SALMON AQUACULTURE REVIEW

First Nation Perspectives

Volume 2

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I. FIRST NATIONS PARTICIPATION IN THE SALMON AQUACULTURE REVIEW

Planning for the review process, the Environmental Assessment Office (EAO) consulted with First Nations from coastal areas where fish farms are currently located, regarding their participation in the review. First Nations advised the EAO early in the review process, June, 1996, that they would participate on the Review Committee, but desired a separate process to establish a working relationship with the EAO and the Technical Advisory Team (TAT) in order to provide comment, advice and to discuss positions with respect to particular issues pertinent to salmon farming and the province's management of that industry.

First Nations requested that a document be prepared which provides their perspectives and views with respect to salmon farming. The BC Aboriginal Fisheries Commission (BCAFC) agreed to coordinate the documentation of the perspectives of First Nations which would serve as a basis for this document. Information has been conveyed through the Review Committee working sessions, submissions, and meetings held with the EAO. First Nation representatives to the Review Committee are shown in Appendix 1, and the series of meeting dates and Review Committee working sessions are shown in Appendix 2. In addition to participating actively in the review, First Nations organizations took members of the TAT and staff of the EAO to view certain salmon farm sites within their territories.

During the review the BCAFC, the Kwakiutl Territorial Fisheries Commission (KTFC) and the Nuu-chah-nulth Tribal Council (NTC) made detailed submissions and recommendations to the review. These were filed on the project registry and are reproduced in Appendix 3. A resolution pertaining to the position of the First Nations with respect to salmon farming was considered by the First Nation Summit, May 15, 1997. The resolution was passed by a strong majority and is reproduced in Appendix 4.

This document represents the First Nations' perspective, not the perspective of the province of British Columbia nor the EAO, with respect to salmon farming. The EAO was asked to provide advice on improvements to the decision-making and management framework for salmon farming in the province and to take into account the First Nations' perspective. These recommendations are contained in Volume 1, in particular chapter 9.

II. CONTEXT FOR THE POSITIONS OF FIRST NATIONS

The objectives of the First Nations are to:

- restore the environment within the territories of First Nations to a healthy, sustainable level, and
- fully participate in all aspects of management, protection, and restoration of the environment within the territories of the First Nations to ensure present and future generations who live in the territories enjoy a healthy environment.

Environmental Issues Related to Salmon Farming

The importance and need for environmental protection should not be compromised by promises of job creation. First Nations are uniquely vulnerable to any risk to the environment. This is because of the strong connection First Nations

- have had, as far back in time as can be remembered,
- have today, and
- will have in the future,

with the land and sea and the resources they support. This connection with, and reliance on, the environment and resources is distinct for each First Nation. In addressing this First Nation representatives explained:

"...you must understand that cultures are tied closely to the land and animals and our beliefs are tied closely to these traditions...you must understand that our stand is tied to the land (November 7, 1996; Tofino). We must look at what is happening to the food chain, for example any impacts to the spring, cod and snappers, because impacts on these various species leads to a high social impact on First Nation communities." (Chief Simon Lucas, October 18, 1996, Campbell River)

"...you must consider what does "home" mean to us. Our people talk about responsibility to our chiefs and responsibility to ourselves. Always look after those things that you eat because we live from life; we live off the salmon and the salmon berries; we have a strong understanding of the four seasons around us. At different times of the year different species are important to us, and the activities flow from this. We know when to gather the herring roe, know when to catch the chum to smoke it... The issue is not about scientific findings—it is about home....We need the resources—if you affect the clams or the salmon you are going to affect us." (Chief Simon Lucas, January 18, 1997, Campbell River)

"...you are talking about my future and the future of my children." (Chief Basil Ambers, November 29, 1996, Fort Rupert)

"In considering this industry our areas must be recognized." (Councilor Victor Isaac, September 13, 1996, Campbell River)

No resources can be expended or impacted without harming the First Nation which is reliant on those resources.

"We are different. You cut off our food and you cut off our life-line." (Chief Basil Ambers, November 29, 1996, Fort Rupert)

The importance of the fishery resource to First Nations has been demonstrated time and time again in connection with the wild fisheries, particularly salmon and herring. The aboriginal social, cultural, ceremonial and economic interests in, and reliance on, the fisheries resources have been recognized as giving rise to constitutionally protected aboriginal rights. Also some First Nations have constitutionally protected treaty rights flowing from Douglas Treaties.

Understanding this is essential to understanding the degree of concern that First Nations have about the actual and potential impacts of salmon farming on all environmental resources, particularly the fisheries.

First Nations take the position that salmon farming itself infringes aboriginal rights. Also the presence of a salmon farm can infringe aboriginal rights through interfering with access to the fishery resources. Further, salmon farming can infringe aboriginal rights by

- impacting the habitat of the fisheries resources
- impacting quantity and quality of natural resources
- introducing contaminants such as antibiotics to the wild resources
- transmitting disease to wild fish.

Rod Sam (Ahousaht) reminded the review throughout its duration that salmon farming infringed his aboriginal rights. During discussion of whether or not farmed salmon preyed on other fish he commented, "Even if one fish, one herring is eaten, it infringes my aboriginal rights" (Nanaimo, April 3, 1997).

Of primary concern to First Nation is the importance of wild salmon and other species, and the restoration and maintenance of wild salmon. First Nations view with great concern the risk that the salmon aquaculture industry poses to wild fisheries.

Outstanding Technical Concerns

First Nations made it clear that their concerns must be addressed.

"We should know the good and bad about the industry before we proceed." (Chief Simon Lucas, October 18, 1996, Campbell River).

"We are apprehensive about what can happen." (Chief Simon Lucas, January 18, 1997, Campbell River).

"We are looking for proof that there are no negative environmental impacts of salmon farming on a site and that a site recovers in a short time." (Councilor Tom Nelson, September 13, 1996, Campbell River).

"We are not against fish farming per se but there are not enough studies done to warrant an expansion of the industry. When things are healthy, the resource takes care of things that are lacking. We are watching the disappearance of one resource (timber) and there have been big changes in the area (Port Hardy area). If you can prove to me that fish farms do not pollute and do not kill, then I will be there with you... If my way of life is threatened by stupidity, then I will make threats—my grandchildren will need the resources. We are not scientists, but just live here." (Chief Basil Ambers, Campbell River, January 18, 1997).

The technical work produced by the Technical Advisory Team did not satisfy the concerns of First Nations regarding the potential and actual impacts.

"We were told to take information back to our people, but nothing has changed. Chief Charlie Williams will not accept the impact on his clam beds." (Chief, Kwa-Wa-Aineuk, First Nation, November 29, 1996, Fort Rupert).

Continuing concerns are with respect to antibiotic residues in food resources around fish farms, the impacts of escaped Atlantic salmon, potential for disease transfer, and waste management issues, particularly the unlawful dumping of dead farmed fish into the sea.

"We have a problem with fish farming polluting the ocean. This coast is one of the last ones that is not polluted anywhere....I heard about the 70 000 fish died near Port Hardy...What was done with them? Were they dumped? Why did they die?" (Councilor Tom Nelson, November 29, 1996, Fort Rupert).

There is a degree of distrust in the scientific evidence collected to date and conclusions drawn by the TAT. Under a memorandum of understanding,1 the Kwakiutl Territorial Fisheries Commission has recently been included in the provincial government's decision-making with respect to information collection, study design and data collection with respect to salmon farms in the traditional territories of the Kwakiutl First Nations. (Key purposes of the agreement are to provide a framework which will establish a clear process for information-sharing between ministries and the KTFC regarding the disposition of Crown lands and to improve the enforcement and monitoring of aquatic resource use and development, and aquaculture within Territories.) At times the results of government or industry sponsored research are inconsistent with the outcomes First Nations expect based on their knowledge of and experience with a particular resource. For example, stomach content studies have shown few fish, but First Nations have observed small fry entering net cages and disappearing. First Nation people know that certain types of fish, especially herring and herring fry, are attracted to lights. Farms are using lights and First Nations conclude that these have detrimental impacts on the wild resource because

- small fish are attracted into the cages and eaten by farmed fish
- fish attracted to the cages are preyed upon by predators following them to the net cages
- the predators are at risk because of closeness to farms
- fish are attracted to the cages where there is the potential for disease transfer.

First Nations are concerned about the level and type of information available at this time, have concluded many of their concerns have not been addressed, and therefore salmon farming as currently practiced presents risks to the environment and to First Nations. They have indicated that even if a risk of negative environmental consequence is low as outlined in the TAT papers, the possible adverse effects could nonetheless be potentially devastating to the aquatic ecosystems of B.C.

1 *Memorandum of Understanding, made Dec. 10, 1993, Parties: KTFC (signed by Chiefs of the Kwakiutl Nations and the Fisheries Commission) and the Minister of Agriculture, Fisheries and Food and the Minister of Environment, Lands and Parks. The term of the agreement is until an interim measures agreement or similar agreement is reached between the First Nations and the Province as part of treaty negotiations.*

First Nations disagree with the conclusions drawn by the TAT that salmon farming presents low risk to the environment because

- the risk assessment was conducted at current production levels,
- of the critical importance of biological resources to First Nations for sustenance, social, cultural, economic purposes,
- the perspective that any affect on these resources is unacceptable and an infringement of rights,
- a team member could determine which literature to rely on and the weight to be given the reported research in making a finding,
- skepticism regarding existing information due to limited or no involvement with research or the results, and results that are at variance with observations and expectations, and
- lack of information regarding specific topics, such as the affects of salmon farming on First Nations' health.

There is general opposition toward new industries established in territories with little or no prior discussion with First Nations about the industries or their potential impacts. The province is obligated to consult with First Nations to assess whether, as a result of making a decision First Nations' rights would be infringed, and if so whether or not that infringement is justifiable.

III. SOCIAL AND ECONOMIC CONSIDERATIONS

Health

The following is taken from the BCAFC submission (see Appendix 3).

"Medical science has recognized the importance of heredity to the response of our physiology, both to combat particular disease agents, as well as the general impact of our environment on our health. Aboriginal people are much more susceptible to some particular diseases than is the general public. First Nations are alarmed at the use of very biologically active chemicals, such as antibiotics and hormones in salmon aquaculture, particularly in the open cage setting where these chemicals are released into the marine environment. These chemicals are potentially transported long distances and ingested by other animals and plants that are eaten by aboriginal people as part of their daily diet."

"The total impact of these chemicals on the health of aboriginal people is not fully known, therefore, First Nations are opposed to the continued use of medicated feeds and other chemical agents in open cage salmon operations where these chemicals can be released into the environment."

Since the diet of many coastal First Nations is predominantly seafood, these concerns are unique and significant because First Nations view all components of the environment and food chain as one. Unlike many other British Columbians, many coastal First Nations live near salmon farms. They must have the opportunity to evaluate whether or not salmon farming affects the seafood they are reliant on. First Nations are concerned about the medications used in salmon farming and the threat that antibiotics and other therapeutants pose to the health of First Nations people. First Nations have unique and specific health sensitivities.

"You have to listen to us—because our immune system is not like yours...we want a full study—everything you have touched has impacted us, we have always been at the end of the line—we need some guarantees....We want to be careful, we want to make sure things go the right way." (Chief Simon Lucas, November 16, 1996, Tofino)

"We are apprehensive about what can happen. Throughout our lifetime we have had to change. In the 1950's I can remember my mother being excited because we were going to eat cod fish heads for lunch—she had been preparing them on the stove. Then an agent came from the federal government; he asked what we had to sustain ourselves over the winter—we had stores and mother was boasting that we would eat well over the winter. The agent said 'you poor people—all you eat is fish'. My mother wanted to hide the cod heads. He said he would send us some food that was good for our health. Thirty-six years later so many of my people have diabetes. Why are we all dying from stomach cancer; a scientist told us it was what we were eating. Can someone give us guarantees that changes from salmon farming won't affect us like this?" (Chief Simon Lucas, January 17, 1997, Campbell River)

The concerns due to unanswered questions with respect to the impacts of salmon farming on the environment may cause stress to First Nation people. Mental stability to many First Nations means

not being concerned about illness or impacts of salmon farming. Salmon farming takes place in the "front yards" of many First Nations people and that presence makes many First Nation people angry.

Impacts on Resource Use and Social Consequences

The following is excerpted from Shaffer (1997, see Volume 4) and was discussed with the EAO during a meeting (January 1997).

"In a study for the KTFC, Weinstein and Morrell (1994) estimated the subsistence catch of the Comox Quatsino Bands between September 1992 and August 1993 to be about 12 000 pieces of salmon, 600-700 pieces of groundfish, 4 200 pounds of herring and herring roe, 14 400 pounds of shellfish and some consumption of marine mammals. The subsistence activity is not simply a source of food. "...subsistence is an integrative activity. It connects individual activity with family and group welfare, and these in turn with direct experience of the state of resource animal populations and environmental quality. Resource harvesting is the connector between environment, communities, human history and individual and family life." (Weinstein and Morrell, 1994). All the Kwakiutl communities have high degrees of kin linkages and joint work group structures that are involved in food harvesting and distribution for example through potlatches.

Clams are a central item in the Kwakiutl diet and they are normally served at potlatches and other ceremonial occasions. Fort Rupert and Gilford Island are the only communities near enough to clam beds to allow harvesting without boats. Clams are generally less accessible than historically. Clam beds near Comox, Cape Mudge, Campbell River, Fort Rupert, Quatsino and Port Hardy have all been polluted by sewage outfalls or industrial effluent (Island Copper Mine, Elk Falls pulp mill). Although needs in more remote communities are generally being met, those without access to boats are not meeting these basic needs.

First Nations have observed negative impacts to the clam resources near salmon farms. There are also unanswered questions about the level of antibiotics in bivalves found near salmon farms. First Nations do not know when the farms are treating the salmon and do not have information regarding the fate of any drugs that enter the environment. Under circumstances where other sources of shellfish have been impacted due to some other activity, more pressure is placed on the remaining resources to ensure their health and quality. Concerns over the state of clams near certain farms is forcing some communities to seek out alternative sources. This is more costly and difficult and restricts access to an important resource. This may cause undue pressures on resources within one area as more than one First Nation may seek them out. This could create inter-territorial tensions.

Other resources have not been affected to the same extent, but the risks are of concern to First Nation communities and threaten their traditional way of life and principal source of employment. (Shaffer, 1997, see Volume 4) Other industries such as logging, mining, and commercial and sport fishing have had a detrimental impact on the "bread basket" of sea resources that support First Nations communities. The fish farming industry is the latest in a series of extractive resource industries that further threatens the sea resources that First Nations depend upon for their personal and cultural survival. For example, the Broughton Archipelago is a myriad of small islands. If an outbreak of disease occurs in the Broughton Archipelago, First Nations could be threatened as a people. The area is highly sensitive and a highly productive area for resources; much of the area has already been lost to a park.

Employment in the Industry

The following is also excerpted from Shaffer (1997, see Volume 4).

"Of the 1,200 First Nation residents living in the study area for the review, as of late 1996, eight were working at the farms in the Broughton Archipelago or in the processing plant in Port McNeill."

Few First Nation people are employed in the salmon farming industry. Overall in the province the very few aboriginal persons who are employed in the salmon farming industry, work mainly in processing or hatchery-related areas. Employment is not available to all First Nations in their traditional territories. Where First Nations have limited opportunities for employment near their homes, working in the salmon farming industry should not be construed as support for the industry.

There is continuing concern that with the increased automation at the farm and in the processing plants, there will be fewer opportunities for employment of First Nations.

"Unless you stipulate that the industry must hire First Nations, there will be no job opportunities for us." (Pat Alfred, vice-president KTFC, October 18, 1996, Campbell River).

Investment in the Industry

There is currently no First Nations' business participation in any grow out sites, though one joint venture hatchery operation has been reported in Sechelt. *"First Nation investments in salmon farming have failed (e.g., the Sunshine Coast and Kitasoo areas) or promises of joint ventures have been withdrawn (e.g., Beaver Cove). Generally, the capital-intensive nature of salmon farming and extensive vertical integration in the industry has not been conducive to successful First Nations involvement."*

Potential First Nation Interest

One of the First Nations from the central coast has expressed interest in cooperating and joint venturing with a salmon farming business to develop sites within its territory.

IV. MANAGEMENT FRAMEWORK AND DECISION-MAKING PROCESS

First Nations have not been effectively or sufficiently involved in the decision-making process to date. First Nations oppose issuance of new tenures and renewal of tenures until this has been addressed.

Many of the tenures for salmon farms were issued in the Broughton Archipelago between 1986 and 1988. Applications for a number of these sites had been received prior to 1986 and were not subject to application of the CRIS guidelines. This information, while made public and printed on all CRIS maps for the Broughton, was poorly understood by CRIS participants including First Nations. It resulted in considerable distrust of government decision-making. The law regarding government obligations to avoid potential infringements of aboriginal and treaty rights by amongst other actions, consulting with First Nations to assess aboriginal rights, was evolving rapidly at this time. Government policy with respect to required consultations with First Nations for decisions with resource implications in traditionally claimed territories was also evolving rapidly in the mid 1980's as a result of court decisions.

For the Cypress Bay example, the original tenure was approved based on poor information that amounted to inaccurate answers to the BC Lands application. Once approved and in place, government agencies have been slow to correct the siting mistake even though the farm still threatens salmon and sea resources in Cypress Bay.

The KTFC have outlined the concerns with the historic approval process which has resulted in resource conflicts and regulatory compliance problems, including 3 sites operating too close to shellfish beds, 2 sites near salmon rearing areas, 2 farms off lease areas, inadequate cleanup of debris (e.g., nets, feed bags, rope, chain, etc.) at 6 sites. Their submission states that there are at least 10 farms located directly in CRIS "red zones" (i.e., areas identified as no opportunity for farming by stakeholders because of conflicts with salmon migration routes, shellfish beds, stream mouths, recreation sites, etc.)2 First Nations also conclude that their participation in referral/regulatory process for amendments to farm permits (e.g., for expansion, different species, drugs and chemicals used to promote growth and prevent disease) is even less adequate.

The NTC have outlined problems with the tenure approval process, providing a detailed example of one tenure process. In the territory claimed by the Ahousaht First Nation there are fourteen (14) farms currently in CRIS "red zones". As with the Broughton these tenures were approved prior to the CRIS guidelines being adopted by the province. Within the combined NTC First Nations territories, there are 3 tenures which have expired and 2 will expire in August, 1997. Resolution of process concerns and the involvement of First Nations in tenure decision-making are critical and essential.

2 *C. Berris identified 5 farms in, or partially in a red zone, plus one additional farm with only a residence (i.e. about 20% of the total number of farms). Applications for all but one of these farms had been received prior to the release of CRIS and were not subject to strict application of CRIS findings.*

Since the mid to late 1980's when many tenures were issued in the Broughton Archipelago, the KTFC have entered the memorandum of understanding referred to above. Few new tenures for aquaculture have been issued in the Broughton Archipelago since the agreement was made so there is not a broad basis for evaluating the effectiveness of the procedures under it. None of these were for salmon farms.

Requests for tenure renewals or amendments for aquaculture tenures in Clayoquot Sound come under the jurisdiction of the Central Region Board, pursuant to an interim measures agreement.3 The Board must receive applications for tenure approvals for aquaculture; the Board must within 30 days accept, propose modifications to, or recommend rejection of the proposal to the ministry referring the proposal (Ministry of Environment, Lands and Parks).

