



Department of Justice
Canada

Ministère de la Justice
Canada

Department of Justice
BC Regional Office
900-840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Telephone: 604-666-2324
Facsimile: 604-666-2710

January 17, 2011

By Email

Commission of Inquiry into the Decline of Sockeye
Salmon in the Fraser River
2800 – 650 West Georgia Street
Vancouver, British Columbia
V6B 4N7

Attention: Brian J. Wallace, Q.C.

Dear Sir:

Re: FRASER River Sockeye Salmon - Commission of Inquiry - DFO
Our File: 2-272052
Responses to Commission Counsel's 35 Questions on Aboriginal Treaties

Please find enclosed Canada's written response to the "Treaty Fishery Questions" received from Commission counsel, Jennifer Chan, under cover of email dated November 1, 2010. Attached to Canada's response is a copy of the Minister of Fisheries and Ocean's statement of March 2, 2010, that the Government of Canada is deferring the negotiation of fisheries components at treaty tables in British Columbia that involve salmon, pending the findings and recommendations of the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River.

Yours truly,

Mitchell R. Taylor, Q.C.
Senior General Counsel

/cg
Enclosures

Cc – Patrick McGowan, Jennifer Chan

**The Government of Canada's Response to
"TREATY FISHERY QUESTIONS"
received from Cohen Commission Counsel, Jennifer Chan,
under cover of email dated November 1, 2010**

January 13, 2011

January 13, 2011

“TREATY FISHERY QUESTIONS” Received from Commission Counsel

Introduction

This document provides responses to the 35 Treaty related fishery questions posed by Commission Counsel. Some of these questions request information about the Coast Wide Framework referred to in paragraph 265 of the Commission’s Policy and Practice Report (PPR) on Fisheries and Oceans Canada (DFO’s) Policies and Programs for Aboriginal Fishing. This draft framework is a Cabinet confidence protected pursuant to sub section 39(2) of the *Canada Evidence Act* and is also protected by treaty negotiation (or settlement) privilege. Completion of the work on the Coast Wide Framework has been deferred pending the conclusion of the work of the Cohen Commission, and pending DFO’s consideration of the Commission’s recommendations in its final report.

DFO seeks to manage the Fraser River sockeye salmon fishery in a manner consistent with Canada’s legal obligations to Aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*. DFO also acknowledges the desire of First Nations to derive greater economic benefits from the salmon fishery. At the same time, DFO seeks to manage the fishery in a manner that allows for all Canadians to participate in the fishery. Finding the appropriate balance in managing these rights and interests has been complicated, challenging and often controversial. DFO recognizes the need to be clear as to how First Nation food, social and ceremonial (FSC) and commercial salmon allocations – both in and outside of treaty arrangements – are integrated within a comprehensive and transparent overall fisheries allocation and management framework. Within this management framework that features an extensive consultative process, DFO seeks to balance a number of sometimes competing factors and objectives in allocating and managing fisheries resource, including (but not limited to):

- Conservation as the highest priority;
- Respect for the priority, subject to conservation requirements of First Nations FSC fisheries;
- Maintaining healthy and sustainable fisheries for all Canadians;
- Recognizing the diverse stocks being harvested, their migratory characteristics and the uncertainty in pre-season and in-season information;
- Seeking consensus in inclusive and effective consultative processes with First Nations and other fishery stakeholders and interests;
- New treaty arrangements with some First Nations;
- Rebuilding depressed stocks consistent with the Wild Salmon Policy and the Sustainable Fisheries Framework; and,
- Building cost-effective and manageable watershed or regional fisheries arrangements.

DFO expects that the findings and recommendations of the Cohen Commission will assist the Government of Canada in meeting its objectives and addressing these challenges.

**Responses to Treaty Related Questions Posed by the
Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River**

Coast Wide Framework

1. When was the Coast Wide Framework developed and how long did it take to develop it?

Response 1:

As noted above, the draft Coast Wide Framework is a Cabinet confidence protected pursuant to subsection 39(2) of the *Canada Evidence Act*, and is also protected by treaty negotiation (or settlement) privilege.

On March 2, 2010, the Government of Canada (via the Minister of Fisheries and Oceans and the Minister of Indian and Northern Affairs Canada) announced that treaty negotiations on Aboriginal fisheries would be deferred pending the conclusion of the Commission of Inquiry and consideration of Commissioner Cohen's final report by the Government of Canada. The Minister of Fisheries and Ocean's statement is attached.

