ANNUAL GENERAL ASSEMBLY
JULY 20, 21 & 22, 2010, WINNIPEG, MB

Resolution no. 46/2010

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| TITLE: | Duty to Consult on Aquaculture |
| SUBJECT: | Fisheries |
| MOVED BY: | Chief Bob Chamberlin, Kwicksutaineauk Ah-kwa-mish First Nation, BC |
| SECONDED BY: | Cliff Atleo, Proxy, Tseshaht, BC |
| DECISION: | Passed by AFN Executive Committee |

WHEREAS:

A. First Nations have title and rights to our lands, waters and resources, and these rights include the right to manage our lands, waters, and resources according to our inherent laws and jurisdictions;

B. In *Morton v. British Columbia (Agriculture and Lands),* the BC Supreme Court ruled that BC government does not have the constitutional authority to regulate the aquaculture industry. In particular, the court held 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 that "the impugned provincial legislation… was ultra vires the provincial crown and thus invalid."

C. The BC Court of Appeal initially gave the federal government twelve months to enact legislation for the regulation of finfish farming. This deadline was subsequently extended and the court imposed deadline for developing the legislation is now December 18, 2010.

D. On July 10, 2010, the Department of Fisheries and Oceans (DFO) released draft BC Aquaculture Regulations. These Regulations, if adopted, will set a benchmark for other jurisdictions. The deadline for commenting on the draft BC Aquaculture Regulations is September 8, 2010.

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E. The DFO and the Government of BC are negotiating a Memorandum of Understanding that will allow the provincial government to retain the right to issue land tenures, make related land-use decisions and regulate workers' safety and general business aspects of the aquaculture industry.

F. The Crown is under a legal duty to consult with BC First Nations regarding any legislation, regulations or policy, including the proposed BC Aquaculture Regulations and the Memorandum of Understanding, which have the potential to adversely impact the Aboriginal rights of First Nations. The Crown has an legal obligation to minimize any infringement of Aboriginal title and rights that will occur as a result of adoption of the Regulations and implementation of the Memorandum of Understanding. The Crown is also required to accommodate the Aboriginal rights of First Nations and to seek reconciliation of Crown and First Nations jurisdictions respecting regulation of the aquaculture industry.

G. The Crown has engaged in consultations with stakeholders regarding development of the Regulations, but has not engaged in meanginful consultation or sought to accommodate the interests of First Nations whose Aboriginal title or rights may be adversely impacted by the draft Regulations. Nor has the Crown engaged in consultations with First Nations regarding the Memorandum of Understanding. Thus, the Crown's consultation process for engagement with First Nations on the Regulations and the Memorandum of Understanding is a breach of Aboriginal and Treaty Rights.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Call on the Government of Canada to engage in meaningful consultation with, leading to accommodation of First Nations in connection with the development of the Regulations, the Memorandum of Understanding and any operational guidelines, area-based management plans and aquaculture management plans subsequently developed pursuant to the Regulations.

2. Call on the Government of Canada to provide adequate resources to First Nations to participate in consultations with the Crown.

3.Direct the National Chief to seek a meeting with the Minister of Fisheries at the earliest possible opportunity to seek Canada's commitment to establish a bilateral, government-to-government process for engagement on the Regulations and any operational guidelines, area-based management plans and aquaculture management plans subsequently developed pursuant to the Regulations.

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SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF