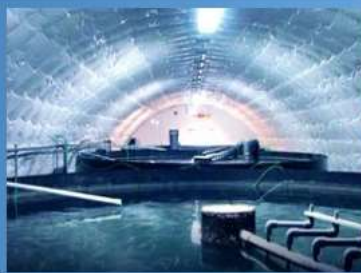




Proposed federal Aquaculture Act

Engagement Sessions and Written Submissions
Summary Report



Proposed Federal Aquaculture Act Engagement Sessions and Written Submissions Summary Report

Executive Summary

At the December 2018 Canadian Council of Fisheries and Aquaculture Ministers (CCFAM) meeting, federal, provincial, and territorial ministers confirmed support for a federal Aquaculture Act of “limited scope that respects federal, provincial and territorial jurisdictions, and provides greater clarity to the sector.” Following this meeting, the Fisheries and Oceans Canada (DFO) engaged a broad array of Canadians in spring and summer 2019 on proposed Aquaculture Act authorities. This report is a non-exhaustive summary of the input received throughout that engagement process.

Annex 1 provides a detailed list of audiences and locations for all engagement sessions that took place in 2019. Some sessions responded to a specific request to discuss the Act; some leveraged existing aquaculture tables and committees; and DFO also hosted some general engagement sessions with invitees determined with regional staff to ensure a broad array of participants and perspectives. An online consultation was also open to all Canadians from June 4 to December 21, 2019.

Themes that emerged from engagement are:

- engagement;
- Indigenous engagement and Indigenous rights;
- defining aquaculture and other key elements;
- environmental and ecosystem management;
- scope and governance of the future legislation;
- opportunities and or mechanisms to achieve national consistency (while respecting provincial and territorial jurisdiction and authorities, except in British Columbia and Prince Edward Island where DFO is the lead regulator);
- authorities necessary to have an effective regulatory framework;
- enforcement tools and authorities to protect the environment and ensure compliance; and,
- effective reporting and increased sector transparency.



1. Legislative Context

Aquaculture in Canada is a shared jurisdiction. In Canada, aquaculture has been regulated federally since the 1980s through existing legislation targeting specific elements of aquaculture operations. Over time, incremental changes to multiple federal-provincial-territorial laws, regulations, and policies have created a complex regulatory scheme. DFO is the federal lead for managing aquaculture under the *Fisheries Act*, which was designed for wild fisheries and does not reflect the distinct needs of aquaculture.

Three distinct types of regulatory approaches govern aquaculture in Canada. The Department is the lead regulator in British Columbia, issues aquaculture licences and is directly responsible for environmental regulation of the sector while the Province is responsible for land management and issues leases. In Prince Edward Island, DFO issues aquaculture leases to help ensure appropriate environmental performance of the sector in collaboration with the province.

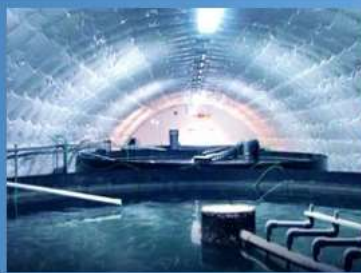
Elsewhere in Canada, DFO is responsible for environmental regulation of the sector while provinces and territories are the lead regulators, having the authority to license aquaculture operations, and authorize the allocation of space for aquaculture operations. Many provincial/territorial jurisdictions also regulate for potential environmental impacts, animal welfare, fish health, and/or pest control product sale and use. Overlaying these three approaches, the federal government plays a national cross-cutting role in aquaculture governance.

Following the 2016 Standing Senate Committee on Fisheries and Oceans (SCFO) report, *"Ocean of Opportunities,"* and the February 2017 report of the Advisory Council on Economic Growth report, which both called for a legislative reform, the Department conducted initial engagement on a proposed Aquaculture Act from fall 2017 to spring 2018 to assess preliminary views. This engagement, along with requests for an Aquaculture Act received as part of fall 2018 engagement on the TBS regulatory review of the agri-food and aquaculture sector, informed CCFAM's decision to support a federal Aquaculture Act.

