



BC Salmon Aquaculture Expansion

A CITIZENS' GUIDE TO PARTICIPATING IN DECISION-MAKING

Sierra Legal Defence Fund

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Disclaimer

THIS GUIDE IS NOT LEGAL ADVICE AND IS NOT INTENDED TO REPLACE THE SERVICES OF A LAWYER. While there are benefits to learning about the legal issues surrounding aquaculture in BC, it is important to seek legal advice specific to the facts of your particular situation. Sierra Legal makes the information in this guide available without warranty of any kind and accepts no responsibility for any consequences of its use. Users of this resource should exercise due diligence to ensure the accuracy and currency of all information.

The Issue

AQUACULTURE IS OFTEN CALLED FISH FARMING. IT REFERS TO ARTIFICIAL METHODS OF raising fish for food (usually in net pens or other enclosures) as opposed to catching wild fish. Aquaculture can be a viable alternative to harvesting wild stocks. However, the current practice in BC is to raise fish in open nets in the ocean, which pollutes the environment and threatens the integrity of wild fish stocks. BC's current practice creates several risks, including the following:

- escapes of farmed fish to the wild, which can introduce alien species (in the case of Atlantic Salmon) to the Pacific marine environment or introduce farmed Pacific salmon that are genetically different from wild stocks;
- transfer of disease and parasites to wild fish stocks from wild fish migrating past salmon farms and from farmed fish escaping into the wild;
- pollution of the marine environment, for example from antibiotics, pesticides, waste feed and fish feces;
- the killing of seals and sea lions and harassment of other marine mammals in the vicinity of salmon farms;
- impacts on commercial fisheries from declines in salmon and other fish stocks and from shellfish closures in the vicinity of fish farms (due to concerns about contamination from feces, antibiotics, pesticides and other substances used on salmon farms); and
- social impacts from declines of traditional fisheries in coastal communities, including the disruption of Aboriginal fisheries.

More information about the risks associated with fish farming can be found at the Farmed and Dangerous web-site: www.farmedanddangerous.com.¹ Information specific to BC's northwest coast can be found at the Friends of Wild Salmon web-site: <http://www.friendsofwildsalmon.ca>.²

As of August 2005, there were 119 marine salmon farms operating in BC.³ There is a concern that salmon farms are moving further northwards in BC towards watersheds not previously exposed to aquaculture. As of the time this guide was published, two proposed salmon farms had received all necessary federal and provincial permits to begin operating in an area near Prince Rupert in northwest BC. These are the first two fish farms approved in marine waters in northwest BC.

Note: This guide does not address shellfish aquaculture, as finfish aquaculture is associated with far greater environmental risks. It is notable that Alaska, which borders northern BC, has specifically prohibited finfish farming.⁴ At present, the vast majority of finfish farms in BC raise species of salmon (especially Atlantic salmon).⁵

Purpose of this Guide

THIS GUIDE WAS CREATED TO ADVISE INDIVIDUALS AND COMMUNITY GROUPS ON WHAT they can do about the expansion of salmon farms in BC. The guide aims to:

- provide information on who makes decisions about salmon aquaculture in BC; and
- offer strategies for citizens to affect this decision-making process.

This guide takes a “how-to approach”. Some methods we discuss involve more traditional legal tools like litigation, which are best done with the assistance of a lawyer, while other methods are directed at applying political pressure to government officials. It is up to you to decide which tactics you would find useful.

The various decision-makers involved in salmon aquaculture in BC are described throughout this guide and are also listed in Appendix B.

What can you do about the expansion of salmon farming in BC in general?

IN 2002, THE BC GOVERNMENT LIFTED A SEVEN-YEAR BAN ON NEW SALMON FARMS.

Now, there is no limit to the number of salmon farms on the BC coast.

You can let your elected provincial officials know what you think about this issue. Contact them and let them know their decision was wrong, and that it will impact British Columbians and our natural heritage for generations.

- The Premier: Tel: (250) 387-1715, Fax: (250) 387-0087, email: premier@gov.bc.ca
- The Minister of Agriculture and Lands: Tel: (250) 387-1023, Fax: (250) 387-1522, e-mail: AL.Minister@gov.bc.ca
- The Minister of Environment (BC): Tel: (250) 387-1187, Fax: (250) 387-1356, email: env.minister@gov.bc.ca
- Your MLA: see the BC government directory at: <http://www.dir.gov.bc.ca/>

More general information on how to take action against salmon farms can be found at:
<http://www.farmedanddangerous.org/activists/index.html>

What government approval does someone need to start a fish farm?

Federal government approval

Two federal government departments and one agency deal with issues relevant to salmon farms: the Department of Fisheries and Oceans (DFO), Transport Canada and the Canadian Environmental Assessment Agency.

These departments and agencies administer three laws:

- the *Fisheries Act*,⁶
- the *Navigable Waters Protection Act* (NWPA),⁷ and,
- the *Canadian Environmental Assessment Act* (CEAA).⁸

Amongst other things, these laws deal with the conservation and protection of fish and fish habitat, the protection of navigable waters to ensure safe navigation, and the assessment of potentially harmful environmental effects associated with projects.

Federal permits required for a new salmon farm

In most cases, new salmon farms require federal permits, licences or authorizations. These are issued through the DFO and through Transport Canada. The federal permits that a salmon farm requires depend on the location and size of the farm and on what species of salmon will be farmed there.

Specifically, if there are expected impacts to the ocean floor in the vicinity of the farm, the DFO should issue an authorization for the harmful alteration, disruption or destruction of fish habitat; these are called “HADD” authorizations.⁹ If salmon farms are located in navigable waters and are considered a navigation hazard, Transport Canada should issue a permit under the NWPA. Finally, if the farm proposes to raise Atlantic salmon, DFO may issue a permit to transfer live Atlantic salmon into Pacific salmon habitat.¹⁰

In order to obtain a permit to transfer Atlantic salmon to the Pacific, an application must be made to the Federal-Provincial Introductions and Transfers Committee.¹¹ This Committee was created specifically to consider potential ecological, genetic and fish health risks associated with introductions and transfers of live aquatic organisms into or within Canada. The Committee is mandated to provide decision-makers with advice on these risks. In BC, these decision makers are the Regional Director-General of DFO, the Assistant Deputy Minister Science at DFO, and the provincial Minister/Director of Fisheries.¹² The Committee has posted a Guide to its decision-making process that can be found on-line.¹³ More information on this Committee can be found at: http://www-heb.pac.dfo-mpo.gc.ca/intro_trans/transfers_e.htm.

Many BC aquaculture sites farm Atlantic salmon in Pacific waters. This is a worrisome practice – the United Nations has declared that the introduction of exotic or alien species is the greatest threat to global biodiversity after habitat loss.¹⁴ More information on the dangers associated with farming exotic species can be found in a 2002 Report “Atlantic Salmon: A White Paper”, posted on the Farmed and Dangerous web-site.¹⁵

It is possible that salmon farms will be required to hold additional federal permits in the future, so it’s a good idea to check this with your local fisheries officer.¹⁶ Your local fisheries officer can be found through DFO’s Pacific Regional office (web-site: http://www.pac.dfo-mpo.gc.ca/pages/default_e.htm).

