

Issues

Small meal deals?

Remove references to AFS (to improve acceptance in the external review)

Any need for discussion here on economic fishery mandates?

Review the Interim Access guidelines and comment on its feasibility

**DECISION GUIDELINES
FOR
EVALUATING REQUESTS
TO CHANGE THE
PROVISIONS OF FSC MANDATES**

DRAFT 2: June 27th, 2005

NOTE: This draft has been prepared for the FSC Allocation Working Group. All statements need to be verified and should not be misconstrued as official DFO policy.

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- Salmon WG
- (Substitutes)

Executive Summary

(To be inserted)

List of Necessary Revisions

1. Check which mandates and Communal Licences cover the following bands or groups of bands:

- Liard River 502
- Dease River 504
- Moricetown 530
- Gitanmaax 531
- Kispiox 532
- Glen Vowell 533
- Hagwilget Village 534
- Gitsegukla 535
- Gitwangak 536
- Saulteau First Nations 542
- Fort Nelson First Nation 543
- Prophet River Band, Dene Tsa Tse K'Nai First Nation 544
- West Moberly First Nations 545
- Halfway River First Nation 546
- Blueberry River First Nations 547
- Doig River 548
- New Westminster 566
- Penticton 597
- Kwadacha 610
- McLeod Lake 618
- Haida not covered by any mandate? (Old Massett Village Council 669, Skidegate 670)
- Lax-kw'alaams 674
- Kanaka Bar 704
- Skuppah 707
- Nee-Tahi-Buhn 726
- Skin Tyee 729

2. Include comparison with treaty provisions (final and draft)

- Nisga'a Village of Gingolx 671
- Nisga'a Village of New Aiyansh 677
- Nisga'a Village of Laxgalt'sap 678
- Nisga'a Village of Gitwinksihlkw 679

3. Review Communal Licences

4. Make it very clear throughout that "per-capita" calculations are intended only for rough comparisons, not as the basis for allocation calculations.

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1. Introduction

Brief history of Food, Social, and Ceremonial Fisheries under the Aboriginal Fisheries Strategy

The 1990 *Sparrow Decision* of the Supreme Court set the legal context for aboriginal rights to fish, and generated an intense effort to provide First Nations with equitable and structured access [BH: is this really true?] to marine resources for dietary and cultural needs. DFO, as the department responsible for managing marine resources, took the lead in this initiative through the national *Aboriginal Fisheries Strategy (AFS)*. Although AFS is a national program, it has a strong emphasis in the Pacific Region. To reflect the diverse use of marine resources, these non-commercial fisheries now explicitly include harvests for food, social, and ceremonial purposes (FSC), but the exact definition is still evolving. Appendix 1 contains an overview of the legal context for First Nation's fisheries.

The initial focus of the AFS program, in the early 1990s, was to negotiate a first suite of agreements that would cover all FSC fisheries in BC. Depending on local circumstances, these agreements were negotiated with individual bands, or with administrative bodies representing several bands (e.g. tribal councils, fisheries commissions). The allocations captured in these initial agreements were based on variety of considerations, including levels of catch at the time and local abundance of each species.

To this date, not all bands have signed AFS agreements, and many of the signatories are requesting revisions to fish allocations associated with existing agreements due to increased populations, a strong cultural awakening, and increased capacity to catch fish. The on-going treaty process also creates an incentive to push for increased FSC allocations, because these allocations can become the starting point for the fisheries chapter in treaty negotiations.

Current Practices and Concerns

Current inconsistencies in FSC allocations range from inequities in the allocated amount to local differences in practical implementation. Most fundamentally, the interpretation of mandated FSC allocations differs considerably among DFO staff:

- **Number of fish** (FSC Mandate, Communal Licence) vs. **Opportunity** (openings specified in fishing plans)

- **Upper limit** (i.e. FN is allowed to catch up to the specified number of fish, subject to abundance and considerations for co-migrating stocks or species) vs. **Target** (i.e. DFO strives to provide the specified amount, acknowledging that actual amounts can vary from year to year, but seeking to maintain a long-term average close to the specified number) vs. **Exact Requirement** (i.e. The specified number captures the exact dietary, social and ceremonial requirements, and efforts are made to provided this requirement every year)

These different interpretations raise a broad range of issues, and a critical first step in developing and implementing a decision-making framework for FSC allocations is to ensure a common understanding among DFO staff. The first part of this report (Ch. 2) describes a proposed framework for defining, interpreting, and reviewing FSC allocations.

Depending on the interpretation, a wide range of criteria may have been considered in any one allocation in past years. Also, local circumstances have resulted in a patchwork of approaches by DFO staff in different areas:

- **Communal Licences (CL):** In some cases the CL are set to equal the amounts in FSC mandates, while in other the CL is set below the FSC Mandate to allow for abundance-based adjustments. There are even some scenarios where the sum of allocations under the CL for individual bands exceeds the FSC Mandate for an aggregate of bands. Finally, there are Communal Licences for fisheries where the FSC Mandate specifies no allocation.
- **Sales Component:** In some areas (e.g. Lower Fraser), the allocation under the Communal Licence is divided into FSC fish and Sales fish, and the split is negotiated each year. In other areas, all sales of fish harvested under Communal Licence are strictly illegal.

Each of these issues, with specific examples, is discussed in more detail later in this report.

Project outline

The AFS program and the management of FSC fisheries have evolved over the last 15 years. As DFO staff worked to address the local issues, inconsistencies invariably developed. As a first step towards addressing these inconsistencies, an interim guidance document was developed and distributed to staff in January 2005: *Pacific Region - Interim Assessment Framework and Procedures for Addressing Changes to First Nation Food, Social and Ceremonial Allocations and Fishing Locations*. This report is the next step in the process to review and streamline the administration of FSC fisheries in BC. DFO is undertaking this initiative in response to three specific developments:

- Increasing concerns among First Nations about inequities in current allocations and lack of a transparent decision-making processes
- The province-wide response to *Treaties and Transition: Towards a Sustainable Fishery on Canada's Pacific Coast* (by D.M. McRae and P.H. Pearse) and *the Report by the First Nation's Panel on Fisheries*.
- Increased requests for in-season increases in FSC allocation when runs appear abundant.

This project has two components that complement each other. Looking back, we review current allocations and identify how widespread the different approaches are across the region. Looking forward, we propose a framework for consistent interpretation of FSC allocations and clearly identify which criteria should be considered when setting FSC amounts and choosing locations for FSC fisheries. Specific products under development are:

- Up-to-date information database on FSC Mandate allocations, and commercial opportunities that DFO has provided to individual First Nations
 - **Process Framework** for FSC mandates and other management tools (e.g. Communal Licences) -> Draft proposal in Chapter 2 of this report
 - **Decision Framework** for evaluating requests to change the provisions of FSC mandates -> First step are the decision criteria in Chapter 3 of this report
 - Priority list of mandates for review, based on current inconsistencies
- Describe internal review process for this report: Sal WG, RMC?
- Salmon Working Group

- RHQ: Fisheries Management Species Coordinators (Salmon, Groundfish & Shellfish Coordinators)
 - Treaty and Aboriginal Policy
 - Review and comment by Aboriginal Affairs Advisors and Resource Managers
 - Review by Treaty and Aboriginal Policy (Director, TAP Senior Negotiator, AFS Manager, AAROM Coordinator)
 - Areas: Aboriginal Affairs Advisors, Area Chief Resource Management; Resource Managers
 - Finalize comments and report to RMC, including recommendations on a consultation plan (prepared with the assistance of Jay Hartling) and seek approval to proceed with an external review.
- Describe external review process for this report: when will we involve Regional FN representatives, and individual bands
- After RMC approval of the draft report and an external consultation plan.

Report outline

Insert chapter-by-chapter summary

Throughout this report, two symbols are used to flag sections for particular attention:



This symbol highlights concerns brought up by area staff, or existing situations that present particular implementation challenges.



This symbol points out unresolved issues that require clear policy advice.

2. Proposed Framework – Process

The decision framework described here does not reflect what is currently done in any one area, but combines suggestions for a consistent, equitable, and defensible approach to managing FSC fisheries throughout BC. It has been developed based on the comments and concerns raised by DFO staff during an initial round of interviews. This draft is now being circulated for comments and corrections.

Management Tools for FSC Allocations

DFO has a full suite of management tools available to ensure that FSC allocations are implemented fairly and equitably. *Mandates for FSC allocations* are DFO-internal documents marked as *Protected for Negotiations* and exempt from Access to Information requests. They serve as the basis for fisheries provisions in Comprehensive Fisheries Agreements and Communal Licences. Fish numbers provided in CFAs and Communal Licences are limited to the amount in the associated FSC mandate. *Comprehensive Fisheries Agreements* (CFA) are negotiated bilaterally with individual bands or tribal councils. CFAs specify all fisheries-related provisions as well as providing funds for projects described in the CFA such as fisheries related meetings, catch monitoring and stock assessment. [note: other than ATP, economic development has been moved to the AAROM program T&Cs]. FSC provisions in the form of a fish harvest plan are part of the CFAs (Schedule B), and specify either allocations (e.g. salmon) or access rights (e.g. clams) for FSC purposes or an agreed to process for DFO to issue a communal licence (in situations where fish numbers are not included in the CFA. *Fishing Plans* (FP), where developed, describe the operational details of each fishery (e.g. open times and gear restrictions). For bands that are not signatories to CFAs, Communal Licences are issued by DFO as a legal mechanism to authorize fishing.

To achieve a consistent process and equitable allocations, it is crucial that each of these tools has a clearly specified purpose, an unambiguous process for review, and explicitly defined decision criteria. While this report focuses on the FSC mandates, it is necessary to discuss both Communal Licences and fishing plans throughout.

FSC Mandates

FSC mandates are intended to reflect the fish allocation needs of each First Nation or Tribal Council representing member First Nations in a CFA). Currently FSC mandates normally specify allocations for some species (i.e. an amount of fish) identified as an **upper limit**, as well as access rights to other species. [BH com: suggest check with Cam West as I do not think fishing locations is

part of approved mandates?]. To preserve flexibility for negotiation mandates for FSC allocations will continue to be confidential, and *Protected for Negotiation*.

Based on this interpretation, mandated allocations of fish should reflect an equitable upper limit on each First Nation's dietary and cultural needs. To be equitable, allocations for a particular species need to take into account the diversity and overall abundance of all species available to a First Nation to meet its needs.

Also implicit in this interpretation of FSC Mandates is the concept that allocations should be roughly proportional to the number of registered members for all the bands covered by the mandate (i.e. they should reflect community needs). This in turn implies that mandates need to be adjusted as band affiliations change over time. For example, a band leaving a tribal council (with a FSC mandate for member First Nations) should take a proportional part of the allocations with them.

After a transition period for dealing with current inequities, FSC mandates should not require frequent changes. Rather, Communal Licences would be adjusted within the limits described in the mandates.

It is important to note that FSC mandates, by themselves, have no legal authority and the mandated allocations can't be enforced. They simply guide DFO staff during the negotiation of fish harvest numbers. It is Departmental policy that increases in allocations of fish above an existing FSC mandate require a request initiated by area staff and approval from DFO Headquarters [may wish to be more specific here] for the increase in the FSC mandate.

Communal Licences

Communal Licences are negotiated tools for dealing with changing circumstances, such as natural variability in abundance or emerging conservation concerns. They describe the **licenced upper limit** on harvest, current fishing locations, and gear restrictions. Communal licences are issued under the *Aboriginal Communal Fishing Licences Regulations* and are **legally enforceable**.

Multiple Communal Licences may be issued under a single Mandate where the FSC fishery is intensively managed (e.g. revised licences issued every few weeks as different salmon runs migrate through the Lower Fraser) or where the mandate covers more than one First Nation. In these cases, area staff are expected to ensure that the sum of allocations in these Communal Licences does not exceed the provisions of the mandate.

Annual Fishing Plans

Annual Fishing plans map out the operational details for each FSC fishery, describing open times and open areas. They are designed to provide First Nations with the **opportunity** to harvest fish **up to** the limits specified in the Communal Licences. Fishing plans describe how the FSC fishery for a specific target species may be conducted and should be consistent with the conditions in the Communal Licence. Stand-alone fishing plans are at this time only developed for intensively managed FSC fisheries, and in many cases the Communal Licence contains all the necessary details. Where possible fishing plans should be negotiated with Aboriginal Organizations. Such plans will be reflected in the associated Communal Licence(s). As well these plans will be included in a CFA or treaty related Harvest Agreement where such an agreement is in place).

Table 1 shows a comparison of FSC mandates, Communal Licences, and fishing plans under the proposed decision framework. Figure 1 illustrates how these tools could be used for intensively managed species such as sockeye salmon. The proposed process for evaluation and revision is described in more detail later in this chapter.

Management tool	Specifies	Intention	Criteria to be considered
FSC Mandate	<p>Long-term upper limit on catch</p> <p>Traditional fishing location[is this to be part of the FSC mandate or should this be included in a policy for fishing locations/adjacency?]</p>	<p>Reflect dietary and cultural needs, with regional consistency based on diversity and abundance of species available for FSC fisheries (i.e. full basket of fish)</p> <p>Set negotiating parameters for Communal Licences</p>	<p>E.g. Use this to reflect local differences in availability of fisheries resources and food preferences</p>
Communal Licence	<p>Short-term upper limit on catch</p> <p>Current restrictions/ changes to fishing location</p>	<p>Band-specific limit within the bounds set by the FSC mandate</p>	<p>E.g. use this to deal with periods of low productivity or short-term concerns such a co-migrating stocks of concern or indications of unreported catch</p>
Fishing plan (Where practical, fishing plans can be part of the CL)	<p>Openings, locations and gear restrictions</p>	<p>Shape FSC fishing opportunity to (1) achieve catches close to CL provisions where possible, (2) to provide reasonable CPUE, and (3) to allow compliance monitoring and data collection</p>	<p>E.g. use this to provide FN with reasonable access by the preferred means, prevent overexploitation, to ensure escapement, and to allow for stock assessment and catch monitoring data to be updated.</p>

Table 1. Management tools for FSC allocations

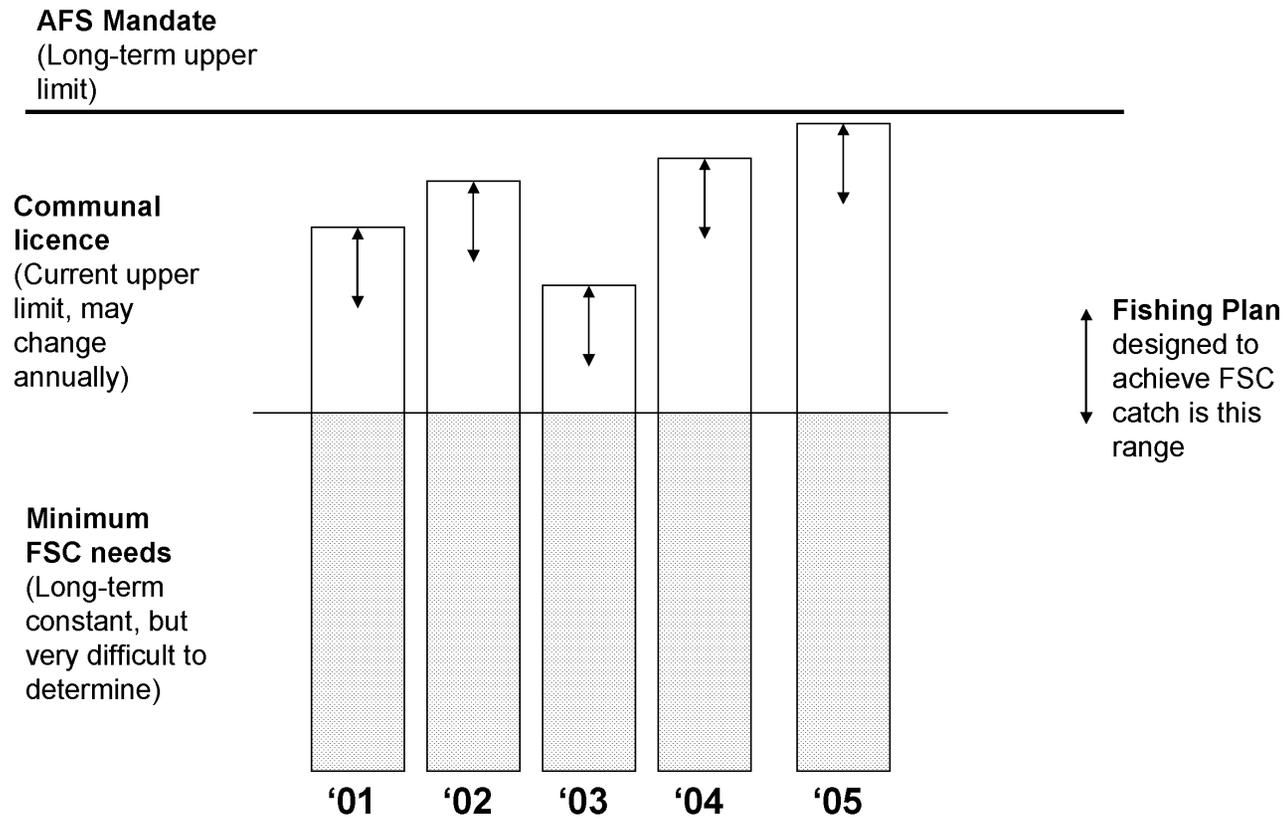


Figure 1. Illustration of management tools for FSC allocations

Note: This illustration reflects an intensively managed fishery, such as Skeena sockeye.

Ensuring Consistency

To establish and maintain regional consistency in the management of FSC fisheries, we need to clearly identify which of the management tools should be used to address different circumstances, and how they fit together.

The first requirement for consistency is a clear hierarchy and nesting of Communal Licences and bands within mandates:

- Each band should be covered only by a single mandate
- A Communal Licence or Licences issued to the band (or parent organization) under a mandate will not have combined provisions for fish that exceed the approved FSC mandate. Note: In some cases a tribal council may have a FSC mandate that provides for member First Nations and a communal licence is issued to the Tribal Council, but additionally a ceremonial licence may be issued to a member band in situations where a closure is in place or a limited harvest request is made for a harvest outside the normal fishing area. In these situations any harvest is considered part of harvest of the parent organization and its FSC mandate. [Maybe include ceremonial licence comments with supplementary licences details but have a comment associated with this bullet that refers to supplementary licences section](Are bands that currently harvest under two mandates covered by a single CL, or one CL for each mandate?)[There should only be one mandate that is designed to meet the FSC needs of the band]

The following should be under a section that deals with adjacency

- If individuals from one band are fishing in the area of another band with the permission of the host band, they must conform to the licence of the host band (the host band may have their own additional restrictions for non band members which may or may not be accounted for in the communal licence). (and their catches would come out of the host band's allocation? [generally yes but there may be special circumstances as described after RHQ comment. What if an entire band gets permission to fish a different location? Would the catch come out of their allocation, or the host band's allocation?]) **RHQ comment:** This would depend upon the circumstances, including the band's historic fishing practices, and the reasons for fishing in a different fishing area (i.e. if DFO has asked a band to fish elsewhere for conservation reasons (that were created by an over harvest of a stock in other

fisheries), we cannot impact the allocation of the host band in this way). This needs to be addressed in the decision framework that provides guidance on how to evaluate the various criteria.