2. How was the Coast Wide Framework developed?
 - a. What process was used in the development of this Framework?
 - b. Who drafted the Coast Wide Framework?
 - c. Were there any consultative processes or input from the public in regards to its development? If yes, from whom and how?

Response 2:

Regarding the Coast Wide Framework, please see the response to question 1 above.

In general, DFO policy frameworks are developed following the standard government process for policy development and approval. This involves direction from the Minister, guidance from DFO senior management, collaboration of DFO officials from regional and national headquarters in technical and policy analysis, consultations with other government departments including the Privy Council Office (PCO), in most cases public consultations, and finally approval by the Minister.

3. What are the problems or concerns that the Coast Wide Framework is intended to address?

Response 3:

Regarding the Coast Wide Framework, please see the response to question 1 above.

As a general comment, issues to be addressed include: the sustainability, manageability and affordability of future treaty and non-treaty fish arrangements with First Nations; guidance for individual treaty allocations; and the need for integrated fishing arrangements. Questions have been raised with respect to the place of First Nations and non-First Nations participants in future fisheries. There is also a concern that recent treaty arrangements, if widely expanded, would not be deliverable or affordable.

4. What objectives does the Coast Wide Framework aim to achieve?

Response 4:

Regarding the Coast Wide Framework, please see the response to question 1 above.

As a general comment, in any fisheries management framework, Canada seeks greater certainty and stability for all harvesters in access and allocation within a well integrated fisheries management regime. Another important element would be the establishment of new fisheries arrangements that would support a shift to more cost-effective and manageable watershed or regional fisheries arrangements, inside and outside of treaties. These arrangements must also align with broad fisheries management approaches and policies such as the Wild Salmon Policy and the Sustainable Fisheries Framework.

5. How long have fishery related negotiations at treaty tables been deferred in relation to the Coast Wide Framework or its development?

Response 5:

Regarding the Coast Wide Framework, please see the response to question 1 above.

More generally, prior to July 2008, there was a period of reduced activity with regard to fishery-related negotiations at treaty tables.

Since July 2008, fishery-related negotiations at treaty tables were waiting for the development of an approach to guide table-specific negotiations for First Nations fisheries. The exception was that negotiations at the Yale table continued through 2008 and 2009 and negotiations at the In-SHUCK-ch table continued during 2009.

On March 2, 2010, the Government of Canada announced the deferral of negotiations of fisheries components at treaty tables in B.C. that involve salmon, pending the findings and recommendations of the Cohen Commission of Inquiry. This deferral did not include late stage Final Agreement negotiations with Yale First Nation, Sliammon First Nation and In-SHUCH-ch Nation, which had reached this final stage after years of negotiations between all parties in the British Columbia Treaty Commission (BCTC) process.

6. Did Canada plan for a date on which the Coast Wide Framework would be implemented? (Did this plan change with the announcement of the Cohen Commission, and if yes, why?)

Response 6:

Regarding the Coast Wide Framework, please see the response to question 1 above.

On March 2, 2010, the Government of Canada announced that it is deferring the negotiation of fisheries components at treaty tables in BC that involve salmon, pending the findings and recommendations of the Cohen Commission of Inquiry. The deferral of fisheries related negotiations will allow for treaty negotiations to be staged so that fish chapters in treaties can be informed by the findings and recommendations of the Cohen Inquiry.

7. Have principles from the draft Coast Wide Framework been applied to any treaty negotiations?

Response 7:

Regarding the Coast Wide Framework, please see the response to question 1 above.

Generally speaking, the Government of Canada has applied certain principles to treaties that have been negotiated to date, and the management of fisheries more broadly in Canada, including:

- the authority of the Minister of Fisheries and Oceans to manage fish and fish habitat is respected;
- conservation is the first priority;
- FSC fish access has priority after conservation;
- FSC fisheries allocations will be held communally;
- First Nations will be provided with an expanded collaborative role in the management of their fishery, subject to the Minister's authority;
- treaty arrangements must be deliverable, manageable, and affordable;
- recognition that all resource users must have a place (a fishery for all); and,
- First Nations communal commercial allocations will have the same priority as the general commercial fishery, operating under common or comparable rules for all participants.

8. May we have a copy of the most recent draft Coast Wide Framework?

Response 8:

Regarding the Coast Wide Framework, please see the response to question 1 above.

FSC Allocations

9. How is the FSC allocation determined for each First Nation? (Please answer generally, as well as within the treaty context).
 - a. Is the FSC allocation assessed on a *per capita* basis?
 - b. If the FSC allocation is assessed on a *per capita* basis, how many fish *per capita*, is an appropriate number?
 - c. What types of information are considered in determining the FSC needs of a First Nation?

