



First Nations Fisheries Council of British Columbia

BC CHIEFS & COUNCILS UPDATE

FEBRUARY - MARCH 2018



Current Priorities – Implementation Context

- Fisheries are integral to First Nations for nutritional, social, economic, cultural and spiritual well-being. Fisheries have always formed the basis of our economies, as well as the social fabric of our communities through the inter-generational sharing of knowledge, ceremony, arts, and community fishing practices.
- The Federal and Provincial Governments have each made a commitment for reconciliation with Indigenous Peoples a key part of their policy platforms, and have committed to adopting UNDRIP and to building relationships based on respect, collaboration and partnership. The Crown must recognize First Nations' historic and uninterrupted role in fisheries pre-contact, and the role we continue to play in honoring, protecting, managing and using aquatic resources.
- Recognition of Aboriginal Title and Rights and Treaty Rights will be a fundamental part of reconciliation, including the recognition of the right to manage, protect, and harvest fish and aquatic resources and their habitats and ecosystems. First Nations look forward to working with the Crown toward achieving constitutionally protected Section 35.1 Aboriginal Fisheries by prioritizing fisheries for food, social, ceremonial and economic rights-based purposes for our communities.
- The federal government's mandate includes specific direction to use precautionary management approaches, restore funding to science and monitoring programs, consider climate change in decision making, act on the Cohen Commission recommendations, review the previous government's changes to the *Fisheries Act* and *Navigation Protection Act*, and restore robust oversight and thorough environmental assessment processes. First Nations look forward to working with the federal government on returning to science-based approaches, including the recognition and application of Aboriginal Traditional Knowledge (ATK).
- The Crown has an obligation to consult First Nations and provide meaningful engagement opportunities in fisheries management. In order to achieve this, First Nations require the capacity to engage as equal partners on matters related to fisheries management and policy decision-making. First Nations in BC have spent the last several years building capacity and processes for more effective engagement; in order to further build and maintain this capacity, increased funding for fisheries processes and consistent resourcing is required.

“A UNITED VOICE FOR FIRST NATIONS FISHERIES”



- The federal and provincial governments have set a higher bar for openness and transparency. First Nations very much look forward to more open dialogue with Fisheries and Oceans Canada and the BC Ministries of Environment, Agriculture and Forests, Lands, Natural Resource Operations, and Rural Development as we work to advance Aboriginal Title and Rights and Treaty Rights in the fishery, and to protect and manage aquatic resources and habitat for future generations.
- We look forward to building a renewed relationship with the Crown aimed to achieve successful Aboriginal Fisheries that ensure First Nations in BC have access to the diversity of resources in their territories, now and into the future, that will support their health, cultural and community well-being and provide for their economic prosperity.

Pacific Salmon Treaty Renewal

The 1985 Pacific Salmon Treaty (PST) commits Canada and the US to work together on the research, conservation, and management of Pacific salmon. Five PST chapters are set to expire at the end of 2018:

- Transboundary Rivers
- Northern BC and Southeastern Alaska
- Chinook Salmon
- Coho Salmon
- Southern BC/Washington Chum Salmon

Both the US and Canada aimed to complete negotiations by December 2017 to allow one year for domestic ratification. Negotiations for Chapters are close to being finalized except for the Chinook and Northern BC and Southeastern Alaska Chapters. Outstanding issues are related to agreeing on appropriate management measures to address conservation concerns.

During the Pacific Salmon Commission's (PSC's) most recent meeting in January 2018, the First Nations Caucus¹ met to formulate shared interests and positions for the PST Chapters still under negotiation. The FNFC hasn't heard any plans from DFO about additional consultations with First Nations on PST chapters prior to ratification, despite requests for consultations due to the potential infringement on Aboriginal Rights. Additionally, the Fraser River Sockeye and Pink Salmon chapter is set to expire at the end of 2019; negotiations on new Chapter wording are expected to begin this year. The FNFC is urging First Nations communities to request direct consultations with DFO on PST renewal as required.

