

AAA Response & Recommendations Integrated Geoduck Management Framework

DFO – Pacific Region – Draft December 6, 2013

Aboriginal Aquaculture Association – April 9, 2014

PREAMBLE

This response by the Aboriginal Aquaculture Association (AAA) is made to the “Pacific Region Integrated Geoduck Management Framework” draft dated December 6, 2013.

This document is prepared from the input received by member First Nations and supporting First Nations of the AAA and is not to be regarded as a consultation document on behalf of any First Nation in regards to their respective aboriginal rights including title.

Should there be any inconsistency between the representations made in this document with any First Nation’s representation, the representation made by that First Nation should prevail in regards to that First Nation’s aboriginal rights and title.

1. INTRODUCTION

This response document is based on information collected by the Aboriginal Aquaculture Association (AAA) over the past five years as its member First Nations met to discuss the development of the Aquaculture management and regulations and most recently the proposed draft of the Pacific Region Integrated Geoduck Management Framework dated December 6, 2013 (the “Framework”). The overall response by the First Nations involved expressed the concern over the short time frame to provide input, the lack of fulsome and required consultation and the specific lack of reference to the required role of Aboriginal communities throughout the coast of British Columbia in the future management of this important resource. It is for this reason the AAA has chosen to do a comprehensive response to the Framework as opposed to simply providing technical recommendations.

2. ABORIGINAL COMMUNITIES AND THE USE OF THE GEODUCK

First Nations are, of course, currently subject to the Indian Act. In establishing Indian Reserves on the coast of British Columbia the federal government recognized the importance of the marine resources to these First Nations as they developed a policy of allotting a smaller land bases for Indian Reserves. In the placement of these Indian Reserves many were strategically placed to allow First Nations free and unfettered access to the marine resources within that First Nation’s territory. The Honour of the Crown would be called into question should the Department of Fisheries and Oceans (DFO) choose to ignore the historic role of First Nations and our continuing right to share in the development and enhancement of these marine resources.

Aquaculture has always been a significant part of the coastal First Nations culture and way of life in British Columbia. Clam gardens dated 5,000 years old and are found along the BC coast makes this evident.

Geoducks have always been a food of sustenance for the coastal tribes. This is evident as many of the First Nations peoples have an aboriginal name for geoducks. An example of this is the Kwakwaka'wakw Tribes who call the geoduck "Kwixwani". Geoduck sites can be found fronting many Indian Reserves. It is for this reason that the Government of British Columbia has engaged in negotiation of Foreshore Management Agreements with coastal First Nations and advanced other negotiations to provide economic opportunities to develop marine resources. DFO cannot choose to ignore the role of the First Nations' governments in on-going management and planning for waters adjacent to existing and future lands. This is especially offensive when the Management Framework chooses to identify the roles of Canada, BC, local governments but fails to recognize the role of First Nations.

3. PRINCIPLES AND OBJECTIVES

The First Nations expect that the principles outlined the Sparrow case that First Nations food, social and ceremonial needs be addressed second only to conservation and adopted by the Department of Fisheries in all the other Fisheries will also apply in the Aquaculture framework. Additionally, there is concern over the approach expressed in the principles in terms of "Obligations" to First Nations and that the government's duty to the First Nations community may take a very restrictive approach. First Nations rely on the "Honour of the Crown" to interpret the law generously in favour of the First Nation communities. It is hoped that the Honour of the Crown will carry forward the continued recognition by the federal government of the reliance by the First Nation on all sea resources for their livelihood and grant the access required to carry out their livelihood. Given the responsibility for aquaculture is a relatively new undertaking by the Federal Government, here is a unique opportunity through federal policy and regulations to address many barriers in the way to a prosperous future for many First Nations.

4. ECONOMIC OBJECTIVES

First Nations in British Columbia have been engaged in planning and development efforts to enter into geoduck aquaculture as a means to generate meaningful employment in First Nations communities and to help pave the way to greater economic self-sufficiency. Several First Nations have invested considerable time and monies to develop geoduck ventures in their traditional territories. Many more have expressed interest in developing the opportunity.

While the Department of Fisheries and Oceans is to be commended for the proposed expansion of geoduck aquaculture our considered view is the proposed policy fails to grasp the significant economic potential of this industry for Canada and specifically for BC First Nations.

Our view is the policy is driven by ensuring protection to existing stakeholders. It fails to create the conditions that would ensure new profitable opportunities, partnerships with existing stakeholders and seriously limits the economic potential of this emerging industry to contribute to economic growth.

We particularly note the federal government's commitment to new trade agreements in Asia such as the Canada-Korea Free Trade Agreement with its focus on seafood opportunities and, of course the stated intention to negotiations with Vietnam and other partners. These are new and potential future realities that would make the proposed ten-year review period of the Management Framework short-sighted in the view of First Nations.

Put most simply, First Nations in British Columbia continue to be interested, capable and motivated to be active participants in a shared agenda of economic growth of geoduck aquaculture. However, the proposed Management Framework misses the mark in ensuring the systematic development of the capacity and profitability potential of this industry.

