



FIRST NATIONS
FISHERIES COUNCIL

SUMMARY REPORT:

Species at Risk Act & Aquatic Species Workshop

January 16 (Tier 1) & 17 (Tier 2), 2013

Richmond, BC

FINAL DRAFT (September 2013)

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WORKSHOP OVERVIEW

In 2011, the First Nations Fisheries Council (FNFC) began organizing Tier 1 (First Nations only) teleconferences for participating BC First Nations to speak with each other in order to share information and perspectives regarding a potential eulachon listing. The FNFC also received notices, information and correspondence on the *Species at Risk Act* (SARA) and candidate species at risk from Fisheries and Oceans Canada (DFO) Pacific Region that was distributed to BC First Nations.

Prior to these Tier 1 teleconferences, many of the First Nations participants or communities had not engaged to any significant degree in species-specific SARA consultations; they may have had some general awareness of the Act, however many First Nations had questions and concerns about the provisions of the Act, the SARA conservation cycle processes, SARA consultations, and most importantly, how SARA listings could potentially infringe upon the Aboriginal and Treaty rights of BC First Nations.

To support information sharing and knowledge transfer in relation to SARA, the FNFC organized and hosted a two-day Tier 1 and Tier 2 *SARA & Aquatic Species Workshop* (Appendix 1: Workshop Agenda) in January 2013 to address foundational issues relating to First Nations engagement in the SARA process. This workshop intended to:

- a) Improve awareness and understanding of SARA and its consultative approach with First Nations;
- b) Understand what Aboriginal Traditional Knowledge is and why it is beneficial for the SARA process;
- c) Identify the challenges and opportunities related to sharing and using Aboriginal Traditional Knowledge in SARA Listing and Recovery processes;
- d) Make suggestions on how to improve First Nations engagement in the SARA process; and,
- e) Provide an opportunity for relationship building and advancing discussions between First Nations and Fisheries and Oceans Canada.

The workshop was facilitated by John Talbot and John also assisted the FNFC and DFO with the planning for the Tier 1 day and Tier 2 day respectively. In addition to presentations from the FNFC (Days 1 and 2) and DFO (Day 2), there were presentations from First Nations who shared their direct experiences with aquatic species at risk and SARA processes.

On Days 1 and 2, the workshop was attended by twenty-five First Nation community members and/or staff from the following FNFC geographic regions: North Coast (3), Transboundary Columbia (3), Fraser Valley (6), Northern Vancouver Island (2), Southern Vancouver Island (2), West Coast Vancouver Island (1), Central Coast (2), Upper Fraser (2), Lower Mainland (3) and Haida Gwaii (1). On Day 2, eight DFO Pacific Region staff members were able to attend and participate. Additionally, four FNFC staff and contractors provided workshop support and where possible were able to participate in the discussions.

Based on feedback from 20 workshop evaluations that were submitted from eight DFO staff and twelve First Nation community members/staff, workshop participants were very satisfied with the overall planning and organization of the workshop; average rating of 9/10 from DFO staff and an average rating of 8.83 from First Nation participants. When asked about the participant's level of understanding of SARA prior to and after the workshop, a majority of participants felt that their understanding increased; on a scale from 1 to 10, there were three First Nation participants felt that their knowledge level

increased by 3 or more points, seven First Nations that increased their knowledge level by 1 to 2 points, and two First Nation participants did not report an increase in their knowledge of SARA. Interestingly, when asked the same question, two DFO staff member indicated an increased of their knowledge by 3 points or more, two DFO staff members felt that their knowledge increased by 1 point, and four DFO staff felt that their knowledge level remained the same prior to and at the close of the workshop.

In general, when asked what they liked most about the workshop, here are some of the things that participants had to say:

- *The breakout groups were good, interactions with other nations and people* (FN participant)
- *Collaborative discussion. Listening and hearing other FNs experiences, what they are doing* (FN participant)
- *Group discussion – getting ideas on paper – possible next steps to work together* (DFO participant)
- *The amount of DFO staff present – which wasn't evident from draft agenda. Wide variety of participants geographically* (FN participant)
- *Networking, good agenda, no wasted time. Had opportunity to ask questions, debate.* (FN participant)
- *Very open and honest conversations, focused on how to improve upon current management and processes* (DFO participant)
- *Liked very much how divided into two Tier sessions as helped very much in understanding, sharing of information and discussion of potential solutions to the issues in question* (FN participant)
- *Good background given – group work was informative – nice to have FN and DFO perspectives – nice to network* (FN participant)
- *Break-out to discuss ATK use and how to implement into SARA process* (DFO participant)
- *Frank open discussion. Effort to maintain discussion on SARA as a whole, not species* (DFO participant)
- *Identifying issues and coming up with collective solutions* (FN participant)

As the hosts of the workshop, the FNFC would like to acknowledge that both First Nations and DFO staff were very engaged and animated during the plenary and small group discussions. While the subject matter may at times elicit and challenge strong opinions and perceptions, the level of discussion was respectful and insightful, and participants seemed to listen and engage with each other with an open mind.

BACKGROUND ON THE SPECIES AT RISK ACT (SARA)

The federal *Species at Risk Act* (SARA) is one of the main tools Canada uses to carry out its obligations under the United Nations *Convention on Biological Diversity*. It affirms the Government of Canada's commitment to: prevent species extirpation or extinction; recover extirpated, endangered or threatened species; and, manage species of special concern. SARA has been in place for over ten years; the Act was given Royal Assent on December 12, 2002 and came into force in stages. The majority of

the SARA provisions were proclaimed into force on June 5, 2003, with the final provisions, mainly the SARA prohibition and enforcement provisions, taking effect June 1, 2004.

The Preamble to SARA proclaims that the roles of the Aboriginal peoples of Canada and of Wildlife Management Boards established under land claims agreements *“in the conservation of wildlife in this country are essential”* and that *“the traditional knowledge of the aboriginal peoples of Canada should be considered in the assessment of which species may be at risk and in developing and implementing recovery measures.”*

It is also important to point out that SARA contains specific language around Aboriginal and Treaty Rights. Section 3 of SARA states:

For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.

Despite these important protections, during the Act’s short lifetime many First Nations across British Columbia have never fully embraced the Act. While First Nations take seriously their rights and responsibilities towards species management, protection and conservation, they have been highly critical of the Act’s scope, as well as the federal government’s interpretation and implementation of the Act to date.

