



First Nations Fisheries Council COMMUNIQUÉ

APRIL 2017 ISSUE



FIRST NATIONS FISHERIES COUNCIL MEMBERS:

North Coast: **Arnold Clifton**
Central Coast: **In progress**
South Vancouver Island: **Larry George**
Lower Mainland: **In progress**
Upper Fraser: **Thomas Alexis**
Northern Transboundary: **Cheri Frocklage**
Haida Gwaii: **Robert Bennett**
North Vancouver Island: **John Henderson**
West Coast Vancouver Island: **Hugh Braker**
Fraser Valley: **Ken Malloway**
Mid-Fraser 1: **Murray Ross**
Mid-Fraser 2: **Tracy Wimbush**
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FISHERIES ACT REVIEW

The previous federal government made changes to the *Fisheries Act* through two Omnibus Bills (Bills C-38 and C-45) which passed through Parliament and received Royal Assent on June 29 and December 14, 2012 respectively. In June 2016, the federal government announced it would be undertaking a review of the following environmental and regulatory processes: *Fisheries Act*, *Navigation Protection Act*, *Canadian Environmental Assessment Act*, and the National Energy Board. The Prime Minister mandated the Minister of Fisheries, Oceans and the Canadian Coast Guard to “review the previous government’s changes to the *Fisheries Act*, restore lost protections and incorporate modern safeguards”. The Minister asked the Parliamentary Standing Committee on Fisheries and Oceans (FOPO) to undertake the review of the *Fisheries Act*.

Scope of the *Fisheries Act* Review

The review of legislative changes to the *Fisheries Act* was to focus on:

1. the scope of application of the *Fisheries Act*, and specifically the **serious harm to fish prohibition**;
2. how the prohibition is implemented to protect fish and fish habitat;
3. the **definition of serious harm to fish**, and the definitions of **commercial, recreational, and Aboriginal fisheries**;
4. the use of **regulatory authorities** under the *Fisheries Act*, and other related provisions of the Act; and
5. the **capacity** of Fisheries and Oceans Canada to deliver on fish and fish habitat protection through project review, monitoring, and enforcement.



Through a public engagement process, the Standing Committee on Fisheries and Oceans has heard from First Nations, industry, fishers, NGOs, academia, etc. with respect to the 2012-13 changes to the Act. Indigenous groups were invited to provide their perspectives on the *Fisheries Act* changes to the Standing Committee by November 30, 2016 or directly to the Minister of Fisheries, Oceans and the Canadian Coast Guard by January 31, 2017. Indigenous organizations could also request to appear before the Standing Committee to provide their views. Throughout the review process, the Standing Committee heard from 50 witnesses; only 4 of those were Indigenous organizations, including Brenda Gaertner who represented the First Nations Fisheries Council. The Standing Committee received 229 written submissions from Indigenous groups, academics, industry associations, conservation organizations and governments; the highest proportion of written submissions were from Indigenous groups (77) and conservation organizations (61).

Standing Committee Report

The Standing Committee made 32 recommendations which can be broadly categorized as follows:

- Reinstating the prohibition against the harmful alteration or disruption or the destruction of fish habitat (HADD provision) and further recommendations to DFO regarding the protection and conservation of fish habitat, including adding directions for the restoration and recovery of fish habitat and stocks and considering cumulative effects of projects.
- Improved communications with “fisheries stakeholders” (presumably including Indigenous groups) and transparency in DFO decision making.
- That DFO reinstate the Habitat Protection Branch and make investments in hiring staff, improved monitoring and enforcement, database systems and research in ecosystem science.

However, the Standing Committee was silent on issues raised by First Nations and other Indigenous groups related to Indigenous rights, co-management or the definitions of “commercial, recreational and Aboriginal fisheries”. We are urging the Minister to address the concerns raised by First Nations and to modernize the Act 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 of the *Fisheries Act*, and most importantly, for the honour of the Crown to be upheld.

Anticipated Process to Amend the *Fisheries Act*

DFO has yet to respond the FOPO Report; however, it seems likely that government will be proceeding to amend the *Fisheries Act* over the next year. DFO will be developing legislative proposals for consultation and engagement over the spring and summer of 2017. These proposals are expected to outline and scope amendments to sections of the Act and the consultations on the proposals will inform the drafting of the Bill. DFO has already indicated that it will engage in consultations with First Nations during this phase of legislative review process, but is to be determined how these consultations will proceed. There is likely to be funding available to support First Nations participation in the consultation and engagement, but again this is to be confirmed.

It is anticipated that DFO will be working to table a Bill to amend the *Fisheries Act* in the winter of 2017/2018 and following the legislative process, the Bill could be passed and come into force as early as 2018.