- Communal licences should only be issued for groups of bands that are covered by a common mandate. This means that bands should share a Communal Licence only if they are covered by the same mandate.
- Total allocations in Communal Licences issued under a common Mandate should not exceed the provisions of that mandate. [redundant if BH comments included with second bullet above or conflicts with statement made in original first bullet above]

The second requirement for consistency is a separate tool for dealing with special circumstances. We propose the use of *Supplementary Communal Licences* to deal with one-off allocations for special events. These supplementary licences still need to fall within the constraints of the mandate. Special purpose allocations are discussed in detail on p 29. (Need to check this with licensing)

The third requirement for consistency is clear distinction between FSC fisheries and other communal harvests by First Nations. Specifically, sales fisheries, ESSR fisheries, and harvests of hatchery surpluses should be managed with different tools than the FSC fisheries.

- *Sales fisheries*: If a commercial opportunity is to be part of the Comprehensive Fisheries Agreement then it must be included in the FSC Mandate, but perhaps should be considered and licenced separately from FSC. This would require internal discussion.
- *Hatchery surplus*: Once spawning and broodstock requirements have been met, First Nations have an opportunity to obtain surplus spawners for FSC purposes. Harvests on surplus hatchery returns can help a First Nations reach their allocations as specified in a Communal Licence. However, these harvests should not form the basis of allocations in the FSC mandate. (There may be a connection in current allocations, because hatchery fish can contribute to predictable harvestable returns.)
- *ESSR fisheries*: When there are surplus spawners (either wild or hatchery), and FSC needs have been met, there can be commercial harvest opportunities for First Nations and others. These fisheries are managed separately, in accordance with the ESSR policy, and ESSR opportunities should remain clearly distinct from FSC fisheries and allocations in the FSC Mandates.

The fourth requirement is a clear process for evaluating and revising the mandates, which is described in the next section.

Process for Evaluating and Revising FSC Mandates

Many parts of DFO are involved in the administration of FSC mandates. This section describes the proposed division of roles and responsibilities between area staff, RHQ-FM, RHQ-AFS, RHQ-TAP, NHQ, and Legal Counsel. A key element is the sharing of information between areas and among DFO branches.

The decision process needs to be adapted to different types of situations. Three scenarios are described here:

- Request for changing an allocated amount
- Request for changing a fishing location
- Changes in band affiliation
- Any others that need to be here?

Supplementary Communal Licences, and the decision process for evaluating those requests, are discussed on p 29.

Request for changing an allocated amount

This process deals with requests to increase an allocated amount, to include a new allocation, or include access opportunities to a new species. The process is the same for fisheries where allocations are negotiated frequently (e.g. in-season), or where a Communal Licence is not covered by a Mandate (no Comprehensive Fisheries Agreement is in place, but a CL is issued).

1. The First Nation submits a request to change the allocation under its Communal Licence, with supporting documentation (e.g. harvest data including CPUE, numbers of fish caught, and by-catch data; see Appendix 4: Supporting Documentation) to the local Resource Manager.

2. Area staff notify RHQ-AFS and RHQ-TAP of the request and refrain from providing any preliminary evaluation of the request.
 - **A. If the requested change falls within the negotiating parameters** of the FSC Mandate, then area staff evaluate the request in accordance with criteria to be specified in Chapter 3, check with RHQ-TAP regarding treaty implications, and amend the Communal Licence where warranted. A copy of the revised licence must be forwarded to RHQ-AFS.
 - **B. If the requested change exceeds the negotiating parameters** of the FSC Mandate, then area staff provide an initial evaluation of the request and all supporting materials to RHQ-AFS. Upon receipt of a request RHQ-AFS will:
 - i. Inform the RHQ-TAP Senior Negotiator of the request and provide a preliminary assessment in a regional context
 - ii. Send the preliminary assessment to legal advisors for review, with a summary of potential concerns (e.g. new species, new location). The legal review should be fast-tracked if the request will likely be declined. Legal counsel will check for potential precedents.
 - iii. Perform a detailed evaluation based on the decision criteria in Chapter 3 of this report.
 - iv. Once the recommendation and evaluation are supported by RHQ-AFS, RHQ-TAP and the RD-FM, forward the full package to NHQ for final sign-off.
 - **C. If there is no FSC mandate** then follow step B above.

Request for Changing a Fishing Location

Requests for changing fishing locations can be triggered by several distinct situations. Each of these requires a distinct set of considerations and a specific process for review. For all of the situations listed here, please review the process outlined in the Interim Access guidelines and comment on its feasibility.

- **If the request is mainly intended to accommodate for a local shortfall, then:**
 - i. Follow the steps in the Interim Access Guidelines (attached)?

- **If the request is mainly a response to conservation measures implemented by DFO, then:**
 - i. Follow the steps in the Interim Access Guidelines (attached)?

- **If the request is mainly intended to ensure adequate catch-per-effort, then**
 - i. Follow the steps in the Interim Access Guidelines (attached)?

- **If the request is mainly intended to access additional allocations, then**
 - i. Follow the steps in the Interim Access Guidelines (attached)?

Changes in Band Affiliation

The basic concept guiding the approach proposed below is that FSC allocations intended to provide for the population covered by each allocation. Consequently, each band would take their population-based share of the allocation with them as they change affiliations.

1. Area staff notify RHQ-AFS as soon as they become aware of a change in band affiliation
 - **If a band has left a parent organization (e.g. tribal council) covered by a shared mandate**
 - If the band requests an individual Comprehensive Fisheries Agreement, then a new FSC Mandate and new Communal Licence need to be developed. (Verify this with Cam West)
 - If the band requests an individual Communal Licence, this new licence can be covered under the existing FSC Mandate.
 - If a new Mandate is issued, decrease the Mandate of the aggregate by the amount in the new Mandate.
 - If a new Communal Licence is issued, decrease the CL of the aggregate by the amount in the new CL.
 - Changes to Mandates are done at the RHQ/NHQ level, led by the AFS Manager in RHQ. Changes to Communal Licences are made in the Area. Follow Step 2 of the process to evaluate requests for changing an allocated amount (p. 14).
 - Legal issues?
 - **If a band has joined an aggregate (e.g. tribal council) covered by a shared mandate**
 - Add their allocations to the shared mandate, but keep their CL separate?
 - Retire the existing Mandate for the band that joined?
 - How to deal with CFAs in this case?
 - Process is the same as above: Area staff handle changes to Communal Licences, and RHQ/NHQ deal with changes to FSC Mandates.
 - Legal issues?

Illustrative Examples

The following illustrations are fictional examples showing how the proposed **Process Framework** could be applied in different settings.

Illustration 1: The FSC Mandate for Band A specifies an allocation of 2,000 sockeye for harvest in their traditional territory on a major river. In 4 out of the last 5 years, the local sockeye run has been below its long-term average, while the fifth year had a very good run. The sockeye allocation in the Communal Licence, negotiated annually, was 1,000 in the four poor years, and 1,600 in the year with abundant run. Each year the fishing plan was adapted to deal with unique circumstances. For example, in years with low water levels in the river, weekly openings would be reduced to counter-act the increased gear efficiency. Each year, area staff negotiated the amount, and notified both RHQ-AFS and RHQ-TAP.

Illustration 2: The FSC Mandate for Band B specifies an allocation of 4,000 chinook. This stock is not managed intensively, so there are no pre-season forecasts or in-season assessments. Based on trends in escapement for indicator stocks in a nearby watershed, the Communal Licence has included a chinook allocation of 2,000 and a 4 day/week opening for the last few years. In this case there is no fishing plan, and the Communal Licence was not renegotiated every year. This year, the chinook allocation in the Communal Licence was increased to 3,000 to account for population growth and renewed cultural activities. This change fell within the negotiating parameters of the existing mandate, and the decision was made by local DFO staff.

Illustration 3: Groundfish

Illustration 4: Shellfish

Illustration 5: tribal council => one mandate, several CL, **PROCESS**

Illustration 6: Supplementary Communal Licences (SCL): 5 bands under 2 diff mandates plan a special event=> SCL issued to each participant band (is this practical?) **PROCESS**

Overview of Initial Comments

The general decision framework proposed in this chapter does not describe how FSC fisheries are currently managed in any one area, but tries to merge aspects of current practices with suggestions for improvement offered by DFO staff. Table 1 and Figure 1 have been revised from previous drafts to incorporate the comments from DFO staff. This section summarizes the comments received so far. Note that the comments in this section refer to the proposed framework of three distinct management tools (FSC Mandates, Communal Licences, and Fishing Plans), their general intention, and the review processes described at the beginning of this chapter. Chapter 3 deals specifically with the decision criteria that should or shouldn't be taken into account when evaluating requests to change allocations or fishing locations in an FSC mandate.

DFO staff interviewed for this project generally agreed that the proposed approach is an important step towards improved consistency and fairness in the management of FSC fisheries, but they also raised several practical concerns with respect to implementation, in particular the DFO-internal process of evaluating FSC requests and the challenges of dealing with a wide range of circumstances (e.g. salmon vs. clams). Throughout this section, the management area providing each comment is identified (BCI= BC Interior, CC= Central Coast, LF= lower Fraser, NC =North Coast, RHQ= Regional Headquarters, SC = South Coast, WG = FSC Working Group, Sal WG = Salmon Working Group) (Area staff: please check over my summary of your comments for corrections)

General Comments

- (SC) The general approach makes sense, because we need to work towards an approach for responding to changing circumstances, particularly varying abundance. For example, to manage FSC fisheries on **inside chinook** we would want a high number as the long-term upper limit to account for the occasional strong year, and the ability to set annual targets locally through the Communal Licence. This approach would also help shift the focus to collaborative assessment projects.
- (NC) We urgently need an initiative to bring more consistency into the FSC mandates, and clarify the link between the mandates and Communal Licences.
- (SC) The decision guidelines need to describe how the general approach can be used to deal with the complexity of current issues.

- (RHQ) The regional and national perspective is that FSC Mandate allocations are an upper limit (i.e. not to be exceeded), and that resources should be managed to provide First Nations with adequate opportunity to catch their allocations identified in the Communal Licence in any given year.
- (SC) The approach described in Figure 1 is consistent with abundance-based management approached for commercial and recreational fisheries, and consistent with the provisions of some existing harvest agreements. For example, the harvest limits for **Somass sockeye** vary from year to year, but the agreement for **which bands?** specifies a long-term average of 55,000 fish, which includes both an FSC fish and sales fish.
- (SC) The abundance-based approach in Figure 1 would make it possible to deal with some existing challenges. For example, the Communal Licence for the 12 “outside bands” of the Nuu-chah-nulth Tribal Council currently includes an allocation of 20,000 **Somass sockeye** (is this out of the 22,500 non-Fraser sock in the NTC mandate? What about the other 2.5k- negotiating room or diff CL?). They are requesting an increase to 58,000, which will probably not be approved given current conservation issues. However, it would probably be feasible to provide the 58,000 in years with strong abundance, just not on an annual basis.
- (SC) However, this abundance-based approach may not be feasible for species other than salmon, because abundance information is not available (e.g. shellfish). Also, we need to be cautious with committing to an arduous process that requires supportable pre-season/in-season assessments. One possible approach is to link it to long-term, large-scale trends (e.g. 5-yr average abundance of Lower Strait of Georgia chinook)
- (SC) There are two foreseeable problems with any abundance-based approach to FSC allocations. First of all, the minimum need is very difficult to determine and any number DFO suggests would be highly controversial. Secondly, there will be a strong pressure to increase allocations in years with high abundance, and strong resistance to reduce in years with low abundance. This ratchet effect is present in all fisheries, but the legal background of FSC fisheries may make it even stronger here. (Are there any precedents?)
- (RHQ) In years of very low abundance, the allocation in the Communal Licence or fishing plan may not reflect minimum need, but rather the fact that there are not enough fish to go around to all the bands which rely on the stock. While this situation would not automatically trigger some mitigating action, such as a different fishing location, increased allocation of different species, or access to hatchery surplus elsewhere, DFO would likely be open to requests by the First Nations under these circumstances.

- (WG) With respect to the location of FSC fisheries, DFO should encourage Protocol Agreements between First Nations, and not take on an arbitration role in these processes. This being said, the Minister has the authority to decide where fish can be caught, and by whom.
- (WG) It is difficult to separate the food, social and ceremonial components of FSC allocations, and DFO does not want to define these components. FSC allocations should accommodate these uses as best as possible and this should be discussed during negotiation of AFS agreements. Also, the cultural component can differ considerably between bands (yearly festivals, adjacency to other FN), but should be similar within an area.
- (WG) Catch levels established in the early 90s may not adequately reflect current “SC” components of FSC fisheries, as cultural activities are generally increasing.

Comments related to the MANAGEMENT TOOLS

(Mandates vs. Communal Licences vs. Fishing Plans)

- (RHQ) Currently, the mandates explicitly distinguish between **Fraser sockeye** and **Non-Fraser sockeye**. This is the only instance where the mandates specify the migration target of a stock, rather than just the location where it is harvested. The original intention was to differentiate between local stocks, and passing stocks that tend to be intercepted further off shore. However, bands are now increasingly requesting to harvest their allocation of Fraser sockeye near the mouth of the Fraser, resulting in adjacency concerns. Also, it may not be possible to identify the passing stocks.
- (BCI) FSC mandates for the **BC Interior** currently don't reflect fishing locations, but these are specified in the Communal Licences (e.g. stretch of the river). It would be useful to clearly specify the *traditional* fishing location in the mandate, and capture *current* fishing locations in the Communal Licence. This would make it easier to deal with “one-off” changes in location triggered by conservation concerns or short-term access issues (e.g. **Lheidli T'enneh**) (Please explain this example)
- (SC) In current practice, the Communal Licences often contain the fishing plans and many other requirements (e.g. catch reporting, gear restrictions).
- (SC) Many practical aspects of managing FSC fisheries are not reflected in Table 1. For example Communal Licences have many more elements than just allocation, including Terms and Conditions, provisions for guardian programs, dispute resolution mechanisms, and reporting requirements.

- (CC) The proposed approach describes a useful goal, but does not reflect the current practice on the **Central Coast**. While some Communal Licences contain fishing regulations, these were developed by the First Nation. For example, the Nuxalk voluntarily included a 3-day weekly closure for in-river chinook fisheries. Also, the FSC mandates for Central Coast bands currently do not reflect traditional fishing areas, but these are described in the Communal Licences.
- (LF) Even though allocations are often made to a group of bands, this project should also consider approximate allocations by band. This will be important to deal with changes in band affiliations. At the same time, DFO encourages FN to deal with the distribution of FSC fish internally. For example, 4 of the 25 **Sto:lo** bands (Cheam, Katzie, Kwantlen, and Matsqui) have switched to drift nets, while the rest still use set nets. These differences are currently addressed through gear-specific openings. (How should this be handled in AFS vs. FM?)

Comments related to the IMPLEMENTATION CHALLENGES

- (NC) On the **North Coast** there is strong disagreement between DFO and some bands regarding the harvest levels in the Communal Licences. The numbers currently in the licence are understood to be for “management purposes only”.
- (BCI) The approach proposed in Table 1 and Figure 1 may be difficult to implement in the cases where there is complete disagreement between FN and DFO regarding FSC needs. (Note: but it may be easier to agree on an abundance-based *range*)
- (SC) Allocation and adjacency issues can’t easily be separated, because they become closely linked at low abundances. For example, a FN may request access to salmon in another area if local runs are depressed (multi-year trend), or if a run fails to materialize (in-season).

Comments related to the PROCESS OF CHANGING FSC MANDATES OR COMMUNAL LICENCES

- (SC) There are currently no AFS negotiators in the South Coast management area, and Communal Licences are handled by Fisheries Managers. These Communal Licences are currently not vetted through AFS-RHQ staff. Rather, they are negotiated in Nov/Dec for the upcoming year, sent to RHQ-FM, and then forwarded to Ottawa. Any requested changes would take the form of a briefing note to the Assistant Deputy Minister. (Please verify this). A simpler process with clear division of responsibilities between area staff and regional staff, and between AFS and FM is needed. **RHQ Note:** Under the circumstances described here, the interim guidance document identifies that the revised licence should be sent to the AFS manager – partly so

that Treaties will also be informed. As well, there should be discussion with TAP staff before a revised licence is issued to ensure it does not cause complications in the treaty process.

- (SC) The long-term upper limits, and other negotiating parameters, need to remain confidential information for internal use. Otherwise the upper limit will automatically become the target.
- (BCI) The FSC mandates don't necessarily need to be adjusted for every change in band affiliation. These changes could be reflected in the Communal Licences, which could be dealt with locally.
- (BCI) The mandates for **BC Interior** currently specify a single number of fish, not a range. This number is carried over into the Fishing Plan, and the Communal Licence is based on the Fishing Plan. The existing agreement has a provision along the lines of "the parties will define a FSC harvest level by a given date, otherwise DFO will issue a Communal Licence".
- (BCI) It would make sense that a band leaving a tribal council would take along a proportional part of the FSC mandate. However, this has not happened in the past, and the sum of new allocations may exceed the Mandate(See example of **Tsimshian Tribal Council** on page 62).
- (BCI) Internally, we need to be cautious with the link between FSC mandates and treaty negotiations. On the one hand, FN have high expectations for the treaty process, and on the other hand negotiators may use imposed provisions in Communal Licences as starting offers for treaty talks. All DFO staff need to be aware that some Communal Licences simply reflect interim targets based on recent catches.

Comments related to DECISION CRITERIA

- (BCI) One of the main criteria in determining FSC allocations should be documented catch, which makes any requested changes contingent upon improved catch data. (Note: others disagreed with this point, arguing that mandates should reflect only FSC needs and not any type of incentive or punitive measure; **RHQ Note:** As part of any request to increase allocations the FN must provide some rationale, and catch data must form part of this rationale. The requested increase may or may not require a Mandate change.
- (BCI) Economic factors play a strong role in FSC needs. For example, if there is a good market for pine mushrooms or an abundance of logging jobs, then reliance of food fish is reduced. **RHQ Note:** This criterion should not be reflected in the Mandates. Many First Nations are now using more food fish than previously out of choice and fish is a preferred food choice for many band members.

(SC) Some First Nations have been building fishing capacity since the initial agreements were negotiated, resulting in requests for increased allocation.

Consistency with Current Practices

The approach in Table 1 and Figure 1 is consistent with several current practices and draft agreements in the treaty process, as illustrated in the examples below.



Lower Fraser staff currently work with the equivalent of the minimum FSC needs identified in Figure 1. They consider this *unspecified base amount* when balancing access priority in times of low abundance. When planning fisheries, other user groups would be restricted to ensure that First Nations meet the base amount



A lot of the FSC fisheries in the **BC Interior** are already managed with this approach. The Communal Licences, reviewed annually during pre-season consultations, are set to amounts below the provisions of the FSC mandates, and abundance-based adjustments can be dealt with locally. Also, the Communal Licences are generally issued to the same groups as the FSC mandates, eliminating potential confusion and double counting.