Provincial government approval

The Ministry of Agriculture and Land (BC MAL) is the lead provincial ministry regulating fish farming in BC. It has assumed primary responsibility for regulating fish farms and developing the industry. It issues provincial licences for aquaculture operations under the BC *Fisheries Act*. It is also responsible for granting property rights to Crown land under the BC *Land Act*, including property rights to the sea-bed under fish farms.

The BC Ministry of Environment (BC MoE) is responsible for regulating and monitoring the discharge of wastes from fish farms. It is also responsible for enforcing laws relating to aquaculture. Fish farmers do not, however, generally require any permits from BC MoE to discharge aquaculture wastes into the ocean.

Note that provincial permits do not exempt fish farms from complying with federal laws like the sections of the *Fisheries Act* that prohibit people from releasing harmful substances into fish habitat. In theory, BC and Canada try to cooperate with one another and share information when they issue permits to fish farms and when they monitor ongoing fish farming operations. This cooperation and information-sharing often seems to break down in practice, however.

Provincial permits required for a new salmon farm

As noted above, fish farms usually need two provincial licences or permits before they start up: an aquaculture licence under the BC *Fisheries Act* ¹⁷ and a permit to use Crown land under the BC *Land Act*.¹⁸

Aquaculture licences (BC *Fisheries Act*)

BC MAL's Fisheries and Aquaculture Licensing and Compliance Branch is responsible for issuing, renewing and suspending provincial aquaculture licences under the BC *Fisheries Act*. The process of issuing an aquaculture licence is guided by a provincial policy called the Finfish Aquaculture Licensing Policies and Procedures for Applications.¹⁹ Under this policy, the Minister of Agriculture and Lands has delegated the power to issue licences to the Director of the Fisheries and Aquaculture Licensing and Compliance Branch in BC MAL.²⁰

To receive fish farming permits, an applicant must first complete an application form called the Commercial Finfish Aquaculture Management Plan ("Management Plan"). This is the single application form for both an aquaculture licence and for a Crown land permit.²¹ This form contains important information like who is applying, where the site is, the total area the farm will occupy, the "improvements" that will be added to the site (e.g. net cages, feed barges), the species of fish that will be grown on the site, and expected production levels (how many fish, total weight of fish, and length of time fish will be grown before they are harvested).²²

BC MAL may refer the applicant's Management Plan to other government departments for review and comment, including DFO, BC Ministry of Aboriginal Relations and Reconciliation, BC MoE, local governments and other agencies and organizations. Where the BC government recognizes that an application may impact a First Nation's rights or interests, it will start a consultation process with that First Nation – see Appendix A for more details on this process. Often, however, the BC government won't recognize the need to consult until the First Nation has complained to government or threatened court action.

Aquaculture licences usually contain specific terms and conditions. General terms and conditions that are common to most aquaculture licences are listed at: http://www.agf.gov.bc.ca/fisheries/Manuals/Licensing/gt_FinfishAqua.pdf. These conditions include that the fish farm operator must take reasonable precautions to prevent escape of fish from the farm, and must comply with "standards established by the [Licensing & Compliance] Branch in consultation with industry".

Aquaculture licences are renewed annually. These renewals are usually issued without a full repeat of the application process, but if a fish farmer proposes changes to the species or production levels at the fish farm, the applicant must provide new information to BC MAL.²³

Crown land permits (BC *Land Act*)

The Integrated Land Management Bureau (ILMB) within BC MAL is responsible for issuing Crown land permits. The ILMB was formerly called Land & Water BC (LWBC). The ILMB has more-or-less the same staff and is run under essentially the same policies as the former LWBC.²⁴

The key provincial policy dealing with land permits for fish farming is called the Crown Land Use Operational Policy: Aquaculture.²⁵ Under this policy, the ILMB issues three types of land permits to fish farms. A 5 year "licence of occupation" is issued initially while the province determines whether the proposed fish farm site is suitable. Once the province approves a site for fish farming, it will usually offer a 20 year licence of occupation or, occasionally, a 30 year lease to operate a fish farm. Each of these land permits is renewable after half of their term has elapsed (i.e. after 10 and 15 years, respectively).

ILMB may solicit comments from other provincial and federal government agencies on the land application, and may send information to local governments and First Nations. At the discretion of the Regional Director of the local Crown land service region, the ILMB may seek public input on the fish farm application through open houses, local advisory committees, or through other means.

Approval needed from other relevant government bodies

Depending on the location of a proposed salmon farm, the government may have a legally-enforceable duty to consult with potentially affected First Nations. This consultation must occur *before* the government issues approvals for a new salmon farm or allows significant changes to an existing farm. The law associated with consulting First Nations is complex and is beyond the scope of this guide. However, an overview of some of the key issues currently relevant to First Nations consultation is provided in Appendix A.

In some instances local government approval or consultation will be necessary for a farm to go ahead. Some salmon farm proposals involve the construction of land-based infrastructure (e.g. buildings) that can fall under the control of municipalities or regional districts.

Local levels of governments could restrict the expansion of salmon farms in their area if their power weren't so limited in comparison with that of the province and the federal government. There are two pieces of legislation central to the powers of local governments in BC: the *Community Charter*²⁶ and the *Local Government Act*.²⁷

Although the *Community Charter* gives municipalities the right to regulate the protection of the natural environment, the approval of the provincial Minister is required.²⁸ Similarly, although the *Local Government Act* gives regional districts and municipalities rights over zoning, if the provincial Minister finds that the bylaw is contrary to the public interest of BC, the council or board must alter the bylaw or plan accordingly.²⁹

Municipalities and regional districts have often held businesses to a higher environmental standard than the province has. For example, the Comox-Strathcona Regional District denied a salmon farm re-zoning application in 2001 based on community and environmental concerns. A year later, the province announced that a two-year experimental license had been issued to the applicant anyway.³⁰ Soon after, the province gave the file to the DFO to conduct an environmental assessment. For more details on the story, see www.thetyee.ca, “Fighting to Keep a Fish Farm at Bay”.³¹

The powers of local governments to control salmon farms were further restricted through recent changes to the *BC Right to Farm Act*.³² These changes expanded the definition of “farmland” to include marine areas deemed suitable for aquaculture, restricting the power of local authorities to interfere with salmon farmers’ rights.

As a general rule, governments of neighbouring jurisdictions (like Alaska) do not have regulatory control over salmon farming in Canada. However, the concerns and input of neighbouring jurisdictions can *influence* regulatory decisions in Canada. Such communications could result in significant changes to the proposed farm.

What can you do *before* the salmon farm permit is issued or modified?

Public involvement in the approval stage of a salmon farm – federal

Who do you speak to in the federal government?

The permits issued by the federal government are issued at the discretion of the government. This means that federal officials decide who they will issue a permit to and why. As noted below in the section on “Judicial Review”, it is difficult for citizens to compel or prohibit the issuance of these kinds of permits in a court of law because there are generally no legal criteria listed in either the *Fisheries Act* or the NWPA that dictate when the government can or can’t issue such permits.³³

That said, it is possible for citizens to express their views about why a permit should not be issued based on concerns about impacts to navigable waters or fish habitat, or general concerns about the potential of the proposed fish farm to cause environmental or social harm.

When a salmon farm needs an NWPA permit or HADD authorization to operate, an environmental assessment is triggered under the Canadian Environmental Assessment Act (CEAA). This means that an environmental assessment of the proposed salmon farm must be completed before a federal permit can be issued. The federal government will usually accept public input to this assessment process, although they are not required to do so under CEAA.

