



FIRST NATIONS
FISHERIES COUNCIL

Aquaculture “Kick-Off” Session January 24, 2011 (Executive Airport Plaza Hotel, Richmond)

Aquaculture Working Group Presentation by Chief Bob Chamberlin

- Background: Resolutions passed in 2009 mandated and directed the Aquaculture Working Group to support the interests of First Nations. The Commitment to Action between the First Nations Fisheries Council and Fisheries & Oceans Canada (signed May 2010) provides further direction to the Working Group.
- Community Sessions 2010: There were nine community sessions throughout the province, which included both tier one and tier two discussions. Although the Department considered the sessions to be a form of consultation, the purpose of the sessions were to share information with communities, seek input and guidance from First Nations in the drafting of an initial report, and facilitate preliminary dialogue.
- The community sessions provided direction for the working group’s work plan while informing the ‘summary report’ (*First Nations Views on a Proposed Aquaculture Regulation for British Columbia*). Some of the ongoing work of the Fisheries Council is determining how the comments and feedback
- First Nations maintain some concerns with the regulatory development process. For instance, First Nations desire a government-to-government approach (First Nations cannot be considered a stakeholder in a multi-lateral process). Another concern is the lack of capacity to participate in these processes. Adequate resourcing is required to make the consultation process more effective. Eventually, First Nations have to turn their attention to the Integrated Fisheries Management Plan (IFMP), as this might be the defining model for the Integrated Management Aquaculture Plan (IMAP). One immediate challenge is the limited timeframe for response. First Nations have to determine where First Nations fit into this project. Thus, the parameters of the policy process need to be defined (specific dates).

Questions & Comments:

- How have court cases impacted the license transfers from the provincial to federal government?
- Has there been effective consultation? What is the medium for effective consultation?
- As the Fisheries Council has replaced other First Nation organizations, how or will the Fisheries Council speak for First Nations on issues of concern?

Answer:

- In regards to consultation, this is the critical piece of information needed from First Nations throughout the community sessions, as First Nations must reaffirm the Department’s obligation to consult.
- The Aquaculture Working Group will not influence the decisions of First Nations. The working group and the Fisheries Council can identify commonalities expressed by First Nations to move forward on a number of these issues.

Questions & Comments:

- Will the Department recognize the United Nations Declaration on Indigenous Rights?
- Meaningful consultation that respects rights and title is required, that is, establish communication linkages with government that goes beyond simply sharing draft proposals among First Nations and government agencies. The issues surrounding sustainable food sources, as an example, are an issue that requires meaningful consultation.
- In regards to the recognition of title and rights, some communities eliminated government from the process and worked directly with the industry. Although concerns remain, alternative protocol (such as First Nations to industry relationships) is an effective means of having community concerns recognized. Regardless, the causal factor for disappearing stocks needs to be explored further.

- Why are First Nations even considering entering an integrated management approach, has this process worked to this point? To date, meaningful consultation has not occurred. It is important to remember that two-levels of government are involved in this process (license tenures provided by the federal government and land tenures provided by the provincial government). An integrated management approach only complicates the process (with committees of competing interest). If First Nations are entering a process that First Nations disagree with in principal, why is this being pursued further?
- In regards to the governance aspect of the discussion, Jordan Point is interested in obtaining feedback for the development of a governance structure. For example, the identification of delegates and representatives for different processes, such as the Integrated Harvest Planning Committee, has been confusing to date.
- A draft document needs to be created by Fisheries & Oceans Canada that summarizes the information collected throughout these workshops. The information has to be produced in a timely manner and forwarded to the First Nation communities that it impacts to seek feedback and clarification.

Fisheries & Oceans Canada Background and Introduction Presentation by Andy Thomson & Gary Reay

- As a result of comments on the presentation, all references to *certainty* will be changed to *clarity* or *transparent*.
- Fisheries & Oceans Canada is interested in collaboration with First Nations, but as documentation of these concepts or models is required, the Department has provided some proposals for the management of aquaculture. The purpose of these discussions is to determine what works, what doesn't, and how Fisheries & Oceans Canada moves forward with First Nations.
- One key difference between the IFMP and IMAP process is that license conditions under the IMAP process can be area-specific. Integration is a key component of a management plan; this will require traditional knowledge, environmental factors, socio-economic factors, recognition of spatial scales, and provincial government decisions on tenure.
- Gary provided an overview of the possible components of an IMAP process, including an overview of the sector, economic importance and governance; overview of local First Nations; issues that require management attention through science; general management direction; area based management direction; implementation, compliance and enforcement measures; and monitoring, research and plans revision.
- The document developed by the Department asks what the most appropriate governance structure is for informing the development of IMAPs.
- Moving forward, the Department is seeking input for a preferable management plan.

