

DEPARTMENT OF FISHERIES AND OCEANS

Aboriginal Policy and Governance Risk Profile

Final Report

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1 INTRODUCTION

1.1 ABORIGINAL POLICY AND GOVERNANCE MANDATE

DFO, as the agency of the Government of Canada with primary responsibility for oceans and the management and protection of fisheries, has had increasing involvement with Aboriginal groups over the past 15 years. Today, DFO is one of the federal departments with the largest on-the-ground presence in coastal Aboriginal communities and is therefore in the position to contribute to the broader objectives of improving the socio-economic conditions of Aboriginal peoples and their communities. DFO's expanding responsibilities require engaging with Aboriginal groups on a broad range of issues, including oceans management, habitat management and planning, environmental assessment and species at risk.

The Aboriginal Policy and Governance (APG) Directorate is in the business of managing risks and does so through the implementation of several programs targeted to Aboriginal fishers (notably the Aboriginal Fisheries Strategy, the Aboriginal Aquatic Resource and Oceans Management program, the Longer-term Marshall Response Initiative and the Atlantic Integrated Commercial Fisheries Initiative), offering policy advice to the Department on Aboriginal fishing issues, negotiating agreements on the management of Aboriginal fisheries, helping integrate these into the overall management framework, advising federal negotiators on land claims and self-government, and promoting fisheries-related economic opportunities for Aboriginal communities.

These activities are based on the following objectives:

- Enhance the involvement of Aboriginal groups in the fisheries management decision-making process using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making
- Increase involvement of Aboriginal groups in the decision-making processes in other areas of DFO's responsibility including integrated oceans management, species at risk, habitat management, scientific research and aquaculture development
- Improve the stability of the west and east coast fisheries by resolving commercial access issues
- Manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the *Constitution Act*, 1982
- Contribute to the broader Government of Canada objective of improving the quality of life of Aboriginal people through greater access to economic opportunities, such as commercial fishing.

1.2 APG OPERATING ENVIRONMENT

APG operates in a complex environment that involves the monitoring and management of situations and issues that have an elevated capacity for risk. This environment requires the balancing of the rights and interests of Aboriginal people with the interests of other fishers. The policy framework that supports APG's activities is constantly under pressure to address these oftentimes competing interests while at the same time adapting to changes stemming from court decisions and new government directions. The resulting instability affects a large number of Aboriginal communities and non-Aboriginal commercial fisherman.

Much of APG's policy mandate is driven by the need to implement Supreme Court of Canada (SCC) decisions respecting Aboriginal rights related to fisheries. In particular, SCC decisions have dealt with:

- First Nations' rights to take fish for food, social, and ceremonial purposes (*Sparrow*);
- First Nations' rights to fish for commercial purposes (*Marshall, Van der Peet*); and
- Consultation where asserted rights may be affected by government activities or policies (*Taku River, Haida*).

While the SCC has indicated that Aboriginal and treaty rights exist in certain circumstances, the Court has provided little direction as to the interpretation of their decisions. As a result, Aboriginal and non-Aboriginal fishers have differing views on the implementation of SCC rulings. This can lead to situations where individuals take actions based on their interpretation of the law (i.e., protest fisheries), which can result in tense situations on the water. Parties will also seek clarity on interpretation by initiating further litigation, thereby placing greater strain on the relationships between Aboriginal and non-Aboriginal resource users and DFO. In the worst case scenario, escalating tension can lead to situations involving property damage, assault, and, potentially, death.

In addition to SCC decisions, Aboriginal fishing rights have also been evolving as treaty negotiations progress and land claims are settled. As a result, DFO must manage the fisheries in a manner that takes into account the fisheries regimes established under land claims. This additional complexity requires that DFO employees be aware of the differing regimes and able to incorporate the differences when making management decisions.

In this complex and charged environment, DFO, through APG, works to manage risk and diffuse tension through the negotiation of program agreements that: provide for the development of capacity to participate in the co-management of fisheries resources; provide financial assistance to support scientific and stock assessment activities; and provide for access to communal commercial fishing opportunities. In addition, APG provides guidance related to the development of policies to provide added clarity and common reference points for all fisheries resource users.

DFO's Aboriginal programs have greatly improved the relationships with Aboriginal organizations. The experience gained within APG through the delivery of these programs, combined with the evolving relationships with Aboriginal communities, has greatly aided the management of fisheries. The department is now, however, faced with the fact that this level of experience is being lost at a greater pace than it is being replaced as employees retire. The loss of corporate memory puts at risk DFO's ability to continue to mitigate a tense environment.

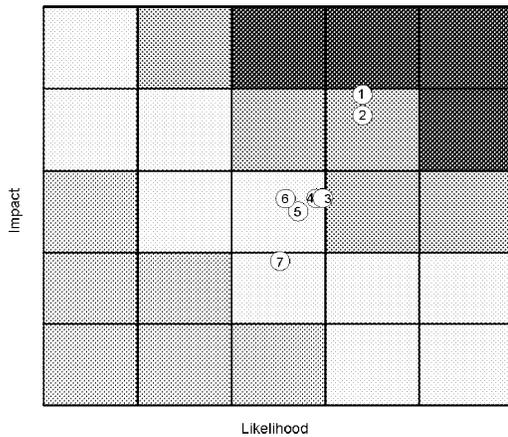
APG RISK PROFILE

The next section of the report describes in further detail the risk environment to which the APG is exposed. It identifies the risks, their causes, consequences if the risks materialize, the significance of the risks (these were assessed by APG specialists), what is being done about it now, and what APG plans to do about it in the near future.