Response 9:

Generally, FSC allocations are determined based on consultations and negotiations with First Nations as well as the factors outlined below (Response 9c). Within the treaty context, these have been negotiated based on the factors outlined below (Response 9c), as well as the overall balance of negotiated benefits within the treaty.

- a. Population size is one of several factors considered in determining First Nations FSC allocations.
- b. Population size is only one factor that would inform an appropriate FSC allocation for a particular species. Therefore, the FSC allocation per capita can be highly variable. See Response 9c for more details on the full range of factors.
- c. Factors considered in the negotiation of First Nations FSC allocations could include: recent harvest levels (reflecting interest and fishing capacity and FSC allocations); species availability (salmon, non-salmon, freshwater species, game, etc.); species abundance; consideration of allocations for other First Nations; and, population size (on reserve, off reserve). In the treaty context, FSC levels have been negotiated with reference to the above factors.

10. Is there a maximum percentage of the fishery, or maximum number of Fraser sockeye (pieces) that will be available for FSC allocations under all treaties to be signed in British Columbia?
 - a. If yes, what is that maximum percentage or maximum number?
 - b. How does this total allocation compare to the allocation described in Pearse's 2004 Treaties and Transitions report?

Response 10:

The percentage or number of Fraser River sockeye (pieces) that might be available for FSC allocations under treaties to be signed in BC is a Cabinet confidence protected under subsection 39(2) of the *Canada Evidence Act*, and is also subject to settlement privilege.

- a. See above.
- b. For information, the 2004 Treaties and Transitions report estimated the future First Nations share of the catch under treaties of all sockeye salmon stocks in BC at 33

percent based on an extrapolation of the Agreement in Principle negotiated at the time to all BC First Nations. This share included FSC and communal commercial fisheries but did not include individually licensed aboriginal fishers. Pearse and McRae, the authors of 2004 Treaties and Transitions report, indicated that the extrapolation was based on very limited data, but that even using other data they could not arrive at a share that exceeded 38 percent for sockeye, coast wide. Pearse and McRae did not present a similar analysis for Fraser River sockeye.

11. If there is no maximum percentage of the fishery, or maximum number of Fraser sockeye (pieces) that will be available for FSC allocations under all treaties to be signed in British Columbia, is there nevertheless a target percentage or number, or a range or percentages or numbers?

Response 11:

See response to question 10 above.

12. Will the total of all treaty FSC allocations be greater than the current FSC allocations of Fraser sockeye provided under AFS agreements or communal licences?
- a. The Fishery Treaty Update February 26, 2007, provided to the Commission on October 7, 2010, by hand from Hugh MacAulay (“Fishery Treaty Update”) says on page 8 “Allocations based on current and historic harvesting levels and a onetime increase”. What is this onetime increase and how is it calculated?

Response 12:

For those First Nations under treaty, the total of their FSC allocations will likely be greater than current levels, taking into account negotiations where First Nations will want to consider future population growth. In exchange for this increase and to improve manageability and stability, in most cases FSC levels will be abundance based with a limit on FSC harvest at a specified abundance level. Notwithstanding this outlook, treaty specific FSC allocations are the subject of negotiations that have yet to be concluded, or initiated in many cases.

- a. A onetime increase in FSC provides an adjustment over current FSC fishing levels to account for future population growth in exchange for a limit on treaty allocations. Note that this is a negotiated outcome that may vary between treaties and that the increase will be mitigated for other harvesters as noted in Response 17 below.
13. Do treaty FSC allocations take into consideration the FSC allocations of Fraser sockeye currently in place under AFS agreements or communal licenses?
- a. Will treaty FSC allocations track or match current FSC allocations?

- b. Is there a formula used to determine the maximum treaty FSC allocation that is applied to existing FSC allocations? (for example, existing allocation plus 25%, or plus 50% etc).

Response 13:

Yes, current Fraser sockeye FSC allocations are one consideration in negotiating treaty arrangements. However, treaty FSC allocations have been abundance based and vary depending upon run size, while FSC allocations outside of treaty are fixed numerically, but can be adjusted if a conservation concern is demonstrated.

- a. Since current FSC allocations are a consideration in treaty negotiations to date there will likely be some tracking of the two. However, note the difference between abundance based and fixed numerical allocations described above which could lead to divergences in the tracking in some years.
- b. As noted above, current Fraser sockeye FSC allocations are taken into consideration when negotiating treaty allocations for Fraser sockeye. However, Canada's mandate and instructions to negotiators for negotiating Fraser sockeye treaty allocations are protected by Cabinet confidence and/or subject to treaty settlement privilege.

