

An Overview of Issues
concerning First Nations
and DFO Co-management
of Fisheries
in the Pacific Region

DRAFT

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AN OVERVIEW OF ISSUES CONCERNING FIRST NATIONS AND DFO CO-MANAGEMENT OF FISHERIES IN THE PACIFIC REGION: REPORT SUMMARY

The objective of the report is to provide Fisheries and Oceans Canada (DFO) with:

- a better understanding of advisory/co-management processes involving First Nations (sections 2 and 3 of the report),
- key issues related to DFO-First Nations engagement in these processes (section 4),
- ways that DFO can work more collaboratively with First Nations to ensure coherent and effective fisheries management processes as well as effective representation of First Nations (sections 4 and 5),
- areas for future work (section 5.3).

The focus is on fisheries co-management processes involving First Nations, but it also includes attention to multi-party consultation processes that engage First Nations. The scope is regional: DFO's Pacific Region. The information is from existing documentation and web resources.

Efforts to advance co-management processes can draw from this research, but effective, enduring improvements can only be developed collaboratively with First Nations.

Rationale for co-management

Co-management can be defined as the sharing of responsibility and accountability for fisheries management between DFO and resource users. When distinguished from other engagement processes, co-management implies something significantly deeper than consultation, including increasing sharing of authority, participatory or delegated decision-making, and empowerment.

Co-management has the following potential benefits:

- Higher acceptability, legitimacy for government
- Higher compliance with management measures, regulations
- Less conflict
- Improved relationships
- More equitable management
- Progress towards recognition of Rights and Title
- Self-determination for First Nations
- Better information for fisheries management
- Improved effectiveness of fisheries management
- Protection and enhancement of the resource
- Tailoring to local circumstances
- More efficient management, reduced costs for government
- Community development for First Nations
- Greater access to fisheries resources for First Nations

- Learning opportunities

Driving forces for fisheries co-management in BC include DFO's role in meeting Canada's legal obligations to First Nations regarding their constitutionally protected rights, and the department's mandate to achieve good governance and effective, sustainable fisheries management, as reflected in various policies and plans. First Nations' aspirations for greater self-determination and recognition of rights, and to have a stronger role in managing and benefiting from the resources of their territories, are also driving forces.

Mechanisms for First Nations engagement in Fisheries management and Related processes

DFO-driven planning and advisory processes that include First Nations can be simplified into:

- First Nations bilateral discussion and consultations
- First Nations aggregate discussions and consultation
- First Nations inclusion in consultative processes that also engage stakeholders
- First Nations inclusion in spatial/regional planning initiatives

BC First Nations leaders have delineated a three-tiered process for dialogue with First Nations that parallels the above categorization [as indicated in square brackets]:

- Tier 1: First Nation to First Nation processes [can lead to First Nations aggregates]
- Tier 2: First Nations and Canadian Government processes [bilateral, or government-to-government]
- Tier 3: Multi-party [multi-lateral] processes [in which First Nations participate in processes that also engage stakeholders]

In a spreadsheet accompanying the report, terms of reference and membership lists for various fisheries advisory committees are reviewed to highlight their attention to First Nations participation. Fifteen of the 21 bodies for which information was available have First Nations membership specified. The number of specified First Nations members ranged from 8 for the Integrated Harvest Planning Committee to one. Other terms of reference specifically referring to First Nations were rare.

Three examples of area-based collaborative processes are described in the report:

- Aboriginal Aquatic Resources and Ocean Management
- Clam management boards
- Integrated oceans management, PNCIMA

Several other mechanisms (processes, programs, etc.) through which DFO Pacific Region can pursue engagement or co-management with First Nations are explored, namely:

- Aboriginal Fisheries Sector (AFS) agreements
- Pacific Integrated Commercial Fisheries Initiative (PICFI)
- Joint Fisheries Dialogue MOU
- Species at Risk Act
- Fisheries Act Renewal

- Policy

First Nations also initiate collaborative processes related to fisheries that can enhance opportunities for engagement in co-management initiatives with DFO. The main province-level organization connected to fisheries management is the BC First Nations Fisheries Council. This is described, as well as a selection of sub-regional, aggregate First Nations organizations.

Where land claims are settled, renewable resource boards typically are involved in co-management, provision of advice and decision-making processes. Specific components of the Nisga'a Treaty and a couple of more recent treaties relevant to co-management are summarized.

Issues in First Nations engagement with DFO

Issues are clustered under seven themes. Under each theme, various issues and factors that pose challenges to or constraints on co-management are described, including Government of Canada/DFO and First Nations perspectives. Promising directions to help resolve the challenges are then outlined. These include actions taken or adjustments already made by DFO (or the federal government) to address gaps or recommendations made through other reviews and reports, as well as lessons from experience related in the literature. Findings under each theme are summarized here.

Rights and Title, and the Government-to-Government relationship

The extent and protection of aboriginal rights is the most fundamental consideration in engagement with First Nations. DFO has an obligation not to unjustifiably infringe Aboriginal or treaty rights and has a legal duty to consult and, where appropriate, accommodate Aboriginal interests.

First Nations want stronger recognition of their rights and they need to be consulted as governments, in a bilateral (Tier 2) approach.

Government agencies such as DFO cannot delegate their authority or that of the Minister. Further, due to the nature and complexity of fisheries management, DFO has also initiated a number of engagement processes that are inclusive (multilateral). Because of their focus on rights and title, First Nations are cautious about involvement in multilateral (Tier 3) and integrated processes. Therefore, engagement processes are struggling to incorporate bilateral and multilateral engagement.

Actions responding to the tensions caused by the above perspectives and requirements include providing written assurances that DFO will not unjustifiably infringe Aboriginal or treaty rights and conducting bilateral consultations in connection with multilateral advisory processes. Vigilance is required to ensure that multilateral processes do not push aside First Nation consultation and accommodation, where appropriate.

The three-tier framework First Nations leaders generated to describe the process for dialogue could usefully be applied to keep clear on the context for the government-to-government relationship between DFO and First Nations when discussing engagement and co-management.

Meaningfulness and depth of the process

First Nations believe the way they are consulted is often not meaningful and does not meet federal government obligations. They call for increased decision-making responsibility/authority and deeper involvement in policy implementation as well as policy development.

Increasing devolution of responsibility to First Nations can lead to inter-Nation conflict when First Nations are required to agree amongst themselves on resource allocation.

Efforts to advance co-management should recognize that true co-management lies at the authority-sharing end of the engagement spectrum. In general, Canada as well as First Nations do aim to move in this direction. However, DFO has highlighted that the authority of the Minister to make decisions cannot be delegated. Steps along the way include ensuring that the results of consultation processes can affect decision-making, taking engagement with First Nations beyond operational issues, consulting First Nations as early as possible and explaining how advice from consultations is used.

First Nations and DFO together could delineate agreed-on steps in meaningful consultation – at a regional level and/or on a case-by-case basis.

Other ways to ensure engagement is meaningful include addressing issues of specific interest to First Nations and taking into account that First Nations' connection to the resource goes beyond use.

Multiplicity of First Nations

The multiplicity of First Nations in BC strains DFO's capacity to engage with them on a bilateral basis. It also constrains First Nations involvement in various other ways. There are some aggregate First Nation organizations but their roles in co-management are diverse and limited by factors including the need to keep authority at the level of individual bands/Nations.

DFO and First Nations should continue to support First Nation collaboration (Tier 1) to strengthen aggregate organizations (e.g. through AAROM and the First Nations Fisheries Commission). This could include encouraging resolution of inter-tribal allocation issues by First Nations.

Regardless of progress at the aggregate level, DFO must continue to recognize that the mandates and limitations of Aboriginal organizations may require that consultations take place at several different levels. The priority should be on a community-up approach and all parties should keep in mind that bi-lateral (Tier 2) processes take time.

Complexity of scales and themes of engagement

Different types of fisheries management decisions engage participants at different scales, and different fisheries interests and sectors tend to focus on different locations, from ocean to up-river. Scope and scale affects the extent to which decision-making responsibility can be shared. The complexity of processes related to these factors, combined with the diversity of DFO programs, makes it difficult to define the roles and responsibilities of various advisory and co-management bodies in relation to each other.

The wide-ranging nature of migratory species such as salmon makes collaboration even more difficult.

Given these challenges, it is not surprising that First Nations engagement in DFO's multiple functions lacks integration. Directions to be explored include establishing co-management arrangements that work/link at a range of scopes and scales, and potential new regional agreements, including policies on consultation and dispute resolution.

At the same time, complexity of engagement processes should not be regarded only as a problem. Complex systems have resilient qualities that can work in favour of effective, sustainable fisheries management.

Representation of parties

There is a lack of continuity in representation of the parties engaged in processes both on the part of First Nations and DFO. As well, First Nations lack full representation in some processes, and there is a lack of clear procedures for attaining First Nations representation. Achieving appropriate representation is further challenged by the limited availability of First Nations individuals who are legitimate representatives of their governments.

In response to issues concerning representation, promising directions include having First Nations organizations put forward members to Advisory Committees, ensuring "the right people" are selected to lead co-management, and requiring that members of co-management bodies be accountable to those they represent.

Trust, fairness and cohesion

Mistrust of DFO by First Nations stems in part from loss of access to fisheries over the years. Mistrust and conflict can be exacerbated by lack of reliable information, and resource scarcity adds to the challenge by reducing room for mutually agreeable options.

In some multilateral processes First Nations are dominated by other fisheries interests, and First Nations knowledge generally is not being sufficiently included.

Ways of increasing trust, fairness and cohesion include cultivating clarity and transparency, seeking cross-cultural understanding, recognizing different knowledge frames and sharing information. Relationships are built when parties work together, for example, by collaborating on research, monitoring and compliance measures.

A neutral facilitator/third party convener can help ensure fairness.

Capacity

First Nations often do not have sufficient capacity for co-management. Many are overwhelmed by numerous, diverse consultation demands.

Co-management can add to costs for government agencies, and, as for First Nations, the multiplicity of engagement processes places heavy demands on organizational resources. For all involved, co-management processes can be time-consuming and fatiguing. Sunsetting, or lack of implementation of programs and policies that have provided the necessary capacity, adds to the problem, seriously compromising some co-management arrangements.

For co-management to work, both DFO and First Nations need sufficient resources to implement and engage in co-management, and capacity needs to be strengthened. At the same time, existing First Nations capacity and relevant government programs should be appreciated and tapped into. First Nations aggregate organizations play an important role in capacity building and should be supported in this work.

Until stable resourcing for First Nations engagement is established, ongoing assistance to First Nations to support participation in various processes, and extra efforts to engage First Nations that are lacking capacity are required.

Ways forward

Enabling factors for successful co-management

The report summarizes enabling factors for successful co-management from the literature in the following categories and links them to the seven issue themes. The themes are shown in square brackets below. Note that the association between an issue and an enabling factor can be a contrary one.

- **Enabling factor [associated issue theme]**
- Political will and leadership [all themes]
- Benefits accruing to parties involved [all themes]
- Devolution of authority [Rights and Title]
- Attention to rights [Rights and Title]
- Inclusiveness [Rights and Title]
- Thorough participation by parties involved [Meaningfulness]
- Serious consideration of the parties' perspectives [Meaningfulness]
- Limited number/diversity of participants [Multiplicity of First Nations]
- Flexibility to match unique circumstances [Multiplicity of First Nations]
- Limited geographic area [Complexity of scales and themes]
- Adaptive Approach [Complexity of scales and themes]
- Transparency and accountability [Representation of parties]
- Clear procedural and structural guidelines/agreements [Trust, fairness and cohesion]
- Opportunity for relationship building [Trust, fairness and cohesion]
- Integration of local/indigenous knowledge [Trust, fairness and cohesion]
- Consensus decision-making [Trust, fairness and cohesion]
- Sufficient capacity [Capacity]

Note that the first two factors, political will and benefits accruing, and the last factor, capacity, have a circular relationship. Many of the factors are moot if political will to provide the necessary capacity is lacking. Political will is more likely to exist if the parties are experiencing benefits, but realizing benefits depends on the investment of resources. Despite this interdependency, those championing co-management can take steps that will help engender political will, inspire leadership and lead to benefits for the parties involved by attending to the other enabling factors and following the promising directions identified by this research. The key may be to get enough of the enabling factors in place so that co-management begins to prove its effectiveness and benefits to

the parties involved begin to accrue. A snowballing of support, investment and increasing effectiveness might then ensue.

Priorities for next steps stemming from this report

The last section of the report puts forward the following priorities for consideration.

Expand on the contents of this report:

- Fact check the information in this report.
- Assess participants' experience of advisory processes.
- Further develop the factors for successful co-management.
- Add specificity to other findings of the report.

Undertake additional research:

- Draw on experience from beyond BC.
- Investigate relevance of Province of BC co-management initiatives.
- Build in more information on First Nations co-management initiatives.
- Draw on the theory of adaptive co-management.

Move forward:

Use this report as a basis for discussions with First Nations.

Conduct case studies and experiment, using action/participatory research.

Consider the following ways of addressing the main issues and challenges identified in this report. Some of these initiatives could feed into the development of a regional co-management strategy.

➤ Re. Rights and Title, and the Government-to-Government relationship:

Seek regional agreement on a protocol that would provide comfort for First Nations regarding lack of prejudice to Aboriginal rights while allowing inclusiveness of stakeholders in co-management processes, possibly including:

- a template for wording assurances that DFO will not unjustifiably infringe Aboriginal or treaty rights;
- ways of ensuring that multilateral processes do not push aside consultation and accommodation, where appropriate;
- standards for conducting bilateral consultations in connection with multilateral advisory processes;
- use of the three-tier framework to keep clear on the context for the government-to-government relationship between DFO and First Nations.

➤ Re. meaningfulness and depth of the process:

Consolidate criteria for what constitutes meaningful consultation, acknowledging that these principles would also apply to co-management. Include:

- the limits and possibilities of delegating authority/responsibility;
- an agreed sequence of steps (possibly in flow chart or dichotomous key format);
- guidelines that draw on promising directions from section 4.2.2 and other parts of this report, existing principles (e.g. from INAC guidelines, DFO policies, First Nation policies, advisory committee terms of reference), and court decisions.

➤ Re. multiplicity of First Nations:

Establish a clear, shared understanding of the roles, responsibilities and mandates of aggregate First Nations organizations with respect to engagement in co-management. Seek ways to enhance (legitimize, formalize, build capacity for) the role of some that may not currently connect with co-management or fulfill their potential, as appropriate.

Review the successes and challenges of AFC, AAROM and PICFI to date with regard to the effectiveness of these programs in finding ways to link with First Nations or groups of First Nations. Draw lessons to apply to new or ongoing processes.

➤ Re. complexity of scales and themes of engagement:

Map – conceptually, functionally, organizationally and spatially – the existing array of fisheries-related engagement processes. Compare roles and responsibilities. Identify existing linkages and gaps where linkages are called for. Establish media for communications among the processes.

➤ Re. representation of parties:

Establish mutually acceptable procedures and criteria for First Nations and DFO representation in co-management processes, taking into account the diversity of situations.

➤ Re. trust, fairness and cohesion:

Inventory (or gather existing documentation of) ways that people from First Nations, DFO and possibly other sectors, are successfully collaborating (or have in the past) on particular fisheries management functions, from policy development to research, monitoring and compliance. Develop a reference/catalogue that new or existing initiatives can draw on to encourage effective ways of working together and building relationships. Consider stories as a means of communicating this information.

Review Gardner's (2008) report on Knowledge Integration in Salmon Conservation and Sustainability Planning for findings relevant to fisheries co-management.

➤ Re. capacity:

Coordinate capacity-building initiatives between DFO and First Nations organizations to maximize their effectiveness.

➤ Re. factors for successful co-management:

Develop the factors for successful co-management into a list of best practices tailored to circumstances in the Pacific region. Use the factors:

- as criteria against which to measure the potential success of co-management initiatives in the Pacific region,
- to support and improve co-management processes, and
- as a guide for collaborative work on projects such as the ones in this list.

1 INTRODUCTION

This report is an overview and preliminary analysis of Fisheries and Oceans Canada (DFO) processes with participation by First Nations, particularly those processes related to fisheries management.

Objective

The objective is to provide DFO with:

- a better understanding of advisory/co-management processes involving First Nations (sections 2 and 3 of this report),
- key issues related to DFO-First Nations engagement in these processes (section 4),
- ways that DFO can work more collaboratively with First Nations to ensure coherent and effective fisheries management processes as well as effective representation of First Nations (sections 4 and 5),
- areas for future work (section 5.3).

This research should ultimately help to strengthen and link existing co-management processes (e.g. advisory boards and AAROM groups), in addition to supporting the development of new co-management mechanisms and processes.

Scope and limitations

This is a broad overview of documented experience and a high level assessment of issues related to processes that support co-management with Aboriginal peoples¹. The focus is on co-management processes involving First Nations, but it also includes attention to multi-party processes where First Nations are included. On route to the co-management focus, various forms of engagement are considered.

The scope is regional: DFO's Pacific and Yukon Region, particularly BC. All fisheries are of interest, and the discussion is often broader, connecting to various areas of DFO's mandate.

