO will provide aquaculturists with predictable, equitable and timely access to the aquatic resource base.

A National Working Group on Access to Wild Resources (NWGAWR) was established to develop national criteria to support the application of the policy in key areas. Aside from the on-going implementation and administration of the policy, the NWGAWR was also responsible for evaluating and updating the policy after one year. This review has not yet been completed. Furthermore, during consultations with industry, governments, First Nations and other stakeholders for the National Aquaculture Strategic Action Plan Initiative (NASAPI), it became evident that some aspects of the policy require further consideration. As a result, amongst the strategic objectives outlined in the NASAPI, a specific action item pertains to the policy on Access to Wild Aquatic Resources as it applies to Aquaculture.

**AWR-1:** Conduct the mandated review of the Access to Wild Aquatic Resources for Aquaculture Purposes Policy

**Action:** DFO, Provinces/Territories, Industry are to review the existing policy and update as required; and communicate effectively during the review process to make the aquaculture and wild fisheries communities and other stakeholders aware of the policy.

The purpose of this discussion document is to present an overview of the policy on Access to Wild Aquatic Resources as it applies to Aquaculture, noting specific issues to be addressed. The objective is to stimulate discussion and promote ideas to update the policy, making it more responsive to the needs of the aquaculture and fisheries sectors and to streamline government implementation and administration.

## 2.0 MANAGEMENT OF ACCESS TO WILD AQUATIC RESOURCES

### 2.1 Review Process

The Regional Aquaculture Coordination Offices (RACO) are the focal points for implementation of this policy. The approach used to authorize access for aquaculturists can be grouped into the following three categories.

#### Category 1: Access allowed with no authorization required

Authorization is not required for the following activities; however, aquaculturists are required to notify DFO annually if they expect to, or do, access wild stocks. Category 1 applies to:

- Spat collection of lease species on a suspension lease
- By-catch of wild shellfish of lease species on-lease.

#### Category 2: Access authorized through fishing licence or permit on a routine basis

Where harvest levels are insignificant to the wild stock and there are no SARA implications, fishing licences or collection permits are issued on a routine basis to aquaculturists, on request and with appropriate conditions, within 30 days of the fully documented request. These licences may have more specific seasonal, TAC, or area requirements than a regular licence. Category 2 applies to:

- Spat collection not covered in Category 1;
- Collection of wild aquatic plants for feed where the request is for less than 0.1% of the TAC or 0.1% of harvest volumes where no TAC exists;
- Collection of wild finfish for broodstock development where the request is for less than 0.1% of the TAC or for less than 0.1% of harvest volumes where no TAC exists;
- Collection of shellfish for relaying;
- Collection and sale of specified nuisance species on lease; species retained and sold;
- By-catch of specified wild finfish in nets; by-catch retained and sold;
- Collection and disposal of specified nuisance species on lease; not retained or sold; and
- By-catch of specified wild finfish in nets; by-catch not retained and sold.

#### Category 3: Non-routine Access Authorizations

For all other types of access requests by aquaculturists, issuance of fishing licences or experimental permits under section 4 of the *Fisheries Act* will be considered under the Review Process outlined below. Where there are, or are expected to be, several applications for similar access, access will be looked at on a strategic basis, with individual requests then considered based on access criteria that are developed. The total allocation will be limited by conservation objectives. Category 3 applies to:

- Collection of low volumes of wild finfish for broodstock development where access may be contentious or does not otherwise fall under category 2;
- Collection of low volumes of wild aquatic plants for feed where the request may be contentious or does not otherwise fall under category 2;
- Collection outside the wild fishery of wild finfish for on-growing;

- Collection of resources where wild fishery is under moratorium, or there are SARA implications;
- Collection and sale of nuisance species on lease other than those covered in Categories 1 and 2; and
- By-catch of specified wild finfish in nets other than those covered in Categories 1 and 2.

### **Review Process for Consideration of Category 3 Requests**

Requests are submitted in writing to the Regional Aquaculture Coordination Office (RACO), either directly or via the model used for delivery of services in the area outlining:

- the purpose of the request;
- the species and quantity of fish required;
- the location and time of year for the collection;
- the method of collection; and
- other relevant information required to evaluate the request.

### **2.2 Service Standard**

1. The RACO will circulate applications to Fisheries Management within 10 days of receipt to seek information on the completeness of information needed for the evaluation of the request and to define the process to be followed in reviewing the request.
2. The RACO will advise the applicants of receipt of their proposal and any deficiencies in information within 15 days. The RACO will also outline the process and time frame to be followed to reach a decision regarding the request.
3. Unless there is an IFMP process, or another reason has been flagged up front, advice from Fisheries Management will be provided to the RACO within 30 days.
4. The applicant will be notified of the decision in writing by the Regional Director General, generally within 45 days of receipt of an approved application.

