



FIRST NATIONS  
FISHERIES COUNCIL

## **SUMMARY REPORT:**

### **Working Together Towards a New Approach to Indigenous Fisheries – Co Development of an FSC Engagement Process (Tier 2)**

**September 2019 – June 2020**

**Prepared For: FNFC FSC Tier 1 Working Group & Fisheries and Oceans Canada**

#### **SUMMARY**

- In 2019, the FNFC agreed to work collaboratively with DFO on “*Working Together Towards a New Approach to Indigenous Fisheries*” and to engage First Nations in dialogue related to their fisheries.
- FNs identified a number of policy and management issues, concerns and barriers that directly impact their Nations’ rights, values and benefits related to their fisheries.
- In September 2019, FNFC convened an FSC Working Group that would continue to work with DFO to review the information from the early 2019 dialogue sessions and to co-develop a proposed engagement strategy for DFO to implement in 2020 for further dialogue with FNs on how to develop new approaches to Indigenous fisheries.
- The FNFC and the FSC Working Group initiated a preliminary review and assessment of the challenges, barriers, and policy and operational issues identified by First Nations at the FSC dialogue sessions held in early 2019 to identify high value/critical policy and operational issues that impact the majority of fisheries and the majority of First Nations across the province.
- **Next Step:** FNFC to convene a Tier 2 meeting by September 2020 to discuss and determine an approach for developing an action plan or engagement strategy for First Nations and the Department to work together to address critical and high value FSC issues and to develop new approaches to Indigenous fisheries in the Pacific Region.

#### **ISSUE**

Having a long history with fisheries that preceded non-Indigenous settlement in North America, First Nations in Canada have a different legal relationship to fisheries than non-Indigenous Canadians. Aboriginal Rights are entrenched in Canadian law in Section 35(1) of the *Constitution Act, 1982* which states “*The existing Aboriginal and Treaty Rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed.*” This constitutional status is meant to ensure

protection of and eliminate the potential for their unjustified infringement. The Crown has a legal obligation to consult and accommodate First Nations in relation to any action or decision that has the potential to infringe upon constitutionally protected Aboriginal Rights and Treaty Rights.

In the 30 years since the Sparrow Decision affirmed First Nations priority access to fisheries and aquatic resources for food, social and ceremonial purposes, DFO's attempts to manage and control FSC fisheries has essentially ensured meaningful FSC Fisheries have never been fully realized. First Nations in BC consistently report they are not achieving their FSC needs and they are of the opinion that DFO does not manage other fisheries (i.e. commercial and recreational fisheries) to ensure that the FSC priority is met. Furthermore, First Nations all over BC are experiencing an inability to access fisheries and/or low harvest due to a number of factors: e.g. conservation for stocks of concern, low abundance/variability in returns, insufficient allocations, industrialization of fisheries and increased competition, inability to access preferred species at specific times/locations, high costs of fishing, etc.

The FNFC's 2019-2021 Strategic Plan *Transforming Relationships for Successful Indigenous Fisheries* outlined a priority area of work for the recognition, respect and implementation of Indigenous Rights, and the process of reconciliation with respect to Indigenous laws, inherent and treaty rights and self-determination relating to fisheries will include transformation in all aspects of the governance and management of fish, fisheries, and their habitats as follows:

- » Facilitate integrated policy dialogue with federal and provincial Crown agencies whose organizations have responsibilities for reconciling Aboriginal Rights and Treaty Rights, fisheries, marine and freshwater habitats, and environmental management.
- » Facilitate dialogue among BC First Nations to review existing and future federal and provincial legislation, regulations, and policies as they relate to fisheries or aquatic resources and marine and freshwater environments and collaborate with BC First Nations on developing unified responses and shared approaches.
- » Ensure that First Nations' rights to fish and to protect and manage fisheries and their habitats in their traditional territories are maintained by integrating First Nations authority, roles, and priorities into all levels of decision-making.

As part of its on-going contributions towards advancing each of the strategic priorities, the FNFC regularly hears from BC First Nations about the critical issues impacting rights-based fisheries. In particular, the FNFC frequently hears about the longstanding need to transform the relationship between DFO and BC First Nations in favour of restoring meaningful food, social and ceremonial fisheries. To be clear, this type of transformative policy and governance change can only be achieved if BC First Nations are involved in co-interpreting and co-developing the strategies, policies and guidelines applicable to FSC fisheries, and in co-managing and jointly applying these principles to FSC decisions.

Throughout 2019 and 2020 thus far, the intent of the collaborative dialogue “*Working Together Towards a New Approach to Indigenous Fisheries*” between the FNFC FSC Working Group and the Department has been to examine DFO’s current approaches to FSC and to co-develop with the Department an engagement strategy (or action plan) aimed at working with First Nations to develop new approaches to Indigenous fisheries in the Pacific Region.

