

Policy and Practice Report

Commercial Salmon Fishing: Licensing, Allocation, and Related Issues

22 December 2010

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Introduction

- 1 This Policy and Practice Report (“Report”) provides an overview of the Department of Fisheries and Oceans’ (DFO’s) policies and practices with respect to commercial salmon fishing licensing, allocation, and other issues relevant to Fraser River sockeye. This Report relies principally on information obtained from documents disclosed to the Commission or otherwise made available during the Commission’s investigations. The accuracy of this report is contingent on the accuracy of those documents.
- 2 This Report is not comprehensive of all DFO policies or practices related to commercial salmon fishing. It provides a contextual background for the commercial fishing portion of the commission’s hearings, scheduled to begin in early 2011. Certain topics not covered, but relevant to commercial salmon fishing, such as harvest management, catch monitoring, habitat management, and enforcement, are addressed in other sections of the commission’s hearings plan. There is a list of acronyms used in this Report, at Appendix A.

Licensing of the Commercial Salmon Fleet

A Brief History of Limited Licensing in the Commercial Salmon Fleet¹

- 3 Prior to 1969, anyone could purchase a commercial salmon licence and fish for salmon when the season was open.
- 4 In 1969, the Department implemented licence limitation for the commercial salmon fishery under the “Davis Plan,” named after Minister Jack Davis. The purpose of licence limitation was to reduce “the size of the salmon fleet” and to

¹ For a detailed history of Commercial Salmon Fleet licensing up to 1973, see Blake A. Campbell, *A Review and Appraisal of the Salmon Licence Control Program in British Columbia: Section I: An Historical Review of Developments in Salmon Licencing up Until 1968* (October 1973) [CAN000171], and *A Review and Appraisal of the Salmon Licence Control Program in British Columbia: Section II: Development of the “Davis Plan” for the Control of Salmon Vessel Licences, 1968-1973* (October 1973) [CAN000126, CAN000127, CAN000128, CAN000129, CAN000130, CAN000131, CAN000132, CAN000133, CAN000135, CAN000136, CAN000137, and CAN000138]

move “towards a commercial salmon fleet manned by professional fishermen.”² The concept of licence limitation was not new; indeed, the idea had been discussed in relation to the Fraser River since at least 1887, as noted by Blake Campbell in a 1973 review of salmon licence control in British Columbia.³ Blake reported as follows:

The danger of overfishing, particularly on the Fraser River, because of excess gear, was the subject of some controversy in the late 1880's as proponents of restrictive measures in the fishery pointed to the demise of salmon production in the Sacramento and Columbia Rivers abstentiously the result of over-exploitation.

Two Fraser River Guardians, in their annual reports to the Commissioner of Fisheries in 1887, were aware of the problem. Guardian Chas. F. Green observed that as many as 250 boats were fishing in Canoe Pass (on the lower Fraser River) and went on to suggest, “as a partial remedy that in the future only a limited number of licences be issued and that no cannery be allowed more than 40 boats, contract or otherwise, which would materially tend to diminish the number of boats in my district.” In the same year Guardian John Buie wrote:

“.....in my opinion it is about time that some limit should be placed on the number of nets allowed on this river and I think the Fisheries Department cannot too soon take this matter into serious consideration.”

[citations omitted]⁴

- 5 In implementing licence limitations in 1969, the Department created two types of licences—Category A and Category B, based on vessels’ recorded catch levels. The Department created 5,870 Category A licences (available for \$10 each) for vessels which had recorded a catch of 10,000 lbs or more of pink or chum salmon or equivalent during 1967 or 1968.⁵ In 1970, licence fees were raised to \$100-\$200, depending on the size of the vessel, in order to raise money for licence buy backs.⁶ In 1971 the fees were doubled.⁷ In March 1981, the

² Fisheries News issued by The Department of Fisheries of Canada Information Branch (3 September 1969) [CAN000180] at 2-3

³ Blake A. Campbell, *A Review and Appraisal of the Salmon Licence Control Program in British Columbia: Section I: An Historical Review of Developments in Salmon Licencing up Until 1968* (October 1973) [CAN000171]

⁴ *Ibid.*, at 3

⁵ Pacific Coast Commercial Fishing Licensing Policy: Discussion Paper (Fisheries and Oceans, 1990) [CAN000041] at 27-29

⁶ Fisheries News issued by The Department of Fisheries of Canada Information Branch (16 January 1970) [CAN000005] at 1

Department initiated a buy back program in which a mere 26 of the 5,200 vessels in the fleet were retired.⁸ Also in 1981, the licence fees were raised to \$400-\$800 to fund the Salmon Enhancement Program; and in 1987, the fees were doubled, again to raise money for the Salmon Enhancement Program.⁹

- 6 In contrast to Category A licences, Category B licences were created for vessels with a lower catch level. Thus, also in 1969, the Department created 1,062 Category B licences (available for \$10 each) for vessels that had recorded less than 10,000 lbs in 1967 or 1968.¹⁰ In 1970, a phase out of these licences was announced.¹¹ The Category B licence fee was doubled to \$20 in 1981. By 1990, there was only one Category B licence remaining.¹² Today there are no remaining Category B licences.
- 7 In 1983, an additional category of licence was created. Category N licences were issued exclusively to the Northern Native Fishing Corporation (“NNFC”) for vessels designated by that Corporation. The NNFC was established in 1982 when B.C. Packers Ltd. sold it 243 vessels and 252 Category A licences. The Minister created this special category of “N” licences, which the NNFC may sell to individual First Nations fishers. The NNFC had to relinquish its Category A licences in order to receive the Category N licences.¹³
- 8 Limited licensing was not the only measure the Department implemented to reduce fishing capacity. In 1971, the Department implemented restrictions on vessel replacement. This was done in response to a report that showed “that in 1969-1970 a total of 76 vessels had been retired and new vessels licensed. The capacity of vessels retired was 187 tons with a value of \$174,000, while the

⁷ Pacific Coast Commercial Fishing Licensing Policy: Discussion Paper (Fisheries and Oceans, 1990) [CAN000041] at 27-29.

⁸ Burlington and Associates Consulting Ltd., Evaluation of the British Columbia March 1981 Salmon Vessel Buy-Back Program (November 1981) [CAN000184] at 25

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Fisheries News issued by The Department of Fisheries of Canada Information Branch (16 January 1970) [CAN000005] at 1

¹² *Ibid.*, at 27-28.

¹³ *Ibid.*, at 27-28.

capacity of new vessels built was 596 tons valued at \$1,773,000.”¹⁴ The Department replaced the implicit “licence for licence rule” of limited licensing with a “ton-for-ton rule”, and a length-to-ton conversion scale was developed to deal with those vessels which had not originally been registered according to their tonnage.¹⁵ This policy reform was designed to prevent the practice of purchasing a licence attached to a small vessel and then moving the licence to a larger vessel, thereby increasing the fishing capacity associated with the licence. In 1978, DFO imposed further restrictions, whereby new vessels were restricted in length to the size of the vessel that they were replacing.¹⁶ Restrictions on length remain in place today.

- 9 Before 1996, licences attached to a vessel could not be split or stacked. That is, if two licences were assigned to one vessel, they could not be split and put on two different vessels; and two licences of the same category (e.g., two Category A salmon licences) could not be stacked on one boat.¹⁷ Indeed, prior to 1996, it would not have made sense to stack two Category A licences, since one licence enabled a vessel to fish the entire coast.
- 10 In March 1996, the Federal Government introduced the “Pacific Salmon Revitalization Strategy” (known as the “Mifflin Plan” after Minister Fred Mifflin). The Mifflin Plan introduced further restrictions aimed at reducing the size and capacity of the fleet, including area licencing. The Plan also allowed for stacking of licences (but not splitting) in an effort to reduce the overall fleet size. The Mifflin Plan included the following major elements:
 - “An \$80-million federally-funded voluntary licence retirement program or “buyback” whereby fishers would relinquish their licenses through a specially established buyback committee chaired by Jim Matkin;

¹⁴ Blake A Campbell, *A Review and Appraisal of the Salmon Licence Control Program in British Columbia: Section II: Development of the “Davis Plan” for the Control of Salmon Vessel Licences, 1968-1973* (October 1973) [CAN000130] at 340

¹⁵ Don Cruickshank, Commissioner, *A Commission of Inquiry into Licensing and Related Policies of the Department of Fisheries and Oceans, The Fisherman’s Report* November 1991 [CAN000318] at 49

¹⁶ *Ibid* at 89

¹⁷ *Pacific Coast Commercial Fishing Licensing Policy: Discussion Paper* (Fisheries and Oceans, 1990) [CAN000041] at 74-79

- Single-gear licensing which means a single-licence holder can fish with only one gear type (gillnet, troll or seine);
- Area licensing which designated the coastal fishing waters into two areas for seine boats, three for gillnetters and three for trollers. Under the Plan, a single-licence holder could chose a single area in which to fish;
- Stacking. Once a licence holder has chosen an area, the Plan allows him or her to purchase additional licences or “stack” from fellow fishers in order to fish other areas or another gear. When a licence is stacked, the licence-holder can re-designate the area associated with the stacked licence;
- The Plan was also intended to reflect DFO’s more conservative risk-adverse management, which stipulates that conservation is the number-one priority and must be designed so that adequate numbers of returning salmon reach their spawning grounds each year.”¹⁸

11 In May 1996, the Federal Government announced modifications to the Mifflin Plan, including that licence holders could opt to not to fish in 1996 and to pay no licence fee for that year; that initial area selection would be for four years; and that no stacking was permitted from 30 June 1996 to 30 November 1996.¹⁹

12 Following the Mifflin Plan, the DFO implemented two major licence retirement programs, requiring a substantial investment of public funds, and reducing the number of commercial salmon licences by 50 percent.²⁰ The first of these took place in 1996, resulting in the retirement of 19 percent of the eligible commercial salmon fleet at a cost of \$78.5 million.²¹ The second took place 1998 under the Canadian Fisheries Adjustment and Restructuring (“CFAR”) plan²². At a total cost of \$195 million, this program retired 1,406 licences, representing 44 percent of eligible seine licences, 40 percent of gillnet, and 46 percent of troll²³.

¹⁸ Pacific Salmon Revitalization Plan Review Panel, *Tangled Lines: Restructuring in the Pacific Salmon Fishery: A Federal-Provincial Review of the Mifflin Plan* (Sidney, British Columbia, 1996) [CAN020986] at 3-4

¹⁹ P. MacGillivray, Pacific Salmon Revitalization Plan – Chronology of Events (12 June 1996) [CAN000031] at 3

²⁰ Fisheries and Oceans Canada, *A Discussion Paper on the Implementation of Pacific Fisheries Reform* (September 2005) [CAN002514] at 9

²¹ Michelle James, *Final Report on the 1996 Voluntary Fleet Reduction Licence Retirement Program* (DFO, December 1996) [CAN000058] at 15

²² Information taken from Fisheries and Oceans website, online: http://www.dfo-mpo.gc.ca/ae-ve/evaluations/02-03/fisheries-peches-eng.htm#_Toc8720979

²³ Fisheries and Oceans Canada Backgrounder, Pacific Fisheries Adjustment and restructuring Program (23 July 2008) [CAN000161]

- 13 Also since 1996, licence holders have had opportunities to re-select the fishing areas designated on their licences. Re-selection allows a licence holder to redirect his or her fishing efforts in a different geographical area. Re-selection opportunities were offered in 2000, 2006 and 2007. The 2007 re-selection is valid for an indefinite period.²⁴
- 14 In April 2005, the Minister announced a management reform initiative called “Pacific Fisheries Reform.” The announcement followed reports from a Joint (Federal and Provincial) Task Group on Post-Treaty Fisheries entitled “Treaties and Transition: Towards a Sustainable Fishery on Canada’s Pacific Coast” and the First Nations Panel on Fisheries entitled “Our Place at the Table: First Nations in the BC Fishery”. Changes to licensing considered under Pacific Fisheries Reform include:²⁵
- Extending commercial licences for longer terms – even as long as 25 years;
 - Considering a shift to personal rather than vessel licences, especially where individual quotas are implemented;
 - Defining catch shares through either individual quotas or fleet pooling arrangements; and
 - Ensuring transferability of licences so that old fishers could retire and young fishers could enter the business.
- 15 The Pacific Fisheries Reform continues to provide policy guidance to DFO.
- 16 In 1994, DFO initiated the Allocation Transfer Program (“ATP”) in part to address the increasing demand for commercial fisheries access by First Nations.²⁶ Under the ATP, commercial licence holders can voluntarily offer up their licences for

²⁴ Fisheries and Oceans Canada, 2007 Salmon Area Selection Summary of Process , Online: http://www-ops2.pac.dfo-mpo.gc.ca/xnet/content/licensing/commercial/2007_salmon_area_reselection/default.htm

²⁵ Fisheries and Oceans Canada, *A Discussion Paper on the Implementation of Pacific Fisheries Reform*, September 2005, [CAN002514] at 16-19; see also Fisheries and Oceans Canada Background: Vision and Principles for Pacific Fishery Reform (14 April 2005) [CAN001555]

²⁶ AFS Fact Sheet: Licence Retirement/Allocation Transfer Program (June 1995) [CAN000066]

buyback by the Department. The Department may then re-issue equivalent commercial fishing licenses or allocations to First Nations groups on a communal basis under Aboriginal Fisheries Strategy Agreements and pursuant to the Aboriginal Communal Fishing License Regulations. The ATP is discussed in more detail in the commission's Policy and Practice Report on Aboriginal Fishing.

- 17 The Pacific Integrated Commercial Fisheries Initiative ("PICFI") was announced in 2007.²⁷ Among other things, PICFI provided funds to facilitate the relinquishment of commercial licences and the increase of First Nations participation in the salmon fishery. The relinquishment process under PICFI is initiated by a commercial vessel owner, who applies to offer up his or her licence and indicates the voluntary payment sought from the government for each relinquishment. The Department may then approve and/or purchase the commercial licence.²⁸ The license relinquishment activities of PICFI and ATP have been integrated together, in order to provide for a more streamlined process. The PICFI is scheduled to end on March 31, 2012. The PICFI is discussed in more detail in the commission's Policy and Practice Report on Aboriginal Fishing.

The Minister's Authority

- 18 The *Fisheries Act* provides that "the Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued leases and licences for fisheries or fishing, wherever situated or carried on."²⁹ As well, the Minister may charge fees for fishery or fishing licences, and may suspend or cancel licences in certain circumstances.³⁰ According to the Supreme Court of Canada, "The Minister gives and the Minister

²⁷ Fisheries and Oceans Background: One Fishery for All of Us [CAN000060]; and Pacific Integrated Commercial Fisheries Initiative (PICFI) (17 July 2007) [Presentation] [CAN002480]

²⁸ Fisheries and Oceans, Information about the Commercial Fishing Licence Eligibility and Quota Relinquishment Process, Online: <http://www.pac.dfo-mpo.gc.ca/fm-gp/picfi-ipcip/acquisition-eng.htm>

²⁹ *Fisheries Act*, R.S.C. 1985, c. F-14, as am., s. 7

³⁰ *Fisheries Act*, ss. 8 and 9

(when acting properly within his jurisdiction under s. 9 of the Act) can take away according to the exigencies of his or her management of the fisheries.”³¹

- 19 The *Fisheries Act* also allows the Governor in Council to make regulations for carrying out the purposes and provisions of the *Fisheries Act*, including regulations “respecting the issue, suspension and cancellation of licences and leases” and “respecting the terms and conditions under which a licence and lease may be issued.”³²
- 20 The Governor in Council has made two regulations that apply to the commercial sockeye salmon fishery in B.C.: *Fisheries (General) Regulations*, SOR/93-53 (the “FGR”), and *Pacific Fisheries Regulations*, 1993, SOR/93-54 (the “PFR”).

The Licence Requirement and Documents

- 21 Anyone who is age 16 or older must not engage in commercial fishing or be on board a vessel used for commercial fishing unless that person is registered.³³ Moreover, no person shall fish except under the authority of a licence issued under the PFR, the FGR, or the *Aboriginal Communal Fishing Licences Regulation*,³⁴ and, no person shall fish for experimental, scientific, educational or public display purposes unless authorized to do so under a licence.³⁵ Thus anyone participating in any commercial fishery, demonstration fishery, or scientific test fishery needs a licence to do so.
- 22 Additionally, “no person shall use a vessel, and no owner or lessee of a vessel shall permit the use of that vessel, in commercial fishing for any species of fish unless ... the vessel is registered; and the use of the vessel to fish for that species of fish is authorized by a commercial fishing licence.”³⁶

³¹ *Saulnier v. Royal Bank of Canada*, [2008] 3 S.C.R. 166 at para. 48

³² *Ibid.*, s. 43(f) and (g)

³³ PFR, s. 25

³⁴ *Ibid.*, s. 26

³⁵ *Ibid.*, FGR, s. 51

³⁶ PFR, s. 22

- 23 Accordingly, there are two types of registration or licensing required for commercial salmon fishing: personal registration, and vessel registration. Personal registration is accomplished through “Fisher Registration Cards” which the DFO may issue on an annual, five-year or temporary basis.³⁷ Vessel registration is accomplished through “Vessel Registration Certificates” and “Commercial Fishing Licences.” Commercial salmon licences are annual and expire on December 31st of any given year.³⁸
- 24 There are currently two categories of commercial salmon licenses: Category A and Category N. These licences are issued to vessels. Category A is the main category, with Category N licences only issued to the Northern Native Fishing Corporation.³⁹
- 25 As of June 17, 2010, the Category A licences were distributed as follows: 1,259 gillnet licences, 233 seine licences and 498 troll licences.⁴⁰ The Pacific Region issues approximately 8,000 to 8,800 Fisher Registration Cards each year.⁴¹
- 26 Because the salmon fishery is a limited entry fishery, no new licences are created. The only way to acquire a licence is to purchase one from a current licence holder. There is a limited market for commercial licences. In recent years, the biggest “buyer” has been the federal government through licence buyback programs, such as ATP or PICFI.
- 27 Fishers must carry licences, fisher registration cards, and/or vessel registration certificates. They must produce them on demand by a fishery officer or fishery guardian whenever the fisher/vessel is engaged in fishing. Since 2006, each

³⁷ *Ibid.*, s. 19

³⁸ *Ibid.*, schedule II

³⁹ As described above, the Northern Native Fishing Corporation (“NNFC”) was established in 1982 when B.C. Packers Ltd. sold 243 vessels and 252 licences to the NNFC. The Minister created this special category of “N” licences which the NNFC may sell to individual First Nations fishers.

⁴⁰ Information taken from Fisheries and Oceans website, online: <http://www-ops2.pac.dfo-mpo.gc.ca/Ops/VRNdirectory/LicReportSelect.cfm>

⁴¹ See Commercial Fisheries, Fishers Information, online: <http://www.dfo-mpo.gc.ca/stats/commercial/licences-permis/pacific-pacifique/pactype-eng.htm>

individual fisher has been assigned a Fisher Identification Number, which appears on all their documents.

Entitlements of a Licence Holder

- 28 The Supreme Court of Canada has described commercial fishing licensing and licences in the following ways:

[37]...Canada's fisheries are a 'common property resource', belonging to all the people of Canada. Under the *Fisheries Act*, it is the Minister's duty to manage, conserve and develop the fishery on behalf of Canadians in the public interest (s. 43). Licensing is a tool in the arsenal of powers available to the Minister under the *Fisheries Act* to manage fisheries. It restricts the entry into the commercial fishery."⁴²; and

"[22] The fishery is a public resource. The fishing licence permits the holder to participate for a limited time in its exploitation. The fish, once caught, become the property of the holder. Accordingly, the fishing licence is more than a 'mere licence' to do that which is otherwise illegal. It is a licence coupled with a proprietary interest in the harvest from the fishing effort contingent, of course, on first catching it.

[23] It is extremely doubtful that a simple licence could itself be considered property at common law. See generally A. M. Honoré, 'Ownership', in A.G. Guest, ed., *Oxford Essays in Jurisprudence* (1961). On the other hand, if not property in the common law sense, a fishing licence is unquestionably a major commercial asset.⁴³

- 29 A commercial licence holder is entitled to a limited opportunity to fish for the species designated, in accordance with whatever conditions are attached to the licence, whenever that particular fishery is "open." Section 53 of the PFR provides as follows:

53. (1) No person shall fish in any waters set out in column I of an item of Part I of Schedule VI for the species of salmon set out in column II of that item with the type of fishing gear set out in column III of that item during the close time set out in column IV of that item.

(2) No person shall troll in any waters set out in column I of an item of Part II of Schedule VI for the species of salmon set out in column II of that item using the type of vessel set out in column II of that item during the close time set out in column IV of that item.

⁴² *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 S.C.R. 12 at para. 37

⁴³ *Saulnier v. Royal Bank of Canada*, [2008] 3 S.C.R. 166 at paras. 22 and 23.

- 30 Schedule VI sets out the “Salmon Close Times” for all areas and subareas, all species of salmon, and all gear types. For all of the foregoing, the salmon close times are 1 January to 31 December. The salmon fishery is therefore always closed unless there is a variation to allow for an opening. The Regional Director-General, and/or in the case of salmon, a fishery officer, may vary a close time by making an order under s. 6 of the FGR. Effectively, a commercial salmon licence holder is entitled to fish for salmon whenever DFO has varied the close time to allow for fishing under the licence.

Area Based Licensing

- 31 For fishing purposes, the B.C. coast is split into the North Coast and the South Coast. Only the South Coast commercial fleet receives a fishing allocation of Fraser River sockeye.
- 32 The North and South Coast regions are further broken down into areas. In each area, commercial fishing occurs only by way of a specific gear type and within set geographic bounds. The area names and gear types, by region, are listed below:

North Coast		South Coast	
Area A	Seine	Area B	Seine
Area C	Gillnet	Area D	Gillnet
Area F	Troll	Area E	Gillnet
		Area G	Troll
		Area H	Troll

- 33 Maps depicting the geographic fishing areas relevant to the South Coast are attached as Appendix B. Each letter area is further divided into smaller numbered areas for management purposes.

