

Trustee Notebook

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Islands Trust

Shellfish Aquaculture Complexities

Recently I've received lots of questions about shellfish aquaculture – and no wonder. You've probably heard about aquaculture rafts being installed in Henry Bay at Denman's north end, contrary to the area's zoning, and about possible new shellfish farms on our northeast shores – also not zoned for aquaculture. Here are some Frequently Asked Questions, with answers:

What's the Denman Island Local Trust Committee's position on shellfish aquaculture?

This is captured in Denman's Official Community Plan, which says that we “recognize that aquaculture is a valuable activity in the Trust Area if compatible with maintenance of ecosystems and community character, to support shellfish aquaculture when practiced in a low-impact, environmentally sound manner...” (C3 – Objective 8, p 26)

How does the Denman Island Local Trust Committee regulate aquaculture?

By zoning. Aquaculture is only allowed in the W3 zone, which is present on much of Denman's west coast, in some areas meeting the high water mark and in many areas located off shore. If a company wants to farm shellfish in another area, they need to apply for rezoning. The Denman Island Local Trust Committee (DLTC) will look at the merits of the application, consult the community, and decide yes or no.

Does this give the DLTC the legal authority to fully control what happens on its shores?

Here is where it gets complicated: we are not alone. Two other entities regulate aquaculture: the BC Ministry of Forests, Lands and Resource Operations (FLNRO) and Fisheries and Oceans Canada (FOC).

FLNRO grants aquaculture tenures which give permission to use provincial Crown land and set out various conditions which the operator must follow. These tenures require that the owner adhere to local zoning regulations. FOC issues a fisheries permit for the management and operation of the shellfish aquaculture activities.

What's happening in Henry Bay and what can the DLTC do about it?

Pentlatch Seafoods Ltd, which is wholly owned by the K'omoks First Nation, has begun constructing an offshore shellfish farming operation, contrary to our local zoning. As is the normal practice, Pentlatch applied for and received a tenure from FLNRO, at which point they were informed their tenure is conditional upon ensuring the proper zoning is in place. But thus far, the DLTC has not received a rezoning application from Pentlatch Seafoods.

In response to a complaint, an Islands Trust bylaw enforcement officer has advised Pentlatch Seafoods of the zoning bylaw requirements and has asked them to comply by ceasing the activity and applying for a zoning amendment.

Why did FLNRO issue the tenure without local zoning being in place?

This is FLNRO's province-wide practice for issuing tenures. Typically, when an applicant discovers that their proposal doesn't comply with local zoning, they look elsewhere for a tenure or make a rezoning application before moving ahead. But not always, as we are seeing.

Can we get FLNRO to change this practice?

Islands Trust staff has had a teleconference with FLNRO staff about the Henry Bay situation and are currently setting up another meeting to discuss ways to improve communication and coordination throughout the Trust Area, including the possibility of withholding tenures until the appropriate zoning is in place.

So does FLNRO have any responsibility at this point?

If the applicant carries out shellfish farming contrary to zoning, they are in contravention of both the local bylaws *and* the conditions of their tenure. If Islands Trust bylaw enforcement does not succeed, FLNRO may choose to take action.

I've heard there are five new lease applications for Denman shores in the works. What is the Trust doing to prevent a similar problem with these?

Yes, we have learned that Salish Seafoods (also wholly owned by the K'omoks First Nation) has put in applications to FLNRO. FLNRO's practice is to refer these to relevant local governments for comment, but in the meantime our staff is arranging the meeting mentioned above.

Will First Nations businesses get special treatment and if so, why?

This is a very good question, and I hope that in seeking to answer it we will learn something important about neighbours whose ancestors were here long before ours. The Islands Trust Council is committed to developing and maintaining good relationships with First Nations people, including respecting their Aboriginal rights as defined in Section 35 of Canada's *Constitution Act*. We don't know yet how that plays out in this case.

What's going to happen?

That's very hard to predict. This is a very complex situation!