### **3.0 PRINCIPLES**

- 1) In considering access requests, the first priority in managing fish stocks is conservation, followed by First Nations obligations. Beyond that, the needs of aquaculturalists and commercial fisheries will be given equitable consideration.
- 2) Recognizing that aquaculture is a legitimate use of land, water and aquatic resources, DFO will work with provincial and territorial governments to provide aquaculturalists with predictable, equitable and timely access to the aquatic resources (i.e. aquatic organisms and access to production sites).
- 3) DFO will make every effort to understand the needs of the aquaculture industry and to respond in a manner that is solutions-oriented and supportive of sustainable aquaculture development.
- 4) Within conservation limits and when the Total Allowable Catch (TAC) is fully subscribed (in competitive and Individual Quota fisheries), the requirements of the aquaculture sector will be accommodated within the integrated fisheries management plans for the species.
- 5) Aquaculturists will be required to pay licence and other fees to the Crown, consistent with policies for other participants in the fishery and proportionate to the anticipated utilization of the resource.
- 6) Where fisheries groups are contributing financially to stock management, research, etc., aquaculturists may be required to contribute financially to the management group for access to stocks, consistent with policies for other users. [Comment: this is a potential barrier to entry]

#### Strategic Question

1. Do these principles adequately reflect DFO's obligation to balance the principles of resource conservation with the needs and requirements of the fisheries and aquaculture sectors?

## B. POLICY REVIEW & RENEWAL

### 4.0 AREAS OF FOCUS

Experience acquired through implementation of the policy since 2004 has identified several areas where the policy and its implementation could be improved to better serve the needs of the Department's clientele and to facilitate administrative efficiency and effectiveness. The principal areas for further consideration are listed below. The list is not necessarily complete and other issues may have emerged in various regions.

- Legislative Authorities
- Licence Eligibilities
- Nuisance Species and By-catch
- Traceability
- Pre-Seed Harvest of Aquaculture Sites
- Fisheries Resource Allocation / Access to Growing Areas
- Service Standards

#### 4.1 Legislative Authorities

##### Issue

The *Fisheries Act* allows the Minister to grant written permission to obtain fish for the purposes of stocking, artificial breeding and/or for scientific purposes. In practice, different legal mechanisms are being used in different regions for authorizing access to wild aquatic resources, including:

- Sections 2, 4, 7 and 57 of the *Fisheries Act*;
- Sections 22, 52 and 56 of the Fishery (General) Regulations (FGR);
- Section 4 of the Management of Contaminated Fisheries Regulations; and
- Section 29 of the Maritime Provinces Fishery Regulations.

DFO can issue licences and conditions pursuant to the Fishery (General) Regulations as a means to authorize and control fishing activities and resource access requests for aquaculture purposes (most often Sections 22(1), 52, and 56). In situations in which seasons are set out in regulations, Section 7(1) of the *Fisheries Act* can be used to provide access outside of the normal fishing season. The legislative authorities used in each of the DFO Regions to allocate access to aquatic resources for aquaculture are identified in Table 1. It is DFO's objective to establish a more congruent, consistent and harmonized approach that is transparent and equitable to DFO's clientele.

Furthermore, DFO has a number of policy and regulatory instruments that provide direction with regard to emerging fisheries, owner-operators, core fishers, species at risk, introductions and transfers, etc. It is important for the access to wild aquatic resources policy to be advanced in a manner that is consistent with and complementary to these other instruments in a harmonized manner.



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Table 1: Legislative authorities used in each of the DFO Regions to allocate access to aquatic resources for aquaculture.

Region	Typical Access Type	Species	Regulatory Authority	# of Requests/yr
NF	Broodstock Development	Soft shell clams American Eel	s. 52 and 56 of F(G)R	2
Gulf	Spat Collection (commercial – off-lease)	oysters, mussels, clams and scallops	s. 4 and s. 7(1) FA or s. 4 of MCFR	309 in 2006 (263 oysters + 42 mussels + 4 scallops) 357 in 2007 (5 GNS, 33 ENB, 319 PEI)
Maritimes	Spat Collection	Scallops, Am. oysters, Blue mussels, Quahogs, Clams, (At. salmon and Br trout for enhancement)	s. 52 F(G)R in combination with Section 56 F(G)Rs, s.4 FA, or s. 4 of MCFR	10
Quebec	Spat Collection Broodstock Feed	Scallop, mussel Quahog Atlantic halibut Cod, Atl. Salmon algae	s. 7 of FA	4 -5
Pacific	Broodstock Spat Collection	Sablefish Geoduck	s. 52 F(G)R	2-3

## Strategic Questions

2. Which authorities are most appropriate for the various classes of access to aquatic resources?
3. What are the main incongruent issues within the policy and amongst policies that need to be rectified (e.g. emerging fisheries, owner-operators, core fishers, SARA, I&T)?
4. Is a new regulation required to accommodate access to wild fisheries resources for aquaculturists?

## **4.2 Licence Eligibilities**

### Issue

Questions exist regarding eligibility for spat collection licences, with some regions only considering aquaculturists while others also consider commercial and FN fishers. Establishing general licence and permit conditions could help to harmonize implementation of the policy and to clarify special circumstances, such as the sale or destruction of animals.