14. Do treaty FSC allocations take into account increases in First Nations populations?
- a. If yes, how do treaty FSC allocations take into account increases in First Nations populations?
 - b. Will treaty FSC allocations be decreased to reflect those First Nations with decreasing populations? Is there a mechanism for adjusting FSC allocations to match population sizes?

Response 14:

See Response 9 above where population is described as one of several factors considered in the negotiation of FSC allocations.

- a. Treaty FSC allocations already take into account future population growth, which is a well documented demographic trend among First Nations, with the previously described one time increase (Response 12a) and are therefore not affected by future First Nations population levels.
- b. Once negotiated and agreed to in a treaty, future FSC levels will not be adjusted to reflect changes, whether there be increases or decreases, in population size.

15. How will FSC allocations of Fraser River sockeye vary as between marine/approach, lower Fraser and mid to upper Fraser First Nations?

- a. Will Marine/Approach area First Nations receive greater or lesser FSC allocations under treaty than are currently provided for under AFS agreements or communal licenses?
- b. Will Lower Fraser First Nations receive greater or lesser FSC allocations under treaty than are currently provided for under AFS agreements or communal licenses?
- c. Will Upper Fraser First Nations receive greater or lesser FSC allocations under treaty than are currently provided for under AFS agreements or communal licenses?
- d. Will the FSC allocation among Fraser River First Nations be equally shared on a *per capita* basis? If not, why not?

Response 15:

FSC allocations are negotiated and based on a variety of factors as outlined in Response 9. With respect to geographic differences, generally, allocations take into account the variety of fish and wildlife species available to the First Nation in their Statement of Intent area which does vary depending on location relative to marine, Lower Fraser or interior Fraser areas.

- a. Fraser sockeye are a significant source of FSC for marine/approach area First Nations. However, unlike Fraser River First Nations, these First Nations also have access to many other salmon stocks and fish species for FSC purposes and their current allocations reflect this difference. For First Nations in treaty negotiations, future population growth is a key consideration and as a result the one time increase described in Response 12(a), combined with an abundance based approach and a limit at a specified abundance, would likely be discussed in negotiations. Notwithstanding this general direction, FSC allocations are subject to table specific negotiations and may vary. For example, the FSC allocation of Fraser sockeye in the Maa-nulth Treaty is a small fixed percentage share at all abundance levels without an absolute cap.
- b. Given the history of the Lower Fraser First Nations FSC fishery with respect to the introduction of the Pilot Sales Program in 1992 and the Economic Opportunity fishery beginning in 2004, the future direction of FSC allocations under treaties is difficult to predict. Negotiations will involve clearly identifying FSC levels separate from economic allocations which would be contained in Harvest Agreements. Again, this would be subject to table specific negotiations.
- c. Interior Fraser First Nations would likely see higher FSC levels than current levels based on the one time increase described in Response 12(a). Again, this would be subject to table specific negotiations.
- d. DFO currently negotiates regarding FSC allocations with individual First Nations or groups of First Nations that come together to negotiate treaties. DFO would not

impose equal per capita allocations but would consider the approach if proposed collectively by all affected First Nations.

16. Have FSC allocations been decreased or increased for any First Nation in AFS agreements prior to the signing of a treaty? If so, what were the reasons for such decrease or increase?

Response 16:

First Nations' requests for increases in their FSC allocations are assessed individually based on criteria that include, the First Nation's rationale, recent catch levels relative to their current allocation, availability of the stock or species in question, potential conservation concerns, potential impacts on other First Nation's FSC access and any other information that may be relevant. Based on the above information, DFO makes a decision on whether to approve the increase. Given this process, FSC allocations may be increased prior to the signing of a treaty, but the reasons would be case specific.

17. Are increases in Fraser sockeye FSC allocations under treaty offset in any way by decreasing FSC allocations to other First Nations or decreasing licenses held by other sectors?
- a. Are there any commercial license buy-backs associated with increased FSC allocations? (i.e. is there anything similar to the commercial license buy-backs under PICFI for First Nations economic opportunity fisheries).

Response 17:

Increases in FSC allocations under treaty are mitigated for all fishing sectors through the voluntary relinquishment of commercial licences. Only the increase in allocation above the First Nation's pre-treaty share of the harvest will be mitigated and only if that increase reduces the amount available to other harvesters. There are no reductions in FSC allocations for other First Nations for this purpose.

