



Kwikwasutinuxw Haxwa'mis
Box 10, Alert Bay, BC V0N 1A0

'Namgis
49 Atli Rd, Alert Bay, BC V0N 1A0

Mamalilikulla
1441B 16th Avenue, Campbell River BC V9W 2E4

Dated for reference: June 27, 2018

Re: Letter of Understanding regarding a government-to-government process to address finfish aquaculture in the Broughton Area, including recommendations on Provincial Tenure Replacement Decisions

This letter is further to the discussions which were initiated at a meeting in the Big House in Alert Bay in October 2017, and continued on January 30, 2018. These discussions led to our joint communique of January 30, 2018 where the Parties confirmed a willingness to engage in a consent-based process consistent with the United Nations Declaration on the Rights of Indigenous Peoples with respect to wild salmon and existing open-pen aquaculture operations in the Broughton Area. This letter and attached Letter of Understanding confirms the agreement of the Province of British Columbia, as represented by the Ministry of Forests, Lands and Natural Resource Operations and Rural Development, in cooperation with the BC Ministry of Agriculture and the BC Ministry of Indigenous Relations and Reconciliation, to collaborate with the First Nations who are signatories to this letter to reach consensus recommendations on:

- (a) Provincial finfish aquaculture tenures listed in the attached Letter of Understanding including applications for Provincial replacement tenures, under *the Land Act*;
- (b) promoting, protecting and conserving, in the context of our respective authorities, sustainable wild salmon populations, other aquatic species and their ecosystems, recognizing that as between the Federal and Provincial Crown, the Federal Government exercises primary responsibility over the management of wild salmon and other marine aquatic species and their habitats; and,
- (c) priorities for short, medium and long term action.

The Province and the signatory First Nations will use the best available information and best practices to inform the work set out in this Letter of Understanding, including traditional indigenous knowledge and science.

The nature and process for our collaboration is identified in Attachment 1 to this letter. If the First Nations are in support of this Letter of Understanding, please initial the pages of

Attachment 1, sign in the signature block provided below, and return a copy of this letter to our attention.

Further, the Province and the signatory First Nations agree that Dzawada'enuxw First Nation and Gwawaenuk Tribe (other First Nations within the Broughton Area) may, upon their request, become parties to this Letter of Understanding

Sincerely,

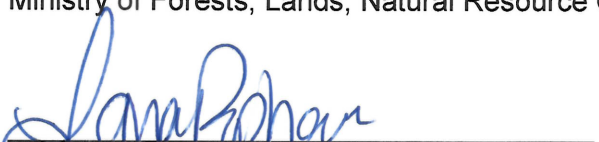


Honorable Doug Donaldson
Minister

Province of British Columbia

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Date: June 27, 2018



Honorable Lorna Fopham
Minister

Province of British Columbia

Ministry of Agriculture

Date: June 27, 2018



Honorable Scott Fraser
Minister

Province of British Columbia

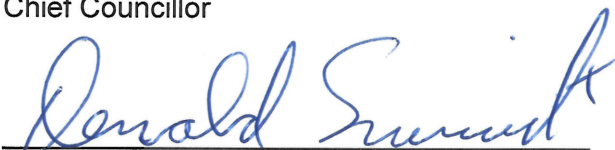
Ministry of Indigenous Relations and Reconciliation

Date: June 27, 2018



Kwikwasut'inuxw/Haxwa'mis
Chief Robert Chamberlin, Owadi
Chief Councillor

Date: June 27, 2018



'Namgis
Chief Councillor Donald Svanvik

Date: June 27, 2018



Mamalilikulla
Chief Councillor Richard Sumner

Date: June 27, 2018

ATTACHMENT 1 to June __, 2018 Letter of Understanding

BRITISH COLUMBIA - FIRST NATIONS COLLABORATIVE SOLUTIONS FOR FINFISH AQUACULTURE FARMS IN THE BROUGHTON AREA

1.0 PURPOSE

This document outlines the context and consent-based process to be undertaken by the Province of British Columbia, as represented by the Ministry of Forests, Lands and Natural Resource Operations and Rural Development, in cooperation with the BC Ministry of Agriculture and the BC Ministry of Indigenous Relations and Reconciliation (the “**Provincial Agencies**”), and Kwikwasutinuxw Haxwa’mis, ‘Namgis, and the Mamalilikulla Nations (the “**First Nations**”), (and collectively “the **Parties**”) for finfish aquaculture in the Broughton Area, including applications for Provincial replacement tenures under *the Land Act*.

