

# Inter-Tribal Allocation Processes: Maori & NW Indian Fisheries Commission

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# Outline

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- Context for B.C. fisheries allocations
- New Zealand fisheries and the Maori
- Salmon and the Northwest Indian Fish Commission
- Considerations for B.C.



# Context

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- FN Panel on Fisheries:  
“First Nations themselves should address fisheries allocations”
- BC FN Action Plan:  
“First Nations will address intertribal sharing of migratory stocks and aquatic resources as a mechanism for developing regional working relationships.”



# Context

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- PICFI is currently expected to transfer about 9% of all B.C. commercial licences and quotas to First Nations
- Principles for changes under Pacific Fisheries Reform include: “First Nations interest in increased economic access will be addressed in a manner consistent with Canada’s treaty process” (DFO 2005)



# Context

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- Nuu-chah-nulth fishing rights decision (*Ahousaht v Canada 2009*) recognizes Nuu-chah-nulth rights to fish for sale within a defined fishing area (extending 9 miles offshore)



# New Zealand fisheries and the Maori

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## History

- Treaty of Waitangi in 1840
- Maori court challenge to introduction of Quota Management System in 1987
- *Maori Fisheries Act* in 1989 creates Maori Fisheries Commission to buy quotas
- *Settlement Act* in 1992 allowed purchase of 50% of Sealord Ltd. (NZ\$150 M over 3 years)



# Treaty of Waitangi Treaty Commission

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Mandated to:

- Develop plan to distribute pre- and post-settlement assets
- Manage assets held in trust for tribes in interim
- Encourage Maori education and participation in the fishing industry

Maori share of all New Zealand fisheries increased from 20% to 33% in first 10 years; major player in seafood sector





# Allocation process

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- First proposal took 5 years, was approved but then not adopted
- Revised allocation model presented in 2002 supported by majority of Iwi
- Legislation passed in 2003 enacting allocation of Maori assets. Settlement linked to Quota Management System



# Allocation criteria

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- Half of assets continue to be held centrally. Iwi receive annual dividends. Most held by Iwi in proportion to population
- Other half including quota and cash transferred to Iwi. Split into inshore and deepwater (> 300 meter depth) quota.



# Allocation criteria

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- Inshore quota split proportionately based on length of Iwi's coastline
- Deepwater quota split proportionately using a 25/75 split based on Iwi's coastline and population respectively
- Cash allocated proportionately based on Iwi's population



# Situation and Benefits

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- Maori allocation was the result of negotiated political settlement
- Maori allocation increased by skillful management during interim period
- Delays allowed time to develop management and fishing capacity
- Protections to avoid transfers of quota from Maori hands



