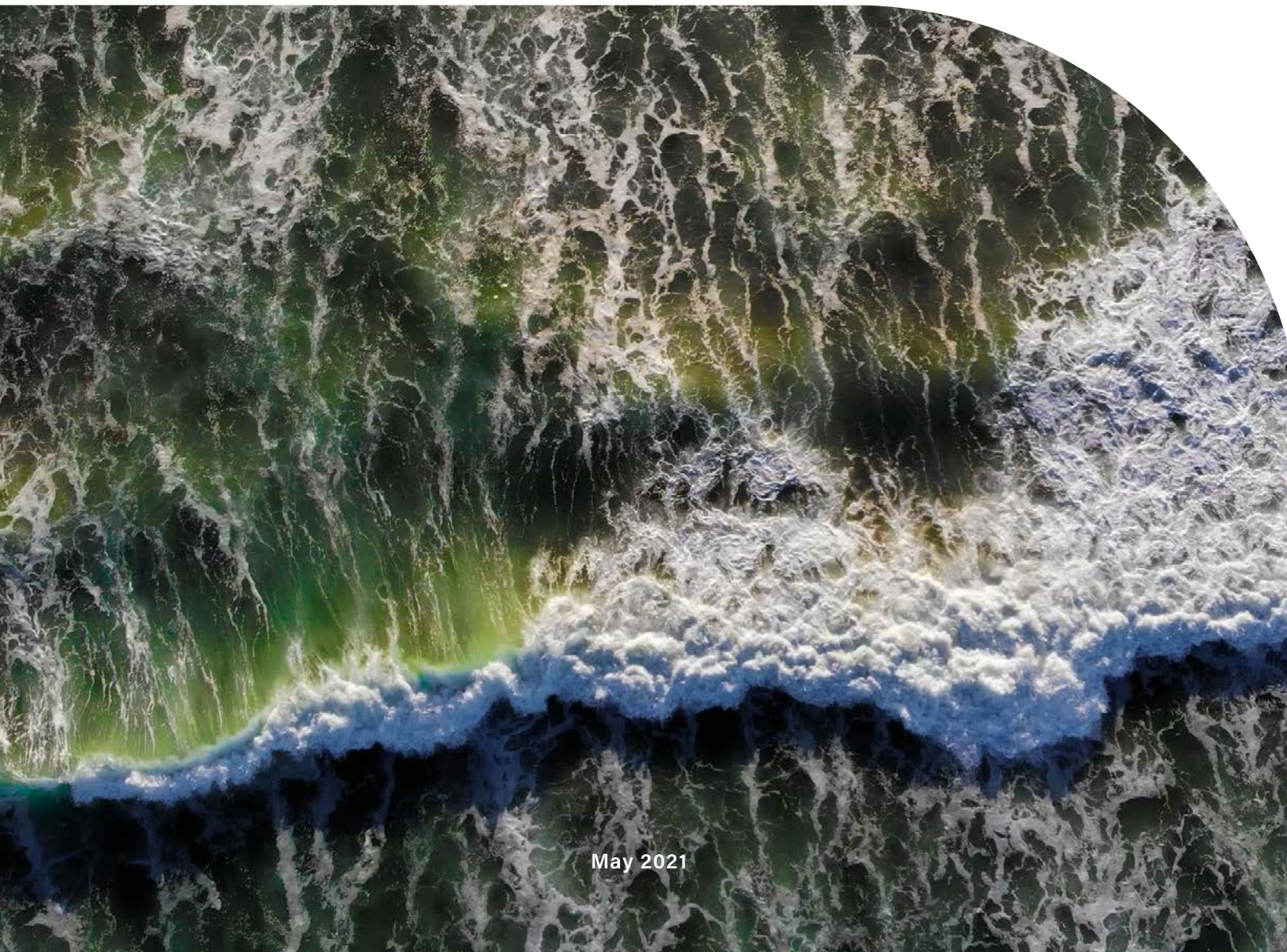




First Nations  
Fisheries Council  
of British Columbia

# Turning the Tide

Actions to Implement the ***Declaration  
On The Rights Of Indigenous Peoples Act***  
in the context of Fish, Fisheries, and Aquatic  
Habitats in British Columbia



May 2021

# ABOUT THE FIRST NATIONS FISHERIES COUNCIL OF BRITISH COLUMBIA

Through the BC First Nations Fisheries Action Plan, First Nations in British Columbia have directed the First Nations Fisheries Council of BC (FNFC) to support them in protecting, reconciling, and advancing their Aboriginal Title and Rights and Treaty Rights as they relate to fisheries and the health and protection of aquatic resources. FNFC's priorities are to develop effective governance mechanisms, form collaborative relationships among First Nations organizations, and work together to build a cohesive voice on fisheries and other aquatic resource matters.

FNFC is not a rights-holding organization. FNFC recognizes and respects the sovereignty and self-governance of all First Nations as rights holders and supports their right to make their own decisions. FNFC's role is to provide information and support First Nations positions where their collective interests align.

This document does not represent a consensus First Nations perspective on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) or the Declaration on the Rights of Indigenous Peoples Act (the Declaration Act). It is not prescriptive nor does it speak on behalf of any First Nations rights holders. It does not satisfy government's legal duty of consultation.