Licence Fees

- 34 Schedule II of the PFR sets out the licence fees for Fisher Registration Cards (annual \$60, five-year \$250, or temporary \$20), Vessel Registration Certificates (\$50), and Commercial Fishing Licences (Category A: \$430, \$710, or \$3,880, depending on the size of the vessel; Category N: \$380, \$650, or \$2,670, depending on the size of the vessel).
- 35 The current licence fees were set in 1998 to reflect market prices.⁴⁴ DFO envisioned updating the fee schedule every few years to keep fees reflective of market prices—so that fees would rise or fall with the commercial value of a licence. Since then, salmon prices have dropped and the fishery has declined, yet the fees have remained the same.
- 36 In April 2007, DFO announced a review of the commercial licensing fee structure.⁴⁵ Licence fee reform is politically complicated. DFO is required to engage in extensive consultation under the *User Fees Act* prior to adopting any change.⁴⁶ The review was initially expected to take up to three years; it included a two phased approach⁴⁷. The first phase commenced in April 2007 and consisted of a review of the existing fee structure and any alternatives to that structure.⁴⁸ The second phase includes consultations as per the *User Fees Act* with all applicable stakeholders⁴⁹. As of February 2010, DFO anticipated that the earliest the new fee regulations could be in place would be for the 2011 fishing season.⁵⁰ However, to date, the Department has not formally consulted with industry on the proposed reforms.⁵¹

⁴⁴ Fisheries and Oceans Canada News Release (19 February 1998) [CAN000110]

⁴⁵ See Memorandum for the Minister: Anticipated Requests for Compensation – Fraser River Sockeye [CAN076907]

⁴⁶ *User Fees Act*, S.C. 2004, c.6, s. 4

⁴⁷ Information taken from Fisheries and Oceans Website: <http://www.dfo-mpo.gc.ca/media/back-fiche/2007/hq-ac17e-eng.htm>

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Commercial Fishing Licence Fee Review, Last Updated: February 22, 2010 [CAN009847] at 1

⁵¹ See Letter from The Honourable Loyola Hearn, Minister of Fisheries dated 7 July 2008 [CAN057799] and Commercial Fishing Licence Fee Review, Last Updated: February 22, 2010 [CAN009847]

- 37 As well, a new fee schedule under the *Fisheries Act* would affect fisheries from coast to coast. While market-based fees would likely result in a decrease to the cost of a Pacific salmon licence, such a fee structure would likely produce a dramatic increase in fees for some East coast fisheries, such as lobster, which have increased in value over the last 15 years.
- 38 In both 1998 and 1999 the Minister announced and granted licence fee relief to the Pacific commercial salmon fleet. In June 1998, to address and implement coho conservation measures, Minister David Anderson announced that the Department would waive or refund commercial salmon licence fees for those licence holders who chose not to fish in 1998.⁵² In December 1999, as part of CFAR, Minister Herb Dhaliwal announced a \$2 million salmon licence fee refund for those licence holders who were significantly affected by the Fraser River sockeye salmon closures in 1999.⁵³
- 39 Following the record low sockeye return in 2009 and the consequent lack of fishing opportunity, the commercial fleet again requested licence fee relief. However, since 2007, DFO's response to these sorts of requests is to say that the Department is undertaking a licence fee review and will not entertain requests for relief outside of that review.⁵⁴
- 40 Each year, Treasury Board gives DFO a "frozen allotment" whereby funds are not released to the Department until DFO meets its revenue generation targets. Treasury Board sets a target for DFO to raise \$40-41 million in licence fees from all fisheries across Canada.⁵⁵ DFO is continually below its target,⁵⁶ limiting its ability to access its Treasury Board allotment.

⁵² Fisheries and Oceans Background Announcement Highlights (June 1998) [CAN030066]; see also: Principles and Operational Guidelines for 1998 Commercial Allocation Decisions [CAN000259]

⁵³ Fisheries and Oceans Media Release: Minister Dhaliwal Announces \$2 Million Salmon Licence Fee Refund (10 December 1999) [CAN031370]

⁵⁴ Integrated Harvest Planning Committee Meeting Draft Minutes (25-26 November 2009) [CAN021884] at 3; see also: Commercial Fishing Licence Fee Review, Last Updated: 22 February 2010 [CAN009847], and Email String [CAN164155]

⁵⁵ Commercial Fishing Licence Fee Review, Last Updated: February 22, 2010 [CAN009847]

Vessel Replacement Rules

- 41 Since the late 1970s, DFO has implemented a policy of restricting the length of replacement vessels to ensure the capacity of the commercial fleet does not expand. This policy is currently reflected on DFO's website.⁵⁷
- 42 The policy is simple: "Replacement vessels for category A salmon licence eligibilities where no stacking is involved must be the exact overall length or smaller than the vessel being replaced."⁵⁸ DFO allows six inches of leeway to accept a replacement vessel that is longer than the original. As well, if two licences are married onto the same vessel, DFO will allow a one-time 30 percent increase in vessel size. This "marriage" results in a larger vessel, but one less vessel in the fleet.
- 43 In cases where a licence holder wishes to increase the size of a vessel attached to a licence (for example, where a vessel needs to be replaced for safety reasons and the licence holder has been unable to find a suitable replacement within the length restriction), the licence holder may make an application to the Pacific Region Licence Appeal Board ("PRLAB") for a recommendation to the Minister that variation from the policy be allowed. The PRLAB is discussed below.

Conditions of Licence

- 44 The Minister may specify conditions of licence in respect of an open list of subjects. Generally, conditions relate to the species and quantity of fish that may be caught, the type, quantity, size and length of fishing gear that may be used, the authorized area and location of the commercial fishery, and the form and

⁵⁶ For example, from 2000/01 to 2004/05, DFO had an annual average revenue shortfall of \$3.8M. See CAN203426 at 13

⁵⁷ Information taken from Fisheries and Oceans website, online: <http://www.pac.dfo-mpo.gc.ca/fm-gp/species-especes/salmon-saumon/fisheries-peches/licence-permis-eng.htm>

⁵⁸ *Ibid.*

manner of submitting catch and fishing data.⁵⁹ The Minister may amend conditions attached to a licence for the purpose of conservation and protection of fish.⁶⁰

- 45 Compliance with the Act and the regulations is a condition of every licence.⁶¹ As well, “No person carrying out any activity under the authority of a licence shall contravene or fail to comply with any condition of the licence”.⁶²
- 46 Sample conditions for the Area E gillnet 2009-2010 season are found in Appendix C.⁶³ Part 1 of the conditions of licence sets out the species of salmon that a licence holder is permitted to take under the licence, as well as the conditions under which the fish may be taken. Part 2 sets out the non-salmon species, gear, and quantities of fish that a licence holder is permitted to take.
- 47 DFO develops one set of licence conditions for each area and then consults with the various area harvest committees (“AHCs”) and the Commercial Salmon Advisory Board (“CSAB”) prior to adopting any changes to the license conditions.
- 48 Licence conditions change from year to year and from area to area. Recent changes have occurred to allow for demonstration projects (for example, when an area participates in a demonstration fishery, the licence conditions need to be changed to reflect the circumstances of the demonstration project) and technological changes (such as electronic log books).

Suspension of Licences

- 49 Section 9 of the *Fisheries Act* allows for suspension or cancellation of any

...lease or licence issued under the authority of this Act, if (a) the Minister has ascertained that the operations under the lease or licence were not conducted in

⁵⁹ FGR, s. 22

⁶⁰ *Ibid.*

⁶¹ FGR, s. 22(6)

⁶² *Ibid.*, s. 22(7)

⁶³ Sample licence conditions for all south coast fleets for 2010-2011 can be found at CAN185393, CAN185387, CAN185395, CAN185392, and CAN185388.

conformity with its provisions, and (b) no proceedings under this Act have been commenced with respect to the operations under the lease or licence.

- 50 Sections 24 and 25 of the FGR provide a process for suspending or cancelling licences under section 9 of the *Fisheries Act*: the Minister provides notice in writing; the licence holder may make representations to the Minister within 30 days of receiving notice; the Minister may review the suspension within a “reasonable time”; and the Minister shall communicate any further decision.⁶⁴ Where a licence is suspended or cancelled, the holder must immediately surrender the licence, remove from the water any fishing gear operated under the licence, and not engage in fishing or be on board a vessel engaged in fishing for any species of fish for which the licence had been issued.⁶⁵
- 51 In practice, commercial salmon licence suspensions do not occur. Similarly, DFO licensing staff do not consider *Fisheries Act* or licence violations in renewing an annual licence. The preferred practice is for fisheries officers to charge a licence holder for a violation of the *Fisheries Act* and then to have the matter determined in court. A court may, by order, “cancel the lease or licence or suspend it for any period the court considers appropriate; and prohibit the person to whom the lease or licence was issued from applying for any new lease or licence” where a person is convicted of an offence under the Act relating to any operations under the lease or licence.⁶⁶

Pacific Region Licence Appeal Board

- 52 In 1979 the Minister established the Pacific Region Licence Appeal Board (“PRLAB”). The PRLAB is an advisory board that hears appeals from licence holders, and makes confidential written recommendations directly to the Minister

⁶⁴ FGR, s. 24

⁶⁵ FGR, s. 25

⁶⁶ *Fisheries Act*, s. 79.1

for his or her decision.⁶⁷ The PRLAB may also provide recommendations to the Minister on changes to licensing practices and procedures.⁶⁸

53 Don Cruikshank noted in 1991 that the PRLAB had a poor reputation among fishers, who did not see it as independent of DFO and who felt that the “Board’s claim to fairness is weakened by the in camera presentation of appeals, which are thus not available to public scrutiny—or even, in the decision-making phase, to fishermen.”⁶⁹

54 The scope of PRLAB’s mandate is described in its terms of reference as follows:

3. Scope

For effort controls initiated after December 31, 1989, the scope of PRLAB shall be determined as follows:

- a) the Board will only hear appeals relating to elements of fact and process or involving extenuating circumstances, but not for reasons related to the inappropriateness of licensing policy and criteria;
- b) the Board will not hear requests for new licenses in limited entry fisheries where new licences are not being issued;
- c) the Board will have the discretion of refusing to grant an appeal hearing, if the appeal is determined to be made on unwarranted grounds or there is no acceptable reason for non-attendance at a previously scheduled appeal hearing. For non-attendance, recommendations would be made to the Minister based on information at hand;
- d) the Board will only hear appeals resulting from licensing decisions by the Resource Manager, Pacific Fishery Licence Unit, which occurred within a two-year timeframe, that is from the time a grievance is alleged to the date a notice of intent to appeal is filed. For licence limitation appeals, the timeframe will also be of two years from January 1st of the year following the announcement of the limitation program or management control; and
- e) the Board has the discretion of granting or denying re-appeals.⁷⁰

⁶⁷ *Pacific Coast Commercial Fishing Licensing Policy: Discussion Paper* (Fisheries and Oceans, 1990) at 47.

⁶⁸ Fisheries and Oceans Canada, *A Guide to the Pacific Region License Appeal Process: Terms of Reference*, online: <http://www-ops2.pac.dfo-mpo.gc.ca/xnet/content/licensing/prlab/terms.htm>

⁶⁹ Don Cruikshank, Commissioner, *A Commission of Inquiry into Licensing and Related Policies of the Department of Fisheries and Oceans, The Fisherman’s Report* November 1991 [CAN000318] p. 51-52

⁷⁰ Fisheries and Oceans Canada, *A Guide to the Pacific Region License Appeal Process: Terms of Reference* (Online: <http://www-ops2.pac.dfo-mpo.gc.ca/xnet/content/licensing/prlab/terms.htm>).

- 55 The board is comprised of five members, knowledgeable about Pacific fisheries but with no current interest in the fishery (e.g., retired fishermen or retired DFO employees). The board hears approximately 20 appeals per year. It makes confidential recommendations to the Minister; the appellant is only told of the Minister's decision. Although the board makes its recommendations to the Minister immediately following an appeal, it can take upward of six months for the Minister to decide whether to follow the recommendation provided. There is no interim relief for an appellant. That licence holder may lose the fishing season while waiting for a ministerial decision, since the licence is held in limbo and is not renewed pending the Minister's decision.
- 56 Common issues before the board include vessel length (including packing capacity), area re-selection, and transferability of licences to new vessels. The most common issue is vessel length.

DFO Responsibility for Licensing

- 57 Licensing of commercial fishers is managed regionally within DFO by the Pacific Fishery Licence Unit. This Unit is located under the Business and Client Services Branch within Fisheries and Aquaculture Management (changed to Ecosystem and Fisheries Management as of May 2010). The Unit processes licences and provides counter service to fishers through offices in Vancouver, Nanaimo, and Prince Rupert.
- 58 A DFO working group, including staff from the Salmon Team, drafts changes to conditions of licence after consultation with industry and after the Salmon Integrated Fisheries Management Plan ("IFMP") is finalized for the year. The Salmon Team is described below under "DFO Responsibility for Salmon Allocation."
- 59 The Salmon Working Group (described in detail in the commission's Policy and Practice Report entitled "Overview of Fraser River Sockeye Salmon Harvest Management") is responsible for reviewing, clarifying, providing

recommendations for changes to, and providing direction on the implementation and integration of regional and national policies and guidelines related to licensing (among other things).⁷¹

Salmon Allocation

What is Allocation?

- 60 An “allocation” describes the number of fish that a sector, gear type or licence holder is allowed to catch. Allocations of a fishery to a sector, gear type or licence holder are usually expressed as percentages of the Total Allowable Catch (“TAC”).⁷²
- 61 The process of allocating TAC between sectors—more specifically between the recreational, commercial, and First Nations sectors—is called “intersectoral allocation.” Allocation between gear types within the commercial sector is called “intrasectoral allocation.” Both intersectoral and intrasectoral allocation occur under the Department’s Allocation Policy for Pacific Salmon (“Salmon Allocation Policy”), discussed further in the sections below.

The Minister’s Authority

- 62 DFO’s authority over allocation comes from the ability to set and vary limits or quotas on the amount of fish caught under the *Fisheries Act* and Regulations.
- 63 Section 43 of the *Fisheries Act* allows the Governor in Council to make regulations in part as follows:

(c) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;

...

⁷¹ Salmon Working Group (SWG) – Draft Terms of Reference [CAN006849]

⁷² Total Allowable Catch is discussed at pages 25 to 28 of the Cohen Commission’s Policy and Practice Report entitled “Overview of Fraser River Sockeye Salmon Harvest Management” (9 November 2010)

(l) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those powers and duties; and

(m) where a close time, fishing quota or limit on the size or weight of fish has been fixed in respect of an area under the regulations, authorizing persons referred to in paragraph (l) to vary the close time, fishing quota or limit in respect of that area or any portion of that area.

- 64 Section 22(1) of the FGR allows the Minister to specify conditions on a fishing licence respecting “(a) the species of fish and quantities thereof that are permitted to be taken or transported” [emphasis added]. The FGR also provides that,

...where a close time, fishing quota or limit on the size or weight of fish is fixed in respect of an area under any of the Regulations listed in subsection 3(4) [which includes both the *British Columbia Sport Fishing Regulations, 1996*, and the *Pacific Fisheries Regulations, 1993* (“PFR”)], the Regional Director-General or a fishery officer may, by order, vary that close time, fishing quota or limit in respect of that area or any portion of that area.⁷³

- 65 In short, DFO has the ultimate power to specify the number of fish caught by different sectors, gear types or licence holders.

Pre-1999 Allocation Process and Reviews

- 66 Prior to the mid 1980s, no formal procedures existed for allocating salmon either inter- or intrasectorally. Generally, DFO managed openings to provide fishing opportunities to the seine and gillnet fleets for sockeye, pink and chum, while the troll fishery focused on chinook and coho.⁷⁴ In the late 1980s and early 1990s, the Commercial Fishing Industry Council (“CFIC”) became the primary interface between DFO and the commercial fishing industry. CFIC began making recommendations to DFO on intrasectoral allocation. However, by 1994, gear types within the commercial sector were not able to reach agreements on advice to provide to DFO on allocation.⁷⁵ As well, starting in the late 1980s, the

⁷³ FGR, s. 6(1)

⁷⁴ Allocation Background and 1991-1997 Management and Biological Issues that Have Affected Catch by Various Sectors, Draft 12/19/97. [CAN001444]

⁷⁵ *Ibid.*

recreational sector began expanding, leading to a need to address intersectoral allocation.⁷⁶

- 67 In December 1995, the Pacific Policy Roundtable, issued a “Report to the Minister of Fisheries and Oceans on the Renewal of the Commercial Pacific Salmon Fishery”.⁷⁷ As part of this report, the Roundtable determined that, “more certainty is required about the commercial sector’s future share of the total salmon catch.” It also sought assurances that “productivity gains achieved through fleet rationalization will not result in transfer of allocations to other sectors without fair compensation.”⁷⁸ The Roundtable recommended the appointment of an advisor to the Minister on intersectoral allocation in the hope that it would lead to “clear rules associated with initial catch shares and adjustments over time.”⁷⁹ As a result, Minister Fred Mifflin contracted Dr. Art May to conduct an assessment of intersectoral allocation of salmon in B.C.

The May Report (1996)

- 68 May consulted with the fishing sectors (commercial, recreational and First Nations) and then concluded that there was “no possibility of building consensus among all interested parties on principles or policy framework to guide the conservation and utilization of Canada’s Pacific salmon fisheries.”⁸⁰ May set out a number of policy considerations for the Minister to consider in the development of an allocation framework, such as the priority of allocations for Aboriginal food, social and ceremonial fish; that initial shares for the commercial and recreational sector need to be based on the most recent historical period (May suggested 1991-1994); and that the recreational fishery have priority for chinook and coho fisheries.

⁷⁶ *Ibid.*

⁷⁷ Pacific Policy Roundtable, Report to the Minister of Fisheries and Oceans on The Renewal of the Commercial Pacific Salmon Fishery (December 1995) [CAN000400]

⁷⁸ *Ibid.*, at p. 18

⁷⁹ *Ibid.*

⁸⁰ A.W. May, *Altering Course: A Report to the Minister of Fisheries and Oceans on Intersectoral Allocations of Salmon in British Columbia* (December 1996) [CAN000280] at ix

- 69 The May Report did not address intrasectoral allocation, nor did it reflect any sort of consensus on intersectoral allocation. The Department continued exploring these issues in subsequent work by Samuel Toy and Stephen Kelleher, Q.C.

The Toy Report (1998)

- 70 In October 1997, the Minister appointed Samuel Toy, a retired judge, to carry out and oversee consultations on intersectoral salmon allocations, to focus his review on issues identified in May's report, and to work with stakeholders to come to consensus on as many issues as possible.⁸¹ Toy took advice on how to consult with the various sectors from a group of 10 advisors representing the First Nations, commercial and recreational sectors.
- 71 Toy was not able to secure any agreement from the First Nations sector on the allocation issues raised in the May Report. The First Nations withdrew from the process, citing pending settlement of land claims and the need for fair compensation for historic infringements on aboriginal fishing rights.⁸² Toy proceeded to consult with the commercial and recreational sectors, eventually securing the agreement of these sectors on a statement of 10 principles concerning allocation.
- 72 Toy made two official recommendations to the Minister. The first was to adopt, with some qualification, the statement of principles developed by the commercial and recreational sector representatives. The second was to create a new initiative in which regionally elected management boards would advise on allocation issues under the wing of an overarching independent allocation tribunal.

⁸¹ Samuel Toy, *Recommendations for Policy Changes Implementing Several Recommendations of Dr. A.W. May's Report "Altering Course" on Intersectoral Allocations of Salmon in British Columbia* (16 March 1998) [CAN000385] at 30 (Appendix 1: Terms of Reference)

⁸² *Ibid.*, at 12-15

The Kelleher Report (1998)

- 73 Contemporaneously with the Toy process, the Minister contracted with Stephen Kelleher, Q.C. to consult with commercial fishers and make recommendations on intrasectoral allocation. Kelleher undertook two sets of consultations with commercial fishers: one in 1997 and one in 1998. His April 1998 report summarizes the results of both these consultations.⁸³
- 74 Based on his 1997 consultations, Kelleher made seven recommendations to the Minister:
- (1) Allocation should include all five species, sockeye, chum, pink, coho and chinook salmon.
 - (2) Sockeye equivalents should be the unit of measurement in allocation.
 - (3) Where possible, an allocation plan should reflect traditional fishing patterns.
 - (4) Allocation must be considered on a four year basis.
 - (5) The allocation plan should target coast-wide shares of 34 per cent gillnet, 42 per cent seine, and 24 per cent troll.
 - (6) Allocation planning should strive for equality between southern areas, but cannot guarantee equality between northern and southern areas.
 - (7) The allocation plan should provide for Fraser River Sockeye catch-up/make-up amounts of 477,477 sockeye to be given the troll fleet, and 143,754 to be given the seine fleet. This payback arises from terms of the 1990-94 Long Term Allocation Plan.⁸⁴
- 75 After the 1998 consultations, Kelleher made an additional 23 recommendations about how allocation within the commercial sector should proceed among gear types.⁸⁵

Deficit Surplus Accounting

- (1) I recommend that formal adjustments for deficits and surpluses be suspended until after Area Re-selection is complete. In the interim, the Department should attempt to meet allocations and should attempt to provide adjustment where possible and appropriate.
- (2) The Department should continue its efforts to improve catch accounting and monitoring systems with a view to improving confidence in catch statistics.

⁸³ Stephen Kelleher, Q.C., *Report to the Honourable David Anderson, Minister of Fisheries & Oceans Re: Commercial Salmon Allocation* (30 April 1998) [CAN046955]

⁸⁴ *Ibid.*, at 5-6

⁸⁵ *Ibid.*, (recommendations dispersed through document)

- (3) Until Area Re-selection is complete, the Department should measure deficit and surplus amounts on the basis of Plan vs. Actual Catch, by gear on a coast-wide basis in Sockeye equivalents and adjust on a best efforts basis.
- (4) After Area Re-selection is complete, the Department should measure deficit and surplus amounts on the basis of Plan vs. Actual Catch, by gear, by North and South totals in Sockeye equivalents.
- (5) I recommend that deficit adjustment only be considered in those instances when, allowing for the constraints of other management objectives, a gear group has not been provided with a reasonable opportunity to catch its allocation.
- (6) I recommend that deficits and surpluses be monitored by the Department year to year by Sockeye Equivalent.
- (7) I recommend that the Department adjust for deficits and surpluses where possible and appropriate on a year to year basis.
- (8) I recommend that there be a formal allocation accounting once every four years, using Departmental catch statistics, but co-ordinated by an Allocation Facilitator (see Dispute Resolution below). At this time, deficits and surpluses will be formally stated, and repayment of these amounts built into the Allocation Plan for the upcoming four year period.

Northern By-catch

- (1) I recommend that by-catch of Fraser Sockeye be included in formal allocation accounting once every four years giving stakeholders and managers the opportunity to assess by-catch trends.
- (2) I recommend that the Department otherwise use discretion in managing fisheries in the North, seeking to provide fisheries to Northern license holders without significantly varying from by-catch patterns in the past.
- (3) I recommend that by-catch in the North be deducted from the TAC of the same gear type in the south in-season, in order to preserve coast-wide gear shares.

Allocation Change over Time

- (1) I recommend that in the event of a privately financed license buy back, gear shares not be adjusted.
- (2) I recommend that in the event of publicly funded license buy back, CPUE [catch per unit of effort] be held constant in the adjustment of coast wide gear allocations.
- (3) In the event of an inter-sectoral reallocation I recommend that catch capacity purchased be matched as accurately as possible to catch reallocated, by volume, species and area.
- (4) I recommend that the Department make available as much relevant information as possible prior to and during a two step area re-selection process. This information might include catch forecasts and income averages per license per license area.

- (1) I recommend that the Long Term Allocation Plan not be adjusted after the 1999 Re-selection process.

Dispute Resolution

- (1) I recommend that an Allocation Facilitator be appointed to handle disputes. The Allocation Facilitator shall seek consensus where possible and make recommendations to the Minister.

Specific Troll Fleet Issues

- (1) Until area re-selection is complete before the 2000 season, I recommend that Area G be given access to parts of Area 11 for the purpose of achieving its allocation, and that Area F be given a small harvest of Fraser Sockeye if abundance supports it.
- (2) I recommend that the Department provide Area F this access to Fraser Sockeye in such a way that minimizes risk when run size is uncertain. Area 2W or Area 11 might be considered.
- (3) I recommend that the Department provide Area F this access only subject to suitable catch monitoring.
- (4) After area re-selection, I recommend that there be no continuation of modifications of this kind. Boundaries for license areas should be drawn in such way that further modifications are not necessary.

Selective Fishing Practices

- (1) I recommend that the Department consider no new selective fisheries without accurate retirement of commercial fleet capacity and appropriate compensation.
- (2) In the interests of encouraging commercial license holders to innovate, and providing them with an opportunity catch [sic] their allocation in new more selective ways, I recommend that the Department establish a program to consider applications from commercial license holders to harvest by more selective means on a trial basis.

Allocation Framework

- 76 In response to the work of May, Toy and Kelleher, in December 1998, DFO released "An Allocation Framework for Pacific Salmon 1999-2005."⁸⁶
- 77 DFO held three workshops in March and April of 1999 to gather feedback on the Allocation Framework. It also received 225 pages of written submission. Edwin Blewett and Associates Inc. and Timothy Taylor Consulting Services compiled

⁸⁶ Fisheries and Oceans Canada, An Allocation Framework for Pacific Salmon 1999-2005. A New Direction: The Second in a Series of Papers from Fisheries and Oceans Canada (December 1998) [CAN000443]

the results of these consultations.⁸⁷ Based on these consultations, the Allocation Framework was then revised internally at DFO and renamed “An Allocation Policy for Pacific Salmon” (the “Salmon Allocation Policy”).

