

**FIRST NATIONS FISHERIES COUNCIL
OF BRITISH COLUMBIA**

Annual Report

2013-2014



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Introduction

The First Nations Fisheries Council (FNFC), established in 2008, has the mandate of implementing the BC First Nations Fisheries Action Plan: Preparing for Transformative Change in the BC Fishery. This important document, published in 2007, provides a solid foundation for First Nations to seek increasing access in the BC fishery and greater involvement in management and decision-making.

The BC First Nations Fisheries Action Plan builds on work done in 2004 by the First Nation Panel on Fisheries and detailed in *Our Place at the Table: First Nations in the BC Fishery*. The First Nations Fisheries Action Plan is a strong, collective vision and strategy to achieve progress on First Nations goals for transformative changes in the BC fishery.

This annual report provides information about the FNFC's 2013-14 progress toward achieving the action items identified for each of six themes in the First Nations Fisheries Action Plan:

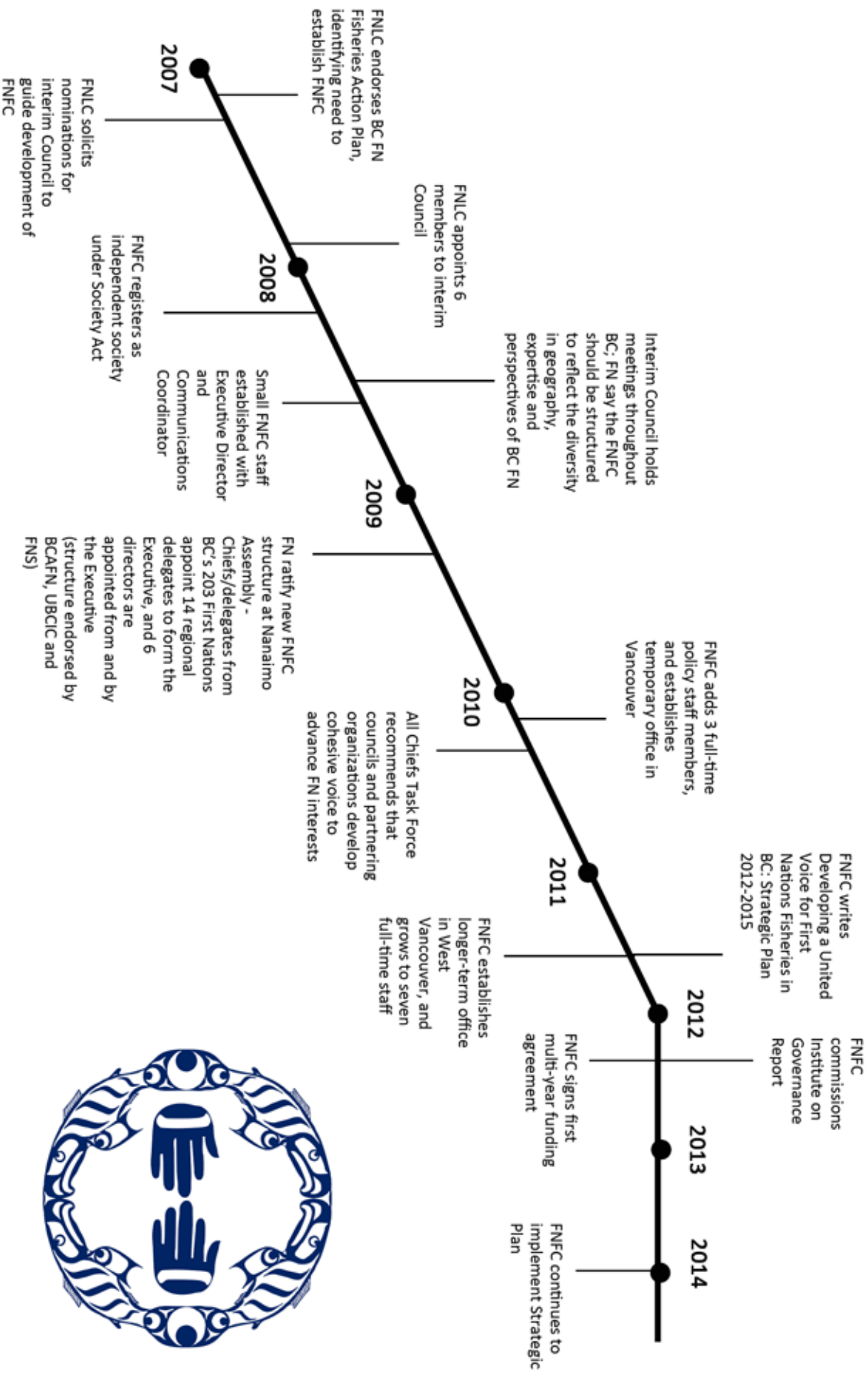
1. **Relationships and reconciliation**
2. **Aquatic resource sharing (allocation)**
3. **Safeguarding habitat and responding to threats**
4. **Aquatic resource management**
5. **Building solid economic opportunities**
6. **Negotiations and litigation**