## **BACKGROUND**

- Between January and March 2019, the FNFC hosted 4 regional sessions and one provincial session to engage First Nations and DFO in dialogue to “understand what a meaningful fishery might look like, and seek new approaches to achieve this”.
- Through the dialogue sessions, First Nations identified a number of policy and management issues, concerns and barriers that directly impact their Nations’ rights, values and benefits related to their fisheries.
- In September 2019, the FNFC convened a Tier 1 FSC Working Group that would continue to work with DFO to review the information from the early 2019 dialogue session and to co-develop an FSC engagement strategy for DFO to implement in 2020 for further dialogue on how to develop new approaches to Indigenous fisheries.
- As the First Nation participants to the FNFC FSC Working Group understood it, the **objective** of the 2020 engagement would be for First Nations and DFO to jointly develop and jointly implement “approaches to achieve meaningful First Nations’ fisheries”.
- The FNFC FSC Working Group met with DFO in Tier 2 meetings in September, October and January with much of the discussion centered on gaining clarity and a shared understanding of specifically “what” would be the focus of future engagements and “who” would be responsible for conducting future engagements. First Nation participants also communicated their expectation that future engagements would result in some significant and tangible actions and outcomes that would lead to “successful FSC fisheries” that reflect First Nations priority access to fisheries
- In preparation for the Tier 2 meeting in late January, FNFC staff met with DFO in December and early January to get clarity on the scope of co-developing an FSC engagement strategy that would be focused on promoting dialogue with First Nations regarding:
  - Issues related to FSC allocations and access, particularly on understanding and transparency of decision-making and operational practices for FSC access and allocations, and
  - Exploring potential changes to operational practices to support improved access for First Nations to achieve their FSC allocations.
- DFO staff also clarified that Pacific Region currently does not have the mandate to update or change national policies (e.g. Policy for Management of Aboriginal Fishing [1993]) and that the broad Tier 2 engagements are not intended to have dialogue relating to any Nation’s specific allocations.

## IDENTIFICATION OF IMPACTS TO FSC FISHERIES

- First Nations who attended the regional and provincial FSC dialogue sessions in February and March 2019 identified a number of issues, concerns and barriers that directly impact their Nations' rights, values and benefits related to their fisheries.
- The FNFC used this information to draft an "FSC Discussion Framework", organizing the identified issues into three broad categories: 1) Allocation, 2) Access, and 3) Relative Abundance of Fisheries. (Note that the identified issues related to governance were not included in the FSC discussion framework at this time, respecting the sensitivities that those topics may need further review and discussion internally and perhaps at bilateral and/or Tier 1 forums in the future.)
- First Nations also identified a number of issues that impact their FSC fisheries that likely cannot be addressed through this engagement process, but these issues will be tracked to determine whether they may be addressed through other processes or policies. For example, the Salmon Allocation Policy review process will look at overall allocations between FSC, commercial and recreational fisheries, and will update the policy accordingly.
- The intent of the FSC Discussion Framework is to elicit further information and perspectives pertaining to the policy, operational, management, and administrative barriers to meaningful FSC fisheries and potential solutions for improvements to FSC access and allocations.
- The FSC Discussion Framework was reviewed at the Tier 2 FSC Working Group meeting in January 2020 and was provided to DFO and to First Nations Working Group members to assist their organizations' community engagement sessions planned for March 2020.
- In addition, and parallel to the collaborative FNFC FSC Working Group and DFO Tier 2 process to co-develop an FSC engagement strategy, the Department provided funding through separate contribution agreements to a number of regional First Nation fisheries organizations to undertake their own Tier 1 and/or Tier 2 dialogues relating to FSC fisheries. Note that the FNFC was not involved in those regional dialogue sessions, nor have any of the regional First Nation fisheries organizations been required to provide any written reports to the FNFC as a term of their contribution agreements with the Department.
- Work of the FNFC and the FSC Working Group will focus on policy and operational issues relating to FSC fisheries that already apply (or don't apply) to the majority of Indigenous fisheries across the province, which, if addressed, could substantially improve First Nations' ability to harvest and manage their fisheries.
- Using the FSC Discussion Framework, the FNFC and the FNFC FSC Working Group did a preliminary review and assessment of the 43 challenges, barriers and policy and operational issues identified by First Nations at the FSC dialogue sessions held in early 2019, and for each of the 43 issues, we asked:
  - A) Does this issue significantly impact a Nation or community's ability to harvest species?
  - B) If this issue were changed/addressed, will a Nation or community's ability to access fisheries improve in a significant or meaningful way?
  - C) What specifically needs to change?

D) Does it impact a majority of First Nations and could be addressed at a provincial scale? Or is it best addressed at a local/area/watershed scale?