The Salmon Allocation Policy

78 In October 1999, DFO released “An Allocation Policy for Pacific Salmon, A New Direction: The Fourth in a Series of Papers from Fisheries and Oceans Canada.” The Salmon Allocation Policy contains a Salmon Allocation Framework, which sets out seven overarching principles for the allocation of salmon:⁸⁸

- (1) Conservation – Conservation of Pacific salmon stocks is the primary objective and will take precedence in managing the resource – conservation will not be compromised to achieve salmon allocation targets.
- (2) First Nations – After conservation needs are met, First Nations’ food, social and ceremonial requirements and treaty obligations to First Nations have first priority in salmon allocation.
- (3) Common Property Resource – Salmon is a common property resource that is managed by the federal government on behalf of all Canadians, both present and future. Common property does not imply open access, nor does it imply equal access.
- (4) Recreational Allocation – After conservation needs are met, and priority access for First Nations as set out in Principle 2 is addressed, recreational anglers will be provided:
 - a. Priority to directed fisheries on chinook and coho salmon; and
 - b. Predictable and stable fishing opportunities for sockeye, pink and chum salmon.
- (5) Commercial Allocation – After conservation needs are met, and priority access for First Nations as set out in Principle 2 is addressed:
 - a. The commercial sector will be allocated at least 95 per cent of combined commercial and recreational harvest of sockeye, pink and chum salmon; and
 - b. The commercial harvest of Chinook and coho will occur when abundance permits.
- (6) Selective Fishing – To encourage selective fishing:

⁸⁷ Edwin Blewett and Associates Inc. and Timothy Taylor Consulting Services, *An Allocation Framework for Pacific Salmon: 1999-2005 – Report on Written Submissions and Workshop Discussions* [CAN001100]

⁸⁸ Fisheries and Oceans Canada, *An Allocation Policy for Pacific Salmon, A New Direction: The Fourth in a Series of Papers from Fisheries and Oceans Canada* (October 1999) [CAN007857] at 15-36

- a. A portion of the total available commercial catch will be set aside for existing commercial licence holders to test alternative, more selective harvesting gear and technology; and,
- b. Over time, commercial allocations will favour those that can demonstrate their ability to fish selectively.

(7) Gear Allocations – Target allocations for the commercial sector will be:

- a. Established on a coast-wide basis by gear, with the catch of all species expressed on a sockeye equivalent basis; and,
- b. Subject to adjustments over time to account for conservation needs, including selective fishing, and possible changes resulting from the Voluntary Salmon Licence Retirement Program.

Intersectoral Allocation

79 The Salmon Allocation Policy deals with intersectoral allocation between Aboriginal fishing for food, social and ceremonial purposes, and both recreational and commercial fishing by giving First Nations food, social and ceremonial purposes priority over other uses of the resource.

80 Between commercial and recreational fishers, the Salmon Allocation Policy recognizes the following:

Recreational and commercial salmon fisheries operate very differently. The recreational fishery accounts for a relatively small portion of the total annual harvest of salmon. It is primarily concerned with the quality of the angling experience and with the opportunity to fish throughout the year. In contrast, the commercial fishery, which takes place mainly from July to November, accounts for the vast majority of the total salmon harvest and is primarily concerned with the quantity and value of the catch.⁸⁹

81 Principle 4 grants recreational harvesters priority access to chinook and coho. It also limits the recreational harvest of sockeye, pink and chum “to a maximum average of 5% of the combined recreational and commercial harvest of each species over the period 1999 to 2005.”⁹⁰ The Salmon Allocation Policy allows for some adjustment to allocation targets during 1999 to 2005 in the event that projections show that the recreational cap would be exceeded during this period.

⁸⁹ *Ibid.*, at 20

⁹⁰ *Ibid.*, at 25

82 Under Principle 5, the Salmon Allocation Policy grants the commercial sector 95 percent of the combined recreational and commercial catch for sockeye, pink and chum. At the time, DFO and fishers alike understood that it was unlikely that the recreational fishery would reach its five percent cap in most years.⁹¹ Any uncaught portions of the recreational allocation were to be harvested by the commercial fishery. Also, the commercial 95 percent was to be “broken out by species.”⁹² The commercial fishery was only to receive access to chinook and coho through directed commercial fisheries when “harvestable surpluses are sufficiently high” to meet conservation objectives, provide for First Nations’ food, social and ceremonial needs and requirements set out in treaties and agreements, allow for a directed recreational fishery, and still be sufficiently high to permit a directed commercial fishery.⁹³

Intrasectoral Allocation

83 The Salmon Allocation Policy adopts the initial coast-wide allocation targets for different gear types (expressed as percentages of TAC⁹⁴) as recommended by Stephen Kelleher: 34 percent gillnet, 42 percent seine, and 24 percent troll. These numbers were adjusted in early 2000 after the second licence buyback program as follows: 38 percent gillnet, 40 percent seine, and 22 percent troll.⁹⁵ These coast-wide target allocations are translated, on an annual basis, into licence area target allocations.⁹⁶ These annual target allocations are expressed in sockeye equivalents, based on the previous year’s average price by species.⁹⁷

84 Each year, DFO hosts a meeting in April amongst representatives of the commercial fishery to consult on how the coast-wide target allocations will be translated into licence area target allocations. The process is sometimes

⁹¹ *Ibid.*, at 21

⁹² *Ibid.*, at 21

⁹³ *Ibid.*, at 28

⁹⁴ TAC in this context means the Canadian commercial TAC.

⁹⁵ Report, Allocation within Commercial Fisheries in Canada: Pacific Herring, Salmon and Groundfish [CAN045285] at 5.

⁹⁶ Salmon Allocation Policy at 24

⁹⁷ *Ibid.*, at 32

controversial and criticized by commercial fishers because it is not always possible to achieve the target percentage split of the TAC amongst gear sectors. The process generally unfolds each year as follows:

- a. The Department divides the entire coast into 21 production areas. For each production area, the major stock of harvest is identified. For example, “South Coast Sockeye - Area 23” is one production area; “South Coast Sockeye – Fraser River Sockeye” is another; “South Coast Chum – areas 11 to 19 and 28 to 29” is yet another. The Department makes projections for the number of fish that will be harvested in each production area.
- b. The Department looks at the market value of the fish, based on the previous year, and turns each fish into a “sockeye equivalent.” For example, one chinook might be worth five sockeyes, whereas one pink might be worth only a fraction of one sockeye. In this way, the Department can determine the value of the projected harvest, based on sockeye equivalents, for each production area. The sockeye equivalent for a particular fish species is calculated as follows:⁹⁸

$$\text{Sockeye equivalent} = (\text{price/fish}) \div (\text{price/sockeye})$$

$$\text{Price/fish} = \text{landed value by species} \div \text{total catch by species}$$

- c. The goal is to allocate 40 percent of the harvest, measured in sockeye equivalents, to the gillnet fleet, 38 percent to the seine fleet, and 22 percent to the troll fleet on a coast-wide basis (including both the north and south coast regions). This is achieved by allocating the harvest in each production area to licence areas corresponding to different gear

⁹⁸ Commercial Salmon Allocation Draft 1 (12 October 2007) [CAN006502] at 3

types. For example, in 2009, the two production units of “South Coast Sockeye” were divided as follows:⁹⁹

Areas	Potential Harvest (Pieces)	Seine B	Gill Net D	Gill Net E	Troll G	Troll H
Area 23	-	60%	40%		0%	
Fraser River Sockeye	2.0 M	47.5%	21.5%	25%	0%	6%

Ideally, once the harvest for each production area is divided among gear types, the total coast-wide allocation of salmon amongst gear types should meet the 40:38:22 target ratio.

- d. Each year, the consultation on allocation starts with a model table prepared by DFO, which reflects last year’s shares, the projected harvest, and the value of the catch in sockeye equivalents for each production area. During the April meeting, the numbers are tweaked, and “horse trading” occurs between the representatives of different licence areas. The model is updated during the course of the meetings; different scenarios can be run as necessary to explore different allocation options. At the end of the meeting, DFO seeks an agreement on the percentage shares of each licence area for each production area.¹⁰⁰ This summary then becomes Appendix 4 of the Integrated Fisheries Management Plan (“IFMP”) for Salmon. It is the formal allocation plan for the year, broken down by species/production area and licence area/gear type.

⁹⁹ *Pacific Region Integrated Fisheries Management Plan Salmon Southern B.C.* June 1, 2009 to May 31, 2010, [CAN004013] at Appendix 4. Note that the predicted harvest of 2.0 million Fraser River sockeye did not in fact happen due to sockeye returning in lower than expected numbers. The commercial fishery did not proceed in 2009.

¹⁰⁰ For an example of the results of this process, see: Summary of Final 2009 Allocation Charts and Tables from the CSAB/DFO Allocation Meeting Richmond Inn (15 April 2009) [CAN006509]

- e. Ultimately, the Department will determine the allocation for each production unit, if agreement cannot be reached amongst the area representatives during the April meeting.

85 One of the challenges arising from coast-wide allocation targets relates to gear types that target high value fish. For example, the Area F troll fleet and the Area G troll fleet both have access to high value chinook. The catch of chinook in these areas often pushes the coast-wide allocation, based on sockeye equivalents, for the troll industry over the 22 percent target. This raises the question of what to do about the Area H troll fleet, which does not have access to chinook. Should Area H have access to any Fraser River sockeye when the coast-wide allocation for trollers runs over 22 percent? Is it fair to “zero out” a licence area from potential catch because, coast wide, the gear type is over the allocation target? These are the sorts of issues that are discussed in the annual April allocation meeting and become part of the negotiation context.¹⁰¹

Other Commercial Allocation Considerations

- 86 The Allocation Policy also provides that fisheries plans developed to meet target allocations should reflect the following:
- Taking steps to reduce harvest rates and harvest levels in “more seaward fishing areas where uncertainties in run size, stock composition and survival rates are greatest” (i.e., transitioning to harvesting in more terminal areas over time); and
 - Where a certain area is unable to harvest its target allocation of a species, “deliver that foregone target allocation to the same gear in another area” to help each gear harvest its coastal target allocation.”¹⁰²

¹⁰¹ See discussion, *ibid*, at 1-2.

¹⁰² Salmon Allocation Policy at 32-33

One way that these policy directions are being implemented is through commercial licence relinquishment and transfer of the equivalent allocation to inland First Nations fisheries under PICFI.

- 87 The Salmon Allocation Policy recognizes that adjustments to target allocations might be required over time in order to reflect conservation needs, the need for more selective fishing, and changes in the mix of gear types in the fishery. For example, such changes in gear type mix might occur as a result of licence retirement programs. The procedure for adjusting target allocations “will be based on maintaining the relative catch per licence within each gear constant.”¹⁰³ As mentioned above, such an adjustment was made after licence buybacks, resulting in the current target allocation percentages.
- 88 The Salmon Allocation Policy also states that target allocations are not guaranteed, and no compensation is provided in the event that an allocation is not achieved. More specifically, “‘catch up/make up’ adjustments to future target allocations will not be considered in the event that a fleet does not achieve its target allocation.”¹⁰⁴ This is a departure from previous allocation methods. The Department expressly did not accept Kelleher’s recommendations in respect of “Deficit Surplus Accounting.” Instead, the Department took the view that “Catch up/make up provisions would seriously complicate salmon fishery management and potentially conflict with conservation goals and selective fishing priorities.”¹⁰⁵

Selective Fishing under the Salmon Allocation Policy

- 89 The Salmon Allocation Policy provides that,

For a two-year period (1999-2000), up to 5% of the total available commercial catch will be available to commercial licence holders who wish to experiment with alternative fishing gear and technology such as salmon traps, fish wheels and tooth tangle nets. The results of the fishing trials will be reviewed and evaluated. At the end of the two-year period, the adequacy of the allocation for experimental

¹⁰³ *Ibid.*, at 34

¹⁰⁴ *Ibid.*, at 36

¹⁰⁵ *Ibid.*, at 36

trials will be assessed and revised if necessary. Initial longer-term allocations to alternative gear and technology will also be considered at that time.¹⁰⁶

- 90 As discussed further in the section on selective fishing, below, selective fishing is “the ability to avoid non-target fish, invertebrates, seabirds, and marine mammals or, if encountered, to release them alive and unharmed.”¹⁰⁷
- 91 Under the Salmon Allocation Policy, selective fishing experiments were to have priority over existing commercial fisheries, and that “Over the longer term, target allocations for seine, gillnet and troll gear will reflect the relative ability of each gear type to harvest selectively through modification of existing gear and fishing operations.”¹⁰⁸
- 92 In 2001, TAC used for selective fishing experiments in the Pacific Region was in the order of about \$700,000.¹⁰⁹ (Selective fishing experiments that took place in the 1998-2002 period are described in the section on selective fishing, below.)
- 93 The target allocations under the Salmon Allocation Policy have not been adjusted away from the “Kelleher formula” to reflect the relative selectivity of different gear types. Instead, fleets using less selective methods may be unable to access their allocation if, for example, their fishery is closed because of a high risk to stocks of concern.

Allocation Board

- 94 Building on the recommendations from May, Toy and Kelleher, the Salmon Allocation Policy said that “an impartial board with coast-wide responsibilities will be established to advise and assist the Minister in implementing this salmon

¹⁰⁶ *Ibid.*, at 29

¹⁰⁷ Fisheries and Oceans Canada, *A Policy for Selective Fishing in Canada’s Pacific Fisheries* (January 2001) [CAN021244] at 7

¹⁰⁸ *Ibid.*, at 31

¹⁰⁹ *Selective Fisheries Experimental Project Management – 2002 Transition* [CAN002146]

allocation policy.”¹¹⁰ According to the policy, the board was to be established in the calendar year 2000.

- 95 The allocation board has never been established.

Current Status of Allocation Policy

- 96 The Salmon Allocation Policy remains the operating policy document for guiding salmon allocation.

- 97 In April 2005, DFO released a “Backgrounder” describing its 2005 Action Plan. In the Backgrounder, the Department said the following:

The current salmon allocation policy guiding the distribution of the salmon resource among First Nations, and commercial and recreational stakeholders, will remain in effect for the foreseeable future. ... while there are on-going implementation issues that need to be addressed, the substance of the policy remains sound.¹¹¹

- 98 Recently, the Department revived an intersectoral allocation committee called the Allocation Implementation Committee (described further below) to deal with some issues of modernizing the Salmon Allocation Policy. For example, this group may deal with the problem of how to address recreational fishers going beyond the five percent cap for sockeye in years of poor returns when the commercial harvest is low. Another current issue is whether the five percent cap applies on a rolling five-year basis, or whether it was intended to apply every year.

DFO Responsibility for Salmon Allocation

- 99 Regional responsibility for implementing the Salmon Allocation Policy rests with the Salmon Team, located within Fisheries and Aquaculture Management (changed to Ecosystem and Fisheries Management as of May 2010) under the Director of Fisheries Resource Management. As described in the commission’s

¹¹⁰ Salmon Allocation Policy at 38

¹¹¹ Fisheries and Oceans Canada, Backgrounder: 2005 Action Plan (14 April 2005) [CAN001550]

Policy and Practice Report entitled “Overview of Fraser River Sockeye Salmon Harvest Management,” the salmon team’s member are the Lead of the Salmon Team,¹¹² the Regional Salmon Coordinator¹¹³ (also called the Regional Salmon Resource Manager or the Regional Resource Manager, Salmon), the Regional Recreational Coordinator¹¹⁴ and the Salmon Officer.¹¹⁵

- 100 The Salmon Working Group, described in the section above on licensing, also coordinates the implementation of regional and national strategies relating to allocation (among other things).

Selective Fishing

What is Selective Fishing?

- 101 Selective fishing is “the ability to avoid non-target fish, invertebrates, seabirds, and marine mammals or, if encountered, to release them alive and unharmed.”¹¹⁶ Bycatch is defined as follows:

Bycatch—fish that are harvested in a fishery, but usually not sold or kept for personal use, as well as seabirds and marine mammals that become entangled or caught by fishing gear. Bycatch includes the discard of whole fish at sea or elsewhere, including those fish discarded for economic and regulatory or regulatory reasons, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include fish legally retained in a fishery and kept for personal or cultural use, or that enter commerce through sale, barter or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program.¹¹⁷

“Bycatch” normally refers to non-target species (e.g., sockeye salmon when fishing for pink), while “incidental harvest” refers to the inadvertent harvest of

¹¹² As of December 2010, Brent Hargreaves is acting in this position. The prior Lead was Paul Ryall (2003-2009).

¹¹³ As of December 2010, Jeff Grout.

¹¹⁴ As of December 2010, Devona Adams.

¹¹⁵ As of December 2010, Kelly Binning.

¹¹⁶ Fisheries and Oceans Canada, *A Policy for Selective Fishing in Canada’s Pacific Fisheries* (January 2001) [CAN021244] at 7

¹¹⁷ Fisheries and Oceans Canada, *A Policy for Selective Fishing in Canada’s Pacific Fisheries* (January 2001) [CAN021244] at 16

stocks of concern within a species (e.g., Cultus Lake sockeye when harvesting summer run sockeye).¹¹⁸

- 102 Selective fishing may be relevant to Fraser River sockeye and the associated fishery for several reasons, arising from various possible scenarios. First, fishers might catch sockeye as bycatch during other fisheries. One example where this might happen is during the Fraser River pink fishery. This can be problematic in years of sockeye low abundance. If pink salmon cannot be caught selectively during such years, then that fishery might be closed to preserve sockeye. Second, during years when sockeye are abundant enough for the fishery, the fishery risks closure if the bycatch and mortality of vulnerable non-target species, such as coho, exceed acceptable limits. Selective fishing techniques can allow for longer openings, helping to ensure that the various fleets catch their allocation of Fraser River sockeye. Third, the sockeye fishery risks closure to protect weak stocks within the sockeye species. When it comes to avoiding vulnerable stocks of the same species, current selective fishing methods are limited to time and area controls, since these stocks are not distinguishable by sight. Future development of selective fishing techniques might allow testing of fish for genetic or DNA markers that would identify their conservation unit and allow for fish sorting by genetic markers.

Regulatory Instruments

- 103 The *Fisheries Act* and related Regulations contain relatively few direct provisions about selective fishing.
- 104 Section 33(2) of the FGR provides that other than where retention of incidental catch is allow by regulation, “every person who catches a fish incidentally shall forthwith return it (a) to the place from which it was taken; and (b) where it is alive, in a manner that causes it the least harm.”

¹¹⁸ See definitions in untitled document [CAN029977] at 1

- 105 The PFR also contain provisions prohibiting the catching of fish by snagging,¹¹⁹ prohibiting the use of lights to attract or repel fish (except for squid),¹²⁰ restricting the length of gill nets,¹²¹ and restricting the length and depth of purse seine nets.¹²²
- 106 Selective fishing measures may also be imposed under s. 22 of the FGR, through conditions of licence, in particular, conditions that affect the type, quantity, size and length of fishing gear that may be used.

A Recent History of Selective Fishing

- 107 In 1995, the United Nations Food and Agriculture Organization issued its Code of Conduct for Responsible Fisheries.¹²³ In 1998, Canada's commercial fishing industry developed its own code.¹²⁴ The Canadian Code of Conduct sets out a process for setting up a Code Board and a process for the ratification of the Code by the commercial fishing industry.¹²⁵ DFO reports that "more than 60 Canadian fisheries organizations, representing 80 per cent of the landings, have ratified the Canadian Code of Conduct for Responsible Fishing Operations."¹²⁶
- 108 Principle 6 of the Canadian Code of Conduct states: "To the extent practical, fish harvesters will minimize unintended bycatch and reduce waste and adverse impacts on the freshwater and marine ecosystems and habitats to ensure healthy stocks." The Code then goes on to set out several guidelines, some of which relate to selective fishing, as follows:

Guideline #2.1

¹¹⁹ PFR, s. 6

¹²⁰ PFR, s. 8

¹²¹ PFR, s. 57

¹²² PFR, s. 60

¹²³ See discussion in Cohen Commission, *International Law Framework Practices and Policy Report* at 41-43

¹²⁴ A copy of the Canadian Industry Code is attached as Annex 3 to the Selective Fishing Policy, discussed below.

¹²⁵ See *Canadian Code of Conduct for Responsible Fishing Operations*, online: <http://www.dfo-mpo.gc.ca/fm-gp/policies-politiques/cccrfo-cccpr-eng.htm>

¹²⁶ See *United Nations Food and Agriculture Organization Code of Conduct for Responsible Fishing Operations*, online: http://www.dfo-mpo.gc.ca/international/media/bk_fao-eng.htm

Develop protocols (including, when practical and appropriate, the use of selective fishing gears and practices) regarding the catch of non-targeted resources which jeopardize the health of the stocks.

Guideline #2.2

Use only gear authorized for use in a particular fishery.

Guideline #2.3

Ensure fishing activities are not conducted in a fashion that would endanger fish stocks or the environment.

Guideline #2.4

Conduct, in consultation with relevant sectors, research to assess fishing gears, and promote and utilize new fishing gears and practices which are consistent with sustainable fishing practices.

Guideline #2.5

Assist, initiate, and participate in research and assessment initiatives aimed at resource and environmental protection.

109 In 1998, selective fishing rose to the forefront of fisheries management in B.C. The coho stocks were in crisis. In February, Minister David Anderson established a Coho Response Team. In May, the Team released a "Selective Fisheries Approach for Management of BC Salmon Fisheries in 1998" which set out a Selective Fisheries Management Framework. The Minister then announced conservation measures to rebuild coho, including zero fishing mortality for critical coho stocks.¹²⁷ In June, the Minister announced \$400 million in funding for the CFAR, which included \$21.5 million to fund the Pacific Salmon Selective Fishing Program, one of the subcomponents of CFAR.¹²⁸

110 The Pacific Fisheries Resource Conservation Counsel reported that:

The enthusiasm and ingenuity that developed over selective fishing in 1998 were astounding. ...

¹²⁷ See discussion in Edwin Blewett & Associates Inc. and Timothy Taylor Consulting Services Inc., *Selective Fisheries Policy and Practice* (January 1999) [CAN000288] at 1

¹²⁸ Audit and Evaluation Directorate, *Pacific Salmon Selective Fishing Program Evaluation*, Project Number 60278, Draft Advisory Report (11 February 2005) [CAN018739] at i

Though some fishers participated reluctantly in the new move to more selective fishing, many showed genuine excitement at the challenge of exploring new ways to fish selectively. This major shift in attitude was perhaps the most positive development in the 1998 season.¹²⁹

111 From 1998 to 2002, the Pacific Salmon Selective Fisheries Program was a key element of fleet restructuring. Program funding ended on March 31, 2002.¹³⁰

The Pacific Salmon Selective Fisheries Program (1998-2002)

112 The Selective Fisheries Program had three goals:

1. “Develop and evaluate more selective fishing techniques in commercial, First Nations and recreational salmon fisheries.
2. Facilitate implementation of selective fishing practices in commercial, First Nations and recreational salmon fisheries.
3. Communicate to participants in these fisheries harvesting methods and technologies that will lead to more selective fishing.”¹³¹

113 During the course of the program, DFO funded a total of 122 selective fishing experimental pilot projects: 73 with commercial fishers, 24 with First Nations, 19 with recreational fishers, two with conservationists, and two multi-sectoral projects.¹³² The “most significant research investment” was directed at determining salmon mortality after release from fishing gear.

