

plentiful wild fisheries resources available to the Canadian fishing industry. More likely explanations seems to be the lack of clearly defined jurisdictions, inadequate support policies, limited funding and the lack of clear ground rules for the development of the industry, as well as the limited availability of high risk investment capital.

### *1. Jurisdiction, Legislation and Regulation in the Aquaculture Industry*

Aquaculture falls into a grey zone between the federal responsibility for fish, fish health and habitat, environment, fisheries management and product inspection and navigational waters, and the provinces' responsibility for resources and proprietary rights. The question of jurisdiction is complex for any new industry, but it is particularly so for aquaculture. This section covers the jurisdictional issue, the federal/provincial agreements on commercial aquaculture development and the legislative as well as regulatory requirements of the industry.

#### *a) Jurisdiction*

In Canada, the federal and provincial governments both claim jurisdiction over aquaculture and both levels of government have been regulating some aspects of the industry.

The federal government bases its claim on the fact that under the *Constitution Act*, the "seacoast and inland fisheries" and their management are its responsibility. The federal government regulates aquaculture under the *Fisheries Act* and implicit in this is that aquaculture is a natural extension of the fishing industry. This is a matter of some debate as it has been argued that aquaculture should rather be the subject of a National Aquaculture Act "to set out the federal role in aquaculture and be the enabling legislation" for the industry's regulation by the federal government.<sup>6</sup> The arguments in favour of this position are outlined in the next paragraph. Among the factors that militate against the adoption of such a statute are: on one hand, it contradicts the federal government's position that aquaculture is a type of fishing activity; on the other hand, it could jeopardize the uneasy federal-provincial relations in this area by antagonizing provincial governments who might see it as a move by the federal government to strengthen its jurisdictional claim over this activity.

According to Bruce Wildsmith, a Canadian jurist who has worked for the provinces and the federal government on the legislative and regulatory