- We found that while each of these 43 issues impact FSC fisheries to some degree and with varying severity (depending on the fishery or DFO Management Area), and while they may be prioritized differently by different Nations or communities, it was possible to identify a smaller number of policy and management issues that have significant impact on a large proportion of Indigenous fisheries in the Pacific Region, which if addressed would meaningfully improve Nations’ access to their fisheries. That is to say, our focus was to identify the high value/high priority issues, not the “low hanging fruit”. The low hanging fruit may be quicker or cheaper for the Department to address, but will not significantly improve FSC access to the majority of fisheries for the majority of Nations.
- In no particular order, the following issues were identified as applicable to a majority of Nations or occurring province-wide and having a significant impact on Nations’ ability to access fisheries:

POLICY ISSUES	MANAGEMENT/OPERATIONAL ISSUES
▶ Implement FN Priority Access & Transparency in Allocation Decisions	▶ Restrictions on Dual Fishing
▶ Define/identify First Nations’ FSC needs	▶ Impact of Outside/Downstream Fisheries
▶ DFO National Policy for Management of Aboriginal Fishing (1993)	▶ Adjacency/Inter-tribal Protocols
▶ Guardians (re: enforcement authority)	▶ IFMPs
▶ Stock Rebuilding (related to: Enhancement / Aquaculture objectives and strategies)	▶ Improved Standards, Data and Science needed for Management (i.e. Catch Monitoring of Rec Fisheries)
▶ Salmon Allocation Policy	▶ Establish and Implement Conservation and Escapement Objectives

- Note that more detailed information gathering and analysis of each of these issues is required to scope and understand each of the issues in further detail, and that as more information is received and considered, this list may change.
- We also note that with the number of policy and management issues that affect FSC fisheries across the Province, it is not possible to address only one or two issues; there needs to be a concerted effort to address each of these issues through some combination of work that is done concurrently or in sequence.

## ENGAGEMENT PRINCIPLES

When considering how and where engagement should occur, the First Nation participants at the regional and provincial FSC engagement sessions in February and March 2019 provided the following guidance:

- Engagement should occur at the following scales:

- In community/Nation's territory
- Sub-regional and regional locations
- Ideally and where possible, these would be in-person meetings, however COVID health and safety precautions for possibly the next year or more will require socially distanced options of video and phone conferences and online webinars. Small meetings may be possible (50 people or less with appropriate precautions).
- Engagement should have defined scope, objectives and result in action and change.
- Engagement should occur early and be on-going and regular and have follow-up.
- Engagement should be offered and delivered consistently across engagement locations (same facilitators/facilitation plan, same topics etc.).
- Efforts should be made to engage a diverse range of First Nation and DFO participants (e.g. FN leaders, fisheries staff, elders, youth and DFO Directors, stock assessment biologists, AAAs, policy staff, etc.).
- Engagement should be resourced appropriately to support First Nation technical and policy reviews and analysis and for Tier 1 and 2 meeting costs.
- Engagement should be evaluated to measure progress and success.

## **CONCLUSIONS AND NEXT STEPS**

Reconciliation includes respect and implementation of First Nations' inherent priority right to access fisheries, and for First Nations to fully benefit from the wealth and diversity of fisheries in their territories. What remains clear is that until fisheries are managed to ensure that First Nations' Constitutional priority for FSC fisheries is met, there is no shared understanding between DFO and First Nations as to what "meaningful FSC fisheries" are and how they can be achieved. The work of reconciliation is an on-going commitment by both First Nations and DFO based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.

As a next step in the collaborative effort for *"Working Together Towards a New Approach to Indigenous Fisheries"* the FNFC is providing this summary report to the Department to provide our views on the dialogue process to date and to provide the preliminary results of the FNFC's assessment and identification of critical issues that affect a majority of FSC fisheries.

We suggest that, once the Department has time to review this summary report, we convene a Tier 2 meeting by September 2020 to discuss and determine an approach for developing an action plan or engagement strategy for First Nations and the Department to work together to address critical and high value FSC issues and to develop new approaches to Indigenous fisheries in the Pacific Region.

## APPENDIX 1

### **DRAFT Discussion Framework**

***Discussion framework and key questions to identify operational and administrative challenges/barriers and potential solutions that could improve access to FSC fisheries.***

Between January and March 2019, the FNFC hosted 4 regional sessions and one provincial session to engage First Nations and DFO in dialogue to “understand what a meaningful fishery might look like, and seek new approaches to achieve this”. Through the dialogue sessions, First Nations identified a number of issues, concerns and barriers that directly impact their Nations’ rights, values and benefits related to their fisheries. First Nations at the February and March 2019 engagement sessions identified a number of issues that affect their fisheries, and these issues have been organized under four broad Categories: Allocation, Access, Relative Abundance of Fisheries, and Governance.