- a. Increases in FSC allocations negotiated as part of the treaty process are mitigated by reductions in commercial fishing capacity by retiring commercial licences that are voluntarily relinquished by licence holders (i.e. similar to PICFI and ATP).

18. Will all future treaty Fraser sockeye FSC allocations be quantified as a percentage of total allowable catch?

Response 18:

There is no one answer to this. Some recent treaties have featured FSC allocations in the form of a harvest share that is a percentage of abundance above a conservation threshold with a numerical cap, reflecting the unique nature of FSC and priority of FSC harvest. Another option is for a fixed percentage of allowable catch at all abundance levels, albeit

at a lower rate than in the previous approach. The approach to Fraser sockeye FSC as for other aspects of treaties will be the subject of table specific negotiations.

19. Will all future treaty Fraser sockeye FSC allocations be capped at a maximum number of fish?
- a. This was done for Fraser sockeye in the *Tsawwassen First Nation Final Agreement*, but not in the *Maa-Nulth Final Agreement*. Why?

Response 19:

Future Fraser sockeye treaty FSC allocations will be determined through negotiation. The approach to negotiating the allocation formula for FSC has been abundance based and is intended to strike a balance between providing the First Nation priority access over commercial and recreational sectors at low run sizes, with increased opportunities in years of higher abundance (e.g. 2010). Where the First Nation values a higher percentage share at low abundance for FSC, a numerical limit is part of the formula. Conversely, a lower percentage share might not be accompanied by a numerical limit, but the net effect over a period of years and a range of run sizes might not be dissimilar.

- a. These were outcomes of comprehensive treaty negotiations with many factors involved on all sides of the negotiating table. As a result, outcomes on the same issue may vary from table to table. The fact that Fraser sockeye are a relatively minor intercepted stock for Maa-Nulth and a major source of fish for FSC purposes for Tsawwassen was also a factor.
20. Where a Final Agreement is signed with an independent aboriginal group that has split from a larger First Nation, will the FSC allocation under the treaty be deducted from the FSC allocation previously provided to the First Nation?
- a. For example, will the FSC allocation provided for under the *Yale First Nation Final Agreement* be deducted from the total FSC allocation previously provided under the Sto:lo comprehensive fisheries agreement, which was meant to include the Yale Indian Band?
 - b. Will catch monitoring programs (including over-flights and surveys) be applied to each treaty group on an individual basis also?

Response 20:

The pre-treaty portion of the group FSC allocation attributable to the treaty First Nation will be deducted from the group FSC allocation.

- a. See immediately above.
- b. Yes, catch monitoring programs will be conducted by treaty First Nations consistent with funding levels provided to the First Nations and with information requirements as laid out in their treaties and licences.

Commercial Allocations

21. How is the commercial allocation or economic opportunity access determined for each First Nation? (Please answer with regard to economic opportunities or pilot sales outside of the treaty context in addition to commercial allocations in harvest agreements).
- a. Is the commercial allocation assessed on a *per capita* basis?
 - b. Is the commercial allocation assessed on an economic needs basis?
 - c. What types of information are considered in determining the commercial harvest needs or desires of a First Nation?

Response 21:

Where government programs like the Allocation Transfer Program (ATP) or PICFI apply outside of treaty, the distribution of commercial or economic access considers a variety of factors such as interest of the First Nation, location and traditional species fished, business case for successful operation of the access, current access relative to population size and other similar First Nations, availability and cost of desired licences and manageability of the access.

Pilot sales fisheries on Fraser sockeye that occurred between 1992 and 2003 were based on combined FSC and economic allocations from which individuals chose to sell a portion at their discretion. Combined allocations were negotiated and took into account recent catch levels and FSC allocations. Economic opportunity fisheries on Fraser sockeye which began in 2004 required the explicit separation of FSC and economic access prior to the fishing season.

Harvest Agreement allocations are negotiated as side agreements to treaties and are not constitutionally protected, however, some of the same considerations apply as for non-treaty commercial allocations. Commercial access and allocations in Harvest Agreements have been determined based on the commercial capacity currently “held” by the First Nation, in addition to commercial capacity that the First Nation chooses to acquire, to a negotiated level set out in the Harvest Agreement. Note that some First Nations have indicated they do not want Harvest Agreements, and some Harvest Agreements do not have allocations, only licences to be fished in the same manner as the general commercial fishery.

All First Nations economic access provided through DFO programming and agreements include the voluntary relinquishment of equivalent licences or catch shares from the general commercial fishery.

