

# **Independent Review of Improved Decision Making in the Pacific Salmon Fishery**

## **Final Recommendations**

**May 16, 2001**

**Institute for Dispute Resolution**  
University of Victoria  
Victoria, B.C.

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# Acronyms

AFS	Aboriginal Fisheries Strategy
BCAFC	BC Aboriginal Fisheries Commission
BCTC	BC Treaty Commission
CCN	Coastal Communities Network
CHPC	Commercial Harvest Planning Committee
CSHAB	Commercial Salmon Harvester's Advisory Board
FSC	Food, Social and Ceremonial
FNHPC	First Nations Harvest Planning Committee
IDR	Institute for Dispute Resolution
IRF	Integrated Regional Forum
NBBC	Native Brotherhood of BC
PAC	Policy Advisory Committee
PSARC	Pacific Scientific Advice Review Committee
RDG	Regional Director General
RHPC	Recreational Harvest Planning Committee
SFAB	Sport Fishing Advisory Board
SHMP	Salmon Harvest Management Plan
UBCM	Union of British Columbia Municipalities
UFAWU	United Fishermen and Allied Workers Union
WCVI	West Coast of Vancouver Island

# I: Introduction

The Independent Review of Improved Decision Making for Fisheries and Oceans Canada commenced in May 2000 with the appointment of the Co-Directors of the Institute for Dispute Resolution at the University of Victoria, Stephen Owen and Maureen Maloney, and their associate Alex Grzybowski, to facilitate the Independent Review. Additional Review Team members included, Norm MacLeod, Gary Youngman, Rod Dobell, Jennifer Ellis, Jessica Bratty, and Jane King.

In June 2000, Fisheries and Oceans Canada released its Discussion Paper, “A Framework for Improved Decision-Making in the Pacific Salmon Fishery.” The Discussion Paper was intended to begin the public dialogue on key consultation issues with a wide range of government and stakeholder groups, including Fisheries and Oceans Canada, the provincial government, local governments, First Nations, commercial fishers and processors, recreational fishers, community associations, environmental organizations, and academics.

The Discussion Paper and the Independent Review focused specifically on three key aspects of salmon consultation processes in the Pacific Region:

- Annual salmon harvest management planning;
- Implementation issues associated with the Pacific Allocation and Licensing Board; and
- The policy development process for issues related to salmon fisheries management.

It is important to note that the proposals outlined in the Improved Decision Making Discussion Paper are primarily targeted at non-First Nations harvesters and specifically exclude issues associated with First Nations food, social and ceremonial (FSC) and Treaty based fisheries. Although the Institute met with First Nations over the course of the Independent Review, these meetings are not meant to be construed as consultations with First Nations in the legal sense. Rather they were “an exchange of information” and an opportunity for First Nations organizations to consider their involvement with other parties in a multi-party environment. Fisheries and Oceans Canada will fulfill its legal obligations to formally consult with First Nations on these issues through a process agreed to by both parties.

The Independent Review began in July 2000 with pre-consultation, preparation of the design of the review process, establishment of the Review Team and review of background information. Consultation with government and stakeholder groups commenced in September 2000 with meetings with interested government and stakeholder groups. These meetings continued on through October. At the same time, information exchange meetings were held with the Native Brotherhood of B.C. (NBBC) and the B.C. Aboriginal Fisheries Commission (BCAFC). In October 2000, five of fourteen planned public meetings were held in communities around the province. In mid-October, Stephen Owen announced his candidacy for the Liberal Party in the federal election. As a result, he withdrew from the Independent Review, which continued under the leadership of Maureen Maloney, Director of the Institute for Dispute Resolution.

The meetings with governments, stakeholder groups and the public were planned to continue through November, culminating with the completion of preliminary recommendations at the end of December. However, in the last week of October, as a result of the federal election, the Review Team was asked by Fisheries and Oceans Canada to suspend all consultation meetings, as part of a government-wide measure to respect the federal election.

The Independent Review recommenced in the second week of January 2001, and meetings with governments, stakeholder groups and the public resumed the following week. These meetings continued until the first week of March 2001.

Over the course of Phase 2 of the Independent Review, the Review Team held 71 meetings with interested government and stakeholder groups (nine of these meetings were information exchange meetings with First Nation organizations), and conducted 14 public meetings in communities where fisheries issues are important. In addition, 24 individuals and groups made formal written submissions, 18 individuals submitted comments by phone and nine submitted comments by mail and email. In total, the Institute met with and/or talked to well over 350 individuals and organizations with an interest in the salmon industry. A list of the organizations that the Review Team met with is provided in Appendix 1. However, this list does not reflect the large number of contacts with individuals.

On March 26, 2001 the Review Team presented Preliminary Recommendations to all concerned for their consideration and response. The responses received were posted on the Fisheries and Oceans Canada website for the Independent Review (<http://www-comm.pac.dfo-mpo.gc.ca/english/consult/decision.htm>). The Review Team has considered the specific concerns raised in the feedback submissions and where it was deemed appropriate to do so, modified the recommendations accordingly. Due to insufficient resources and the unanticipated extensions of the Review, the Review Team was not able to review its final recommendations with representatives of affected interests in a multi-party format as originally proposed. As an alternative, the Team recommends that the proposed new Policy Advisory Committee (PAC)<sup>1</sup> assume an implementation and monitoring role to help facilitate the shift to improved decision making on an ongoing basis.

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<sup>1</sup> The PAC brings representatives of Fisheries and Oceans Canada together with representatives of the BC Provincial Government, First Nations, stakeholder groups and communities to address policy issues.

## II: Context Statement and Synopsis of Recommendations

Managing salmon stocks is a highly complex undertaking. It has been observed, for example, that a Fraser River sockeye may pass through:

- two countries: Canada, the United States and international waters,
- three provinces/states: Alaska, British Columbia and Washington,
- 22 BC Regional Districts,
- over 100 traditional First Nation territories, and
- over 200 communities,

on its journey from the ocean to its spawning area. In every jurisdiction, there are multiple claims to the same fish, and the migration happens in a matter of months with significant uncertainty with regard to the run size. It is Fisheries and Oceans Canada's responsibility to ensure the catch is distributed according to an allocation framework. Stock declines in the past decade and the associated changes to the industry, including buy-backs, have recently added a significant social dimension to the challenge of managing the fishery. In addition, Fisheries and Oceans Canada continues to restructure its organization, treaty negotiations proceed and communities search for more control over the natural resources that sustain them, including salmon. We are also growing more and more aware of the complexity of the ocean environment, which is increasingly being affected by a variety of factors, such as climate change. All of these circumstances have contributed to a climate of uncertainty and change, which have in turn increased public scrutiny of decision making in the Pacific salmon fishery.

Improving decision-making processes based on principles of administrative fairness, such as transparency, consulting those affected and providing reasons for decisions, is critical to the future of the Pacific salmon fishery. A compendium of relevant principles, drawn from a range of national and international organizations and agencies, is appended to this report for reference (See Appendix 4). The recommendations in this review were developed with full regard for these principles and it is recommended that they continue to be used for guidance in the implementation of an improved decision-making system.

All parties will benefit from taking a long-term view. Improved decision making will not occur overnight, or through the initiative of Fisheries and Oceans Canada alone. The diligent efforts of all parties will be needed to implement the recommendations in this report.

It is important to emphasize that while this document identifies many 'issues' associated with Fisheries and Oceans Canada's consultation and decision-making processes, Fisheries and Oceans Canada initiated this Independent Review in an effort to improve their current practices. In some cases, the issues identified with consultation and decision making are related to insufficient resources, not an unwillingness to change. In order to fulfill some of the Review

Team's recommendations, Fisheries and Oceans Canada, First Nations and other stakeholders may require additional resources.

It is also important to stress that the Department, stakeholders and First Nations will need to take an adaptive approach to implementing these recommendations. Over time, it may become evident that there may be a more effective way to undertake certain recommendations, or certain aspects of recommendations, while still achieving the desired goals. We are encouraging the Department, together with the proposed Policy Advisory Committee (PAC) to make adjustments where it appears that there is a better approach, while still adhering to the general principles outlined in this report.

The following broad recommendations provide an important framework for more detailed recommendations contained in this report.

1. Improve standards of practice within consultation processes and commit to a set of principles and a code of conduct that address fundamental issues of mistrust.
2. Establish a planning and policy development system that clarifies when and how important decisions are made and how interested parties may participate.
3. Establish a nomination process within the commercial sector to ensure fair and accountable representation of all Area/gear types in harvest management planning, allocation decision making and policy development. The Department should provide resources on a priority basis for an independent firm or organization to assist the commercial sector in establishing the proposed organizations, unless the Department is prepared to take this task on internally.
4. Establish an Integrated Regional Forum (IRF) within which Integrated Salmon Harvest Management Plans (SHMPs) can be refined and decision rules for SHMPs can be developed. The IRF should adopt a flexible approach to dealing with conflicts between the commercial and recreational Sectoral SHMPs (and potentially in the future First Nations SHMPs) by bringing affected parties together in a working group format. North and South subgroups are a key starting point. However, there are issues that may involve interests from both north and south, as well as other potential subgroups, such as a coast/interior subgroup.
5. Ensure that multi-party negotiation is an integral part of the process used by the Allocation and Licensing Board to interpret and clarify the Allocation Policy and address new allocation issues that have been referred to the Board by the Minister.
6. Establish a Policy Advisory Committee (PAC) and a public Policy Forum process for discussion of key policy issues amongst all sectors, First Nations and the federal and provincial governments.
7. Strengthen the three tiered process that First Nations and Governments are developing in order to more effectively fulfill Constitutional and fiduciary obligations and ensure that the three tiered process is effectively integrated into the overall system of decision making,



while simultaneously enabling improved First Nation participation in multi-party discussions.

8. Address the role of communities and regional management boards as a priority topic for the Policy Advisory Committee (PAC) and a public Policy Forum. Review of the progress and results of the West Coast of Vancouver Island (WCVI) pilot should be a key focus of this discussion.
9. The recommendations contained in this report should be provided to First Nations for consideration in the Tier 2, government to government, consultation between First Nations and Fisheries and Oceans Canada that will occur after this independent review is completed. This consultation will include how First Nations will be resourced to participate meaningfully.

It was noted by several parties throughout the review and feedback process that consultation and decision making with regard to other species in the Pacific fishery could benefit from the types of recommendations outlined in this report, particularly with regard to consultation fundamentals. It is the Review Team's belief that some of the fundamentals could be extended to consultation and decision making in association with other fisheries. Moreover, as the structures and processes related to the system for decision making outlined in this report mature, there may be expectations that Fisheries and Oceans Canada extend them to other fisheries. Fisheries and Oceans Canada has indicated that it will not extend any of the Institute's recommendations to other fisheries without consulting the appropriate parties. The Institute strongly endorses this commitment. In addition, should the processes and structures recommended in this report be extended to other fisheries, the leadership and members of the structures that have been put into place, such as the Allocation and Licensing Board, will have to be examined and likely changed, as it is expected that they will be salmon focused.

### III: Implementation

Virtually all parties that provided feedback on the Preliminary Recommendations raised the concern that the Institute's recommendations would not be fully implemented. Specifically, concerns were raised that:

- without independent oversight the recommendations may not be implemented in a manner that is consistent with stakeholder and First Nations expectations, and
- the potential cost of implementing the Institute's recommendations may be excessive.

The Institute recognizes the fundamental importance of these issues and, in response, makes the following observations and recommendations.

#### ***With Respect to Oversight of Implementation:***

The recommendations offered in this report were developed as a package. Implementing only some of the recommendations could undermine the integrity and viability of the approach suggested and may actually result in less effective consultation.

Many participants recommended a continued role for an independent body to monitor the implementation of the recommendations. Many of the parties view this as necessary because the Pacific salmon fishery is just emerging from a period of transition and instability, and stakeholder confidence and trust in the system used to reach decisions is very low. Independent oversight is expected to reinforce and help build confidence and trust. This view is challenged by the potential for an independent oversight function to displace the functions that are being overseen – by providing an alternative venue to raise concerns that are not addressed to the satisfaction of the individuals or organizations that hold them.

#### **Recommendations:**

10. Fisheries and Oceans Canada should prepare an action plan in response to the Institute's recommendations within 120 days of receipt of these Final Recommendations and distribute copies to all process participants.
11. The proposed Policy Advisory Committee (PAC) should review these recommendations to confirm their intent and the appropriateness of the Department's Action Plan. Working with the Consultation Secretariat, the PAC should develop indicators for monitoring the implementation of the recommendations and track those indicators, summarizing the results in an annual Progress Report<sup>2</sup>.

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<sup>2</sup> An example indicator for Recommendation 14 under Fundamentals would be: Code of Conduct revised and adopted.

12. An independent review of the implementation of the Institute's recommendations should be undertaken within three years. This independent review could be conducted by the Institute, Auditor General or some other independent body and is intended to provide the Department, stakeholders and First Nations with additional assistance in effectively implementing improved decision making.

**With Respect to Implementation Costs:**

The consultation processes and structures recommended in this report are consistent with those used by other resource management agencies to support the resolution of complex planning and policy issues associated with public resources in areas such as forest management, mineral development and land use planning.

13. Any determination of appropriate costs for implementing these recommendations should be subject to a full cost accounting including:
  - A. the cost of the recommended processes in comparison to processes used to support planning and conflict resolution for other natural resource uses; and
  - B. the cost of the recommended processes in comparison to existing Department expenditures for consultation, policy development and communications.

## IV: Fundamentals

The Institute was specifically tasked with the review of Fisheries and Oceans Canada's proposals for improved decision making with respect to Salmon Harvest Management Planning, the establishment of an Allocation and Licensing Board, and the policy development process for issues related to salmon management, as outlined in its Discussion Paper. While many of our recommendations are directed at these three areas and how related consultations might be structured, the Review Team felt that it was equally important to address how consultations are conducted; something we have termed "consultation fundamentals." Consultation fundamentals refer to the protocols, policies and standards of practice associated with consultation and decision making. Since concern regarding consultation fundamentals constituted such a large portion of what we heard, we have incorporated a description of some of the major issues and have recommended appropriate remedies that focus on changing the way the Department "does business" with stakeholders and other parties, and the way those stakeholders and other parties treat the Department and each other. It is important to emphasize that the responsibility for implementing the fundamentals falls to everyone involved in the Pacific salmon fishery. Everyone has to take responsibility for adopting a new way of "doing business" in association with consultation and decision making.

### ***Issue 1: Trust is broken***

There is a lack of trust among parties that is, in part, a product of the lack of consultation protocols and standards of practice. It is also a reflection of the lack of commitment to common principles of management and participation. It is clear that relationships have deteriorated and that all parties must commit to developing a more collaborative environment. Many Department people feel unfairly targeted by participants. Similarly, many participants feel that some parties have privileged access to decision makers and that the Department has developed a special relationship that meets the needs of some participants – at the expense of others. They feel that their views are dismissed without serious consideration. In addition, participants often do not treat each other with respect. The best design to improve the structure of consultations would fail without an associated change to relationships in the salmon fishery. Rebuilding trust and mutual respect will require all parties to work together in a constructive manner in the context of a set of management principles and goals that all parties have endorsed. This would also respond to the concern that was raised by many parties that there does not appear to be a clear and common vision to guide management decisions.

**Recommendations:**

14. Establish all party commitment to a Code of Conduct for inclusive, transparent and accountable participation processes. An initial Code of Conduct, which is based on principles of effective participation process design and implementation, is provided in Appendix 2. This should be used as a draft Code within participation processes. It should also be used as a starting point for discussion within the PAC with the objective of reaching agreement on a final Code of Conduct.
15. Establish an explicit commitment to the management principles contained in the *Canada Oceans Act* (See Appendix 3) as well as identifying any additional management principles and goals that the parties feel are necessary to guide the management of salmon. This is intended to provide a clear and common vision for the management of the Pacific salmon fishery. This commitment to management principles and goals should be developed in the PAC when the Code of Conduct is further developed and confirmed. The principles assembled and used by the Review Team in developing this report (See Appendix 4) are recommended as a reference document for the PAC to be used in finalizing a set of management principles.
16. Endeavour to rebuild relationships among all parties with an interest in the salmon fishery. The responsibility for implementing this recommendation is not the Department's alone. Rather, all parties must make a concerted effort to deal with each other with greater respect.

***Issue 2: Inconsistent consultation protocols, information and standards of practice***

Major concerns were expressed regarding the lack of consistency in approaches to consultation, and the lack of clear and specific standards for effective consultation. Respondents frequently referenced an absence of basic decision making protocols, such as providing clear reasons for decisions, providing adequate notification of meetings, taking minutes in meetings, preparing and posting meeting summaries, holding meetings at times when the majority of parties can participate and responding to stakeholder letters, requests for meetings and phone calls in a timely manner. Participants also expressed frustration that they did not know how to access reliable information regarding ongoing consultation processes, and that when they did make contact with Fisheries and Oceans Canada, they often received different or conflicting messages from different individuals.

While the Independent Review has been in progress, the Department has established a new Consultation Secretariat intended to undertake coordination and standardization of Departmental consultation processes. It is understood that the Consultation Secretariat at Fisheries and Oceans Canada is already developing guidelines and principles for improving consultation fundamentals. It is also understood that the new Consultation Secretariat will establish a website that will serve as a centralized place for information regarding ongoing consultation and will also be a central place to call if participants have questions regarding consultation. However, some individuals and groups have expressed concern that this new body could serve as a 'filter' between them and the managers and prevent them from accessing the decision-makers.

