

# Watershed Talk

A weekly Aboriginal fisheries newsletter for  
fisheries representatives and their organizations

## THE EVOLUTION OF THE FRASER RIVER ABORIGINAL FISHERIES SECRETARIAT

By Neil Todd, FRAFS Operations Manager & Ken Malloway, FRAFS Executive Committee Chairperson

### INTRODUCTION - by Ken Malloway

Neil Todd prepared the following paper for the Fraser Salmon Roadmap meeting in Richmond on February 8 and 9, 2011. It describes the genesis of the Fraser River Aboriginal Fisheries Secretariat and its subsequent evolution. The article is well written and basically speaks for itself; however, one question keeps coming up at Watershed meetings: "Are we being consulted at these meetings?"

A number of court cases have dealt with that very question. In Tier 1 meetings (First Nations only), we are not being consulted. But when we meet with government at the Tier 2 level we are engaging in at least a part of the consultation process. For some issues though, deep and meaningful consultation must occur in bilateral sessions between DFO and First Nations at the community level. This is what we have heard from our legal advisors. However, we are also told that we cannot avoid the broader consultation processes (e.g. the Forum) by refusing to attend meetings with DFO. The government has an obligation to consult, but First Nations have a reciprocal obligation to be consulted.

The following is a quote from the R. v. Douglas et al. (2007) BC Court of Appeal case involving the Cheam First Nation:

*Given the nature of the Fraser River salmon fishery, the number of First Nations involved, and the lack of unanimity between them on important issues, DFO's emphasis on joint consultations was reasonable and appropriate... Because the Cheam refused to participate in the joint consultations, DFO attempted to consult them separately. The trial judge found, and the appeal judge agreed, that DFO's efforts to engage the Cheam in consultation were reasonable and in good faith.*

The R. v. Douglas case shows us that refusal to participate in broader consultation processes weakens the allegation that the Crown has not fulfilled its duty to consult with First Nations.

A major misconception about FRAFS is that this group is consulting and/or being consulted on behalf of First Nations. FRAFS has no such mandate. The role of FRAFS is to facilitate the consultation process by setting the table for DFO and First Nations to engage with one another on important fisheries issues.

### THE EVOLUTION OF FRAFS - by Neil Todd

#### 1994-1999

The Fraser River Aboriginal Fisheries Secretariat (FRAFS) was established by Fraser First Nations and the Dept. of Fisheries and Oceans (DFO) in 1994 to provide communications and support services to the Fraser Watershed Steering Committee under the Fraser Watershed Agreement. FRAFS was hosted by the Shuswap Nation Fisheries Commission (Kamloops) until 2005, at which time the Nicola Tribal Association (Merritt) became the host organization, which it still is today.

The Fraser Watershed Steering Committee had an Independent Chairperson and was populated by First Nation representatives who had signed the Fraser Watershed Agreement and had subsequently signed Aboriginal Fisheries Strategy agreements.

A number of sub-committees were formed throughout the watershed: habitat, enforcement, stock assessment, etc. These sub-committees were somewhat operational in nature, in that they theoretically were supposed to coordinate DFO and First Nations' intentions and activities within the geographic and subject matter realm of the sub-committee.

It is important to remember that under the Fraser Watershed Agreement the Secretariat was truly a Secretariat – a "keeper of the process" – providing administrative, executive, and communications

support in order to assist the Fraser Watershed Steering Committee and its sub-committees to function.

#### 1999-2007

The Fraser Watershed Agreement expired in 1999, but a series of initiatives between the Dept. of Fisheries and Oceans and First Nations in the Fraser River Watershed have maintained the presence of the Secretariat since its inception.

Efforts were made by the Dept. to encourage First Nations representatives to constitute a "Tier 1" process which would meet with and speak to the Dept. ("Tier 2 process") as official representatives of their groups or organizations on matters of consultation. First Nations, while finding it useful to meet among themselves, felt they could not be put into the position of speaking on title and rights matters as representatives of their nations – at least not without some sort of formal agreement, terms of reference, and mandate from their parent organizations. None of these were established and this led to increased tension between DFO and First Nations.

The Secretariat lost its identity as a secretariat; it became "FRAFS", an operational body thought to consist of Tier 1 and Tier 2 components, an "organization" that was viewed as the consultation mechanism between DFO and First Nations.

Objections to this were often voiced, particularly when viewpoints and opinions of First Nation representatives weren't acted upon or heeded by the Dept. The AFS agreements were used to force First Nations into positions of having their rights infringed upon; if they objected, they were accused of breaking the agreements. Meanwhile, though, through some wording in the Agreements and at meetings the Department tried to maintain that they weren't dealing with First Nations' rights. Eventually First Nation representatives threatened to reject any FRAFS meetings that involved DFO.

Independent advice was sought. A consultant reviewed the situation and was contracted to act as an independent chairperson of FRAFS while recommendations from his report were implemented.