The draft agreement currently under negotiation with **Sliammon** explicitly identifies a minimum amount of 1,000 chinook, expected to be available every year, and an abundance-based variable amount of 2,000 chinook. Each year, DFO and Sliammon would negotiate a catch target in the range from 1,000 to 3,000 chinook. (This used to be in the Communal Licence, but was taken out after 1 year, and was never actually used because the actual catch was less than 1000. What were the issues? What was used as an abundance indicator? Who would have more information about this?)



Five of the 12 “outside bands” in the **Nuu-chah-nulth Tribal Council** are close to signing treaties which include abundance-based allocations. In this case, the draft agreements specify a fixed percentage of each year’s *sockeye* salmon run, rather than a combination of a fixed amount and an abundance-based variable amount as in the Sliammon example, or an average amount as in the Somass example (earlier).

Local
Issue

Current management of Fraser River sockeye fisheries has a crude formula for FSC catches. The working assumption is that coastal FN catch about 250,000 Fraser sockeye, which translates very roughly into 8 per individual. (Compare this to Mandate allocations). It would be conceptually consistent to compare approximate allocations per person between bands to assess consistency.

Local
Issue

Requests by FN to fish at mouth of the Skeena or Fraser (what if affected by local conservation closures)

Local
Issue

NTC have shared FA, individually licenced for terminal fisheries, but share a common troll area all covered by a single mandate? CHECK

Local
Issue

Can you think of any others?

Transition Strategies

This section describes strategies for bridging the gap between the proposed approach and the existing patchwork of practices. The situations listed here are based on the examples in Appendix 2. For some bands, several of these situations may exist at the same time.

Situation 1: The allocation in the Communal Licence equals the provisions of the mandate

While this situation, apparently quite common throughout the province, does not present any immediate problems, it eliminates all room for local negotiation in response to changing circumstances. Any request for increased allocation automatically requires regional (or national?) evaluation and sign-off.

1. If reported or estimated harvest in recent years has fallen short of the allocation, then try to negotiate an abundance-based range with the current allocation at the high end, and current levels of catch at the low end. (What could be used as incentive?)
2. If reported or estimated harvest in recent years has equaled the allocation, then initiate a full review of the current Mandate based on the decision criteria in Chapter 3.
3. If the review supports an increased allocation (i.e. long-term upper limit), then adjust the Mandate and renegotiate the Communal Licence within the provisions of the revised mandate.
4. If the review does not support an increased allocation, then ??? (How to create negotiating room?)

Situation 2: The Communal Licence exceeds the provisions of the mandate

This can occur if an individual band has negotiated Communal Licence with allocations that exceed the Mandate provisions, but most of the cases are probably the result of changes in band affiliation. For example, a band may separate from a tribal council and receive a separate Communal Licence, but the Communal Licence for the tribal council is not adjusted. If larger groups of bands disintegrate, the total allocation in the Communal Licences can exceed the original Mandate for the tribal council.

1. Adjust the Mandate to equal the current allocation in the Communal Licence.
2. If catches are not approaching the upper limit specified in the Communal Licence, then consider decreasing the allocation in the Communal Licence.

3. Then follow the strategy for Situation 1.

Situation 3: Reported or Estimated Harvest in recent years exceeded the allocation in the Communal Licence

The current situation creates several opposing incentives for inaccurate catch data. Some bands may report inflated catches to trigger legal proceedings or as a strategy for treaty negotiations. Other bands may under-report harvests to remain within the existing allocations. However, the intention of the AFS program is to satisfy First Nations' dietary and cultural needs, and it is important to know how actual harvests compare to allocations.

1. Review available catch information to check the magnitude of the discrepancy
2. Where possible, try to independently verify the available catch data.
3. If recent catches exceed the Communal Licence but not the mandate, then try to negotiate an abundance-based range that provides an increase over current catches at the high end, and reductions from current catches during poor years. (**RHQ Note:** Or just negotiate a level in the licence that reflects anticipated returns for the relevant year?)
4. If recent catches also exceed the allocation in the mandate, then initiate a full review of the current Mandate based on the decision criteria in Chapter 3.
5. If the review supports an increased allocation (i.e. long-term upper limit), then adjust the Mandate and renegotiate the Communal Licence within the provisions of the revised mandate.
6. If the review does not support an increased allocation, then
 - i. Inform C&P and Dept. of Justice of the potential issue
 - ii. Work with the band to try and gain better cooperation
 - iii. Work with C&P and DOJ to develop an appropriate action plan.

Situation 4: A band is fishing under a Communal Licence that is not covered under any mandate

Some bands have not participated in Comprehensive Fisheries Agreements, and their FSC fisheries are therefore not covered under any mandate. However, all FSC fisheries legally require that a Communal Licence is in place.

1. If the Communal Licence was negotiated between DFO and the First Nation, simply issue a Mandate (How simple is this?) for an allocation equal to the Communal Licence and then follow the strategy for Situation 1 to create negotiating room. **RHQ NOTE:** The Mandate is

not necessary if the band is not interested in a Comprehensive Fisheries Agreement. (But what would provide area staff with negotiating parameters? Negotiating parameters could be developed in the Area using Decision Criteria, and in discussion with TAPD.)

2. If the Communal Licence was issued by DFO to cover expected catches of a band that has not signed a Comprehensive Fisheries Agreement, then track the provisions of the Communal Licence (i.e. what quantities of what species), as well as catch data where possible. If the band is involved with the Treaty process, Area staff should confer with RHQ-TAP before making any changes to fish allocations or fishing location. In this case, the negotiating parameters would be based on the **Decision Framework** in Chapter 3, and discussions between Area staff and TAP-RHQ.

Situation 5: Inconsistency between groups covered by mandates and groups covered by Communal Licences

As a result of changes in band affiliation, it is sometimes not clear under which Communal Licence or Mandate a band is harvesting a particular species. This makes it difficult to evaluate whether allocations are fair and equitable, and in some cases even makes it difficult to determine what the allocation is.

1. If a band currently harvests under several Communal Licences, then combine all the allocations into a single Communal Licence, taking the proportional share from each of the original allocations.
2. If a band currently harvests under a Communal Licence issued to a group of bands (e.g. tribal council, but is not affiliated with the corresponding Mandate and CFA, then either issue a separate Communal Licence covered by the same Mandate, or add them to the mandate) **(This is linked to fishing location)**
3. Should there be any retroactive proportional adjustments in allocation where these changes in affiliation occurred?

Situation 6: The Communal Licence for a band does not specify an allocated amount, but the corresponding Mandate specifies an upper limit on FSC harvest.

Where bands have separated from a tribal council, the Communal Licence for the individual band may not specify an amount. For example, it may only include wording such as “appropriate share of the allocation for the tribal council”.

1. DFO needs to define these allocations more clearly, to assess the overall impact on the resource.

Situation 7: A band’s Communal Licence explicitly specifies allocations for Fraser sockeye and Non-Fraser sockeye without specifying a fishing location.

This wording was originally included to distinguish between passing stocks harvested further off-shore and local sockeye runs harvested near their terminal area. However, some bands have used this wording as an argument in support of a change in fishing location (e.g. at the mouth of the Fraser River)

1. In any new or revised Communal Licence, as well as the corresponding Mandate, change the wording to “passing sockeye” and “local sockeye”.

Situation 8: Any typical examples related to fishing location?

Unique Cases and Supplementary Communal Licences

Each year, DFO evaluates ~~dozens~~ of requests for allocations to deal with special circumstances. These requests are often submitted by individuals rather than bands, and tend to come in after a band has achieved their allocation and the season is closed. Currently, these requests are granted for ceremonial requirements (e.g. funeral), when target stocks are very abundant, or when allocations for another species are not being met (i.e. substitute). However, FSC allocations under the FSC mandates are intended to address distribution within the community, as well as all planned and “unexpected” social and ceremonial needs. These frequent requests may indicate that current allocations fall short of minimum FSC needs, or that FSC fish are not evenly distributed throughout the community.

Transition Strategy

1. Phase out Special Purpose allocations over 5 years
2. Where warranted, raise existing FSC allocations to better reflect social and ceremonial needs.
3. After 5 years, limit Special Purpose Allocations to abundance-based, selective fishing opportunities (and to substitute for poor catch of the species?)
4. Under the proposed approach, these licences could be handled locally as long as the total does not exceed the provisions of the mandate.

~~DFO will need legal advice on this concept before proceeding. Given the legal foundation, the working group should consider criteria we need to evaluate when REFUSING a request for Special Purpose allocation, rather than for granting a request.~~

Fund-Raising and Other Social Activities

Local
Issue

The Hulitan Services Society, affiliated with the ~~???~~, is organizing a fund-raising barbecue in support of a community project. The intention is to use donated food fish, and invest the proceeds in canning equipment to be used at community-building events. Area staff currently have no clear guidelines to deal with this type of request. ~~Legal precedents from ESSR fisheries established that DFO cannot specify how proceeds from sales fish are used.~~



How should fund-raising efforts for First Nations organizations fit into the FSC mandates?

(RHQ) They should not be specifically addressed.



How to deal with large events like the World Indigenous Games?

(RHQ) Address these in a special licence without modifying the Mandates.



How to deal with regular events (e.g. soccer tournaments with ?DFO?)

(RHQ Comment: If FN chooses to use part of their FSC this way I doubt that DFO would take action. Something to consider if the FN comes looking for an increase in FSC when we know lots of fish are going to fund-raising events. We should develop some guidance around this for staff. Decision criteria (Chapter 3) identify the need to consider how FSC fish are used/distributed.

3. Decision Criteria

Chapter 2 describes a consistent framework for administering FSC fisheries through three distinct management tools: mandates, Communal Licences, and fishing plans (i.e. **Process Framework**). For each of these tools, DFO staff need clear decision guidelines. The first step is identifying which criteria *should* be taken into account, and which criteria *should not* be considered. Once team members agree on a shortlist of criteria, we can work towards identifying their relative importance in the 4 types of decisions identified in the previous chapter, and develop task-specific checklists (i.e. **Decision Framework**):

- Request for changing an allocated amount
- Request for changing a fishing location
- Changes in band affiliation
- Special purpose allocations

This chapter lists a wide range of potential decision criteria (DC) identified during initial discussions, categorized as:

- *Legal Requirements and Fundamental Policy Considerations*: While the views of different respondents are presented for the criteria in this category, the final assessments will be guided by DFO's interpretation of legal precedents and existing policies.
- *General agreement*: all respondents (so far) agreed with the criterion
- *Opposing views*: at least one respondent disagreed
- *To be excluded*: all respondents agreed that the criterion should *not* influence allocations under the FSC mandates
- *New Suggestions*: Additional criteria provided by a respondent, which have not been reviewed by the team

Overall, the responses were relatively consistent with the decision framework laid out in Chapter 2. Area staff generally indicated that FSC mandates should reflect some fair and equitable allocation across areas, which takes into account the full range of natural resources available to a community. Also, all respondents agreed that concerns about compliance with licence conditions should not be reflected in the allocations specified in an FSC mandate. However, respondents disagreed with respect to using allocations as incentives for various purposes.

Respondents also ranked the decision criteria according to relative importance, but responses were very inconsistent. It may be necessary to work with a shortlist during a group session, rather than reading too much in to the individual responses received during this first round.

How can we incorporate treaty negotiation and new legal cases? **RHQ Note:** Treaty negotiation issues are addressed by dialogue as per the Interim Guidelines. Implications of new legal cases could result in need to modify the Decision Criteria in Chapter 3.

How can we deal with the feedback between capacity building and increased requests?

Legal Requirements and Fundamental Policy Considerations

DC 1: Possible influence on FSC catches of other First Nations

It is not clear how this consideration should be taken into account within the proposed framework of distinct purposes for Mandates, Communal Licences, and fishing plans (Ch. 2). In past practice it probably served as a consideration for refusing a request to either increase an allocation or change a fishing location. However, if an allocation in the FSC Mandate is strictly interpreted as the long-term upper limit on FSC harvest, then it should reflect only each band's needs, and not the cumulative harvest pressure on a particular stock.

Comments

- (LF) If this is part of an FSC allocation, it would encourage greater understanding of responsibilities and liabilities to other communities. This would be a culturally powerful incentive.
- (CC) This is usually linked to adjacency issues. One approach is that this criterion is considered in requests to change location, but not in mandated amounts.
- (BCI) This may happen in a scenario where a band relies on only one run for their FSC fish. If a environmental conditions occur causing high en-route mortalities, then the anticipated abundances would not arrive. The only problem is that this is not usually noticed until after lower river First Nations have already harvested their fish. This is hard to predict and put it in the Mandate. Takla band is a good example.
- (RHQ) This could be a reason NOT to support a Mandate increase.

Policy Interpretation

(RHQ) This issue needs to be given strong consideration in determining whether or not to increase an allocation or change a fishing area, because DFO is legally responsible for both conserving stocks and addressing the FSC needs of all First Nations. We risk overexploitation if we do not consider the needs of other First Nations in both the mandated amounts and fishing locations. (But this is also linked to access priority: Some might argue that the legal requirement is to determine overall FSC needs for a band, then determine a desirable mix of species, and then find a way to meet the interests as best as possible. Others argue that DFO does not determine the Band's need, but rather specify what's reasonable to provide given the overall state of the various resources and competing needs (e.g. other First Nations. To a large degree, each band determines their desired mix of species. Where the required amount of each species can't be provided to each band because of concern over the cumulative harvest, then the access priority would preclude all non-FSC harvests. An abundance-based approach, as outlined in Chapter 2, may be a feasible compromise between these two viewpoints.

Legal Interpretation

() Please provide a legal viewpoint on this issue

DC 2: Priority of access

The Supreme Court of Canada has clearly established the aboriginal right to fish for food, social, and ceremonial purposes. This right is reflected in *An Allocation Policy for Pacific Salmon*, which clearly identifies FSC fisheries as the first priority after conservation. While this is a very explicit legal and policy requirement, it is not clear how it should be taken into account in FSC Mandates, Communal Licences, or fishing plans. In practice, it has been handled as follows: include examples (1: satisfy full FSC harvest opportunity rather than catch, 2: manage based on pre-season expected harvest). If the distinction between Mandates, Communal Licences, and fishing plans from Chapter 2 is adopted, then this decision criterion should be addressed in the fishing plan, may influence the allocation in the Communal Licence which responds to changing circumstances, but should not affect the long-term upper limit in the Mandate.

Comments

() Please provide a FM viewpoint on this issue

Policy Interpretation

() Jennifer Nener will provide a policy viewpoint on this issue

Legal Interpretation

() Please provide a legal viewpoint on this issue

DC 3: Conservation Issues

Conservation concerns can affect FSC allocations in two distinct ways. On the one hand, any requested increase or change in location needs to be reviewed for potential impacts on the target stock. However, an increase in allocation of a stock or species may be requested to offset a reduction in another species or stock due to a conservation concern.

Comments

(RHQ) If a request is triggered by conservation measures in another fishery, a Mandate increase could be a good decision.

(RHQ) When making these decisions, DFO must take into account the conservation of the target species or co-migrating stocks/species that could be affected. Conservation is recognized by the courts as a valid legislative objective, and conservation has been understood by the courts to include stock re-building.

(RHQ) This consideration might be captured in one or more of the three management tools (Mandate, Communal Licence, fishing plan), depending on the issue and the species. For example, concerns for abalone would not be reflected in either (why?), but a conservation concern that could be managed around might just be addressed in the Communal Licence or fishing plans (such as?).

DC ?: Any others?

Please provide additional decision criteria related to legal and policy issues

General Agreement

All respondents so far agreed that these decision criteria *should* influence FSC allocations under FSC Mandates.

DC 4: Diversity and overall abundance of species available for FSC fisheries

The basic intention of FSC mandates is to satisfy the dietary and cultural needs of First Nations, and it makes sense that allocations of marine resources should be adjusted based on the full “fish basket”, or more specifically, the full range of species available for FSC harvests. For example, communities which rely predominantly on salmon may tend to have higher salmon allocations than communities with access to substantial amounts of groundfish and shellfish.

Comments

- (CC) How should we take into consideration access to moose, deer, and other land mammals? And what about marine mammals?
- (RHQ) Any resources not under DFO’s jurisdiction should not be explicitly considered in allocations under FSC Mandates, but this issue is partly addressed by the use of area-specific averages for comparison. The underlying assumption is that bands in close proximity tend to have access to the same diversity of resources, even if these resources are not explicitly considered. For example, bands in the BC Interior have much smaller “fish basket” than bands on the WCVI, but their overall “bread basket” may be the same. (How should this influence salmon allocations in the Mandates? Larger or smaller?)
- (RHQ) From a practical perspective, allocations in the Communal Licence should be based on the expressed interests of a band and the availability of fish.
- () While sockeye equivalents can be used to summarize all salmon allocations, there is no analogous calculation to compare other harvests (e.g. halibut vs. clams).
- (Slaw) It is inappropriate to use sockeye equivalents to arrive at a total allocation of salmon, even for simple comparisons. Sockeye equivalents are designed to reflect commercial value, and do not express the relative preferences of First Nations. While each band may prefer a unique mix of species in their “fish basket”, average weights could be used as a starting point. (See Chapter 4 for an initial comparison of allocations in the 2004 FSC Mandates.)

DC 5: Band affiliation and membership & DC 6: Existing inequities in allocation

Both of these considerations are linked to the concept of a “full fish basket” (DC1). For species with allocated amounts, it makes sense that the amount allocated in an FSC Mandate would roughly reflect the population covered by that Mandate based on an approximate population-based allocation. This means that changes in band affiliation would result in adjustments to mandates and Communal Licences. For example, if a band leaves a tribal council, they would take a proportional part of the allocation with them. Also, if a community’s current allocation is below the average for other communities in similar circumstances (e.g. close by, similar spectrum of fishing opportunities), then a request for increased allocations could be receive a higher priority. Finally, population increases should be reflected in corresponding increases in allocation. Is this true?

Comments

(LF) This may be a useful theoretical approach, but it will prove to be very difficult and controversial in practice to estimate the per capita need of bands in different areas (e.g. Lower Fraser vs. North Coast)

(RHQ) It is not just a matter of estimating per capita need or setting a per capita allocation, because availability is also part of the equation. The intent is to ensure that when band affiliations change, groups are not left without allocation, and that there are not huge disparities between groups that have a comparable resource base.

Opposing Views

Respondents disagreed whether these decision criteria *should* or *should not* influence FSC allocations under FSC Mandates. Many of these had general agreement (with no comments), except for one dissenting response with comments. This may be partly due to different interpretations of the questionnaire, and the apparent disagreements need to be resolved through a group session.

DC 7: Proximity to terminal area

Several considerations could be combined for here. Communities closer to the terminal areas can fish more selectively and, in some cases better abundance estimates are available. Also, this is probably correlated to the diversity of available species, as many of the bands fishing in terminal areas are further inland, and therefore don’t have access to non-salmon marine resources.

Comments

(CC) This consideration can be more easily reflected in the Communal Licence and/or fishing plan.