Decisions of the Board are as a matter of practice taken through consensus. If consensus cannot be reached, decisions are by double majority vote (a majority of First Nations and a majority of non-First Nation members). If the recommendation of the Board is not implemented within 30 days by the ministry, the Board may refer the matter to Cabinet. If Cabinet does not accept the proposal of the Board in the matter referred to it, the Central Region Resource Council (hereditary chiefs of First Nations and ministers of British Columbia) must meet to consider solutions.

The TAT made several technical recommendations to the EAO. These recommendations serve as a basis from which to evaluate the need for improvements to the effectiveness of the current management framework for salmon farming. There were a number of recommendations that the First Nations agreed with and both the TAT and First Nations recommended against the farming of transgenic fish.

A summary of the response of First Nations to the TAT recommendations representing continuing concerns follows. Until these concerns are addressed to the satisfaction of First Nations, First Nations support the continuation of the moratorium on the issuance of new tenures for salmon farms.

3 *Clayoquot Sound Interim Measures Extension Agreement, made April 24, 1996 and effective until April 24, 1999; parties are the province (Minister of Aboriginal Affairs) and the Tla-o-qui-aht First Nations, the Ahousaht First Nation, the Hesquiaht First Nation, the Toquaht First Nations and the Ucluelet First Nation.*

Technical Advisory Team Recommendation	First Nation Response
continue with production of Atlantic and pacific salmon	•continued farming of Atlantic salmon unacceptable; oppose farming of non-native finfish stock. Any adverse impact on the pacific salmon fishery is unacceptable.
•encourage development of techniques and methods that prevent fish escapement	•regulate to eliminate number of escapes and enforce with punitive measures; fines to go to fund for restoration of wild fishery; immediate reporting of escapes to local First Nations
•production of all female Atlantics in 8 years	•not feasible; risks associated with escaped Atlantics will continue
•continue with and expand Atlantic Watch Program	•expand to include escaped pacific salmon; eliminate federal catch limit on Atlantic salmon
•adopt genetic and physical marking of farmed fish	•marking should be external
•suite of recommendations pertaining to fish health	•industry must bear cost of implementing new measures; mandatory reporting of disease outbreaks within 24 hours to local First Nation; grant power to First Nation to order destruction of diseased fish
•strengthen federal *Fish Health Protection Regulations* (FHP)	•no importation of eggs or fish for salmon aquaculture to ensure accreditation of importing hatcheries and better surveillance in BC on fish when hatched; limit number of eggs imported; for salmon no "fish" imports
•industry required to disclose when drugs are being used on farm providing notice of drug used; government review drug treatment records to analyze trends in drug use and residues	•should be full disclosure on farm by farm basis of all drugs used; immediately ban use of medicated feed in open net cages
•codes of practice to manage wastes should be established	•must be mandatory
•further evaluate suitability of freshwater for use by aquaculture	•prohibit operation of commercial salmon aquaculture in freshwater
•phase out use of ADDs over 2 year period	•stop use immediately
•no new approvals for lights used at night with complete evaluation of effects	•stop all use until effects evaluated; allow lights for navigation and safety and direct away from cages
•for siting underwater resources should be mapped for a distance of 30 m. from site	•increase to 100 m. from site
•minimum distance expressed for shellfish resources (300 m.)	•should be greater; do not "exempt" already impacted shellfish beds
•minimum distance 1 km. from Indian Reservation	•minimum of 10 km. from Indian Reserve, unless a specific exemption is granted by First Nation
•implement certain recommendations immediately; resite farms as necessary: establish new decision-making process prior to considering applications for new tenures	•satisfactorily address all First Nation concerns with respect to existing sites and remediate as necessary; prior to considering applications for new and renewed tenures
•adopt a coordinated, integrated and participatory regulatory framework for salmon aquaculture; establish local advisory "working committees" to enhance the "referral" system for tenure decisions	•provide First Nations with final approval in siting salmon aquaculture operations, which should extend retroactively to existing tenures
•monitoring systems to involve trained third party observers	•provide local First Nations' Guardians with powers to enforce regulations, including the monitoring of environmental conditions; fund First Nation role in enforcement through levy on industry
	•farmed fish should be labeled as such for consumer
	•provide First Nations health concerns priority attention and provide First Nations' health priority attention
	•impose levy on operations continuing to use open net cages; develop financial incentives to develop and implement closed containment technology
	•establish industry funded research program controlled by first Nations to conduct research into environmental impacts of open net cage operations
	•use of hormones in salmon farming industry to be reported to First Nations in whose territory the product is being used

V. FIRST NATIONS' ROLE IN DECISION-MAKING AND MANAGEMENT OF SALMON FARMING

First Nations almost unanimously remain opposed to salmon farming and the fish farms for the coast of BC. Assuming that the recommendations of the First Nations are fully implemented, eventually new applications may be considered. First Nations are requiring changes to the decision-making process which they must be part of.

With respect to existing farms, First Nations must have a meaningful role in decisions when changes are made to farm operations and tenure amendment, and tenure and license renewals. There also must be a role for the First Nations in the ongoing enforcement, regulation, and environmental monitoring at salmon farms.

In considering this role, the following principles should apply.

Principles for Involving First Nations in Salmon Farm Decision-Making

1. The relationship between the province of B.C. and the First Nation must be based on respect. This requires full disclosure of information relevant to a decision by the province.

2. Each First Nation is independent and possesses its own rights, therefore, the First Nation in whose traditional territory an application for a tenure is made must be consulted.

3. Each First Nation may establish its requirements for consultation.

4. First Nations must be involved in decision-making in a genuine manner on a government to government basis.

5. When implementing policies and regulations, the province will recognize, affirm, and respect aboriginal rights.

6. First Nations must be involved in decisions regarding:
   - application for approvals for new fish farms
   - changes to existing farms (threshold of change not specified)
   - renewal of fish farm "licenses"
   - management of fish farms.

The First Nation process outlined in Figure 1 is based on these principles. This would apply to new fish farm applications and amendments. Changes requiring First Nation assessment include changes in:

- species raised at a site
- production levels
- containment technology
- tenure boundaries.

Figure 1. First Nation Proposed Process for Approval of New Farms and Certain Amendments*

First Nation Proposed Process for Approval of New Farms and Certain Amendments

Proposal
• site plan - tenure boundaries - layout of farm • operational plan - species - level of production • management plans - fish containment - escape fish recovery - fish health and disease control - predation control - waste management - staffing and hiring policy • site remediation (in cases of temporary production stoppage) site reclamation (when producer leaves site)

The management (operational) plan filed with the proposal must include plans for:

- providing timely notice to First Nations in a manner approved by the affected First Nation, and regional public when a disease treatment is underway. It will include information describing the likely length of treatments and the drugs expected to be used;
- fish health management and disease control;
- third party measurement of levels of antibiotic residues in nearby shellfish during and after treatment;
- providing First Nations notice in a manner approved by the affected First Nation of fish escapement within 24 hours of the escape;
- recovery of escaped fish.

Notice of drug treatment may include flying of a flag on site, posting of notices in the area around the farm, publishing notice in the newspapers, VHF announcements.

When farms are operating and in the event of antibiotic treatments and escapement, the province must ensure the notice provisions are adhered to and that First Nations are advised of the particular plans being implemented to recapture escaped fish.

ENFORCEMENT

There must be a role for First Nation guardians and officers in monitoring for regulatory license and standards compliance on a daily basis. Individuals involved should be granted the necessary statutory inspection and enforcement powers to fulfill this role which should extend to the action of laying charges. First Nation officers and guardians should be involved in enforcement on an agreed to basis, in site restoration, remediation and clean up.

The costs of developing any additional capability in First Nations to undertake this role and costs of performing these services must be borne by government and industry.

VI. SUMMARY OF FIRST NATIONS' POSITION REGARDING FISH FARMING

The priority of First Nations is restoring wild salmon to the streams, rivers and lakes of their territories. Salmon farming as practiced, directly infringes on aboriginal rights on the basis that it threatens existing salmon populations and restoration efforts. Serious health concerns raised by First Nations regarding the consumption of sea resources polluted by salmon farms have not been answered.

A moratorium on the issuance of new tenures should continue until all concerns have been addressed and risks further minimized.

The final position of First Nations involved in the review and those directly affected by salmon farms is zero tolerance to any salmon farms.

APPENDIX 1

Salmon Aquaculture Review Committee:
First Nation Membership

Salmon Aquaculture Review Committee: First Nation Membership

Organization	Member	Alternate
BC Aboriginal Fisheries Commission	Mike Staley / Simon Lucas	Beryl Harris
Kwakiutl Territorial Fisheries Commission	Pat Alfred	Christine Hunt Trevor Jones
Alliance Tribal Council	Pam Paul	Jennifer Sinclair Fred Carpenter
Nuu-chah-nulth Tribal Council, Fisheries Council	Don Hall	Richard Watts
Oweekeno/Kitasoo Tribal Council	Ivan Tilliou	Gordon Hanuse (corresponding member)
Ahousaht First Nation	Rod Sam	Peter Charlie Daryl Campbell
Tla-o-qui-aht First Nation	Terri Tom	Gerald Robinson
Kwakiutl District Council	Tom Nelson	Perla Henderson
Musgamagw Tsawataineuk Tribal Council	Richard Dawson	Yvonne Gessinghaus
Native Brotherhood of BC (corresponding member)	Jim White	Lynne Widdows

APPENDIX 2

Chronology Of First Nations Meetings With EAO And Review Committee Working Sessions

Chronology of First Nations Meetings with EAO and Review Committee Working Sessions

August 17, 1995 – Meeting with Alliance Tribal Council to Introduce Upcoming Review

December 7, 1995 – Meeting With Clayoquot Central Regional Board to Discuss Upcoming Review

February 15, 1996 – Meeting with Ahousaht to Discuss Concerns Regarding Tenures

March 22, 1996 – Presentations to BC First Nations Aquaculture Symposium on SAR

June 11, 1996 – Meeting With First Nations and BCAFC to Discuss Participation and BCAFC Coordination Mandate

- Dean Wilson (Chair)
- BCAFC, Simon P. Lucas, Beryl Harris
- Ahousaht, Darryl Campbell, Rod Sam
- Alliance Tribal Council, Fred Carpenter
- Nuu-chah-nulth TC, Richard Watts, Don Hall
- Penelakut, Mark Brown, Tembly Matthews
- Kwakiutl Territorial Fisheries Commission, Victor Isaac, Pat Alfred
- Kwakiutl District Council, Tom Nelson
- Tla-o-qui-aht, Moses Martin

September 13, 1996 – Meeting with First Nations

- Rod Sam, Ahousaht
- Peter Charlie, Councilor, Ahousaht
- BC Aboriginal Fisheries Commission, Mike Staley (consultant)
- Chief Charlie Williams, Kwa-Wa-aineuk Indian Band (MTC)
- Percy Williams, Councilor, Kwicksutaineuk-ah-kwaw-ah-mish (MTC)
- Richard Dawson, Councilor, NAMGIS (MTC)
- Bobby Joseph, Band Manager, Mamaleleqala-qwe-qwa-sot-enox (MTC)
- Kwakiutl District Council, Tome Nelson, Councilor, Kwakiutl
- Kwakiutl Territorial Fisheries Commission, Pat Alfred
- Native Brotherhood, - Lynn Widdows
- Nuuc-chah-nulth Tribal Council, Don Hall

September 13-14, 1996 – Review Committee Working Session – Campbell River (see Appendix 1 for Review Committee participants)

September 26-27, 1996 – Review Committee Working Session – Port Hardy

October 1, 1996 – Meeting with BCAFC and Native Brotherhood to Discuss Participant Assistance and Further Studies

October 11, 1996 – Meeting with BCAFC, Hugh Barker (for BCAFC) and Ann Hillyer (for EAO) to Discuss Paper on Aboriginal Rights

October 18-19, 1996 – Review Committee Working Session – Campbell River

November 6, 1996 – Meeting with First Nations and TAT to Discuss TAT Discussion Papers

November 6-8, 1996 – Review Committee Working Session – Tofino

November 28-30, 1996 – Review Committee Working Session – Fort Rupert

December 12-14, 1996 – Review Committee Working Session – Nanaimo

January 16, 1997 – Meeting with First Nations and TAT to Discuss TAT Discussion Papers and Braker Paper

January 16-18, 1997 – Review Committee Working Session – Campbell River

January 24, 1997 – Meeting with First Nations to Discuss Socio-Economic Issues (waiting for complete list of attendees from BCACF)

- Nanaimo (4 representatives)
- Ahousaht – Rod Sam, Darrell Campbell, Peter Charlie, MacKenzie Charlie
- Ditidaht – Carl Edgar Jr., Philip Edgar, Paul Tate
- Kwakiutl – Marion Wright, Chief Basil Ambrose, Tom Nelson
- Penelekaut FN
- Namgis FN
- KTFC – Pat Alfred
- KDC
- NTC – Don Hall
- BCAFC – Simon Lucas, Mike Staley

April 2-4, 1997 – Review Committee Working Session – Nanaimo

April 15, 1997 – Meeting with First Nations to discuss TAT Recommendations and Braker Paper

- Ahousaht – McKenzie Charlie, Peter Charlie, Darrell Campbell
- NTC – Don Hall, Richard Watts
- BCAFC – Simon Lucas, Mike Staley
- KDC – Tom Nelson
- MTC – Richard Dawson
- KTFC – Trevor Jones, Victor Isaac, Pat Alfred, Christine Hunt

May 30, 1997 – Meeting to Discuss Draft Paper on First Nations Perspective

- BCAFC – Simon Lucas, Mike Staley, Arni Narcisse, Gibby Jacob
- Kwa-wa-aineuk – Charlie Williams
- Musgamagw – Bobby Joseph, Richard Dawson
- Kwakiutl DC – Tome Nelson, Robert Sewid
- Ahousaht, Rod Sam, Sid Sam, Darrell Campbell, Peter Charlie
- NTC – Don Hall
- KTFC – Pat Alfred, Trevor Jones
- Namgis – Victor Isaac
- ATC – Fred Carpenter

Trip to First Nations Territories (KTFC; NTC) – EAO and TAT

March 6, 1997 – Trip with KTFC guardians and elders to Broughton Archipelago
March 7, 1997 – Trip with NTC staff, Ahousaht guardians and elder to Clayoquot Sound

APPENDIX 3

Individual First Nation Submissions
And Resolutions Filed With The Salmon Aquaculture Review

INDIVIDUAL FIRST NATIONS SUBMISSIONS AND RESOLUTIONS
FILED WITH THE SALMON AQUACULTURE REVIEW

FIRST NATION SUBMISSIONS		
DATE	NAME	ORGANIZATION
September 12, 1996	Yvon Gesinghaus	Musgamagw Tsawataineuk Tribal Council
September 14, 1996	Chief Charlie Williams	Kwa-wa-aineuk Indian Band
November 7, 1996		Ahousaht Band Council
November 7, 1996	Roger Dunlop / Don Hall	Presented by the Nuu-chah-nulth on behalf of the Ahousaht First Nation
December 13, 1996	Christine Hunt	Kwakiutl Territorial Fisheries Commission
January 15, 1997		Nuu-chah-nulth Tribal Council
January 17, 1997		BC Aboriginal Fisheries Commission
January 17, 1997	Chief Charlie Williams / Chief Bill Crammer	Musgamagw Tsawataineuk Tribal Council
April 28, 1997	Don Hall	Nuu-chah-nulth Tribal Council

FIRST NATION RESOLUTIONS		
DATE	NAME	ORGANIZATION
May 16, 1997	Beryl Harris	BC Aboriginal Fisheries Commission
May 27, 1997		Nuu-chah-nulth Tribal Council /Kwakiutl Territorial Fisheries Commission/ BC Aboriginal Fisheries Commission

Musgamagw Twawataineuk
Tribal Council

PO BOX 90, ALERT BAY, BC V0N 1A0
TEL:(604)974-5516 FAX:(604)974-5466

September 12, 1996

To Whom It May Concern:

The Musgamagw Tsawataineuk Tribal Council is directly and violently opposed to the operation of fish farms within our traditional territories. Too much of our territories are being destroyed by untested "projects" that cannot survive elsewhere.

Of prime concern is the condition of our beaches which are near present fish farms. Our clam population is suffering as well as our ground fish. We are not satisfied with the reports stating otherwise as we are witnesses to the desecration of our wildlife, oceans, and beaches.

As the Creator has tasked us with the duty of stewards of our territories we insist that fish farms be removed from our territories and that they are not permitted to return.

Yours truly,
On behalf of the Directors

Yvon Gesinghaus
General Manager

September 14, 1996

To: BC Fish-farm Aquaculture – Technical Working Group

From: Chief Charlie Williams, Kwa-wa-aineuk People

No matter how much effort you try put into improving your industry by performing so called studies, it will never reach near the acceptable level of the Kwa-wa-aineuk.

Your studies will never be acceptable because your so-called technicians perform these studies from time to time, only days at a time, which is a meaningless effort. They will never understand the life of the water resources as much as we do, and will never care for that rich way of life like we do, because all they see is money for themselves, for something that will never work.

You can't call this ECONOMIC DEVELOPMENT because this has a drastic effect of our wild stock, our clam beaches, our way of life.

Comparing our area to Gilford Island's, their clam beaches are destroyed and their shellfish are not the same.

We have a crisis on our hands at the fault of this industry. Last year thousands of ATLANTIC salmon escaped from the site in Well's Pass, in our Traditional Territory. You can't tell us that this will not affect our wild stock because it will.

This grossly infringes our rights, and interferes with our traditional and cultural activities. Deer hunting, clam harvesting, duck and seal hunting, the gathering of all the natural resources that rightfully belong to us.

No matter how much assessments and studies you do, the Kwa-wa-aineuk will never accept Fish Farms in our Traditional Territory.

Sincerely,

Chief Charlie Williams

AHOUSAHT
BAND COUNCIL

General Delivery
Ahousaht BC V0R 1A0
Phone 670 9563

Ahousaht First Nations Presentation on Fish Farms – November 7/96

Introduction:

- The Hawiih of Ahousaht accept that current activity in fish farming is carried on in their territory.
- The Hawiih of Ahousaht will negotiate new terms of how this activity will be carried on in the future, through the treaty process.
- For the immediate, the Hawiih of Ahousaht support the environmental review process to the extent that it fully considers First Nations interests.
- The Ahousaht Hawiih do not support expanded activity in Ahousaht territory.
- The Ahousaht Hawiih do not support the 17 licenses operating currently within their territory.

Issues:

- Existing standards are not clear to the Hawiih of the Ahousaht First Nations.
- It is not clear to the Hawiih of the Ahousaht First Nations how the standards for the Fish farm industry are being monitored and enforced.
- There currently are a large number of fish farms operating within Ahousaht territory and Clayoquot Sound.
- Fish farm operations operate currently within very close proximity of some of our reserves.
- Fish farms currently operate within close proximity of clam beaches.
- Fish farm sites need to reassessed to begin considering First Nations interests.
- There is an escalating demand for the use of Atlantic salmon and the problem of escapements has not been adequately addressed.
- Disease control must be applied from farm fish to wild stock and wild stock to fish farms.
- Environments have been impacted by fish farm wastes.
- Fish farm operators are not respecting First Nations interests and currently there is no cooperation.