2.0 CONTEXT

- 2.1 The First Nations represent Aboriginal peoples who have since time immemorial used and occupied the lands and waters of their various territories located on the central coast of what is now called British Columbia, which include the Broughton Area (the “**Territories**”).
- 2.2 Pursuant to their laws, customs and traditions, the Aboriginal peoples represented by the First Nations hold and exercise Aboriginal Title, Rights, responsibilities and authorities in relation to the lands, waters, resources and people of their Territories.
- 2.3 These Titles, Rights, responsibilities and authorities are advanced by elected and hereditary leadership of the Aboriginal peoples represented by the First Nations. The First Nations’ laws, customs and traditions include sacred responsibilities to past, present and future generations, including the lands, waters and resources on which their food security, societies and cultures depend.
- 2.4 The Province and Canada have authorized and licenced the siting, locations, tenures and operation of those open-net pen Atlantic Salmon finfish farms in the Territories (the “**Fish Farms**”) without the consent of the First Nations. These Fish Farms are identified on the map attached as Schedule A, and are listed in Schedule B. There are currently 17 Fish Farms identified in Schedules A and B, 16 of which the Province has currently received applications for Provincial tenure renewal or replacement under the Provincial *Land Act* (the “**Broughton Replacement Tenure Decisions**”).
- 2.5 As between the Province and Canada, the Province regulates finfish aquaculture in British Columbia by issuing tenures for the sites of the Fish Farms. The Province does so by way of decisions it makes under its *Land Act*. The Province also participates in testing of fish including farmed fish through its Animal Health Centre, which is affiliated with the BC Ministry of Agriculture, and has a contract with Fisheries and Oceans Canada (“**DFO**”) to provide diagnostic services to DFO’s Fish Health Audit and Surveillance Program.
- 2.6 As between the Province and Canada, Canada has a central role in the regulation of finfish aquaculture by way of its responsibilities over Sea Coast and Inland Fisheries under s. 91(12) of the *Constitution Act, 1867*, and exercises that authority by:

- 2.6.1 passing statutes and regulations that govern the Fish Farm industry;
 - 2.6.2 issuing aquaculture licences that govern the operation of the Fish Farms;
and
 - 2.6.3 issuing licences to introduce or transfer fish into the Fish Farms.
- 2.7 Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal Rights, including Aboriginal Title, of Aboriginal people within Canada.
- 2.8 The United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**"), was adopted by the United Nations General Assembly in 2007, and Canada became a full supporter of UNDRIP in May 2016, without qualification, and British Columbia committed fully to UNDRIP on September 13, 2017 and released British Columbia's Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples in May 2018 (the "**Draft Principles**").
- 2.9 While the articles of UNDRIP benefit from being read comprehensively, and without restricting the application of UNDRIP to the work under this Letter of Understanding: Article 19 of UNDRIP states that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions." Article 32(2) of UNDRIP states that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources".
- 2.10 BC acknowledges that the Broughton Replacement Tenure Decisions have the potential to cause serious adverse impacts on the Aboriginal Rights, including Aboriginal Title, of the First Nations.
- 2.11 The First Nations require that the Fish Farms be removed from their Territories given their conclusions regarding the harmful effects on and risks to the ecosystems, including the waters, lands, and resources, including migratory resources, in their Territories and the adverse impacts of the Fish Farms on their Aboriginal Rights including Title.
- 2.12 On January 30th, 2018 the Parties agreed to immediately embark on government-to-government discussions to address the Fish Farms, including the Broughton Replacement Tenure Decisions, based on the UNDRIP and to have these discussions be conducted through a jointly-defined consent-based process (the "**Gov to Gov Process**").
- 2.13 The Parties intend to identify and implement solutions to outstanding concerns about the Fish Farms, including effects on wild Pacific salmon and the ecosystems on which wild salmon rely.
- 2.14 The Parties intend to enter into agreements for capacity funding to the First Nations according to the provisions set out in Section 6.