2. Objective of the Engagement Process

The objective is to create a modern Aquaculture Act that respects federal, provincial and territorial jurisdictions and creates long-term conditions for the development of a thriving, environmentally sustainable, and competitive aquaculture sector that benefits the economic development of coastal communities and Indigenous peoples.

Engagement is key for the successful development of a legislation that is in the best interest of Canadians. Some discussions took place in 2017-2018 and helped gain a sense of what a federal Aquaculture Act could or should do. Engagement sessions and



an online consultation sought input on proposed authorities to be incorporated into the Act which were taken from the *Fisheries Act* and a policy paper that informed CCFAM's decision.

3. 2019 Aquaculture Act Engagement

3.1 Process

To date, the department has held 23 engagement sessions across Canada from March to August 2019. Over 450 people attended the sessions.

As an initial round of engagement, key partners and stakeholders were engaged and included:

- Provinces/territories
- National and regional Indigenous organizations
- Industry
- Environmental Non-governmental Organizations (ENGOS)
- General public
- Federal partners

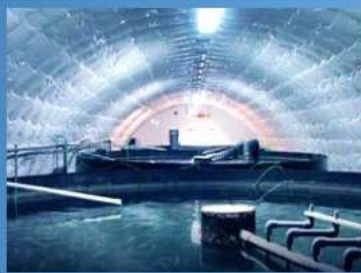
An online consultation page was launched June 4, 2019. The webpage provided an electronic copy of the presentation used for engagement sessions and invited the public to provide input for the Aquaculture Act by December 21, 2019. A total of 52 submissions from various stakeholders and partners were submitted in addition to 2400 emails received through an email campaign organized by a third party organization.

3.2 Emergent Themes

Some themes emerged and will be individually addressed in the sections that follow.

Overview of themes:

- Engagement was raised frequently. Participants called for transparent and broad engagement to consider and integrate diverse perspectives.
- Indigenous engagement and respecting Indigenous rights were key elements raised for the successful development of the new Act.
- Many participants raised the need for a clear definition of aquaculture and other key elements.
- Environmental and ecosystem management was one of the most discussed themes. Area-based management and space allocation were also frequently raised.



- A large proportion of discussions touched on the scope of the future legislation and the need to clarify federal-provincial-territorial roles (governance).
- Setting a foundation for a clear and coherent regulatory framework for the sector is one of the objectives of the new Act. This raised questions about what opportunities and or mechanisms were available to achieve national consistency given provincial and territorial jurisdiction and authorities across most of the country (except British Columbia and Prince Edward Island where DFO is the lead regulator).
- Some input was received to inform future regulations but mostly, input was gathered on what authorities were necessary to include in the Act to have an effective regulatory framework to manage the sector.
- Enforcement tools and authorities were discussed to protect the environment and ensure compliance.
- The need for effective reporting and increased sector transparency was also raised.

4. What We Heard

Theme 1: Engagement

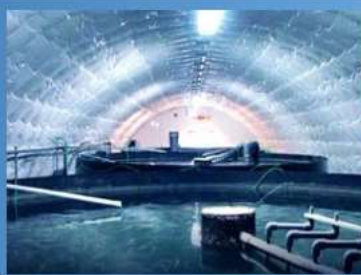
Engagement and its importance was a theme that emerged frequently throughout discussions.

Indigenous Peoples Engagement

Indigenous partners and multiple stakeholders noted that meaningful Indigenous engagement was an important element for the successful development of the legislation. Indigenous peoples are key partners in aquaculture and environmental management. The importance of going beyond Indigenous organizations and engaging Indigenous groups and communities was raised. Adequate resourcing (national, regional, and community/group level) for capacity building and engagement was also an important element flagged to ensure Indigenous partners are able to meaningfully contribute to legislative and regulatory development. The need to work together and co-develop processes, tools, and policy was also raised.

