

# Working Models for Fisheries Collaborative Management

Prepared for:

First Nation Marine Society

544 Centre Street  
Nanaimo, B.C.  
V9R 4Z3

Prepared by:

Russ Jones

PO Box 98  
Queen Charlotte  
Haida Gwaii  
V0T 1S0

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## 1. Introduction

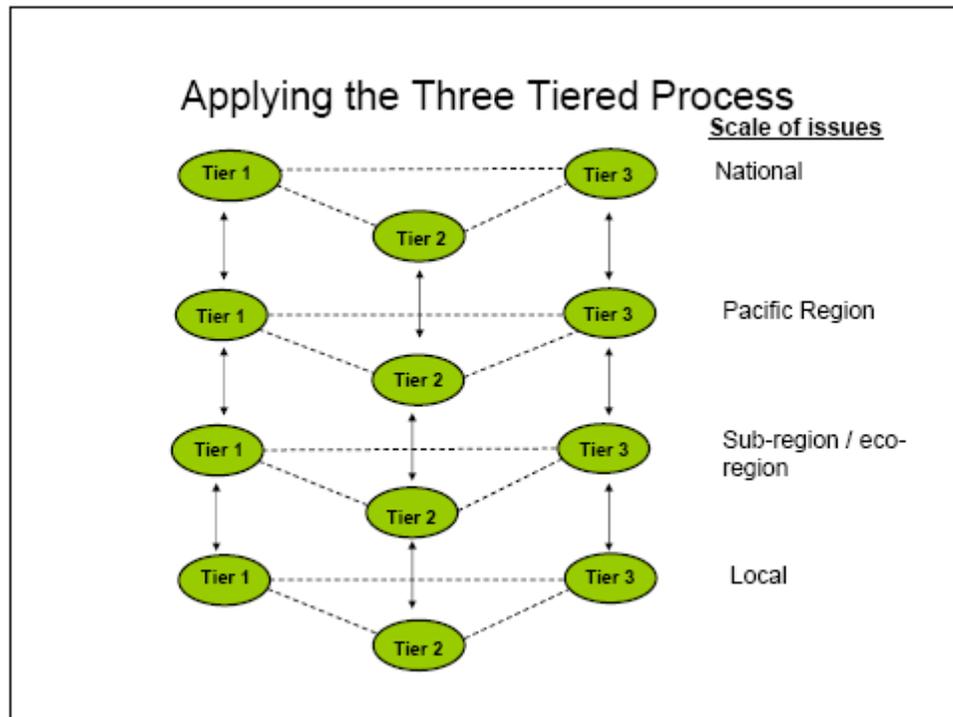
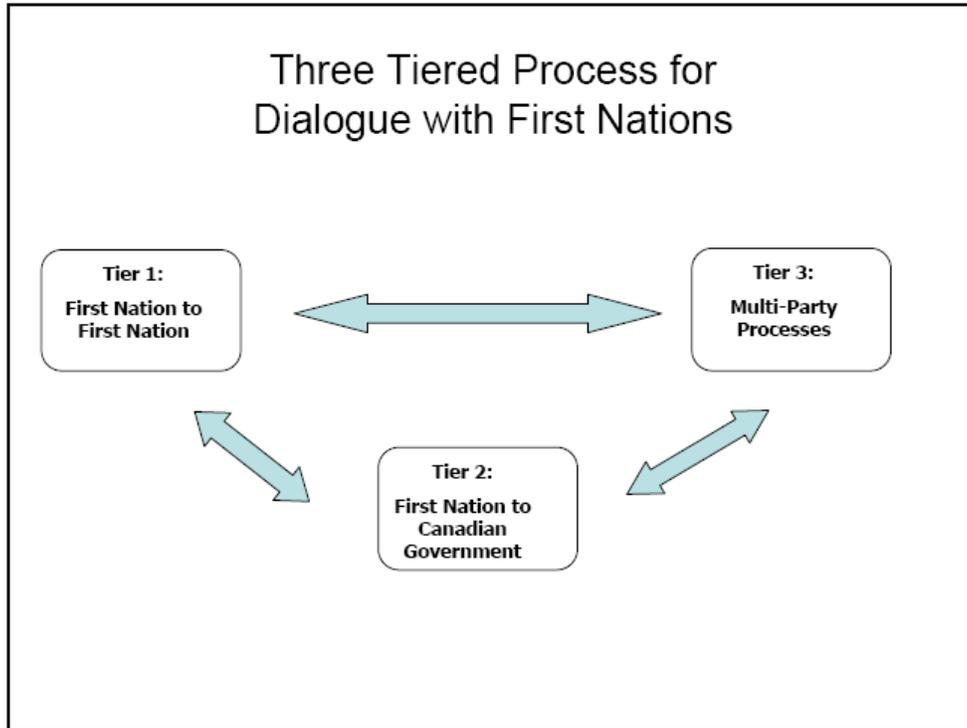
This report was prepared to assist the First Nation Marine Society to plan how it might get involved in collaborative fisheries and ocean management. The First Nation Marine Society currently provides a cooperative service to 26 First Nations on Vancouver Island and the southern B.C. mainland that involves catch and delivery of food, social and ceremonial fish. This report researches and describes a variety of organizations involved in collaborative fisheries or ocean management. The project was intended to expand on examples described in *Our Place at the Table: First Nations in the B.C. Fishery* (First Nation Panel 2004: 60-67).

The First Nation Panel report elaborated on a fisheries decision-making approach developed by First Nation leaders over a decade ago. Those leaders identified the need for processes that allowed for dialogue among First Nation alone (Tier 1), between First Nations and government (Tier 2), and between First Nations, government and other parties (Tier 3), as illustrated in Figure 1. Two-way interactions could occur between these processes such as information flow or representatives that participate in several processes. Figure 1 also shows how the three-tiered approach might be implemented at local, sub-regional, regional, and national levels. The First Nations Marine Society is considering involvement at the sub-regional level but would need to specify their interests in Tier 1, 2 or 3 processes or a combination of these and identify their purpose before proceeding.

The main questions that were answered for each organization studied included: purpose of the organization; its history of formation and working together; structure, size and current members; current activities; successes; challenges; and critical stages in development.

Section 2 describes and compares six organizations with a Tier 1 focus. Section 3 and 4 does the same for each of three Tier 2 and Tier 3 organizations, respectively. Section 5 proposes criteria for successful collaborative management and Section 6 provides a summary and recommendations.

**Figure 1. A Three Tiered Multi-Level Collaborative Management Process.**  
 (diagram adapted from DFO 2005)



## **2. Tier 1 Case Studies**

This section describes six organizations whose primary focus is on processes involving First Nations or U.S. Tribes alone. Four Canadian models and two U.S. models are described. All are working examples except for the Intertribal Fisheries Framework process, a model that was proposed by the B.C. Aboriginal Fisheries Commission, but never adopted by First Nations.

### **2.1. Northwest Indian Fisheries Commission**

#### **Introduction**

The Northwest Indian Fisheries Commission (NWIFC) provides a forum for treaty tribes in western Washington State to coordinate management of their fisheries that is essential for the exercise of their treaty rights. NWIFC has grown and their mandate has expanded over time as new challenges have surfaced. Member tribes who signed treaties in the 1850s were neighbouring Coast Salish, Quileute, and Makah cultural groups. NWIFC has been operation for 32 years.

#### **History and Purpose**

The Northwest Indian Fisheries Commission (NWIFC) was formed by U.S. Treaty Tribes in western Washington State in 1974. It formed in response to the Boldt decision (*U.S. v. Washington*) that allocated them 50% of the salmon catch and established the tribes as co-managers of the resource. The US Tribes needed a means to work together and bring unified tribal positions to federal and state fisheries management agencies.

The purpose of NWIFC according to their Constitution (October 5, 1984) is:

- “To provide supplemental and supportive services to those tribal organizations who express a need for such services and desire that such services be provided by a central coordinating body. These services shall include: public relations, biological, technical, administrative, and other services that are identified and made available to the member Tribes by the Commission;
- To act as a central clearinghouse for information and data in the areas of public relations, technical and management services, environmental issues, and political developments;
- To act as a coordinating body in order to provide a forum to express, communicate, and resolve the issues and concerns identified unanimously by the member Tribes of the Commission and to provide a vehicle and mechanism to reach a mutually agreeable position or course of action acceptable to the parties concerned.”

In 1974, U.S. District Court Judge George Boldt ruled the tribes had reserved the right to harvest half of the harvestable salmon and steelhead in western Washington. The “Boldt Decision” was upheld by the U.S. Supreme Court in 1979. It required tribal and state fisheries staff to work together for the purpose of developing fisheries management regimes to ensure harvest opportunities for Indians and non-Indians alike.

NWIFC is essentially a coordinating body and individual tribes conduct most of their own fisheries activities. Each of the tribes either have their own cooperative management programs or participate in programs with other tribes employing harvest managers, enforcement personnel, fisheries biologists and technicians funded largely by the Bureau of Indian Affairs. They licence their own fishermen, most impose a tax on tribal catch, and a few maintain a tribally-owned fishing fleet. Revenues from licence fees, harvest taxes, and tribally-owned vessels are used to supplement fisheries management budgets and other tribal programs (Cohen 1986: 164).

Several levels of inter-Tribal cooperation occur outside of the NWIFC. For example some tribes may work together in development of fishery or watershed management plans. As well NWIFC provides technical and policy support for the tribes in other fisheries management agencies, such as the Pacific Salmon Commission and the Pacific Fisheries Management Council that develop regional fisheries management policies and plans. In addition the commission sometimes provides services to non-member tribes through coordination of programs.

NWIFC programs and activities have expanded over time to include fisheries habitat management, wildlife, shellfish and groundfish.

## **Organizational Structure and Decision Making**

The NWIFC is made up of 20 Treaty Tribes in western Washington State (Figure 2): Lummi, Nooksack, Swinomish, Upper Skagit, Sauk-Suiattle, Stillaguamish, Tulalip, Muckleshoot, Puyallup, Nisqually, Squaxin Island, Skokomish, Suquamish, Port Gamble S’Klallam, Jamestown S’Klallam, Lower Elwha Klallam, Makah, Quileute, Hoh and Quinault.

Each of the member tribes appoints commissioners to develop policy to guide the organization for a total of 20 commissioners. Commissioners elect a chairman, vice-chairman and treasurer. The structure has changed several times. Initially there were four commissioners to represent each of the four treaty areas. By 1984 the number of commissioners was increased to sixteen (eight commissioners and eight alternates) with some commissioners representing more than one tribe.

The commission makes decisions by majority vote. However the constitution provides that the commission will not vote or take actions that supersedes the fishery or legal rights of any member tribe. Then in those situations the commission can only act by consensus.

**Figure 2. Location of NWIFC member tribes**



NWIFC has a staff of approximately 65 persons supervised by an executive director. Their head office is located in Olympia, Washington with satellite offices in Forks, Mount Vernon and Kingston. The organization is divided into four departments: administration, fishery services, habitat services and information and education.

NWIFC provides a process for member tribes to discuss and work out intertribal issues (Tier 1). In addition NWIFC provides a window to deal with government agencies (Tier 2). In the past NWIFC has had to deal with many different federal agencies. In recent years a Presidential directive outlined a consultation process for federal agencies and tribes. Now the tribes work with the Executive Branch on a variety of issues. This helps to ensure consistency between agencies.

NWIFC does not generally engage in multi-sectoral processes (Tier 3). However, NWIFC and member tribes maintain lines of communication with commercial and recreational sectors, local and state government and may work on common issues on a case by case basis.

## **Current Activities**

NWIFC is a coordinating organization and depends on member tribes for its mandate. Member tribes have their own fisheries program and NWIFC provides a diverse range of services (NWIFC 2006) including:

- Policy analysis related to both the fishery and habitat;
- Technical assistance to the tribes in coordination of development of annual and long term fisheries plans;
- Assists tribes in implementation of the US/Canada Pacific Salmon Treaty;
- Efforts to protect western Washington salmon stocks that are listed as threatened under the Endangered Species Act;
- Maintaining the Treaty Indian Catch Monitoring Program, a database of harvest statistics necessary for fishery management planning and harvest allocation;
- Coordination of tribal hatchery programs such as coded wire tagging and fish health programs;
- Technical and policy development assistance to member tribes on habitat and environmental issues; This includes forest management, water quality, salmon habitat inventory and assessment;
- Publication of a newsletter to inform and educate the public;
- Responding to numerous information requests from agencies, organizations and the public;
- Shellfish management;
- Groundfish management; and
- Management of wildlife, including deer and elk.

NWIFC maintains its initial focus on salmon although management has become increasingly complex over the years. In the early years the tribes invested significant effort in salmon enhancement to support tribal fisheries and NWIFC played a supporting role. NWIFC presently coordinates tribal involvement in efforts to protect salmon stocks that are listed under the Endangered Species Act. Efforts focus on maintaining sustainable and harvestable populations. NWIFC participates in development of strategies and recovery plans involving tribal, state and local levels for stocks such as threatened Puget Sound chinook.

NWIFC activities expanded to include shellfish and wildlife as treaty rights were acknowledged in recent years. After years of court action the US Supreme Court reaffirmed the tribes' treaty right to harvest shellfish in 1999 and established the tribes are co-managers of shellfish resources. Since treaties also reserved the right to hunt, the tribes became active in management of deer, elk and other wildlife resources in the region. Treaty rights were also recently affirmed to access groundfish.

## Successes

Some of NWIFC's notable successes include:

**Implementing Historic Treaty Rights** – NWIFC has been highly successful in their initial mandate to ensure that tribes achieved their treaty rights to fish, particularly a 50% share of the catch. The Boldt decision provided the impetus for the tribes to organize in order to deal with intertribal allocation and coordinate management activities.

**Unified Political Voice** – NWIFC has become a strong political voice for the US tribes. While the focus is on fish and other natural resources it provides a forum for cooperation on other issues. There are numerous interests that would otherwise supplant tribal rights including the state government, commercial and recreational fishers, forest companies or others.

**Expanding Mandate** – NWIFC was a springboard for the tribes to get involved in management of other natural resources including shellfish, groundfish and wildlife.

## Challenges

Some of the key challenges that face NWIFC are:

**Pressures on Natural Resources** – There are numerous pressures on fish and wildlife resources including salmon that make it difficult to maintain sustainable and harvestable populations. Major pressures on salmon alone include urbanization, habitat degradation, and hydropower development.

**Declining Economic Importance of Fish** – Natural resources and fish were a key focus for the tribes. But in recent years fish have become less important economically. Revenues from other sources, particularly gambling, have far exceeded natural resource revenues. In addition fish prices have declined or not kept up with inflation due to increases in supply from aquaculture, hatchery production or world market changes.

**Overcapacity** – Individual tribes manage their own fisheries and all suffer from some degree of overcapacity (Boxberger 2000; Singleton 2002). This may have alleviated somewhat by the tribal expansion into shellfish and groundfish fisheries but has potential to occur in these fisheries as well. All tribes have established some limits on capacity such as a maximum number of vessels fishing

## Critical Stages in Development

Critical stages in development included:

**Establishing Stable Funding** – The federal Department of the Interior provides core funding that assisted the NWIFC to organize and to continue to operate. The Department of the Interior is responsible for assisting the tribes to exercise their treaty

rights. NWIFC actively pursues funding for other activities as part of the US political process.

**Setting Inter-Tribal Allocations** – Allocation became an issue as the member tribes developed fishing capacity and the catches reached the 50% tribal share. The tribes developed an allocation framework based on individual species and catches in traditional fishing areas. This was a divisive issue but with the help of mediation, the tribes reached a framework agreement in 1989 that deals with the majority of issues (Singleton 2002).

**Changes in Membership or Mandate** – NWIFC membership has changed occasionally with some tribes choosing to opt in or out. Disagreements have surfaced that in extreme cases led to lawsuits by some member tribes against other tribes. The NWIFC constitution has been periodically revisited that often causes historic issues and positions to resurface. As well, external pressures such as the Endangered Species Act can trigger conflicts by reducing the availability of fish which can cause allocation issues to resurface.