2 OVERVIEW OF RISK PROFILE

The following risk map, risk map legend, and list of risks provide an overview of the APG program risk profile. The risks are listed in order of severity.

Risk Map



Risk Map Legend

Risk Level	Actions
Extreme	Escalation to highest level. Action in < 6 months. May require significant investment or reallocation
High	Escalation to DM minus One. Action in < 6 months. Optional escalation to DM
Moderate	Escalation to DM minus Two. Action could involve mitigation or monitoring. May require changes to policies, procedures or resources
Low	No Escalation, managed within existing policies, procedures or resources. May be over-control

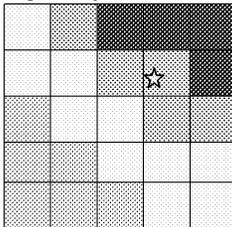
List of Risks

Risk Name	Risk Event
1. Human Resource Capability	There is a risk that DFO –APG may not have skilled and knowledgeable human resources to deliver its programs.
2. Litigation	There is a risk that legal action may be taken against DFO/GOC/Provincial Governments.
3. Confrontations	There is a risk that physical or serious non-physical confrontations may arise between Aboriginal and non-Aboriginal fishing groups, between various Aboriginal fishing groups, and between DFO and Aboriginal or non-Aboriginal fishing groups.
4. Resource Misalignment	There is a risk that financial resources and accountability requirements will not align with program legal obligations and objectives.
5. Negotiation and Implementation of Agreements	There is a risk that DFO agreements with Aboriginal communities will not be negotiated or implemented.
6. Exceptions to Policy Framework	There is a risk that policy exceptions or positions outside of policy will be made in the course of program delivery.
7. Information for Decision Support	There is a risk that timely decision-making will not be supported by sufficient and appropriate information.

3 DETAILED RISK ANALYSIS

This section of the profile provides a detailed analysis of the risks that may impede the achievement of APG objectives. The risks were identified and assessed taking into consideration the existing controls or risk mitigation practices that were in place at the time of the assessment. As a result, it is the residual risks that were ranked. The risk profile that follows provides a detailed description of the current risk exposure faced by APG, which may impede the achievement of its objectives. The APG risks are presented in order of severity.

Human Resource Capability



3.1 RISK 1: HUMAN RESOURCE CAPABILITY

Risk Definition

There is a risk that DFO –APG may not have skilled and knowledgeable human resources to deliver its programs.
 This risk was ranked High and is illustrated on the risk map to the left as orange.

Risk Drivers

The following describes the causes that are generating the risk of not having skilled and knowledgeable human resources to deliver its programs:

- The demographic trends, more specifically, the large proportion of pending retirements, is causing corporate knowledge to decrease faster than it is being created. (e.g., there has been leadership turnover in 4 regions at the time the report was written)
- The HR competencies required are highly specialized and not easily replaced. These competencies include, among others; cultural awareness relating to Canada’s Aboriginal peoples, management through complex legal implications, and negotiation skills
- There is a lack of appropriate succession planning taking place within the department. The current environment of resource reductions and Full-Time-Employee (FTE) caps does not enable succession planning, employee training and development

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place to manage the risk of not having skilled and knowledgeable human resources to deliver its programs. Note that these controls were taken into consideration when the risk was ranked. They include:

- An informal approach of rotational staffing assignments allows for some cross-training of employees

Possible Consequences

The following describes the possible consequences that could emerge if the risk of losing skilled and knowledgeable human resources materializes:

- The geographically specific expertise built up by employees will be lost to normal job turnover if there is no systematic transfer of knowledge
- The lack of appropriate skills and expertise in APG employees can cause incorrect decisions to be made during negotiations or policy development leading to undesirable events such as litigation

Objectives at Risk

If DFO –APG were to lose a critical number of skilled and knowledgeable human resources the following APG program objectives would most likely be compromised:

- Enhance the involvement of Aboriginal groups in the fisheries management decision-making process using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making
- Improve the stability of the west and east coast fisheries by resolving commercial access issues
- Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the Constitution Act, 1982
- Contribute to the broader Government of Canada objective of improving the quality of life of Aboriginal people through greater access to economic opportunities, such as commercial fishing

Risk Response Strategy

This risk was deemed unacceptable by APG Management. As a result the following risk response strategy was defined to address the above risk.

Staffing Plan

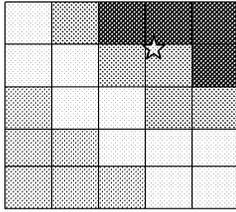
Aboriginal Policy and Governance should develop a staffing plan (succession plan) to ensure an ongoing workforce that is: competent in matters around fisheries and Aboriginal issues and interests; and, appropriate in numbers and distribution to ensure an appropriate reach across the country and the Department. A staffing plan should be developed in collaboration with Corporate Services. The Staffing plan should include at a minimum such elements as:

- work load
- competency requirements
- number of resources
- expected turnover (through retirement or departures, etc.)
- marketing strategy to recruit and retain employees

APG Position Paper on Need to Change Recruitment Process

APG should prepare a position paper that rationalizes the need for the Department to revisit the recruitment process at DFO to allow for an effective succession planning and implementation within the existing HR caps policy.

