



SECHELT INDIAN BAND

August 24, 2010

Via Fax

Honourable Gail Shea
Department of Fisheries and Oceans Canada
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister Shea:

Re: Proposed Regulations regarding BC Aquaculture

shíshálh Nation holds and exercises aboriginal title, rights and responsibilities to our Territory which includes the lands, water and other resources, including the marine environments. We enclose for your immediate reference a map of our Territory. These rights and responsibilities include the obligation to manage and access our lands, waters and resources according to our laws, practices and traditions. There is much evidence that confirms that since time immemorial our people have actively used, relied upon and occupied the lands and waters of our Territory, including all of the marine environments within our Territory. Please advise if your review of the strength of our title and rights suggests anything other than a strong *prima facie* case in support of shíshálh title and fishing rights throughout our Territory.

shíshálh Nation was not consulted and our concerns and interests were not accommodated by any of the existing Provincial licences for aquaculture within our Territory. As a result of the BC Supreme Court decision in *Morton v. British Columbia (Agriculture and Lands)*, your government is now required to fully oversee and regulate the aquaculture industry that either exists today or is being planned for some time in the future. Please be advised that we expect to be consulted by Canada with respect to all aspects of your proposed steps for implementing the necessary regulations, policies and strategic plans related to aquaculture (and mariculture) within our Territory.

In order to uphold the honour of the Crown and meet your constitutional duties, DFO is required to consult the shíshálh Nation about all existing (potential roll-overs) and proposed new aquaculture licences. As the Minister charged with implementing the *Fisheries Act* and any proposed BC Aquaculture Regulations, you must ensure that shíshálh Nation has been consulted and accommodated with respect to all existing licensed sites within our Territory before taking steps to purport to legalize these unlawful tenures. Failure to do so will simply result in less certainty of tenure for these existing facilities and more uncertainty for the aquaculture industry.

We have very recently been advised by your staff that DFO does not plan to consult with us on the existing provincially tenured operations within our Territory, but rather plans to consult on broader measures and plans for aquaculture species pursuant to an Integrated Fishery (or Aquaculture) Management Plan developed by species or groups of species. Consulting on broad measures and plans after granting a federal licence to the aquaculture operators within our Territory will not meet your constitutional obligations. It is neither acceptable nor justified that DFO make new statutory decisions under the Fisheries Act or the proposed BC Aquaculture Regulations that confirm/ roll over existing provincial licences without consulting and accommodating our concerns and interests. Such decisions will have ongoing, long-standing and potentially permanent impacts on the lands, waters and resources of our Territory and would directly and indirectly impact on the exercise of shíshálh title and rights.

While not an exhaustive list, we set out below some of the concerns which shíshálh has regarding the existing provincially licensed aquaculture facilities and operations within our Territory and the upcoming transition to federal jurisdiction. We would be pleased to meet with your staff as soon as possible to clarify our concerns and interests and confirm the steps going forward that would promote sound management and the meeting of our respective obligations and responsibilities.

shíshálh Nation have and can easily identify specific locations within our Territory that have been and/or are actively used for the management and harvesting of shell fish and other marine species, and which cannot risk the potential deposition of deleterious substances. Such locations and concerns throughout our Territory must be mapped and addressed as it relates to both current provincial aquaculture licences that will be assumed by the Federal Crown in December 2010, and future proposed licences.

A condition of any new licence must require immediate notification and reporting to shíshálh Nation of any events that may impose environmental concerns or risks, including advance notice of any planned activities that could be risky and any intentions for treatment of suspected pathogens.

Current field inspections and DFO enforcement will be inadequate to address the local concerns and monitoring required for these facilities. shíshálh Nation needs to be engaged in the review of any potential operations within our Territory that are licenced to deposit prescribed deleterious substances (fish feed and feces) and shíshálh want monitoring and enforcement capacity for all aquaculture projects within our Territory. Either the proponent or DFO must ensure that adequate funding is provided to shíshálh for such monitoring and enforcement at the local level.

shíshálh Nation has raised on numerous occasions and continues to hold serious concerns regarding the introduction of Atlantic finfish and their infectious viruses into our Territory. Our people have since time immemorial managed, cultivated and harvested marine species, including migrating salmon, which are integral to our distinct culture. It is not respectful, nor sufficiently precautionary to our vulnerable wild species that DFO authorize the introduction of foreign disease carrying species into our waters. We have many concerns regarding such species being introduced into our ecosystems, and these concerns must be addressed before DFO can provide any purported legitimacy to existing facilities.

It has been suggested that DFO is proposing that aquaculture licences be granted without environmental assessment. The Pacific Ocean and its marine life is facing a continual onslaught of new and existing environmental challenges. It is not acceptable to simply licence these potentially high

impact facilities without due diligence specifically focused on their potential impacts on the ocean and all of the marine and salmon resources within our Territory.

Finally, these licences purport to provide benefits to third parties from the cultivation and/or use of shishálh Nation lands and resources without any benefits being shared with shishálh. We have begun to have the necessary discussions regarding geoduck licences and we will need to have further discussions with your representatives, the Province and proponents regarding the necessary revenue and benefit sharing from these developments in our Territory.

We can advise that with sufficient resources and capacity shishálh Nation is ready and willing to meaningfully engage in a timely manner with DFO regarding these proposed regulations and the implementation of a constitutionally sound aquaculture regulatory regime. shishálh Nation is willing to look for short and long term solutions that assist DFO in properly meeting its lawful obligations. These possible solutions must be explored in a timely and meaningful manner that does not promote the unconstitutional status quo.

When reviewing the recently released draft BC Aquaculture regulations published in the Canada Gazette on July 10, 2010 (the "Regulations") we identified that all of the concerns raised above continue to be unaddressed. The Regulations inaccurately assert that "Consultations have been held with First Nations". This is clearly not the case. Discussions and information sharing with organizations like the First Nation Fisheries Council or the Aboriginal Aquaculture Association do not fulfill your obligations to consult directly with shishálh Nation. We welcome the opportunity to be consulted in a timely and meaningful manner and look forward to hearing from you or your staff to determine how such consultation with the goal of accommodation will be conducted. We would like to meet with you immediately and will be contacting your staff to set up an appropriate date.

By copy of this letter to Ed Porter of DFO the comments and concerns set out above can be accepted as shishálh's response to the proposed Federal Pacific Aquaculture Regulations.

Signed on behalf of the *shishálh* Nation:

absent
Chief Garry Feschuk

[Signature]
Councilor Tom Paul

[Signature]
Councilor Wesley Jeffries

[Signature]
Councilor Robert Joe

[Signature]
Councilor Jordan Louie

cc:

Ed Porter, DFO
Brenda Gaertner, Mandell Pinder