## **FNFC ACKNOWLEDGES AND THANKS THE FOLLOWING PARTICIPANTS IN THE UNDRIP TASK GROUP FOR THEIR LEADERSHIP, TIME, AND CONTRIBUTIONS TO THIS DOCUMENT:**

- » Hugh Braker (FNFC President and West Coast Island Delegate, Tseshah First Nation)
- » Dawn Machin (FNFC Secretary-Treasurer and Mid-Fraser Delegate, Okanagan Nation Alliance)
- » Stu Barnes (FNFC Upper Skeena Delegate, Skeena Fisheries Commission)
- » Gord Sterritt (Upper Fraser Fisheries Conservation Alliance)
- » Chief Dalton Silver (Semá:th First Nation, Union of BC Indian Chiefs)
- » Lydia Hwitsum (Cowichan Tribes, First Nations Summit)
- » Maggie Mills (BC Assembly of First Nations)
- » Murray Ned (Lower Fraser Fisheries Alliance)
- » Ray Harris (First Nations Summit)

photo from FNFC collection







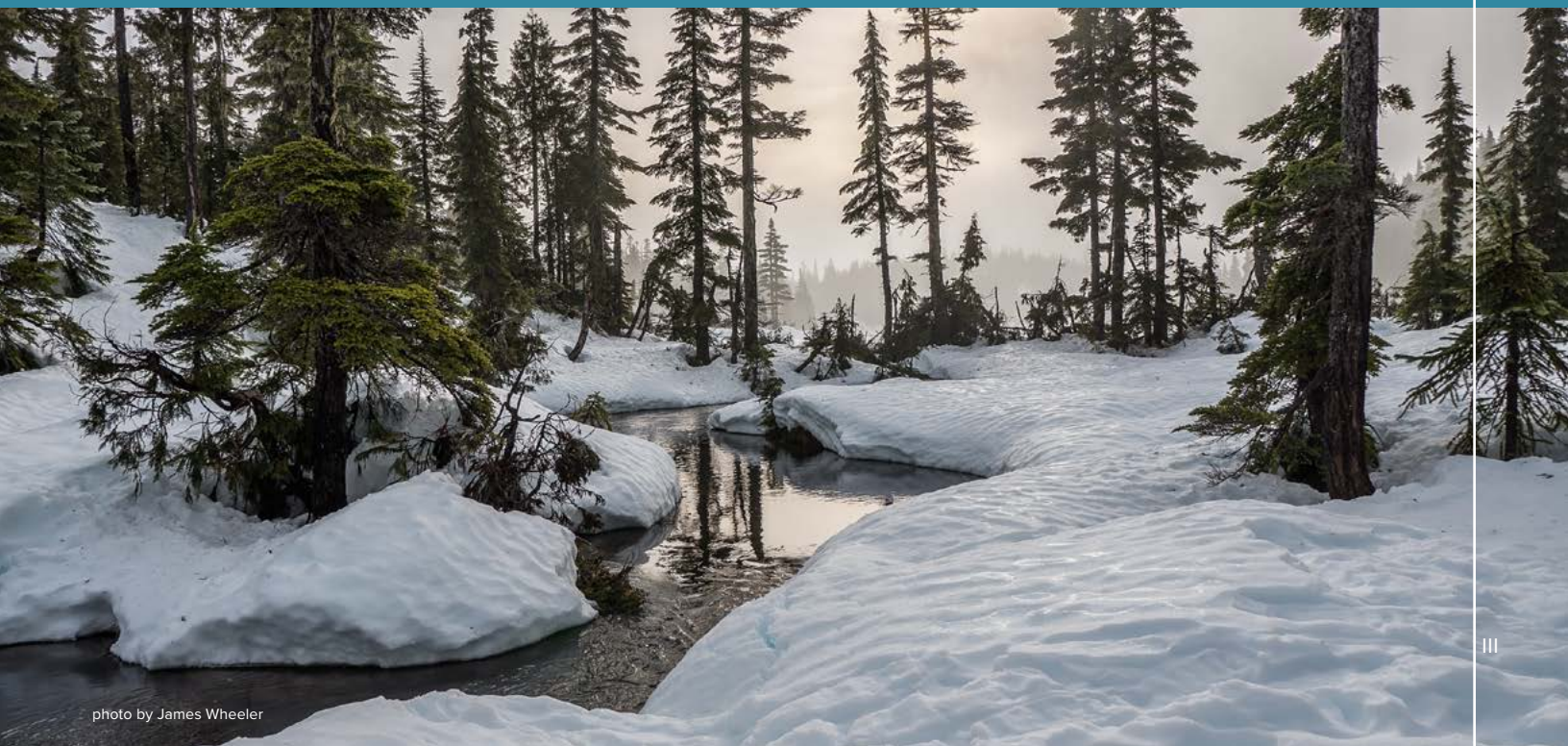
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## EXECUTIVE SUMMARY

For more than 150 years, First Nations in BC have worked tirelessly through every available avenue to have their inherent rights, responsibilities, and laws for fish, fisheries, lands, and waters recognized, respected, and upheld. The enactment of BC's 2019 *Declaration on the Rights of Indigenous Peoples Act* (*Declaration Act*) marks a critical step toward achieving this vision and making implementation of the United Nations *Declaration on the Rights of Indigenous Peoples (UNDRIP)* an enduring reality in the province. However, much work remains in terms of implementation, as First Nations and the Province of BC work together to give the *Declaration Act* meaningful effect on the ground.

This Direction Paper by the First Nations Fisheries Council of BC (FNFC) identifies concrete actions to implement *UNDRIP* and the *Declaration Act* in the context of fish, fisheries, and aquatic habitat priorities in BC. It identifies specific changes in provincial law, policy, and practice through a series of recommendations aimed at protecting wild fish and their habitats and upholding First Nations self-determination and authority.