Questions & Comments:

- What happened to all of the recommendations made in other meetings? Some questions in regards to the enforcement of aquaculture have been muted. For example, a pilot project that trains and employs First Nations to enforce aquaculture activities has not been discussed. These issues all relate to effective and meaningful consultation and engagement, First Nations input appears to have been continually ignored. In some ways, these processes need to be streamlined, as there is some redundancy within the Department (as personnel attend multiple meetings and listen to the same concerns with minimal action). Reference to revenue sharing has been raised in some meetings, with shared revenue being used for enhancement activities that will begin to address the environmental degradation caused by industrial activities.

Answer (Andy Thomson):

- The courts will assess the fines and these fines will be similar to the fines issued by the provincial government. In reference to industrial activities, the new license conditions have provisions that require more stringent reporting (thus enhancing transparency).

Questions & Comments:

- Some First Nations have the capacity to conduct monitoring and enforcement. It is important that the Department hires individuals that understand and recognize the significance of traditional territories.
- Concerns that the new employees on this file do not represent a staffing change, as a number of the provincial staff have simply acquired positions with the federal government. Some of this discussion relates to a lack of trust among First Nations in regards to the federal government. How will aquaculture change under a new regulatory regime? Will First Nations have any part in the enforcement of this new regulatory regime? Possibly, a certain percentage of the observers of aquaculture activities should have to reside in the areas that they are observing. How does the Department change components of the program that do not work? What is the process by which First Nations are able to influence this change?
- In regards to transparency, if a government-to-government relationship is important, the authority of Fisheries & Oceans Canada staff must be clarified. Where are the recommendations moved forward by First Nations? In regards to Canada Gazette II, how does that work into all of the other information that is received? What does integrated mean if it doesn't include general management?
- Recommendations have been made in different meetings, which are interested in the mechanisms and relationships that work through the concerns raised. Maintaining jurisdiction over licenses is important for First Nations.
- A revenue sharing initiative should be introduced that promotes local enhancement activities or enforcement and reporting activities
- A discussion about control and jurisdiction needs to occur, with recognition of legal precedents.
- It appears that the processes adopted by the federal government mirror the processes of the provincial government. What does integrated management really mean?
- A management plan proposal operates on the assumption that aquaculture activities are accepted by First Nations. How does a management plan respond to the concerns of First Nations, particularly First Nations that oppose aquaculture? Concerns that the Department will bypass consultation with communities, as Fisheries & Oceans Canada has worked directly with aggregate bodies such as the Fisheries Council, which might be considered consultation at the end of the day.
- The long-term environmental impact of aquaculture needs to be studied. Although the economic benefit of aquaculture is significant, consultation has been minimal. The economic opportunities are qualified as more important than the people in these traditional territories. Possibly, at some point, a compensation package has to be prepared for some First Nation communities that have been adversely impacted by aquaculture activities. In regards to closed containment, it might be a start. If closed containment can begin in an environmentally sustainable manner, First Nations might support such activities. The concerns move beyond the environment as well, as health concerns ought to be a consideration in the development of aquaculture.

Answer (Andy Thomson):

- The concerns that have been raised highlight the lack of trust, but an integrated management approach is a good start. Fisheries & Oceans Canada wants to begin with soliciting feedback from First Nations. This is a dynamic process that requires some trust building.
- In regards to staff interchanges, the majority of the new staff were hired as a result of an open hiring process that allows anyone in Canada to apply.
- In regards to licenses, where the money acquired from these licenses is directed will be part of a discussion that will occur over time. In some cases, the courts have determined that licensing fees

can be distributed to First Nations to support enhancement activities. The province required three payments (land tenure, waste discharge permit and the actual license – \$2.8 million per year), which were placed in the provincial coffers. It is a federal obligation to consult with groups about the operator fees.

- In regards to discussing feedback, more community sessions are required to collect this information. The Fisheries Council is a vehicle to facilitate these processes.
- In regards to the Canada Gazette, the first draft (Gazette I) had a period for response. The second draft (Gazette II) emerged in December. This is an ongoing process that requires more feedback and amendments.
- In regards to license conditions, general versus area approach alludes to the conditions outlined by different groups.