A CEAA assessment of proposed salmon farms is administered by a representative of the federal ministry or ministries responsible for issuing the permits in question. These ministry representatives are referred to in CEAA as “Responsible Authorities” or “RAs”. Of the three levels of environmental assessment under

CEAA (screening, comprehensive studies, and mediation or panel reviews), salmon farm assessments to date have been conducted as screening assessments. Screening assessments are the least thorough type of federal environmental assessment.

A screening assessment requires the Responsible Authority to “carefully consider” the potential environmental effects of a project, which include both socio-economic impacts and cumulative environmental impacts,³⁴ with a view to evaluating whether those impacts will be “significant” and “adverse” (i.e. harmful).³⁵ Significant and adverse environmental impacts are not defined in the Act, but are described in non-binding guidebooks.³⁶ In evaluating the significance of potential impacts, the RA is allowed to consider various ways that environmental impacts might be reduced or eliminated, which is called “mitigation”. The RA may allow concerned members of the public to comment on the proposed fish farm, in which case they must also carefully consider those comments before making a decision about the project. Finally, the RA may include other considerations in its analysis of the potential impacts of the project, such as the need for or alternatives to the proposed farm.³⁷

In situations where no federal permit or approval triggers an environmental assessment of a new farm, the federal Minister of Environment can order an assessment based on concerns about impacts to federal areas of responsibility, impacts to First Nations or transboundary impacts.³⁸ Such an assessment is conducted as a panel review. Panel reviews are much more thorough than the usual screening assessment. The provisions allowing the Minister to order this kind of review have not been used in the past, but this is in part due to a drafting error in the Act that has recently been fixed. One benefit of panel reviews is that they take the environmental assessment out of DFO’s hands and bring independent non-government people into the assessment process. Panel reviews also allow for funded participation by public interest interveners.

A CEAA assessment can be a productive avenue for public involvement in the approval of a proposed fish farm. The CEAA process is, in fact, the only formal opportunity for public involvement in the federal permit issuing process. Concerned citizens should check with the Canadian Environmental Assessment Agency and the DFO to confirm that they will be allowing public comment during the environmental assessment:

Canadian Environmental Assessment Agency

Pacific and Yukon (Regional) Office
757 West Hastings Street, Suite 320
Vancouver, BC V6C 1A1
Tel: (604) 666-2434, Fax: (604) 666-6990
E-mail: ceaa.pacific@ceaa-acee.gc.ca

Department of Fisheries and Oceans, Pacific Region

Suite 200 – 401 Burrard Street
Vancouver, BC V6C 3S4
Tel: (604) 666-0384, Fax: (604) 666-1847

Under CEAA, the federal government is not required to receive public comments for a screening assessment – however, the RA will often accept comments if you phone or write to them well in advance to

ask for an opportunity to comment on a particular fish farm. If the RA and the CEA agency say that they do not plan to allow for public comment, you can complain to both organizations.

Although to date the CEAA process has never been used successfully to deny a salmon farm permit, it has resulted in modification of certain farms and has slowed the rate of fish farm expansion. This has been based largely on community and public concerns about environmental and social impacts.

What do you say to the federal government?

When making comments on the potential impact of a salmon farm, there are two relevant policy documents, called interim guides (which, as the name suggests, are subject to change). These guides outline criteria the government uses to decide whether NWPA permits and HADD authorizations should be issued to salmon farms.³⁹ They list relevant considerations and propose mitigation strategies for addressing or reducing impacts. Specifically, Appendix 6 of the *Fisheries Act* interim guide lists unacceptable impacts that will result in DFO withholding a HADD permit.⁴⁰ If any of these criteria are present at the salmon farm in question, you should point them out to DFO.

It is also important to mention general concerns associated with salmon farms, and why these general concerns might be relevant to the specific farm being considered. For example, sea lice have been associated with declining migration of pink and chum salmon stocks.⁴¹ If these stocks are present in the vicinity of the salmon farm, you can mention this as a concern.⁴²

Public involvement in federal decision to transfer/introduce new species into BC waters

The National Code, approved by the Federal-Provincial Introductions and Transfers Committee in 2003, encourages all decision-making authorities to “consult with all interested parties such as individuals and local organizations, Aboriginal Groups, commercial and recreational fishing groups, etc.”⁴³ before issuing permits.

In BC, these decision makers are the Regional Director-General DFO, the Assistant Deputy Minister Science-DFO, and the provincial Minister/Director of Fisheries.⁴⁴ You can contact these officials to inquire whether there are any new transfer permits pending for a specific fish farm and ask to give your input on the issue.

Fisheries and Oceans Canada

Pacific Region: Central Contact
200 – 401 Burrard Street
Vancouver, BC V6C 3S4
Tel: (604) 666-0384, Fax: (604) 666-1847

Minister of Agriculture and Lands

PO Box 9058, STN PROV GOVT
Victoria, BC V8W 9E2
Tel: (250) 387-1023, Fax: 250 387-1522

Public involvement in the approval stage of a salmon farm – provincial

Although there is no requirement in the BC *Fisheries Act* or *Land Act* for the provincial government to receive public comment on an application for an aquaculture licence or land permit, BC MAL claims in non-binding policy documents that “reasonable efforts will be made to notify affected parties and provide them with an opportunity to comment...”.⁴⁵ BC MAL may require the fish farm applicant to provide public notice of the proposed farm but, again, there is no requirement in the BC *Fisheries Act* or *Land Act* that the government do so.⁴⁶

The Crown land use policy states that “All new finfish applications will require public consultation which will most often be conducted via an open house session in a local community near the area under application”.⁴⁷ BC MAL also claims that it *may* consider the impact of the proposed operation on other users and other resources in the area near the proposed farm, and *may* consider the nature and extent of local community support for the proposed farm.⁴⁸

While BC legislation does not require the province to pay attention to public comments, these processes can still be worthwhile avenues to express concerns and present credible evidence about the risks of open-net pen salmon farming.

To give your input to provincial decision-makers, ask them for an opportunity for public comment on a new fish farm licence:⁴⁹

Ministry of Agriculture and Lands

Fisheries & Aquaculture Licensing and Compliance Branch
2500 Cliffe Avenue
Courtenay, BC V9N 5M6
Tel: (250) 897-7540, Fax: (250) 334-1410

Integrated Land Management Bureau

PO Box 9352 STN PROV GOVT
Victoria, BC V8W 9M2
Tel: (250) 387-1772, Fax: (250) 387-3291

Comments to BC MAL and to the ILMB should address topics including the environmental effects of fish farming, the impacts the farm might have on other users and resources, economic impacts on other businesses (e.g. tourism, guiding), the location of the farm (near active salmon streams, clam beds, abalone grounds, etc.), community opposition, the adequacy of public notice, and alternatives to open-net pen aquaculture in general (e.g. closed containment fish farming – for more details, see the *Farmed and Dangerous* web-site). You may also want to suggest specific terms and conditions for the province to include in the aquaculture licence. Back up your statements with solid evidence wherever you can. If possible, have a qualified expert like a marine or fisheries biologist provide comments specific to the proposed farm.

Complaint under section 63 of the *BC Land Act*

Under section 63 of the *BC Land Act*, it is possible to dispute an application for a land permit by filing a notice of objection with the Commissioner for the relevant land recording district.⁵⁰ The objection must be filed before BC MAL grants a land permit for the fish farm.