- 2.15 For the purposes of the Gov to Gov Process, the Parties intend to work together in the interests of arriving at consensus solutions regarding the Fish Farms, including using the Gov to Gov Process to reach consensus outcomes related to the Broughton Replacement Tenure Decisions.
- 2.16 While the Province acknowledges that the First Nations hold Aboriginal Title and Rights within their respective Territories, neither this document, nor any acts performed in connection with it, are to be used, construed or relied on by anyone as evidence or admission of the nature, scope or content of any Aboriginal Rights or Title and Crown Rights or Title.
- 2.17 Nothing in the Gov to Gov Process precludes the First Nations or the Province from engaging in consultation with other first nations.

3.0 COLLABORATION PRINCIPLES

3.1 The Parties agree that:

- (a) internal processes are required to inform and mandate the work of their representatives in the Gov to Gov Process, and participating individuals have the responsibility to represent their respective governments in the Gov to Gov Process;
- (b) best efforts will be made to reach consensus recommendations in a timely and efficient manner;
- (c) discussions will be respectful with the aim of upholding reconciliation;
- (d) the precautionary principle will guide the Gov to Gov Process;
- (e) best practices and the best available information will be used to inform the work and recommendations, including traditional knowledge, science, and best practices from other open-net pen Atlantic salmon producing nations - (e.g., Norway, Scotland, Chile);
- (f) there is a strong potential for ongoing and significant adverse effects and impacts of the Fish Farms, and different perspectives of risk, therefore the scientific weight of evidence regarding the impacts of open-net pen Atlantic salmon aquaculture on wild salmon populations will not be debated unless specifically required to reach consensus recommendations;
- (g) information will be shared between the Parties, guided where required by data sharing agreements or protocols between the First Nations, the Province, Canada and industry, as appropriate;
- (h) the Province intends to act in a manner that upholds the honour of the Crown and its constitutional obligations under s. 35 of the *Constitution Act, 1982*, and the principles and standards within UNDRIP, and the Draft Principles;
- (i) without predetermining the sufficiency of the process, the Gov to Gov Process will be used to inform, and may, where possible, meet the consultation

obligations which the Provincial Agencies owe to the First Nations with respect to the Broughton Replacement Tenure Decisions;

- (j) without predetermining the sufficiency of such accommodations, consent-based recommendations resulting from the Gov to Gov Process that are adopted by the Parties may be considered as potential contributions towards accommodations, to address First Nations' Aboriginal interests and concerns with respect to the Broughton Replacement Tenure Decisions;
 - (k) the Gov to Gov Process may include consensus recommendations to the Federal Government;
 - (l) the Gov to Gov Process will be a collaboration, with agreed upon processes for input from other first nations, stakeholders and the public to be implemented as required; and;
 - (m) input from stakeholders and the public is advisory in nature.
- 3.2 The Parties will respect each other's decision making structures and authorities, and the individuals participating in the Gov to Gov Process will work in good faith to make consensus recommendations to their respective executive/leadership.
- 3.3 Where areas of disagreement persist, the Parties will seek appropriate facilitation, mediation and other methods of conflict resolution in an effort to find common ground.
- 3.4 Discussions during the process will be on the record except when the Parties agree in advance that specific issues are confidential. The Parties agree that their discussions need to be conducted in a frank and direct manner; that some of the discussions may need to occur on a confidential basis; and that some discussions may benefit from occurring without prejudice.
- 3.5 The Parties may from time to time issue joint press releases regarding the implementation of the LOU. The Parties will not make public statements about information which have been agreed as confidential; and to the extent that public communication about confidential discussions are necessary – those communications will be jointly drafted and agreed upon by the Parties prior to release.
- 3.6 The Parties agree to use the Gov to Gov Process set out in this Agreement to review information and make consensus recommendations related to the Scope of Issues set out in section 4.0.
- 3.7 When advancing recommendations the Parties will consider tools for short, mid and long term planning, including land and marine use planning information to help inform collaborative governance, management and decision making.

