



First Nations Fisheries Council of British Columbia

BC CHIEFS & COUNCILS UPDATE

JANUARY – FEBRUARY 2016



FNFC BACKGROUND

BC First Nations and the Chiefs in Assembly drafted the First Nations Fisheries Action Plan in 2006 (6 themes, 70 recommendations), which mandated the creation of a province-wide Fisheries Council in 2007 (the FNFC). The FNFC drafted its first Strategic Plan in 2011 and an updated version in 2015 to guide the implementation of the FN Fisheries Action Plan. The FNFC is structured to have 14 geographic regions throughout BC to reflect the diversity in fisheries, ecosystems and expertise throughout the province, and strives to develop advisory and engagement processes according to this regional structure. The FNFC is a registered society, and its constitution and by-laws can be found on our website at www.fnfisheriescouncil.ca.

In support of the 2010 All Chiefs Task Force recommendation to develop a cohesive voice among First Nations, the FNFC has established formal relationships with First Nations leadership (Declaration and Protocol with the FNLC) and First Nations regional fisheries organizations (Charter agreements). The FNFC communicates regularly with partner organizations and First Nations at all scales through various tools and mechanisms (e.g. website, monthly calls, communiques, social media, various meetings and workshops, Annual Fisheries Assembly, etc.).

PRIORITIES

Through the BC First Nations Fisheries Action Plan, the FNFC has been directed to support, protect, reconcile, and advance Aboriginal Title and Rights and Treaty Rights as they relate to fisheries and the health and protection of aquatic resources. Our priorities are to develop effective governance mechanisms, form collaborative relationships among First Nations organizations, and work together to build a cohesive voice among BC First Nations on fisheries matters. These objectives will be accomplished through:

- Continued implementation of the FN Fisheries Action Plan (2007) and the new FNFC Strategic Plan (2015-2018);
- Continued implementation of the FNLC MOU with the DFO Minister to advance First Nations fisheries issues nationally;
- Continued implementation of the All Chiefs Task Force recommendation to “build a cohesive voice” by convening First Nations and distilling common perspectives and advice on policy and operational matters;
- Collaboration with regional First Nations organizations to identify and support best practices and knowledge transfer among First Nations on fisheries processes, policies and programs (e.g. fisheries governance and management, aquaculture, Section 35(1) fisheries, economic opportunities, water and habitat, etc.);
- Exploration of cumulative effects/environmental impacts from resource extraction and industrial development on aquatic resources and habitat.

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New FNFC Strategic Plan – 2015-2018

The FNFC's last strategic plan (2011-2014) advanced the *BC First Nations Fisheries Action Plan* by focusing on building relationships and developing effective processes. Over the next three years, the FNFC will continue to address the action items in the *Action Plan* by leveraging these relationships and using these processes to organize for change that positively influences policy and management. The FNFC's strategic direction for 2015-2018 will focus on four main priority areas:

- Protection of Rights and Sustainable Fisheries
- Governance and Management
- Enhanced First Nations Economic Performance
- Strategic Outreach Through Effective Communications

Upcoming on our agenda

- **Board Reappointment:** The 14 FNFC Executive regional delegates' terms will expire in January 2017, so board appointments will take place in the fall of 2016.
- **New Executive Director:** The FNFC Executive Director has submitted a briefing to the Council recommending a succession plan for approval that would see a transition to a new ED by the end of the 2016-17 fiscal year (14 month transition plan).
- **Natural Resource Secretariat:** Arising from the 2009 Cooperation Protocol, it's been recommended that the BC First Nations natural resource councils develop a coordinated and defined approach for consistent and structured information sharing and communication (FN Energy and Mining Council, FN Forestry Council, and FN Fisheries Council). The FNFC has offered to host the meetings at our offices and provide support staff to coordinate and record information to enable shared perspectives on resource development, cumulative effects, and related habitat impacts as required and identified. This has the potential to expand to include other First Nations organizations.
- **Economic Fisheries Development:** Support/further expansion of the funding envelope for the Pacific Commercial Fisheries Diversification Initiative (PCFDI) to support continued development of economic development in BC First Nations fisheries is required. Currently 97 nations are engaged in 24 Commercial Fisheries Enterprises (CFEs) which employ directly and indirectly up to 600 people; however the PCFDI program may sunset unless supported by Treasury Board in the upcoming budget.
- **Implementation of Cohen:** The mandate letter advised the Fisheries Minister to "Act on the recommendations of Cohen to restore sockeye salmon stocks on the Fraser River." The FNFC recommends the full implementation of the recommendations of the Cohen commission to ascertain and mitigate the risks to wild salmon populations including the exposure to open net pen aquaculture operations.
- **Case law implementation:** Specific cases have been languishing in the interpretation and implementation stages, which has led to chronic frustration among BC First Nations. *Sparrow*, *Gladstone*, *Ahousaht*, *Tsilhqot'in* and many other cases have all identified that Aboriginal rights must be respected and that deeper consultation with First Nations is required. We also recommend that DFO at the national level consider a BC based program response similar to the *Marshall* response to address outstanding matters of co-governance, and to avoid potential future litigation.



