



# Fisheries Consultations with First Nations in British Columbia

## ***Western Canada Aboriginal Law Forum***

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# Fisheries Consultations with First Nations in British Columbia

- DFO Responsibilities
- Why Consult
- Current Context – First Nations / Fisheries
- Challenges
- DFO Approach
- Best Practices





# DFO Responsibilities

- Healthy and Productive Aquatic Ecosystems
- Safe and Accessible Waterways
- Sustainable Fisheries and Aquaculture
  - Objectives Regarding Aboriginal Fisheries
    - Maintain the Honour of the Crown
    - Provide access for Food Social and Ceremonial purposes
    - Provide commercial access for economic benefits
    - Provide role in fisheries management
    - Strengthen relationships with First Nations





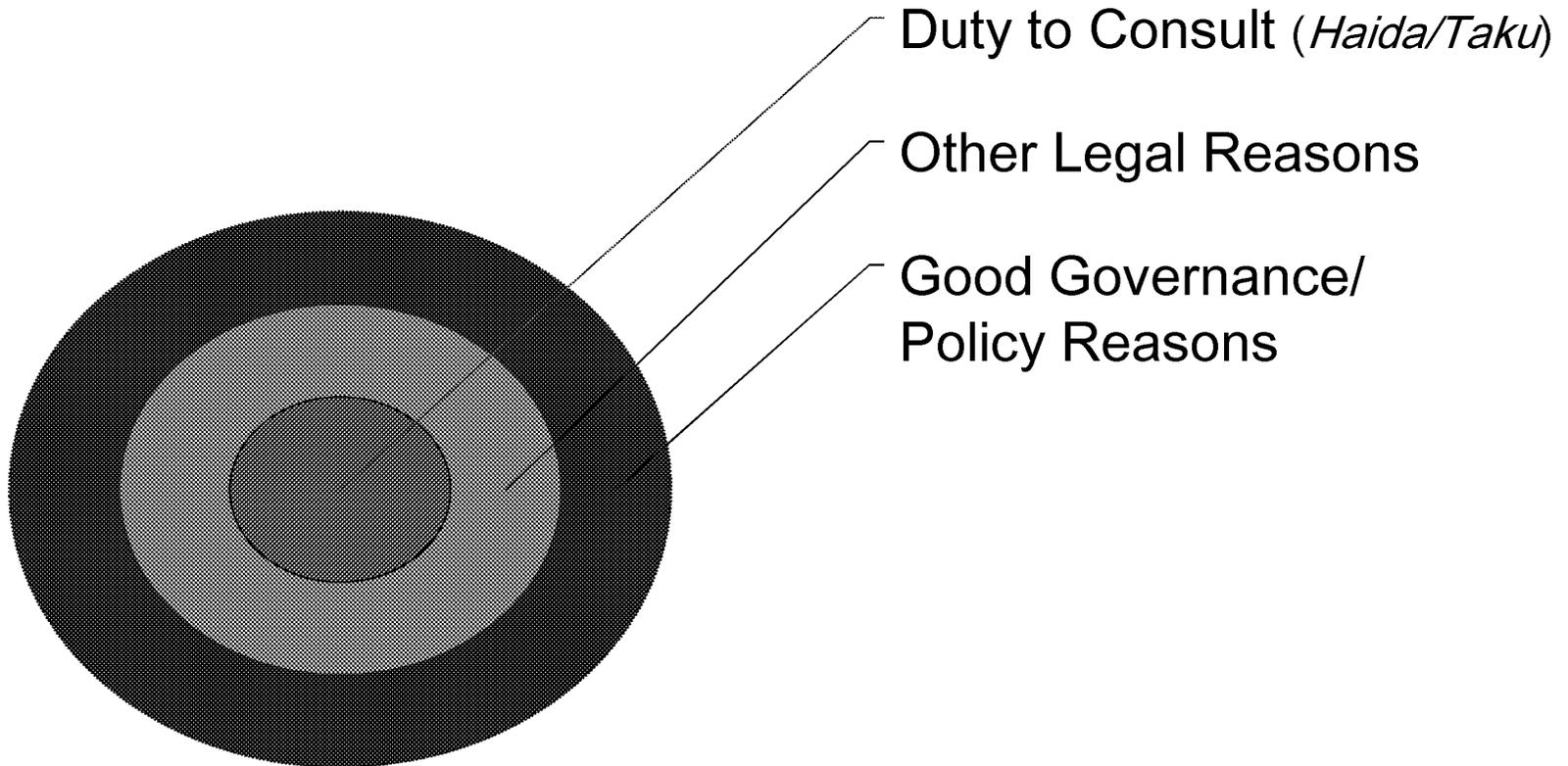
# Aboriginal Fisheries Considerations

- Communal nature of an aboriginal right to fish for food, social and ceremonial (FSC) purposes
- Aboriginal fishing for FSC purposes has first priority in management decisions after conservation
- Allow flexibility within consistent approach to address differences among First Nations
- Aboriginal fishing for FSC purposes should occur in areas that were used historically by the First Nation
- Negotiate rather than litigate
- Consult