4.0 SCOPE OF ISSUES

- 4.1 The Parties agree to engage on a respectful government to government basis, using the standard of free, prior and informed consent, to make consensus recommendations to their respective decision makers in relation to the Broughton Replacement Tenure Decisions including the following list of issues related to the Fish Farms:

- 4.1.1 the avoidance and mitigation of environmental harm including fresh and marine waters, rearing habitats and migratory routes of wild salmon and other aquatic resources within the context of Provincial and First Nations authorities;
- 4.1.2 the avoidance, mitigation and/or accommodation of adverse impacts to s. 35 (1) Rights, including Title, from the location of the Fish Farms;
- 4.1.3 regional and First Nations' socio-economic and public impacts, including industry concerns and operational requirements;
- 4.1.4 terms and conditions that would attach to the Broughton Replacement Tenure Decisions, taking into account considerations with respect to whether any of such tenure applications can be granted or replaced, as well as the Province's constitutional and administrative fairness obligations;
- 4.1.5 such further and other matters as may be agreed in writing by the Parties from time to time.

(the "**Scope**")

- 4.2 It is understood that implementation of this Gov to Gov Process for some of the Scope may raise issues specific to the interests of one or more of the First Nations. In that event, the interested First Nation or Nations may wish to engage directly with the Province and will provide notice to the others pursuant to s. 4.3.
- 4.3 At any time during the implementation of this Gov to Gov Process, a First Nation may provide 30 days advance notice to the other First Nations and the Province of their decision to proceed using bilateral discussions directly with the Province, on some or all of the Scope.
- 4.4 When a notice has been provided pursuant to s. 4.3, the Parties will collaboratively work to consider what, if any, adjustments to the Gov to Gov Process and structure set out in this Letter of Understanding would be required, including any work plans and budgets.
- 4.5 Any First Nation may, at any time, by notice in writing to the other Parties, terminate its participation under this Letter of Understanding. Upon receipt of such notice, the remaining Parties will discuss the implications of that termination, and the continued implementation of this Letter of Understanding.

5.0 STRUCTURES

The Parties hereby establish the following collaborative structures to reach consensus recommendations and/or decisions within the Gov to Gov Process:

A. Executive Committee

- The Executive Committee will be comprised of leadership from the Province and leadership from each of the First Nations.

- The role of the Executive Committee is to exchange information and resolve strategic and policy issues as necessary, including assisting if the Steering Committee is unable to reach consensus recommendations.
- Executive Committee members will be Provincial deputy ministers or designated representatives of the Provincial Agencies, and the Chiefs or designated representatives of the First Nations.
- Executive Committee will be comprised of an equal number of representatives appointed by the Province and the First Nations.
- The Executive Committee will meet as required.
- Prior to making a decision or implementing an action that is substantively inconsistent with consensus recommendations of the Steering Committee, a Party will provide advance notification to the Executive Committee, and the Executive Committee will exchange information to determine whether a strategic consensus solution can be reached.

B. Broughton Steering Committee

- The Steering Committee will be comprised of representatives from the Province and First Nations, who have been mandated to work collaboratively to reach the outcomes listed in section 8.1.
- The role of the Steering Committee is to conduct the day to day discussions, negotiations and reviews to complete the collaborative work necessary to reach consensus recommendations for the Parties' consideration.
- The Steering Committee will be comprised of an equal number of representatives appointed by the First Nations and the Province, shall not be populated by fewer than six (6) or more than eight (8) representatives from the Province and from the First Nations at any one time and will strive to complete all of their work by consensus.
- The Steering Committee may from time to time utilize technical expertise and capacity, including if necessary establishing a technical working group or team, on an as needed basis. This may include subject matter experts or external advisors from the respective parties who will conduct specific research, analysis and problem solving, and develop proposed plans, policies or program recommendations for the consideration of the Steering Committee.
- While all members of the Steering Committee are responsible for conducting the work, each Party has identified a lead contact for communication purposes.

6.0 RESOURCING

- 6.1 The Parties recognize that the First Nations require funding in order to participate equally and meaningfully in the Gov to Gov Process.
- 6.2 The Parties will develop shared cost arrangements to ensure the First Nations have an appropriate budget to travel to and participate in meetings, complete internal work to

inform their constituents and obtain mandates and retain the services of legal counsel and other specialized officials as necessary.

- 6.3 The Parties recognize there may be the need to retain external independent facilitators or technical advisors, and in the event those are required and agreed upon by the Parties, the Province will provide the necessary funding and resources for those services.
- 6.4 Associated meeting room and other logistical costs as determined jointly by the Parties will be resourced by the Province.