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POLITICAL ENVIRONMENT

The FNFC operates at the intersection between the political and operational environments. We work closely with the First Nations in the province and the regional fisheries organizations, while also supporting policy analysis and advice in a challenging and evolving political environment. Also, while the FNFC is mandated by the *First Nations Fisheries Action Plan*, it receives funding from DFO and therefore must advance First Nations aspirations to implement Aboriginal Rights while collaborating with DFO on the objectives of co-management, shared program delivery, communication, and agreements.

The All Chiefs Task Force recommended in 2010 that councils develop a cohesive voice to advance the interests of First Nations in BC. The FNFC has been working to achieve that goal among BC First Nations on fisheries matters. A united voice would allow BC First Nations to engage in a coherent and cohesive way with governments on management, policy, and legislative decision making.

Federal Government Environment:

The federal government has introduced several changes to fisheries laws, policies, and regulations since 2012 with scant consultation prior to implementation (e.g. omnibus Bills C-38 and C-45). Many of these changes have resulted in weakened protection for fish and fish habitats, devolution of DFO responsibility to other government agencies, and aggressive development of policy and management guidelines by the government (e.g. Fisheries Protection Policy) that ease the path for industrial regulatory approvals at the expense of aquatic species and habitats. We have observed a major shift in government toward economic priorities at the cost of environmental protection. Industry development is taking precedence over sound scientific and precautionary processes. Lack of recognition and accommodation of First Nations jurisdiction and authority is an ongoing issue.

The election of a new Liberal federal government in October 2015 has given hope for a new direction and a new relationship with DFO. First Nations were particularly encouraged by the appointment of an indigenous Fisheries Minister, the Honorable Hunter Tootoo. Prime Minister Justin Trudeau's campaign commitments aimed to address a number of issues related to fisheries, aquatic resources and habitat:

- Restore funding to support federal ocean science and monitoring programs, to protect the health of fish stocks, to monitor contaminants and pollution in the oceans, and to support responsible and sustainable aquaculture industries on Canada's coasts;
- Use scientific evidence and the precautionary principle and take climate change into account when making decisions affecting fish stocks and ecosystem management;
- Work with the provinces, territories, Indigenous Peoples, and other stakeholders to better co-manage Canada's three oceans;
- Act on recommendations of the Cohen Commission on restoring sockeye salmon stocks in the Fraser River.
- Work with the Minister of Transport to review the previous government's changes to the *Fisheries and Navigable Waters Protection Acts*, restore lost protections, and incorporate modern safeguards.



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PROTECTION OF RIGHTS AND SUSTAINABLE FISHERIES

DFO Engagement and Consultation:

Under the previous federal government, DFO had been engaging in discussions, information sharing and consultation with First Nations “after the fact” (e.g. Fisheries Protection Policy [FPP], Aquaculture Activity Regulations [AAR], etc.), and excluding First Nations from the development of new policies, regulations, and legislation. As DFO funding and capacity were cut in pursuit of operational and funding efficiencies, they increasingly sought ‘aggregated’ approaches to engaging with First Nations. Over the past few decades DFO moved from community/Nation level engagement, to engaging aggregate groups (regional), then super-aggregates (e.g. watershed processes such as the Fraser Forum), and finally smaller, more selective groups (e.g. DFO engaging the Salmon Coordinating Committee [SCC] in the Commercial Salmon Allocation Framework [CSAF] revision process) without broader engagement or proper consultation with BC First Nations.