## THE RECOMMENDATIONS, DEVELOPED WITH INPUT FROM THE UNDRIP TASK GROUP, FOCUS ON FIVE THEMES:

- 1. LAW REFORM:** bringing BC natural resource management laws that impact fish and fish habitat into alignment with UNDRIP. This includes (a) reviewing the BC *Water Sustainability Act* as a priority and enacting crosscutting reforms to natural resource laws to recognize and uphold First Nations Rights, Title, jurisdiction, and Indigenous Knowledge, (b) strengthening protections for fish and aquatic habitat, and (c) enabling joint and consent-based decision-making.
- 2. SHARED GOVERNANCE, MANAGEMENT, AND DECISION-MAKING:** building stable government-to-government structures and processes, at the appropriate levels, based on a foundation of joint and consent-based decision-making. This includes effective processes that support First Nations and the Province of BC to collaborate on *province-wide* policy, laws, and initiatives, and to implement joint and consent-based decision-making for fish, fisheries, and aquatic habitat with self-determining First Nations rights holders.
- 3. SAFEGUARDS FOR WATERSHEDS AND AQUATIC HABITAT:** addressing habitat loss to protect and restore resilient lakes, rivers, and streams that sustain healthy wild fish, aquatic life, community economies, and food security. This includes supporting First Nations to undertake territory-wide planning to guide activities on the land (and in the water), and resourcing First Nations long-term environmental stewardship programming.
- 4. DEVELOPMENT AND IMPLEMENTATION OF ENDURING PROGRAMS:** collaborating on the design and scope of dedicated resources and stable, multi-year core funding to support First Nations at the co-governance and local and watershed scales to manage fish, fisheries, and habitat. This includes ensuring provincial funding opportunities are explicitly designed to support First Nations-led initiatives, and implementing equitable revenue-sharing models.
- 5. INDIGENOUS KNOWLEDGE:** building new systems and processes for Indigenous Knowledge to actively support decision-making, consistent with First Nations distinct Indigenous Knowledge protocols, laws, processes, and protections. (*Note: It is ultimately up to First Nations to define Indigenous Knowledge for their communities.*)

This Direction Paper is intended to inform the *Declaration Act Action Plan* and ongoing work by First Nations and the Province of BC to realize the Act's promise and potential, and achieve tangible outcomes for wild fish, aquatic habitat, and communities.





**OUR ANCESTORS HAVE PASSED ON TO US  
THE RESPONSIBILITY TO PROTECT OUR LAND, WATERS,  
AND RESOURCES AS THEY HAVE BEFORE US, AND TO  
PASS ON OUR TRADITIONAL VALUES AND PRACTICES  
TO FUTURE GENERATIONS.**

*First Nations in BC will work together—based on respect for each other and the natural world—to address issues in the fishery for our common good and to enhance the well-being of our communities. We will strive to maintain healthy aquatic ecosystems and species and restore them as necessary. We will work in partnership and share management responsibility based on our ownership of our territories and our right to manage the fishery. We will work with other governments and third parties to ensure recognition and respect of our Title and Rights, and conservation and appropriate management of the resource.*

**—2007 First Nations Fisheries Action Plan Vision**

BC First Nations Fisheries Action Plan. (2007). Available online:

<https://www.fnfisheriescouncil.ca/wp-content/uploads/2015/09/FNFC-Action-Play-full-version-2007.pdf>



# 1. INTRODUCTION

## 1.1 NEW PATHWAYS FORWARD

Since time immemorial, First Nations have exercised laws, systems of governance, and stewardship practices, and have upheld their inherent responsibilities for lands and waters, including rivers, lakes, streams, estuaries, watersheds, and the abundant wild salmon and plant and animal life these aquatic systems sustain. This worldview informed the teachings, laws, and practices that informed Nations identities, cultures, languages, communities, economies, and knowledge systems.

Today, threats to wild fish and their habitats persist. Salmon runs are in crisis, undermining First Nations cultures, food security, and economies. Habitat degradation and loss continues to accelerate. Climate change is posing new threats, leaving many streams and rivers high or dry at different times of the year. While changes are underway, First Nations continue to encounter barriers to governing their territories.

The Province of BC's commitments to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and to reconciliation processes more broadly, have the potential to turn the tide and bring in a new era of policies, laws, and relationships based on recognition and respect. The enactment of the *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)* in 2019 marks a critical and promising step toward making UNDRIP implementation an enduring reality in BC. By providing a framework through which to reform BC's laws to be consistent with UNDRIP, and by enabling new forms of joint and consent-based decision-making, the *Declaration Act* has the potential to bring about transformative change.

However, the *Declaration Act* is just a starting point. As high-level enabling legislation, the Act itself does not contain the plans, details, or new authorities required to achieve meaningful change in practice.

This paper seeks to provide a more detailed picture of UNDRIP implementation in the context of fish, fisheries, and aquatic habitat in BC, and it outlines specific recommendations to the provincial government to initiate the necessary reforms.



Taseko River photo by Shamus Curtis

## 1.2 PURPOSE OF THIS PAPER

This paper identifies concrete changes in **provincial government law, policy, and practice** to advance UNDRIP implementation under the *Declaration Act* in the context of fish, fisheries, and aquatic habitat priorities in BC.

It intends to inform the *Declaration Act* Action Plan and to support ongoing work by the Province of BC, First Nations leadership, First Nations rights holders, and FNFC to give meaningful effect to UNDRIP and achieve tangible outcomes for fish, fisheries, and aquatic habitats. The recommendations specifically focus on actions within the provincial government's assumed authority; however, given interjurisdictional overlaps, it will also support FNFC's efforts to inform UNDRIP implementation with federal government.

The recommendations are aimed at protecting wild fish and their habitats, and upholding First Nations self-determination and authority.