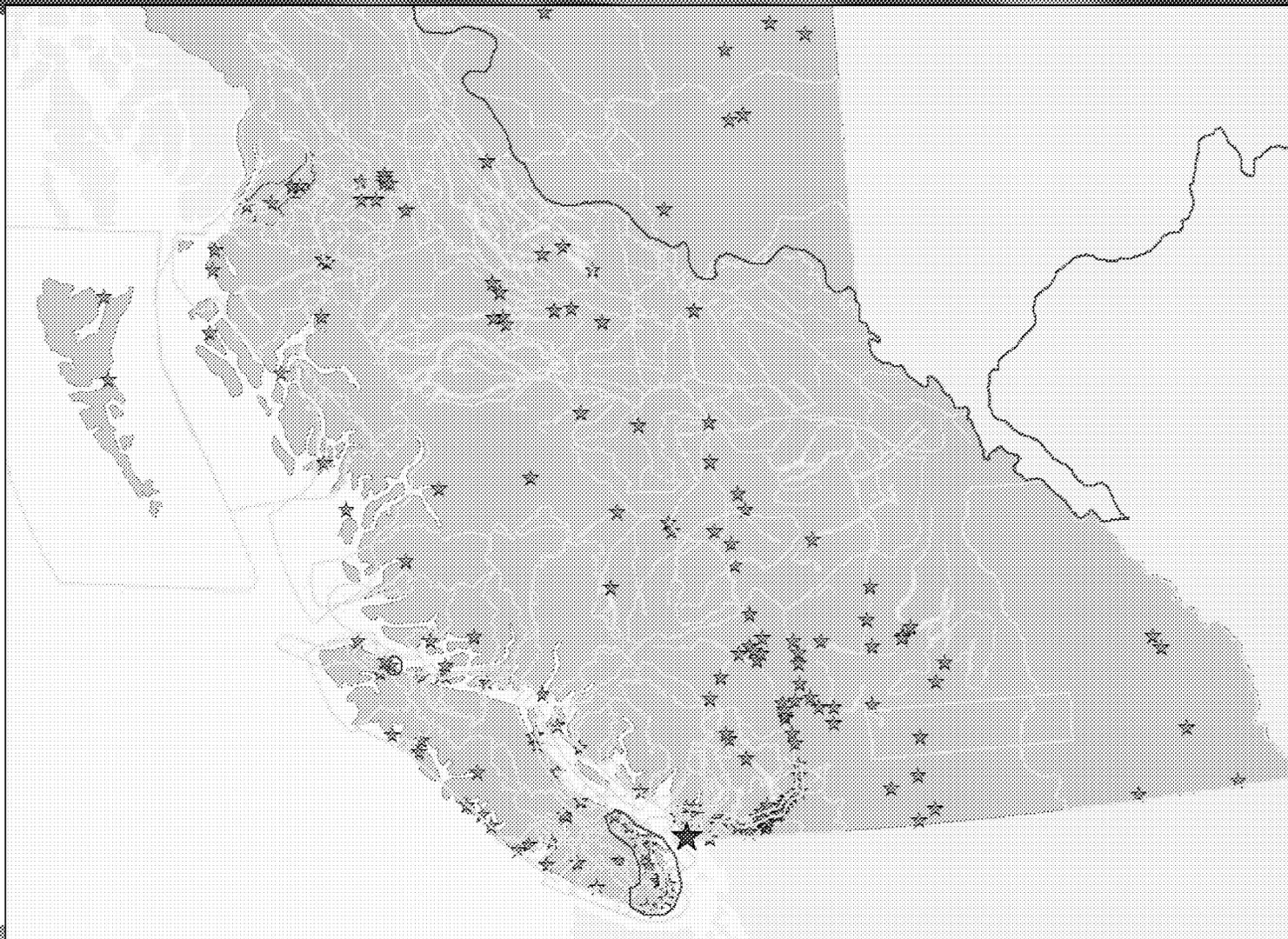


# Why Consult?





# First Nations Context



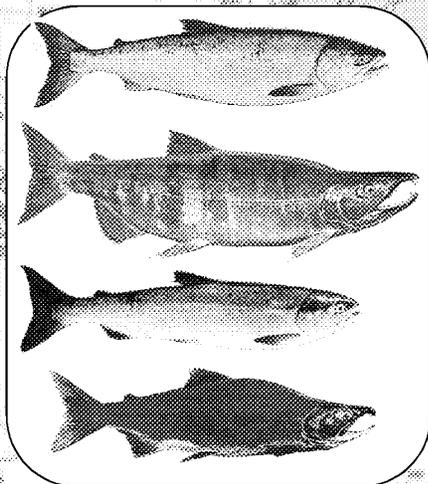
Canada

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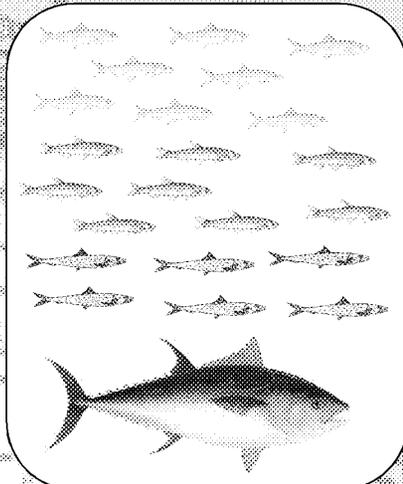


