

**UNION OF B.C. INDIAN CHIEFS
40TH ANNUAL GENERAL ASSEMBLY
SEPTEMBER 16TH-18TH, 2009
HARRISON HOT SPRINGS, B.C.**

Resolution no. 2009-36

RE: B.C. First Nations Statement of Jurisdiction on Aquaculture

WHEREAS First Nations in British Columbia have constitutionally protected title and rights that have been affirmed by the Supreme Court of Canada and by international conventions and local and international treaties, including the *United Nations Declaration on the Rights of Indigenous Peoples*;

WHEREAS through the *New Relationship*, the *First Nations-Federal Crown Political Accord on the Recognition and Implementation of Title and Rights*, and the *Transformative Change Accord*, the federal and provincial governments have agreed to work toward the implementation of a government-to-government relationship with First Nations based on respect, recognition and accommodation of title and rights;

WHEREAS the judgment in the *Morton* case resulted in a ruling by the B.C. Supreme Court that “fish which are reared in finfish farms on the coast of British Columbia fall under the jurisdiction of Parliament under s. 91(12) of the Constitution Act 1867, and the purpose and legal effect of the specific provincial legislation... was the management and regulation of a fishery” and “the petitioners had demonstrated that the impugned provincial legislation... was *ultra vires* the provincial crown and thus invalid. I ordered that the present provincial regulatory scheme with respect to finfish farming in British Columbia would continue for a further 12 months, to permit the Federal Government to enact legislation for the regulation of finfish farming...”

WHEREAS as a result of the *Morton*¹ case, management of the aquaculture industry will require significant reform in order to balance the management responsibilities and jurisdictions of both the federal and provincial governments. Although it is unclear whether the federal government will assume a more active role in aquaculture management in B.C., what is clear is that B.C. First Nations must be actively involved in any legislative, policy and/or decision-making process to reform the aquaculture industry in B.C.;

WHEREAS Article 26 of the *United Nations Declaration on the Rights of Indigenous Peoples* provides that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

¹ *Morton v. British Columbia (Agriculture and Lands)*, 2009 BCSC 660.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

WHEREAS Article 27 of the *United Nations Declaration on the Rights of Indigenous Peoples* provides that, “States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

WHEREAS Article 29 of the *United Nations Declaration on the Rights of Indigenous Peoples* provides that:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

WHEREAS Article 32 of the *United Nations Declaration on the Rights of Indigenous Peoples* provides that:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. 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.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

WHEREAS the principles of reconciliation, respect and recognition of First Nations title and rights must be paramount in any legislative, policy or decision-making process regarding changes to the aquaculture industry. At a minimum, the honour of the Crown requires both the federal and provincial governments to minimize any infringement to title and rights, and to engage in appropriate consultation and accommodation processes;

WHEREAS the Aquaculture Working Group was established, by resolution of the Union of BC Indian Chiefs, First Nations Summit and the BC Assembly of First Nations to engage with the province of British Columbia to address and advocate for First Nations title and rights issues that have a bearing on the management and regulation of the aquaculture industry;

WHEREAS the First Nations Fisheries Council has been empowered by First Nations leadership in B.C. to implement the B.C. First Nations Fisheries Action Plan and part of this task includes working to advance title and rights, to build capacity, and to help facilitate discussions with the federal and provincial governments regarding the recognition of First Nations inherent rights with respect to the management of fisheries and aquatic resources;

THEREFORE BE IT RESOLVED that the UBCIC Chiefs-in-Assembly call upon the First Nations Fisheries Council and the Aquaculture Working Group to meet both senior headquarter officials from the Ministry of Agriculture and Lands and the Department of Fisheries and Oceans Canada surrounding the proposed change of jurisdiction over the aquaculture industry resulting from the *Morton* decision and ensure that First Nations are full participants on a government-to-government level in the jurisdictional discussions.

Moved: Chief Sidney Douglas, Cheam First Nation
Seconded: Chief Dalton Silver, Sumas First Nation
Disposition: Carried
Date: September 18, 2009