### RECOMMENDATIONS FOCUS ON FIVE THEMES:

1. **LAW REFORM**
2. **SHARED GOVERNANCE, MANAGEMENT, AND DECISION-MAKING**
3. **SAFEGUARDS FOR WATERSHEDS AND AQUATIC HABITAT**
4. **DEVELOPMENT AND IMPLEMENTATION OF ENDURING PROGRAMS**
5. **INDIGENOUS KNOWLEDGE**

FNFC developed this paper and recommendations with guidance and input from the UNDRIP Task Group (see next page and Appendix A for details). Recommendations also incorporate priorities identified in recent submissions, reports, meetings, and resolutions from First Nations communities and organizations. This work is “living” and will continue to evolve and change in response to First Nations concerns and key issues.

*\*\*This document does not represent a consensus First Nations perspective on UNDRIP and the Declaration Act, nor does it speak on behalf of any First Nations rights holders or satisfy the requirements for the Province of BC to engage directly with rights holders. The recommendations are not exhaustive or prescriptive: self-determining First Nations will identify specific priorities in their territories.\*\**



photo from FNFC collection



## ABOUT THE FNFC UNDRIP TASK GROUP

**In May 2020, FNFC Council delegates advanced motions directing the organization to strike an UNDRIP Task Group. The purpose of the Task Group is to identify specific priorities and actions to advance UNDRIP implementation in the context of fish, fisheries, and aquatic habitat in BC.**

The Task Group is complementary to other *Declaration Act* engagement processes happening with First Nations Leadership organizations and rights holders. The Task Group's initial objectives are to identify a cohesive set of actions related to fish, fisheries, habitat, and aquatic resources for inclusion in the 2021 *Declaration Act* Action Plan and for informing UNDRIP implementation; and connect with and communicate these priorities consistently with First Nations Leadership, with the Province of BC, and at regional and Nation levels.

Task Group participants (see [Appendix A](#)) bring diverse experience in fisheries and aquatic habitat management, and are recognized for their expertise in guiding the conversation around UNDRIP implementation and reconciliation with Crown governments.



cousins in canoe, Skidegate, Haida Gwaii - photo from FNFC collection

## 2. THEMES AND RECOMMENDATIONS

### 2.1 LAW REFORM

**CHALLENGE:** Multiple BC natural resource management laws, such as the *Water Sustainability Act* (WSA), the *Forest and Range Practices Act*, and the *Mineral Tenure Act*, impact fish and aquatic habitat (see *Appendix B*). These existing laws are inconsistent with UNDRIP. They do not adequately protect fish and habitat, nor do they recognize inherent rights, Aboriginal Rights, Title, Treaty Rights, or Indigenous Knowledge, or allow for Free, Prior, and Informed Consent (FPIC) and joint decision-making.

**RELEVANT UNDRIP ARTICLES AND DECLARATION ACT PROVISIONS:** A core purpose of the *Declaration Act* is to bring BC's existing and future laws into alignment with UNDRIP. Given the range of laws that impact fish and fish habitat, the recommendations below focus on crosscutting reforms to all natural resource laws to begin to initiate change, rather than a detailed act-by-act analysis. (Note: FNFC has completed a separate detailed review of the WSA, given this legislation's critical importance to fresh water and the many issues First Nations have identified with the current Act.)<sup>1</sup>

**OUTCOME SOUGHT:** Reformed BC natural resource management laws that (a) uphold First Nations inherent rights, Aboriginal Title and Rights, and Treaty Rights, jurisdiction, and Indigenous Knowledge, (b) strengthen protections for fish and aquatic habitat, and (c) enable joint and consent-based decision-making.<sup>2</sup>

#### RECOMMENDATIONS TO THE PROVINCE OF BC:

1. Respect and support implementation of First Nations distinct laws, policies, and Indigenous management systems for fish, fisheries, and aquatic habitat.<sup>3</sup>
2. Designate the WSA as an immediate priority for reform to address key identified issues, including prioritizing water for ecosystems and fish and addressing the *First in Time*, *First in Right* allocation system.<sup>4</sup>
3. Enact initial crosscutting reforms that apply to each of BC's natural resource management laws:
4. Add preamble language that affirms and upholds First Nations inherent and constitutionally-protected Rights, Title, jurisdiction, laws, and Indigenous Knowledge;
5. Make amendments to allow for joint and consent-based decision-making as per the *Declaration Act* s. 7.
6. Implement overarching legislation to establish ecosystem health and biodiversity as priorities across all sectors.<sup>5</sup> This can guide the process of targeted reforms to individual natural resource laws (forestry, mining, etc.) to address their specific gaps and weaknesses in fish and aquatic habitat protections.



## 2.2 SHARED GOVERNANCE, MANAGEMENT, AND DECISION-MAKING

**CHALLENGE:** While promising new examples of shared and consent-based decision-making are emerging,<sup>6</sup> these co-governance arrangements for land and water are still nascent (or absent) in many territories. This is true of the fisheries and aquatic habitat context, where there is ongoing siloing and a lack of structured government-to-government relationships or shared decision-making processes between First Nations and the provincial government at the appropriate scales.

**RELEVANT UNDRIP ARTICLES AND DECLARATION ACT PROVISIONS:** Several UNDRIP articles focus on Indigenous Peoples' rights regarding governance and decision-making, including rights to

- » participate in decision-making in matters that would affect their rights through their representative institutions and procedures (*Article 18*);
- » Free, Prior, and Informed Consent in relation to legislative or administrative measures (*Article 19*);
- » determine and develop priorities and strategies for the development or use of their territories, including waters and water resources therein (*Article 32[1]*); and,
- » Free, Prior, and Informed Consent in the approval of any project affecting their lands or territories and other resources (*Article 32[2]*).

