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EKME # 2419093

MEMORANDUM FOR THE MINISTER

**LICENSING DECISIONS FOR BRITISH COLUMBIA
AQUACULTURE DURING THE COHEN COMMISSION**

(for Information)

SUMMARY

- This memorandum seeks your decision with respect to aquaculture license eligibility rules under the British Columbia Aquaculture Regulatory Program, as well as your decision with respect to the handling of aquaculture licence applications during the term of the Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River.
- With respect to licence eligibility, it is proposed that any person or organization eligible to carry out business in Canada will be eligible to apply for a federal aquaculture licence in British Columbia.
- With respect to Cohen, since the Commission may ultimately make recommendations pertaining to salmon aquaculture in British Columbia, there is a need to take its work into consideration when making licensing decisions. It is proposed, therefore, that most decisions on new marine salmon aquaculture sites or substantial amendments to marine salmon aquaculture licences be postponed until the Department has reviewed the Commission's recommendations. This approach would be consistent with decisions on other Departmental activities which could potentially be affected by Commission recommendations.
- At the same time, it is proposed that exceptions to this approach could be considered where there is a new site that would replace an existing site, and where the new site is expected to have a reduced environmental impact.
- A proposal for a new licence fee structure is under development and will be brought forward to your attention soon.

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Background

- After a British Columbia Supreme Court ruling that struck down most provincial regulations for aquaculture in the province, Fisheries and Oceans Canada has been active in building an aquaculture regulatory regime for British Columbia under the *Fisheries Act*, with an aquaculture licence as the primary regulatory tool.
- Since the Cohen Commission of Inquiry into the Decline of Sockeye Salmon on the Fraser River may make recommendations pertaining to salmon aquaculture in British Columbia, there is a need to take the Commission into consideration when making licensing decisions for the next year.

Analysis/DFO Comment

- The Department is preparing to implement its licensing approach for aquaculture in British Columbia. Before doing so, decisions are required on: eligibility rules with respect to aquaculture licences; and decision-making during the Cohen Inquiry.
- Regarding eligibility rules, it is proposed that any person or organization eligible to carry out business in Canada will be eligible to apply. There will be no restrictions on foreign ownership, on the holding of multiple licences or on ownership of both fisheries and aquaculture licences. This approach is consistent with the Pacific Region's approach to fisheries licences and past provincial practice with respect to aquaculture.
- Based on Ministerial discretion on a case-by-case basis, companies with foreign ownership levels exceeding 49% may be prohibited from holding Canadian commercial fishing licenses. Historically, this policy has been applied on the Atlantic coast. The approach to aquaculture licensing in British Columbia is consistent with past practice.
- The Department is also postponing decisions in a number of other areas potentially affected by eventual Commission advice. For example, the Governments of Canada and the United States agreed to delay renegotiation of the Pacific Salmon Treaty's Fraser River Chapter, and we are not including fisheries discussions in BC treaty negotiations.
- For aquaculture, consistent with the overall approach to Cohen, it is recommended that decisions be postponed on applications for new marine salmon aquaculture sites or for substantial amendments to existing marine salmon aquaculture licences where there is potential for a significant increase in the environmental footprint. Decisions would continue to be rendered on aquaculture applications under the following circumstances:

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- All categories of applications related to shellfish, freshwater, enhancement and non-salmonid marine aquaculture;
 - Applications for administrative, name change or technical amendments to marine salmon licences; and
 - Applications for existing marine salmon farms which have been previously licensed by the Province but which do not yet have a federal licence.
- Within this context, however, Mainstream Canada has recently submitted an application for a new site (Plover Point) that would replace an existing site in the same area where the new site may have a lower environmental impact at the equivalent production level. The local First Nation, Ahousaht, has been actively supporting this application. While this proposal is not within the guidelines outlined above, given the possible overall environmental benefits, it is proposed that this application be treated as an exception and that it be reviewed. A positive decision during Cohen would only be rendered if it replaces an existing site and the environmental footprint of the new site would be less than the existing site.
 - The Department will continue to accept other marine salmon applications but notify applicants of delays pending review of Commission recommendations.
 - External views on a decision not to proceed with reviews for certain applications during the Cohen Inquiry will be mixed:
 - The aquaculture industry is unlikely to be supportive of the proposed delays in decision-making, viewing this as an impediment to growth, potentially indicative of potential long-term Departmental direction and indicative of a presumption that the Commission will find fault with the aquaculture industry. This could result in reduced aquaculture investment in the province.
 - The Ahousaht First Nation will not be supportive of delays on the approval of the Plover Point site but would likely support the delay of decisions for other applications.
 - Critics of aquaculture are likely to support the delaying of decisions, but are likely to oppose the approval of new licences even under the circumstances outlined.

Recommendations / Next Steps

- It is recommended that:
 - Any person or organization eligible to carry out business in Canada be eligible to apply for a British Columbia aquaculture licence;
 - During the term of the Cohen Commission, decisions be postponed on applications for new marine salmon aquaculture sites in British Columbia or for substantial amendments to existing marine salmon aquaculture licences where there is potential for a significant increase in the environmental footprint; and

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- An exception be made with respect to the review of the Mainstream Plover Point given the potential for a decreased environmental footprint than a site that it is replacing. A decision on this application during Cohen would be brought forward for your consideration.
- You will be kept informed via periodic updates as this and other licensing decisions proceed.

 JUL 27 2011
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