The FNFC met with the Deputy Minister of DFO and expressed that BC First Nations were frustrated with the consultation process. We also expressed a desire to engage in high level policy dialogue with Indigenous and Northern Affairs Canada (INAC) at the table so that Aboriginal Title and Rights and Treaty Rights could be properly addressed. The FNFC is developing an agenda for this discussion moving forward, and this will be the focus of our 2016 FNFC Annual General Assembly in March. We also look forward to working with the new federal government to get back to Nation-to-Nation relationships, and to developing approaches to consultation on fisheries that meet the needs of both government and First Nations.

Nuu-chah-nulth Justification Trial:

On March 9, 2015, the five Nuuchah-nulth Nations involved in the *Ahousaht et al. v. Canada [2009]* case returned to the BC Supreme Court to begin the next phase of the legal process for implementation of their Aboriginal Rights to fish and sell fish. In this new trial, Canada must prove that DFO’s past and on-going infringements of fishing rights can be justified by federal legislation and societal interests. The trial adjourned for the Christmas break and resumed on January 18, 2016. Daily updates on the trial are being shared by Uu-a-thluk, the fisheries department at the Nuuchah-nulth Tribal Council. Visit www.uuathluk.ca or find them on Facebook for more information or to subscribe to updates on the trial.

CAPACITY DEVELOPMENT

The FNFC continues to support First Nations capacity development (skills, structures, processes, resources, governance, technical support, etc.) to facilitate engagement in fisheries policy and management decision making processes. Recognizing that First Nations in isolation lack the resources and capacity to address broader issues, the 2010 All Chiefs Task Force recommended that First Nations develop a cohesive/united voice to advance rights and interests. In support of this recommendation, the FNFC has established formal relationships with First Nations regional fisheries organizations through our Charter process, and with First Nations leadership through the Declaration and Protocol with the First Nations Leadership Council (FNLC).

BC First Nations have also formed province-wide operational committee processes that are coordinated by the FNFC, including the Salmon Coordinating Committee (SCC) and the Aquaculture Coordinating Committee (ACC). Participation in these processes is based on the FNFC’s regional model of 14 geographic regions.

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Aquaculture

Tier 1 Aquaculture Coordinating Committee (ACC):

First Nations in BC share a common interest in increasing decision-making and control with respect to the regulation, policy, planning and management of aquaculture to promote the protection, restoration and sustainability of fisheries, aquatic resources and ecosystems. Additionally, First Nations in BC have the right to be fully informed and involved in decisions that have the potential to adversely impact Aboriginal rights. As such, the FNFC established the Aquaculture Coordinating Committee (ACC) in 2013 to increase First Nations engagement in the management of aquaculture at local and regional levels, and to provide coherent and cohesive advice on policy changes. The ACC brings together First Nations participants from across the province to explore areas of common interest.

There has been strong progress in building this Tier 1 foundation, but major challenges persist regarding government responsibilities around consultation and meaningful engagement of First Nations in regional aquaculture management processes. In an environment of limited resources and capacity, the ACC is supporting the development of proactive approaches, tools and resources to help First Nations advance their interests related to aquaculture.

The ACC meets next on February 11, 2016. The meeting will focus on strategizing for Tier 2 engagement with DFO in the coming year and identifying priority topics for this engagement.

DFO Aquaculture Advisory Processes:

DFO continues to encourage First Nations to participate in its Tier 3 aquaculture multi-stakeholder advisory processes called Aquaculture Management Advisory Committees (AMACs). However, through the ACC Tier 1 process, the FNFC has heard ongoing concerns from First Nations about these multi-stakeholder processes. As directed by the ACC, FNFC staff have communicated the following issues to DFO:

- DFO's AMAC tables are heavily focused on aquaculture business and operations, and are not an appropriate place for First Nations to engage with DFO on high-level policy and management issues that have consequences for Aboriginal rights;
- Local and regional First Nations fisheries organizations do not have dedicated funding to work on aquaculture policy and management. Participants in the Tier 1 ACC process are already working off the sides of their desks to attend aquaculture meetings. Robust First Nations engagement in any aquaculture advisory process would require additional and stable funding at the regional level;
- With the proper resources, First Nations could structure themselves to engage effectively at Tier 1, Tier 2 and even Tier 3 levels regarding aquaculture. However, in light of current resourcing, sitting at a multi-stakeholder advisory table to discuss operational issues associated with the aquaculture industry is not a priority.