The usefulness of this section of the *Land Act* is limited. The Minister has absolute power to decide whether your objection warrants a hearing. If the Minister decides your objection *does* warrant a hearing, he or she may appoint a person to look into the objection and report back to BC MAL. After the Minister receives this report, he or she can still make whatever decision he or she wants to about the land permit. A person affected by the Minister's final decision has a limited right of appeal to the BC Supreme Court.⁵¹

BC's environmental assessment process

Another possibility is to try use the BC environmental assessment process. BC's *Environmental Assessment Act*,⁵² revised significantly in 2002, has been criticized by several groups as a weak piece of legislation that gives little certainty to Aboriginal groups, to the public, or to industry.⁵³ Fish farms are not included in the list of reviewable projects in the Act,⁵⁴ so generally a fish farm application will not trigger a provincial assessment. However, it is possible under section 6 of the Act to ask BC's Minister of Environment to designate a particular project as reviewable.

To make such a request to the Minister, you could send a fax or letter to BC's Minister of Environment showing why you believe the proposed fish farm(s) may have significant adverse environmental, economic, social, heritage or health effects, and showing that it would be in the public interest for the Minister to trigger a provincial assessment. Such a request should be made well before the fish farm starts operations, preferably while it is in the early stages of applying for federal and provincial permits. It is probably a good idea to send a copy of the letter to BC's environmental assessment office as well, since that office will likely provide an opinion to the Minister about whether the project should be sent for a provincial environmental assessment (see contact info below).

Note as well that there are sections in BC's *Environmental Assessment Act* that give the Executive Director of the assessment office wide discretion to decide whether neighbouring jurisdictions (e.g. the Nisga'a First Nations Government or the State of Alaska) should be consulted in course of a provincial assessment.⁵⁵ For this reason, it may help in the request to the Minister to mention possible effects on Alaska's state waters and/or on the Nisga'a fishery, and any public and government concerns from either of those jurisdictions.

As noted above, however, the BC *Environmental Assessment Act* has been heavily criticized and suffers from several flaws. The Minister and the Executive Director both have wide discretion to decide whether a project should be reviewed and in what way.⁵⁶ Note as well that a bizarre section of the Act requires all provincial environmental assessments to "take into account and reflect government policy".⁵⁷ This suggests that there's limited utility in asking for an assessment, given that the province's present policy is to strongly encourage the growth of the fish farming industry.

If you want to request an environmental assessment of a proposed fish farm, contact information for the BC Minister of Environment is provided above on page 8. The BC environmental assessment office can be contacted at (250) 356-7441 (web-site: <http://www.eao.gov.bc.ca/>).

Public involvement in federal or provincial approval of the expansion, relocation or modification of a salmon farm

Salmon farms often modify their operations after they start up. This can involve changing the size of the farm, the type of fish stocked in the pens, or the farm's location. In so doing, they often require new permits under the NWPA, new authorizations for the harmful alteration, disruption, or destruction of fish habitat under the federal *Fisheries Act*, or new licences to transfer Atlantic salmon into Pacific marine waters. They may also require new or modified provincial aquaculture licences and land permits under the BC *Fisheries Act* and *Land Act*. Where new federal or provincial permits are being issued, you can get involved as described above.

New federal permits may also trigger a new environmental assessment under CEAA, thus allowing renewed public involvement. If Atlantic salmon are being introduced to a farm, the Federal-Provincial Introductions and Transfer committee may also be involved.

If no new federal permits or authorizations are being granted, then the federal government is likely not playing an active role in the modification or expansion of the farm – public efforts should probably be aimed towards the provincial government.

What can you do *after* the salmon farm permit is issued or modified?

Ask the government to enforce the law

As a general rule, fish farmers have an obligation under the federal *Fisheries Act* to avoid damage to the marine environment, whether the federal government is monitoring farm activity or not. Should issues of water quality, fish habitat or fish health become apparent at a farm, you should inform the federal government. The DFO carries the responsibility for fish habitat and health, while Environment Canada deals with pollution, in particular the deposit of substances harmful to fish from farms into fish bearing waters. Both agencies have the capacity to get involved in the enforcement of the *Fisheries Act* at any time.

There are some cases in which DFO may have reached a specific agreement with a fish farm operator instead of issuing a HADD permit that might require ongoing monitoring and enforcement. It's a good idea to find out whether such a Habitat Management Agreement exists by asking DFO for the HADD permit and any related documents. If they refuse, you can request this same information through the federal *Access to Information Act* – for more details on using this process, see: <http://www.infocom.gc.ca/menu-e.asp>.

Depending on the location of the farm, it might also be possible to ask Environment Canada to investigate the farm under the *Canadian Environmental Protection Act* (CEPA).⁵⁸ Usually, to require a CEPA investigation, one needs evidence of a violation involving a substance that is specifically regulated under the Act. This is a problem for fish farms because the CEPA regulations apply to a limited number of substances, used in a limited number of situations. Generally, none of these are relevant to the substances of concern in fish

farming, such as fish disease pathogens. However, there are provisions in CEPA that generally apply to prohibit pollution that crosses a border.⁵⁹ If the farm you are concerned about is near a border and you are concerned that pollution from that farm is making its way across the border you could legitimately ask the federal Minister of Environment to investigate under CEPA.

The province also has an ongoing role in monitoring aquaculture facilities. BC MAL Fisheries Inspectors are responsible for ensuring that fish farms comply with the *BC Fisheries Act* and *Aquaculture Regulation* and comply with the terms and conditions in their aquaculture licences.

The BC Ministry of Environment (BC MoE) is also responsible for enforcing aquaculture laws, including regulating and monitoring the discharge of wastes from fish farms. BC MoE is responsible for administering the *BC Environmental Management Act*. Under this Act, fish farms can discharge waste without permits as long as they fulfill requirements of the *Aquaculture Waste Control Regulation*. This regulation requires fish farmers to test sediment on the ocean floor below a fish farm somewhat regularly for levels of the chemical hydrogen sulphide and for changes in the variety of organisms living there.

If you have reason to believe that a fish farming operation is violating any provincial laws, you should contact BC MAL and/or BC MoE and file a report. You can find contact information for the local office of both ministries through Enquiry BC at 1-800-663-7867.

Enforce the law yourself

Sometimes, even when you ask the government to enforce the law, they don't. Every Canadian citizen has the right to seek to enforce laws when governments will not. Specifically, citizens may seek to enforce the habitat protection and pollution prevention provisions of the *Fisheries Act* where government will not.⁶⁰

This option involves taking the fish farm to court in a proceeding called a private prosecution. In a private prosecution, the citizen takes the place of the Crown prosecutor. It is important to find a lawyer to assist you in gathering evidence of the alleged offence and in decoding the legal system. Bringing a private prosecution is not something that should be attempted without a lawyer at least providing guidance.

The shortcoming of private prosecutions is that the government has the power to intervene in your case, take over the prosecution, and then decide not to proceed. This is called "staying" a case. The BC government currently appears to have an unofficial policy of staying all private prosecutions in the province, but this could change in the future.

Bring a “judicial review” of federal or provincial government decisions to issue permits, licences or authorizations

Canadian courts retain the power to supervise government decision-making to make sure the government complies with legislation. In some situations, you can apply to the courts to overturn a government decision – this is called judicial review.