Objective: DFO must consult with First Nations on the negotiated US-Canada agreements prior to the ratification of these Treaty Chapters. Given the significance of these international negotiations, First Nations are highly encouraged to contact DFO directly to request bilateral meetings.

¹ Supported by the FNFC, the Pacific Salmon Commission's (PSC) First Nations Caucus consists of First Nations participants who have been appointed by Canada to participate in the Pacific Salmon Commission process at the Commissioner, panel, and technical committee levels. First Nations Caucus members are integral to the process as the Caucus includes the First Nations commissioners, and panel and technical committee members.

First Nations Access to FSC Fisheries

First Nations in many parts of BC have been unable to meet their food, social and ceremonial (FSC) fish needs, for various reasons including insufficient allocations, low returns, environmental conditions, factors that hinder the ability to fish at preferred times/locations using preferred methods, and other barriers. This situation is likely to worsen over time, as increasing conservation and environmental pressures exacerbate the challenge of securing food fish access.

According to the Supreme Court of Canada, First Nations' Rights to fish for FSC purposes take precedence, after conservation, over all other uses of the resource; however, First Nations have concerns about DFO's decision making around access and allocation. Common perceptions are that DFO is not managing fisheries according to the FSC priority, First Nations bear the brunt of conservation, and that the Provincial government, in managing steelhead and freshwater fisheries, abdicates its responsibility of upholding the FSC constitutional priority to the federal government.

First Nations must work together to ensure progress on this important issue. As mandated by the *BC First Nations Fisheries Action Plan*, the FNFC will advance BC First Nations interests by addressing challenges regarding FSC access and allocation, which often translates to policy action at national and provincial levels. However, the success of any policy regarding BC First Nations access and allocation to FSC fisheries is contingent on well-coordinated and strategic actions by rights holders at the community and Nation levels.

Objective: The federal and provincial governments must manage fisheries to meet conservation objectives and to ensure that the FSC priority is upheld. The goal of successful FSC fisheries is likely a unifying issue for BC First Nations – direct engagement with the responsible federal or provincial Minister and senior staff on this issue may be beneficial to changing governments' approach to FSC fisheries and managing for First Nations Constitutional priority.

Federal Environmental and Regulatory Review

The previous federal government made changes to environmental legislation through two Omnibus Bills which passed through Parliament and received Royal Assent in 2012. In June 2016, the federal government announced it would be undertaking a review of changes to the *Fisheries Act*, *Navigation Protection Act*, *Canadian Environmental Assessment Act* and the National Energy Board. The FNFC welcomed this government's commitment to "restore lost protections and incorporate modern safeguards".

First Nations in BC have high expectations regarding the outcomes of the review, which provides an opportunity for this government to demonstrate real action on several of its major commitments, namely building a renewed nation-to-nation relationship with Indigenous Peoples, implementation of UNDRIP, and co-management with First Nations and other levels of government.

The FNFC coordinated the development of a First Nations Coalition response to phases 1 and 2 of the federal reviews of the *Fisheries Act* and the *Navigation Protection Act*. The submissions and recommendations were supported by resolution by the UBCIC, BCAFN, and First Nations Summit. The submissions have been well

received by the federal government, and we will soon be learning of the potential amendments to these two acts, as well as the *Canadian Environmental Assessment Act* and the National Energy Board process.

DFO has stated that the draft legislation for proposed amendments to the *Fisheries Act* will be tabled sometime during the next sitting of Parliament, which begins on January 29, 2018. The FNFC is working with DFO to organize a webinar on February 9, 2018 to provide further information on the proposed amendments and how First Nations can engage in the Parliamentary process. We are also working on organizing an in-person session in March.

Objectives: We are urging the Minister to address the concerns raised by First Nations and to modernize the Acts in a manner that recognizes and respects Aboriginal and treaty rights within the meaning of Section 35(1) of the Constitution Act, 1982 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). These concerns must be properly addressed to meet the mandate of the review, and most importantly, for the Honour of the Crown to be upheld.