## Recommendations:

17. Establish standards and protocols for consultation to set expectations with regard to how consultation will be undertaken and how parties will engage in discussion and problem solving. Consider developing these standards and protocols with the participation of stakeholders and First Nations, as a key step towards building trust and relationships. These guidelines should cover aspects of effective consultation practice such as:
  - A. Provision of reasons for decisions in writing. It should be noted that the new Consultation Secretariat is intended to ensure that participants receive adequate explanation of “how and why decisions are made.”
  - B. Taking minutes in meetings and preparing/distributing a record of discussion in a timely manner. These records should be made available to anyone who requests them and be kept on file for future reference.
  - C. Promoting mutual responsibility and shared accountability for decisions.
  - D. Promoting the use of an interest based approach to negotiation among participants.
  - E. Ensuring appropriate notification for consultation opportunities.
  - F. Promoting transparency of process.
  - G. Ensuring a reasonable level of Department responsiveness.
  - H. Balancing the needs of Fisheries and Oceans Canada staff and the participants in determining the timing of meetings (e.g. seasonal considerations and alternating mid-week, evening and weekend meetings).
18. Provide training to front-line Department staff, stakeholders and First Nations participating in consultation processes. Training should initially focus on the selection and application of consultation processes, interest-based negotiation skills and building collaborative partnerships. It is noted that the newly created Consultation Secretariat is intended to carry out this training function.
19. Engage independent facilitators to facilitate major consultation processes; building trust among participants and among participants and Fisheries and Oceans Canada. The use of experienced facilitators will assist in training Fisheries and Oceans Canada staff in facilitation. Ultimately, appropriately trained Fisheries and Oceans Canada staff may elect to facilitate specific consultations. However, this may be challenging where contentious issues are being addressed. Clarifying the Department’s role – as an active participant and as a technical advisor to consultations, as opposed to the “keeper of the process” – will also allow Fisheries and Oceans Canada to more effectively represent the Department’s and the resource’s interests. This repositioning of the Department in consultations need not and should not fetter the Minister’s discretion to make decisions as required.

20. The creation of the Consultation Secretariat is a timely and appropriate response to the issue of inconsistent information. Given adequate resources, the Secretariat could significantly improve the flow of information to interested stakeholders and First Nations. However, it should be emphasized that groups will look for a clear separation between public relations initiatives and public consultation information. To facilitate information flow, the Consultation Secretariat should:
- A. Publish a quarterly newsletter directed at updating interested parties on key developments in consultation and progress in resolving specific issues.
  - B. Develop a consultation web page. The web page should include/allow for the following:
    - I. Postings of all the meeting minutes from all major consultation processes to ensure transparency.
    - II. A provision for feedback that allows individuals and organizations to contribute to specific consultation processes. The Consultation Secretariat should compile the input and bring the general consensus of those comments to the various forums. The summary of individual comments should also be available on the web page.
    - III. A regularly updated organization chart for Fisheries and Oceans Canada that provides Department contacts for each consultation process with the appropriate phone numbers.
  - C. Explore the use of First Nations publications such as the Native Voice to improve the flow of information to First Nations.

***Issue 3: Perception that lobbying is more successful than participating in the sponsored consultation process.***

Many participants raised concerns that individuals and groups who are unable to successfully negotiate their preferred outcome at the table seek to influence decisions by approaching the Minister or senior staff within Fisheries and Oceans Canada. Many respondents alleged that decisions were more often made 'in the halls' rather than at the table and that corporate interests control policy decisions by lobbying in Ottawa.

**Recommendations:**

- 21. The Department should send a clear message to stakeholders and First Nations that it is committed to a new systematic, transparent and representative process for engaging them.
- 22. At the same time, access to key decision makers or the Minister should not be restricted, but this access should not represent a better opportunity to achieve any stakeholders' interests than participation in the sanctioned multi-party consultations.

***Issue 4: Perception that Fisheries and Oceans Canada has failed to act on the advice provided in the past.***

Participants are very frustrated by Fisheries and Oceans Canada's apparent failure to act on the advice they have provided in the past. Participants questioned why they should provide advice to the Independent Review or to Fisheries and Oceans Canada in the future if there is no reasonable expectation that advice will be implemented. Indeed, there is evidence that Fisheries and Oceans Canada has not provided a meaningful response to the recommendations of some public consultation processes it has sponsored in the past, some of which have recommended similar measures to those suggested in this Independent Review. In particular, concern was expressed that Fisheries and Oceans Canada would not implement the recommendations of this Independent Review.

On the other hand, it is important to stress that dissatisfaction with policy direction should not be misconstrued as poor consultation. In addition, participants have a responsibility to engage other parties whose views differ from their own and to try to develop advice that truly represents a consensus. Fisheries and Oceans Canada cannot be faulted for choosing among competing proposals if stakeholders are unable or unprepared to reconcile with one another. Fisheries and Oceans Canada may also have to take into account other issues in the public interest which have not been taken into account by the participating parties.

**Recommendations:**

23. Reasons for decisions should always be provided (where reasonable these reasons should be provided in writing), particularly when those decisions do not reflect multi-party consensus-based advice received from stakeholders and First Nations.



***Issue 5: Insufficient or lack of support for participants.***

Many participants commented on the difficulty of participating in consultation processes, including the Independent Review, due to the lack of financial support from Fisheries and Oceans Canada to cover “out-of-pocket” travel expenses. Participants noted that individuals living outside the Lower Mainland are often precluded from participating in consultation processes because of the expense. Capacity to communicate with constituents in the absence of funding is also limited and has contributed to the difficulty some sectors experience in trying to fully represent their constituents’ interests. Many people noted that not covering these expenses places an unfair burden on those people that have been chosen as representatives. Participants also pointed to unfairness in the current approach to funding used by Fisheries and Oceans Canada, whereby certain organizations, such as the Sport Fishing Advisory Board (SFAB), receive a certain amount of participant funding, while other organizations do not. At the same time, organizations, such as SFAB, indicated that they were facing declining support from Fisheries and Oceans Canada and that the limited financial support made it very difficult for them to engage fully in consultation processes and communicate with their constituents. Many participants argued that a credible consultation process must consider covering these expenses. Concerns were also raised that while creating a more extensive consultation process, as proposed by the Discussion Paper, might improve the input opportunities for participants, it would also increase the financial and time constraints of participants.

Concerns were also raised by the Sport Fishing Advisory Board in particular with regard to the reduction in the number of staff within Fisheries and Oceans Canada dedicated to supporting the recreational consultation process. SFAB representatives felt that the reduction in this support was reducing their capacity for internal communication as well as the transparency of their process.

**Recommendations:**

24. Establish a clear and consistent policy for participant funding that recognizes the unique circumstance of each constituency or type of constituency.
  - A. Coverage of basic “out-of-pocket” expenses of participants in consultation processes should be provided in accordance with standard government expense allowances. To moderate costs, consider providing funding to only those participants that have clearly established constituencies, and have been chosen by those constituencies to represent them on a regular basis in ongoing processes.
  - B. Some funding for administrative support particularly for representatives to communicate with their constituencies should also be provided.
  - C. In exceptional circumstances, where Fisheries and Oceans Canada expects representatives to commit several days each month to participate in ongoing intensive negotiations, consider providing honorariums in lieu of lost wages.
  - D. Consider establishing an annual participant funding budget for the commercial and recreational sector and First Nations so representatives can plan how they will arrange representation and the best means for communicating with their constituents. These

funds should be administered by the representative organization(s) for each sector and the organizations should be required to provide a periodic accounting of funds expended.

- E. In the case of commercial vessel license holders, various options for raising the necessary financial resources should be explored including: partial financing by the licensees; establishment of a small “consultation fee” to be drawn from the annual license fee, drawing the funds from general revenue as part of the Department’s budget with grants to license holder organizations etc.. The revenues should be provided to the appropriate Area Council (see recommendations below) to support their participation in consultation processes.

***Issue 6: Lack of transparent and accountable representation.***

There are many concerns and suspicions with regard to who represents whom, particularly in the commercial sector. There is a wide range of organizations that claim to represent commercial license interests in the salmon fishery, while stating that other organizations have ‘very few’ members. The Department is not certain who to seek advice from and many decisions are regarded as inappropriate because individuals did not feel they were represented in the processes that led to them. Most participants in the commercial salmon industry agreed that representation is an issue that must be addressed. The role of communities, processors, the NBBC and the UFAWU in commercial harvesting associations is also unclear, with some associations choosing to include them or suggesting that they should be included, while others do not.

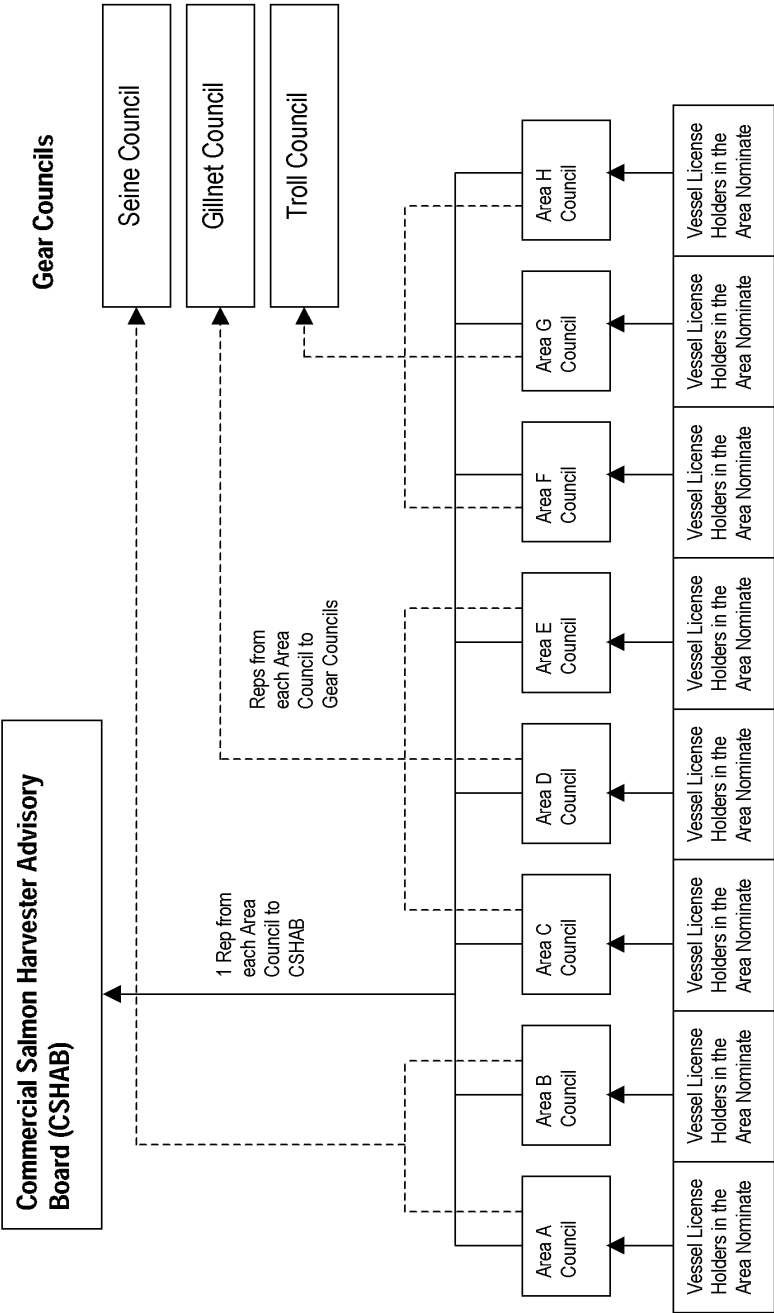
Although the recreational sector also contains a diverse range of interests, most participants felt that representation was functioning effectively through the Sport Fishing Advisory Board (SFAB). A few concerns were raised that independent anglers do not receive sufficient information with regard to opportunities for local input into SFAB decision making. The SFAB executive has pointed out that it is an open process and that anyone has the opportunity to speak at meetings. They also noted that they make every effort to ensure that they can be contacted by independent anglers. However, they have acknowledged that they are facing increasing difficulties ensuring that all of their constituents are notified of meetings in the face of confusing Fisheries and Oceans Canada meeting schedules, and declining support from Fisheries and Oceans Canada. They were hopeful that if the structures and processes outlined in the Preliminary Recommendations from the Independent Review were adopted, they could start providing better notification.

**Recommendations:**

- 25. All representation should be inclusive, accountable and transparent. All organizations should be able to demonstrate who they represent, how they are accountable to those people and how they ensure regular opportunities for participation and input by their constituents. Further details on accountability in representation can be found in the Code of Conduct in Appendix 2.

26. The Department should maintain and make available, on the Consultation Secretariat website, a list of the major commercial, recreational and First Nations organizations that participate in Fisheries and Oceans Canada consultation processes, with contact names and numbers for representatives, as well as instructions with regard to how individuals can become members of the organizations.
27. The Department should recognize that there are some individuals that will choose not to join any organizations and will not feel represented even if they are given the opportunity to elect representatives. These individuals should not be excluded from consultation processes. However, their input should be weighted appropriately. Individuals should be permitted to make written submissions to any consultation process, and a short period of time should be set aside in every major consultation process for short presentations from individuals who do not feel represented by the groups at the table.
28. Commercial sector representation should be as follows:
  - A. It is recommended that Fisheries and Oceans Canada provide administrative and financial resources to assist the commercial salmon harvesters in establishing a system of representation that enables them to provide accountable representation within all Fisheries and Oceans Canada consultation and negotiation processes. This system should include the following organizations and committees: Area Councils for each license area, Gear Councils for each gear type, a Commercial Salmon Harvesters Advisory Board (CSHAB) and Commercial Harvest Planning Committees (See Figure 1). Each of these organizations is described below:
    - I. An Area Council should be established for each Commercial License Area:
      - i. The Area Councils are intended to provide the foundation for articulating the interests of commercial salmon harvesters in various planning and policy development processes. It is proposed that the Area Councils send representatives (the same or different) to the Gear Councils, to the CSHAB, and to the Commercial Harvest Planning Committee.
      - ii. The number of representatives on each Area Council should be either set at a target of 10 to 15 members, or it should be proportional to the number of license holders in the Area (e.g. Areas under 250 license holders should have a minimum of 5% of the license holders on the Council and Areas over 250 should have a minimum of 2.5%)
      - iii. Area Council representatives should be nominated by the vessel license holders in the Area. These nominees do not need to be vessel license holders themselves as it is up to the vessel license holders to decide who they want to represent them. Individual vessel license holders should be permitted to sign the nomination form of one representative only and these forms should be available to the public in order to maintain transparency and accountability. In order to be nominated, a representative must obtain a minimum number of signatures from vessel license holders within the Area (e.g. minimum of 5% in areas with less than 250 licenses and a minimum of 2.5% in Areas with more than 250 licenses).

Figure 1: Proposed Representative Structure for Commercial Salmon Harvesters



- iv. The specific rules and procedures for implementing the nomination process should be worked out between the Department and vessel license holders as a priority implementation item.
  - v. The terms of office for representatives on Area Councils should be staggered with some being three years and the remainder being two years. This can be determined initially by having the 3 to 5 representatives with the most nominations having three-year terms and the remainder having two-year terms. All representatives could then move to a staggered three-year term.
  - vi. It is presumed that processors, First Nations commercial harvesters and UFAWU members that are also license holders will ensure that they are appropriately represented on Area Councils by nominating staff or leadership from their organizations if they wish to do so. However, this will not always be the case as a large number of the licenses in Areas A and B are held by corporations and therefore the UFAWU is unlikely to be nominated in these areas and similarly processors are primarily license holders in the seine fishery and are therefore unlikely to be represented in the Gillnet and Troll Areas. In order to address this problem it is recommended that the UFAWU and processors be participants in the Commercial Harvest Planning Committees as indicated below.
  - vii. An exception to the Area Council structure may be required in Area C, where it may be appropriate to divide into two councils due to the large number of license holders. This issue should be addressed during implementation of the Area C Council as some participants in the Independent Review felt that it was necessary while others did not.
  - viii. All Area license holders should be able to attend Area Council meetings as observers. Minutes of all meetings should be made available to all license holders so that they can provide feedback on the directions that are contemplated, particularly when the subject matter is salmon harvest planning, policy development or allocation negotiations.
  - ix. Once established, Area Councils should develop a general constitution that addresses key procedural matters such as:
    - a. How they will make decisions – e.g. by consensus or a 75% majority vote.
    - b. How often they will meet.
    - c. How they will report back to their constituents.
    - d. Whether they will have a chair, president or spokesperson.
    - e. Replacing representatives that cannot finish their terms.
    - f. Rules associated with the recall of representatives.
- B. The commercial vessel license holders should also establish a Commercial Salmon Harvester Advisory Board (CSHAB):
- I. The purpose of the CSHAB is to:
    - i. Facilitate discussion among the Area Councils and gear types.