The *Declaration Act* enables new forms of decision-making agreements to give effect to these rights. Section 7 specifically enables joint and consent-based decision-making agreements between the provincial government and an Indigenous Governing Body<sup>7</sup>—a concrete mechanism to shift toward decision-making approaches in line with UNDRIP.

**OUTCOME SOUGHT:** Stable government-to-government structures and processes, tailored to the appropriate levels, based on a foundation of joint and consent-based decision-making. This includes

- » development of effective processes at a provincial scale that support First Nations and the Province of BC to collaborate on policy, laws, strategies, and initiatives with province-wide effect; and,
- » implementation of joint and consent-based decision-making and management for fish, fisheries, and aquatic habitat with self-determining rights holders (whether on an individual First Nation basis or among multiple Nations agreeing to work together at regional or watershed levels).



## RECOMMENDATIONS TO THE PROVINCE OF BC:

### **Collaboration with First Nations on province-wide policy, law, and programs:**

1. Resource and support a First Nations water caucus to serve as a collaborative forum between the Province of BC and First Nations on provincial freshwater law, policy, and management (alongside other pathways for engagement as detailed in the *2019 Recommendations for a WSA Engagement Framework*).<sup>8</sup>
2. Resource and support First Nations co-governance in the development, coordination, and decision-making for provincial funding initiatives (e.g., BCSRIF, Watershed Security Fund), so that First Nations are full partners with the Province of BC on designing how funds are managed and invested.

### **Decision making with First Nations rights holders:**

1. Support FPIC and joint decision-making with self-determining First Nations on critical decisions and management for fish, fisheries, and aquatic habitat in their territories (e.g., aquaculture tenure licensing, water licenses).
2. Engage with First Nations on authorizations at a territory- or watershed-basis so that First Nations can evaluate cumulative impacts to fish and aquatic habitat alongside specific individual licence or project impacts.<sup>9</sup>
3. Streamline collaboration by building on existing government-to-government agreements, tables, and processes to maximize efficiencies and reduce engagement fatigue.

### **Operational changes internal to government:**

1. Provide regular, transparent, and broad communications to First Nations about the status of Declaration Act implementation and relevant fisheries and aquatic habitat policy, law, and programs to ensure awareness of issues and opportunities.
2. Improve internal coordination and integration between Ministries and departments (and with federal partners) to remove silos and create clear lines of accountability.<sup>10</sup>
3. Increase communications and training with non-Indigenous stakeholders (and within government) to address racism and build awareness of First Nations Rights, Title, and jurisdiction.





photo by Jack Church

## CLEAR DIRECTION FROM FIRST NATIONS TO BREAK DOWN SILOS AND STRENGTHEN RELATIONSHIPS

First Nations clearly identify the gaps in and need for structured ongoing relationships with the provincial government regarding wild salmon and fisheries. For example, at a 2018 Wild Salmon Summit hosted by the Union of BC Indian Chiefs, BC Assembly of First Nations, and First Nations Summit, participants highlighted the lack of clear mechanisms to work with the provincial government as a priority issue:

***“The Province of British Columbia has several ministries with jurisdiction over critical factors that influence wild salmon health, including mining and forestry. However, British Columbia currently has no central department that deals with fisheries and is the only province in the country that does not have such a department. First Nations need to work with BC to establish a department that manages fisheries to allow BC to exercise jurisdiction over fisheries matters.”***

This theme also is clear in the *Recommendations for a BC Wild Salmon Strategy* (2019), which identifies a need for:

***“a more structured and ongoing relationship between Indigenous communities and the provincial government regarding salmon and fisheries issues.”***



## 2.3 SAFEGUARDS FOR WATERSHEDS AND AQUATIC HABITAT

**CHALLENGE:** Habitat loss caused by growing cumulative impacts (e.g., climate change, forestry, agriculture, urban development, mining, water allocation, invasive species, etc.) is a leading factor driving major declines in wild fish and other aquatic life, undermining First Nations livelihoods and community food security.

While the federal government asserts authority for many aspects of wild salmon management, land and water management and aquatic habitat protection are critical areas in which the provincial government assumes jurisdiction (see Appendix B for an overview of BC laws affecting fish and habitat).<sup>11</sup> Several opportunities exist for the Province of BC to implement its responsibilities for aquatic habitat protection more effectively, in collaboration with First Nations.

Relevant UNDRIP articles and Declaration Act provisions: Key UNDRIP articles related to safeguarding watersheds and aquatic habitat include the rights of Indigenous Peoples to

- » conservation and protection of the environment and the productive capacity of their territories, including waters and water resources therein, with assistance programs for Indigenous Peoples to be established by state actors for carrying out conservation and protection initiatives (*Article 29[1]*); and,
- » determine and develop priorities and strategies for the development or use of their territories, including waters and water resources therein (*Article 32[1]*).

**OUTCOME SOUGHT:** Resilient aquatic habitats and watersheds that sustain healthy wild salmon runs, aquatic life, and community well-being, economies, and food security—with First Nations leading or co-leading land and water planning and stewardship to address territory-specific issues.