National Indigenous Program Review (NIPR):

The federal government is working to meet their platform promises to review Canadian laws and policies that affect Indigenous Peoples and bring them in line with case law and the nation-to-nation relationship. This is occurring on a number of fronts both politically and operationally.

The previous National Indigenous Fisheries and Aquaculture Forum (NAFF III) Steering Committee continues to work at a national scale on advancing First Nations' interests in Canada on economic fisheries issues and programs. They are now working as an interim national panel to oversee and coordinate a review of DFO programs supporting Indigenous fisheries in Canada, and are called the National Indigenous Fisheries Institute (NIFI).

Engagement and information sessions have been occurring across Canada, and the review so far has focused on the PICFI and AAROM programs. The focus will soon expand to the AFS program, the Guardian program, and perhaps also elements of the emerging Oceans Protection Plan.

More information is available on the NIFI website at www.indigenousfisheries.ca.

Federal Cabinet “Endpoint Directive” for Aboriginal Fisheries

A Federal Cabinet directive from pre-2009 sets a hard cap on the amount of fish that First Nations can access through any means (Treaty, FSC fisheries, economic fisheries, etc.). DFO has developed a “Coast-wide Allocation Framework” to ensure that total allocations to First Nations do not exceed the “endpoint” amount. Through the Allocation Framework, DFO has set a “notional allocation” for each First Nation that can’t be exceeded.

The Endpoint Directive, the *Coast-wide Allocation Framework* and the notional allocations are inconsistent with the constitutional priority of Aboriginal Fishing Rights. It does not keep with the Honour of the Crown or the principle of good faith negotiations for DFO to rely on an “endpoint” analysis rather than an Aboriginal Rights analysis to guide negotiations with First Nations regarding implementation of their Fishing Rights.

Objective: The ‘endpoint’ directive must be repealed. This action would be consistent with the Government of Canada’s Working Group of Ministers mandate to review the laws and policies related to Indigenous Peoples to “ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and Treaty Rights”.

Wild Salmon Policy Implementation

DFO engaged First Nations and others on Wild Salmon Policy implementation throughout the fall. The FNFC’s Salmon Coordinating Committee² (SCC) met with DFO several times to identify gaps and priorities to be addressed during implementation and to discuss opportunities for collaboration. The SCC has raised concerns to DFO about the lack of resources for this phase of implementation, but still expressed interest in the collaborative development of a draft implementation plan.

DFO established a multi-partner working group of participants from the SCC, DFO, BC Province, Yukon Salmon Subcommittee, and the Pacific Salmon Foundation, which met from May through August 2017 to collaborate on an initial draft implementation plan. While these meetings mark a positive step in collaboration, SCC participants continue to highlight outstanding issues that will require further Tier 1 and 2 discussion.

DFO circulated a draft implementation plan in the fall prior to the regional consultations. The FNFC and the SCC worked with First Nations and Mandell Pinder LLP to develop a submission to DFO on the draft, which was submitted in December. FNFC received six letters to DFO from various First Nations and regional First Nations organizations all around the Province expressing support for FNFC’s submission. A response from DFO has not yet been received. The working group plans to meet again soon.

The SCC maintains it is not a decision-making body for any First Nation or group of FNs, and that consultations with the SCC do not satisfy the requirement for bilateral consultation between DFO and any First Nation.

Objective: DFO must assign sufficient resources to properly implement the Wild Salmon Policy. Concurrently, given declining budgets, DFO should explore alternative approaches to implementing WSP-related projects and activities that involve strategic partnerships with First Nations and others. First Nations should request bilateral meetings on WSP implementation as desired.

² The First Nations Salmon Coordinating Committee (SCC) is a province-wide advisory process consisting of approximately 13 delegates from the various First Nations Fisheries Council Regions. The objective of the SCC is to provide strategic advice and recommendations to First Nations and DFO on Province-wide Pacific Salmon programs, plans, and policies.

