

**GOVERNMENT OF CANADA
EXECUTIVE GROUP POSITION DESCRIPTION**

POSITION TITLE: Director, Treaty Policy and Programs

SECTOR: Fisheries and Aquaculture Management

DEPARTMENT Fisheries and Oceans

POSITION NUMBER: 32724

LOCATION: Ottawa, Ontario

GENERAL ACCOUNTABILITY

Is accountable for providing professional leadership for the design, development, and delivery of Department of Fisheries and Oceans integrated positions with respect to Aboriginal fisheries access and management in the negotiation of treaties led by Indian and Northern Affairs Canada to address Aboriginal comprehensive land claims and traditional fishing rights, for providing leadership to DFO managers and employees in the design and development of ways and means to achieve in treaty implementation a strong Aboriginal participation in the management of a sustainable integrated fishery respecting the Minister's authority to manage the Canadian fishery while reflecting the interests of all harvesters, and for providing expertise in constitutional questions and litigation regarding Aboriginal fisheries claims and rights

ORGANIZATIONAL STRUCTURE

This is one of five management positions reporting to the Director General, Aboriginal Policy and Governance. The others are: the Director Strategic Aboriginal Policy, the Director Aboriginal Programs, the Director Atlantic Integrated Commercial Fisheries Initiative (AICFI), and the Director Pacific Integrated Commercial Fisheries Initiative (PICFI).

Specific functions of the positions reporting directly to the Director Treaty Policy and Programs are:

Manager, Claims And Self Governance (Staff of 3): responsible for providing Aboriginal fisheries rights, claims, and entitlements, policy, and program research, consultation, liaison, coordination, management and advisory services, as the senior DFO Aboriginal claims and self-government Negotiator/advisor, leading DFO's participation at treaty negotiation tables in Atlantic Canada, Québec and in the North, working with other DFO Sectors, INAC and other departments and agencies, providing research and authoritative advice on the development of DFO negotiation mandates for the negotiation of the terms and conditions of Aboriginal group fisheries access and management in support of DFO management and federal government

objectives with respect to the resolution of Aboriginal rights to fish, and comprehensive First Nations treaty claims, self-government, treaty, and possible co-management agreements consistent with DFO's legislative framework, its policies and programs (Oceans, Fisheries Aquaculture, Science, and Coast Guard) for sustainable fisheries, oceans resources and watershed management, as well as the costs of possible treaty terms, the costs for First Nations and other Aboriginal groups, and the cost-effectiveness of these terms for all parties for the consideration of senior management of DFO, INAC, PCO, and other organizations both for negotiation purposes, and for the implementation of negotiated treaties.

Aboriginal Litigation Advisor (staff of 1): responsible for the provision of advice and recommendations on legal positions and implications of constitutional issues and litigation arising under section 35 (1) of the Constitution Act of 1982 and under Supreme Court of Canada decisions with respect to the definition and recognition of Aboriginal and treaty rights pertaining to fisheries and oceans and what is required to satisfy those rights under specific treaties or Aboriginal rights and what positions might be taken by DFO to address those rights while maintaining the integrity of the Minister's authority to manage the Canadian fishery.

Claims and Self Governance Implementation Advisor (staff of 1): responsible for providing advice and liaison services in support of Senior Management and the Federal Government's efforts to meet its comprehensive claim and self-government obligations in collaboration with other government departments, provincial governments and interests and external partner organizations and individuals across Canada

Manager, Claims and Self Governance –Gulf/Maritimes (Moncton)(staff of 3): responsible for providing Aboriginal fisheries rights, claims, and entitlements, policy, and program research, negotiation support, consultation, liaison, coordination, management and advisory services, as the senior DFO Aboriginal claims and self-government advisor/negotiator working with other DFO Sectors, INAC and other departments and agencies, responsible for supporting DFO's participation at treaty negotiation tables in Atlantic Canada, providing research and authoritative advice on the development of DFO negotiation mandates for the negotiation of the terms and conditions of Aboriginal group fisheries access and management in support of DFO management and federal government objectives with respect to the resolution of Aboriginal rights to fish, and comprehensive First Nations treaty claims, self-government, treaty, treaty implementation and monitoring, and possible co-management agreements consistent with DFO's legislative framework, its policies and programs (Oceans, Fisheries, Aquaculture, Science, and Coast Guard) under the Atlantic-wide treaty fishery negotiation mandate or other initiatives. This unit is proposed and is subject to Cabinet approval of a fisheries negotiations mandate and negotiating resources.