This led to a more formal structure for the FRAFS and a partial return to its former role as that of a secretariat. Its function became focused more on that of a facilitation body, providing biological support services to First Nations, and communications between First Nations and DFO, and among First Nations. An Executive Committee was formed to provide guidance to the Secretariat.

The First Nations' members of the Executive Committee were appointed by consensus at a Tier 1 meeting in Williams Lake.

#### 2007-Present

It became apparent that DFO wished to use the Secretariat as a vehicle for facilitating the expenditure of budget funds on initiatives that were of interest to them (and some of which were of interest to First Nations). The administrative, managerial, and executive committee functions were better defined through the services of an organization consultant such that the configuration/organization chart of the Secretariat became what you see today.

Various initiatives that come and go as part of the FRAFS annual program are now defined with terms of reference that include purpose, structure, and process. But the key point is that the Secretariat continues to exist again truly as a Secretariat. As befits a true Secretariat, the FRAFS does not instigate, lead, or implement political (rights based, consultative) initiatives on its own; rather, it assists both First Nations and DFO in the provision of communications and technical services, and provides administrative and executive support for the implementation of initiatives brought forward by both DFO and First Nations.

A weekly Aboriginal fisheries newsletter for  
fisheries representatives and their organizations

## Important Meeting Notice: Forum on Conservation and Harvest Planning for Fraser Salmon

The next Forum on Conservation and Harvest Planning for Fraser Salmon meeting will be held at the Executive Airport Plaza Hotel (Grand 'A' Room) on Tuesday, February 22 & Wednesday, February 23, 2011.

**Accommodations information:** The Executive Airport Plaza Hotel is currently offering the government accommodation rate of \$99.00 (plus tax) for attendees (reduced rate in effect until February 16th; includes free internet and overnight parking). When making reservations, guests are asked to quote the group name "Fraser River Aboriginal Fisheries Secretariat" and secure their reservation with a valid credit card. All guests are responsible for full payment of room, tax and incidental charges. Individual reservations can be cancelled up to 4:00 pm the day prior to travel.

### February 22 & 23, 2011 Executive Airport Plaza Hotel

Address: 7311 Westminster Highway, Richmond  
Hotel contact: (604) 278-5555

If you are interested in attending,  
please confirm by email at  
[info@frafs.ca](mailto:info@frafs.ca)  
or by phone at 604-836-1909

**The Watershed Talk is also available  
for download at [www.frafs.ca](http://www.frafs.ca)**

To subscribe or submit content to the  
Watershed Talk, please contact us at:  
**Tel: (604) 836-1909 • Fax: (250) 378-9119**  
**E-mail: [info@frafs.ca](mailto:info@frafs.ca)**  
**Web: [www.frafs.ca](http://www.frafs.ca)**

## Upcoming fisheries meetings

### FRAFS MEETINGS:

**February 22-23, 2011: Forum on Conservation & Harvest Planning for Fraser Salmon (Richmond)**

**March 21-22, 2011: Fraser Salmon Roadmap (Prince George)**

**March 29-30, 2011: Forum on Conservation & Harvest Planning for Fraser Salmon (Vancouver Island)**

**May 10-11, 2011: Forum on Conservation & Harvest Planning for Fraser Salmon (Kamloops)**

### FIRST NATIONS FISHERIES COUNCIL COMMUNITY ENGAGEMENT SESSIONS:

**Tuesday, February 15, 2011: FNFC Aquaculture Community Dialogue - Tier 1 (Prince Rupert)**

**February 16, 2011: FNFC Aquaculture Community Dialogue - Tier 1 (Kamloops)**

**February 24-25, 2011: FNFC Co-Management Workshop - Tier 1 and Tier 2 (Richmond)**

**February 28, 2011: FNFC Food, Social and Ceremonial Community Dialogue Session - Tier 1 (Nanaimo)**

**March 10, 2011: FNFC Co-Management Community Dialogue Session - Tier 1 (Prince George)**

**March 11, 2011: FNFC Food, Social and Ceremonial Community Dialogue Session - Tier 1 (Prince George)**

**March 15, 2011: FNFC Co-Management Community Dialogue Session - Tier 1 (Terrace)**

**March 16, 2011: FNFC Food, Social and Ceremonial Community Dialogue Session - Tier 1 (Terrace)**

**PLEASE NOTE THAT REGISTRATION IS REQUIRED FOR THE COMMUNITY ENGAGEMENT SESSIONS. PLEASE VISIT THEIR WEBSITE AT [WWW.FNFISHERIESCOUNCIL.CA](http://WWW.FNFISHERIESCOUNCIL.CA) FOR MORE INFORMATION AND TO REGISTER.**

The Fisheries Council also hosts a Tier 1 bi-weekly update conference call every second Wednesday morning at 9:00am. The next call is scheduled for Wednesday, February 23. Dial-in info is sent out via the email distribution list.