### RECOMMENDATIONS TO THE PROVINCE OF BC:

1. \*See law reform recommendations in *Section 2.1*.
2. Build on initiatives like Modernized Land Use Planning, Collaborative Stewardship Forums, and the Marine Plan Partnership to resource and enable First Nations to undertake holistic territory-wide planning, monitoring, and stewardship projects that guide activities on the land (and in the water) to safeguard fish and aquatic habitat.
3. Work with First Nations technical staff to establish and monitor environmental flow needs to prioritize water for ecosystems and fish.<sup>12</sup>
4. Enable First Nations to lead and conduct restoration without needing approvals under the *Water Sustainability Act*.
5. Address in-stream fish-passage obstructions (dams, culverts, flood control structures) and aquatic invasive species.
6. Resource First Nations targeted long-term environmental stewardship programming to enable First Nations to manage, monitor, restore, and respond to aquatic habitat threats.
7. Support coordination of a provincial-scale technical network for First Nations experts to convene and collaborate on fisheries and natural resources technical interests.



## 2.4 DEVELOPMENT AND IMPLEMENTATION OF ENDURING PROGRAMS

**CHALLENGE:** First Nations are leading tremendous work in their territories to govern and manage fish, fisheries, and aquatic habitat and to engage with Crown governments, while continuing to experience major resource and capacity disparities. This is exacerbated by short-term, one-off funding programs that often put First Nations in a reactive position, resulting in projects and employment opportunities that are difficult to sustain. And, First Nations continue to bear the costs of resource development and extraction in their territories without receiving fair compensation or benefits from those activities.

**RELEVANT UNDRIP ARTICLES AND DECLARATION ACT PROVISIONS:** UNDRIP includes the rights to

- » redress where means of subsistence and development have been deprived (Article 20[2]);
- » redress for waters and water resources within their territories which have been confiscated, taken, occupied, used, or damaged without Free, Prior, and Informed Consent (Article 28); and,
- » just and fair redress for projects affecting lands or territories, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources (Article 32).

The provincial government is also committed to a new fiscal relationship that enables First Nations to have “fair and ongoing access to their lands, territories, and resources to support their traditional economies and to share in the wealth generated from those lands and resources as part of the broader provincial economy.”<sup>13</sup>

**OUTCOME SOUGHT:** Implementing UNDRIP means that First Nations receive a fair share of the benefits derived from the use and harvest of water, fish, and other resources in their territories. It requires stable, multi-year core funding that supports First Nations to implement long-term governance and management (including employment opportunities and initiatives in restoration, monitoring, science, stewardship, food security, land-based aquaculture, planning, Indigenous Knowledge, and revitalization of Indigenous legal orders) and capacity for engaging with Crown governments.

### RECOMMENDATIONS TO THE PROVINCE OF BC:

1. Design the Watershed Security Fund to provide stable, multi-year core funding to First Nations fish, fisheries, and aquatic habitat initiatives.<sup>14</sup>
2. Provide long-term predictable core funding to First Nations organizations to work in Tier 1 and 2 processes to advance shared priorities.
3. Identify and implement ongoing revenue-sharing mechanisms<sup>15</sup> so that First Nations receive a meaningful share of benefits derived from the use of fisheries, aquatic resources, and their territories.
4. Support training and capacity development programs to advance First Nations career opportunities in the fish, fisheries, and habitat sectors.
5. Support First Nations in expanding land-based aquaculture business opportunities.

## 2.5 INDIGENOUS KNOWLEDGE

### NO ONE-SIZE-FITS-ALL APPROACH EXISTS TO WORKING WITH INDIGENOUS KNOWLEDGE

*“Given the diversity of cultural practices and traditions among the First Nations in present-day British Columbia, there is no one way in which Indigenous Knowledge can or should be accessed and incorporated into government or any other decisions. There are nuances that must be considered on a community level, and there are trust issues that must be addressed broadly across many, if not all, communities.”*

—Summary Report, 2019 FNFC Fisheries Indigenous Knowledge Forum<sup>16</sup>

**CHALLENGE:** Provincial decision-making regarding fish and aquatic habitat is driven by Western science and currently excludes Indigenous Knowledge or uses it in a piecemeal, extractive manner. And, although some new laws direct governments to consider Indigenous Knowledge in decision-making (e.g., the federal *Fisheries Act* and provincial *Environmental Assessment Act*), many challenges and capacity gaps must be addressed to ensure this is done respectfully and appropriately with First Nations rights holders.

**RELEVANT UNDRIP ARTICLES AND DECLARATION ACT PROVISIONS:** UNDRIP includes the rights of Indigenous Peoples to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies, and cultures (*Article 31*). It also requires states to take effective measures to recognize and protect the exercise of these rights.

The *Declaration Act* (s. 1(2)) states that for the purposes of implementing the Act, the government must consider “the diversity of the Indigenous Peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories, and **knowledge systems** of the Indigenous Peoples in British Columbia” (emphasis added).

**OUTCOME SOUGHT:** Indigenous Knowledge actively supports provincial decision-making, including through joint and consent-based decision-making, consistent with and respecting First Nations Indigenous Knowledge protocols, laws, processes, and protections.

#### RECOMMENDATIONS TO THE PROVINCE OF BC:

1. Build capacity and understanding among government staff and decision makers about the laws, protocols, complexities, and considerations for interacting with Indigenous Knowledge.
2. Develop processes that integrate Indigenous Knowledge with the use of Western science systems—including support for the necessary knowledge governance systems, agreements, and protocols.



### 3. CONCLUSION: FROM PROMISE TO ACTION

British Columbia's broad commitments to implementing UNDRIP—and the specific pathways to do so under the *Declaration Act*—mark a promising shift toward a new era of recognition and respect for First Nations Rights, Title, jurisdiction, laws, and Indigenous Knowledge.

With these milestones in place, the journey to move from commitments to on-the-ground implementation is just beginning.