Problems in the Referral Process
Siting Finfish Aquaculture Operations:
Cypress Bay, Clayoquot Sound Example

Roger Dunlop and Don Hall

Nuu-chah-nulth Tribal Council

Presented on behalf of the

Ahousaht First Nation

The Referral Process

The Province administers Crown Land through the Lands Branch of the Ministry of Environment, Lands and Parks. This administration includes granting of aquacultures site licenses and leases.

When applications for tenure are made to the Lands Branch, the Lands Branch "refers" these applications to other agencies and parties whose interests may be affected by the proposed development. These agencies may include:

- Provincial ministries (MAFF, MELP, MEMPR, MoF, etc)
- Federal agencies (DFO, Coast Guard, etc.)
- Regional and municipal governments
- First Nations (recently after Province recognized Delgam uukw)
- some organized interest groups (e.g., yachting associations)
- other affected parties (upland owners etc.)

These agencies and parties are requested to demonstrate to the Lands Branch how their interests may be affected, suggest alternatives to accommodate the proposed development or recommend rejection of the development.

The Lands Branch then weighs the information it receives and approves, suggests modification to, or rejects the application.

First Nations and the Referral Process

When Hagensborg Sea Farms Inc. first made application for the Cypress Bay Site #1401968 in 1988 the Province did not recognize First Nations in the referral process.

The Province started including First Nations in the referral process about 1992 as a result of the Regina and BC vs. Delgamuukw litigation.

Consequently, until recently there was no opportunity for the input of local and traditional knowledge about the natural resource values of specific sites under application. Lands Branch relied on information from resource management agencies which in many cases are not thoroughly familiar with the resource base associated with specific sites.

Currently there is no capacity funding for First Nations to deal with referrals. First Nations participation in referral process requires the commitment of resources from other programs or sources.

Cypress Bay site

The site was approved by BC Lands sometime after 1986. The documents obtained from BC Lands are not clear on what process was followed during the original referral process. Copies of all the original referral documents have been requested from Lands but have not yet been received. One handwritten note indicates that the net cages were moved to the site prior to approval and hastened the approval. A License of Occupation was issued. This License of Occupation expires on November 26,1996. An application for renewal of the LOC and an amended Finfish Farm Development Plan are presently being put through the referral process by BC Lands. The date on the referral response form is July 22, 1996. The amended Development Plan includes re-orientation of the pen system (N/S to E/W), a production plan with increased production from the site in terms of tonnes of salmon (396 to 986 tonnes), and a shift in the species from chinook and coho to include the culture of chinook and/or Atlantic salmon.

Much of documentation was supplied by a concerned Tofino area resident who obtained the information through he access to a and freedom of information legislation. We wrote and requested the Lands Branch provide all the referral documents related to the development of this site in mid October. To date we have only received a copy of the new development plan. We contacted Lands again on November 1 and were told that it will be some time before they can get to the documents as they are archived.

The Lands Officer stressed that the old information would not be relevant to the new application; review of the re-application would be based on new information only. If the original application was based on false or incomplete information, as we show below, then we contend that this information should be considered in granting extensions, new licenses or new leases.

[show overhead comparison table between 1988 & 1996 applications]

Q#2 used by recreational boaters accessing property adjacent to site

Q#3 foreshore lot was a log sort area, former skid and log dump area now a ramp for PNG feed barge

Q#5 about 680 m form Wahous IR (<1km)

Q#6 Is the site used for commercial fishing? Both the 1988 and current renewal application state "No". DFO Record of Herring Management Strategy (1994) indicate there are commercial roe-herring fisheries and test fishing charter payment fisheries in Cypress Bay. In 1994 155.5 tons of herring test payment fish were harvested in Cypress Bay. in 1988 4,190 tons of roe-herring were harvested in Cypress Bay. The DFO Fisheries Officer who ran the 1988 commercial herring fishery in Cypress Bay commented on the fact that the pens and anchor lines interfered with the fishery.

Q#7 The 1988 application and 1996 renewal request both state "No" to the question of clam beaches being within 125 m of the site.

There have been commercial clam harvests on the beach located in the cove to the NE of the site. Ahousaht First Nation members report a formally productive clam pocket beach near the rocks adjacent to the marked 3 $_7$ on the chart which is less that 200 m from the lease. This pocket beach no longer produces clams in harvestable quantity or quality. There are (were) subtidal clams under the fish farm site.

Q#8 The 1988 application indicates the site had "No" marine fisheries habitat within 1km (herring or cod spawning, salmon holding/rearing). The 1996 application indicates they are aware of the marine habitat values and probably refers to the presence of herring spawn. It was known in 1988 that herring had historically spawned in Cypress Bay. Herring had spawned in this particular location in 1978. A DFO Fishery Officer reported that the farm was specifically located at the present site because there was no herring spawn reported for the area for about 10 years prior to the application. Chuck Forte, DFO herring biologist responsible for herring spawn assessments, suggested that lack of herring spawn reporting was not an accurate indication of true herring spawn activity, especially for a location like Cypress Bay that is known to be a "late" spawn location. It simply might have been missed in the DFO assessments. In 1994 a very large herring spawn was assessed in Cypress Bay [overhead]. As this site was known to be used by herring it should never have been approved for salmon farming in the first place. DFO policy calls for no net loss of habitat. DFO guidelines for siting salmon farms state that they should be located >1km from significant herring spawn areas [overhead].

Ahousaht fishermen use Cypress Bay as a fishing area for winter chinook and for cod jigging.

Q#9 The site is located within 1km of the Cypre River estuary and the entire bay is a known rearing/staging area for juvenile and adult salmon. An upland landowner has caught juvenile salmon fry in the small streams entering the cove to the NE. The small streams are identified as fish habitat in the covenant and maps of the site given to the upland lot owners which includes the Pacific National Group.

What effect the concentration of hundreds of tonnes of caged salmon in immediate proximity to a herring spawn area, and herring, salmon, and rockfish rearing and adult habitat are unknown.

Upland property owners that own lots adjacent to the lot owned by Pacific National Group have reported other problems

- habituation of black bears to fish food and refuse
- disappearance of river otters and marine mammals which were once commonly seen in the vicinity of the farm
- reports of an oily scum generated by the farm adhering to the beach, (probably fish oils which comprise a large part of fish feed)

A substrate sample collected from under the middle of the farm site on May 1,1996 was analyzed by MELP Waste Management staff [overhead]. Amphipods are used as a bioassay indicator for marine samples. Four replicate 10 day sediment bioassays tests on the samples indicated 0% survival (all four were 0% survival) to amphipods while samples from the control site (Esquimalt Lagoon) averaged 88.75% survival (11.25% lethal). The cause of toxicity remains unconfirmed but it is likely hydrogen sulfide from decomposition of organic waste from the net pen operation. Waste Management staff said there were polychaete worms alive in the sample which smelled of hydrogen-sulfide (John Denisiger, MoELP, pers. comm.).

Currents do no adequately disperse the plume of waste allowing accumulation of sediment under the site. For this reason alone it is a poor site. The new development plan would see production on site increase from 386 tonnes to 986 tonnes. This will significantly increase the rate of organic waste deposition on the sea floor, even with the re-orientation of the net cages.

The Ahousaht First Nation opposes the renewal of salmon farming at this site. Apparently DFO is also going to oppose the license renewal (R. Russell, DFO, pers. comm.). Assuming the opposition to the site is successful, the site would provide a good case study area to monitor site recovery.

Other Information:

- Apparently the net pens and fish were moved on to the lease in trespass prior to the approval of the application. A handwritten note of unknown origin in the file directed approval of the application in haste once the pens were on site. (Farmers probably had ordered smolts a year before anticipating the approval being in place in time and then felt they had to set up the pens.)
- When PNG took control of the site and purchased the upland lot they constructed a concrete block barge grid structure on the beach without applying for approval. A 1994 letter from Rob Russell (DFO) ordered PNG to remove the structure from the intertidal area. We visited the site on October 29,1996 and found the concrete barge grid still in place. Rob Russell indicated to us that some structure had been removed. we are trying to clarify this matter with DFO. Charges could and should have been laid under the *Fisheries Act* for the existing structure that does remain in the intertidal area.
- The new application has applied switching from chinook/coho to chinook/Atlantic.

Conclusion

This is just one site that we have looked into, and it took at least one full week of our time plus an unknown amount of time by a local resident who had collected much of the background information. An audit should be conducted to determine if this example is typical. Based on our experience with other BC Lands approved tenures (non-fish farms), we suspect that this is the norm rather than the exception. There is an obvious need to improve on the environmental screening process for siting aquaculture net pens site in general as the process and results to date have been less than acceptable.

Recommendations (DRAFT)

All marine and freshwater operations related to farming salmon must be subject to the Environmental Assessment Process and be immediately included in the Environmental Assessment Reviewable Project Regulations by the Lieutenant Governor in Council. This includes marine and freshwater netpen sites particularly where exotic species (Atlantic salmon) are indicated.

Ministerial and Cabinet discretion must not be allowed to waive reviews for political reasons as has occurred in other instances.

Criteria for a reviewable project need to be established. We suggest any salmon farming for commercial purposes including broodstock collection, hatcheries,l rearing and growout operations.

We must stress the following point. Developers typically gain project approval as small operations and then modify and amend the original proposals. The modifications and amendments are often not subject to rigorous scrutiny. Amendments to development plans must also be subject to a referral process and/or public review.

The Environmental Assessment Act should include requirements for the posting of security bonds by the proponent sufficient to address any environmental consequences of the operation. This environmental cost/financial burden should not be placed on the public.

First Nations have a right and responsibility to protect habitat and resources in their territory. This was made clear in the Saanichton Bay Marina case. First Nations should be provided with adequate funding to investigate applications and respond to referrals. Funding should be sufficient to permit First Nations to seek advice and local ecological knowledge from elders and community members. Funding for First Nations and government monitoring should be provided by the fish farming industry through a royalty or other form of taxation.

A Comparison of the Local Coastal Uses Sections of the 1988 and 1996 Finfish Farm Development Plans for Crown Land: Cypress Bay Salmon Farm License No: 101441

	Local Coastal Use Questions Circa 1988	Application Date 1988	1996	Fact
1)	The site is in or near (1km) a designated boat anchorage	NO	N/A	Unknown
2)	The site is on or near (1km) of an area used by recreational boaters for passage, moorage or shore access	NO	NO	Yes
3)	The site is used or proposed for log handling or other use (marine or upland)	NO	N/A	It was
4)	The site is within 1km of a coastal marine park or ecological reserve	NO	NO	No
5)	The site is within 1km of an Indian Reserve Boundary: (check with BC District Lands Office)	NO	YES	Yes
6)	The site is used for commercial fishing (anchoring, seining, trolling, crabbing, shrimping etc): (check with District Federal Fisheries Office)	NO	NO	Yes
7)	The site is within 125m of an intertidal or subtidal shellfish bed which is subject to commercial, recreational or Native Indian harvest: (check with Local Tribal Council, District Lands Office, District Federal Fisheries Office)	NO	NO	Yes
8)	The site is on or near (1km) marine fisheries habitat of such as herring or cod spawning, salmon holding/rearing areas: (check with District Federal Fisheries Office)	NO	YES	Yes
9)	The site is on or near (1km) the mouth of any salmonid-bearing water course (salmon, trout): If yes state how far:____km. (check with District Federal Fisheries Office)	NO	NO	Yes
10)	The site (both foreshore area and upland) is zoned for marine fish farming: (Check with Regional District Offices): If no state the current plan and zoning designations: _____.	YES	N/A	No-upland recreational
11)	The site fronts foreshore area of an upland owner: (Check with Regional BC Lands Office). If yes, state the current use of upland and foreshore_____.	NO	N/A	Yes-recreational

N/A indicates that the questions which appeared in the Development Plans circa 1988 did not appear in the recent application forms.

Department of Fisheries and Oceans guidelines for siting new fish farms (from Winsby et al. 1996)

> 3km from existing farm tenures (unless applicant can demonstrate the restriction should be relaxed);

> 3km from major rivers;

> 1km from important salmon bearing streams, herring spawn areas, marine parks , ecological reserves or native reserves

> 1km form established commercial fishing grounds and substantial recreational fishing areas;

> 100 m from significant shellfish beds, extensive seaweed beds, and large rocky reef habitat; and

generally away from sensitive fish habitats and waterways used for commercial or recreational interests, or for navigation, and away from areas identified as "No Opportunity" in Coastal Resource Interest Studies.

Winsby et al. 1996. The environmental effects of salmon netcage culture in British Columbia: A literature review. Report of Hatfield Consultants Ltd. and EVS Environmental Consultants to Ministry of Environment, Lands and Parks, Victoria

TEST FISH ALLOCATION FISHERY

A. SEINE -

PAYMENT REQUIREMENT

ANTE B (AREA 23)	26 days X 5.40 tons/day	=140.40 tons
ROYAL MARINER (AREA 24)	30 days X 4.49 tons/day	=134.70 tons
ROYAL VIKING (AREA 25)	26 days X 4.76 tons/day	=123.76 tons
VIKING PRIDE (AREA 27)*	15 days X 4.18 tons/day	= 62.70 tons
	TOTAL	461.56 tons

*split charter with Kitkatla – payment to come from Kitkatla

PAYMENT CATCH

On March 4 Royal Mariner caught payment fish in Miller Channel (AREA 24). Fish was delivered to JSM and shared by Royal Mariner and Ante B.

Packer – Arctic Ocean Hail = 110 tons
Delivery = 103.7235 tons
Roe yield – 15.3%

On March 14, Ante B caught fish in Cypress Bay (AREA 24). Fish was delivered to CFC for the Royal Viking.

Packer – Cape Scott Hail = 60 tons
Delivery = 74.9710

There was no further opportunities to obtain payment fish on the WCVI so the remainder of the catch requirement came from the Central Coast (Ante B, Royal Mariner) and Kitkatla (Viking Pride).

Total tons of fish required for payment = 461.5600 tons
Total tons of fish taken for payment on WCVI = 259.2215 tons
Shortfall = 202.3385 tons

WCVI ROE HERRING FIELD HAIL CATCHES (1996 TO 1980)

YEAR	AREA	DATE	LOCATION	GEAR OF.	CATCH (QUOTA)	COMMENTS
1996	23	Mar 14	Toquart B. to Chrow Island	Sn 27	337	6hrs and 25 min. Pool Fishery.
		Mar 15/16	Toquart B. to Chrow Island	Sn 27	108	31hrs & 15 min. Pool Fishery
	24	Mar 16/17	Maurus Channel area	Sn 27	55	29hrs & 3 min. Pool Fishery
		Mar 16/17	Hecate & Cypress Bay area	Sn 27	210 (1,014)	22hrs &48 min. Pool Fishery Total seine hailed catch 710 T
1995	23	Mar 3	Toq.B/Stopper Is/Macoah P.	Sn 23	1436 (1394)	24hrs & 50 min. Pool Fishery
1994	23	Mar 7	Page L – George Fraser I.	Sn 59	6022 (5000)	49 min.(Seines shortened to 410m
	25	Mar9	Inner Nuchatlitz	GN 33	690 (500)	5 hrs
	27	Mar9	Winter Hbr. (Forward Inlet)	GN 23	330 (300)	8hrs
1993	23	Mar 7	Chrow I. – Forbes I.	Sn 53	5775 (3000)	1 hr 14 min
	27	Mar 10	Winter Hbr. (Forward Inlet)	GN 20	369 (300)	9 hrs
1992	23	Mar 6	Stopper Is –St. Ines I	Sn 53	1205	5hrs
		Mar 7		Sn 49	944	3hrs 4min Sn total 3003 T
		Mar 8	Stopper Is. – Forbes I.	Sn 53	854 (2696)	13 min
	23	Mar 8	Beg I. – Forbes I.	GN 56	618 (473)	Total all gear 3621 T
1991 (1)	25	Mar 10	Cook Ch/Saavedra Isl	Sn 14 (north)	1745 (1000)	2hrs 29 min 12.6% roe yield
	23	Mar 12	Forbes/Stopper Isl/Mayne B	Sn 70 (south)	4382 (4708)	1hr 22min
	23	Mar 21	Forbes Isl./Stopper Isl.	GN 136	2465 (1705)	6hrs 30 min 14% roe yield Total all gear – 8592 T
1990	23	Mar 11/12	Forbes Island/Stopper Islands	Sn 99	7294 (6513)	4hrs 59 min – 3300 tons 4hrs 52 min – 3994 tons
	24	Mar 21	Yellow/Elbow Banks	GN 118	2195 (1376)	7hrs – 11 to 14% roe yield Total all gear – 9489 tons
1989	23	Mar 13	Sechart/Peacock areas	Sn 77 (south)	7066 (5428)	2hrs 18 min 4hrs 16 min – Moved fleet to Barkeley Sound as advisors felt stock was not fishable in the northern area
	23	Mar 17	Sechart/Peacock areas extended to Lyall Pt.	Sn 33 (north)	3025 (3283)	
	23	Mar 23	Pinkertons/Broken Group	GN 186	3692 (2649)	7hrs 15 min Total all gear-13783 T
1988	23	Mar 11	Lyall Pt./Forbes/Stopper Isl.	Sn 76 (south)	5700 (5000)	2hrs 21 min
	24	Mar 11	Cypress Bay	Sn 35 (north)	2690 (2440)	4hrs 22 min 14.8% roe yield
	24	Mar 23	Cypress Bay/Ritchie Bay	GN 173	1500 (1500)	10hrs 35 min 11.98-14.3% roe yield. Total all gear –9890 T.
1987	23	Mar 12	Toq./Mayne Bay/Stopper Isl.	Sn 96	15143 (7703)	2hrs 35 min
	23	Mar 12	O.Nuchatlitz/Port Langford	GN 187	2810 (2660)	10hrs 15 min Total all gear – 17953 T
1986			No Fishery			

Results of 10-day Fish Farm Sediment Assays using *Eohaustorius washingtonianus* May 1,1996 (from MELP Waste Management Branch)

	Replicates					
Treatment	**1**	**2**	**3**	**4**	**Mean**	**sd**
Esquimalt Lagoon (control)						
% survival	95	80	85	95	88.75	7.50
% at surface	0	0	5	0	1.25	2.50
Blue Heron						
% survival	0	0	0	0	0	0
% at surface	0	0	0	0	0	0

KWAKIUTL
TERRITORIAL FISHERIES COMMISION

Daphne Stancil
Environmental Assessment Office
Ministry of environment Lands and Parks
Victoria, BC

December 13, 1996

Dear Ms. Stancil:

RE: KTFC formal position on Salmon net pen operations in the Kwakiutl territory

Please accept the following submission and enter it into EAO registry on the review of salmon aquaculture currently underway. This position was unanimously supported and adopted at our recent executive meeting. The attached paper and video documentation provides the rationale supporting our 12 recommendations.

Thank you for your attention to this matter.

Sincerely,

Christine Hunt
President

Kwakiutl Territorial Fisheries Commission

Position Paper on: Salmon Aquaculture in the Kwakiutl Territories

The historic position of the Kwakiutl Territorial Fisheries Commission with regards to salmon net pen culture is best described as skeptical tolerance. Most of the member bands have at one time or another expressed their concern about either siting, environmental effects and/or operational practices of farms in the territory. The sudden surge of farm activity in the area since 1988 when only 4 farms were operating to the existing approximately 30 farms indicates the rapid rate of development in the area and one of the primary reasons for public alarm.

