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Governance of aquaculture in Canada: Regulation, property rights and constitutional impediments

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The governance of marine aquaculture in Canada takes place in the context of a federal system in which some elements of the constitutional jurisdiction relevant to aquaculture management rest with federal authorities, and others with the provincial (or possibly territorial) governments. In addition, constitutionally protected interests of aboriginal people – both potential title to marine space and mandatory consultation duties – are overlaid on the federal-provincial division. For many years the dominant approach to the regulation of the industry (with some exceptions) has been through effective devolution of authority over licensing and tenurial rights to provincial authorities, but this system was inherently vulnerable to challenge, and arguably provided incomplete protection of leasehold rights over aquaculture facilities, and created a patchwork system of regulation across the country. In 2010 a successful constitutional challenge in British Columbia forced the federal government to assume greater control over licensing of aquaculture, but to date this has not been applied in other provinces. This paper considers the implications of the confused and varied legal structures currently in place for the implementation of important governance principles, including precaution, integration and transparency. In addition, the pros and cons of a greater federal role, and the form it might take, are assessed in the light of the experience post-2010 in British Columbia.

Biography

Phillip Saunders Q C is an Associate Professor in Schulich School of Law at Dalhousie University. He was Dean of Law from 2005-2010 and Cross-appointed to the School for Resource and Environmental Studies. He has teaching and research interests in international marine and environmental law, maritime boundary delimitation and fisheries law. Formerly with the International Centre for Ocean Development as Senior Policy Advisor and Field Representative, South Pacific and has advised states on matters of international law and law of the sea in the South Pacific, the Caribbean, the Indian Ocean, Southern Africa, Southeast Asia, South Asia, Central America and Russia. He also acted as Counsel for Nova Scotia in the arbitration of the boundary between the offshore areas of Nova Scotia and Newfoundland and as Commissioner for the Canada-Nova Scotia review of the Deep Panuke offshore project. Co-general Editor and Co-author of *International Law, Chiefly as Interpreted and Applied in Canada* (8th ed., 2014).

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