Specific functions of the positions reporting functionally to the Director Treaty Policy and Programs are:

Manager, Claims and Self Governance – Newfoundland and Labrador (staff of 1), ***Manager, Claims and Self Governance – Quebec*** (staff of 3), and ***Manager, Claims and Self Governance –Central and Arctic*** (staff of 1): each of which is responsible for providing Aboriginal fisheries rights, claims, and entitlements, policy, and program research, negotiation

support, consultation, liaison, coordination, management and advisory services, as the senior DFO Aboriginal claims and self-government advisor/negotiator working with other DFO Sectors, INAC and other departments and agencies, responsible for supporting DFO's participation at treaty negotiation tables in their respective regions, providing research and authoritative advice on the development of DFO negotiation mandates for the negotiation of the terms and conditions of Aboriginal group fisheries access and management in support of DFO management and federal government objectives with respect to the resolution of Aboriginal rights to fish, and comprehensive First Nations treaty claims, self-government, treaty, treaty implementation and monitoring and possible co-management agreements consistent with DFO's legislative framework, its policies and programs (Oceans, Fisheries, Aquaculture, Science, and Coast Guard) under the Aboriginal treaty and traditional rights negotiations.

Treaty Negotiation Unit – Pacific Region (22 FTE's) responsible for negotiating terms and conditions of treaty terms and monitoring their implementation once approved are functionally accountable to the Director for their work, and for functional direction on Aboriginal relations management for DFO.

NATURE AND SCOPE

The Department of Fisheries and Oceans (DFO), on behalf of the Government of Canada, is responsible for developing and implementing policies and programs in support of Canada's scientific, ecological, social and economic interests in oceans and fresh waters. DFO is the Government of Canada's national and international leader in marine safety and in the management of oceans and freshwater resources. Departmental activities and presence on Canadian waters help to ensure the safe movement of people and goods. As a sustainable development department, DFO is responsible for integrating environmental, economic and social perspectives to ensure Canada's oceans and freshwater resources benefit this generation and those to come. The Department's guiding legislation includes the *Oceans Act*, which charges the Minister with leading oceans management and providing coast guard and hydrographic services on behalf of the Government of Canada, and the *Fisheries Act*, which confers responsibility to the Minister for the management of fisheries, habitat and aquaculture. The Department is also one of two responsible authorities under the *Species at Risk Act*.

The Fisheries and Aquaculture Management Sector (FAM) of DFO is charged with providing corporate, federal, national, and international leadership in the sustainable development of Canada's fisheries and aquaculture development through sound policy, program, and management initiatives developed and implemented in cooperation with other federal departments, provincial and territorial governments and Aboriginal communities including Canada's First Nations. However, any attempt at managing Canada's fisheries that reflects the multiple interests of all communities with a stake in the current fisheries and their future as a sustainable resource, must incorporate the interests of those communities.

Supreme Court of Canada decisions have recognized Aboriginal and treaty rights to fisheries and since 1982 section 35 of the Constitution Act has created a significant duty on the government to recognize and respond to Aboriginal and treaty rights. While Supreme Court decisions have

recognized Aboriginal rights, the courts have not identified what specifically is required to satisfy those rights. These court decisions have shaped DFO's relationship with Aboriginal groups, and preparations for transfer of access to fisheries under Aboriginal or treaty rights, Aboriginal treaty negotiations, and the implementation of treaty settlements have and continue to shape DFO programs, the fisheries economy, the need for Aboriginal people to obtain the capacity to more effectively participate in the various advisory and multi-stakeholder processes used for aquatic resource and oceans management and the need for federal-provincial and territorial cooperation as well as the cooperation of all other stakeholders in the fishery in its full manifestation as marine and freshwater resources and their supporting habitat environments, and all stakeholders in oceans management both as an environment for the fishery and as a resource by itself for the well-being of all.