The Kwakiutl Territorial fisheries Commission is in a unique position to comment on the environmental and socio/economic effects of fish farming due to our involvement in two environmental assessments with Stolt Seafarms and the province since 1995. These ongoing studies in addition to previous reconnaissance work performed by our dive team has provided the KTFC with field data and other documentation supporting in many instances the negative effects of this industry on the receiving environment and first Nation communities.

When the membership, comprising 14 first nation communities, was requested to provide topics of concern with regards to fish farm operations the following were identified:

1. Effects on Oolichan and wild salmon populations
2. Disease transfer to wild stocks.
3. Effects of "pit lamping" on wild stocks.
4. Predation on wild juvenile salmon from escaped farmed Atlantics.
5. Competition effects and potential genetic hybrids between wild salmon and escaped farmed Atlantics
6. The impact of farm operations on the benthos and associated infaunal organisms.
7. The accumulative and distance effects of antibiotic use.
8. The general poor siting of farms on the net effects on native populations of shellfish stocks.
9. The effects of farms on the frequency and duration of algal blooms.
10. The lack of remediation efforts for abandoned farm sites.
11. The widespread chronic non-compliance of farms with regards to siting.

Due to the continued role of the KTFC in the area with regards to monitoring many of the fish resources in partnership with DFO, and the recognized role the KTFC has with MAFF and MELP in the referral process, we are therefore in a position to comment about many of the farm's operating practices in the area from a regulatory standpoint. The following sample of complaints around non-compliance of fish farm operations in the last 6 years have been verified by field observations and through documents from MELP, MAFF and DFO forwarded to our referral agent at the KTFC.

1. March 31, 1993 – Mound Island Seafarm – Abandoned IBEC site.

- **complaint:** operating close to a traditional shellfish beach, waste build up
- **evidence gathered:** video documentation and benthic sampling.
- **outcome:** extent of impact reaches well beyond the area under the net pens up to .5 km
- recovery of the site is slow given absence of benthic populations after 10 months of site lying fallow.- commercial crab gear used to be set here, yet there were no C. magister recorded at the site.

2. January 26, 1994 – Sir Edmund Bay – BC Packers Ltd.

- **complaint:** Broodstock pen located off of lease area and illegal use of fresh water from a nearby stream for use in mort grinding facility.
- **evidence gathered:** GPS data, video documentation
- **outcome:** MELP issued a warning

3. January 1, 1994 – Port Elizabeth – Abandoned Ibec Farm
- **complaint:** Garbage, debris, general waste build up
- **evidence gathered:** field observations, dive video footage
- **outcome:** nets abandoned on the bottom, feed bags, railings, chain, rope and various debris deposited on the bottom.

4. December 15, 1995 – N. Reach of Sargeaunt Passage – Stolt Sea Farms
- **complaint:** Farm was up to 2 km off of leased site.
- **evidence gathered:** field observations and GPS data.
- **outcome:** MELP was notified, trespass notice issued from lands and a fine imposed.

In addition another five abandoned farm sites were investigated and were recorded to have a build up of various farm waste including nets, bags, rope, chain, pens, etc. scattered at distances from the original net pen operations. **The following video documentation is representative of the types of footage recorded in the above reconnaissance dives.**

What this evidence indicates is the general lack of standardized operating practices for the industry, poor enforcement of siting requirements of operating farms and little if no enforcement of remediation efforts after farms cease to operate.

Simply not acceptable.

When the province initiated the Coastal Resource Interests Study (CRIS) in the late 1980's it was believed at the time that there would finally be some criteria developed from an integrated resource management perspective that would ensure existing marine resources would be better protected by producing a series of prioritized resource zones.

Farms would not be allowed to site operations in sensitive areas identified by residents, fishers, resource managers and aboriginal interests. Unfortunately this study proved to be an exercise in futility for no sooner was the planning completed that farms once again were located directly in those areas identified by the stakeholders to be of top sensitivity to either migrating salmon, shellfish stocks, stream mouths, cultural sites etc. Approximately 42% of the farms in the Broughton are located in these red zones.

The following is a partial list of farms located directly in CRIS red zones or "no opportunity zones":

1. Connolly Pt. – shellfish habitat, salmon migratory route, rearing area for chinook.
2. Cecil Isl. – shellfish habitat, wildlife area, salmon rearing area, humpback whale site.
3. Burdwood Islands – midden site – BC Packers towed their pens here in 1990 to avoid toxic algal bloom.
4. Watson Cove – Stolt Seafarms
5. Sargeaunts Pass – Stolt Seafarms
6. Eden Island – Stolt Seafarms
7. Betty Cove – gravel was spread on native heritage site, building erected.
8. Carrie Bay – within 1km of native reserve.
9. Midsummer Island

10. Yokohama Bay

The KTFC is still developing their final policy with regards to the continued operation of farms in the territorial waters of the Kwakiutl. At this time some general concerns and recommendations emerge with respect to the continued operations and the strong industry lobby to allow more farms into the area.

The following recommendations are made at this juncture:

1. All existing farms currently located in CRIS red zones are relocated immediately in to areas that were identified as capable of supporting such operations.

2. Any farms that are within 1 km of a native reserve or culturally sensitive site are relocated at distances acceptable to those affected first nations.

3. The practice of Atlantic salmon net pen culture be completely phased our within 2 years and a industry wide move to the culture of Pacific salmon species only.

4. Environmentally friendly feeds be utilized that reduce fish effluent such as wet feeds, silaged feeds etc.

5. The use of medicated feeds in net pens systems should be banned immediately due to First Nation's health concerns.

6. Any farm operation that impacts on resident shellfish populations will be shut down, all farms must be located at distances greater than 2 km from any existing shellfish stocks.

7. Mandatory industry insurance covering full ecological restoration of catastrophic events.

8. Utilization of Native Fishery guardians on-site during harvesting, smolt transport, and mort off-loading to ensure adequate monitoring in advent of escape or loss of product to the wild.

9. An annual resource-use royalty that all farmers pay to First Nation governments for use of traditional waters.
10. Prohibition on the use of firearms and acoustic deterrent devices that harass marine mammals.
11. Zero tolerance on the approval of any more leases to Salmon farm operations.

12. No Pit lamping or photoperiod manipulation on net pen operations.

NOTES FOR FISH FARM VIDEO

Tape counter number

0022-0075
25May 1994 – first underwater survey video of Seven Hills' Raynor Fish farm. The video transect started at one end of the farm and carries on down the centre of the farm for 12 50'x50' net pen lengths.

0075-0308
1Nov 1994-Raynor fish farm six months later. The transect line is completely buried in sedement. There is an abundance of fish feed pellets lying on the bottom. At this time farm staff were using snow shovels to distribute feed instead of machine feeders or the small scoops.

0308-0402
Feb 95 – Raynor fish farm-large resident ling cod living below net pens and is present on subsequent dives at this site.

0404-0516
7 July 94 – Wells Passage farm wreckage. Due to strong tides the system broke apart and sank resulting in a major escapement of fish at this time. KTFC divers hired to conduct a video survey before and after the cleanup.

0517-0700
Swanson Island net washing station. This is debris that was dumped and left here for an undetermined amount of time, as the nets have sea life trapped inside them, and the generator has broken down a great deal.

0701-
Stolt Sea farm study in Arrow Passage wild fish and farm fish interaction footage. Schooling perch and herring just outside the pens as well as wild fish trapped inside the pens. Abundance of sea life growth on the nets and anchor lines.

Nuu-chah-nulth Tribal Council

Public Submission by the

Nuu-chah-nulth Tribal Council

to the

BC Environmental Assessment Office

for the

Salmon Aquaculture Review

January 15, 1997

Introduction

The Nuu-chah-nulth Tribal Council represents 14 First Nations on the west coast of Vancouver Island, from Carmanah Point in the south to Cape Cooke on the Brooks Peninsula in the north. The First Nations are Ditidaht, Huu-ay-aht, Tseshaht, Uchuchlesaht, Ucluelet, Toquaht, Opetchesaht, Tla-o-qui-aht, Ahousaht, Hesquiat, Nuchatlaht, Mowachaht, Ehattesaht, and Ka:'yu:'k't'h'/Che:k'tles7et'h. Total registered membership of the 14 First Nations is over 6,700 people.

Nuu-chah-nulth First Nations are guided by two simple objectives (see glossary for definition of Nuu-chah-nulth words):

1. To ensure that the environment within the ha-hoolthee of the Nuu-chah-nulth Ha'wiih is restored to a healthy, sustainable level.
2. To fully participate in all aspects of management, protection, and restoration of the environment within the ha-hoolthee of Nuu-chah-nulth Ha'wiih to ensure that all present and future generations who will live within the ha-hoolthee of Nuu-chah-nulth Ha'wiih will enjoy a healthy environment.

These fundamental objectives lead to the following specific resolution of the Nuu-chah-nulth Fisheries Council (November 5, 1996):

> Whereas the first priority of Nuu-chah-nulth Ha'wiih is restoring wild salmon runs to the streams and rivers of their ha-hoolthee.
>
> Whereas the salmon farming industry has proved they have nothing to contribute toward the goal of restoring wild salmon and instead may pose some risk to restoring wild salmon populations.
>
> Furthermore, the licensing and approval of fish farms by the Federal and Provincial governments is an unauthorized encroachment on the ha-hoolthee of Nuu-chah-nulth Ha'wiih.
>
> Be it therefore resolved that the Nuu-chah-nulth First Nations, through the Nuu-chah-nulth Fisheries Council, totally oppose the existing 34 fish farms in Nuu-chah-nulth ha-hoolthee.

In this submission, the Nuu-chah-nulth Tribal Council will restrict its recommendations to accord with the Terms of Reference for the EAO Salmon Aquaculture Review. As stated by the EAO project director, the SAR is not about whether or not the salmon net cage industry will continue, but how it will continue. However, it is important to state clearly and for the record that most Nuu-chah-nulth First Nations strongly oppose the very existence of the salmon net cage industry in their waters. All Nuu-chah-nulth First Nations have serious concerns about the methods and regulations under which the industry currently operates.

There are 34 registered salmon net cage sites in Nuu-chah-nulth ha-hoolthee (Table 1). Four tenures are in the Barkley Sound/Alberni Inlet area, 23 are in Clayoquot Sound, 3 are in Nootka Sound/Esperanza Inlet and 4 are located in Kyuquot Sound. These 34 tenures represent about 25% of all salmon net cage tenures registered by BC Lands.

Salmon net cages have been operating on the west coast of Vancouver Island since the mid-1980's. Nuu-chah-nulth opposition to the salmon net cage industry is founded in direct observation of salmon net cage culture on the sea resources in Nuu-chah-nulth waters. Clam beaches are fouled; juvenile herring are consumed; adult herring are blocked from spawning; wild salmon rearing areas are contaminated; seals, sea lions, otters and birds are needlessly killed; rockfish jigging sites near fish farms are barren; and escaped cage-reared Atlantic, chinook and coho salmon enter the spawning streams to further threaten dwindling wild salmon stocks. The health of the food

chain is threatened to the point that many Nuu-chah-nulth elders now fear to eat some sea foods that they have consumed all of their lives.

The EAO Salmon Aquaculture Review is relying in part on the "scientific assessment " of these and other observations, to look for "documented effects". Nuu-chah-nulth have been listening to biologists and scientists for decades tell them that everything is fine, only to see their sea resources diminished to levels that will no longer support a people that are inextricably linked – culturally, economically, physically, and spiritually – to these sea resources. Nuu-chah-nulth knew and warned what the effect of logging salmon streams to the banks would be. Nuu-chah-nulth knew and warned that the pilchard and then herring industrial reduction fisheries would wipe out these species. Nuu-chah-nulth know and understand the effect of salmon net cage culture on the sea resources. It is time that governments, industry, and the public hear, understand, and act on the warnings of First Nation people.

Recommendations

The Recommendations of the Nuu-chah-nulth Tribal Council that follow are organized by "key issues" as identified by the EAO, plus a category for general issues.

A. Escaped Farm Fish

Atlantic salmon

1. Immediately and permanently ban the import of Atlantic salmon eggs into British Columbia.
2. Phase out the culture of Atlantic salmon by prohibiting the incubation of Atlantic salmon eggs starting in 1997.
3. Immediately and permanently prohibit the rearing of Atlantic salmon in freshwater lakes.

Pacific Salmon

4. Require industry to develop broodstock from local populations of native salmon species through approval of local First Nations and/or Regional Management Board.
5. Aquaculture access to native salmon for broodstock purposes will follow after requirements for conservation; First Nation's food, societal, and ceremonial fisheries; commercial; and sport fisheries are met.
6. Require immediate reporting of escape events to local First Nations and/or the Regional Management Board. Require a recovery plan be maintained to engage local fishermen in the recovery of escaped fish as soon as reported.
7. Establish a method for assessing a financial penalty for escaped farm fish. The method would require a means of recognizing farmed fish and identifying the farm of origin (for example, external mark and coded wire tag). Proceeds from the fines would pay for the recovery program and be put toward the restoration of wild salmon.
8. Replace the current Atlantic Salmon Watch program with an expanded Escaped Farm Fish recovery program to include systematic spawning ground searches for escaped chinook and coho salmon and rearing stream surveys to monitor levels of escaped farm fish colonization.
9. Develop an industry funded, intensive research program to monitor genetic impacts of escaped farm fish on wild salmon populations.

B. Fish Health

10. Regulate zero tolerance for diseased fish in open net cage operations.
11. Create an open disease and drug use registry with mandatory participation by each net cage operation.
12. Require mandatory reporting of disease outbreaks within 24 hours to local First Nations and/or Regional Management Boards.
13. Empower First Nations and/or Regional Management Boards to order containment/destruction of diseased fish.
14. Prohibit the use of hormones and other chemicals to develop unnatural fish.
15. Continue and make permanent the import ban on live fish for salmon culture purposes.

C. Waste Discharges

16. Immediately ban the use of medicated feeds in open net cage operations.
17. Develop escalating financial penalties (e.g., annually increasing environmental levy) for the continued use of open net cages.
18. Develop financial incentives for the use of closed containment culture operations (land based operations receiving additional incentives versus closed ocean systems).

19. Require the *Waste Management Act* apply to all salmon aquaculture operations, including hatcheries. Eliminate the 630 tonnes exemption currently in place.

D. Marine Mammals and Other Species

20. Immediately ban the use of acoustic deterrent devices and explosive harassment devices.
21. Ban use of night lights beyond that required for safe navigation and safety on net cage operations. Navigation and safety lighting must be directed away from cages and surrounding water to minimize attraction of other species.
22. Prohibit the possession and discharge of firearms at net cage operations.
23. Eliminate the use of fish suitable for human consumption as the primary food for net cage salmon.
24. Until net cages are removed from herring spawn areas, require that automatic feeders be shut down during herring season and boat traffic be kept to a minimum.
25. Develop an industry funded research program to measure and monitor impacts of open net cage operations on the surrounding ecosystem.

E. Siting

26. Local First Nations shall have final approval in siting net cage operations. To facilitate this process, First Nations should be included in preliminary siting discussions.
27. First Nation siting approval shall extend retroactively to existing tenures, as or before leases and licenses of occupation expire.
28. Tenure application renewals must go through full referral process.
29. An independent, public audit of all existing tenures be conducted to verify compliance with existing regulations guidelines, and standards (e.g. CRIS recommendations, DFO guidelines, etc.)
30. Open net cages be at least 5 km from fish bearing streams and juvenile rearing habitat.
31. Open net cages be at least 5 km from salmon migration routes and holding areas.
32. Open net cages be at least 5 km from herring spawning and rearing habitat.
33. Open net cages be at least 5 km from clam beaches.
34. Open net cages be at least 5 km from other salmon and shellfish tenures.
35. Any salmon net cage operation be at least 10 km from Indian Reserve Lands, unless specific exemption has been granted by the First Nations.
36. Towing areas for net cages to avoid plankton blooms and other natural and man-made events be regulated under emergency order by the local First Nation and/or Regional Management Board. Industry should develop contingency towing plans in consultation with local First Nations.

F. Regulations, Monitoring and Enforcement

37. Local First Nation's Fisheries Guardians be trained and authorized to enforce existing and new regulations.
38. Site inspections be conducted monthly, with no requirement for notification.
39. Local First Nation's Fisheries Guardians be trained and authorized to monitor environmental conditions of salmon net cage operations.
40. Funding for monitoring and enforcement derived from a fee and levy system on the salmon net cage industry.
41. Make recommendations enforceable regulations, not "industry guidelines".

G. Socio-Economic Considerations

42. Direct and indirect employment opportunities be extended first to local First Nation communities.
43. Require domestic and export cultured salmon to be clearly and explicitly labeled to the end-use consumer as "farmed salmon".

H. General

44. The aboriginal rights of First Nations members must be the primary concern in any decision, action or policy potentially effecting aboriginal rights. Consultation with First Nations, as stipulated by the BC Court of Appeal in *Jack, John, and John*, must be the action taken when aboriginal rights might be effected.

45. The Provincial moratorium on the issue of new salmon farm licenses, permits, leases, etc. on the west coast of Vancouver Island be extended until the settlement of the Nuu-chah-nulth Treaty.
46. The health of First Nations people and others dependent on aquatic resources for their sustenance must receive priority attention and protection.
47. As Regional Fisheries Management boards are established through Treaties, Interim Measures Agreements and Government policy, that management authority for the salmon net cage industry be transferred to these Boards.
48. Develop industry based fee and levy charges that will make the salmon aquaculture industry self-funding for all aspects of enforcement, monitoring, research, management and administration.
49. Each salmon net cage operation be required to carry insurance to cover the cost of full ecological restoration from damage attributable to the salmon farm operation.
50. Require federal and provincial environmental assessments for all new salmon aquaculture applications, regardless of proposed size of operation.

Glossary

"Ha'wiih" means the hereditary Chiefs of the Nuu-chah-nulth First Nations.
"ha-hoolthee" are the territories, jurisdiction, and dominion of Nuu-chah-nulth Ha'wiih.

BCAFC Salmon Aquaculture Review Submission January 17, 1997

Introduction

The British Columbia Aboriginal Fisheries Commission (BCAFC) is an organization open to all of the First Nations in BC. The Commission is a facilitating body that provides a communication vehicle for First Nations to discuss fisheries issues and where possible seek consensus on issues to assist First Nations in areas where they have common concerns and interests. The BCAFC does not represent First Nations but aims to be representative of the various views and concerns of First Nations. In specific cases on specific issues where there is consensus from the First Nations the BCAFC can speak and take positions, however, it's main role is to support First Nations by disseminating information, communicating various points and positions and facilitating activities of First Nations in striving to a common goal.

The BCAFC was asked by the EAO to facilitate First nations input into the Salmon Aquaculture Review. The BCAFC will also provide a broad overview or perspective of First Nations concerns. This overview does not prejudice the position of any particular First nation. We respect the principle that each First Nation exercises it's own authority and responsibility to take and present their positions. However, there is a predominant view of First Nations on the issue salmon farming and we will present this view here.

The General First Nation Perspective

In general the First Nations that have been involved with this review through the participation **of the BCAFC fully support and concur with the recommendations presented by the Nuu-chah-nulth Tribal Council and the Kwakiutl Territorial Fisheries Commission**. Particularly those recommendations dealing with the prohibition of Atlantic Salmon, the elimination of the release of medications to the environment and the principal role of First Nations in the issuing, monitoring and enforcement of salmon aquaculture licenses in their territory. While some First Nations have expressed a degree of openness to salmon aquaculture they all require that the practice be demonstrated to be environmentally and biologically safe and sound.