In light of these concerns and on the advice of the Tier 1 Aquaculture Coordinating Committee, the FNFC has made the following recommendations to DFO regarding First Nations engagement in Aquaculture policy and management:

- DFO should continue to support the development of the ACC as a strong Tier 1 table comprised of First Nations delegates from across BC;
- DFO should engage directly with the ACC to collaboratively develop a Tier 2 structure for engagement and dialogue on policy and legislative developments that are important to BC First Nations; and
- DFO should commit to working with First Nations to develop a high-level science review process to address fundamental concerns such as the recently-reported detection of the European ISA virus in farmed and wild fish in BC.

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First Nations Access to FSC Fisheries (Salmon Coordinating Committee)

First Nations' rights to fish for food, social and ceremonial (FSC) purposes take precedence, after conservation, over all other uses of the resource. However, both DFO and the FNFC have heard that many First Nations are not meeting their FSC needs. This may be the result of insufficient allocations, lack of ability to fish at preferred times and locations using preferred methods, or other barriers.

In most situations, DFO and First Nations do not currently engage in a meaningful post-fishing season review to assess whether FSC needs were met. Prior to each fishing season, DFO seeks to sign fisheries agreements with First Nations on their FSC allocations, but if an agreement is not reached, DFO issues a communal fishing license based on its estimates of the Nation's FSC fishery. Some Nations have expressed concerns about the lack of transparency in how DFO determines these FSC estimates, and are hesitant to agree to insufficient FSC allocation agreements for fear of being constrained to those inadequate numbers in the long term. While there is variation among First Nations in their ability to access FSC fish from year to year, the FNFC has consistently heard that DFO is not managing the resource to ensure that adequate FSC access is the first priority after conservation.

The FNFC's Salmon Coordinating Committee (SCC), consisting of 13 delegates from the 14 FNFC regions, works to advance common BC First Nations salmon management priorities and engages with DFO in doing so. In 2013, in response to concerns about FSC access from First Nations, a sub-committee of the SCC engaged with DFO staff to develop a mechanism that enables annual post-season reviews of FSC fisheries. Through that work, many existing barriers to First Nations accessing sufficient FSC fish have been identified.

Nonetheless, there are significant challenges to assessing FSC issues and solutions at the province-wide level. First, there is significant variation in how individual First Nations approach their FSC fisheries; some do not make specific FSC requests of DFO, some feel DFO has no business accessing information regarding FSC needs and harvests, while others simply do not have the resources to monitor FSC fisheries. Further, while some First Nations are able and willing to provide data for assessing whether annual FSC needs are met, the scale and scope of that data is often not consistent with DFO's data, making analysis challenging.

To ensure that BC First Nations have adequate access to FSC fish, more work is required to understand how First Nations develop and communicate their FSC needs, how DFO allocates fishing opportunities, and to identify constraints and potential solutions to FSC access even if adequate allocations are provided. The FNFC and the SCC are prepared to work with DFO to improve FSC outcomes for First Nations. The success of such work will require, however, that DFO make First Nations FSC fisheries the primary management priority for the resource, after conservation, as is required by Canada's constitution.

Pacific Salmon Commission

The PSC met in Portland the week of January 11, 2016. The PSC First Nations Caucus met during this time to provide information and updates to Commissioners to prepare for PST negotiations. Two new FN Caucus members joined the meeting – Mike Baird (Southern Panel) and Eleanor Magrath (Chinook Technical Committee). In its coordination and support role to the FN Caucus, the FNFC supported the application and nomination process for these new FN Caucus members. The FN Caucus also met with the DFO RDG to discuss issues such as First Nations capacity and funding issues and Pacific Salmon Treaty (PST) re-negotiations.

