



MEMORANDUM

NOTE DE SERVICE

TO
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G.E. Jones
Regional Director
Fisheries Branch

FROM
DE

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Fraser River, N.B.C. & Yukon Division

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N / RÉFÉRENCE
YOUR FILE - V / RÉFÉRENCE
DATE April 14, 1987

SUBJECT
OBJET

1987 Fraser River I.F.F.

The following information is compiled in order to provide some preparation and focus for the upcoming meeting with the IIFC in Chilliwack on April 21, 1987. An agreed to agenda is not, as yet, available. However, before dealing with major issues anticipated to arise at the meeting it is useful to review certain relevant events leading up to the present situation.

I. Chronology of Events:

August 16 & 23, 1986 - The I.F.F. was reduced from three days to two days per week in the 160 km stretch of mainstem Fraser from Mission to North Bend (see attached map). At this time a normal fishery would have up to 350 nets in the river. During the two Saturday closures virtually all nets were voluntarily removed from the river except for about six at Gill Bay, the traditional fishing spot of Cheam Band members. While all but full compliance to the closure was observed elsewhere the Cheam members challenged the closure and continued to fish illegally. As a result of consequent enforcement action on the 23rd of August, 1987, 18 Indians were charged with a total of 54 offences. Two members of the Department and our helicopter pilot have now been countercharged with assault and mischief and will have their first court appearance in Chilliwack on April 21, 1987.

Sept. 13, 1986 - A meeting was held between ADM Aimée Lefebvre-Anglin and six members of the Sto:lo Tribal Council (John George, Bill Williams, Sam Douglas, Lester Ned, Doug Kelly, and Clarence Pennier). This meeting was convened at the request of the above-mentioned individuals to discuss the Gill Bay affair and to complain about the Department's handling of the 1986 IFF. A request for an inquiry into DFO management of the 1986 fishery was demanded but declined by the ADM. The individuals were reminded by the ADM of the principles that the Department was operating under, that she was quite satisfied with that situation and she did not anticipate any change. Information and views were exchanged but very little resulted from the meeting.

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Nov. 22, 1986 - The Minister of Fisheries met with nine representatives of the Sto:lo Nation and 12 members of the Sto:lo Tribal Council. Bill Williams of the Chehalis Band chaired the meeting. Ross Belsher, local M.P., was also in attendance. A handout was distributed by the Sto:lo representatives which contained, among other things, their fishing declaration, a discussion on co-management, and an IIFC budget request for \$120K.

The Minister, in response to the Sto:lo presentation, made a number of important points. Among them were:

- The question of an aboriginal fishing right, while claimed was not defined, and must be resolved either through Constitutional discussions or by Cabinet.
- Co-management must take into consideration all facts, recognize the needs and aspirations of all user groups.
- In the Minister's mind he was not dealing with a "traditional Indian fishery" generally but rather specifically with an Indian food fishery with special emphasis "to meet the needs of local fishermen". The IFF gets first claim and should relate to historical use but "not for sale". But if in the future fish were to be sold, those fish would be allocated to the natives on the same basis as done with other user groups. In addition, an increase over the 500K sockeye 1986 allocation would have had to be negotiated with the other users.
- Co-management was suggested as means by which the Department and the IIFC could work together in the gathering of catch statistics to "get a handle on the actual figures".
- With reference to commercializing Indian catches he was not prepared to arbitrarily agree on the fishing and sale of salmon without all affected groups coming together in agreement and arranging for an acceptable sharing formula.
- The Minister was sympathetic to the natives position but pointed out that changes, when initiated, would have to be done in a way to avoid back-lash reactions from other user groups. A democratic process will be used and the law must be upheld.

Jan. 8, 1987 - DFO letter to IIFC requesting meeting on January 27 to initiate discussions leading to 1987 management plan.

Jan. 21, 1987 - IIFC letter to DFO declining Jan. 8 request to meet and detailing several areas of concern.

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Jan. 22, 1987 - Letter to IIFC containing 1986 seasonal review and the 1987 forecast along with a re-stated request to meet on January 27.

