

It was literally standing-room-only at our most recent Denman Island Local Trust Committee (DLTC) business meeting – mostly because of two guest speakers. Both spoke about shellfish aquaculture issues, but from differing perspectives. Here is a summary, but first, for anyone new to this complex topic, here is a very short background:

Denman Islanders have had increasing concerns about the environmental and social impacts of aquaculture practices on our shores (ie habitat destruction, garbage, noise, aesthetic degradation). Recently, Pentlatch Seafoods, a company wholly owned by the K'omoks First Nation, has begun constructing an aquaculture operation in Henry Bay, contrary to the "Water Conservation" zoning. As well, Pentlatch and its sister company, Salish Seafoods, have applied to the province for three more leases on Denman's shores.

Ken Albrecht is a Land Officer with the Provincial Ministry of Forests, Lands and Natural Resource Operations (FLNRO), which is responsible for issuing crown land tenures for aquaculture.

Albrecht explained that he has dissuaded about a dozen potential applicants for tenures on Denman's shores by pointing out that our zoning doesn't allow aquaculture, and that he thought the community and DLTC would be unlikely to support rezoning. These applicants then decided not to proceed.

This prompted some questions from audience members:

Q: Why didn't the Henry Bay applicant back off, then?

A: Because they are asserting aboriginal rights as a First Nation.

Q: What does your agency do when an applicant says it is not listening to local government?

A: It's between the two parties. The higher staff in FLNRO say their decision will not be fettered by Regional Districts and other governments.

Linda Adams, Chief Administrative Officer of the Islands Trust, talked about how this policy looks from the Trust's perspective.

She explained that FLNRO used to require local zoning compliance *before* granting tenures. "We liked that process better," she said. This changed, "to general objection from local governments," in the early 2000s, and has not changed back, despite requests not just from the Islands Trust but also the Union of BC Municipalities to go back to the original approach.

"Still, everything generally works okay with the current process," she explained. "We advise applicants of the need to rezone early in the application phase. If it becomes

necessary, we use our bylaw enforcement process and things are usually brought into conformity with zoning."

"This case is unusual because we are dealing with a First Nation that is asserting its aboriginal rights."

Adams referred to a letter she'd received from K'omoks First Nation Chief Councillor Robert Everson, dated October 11, 2013, which states, "...we do not recognize the authority of Islands Trust...especially when it comes to any bylaws that may have an impact upon the lands and waters that we have had access to since time immemorial... The K'omoks First Nation, through its aquaculture practices, is asserting its rights and title in and around lhaytayich, xelikw', jaji7em and Kw'ulh."

"It's important to remember that many First Nations in BC do have unextinguished rights. So this is a complicated area and not as straight-forward as some bylaw enforcement situations," explained Adams.

Adams indicated that the situation is of interest to the entire Islands Trust Area and likely for other local governments. Given the complexities, there are no easy answers to the question, "What next?"

In November, Trust staff advised FLNRO of the problems that arise when applicants receive tenures for areas that are not appropriately zoned. There's been no suggestion that FLNRO plans to change its process, however, and the DLTC is seeking further meetings at a political level to raise its concerns. The DLTC Chair, Peter Luckham, has also asked to meet with Chief Councillor Everson.

Also, the DLTC is seeking a meeting with the provincial negotiators for the K'omoks treaty to learn more about the treaty process. Adams and other Trust staff are further researching the legal and jurisdictional situation, and there have been meetings with other government bodies, including DFO, which has a relatively new role in aquaculture management in BC.

I anticipate that this issue will stay front and centre for the DLTC for some time, and am expecting to be attending more packed meetings. In many ways, this is a rich opportunity for all of us to develop a deeper understanding of what it means to be a Canadian in 2013, as we seek to come to terms with the consequences of our colonial history.