The information provided to date by the EAO, the industry and the Technical Advisory Team has not given the BCAFC the confidence that open cage salmon aquaculture is environmentally and biologically safe and sound.

BCAFC Salmon Aquaculture Review Submission January 17, 1997

A Special Place for Aboriginal People

The aboriginal peoples in BC have been a part of the land, sea and resources of their territories Fr thousands of years. Without the land and the sea and the resources the First Nations could not and would not exist. We have been here since time immemorial and will remain here as long our peoples and our culture remain. We can not leave. If the things that make us what we are disappear, then we as a people disappear. Therefore, First Nations are uniquely vulnerable to any risk to our environment.

Most of the rest of the society in BC are not so inextricably tied to the seas, the land and the resources. As relatively recent migrants here the non-aboriginal people can, if necessary, move elsewhere. If due to natural or man made actions the environment no longer provides a livelihood some may be displaced but there is no loss of a distinct culture or people, except for First Nations.

No one can deny that salmon aquaculture poses the possible threat of irreversible damage to our sea resources that support and sustain First Nations. The probabilities associate with these risks are unknown, some may be very

small or low but some may not. While the BC society at large and the economy in general would most likely survive the collapse or extinction of a run or stock of wild salmon. A First Nation whose distinct culture may depend upon that stock, would cease to exist. The society at large may find such a catastrophe an acceptable risk. The First Nations who face extinction as a people and a culture do not. **Therefore, the very special nature of the First Nations and their dependence on the natural environment around them requires a very special treatment and recognition of the risks associated with activities such as salmon aquaculture.**

First Nations' Health and Salmon Aquaculture

Medical science has recognized the importance of heredity to the response of our physiology, both to combat particular disease agents, as well as the general impact of the our environment on our health. Aboriginal people are much more susceptible to some particular diseases than is the general public. First Nations are alarmed at the use of very biologically active chemicals, such as antibiotics and hormones in salmon aquaculture, particular in the open cage setting where these chemicals are released into the marine environment. These chemicals are potentially transported long distances and ingested by other animals and plants that are eaten by aboriginal people as a part of their daily routine or tradition. The potential impact of these chemicals on the health of aboriginal people is not known. **Therefore, First Nations are opposed to the continued use of medicated feeds in open cage salmon operations, where these chemicals can be release into the environment. The First Nations also demand a full investigation of theses chemicals in relation to aboriginal peoples be undertaken to identify potential health problems related to exposure to these chemicals that may already be present in First Nations populations.**

A repeat of the long term health effects of contaminated foods in the Yukon, described recently by the Globe and Mail, is not an option.

Aboriginal Rights Impact Assessment

Salmon aquaculture interferes with Aboriginal Rights in many ways. Interference with access to fish resources through the location or site of the operation, impact on the quantity and quality of wild fish and shellfish resources as well as the contamination of wild stocks from salmon aquaculture operations are all infringements on the right to fish.

All existing and proposed salmon aquaculture operations should be subject to an Aboriginal Rights Impact Assessment, with adequate time and resources to fully review the nature and extent of any impact. This assessment is much more than a referral to the local band office.

Other Species Culture

While this environmental review has been focused on Salmon Aquaculture other fin fishes are being considered or are already into research testing for intensive culture. Many of the issues and problems of salmon operations will be present with these other species. **The lessons we learn about the environment and aboriginal impact of salmon aquaculture must be applied preemptively in the development of other fish farm situations.**

Musgamagw Tsawataineuk
Tribal Council

PO Box 90, Alert Bay BC V0N 1A0
Tel: (250) 974-5516 TOLL FREE:1-800-244-0969 FAX☹250) 974-5466
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The Musgamagw Tsawataineuk Tribal Council is violently opposed to any fish farms in our territories;

The Musgamagw Tsawataineuk Tribal Council insists that the moratorium on fish farms remain in place;

Further, the Musgamagw Twawataineuk Tribal Council will not allow the expansion of any fish farm presently in place;

And that the Musgamagw Twawataineuk Tribal Council insist that all Atlantic Salmon be removed from the present fish farms.

Moved/Seconded: **Chief Charlie Williams/Kwa-sa-aineuk**
Chief Bill Crammer/Namgis

Carried,

Nuu-chah-nulth Tribal Council

April 28,1997

Daphne Stancil
Project Assessment Director
Environmental Assessment Office
2 – 836 Yates Street
Victoria BC V8V 1X4
(via fax 250-356-2208; original by mail)

Dear Daphne:

Following are the written comments of the Nuu-chah-nulth Tribal Council in response to the Technical Advisory Team Findings and Recommendations.

The Nuu-chah-nulth Tribal Council would like to take this opportunity to thank you personally, Deputy Minister Sheila Wynn, the entire SAR project staff, consultants and Technical Advisory Team for your dedication to this Review. The Nuu-chah-nulth SARC representatives especially appreciate your thoughtfulness in paying attention and gaining an understanding of First Nations issues. You have heard many heartfelt presentations from First Nations speakers at the SAR meetings. We trust that you will take your understanding of First Nations issues and convey them effectively to the Minister of Environment and Minister of Agriculture, Fisheries and Food.

On behalf of the Nuu-chah-nulth Tribal Council,

Don Hall, Ph.D
NTC Fisheries

copy: Nuu-chah-nulth Fisheries Council
NTC Executive
enclosures: NTC response to TAT recommendations

Nuu-chah-nulth Tribal Council

Response of the

Nuu-chah-nulth Tribal Council

to the Findings and Recommendations of the

EAO Technical Advisory Team

April 28,1997

Comments on the "Conclusions of the Technical Advisory Team"

1. The NTC strongly objects to the draft overall conclusion that "salmon farming as practiced today in BC at the current level of production, presents low probability of risk adverse effects to the province's environment" (page 2, par. 1; page3, par.3)

   Without the context of the entire TAT Findings and Recommendations report, this statement will be used by proponents of the salmon aquaculture industry as the summary finding. This statement does not provide justice to the presentations and discussion that First Nations and local residents provided to the SAR reporting severe adverse impacts of salmon aquaculture. As presently worded, it will easy for government to dismiss the TAT recommendations, since, as the BCSFA representative pointed out repeatedly at the last SARC meeting, this overall conclusion statement seemingly contradicts the 55 important recommendations that follow.

   Of particular concern to Nuu-chah-nulth is the implied exclusion of First Nations people form the "province's environment"? First Nation's people are an integral part of the environment, having co-existed with the marine, freshwater and land resources for countless generations. First Nations have been adversely impacted by salmon aquaculture: through reduced access to food resources that have affected First Nation's health and economics and through the imposition of an unwanted industry that has affected First Nation's sovereignty and spirituality. Since First Nations have been negatively impacted, the statement as written is misleading.

   At the least, the statement needs to be put into a frame of reference, ie., low probability of risk to the province's environment compared to other industries and marine resource activities. For example, salmon aquaculture may be a lower risk activity than clear-cut logging, pulp mill effluent, lack of GVRD sewage treatment, etc., but may be a higher risk than Kemano Completion, commercial fishing, marine transportation, etc.
2. The statement "However, some changes are needed in the way that the salmon aquaculture industry is managed in BC in order to ensure risks of adverse effects associated with the five key issues are further prevented or mitigated, and to ensure a sustainable approach to salmon aquaculture" is weak and poorly worded.

   There is little in the subsequent recommendations that would "prevent" risk to the environment. The recommendations go toward minimizing the risks. Prohibition of salmon aquaculture in BC waters is the only course of risk prevention.

   Suggested rewording for EAO report (re: comments 1 and 2)

   Salmon aquaculture as practiced in BC at the current level of production adversely impacts local environments. The risk of irreversible adverse effects to the BC aquatic environment as a whole is relatively low compared with other resource industries. This low risk must not be ignored, as the possible adverse impacts are potentially devastating to the aquatic ecosystems of British Columbia> The recommendations of the EAO are designed to minimize the risks of adverse impacts to the provincial environment.

3. "Local Impacts and Concerns" section (page 2) – The statement "There are currently significant localized problems associated with the industry which are causing some adverse impacts on the environment, and on individuals and communities" is accurate. However, the statement is framed by two sentences dealing with past practices (1980's) that reduces the impact of this statement. The reader can easily jump to the conclusion that the BCSFA has put forward, that the industry has improved since its early days in Sechelt. While that may be true, the Nuu-chah-nulth have no experience with the east side of the Strait of Georgia. Nuu-chah-nulth First Nations are entirely concerned with the <u>current</u> practices of the 34 salmon farms operating in their territories. In addition to "significant negative perception" (page 3, first line), Nuu-chah-nulth have experienced first-hand practices of the 34 salmon farms operating in their territories. In addition to "significant negative perception" (page 3, first line), Nuu-chah-nulth have experienced first-hand <u>significant negative observations</u> that have led to the position of the NTC regarding salmon farming.

4. Again in reference to "The summary conclusion of the TAT is that the salmon aquaculture industry, as presently practiced in BC at the current level of production, overall presents low probability of risk of adverse effects to the province's environment" (page 3, par.3). At a recent NTC Fisheries Council meeting discussing the draft TAT recommendations Steve Charleson, Chief Councilor for the Hesquiat First Nation, told delegates the history of how the Plains Indians were told that they didn't need buffalo, and instead could subsist on cattle as a replacement. An entire society and culture of hunter-gatherers

Comments on the TAT Findings

A. Escaped Farm Salmon

Under item 5, "Predation by Escaped Fish", the statement "Night illumination lights do not influence predation by caged salmon on wild fishes" is much more conclusive than the finding under item 7 for Marine Mammals and Other Species. Given the weight of anecdotal evidence it seems that this is an area that requires further study, as recommended by Dr. Iwama.

B. Fish Health

The statement in item 5 (page 6) "However, consumers should be afforded the opportunity to avoid consumption of food products containing drug residues" should be accompanied by a recommendation for clear and explicit labeling of farmed salmon to the end-use consumer (restaurant and market).

E. Salmon Farm Siting

The conclusion on page 13 "Fish farms directly affect a relatively small portion of commercial and sport fishing locations because of the large areas used for fishing salmon, ground fish, crabs and prawns" understates the problem. As was made clear at the last SAR meeting, many salmon farms are located on/over what were the best locations for fishing these other species.

F. Socio-economic Impacts of Existing Salmon Aquaculture in BC

under item 6, "Impacts on First Nations Communities", it is not just access to clam resources that have been reduced. The sentence should be changed to – Access to sea resources (clams, herring, salmon, ground fish, crab, ducks, kelp, etc.) have been reduced.

Comments on the TAT Recommendations

A. Escaped Farm Salmon

1. Under no circumstances should the culture of Atlantic salmon be allowed to continue. BC salmon farmers choose to use Atlantic salmon because European salmon farms have created a domesticated animal for the net cage industry. The alternative is for the BC industry to create an equivalent animal using indigenous chinook populations. The recommendation should be to phase out the culture of Atlantic salmon. Any risk of adverse impacts of Atlantic salmon on wild Pacific salmon is unacceptable. The environmental, economic and social costs of an exotic disease affecting BC wild salmon stocks are potentially huge and irreversible.

   (Note: The NTC has chosen to respond to recommendations that follow that assume that the culture of Atlantic salmon will continue even though the Nuu-chah-nulth First Nations oppose this recommendations.)

2. After reviewing the BCSFA recommendations that Dr. Alverson refers to in recommendation 2, Nuu-chah-nulth concerns are not eased. The 16 BCSFA recommendations are all practices that the NTC assumed any concerned salmon farmer would already be using. Industry is driven by profit.

Clearly the industry finds the current level of annual escapes financially acceptable. First Nations, the public and the majority of the SARC have made it clear that the current level of escapes is far too high. The role of government must be to regulate the number of escapes, through punitive fines and/or financial incentives for developing escape proof operations.

3. The time period for "phase-in" of all female Atlantic salmon culture is far too long. Previously, the provincial government gave the industry a deadline of 1998 for the switch to all female Atlantic salmon. under an eight year phase in the new deadline would be 2005. The problem seems to be with the technological development of the feminization process. The NTC is concerned that the TAT can make recommendations regarding this unproven technology, yet is unwilling to make specific recommendations regarding closed containment systems. Overcoming the mechanical and structural design difficulties of a closed containment system are problems that engineers are well qualified to solve, compared to overcoming the biological and physiological problems of manipulating sex in a highly evolved fish species.

4. This recommendation could be implemented by requiring an observer program for salmon farms. It is likely that one observer could monitor several salmon farms to maintain accurate inventories.

5. The escaped salmon recovery plan should include alternative methods for escapes at different sizes. For example, a small hand-operated purse seine would be sufficient and probably more effective for escaped juvenile fish. Commercial size seine boats would be required for adult escapes. The recovery plan should be required as a condition of license, with stipulations as to the maximum time for implementing the plan after an escape event.

6. Given that the third alternative (sterilized Pacific salmon) is not yet viable, efforts should be concentrated around alternatives one and two. For broodstock purposes, there can be no access to local populations that are not in sufficient abundance. This recommendation should be tied tightly to #8, requiring the marking of all Pacific salmon cultured under selective breeding programs.

   For existing farms that are located near depressed wild salmon streams, the companies should be required to institute extra precautions and assist in recovery plans for the wild populations, including funding enhancement efforts such as gene banking.

7. The recommendation "Continue and possible expand the Atlantic Salmon Watch program to allow more observations of Atlantic salmon in freshwater" should be changed to: "Continue and expand the Salmon Watch program to allow more observations of escaped farm salmon in freshwater." The program must be expanded to include escaped Pacific salmon.

8. Unless funding is available for intensive spawning ground fish tissue/otolith sampling programs, the mark must be external. Coded wire tags are inexpensive, and would allow identification of escapes to the farm of origin for punitive fines.

9. The information should also be made available in regular reports from MoELP/MAFF.

10. NTC biologists and fisheries technicians would be willing and able to conduct this research with a cooperative fish farm using external funding.

11. The recommendation for a performance based standard is good. In addition to penalties for operations that fail to report or under-report, penalties should be enforced on farms that have escapes. This recommendation would require marking all farmed fish, identifiable to farm of origin. Pacific salmon would require an external mark and internal tag, and Atlantic salmon would require a biological (e.g., thermal otolith mark) or genetic marker to identify farm of origin.

12. The farming of transgenic fish should be completely prohibited except for non-commercial research purposes.

13. Limited R&D funding would be better spent on researching and refining technology for preventing escapes rather than mitigating the escape problem.

14. Commercial Atlantic salmon aquaculture should not be allowed to operate in freshwater lakes. The definition of "important indigenous species" should include all species.

B. Fish Health

The general concern of the recommendations in the Fish Health section are the extra cost to government for implementation. It is unrealistic to expect that government resources will increase to implement these recommendations. Government can not use the excuse that there is simply not enough funding for implementation. Government must extract the necessary revenue from the salmon aquaculture industry for funding all aspects of enforcement, monitoring, research, management and administration as recommended by the TAT.

The NTC supports the direction of including all aspects of fish health (wild and cultured) under central jurisdiction and/or coordination. Disease and fish health specialists should be concerned primarily about the health of wild salmon and other wild species (e.g., how cultured species can impact wild species) and minimizing fish health risks to wild species.

1. Good recommendation.

2. The NTC supports implementing recommendations as conditions of license.

   The NTC is concerned about the wording "…to ensure they evolve to meet changing scientific knowledge and political and public priorities." Political priorities should not influence "enforceable standards of practice for managing farmed salmon health."

3. Costs for accreditation or quality assurance programs should be supported by the salmon aquaculture industry.

4. No comment.

5. Replace "should" with "must" throughout.

6. (c) There needs to be a time limit for reporting to the committee, eg., 24 hours.

The NTC recommends that First Nations and/or Regional Management Boards be empowered to order the containment destruction of diseased fish. NTC Recommendation 13 should be incorporated into this TAT Fish Health recommendation 6.

Replace "should" with "must" throughout/.

7. Fish health data should be publicly accessible.

8. Importation of fish and eggs from outside British Columbia should be prohibited for commercial aquaculture purposes. Transportation of fish and eggs within BC should be tightly regulated. Suggest that this recommendation be split to deal with these issues separately.

9. (c) As long as salmon aquaculture facilities utilize open net cages for grow out, drug records for each farm must be publicly available. The "doctor-patient" confidentiality excuse should not apply to salmon aquaculture.

10. As worded, the summary recommendation is ambiguous as to whether the recommendation only applies <u>on</u> salmon farm sites or to salmon farming operations in general.

    The NTC strongly supports the recommendation of visible indicators to be shown at fish farms where drugs are being used of the duration of treatment and complete withdrawal for non-target species located outside of open net cages. A time limit must be applied to this recommendation, eg., flag should be raised within 3 hours.

    A recommendation requiring domestic and export cultured salmon to be clearly and explicitly labeled to the end-use consumer as "farmed salmon" should go in this section.

C. Waste Discharges

1. The NTC strongly supports the application of performance based operating standards to the waste management of fish farm effluent.

2. Good recommendation. "Isolated bays" should be better defined.

3. The NTC strongly supports this recommendation regarding applying the performance based standards to existing salmon farms, a dealing with existing problem sites before new sites are considered.

   (c) First Nations must be part of the review process of existing sites.

4. "Code of Practice" should be based in regulation, not a voluntary compliance program.

5. The salmon aquaculture industry should be the primary funding source for research funding.

6. (e) First Nations fisheries technicians and guardians are ideally suited for the recommended monitoring positions.

7. Interesting recommendation. NTC Fisheries staff would be interested in monitoring a poly-culture operation.

8. Commercial aquaculture operations should be prohibited from operating in freshwater lakes.

D. Marine Mammals and Other Species

1. The time period for development of a predation control plan should be no more than 6 months. Implementation should be based on design. Some plans could be implemented immediately, other plans may take up to a maximum of two years to implement.

2. ADD's and explosive harassment devices should be permanently prohibited at all sights immediately. The scientific evidence indicates that ADD's disperse marine mammals, a violation of the Fisheries Act. Nuu-chuh-nulth First Nations are primarily concerned for non-targeted cetaceans should take precedence over potential negative impacts on seals and sea lions when the ADD's are turned off.

3. (e) Change "should" to "must".

4. Change "guideline" to "criteria".

5. The NTC supports the recommendation of a thorough study being conducted on the effects of night lights on prey species both inside and outside of net cage operations. Until such a study is designed and implemented, the use of night lights should be discontinued.

E. Salmon Farm Siting

1. The NTC supports the regulation of minimum distances to guide salmon farm siting decisions. Additional wording needs to be added to the distance recommendations to strengthen the concept expressed clearly verbally at the last SARC meeting and again at the April 15 EAO/FN meeting that these distances are recommended as <u>minimum</u> distances, and could be increased based on specific site conditions.

   (d) Underwater resources should be mapped to at least 100m beyond tenure boundaries.

   From the Table "RECOMMENDED SALMON FARM SITING CRITERIA"

   3.Given information from Trevor Jones M.Sc thesis that shows uptake at 300 maters, the minimum "safe" distance should be greater than 300 m

   The phrase "which are used regularly" should be changed to "which are/were used". Formerly productive shellfish beds that are now considered unharvestable by First Nations harvesters due to impacts from salmon farms should not be exempted from this recommendation.