Litigation



3.2 RISK 2: LITIGATION

Risk Definition

There is a risk that legal action may be taken against the Government of Canada through DFO, or against the Provincial Governments.

This risk was ranked High and is illustrated on the risk map to the left as orange.

Risk Drivers

The following describes the causes that are generating the risk that legal action may be taken against the Government of Canada, or against the Provincial Governments:

- Court decisions provide guidance on how or what is to be done in certain circumstances. When these directions are vague, it can lead to varying interpretations from the Aboriginal fishing groups, Aboriginal individuals, non-Aboriginal commercial fishing groups and DFO or other governments
- Approaches to fisheries management regimes are changing and may impact Aboriginal and treaty fishing rights. Examples of this driver are the shift from:
 - harvesting on an open and competitive basis, to limiting the harvest yield with quotas
 - determining rules on a species by species basis, to using an ecosystem approach
- Interpretations of new policy or legislation vary significantly. For example, the Species at Risk Act's (SARA) impact on the rights-based fisheries process is viewed differently by different parties
- Strategic litigation is a common tool used by both Aboriginal and non-Aboriginal fishing groups. Such litigation is used to clarify existing treaty rights by both Aboriginal and non-Aboriginal groups.

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place to manage the risk of litigation. Note that these controls were taken into consideration when the risk was ranked. They include:

- Policy responses and legislation already in place acts as a natural control
- Agreements are negotiated with Aboriginal communities to provide a norm for dealing with certain situations
- Training for DFO field officers is provided to improve the quality of work performed and reduce the probability of litigation
- Regular consultation with the Department of Justice takes place to reduce the probability of litigation
- DFO provides meaningful consultation and accommodation with affected Aboriginal groups on issues of concern to minimize the probability of future litigation

Possible Consequences

The following possible consequences could emerge if the risk of litigation materializes:

- Financial costs will be incurred to defend any legal actions taken;
- Refocusing staff from their regular duties of program implementation to deal with administration of the litigation process;
- Litigation ending in a court decision may bring added clarity on interpretations (a positive consequence);
- Deterioration of relationship between Aboriginal communities and DFO;
- Uncertainty and inability to take a firm position in ongoing negotiations will be likely while a court decision is pending. This will also create delays in negotiation of and implementation of agreements; or
- Court decisions can result in uncertainty and instability for other fisheries resource users, which can drive further litigation or confrontation.

Objectives at Risk

If litigation were to occur the following APG program objectives would most likely be compromised:

- Enhanced involvement of Aboriginal groups in the fisheries management decision-making process using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making;
- Increased involvement of Aboriginal groups in the decision-making processes in other areas of DFO's responsibility including integrated oceans management, species at risk, habitat management, scientific research and aquaculture development;
- Improved stability of the west and east coast fisheries by resolving commercial access issues; and
- Continued management of the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the Constitution Act, 1982.

Risk Response Strategy

This residual risk was deemed unacceptable by APG Management. As a result the following risk response strategy was defined with a program representative to address the above risk.

Management and Policy Framework

Finalize the Aboriginal policy framework to provide guidance to APG staff with respect to goals and objectives related to working with Aboriginal groups, with the possibility to expanding the framework so it can be used by the department at large.

Awareness-raising Strategy for APG Staff

Keeping staff (APG) informed of obligations (legislative requirements, e.g., SARA, Treaties), departmental decisions, and court decisions will provide a consistent representation to Aboriginal groups on legal and policy matters. The provision of cultural awareness sessions will provide for a more proficient delivery of services. Such a strategy should also include consideration for elements such as:

- Departmental position on legal matters. This can be developed in consultation with Justice, INAC and Environment Canada;
- Cultural attributes of relevant Aboriginal communities;
- Appropriate support materials for awareness-raising with staff;
- A mechanism to track the exposure of APG staff to awareness-raising activities and which includes criteria to identify the frequency at which APG staff should be refreshed; or
- Ensure ongoing quality of the awareness-raising activities through an evaluation of awareness raising by staff.

Communication Strategy with Aboriginal Groups

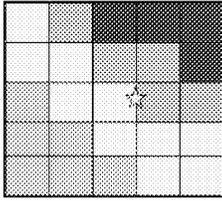
A communication strategy addressing planned activities and projects with all key stakeholders has been identified as a key part of a risk strategy to reduce the likelihood of litigation. This strategy should:

- identify key groups to be reached
- define means and practices for communicating
- define a mechanism to assess whether communication had sufficient content and reach and whether the efforts were effective

Identify Hotspots and Leverage Opportunities

Develop a risk-based tracking system to identify situations where strategic litigation could arise and then define management options to address each one. This should lead to the identification and leveraging of events/opportunities to have the right people in place to manage the situation.

Confrontations



3.3 RISK 3: CONFRONTATIONS

Risk Definition

There is a risk that physical or serious non-physical confrontations may arise between Aboriginal and non-Aboriginal fishing groups, between various Aboriginal fishing groups, and between DFO and Aboriginal or non-Aboriginal fishing groups. This risk was ranked Moderate and is illustrated on the risk map to the left as yellow.

