

An Overview of Nova Scotia's Independent Review of Aquaculture Regulation (The Doelle-Lahey Panel)

William Lahey
(On behalf of William Lahey and Meinhard Doelle)
Schulich School of Law
Dalhousie University

Overview

- Our Mandate and Process
- Policy Context and Issues
- Foundational Elements
- Principles and Goals
- Key overall changes
- Key Changes in specific areas of the regulatory framework
- Wild Salmon
- Implementation

Our Mandate

- Design a state of the art regulatory system for aquaculture industry in NS
- Fin-fish, shell-fish, and plant-based
- Land-based and marine-based
- Long-term best interest of the province
- Include social, environmental and economic considerations
- Guided by priorities, principles in EGSPA

Our Process

- Monthly Advisory Committee Meetings
- 42 Community Meetings (July – Aug)
- 20 + Individual Stakeholder Meetings
- Individual Submissions Throughout
- Roundtable (Nov – May)
- Knowledge Roster and Workshops (Aug – April)
- Release of Draft Report (July 3)
- 4 public meetings + written feedback
- Final Report (Soon)

Policy Context and Issues

- Long-Term Economic and Environmental Policy Objectives
- What We Heard
- Environmental Impacts
- Request for a Permanent Moratorium
- Fin-Fish vs. Shell-Fish
- Regulation and Scale of Operations
- Prescriptive vs. Performance-Based Regulation

Conclusion on Moratorium

- Risks can be addressed
- Marine-based fin-fish aquaculture can contribute to sustainable prosperity
- Industry diversity
- Consistency with other regulatory frameworks
- Consistency with mandate, Now or Never, and EGSPA

Foundational Elements of Effective Regulation

- Constructive Attitudes
- Regulations That Enhance Social Licence
- More Limited Discretion
- Enhanced Regulatory Capacity
- Emphasis on Compatibility With Other Uses
- Research To Fill Knowledge Gaps
- Regional Cooperation Where Appropriate
- Continuing commitment

7 Guiding Principles

1. ***Effectiveness***
2. Openness
3. ***Transparency***
4. Accountability
5. ***Proportionality***
6. Integration
7. ***Precaution***

10 Regulatory Goals

1. Environmental protection & sustainable use
2. Fairness in allocating public resources
3. Low impact high value use of resources
4. Compatible with other sectors
5. Benefits proportional to resources used/affected
- 6. *Protection of wild salmon***
7. Meaningful public engagement
8. Attentive to local communities
9. Supporting sustainable growth of the industry
10. Enforceable, affordable, efficient and effective regulations

Key Overall Changes

- Core focus on low impact/high value aquaculture
- “Open book” regulatory transparency
- Functional separation of regulation and other government functions (within DFA)
- Environment monitoring moved to Environment
- More of the key standards (or need for standards) set in legislation
- Much less process discretion – more statutory guidance for decision-making
- Strong focus on health & wellbeing of farmed fish

Key Changes to Site Selection

- Red, yellow and green areas identified for marine based fin-fish operations
- Three distinct process options, all of which feed into licensing
- Process and outcomes will differ depending on red, yellow or green classification
- Clear standardized process for shellfish operations

Key Changes to Licensing Process

- Multiple opportunities for public engagement from start of an open process
- Statutorily standardized process
- Mandatory hearing (different forms)
- EA approach and classification of unclassified sites integrated into process
- Statutory licensing principles combined with written reasons for decision

And

- Adequate reasons must also address issues and regulatory objectives
- Strengthened appeal process
- Transparent and clear rules and process for changes and transfers
- Ability to apply to have licence revoked

Monitoring and Enforcement

- For example:
 - Legislated reporting obligations
 - More inspectors and associated resources
 - Unannounced inspections
 - More investigative capacity
 - Aerial surveillance
 - Full use of full spectrum of enforcement measures
 - Transparency on compliance status
 - Clear linkages to the licensing process

Key Finfish Operating Conditions

- Full transparency
- No chemical anti-fouling agents
- Maintain oxic conditions
- Comprehensive containment system
 - Ability to trace escaped fish back to site
- Minimization of use of medication, pest control
 - Under supervision of provincial vet
- Comprehensive monitoring, reporting, verification of compliance
- Comprehensive review after first growing cycle

Other Key Changes

- Removal where sites prove unsuitable
- Clarification of leaseholder rights and strengthened enforcement of leases
- Standing Regulatory Advisory Committee
- Independent Science Advice Mechanism
- Five-year Review

Wild Salmon

- Regulatory principles and goals
- Classification system and process
- Legislated standards (or need for standards)
- Mandated rigorous licensing process
- Appropriate physical separation
- Acceptance of responsibility for going further than DFO where demanded by goals
- Comprehensive containment system
- Research, learning and continuous improvement

Implementation

- Conclusion on marine-based fin-fish aquaculture depends on adoption of the proposed framework
- Current moratorium should be maintained until framework is in place
- The framework should apply to all licensed operations
- Consultations with Mi'kmaq