For each theme, we state the issue identified in the First Nations Fisheries Action Plan and provide the overarching objective to resolve the issue. We also indicate the future impact of successfully resolving each issue and summarize the FNFC's progress over the course of the 2013-14 fiscal year.



Photos: Keith and Koby, daycare kikinee (kokanee) tour in the Okanagan (top) - by Ruby Alexis; Herring seine test fishery in Hesquiaht (bottom) - by Uu-a-thluk - Nuu-chah-nulth Tribal Council Fisheries

The Evolution of the First Nations Fisheries Council





The Political and Legislative Environment

The FNFC operates in a challenging and evolving political environment. Since *R. v. Sparrow* [1990] and the implementation of the Aboriginal Fisheries Strategy (AFS) in 1993, there have been competing interests of First Nations' aspirations to implement Aboriginal Rights, and DFO objectives of program delivery and establishing co-management structures through negotiated or imposed agreements. The most critical considerations that have vexed both government and First Nations are the complexity of fisheries management, and the number of First Nations involved in the conversation.

The 2010 All Chiefs Task Force recommendations advised that all councils and partnering organizations needed to develop a cohesive voice to advance First Nations interests and avoid speaking in a fragmented manner. The FNFC first took on this critical task in 2010, and since that time has been striving to develop approaches and processes that enable coherent analysis, deliberation, and advice both to First Nations leadership and to external partners including government. The mission of creating a united voice among First Nations on fisheries matters has remained a key driver of the FNFC's work in the 2013-2014 fiscal year.

Part of this mission has been to respond to federal changes to fisheries law and regulations with scant consultation prior to implementation

– for example, omnibus legislation such as Bills C-38, the Growth and Long-term Prosperity Act, and C-45, the Jobs and Growth Act, which were passed in 2012. An outcome of these bills has been the aggressive development of policy and management guidelines with scant consultation prior to implementation. Examples from the past year include amendments to Section 2 of the Fisheries Act, which redefines "Aboriginal fishing", amendments to Section 10, which defines the Use of Fish for Financing policy, and changes to the Fisheries Act habitat provisions.

BC First Nations have had some success in advancing their fisheries rights and interests through the courts this year. The Supreme Court of Canada released a decision in January 2014 to deny Canada's second application to appeal the BC Court of Appeal's ruling in *Ahousaht et al. v. Canada* [2009]. This confirmed the BC Court of Appeal's affirmation of the Nuu-chah-nulth Nations' right to fish and sell fish. In February 2014, a group of first Nations from the Heiltsuk Tribal Council, the Council of Haida Nation, and the Nuu-chah-nulth Tribal Council also won a major legal victory when a Federal Court judge granted an injunction blocking the opening of a herring fishery on the west coast of Vancouver Island. The decision came after an internal memo revealed that the Minister of Fisheries and Oceans overruled recommendations of DFO scientists to maintain the herring fisheries

closure for the 2014 season for conservation purposes. The government says that they will listen to scientific advice, but this is a clear indication that the government is choosing to ignore such advice.