- ii. Serve as a forum for harvester discussion of approach to the policy and allocation and licensing advisory processes in an effort to resolve Area and gear differences ‘away from the table’ so that harvesters can provide consensus advice to Fisheries and Oceans Canada in those consultation processes or adopt an integrated approach where negotiations are involved.
    - iii. The CSHAB is not intended to “filter” Area differences. It is recognized that there are some allocation and policy issues where there will be differences among the Area Councils and where that is the case, the views of particular Areas should be brought forward directly by the Area Council representatives to the appropriate advisory process.
  - II. Each Area Council should nominate one representative and one alternate to represent them on the CSHAB for two years.
  - III. The CSHAB should also consider seeking representation of processors and the UFAWU (unless they are already present there as Council representatives) in order to ensure that the information and perspectives of processors and crew are accounted for when considering issues from a commercial perspective. The CSHAB may decide to involve other interests as well at their discretion.
  - IV. Each Area Council should contribute to fund the CSHAB.
  - V. All license holders should be able to attend CSHAB meetings as observers. Minutes of all meetings should be made available to all license holders so that they can provide feedback on the directions that are contemplated particularly when the subject matter is policy development or allocation negotiations.
  - VI. Once established, the CSHAB should develop a general constitution that addresses key procedural matters such as:
    - i. How they will make decisions.
    - ii. How often they will meet.
    - iii. How they will report back to the Area Councils.
    - iv. Whether they will have a chair, president or spokesperson
- C. Commercial License holders should also establish coast wide Gear Councils (i.e. a Troll Council, Seine Council and Gillnet Council) in recognition of the fact that many policy and allocation issues affect the gear types differentially and it will be important for Trollers, Gillnetters and Seiners to work out issues amongst themselves so that they can address these issues in a consistent and unified manner. Gear Councils should also provide a forum to address issues that are specific to a particular gear type, such as increasing selectivity.
- I. Gear Councils should be established through designation of representatives of Area Councils. Ideally these representatives would be the same as the representatives for the CSHAB. However the workload may be too demanding.
  - II. Once established, the Gear Councils should develop a general constitution that addresses key procedural matters such as:
    - i. How they will make decisions.
    - ii. How often they will meet.
    - iii. How they will report back to the Area Councils.
    - iv. Whether they will have a chair, president or spokesperson

To ensure that a particular Area is not isolated on the Gear Council, it is proposed that the Gear Council require either a consensus or a 75% majority in decisions regarding input and representation in allocation and policy advisory processes. Where a 75% majority is not achievable, the views of particular Areas will need to be brought forward directly to the relevant advisory process.

- D. Together with the Department, Commercial License holders should establish a Commercial Harvest Planning Committee. This committee will formalize some of the existing processes by making them more representative, accountable and transparent. The committee should be convened with north and south subcommittees recognizing the need to address issues that concern commercial harvesters in both the north and the south and the importance of developing a comprehensive commercial salmon harvest management plan to bring into the Integrated Regional Forum. After developing draft harvest management plans for their areas, Area Councils should send two or three representatives to the North or South subcommittees of the Commercial Harvest Planning Committee to develop the draft Commercial Salmon Harvest Management Plan.
- E. In order to support the establishment of the representation structures outlined above the Department should provide funding for an independent firm or organization to assist the commercial sector in organizing itself unless the Department is prepared to take this task on internally.

**Summary of Commercial Harvester representation in harvest planning, policy development, and allocation.**

Based on the organizations recommended above, commercial salmon harvester representation in the specific consultation structures proposed in this report should be as follows:

*Salmon Harvest Management Planning:*

- Area Councils will develop draft Area specific SHMPs to be brought to the proposed Commercial Harvest Planning Committee (CHPC) by Area Council representatives where they will develop the draft Commercial Salmon Harvest Management Plan.

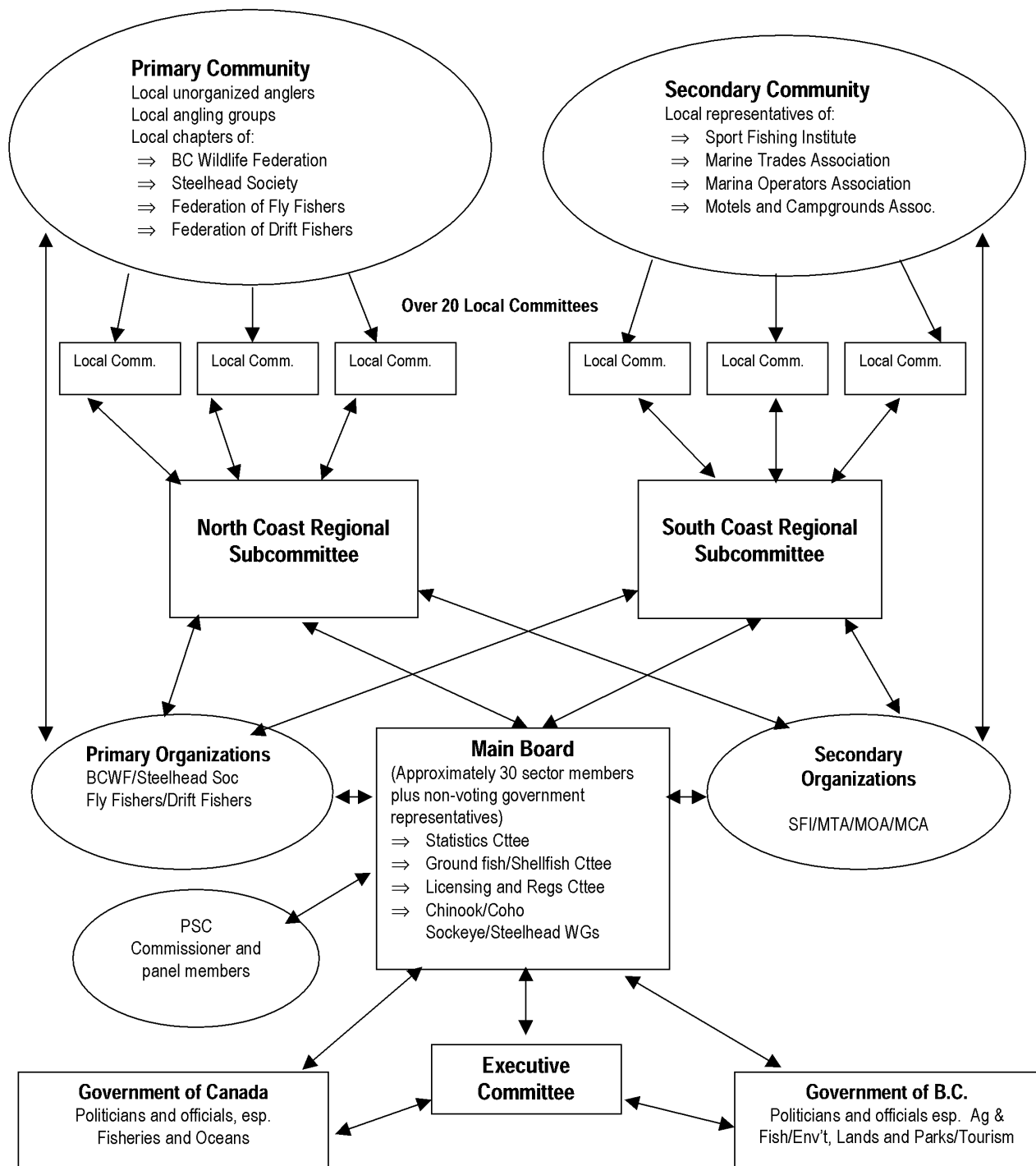
*Policy and Allocation and Licensing:*

- Given that many allocation and policy issues are gear related, the Gear Councils should meet to identify and discuss gear interests in policy and allocation and coordinate gear representation in those processes.
- Where policy or allocation issues affect harvesters as a whole, it is suggested that the CSHAB meet to identify and discuss interests and, where possible, coordinate representations in those processes.

29. Representation in the recreational fishing sector appears to be functioning effectively. It is recommended that SFAB continue to represent recreational fishers in Fisheries and Oceans Canada consultation processes and maintain its current structure (See Figure 2). SFAB must ensure that it meets tests of accessibility, accountability and transparency on an ongoing basis, while increasing the flow of information regarding opportunities for participation within the Board structure.



Figure 2: Existing Representative Structure for Recreational Salmon Harvesters (SFAB)



## V: A System for Decision Making<sup>3</sup>

### ***Issue 1: Lack of a systematic approach to harvest planning, allocation decision making and policy.***

Many participants expressed frustration that there is not a systematic and integrated system for engaging in policy, planning and allocation decision making. Policy and allocation issues are frequently raised during Salmon Harvest Management Planning, stalling the Salmon Harvest Management Planning process. Many parties expressed the desire to have Salmon Harvest Management Planning focused just on operational issues, not policy and allocation. At the same time, the parties raising the policy and allocation concerns in the Salmon Harvest Management Planning process expressed frustration that they do not have a forum to discuss these issues. Lack of a coherent system has also contributed to confusion and mistrust and has made the process more susceptible to lobbying, as parties who feel that they have no forum to have their concerns addressed go directly to key decision makers or the Minister.

### **Recommendations:**

30. Develop a systematic and integrated planning system that incorporates:
- A. A Salmon Harvest Management Planning Process including an Integrated Regional Forum with supporting Harvest Planning Committees and issue resolution subgroups – to ensure an integrated approach to operationalizing salmon harvesting for recreational, commercial and First Nations harvesters.
  - B. An Allocation and Licensing Board including an Allocation and Licensing Negotiation Process – to provide advice to the Minister on the implementation and clarification of the Allocation Policy, new allocation issues and new licensing rules.
  - C. A Policy Advisory Process including a Policy Advisory Committee (PAC) and Policy Forums – to assist the Department in developing new policy.
  - D. Details for each component of the planning system are outlined below and are shown graphically in Figure 6 on page 48.

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<sup>3</sup> **NOTE:** All of the recommendations contained in Section V of the report are recommended to First Nations for their consideration in the Tier 2 (government to government) consultations between First Nations and Fisheries and Oceans Canada that will occur after this Independent Review is completed.

## ***Issue 2: Lack of a predictable, systematic and inclusive approach to Salmon Harvest Management Planning.***

Concerns were raised about the lack of consistency and predictability in approaches to Salmon Harvest Management Planning, the late timing of decisions and the frequency of in-season adjustments, which prevent both commercial and recreational stakeholders from making important advertising and other business decisions. Concerns were also raised that Salmon Harvest Management Planning is not inclusive enough, specifically of conservation groups, communities, and the public. On the other hand, major concerns were raised that the participation of too many additional groups would slow the process down to the point where it would become unmanageable, and might lead to imbalanced representation of some communities at the expense of others. Fisheries and Oceans Canada staff also expressed a desire to get the sectors to work together to try to produce an integrated Salmon Harvest Management Plan. This would allow the parties to work out their competing interests in a manner that is potentially more satisfactory to them. The importance of separating operational decision making, such as Salmon Harvest Management Planning, from higher level, strategic decision making, such as allocation and policy decision making was also stressed. It was felt that if there was a coherent system for decision making, with a clear forum for participation in strategic decisions, that Salmon Harvest Management Planning could more effectively function as a forum for operational decisions.

### **Recommendations:**

#### **31. Goals**

- A. To produce SHMPs in a more timely manner and eventually move to multi-year plans.
- B. To promote greater participant buy-in to the final SHMPs.
- C. To build working relationships between the commercial and recreational sectors and between the commercial and recreational sectors and First Nations.
- D. To facilitate coast and fishery wide information sharing.
- E. To address the public interest.

#### **32. Structure**

- A. The proposed bodies involved in the SHMP Process are:
  - I. An Integrated All Sector Regional Forum (IRF). Subgroups within the Forum should be created on an as needs basis to address tensions between the SHMPs of the commercial and sports sector as well as tensions between these sector SHMPs and First Nations SHMPs. North and South sub-groups are an obvious starting point. Additional sub-groups may be required to focus on the Fraser or Skeena watersheds, to deal with specific issues in specific locations (such as the west coast of Vancouver Island or Campbell River), or to rationalize habitat protection and salmon harvest interests by linking to processes such as the new Watershed Based Fish Sustainability Planning process.
  - II. Harvest Planning Committees for the commercial sector, the recreational sector and First Nations. (For the sake of logistics, the Committees may wish to divide

into North and South subcommittees to conduct the initial plan development. However, the Harvest Planning Committees should ensure that they meet as a whole before going to the IRF).

### **33. Mandate**

- A. In the short term (by next year), to develop integrated annual SHMPs with guidelines for in-season adjustments for commercial, recreational and First Nations fisheries, that have:
  - I. resolved the conflicts/overlaps among the sectors,
  - II. assisted in ensuring that constitutional obligations to First Nations are addressed in the Tier 2 (government to government) process, and
  - III. considered the effects of SHMPs on communities and the public, within the existing policy and legislative regime.
- B. In the longer term (within five years), to move to more predictable multi-year integrated SHMPs by developing clear decision rules that stay the same from year to year and address:
  - I. how the integrated SHMP will look given various run sizes (i.e. if the run size is x, the following harvest opportunities will be available to the following sectors), and
  - II. in-season adjustments (i.e. what happens if run z is higher than expected, under what circumstances could a sector or gear type access a specific stock surplus that was not expected when stock assessments were prepared).

These decision rules will be, in many cases, operational interpretations of the Allocation Policy.

- C. If, over time (within 10 years), the IRF proves to be a representative and effective forum for SHMP and all parties are satisfied with the manner in which it is operating, consideration should be given to expanding its mandate to include other resource management responsibilities, such as test fishing and catch monitoring.
- D. To ensure community and public interests are protected.

### **34. Participation (See Figure 3)**

- A. Participation in the Harvest Planning Committees should be as follows:

#### *Commercial:*

- I. Each Area Council should send two (or three) representatives to the Commercial Harvest Planning Committee (CHPC).
- II. The CHPC should also have representation from processors to provide relevant market information and from the UFAWU to ensure the interests of crew are considered unless these organizations are already represented through nominations to the Area Councils.
- III. The appropriate Fisheries and Oceans Canada staff should also be part of the CHPC to provide advice on policy, forecast scenarios and arrangements that have been made with First Nations for FSC fish.

*Recreational:*

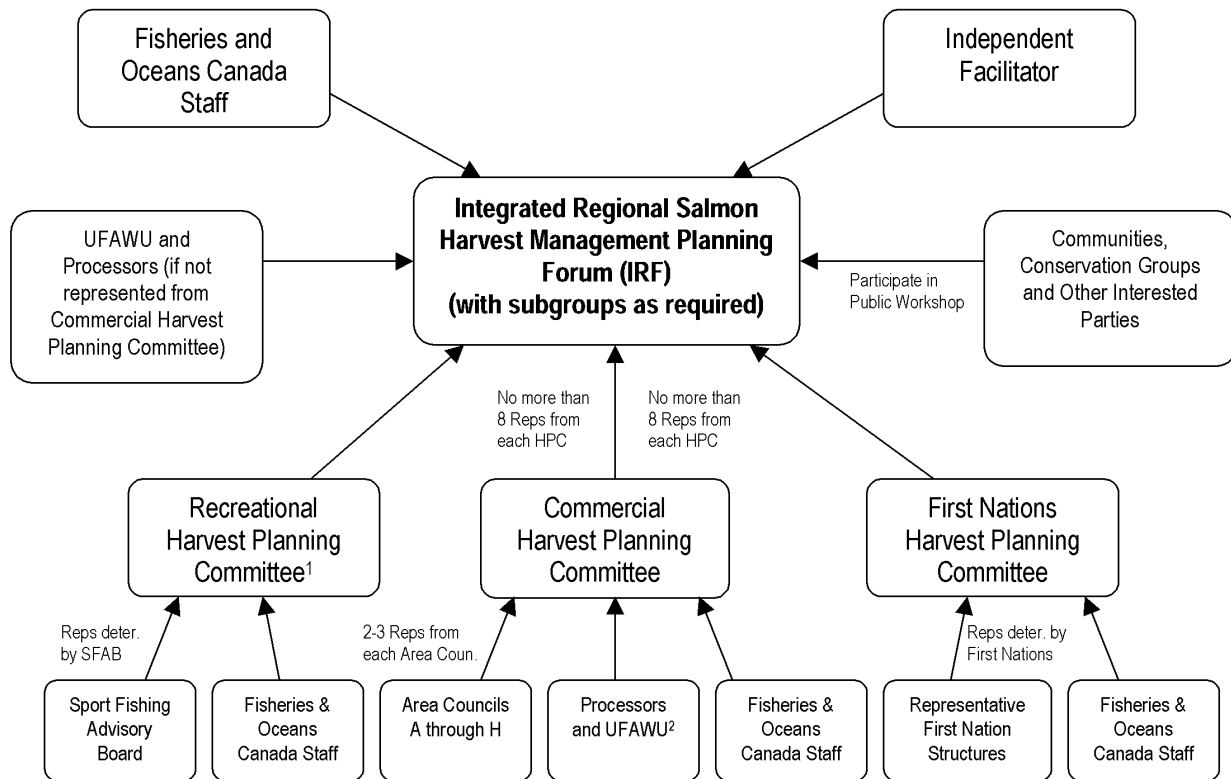
- IV. Recreational participants on the Recreational Harvest Planning Committee (RHPC) should be determined by SFAB.
- V. The appropriate Fisheries and Oceans Canada staff should also be part of the RHPC to provide advice on policy, forecast scenarios and arrangements that have been made with First Nations for FSC fish.

*First Nations:*

- VI. First Nation participants on the First Nations Harvest Planning Committee (FNHPC) should be determined by the appropriate First Nations representative structure, after consultation at the Tier 2 (government to government) level.
  - VII. The appropriate Fisheries and Oceans Canada staff should also be part of the FNHPC to provide advice on policy and forecast scenarios.
- B. Participation in the Integrated Regional Forum should include the following:
- I. Representatives from each of the Harvest Planning Committees. The exact number should be determined by the committees with the support of the organizations that they represent. The maximum number that a committee should send is eight, recognizing that a smaller number may be able to do the job more effectively. This number may be increased in order to provide representation on subgroups. The UFAWU and processors should also be represented in the IRF either as representatives of the commercial harvest planning committee or separately.
  - II. Representation of Community, Conservation and Other Interests. Salmon harvest decisions affect many different communities on the coast and in the interior. They also affect public conservation and other interests. These concerns must be considered, and where warranted, factored into annual salmon harvest management plans. It is primarily the responsibility of Fisheries and Oceans Canada to ensure that this occurs. In order for these concerns to be expressed and discussed within the context of the IRF, part of the annual IRF meeting should include a public workshop where communities, conservation groups and other interested parties can make presentations and discuss the issues raised with representatives of commercial, recreational and First Nations salmon harvesters and Fisheries and Oceans Canada. The issues raised in these workshops should be recorded and those that have a direct bearing on the integrated salmon harvest management plan should be explicitly addressed in the plan. These issues may require the establishment of a subgroup that involves the relevant interests in order to develop solutions. In order to maintain transparency, all IRF meetings should be open to anyone that wishes to observe them. Concerned individuals and groups should also be given the opportunity to comment on the integrated SHMP before it is finalized.
  - III. An appropriate number of Fisheries and Oceans Canada staff should also participate in the IRF to provide technical advice and articulate the Department's policies and interests.
  - IV. An independent facilitator should be hired to facilitate the IRF.
- C. It is recognized that both the Provincial government and First Nations will be providing feedback directly to Fisheries and Oceans Canada on salmon harvest management.