Treaties are about delineating Aboriginal rights, jurisdictions, and authorities. In trying to achieve the legal certainty that can be obtained through a treaty, as we have found, there can be significant consequences for the management of the fishery and the allocation of fishery resources among Aboriginal, recreational, and commercial harvesters. The need for a framework for DFO's policies and programs as they relate to Aboriginal communities was recognized in the Department's five year plan "Our Waters, Our Future" 2005-2010 which called for a fully integrated departmental policy and program approach and the need to foster the relationship between the Department and Aboriginal peoples.

The Aboriginal Policy and Governance Directorate (APG) was established to assume the responsibilities of DFO and of FAM for providing corporate, federal, and national leadership in renewing DFO's relationship with Aboriginal peoples and developing and implementing policies, programs, and other initiatives for facilitating the participation of Aboriginal groups in modern fisheries and aquatic resource management. To this end a number of programs and initiatives have been established to achieve the outcomes sought. However, "Our Waters, Our Future" and events of 2007 brought both the challenge of fisheries management and the role of DFO and of APG to new levels of complexity, and new levels of responsibility. That is, the commitment of the Minister of Fisheries and Oceans in 2007 to pursue a Fisheries Management Renewal and the Oceans to Plate Approach to fish and fish product management, combined with the release of the new framework for the management of DFO-Aboriginal relations significantly changed the role of APG.

The Treaty Policy and Programs Branch (TPPB) is being established to take on the over-arching role within DFO and with DFO's external partner organizations including Indian and Northern Affairs Canada, other government departments, Aboriginal communities, provincial and territorial governments, and other stakeholders in the management of Canada's aquatic resources and its oceans with respect to legally defining Aboriginal and treaty rights and building better relations with Aboriginal peoples and integrating Aboriginal peoples into the management of Canada's aquatic resources and ocean spaces.

The Branch under the Director Treaty Policy and Programs (TPP), is being established as part of a reorganization of APG to provide a focus for APG, as well as for all of DFO and its external partner organizations on DFO's commitment to improving DFO-Aboriginal relations, and to

provide representation, research support, and expert advice on all Aboriginal land claims under existing treaties or under traditional fishing rights, the legal status of Aboriginal claims and legal interpretations of what might constitute addressing those claims, the costs of possible treaty terms, the costs for First Nations and other Aboriginal groups, and the cost-effectiveness of these terms for all parties, as well as to provide a monitoring function on all treaty implementation agreements and programs to ensure that DFO and the Government of Canada fulfilling not just specific obligations, although that is important, but are fulfilling the honour of the Crown in DFO's area of responsibility.

The Director TPP is responsible for leading the development of new and/or improved working relationships between DFO organizations and Aboriginal peoples through fostering an internal culture and external climate of mutual understanding and respect across Canada.

The Director, TPP is responsible for representing DFO directly or through subordinate experts from the Branch in Ottawa or Moncton, to Indian and Northern Affairs Canada (INAC) led negotiations of treaties to address Aboriginal land claims, and in INAC-led negotiations to establish the terms for implementing treaty terms. The Director TPP is also responsible for representing DFO in consultation with Department of Justice lawyers in addressing constitutional issues arising out of section 35 with regard to defining Aboriginal rights and the definition of what constitutes addressing Aboriginal rights, in clarifying terms of final settlements of comprehensive land claims for treaty purposes, and in consultation with Treasury Board, the Privy Council Office and INAC in developing the Government of Canada treaties policy.