First Nations remain critical of the lack of transparency in DFO's decision-making, the lack of recognition and accommodation of First Nations jurisdiction and authority, the lack of independent science, the absence of clear policy and management objectives for the development of the BC aquaculture industry, and the absence of adequate resourcing for meaningful engagement.

Over the past several years, Canada has seen significant changes to the federal government approach to consultation and engagement with First Nations, as well as a shift in government philosophy regarding the protection of Canada's natural environment and resources. These changes create an even greater need for BC First Nations and First Nations across Canada to develop a unified voice on fisheries matters. DFO's sweeping alteration of its consultation practices and failure to uphold its fiduciary obligations to First Nations fosters an environment of distrust and uncertainty among First Nations in BC.

The Political and Legislative Environment (cont.)

Fisheries Act Section 10: Use of Fish for Financing Purposes

In October 2013, the FNFC received a letter from DFO requesting comments on the draft National Policy for Allocating Fish for Financing Purposes under Section 10 of the new *Fisheries Act*. The FNFC worked with a group of First Nations to develop an analysis, discuss the policy elements, and draft a response letter to DFO, but no formal consultation process was initiated by government. The ad hoc First Nations group identified a number of concerns with the new policy, e.g. how the operational guidelines would uphold the implementation of Aboriginal Rights to ensure that First Nations FSC and economic needs are met, how the decision-making process for decisions under this policy will occur, the inclusion of First Nations in monitoring, and reporting of test fisheries.

Fisheries Protection Program (FPP): Fisheries Act Habitat Provisions

Fisheries Act habitat provisions were stripped as a result of Bill C-38 (2012). The new provisions move away from measures that protect “fish and fish habitat”, and include a prohibition against causing “serious harm” to fish that are part of or support a commercial, recreational or Aboriginal fishery, provisions for flow and passage, and a framework for regulatory decision-making. In April 2013, DFO announced its intention to create a new policy to replace the Policy for the Management of Fish Habitat (1986); the new Fisheries Protection Policy (FPP), introduced in the fall of 2013, explains how DFO will apply the *Fisheries Act* prohibition against causing “serious harm” to fisheries.

No formal consultation took place on either the changes to the *Fisheries Act* or the development of the FPP, despite the significant potential for the legislative changes and policy to adversely affect First Nations Title and Rights and Treaty Rights. In November 2013, Regional DFO staff gave an introductory presentation on the impending changes at the FNFC Fall Assembly. The FNFC proposed coordinating a series of First Nations information sessions throughout BC on the new policy and how it would be implemented in the Pacific Region.

A key concern that emerged during the resulting information sessions was an unreported Memorandum of Understanding (MOU) signed by DFO and the National Energy Board (NEB) on December 26, 2013. The MOU transfers decision-making authority regarding

authorizations under the *Fisheries Act* to the NEB for oil and gas pipelines. Decisions made by the NEB are advisory, and final decisions rest with Cabinet. This new process for decision-making entirely bypasses the established consultation process with First Nations.

Aquaculture

DFO’s management of aquaculture has been a serious concern for BC First Nations. DFO is seen as having two opposing mandates – the protection of wild fish, and the promotion of the aquaculture industry. This conflicted role was identified as a significant issue during the Cohen Commission, and is not conducive to First Nations effectively articulating feedback on either policy direction. DFO at the national level has been focused primarily on business development, marketing, and promotion of aquaculture, and at the regional level has been focused on operational management and regulation. Neither process has engaged in direct consultation with First Nations, nor has appropriate funding been identified for meaningful First Nations engagement.