Many of the federal and provincial laws regulating fish farming are written in a way that makes it very difficult to overturn a government decision in court. This is because many of the acts described above give wide discretion (i.e. virtually absolute power) to the decision-makers, without listing the factors decision-makers must consider. In some situations, however, it may be worthwhile to ask the court to review a government decision on aquaculture.⁶¹ This is a complicated process that is best done with the help of a lawyer.

Turn to national institutions for help

Several national and provincial institutions may be able to help citizens who are concerned about the expansion of aquaculture.

The federal Commissioner of the Environment and Sustainable Development works out of the office of the federal Auditor General in Ottawa. The Commissioner’s duties include monitoring the federal government’s progress towards promoting and achieving sustainable development. To this end, the Commissioner releases annual reports targeting specific federal departments. The Commissioner has in past been critical of the federal government’s general approach to aquaculture, and of DFO’s approach in particular.⁶² The Commissioner also supervises an “environmental petitions” process that allows citizens to get answers from federal departments about specific environmental issues. This process can be helpful in forcing the government to explain its actions. Further information about the Commissioner’s role and about the petitions process in general can be found at: http://www.oag-bvg.gc.ca/domino/cesd_cedd.nsf/html/petitions_e.html#hd3a.

Note as well that both the federal Parliament and the Senate have standing committees that consider fisheries issues. These committees have looked at the issue of salmon aquaculture before, and they may again. Information about these committees and about the particular issues they are currently considering can be found through the federal Parliament’s general web-site, at: <http://www.parl.gc.ca/>.

The Pacific Fisheries Resource Conservation Council was created as an independent organization to advise the federal and BC governments and the Canadian public on the conservation and environmental sustainability of Pacific salmon stocks and their habitat. Further information about its activities and copies of its past reports can be found at: <http://www.fish.bc.ca/index.php>

The Pacific Salmon Forum is an initiative of the BC government announced in December 2004. The Forum consists of seven members, and is charged with looking at issues surrounding the wild and farmed salmon resource in BC. Further information about the PSF can be found at: <http://www.pacificsalmonforum.ca/>

Finally, note that a new sub-committee of the BC Legislature, the Special Committee on Sustainable Aquaculture, is looking into fish farming issues in the province. This committee may hold public hearings at some point in the future. The committee's terms of reference, current members, and a schedule of upcoming hearings can be found at: <http://www.legis.gov.bc.ca/cmt/38thparl/session-1/aquaculture/5-38-I-18-2.htm>.

Turn to international institutions for help

Canada has entered into a number of international agreements and treaties relevant to the management of fisheries and protection of the marine environment. Most of these agreements and treaties contain strong language about the need to protect the marine environment, and appear to set high standards for government conduct. Unfortunately, most are also difficult for citizens to enforce.

However, some international agreements create bodies that can receive public input either formally or informally. These provide a useful avenue for concerned citizens to talk about issues from their perspective and can result in a national government being taken to task for failing to live up to its international obligations. The following is a brief discussion of current international treaties and agreements that are relevant to salmon farming in coastal British Columbia, and that create formal or informal avenues for citizen input.

North American Agreement on Environmental Cooperation⁶³

The citizen submissions process under the North American Agreement on Environmental Cooperation (NAAEC) has proven in the past to be a valuable avenue for citizen participation. Canada has often responded to citizens' complaints by taking steps to resolve issues on the ground.

The NAAEC is an agreement through which the parties to the North American Free Trade Agreement (NAFTA),⁶⁴ namely Canada, the US, and Mexico, agreed to enhance environmental cooperation and effectively enforce all of their environmental laws. In order to oversee the implementation of this commitment, the NAAEC establishes the Council (a political body made up of the environment Ministers from each of the three nations) and the Commission on Environmental Cooperation (CEC).

The CEC is an independent administrative body. In addition to its own work and investigations, the CEC accepts submissions from the public about specific instances where a country may have failed to enforce environmental laws. Under the citizens submissions process an individual or group files a petition with the CEC claiming that a country has failed to enforce environmental laws in a particular case, and requesting that the CEC investigate.

When it receives a petition, the CEC will do a preliminary review of the claimed failure to enforce to determine if indeed it meets the criteria for investigation under the NAAEC. This review includes seeking the response of the nation against whom the petition is filed. If the CEC finds that the basic requirements of the citizens submission process have been met, and if they are not convinced by the response of the national government that all is well on the home-front, the CEC will recommend to the Council comprised of the three nations' environment Ministers that the CEC prepare a "factual record". A factual record is an independent

fact-finding investigation in which the CEC takes a look at what is actually happening on the ground in the situation identified in the complaint. Through the factual record, the CEC will give its observations and interpretations on an issue, but it is up to the offending nation to implement recommendations or respond to findings.

There is concern that Canada under-enforces its own laws in the context of aquaculture – this is not a concern that is limited to the northern expansion of fish farms. Additionally there is a concern that Canada is failing to live up to its responsibility to manage the fishery and protect the marine environment by intentionally limiting its own role in regulating aquaculture and by failing to effectively monitor operations at salmon farms. Both of these issues could be the subject of a CEC complaint.

The 1992 Convention on Biological Diversity⁶⁵

Signed by 150 government leaders at the 1992 Rio Earth Summit, the Convention on Biological Diversity (CBD) is dedicated to promoting sustainable development. Canada was the first industrialized nation to sign the CBD. Under the CBD, national governments made a number of commitments, including addressing the introduction of alien species.⁶⁶ The CBD is one of the few international instruments that expressly refers to alien species (e.g. Atlantic salmon farmed in the Pacific Ocean).

The CBD creates a Secretariat, housed in Montreal, responsible for administering the Convention. Recently, NGOs have sent submissions to the Secretariat to highlight issues of concern about implementation of the CBD that have not been addressed by the parties themselves. This has been done in a number of different ways, all of which could apply to the salmon farming scenario. First, it is possible to send information directly to the Secretariat with a request that the information be considered in the context of an upcoming meeting of the parties, or an upcoming technical meeting. Usually this requires that the issue be relevant to the agenda of the upcoming meeting.

Second, it is possible to comment on an individual country's report on its progress under the CBD. The CBD requires each country to report periodically on various issues related to the treaty's implementation. Anyone can send in comments in response to a country's assertion that it is doing an excellent job implementing commitments in the Convention. In so doing the citizens sending in the information can ask that it be forwarded to other countries for discussion at an upcoming meeting, or ask that the Secretariat consider the information when accepting and evaluating a country report.

Sending submissions to secretariats responsible for administering international agreements has in some contexts helped to raise the profile of domestic concerns about meeting international obligations.⁶⁷ It has been tried a few times with the CBD. It is unclear from the outcome of those few cases how activist the CBD Secretariat is willing to be. Sending such submissions could cause the Secretariat to do an independent paper or investigation, or even to inquire of Canada about its perspective – all of which raise the profile of the issue to some degree.

Pacific Salmon Treaty⁶⁸

In 1985, Canada and the United States signed the Pacific Salmon Treaty (PST). The product of 15 years of negotiations, the Treaty provides a framework for the management of Pacific salmon, including conservation and sharing arrangements. Later negotiations have added provisions and agreements, including the recent “habitat annex” that includes provisions requiring countries to protect fish habitat and promote the “safe passage” of salmon. The safe passage of wild salmon through BC waters is arguably compromised by the threat of disease and parasite transfer from farmed to wild migrating fish.