Five PSC chapters are set to expire at the end of 2018: Transboundary Rivers, Northern Boundary Sockeye Pink and Chum, Coast-wide Chinook, Southern BC/Washington/Oregon Coho, and Southern BC/Washington Chum. The FN Caucus has strongly urged DFO to engage in broader consultations with BC and Yukon First Nations whose rights may be impacted by the negotiations. DFO has sent a letter to the FNFC with a preliminary introduction to their PST consultation approach. They hope to use existing engagement and communication processes and mechanisms to communicate with First Nations about PST re-negotiation. DFO

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also indicated that First Nations organizations will be receiving letters outlining the PST renegotiation and renewal process. The FNFC and the FN Caucus will be working with DFO to identify opportunities for communication and engagement, and will continue to strongly urge DFO to conduct meaningful consultation with First Nations.

Potential Listing of Eulachon under the *Species at Risk Act (SARA)*

Since 2011, the FNFC has worked closely with First Nations in BC to facilitate information sharing and to support the capacity of BC First Nations to effectively participate in the SARA process associated with the potential listing of three designatable units (DUs) of eulachon: Fraser, Central Coast and Nass/Skeena DUs. Throughout this time period and as information became available, the FNFC facilitated numerous Tier 1 and 2 meetings, workshops and teleconferences to identify issues of common concern and to work with First Nations to chart a path forward through the SARA process.

A recent outcome from this engagement was limited resources for the FNFC, the Central Coast Indigenous Resource Alliance (CCIRA) and the Lower Fraser Fisheries Alliance (LFFA) to each prepare a technical review of DFO's draft report entitled "*A Socio-Economic Analysis of the Potential Impacts of Adding Two Endangered Eulachon (*Thaleichthys pacificus*) Designatable Units to Schedule 1 of the Species at Risk Act.*" The FNFC's technical review focuses on evaluating the Treasury Board of Canada Secretariat's *Cost-Benefit Analysis Guide: Regulatory Proposals* methodology that DFO used to assess the socio-economic impacts of adding endangered eulachon populations in two DUs to the federal *Species at Risk Act (SARA)* Schedule 1.

After conducting the technical review of the analysis, the FNFC has serious concerns with how DFO evaluates First Nations' socio-economic considerations in relation to SARA. The FNFC submits that DFO's application of the Treasury Board of Canada Secretariat's *Cost-Benefit Analysis Guide: Regulatory Proposals* to the proposed listing of the Fraser and Central Coast Eulachon DUs provides a distorted view of the socio-economic impacts, costs and benefits. Furthermore, the FNFC asserts that the methods used by DFO for estimating potential socio-economic impacts experienced by affected First Nations communities are incomplete, out-of-date, methodologically incorrect, or simply don't make sense. Further analysis is contained in the FNFC's technical review memo, including how the analysis could be improved to better reflect the socio-economic impacts of a potential SARA endangered species listing. Please contact the FNFC if you would like to request a copy of the technical review. DFO has not yet distributed the final draft of the socio-economic analysis for public review.

Current Status of the Proposed Listing: The last stage of the SARA listing process for the three eulachon DUs will begin once the socio-economic analysis is available for public review and comment. Once the review of the socio-economic analysis has been completed, DFO will consider all of the available information they have compiled or received during the entire consultation process to date, and DFO will develop advice on the proposed listing (list, do not list, or refer back to COSEWIC). The Minister of DFO then sends the listing advice to the Minister of Environment, as the federal agency responsible for the Species at Risk Act. Given the uncertainties with DFO's consultation timelines, it may be several months to a year before DFO provides listing advice for eulachon DUs in the Fraser, Central Coast and Nass/Skeena.

