

*DRAFT FRAMEWORK FOR CONSULTATIONS
BETWEEN THE DEPARTMENT OF FISHERIES
AND OCEANS AND FRASER RIVER FIRST
NATIONS*

*through the
Fraser River Aboriginal Fisheries Forum process*

*prepared for the Fraser River Aboriginal Fisheries
Secretariat Tier One & DFO Sub-Committee, Oct 31. 2002*

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Background:

This framework has been developed recognizing consultation occurs for a variety to reasons, not just to meet legal requirements. Both parties (Department of Fisheries and Oceans and First Nations and their organizations) have a common interest in the proper management of the fisheries resource. Good management of Fraser River stocks requires that the interests and concerns of affected parties are presented and debated in an open forum, and this is a primary reason to invest in a consultative process. Indeed, with meaningful discussion and a collaborative approach to fisheries planning and management, it is hoped that there will be fewer conflicting views on management approaches (or at least an established process for dealing with conflicting views), and litigation regarding these issues will become less frequent.

The Watershed discussions should be seen as an important component of a series of processes that occur at different levels, all of which combine to provide a well rounded and informed picture of First Nations views on fisheries issues.

It should be noted that First Nation parties participating in the watershed process have no obligation to agree that the processes outlined in this protocol constitute a level of consultation, which is fully satisfactory. The Department of Fisheries and Oceans views these processes as evolving ones which will improve with time, but for the time being, are the best attempt to bring First Nations views into the planning process, and to consult given current resources and capacities.

Key Words:

First Nation: a First Nation group, organization or its representative(s) with an interest in the Fraser River fisheries resource.

DFO: Department of Fisheries and Oceans (known in some documents as Fisheries and Oceans Canada, or FOC).

Tier 1: Interactions occurring between Fraser River First Nations (generally with reference to Watershed-level issues).

Tier 2: Interactions occurring between Fraser River First Nations and DFO at the watershed level.

IFMP: Integrated Fisheries Management Plan. The planning document produced by DFO outlining the overall management approach for a given species or fishery. The IFMP is based on broad input from various DFO sectors (science, fish management, policy, enforcement, etc.), First Nations, fisheries user groups and other interests.

Fraser River Aboriginal Fisheries Forum: An inclusive term used to describe the group of First Nations and DFO staff that participate in discussions or other forms of exchange concerning watershed-level management processes. Many of these processes are supported by the Fraser River Aboriginal Fisheries Secretariat.

FRAMEWORK FOR CONSULTATIONS

General principles of the consultation process:

- Discussions will be carried out with a spirit of respect and collaboration
- The consultation process is designed to support meaningful input and involvement of First Nations in fisheries management processes.
- The process is designed so that the full range of views of various participants are understood and considered in management decisions
- Participants, and the groups they represent, should be aware of participants' roles and responsibilities in the process
- Relevant information is exchanged in a timely way so that parties have time to prepare responses

General structure of exchange between DFO and First Nations :

Though this document lays out structures and guidelines for the exchange of views between DFO and Fraser First Nations on fisheries management issues, the process is designed to be flexible to account for various issues and circumstances that may arise (e.g. lead-time to provide input on in-season management issues is often very short). The process will involve:

- an exchange of available technical information, and other relevant information between DFO and participating First Nations
- a defined timeframe for First Nations and / or DFO to prepare views on the issue
- an opportunity for First Nations to present their views on the issue to DFO, and for DFO to present its views on the issue to First Nations in a timely manner
- an opportunity for meaningful discussion between participating First Nations and DFO regarding the parties views in an attempt to achieve consensus, if possible, regarding the issue
- in situations where consensus can't be achieved regarding an issue, an explanation by DFO to participating First Nations of any decisions made will be conveyed to the First Nations in a timely manner

Though DFO will strive to address concerns and accommodate views raised through the Watershed process, there are a number of factors that can constrain what DFO can and cannot do. DFO must address the priority of conservation goals and provisions of opportunities for First Nations to fish for food, social and ceremonial purposes. However, while giving effect to these priorities, DFO must consider other obligations and objectives such as:

- International obligations (e.g. Pacific Salmon Treaty)
- Providing opportunities for other user groups when consistent with the above priorities
- Legislative mandates (e.g. *Fisheries Act, Species at Risk, Oceans Act*)
- Departmental policies
- Budgetary, time and human resource limitations

As participants in a consultative process, DFO and First Nations understand that there are a range of constraints facing both parties that will affect how interactions on planning issues will proceed.

Levels of consultation:

The watershed process does not stand alone as DFO's consultative mechanism with Fraser First Nations. Bilateral meetings with First Nations bands and tribal councils still form the backbone of DFO's consultation process. The Watershed process allows Fraser First Nation to come together as a group to present their views to DFO, for DFO to present information and views to First Nations as a group (thereby ensuring consistency of messages) and for consensus to be built where possible. In the absence of this process, DFO is left to sort between various views expressed at bilateral meetings, and to make decisions without engaging in a formal process of challenge or debate.