Risk Drivers

The following scenarios may lead to the possibility of confrontation:

- The APG program is unstable and its ongoing alignment with policy direction is at risk, which creates situations of uncertainty on the ground;
- Decisions, policy or programs that support Aboriginal economic opportunity fisheries, and fishing for Food, Social and Ceremonial (FSC) requirements are often perceived as unfair by non-Aboriginal fishing groups and drive the risk of increased tension;
- DFO decisions, policies or programs that are interpreted by Aboriginal people as restricting their Aboriginal or treaty rights may cause them to consider civil disobedience as a means of making their views known;
- DFO decisions, policies or programs that are interpreted by the commercial fishing industry as favouring Aboriginal fishers over non-Aboriginal fishers may cause them to consider civil disobedience as a means of protesting the direction taken by the department;
- A uniform interpretation of Supreme Court decisions government-wide (also inter-regional within DFO) does not always exist and thus can be interpreted to suit local circumstances. This inconsistency could favor some groups and disfavor others, thereby increasing tension on the water, which may lead to confrontation.

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place to manage the risk of confrontation. Note that these controls were taken into consideration when the risk was ranked. They include:

- The negotiation and implementation of Agreements acts as a control to avoid events that may lead to confrontations
- DFO attempts to provide meaningful consultation and accommodation with affected Aboriginal groups on issues of concern to minimize the probability of future conflicts
- DFO regularly holds discussions with fishing associations to keep informed of the environment as well as to inform the associations on the goings-on at DFO
- There is a focus on capacity-building and on allocating communal access to Aboriginal groups. This tends to reduce the confrontations originated by the Aboriginal groups, but at the same time may lead to confrontations originated by non-Aboriginal groups

Possible Consequences

The following describes the possible consequences that could emerge if the risk of confrontations materializes:

- As a result of confrontations, some of the physical impacts include property damage, injury or death. Depending on the severity of a specific outcome, there is potential for high-level political fallout and litigation.
- Non-physical impacts arising from confrontations include mistrust towards DFO, obstacles to future arrangements and agreements, and lack of cooperation among parties. These impacts have the potential to affect other Aboriginal and non-Aboriginal groups which are not involved in the particular confrontation.
- There is potential for international pressure to be put on Canada to alter its position on Aboriginal issues. An example of this is the incident at Burnt Church, where an Aboriginal fishing boat was accidentally struck and damaged and then was widely publicized, sparking international media interest and reaction
- Spill-off consequences of confrontations may include disruptions in DFO program implementation

Objectives at Risk

If serious confrontations were to occur the following APG program objectives would be most likely be compromised:

- Improve the stability of the west and east coast fisheries by resolving commercial access issues
- Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the Constitution Act, 1982

Risk Response Strategy

This risk was deemed unacceptable by APG Management. As a result the following risk response strategy was defined with a program representative to address the above risk.

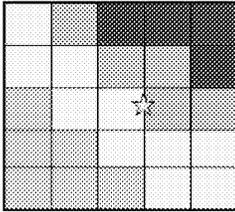
Work with Conservation and Protection (C&P) to identify hotspots

- Establish a working protocol with C&P, so that potential conflict “hot spots” are integrated into C&P operations planning; and
- Develop a working agreement with resource management and C&P to leverage their monitoring and assist in the identification of “hotspots”.

Provide training on cultural awareness and dispute resolution

- Training on cultural awareness and dispute resolution techniques should consider such elements as the following:
 - When cultural intolerance is the cause of the hotspot, implement a proactive communication strategy to balance perceptions, including elements that would reach the community at large and leverage peer/community pressure; and
 - When evidence of a breach of agreement or regulation is evident, initiate a timely and measured intervention/discussion through discussions with C&P to reduce the potential for confrontation.

Resource Misalignment



3.4 RISK 4: RESOURCE MISALIGNMENT

Risk Definition

There is a risk that financial resources and accountability requirements will not align with program legal obligations and objectives.

This risk was ranked Moderate and is illustrated on the risk map to the left as yellow.

Risk Drivers

The following describes the causes that are generating the risk that financial resources and accountability requirements will not align with program legal obligations and objectives:

- DFO priorities may not adequately reflect the significance of APG’s objectives. Unintentional bypassing of Aboriginal fishing issues in priority setting or policy making on DFO’s part could lead to a misalignment of resources;
- The Department of Indian and Northern Affairs Canada (INAC) as the lead for the federal treaty negotiation process, provides funding to DFO for the implementation of treaties. Funding levels do not often correspond to the costs associated with meeting the treaty obligations;
- Resources allocated to APG may not be aligned with the human resource capacity required to address the level of funding (e.g., initial *Marshall* Implementation). APG may not be able to act on a new funded priority due to its lack of capacity, which can occur if the balance between O&M versus G&C funding structures do not align with obligations and internal capacity; and
- Court decisions take effect immediately, while the adjustment in reaction to the decision is usually delayed. This delay impacts on resource allocation and alignment until such time as additional resources, if any, are secured.