Fisheries and Oceans Canada is expected to bring this feedback, particularly feedback regarding First Nations FSC arrangements, to the Area Council meetings, Harvest Planning Committee meetings and IRF.

**Figure 3: Structure of and Participation in Salmon Harvest Management Planning**



<sup>1</sup> For the sake of logistics, the Harvest Planning Committees may wish to divide into North and South subcommittees to conduct initial plan development. However they should meet as a whole before going to the IRF.

<sup>2</sup> Unless processors and UFAWU are already represented through nominations to Area Councils.

### 35. Process

*In the Short Term (starting next year):*

- A. All of the representatives that will be participating on the various Harvest Planning Committees in the SHMP process, and any interested observers should meet annually either on a coast wide or north/south basis to:
  - I. conduct a post season review;
  - II. hear the early forecast; and
  - III. begin to identify some of the potential conflicts/overlaps that will arise between sectors.
- B. Fisheries and Oceans Canada should meet directly with the appropriate First Nations to begin to determine their FSC arrangements for the season.
- C. Based on the early information, the commercial Area Councils should each meet and develop proposed Area plans for input into the Commercial Harvest Planning Committee. Any other local committees established by the recreational sector and First Nations should also be meeting at this time to prepare their input into their Harvest Planning Committees. It is recommended that Fisheries and Oceans Canada staff be invited to provide input with regard to First Nations FSC arrangements at these meetings.
- D. The Commercial and Recreational Harvest Planning Committees should each meet to reconcile intrasectoral conflicts, consider how to avoid intersectoral conflicts and develop recommended draft Sectoral SHMPs with proposed guidelines for in-season adjustments to take to the IRF. (As noted, some of the initial Harvest Planning Committee meetings can be on a North South basis, but it is recommended that the Harvest Planning Committee meet as a whole to resolve any North South conflicts before submitting a draft Sectoral SHMP).
- E. First Nations should develop their own SHMPs and the First Nation Harvest Planning Committee should reconcile First Nation SHMPs amongst each other to develop an overall First Nations SHMP, if they choose to participate.
- F. The recommended draft Sectoral and First Nation SHMPs should be submitted to Fisheries and Oceans Canada for review. Fisheries and Oceans Canada should:
  - I. Ensure that the draft SHMPs are consistent with policy and conservation mandates and First Nations FSC arrangements, and that potential infringements upon Treaty and/or aboriginal rights are referred to the Tier 2 (government to government) process.
  - II. Overlay the draft Sectoral and First Nation SHMPs to identify the conflicts/overlaps among the plans.
  - III. Announce the portions of the SHMPs, subject to PSARC forecasts, where there are clearly no conflicts so that the sectors and First Nations can begin planning their harvest seasons.
- G. Once they have been reviewed by Fisheries and Oceans Canada, the draft Sectoral and First Nation SHMPs should be available for written comment by interested parties, such as local governments, conservation groups, community boards and individual harvesters for a two week period preceding the IRF. The comments submitted should be compiled and summarized by Fisheries and Oceans Canada for distribution at the IRF.

- H. The Integrated Regional Forum (IRF) should be held:
- I. The draft Sectoral and First Nation SHMPs should be reviewed to identify any additional conflicts/overlaps and reconciled with the PSARC annual forecast.
  - II. Fisheries and Oceans Canada should present any additional input provided to them directly by First Nations and the provincial government.
  - III. Written comments from interested parties should be reviewed and considered.
  - IV. The decision rules that are implicit in the draft Sectoral and First Nation SHMPs should be summarized and discussed (especially in areas where there are no conflicts).
  - V. Conflicts/overlaps among the draft Sectoral and First Nation SHMPs and in-season adjustment guidelines should be resolved by engaging only those affected by the conflict/overlap – in some cases the discussions will occur in North and South Subgroups, but other subgroups can be created as required. Where possible, these conflicts should be resolved in the form of new decision rules that all of the participants agree upon. In many cases, these decision rules will be interpretations of the Allocation Policy. In some cases, the parties may wish to negotiate an interim solution that can be tested in that particular year and potentially turned into a decision rule the following year, should it prove to be effective.
  - VI. The issues for which the participants cannot negotiate a consensus resolution should be turned over to the Department for an interim solution that will apply to that year's integrated SHMP. If the issue requires a clarification of the Allocation Policy, it should be referred to the Minister to refer to the Allocation and Licensing Board. Interim solutions should be provided in writing by the Department within three weeks of the IRF.
  - VII. Time should be set aside at the IRF each year for further discussion and development of decision rules. The decision rules should be viewed as an overall package that is being developed, whereby some rules will favour one sector or gear type, while other rules will favour another sector or gear type. The overall package, once complete in a few years, should be viewed as fair and acceptable by all participants. Participants should be reminded of this frequently. To the extent that they can be, less controversial decision rules should be tested in the following year's SHMP process.
  - VIII. Interested parties, such as local governments, conservation groups and community boards, should also be provided with the opportunity to comment on the draft integrated SHMP and decision rules, verbally at the IRF, in the time set aside for the public workshop.
  - I. Interested parties should also be provided with the opportunity to comment in writing on the draft integrated SHMP and decision rules during a two week comment period before the integrated SHMP is finalized. Fisheries and Oceans Canada should review the comments received and announce any changes to the draft integrated SHMP. The reasons for Fisheries and Oceans Canada's decision should be publicly available. Comments on the draft decision rules should be discussed at the next annual IRF.
  - J. The Department should announce the final integrated SHMP based on its decisions regarding the outstanding issues that the parties could not resolve and the incorporation of concerns raised by interested parties.



*In the Long Term (within five years):*

- K. In the long term, once the package of decision rules has been developed and approved by the IRF representatives, the process should move to one of multi-year plans, whereby minor adjustments are made each year based on the run size.
- L. The same general process for plan development should be followed, but should become simpler. Once the run size data is available, the draft plans should be developed by the Harvest Planning Committees. The same process of holding the IRF and resolving any conflicts/overlaps should be followed, but it is expected that these meetings will be shorter and there will be fewer conflicts/overlaps to resolve.
- M. As multi-year plans are developed and working relationships are built, the IRF may ultimately cease to be a meeting but rather a group of representatives etc. working by phone and ad hoc meetings as required.

**36. Timetable**

- A. There should be a strict timetable for the SHMP process, whereby the same meetings occur in the same week every year so participants know how to prepare and when to expect meetings.
- B. The following general schedule is proposed (Note: PSARC data availability will have to be advanced to meet this schedule):
  - I. Post season review and early forecast meeting – mid to late November.
  - II. Area/Sector preparation of draft Sectoral and First Nation SHMPs – late November.
  - III. Submission of draft Sectoral and First Nation SHMPs to Fisheries and Oceans Canada for review – First week of December.
  - IV. Identification of conflicts/overlaps and areas of potential infringement of Treaty and/or aboriginal rights by Fisheries and Oceans Canada – December.
  - V. Announcement of portions of SHMPs that are not in conflict – December.
  - VI. Comment period for interested parties – First two weeks of January.
  - VII. Integrated Regional Forum – Late January.
  - VIII. Comment period for interested parties – First three weeks of February.
  - IX. Decision period on outstanding conflicts/overlaps – First three weeks of February.
  - X. Announcement of final integrated SHMP – Last two weeks of February.

**37. Relationship to other Consultation Processes**

- A. Concerns with regard to policy issues and questions regarding the interpretation of the Allocation Policy that arise in the Salmon Harvest Management Planning Process should be recorded by Fisheries and Oceans Canada and submitted to either the Policy Advisory Process or Minister for referral to the Allocation and Licensing Board, as appropriate, to be addressed.
- B. Results emerging from the Policy Advisory Process and Allocation and Licensing Advisory Process will set the parameters for the Salmon Harvest Management Planning process.

- C. If potential Treaty and/or aboriginal rights infringement issues are identified by Fisheries and Oceans Canada, they should be referred to the Tier 2 (government to government) process.<sup>4</sup>

***Issue 3: Concerns regarding previous allocation decision making & the planned Allocation and Licensing Board.***

Dissatisfaction with previous allocation decision-making processes in part stemmed from representation issues. It is understood that the Department has committed to establishing an Allocation and Licensing Board. However, many commercial and recreational stakeholders want to ensure that they still have the opportunity to negotiate allocations and are concerned that the proposed Board may eliminate that opportunity. Major concerns were raised about the planned “expert and impartial” Allocation and Licensing Board making allocation recommendations. These concerns are exacerbated by the lack of a clear and common understanding of the difference between allocation and management. In addition, many participants suggested that the License Appeal Board is functioning effectively and should be left as it is. Nevertheless, there was support for an Allocation and Licensing Board with a neutral, impartial chair to carry out some functions, such as conducting an audit of whether the Allocation Policy is being effectively implemented and whether the various commercial gear sectors/types are meeting their allocations.

**Recommendations:**

**38. Goals**

- A. To establish a clear, open and unbiased process for:
  - I. refining the Allocation Policy and making new commercial and recreational allocation decisions should they be required; and
  - II. making decisions regarding the licensing rules respecting eligibility to hold a commercial license.
- B. To move to long-term relatively stable allocations so that all parties can make long-term plans.
- C. To consider the public interest in allocation and licensing decisions.

**39. Structure**

- A. The proposed structure of the Allocation and Licensing Advisory Process will consist of:
  - I. A standing Allocation and Licensing Board;
  - II. A standing License Appeal Board; and

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<sup>4</sup> **NOTE:** The integration of the proposed decision-making structure and the First Nations Tier 2 (government to government) process needs to be addressed to ensure that potential infringement of Treaty and/or aboriginal rights are dealt with in the Tier 2 process, while at the same time recognizing the need for ongoing decisions for stakeholders in the other processes.

- III. An Allocation and Licensing Negotiation Process and Public Hearing Process convened by the Allocation and Licensing Board.

#### **40. Mandate**

- A. The mandates of all of the bodies outlined below, with the exception of the License Appeal Board, apply to the salmon fishery only. Fisheries and Oceans Canada may wish to extend the mandates of the proposed Allocation and Licensing Board and Allocation and Licensing Negotiation Processes to address other fisheries, but should only do so after conducting a full consultation with representatives in those fisheries.

##### *Allocation and Licensing Board:*

- B. When allocation and licensing issues are referred to the Board by the Minister:
- I. Convene an Allocation and Licensing Negotiation and Public Hearing Process, and set the Terms of Reference for those processes.
  - II. Provide advice to the Minister on the following based on the outcomes of the Allocation and Licensing Negotiation and Public Hearing Processes:
    - i. Interpretation, implementation and clarification of the Allocation Policy.
    - ii. Adjustments to the Allocation Principles in the Allocation Policy to account for changes in circumstances such as:
      - a. The introduction of new selective fishing techniques;
      - b. Changes in fleet composition or distribution;
      - c. Changes in stock composition; and
      - d. Policy and legislative changes (including government to government interim measures and treaty settlements).
    - iii. Changes to commercial licensing rules that determine eligibility to hold a commercial license.
  - C. To conduct an annual audit of the fishing season to determine whether the established Allocation Principles and target allocations were met, and make recommendations with regard to how to address the situation if the allocations are not being met, either by convening the Allocation and Licensing Negotiation Process in cases where there is disagreement regarding the interpretation of the Allocation Principles, or by recommending appropriate adjustments in cases where there is little disagreement on the interpretation.
  - D. To ensure community and public interests are protected.
  - E. The Board's advice should be based on a consensus of the Board members. Where the Board is unable to agree on recommendations then alternatives should be presented with an assessment of the implications of the alternatives.

##### *Allocation and Licensing Negotiation Process:*

- F. To conduct intersectoral or intrasectoral negotiations regarding commercial and recreational allocation and licensing issues referred to the Allocation and Licensing Board by the Minister, within the Terms of Reference set by the Board, with a goal of developing consensus advice to provide to the Board.

*License Appeal Board:*

- G. To maintain its current mandate of hearing appeals from individual harvesters for special consideration in the application of commercial licensing rules. In time, there should be a review of the functions of both the License Appeal Board and Allocation and Licensing Board to assess whether separate bodies are warranted.

**41. Participation (See Figure 4)**

*Allocation and Licensing Board:*

- A. The Department has already determined that the chairperson of the Allocation and Licensing Board will be appointed by the Minister. It is recommended that the person selected be a neutral, but knowledgeable individual that is well respected by all sectors.
- B. The selection of the remaining board members will be a difficult task. It is recommended that there be only three additional board members, and that the Department take the following approach in selecting the other board members:
- C. Have the representative bodies in the commercial and recreational sectors (i.e. SFAB and CSHAB) and First Nations select one representative each to sit on the board within certain criteria. These criteria should include factors such as understanding of complex negotiations, knowledge regarding the salmon fishery and experience in an adjudicative role.

*Allocation and Licensing Negotiation Process:*

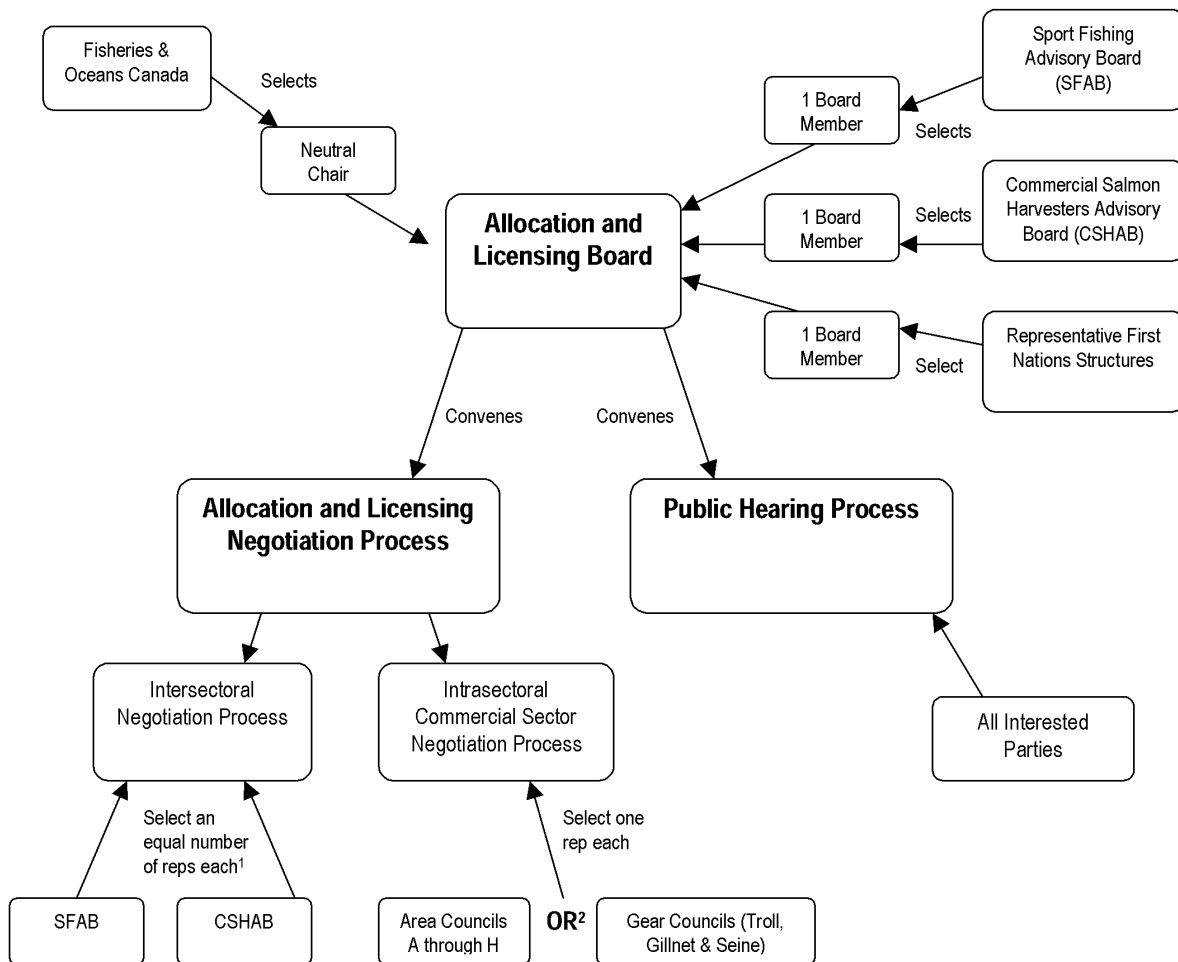
- D. The participants in the Allocation and Licensing Negotiation Process should be selected on the basis of whether the issue that requires resolution is inter or intrasectoral.
  - I. If the issue is an intersectoral one, the appropriate representative bodies for the commercial and recreational sectors (the CSHAB and SFAB) should be requested to select an equal number of representatives to participate in the negotiation. It is suggested that to ensure manageability and the potential for a negotiated solution that the number of representatives per sector be kept to a minimum, recognizing that depending on the issue, it may be necessary to have all of the commercial gear types or Areas represented individually.
  - II. If the issue is an intrasectoral one within the commercial sector, it is recommended that the commercial Area Councils or Gear Councils each select one representative and an alternate to participate in the negotiation process. In some cases it may be possible that only one or two gear types or Areas are involved in the issue. In those cases, participation in the Negotiation Process should be set accordingly.