NAVIGATION PROTECTION ACT REVIEW

Background

In 2012, the former Conservative federal government introduced changes to the *Navigable Waters Protection Act* and renamed it the *Navigation Protection Act* (NPA). These changes drastically reduced the number of waterways protected by the NPA and exempted several major industrial projects from federal purview. These changes include:

- Weakened protection of waterways, specifically eliminating the requirement for environmental assessments for dams, pipelines, and other major industrial activities for 99 percent of Canada's lakes and rivers, thereby reducing environmental protections for rivers and lakes people have used for centuries for travel and transport.
- Decreased accountability, transparency and public participation in decision-making by eliminating automatic public participation opportunities, and allowing the Minister to delegate responsibilities, powers, or duties in the Act.

Under the new NPA, waterways are protected only if they are among the rivers, lakes, and oceans specifically named under "List of Scheduled Waters." This List was reduced to 162 waterways from the 17,000 protected by the previous Act.

The 2012 changes removed the role of the Crown to consult or accommodate Aboriginal Rights for most navigable waters, opening the door to potential infringement on Aboriginal Rights without any consultation or accommodation. For example, rivers, lakes and oceans on which BC First Nations exert their rights to fish, navigate, harvest, and observe ceremony are not protected by the NPA unless they are specifically named in the Act's "List of Scheduled Waters". The relationship between First Nations and navigable waters is unique. Navigation is necessary for the exercise of most other water-based Aboriginal Rights and is central to the rights protected under s.35 of the Constitution. Many First Nations fish and harvest in navigable waters and depend on healthy and accessible fisheries for sustenance and for income. As well, many BC First Nations, including all of the coastal tribes, use waters for spiritual and ceremonial purposes. Navigation and navigable waters are therefore inextricably connected to the constitutionally protected rights, including water rights, of BC First Nations in a number of ways.

Standing Committee Report: "A Study of the Navigation Protection Act"

On June 20, 2016, the current Liberal federal government announced a review of the *Navigation Protection Act*, along with separate reviews of the National Energy Board, the *Fisheries Act* and the *Canadian Environmental Assessment Act*, to "restore lost protections and incorporate modern safeguards". Transport Canada and the Standing Committee on Transport, Infrastructure and Communities (SCOTIC) had a process to conduct a review of the *Navigation Protection Act*, similar to the processes used to review the other pieces of environmental legislation. Indigenous groups were invited to provide their perspectives on the *Navigation Protection Act* changes to the SCOTIC by December 7, 2016. The Standing Committee submitted its report "A Study of the Navigation Protection Act" (the Report) to the House of Commons on March 23, 2017 and Transport Canada has 120 days from then to provide its response to the Report.



Overarching Comments on the Report

The Committee rightly recognized that the changes to the *Navigation Protection Act* have impacted the viability of Indigenous use of waterways. This is an important acknowledgement. Unfortunately, the Committee appears to have failed to grasp the importance of issues that are critical to Indigenous Peoples including that:

- The application of the Act to all waters used for the exercise of constitutionally-protected rights of BC First Nations is necessary to ensure Aboriginal and Treaty Rights are protected;
- The designation of minor waters and minor works removes the requirement for consultation with Aboriginal peoples on projects that are classified as minor works or are in minor waters; and
- The NPA needs new protections to address the modern realities of climate change, cumulative effects and Canada’s adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

In preparing its response to the SCOTIC Report, the FNFC has urged the Minister of Transport to restore the protection of the Act to all navigable waters and to adopt the recommendations that the First Nations Fisheries Council of BC made in our submission to the Standing Committee, which were not mentioned in the Report. Transport Canada’s response to the report must outline stronger recommendations and confirm the federal government’s commitment to taking a broad and purposeful approach to the Committee’s primary recommendation relating to Indigenous Peoples.

Anticipated Process to Amend the *Navigation Protection Act*:

While Transport Canada has not provided any information on its intentions to amend the NPA, we anticipate that it will also follow a similar timeline and process to amend the *Navigation Protection Act* as DFO will use for the *Fisheries Act* review; however, this will likely not be confirmed until Transport Canada submits its response to Parliament, which is expected in June 2017.

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FIRST NATIONS CAUCUS UPDATE ON PACIFIC SALMON TREATY RENEWAL 2016-18

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, and Southern BC/Washington Chum salmon. Both US and Canada aim to complete negotiations by December 2017 to allow one year for domestic ratification. Negotiations and consultations for the Transboundary Rivers, Northern BC/Southeastern Alaska, Coho, and Southern BC/WA Chum chapters have been led by the Panel chairs, who have been working with their respective panels and technical committees to identify key issues and products needed to support bilateral negotiations.