Aquaculture

BC First Nations 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. First Nations have the right to be fully informed and involved in decisions that have the potential to impact Aboriginal Rights and Treaty Rights.

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 has regional participation from the 14 FNFC geographic regions. There has been strong progress in building the Tier 1 ACC, but major challenges persist regarding federal and provincial government engagement on aquaculture.

DFO continues to encourage First Nations to participate in its Tier 3 multi-stakeholder Aquaculture Management Advisory Committees (AMACs). However, through the ACC Tier 1 process, First Nations have expressed that DFO's AMAC tables are not an appropriate place to engage on high-level policy and management issues that have consequences for Aboriginal Rights. Furthermore, local and regional First Nations fisheries organizations lack the funding and resources to properly engage on aquaculture policy and management, and stable funding at the regional level is required for proper Tier 1, 2 and 3 engagement.

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

- ***DFO should adhere to specific commitments detailed in the Minister's mandate letter, with respect to collaborative approaches in policy development and management decisions – "renewed, nation-to-nation relationship with Indigenous People, based on recognition of rights, respect, co-operation, and partnership";***
- ***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 continue to engage directly with the ACC to collaboratively develop a Tier 2 structure and strategic approach for engagement and dialogue on policy and legislative developments that are important to BC First Nations;***
- ***DFO should commit to working with First Nations to develop a high-level science review process to address fundamental concerns such as disease and pathogens;***
- ***DFO and appropriate representatives from the Province should collaborate and engage with First Nations regarding the jurisdictional issues facing First Nations in relation to aquaculture development in their territories.***

Update – Brown Bay Effluent Incident:

First Nations had major concerns regarding the Brown Bay effluent incident, which made headlines in the fall of 2017. Of particular concern was the lack of communication to First Nations. In response, the FNFC acquired a written statement from DFO discussing their fish health monitoring and auditing program, which DFO says gives them confidence in the status of fish health and disease in farmed salmon. Information on DFO’s monitoring and audit program can be found online at <http://www.pac.dfo-mpo.gc.ca/aquaculture/regs-eng.html>.

DFO stated that the effluent discharge is managed by the province, and although auditing the discharge is outside their jurisdiction, they have confidence in the health of the fish being harvested and in the status of the effluent: “DFO has confidence that pathogens that cause significant risk to salmon are being addressed prior to harvest, which then minimizes risks at the effluent discharge”.

The ACC takes this incident very seriously and will be working with DFO to ensure that there are proper monitoring practices around the province, as well as efficient communication mechanisms to get information out to First Nations as quickly as possible.

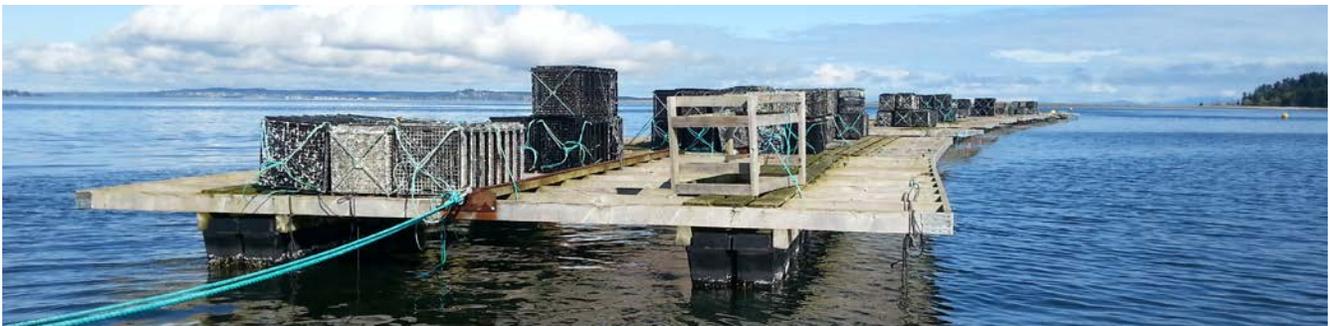
Update – Atlantic Salmon Escapement:

In August 2017 the FNFC received alarming news regarding the escape of over 305,000 Atlantic salmon from an open net pen fish farm into the Salish Sea. The FNFC and the ACC discussed the incident with DFO and put forward a recommendation that DFO provide communications to First Nations and to the general public on identifying Atlantic salmon and reporting sightings. DFO created a notice, and the FNFC and DFO each shared it through their channels.