*Public Hearing Process:*

- E. All interested parties would have access to the Public Hearing Process.

*License Appeal Board:*

- F. It is presumed that participation in the License Appeal Board will remain as it is currently.

**Figure 4: Structure of and Participation in Allocation and Licensing Advisory Process**

<sup>1</sup> To ensure manageability, and the potential for a negotiated solution, it is recommended that the number of representatives for each sector be kept to a minimum, recognizing that depending on the issue all of the commercial gear types or Areas may need to be represented individually.

<sup>2</sup> Depending on the issue, participation in Intrasectoral Commercial Sector Allocation and Licensing Negotiation Processes should be determined by Area or Gear Councils. In some cases it may be possible that only one or two gear types or Areas are involved in the issue. In those cases, participation in the Negotiation Process should be set accordingly.

## 42. Process

- A. The Allocation and Licensing Board's annual audit of whether the established Allocation Principles and target allocations were met should be automatically conducted by the Board every year in the fall. The results of this audit should be publicly available.

- B. When issues are referred to the Board by the Minister, the Board should convene an Allocation and Licensing Negotiation Process and an associated Public Hearing Process. The Board should not provide advice to the Minister without holding these processes.
- C. The Board should set the Terms of Reference for the Negotiation Process including:
  - I. whether it is an inter or intrasectoral negotiation and whether it applies to only specific gear types or Areas;
  - II. a deadline for the negotiation; and
  - III. the specific issue that the negotiators are requested to come to consensus on.
- D. Potential areas of infringement on Treaty and/or aboriginal rights should be identified and referred to the Tier 2 (government to government) process.
- E. It is recommended that all negotiation processes be mediated or facilitated by a neutral individual. If the chairperson of the Allocation and Licensing Board is acceptable to the negotiators, it is recommended that he or she be the facilitator. If not, an outside facilitator or mediator should be hired. The negotiation process should be open to all interested observers.
- F. At the same time that the Negotiation Process is ongoing, the Board should convene a Public Hearing on the issue. This Public Hearing Process should take place in conjunction with the Negotiation Process. Time on each day of the negotiation should be set aside for presentations from any interested party. Written submissions should also be accepted. The negotiators are expected to consider this public input in their deliberations as the recommendations to the Minister by the Board need to account for how public interest has been defined and protected.
- G. Once the deadline for the negotiation has been reached, the negotiators should document either their consensus or non-consensus. They should also indicate how input from the Public Hearing has been incorporated into their agreement, if agreement has been reached.
- H. In the case of consensus in the Negotiation Process, once the negotiation deadline has been reached, the Board should forward the consensus to the Minister as their recommendation, unless the Board feels that the negotiators ignored input from the Public Hearings that should not have been left out. In this case, the Board should forward the consensus to the Minister with comments with regard to how the Public Hearing input may be incorporated. If the Board feels that the consensus does not adequately account for the public interest, they can recommend a variation on it.
- I. In the case of non-consensus in the Negotiation Process once the negotiation deadline has been reached, the Board should consider all of the input received through the Negotiation and Public Hearing Processes and forward a recommendation to the Minister.

#### **43. *Timetable***

- A. The Allocation and Licensing Board should conduct its annual audit and review of issues in September and early October. Negotiation and Public Hearing Processes should ideally be convened in October or November with a deadline of late December, so that results can be fed into the SHMP process.

**44. Relationship to other Consultation Processes**

- A. Provides direction to the SHMP process.
- B. Receives direction from Policy Advisory Process.
- C. If potential Treaty and/or aboriginal rights infringement issues are identified by the Board, they should be referred to the Tier 2 (government to government) process (see footnote on page 30).

**Issue 4: Lack of an effective forum to address large-scale policy questions.**

Participants repeatedly identified the need for a forum to address large-scale policy questions such as:

- moving to an individual transferable quota (ITQ) system in salmon harvesting;
- multi-species fisheries;
- moving to value added harvesting;
- cost recovery in management;
- ocean ranching;
- integrated coastal zone management;
- proposals for Marine Protected areas and Marine Conservation areas; and
- the role of communities and area-based management boards in salmon management.

Many parties noted that in the past these large-scale policy issues have been raised in the Salmon Harvest Management Planning process, but that they have been told by Fisheries and Oceans Canada that Salmon Harvest Management Planning is not the place to deal with those issues. Most parties agree with this assertion, but emphasized that there needs to be a forum in which parties have confidence that they can address policy issues. Fisheries and Oceans Canada felt that the establishment of a formal policy advisory process was the most appropriate response to this concern. In addition, many groups expressed the need for an inclusive policy advisory process that allows the full participation of all interested parties.

**Recommendations:****45. Goals**

- A. To establish a formal, credible and inclusive process for the provision of policy advice to the Minister.
- B. To reduce the pressure to address policy issues in other forums, such as the Salmon Harvest Management Planning process.
- C. To address the public interest.

#### **46. Structure**

- A. The proposed structure of the Policy Advisory Process is as follows:
  - I. A standing Policy Advisory Committee (PAC).
  - II. Public Policy Forums to be convened jointly by Fisheries and Oceans Canada and the PAC as required.
  - III. Fisheries and Oceans Canada may also establish an Intergovernmental Policy Committee that includes the provincial government and First Nations representatives from the PAC to coordinate government participation and input into the PAC.

#### **47. Mandate**

- A. The mandates of the PAC and Policy Forum process apply to the salmon fishery only. Fisheries and Oceans Canada may wish to extend the mandate of the proposed Policy Advisory Process to address other fisheries, but should only do so after conducting a full consultation with representatives in those fisheries.
- B. The mandates of the PAC and Policy Forum process do not apply to issues involving Treaty and/or aboriginal rights, which will be addressed in the Tier 2 (government to government) process.

##### *Policy Advisory Committee (PAC):*

- C. To identify, delineate and prioritize policy issues for resolution, preferably by consensus and advise Fisheries and Oceans Canada of the list developed. The policy issues identified should be those that have not yet been addressed by Fisheries and Oceans Canada. The PAC should not be readdressing already existing policies that are the focus of ongoing dissatisfaction, unless it is felt that the policy is not meeting its goals, or that the existing policy is outdated, due to changes in circumstances. If the PAC does wish to address an already existing policy, it should provide Fisheries and Oceans Canada with a compelling rationale based on clear information as to why that policy should be readdressed.
- D. To discuss and provide advice on policy issues to Fisheries and Oceans Canada. Where possible, the PAC should attempt to provide consensus advice on policy issues.
- E. To advise Fisheries and Oceans Canada when broader public Policy Forums are required for gathering input regarding the particular policy issue, propose the Terms of Reference for the Policy Forum and frame the policy issue for the Policy Forum.
- F. To jointly convene public Policy Forums with Fisheries and Oceans Canada.
- G. To consolidate input from broader public Policy Forums to provide to Fisheries and Oceans Canada.

##### *Policy Forums:*

- H. To provide input on large-scale policy issues identified by the PAC within the Terms of Reference for the Policy Forum.



**48. Participation (See Figure 5)***Policy Advisory Committee (PAC):*

- A. The membership of the PAC should include representatives of:
  - I. First Nations (including NBBC and BCAFC)
  - II. the recreational sector, e.g. SFAB
  - III. the commercial sector, e.g. Gear Councils/CHAB
  - IV. non-government science – e.g. Scientists from Research Institutes and Universities
  - V. conservation groups (e.g. BC Wildlife Federation and ENGOs such as T. Buck Suzuki Foundation and Sierra Club of BC)
  - VI. the provincial government, e.g. BC Fisheries
  - VII. processors
  - VIII. United Fishermen and Allied Workers Union
  - IX. the Department, and
  - X. communities e.g. Union of B.C. Municipalities and Coastal Communities Network.
- B. Representatives should be nominated by appropriate representative bodies from the particular group. In the case of the non-government science and non-government conservation group representatives, Fisheries and Oceans Canada may have to assist in finding an acceptable appointee.
- C. Terms for the PAC representatives should be three years.
- D. The PAC should have an independent facilitator.

*Policy Forums:*

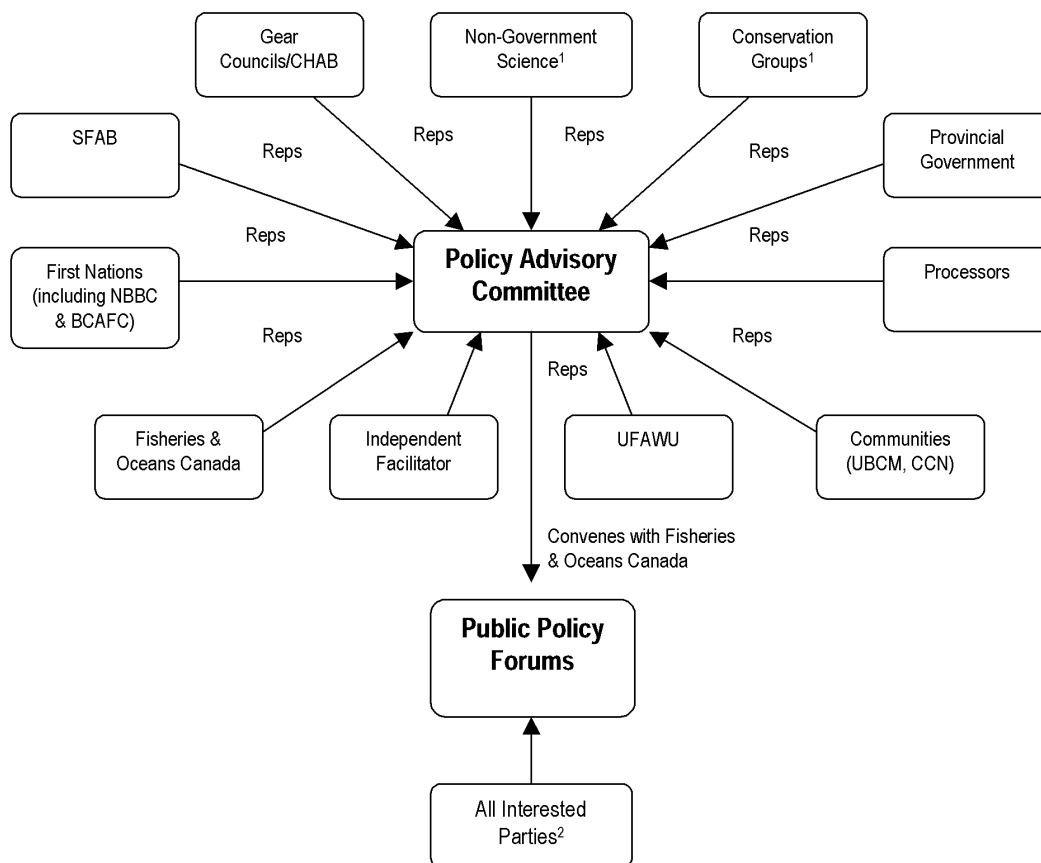
- E. Participation in the Policy Forums should be open to any individuals and groups that would like to provide input on the particular issue. However, to the extent possible, individuals and groups with similar interests should be encouraged to form representative coalitions.

**49. Process***Policy Advisory Committee (PAC):*

- A. Large-scale policy issues/questions should be submitted by any interested party to the PAC for consideration.
- B. The PAC should meet, review the issues/questions submitted and, working by consensus:
  - I. Provide advice to Fisheries and Oceans Canada on the priority policy issues to be addressed.
  - II. Provide advice to Fisheries and Oceans Canada on how the policy issues should be addressed.
  - III. Suggest which issues should be addressed by a public Policy Forum and suggest Terms of Reference for the Policy Forum that identify:
    - i. the broad questions that the Policy Forum is to provide input on (Separate Policy Forums can be held for separate issues, or a single Policy Forum could consider a number of related issues);

- ii. when the Policy Forum will be held and over what period of time; and
- iii. the general process that the Policy Forum will follow i.e. Will it be informal discussion or negotiation with an intent to try to reach consensus? Will an independent facilitator be utilized?
- IV. Convene Policy Forums with Fisheries and Oceans Canada as required.
- V. Consolidate input from the Policy Forum and submit it to Fisheries and Oceans Canada.
- C. The participants in the PAC should determine whether they would like to have a Chair and select that Chair, which could include, the Regional Director General (RDG), another Fisheries and Oceans Canada official, or a non-government PAC member.

**Figure 5: Structure of and Participation in Policy Advisory Process**



<sup>1</sup> In the case of the non-government science and non-government conservation group representatives, Fisheries and Oceans Canada may have to assist in finding an acceptable appointee.

<sup>2</sup> To the extent possible, individuals and groups with similar interests should be encouraged to form representative coalitions.

**50. Timetable**

- A. The PAC should meet as required (at least twice a year).
- B. Policy Forums should be convened on an as needed basis.

**51. Relationship to other Consultation Processes**

- A. The Policy Advisory Process will shape the policy that sets the overall parameters for the SHMP process and the Allocation and Licensing Advisory Process.
- B. Large-scale policy issues raised in the SHMP and Allocation and Licensing Advisory Process should be directed to the PAC.
- C. If potential Treaty and/or aboriginal rights infringement issues are identified by the PAC, they should be referred to the Tier 2 (government to government) process (see footnote on page 30).

**Issue 5: Differing views on the approach to community involvement and the role of area-based management.**

The Institute heard many strong views with regard to the desirability of community involvement in salmon management and area-based fisheries management in general. Some of these views were strongly supportive. Others were strongly opposed.

Advocates for community and area-based management believe these processes will prove to be more effective in supporting integrated fisheries management. This will lead to increased efficiency and greater potential to manage for sustainability and the general principles articulated in the *Oceans Act*. Proponents of area-based management believe that it will be capable of engaging a wide range of interests in a single integrated discussion, rather than the numerous segregated processes used to date. They also point out that the need to rationalize the various area-specific interests will continue under the proposed Area Councils and that this will not change with the development of area-based management as indicated in the terms of reference for the West Coast Vancouver Island area-based pilot project. There has always been a requirement to come together in coast-wide discussions and this is reflected in the pilot's terms of reference.

Opposition to community and area-based management stemmed primarily from concern about local groups managing migratory salmon stocks particularly where a number of the affected communities are outside of the local area and not represented in the process. However, concerns were also raised about:

- area-based management taking too much time for most commercial and recreational harvesters to participate,
- the potential for area-based groups to undermine existing representative organizations, many of which are regionally based, and
- the potential confusion and management burden of having area-based management in all communities along the coast.

Fears were also raised that allocations could be affected by area-based management as well as locations for fish processing.

There is very strong local level support in some communities for area-based management. Communities repeatedly pointed out that they are directly and materially affected by harvest management and allocation decisions and thus have a stake in those decisions. Regardless of their views on area-based management, virtually all community representatives are seeking a more meaningful role in consultations regarding the management of the salmon fishery.

Moreover, there is significant evidence with regard to how area-based approaches can reduce local conflict and foster the type of respectful, inclusive and open dialogue that is needed in the Pacific salmon fishery. There is also evidence (in the WCVI pilot) that First Nations are supportive of developing and participating in area-based approaches, and that area-based approaches can help build relationships between First Nations and non-First Nations, which will be critical to the future management of the fishery, particularly in light of future treaty settlements.

Piloting area-based management through the WCVI initiative will challenge both advocates and detractors. On one hand the pilot must be given a reasonable opportunity to succeed and to influence the management environment within which it will function. This means that supporters and detractors alike should fully engage the initiative through participation in it, and use of it as one of the mechanisms to address management and policy issues. On the other hand, the pilot is designed to test a significantly different approach to the management of the fishery and the lessons learned should not be widely implemented until they are shown to provide a better alternative.

### Recommendations:

52. The WCVI pilot should serve as a good test for exploring area-based management and greater community and First Nations participation. The Department, as a signatory to the pilot's Terms of Reference and the regulatory agency, should ensure that the project is adequately resourced.
53. As intersectoral conflicts are identified within the SHMP process, particularly within the IRF, the WCVI pilot should be considered as a potential "subgroup" of the IRF for resolving issues that are specific to the pilot area. Resolutions that are developed in the pilot should be fed back into the IRF for integration into the integrated salmon harvest management plan.
54. After a three-year period, evaluation of the pilot should be based on a principle-based framework drawing on the principles contained in the *Oceans Act*, those additional principles developed by the PAC as well as the Code of Conduct. (e.g. sustainability, intergenerational equity, inclusivity, etc).
55. Key stakeholders that have not engaged in the WCVI pilot should engage in the pilot in order to ensure that the full range of interests are addressed.

56. The progress and results of the pilot should inform discussions on the policy topic of area-based management and community participation in the PAC.

## VI: Aboriginal and Treaty Rights, Linkages and Participation

### ***Issue 1: Consultation.***

The Review Team was not asked to and did not conduct a full consultation process with First Nations regarding the Discussion Paper. This would have been an impossible task within the time frame and resources of the Review Team. However, the Review Team was able to talk with representatives of several First Nation organizations, including the BC Aboriginal Fisheries Commission, Native Brotherhood of BC, the Native Fishing Association and the Te'mexw Treaty Association (see Appendix 1 for complete list).

At the commencement of the review, a letter went out to all First Nations advising that discussions with First Nations would not be construed as "consultations" in the legal sense, rather they were "an exchange of information." This letter provided a level of comfort, which allowed the Review Team to obtain significant input from these First Nation organizations. Fisheries and Oceans has agreed to fulfill its legal obligations to formally consult with First Nations through a process agreed to by Fisheries and Oceans Canada and First Nations.

