

## ABORIGINAL FISHERIES FRAMEWORK

### A. The Fisheries Environment

- Fish is a key element of federal treaty offers in BC. The current approach to fish in treaties includes:
  - food, social and ceremonial (FSC) allocation details that are embedded in treaties with a defined Fishing Area;
  - governance structures that support resource co-management; and,
  - commercial allocations that are set out in side-agreements that are not treaty protected.
- The negotiation and implementation of First Nation fishing arrangements in BC treaties have become increasingly challenging. In recent years, several issues have emerged, including:
  - fish allocations in recent BC treaties have raised concerns that, if allocations are extrapolated to all groups, opportunities for non-Aboriginal commercial and recreational fisheries would be significantly curtailed;
  - detailed and complex fisheries arrangement are negotiated with numerous individual First Nations, creating challenges for managing fisheries which are mostly managed on a broader regional scale;
  - complex fish offers are becoming increasingly difficult to sustain, with numbers of small First Nations, in their current format given increasing fluctuations in fish abundance and more integrated management systems;
  - over the medium term the Aboriginal rights of most First Nations will need to be managed outside treaties; and,
  - the negotiation of fish chapters needs to be done early in the negotiation process, with an understanding of the cost and management implications.
- Aboriginal access to fisheries resources is an important and contentious issue. The majority of legal cases regarding Aboriginal rights in BC have focused on fishing rights.

### B. The Aboriginal Fisheries Framework

- The Aboriginal Fisheries Framework (the Framework) provides a more coherent, policy-based approach to addressing Aboriginal participation in BC fisheries and managing Section 35 rights, both inside and outside of treaty.
- The Framework will provide clear direction to address fisheries components of treaties and improve linkages between fisheries arrangements inside and outside of treaties. The objective of the Framework is to achieve fisheries arrangements that are:
  - aligned with current fisheries management approaches but adaptable to new ones;
  - responsive to environmental changes and uncertainties surrounding fisheries resources (especially salmon); and
  - deliverable, manageable and cost-effective over the long-term in order to mitigate the risk of post treaty litigation.
- The Framework encompasses three main components, including:
  - **Key Principles** that will guide the negotiation and implementation of fisheries arrangements;
  - an **Allocation Strategy** which establishes a coast wide endpoint for First Nation fishery allocations to guide the negotiation of fisheries arrangements inside and outside of the treaty process, and
  - **New Fisheries Arrangements** that better align with DFO policies and objectives and establishes arrangements that are more manageable and flexible.

#### *Key Principles*

- The Framework establishes the following overarching principles which will guide the development and implementation of fisheries arrangements, inside and outside of treaties:
  - the authority of the Minister of Fisheries and Oceans to manage fisheries and fish habitat is respected;
  - conservation is the first priority;

- FSC fish access has priority after conservation and allocations will be established and harvested separate from commercial allocations;
- recognition that all resource users must be accommodated (a fishery for all);
- commercial allocations will have the same priority as the general commercial fishery, operating under common rules for all participants;
- First Nations will be provided with an expanded collaborative role in integrated fisheries management, subject to the Minister’s authority;
- fisheries allocations will be held communally; and,
- treaty arrangements must be deliverable, manageable and affordable.

### *Allocation Strategy*

- The Allocation Strategy establishes end-point cumulative allocation outcomes for salmon and non-salmon species that will guide all fisheries negotiations with all BC First Nations, inside and outside of treaties.
- **FSC allocations** take into account: the potential existence of a First Nation’s fishing rights; the availability of fisheries resources; recent harvest levels; and reasonable need.
- **Commercial allocations** also takes into account a number of factors including: a number of groups are seeking to establish rights to commercial fisheries access through the courts (Lax Kw’alaams, Haida and Douglas groups.); many BC First Nations, located in remote coastal areas and watersheds where there are few economic opportunities, view fisheries as a potential driver for socio-economic development; the share of communal commercial fisheries access held by First Nation, in most species, particularly those that are most lucrative, (e.g. Halibut, Prawn, Sablefish,) is relatively small and much less than salmon in most cases; and, the level of communal commercial access must balance the government-wide objective of supporting the economic development objectives of First Nation communities and the interests of all participants (i.e., room for all).
- BC First Nations’ allocations (FSC and Commercial), provided through existing arrangements, amount to about 30% of the salmon and 15% of the non-salmon species. The Strategy establishes coast-wide allocation outcomes of XX% for salmon and YY% for non-salmon.<sup>1</sup>
- Implementing the Allocation Strategy will require a concerted effort in collaboration with DIAND and Justice, to negotiate allocations at specific tables within the understood fisheries outcomes.

### *New Fisheries Arrangements*

- The Framework will support a shift to more cost-effective and manageable watershed or regional fisheries arrangements, inside and outside of treaties, which align with broad fisheries management approaches and policies such as the Wild Salmon Policy and the Sustainable Fisheries Framework.
- The Framework will establish or advance fisheries management arrangements that:
  - reflect **regional or watershed or ecosystem approaches**, where appropriate;
  - incorporate **reliable and consistent fisheries monitoring and reporting**;
  - are **credible, science based and inclusive** of relevant local and traditional knowledge, expertise and practices with respect to the management of fisheries and the conservation and protection of fish and fish habitat;
  - **strengthen integration** with DFO objectives and priorities, including securing integrated commercial fisheries where all participants have the same priority of access and operate under common rules;
  - move to broader collaborative fisheries arrangements at **tribal groupings and watershed levels** that are more affordable, manageable and sustainable over the long-term; and,

<sup>1</sup> Figures are available from the Assistant Deputy Minister, Fisheries and Aquaculture Management, Department of Fisheries and Oceans. **REDACTED**

- establish **manageable fisheries arrangements** that can respond to the volatility and unpredictability of future harvest levels (particularly salmon), provide for stability inside and outside the treaty process and are **sufficiently funded** to mitigate post treaty litigation risks.
- Under the New Fisheries Arrangement component of the Framework, DFO will adopt a differentiated approach for treaty settlements, with the scale and scope of a treaty group's involvement in collaborative decision making processes differing depending on the size of the treaty group and with allocation arrangements varying depending upon the species and their current management regimes.
- In addition, DFO will seek to establish arrangements that respond to the volatility and unpredictability of future harvest levels, particularly for salmon where, in periods of low abundance, Canada would have the flexibility of reducing FSC allocations committed to in treaties (possibly to zero) to meet the conservation imperative.

### **Moving Forward**

- DFO will be exploring options that are significantly different from the current approach to treaty negotiation in BC in order to manage section 35 rights outside of the current treaty process. These options will be guided by the objectives and principles of the Framework and may include:
  - **Sectoral Treaty Agreements on Fisheries** Negotiation of separate fisheries treaties with First Nation aggregates (language groups) linked to watershed or ecosystem-based management, independent of other treaty elements.
  - **Consultation and Accommodation** Alternative non-treaty options for addressing s.35 fishing rights will be explored including non-treaty arrangements and continued risk-based management through enhancements to current Aboriginal fisheries programming (e.g., Aboriginal Fisheries Strategy, Aboriginal Aquatic and Resource Management Program, Pacific Integrated Commercial Fisheries Initiative) or designing a broad policy approach which involves declaring overall First Nation shares for salmon by major watershed and other species (FSC and commercial) and supporting First Nation processes to develop sharing arrangements and to participate in the broader integrated management processes.
- Following the process of policy development and engagement, the Minister of Fisheries and Oceans will seek any necessary policy or financial approvals from Cabinet, Treasury Board or Central Agencies, as required.