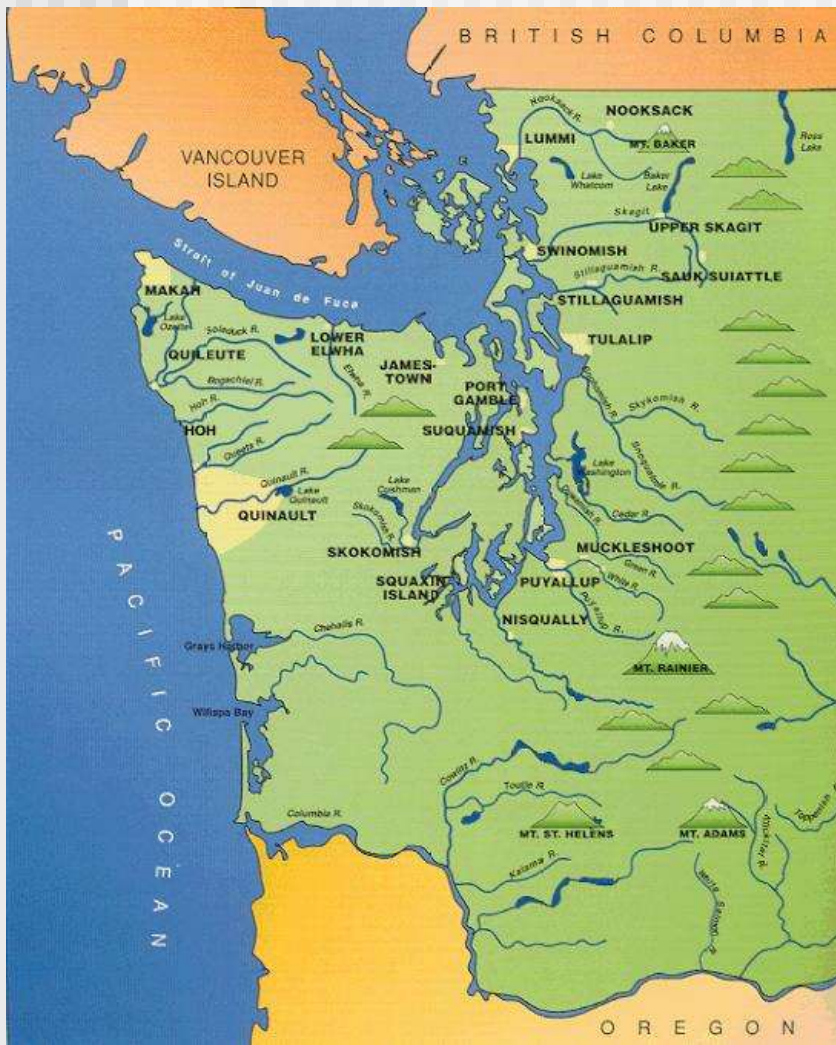
# Challenges

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- Extensive consultation on internal allocation process lasted 12 years and cost \$84 M
- Settlement weathered several court challenges



# Salmon and the Northwest Indian Fish Commission



- 20 Treaty Tribes located in NW Washington
- United by similar treaties and reliance on salmon

# The U.S. Courts and Treaty Rights

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## History:

- “The right of taking fish at all usual and accustomed places is further secured to said Indians in common with all citizens of the United States” (Treaty of Point No Point 1855)
- *U.S. v. Washington* (1973 Boldt decision): interpreted ‘in common with’ to mean ‘sharing equally’; Tribes also entitled to regulate and manage their own share of the fishery



# Northwest Indian Fisheries Commission

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## History:

- Tribes formed the Northwest Indian Fisheries Commission to coordinate fisheries management – presently 20 commissioners; 1 per U.S. Treaty Tribe
- Tribes were left with the challenge of allocating fish among themselves and negotiating fishing plans to avoid State of Federal takeover of management



# Allocation process

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- Fishing is restricted to “usual and accustomed places”
- Court established a dispute resolution process primarily for resolving Treaty/Non-Treaty disputes using an independent technical advisor
- Internally, the Tribes then engaged in a two-year mediated process to negotiate inter-Tribal allocations. Plan has been in place about 20 years now.



# Proposed allocation principles

(By one or more Tribes, Singleton 2002)

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- According to population
- According to number of fishermen
- Recent catch share or fishery dependence
- Equal shares for each tribe with fishing rights in an area
- Investment in hatcheries, habitat protection or past litigation
- Amount of fish taken at time of the treaty



# Current criteria

(from Singleton 2002)

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- Primary rights in “home waters”
- Where several tribes share an area regulations are arrived at through negotiation
- Allocation share agreements with abundance triggers



# Situation and Benefits

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- Overall salmon Treaty/Non-Treaty allocation was determined by the courts
- Individual tribes are responsible for managing their own fisheries once fisheries management plans are approved
- Commission process provides a venue to address common issues



# Challenges

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- Courts provide a mechanism to resolve both treaty/non-treaty and inter-Tribal allocation disputes but little control over outcome
- Tribes are currently seeking to establish a binding dispute resolution process between themselves for boundary and allocation disputes



# Considerations for BC

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- BC Treaty Process is based on negotiation with individual First Nations that file a Statement of Intent (49 negotiating tables at present)
- PICFI encourages First Nations to work together for efficiency (20-25 aggregates at present)



# Potential criteria

(by FN PICFI workgroup April 2008)

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- Geography – FN territories, population, resource productivity, catch, fishery value
- Fisheries characteristics – licence and quota values & availability
- First Nation characteristics – expressed needs, capacity and readiness, existing access, aggregation



# Stated PICFI Access Criteria

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- Size/ population of group
- Location of group
- Existing access (ATP)
- Capacity of group
- Total number of applications received