- (BCI) This can sometimes be a detriment when environmental conditions cause large en-route mortalities and the expected abundance does not make it to the terminal area. This scenario could result in lower-river FNs accessing fish, while those in the terminal area are faced with an emergency “conservation closure”. Terminal harvesters should have priority of access, because they tend to get least opportunity. (Does priority come into the mandates and Communal Licences, or does it determine fishing plans? RHQ: Depending on the circumstances it might be reflected in all three management tools.)
- (RHQ) The previous comment might be referring to higher allocations for terminal harvesters, taking into account population, which would come into both the Mandates and the Communal Licences. This would be very difficult to address in terms of having terminal groups fish first, if that is the intent of the comment.
- (RHQ) Terminal areas can vary widely (e.g. upper Fraser versus a small system that drains to the ocean, where a terminal fishery could occur at the mouth). The intent of this decision criterion is actually quite similar to the consideration of the full “fish basket” (DC4).

DC 8: Access to hatchery surpluses

Many communities have access to surplus salmon from hatchery returns (e.g. Capilano, Chilliwack), and these surpluses have been used to supplement FSC harvests for bands that could not achieve their allocation through regular fisheries. If a band has frequent access to hatchery surpluses, this could arguably be reflected in a lower FSC allocation.

Comments

- (CC) The FSC Mandate should not change, because it reflects the community’s need. They would just be getting their allocated fish through a different fishery.
- () While responses so far were insufficient for dealing with this criterion, it will most likely fall into the “To Be Excluded” category as soon as a few more responses come in.

DC 9: Incentives and Participation

If the allocations in FSC mandates really reflect dietary and cultural needs, then these allocations should not be used as incentives for participation in different initiatives (e.g. co-management, catch monitoring, data collections, AAROM and other economic development initiatives, forming governing bodies). It may be more appropriate to address these processes through other elements of the AFS agreement, the Communal Licences, or fishing plans.

Comments

- (BCI) Co-management participation may be affecting current allocations in the mandates and Communal Licences, especially for more terminal groups.
- (CC) This consideration should not apply to allocations in the mandates, but it may have a role in harvest agreements or treaties. There can be rewards and incentives elsewhere, but not in the documented upper limit of food need.
- (LF) Allocations could be used as incentives for forming governing bodies. For example, this could be used to encourage umbrella groups to take greater responsibility in the distribution of FSC locally, which may be expanded upon as capacity grows.

DC 10: Timing of catch

Dietary and cultural need fluctuate throughout the year, and some communities rely on a particular run or species during a time when little else is available. While this consideration is linked to the availability of other resources, it may not be enough to consider the overall allocations, but the allocations at critical time.

Comments

- (BCI) If a community relies on only one run, they should then be given the priority share of that run when no substitutes are available.
- (CC) This consideration should be dealt with in either the Communal Licence or the fishing plan.
- (RHQ) This influences whether there should be an allocation, but not the quantity.

DC 11: Strong cultural component of FSC fisheries

FSC mandates are intended to reflect dietary and cultural needs, but the cultural element of FSC fisheries may differ widely between communities, and may be influenced by a traditional of annual festivals, and the adjacency to other communities. These cultural components should be similar within an area.

Comments

- (CC) The amount of an allocation that is used during ceremonies or as trade for other products (i.e. SOK traded for eulachon grease) should be considered in the overall picture of a community's need. In practice, it may be difficult to argue that one group has more of a cultural need than

another. For example, we would need to be able to quantify the number of ceremonies and the approximate amount of the species used/traded in a season. This may not be feasible.

- (CC) If more festivals or ceremonies are expected for a year, this could be reflected in the Communal Licence, but should be not influencing the mandate. (Note: This works where there is negotiating room between Communal Licences and mandates.)
- (BCI) This should be dealt with in the fishing plan.
- (LF) First Nations increasingly seek to express the cultural component, and consider it integral to their community and identity. It would be consistent with legal background to consider this as a criterion.
- (RHQ) The long-term upper limit in the Mandate is for FSC purposes, and therefore should address all social and ceremonial requirements. However, festivals involving multiple groups tend to be reciprocal, and also, when people are attending lots of festivals, their consumption at home is less, so in general things should balance out.

To Be Excluded

(All respondents so far agreed that these criteria *should not* influence allocations under the FSC Mandates)

DC 12: Variations in abundance

All respondents agreed that variations in abundance (weekly, monthly, annual, multi-year) should be dealt with in the Communal Licences and fishing plans, not in the mandates.

DC 13: Compliance

All respondents agreed that any forms of non-compliance (e.g. conditions of licence, terms of AFS agreement) should not influence allocations under the FSC mandates.

Comments

(RHQ) Should be dealt with through enforcement, not through allocations.

(Sal WG) The decision criterion of compliance, which we included under " should NOT influence allocations in the mandate", was extensively discussed. C&P participants pointed out the need for enforcement tools, but FM participants tended to agree with the concept of using the Comm. Licence or Fishing Plan to deal with non-compliance.

DC 14: Demographics

While demographics can have a strong influence on dietary and cultural needs, the majority of respondents agreed that these internal characteristics of each band should not influence their allocation under the mandate. Specifically, the proportion of the population living on reserve should, urban vs. rural

Comments

(BCI) This maybe applicable if those on reserve fish in traditional territory and those off reserve fish where ever they can get permission. If a larger portion are fishing some place else then the Mandate may be adjusted.

DC 15: Operational details of FSC fisheries

Past allocations, in both the mandates and the Communal Licences, may have been strongly influenced by each band's capacity to harvest. For example, observed effort, gear type, and gear efficiency may all have been considered. Under the proposed approach, these should be dealt with under Communal Licences or fishing plans.

Comments

(RHQ) This is not relevant to allocations in the mandates, but may need to be dealt with through economic and social development programs (E.g. AAROM)

(BCI) Other provisions of the AFS agreement may be put in place to address this issue (e.g. insufficient capacity)

New Suggestions**DC 16: Recent catches**

The department's decision to grant or refuse a request may be strongly influenced by recent levels of harvest. For example, if a band has consistently harvested less than the requested amount, it may be more important to focus on capacity building.

Comments

(RHQ) The *Interim Access Guidelines* require that actual harvests are reviewed, and if catches have not attained the existing allocation, then "the Aboriginal group must provide a convincing rationale for increasing the allocation (e.g. increased fishing capacity, and evidence that existing allocations are unreasonable)."

() However, all respondents so far agreed that operational details, such as capacity to catch fish, should not influence allocations under a Mandate.

(RHQ) While operational details should not influence the allocations, DFO would probably not increase an allocation (under the Communal Licence?) if a band is not achieving the existing allocation.

(RHQ) Catch reporting is also an issue here – recent harvest and recent reported harvest may be two different things. If a band is seeking an increase, the band must provide supporting information.

() How, and in which management tool, should this be taken into consideration?

DC 17: Historic fisheries

Proven amounts of harvest vs. fair and equitable upper limit?

Comments

() How should this be taken into consideration?

DC 18: Use of FSC fish

Suspected sales, sharing within band?

Comments

() If Mandates are intended to reflect a fair and equitable long-term upper limit, as proposed in Chapter 2, then this consideration should not influence allocations under the Mandate.

() How, and in which management tool, should this be taken into consideration?

4. Review of Current FSC Mandates

This chapter contains preliminary results of a regional review of FSC allocations to identify equity issues that need to be addressed. Any changes in allocations would be made in accordance with the **Decision Framework** which will build on the decision criteria in Chapter 3 and will be further developed with input from First Nations representatives.

Comparing Allocations

As described in Chapter 2, allocations under the FSC Mandates should reflect an equitable upper limit on each First Nation's dietary and cultural needs. To be equitable, allocations for a particular species need to take into account the diversity and overall abundance of all species available to a band (i.e. the full fish basket).

In this preliminary analysis, we focus on salmon allocations, which provide a good starting point for several reasons. This allows for the broadest comparison, because almost all of the bands with FSC fisheries have salmon allocations. Salmon are most clearly allocated, with Mandates and Communal Licences explicitly specifying an amount. We look at five aspects:

1. How to summarize allocations across species, which is even more of an issue for non-salmon species (FSC allocations of non-salmonids will be included in future extensions of this analysis).
2. How to group bands in similar settings (further discussion in Appendix 5)
3. Use spatial analysis tool as an interface to for eliciting additional information and facilitate comparisons.
4. How salmon allocations are influenced by the availability of non-salmon resources (other finfish, shellfish).
5. Also consider FSC mandates in the context of what else DFO has provided to a First Nation (e.g. commercial opportunities through ATP, and commercial and/or sport closures to help FNs obtain adequate fish (usually shellfish) to meet FSC needs).

For approximate comparisons, use some summary index based on weight, across all licence areas and gear types, but:

- First Nations preference for salmon species differs by band
- First Nations strongly oppose comparisons or evaluations based on nutritional value

Data Sources

- All of this information is still incomplete, and needs to be verified.
- Band names, ID #, and populations compiled from AFS files and DIAND website
- Band locations and map outlines provided by HEB-GIS
- Band populations used here are the total registered population (on reserve, off reserve, other reserve etc.)
- Band characteristics are based on the questionnaire completed by area staff (Appendix 3).
- **NOTE:** Most of the questions were initially answered based on the most appropriate response for all salmon FSC fisheries across all member bands of an allocation unit. For this analysis, these overall responses were then assigned to each member band, which may introduce inaccuracies.
- **NOTE:** Four bands have been identified as falling under two mandates, one for the band and one for a tribal council. In these cases, the per capita allocations for the tribal council and for the band were summed (Gwa'sala'nakwaxda'xw, 5 of 6 bands listed under the Tsimshian Tribal Council)
- **NOTE:** Tahltan and Iskut bands share a mandate, but have different locations. There is no census data for Iskut, so the assumption used here is that half the Tahltan population number is from Iskut.

Summary Indices for Salmon Allocation

To compare allocations among First Nations, particularly for different areas, we need to devise a summary statistic that combines all allocations into a common unit, and adjust it for population size. For rough comparisons, we use *Sockeye Weight Equivalents*, based on the average weights of each salmon species in commercial harvests from 1996 to 2004, across all licence areas and gear types (Table 2). This calculation shows that a chinook weighs about 3 times as much as a sockeye (2.89), and that an allocation of 100 chinook could be considered about the same as an allocation of 300 sockeye (289).

The average weight of harvested salmon varies by gear and area, and changes over time. Weight differences are most pronounced in chinook, but other biological differences also have a strong influence on the food, social, and ceremonial value of each salmon species at a particular time and location. For example, pink salmon may be more preferred along the coast than further in-land along a major river, after their adaptation to freshwater which degrades quality.

Next steps

- Provide general suggestions for alternative ways for comparing allocations
- Do you have any specific concerns with the Sockeye Weight Equivalents as presented here?
- Review the current weight data in the attached spreadsheet, as per instructions handout)
- Provide suggestions for dealing with similar considerations for non-salmon species: halibut, herring, shellfish
- Treaty: use weight based calculations

Earlier versions of this analysis used average sockeye equivalents for 1995-2005 (excl. 1996) to calculate a summary statistic for all salmon allocations. This was intended as a rough approximation of dietary and cultural values. However, the Working Group received strong advice that the use of Sockeye Equivalents may be inappropriate, because of its connection to commercial value. Even the 10-year average was considered inappropriate. Overall, some DFO staff suggested that each band's full "bread basket" of resources should be evaluated in terms of nutritional value (including moose etc.) to arrive at a fair allocation, while others are strongly opposed to such an approach.

Some participants raised concerns of the per capita comparisons, due to a recent court case over tree licences. This concern was somewhat addressed by pointing out that the allocation in the Mandate would be considered a long-term upper limit, and that the actual allocation in the Communal Licence would be negotiated based on a variety of factors. In short, the per capita numbers would be used for rough comparisons within an area, but not to calculate an exact allocation.

- As these guidelines are further developed, we need to elicit feedback from each FN regarding their preferences?

No matter which summary statistic we choose, it will always benefit some bands (i.e. indicate that current allocation is below average) and not others. The examples in Table 2 show that this summary index needs to be carefully chosen, even for preliminary comparisons.

Table 2: Summary indices of salmon allocation.

Weight Equivalents By Licence Area (1996-2004)	Sockeye	Chinook	Coho	Pink	Chum
A	1	3.06	1.35	0.62	1.92
B	1	2.52	0.94	0.71	1.87
C	1	3.20	1.29	0.69	1.91
D	1	3.24	1.40	0.67	1.78
E	1	2.88	0.99	0.71	1.75
F	1	3.39	1.41	0.64	1.64
G	1	1.87	0.74	0.53	1.55
H	1	2.98	1.00	0.80	1.99
Coast-wide Weight Equivalents (used throughout this chapter)	1.00	2.89	1.19	0.63	1.85
Average Sockeye Equivalents (1995-2205, excluding 1996)	1	2.631	0.694	0.067	0.302

Does it make a difference?

	Tseycum First Nation (Predom. chum)	Kitamaat Village Council (Sign. coho allocation)	Tsleil-Waututh (Predom. sockeye)
Total per capita salmon allocation using coast-wide weight equivalents	39.65	8.30	22.10
Total per capita salmon allocation using average sockeye equivalents	15.36	4.92	18.70

Note: Per capita values are intended for approximate comparisons of existing allocations, not for use in an allocation equation.

Spatial Analysis

- Fig 2: Strong geographic pattern in allocations (e.g. clusters of red)
- Fig 3: clusters of areas where allocations are not being met
- Fig 6: Some bands have low salmon allocation, are not meeting that allocation, and have low capacity to catch salmon, but have access ton both non-salmon finfish and shellfish(e.g. Beecher Bay).

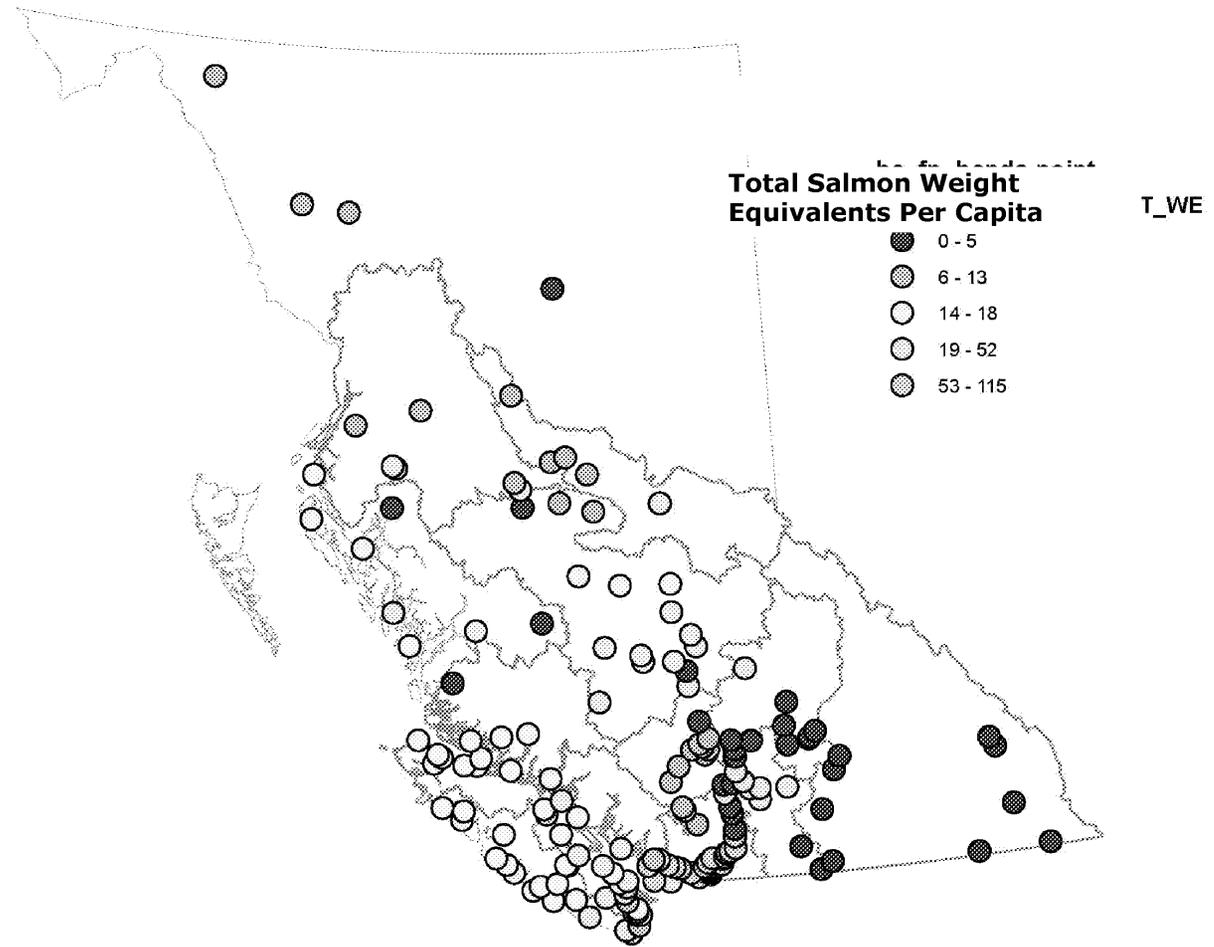


Figure 2. Distribution of salmon allocations for FSC harvests under 2004 FSC mandates

(Note: Some allocations and band affiliations still need to be verified, refer to data summary at beginning of this chapter.

