

From: Smith, James <James.Smith@dfo-mpo.gc.ca>
Sent: Monday, April 19, 2010 6:45 AM
To: Swerdfager, Trevor <Trevor.Swerdfager@dfo-mpo.gc.ca>
Subject: RE: Aquaculture Act

Excellent. Put me in, coach.

James Smith, PhD

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From: Swerdfager, Trevor
Sent: April 17, 2010 11:54 AM
To: Belzile, Gilles
Cc: Smith, James; Bevan, David; Bouffard, Nadia; Stringer, Kevin; Bloom, Mitch
Subject: RE: Aquaculture Act

Thanks Gilles

As I pointed out in my initial message, in my view, one of the options that should at least be presented to the DM for consideration is a new Aquaculture Act. Another option is to introduce FA amendments to address aq issues as you suggest. We would be happy to have Jamey Smith serve on that team. Given my very strong interest in this issue I will sit in with him from to time as well or replace him if he is unable to attend meetings.

As an aside, I would note that the provincial Aq Act in Nfld is now under challenge in court. Should the province lose and have its jurisdiction rescinded so to speak, I think this will give further impetus to efforts to allow Parliament to express its will wrt to this sector. The initial hearing on the issue is set for May 31. I will keep you posted on it.

thanks for your quick response. I will look forward to working with you on this one.

Trevor Swerdfager
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From: Belzile, Gilles
Sent: April 17, 2010 11:02 AM
To: Swerdfager, Trevor
Cc: Smith, James; Bevan, David; Bouffard, Nadia; Stringer, Kevin; Bloom, Mitch

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Swerdfager\Email\Cohen - Swerdfager\

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Subject: Re: Aquaculture Act

Hi Trevor - it looks like the FA is going to move forward once again....still not certain for how long. We are therefore pulling a small team together to work on it and start preparing for the Committee process which could get underway as early as June....however, we don't expect substantive bill review to get underway until the fall. This gives us a bit of time to address a few policy issues that will likely come up at Committee and for which we may even want to introduce Govt amendments ourselves. One of those issues is likely going to be aquaculture, especially given the BC situation. I am meeting with Nadia on Monday to identify someone from FAM to be part of the FA Team. I think that given the special nature of the aquaculture file, having someone from your group assigned to the Team would allow us to better address that particular issue. We plan to have a first meeting of the Team next week along with a call with regions. While the substantive Committee work will not start until the fall, we will likely be asked to start briefing SCOFO Govt members and opposition in the next month or so....and therefore need to have a good story line for aquaculture...let me know who you would want to be on the FA Team. We can discuss further if you want. Thanks

Gilles

Gilles Belzile

From: Swerdfager, Trevor
To: Belzile, Gilles
Cc: Smith, James; Bevan, David; Bouffard, Nadia; Stringer, Kevin
Sent: Sat Apr 17 06:00:03 2010
Subject: Aquaculture Act

Hi Gilles

I understand that efforts to revise the Fisheries Act have recently been re-activated. As you know, development, regulation, and management of aquaculture is directly impacted by the FA. Whilst our upcoming re-organization may change the manner in which we coordinate our work going forward, in the near term to ensure that things don't fall through the cracks as we organize ourselves, I would like to ask that you directly involve the Aquaculture Management Directorate (AMD) in this work as well as others in Fisheries and Aquaculture Management, in order to ensure that proper consideration is given to the aquaculture sector within the deliberations around Fisheries Act renewal.

As you know, aquaculture in Canada has developed over the past 30 years without the benefit of a legislative and regulatory regime specifically dedicated to its development and management. Although several provinces have developed aquaculture legislation, the federal regime has changed very little as the industry has grown. Similarly, the provincial framework has evolved on an ad hoc basis, and federal-provincial collaboration and harmonization has been equally ad hoc. The result is an industry sector with tremendous potential, but with severe governance constraints that limit this potential.

I feel that the Fisheries Act may not be as an adequate mechanism for governing the aquaculture sector in Canada. Notwithstanding the fact that the BC Supreme Court ruled that aquaculture is a fishery, the Court was equally clear that it is a unique fishery and is not necessarily akin to capture fisheries. Indeed, at the conceptual level, I would argue that there are real concerns with treating aquaculture as just a subset of the capture fisheries to be managed using a statute designed for capture fisheries albeit modified in some way to address aquaculture. Just as no one now would equate agriculture with gathering and hunting wild plants and animals, it is likewise inappropriate to perpetuate the misconception that the domestic culturing of aquatic plants and animals is closely allied to the capturing of wild organisms. To modernize the Fisheries Act while retaining this antiquated concept that aquaculture is just a subset or minor element of the fish and seafood sector would, in my view, be unfortunate. The aquaculture industry is now recognized to contribute over \$1billion to the Canadian economy and employ some 15,000 people in coastal and rural communities, in many cases being the dominant employer where traditional sectors continue to decline. The BC court decision is driving regulatory change in a

manner that is only loosely connected to Parliament through the regulatory process. In short, there is no legislative expression of Parliament's direction or will wrt to aquaculture despite the fact that it now represents over a third of the fish and seafood value in Canada.

In my view, a real opportunity now exists to address this matter to support the sector to reach its potential, to provide social license for development, to ensure that the environment and other uses of resources are protected, and to provide transparent regulation and management of the sector to all stakeholders. For the first time, the industry is aligned around the idea. The Canadian Aquaculture Industry Alliance (CAIA) is spearheading a campaign to develop support for a federal Aquaculture Act that has merit and is worthy of further consideration by government. Their main premise is that an Aquaculture Act would recognize aquaculture as a legitimate user of aquatic resources. Further, such an Act would provide a legal definition of aquaculture, establish aquaculture as an activity distinct from fishing, set out the rights and responsibilities of fish-farm operators, and provide the legal basis for an appropriate policy framework.

Canadian legislation, based on the model of traditional fisheries and terrestrial agriculture, does not allow for easy distinctions between legal requirements that should apply only to the traditional fishery, those that should apply only to aquaculture, and those that should apply to both. Understanding what would be encompassed in an Aquaculture Act, what would be controlled through the Fisheries Act, how to deal with areas of overlap, how to make the adjustments and amendments necessary to the Fisheries Act – these are matters requiring a significant investment of time and resources.

Considerable work on these topics was done in the 1980s by Bruce Wildsmith, constitutional law expert and then professor of law at Dalhousie University. Much of his work still has relevance and could be useful in determining the provisions that need to be made to bring aquaculture regulation into a modern context, to understand linkages to other legislation and regulations, and to look at possible ways forward in separating out governance structures.

In any event, my intent in this note is not to spell out a comprehensive vision of what a potential Aquaculture Act would look like. Rather, my point is that if, as seems likely, serious attention is devoted to reforming the Fisheries Act, in my view, equally serious attention should be devoted to a consideration of new aquaculture legislation. I am not confident at all that such legislation could, or should, be developed in the form of government amendments to the previously table Bill. I believe that the Deputy and the Minister should at least be presented with options regarding how best to deal with aquaculture and that it should not be assumed that amendments or other tinkering with the FA is the best way to proceed.

I would be pleased to discuss this with you further and look forward to hearing from you in that regard.

Trevor Swerdfager
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