# Fisheries Context

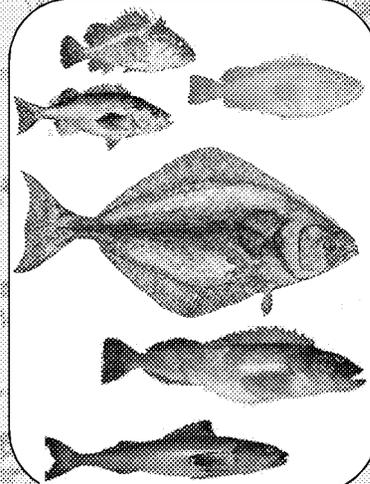
## Salmon



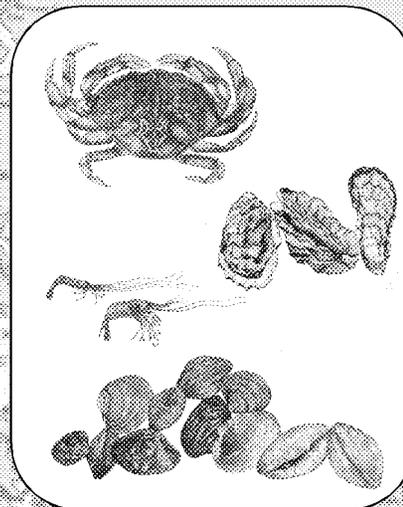
## Pelagics



## Groundfish

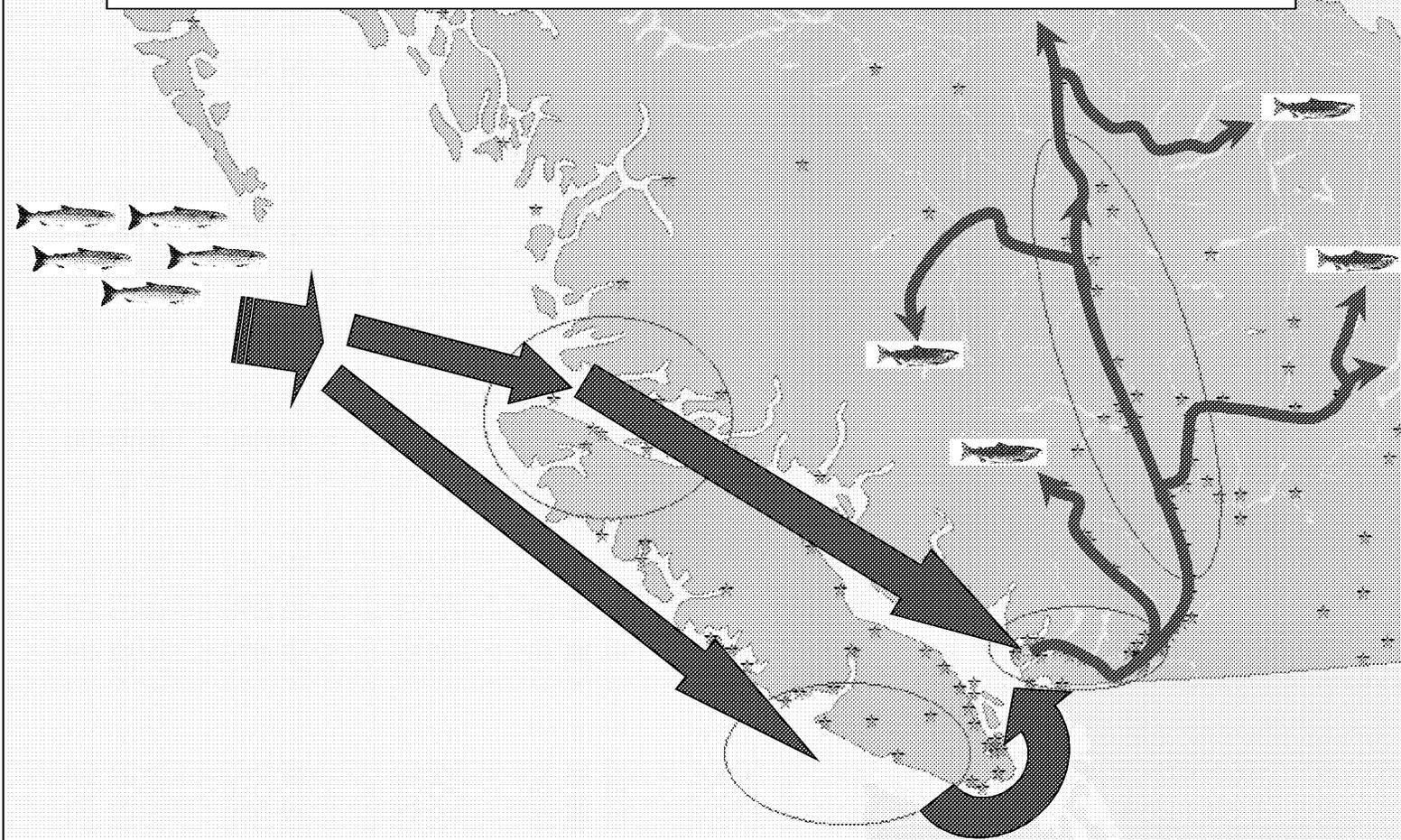


## Shellfish





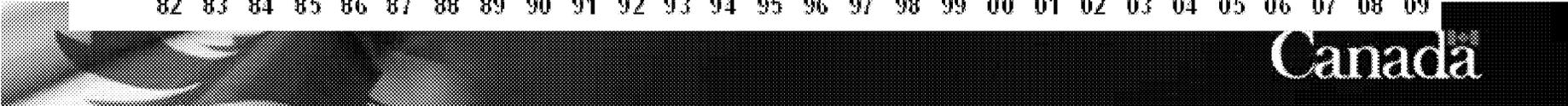
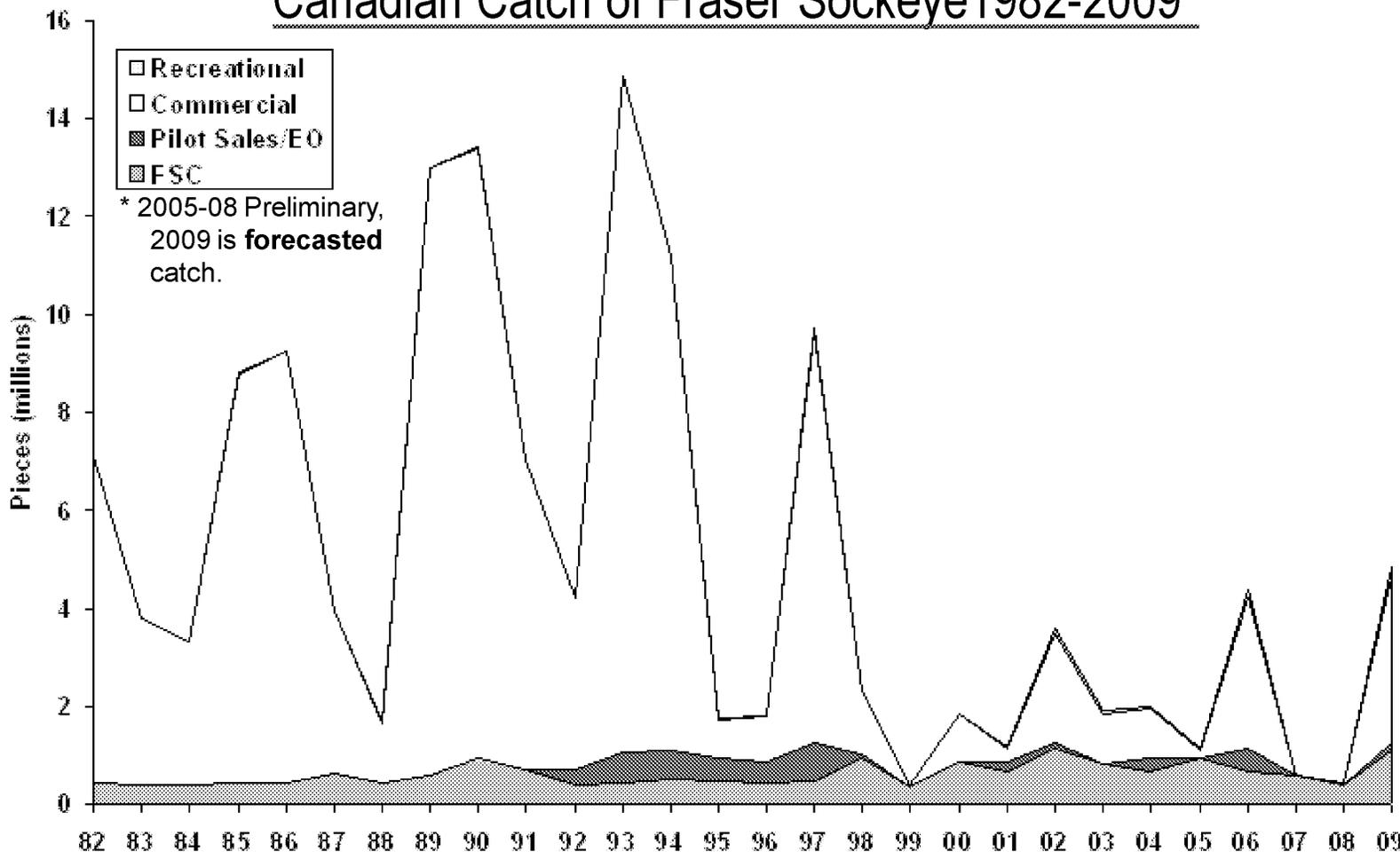
## First Nations and Fisheries Context – Fraser Salmon





## Fisheries / First Nations Context

### Canadian Catch of Fraser Sockeye 1982-2009\*





# Consultation Challenges

- Undefined Aboriginal Rights
- Overlapping First Nations interests
- Competing interests for limited resource
- Capacity
- Evolving case law
- Representation
- Governance structures





# Governance Structures

Geographic Scale

Strength of Influence

Unit of FN Organization

Unit of DFO Organization

Strength of Influence

*high*

*low*

Local

Band

Field officers

Watersheds