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.



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Canada's chinook negotiating team will be led by Sue Farlinger, alternate Canadian Commissioner. This team has been supported by technical advisors from the Chinook Technical Committee, as well as a Chinook Working Group, consisting of panel members with a strong interest and background in Chinook.

In late 2016, DFO conducted regional consultation sessions across the province about the status of Chapter negotiations, anticipated issues for Canada, and sought input on First Nations interests into the negotiations of the five Chapters. The FNFC prepared briefing materials to support BC First Nations in these discussions, and appropriate First Nations Caucus members attended all these sessions to support BC First Nations in their discussions. In early February, FNFC sent a letter to DFO's Regional Director General providing feedback on the consultation sessions, highlighted some key issues First Nations raised during the sessions, and reminded DFO that follow-up from these sessions will be necessary, including bilateral consultations where requested or required.

During the PSC's 32nd annual meeting in February, the First Nations Caucus met to formulate shared interests and positions for each of the five PST Chapters under negotiation. These interests and positions were discussed at a Tier 2 meeting with the lead Canadian Commissioner and other senior DFO staff. Following that session, the FNFC and PSC First Nations Caucus members hosted a Tier 1 conference call on March 20, 2017 to update interested BC First Nations on the progress of Treaty Chapter negotiations and shared interests and positions of the First Nations Caucus. To date, only the Transboundary Chapter negotiations have been completed and recommended to the Commission, while other Chapters are still undergoing bilateral negotiations.

Given the significance of these international negotiations, First Nations are highly encouraged to contact DFO directly to request bilateral meetings on the renewal of the PST as they see fit. For more information on the PSC First Nations Caucus, please contact Wanli Ou at wanli@fnfisheriescouncil.ca or 778-379-6470 (ext. 29).

The PSC's First Nations Caucus consists of:

PSC Commissioners – Murray Ned, Brian Assu

Advisor to the First Nations PSC Commissioners – Russ Jones

Southern Panel – Dr. Don Hall, Mike Baird, Gord Sterritt (Chair of FN Caucus)

Fraser River Panel – Ken Malloway, Marcel Shepert, Tony Roberts Jr

Northern Panel – Stu Barnes, Harry Nyce Sr

Transboundary River Panel – Linaya Workman, Cheri Frocklage, Keith Carlick (Richard Erhardt alt.), Kerry Carlick (obs.)

Chinook Technical Committee – Dr. Teresa Ryan, Elinor McGrath, Sabrina Crowley

Chum Technical Committee – Kim Charlie

Coho Technical Committee – Pete Nicklin, Roger Dunlop

Transboundary River Technical Committee – Richard Erhardt

Northern Boundary Technical Committee – Allen Gottesfeld

Fraser River Technical Committee – Mike Staley, Kelsey Campbell



AQUACULTURE

Aquaculture Coordinating Committee:

First Nations in BC have diverse interests, perspectives and priorities with respect to the management of aquaculture and, as self-determining Nations, share a responsibility to manage resources in a manner that respects the interdependence they have with one another. As such, the First Nations Fisheries Council (FNFC) established the Aquaculture Coordinating Committee (ACC) as a technical table with members from the FNFC regions. The ACC aims to identify common interests and to increase First Nations involvement in the policy and management of the aquaculture industry.

The ACC has identified meeting objectives throughout the fiscal year with a focus on strategic agendas. The ACC continues to improve on a robust communication strategy between First Nations, and development of strategies for First Nations engagement that will advance First Nations common interests in the management of aquaculture.

Geoduck Management Framework:

On March 21, 2017 the Department of Fisheries and Oceans released a final version of the Integrated Geoduck Management Framework. First Nations have identified critical elements within the framework, and some communities and aggregate groups have drafted formal responses. The FNFC is working with the ACC to develop a formal response which will reflect concerns raised by BC First Nations. The ACC is scheduled for a Tier 2 meeting focused specifically on the Geoduck Framework on May 2nd, 2017 in Vancouver.

Publication – *Cultivating Change to Preserve Tradition*:

Working with members of the ACC, the FNFC has also recently completed a publication on First Nations and aquaculture in BC called “**Cultivating Change to Preserve Tradition.**” A PDF version of the document is available on the FNFC website at the link below. Please review and provide your comments to richard@fnfisheriescouncil.ca.

