

An Aquaculture Act for Canadian Aquaculture (or separate Chapter in Fisheries Act)

Background / Current Situation

The Canadian aquaculture industry has labored under poorly designed policy & regulations for years as governments have utilized the Fisheries Act to try to manage the industry. Responsibilities for regulations affecting aquaculture are distributed among numerous federal departments and agencies, and those regulations were often designed with activities other than aquaculture in mind.

The Fisheries Act is basically a wildlife management act and is not focused on the process of farming in the aquatic environment. Now more than ever before, aquaculture needs an act which recognizes that the process is a food production practice which takes place with fish as private property and occurs in legally defined private spaces. It is not the management of a common property resource which occurs in public waters.

Background – Wildsmith Papers

In the papers written by Bruce Wildsmith (Associate Professor Faculty of Law at Dalhousie University, under contract for DFO Aquaculture Resource Development Branch in 1984 and 1985) Wildsmith draws the same conclusion. He states that the federal government has over-extended its legislative embrace. According to Wildsmith, the points of particular concern are “setting aside areas for artificial propagation of fish, oyster leases, licenses and controls in leased areas, aquaculture licenses, the sale of fish, marine plants, interprovincial transport of live fish or eggs from one aquaculture facility to another and closed seasons”. He concludes the paper by providing three options for the government to consider in reforming the legislative framework.

In the second paper “Toward an Appropriate Federal Aquaculture Role and Legislative Base” Wildsmith outlines specific details on the proposed federal role as a focal point for further discussion. The paper contains a Draft Aquaculture Act for consideration. The paper was written in December 1985.

Background – OCAD’s Legislative Review

Much of the background work on an Aquaculture Act was done by OCAD in 2001 – but never pursued.

Here is some information taken directly out of the Legislative Review Document, prepared by OCAD, and still available on the DFO site:
<http://www.dfo-mpo.gc.ca/aquaculture/lib-bib/index-eng.htm>

RECOMMENDATION

That the federal government enacts a federal Aquaculture Act that will:

- recognize in law aquaculture as a legitimate user of aquatic resources;
- provide a legal definition of aquaculture;
- set out the rights and obligations of fish farm operators;
- recognize that aquaculture is not a fishery *per se* but is a form of animal husbandry;
- provide the legal basis for an appropriate policy framework;

Outline of an Act / or Chapter

The following outline is a compilation of Prof. Wildsmith's report and industry's current views:

Purpose

The Act would have the following purposes:

- Legitimize the business of aquaculture in law
- Define aquaculture (e.g. the cultivation of fish), to include enhancement facilities and ranching of fish
- Define and authorize (unless identified elsewhere) common farming practices, including appropriate disease control practices
- Provide a framework for the planning of aquaculture development in Canada;
- Provide financial resources to plan and foster aquaculture development;
- Ensure farming activities are conducted in an environmentally sustainable manner, any impacts are minimized and mitigated
- Regulate the conduct of aquaculture within the marine or tidal waters under the legislative control of Canada.

Governance

The Act would be under the supervision of the Minister of Fisheries and Oceans.

Private Property

- Fish and sites are collateral for loans
- No fishing would be allowed in, on, or over a privately owned or leased area used in the conduct of aquaculture, or within a specified distance of such a place (100 meters suggested.)
- Any person intentionally damaging aquaculture sites or intentionally releasing aquaculture stock would be punishable by a fine. Any theft would be punishable under the criminal code.
- Farm Biosecurity protocols would be respected

Aquaculture License

- No person would be able to conduct aquaculture within tidal or non-tidal waters without a license from the Minister.
- A set timeframe for license would be determined (20 year goal)

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- Fees and performance standards would be outlined in this section of the Act

Conditions of License

The Act would address the following conditions of license:

- Collection of wild stock including spat, fish for grow out – also hatchery and harvesting operations
- Fish Health Management
- Containment
- Monitoring, collection of farm records & reporting: anyone engaging in aquaculture would have to provide data as required by the Act.
- Marking of gear;

Risk Management

The Act would address the following:

- Insurance, re-insurance or co-insurance against any or all risks;
- Compensation for loss or damage;
- Compensation for product confiscated or stock ordered destroyed by the competent authority

Inspection & Enforcement

The Act would address the following:

- Aquaculture inspectors would be appointed to enforce the regulations outlined in the Act regarding all aquaculture facilities and the transfer of aquaculture organisms.
- Inspections would include transfer, importation, quarantine of aquatic livestock;

Introductions & Transfers

The Act would address the following:

- There would be no introduction of non-indigenous species for culture without full impact assessment and subsequent approval
- There would be no transfer of live aquaculture organisms without approval.