Large Tribal Council /  
linguistic group

Field officers /  
managers

Area

Ecosystem umbrella group  
(e.g. Fraser Watershed  
Secretariat)

Area chief / Area  
director

Region

Regional umbrella group  
(e.g. FNFC )

RDG / Regional  
Directors

National

National Organizations (e.g.  
AFN )

ADM / DM / Minister

*low*

*high*





# DFO Approach

## Guiding Principles for Consultation

### Legal Principles

- Honour of the Crown
- Reconciliation
- Reasonableness
- Meaningful Consultation
- Good Faith
- Responsiveness

### Principles from Practice

- Mutual Respect
- Accessibility and Inclusiveness
- Efficiency
- Timeliness
- Transparency





# DFO Approach Programs and Negotiations

- Aboriginal Fisheries Strategy
- Aboriginal Aquatic Resource and Oceans Management Program
- Pacific Integrated Commercial Fisheries Initiative
- Treaty Negotiations





# DFO Approach Consultation Processes

## Formal

- Address statutory requirements (CEAA, SARA)
- Coordinate targeted regional consultation forums for DFO policies
- Address specific issues - six step process

## Planning Processes

- Include variety of levels (community, watershed, and provincial levels)
- Include as part of operational decision making and planning
- Encourage collaboration of First Nations (First Nation organizations)
- Encourage participation in collaborative integrated processes





# Best Practices

- Build in time for consultation: go early & often
- Develop joint consultation approach, where feasible
- Anticipate capacity limitations
- Be prepared to alter your approach and be flexible on outcomes
- Understanding of history and culture is key
- Develop ongoing relationships and work collaboratively
- Make it a part of daily business

