

First Nations Access to Fish for Food, Social and Ceremonial (FSC) Purposes:

Trial Implementation of Evaluation Framework

May 2, 2006

Decision Sought from RMC:

- TAPD is seeking approval for trial implementation of a FSC Access Evaluation Framework during the current fishing season;
- Effectiveness would be reviewed in the fall of 2006, and revisions made as necessary prior to the 2007 fishing season.

FSC Access issues include:

- *allocation changes;*
- *fishing area changes;*
- *requests for commercial &/or recreational closures*

Background

- ❑ No global or strategic review of FSC allocations since they were first established under AFS in 1992.
- ❑ Fisheries Managers are frequently asked to increase FN FSC allocations or expand fishing area, without an analytical framework or clear administrative framework.
- ❑ Has lead to ad-hoc decisions, confusion, disparities among FNs, and inconsistencies between AFS and Treaties.

Drivers for Change:

1. FSC allocations are considered inadequate and inequitable by many FNs.
2. Environment for making FSC Access decisions is becoming more complex due to:
 - a) Court decisions that continue to re-define government responsibilities e.g. consultation, accommodation, FSC access priority;
 - b) Increasing complexity of treaty environment;
 - c) Changing FN needs/expectations and capacity;
 - d) Increasing dialogue among FNs.

Drivers for Change Cont'd.

3. Commitments of Minister to FNs with respect to FSC access (April 2005):
 - a) DFO will work with FNs to address concerns regarding fisheries access for FSC purposes; and
 - b) In the longer term, DFO will work with FNs to develop a mutually agreeable framework for negotiating appropriate levels of fisheries resources for FSC purposes.

Legal context: how much FSC is enough?

Huu-Ay-Aht court case:

- ❑ BC Supreme Court emphasized that the requirement to address each case individually is key, and that there must be active consideration of the FN's interests in a consultation and accommodation process.
- ❑ Application of a population-based formula to determine accommodation does not constitute good faith consultation and accommodation.

FSC Access Strategy Components:

1. Data base & query tools (*complete*)
2. Operational Framework (*approved for trial implementation*)
3. Evaluation Framework (*for decision today*)
4. Strategic Issues (*reviewed by SDC*)
5. Guiding Principles (*reviewed by SDC*)

FSC Access Evaluation Framework: Overview

- Identifies basic criteria (issues and questions) that need to be considered in evaluation of each request;
- Provides systematic approach, will improve consistency of how requests are addressed by ensuring the same factors are always considered;
- Is not prescriptive; must provide flexibility to address unique circumstances of each request;
- Summary tables provide a consistent information package, and facilitate quick identification of the key (sometimes conflicting) factors that need to be addressed by evaluation “teams” in decision-making.
- Documents rationale behind decisions.

Evaluation Framework Components:

1. Supporting Database (FSC, ATP and other economic benefits, GIS-linked)
2. *Criteria*
 - 4 general categories of factors that must be considered.
3. *Indicators*
 - Identify what qualitative and quantitative information should be considered for each criterion. (Nested under Criteria)
4. *Assessment Guidance*
 - Guide how information should be assessed.
5. *Standard Information Summaries & Approval Documents*
 - A “fill-in-the-blanks” Decision/Information Note, and summary Criteria and Indicator evaluation tables

Evaluation Framework - The 4 General Criteria:

1. Legal Considerations (e.g. Conservation, priority of access for FSC purposes).
2. Fisheries Resource Diversity, Abundance, and Equity Issues.
3. Fisheries Capacity, Governance, and Operational Issues.
4. Treaty-Related issues.

These criteria apply to evaluating 3 types of FSC requests:

a) change in allocation,

b) change in fishing area, and

c) requests for commercial &/or recreational closures.

Decision-making:

- Ultimately, guiding principles will provide basis for decisions about FN's access requests
 - Will consult with FNs during 2006 fall consultation workshops
- For now, the following considerations will be used:
 - Evaluate requests in context of “fish basket” available to a FN (i.e. allocations for all species, and availability of unallocated species) in the fishing area.
 - Avoid creating large disparities among FNs with similar availability of fisheries resources in their area, taking population into consideration.
 - Variance among groups will reflect preferences, social and cultural differences.

Measures of Effectiveness

1. Improved communication and decision-making within DFO.
2. Higher comfort level with risk management.
3. Greater consistency between AFS and Treaty approaches.
4. More timely decisions.
5. Improved documentation.

Next Steps

- Trial implementation of Operational framework is ongoing, to be reviewed post-season.
- Draft principles to guide decision-making, and to provide basis for further consultation with FNs on “a mutually agreeable framework for negotiating appropriate levels of fisheries resources for FSC purposes”.
- Further work on Strategic Issues.

Thank you!



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- May 2, 2006\2 - FSC Evaluation Framework.doc

General Regional Review Process

1. FN submits FSC access request to Area.



2. Area lead distributes request and supporting info from FN to other area staff (e.g. C&P), AFS Manager and RHQ-FAM.



3. AFS Manager sends summary data to Area lead and forwards request to Sr. Negotiator, TAPD.



4. Area lead coordinates information exchange within Area, and between RHQ-FAM, Treaty Negotiator(s), & DOJ as appropriate



General Process Overview Cont'd.

5. Area rep. leads drafting of FSC Access Information/Decision Package, distributes within Area (e.g. C&P) and to DFO Treaty Negotiator and FAM (RHQ) for input.



6. Meeting/conference call with Area, Treaty Negotiator, FAM (RHQ), DOJ, and others, as appropriate, to resolve outstanding issues.



7. Area lead finalizes Information/Decision Package, sends to Area Director, FAM Director, and TAPD Director for sign-off.



8. TAPD Director sends to RDG for Information / Approval.

FSC Access Operational Framework identifies the following:

- a) Administrative tools (Mandates, communal licences, etc.);
- b) How tools should be used;
- c) Roles and responsibilities of Area, TAPD, RHQ-FAM, and DOJ in the evaluation process (collaborative approach);
- d) Approval procedures (Area, RHQ-FAM, TAPD, and sometimes RDG).

Operational Framework – Process Overview

Area leads the evaluation of requests:

- Leads dialogue with FN, documents all efforts at communication and consultation;
- Engages other area staff (e.g. C&P), TAPD, RHQ-FAM, DOJ, and coordinates communication.
- Leads preparation of Decision/Info Package, obtaining input from TAPD, FAM, DOJ, and others
- Initiates approval process, which requires sign-off by Directors of TAPD, FAM, and Area, and sometimes RDG.

Roles and Responsibilities Cont'd.

RHQ-FAM

- Appropriate representatives (e.g. Species Coordinators) review & provide advice from regional perspective;
- RD-FAM signs off on Decision/Information Package when satisfied with recommendations.

TAPD:

- Regional Negotiator(s) provide input to the evaluation;
- TAPD director signs Decision/Information Package, when satisfied with recommendations;
- AFS Manager addresses Mandate issues, RHQ record-keeping.