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place and that reduce the risk of having resource misalignment materializing. These were taken into consideration when the risk was ranked. The current risk mitigation includes:

- APG Program and business planning (e.g., development of Management Control Frameworks, etc.) takes into account the requirements and sources of funding;
- Laws, regulations, and policies in place provide a sound foundation for requesting resources and therefore a level of assurance that resources are aligned with program objectives and legal obligations;
- Partnerships with INAC and other government departments are formed to communicate requirements; and
- Legal risk management through regular consultations with the Department of Justice is carried out to ensure that legal obligations are being addressed by DFO according to the provisions of the law.

Possible Consequences

The following describes the possible consequences if resources are not aligned or proportionate with the program obligations and legal requirements:

- Program elements do not get implemented, or get implemented in an inconsistent manner. This in turn may cause a loss of credibility with Aboriginal or non-Aboriginal groups, confrontations, or litigation;
- Funds can lapse, which may cause the loss of any ongoing support from Treasury Board. As a result, senior management may question the validity of resources required to deliver programs;
- There may be pressure on other segments of DFO and their resources (e.g., Conservation & Protection).

Objectives at Risk

If resources were misaligned with program objectives and legal obligations the following APG program objectives would be most likely be compromised:

- Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the Constitution Act, 1982

Risk Response Strategy

This risk was deemed unacceptable by APG Management. As a result the following risk response strategy was defined with a program representative to address the above risk.

Treaty Implementation Charter/MOU With INAC

Develop a Treaty Implementation Charter or MOU with INAC and other department stakeholders. This should include a jointly developed funding model for treaty implementation. Such a model would assist in better assessing the cost of implementation and then securing the necessary funds to support it.

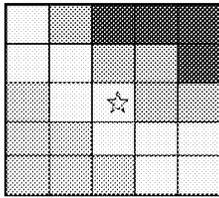
A DFO Inter-sector Aboriginal Caucus

Establish a working committee (Aboriginal caucus) at DFO with appropriate senior management engagement to discuss Aboriginal issues and interests as it pertains to the DFO's mandate and sectors (e.g., resource management, C&P, Science, Oceans, and Policy). This would provide a common understanding of DFO's obligations and current Aboriginal issues and interests.

Proactively Communicate Intervention Strategies to Parliament

Develop a proactive approach to communicate intervention strategies to Parliament, which is aimed at avoiding conflict or litigation

Negotiation and Implementation of Agreements



3.5 RISK 5: NEGOTIATION AND IMPLEMENTATION OF AGREEMENTS

Risk Definition

There is a risk that DFO agreements with Aboriginal communities will not be negotiated or implemented.

This risk was ranked Moderate and is illustrated on the risk map to the left as yellow.

Risk Drivers

The following describes the causes that are generating the risk that DFO agreements with Aboriginal communities will not be negotiated or implemented:

- Delays in the receipt of guidance, or lack of clear guidance from Justice Canada to interpret Supreme Court decisions, do not allow DFO to take the appropriate positions in a timely manner;
- A uniform interpretation of Supreme Court decisions government-wide (also inter-regional within DFO) does not always exist, affecting consistent implementation across the country;
- New federal directives providing different guidance or a change in business tactics may alienate Aboriginal communities, which then make them less likely to cooperate in negotiating or implementing agreements;
- Lack of a government-wide response to issues has caused confusion and frustration within Aboriginal communities and diminishes the government’s credibility (e.g., the Government of Canada Consultation Policy, and the demonstrated lack of interdepartmental coordination);
- At times, DFO employees unintentionally alienate communities because of a lack of cultural awareness or sensitivity;
- Aboriginal leaders do not always have complete community support to implement agreements; some individuals within some of the communities act as independent agents and do not act consistently with agreements;
- Priorities of other government departments and of other levels of government change, and positions among the different parties differ. As a result, fishing communities may be receiving varying directives on fishing rights;
- A lack of administrative and program capacity within some Aboriginal communities makes it difficult for them to negotiate effectively or implement any required actions;
- Differing views respecting the status of species to be listed under the *Species at Risk Act* (SARA) and the application of related conservation measures in areas where Aboriginal or treaty rights exist. This can lead to a general sense of mistrust between Aboriginal groups and DFO/GOC regarding species permitted to be fished under treaty that may be identified as being at risk under SARA. This lack of trust tends to increase the length of time required to reach agreements; and
- Resource misalignment (see risk #4).

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place to manage the risk that DFO agreements with Aboriginal communities will not be negotiated or implemented. Note that these controls were taken into consideration when the risk was ranked. They include:

- Relationship building through interaction between DFO area offices and Aboriginal groups increases the likelihood of success in negotiating and implementing agreements;
- Capacity development requirements are included during negotiations along with the re-sourcing of coordinators to enable implementation of capacity building initiatives;
- Amendments are made to existing agreements in response to requests for changes to make them more relevant to current circumstances, thereby increasing the likelihood that an agreement will be followed; and
- Consultation and information sharing is practiced during negotiation and implementation phases of agreements.

Possible Consequences

The following describes the possible consequences that could emerge if DFO agreements with Aboriginal communities were not negotiated or implemented:

- Not reaching agreements causes uncertainty within the fishing community at large, especially in providing clarity with respect to rights of Aboriginal fishing groups. This uncertainty may lead to: confrontations between Aboriginal and non-Aboriginal communities, DFO enforcement and Aboriginal fisheries, litigation and damage to the reputation of DFO.