A consultation matrix has been developed to clarify various processes and linkages (Appendix ***).

Scope of consultations:

At this time, the Watershed process is primarily a forum for discussion of issues tied to the management of Fraser River salmon stocks; however, there may be some discussion of longer-term policy issues where appropriate. The main focus of the process will be pre-season planning, in-season discussions / technical processes, and post-season review. Other areas of discussion will include research and assessment on Fraser stocks, habitat management and enforcement.

Participation:

Both First Nations and DFO agree that the Watershed process will be most effective if participants are able to act as representatives of their sending organizations; i.e. participants are empowered to speak to issues / priorities of concern to their sending organization. At the least, participants will be accountable for relaying information gained through the process back to their respective organizations.

Functional structures:

Secretariat: largely focussed on information exchange and administration of the Watershed process (newsletters, distribution and gathering of documents, meeting notices, co-ordination and minutes, administration of contracts, financial administration).

Interim Executive Committee: gives direction to the process (including the secretariat), sets budgets, sets schedules and agendas for meetings (see attached TOR for more detail).

Executive Director: Full time administrator to oversee day-to-day operations of the Secretariat. Reports to the Interim Executive Committee.

Technical Process: Presentation and discussions of technical data, reports, forecasts, expectations, catch information, historic trends, etc. Both DFO and FN are expected to bring forward information (for First Nations, this could include traditional and local knowledge). The technical process includes distribution of information via the stock management co-ordinator positions, secretariat processes and stock management committee meetings. Those participating in this process will summarize technical information for those in the management process, will outline management options and possible approaches, and brief those in the management process on issues of potential policy / management concern.

The technical process will be carried out by a joint technical sub-committee (the Stock Management Committee), which will report to the Interim Executive Committee. Members of the Stock Management Committee will be appointed by their respective organizations.

Management Process: Focussed on development of recommendations for fisheries plans and programs based on technical information. This would include development of objectives, priorities, decision rules, monitoring strategies, and mechanisms for evaluating success of fishing plans

The in-season management process focuses on the interpretation and implementation of pre-season plans. Ongoing work will be required to enhance First Nations participation in the in-season management process, recognizing that the requirement for rapid evaluation of substantial amounts of data and other information pose challenges.

The Interim Executive Committee may wish to appoint sub-committees to address specific management issues as appropriate.

Methods of information exchange and schedule of activities:

A schedule of meetings and a schedule for distribution of documents and other forms of communications / correspondence will be established well in advance of the season.

Three formal Fraser Watershed Forum-style meetings per year will be convened (preliminary pre-season, detailed pre-season and post-season). Issues that are to be discussed and supporting documentation will be distributed prior to the meetings under the direction of the Interim Executive Committee.

The Executive Director, in consultation with the Interim Executive Committee will work to define agendas, and clearly articulate desired outcomes of meetings. Where necessary, sub-committees will work to develop options and recommendations on specific issues in order to streamline the forum meetings and increase the likelihood of meaningful outcomes.

Local First nations will, in discussions with local DFO staff, will determine how local bilateral processes should be scheduled relative to the watershed process. The role and scheduling of technical processes relative to management processes will also be discussed.

One example of a sequence of discussions for this process is:

- Bi-/lateral / sub-regional technical staff (First Nations + DFO) meet to jointly work on fisheries management plan options based on available pre-season technical information.
- First Nations representatives on technical group reports to Tier 1 for further review and input from First Nations leadership. DFO representatives discuss plan options with their senior management, other relevant staff and internal management processes.
- Joint technical group meets to refine plans and / or to forward views to the Watershed forum as directed by Tier 1 participants.

Outcomes of the watershed-level consultation process and other processes:

1. that both parties have a clear understanding of the management processes and strategies for Fraser River fisheries (carried out by the Fraser Panel, DFO, First Nations organizations and other bodies), including planning timelines, management objectives and harvest rules
2. that a Watershed-wide record of Fraser River First Nations' views on management objectives, escapement levels, general harvest and sharing rules, specific management strategies etc. to guide the in-season process is developed. This record will be incorporated into a Conservation Harvest Plan similar to that produced by the Stock Management Co-ordinator.
3. that the views presented in the Conservation Harvest Plan undergo full consideration in the planning process that leads to the development of the IFMP.
4. that the IFMP, and other approved harvesting plans, are implemented in a way, which is understandable and transparent.
5. that progress is made annually towards co-management of the fisheries resource.

Timing of discussions:

- A joint planning calendar for Fraser salmon species will be established by the Interim Executive Committee to ensure that meetings and information exchange are carried out with the optimal timing.

Dispute resolution mechanisms:

- DFO and First Nations support the idea of a mechanism for resolving disputes arising from this document.
- The Interim Executive Committee will be responsible for recommending a dispute resolution mechanism within one year of signing of a Watershed Agreement (or by Mar. 31, 2004).

Review and evaluation:

During the post-season review process (both at the local and Watershed levels), whatever consultation process is adopted will be reviewed and suggestions for improvements made. Recommendations will be noted in a Watershed-wide post-season review report.