Feb. 01, 1987 - Letter to IIFC indicating disappointment regarding aborted meeting and an indicated willingness to meet with the IIFC on February 16, 1987 to discuss broad principles of IFF management.

Feb. 16, 1987 - The Director-General and senior staff met with nineteen representatives of the two Sto:lo groups for a 2½ hour session to discuss broad issues of concern. The Sto:lo's concerns centered around a number of related issues such as Departmental performance, lack of trust, lack of consultation, lack of Indian input into DFO management, and the need for change to allow for "hands-on management" by the IIFC. The 400K sockeye treaty number was discussed but not understood along with a complaint about how the 500K sockeye allocation was established. Inland commercial fisheries were also referenced.

The Director-General responded by stating the obvious need for more co-operation and less confrontation. That the Department would/could only respond to reasonable IFF requirements and that their advise on that reasonable number was requested. The prohibition on sale was reiterated and that no realignment of catch sharing would take place without the need for extensive consultation, probably through the imminent PARC. Co-management had to be considered on a coast wide basis and a need to agree on principles was still outstanding. In the meantime the status quo would be maintained and in 1986 the 500K allocation was viewed by the Department as a reasonable allocation to the IIFC.

Mar. 6, 1987 - A proposal from the Sto:lo Tribal Council to the Minister of Indian and Northern Affairs concerning "Fraser River Watershed Co-management". This proposal is a multi-phased program to initiate a process of data collection, negotiation and sharing of the salmon resource. Co-management is defined as "the equal sharing of Fraser River fishery resource management responsibilities between Sto:lo people as original owners of the resource, and the Canadian Government, representing other resource users and the Canadian people". The proposal is superficial and demonstrates a basic lack of understanding of the salmon resource of the Fraser River. In addition the Sto:lo's indicate in their proposal that they alone be given management responsibilities for the inland IFF as well as setting escapement goals on streams many hundreds of miles past their tribal territories. They also request \$155K from DIAND to fund their 1987 related activities. The status of this proposal in DIAND, Ottawa should be determined.

April 07, 1987 - Divisional staff met with the Katzie Band to discuss the 1987 season. Neither the proposed fishing plan nor a potential allocation to the IFF became contentious issues. The band was more interested in getting approval on a drift fishery similar to that of the Musqueam, however, the Department was reluctant to start new types of fisheries at this point in time and consequently could not agree with their request. The band did express an interest in a 5 year IFF licence with a photo I.D. and this is an issue the Department should explore further.

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April 13 & 14, 1987 - The Interior Caucus of the B.C. Aboriginal Peoples Fisheries Commission had a two day meeting to discuss, among other things, co-management plans, band by-laws, 1987 fishing season, PARC (Bill Williams attended the second day), and a joint meeting with their counterparts from the State of Washington.

April 14, 1987 - After four earlier unsuccessful attempts to arrange a meeting with the Musqueam Indian Band to discuss their food fishery prior to the expiry of licences (March 31, 1987) a meeting was finally agreed to and held with the Musqueam Band Council on April 14, 1987 from 6:30 to 9:00 p.m. at their Band office. The Band generally accepted the overall fishing plan for their area and were supportive of the reduced fishing times in the early season for conservation of chinook salmon and the two week conservation closure for Early Stuart Sockeye.

The legal problem with Band Licences caused by Bands not being a legal entity was explained and the Band agreed to accept individual licences directly from DFO Fishery Officers.

The Musqueam Band presented the following concerns and requests that were discussed at some length but need to be reviewed and discussed in more detail:

- 1) Increase of 25 fathom drift net length to 50 or 75 fathoms - growth in band population from 500 to 700.
- 2) Increase in fishing area involving boundary changes extending into the main arm of the Fraser River to one quarter mile below Deas Tunnel - growth in fishermen from 24 to 40.
- 3) Eliminate unlicensed Indian and non-Indian participants and non-Indian boats from participating in the Musqueam fishery.
 - support for regulation amendment
 - request for funding and training of an Indian Fishery Officer
- 4) Development of a 5 year picture I.D. - IFF Licences.