The information drawn together in this report is gleaned from existing documentation and web resources (see section 6) rather than new/original data such as interviews. For each section of the report, sources drawn upon that are fully referenced in section 6 are listed. The prevalence of Federal Government documents means that the DFO perspective is likely over-represented in this analysis.

Efforts to advance co-management processes can draw from this research, but effective, enduring improvements can only be developed collaboratively with First Nations.

Background

This background description is from the Statement of Work:

DFO is seeking to build a broad co-management framework for fisheries management and potentially extending beyond to include watersheds and marine

¹ This term is generally used to mean the same thing as First Nations. The term First Nations is used here only in connection with BC.

ecosystems, as well as moving forward on specific co-management processes that will support departmental objectives.

Efforts have been made over the last several years (including most recently under PICFI) to develop new and more effective approaches to co-management; however, these need to move forward and coalesce toward a comprehensive regional co-management approach and structure. In particular, the Department has identified effective engagement with First Nations as a priority in establishing co-management structures.

This paper is designed to help shape and inform this work.

2 RATIONALE FOR CO-MANAGEMENT

The rationale for co-management is described here in terms of a definition of co-management, the spectrum of engagement, potential benefits of co-management and driving forces for fisheries co-management in BC.

2.1 Definition of co-management²

Governance of fisheries is shifting toward community-based and co-management approaches worldwide. Co-management is short for cooperative management and the term is often used in an exchangeable way with participatory, joint, stakeholder, multi-party or collaborative³ management. Devolution of authority from the state is central to a strict definition of the term, and DFO's Aboriginal Policy Framework recognizes this: "co-management is defined as: the sharing of responsibility and accountability for fisheries management between Fisheries and Oceans Canada and resource users.

Co-management typically involves one or more government agencies working cooperatively (in partnership) with one or more groups on one or more management functions. Practically, it takes the form of a working arrangement between an agent of the state and groups of resource users who have a role in managing the resource. Through consultations and negotiations, the partners develop a formal agreement on their respective roles, responsibilities and rights in management. The scope and complexity of agreements differ a great deal.

In most forms of co-management the resource users are part of a local community and First Nations co-management normally implies a community focus. Yet co-management can relate to a large-scale resource – e.g. the Porcupine caribou herd in the Arctic, or a fishery that is of interest to people from more than one community. The migratory nature and geographic scope of fisheries resources (such as salmon) makes engaging on a broader scale an important aspect of management.

² Sources include: DFO 2007, Pinkerton 1996, Pinkerton 1989, Berkes et al. 2001, Pomeroy and Rivera-Guieb 2006

³ Collaborative fisheries governance is a process to reach shared outcomes and resolve differences among all sectors and governments (Kadowaki and Graham at ISDF Dec. 2008).

2.2 Spectrum of engagement⁴

While the term co-management connotes the sharing of authority, in reality the degree that authority can be shared within various engagement processes varies, largely based on the type of decision. For example, co-management does not apply to decisions about national policy and legislation. Even where co-management agreements give resource users or communities the power and responsibility to do things themselves, governments will always hold the balance of power.

True co-management is not merely informing, advising and/or consulting, yet many include these latter processes at one end of a co-management continuum reflecting a spectrum of power sharing. In this usage co-management refers to a variety of arrangements for shared decision-making between government resource management agencies and other parties.

DFO's Consultation Framework explains how consultation with First Nations is an ongoing process:

In the context of consulting with Aboriginal groups, the term 'consultations' is often understood to be the sum of a series of interactions, both formal and informal, or an ongoing process built around a relationship, rather than one specific consultation event. The ongoing process requires sound and effective relationships as a foundation.

Co-management is a way of formalizing and supporting this foundation of sound relationships. It can be said that consultation is moot in the face of effective co-management, functionally if not legally.

A few descriptions of the continuum of processes related to increasing levels of sharing or devolution of decision-making power are shown in Table 1. Some would call this a co-management spectrum, while others would say only the processes to the right of the darker centre line qualify as co-management.

Table 1 Engagement processes on the continuum of influence

Source	→ Increasing sharing of authority →			
Kadowaki 2008	Information exchange	Advice	Participatory decision-making	Delegated decision-making
Phelan 2009b	Inform	Consult	Involve Collaborate	Empower
Delgamuukw in DFO 2004a		Consultation (infringement of Aboriginal right relatively minor)	Something significantly deeper than mere consultation – required in most cases	Consent, which may be required in some cases

⁴ Sources include: DFO 2004a, Kadowaki 2008, Berkes et al. 2001, Phelan 2009b, First Nations WSP Implementation Forum, Musqueam 51st Hall December 7, 2005

2.3 Potential benefits of co-management⁵

The benefits of co-management generally include the benefits of effective consultation, but extend beyond these. Benefits or advantages of co-management vary somewhat between the Federal Government/DFO perspective and the First Nations perspective, but many overlap. The benefits listed below are only potential, and their realization depends on effective framing and implementation of co-management.

In this compilation, broad benefits applicable to a wide variety of co-management, or even other engagement situations, are mixed in with ideas that are more specific to fisheries co-management with DFO and First Nations. Multiple ways of wording are included to illustrate the nuances of a benefit and emphasize the level of attention to it in the literature. Connections between the different factors are frequent.

Co-management has risks as well. These are reflected in the discussion of issues in section 4.

Higher acceptability, legitimacy for government:

- improved chance of successfully developing and implementing management policy
- increased confidence and trust in DFO actions
- greater understanding
- higher degree of credibility, acceptability, legitimacy and support
- partners take on greater sense of ownership or accountability

Higher compliance with management measures, regulations:

- reduced challenge to government agency authority (easier enforcement of regulations)
- higher degree of compliance to plans and regulations
- exploration of options for regulation that reduce inefficiencies for fishermen
- more effective enforcement of standards of behaviour by the community

Less conflict:

- fewer surprises
- increased ability to deal with crises in an orderly manner
- formalized vehicle for dispute/conflict resolution
- reduced conflict, fewer confrontations

Improved relationships:

- enhanced, mutually beneficial relationships between First Nations, with other governments, and with resource users
- increased communication, opportunity to develop a culture of respect and understanding
- improved working relationships, increased trust, improved social cohesion
- less alienation of people from government

⁵ Sources include: Goetz 2004 Berkes et al. 2001, Pomeroy and Rivera-Guieb 2006, Kadowaki 2008, Groundfish Trawl Terms of Reference, First Nation Panel on Fisheries 2004, DFO 2007, Goetz 2004, Ebbin 2004, Day 2009, DFO Pacific Region 2009, Richardson and Green 1989, Pinkerton 1996

More equitable management:

- balancing of rights and responsibilities
- increased motivation to negotiate sharing of access, costs and benefits
- more transparent, inclusive, accountable and autonomous management system
- more democratic and participatory system

Progress towards recognition of Rights and Title:

- step toward recognizing the indigenous right to self-determination
- increased potential for Aboriginal rights and title to be recognized, exercised and respected
- opportunity to experiment with possible mechanisms for resolving title before such mechanisms/approaches are legislatively entrenched

Self-determination for First Nations:

- increased First Nation access to DFO managers
- empowerment of marginalized groups through distribution of decision-making authority
- self-regulation
- greater control over working lives for communities
- economic and cultural self-determination
- First Nations no longer objects of an administrative process, rather subjects directing it as it applies to some of their key interests
- First Nation participation in decisions that affect their livelihood and culture

Better information for fisheries management:

- maximum use of indigenous knowledge and expertise to provide information on the resource base and to complement scientific information for management
- improved information exchange, giving both sides the information on which to base a decision and reducing misinformation
- expanded information/knowledge/data – especially ability to take into account ecological complexities through a more comprehensive understanding of the resource

Improved effectiveness of fisheries management:

- potential for enhancement of long-term planning
- appropriate/effective implementation of policy (e.g. by tailoring to local situations)
- more informed decisions around allocation
- more robust/improved harvesting decisions (e.g. licensing, timing, location and vessel or gear restrictions) and integrated planning decisions

Protection and enhancement of the resource:

- closer attention to local ecological factors such as habitats and local populations which are central to ecosystem health
- improved stewardship/protection of aquatic and coastal resources, including habitat
- cooperation in planning the improvement or conservation of fish stocks, fishery enhancement
- incentive for resource users to view the resource as a long-term asset (this is less of a shift in perspective for First Nations than other users)

Tailoring to local circumstances:

- can take advantage of local management opportunities
- opportunity to address local concerns; better, localized solutions to local problems
- plans and regulatory measures that are more appropriate to local conditions
- greater flexibility to design and experiment with locally appropriate regulation

More efficient management, reduced costs for government:

- increased cooperation and assistance to resource managers (e.g. data contribution)
- potential for First Nations to take responsibility for certain fisheries management functions
- more economical than centralized management systems
- requiring less to be spent on management administration and enforcement in the long run

Community development for First Nations:

- increased ability of First Nations to influence the pace and form of resource development
- community development can result when benefits from improved enhancement, planning and protection of the resource are circulated back into the community
- better social cohesion

Greater access to fisheries resources for First Nations:

- greater harvests (e.g. via enhancement)
- increased First Nations access to and benefits from resource activity in their territories
- First Nations benefit more fully from their rights to fish for food, social and ceremonial use
- increased First Nations access to economic fisheries

Learning opportunities:

- a basis for interaction and social learning
- sharing of perspectives among various interests and stakeholders
- educational opportunities such as learning how the various fishery sectors work
- links institutions to their environment, allowing feedback to inform management
- provides stimulus for institutional innovation and creation

2.4 Driving forces for fisheries co-management in BC⁶

Policies, plans and statements from the Government of Canada, DFO and regional First Nations organizations and/or processes reflect strong motivation to move towards fisheries co-management. Some of the potential benefits listed above are echoed in these documents.

2.4.1 Rights and Title

A central First Nations role in fisheries management is necessary due to the existence in BC of Aboriginal title and rights. Largely as a result of court decisions, greater onus being placed on DFO to meet Canada's legal obligations to First Nations regarding their constitutionally protected rights. The federal government has a legal duty to consult and accommodate, which DFO must meet⁷. In particular, DFO is interested in respecting and defining rights and obligations to First Nations for food, social and ceremonial needs while reconciling this with the rights of all Canadians.

2.4.2 DFO policies and plans

Various drivers of Aboriginal Policy for DFO emphasize the outcome of increased collaborative management between all DFO sectors and First Nations. In particular, the Aboriginal Policy Framework identifies the following as falling within some common objectives between the government and Aboriginal coastal communities,

“to improve fisheries management decision making by increasing transparency and the participation of Aboriginal groups, stakeholders and others” and

“manage the fisheries in a manner consistent with the constitutional protection provided to Aboriginal and treaty rights.”

The Framework also states “DFO wishes to improve its structures and processes for involving Aboriginal people in decision making for fisheries and oceans issues.”

DFO's Strategic Plan 2005-2010 includes a goal for maintaining and strengthening relationships between DFO and Aboriginal groups under the heading “Beyond the Priorities: Aboriginal Policy and Governance”:

“Enhance the involvement of Aboriginal groups in the fisheries management decision-making processes using a model of shared stewardship in which Aboriginal groups collaborate with the department in decision-making.”

DFO's motivation for consulting First Nations in the Pacific Region generally is to achieve good governance and effective, sustainable fisheries management rather than just meeting the legal obligation to consult and accommodate. Through programs and policies

⁶ Sources for this section include: Day 2009, Kadowaki 2008, Garner and Parfitt 2006, First Nation Panel on Fisheries 2004, <http://www.pac.dfo-mpo.gc.ca/fm-gp/picfi-ipcip/index-eng.htm>, DFO 2007, DFO 2005, First Nation Panel on Fisheries 2004, First Nations Leadership Council 2007

⁷ The duty to consult arises when “the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.” (*Haida*, paragraph 35)

(e.g. AAROM, WSP, PICFI) DFO has indicated a commitment to improving co-management.

2.4.3 First Nations' aspirations

The First Nations' vision of BC fisheries, according to the First Nations Leadership Council and the First Nation Panel on Fisheries, is based on being able to jointly manage aquatic species and ecosystems, among other priorities. One of six principles in the Vision is shared responsibilities. First Nations wish to work in partnership and share management responsibility and decision-making at all levels based on "our ownership of our territories and our right to manage the fishery." One of seven goals for the Pacific fishery is:

"That First Nations, federal and provincial governments jointly manage aquatic species and ecosystems, and that those involved in the use and enjoyment of aquatic species and ecosystems have the responsibility and ability to meaningfully contribute and share their knowledge, experience, and energy towards achieving the above goals."

The aim of First Nations is not only to be fully involved in decision-making about fisheries, but also to be deeply engaged in their planning and management. Their motivation goes beyond exercising their rights, to the conservation of the resource. A "Statement of Unity" of the First Nations Leadership Council is:

"First Nations in BC will together plan and manage sustainable fisheries in order to ensure fisheries conservation and position First Nations as active fisheries managers and decision-makers at regional and provincial levels. By working together in fisheries management, First Nations will conserve fisheries resources for future generations."

And the First Nation Panel on Fisheries asserted that:

"there is general frustration at the lack of input that First Nations have in critically important fisheries management decisions. Generally speaking, First Nations should be playing a stronger management role because they live in communities that are close to where fisheries resources are found and they know those resources intimately."

An additional driver from the First Nations perspective is the need to address outstanding issues to be addressed to "fix" the Treaty process, which include:

- defining the First Nations' role and input to local conservation and management,
- establishing local area all-interest management processes,
- funding the proposed First Nation co-management and coordination process.

3 MECHANISMS FOR FIRST NATIONS ENGAGEMENT IN FISHERIES MANAGEMENT AND RELATED PROCESSES

This section provides an overview of First Nations engagement in DFO advisory/co-management processes. It is a general description only, and because it is based on readily available information it is uneven in detail across the different bodies and processes. Analysis of issues associated with these processes follows in section 4 of this report.

DFO-driven planning and advisory processes that include First Nations can be simplified into:

- First Nations bilateral discussion and consultations
- First Nations aggregate discussions and consultation
- First Nations inclusion in consultative processes that also engage stakeholders
- First Nations inclusion in spatial/regional planning initiatives

Key engagement mechanisms in these categories are described in sections 3.1 to 3.3.

There are also ad hoc, issue-driven processes (e.g., in 2008 First Nations from within the Fraser watershed and marine areas convened on a number of occasions with DFO to discuss issues of mutual concern). On the DFO consultations website 14 people affiliated with 11 First Nations are listed under “First Nations Consultation Contacts,” presumably to facilitate a range of efforts. To an extent, the mechanisms described in this section of the report formalize and make public interactions between DFO and First Nations that otherwise occur on a more informal basis.

There are also processes *not* driven by DFO that facilitate First Nations engagement in fisheries and related activities, such as the First Nations Fisheries Council, First Nations marine and coastal management plans and First Nations fisheries bodies (described in section 3.4). Some of these provide a foundation for First Nations participation in co-management with DFO.

BC First Nations leaders have delineated a three-tiered process for dialogue:

- Tier 1: First Nation to First Nation processes [can lead to First Nations aggregates]
- Tier 2: First Nations and Canadian Government processes [bilateral, or government-to-government]
- Tier 3: Multi-party [multi-lateral] processes [in which First Nations participate in processes that also engage stakeholders]

Engagement mechanisms throughout this section of the report connect with various of the above three tiers.

Treaties are a special type of mechanism, in which co-management arrangements are clearly defined (section 0).

3.1 Fisheries advisory committees

3.1.1 Overview⁸

Fisheries and Aquaculture Management (FAM) has established advisory committee processes for fisheries in Pacific Region. Growing in number, these processes provide formal advice and make recommendations to the Department regarding fisheries management planning, which inform the development of fisheries management plans. They focus on developing management plans for particular species or groups of species. For example, there are Integrated Harvest Planning Committees for salmon and herring and sector-based committees for prawn and crab. Further, there are commercial industry committees for all commercially harvested species to provide advice on the management of those fisheries. There is also a province-wide process for providing advice on recreational fisheries for marine and anadromous species.

In terms of the three tiers of dialogue, these are Tier 3, multi-lateral processes, in which First Nations might participate in consultative processes that also engage stakeholders. Advisory committees typically include representatives from the commercial fishing industry, First Nations, Provincial government, recreational fishing and conservation sectors. A consensus recommendation coming from an advisory committee helps to consolidate the interests or positions of stakeholders and will be considered by the Department, though the Department may or may not act according to the advice provided.

Both DFO and First Nations would like greater participation of First Nations in these advisory processes. DFO's Aboriginal Policy Framework Action Plan includes a strategy with the following "critical outcome": involvement of Aboriginal groups in the development of integrated fisheries management plans. The Policy Framework highlights the opportunity for DFO to support Aboriginal participation in integrated commercial fisheries, which provide all resource users with an opportunity to work together to maximize the value of the fisheries. PICFI is intended in part to strengthen First Nations participation in multi-lateral planning and in-season processes.

The First Nations Leadership Council calls for First Nations to participate more actively in third party stakeholder meetings and to nominate First Nation representatives to advisory boards.

