

**Ministry of Agriculture  
BRIEFING NOTE FOR MINISTER FOR INFORMATION**

Ref: 182165

Date: May 8, 2015

**Issue:** The Federal Court has ruled that some conditions of the federal BC aquaculture licence regarding transfer of fish are not valid.

**Background:** In March, 2013, Marine Harvest transferred salmon smolts from its Dalrymple hatchery to the Shelter Bay fish farm. The smolts were subsequently sampled at the fish farm, and in June 2013 tested positive for piscine reovirus (PRV).

PRV is common in wild Pacific salmon and its presence predates the salmon farming industry.

Although the causal link between PRV and Heart and Skeletal Muscle Inflammation (HSMI) disease is a subject of debate among scientists, Alexandra Morton is of the opinion that PRV is the causative agent of HSMI. HSMI has had significant impacts on salmon farming in Norway, and has been detected in Scotland and Chile. Although the decision indicates that HSMI has been found in Canada, this is not correct. HSMI has not been found in BC.

Based on her concern about PRV, Morton brought an application for judicial review to determine whether fish transfer conditions attached to the aquaculture licence issued under the federal Pacific Aquaculture Regulations (PAR) were consistent with fish transfer requirements of the federal Fishery (General) Regulations (FGR).

**First Nations Considerations:** First Nations will be concerned about any perceived risk to the health of wild fish, particularly salmon, that may have an impact on their right to harvest fish for food, social and ceremonial purposes.

**Discussion:** The Court determined that two of the four PAR licence conditions related to fish transfers are inconsistent with the FGR and declared them invalid and to have no force and effect. The judgment is suspended for four months from the date of issue (May 6, 2015) in order to give Fisheries and Oceans Canada (DFO) time to sever the invalid conditions.

Condition 3.1(b)(ii) requires that the stock to be moved from the source facility “shows *no signs* of clinical disease”. The Court found that this was a lower standard, and thus inconsistent with the FGR requirement that fish “do not *have* any disease or disease agent.”

Condition 3.1(b)(iv) allows for transfers of fish subject to prescribed risk assessment steps if deemed to be “low risk” by the facility veterinarian. The Court found that this was inconsistent with the FGR as it could allow for the transfer of diseased fish if deemed to be a low risk. The Court also found that this condition amounted to an improper delegation to fish health professionals of authority to make fish transfers in a manner not consistent with a precautionary approach intended in the FGR.

**Conclusion:** The court did not rule on the presence of HSMI in British Columbia nor did it find that the BC Strain of PVR causes HSMI or that salmon aquaculture introduced PVR to British Columbia.

The Court did rule that two conditions of the BC finfish aquaculture licence are invalid and must be severed from the licence. The Court has given DFO four months to do this.

Marine Harvest disputes that it has ever transferred unhealthy fish. Marine Harvest stated that the removal of the conditions should not have any substantive impact on the operations of salmon farms in British Columbia.

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DFO said it was reviewing the decision, but noted the ruling pertains to two subsections of 140 licence conditions. The DFO website states that examination of hundreds of fish has found no evidence to date of HSMI in wild or farmed fish in BC, and this information is supported by published peer-reviewed scientific research led by professional staff at the Ministry's Animal Health Centre.

As many as 120 licences due to expire by the end of 2015 could be affected by the invalidated regulations.

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**BRIEFING NOTE FOR MINISTER FOR MEETING**  
**with Ruth Salmon, Canadian Aquaculture Industry Alliance, June 1, 2015**

Ref: 182158

Date: May 13, 2015

**Issue:** Proposed federal *Aquaculture Act*.

**Background:** The Canadian aquaculture industry through the national industry association, Canadian Aquaculture Industry Alliance (CAIA), has been advocating for the development of a national aquaculture strategy for several years. As part this strategy, CAIA is drafting a proposed federal *Aquaculture Act* to facilitate growth in the aquaculture industry.

Most of the current federal regulatory framework for aquaculture under the *Fisheries Act* was developed decades ago for sustainable management of capture fisheries and protecting the marine environment. This genesis makes it a poor fit with aquaculture (i.e. farming vs. fishing) and it lacks the capacity to allow for the innovation necessary for industry development.

CAIA contends that the current regulatory framework is a web of complex, burdensome rules that restrict growth and investment, frustrate implementation of sustainable practices, and limit industry's ability to compete successfully. CAIA highlights decreasing investment and lack of growth in the Canadian industry since 2001 as evidence of the regulatory problem.

**First Nations Considerations:** Some first nations are supportive of salmon farms and most are supportive of shellfish aquaculture within their traditional territory. Other first nations, including several in the Broughton Archipelago (members of the Musgamagw Tsawataineuk Tribal Council), are publicly opposed to salmon farming.

**Discussion:** The proposed legislation would clearly define aquaculture as a farming activity and not a fishery. The intent is to have aquaculture recognized and accorded access similar to agriculture for government programs and resources.

The proposed Act would reaffirm federal commitment to promotion, research and enhancement of the aquaculture sector. The intent would be to provide clarity and cohesiveness to various federal departmental roles, to streamline regulation and reduce red tape. Importantly, the Act would recognize the private property rights of aquaculturists in their fish stocks. The Act would also provide workable mechanisms and a framework for federal-provincial cooperation on aquaculture development.

The Act would provide guidance to promote policy and regulatory reforms to: provide more predictable licensing processes and more transparent decision making; improve access to fish health products; create a targeted approach to research and development; and, provide a renewed commitment to new species and broodstock development.

There is also an initiative to create targeted business risk management programs similar to those available to agriculture producers.

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Ref: 182315

Date: May 29, 2015

**Issue:** Canada-BC Aquaculture Management Committee (AMC) May 29, 2015 meeting update.

**Background:** AMC serves as the overall management forum for Federal/Provincial strategic oversight, decision-making, and implementation with respect to the Canada-BC Agreement on Aquaculture Management. AMC is co-chaired by Assistant Deputy Minister James Mack and Department of Fisheries and Oceans (DFO) Pacific Regional Director General Sue Farlinger.

**Discussion:**

DFO provided a progress update on aquaculture management issues:

- Pacific Aquaculture Regulations (PAR) were recently amended to establish a license fee schedule. With the new fees, DFO now has service delivery standards for new sites and major amendments. The standard to review and reach a decision is 365 calendar days. s.13  
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- Aquaculture Activities Regulations (AAR) are the first national aquaculture specific regulations under the Fisheries Act which contain conditions for treatment of fish, deposit of organic matter, and for environmental monitoring and reporting.  
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- The proponent Marine Harvest has been notified of provincial tenure approvals and federal aquaculture license approvals for two new salmon farm sites on North Vancouver Island  
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Two are likely to be approved: one each in Clayoquot Sound and the Clio Channel in the southern Broughton Archipelago.
- DFO is reviewing options for a response to the recent Federal Court decision (Morton) regarding licensing of fish transfers, including appeal.
- DFO has nothing new to report on the pending approval of the geoduck policy framework.
- Ministry of Forest Lands and Natural Resources Operations met 2014/15 objectives for its licensing action plan, including a 1/3 reduction in application backlog. The \$200,000 funding support from the Ministry of Agriculture has been spent.

**Summary:**

- DFO has made good progress on aquaculture management regulatory and licensing matters.

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