Many BC First Nations have remained critical of the Act due to potential infringements that may occur:

- SARA’s automatic application to federal lands and waters, including *“reserves and any other lands that are set apart for the use and benefit of a band under the Indian Act, and all waters on and airspace above those reserves and lands”* may have the potential to adversely impact First Nations lands and infringe Aboriginal and Treaty rights; and
- SARA’s general prohibitions against killing, harming, harassing, capturing, taking, possessing, collecting, buying, selling or trading extirpated, endangered or threatened wildlife species or their derivatives may directly affect First Nations’ management, harvest, ceremonial, communal and economic access to wildlife species.

Not surprisingly, therefore, in the context of BC First Nations’ fisheries and aquatic resources, SARA processes continue to generate significant concerns and challenges. One of the main reasons for this is that since aquatic species at risk are found exclusively in federal waters, SARA’s protective and prohibitive measures are automatically triggered everywhere an aquatic species occurs, which is not the case for most other non-aquatic species at risk, which may be found on a combination of federal, provincial and private lands.

Unfortunately, SARA’s protective and prohibitive measures often brush up against BC First Nations Aboriginal and Treaty Rights, particularly food, social and ceremonial fishing rights in specific and targeted ways. The result is a cycle of SARA processes that have the potential to trigger adverse and cumulative effects to Aboriginal and Treaty Rights as they relate to fisheries and aquatic resources. In many instances, these SARA processes result in infringements to Aboriginal and Treaty Rights as well. Too often, First Nations in BC and across Canada have stated that these encroachments on Aboriginal and Treaty Rights occur without full, proper and meaningful consultation or accommodation.

The Committee on the Status for Endangered Wildlife in Canada (COSEWIC) has been assessing the status of species since 1977. In 1999, COSEWIC adopted new assessment criteria. At the time SARA came into effect, all species which had been assessed by COSEWIC's new criteria were included in Schedule 1 of SARA (list of wildlife species at risk). The remaining species at risk were included in Schedule 2 (extirpated, endangered or threatened) and Schedule 3 (species of special concern). After species on Schedules 2 and 3 are reassessed and found to be at risk, they undergo the SARA listing process. In the event that they are listed under SARA, they would be added to Schedule 1. The protection and/or conservation measures afforded by SARA apply only to species once they are on Schedule 1.

DFO had engaged BC First Nations in SARA consultation processes (e.g. Interior Fraser Coho, Sea Otter, Cultus Sockeye, Nechako White Sturgeon, and Eulachon, amongst others) associated with the various aspects of the SARA Conservation Cycle (see diagram below on p. 4) as it applies to aquatic species at risk. In various meetings and forums over the years since SARA came into effect, BC First Nations have expressed varying experiences and challenges related to DFO's SARA consultation attempts, and have consistently raised concerns related to potential infringements to Aboriginal and Treaty Rights resulting from the application of the SARA Conservation Cycle on a number of aquatic species.

Recently, coast-wide Eulachon populations were put forward for consideration of listing under SARA. Given the dietary, social, economic, and cultural significance of eulachon for BC First Nation communities, and the largely uninterrupted care and management that BC First Nations have had of their local runs, many First Nation communities were once again pulled into species-specific SARA consultations with DFO. Despite DFO hosting consultation sessions with First Nations, First Nations had the sense that they were being engaged as an "interest group" and not as rights-holders; DFO kept consultations focused on species specific information, whereas First Nations wished to discuss the potential impacts or infringements to Aboriginal and Treaty rights that could potentially result from a SARA listing of eulachon.

In light of concerns related to a potential listing of Pacific Eulachon populations and with the knowledge that upcoming listing consultations for a number of Pacific salmon stocks are scheduled to begin in 2014, it was clear that knowledge and understanding of SARA and the various steps in the SARA Conservation Cycle would be valuable to BC First Nations.

UNDERSTANDING THE *SPECIES AT RISK ACT* AND SARA PROCESSES

Through presentations delivered by Myrah Baptiste (First Nations Fisheries Council) and Christopher Devlin (Devlin Gailus Barristers and Solicitors) on Day 1 and from Kelly Francis (Fisheries and Oceans Canada) on Day 2, the *Species at Risk Act* and the SARA Conservation Cycle were summarized and overviewed for workshop participants.

The bulk of SARA's provisions came into effect in June 2003 to prevent species from extirpation or extinction, to recover Extirpated, Endangered or Threatened species, and to manage species of Special Concern to prevent them from becoming at risk. The SARA applies to all federal lands and waters, for example National Parks and National Historic Sites, Reserve Lands, as well as the internal waters and territorial sea of Canada, including Marine Protected Areas.

In the assessment and recovery of species, the Act requires that the best available knowledge be used, which includes Aboriginal Traditional Knowledge (ATK), scientific information and community knowledge. If a species is listed under SARA as Extirpated, Endangered, or Threatened, it is afforded legal protection. A number of prohibitions are triggered to protect the species and its habitat, and recovery planning requirements are triggered. An Extirpated, Endangered, or Threatened species at risk must have a recovery strategy and one or more action plans developed that “to the extent possible” identify critical habitat.

SARA’s general prohibitions as well as protection of critical habitat are not applied for species listed as Special Concern. Recovery planning for a species listed as Special Concern takes the form of a management plan. The Act also provides that “to the extent possible” all recovery planning documents (i.e. recovery strategy, action plan, and management plan) “must be prepared in cooperation” with every affected Aboriginal organization that the competent minister considers will be directly affected by the recovery document.

In the Pacific Region, there are currently 25 designated marine species at risk, 23 designated freshwater species at risk and a number of other species are under consideration for SARA listing¹.