⁸ Sources include: DFO 2007, DFO Pacific Region 2009, First Nations Leadership Council 2007, <http://www.pac.dfo-mpo.gc.ca/fin-gp/picfi-ipcip/index-eng.htm>

3.1.2 *Specific advisory committees*

Accompanying this document is a spreadsheet listing various advisory processes, with a focus on fisheries planning/management committees. The starting point was an inventory of Pacific Region advisory processes provided by DFO (2009) that highlighted some characteristics of the different processes. The inventory did not focus on First Nations so data was added as follows:

- **First Nations membership specified:** Whether the term of reference or membership list specify that the committee/body will have one or more First Nation members, and if so, the number of members. “None” means member slots were listed and did not include First Nations. “Not specified” means there was not specific enough information available to determine whether First Nations are included.
- **Specific First Nation member(s):** Whether the terms of reference or membership list on the website as of Feb. 2010 specify the actual First Nations to send members or the members’ names.
- **Membership context:** Total number of members on the committee or other information providing context against which to estimate the strength of First Nations representation.
- **Other Terms of Reference mentioning/directly relevant to First Nations:** Any other points from the terms of reference for the committee relevant to First Nation involvement.

Virtually all of the information added to the spreadsheet was obtained from the DFO, Pacific Region Consultation website in February-March 2010. It is assumed to be the most current information available, notwithstanding indications that some of the data is out of date (e.g. references to entities that no longer exist).

At least some data was accessible on the DFO website for the following fisheries-focused advisory bodies:

- Groundfish Trawl Advisory Committee
- Sablefish Advisory Committee
- Halibut Advisory Board
- Groundfish Hook and Line Advisory Board
- Groundfish Integrated Advisory Board
- Commercial Salmon Advisory Board
- Integrated Harvest Planning Committee
- Integrated Herring Harvest Planning Committee
- Tuna Advisory Board
- Sardine Integrated Advisory Board
- Clam Planning Committee
- Crab Sectoral Committee
- Geoduck and Horse Clam Sectoral Committee
- Prawn Sectoral Committee
- Shrimp by Trawl Sectoral Committee
- Sea Cucumber Sectoral Committee
- Eulachon
- Euphausiid Sectoral Committee
- Yukon Salmon Committee

- Sport Fishing Advisory Board
- Recreational-Commercial Salmon Allocation Implementation Committee

No information was easily accessible on:

- In season Hake Advisory Committee
- Integrated Herring Advisory Board
- Red Sea Urchin Sectoral Committee

Fifteen of the 21 bodies for which information was available have First Nations membership specified, though for four of these the term used is “advisors.” The number of specified First Nations members ranged from eight for the Integrated Harvest Planning Committee to one.

Other terms of reference specifically referring to First Nations were rare. The few instances provided for such matters as how the First Nations representatives will be appointed.

3.2 Area-based collaborative processes

Three types of area-based collaborative processes are described here:

- Aboriginal Aquatic Resources and Ocean Management
- Clam management boards
- Integrated oceans management, PNCIMA

There are several other regional or watershed-based processes relevant to First Nation engagement, such as Marine Protected Area planning, BC-driven coastal planning, the West Coast Vancouver Island Aquatic Management Board⁹ and watershed-specific bodies such as the Cowichan Board. These are not described here, but experience related to some of them is included in the analysis in section 3.

3.2.1 Aboriginal Aquatic Resources and Ocean Management (AAROM)¹⁰

One mechanism designed to facilitate DFO consultations and engagement with First Nations is the Aboriginal Aquatic Resources and Ocean Management (AAROM) program. The AAROM program was developed, in part, from the response to a 2002-2003 AFS Renewal process. AAROM bodies are established to organize several First Nations into larger groups at a broad regional, watershed or ecosystem level, making it more efficient for them to build capacity and engage with DFO at a strategic level. There are approximately 8 AAROM bodies in BC.

The AAROM program builds First Nations’ capacity to participate in decision-making processes for aquatic resources and oceans management. It provides funding to the AAROM bodies for hiring or contracting skilled personnel to allow them to effectively participate in decision-making and advisory processes, among other things.

⁹ See <http://www.westcoastaquatic.ca/about.htm> and <http://www.westcoastaquatic.ca/AMBFinalEvaluation22March05.pdf>

¹⁰ Sources: DFO 2008, http://www.pac.dfo-mpo.gc.ca/tapd/aarom_e.htm

The main objectives of the AAROM program are closely related to co-management. They are to:

- assist Aboriginal groups in acquiring the administrative capacity and scientific/technical expertise to facilitate their participation in aquatic resource and oceans management;
- encourage the establishment of collaborative management structures that contribute to integrated ecosystem/watershed management and planning processes;
- enhance existing collaborative management structures, where appropriate;
- facilitate representation of member communities in interactions with DFO at the multi-stakeholder level and potentially with other government departments;
- strengthen relationships through improved information-sharing between Aboriginal communities, DFO and other stakeholders and among Aboriginal communities;
- contribute to the federal government's broader objective of improving the quality of life of Aboriginal people; and,
- facilitate sound decision-making in advisory and other processes related to a number of areas of DFO responsibility.

3.2.2 Clam management boards¹¹

The Department has attempted to develop community management boards in some of the clam fishing areas. The boards are to be structured with broad stakeholder representation to allow for greater involvement of local communities in the management of the clam fishery. There is one community management board in Area F (West Coast of Vancouver Island), and an informal advisory committee has been established in Area C (Sunshine Coast). Harvesters licensed for either of these areas are encouraged to contact these groups regarding issues, comments or suggestions for the fishery.

3.2.3 Integrated oceans management, PNCIMA¹²

Under the *Canada Oceans Act*, integrated oceans management is being implemented via planning for Large Ocean Management Areas (LOMAs). One of the five LOMAs underway is the Pacific North Coast Integrated Management Area (PNCIMA). The federal government has encouraged First Nations participation, including the provision of funding early in the process. Three main organizations that represent First Nations in PNCIMA have AAROM funding. They are: the Council of the Haida Nation, Coastal First Nations (Turning Point) and the North Coast-Skeena First Nations Stewardship Society. From late 2003 to early 2005 the Coastal First Nations leadership worked closely with the Oceans executive in Ottawa through a government-to-government process to harmonize objectives outlined in the Oceans Strategy with the interests of the Coastal First Nations. This work culminated in a framework agreement that outlines planning and governance structures necessary to implement marine planning within PNCIMA.

¹¹ *Source:* DFO 2010 (This arrangement could also be included in the section on fisheries advisory committees.)

¹² *Sources:* Gardner 2009a, <http://www.coastalfirstnations.ca/print/activities/marineuse.html>

A Tripartite Collaborative Governance Model is under development for PNCIMA, reflecting a high level of collaboration between the First Nations and federal and provincial government agencies involved.

3.3 Other DFO mechanisms

Several mechanisms (processes, programs, etc.) beyond fisheries advisory committees through which DFO Pacific Region can pursue engagement or co-management with First Nations are explored here, namely:

- Aboriginal Fisheries Sector (AFS) agreements
- Pacific Integrated Commercial Fisheries Initiative (PICFI)
- Fall Consultation/Community Dialogues
- Joint Fisheries Dialogue MOU
- Species at Risk Act
- Fisheries Act Renewal
- Policy

Some programs of potential relevance, such as the Aboriginal Guardian Program and the Allocation Transfer Program, are not covered here. The AIHP and Marshall-related initiatives are assumed to be less relevant to this region.

3.3.1 Aboriginal Fisheries Strategy (AFS)¹³

Started in 1992, the AFS program was, in large part, a DFO response to the SCC 1990 Sparrow decision. Through AFS, DFO collaborates with selected Aboriginal groups in the design and implementation of co-operative management programs that directly benefit the fisheries resource.

Mutually acceptable, time-limited (e.g. one-year) AFS agreements are negotiated between DFO and First Nations covering such topics as:

- harvest plans, specifying harvest quotas, and in some cases, the right to sell fish;
- cooperative enforcement, data analysis and sale monitoring, etc. (e.g. Gitksan on Skeena in early 1990s);
- habitat assessment and enhancement, and fisheries enhancement and research;
- funding for fisheries management and economic opportunities, including the provision of commercial fishing opportunities.

3.3.2 Pacific Integrated Commercial Fisheries Initiative (PICFI)¹⁴

PICFI was launched in 2007 to facilitate increased BC First Nation participation in integrated commercial fisheries consistent with, and supportive of, the BC treaty process. It builds on fisheries reform work begun in response to the 2004 reports of the First

¹³ Sources: http://www.pac.dfo-mpo.gc.ca/tapd/afs_e.htm, DFO 2007, Pinkerton 1996, Aboriginal Fisheries Strategy (AFS)

¹⁴ Sources: <http://www.pac.dfo-mpo.gc.ca/fm-gp/picfi-ipcip/index-eng.htm>, PICFI PP 2007, DFO 2007)

Nations Panel on Fisheries and the Joint Task Group on Post-treaty Fisheries, as well as subsequent discussions in a wide variety of forums.

The initiative is aimed at achieving environmentally sustainable and economically viable commercial fisheries, where conservation is the first priority and First Nations' aspirations to be more involved are supported. It provides for a number of actions, including greater participation in fisheries management decision-making processes including policy development. PICFI's co-management element recognizes that strengthening co-management approaches with First Nations and other fisheries participants will be key to successfully advancing with Pacific integrated commercial fisheries and addressing conservation and sustainability challenges. PICFI is supporting co-management at two levels: co-management among First Nations (e.g. Tier 1) and co-management among all fishery participants (e.g. Tier 3).

3.3.3 Joint Fisheries Dialogue Memorandum of Understanding¹⁵

In 2000, an MOU entitled *A Joint Fisheries Dialogue for British Columbia* was signed by the First Nations Summit, BC Aboriginal Fisheries Commission, Native Brotherhood of BC, DFO, Indian and Northern Affairs Canada, Human Resource Development Canada, Environment Canada, Parks Canada and Western Economic Diversification Canada to “confirm the commitment of the Federal Government Agencies and First Nations 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.”

Comments on the MOU have included that better linkages need to be made between this “planning structure” and what is going on in government to government negotiations, and that the process has not resulted in significant or observable policy change on the ground.

3.3.4 Species at Risk Act (SARA)¹⁶

SARA protects indigenous Canadian species from becoming extinct or extirpated, provides for the recovery of species, and manages species of special concern. DFO is responsible for aquatic species under the Act. Many of the species identified under SARA are of importance to Aboriginal groups for food, social and ceremonial purposes. DFO recognizes that Aboriginal groups can play a vital role in aquatic species conservation.

With respect to species at risk in the Pacific Region, DFO seeks to

- promote an understanding of the SARA within Aboriginal groups,
- facilitate the transfer of relevant SARA information from DFO to Aboriginal groups,
- seek feedback and input from Aboriginal groups on species at risk issues,
- inform Aboriginal groups of the aquatic species that are being considered for legal listing under SARA,
- notify Aboriginal groups of ongoing recovery efforts for species that have been listed under SARA, and

¹⁵ Sources: Institute for Dispute Resolution 2001, First Nations Leadership Council 2007

¹⁶ Source: http://www.pac.dfo-mpo.gc.ca/tapd/sara_e.htm

- facilitate Aboriginal participation in recovery efforts when possible.

SARA provides opportunities for public involvement at different stages of the listing, recovery and action planning process. A variety of consultation methods and processes are used, and Aboriginal groups are involved in several projects that address species at risk and their habitats.

3.3.5 Fisheries Act renewal¹⁷

DFO's Aboriginal Policy Framework Action Plan includes: Fisheries Act amendments that provide for greater involvement of Aboriginal groups and others in decision-making processes.

Meetings have been held to bring Aboriginal groups up to speed with the proposed changes to the Fisheries Act. These include provision for co-management agreements that would clearly identify the role of Aboriginal groups in resource management and decision-making processes.

3.3.6 Policy development¹⁸

DFO's Aboriginal Policy Framework Action Plan promotes engagement of Aboriginal groups in a broad-based renewal of DFO policies and programs including fisheries management. PICFI objectives recognize that collaborative management approaches may involve higher-level policy matters, and its co-management element addresses the need to further support First Nations in contributing to policy development.

First Nations are currently consulted on draft fisheries policies through bilateral and multilateral consultations, aboriginal organizations and public forums. For example, First Nations were engaged at several stages in the development of the Wild Salmon Policy (WSP). Among the changes made to the draft policy in response to First Nations input was that First Nations would assume more responsibility for stock assessment and habitat monitoring in connection with the policy.

3.4 First Nation-driven processes/organizations

First Nations also initiate collaborative processes related to fisheries. These can enhance opportunities for engagement in co-management initiatives with DFO. The main province-level organization connected to fisheries management is the BC First Nations Fisheries Council. This is discussed below, followed by descriptions of a selection of sub-regional, aggregate First Nations organizations.

3.4.1 BC First Nations Fisheries Council¹⁹

The First Nations Fisheries Council (FNFC) was formed in late 2007 by BC First Nations

¹⁷ Sources: DFO n.d. slide deck on Fisheries Act Renewal; DFO 2007

¹⁸ Sources include: DFO 2007, <http://www.pac.dfo-mpo.gc.ca/fm-gp/picfi-ipcip/index-eng.htm>

¹⁹ Sources: BC FNFC Homepage www.FNFisheriesCouncil.ca, FNFC, n.d.

as an outcome of the BC First Nations Fisheries Action Plan. The Council supports First Nations in BC with respect to the care and management of fisheries resources through the implementation of the Action Plan. This Plan, an agenda for action in the Pacific fishery for all BC First Nations, was endorsed by resolution at the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs in 2006.

The BC FNFC works both internally with First Nations and with other governments and stakeholders to develop a broader understanding of First Nations rights and to support relationship-building and reconciliation. It supports the principles of an ecosystem approach, conservation, sustainability, shared responsibility, accountability, diverse approaches and benefits, First Nations ownership, and stewardship. Through capacity-building, dialogue, and the development of co-management approaches, the Council works with BC First Nations to support the stewardship of fisheries resources for current and future generations.

The BC FNFC has fourteen council members, representing regional diversity and also a diversity of expertise and perspectives. It is currently working with First Nations around BC to establish a robust and enduring organizational structure. The Council does not speak for the 14 or so First Nations aggregate organizations nor individual First Nations. The Council is tasked with implementing the BC First Nations Fisheries Action Plan priorities, including:

- holding regular province-wide forums and assemblies on fisheries issues, including an annual Forum open to all BC First Nations;
- supporting regional or watershed-based forums and processes;
- developing fisheries-related strategies and policy perspectives;
- sharing information on fisheries issues and supporting data collection and sharing;
- supporting First Nations in developing and implementing their fisheries plans; and
- building effective working relationships with First Nations.

One of the first steps the Council has taken is to support and facilitate dialogue and information-sharing among BC First Nations.

3.4.2 Sub-regional processes/organizations

There are approximately 14 aggregates of First Nations or bands in Tribal Councils, treaty groups, etc. in BC. Many of these, as well as individual First Nations, have fisheries programs. Six sub-regional First Nations organizations or processes are briefly described here.

Coastal First Nations²⁰

Coastal First Nations (CFN) (formerly Turning Point Initiative) is an alliance of First Nations on British Columbia's North and Central Coast and Haida Gwaii, including the Oweekeno, Heiltsuk, Nuxalk and Kitsoo. The aim of CFN is largely to develop a conservation-based economy on BC's North and Central Coast and Haida Gwaii. Their strategic approach to development includes:

²⁰ Source: <http://coastalfirstnations.ca/>

- sustainable ecosystem-based management of marine and land resources;
- increased local control and management of forestry and fisheries operations;
- coordinated development through regional strategic planning in forestry, fisheries and tourism with an emphasis on value added initiatives;
- partnerships and cooperative arrangements with governments, industry, ENGOs and other stakeholder groups; and
- building capacity.

North Coast-Skeena First Nations Stewardship Society²¹

In 2003 a group of First Nations were brought together by a resolution to collaborate on projects where they share common interests and objectives. They incorporated as a non-profit society under the name, North Coast-Skeena First Nations Stewardship Society, and include the Haisla, Metlakatla, Gitga'at, Gitxaala, Kitsumkalum and Kiselas. Currently the Society focuses on marine and terrestrial resource planning, management and economic development. The basis of the Society's work is regional and/or community based initiatives that are common to member communities and where it makes sense to collaborate for scales of economy and efficiency.

Fraser River Aboriginal Fisheries Secretariat²²

The Fraser River Aboriginal Fisheries Secretariat was established by Fraser First Nations and DFO in 1994 to provide communications and support services to the Fraser Watershed Steering Committee under the Fraser Watershed Agreement. The Fraser Watershed Agreement has expired but a series of initiatives between DFO and First Nations in the Fraser River Watershed have maintained the presence of the Secretariat. The Secretariat was hosted by the Shuswap Nation Fisheries Commission (Kamloops) until 2004 at which time the Nicola Tribal Association (Merritt) became the host.

