



Kwicksutaineuk/Ah-Kwa-Mish First Nations  
P.O. Box 10, 1 Front Street, Alert Bay, BC V0N1A0  
Phone: 250-974-3004 Fax: 250-974-3007

## Media Release

### **No choice but to go forward to the Supreme Court of Canada to protect wild salmon – Government attack on environment increases the urgency of First Nations’ access to Class Action Proceedings**

(VANCOUVER, BC, August 8, 2012) The Supreme Court of Canada is where the Kwicksutaineuk/Ah-Kwa-Mish First Nation (KAFN) of the Broughton Archipelago expect to continue their quest to protect the wild salmon in their Territory. The KAFN announced this morning that they applied to the Supreme Court of Canada for Leave to Appeal the May 3, 2012 decision of the British Columbia Court of Appeal (BCCA) regarding the environmental impacts of open net-pen salmon farms on the wild salmon that the KAFN have depended upon for thousands of years.

The recent BCCA decision overturned an earlier legal victory, where the KAFN made history by successfully advancing the first class-action lawsuit in Canada that focused on Aboriginal fishing rights. The case was successfully certified by the Honourable Justice Slade on December 1st, 2010.

Justice Slade’s decision was appealed jointly by the BC and Canadian governments on several grounds, but most notably that, unlike other Canadians, “aboriginal collectives” should not be allowed to join together in a class action. This argument was accepted by the Court of Appeal.



Bob Chamberlin, KAFN Chief and representative plaintiff in the case, observed, “The appeal of our certification win by both the Canadian and BC governments, and supported by the aquaculture industry, hinged on technicalities and missed the importance of government’s obligation to regulate the open net salmon farming industry in a way that protects wild salmon. This decision cannot remain unchallenged.”

“The urgency and importance of this case has only increased since it was filed in February 2009. The Harper government’s recent gutting of the Fisheries Act, hollowing out of the environmental assessment process, silencing of science, and attempting to paralyze ENGOs highlights the importance of the rights of First Nations. Their access to the justice system can serve as the last stand to prevent the environmental carnage that will result from the pursuit of economic development at all costs. With this assault on the environment in favour of the rapid exploitation of natural resources, what is left to hold industry accountable? We must remove this barrier to First Nations being able to protect natural resources such as the wild salmon of the Broughton that all Canadians hold dear.”

Legal Counsel, Reidar Mogerman of the Vancouver-based law firm Camp Fiorante Matthews Mogerman, confirmed that the Leave to Appeal application had been filed earlier in Ottawa.

A successful application for Leave to Appeal would mean the Supreme Court of Canada would consider whether aboriginal collectives should be able to join together and use the powerful class-action laws to protect their rights. The details are contained in the *Applicant's Memorandum of Argument*. This 21-page document was circulated to media conference attendees.

Chief Chamberlin, flanked by his legal counsel Reidar Mogerma and Grand Chief Stewart Phillip, President of the Union of BC Indian Chiefs (UBCIC), made the announcement to a crowded room in the offices of the UBCIC. In attendance were regional First Nations leaders, scientists, and wild salmon advocates.

Chief Chamberlin went on to say, "Our experience is inconsistent with Canada's international obligations as a supporter of the UN Declaration on the Rights of Indigenous Peoples that promises shared decision making at both the Federal and Provincial levels that is clearly not happening."

He observed, "Wild salmon are integral to the social, cultural, and ecological well-being of the KAFN and they have sustained us for over 5,000 years. Despite this, our firsthand knowledge of the impacts of open net-pen salmon farms in KAFN Territories has not been respected. We are dealing with governments who, rather than respecting First Nations and working together towards solutions and sustainable economic development opportunities, prefer to invest in litigation costs."