### **Recommendations:**

57. While the duty to consult with First Nations is based on fiduciary and legal considerations, the fundamentals of consultation mentioned in Section IV of this report apply and should be adopted in all consultations with First Nations.
58. Fisheries and Oceans Canada should consult with First Nations on these recommendations through a process agreed to by the parties. Where processes are in place with First Nations, these processes should be used. If no processes are in place then Fisheries and Oceans Canada and First Nations, possibly through the recently established Joint Fisheries Dialogue process, could initiate discussions on how best to fulfill this consultation obligation.
59. Where decisions are being made that may infringe on aboriginal and/or treaty rights, these decisions should be deferred until appropriate consultation with First Nations affected by the decisions have taken place (see footnote on page 30) and, where necessary, interim agreements, approaches or strategies have been developed.

## **Issue 2: Aboriginal and Treaty Rights.**

The most significant issue discussed with First Nation representatives was the issue of rights, including the extent and protection of these rights. Despite numerous court cases, there remain conflicting legal interpretations of the status of Treaty and aboriginal rights to the salmon fisheries. Fisheries and Oceans Canada takes a narrower and more restrictive view of these rights while First Nations apply a broader and more liberal interpretation. While this positioning of the parties is understandable in an existing negotiation context, it does not create an environment for meaningful dialogue, and until government to government agreements are in place, uncertainty will continue to exist within the salmon fishery.

In order to achieve agreements on such issues as habitat protection, conservation, management and allocations, it is necessary to have a place that works for addressing issues that have potential for infringing on Treaty and aboriginal rights.

Figure 6 entitled An Integrated Planning System illustrates the recommended planning structure (on the left) and its linkage to the three tiered First Nation structure (on the right).

First Nations have developed a three tiered process for resolving issues.

- Tier 1 (First Nation to First Nation) involves internal First Nation processes to address outstanding issues and to develop inter-tribal protocols, policies, management and fishing plans. The *Protocol on Inter-Tribal Fisheries Cooperation* is an example of this type of Tier 1 process.
- Tier 2 (government to government) involves processes between First Nations and the federal and/or provincial governments. The current six stage B.C. Treaty Commission (BCTC) process, the Douglas Treaties, the Nisga'a Treaty, Bilateral processes outside the BCTC process and Aboriginal Fisheries Strategy (AFS) agreements are examples of Tier 2 processes.
- Tier 3 (multi-party) involves processes that include First Nations, federal and/or provincial governments plus other stakeholders who may have an interest in the fishery. First Nations view Tier 3 level processes appropriate only after the substantive issues have been addressed in Tier 2 level agreements.

The Allocation and Licensing Advisory Board and the Salmon Harvest Management Advisory Planning process presented in the Discussion Paper are viewed by First Nations as premature and potentially prejudicial to the Tier 2 process. They argue that effective Tier 2 processes must be properly established and working before multi-party (Tier 3) processes can succeed. If decisions are made under the planning structure that might infringe upon Treaty and aboriginal rights, they argue consultation is required. To consult properly with First Nations requires a timely process, given the number and diversity of the First Nations that might be affected.

On October 2, 2000 a joint Memorandum of Understanding entitled *A Joint Fisheries Dialogue For British Columbia* was signed by representatives of the federal government including the Department of Fisheries and Oceans (Pacific Region), Indian and Northern Affairs Canada (BC Region), Human Resources Development Canada (BC - Yukon Region), Environment Canada (Pacific and Yukon Region) and Parks Canada Agency (Western Region) and representatives of the First Nation Summit, BC Aboriginal Fisheries Commission (Chair and Coastal and Interior Co-Chairs) and the Native Brotherhood of BC. The purpose of the MOU is to “confirm the commitment of the Federal Government Agencies and First Nation Organizations to work together to establish a joint process that allows them to engage in a dialogue on a broad range of policies related to fish, fisheries and related social, economic and environmental issues.”

While this dialogue forum is not intended to be used as a mechanism for consultation with First Nations, it is, in the opinion of the Review Team, a positive steps towards creating a mechanism for discussing mutual policy concerns and issues in the salmon fishery and exploring ways to resolve any impasses.

The recommended planning structure has the potential of prejudicing Tier 2 negotiations where decisions related to new or changed allocations are made, or where expectations are raised in the non-aboriginal fishery that would negatively affect the government’s ability to reach agreements with First Nations.

The challenge in implementing the planning structure while Treaty and aboriginal rights issues are largely unresolved is to ensure that there is a clear linkage between what is going on with government to government negotiations, and what is taking place under the planning structure that is addressing allocation and harvest management issues within an existing policy context.

It is our view that First Nations must participate in the planning structure if only to ensure themselves that decisions made in that structure are not prejudicing their rights. Should a decision appear to infringe upon rights then the matter should be flagged and brought to the government to government process for discussion and resolution.

### **Recommendations:**

60. The Tier 1 (First Nation to First Nation) processes should be supported and made to work effectively in order for First Nations to develop a shared vision on the management of fisheries resources and the implementation of fishing rights;
61. Tier 2 (government to government) processes should be supported and made to work to address mutual policy concerns and issues.
62. Interim measure agreements should be made with First Nations to address capacity issues, habitat protection, co-management schemes and allocation issues, including economic opportunities while negotiations and clarification of rights are underway.



**Issue 3: Representation and Participation.**

The issue of representation or participation on the advisory boards proposed in Fisheries and Oceans Canada's Discussion Paper (e.g. Allocation and Licensing Board) was seen to be problematic to the First Nations organizations, with which we exchanged information, due to the broad diversity of First Nations involved in the salmon fishery, the nature of decision-making within their Nations and the fact that some are participating in the B.C. Treaty process and others are not. We were advised that previous experience with multi-party bodies did not allow for an effective First Nations voice in the dialogue. There was also concern that the proposed advisory bodies might make decisions which would impact upon existing aboriginal or treaty rights. If the Tier 1 and Tier 2 processes mentioned above are supported and working then First Nations and the federal government will have a forum and a process to address outstanding issues. Working processes in Tier 1 and 2 will also facilitate First Nation participation in the recommended planning structure because the government to government nature of the relationship will be respected and First Nations will be able to bring a more comprehensive First Nations view to the table.

In terms of First Nations participation in policy and allocation decision making, the objective of First Nations participation should be to achieve integration without compromising their constitutional rights, while being mindful of the fact that many are engaged in negotiations that may further define those constitutional rights. As a result, if there are negotiations, for example, in association with the allocation policy, First Nations are going to want to observe, or perhaps engage in those negotiations. Moreover, if First Nations think that policy or allocation decisions are going to compromise their rights, they need a forum to deal with those concerns on a government to government basis to ensure there is no infringement and ensure that the fiduciary duty of the Crown is fulfilled before a decision is made. This relationship is reflected in Figure 6 by the lines going from the Government of Canada process to the First Nations government to government process. The linkage of this process and the three tier processes is also illustrated in Figure 6.

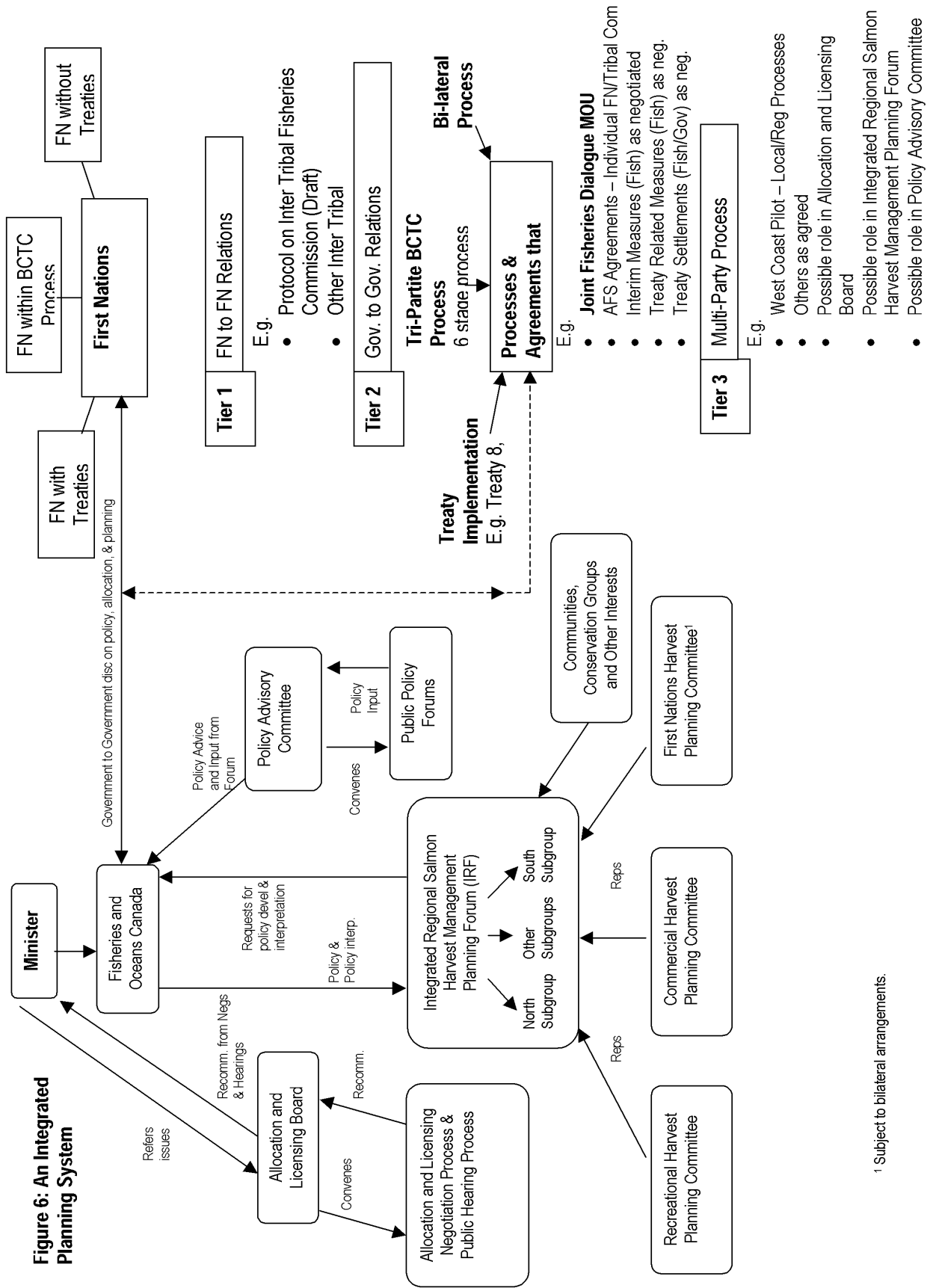
**Recommendations:**

63. In the consultations regarding these recommendations, Fisheries and Oceans Canada and First Nations should discuss how First Nations can effectively participate in the recommended planning structure. This consultation should include how First Nations will be resourced to participate meaningfully.
64. Fisheries and Oceans Canada must assure First Nations that any participation by them will not prejudice their aboriginal or treaty rights. This assurance should be part of the terms of reference of the advisory bodies and it should be clear that this limited participation in and of itself will not constitute formal consultation with the Nation.
65. First Nations should participate in the recommended planning structure to share their knowledge and expertise in the management of the fishery, ensure that issues do not prejudice their rights, and ensure appropriate integration of their fishing plans.

66. Processes where First Nations are engaged with non-First Nations parties should be facilitated by a neutral third party, who can ensure equal opportunity to express participants' points of view. These processes are more likely to be supported by First Nations.
67. Where matters under discussion in these advisory bodies have potential for prejudicing/infringing upon aboriginal or treaty rights, they should be referred to the First Nations/Government of Canada process in Figure 6 for consultation, negotiation and accommodation.

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**Figure 6: An Integrated Planning System**



## Appendix 1: Organizations that participated in the Independent Review

Alberni-Clayoquot Economic Development Commission	Cooperative Fishermen's Guild
Alberni-Clayoquot Regional District	Corporation of Delta
Area "G" Troll Fishery Association	Council of the Haida Nation
Area B Seine Association	Cowichan Fish and Habitat Renewal Board
Area D (Johnstone Strait) Gillnet Association	Cowichan Regional Fishers Cooperative
Area E Gillnetters Association	Cowichan Valley Regional District
BC Aboriginal Fisheries Commission	David Suzuki Foundation
BC Conservation Foundation	District of Campbell River
BC Federation of Fly Fishers	District of Chilliwack
BC Fisheries Survival Coalition	District of Port Hardy
BC Seafood Alliance	District of Powell River
BC Watershed Stewardship Alliance	District of Saanich
BC Wildlife Federation	District of Sechelt
Canadian Fishing Company	District of Tofino
Central Coast Regional District	District of Ucluelet
Central Vancouver Island Native Fishers	Douglas Treaty First Nations
City of Abbotsford	Economic Development Corporation of Campbell River
City of Kamloops	Ecotrust
City of Langley	First Nations Summit
City of Nanaimo	Fisheries and Oceans Canada
City of North Vancouver	Fisheries Renewal BC
City of Port Alberni	Fisheries Research Centre
City of Port Coquitlam	Fishing Vessel Owners Association
City of Prince Rupert	Forest Marine Ltd.
City of Surrey	Fraser Basin Council
Coastal Community Network	Fraser River Estuary Management Program
Columbia Shuswap Regional District	Fraser Valley Regional District
Combined North Island Fisheries Centre	GowGaia Institute
Community Fisheries Development Centre	Greater Vancouver Regional District
Community Futures Association of Prince Rupert	Gulf (Area H) Trollers Association
Community Futures Development Corporation of Bella Coola	Haida Gwaii Marine Resources Committee
Community Futures Development Corporation of Duncan	KTFC
Community Futures Development Corporation of Nanaimo	LGL Ltd.
Community Futures Development Corporation of North Fraser	Little Shuswap Indian Band
Community Futures Development Corporation of Smithers	Living Oceans Society
Comox-Strathcona Fisheries Renewal Partnership	Marine Resources Management Advisory Committee
	Ministry of Fisheries
	Mount Waddington Regional District
	Native Brotherhood of British Columbia
	Native Fishing Association
	Nicola Tribal Association

## Appendix 1

Nicola Watershed Stewardship and Fisheries Authority	Sport Fishing Advisory Board
Northern Native Fishing Cooperative	Sport Fishing Institute of B.C.
Northern Trollers Association	Sports Fishing Guides Association
Northwest Stewardship Society	Squamish River Wathershed Society
Nuu-chah-nulth Tribal Council	Steelhead Society
Oak Bay Marine Group	Sto:Lo Nation Fisheries Committee
Okanagan Nations Fisheries Commission	Sustainable Fisheries Foundation
Pacheenaht First Nation	Te'mexw Treaty Association
Pacific Fisheries Resource Conservation Council	The Cultured Crustacean Company Ltd.
Pacific Salmon Foundation	Thompson Basin Fisheries Council
Pacific Salmon Harvesters Society	Tofino Business Association
Pacific Seafood Council	Town of Qualicum Beach
Pacific Streamkeepers Federation	Town of Smithers
Pacific Trollers Association	Township of Langely
Powell River Regional District	Union of British Columbia Municipalities
Queen Charlotte Salmon Unlimited	United Fishermen and Allied Workers Union
Regional Aquatic Management Society	Upper Fraser and Nechako Fisheries Council
Regional District of Fraser-Fort George	Victoria Fish Co Ltd.
Seafood Products	Village of Alert Bay
Sierra Club of BC	Village of Masset
Simon Fraser University	Village of Port Clements
Skeena Fisheries Commission	Village of Sayward
Skeena Fisheries Commission	Village of Tahsis
Skeena Queen Charlotte Regional District	Village of Telkwa
Skeena Selective Fishing	Village of Zeballos
Sointula Harbour	West Coast Sustainability Association
South Island Aquatic Stewardship Society	Wild Fish First Society

## Appendix 2: Suggested Code of Conduct for Participation in Fisheries and Oceans Canada Consultations

Individuals' rights to participate in consultation processes are accompanied by responsibilities. Parties that participate in consultation processes should do so in good faith and with the public interest as well as their own interest in mind. Participants also have a responsibility to engage in effective, balanced and civil communication. All representatives have a responsibility to ensure that they are accountable to their constituents, that the government gets the information it needs to make a well-informed and balanced decisions, and that consultation processes operate as efficiently as possible.

The Code of Conduct provided below has been modified slightly from the Code of Conduct prepared by the Commission on Resources and Environment (CORE) and Codes of Conduct utilized in Land and Resource Management Planning processes around the province. It is proposed here as an initial draft for your consideration and will be modified in the Final Recommendations on the basis of the feedback received.

Participants in consultation processes should:

1. Maximize the exchange of information among parties and minimize misunderstandings by:
  - speaking clearly, listening carefully and asking for clarification if a point is not understood;
  - sharing information related to the issues at hand;
  - stating concerns about other participants or the process openly and directly; and
  - clearly explaining what is important to them and why.
  - stating their perspective as concisely and briefly as possible
2. Ensure that all participants have the opportunity to speak and all perspectives are taken into account by:
  - seeking the participation of all interests; and
  - providing opportunities for affected parties to be heard before making a decision.
3. Maintain a respectful atmosphere by:
  - respecting each others' values and interests;
  - avoiding accusatory language, rude behaviour and stereotyping;
  - listening to what others have to say without interrupting;
  - beginning meetings on time; and
  - seeking a better understanding of other perspectives with an open mind.

