

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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March 30, 2010

OPEN LETTER

Honourable Gail Shea
Department of Fisheries and Oceans Canada

Dear Minister Shea,

We are writing with respect to Union of BC Indian Chiefs (UBCIC) Resolution no.2010-14, Aquaculture – Rejection of *Federal BC Aquaculture Regulation and Strategic Action Plan* which was carried at the Union of BC Indian Chiefs Council on March 18, 2010 (enclosed).

The UBCIC Chiefs Council has affirmed its rejection of the Federal Initiative because it does not meet Canada's legal and constitutional obligations to First Nations. The UBCIC insists that the Federal government abandon this Initiative. Although, this is a fundamentally flawed process, there is some useful information coming from the process which could be used to inform a more meaningful consultation process that fully embraces the Crown's obligations. It is with this expectation, the UBCIC urges Canada to meaningfully engage with all affected First Nations about the appropriate process to develop Regulations and Strategic Action Plan for aquaculture. The Federal government must recognize First Nations land use and marine use plans in the criteria in the determination of sites.

The UBCIC Chiefs Council strongly feels that Canada's Regulations and Strategic Action Plan must give expression to First Nations laws, authority, and traditional knowledge and must incorporate the economic component of Aboriginal Title and Rights and Treaty Rights in order to adequately address and develop a regulatory framework and policies around aquaculture.

If there are any questions or comments please contact Bob Chamberlin, Secretary-Treasurer at 604-684-0231 or 778-988-9282.

On behalf of the UNION OF BC INDIAN CHIEFS

Grand Chief Stewart Phillip
President

Chief William Charlie
Vice-President

Chief Bob Chamberlin
Secretary-Treasurer

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UNION OF B.C. INDIAN CHIEFS
CHIEFS COUNCIL
MARCH 17TH - 18TH, 2010
VANCOUVER, B.C.

Resolution no. 2010-14

RE: Aquaculture – Rejection of *Federal B.C. Aquaculture Regulation and Strategic Action Plan*

WHEREAS First Nations practiced uncontested, supreme and absolute jurisdiction over our territories, our resources and our lives with the right to manage our lands, resources and institutions;

WHEREAS First Nations have been negatively impacted by aquaculture in their territories, due to the harm the industry has caused to wild fish stock; Crown decisions have been made in disregard of our laws; and the Crown has granted tenures for aquaculture, which take what is ours and give it to benefit others, without our consent, appropriate consultation or accommodation, and to our economic and cultural detriment;

WHEREAS we respect as First Nations people that we have the right to determine our level of involvement and perspectives on the aquaculture industry based on each of our community's needs, aspirations and priorities;

WHEREAS in February 2009, the B.C. Supreme Court issued a decision in the case of *Morton v. British Columbia (Minister of Agriculture and Lands)* [2009] B.C.J. No. 193, striking down Provincial Legislation and regulations pertaining to aquaculture, finding that it is the Federal Government and not the Province that has jurisdiction to regulate aquaculture on behalf of the Crown;

WHEREAS Canada has launched the Federal B.C. Aquaculture Regulation and Strategic Action Plan Initiative (the "Federal Initiative") which involves the development of a regulatory framework and policies for aquaculture;

WHEREAS the Federal Initiative impacts the majority of First Nations in B.C. since aquaculture operates and affects fish and waters where Aboriginal Title, Rights and Treaty Rights are exercised, and encompasses land where Aboriginal title has not been extinguished;

WHEREAS First Nations expect that aquaculture will continue to cause increased harm and interference in the future, since the Federal Initiative contemplates expansion of shellfish aquaculture;

WHEREAS because the impact of aquaculture affects established Aboriginal Rights and Treaty Rights and unextinguished Aboriginal Title, Canada has a duty of meaningful consultation, which should entail obtaining the consent of affected First Nations, in respect of the development of regulatory framework, policies and strategic plans, which integrate solutions to concerns raised by First Nations;

March 18, 2010

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WHEREAS the Federal Initiative does not meet the legal obligations of Canada regarding the engagement with First Nations, the timeframe for engagement is inadequate. Canada targets a “significant number of First Nations” who may be impacted by the Federal Initiative, rather than providing all affected First Nations the opportunity of constructive engagement. The Federal Initiative avoids recognition of Aboriginal Title and Rights and Treaty Rights, and provides inadequate capacity for engagement.

THEREFORE BE IT RESOLVED that the UBCIC Chiefs Council reject the Federal Initiative as it stands and will communicate this to the government of Canada;

THEREFORE BE IT FURTHER RESOLVED that the UBCIC Chiefs Council urge the Federal Government to recognize First Nations land use and marine use plans and that the criteria in the determination of sites incorporate and provide space for information from First Nations planning efforts;

THEREFORE BE IT FINALLY RESOLVED that the UBCIC Chiefs Council direct UBCIC staff to draft an open letter communicating that:

- (a) The Federal Initiative in its present form does not meet Canada’s constitutional obligations to First Nations, and should be abandoned;
- (b) Some outputs of this current effort can be used to inform meaningful consultation;
- (c) Canada must engage with all affected First Nations about the appropriate process to develop Regulations and a Strategic Action Plan for aquaculture;
- (d) Canada’s Regulations and Strategic Action Plan must give expression to First Nations’ laws, authority, traditional knowledge and the economic component of Aboriginal Title and Rights and Treaty Rights.

Moved: Chief Mike LeBourdais, Whispering Pines Indian Band
Seconded: Chief Dalton Silver, Sumas First Nation
Disposition: Carried
Date: March 18th, 2010