114 At the end of the four years, DFO reported the following (among other things) in its final report on the program:¹³³

- Seiners were able to demonstrate a reduction in coho mortality from 25 to five percent by employing brailing techniques and allowing coho to recuperate in on-board revival tanks. These techniques allowed access to

¹²⁹ Richard Routledge and Ken Wilson, *Coast-Wide Coho* (Pacific Fisheries Resource Conservation Council, June 1999) at 15

¹³⁰ Fisheries and Ocean, Selective (Salmon) Fisheries Program, Final Report [CAN000444]

¹³¹ *Ibid.*, at 3

¹³² *Ibid.*, at 4. See also: Document Summary [CAN176467], which provides summaries of the selective fishing experiments.

¹³³ Fisheries and Oceans, Selective (Salmon) Fisheries Program, Final Report [CAN000444]

sockeye and pink fisheries that would otherwise have remained closed due to coho concerns.

- Gillnetters were able to show that it is possible to reduce coho mortality from 70 to five percent by using shortened nets, short set times, smaller mesh size, improved revival tank designs, and careful handling of fish. Changing fishing area and fishing only during daylight hours also helped to avoid catching coho.
- Troll gear can selectively catch one species over another by changing plug size. Trollers can also avoid non-target species through time and area specific fishing patterns.
- A significant knowledge gap still remains with respect to post-release mortality rates, “but the department plans to continue to investigate solutions.”
- In the recreational fishery, measures implemented included Special Management Zones, barbless hooks in all salmon fisheries, and non-retention of coho.
- The 2001-2002 IFMP set out selective fishing measures for the commercial fleet, including: brailing of seine sets; net mesh and depth restrictions and set-length restrictions for gill netters; use of barbless hooks for trollers; fish sorting; and use of revival tanks.
- DFO undertook educational activities including sponsoring at least one selective fishing workshop in each year of the program, commissioning a *Selective Fisheries Review and Evaluation*, and holding community workshops in 2000-2001.

115 In February 2005, the Department's Audit and Evaluation Directorate released a program evaluation of the Pacific Salmon Selective Fishing Program.¹³⁴ It concluded that the Program marked "a step in the shift of thinking about selective fishing" and that success was achieved in some areas:

With regard to Program success, there were important areas in which success was achieved, such as the implementation of selective technologies and gear standards into conditions of licences for salmon harvesters. The allocation principle and policy were well thought out and applied successfully to further experimental testing and to encourage selectivity. The Program was successful in terms of maintaining fishing activity under the guidance of Integrated Fisheries Management Plans that contained temporary gear measures and time allocations, which helped sustain the industry through a period of low abundance by offering an innovative management approach. Stock identification research also advanced under the PSSFP.¹³⁵

116 However, the audit also found "no evidence to suggest the PSSFP had an impact in creating a viable and sustainable fishing industry," partly due to a lack of accurate implementation measures and selective fishing compliance indicators needed to measure the Program's progress.¹³⁶ The Program also fell short in the development of selective standards.¹³⁷

117 The audit also set out a number of "Lessons Learned"—addressing such things as selection of strategies to encourage change in the industry, utilization of TAC for selective fishing projects, monitoring progress, and evaluation of the program—that could be used in the development of future selective fishing programs.¹³⁸

The Selective Fishing Policy (2001)

118 In May 1999, DFO released "Selective Fishing in Canada's Pacific Fisheries: A New Direction: The Third in a Series of Papers from Fisheries and Oceans

¹³⁴ Audit and Evaluation Directorate, *Pacific Salmon Selective Fishing Program Evaluation*, Project Number 60278, Draft Advisory Report (11 February 2005) [CAN018739]

¹³⁵ *Ibid.*, at i

¹³⁶ *Ibid.*, at ii

¹³⁷ *Ibid.*, at ii

¹³⁸ *Ibid.*, at ii-iii

Canada.¹³⁹ This paper set out a policy framework and served as a discussion paper among First Nations and stakeholders prior to the adoption of the Selective Fishing Policy.

- 119 In January 2001, just over a year before the end of the Selective Fisheries Program, DFO released *A Policy for Selective Fishing in Canada's Pacific Fisheries* (the "Selective Fishing Policy"). The stated objective of the Selective Fishing Policy is as follows:

The objective is to ensure that selective fishing technology and practices are adopted where appropriate in all fisheries in the Pacific Region, and that there are continuing improvements in harvesting gear and related practices.

Selective fishing is a requisite element of conservation-based fisheries. In meeting conservation objectives, fishing opportunities and resource allocations will be shaped by the ability of all harvesters – First Nations, commercial and recreational anglers – to fish selectively.¹⁴⁰

- 120 The Selective Fishing Policy sets out five principles towards achieving that objective:

Principle 1 – Conservation of Pacific fisheries stocks is the primary objective and will take precedence in managing the resource.

Principle 2 – All Pacific recreational and commercial fisheries will adhere to selective fishing standards within set timelines.

Principle 3 – In fisheries where selective harvesting standards are not met within prescribed timelines, and bycatches prevent achievement of conservation objectives, fishing opportunities will be curtailed.

Principle 4 – Four fundamental strategies in fishing selectively to minimize mortalities and maximize chances for survival of non-target fish, invertebrates, seabirds and marine mammals will be adopted through increased knowledge of fishing gear and practices.

Principles 5 – First Nations and the recreational and commercial fishing sectors will be responsible for continuous learning and skills development and transfer of responsible and selective harvesting practices.¹⁴¹

¹³⁹ Fisheries and Oceans Canada, *Selective Fishing in Canada's Pacific Fisheries: A New Direction: The Third in a Series of Papers from Fisheries and Oceans Canada* (May 1999) [CAN000325]

¹⁴⁰ Fisheries and Oceans Canada, *A Policy for Selective Fishing in Canada's Pacific Fisheries* (January 2001) [CAN021244]

¹⁴¹ *Ibid.*, at 8-10

121 Principle 1 reflects the precautionary approach to fisheries management. In implementing Principle 2, DFO planned to “develop selective fishing standards and implementation action plans for all Pacific recreational and commercial fisheries by January 2003.” Examples of standards include certification of licence holders in responsible and selective fishing, classification of fisheries according to risk, and fishery or vessel bycatch limits that may trigger closure of a fishery. The discussion related to Principle 3 indicates shifts in fishing opportunity and resource allocation to favour those who fish selectively. It also indicated that the “allocation board” referred to in the Allocation Policy, may be tasked with providing advice on salmon allocations related to selective fishing ability.¹⁴² The Selective Fishing Policy four fundamental strategies referred to in Principle 4, in order of preference, are as follows:

1. Avoidance of non-target species and stocks through time and area restrictions;
2. Avoidance through gear design;
3. Release alive and unharmed before being brought aboard or ashore, through gear design; and
4. Release alive and unharmed from the deck of the vessel or landing site (e.g., shore or fishing pier).¹⁴³

Finally, Principle 5 aims at education within the fishing sectors: encouraging “Aboriginal, recreational and commercial organizations to develop and deliver programs that increase the awareness of selective fishing and skill levels of harvesters and anglers to employ selective practices.”¹⁴⁴

122 As well, with respect to encouraging selective fishing in the commercial sector, the Selective Fishing Policy reiterates the policy that was previously set out in the Allocation Policy:

To encourage selective fishing:

¹⁴² As discussed above in the section on the Allocation Policy, the allocation board has never been established.

¹⁴³ Selective Fishing Policy at 9

¹⁴⁴ *Ibid.*, at 10

- A portion of the total available commercial catch will be set aside for existing commercial licence holders to test alternative, more selective harvesting gear and technology, and
- Over time, commercial allocations will favour those who can demonstrate their ability to fish selectively.¹⁴⁵

123 As noted above, the Salmon Allocation Policy specifically reserved five percent of the commercial TAC for selective fishing experiments in the years 1999-2000 and allowed for the adequacy of the allocation for selective fishing to be reviewed and revised at the end of those two years as necessary. Although the Selective Fishing Program ended in 2002, the ability to use up to five percent of the commercial TAC for selective fishing projects remains under the Salmon Allocation Policy. Since the Federal Court of Appeal's decision in *Larocque v. Canada (Minister of Fisheries and Oceans)*, 2006 FCA 237 in 2006, there is uncertainty as to whether the use of TAC for selective fishing projects is possible.

124 The Selective Fishing Policy repeated the Salmon Allocation Policy's direction that commercial allocations would favour those fishers demonstrating an ability to fish selectively. DFO has not made adjustments to the annual coast-wide allocation targets to reflect selective fishing methods.

Current Status of Selective Fishing

125 Following the period of experimentation that occurred under the Selective Fisheries Program, and based on the results of those studies,¹⁴⁶ DFO introduced selective fishing measures in its 2001 Salmon Integrated Fisheries Management Plan (IFMP) for the South Coast, which were then translated into conditions of licence. These measures included the use of brailing and revival tanks for the seine fleet; 60 minute maximum set times and revival tanks for the gill net fleet; and the use of barbless hooks and revival tanks for the troll fleet.¹⁴⁷ DFO has not

¹⁴⁵ *Ibid.*, at 6

¹⁴⁶ For example, see N.B.Hargreaves and C.Tovey, *Mortality Rates of Coho Salmon Caught by Commercial Salmon Gillnets and the Effectiveness of Revival Tanks and Reduced Soak Time for Decreasing Coho Mortality Rates*, Canadian Science Advisory Secretariate Research Document 2001/154 [CAN004335]

¹⁴⁷ 2001 Southern BC Salmon Integrated Fishery Management Plan [CAN001017] at 38-41.

formalized a set of selective fishing standards as contemplated under Principle 2 of the Selective Fishing Policy.

- 126 Since 2002, the Department has not addressed selective fishing through targeted selective fishing programs, though some scientific projects have continued where the departmental proponents have received funding under other programs. For example, a project on escape grids in knotless bunt seine nets that was started under the Selective Fisheries Program continued to completion in 2004.¹⁴⁸ The Department also conducted catch and release experiments in the recreational sockeye fishery, and DFO has co-managed a drift net study with First Nations groups to assess the drop-out rates from in-river drift nets.¹⁴⁹ Selective fishing continues to be mentioned in the yearly IFMPs.
- 127 A lack of interest in pursuing further formal selective fishing measures may stem from a lack of support in the commercial fleet. In 2004, some industry representatives apparently told DFO that they were opposed to additional testing or broad implementation of new selective fishing methods.¹⁵⁰
- 128 The Selective Fishing Policy is still a current policy. The potential exists for the Department to initiate new efforts to implement the policy. The *Larocque* decision¹⁵¹ raises uncertainty about the use of TAC for experimental purposes.

DFO Responsibility for Selective Fishing

- 129 No directed programs currently address selective fishing. Responsibility for the Selective Fishing Policy presumably now rests with the Salmon Working Group

¹⁴⁸ Appendix 9: Commercial Selective, Assessment and Demonstration Fisheries [CAN 000838] at 1 (Appendix to Southern BC Integrated Fisheries Management Plan 2005-2006 [CAN000837])

¹⁴⁹ Communication Strategy: Fraser River Drift Net Study, draft plan (2005) [CAN007706]; see also: Fishery Notice: Fraser River Gill Net Study [CAN007104]

¹⁵⁰ Memorandum for the RDG: Selective Fishing in the 2004 Area A & B Seine Fisheries [CAN18164]; see also: Email from Don Lawseth Re: Allocation Policy – Use of TAC for Selective Fisheries (7 July 2000) [CAN160142]

¹⁵¹ *Larocque v. Canada (Minister of Fisheries and Oceans)*, 2006 FCA 237. See discussion of the *Larocque* decision in the commissions Policy and Practice Report entitled “Overview of Fraser River Sockeye Salmon Harvest Management” at 70

described above. Selective fishing is implemented through salmon resource managers.

- 130 The Project Authority for the Pacific Salmon Selective Fishing Program from 1998-2002 was Don Lawseth. The Selective Fisheries Coordinator was Gordon Curry. Dr. Brent Hargreaves provided the contact to DFO's Science Branch. This program is no longer in operation.

Consultative Processes and Bodies

Introduction to Salmon Consultative Processes

- 131 In the late 1980s and until it disbanded in 1998, CFIC represented the commercial fishing industry. CFIC was comprised of representatives from various fisher associations and guilds from along the coast including the following:¹⁵²

- United Fishermen & Allied Workers Union (“UFAWU”)
- Co-operative Fishermen’s Guild
- Pacific Gillnetters Association
- Gulf Trollers Association
- Pacific Coast Fishing Vessel Owners Guild
- Pacific Trollers Association
- Native Brotherhood of B.C.
- Deep Sea Trawlers Association of B.C.
- Prince Rupert Fishermen’s Co-op Association
- Fisheries Council of B.C.
- Fishing Vessel Owners Association
- Northern Trollers Association
- Prince Rupert Fishing Vessel Owners Association
- Pacific Seafood Council
- Pacific Black Cod Fishermen’s Association

¹⁵² Commercial Fishing Industry Council (List) [CAN001032]

- Nuu-chah-nulth Fisheries Council

- 132 In 1999, the Auditor General stated that DFO needed to improve its process for consulting with stakeholders, the Province and communities.¹⁵³ The advisory committees in place were outdated (not reflecting current gear and area based licensing) and lacked clarity in their terms of reference, roles and responsibilities; also, questions existed about their accountability and mandates.¹⁵⁴
- 133 On December 10, 1999, the Minister announced a review of salmon advisory processes.¹⁵⁵ The Minister contracted the University of Victoria Institute for Dispute Resolution (“UVICIDR”) to conduct an independent review of Pacific Salmon Advisory Processes. The review team included Stephen Owen, Q.C. and Maureen Maloney, Q.C..¹⁵⁶ DFO released a discussion framework in June of 2000, which set the context for the UVICIDR consultations with stakeholders in the fall of that year, and spring of the following year.¹⁵⁷ That discussion framework described the state of consultation with the commercial sector as follows:

With respect to commercial salmon fisheries, seven standing advisory boards and committees, organized geographically, have provided input to the responsible Fisheries and Oceans Canada managers on the development of annual commercial fishing plans and other operational matters. The majority of participants on these committees are members of independently organized industry association. Some of these committees also have broader than commercial representation, including local First Nations, recreational fishing interests and, at times, local and provincial governments. Since the Commercial Fishing Industry Council formally disbanded in 1998, there has been no region-wide association that broadly represents commercial salmon stakeholders.

¹⁵³ Auditor General, Chapter 20 Pacific Salmon: Sustainability of the Fisheries (November 1999) [CAN002444]

¹⁵⁴ Fisheries and Oceans Canada, A Framework for Improved Decision-Making in the Pacific Salmon Fishery. Discussion Paper. A New Direction: The Sixth in a Series of Papers from Fisheries and Oceans Canada (June 2000) [CAN002909] at 4

¹⁵⁵ See reference in Terms of Reference :Review of Consultative and Decision Making Processes in the Pacific Salmon Fishery [CAN075568]

¹⁵⁶ Fisheries and Oceans Canada, A Framework for Improved Decision-Making in the Pacific Salmon Fishery. Discussion Paper. A New Direction: The Sixth in a Series of Papers from Fisheries and Oceans Canada (June 2000) [CAN002909]. Note that Stephen Owen, Q.C. withdrew from the team in October 2000 when he announced his candidacy for the federal Liberal Party. The Independent Review continued under the leadership of Maureen Maloney, Q.C.. See: Institute for Dispute Resolution, University of Victoria. *Independent Review of Improved Decision Making in the Pacific Salmon Fishery. Final Recommendations* (16 May 2001) [CAN003238] at 1

¹⁵⁷ Institute for Dispute Resolution, *ibid.*, at 1-2

Recently, however, some commercial salmon licence holders have organized a Salmon Harvesters Society.¹⁵⁸

134 The discussion framework proposed a model of harvesting plans and harvest management advisory committees based on the following principles: “Effective and Efficient,” “Appropriate Representation,” and “Accountable and Transparent.”¹⁵⁹

135 On May 16, 2001, the UVICIDR released its final recommendations for and improved decision making process for the Pacific salmon fishery.¹⁶⁰ The UVICIDR made the following broad recommendations:

1. Improve standards of practice within consultation processes and commit to a set of principles and a code of conduct that address fundamental issues of mistrust.
2. Establish a planning and policy development system that clarifies when and how important decisions are made and how interested parties may participate.
3. Establish a nomination process within the commercial sector to ensure fair and accountable representation of all Area/gear types in harvest management planning, allocation decision making and policy development. The Department should provide resources on a priority basis for an independent firm or organization to assist the commercial sector in establishing the proposed organizations, unless the Department is prepared to take this task on internally.
4. Establish an Integrated Regional Forum (IRF) within which Integrated Salmon Harvest Management Plans (SHMPs) can be refined and decision rules for SHMPs can be developed. The IRF should adopt a flexible approach to dealing with conflicts between the commercial and recreational sectoral SHMPs (and potentially in the future First Nations SHMPs) by bringing affected parties together in a working group format. North and South subgroups are a key starting point. However, there are issues that may involve interests from both north and south, as well as other potential subgroups, such as a coast/interior subgroup.

¹⁵⁸ Fisheries and Oceans Canada, A Framework for Improved Decision-Making in the Pacific Salmon Fishery. Discussion Paper. A New Direction: The Sixth in a Series of Papers from Fisheries and Oceans Canada (June 2000) [CAN002909] at 6

¹⁵⁹ *Ibid.*, at 9-10

¹⁶⁰ Institute for Dispute Resolution, University of Victoria. *Independent Review of Improved Decision Making in the Pacific Salmon Fishery. Final Recommendations* (16 May 2001) [CAN003238]

5. Ensure that multi-party negotiation is an integral part of the process used by the Allocation and Licensing Board to interpret and clarify the Allocation Policy and address new allocation issues that have been referred to the Board by the Minister.
6. Establish a Policy Advisory Committee (PAC) and a public Policy Forum process for discussion of key policy issues amongst all sectors, First Nations and the federal and provincial governments.
7. Strengthen the three tiered process that First Nations and Government are developing in order to more effectively fulfill Constitutional and fiduciary obligations and ensure that the three tiered process is effectively integrated into the overall system of decision making, while simultaneously enabling improved First Nation participation in multi-party discussions.
8. Address the role of communities and regional management boards as a priority topic for the Policy Advisory Committee (PAC) and a public Policy Forum. Review of the progress and results of the West Coast of Vancouver Island (WCVI) pilot should be a key focus of this discussion.
9. The recommendations contained in this report should be provided to First Nations for consideration in the Tier 2, government to government, consultation between First Nations and Fisheries and Oceans Canada that will occur after this independent review is completed. This consultation will include how First Nations will be resourced to participate meaningfully.¹⁶¹

136 More specifically, with respect to the commercial sector, the UVICIDR recommended a system of (licence) area councils elected by licence holders, which would then send representatives to a “Commercial Salmon Harvester Advisory Board” and to “Gear Councils.”¹⁶² It also recommended funding the expenses of representatives.¹⁶³ The UVICIDR also recommended setting up a system for decision making that included commercial area councils sending representatives to participate in an Integrated Regional Salmon Harvest Management Planning Forum.¹⁶⁴ Additionally, the UVICIDR made recommendations for an allocation and licensing negotiation process that would relate to the Allocation and Licensing Board that had been promised by the Salmon Allocation Policy.¹⁶⁵

¹⁶¹ *Ibid.*, at 4-5

¹⁶² *Ibid.*, at 15-16

¹⁶³ *Ibid.*, at 13

¹⁶⁴ *Ibid.*, at 22-29

¹⁶⁵ *Ibid.*, at 30-34

137 The Department agreed with many of the recommendations in the report.¹⁶⁶ It moved towards implementing a system of consultation with the commercial sector through Area Harvest Committees (AHCs) and the CSAB. Both AHCs and the CSAB are discussed in more detail in the sections below.

138 The main areas in which DFO currently takes advice from the industry include the following:

- Intrasectoral Allocation. DFO meets with the CSAB in April of each year to seek agreement on allocation of the commercial TAC to the various licence areas as described in the section on intrasectoral allocation.
- Intersectoral Allocation. DFO has established the Allocation Implementation Committee (“AIC”), (also referred to as the “Recreational-Commercial Salmon Allocation Implementation Committee”) to consult with the recreational and commercial sectors on issues related to allocation of the combined commercial and recreational TAC for salmon.
- Harvest Management and Integrated Fisheries Management Plans.¹⁶⁷ DFO meets with the CSAB through the Salmon Integrated Harvest Planning Committee (“IHPC”), which includes representatives from the three fishing sectors (commercial, recreational and First Nations) and the environmental community, to consult on development of IFMPs.
- Other issues. DFO may consult with the industry on issues related to licensing, buybacks, enforcement, stock assessment, demonstration projects, test fishing, selective fishing, etc. on an as needed basis.

139 In addition to the DFO-sanctioned AHCs, many licence holders still belong to other fisher organizations (e.g., The West Coast Trollers Area G Association, which is participant in this inquiry). The UFAWU (another inquiry participant) and

¹⁶⁶ Pacific Policy Committee, Decision Paper [CAN075550] at 2

¹⁶⁷ For a full discussion of IFMPs, see the commission’s Policy and Practice Report entitled “Overview of Fraser River Sockeye Salmon Harvest Management.”

the Native Brotherhood of BC also act on behalf of their members. The processing industry currently associates through the Seafood Processing Association (another inquiry participant).

- 140 Licence holders volunteer their time to sit on AHCs and attend CSAB meetings. In some cases the harvest committee members who attend AHC meetings, CSAB meetings and other consultative processes set up by DFO, such as the IHPC, receive remuneration from fisher associations to represent the views of a gear type or licence area. But that is not the norm. The commitment of volunteers is substantial.

Commercial Salmon Advisory Board (CSAB)

- 141 The terms of reference for the CSAB were finalized in February 2006.¹⁶⁸

- 142 The CSAB is mandated to do the following:

- “Provide advice on policy matters related to the commercial salmon fishery.
- Develop commercial salmon harvest plans that consolidate and co-ordinate the interests of the various areas and gear types, according to the objectives and criteria developed by the Integrated Salmon Harvest Planning Committee.
- For example, provide recommendations to resolve conflicting issues within the commercial sector allocation, harvesting priorities and responses to SARA concerns (as they pertain to impacts on salmon fisheries).
- Serve as the consultative body on issues that affect commercial salmon fisheries.”¹⁶⁹

- 143 Principles of transparency, accountability, balanced representation and effective and efficient participation (which includes cost effectiveness and timeliness) guide the CSAB process.¹⁷⁰

- 144 The CSAB is comprised of one main board (the CSAB) and two subcommittees, one for the North and one for the South.¹⁷¹ The CSAB meets at least twice per

¹⁶⁸ Commercial Salmon Advisory Board and Area Harvest Committee Terms of Reference [CAN003248]

¹⁶⁹ Commercial Salmon Advisory Board and Area Harvest Committee Terms of Reference [CAN003248] at 2

¹⁷⁰ *Ibid.*, at 2

year, once in April (to review and provide advice on allocation as set out in the section on intrasectoral allocation above), and once to discuss other policy implementation issues. The North and South subcommittees meet as needed.

145 Membership of the CSAB is comprised of two elected members from each of the eight Area Harvest Committees; and two representatives from each of the UFAWU, the Native Brotherhood of BC and the processing industry.¹⁷² The North and South subcommittees are comprised of two representatives from each of the AHCs in their regions, and one from each of the UFAWU, the Native Brotherhood of BC and the processing industry. The Province of BC is entitled to ex-officio representation on the CSAB.¹⁷³

146 Each of the DFO, the AHCs, the CSAB Secretariat, and the CSAB has specific roles and responsibilities set out in the CSAB's Terms of Reference.¹⁷⁴ DFO provides fisheries management and technical expertise to support CSAB meetings. The AHCs serve as advisory committees to the CSAB. The Secretariat develops meeting agendas, notifies members and prepares minutes of the meetings. The CSAB itself has various responsibilities including but not limited to the following:¹⁷⁵

- Nominate representatives from the CSAB to sit on the Salmon IHPC;
- Provide information to and communicate with AHC members;
- Provide advice to DFO on various issues including enforcement, commercial harvesting, stock assessment, selective fishing practices, in-season management, etc.;
- Develop subcommittees as appropriate to deal with issues;

¹⁷¹ *Ibid.*, at 3

¹⁷² *Ibid.*, at 3

¹⁷³ *Ibid.*, at 3

¹⁷⁴ *Ibid.*, at 3-4

¹⁷⁵ *Ibid.*, at 4

- Meet with the Sport Fishing Advisory Board (“SFAB”), First Nations representatives or other interested parties as appropriate to resolve intersectoral issues;
- Ensure that the AHCs operate in a manner consistent with principles of transparency, accountability, balanced representation, and effectiveness and efficiency; and
- Provide nominees for Ministerial appointments (e.g., to sit as a Canadian representative on the Pacific Salmon Commission).