It was agreed that a working group of two to three representatives from the Musqueam Band and DFO would be identified to have further meetings to discuss, develop and negotiate these concerns and requests. The tentative date for the next meeting was set for May 6, 1987 at the New Westminster office. The final meeting agenda is to be confirmed by DFO.

The meeting was considered productive by both parties. The Musqueam band also clarified that although they had been asked by the IIFC to attend the meeting set for April 21, 1987 they would not participate and did not want to be aligned with a group that is split amongst themselves and not totally representing all Indians Bands.

April 14, 1987 - Update - A letter along with conservation concerns and fishing plan was sent to the Lillooet Tribal Council and bands involved in the fishery on March 23, 1987 requesting a meeting to discuss the 1987 fishing season with no response to date.

- element of allocation deals with the commercial fishery, particularly when a run size is increased with the consequent effect of the commercial fleet getting more fishing time and catch. The IIFC overlooks the fact that their reasonable food fish needs have special status and are addressed on a priority basis. Nevertheless there were further demands that their allocation be increased proportionately to that of the commercial fishery. This the Department did not do and which led, in part, to last year's confrontation.
- 3) **Flex Time:** - This is a concept that was recommended last year by the Sto:lo's and adopted by the Department wherein the IFF fishing effort would be increased or decreased depending on the situation. The objective of the Department was to ensure that the fishery stayed in pace with the management plan or could be sped up if it fell behind. The IFF below North Bend was flexed both ways last year. Some of the Sto:lo fishermen reacted quite negatively when the Department flexed the fishery downward last summer (i.e. the fishery was reduced from 3 to 2 days per week for 2 weeks in August). The concept, however, is quite viable and allowed the Department to actively manage a group of fishermen, who collectively demonstrate a substantial fishing power which from time-to-time requires additional regulation.
 - 4) **Perceived decline in Fisheries:** - Natives generally have the erroneous impression that salmon stocks are in a steady state of decline and that the Department holds them responsible. The facts are that all stocks, except for coho, are in good condition and returns to the spawning grounds have been increasing significantly over recent years due to deliberate management actions. No one in the Department has ever stated that the native fishermen were responsible for stock declines either real or imagined. This view will undoubtedly be expressed at the upcoming meeting.
 - 5) **Auditor-General's Report:** - The Sto:lo's in their various emanations to all and sundry have made reference to the 1986 report on the Department by the A-G. They make particular reference to Section 10.61 that refers to "the lack of accurate and timely information reduces the ability of fisheries managers to protect the resource...." This statement is not only taken completely out of context but also does not refer to the Fraser River generally or the Indian food fishery specifically. A clear case of selecting statements to suit their arguments.
 - 6) **Inland Sport Fisheries:** - The Department has been slowly increasing the opportunity to sport catch certain races of chinook salmon over the last few years. In 1986, for the first time, five Fraser River headwater areas were made available to sport fishermen on a catch allocation basis. Previous to this up-river sport fishermen had no opportunity to fish for adult chinook. Both the IFF and the local commercial fisheries have been allowed to fish for sockeye and take bi-catches of chinook. With the current opportunities for sport

fishermen the situation is now more balanced among the three user groups and still consistent with the chinook rebuilding program. The natives, may however, see these measures as a means to argue for more fishing time or higher chinook catches for themselves. This has not been a big issue to date.

III. Co-management:

The concept of co-management is not yet fully defined and, at present each side applies a different meaning to the term. The view of the IIFC is that co-management implies recognition of ownership and that the fishery is then co-managed between the Government of Canada and the native people (owners). The Departmental view is that co-management is a program activity, funded by government, and cooperatively implemented with varying levels of native involvement (up to 100%). There is a fundamental philosophical difference over the co-management issue and to proceed into any shared programs at this point with such widely divergent agendas is to risk disappointment. The natives view co-management as a means to have "hands-on management" which would basically eliminate and exclude the Department's involvement. The native approach is an example of a user group being both its allocator, manager and harvester - the best of all worlds but fraught with difficulties.