SARA Roles and Responsibilities²

The SARA identifies a number of government entities, committees, and independent organizations with specific roles and responsibilities in the implementation of the Act:

- ***Governor-in-Council:*** The Federal Cabinet is responsible for initiating SARA timelines and makes final decisions on listings based on a recommendation from the Responsible Minister (Minister of the Environment);
- ***Environment Canada:*** The Minister of Environment is the Responsible Minister for the Act as a whole, and the Competent Minister for the protection and recovery of migratory birds and species at risk on federal lands other than aquatic species;
- ***Fisheries and Oceans Canada:*** The Minister of Fisheries and Oceans is the Competent Minister for the protection and recovery of aquatic species at risk;
- ***Parks Canada Agency:*** The Agency is responsible for the management and recovery of species at risk found in National Parks and lands administered by Parks Canada;
- ***Canadian Endangered Species Conservation Council (CESCC):*** Comprised of the Ministers of Environment Canada, Fisheries and Oceans Canada, and Ministers of the Provincial / Territorial governments that are responsible for the conservation and management of wildlife in their province or territory, the role of CESCC is: to provide general direction on the activities of COSEWIC; coordinate the activities of governments represented on the Council relating to the protection of species at risk; and, to consider advice and recommendations from NACOSAR;
- ***Committee on the Status of Endangered Wildlife in Canada (COSEWIC):*** The Act designates COSEWIC as an independent body of experts responsible for assessing and identifying species at risk, and requires COSEWIC to form an Aboriginal Traditional Knowledge Sub-Committee (COSEWIC ATK Sub-Committee);

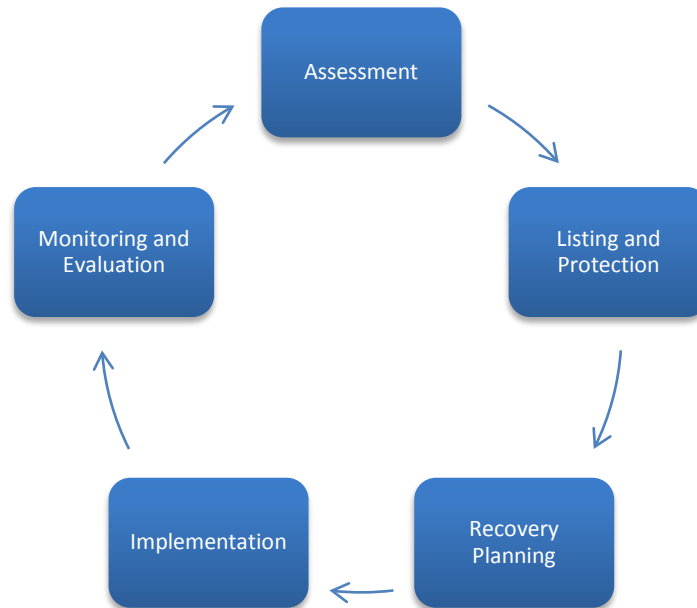
¹ <http://www.dfo-mpo.gc.ca/species-especes/listing-eng.htm>

² http://www.sararegistry.gc.ca/approach/strategy/background/responsible_e.cfm and www.nacosar-canep.ca

- **National Aboriginal Council on Species at Risk (NACOSAR):** Established under Section 8.1 of the Act, the role of NACOSAR is to advise the Minister of Environment on the administration of SARA and to provide advice and recommendations to the CESSC.

SARA Conservation Cycle³

There are five basic phases of the SARA Conservation Cycle, each having its own set of processes and activities:



1. **ASSESSMENT:** The species assessment process is conducted by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). Based on the status report, they use a committee of experts to conduct a species assessment and assign the status of a wildlife species, or designatable unit of a wildlife species, believed to be at some degree of risk. The COSEWIC ATK Sub-Committee is also charged with assisting COSEWIC to incorporate ATK into the assessment phase of the SARA Conservation Cycle.
2. **LISTING and PROTECTION:** In response to a COSEWIC assessment and status designation, the Minister of Environment issues a Response Statement indicating how the Minister intends to respond to the COSEWIC assessment, including timelines for action. During the listing phase for aquatic species assessed as Extirpated, Endangered, or Threatened, DFO will also complete a Recovery Potential Assessment, develop a Management Scenario(s), conduct a Socio-Economic Analysis⁴, and undertake listing consultations, all of which inform the DFO listing recommendation to the Minister of Environment. Once these steps are complete, the Minister will send the Governor-in-Council (GIC) a copy of the COSEWIC assessment along with a listing

³ Please note that in this section of the workshop summary report, the SARA conservation cycle was summarized by presenters on Day 1 and Day 2, but additional information was compiled from the following on-line sources: http://www.sararegistry.gc.ca/approach/strategy/background/process_e.cfm and see http://publications.gc.ca/collections/collection_2010/ec/En14-23-2010-eng.pdf at pages 7-11.

⁴ SARA uses the Treasury Board of Canada Secretariat's *Canadian Cost-Benefit Analysis Guide: Regulatory Proposals* to undertake Socio-economic Analysis <http://www.tbs-sct.gc.ca/rtrap-parfa/analys/analystb-eng.asp>.

recommendation. Once the GIC acknowledges receipt of the COSEWIC assessment, the 9 month timeline is triggered for the GIC to decide, based on the Minister's recommendation, to add or remove a species from Schedule I (the legal list of species at risk). A species added to Schedule I will benefit from protection commensurate with its designation.

- 3. RECOVERY PLANNING:** For listed species, a recovery document is prepared which outlines what is scientifically required for the successful recovery or conservation of a species at risk. For species listed as Extirpated, Endangered or Threatened, prohibitions are put in place to prevent the killing, harming, harassing, capturing, taking, possessing, collecting, buying, selling or trading an individual or its derivative and to prevent damage or destruction of a species' residence. Recovery planning for Extirpated, Endangered or Threatened species includes development of a recovery strategy that should identify threats and, to the extent possible, critical habitat. An action plan will be prepared to identify the specific actions needed to help in the species recovery, as identified in the recovery strategy. This includes a summary of the various projects and activities needed to meet recovery objectives and goals, with associated timelines, as well as an examination of socio-economic issues. For species listed as Special Concern, automatic prohibitions and identification of critical habitat do not apply, however a management plan is developed.
- 4. IMPLEMENTATION:** The implementation phase of the SARA Conservation Cycle focuses on implementing recovery and management actions in order to ensure a species at risk is not furthered imperiled and to ensure its long-term survival or recovery.
- 5. MONITORING and EVALUATION:** The objectives of the monitoring and evaluation phase of the SARA Conservation Cycle are to determine the effectiveness of protection and recovery measures, to measure progress toward achieving recovery or management objectives, and to detect changes in the status of a species.

The DFO maintains that it follows the federal Duty to Consult guidelines⁵ and the consultation and engagement requirements of the Act. This includes consultation at all stages of the SARA conservation cycle, with levels of engagement and consultation dependent on the process and known significance of species to First Nations.