147 The CSAB operates by consensus, which is defined in its terms of reference as follows:

Consensus is a process for making decisions. Its main feature is that no action is taken unless all members of the group can support the action, or agree not to obstruct it. Consensus does not require that everyone be in complete agreement, but only that all will be willing to accept—consent to—a decision.¹⁷⁶

148 When consensus cannot be reached, it is the CSAB Chair’s job to summarize the differing views and “advise the Department accordingly.”¹⁷⁷

149 Participation in the CSAB is also governed by a “Committee Charter” that defines the expectations members may have for how they work together. In short, the Committee Charter sets out CSAB members’ responsibility to participate in consultations in good faith and to engage in “effective, balanced and civil communications.”¹⁷⁸

Area Harvest Committees (AHCs)

150 The mandate of AHCs is as follows:

¹⁷⁶ *Ibid.*, at 4

¹⁷⁷ *Ibid.*, at 4

¹⁷⁸ *Ibid.*, at Appendix 2, p. 10

Each of the AHCs develops specific salmon harvesting plans relative to the area and gear type for consolidation and co-ordination by the CSAB; and provides advice to the CSAB on all matters related to the Board's mandate, for example, management, enforcement and allocation.¹⁷⁹

- 151 Like the CSAB, AHCs are guided by principles of transparency, accountability, balanced representation, effectiveness and efficiency.
- 152 AHCs are bodies elected by the commercial salmon licence holders in each of the eight licence areas.¹⁸⁰ Elections are held once per year by registered mail ballots, with half the seats on an AHC coming up for election each year (i.e., members are elected for two-year terms). A chair is elected by the elected AHC members at the first meeting after the Board election.
- 153 The number of members on the AHCs varies among areas. When the AHCs were initially set up, each area was allowed to independently determine the number of members it would have on its area "board". As of February 2006, licence holders elected the following number of AHC members in different areas:

Area	Number of representatives on AHC
A, B, D, E and H	12
C	8
F	10
G	9

- 154 DFO fishery managers are responsible to meet with the AHC's in their areas as needed to review information, discuss fishing options and implement fisheries. The AHCs themselves have various responsibilities including but not limited to the following:¹⁸¹

- Electing two of their members to represent the area on the CSAB;
- Providing advice to the CSAB on all matters relative to the CSAB's mandate;

¹⁷⁹ *Ibid.*, at 6

¹⁸⁰ *Ibid.*, at 6-7

¹⁸¹ *Ibid.*, at 7-8

- Developing local harvesting plans;
- Providing in-season advice to DFO as appropriate to the area and gear type;
- Meeting with the SFAB, First Nations representatives or others as appropriate to resolve issues affecting the respective sectors or area gear types; and
- Providing information to and communicating with fishermen and area licence holders.

155 Unlike the CSAB, AHCs operate by simple majority (with minority reports prepared when necessary).¹⁸² Meetings are conducted according to Robert's Rules of Order.¹⁸³

Salmon Integrated Harvest Planning Committee (IHPC)

156 The Salmon IHPC is discussed in detail in the commission's Policy and Practice Report entitled "Overview of Fraser River Sockeye Salmon Harvest Management" at pp. 64-66. For ease of reference, that discussion is repeated below in paragraphs 157-160.

157 Partly in response to the UVICIDR Independent Review of Improved Decision Making in the Pacific Salmon Fishery: Final Recommendations, 2001,¹⁸⁴ DFO established the Salmon IHPC for salmon in 2004.¹⁸⁵ It was created to be the vehicle for consultation by DFO of all stakeholders regarding the Regional salmon management planning process.¹⁸⁶

158 The Salmon IHPC is the primary vehicle for inter-sectoral communication and advice between DFO and those with interests in the salmon fishery. Its mandate

¹⁸² *Ibid.*, at 8

¹⁸³ *Ibid.*, at 6

¹⁸⁴ Institute for Dispute Resolution, University of Victoria. *Independent Review of Improved Decision Making in the Pacific Salmon Fishery. Final Recommendations* (16 May 2001) [CAN003238]

¹⁸⁵ Recommendations Related to Fraser River Sockeye Salmon and Responses by the Government of Canada 1981-2010: Summary Prepared by DFO for the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River (17 May 2010)[Commission Exhibit 14] at 161-199

¹⁸⁶ *Ibid.*, at 177-178

is to make recommendations to DFO on operational decisions related to salmon harvesting.¹⁸⁷ The goal of the Salmon IHPC is to ensure that fishing plans are coordinated and integrated, to identify potential conflicts between sectors and to make recommendations for solutions if there is disagreement among sectors.¹⁸⁸

159 The Salmon IHPC has two regional sub-committees, one for the South Coast and one for the North Coast. Each regional sub-committee is comprised of representatives from commercial and recreational fisheries,¹⁸⁹ First Nations, and environmental organizations grouped into a Marine Conservation Caucus,¹⁹⁰ and there is ex-officio representation from the Province. The IHPC is chaired by an independent facilitator hired by DFO.¹⁹¹

160 The Committee's roles and responsibilities are as follows:¹⁹²

a. Pre-season

- i. Provide recommendations that ensure fishing plans are coordinated and integrated, identify potential conflicts, and recommend a means of resolving disputes;
- ii. Receive from and provide advice to DFO on pre-season forecasts and stock assessments;
- iii. Review enforcement plans, identify problems and provide recommendations on the management or enforcement of the fishery, and make recommendations for improvement;

¹⁸⁷ Integrated Salmon Harvest Planning Committee (IHPC): Terms of Reference (May 2005) [CAN002470] at 1; specific operational decisions are set out in the Terms of Reference under the "Roles and Responsibilities" section at 4.

¹⁸⁸ *Ibid.*

¹⁸⁹ For the commercial fishery, representatives from the Commercial Salmon Advisory Board sit on the IHPC; for the recreational fishery, representatives from the Sports Fishery Advisory Board sit on the Committee.

¹⁹⁰ The mandate and membership of the Marine Conservation Caucus are described online: <http://www.mccpacific.org/>

¹⁹¹ Integrated Salmon Harvest Planning Committee (IHPC): Terms of Reference (May 2005) [CAN002470] at 2 and 5 and Appendix B.

¹⁹² *Ibid.* at 4-5

- iv. Provide input on stock assessment programs, as required for management purposes;
- v. Provide advice on changes to escapement strategies or policies;
- vi. Advise on IFMPs (i.e. decision guidelines, fishing plans);
- vii. Advise on measures and mechanisms for timely and accurate catch/effort information; and
- viii. Advise on selective fishing practices.

b. Post-season

- i. Review post-season stock status to determine if conservation goals were met;
- ii. Advise on problems encountered regarding management, enforcement and consultation;
- iii. Advise on management, enforcement or other actions that will improve the fishery;
- iv. Review anomalies not covered in the fishing plan;
- v. Review expected stock status for the coming year; and
- vi. Review the stock assessment program.

Allocation Implementation Committee

161 DFO held the inaugural meeting for the AIC on 10 November 2004.¹⁹³ The AIC's purpose was to deal with allocation issues that impact both recreational and

¹⁹³ Recreational-Commercial Allocation Implementation Draft Meeting Minutes (10 November 2004) [CAN007886]

commercial fishers.¹⁹⁴ The First Nations sector is not represented on this committee.

162 The original issues tackled by the group included West Coast Vancouver Island chinook, Strait of Georgia chinook, Queen Charlotte Island coho, and Wannoch chinook.¹⁹⁵ The AIC was active until approximately 2007, and then reactivated in late 2009/early 2010 to deal with further allocation issues such as those stemming from the Allocation Policy's five percent cap on the recreational portion of the combined recreational-commercial TAC for sockeye.

163 The AIC's mandate includes the following:

- "To be a forum to discuss issues related to implementation of the Salmon Allocation Policy;
- To provide advice to the Minister regarding specific allocation issues that have a direct impact on both the recreational and commercial sectors; and
- To recommend changes to the Principles identified in the Salmon Allocation Policy on a consensus basis."¹⁹⁶

164 The AIC is guided by principles of transparency, accountability, inclusive representation, effectiveness and efficiency.¹⁹⁷

165 Membership on the AIC is comprised of 11 representatives from the CSAB, 11 representatives from the SFAB, and four representatives from DFO.¹⁹⁸ The Province of BC may participate in an *ex officio* capacity. The Departmental contact is the Regional Resource Manager – Salmon, currently Jeff Grout.

166 The AIC is responsible for identifying issues "not clarified in the Allocation Policy," developing consensus recommendations for consideration by fishery managers, and providing advice to DFO on specific issues related to intersectoral

¹⁹⁴ See Recreational-Commercial Allocation Implementation Committee Issues Outline [CAN007887] and DFO Advisory Boards and Committees [CAN001076] at 33-35

¹⁹⁵ Recreational-Commercial Allocation Implementation Committee Issues Outline [CAN007887]

¹⁹⁶ Terms of Reference: Recreational-Commercial Salmon Allocation Implementation Committee [CAN005297]

¹⁹⁷ *Ibid.*, at 2

¹⁹⁸ *Ibid.*, at 2

allocation.¹⁹⁹ The AIC operates by consensus, and “members will not agree to any proposed actions unless they are confident the actions will be generally supported and are in the best interest of the constituency members.”²⁰⁰ DFO prepares minutes of these meetings and members disseminate the minutes, advice and action items to their constituencies.

Share Based Management and Individual Transferable Quotas

What is Share Based Management?

- 167 Shared based management (sometimes called “SBM”) refers to a method of managing the fishery by assigning catch shares to specific user groups or individuals, such that the users know in advance of fishing how many fish they are allowed to catch and retain. A “catch share” provides a sector, licence area, gear type, or licence holder “access to a pre-determined share of the TAC, thus removing the competitive element of the fishery.”²⁰¹ When catch shares are assigned to individual licences or vessels, they are often called “individual quotas” or “IQs.”
- 168 SBM systems can be designed such that shares or quotas are transferable. When licence holders are allowed to transfer their quotas to another licence holder, the quotas are referred to as “individual transferrable quotas” or “ITQs”. A SBM system may restrict transfers of shares within a particular licence area or gear type or may allow transfers among gear types or even fishing sectors (such as a transfer of TAC from the commercial to recreational or First Nations sectors).
- 169 This Report focuses on share based management affecting the commercial salmon sector, with an emphasis on Fraser River sockeye. It is not

¹⁹⁹ *Ibid.*, at 2

²⁰⁰ *Ibid.*, at 2

²⁰¹ Diamond Management Consulting Inc., 21st Century Salmon Management Continuing Toward the Vision, Beige Paper (Annotated Outline) (20 August 2007) [CAN006614] at 2

comprehensive of the discussion of share based management, nor does it discuss share based management for First Nations fisheries. However, there are implications for both the First Nations and recreational fisheries from a move to SBM in the commercial sector. DFO has identified some of these implications as follows:

- “Current salmon allocation policy provisions unaffected
- FSC priority access maintained
- Recreational priority for chinook and coho maintained
- Recreational access up to a limit of 5% of the coastwide TAC (After FSC) for sockeye, pink and chum salmon maintained
- Growth in demand for recreational access beyond the 5% limit for sockeye, pink and chum may be accommodated through a market mechanism²⁰²

170 The only commercial salmon IQ or ITQ fisheries to date have occurred through demonstration fisheries with willing fleets. These demonstration fisheries are discussed below.

171 The Department is supportive of moving towards share based management for the commercial salmon fishery and is committed to moving forward with demonstration projects in licence areas where there is strong support from the AHCs.²⁰³

172 To date, there has been mixed support from the fleets. In general, Areas B and H are largely supportive of SBM; Areas G, and E are largely unsupportive, and there are mixed pockets of support in Area D.²⁰⁴

173 The Department expects SBM to result in the following benefits for the salmon fishery:

²⁰² Salmon Share Based Management [CAN004946] at 4

²⁰³ Letter to Licence Holders [CAN016970]; and Memorandum for the Deputy Minister, 2009 Commercial Salmon Demonstration Fishery Planning (24 December 2008) [CAN045538]

²⁰⁴ See discussion in Strategic Plan for Salmon Share Based Management Draft (23 March 2009) [CAN003198] at 5-6; and Memorandum for the Deputy Minister, 2009 Commercial Salmon Demonstration Fishery Planning (24 December 2008) [CAN045538] at 2

- “Conservation and fisheries sustainability facilitated
 - Addressing Wild Salmon Policy objectives – selective harvest
 - Lower fishing effort reduces risk of over-fishing
 - Move away from competitive style fisheries – emphasis on maximizing value
 - Stronger incentive for collaboration and stewardship with greater certainty and sense of “ownership”
- First Nations Fisheries
 - In-river commercial harvest
 - Flexible strategies to meet community objectives – splitting shares?
 - Improved ability to manage for FSC access
- Commercial fishery better able to self-adjust
- Enhanced catch accountability and compliance through dockside validation and audits”²⁰⁵

174 In 2007, Watershed Watch Salmon Society released a report discussing Transferable Shares in British Columbia’s Commercial Salmon Fishery (the “Watershed Watch Report”).²⁰⁶ The Watershed Watch Report summarizes six reasons for “why transferable shares work,” based on a review of 150 studies and academic papers, 10 U.S. and Canadian shared based fisheries, and field work in three share fisheries and two transitioning fisheries. The Watershed Watch Report is noted here not as the authoritative analysis of this controversial subject, but rather as a helpful overview of the types of arguments offered both in support and in opposition to SBM. The Watershed Watch Report’s reasons “why transferable shares work” are summarized here as follows:²⁰⁷

- Complying with Catch Limits. In fisheries that have converted to catch shares, compliance with catch limits rose from 35 percent to 75 percent, and landings averaged five percent below the TAC.

²⁰⁵ Presentation: Supporting Integrated Commercial Salmon Fisheries: Moving to Share Based Management (Community Dialogues – Fall, 2008) [CAN021795] at 5

²⁰⁶ Terry Glavin, Transferable Shares in British Columbia’s Commercial Salmon Fishery (Watershed Watch Salmon Society: September 2007) [CAN003213]

²⁰⁷ *Ibid.*, at 10-13

- Better Science and Monitoring. Seventy-two percent of fisheries managed under catch shares have monitoring programs compared to 26 percent of traditional fisheries.
- Reducing Bycatch. Bycatch can be reduced by up to 40 percent “following the implementation of transferable share management” because fishers do not have to “race for the fish”; they have time to be selective.
- Limiting Fishing Impacts on Habitats. Improved gear design and less lost gear, due to the slower pace, make for less impact on fish habitat.
- Making Fishing Safer. In traditional competitive fisheries, the frantic pace often compels fishers to “risk their lives in order to make a living.” Safety tends to increase after a transition to catch shares.

175 The Watershed Watch Report also notes six concerns and controversies associated with share based management. These concerns and controversies are summarized below:²⁰⁸

- Practicality. “Due to the highly migratory nature of the salmon resource, it can be difficult to set a total allowable catch prior to the fishing season, and harvesting can only occur for a limited time during the year.
- Privatizing a Public Resource. “There is much concern that transferable shares, particularly ‘individual quota’ regimes, will unavoidably result in the privatization of fisheries resources.”
- First Nations Interests. In 2004, leaders of the First Nations Summit and the B.C. Aboriginal Fisheries Commission appointed a panel to articulate a vision for future fisheries management and allocation. That panel “proposed a moratorium on the introduction of any new quota fisheries” and “specifically objected to ‘individual property rights regimes’ prior to the resolution of aboriginal concerns.”

²⁰⁸ *Ibid.*, at 16-21

- Increased Costs to Enter the Fishery. There exists a concern that high licence values will make it too prohibitive for many individuals to enter the fishery.
- Ownership Concentration. “Another concern associated with catch share management is that it will lead to excessive concentration of fishing privileges in the hands of just a few owners.”
- Employment and Transition Costs. Share based management “changes the business of fishing.” In other fisheries that have transitioned to catch shares, job stability improves, but “the total number of available crew positions decreased by half.”

Recent Discussion on Share Based Management

McCrae and Pearse (Joint Task Group on Post-Treaty Fisheries) Report (2004)

176 In July 2003, the Federal Minister of Fisheries and the Provincial Minister Responsible for Treaty Negotiations and Minister of Agriculture, Food and Fisheries, agreed to appoint Donald McCrae and Peter Pearse to do the following:

[D]efine a ‘vision’ of the fisheries in a post-treaty era, and to make recommendations that would provide certainty for all participants in the fisheries, ensure conservation of the resource, provide for sustainable use and effective management, improve the economic performance of the fisheries and provide equitable arrangements among fishers and fair treatment of those adversely affected by treaty settlements.²⁰⁹

177 McCrae and Pearse made several recommendations pertaining to licensing and quota systems:

1. Licences and quotas should be merged into a single “quota licence”: each licence authorizing its holder to take a specific percentage of the total allowable commercial catch for the relevant fishery for the duration of the licence.

²⁰⁹ Donald McCrae and Peter Pearse, *Treaties and Transition: Towards a Sustainable Fishery on Canada’s Pacific Coast* (April 2004) [CAN005378]

2. Quota licences should be issued to persons, companies or associations—not vessels.
- 3 The Minister should seek the legislative change necessary to give quota licences terms of 25 years, replaceable after 15 years on an evergreen renewal basis.
4. In the interim, the Minister should grant quota licences for five years and announce his intention to seek legislative change.
5. The Minister should announce that if legislative change is not in place within five years, he will re-issue licences for another five-year term.
6. Restrictions on the transferability and divisibility of licences and quotas, their attachment to vessels and other impediments to their flexibility should be eliminated.
7. The provisions for quota licences should be set out in the Regulations pursuant to the Fisheries Act, thus eliminating their discretionary elements.
8. Additional quota licences should not be issued without the consent of the holders of fishing rights in the relevant fishery.
9. Annual conditions of licences should be used to authorize and manage fishing activities consistent with integrated fishery management.²¹⁰

Commercial Salmon Advisory Board “Score” Process (2006-2007)

178 In 2006, the CSAB struck a Sub-Committee on Options for Review and Evaluation (“SCORE”) to address future opportunities for the salmon fishery. Diamond Management Consulting Inc. (the consulting firm hired by DFO to facilitate SCORE’s work) described SCORE’s mission as follows:

The Sub-Committee on Options for Review and Evaluation (SCORE) is an industry leadership table dedicated to identifying and responding to the severe obstacles that have recently affected salmon harvest opportunities with an overall objective of renewing a robust fishery that benefits those choosing to remain in the industry and those choosing to leave.

SCORE is dedicated to timely and creative problem solving that will not be constrained by current perspectives. The group will identify and prioritize issues for resolution within short, medium and long term timeframes.

SCORE will use collaborative problem solving and consensus decision making to identify new ways to create a prosperous future for current and future fishing generations.

²¹⁰ *Ibid.*, at 57

SCORE expects that the results of its work will be communicated to its constituents. At the same time, the results will be communicated to other stakeholders and First Nations partners through the Advisory process.²¹¹

179 Following the announcement of PICFI in July 2007, on 13 August 2007, DFO, clarified the advice that it was seeking from the CSAB and the SCORE process:

“...I want to clarify that DFO is seeking advice on a management framework for commercial salmon fleets that contains the following elements;

- a. Has the flexibility to respond effectively to conservation objectives in an economically viable and sustainable manner, including the ability to fund associated fishery monitoring programs in the long run,
- b. Includes defined catch shares for all commercial salmon fishing fleets to provide for
 - i. Greater certainty and stability, and
 - ii. Additional flexibility in structuring fisheries, including the potential for inter-fleet transfers under mutually beneficial circumstances,
- c. Can be delivered in an integrated manner with share based commercial fisheries conducted by First Nations, i.e. all parties have an equal opportunity to harvest their shares under similar rules and common conservation objectives, and
- d. Contains a mechanism to permit transfers of catch shares, through voluntary license retirement in a fair and transparent manner.

...Notwithstanding the complexity of the issues and the different views on the appropriate way forward, I am requesting that the CSAB provide its advice on the matters described above by February 28th, 2008.”²¹²

180 In response to this request for advice, Diamond Management Consulting Inc. prepared a report called “Salmon Management Reform: A reporting out on the work of the Commercial Salmon Advisory Board’s committee on Options for Review and Evaluation (SCORE) to reform the agement [sic] of the Pacific Salmon Fishery off the west coast of Canada” (the “SCORE Report”).²¹³

²¹¹ Diamond Management Consulting Inc., 21st Century Salmon Management Continuing Toward the Vision, Beige Paper (Annotated Outline) (20 August 2007) [CAN006614] at 17, Appendix B

²¹² Letter from Ron Kadowaki, Director, Pacific Fisheries Reform, to Dave Barrett, Interim Executive Director, Commercial Salmon Advisory Board, August 13, 2007 [CAN006616]

²¹³ SCORE Report, March 1, 2008 [CAN002611]

181 SCORE was not able to reach consensus on a single management framework for the commercial salmon fleet. Instead, the SCORE Report summarized “two distinct perspectives, majority and minority responses to the request for advice from the Department of Fisheries and Oceans.”²¹⁴ The CSAB members forming those two perspectives met in caucuses described in the SCORE Report as follows:

The Effective Process/IAP [Integrated Allocation Process] caucus comprised representatives from Areas C, E, G and the UFAWU.

The Defined Shares/ITQ caucus comprised representatives from Areas A, B, D, F, H and processors.

The Native Brotherhood chose not to participate in the SCORE process.²¹⁵

182 The two caucuses held different conceptions of shares:

The Defined Shares/ITQ caucus felt that a share must be a fixed percentage ... so that an individual would know year-to-year what his slice of the pie represented, and to facilitate transfers. The Effective Process/IAP caucus argued that shares must be revisited annually to accommodate changes in resource abundance, to facilitate reasonable participation by each gear/area and to ensure fair gear splits.²¹⁶

183 There was also “intense division” over how to treat inactive licences/vessels in future salmon management, with the Effective Process/IAP caucus believing that “future benefits from the fishery should continue to accrue to active vessels only,” and the Defined Shares/ITQ caucus believing that “inactive vessels—having conferred tangible benefits to their active brethren—should be full participants in the future of the fishery.”²¹⁷

184 Each of the two caucuses developed advice around intersectoral allocation, fleet shares, individual shares, and fishery management. While no overall consensus could be reached on a management framework, some areas of consensus did emerge from the SCORE process. The SCORE Report summarized the advice

²¹⁴ *Ibid.*, at p. iv

²¹⁵ *Ibid.*, at p. iv

²¹⁶ *Ibid.*, at p. v

²¹⁷ *Ibid.*, at vi-vii

of each caucus and the areas of overlap into a table that is reproduced at Appendix D of this Report.