At this point in time there have been in excess of 25 co-management proposals submitted to the Department for a total cost of approximately \$1.0 million. Some of these proposals are two and three years old and may no longer be relevant, some of the original proponents are no longer in power and hence support may have fallen away. Most important of all is the fact that none of these proposals have been reviewed to determine just how well they fit into the Department's short and long term plans and consequently they could put us at cross purposes with proponent groups and other users. Finally, the proposals have not been reviewed to determine if good value for the investment can be expected.

As an example, in 1986 the Government through CEIC paid the Lytton-Lillooet natives about \$250K to gather catch stats on their Indian food fishery which caught, on the basis of their figures, 95,000 sockeye (the Departmental estimate was 83K). This enumeration cost \$2.77 for each fish caught. A report on this project is yet to be forthcoming. In any event, apart from the training aspect, the cost to obtain a second set of catch statistics may not be good value for the money spent.

The Sto:lo tribal groups also have a number of "co-management" proposals to do work on a number of aspects of fisheries management.

IV. Habitat:

References to the Department's habitat management program usually comes up at every meeting. The status of the Nechako proceedings will be brought up and a brief update from the Nechako Task Force may be appropriate. Water quality and pollution concerns are always expressed with such detailed specifics that they are difficult to answer except by an attending fishery officer with local knowledge.

Lab analysis of Fraser River sockeye salmon taken in 1986 from various locations (Campbell River, Steveston, Lytton and Prince George) are now complete with the results being delivered only this week. The format of the raw data is such that statistical analysis must be performed to establish confidence, limits and to properly interpret the results. However, preliminary analysis indicates that contaminant levels were all observed to be below acceptable standards.

V. Legal Issues:

A key issue of discussion will deal with the licencing of individual native fishermen. It is recognized that the Minister may issue a band licence or one to an individual, however, for both practical and legal reasons this Division has consistently moved toward issuing only individual licences and this format will be fully implemented this year. The principle reason for taking this direction is that a band is not a legal entity and thus cannot be charged with an offence and secondly, in virtually all instances fishing takes place in areas that are not on the reserve and well beyond the control of the band. And further, people from many bands fish in the same area and band control is totally impractical. The native leaders will continue to advocate that licencing and its administration should be their responsibility but this is not practical and would affect both enforcement capability and statistical gathering activities. Individual fishermen find the system quite satisfactory and the issuance of 1987 licences has been brisk.

The matter of issuing licences to individuals to fish in areas other than their traditional one is currently under challenge with the possibility of a test case being developed under the auspices of Ron George, President of the United Native Nations. Correspondence from Mr. George to the Minister is currently in the system in which he asks for clarification of the Department's policy and how it relates to Section 27 of the Regulations.

VI. International:

The Annex of the Pacific Salmon Treaty covering the management of the Fraser River sockeye excludes 400K sockeye from computations of the total allowable catch for the Canadian IFF. In other words, the first 400K are paid for by both countries and any additional allocation then comes out of Canada's share of the TAC. This treaty arrangement, which is a benefit to Canada, is seen by many natives as a limit that was negotiated by the two countries without consultation. This issue is likely to arise again.

Another concern deals with the Fraser Panel. The natives have the view that the IFF is managed or influenced by this panel and again decisions are made with little or no consultation. In 1986 Sam Douglas (who is a commercial fisherman) represented the food fishery but his seat is now vacant awaiting a re-appointment. The IFF is managed as a domestic fishery, and other than advising the panel with updates of the status of IFF, there is no panel involvement.

One issue that does involve the panel is when it authorizes commercial openings in the Fraser River on days other than the normal Monday fisheries. The IFF immediately above the commercial boundary, which normally starts its fishery at noon Thursday can be impacted, if a commercial fishery is permitted on a Wednesday or Thursday. The panel tries to avoid these later openings but they at times become all but unavoidable when fisheries are based on abundance and not time of week. Lester Ned, Chief of the Sumas Band, who is a commercial fisherman, fishes the area upstream from the commercial boundary at Mission and complains constantly that his fishermen are not catching any fish. Our statistics do not fully support his claim but he does have a point.