Objectives at Risk

If DFO agreements with Aboriginal communities were not negotiated or implemented the following APG program objectives would most likely be compromised:

- Enhance the involvement of Aboriginal groups in the fisheries management decision-making process using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making
- Increase involvement of Aboriginal groups in the decision-making processes in other areas of DFO's responsibility including integrated oceans management, species at risk, habitat management, scientific research and aquaculture development
- Improve the stability of the west and east coast fisheries by resolving commercial access issues

Risk Response Strategy

This risk was deemed unacceptable by APG Management. As a result the following risk response strategy was defined with a program representative to address the above risk.

Leverage Opportunities and Events

APG should develop a tracking mechanism to identify opportunities and events that can be leveraged for negotiation. This should be coordinated to have the right people attending such opportunities and events to maximize the successful negotiation of agreements.

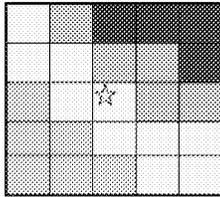
Standardized Reporting

Develop a DFO position regarding the harmonizing of agreements stemming from federal directives. The harmonization recommendations would focus on standard reporting for Aboriginal groups and standard communication strategies with these same groups.

DFO Protocol for Hearing Aboriginal Concerns about OGDs

Develop a DFO protocol for capturing and communicating concerns raised by Aboriginal groups as it relates to the affairs of OGDs. This mechanism will facilitate the advancement of the DFO agenda, by reducing frustration that some Aboriginal groups may have with the federal government initiatives– since their concerns will be heard. The focus of the protocol would provide a mechanism for DFO officers to communicate concerns to OGDs and inform the community that this has occurred.

Exceptions to Policy Framework



3.6 RISK6: EXCEPTIONS TO POLICY FRAMEWORK

Risk Definition

There is a risk that policy exceptions or positions outside of policy will be made in the course of program delivery.

This risk was ranked Moderate and is illustrated on the risk map to the left as yellow.

Risk Drivers

The following describes the causes that are generating the risk that policy exceptions or positions outside of policy will be made:

- There is always a high-level of pressure to conclude negotiations in a timely manner while achieving multiple agendas. To alleviate the pressure, exceptions may be made to the policy approach;
- The policy framework is unplanned and ad hoc policy statements are made regularly. This adds complexity to the process of program delivery and reduces the certainty of what is the most recent or most correct policy or position; and
- Positions or commitments made by other sectors within DFO are often undertaken without coordination or input from APG. This can affect the expectations of other parties and stakeholders and increase the pressure to live up to the positions stated.

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place to manage the risk of having exceptions to policy. Note that these controls were taken into consideration when the risk was ranked. They include:

- Agreements already in place act as controls in providing appropriate direction;
- Regular consultation with Legal Services to determine alternative approaches, and if an exception has to be made, to reduce the potential impact;
- Provision of training on the policies and guidelines of the program and of standard government requirements to staff; and
- Provision of timely and accurate briefings to the Minister and senior management reduces the chances of inconsistent policy statements.

Possible Consequences

The following describes the possible consequences that could emerge if the risk of having exceptions to policy were to materialize:

- If exceptions to policy are made, precedents will be created that can cause difficulties down the road in future negotiations and program delivery; and
- Increased tension between Aboriginal and non-Aboriginal fishing groups may arise from providing different policy approaches or levels of program delivery to different groups, which can lead to confrontations and litigation

Objectives at Risk

If timely exceptions to policy were made the following APG program objectives would most likely be compromised or not achieved:

- Improve the stability of the west and east coast fisheries by resolving commercial access issues
- Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the *Constitution Act*, 1982

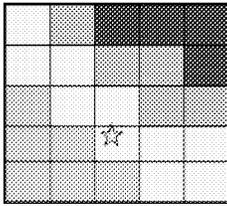
Risk Response Strategy

This risk was deemed unacceptable by APG Management and where a risk strategy should be developed. As a result the following risk response strategy was defined with a program representative to address the above risk.

Management and Policy Framework (as previously mentioned)

A DFO Inter-sector Aboriginal Caucus - (As previously mentioned)

Information for Decision Support



3.7 RISK7: INFORMATION FOR DECISION SUPPORT

Risk Definition

There is a risk that timely decision-making will not be supported by sufficient and appropriate information. This risk was ranked Moderate and is illustrated on the risk map to the left as yellow.

Risk Drivers

The following describes the causes that generate the risk that timely decision-making will not be supported by sufficient and appropriate information:

- The appropriate infrastructure, tools, and procedures are not in place to track data including information required to respond to the centre for funding purposes;
- Some pertinent information is not collected (e.g., FSC harvest data, catch monitoring). This deficiency reduces the quality of information used in making important decisions;
- APG consistently deals with requests from ATIP, the Minister’s office, Aboriginal groups and others that are required within a short turn around. The need for quick responses may mean that not all the relevant information can be assembled, possibly leading to incomplete responses; or
- DFO employees informally retain and share information (corporate knowledge). There is no adequate formal mechanism for retention and retrieval of knowledge.