DFO Internal Workshop on Implementing Share Based Management

185 On 4 and 5 March 2008, DFO held an internal workshop on implementing share based management in the Pacific salmon fishery. The objectives and purpose of the workshop included clarifying the context for moving to defined shares, providing a forum to assess the technical feasibility of developing a share based management approach for Pacific salmon, and developing a work plan to guide the next steps.²¹⁸ Discussion at the workshop focused on the key questions of “What is the end game?” “How fast?” “How much uncertainty is acceptable in implementing share based management?” and “What is our capacity to implement share-based management?”²¹⁹ Workshop participants developed “next steps” in relation to share based management:

1. Discuss share based salmon management further at internal DFO meetings aimed at developing a strategic plan for post-treaty management;
2. Develop accountability protocol among key directors to clarify roles in developing a share based management strategy for salmon, including the formation of an inter-sectoral team and the production of a discussion paper to support the engagement strategy. This would be auctioned, at least as an initial step, through the Way Forward Committee.
3. Develop Engagement Strategy based on workshop discussion.
3. Re-start Internal Demonstration Fishery Review Team.
4. Initiate development of initial demonstration fishery briefing note seeking direction on key issues for 2008.

186 In a Memorandum for PICFI’s Way Forward Steering Committee,²²⁰ the Director of Pacific Fisheries Reform (Ron Kadowaki) stated that, at the workshop, “there

²¹⁸ Workshop Summary: DFO Internal Workshop on Implementing Share Based Management in the Pacific Salmon Fishery (4-5 March 2008) [CAN029976] at 21

²¹⁹ *Ibid.*, at 9

²²⁰ The “Way Forward Steering Committee” is a steering committee under PICFI, with representation from the “Regional Directors, Area Directors, and key staff in Pacific Region, as well as the DG of Aboriginal Policy and Governance. The general role of this Steering Committee is to support the planning and implementation of fully

was agreement on the importance and urgency of moving to develop a share based salmon management regime and conclusions were reached on the elements of an action plan.”²²¹

DFO Discussion Paper Towards Share Based Management of the British Columbia Commercial Salmon Fishery

187 In January 2009, the Department released a *Discussion Paper: Towards Share Based Management of the British Columbia Commercial Salmon Fishery*, intended to “assist in further advancing reform of the commercial salmon Fishery in British Columbia.”²²² After reviewing the current regime for sharing the commercial harvest, the Discussion Paper offered the following summary:

In summary, the key deficiency of the present sharing system is that it does not provide the certainty and security required by commercial harvesters to efficiently plan their fishing operations. This fuels competition and conflict between harvesters and harvesting groups over their harvest shares and undermines financial performance in the fishery. Also, the present sharing system does not provide sufficient flexibility to address the changing needs of the resource and society without significant conflict and controversy.²²³

188 The Discussion Paper noted the recommendations by McCrae and Pearse (the Joint Task Group on Post-Treaty Fisheries)²²⁴ for the immediate implementation of fully transferable individual fishing quotas, and the First Nations Panel of Fisheries²²⁵ for a moratorium on new ITQ regimes until First Nations interests in allocation were addressed.²²⁶ It also noted “the complexity of salmon biology and the nature of commercial salmon fishing make it difficult to implement and

integrated commercial fisheries.” For more details see: PICFI Working Group Draft Terms of Reference (28 September 2007) [CAN041284] at 1

²²¹ Memorandum for the Way Forward Steering Committee [CAN154199]

²²² Fisheries and Oceans Canada, Pacific Region, Discussion Paper: Towards Share Based Management of the British Columbia Commercial Salmon Fishery (January 2009) [CAN007421]

²²³ *Ibid.*, at 9

²²⁴ Donald McCrae and Peter Pearse, *Treaties and Transition: Towards a Sustainable Fishery on Canada’s Pacific Coast* (April 2004) [CAN005378]

²²⁵ First Nations Panel on Fisheries, *Our Place at the Table* [CAN007488]

²²⁶ Fisheries and Oceans Canada, Pacific Region, Discussion Paper: Towards Share Based Management of the British Columbia Commercial Salmon Fishery, January 2009 [CAN007421] at pp. 9-11

apply a standardized ‘one size fits all’ approach to share based management of commercial salmon fishing.”²²⁷

- 189 The Discussion Paper went on to pose five key questions that need to be addressed in order to move forward with shared based management:²²⁸

Question 1: Shares of what?

Question 2: Shares for whom?

Question 3: How should the size of initial shares be determined?

Question 4: How can accountability be assured in the absence of individual shares?

Question 5: How transferable should the shares be?

- 190 The Discussion Paper concluded that “continuing and expanding the current demonstration projects in the fishery is clearly a key element of moving the transition forward.”²²⁹

Fraser River Sockeye IQ and ITQ Demonstration Projects

- 191 Over the last decade, there have been a number of IQ and ITQ demonstration projects for salmon in the Pacific Region. Two demonstration projects have focused on Fraser River Sockeye—the Area H Troll Pilot Studies (2002, 2003, and 2006), and the joint demonstration project in both Area B and Area H (2010). Additional experience in salmon share based management has been gained through demonstration projects involving IQs for Area H chum (2007) and Area B chum (2005), and projects involving ITQs for Area F chinook (2005-2007).²³⁰

²²⁷ Ibid., at p. 15

²²⁸ Ibid., at pp. 16-17

²²⁹ Ibid., at p. 18

²³⁰ Gardner Pinfold, A Review of Five Demonstration Projects from the 2008 Salmon Season, Report Prepared for Fisheries and Oceans Canada (October 2009) [CAN004897]

192 DFO will only set up an ITQ demonstration project if a majority of the licence holders in a given licence area are in favour of the project.²³¹

Area H Troll Sockeye Demonstration Projects (2002-2006)

193 In 2002, the Gulf Troller's (Area H) Association approached DFO about conducting a pilot study on an individual quota (IQ) system for the Area H sockeye salmon fishery. DFO agree to conduct the pilot study during the 2002 fishing season.²³² Only 10 demonstration vessels took part in the study,²³³ and the demonstration vessels had little fishing time outside of the regular troll openings, resulting in an insufficient amount of data to analyze and evaluate the fishery.

194 The Area H Association lobbied for a continuation of the pilot study into 2003 and DFO approved the study's continuation.²³⁴ Twenty-five vessels took part in the study during the 2003 season.

195 In brief, the project evaluators of the 2003 Area H Study concluded the following (among other things):²³⁵

- Participants landed 74.1 percent of their allocation; 100 percent of the landings were monitored; and landing data provided an accurate snapshot of the quota fishery activity, leading to confidence in management decisions;
- Observers provide the most timely and verifiable data source for offload validations;

²³¹ Letter to Licence Holders [CAN016970]; and Memorandum for the Deputy Minister, 2009 Commercial Salmon Demonstration Fishery Planning (24 December 2008) [CAN045538]

²³² Jody Riley and Shawn Stebbins, *2003 Area H IQ Demonstration Fishery: Project Summary and Evaluation* (Archipelago Marine Research Ltd., November 2003) [CAN015858] at 1

²³³ Gardner Pinfold, *A Review of Five Demonstration Projects from the 2008 Salmon Season*, Report Prepared for Fisheries and Oceans Canada (October 2009) [CAN004897]

²³⁴ Jody Riley and Shawn Stebbins, *2003 Area H IQ Demonstration Fishery: Project Summary and Evaluation* (Archipelago Marine Research Ltd., November 2003) [CAN015858] at 6

²³⁵ *Ibid.*, at 1

- Electronic monitoring provides some potential and should be explored further and the technology developed;
- Certainty from the quota fishery led to advance coordination of deliveries to primarily one buyer; and
- The IQ fishery generated “product self-promotion” as individual fish were tagged and traceable to the vessel of origin.

196 Quotas were not transferable in this pilot study. However, participants wanted “to see transferability included in subsequent seasons” to allow for “flexibility in the planning and execution of their fisheries, increasing economic viability.”²³⁶ The project evaluators recommended considering the following with respect to future ITQ demonstration projects.²³⁷

- The quota unit (pieces vs. weight);
- Rules to address transfer quantities and scheduling;
- Transferability between gear types;
- Maximum holdings or quota caps;
- Whether it can be determined, pre-season, what factors would allow for options such as transferability between gear sectors; and
- Whether transferability impacts on a fisher’s decision to choose a derby or quota system.

197 Another sockeye demonstration fishery—this one an ITQ demonstration—was held in Area H in 2006.²³⁸ The 122 Area H licence holders were given the option to opt in or out of the demonstration fishery. Seventy-three licences opted into

²³⁶ *Ibid.*, at 24

²³⁷ *Ibid.*, at 25

²³⁸ G.S. Gislason & Associates Ltd., *The Area H Troll Sockeye Demonstration Fishery in 2006: A Review* (June 2007) [CAN003192]

the demonstration project. Of these 73 licences, 64 were active licences that reported landings.

198 G.S. Gislason & Associates Ltd. reviewed the 2006 demonstration fishery and drew the following conclusions:²³⁹

- The “demonstration ITQ program met sustainability objectives with improved catch monitoring and adherence to the ITQ TAC; but the non-ITQ fleet exceeded their TAC—this is a concern and needs to be addressed in the future”;
- Quality “appears to have improved for ITQ fish”;
- Financial benefits to the fleet were minimal in this first year as it takes time to build market value from improved quality;
- Constraints to the ITQ program include that Fraser River sockeye must be caught in a short time frame due to concerns for weaker, late run stocks. Accordingly, the ITQ fishery for Fraser River sockeye does not get the benefit that other fisheries get from extending the season;
- Problems can arise from the ITQ fleet and non-ITQ fleet operating side by side, one with mandatory validation and one with voluntary validation;
- “In our view, all fish (ITQ and non-ITQ) should be validated; so doing would create trust in the system to Area H participants, other user groups and the public at large”;
- Problems in validation can arise from the other southern salmon fleets (Areas B, G, D and E) being allowed to fish at the same time as the Area H fleet;
- The validation program “did not provide timely information to DFO for management purposes. This needs to be addressed in the future”; and

²³⁹ Ibid., at 10

- The Area H ITQ demonstration fishery is a work in progress.

Areas B and H Demonstration Projects (2008-2010)

199 Concurrently with the SCORE process described above, representatives of the Harvest Committees for Areas B, D and H met to discuss “the possibility of a joint project to test the feasibility, practicality and desirability of implementing share based ITQ’s.”²⁴⁰ As described by Davlin Pacific Inc.,

In the past, demonstration fisheries were conducted separate from the regular competitive fishery. Licence holders were required to choose the demonstration fishery or the competitive fishery and licences and scientific permits were issued to allow each to occur. This is no longer possible. Consequently a decision needs to be reached that will see the fleets choosing one type of fishery for the 2008 fishery. In an effort to allow the fleets a voice in this decision, the group decided the only fair way to accomplish this was to poll the fleets.²⁴¹

200 DFO supervised a mail out ballot to all the licence holders in each of Areas B, D, and H.²⁴² Licence holders were asked (1) whether they were in favour of an individual transferable defined share demonstration fishery in 2008 for their fleet, for Fraser River Sockeye, Johnstone Strait and Southern Area Chum or for other species; and (2) if they voted yes to any of the above, whether they were in favour of allowing willing participants to transfer (for 2008) their individual share between seine, gillnet and troll fleets.

201 Sixty-six percent of the ballots were returned in Area B; 65 percent in Area D; and 56 percent in Area H.²⁴³ The results of the first question showed that 91 percent of the licence holders who voted in Area B were in favour of an ITQ demonstration fishery for all species of salmon. One hundred percent of these licence holders were also in favour of transferring shares among fleets. Seventy to 74 percent (depending on species) of the licence holders who voted in Area H were in favour of an ITQ demonstration fishery; of those, 88-91 percent were in

²⁴⁰ Davlin Pacific Inc., Southern Salmon Integration Project Scoping Report (15 April 2008) [CAN017975]

²⁴¹ *Ibid.*, at 1

²⁴² *Ibid.*

²⁴³ Chart showing “BDH Vote Summary” [CAN023804]. See also, Gardner Pinfold, A Review of Five Demonstration Projects from the 2008 Salmon Season, Report Prepared for Fisheries and Oceans Canada (October 2009) [CAN004897] at 38

favour of transfers between fleets. For Area D, the majority of the ballots returned (57-71 percent, depending on species) were opposed to an ITQ demonstration fishery.

- 202 As a result, an ITQ demonstration project was planned for the 2008 sockeye fisheries in Areas B and H, but not for Area D. Although the demonstration project went ahead, due to the relatively low TAC (only 100,000 pieces for the entire commercial fleet, which translated into 281 pieces per licence in Area B and 135 pieces per licence in Area H), few vessels actually turned out for the fishery. As noted by Gardner Pinfold,

In Area B, of the 169 vessels, 97 were active in the sense that they transferred fish or fished. Of these, 12 vessels bought quota of which nine caught fish. Three vessels that did not acquire additional quota also caught fish, for a total of 12 vessels that caught 12,250 pieces. For Area H Troll, 34 of the 89 vessels transferred quota and/or fished. Eight vessels caught 440 pieces, two of which had purchased additional quota.²⁴⁴

- 203 Gardner Pinfold also noted that concerns about impacts to specific stocks led to a short season and that the fishery's two day season and low TAC "did not present time for much evidence to accrue."²⁴⁵ Nevertheless, Gardner Pinfold made a number of observations about the demonstration fisheries, summarized here as follows:²⁴⁶

- Allocating the TAC to each licence gave "much better management control";
- "Seven vessels failed to validate their catch but this was primarily a misunderstanding about the reporting/validation requirement";
- Catchability of the quota was an issue due to sockeye primarily migrating through the southern route rather than the Johnstone Strait;
- High grading (selecting the best-quality fish and returning lower quality fish to the water) was not an issue given the short season;

²⁴⁴ *Ibid.*, at 39

²⁴⁵ *Ibid.*, at 40

²⁴⁶ *Ibid.*, at 41

- Due to reduced TAC and small run size, the fishery might not have opened at all if not for the ITQ approach;
- Observers agreed that ITQ should help to reduce by-catch because fishermen can take the time to avoid areas of high by-catch; however “this could not be observed under the short duration low run 2008 fishery”;
- Dockside validation provides better records than phone log books;
- ITQ fisheries are more complex in regulatory requirements at the start, but this complexity will diminish with experience; and
- Handling quota reallocations requires a quota-catch database, with attendant one-time development costs.

204 No demonstration fisheries took place for Fraser River sockeye in 2009, since, due to poor returns, there was no commercial fishery that year.

205 In 2010, the ITQ demonstration fishery proceeded for Fraser River sockeye in both Areas B and H. DFO expects to commission a review of the demonstration fishery, which should be available in 2011.

Current State of Share Based Management in the Salmon Fishery

206 The Department’s Strategic Plan for Salmon Share Based Management (the “SBM Strategic Plan”), which appears to be in draft form, notes the following vision for salmon share based management:

Defined shares for the commercial salmon fishery to support integrated management so that all fishery participants can contribute to a sustainable resource and achieve economic prosperity.²⁴⁷

207 The SBM Strategic Plan espouses the following principles: conservation, consistency with treaties, integration, accountability, responsibility, equal share,

²⁴⁷ Strategic Plan for Salmon Share Based Management, Draft (23 March 2009) [CAN003198]; see also Presentation [CAN007419]

and incremental.²⁴⁸ It notes that “effective implementation of SBM across all commercial fisheries will require buy-in from license holders.”²⁴⁹ The following key incentives are suggested as ways of building support for share based management and demonstration fisheries: providing additional fishing opportunities through share based management; providing the ability for the industry to self-adjust to their fishing strategies to the available catch and the market place; meeting catch monitoring standards; and providing transfers to First Nations in a transparent manner.²⁵⁰

- 208 The SBM Strategic Plan sets out “Keys to Influencing Resistant Fleets,” including the following comments about two resistant south coast fleets:

Area E—Potential fishing opportunities on small surpluses of all salmon species, particularly Chinook, may cause Area E harvesters to consider some form of SBM, as will the potential loss of access to Fraser sockeye due to ocean mixed stock concerns. Historical opposition to government policies on First Nation fisheries (e.g. pilot sales) makes this group resistant to changes like SBM that may reduce their numbers. Further, the part-time nature of this fishery makes it difficult to effectively use economic incentives.

Area G—This is a highly polarized fleet divided into those who believe that fishermen should have to actively fish their allocation to benefit and those who support an ITQ approach. The elected Area Harvest Committee is dominated by the former group and has rebuffed any attempts by the minority to discuss demonstration fishery options with DFO fishery managers, in spite of the results of the survey in Table 2. Reducing the size of this fleet through the Pacific Salmon Treaty mitigation program may cause this fleet to reconsider.²⁵¹

- 209 The Department’s approach as of 2009 is to implement share based management with willing harvest committees and First Nations.²⁵² Share based management is a “Pacific Region Priority Program Area” under “Fisheries Renewal” on Fisheries and Aquaculture Management’s Business Plan for 2009-2010.²⁵³

²⁴⁸ *Ibid.*, at 1-2

²⁴⁹ *Ibid.*, at 4

²⁵⁰ *Ibid.*, at 4-5

²⁵¹ *Ibid.*, at 5-6

²⁵² Presentation: Defined Shares for Salmon Management [CAN007424]

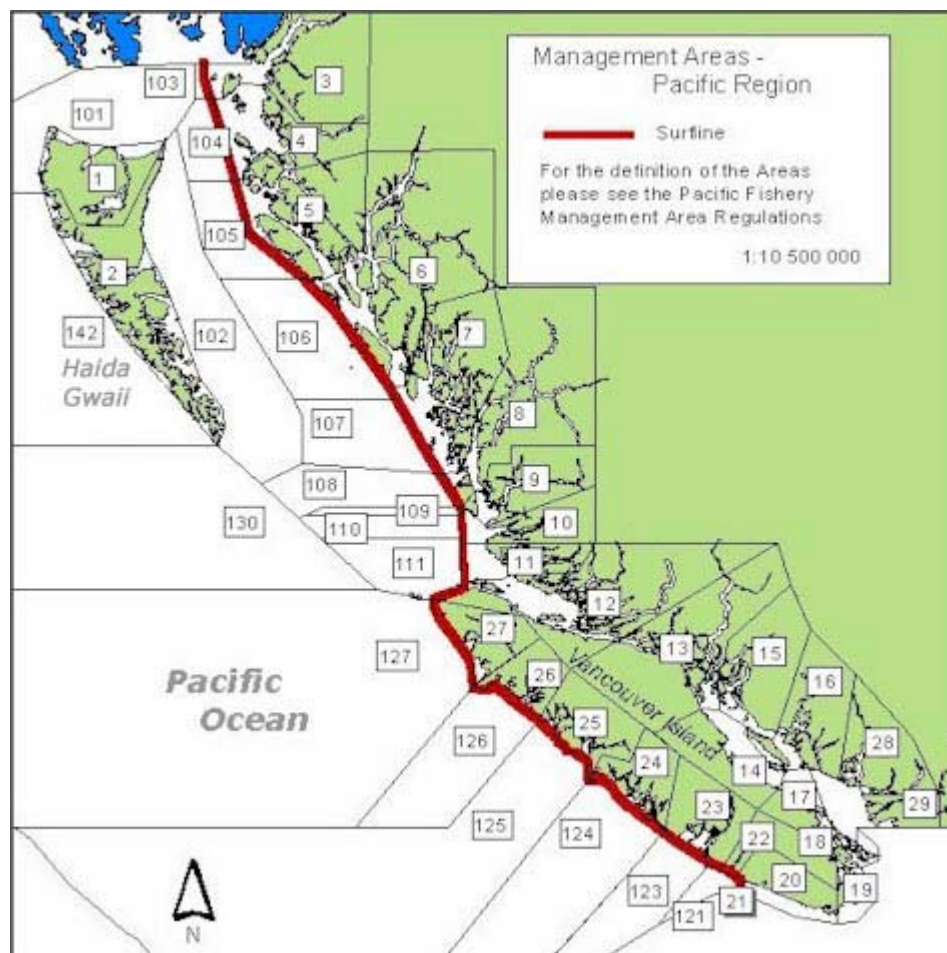
²⁵³ Fisheries and Aquaculture Management, Pacific Region Business Plan 2009-2010 [CAN067510] at 4

