



Background:

Many wild Atlantic salmon populations in Canada are at risk. Dramatic declines since the late 1980s have prompted their health to be the focus of ongoing concerns, and in 2014, returns in many river systems were the lowest on record. With numbers continuing to dwindle, keeping their populations safe from invasive species remains a high priority — invasive species can cause increased competition for food and habitat, genetic introgression and biodiversity.

Despite this, in 2013, the federal government approved AquaBounty's application to engineer genetically-modified salmon eggs at a facility in P.E.I.; these eggs would then be grown-out in Panama and sold in stores in North America. The government's approval, however, went much further. It approved commercial grow-out of the organism, which was not applied for and not assessed, and permitted those uses at any contained facility in Canada, even though only the PEI facility was assessed.

Further, the scientific risk assessment that was done did not include data from a test to determine the genetically-modified salmon's toxicity and potential to become invasive in the event of an escape, as the government waived the requirement for that information. The federal government failed to provide public notice that it was waiving that information until months after the fact, and after we launched our case. In fact, it looks like until we challenged the failure to publish notice of the granting of a waiver of information requirements in this case the government hadn't published any such notices in over five years.

This case highlights the importance of the assessment provisions under the *Canadian Environmental Protection Act*. In that Act Parliament required the government to make decisions in a science-based and precautionary manner, something the government failed to do.

We commenced a judicial review of the Minister's approval in 2013. After we launched the case, the government published notice of its waiver of the toxicity assessment along with more than 600 other waiver notices dating back to 2008 — a clear violation of CEPA.

In December 2015, Justice Zinn of the Federal Court dismissed our application. Although the application was dismissed, Justice Zinn's interpretation of CEPA was consistent with ours in one important respect — his decision appears to limit the use and manufacture of AquaAdvantage salmon to AquaBounty's one facility in PEI. He also held that publications of waivers are mandatory and must be done in a reasonable time — although he did say that the nearly six-month delay was reasonable in this situation. This means that the government cannot continue with its previous practice of waiting years to publish notice when it waives information requirements as part of the assessment of organisms and substances under CEPA.

We have filed an appeal due to the lack of clarity in the Federal Court's decision not to quash the significant new activity notice at issue. We believe it creates significant uncertainty regarding what is and is not permitted by the notice and leaves open the government's approval to use the salmon at locations, and in ways, that were never assessed. We are hopeful that the Federal Court of Appeal will quash the notice and let the Ministers make a new decision, one which complies with the law.

ecojustice