## **2.2. Columbia River Inter-Tribal Fish Commission**

### **Introduction**

Similar to NWIFC, the Columbia River Inter-Tribal Fish Commission (CRITFC) arose as a result of court decisions that affirmed that the tribes on the Columbia River were entitled to a 50% share of catches of salmon returning to the Columbia River. Salmon passage to spawning grounds in the upper Columbia watershed has been heavily impeded by dam development for hydropower. The main focus of CRITFC has been on ensuring survival of salmon throughout the watershed and tribal access to ceremonial, subsistence and occasional commercial fisheries. CRITFC has served its four member tribes for 29 years.

### **History and Purpose**

The purpose of the organization is captured in the following mission statement (CRITFC 2006):

“The Columbia River Inter-Tribal Fish Commission is to ensure a unified voice in the overall management of the fishery resources, and as managers, to protect reserved treaty rights through the exercise of the inherent sovereign powers of the tribes.”

CRITFC grew out an earlier inter-tribal authority, the Celilo Fish Committee, that “ordained fishing practices and aimed at ensuring salmon were served first and would flourish and always exist” (CRITFC 2006). CRITFC was created in 1977 by the four tribes on the Columbia that held off-reservation fishing rights on the Columbia River: Nez Perce, Umatilla, Warm Springs and Yakama. These were amalgamations of tribes that were settled on reservations in the 1800s but shared a similar lifestyle and culture including fishing, hunting, gathering and raising horses.

CRITFC is a coordinating and technical organization that supports the member tribes. It provides a forum for organized intertribal representation in regional, policy and decision-making. To a large extent member tribes manage their own fisheries and run their own hatchery and restoration programs. CRITFC sometimes acts as a central body that passes funding through to the member tribes. CRITFC is a non-profit and not allowed to lobby for funding although it frequently makes submissions on technical issues in support of tribal policy positions.

The fight for treaty fishing rights in Oregon and Idaho took a different path from Washington State as the former states were more willing to negotiate (Cohen 1989: 120). But the impetus for change also came from court rulings, in particular one by Judge Belloni (*U.S. v Oregon*) in 1969 that recognized treaty rights to fish.

In 1974 Judge Belloni subsequently adopted for the Columbia River the 50-50 harvest allocation and provision for tribal co-management of Judge Boldt's ruling in *U.S. v. Washington*. (Cohen 1989: 121). Following years of litigation the tribes, states and federal government negotiated a comprehensive 5-year management plan that was entered as a federal court order by Judge Belloni in 1977. Elements of the plan included:

- A commitment for tribal, state and federal agencies to work cooperatively to maintain present runs, rehabilitate declining runs and to develop larger runs through enhancement projects;
- Further commitments by managing agencies to “make every effort to reallocate the available harvest as prescribed by the agreement on an annual basis”; The plan included a payback provision that adjusted catches to compensate for catches less than their share; and
- Establishment of a *U.S. v Oregon* Technical Advisory Committee with fisheries scientists representing Oregon, Washington, Idaho, National Marine Fisheries Service (now called National Ocean and Atmospheric Administration Fisheries Service), U.S. Fish and Wildlife Service and each of the four tribes; The committee was charged with reviewing data and making recommendations to managing agencies.

Another court case in 1979 extended tribal sharing of Columbia River salmon to catches in ocean fisheries. This and other decisions made the tribes a major player in negotiation of the Pacific Salmon Treaty between Canada and the U.S. in 1985.

## **Organizational Structure and Decision-Making**

The governing body of CRITFC is made up of the Fish and Wildlife Committees of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation. Each of the four tribes has a different process to appoint their members. The Fish and Wildlife Committees are generally a mix

of elected and community members. The website lists 13 Nez Perce, 5 Umatilla, 4 Warm Springs and 4 Yakama Commissioners for a total of 26.

**Figure 3. Location of Columbia River Tribes and major dams.**



CRITFC holds regularly scheduled monthly meetings. Decisions are made by consensus of the four member tribes (each has one vote).

CRITFC has an executive director, about 80 administrative and technical staff and 20 enforcement staff. It has two offices, a main office in Portland and an enforcement office at Hood River, 40 miles upstream of Portland.

Funding is obtained from a variety of US government sources including Bureau of Indian Affairs Fisheries (US Department of Interior), US Pacific Salmon Commission participation funds, Pacific Coastal Salmon Recovery Fund (NOAA) and Bonneville Power Administration mitigation funds.

CRITFC participates in a process with Federal and State agencies established under *U.S. v Oregon*. Participants include federal agencies (U.S. Fish and Wildlife Service, NOAA Fisheries Service, Bureau of Indian Affairs, U.S. Attorney General's office), the tribes (Warm Springs, Yakama, Nez Perce, Umatilla, Shoshone Bannock), and state agencies (Oregon, Washington, and Idaho). The focus is negotiation of the Columbia River fish management plan. The plan was negotiated in 1988 and expired in 1998. An interim agreement is set to expire in 2007.

CRITFC participates with a variety of federal agencies on issues. For instance Bonneville Power Administration (BPA, US Department of Energy) is an agency that markets and hydroelectric power generated by dams on the Columbia River. Due to the impact of dams on salmon habitat, BPA is responsible for habitat restoration as a part of recovery planning. CRITFC participates in review of the Biological Opinion prepared by federal agencies for restoration of Columbia River salmon protected under the Endangered Species Act

CRITFC partners with other harvest groups on a case by case basis. For instance CRITFC joined with commercial and recreational fisheries, the State of Alaska and environmental groups on issues of water reservoir spill for fish passage.

## **Current Activities**

CRITFC has both a fish science and enforcement department.

The Fish Science department employs geneticists, hydrologists, fish biologists, and biometricians dedicated to studying salmon and their ecosystem. Scientists provide support to tribal fisheries programs although all four tribes have developed their own fisheries management capacity over time.

One major project has been to create Wy·Kan·Ush·Mi Wa·Kist·Wit or “Spirit of the Salmon”, a restoration plan that was developed in 1995. It is the only basin-wide plan that promotes “gravel-to-gravel” management. Objectives were to halt the decline of salmon, lamprey and sturgeon populations above Bonneville Dam within seven years. Salmon populations are to be rebuilt to annual run sizes of four million above Bonneville Dam within 25 years in order to support tribal ceremonial, subsistence and commercial harvests. Lamprey and sturgeon are to be increased to naturally sustaining levels in a manner that supports tribal harvests. CRITFC regularly responds to agency plans and proposals for dam water releases to support fish passage, and addresses biological opinions under the Endangered Species Act.

CRITFC also has an enforcement department dedicated to enforcement of all fishing regulations. Columbia River Inter-Tribal Fisheries Enforcement (CRITFE) officers are Oregon certified police officers and serve as an extension of tribal law enforcement. CRITFE officers are members of the Columbia Basin Salmon Enforcement Team that includes Idaho Department of Fish and Game and NOAA Fisheries Service, and is funded by the Bonneville Power Administration. CRITFE focuses on 147 miles of the Columbia River from Bonneville Dam to McNary Dam. Activities during the fishing season include inspection of fishing sites, nets and checking tribal identification.

One of the main tasks of CRITFC is to develop a coordinated tribal management plan. Tribal management includes ceremonial, subsistence and commercial fisheries. Commercial fisheries have only occurred sporadically (3-4 times) in recent years. CRITFC works out fish allocations between the four member tribes on an annual basis.

## Successes

The main successes are delivery of treaty fish allocations to Columbia River tribes, development of technical expertise, and active roles in salmon restoration.

**Treaty fish allocations** – CRITFC has been true to its initial mission of enforcement of the federal court decision in *U.S. v Oregon*. The decision was initially applied to river and river mouth fisheries and later extended to ocean fisheries. Prior to that, the tribes had a limited share of fisheries but were required to bear the full conservation burden.

**Scientific expertise** – CRITFC has developed scientific and technical expertise on a level equal to state and federal agencies. They are full participants in discussions about salmon management and recovery. At the same time the member tribes have developed considerable in-house expertise.

**Salmon restoration** – CRITFC has coordinated basin-wide policy on behalf of the tribes. An important effort is Wy·Kan·Ush·Mi Wa·Kish·Wit or “Spirit of the Salmon” restoration plan. The tribal goal is restoration compared to objectives under the Endangered Species Recovery Act of delisting threatened or endangered species. CRITFC frequently challenges federal plans such as the Biological Opinion that NOAA recently prepared for Columbia River that attempted to designate dams as part of the natural landscape of the Columbia.

## Challenges

Continuing challenges are CRITFC’s evolving role and relationship with the federal government:

**Evolving role** – At the outset CRITFC was set up as the technical arm of the tribes. However the tribes are increasingly taking on this role with CRITFC playing a supporting role. As a result, CRITFC has become more active in science and policy and framing issues for member tribes.

**Federal government relationship** – Survival of salmon is continually challenged by federal and state policies. Current trends are to weaken policy based on Endangered Species Act regulations that were put in place to restore endangered salmon runs. This emphasizes the need for coordinated efforts to support tribal rights including technical analyses, as well as the need to maintain the funding base for salmon habitat protection and restoration.

## Critical Stages in Development

CRITFC has largely followed through with its original mission. Likely the most critical point in its development was the *U.S. v Oregon* court decision and recognition of tribal fishery shares and role in management.

As an organization CRITFC is forced to respond constantly to initiatives that may threaten salmon recovery and tribal harvest guaranteed under their treaty rights. The

Columbia treaty tribes have much in common including a clear priority for ceremonial and subsistence fisheries. External threats serve to strengthen tribal unity and the need for a coordinating body such as CRITFC.

## **2.3. Uu-a-thluk (Nuu-chah-nulth Fisheries Program)**

### **Introduction**

The Nuu-chah-nulth Tribal Council (NTC) provides services to fourteen First Nations. Fisheries is an area of responsibility that is shared with the individual First Nations. In 2005 the Nuu-chah-nulth First Nations and Pacheedaht First Nation initiated a Nuu-chah-nulth Resource Management Organization called Uu-a-thluk (Nuu-chah-nulth for “taking care of”) using DFO AAROM funding. Pacheedaht is not part of the NTC but did choose to participate in Uu-a-thluk. Uu-a-thluk staff provide technical support to fisheries programs delivered by the individual First Nations. Uu-a-thluk has a small staff of five biologists that are located at the NTC head office and three regional offices. In addition to taking direction from the 15 First Nations, Uu-a-thluk staff also take direction from a Council of Ha’wiih (Council of Hereditary Chiefs) and participate in a Joint Technical Working Group with DFO and Nuu-chah-nulth First Nation representatives.

### **History and Purpose**

The NTC represents First Nations on the west coast of Vancouver Island whose territories extend over about 300 km of coastline. First Nations in this area have a long history of working together. Modern organizations include the West Coast Allied Tribes formed in 1958. In 1973 the First Nations incorporated into a non-profit society called the West Coast District Society of Indian Chiefs. In 1979 the Chiefs changed the name to Nuu-chah-nulth Tribal Council.

The fourteen NTC member First Nations are divided into three regions:

Southern Region: Ditidaht, Huu-ay-aht, Hupascasath, Tse-shaht, and Uchucklesaht

Central Region: Ahousaht, Hesquiaht, Tla-o-qui-aht, Toquaht, and Ucluelet

Northern Region: Ehattesaht, Kyuquot/Cheklesahht, Mowachat/Muchalaht, and Nuchatlaht

Pacheedaht First Nation is not part of the NTC but participates in Uu-a-thluk. Pacheedaht has its own AFS agreement and Fisheries Program that works with Uu-a-thluk staff on issues of common interest. The NTC Fisheries Program (Uu-a-thluk) has been supported by AFS funding since the early 1990s. AFS funding is distributed to the fourteen NTC First Nations and the Fisheries Program provides technical support. Funding has also been provided by DFO’s Aboriginal Aquatic Resource and Oceans Management program (AAROM) in the past two years to improve dialogue with DFO and communities.

In the past year the NTC Fisheries Program was integrated into a new structure called Uu-a-thluk that provides linkages with Hereditary Chiefs, DFO and the community. This is described in more detail in the next section.

## **Organizational Structure and Decision-Making**

The NTC provides various programs and services to approximately 8,000 registered members including Nuuchahnulth people who live off reserve (NTC 2006). Services include health, education and other social services as well as fisheries and economic development.

Uu-a-thluk (NTC Fisheries Department) is located in Port Alberni with regional offices in Gold River, Ucluelet, and the Pacheedaht office at Port Renfrew. Staff include four biologists, a program manager, a program manager in training, an office manager and several contractors. The Fisheries Program administers and distributes about \$1 million in AFS funding to the 14 NTC member First Nations. Funding is allocated using a funding formula based partly on population. The Fisheries Department provides a broad range of technical assistance to the individual First Nation fisheries programs.

Uu-a-thluk's vision and goals (NTC 2005) are:

- Aquatic resources in Nuuchahnulth Ha-houlthee, or territories of hereditary Chiefs, are managed consistent with traditional Nuuchahnulth principles and values;
- Ecosystems and species in Nuuchahnulth Ha-houlthee are healthy and resilient to change;
- Nuuchahnulth rights and title are recognized, exercised and respected;
- Nuuchahnulth, Federal, Provincial and Local Governments are managing the use of resources through an integrated ecosystem approach that includes the experience, commitment, energy and resources of communities and others affected by aquatic resource use; and
- Nuuchahnulth are accessing and benefiting from diverse local aquatic ecosystems and species; and generating enough wealth that families and communities are healthy.

The purpose of Uu-a-thluk (NTC 2006) is

- “Nuuchahnulth working cooperatively together, and coordinating their activities with other First Nations,
- Nuuchahnulth working cooperatively with other governments, and
- Nuuchahnulth working with other people involved in the use, enjoyment and management of aquatic species and ecosystems.”

NTC is experimenting with a new structure for Uu-a-thluk that incorporates the NTC Fisheries Program (NTC 2006). It involves a Chiefs Council (Council of Ha'wiih), a Joint Technical Working Group (Nuu-chah-nulth and DFO) and a Secretariat. The Council of Ha'wiih includes the Ha'wiih (Chiefs) or their representatives from the 15 First Nations. The Joint Technical Working Group involves First Nations, Uu-a-thluk and DFO staff. The Secretariat includes NTC staff from a variety of program areas including biologists, managers, outreach, capacity development, fundraising and economic development.

Huu-ay-aht is one of the Nuu-chah-nulth First Nations. It manages a small but successful fisheries program and has worked strategically to develop capacity and advance local fisheries issues. Their fisheries program is different from other areas in that about ten years ago the decision was made to hire an outside biologist to develop and manage the program. Over the years the program has been successful in accessing outside funding from sources such as Forest Renewal and Fisheries Renewal. As well they have recently become involved in shellfish aquaculture. Initiatives are integrated with other activities of the Huu-ay-aht First Nation that has chosen to invest additional economic development monies into fisheries projects.

Nuu-chah-nulth First Nations have been engaged in the B.C. Treaty Commission treaty process since the mid-1990s. Frustrated with a lack of progress on fisheries negotiations, eleven Nuu-chah-nulth First Nations are participating in a court case to prove Aboriginal title and rights to marine areas and fisheries.

The NTC has been a leader in multi-stakeholder Tier 3 processes. It was a key driver in establishment of the West Coast Vancouver Island Aquatic Management Board that is described in Section 4.1.

## **Current Activities**

Responsibilities of the NTC Fisheries Program (NTC 2006) include:

- Conserve fish and habitats through NTC and the First Nations fisheries programs;
- Provide fisheries related technical and policy advice to the First Nations/NTC;
- Establish a Regional Fisheries Management Board for Nuu-chah-nulth Ha-houlthee (“Chiefly” territories);
- Promote Nuu-chah-nulth participation in commercial fisheries;
- Stay current with fisheries events/issues and brief First Nations and NTC Executive;
- Organize Uu-a-thluk meetings and implement decisions;
- Communicate with other organizations the objectives and goals of NTC/First Nation fisheries programs such as Canadian government, B.C. Aboriginal Fisheries Commission, West Coast Sustainability Alliance, and Area G Trollers;
- Protect Nuu-chah-nulth fishing rights through challenges to government policies and management;
- Liaise extensively with DFO and other resource management agencies;

- Administer DFO/AFS/AAROM funding for NTC/First Nation Fisheries programs and projects;
- Collect, maintain, and publish fisheries data for assessment and management; and
- Develop and coordinate training programs for First Nation guardians and technicians.

