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Fisheries and Oceans Canada: Approach to the Management of Aboriginal Fishing in Pacific Region

November 2014

*Presented to the FNFC Annual Assembly,
Prince George, BC*

Canada 



Workshop Outline

Presentation:

Part 1: Background and Policy Context

- Overview of DFO's FSC Fisheries Management Practices and Tools
- Overview of DFO's Aboriginal Programs

Part 2: Current Operational Approach to Managing FSC Fisheries

- DFO's Regional Process for Reviewing FSC Access Change Requests
- Challenges with Current Processes

Discussion:

- Table discussions and reporting out





Workshop Purpose:



- Share information about DFO's legislation, regulations, policies, guidelines, and tools for the management of Aboriginal food, social, and ceremonial (FSC) fisheries
- Seek your advice on DFO's management of Aboriginal fisheries and regional FSC access change review process



Part 1: Background and Policy Context



Background

- 198 First Nations in BC, most with significant interests in fisheries.
- Fisheries harvest capacity and aspirations of many First Nations are increasing and many do not feel that DFO's response has been adequate.
- For the most part, DFO regulations, policy and programs that support FSC management established in the early 1990s following the *Sparrow* decision (see Annex 1). E.g.
 - Aboriginal Communal Fishing Licences Regulations
 - Policy for the Management of Aboriginal Fisheries
 - Aboriginal Fisheries Strategy (AFS)
 - BCTC Treaty Process



Overview of DFO's FSC Policies and Practice

- *Fisheries Act* provides the Minister of Fisheries and Oceans Canada with the legislative authority for the management and regulation of the fishery
- Conservation of the resource is Canada's primary objective, and the first priority in all access and allocation decisions
- After conservation needs are met, First Nations' FSC rights and treaty obligations to First Nations have first priority in allocation decisions.
- FSC fisheries access is held communally
- Fishing for FSC purposes is an opportunity to harvest, not a guarantee of a specific allocation
- Aboriginal fishing for FSC purposes is managed within the broader context of integrated fisheries management plans
- Recognition that all resource users must be accommodated, subject to available Total allowable catches (TACs)
- Fisheries arrangements promote the long-term stability of fisheries



Overview of DFO's FSC Policies and Practice

- Regional operational decisions regarding FSC fishing should take into account:
 - **differences between First Nations** (e.g. community needs, preferences, social and cultural differences, community use, etc.)
 - **FSC fishing by other First Nations** on the same stock/species
 - **diversity and abundance of fisheries resources available** in the fishing area of the Aboriginal group or First Nation
- Where an Aboriginal individual or group wishes to fish for FSC purposes in an area outside of their community's communal licence area and in the area of another Aboriginal group, they may be designated by the other Aboriginal group to fish under their communal licence. The harvest is counted toward the allocation from which it was licensed.



Key Operational Tools for the Management of Aboriginal Fisheries

- **Comprehensive Fisheries Agreements**
 - Harvest plans, allocations or access rights, process to issue communal licence, management considerations
- **Communal Licences**
 - Licensed upper limit on harvest, fishing locations, and gear restrictions
- **FSC Fishing Plans**
- **Integrated Fisheries Management Plans**





DFO's Pacific Region Aboriginal Programs

- BC First Nations capacity to manage and collaborate in the management of FSC fisheries is supported, directly and indirectly, by several different DFO Aboriginal Programs:
 - **Aboriginal Fisheries Strategy (1992)**
 - \$14 million per year supporting 86 Agreements with 164 B.C. First Nations
 - **Allocation Transfer Program (1994)**
 - Relinquished and re-allocated 421 or 6.9 per cent of total coast wide licences for \$87.1 million, which is distributed annually for the economic benefit of 49 First Nations
 - **Aboriginal Aquatic Resource and Oceans Management (2004)**
 - \$7 million per year supporting 20 regional Aboriginal fisheries organisations
 - **Aboriginal Funds for Species at Risk (2004)**
 - For 2014, ~\$540K was made available for aquatic projects nationally
 - **Pacific Integrated Commercial Fisheries Initiative (2007-2015)**
 - \$123 million in fisheries access and \$19 million in funding for operational support, training and mentoring, and vessel and gear to support 25 Commercial Fisheries Enterprises (97 First Nations)



Aboriginal Programs – Funded Activities

Activity Area	AAROM	AFS
Fisheries Management Operations	\$6,400,000	\$7,744,000
Stock Assessment	\$170,000	\$2,795,000
Catch Monitoring	\$149,000	\$1,992,000
Capacity Development	\$172,000	\$522,000
Compliance and Enforcement	\$0	\$388,000
Habitat Mgt and Enhancement	\$13,000	\$354,000
Hatcheries	\$0	\$349,000
Economic Opportunity Fisheries	\$0	\$21,000
Total	\$6,904,000	\$14,165,000