Protection of livestock from predation

- Producers would be allowed to protect their stock from aquatic or avian predators within the restrictions of the endangered species' and migratory birds' acts.

Identification of gear

- All aquaculture gear in tidal and non-tidal waters would need to be in compliance with the Navigable Waters Protection Act, including being clearly marked and identified.

Agreements with provinces & agencies

- The Minister would be able to enter into agreements with any province regarding delegation of authority, projects for the development of aquaculture or more efficient use and economic development of the coastal zone.

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Fisheries Act (need to check here)

- The regulations of the Fisheries Act pertaining to the harvest, sale of fish and marine plants would not apply in connection with the conduct of aquaculture.
- Fish health protection regulations and shellfish sanitary regulations of the Fisheries Act would apply in connection with the conduct of aquaculture.

The Fisheries Act Does Not Address the Following:

- Private property rights of farmers
- Need to manage tenure at all times, including when it is in a Closed Area
- Bycatch issue
- Need to control and manage diseases, including external parasites (Section 36)
- Need to monitor for disease control

Other Countries

All countries active in aquaculture have specific statutes for aquaculture in place. As well several Canadian provinces have similar legislation:

Norway:

Act of 17 June 2005 no. 79 relating to aquaculture (Aquaculture Act).

<http://www.fiskeridir.no/akvakultur/lov-om-akvakultur/aquaculture-act>

United States:

NATIONAL AQUACULTURE ACT OF 1980.

http://www.nmfs.noaa.gov/sfa/sfweb/aqua_act.htm

New Zealand:

Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

<http://gpacts.knowledge-basket.co.nz/gpacts/public/text/2004/an/109.html>

South Australia

<http://www.legislation.sa.gov.au/LZ/C/A/Aquaculture%20Act%202001.aspx>

Chile

http://www.fao.org/fishery/legalframework/nalo_chile/en

New Brunswick:

Aquaculture Act. <http://www.gnb.ca/0062/regs/a-9-2reg.htm>

Newfoundland & Labrador:

Aquaculture Act. <http://www.assembly.nl.ca/legislation/sr/statutes/a13.htm>

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References

Federal Aquaculture Legislation, Bruce H. Wildsmith. Canadian Technical Report of Fisheries and Aquatic Sciences No. 1252, April 1984.

Toward an Appropriate Federal Aquaculture Role and Legislative Base, Bruce H. Wildsmith. Canadian Technical Report of Fisheries and Aquatic Sciences No. 1419, December 1985.

Legislative and Regulatory Review of Aquaculture in Canada, a report prepared by the Commissioner of Aquaculture Development for Fisheries and Oceans Canada, March 2001. <http://www.dfo-mpo.gc.ca/aquaculture/ref/legal-lois-eng.htm#ann1>

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APPENDIX

The Need for an Aquaculture Act: Questions & Answers

The industry has talked about the need for legislation off and on for years. Why is it so critical now?

Judicial challenges to provincial regulations governing aquaculture are only the start of what is expected to be a larger challenge to the industry's legitimacy. The federal government's legislative authority to govern aquaculture is likely to be challenged next. The Canadian aquaculture industry needs stronger protection under law, particularly since the federal Fisheries Act (which doesn't address the practices of farming in the ocean) will be insufficient.

What would an Aquaculture Act address?

An Act would:

- Recognize aquaculture as a legitimate user of aquatic resources;
- Provide a legal definition of aquaculture;
- Set out the rights and obligations of fish farm operators;
- Enable legitimate use of veterinary-prescribed treatments for disease control
- Recognize that aquaculture is not a fishery per se but is a form of animal husbandry;
- Provide the legal basis for an appropriate policy framework;

Most provinces have aquaculture statutes and regulations. Also, federal regulations are currently being developed in British Columbia. Isn't that enough?