Currently the Secretariat provides communications and biological support services to First Nations. As the numbers of meetings and workshops increase in response to a multitude of initiatives and issues surrounding management of Fraser River salmon, the Secretariat also plays a coordinating and executive support role in arranging venues and associated services for both First Nations and DFO.

Marine use planning²³

Many coastal First Nations in BC have engaged in strategic land use planning for their traditional territories, and several of these plans have a marine, or at least intertidal, component – e.g. Lax Kw'alaams, Hul'qumi'num and Sliammon. The Kitasoo have a Marine Use Plan and the Heiltsuk have a high-level integrated marine and land use plan. The Hul'qumi'num are working on the framework for a Marine Use Plan for the area of their statement of intent (in the treaty process).

Three groups of First Nations have organized to implement a standardized approach to developing "Community Integrated Marine Use Plans." DFO has provided support to the

²¹ Source: <http://www.togetheronthecoast.org/about.php>

²² Source: <http://www.frafs.ca/>

²³ Source: Gardner 2009a

initiative through AAROM and a 2005 MOU with Coastal First Nations. The three groups are the Coastal First Nations, the Council of the Haida Nation, and the North Coast-Skeena First Nations Stewardship Society. These organizations provide a point of contact with the BC and Canadian governments, strategic direction, policy and political support, and contacts with ENGOs; yet all report to the leadership of the individual First Nations. At the regional level, each of the three groups has an area Technical Team that provides advice to the local processes; multiple scale analyses, objectives and strategies; and collaborative approaches. Each community has a Marine Planning Team. Primary data is collected at the community level and rolled up, using standardized methods of ecosystem-based management.

Skeena Fisheries Commission²⁴

The Skeena Fisheries Commission (SFC) consists of Aboriginal representatives from First Nations in the Skeena River Watershed, including Lake Babine Band (Natoot'en), Wet'suwet'en, Gitskan/Gitxan, Gitinyow and the Tsimshian Tribal Council. The Commission focuses on science, sustainability, fisheries management and economic access to salmon in the watershed. It provides a forum for First Nations to work together, identify common priorities and advance these with DFO and other parties.

DFO has an agreement with the SFC to fund and support the coordination, management and enforcement of aboriginal fisheries on the Skeena called the Skeena Watershed Agreement. Monthly technical committee meetings are held between the First Nations' fisheries technicians and DFO, in order to reach general agreement on how fisheries should be prosecuted in the watershed. Management decisions apply both to fisheries conducted for FSC purposes and to commercial fisheries conducted by First Nations who access fish stocks that are deemed to be excess to spawning requirements. Within the overarching collaborative management of these fisheries, each individual First Nation community has allocation agreements with DFO. There is also cooperation in watershed planning, and the Commission has spearheaded a variety of watershed level assessments.

A working relationship between the SFC and DFO has developed to the point that the SFC is regularly consulted on proposed fishing plans by the commercial fleet before fishing activities begin.

Uu-a-thluk²⁵

Uu-a-thluk is a fisheries management organization under the leadership of a council of Ha'wiih – hereditary chiefs – from Nuu-chah-nulth First Nations. Formed in 2005, it is the successor to the Nuu-chah-nulth Fisheries Program and operates under the auspices of the Nuu-chah-nulth Tribal Council (NTC). It provides services to 14 Nuu-chah-nulth tribes and the Pacheedaht First Nation.

Uu-a-thluk responsibilities include:

- Protect Nuu-chah-nulth fishing rights through challenges to government policies and management.

²⁴ Sources: Garner and Parfitt 2006, First Nations Leadership Council 2007, <http://www.skeenafisheries.ca/about%20us.htm>

²⁵ Sources: <http://uuathluk.ca/>, Garner and Parfitt 2006, First Nations Leadership Council 2007

- Liaise extensively with DFO and other resource management agencies.
- Administer DFO/AFS/AAROM funding for NTC/First Nation Fisheries programs and projects.

A joint technical working group consisting of Tribal Council fisheries staff (NTC) and DFO staff meets several times a year to deal with aquatic resource issues, including policy issues. The arrangement, which has had support through AAROM, has allowed the NTC to be involved more directly in management of local fisheries.

Fraser River Salmon Table Society²⁶

The Fraser River Salmon Table Society, which evolved out of an initiative related to Cultus Lake Sockeye, is not solely a First Nations initiative. It was founded by Fraser River First Nations, conservation organizations, the sport fishing community and the Commercial Salmon Advisory Board. Members of the Society recognize the importance of working together to define good salmon management and to identify and achieve common objectives, including the maintenance of biodiversity for the long-term health of the Fraser River.

The Society recognizes that First Nations within the Fraser Watershed assert aboriginal title and rights that are being defined and must be acknowledged and reconciled in a just and fair manner.

The mission of the Society is to foster mutual respect and increased understanding of individual interests among various fisheries and rights-holders in order to achieve reduced conflict, better decision-making, effective harvest management, improved health of salmon stocks and greater economic opportunity. Plans and activities must be adaptable and able to respond to external pressures and changing social values.

3.5 Treaties

Treaties define a form of engagement that is clearly bilateral (or trilateral), and place an unambiguous onus on the parties working together. DFO acknowledges that the co-management approaches it supports should be consistent with, and supportive of, approaches negotiated at treaty tables. For example, on the advice of First Nations, explicit text reflecting this commitment was added to the Wild Salmon Policy – i.e., recognition that DFO will act within Nisga'a and Yukon agreements and any other treaties.

AFS and AAROM apply in areas where DFO manages the fishery and land claims have not been settled. AFS was designed as a bridging arrangement in fisheries matters during the negotiation of land claims and self-government agreements.

Where land claims are settled, renewable resource boards typically are involved in co-management, provision of advice and decision-making processes. Specific components of the Nisga'a Treaty and a couple of more recent treaties relevant to co-management are described below.

²⁶ Source: <http://www.frasersalmontable.com/content/home.asp>

3.5.1 *Nisga'a*²⁷

A Joint Fisheries Management Committee (JFMC) with DFO, BC and Nisga'a fisheries department representatives was formed on signing of the Nisga'a Final Agreement in 2000. Its purpose is to facilitate cooperative planning and conduct of Nisga'a fisheries and enhancement initiatives in the Nass Area. There is also a Joint Technical Committee. Fourteen responsibilities are listed in the agreement for the Joint Fisheries Management Committee, several of which include making recommendations to the Minister of Fisheries and Oceans and Nisga'a Lisims Government. The Committee has six members, two each from the Nisga'a Nation, Canada and BC.

The federal and provincial governments retain authority for management and conservation of fish and fish habitat, and JFMC plans go to the federal fisheries minister for final approval. This must be done in a manner consistent with the treaty and the Nisga'a have authority for internal regulation of the fishery.

The Agreement states that if fisheries management advisory bodies are established in areas including the Nass, the Nisga'a Nation will be consulted in developing these bodies and will have participation in them if appropriate.

The Nisga'a Fisheries Program, launched eight years before the signing of the Final Agreement, has a reputation for effective salmon management. Core activities of the Program include monitoring escapement and harvests, as well as determining the factors that limit production, and capacity building. Achievements of the program reflect many of the potential benefits of co-management listed in section 2.3, including:

- development and reporting of reliable in-season information for fishery management,
- complete catch accounting – free of disputes,
- effective regulation and enforcement,
- Nisga'a harvests consistent with Nisga'a allocations,
- harvests of abundant returns and protection of weak runs,
- achievement of escapement goals in most years,
- training of Nisga'a people and people from other BC First Nations for technical and biologist positions, and
- identification of factors that limit production of Nass salmon and non-salmon species.

3.5.2 *Other BC treaties*²⁸

The Naa-nulth, Lheidli T'enneh and Tsawwassen Final Agreements have much in common under the heading "Fishery Management and Conservation." Some of the wording is also similar to the Nisga'a Agreement. They each provide for a Joint Fisheries Committee (JFC) made up of representatives of each government. Its purpose is to undertake cooperative planning for fishing, fisheries management activities and other fisheries related matters, and the committee may make recommendations to the Minister on these matters. The Final Agreements also provide for First Nation participation in any

²⁷ Sources include: Garner and Parfitt 2006, Nisga'a Final Agreement, <http://www.gov.bc.ca/arr/treaty/final.html>

²⁸ Source: <http://www.gov.bc.ca/arr/treaty/final.html>

multi-sectoral fisheries advisory process for the area concerned, should one be established. The Agreements state that Canada and British Columbia retain authority to manage and conserve fish, aquatic plants and fish habitat, according to their respective jurisdictions. The Nations have law-making authority with respect to the internal regulation of their fisheries.

4 ISSUES IN FIRST NATIONS ENGAGEMENT WITH DFO

This section provides a summary of key issues related to the engagement mechanisms described in section 3, from DFO and First Nations perspectives²⁹. The sources of information are documents from government and First Nations, commissioned reports, published articles and websites.

Issues are clustered under seven themes:

- Rights and Title, and the Government-to-Government relationship
- Meaningfulness and depth of the process
- Multiplicity of First Nations
- Complexity of scales and themes of engagement
- Representation of parties
- Trust, fairness and cohesion
- Capacity

Under each theme, various **issues** and factors that pose challenges to or constraints on co-management are described, including government/DFO and First Nation perspectives, followed by **promising directions** which include actions taken/adjustments already made by DFO (or the federal government) to address gaps or recommendations made through other reviews and reports, as well as lessons and positive findings from experience related in the literature.

There is much overlap between themes, and several issues are relevant to more than one theme – the reader might find an issue they would expect under a certain theme is summarized further down the list.

²⁹ Note that these “perspectives” are those that can be gleaned from documents available at the time of writing. The prevalence of Federal Government documents means that the DFO perspective is likely over-represented in this analysis.

4.1 Rights and Title, and the Government-to-Government relationship

4.1.1 Issues and factors

The extent and protection of aboriginal rights is the most fundamental consideration in engagement with First Nations.³⁰

Court rulings have and are changing the legal landscape of governance. Yet despite the numerous court cases, there remain conflicting legal interpretations of the status of aboriginal rights, and efforts towards co-management take place in a climate of uncertainty. In general, the Federal Government tends to take a narrower and more restrictive view of these rights while First Nations apply a broader and more liberal interpretation. Recognition of title and rights for First Nations encompasses both a key role in resource management decision-making and greater access to resources.

An example from Washington illustrates the different perspectives, and a pattern that can also occur in BC: Washington Department of Fisheries managers initially framed the conflict over the management of fisheries as a technical problem in which their expertise, scientific data and analyses were central. Tribes instead suggested that the conflict was essentially a legal dispute over the nature of rights to the resource and not a technical exercise. The tribes sought to shift the definition of conflict from a scientific to a political framing concerning the nature and distribution of rights to the salmon resource and who possessed the authority to manage this resource.

DFO has an obligation not to unjustifiably infringe Aboriginal or treaty rights.³¹

DFO does not have a mandate to determine whether an Aboriginal group has Aboriginal or treaty rights, or the nature and scope of such rights. However, the Government of Canada has a fiduciary relationship with Aboriginal peoples and DFO has an obligation not to unjustifiably infringe Aboriginal or treaty rights. Consultations are an important factor that courts consider in determining whether or not infringements of Aboriginal or treaty rights can be justified.

DFO has a legal duty to consult and, where appropriate, accommodate Aboriginal interests.³²

The federal government has legal obligations to consult with Aboriginal groups, and courts continue to provide guidance regarding the nature and scope of those obligations. Specifically, the courts have held that when the Crown (federal, provincial or territorial) contemplates conduct that may adversely affect established or potential Aboriginal and treaty rights for which it has real or constructive knowledge, it has a legal duty to consult with the rights holders. In its “Interim Guidelines to Fulfill the Legal Duty to Consult,” Indian and Northern Affairs Canada (INAC) provides recommended steps for

³⁰ Sources include: Institute for Dispute Resolution 2001, Day 2009, Ebbin 2004

³¹ Source: DFO 2004 Consultation Framework

³² Sources: DFO 2007, INAC 2009

practitioners for Crown consultation that may apply when the federal government decides to implement a consultation process pursuant to the legal duty to consult.

As a Canadian government agency, DFO recognizes these duties. A guiding principle of DFO's Aboriginal Policy Framework is "attempt to accommodate Aboriginal interests in aquatic resources and oceans management, taking into account the need for conservation of the resource, its effective and efficient management and the interests of other Canadians."

First Nations want stronger recognition of their rights.³³

First Nations have often sought stronger recognition of their fishing rights through litigation. Experience involving the Nuu-cha-nulth Tribal Council provides an example. In 2005, Nuu-cha-nulth Tribal Council (NTC) representatives on the Commercial Groundfish Integrated Advisory Committee objected to features of a proposal for integrated groundfish management, yet DFO accepted the proposal and implemented it as a three-year pilot plan in 2006. The NTC also argued that DFO failed to fulfill their duty to consult and attempt to accommodate the NTC's aboriginal rights and title interests and shortly after the plan's implementation, they initiated litigation against DFO.

A BC Supreme Court decision in 2009 recognized the right of the Nuu-chah-nulth peoples to commercially harvest and sell fish and other seafood within their traditional territorial waters, while acknowledging possible restrictions. The decision granted Canada and the Nuu-chah-nulth two years in which to negotiate an acceptable regulatory regime. The judge said: "There is an important difference between balancing generalized aboriginal interests in participating in the commercial fishery with other competing interests on the one hand, and according recognition, however defined, to the constitutional right of these plaintiffs, on the other."

Regional First Nation organizations have also voiced concerns about recognition of rights. The First Nation Panel on Fisheries called for Canada to immediately recognize in policy, and implement through negotiated agreements, the aboriginal right to manage fisheries. The First Nations Leadership Council has cautioned that international agreements such as the Pacific Salmon Treaty and the Convention creating the International Halibut Commission may affect First Nations access to fish.

DFO cannot delegate its authority nor that of the Minister.

As part of the Canadian government, the Minister of Fisheries is restricted in the delegation of decision-making authority. The Department cannot be seen to be abrogating this responsibility or the responsibilities of the Minister under the *Fisheries Act*. This is viewed by both DFO and First Nations as a key issue that will shape efforts in moving toward co-management.

³³ Sources include: *Ahousaht Indian Band and Nation v. Canada (Attorney-General)* 2009; Davis 2008; First Nation Panel on Fisheries 2004; First Nations Leadership Council 2007

First Nations need to be consulted as governments, in a bilateral (Tier 2) approach.³⁴

The DFO obligation to consult is always with the proper rights-holders at the Nation or community level – referred to as government-to-government, bilateral, or Tier 2 consultation. DFO recognizes that most consultations between DFO and Aboriginal groups will be undertaken bilaterally, yet First Nations often feel this is not the case. They ask for more bilateral consultations, contrasting this approach with multi-sector advisory processes. They emphasize that First Nations must be regarded as an order of government, not a stakeholder or an interest group.

DFO requires that some engagement processes be inclusive (multilateral).³⁵

DFO mandates arise at the national and regional levels, and the Department is obliged to work with all fisheries interests, including First Nations. While the department recognizes its duty to consult First Nations on a bilateral basis, it also views consultation with First Nations that take place within a multilateral context as a key part of engagement with First Nations. Due to the complexity and the range of interests involved in fisheries management, DFO sees an important role for advisory and co-management processes that include all participants – aimed at broad multi-lateral processes, including First Nations, the recreational and commercial fishing sectors, the environmental community, other orders of government and the public. PICFI’s “Co-Management element” addresses the need to facilitate collaboration or joint problem solving between First Nations and other fishery participants, including multilateral processes that facilitate First Nations involvement and are inclusive of all relevant interests and are well supported by all fishery participants. One of PICFI’s proposed principles for co-management is inclusiveness: Groups with a direct interest in the fisheries resource should have an opportunity to contribute to decision-making processes.

First Nations are cautious about involvement in multilateral (Tier 3) and integrated processes.³⁶

The priority on government-to-government consultation (Tier 2) often leads First Nations to be reluctant to take a seat at the table in multilateral processes. They argue that effective Tier 2 processes³⁷ must be properly established and working before multi-party processes can succeed. They feel that:

- the DFO advisory process has the potential of prejudicing Tier 2 processes, sidestepping the requirement for consultation;
- priority access for FSC purposes may be impacted by participation in integrated processes;
- the need to develop a consensus from a wide range of interests may result in weaker, compromised measures;

³⁴ Sources include: DFO 2004 Consultation Toolbox, Consultation Framework; All-Nations WSP Dialogue 2005

³⁵ Sources include: PICFI PP 2007, PICFI website

³⁶ Sources include: First Nation Panel on Fisheries 2004, Institute for Dispute Resolution 2001, First Nations Leadership Council 2007, Ionson 2009

³⁷ And Tier 1 processes – see section 4.3.

- negotiation of numerical limits on fisheries access (through aggregate catch limits or individual quotas) could limit options for First Nations to exercise fishing rights such as setting aside exclusive fishing areas or managing through fishing time with no catch limit.

At the same time, the First Nations Leadership Council recognizes a need for improved relations with the commercial, sport and recreational sectors and that further work is required to achieve this. The Council notes that some instances of First Nations organizations engaging in dialogue with commercial and recreational sectors exist, but not on a province-wide scale.