Some of What We've Heard from First Nations

- Need transparency in decision-making around FSC allocations
- Set allocations based on "fish basket," need, and population, not historical catch
- Need to account for fact that First Nations sometimes fish in others' territories due to abundance and conservation issues, natural disasters
- Need a process to figure out how to share fish amongst First Nations
- DFO has no authority to manage the FSC fishery
- Consultation needs to happen with Chiefs of each Band
- First Nations claim they cannot access FSC in areas historically licensed because of declines in local resources
- DFO needs to consistently apply its policies and management practices
- Need greater assurances that management will make fish available for FSC in a priority fashion



Some of DFO's Challenges in Managing FSC Fisheries

- Poor understanding of how First Nations determine their FSC needs
- Lack of reliable First Nations harvest information for many species
- Increasing requests from First Nations for access to other fishing areas and increases to allocation levels
- Lack of detailed stock assessment information to always support local First Nations fisheries
- Lack of clear governance structures or mandated First Nations advisory and planning process for all species in all areas





Cohen Commission Recommendations related to FSC

- "... the Minister is the ultimate authority in decisions about conservation, fisheries management (subject to the Pacific Salmon Treaty), and, within areas of federal jurisdiction"
- "Following consultation with First Nations, the Department of Fisheries and Oceans should articulate a clear working definition for FSC fishing; and assess, and adjust if necessary, all existing FSC allocations in accordance with that definition."
- "... the Department of Fisheries and Oceans should encourage the First Nation to provide DFO with information on its practices, customs, and traditions that is relevant in determining its food, social, and ceremonial needs. "





*Part 2: Current Pacific Regional Operational Approach
to Managing FSC Fisheries*



Regional FSC Fisheries Access Framework

Purpose of the Framework:

Provide staff with a consistent operational approach and common set of criteria to respond to requests from First Nations to:



- Fish for food, social and ceremonial (FSC) purposes in **areas** not previously authorized under a communal licence
- **Increase their allocation**, request an **allocation for “new” species**, or request a **change to gear type** that will increase FSC harvests



Regional FSC Fisheries Access Framework

1. Pre-Contact and Continuous Use *(this criteria is only required for fishing area access change requests)*
 - any historical information related to your pre-contact and continuous fishing practices

2. First Nations' Community Needs for FSC Fish
 - Food needs and nutritional studies
 - Harvest information for all species
 - Current allocations for all species
 - Local species availability
 - Any other information regarding how the First Nations' current allocation was arrived at or is currently being used





Regional FSC Fisheries Access Framework: Key Criteria

3. Conservation Concern

- Reasons community needs may not be getting their needs met
- Stock assessment/science branch issues or closures

4. Other Valid Legislative Objectives

- E.g., safety, health, other First Nations potential or established rights
- Potential adverse impacts to other First Nations' FSC access

5. Manageability

- E.g., fisheries monitoring and catch reporting, compliance and enforcement strategies, harvest rules, management plans, etc.



Regional FSC Fisheries Access Framework: Procedures



1. Request received from from Chief or official representative of the Band
2. DFO evaluates the request
3. DFO obtains as much information as possible from the First Nation and offers to meet
4. DFO consults with First Nations that may be potentially impacted
 - Determine the scope of the duty to consult (ranges from give notice to propose accommodation) by completing an assessment of the strength of claim to aboriginal or treaty rights and the seriousness of the potential impact on those rights
5. DFO decision
6. Area staff to notify First Nations of decision



Challenges with Current Process

- Lack of information about other First Nations claimed Aboriginal rights, fishing area, allocations, etc.
- Concern about the cumulative effects, or overall impacts to the resource
- Application of traditional protocols
- Does not foster First Nations' control over management of FSC fisheries
- Capacity to support participation and preparation of positions





Time for Discussion

- At your tables
- 15 minutes to discuss each question (3)
- 5 minutes to summarize and prioritize your responses on flip chart
- 5-7 minutes to report back on top 3 recommendations for each question



Photo : Fishery officer onboard fishing boat inspecting crab catch



Time for Discussion



- DFO is seeking your advice on:
 1. How could DFO improve its regional FSC fisheries management practices?
 2. What specific factors should DFO take into account when reviewing FSC fisheries allocation change requests?
 3. Who/how should DFO consult with? For instance, on potential adverse impacts related to DFO's decisions related to changing First Nations' FSC fisheries access?