The Council of Ha'wiih is currently working on responses to three policy issues that DFO brought to them in November 2005. These are Groundfish Integration, Fisheries Renewal and changes to the Fisheries Act. Also in November, the Uu-a-thluk Council of Ha'wiih presented DFO with a six-stage consultation protocol for discussing and meaningfully accommodating Nuu-chah-nulth interests about these three policy issues.

## **Successes**

Uu-a-thluk (and prior to that NTC Fisheries Program) has had several notable successes:

**Builds on Existing Infrastructure** – NTC provided a convenient place to develop Uu-a-thluk. NTC is a stable political organization and provides security for funders. As well, Uu-a-thluk can operate more efficiently by using existing political decision processes and communication networks.

**Increased Capacity to Manage Fisheries** – Uu-a-thluk has increased Nuu-chah-nulth capacity to manage fisheries. It helps to build capacity by providing policy advice as well as technical support to First Nations fisheries projects.

## **Challenges**

These have included:

**Ground Level Capacity** – Like other First Nations, Uu-a-thluk has had limited success in recruiting Nuu-chah-nulth biologists or managers. Technical resources are small compared to organizations such as NWIFC or CRITFC and Uu-a-thluk biologists have to cover a large territory and work with a variety of small fisheries programs.

**DFO Policy Constraints** – There are considerable gaps between existing DFO policies and processes outlined by the courts in order to respect Aboriginal rights and title. Consultation protocols may assist in bridging some of this gap but are only the first step in reconciliation of Aboriginal and Crown title to land and resources.

**Inadequate Interim Solutions** – Initiatives such as Uu-a-thluk are intended as a bridge to self-government. However at the same time that these efforts are being made, the treaty process has failed to make adequate progress and the Nuu-chah-nulth are poised to go to court.

## **Critical Stages in Development**

A key point in development of Uu-a-thluk and NTC Fisheries Program was securing resources to initiate and maintain the program. This included AFS funds in the early 1990s and more recently AAROM funding.

## **2.4. Skeena Fisheries Commission**

### **Introduction**

The Skeena Fisheries Commission is a coalition of all traditional tribes in the Skeena River watershed. Their focus is on sustainability, management and economic access to salmonids returning to the watershed. Five First Nation groups participate in the commission: Tsimshian, Gitksan, Gitanyow, Wet'suwet'en and Lake Babine Nation. Individual First Nations manage their own fisheries programs. It has functioned for approximately 15 years.

### **History and Purpose**

The Skeena Fisheries Commission was formed in 1985. Member First Nations agreed to work co-operatively and within the parameters of traditional law to ensure that the salmon resource, among others, was preserved for future generations.

Further, in 1990, the Gitksan, Wet'suwet'en and Lake Babine Nation signed a Memorandum of Understanding committing to work together based on four principles:

- The right to fish for social, ceremonial and economic purposes under Aboriginal title;
- Dependence on the fisheries resource as a mainstay of economic, social and cultural well-being;
- Right to fish superseded all non-Aboriginal fishing interests and would only be limited by the need for proper conservation of threatened fish stocks; and
- As rightful Guardians each was obliged to protect, conserve and harvest the fishery resource according to traditional law. (SFC files, 1990 from Robinson 2001: 189)

The Commission's goal is to promote co-operation between the five First Nations and other fishers, and to work towards self-governance and economic self-sufficiency (SFC files 1990 from Robinson 2001: 189).

In 1992 the Commission negotiated an agreement with DFO under the Aboriginal Fisheries Strategy. Key elements of the agreement included training and employment of Aboriginal Fishery Guardians; working under the co-operative guidance of the Commission, Hereditary Chiefs and DFO; and allocations of salmon for commercial use under a DFO Communal Licence (1995 Skeena Watershed Agreement between DFO and SFC from Robinson 2001: 191). These allocations were made under DFO's Excess Salmon to Spawning Requirements (ESSR) policy. Equal allocations (one-third each) were made to Tsimshian, Gitksan-Wet'suwet'en and Lake Babine First Nations. All fish were landed at or transferred to one of three designated landing sites along the Skeena River where they are inspected and counted by a DFO officer and First Nations Fishery Guardian. Profits from commercial sale provide a source of revenue for the Skeena Fisheries Commission used for employment, stream restoration, community meetings and training programs.

The Skeena Watershed Agreement was renewed in 1985, 1992, 1996, 2000 and 2004. Other changes are that ESSR surpluses have not occurred regularly and none have occurred since 2001 (FNP 2004: 41; Personal Communication with Allen Gottesfeld, February 2006).

## **Organizational Structure and Decision-Making**

The Commission is comprised of one commissioner from each of the First Nations groups: Tsimshian, Gitksan, Gitanyow, Wet'suwet'en and Lake Babine Nation. It meets about 4 to 6 times per year. Decisions are made by consensus. The Commission meets by itself and also regularly meets with DFO to deal with fisheries issues.

The Commission has a part-time chair and a technical staff of about 5 persons. Its office is located in Hazelton. Most staff work part-time for the Commission and are also involved in projects and activities for First Nations in the region.

Decisions are made by consensus of the commissioners (Chris Barnes, Skeena Fisheries Commission Chair, Personal Communication, April 7, 2006).

A joint technical committee consisting of DFO and Skeena Fisheries Commission biologists and technical staff meets approximately once per month. The committee jointly coordinates a variety of stock assessment projects and exchanges catch and other information.

The Commission obtained funding from the Aboriginal Fisheries Strategy (AFS) in 1992. Funding from other sources has included the Federal Green Plan, DFO contracts as well as the Pacific Salmon Treaty Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund. Federal Green Plan funding secured in the mid-1990s focused on habitat and lasted about four years. It was obtained in cooperation with the multi-party Skeena Watershed Committee and was substantial: \$1 million per year for the Commission and \$2 million per year for the Watershed Committee over 4 years (Pinkerton and Weinstein 1995: 60). DFO's Aboriginal Aquatic Resource and Ocean Management (AAROM) program has been a significant contributor in recent years.

The Skeena Fisheries Commission was an integral part of a Tier 3 multi-party Skeena Watershed Committee that formed in 1992 (see section 4.2). However this process collapsed prior to the 1998 season.

## **Current Activities**

A major focus of the Commission and technical staff is on the annual Skeena River salmon fisheries management plan. This includes management of food, social and ceremonial fisheries as well as ESSR fisheries. ESSR fisheries have been sporadic and in 2005 a new federal process allowed "economic opportunity fisheries" by means of buyback of commercial licences and transfer of salmon allocations upriver. No directed commercial fishery occurred that year due to low stock abundance but similar arrangements are expected in 2006.

Other activities include stock assessment, watershed planning and First Nation Guardian programs:

- Individual First Nations conduct a wide variety of stock assessment initiatives focusing on culturally important stocks and stocks at risk.
- Skeena Fisheries Commission prepared a detailed report as the first stage in a watershed-based fish sustainability plan (Gottesfeld et al. 2002). Work on this project is ongoing with DFO and B.C. Ministries.
- Skeena First Nations have developed capacity for catch monitoring and enforcement. The Skeena Fisheries Commission developed a successful enforcement model that involves placement of Community Fisheries Officers in local DFO offices. These are First Nations members who are hired by DFO and fully designated as Fisheries Officers.

## **Successes**

Notable successes include:

**A Unified First Nations Voice in the Watershed** – The Commission provides a forum for First Nations to work together, identify common priorities and advance these with DFO or other parties.

**Forum for Cooperation with DFO** – The Commission and technical committees have been successful at developing annual fishing plans that account for First Nations food, social and ceremonial fisheries, ESSR and other economic fisheries. As well there is cooperation in watershed planning and technical assessment and sharing of data and planning of field programs.

**Watershed Assessments** – The Commission has spearheaded a variety of watershed level assessments over the years and is building its GIS capacity.

## **Challenges**

**First Nation Political Changes** – The five First Nations in the region have undergone periodic organizational changes over the past 20 years. The 1985 MOU is founded on traditional law at the Nation level and continued to function through these changes. These changes have sometimes led to less than full participation at the Commission table by some Nations, although all continued to participate in technical processes. The Commission does not engage in internal politics and maintains a focus on science, conservation, resource management and enforcement.

**Commercial Allocations** – Management of ESSR fisheries was a major incentive for joint management between DFO and the Skeena Fisheries Commission. But no ESSR surpluses have occurred over the past four years. In 2005 the Commission and DFO planned an upriver economic opportunity fishery. But the fishery did not materialize due to low Skeena sockeye returns. It is expected that this will continue and expand in future years.

**DFO Cutbacks** – DFO has been reducing programs and technical support in all areas including the Skeena. First Nations in the Skeena have the capacity to carry out many of these functions but would need funding to carry these out.

## **Critical Stages in Development**

Several critical stages in development have been:

**Funding Support and Technical Capacity** – Two keys to the success of the Skeena Fisheries Commission have been funding support and development of technical capacity. Both have gradually increased over the years.

**Stable First Nation Politics** – Skeena Watershed Commission has been fortunate in that First Nation politics between tribes have been relatively stable over the years. First Nations in the watershed decided to work together several years before AFS emerged and were prepared to advance their role in management of Skeena fisheries.

## **2.5. Haida Fisheries Program**

### **Introduction**

The Haida Fisheries Program was established in 1989 and delivers a diversity of fisheries programs and projects. Core funding is provided by AFS and additional project funding is attracted from other sources. Similar to Uu-a-thluk, the Haida Fisheries Program works under an existing Haida governing and administrative structure, the Council of the Haida Nation and Haida Tribal Society, respectively. It takes direction from a Haida Fisheries Committee that includes representatives from the Council and the two Haida communities of Massett and Skidegate. So far, the major focus of Haida AFS agreements has been on fisheries management and capacity development, although separate agreements have provided for commercial access to razor clams and a variety of commercial licences and quota.

### **History and Purpose**

The Council of the Haida Nation is a government with its own Constitution that is elected by all citizens of Haida ancestry. The Haida Fisheries Program works under the direction of the Haida Fisheries Committee of the Council of the Haida Nation. The Council of the Haida Nation has a mandate to protect Haida Aboriginal rights and title. It regularly holds All Leaders meetings with the two village councils of Skidegate and Old Massett. As well it regularly meets with a Council of Hereditary Chiefs.

Long terms goals of the Haida Fisheries Program (HFP 1992) are:

- Increased Haida participation in fisheries resource management
- Greater access to fish resources for economic and social purposes;
- Training for Haidas seeking a career in fisheries;

- Increased Haida participation in the commercial fishing industry, directly or indirectly; and
- Increased public awareness of fisheries issues.

Initial funding for the Haida Fisheries Program was provided by CEIC and DIAND in 1989. AFS began providing core funding in 1992. Current funding consists of about \$1 million per year from AFS and approximately an equal amount from other sources for additional activities.

## **Organizational Structure and Decision-Making**

The Haida Fisheries Committee consists of three representatives from the Council of the Haida Nation, two from Skidegate Band Council and two from Old Massett Village Council. The Chair of the Haida Fisheries Committee is named by, and the Committee makes recommendations to, the Council of the Haida Nation. The Council of the Haida Nation makes decision by a three-quarters majority vote.

The Haida Fisheries Program employs approximately 16 full-time and 20 part-time staff. It has two offices in Skidegate and Old Massett.

The AFS agreement between the Council of the Haida Nation and DFO sets up a discussion process on fisheries issues (Figure 4). There are three levels of discussion: negotiation, policy development and planning, and joint technical committees. The Cooperative Management Group is responsible for policy development and planning and consists of three DFO and three Haida members that meet about three times a year. Four Joint Technical Committees for salmon, herring shellfish and groundfish (including halibut) meet about twice a year. Technical committees have 3 members each from the Haida and DFO, except for salmon which has 4 members each. DFO has representatives from science and management on the technical committees.

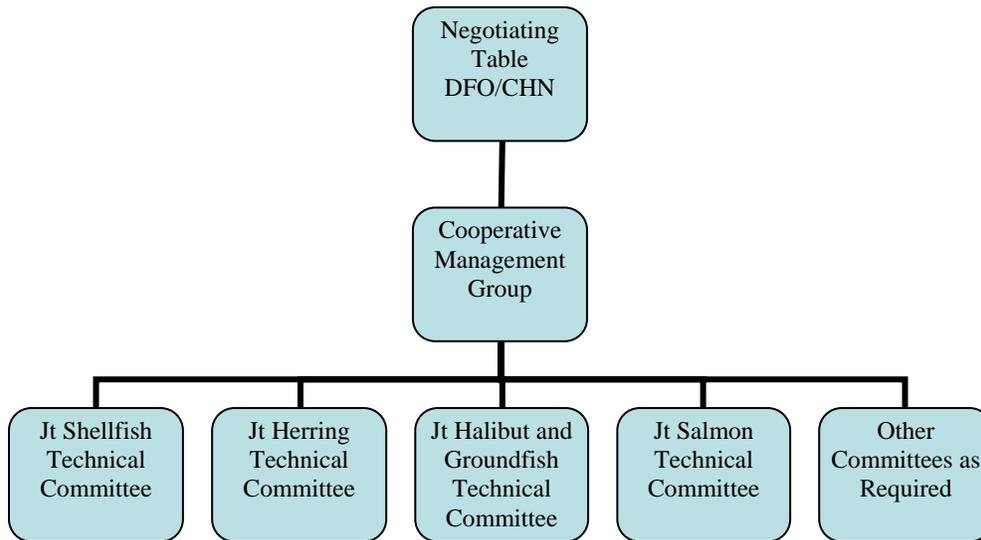
Technical committees are involved in planning and review of projects and initial discussion of issues.

## **Current Activities**

The Haida Fisheries Program delivers technical services in a variety of key areas:

- A research dive program that focuses on abalone, red sea urchin, and geoduck; most surveys are done cooperatively with industry with each partner providing a supervising biologist, vessel and dive team;
- A Haida Fisheries Guardian program although enforcement activities are limited;
- Operation of Pallant Creek hatchery, primarily a chum and coho facility, and conduct of a cost recovery fishery to catch and sell a portion of returns through agreements with industry;

**Figure 4. Discussion Process between DFO and Council of the Haida Nation (CHN)**



- A comprehensive creel survey of marine recreational catch and effort that utilizes Haida Watchmen working at base camps located in the vicinity of fishing lodges;
- Management and stock assessment of the local razor clam fishery;
- Salmon stock assessments including operation of a coho index stream (Deena Creek) and monitoring of sockeye escapements; and
- Conducting a herring spawn dive charter on contract to DFO and monitoring commercial and Haida herring spawn-on-kelp fisheries.

Under AFS the Council of the Haida Nation manages approximately 21 commercial licences. Licences are leased at or below market value with preference given to Haida fishers. Haida AFS agreements do not contain fish allocations other than in the razor clam fishery where Haida make up more than 95% of the fishers and fish under a Razor Clam Subagreement. Haida access in the razor clam fishery was protected in 1994 by limiting non-Haida participation in the fishery. Haida razor clam fishers are managed under a Communal Licence and are designated and issued Right to Access documents by the Council of the Haida.

## **Successes**

Key successes include:

**Involvement in fisheries management** – Haida Fisheries participates in most fisheries assessments on Haida Gwaii including those for salmon, herring and shellfish. The razor clam fishery is co-managed with DFO and an annual management plan is developed each

year that covers commercial, recreational and Haida food, social and ceremonial fisheries.

**Capacity building** – Key areas for team development include an in-house research dive team, Haida Fisheries Guardians, and fishery and hatchery technicians.

**Improved stock information** – Haida Fisheries has contributed to improved stock assessment of Islands sockeye and coho, abalone, red sea urchin, and geoduck clam.

## **Challenges**

**Fisheries Access** – Limited fisheries access has been provided under DFO's Allocation Transfer Program which transferred commercial licences to the Haida. However, licences are not the preferred way for the Haida to exercise rights to access fisheries.