Processes are struggling to incorporate bilateral and multilateral engagement.³⁸

It is challenging to link and/or reconcile the results of, bilateral meetings and multi-lateral discussions. Three examples follow.

IHPCs: First Nations were concerned about the establishment of the Salmon Integrated Harvest Planning Committees. They felt it was unclear how the bilateral processes working at a more regional scale would have a meaningful role in these new processes (the two Integrated Harvest Planning Committees and eight Area Harvest Committees).

Fraser: The management process on the Fraser River has extensive First Nations engagement, including a significant number of bilateral meetings with First Nations both at the band level and from a technical perspective at the watershed level. Consultation with each of the sectors has also occurred annually for several years. The process however is not fully integrated between sectors. A new feature in 2008 was that of basin-wide meetings of all First Nations (including some from the marine areas) to discuss specific issues. There is opportunity for multi-sector review of the management plan at the IHPC, but there is no mechanism for reconciling differing pieces of advice from bilateral discussions with First Nations advice from throughout the Basin and as a result decisions are “authority driven” rather being based in consensus processes.

Skeena: First Nation fishing plans are negotiated between Bands or Tribal Councils and the department. Bilateral meetings also occur between each of the sectors and the department. There is no process to engage all parties (all First Nations and all sectors) simultaneously in the decision making process, though decisions related to fisheries concerning Skeena Chinook are reviewed by the multi-sector IHPC prior to the final decision being made.

4.1.2 Promising directions

Provide written assurances that DFO will not unjustifiably infringe Aboriginal or treaty rights.³⁹

DFO could assure First Nations that any participation by them will not prejudice their aboriginal or treaty rights. This assurance could be part of the terms of reference for advisory bodies and be clear that this limited participation in and of itself will not constitute the extent of formal consultation with the Nation.

³⁸ Sources: Ionson 2009, First Nation Panel on Fisheries 2004

³⁹ Sources include: Institute for Dispute Resolution 2001

An example of how DFO is following this approach is in changes made to the draft Wild Salmon Policy based on First Nation input, which gave prominence to the First Nations legal context in the introduction, reaffirmed commitment to FSC fisheries with priority over other fisheries, stated that implementation is to be in accordance with existing and future guidance from courts, and added a new principle regarding obligations to First Nations.

Ensure multilateral processes do not push aside consultation and accommodation, where appropriate.⁴⁰

Where matters under discussion by multisectoral advisory bodies have the potential to prejudice and/or infringe on aboriginal or treaty rights, they should be referred to a bilateral process for consultation, negotiation, and accommodation.

A First Nation perspective is that existing processes have to move beyond consultation towards meaningful accommodation of rights. They call for a clarification that the priority of the fisheries is in addressing First Nations rights over the interests of other sectors.

Conduct bilateral consultations in connection with multilateral advisory processes.⁴¹

Multilateral processes have to work within a framework which supports First Nations working on a bilateral basis with BC and/or Canada with respect to issues that relate to their interests, rights and title. Bilateral obligations must be respected, fostered and supported alongside multilateral collaboration. First Nations generally view Tier 3 processes as appropriate only after any substantive issues have been addressed in Tier 2 agreements. In cases where Tier 2 processes and Tier 3 processes are evolving, DFO and First Nations should also look to build and clarify linkages between these processes.

A collaborative approach to managing Somass Chinook illustrates this priority. It included identifying First Nations objectives preseason, recognizing the First Nation fisheries priority, and holding bilateral meetings regularly in season, always preceding weekly sector meetings.

Use the three-tier framework to keep clear on the context for the government-to-government relationship between DFO and First Nations.⁴²

The three-tier framework for processes involving First Nations was introduced in the introduction to Section 3. Given that more structure and clarity is needed with regard to the relationship between DFO and First Nations, this framework, identified by aboriginal leaders in the 1990s, provides the basis for a shared vocabulary on some themes.

Tier 1: First Nations to First Nation processes to address shared issues and develop inter-tribal protocols, policies, management and fishing plans. Used as necessary, e.g. in the case of migratory fish where one First Nation's interest in fish can overlap with another – they discuss sharing or management issues among themselves

⁴⁰ *Source:* First Nations WSP Implementation Forum 2005, Institute for Dispute Resolution 2001

⁴¹ *Sources include:* Ionson 2009, ISDF 2008, ISDF 2009

⁴² *Sources include:* Institute for Dispute Resolution 2001, First Nation Panel on Fisheries 2004, Day 2009

Tier 2: First Nations and federal and/or provincial governments (some would say only federal) processes to reconcile Canadian and First Nations interests in the fishery – bilateral consultation at a minimum. The Treaty Commission process, treaties and Aboriginal Fisheries Strategy agreements are examples.

Tier 3: Processes engaging First Nations, government and third parties – stakeholders with an interest in fisheries – necessary in the case of shared fish stocks.

4.2 Meaningfulness and depth of the process

4.2.1 Issues and factors

First Nations believe the way they are consulted is often not meaningful and does not meet federal government obligations.⁴³

First Nations often feel they are approached with plans/strategies that are ‘top driven’ and no real constructive consultation has taken place. For example, in 2007 the Sliammon First Nation threatened the Province with legal action over lack of consultation on geoduck farms. The First Nation claimed there had not been meaningful negotiations and the resources of their territory were being sold off or tenured out by the government with no shared-decision making and little benefit to Sliammon.

Another recent example is the Union of BC Indian Chiefs’ (UBCIC) objection to the Federal BC Aquaculture Regulation and Strategic Action Plan on the grounds that it does not meet Canada’s legal and constitutional obligations to First Nations. The UBCIC urged Canada to meaningfully engage with affected First Nations about an appropriate process and to recognize First Nations land use and marine use plans in the criteria in the determination of sites. Their letter to the Minister of Fisheries and Oceans went on to call for attention to Aboriginal and treaty rights in the development of aquaculture regulations and policies.

Even when consultation takes place, it does not qualify as meaningful if it appears that the views of those consulted have not been heard. Often it is not clear how information from advisory processes is used in decision-making, if at all. There is usually no explanation for decisions that are not consistent with advice given. Participants, including First Nations, want a better understanding of how their feedback links to the range of existing management and decision-making processes.

First Nations would like increased decision-making responsibility/authority.⁴⁴

Managing in true partnership is what many First Nations believe is required in order to ensure conservation, adequate fisheries resources for aboriginal people, and an equitable sharing of those resources once the interests of conservation and aboriginal needs have been addressed. Input to the First Nation Panel on Fisheries included the following:

⁴³ *Sources include:* One World Inc. 2008, ISDF Dec. 2008, News Release Sliammon Goes to Court Over Lack of Consultation on Geoduck Farms 2007, Union Of BC Indian Chiefs March 30, 2010

⁴⁴ *Sources include:* First Nation Panel on Fisheries 2004; Morrell 1989

- The Sto:lo Nation Fisheries and Aquatic Resources Treaty Working Group stated “Only an equal level of decision making authority and management responsibility between First Nations and the Department of Fisheries and Oceans [on all fisheries management boards and committees] will sufficiently address this issue [shared decision making and co-management control].”
- Nuu-chah-nulth members stated that regional boards can only be effective if they have “real powers to make decisions on management and allocation of ‘money stocks’ such as salmon.”

Another example is from the Skeena. During the early years of efforts towards co-management, the Gitksan and Wet’suwet’en were not satisfied with a lack of federal recognition of the management authority of the Chiefs. The Tribal Council’s view was that if they accepted DFO’s position that the Minister of Fisheries had to retain the ultimate authority and responsibility for management decisions, this would reduce the First Nation role in management to consultation only and make the First Nation authorities agents of the federal government. While the Chiefs recognized the need to co-ordinate their management within the territory with the policies and programs of management agencies and fishing interests of other jurisdictions, they held that for such coordination to work the institutions outside the territory would have to acknowledge the authority of the hereditary Chiefs within the territory. Without such outside acknowledgement of the authority of aboriginal institutions, the First Nation negotiators would be seen as co-opted, and harvesters would be expected to resist the new management regime just as they had been resisting DFO regulation.

While Canada has been moving slowly in the direction of co-management with aboriginal peoples through initiatives such as the AFS and delegation of certain fisheries management responsibilities to resource users, individual First Nations would like more decisions to be delegated locally, and the First Nation Panel on Fisheries calls for a significant decentralization in decision-making and shared responsibility among First Nations, federal and provincial governments.

Increasing devolution of responsibility to First Nations can lead to inter-Nation/band conflict.⁴⁵

Conflict can be expected when a group of resource users is given increased access to a resource that they must share amongst themselves. This happened in Washington State following the Boldt decision. The decision did not address how the tribal 50% allocation was to be divided among the 20 tribal sovereigns in western Washington and a proliferation of intertribal conflicts regarding salmon ensued – though Tier 1-type processes eventually worked things out.

If the devolution of responsibility is not seen to be fairly distributed, the situation can be exacerbated. In BC, the granting of pilot sales licences to some Fraser River First Nations but not others lead to inequality, which in turn lead to divisions and competition between the nations, disputes, distrust and dysfunction.

⁴⁵ Sources: Ebbin 2004, Gaertner 2003

First Nations feel they have not been sufficiently involved in policy implementation.⁴⁶

First Nations need to be engaged in higher levels of management, such as policy development, rather than just at the operational level. At the same time, they wish to be part of decision-making and activities *stemming from* programs or policies, rather than just having their views considered on the *contents* of the policies. Without enhanced collaboration between DFO and First Nations, new policies have the potential to exclude First Nations in their implementation.

4.2.2 Promising directions

Recognize that true co-management lies at the authority-sharing end of the engagement spectrum.⁴⁷

Interpretations of co-management can include a range of engagement processes, but the spectrum described in section 2.2 illustrated that true co-management does require sharing of authority. DFO's Aboriginal Policy Framework is on track in its statement that "It is the policy of DFO to shift from top-down, centralized management of the fisheries resource by the Department to a shared stewardship of the resource that includes the devolution of certain fisheries management authorities to resource users."

Ensure that the results of consultation and co-management processes can affect decision-making.⁴⁸

Federal government guidelines appropriately describe the priority of considering the results of consultation (and potentially co-management arrangements) in decision-making, in stating:

- The duty to consult requires a genuine effort to address legitimate concerns and interests that relate to the impacts of contemplated Crown conduct on section 35 rights.
- To be meaningful, there must be a genuine willingness and ability to adjust the contemplated conduct, if such is appropriate.
- Consultation is intended to respond to Aboriginal rights and interests, to minimize the potential adverse affects of a given activity, and to substantively address the concerns raised. To do so, it is necessary that the Crown be prepared to respond, have some degree of flexibility in relation to the planning and implementation of the proposed activity, and consider potential accommodation measures that may be appropriate in a given context.

Take engagement with First Nations beyond operational issues.⁴⁹

Aboriginal groups are most often consulted on localized, operational issues, and they should also have the opportunity for involvement in broad regional policy or national

⁴⁶ Sources include: Gardner 2009b, One World Inc. 2008, All-Nations WSP Dialogue 2005

⁴⁷ Sources include: DFO 2007

⁴⁸ Source: INAC 2009

⁴⁹ Sources include: Gardner 2009a, First Nations Leadership Council 2007

policy issues. They need to be consulted and engaged at the conceptual stage, when policies and legislation are developed that define the range of possibilities.⁵⁰

The First Nation Panel on Fisheries Report focuses on a broad concept of co-management that includes participation in the development of policies and overall objectives for fisheries management as well as direct involvement in conservation and rehabilitation programs and in detailed decisions on the regulatory controls and management programs that should be applied to individual First Nations fisheries. This goes well beyond advising on operational decision-making and program implementation at the level of individual commercial fisheries.

Conversely, consultation cannot stop with the development of policy. Changes appropriately were made to the draft Wild Salmon Policy committing to consult with First Nations in implementation steps (identification of CUs, development of strategic planning process and annual assessment, fishery and habitat planning, and performance review), though satisfaction with policy implementation in this regard is uncertain.

Consult First Nations as early as possible.⁵¹

Consultation is not meaningful if it occurs too late to have a chance of substantively affecting the outcome. In any process, from policy development to operational decision-making, First Nation consultation should begin at the earliest possible stage.

Explain how advice from consultations is used.⁵²

For engagement processes to be meaningful, there have to be clear feedback loops between information, recommendations and decisions. While the Department may or may not follow the advice provided, it is clear that an explanation of what is done with the advice and/or recommendations is required – how the advice is considered and incorporated into Departmental decision-making, and what/whose advice is not taken. Documentation and follow-up on these matters provide transparency and accountability.

There is also a need to clarify how, where and when advisory processes fit into formal decision-making processes such as IFMP development, integrated oceans plan development, habitat status reports, and wild salmon pilot plans.

Delineate agreed-on steps in meaningful consultation.⁵³

A way to ensure shared understanding of what constitutes a meaningful process is to agree on criteria or steps in consultation that meet the standards of both parties. These could be delineated in an MOU. They could be designed to suit individual First Nations while adopting best practices from elsewhere.

A starting point could be elements that may be included in the duty to consult according to the courts. These include:

- gathering information to test policy proposals,

⁵⁰ See section 3.3.6 for a short description of existing opportunities for involvement in policy development.

⁵¹ *Sources include:* Gardner 2009a

⁵² *Sources include:* Fisheries and Oceans Canada 2004 Consultation Framework, DFO 2009, Day 2009

⁵³ *Sources include:* Gardner 2009a, Fisheries and Oceans Canada 2004 Consultation Framework

- putting forward proposals that are not yet finalized,
- seeking the First Nations' opinion on those proposals,
- informing the First Nation of all relevant information upon which those proposals are based,
- providing notice of the matter in sufficient detail for the Aboriginal group to provide its views,
- providing a reasonable period of time for the Aboriginal group to contemplate and prepare its views,
- giving the Aboriginal group an opportunity to present its views,
- not promoting but listening with an open mind to what the First Nation might have to say,
- consideration of the views expressed,
- being prepared to alter the original proposal,
- providing feedback both during the consultation process and after the decision process.

Address issues of specific interest to First Nations.⁵⁴

There is a need for both complex and tailored approaches to co-management to accommodate the diversity of First Nations interests and complex resource management considerations. To appropriately address First Nations interests and concerns, the different perspectives that First Nations bring to the issue need to be heard and understood. There are issues that are of specific interest to First Nations, and upon which First Nations may have a specific and unique perspective. Consultations must occur with the intention to address issues that affect the First Nations concerned – e.g. explore potential impacts on First Nations activities in feasibility studies.

Take into account that First Nations' connection to the resource goes beyond use.⁵⁵

Essentially, First Nations need to be recognized as resource managers and owners, as well as resource users. As the First Nation Panel on Fisheries observed in the case of the herring fishery: “there is nowhere near enough First Nations involvement in or benefit from the lucrative herring fishery and .. First Nations do not play the role in assessment and management of herring stocks that they should.”

DFO's Consultation Framework is misleading in its statement that “Consulting with Aboriginal groups and individuals is, to a large extent, no different than consulting with other people and communities affected by decisions of DFO.”⁵⁶ Consulting with First Nations is in many respects very different from consultations with stakeholders and other communities of interest.

⁵⁴ Sources include: One World Inc. 2008, Gardner 2009b

⁵⁵ Sources include: DFO 2004, First Nation Panel on Fisheries 2004

⁵⁶ The framework does advise that the practitioner contact colleagues and experts with experience in the area of aboriginal consultations

4.3 Multiplicity of First Nations

4.3.1 Issues and factors

The multiplicity of First Nations in BC strains DFO's capacity to engage with them on a bilateral basis.⁵⁷

There are over 200 bands/Nations with which DFO may interact on a wide range of topics (e.g., food fisheries, participation in commercial fisheries, habitat, aquatic management, treaties, land claims agreements, enforcement, and capacity building). Few First Nations have treaties that clarify the co-management relationship, and there are few aggregate organizations through which to communicate.

Given the number of First Nations involved, consultation can take a considerable length of time and can be bureaucratically cumbersome.

Effective co-management is easier to achieve in watersheds with fewer First Nations (e.g. the Nass) as compared to larger watersheds with numerous First Nations and more stakeholders (e.g. 94 bands/Nations on the Fraser).

The multiplicity of First Nations in BC constrains their engagement in various other ways.⁵⁸

While some Nations work in aggregate groups of various types at ecoregional and coast wide levels, many of the First Nations in BC are not organized into groups.

Challenges arising where multiple First Nations are involved include:

- First Nations that share matters of mutual concern – e.g. at the watershed level, lack functional agreements as to how they will meet and make decisions.
- First Nations lack avenues for effective interactions with other fishery interests (e.g. for participation in multilateral (Tier 3) processes).
- Getting many First Nations together to decide on matters such as how to share catch in various stocks is difficult.
- First Nations lack avenues for effective engagement in province/coast wide policy initiatives and issues.