Current Risk Mitigation

Listed below are the controls or current risk mitigation practices that are in place to manage the risk of having decisions not being supported by sufficient and appropriate information. Note that these controls were taken into consideration when the risk was ranked. They include:

- Paper filing systems are used to store and manage information;
- A universal electronic filing system is being implemented across the department;
- Development of electronic databases to deal with data and knowledge management is ongoing; and
- The precautionary approach to fisheries management is being used to guide decisions where data is incomplete or non-existent.

Possible Consequences

The following describes the possible consequences that could emerge if timely decision-making is not supported by sufficient and appropriate information:

- The extra effort required to retrieve information and the lack of information management capacity divert resources away from other activities required to achieve objectives, creating ineffective and or inefficient program delivery
- Inappropriate decisions could be made or repeated. Also, the decision making process could be delayed
- DFO would have to gather dispersed information in support of litigation, thereby consuming significant resources
- The lack of information means that DFO's legal position in litigation may be weakened
- Mistrust along with loss of credibility of DFO with its clients and stakeholders can occur if an inappropriate decision is made

Objectives at Risk

If timely decision-making is not supported by sufficient and appropriate information the following APG program objectives would most likely be compromised:

- Enhance the involvement of Aboriginal groups in the fisheries management decision-making process using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making
- Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the *Constitution Act*, 1982
- Contribute to the broader Government of Canada objective of improving the quality of life of Aboriginal people through greater access to economic opportunities, such as commercial fishing

Risk Response Strategy

This risk was deemed unacceptable by Management. As a result the following risk response strategy was defined to address the above risk.

Database to track KPI

APG in collaboration with IMTS to develop a database to track the relevant data required to support agreements throughout the regions and to collect such data for input into the database.

4 INTERACTION BETWEEN THE APG RISKS

The risks defined for APG are not isolated risks, but in fact interact with each other. When the likelihood of a risk increases or when the risk materializes, it escalates the likelihood of the other risks, and in some instances it increases the severity of the impact when other risks materialize. Although this type of risk profile is not entirely unique to APG, the APG risks are closely connected and one could view them as one risk with multiple components. To facilitate their readability and to better understand their complexity, they are presented in this report as distinct risks.

Risk Interactions

This table show the interactions between risks:

APG Risks	Other APG Risks and how they are affected						
	HR Capability	Litigation	Confront.	Resource Misalign.	Negotiation & Implement Agreements	Exceptions to Policy Framework	Information for Decision Making
Human Resource Capability	-	D	I	D	D	D	D
Litigation	I	-	N	D	D	D	D
Confrontations	I	D	-	I	D	D	I
Resource Misalignment	D	D	I	-	D	D	D
Negotiation and Implementation of Agreements	I	D	D	I	-	D	N
Exceptions to Policy Framework	N	D	D	N	D	-	N
Information for Decision Making	N	I	I	I	D	D	-

Legend

Items	Descriptions
D	Directly escalates the other risk
I	Indirectly or in part escalates the other risk
N	Minimal or no effect
-	Not applicable

5 CONCLUSION AND RECOMMENDATION

5.1 CONCLUDING STATEMENT

This risk profile identifies seven risks to which Aboriginal Policy and Governance is faced. These risks range from high to moderate in significance. Management has decided that the risks are unacceptable and that action is required to reduce their likelihood of occurring and/or their impact if they did occur. As a result risk response strategies have been outlined for each risk.

5.2 RECOMMENDATION

Although risk response strategies have been defined to reduce the likelihood or impact of the risks materializing, APG should further detail the risk response strategies; identify an owner and a due date to ensure their completion.

The implementation of the risk response strategies should be monitored for effectiveness and changes should be made to ensure risks are managed within the tolerance level of management and the department.

APPENDIX A RISK CONCEPTS

RISK DEFINED

Within the context of this report, a risk is defined as:

- an event that may have negative or undesirable consequences on objectives
- an expression of the likelihood of an event occurring and a description of its impact(s) in terms of the organization's objectives

While risk is generally associated with negative, unwanted consequences, positive opportunities may arise from responsible risk-taking. Nonetheless for the purpose of this report, "positive" risks, as used in some circles, were not identified.

RISK DRIVERS

Risk drivers are the causes or sources of risk. Given the right conditions risk drivers can cause a risk event to materialize. Risk drivers can be the business conditions, internal or external, which inherently pre-dispose operations to risk. Standard risk drivers include: operational complexity, degree and recency of change, number of dependencies, legislative or other compliance requirements, knowledge requirements, and geographical dispersion.

CONTROLS

Controls should be viewed broadly as any action taken to reduce the likelihood and/or impact of risks and thus, to help achieve objectives.

RESIDUAL RISK

Residual risk is the net risk to which an organization is exposed. It is the remaining level of risk *after* controls or risk mitigation practices are considered.

POTENTIAL CONSEQUENCES TO RISK

If a risk event materializes, impacts will be felt. Consequences are a descriptive list of likely impacts. Identifying consequences provides context when ranking the impact of the risks.

APPENDIX B METHODOLOGY

PURPOSE

The purpose of this report is to present the risk profile for DFO's Aboriginal Policy and Governance (APG) program. The risk profile will provide a framework to develop guidelines for APG and DFO program delivery and decision-making for DFO officers.