**Few Haida Management Staff** – Trained Haida are not available to fill management positions such as fisheries biologists or the hatchery manager.

**Policy Issues** – The Cooperative Management Group has had limited success at tackling policy issues such as allocation, fishery management issues, and Haida requests for commercial fishery closures. DFO staff in the Cooperative Management Group process are usually not policy decision-makers although the AFS agreement calls for DFO representatives from the North Coast Area, Pacific Region and Ottawa level.

## **Critical Stages in Development**

The Haida Fisheries Program has several advantages compared to fisheries programs in other areas. These include:

**A Single Fisheries Window** – There is efficiency from managing Haida fisheries technical programs under a single roof. Political interests are addressed through a single Haida Fisheries Committee that has the necessary representation. This is made easier by having a Haida governing structure in place and only two villages involved.

**Multi-year agreements** – Multi-year AFS agreements were negotiated beginning in 1993. This provided certainty of funding for projects and allows longer term planning.

## **2.6. Inter-Tribal Fisheries Framework (BCAFC Proposal)**

### **Introduction**

In 1999 the B.C. Aboriginal Fisheries Commission (BCAFC) developed a Tier 1 process for First Nations to work together in fisheries referred to as an Inter-Tribal Fisheries Framework. The Framework envisaged a process by which First Nations would work together to develop inter-tribal conventions that would be similar to inter-tribal treaties. However the framework process never gained widespread support from First Nations and so was never tested in practice.

## **History and Purpose**

Objectives of the Fisheries Framework (BCAFC no date) were:

- To develop a shared vision among B.C. First Nations on the implementation of Aboriginal fishing rights and on the future of fisheries management;
- To develop processes for the coordinated management of shared stocks while preserving the sovereignty of individual First Nations over the implementation of their fishing rights; and
- To form the basis for joint action by First Nations on the protection and implementation of Aboriginal fishing rights, both inside and outside the B.C. Treaty process.

## **Organizational Structure and Decision-Making**

The Framework concept was to adapt the multi-staged process used in international law to develop conventions, or agreements that would be similar to inter-Tribal treaties.

The process would be for First Nations to participate in conferences to discuss issues and develop proposals or draft conventions. A final draft text of a convention or protocol would be adopted by consensus at a conference. First Nations would have to go through their own internal ratification processes to sign onto a convention.

Not all First Nations would have to sign onto a convention for it to be ratified. As well, First Nations could support a part of a convention. As such, it would be clear at any time to First Nations or other governments which First Nations support the articles of a convention.

## **Current Activities**

The proposal was presented at several coastwide workshops. However it never gained widespread support.

Several possible Inter-Tribal Conventions were proposed:

- To formally establish the Framework Process;
- For mutual support on the implementation of fishing rights;
- For stewardship of wild salmon; and
- For inter-tribal co-management of shared stocks.

## **Successes**

The framework process was an interesting idea but did not capture the interest of enough First Nations.

## **Challenges**

These have included:

**Lack of focus** – The Framework Process was mainly a political process and may have lacked the focus on results that was necessary to motivate participants.

**Representation** – The process would have required First Nations to name representatives and delegate decision-making powers to them which has been a challenge in other processes.

**Potential to divide** – Since conventions did not require a consensus, the process could have been divisive.

## **Critical Stages in Development**

This concept has been tested and works in international forums. However it depended on participation of a critical mass of First Nations for legitimacy, which was not achieved.

### **2.7. Comparison of Tier 1 Models**

This section described six Tier 1 (First Nation to First Nation) organizations with a diverse range of fisheries interests and accomplishments. Each has had some degree of success and have encountered or dealt with a variety of challenges. Most are also involved in some Tier 2 activities (First Nation to government). While there are similarities between organizations there are also some instructive differences in terms of geographic scope and size, purpose of organization, underlying political structures, and decision-making (Table 1).

#### **Geographic Scope and Size**

All but one example have a sub-regional geographic scope similar to what the First Nations Marine Society might consider. The Inter-Tribal Fisheries Framework process differs in that it ambitiously proposed a coastwide membership and scope but was unable to gain wide support. Membership ranges from 2 to 20 (Table 1), so the First Nation Marine Society, with 26 members, is larger than any of the organizations examined. In general First Nation organizations in B.C. have less technical staff than Tribes in the U.S. (Table 1). Involvement by First Nations in fisheries management processes in Canada is likely to increase through either negotiation or court processes.

## **Governing Structures and Purpose**

A major difference between the models is the underlying governing structure (Table 1). Purposes vary between organizations but are generally more clearly defined in the U.S. process due to direction provided by the courts and subsequent policy directives.

Uu-a-thluk (NTC Fisheries Program) and Haida Fisheries Program are both built on pre-existing political governing structures, the Nuu-chah-nulth Tribal Council and the Council of the Haida Nation. This adds to efficiency by utilizing existing administrative structures and building on existing relationships between member First Nations. Some of the initial motivation for both programs included access to federal co-management funds under AFS. A difference is that Uu-a-thluk coordinates activities between 15 First Nations while Haida Fisheries Program involves only 2. This contributed to differences in the scope of work and delivery of these two programs and has allowed the Haida to deliver a single program rather than separate First Nation programs. Both Uu-a-thluk and Haida Fisheries Program are service providers to a certain extent with political processes being addressed by the governing institutions.

The other four Tier 1 processes: NWIFC, CRITFC, Skeena Fisheries Commission and the proposed Inter-Tribal Framework) did not have existing governing structures to build upon. They subsequently had to go through a process of “Nation-building” and agreeing on a common purpose and processes for working together. Each of the organizations had a different history and experience in working together.

In the U.S., new political structures were necessary to coordinate implementation of treaty rights, when about 30 years ago, the Tribes formed both NWIFC and CRITFC. When the Tribes on the Columbia formed CRITFC, they already had experience working together in the Celilo Fish Commission that coordinated tribal fishing in the Columbia. CRITFC member Tribes live on four reservations with existing Tribal governments. NWIFC currently serves 20 member tribes but were unified to the extent of having signed similar treaties in the 1850s. In the case of both CRITFC and NWIFC, individual tribes or groups of tribes deliver their own fisheries programs that may include fishing, salmon hatcheries, habitat restoration, or watershed management activities.

Skeena Fisheries Commission formed in 1985 and become more active as financial resources became available through federal programs such as AFS. Although founded on traditional law, they also drew on underlying governing structures that have developed their own fisheries programs.

Finally the BCAFC Framework process aimed to provide a means for First Nations to develop conventions on issues of common interest. It would have included all First Nations that ratified their membership and provided a mechanism for First Nations to develop and ratify multi-lateral agreements. In a way, watershed bodies involving First Nations are a practical application of this approach on a smaller scale. One difference is that most watershed bodies attempt to be inclusive, while under the Framework process conventions could be ratified by any group of First Nations, even though others may not support it.

In general, smaller organizations with fewer members are easier to organize and manage. In any group there will be competing interests and agendas. It is important to be inclusive but too many voices can make it difficult to reach decisions. CRITFC and Skeena Fisheries Commission have tried to limit the size of their decision-making commission by use of smaller representative bodies.

## **Decision Making**

Most of the organizations examined make decisions by consensus (Table 1). Exceptions are the Council of the Haida Nation and Nuu-chah-nulth Tribal Council which can make decisions by majority vote. First Nations and U.S. Tribes are the holders of Aboriginal or treaty rights and overarching organizations are unable to take actions that might affect those rights unless individual First Nations or Tribes consent. First Nations generally recognize that if these fundamental relationships are ignored it could lead to breakup of the organization.

## **Role of Traditional Government**

Several of the Tier 1 processes have linkages to different forms of traditional governing authority. Uu-a-thluk, Skeena Fisheries Commission and Haida Fisheries refer to and use processes involving traditional law and leaders (Table 1). CRITFC is modeled on the Celilo Fish Committee, a traditional fishing authority that governed tribal communities on the Columbia (CRITFC 2006).

## **Summary**

All of the collaborative management models examined were formed with a clear purpose or mission. This allows members to see the benefits of cooperation as well as justify the investments in time and energy that are necessary to make any organization work.

Some organizations were able to use a pre-existing government structure that provided efficiencies in decision-making and administration. Others needed to develop their governing structure.

The role of some organizations, particularly NWIFC and CRITFC has evolved over time as tribes have developed more capacity or new issues have emerged. Changes are expected to occur in B.C. fisheries with most First Nations involved in negotiations to clarify access to resources and several in court to prove their title and rights. First Nations processes in B.C. are likely to develop and evolve as First Nation fish access and management issues are addressed.

**Table 1. Comparison of Tier 1 Models**

Organization/ Governing Body	Geographic Area	# FNs or Tribes	Single FN Government	Technical Staff	Purpose	Related Traditional Government Structures	Consensus Decisions
Northwest Indian Fisheries Commission	Western Washington State	20 Tribes	no	65	Implement treaty right to fish (allocation & management); Mandate expanded from salmon to include shellfish, wildlife, groundfish	Not directly involved; Possibly in structure of Tribes	Yes for treaty rights decisions; Majority vote on administrative issues
Columbia River Inter- Tribal Fish Commission	Lower & Middle Columbia River	4 Tribes; 26 commissioners	no	~100	Implement treaty right to fish (allocation & management); Focuses on salmon	CRITFC is modeled on a traditional fishing authority, Celilo Fish Committee	Yes
Uu-a-thluk/ Nuu-chah- nulth Tribal Council (NTC) & Pacheedaht FN	West Coast Vancouver Island	14 FNs	yes	5	Provide policy and technical advice to NTC and Pacheedaht First Nations; Promote integrated management	Council of Ha'wiih (Chiefs) directs Uu-a-thluk	Yes for Council of Ha'wiih (Chiefs); Majority vote for NTC
Skeena Fisheries Commission	Skeena River	5 FN groups	no	5	Facilitate cooperation between FNs and other fishers; Promote FN economic access	Hereditary House Chiefs supported formation	Yes
Haida Fisheries/ Council of the Haida Nation (CHN)	Haida Gwaii	2 FNs	yes	36	Develop Haida management capacity; Provide policy and technical advice to CHN	CHN seeks advice from Council of Hereditary Chiefs	No; 3/4 majority vote by CHN

### **3. Tier 2 Case Studies**

This section describes three collaborative models involving First Nations working with government (Tier 2).

#### **3.1. Nisga'a Joint Fisheries Management Committee**

##### **Introduction**

The Nisga'a Final Agreement is presently the only modern treaty in B.C. and has been in place since 2000. The agreement defines Nisga'a catch allocations and joint (Nisga'a/Canada/B.C.) fisheries management structures and specifies financial commitments related to Nisga'a fisheries and Nass area stocks. The Joint Fishery Management Committee is responsible for facilitating cooperative planning and conduct of Nisga'a fisheries and enhancement initiatives in the Nass Area. It has representatives from DFO, British Columbia and the Nisga'a.

##### **History and Purpose**

The Nisga'a Final Agreement came into effect on May 11, 2000. It is the only example of an operational post-treaty fishery in British Columbia. The Agreement and related documents on Fisheries Operation Guidelines and the Nisga'a Enforcement Agreement describe in detail Nisga'a catch allocations and management responsibilities. The authority to implement the Nisga'a fishery comes from the Final Agreement and the federal *Fisheries Act*. The Nisga'a Lisims Government has the responsibility to develop the Nisga'a Annual Fishing Plan that is reviewed by the Joint Fisheries Management Committee prior to being submitted to the Minister for approval.

Beginning in 1990 an intensive program was initiated to collect information about Nass River salmon stocks including stock composition and run size. Prior to that, run size was frequently under-estimated and little directed management of the stocks was possible (MacKay et al., no date). During this exploratory period, fish wheels were tested as an index of abundance and means to sample returning salmon and were found to perform considerably better than test fishing, which was used previously.

Key features of the Agreement (Link and English 1998) are:

- Community held entitlement to a share of the salmon returns;
- Establishment of a Joint Fishery Management Committee involving the Nisga'a, B.C. and Canada;
- Sustainable funding for research through a \$13 M Lisims Fisheries Conservation Trust Fund; and

- Integrated research, management and harvesting.

The Nisga'a distribute their salmon catches between three types of fisheries: domestic fisheries for food, social and ceremonial purposes; communal sale fisheries, that use the proceeds to support fisheries management programs; and individual sale fisheries that provide commercial catch opportunities and income for Nisga'a fishers. The communal sale fishery is conducted at six fish wheels and occasionally commercial vessels under charter to harvest sockeye and pink salmon. The individual sale fisheries are recently managed with individual quotas of 500 sockeye and no limit on the number of licences. (MacKay et al., no date).

The Nisga'a government has a Nisga'a Fisheries Program that has goals (NLG 2006) to:

- Determine the status of Nass stocks;
- Provide information required for better management;
- (Assess) run size, timing and harvest rates;
- (Assess) factors limiting production; and
- (Provide) training and employment for Nisga'a

About 100 people worked for Nisga'a Fisheries during the 2001 season including at the Nisga'a Fisheries fresh fish plant at New Aiyansh (Anon. No date (a)).

## **Organizational Structure and Decision-Making**

The Joint Fisheries Management Committee has six members. The Nisga'a Nation, Canada and British Columbia each appoint two members. The Agreement specifies that the members representing the Nisga'a Nation and Canada are responsible for functions relating to fisheries managed by Canada. Likewise the members representing the Nisga'a Nation and B.C. are responsible for functions relating to fisheries managed by B.C.

The Committee aims to make decisions by consensus of the members responsible for each function. If there is no consensus then the Committee submits recommendations or advice from each Party's representatives.

The Joint Fisheries Management Committee is supported by a Technical Fisheries Working group that it establishes (Anon. No date (a)).

The Nisga'a governing body is Nisga'a Lisims Government which consists of a legislative house and a Nisga'a Lisims Government Executive. The Nisga'a Constitution describes the government structure and its relationship to a Council of Elders and Nisga'a Village Governments (NLG 1998). Wilp Si'ayuukhl Nisga'a is the 39-member legislative body that passes legislation and regulations that have included a Nisga'a Fisheries and Wildlife Act and regulations (NLG 2000). It is made up of elected officers of the government, councilors from the four Nisga'a village governments and

representatives from the urban locals of Prince Rupert, Terrace and Vancouver. The NLG Executive follows up on duties assigned by the legislative body, represents the Nisga'a in intergovernmental relations, and makes appointments to public institutions or delegates responsibilities to carry out Nisga'a laws. The Executive has a Fish and Wildlife Committee as well as a Director of Fish and Wildlife.

### **Current Activities**

The Nisga'a Joint Fisheries Management Committee has been in place since 2000 and fulfilled its mandate of developing and recommending fisheries management plans and exchanging technical information between the three parties (Nisga'a/DFO/B.C.).

Responsibilities of the committee (Indian and Northern Affairs Canada 2000) include:

- Sharing information for existing and proposed fisheries;
- Arranging for collection and exchange of data;
- Providing advice concerning escapement goals and other conservation requirements;
- Making recommendations or providing advice regarding Nisga'a annual fishing plans, Nisga'a overages and underages, enhancement studies and initiatives, surpluses and in-season adjustments to Nisga'a annual fishing plans;
- Making recommendations to the Lisims Fisheries Conservation Trust regarding funding of projects, programs and activities; and
- Striking any technical committees or sub-committees that may be necessary.

The committee met four times in the first year of the agreement (B.C. Treaty Negotiations Office, No date).

The committee reviews annual fishing plans and conducts post-season reviews. Following is a summary of catch in the Individual Sales Fishery from 2000-2003 (Anon. No date (b)):

**Table 2. Catch and Value of Nisga'a Individual Sale Fishery**

Year	Sockeye	Coho	Landed Value
2000	54,734	0	\$900,000
2001	37,833	0	\$386,126
2002	87,918	2,425	\$833,781
2003	85,284	10,317	\$984,708

The committee also reviewed Nisga'a domestic and communal sale fisheries. In 2003 Nisga'a domestic harvest was 39,198 salmon and communal sale harvest was 29,573 sockeye. The Communal Sale Fishery generated \$162,908 in 2001 and \$297,468 in 2004 (Anon. No date (a): 19; Anon. No date (b)). Nisga'a have forgone catch of some species such as pink due to low prices (NLG 2005).

