

Commercial Salmon Allocation Framework (CSAF) Review Summary of the SCC First Nations' Proposal

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Background

In October 2013, Fisheries and Oceans Canada (DFO) engaged the Salmon Coordinating Committee (SCC) in a discussion about updating the Commercial Salmon Allocation Framework (CSAF) in preparation to revise and update that section of the *Allocation Policy for Pacific Salmon* (1999). They are also engaging commercial salmon harvesters through the Commercial Salmon Advisory Board (CSAB). The updated CSAF is intended to make the allocation of commercial access to salmon more responsive to current situations, challenges, international and First Nations treaties, and constitutional and legal obligations to First Nations. The Department is engaging with First Nations under its "Terms of Reference for Updating the Commercial Salmon Allocation Framework" (<http://www.pac.dfo-mpo.gc.ca/consultation/smon/saf-crrs/tor-cdr-eng.html>). Funding for this work came from a portion of the \$30 million that the US provided to Canada for signing the 2009 Pacific Salmon Treaty agreement that required the US to mitigate for a reduction in the West Coast Vancouver Island (WCVI) troll chinook catch.

The scope of this work, as defined by DFO, is limited to the allocation of the *commercial* shares of salmon in BC. It does not address recreational harvest, allocation of fish for financial purposes (draft "Use of Fish" Policy), nor does it address Aboriginal rights or title.

How are salmon allocated for commercial use now?

The goal of the current commercial salmon allocation framework is to share the total value of annual salmon harvest allocations using a coast-wide ratio of 22:38:40 among troll (F-G-H), gillnet (C-D-E) and seine (A-B) fleets. Each salmon species is valued according to its "sockeye equivalent" value. Next, the total value of all species of salmon expected to return and be catchable (considering constraints due to co-migrating species, environmental conditions, etc.) that year is tallied and then divided amongst the share categories (troll, gillnet, and seine according to the 22:38:40 split). For this process, DFO uses 21 production areas based on major target stocks (e.g. Fraser sockeye), and sockeye equivalent values are adjusted every year based on prior year market values. This annual process makes it difficult to plan business opportunities and removes incentives to add value to product since it would result in lower allocations.

Sharing decisions are made by DFO, but the process is guided by input from the CSAB. First Nations have stated concerns that their communal commercial harvest interests are not represented in the process. Although the Native Brotherhood has a seat on the CSAB, they represent First Nations regular commercial licence holders and not necessarily those who fish the commercial-communal access, some of which is done by alternative gear types (e.g., fences, hook and line, small boat gillnet, beach seine, etc.). Therefore, First Nations are largely outside of the existing CSAB process which decides how much and how they can access salmon for commercial purposes.

Finally, because First Nations' communal commercial fishing opportunities are not explicitly covered by the existing CSAF, many Nations lack certainty that an opportunity will be provided and therefore are hesitant to develop business opportunities around salmon sales. For instance, a Nation may not wish to invest in developing a smoke-house if they fear that a commercial opportunity will not be provided because of a breakdown in yearly negotiations. In some instances, agreements for economic opportunities are tied to agreements for FSC harvest, and therefore those Nations may not want to sacrifice FSC opportunities to ensure economic opportunities.

For more information on deficiencies in the current salmon allocation framework, see Appendix A.

What are the interests in participating in this process?

DFO has broad objectives of changing the CSAF to enhance long term sustainability of Pacific wild salmon, of enabling industry to realize greater economic benefit, and of creating more resilient commercial salmon fisheries. First Nations' have listed the following objectives to guide their participation in the process:

1. Healthy growth of salmon populations
2. Greater certainty and access
3. Unencumbered allocation (e.g., license shares are sometimes tied to license Area and not necessarily best aligned to Nations' territories, licenses provided to First Nations should not come with obligations to past owners to sell product, etc.)
4. Flexibility to negotiate and implement multi-year agreements for harvest shares, harvest methods, and monitoring requirements
5. Species specific allocations
6. Clear and fair fishery rules and transfer mechanisms
7. Encourage equitable inland commercial fishing opportunities
8. Maximize First Nations' social and economic benefits
9. Viable First Nations' economic fisheries
10. Maximize employment opportunities for First Nation members
11. Develop a First Nations Joint Fisheries Management process
12. Reform economic agreements to meet the needs of First Nations

The SCC's First Nations proposal

SCC First Nations representatives have worked together since October 2013 to develop a proposal for specific changes to revise and improve the Commercial Salmon Allocation Framework. It is clear that First Nations have an interest in increasing their share in commercial fisheries, and this could be done through a variety of mechanisms, including PICFI/ATP license transfers, Treaty and rights-based negotiations, license purchases and further license buyback programs. The First Nations' proposal is meant to 1) ensure that the CSAF process is easier to understand, 2) identifies explicit harvest shares and the means for First Nations to increase their share, 3) is more consistent over multiple years, and 4) clearly recognizes First Nations communal commercial fisheries and provides harvest shares for these fisheries.

Key Elements of the SCC Proposal

A – Healthy growth of salmon populations

- The CSAF is meaningless without healthy salmon populations.
- Clearly defined commercial harvest shares and more viable fisheries will create an incentive for investment in better stock assessment and fisheries management programs.