In light of this event, the FNFC Executive Council passed a resolution to support the transition to closed containment fish farms. While the FNFC recognizes that some First Nations communities rely on agreements with fish farm operators for economic opportunities in their communities, the FNFC has heard from many nations that open net pens pose too great a risk to wild populations.

The FNFC has been following up with DFO on the status of the analysis of captured Atlantic salmon and has been pushing for a First Nations biologist to be involved in this process. Jim Meldrum, a biologist from Wei Wai Kum, has been selected and will be reporting out on the findings. The FNFC will ensure this information is circulated out as it becomes available.

For any questions, please contact the DFO Atlantic Salmon Watch program at aswp@dfo-mpo.gc.ca or visit their website at www.pac.dfo-mpo.gc.ca/science/aquaculture/aswp/index-eng.html.



Case Law Implementation

Supreme Court decisions relating to Aboriginal Rights have been languishing in the interpretation and implementation stages, causing frustration among BC First Nations Leadership and the affected Nations. *Sparrow*, *Gladstone*, *Ahousaht*, and *Tsilhqot'in* have all identified that these rights are alive and require deeper consultation.

Objective: To ensure that DFO engagement with BC First Nations is consistent, and that processes are established according to case law principles:

- ***Calder – inherent right prior to contact.***
- ***Guerin – the fiduciary obligation of federal government.***
- ***Sparrow – fishing is a defined right, assumed to be held by First Nations in BC.***
- ***Gladstone and Ahousaht – that the right is not limited to FSC purposes.***
- ***Tsilhqot'in – that the fiduciary relationship is based on the foundation of recognition of the Aboriginal right.***

We recommend that DFO consider a BC-based program response similar to the Marshall response that will address outstanding matters and potential future litigation.



BC Water Sustainability Act Regulatory Consultations and Implementation

The BC Provincial Government enacted the *Water Sustainability Act* (WSA) in May 2014 to replace the 106-year old *Water Act*, with the first set of priority regulations coming into force on February 29, 2016. The BC government is taking a phased approach to implementing the WSA, and is expected to continue to develop the remaining WSA regulations over the next few years. Regulation areas that have yet to be developed and that have high potential for significant and direct impact on Aboriginal Rights and Treaty Rights are 1) Water Objectives, 2) Area Based Regulations, and 3) Water Sustainability Plans.

First Nations are concerned with the process the provincial government has used to solicit feedback throughout the *Water Act* modernization and WSA implementation process³; the Province has not engaged in a government-to-government consultation process, and the role of First Nations in the development of the new legislation, policies and regulations has been largely nonexistent. It's critical that BC First Nations are consulted on all remaining WSA regulation areas due to the potential for impacts on Aboriginal and Treaty Rights. A consultation framework must be developed and immediately implemented.

The UBCIC Chiefs Council (June 2017) and the First Nations Summit (October 2017) passed resolutions put forward by the FNFC directing their executives to work with the other political leadership organizations, as the First Nations Leadership Council, to immediately co-develop with BC First Nations a framework for, and to provide adequate resources to, First Nations to appropriately engage in the regulations pertaining to the *Water Sustainability Act*. The FNFC will be putting forward a similar resolution to the BCAFN at their March 2018 meeting.

Objective: The British Columbia provincial government must work with the First Nations Leadership Council to immediately co-develop a framework for consulting with First Nations on remaining regulations related to the Water Sustainability Act.

