FIRST NATIONS FISHERIES COUNCIL OF BRITISH COLUMBIA

Annual Report
2014-2015
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>The FNFC’s Evolution</td>
<td>3</td>
</tr>
<tr>
<td>Organizational Development</td>
<td>3</td>
</tr>
<tr>
<td>The Political and Legislative Environment</td>
<td>4</td>
</tr>
<tr>
<td>Theme 1: Relationships and Reconciliation</td>
<td>5</td>
</tr>
<tr>
<td>Theme 2: Aquatic Resource Sharing</td>
<td>6</td>
</tr>
<tr>
<td>Theme 3: Safeguarding Habitat and Responding to Threats</td>
<td>7</td>
</tr>
<tr>
<td>Theme 4: Aquatic Resource Management</td>
<td>8</td>
</tr>
<tr>
<td>Theme 5: Building Solid Economic Opportunities</td>
<td>9</td>
</tr>
<tr>
<td>Theme 6: Negotiations and Litigation</td>
<td>10</td>
</tr>
<tr>
<td>Contact Us</td>
<td>11</td>
</tr>
</tbody>
</table>
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 fisheries management and decision-making.

The BC First Nations Fisheries Action Plan builds on work done in 2004 by the First Nations 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 2014-15 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 2014-15 fiscal year.
The FNFC’s Evolution

In 2007, the First Nations Leadership Council—a political accord among the British Columbia Assembly of First Nations (BCAFN), the Union of British Columbia Indian Chiefs (UBCIC), and the First Nations Summit (FNS)—endorsed the BC First Nations Fisheries Action Plan. This plan identified the need to establish the First Nations Fisheries Council (FNFC). Although the Fisheries Action Plan provided the FNFC with its mandate, the newly created organization did not yet have the staff or infrastructure to deliver the actions under this mandate. The FNFC began in 2008 with an Executive Director and a part-time Communications Coordinator who worked from home offices. By 2012, the organization had established a physical office and grown to seven full-time staff.

At the 2009 Fisheries Assembly in Chehalis, attendees ratified a new structure for the FNFC based on 14 geographic regions, with one delegate from each region forming the Executive Council. This change represented an increase from 6 Council seats to 14 in order to better reflect the interests and diversity of BC First Nations. The BCAFN, UBCIC and FNS endorsed this structure, as well as the FNFC mandate to protect, reconcile and advance First Nations Title and Rights and Treaty Rights as they relate to fisheries and the health and protection of aquatic resources.

In 2011, the FNFC wrote Developing a United Voice for First Nations Fisheries in BC as a three-year Strategic Plan (2012–2015) to articulate an organizational approach that would advance the First Nations Fisheries Action Plan. The strategy enables the FNFC to maintain its reputation as a sound, rigorous organization that has legitimacy with all parties involved in the issues of the BC fishery and that effectively advances the interests of all BC First Nations in the fisheries and aquatic resources sector. In 2015, an updated Strategic Plan was developed and ratified by the Executive Council, and will be adopted in July 2015.

The 2012-2015 Strategic Plan focused on the development of collaborative processes among the 203 First Nations in the province to bring groups together at both the operational and policy levels. Articles of collaboration between the FNFC and First Nations organizations were developed through various formal declarations and protocols, and a collaborative Tier 2 relationship with DFO was established through the Commitment to Action Accord. This accord allows the parties to work together to identify and coordinate priorities, activities and objectives through a joint Steering Committee and a Joint Executive table. This structure also supports the political dialogue between the Minister of Fisheries and Oceans and the First Nations Leadership Council.

This evolution has allowed the FNFC to achieve stability as an organization, and will continue to guide our activities into the future as we work to support collaboration and dialogue on fisheries matters in BC.

Organizational Development

- The 2012-2015 FNFC Strategic Plan concluded this past March and staff and the Executive Council worked this year to develop the next iteration of the FNFC Strategic Plan for 2015-2018. The new Strategic Plan will form the basis for the strategic direction and priorities for the FNFC over the next 3 years.
- The FNFC continued the development of a clear governance structure to support Tier 1 and Tier 2 processes to advance the fisheries interests of BC First Nations.
- The FNFC Executive Council met regularly throughout the year to guide and oversee the work of the FNFC.
- The staff and Council developed financial management plans, budgets, annual business plans, staff work plans, and HR plans.
- The work of the FNFC was supported through strong foundational society articles and policies including the constitution and by-laws, terms of reference, board governance policy, and Council policy and procedures manual.
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 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.

