



## FIRST NATIONS FISHERIES COUNCIL of British Columbia

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**RE: SAP Working Group Feedback to the Draft TOR for SAP Review**

Attn: DFO Salmon Allocation Policy Review Team  
Sarah Murdoch, Nadine Pinnell, Heather Owens, Ange Hill

Dear ~~Ms. Murdoch~~ Sarah,

Over the last two years, we have coordinated a Salmon Allocation Policy Working Group (SAP WG) to collaborate and work with Fisheries and Oceans Canada (DFO), to provide our views to the Government of Canada on the *Salmon Allocation Policy* Engagement Process and drafting of the Terms of Reference (TOR) (i.e. Phase 1). In addition to the recommendations brought forward by SAP WG participants, we anticipate that individual First Nations and regional First Nations organizations may also provide direct responses and recommendations as part of the draft TOR for SAP Review consultation process.

Given the important opportunity to review and co-develop the *Salmon Allocation Policy* with B.C. First Nations, following the B.C. Supreme Court Ahousaht decision, the SAP WG is bringing forward our collective recommendations, based on principles to recognize and respect Indigenous Peoples' inherent and constitutional rights and responsibilities, the Government of Canada's commitments to Indigenous Peoples, UNDRIP implementation (i.e. Bill C-15), Canada's Ten Principles, DFO's Reconciliation Strategy and upholding relevant Supreme Court decisions (e.g. *R. v. Sparrow*, *R. v. Gladstone*, *R. v. Marshall*, *Ahousaht v. Canada*, etc.).

We acknowledge efforts made by DFO staff to incorporate several recommendations provided by the SAP WG into the current draft ToR. In providing this review, FNFC and the SAP WG worked to develop specific recommendations and revisions that can go some way toward addressing outstanding concerns. By addressing these recommendations and revisions, and barring any major changes to the final TOR, the SAP WG recommends:

- Finalizing the SAP TOR and proceeding to Phase 2 of the SAP Review process; and
- That the final Terms of Reference be provided to the SAP WG and First Nations, as soon as possible to make this recommendation final.

The following list sets out in summary form main points and issues identified by First Nations to the FNFC with respect to the Draft Terms of Reference for the Pacific Salmon Allocation Policy Review, dated October 1, 2020. Where possible, comments and suggested wording consistent with the list of points has been inserted into a version of the TOR called "FNFC - SAP DRAFT TOR- Tracked Changes- Dec 18 2020" enclosed with this summary.

## **Process and Recommendations to the Minister**

- Support for the FN-DFO Committee does not replace or come at the expense of the need for Government to Government consultation between Canada and First Nations.
- The unique rights and interests of First Nations are recognized and protected by section 35(1) of the Constitution, and, give rise to Canada's obligations to meaningfully engage with, and take into account the interests and views of, First Nations with respect to salmon fisheries in British Columbia. The FN-DFO Committee is a positive step.
- SAP Working Group confirms their understanding of the TOR which states that the FN-DFO Committee will prepare a report setting out recommendations developed through the process (including from the Multiparty Options Development Working Group) that will go to the Minister, and that this report will be attached to the internal decision note. There is no other committee or mechanism for other sectors to provide recommendations to the Minister.
- Request that the Minister's decision with respect to the recommendations and new SAP will be consistent with natural justice jurisprudence as well as the rights and obligations set out in section 35(1) of the Constitution.
- Prior to finalization of the TOR, there is a need to clarify ambiguity in the TOR with respect to the FN-DFO Committee's role in deciding and framing recommendations. In particular, section "1" should be consistent with section E. 3 "Committees" and recognize the role of the FN/DFO Committee in reviewing, finalizing and presenting recommendations in a report to the Minister.
- Further, First Nations delegation to the Multiparty Options Development Committee is inadequate. One suggestion is that First Nations delegation to the Multiparty Options Development Committee be at least 15 seats, in addition to treaty and representation from the Five Nations, to recognize regional complexities and perspectives.

## **Priority**

- Based on the TOR, the scope of the review is very focused on identifying allocation priority between sectors. The TOR do not set out the extent to which the concept of priority itself, either in general, or as it applies to specific principles or sectors, will be elaborated.
- Priority is not only or even necessarily a percentage of the resource opportunity; it also involves how opportunities are determined in relation to one another (timing, et cetera). In the 1999 SAP, some principles were elaborated on; others, like First Nations priority, were barely described. Predictability will be enhanced, and conflict and frustration may be avoided, if a more detailed understanding of what priority means is included in the new SAP.
- SAP WG proposes that the review consider and result in recommendations that include more detailed descriptions of what priority means, how it is measured and actualized, and what the principles of priority are as they apply to different sectors. This will provide more certainty to First



Nations (and other sectors) and less room for misinterpretation or conflict once there is a final SAP to implement.

### **Implementation Guidance to Support Priority**

- While operational guidance and implementation of the SAP may be formally excluded from the review, general objectives or elements of implementation should nonetheless be developed as part of the delineation of the concept of priority and its related principles.
- This is an important issue for First Nations, given that First Nations have experienced a disconnect between the high-level principle of priority of FSC fishing in the 1999 SAP and how it gets implemented by DFO in management of the fisheries. And, it has been very difficult for First Nations to change their FSC allocations from the 1990s to better reflect their current needs.
- FSC allocations and access are a significant issue that requires attention in the review as well as alongside it in other policy review. SAP WG requests that the parallel FSC Policy review is completed prior to the completion of the SAP Review process. SAP WG proposes that if the parallel FSC Policy review is not completed before the SAP Review process is completed, that the FN-DFO Committee commit to reviewing and revising the SAP in order to ensure consistency across federal policies.
- The SAP Review provides an opportunity to try to identify a middle-ground between a very broad principle such as “FSC is second in priority only to conservation” and the minutiae of in-season decision-making. This could occur as part of a discussion about what “priority” means generally or for First Nations fisheries in particular.

### **Economic opportunity, asserted rights and negotiated agreements**

- While formally recognized (court or treaty) aboriginal rights and FSC rights are to be expressly addressed as part of the process in the TOR, non-treaty negotiated opportunities, economic opportunity fisheries, and asserted rights are not. This has been noted in prior meetings with DFO. The TOR should include as a topic for discussion relative priority of economic opportunity, negotiated agreements and asserted rights fishery as part of the review.

### **Long-term Allocation Committee**

- SAP WG proposes for discussion the inclusion of a long-term FN-DFO Committee and/or multisectoral committee as part of the TOR and ultimately the SAP itself. This could be a forum to increase First Nations involvement in decision-making and allay concerns with respect to a disconnect between high level principle and implementation.

### **Habitat Protection and Restoration**

- Given that habitat protection and restoration are essential to the sustainability and availability of salmon, and thus, the functioning of any SAP in the long-term, SAP WG prefers that these subjects be included in the review. If habitat is not a specific topic or issue for discussion, then as an



alternative, it should be acknowledged as part of conservation and sustainability (as a first principle and priority).

### **Funding and Participation**

- SAP WG seeks to ensure that there is adequate funding available to support First Nations' meaningful participation in the review, including legal representation as appropriate.
- Clear timelines for the phases of review would help the process stay on track. The SAP has important implications for First Nations and the review process must be completed as soon as possible.

Yours truly,



Jordan Point  
Executive Director  
First Nations fisheries Council of BC

cc: BC First Nations  
BC Assembly of First Nations  
First Nations Summit  
Union of BC Indian Chiefs  
Rebecca Reid, Regional Director General, Department of Fisheries and Ocean  
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Enclosed attachment: "FNFC - SAP DRAFT TOR- Tracked Changes- Dec 18 2020"