Note that although a coast wide framework for First Nations fisheries has not been completed, the overall First Nations allocation is another consideration when providing

additional communal commercial fishery access, either through DFO programming or treaty harvest agreements.

- a. Population size of a First Nation could be considered, among many other factors, in determining whether additional access might be provided.
- b. There is no specific “economic needs” assessment conducted when distributing commercial access. However, since commercial fishing is an important economic activity for many Aboriginal people, and given the high unemployment rates in many First Nations communities, DFO’s ATP and PICFI are important components of Canada’s economic development programming for First Nations.
- c. See Response 21 above.

22. Is there a maximum percentage of the fishery, or maximum number of Fraser sockeye (pieces) that will be available for allocation under all harvest agreements?
- a. If yes, what is that maximum percentage or maximum number?

Response 22:

The percentage or number of Fraser River sockeye (pieces) that might be available for harvest agreements under treaties to be signed in BC is a Cabinet confidence protected under subsection 39(2) of the *Canada Evidence Act*, and is also subject to settlement privilege.

23. If there is no maximum percentage of the fishery, or maximum number of Fraser sockeye (pieces) that will be available for allocation under all harvest agreements, is there nevertheless a target percentage or number, or a range or percentages or numbers?

Response 23:

Neither a target nor a range currently exists for harvest agreement allocations.

24. Do commercial allocations grandfather existing economic opportunity or pilot sales fisheries? If so, would this perpetuate a greater provision of economic opportunity fisheries to lower Fraser First Nations as opposed to Upper Fraser First Nations (who were not given pilot sales opportunities in the 90s)?

Response 24:

As per Response 21, current catch and allocation levels and manageability of the fishery are key considerations in negotiating economic access. Also see Response 21 for a description of how pilot sales allocations were determined. Lower Fraser First Nations’ access to this allocation is negotiated annually and is not guaranteed in perpetuity. Nevertheless, past levels do influence future potential allocations whether inside or

outside of treaties and could be considered as “grandfathering” future allocations or access.

Additional Fraser salmon economic access is being acquired through the ATP and PICFI programs and could be used to support additional inland commercial fisheries beyond the current demonstration fishery stage if they prove to be feasible and economically attractive. Given the terminal location of some potential inland First Nations fisheries, large surpluses could be available in some years that might not be harvestable in more seaward locations due to weak stock concerns in mixed stock fisheries.

25. Will commercial allocations under harvest agreements increase the use of terminal or near-terminal fisheries?

Response 25:

The move towards more terminal or stock specific harvesting of salmon, with commensurate reductions in mixed stock harvest rates is more than just a treaty harvest agreement phenomena. To the extent that inland First Nations negotiate harvest agreements for salmon, there will likely be an increase in fish caught in more terminal areas. However, increases due to harvest agreement fisheries will likely be just one component of a more general increase in stock specific harvesting in more terminal locations in response to conservation concerns for weak stocks. Any increase in terminal fisheries would be facilitated by a move to defined shares management in the overall commercial fishery and is supported by the direction for sustainable fisheries outlined in the Wild Salmon Policy. Furthermore, the Selective Fishing Policy calls for avoidance of non-target stocks or species as the first strategy in being more selective, and fishing in more terminal locations is generally consistent with this direction.

26. Will commercial allocations differ as between mixed stock or single-stock fisheries, and if so, how?

Response 26:

The same policy framework for fisheries management (see annual Integrated Fisheries Management Plan) will guide the management of all commercial fisheries whether single stock or mixed stock in nature, or whether they are conducted by the general commercial fishery or First Nations communal commercial fisheries. This is an important feature of an integrated fishery. The Wild Salmon Policy is a key component of this policy framework as are the Allocation Policy for Pacific Salmon and the Selective Fishing Policy. Commercial allocations in mixed stock and single stock fisheries will depend on stock status, fishery objectives and the management plan for the over-all fishery in any particular year.

Generally, a single stock fishery would need to only consider the status of that stock, its allowable catch and any prior harvests on that stock. A mixed stock fishery, on the other hand, would need to consider the above for all stocks within the mixture and harvest at a rate that recognizes the limits of its weakest components.

27. Is it anticipated that all treaties with Fraser River First Nations, or other First Nations on the migratory path of Fraser sockeye, be accompanied by harvest agreements relevant to Fraser Sockeye?

Response 27:

This would be the subject of table specific negotiations and depend on the interest of the First Nation in fishing Fraser sockeye versus other available options. For example, some First Nations are not seeking harvest agreements while other First Nations are very interested in them.