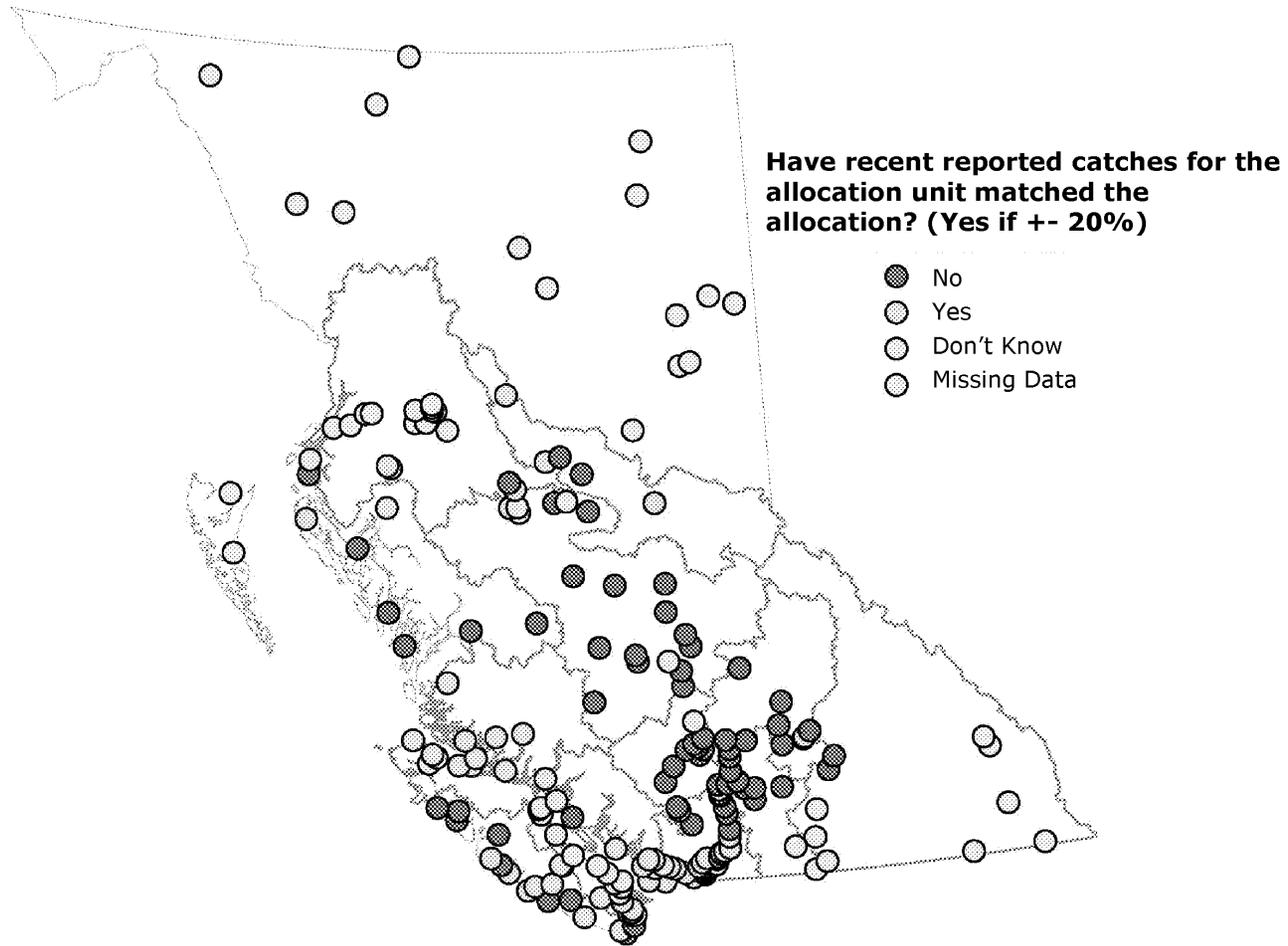


Figure 3. Distribution of reported FSC salmon harvests relative to allocations under 2004 FSC mandates
(Note: Some responses and band affiliations still need to be verified, refer to data summary at beginning of this chapter)

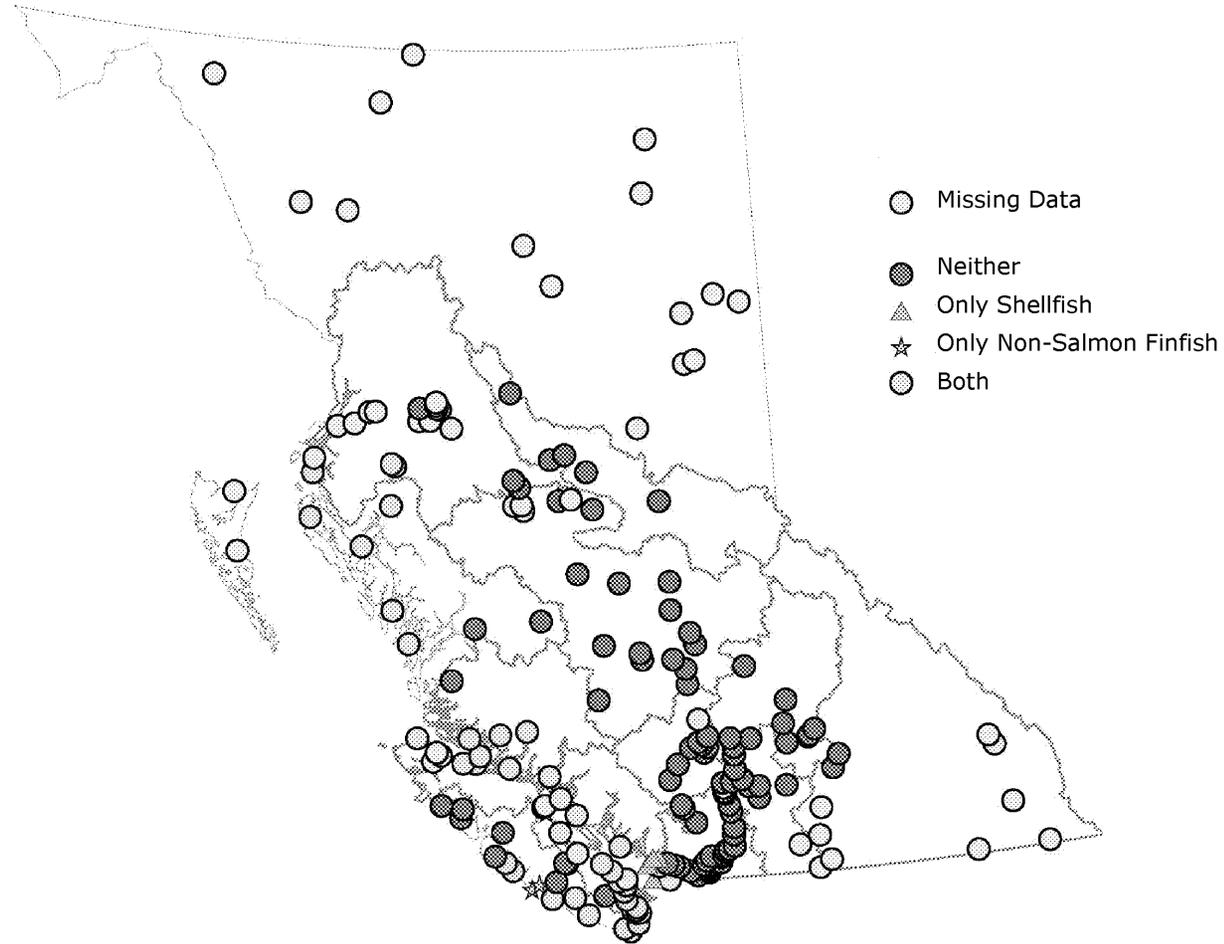


Figure 4. Distribution of access to non-salmon marine resources (herring, halibut, sablefish, lingcod, shellfish)
(Note: Some responses and band affiliations still need to be verified, refer to data summary at beginning of this chapter)

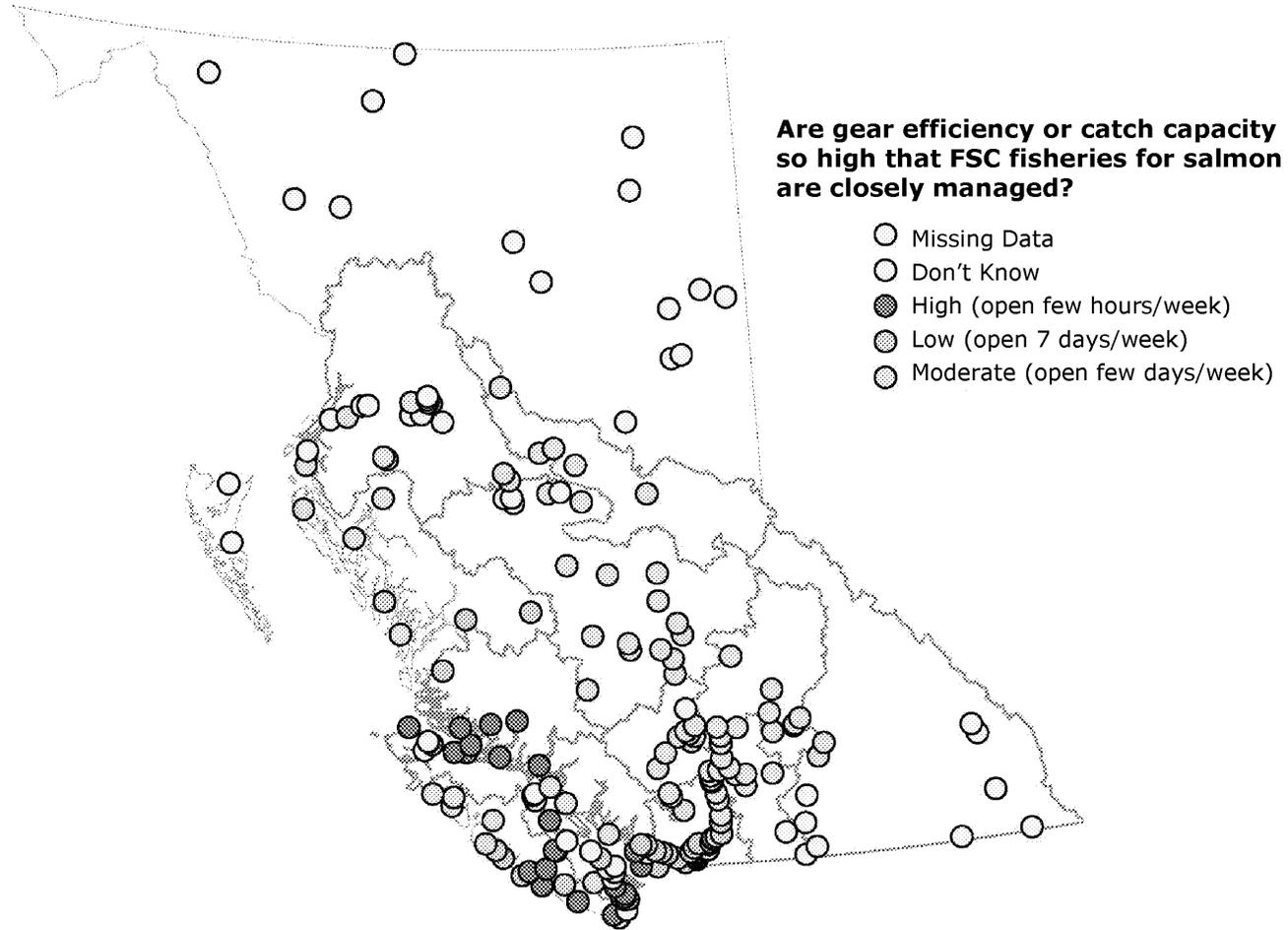
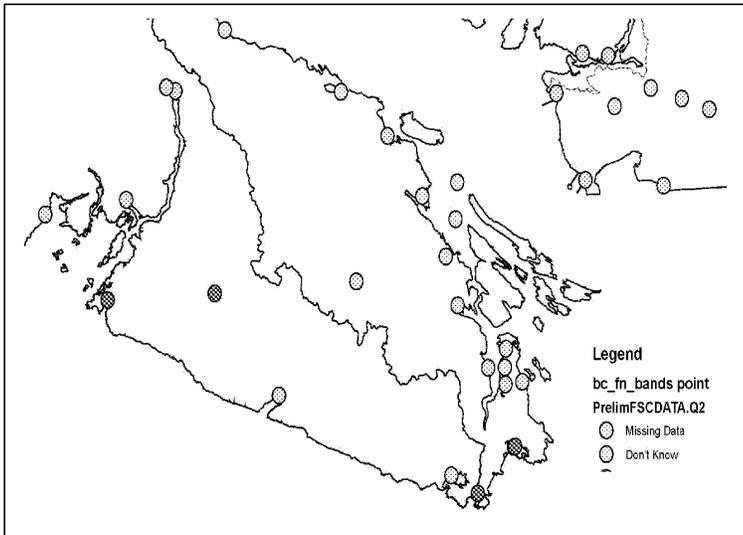
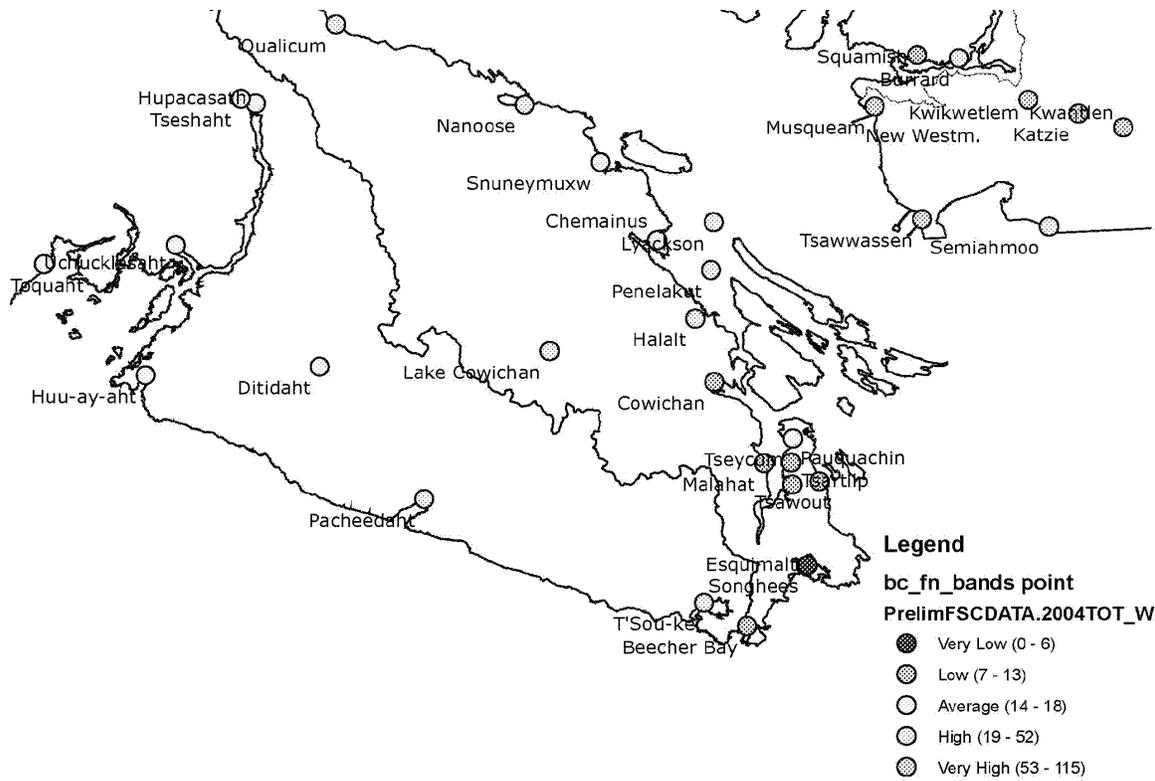
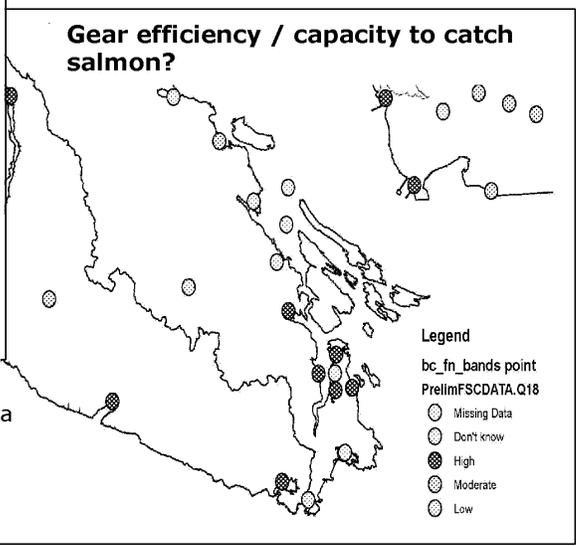


Figure 5. Distribution of gear efficiency and catch capacity in FSC fisheries for salmon.

(Note: Some responses and band affiliations still need to be verified, refer to data summary at beginning of this chapter)



Missing Data
Don't Know
No
Yes



\\svbcvafp01\Cohen-Comm\The Cohen Commission-Kaml
oops\Aboriginal Affairs Advisor-BarryHuber\Data\AB
FISH\Policy-Aboriginal\FSC_Allocation\FilesForRevi
ew-050731ef\Round 3 Materials\FSC_Allocation_DG(Dr
aft2_June27_05)bhCom.doc

Missing Data
 Don't Know
 High
 Moderate
 Low

Do recent catches achieve Communal Licence allocations?

Figure 6. Focus of South Coast (same data as Figures 2, 3 and 5)
 (Note: Some responses and band affiliations still need to be verified, refer to data summary at beginning of this chapter)

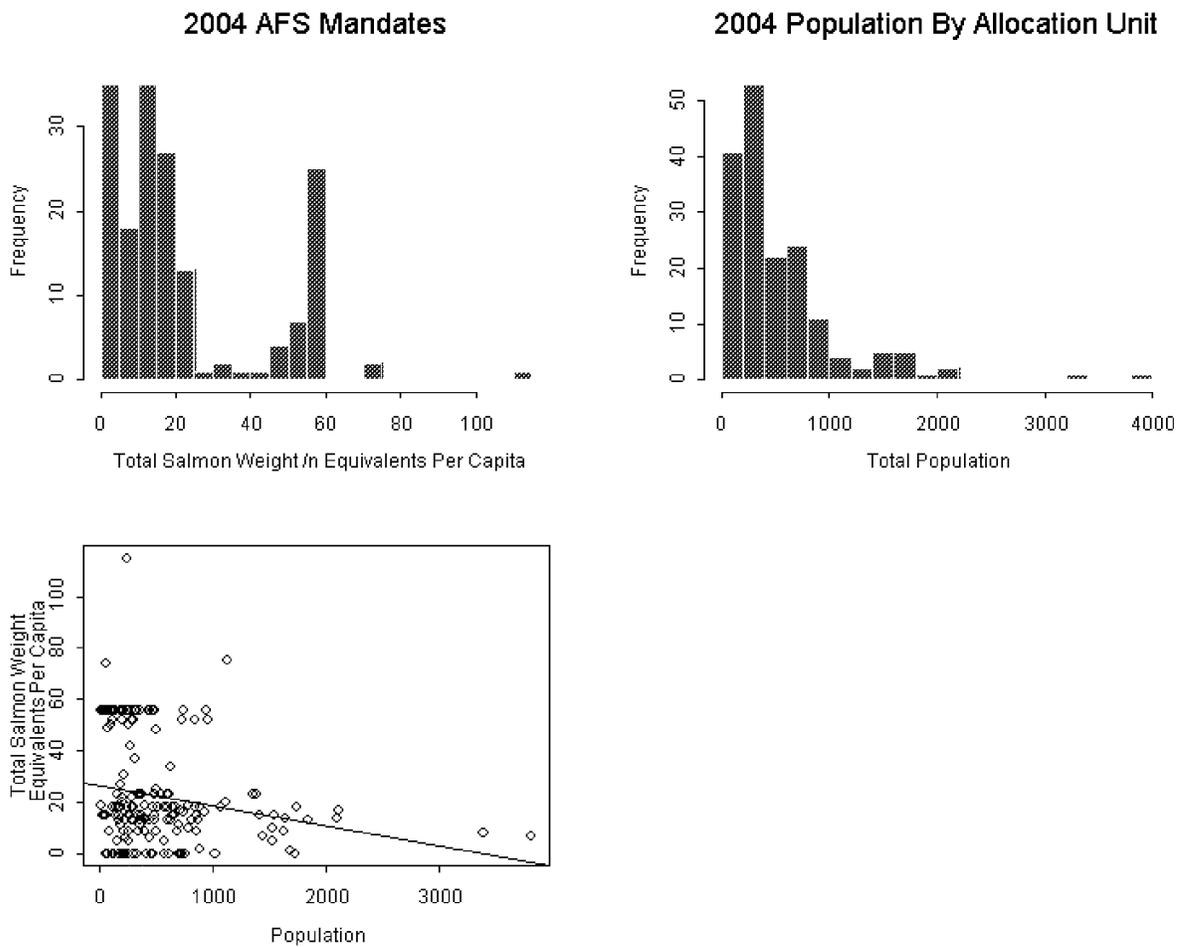


Figure 7. Distribution of 2004 Salmon Allocations and Band Populations

(Note: Some allocations and band affiliations still need to be verified, refer to data summary at beginning of this chapter)

- Both band population and per capita allocation are strongly skewed, with a few very large values.
- Larger bands tend to get fewer sockeye equivalents per capita. (Could there also be an issue with internal distribution?)