Working With Other Governments

The Department has kept provinces abreast of the progress made on the development of the Act and sought their input to develop the 2019 engagement tools. Provincial



representatives attended general engagement sessions that took place in Eastern Canada and were important contributors to the discussions.

Local governments were raised as important stakeholders to engage as they play an important role in regional development and have an in-depth understanding of regional issues, opportunities, and needs.

Additional recommendations included:

- Leveraging a technical working group to support ongoing improvement of aquaculture management in Canada (e.g.: area-based management) and ensuring the Act could support such recommendations.
- Collaborating and communicating with other federal organizations to harness existing knowledge relevant to aquaculture management and the development of the Act.
- Ensuring coordination and cooperation among all levels of government.
- Actively and effectively engaging stakeholders and partners across Canada.
- Proactively sharing information with, and reaching out to, the public.
- Increasing transparency and sharing emails and comments made by the public.
- Sharing the engagement process and opportunities to provide input on subsequent iterations of the proposed Aquaculture Act provisions.
- Involving a diverse range stakeholders and ensure the public is involved.

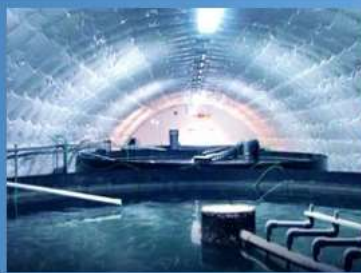
There was an interest in understanding how invitation lists were developed and where and when engagement sessions took place.

Theme 2: Indigenous Rights

In preliminary conversations, references were made to the United Nations Declaration of Rights of Indigenous Peoples and to the rights of Indigenous peoples as per section 35 of the 1982 *Constitution Act*. Participants indicated that they expected the new Act to be respectful of Indigenous peoples, treaty rights and the UN Declaration principle of free, prior and informed consent.

It was also expressed that the new Act provided an opportunity to:

- consider new ways and areas to involve Indigenous peoples in the sector and help communities build capacity, working progressively towards co-management;
- involve Indigenous peoples in the development and delivery of aquaculture policy (e.g.: development of precautionary principles, definitions for aquaculture and innovation, and authorities for aquaculture management); and,



- support proactive information sharing (e.g.: real-time notification to enable communities to monitor impacts to their aquatic resources).

Theme 3: Definitions

Throughout the conversations that were held and input received via the online consultation, several comments focused on terms needing to be clearly defined.

“Aquaculture”

The term “aquaculture” is not currently defined in the *Fisheries Act*. For example, in the *Aquaculture Activities Regulations* and *Pacific Aquaculture Regulations*, it is defined as “the cultivation of fish.” Multiple comments supported the idea that the Act provides an opportunity to better define aquaculture in Canada.

Key elements raised were the need to:

- define aquaculture as a farming sector;
- define what is considered aquaculture, building on the level of control and intervention in the growth cycle;
- address ownership questions; and,
- align the definition with provinces, territories, and international references.

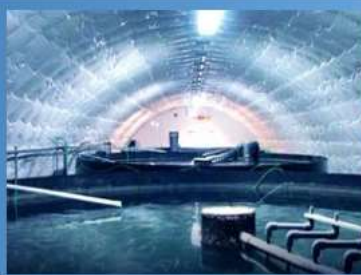
A majority of the comments that touched on the definition of aquaculture suggested using the United Nations Food and Agriculture Organization (FAO) definition:

“(...) the farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants. Farming implies some form of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators, etc. Farming also implies individual or corporate ownership of the stock being cultivated. For statistical purposes, aquatic organisms which are harvested by an individual or corporate body which has owned them throughout their rearing period contribute to aquaculture, while aquatic organisms which are exploitable by the public as a common property resources, with or without appropriate licences, are the harvest of fisheries.” (1988)

Some participants noted that a clear and strong definition of aquaculture could facilitate access to investments, be inclusive and innovative by touching on concepts such as an ecosystem approach, and reference aquatic plants.