B – Greater certainty, access and multi-year agreements

- Identifies initial harvest shares for First Nation’s communal commercial fisheries (“First Nation’s economic fisheries”) and each Area A-H licence group for each production area/species combination. (e.g., Skeena Sockeye, North Coast pink salmon).
- Harvest shares will be identified for multiple years with periodic reviews (5 year) of these shares.
- The initial determination of harvest shares under the new CSAF will be based on the total number of commercial Area A-H licences, excluding only those 23 licences currently classified as First Nation treaty related licences.
- First Nations shares can be increased through ongoing conversion of A-H licenses.

C – Flexibility in commercial fishing options

- Any First Nation individual, group or governing body, including any First Nation owned company or First Nation who owns an Area A-H licence may continue to fish that licence in a DFO authorized Area A-H fishery; or they could transfer the harvest shares associated with their licence to an approved First Nation economic fishery.
- Any First Nation (or group of First Nations) may propose to implement a new First Nations economic fishery where their members can harvest a share of the total commercial catch (within TAC and non-TAC fisheries) from each production area/species using methods, times and locations that may be similar to, or may be very different from, the methods, times and locations for Area A-H fisheries.
- Any proposal for a new First Nations economic fishery would need to identify how this fishery would be coordinated with other fisheries in the proposed area and how commercial fishery standards for catch monitoring, compliance and enforcement will be met.
- These monitoring, compliance and enforcement systems will evolve over time. Costs in the first year(s) will likely be greater than in subsequent years.

The SCC has prepared examples of how the proposed SCC changes to the CSAF could be implemented for Nass sockeye, Skeena sockeye, and Fraser sockeye as well as all five salmon species on the Central Coast and West Coast of Vancouver Island. These examples have been used to help the SCC members, the CSAB and DFO understand the proposed changes to the CSAF defined in the SCC proposal. Further details regarding how the harvest shares associated with Area A-H licences could be allocated to

regional First Nation economic fisheries (e.g. Central Coast) or stock-specific First Nation economic fisheries (e.g. Nass sockeye) can be explored through these specific examples.

Further clarification of the proposed changes to the CSAF is provided below:

- *Allocation categories:* Adding a First Nations' category (an area-based First Nations "basket") to the current allocation categories of seine, gillnet and troll. This provides First Nations with a share and a position to participate in decisions about allocations and to participate in transfers.
- *Consideration of fishing location:* Some fisheries have different values and fishing constraints than do other fisheries. Considerations should be made of the location (e.g., marine, in-river, terminal, preferred fishing location) when allocating share and fishing opportunities.
- *Duration:* Instead of annual agreements, First Nations are proposing 5-year agreements with flexibility for adjustments through a post-season review process. This will provide more certainty to businesses to invest, develop partnerships, etc. This will also provide an opportunity to evaluate the mechanisms of the updated CSAF.
- *Valuation:* Instead of using "sockeye equivalents" which are based on landed value and can work as a disincentive to add value to product, First Nations are proposing that harvest shares be defined on a species and catch area basis, including inland fisheries, and encourage innovation in business approaches to maximize landed value.
- *Flexible management:* Once shares are determined, each gear sector, First Nation, or First Nations' group can determine the best approach for the fair distribution of the harvest opportunities and benefits while reducing impacts on stocks of concern. Options may include competitive fishing, individual quotas, communal access, etc. Also, in-season transfers can occur if pre-season plans outline possibilities.
- *Transfers:* Pre-season plans outlining the rules and mechanisms for transfers to all allocation categories (including the First Nation's basket) will be developed prior to the fishing season. This includes species-specific harvest shares that are associated with PICFI and ATP licences, since trading amongst First Nations will help to achieve local harvest priorities and access to local stocks.
- *Uncaught fish:* Groups "upstream" of the fishery that could not catch their share could be provided opportunities to harvest a portion of the share not caught by the "downstream" fishery. No compensation is required.
- *Role in management:* First Nations want to have a defined role in management. Currently, annual changes to fleet/fishery shares can have an impact on the First Nations shares associated with the inventory of licenses that DFO uses to provide First Nations with economic access to salmon. First Nations' communal-commercial licenses are not presently represented at the CSAB (inter-sectoral discussions), but will be according to this First Nations' proposal (under the First Nations' "basket"). Furthermore, a separate management body/process may be developed to manage the First Nations' "basket" of salmon (intra-sectoral). This central First Nations' licensing board would harmonize with DFO's systems to administer/document share utilization, short and

long term transfers, etc. First Nations also want to have more flexibility in managing their fisheries to meet their community and fisher's interests and priorities.

- *Dual fishing*: First Nations fishers may retain non-target species for FSC purposes. If the species has a conservation concern, only those likely to die may be retained for FSC.
- *Catch monitoring*: Sufficient validation requirements would be established for all fisheries with provisions for increased monitoring where necessary to achieve compliance and catch reporting goals. The process would be more transparent than it is now and costs would be shared between harvesters and governments. First Nations monitors will be preferable where available.