DFO debuted their multi-stakeholder Aquaculture Management Advisory Committee (AMAC) model in March 2013 to implement the Integrated Management of Aquaculture Plans (IMAPs), and significant concerns have been raised regarding the process including the balance of representation, lack of First Nations engagement in decision making on management and research priorities, lack of clear linkages with transparent/independent science, and exclusion of Aboriginal Title and Rights and Treaty Rights.

First Nations have opted to focus on Tier 1 development for aquaculture engagement, and have developed a shared First Nations declaration on aquaculture governance based on priorities of common interest or concern to BC First Nations. The declaration indicates that while there are diverse perspectives on aquaculture among BC First Nations, there is agreement that the protection of wild salmon is paramount and that more research is needed before the industry can safely expand. However, DFO has taken on a business resumption position with the expansion of aquaculture, as evidenced by the lifting of a

moratorium on fish farm licenses without prior notification or consultation with First Nations.

As in other areas of fisheries management, it appears that in aquaculture, the economic perspective is taking precedence over sound scientific and precautionary processes.

Energy Development Projects

The 2013-14 fiscal year has also seen significant opposition to the Enbridge Northern Gateway Pipeline among First Nations and the general population of BC and Canada, as the issue has raised alarm over the possibility of an oil spill on land or off the coast of BC. The four clans of the Yinka Dene, whose territory covers a quarter of the proposed pipeline route, met with the Canadian Environmental Assessment Agency (CEAA), NEB and DFO to announce their official opposition to the pipeline. Several municipalities in northern BC have also voted to oppose the project, including Terrace, Prince Rupert and Smithers. Despite widespread opposition, a federal review panel recommended approval of the pipeline with 209 conditions. Several BC First Nations filed appeals with the federal court seeking to overturn the panel recommendation.

Similarly, concerns have been raised among First Nations about the potential environmental impacts of proposed increases in liquid natural gas (LNG) development in northern BC, and a First Nations LNG Summit was convened in Prince George in October 2013 to discuss concerns and opportunities. In the last year, the grassroots people have been standing up more and more to demand a greater say about the direction of development in First Nations territories, but federal and provincial governments continue to push forward on their development agendas without adequate consultation.



Photo: “Our Future” - by Andrea Tom, Yekooche First Nation

Theme 1:

Relationships and Reconciliation

Issue: Strained relationships hinder meaningful progress on both political and technical levels in the Pacific fishery.

Objective: Establish and maintain effective relationships with all levels of government, all BC First Nations and all fishing sectors.

Desired outcomes: Collaborative, informed and respectful dialogue will enable good relationships, which in turn will allow all parties to work together constructively and make meaningful progress in addressing issues.

2013-14 PROGRESS HIGHLIGHTS

- Continued implementation of the 2012-2015 Strategic Plan in order to achieve the objectives set out in the First Nations Fisheries Action Plan Process for sound organizational and financial management, development of operational plans, and reporting to both BC First Nations and the federal government in the spirit of transparency and accountability.
- Hosted meetings, workshops and forums, e.g. 2013 Annual Fall Assembly, which brought together nearly 100 First Nations and government representatives.
- Provided administration and coordination support for the development of a province-wide network of Commercial Fishing Enterprises (CFEs).
- Worked with BC First Nations to develop the Tier 1 Aquaculture Coordinating Committee process and a shared Aquaculture Declaration.
- Coordinated the Salmon Coordinating Committee (Tier 1 and 2 components).
- Continued collaborative relationship with DFO through the Commitment to Action Accord; through quarterly Joint Steering Committee and Joint Executive meetings, the FNFC and DFO collaborate to identify joint strategic work planning objectives.
- Provided coordination and related support to the First Nations Leadership Council (FNLC) on their Memorandum of Understanding (MOU) with the Minister of Fisheries and Oceans. The MOU describes a collaborative relationship between the parties and a commitment of 2 meetings per year.
- Development of a governance framework among BC First Nations through articles of collaboration such as the Declaration and Protocol with the FNLC and Charters with First Nations fisheries organizations throughout the province. The Charters are agreements that promote relationship building, constructive dialogue, and development of effective process among First Nations Signed Charters with the Fraser River Aboriginal Fisheries Secretariat, the Council of the Haida Nation, and the Okanagan Nation Alliance.
- Increased collaboration on communications and reporting and strengthened the operational relationship with the Pacific Salmon Commission First Nations Caucus.
- Communicated regularly with First Nations at various scales through a number of different tools and processes, e.g. website, bi-monthly communiqués, monthly update teleconferences, presentations to the FNLC, FNFC Annual General Assembly, extensive email list, and social media.
- Completed a five year progress report on the First Nations Fisheries Action Plan. Some actions identified in the Action Plan require collaboration with or leadership from other organizations at the community, regional and provincial level. Provided technical and policy support to First Nations leadership in the recognition and promotion of Aboriginal Title and Rights and in calling on the government to fulfill their legal obligation to consult and accommodate First Nations in relation to fisheries.