9. Indian Reservation sites were chosen designated by government agents at important First Nation harvesting locations for salmon, shellfish, marine fish and other species. The reason that coastal First Nations have such small reservations compared to interior and plains First Nations is that coastal First Nations depend almost exclusively on the sea for their sustenance and livelihood. To suggest that salmon farms can be located as close as 1 km to these important sites completely ignores the input of First Nations on the SARC. According to the EAO Project Director, this distance was chosen arbitrarily. The Nuu-chah-nulth Tribal Council recommendation # 35 stated "Any salmon net cage operation be at least 10 km from Indian Reserve Lands, unless specific exemption has been granted by the First Nation." First Nations must be the decision makers that arbitrarily decide that siting criteria for salmon farms from their most important harvesting areas.

The "line of sight" criteria should not apply to First Nations reservations. The concern of First Nations is not visual appearance, but adverse impacts on resources.

To "infringement of First Nations' aboriginal rights in relation to spiritual and cultural areas, and resources which are harvested for food and ceremonial purposes" should be added resources that are harvested for economic purposes as an aboriginal right, as recently affirmed by the Supreme Court in R. v. Gladstone.

15. It is not clear from the table or supporting information why salmon farms are afforded a 3 km spacing yet recommended distances from natural resources are much less.

11. The NTC strongly endorses this recommendation evaluating existing salmon farms for conformance with new siting criteria and other performance requirements.

    Replace "should" with "must" in parts (a) and (b), especially with respect to priority of existing salmon farms having priority relocation versus new sites. The provincial moratorium on new salmon aquaculture sites should be extended until this compliance review is complete and relocation issues are settled.

12. CRIS designations should be utilized pending coastal zone management plans.

13. First Nations must be adequately represented on local committees, with resources provided to insure adequate representation.

14. Good recommendation.

15. Good recommendation.

16. Reclamation plans and bonding must be implemented of existing salmon farms before new tenures are considered.

17. Trained First Nations Fisheries Guardians and Technicians can play the lead role in monitoring salmon aquaculture operations in remote coastal areas.

18. Change "guidelines" to "regulations".

19. Financial incentives (eg tax relief, reduced fees) and penalties (eg., increased fees) should be utilized to encourage research, development and use of alternative technologies.

F. Institutional Framework

The NTC finds that the overall package of TAT recommendations would make some progress toward addressing Nuu-chah-nulth concerns about salmon farming as presently practiced, especially if changed as per the above suggestions. The NTC is very concerned that government will selectively choose which TAT recommendations to implement, and that the criteria government uses to make these decisions may have little to do with protecting British Columbia's environment. To be effective, the entire package of TAT recommendations need to be implemented. To ensure full implementation, as stated at the last SARC meeting, government should clearly understand the potential catastrophic costs of not implementing the TAT recommendations. For example, the cost to British Columbia and Canada if Fraser River salmon stocks were to be adversely affected by an imported disease.

1. Good recommendation.

2. Good recommendation. First Nations; must be a part of the "participatory regulatory framework", as indicated.

   The NTC is concerned that government might interpret this recommendation to vest total responsibility for salmon aquaculture into MAFF or a restructured, like-minded advocating Ministry. Government must maintain its commitment to environmental protection in implementing this recommendation.

3. Good recommendation.

4. Trained First Nation Fisheries Biologists, Guardians and Technicians can provide a vital role in monitoring the salmon aquaculture industry. Recommend strengthening the wording in (c) by changing to: "A system of qualified third party observers to assist in monitoring functions at salmon farms should be implemented".

5. Good recommendation. Strengthen by changing "investigate" to "investigate and implement".

6. Good recommendation. Strengthen by changing "should" to "must".

7. Good recommendation.

8. Good recommendation.

DRAFT RESOLUTION #ONE

SUBJECT: SALMON AQUACULTURE

WHEREAS

A. The first priority of the First Nations is restoring wild salmon to the streams, rivers and lakes of their territories.

B. The salmon aquaculture industry threatens existing salmon populations and restoration efforts.

C. The salmon aquaculture industry as practice directly infringes on the Aboriginal and Treaty rights of First Nations.

D. Serious health concerns raised by the First Nations regarding the consumption of sea resources polluted by salmon farms have not been answered.

THEREFORE BE IT RESOLVED

1. That the First Nations of British Columbia support the continuation of the Provincial moratorium on the salmon aquaculture industry and that concerns of the First nations are addressed to the satisfaction of the First Nations as stated in the following conditions.

   i. Local First Nations shall have final approval in siting salmon aquaculture operations. First Nation siting approval shall extend retroactively to existing tenures, as or before leases and licenses of occupation expire.

   ii. The health of First Nations people and others dependent on aquatic resources for their sustenance must receive priority attention and protection.

   iii. Require mandatory reporting of disease outbreaks within 24 hours to local First Nations and empower First Nations to order destruction of diseased fish.

   iv. Immediately ban the use of medicated feeds in open net cage operations.

   v. Develop escalating financial penalties (e.g., annually increasing environmental levy) for the continued use of open net cages. Develop financial incentives (including government subsidized research and development) for the use of closed containment culture operations.

   vi. Require domestic and export cultured salmon to be clearly and explicitly labeled to the end-use consumers as “farmed <u>species</u> salmon”.

   vii. Prohibit the culture of Atlantic salmon by banning the incubation of Atlantic salmon eggs starting in 1998. Immediately prohibit the import of Atlantic

Resolution of the First Nations of British Columbia
In Concern of Wild Salmon and the Salmon Aquaculture Industry

Submitted by the Nuu-chah-nulth Tribal Council,
the Kwakuitl Territorial Fisheries Commission, and
the BC Aboriginal Fisheries Commission

The First Nations of British Columbia are guided by two simple environmental objectives:

1. To restore the environment within the territories of the First Nations to a healthy, sustainable level.

2. To fully participate in all aspects of management, protection, and restoration of the environment within the territories of the First Nations to ensure that all present and future generations who will live in the territories will enjoy a healthy environment.

These fundamental objectives lead to the following resolution submitted to the First Nations Summit in concern of wild salmon and the salmon aquaculture industry.

Resolution

Whereas the first priority of the First Nations is restoring wild salmon to the streams, rivers and lakes of their territories.

Whereas the salmon aquaculture industry threatens existing salmon populations and restoration efforts.

Whereas the salmon aquaculture industry as practiced directly infringes on the Aboriginal rights of First Nations.

Whereas serious health concerns raised by the First Nations regarding the consumption of sea resources polluted by salmon farms have not been answered.

Be it therefore resolved that the First Nations of British Columbia support the continuation of the Provincial moratorium on the salmon aquaculture industry until the concerns of the First Nations are addressed to the satisfaction of the First Nations as stated in the following conditions.

1. Local First Nations shall have final approval in siting salmon aquaculture operations. First Nations siting approval shall extend retroactively to existing tenures, as or before leases and licenses of occupation expire.
2. The health of First Nations people and others dependent on aquatic resources for their sustenance must receive priority attention and protection.
3. Require mandatory reporting of disease outbreaks within 24 hours to local First Nations and empower First Nations to order destruction of diseased fish.
4. Immediately ban the use of medicated feeds in open net cage operations.

5. Develop escalating financial penalties (eg., annually increasing environmental levy) for the continued use of open net cages. Develop financial incentives (including government subsidized research and development) for the use of closed containment culture operations.
6. Require domestic and export cultured salmon to be clearly and explicitly labeled to the end-use consumer as “farmed salmon”.
7. Phase out the culture of Atlantic salmon by prohibiting the incubation of Atlantic salon eggs starting in 1998. Immediately prohibit the import of Atlantic salmon eggs.
8. Reduce escapes from salmon aquaculture operations by assessing financial penalties, with proceeds from fines put toward restoration of wild salmon. Require immediate reporting of escape events to local First Nations and a farm specific recovery plan to engage local fishermen in the recovery of escaped fish.
9. Immediately ban the use of acoustic deterrent devices and explosive harassment devices.
10. Ban use of night lights beyond that required for safe navigation and safety on net cage operations. Navigation and safety lighting must be directed away from cages and surrounding water to minimize attraction of other species.
11. Local First Nation’s Fisheries Guardians be trained and authorized to enforce salmon aquaculture regulations. Local First Nation’s Fisheries Guardians and Technicians be trained and employed to monitor environmental conditions of salmon aquaculture operations. Funding for First Nation enforcement and monitoring derived from a fee and levy system on the salmon net cage industry.
12. Develop an industry funded research program to measure and monitor impacts of open net cage operations on the surrounding ecosystem.

APPENDIX 4

First Nations Position Paper

BC ABORIGINAL FISHERIES COMMISION

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FISH FARMING IN BRITISH COLUMBIA

ABORIGINAL PEOPLE AND JURISDICTION

- Prepared by the British Columbia
Aboriginal Fisheries Commission

May, 1997

ABORIGINAL JURISDICTION AND ABORIGINAL RIGHTS

Aboriginal people in British Columbia have, since first contact with Europeans, held that their jurisdiction in this land was unlimited by the sovereignty claimed by the Crown. From the earliest representations to the Crown in London to the contemporary *Delgamuukw* case, the message of aboriginal people has been remarkable for it's consistency.

An analysis of the Claims filed with the Federal Government and of the pleadings in the various claims cases and of the position papers of First Nations indicates that their view is that title in the land and resources of British Columbia still rests with the aboriginal people, at least until treaties are signed. While the contemporary language of sovereignty appears at odds with the traditional language of ownership (such as used in the *Calder* case) that is only so if there is no understanding of the underlying aboriginal view of their title to the land, water and resources.

Complimenting the title to land and resources is the right of self-government. These concepts of title and rights are not new. Nor, in the view of First Nations are they dependent on the Constitution. For many First Nations the tests set *Sparrow* may not apply to Treaties for example. The treaty may have within it it's own tests.

The belief of the Aboriginal Peoples is one matter, but having their ownership's and rights recognized by the governments and the courts is another.

This paper will, with the beliefs of aboriginal people to their title and rights as the foundation, examine, from an aboriginal view, the existing caselaw in respect of jurisdiction and aboriginal and treaty rights. The paper will then take that examination and apply it to the existing situation in British Columbia with respect to Fish Farms and the proposals for change. Although many documents and pieces of legislation have been examined legal citation will be kept to a minimum. The intention is to make the document as readable as possible.

JUDICIAL INTERPRETIATION OF ABORIGINAL RIGHTS – THE ABORIGINAL VIEW

This portion of the paper will discuss the Judicial interpretation of Aboriginal rights specifically in the context of salmon fish farming. It will begin with an interpretation and review of the law of Aboriginal rights. This part will proceed;

- Firstly, by examining the proof of Aboriginal rights, including a discussion of the test for establishing that custom, tradition or practice of an Aboriginal group is constitutionally protected.
- Secondly, it will look at the establishment of an infringement of an Aboriginal right.
- Thirdly, it will look at the establishment of an infringement of Aboriginal rights.
- Finally, it will examine the jurisdiction of the federal and provincial governments with respect to the justification of infringements of Aboriginal rights. This last question includes an examination of section 88 of *Indian Act*.

This part of the paper will examine Aboriginal self-government and its effect on salmon fish farming. This part will also consider sources of jurisdiction, statements by Aboriginal people as to their jurisdiction and the effect of that jurisdiction on both Aboriginal and non-Aboriginal people.

The paper will then examine treaty rights and their position in Canadian constitutional law, including the protection afforded them by s. 35 of the *Constitution Act* and their position in light of Canadian federalism. One distinction between treaty rights and Aboriginal rights is that s. 88 excludes the terms of any treaty from the scope of the referential incorporation's it performs.

The paper will attempt to apply the law discussed earlier in the context of fish farming. This will include both remedies for infringements of Aboriginal rights to fish caused by fish farming, and the rights of Aboriginal people with respect to participation in the issuance of fish farm licenses.

Proof of Aboriginal Rights

The latest word from the Supreme Court of Canada with respect to the proof of Aboriginal rights is found in *R. v. Van der Peet*, [1996] 9 W.W.R. 1. At page 10 of that decision, chief Justice Lamer stated the question the court was to determine in that case was:

> "How are the Aboriginal rights recognized and affirmed by section 35 (1) of the *Constitution Act*, 1982 to be defined?"

Not everything, in other words, that an Aboriginal person or community does comes within the scope of the constitutional protection. At page 16 of his reasons, he said:

> "The mere existence of an activity in a particular Aboriginal community prior to contact with Europeans is not, in itself sufficient foundation for the definition of Aboriginal rights".

He said at page 17, that Aboriginal rights arise from the fact that Aboriginal people are Aboriginal. He went on to identify the purposes underlined, section 35 (1) of the *Constitution Act* , noting at the outset, at pages 18 and 19 that any doubt or ambiguity as to what falls within the scope of section 35 (1) must be resolved in favour of Aboriginal people.

At page 20, the Chief Justice identifies the purposes underlying section 35 (1). He says:

> "In my view, the doctrine of Aboriginal rights exists, and is recognized and affirmed by s. 35 (1), because of one simple fact: when Europeans arrived in North America, Aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all in Canadian society and which mandates their special legal and now constitutional status.
>
> More specifically, what s. 35 (1) does is provide the constitutional framework through which the fact that Aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown. The substantive rights that fall within the provision must be defined in light of this purpose; the Aboriginal rights recognized and affirmed by s. 35(1) must be directed towards the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown.."

At page 26, he says:

> "Aboriginal rights recognized and affirmed by s. 35(1) are best understood as, first, the means by which the Constitution recognizes the fact that prior to the arrival of Europeans in North America the land was already occupied by distinctive Aboriginal societies, and as, second, the means by which that prior occupation is reconciled with the assertion of Crown sovereignty over Canadian territory. The content of Aboriginal rights must be directed at fulfilling both of these purposes; the next section of the judgment, as well as that which follows it, will attempt to accomplish this task."

So, in essence the purpose of s. 35(1) is to reconcile preexisting Aboriginal societies with Crown sovereignty. It is to be noted that he Chief Justice places a heavy emphasis on pre-existence.

At page 27 the Chief Justice sets out the test for establishing an Aboriginal right protected by s. 35(1):

> "In order to be an Aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right."

This suggests a dichotomy between Aboriginal rights as defined by Aboriginal societies and Aboriginal rights as protected by the Constitution. Because the Chief Justice has identified reconciliation as the key purpose of s. 35 (1), he rejects the notion that Aboriginal people define Aboriginal rights, at least and so far as the scope of constitutional protection is concerned; but, this distinction is not found in the text itself.

He then goes on to identify several factors which must be taken into account in evaluating the test just set out. Firstly, the court must take into account the effect of Aboriginal peoples; but because the purpose is reconciliation, that perspective must be articulated in terms that are understandable to the common law. The Chief Justice would place equal weight on both the common law perspective and the Aboriginal perspective; though surely he cannot be interpreted to mean to suggest that common law rights are given the same constitutional status as Aboriginal rights.

Second, courts must identify precisely the nature of the claim being made in determining whether an Aboriginal claimant has demonstrated the existence of an Aboriginal right. At page 30, the Chief Justice said:

> "A court should consider such factors as the nature of the action which the applicant is claiming was done pursuant to an Aboriginal right, the nature of the governmental regulation, statue or action being impugned, and the tradition, custom or practice being relied upon to establish the right."

It should be noted that the emphasis placed by the Chief Justice on the nature of the governmental regulation, statute or action being impugned seems to come from a desire not to consider Aboriginal rights in context broader than the precise issue before the court. It should not be interpreted to mean that the governmental regulation could define an Aboriginal right, because this would contradict what is essentially the ratio in *R. v. Sparrow,* [1990] 3C.N.L.R. 160 at page 176:

> "Government regulations governing the exercise of the Musgueam right to fish, as described above, have only recognized the right to fish for food for over a hundred years. This may have reflected the existing position. However, historical policy on the part of the Crown is not only incapable of extinguishing the existing Aboriginal right without clear intention, but is also incapable of, in itself, delineating that right. The nature of government regulations cannot be determinative of the content and scope of an existing Aboriginal right. Government policy can however, regulate the exercise of that right, but such regulation must be in keeping with s. 35(1)."

This appears to be difficult for he courts to come to terms with because in paragraph 54, the Chief Justice goes on to state that:

> "It should be acknowledged that a characterization of the nature of the appellant's claim from the actions, which led to her being charged, must be undertaken, with some caution. In order to inform the court's analysis the activities must be considered at a general rather than at a specific level. Moreover, the court must bear in mind that the activities may be the exercise in a modern form of a practice, custom or tradition that existed prior to contact, and should vary its characterization of the claim accordingly."

Third, in order to be integral a practice, custom or tradition must be of central significance to the Aboriginal society in question. This may be the consideration of the Aboriginal perspective in determining Aboriginal rights for purposes of s. 35(1). The Chief Justice identifies the protection of what makes an Aboriginal society distinctive as a necessary element the reconciliation of those societies with Crown sovereignty. He says that this involves the consideration of whether or not the absence of this practice, custom or tradition would fundamentally alter the Aboriginal culture. It should be noted, however, that the Chief Justice does not address the fact that the ability of a culture to change is fundamental to any culture.

Fourth, the practices, customs and traditions that constitute Aboriginal rights are those which have continuity with the traditions, customs and practices that existed prior to contract. In this section, the Chief Justice states that the relevant time period for a court to consider in identifying what is integral to the Aboriginal community is the period prior to contract with European societies. He notes that in light of the difficulty of producing evidence as to what happened in Aboriginal societies prior to contact, all that need be shown is that the present practices have their origin prior to contact. Paradoxically, he says that the concept of continuity is the means by which the "frozen rights" approach will be avoided and seems to equate continuity with the ability of Aboriginal practices to evolve. Continuity does not require an unbroken chain of events from the time prior to contact to the present period.

Fifth, the rules of evidence must be approached in light of the apparent difficulties in adjudicating aboriginal claims. As noted above, a court must recognize the difficulties involved in establishing what occurred prior to contact with Europeans, and not undervalue Aboriginal claims.
Sixth, claims to Aboriginal rights must be adjudicated on a specific rather than general basis. As noted above, the Chief Justice is careful to state that Aboriginal claims must be articulated in terms understandable to the common law. They must be adjudicated in light of the government regulations being challenged. This seems to underlie the requirement that the existence of an Aboriginal right will

depend entirely on the tradition, custom and practice of the particular Aboriginal community claiming the right. So, no Aboriginal community can claim a right simply because another Aboriginal community has that right. This consideration seems to be at odds with the statement earlier by the Chief Justice that activities must be considered at a general rather than a specific level. The distinction, which is not readily apparent on the face of the judgment, is as follows, in my view. While no two Aboriginal communities must necessarily have the same right, since they belong to differently organized societies, articulation of the right must be general enough so as to permit evolution. If there is a right to hunt, that right should not be articulated as a right to hunt for a specific species. Difficulties, however, arise because the evidence articulating those hunting rights will often be species specific. It should be noted the that the Chief Justice's articulation in this case was on a much more specific level than that of the dissenting Justices.