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DFO's Key Legislation

Constitution Act, 1867

- Section 91(12) provides the federal government with jurisdiction over “sea coast and inland fisheries”
- Section 35(1) recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. As such, DFO manages the fishery in a manner consistent with the constitutional protection provided to Aboriginal and Treaty rights.

Fisheries Act

- Sets out the powers to regulate access to fisheries, to control the conditions of harvesting fish, and the development, implementation and enforcement of related regulations.

Department of Fisheries Act

- sets out the powers, duties and functions of the Minister and empowers the Minister to enter into agreements with any province (or provincial agency) regarding fisheries programs

Oceans Act

- the Minister shall lead and facilitate the development and implementation of “a national strategy for the management of estuarine, coastal and marine ecosystems” in Canada’s oceans (section 29) and of “plans for the integrated management of all activities or measures in or affecting” Canada’s oceans (section 31). The *Oceans Act* mandates three principles upon which the national strategy is based: sustainable development, integrated management, and the precautionary approach (section 30).

Species at Risk Act (SARA)

- purpose is to “to prevent wildlife [including aquatic] species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened”



DFO's Key Regulations

Fishery (General) Regulations

- govern the economic operation of the fisheries and apply to all fisheries (commercial, recreational and aboriginal communal fisheries). They contain provisions regarding the establishment and variation of fishery closures, fishing quotas and fish size and weight limits; licences and registration; identification of fishing vessels and fishing gear; and fishery observers.

Pacific Fishery Regulations (1993)

- apply to commercial fisheries, and Part VI governs the salmon fishery.

Pacific Fishery Management Area Regulations (2007)

- describe the surf line and divide the Canadian fisheries waters of the Pacific Ocean into Management Areas and Subareas.

Aboriginal Communal Fishing Licence Regulations (1993)

- cover the issuance of communal licences to aboriginal organizations, and how the conditions of those licences are used to regulate communal fishing activities.

Pacific Aquaculture Regulations

- designed to provide a legal framework consistent with the Department's mandate to manage aquaculture fisheries and protect wild fish and fish habitat.



Policy for the Management of Aboriginal Fishing, 1993

Provides the following key DFO policy direction:

- Aboriginal fishing should occur within the areas that were used historically by the Aboriginal groups of First Nation
- Aboriginal fishing opportunities will be provided to the First Nation having historical use and occupancy of the area in question.
- The First Nation will administer the fishing opportunities for the benefit of its members collectively rather than individually
- Aboriginal fishing for FSC purposes will have first priority, after conservation, over other uses
- Aboriginal fishing for such purposes will only be restricted to achieve a valid conservation objective, provide for sufficient food fish for other Aboriginal people, to achieve a valid health and safety objective, or to achieve other substantial and compelling objectives
- DFO will consult with respect to allocations
- Information on community size (including but not necessarily limited to band membership), recent food fishery harvests, trends in such harvests, current food preferences and use and availability of other foods may be used to establish the reasonable food requirements of members of the community represented by the First Nation.



DFO's Other Key Policies and Guidelines

- Guidelines Respecting the Issuance of Licences under the Aboriginal Communal Fishing Licences Regulations
 - describes and standardizes DFO's licensing process and to allow communal licences to be drafted, reviewed and issued efficiently and effectively. Guidelines reiterate that the issuance of a licence under the ACFLR is not recognition that a particular Aboriginal group has an Aboriginal or treaty right to fish, but rather is a tool that assists in the management of the fisheries and the conservation of fisheries resources to promote stability in fisheries
- Integrated Aboriginal Policy Framework: 2005-2010
 - serve as a guide for DFO employees for the renewal of DFO's Aboriginal policies and programs, to provide strategic policy direction for the development of operational guidelines and programs, and to guide DFO in discussions and collaboration with other federal agencies, provinces, territories, stakeholders and Aboriginal groups
- Harvesting of Excess Pacific Salmon to Spawning Requirements Operational Policy (1993)
 - Sets out the priority for making fish available, with the first priority will be to use surpluses to meet outstanding food fish requirements, which cannot be met through approved section 35 fisheries
- Allocation Policy for Pacific Salmon (1999)
 - pertains to several species of salmon and harvest by all sectors, sets out a series of "Allocation Principles".
- Strategic Framework for Fisheries Monitoring and Catch Reporting
 - one of the tools within the Sustainable Fisheries Framework, serves as a to guide Pacific fishery monitoring and catch reporting into the future