Photo: Fraser River near Hells Gate - by FNFC

Theme 2: Aquatic Resource Sharing

Issue: DFO imposes an allocation system for allotting fish to First Nations and to commercial and recreational sectors. Among First Nations, this system results in contentious allocations for the harvest of migratory stocks and fails to promote unity.

Objective: Promote and support efforts by First Nations to address sharing of migratory stocks and aquatic resources.

Desired outcomes: A common understanding of the current approach to Pacific fisheries reform, the sustainable fisheries framework, and how to coordinate and cooperate in sharing aquatic resources and planning strategies will promote unity among First Nations and will help to protect fisheries and habitats.

2013-14 PROGRESS HIGHLIGHTS

- Continued the coordination and administration role for the Salmon Coordinating Committee (SCC), the purpose of which is to advance First Nations priorities and recommendations on salmon management and inform DFO's annual Integrated Fisheries Management Plan (IFMP) for salmon. The SCC advances strategic technical and management priorities at a Tier 2 level, and also through Tier 1 discussion where First Nations can work together to develop management recommendations and harvest plans.
- The SCC submitted its third consolidated comment document on DFO's salmon Integrated Fisheries Management Plan (IFMP), which was developed through the voluntary submission of First Nations annual comments on the IFMP.
- First Nations SCC members collaborated with DFO on the development of potential FSC performance indicators for salmon.
- Coordinated discussions about updating the Commercial Salmon Allocation Framework (CSAF) through the SCC. The SCC proposed a number of changes in order to reflect First Nations' interests in existing and emerging First Nations economic fisheries – e.g. expanding First Nations role in salmon management; adding specific allocation for First Nations commercial fisheries; and allowing retention of non-target species for FSC.
- The SCC recommended that DFO develop and implement a communication and consultation plan to provide information to BC First Nations on the CSAF process.



Photos: Harvesting gooseneck barnacles (top) - by Uu-a-thluk - Nu-u-chah-nulh Tribal Council Fisheries; Haida Gwaii shellfish aquaculture (bottom) - by Council of the Haida Nation

Theme 3:

Safeguarding Habitat and Responding to Threats

Issue: Human activities on land and in marine areas threaten aquatic resources and habitats.

Objective: Reduce threats to aquatic resources and habitats from human activities.

Desired outcomes: Aquatic resources and habitats will be protected and revitalized for long-term survival and productivity of all species and populations.