Seventh, for a practice, custom, or tradition to constitute an Aboriginal right, it must be of independent significance to the Aboriginal culture in which it exists. The Chief Justice says that the practice, custom or tradition cannot exist simply as an incident to another practice, custom or tradition; but must be of integral significance to the Aboriginal society. This, again, seems to address the tension between generality and specificity in the articulation of Aboriginal rights. But, what exactly the Chief Justice means is unclear. "Integral" and "incidental" are not in their ordinary meanings inversely related to one another. While and integral part of something, if absent, would leave that something less than whole, an incidental seems to relate more to questions of form, and as has already been stated, Aboriginal rights are not frozen in the form in which they were exercised prior to contact, but can evolve. Integral has a legal meaning already in the context of the constitutional Law of Canada. The test for interjurisdictional immunity of federal works or undertakings is that if provincial regulation effects an integral part of those undertakings, that provincial law does not apply to them. The purpose in this test is to protect the federal character of those works or undertakings, presumably so that the federal objective can be met without provincial interference.

Eighth, a practice, custom or tradition must b distinctive, but it need not be distinct. The Chief Justice points out that the test is that the custom or tradition makes the culture what it is, not that the custom or tradition is different from the customs or traditions of other cultures. It is unfortunate, in my view that the distinctive culture part of the test should be brought over to the identification of the distinctive practices, customs or traditions. What is actually being protected by s. 35(1) is distinctive cultures, rather than distinctive practices.

Ninth, the influences of European culture will only be relevant to the inquiry if it is demonstrated that the practice, custom or tradition is only integral because of that influence. At paragraph 73, the Chief Justice said:

> "The fact that Europeans in North America engaged in the same practices, customs or traditions as those under which an Aboriginal right is claimed will only be relevant to the Aboriginal claim if the practice, custom or tradition in question can only be said to exist because of the influence of European culture. If the practice, custom or tradition was an integral part of the Aboriginal community's culture prior to contact with Europeans, the fact that that practice, custom or tradition continued after the arrival of Europeans, and adapted in response to their arrival, is not relevant to a determination of the claim; European arrival and influence cannot be used to deprive an Aboriginal group of an otherwise valid claim to an Aboriginal right.

As noted earlier, this part of the test is troubling because the ability to change is essential to any culture. Furthermore, European societies themselves evolved in response to Aboriginal cultures.

Tenth, courts must take into account both the relationship of Aboriginal peoples to the land and the distinctive societies and cultures of Aboriginal peoples. In this section, the Chief Justice makes a useful distinction between Aboriginal title, which describes those Aboriginal rights, which deal with rights to land, and Aboriginal rights which arise from the social organization and distinctive culture of an Aboriginal people. The second category would embrace such things as customs relating to status, personal property, cultural property, and self-government. One illustration of this distinction is found in *R. v. Adams*, [1996] 4 C.N.L.R. 1, where at paragraph 26, the Chief Justice said:

> "While claims to Aboriginal title fall within the conceptual framework of Aboriginal rights, Aboriginal rights do not exist solely where a claim to Aboriginal title has been made out. Where an Aboriginal group has shown that a particular activity, custom or tradition taking place on the land was integral to the distinctive culture of that group then, even if they have not shown that their occupation and use of the land was sufficient to support a claim of title to the land, they will have demonstrated that they have an Aboriginal right to engage in that practice, custom or tradition. The *Van der Peet* test protects activities which were integral to the distinctive culture of the Aboriginal group claiming the right; it does not require that the group satisfy the further hurdle of demonstration that their connection with the piece of land on which the activity was taking place was of a central significance to their distinctive culture sufficient to make out a claim to Aboriginal title to the land."

In *R.v. Pamajewon*, [1996]4 C.N.L.R. 164, the Chief Justice stated , with respect to self-government, that the test articulated in Van der Peet applies, and that Aboriginal rights including any right to self-government must be looked at in light of the specific circumstances of each case and in light of the specific history and culture of the Aboriginal group claiming the right (para.27). Even practices themselves may not be related to any particular land; however they may be so related.

One other instance of Aboriginal rights not related to land is found in *Casimel v. I.C.B.C,* [1994] 2 C.N.L.R. 22 (B.C.C.C.) where and adoption according to Aboriginal customs was recognized as valid for the purposed of an insurance claim.

Prima facia Infringement

The decision of the Supreme Court of Canada *R. v. Sparrow*, sets out tests for establishing a *prima facie* interference or infringement with Aboriginal rights, and the justification of such an infringement. At pages 182 and 183, the court said:

> "To determine whether the fishing rights have been interfered with such as to constitute a *prima facie* infringement of s. 35(1), certain questions must be asked. First, is the limitation unreasonable? Second, does the regulation impose undue hardship? Third, does the regulation deny to the holders of the right their preferred means of exercising that right? The onus of proving a *prima facie* infringement lies on the individual or group challenging the legislation. Rather the test involves asking whether either the purpose or the effect of the restriction on net

> length unnecessarily infringes the interest protected by the fishing right. If, for example, the Musqueam were forced to spend undue time and money per fish caught or if the net length reduction resulted in a hardship to the Musqueam in catching fish, then the first branch of the s. 35(1) analysis would be met."

Before passing onto the question of justification, I want to point out that reasonableness has been said to form part of the *Sparrow* test in *R. v. Badger*, [1996] 2 C.N.L.R. 77, at paragraph 73. It may be that an Aboriginal right can be exercised so unreasonably as to lose the protection of s. 35(1), but I would point out that the emphasis in the *Badger* decision in reasonableness placed by Mr. Justice Cory was specifically on the justification of an infringement. I would also point out that the onus of proving an infringement is not heavy and that proof need not include evidence that the infringement was unjustified. So in *R. v. Sampson*, [1996] 2C.N.L.R. 184 (B.C.C.A.) at pages 195 and 196 the onus on the person claiming the aboriginal right in terms of establishing an infringement was said to be enough to ensure that only meritorious claims were considered, and no more:

> "The purpose of the three questions posed (at the stage where an applicant establishes a prima facie infringement of an aboriginal rights)…is to ensure that only meritorious claims are considered. The onus on the applicant is not heavy. The establishment of an infringement on a prima facie basis is sufficient. To include consideration of such factors as priority and consultation-factors which are relevant to [justification] – would adversely affect the onus of proof resting upon the applicant. It would diminish the safeguard for Aboriginal rights established by s. 35(1) as interpreted by the Supreme Court in Sparrow.
>
> …{We} conclude that factors relevant to the second stage of the test in Sparrow should not be taken into account in the first stage of the test-whether there was an infringement of an Aboriginal right."

A *prima facie* case is generally made out when there is some evidence which would support the case. All that is required of a person claiming an aboriginal right is to produce some evidence of infringement, and then a heavy onus falls on the Crown to justify that *prima facie* infringement. For a case where infringement was not proven see R. v. Cote, [1996] 4 C.N.L.R. 26 (S.C.C.).

Justification

In *Sparrow* at Page 183, the Supreme Court stated:

> "If a *prima facie* interference is found, the analysis moves to the issue of justification. This is the test that addresses the question of what constitutes legitimate regulation of a constitutional Aboriginal right. The justification analysis would proceed as follows. First, is there a valid legislative objective? Here the court would inquire into whether the objective of Parliament in authorizing the department to enact regulation regarding fisheries is valid. The objective of the department in setting out the particular regulations would also be scrutinized. An objective aimed at preserving s. 35(1) rights by conserving and managing an natural resource, for example, would be valid. Also valid would be objectives purporting to prevent the exercise of s. (35) rights that would cause harm to the general populace or to Aboriginal peoples themselves, or other objectives found to be compelling and substantial."

> The court of Appeal below held , at p. 331 [p.178 C.N.L.R.] that regulations could be valid if reasonable justified as "necessary for the proper management and conservation of the resource or in the public interest" (emphasis added). We find the "public interest" justification to be so vague as to provide no meaningful guidance and so broad as to be unworkable as a test for the justification of a limitation on constitutional rights."

Basically, what is needed first of all is a pressing and substantial objective properly articulated by the government in enacting a regulation, which interferes with Aboriginal rights. prior to 1982, the courts could not second-guess Parliamentary objectives in legislating on a particular issue. There was a presumption that a law was valid. That presumption is no longer valid.

The second leg of justification refers to the general guiding principal that the honor of the Crown is at stake in its dealings with Aboriginal peoples. This trust-like relationship places a heavy burden on the Crown with respect to justification, and interestingly, in *Sparrow* on p. 186 is found the following:

> "The fact that the objective is of a "reasonable" nature cannot suffice as constitutional recognition and affirmation of Aboriginal rights."

This seems to have been undercut in the *Badger* case.

At pages 186 and 187 of *Sparrow* the Supreme Court said this:

> We acknowledge the fact that the justificatory standard to be met may place a heavy burden on the Crown. However, government policy with respect to the British Columbia fishery, regardless of s. 35(1) requires the Crown to ensure that its regulations are in keeping with that allocation of priority. The objective of this requirement is not to undermine Parliament's ability and responsibility with respect to creating and administering overall conservation and management plans regarding the salmon fishery. The objective is rather to guarantee that those plans treat Aboriginal peoples in a way ensuring that their rights are taken seriously.
>
> Within the analysis of justification, there are further questions to be addressed depending on the circumstances of the inquiry. These include the questions of whether there has been as little infringement as possible in order to effect the desired result; whether, in a situation of expropriation, fair compensation is available; and, whether the Aboriginal group in question has been consulted with respect to the conservation measures being implemented. The Aboriginal peoples, with their history of conservation-consciousness and interdependence with natural resources would surely be expected, at the least to be informed regarding the determination of an appropriate scheme for the regulation of the fisheries."

To isolate the different elements of the justificatory standard, first the allocation of priority must take into account the constitutional recognition and affirmation of Aboriginal rights. This allocation of priority varies with the nature of the right asserted. In R.V. *Gladstone*, [1996] 9 W.W. R. 149 at p. 179, Chief Justice Lamer distinguished between Aboriginal rights that are internally limited and Aboriginal

rights that have no such internal limitations. At p.181, at paragraph 62, the court modified the priority with respect to rights without internal limitations:

> "Instead, the doctrine of priority requires that the government demonstrate that, in allocating the resources, it has taken account of the existence of Aboriginal rights and allocated the resource in a manner respectful of the fact that those rights have priority over the exploitation of the fishery by other users. This right is at once both procedural and substantive; at the stage of justification the government must demonstrate both that the process by which it allocated the resource and the actual allocation of the resource which results from that process reflects the prior interest of Aboriginal rights holders in the fishery."

There has been no definitive statement on what constitutes proper allocation of priorities in the case of non-internally limited rights. There has also been no consideration of the concept of priorities in the contest where the exercise of Aboriginal rights is infringed by non-Aboriginal use of other resources.

The second part considers whether or not there has been as little infringement as possible. This too varies with the nature of the right asserted, as Gladstone points out.

Compensation is the third element and consultation is the fourth one. Consultation seems to have its origin in the trust-like relationship with the Crown. In the decision of the BC Court of Appeal in *R. v. Jack*, [1996] 2 C.N.L.R. 113, at p. 153, the court describes the duty to consult as a duty on the government to inform itself fully of the practices of the Aboriginal group and of their view on the proposed government regulations. The court declined to equate these duties necessarily with the duties of a fiduciary and said that the duty to consult did not require Aboriginal consent.

Aboriginal Rights in the Context of Federalism

Because of the division of powers which assign Indians and land reserved for the Indians to the federal government, a province may not make laws with respect to Indians. Valid provincial laws enacted under a head of provincial power applied to Indians except to the extent that they interfere with federal jurisdiction over Indians. By s. 88 of the *Indian Act*, provincial laws that effect the federal nature of Indians are referentially incorporated as federal laws and given federal force so as to apply to Indians. But, a province still may not make laws, which are characterized as laws in relation to Indians. The problem with respect to Aboriginal rights to be justified, that law must specifically consider the needs of Aboriginal people and accommodate those needs in accordance with the trust-like relationship of the Crown with Aboriginal people. However, s.88 does not, and could not give a province jurisdiction specifically to take Aboriginal peoples rights into consideration. I know of no case which specifically addressed this problem, but in *R. v. Cote* at pages 60-61, Chief Justice Lamar said this:

> "Once it has been demonstrated that a provincial law infringes "the terms of [a] treaty", the treaty would arguably prevail under s.88 even in the presence of a well-grounded jurisdiction. The statutory provision does not expressly incorporate a justification requirement analogous to the justification stage included in the *Sparrow* framework. But the precise boundaries of the protection of s.88 remains a topic for future consideration. I know of no case, which has authoritatively discounted the potential existence of an implicit justification stage under s.88. In the near future, Parliament will no doubt feel compelled to re-examine the existence and scope of

> this statutory protection in light of these uncertainties an in light of the parallel constitutionalization of treaty rights under s. 35(1).
>
> For the reason which animated my previous finding that the Regulation respecting controlled zones does not infringe the Aboriginal rights of the appellants, I find that the Regulation does not infringe or restrict the asserted right of the appellants to fish under the terms of the Swegatchy treaty. The Regulation only imposes a modest financial burden on the exercise of this alleged treaty right where access is sought by motor vehicle, and under the circumstances, the access fee actually facilitates rather than restricts the exercise of this right. Accordingly, although the Regulation is subject to the terms of the alleged treaty, the Regulation is not inconsistent with the treaty and remains operative in relation to the activities of the appellants. It is therefore unnecessary to further consider the scope of protection of s.88, particularly in relation to whether the provision incorporates a justification defense similar to that in *Sparrow*.

He was discussing treaties of course, and treaties are specifically excluded from s. 88, unlike aboriginal rights. But in my view that does not make a difference. I do not know how a justification requirement can be read into s. 88 in light of Parliaments inability to delegate its exclusive authority over Aboriginal people to the provinces. Parliament may not under the Constitution give jurisdiction specifically to make laws with respect to Indians. Such a law would no longer be a law of general application and would be invalid. So, in *R. v. Aphonse*, [1993] 5 W.W.R. 401, a provincial law of general application failed the test under s. 35(1) for justification of infringement and in *R. v. Badger*, at p.103, the Supreme Court said that:

> "Pursuant to the provisions of s.88 of the Indian Act, provincial laws of general application will apply to Indians. This is so except where they conflict with Aboriginal or treaty rights, in which case the latter must prevail. In any event, the regulation of Indian hunting rights would ordinarily come within the jurisdiction of the Federal government and not the Province. However, the issue does not arise in this case since we are dealing with the right to hunt provided by Treaty 8 as modified by the NRTA. Both the Treaty and the NRTA specifically provided that the right would be subject to regulation pertaining to conservation."

Jurisdiction

As noted earlier, the Supreme Court of Canada has not ruled out self-government for Aboriginal people as a part of the Constitutional protection given to Aboriginal rights under s. 35(1). It is clear, however, that competent legislative authority could infringe any exercise of self-government provided that infringement was justified in accordance with the *Sparrow* test. There are two basis for jurisdiction in law: First, there is jurisdiction over people. Aboriginal self-government would give Aboriginal communities some jurisdiction over their own people. It would not extend beyond those people, and, perhaps, people who had decided to live in that community. The second source of jurisdiction however, is a jurisdiction grounded in property. People, whether Aboriginal or not; who acquire the right to the use or occupation of Aboriginal lands and resources would be subject to the Aboriginal regulation of those resource. So, for example, provincial laws with respect to fisheries, are not grounded in legislative jurisdiction under the Canadian Constitution; but in the proprietary right of the province as owner of the fish in the province. Governments have the right to control and dispose of their own resources as they wish.

Examples of the articulation of the claim of self-government are found in the orders requested by the Gitksan and Wet'suwet'en in their facta for the Supreme Court of Canada. The Gitksan claim a right to harvest, manage and conserve the territory and its resources might include the right to govern non-Gitksan in the use of those resources.

Treaty Making and the Canadian Constitution

In R. v. Sioui, [1990] 3 C.N.L.R. 127, while reviewing case law such as *Simon v. the Queen*, [1986] 1 C.N.L.R 152 and *R. v. White and Bob* (1964), 52 W.W.R. 193, the Supreme Court said a court should be flexible in determining what constitutes a treaty with Indians, taking into account the historical context and the perceptions of the parties as to the nature of the undertaking contained in the document (pages 133-134). A broad and liberal attitude is proper in determining both what constitutes a treaty, and in construing the document. Words are to be interpreted in the sense the Indians would have understood them.

Sioui is authority for the proposition that an Indian treaty is

> "a document *sui generis* which is neither created nor terminated according to the rules of international law" (page 135).

A government official has the capacity to enter into a treaty with Indians if he or she has a position of high rank and authority so that it is reasonable for the Indians to believe that he or she had the power to enter into a treaty (page 137).

In the context of modern times, the capacity of governments to enter into treaties is not an issue, except in the context of federalism, since the federal government cannot enforce a treaty not grounded in a head of federal power as set out in section 91 of the *Constitution Act*, 1867 (Attorney General for Canada v. Attorney General for Ontario, [1937] A.C. 326). In the context of treaty making with Indians, this may effect the capacity of the federal government to carryout the obligations it has assumed in a treaty. In *Ontario Mining Co. v. Seybold*, [1903] A.C. 73, it was held that the federal government did not have the power to create a reserve without the consent of Ontario upon a surrender of lands by Indians by treaty, in purported fulfillment of the treaty's terms. It should be noted that in that case because the Indian interest in the land was extinguished by the treaty, the federal government had no remaining jurisdiction to create a reserve, and the case is not authority for the proposition that the federal government cannot create a reserve without the consent of a province where the federal government has jurisdiction under head 91 (24) of the *Constitution Act*, 1867 because the land is burdened by an unreserved Aboriginal interest which is within the scope of head 91 (24). (*Delgamuukw v. B.C.,* [1993] 5 W.W.R. 97 (B.C.C.A.)

To a large extent the federal jurisdiction to enter into treaty obligations is governed by the scope of federal jurisdiction under head 91 (24). Unfortunately, the case law has not provided a very expansive definition of federal jurisdiction. One can say it includes hunting and fishing rights of Indians certainly. It may be so broad as to embrace all property and civil rights of Indians. The various subjects covered by the Indian Act-wills and estates, taxation of Indians, Band government and powers-all point to an expansive reading of that jurisdiction. On the other hand, section 88 of the Act, which gives provincial laws which would otherwise interfere with Indianness, federal force, has not forced the Courts to

examine which provincial laws would not apply to Indians, or to carve out areas of exclusive federal jurisdiction, though the case law prior to section 88's enactment suggests that it was broad. For instance, laws respecting enforcement of debts did not apply to Indians, at least to the extent that an Indian could not be put into prison for non payment, or forced to pay provincial tax. The reasoning behind these decisions was that Indians as wards of the federal government could not be subject to provincial civil procedures. This reasoning is based in part upon the idea of the fathers of Confederation that the federal government was more likely to protect Indians from local settlers with whose interests those of Indians were often in conflict (See for example, Peter Hogg, *Constitutional Law of Canada, 3rd ed.,* (1992) s. 27.1 (a)). This of course ties into the fiduciary relationship of the Crown with respect to Aboriginal peoples, and suggests that there is a structural imperative behind section 91 (24) which s. 88 of the *Indian Act* has obscured. In my view there is no subject matter which the federal government could not agree to as part of its plenary jurisdiction over Indians and Lands reserved for the Indians, and, in fact, provincial participation at the treaty table is not only unnecessary but also contrary to the constitutional imperative of s. 91 (24). But this imperative is buried by the political nature of the treaty process in the era of cooperative federalism.