The PST covers the area from Cape Suckling, Alaska, south to the borders of California, including the coasts of British Columbia, Washington and Oregon.

The PST establishes the Pacific Salmon Commission (the Commission) to advise Canada and the United States on any matters relating to the implementation of the Treaty. There are four US and four Canadian Commissioners, and eight alternate Commissioners. The only information that Commissioners, panels and committees appear to consider comes from government staff scientists.

There is no formal mechanism for non-parties to raise an issue with the Commission, but informally this has been done in the past. If you want to raise an issue informally with the Commission, you should ask a specific Commissioner to add that issue to the agenda of an upcoming meeting. Should that Commissioner agree, the item will be added to the draft agenda. The draft agenda for the Commissioners meeting is circulated by the Executive Secretary at least 21 days in advance of the upcoming meeting. A forward-looking agenda for the Commissioner’s upcoming meetings is available on the PSC web-site: www.psc.org. Any Commissioner or Alternate Commissioner may propose items for the agenda. However, in order for that issue to remain on the final agenda, the Commissioners from both Canada and the United States need to agree. This agenda-by-consensus approach has been heavily criticized and may account for the Commission’s failure to consider new and emerging contentious issues. Access to individual Commissioners or Alternates can be coordinated by either the Canadian or American National Correspondents.

While it is difficult to gauge whether this avenue would be effective, it is worth trying. As various agreements under the treaty are constantly being re-negotiated, there is always the possibility that through persistence, the issue of salmon farming will be reconsidered. This approach is entirely political and, at least in the preliminary stages, requires little legal expertise.

First Nations Issues

The issues of salmon farming and First Nations' interests are often closely intertwined. Although this guide does not offer specific recommendations for ensuring that affected First Nations are properly consulted, a brief overview of these issues is set out here. Given the rapid evolution of Aboriginal law and policy in British Columbia, this appendix should be used as a starting point only, and should not be considered legal advice.

The University of Victoria's Environmental Law Centre (ELC) produced a handbook in July of 2003 to help First Nations respond to fish farm applications in their territory.⁶⁹ This handbook, available on-line, provides useful general information about fish farming and about the government's duty to consult with First Nations.

Note, however, that in the time since the ELC handbook was published, the Supreme Court of Canada has issued an important case that provides a new and comprehensive summary of the Crown's duty to consult with and accommodate First Nations. The decision is called *Haida Nation v. B.C. (Minister of Forests)*.⁷⁰ It was released in November of 2004.

In *Haida*, the Supreme Court of Canada found that the federal and provincial governments have a legally-enforceable duty to consult with First Nations that have claimed (but not yet proven) Aboriginal rights or title. The government's duty arises when:

- the government knows, or *should* know, that a First Nation may have rights or title in an area; and,
- the government plans to do something that might harm those rights or title.

The Court in *Haida* found that the scope of the government's duty depends both on the strength of the First Nation's rights or title claim and on the seriousness of the harm that might be caused by the government's decision. First Nations, therefore, must clearly outline to government the scope and nature of their Aboriginal rights and title, and must clearly state the specific harm that the government's actions may cause to the group's rights and title. There are several ways for First Nations to do this – note, however, that the processes are usually complicated and technical and are best done with the help of a lawyer who specializes in Aboriginal law.

At a minimum, First Nations whose asserted Aboriginal fishing rights or title may be harmed by a proposed fish farm have a right to receive notice and information about the proposed farm and to discuss their views on the proposed farm with the government. Where the First Nation has a strong claim to rights or title and where a farm may cause serious damage to the First Nation's rights and title, the government will have a stronger duty that requires it to try find a reasonable short-term solution to address the First Nation's concerns.

As noted above, the BC government and DFO often seem to take the narrowest possible view of their duty to consult with First Nations. They often fail to consult properly, or at all, until a First Nation complains or threatens court action about a specific proposal. If a First Nation feels that the government isn't respecting its rights and title, again the best course is to discuss options with a lawyer who practises Aboriginal law.

The Players

Overview of decision-makers and jurisdictions involved in approving new salmon farms

THE PURPOSE OF THIS SECTION IS TO IDENTIFY VARIOUS DECISION MAKERS INVOLVED directly or indirectly in the approval of a new fish farm. Broadly speaking, decisions about aquaculture occur at (and between) five levels of government: Local, First Nations, Provincial, Federal, and International.

Local governments

Local governments include both municipal councils and the boards of regional districts. Municipalities (incorporated villages, towns, districts or cities) are governed by a mayor and municipal councillors. Regional districts are larger and include both municipalities and rural areas – their boards consist of elected directors from rural areas and of appointed directors from municipal councils. Both levels of government have responsibilities for land-use planning (through official community plans and zoning bylaws), business licensing, development permits and bylaw enforcement.

First Nations governments

Aboriginal groups in Canada have constitutionally-protected rights both to certain lands and to the use and enjoyment of certain resources. Although these rights were enshrined in the Constitution in 1982, the nature and scope of the rights of specific Aboriginal groups is still largely undetermined. That said, many Aboriginal groups have asserted rights to fish and gather seafood or have asserted Aboriginal title to submerged lands under the ocean. These rights can be affected by fish farm development; consultation of potentially affected Aboriginal groups is, therefore, generally required before fish farms can be approved.

BC Ministry of Agriculture and Lands (BC MAL)⁷¹

Any person engaged in growing or cultivating fish for commercial purposes in B.C. must hold a valid aquaculture licence under the BC *Fisheries Act*. Such licences are issued by the Aquaculture Licensing and Compliance Branch of BC MAL. BC MAL is the lead agency for aquaculture development in British

Columbia. BC MAL administers the BC *Fisheries Act* and *Aquaculture Regulation* and regulates most aspects of fish farm operations, including escape prevention, net maintenance, and compliance with licensing terms and conditions.

BC Integrated Land Management Bureau (ILMB)⁷²

ILMB is responsible for issuing and administering Crown land tenures. All aquaculture facilities need a tenure to operate in BC – usually this is a licence of occupation or a lease of submerged Crown land. ILMB is now part of BC MAL.

BC Ministry of Environment (BC MoE)⁷³

BC MoE is responsible for administering the *Environmental Management Act* and *Aquaculture Waste Control Regulation*, and for licensing and enforcement of non-tidal recreational fisheries. BC MoE is responsible for ensuring the management, conservation and protection of some aspects of the marine environment and fish and wildlife species. In relation to salmon farming, these responsibilities include assessing impacts to fish and wildlife as a result of waste discharges (such as fish feces) and regulating the disposal of sewage and other wastes.

BC MoE also receives referrals from BC MAL Inspectors for recommended finfish and shellfish enforcement charges.

BC Ministry of Health

The BC Ministry of Health is responsible for the regulation of food safety under the *Health Act* and inspection of processing facilities engaged solely in trade within the province.

Fisheries and Oceans Canada (DFO)

DFO is responsible for the management of all tidal commercial fisheries in and off the coast of BC, as well as non-tidal anadromous fisheries (for example the salmon fishery on rivers in the BC interior). DFO administers or is responsible for the implementation of the federal *Fisheries Act* and certain approvals under the *Canadian Environmental Assessment Act*.

Transport Canada

Transport Canada administers and enforces the *Navigable Waters Protection Act* and shares responsibility with DFO for environmental assessments of aquaculture facilities under the *Canadian Environmental Assessment Act*. Recently, Transport Canada has assumed a lead role in the federal assessment of new fish farms.