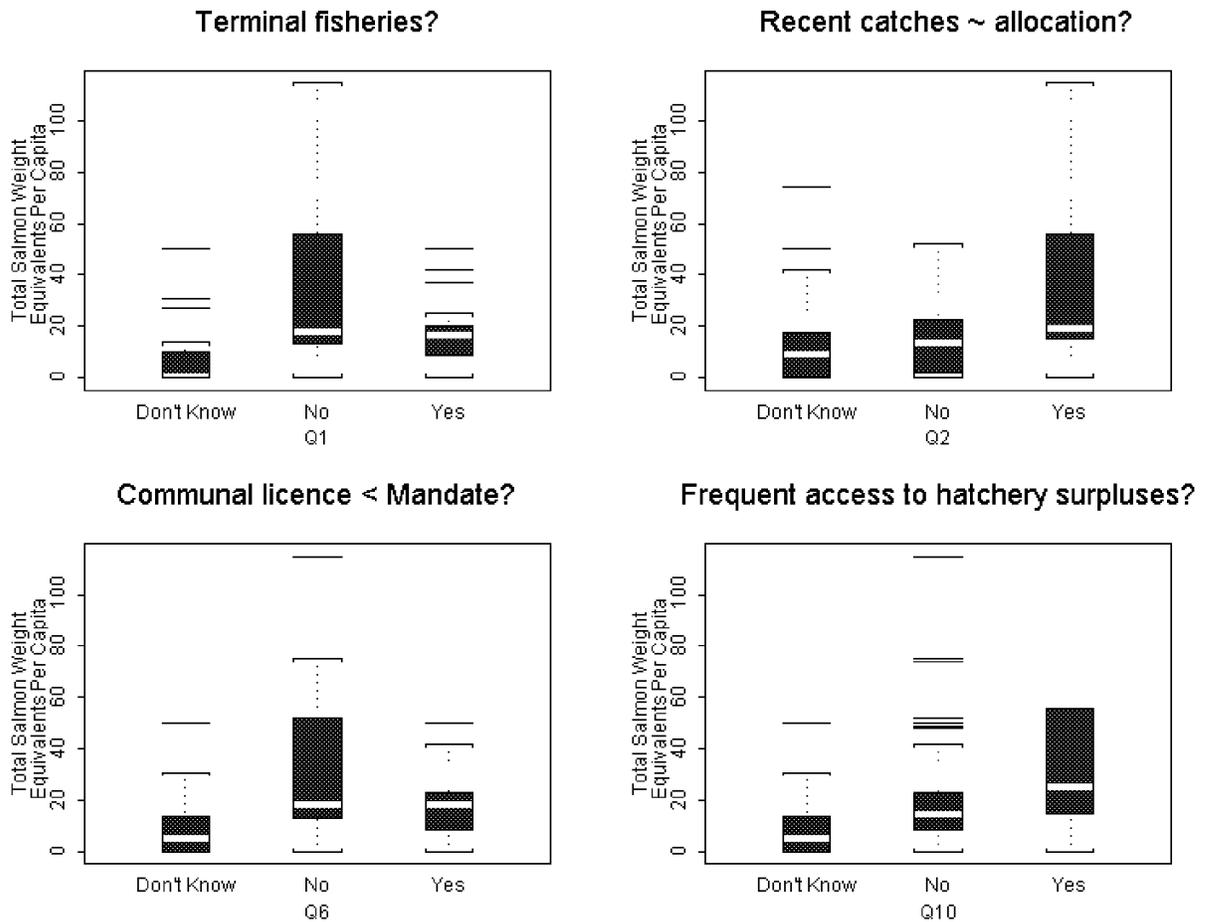


Figure 8. Observed Patterns in 2004 Salmon Allocations

(Note: Some allocations and band affiliations still need to be verified, refer to data summary at beginning of this chapter)

- Bands in terminal areas tend to have lower allocations
- Bands that are meeting their allocations tend to have higher allocations
- Bands for which there is no negotiating room between the Communal Licence and the Mandate tend to have higher allocations.
- Bands that have frequent access to hatchery surpluses tend to have larger allocations.

Decision Criteria vs. Current Patterns in FSC Allocations

To be inserted:

- compare decision criteria identified in Ch3 to observed patterns in Ch. 4
- Shortlist of mandates for review

Appendix 1: Legal Context

The Legal Context for DFO's Aboriginal Fisheries Strategy in BC: An Overview of Decisions from the Courts Relating to Aboriginal Fishing

Prepared by

Hugh MacAulay
(Legal Counsel – DFO Vancouver)

(Currently attached as a separate file)

Appendix 2: Examples of Inconsistencies in Current Practices

In some locations, current practices differ substantially from the approach outlined in Chapter 2. This appendix contains a brief summary of local issues and inconsistencies raised by area staff. Based on these examples, Chapter 3 describes proposed transition strategies from the current patchwork to the proposed decision framework. **PLEASE PROOF-READ THESE CAREFULLY TO CORRECT ANY MISREPRESENTATIONS.**

Examples of Local Practices

Local
Issue

On the **Lower Fraser**, the Communal Licence is implemented as a *Variation Order* (i.e. a public notice in other fisheries). This variation order is the legal instrument which specifies the time of each opening, the legal uses for harvested fish, the participants, and gear restrictions for fishing. In these fisheries, there is strong link between the overall fishing plan and the Communal Licences. The Communal Licences are derived from fishing plans developed by the *Fraser River Panel* of the *Pacific Salmon Commission*, which in turn are modeled based on run size estimates, environmental conditions, escapement targets for each stock that may be passing through, and international obligations. This simulation model forecasts catch capacity of different harvesters and the timing of stock migration to determine the fishing time for each harvester group. An additional complexity is the sales component of the FSC allocation, which is negotiated annually to ensure catch monitoring (25% or 50%).

- Do the CL specify the openings or target amount for FSC harvests (total or per opening) ?

Local
Issue

For **Central Coast** bands the Communal Licences currently specify fishing locations, gear restrictions, and the open times of the fishery, because there are no formalized fishing plans in place. The provisions in these Communal Licences are reviewed annually between the local DFO staff and the FN Fisheries Manager. Recently, some specialized fishing plans have been developed with First Nations in Johnstone Strait to coordinate conservation measures in sockeye fisheries with possible by-catch of Sakinaw sockeye or Cultus sockeye.

Local
Issue

The **Nuu-chah-nulth Tribal Council** and its member bands are currently not signatories to any harvest agreements, and DFO has simply issued a Communal Licence with harvest schedules. For primary species (i.e. salmon and other finfish), the harvest schedules specify a target amount, and for secondary species (e.g. finfish) they just specify "open to access". For ??? the limit is set to 5% of the total allowable catch.

Local
Issue

Some managers on the **South Coast** of Vancouver Island have negotiated the actual mandates with FN, so that mandates are currently not considered a confidential number in some cases.

Comments

(RHQ) This comments may simply reflect an inconsistent use of words, as it would be surprising of staff had the authority to do this – it is just not part of the process. They negotiate the Comprehensive Fisheries Agreements for sure, but these should still be within the limits of the confidential Mandate limits.

Examples of Inconsistencies between FSC Mandates, Band Affiliations, and Communal Licences



The **Gwa'sala'nakwaxda'xw First Nation** was relocated from its traditional territory to Port Hardy in the 1960s, and FSC fisheries were shifted to Statistical Areas 9 and 10 ~~when?~~, where they were grouped with the **Kwakiutl Territorial Fisheries Commission**, the **A-tlegay Fisheries Society**, and five other bands under a single Communal Licence (Licence Number CCD-05-CL023-KTFC-A-TLEGAY FISHERIES SOCIETY-GNN-KFN-GFN-NFN-KMFN-TFN). Under a separate Communal Licence, they also have a small allocation of chinook, coho, pink, and chum in their traditional territory in Statistical Areas 8-1 and 8-2 (ca 350 sockeye equivalents, mainly chinook). In recent years, the **Gwa'sala'nakwaxda'xw** have been seeking increased FSC harvests in their traditional territory, particularly because the current allocation makes the trip impractical.



Should increased allocations for **Gwa'sala'nakwaxda'xw** in Area 8 be taken out of the shared Communal Licence for Areas 9 and 10? There is no indication that shared allocations were increased when the additional band was included.



Band affiliations for the **Kwakiutl Territorial Fisheries Commission (KTFC)** have changed frequently in recent years. While the funding provisions in the FSC Mandate were adjusted accordingly, the FSC allocations in either the Mandate or the Communal Licences were not. For some of the bands that separated from the KTFC Communal Licences were issued under the existing Mandate(e.g. which bands?), while for others new FSC mandates were put in place (e.g. Quatsino). The total allocation under Communal Licences for all former KTFC members may now exceed the total FSC mandates. (Note that other staff provided a different summary: Only 3-4 groups of the original 16 (?) are still member of the KTFC, but the Mandate was not split and Communal Licences for each of the separated bands simply state "Take the group's share of the KTFC allocation" without specifying an amount. ~~Please clarify this issue!~~)



The **Nuu-chah-nulth Tribal Council**, with members bands in various stages of treaty negotiation, may have Communal Licences which in total exceed the provisions of the FSC Mandate for the tribal council. Also, they report catches in excess of the mandate. These catch reports may be inflated in order to trigger a court case and increase the starting point for treaty negotiations.

**Local
Issue**

The **Kwakiutl Band**, on the Northern end of Johnstone Strait, have access to *Fraser sockeye* as part of the 8,000 pieces in the Mandate for **Kwakiutl Territorial Fisheries Commission**, the **A-tlegay Fisheries Society**, and five other bands. However, they also have a harvest agreement for the local Quatse sockeye. These harvests are not covered under the FSC mandate, because the Non-Fraser sockeye allocation is zero. (Please verify this).

**Local
Issue**

The **Carrier-Chilcotin Tribal Council (CCTC)**, according to the current DIAND information, has 5 member bands: **Kluskus Band, Nazko Band Government, Red Bluff Band, Toosey Band, and Ulkatcho Band**. However, the FSC Mandate for CCTC only covers Kluskus, Nazko, and Red Bluff. For FSC mandate purposes, this group could be called the **Southern Carrier** Allocation Unit. Toosey and Ulkatcho each have individual FSC mandates. For the three bands covered by the CCTC mandate, Communal Licences are negotiated with each individual band, while ensuring that the total does not exceed the Mandate provisions for the group.

**Local
Issue**

Most of the former member bands have pulled away from the **Tsimshian Tribal Council (TTC)**, and the current practice is to issue Communal Licences to each of the individual bands. In combination, these Communal Licences may exceed the FSC mandate. (Please clarify the following comment: TTC sockeye allocation is 80k, of which 60k is divided among Communal Licences, and 20k is earmarked for other FN that never were part of the TTC, but who come to the mouth of the Skeena to fish. **Note:** In the database we have a sockeye allocation of 43,300 for TTC)

**Local
Issue**

In the database, an FSC Mandate is currently issued to the **Takla First Nation** (ID 608), but the **Takla Lake Band** (same ID?) is also covered by the FSC Mandate for the **Carrier-Sekani Tribal Council (CSTC)**. Is this one band covered by two mandates, or two separate bands, or the same band covered for two different areas? (**Note: per capita allocations added in prelim analysis**)

**Local
Issue**

In the database, an FSC Mandate is currently issued to the **Kitkatla First Nation** (ID 672), but the **Gitkxala Nation** (same ID?) is also covered by the FSC Mandate for the **Tsimshian Tribal Council**. Is this one band covered by two mandates, or two separate bands, or the same band covered for two different areas? (**Note: per capita allocations were added in prelim analysis**)

Local
Issue

In the database, an FSC Mandate is currently issued to the **Metlakatla First Nation** (ID 673), but they are also covered by the FSC Mandate for the **Tsimshian Tribal Council**. Is this one band covered by two mandates, or two separate bands, or the same band covered for two different areas? **(Note: per capita allocations added in prelim analysis)**

Local
Issue

Upper Nicola Band are part of both the **Nicola Watershed Stewardship**, which has an FSC allocation, and the **Canadian Columbia River Inter-Tribal Fisheries Commission**, which does not have an allocation.

Local
Issue

The **Secwepemc (a.k.a. Shuswap) Fisheries Commission (SFC)** is a separate body from the **Shuswap Tribal Council (STC)**. The SFC currently has 6 member bands: **North Thompson, Bonaparte, Skeetchestn, Kamloops, Little Shuswap, and Spallumcheen. Adams Lake** are not in the SFC, but are signatories to the same fisheries agreement. **Neskonlith, Whispering Pines, and High Bar** are currently affiliated with the STC, but not with the SFC. **None of these are currently in the database of mandates. Need to check the details.**

Local
Issue

The **Nicola Watershed Stewardship** has a clearly specified FSC mandate. Based on current DIAND information, this allocation unit has seven member bands: **Coldwater, Cook's Ferry, Lower Nicola, Nooaitch, Shackan, Siska, and Upper Nicola**. In preliminary analysis, this allocation unit was flagged because per capita allocations of salmon for these seven bands were more than double the regional average. Area staff clarified that the **Nlaka'pamux Nation Tribal Council**, not currently a signatory to AFS, also harvest FSC fish under that mandate, bringing five additional bands: **Ashcroft, Boston Bar, Boothroyd, Oregon Jack Creek, Spuzzum, and Lytton**.

Local
Issue

In the **Lilloet area**, Communal Licences are issued to individual bands to cover expected harvests that are not covered by any fisheries agreements. **(issued so don't exceed some mandate? Please clarify)**

Local
Issue

Three bands have recently left the **Carrier Sekani Tribal Council (CSTC)**. The **Cheslatta Carrier Nation** and **Tsay Keh Dene First Nation** are currently not covered by any mandate, but have a Communal Licence? **Tl'azt'en Nation** has new mandate, but the CSTC was probably not adjusted.

Local
Issue

Canoe Creek are listed under both the **Tsilhqot'in National Government** (with a mandate) and the **Cariboo Tribal Council** (without a mandate?)

Examples of Practical Overlap Between Commercial, Sales, and FSC Harvests

Local
Issue

The **A-tlegay Fisheries Society** accesses halibut and other groundfish under both a commercial licence and in FSC fisheries. Practical challenges arise because commercial harvests under the *groundfish schedule* are managed regionally, while FSC harvests are restricted to traditional territories in statistical areas 9, 10-1, and 10-2. The current approach is that they can combine commercial and FSC harvests in a single trip, but that FSC fish must be caught in the specified areas. From a practical perspective, this is almost impossible to monitor.

Local
Issue

Some of the **Lower Fraser** bands (**Musqueam, Sto:lo, Tsawwassen**) have a sales component in their FSC allocation, ranging from 25% to 50%, which is negotiated annually. Some respondents felt that DFO should work towards a clearer separation between FSC and sales allocations. Also, the focus for this project is exclusively on FSC allocations, because most bands have not established an aboriginal right to sales. However, the sale component in the Lower Fraser is also in place for practical reasons, mainly to gain some catch monitoring data.

- legal precedent of sales fishery?
- How should this be handled in the per capita comparisons?

Local
Issue

In **Port Alberni** there are two Communal Licences with a sales component (which bands). These CL specify open times and gear restrictions, and are amended weekly to reflect changes in the Fishing Plan. For salmon and some other finfish the FSC Mandate and fisheries agreement specify an amount of FSC harvest, while the CL specifies a fishing opportunity (Designed to achieve the Mandate amount under expected conditions?). For shellfish, there is no mandated amount, and the CL simple provides year-round access and ,in some cases, daily limits (e.g. clam). (Please clarify this)

Examples of Requests for Increased Allocations

Local
Issue

The **Homalco Band** has a long-standing allocation of 4,000 Fraser sockeye in the FSC Mandate and in the Communal Licence. Only recently they have been able to actually harvest that allocation through the **First Nations Marine Society**. This increased capacity, in combination with population growth, has led to requests for increased allocation. (Please verify this summary)

=> are there substitute stocks locally? Other species?

Local
Issue

The **First Nations Marine Society** has greatly increased the capacity of individual bands to catch their allocations, and requests are coming in to double the current mandate.

Local
Issue

The current FSC Mandate for **Owekeeno First Nation** specifies 500 sockeye, 100 chinook, and about 5,150 lbs of groundfish (halibut, sable, other). Due to conservation measures restricting access to sockeye and depleted groundfish stocks, they are requesting an increased chinook allocation. However, the request for 3,000 chinook may also be influenced by conflicts with the local recreational fishery which currently harvest about 3,000 chinook. Given the current band population of 256 individuals, the additional 2,900 chinook may not be intended for harvest, but as a measure to ensure larger escapements.

Local
Issue

The **Gitxsan and Wet’suwet’en Watershed Authorities (GWWA)** got an increase in Communal Licence limit for chinook from 5,000 pieces to 10,000 pieces. The driving factor was that actual reported catches consistently exceeded the 5,000 limit. This issue is closely connected to the Skeena treaty negotiations, and reported catches may be inflated for two purposes: to trigger a court case for legal precedent, and to raise the starting point for treaty negotiations. This emphasizes the need for improved catch monitoring. (Please clarify under which Mandate this is covered. Currently we don’t have a Mandate for Gitxsan in the database, and Wet’suwet’en First Nation is part of the Mandate for the Carrier Sekani Tribal Council, which only has an allocation of 400 chinook!)

Local
Issue

The **Hartley Bay** and **Metlakatla** insist that their current halibut harvests are about 4 times the current mandate, but still fall short of the minimum FSC need. For example, **Hartley Bay** : 5k in mandate, 31k reported caught(Please clarify this)

Local
Issue

Members of the **Nuu-chah-nulth Tribal Council** insist that current allocation under the Communal Licences fall short of minimum requirements, because of increases in both population and cultural activity. (Note: treaty negotiation strategies may play a role in this) REF TO OTHER EX)

Local
Issue

Members of the **FR Chinook Planning Commission** would get very frustrated with the current FSC Mandate of 50 Ck for ~ 2000 individuals. (by-catch?) Please clarify this

Local
Issue

Both the **Nanaimo FN** and **Cowichan FN** have long-standing requests for increased allocations, arguing that the current Communal Licences are inequitable relative to other bands in the area (check per capita), and don't satisfy minimum FSC requirements

Local
Issue

Please clarify comment about Sooke FN requesting access to Fraser fish

Appendix 3: Questionnaire

A crucial part of this project is to build a database of background information about each band and its FSC fisheries. DFO staff answered a series of questions for each band or allocation unit in their area, bringing together their combined judgment and local knowledge.

In the first round of elicitation, the responses were mostly given for allocation units, not for individual bands, and intended to reflect all FSC fisheries for salmon species. As a result, the information may be inaccurate in the details (e.g. there may be differences between a band's chinook and sockeye fisheries), but it is nevertheless a valuable starting point for analysis.