Please visit the DFO website for up-to-date information on SARA consultations in the Pacific Region: http://www.pac.dfo-mpo.gc.ca/consultation/sara-lep/cal-eng.html#Upcoming_Consultations



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ENHANCED FIRST NATIONS ECONOMIC PERFORMANCE

The FNFC continues to support the development of enhanced economic performance in fisheries among BC First Nations. Over the last 25 years of federal program delivery, high capacity First Nations fisheries management infrastructure has been developed among our Nations for fisheries management functions. Annual contributions to First Nations economic fisheries from DFO across programs (AFS, AAROM, ATP, PICFI) average between \$47 and \$59 million. Over 300 direct positions exist – management, technicians, guardians, biologists, etc. This infrastructure needs to be embraced, supported and guided in a coordinated fashion among First Nations. The 24 Communal Fishing Enterprises (CFEs) in BC currently receive \$150,000.00 each in PICFI funding (\$3.6M total).

DFO has initiated a Business Development Team (BDT) model to centralize and coordinate support for CFEs in accessing funding for marketing, business planning, and related business development. The BDT is working under a flow-through contract to the FNFC, and the team at Grand Basin Capital has been retained for this role. They have met with and are now working with the 25 CFEs in BC to develop applications for PICFI Enterprise Development funding, and assist with updating business and training plans. Separate from the BDT, DFO has retained the services of Edwin Blewett of Counterpoint Consulting Inc. to provide confidential third party independent evaluations of the PICFI Enterprise Development funding applications.

STRATEGIC OUTREACH AND COMMUNICATIONS

Strategic outreach through effective communication is one of the key pillars of the FNFC strategic plan. As per the 2010 *All Chiefs Task Force* recommendations, a key priority for the FNFC is to build a united voice among BC First Nations on fisheries, and success requires communication with all First Nations in BC to support engagement, as well as communication with other audiences such as government, ENGOs, media, etc.

First Nations fisheries communications is a dynamic process that involves many parties. We emphasize 2-way communications with BC First Nations to ensure that our work a) reflects the aspirations and priorities of BC First Nations and b) supports the work of BC First Nations on fisheries matters at the community and regional levels. The FNFC regional model itself (based on 14 geographic regions in BC) serves as a network for 2-way communication. Delegates bring their regional perspectives to the FNFC table, and also bring information from the FNFC back to their regions. We also strive to have participation from each of the regions in the sub-committee and coordinating committee processes hosted by the FNFC (e.g. ACC, SCC) in order to account for the diversity of fisheries activities, geography, priorities, and expertise of First Nations across the province.

The FNFC provides resources to support regional communications, e.g. briefing notes, communiques, etc. Many of the 14 regions have established processes through which FNFC delegates may communicate (e.g. UFFCA, LFFA, CCIRA, CHN, etc.). For other regions that do not have established regional processes, regional reporting may be more of a challenge.

Overview of Key Communication Tools and Processes

Public: FNFC website; FNFC communique; social media (Twitter, Facebook); news releases; Action Plan progress reports (5-year report, annual reports); FNFC foundational documents (Strategic Plan, Action Plan, IOG Report, etc.).

Tier 1 (BC First Nations and FN fisheries program staff): FNFC Tier 1 email distribution list (by subscription – currently over 500 subscribers); briefing notes, meeting notes and reports, analysis pieces, other resources; FNFC monthly update teleconferences (second Wednesday of each month); Tier 1 meetings, teleconferences, workshops and other events (e.g. eulachon calls, Water

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Wednesdays, etc.); FNFC Assembly (Tier 1 and Tier 2 components); FNFC Science Series (series of workshops on priority science topics); Tier 1 workshops, information sessions, community dialogue sessions.

Tier 1 Committees and Working Groups: Salmon Coordinating Committee; Aquaculture Coordinating Committee; Water for Fish Initiative (informal communication network); FishTank Policy Dialogue (3 to 4 small, focused Tier 1 sessions annually – FNFC solicits advice and guidance from BC First Nations fisheries orgs prior to initiating broader discussions)

First Nations Organizational Relationships: Regional Charters – agreements between FNFC and regional fisheries orgs, promotes enduring relationships, dialogue, working together, FN-to-FN process; Declaration and Protocol between FNFC and FNLC – affirms intention to work together, exchange information, etc. – parties agreed that updating the Declaration is a priority for this year; PTO Reporting – FNFC provides reports to the three PTOs – BCAFN, UBCIC, FN Summit.