Environment Canada

Environment Canada is responsible for the overarching administration of the *Canadian Environmental Assessment Act* and the *Canadian Environmental Protection Act*, and through an agreement with DFO the pollution prevention provisions of the federal *Fisheries Act*.

Health Canada

Health Canada sets standards for the labeling of seafood and seafood products under the *Food and Drug Act*.

Canadian Food Inspection Agency

The Canadian Food Inspection Agency is responsible for the licensing and regulation of federally approved fish processing facilities under the federal *Fish Inspection Act*. Federal licensing is required for any processing of fish sold outside of the province, and for processing of farmed salmon or shellfish.

International institutions and foreign jurisdictions

As noted above, governments of neighbouring jurisdictions like Alaska do not have any regulatory control over salmon farming in Canada. However, the concerns and input of neighbouring jurisdictions can *influence* regulatory decisions in Canada, and are relevant factors for federal and provincial decision-makers to consider. Communications about a foreign government's opposition could result in significant changes to a proposed farm. Information is given above at pages 22 to 24 about international institutions that could affect government decisions on aquaculture.

Helpful References

Auditor General of Canada, *2000 Report of the Auditor General of Canada*. "Chapter 30: Fisheries and Oceans – The Effects of Salmon Farming in British Columbia on the Management of Wild Salmon Stocks" (Ottawa: Office of the Auditor General, December 2000). Available on-line at www.oag-bvg.gc.ca.

Auditor General of Canada, *2004 Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*. "Chapter 5: Fisheries and Oceans Canada – Salmon Stocks, Habitat, and Aquaculture" (Ottawa: Office of the Auditor General, 2004). Available on-line at www.oag-bvg.gc.ca.

David R. Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003).

Lani Gibson, *Responding to Finfish Aquaculture in your Territory: A "How-to" Guide for First Nations* (Victoria, BC: Environmental Law Centre, 2003). Available on-line at <http://www.elc.uvic.ca/publications/index.htm>.

Linda A. Malone and Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (New York: Transnational Publishers, 2004).

Linda Nowlan and Chris Rolfe, *Kyoto, POPs and Straddling Stocks: Understanding Environmental Treaties* (Vancouver: WCEL, January 2003). Available on-line at www.wcel.org.

Susan Rutherford and Karen Campbell, *Time Well Spent? A Survey of Public Participation in Federal Environmental Assessment Panels* (Vancouver: WCEL, February 2004). Available on-line at www.wcel.org.

Notes

- ¹ This web-site is maintained by the Coastal Alliance for Aquaculture Reform, a coalition of organizations that are working to promote sustainable aquaculture in BC. For more information on the risks associated with salmon farming in particular, see the public inquiry into salmon farming in BC conducted by the Honourable Stuart Leggatt in 1991. This report, called “Clean Choices, Clear Waters”, is available on-line.
- ² Friends of Wild Salmon is a group of residents of the north coast and the Skeena watershed who are working to maintain a healthy wild salmon population. Members include sport, commercial and Aboriginal fishing organizations.
- ³ Statistics from the BC Ministry of Agriculture and Lands. See: http://www.agf.gov.bc.ca/fisheries/licences/MFF_Sites_Current.htm
- ⁴ Alaska statute 16.40.210.
- ⁵ Farming of sablefish (blackcod) may become significant in BC over the next few years. Information on risks associated with sablefish farming can be accessed at: <http://www.canadiansablefish.com/>. The laws and policies surrounding sablefish farming in BC are beyond the scope of this guide.
- ⁶ *Fisheries Act*, Revised Statutes of Canada 1985, chapter F-14 [*Fisheries Act*].
- ⁷ *Navigable Waters Protection Act*, Revised Statutes of Canada 1985, chapter N-22 [NWPA].
- ⁸ *Canadian Environmental Assessment Act*, Statutes of Canada 1992, chapter 37 [CEAA].
- ⁹ This is done under section 35 of the federal *Fisheries Act* and under section 58 of the *Fishery (General) Regulations*, SOR 93/53.
- ¹⁰ This is done under sections 55 & 56 of the *Fishery (General) Regulations*, under the supervision of a Federal-Provincial Introductions and Transfers committee.
- ¹¹ The Federal-Provincial Introductions and Transfers Committee was formed under a Memorandum of Understanding among: DFO; the B.C. Ministry of Environment, Lands and Parks (now Ministry of Environment); and the Ministry of Agriculture, Fisheries and Food (now Ministry of Agriculture and Lands).
- ¹² For more information on the roles and responsibilities of the various entities involved in the Introductions and Transfers process, see http://www.dfo-mpo.gc.ca/science/aquaculture/code/app2_e.htm
- ¹³ See http://www.agf.gov.bc.ca/fisheries/ITC_Review_Process.pdf
- ¹⁴ *United Nations Convention on Biological Diversity*, 5 June 1992, Can. T.S. 1993 No. 24. Subsidiary Body on Scientific, Technical and Technological Advice; Sixth Meeting, Montreal.
- ¹⁵ Find report at: http://www.farmedanddangerous.org/?action=d7_article_view_folder&Join_ID=82852
- ¹⁶ See DFO’s Sustainable Development Strategy 2005-2006 at page 18, showing DFO’s plans to adjust the Introduction & Transfer Authorization process to integrate social, economic and environmental considerations, and implement “improvements” to the process for reviewing aquaculture site applications and renewals.
- ¹⁷ *Fisheries Act*, Revised Statutes of BC 1996, chapter 149.
- ¹⁸ *Land Act*, Revised Statutes of BC 1996, chapter 245. Note that there is no need for a Crown land permit if the proposed farm is on private land.
- ¹⁹ Last revision: November 3, 2005, found at: http://www.agf.gov.bc.ca/fisheries/siting_reloc/MAL_licensing_policy_update.pdf. Note that this document is subject to fairly regular revision (i.e. every couple of years) – the most recent version should be available on the BC MAL web-site.