<http://www.fnfisheriescouncil.ca/wp-content/uploads/2015/09/Cultivating-Change-Brochure.pdf>

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WATER FOR FISH

Freshwater Funding Opportunities for First Nations:

FNFC’s *Water for Fish* freshwater initiative hosted a webinar on April 19th focusing on funding opportunities for First Nations-led freshwater planning and governance projects. The FNFC has a number of resources to share with First Nations from this webinar. Please contact Genevieve Layton-Cartier (contact info below) to request a Dropbox link to download the following:

- the webinar video
- PowerPoint presentation
- a written summary of freshwater funding opportunities available to First Nations, and



- a template letter for Indigenous organizations to apply for qualified done status with the Canada Revenue Agency.

New Briefing Note on BC's Water Sustainability Act:

The *Water for Fish* freshwater initiative put together a new briefing note in March 2017 which focuses on a range of options for First Nations to leverage and respond to the *Water Sustainability Act* (WSA).

The BC government has indicated that it is undertaking a “phased approach” to implementing the WSA, meaning that it will continue to develop key regulations over the next few years. Upcoming regulation areas include measuring & reporting, water objectives, area based regulations, and Water Sustainability Plans.

Please contact Project Coordinator Geneviève Layton-Cartier at genevieve@fnfisheriescouncil.ca if you would like a copy of the briefing note emailed to you.

Upcoming Water for Fish Events:

The Water for Fish initiative hosts a Water Wednesday webinar/teleconference call generally on the third Wednesday of every month. We also host freshwater-related workshops and meetings. Please contact Geneviève if you would like to be added to the Council's First Nations Water Network email list.

WATER WEDNESDAY WEBINAR: May 17th, 2017 from 10:00 am-11:00am PT

First Nations and Drought Planning and Response in BC.

Register by clicking here: <https://attendee.gotowebinar.com/register/4326547851242229249>

Other Program Updates:

The *Water for Fish* initiative is embarking on a strategic planning process in spring and summer 2017 to inform the direction of “Phase II” of the initiative.

BUSINESS DEVELOPMENT TEAM

Great news in Budget 2017! The Government of Canada approved an on-going commitment to support Indigenous participation in the commercial fishing sector. The Atlantic and Pacific Integrated Commercial Fisheries Initiatives (AICFI and PICFI) are now A-based, with \$250 million allocated over the next five years, and \$62.2 million annually thereafter. The AICFI and PICFI programs are administered by Fisheries and Oceans Canada (DFO), and the goal of both programs is to increase Indigenous capacity and participation in the commercial fishing sector. There are currently 25 Commercial Fishing Enterprises (CFEs) owned by 97 First Nations in BC.

This budget announcement reflected a huge effort by CFEs and their supporters. CFEs contacted their local Members of Parliament, Minister LeBlanc and other cabinet members, as well as the federal Liberal caucus in BC to seek support for renewal and expansion of the PICFI program. In addition to this effort by CFEs, BCAFN, UBCIC,



and the First Nations Summit provided their support to renew and expand the PICFI program. Congratulations and thanks are owed to CFEs and all their supporters for this significant success.

The budget announcement sets the stage for long-term CFE sustainability and financial independence. CFEs, their member First Nations and community fishermen can continue to plan and invest in the growth and development of their commercial fishing enterprises. The transition from annual commitments to a longer timeline will encourage CFEs to set ambitious goals, work towards achieving their objectives, and increase their governance, management and operational capacity. In this regard, the Business Development Team (BDT) will continue to provide confidential support to CFEs with respect to business planning, investment and funding applications, human and organizational capacity development, diversification initiatives, and project implementation.

Looking back on fiscal year 2016/17, all 25 Business Development Source (BDS) projects and 6 Pacific Commercial Fisheries Diversification Initiative (PCFDI, administered by DFO and supported by INAC's Strategic Partnerships Initiative) projects were successfully implemented. Project examples included license and quota acquisition, building equipment and gear storage, purchase of enumeration equipment for terminal fisheries, acquisition of ownership stakes in processing facilities, and expansion of distribution, marketing and branding opportunities. The projects were diverse and spanned the variety of interests and objectives of individual CFEs in locations across coastal and interior BC.

We look forward to working with all CFEs in the 2017/18 fiscal year!

FNFC UPDATE CONFERENCE CALLS (TIER 1) – New Schedule!

The First Nations Fisheries Council hosts First Nations fisheries teleconferences on the second Monday afternoon of every month from 1:30pm to 3:00pm. The purpose of these calls is for First Nations to raise issues or concerns for discussion, and for the FNFC to provide updates and seek feedback on our priorities and activities. These calls are Tier 1, and are open to all First Nations and First Nations fisheries program staff. Dial-in information and agendas are distributed prior to each conference call via our email list.

The next monthly FNFC update conference call will be held on Monday, May 8, 2017

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