In the fish, fisheries, and aquatic habitat context, substantial reforms are needed to bring laws, policies, and practices into alignment with UNDRIP. These are not quick fixes and will take sustained commitment, time, resources, and leadership by the provincial government and First Nations working in partnership and collaboration. However, as this Direction Paper outlines, there are many concrete places for the provincial government to begin—from initiating law reform, to enabling new governance structures, to supporting First Nations capacity and economic opportunities with dedicated, multi-year core funding.

***With climate change and other growing impacts placing increasing pressure on wild fish and their habitats—and by extension on First Nations communities and their food security, economies, and livelihoods—there is clear urgency to act now to ensure healthy watersheds and abundant wild fish and aquatic life for current and future generations.***



photo by Marco Tjokro



## 4. APPENDICES

### APPENDIX A:

#### TASK GROUP DETAILS

In May 2020, FNFC Council delegates advanced motions directing the organization to strike an UNDRIP Task Group. The purpose of the Task Group is to identify specific priorities and actions to advance UNDRIP implementation in the context of fish, fisheries, and aquatic habitat in BC. The Task Group is complementary to other *Declaration Act* engagement processes happening with First Nations leadership organizations and with rights holders.

##### THE TASK GROUP'S INITIAL OBJECTIVES:

- » Identify a cohesive set of actions related to fish, fisheries, habitat, and aquatic resources for inclusion in the 2021 *Declaration Act* Action Plan and to inform UNDRIP implementation.
- » Connect with and communicate these priorities consistently with First Nations leadership, with the Province of BC, and at regional and Nation levels.

The Task Group gathered for four Tier 1 meetings and one Tier 2 meeting with provincial government staff between September 2020 and March 2021.

##### TASK GROUP PARTICIPANTS:

- Chief Dalton Silver (Semá:th First Nation, Union of BC Indian Chiefs)
- Dawn Machin (FNFC, Okanagan Nation Alliance)
- Gord Sterritt (Upper Fraser Fisheries Conservation Alliance)
- Hugh Braker (FNFC, Tseshah First Nation)
- Lydia Hwitsum (Cowichan Tribes, First Nations Summit)
- Maggie Mills (BC Assembly of First Nations)
- Murray Ned (Lower Fraser Fisheries Alliance)
- Ray Harris (First Nations Summit)
- Stu Barnes (FNFC, Skeena Fisheries Commission)

##### THE WORK OF THE TASK GROUP IS SUPPORTED BY THESE PEOPLE:

- Jordan Point (executive director, FNFC)
- Astrid Niemann-Zajac (senior manager, Economic Opportunities & Partnerships, FNFC)
- Susi Porter-Bopp (project manager, Water for Fish, FNFC)
- Rosie Simms (independent consultant)
- Kris Statnyk (Mandell Pinder LLP)

## APPENDIX B:

# OVERVIEW OF PROVINCIAL JURISDICTION AND AUTHORITY AFFECTING AQUATIC HABITAT AND FISHERIES

The Province of BC has assumed *exclusive* jurisdiction under Canada’s Constitution over various matters such as property and civil rights, provincial “Crown land,” non-renewable resources, and all matters of a merely local or private nature.

The Province of BC has also assumed jurisdiction that is *shared* with the federal government over various matters, such as the environment.

While the federal government assumes exclusive jurisdiction over the seacoast and inland fisheries, the Province also exercises some authority related to fisheries, such as the management of freshwater species and licensing of freshwater salmon sportfishing.

The Province of BC exercises its assumed jurisdiction and authority through provincial legislation in ways that may affect aquatic habitat and fisheries, including most directly through the legislation listed and summarized below.<sup>17</sup>

***Environmental  
Management Act***  
**SBC 2003, c 53**

Regulates industrial and municipal waste discharge, pollution, hazardous waste, and contaminated site remediation, including provisions for authorizing the introduction of waste into water, foreshore, and land covered by water.

***Fish and Seafood Act***  
**SBC 2015, c 14**

Regulates those who possess, rear, grow, harvest, process, store, transport, or distribute fish or aquatic plants that may be distributed to the public for human consumption, including provisions for the issuance of licences for the wild harvest and culture of aquatic plants.

***Forest and Range  
Practices Act***  
**SBC 2002, c 69**

Regulates all forest and range practices on provincial “Crown land,” including provisions for licensing during all stages of planning, road building, logging, reforestation, and/or grazing.

***Land Act***  
**RSBC 1996, c 245**

Regulates the use and disposition of provincial “Crown land,” including provisions for authorizing tenures for aquaculture facilities and ancillary uses on land covered by water and foreshore.

***Mines Act***  
**RSBC 1996, c 293**

Regulates all mines during exploration, development, construction, production, closure, reclamation, and abandonment, including provisions for the protection and reclamation of watercourses affected by mining activities.

***Oil and Gas Activities Act***  
**SBC 2008, c 36**

Regulates oil and gas activities, including through the establishment of the oil and gas commission and delegation of certain authorities under other provincial legislation to the commission, such as authorities under the *Water Sustainability Act* and the *Environmental Management Act*.

***Riparian Areas Protection Act***  
**SBC 1997, c 21**

Regulates the protection of riparian habitat by local governments during residential, commercial, and industrial development activities.

***Water Protection Act***  
**RSBC 1996, c 484**

Regulates bulk water removal and prohibits the large-scale diversion of water between major provincial watersheds and/or to locations outside the province.

***Water Sustainability Act***  
**SBC 2014, c 15**

Asserts provincial ownership over water and is the principal legislation that regulates the diversion and use of water, including provisions for water sustainability planning and licensing ground water use.