“Aquaculture Area”/“Zoning”

Some provinces already have designated aquaculture areas. Some stakeholders said that’s defining the parameters for the designation of an aquaculture area would increase



transparency and support national consistency for the development of a sustainable industry. It was mentioned that the term “zoning” may cause confusion seeing the term is used in different fields such as municipal planning and fish health management.

“State”

One comment pointed out the need to define *state*, in reference to Indigenous rights and the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP).

“Area-Based Management”

There are pilot projects being developed and interest is growing around area-based management as a way to ensure the sustainability of aquaculture, factoring relevant aspects in decision-making and risk management. As this grows in popularity, a definition of what it encompassed could be beneficial.

In addition, legitimizing aquaculture as a user of aquatic space and resources was raised for future consideration.

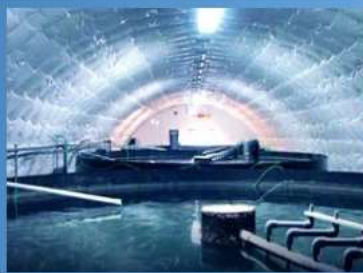
Theme 4: Governance and Scope

Many comments and questions received touched on the scope of the Act and how the different roles and jurisdictions would be clarified.

Clarifying Roles

Engagement participants sought clarifications on:

- who would be the lead regulator;
- the scope of activities that would be encompassed;
- DFO’s role in administering the new Act;
- if signed international agreements and treaties would be respected;
- if provinces and territories would continue to regulate under their own legislation when desired;
- whether other federal agencies or departments were considered to become the champions of aquaculture, or its lead regulator;
- whether DFO could be the federal champion for the industry while being the federal regulator and delivering on its obligation to protect fish and fish habitat; and,
- if roles and responsibilities of other federal departments in relation to aquaculture could be clarified in the Act (e.g., the Canadian Food Inspection Agency’s (CFIA) lead role for aquatic animal health).



Some comments touched on other government departments (e.g., Agriculture and Agri-food Canada's (AAFC)) current and potential future role such as:

- need for a federal department to champion the industry,
- for AAFC to include aquaculture in its suite of programs targeted to enhance the competitiveness of Canadian farming and farm products; to support research, fostering consumer confidence in aquaculture products; and to provide financial assistance.

Comments regarding other federal departments will be shared for their consideration.

Jurisdictions

The industry is regulated under different federal, provincial, and territorial acts and regulations, creating a complex legislative and regulatory framework that varies from one province to the other. The following elements were raised for consideration:

- clarify the application of national legislation in provinces which already regulate the industry and if the Department could influence or affect provincial regulations;
- consider a whole of Government approach to reduce complexity;
- eliminate federal redundancies and gaps as well as the duplication of provincial responsibilities;
- create alignment between federal, provincial, and territorial frameworks;
- support harmonized and streamlined processes; and,
- clarify roles in disease management and treatment.

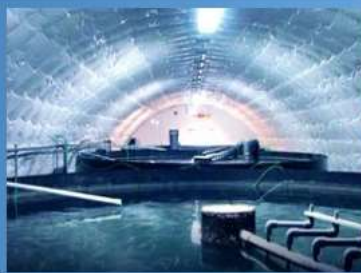
Scope and Activities

Questions on the scope of the Act touched on whether the new legislation would or could address freshwater, saltwater, offshore, and land-based aquaculture, providing clear guidance and requirements for all types of aquaculture. Some thought the Act should cover all zones where aquaculture takes places, but others had difficulty reconciling how a federal law could impact or apply on aspects of the industry regulated by provinces. As it was clarified during engagement sessions, the legislation's scope will not encroach on provincial and territorial jurisdiction.

Whether the scope of the Act would cover research facilities was also raised.

Public Involvement in Decision-making

An Aquaculture Board or advisory committee was proposed for consideration to allow for direct involvement of the public and key stakeholders in decision-making processes,



promoting transparency and participation, e.g. emulating the Newfoundland Offshore Petroleum Board.

Theme 5: National Consistency

National consistency was raised in past consultations and remains an important element for the new legislation.