The roles of aggregate First Nation organizations in co-management are diverse and limited.⁵⁹

The 14 or so aggregate First Nations organizations that do exist are diverse and may not have a clear mandate for decision-making. The need to address rights at the level of the individual First Nation limits their role, as the organizations generally cannot speak for their member Nations on significant issues. Their membership does not align with the 8 AAROMs, and it changes over time as Nations join and depart from various tribal groupings.

⁵⁷ Sources include: DFO 2007, Garner and Parfitt 2006

⁵⁸ Sources include: Gaertner 2003, ISDF May 2008, Institute for Dispute Resolution 2001, Day 2009

⁵⁹ Sources include: First Nations Forum on Implementing Strategy 3 of the WSP 2006

4.3.2 Promising directions

Recognize that the mandates of Aboriginal organizations may require consultations at several different levels.⁶⁰

Consultations planning should take into consideration the possibility that member, of associations such as Aboriginal fisheries commissions may seek the opportunity to be consulted on a bilateral basis. Recognize that the mandates and limitations of Aboriginal organizations may require that consultations take place at several different levels (e.g., association, tribal council, or band).

Continue to support First Nation collaboration (Tier 1) for fisheries management.⁶¹

DFO (PICFI), the First Nations Leadership Council and others recognize the need to support First Nations coming together to:

- address common issues,
- work out matters that affect them at different geographic scales,
- address common fisheries management needs and resource sustainability objectives,
- coordinate and inform participation in multi-sector processes,
- coordinate and inform participation in bilateral processes with government,
- have a stronger collective voice,
- develop intertribal protocol agreements or an inter-tribal treaty on fisheries,
- develop a shared vision on the management of fisheries resources and the implementation of fishing rights.

In many cases, as described in section 3.4, First Nations are already working closely with each other within watersheds or coastal zones. DFO programs including AAROM and AFS have helped. For example, the AFS program has enabled the Skeena nations to develop a coordinated approach to conservation and management of the fisheries allocated to the member communities from tidewater to headwaters. At the same time, the fact that all of the Nations work together under the Skeena Fisheries Commission allows DFO to deal with one body rather than five separate First Nations and numerous aboriginal communities.

At the local/watershed level experience has shown that working together can help First Nations build relationships as a foundation for Tier 1 agreements. First Nations in the Nuuchahnulth Tribal Council area have a long history of working together and can draw on existing political decision processes and communication networks. On the Skeena, an initial focus on technical matters rather than allocation or sharing of catch among First Nations on the river avoided political and potentially divisive issues.

At the regional level, DFO is supportive of a BC wide process or mechanism to address broad First Nations fisheries issues with the objective of developing a positive and productive working relationship. The First Nations Fisheries Commission has a promising role to play in support of fisheries co-management with DFO. This BC-wide

⁶⁰ Source: DFO 2004

⁶¹ Sources include: First Nations Leadership Council 2007, PICFI PP 2007, Garner and Parfitt 2006, First Nation Panel on Fisheries 2004

First Nations fisheries organization is an important compliment to existing processes. It has the potential to facilitate inter-tribal dialogue on policy development as well as helping support local processes.

Encourage resolution of inter-tribal allocation by First Nations.⁶²

The First Nations Panel on Fisheries recommended that steps be taken by First Nations to resolve intertribal allocations, since joint allocations would encourage them to work together on management of migratory stocks. The First Nations Leadership Council recommended the development of approaches to intertribal resource sharing discussions that foster and maintain unity. It suggested that regional First Nations groups develop intertribal resource sharing protocols and investigate how these might be applied at the province-wide scale.

The Inter-Tribal Fishing Treaty between Indian Nations of the Fraser and Columbia watersheds, signed in 1993, envisaged development of a common inter-tribal fishery policy that would be approved by all parties. The treaty has been inactive for some time.

Take a community-up approach and recognize that bi-lateral (Tier 2) processes take time.⁶³

Because First Nations mandates are defined at the local territory level all involved must acknowledge that bilateral consultations will continue to be necessary, and that, given the number of First Nations involved, consultation needs to take time.

First Nations call for a grassroots or community-up approach to building partnerships and foundations for co-management. The Skeena Fisheries Commission is again a positive example. The Commission focused on building equal partnerships with various fisheries interests to ensure that distinctive management approaches would be respected and coordinated as follows: among the communities of each Nation; between the Nations; and among the Nations, Canada, BC and participants in the fishing industry.

4.4 Complexity of scales and themes of engagement

4.4.1 Issues and factors

Different types of fisheries management decisions engage participants at different geographical/spatial scales.⁶⁴

Engagement processes occur at various geographic scales, from local area/watersheds to aggregates or coastal areas to large ocean ecosystem areas to the provincial scale. Following is a summary of the types of decisions that are a part of the salmon management process and where the decisions are made.

⁶² Sources: First Nations Leadership Council 2007, First Nation Panel on Fisheries 2004

⁶³ Sources include: First Nations Forum on Implementing Strategy 3 of the WSP 2006, First Nation Panel on Fisheries 2004, Gardner 2009b

⁶⁴ Source: Ionson 2009

Regional:

- Interpretation of national policy
- Development of regional guidelines
- Conservation objectives
- Contentious cross sectoral management decisions
- Multiple area /cross sectoral fishing plans
- Lead IFMP development and recommendations to Minister
- Stock assessment priorities
- Funding Priorities
- Commercial salmon allocation

Watershed:

- Planning and implementation of coordinated watershed-wide fishing plans
- Stock assessment priorities

Local:

- Fishing times
- Area specific management actions

Different fisheries interests and sectors tend to focus on different locations, from ocean to up-river.⁶⁵

Commercial interests tend to support rules based on MSY of most abundant or enhanced stocks while sport fishers and upriver First Nations support stock-specific management, aiming to protect a greater diversity of stocks. This can lead to tension in processes that seek to engage coastal First Nations and up-river First Nations, and further complexity when other sectors are also included. For example, participants in the Somass Roundtable doubted that the process would continue to be successful if it tried to extend out from terminal to mixed stock interception fisheries.

Migratory species – larger systems – make collaboration more difficult.⁶⁶

In larger systems where fisheries are more geographically dispersed and information is scarce competition between different groups is high and trust tends to be low. When stocks are under pressure (e.g. concerns about the effect of mixed stock fisheries in the Skeena on coho and steelhead) there is less room for “win-win” resolutions to conflicts.

Resource characteristics that draw in considerations beyond a local community (e.g. migration) make it difficult or impossible for the community to co-manage the resource. In particular, the fluidity, mobility and extensiveness of salmon leads to situations where joint use involves subtractibility (one party’s access to the resource is at the cost of access by another party) and exclusion is difficult, again narrowing the range of options available to please all parties involved in co-management. In large, complex systems such as the Fraser, this has lead DFO to seek out integrated dialogues with First Nations throughout the watershed and marine areas.

⁶⁵ Source: ISDF Nov. 2008

⁶⁶ Sources include: Ionson 2009, Ebbin 2004

The scope and scale of the decision affects the extent to which decision-making responsibility can be shared.⁶⁷

In the consideration of fisheries management processes and the evolution toward different decision-making processes, it is DFO's perspective that some decisions can be devolved to local, integrated processes while other decisions have to be made at a larger scale or retained by the authority. This is largely because some types of decisions are regional in scope involving a wide range of users that in the short term cannot effectively be melded into an integrated decision making body. Also, some decisions are the responsibility of the Government of Canada by virtue of legislation or jurisprudence (e.g., First Nations FSC requirements). However other decisions can be made at the local level, opening possibilities for devolution of authority on some matters.

The complexity of processes makes it difficult to define roles and responsibilities of various bodies in relation to each other.⁶⁸

One of the engagement challenges resulting from the complex array of engagement processes is a lack of clarity in the relation of the roles and responsibilities of various advisory/planning bodies associated with these different management functions, from policy through planning to enforcement – particularly for salmon. Even within the IFMP process, the roles and responsibilities of different bodies in relation to the different stages and tasks associated with IFMP development, application and review are not clear. Adding to the complexity, fisheries-specific and place-based (e.g. watershed) processes do not easily mesh. Linking existing or evolving processes and practices to new co-management arrangements will be challenging.

First Nations engagement in DFO's multiple functions lacks integration.⁶⁹

Apart from the Fall Consultation/Community Dialogues, engagement of First Nations and stakeholders is not aligned across the various responsibilities of DFO – Oceans management, FAM, C&P. This can lead to confusion, as participants wonder about connections between processes such as fishery advisory committees and marine planning committees, or between harvest planning bodies and habitat planning and stewardship bodies. It can also mean inefficiencies, difficulties in implementing an ecosystem-based approach, and a lack of integration among the array of fisheries-related management functions.

⁶⁷ Sources include: Ionson 2009

⁶⁸ Sources include: Kadowaki 2008, Ionson 2009, Day 2009, ISDF Dec. 2008, One World Inc. 2008

⁶⁹ Sources include: DFO Pacific Region 2009, Day 2009

4.4.2 Promising directions

Establish co-management arrangements that work/link at a range of scopes and scales.⁷⁰

As recognized by PICFI, improvements to co-management should be pursued at a range of geographic scales and cover both operational fisheries management and broad policy issues. Various commentators have suggested the following:

- Consideration should be given to how linkages between fisheries-specific and place-based (watershed) governance can be connected, e.g. by having fisheries interests represented in watershed councils, roundtables, etc.
- The division of roles and responsibilities between integrated advisory boards and sectoral advisory boards could be clarified.
- The potential for new or reformed institutions that have delegated authority and clear roles and responsibilities should be considered. These could include area-based bodies that provide a clear framework for integrating First Nations, Federal, Provincial and local government jurisdictions and authority.
- There may be a role for an umbrella body or bodies that address broader jurisdictions, coast-wide or regionally and whose objective is to coordinate the efforts of area-based bodies.

Appreciate the resilient qualities of complex systems.⁷¹

At the same time, the complexity of processes relevant to fisheries management should not be seen only as a problem. Studies of fisheries management by Syma Ebbin have shown that the mixture of nested co-management institutions in the Pacific Northwest⁷² has provided benefits including getting a greater number and diversity of interests involved and offering opportunities for the formation of various alliances and cross-cutting cleavages. She found that the high degree of engagement of diverse interests enriches the process of defining problems with a greater degree of complexity. Complex problem definitions in turn facilitate more refined, nuanced, robust and resilient management plans and regulations.

Explore the potential for new regional agreements, including policies on consultation and dispute resolution.⁷³

Suggestions from First Nations for region-wide arrangements include:

- an umbrella body or bodies that address broader jurisdictions, coast-wide or regionally and whose objective is to coordinate the efforts of area-based bodies;
- a high-level protocol or MOU with governments to improve relationships as they relate to the fishery;
- a consultation and accommodation policy with respect to fisheries and aquatic resources;

⁷⁰ Sources include: Ebbin 2002, Ebbin 2009, Kadowaki 2008, ISDF Dec. 2008, PICFI PP 2007, First Nation Panel on Fisheries 2004, Davis 2008

⁷¹ Sources include: Ebbin 2002, Ebbin 2009

⁷² The co-management institutions of the Pacific Northwest have a diversity of participants: 20 tribes in Washington, 4 in the Columbia River, 3 on the Klamath and various state and federal agencies.

⁷³ Sources include: First Nations Leadership Council 2007, First Nation Panel on Fisheries 2004

- a dispute resolution system for issues arising between First Nations and between First Nations and government.

4.5 Representation of parties

4.5.1 Issues and factors

There is a lack of continuity in representation of parties in processes.⁷⁴

Non-First Nation participants in integrated processes sometimes find that consensus decisions are difficult to achieve because not all First Nations views are represented, and after a decision is reached it may require modification to address First Nations views not originally discussed. Even when aggregate First Nation bodies help streamline interactions, these tribal associations often break down, or member nations change.

There is also a lack of continuity on the government side, as the DFO bureaucracy is reorganized or individuals change positions. It can be argued that a new First Nations representative in a process (e.g. a newly elected Chief) might have a new bargaining position, as might a public servant following a new government policy, but the First Nations representatives are likely to have greater continuity of knowledge of the area than are government officials who may arrive from outside of the province.

There is a lack of clear procedures for attaining First Nations representation.⁷⁵

In general, the structures or procedures used to get First Nations representatives onto the various committees are not clear. Even after the Salmon Integrated Harvest Planning Committee and the Integrated Herring Planning Committee had been operating for two years,⁷⁶ there was no First Nation process to appoint representatives, so participants were invited by DFO.

First Nations lack full representation in some processes.⁷⁷

Government of Canada guidelines recognize the importance of ensuring the participation of Aboriginal groups who have an interest in or who may be affected by decisions. For consultation based on a legal duty to consult, participation has to include those Aboriginal groups whose established or potential rights could be negatively affected. Nevertheless, there is a gap in First Nations representation in various processes. In particular, some integrated processes are functioning at less than effective levels because First Nations are not fully represented. For example there is some First Nations commercial representation on the Commercial Salmon Advisory Board but there is a lack of First Nation community representation (particularly from up-river Nations).

⁷⁴ Sources include: Ionson 2009, First Nations Forum on Implementing Strategy 3 of the WSP 2006

⁷⁵ Sources include: First Nations Leadership Council 2007

⁷⁶ As of 2007. The author was not aware of changes as of the time of writing.

⁷⁷ Sources include: Ionson 2009, INAC 2009, All-Nations WSP Dialogue 2005

Only certain First Nations individuals are legitimate representatives of their governments.⁷⁸

Individual First Nation members attending consultative processes resent it when others assume they are representing their First Nations if they do not hold that mandate (as a Chief would). They may hold back from contributing for fear their input might be misconstrued as meeting the Crown's responsibility for bilateral consultation. Other participants are aware of this challenge, wishing to proceed with discussions or decisions but realizing that a lack of First Nations leaders means that political problems may lie ahead if they do proceed.

4.5.2 Promising directions

Have First Nations organizations put forward members to Advisory Committees.⁷⁹

An advantage of the West Coast Vancouver Island Aquatic Management Board and the Skeena Watershed Committee was that they included First Nations representatives selected through First Nation political processes. The decisions arising from such processes have greater legitimacy than those without such a formal selection process.

Ensure “the right people” are selected to lead co-management.⁸⁰

For effective and inclusive fisheries management, the most effective and committed people must be in place to co-manage stocks – people with the right cultural and educational skills and attitudes. As well, mutual respect and trust can be fostered by participation of more senior decision-makers and leaders from both DFO and First Nations.

Require that members of co-management bodies be accountable to those they represent.⁸¹

Representatives in co-management processes must be accountable to their constituents. Participants who are representatives of a constituency are expected to bring to the discussions the general views, knowledge and experience of those they represent, and bring back to their constituencies an understanding about the deliberations of the consultation activity and reasons for decisions taken. These expectations should apply to First Nations participants as well as others.

⁷⁸ Sources include: First Nations Forum on Implementing Strategy 3 of the WSP 2006

⁷⁹ Source: First Nation Panel on Fisheries 2004

⁸⁰ Sources include: First Nation Panel on Fisheries 2004, First Nations Forum on Implementing Strategy 3 of the WSP 2006

⁸¹ Sources: PICFI PP 2007, Sablefish Advisory Committee Draft Terms of Reference

4.6 Trust, fairness and cohesion

4.6.1 Issues and factors

Lack of reliable information leads to lack of trust.⁸²

Lack of information, particularly as it pertains to the impact of fisheries on stocks, is one feature of the management process that ultimately leads to lack of trust between participants. Typically, First Nations and in-river recreational fishermen believe the impacts of the marine commercial and recreational fisheries are greater than estimated by DFO and that management actions should be more stringent. Conversely, marine harvesters may believe there is no evidence to suggest they are having a significant impact on these stocks and management actions are not justified.

Small, local fisheries supported by high levels of stock-related information where advisors know each other are experiencing greater success in adopting collaborative approaches than other more complex fisheries. In larger systems where fisheries are more geographically dispersed and information is scarce trust is relatively low.

Increasing loss of access to fisheries has led to First Nations mistrust of DFO.⁸³

One of the keys to legitimacy for a fisheries authority is the extent to which the authority can demonstrate effectiveness in implementing regulations and in keeping the system sufficiently functional, orderly, and acceptable that closures are not required. This type of legitimacy for DFO is lacking in the view of many First Nations in BC. Over the decades, First Nations have placed responsibility on DFO for declines in fishery resources and loss of access to fisheries. They sometimes claim to have been discriminated against by departmental policies. They have experience with regulations being implemented in ways that constrain their access even having provided input into those regulations (e.g. under SARA).

In some processes First Nations are dominated by other fisheries interests.⁸⁴

In multilateral processes First Nation voices can be overwhelmed by other sectors, and by societal imperatives as represented by DFO (“greater good”). For example, the advisory process for herring management and allocation of catches was dominated by the commercial industry, with limited involvement of First Nations. Some saw consultations on the WSP in this light.

First Nations knowledge is not being sufficiently included.⁸⁵

Many believe that traditional ecological knowledge is not feeding into management decisions to near the degree it should. First Nations are constrained from using their own voices in decision-making processes dominated by science and numbers. From a wider

⁸² *Source:* Ionson 2009

⁸³ *Sources include:* All-Nations WSP Dialogue 2005, Pinkerton and John 2008

⁸⁴ *Sources include:* First Nation Panel on Fisheries 2004

⁸⁵ *Sources include:* First Nation Panel on Fisheries 2004, ISDF Nov. 2008, Ebin 2004

perspective, these gaps are caused by differences in worldviews and in ascribing legitimacy to different knowledge systems.

