

Fisheries Law 396c

Exam Questions

Three of the following questions will appear on the Fisheries Law exam on December 11th, 2006. You will be required to answer two of those questions.

1. Describe the division of jurisdiction over fisheries in Canada. In particular, outline the scope and extent of federal jurisdiction under the s. 91(12) “Sea Coast and Inland Fisheries” head of power in the *Constitution Act, 1867*. How have the courts and levels of government interpreted this provision?
2. The extent of Canada’s jurisdiction over the fisheries is defined in international law. Canada is also a party to a number of bilateral treaties that attempt to allocate fisheries and establish management regimes between Canada and its neighbours, principally the United States. Drawing on the material in this course, explain this international framework and how it affects the management of Canadian fisheries on the Pacific Coast.
3. Many of the foundational Aboriginal and treaty rights cases in Canada involve claims to fishing rights, and fisheries have also been one of the most difficult subjects of negotiation in British Columbia’s modern treaty process. In short, the fisheries and Canada’s fisheries law have been one of the principal sites of conflict between Aboriginal peoples and the Canadian government. Describe the extent to which Aboriginal claims to the fisheries in British Columbia have been defined in Canadian law, either by the courts or through treaties. What still remains to be defined?
4. In their 2004 report, “Treaties and Transition: Towards a Sustainable Fishery on Canada’s Pacific Coast”, Donald McRae and Peter Pearse recommended that all fisheries not currently managed through an individual transferable quota (ITQ) licence system should move to that system. Describe and evaluate the ITQ system as well as the alternatives to it. Do you agree with the recommendation? Why or why not?
5. The legal regime governing fisheries in Canada is largely a creature of statute, primarily the *Fisheries Act* and the regulations pursuant to it. However, the common law of fisheries provides much of the foundation on which that statutory regime rests. In addition, a regime of Aboriginal fisheries law based on traditional ownership and management of the fisheries underscores the contemporary development of Aboriginal and treaty rights to fish. Describe and explain the principal features of these two legal traditions and how they inform, in varying degrees, the management of the fisheries today.
6. How might domestic and international legal regimes contribute to the goal of constructing and supporting sustainable fisheries?