### Strategic Questions

5. What criteria are required to define “reasonable” levels of access (i.e. thresholds of allowable collections)?
6. What should be included amongst general license and permit conditions to improve the implementation and administration of the policy?

## **4.3 Nuisance Species and By-Catch**

### Issue

The approach to nuisance species and harvest of non-cultured organisms on-lease is inconsistent across regions. Nuances regarding predatory and competing species as well as incidental by-catch need to be reviewed. Lists of “specified species” should be defined and criteria established regarding allowable catch and potential relocation, sale or destruction.

Currently, the only method for collecting non-target species is to allow commercial fishers with a valid licence onto a lease. Terms and conditions of the target “nuisance species” licence apply to the harvest (e.g. minimum size, time of harvest, berried female prohibition, etc.) and thus may not meet all needs of the aquaculturist. Additional regulatory solutions may be required to adequately solve this issue as a policy solution alone may not be sufficient for dealing with commercial species, to which existing terms and conditions of commercial licences apply.

### Strategic Questions

7. Is there a need to develop lists of “specified” species and criteria for determining allowable catch and sale?
8. What is the most appropriate method to deal with commercial and non-commercial species?

#### 4.4 Traceability

##### Issue

DFO is currently examining various proposed standards for aquaculture certification. It is apparent that such standards would impose additional requirements for demonstrating product traceability (e.g. under Section 56 FGR that allows for transfer licences). This policy must be consistent with certification efforts.

##### Strategic Question

9. In view of pending adoption of international certification standards by the aquaculture sector, what changes are required in the policy to accommodate the needs of the standards and the marketplace?

#### 4.5 Pre-Seed Harvest of Aquaculture Sites

##### Issue

Some fisheries managers have proposed that commercial fisheries interests are to be compensated when fisheries are transferred from harvest fisheries to aquaculture. Compensation in the form of purge fisheries has been recommended. This situation is currently controversial in the BC geoduck sector; however, it could potentially emerge with other species. Therefore, it would be prudent to consider the matter from a broader, national perspective.

There may be overlap with the issue of nuisance species, especially if a commercial fishery exists for the nuisance species. Sharing arrangements with the commercial fisheries sector, relocation of live organisms or non-profit solutions (e.g. investing all proceeds of sale in species enhancement, science, etc.) could present viable solutions and should be considered.

##### Strategic Question

10. How can the best interest of Canadians be protected and reflected when fisheries resources are transferred from harvest fisheries to aquaculture (e.g. geoduck, sablefish)?

#### 4.6 Fisheries Resource Allocation / Access to Growing Areas

##### Issue

Mechanisms and principles regarding capture & recreational fisheries management and resource allocation are well-established and are sufficiently flexible to accommodate aquaculturists. The Department of Fisheries and Oceans, with active engagement from the aquaculture and resource management sectors, determines how to fairly and reasonably accommodate the needs of aquaculturists in the design and implementation of fisheries resource management programs.

Nevertheless, the situation with geoduck and sablefish in BC underscores some of the key challenges associated with this policy. Geoduck is identified as an aquaculture species with considerable potential for sustainable commercial aquaculture development. If handled

correctly, it presents an opportunity to model the integration of an emerging aquaculture sector with a successful commercial fishery.

Strategic Question

11. What lessons can be learned from the challenges associated with geoduck and sablefish aquaculture? How can the policy be amended to enable complementary fisheries and aquaculture development?

**4.7 Service Standards**

Increasingly, the Department's clientele are requesting that service standards be imposed for a variety of authorization processes that require a governmental review and decision. Service standards introduce a measure of transparency, responsibility and certainty to the review and approvals process.

Strategic Question

12. How can the service standards be enhanced to better meet the needs of the Department and its clientele?

Draft - For Discussion

## 5.0 THE PATH FORWARD: STAKEHOLDER ENGAGEMENT

Action	Roles & Responsibilities	Timeframe
National Committee to be re-established	AMD	February 2011
Bilateral discussions with RACOs and Regional Resource Management Directors to determine current situation around application of existing access policy	AMD/RACOs/RM	February / March 2011
Review process established, including work plan, timelines, communications strategy, consultation workshops, etc.	National Committee	March 2011
Discussion document on issues/solutions to be finalized and distributed to stimulate effective discussions during the consultation (NASAPI approach)	AMD/National Committee	March 2011
Internal bilateral engagement (Resource Management, Conservation & Protection, Science, Aboriginal, legal, etc.)	AMD	March 2011
External engagement: <ul style="list-style-type: none"> <li>Fisheries &amp; Aquaculture Sectors (association executive directors, provinces/SMC, etc.); and</li> <li>First Nations groups, other implicated parties, etc.</li> </ul>	AMD/National Committee	Spring 2011
Draft Policy for review (Posted on Website with request for comments)	All	June 2011
Communication Plan developed	National Committee	June 2011
Final Draft Policy endorsed by National Committee	National Committee	Fall 2011
Presentation of Draft Policy at Economic Prosperity Strategic Outcome Committee and Policy Committee	AMD	Fall 2011
Finalized Policy to Minister for approval	N/A	Fall 2011