Resource scarcity reduces room for mutually agreeable options.⁸⁶

Population declines and resource scarcity reduce the available options for management and increase competition, making collaborative decision-making (e.g. “win-win” solutions) more difficult. In processes focused on shrinking resources the focus tends to be on shares and there is little room for trade-offs.

4.6.2 Promising directions

Cultivate clarity and transparency.⁸⁷

Clear roles and responsibilities, and explicit expectations for co-management are critical. The greater the understanding of the roles and responsibilities of the participants, the greater the trust between them. DFO is working with the First Nation Fisheries Council, the Integrated Salmon Dialogue Forum and others on a co-management framework which may help to provide this type of clarification. Co-management participants must clearly identify their fishery interests and work to develop a foundation of mutual trust and respect.

Seek cross-cultural understanding.⁸⁸

Within any co-management regime care must be taken to respect First Nation cultural values and practices. Those involved in co-management arrangements (e.g. DFO employees) should strive to cultivate a reasonable level of understanding of the First Nations territories, cultures and economies involved.

Improved understanding helps the parties in co-management identify and incorporate into agreements and frameworks common goals shared by the parties. This, in turn provides a firm foundation for ongoing co-management.

Recognize different knowledge frames and share information.⁸⁹

DFO recognizes that principles for co-management should require that fishery groups and government bring their knowledge and expertise to the table to seek mutually beneficial outcomes. First Nations traditional ecological knowledge and local knowledge of others must be included in addition to scientific knowledge.

When this principle is followed, it leads to one of the main benefits of co-management: expansion of the knowledge base for fisheries management. Experience with co-management of Pacific salmon management and allocation in Washington State has demonstrated related benefits:

⁸⁶ Sources include: ISDF Jan. 2010

⁸⁷ Sources include: Ionson 2009, PICFI PP 2007

⁸⁸ Sources include: First Nation Panel on Fisheries 2004, First Nations Forum on Implementing Strategy 3 of the WSP 2006, Gardner 2008, Gardner 2009a, Pinkerton 1996

⁸⁹ Sources include: Pinkerton 1996, Ebbin 2004, Ebbin 2009, Ebbin 2002, Gardner 2008, Pinkerton and John 2008, Pinkerton 1996, PICFI PP 2007

- Co-management has created institutional paths for the transfer of knowledge at different geographic and political scales.
- Co-management has facilitated production, communication, dissemination and integration of information among those with different types of knowledge (e.g. biologists and fishermen).
- The sharing of information has legitimized different knowledge systems and expanded who may legitimately have input to management.
- Co-management has created technical and policy processes where these flows of information are integrated, allowing the creation of a more comprehensive knowledge base to emerge.
- The creation of an expanded knowledge base has provided an improved informational foundation on which management and allocation decisions can be made.
- The substantial decentralization of research and management that accompanied the shift to co-management has enabled managers to better accommodate the social and cultural needs of the local tribes and fishing communities.

Incorporating local/traditional knowledge shows respect for First Nations culture and helps assert indigenous values, interests and perceptions regarding the resource, while improving the management of the resource and promoting the convergence of interests.

It has also been pointed out that sharing of knowledge by natural scientists plays a key role in legitimizing regulations, but this depends on science being communicated effectively and time taken to teach and discuss it respectfully, and sufficient time taken on information dissemination to allow consensus to grow. In other words, to be credible, information has to be accessible, and tools for communication, information exchange and decision-making must be provided. A 2008 report on Knowledge Integration in Salmon Conservation and Sustainability Planning provides more detailed direction in this regard.

Collaborate on research, monitoring and compliance.⁹⁰

Experience suggests that a good starting point for sharing knowledge is collaboration on research, monitoring and compliance. Collaborative approaches to these management functions can increase transparency, fairness and equity; reduce disputes about fish numbers; increase confidence in compliance policies and practices; and increase voluntary compliance.

The experience leading up to and including the Area F Clam Management Board in Nuuchahnulth territory demonstrated that legitimate local management can be developed in a manner that promotes sustainability and compliance with regulations to an extent not possible with traditional top down management.

One of the underlying strengths of co-management in the Nisga'a fisheries program is the quality and reliability of its data. The Nisga'a operate fishwheels for commercial and communal harvesting as well as monitoring.

In Washington, initial contentiousness surrounding co-management and lack of trust between state and tribal co-managers meant that many technical analyses were duplicated or subjected to critical review. This can be interpreted as inefficient; however, it fostered a system of peer review, facilitating critique and refinement of the information and analyses used in management.

⁹⁰ Sources: Garner and Parfitt 2006, Ebbin 2009, ISDF Monitoring and Compliance Panel 2010, Pinkerton and John 2008

Build relationships by working together.⁹¹

A head start for effective co-management is found in strong interpersonal relationships among those involved. Collaborative management and decision-making processes can in turn help build those relationships.

Finding ways to work together is key. For example, having many DFO fishery officers in the Skeena region as members of First Nations communities has resulted in greater trust and cooperation between local communities and DFO (and greater incorporation of local knowledge in fisheries management decisions).

It is also important to have patience and be willing to compromise in joint drafting of agreements and in working through multiple drafts of agreements together.

Have a neutral facilitator/third party ensure fairness.⁹²

Processes that are facilitated by a neutral third party are more likely to be supported by First Nations. An experienced coordinator/convenor/facilitator can ensure participants have equal opportunity to express their points of view and help diffuse power differentials. If government is both the sponsor and the convenor of a process, the process may be perceived as just another way to impose government's agenda.

A collaborative model requires that we remove the differential of power (Duivan at).

4.7 Capacity

4.7.1 Issues and factors

First Nations often do not have sufficient capacity for co-management.⁹³

Some First Nations may not be able to take on the responsibility of co-management. Leadership, skills and appropriate local institutions, such as fisheries programs, may not exist within the community to initiate or sustain co-management efforts. Even for processes less demanding than co-management, First Nations often lack sufficient resources to critically consider DFO information and recommend alternatives. The lack of resources leads to reduced ability to engage First Nations in Tier 2 and multi-sector processes.

In existing co-management initiatives, capacity varies on a group-by-group basis, including among AAROM processes. The Skeena is often cited as a watershed where First Nations have built significant capacity for fisheries management. On the Fraser River, there is strong technical support for First Nations at the broader level, but limited support at the band level. In both basins the non-DFO technical support available to tribal councils is helpful and provides capability to assess and explore different fishing plans and explore impacts, but at the band level there is no technical or financial support.

⁹¹ Sources include: ISDF Jan. 2010, First Nations Forum on Implementing Strategy 3 of the WSP 2006, Garner and Parfitt 2006

⁹² Sources include: Pinkerton 1996, ISDF Jan. 2010, Institute for Dispute Resolution 2001

⁹³ Sources include: Ionson 2009, First Nations WSP Implementation Forum 2005, ISDF Dec. 2008

Many First Nations are overwhelmed by numerous, diverse consultation demands.

First Nations fisheries experts, leaders or other representatives who are willing and able to participate in advisory or co-management processes are often “spread thinly” – i.e., their presence is needed at too many tables and meetings. In addition, First Nation personnel with resource management expertise have many issues to attend to in addition to fisheries. On the Nass River the Nisga’a Fisheries program, developed and operated over the past two decades, is well-respected. Over recent years, however, Nisga’a fisheries staff have been challenged to find the time to continue meeting the high standards, as they are required to allocate increasing amounts of their limited resources to responding to development proposals such as mining and energy projects that impact the Nass territory and the fisheries resource.

Co-management can add to costs for government agencies.⁹⁴

In the short-run, establishing co-management requires government to make high investments of time, financial resources and human resources. There is an ongoing possibility of increased bureaucracy and transaction costs – for example, demands on departmental resources to undertake requested analytical and consultation activities.

As for First Nations, the costs for DFO individuals to participate in co-management strategies (time, money) may outweigh the expected benefits. There are those who feel that co-management is too costly and time consuming and that other alternatives, such as stricter regulations, may be better.

The multiplicity of engagement processes increases demands on organizational resources.⁹⁵

The burgeoning array of forms of engagement places additional demands on resources available for co-management. Support for and participation in the array of fishery advisory processes may leave insufficient resources for DFO fisheries management staff, First Nations and advisors to participate in other, local and watershed processes.

Co-management processes can be time-consuming and fatiguing.⁹⁶

Consensus decision-making can be time-consuming, particularly since the need to develop consensus among a range of interests can lengthen the decision-making process. Participants become fatigued. Some First Nations representatives are even tired of participating in processes to discuss the design of co-management arrangements.

Sunsetting or lack of implementation of programs and policies can hamstring co-management arrangements.⁹⁷

DFO recognizes that capacity-building initiatives are required to improve the ability of some partners to contribute effectively to the shared management process, and government programs such as AAROM and AFS, though not without their critics, have

⁹⁴ Sources include: Ionson 2009

⁹⁵ Sources include: Ionson 2009

⁹⁶ Sources include: ISDF May 2008

⁹⁷ Sources include: First Nation Panel on Fisheries 2004, Pinkerton et al. 2005, DFO 2007

been invaluable in supporting various initiatives. Sunsetting or cutbacks to programs such as these, or to other contribution agreements, curtails the potential of co-management. Lack of funding has constrained the ability of the West Coast Vancouver Island Aquatic Management Board to fulfill its potential as a model of shared management. On the Nass, an intent to follow up the Final Agreement with continued annual FFA top-up funds after the first five years was not realized. On the east coast, sunsetting the At Sea Mentoring Initiative has been at the cost of capacity-building.

4.7.2 Promising directions

Build the capacity of DFO to implement and engage in co-management.⁹⁸

DFO needs sufficient resourcing to:

- develop/facilitate the initiation of co-management arrangements,
- participate effectively as a party to co-management agreements,
- support capacity building in First Nations for their involvement in co-management.

PICFI is key to all of the above, and this report is intended to contribute to the first task listed.

Support for the second has been provided in forms such as guidelines and training, e.g. INAC's 2009 guidelines, Best Practices for consultation provided by DFO Pacific region, and First Nations awareness training in 2007. PICFI has acknowledged that considerations of sustainability should be included in establishing co-management arrangements – new co-management processes must be sustainable in the long term and include a funding strategy as part of the design work.

Relevant to the third task in the above list, a guiding strategy of the Aboriginal Policy Framework is to build DFO's capacity to serve Aboriginal groups, providing organizational and staff capacity to serve Aboriginal groups and respond to emerging issues through organizational and training initiatives.

Build the capacity of First Nations to engage in co-management.⁹⁹

While not always sufficient, there are significant resources made available to First Nations to build capacity and engage in co-management (e.g. AAROM, AFS, PICFI). DFO acknowledges that, on a province-wide level, there is a need for First Nations fisheries coordination and technical capacity to support more local processes, and enable effective participation in province-wide policy initiatives and interactions with other fishery interests. Similarly, at a national level the government recognizes that Aboriginal groups need to further develop their financial, technical and scientific capacity in order to achieve the level of participation in the aquatic sector and its management to which they aspire.

The First Nation Panel on Fisheries emphasized that it is important to take an incremental approach to First Nation involvement in management and all changes may have to be staged. The Panel noted that processes that include First Nations in management

⁹⁸ Sources include: DFO 2007, INAC 2009, Phelan 2009b, PICFI PP 2007

⁹⁹ Sources include: PICFI, DFO 2007, First Nation Panel on Fisheries 2004, Garner and Parfitt 2006

decisions affecting their fisheries interests have to be developed and supported by Canada to implement this recommendation.

Employing First Nation community members in fisheries management at the local level is another way of contributing to capacity building within First Nation communities.

Acknowledge and tap into existing First Nations capacity.¹⁰⁰

DFO recognizes that many Aboriginal communities are ideally situated to participate in the aquatic sector and its management and their people have a wealth of relevant traditional knowledge and skills. Furthermore, Aboriginal groups have growing technical capacity to participate and in many cases they are already playing an important role in fisheries management.

As noted in the discussion of benefits of co-management, application of First Nations abilities contributes much to the quality of fisheries management – many would argue that it is essential. In particular, First Nations possess, and may be willing to contribute:

- a wealth of knowledge that has been passed down over generations;
- local knowledge based on close observation of fish and fish habitat through the seasons;
- the presence and understanding to provide continuity watershed restoration, stock enhancement, stock assessment, and monitoring and enforcement efforts;
- the ability (or potential) to collect accurate data at reduced costs.

The First Nation Panel on Fisheries observed that sharing of decision-making holds the promise of reducing bureaucracy and reducing, although not replacing, the need for costly, time consuming and not always effective government-to-government consultation processes.

Support First Nations aggregations in their capacity-building work.¹⁰¹

Some First Nation aggregate bodies have contributed much to capacity building, and deserve ongoing support in their endeavours. For example, Uu-a-thluk has increased Nuu-chah-nulth capacity to manage fisheries by providing policy advice as well as technical support to First Nations fisheries projects. An initial focus on technical matters by the Skeena Fisheries Commission allowed member First Nations and DFO to improve their scientific and technical capacity and to be able to act more authoritatively when it came to fisheries management decisions. The SFC has a strong science and research team with reliable data, which they share with DFO.

Area-based initiatives such as these can only be effective if they are properly funded.

The First Nations Fisheries Council is well situated to investigate ways of improving First Nations capacity for fisheries management and recommend promising avenues.

¹⁰⁰ Sources include: DFO 2007, First Nation Panel on Fisheries 2004

¹⁰¹ Sources include: First Nations Leadership Council 2007, First Nation Panel on Fisheries 2004

Provide assistance to First Nations to support participation, including funding.¹⁰²

Regardless of broader scale capacity-building initiatives, as reflected in INAC guidelines, appropriate measures should strive to ensure access of Aboriginal groups to individual engagement processes, taking into account community capacities, geographic location and/or their linguistic, socio-economic background or physical capabilities. In particular, funding should be provided (as it is currently, to some extent), to enable First Nations to participate in co-management activities. Co-management is time consuming and participation is too much to ask on a volunteer basis.

Go to extra efforts to engage First Nations that are lacking capacity.¹⁰³

DFO's consultation framework appropriately advises that even if an Aboriginal group fails to participate in consultations, DFO should still make all reasonable efforts to inform and consult. The existence of aggregate First Nations organizations such as AAROMs should not lead to a focus on these at the neglect of First Nations falling outside them. Again, the provision of financial resources to First Nations to enable them to meaningfully participate is key.

5 WAYS FORWARD

The end to which this research is contributing is to make DFO engagement with First Nations more effective, which includes working together towards efficient and sustainable fisheries management. As the analysis in section 4 shows, many issues pose challenges to co-management, but there are also many promising directions on which to build progress.

This section begins with a synthesis of enabling factors for successful co-management from the literature. It then summarizes key issues and directions along side the enabling factors. The report concludes with priorities for next steps stemming from this research.

5.1 Enabling factors for successful co-management

Following is a list of factors from the literature on co-management¹⁰⁴ that contribute to, or set conditions amenable to, effective fisheries co-management. They are at the same time "best practices" for those engaging in co-management to follow and preconditions for, or predictors of the effectiveness of co-management. Some details listed under the factors reflect ideal conditions that might rarely be achieved.

Note that the first two factors, political will and benefits accruing, and the last factor, capacity, have a circular relationship. Many of the factors are moot if political will to provide the necessary capacity is lacking. Political will is more likely to exist if the parties are experiencing benefits, but realizing benefits depends on the investment of

¹⁰² Sources include: INAC 2009, Kadowaki 2008, One World Inc. 2008

¹⁰³ Sources include: DFO 2004, First Nations WSP Implementation Forum 2005

¹⁰⁴ Sources include: Goetze 2004, PICFI PP 2007, Berkes et al. 2001, Pinkerton 1989, Phelan 2009b. The guiding principles typically used by DFO fisheries advisory bodies are consistent with the list of contributors to effective co-management.

resources. Despite this interdependency, those championing co-management can take steps that will help engender political will, inspire leadership and lead to benefits for the parties involved by attending to the other enabling factors and following the promising directions identified by this research. The key may be to get as many of the enabling factors as possible in place so that co-management begins to prove its effectiveness and benefits to the parties involved begin to accrue. A snowballing of support, investment and increasing effectiveness might then ensue.

Political will and leadership:

- There is willingness to change the status quo despite risks involved in changing fisheries management strategies (e.g., loss of power, risk of cooptation).
- There is sufficient political will and supportive leadership to reach potential of co-management.
- There is a dedicated person or core group who applies consistent pressure to advance the process, contributes energy and direction, sets an example and takes leadership responsibility for the management process.