There has been extensive discussion of the above proposal within the SCC, with DFO and with Commercial Salmon Advisory Board (CSAB) representatives over the past 10 months. However, the above descriptions of the proposed changes to the CSAF are essentially identical to those in the March 2014 draft of the SCC Proposal. While there is general support for the key elements of the SCC Proposal, more work remains to be done on defining the guiding principles and operational details for implementing the proposed changes to the CSAF.

Next steps

The definition of a set of guiding principles for a new CSAF was initiated in January 2015 through a series of meetings with representatives from the SCC, CSAB and DFO. The SCC has proposed to continue to work with these representatives to define a common set of principles and operational guidelines needed to implement a new CSAF. The document defining these principles and operational guidelines is expected to evolve over time. The 2015 version of this document will need to be completed by early April 2015, so it can be used to determine the degree to which any proposed changes to the CSAF can be implemented in 2015.

SCC Role and Context for SCC Proposal

The SCC has clearly indicated on numerous occasions during the CSAF review process that SCC is a committee tasked with coordinating discussions and exchanging information and ideas related to salmon fisheries. The SCC is not a decision making body for any First Nation or group of First Nations. Consequently, DFO consultation with the SCC does not in any way satisfy the requirement for bi-lateral consultation between DFO and any First Nation.

The SCC proposal has been prepared for consideration by First Nations and DFO in the following context:

- a) the implementation of the SCC Proposal will not negatively affect or restrict First Nations ability to harvest and manage their Section 35 fisheries;
- b) the SCC Proposal does not create, define, evidence, amend, recognize, affirm or deny any Aboriginal rights, Aboriginal title and or treaty rights, and is not evidence of the nature, scope or extent of Aboriginal rights or Aboriginal title or treaty rights;
- c) the SCC Proposal does not limit or prejudice the positions First Nations may take in any negotiations or legal or administrative proceedings;

- d) the SCC Proposal does not alter, define, fetter or limit or shall be deemed to alter, define, fetter or limit the jurisdiction, authority, obligations or responsibilities of the First Nation; and
- e) The SCC Proposal does not create, define, evidence, amend, recognize or affirm Crown title, rights or jurisdiction.

Appendix A: Summary of First Nation issues with the current CSAF

Issue	Explained
Valuation	<p>Process of using marine value and sockeye equivalents is outdated.</p> <ul style="list-style-type: none"> • Inland fish are less valuable • Sockeye equivalent valuation provides a disincentive to add value to product • Amount provided to FNs is based on TAC/total number of licences, but marine fisheries can access TAC/total number of active licenses • First Nations want to realize full value of FN licence
Transferring allocation	<ul style="list-style-type: none"> • By-catch needs may be different in where license is fished than where license was from • Value is different between marine and in-land (may make allocation not economically viable to fish)
Uncertain inland share	<ul style="list-style-type: none"> • CFAs are signed late in spring/summer yearly and are tied to FSC agreements • In-season adjustments: coastal fisheries occur before full assessment and thus may access a greater share than upriver harvesters. • Harvesters are not always able to access excess spawners because of management constraints.
Lack of FN participation in decision making	<ul style="list-style-type: none"> • First Nations' communal-commercial licenses are not represented at the CSAB. (Note that Native Brotherhood sometimes at table, but they only represent FN commercial licence holders, not communal commercial fishers)
Fleet structure has changed since 1999	<ul style="list-style-type: none"> • More FN participation • More corporate ownership vs owner-operated participation • Allocation does not necessarily support more sustainable fishing
Monitoring	<ul style="list-style-type: none"> • Level of monitoring is much higher on First Nation communal-commercial fisheries than on regular commercial fisheries
Socio-economic studies incorrect	<ul style="list-style-type: none"> • Benefits of economic access for First Nations have not been assessed
Current reallocation process (via ATP, PICFI) is insufficient	<ul style="list-style-type: none"> • Reallocation doesn't always make sense economically. Allocation may be too small to fish, or no associated by-catch for area constrains fishing opportunities, etc.
Local	<ul style="list-style-type: none"> • Currently no mechanism for flexible local management of communal

management	<p>commercial access to maximize benefits</p> <ul style="list-style-type: none"> • At times of local/terminal abundance, fishers are not always able to access fish because of fleet restrictions. The current structure is not flexible to local conditions
Vessel length restrictions	<ul style="list-style-type: none"> • Licences reallocated to First Nations don't always fit their infrastructure • Doesn't provide opportunities for "mosquito fleets"
Unallocated licenses	<ul style="list-style-type: none"> • DFO holds licences but doesn't always reallocate them
Ideas of "ownership"	<ul style="list-style-type: none"> • Associated with uncaught fish, licence relinquishment, compensation for overages/underages • Armchair fishers get to make decisions instead of actual fishers who lease the licenses
Flexibility	<ul style="list-style-type: none"> • Some Nations not able to use PICFI and ATP licences because they don't meet DFO requirements
Uncaught fish	<ul style="list-style-type: none"> • Excess fish identified in-season but no mechanism to allow for catch up-stream • Currently, uncaught allocations move between A – H fleets, not to First Nation's economic fisheries