2013-14 PROGRESS HIGHLIGHTS

- Co-hosted with DFO a series of information sessions throughout the province on DFO's new Fisheries Protection Policy (FPP), a result of federal legislative changes to the Fisheries Act through omnibus Bill C-38 (2012). Summarized issues and concerns from First Nations related to the FPP in a report to DFO.
- Contracted Ratcliff and Co. to conduct a legal analysis of DFO's Memorandum of Understanding (MOU) with the National Energy Board (NEB), which was shared with First Nations. First Nations raised serious concerns about the MOU, as it transfers decision making authority regarding authorizations under the Fisheries Act to the NEB for oil and gas pipelines. The new process bypasses the established consultation process with First Nations on fisheries.
- Moved forward on the Water for Fish Initiative, which focuses on the protection of freshwater habitat. Hosted teleconferences to engage First Nation participants in a province-wide First Nations water network, and developed resource materials to increase First Nations capacity for water engagement.
- Analyzed and responded to the provincial Water Sustainability Act legislative proposal.
- Began planning for a series of science workshops scheduled to take place in 2014-15.
- First Nations engaged on the issue of habitat protection through the Pacific Salmon Commission (PSC) First Nations Caucus' support for the PSC Habitat Restoration Committee.
- Some actions identified in the First Nations Fisheries Action Plan, such as improving baseline information and monitoring and increasing the use of traditional knowledge, require leadership from local and watershed organizations. The FNFC will continue to be available in a supportive capacity for these efforts.



Photo: Duus (Owikeno Lake) - by J. Walkus & Wuikinuxv Fisheries

Theme 4: Aquatic Resource Management

Issue: Fisheries management systems are rapidly changing to reflect realities such as threats to fish populations and decreased public resources.

Objective: Address First Nations needs for and concerns with fisheries management.

Desired outcomes: First Nations will be active decision-makers in sustainably managed fisheries that conserve aquatic resources for future generations.

2013-14 PROGRESS HIGHLIGHTS

- Worked with First Nations to develop advisory structures and processes that seek to support First Nations communities in bringing forward priorities and concerns related to the management of aquatic resources.
- Continued the coordination and administration role for the Salmon Coordinating Committee (SCC), the purpose of which is to advance First Nations priorities and recommendations on salmon management and inform DFO's annual integrated fisheries management plan (IFMP) for salmon. The SCC submitted its third consolidated comment document on DFO's salmon Integrated Fisheries Management Plan (IFMP), which was developed through the voluntary submission of First Nations annual comments on the IFMP.
- First Nations SCC members collaborated with DFO on the development of potential FSC performance indicators for salmon.
- Hosted a number of Tier 1 teleconferences to discuss First Nations interests and concerns related to DFO's consideration of listing eulachon under the Species at Risk Act (SARA),
- Provided operational and communications support to the First Nations Caucus of the Pacific Salmon Commission, which works to address and negotiate on salmon management issues that arise between Canada and the United States.
- Coordinated the development of province-wide Tier 1 aquaculture process, the Aquaculture Coordinating Committee (ACC), modeled after the SCC. This Tier 1 process will eventually support effective engagement at the Tier 2 and 3 levels, as determined by First Nations.
- ACC participants directed the FNFC to develop a BC First Nations Aquaculture Declaration that sets out shared guiding principles for aquaculture engagement.
- FNFC Executive Director Jordan Point, Aboriginal Aquaculture Association (AAA) President Richard Harry, and Union of BC Indian Chiefs (UBCIC) Vice President Bob Chamberlin brought First Nations aquaculture interests and concerns before the Federal Senate Committee on Fisheries and Oceans, which has been conducting a study of the regulation of aquaculture, current challenges, and future prospects for the industry in Canada.
- The development of effective Tier 1 processes like the SCC and ACC allow for accountability in the FNFC's work planning on aquatic resource management and the retention of professional services (e.g. facilitators, biologists, policy support, etc.).
- The FNFC supports regional groups and processes (e.g., the Fraser Salmon Management Council and the Forum on Conservation and Harvest Planning for Fraser Salmon, both hosted by the Fraser River Aboriginal Fisheries Secretariat) that have addressed local and regional management planning.



Photos: Making eulachon grease (top) - Nuxalk Nutritional Study 1985;
Salish Seafoods spot prawn fishing (bottom) - by FNFC

Theme 5:

Building Solid Economic Opportunities

Issue: Existing and potential economic opportunities must be pursued wisely to benefit First Nations communities.

Objective: Pursue existing and potential economic opportunities to benefit First Nations communities.

