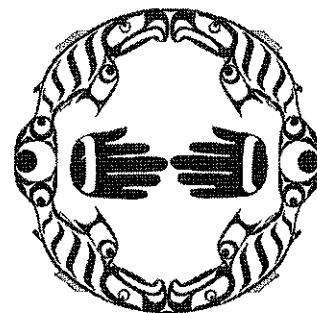


Briefing Note

To: B.C. First Nation Communities

Date: July 12, 2010

Re: Comments on DRAFT B.C. Aquaculture Regulations



FIRST NATIONS
FISHERIES COUNCIL

On July 10, 2010 DFO released the Draft of the B.C. Aquaculture Regulations in Canada Gazette 1. This Briefing Note identifies some initial considerations that First Nations should be aware of in reviewing this Draft piece of Regulations. This note is informed by FNFC analysis of the Regulations and from initial discussions with DFO.

Analysis:

Background on Process:

- DFO received between 1000-1200 "submissions" on the regulations and reviewed the regulations from international examples (Norway, Chile, USA, Ireland)
- DFO is aiming to meet the December 18, 2010 Court imposed deadline to transfer regulatory responsibility of Aquaculture from the Province of British Columbia to the Government of Canada.
- The comment period for the Draft in Gazette One ends September 8, 2010. Comments are to be directed to Ed Porter (PAR-RPA@dfo-mpo.gc.ca)

The regulations are structured in two parts:

1. Impact Analysis of the Regulations
2. The Proposed Regulatory Text

General Observations on Impact Analysis Statement:

- It is anticipated that the regulation of the Aquaculture industry in B.C. will cost DFO approximately \$8-8.5 Million per year – an increase from the Provincial budget of \$5.7 Million annually
 - Added costs related with increasing monitoring, expansion to include enhancement and info sharing
- Unlike the provincial system, the Federal model will result in only one License to be necessary (and an Authorization (see Section 6-9 below)). This is anticipated to increase international confidence in B.C. Aquaculture and reduce the administrative burden to farm owners
- Page 1939 of the Regulatory Impact Analysis discusses First Nations, stating:
 - Many First Nations view aquaculture as a viable economic opportunity (First Nations hold 6% of the jobs in the sector)
 - Many farms engage in habitat restoration activities which benefit First Nations
 - Some First Nations receive funds from Farms operating in their territories
- It is stated that the option heard in consultations for Aquaculture Aboriginal Specific Fisheries Guardians is a viable option
- BC and DFO are in the process of developing a MoU. This MoU will empower B.C. to retain the right to issue land tenures, related land-use decisions, workers safety and general business aspects of the sector. Also, the MoU will detail provisions for a joint decision-making table on issues requiring both federal and provincial input (such as new areas for farming, site expansions, sharing of information). There is no mention of the role First Nations will play at this joint decision making table.
- The Regulations are to be reviewed and evaluated in 2014-2015. One of the outcomes that this review will examine is "informed First Nation and Coastal Communities"

General Observations on Regulatory Text:

- The regulation itself makes no mention to First Nations or Rights and Title
 - On the DFO call, it was explained that DFO considered the regulations to be “consistent” with Section 35.1
 - It was stated elements such as a different fee structure for First Nations, First Nation Enforcement Officers, etc would be found in the Policies that flowed from this regulation
 - There is no mention of First Nations right to manage their territories or to have a voice in how their resources are utilized
- Overall, the regulations are very vague. This is necessary to allow one regulation to apply to the diversity of farming which occurs in B.C.: shellfish, finfish, freshwater, marine, etc
 - This also created a regulation, which is very broad and allows for flexibility/discretion in how it is applied and implemented. This flexibility is in the hands of DFO. This may or may not be favorable.

The regulation itself is composed of 18 parts. The following comments are structured under these 18 areas

Part 1: Interpretation

- As this Regulation is under the *Fisheries Act*, some things are not explicitly stated in this Regulation as they are stated in the broader *Fisheries Act*.
- It states that the regulations apply to “fish” – this is the broad DFO definition of fish, which includes sea mammals, shellfish and fish – both fresh and salt water
- This means that the regulation is different from the Provincial regulations in that it **WILL** apply to enhancement activities (hatcheries, rearing of salmon for enhancement purposes). The previous Provincial regulations did not cover enhancement.

