



Kwicksutaineuk/Ah-Kwa-Mish First Nations

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British Columbia Supreme Court judgment means Kwicksutaineuk/Ah-Kwa-Mish First Nation (KAFN) salmon fishery class action law suit will not be delayed by provincial government efforts

(Vancouver, Nov. 24, 2009) In February 2009, representatives of the Kwicksutaineuk/Ah-Kwa-Mish First Nation (KAFN) launched a Class Action law suit involving the B.C. Government's regulation of open net-cage salmon farms, and the very survival of B.C.'s wild salmon. On October 8th and 9th, a series of Motions were made by the B.C. Government with the potential to delay the case. A decision by the Honourable Mr. Justice Slade was rendered on November 20th dismissing the B.C. Government's Motions.

Responding to the decision, KAFN Chief and representative plaintiff in this action, Bob Chamberlin made the following observations, "We are pleased with the Court's response to the matters raised by the B.C. Government. The efforts of the B.C. Government had real potential to increase the damage to the salmon by delaying consideration of the merits of our case. It is a great relief, to be on track to seek Certification as a class action in early January 2010."

Included in the Honourable Mr. Justice Slade's judgment were the following statements:

Para 70: *"In my view, there is a substantial risk that hearing the Province's preliminary motions in advance of the certification hearing could create unnecessary delay, duplication and expense. This does not mean that the Province is not able to advance their submissions in the appropriate forum, the certification hearing."* and at Para. 74: *"Issues over whether the plaintiff has satisfied the requirements of s. 4 [of the B.C. Class Proceedings Act] are not to be dealt with piecemeal in advance of the certification hearing. For the most part, the bases on which the Province seeks leave to apply to strike do just that."*

In addition, Justice Slade clearly articulated the purpose of the class action at Para 66 and 67: *"... As I understand it, the common issue, or perhaps issues, that the plaintiff seeks to try, is whether due to the licensing of fish farms, and Provincial regulation under its licensing scheme, wild salmon have become infested with sea lice, with a consequent reduction in wild salmon stocks. The common issues, thus framed, do not call for proof of an aboriginal right. The common issues are not, however, academic in relation to the rights asserted by the plaintiff, and possibly asserted by other Aboriginal Nations in the Broughton Archipelago. The object of the exercise of the asserted right is wild salmon. However the aboriginal rights of Aboriginal Nations located in the Broughton Archipelago may differ, there is nothing novel or controversial about the assertion that indigenous peoples of the British Columbia coast fished for salmon."*

This law suit was filed to address the negative impacts of open net-cage salmon farming and the decline in the wild salmon population in their traditional territory. The suit was brought against the B.C. Government by a First Nation whose territory is within the area known as the Broughton Archipelago. This is the formerly salmon rich area of mainland coast, islands and bays east of the northern tip of Vancouver Island. Currently, 29 fish farms are authorized by the B.C. Government to operate in the area. The KAFN contends that these fish farms are licensed and regulated in a manner that has significant negative impacts on wild salmon stocks.

To schedule media interviews, please contact:

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Copies of the Judgment can be found at: <http://www.courts.gov.bc.ca/jdb-txt/SC/09/15/2009BCSC1593.htm>