Appendices

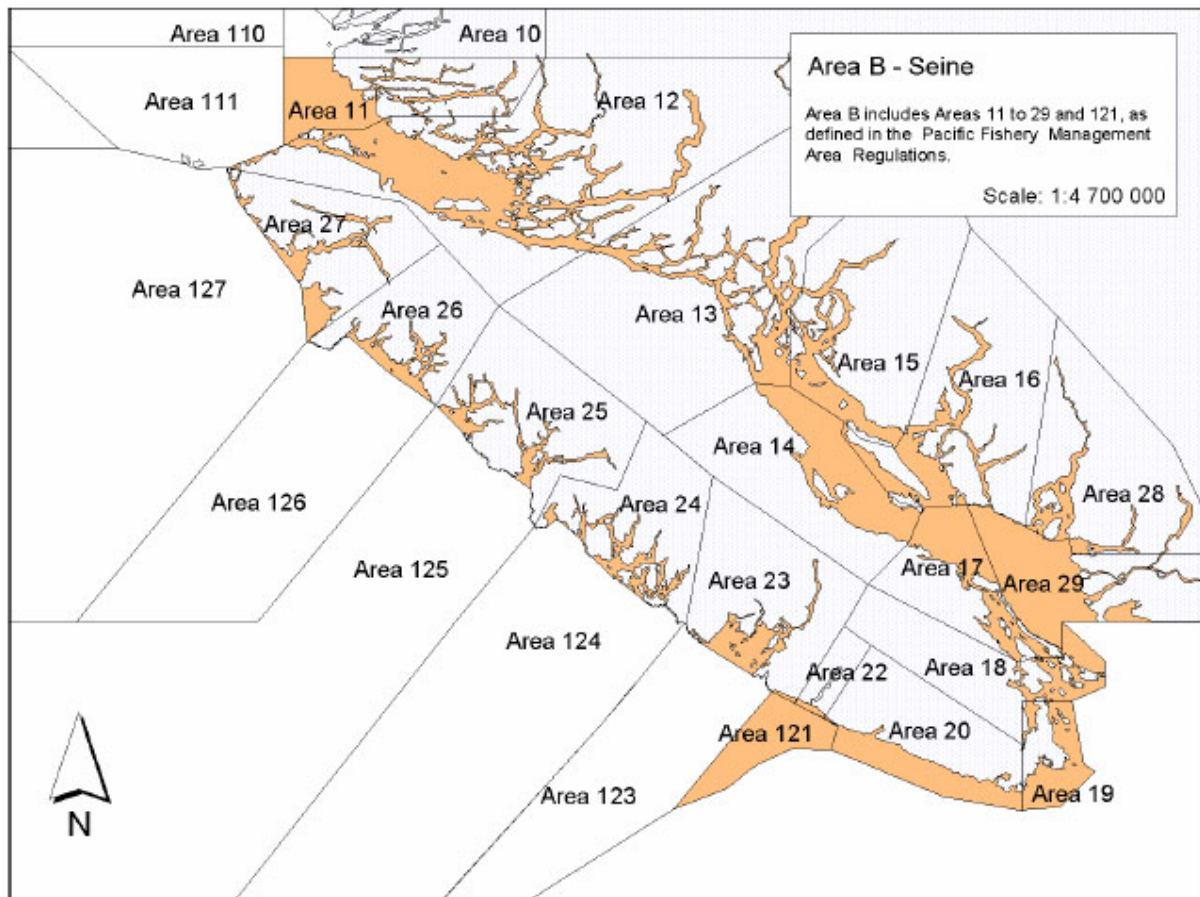
Appendix A: List of Acronyms Used

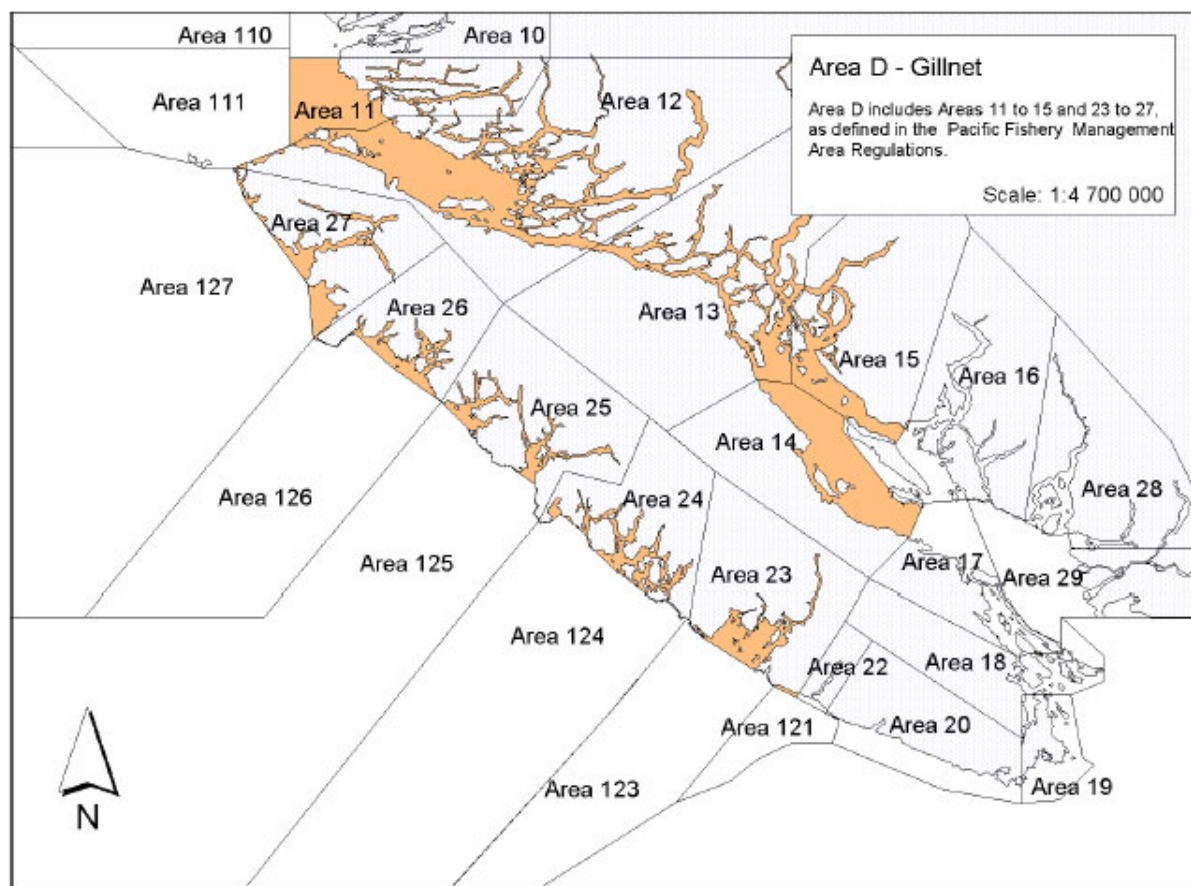
AHC: Area harvest committee
AIC: Allocation Implementation Committee
ATP: Allocation Transfer Program
CFAR: Canadian Fisheries Adjustment and Restructuring plan
CFIC: Commercial Fishing Industry Council
CSAB: Commercial Salmon Advisory Board
DFO: Department of Fisheries and Oceans
FGR: *Fisheries (General) Regulations*
IFMP: Integrated Fisheries Management Plan
IHPC: Integrated Harvest Planning Committee
IQ: Individual quota
ITQ: Individual transferable quota
NNFC: Northern Native Fishing Corporation
PFR: *Pacific Fisheries Regulations*
PICFI: Pacific Integrated Commercial Fisheries Initiative
PRLAB: Pacific Region Licence Appeal Board
SBM: Share Based Management
SCORE: [CSAB] Sub-Committee on Options for Review and Evaluation
SFAB: Sport Fishing Advisory Board
TAC: Total Allowable Catch
UFAWU: United Fishermen & Allied Workers Union
UVICIDR: University of Victoria Institute for Dispute Resolution

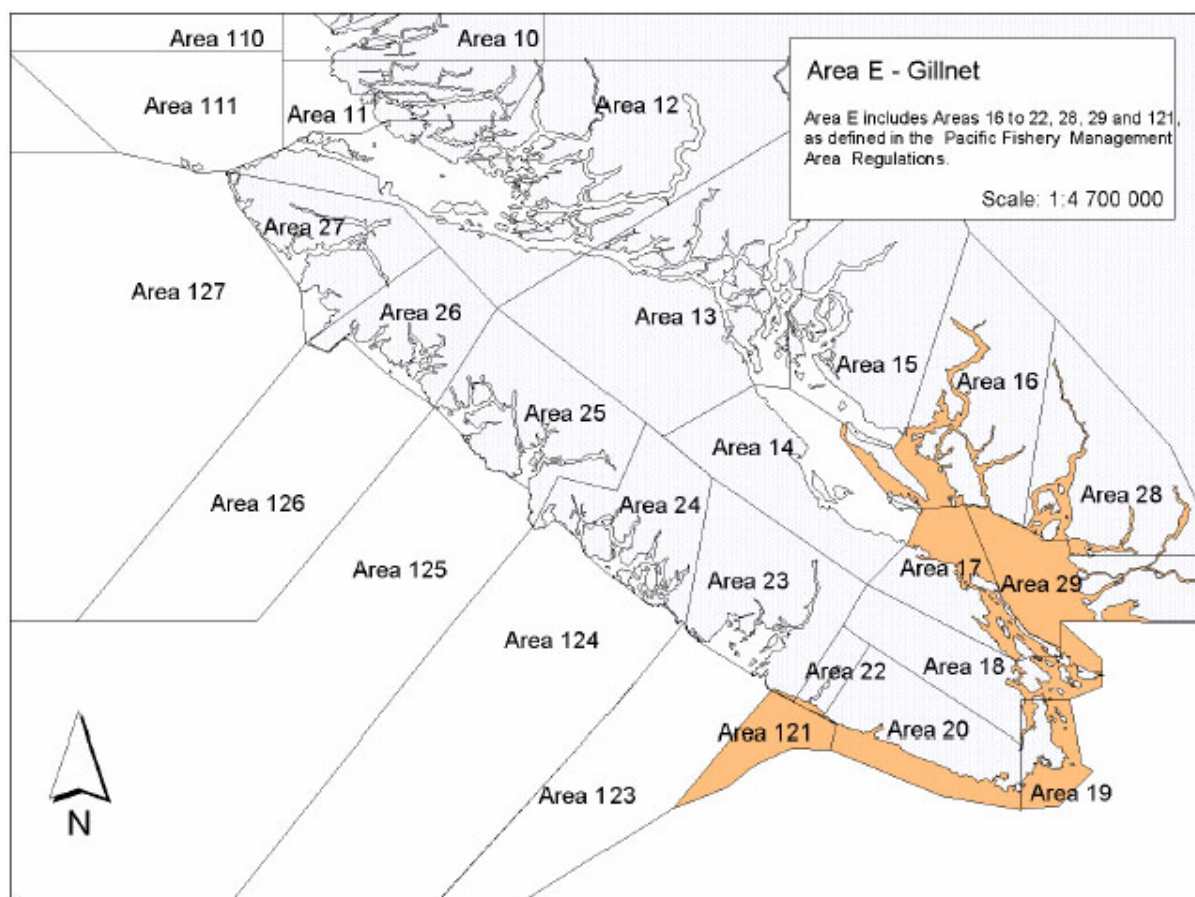
Appendix B: Maps of B.C. South Coast Fishing Areas²⁵⁴

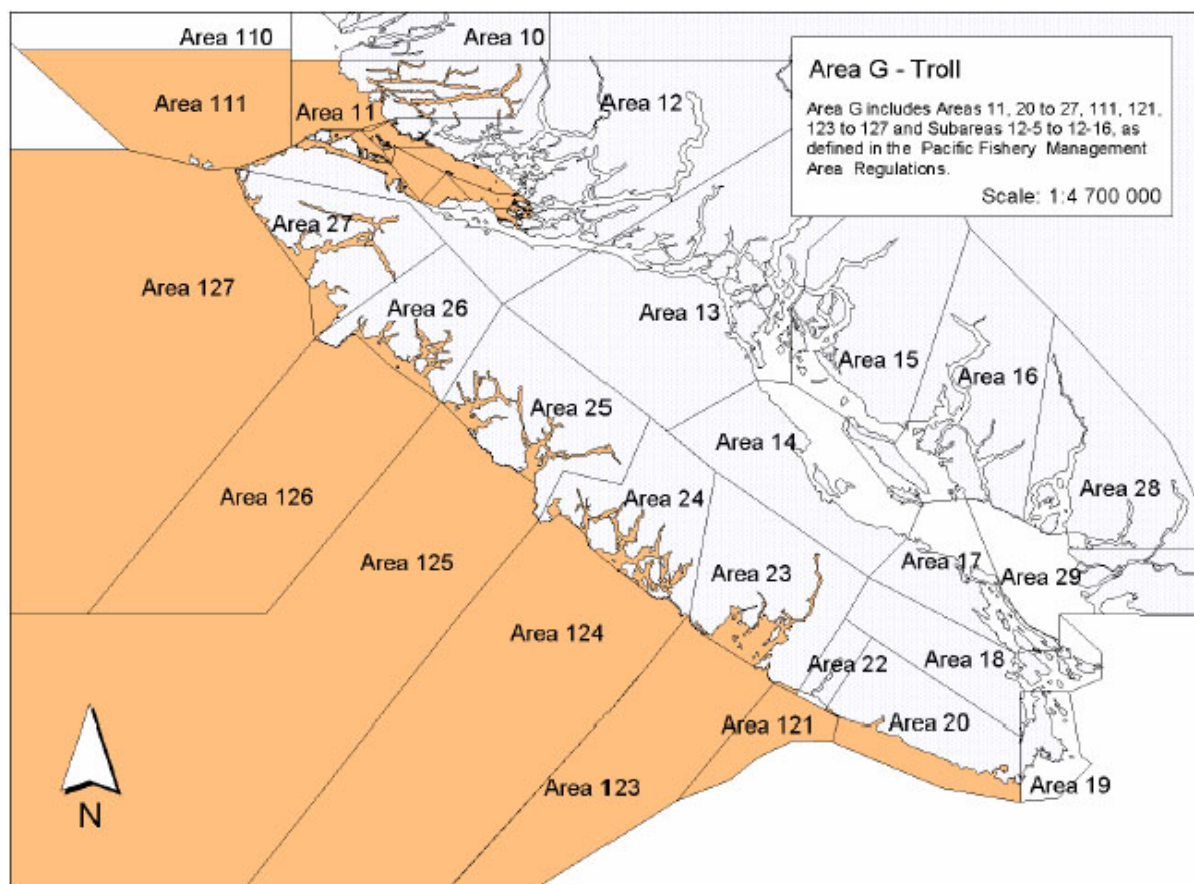


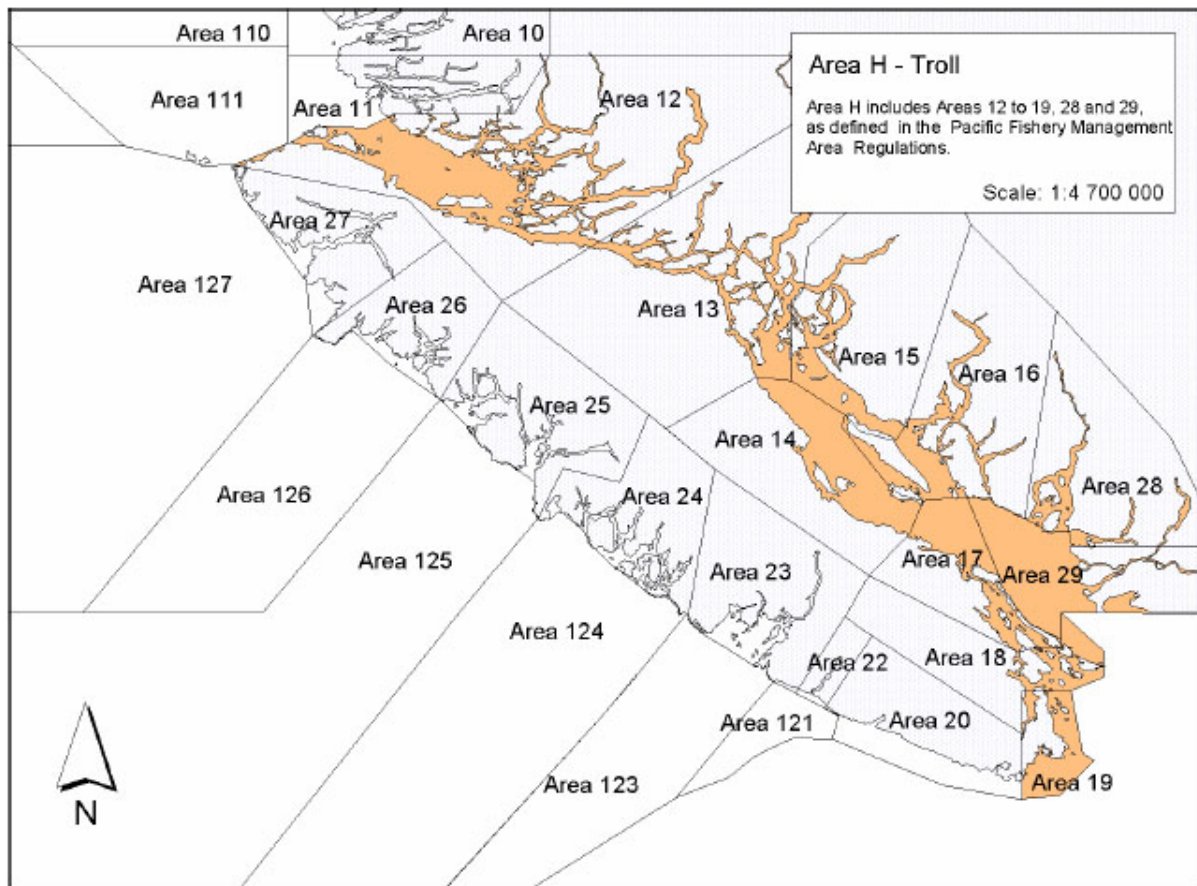
²⁵⁴ Maps available from Fisheries and Oceans online: <http://www.pac.dfo-mpo.gc.ca/fm-gp/maps-cartes/index-eng.htm>











Appendix C: Sample Licence Conditions for 2009-2010 Area E Gillnet²⁵⁵

CONDITIONS OF 2009/2010 SALMON AREA E LICENCE
Licence period: April 1, 2009 to March 31, 2010
(GILL NET - FRASER RIVER / JUAN DE FUCA)

Authority

The Department of Fisheries and Oceans has authority to set licence conditions under subsection 22(1) of the *Fishery (General) Regulations* for the proper management and control of fisheries and the conservation and protection of fish.

Persons fishing under authority of this licence may only do so in accordance with the conditions stated below.

Also, it is the responsibility of individual fishers to be informed of, and comply with, the *Fisheries Act* and the regulations made thereunder, in addition to these conditions.

For information on management of the salmon fishery obtain a copy of the 2009/2010 Southern BC Salmon - Integrated Fisheries Management Plan from a Pacific Fishery Licensing Unit Office. The Management Plan is intended for general information purposes only. Where there is a discrepancy between the Plan and the regulations or conditions, the regulations and conditions prevail.

PART 1

Application

This Part applies to fishing for salmon and to species of fish permitted as a by-catch while fishing for salmon.

Definitions

"Alaska Twist" means a gill net that, in addition to meeting any specifications prescribed by the *Fisheries Act* and the regulations made thereunder, has 4 or more filaments of equal diameter in each twine of the web and each of these filaments must be a minimum of 0.20 mm in diameter.

"Area" and "Subarea" have the same meaning as in the *Pacific Fishery Management Area Regulations, 2007*.

"Cancel Trip Report Confirmation Number" means the unique number provided by an authorized salmon catch reporting service provider upon completion of a Cancel Trip Report (see subsection 5(4)).

"Daily Catch Report Confirmation Number" means the unique number provided by an authorized service provider upon completion of a Daily Catch Report (see subsection 5(1)).

"day" means a calendar day, beginning at 00:01 h and ending at 23:59 h.

"Department" means the Department of Fisheries and Oceans.

²⁵⁵ Conditions of 2009/2010 Salmon Area E Licence [CAN143058]

"Designated Landing Station" means a location designated by the Department prior to an Area E fishery opening for the validation and/or landing of fish caught during that opening.

"Electronic Logbook" (E-Log) means a computer application approved by the Department that captures commercial catch and other fishery-related information in an electronic format. The computer application must transmit this information into the Salmon Fishery Database using the data specifications set out by the Department.

"Fisher Identification Number (FIN)" means the unique identification number issued to fishers by the Department of Fisheries and Oceans for licensing and other fisheries management purposes.

"fishery opening" means a period during which fish may be caught under authority of this licence pursuant to the *Pacific Fishery Regulations, 1993*.

"fishing trip" means the time between leaving a port to commence commercial salmon fishing and the return to a port or offloading of catch that results in a discontinuation of fishing for one day or longer.

"gill net set time" means the period of time beginning with entry of the first portion of the web into the water and ending when the last portion of the web leaves the water.

"gill net soak time" means the period of time beginning when the gill net is fully extended for a fishing set and ending with the commencement of the retrieval of the gill net from the water.

"harvest log" means the record of fishing activities required to be kept under these conditions of licence and applies to both hard copy (paper) versions and electronic (E-Log) versions unless otherwise specified.

"Multi-strand" means a gill net that, in addition to meeting any specifications prescribed by the *Fisheries Act* and the regulations made thereunder, has 30 or more filaments of equal diameter in each twine of the web.

"observer" means a person designated by the Regional Director-General to carry out duties described in subsection 39(2) of the *Fishery (General) Regulations*.

"Salmon Fishery Database" means a restricted access computer database maintained by the Department, which stores information required by these conditions.

"service provider" means a company, organisation or individual authorized by the Department to enter information into the Salmon Fishery Database, for the purpose of assisting licence holders and vessel masters in meeting these conditions of licence with regards to reporting of information.

"Trip Identification Number" means the unique number provided by an authorized salmon catch reporting service provider upon completion of a Start Fishing Report (see subsection 5(3)).

"vessel registration number" or "VRN" means the number assigned to a vessel by the Department at the time the vessel is registered as a fishing vessel.

"wild coho salmon" means any coho salmon that does not possess a healed scar in place of the adipose, pelvic or pectoral fin, or in place of a maxillary.

1. Species of fish that are permitted to be taken:

(1) Subject to variation of the close times set out in the *Pacific Fishery Regulations, 1993*, this licence authorizes the licensed vessel to retain the following species to the maximum amounts set out:

- a) Chinook salmon.....0
- c) Chum salmon.....no limit
- d) Coho salmon.....no limit
- e) Pink salmon.....no limit
- f) Sockeye salmon.....no limit

(2) The TAC for directed chinook fisheries will be posted at:

http://www-ops2.pac.dfo-mpo.gc.ca/xnet/content/fns/index.cfm?pg=fishery_search&lang=en&ID=commercial

and at any DFO office in the form of a fishery notice. The TAC may be modified in-season by subsequent fishery notices.

(3) Fishing activity in directed chinook fisheries shall cease when the maximums set out in subsections 1(a) are reached. The vessel shall not continue to fish for other species as by-catch.

(4) Notwithstanding subsections 1(a), chinook species caught incidentally during a directed fishery for other salmon species may be retained in addition to the maximum set out.

2. Protection of wild coho salmon:

Retention of wild coho salmon is not permitted.

3. Waters in which fishing is permitted:

Areas 16 to 22, 28, 29 and 121.

4. Type, size and quantity of fishing gear and equipment that is permitted to be used and the manner in which it may be used:

(1) One salmon gill net. In addition to any specifications prescribed by the *Fisheries Act* and the regulations made thereunder, gill nets shall meet the following specifications:

(a) In Areas 18 to 20 and 22, Multi-strand is permitted.

(b) In Areas 16, 17, 21, 28, 29, and 121, Multi-strand or Alaska Twist or a combination of the two is permitted.

(2) Subject to subsection 4(3), the maximum gill net soak time is sixty (60) minutes except that there is no maximum gill net soak time for the following fisheries:

(a) fisheries in Areas 20 and 21 and Subareas 121-1 and 121-2 during the period October 16, 2009 to March 31, 2010; and

(b) fisheries that occur in that portion of Area 29 easterly of a line from a fishing boundary sign on Point Grey on the mainland, thence northerly to the Point Grey bell buoy, thence westerly to the navigation buoy west of Point Grey, thence southwesterly to the navigation buoy west of Sand Heads, thence southeasterly to the most westerly point of the International boundary between Canada and the United States of America in the Strait of Georgia, thence easterly along the International Boundary to the mainland.

(3) In Subareas 29-9 to 29-17 during the period October 15, 2009 to October 31, 2009 the following applies:

- (a) the maximum gill net set time is sixty (60) minutes;
- (b) the maximum gill net soak time is thirty (30) minutes; and
- (c) the maximum gill net length is 187.5 m.

(4) The gill net shall be completely retrieved from the water upon completion of each set.

(5) While fishing for salmon, the licensed vessel shall be equipped with a revival tank, the purpose of which is to temporarily hold and revive injured or stressed fish which the vessel is prohibited from retaining. Those salmon and steelhead that are lethargic or appear dead shall be placed in the revival tank until revived to a vigorous condition or for at least one hour and then released back into the water from which they were caught in the manner that causes the least harm.

(a) For Areas 16 to 22, 28 and 121, the revival tank utilized shall meet the following specifications:

- (i) constructed of non-transparent material;
- (ii) minimum of two separate compartments;
- (iii) minimum inside dimensions of 100 cm x 20 cm x 40 cm for each compartment;
- (iv) a tight fitting lid made of non-transparent material for each compartment;
- (v) a pump capable of continuously delivering a minimum flow rate of 0.6 litres per second to each compartment of the tank;
- (vi) a separate inlet and outlet for each compartment; and
- (vii) subject to subsection 4(6), each compartment shall have a release mechanism that will allow revived fish to be released without being handled.

(b) For Area 29, two different types of revival tanks are permitted. The revival tank utilized shall meet the specifications of either Option 1 or Option 2 listed below:

Option 1:

- (i) constructed of non-transparent material;
- (ii) minimum inside dimensions of 90 cm x 40 cm x 40 cm;
- (iii) a tight fitting lid; and
- (iv) designed so as to receive a continuous flow of oxygenated water to the tank.

Option 2:

- (i) constructed of non-transparent material;

- (ii) minimum of two separate compartments;
- (iii) minimum inside dimensions of 100 cm x 20 cm x 40 cm for each compartment;
- (iv) a tight fitting lid made of non-transparent material for each compartment;
- (v) a pump capable of continuously delivering a minimum flow rate of 0.6 litres per second to each compartment of the tank;
- (vi) a separate inlet and outlet for each compartment; and
- (vii) subject to subsection 4(6) each compartment shall have a release mechanism that will allow revived fish to be released without being handled.

The revival tank must be operating from 10 minutes prior to the commencement of retrieval of the net and continue in operation at all times during retrieval and while fish are being held in the tank. The tank must be full of oxygenated water that is the same temperature as the water from which it is drawn prior to placing fish in the tank. When the revival tank is holding fish during fishing or after fishing is completed, the revival tank must remain filled with water and there must be a constant exchange of oxygenated water throughout the tank.

The revival tank(s) and equipment must be kept clean and in operable condition and shall be used for no other purpose than that outlined above.