In 2010 the All Chiefs Task Force issued a recommendation that all First Nations councils and partnering organizations develop a cohesive voice and avoid speaking in a fragmented manner. This is a crucial step in achieving the long term goal of First Nations jurisdictional authority in fisheries, as federal fisheries policy and legislation are national in scope, and change cannot be achieved at the local level. First Nations must work together in a coherent and coordinated fashion to influence change. The FNFC first took on the critical task of building a united voice for First Nations on fisheries in 2010, and since that time has been striving to develop processes that enable coherent analysis, deliberation, and advice to both First Nations leadership and external partners including government. This mission has remained a key driver of the FNFC’s work in the 2014-2015 fiscal year.

Part of this mission over the last several years has been to respond to federal changes to fisheries legislation, policy, regulations and processes – e.g. omnibus legislation such as Bills C-38 and C-45 (2012), changes to the Fisheries Act habitat regulations, the Aquaculture Activities Regulations, the Section 10 National Policy for Allocating Fish for Financing Purposes, revision of the Commercial Salmon Allocation Framework, development of DFO’s engagement process for aquaculture, etc. 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.

As federal funding sources for fisheries management expand and contract over annual funding cycles (e.g. the imminent sunset of the PICFI program resulting in $880,000 in funding cuts to First Nations fisheries organizations and critically important collaborative fisheries governance processes), DFO has been aiming to find efficiencies in management and First Nations engagement activities. DFO is increasingly seeking aggregated or selective approaches to consultation, and engaging in consultation with First Nations ‘after the fact’. These 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, foster an environment of distrust and uncertainty. This has created an even greater need for BC First Nations and First Nations across Canada to develop a unified voice on fisheries matters.

First Nations have had some success in advancing their rights and interests through the courts this year, most notably with the Tsilhqot’in Title Decision (William Case) passed in June 2014. This ruling represents the first time that Aboriginal Title to lands off reserve was declared through the Supreme Court of Canada, and has significant implications regarding First Nations’ control over their territories and their relationship to resource use and industry development.
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.

2014-15 PROGRESS HIGHLIGHTS

• In the 2014-15 fiscal year the FNFC continued to implement the 2012-2015 FNFC Strategic Plan in order to achieve the objectives set out in the First Nations Fisheries Action Plan 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.

• FNFC hosted a number of Tier 1 meetings, workshops and forums that brought together First Nations from throughout the province to discuss operational, management and policy issues related to First Nations fisheries interests. For example, the annual FNFC Assembly in Prince George brought together over 80 BC First Nations to discuss fisheries work in BC.

• FNFC hosted the Tier 1 FishTank policy dialogue process to identify strategies for increased First Nations engagement and influence in the management and policy of Pacific Region fisheries.

• Hosted the FNFC Science Panel to discuss the state of the science for salmon management topics in BC and provide practical information, analysis and advice to First Nations on priority science issues to support informed planning and decision making.

• Continued First Nations’ collaborative work on shared aquaculture priorities, interests and concerns through the Tier 1 Aquaculture Coordinating Committee (ACC) process and BC First Nations Aquaculture Declaration.

• Continued development of a fisheries governance framework among BC First Nations through articles of collaboration such as the Declaration and Protocol with the First Nations Leadership Council (FNLC) and Charters with regional First Nations fisheries organizations throughout the province. The Charters are agreements that promote relationship building, constructive dialogue, and the development of effective process among First Nations.

• Participated in meetings with various Charter partners including the Fraser River Aboriginal Fisheries Secretariat Executive Committee, the Island Marine Aquatic Working Group, the Native Brotherhood of BC, the Native Fishing Association, and the Council of the Ha’wiih (Nuu-chah-nulth Chiefs). The FNFC also supported work between Charter partners (Lower Fraser Fisheries Alliance, Upper Fraser Fisheries Conservation Alliance and Island Marine Aquatic Working Group) on a protocol template for collaboration on Fraser River management issues.

• Provided technical and policy support to BC First Nations leadership in the recognition and advancement of Aboriginal Title and Rights and Treaty Rights with respect to fisheries and in calling on the government to fulfill their legal obligation to consult and accommodate First Nations on matters related to fisheries.

• Reported regularly to BC First Nations leadership at meetings of the Union of BC Indian Chiefs (UBCIC), First Nations Summit, and BC Assembly of First Nations (BCAFN).

• 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, meetings, workshops, information sessions, extensive email list, social media, etc.

• Completed an annual progress report on the implementation of the First Nations Fisheries Action Plan for the 2013-14 fiscal year. Some actions identified in the Action Plan require collaboration with leadership or other organizations at the community, regional and provincial levels.

• Continued collaborative work 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 priorities and strategic work planning objectives.

• Provided coordination and policy support to the 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.