# “Notional” distribution of funds for planning

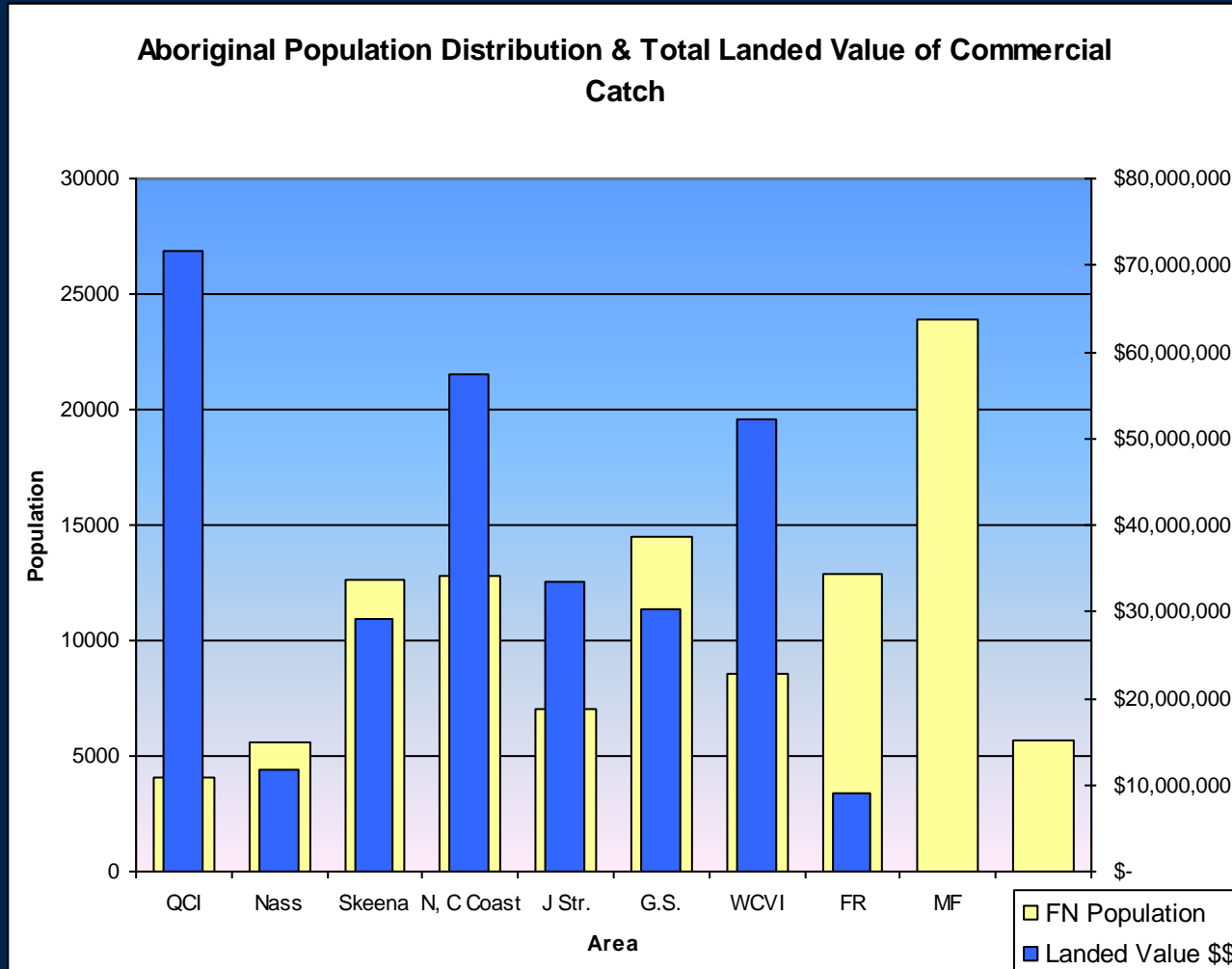
## FN population - broad geographic areas

GROUP	BANDS	POP.	% Population of Total
QCI	2	4,027	3.7%
NASS	4	5,577	5.2%
SKEENA	12	12,595	11.7%
NC/CC	9	12,828	11.9%
JS/NORTH ISLAND	15	7,038	6.5%
GEORGIA STRAIT	23	14,978	13.9%
WCVI	15	8,577	7.9%
LOWER FRASER	33	12,840	11.9%
MID FRASER	50	23,932	22.2%
UPPER FRASER	11	5,647	5.2%
GRAND TOTAL	174	108,039	100.0%

Source: DFO Powerpoint February 2008

# "Notional" distribution of funds for planning

## Aboriginal Population Distribution & Landed Total Commercial Catch Value



Source: DFO Powerpoint February 2008

# Possible Approaches

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- Status quo (Canada decides on equitable shares)
- Treaty-based approach using tools such as strength of claim analysis for title or rights
- Allocation models for key species such as salmon, halibut, crab, etc.
- Other approaches or criteria??

