



FIRST NATIONS SUMMIT

RESOLUTION #0909.06

SUBJECT: BC FIRST NATIONS' STATEMENT OF JURISDICTION ON AQUACULTURE

WHEREAS

- A. First Nations in British Columbia have constitutionally protected title and rights that have been affirmed by the Supreme Court of Canada and by international conventions and local and international instruments, including *UN Declaration on the Rights of Indigenous Peoples*.
- B. Through the *New Relationship*, the *First Nations-Federal Crown Political Accord on the Recognition and Implementation of Title and Rights*, and the *Transformative Change Accord*, the federal and provincial governments have agreed to work toward the implementation of a government-to-government relationship with First Nations based on respect, recognition and accommodation of Aboriginal title and rights.
- C. The judgment in the *Morton*¹ case resulted in a ruling by the BC Supreme Court that "fish which are reared in finfish farms on the coast of British Columbia fall under the jurisdiction of Parliament under s. 91(12) of the Constitution Act, 1867, and the purpose and legal effect of the specific provincial legislation... was the management and regulation of a fishery" and "the petitioners had demonstrated that the impugned provincial legislation... was *ultra vires* the provincial crown and thus invalid. I ordered that the present provincial regulatory scheme with respect to finfish farming in British Columbia would continue for a further 12 months, to permit the Federal Government to enact legislation for the regulation of finfish farming..."
- D. 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. Although it is unclear whether the federal government will assume a more active role in aquaculture management in BC, what is clear is that BC First Nations must be actively involved in any legislative, policy and or decision-making process to reform the aquaculture industry in BC.
- E. The principles of reconciliation, respect and recognition of First Nations title and rights must be paramount in any legislative, policy or decision-making process regarding changes to the aquaculture industry. At a minimum, the honour of the Crown requires both the federal and provincial governments to minimize any infringement to Aboriginal title and rights, and to engage in appropriate consultation and accommodation processes.
- F. The Aquaculture Working Group was established by resolutions of the Union of BC Indian Chiefs, First Nations Summit and the BC Assembly of First Nations to engage with the province of British Columbia to address and advocate for First Nations title and

¹ *Morton v. British Columbia (Agriculture and Lands)*, 2009 BCSC 660.

PAGE TWO

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rights issues that have a bearing on the management and regulation of the aquaculture industry.

- G. The First Nations Fisheries Council has been empowered by First Nations leadership in BC to implement the *BC First Nations Fisheries Action Plan* and part of this task includes working to advance title and rights, to build capacity, and to help facilitate discussions with the federal and provincial governments regarding the recognition of First Nations inherent rights with respect to the management of fisheries and aquatic resources.

THEREFORE BE IT RESOLVED

That the First Nations Summit Chiefs in Assembly call upon the First Nations Fisheries Council and the Aquaculture Working Group to meet with both the Ministry of Agriculture and Lands and the Department of Fisheries and Oceans Canada (DFO) with respect to the proposed change of jurisdiction over the aquaculture industry resulting from the *Morton* decision, and ensure that First Nations are full participants on a government-to-government level in the jurisdictional discussions.

MOVED BY: Chief Maureen Chapman, Skawahlook First Nation
SECONDED BY: Reg Seaweed, Quatsino First Nation
DATE: September 25, 2009

Passed via Omnibus First Nations Summit Resolution #0909.02 (Omnibus Resolution to adopt eight resolutions from the September 2009 First Nations Summit Meeting).

ENDORSED BY:



Dan Smith



Grand Chief Doug Kelly



Grand Chief Edward John