Aboriginal Traditional Knowledge and SARA

As described above, SARA recognizes the essential role of Aboriginal Peoples and Wildlife Management Boards and has a non-derogation clause to safeguard existing Aboriginal and Treaty Rights. These SARA provisions should ensure broad, all-encompassing engagement between the federal government and First Nations in relation to SARA. As discussed among First Nation participants on Day 1 of the workshop, it appears that the federal government has largely limited its interactions with First Nations to requests for ATK for candidate and listed species at risk. Yet, without strong government-to-government relationships between Canada and First Nations capable of addressing SARA concerns and challenges, the collection and use of ATK for candidate and listed species at risk continues to face serious obstacles throughout the SARA Conservation Cycle.

⁵ Aboriginal Consultation and Accommodation[:] Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, March 2011
http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_eng.pdf

As an independent organization conducting species assessments, COSEWIC maintains that it does not have a legal duty to consult with Aboriginal peoples, however its operational policies and guidelines indicate that it should work closely with relevant Wildlife Management Boards and Aboriginal Peoples where possible. The Government of Canada led by DFO, Environment Canada, and the Parks Canada Agency, has a legal duty to consult with Aboriginal peoples throughout the SARA Conservation Cycle. In the case of aquatic species, during the Listing Phase of the SARA Conservation Cycle, DFO develops a regional listing recommendation. For extirpated, endangered or threatened species, four key components support the listing recommendation: a Recovery Potential Assessment, departmental Management Scenarios, Socio-economic Analysis, and public consultations. The reports and outcomes of the consultations inform the listing recommendation that DFO provides to the Minister of Environment.

The assessment and recovery measures set out in SARA are intended to make use of the best available information, which includes Aboriginal Traditional Knowledge (ATK), Scientific Information, and Community Knowledge. DFO has developed draft document, *“Guidance on Considering Aboriginal Traditional Knowledge in Species at Risk Act Implementation”*, that sets out commitments for engagement with Aboriginal communities in a respectful and meaningful way to gather and include ATK throughout SARA and SARA-related processes for aquatic species. Copies of the draft guidance document were provided to workshop participants for their reference.

In relation to the development of Stock Status Reports by COSEWIC, the COSEWIC ATK Sub-Committee “will be responsible for ensuring that Aboriginal Traditional Knowledge is incorporated into COSEWIC’s assessment process”⁶. To assist in achieving this goal, the COSEWIC ATK Sub-Committee developed *COSEWIC Aboriginal Traditional Knowledge (ATK) Process and Protocols Guidelines* (April 2010).

CASE STUDIES: FIRST NATIONS’ EXPERIENCES WITH AQUATIC SPECIES LISTINGS

On Day 1 of the workshop, First Nations having experience with the *Species at Risk Act* and its processes were invited to provide an overview of the species listing process that they were engaged with and to identify challenges that their Nations experienced throughout the species assessment, listing or recovery processes.

Pacific Eulachon (Central Coast)

Megan Moody, with the Central Coast Indigenous Resource Alliance, spoke about the current listing process for Pacific Eulachon populations. Megan grew up in the *Nuxalk* Nation community located on the Bella Coola River, and her personal history, experiences and interest in eulachon led her to focus her Master’s of Science thesis on eulachon. Eulachon were a staple food source for First Nations along the Pacific Coast, and they were either consumed whole, or were rendered for their oil (grease) which is both an important food item and a valuable trade item. For most eulachon bearing rivers in the Central Coast area, the runs are in severe decline and local First Nations have implemented conservation measures and have not harvested eulachon since the mid or late 1990s. There are still modest eulachon food fisheries in the Fraser River (measured in the hundreds of pounds) and viable food fisheries in the Nass and Skeena Rivers, although concern remains for the stock.

⁶http://www.cosewic.gc.ca/eng/sct4/sct4_1_e.cfm

COSEWIC's process for contacting or informing potential affected First Nations of species assessments is not transparent, and so it is uncertain which First Nations COSEWIC may have contacted during the eulachon assessment phase. Megan was one contributing author on the COSEWIC assessment in the initial stages; however she was not afforded an opportunity to review or comment on the final draft stock status report which had changed considerably since she was first involved. An individual's limited involvement in the process should not be interpreted as engagement or involvement with the affected First Nation community or any other community with rights to eulachon fisheries. The data, information and Aboriginal Traditional Knowledge contained in her thesis, the majority of which was specific to a limited number of rivers in the Central Coast area, was drawn on heavily in the COSEWIC Stock Status Report for Pacific Eulachon, which ultimately identified populations in three Designatable Units (DU) as: Fraser River – Endangered; Central Coast – Endangered; and, Nass/Skeena – Threatened (in May 2013 the Nass/Skeena designatable unit was re-assessed by COSEWIC as a species of Special Concern).

Megan summarized some of the challenges for First Nations with respect to the eulachon assessment and listing consultations to date have included:

- COSEWIC's overall limited engagement of BC First Nations in the species assessment was particularly problematic because not only do First Nations have a wealth of ATK, they are among the only groups actively involved in monitoring and assessing eulachon runs in their territories and may hold a significant amount of scientific data and information.
- A number of affected First Nations in the Central Coast area were concerned by COSEWIC's identification of a Central Pacific coast DU and the potential infringements should this DU be listed under SARA as 'endangered'; many felt that the river systems in the area are widely geographically dispersed, that the populations are distinct and that the status of the runs varies widely from river to river.
- The development and review of the Recovery Potential Assessment (RPA) was lengthy. Additionally, many First Nations felt that the process used to develop the RPA was not clearly communicated, and there were concerns raised by First Nations about data sharing arrangements.
- The consultation schedule for the listing phase keeps changing, and there seem to be long delays between the major steps (RPA development, Management Scenario development, Socio-Economic Analysis).
- On-going concern is that First Nations are not adequately being consulted or engaged in the SARA Conservation Cycle, particularly in the assessment and listing phases, or in the development of specific listing tools (RPA, Management Scenarios, Socio-Economic Analysis, etc).
- Eulachon related ATK is known to exist but likely not in a format that may be acceptable in the SARA Conservation Cycle; for any species, the inclusion of ATK in the SARA processes raises its own set of issues and challenges that need to be addressed by First Nation communities.