7.0 ENGAGEMENT

- 7.1 The Parties agree that the Steering Committee may, as required and agreed upon, undertake engagement with other first nations to inform their recommendations.
- 7.2 The Parties agree that the Steering Committee may, as required and agreed upon, undertake stakeholder and public engagement to inform their recommendations.
- 7.3 Any engagement conducted pursuant to 7.1 and 7.2 will:
 - (a) be based on the principles of openness, transparency, inclusiveness, responsiveness, and informed input;
 - (b) may include tools such as focused multi-party meetings, open houses and joint communications; and
 - (c) also afford the opportunity for in-camera discussions, including with the Federal Government, other first nations, the Fish Farm tenure holders, and/or the BC Salmon Farmers Association.

8.0 KEY OUTPUTS

- 8.1 Anticipated key outputs of the collaborative Gov to Gov Process would include consensus recommendations to the Parties as soon as possible, and no later than September 30th, 2018 regarding:
 - (a) identification of key short, medium, long term actions;
 - (b) consensus recommendations to the First Nations, and the Government of British Columbia regarding the Broughton Replacement Tenure Decisions;
 - (c) recommendations to the Federal Governments on matters related to finfish aquaculture in the Territories; and,
 - (d) implementation agreements, as required.

1/02/2018



Schedule B

List of Provincial Tenures under the Letter of Understanding

File #	Client name	Physical Location	Place Name	Tenure expiry date	DFO licence expiry date
1405381	CERMAQ CANADA LTD.	Cypress Harbour	Cypress Hrbr, Harbour Pt, Sutlej Channel	Jun 20 2018	2022-Jun-30
1403929	CERMAQ CANADA LTD.	Cliff Bay	Cliff Bay Simoom Sound Wishart Peninsula	Jun 20 2018	2022-Jun-30
1404379	MARINE HARVEST CANADA INC.	Upper Retreat	Upper Retreat Passage	Jun 20 2018	2022-Jun-30
1404681	MARINE HARVEST CANADA INC.	Arrow Passage	Arrow Passage, Bonwick Island	Jun 20 2018	2022-Jun-30
1405181	CERMAQ CANADA LTD.	Cecil Island	Cecil Island, Greenway Sound	Jun 20 2018	2022-Jun-30
1406655	MARINE HARVEST CANADA INC.	Potts Bay	Potts Bay, Midsummer Island	Apr 01 2025	2022-Jun-30
1403104	MARINE HARVEST CANADA INC.	Port Elizabeth	Port Elizabeth, Gilford Island	Jun 20 2018	2022-Jun-30
1403328	MARINE HARVEST CANADA INC.	Sargeaunt Passage	Sargeaunt Passage, Tribune Channel	Jun 20 2018	2022-Jun-30
1404179	CERMAQ CANADA LTD.	Sir Edmund Bay	Sir Edmund Bay, NE Shore Broughton Inlet	Jun 20 2018	2022-Jun-30
1404380	MARINE HARVEST CANADA INC.	Midsummer Island	Midsummer Island, Spring Passage	Jun 20 2018	2022-Jun-30
1404381	MARINE HARVEST CANADA INC.	Swanson Island	Swanson Island, North side	Jun 20 2018	2022-Jun-30
1405180	MARINE HARVEST CANADA INC.	Glacial Falls	Glacial Falls, Watson Cove, Tribune Channel	Jun 20 2018	2022-Jun-30
1405183	MARINE HARVEST CANADA INC.	Wicklow Point	Wicklow Point, Broughton Island	Jun 20 2018	2022-Jun-30
1406650	CERMAQ CANADA LTD.	Burdwood Group	Burdwood Group, Raleigh Passage	Jun 20 2018	2022-Jun-30
1408560	MARINE HARVEST CANADA INC.	Larsen Island	Larsen Island, Indian Channel	Jun 20 2018	2022-Jun-30
1408758	MARINE HARVEST CANADA INC.	Doctor Islets	Doctor Islets, Knight Inlet	Jun 20 2018	2022-Jun-30
1409707	MARINE HARVEST CANADA INC.	Humphrey Rock	Humphrey Rock, Tribune Channel	Jun 20 2018	2022-Jun-30