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MEMORANDUM FOR THE RDG, PACIFIC REGION

**REQUEST FOR INCREASED SOCKEYE
ALLOCATION FOR COWICHAN TRIBES**

(Decision Sought)

SUMMARY

- A structured approach to deal with requests for increased salmon FSC allocations is currently being developed within the Region but will not be ready for the 2005 fishery.
- Addressing Cowichan Tribes will likely be a priority under this policy due to currently low FSC allocation of sockeye, and historic records that indicate residency in the Fraser River for purposes of fishing sockeye. It is recommended that an interim step be taken by increasing the sockeye allocation for Cowichan Tribes by 10,000 in 2005.
- Sockeye allocations for other First Nations will remain unchanged pending development of a comprehensive policy to guide assessment of First Nation's needs.

Background

- First Nations throughout the South Coast Area have indicated that current FSC allocations provided for salmon do not meet their needs and they are demanding increases. The Cowichan request is for an increase of 130,000 sockeye.

- For many First Nations, sockeye are the preferred salmon species for FSC purposes.
- From the First Nations point of view, allocations, originally negotiated in the early 1990's, are arbitrary and have not kept pace with increasing population levels. Some First Nations state they have never agreed to the quantum provided in agreements and communal licences, and are demanding substantial increases in recognition of the right. Douglas Treaty bands claim a "right to fish as formerly" which they contend is infringed by restrictive allocations.
- Current allocations have not been based on a consistent policy framework. Instead allocations were based on a variety of factors, including the Department's view of availability of stocks, capacity to fish, historic catches, etc. Consequently, current allocations vary considerably from band to band. For example, the combined allocation to the 21 First Nations on southeast Vancouver Island results in an average of 10 sockeye per person, but ranges from 5 to 22 per person on a band by band basis.
- With the advent of a relatively low cost cooperative fishery provided by the First Nations Marine Society, many First Nations are now able to achieve their allocations and are demanding more fish.
- First Nations in the SCA are increasingly expressing frustration with the lack of response by the Department to their demands for more sockeye. Some have reacted by catching more sockeye than allocated, while others refuse to sign AFS agreements.

Analysis / DFO Comment

- A structured approach is required to deal with requests from First Nations for increased salmon FSC allocations. A regional initiative is currently underway to develop a policy for assessing FSC needs but will not be completed in time to provide direction for 2005 fisheries. In the interim the Department should take steps to deal with the highest priority issues Solicitor-Client Privilege while leaving the majority of requests in abeyance until policy is available.
- In the SCA, the Cowichan Tribes stands out as a First Nation whose needs should be addressed. Reasons include:
 - There is clear documentation of Cowichan's historic presence (including wooden houses) in the lower Fraser River (e.g. Dewhirst report, November 2003), which strengthens their claim to Fraser Sockeye, and could leave DFO in a difficult legal position if Cowichan challenges a very low allocation in court. (e.g. Page 30: "With the coming of the sockeye in July, all the able-bodied Cowichans left for the Fraser River for two months...")
 - The Cowichan are the largest First Nation in the province and have a relatively low allocation. The 20,000 allocation results in an average of 5 sockeye per person

relative to the average of 10 on southeast Vancouver Island and higher elsewhere.

- Cowichan do not have significant alternatives (mainly local chum and chinook).
- Cowichan Tribe's have indicated an intention to fish sockeye in the lower Fraser, under protocols with Fraser First Nations.
- Cowichan chinook are a management concern, with low returns in coming years requiring management actions in all fisheries. Addressing Cowichan Tribes needs with sockeye may be used in negotiations to reduce in-river impact by the tribes, and thereby alleviate management actions in the Strait of Georgia sport fishery.
- Cowichan Tribe's have offered a more collaborative and cooperative management approach both with DFO and other First Nations between Duncan and Nanaimo.

Public Interest Privilege

- In addition to Fraser River sockeye, the Department is likely able to offer chinook from hatchery rack fisheries such as Nitinat and Qualicum.

Recommendations / Next Steps

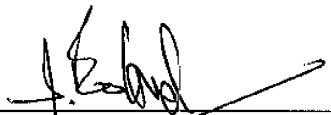
Public Interest Privilege

- With respect to anticipated reaction from commercial groups; the recommended increase in allocation of **Public Interest Privilege** is small relative to the total marine First Nation catch of Fraser sockeye and within the annual variation of catch. Therefore there is marginal additional risk of exceeding the 250,000 allocation to marine First Nations. This means there is no anticipated impact on Fraser sockeye management for 2005.
- It will be important to manage expectations of other First Nations, some of which have low allocations of sockeye. In fact, 65% of the South Coast First Nations covered by AFS agreements would require about 58,000 sockeye to bring them up to per capita level proposed for the Cowichan. The requests for these bands will have to be flagged when the policy and decision making framework are ready.
- The recommendation partially addresses one of four issues the Hul'qumi'num Group (including First Nations from Duncan to Chemainus) indicates are necessary to

achieve agreement and a collaborative working relationship. These issues include 1) adequate FSC allocations, 2) Clause 3b in AFS agreements linking the contents of the agreement to Treaty, 3) definition of Fishing Area in the agreement, and 4) providing economic opportunity. The other issues have also been addressed.

- The increase will not compromise any treaty arrangements with the Cowichan Tribes given that there has been no interim agreement on fish allocations to date.

Wilf Luedke
A/Area Director, South Coast Area



I concur,
Paul Sprout
Regional Director General

G. Thomas / W. Luedke / M. Kotyk / D. Radford / le