Over time, area staff will be asked to fill in the missing pieces and provide additional details to build a complete picture of FSC fisheries by band and by species. Note: For preliminary analysis we assume that answers hold true for all member bands of an allocation unit, except for Nuu-chah-nulth Tribal Council where responses were specifically provided for each individual band. In Chapter 4, we use this information to identify patterns in current allocations. In Chapter 5, we compare patterns in current allocations to the decision criteria described in Chapter 3, and identify a priority list of mandates for review.

The questions are listed below. The most recent data are available as an Excel spreadsheet from the Project Lead (See Contact Information).

Location

1. Is the salmon fishery close to spawning area for targeted stocks?

Catch

2. Have recent reported catches for the allocation unit matched the FSC mandate? (Yes if +- 20%)
3. Have recent catches/fishing locations been affected by conservation measures?
4. Are there indications of substantial unreported FSC catches?
5. Are there indications of substantial sales of FSC fish?

FSC Provisions

6. Is the Communal Licence set below the FSC mandate?
7. Does the FSC Mandate or Communal Licence have a sales component?
8. Do members of this allocation unit have access to substantial amounts of non-salmon fin-fish (Herring, halibut, sablefish, lingcod)

9. Do the members of this allocation unit have access to substantial amounts of shellfish?
10. Do the members of this allocation unit have frequent access to hatchery surpluses?

Organization

11. Has the population for this allocation unit changed drastically in recent years?
12. Has this allocation unit recently separated from a larger allocation unit (e.g. Tribal Council)?
13. Have any bands or groups recently joined this allocation unit (e.g. Tribal Council)?
14. Has there been feedback from the FN that current allocations are unfair relative to other bands in the area?
15. Has there been feedback from the FN that current allocations are unfair relative to other bands in the area?
16. Are there any indications that FSC fish are not distributed proportionally between bands and individuals in this allocation unit?
17. Do the FSC fisheries for this allocation unit have a strong social or ceremonial component?

Gear

18. What is the gear used to access salmon allocations?
 - Commercial Type = seine, gill net
 - Traditional = spear, dip net, set net
 - Modified traditional = drift net, circle setting
 - Other
19. Are gear efficiency or catch capacity so high that FSC fisheries are closely managed?
 - High: opening a few hours per week
 - Moderate: opening a few days/week
 - Low: open 7 days /week

Aboriginal Transfer Program

20. Has any member band of this Allocation Unit received allocations under the ATP?

Appendix 4: Supporting Documentation

Include a checklist of supporting information to be provided by FN

Appendix 5: Preliminary Allocation Aggregates

The intention of FSC Mandates is to reflect fair and equitable allocations based on the full diversity and abundance of species available for FSC harvests. The FSC Working Group recognizes that each band has individual needs and preferences, but nevertheless considers it reasonable to assume that bands in close proximity (e.g. same watershed) would have access to a similar “fish basket”, and that their overall set of FSC allocations should be similar after adjusting for population size.

This appendix illustrates a preliminary set of allocation aggregates based on the following considerations:

- Where possible, keep all member bands of a tribal council in the same aggregate.
- Where possible, keep all bands within a watershed in the same aggregate.
- Where possible, keep bands with similar historic roots in the same aggregate.
- Any others?

In this preliminary version, BC First Nations are grouped into 10 aggregates:

- Central Coast
- Columbia
- Fraser Canyon
- Gulf
- Lower Fraser
- Mid Fraser
- North Island (Northern Vancouver Island and part of Central Coast)
- Skeena / Nass
- Thompson
- Upper Fraser
- WCVI

As for the questionnaire data, these aggregates are preliminary and several issues remain to be dealt with in the Working Group;

- Currently, the database uses band office locations, which may reflect only one of several population sites.
- Some bands fish in multiple locations. Where should they be grouped?
- Do the current names for these allocation aggregates adequately reflect the area and all of the bands covered?
- What about neighboring bands that fall into different allocation aggregates? For example:
 - a. Gitxaala Nation / Kitkatla in Central Coast and Metakatla / Kitselas in Skeena-Nass
 - b. Bonaparte in Thompson, Cook's Ferry in Mid Fraser, and Lytton in Lower Fraser
- What about bands that are geographically close together, but have very different allocations:
 - a. Nuxalk Nation and Ulkatcho
 - b. Others?
- Should Queen Charlotte Islands be grouped with NC or CC, or as a separate allocation aggregate?
- Should Yukon bands be kept as a separate allocation aggregate?
- Any others?

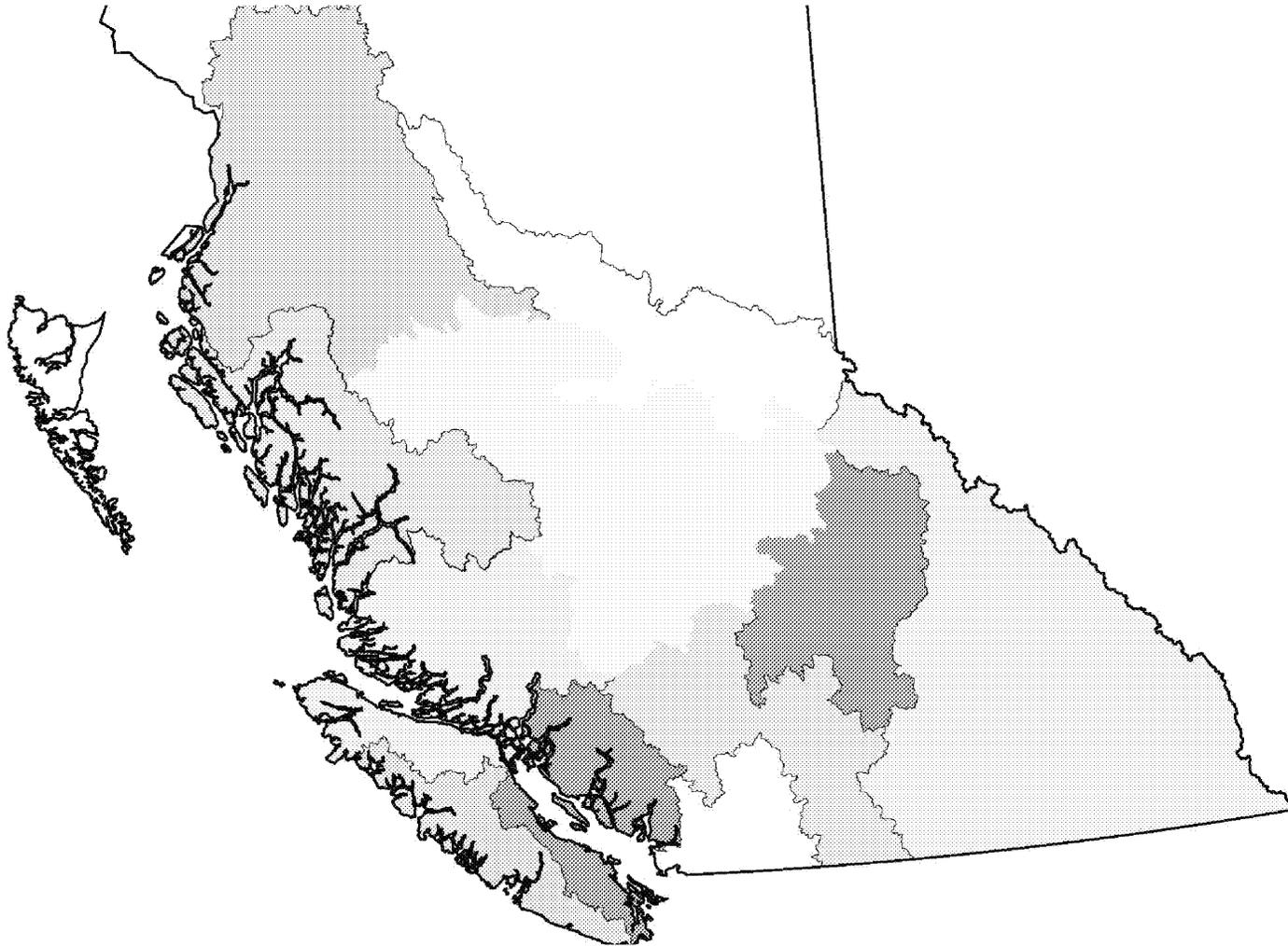


Figure A5.1. Pacific Coast Allocation Aggregates for FSC Fisheries (Preliminary)

List of Bands

- Ahousaht
- Beecher Bay
- Cape Mudge
- Ditidaht
- Ehattesaht
- Hesquiaht
- Hupacasath
- Huu-ay-aht
- Ka:'yu:'k't'h'/Che:k:tləs7e
- Mowachaht/Muchalaht
- Nuchatlaht
- Pacheedaht
- Tla-o-qui-aht
- Toquaht
- Tseshaht
- T'Sou-ke
- Uchucklesaht
- Ucluelet

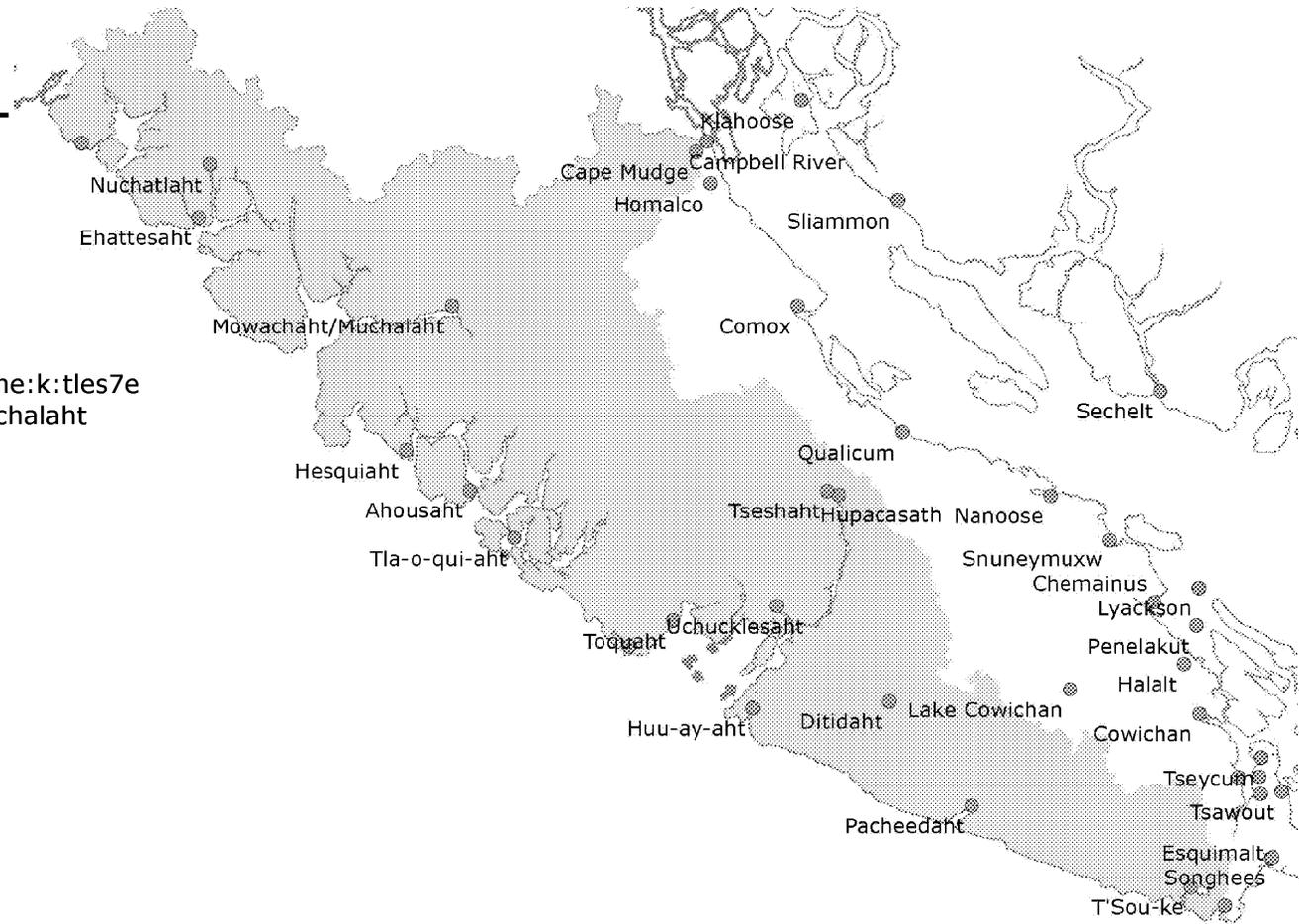


Figure A5.2. West Coast Vancouver Island Allocation Aggregate (Preliminary)

List of Bands

- Burrard
- Campbell River
- Chemainus
- Comox
- Cowichan
- Esquimalt
- Halalt
- Homalco
- Klahoose
- Lake Cowichan
- Malahat
- Nanoose
- Pauquachin
- Qualicum
- Sechelt
- Sliammon
- Songhees
- Squamish
- Tsartlip
- Tsawout
- Tseycum



Figure A5.3. Gulf Allocation Aggregate (Preliminary)

List of Bands

- | | |
|------------------|---------------|
| Aitchelitz | Siska |
| Boothroyd | Skawahlook |
| Boston Bar | Skowkale |
| Chawathil | Skuppah |
| Cheam | Skwah |
| Chehalis | Soowahlie |
| Kanaka Bar | Spuzzum |
| Katzie | Squiala |
| Kwantlen | Sumas |
| Kwaw-kwaw-Apilt | Tsawwassen |
| Kwikwetlem | Tzeachten |
| Leq'a: mel | Union Bar |
| Lytton | Yakweakwioose |
| Matsqui | Yale |
| Musqueam | |
| New Westm. | |
| Peters | |
| Popkum | |
| Scowlitz | |
| Seabird Island | |
| Semiahmoo | |
| Shxwhc:y Village | |
| Shxw'ow'hamel | |

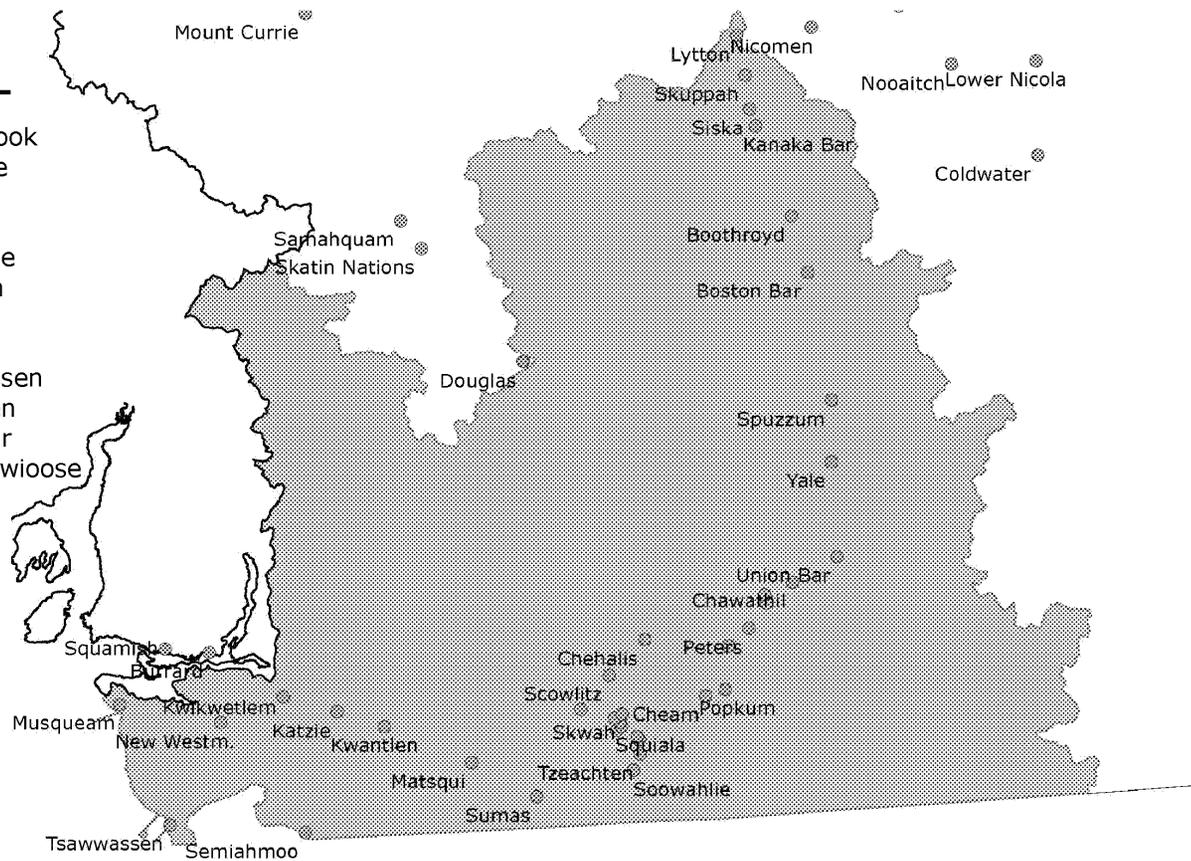


Figure A5.4. Lower Fraser Allocation Aggregate (Preliminary)

List of Bands

- Ashcroft
- Bridge River
- Cayoose Creek
- Coldwater
- Cook's Ferry
- Douglas
- High Bar
- Lower Nicola
- Lower Similkameen
- Mount Currie
- Nicomen
- Nooaitch
- N'Quat'qua
- Oregon Jack Creek
- Samahquam
- Seton Lake
- Shackan
- Skatin Nations
- T'it'q'et
- Ts'kw'aylaxw
- Upper Nicola
- Upper Similkameen
- Xaxli'p



Figure A5.5. Fraser Canyon Allocation Aggregate (Preliminary)

List of Bands

- Adams Lake
- Bonaparte
- Canim Lake
- Kamloops
- Little Shuswap Lake
- Neskonlith
- Simpcw
- Skeetchestn
- Whispering Pines/Clinton



Figure A5.6. Thompson Allocation Aggregate (Preliminary)

List of Bands

- Alexandria
- Alexis Creek
- Burns Lake
- Canoe Creek
- Cheslatta Carrier Nation
- Esketemc
- Kluskus
- Lake Babine Nation
- Nadleh Whuten
- Nazko
- Nee-Tahi-Buhn
- Red Bluff
- Saik'uz
- Skin Tye
- Soda Creek
- Stellat'en
- Stone
- Tl'etingox-t'in Government Office
- Toosey
- Wet'suwet'en
- Williams Lake
- Xeni Gwet'in Government

