

*A weekly Aboriginal fisheries newsletter for
fisheries representatives and their organizations*

FISHERIES MANAGEMENT IN 2008: A Step Toward a New Watershed Relationship?

By Neil Todd, FRAFS Operations Manager & Mike Staley, FRAFS Biologist

Fraser and marine-area First Nations met in Richmond on June 4 and 5 to discuss concerns in the management of their 2008 fisheries for Fraser sockeye in the face of anticipated low returns. This meeting is the fourth in a series of such meetings that started in January of this year. As with the second and third meetings (February and April), the second day of the session was a Tier 2 consultation discussion with representatives from the Dept. of Fisheries and Oceans.

The First Nations-only session on June 4 was guided to some degree by DFO's continuing attempt to have First Nations decide among themselves how they were going to share with each other the anticipated small numbers of sockeye returning to the Fraser in 2008. Again, DFO had requested that First Nations provide them with advice by addressing the three questions delivered by Paul McGillivray back in January. The questions themselves were somewhat problematic for a few reasons (e.g. is it the role of First Nations to provide "advice" to DFO? Why is 2008 any different from many previous years when First Nations' needs were not met as a result of stock abundance and/or DFO management decisions?) The discussions were therefore quite wide ranging in an attempt to focus on what First Nations wanted to see happen, without necessarily adopting DFO's "agenda".

By the end of the day on June 4, the meeting had resulted in a summary of key points and principles. These were shared with DFO the next day. Key among them were:

- DFO needs to manage consistently with the Sparrow decision. The point was made that DFO's justification for its management of Early Timed Chinook this year was a mis-use of the Sparrow decision in that a statement in the decision was taken out of context.
- This process that DFO is urging First Nations to undertake is not just about catch sharing, it is about First Nations' role in management. This is a long-term process that DFO must commit to, and it needs to be formalized through a written arrangement or agreement.
- There needs to be an in-season process for First Nations to talk to each other.

In regard to a potential process for future years (too late to get it up and running fully this year), First Nations

provided a response to DFO that included the possibility of the creation of a First Nations salmon fisheries management body/board/committee for more equitable and effective management of First Nations' fisheries on Fraser sockeye. And to "test drive" a board-committee this coming season.

The meeting opened on June 5 with Barry Rosenberger, Area Director, BC Interior, presenting the context around DFO's understanding of the four different potential management scenarios that resulted from discussions and correspondence received over the last few months. This was followed by presentation of the information developed the preceding day, and discussions followed with many comments, questions, and answers. One outcome at the end of the day was a plan for First Nations to engage in regular dialogue among themselves in conjunction with the First Nations' in-season technical update weekly teleconference calls.

To summarize, this pre-season consultation process, that was started in January 2008, did not produce a definitive blueprint for management of Fraser sockeye in 2008. There were likely a couple of reasons from a First Nations' perspective why it couldn't:

1. DFO's interpretation of the Sparrow decision, and their application of that interpretation in the management of Chinook (and potentially sockeye) in 2008.
2. DFO's relegation of First Nations to an "advisory" role in management of the resource to which First Nations have rights and title.

Nevertheless, there is reason for some cautious optimism for the future:

1. An unprecedented degree of understanding, goodwill, respect, and unity between and among First Nations both inside and outside the Fraser watershed has been developed.
2. The dialogue between DFO and First Nations has been characterized by frankness and courtesy, establishing a pretty good basis for further discussions should both parties wish to carry on the dialogue.
3. If the Department is willing, at a very senior level, to try to work out a formalized arrangement with First Nations there are indications that First Nations may be willing to enter into such discussions.

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BC Appeal Court Suggests the Large Assembly Consultations Appropriate

Submitted by Mike Staley, FRAFS Biologist

The 2007 BC Appeal Court decision in *R. v. Douglas* suggests that the approach to consultation being taken this year is appropriate. This decision is important because of what it says about consultation, and also because it illustrates how small interceptions of fish by others may be reasonable and consistent with the Sparrow priority for FSC in some cases.

On the consultation issues the court seems to support the notion of "joint consultation" like the watershed-wide/marine meetings that have been held since January this year.

Paragraph 40 reads:

"[40] In this case, DFO conducted extensive and detailed consultations with Fraser River First Nations as to its conservation objectives. 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. DFO provided the necessary information and technical assistance. DFO provided opportunities for the First Nations to express their concerns and resources to facilitate the meetings. DFO adjusted the escapement target and exploitation rate in response to First Nations' concerns. In this way, DFO complied with the standard set out in *Halfway River*, *supra*, and in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388 at para. 64. 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."

This conclusion suggest that First Nations and DFO need to examine the nature of the discussions that should take place in the larger assemblies and what is left over for the bi-lateral table.

The entire decision is very enlightening reading and can be found at the following link:

<http://www.courts.gov.bc.ca/jdb-txt/ca/07/02/2007bcca0265.htm>

HA HA HA!

A conservation officer asked a fisherman, "Do you have a license to catch those fish?"

The man replied to the officer, "No, sir. These are my pet fish."

"Pet fish?!" the officer replied.

"Yes, sir. Every night I take these here fish down to the lake and let them swim around for a while. I whistle and they jump back into their buckets, and I take them home."

"That's a bunch of hooey! Fish can't do that!"

The man looked at the officer for a moment, and then said, "Here, I'll show you. It really works."

"Okay, I've GOT to see this!" The officer was curious.

The man poured the fish in to the river and stood and waited. After several minutes, the conservation officer turned to the man and said, "Well?"

"Well, what?" the man responded.

"When are you going to call them back?" the officer prompted.

"Call who back?" the man asked.

"The FISH!"

"What fish?" the man asked.

Intertribal Fishing Treaty Meeting Hosted by the Nicola Tribal Association

Wednesday, June 18 &

Thursday, June 19, 2008

at the Merritt Civic Center

For more information or to register please contact

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Fraser Watershed Joint Technical Committee Meeting

Wednesday, June 18th, 2008 at the

Prince George Native Friendship Center
(Lunch will be provided)