Okanagan Chinook

Myrah Baptiste, formerly working with the Okanagan Nation Alliance (ONA) Fisheries Department, provided information on the efforts of the Okanagan Nation to have Okanagan Chinook salmon listed and protected under SARA. The Okanagan River is a tributary that enters the Columbia River just downstream of Chief Joseph Dam in Washington State. Unfortunately, Chief Joseph Dam does not have salmon migration structures, so salmon have been extirpated from the upper Columbia River in BC, and salmon migrating through the Columbia and into the Okanagan River are the only remaining salmon stocks in the Canadian portions of the Columbia Basin. Chinook were once thought to be extirpated from the Okanagan River, however in the late 1990s when the ONA and its member communities established its fisheries program, they began to officially report observations of Chinook (less than 50 observed annually) during their annual sockeye stock assessment.

The ONA believed the status of Okanagan Chinook to be in imminent danger of extirpation and in need of legal protection, and so the ONA completed an emergency Stock Status Report for COSEWIC in 2005 recommending an Endangered species designation. In a 2006 re-assessment COSEWIC designated Okanagan Chinook as a Threatened species. Even though the Okanagan Nation led the species assessment and made efforts to participate in the listing phase, their participation was hampered by uncertainty in assessment and listing consultation schedules and timelines, and the resulting communications from DFO with respect to these processes did little to provide clarity on these issues. In addition, the Okanagan Nation Alliance felt their input and views were not fully incorporated by DFO in the RPA, Management Scenarios or the Socio-Economic Analysis⁷ in a satisfactory manner.

As a whole, the ONA felt it was not engaged by DFO in a meaningful consultation process regarding the above assessment and listing for aquatic species at risk and was subject to lengthy and uncertain SARA timelines. As a result, the socio-economic analysis focused on economic factors affecting coastal economies, and did not take into consideration social or cultural factors, particularly a valuation of the socio-economic losses suffered by the Okanagan Nation for decades due to the near extirpation of the culturally important species. After the completion of the Listing Phase and referencing socio-economic factors, existing habitat degradation and the possibility of chinook recovery from elsewhere in the Columbia basin, five years after the 2005 emergency assessment, in 2010 a SARA listing decision was announced which noted Okanagan Chinook would not be listed under the Act.

Despite a lack of legal protection, the Okanagan Nation is leading its own Okanagan Chinook recovery process; DFO is involved to some extent, but there is no requirement for DFO to provide funding or fisheries management support, nor to implement any recovery or action plans that are developed. This remains both an opportunity for the Okanagan Nation, but also a significant challenge in terms of being able to achieve recovery of this important species.

Cultus Lake Sockeye

Ernie Victor, Fisheries Manager for Sto:lo Nation, spoke about the Cultus Lake sockeye population and its long journey for future recovery. In 2003, COSEWIC assessed the Cultus Lake sockeye population as endangered, and in the SARA Response Statement, the Minister stated:

⁷ At the time, the process to develop the Okanagan Chinook socio-economic analysis may have been different than the one currently being used. Currently SARA uses **the Treasury Board of Canada Secretariat's Canadian Cost-Benefit Analysis Guide: Regulatory Proposals** to undertake Socio-Economic Analysis for aquatic species.

The Cultus population has collapsed primarily due to overexploitation, including directed and incidental catches in mixed-stock fisheries at levels above those that can be sustained. [...] There are also ecological impacts to the lake habitat from colonization by Eurasian Watermilfoil, land development, stream channelization, nutrient input, and recreational use. Under present conditions, there is a high probability of extinction of the Cultus sockeye.⁸

Despite this possible outcome for the species, Cultus Sockeye were not afforded protection under SARA. And despite what was provided in the official Response Statement, many First Nations in the area felt that the underlying reason not to list was due to socio-economic factors; because Cultus Sockeye have a long migration period in a mixed-stock fishery management unit, a SARA listing for Cultus Sockeye may also have forced closures of other commercial and recreational fisheries. Although the species was not listed, DFO did commit to developing a National Conservation Strategy⁹ and implementing a Cultus Sockeye Recovery Program in partnership with local First Nation communities, municipal, regional and provincial governments, commercial fisheries and environmental non-government organizations. Accessing funding to support and implement the strategy presents an on-going challenge. While it is likely too early to determine the effectiveness of conservation and recovery efforts, because this population was not listed under SARA there is no legal requirement of the federal government to undertake monitoring or evaluation of the important recovery actions taken for this species to date.

There are still on-going and sustained pressures on this population due to human impacts (Cultus Lake receives many visitors and has significant recreational use over the summer), predation from pike minnow, aquatic habitat degradation and incidental by-catch during Fraser River fishery openings. And currently, the Cultus Lake Pygmy Sculpin population, a food source for juvenile sockeye, are listed as Threatened under SARA.

Nechako White Surgeon

Christina Ciesielski, Fisheries Program Manager from the Carrier Sekani Tribal Council (CSTC), described for workshop participants the CSTC's engagement in recovery planning for Nechako White Sturgeon. Prior to SARA coming into force, COSEWIC had already designated Nechako white sturgeon as vulnerable, (1991) and endangered in (2003), and in 2006 Nechako White Sturgeon were listed under SARA as Endangered. Currently, white sturgeon populations in BC are being reassessed into four Designatable Units, and the Nechako and other white sturgeon populations in the Upper Fraser region are being re-assessed for consolidation into a single DU with an endangered designation. A Nechako White Sturgeon recovery planning process was initiated by the province in 2000 and with other partners on the Recovery Team, the plan was completed by 2004. This recovery plan was adopted in 2006 to help meet the recovery strategy requirements under SARA. The recovery team (technical and community working groups) includes representatives from federal and provincial governments, First Nations communities, industry, and non-government organizations.

A long-lived species, Nechako White Sturgeon are distinct from other white sturgeon populations, and recruitment failure is resulting in an increasingly older age class of the remaining population. Factors contributing to the population decline include changes to the timing and volume of flows from the operation of Kenny Dam, habitat loss, and over-fishing prior to a 1994 angling ban. Due to the life

⁸ April 21 2004 Response Statement: http://www.sararegistry.gc.ca/document/default_e.cfm?documentID=351

⁹ <http://www.pac.dfo-mpo.gc.ca/science/habitat/cultus/conservstrat.pdf>

history characteristics of the species, the recovery team recognized that protection and conservation are not enough; the plan needed to focus on rebuilding the population as well.