The Director TPP must possess a comprehensive knowledge of the Departmental mandate with respect to fisheries management and sustainable development, and the mandates and challenges of all DFO organizations, both in the Headquarters Region, and the Regions and their importance or and relationship to Aboriginal peoples, Aboriginal land claims, treaties, and treaty settlement implementation plans in order to bring all DFO organizations together from Oceans, Habitat, and Species At Risk, Science, Fisheries and Aquaculture Management, and Coast Guard to integrate the DFO approach to Aboriginal relations, and develop comprehensive positions from a Departmental perspective on Aboriginal fishing rights, food and ceremonial access to fisheries, access to commercial fisheries, and the co-management of the fishery under the Minister of Fisheries and Oceans. The Director TPP must possess an extensive knowledge of Aboriginal peoples' cultures and their leadership models in order both to consult with and direct consultations with Aboriginal peoples' leadership for fostering the development of improved working relationships between Aboriginal peoples and the department. The Director TPP must also have a command of the legal and constitutional issues relating to Aboriginal rights and Aboriginal claims to fisheries resources under s.35 of the Constitution Act of 1982, under Supreme Court of Canada decisions, and under precedent-setting case law gradually reducing the uncertainty with respect to Aboriginal rights. The Director TPP must also have a command of the policies, plans, and practices of INAC with respect to comprehensive land claims and the timetable for their resolution, as well as with policies, plans, practices, and programs of other federal agencies capable of assisting in the development or delivery of programs for Aboriginal people across Canada. The individual must possess strong leadership, change management, negotiation, managerial, and executive skills combined with a command of fields of knowledge required for

this work, as demonstrated in professional level of knowledge and competence, in the fisheries management theories and practices, sustainable development theories and their application to fisheries management, economic development theories as they relate to regional economic development and small scale business development, ecosystems management, and in the fields of public policy and program development and implementation, performance measurement and program evaluation, and in particular Canada-Aboriginal relations in general and with individual Aboriginal communities specifically in order to lead in the achievement of the objectives for which responsible.

The Director, TPP is required to address at least three major challenges to achieve the results expected of the Branch.

A first challenge is that the Director must achieve her/his results through managing a cultural change within DFO at headquarters and in the regional offices and within the Aboriginal communities directly and through staff located in Gulf/Maritimes, Newfoundland and Labrador, Québec, Central and Arctic and Pacific regions, in order to be able to foster improved relations between DFO and Aboriginal people and thus foster mutual respect and understanding on the part of both, and lay the ground work for both the design and delivery of programs for Aboriginal communities, and building the capacity and access of Aboriginal people to participating in the decision-making of DFO with respect to the management of aquatic resources, habitats, and ocean spaces – including policy and program formulation, planning, resource management, and program delivery.

A second key challenge for the Director is to develop the comprehensive basis for all Aboriginal claims and rights as claimed in negotiations and as established in Supreme Court of Canada decisions and in case law to serve as an authoritative basis for providing advice in treaty negotiations, treaty final settlements, and establishing the parameters of DFO implementation plans, for the use of Justice Canada, provincial and territorial governments, DFO officials and representatives of Aboriginal people in designing related policies and programs, and in negotiations and consultations on aquatic resources, habitats and ocean spaces co-management.

A third major challenge is that the Director must achieve his/her results through developing a close association with negotiators of INAC, one based on mutual respect and understanding to develop options for Ministers on improving and expediting the treaty process, including an option for broad based watershed fisheries negotiations, achieving greater transparency in INAC's development of financial mandates, an agreement on treaty implementation cost processes, and greater financial certainty for DFO with regard to DFO's treaty implementation responsibilities.

The Director TPP is the key advisor to the Director General Aboriginal Policy and Governance, to the ADM Fisheries and Aquaculture Management, to the Deputy Minister and to the Minister on DFO Aboriginal relations, their status and development, on constitutional and legal definitions of Aboriginal rights with respect fisheries access and co-management, on the status of treaty negotiations, final settlements, and implementation agreements, on the cost of treaty processing and implementation, on the degree to which DFO is living up to treaty obligations,

and on the acceptability of or required changes to INAC Memoranda to Cabinet on Treaty Agreement Implementation Plans for the resolution of Aboriginal comprehensive land claims consistent with the authority of the Minister of DFO over the Canadian fishery.