Industry is appreciative of the efforts of the federal government to design a workable system in BC within the confines of the Fisheries Act, but for the long term, more is required to provide certainty to this industry.

While it is true that most provinces, including all of the coastal provinces, have aquaculture statutes and/or regulations, there is no federal aquaculture act and there are no federal statutes that specifically address aquaculture. Canadian legislation, which is based on the model of traditional fisheries and terrestrial agriculture, does not define the term aquaculture. Therefore, it is difficult to make appropriate distinctions in legal requirements that should apply only to the traditional fishery, those that should apply only to aquaculture, and those that should apply to both.

The lack of a federal aquaculture act causes problems for both aquaculture operators and other stakeholders. Aquaculture, as an emerging marine industry, must compete for legitimacy with established marine and aquatic sectors such as the capture fishery and marine transportation. Aquaculture legislation would confirm legitimacy of this growing industry.

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I understand that the Fisheries Act may be opened up in Parliament again this year. Wouldn't it be easier just to amend the Fisheries Act to address aquaculture, rather than create a new Aquaculture Act?

The Canadian aquaculture industry has labored under poorly designed policy & regulations for years as governments have twisted the interpretation of the Fisheries Act to try to manage the industry. The Fisheries Act is basically a wildlife management act and has nothing to do with farming. Now more than ever before, aquaculture needs an act which recognizes aquaculture is a food production practice which takes place with fish as private property and occurs in legally defined private spaces. It is not the management of a common property resource which occurs in public waters.

Give me an example of why the Fisheries Act is not workable for Aquaculture?

Shellfish and finfish farmers need to control pests/diseases for economic, animal welfare and environmental reasons – but several veterinary prescribing practices (common to aquatic and terrestrial veterinary medicine) are not legal options under a strict definition of the Fisheries Act. An Aquaculture Act would address the standard practices that are conducted on a farm, and would take a risk based approach to fish health management. The Fisheries Act takes a zero tolerance / hazard approach to authorization, rather than mitigation of risk. “Zero tolerance” approaches are untenable in any food production system, including aquatic food animals.

Now that the BC Supreme Court has ruled that aquaculture is a fishery, can the private property issue be addressed in an Act?

The only way to create a private fishery (vs. a public fishery) is to do it through legislation. The aquaculture industry needs to establish private property in aquaculture to the extent that it is established in agriculture.

How would an Aquaculture Act address the concerns of ENGO's and other stakeholders?

ENGO's and other stakeholders would have an opportunity to participate in the development of the legislation. They would have a voice in ensuring the industry's sustainability today and into the future. While the legitimacy and rights of the aquaculture industry need to be established in law, the responsibilities of aquaculture operators must also be set out unambiguously so that there are clear standards to which they will be held accountable. Both rights and responsibilities are aspects of legislation.

How would an Aquaculture Act impact investment opportunities in this industry?

The lack of legislative certainty (and resulting clear guidelines for industry rights & responsibilities) prevents the aquaculture industry from attracting new

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investment for expansion and growth. Security and legislative certainty will play a key role in ensuring access to capital.

Like all other industries, aquaculturists shall be afforded the long-term investment security to conduct their businesses following responsible business practices. A more appropriate legal framework for aquaculture would assist the Canadian industry to attract investment, improving its competitive position.

To meet the growing demand for seafood, aquaculture has grown rapidly in certain parts of the world. How have other countries addressed the regulation of this new and growing industry?

Every country that has been very successful with aquaculture (Chile, Norway, Scotland, Tasmania, Ireland etc.) all have legislation which is supportive or enabling for the industry. Even the US has a National Aquaculture Act “to encourage the development of aquaculture in the United States”.

Many provinces have taken a strong leadership role in aquaculture – and want to maintain management of this industry. Will this be possible with a federal Aquaculture Act?

An Aquaculture Act is about securing legitimacy and defining industry’s rights and responsibilities in law. It is not about management of the industry – or who has administrative responsibilities. The federal government currently has an MOU with many of the provinces/territories. Many provincial governments are strong supporters of our industry as well as regulators - and this positive relationship must be maintained.

Major “turf wars” within various levels of governments over management and regulation will do nothing to provide the security, clarity and investment this industry needs for its sustainable future growth.

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