Tier 2 Communications: Joint Steering Committee (JSC) – advice on strategic priorities to JE, updates and recommendations; Joint Executive (JE) – formal approvals, monitor progress of the Commitment to Action Workplan, technical table to carry out direction under MOU with Minister; MOU between FNLC and DFO Minister – ensures clear line of communication, commits parties to 2 meetings per year, FNFC also provides coordination and/or communications support to DFO for various engagement processes and information sessions with First Nations (e.g. FPP info sessions, AAR info sessions, AMAC etc.).

POLICY BRIEFS

DFO Commercial Salmon Allocation Framework (CSAF)

Supported by the First Nations Fisheries Council (FNFC), the Salmon Coordinating Committee (SCC) is a committee made up of delegates nominated by regional fisheries organizations from 13 FNFC regions, with the purpose of advancing First Nations priorities and recommendations in salmon management and planning

Since October 2013, DFO has engaged with the SCC and the Commercial Salmon Advisory Board (CSAB) to update the Commercial Salmon Allocation Framework. After several months of Tier 1, 2, and 3 discussions, the SCC submitted a proposal for recommended changes to the CSAF that enable greater certainty and access to the commercial salmon fishery for BC First Nations. This proposal received the support of several First Nations and First Nations organizations. DFO announced approved changes to the CSAF on June 30 2015, in line with both the SCC's and CSAB's recommendations:

- Moving from annual to longer-term (5 years) allocation arrangements,
- Changing the coast-wide approach to an area-based management approach based on species, fleet, and fishery production area levels
- Discontinuing annual adjustment of harvest shares using “sockeye equivalents”

Additionally, DFO made a commitment to consider SCC and CSAB-led proposals for more flexibility to harvest salmon shares as part of a limited implementation of the updated CSAF, with testing to begin in the 2016 fishing season prior to broader implementation in future years. SCC delegates and their technical support staff worked with regional First Nations organizations on four proposals from the following FNFC regions: South Vancouver Island and Mainland Inlets, Central Coast, North Coast, and Upper Skeena. These proposals are all based on harvest shares associated with licences acquired through DFO's Pacific Integrated Commercial Fisheries Initiative (PICFI) and Allocation Transfer Program (ATP). The SCC envisions that the implementation of a number of pilot First Nations fisheries that utilize these harvest shares will facilitate broader implementation of this approach and allow First Nations to finally realize the full benefits of programs that were created to support their increased participation in Pacific commercial fisheries. Additionally, these initial First Nations proposals for 2016 promote the increased involvement of First Nations individuals in fisheries management, monitoring, and catch reporting, the

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flexibility to transfer harvest shares between marine and in-land fisheries, as well as increased coordination and collaboration amongst First Nations on fishing plans.

The SCC, CSAB, and DFO have also discussed a number of CSAB-driven proposals for increased flexibilities, some of which include potential opportunities for First Nations collaboration and benefits. Nevertheless, the SCC and FNFC have also articulated concerns with some of the CSAB proposals and to the CSAB and DFO. All proposals for increased flexibilities will be subject to review using an evaluation framework that includes a set of guiding principles, objectives, and criteria developed by the SCC, DFO, and CSAB. The assessment and finalization of all proposals are scheduled to occur until the end of January, with finalized proposals identified within the draft Integrated Fisheries Management Plans in March 2016. The outcomes from approved fisheries will be used to determine the feasibility of continued and/or broader implementation of flexibilities that enable greater economic and employment benefits for First Nations in BC.

BC Water Sustainability Act and Development of Groundwater Regulations

The *Water Sustainability Act (WSA)* received Royal Assent in May 2014 and will come into effect in 2016. The most significant change is groundwater regulation and licensing. There are significant unresolved governance and jurisdiction issues related to the assumed jurisdiction of the Province over resources that are subject to Aboriginal Title and Rights and Treaty Rights. Water is a shared resource and is critical for fish habitat, environmental health, community health and social wellbeing, and potentially for community economic development. In communications to the Province of BC, the FNFC has articulated that the *Water Sustainability Act* should respect and accommodate Aboriginal water dependent rights (e.g. fishing, birding, and gathering etc.), and that First Nations' participation in developing the legislative and regulatory framework and in the decision-making process around water use and management is required. Through various processes, First Nations have consistently and clearly articulated that they wish to develop respectful government-to-government relationships with the Province of BC that are based on recognition and accommodation of Aboriginal Title and Rights and will work toward reconciliation of Aboriginal and Crown titles and jurisdictions. The FNFC has strongly encouraged the Province to meaningfully engage all First Nations on the implementation of the *Water Sustainability Act* and to provide resources to First Nations to engage in water governance and management processes.