SCOPE

The scope of the assignment and, consequently the risk profile is exclusively limited to the events that potentially have a negative or undesirable impact on the achievement of APG's program objectives as described in the background of this report. It is not a risk assessment of entities beyond either the APG program or its stakeholders unless otherwise specified in the program objectives.

METHODOLOGY

The approach used to develop the risk profile was multi-phased and is described in detail below:

Risk Identification

Key APG program documentation was reviewed to gain an overview of program objectives and activities.

Following this, two teleconference interviews were conducted with key APG officials (one from Gulf Region and the other from Pacific Region) to identify risk factors that they are facing in program delivery. The DFO IRM standard set of risk factors was used on which to base questions on when conducting the interviews. A workshop was also held in Ottawa with APG representatives from HQ and the regions¹ to further probe areas of risk using the standard risk factor questionnaire. The outcome of this phase was a preliminary list of risks, some of the risk drivers or causes of risks and possible consequences if the risks materialized.

The risk factors used included the following:

- Degree of complexity
- Degree of change
- Legislative or compliance requirements

¹ The list of individuals consulted is included in Appendix A

- Degree of knowledge
- Degree of dependencies
- Degree of geographic dispersion

Risk Assessment

The goal of this phase of the assignment was to validate the preliminary list of risks, risk drivers, current mitigation measures, and possible consequences if the risks materialized.

To this end, a one-day workshop was held with APG program officials from across the regions. Following the validation process, workshop participants assessed the risks according to likelihood of occurrence and the impact if they did occur using anonymous voting technology and departmental standard scales for likelihood and impact.

The outcome from the workshop was used to refine the definition of the APG risk profile and to develop the APG risk map.

APPENDIX C PARTICIPANTS FROM APG

Participation in the Risk Profiling exercise took part in telephone interviews, a risk identification workshop and a risk assessment workshop.

Telephone Interview Participants

Participant	Position	Region
Mel Kotyk	Senior Regional Negotiator	Pacific
Bernard Thériault	Acting Director, Aboriginal Fisheries	Gulf

Risk Identification Workshop Participants

Participant	Position	Region
Ian Redmond	Chief, Special Projects	Head Quarters / NCR
Peter Levi Jr.	Co-Management Development Officer	Gulf
Gary Weber	Senior Advisor, Resource Management	Maritimes
Jacqueline Perry	Staff Officer, Fisheries Management	Newfoundland and Labrador
Terry Bedard	Implementation Negotiator	Pacific
Sam Stephenson	Regional Program Coordinator	Central and Arctic

Risk Assessment Workshop Participants

Participant	Position	Region
Ian Redmond	Chief, Special Projects	Head Quarters / NCR
Robert Fibich	Coordinator, Aboriginal Fisheries	Quebec
Terry Bedard	Implementation Negotiator	Pacific
Gary Weber	Senior Advisor, Resource Management	Maritimes
Sam Stephenson	Regional Program Coordinator	Central and Arctic
Tim Lutzac	Senior Staff Officer, Aboriginal Fisheries / Marshall Team Division	Gulf

Risk Treatment Work Session

Participant	Position	Region
David Balfour	Director General, Aboriginal Policy and Governance	Head Quarters / NCR
Ian Redmond	Chief, Special Projects	Head Quarters / NCR

Risk Management Strategy Work Session

Participant	Position	Region
Ian Redmond	Chief, Special Projects	Head Quarters / NCR

APPENDIX D LINKING RISKS TO OBJECTIVES

The following matrix identifies risks and the key objectives the risk would impact if it materialized.

Risk Name	Objectives				
	1	2	3	4	5
1. Human Resource Capability: There is a risk that DFO –APG may not have skilled and knowledgeable human resources to deliver its programs.	X		X	X	X
2. Litigation: There is a risk that legal action may be taken against DFO/GOC/Provincial Governments.	X	X	X	X	
3. Confrontations: There is a risk that physical or serious non-physical confrontations may arise between Aboriginal and non-Aboriginal fishing groups, between various Aboriginal fishing groups, and between DFO and Aboriginal or non-Aboriginal fishing groups.			X	X	
4. Resource Misalignment: There is a risk that financial resources and accountability requirements will not align with program legal obligations and objectives.				X	
5. Negotiation and Implementation of Agreements: There is a risk that DFO agreements with Aboriginal communities will not be negotiated or implemented.	X	X	X		
6. Exceptions to Policy Framework: There is a risk that policy exceptions or positions outside of policy will be made in the course of program delivery.			X	X	
7. Information for Decision Support: There is a risk that timely decision-making will not be supported by sufficient and appropriate information.	X			X	X

The Objectives of Aboriginal Policy and Governance are as follows:

1. Enhance the involvement of Aboriginal groups in the fisheries management decision-making process using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making
2. Increase involvement of Aboriginal groups in the decision-making processes in other areas of DFO’s responsibility including integrated oceans management, species at risk, habitat management, scientific research and aquaculture development
3. Improve the stability of the west and east coast fisheries by resolving commercial access issues

4. Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the *Constitution Act*, 1982
5. Contribute to the broader Government of Canada objective of improving the quality of life of Aboriginal people through greater access to economic opportunities, such as commercial fishing