Christina stated that some of the main challenges in the recovery of the species relates to administrative and bureaucratic delays, such as the lack of a clear process to apply and administer funding for recovery projects and species assessments (including ATK initiatives), which causes difficulty implementing projects due to limited access to funding availability, and the timing of applying for and receiving permits to approve the handling of sturgeon for monitoring and assessment purposes. First Nations involved in the recovery process have also been working to establish processes and guidelines for the collection, sharing and interpretation of ATK. A number of First Nations have been working with DFO to ensure the salmon FSC fishery does not negatively impact White Sturgeon.

ASSESSING THE BENEFITS AND CHALLENGES TO IDENTIFY OPPORTUNITIES

On Day 1 in small group discussions and in plenary, First Nations workshop participants identified and discussed a number of SARA issues and they are organized below into: Policy and Process Challenges, ATK and Science Challenges, and Tier 2 Relationship Challenges. While not exhaustive or completely explored in-depth, are likely a good representation of the issues being faced by BC First Nations, and possibly DFO, for any number of species throughout the province.

On Day 2, First Nations and DFO workshop participants in small group discussions and in plenary had an opportunity to further discuss some of those issues, to identify others, and identify some potential opportunities and solutions.

SARA Policy and Process Challenges

- First Nations are concerned about species conservation and protection, but are uncertain whether SARA is the appropriate tool to achieve these goals.
- SARA may directly or indirectly affect BC First Nations s.35 Aboriginal and Treaty Rights.
- In some cases, First Nations may consider species conservation and protection necessary, but they don't want to bear the cost of conservation through the loss of their FSC fisheries or restrictions on their cultural or economic use of fisheries and aquatic resources.
- Inadequate engagement with First Nations at the outset and throughout SARA processes; if First Nations are essential in the process, where is the funding to support an adequate level of engagement?
- COSEWIC needs to engage with potentially affected Aboriginal Communities during the species assessment.
- Funding cycles, consultation cycles and species research and assessment phases are not aligned, potentially causing delays in the SARA Conservation Cycle.
- Increased communication and clarity relating to the timelines is required at various stages during the SARA Conservation Cycle, recognizing that timelines may vary by species, and overall lack of communication on the status of the listing phase of the SARA Conservation Cycle.

- Low levels of funding and delays in implementing recovery plans for listed species.
- Interactions and impacts of SARA-listed species and their recovery actions on the food, social and ceremonial fisheries on other species may infringe on First Nations' Aboriginal and Treaty Rights.
- Many First Nations reported a lack of multi-year funding to engage effectively in different aspects of SARA assessment, listing and recovery phases (e.g. ATK, field studies, community awareness, etc.); AFSAR funding guidelines indicates that those activities are eligible for funding, so potentially proposals are being submitted that either do not meet the required funding guidelines, or that the number of proposals exceeds the available funding.
- First Nations have the perception that economic considerations are use as the main rationale for the decision not to list a species.
- First Nation participants felt that First Nation values and species values are not adequately incorporated into the Socio-Economic Analysis for a SARA listing process; the costs of NOT protecting a species are also not incorporated into the SEA and perhaps they should be.
- DFO clarified that the SE analysis is not intended to be retrospective (i.e. looking at past losses). It is intended to look at the current situation (baseline) and the costs and benefits of incremental change to management under a "list" (and "do not list") scenario into the future. The Cost-Benefit Analysis (CBA) quantifies (where appropriate) the potential changes in monetary terms through examining economic indicators and reports on the economic impacts, where possible. The economic impacts captured in the CBA are then further explored to report on social impacts, specifically examining measurable impacts such as employment and income impacts across affected parties and regions.
- Either before the assessment phase or in the event that an assessed species is not listed, in some cases First Nations have implemented their own management and conservation measures, which may include voluntary restrictions on fisheries.
- Since the federal government has faced, and lost, legal challenges resulting from their failures to develop recovery strategies in accordance with SARA timelines and to identify critical habitat, there is a backload of recovery strategies coming forward that will identify critical habitat.
- DFO and First Nations have not had meaningful government-to-government discussions about compensation for implementation of their own conservation measures or for extraordinary impact resulting from the identification and protection of critical habitat.
- Access to salmon was identified in the Northern and Southern Resident Killer Whale recovery strategy as part of the species' critical habitat in need of protection. Broader than SARA-related consultations, First Nations need to be consulted through other DFO consultation processes about how protection of this part of critical habitat may impact salmon management and FSC access to chinook salmon moving forward.
- In 2012, the Minister of Environment signaled the government's intent to make changes to the *Species at Risk Act*, but First Nations have not been informed of any consultations on proposed

changes or the process for those consultations. Any proposed changes to the Act require full and meaningful consultation with Aboriginal communities.

- First Nations are asked to review and provide comments on draft documents (e.g. RPA, or other DFO non-SARA processes such as IFMPs); in many cases First Nations where have provided written comments, they may find it difficult to determine how their advice was considered, especially in cases where the draft seemed not to have been changed in the final version.
- Confusion on the sequence of steps in the listing phase – e.g. Eulachon RPA started before COSEWIC assessment was finalized; Eulachon management scenarios shared with industry before they were shared with First Nations.
- Even when species are not listed and afforded legal protection, the COSEWIC designation compels DFO to evaluate its species' management and to consider making necessary adjustments.
- Within a DU, a sub-population may be “sacrificed”, but local First Nation communities may rely on those localized sub-populations for dietary or medicinal purposes or for cultural or spiritual practices. So the loss of localized populations within a DU for a protected population may have significant adverse impacts to First Nation communities.
- Regional DFO staff report that one of the challenges related to SARA listing consultation for species occurring over vast geographic areas is that consultations tend to take longer because there are many groups to consult.

ATK and Science Challenges

- ATK is very holistic and not necessarily species specific, and so requires interpretation by knowledge keepers. For example, for SARA purposes, there may not be a fine enough resolution that indicates “this ATK pertains to this specific individual, at this location”.
- ATK on distinct populations may not be recognized by western science.
- ATK between First Nations may not be transferrable; e.g. *Nuxalk* ATK on eulachon may not apply to eulachon populations in other areas.
- It is a knowledge system that is transferred verbally and is learned over time through experiential learning, and may not be readily accessible for use in SARA processes over short timeframes. For example, you cannot “*pull an elder off the shelf and learn everything about a species in an hour*”.
- There is limited funding for First Nations wanting to record, analyze and interpret ATK, and given the holistic nature of ATK it takes a long time to gather, record and codify.
- Many First Nations are also grappling internally and externally with issues related to Intellectual Property Rights as it pertains to the collection, analysis, interpretation and sharing of ATK; First Nations remain concerned about who has access to ATK once it enters the public realm.