During engagement sessions, participants touched on the following elements:

- it's unclear how national consistency can be improved while not encroaching on provincial jurisdiction;
- there are concerns about applying unilateral solutions that do not factor in regional and geographical differences;
- the industry already adopts some national, provincial, and international standards and any new national standards should align with existing aquaculture standards; and,
- the industry should be consulted in the development of national standards as it would directly impact the supply chain.

Food labelling ideas were also raised but falls under the purview of the Canadian Food Inspection Agency (CFIA). These comments will be shared with CFIA for their consideration.

Theme 6: Regulations

During consultations, some questions touched on the potential consolidation of the different sets of regulations (e.g. the *Aquaculture Activities Regulations*, the *Pacific Aquaculture Regulations*). Based on comments, there was an appetite to review and improve regulations.

Participants also proposed the following ideas for consideration:

- a working group could be set up to consider options and provide recommendations for the review of aquaculture related regulations to develop forward-looking and innovative regulations that reflect the reality of aquaculture and its various streams;
- regulations could favour new and small entrants to the sector by clarifying ownership or production terms;



- regulations, while framing how industry operates, should remain focused on the Department's core mandate (fish and fish habitat protection);
- develop flexible regulatory tools to incentivize the move to closed containment (e.g.: escalating licence fees, an enhanced compliance and enforcement regime, site remediation provisions, etc.);
- respond to new identified risks or situations (e.g.: authority to ask the operator to remove fish from net pen if serious risk is identified); and,
- provide rights to the aquatic organisms (produced or found within the limits of their respective tenures) to the person to whom the aquaculture farming licence is granted.

Theme 7: Ecosystem Management and Environmental Protection

Environmental protection was raised in most discussions. The need to ensure that environmental protections are sufficient and abided by were voiced by all partners and stakeholders groups. Key elements raised are summarized below.

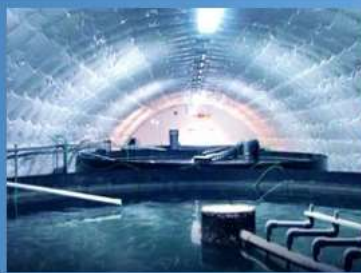
Science

It was raised that:

- there was a need to have an approach that would inform when and where science responses are needed to ensure science-based decision-making;
- Canada's scientific capacity for essential aquaculture research and development as well as collaboration between governments and industry on scientific research and development in Canada should be increased;
- sufficient resources should be allocated;
- the inclusion of Indigenous knowledge and Indigenous knowledge systems would support sound evidence-based decision-making; and,
- science-based risk assessments should be done following identified cases of escapes.

Designated Aquaculture Areas

The idea of designated aquaculture areas was presented. There was support for this idea which connects well with marine spatial planning, which some provinces have already implemented, but it was mentioned it would need to be a flexible and adaptable process to account for new information such as other activities in the vicinity. It was also mentioned that the Act should allow for decisions to be re-evaluated. Authorities could allow the



designation and exclusion of areas for aquaculture based on ecological and/or cultural reasons, where the Department has jurisdiction.

Ecosystem Management

Significant emphasis was put on ecosystem-based assessments, evaluations and decision-making. Elements suggested to be considered in an ecosystem-management approach could include water quality and ensure the sustainability of native species.

It was mentioned that risk evaluation should correspond to regional realities and particularities. Some elements for risk evaluation or reduction strategies were proposed:

- stronger waste management restrictions;
- move net pens onto land or include physical barriers to cut off interactions between wild and farmed fish;
- ensure operators have recapture plans, the capacity to deliver them in the event of escapes (small and large scale);
- label aquaculture gear to identify debris and help ensure operators' accountability;
- require marking of fish and genetic documentation to enable full traceability; and,
- risk evaluation should be able to adapt to the different types of aquaculture and their respective degrees/categories of risks.