## **Successes**

The Nisga'a Joint Fisheries Management Committee has operated smoothly over the years since the treaty was signed. Successes include:

**Well Managed Fisheries** – Nisga'a and Canadian catches have been consistent with their allocations (FNP 2004: 40). This is assisted by the comprehensive monitoring system for stocks and catches that was put in place. There has not been a single substantial fisheries dispute between the parties (FNP 2004: 40).

**Protection from Over-fishing** – Management systems provide a high degree of protection from over-fishing while at the same time providing access to surpluses. Fish wheels and tagging are used to provide in-season escapement estimates.

**Nisga'a Access to Fish** – The Nisga'a have achieved benefits from economic access to fish.

## **Challenges**

The Nisga'a themselves face a variety of challenges in realizing full economic benefits from their fishery that are being addressed as follows:

**Remote Location** – Due to their remote location, the Nisga'a face higher costs for fish handling and transportation than other areas. Nisga'a Fisheries has developed their own fresh fish processing plant at New Aiyansh.

**Marketing** – Salmon markets and prices are subject to fluctuations and efforts are underway to maximize value. In 2000 Nisga'a Fisheries entered into a 5 year agreement with Canadian Fishing Company (Anon. No date (c)). In 2001 five percent of the annual catch was utilized for value-added products including premium quality specially labeled Nisga'a wild sockeye salmon. Nisga'a have also pursued certification of Nass River salmon by the European Marine Stewardship Council (Anon. No date (b)).

## **Critical Stages in Development**

Ratification of the Nisga'a Treaty was a critical point in Nisga'a history. It provided defined fish allocations as well as economic access to fish and other resources and a jointly agreed role for the Nisga'a in fisheries management through the Joint Fisheries Management Committee.

The management system was improved during the negotiation period leading up to the treaty. Nisga'a and Canada tested monitoring and stock assessment systems that took a

lot of the uncertainty out the management of Nass fisheries. This included innovative technology such as fish wheels to provide accurate in-season estimates of returning salmon.

## **3.2. Fraser Watershed Process**

### **Introduction**

Salmon management on the Fraser River system is very challenging as it has historically supported fisheries by approximately 100 First Nations in the watershed alone, the largest commercial fishery on the B.C. coast, as well as a variety of recreational fisheries. A Fraser River Aboriginal Fisheries Secretariat has been in place since 1994 that distributes information to First Nations. In addition, efforts have been underway since 1989 to develop both Tier 1 and 2 processes in the Fraser but these are still in the formative stages.

### **History and Purpose**

Almost all First Nations on the Fraser signed onto an Inter-Tribal treaty of cooperation and respect in 1989 (ITFT 1989) that indicated a willingness to cooperate in fisheries management. The objectives of the treaty include:

“to ensure the survival of the salmon ...; protect and enhance the fisheries of the Fraser and Columbia Rivers ...; recognize and exercise the Aboriginal right to fish of the Parties to this Treaty...; recognize and respect the autonomy and right to self determination of each party including recognition and respect of the fishing laws of each Nation; adhere to a policy of Tribal non-interference between Parties; create a binding Inter-Tribal Fishery policy ...; adopt the principle that Inter-Tribal rights supersede individual Tribal rights if the two are in conflict in order to ensure the survival of salmon; and develop the trade and sale of fish”

Subsequently an AFS Fraser Watershed Agreement was negotiated in 1993 between DFO and about half of Fraser River First Nations. The main issues of contention for First Nations that didn't sign were lack of sales opportunities, as sales were only offered to First Nations in the lower watershed, and management limits on the number of fish for food, social and ceremonial purposes. The AFS agreement established a Tier 2 Watershed Steering Committee and the Fraser River Aboriginal Fisheries Secretariat (the “Secretariat”). The Steering Committee included DFO and First Nations representatives who were signatories to the Agreement. Signatories were eligible to negotiate their own AFS agreements with DFO including pilot sales fisheries for those First Nations on the lower Fraser.

The Fraser Watershed Agreement lapsed in 1999 due to a variety of concerns although the Secretariat continued to function. A new Fraser Watershed Aboriginal Fisheries Forum (the “Forum”) was created in 1999 to fill some of the roles of the defunct Watershed Steering Committee. The Forum maintained most of the exchange of

information that took place before but had no decision-making role or structured criteria for participation by DFO and First Nations. Recently DFO claimed in court that the Fraser Forum constituted “consultation” with individual First Nation which has caused concerns to elevate.

In 2001 an independent facilitator did a review of Forum and Secretariat processes (DFO-FN Subcommittee 2002). He made 13 recommendations that mostly dealt with the need for clarity in structure and function. Clarity around consultation was another key concern. In November 2002, a DFO-First Nations committee recommended action on a number of the recommendations including negotiation of a new Fraser Watershed Agreement, negotiation of a consultation protocol, creation of an Executive Committee to oversee the Secretariat, and development of terms of reference for a technical stock management committee. The latter two tasks are complete and reports have been solicited on how to proceed with negotiations (Gaertner 2003).

## **Organizational Structure and Decision-Making**

Fraser Forums took place from about 1999 to 2003 on a regular basis and included pre-season and post season meetings. Participation by First Nations in the forums was spotty over this period.

As a result of the independent facilitator’s review, an Executive Committee was formed that oversees a Secretariat. It includes about 7 First Nations representatives (two each appointed by DFO from the lower, middle and upper river and one from the B.C. Aboriginal Fisheries Commission) and DFO representatives. The focus is on operation of the Secretariat and is not a venue for fisheries management discussion.

Functions of the Secretariat include:

- Coordinating Forum meetings,
- Coordinating Tier 1 Fraser River First Nations meetings,
- Distributing information and regular publications among the members including *Watershed Talk* and *Watershed Quarterly Journal*,
- Conducting technical analyses in the Fraser River watershed based on First Nations’ perspectives, and
- Providing a technical link to the Fraser Panel of the Pacific Salmon Commission that deals with in-season management of returning sockeye and pink salmon.

The Secretariat has five part-time staff including an Executive Director, an Executive Assistant and three biologists who focus on stock assessment and Fraser Panel liaison.

As well a Fraser Watershed Joint Technical Committee is comprised of the Secretariat technical staff and DFO managers. The technical committee has had regular meetings over the past six months.

Tier 1 meetings continue to occur with the most recent taking place in February 2006.

There are no all encompassing Tier 3 processes on the Fraser. Some regional meetings occur. Some multi-party communication occurs in the Fraser Basin Council. As well there are a few Fraser First Nation representatives appointed to the Fraser River Panel of the Pacific Salmon Commission and the Integrated Harvest Planning Committee (see section 4.3 for a description of the latter).

The Secretariat and technical staff are currently funded under AAROM.

## **Current Activities**

The main function of the Forum and Secretariat has been information exchange, although efforts are underway to engage First Nations and build a functioning Tier 1 process.

The Secretariat plans activities to engage First Nations, such as a conference held in Merritt in March 2006 to discuss the future of the Fraser watershed.

The Secretariat prepares a monthly newsletter, *Watershed Talk*, which is distributed approximately monthly.

## **Successes**

The Fraser River process has gone through several phases and is trying to rebuild. Some continuing activities include:

**Watershed Talk Newsletter** – This has been put out regularly since AFS was first signed and is a useful source of current information that is appreciated by First Nations.

**Ongoing Technical Process** – Information is exchanged through a technical committee. But the process for input is ad hoc as it functions in the absence of political agreements with First Nations.

**AFS Funding for First Nations** – Funding continues to be provided to individual First Nations through AFS. AAROM may be a catalyst to involve other First Nations in discussion of Fraser River management.

## **Challenges**

There are numerous challenges to developing a workable Fraser River process with First Nations:

**Lack of a Political Process** – This is by far the major challenge for both DFO and First Nations. Without a legitimate process DFO will need to consult individually with First Nations. And individual First Nations are likely to have only a marginal voice in Fraser River management. In recent years there have been attempts to organize on a regional level (lower, middle and upper Fraser) but these have had mixed success.

**Scope and Complexity of Issues** – The Fraser River constitutes about 25% of the B.C. interior and has a wide range of stakeholders with diverse interests. Hence it is difficult

to develop a common First Nations position let alone a multi-party watershed perspective.

**Stocks at Risk** – Several Fraser salmon stocks have been identified as at risk including Cultus Lake sockeye and Upper Thompson coho. In addition conservation concerns for Sakinaw sockeye, in the upper straits of Georgia affect commercial fishing Fraser Sockeye in Johnstone Strait. Conservation measures are having significant impacts on ocean fisheries. At the same time measures may not be adequate to allow recovery, particularly of the small sockeye stocks.

## **Critical Stages in Development**

The Fraser River process has gone through several stages and it is uncertain whether or not a new process will emerge. Some of essential ingredients to support a new process include:

**Political Will** – DFO exercised political will to achieve the 1993 Fraser Watershed Agreement but the result was divisive for First Nations. DFO was unable to provide adequate incentives to continue the agreement in 1999. First Nations also need to show a willingness to work together if overarching processes are to be successful.

**Economic Access** – Provision of pilot sales agreements in the lower Fraser were critical in the 1993 agreement. Lack of economic access was a reason why many upper river First Nations did not sign the agreement. In 2005 several economic opportunity fisheries were tested in the watershed. Policy changes may provide incentive for working together.

**Development of Management Capacity** – Another incentive for First Nations was availability of AFS funding for fishery monitoring and management. As a result, some communities have capacity to engage in meaningful discussions regarding fisheries management.

### **3.3. Coastal First Nations – Turning Point Initiative**

#### **Introduction**

Coastal First Nations is a group of First Nations on the B.C. north coast who have agreed to work together on economic development and policy initiatives. Not all First Nations in the area participate but the organization has played a supporting role on land use planning and leads major new initiatives on shellfish aquaculture and marine use planning. Coastal First Nations has been in existence for 5 years.

#### **History and Purpose**

The purpose of Coastal First Nations – Turning Point Initiative (CFN 2006) is:

“Working together to create an ecologically and economically sustainable coast.”

Objectives (CFN 2006) include:

- “To develop land and marine use plans that will provide ecosystem-based management over First Nations’ Traditional Territories and special protection for specific areas;
- To develop economic opportunities in the areas of forestry, marine resources and tourism; and
- To support the development of a management framework that will provide short-term and long-term capacity building for managing the lands, waters and resources with our Traditional Territories.”

The organization’s goals (CFN 2006) are:

- To develop regional business forestry, fisheries and tourism strategies and partnerships;
- To develop business strategies on forestry, fisheries and tourism for individual First Nations;
- To increase and develop capacity in resource management, business management and technical skills in the resource sector;
- To decrease the amount of industrial logging and fishing practices;
- To implement ecosystem-based management practices;
- To demonstrate an alternative to conflict based land and marine use planning; and
- To share the Coastal First Nations’ regional strategic approach with others.

The Turning Point Initiative formed in 2000 after a series of initial meetings of First Nations from B.C. Central Coast, North Coast and Haida Gwaii. Seed funding was provided by a non-governmental organization, the David Suzuki Foundation, and for the first few years it operated out of the Suzuki Foundation’s office in Vancouver. In September 2003 Turning Point Initiative Society began operating independently out of an office in downtown Vancouver.

Turning Point negotiated two government-to-government agreements that provide a framework for negotiations of land and marine use planning, economic measures and cooperative management:

An April 4, 2001 agreement with B.C., “General Protocol Agreement on Interim Measures and Land use Planning”, that commits to ecosystem-based management and developing interim measures in forestry; and

A November 6, 2002 agreement with DFO and DIAND, an “Interim Measures Framework for Fish and Aquatic Resources”, that relates to marine use planning, economic measures and cooperative management arrangements.

## **Organizational Structure and Decision-Making**

The society has a board of directors consisting of representatives of the founding First Nations: Council of the Haida Nation, Gitga'at First Nation, Haisla, Heiltsuk Nation, Kitasoo/Xaixais First Nations, Metlakatla First Nation, Old Massett Village Council, Skidegate Band Council and Wuikinuxv Nation. This does not include all of the First Nations in the B.C. north coast. The board meets quarterly to review progress and provide direction on future activities. In addition the Board has an Executive Committee that meets more frequently to review administrative issues and monitor projects.

Decisions of the board are generally made by consensus. Individual First Nations may participate in some projects and not in others. The Turning Point office has a six person staff that takes its' direction from an Executive Director

A key difference from other organizations is that Coastal First Nations – Turning Point Initiative was initially set up to operate for a five year period. The rationale is that local institutions would be developed to take over the management of these initiatives. But the board recently agreed to extend its mandate and seek operating funding for another four years.

Another difference is that Coastal First Nations is largely independent of government funding. Core funding for office and staff is provided by several foundations that support Coastal First Nations strategic plan and have provided multi-year grants. Funders have not put too many strings on the funding but do have the expectation that Coastal First Nations will follow their strategic plan.

Coastal First Nations provides efficiencies of scale that attract the interest of both government and non-governmental organizations. For instance it facilitates regional economic development and provides coordination that would otherwise be difficult for agencies or funders.

## **Current Activities**

Coastal First Nations has several initiatives underway:

**Shellfish Aquaculture:** Pilot projects were launched in ten First Nation communities to assess the feasibility of shellfish aquaculture in the B.C. North Coast. A preliminary business plan has been developed in which participating First Nations would work together on processing and marketing. Preliminary results are encouraging. Pilot studies have been extended and site specific business plans are currently being developed.

**Marine Use Planning:** A government-to-government process has been put in place for development of integrated marine use plans for the Pacific North Coast Management Area (PNCIMA) which is the entire area from northern Vancouver Island to the border with Alaska. First Nations on northern Vancouver Island have not yet engaged in this process. Funding for this initiative is being provided by Oceans Branch and AAROM. This is one of four integrated management pilot projects in Canada under Phase 1 of

Canada's Oceans Action Plan. Local First Nations plans are being developed for Haida Gwaii, North Coast and Central Coast areas. Each area recently hired a technical team to assist them with developing plans.

**Other Initiatives:** Other work that has been completed include a feasibility study to establish three high end lodges on the coast, an independent study of offshore oil and gas and a proposal for Coastal First Nations fish allocations. As well Coastal First Nations is also undertaking scoping studies on capacity building, tourism, non-timber forest products and First Nations governance approaches.

## **Successes**

Some of the major successes are:

**Negotiating umbrella agreements with government:** Several agreements were put in place that laid the groundwork for planning and economic development. The marine use planning process establishes a government-to-government relationship for developing plans. It also provides resources to First Nations to develop their own plans.

**Accessing non-traditional funding:** Coastal First Nations has been able to secure funding from foundations (non-governmental organizations) to follow up on a variety of initiatives.

**Flexible partnerships:** Coastal First Nations has been able to form flexible partnerships among First Nations, with government as well with non-governmental organizations. First Nations have benefited by more effectively getting the ear of government and being able to put together more attractive packages for economic development.

## **Challenges**

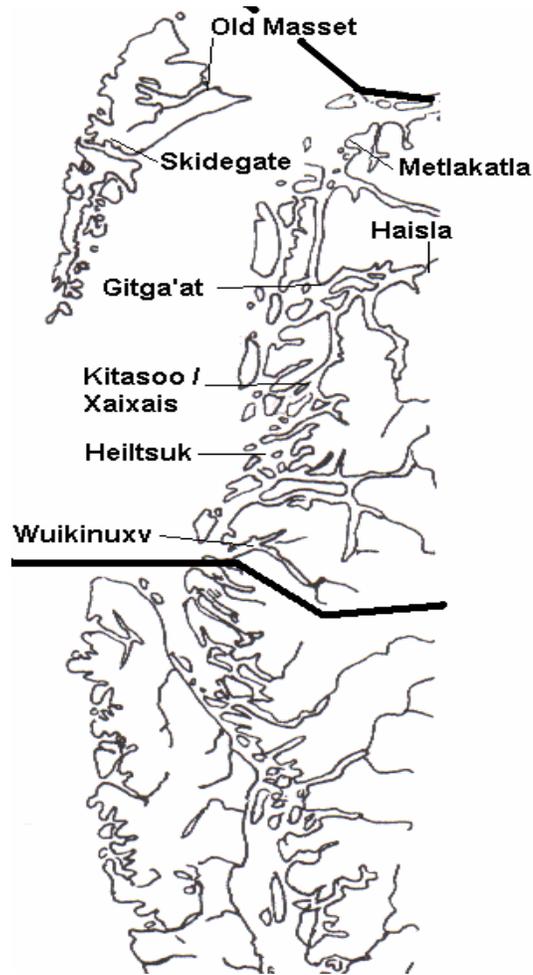
**Funding and Organizational Resources:** Foundations provide core funding but it is not permanent and requires constant work to ensure that resources are in place when they are needed. As well Coastal First Nations is coordinating the start-up of several large projects which have often required funding from multiple sources. This challenge is intensified by having a relatively small staff that needs to work on multiple issues.