28. Where does the allocation room for new commercial access under harvest agreements come from?
- a. Does the harvest agreement commercial access use the notional allocations acquired from the commercial sector through PICFI or ATP? If so, will additional funds be used to acquire commercial access as more treaties are signed or will non-treaty First Nations lose access to economic opportunities now provided under PICFI as these allocations are assigned under harvest agreements?
 - b. Alternatively, does the harvest agreement commercial allocation just decrease the access of other existing commercial fishers, without a buy-back scheme?

Response 28:

Commercial access provided through harvest agreements will be mitigated through the voluntary relinquishment of existing commercial licences with funding specifically provided for this purpose as well as licences and quota already obtained from DFO programs like PICFI and ATP. Funding for these programs is limited; ATP has averaged about \$5M per year for BC and PICFI is ending in 2012.

Note that not all harvest agreements have allocations; some are simply arrangements with regard to use of commercial fishing licences that are included in the harvest agreement. In this case, the allocation room is created by the acquisition of licences in the harvest agreement.

29. The “Fishery Treaty Update” says on page 15 that “[Harvest Agreements] are consistent with DFO’s direction under Pacific Fisheries Reform”.
- a. Please elaborate on the “direction” being taken under Pacific Fisheries Reform and how the Harvest Agreement is consistent with it.

Response 29:

Under Pacific Fisheries Reform, commercial fishery arrangements for both aboriginal and non-aboriginals will be designed to support an integrated approach with defined shares harvested under common or comparable rules for all participants. Many marine fisheries are already managed using a share based approach. This change is particularly important for the salmon fishery given its conservation and economic challenges and the potential need to address allocations in inland areas under future treaty harvest agreements.

A share based management system for salmon would allow for greater flexibility in harvesting surpluses where they are available, avoiding weak stocks and supporting greater potential cooperation among existing license holders and First Nations. Defined share management for salmon has been the subject of experiments described as demonstration fisheries in both marine and inland areas since the inception of Pacific Fisheries Reform in 2005.

30. The Fishery Treaty Update says on page 15 that with respect to commercial access, “Licenses will operate under the same terms and conditions as other non-aboriginal fishers licences for those areas.”
- a. If commercial access is available under Harvest Agreements to up-river First Nations, how does this statement apply to terminal or near-terminal fisheries under harvest agreements? Does it imply that non-aboriginal fisheries would be created in such areas also?
 - b. How will commercial access in terminal and mixed-stock fisheries be operated under the same “terms and conditions?”

Response 30:

- a. This refers to licence holders in general commercial fisheries operating in areas where they are currently licensed to fish. It was not intended to imply that non-aboriginal harvesters would be authorized to fish in inland areas. At present this is not contemplated. Harvest agreement licences could, however, be fished in a terminal or near-terminal area under common or comparable rules and the same priority of access as the general commercial fishery.
- b. The current approach is for integrated commercial fisheries that operate under the same priority with common or comparable rules. In some situations, the rules in terminal and mixed stock fisheries would be identical while in others there might be flexibility in conditions such as gear and vessel parameters.

Management

31. Will the ultimate authority for fishery management decisions continue to rest with the Minister (or Minister’s delegate) under treaties?

Response 31:

Yes. This is a key bottom line for Canada that is explicitly stated in all BC treaties.

32. Will all future treaties continue to apply the Joint Fisheries Committee (JFC) model as found in the *Tsawwassen Final Agreement* for example?
- a. If the JFC model is to be applied to all future treaties, what effect will this have on future management resources? Will there be a separate JFC established for every treaty signed?

Response 32:

Not necessarily. The JFC model is one option to address the processes, roles and responsibilities of the parties in consultation and fisheries management. In addition, the treaties also provide an option for the management functions of the JFC to be carried out at the regional level in certain circumstances.

The fisheries management model under future treaties must be sustainable and affordable, address conservation needs and support effective management of treaty and non-treaty fisheries. Further, they must address issues and objectives at the appropriate geographic scale. For example, addressing the management of highly migratory species, like Fraser sockeye, must take place through regional or international processes while the management of clam fisheries could occur at a more local level.

- a. The original concept was to apply the JFC model to circumstances where one treaty was negotiated for broad groups of First Nations, such as the Nisga'a and Nuu-chah-nulth, which would limit the cumulative number of JFCs when all treaties were concluded. However, since individual First Nations and small groups of First Nations are negotiating treaties, there is concern about whether this approach is affordable, manageable and ultimately viable given the number of Joint Fisheries Committees that may result.
33. Who will be authorized to determine fishery openings and closings for treaty fisheries? Will this be the same management body that determines openings and closings for non-treaty groups?