We believe this is an objective that we share with the Government of Canada and the Government of British Columbia.

In order to realize this enormous potential, the proposed Management Framework needs to be revised. It needs to provide a better balance to ensure new and expanded development versus the risk adverse approach of simply protecting the status quo.

The Aboriginal Aquaculture Association and its members and supporters remain willing and anxious to work with DFO to improve the Management Framework to produce a document that will achieve our shared interest in economic development.

5. AREAS REQUIRING SIGNIFICANT IMPROVEMENT

In the view of the Aboriginal Aquaculture Association and the members and supporters we have engaged, the Department of Fisheries and Oceans is to be commended for proposing the expansion of Geoduck Aquaculture and in particular expanding opportunities beyond the Strait of Georgia. However in order to realize the potential benefits of this development, we believe the Management Framework needs to address the following areas of key concern:

- a) *Role of First Nations Governments* – The Framework details the role of the Canadian Federal Government, role of the B.C. Government and Local governments, the Role of First Nation's Government also needs to be acknowledged and articulated in the Framework. Through Treaty and constitutionally protected rights First Nations have an increased role in the management of aquatic resources within their traditional territory. The Role of First Nations in Foreshore Management adjacent to First Nations Communities, and Treaty Settlement Lands needs to be added to the Management Framework in line with current agreements and treaty negotiations which Canada is a party to with First Nations. This has particular application in the so-called Red and Yellow Areas identified by DFO.

- b) *Priority of First Nations* – the Principles section of the Management Framework needs to reflect the priority of First Nations just below Conservation.
- c) *Area and Siting Limitations* – the proposed 5ha and 20ha limitations in so-called Red and Yellow Areas undermine economic viability. A more innovative approach to balance management needs to be considered. The failure to adopt more flexibility in this approach will undermine new development opportunities and potential future partnerships with existing industry partners.
- d) *Strategic Access to Wild/Feral Stocks during Tenure Development* – the proposed 7-year limitation on access for a future Aquaculture tenure holder must be replaced with a more balanced management approach which would ensure First Nations access to working capital during the development of a new operation. The 7 year limitation also affects business opportunities. There is a growing demand and evidence for markets for 4 – 5 year old geoduck. Limiting access to the wild stock for 7 years will cause missed economic opportunities for these markets.
- e) *Consultation and Comment Period* – A 45 day comment and consultation period on the draft Framework was provided by DFO, March 6 through April 19, 2014. However, DFO did not provide the necessary information required by some First Nations to formulate a fully informed response. In particular, DFO did not provide maps for all of the coastal areas proposed to be open to geoduck aquaculture in British Columbia until late within the 45 day consultation period. Maps of the proposed green, yellow and red areas for many DFO Management Areas (ie. 25, 26, and 27) were not available for review until April 4, 2014.

SPECIFIC RECOMMENDATIONS

- a) *Strategic Access to Wild/Feral Stocks During Development* – We recommend that strategic access to the existing wild or feral stocks be allowed to new First Nation aquaculturists providing that these funds are invested into the new aquaculture operation. The failure to provide this flexibility will limit the potential of many First Nations to the Working Capital required to sustain new development. This is not in interest of DFO in our view.
- b) *Limitations on Proposed First Nations Aquaculture Sites to 5ha and 20 ha* – First Nations have not been consulted in the identification of Red, Yellow or Green Areas. The proposal to limit potential operations to a single limited size scope is not equitable and will limit the development of economically viable operations. A more flexible approach allowing systematic growth and expansion to successful First Nations operations would ensure equity and viability. First Nations with foreshores of Indian Reserves and Treaty Settlement lands should be fully consulted and accommodated. In addition, this has the potential to be a catalyst to future partnerships between First

Nations and existing industry stakeholders, which should be in the interest of DFO.

- c) *Annual Review* – the proposed 10-year freeze on policy changes needs to be removed. Consultation and collaboration are the only ways that this new and emerging industry will realize its potential of economic growth and viability and have the potential to respond to different trade and market factors during its development. Freezing policy development sends the signal that DFO has principal interest in protection of the status quo and entrenched interests and not in the facilitation of expanded economic growth and opportunity.

6. BUILDING A SHARED AGENDA

The Aboriginal Aquaculture Association very much appreciates the assistance of the many First Nations who have participated with us in the review of the proposed DFO Geoduck Management Framework. Many will have specific views to augment those we have advanced directly to the Department.

The overarching view of First Nations is that expanding Geoduck Aquaculture has the potential to ensure positive economic activity not only for individual First Nations communities and businesses but also for Canada and British Columbia.

However in order to realize this potential the proposed Geoduck Management Framework needs to be improved and the principle of on-going collaboration and partnership with First Nations who choose to participate in this industry needs to be strengthened. We believe nobody will benefit if this is not taken seriously.

We have provided an initial response to the Policy Framework, which we believe demonstrates our interest in participating in the development of an improved Management Framework and look forward to a positive response from the Department of Fisheries and Oceans.

We believe, quite simply, that a win-win solution to the development of new Geoduck Aquaculture Industry with full First Nations participation is achievable and this should be a commitment shared with the Government of Canada.