The Director TPP is a key advisor to other DFO and INAC executives and others on Aboriginal rights constitutionally, under Supreme Court of Canada decisions, and under case law, and on the need to integrate Aboriginal people into the decision-making, planning, and other aquatic resources, habitat, and oceans management policy and program development and delivery activities of the department. The Director TPP is also a key advisor to other DFO officials on the degree to which DFO organizations are in compliance with treaty obligations to the Aboriginal people in the broadest sense.

The Director TPP represents the Department in consultations with other federal departments and agencies, and with Provincial and Territorial governments as required, with respect to Aboriginal claims, rights, and negotiating positions and the legislative and constitutional rights and obligations of DFO with respect to aquatic resources, habitat, species at risk, and oceans management and ways and means to reconcile the two, as well as in particular with Treasury Board, the Privy Council Office and INAC on the development of the Government of Canada treaty policy.

DIMENSIONS (all figures FY 2007-2008)

Primary:

Staff: (Ottawa & Gulf/Maritimes)	6 Full Time Equivalents
Salary + O&M:	\$ 1.0 Million

Shared (Implementation):

Functional Staff (B.C., C&A, Que, and Nfld& Lab.)	27 Full Time Equivalents
Salary + O&M:	\$2.5 Million

Contributory:

Current value of fisheries components of comprehensive land claims settled or near settlement approximately \$500 Million in 2007-2008

SPECIFIC ACCOUNTABILITIES:

1. Provides professional leadership for the design, development, and delivery of Department of Fisheries and Oceans integrated positions with respect to Aboriginal fisheries access and management in the negotiation of treaties led by Indian and Northern Affairs Canada to address Aboriginal Comprehensive Land Claims and traditional fishing rights.
2. Provides professional leadership in the development of DFO's treaty policy and priorities with respect to management in the negotiation and implementation of treaties led by Indian and Northern Affairs Canada.

3. Provides professional leadership in the development of new and/or improved working relationships between DFO organizations and Aboriginal peoples through fostering an internal culture and external climate of mutual understanding and respect across Canada.
4. Provides and manages the provision of expert advice to the Minister of Fisheries and Oceans on all Indian and Northern Affairs Canada submissions to Cabinet on treaties and treaty rights regarding the Fisheries Act integrating the views of all DFO organizations (Fisheries, Aquaculture, Science, Oceans Habitat and Species at Risk, and Coast Guard).
5. Directs the provision of representation, research support, and expert advice on all Aboriginal land claims under existing treaties or under traditional fishing rights, the legal status of Aboriginal claims, litigation, and legal interpretations of what might constitute addressing those claims, the costs of possible treaty terms, the costs for First Nations and other Aboriginal groups, and the cost-effectiveness of these terms for all parties.
6. Directs the delivery of a monitoring function on all treaty implementation agreements and programs to ensure that DFO and the Government of Canada fulfilling all of the obligations of the Crown to Aboriginal people in DFO's area of responsibility.
7. Represents DFO directly or through subordinate experts from the to Indian and Northern Affairs Canada (INAC) led negotiations of treaties to address Aboriginal land claims, and in INAC-led negotiations to establish the terms for implementing treaty terms.
8. Represents DFO in consultations with Indian and Northern Affairs on Cabinet Submissions to ensure the Minister of Fisheries and Oceans authority is accurately reflected, and terms are acceptable to DFO, with Department of Justice lawyers in addressing constitutional issues arising out of section 35 with regard to defining Aboriginal rights and the definition of what constitutes addressing Aboriginal rights, in clarifying terms of final settlements of comprehensive land claims for treaty purposes, and in consultation with Treasury Board, the Privy Council Office and INAC in developing the Government of Canada treaties policy.
9. Manages resources assigned with economy, effectiveness and probity.

CERTIFICATION

_____ Incumbent	_____ Date	_____ Signature
_____ Manager	_____ Date	_____ Signature