Desired outcomes: Developing fisheries management systems that enable sustainable economic opportunities will provide long-term benefits to First Nations communities and fishers.

2013-14 PROGRESS HIGHLIGHTS

- Provided advice to DFO regarding the Pacific Integrated Commercial Fisheries Initiative (PICFI), which has outcomes related to economic development, marketing, and building First Nations capacity in business. PICFI was initially set to end in 2011, but received its second annual funding extension in the 2013-14 fiscal year, prohibiting longer-term strategic planning.
- Played a convener and coordinator role for the collaboration of Commercial Fishing Enterprises (CFEs) under PICFI. Coordinated the development of a province-wide CFE networking event, created a process for CFEs to access individual and collaborative funds for business development, and enabled flow-through funding to CFEs from DFO.
- DFO engaged the First Nations Salmon Coordinating Committee (SCC) in discussions about updating the Commercial Salmon Allocation Framework (CSAF), which deals with the allocation of commercial shares of salmon in BC. The First Nations SCC proposed a number of changes to the allocation framework in order to reflect First Nations interests in existing and emerging First Nations economic fisheries, e.g. expanding the role of First Nations in salmon management; adding a specific commercial allocation for First Nations commercial fisheries; and allowing retention of non-target species for FSC.
- The First Nations SCC recommended that DFO develop and implement a communications and consultation plan to provide information to BC First Nations about the CSAF process.
- Hosted a series of Tier 1 Aquaculture Coordinating Committee (ACC) workshops where First Nations shared information about various economic development opportunities in aquaculture, including shellfish operations, closed containment salmon farms, and management partnerships with major aquaculture companies operating in First Nations territories.



Theme 6: Negotiations and Litigation

Issue: Government mandates are a barrier to the resolution of aquatic resource negotiations, regardless of whether the negotiations occur within or outside the treaty negotiation process. Although litigation has effected some changes in the Pacific fishery, it can be slow and costly, and decisions may have a narrow scope.

Objective: Work collectively with all First Nations, whether involved in treaty negotiations or not, to develop a common mandate for resolving fisheries negotiations without litigation, wherever possible.

Desired outcomes: Negotiations for aquatic resources will be resolved and Aboriginal rights will be protected.

2013-14 PROGRESS HIGHLIGHTS

- The Salmon Coordinating Committee (SCC) identified as one of its priorities the need to develop potential performance measures for FSC, as well as the need to increase FSC baseline calculations used by governments.
- Progress on negotiations and litigation is taking place at the regional and watershed scales:
- The FNFC supports the Fraser Salmon Management Council (previously 'the Fraser Salmon Roadmap'), the mandated Tier 1 organization through which First Nations in the Fraser River watershed and marine approach areas are building a process to negotiate with DFO on Fraser salmon management.
- In January 2014, the Supreme Court of Canada rejected Canada's request for an appeal of the *Ahousaht et al. v. Canada* [2009] decision granting economic fishing rights to five Nuu-chah-nulth First Nations.
- In February 2014, the same Nuu-chah-nulth nations were granted an injunction blocking the opening of a commercial herring roe fishery after an internal memo revealed that the DFO Minister overruled the recommendations of DFO scientists to close the herring fishery due to conservation concerns.
- Played a coordination and support role for the First Nations Caucus of the Pacific Salmon Commission, the body formed by the governments of Canada and the United States for the two countries to negotiate on the management of Pacific salmon.
- Hosted a Fisheries Summit in 2013 to help guide the FNFC's direction, and began planning for the FishTank policy dialogue forums for First Nations discussion of various issues, including negotiations and litigation.
- Some of the items identified in the Fisheries Action Plan, such as creating a BC First Nations litigation office, require leadership from the First Nations Leadership Council with the FNFC supporting and contributing to the work required.



Contact Us / Get Involved

For more information on this 2013-14 Annual Report and the First Nations Fisheries Council's projects and initiatives, visit our website at www.fnfisheriescouncil.ca



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