• Continued First Nations’ collaborative work with DFO to advance interests and priorities in salmon management and inform the development DFO’s salmon IFMPs through the First Nations Salmon Coordinating Committee (SCC) process (includes both Tier 1 and Tier 2 components). This included collaborative work to review DFO’s Commercial Salmon Allocation Framework (CSAF).

• Initiated a Tier 1 technical process amongst regional First Nations fisheries organizations in the Skeena watershed through the Northern SCC to foster greater understanding and collaboration between First Nations in that region.

• Built Tier 3 relationships with the Commercial Salmon Advisory Board (CSAB) through DFO’s Commercial Salmon Allocation Framework (CSAF) review process.

• The FNFC provided coordination support for First Nations delegates to the Aquaculture Management Advisory Committee (AMAC) process, which brings together various sectors with aquaculture management interests. First Nations and the environmental sector have built relationships through the sharing of aquaculture resources and expertise.
Theme 2:
Aquatic Resource Sharing

Issue: The need for sustainable fisheries is of critical importance to all parties, and determining allocations amid shifting environmental factors is a daunting management task. DFO seeks to establish an access and allocation framework for management purposes and thus imposes a notional allocation system for allotting fish to First Nations and other sectors. From the First Nations perspective, the failure to consult on actual community needs, population growth, and other matters is contrary to the Crown's fiduciary obligation and case law. This system results in contentious negotiations and dialogue when discussing FSC allocations for the harvest of migratory stocks and fails to promote the collaborative approach desired by many First Nations.

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.

2014-15 PROGRESS HIGHLIGHTS

- DFO began work internally to review current First Nations engagement processes. This work is driven by the sunsetting of the PICFI program in 2016. The PICFI funding envelope was extended twice to support First Nations fisheries governance and co-management projects and initiatives. DFO engaged First Nations in discussions on January 30, 2015, and First Nations began working together at the Tier 1 level in 2015 to conduct a review of First Nations engagement processes before meeting with DFO for further discussion.
- 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 to inform the development of DFO’s annual salmon IFMPs. The SCC advances strategic technical and management priorities at a Tier 2 level, and also through Tier 1 discussions where First Nations can work together to develop management recommendations and harvest plans.
- The SCC submitted its fourth consolidated comment document on DFO’s salmon IFMPs, consisting of the voluntary submissions of First Nations’ comments on the annual IFMPs.
- SCC delegates collaborated with DFO through a sub-committee of the SCC to examine First Nations’ access to Food, Social and Ceremonial (FSC) fisheries by identifying potential fishery performance measures.
- The SCC participated in Tier 1, 2 and 3 discussions about updating DFO’s Commercial Salmon Allocation Framework (CSAF), which has been used to determine allocations of BC commercial salmon shares since 1999. SCC delegates worked together to develop a proposal for a new CSAF that is easier to understand, clearly recognizes First Nations’ economic fisheries, and identifies explicit harvest shares for these fisheries and the means to increase these shares.
- The FNFC supported SCC delegates in developing one comprehensive proposal for changes to the CSAF and supporting communications materials such as an accompanying document of guiding principles, a frequently asked questions (FAQ) guide, a summary of key decision points, and a draft declaration/ letter of support template for First Nations. The FNFC also sent a letter of support for the SCC’s CSAF proposal to the Minister of Fisheries and Oceans.
- The FNFC coordinated Tier 1 eulachon calls to provide support and promote information sharing among First Nations concerned with the potential SARA listing of Pacific eulachon populations, and supported First Nations participation in DFO’s Tier 2 eulachon calls.
- Herring was a major issue for BC First Nations in the 2014-15 fiscal year, and a great deal of engagement on herring conservation and management took place at the regional level, particularly among Central Coast, Nuu-chah-nulth and Haida Gwaii First Nations.
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.