Benefits accruing to parties involved¹⁰⁵:

- There are tangible incentives to engage such as redefined resource access, shift to non-destructive fishing methods, improved enforcement.
- There are observable biological, economic and social changes stemming from more effective management.
- The process is expected to resolve a real or imagined crisis in stock depletion or problems of comparable magnitude.
- Benefits are derived by parties from participating in co-management that exceed the costs of their investments.
- Some of the wealth generated by more intensive, superior management recirculates back into participating communities.

Devolution of authority:

- There is a partnership between fishers and government.
- There is empowerment of community members.
- There is government willingness to devolve sufficient decision-making power to the co-management body such that its decisions are binding to some degree (i.e. decisions cannot be easily ignored or dismissed by the state).

Attention to rights:

- There are defined property rights with clear, legal guarantees regarding tenure over the resource.
- There is specification and legitimacy of user rights.

Inclusiveness:

- Most individuals affected by the management arrangements are included in the group that makes and can change the arrangements.

¹⁰⁵ See section 2.3 for a more comprehensive list of potential benefits.

- The same people that collect information on the fisheries make decisions about management.

Thorough participation by parties involved:

- There is active participation of partners in the planning and implementation process.
- There is a sense of ownership of the co-management process, leading to commitment to the co-management arrangements.

Serious consideration of the parties' perspectives:

- Procedural requirements promote the serious consideration of the perspectives of the parties engaged in co-management.
- Mechanisms for conserving and enhancing a fishery at the same time conserve and enhance the operation of the participants' cultural system.

Limited number/diversity of participants:

- The number of parties or communities is not too large for effective communication, or there are well-organized sub-groupings which communicate well.
- There is common understanding of the problem and alternative strategies and outcomes.
- Those with the right to participate in area management and to fish in the bounded fishing area are clearly defined.
- The fisher group has a cohesive social system, is homogenous in ethnicity and gear type.

Flexibility to match unique circumstances:

- Co-management provisions, structures and processes reflect a consideration for local variability, including governance arrangements, the nature of the resource(s) being managed, economic realities and cultural differences.

Limited geographic area:

- The area is not too large and benefits may be linked to watersheds or local waters.
- Allocations and regulations can be effectively applied.
- The geographic scope of management authority is clearly defined.
- The physical boundaries of the area to be managed are distinct, based on an ecosystem that fishers can easily observe and understand.

Adaptive Approach:

- The process builds on experience and seeks improvements to existing processes as much as possible.
- Gaps are filled with new approaches when necessary.

Transparency and accountability:

- Co-management processes are open and accessible.
- Representatives are accountable to their constituencies.
- There is good communication between the parties involved about the decision-making and management process.
- Sub-committees, open board meetings, etc. give constituencies of representatives a chance to be involved as much as possible.

- The organizations involved have clearly defined membership and represent the majority of resource users in the community.
- Business is conducted in a fair and open manner.

Clear procedural and structural guidelines/agreements:

- There are formalized, legal and multi-year agreements.
- Intentions are expressed in agreements in consistent and unambiguous language.
- Detailed procedural and structural guidelines in which the resources are specified, accountability mechanisms are outlined, and roles and responsibilities of participants are clearly defined, including agreements on working relationships and meeting procedures.
- There is a forum for internal dispute resolution in which contentious issues may be addressed.

Opportunity for relationship building:

- Technical concerns are separated from allocation decisions.
- There is an opportunity to begin with a negotiation process and/or experimental co-management from one simple function, which may later be expanded to other functions.

Integration of local/indigenous knowledge:

- Local/indigenous ecological knowledge and management systems are integrated into the management process.
- All participants' worldviews are respected.

Consensus decision-making:

- Consensus-based decision-making is used for reaching decisions cooperatively.
- There are opportunities for creative, informal problem solving among participants.

Sufficient capacity:

- Levels and duration of funding are part of the legal provisions of the agreement.
- Sufficient, timely and sustained funding is available to support the process.
- Non-government participants show a willingness to contribute financially or recruit other sources of support.
- External support can be recruited (university, non-government scientists, credible organizations) and external forums of discussion are available (e.g. technical committees).

5.2 *Summary of key issues and promising directions in fisheries co-management in BC*

Based on the analysis in section 4, the following table lists issues on which DFO needs to engage with First Nations in improving co-management in the Pacific region, alongside promising directions that have already begun to address the issues. Another column lists associated enabling factors for successful co-management from the literature.

Table 2: Summary of key issues and promising directions in fisheries co-management in BC: The themes, issues and promising directions are primarily based in experience of co-management in BC, as analysed in section 4. The related enabling factors for co-management, from the literature, are described in section 5.1.

THEME	Related enabling factors	Issues and factors related to fisheries co-management in BC	Promising directions to resolve issues and meet challenges
Rights and Title, and the Government-to-Government relationship	<ul style="list-style-type: none"> • Devolution of authority • Attention to rights • Inclusiveness 	<ul style="list-style-type: none"> • The extent and protection of aboriginal rights is the most fundamental consideration in engagement with First Nations. • DFO has an obligation not to unjustifiably infringe Aboriginal or treaty rights. • DFO has a legal duty to consult and, where appropriate, accommodate Aboriginal interests. • First Nations want stronger recognition of their rights. • Government agencies such as DFO cannot delegate their authority. • First Nations need to be consulted as governments, in a bilateral (Tier 2) approach. • DFO requires that engagement processes be inclusive (multilateral). • First Nations are cautious about involvement in multilateral (Tier 3) and integrated processes. • Processes are struggling to incorporate bilateral and multilateral engagement. 	<ul style="list-style-type: none"> • Provide written assurances that DFO will not unjustifiably infringe Aboriginal or treaty rights. • Ensure multilateral processes do not push aside consultation and accommodation, where appropriate. • Conduct bilateral consultations in connection with multilateral advisory processes. • Use the three-tier framework to keep clear on the context for the government-to-government relationship between DFO and First Nations.
Meaningfulness and depth of the process	<ul style="list-style-type: none"> • Thorough participation by parties involved • Serious consideration 	<ul style="list-style-type: none"> • First Nations believe the way they are consulted is often not meaningful and does not meet federal government obligations. • First Nations would like increased decision-making responsibility/authority. 	<ul style="list-style-type: none"> • Recognize that true co-management lies at the authority-sharing end of the engagement spectrum. • Ensure that the results of consultation processes can affect decision-making.

THEME	Related enabling factors	Issues and factors related to fisheries co-management in BC	Promising directions to resolve issues and meet challenges
	of the parties' perspectives	<ul style="list-style-type: none"> Increasing devolution of responsibility to First Nations can lead to inter-Nation/band conflict. First Nations feel they have not been sufficiently involved in policy implementation. 	<ul style="list-style-type: none"> Take engagement with First Nations beyond operational issues. Consult First Nations as early as possible. Explain how advice from consultations is used. Delineate agreed-on steps in meaningful consultation. Address issues of specific interest to First Nations. Take into account that First Nations' connection to the resource goes beyond use.
Multiplicity of First Nations	<ul style="list-style-type: none"> Limited number/diversity of participants Flexibility to match unique circumstances 	<ul style="list-style-type: none"> The multiplicity of First Nations in BC strains DFO's capacity to engage with them on a bilateral basis. The multiplicity of First Nations in BC constrains their engagement in various other ways. The roles of aggregate First Nation organizations in co-management are diverse and limited. 	<ul style="list-style-type: none"> Recognize that the mandates and limitations of Aboriginal organizations may require that consultations take place at several different levels. Continue to support First Nation collaboration (Tier 1) for fisheries management. Encourage resolution of inter-tribal allocation by First Nations. Take a community-up approach and recognize that bi-lateral (Tier 2) processes take time.
Complexity of scales and themes of engagement	<ul style="list-style-type: none"> Limited geographic area Adaptive Approach 	<ul style="list-style-type: none"> Different types of fisheries management decisions engage participants at different geographical/spatial scales. Different fisheries interests and sectors tend to focus on different locations, from ocean to up-river. 	<ul style="list-style-type: none"> Establish co-management arrangements that work/link at a range of scopes and scales. Appreciate the resilient qualities of complex systems. Explore the potential for new regional

THEME	Related enabling factors	Issues and factors related to fisheries co-management in BC	Promising directions to resolve issues and meet challenges
		<ul style="list-style-type: none"> • Migratory species – larger systems – make collaboration more difficult. • The scope and scale of the decision affects the extent to which decision-making responsibility can be shared. • The complexity of processes makes it difficult to define roles and responsibilities of various bodies in relation to each other. • First Nations engagement in DFO’s multiple functions lacks integration. 	<p>agreements, including policies on consultation and dispute resolution.</p>
Representation of parties	<ul style="list-style-type: none"> • Transparency and accountability 	<ul style="list-style-type: none"> • There is a lack of continuity in representation of parties in processes. • There is a lack of clear procedures for attaining First Nations representation. • First Nations lack full representation in some processes. • Only certain First Nations individuals are legitimate representatives of their governments. 	<ul style="list-style-type: none"> • Have First Nations organizations put forward members to Advisory Committees. • Ensure “the right people” are selected to lead co-management. • Require that members of co-management bodies be accountable to those they represent.
Trust, fairness and cohesion	<ul style="list-style-type: none"> • Clear procedural and structural guidelines/ agreements • Opportunity for relationship building • Integration of local/indigenous knowledge 	<ul style="list-style-type: none"> • Lack of reliable information leads to lack of trust. • Increasing loss of access to fisheries has lead to First Nations mistrust of DFO. • In some processes First Nations are dominated by other fisheries interests. • First Nations knowledge is not being sufficiently included. • Resource scarcity reduces room for mutually agreeable options. 	<ul style="list-style-type: none"> • Cultivate clarity and transparency. • Seek cross-cultural understanding. • Recognize different knowledge frames and share information. • Collaborate on research, monitoring and compliance. • Build relationships by working together. • Have a neutral facilitator/third party ensure fairness.

THEME	Related enabling factors	Issues and factors related to fisheries co-management in BC	Promising directions to resolve issues and meet challenges
	<ul style="list-style-type: none"> • Consensus decision-making 		
Capacity	<ul style="list-style-type: none"> • Sufficient capacity 	<ul style="list-style-type: none"> • Communities/First Nations often do not have sufficient capacity for co-management. • Many First Nations are overwhelmed by numerous, diverse consultation demands. • Co-management can add to costs for government agencies. • The multiplicity of engagement processes increases demands on organizational resources. • Co-management processes can be time-consuming and fatiguing. • Sunsetting or lack of implementation of programs and policies can hamstring co-management arrangements. 	<ul style="list-style-type: none"> • Build the capacity of DFO to implement and engage in co-management. • Build the capacity of First Nations to engage in co-management. • Acknowledge and tap into existing First Nations capacity. • Support First Nations aggregations in their capacity-building work. • Provide assistance to First Nations to support participation, including funding. • Go to extra efforts to engage First Nations that are lacking capacity.

5.3 Priorities for next steps stemming from this report

This section puts forward suggestions for expanding on the contents of the work in this report, additional research, and other ways to move forward on fisheries co-management with First Nations in BC. Possible sources of information are integrated into the brief proposals.

5.3.1 Expand on the contents of this report

Fact check the information in this report

Undertake interviews and/or hold an internal DFO workshop to correct points that may be outdated, determine whether the experience related in the report rings true, and generate other conclusions that might be drawn from the analysis.

Assess participants' experience of advisory processes

To flesh out and up-date the description of First Nation participation in fisheries advisory processes in the accompanying spreadsheet, interview conveners of the bodies and a sample of First Nations participants. At the same time, explore levels of satisfaction and identify areas needing improvement.

Further develop the factors for successful co-management

Draw on additional literature to ensure the factors listed in section 5.1 of the report are as accurate as possible. Map the revised factors against the issues and promising directions identified in this research to fine-tune understanding of current limitations and needs in BC.

Add specificity to other findings of the report

Compare the potential benefits of co-management to benefits from actual experience in BC to determine which benefits are being realized and which are not, and identify which issues are interfering where benefits are not being realized.

Drill down on key “promising directions” to provide more definitive rather than just directional ways of making engagement more effective.

Winnow out of the report findings with areas of contradiction or paradox (co-existing truths that are contradictory – e.g. inclusiveness and bilateral obligations) and focus on resolutions to these challenges.

5.3.2 Undertake additional research

Draw on experience from beyond BC

Research fisheries co-management in other jurisdictions to identify lessons learned and best practices that could support or strengthen co-management here.

Investigate relevance of Province of BC co-management initiatives

BC has been taking initiatives in co-management flowing from the new honour of the crown doctrine including BC Strategic Engagement Agreements. For example, government-to-government negotiations are in an advanced stage with the Taku River Tlinget on a decision-making agreement for terrestrial resources for most of the TRT traditional territory. Through interviews or meetings explore the relevance of this approach to fisheries co-management.

Discuss the findings of this report with BC government employees who have experience of co-management, or responsibilities for freshwater fisheries, aboriginal relations, etc.

Investigate relevance of First Nations co-management initiatives

Several First Nations in BC have explored and/or developed approaches to resource co-management. To the extent that their products are accessible, their findings could add to the learning basis for improving fisheries co-management. The author has assisted the Sliammon First Nation, the Ktunaxa First Nation and the Hul'qumi'num Treaty Group in such initiatives.

Draw on the theory of adaptive co-management

As mentioned in connection with the issue of complexity of scales and themes of engagement, complex systems can have resilient qualities and other advantages that support effective resource management. A growing literature on adaptive co-management, resilience and panarchy warrants investigation in this regard. Relevant websites include:

<http://www.cifor.cgiar.org/acm/>

<http://www.resalliance.org/2448.php>

5.3.3 Move forward

Use this report as a basis for discussions with First Nations

A version of this report could be used as a basis for discussions with First Nations. Potential for this should be ascertained through communication with the First Nations Fisheries Commission. Possibly DFO and FNFC could collaborate on a series of discussions with First Nations, following best practices for engagement on the way.

Consider the following ways of addressing the main issues and challenges identified in this report. Some of these initiatives could feed into the development of a regional co-management strategy.

Rights and Title, and the Government-to-Government relationship:

Seek regional agreement on a protocol that would provide comfort for First Nations regarding lack of prejudice to aboriginal rights while allowing inclusiveness of stakeholders in co-management processes, possibly including:

- a template for wording assurances that DFO will not unjustifiably infringe Aboriginal or treaty rights;

- ways of ensuring that multilateral processes do not push aside consultation and accommodation, where appropriate;
- standards for conducting bilateral consultations in connection with multilateral advisory processes;
- use of the three-tier framework to keep clear on the context for the government-to-government relationship between DFO and First Nations.

Meaningfulness and depth of the process:

Consolidate criteria for what constitutes meaningful consultation, acknowledging that these principles would also apply to co-management. Include:

- the limits and possibilities of delegating authority/responsibility;
- an agreed sequence of steps (possibly in flow chart or dichotomous key format);
- guidelines that draw on promising directions from section 4.2.2 and other parts of this report, existing principles (e.g. from INAC guidelines, DFO policies, First Nation policies, advisory committee terms of reference), and court decisions.

Multiplicity of First Nations:

Establish a clear, shared understanding of the roles, responsibilities and mandates of aggregate First Nations organizations with respect to engagement in co-management. Seek ways to enhance (legitimize, formalize, build capacity for) the role of some that may not currently connect with co-management or fulfill their potential, as appropriate.

Review the successes and challenges of AFC, AAROM and PICFI to date with regard to the effectiveness of these programs in finding ways to link with First Nations or groups of First Nations. Draw lessons to apply to new or ongoing processes.

Complexity of scales and themes of engagement:

Map – conceptually, functionally, organizationally and spatially – the existing array of fisheries-related engagement processes. Compare roles and responsibilities. Identify existing linkages and gaps where linkages are called for. Establish media for communications among the processes.

Representation of parties:

Establish mutually acceptable procedures and criteria for First Nations and DFO representation in co-management processes, taking into account the diversity of situations.

Trust, fairness and cohesion:

Inventory (or gather existing documentation of) ways that people from First Nations, DFO and possibly other sectors, are successfully collaborating (or have in the past) on particular fisheries management functions, from policy development to research, monitoring and compliance. Develop a reference/catalogue that new or existing initiatives can draw on to encourage effective ways of working together and building relationships. Consider stories as a means of communicating this information.

Review Gardner's (2008) report on Knowledge Integration in Salmon Conservation and Sustainability Planning: Towards Effective Implementation of Wild Salmon Policy Strategy Four, for guidance relevant to fisheries co-management.

Capacity:

Coordinate capacity-building initiatives between DFO and First Nations organizations to maximize their effectiveness.

Factors for successful co-management:

Develop the factors for successful co-management into a list of best practices tailored to circumstances in the Pacific region. Use the factors:

- as criteria against which to measure the potential success of co-management initiatives in the Pacific region,
- to support and improve co-management processes, and
- as a guide for collaborative work on projects such as the ones in this list.

Conduct case studies and experiment, using action/participatory research

Case studies of specific engagement or co-management initiatives could be conducted to support and/or ground-truth any draft products or outcomes of the projects suggested above. They should be carried out in a way that encourages participation of the parties involved, mutual learning, and improvements based on the findings of the studies. The case studies could be ongoing processes or new endeavours such as the five-year review of the Wild Salmon Policy.

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