4. Ensure accountability to constituencies by:
  - making every effort to attend all important consultation meetings, or sending an alternate as agreed upon by constituents;
  - establishing clear lines of accountability with those they represent, and with other representatives;
  - acting in accordance with the authority granted by constituents and ensuring that other representatives understand this authority;
  - communicating pertinent information to their constituencies regularly and seeking support for negotiated agreements;
  - acting quickly to raise and resolve any concerns regarding the accountability of the process or any of the representatives to protect the integrity and trust of the group.
5. When negotiating in a consultation process, facilitate agreements across the full spectrum of interests by:
  - negotiating in good faith, building as much agreement as possible;
  - avoiding participation in activities that may undermine the negotiation;
  - focusing on underlying interests or objectives rather than positions and seek to understand the interests of others;
  - recognizing the legitimacy of all interests;
  - treating issues as problems to be solved not as personal or sectoral conflicts;
  - allowing representatives the freedom to test ideas without prejudice to future discussion or negotiations — do not hold tentative suggestions or agreements against those who made them; and
  - seeking creative solutions that accommodate all interests; and
  - positively supporting consensus agreements once they have been reached.
6. Engaging in appropriate external communication by:
  - ensuring that descriptions of the process and the views of other representatives are accurate and acceptable to all representatives before communicating them to the general public or the media;
  - ensuring that contact with the media is respectful of others.



## Appendix 3: Excerpts from Canada's Oceans Act

The following excerpts from the Oceans Act provide specific guidance on the principles that should be reflected in fisheries management in terms of the decisions that are made and the processes that are used to involve affected interests in their development. (Note: Some statements have been bolded and underlined by the Review Team to add emphasis.)

“WHEREAS Canada recognizes that the three oceans, the Arctic, the Pacific and the Atlantic, are the **common heritage** of all Canadians;

WHEREAS Canada promotes the understanding of oceans, ocean processes, marine resources and marine ecosystems to foster the **sustainable development** of the oceans and their resources;

WHEREAS Canada holds that **conservation**, based on an **ecosystem approach**, is of fundamental importance to maintaining biological diversity and productivity in the marine environment;

WHEREAS Canada promotes the wide application of the **precautionary approach** to the conservation, management and exploitation of marine resources in order to protect these resources and preserve the marine environment;

WHEREAS Canada recognizes that the oceans and their resources offer significant opportunities for economic diversification and the generation of wealth for the benefit of all Canadians, and in particular for coastal communities;

WHEREAS Canada promotes the **integrated management** of oceans and marine resources;

AND WHEREAS the Minister of Fisheries and Oceans, **in collaboration with** other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, is encouraging the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems;

29. The Minister, **in collaboration with** other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems in waters that form part of Canada or in which Canada has sovereign rights under international law.

### Principles of strategy

30. The national strategy will be based on the principles of

(a) **sustainable development**, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

- (b) the **integrated management** of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and
- (c) the **precautionary approach**, that is, erring on the side of caution.

### **Integrated management plans**

31. The Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law.

### **Implementation of integrated management plans**

32. For the purpose of the implementation of integrated management plans, the Minister
- (a) shall develop and implement policies and programs with respect to matters assigned by law to the Minister;
  - (b) shall coordinate with other ministers, boards and agencies of the Government of Canada the implementation of policies and programs of the Government with respect to all activities or measures in or affecting coastal waters and marine waters;
  - (c) may, on his or her own or jointly with another person or body or with another minister, board or agency of the Government of Canada, and **taking into consideration the views** of other ministers, boards and agencies of the Government of Canada, provincial and territorial governments and affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements,
    - (i) establish advisory or management bodies and appoint or designate, as appropriate, members of those bodies, and
    - (ii) recognize established advisory or management bodies; and
  - (d) may, in consultation with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, establish marine environmental quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters.

### **Cooperation and agreements**

33. (1) In exercising the powers and performing the duties and functions assigned to the Minister by this Act, the Minister(a) **shall cooperate** with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements;(b) may enter into agreements with any person or body or with another minister, board or agency of the Government of Canada;(c) shall gather, compile, analyse, coordinate and disseminate information;(d) may make grants and contributions on terms and conditions approved by the Treasury Board; and(e) may make recoverable expenditures on

behalf of and at the request of any other minister, board or agency of the Government of Canada or of a province or any person or body.

(2) In exercising the powers and performing the duties and functions mentioned in this Part, the Minister **may consult** with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements.”

## Appendix 4: Principles for Discussion – A Reference Document

This is a compendium of principles drawn from a range of national and international sources with a responsibility for the management of natural resources. The Review Team has used these principles in developing the recommendations in this document. They are recommended to the proposed PAC as a key starting point for the development of principles that will compliment those that are contained in the Canada *Oceans Act*.

### I: PRINCIPLES FOR PARTICIPATION IN DECISION MAKING

#### 1. Transparency

**Definition:** Ensuring that the manner in which input has been collected and utilized, the factors that have been considered and the reasons for the final decision are apparent to all participants.

**Related Quotes:**

*“We want to be straightforward and open in our effort to meet our sustainable development obligations.”* - Fisheries and Oceans Canada (F&OC) Sustainable Development Framework for Action

*“States... should ensure transparency in the mechanisms for fisheries management and in the related decision-making process.”* – *Food and Agriculture Organization of the UN [FAO] Code of Conduct*

*“The public deserves substantive responses to all comments they submit. The Department should carefully consider all public comments, regardless of their origin, and provide a response through a comment and response document, not just an acknowledgement.”* – *Pennsylvania Department of Environmental Protection*

*“Transparency by all parties in a decision-making process facilitates more meaningful participation by ensuring that all motivations and objectives are apparent and that all information vital to the decision is presented and reliable.”* – *Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development (ISP) Policy Framework for Public Participation in Sustainable Development Decision-Making in the Americas*

*“Those affected by allocation and licensing decisions should see how decisions are taken, by whom they are taken and who contributed to or influenced the decisions.”* – *F&OC: An Allocation Policy for Pacific Salmon*

**Other Sources:** Western Governors' Association (WGA) Principles for Environmental Management in the West, National Round Table on Environment and Economy (NRTEE) Case Studies

## 2. Accountability

**Definition:** Ensuring that participants are accountable to the people they represent and stand by the advice they have provided. Ensuring that the agency is accountable for its decisions and the manner in which those decisions were made. Ensuring that all participants work to meet the commitments and achieve compliance with agreements reached.

### **Related Quotes:**

Accountability is “to provide feedback on the outcomes of a consultation or citizen engagement process and to demonstrate how these outcomes have been considered in the decision-making process.” – *Government of Canada's (GoC's) Policy Statement and Guidelines on Consulting and Engaging Canadians*

“Our performance will be measured and the results will be available to the public.” – *F&OC Sustainable Development Framework for Action*

Accountability is “responsibility to the public for its decisions and a willingness to provide explanations for the rationales behind its decisions.” – *US Department of Energy Public Participation Policy*.

Accountability means that “participants are accountable both to their constituencies and to the process that they have agreed to establish.” – *NRTEE Building Consensus for a Sustainable Future*

“Government and stakeholders will together be responsible and accountable for sustainable fisheries.” – *F&OC Discussion Paper: A New Direction*

**Other Sources:** CORE – The Provincial Land Use Strategy – Volume 1, BC Hydro Water Use Planning Principles

### 3. Inclusiveness

**Definition:** Involving the broadest range of people with an interest in or affected by the decision in the decision-making process.

**Related Quotes:**

The minister must work in collaboration with “provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements” to develop integrated management plans. – *F&OC Canada Oceans Act*

States should “facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision making” and “parties having a legitimate interest in the use and management of fisheries resources” in the development of fisheries laws and policies. – *FAO Code of Conduct for Responsible Fisheries*

“Make sure everyone is at the table, even if you don’t like them much, or regard them as unhelpful or enemies. Better to have them at the table than in court.” – *US General Services Administration*

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.” – *1992 Rio Declaration Principle 10*

Decision-making processes should be “open to the participation of all interests.” – *CORE – The Provincial Land Use Strategy – Volume 1*

**Other Sources:** GoC’s Policy Statement and Guidelines on Consulting and Engaging Citizens, WGA Principles for Environmental Management in the West, BC Land Use Planning Principles, BC Hydro Water Use Planning Principles, CORE – The Provincial Land Use Strategy – Volume 1, NRTEE Building Consensus for a Sustainable Future

#### 4. Balanced Representation/ Equal Opportunity

**Definition:** Ensuring balanced and fair representation of all affected interests and ensuring that all of those interests have the same opportunity to participate.

*Related Quotes:*

“Balanced communication” is a basic responsibility in which it must be ensured that “all participants have the opportunity to speak and all perspectives are clearly expressed.” A key feature of public participation processes is the “balanced representation of all interests.” If a process is not balanced, “it will be seen as a ‘stacked’ or ‘special interest’ group” that does not have legitimacy in the eyes of the community. – *CORE – The Provincial Land Use Strategy – Volume 2.*

“Equal opportunity for comment and equal consideration of the comments from the private and public sectors should be provided.” – *Pennsylvania Department of Environmental Protection.*

**Other Sources:** WGA Principles for Environmental Management in the West, NRTEE Building Consensus for a Sustainable Future

#### 5. Accessibility

**Definition:** Ensuring that individuals and groups are not restricted from taking part in a decision-making process due to lack of funding, lack of access to information, language differences or physical disabilities.

*Related Quotes:*

Accessibility is a guiding principle of consultation and citizen engagement. It involves “appropriate measures to ensure that Canadians, regardless of their linguistic, regional, ethno-cultural, or socio-economic background or physical capabilities, are able to participate.” – *GoC’s Policy Statement and Guidelines on Consulting and Engaging Canadians*

“All parties have equal access to relevant information and the opportunity to participate effectively throughout the process.” – *NRTEE Building Consensus for a Sustainable Future*

“Participant assistance should be allocated in accordance with current government policy which generally covers out-of-pocket expenses such as meals, mileage to travel to meetings, and charges for photocopying, faxing and telephone calls” – *CORE – The Provincial Land Use Strategy – Volume 2*

**Other Sources:** CORE – The Provincial Land Use Strategy – Volume 1, FAO Code of Conduct for Responsible Fisheries, Canadian Global Change Panel on Marine Resources

## 6. Appropriate Time Frames

**Definition:** Setting realistic, but flexible, deadlines with regular milestones for completing tasks within the scope of the process.

### **Related Quotes:**

“Milestones bring a focus to the process, marshal key resources, and mark progress towards consensus. Sufficient flexibility, however, is key to embrace shifts or changes in timing.” – *NRIEE Building Consensus for a Sustainable Future*

Being results oriented involves setting “targets that can be achieved within a reasonable time.” – *F&OC Sustainable Development Framework for Action*

“Don’t try to impose arbitrary time limits on the consultation. The whole point is to try to reach agreement and you can’t do that if you have an arbitrary deadline. Where real deadlines exist of course everybody needs to know about them. Be as flexible as you can.” – *US General Services Administration*

**Other Sources:** FAO Code of Conduct for Responsible Fisheries, CORE – The Provincial Land Use Strategy – Volume 1

## 7. Early/Pre Consultation

**Definition:** Consulting stakeholders and the general public early in the process before any substantive decisions are made and to enable them to participate in the design of the process.

### **Related Quotes:**

It is important that consultation occurs early in the process that allows for open communications between government and non-government participants at every stage – *BC Land Use Planning Principles*

“Get consultation underway as early as you possibly can. Don’t wait until you have ‘full information’ or have figured out what you think the answers are.” – *US General Services Administration*



“Public involvement in the process must occur early and often.” – *Pennsylvania Department of Environmental Protection*

“All parties must have an equal opportunity to participate in designing the process.” In the beginning it is important to: “define the issues clearly; assess the suitability of a consensus process for each issue – as opposed to other decision-making processes; clarify roles and responsibilities for everyone involved; and establish the ground rules for operating” – *NRTÉE Building Consensus for a Sustainable Future*.

Stakeholder participation in the design of consultation processes is a critical principle for multi-stakeholder committees – *NRTÉE Building Consensus for a Sustainable Future*

In non-consensus consultation processes, self-design is often referred to as pre-consultation in which the party undertaking the consultation determines the objectives of all stakeholders with regard to the consultation process before designing the process. “It is a risk to determine the structure, the agenda, and the rules of the game without the involvement of those affected, there may be resistance, conflicts, extra costs involved, and so on. The participants are more likely to cooperate in the process and obey the rules if they have been involved in developing the framework.” – *Claudia Océan, Local Community Participation in the Establishment of National Parks: Planning for Cooperation*

**Other Sources:** BC Hydro Water Use Planning Principles

**8. Participation in Implementation** **Definition:** Involving interested and affected parties in the implementation of decisions, not just their formulation.

**Related Quotes:**

“Many interested parties say that consultations are most important during the implementation phase, and many say they want to be partners in implementation.” – *F&OC Sustainable Development Framework for Action*

“[States] should ensure that fishers and fishfarmers are involved in the policy formulation and implementation process” – *FAO Code of Conduct for Responsible Fisheries*

Participants should have “the opportunity to share in... follow-up (implementation and review).” – *BC Hydro*

### *Water Use Planning Principles*

**Other Sources:** WGA Principles for Environmental Management in the West, Canadian Global Change Panel on Marine Resources

## 9. Co-management

**Definition:** Governments and stakeholders cooperatively managing resources and human activities.

### **Related Quotes:**

“We are committed to.... a co-management approach.” – *F&OC Sustainable Development Framework for Action*

Co-management is “joint management of human-environment interactions by various stakeholders in specific locales.” – *F&OC Integrating Local and Traditional Ecological Knowledge Into Fisheries Management in Canada*

“Co-management is a system that enables a sharing of decision-making power, responsibility, and risk between governments and stakeholders, including but not limited to resource users, environmental interests, experts and wealth generators.” – *NRTEE Sustainable Strategies for Oceans*

## 10. Defined Roles, Purpose and Process

**Definition:** Clearly defining the purpose and structure of the process, and the roles and responsibilities of participants and governments.

### **Related Quotes:**

It is critical that the roles of all participants are defined in the public participation process i.e. who will provide the information? Who will make the final decision? – *NRTEE Building Consensus for a Sustainable Future*

Clarity involving “a clear and mutual understanding of the purpose, process of involvement and feedback.” – *GoC’s Policy Statement and Guidelines on Consulting and Engaging Canadians*

Planning processes should be undertaken through a series of sequential planning steps including identifying

objectives and needs, collecting and analyzing information, identifying options an alternatives, choosing appropriate responses and outlining implementation and monitoring approaches. – *BC Land Use Planning Principles*

## 11. Availability of Best Information to All Parties

**Definition:** Ensuring that all participants have access to the best information possible in a format that they can understand and utilize.

### **Related Quotes:**

“Success depends on sharing information with our clients – information that we all need for effective decision making and program delivery” – *F&OC Sustainable Development Framework for Action*

Research on fishery conservation and management and complete and reliable statistics on catch and fishing effort, “should be disseminated to interested parties” – *FAO Code of Conduct for Responsible Fisheries*

“Timely information must be synthesized and provided in a useable format to support policy and day-to-day decision-making at both government and community levels.” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*

Participants require access to the best available planning information in a format that they can utilize. – *BC Land Use Planning Principles*

“Effective public participation in decision-making depends on full, accurate, up-to-date information.” – UN Economic Commission for Europe (ECE) – *The Aarhus Convention*

“A broad, comprehensive, and continuous flow of information among participants is critical.” – *Canadian Global Change Panel on Marine Resources*

**Other Sources:** US General Services Administration, 1992 Rio Declaration Principle 10

## 12. Local and Traditional Knowledge taken into account

**Definition:** Ensuring that local and traditional knowledge is incorporated into decision-making processes.

### ***Related Quotes:***

“Conservation and management decisions for fisheries should... also tak[e] into account traditional knowledge of the resources and their habitat” – *FAO Code of Conduct for Responsible Fisheries*

“States should investigate and document traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries, in order to assess their application to sustainable fisheries conservation, management and development.” – *FAO Code of Conduct for Responsible Fisheries*

“Traditional knowledge based in the communities of the region also needs to be recognized as an essential contribution to the conventional understanding of coastal zone activities and ecosystem functions.” – *International Review of Integrated Coastal Zone Management F&OC Oceans Conservation Report Series*

“Local people are very savvy about their environment and have accumulated a great deal of experience of their surroundings, resulting in a keen awareness of the interconnectedness of plants, animals, and soils – their interrelationships and ecology.” – *F&OC Integrating Local and Traditional Ecological Knowledge Into Fisheries Management in Canada*

## 13. Flexible/ Adaptive

**Definition:** Allowing for flexibility and adaptation in decision-making processes so that processes can evolve as required and different techniques can be utilized in different circumstances.

### ***Related Quotes:***

“By designing flexibility into the process, participants can anticipate and better handle change when it faces them.” – *NRTEE Building Consensus for a Sustainable Future*

Flexible consultation is “the selection of consultative approaches that are suited to the particular... issues and participants.” – *BC Hydro Water Use Planning Principles*

“We do not impose a predetermined method of consultation on our stakeholders. We take time to understand how each stakeholder wants to participate in a consultation process and develop individual consultation plans with each designed to meet their needs.” – *Simcor Inc. Approach to Public Consultation*

Decision-making processes should be “adaptive and flexible, to respond to changing information and social preferences.” – *CORE – The Provincial Land Use Strategy – Volume 1*

## 14. Empower Local Decision-makers

**Definition:** Assigning decision-making power to the most local scale of government or decision-making organization that is capable of taking effective action given all relevant spillovers, linkages, and needs for coordination.