2014-15 PROGRESS HIGHLIGHTS

- FNFC continued to move forward on the Water for Fish initiative, which focuses on the protection of freshwater habitat and increasing First Nations’ expertise and engagement on freshwater management issues. The Water for Fish initiative is funded by the US-based Gordon and Betty Moore Foundation.
- FNFC continued to build First Nations participation in the province-wide Tier 1 Water Network and engaged participants through Water Wednesday teleconferences.
- Conducted an analysis of submissions made by BC First Nations during consultations on the development of the provincial Water Sustainability Act to develop a baseline of shared First Nations concerns related to water jurisdiction, governance and management and the protection of water resources and fish habitat.
- Two of the three recent Science Series workshops were focused on topics directly related to habitat protection. The February workshop focused on the topics of incorporating Traditional Ecological Knowledge (TEK) into decision making and the state of cumulative effects assessment and monitoring. While the other workshop was not held until April 2015, planning took place in the 2014-15 fiscal year. It was focused on the topics of environmental impact assessment and the management of extractive resource activities.
- FNFC partnered with the Centre for Indigenous Environmental Resources (CIER) to develop a project proposal to assess existing First Nations capacity to engage in water co-governance with the goal of strategically supporting BC First Nations in water governance development at the regional and provincial scales.
- Secured funding from the Province of BC to host a technical groundwater management workshop for BC First Nations in 2015 (currently in planning stages) to support First Nations engagement in the development or review of groundwater regulations in the summer/fall of 2015.
- Shared policy analysis and briefings prepared by partners and collaborators from BC’s water community, e.g. POLIS and West Coast Environmental Law.
- Met several times with DFO staff between November 2014 and March 2015 to discuss the Government of Canada’s Fish Habitat Restoration Initiative (FHRI) and to discuss the possibility of the FNFC working with DFO to deliver FHRI information sessions for First Nations. Information sessions and a habitat restoration planning guidebook are being planned for the 2015-16 fiscal year.
- 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.
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.

2014-15 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). The FPP moves away from measures that protect “fish and fish habitat”, and describes instead a prohibition against causing “serious harm” to fish that are part of or support a commercial, recreational or Aboriginal fishery.
- Summarized issues and concerns from First Nations on 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. Recruited participants for 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.
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.

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**2014-15 PROGRESS HIGHLIGHTS**

- The FNFC coordinated discussions about updates to DFO’s 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. greater certainty in First Nations’ commercial salmon fisheries, and improved flexibilities in commercial fishing options to create fisheries that benefit First Nations communities.

- Negotiated the agreement with DFO for the PICFI Business Development Team (BDT), which will provide support to the First Nations Commercial Fishing Enterprises (CFEs) in BC. The BDT direction was introduced at a meeting in December 2014 which focused on the sunset of the PICFI program and feedback to DFO during engagement meetings in the spring of 2014.

- 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: Negotiation and Litigation

Issue: Government mandates are a perceived 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 legal decisions may have a narrow scope.

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

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

2014-15 PROGRESS HIGHLIGHTS

- First Nations are working with DFO through the Salmon Coordinating Committee (SCC) to develop performance measures for FSC, and discussing the need to increase FSC baseline calculations used by governments.
- Played a coordination and support role for the First Nations Caucus of the Pacific Salmon Commission, to enhance and strengthen First Nations’ participation and engagement in the Pacific Salmon Treaty, which sets out the process by which the governments of Canada and the United States negotiate on the management of Pacific salmon.
- Hosted three FishTank policy dialogue forums for First Nations discussion of various strategic issues, including negotiations and litigation.
- A priority activity identified in the First Nations Leadership Council and DFO workplan to support the MOU with the Minister is to look at case law implementation. The FNFC developed a table of significant and relevant First Nations court cases that the MOU parties can review to help identify priorities for implementation.
- Progress on negotiations and litigation is taking place at the regional and watershed scales.
- The FNFC supports the Fraser Salmon Management Council, 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.
- On March 9, 2015, the five Nuu-chah-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 original rights to fish and sell fish. In this new trial, Canada must prove that DFO’s past and ongoing infringements of fishing rights can be justified by federal legislation and societal interests. The trial is expected to last several months. FNFC staff attended the pre-trial gathering and supported communications with BC First Nations regarding the trial.
- The five Nuu-chah-nulth Nations wrote a letter to the BC commercial herring industry on January 5, 2015 requesting that commercial herring roe fishermen choose to fish more abundant stocks in the Strait of Georgia or Prince Rupert (recommended that commercial herring fishermen do not select west coast Vancouver Island as their fishing area for 2015). The Nations then pursued an interlocutory injunction pursued in federal court on February 26, 2015 to close the fishery, but the judge ruled against it. However, just before it was scheduled to open, DFO cancelled the fishery due to poor egg samples (science consistent with Nuu-chah-nulth traditional knowledge indicators).
- A group of over 50 Heiltsuk band members occupied DFO’s central coast office near Bella Bella on March 29, 2015 to oppose the commercial herring roe gillnet fishery. The FNFC issued a press release supporting their efforts to protect herring. A few days later, gillnet fishermen voluntarily departed when there weren’t enough herring to sustain their fishery. The Heiltsuk were successful in negotiating improved stock assessment and on-the-ground cultural training by Heiltsuk for DFO officers.
- The Council of the Haida Nation won an injunction to close the herring roe fishery in their territory on March 5, 2015 in federal court.
- Some of the items identified in the First Nations 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 2014-15 Annual Report and the First Nations Fisheries Council’s projects and initiatives, visit our website at www.fnfisheriescouncil.ca