

## **APPENDIX E**

### **Thirteen Recommendations for achieving a First Nation/DFO Fraser Watershed Process ("FWP")**

1. The parties need to determine whether there are mutual goals and sufficient incentives to justify the work necessary for the development of a functional FWP. In particular, DFO needs to confirm with First Nations whether there is a commitment to create and resource a consensus building process for addressing fisheries matters common to the Fraser Watershed. The parties need to be frank about whether there is a real interest in moving forward on the difficult issues. Without such clarity, it may be difficult to secure the commitment of First Nations at this time.
2. Clearly defined pre-negotiation, negotiation and implementation phases need to be identified, including obtaining the necessary human and financial resources to complete the tasks at each phase. How this process will and will not interact with the concurrent and ad hoc processes presently in place (eg. First Nation bilateral negotiations and consultation with DFO, BCAFC Framework Process, Interim and Treaty Measures related to fisheries, and the Fraser Basin Sustainability Initiative) will require clarification.
3. In the pre-negotiation phase, First Nations from the different regions of the River will need to determine whether there is an operative (functional) number of First Nations willing to commit to create and use an inter-tribal table that will be mandated to make recommendations regarding such things as:
  - a) establishing the mandate and authority to collectively represent those First Nations on fishery matters of collective interest and concern;
  - b) developing the necessary accountability to each other and to their membership (informed representation with mandates and reporting responsibilities) on collective interests and concerns;
  - c) developing a transparent and reliable decision making process (i.e. First Nations and DFO understand how and on what matters the representatives are mandated);
  - d) using sub-committee and/or regional approaches to specific issues;
  - e) pooling financial and human resources for addressing collective concerns; and
  - f) the short and long term initiatives that could be used to re-build inter-tribal trust (eg. test fisheries, technical processes and sale agreements may be subcomponents that people agree to work on prior to a comprehensive agreement on all matters).
4. In the pre-negotiation phase, DFO will need to:

- a) secure a commitment to resource a First Nations/DFO watershed process and begin the necessary long term budget planning for it;
  - b) obtain flexible mandates; and
  - c) develop a transparent and engaged chain of authority. For example, if Deputy Minister and Ministerial approval is required for any new agreement, it will be necessary to have a headquarter's representative committed to either participating in the negotiation phase or being available when required by the negotiating table. As a minimum ADM of Fisheries Management, the Regional Director of Treaty and Aboriginal Policy, Aboriginal Affairs in Ottawa, and the requisite Department of Justice (regional and national) representatives need to be meaningfully engaged in the process.
5. Also during the pre-negotiation phase, a joint working committee of DFO and participating First Nations must be resourced to discuss and develop recommendations on:
- a) what are the possible incentives, common visions, short and long term goals, realistic work plans and necessary milestones along the way;
  - b) what are the benefits and efficiencies for both DFO and First Nations from a watershed organization that oversees and develops watershed, regional, and stock expertise;
  - c) what evolving mandates need to be developed and obtained by the parties' representatives/negotiators to engage in the negotiation of a watershed process;
  - d) when is the appropriate timing (readiness) for the creation of a negotiating table charged with the authority to negotiate a multi-year watershed agreement;
  - e) what steps can be taken immediately to create a more trustworthy, working relationship between DFO and First Nation representatives, (eg. the River Gatherings);
  - f) who should facilitate/mediate the negotiating process between the parties, and whether such facilitation could be used as a building block for longer term dispute resolution processes;
  - g) what interim/immediate steps can be taken that would provide the parties with both useful experience when framing the longer term relationship, and a real, on the ground, signal that there is a genuine interest in changing the status quo; and
  - h) when is the appropriate timing (readiness) for the creation of a table that includes Vancouver Island First Nations who share responsibilities and rights with respect to the Fisheries.

6. Given the long-standing nature of the disagreements, the complexities (human, environmental and financial), and the need for the process itself to have built-in flexibilities, both the inter-tribal process and the DFO/First Nations process must be facilitated.
7. A team of people committed to see the process through to its completion, that has the attention and support of senior levels of the Canadian and First Nation governments, and access to the necessary technical expertise, will be critical to any true success. A minimum two year commitment to this negotiation process is required.
8. The negotiation must be designed specifically for the issues and parties, include face to face discussions amongst those people whose lives are directly effects by the decisions reached, and be consensual, by which the parties agree to formulate the problems and the desired outcomes, and agree to do the work necessary to accomplish the goals.
9. Because these discussions will be guided by responsibilities, rights and interests within the myriad of modern complexities, creative problem solving and the generation of workable solutions will be necessary.
10. When and if barriers to change are caused by fundamental differences regarding legal principles, the parties should consider and use joint applications to the courts. This could be more efficient and effective to move certain issues forward, and prevent losing whatever good will has been built.
11. Introduce as soon as possible a dispute resolution process for pre-season and in-season management decisions, for eg. the Fraser Panel process within the Pacific Salmon Commission, the development of the IFMP etc.
12. Once the work in 3, 4, and 5 has been accomplished, create the negotiating teams and negotiate the framework for a new watershed agreement. Following upon the work already completed, it may be that the parties choose to negotiate and implement specific sub-components of a watershed agreement prior to reaching a comprehensive agreement.
13. This work, to be useful, needs to be undertaken as soon as possible so that:
  - a) there remains a legacy of thriving wild salmon stocks for future generations; and
  - b) the process can help avoid the conflicts, on the River and in the Courts, which inevitably result from the status-quo.

Practically speaking, these negotiations should occur outside the May-October in-season management period; and must be given priority (human and financial) by DFO and First Nations leadership. It is possible with sufficient resources and commitments from the parties, to do all of this before the 2004 season. Realistically it may take at least two more winters to complete. In any event it must be done, and there is no time like the present.