Water for Fish Program Updates:

Water for Fish, the FNFC's fresh water initiative, has developed a Statement of Solidarity for BC First Nations on water. This was endorsed at the FNFC Annual General Assembly in November 2017. The Statement provides a clear vision for BC First Nations to work together to advance common interests on freshwater issues, and is available to view on the FNFC website www.fnfisheriescouncil.ca under Initiatives > Water for fish.

Water for Fish is also currently engaging with philanthropic foundations, in addition to seeking a modest amount of support from government sources, in order to support the next phase of their work. The strategic direction for the next three years will focus on the priority areas of a) establishing coordinating processes for First Nations to organize, unite, and positively influence fresh water policy, laws and governance; b) providing capacity support for First Nations to engage in fresh water planning, management and governance activities; and c) supporting First Nations to advance and protect Aboriginal Water Rights. FNFC is currently pursuing charitable status to enable access to funds from funders that require qualified donee status.

³Based on 2013-ongoing verbal communications with First Nations across BC via FNFC's First Nations Water Network. See also Joe, N. et al. *Perspectives on the BC Water Sustainability Act: First Nations Respond to Water Governance Reform in British Columbia*. UBC Program on Water Governance (2017). https://watergovernance.ca/wp-content/uploads/2017/03/Joe-et-al_Full-Report_FINAL.pdf; Submissions to the BC Ministry of Environment by BCAFN (2013) and (2014); First Nations Summit (2010); UBCIC (2010) and (2013), and the First Nations Fisheries Council (2010).

Economic Fisheries

First Nations require the appropriate tools to create fisheries that provide enduring, sustainable benefits that support economic independence and contribute to healthy First Nations communities. Currently, First Nations are working to have DFO establish First Nations economic fishing shares based on allocations from commercial licenses acquired under DFO’s license buy-back programs (e.g. Allocation Transfer Program and Pacific Integrated Commercial Fishing Initiative). Implementation of First Nations-supported changes to the Commercial Salmon Allocation Framework will allow First Nations to more fully realize the benefits of these programs that were created to support their increased participation in Pacific commercial fisheries.

Through the Pacific Integrated Commercial Fisheries Initiative (PICFI), 25 First Nations Commercial Fisheries Enterprises (CFEs) are now established. Important investments were made by DFO to secure access to licenses and quota for CFEs, and to support business and capacity development. CFEs are on the cusp of significant growth and expansion, which will solidify their position in the industry and will also provide long-term employment and career opportunities for community members.

Objectives: Support First Nations-driven changes to the Commercial Salmon Allocation Framework to implement First Nations’ commercial salmon fisheries that benefit First Nations.

Priorities for First Nations under the renewal of PICFI include: flexibility in program and funding delivery to ensure efficient allocation of resources, policy and regulatory support for license and quota acquisition by CFEs, financial support to leverage additional access to capital to acquire licenses, quota and vessels, etc., focus on ongoing support for capacity building, education and training at the CFE and community levels, opportunities for CFEs to diversify their operations and pursue value added opportunities, and market access and branding.

Further, that PICFI be integrated into a national strategy that will lead DFO's implementation of economic and enterprise initiatives for indigenous communities from coast to coast to coast, including the opportunities to achieve economic reconciliation in the fisheries sector.

Further, that the national “Integrated Commercial Diversification Initiative” be assigned the lead coordinating role on all economic programs to ensure congruity in regional program objectives and outcomes.

In September 2017, the FNFC established a new position, Business and Economic Development Advisor, to support its Economic Performance mandate articulated in the BC First Nations Fisheries Action Plan. The FNFC is also working with First Nations to develop an Economic Coordinating Committee (ECC) table, a broad, unified, BC-wide Tier 1 table, which will address First Nations opportunities, challenges, and interests related to economic fisheries. An initial scoping meeting was held in January 2018.

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**For more information on the work of the FNFC, please contact:
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