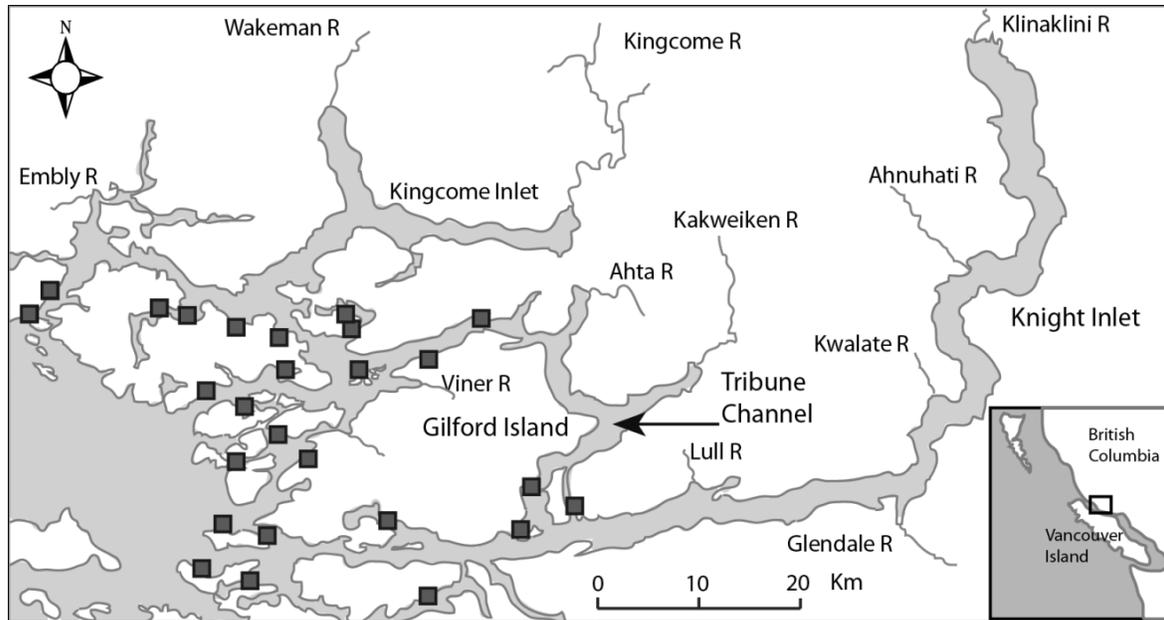
"We were forced into the courts. It is not our preferred approach. We would much rather cooperate and use the resources expended on litigation to remediate the environmental damage that has been done and improve the regulatory system for aquaculture. However, from the actions of the BC and Harper governments to date, I can only conclude that we cannot trust them to protect Canada's environment and our fish without being ordered to do so by the courts," stated Chief Chamberlin.

-30-

**To schedule interviews with Chief Chamberlin and Legal Counsel or to secure the *Applicant's Memorandum of Argument*, contact:**

Don Huff, Penasi Communications/Environmental Communication Options,  
at 416-972-7404, on-site in Vancouver (Cell) 416-805-7720 or [huffd@ecostrategy.ca](mailto:huffd@ecostrategy.ca)

*The Kwicksutaineuk-ah-kwa-mish First Nation is a First Nations band government, in the Queen Charlotte Strait region of British Columbia. The territory of the Kwicksutaineuk-ah-kwa-mish First Nation spans the southern Broughton Archipelago and the Gilford Island area just north of the mouth of Knight Inlet.*



### ■ Salmon farm locations

Source: Broughton Archipelago Monitoring Plan (BAMP)

### **Background**

In February 2009, utilizing the *Class Proceedings Act* of British Columbia, the KAFN sought remedies from the court requiring the defendant, the B.C. Government (represented by the B.C. Minister of Agriculture and Lands) to address the decline in wild salmon in their traditional territory.

To view the original KAFN Statement of Claim go to:

[http://huffstrategy.com/MediaManager/Media/Text/1233780246\\_Microsoft+Word+-+0052+Pleading+Statement+of+Claim+Chamberlin\\_2.pdf](http://huffstrategy.com/MediaManager/Media/Text/1233780246_Microsoft+Word+-+0052+Pleading+Statement+of+Claim+Chamberlin_2.pdf)

This was the first class-action lawsuit advanced by a First Nation in Canada to protect Aboriginal fishing rights.

The Broughton Archipelago is the area of bays, islands and mainland coast adjacent to the northeast side of Vancouver Island. The KAFN claims a constitutionally protected Aboriginal right to fish for wild salmon for food, social and ceremonial purposes within the Broughton Archipelago.

When the class-action was launched, 29 salmon aquaculture sites were authorized by the B.C. Government to operate in the Broughton Archipelago. It is the KAFN's position that these operations have contributed to a drastic decline in salmon stocks within the region.

The class-action was certified in December 2010 by Justice Slade of the Supreme Court of British Columbia.

To view the December 1, 2010 Decision by the Honourable Mr. Justice Slade, go to:

<http://www.courts.gov.bc.ca/jdb-txt/SC/10/16/2010BCSC1699cor1.htm>

An Appeal advanced by the Province of British Columbia and the Government of Canada (who was later joined as a Defendant) overturned Justice Slade's decision in May 2012.

To View the May 3, 2012 Decision by Madame Justice Garson of the British Columbia Court of Appeal, go to: <http://www.courts.gov.bc.ca/jdb-txt/CA/12/01/2012BCCA0193.htm>