Part 2: Application

- This regulation only applies to B.C.
- DFO has NO plans to expand the regulations to apply anywhere else in Canada.

Sections 3/4: License Conditions

- Not a direct cut and paste from the Provincial License Regime, but covers all that was included in the Provincial License
- There is no mention of the duration of licenses, however under the broader *Fisheries Act*, the duration for licenses is a maximum of 9 years. This will therefore apply to this regulation as well.
- There is no structure for fees in the regulation. DFO stated that more legal analysis is necessary to see if a fee structure belongs under this regulation or if it needs to be under the *User Fees Act*. It is anticipated that the final version (in Gazette 2) will contain a fee structure. DFO is looking for comments on what this should look like. Tentatively they are exploring one common administrative fee for all licenses (around \$100), then fees associated with the nature of the industry with an increasing fee schedule proportional to the amount of feed given (more feed, more fee)
- This section contains a broad list of conditions which may be applied to a particular farm. The regulation is framed so that it is enabling, allowing DFO discretion on what conditions are applied to each industry and/or farming operation
 - This level of flexibility allows for one regulation to govern both finfish and shellfish as not all stipulations need to be included in every license. However, it also opens the door for a high level of discretion on the part of DFO as to when and what stipulations are included in a license.

Section 5: Incidental Catch

- Unclear. It states that “every person who catches a fish incidentally must immediately return it to the waters outside the aquaculture facility...” – unclear why, in the case of finfish, you would knowingly be releasing a non-native species into the environment?

Section 6-9: Deleterious Substances

- Contains a broad list of what DFO constitutes a deleterious substance (fish feed; fish fecal matter; any liquid that contains more than 50% by volume of fish blood; any liquid from a container that was used for transporting fish to, from or within the aquaculture facility; disinfectants; antifoulants; wastewater from the aquaculture facility)
- Farms will require a license to operate (see Section 4) and an Authorization from the Minister to deposit any substance that falls under the aforementioned categories. It is anticipated that this Authorization will be issued on an annual basis (see Section 8)

Section 9/10: Prohibitions

- States that to operate a farming practice in B.C. – a license is required. This will have implication to hatchery and enhancement operations.

Sections 11-17: Consequential Amendments

- Lists of amendments which will be necessary to other Acts, Regulations in order for them to conform with one another

Other:

- In Judge Hinkson's ruling Aquaculture under the *Right to Farm Act* was struck down. This regulation contains no provisions for protection to farmers. This regulation does not regulate any aspect of human health or make proscriptions for the protection of Aquaculture farmers under other farmers protection mechanisms.

Implementation:

- The regulations are very broad. They will be used to structure policies, subsequent Acts and Programs which will implement the new regulations.
- The proof/on the ground implementation strategies will come out in these policies.
- It is envisioned that the policies/implementation of this regulation will be like fisheries management in B.C.
 - Moving towards an area based management system with the development of Integrated Management of Aquaculture Plans (IMAPs) which would be structured based on IFMPs. These would be industry specific (finfish separate from shellfish) and be area based.
 - DFO wants to discuss how this will unfold and how the plans should be drafted in the coming months
- Cabinet/Treasury Board has approved a budget for DFO to manage Aquaculture. This includes capacity for 45-50 new staff in B.C.
 - Most of the staff will be located on Vancouver Island.
 - There will be a dedicated enforcement unit (like Aquaculture Fisheries Officers)
- DFO will NOT be holding any more public sessions on the regulations. However, if DFO is requested to come to a community, they will honour all requests.

Recommendations:

1. First Nations should clearly articulate to DFO that First Nations must be included as a level of Government on the joint B.C –DFO decision making table which will be responsible for industry wide decision making processes.
2. First Nations (either through the FNFC or independently) should request another round of consultation sessions on the Proposed regulations
3. First Nations should articulate the need for the Act to set precedence and clearly reference a commitment to uphold the Crown's obligations to First Nations and to respect First Nations title and Rights.

4. More analysis is necessary to identify what the potential implications to First Nations are now that the regulations apply to enhancement activities.