VII. 1987 Management Principles:

In order to set the 1987 management plan for the Indian food fishery it is necessary that the major principles and policies that the Department will be operating under be stated clearly, discussed, fully understood and hopefully agreed to by the IIFC.

These issues are:

- 1) Allocation: - The number of sockeye salmon allocated to the IFF up to and including 1986 was based on a "Natural" growth factor which was allowed to occur as a reflection of demand even though it is known that some significant illegal selling occurred. For 1986 while the "growth factor" was taken into account once the number was decided the fishery was managed to that number. In other words, in 1986, the fishery was actively managed for the first time to the allocated number (500K). Had the Sto:lo trial proceeded on April 7, 1987 as

originally planned I would have convinced the court that 500K sockeye was a number sufficient to satisfy reasonable food fish requirements. This presentation will probably now take place next fall after the 1987 season and if the 1987 allocation is different (i.e. less) than 1986 my arguments may be undermined, therefore, the allocation may now be set by the 1986 precedent. If the "growth factor" approach were applied to the brood years leading up to 1987 then the IFF catch would project out at 400K.

- 2) **In-River Allocation:** - A secondary problem related to the catch by the IFF is its distribution throughout the watershed. For example, the Sto:lo's with 2,800 people caught 320K sockeye for a per capita catch of 600 lbs of fish. Comparing this to the catch by the 3,500 Carrier-Sekani's at Prince George of 27K for a per capita catch of 50 lbs illustrates the gross disproportion of catch between up-river and down-river fishermen. By way of comparison an equal distribution of 500K sockeye among approximately 20,000 population would provide 25 fish and about 125 lbs per person (men, women and children). The question that needs to be addressed is what the Department's role should be in dealing with the in-river allocation issue. The solution is not to flood the river with fish.
- 3) **Conservation:** - No special conservation issues exist in the 1987 plan if the fishermen abide by an allocation quota and fish at appropriate prescribed times. One border-line issue deals with the Early Stuart sockeye which is forecast to return at a total of 200K with 150K required for the grounds and 50K available to the IFF. Commercial fishing is not scheduled during times of passage of the Early Stuarts. If the normal IFF fishing pattern were applied during the passage time of the Early Stuarts it is conceivable that the catch could reach 100K. As a result fishing time in the lower river will be restricted to one day per week for a three week period. A problem could develop if the Sto:lo's refuse to cooperate and decide to fish three days per week.

Other conservation related measures that will be enforced as usual are the all season 5½ inch mesh requirement for chinook conservation and the prohibition on nylon monofilament gill nets.

- 4) **Active Management/Flex Time:** - Regardless of the number finally chosen as the allocation the fishery will be managed to that number as well as responding to any in-season changes that must be taken into consideration. In order to respond to conditions at the time the Indians have to expect that their fishing times could be increased or decreased in order to respond to the management requirements and the need to control the fishery.

- 5) **Licencing:** - Only individual licences will be issued in 1987. The issuance of licences throughout the Divisional area has been very brisk this year with no resistance being shown by the individual fishermen. Licences to qualified "outside" Indians will be issued, as done previously only with the permission of the concerned band.
- 6) **Enforcement:** - The management, catch data gathering and regulation enforcement will be conducted in its normal fashion in 1987 by the sub-district Fishery Officers. No change in their enforcement program is scheduled. The officers will continue to remove nets from the river that are not identified as required. They will continue to patrol for illegal nets and poaching activity. They will also take the usual steps to deal with the very large problem of illegal sales. In this regard the IIFC should be asked what their policy is on illegal sales and whether or not they are prepared to assist the department in reducing poaching and illegal selling.

To summarize the above issues are only the anticipated subjects to be raised at the meeting next week. There are more issues that could be mentioned but time and length of this memo (which I apologise for) preclude. However, this should be sufficiently comprehensive to deal with the majority of issues raised on Tuesday.

F.J. Fraser