- First Nations feel that ATK is not valued in the same way that western science is within SARA processes; this outcome may act as a disincentive for First Nations to become involved in SARA processes.
- There is a lack of internal and external protocols that guide the collection, recording, interpretation and use of knowledge (ATK, scientific data, community knowledge).
- It is perceived that DFO “passively” (through form letters) requests First Nations to provide ATK and other data and information; First Nation participants felt that such an approach does little to build meaningful relationship with First Nations and ATK knowledge holders.
- For First Nations, it may not be clear what type of information is being sought by DFO (e.g. habitat use, animal behavior, population dynamics). The request for ATK needs to be clarified so that First Nations can research or gather and interpret the pertinent information.
- Once information is shared and reported through SARA processes, the information enters the public realm is subject to the *Freedom of Information Act* and the government cannot guarantee the confidentiality of Aboriginal Traditional Knowledge.

Tier 2 Relationship Challenges

- First Nation workshop participants observed that First Nations and the Canadian Government may have different value systems and objectives for species conservation, biodiversity and management, and species recovery making it difficult to reconcile potential SARA actions.
- First Nations participants feel that they are treated like “other interests” and are not directly involved in collaborative efforts in the assessment, listing and recovery phases.
- First Nations are highly frustrated by long timelines for SARA engagement and consultations that result in non-listing; they are similarly frustrated by the lack of funding and lengthy timelines to develop and implement recovery plans.
- First Nations are already in conservation mode on a number of Pacific Fisheries (e.g. early time Chinook, early Stuart sockeye, eulachon, etc.) due to species declines and cumulative effects outside of First Nation control, but in many cases it is felt that there may not be a corresponding or complementary set of conservation or management actions by DFO. Note that First Nations recognize that in many cases this may not be a SARA issue yet, but it may arise during future considerations for species’ listings.
- Generally, First Nations are aware that DFO manages fisheries in accordance with the *Fisheries Act*. However it is not clear to First Nations how the government (DFO) modifies its management practices for species that are not listed for protection under SARA. Some First Nation workshop participants that are interested in species conservation and recovery are discouraged by the sense that some species are “endangered” enough to be considered for listing, but in some cases, not “endangered” enough for recovery plans and implementation of recovery measures when species are not listed.

- In the absence of legal protection, First Nations may lead species recovery plans to meet their community management objectives, however they have no “teeth” – there is no legal obligation to implement these plans.
- First Nations are suffering from consultation fatigue; they receive many letters from DFO and other governments on a variety of topics that they may not have the time or resources to address, and eventually the volume of referrals and consultation requests becomes “white noise” and gets forgotten or ignored.

Opportunities and Solutions

During small group and plenary discussions on Day 2 (Tier 2), First Nations and DFO staff had an opportunity to discuss some of the issues and challenges listed above and brainstormed some potential solutions to address those challenges:

- Recognition that multiple aquatic species populations are declining across the board and that collaboration is necessary.
- Potential SARA listings can help to establish and foster partnerships, particularly with NGOs and local community groups, between First Nations communities, or between First Nations and DFO and industry.
- In many cases, First Nation communities and organizations have developed good relationships with DFO Area staff (Resource Managers, Aboriginal Advisors, etc.) so the DFO SARA teams are encouraged to continue connecting with their colleagues in the area offices for help in facilitating dialogue and relationship building for SARA assessments, listing and recovery efforts. First Nations also meet regularly with DFO staff on other matters, so there is potential to combine meetings to discuss multiple issues. This may be a positive step in relationship building and initial information sharing on the SARA Conservation Cycle, but it does not replace the requirement for formal and meaningful consultations.
- Continue to ensure that engagement is inclusive of all First Nations that may have Aboriginal Title and Rights, and Aboriginal Treaty Rights and an interest in the species.
- Increased communication from DFO on the status of the Listing process could be accomplished by regularly updating information on the DFO website and having web-based “go-to meetings” as a pre-meeting to share information and prepare for consultations sessions.
- DFO has developed a draft document “*Guidance on Considering Aboriginal Traditional Knowledge in Species at Risk Act Implementation*” to provide guidance for its engagement with Aboriginal communities in a respectful and meaningful way throughout the SARA Conservation Cycle.
- First Nations are encouraged to work internally to develop their own internal processes and protocols with respect to Intellectual Property Rights as it pertains to the collection, analysis, interpretation and sharing of their ATK. The COSEWIC *Aboriginal Traditional Knowledge (ATK) Process and Protocols Guidelines* (April 2010) may be a good place to start.

- In cases where there is a decision not to list a species, it may provide an opportunity for a non-DFO group or organization to play a leadership role in species' recovery; First Nations, community groups or even governments have taken a lead in developing recovery strategies and action plans for non-listed species that they may have a particular interest in.
- Potential SARA listings can provide a focus and trigger funding opportunities for First Nations to conduct scientific and ATK research within their communities and territories.
- While there may be outstanding challenges with the sharing and/or inclusion of ATK in the SARA listing phase, some First Nations workshop participants experienced a greater degree in success with having ATK incorporated into local / community conservation and recovery planning processes
- First Nations communities and organizations may work collaboratively to share scientific information and ATK, develop and share conservation strategies and recovery plans, develop principles, policies and practices for the collection and sharing of ATK.
- A potential SARA listing can be beneficial in raising public awareness of the species and public engagement in SARA processes.
- In the event of a decision not to list a species, going through the SARA process can build awareness of the species and may lead to the development of local protection, conservation and recovery measures, which may have some influence on DFO management decisions and which would still require DFO support to implement.
- SARA has provisions for the protection of non-listed species; the government can enter into a Section 12 Conservation Agreement.
- DFO should develop government-to-government relationships with First Nations and build co-management arrangements. Having co-management agreements may help to align First Nations and DFO goals and objectives so that they are working in collaboration to achieve the same goals and reach the same outcomes
- Work collaboratively and be adaptive; if something isn't working, go back to the drawing board.
- Apply draft FNFC co-management principles (Appendix 2) to the implementation of SARA; Co-management arrangements may address many of the issues identified during the workshop.