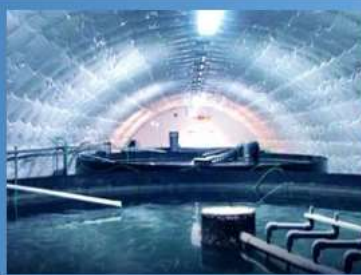
A few participants suggested that environmental and/or impact assessments could be done with a broader scope, including economic, environmental, and social impacts.

The following elements were proposed for consideration during decision-making processes:

- consider the impacts on water and species present in the area (i.e.: eel grass, birding areas, etc.);
- consider and address other substances that could be biological contaminants;
- test for non-native strains of pathogens;
- an environmental impact assessment prior to project approval; and,
- leasing fees should reflect the risks and potential impacts of aquaculture activities.

Financial mechanisms were proposed to help fund the restoration of habitats and ecosystems for sites where environmental harm was caused by industry by implementing a polluter-pays' principle:

- an industry-financed restoration/environmental fund as part of licencing via a bond;
- a carbon tax for operators who emit carbon into the ocean; and,
- using revenues from licence fees.



Fish health and animal well-being aspects were also raised. The responsibility for these elements falls under the CFIA. These comments will be shared with CFIA for their consideration.

Theme 8: Enforcement

There was widespread support for enforcement actions to address non-compliance. It was raised that offences need to be adapted to aquaculture activities' diverse cultures (e.g.: fish farms, shellfish, cages, plants, etc.), across Canada, and that there was a need for increased enforcement capacity and resources. There were some questions concerning the feasibility and implications of having aquaculture specific enforcement action and/or resources. Input was supportive of the Act enabling the Minister to designate persons or classes of persons as inspectors for the purpose of administration and enforcement of the Act. There was support for compliance and enforcement under the Act to be carried out by dedicated aquaculture inspectors with training and operating procedures appropriate to the sector.

It was frequently raised that enforcement mechanisms should recognize and align with those established by the provinces and territories to avoid duplication and redundancies.

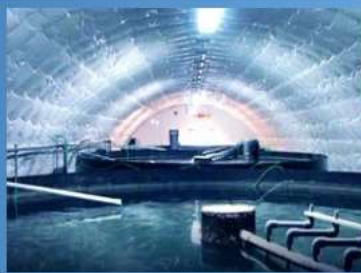
The following ideas were also proposed:

- distinguishing “regulatory offences” (more serious) from “regulatory violations” (less serious);
- allowing for the use of administrative monetary penalties;
- ticketable offences for the finfish and shellfish industry;
- considering offences for any person who interferes with an aquaculture facility or its operation in a way that compromises its biosecurity; and,
- requiring licence holders to implement contingency plans to recapture escaped salmon (funded by licence holders or mandatory insurance policy).

There was also interest in enforcement and monitoring mechanisms that could support Indigenous peoples' participation in aquaculture management (e.g.: field work, science/data collection, Indigenous officers/inspectors/guardians, etc.).

Theme 9: Reporting & Transparency

There was unanimous support for timely, comprehensible and transparent information.



Accessible and Timely Information

Participants agreed that information should be shared in transparent and timely manner but that more needs to be done to share information in a contextual manner that reflects the regional differences, and is easy for Canadians to understand. There is also a desire to have relevant information accessible to the general public across the country and in a detailed way, allowing Canadians to obtain information on a site-by-site basis. There was interest in having access to peer-reviewed science relevant to aquaculture in Canada, particularly when used in regulatory decision-making.

Reporting Process

Overall, participants were supportive of increased reporting and transparency as it can enhance consumer confidence in the safety, health benefits, and wholesomeness of Canadian Aquaculture products. A reduction of duplication or streamlining of federal, provincial, and territorial reporting processes was also desired. However, some apprehensions were expressed towards self-monitoring of the sector.