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- ²⁰ See Finfish Aquaculture Licensing Policy, section 3.
- ²¹ See Finfish Aquaculture Licensing Policy, section 5.1.
- ²² See BC MAL web-site, section on “Management Plan Form” at: http://www.agf.gov.bc.ca/fisheries/siting_reloc/marineff_applic_guide_main.htm#Form
- ²³ May 2003 MAFF/MAL guide to information requirements for Marine Finfish Aquaculture Operations, at Appendix B-6.
- ²⁴ Note however that ILMB is not a Crown corporation, as was LWBC.
- ²⁵ Available (for now) at LWBC’s web-site – <http://www.lwbc.bc.ca/01lwbc/policies/policy/land/aquaculture.pdf> – this will be transferred in future to BC MAL’s web-site.
- ²⁶ *Community Charter*, Statutes of British Columbia 2003, chapter 26.
- ²⁷ *Local Government Act*, Revised Statutes of BC 1996, chapter 323.
- ²⁸ See sections 8(3)(i), 9, 10 of the *Community Charter*.
- ²⁹ See sections 8(3)(i), 9, 10 of the *Community Charter*, and section 874 of the *Local Government Act*. Note that this ministerial power has rarely been exercised.
- ³⁰ Specifically, to Campbell River-based Heritage Aquaculture in partnership with the Homalco First Nations, to open a fish farm at the Downie Range.
- ³¹ 14 Jan 2004 story, http://www.thetyee.ca/News/2004/01/12/Fighting_to_Keep_a_Fish_Farm_at_Bay/
- ³² *Farm Practices Protection (Right to Farm) Act*, Revised Statutes of BC 1996, chapter 131.
- ³³ The introduction and transfer process does, however, list some criteria that the Minister must consider before issuing a permit.
- ³⁴ CEAA, section 16.
- ³⁵ CEAA, section 20.
- ³⁶ See http://www.ceaa-acee.gc.ca/012/newguidance_e.htm
- ³⁷ CEAA, section 16(e).
- ³⁸ CEAA, sections 46-50.
- ³⁹ See *Interim Guide to the Application of Section 35 of the Fisheries Act to Marine Salmonid Cage Aquaculture* (February 2002) at: <http://govdocs.aquake.org/cgi/reprint/2004/410/4100210.pdf>. And see the *Interim Guide to Application and Site marking Requirements for Aquaculture Projects in Canada under the NWPA* (FOC 2002), available at: <http://www.tc.gc.ca/marinesafety/Ships-and-operations-standards/nwp/aquaculture-guidelines.pdf>.
- ⁴⁰ See the *Interim Guide to the Application of Section 35 of the Fisheries Act to Marine Salmonid Cage Aquaculture* (FOC 2002), Appendix 6.
- ⁴¹ For more information on this particular issue, see various reports posted on the Farmed and Dangerous web-site, specifically http://www.farmedanddangerous.org/?action=d7_article_view_folder&Join_ID=82852
- ⁴² West Coast Environmental Law has prepared a helpful list of possible issues to raise in environmental assessment in Appendix 2 of *Time Well Spent? A Survey of Public Participation in Federal Environmental Assessment Panels*, available on their web-site at www.wcel.org.

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- ⁴³ The National Code can be found on-line at: http://www.dfo-mpo.gc.ca/science/aquaculture/national_code_e.htm. See specifically sections 1.1.8 and 1.7.3.
- ⁴⁴ See the roles and responsibilities of the various entities involved in the Introductions and Transfers process at http://www.dfo-mpo.gc.ca/science/aquaculture/code/app2_e.htm
- ⁴⁵ Finfish Aquaculture Licensing Policy, section 7.
- ⁴⁶ Finfish Aquaculture Licensing Policy, section 7. See also section 33 of the BC *Land Act*: if the Minister considers it advisable in the public interest, the Minister may require the applicant to publish a notice in a local newspaper and/or in the BC Gazette.
- ⁴⁷ Crown Land Use Policy, section 8.1.7.
- ⁴⁸ Finfish Aquaculture Licensing Policy, section 11.6.
- ⁴⁹ Current contact information for BC MAL's Aquaculture Licensing and Compliance Branch and for the ILMB can be found through Enquiry BC at 1-800-663-7867, or through the BC Government Directory at: <http://www.dir.gov.bc.ca/>.
- ⁵⁰ Land recording districts are areas in BC set out in regulations made under section 3 of the BC *Land Act*. For local contact information, phone Enquiry BC at 1-800-663-7867.
- ⁵¹ See section 63(5) of the BC *Land Act*.
- ⁵² Statutes of British Columbia 2002, Chapter 43.
- ⁵³ See e.g. West Coast Environmental Law's backgrounder on the Act at <http://www.wcel.org/deregulation/bill38-old.pdf>.
- ⁵⁴ Under section 5 of the Act and under the Reviewable Projects Regulation. An updated version of the Reviewable Projects Regulation should be available at: http://www.qp.gov.bc.ca/statreg/reg/E/EnvAssess/370_2002.htm.
- ⁵⁵ See the Act at sections 11(2)(f), 27, 28 and 30. Sections 27 & 28 allow the Minister to enter into agreements with neighbouring jurisdictions for conducting joint environmental assessments. Section 30 allows the Minister to suspend a provincial assessment pending the results of an inquiry, hearing or other process conducted by a neighbouring jurisdiction.
- ⁵⁶ See e.g. *Do RAV Right*, 2005 BCSC 991, esp. paras. 31-34.
- ⁵⁷ See section 11(3) of the Act.
- ⁵⁸ *Canadian Environmental Protection Act*, Revised Statutes of Canada 1985, chapter 16 (4th Supplement) [CEPA]. Under section 17 of CEPA, any Canadian resident may apply to the federal Minister of Environment for an investigation of an alleged violation of the Act.
- ⁵⁹ The relevant sections are in Division 7 of CEPA, which covers International Water Pollution (sections 175 and following).
- ⁶⁰ This right of private prosecution derives from the common law, from the federal *Fisheries Act* and from the federal *Criminal Code*. Under section 62 of the *Fishery (General) Regulations*, a citizen who brings a successful private prosecution is entitled to half of any fine imposed on the offender by the courts.

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- ⁶¹ For example, it may be worth bringing a judicial review of provincial permitting decisions on the basis that the province doesn't have power under Canada's Constitution to regulate marine fisheries. Any interested individual with standing before the courts can challenge the validity of a government decision on the grounds that it violates a provision of the Constitution relating to the division of federal and provincial powers.
- ⁶² See Auditor General of Canada, 2000 *Report of the Auditor General of Canada*. "Chapter 30: Fisheries and Oceans – The Effects of Salmon Farming in British Columbia on the Management of Wild Salmon Stocks" (Ottawa: Office of the Auditor General, December 2000). See also Auditor General of Canada, 2004 *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*. "Chapter 5: Fisheries and Oceans Canada – Salmon Stocks, Habitat, and Aquaculture" (Ottawa: Office of the Auditor General, 2004).
- ⁶³ *North American Agreement on Environmental Cooperation*, 14 September 1993, Can. T.S. 1994, No. 3. This agreement is also known as the environmental side agreement to NAFTA.
- ⁶⁴ *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, Can. T.S. 1994 No. 2.
- ⁶⁵ *United Nations Convention on Biological Diversity*, 5 June 1992, Can. T.S. 1993 No. 24.
- ⁶⁶ Article 8(h): Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.
- ⁶⁷ General information on petitioning secretariats can be found in Linda A. Malone and Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (New York: Transnational Publishers, 2004), chapter 4. A sample argument relating to the CBD is given at pages 162 and following.
- ⁶⁸ *Treaty between the Government of Canada and the Government of the United States of America concerning Pacific Salmon*, 28 January 1985, Can. T.S. 1985 No. 7.
- ⁶⁹ Lani Gibson, *Responding to Finfish Aquaculture in your Territory: A "How-to" Guide for First Nations* (Victoria, BC: U. Vic. Environmental Law Centre, 2003). The handbook is available at the ELC's web-site, at: <http://www.elc.uvic.ca/projects/2003-02/FinFishAquaculture.pdf>.
- ⁷⁰ Available in the 2004 Supreme Court Reports, vol. 3, at p. 511. The decision can also be accessed on-line (using the "neutral citation" 2004 SCC 73) at: http://www.lexum.umontreal.ca/csc-scc/en/pub/2004/vol3/html/2004scr3_0511.html.
- ⁷¹ Formerly called Ministry of Agriculture, Fisheries and Food (MAFF).
- ⁷² Formerly Land and Water British Columbia (LWBC).
- ⁷³ Formerly called Ministry of Water, Land and Air Protection (WLAP).

Sierra Legal Defence Fund

www.sierralegal.org