NEXT STEPS

Workshop participants were able to identify some practical ways for DFO to improve communications and consultation approaches which could lead to increased engagement of First Nations in SARA listing and recovery phases.

However there are still outstanding challenges and barriers related to the Act itself, to DFO consultation approaches, and to the sharing, inclusion and use of Aboriginal Traditional Knowledge in SARA processes that requires a commitment to ongoing dialogue.

The First Nations Fisheries Council will work with the DFO SARA Marine Team Lead to review the workshop materials and summary notes to develop a work plan for the upcoming fiscal year, and will report progress to BC First Nations. The FNFC will also continue to host regular Tier 1 teleconferences for First Nations to share information and perspectives on a variety of SARA related issues.

And, finally, this workshop report will also be shared with the National Aboriginal Committee on Species at Risk and with the Committee on the Status of Endangered Wildlife in Canada to inform their organizations on the perspectives of BC First Nations in relation to SARA and to share advice on how they can engage with BC First Nations in fulfillment of their organizations' responsibilities under the *Species at Risk Act*.



SARA & Aquatic Species Workshop

January 16 (Tier 1) & 17 (Tier 2)

Sheraton Airport Hotel, 7551 Westminster Highway · Richmond, BC

Purpose:

1. To improve awareness and understanding of the Species At Risk Act and its consultative approach with First Nations
2. To understand what Aboriginal Traditional Knowledge is and why it is beneficial for the SARA process
3. To identify the challenges and opportunities related to sharing and using Aboriginal Traditional Knowledge in the SARA Listing and Recovery processes
4. To make suggestions on how to improve First Nations engagement in the SARA process
5. To provide an opportunity for relationship building and discussion moving forward

Day 1	Wednesday January 16	Tier 1 (First Nations)
8:30	Registration & Coffee	
9:00	Welcome and Opening	
9:15	SARA & First Nations <i>Myrah Baptiste</i> , First Nations Fisheries Council <i>Christopher Devlin</i> , Devlin Gailus Barristers and Solicitors	
	<ul style="list-style-type: none">• Overview of SARA Cycle (Listing and Recovery Phases)• How SARA can affect BC First Nations fisheries and aquatic resources• Observations of key issues and challenges	
10:30	BREAK	
10:45	Aquatic Species at Risk and FN Panel <i>Megan Moody (CCIRA)</i> , <i>Ernie Victor (SN)</i> , <i>Christina Ciesielski (CSTC)</i> and <i>Myrah Baptiste (FNFC)</i>	
	<ul style="list-style-type: none">• Overview of Aquatic Species at Risk in BC• First Nations Experiences, success and challenges related to SARA	
12:30	LUNCH (Provided)	
1:30	Small Group Discussion Topics:	
	<ul style="list-style-type: none">• Challenges and Successes with SARA• SARA and Best Available Information (ATK, Scientific Knowledge, Local Knowledge)• Improving First Nations engagement in SARA processes	
3:30	Wrap-Up and Prepare for Day 2	
4:30	Adjourn	

Day 2**Thursday January 17****Tier 2 (First Nations & DFO)**

8:30 Registration & Coffee

9:00 Welcome and Opening

9:15 DFO SARA Overview

Kelly Francis, SARA Marine Team Lead, Fisheries and Oceans Canada

- Overview of SARA Listing and Recovery Phases

9:45 First Nations and SARA

Speaker TBD

- Successes and Challenges Identified from Day 1
- Potential improvements for increased First Nations participation and engagement

10:15 Health Break

10:30 Engagement of First Nations in the SARA Process

Kelly Francis, SARA Marine Team Lead, Fisheries and Oceans Canada

11:15 Incorporating Aboriginal Traditional Knowledge in the SARA Process

Kelly Francis, SARA Marine Team Lead, Fisheries and Oceans Canada

12:00 LUNCH (Provided)

1:00 Small Group Discussion Topics:

- Challenges and Successes with SARA
- SARA and Best Available Information (ATK, Scientific Knowledge, Local Knowledge)
- Improving First Nations engagement in SARA processes

2:30 Next Steps

3:00 ADJOURN: Thank You and Safe Travels

APPENDIX 2: DRAFT CO-MANAGEMENT PRINCIPLES

DRAFT Co-Management Guiding Principles

At a series meetings, workshops and engagement sessions in 2010 and 2011, First Nations have identified a set of common principles that frame their aspirations and priorities for meaningful co-management.

First Nations Ownership	<i>First Nations Title and rights arise from prior use and occupation of the land and marine spaces, and include rights to utilize and manage fisheries and aquatic resources.</i>
Recognition of Title & Rights	<i>First Nations Title and rights must be recognized and respected as a fundamental principle in all aspects of the management of fisheries and aquatic resources.</i>
Meaningful Engagement, Consultation & Accommodation	<i>The constitutional obligations of the Crown must be embedded in the mechanisms that shape the management of fisheries and aquatic resources. If shared decision-making is not possible with respect to a specific area or issue, meaningful consultation is still required. Further, impacts on territories, rights and interests of First Nations may require additional accommodation.</i>
Cooperation, Collaboration and Capacity Development	<i>In order to effectively and cohesively advance the common interests of First Nations concerning fisheries and aquatic resources, First Nations will be required to efficiently organize and develop governance capacity to conduct all manner of decision-making, engagement, advocacy, technical understandings and related interactions.</i>
Shared Responsibility	<i>First Nations must maintain a central role in the management of fisheries and aquatic resources. First Nations, Federal and Provincial governments must share and continue to hold primary responsibility for the management of fisheries and aquatic resources.</i>
Conservation and Stewardship	<i>The protection, maintenance, and rehabilitation of fisheries and aquatic resources, their habitats, and interconnected life support systems, must increasingly become a priority in the management of fisheries and aquatic resources.</i>
Trust & Relationship Building	<i>Successful relationships are built on a foundation of mutual trust and recognition that First Nations maintain a diversity in expertise and capacity.</i>
Transparency and Accountability	<i>Both resource managers and resource users must be accountable for impartial, accessible and transparent decision-making processes.</i>
Communication	<i>Pertinent information must be shared with and among First Nations in a timely manner.</i>
Knowledge systems	<i>Aboriginal Traditional Knowledge (ATK) be respected, preserved and maintained, and incorporated alongside western knowledge systems. First Nations' best available scientific information, ATK and community knowledge must be actively integrated and applied in decision making processes</i>