***Water Users' Communities Act***  
**RSBC 1996, c 483**

Regulates the creation and management of water users' communities, which may acquire, hold, and control water licences as well as acquire, construct, hold, maintain, improve, replace, and operate works.

***Wildlife Act***  
**RSBC 1996, c 488**

Regulates the management, conservation, and protection of some freshwater fish species, including provisions for licensing of freshwater sportfishing and controlling alien species.



## NOTES

1. FNFC. (2020). Direction Paper: Declaration on the Rights of Indigenous Peoples Act and High Priority Water Sustainability Act Reforms. Available online: <https://www.fnfisheriescouncil.ca/wp-content/uploads/2020/12/The Declaration Act-WSA-paper.pdf>
2. Beyond the reforms identified here: UNDRIP Task Group participants highlight that an overarching key action is for Crown governments to implement and uphold the Supreme Court decisions that First Nations have long fought for with respect to fisheries, fish, Title, Rights, and jurisdiction—including Marshall, Sparrow, Gladstone, and Tsilhqot'in.
3. The Yinka Dene 'Uza'hné Surface Water Management Policy and ʔEsdilagh Sturgeon River Law are two recent examples of First Nations laws and policies related to aquatic habitat. See also: Atlas et al. (2020). Indigenous Systems of Management for Culturally and Ecologically Resilient Pacific Salmon (*Oncorhynchus* spp.) Fisheries. Bioscience. Available online: <https://academic.oup.com/bioscience/advance-article/doi/10.1093/biosci/biaa144/6028542?searchresult=1>
4. See footnote #2.
5. This is an explicit recommendation from the 2020 Old Growth Strategic Review. The FLNRORD minister has a mandate commitment to implement these recommendations in collaboration with First Nations. See: <https://engage.gov.bc.ca/govtogetherBC/consultation/old-growth-strategic-review/>.
6. See for example: Nicola watershed governance pilot; Haida Gwaii Management Council, new G2Gs[Is “new G2Gs” a 3rd item in the list? If yes, change comma after “Council” to a semicolon]
7. Subsection 1(1) of the Declaration Act includes a definition of “Indigenous Governing Body” that allows for the Province of BC to establish legal relationships with forms of Indigenous governing institutions that exist independently of Canada’s federal laws (e.g., Indian Act, RSC 1985, c I-5) or British Columbia’s provincial laws (e.g., Societies Act, SBC 2015, c 18).
8. As part of fully implementing the recommendations endorsed by respective Chiefs-in-Council of the UBCIC, FNS, and BCAFN in the May 2019 report “Towards a WSA First Nations Engagement Framework: Working Group Recommendations for Collaborative Development of Regulations & Policies.” Available online: [https://www.fnfisheriescouncil.ca/wp-content/uploads/2019/11/Letter-FNFC-to-BC\\_July-2019.pdf](https://www.fnfisheriescouncil.ca/wp-content/uploads/2019/11/Letter-FNFC-to-BC_July-2019.pdf)
9. See, for instance, the discussion of groundwater licensing in: FNFC. (2020). Direction Paper: Declaration on the Rights of Indigenous Peoples Act and High Priority Water Sustainability Act Reforms. Available online: <https://www.fnfisheriescouncil.ca/wp-content/uploads/2020/12/The Declaration Act-WSA-paper.pdf>
10. Including bringing the Ministry of Environment and Climate Change Strategy as a signatory to the FNFC-BC MoU to maximize coordination.
11. The Province asserts jurisdiction for managing “freshwater fish habitat, fresh water, and the upland resources that can impact or alter their environments.” See <https://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/fish>
12. See FNFC Water For Fish. (2020). Environmental Flow Needs: A Primer for BC First Nations. Available online: <https://www.fnfisheriescouncil.ca/wp-content/uploads/2020/11/FNFC-EFN-Primer-November-2020.pdf>
13. Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples. Available online: [https://news.gov.bc.ca/files/6118\\_Reconciliation\\_Ten\\_Principles\\_Final\\_Draft.pdf?platform=hootsuite](https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite)
14. See commitment to establish a Watershed Security Fund in 2020 Minister Mandate Letters in ENV, FLNR, and the Parliamentary Secretary for Fisheries and Aquaculture. For background see: A Watershed Security Fund For British Columbia. Available online: <https://poliswaterproject.org/polis-research-publication/a-watershed-security-fund-for-british-columbia-building-resilience-and-advancing-reconciliation/>
15. Potential revenue-sharing options include allocating a dedicated portion of water rental fees, freshwater fishing licence fees, recreational user fees, and development offsetting to First Nations—led fish, fisheries, and aquatic habitat initiatives.
16. For details see: FNFC. (2019). Fisheries Indigenous Knowledge Forum Proceedings and Discussion Paper. Available online: [https://www.fnfisheriescouncil.ca/wp-content/uploads/2020/05/IK-Forum-Proceedings-and-Discussion-Paper\\_Oct-2019-FINAL.pdf](https://www.fnfisheriescouncil.ca/wp-content/uploads/2020/05/IK-Forum-Proceedings-and-Discussion-Paper_Oct-2019-FINAL.pdf)
17. There is other existing provincial legislation not listed and summarized here that may also affect aquatic habitat and fisheries in some way, including the Community Charter, SBC 2003, c 26; Clean Energy Act, SBC 2010, c 22; Dike Maintenance Act, RSBC 1996, c 95; Drainage, Ditch and Dike Act, RSBC 1996, c 102; Environmental Assessment Act, SBC 2018, c 51; Geothermal Resources Act, RSBC 1996, c 171; Local Government Act, RSBC 2015, c 1; and, Park Act, RSBC 1996, c 344.





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