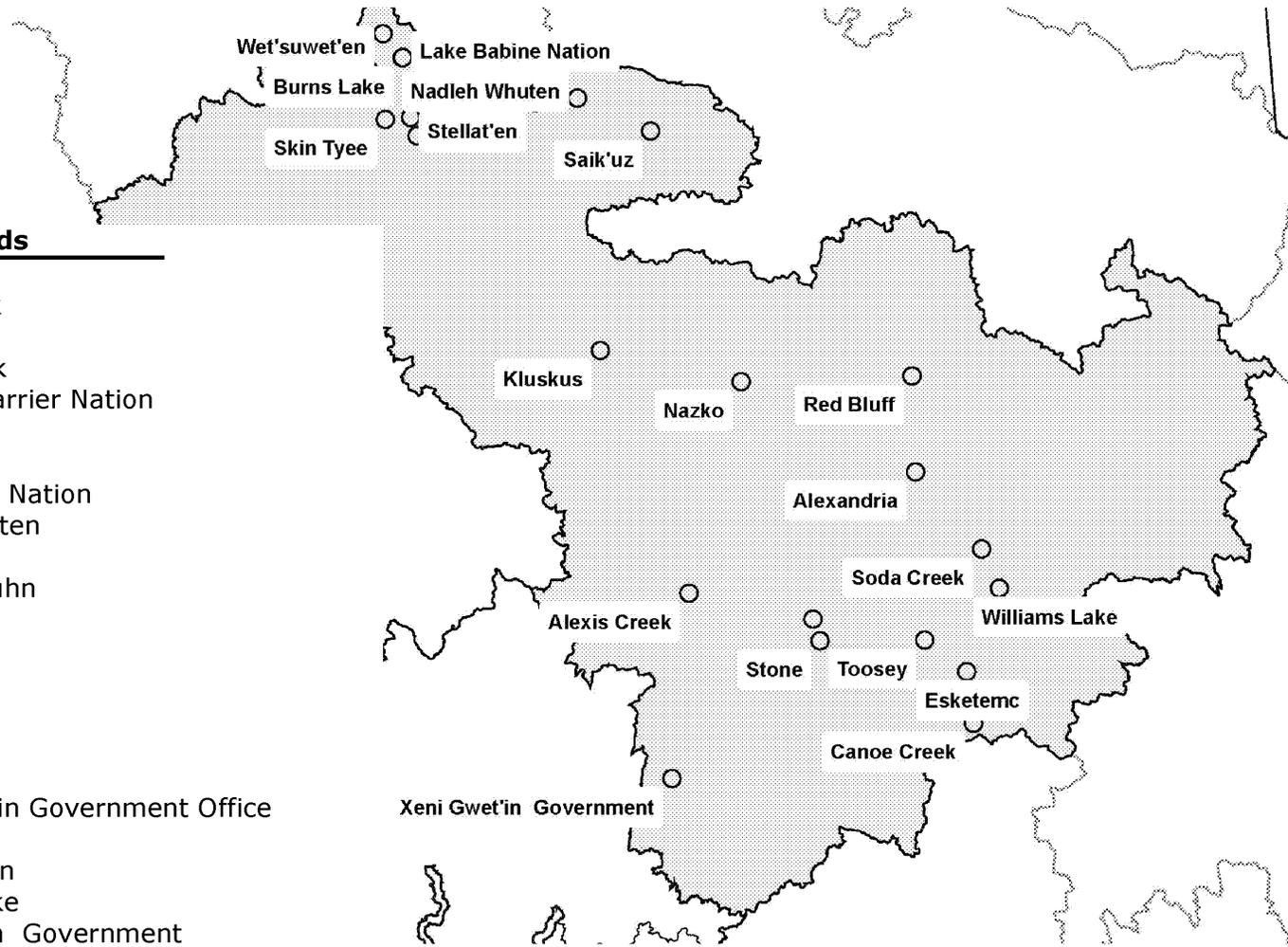


Figure A5.7. Mid-Fraser Allocation Aggregate (Preliminary)

List of Bands

- Lheidli T'enneh
- Nak'azdli
- Takla Lake
- Tl'azt'en Nation
- Yekooche

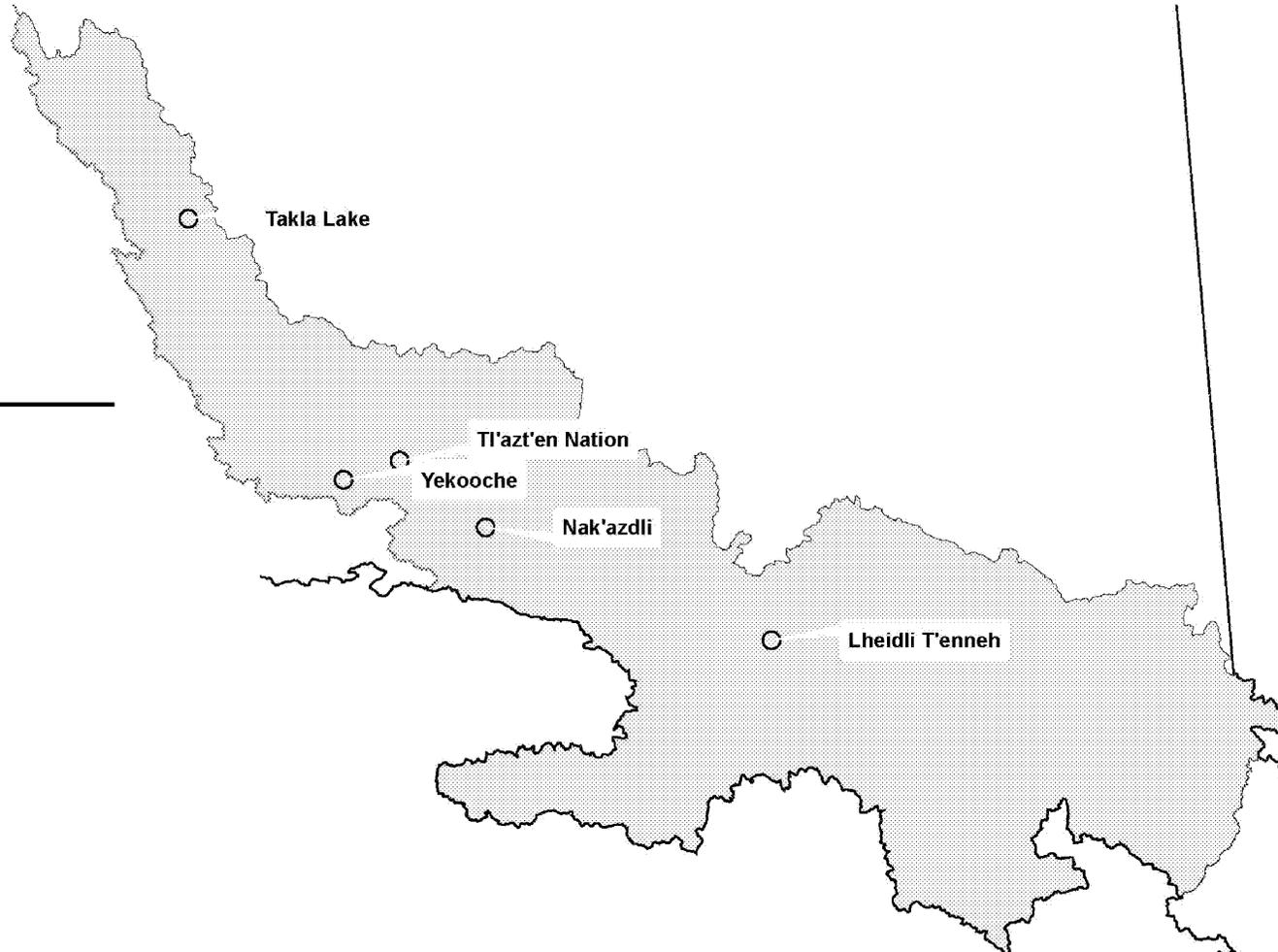


Figure A5.8. Upper Fraser Allocation Aggregate (Preliminary)

List of Bands

- ?Akisq'nuk
- Lower Kootenay
- Okanagan
- Osoyoos
- Penticton
- Shuswap
- Spallumcheen
- St. Mary's
- Tobacco Plains
- Westbank

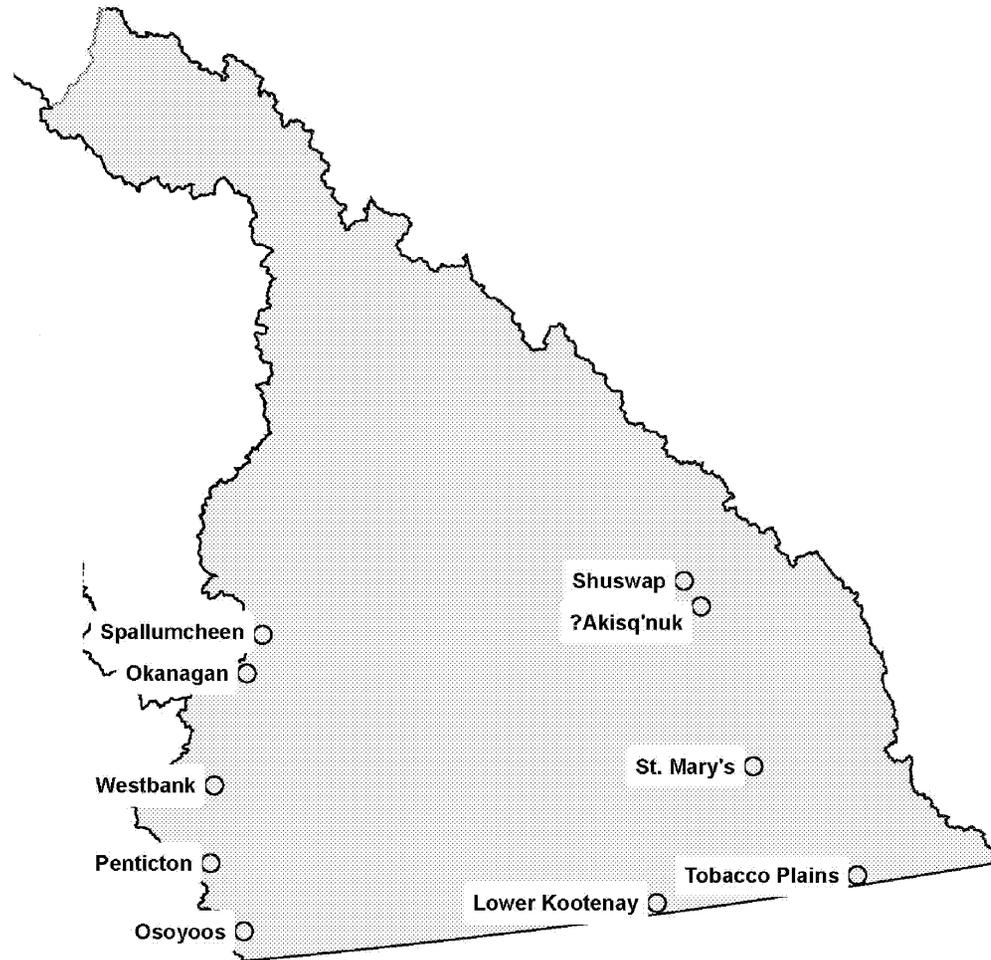


Figure A5.9. Columbia Allocation Aggregate (Preliminary)

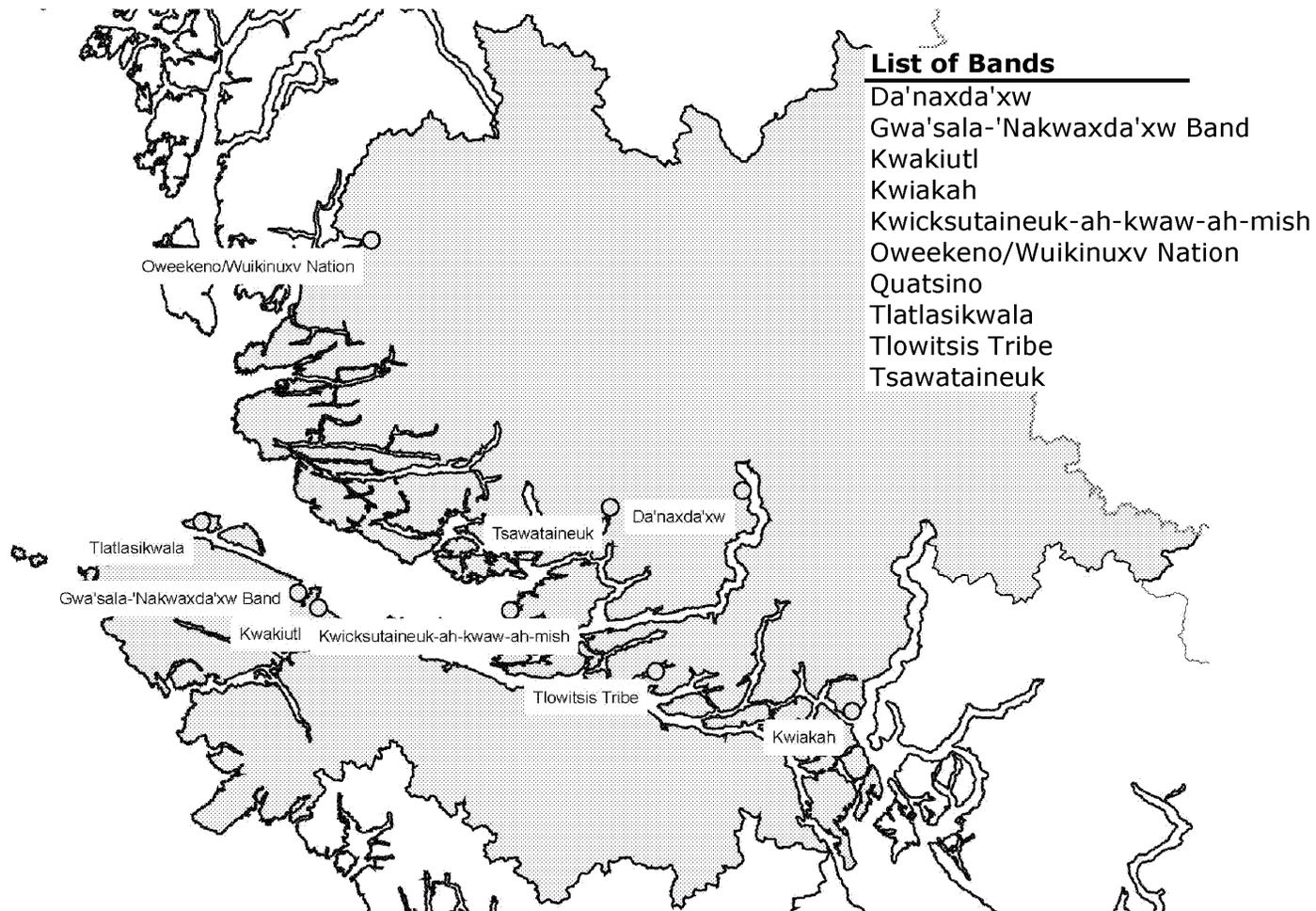
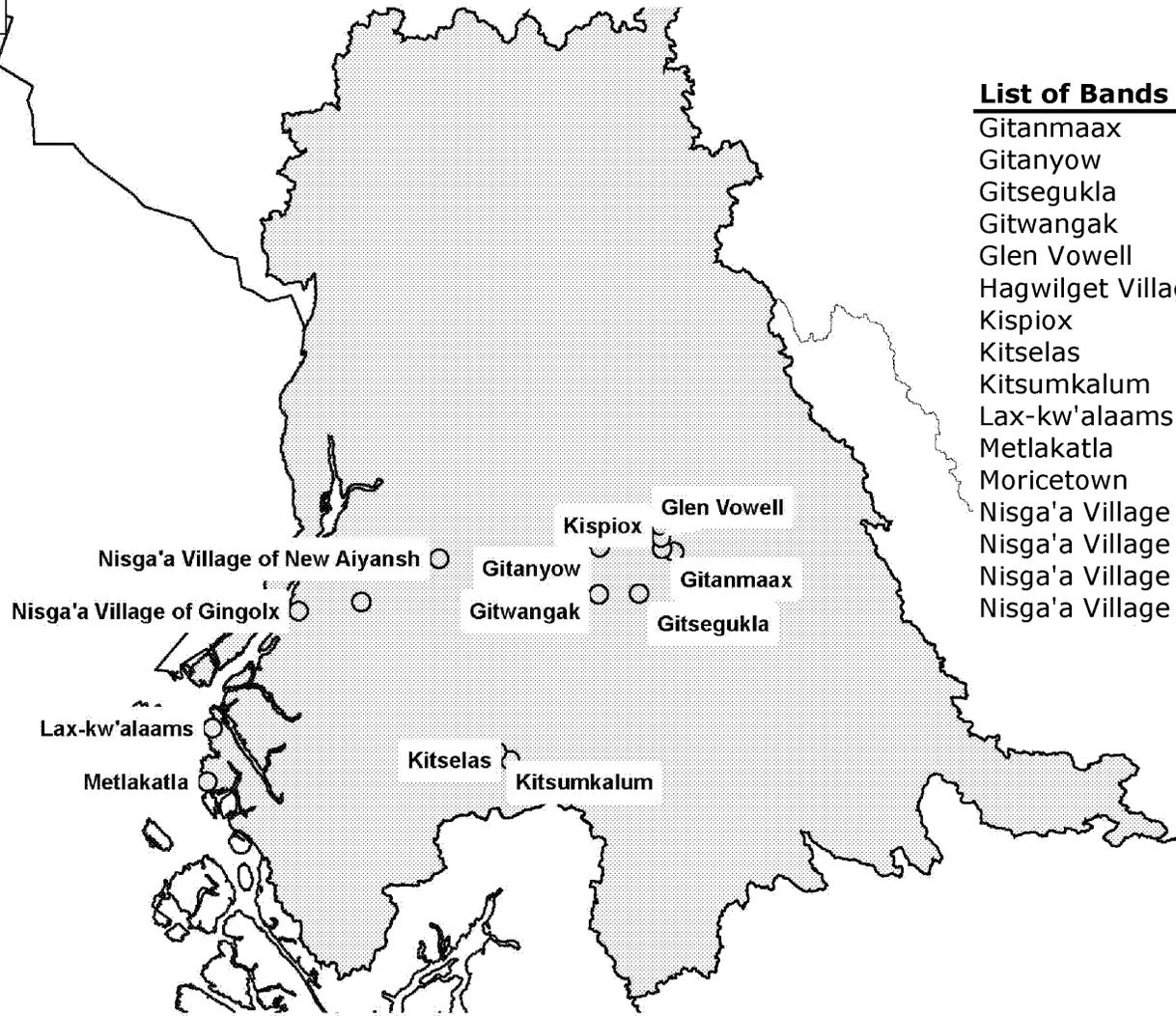


Figure A5.10. North Island Allocation Aggregate (Preliminary)



Figure A5.11. Central Coast Allocation Aggregate (Preliminary)

ET – Protected for Negotiation



List of Bands

- Gitanmaax
- Gitanyow
- Gitsegukla
- Gitwangak
- Glen Vowell
- Hagwilget Village
- Kispiox
- Kitselas
- Kitsumkalum
- Lax-kw'alaams
- Metlakatla
- Moricetown
- Nisga'a Village of Gingolx
- Nisga'a Village of Gitwinksihlkw
- Nisga'a Village of Laxgalt'sap
- Nisga'a Village of New Aiyansh

Figure A5.12. Skeena/Nass Allocation Aggregate (Preliminary)