### ***Related Quotes:***

Although standards should be set on a national level, the government should support “empowerment for any level of government that can demonstrate its ability to meet or exceed standards and goals through locally or regionally tailored plans.” “Successful environmental policy implementation is best accomplished through balanced, open and inclusive approaches at the ground level, where stakeholders work together to formulate critical issue statements and develop locally based solutions to those issues.” – *WGA Principles for Environmental Management in the West*

## 15. Local/Community Level Participation

**Definition:** Ensuring that there are opportunities for local/community participation, cooperation and management.

### ***Related Quotes:***

A key element for action is locally-based management boards. – *F&OC New Directions Policy*

“Environmental policy making should, to a much greater extent, begin from the ‘bottom up’ incorporating the concerns, fears and knowledge of community groups, and from local small scale environmental activities already underway.” – *International Review of Integrated Coastal Zone Management F&OC Oceans Conservation Report Series*

“Community resource boards, local round tables and other community based public advisory groups have emerged in B.C. as a highly effective means of providing public advice and recommendations on complex land and resource decisions.” – *CORE – The Provincial Land Use Strategy – Volume 2*

“The potential exists for greater community involvement in fisheries resource and oceans activities.” “The federal government is committed to working with communities to enhance their input into the decision making process.” – *F&OC Discussion Paper: A New Direction*

## 16. Good Faith and Fairness

**Definition:** Ensuring that the agency and all other participants are: willing to consider alternative perspectives, respectful of differing views, honest in the definition of their own interests, committed to integrating relevant interests to the extent possible without favoritism, and willing to support the decisions that they have taken.

### ***Related Quotes:***

“Consultation must be good faith consultation.... Consider a wide range of alternatives, including all those brought to the table.” – *US General Services Administration*

Openness is “ready accessibility and a willingness to listen to, consider and respond to stakeholders.” Stakeholders should have “known avenues to Department leaders, who are available, approachable, and open to the public.” Employees must have a “commitment to fairness, trustworthiness and straightforwardness” and treat stakeholders with sincerity, “consideration and deference.” – *US Department of Energy Public Participation Policy*

It is critical that those undertaking the consultation believe that it adds value. “If the attitude is that the consultation is little more than a formality, a ‘necessary evil’ in the regulatory approval process, the stakeholders will be able to pick up on that and credibility will forever be an issue with anything the corporation puts forward.” “The proponent is not the only one with good ideas.” “Willingness to be influenced by sound information and argument and prepared to make appropriate modifications to plans” is central to effective consultation. – *Suncor Inc. Approach to Public Consultation*

Fairness is defined as “objectivity and freedom from favor toward any side.” – *US Department of Energy Public Participation Policy*

Discussions and information exchange must involve “mutual respect... with a respect for the diverse perspectives and knowledge of different interests.” – *BC Hydro Water Use Planning Principles*

“Decisions must not only be fair but be seen to be fair.” – *F&OC: An Allocation Policy for Pacific Salmon*

## 17. Respect for Aboriginal Rights, Title and Treaties

**Definition:** Ensuring that decision making processes and decisions do not comprise Aboriginal rights, title and treaties while supporting their continued development and definition.

### ***Related Quotes:***

“The Charter recognizes Aboriginal title and the inherent rights of Aboriginal peoples to self-government.” – CORE – *The Provincial Land Use Strategy – Volume 1*

“Governments and coastal communities on the West Coast will unquestionably need to establish effective partnerships with aboriginal communities, to build trust and respect, and to recognize the importance of indigenous tenure, knowledge, and resource stewardship practices if ICZM [Integrated Coastal Zone Management] is to be successfully implemented.” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*

The consultation process “must take all reasonable steps to identify potentially affected aboriginal groups, provide them with all relevant information regarding the proposed forest management activity, and request information from them which will assist in the identification of aboriginal interests.” – *Ministry of Forests Policy Manual, Policy 15.1 Aboriginal Rights and Title*

“When deciding on the use, conservation and management of fisheries resources, due recognition should be given, as appropriate, in accordance with national laws and regulations, to the traditional practices, needs and interest of indigenous people and local fishing communities which are highly dependant on fishery resources for their livelihood.” – *FAO Code of Conduct for Responsible Fisheries*

“Where treaties exist, or are negotiated in the future, fisheries will be managed in accordance with the provisions of the treaties.” – *F&OC: An Allocation Policy for Pacific Salmon*

**Other Sources:** F&OC Discussion Paper: A New Direction

## 18. Respect for Cultural Diversity

**Definition:** Ensuring that decision processes and decisions reflect the values, interests, and knowledge of participants.

**Related Quotes:**

“Making a special effort to... be sensitive to cultural diversity... is fundamental to achieving long-term solutions that are equitable and therefore sustainable.” – *ISP Policy Framework for Public Participation in Sustainable Development Decision-Making in the Americas*

Decision-making processes should be “respectful, encouraging respect for diverse values.” – *CORE – The Provincial Land Use Strategy – Volume 1*

“Serious attention needs to be paid to ethnic minorities which to this point have been little engaged in environmental issues on the Canadian West Coast.” – *International Review of Integrated Coastal Zone Management F&OC Oceans Conservation Report Series*

## 19. Effective and Efficient Decision-Making

**Definition:** Incorporating public participation into decision-making to the fullest extent possible while making the decision in a timely manner.

**Related Quotes:**

“The process will strive for efficient use of time and financial resources. Decision-making will be based on adequate information and assessment, so that wise and effective decisions can be made. The processes should effectively implement the principles of a sustainable society.” – *CORE – The Provincial Land Use Strategy – Volume 1*

Economical and effective decision-making “focuses on the right issues, brings the necessary views to the table and provides for timely and definitive resolution of issues” – *F&OC: An Allocation Policy for Pacific Salmon*

**Other Sources:** Canadian Global Change Panel on Marine Resources



## 20. Availability of a Dispute Resolution Mechanism

**Definition:** Ensuring the existence of an accepted mechanism to resolve conflicts when and if they arise.

### ***Related Quotes:***

“Multiple use conflicts, particularly between traditional coastal uses, new development activities such as tourism, and conservation interests, are a common feature of many coastal zones around the world... To address multiple use conflicts, consensus-building and conflict resolution techniques are increasingly recognized as an important component of ICZM [Integrated Coastal Zone Management].” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*

“States should promote the establishment of procedures and mechanisms at the appropriate administrative level to settle conflicts which arise within the fisheries sector and between fisheries resource users and other users of the coastal area” – *FAO Code of Conduct for Responsible Fisheries*

**Other Sources:** CORE – The Provincial Land Use Strategy – Volume 1, UN Economic Commission for Europe – The Aarhus Convention

## 21. Education and Training

**Definition:** Educating and training stakeholders and members of the public regarding resource use, sustainability, ecological stewardship and environmental policy and regulation.

### ***Related Quotes:***

The success of environmental policies “ultimately depends on the daily choices of our citizens... they need to understand the importance of sustaining and enhancing their surroundings for themselves and future generations.” – *WGA Principles for Environmental Management in the West*

“States, recognizing the paramount importance to fishers and fish farmers of understanding the conservation and management of the fishery resources on which they depend should promote awareness of responsible fisheries through education and training.” – *FAO Code of Conduct for Responsible Fisheries*

“Another potential lesson from international ICZM [Integrated Coastal Zone Management] experience is that public education programs and media campaigns are important, including education of children from pre-school through university... such education is critical to instill values ascribing worth to the sustainability of natural resources and the need to carefully manage people’s use of these resources. Attitudinal change and stewardship can only occur with education and experience, beginning at pre-school” – *International Review of Integrated Coastal Zone Management F&OC Oceans Conservation Report Series*

## II: PRINCIPLES FOR PLANNING

### 1. Addresses Problems and Responds to Needs

**Definition:** Ensuring that participation processes address clearly defined problems and needs.

#### **Related Quotes:**

Consensus processes should be “purpose-driven”... “the parties should have a common concern and believe that a consensus process offers the best opportunity for addressing it.” – *NRTEE Building Consensus for a Sustainable Future*

Integrated planning should respond to the needs of participants... “either resource management agencies that need a particular plan product, or local governments and non-government participants who are concerned about potential effects of decisions.” – *BC Land Use Planning Principles*

A successful initiative requires that the governance system “should emerge from an analysis of the problem to be solved rather than imposed on the problem from the outside.” – *International Review of Integrated Coastal Zone Management F&OC Oceans Conservation Report Series*

## 2. Ecological, Social and Economic Sustainability

**Definition:** Maintaining a healthy environment within which people and communities can meet their needs in a manner that does not compromise the ability of future generations to meet their own needs.

### **Related Quotes:**

“Sustainability means meeting the needs of the present without compromising the ability to meet the needs of future generations. It includes three parts: ecological, economic and social. But it is upon ecological sustainability that national and community well-being are based” – *USFS Proposed Planning Rule under NEPA*

“Sustainable development is a strategy by which communities seek economic development approaches that also benefit the local environment and quality of life. [It] provides a framework under which communities can use resources efficiently, create efficient infrastructures, protect and enhance quality of life, and create new businesses to strengthen their economies. It can help us create healthy communities that can sustain our generation as well as those that follow us.” – *Center of Excellence for Sustainable Development, a Project of the US Department of Energy*

“Fisheries management should promote the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development.” – *FAO Code of Conduct for Responsible Fisheries*

“Sustainable means ‘capable of being maintained indefinitely’, and the term applies equally to the economy, the environment, and society as a whole.” – *CORE – The Provincial Land Use Strategy – Volume 1*

“Long term sustainability of the salmon resource will enable fish to be available for harvest from year to year by First Nations, recreational and commercial users while satisfying the needs of present and future generations of Canadians.” – *F&OC Discussion Paper: A New Direction*

**Other Sources:** BC Land Use Planning Principles, F&OC Sustainable Development: A Framework for Action, F&OC Oceans Act, Canadian Global Change Panel on Marine Resources

### 3. Precautionary Approach

**Definition:** Erring on the side of caution in the protection of resources when scientific evidence is inconclusive or unavailable.

**Related Quotes:**

The precautionary approach assures plans will err on the side of caution to ensure the sustainability of resources. – *F&OC Sustainable Development: A Framework for Action*

“Where an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if certain cause and effect relationships are not established scientifically.” – *CEPA and the Precautionary Principle*

“States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures.” – *FAO Code of Conduct for Responsible Fisheries*

The Oceans Management Strategy in the *Oceans Act* is based in part on “the precautionary approach, that is erring on the side of caution.” – *F&OC Oceans Act*

“Given uncertainties in predicting fish population levels and survival levels, a precautionary, risk averse approach to fisheries management is essential.” *F&OC Discussion Paper: A New Direction*

“A consciously and indeed aggressively precautionary approach is essential, with recognition that preservation of stock and biological productivity (and hence employment, incomes, and community survival) in the future will depend on exploitation strategies not pressing too heavily against harvest limits in the present.” – *Canadian Global Change Panel on Marine Resources*

**Other Sources:** WGA Principles for Environmental Management in the West, *F&OC: An Allocation Policy for Pacific Salmon*

## 4. Ecosystem Approach

**Definition:** Viewing and planning for ecosystems as integrated, interacting wholes that include all living and non-living entities.

**Related Quotes:**

The Ecosystem Approach is based on “the acknowledgement that all living and non-living elements are interrelated.” The endeavor is therefore to design “policies, programs and operations that promote understanding of and respect for ecosystems, and recognize the interdependence of social, economic and environmental systems.” – *F&OC Sustainable Development Framework for Action*

“An ecosystem approach is a critically important tool in promotion the conservation of biological diversity and an environmentally sustainable level of development . . . [it is] a common-sense, long-term strategy designed to maintain natural communities, while at the same time providing a sustainable level of recreational and economic security for the future.” – *USFWS: An Ecosystem Approach to Fish and Wildlife Conservation*

“As a means to promote sustainable development through the integration of social, environmental, and economic goals, the ecosystem approach views human activities as part of ecosystems.” – *Environment Canada Learning from Nature*

“An ecosystem approach involves understanding and providing for the complex interactions between the different species and requires a move away from the current single species management.” – *F&OC Discussion Paper: A New Direction*

**Other Sources:** F&OC *Oceans Act*, F&OC: An Allocation Policy for Pacific Salmon

## 5. Integrated Management

**Definition:** Engaging in coordinated management that fosters cross-sectoral, cross-resource and cross-agency discussion, planning and action and integrates ecological, economic and social considerations.

**Related Quotes:**

“Successful management of Canada’s fisheries and oceans involves integrating economic, environmental and social goals in the development of public policy and decision-making mechanisms. It requires cooperation among competing interests and recognizes the need to achieve balance by making trade-offs between mutually exclusive activities.” – *F&OC Sustainable Development Framework for Action*

“Land use planning and management shall be cross-sectoral, comprehensive and integrated. The processes will address the full range of environmental, social and economic concerns and values.” – *CORE – The Provincial Land Use Strategy – Volume 1*

“An Integrated Coastal Zone Management (ICZM) Program from the West Coast Region would arguably provide a strategic mechanism to address the current jurisdictional and institutional complexities that impede a coordinated approach to preserving the ecological and economic integrity of the coastal zone.” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*

“The lesson from other jurisdictions with regard to ICZM [Integrated Coastal Zone Management] governance on the West Coast is that all four levels of government- federal, provincial, municipal and First Nations, will unquestionably need to be part of the process for real progress to be made.” – *International Review of Integrated Coastal Zone Management F&OC Oceans Conservation Report Series*

“Integrated management provides policy direction and a process for defining objectives and priorities, and planning development beyond sectoral activities.” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*

“States should ensure that an appropriate policy, legal and institutional framework is adopted to achieve the sustainable and integrated use of the resources.” – *FAO Code of Conduct for Responsible Fisheries*

“Integration encompasses the notion of intragovernmental and intergovernmental coordination, as well as the need to link ecological and economic considerations in all sectoral policies impinging on oceans.” – *NRIEE Sustainable Strategies for Oceans*

The “integrated approach views the interdependent system as a whole, on spatial and temporal scales appropriate to the multiple stocks and ecological services involved, and with provision for coordination across different jurisdictions which may be involved within the ecosystem as a whole.” – *Canadian Global Change Panel on Marine Resources*

## 6. Use of Best Scientific Evidence Available

**Definition:** Using the best available objective, measurable, scientific data in decision-making.

### ***Related Quotes:***

“Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat.... States should assign priority to undertake research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with the ecosystem.” – *FAO Code of Conduct for Responsible Fisheries*

There is a need for “a better link between the production of scientific information and policy setting.” It also notes the need for greater “dialogue between various researchers both within Canada and internationally.” – *NRTEE Case Studies*

We should be “creating plans that have a sound basis in science, and *with more involvement from the science community.*” – *USFS Proposed Planning Rule under NEPA*

“The strategic collection and management of accurate and relevant information is essential to support effective decision-making in the coastal zone.” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*

**Other Sources:** WGA Principles for Environmental Management in the West, US Department of Energy Public Participation Policy

## 7. Performance Based

**Definition:** Focusing on achieving a desired outcome that satisfies a set of economic, social and/or environmental needs, rather than focusing on processes or programs.

### **Related Quotes:**

“A clean and safe environment will best be achieved when government actions are focused on outcomes, not programs, and when innovative approaches to achieving desired outcomes are rewarded. Federal, state and local policies should encourage ‘outside the box’ thinking in the development of strategies to achieve desired outcomes. Solving problems rather than just complying with programs should be rewarded.” – *WGA – Principles for Environmental Management in the West*

## 8. Living Plans/Adaptive and Flexible

**Definition:** Ensuring that plans and decisions are open to change as ecological, economic or social circumstances change or as new information becomes available.

### **Related Quotes:**

The process and plans must be adaptive and flexible in that they will be “capable of modifying decisions in response to technological innovations, field experience, shifts in social preferences, and new information.” – *BC Land Use Planning Principles*

Living Plans are “dynamic documents requiring continuing dialogue with stakeholders and feedback through monitoring and adaptive management. They reflect realistic assumptions about future funding levels. The plans become a collection of decisions that guide future actions rather than weighty documents that sit on a shelf gathering dust. And, because they are easy to amend and revise, they stay current and useful.” – *USFS Proposed Planning Rule under NEPA*

“An ICZM [Integrated Coastal Zone Management] initiative is more likely to be successful when and active, adaptive management strategy is a prominent feature of the initiative.” – *International Review of Integrated Coastal Zone Management, F&OC Oceans Conservation Report Series*



## 9. Full Cost Accounting

**Definition:** Fully considering all social, economic, and ecological costs and benefits in decision-making.

**Related Quotes:**

“Not all benefits and costs can be easily quantified or translated into dollars. There may be other non-economic factors such as equity within and across generations that should also be fully considered and integrated into every assessment of options. The assessment of options should consider all of the social, legal, economic and political factors while ensuring that neither quantitative nor qualitative factors dominate.” – *WGA – Principles for Environmental Management in the West*

“Studies should be promoted which provide an understanding of the costs, benefits and effects of alternative management options designed to rationalize fishing, in particular, options relating to excess fishing capacity and excessive levels of fishing effort.” – *FAO Code of Conduct for Responsible Fisheries*

“In order to assist decision-making on the allocation and use of coastal resources, States should promote the assessment of their respective value taking into account economic, social and cultural factors.” – *FAO Code of Conduct for Responsible Fisheries*

## 10. Enforceable

**Definition:** Designing plans and policies so that they are enforceable, and have mechanisms for monitoring and penalties for non-compliance.

**Related Quotes:**

“States should establish, within their respective competences and capacities, effective mechanisms for fisheries monitoring, surveillance, control and enforcement to ensure compliance with their conservation and management measures.” – *FAO Code of Conduct for Responsible Fisheries*

“States should ensure that laws and regulations provide for sanctions applicable in respect of violations which are adequate in severity to be effective, including sanction which allow for the refusal, withdrawal or suspension of authorizations to fish in the event of non-compliance with conservation and management measures in force.” – *FAO Code of Conduct for Responsible Fisheries*

“The decisions made must be properly monitored and enforced.” – *CORE – The Land Use Strategy – Volume 1*