Response 33:

Treaty First Nations will be closely involved in the decision-making process for opening and closing of their treaty fisheries. Where those decisions affect other fishery participants there will be a need for broader processes. For example, for the Fraser salmon fishery an integrated advisory and decision-making process (Integrated Harvest Planning Committee, Pacific Salmon Commission) is required for effective management of a

highly migratory, mixed stock fishery resource. Ultimate decision making authority continues to rest with the Minister of Fisheries and Oceans.

34. Treaty FSC allocations and harvest agreement commercial allocations for Fraser sockeye are generally a percentage of Canadian Total Allowable Catch (TAC) or Canadian Commercial TAC, respectively, which is an aggregate number. How will these allocations be applied to First Nations whose fishing areas contain weaker Fraser sockeye stocks? Will the TAC or commercial TAC be applied pro rata across all conservation units whether they are weak stock fisheries or not?

Response 34:

Currently the TAC or commercial TAC of Fraser sockeye is a cumulative number across all four stock aggregate timing groups. In recent years, the full TAC has not been harvested due to the presence of weak Conservation Units (CUs) within these aggregate groups. For those First Nations in more terminal areas the approach has been to only provide shares/allocation of those stocks present in or pass through the treaty where a TAC of CCTAC exists. If stocks are weak within that area then allocations will be reduced.

Therefore the TAC or commercial TAC has not been applied “pro rata” across all conservation units and the situation would be no different under treaties and harvest agreements. Effective implementation of treaty FSC and harvest agreements would benefit greatly from the introduction of a defined share basis for management, involving aggregates of First Nations and the commercial fishing sector, by facilitating more stock specific fishing arrangements. This would provide more flexibility in addressing weak CUs while permitting harvest on stronger ones.

35. Will treaties continue to allow overages and underage? If yes, what will prevent or provide disincentive for multiple “overages” from taking place in years of low abundance?

Response 35:

No. The preferred approach to managing FSC fisheries is to establish management plans and contingencies that promote effective delivery and harvesting of allocations in a manner consistent with the treaty obligation. Overage and underage provisions, while theoretically attractive, do not necessarily serve their intended purpose in a consistent manner across the highly variable and often unpredictable abundance levels that salmon typically exhibit. As in the management of FSC allocations outside of treaties, Canada and the First Nation will do their best to deliver and harvest specified allocations, respectively and make modifications to fisheries management plans in future years should persistent deviations from the treaty specified level occur.

[Home](#) > [Media Room](#) > [Ministerial Statements 2010](#)

Fisheries Negotiations at British Columbia Treaty Tables

March 2, 2010

OTTAWA - The Minister of Fisheries and Oceans Canada, the Honourable Gail Shea, today issued the following statement:

"The Government of Canada is deferring the negotiation of fisheries components at treaty tables in British Columbia that involve salmon, pending the findings and recommendations of the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River. The deferral of fisheries related negotiations will allow for treaty negotiations to be staged so that fish chapters in treaties can be informed by the findings and recommendations of the Inquiry.

"As Minister of Fisheries and Oceans, I will continue to manage and authorize BC salmon fisheries, including First Nations allocations of salmon for food, social and ceremonial purposes, and all participation in integrated commercial fisheries.

"The Fraser River sockeye salmon stocks have been in decline and the Commission of Inquiry has been established to investigate the matter. The Commissioner has been mandated with investigating the causes for the decline, assessing the current state of Fraser River sockeye salmon stocks and long term projections for those stocks, and making recommendations for improving the sustainability of the sockeye salmon fishery in the Fraser River. The Commission is expected to provide an interim report in August, 2010 followed by a final report by May 1, 2011.

"The findings of the Commission of Inquiry may have implications for management of other Pacific salmon fisheries, and it is therefore prudent to defer negotiations on the fisheries components of treaties in British Columbia.

"The deferral will not affect late stage Final Agreement negotiations with Yale First Nation, Sliammon First Nation and In-SHUCK-ch Nation, which have reached this final stage after years of good faith discussions between all parties in the BC Treaty Process.

"The Government of Canada will continue to work with all interested parties to consider issues related to conservation and sustainability of this key resource for all Canadians."

- 30 -

FOR MORE INFORMATION:

Nelson Kalil
Media Relations
Fisheries and Oceans Canada
Ottawa
613-990-7537

Nancy Bishay
Press Secretary
Office of the Minister
Fisheries and Oceans Canada
613-992-3474

Date Modified: 2010-03-02