**Communications:** Good communications are important and it takes a continuing effort to maintain a vision both at the board level and in the communities. A newsletter is distributed in all the communities. As well community presentations occur on various initiatives.

**Slow Pace of Policy Changes:** Many of the initiatives taken on by Coastal First Nations require government policy support and resources. Since government is sometimes slow to react to change, schedules may be delayed.

**Developing New Institutional Arrangements:** Coastal First Nations is meant to wind down in about four years and new institutional arrangements will be required to carry on with some issues such as implementation of land use or marine use plans.

**Figure 5. Location of Coastal First Nation/Turning Point First Nations**



### **Critical Stages in Development**

Coastal First Nations – Turning Point Initiative is a relatively new organization but has already encountered several critical phases in its development.

First was the decision for First Nations to work together and develop a common vision. Seed funding from the David Suzuki Foundation was critical to allowing this to happen.

A second was the separation from the Suzuki Foundation and moving to its own downtown office.

### **3.4. Comparison of Tier 2 Models**

This subsection of the report compares the nine Tier 2 organizations and processes described in this section and the previous section. Table 2 summarizes their purpose,

underlying First Nation governing structure and years of operation. Tier 2 processes vary, with three of the nine being long term or permanent, while the other six are evolving or exploratory (Table 2).

### **Established Tier 1 Processes**

The Nisga'a, Columbia River Inter-Tribal Fisheries Commission and Northwest Indian Fisheries Commission are engaged in long-term formal Tier 2 processes. Obligations are outlined in agreements or court orders and the parties are seeking to implement them. For example, the Nisga'a participate in the Joint Fisheries Management Committee, a formal Tier 2 process that was created by the Nisga'a Final Agreement. The Columbia River Inter-Tribal Fisheries Commission participates in a formal Tier 2 process that was an outcome of *U.S. v. Oregon*. And Northwest Indian Fisheries Commission is involved in a variety of processes that were established by government policies, some resulting from court orders such as the Boldt decision (*U.S. v. Washington*). These processes established criteria such as salmon allocations that govern the conduct of Nisga'a, Columbia River Tribal and Western Washington Tribal fisheries and the parties seek to implement them through annual management plans.

### **Evolving Processes**

The evolving Tier 2 processes are all in B.C. where First Nation fish allocations and role in management are not agreed.

The Fraser Watershed Process shows that Tier 2 processes are less stable when there has been little or no prior agreement on allocations or fishery conduct. Up to 1999 the Fraser Watershed Process worked in part because there were some agreements with some First Nations on fish allocations. The 1999 negotiations failed in part because DFO was unable to offer First Nations sufficient incentives to engage in Tier 2 processes, whether through economic allocations or co-management funding. New policy initiatives such as AAROM and economic opportunity fisheries may provide a catalyst to restart Tier 2 processes on the Fraser. This will depend in part on how successful First Nations are at re-invigorating Tier 1 processes.

The Tier 2 approach taken by Coastal First Nations - Turning Point Initiative is entirely different. Coastal First Nations has operated successfully for five years and achieved successes on a variety of land use, marine use and economic development initiatives by facilitating negotiation of agreements and working relationships among First Nations and government. Coastal First Nations' have been independent of government for core operations due in part to silent partnerships with foundations. This was possible because their strategic plan, described by the phrase "Working together to develop an economically and ecologically sustainable coast", brought the member Nations together and also struck a chord with the foundations.

The Tier 2 processes involving the Skeena Fisheries Commission, Uu-a-thluk and Council of the Haida Nation are exploratory but have been in place for a decade or more.

## **Summary**

In general, Tier 2 processes are difficult to start and maintain without effective Tier 1 processes in place. The Tier 2 processes examined all had a clear purpose that focused on fisheries management and sometimes allocation. Some processes, such as the Fraser watershed, limit their activities to information exchange because of the lack of an effective Tier 1 process.

**Table 3. Comparison of Tier 2 Models**

Collaborative Management Structure	Purpose	FN Supporting Process	# FNs or Tribes	Years of Operation
<b>1. Permanent or established Tier 2 processes</b>				
Nisga'a Joint Fishery Management Committee	Implements Nisga'a Final Agreement that specifies Nisga'a catch share and management role	Nisga'a Lisims Govt.	4	5
Various NWIFC processes including US Executive Branch	Manage salmon with federal & state government to achieve allocations; salmon recovery plans; shellfish and groundfish management	Northwest Indian Fisheries Commission	20	31
<i>US v Oregon</i> & other processes	<i>US v Oregon</i> process to negotiate Columbia River management plan and ensure tribal allocations; salmon recovery plans; manage salmon at all levels	Columbia River Inter-Tribal Fish Commission	4	29
<b>2. Evolving Tier 2 processes</b>				
Fraser Watershed Process	Information exchange; no political agreements since 1999	No Tier 1 process	~ 100	13
Coastal First Nations (CFN) - Turning Point Initiative	CFN acts as catalyst for government-to-government agreements; sustainable economic development including marine use planning	CFN Board meets regularly	8	5
DFO-Skeena Fisheries Commission process	Exchange stock assessment information; input to Skeena River fishery management plans; watershed planning	Skeena Fisheries Commission	5 but many Band Councils	21
Uu-a-thluk Process Under AAROM	Testing a Nuu-chah-nulth designed consultation process under AAROM	Nuu-chah-nulth Tribal Council (NTC) and Pacheedaht First Nation	15	1; plus 12 years for NTC Fisheries
Haida-DFO Process Under AFS	Using a 3 level process (technical, policy & negotiation); AFS agreements focus on management	Council of Haida Nation	2	13



## **4. Tier 3 Case Studies**

This section compares three models that focus on multi-party processes involving First Nations. The West Coast Vancouver Island Aquatic Management Board and Integrated Harvest Planning Committee (salmon) are active but in different stages of development. The Skeena Watershed Committee was active from about 1990 to 1997.

### **4.1. West Coast Vancouver Island Aquatic Management Board**

#### **Introduction**

The West Coast Vancouver Island Aquatic Management Board (the “AMB”) is a multi-party regional integrated management body that was established by Nuu-chah-nulth, Federal, Provincial, and local governments as a pilot project in 2001. The Nuu-chah-nulth Tribal Council was integral in establishing the AMB and continues to be an active participant and supporter. A recent evaluation highlighted its successes and challenges in the first three years of operation as well as its potential to act as a body for cross-sectoral consultation at a scale that integrates local watershed management with oceans planning.

#### **History and Purpose**

The AMB was established as a three-year pilot project in 2001 after several years of dialogue in the community and then three years of negotiations with federal and provincial governments. The board includes representation from aboriginal, commercial and recreational fishing, aquaculture, processors, tourism, labour and environmental sectors as well as four governments: federal, provincial, regional district and First Nations (Nuu-chah-nulth).

The purpose of the AMB (AMB 2006) is:

“...(to be) a forum for the coastal communities and other persons and bodies affected by aquatic resource management to participate more fully with governments in all aspects of the integrated management of aquatic resources in the management area.”

The management area includes all of Nuu-chah-nulth traditional territory which encompasses approximately 360 km of coastline and 30,000 square kilometers of ocean.

An independent review was completed in 2005 and concluded that “the AMB is a unique and significant pilot effort in multi-party regional integrated aquatic management and definitely warrants support beyond its pilot period ...” The review identified promising areas of progress including policy development and serving as a model for how to link local or watershed processes with larger-scale coastal and ocean processes.

The board has worked over the past year to address issues identified relating to their structure and organization. However there has been little response to the review as yet from government.

## **Organizational Structure and Decision-Making**

The AMB board is made up of 8 governmental members ( two representatives from each of the Federal, Provincial, Nuuchahnulth and local governments) and 8 non-governmental members broadly representative of commercial, recreational and aboriginal harvesting, processing, tourism, environmental, labour and aquaculture interests.

The Terms of Reference provides for the creation of Management Committees addressing specific aquatic management issues. Several have been formed to address management issues including one for clams and others for gooseneck barnacles, Somass River estuary, and Henderson Lake area.

The board and its management committees make decisions by consensus where consensus is defined as an agreement that the members can live with. In doing so the board and its management committees agree to seek integrated outcomes based on interests.

Nuuchahnulth Tribal Council is working to improve their Tier 2 process with DFO. It is expected that this will improve the effectiveness of the AMB as a forum for multi-party dialogue.

Over the past year, the four governments who convened the board did an assessment of the evaluation and the future role of the board. Their assessment recognized that the Board's operations are heavily influenced by the broader advisory process. DFO committed to reviewing the broader advisory process over the next year. In the meantime, the Board is moving ahead and incorporating some of the suggestions made by the Evaluation.

## **Current Activities**

The AMB has a broad scope of activities. Significant results in the first three years of operation (Pinkerton et al. 2005) include:

- Creation of a new fishery for gooseneck barnacles
- Creation of an internet-accessible marine-oriented atlas and integrated information system
- Contributions to economic development through job creation, fund raising and project development
- Applied ecological and social research and action projects

## **Successes**

The AMB has had numerous successes as detailed in the recent review:

**A Strong Board** – The Board is reaching a stage where it can be productive and members are able to work together despite differences. They continue to look for alternatives that will meet address a range of interests and local needs even though it may challenge the status quo (Andrew Day, Personal Communication, March 26, 2006).

**Cooperation with First Nations** – The AMB is unique in that First Nations were one of the founders and continue to be active participants. The First Nations work together in an inclusive and transparent process that contributes to effective dialogue and a functional model for integrated management.

**Useful Products** – Despite funding challenges the AMB has continued to deliver useful products including an internet-based marine atlas and document database; development of an experimental gooseneck barnacle fishery; as well as numerous other initiatives.

## **Challenges**

The AMB faces a variety of challenges including:

**Unrealized Potential and Institutional Barriers** – The AMB is not being used to its full potential which leads to frustration and tensions. The mandate of the board was severely limited from the start compared to what participants wanted to do. DFO fisheries management processes are generally top-down approaches which are hard to mesh with an organization that is looking for input at all levels. The AMB offers a significant opportunity to engage in integrated management activities but government has not fully utilized it (Pinkerton et al. 2005).

**Lack of Core Funding** – Levels of core funding have been intermittent and less than originally agreed. As a result AMB has had to devote considerable energy to fund raising.

**Communications** – This is difficult by nature difficult given 16 board members and many remote communities.

## **Critical Stages in Development**

These include:

**Gaining A Local Consensus on Formation** – Community members took about three years (1994-1997) to develop political support for taking a local approach to aquatic management. There was considerable mistrust among stakeholders but all found common interest in sitting down together to develop a regionally-based board. A Regional Aquatic Management Society was formed. It continued to build the partnership and brought the proposal to the political level.

**Negotiation and Designation as a National Pilot** – After several years of negotiations between the four governments, with stakeholder participation, the AMB Terms of Reference was developed. Negotiations included a Joint Policy Framework between the four governments, and a negotiation process agreement. The Board was ratified and

designated as a National Pilot in 2001. A board structure was formalized and the board started to operate.

**The First Three Years of Operation** – The board was getting established with the parties learning how to work together, and determining the kind of role and direction the board should take.

**Evaluation and Setting a Direction for the Future** – Another critical stage has been the formal evaluation that occurred in 2005, at the conclusion of the three year pilot stage. The evaluation was generally positive and points out that multi-party boards of this nature frequently take longer than three years to achieve results. The Board has taken the evaluation and its experience, made some changes, and is setting out into the next stage.

## **4.2. Skeena Watershed Committee**

### **Introduction**

The Skeena Watershed Committee was a multi-party group that operated for about six years in the Skeena Watershed. Its work focused on concerns for steelhead as well as information exchange on conduct of a commercial ESSR fishery. It was successful at developing consensus recommendations on management plans for a period of four years from 1994 to 1997.

### **History and Purpose**

The Skeena Watershed Committee was an experiment in multi-party planning. The committee was formed in 1992 after three successive years of poor steelhead returns to the Skeena River. Steelhead run timing overlaps with that of sockeye that are targeted in commercial fisheries. An April 1992 Memorandum among the parties laid out seven founding principles including:

- “Fisheries management problems in the Skeena Watershed require made in the North solutions that accurately reflect resource conservation and the wellbeing of individual residents and communities ...;
- The Committee will encourage high environmental ethics and integrated resource management as the primary means to achieve sustainable fisheries ...;
- The committee will recognize the constitutional rights of aboriginal people ...;
- The agreement is without prejudice to (Aboriginal) rights ...; and
- The Committee will strive to devise solutions to conservation problems which minimize any disruptions to longstanding fisheries.” (Pinkerton and Weinstein 1995: 59)

Over the first two years some progress was made including procuring federal Green Plan funds that were shared with the Skeena Fisheries Commission for watershed work including research on steelhead and coho stocks; and an experiment in steelhead catch and release by the gillnet fleet. But a viable consensus process didn’t emerge until 1994 when an independent mediator was hired

The Skeena Watershed Committee collapsed when it failed to reach agreement on the 1998 management plan. About that time concerns emerged for upper Skeena coho that had similar run timing to steelhead. Commercial fishing opportunities were severely reduced to minimize coho impacts, which caused steelhead harvest rates to remain generally low since 1997.

## **Organizational Structure and Decision-Making**

The five parties to the Memorandum of Understanding were Skeena Fisheries Commission, commercial fishers, recreational fisheries, the B.C. provincial government and DFO.

In 1991, due to concerns that steelhead were declining, DFO committed to reduce steelhead harvest rates in net fisheries by 50% within three years (David Peacock, Personal Communication to Russ Jones, April 23, 2004). Sockeye harvest rates were used as a surrogate for steelhead harvest rates since there was no data directly available for steelhead.

In 2004 DFO provided an incentive by threatening to impose its own time and area closures and weed lines if the Skeena Watershed Committee could not produce its own plan. Weedlines suspend the net below the surface to avoid weeds and also allow fish to swim over the net. Subsequently in 1994 the Skeena Watershed Committee agreed to reduce steelhead interceptions in Area 4 by 42%. This reduces overall steelhead harvest rates from historic rates of 36% to 21%. The plan involved commercial openings before and after the main steelhead run which gave the commercial sector more fishing time than it had under the DFO plan. As well the Gitksan were willing to accept closures on their commercial fishery to coordinate with coastal closures and a pulse fishery strategy.

In 1994 all parties agreed to a management plan and DFO stuck to the plan in-season.

These figures became the established Skeena Watershed Committee target harvest rates for the 1994, 1995 and 1996 seasons. In 1997 the target harvest rates were modified to include outer Area 3 and Area 5 as well.

In 1995 several problems arose. Some funding promised to Skeena Watershed Committee projects was reallocated to other processes by senior DFO personnel. Also in-season data indicated harvest rates different from the plan and resulted in misunderstandings about the how the plan was to be applied (Pinkerton 1996).

Then in 1997 the Skeena Watershed Committee failed to agree to a plan prior to the 1998 season and subsequently collapsed.

## **Activities**

The main activity of the Skeena Watershed Committee was to develop a fishing plan that responded to conservation concerns for steelhead.

As well the committee got involved in collection of data on Skeena River steelhead and coho and habitat restoration.