In this light, concerns about the capacity of governments to make treaties are largely academic given the unlikelihood of the federal government to act without the assent of the Province, and the probability that the treaty would stipulate that it needed the assent of Parliament and the provincial legislature to become effective. There may arise questions, however, about the representative capacity of the Indians who are in authority pursuant to the *Indian Act*. These problems too can be overcome if the treaty only becomes effective upon ratification by the appropriate community, though perhaps that assent should be signified by more than a simple majority because of the solemnity and seriousness of the treaty. In *Sioui* at page 139 it is said that

> "what characterizes a treaty is the intention to create obligations, the presence of mutually binding obligations, and a certain measure of solemnity."

It is against these three criteria that any treaty making process must be measure. Furthermore, the behavior of governments in the treaty making process should be measured against the fiduciary standard, remembering that the honor of the Crown is at stake in its dealings with Aboriginal peoples, as noted by the Supreme Court of Canada in *R. v. Sparrow,* [1990] 1 S.C.R. 1075.

In the context of Aboriginal self-government, I propose to make the following observations about treaty making and the Canadian Constitution.

Treaties which set out rights of self government will not be part of the Canadian Constitution, though the self government rights will be constitutionally protected under s. 35 (although I have heard the suggestion that under s-s. 35 (3) treaty rights are defined to include "rights that now exist by way of land claims agreements or may be so acquired," and so future treaty rights dealing with self government are not the sort of rights contemplated or protected by s.35.) I do not believe that that is so. However, there is a distinction between government being part of the constitution and self-government rights. Under the law, neither Parliament nor a provincial legislature can either transfer its constitutional authority to the other or create a new legislative organ with a status under the constitution similar to its own. (Attorney General of Nova Scotia v. Attorney General of Canada, [1951] S.C.R. 31 at page 47; the Queen v. Burah (1877), 3 App. Cas. 889. It is furthermore incompetent to either Parliament or a

provincial legislature to define the scope of its own jurisdiction under the constitution, though neither is obliged to legislate to the fullest extent of that jurisdiction (*Reference re the Term "Indians*", [1939] S.C.R. 104; *Canadian Pioneer Management v. Labour Relations Board of Saskatchewan,* [1980] 1 S.C.R. That would require a constitutional amendment. A treaty is not a constitutional amendment, so a few things follow:

a) any treaty rights of self government are either existing under the constitution as Aboriginal rights presently which it is the function of treaties to define; or
b) if Aboriginal rights are not existing Aboriginal rights within the meaning of s. 35, apparently they can only exist as delegations of authority from either the federal or provincial government;
c) It is unclear as to how delegated authority can be constitutionally protected as a treaty right since the constitutional protection afforded a treaty right could amount to a surrender of jurisdiction, which neither level of government is competent to do;
d) In light of c) delegated authority probably cannot be considered a treaty right since delegation is subordination (authority for propositions c) and d) is found in *Attorney General of Nova Scotia v. Attorney General of Canada* at pages 47 to 49; and
e) On the other hand, treaties cannot be used by either Parliament or a provincial legislature to abrogate to itself powers constitutionally which belong to the other, and in particular, a province may not acquire jurisdiction which would normally belong to the federal government under head 91 (24) of the *Constitution Act*, 1867.

The Protection Afforded to Treaty Rights in Section 35 of the Constitution Act, 1982

In general, it can be said that a treaty is afforded exactly the same protection given Aboriginal rights by section 35, and that treaty rights are subject to the same tests for infringement and justification as Aboriginal rights which are discussed above in the context of Aboriginal rights. This is set out in *R. v. badger*, [1996] 1 S.C.R. 771 at pages 813 to 816:

> "It has been recognized that Aboriginal and treaty rights are not absolute… In *Sparrow* certain criteria were set out pertaining to justification… I am of the view that these criteria should , in most cases, apply equally to the infringement of treaty rights.
>
> There is no doubt that Aboriginal and treaty rights differ in both origin and structure. Aboriginal rights flow from the customs and traditions of the native peoples… They embody the right of native people to continue living as their forefathers lived. Treaty rights, on the other hand, are those contained in official agreement s between the Crown and the native peoples. Treaties are analogous to contracts, albeit of a very solemn and special, public nature. They create enforceable obligations based on the mutual consent of the parties. It follows that the scope of treaty rights will be determined by their wording, in accordance with the principles enunciated by this Court."

He goes on to articulate similarities. Both Aboriginal and treaty rights may be unilaterally abridged; and are of a unique, *sui generis* nature engaging the honour of the Crown. Both are subject to infringement and justification.

The Supreme Court has stressed that tests for justification are flexible, and it might be possible for a treaty to contain its own terms as to infringement and justification. It cannot be forgotten that the function of treaty making is to provide a vehicle for the recognition of existing Aboriginal rights ant to define the relationship between Aboriginal communities and Crown sovereignty. That relationship informs the purpose of section 35 and the justification tests as set out in *Sparrow*. I know of no reason why the justification tests cannot themselves be the subject of negotiated agreement. In fact, few topics are more suitable for treaty agreement.

The Interpretive Principles

Courts have repeatedly emphasized certain interpretive principles with respect to treaties. In *R. v. Badger*, [1996] 1 S.C.R. 771 at pages 793 and 794, Mr. Justice Cory summarized:

1. It must be remembered that a treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred.
2. The honour of the Crown is always at stake in its dealings with Indian people. Interpretations of treaties and statutes which have an impact upon treaty or Aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfill its promises. No appearance of "sharp dealing" will be sanctioned.
3. Any ambiguities or doubtful expressions in the wording of any treaty or document must be resolved in favour of the Indians. A corollary to this principle is that any limitations which restrict the rights of Indians must be strictly construed.
4. The onus of proving extinguishment lies upon the Crown. There must be "strict proof of the fact of extinguishment" and evidence of a clear and plain intention on the part of the government to extinguish treaty rights.

To this list may be added, from *Saanichton Marina* v. *Claxton* (1989), 36 B.C.L.R. (2d) 79 at pages84 and 85, and reaffirmed in *R. v. Little,* [1996] 2 C.N.L.R. 136 at page 147 (both Cases from the BC court of Appeal):

5. Treaties should be given a fair, large and liberal construction in favour of Indians.
6. Treaties must be construed not according to the technical meaning of the words, but in the sense they would be naturally understood by the Indians.
7. Any ambiguity should be interpreted as against the drafters, and not to the prejudice of the Indians if another construction is reasonably possible.
8. Evidence by conduct or otherwise as to how the parties understood the treaty is of assistance in giving it content.

Aboriginal Rights in the Context of Fish Farming

There are many possible Aboriginal rights, which might be infringed by the establishment of fish farms. The infringement of those Aboriginal rights by the government would necessitate the justification of that infringement. So I propose to look at the justification tests in particular. Most legislative objectives are found to be valid by the courts. However, they must be properly articulated in the context of s. 35(1) rights. I would note that Gladstone significantly widened the number of legislative objectives which the court would find valid. These included regional fairness, the availability of the resource to non-Aboriginal people and so forth. The only restriction on legislative objective would seem to be objectives which are contrary to the spirit s. 35(1) itself. So, in *Adams* and in *Cote,* the objective of promoting a sport fishery was of doubtful validity.

The constitutional priority of Aboriginal rights in the context of fish farming raises interesting questions. First of all, as noted earlier, there have been no cases on competition for different resources between Aboriginal and non-Aboriginal people. A fish farm may interfere with the exercise of Aboriginal rights; but it does not necessarily consume the same resources as Aboriginal rights do. There are two angles to this question: First of all, there may be cases where the proof of infringement cannot be made out. In the second place, the notion of priority cannot be answered by simple mathematical formula in these cases. These questions cannot be answered in the absence of evidence; however, perhaps principles of nuisance law can be drawn on in the articulation of the infringement of the right and, insofar as priority goes, in determining how that nuisance is to be resolved.

The question of consultation is two-fold, because in the first instance, in the absence of court decision, the government has a duty to inform itself as to the potential existence of Aboriginal rights. In the second instance, Aboriginal rights holders have the right to consult with the government in determining how the reconciliation of Aboriginal rights with the issuance of fish farm licenses is to be resolved. This would include the right to participate in the allocation of fish farm licenses as they come up.

Treaty Rights in the Context of Fish Farming

Saanichton Marina is strong authority as to how the law should be with respect to fish farms. In that case, a company was prevented from building a marina on the basis that the construction and operation of the marina would disrupt the aboriginal access and ability to carry out the fishery. If infringement can be demonstrated with respect to the fish farm, a similar result should follow.

An Aboriginal Role

Having reviewed the caselaw with respect to aboriginal rights and treaty rights and having examined the judicial interpretation of those rights, it remains now to apply that knowledge to the existing situation in British Columbia with respect to Fish Farming. While remaining opposed to the construction of further fish farms on the British Columbia coast, First Nations have considered their position should the government of British Columbia choose to ignore the rights and concerns of the First Nations of the coast of British Columbia. In particular, the First Nations have considered their position with respect to the procedures for the approval of new fish farms, changes to existing farms, renewals of current farm licenses, and, the management of fish farms.

First Nations are sensitive tot he following guiding principles:

1. Each First Nation is independent and possesses its own rights. Consequently, each First Nation must be consulted with respect to Fish Farms being established in its area.

2. There can be no single set of procedures for the entire coast. Rather each area may require procedures which respect and accommodate the requirements of the First Nation in that area.
3. There must be the maximum involvement of First Nations possible.
4. Provincial policies and regulations must recognize, affirm and respect the aboriginal rights of the First Nations of BC. These rights are the rights as defined by aboriginal people and not governments or other bodies, and
5. The relationship between the government and the First Nations of BC with respect to Fish Farms must be based on respect and this requires full disclosure to the First Nations by the government.

Aboriginal people remain unalterably opposed to the introduction of genetically altered stock to British Columbia. The threat such stock poses is unacceptable to aboriginal people. Aboriginal people are also of the view that the current ten year tenure system is too long. The tenure/license should be reduced to three years.

With these in mind, it is the position of the First Nations that the new regulations should reflect the following:

Regulations for New Farms

Corporations considering establishing farms on the coast of British Columbia should be required to file with the government a proposal which includes at least the following information:
a) Site
b) Species to be handled
c) Volume of species to be handled
d) Plans for escapements
e) Plans for biological control
f) Staffing
g) General character of the farm
h) Technology to be used, and
i) Treatments to be used or anticipated to possibly be used such as antibiotics, drugs, herbicids, antifallons, pesticides, etc.

The government must give a copy of any proposal it accepts for consideration to the First Nations in the area of the proposed development. The area of the proposed development may not be just the immediate area or the area of the First Nation having jurisdiction but may extend much further depending on the nature of the operation and the nature of the potential danger. The rationale is that the First Nations must have the same information before it as the government. There must be complete disclosure and the relationship must be between the government and the First nation and not the company and the First Nation. Some proposals may be rejected outright by the government and those need not be given to the First Nations involved. Those accepted by the government for consideration must be forwarded to the First Nation within 10 days of acceptance for consideration by the government.

In addition to the government forwarding copies of the proposal to the First Nations affected, the company must give a public notice, including to the First Nations involved of the fact that a proposal has been filed with the government. If a company does not comply with any of the notice requirements of the regulations the proposal will proceed no further.

Once the First Nations affected have notice of the proposal, a compulsory First Nations Assessment will be done. This assessment is to be done by a committee, a majority of whose members will be aboriginal. The committee must begin its work within sixty days of the First Nations getting notice of the proposal. The First Nations Assessment will be paid for by the company proposing the development including all costs of the committee. It will be up to the committee to determine if experts need to be retained to conduct specialized study.

First Nations would have thirty days from receipt of the results of the Impact Assessment to issue a response. Should the company wish to amend its original proposal to take into account the First Nations concerns it could do so within a specific time period. The First Nation could then request another Fist Nations Impact Assessment (within thirty days of receiving the changes) in respect of the changes. Disputes in respect of the findings of an Impact Assessment would be referred to an independent panel for adjudication.

It is recognized that, in addition to the procedural path that there may be an alternate "political" path for First Nations. A First Nation may decide that it will not participate in any First Nations Impact Assessment or study and may wish to reject completely a particular or all proposals. First Nations propose that an independent tribunal be established to deal with such disputes with representatives appointed by the government and First Nations. An outstanding issue to be resolved is whether the independent tribunal could trigger an Assessment.

Fish Farm Monitoring

First Nations demand a greater role in the monitoring of existing and future fish farms.

Of particular concerns to First Nations in the past have been the changes to fish farms with out First Nations being informed or allowed input. First Nations will demand notice of changes to fish farms. In the future, First Nations demand that certain types of changes to fish farms will require a First Nations Impact Assessment. Those types of changes requiring an Assessment include:

a) type of stock
b) numbers of stock
c) holding technology, and
d) boundaries

Other changes will not automatically require a First Nations Impact Assessment but will nonetheless require notice to the First Nations involved.

First Nations are also concerned about the handling of disease by Fish Farms. First Nations must be given notice of disease outbreaks and of attempts by fish farms to control the outbreak of disease. Notice to First Nations must include the following information:

a) the nature of the disease or anticipated disease,
b) the method of control such as by antibiotics,
c) the time and nature of applications of drugs or antibiotics to control disease,
d) potential impact areas,
e) potential side-effects and damage,

f) the withdrawal time, and
g) disposition of moribund fish or dead fish or byproducts (eg. blood) or effluent-there can be no dumping in the Ocean at all.

The First Nations demand that the fish farms give public notice to the area population about the use of antibiotics. That public notice could include the flying of a flag, posting of notices on beaches, notices in newspapers, VHF announcement, etc. Signage could be placed in known harvesting areas. To a lesser extent the same notice may be required for the use of hormones.

There must be monitoring of antibiotics by the testing of shellfish during and after treatments. Monitoring must be done by a party other than the company. The development plan filed by the company originally when the fish farm license was asked for would have included a plan for public notice and a plan for the monitoring of shellfish.

Noncompliance with any provision or regulation would be an offense and liable to substantial fine. The size of fines must be large enough to deter illegal activity. There must be a procedure for First Nations to cause independent speedy review of fish farm plans for disease control. The Fish Farm companies must bear the cost of such independent reviews.

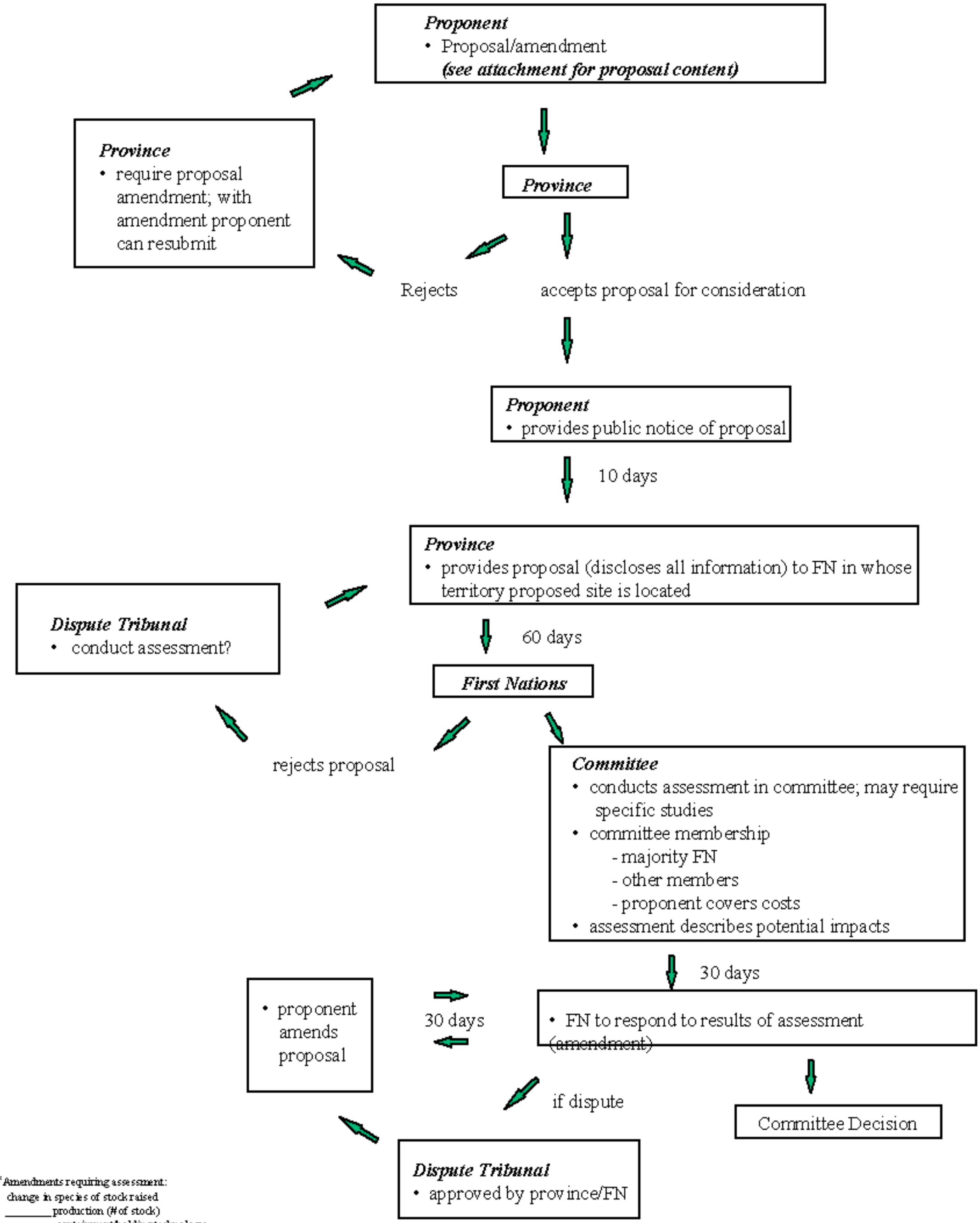
Also of concern to First Nations are escapes from Fish Farms. Again, the guiding principle is one of notice. The Notice must be prompt and must be given to all First Nations potentially affected. The notice must include information about the species and numbers of the species involved in the escapement, efforts to re-catch the escaped fish, anticipated destination (if known) of the escaped fish and other salient information. The notice must be in writing and given within 24 hours of an escapement. The government must also give the First Nations affected notice of how the escapement will be dealt with.

It is realized that many First Nations do not have the financial ability to cope with the flow of information and adequately respond to it. First Nations fisheries guardians/officers must be permitted to monitor the industry. These guardians/officers must have the ability to lay charges where the regulations/legislation has not been complied with. First Nations will have the option of designating their fisheries guardians/officers as the recipients of information and notices form the government and industry. The monitoring of the fish farm industry by the First Nations fisheries guardians/officers will be on a day to day basis. These guardians/officers will be involved to the maximum extent possible in cleanup and environmental restoration when necessary.

Government and industry must bear the cost of the guardians/officers.

Throughout this paper, the BCAFC has attempted to illustrate the jurisdiction of aboriginal people, as claimed by them and as interpreted by the courts. Any closing comment must be reflective of the positions of aboriginal peoples. Their role in this industry must be maximized.

First Nation Proposed Process For Approval of New Farms and Certain Amendments*



*Amendments requiring assessment:
- change in species of stock raised
- _____production (# of stock)
- _____containment/holding technology
- tenure boundaries