(6) Paragraphs 5 (a)(vii)- release mechanism and 5(b)(vii) (Option 2 - release mechanism) does not apply to vessels 9.14 m or less in overall length and to bowpicker-style gillnetters. For these vessels, a hand-held dip net is permitted to be used to transfer fish from the revival tank to the water. The dip net shall be constructed of a shallow bag of soft, knotless web attached to a handle.

5. In-season Reports:

(1) Daily Catch Reports:

Under the circumstances set out below, the vessel master shall:

- (a) obtain a Daily Catch Report Confirmation Number; and
- (b) record the Daily Catch Report Confirmation Number in the appropriate space of the Daily Catch Record in the harvest log.

When a Daily Catch Report Confirmation Number must be recorded in the harvest log:

In Areas 16 to 20, 28 and 29, a confirmation number must be recorded in the harvest log for each day fished before 08:00 h of the following day.

In all other Areas, a Daily Catch Report Confirmation Number must be recorded in the harvest log:

- (a) within 24 hours of the completion of a fishery opening;
- (b) if a fishery opening is extended, within 24 hours of the completion of the extension;
- (c) if a new fishery is opened in an Area within 12 hours of the closure of the previous fishery in the same Area, a Daily Catch Report is not required until 24 hours following the completion of the second opening; or
- (d) for fishery openings that last longer than seven (7) days, a Daily Catch Report must be made at least once every seven days. (For example, if the fishery commences on a Monday, a Daily Catch Report must be made before the following Monday).

To receive a Daily Catch Report Confirmation Number, vessel masters using paper harvest logs shall provide the following information to their service provider who will ensure the information is entered into the Salmon Fishery Database:

- (a) harvest log identification number;
- (b) paper harvest log page number;
- (c) Salmon Licence Area;
- (d) vessel master's name and vessel master's Fisher Identification Number;
- (e) for each date and Area fished:
 - (i) date fished;
 - (ii) Area fished;
 - (iii) number of hours fished;
 - (iv) number of sets;
 - (v) depth of net fished, in meshes;
 - (vi) Subarea(s) fished;
 - (vii) number of fish caught and retained by species or type as indicated in the harvest log;
 - (viii) number of fish caught and released by species or type as indicated in the harvest log; and
 - (ix) number of non-fish (i.e. birds and mammals) encountered by species or type.

Vessel masters with electronic harvest logs are required to submit this information, other than the harvest log identification number and page number, by digital transmission to the Salmon Fishery Database in a properly encoded electronic mail message.

(2) Interim Reports:

Upon demand by a fishery officer, fishery guardian or a representative of the Department, the vessel master shall immediately provide orally in person or by radio, or in writing, any or all of the following information that may be requested:

- (a) an accurate estimate of the amount of fish on board the vessel as well as fish caught and released;
- (b) information concerning the location of catch, rate of catch and method of transporting of the catch; and
- (c) the name and location of the person or company buying the catch.

(3) Area 29 Start Fishing Report:

Prior to beginning fishing on a fishing trip, the vessel master shall:

- (a) obtain a Trip Identification Number; and
- (b) record the Trip Identification Number in the appropriate space in the harvest log.

To obtain a Trip Identification Number, vessel masters using paper harvest logs shall provide the following information to their salmon catch reporting service provider who will ensure the information is entered into the Salmon Fishery Database:

- (a) harvest log identification number;
- (b) Salmon Licence Area;
- (c) vessel master's name and Fisher Identification Number;

- (d) intended fishing start date;
- (e) Area to be fished; and

Vessel masters with electronic harvest logs are required to submit this information, other than the harvest log identification number and page number, by digital transmission to the Salmon Fishery Database in a properly encoded electronic mail message.

(4) Area 29 Cancel Trip Report:

Should the vessel master decide not to fish after having obtained a Trip Identification Number, the vessel master shall:

- (a) obtain a Cancel Trip Report Confirmation Number; and
- (b) record the Cancel Trip Report Confirmation Number in the appropriate space in the harvest log.

To obtain a Cancel Trip Report Confirmation Number, the vessel master shall contact a salmon catch reporting service provider to arrange to have the Salmon Fishery Database updated no later than three days after making the Start-Fishing report to show that the trip was cancelled and that no fishing occurred.

Vessel masters using paper harvest logs are required to provide this information to their salmon catch reporting service provider, who will ensure its entry in the Salmon Fishery Database.

Vessel masters with electronic harvest logs are required to submit this information by digital transmission to the Salmon Fishery Database in a properly encoded electronic mail message.

6. Harvest Log:

(1) The vessel master shall maintain a harvest log of all harvest operations. The harvest log must meet the requirements as set out in the 2009/2010 Southern BC Salmon Integrated Fisheries Management Plan.

(2) If the paper harvest log contains more than one page, the pages shall be bound in such a manner that the removal of a page cannot be performed without leaving evidence of said removal. Each page shall be numbered sequentially.

(3) A carbon copy shall be made for each page of the paper harvest log.

(4) The information recorded in the harvest log shall be complete and accurate.

(5) When harvest log data must be recorded:

- (a) Harvest information must be recorded in the log before any fish are landed.
- (b) If there are two separate fishery openings on one calendar day, harvest information from the first opening must be recorded in the harvest log prior to the vessel participating in the second opening. A separate harvest log entry must be made for each Area fished
- (c) The harvest information must be recorded in the harvest log by no later than 23:59 h for each day fished. If a fishery spans two calendar days then the harvest information must be recorded before 23:59 h of the second day.

(6) The harvest log shall be kept on board the licensed vessel when the vessel is participating in a fishery opening and when travelling to or from a fishery opening.

(7) The harvest log shall contain data pertaining to a single vessel only.

(8) The harvest log shall be produced for examination on demand of a fishery officer or a fishery guardian.

(9) All recording in the paper harvest log shall be in ink. If an error is made while completing an entry, the entry shall be crossed out.

(10) Erasure of an entry in the harvest log is not permitted.

(11) If a harvest log in which harvest information has been recorded is lost or destroyed, and no complete records of that harvest information survive, the licence holder shall submit a notarized Statutory Declaration that the harvest log was lost or destroyed to the service provider. The carbon copies of all pages with harvest information would represent a complete record of harvest information. The harvest log must be replaced prior to any subsequent fishing trips.

(12) The licence holder shall ensure that all paper harvest logs issued, whether used to record fishing or not, are delivered to the issuing service provider by January 31, 2010 and that all records recorded in those paper harvest logs are entered into the Salmon Catch Database by December 31, 2010. Returned harvest logs must contain the original copies of all pages issued.

(13) Carbon copies from the completed paper harvest log(s) shall be retained by the licence holder until December 31, 2010. In cases where the harvest log(s) is (are) lost during delivery to the service provider, images of these carbon copies (either fax or photocopy images) shall be delivered forthwith to the service provider as a backup.

7. Nil Reports:

(1) In the event that a licence is issued but not fished, the licence holder is responsible for ensuring that a Nil Report for the season is submitted by January 31, 2010.

(2) Submitting a Nil report:

(a) If a harvest log was issued, complete the Nil Report form that was included in the harvest log, and return it with the harvest log to your logbook service provider. The Nil Report form must include the vessel name, vessel registration number and licence number(s), and it must be signed by the licence holder;

(b) If no logbook service arrangements were made, send a letter to the Department stating that the licence(s) were not fished. The letter must include the vessel name, vessel registration number and licence number(s), and it must be signed by the licence holder, and be delivered to:

Fisheries and Oceans Canada
Salmon Catch Monitoring Unit
Pacific Biological Station
3190 Hammond Bay Road
Nanaimo, B.C. V9T 6N7
Tel: (250) 756-7000

8. Catch Monitoring:

(1) All vessels are required to take on board an observer when requested to do so by the Regional Director-General for the Pacific Region.

(2) For Area 29 openings targeting sockeye salmon, the following conditions shall apply:

- (a) All vessels shall report to a designated landing station not later than four hours following the end of an Area E fishing opening.
- (b) Vessel masters shall produce their harvest log for inspection at the designated landing station and, at the request of the on-site validator, shall have their catch validated.
- (c) The following is a list of shore-based designated landing stations: McIver's Landing; Haney SCH Dock; Sapperton Dock; Steveston SCH Dock; Ladner SCH Dock.

Additional shore-based landing sites may be included and this information will be posted in fishery notices specific to that opening prior to the start of the fishery. In addition to shore-based landing sites, there will be validators on board mobile vessels.

(d) Sockeye salmon caught in Area 29 during a directed sockeye fishery shall not be transhipped from the licensed vessel to any other vessel.

9. Required Offloading of Fish:

Before commencing fishing in any salmon fishery opening, all salmon of species that are not permitted to be retained in the fishery opening shall be offloaded.

10. Fish Slips:

The vessel master shall provide records, in the form commonly known as a fish slip, of all fish caught and retained under authority of this licence, including fish that are sold to the public and retained for personal use. The vessel master is responsible for submitting slips no later than seven days after landing. Slips must be mailed to:

Fisheries and Oceans Canada
Regional Data Services Unit
200-401 Burrard Street
Vancouver BC V6C 3S4

Vessels licensed for more than one Salmon Area are required to record catch from each Salmon Area on a separate fish slip.

Fish slip books may be purchased through most Departmental offices. Phone (604) 666-2716 for more information.

Appendix D: Consensus/Divergence Table from SCORE Report²⁵⁶

²⁵⁶ Diamond Management Consulting Inc., Salmon Management Reform: A reporting out on the work of the Commercial Advisory Board's committee on Options for Review and Evaluation (SCORE) to reform the agreement [sic] of the Pacific Salmon Fishery off the west coast of Canada (1 March 2008) [CAN002611] at 27-33

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>Level 1</p> <p>Inter-sectoral Allocation</p>	<ol style="list-style-type: none"> 1. Intersectoral Allocation Process (IAP) 2. The IAP would: <ol style="list-style-type: none"> a. Consist of reps from commercial, recreational, and First Nations b. Work together to manage resource conflicts and derive solutions a. Be an ongoing, flexible process to adjust to ever-changing salmon circumstances b. Include an audit/accounting function to follow all transfers of salmon allocation between and within sectors (full transparency); a spreadsheet, a running tally to track movement of allocation to ensure that the full amount and effect of transfers are fully understood and fully compensated. c. Be a critical element of Levels 2, 3, and 4 of this Plan (outlined below). A well-functioning process is the foundation of this Option. d. Pre-empt recreational takeover of commercial TACs, by establishing strong, supportive working relationships between sectors. First Nations as potential ally. 	<ol style="list-style-type: none"> 1. A floating recreational share (sports priority/current approach) is not acceptable or consistent with defined share fisheries. 2. Recreational access must also be expressed as a share. 3. To implement shares, you must first delineate a baseline. 4. Re: the current intersectoral policy/approach: <ol style="list-style-type: none"> a. The 95/5 sockeye, pink, chum arrangement is largely satisfactory. b. For chinook and coho, the application/interpretation of sports priority should not unfairly impact the commercial sector. c. Allocation shifts should have neutral impacts (that is, there should be compensation). 5. A vehicle for delineating a baseline is needed. The Sigurdson/Stuart process could be utilized, providing an appropriate terms of reference are established. CSAB would refine advice and send Reps to the intersectoral process. 6. The conservation burden must be shared equitably amongst all user groups. <p><i>Groups agree that a starting baseline is needed, and that there may be changes over time. No consensus on the time frame (annual vs fixed for multi-years)</i></p>	<ol style="list-style-type: none"> 1. Fix the commercial-recreational share because: <ol style="list-style-type: none"> a. Establishing defined shares for commercial fleets and individuals requires definition of the commercial pie. It is meaningless to have a fixed share of a fluctuating (shrinking) pie. b. Implementing the May/Toy processes as intended is one option. 2. The remaining elements of the Option are dependent upon adequately addressing inter-sectoral (specifically, commercial-recreational) allocation. 3. Improved certainty and security associated with fixed shares is fundamental to this Option. For individuals to gain these benefits, the starting point – the commercial share of the Canadian salmon TAC – must be fixed. 4. It is recognized that shares would need to be reviewed, and could be tweaked over time as circumstances change. 5. If shares between the recreational and commercial sector are not fixed, then the fallback position is 40/38/22 in all production areas (see Level 2 for production area definition).

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>Level 2</p> <p>Fleet Shares</p>	<ol style="list-style-type: none"> 1. Fleet shares to remain flexible using the existing allocation process. 2. Shares should not be fixed; they should be set each season to ensure each fleet/area get reasonable access to stocks. A spirit of cooperation amongst gear types, as has prevailed in the past. 3. IAP can play a role if disputes occur. 4. Fixing fleet shares does not make sense given the volatility of access to salmon. 5. The current allocation process has become quite streamlined. 6. Current areas (A-H) preserved. 7. Area harvest groups (A-H) have autonomy to determine individual sharing & fishery management arrangements for their own area. 8. Not a one size fits all approach. 	<ol style="list-style-type: none"> 1. Gears and areas (A-H) maintained, with Area Harvest Committees involved in creating solutions. 2. Process for determining fleet shares: <ol style="list-style-type: none"> a. Populate a table with 25 production areas and 3 gear types (seine, gillnet, troll). Example appended. b. Each gear allocated an agreed-upon percentage of the TAC in each production area c. Arrive at percentages through negotiations involving full CSAB: consider historical shares, current and future prospects, values, fish catch-ability, and needs and interests of the parties. 3. Need post and in-season accounting of what's happened (net effect of any transfers). Transfers must be consistently and transparently accounted for. <p><i>Groups agree on the process for defining fleet shares – that a populated production area table will be the output – but differ on the frequency of updating the table (for example: one-time, every two cycles, or annually).</i></p>	<ol style="list-style-type: none"> 1. Fleet shares (seine, gillnet, and troll) to be fixed percentages of the commercial TAC. 2. Each gear type to receive a percentage of the commercial TAC in 25 defined production areas. 3. These percentages reflect historical relationships, outcomes of recent allocation exercises, consideration of future trends, and negotiation amongst the parties. 4. Fixing gear shares is crucial to improving certainty and security. 5. Areas A-H preserved. 6. Fixed gear shares are merely a starting point. Transfers across gear types will be permitted. 7. Fixing shares does not imply a lack of adjustment. The adjustments to changing abundance and TACs will be made by individuals, not through negotiations at the area/gear level. Gear shares may change as individuals across gear types make voluntary arrangements with one another. 8. If there is no agreement on permanent allocation of commercial and recreational shares, then the Kelleher approach would apply to populating the table (40% seine in every row, 38% gillnet, and 22% troll).

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>Level 3</p> <p>Individual Shares</p>	<p>1. Preserve opportunity to fish commercial fishery. All benefits of fishery to accrue to active fishermen.</p>	<p>1. All transfers within the commercial fishery, or from the commercial fishery to Treaty (or other First Nations economic fisheries) must be expressed as a percentage of the Canadian commercial TAC – no fixed-number allocations.</p> <p>2. If commercial fishery access is transferred to First Nations under the same licence conditions, then compensation is one-for-one. If the character of the access transferred is changed, then the impact on the commercial sector must be compensated (the exchange rate calculated). Example: transfers upstream (Area E to Prince George) must be at a higher exchange rate than transfers in marine waters or in areas of equivalent catch (Katzie and Area E).</p> <p>3. Principle – compensation for treaty purposes of vessel-based licences should in principle reflect enterprise value. Boat and gear included with sale at fishermen's discretion.</p> <p>4. For treaty transfer purposes: each licence will be valued as an equal percentage of its fleet share (as defined at Level 2).</p> <p>5. Post and in-season accounting: need a dynamic spreadsheet showing total commercial and recreational TACs and transfers.</p> <p><i>Other than defining an individual licence share for Treaty purposes, there is divergence in how individual shares are defined and accessed.</i></p>	<p>1. Each licence to receive an equal share of its fleet share by licence area (a pro-rata share of those production areas lying within a licence-area).</p> <p>2. Individual shares in the form of an ITQ.</p> <p>3. Individuals seek a portfolio of shares meeting their business objectives.</p> <p>4. Fleet rationalization – some individuals increasing participation levels, others decreasing – is inherent in this approach.</p> <p>5. Transferability is a critical component of this program; must be a high level of flexibility for individuals to self-adjust for viability.</p> <p>6. A quota registry established to track ownership and potentially provide an opportunity for security (ie with lenders).</p>

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>Level 4</p> <p>Fishery Management Approach</p>	<ol style="list-style-type: none"> 1. The Area Harvest Committee in each licensed area (A-H) will design management mechanisms to get the fish out of the water. In some cases, this will be a traditional, competitive fishery. 2. Where there are concerns about the size of harvestable surpluses relative to potential fishing effort, a host of mechanisms can be employed, eg: <ol style="list-style-type: none"> a. Equal divisor fisheries b. Pools c. Amendment fisheries d. Lottery e. Others to be developed 3. The existing toolkit allows area groups to develop and adapt to varying circumstances to exploit TACs. Other tools will be developed as required. 	<ol style="list-style-type: none"> 1. Maintenance of licence Areas (A-H), with a degree of autonomy at the Area level to implement specific initiatives. 2. Area harvest groups have autonomy to determine individual sharing and fishery management arrangements for their own area, assuming ability to move fish around is accommodated. 3. Re: PICFI purchases: allow vessel based licences to be de-married and un-stacked. Don't prejudice multi-licences. 4. Need a pre-fishery TAC for each fishery, so that industry has a reasonable opportunity to organize fisheries appropriately. 	<ol style="list-style-type: none"> 1. Each licence includes a share of each production area lying within that licensed area. 2. Each fishery requires a pre-season TAC so that shares can be expressed in expected pieces. TACs can be adjusted throughout the season. 3. Fishery management approach will vary by fishery, eg: <ol style="list-style-type: none"> a. Fraser sockeye ITQ may be split by management unit (MU) – Early Stewart, Early Summer, Summer, Late b. Skeena sockeye may be split by weekly TACs c. Central coast pinks/chums – will need new system for setting TAC 4. Individuals organize themselves to harvest surpluses. 5. Combines ability to specialize through trades/transfers with ability to remain diversified (hold all production areas). 6. Monitoring system inherent in ITQ management. Desire to phase in monitoring as viability improves and fleet rationalizes. 7. System will be necessarily complex. Other complex fisheries (groundfish) have shown individuals can adapt. 8. There will be a learning curve associated with an ITQ plan.

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>Guiding Principles & Underlying Rationale</p>	<ol style="list-style-type: none"> 1. Benefits of fishery to active fishermen. 2. AHCs have autonomy to design fisheries for member fleets. 3. Fleet needs numbers, including high representation from coastal communities, to defend the salmon industry and rebuild the resource. As numbers dwindle, who'll care for the salmon? 4. First Nations, as legitimate governments, can design their own fisheries. An overseer (IAP) will ensure that industry is properly compensated. 5. Preserve and enhance ocean-based fisheries. If fisheries migrate up-river of commercial boundaries, then they are lost to the commercial fleet. 6. The activity level of the fleet naturally (historically) waxes and wanes with economic circumstances. Currently, many boats are tied up, while others choose to fish. Those currently tied up are content to wait out a transitory crisis. As circumstances improve, the activity level will rise. It is not necessary to cannibalize the fleet and consolidate ownership of the resource... actions that cannot be un-done in the future. 	<p><i>This wasn't explicitly discussed at the Feb 5/6 Meeting.</i></p>	<ol style="list-style-type: none"> 1. Value of a licence is readily determinable. 2. Individual accountability and responsibility (don't want to rely on AHCs). 3. Commercial salmon sector strength will best come from a smaller, more cohesive, economically viable group. 4. Ability to execute a business plan. 5. Level playing field – recipients of transfers play by same rules as commercial sector. Access is on the same terms. 6. Don't want to wait for a turnaround. Don't want to wait for industry leaders to effect change; want to enable individuals to create a turnaround. 7. Flexibility to adapt to any fishery. If there are to be up-river fisheries, want the ability to extract value from them. 8. Rationalization is a necessary reality in order to restore overall and individual viability.

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>How the transfer mechanism works.</p>	<ol style="list-style-type: none"> 1. For commercial licences, the opportunity to fish is preserved. 2. For transfers to First Nations, the amount transferred will be deemed to be the average harvest (TAC divided by number of licences). There will be compensation not just for resource access, but for the value of enterprises. 3. First Nations, as legitimate governments, will be free to determine the nature and details of their access. They will not be bound by the rules dictated by DFO in the commercial fishery. 4. The key is that First Nations access, and the impact on the commercial fishery, must be accurately tracked and accounted for on an ongoing basis. This implies an effective monitoring program and a thorough audit process. The IAP will be involved in this key function. 5. If the conditions of a licence (nature of access) are altered, then compensation must flow. The commercial sector must be compensated for the actual impacts on the fishery. For example, a small allocation of in-river Cowichan chinooks could imply the need to substantially purchase the entire Area G troll fleet. 6. There may be a bank of licences held by the government. 	<p><i>From Level 3 Individual Shares above:</i></p> <ol style="list-style-type: none"> 1. All transfers within the commercial fishery or from the commercial fishery to Treaty (or other First Nations economic fisheries) must be expressed as a percentage of the Canadian commercial TAC – no fixed-number allocations. 2. If commercial fishery access is transferred to First Nations under the same licence conditions, then compensation is one-for-one. If the character of the access transferred is changed, then the actual impact on the commercial sector must be compensated (the actual exchange rate calculated). Example: transfers upstream (Area E to Prince George) must be at a higher exchange rate than transfers in marine waters or in areas of equivalent catch (Katzie and Area E). 3. Principle – compensation for treaty purposes of vessel-based licences should in principle reflect enterprise value. Boat and gear included with sale at fishermen's discretion. 4. For treaty transfer purposes: each licence will comprise an equal percentage of its fleet share (as defined at Level 2). 5. Post and in-season accounting: need a dynamic spreadsheet showing total commercial and recreational TACs and transfers. 	<ol style="list-style-type: none"> 1. With defined shares on each licence, it is simple to value a licence for transfer purposes. 2. Each commercial licence has shares of the production areas lying within that area. 3. First Nations can acquire shares in individual production areas or portfolios of production areas. 4. First Nations cannot further subdivide the contents of a production area (more discrete stocks & locations) unless commercial ITQ holders are given the same right.

Decision Matrix Level	Effective Process/IAP Solution	Areas of Consensus (paraphrase of Feb 5/6 Meeting)	Defined Shares/ITQ Solution
<p>Option</p> <p>KEY TO SUCCESS</p>	<p>1. The Key is at Level 1: making the IAP process work:</p> <ul style="list-style-type: none"> a. Effective working relationships between and within sectors b. Comprehensive and transparent audit of fish transfers <p>2. Without effective IAP, you've got the status quo.</p>		<p>1. The key is at Level 4 - creating ITQ fishery management design-rules that:</p> <ul style="list-style-type: none"> a. DFO can adapt to (eg. setting and updating TACs) b. Balance necessary complexity with flexibility to get fish out of water and efficiency of quota transfers <p>2. Without effective ITQ program design, you've got greater complexity and cost without anticipated benefit on the revenue side.</p>
<p>Common Ground</p>	<p><i>Some of the Following Points Are Also Listed Above:</i></p> <ul style="list-style-type: none"> 1. Transfers under PICFI/Treaty should not be termed retirements. The term is misleading, since access is maintained, but merely held/utilized by another party. 2. All fisheries should have an upfront TAC (even if rough estimate) so that fleets/individuals can organize themselves appropriately. 3. The commercial sector must be treated fairly and reasonably with respect to inter-sectoral allocation. 4. Treaty transfers: willing buyer, willing seller. 5. First Nations commercial access will always be a share (not a fixed number), with the same priority as the commercial fishery. 6. The desire is to rebuild salmon stocks, commercial access to salmon stocks, and economic viability. Building the fishery and business vs. watching (contributing to) its decline. 7. Desire to maintain ocean-based fisheries to the extent possible. 8. Desire to improve economic viability. 9. Maintenance of licence-areas (A-H). 		