Pinkerton and Weinstein (1995: 61) list the following informal management functions performed by the Skeena Watershed Committee: joint stock assessment, joint harvest planning, harvest monitoring, resource use coordination and reaching multi-party agreement on management objectives.

## **Successes**

The Committee had a number of notable successes during its existence:

**Better Understanding of the Problem** – Funding was secured for monitoring of steelhead harvest and habitat status in the watershed and exchange of information on Aboriginal harvests that led to a better understanding of the problem.

**Joint Management Plans** – As mentioned the Committee reached consensus on management plans for four seasons.

## **Challenges**

Several challenges limited the usefulness of the Committee:

**Single Issue Focus** – To a certain extent the Committee was focused on a single issue and did not survive when other issues came to the forefront.

**Lack of Commitment** – There may not have been enough time to build trust between the parties. As well, as long as one party believes they are better off leaving the solution up to government and government is willing to take over, the Committee was doomed to failure.

## **Critical Stages in Development**

Critical points in the development were:

**Use of an Independent Facilitator** – Pinkerton and Weinstein (1995) called this a breakthrough in the process. They point out that government cannot be both the sponsor and convener of a process, or the process will be perceived as a way to impose government's agenda. This change gave power to participants and made them more likely to contribute solutions.

**DFO Readiness to Implement Conservation Plans** – In 1994 DFO indicated that it was ready to go ahead with steelhead conservation plans with or without the Skeena Watershed Committee. This provided incentives for compromises and efforts to develop innovative solutions.

### **4.3. DFO Integrated Harvest Planning Committee (Salmon)**

#### **Introduction**

The Integrated Harvest Planning Committee (IHPC) was created by DFO in November 2004. In part it was the outcome of consultations on an improved decision-making process for Pacific salmon fisheries. It has operated for only a short period (1 ½ years) and has not yet dealt with contentious issues. So it is unclear yet whether it will achieve improvements in the advisory process that DFO has hoped for.

#### **History and Purpose**

DFO announced its intention to establish a more formal and policy advisory process and structure in 2000 (DFO 2000). Consultations were conducted by an independent party that recommended creation of an integrated regional forum that would develop integrated salmon harvest management plans.

An additional recommendation was to:

“Strengthen the three tiered process that First Nations and Governments are developing in order to more effectively fulfill Constitutional and fiduciary obligations and ensure that the three tiered process is effectively integrated into the overall system of decision making while simultaneously enabling improved First Nation participation in multi-party discussion”. (IDR 2001: 4, Recommendation #8).

DFO subsequently restructured commercial fishery advisory committees so that all representatives were elected. Commercial and recreational advisory committees then selected representatives to participate in the IHPC. Four seats were allotted to First Nations on each of the north and south subcommittees and DFO requested certain First Nations to appoint representatives. Figure 6 shows the North and South IHPC Subcommittees and associated advisory boards.

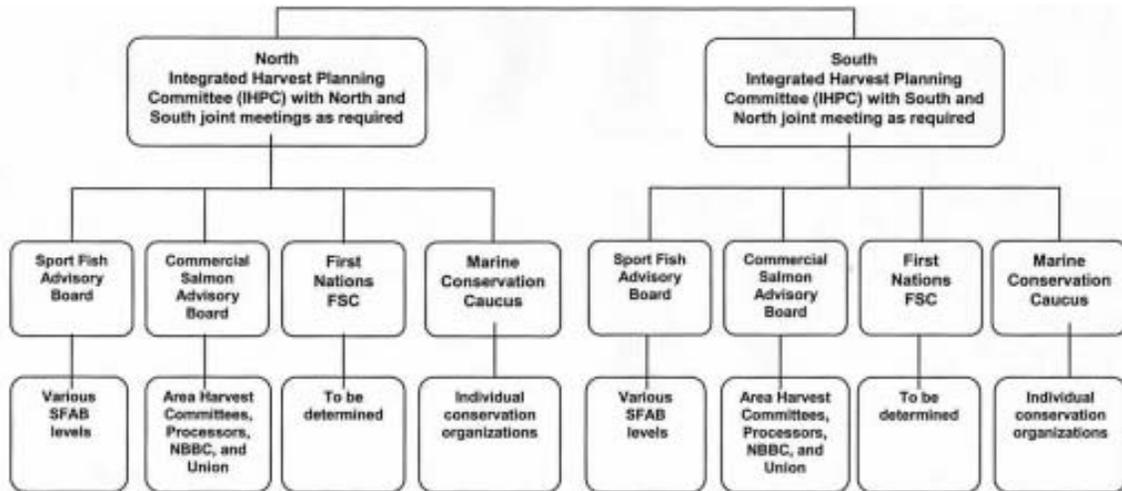
The committee has had seven meetings since November 2004. The purpose is:

“...to promote a more streamlined, representative, cross-sectoral advisory process related to salmon harvest planning, management and post season review.”

Its mandate is stated as follows:

“The IHPC is the primary contact for the Department (DFO) for cross-sectoral communication and advice and makes recommendations to the Department on operational decisions related to salmon harvesting in Pacific Region. The goal of the IHPC will be to ensure fishing plans are coordinated and integrated, identify possible conflicts, and if there are disputes, make recommendations for solutions if possible.”

**Figure 6. The Integrated Harvest Planning Committee**



### **Organizational Structure and Decision-Making**

There is one regional IHPC with North Coast and South Coast subcommittees that have 14 and 16 members respectively. Representation on the North Coast IHPC is: 4 commercial, 3 sports, 2 Marine Conservation Caucus, 4 First Nation and 1 ex-officio provincial member. Representation on the South Coast IHPC is similar except for 6 commercial members.

All members are nominated by the participating sectors and DFO makes final appointments. Commercial members are nominated by the Commercial Salmon Advisory Board, sports members by the Sports Fish Advisory Board and Marine Conservation Caucus members by that body. First Nation representatives are interim appointments based on recommendations by “major Aboriginal groups”. The Terms of Reference states that “For longer term appointments, DFO will continue to work with Aboriginal groups to identify a suitable process.”

The IHPC makes recommendations based on consensus. The meeting is chaired by a facilitator. Where there is not consensus, the facilitator will summarize the differing views at the meeting.

The Terms of Reference calls for an evaluation of the IHPC in 2006.

### **Current Activities**

The Terms of Reference describes the roles and responsibility as follows:

“Pre-season: Provide recommendations on fishing plans ...; provide advice on pre-season forecasts and stock assessments ...; review enforcement plans ...; provide input on stock assessment programs ... and advice on escapement policies ...; advise on Integrated Fishery Management plans such as decision guidelines and fishing plans; and advise on catch and effort information systems as well as selective fishing practices.

Post season: Review post-season stock status to determine if conservation goals were met; advise on ... management, enforcement and consultation ...; and review anomalies not covered in the fishing plan, expected stock status for the coming year and stock assessment programs.”

Three meetings a year are scheduled: a pre-season meeting, a post-season meeting and regional (North and South coast subcommittee) meetings in the late fall. IHPC has met 5 times for a total of 8 days since November 2004.

According to the DFO Contact the IHPC has not yet encountered a hard issue that tests the process (Bert Ionson, Personal Communication, March 24, 2006).

## **Successes**

The committee has experienced a few successes:

**Efficient Use of DFO Resources** – IHPC gets away from DFO’s traditional sectoral approach. Sectors can express their views directly rather than having DFO bring those perspectives to others.

**More Balanced Representation** – IHPC does provide a more balanced approach to resource management than traditional advisory processes if only because First Nations and NGOs have established representation.

**Advice on Consultation** – One useful result for DFO has been advice on how they to efficiently consult with the various sectors (Bert Ionson, Personal Communication, March 29, 2006).

## **Challenges**

Some challenges have been encountered:

**Reaching Consensus on Issues** – Time is limited and agendas are full which makes it difficult to spend much time on issues. The IHPC is exploring a technique called structured decision-making that involves identification of options and evaluation according to agreed criteria. The approach has not yet been tested with the group and requires that members have some technical capability.

**Need for Parallel First Nation Processes** – As alluded to in the Terms of Reference, First Nation processes are not yet developed enough to bring forward unified First Nation views to the table. As well, the Institute for Dispute Resolution (2002: 44) identified that “The recommended planning structure has the potential of prejudicing Tier 2 negotiations where decisions related to new or changed allocations are made, or where expectations are raised in the non-aboriginal fishery that would negatively affect the government’s ability to reach agreements with First Nations.” Since the IHPC process is proceeding without those processes in place it is important that issues be referred to bilateral processes with First Nations at the earliest stage possible.

**No Cross Sectoral Processes for Local Issues** – It is uncertain how responsive the IHPC process will be to local issues. The new consultative process establishes sectoral committees at local and regional levels that are more likely to act in their own sectoral interests than local interests.

## **Critical Stages in Development**

The IHPC is still in an early stage of development and is expected to encounter several critical points in the short term:

**Decision-making tools and processes** – Buy-in to a process such as structured decision-making would allow the group to make progress. It will also be important for the board to develop their capability to work together to seek consensus on issues rather to disagree.

**Evaluation** – Results of the evaluation in 2006 are expected to assist in setting future directions.

### **4.4. Comparison of Tier 3 Models**

Table 3 compares the three Tier 3 models described in this section. To a certain extent these models were all experiments. Each was created due to unique circumstances that resulted in different levels of commitment and power-sharing by participants.

#### **Political Support**

The AMB had a great deal of grass roots support but has not yet been fully embraced by the Canadian government. It was officially designated as a National pilot project in 2001, but has not received the core funding necessary to attain its potential. It took several years to develop community support and several more years to garner official government support. An independent review highlighted that the AMB had good potential as an integrated management body but that it was not being fully utilized by government. The AMB is unique in that it has been fully supported by local First Nations. It may be the only multi-party process in which First Nations are a founder and continued supporter. The AMB reflects their desire for a change in the status quo that was supported by local communities. In future the AMB could be a powerful source of change, particularly as Nuu-chah-nulth rights in the fishery are addressed.

In contrast, the IHPC is a DFO imposed process. It has some positive elements such as a representative process for commercial licence holders and providing a separate forum for First Nations and non-governmental organizations to have a say in fishery management plans, aside from sectoral advisory processes. The process has only been in place for 1 ½ years which is not enough time to see how well it will work and whether it can integrate the views of diverse parties or will simply be another advisory body.

In the case of First Nations the IHPC process is not inclusive since underlying First Nation political processes (Tier 1) are not in place to designate representatives in the IHPC process. This is a major fault, particularly since, as pointed out by the Institute of Dispute Resolution, decisions made in Tier 3 processes have potential to compromise the results of Tier 2 discussions.

The third example, the Skeena Watershed Committee, held promise as a new approach to inter-sectoral cooperation and decision-making. Although the process was successful at reaching cross-sectoral agreement on management plans for steelhead for four years, it did not survive. It illustrates the difficulty in engaging diverse interests and sustaining cross-sectoral processes over the long term. Evidently there was not sufficient commitment to the process or enough mutual benefit to keep all parties engaged.

## **Power Sharing**

The three examples illustrate different degrees of power sharing with DFO ranging from advisory to co-management. The IHPC has the most limited form of power-sharing and to date has operated mainly as an advisory board. Both the AMB and Skeena Watershed Committee sought more involvement in decision-making with variable results. DFO did not choose to engage with the AMB on the Species at Risk Act or Wild Salmon Policy even as broad consultations were conducted with other organizations (Pinkerton et al. 2005: 19). There was more willingness to share decision-making in the Skeena Watershed Committee.

## **Other Examples**

It is worth mentioning that there are likely a wide range of other successful Tier 3 models for power sharing. For instance, decision-making powers in some U.S. fishery management processes, such as the North Pacific Management Council and the Alaska Board of Fish, are delegated to appointed Council or Board members. Agencies are primarily involved when there are conservation issues to be addressed.

## **Summary**

As illustrated by the examples, Tier 3 processes are a challenge to establish and make to work. This may not be a good place to start if First Nations have not yet developed their own governing structure.

**Table 4. Comparison of Tier 3 Models**

Organization	Years of Operation	Purpose	Power Sharing	FN Role	DFO/BC role
West Coast Vancouver Island Aquatic Management Board	4	Integrated management pilot	uses consensus to provide recommendations to statutory authority	members	members
Skeena Watershed Committee	4 (1992-97)	Steelhead recovery & fishery information exchange	informal co-management	members	members
DFO Integrated Harvest Planning Committee (salmon)	1 1/2	Salmon IFMPs & policy advice	advisory to DFO; seeks to provide consensus advice	appointed by DFO	DFO, technical and management support; BC, ex-officio member

## 5. Criteria for Successful Collaborative Management

This report looked at eleven working collaborative management models and one coast-wide model that failed to get off the ground. So what contributed to the success of the eleven working models? And how can this study help the First Nation Marine Society in deciding whether and how to get involved in collaborative management? Collaborative management is a form of governance, so it helps to look at studies that have been done of First Nation governments in the U.S. by the Harvard Project on American Indian Economic Development (Cornell 2002; Cornell et. al 2004). For a summary, see Appendix B. They identify three critical factors for success of First Nations governments: jurisdiction, capable governing institutions and a cultural match in the style of governance. This section considers the models reviewed from this perspective and how their experience might relate to the First Nation Marine Society's situation.

### Step 1 – Ensure Legitimacy in Governance

How important were the governing structures to the formation of these various successful institutions in fisheries management? The Harvard Project describes jurisdiction or sovereignty as a critical factor for successful economic development. Sustained development will only occur through *legitimate governments* that have the trust and acceptance of their people and genuine decision-making power. As mentioned earlier, several models were developed within existing First Nation governing structures. Others were founded as a result of common interests and led to the development of a new governing structure. Finally one example, the Integrated Harvest Planning Committee was formed externally by DFO. The glue that holds the various collaborative management structures together are discussed below.

#### Models with Existing Governing Structures

Four of the models examined were supported by existing First Nations governing structures: Nisga'a Joint Fisheries Management Committee; Uu-a-thluk and the WCVI Aquatic Management Board, which involve Nuu-chah-nulth peoples; and Haida Fisheries Program.

The Nisga'a Joint Fisheries Management Committee is supported by the Nisga'a Lisims Government and is a part of a modern treaty arrangement. As such the Nisga'a are the only B.C. example of negotiated First Nation self-government arrangements. Institutions such as the Joint Fisheries Management Committee are permanent bodies.

Uu-a-thluk (NTC Fisheries Program) and the West Coast Vancouver Island Aquatic Management Board (Tier 1 and 3 models) are supported by the Nuu-chah-nulth Tribal Council and the Pacheedaht First Nation. The Nuu-chah-nulth are also experimenting with a new process for dialogue with DFO (Tier 2) involving a Council of Ha'wiih ("Hereditary Chiefs") and a Joint Technical Committee involving Nuu-chah-nulth and DFO.

Similarly, the Haida Fisheries Program is an extension of an existing First Nation governing structure, the Council of the Haida Nation. While the Haida Fisheries Program is focused on capacity building and service delivery, the Council of the Haida Nation is pursuing self-government through negotiation and court actions. Both Uu-a-thluk and Haida Fisheries are guided by aspirations and goals set by the governing bodies.

First Nations involved in each of the above collaborative management models had a history of working together and were able to use existing systems for decision-making, dispute resolution and administration. In addition they share common cultural traditions.

### **Models Based on New Governing Structures**

Collaborative management based on new governing structures is more challenging but can also be successful. Some models such as NWIFC (Northwest Indian Fisheries Commission) and CRITFC (Columbia River Inter-Tribal Fisheries Commission) are long-standing and well established. Others are in different stages of evolution such as Skeena Fisheries Commission and the Fraser Watershed Process. Two failed to survive or get off the ground; these were the Skeena Watershed Committee and the proposed Intertribal Fisheries Framework, respectively. A possible key to the success or failure was a clear sense of purpose for the organization and a strong common interest to work together.