Under each of these categories, First Nation participants at the 2019 dialogue sessions identified a number of issues that directly affect their fisheries or that affect the fisheries resources which thereby affects their ability to harvest. The table below summarizes the issues that have been identified to date with regard to **allocation, access, and relative abundance of fisheries**.

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**Discussion Questions:** In small groups, reviewing each of the issues in the table below, discuss the following questions and identify possible solutions to address the issue:

1. Does this issue affect my community(ies) fisheries? (e.g. some issues may apply in marine waters but not in freshwater fisheries e.g. dual fishing)
2. Do we agree that if “X” were changed or improved, it would have a direct improvement on ability to access your fisheries?
  - a. What is it that needs to change?
  - b. How will it result in improved access to your fisheries?
3. What are potential solutions to address the issue?
  - a. Management/Operational - i.e. can this issue/challenge barrier be addressed at the DFO area or regional scale through a change to operational practices?
  - b. Policy - i.e. this is a policy issue that may need a different approach (or a longer process) to address

- c. Other (i.e. participants identified a number of issues that affect the fisheries resource itself, so these types of issues may require new or integrated processes to address and/or may need a significant commitment of funding to address e.g. rebuilding plans, climate change impacts etc)
- 4. What questions and/or suggestions do you think need to be considered in future engagement?
- 5. Other thoughts?

Issues/Challenge	<u>Describe the issue.</u> Provide examples.	A) Does this issue significantly impact my ability to harvest species? B) If it changed/addressed, will my ability to access fisheries improve in a significant or meaningful way? C) What is it that needs to change? D) Is this a local issue, or does it apply to the majority of Fisheries and/or Nations across the Province?
Issues related to: ALLOCATION (e.g. the portion available to harvest)		
Define First Nations need		
Allocation requires flexibility		
Ensure First Nations priority access		
Transparency in allocation decisions		
Disposition of fish		



Issues related to ACCESS (e.g. ability to harvest)		
Policies that guide or limit allocations of the ability to harvest: e.g.		
i. Salmon Allocation Policy		
ii. Wild Salmon Policy		
iii. Pacific Salmon Treaty		
iv. Species-at-Risk prohibitions		
v. Marine Protected Areas ( <i>Oceans Act</i> )		
vi. Use of Fish (Sec.10)		
vii. ESSR		

viii. Licencing		
ix. Fisheries Act		
x. End Point Directive		
xi. Aggregate Abundance Based Management (AABM)		
xii. 1993 Policy Guiding Aboriginal Fishing		
xiii. Environmental assessment		
xiv. Aquaculture		
Management Systems and Fishing Practices:		

a) Restrictions on dual fishing		
b) Adjacency		
c) Integrated fisheries management plan		
d) In-season management and advisory processes		
e) Impact of outside fisheries		
f) Area closures		
g) Timing of openings		
h) Gear restrictions / methods		

i) Catch monitoring (of rec and commercial)		
Capacity (e.g. vessels, gear, training, recruitment of fishers)		
Environmental Conditions (e.g. water temp/ climate change, rock slide, etc.)		
Access Decision-Making (e.g. who and how makes decisions regarding access to fish)		
<p>Relative Abundance of Fisheries – i.e. in order for allocation to be meaningful, there has to be fish available to access(harvest). In some cases, the “availability” of fish to harvest could potentially be increased by improving or making new or difference management choices or through efforts to rebuild or restore populations or stocks that have declined</p>		
Management activities:		
a) Planning – e.g. address individual rivers & streams, watershed planning, integrated land & water plans.		
b) Conservation - Shared responsibility, jointly defined, precautionary, inclusive of Indigenous knowledge		

<p>c) Stock Assessment including forecasting – e.g. Need for up to date information, methodologies reviewed with First Nations</p>		
<p>d) Monitoring and enforcement – e.g. support Indigenous Guardian programs</p>		
<p>e) Catch reporting – e.g. Understand all catch (post-season, in-season), Mandatory for reporting for all sectors</p>		
<p>f) Escapement - e.g. shared definition of the level of acceptable risk in meeting escapement goals</p>		
<p>g) Management practices - E.g. elimination of catch and release, reducing bycatch and waste, getting fish to spawning grounds</p>		

Restoration & Environmental activities		
<ul style="list-style-type: none"> <li>○ Restoration – e.g. Habitat restoration, stock rebuilding</li> </ul>		
<ul style="list-style-type: none"> <li>○ Enhancement – e.g. Used carefully to maintain wild genetics</li> </ul>		
<ul style="list-style-type: none"> <li>○ Understanding and closing data gaps - E.g. ocean survival, climate change (actions and adaptations)</li> </ul>		