BC First Nations may be well positioned to pursue funding to build capacity for water governance and management from provincial government revenues created through WSA fees and rentals, and there are also opportunities under the WSA for First Nations to govern water with the Province, specifically through water sustainability plans. The FNFC recommends that First Nations write to the BC Minister of Environment to highlight issues or concerns related to the WSA and the regulatory development process, and outline clear expectations for timelines, process for engagement, and capacity requirements for development/implementation of WSA and regulations. The FNFC also recommends that First Nations assess current water plans to identify how various water uses in their territories may affect their Title and Rights and Treaty Rights.

Legislative Review and Cabinet's Endpoint Directive

The Liberal Government has made a commitment to review and reverse the most problematic legislative amendments that were posed unilaterally on First Nations by federal government without consultation, and reverse measures that conflict with Aboriginal and Treaty Rights, case law and good governance. This includes the legislative amendments that were passed under the Conservatives in 2012 with omnibus bills C-38 and C-45. As part of this review, First Nations also wish to address DFO's Cabinet "Endpoint Directive".

The Nuu-Chah-Nulth Justification trial brought to light a federal Cabinet directive referred to as the Endpoint Directive, which places a limit on the total amount of fish available to BC First Nations through any means of acquisition, including communal licenses, Aboriginal Fisheries Strategy (AFS), Allocation Transfer Program (ATP), Pacific Integrated Commercial Fisheries Initiative (PICFI), treaty, litigation, etc. Capping the First Nations share protects the lower priority recreational and commercial access to fish; therefore, the directive is contrary to the principle of Honour of the Crown, and contrary to Canadian jurisprudence and case law regarding the government's obligation to consult with First Nations where there is the potential to infringe on Section 35(1) Aboriginal Rights under the constitution.

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The FNFC put forward a resolution at the PTO meetings in June 2015 to raise awareness among the Chiefs and their Nations, and to develop a broader communications strategy to those not in attendance. The resolution also called for the Leadership Council to engage with other federal parties to determine their respective platforms on supporting Aboriginal Rights and Reconciliation, particularly the elimination of the “endpoint directive”.

It is hoped that the new Liberal government’s commitment to undertake a full review of regulatory law, policies and operational practices that are at odds with Aboriginal Rights will result in repealing this directive.

FNFC Assembly and Tripartite Discussion Regarding Aboriginal Rights (First Nations, DFO and INAC)

The FNFC has heard frustration from BC First Nations that DFO states that they doesn’t have the mandate to speak to Aboriginal Rights, yet they make management decisions that impact these rights. The FNFC met with the DFO Deputy Minister in March 2015 and proposed the formation of a tripartite table that includes Indigenous and Northern Affairs Canada (INAC), DFO and FNFC to begin to resolve this disconnect.

The FNFC had planned to focus on this initial dialogue as well as the need to develop clarity in process and roles of the federal departments in addressing Aboriginal Rights at the Fall Assembly in November 2015; however, due to the federal election in October, the FNFC re-scheduled the Assembly to **March 1-3, 2016**. The FNFC looks forward to this discussion with the new Liberal government, as reconciliation is high on their list of priorities.

The proposed tripartite discussion with the two federal departments could set the foundation for a broader inter-departmental dialogue process that could expand to other departments such as Natural Resources Canada, Environment Canada, Transport Canada, etc., as these departments are involved with issues that affect aquatic resources and habitat.

For more info on the FNFC Assembly or to register, visit our Assembly page on our website at <http://www.fnfisheriescouncil.ca/communications/fnfc-annual-fisheries-assembly/>

For more info about the First Nations Fisheries Council of British Columbia, please contact us!
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