The Northwest Indian Fisheries Commission and Columbia River Intertribal Fisheries Commission have each been in place for about 30 years. Both NWIFC and CRITFC were united by the need to organize in order to achieve treaty fish allocations and develop fishery management plans. These needs persist to today and serve to unite their member tribes. The NWIFC model has been so successful that the Tribes have used the organization for joint management of shellfish, groundfish and wildlife. Strengths of both organizations have been development of technical capacity and provision of policy and technical support to member tribes. CRITFC builds on governance structures in the four member tribes and Commissioners consist of the Fish and Wildlife Committees set up by these tribes. NWIFC experimented with a variety of structures and ended up with one where each member tribe has a vote.

In Canada, the Skeena Fisheries Commission has worked successfully in the second largest watershed in B.C. for about 14 years. It is based on underlying governing structures of five tribal groups with varying political structures. This is somewhat similar to CRITFC that has 4 member Tribes. The Skeena Fisheries Commission participated in the multi-party Skeena Watershed Committee in the mid-1990s. It would likely have been difficult to initiate this process if the First Nations in the watershed had not been organized. Skeena First Nations have a common interest in the watershed due to salmon and have commonly pursued economic access and involvement in management planning.

The Fraser Watershed Process is an example where First Nations have not yet found sufficient motivation to work together collaboratively. The Fraser is the largest watershed in B.C. Past attempts to develop overarching First Nation processes, included: an MOU in 1989 where most of the First Nations in the watershed agreed to work together; and the

Fraser Watershed Agreement in 1993 that about half of the First Nations in the watershed signed. Two major incentives for First Nations to work together in 1993 were economic access and AFS funding. A less formal Fraser Forum process was attempted for several years beginning in 1999 to bring DFO and Fraser watershed First Nations together, but has not continued. Although no watershed-wide political process is currently in place, information exchange and a joint technical committee process has continued as an essential service.

Coastal First Nations – Turning Point Initiative has been successful at jump-starting several planning and economic development initiatives. A difference from other organizations is that Coastal First Nations is viewed as temporary but has the objective of developing new institutions that support a sustainable economy on the B.C. North Coast. These First Nations have united around the purpose of “Working together to create an ecologically and economically sustainable coast.”

Finally, the proposed Inter-Tribal Fisheries Framework was ambitious attempt to develop a coast-wide First Nation fisheries process. It failed to capture the interest of enough First Nations and didn’t get off the ground.

### **Models Established Externally**

One DFO initiated model was examined. The Integrated Harvest Planning Committee is only loosely based on underlying First Nation governing structures. DFO selected First Nation participants nominated by eight “major aboriginal organizations” (4 in the south and 4 in the north). It is too early to say how successful this will be for collaborative management or merely serve as an “integrated” advisory board to DFO.

### **Application to First Nation Marine Society**

The main lessons are that it is wise to build on existing governing structures if these exist. These can provide legitimacy for a new structure. If these do not exist then it is essential for new organizations to define a clear purpose and take time to develop these structures. A sense of purpose is necessary to engage members and provide concrete and long-lasting incentives to participate with the expectation of future rewards.

The First Nation Marine Society currently has 26 First Nation members out of a possible membership of approximately 25 in Georgia Strait, 11 in Johnstone Strait, and 14 on the West Coast of Vancouver Island. Discussions among First Nations are required to define the purpose of collaborative management and decide on the geographic area that might be served.

The Marine Society recently completed a capacity needs assessment of member First Nations. It is also important to consider opportunities that may be available as a result of Canadian policies. Opportunities that could be considered include:

- Technical support – both to enhance First Nation capacity and coordinate responses to common issues;

- Economic access – an opportunity that will arise soon if DFO’s new Pacific Fisheries Reform is fully implemented;
- Marine use planning – northern Vancouver Island First Nations have an immediate opportunity to engage in planning under Phase 1 of the Oceans Action Plan (the Pacific North Coast Management Area); First Nations in the Georgia Basin or West Coast Vancouver Island could plan to get involved in Phase 2 that is expected to start in spring 2007;
- Salmon management – such as a Tier 1 forum to provide input into coastwide processes, development of management plans, or Wild Salmon Policy implementation;
- Herring management – particularly in Georgia Strait where stocks are at historically high abundance;
- Protected area planning – such as the Southern Georgia Strait National Marine Conservation Area and Scott Islands Marine Wildlife Area;
- Species or stocks that are at risk or depressed – supporting First Nations to participate in recovery planning for stocks such as Sakinaw Lake sockeye or Cowichan River chinook;
- Aquaculture issues or aquaculture development; and
- Habitat restoration opportunities – that could be supported by programs such as the Southern Boundary Restoration and Enhancement Fund.

The geographic area should be considered at the same time that the purpose is defined. There are at least three logical eco-regions in the area currently served by the Marine Society: Georgia Strait, Johnson Strait and West Coast of Vancouver Island.

If the First Nation Marine Society (or a subset of members) can agree on a broader collaborative management purpose and geographic area to serve, then consideration should be given to the best institutional structure.

## **Step 2 – Build Capable Institutions**

Once a decision is made that a group of First Nations want to work together for a common purpose the next critical step is to establish capable institutions. According to the Harvard Project there are a variety of ways to organize capable institutions. Key advice is to *separate politics from administration*. Once politicians agree on a particular vision, direction or decision, then implementation is best left up to administrators. Another is that *there needs to be a cultural fit* between institutions and First Nations societies.

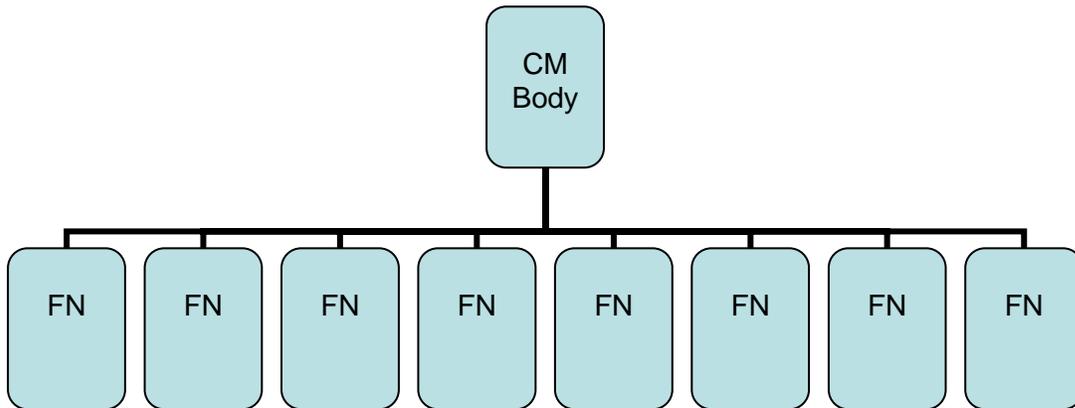
The models looked at in this report all have some degree of cultural connection. Probably the most striking factor is that almost all use some form of consensus decision-making. This has roots in the relationships between First Nations and is also supported by modern Aboriginal rights law. The U.S. Tribes have similar traditions and laws regarding treaty rights.

## Possible Institutional Models

Three simple organizational models are outlined below for consideration.

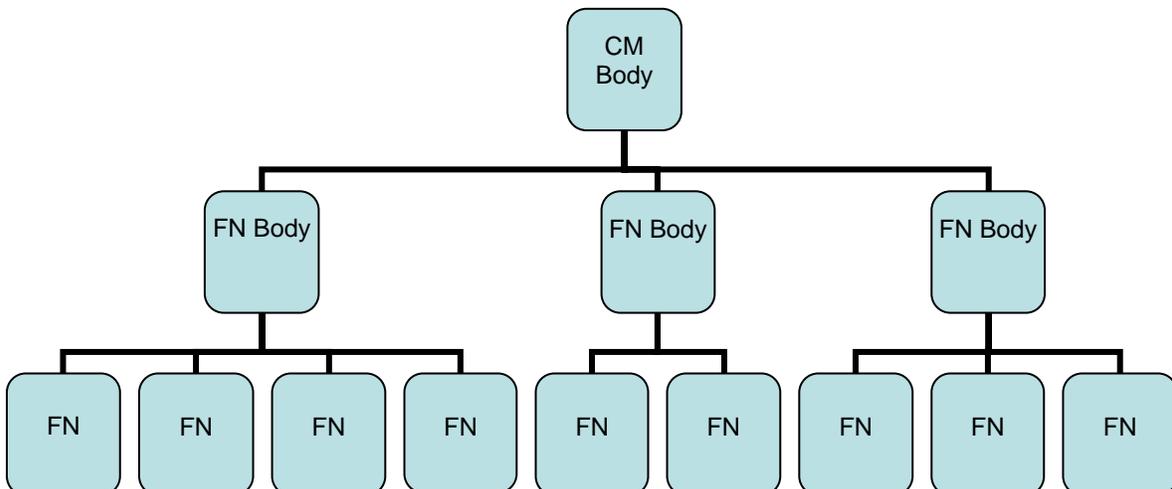
One possible model would be similar to the structure of Northwest Indian Fisheries Commission or Nuu-chah-nulth Tribal Council. As shown below, it would involve a Commission or Board made up one representative appointed by each First Nation. This model has the advantage that all parties have a voice at the table. Disadvantages are the time to reach decisions and the possibility of gridlock if there are large numbers of members.

**Figure 7. A Simple Collaborative Management (CM) Body**



A second possible model would be for groupings of First Nations to appoint Commissioners or Board members as shown below:

**Figure 8. A 3-Level Collaborative Management (CM) Body.**



This structure is similar to that used by the Columbia River Intertribal Fisheries Commission or the Skeena Fisheries Commission. In CRITFC each of four member tribes has a single vote and decisions need a consensus of the four Tribes. But CRITFC meetings still involve a large number of delegates in order to cover the range of interests of each Tribe. Northwest Indian Fisheries Commission tried similar structures in the late 1970s (using treaty groupings) but eventually went to a structure where each Tribe appointed its own Commissioner. The main consideration should be whether there are existing governance structures that can be built upon, such as tribal councils or treaty negotiation groups.

A third possible model is that used by Coastal First Nations / Turning Point Initiative. Key elements of that model are:

- An overarching board and executive;
- Partnerships are flexible with First Nations deciding on a case-by-case basis whether to participate in initiatives;
- Products are agreements with government or projects in areas of mutual benefit and could include areas other than fisheries;
- Commitments may be time-limited with the intention to create new institutions to follow-up on agreements; and
- Opportunities for partnerships with non-governmental organizations are considered if there is a strategic fit.

## **Other Considerations**

Other factors to consider are ensuring a good cultural fit, processes for decision-making, and level of engagement in Tier 2 (between First Nations and Canada) or Tier 3 (multi-party) processes.

Leaders need to design governing bodies and institutions that are a good cultural fit. As shown in Table 1, there is diversity in how First Nations choose to incorporate traditional systems in governance. Member First Nations need to consider this from their unique cultural perspective.

All of the successful new organizations used consensus processes. A few of the existing structures use majority vote. Consensus processes take longer to arrive at decisions but also help to build strong relationships.

One clear message from the models examined is that Tier 2 or 3 processes require a strong Tier 1 process to be effective. The First Nation Marine Society already participates in a Tier 3 process, the Integrated Herring Harvest Planning Committee. This participation could be made more effective by tying it back to an effective Tier 1 processes.

## 6. Summary and Recommendations

A range of working models for collaborative management has been examined. These have ranged from local to regional processes, and from processes involving First Nations alone (Tier 1), to First Nations and government processes (Tier 2) and multi-party processes with First Nations, government and others (Tier 3). If the First Nation Marine Society decides to proceed with preparing for collaborative management, then it needs to define 1) the goals and type of activities that will be supported; 2) the geographic area that will be primarily served; and 3) develop Tier 1, 2 or 3 processes appropriate to the goals and geographic scale. Following are recommendations on important initial decisions that are needed in keeping with that approach:

### 1. **Decide first what you want to do. In other words, what is the purpose for working together collaboratively?**

Here it is important to identify activities that will capture the interest of member First Nations, as well as have a good chance of success.

First Nation Marine Society is in the process of completing a capacity needs assessment. As described in the previous section, it is important to look at opportunities as well as needs such as:

- general technical support for member First Nations,
- marine or coastal use planning,
- restoring wild salmon and habitat,
- salmon management,
- herring management, or
- fisheries economic allocations.

Other topics may be identified in the needs assessment. It will be important to focus on one or two issues that individual First Nations see as a priority so that First Nations can clearly see the benefits of collaborating with other First Nations.

### 2. **Determine the geographic area to serve, the best collaborative management structure and build grass roots (Tier 1) support.**

First Nation Marine Society currently provides food fishing services to a large area. The larger the constituency the more difficult it will be to develop a consensus on goals, objectives and priorities. It would be better to do something well for a smaller constituency that succeeds than try to do something for everyone and be unable to deliver results.

The area has several distinct eco-regions, including West Coast Vancouver Island, Strait of Georgia, and Johnstone Strait/Northern Vancouver Island. The Nuu-chah-

nulth Tribal Council and Pacheedaht First Nations are already engaged in collaborative management initiatives on the West Coast of Vancouver Island.

Georgia Basin would be a logical eco-region to focus efforts as it is a large geographic area with clear oceanographic boundaries. As well it subject to numerous development pressures that would be a common basis for First Nations in the area to work together. As well the basin has numerous problems including water quality and sustainability of fish stocks including salmon, rockfish and lingcod. As well it supports the largest herring stock in B.C.

Johnstone Strait and Northern Vancouver Island is another region where efforts could be focused.

If both areas are selected then an important decision at the outset is whether to work collaboratively or separately.

Challenges include the diversity of First Nation interests in this large area and the fact that First Nations are at various stages in the B.C. treaty process and are not accustomed to working together in larger groups. This is also an opportunity to address cross-cutting issues in this important sub-region.

### **3. Engage in Tier 2 and Tier 3 activities only as may be supported by the Nations.**

The suggested focus for collaborative management activities is on Tier 1 (First Nation to First Nation) processes. Tier 2 (First Nation to government) and Tier 3 (multi-party) processes should be engaged in to the level supported by the member First Nations. If Tier 2 or 3 processes are engaged in, then effective feedback mechanisms need to be developed for information flow and input to advice and decisions.

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## **Appendices**

- A. List of Persons Contacted
- B. Critical Factors in First Nations Governance



## **List of Persons Contacted**

Don Hall, Fisheries Manager, Uu-a-thluk/ Nuu-Chah-Nulth Tribal Council Fisheries Program

Chris Barnes, Chair, Skeena Fisheries Commission

Craig Bowhay, Fisheries Policy Analyst, Northwest Indian Fisheries Commission

Andrew Day, Executive Director, West Coast Vancouver Island Aquatic Management Board

Mark Duiven, MDL International, Policy Advisor to Skeena Fisheries Commission

Les Ellis, Project Manager, Coastal First Nations – Turning Point Initiative

Allen Gottesfeld, Head Scientist, Skeena Fisheries Commission

Bert Ionson, Acting Regional Resource Management Coordinator, South Coast, Fisheries and Oceans Canada/ DFO contact for Integrated Harvest Planning Committee (Salmon)

Wilf Luedke, Acting Area Director, South Coast, Fisheries and Oceans Canada

Olney Pat, Executive Director, Columbia River Inter-Tribal Fish Commission

Mike Staley, Contract Biologist, Fraser River Aboriginal Fisheries Secretariat



## Harvard Project – Critical Factors in First Nation Governance

Research on governance has been done by the Harvard Project on American Indian Economic Development (Cornell 2002; Cornell et. al 2004). Their studies of First Nation governments in the U.S. found that the most reliable predictors of development success on American Indian reservations were political, having to do with the powers, organization and quality of government. The Harvard Project outlines three crucial factors for capable governance:

1. ***Practical sovereignty*** – real decision-making in the hands of indigenous nations, through legitimate governments that have trust and acceptance of their peoples;
2. ***Capable governing institutions*** – an institutional environment that encourages tribal citizens and others to invest time, ideas, energy, and money in the nation's future; and
3. ***Cultural match*** – a fit between those governing institutions and indigenous political culture.

Two other factors played a part in development success:

4. ***Strategic orientation*** – an ability to think, plan and act in ways that support a long-term vision of the nation's future, and
5. ***Leadership*** – some set of persons who consistently act in the nation's best interest instead of their own and can persuade others to do likewise.