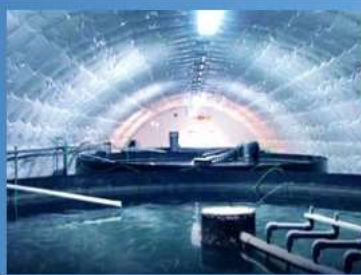
5. Conclusion and Next Steps

Input received will be analyzed and considered for the next iteration of engagement materials and future discussions. A new round of discussions and online consultation is planned to begin in spring 2020. Information received points to the need and expectation for federal, provincial and territorial partners to continue to work together. DFO is committed to working with its partners and stakeholders to ensure the development of a modern Aquaculture Act and of a coherent national aquaculture legislative and regulatory framework.

Some elements raised will require further discussion and evaluation to better understand implications and feasibility or may be considered for the development of regulations. However, some issues may be outside the scope of a federal Aquaculture Act.

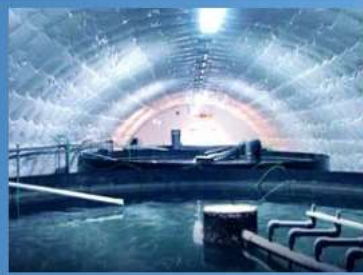
The Department will continue to engage partners, stakeholders, and the public to develop legislation that respects provincial and territorial jurisdictions, provides clarity to the industry, protects the environment and provides sustainable economic development opportunities, including for Indigenous and coast communities across Canada.

The Department thanks all the individuals and groups that took the time to provide input, participate in engagement sessions, or provide online submissions to better inform Canada's first federal Aquaculture Act.



Annex 1: DFO Engagement Sessions

<u>Location</u>	<u>Date</u>	<u>Participants</u>
Ottawa, Ontario	February 6-7, 2019	Seafood Value Chain Roundtable
Montreal, Quebec	February 12-13, 2019	Canadian Council of Fisheries and Aquaculture Ministers, Strategic Management Committee on Aquaculture
Ottawa, Ontario	February 19, 2019	Assembly of First Nations (AFN)
Ottawa, Ontario	February 22, 2019	Canadian Aquaculture Industry Alliance (CAIA)
Ottawa, Ontario	March 8, 2019	Federal Government Interdepartmental Meeting
Vancouver, BC	March 13-14, 2019	Assembly of First Nations (AFN) National Aquaculture Working Group (NAWG)
Collingwood, Ontario	April 3, 2019	Ontario Aquaculture Association Conference and Annual General Meeting
Courtenay, British Columbia	April 30, 2019	Shellfish Aquaculture Management Advisory Committee (AMAC)
Nanaimo, British Columbia	May 10, 2019	Finfish Aquaculture Industry Advisory Panel (FAIAP) - Strategic Working Group
Nanaimo, British Columbia	May 16, 2019	First Nations Fisheries Council (FNFC) Aquaculture Coordinating Committee
St. John's, Newfoundland and Labrador	May 21, 2019	Broad Aquaculture Act Engagement Session
Halifax, Nova Scotia	May 22, 2019	Broad Aquaculture Act Engagement Session
Moncton, New Brunswick	May 23, 2019	Broad Aquaculture Act Engagement Session
Charlottetown, Prince Edward Island	May 24, 2019	Broad Aquaculture Act Engagement Session
Vancouver, British Columbia	June 5, 2019	Conservation Regulatory Working Group



Quebec City, Quebec	June 11, 2019	Broad Aquaculture Act Engagement Session
Iles-de-la-Madeleine, Québec	June 12, 2019	Broad Aquaculture Act Engagement Session
Courtenay, British Columbia	June 14, 2019	Finfish Aquaculture Industry Advisory Panel (FAIAP)
Various locations, Quebec	June 25, 2019	Table filière de l'aquaculture en eau douce et Association des aquaculteurs du Québec
Halifax, Nova Scotia	July 10, 2019	Maritimes ENGO forum
Teleconference	July 22, 2019	Ocean's North engagement conversation
Webex, Central and Arctic region	July 23, 2019	Broad Aquaculture Act Engagement Session
Yarmouth, Nova Scotia	August 29, 2019	Mi'kmaq Fisheries Advisory Committee (MFAC)