Group Question and Answer Period:**What works and what could be improved upon with the current IFMP approach?**

- The current consultation and accommodation process does not work.
- An overall planning process is required, but one gap is in the tier one governance model (requires enhanced information flow).
- An effective tier one process is required to support First Nations.
- It is difficult to determine how First Nations input is integrated into the actual management plan. Also, the process is sporadic.
- Currently, the various advisory boards are under-represented by First Nations.
- The IFMP process is inconsistent when evaluating different species approaches (salmon fishery in contrast to crab fishery in the context of consultation). The processes (Tier One, Tier Two and Tier Three) vary from sector to sector, so a more consistent approach is required.
- First Nations are not stakeholders.
- The federal government has to consult with First Nations (through Tier Two process) about stock depletion and licenses availability.
- The federal government has to recognize traditional knowledge. First Nations have to be trained under the current management model. If a long-term plan is to be developed, the Department has to collaborate with First Nations to promote a healthy community and sustainable environment. Furthermore, First Nations should have the opportunity to communicate the significance of traditional territories (information sharing exercise). At this point, consultation processes have been insufficient; management of resources has been insufficient; there is no reference to First Nations priority after conservation; and there is no reference of how recreational fishery will be managed.
- How do First Nations understand the management plans if no First Nations were consulted in its development? Fisheries & Oceans Canada does not consult with First Nations about the resources available in their traditional territories. First Nations need to know what other sectors are saying about management plans. Does a recreational fisherman have more influence than First Nations?
- This process has to be more transparent.
- The sport fishers lobby for more quota and percentage of salmon allocations. Concern that the IFMP does not illustrate what the sport sector actually catches. Furthermore, if sports fisherman fish in traditional territories with sports licenses, where does this money go? Although there is limited access for the First Nations and Commercial fishery, sport fishery are allowed to fish all throughout these regions. It is important to recognize that the sport fishery is a large commercial sector.
- The process does not have the capacity for the Department to respond to the concerns of First Nations. Furthermore, communication linkages need to be strengthened that allows for

correspondence between Fisheries & Oceans Canada and First Nations. A vehicle for response and feedback is needed for First Nations to influence policy changes.

- How will the Department implement some of the decisions made in court rulings? How will the Department rectify the problems raised by court rulings in respect to First Nations? In regards to the management plan, how will it incorporate title and rights? The Department has to evaluate each individual stock, as the smaller systems need investment. In regards to the sport fishery, how many of the sport fishers are foreign? This is infringement on a constitutionally protected right. In regards to the adjacency policy, which mandates First Nations to fish where they are from, sport fishers should be upheld to the same principle.
- The capacity to engage with the Department in a meaningful manner is critical. The long-term planning for stock rehabilitation does not have the appropriate or adequate amount of financial resources. Part of this process is about managing aggregate stocks, but this does not respect First Nations capability to manage the stock at a local level. It is important to provide the necessary financial resources to participate in these processes. One of the largest barriers is the issue of capacity, but the lack of meaningful engagement is also problematic.
- One of the concerns in the Lower Fraser is that the Department often rejects First Nations representatives (for example, Integrated Harvest Planning Committee). In past committees, such as advisory committees set up by Brian Tobin, First Nations maintained 50 percent representation. The most recent ministers have not participated in these processes. Meaningful engagement has been limited, as representation on advisory committees or boards is not truly representative. Often, the Department will engage and consult with First Nations in very short stints. Follow up occurs with the drafting of letters, which is not consequential. How do you establish a meaningful role in the management of the resource when consultation occurs on this basis? It appears that management decisions are made behind closed doors.
- Over the years, Fisheries & Oceans Canada has failed to recognize the impacts of particular fisheries. The Department determines that economic opportunity is more valuable than traditional knowledge or values. First Nations want access to the resource, but when will the Department be truthful about the activities in each sector? The sport fishery issue has not been resolved or dealt with at this point, as sport fishers continue to have access to the resource while First Nations are often neglected. First Nations require the authority over these processes with appropriate consultation occurring in respect to access.

What types of issues are best dealt with at the local or community scale?

- Stock strength and wild salmon.
- Localized environmental impact.
- Industrial impacts at the community level (for example, impact of logging industry).
- Enhancement programs at the local level.
- Establish 'First Nations Area Harvesting Committees' so the Department has to negotiate with First Nations directly.
- Site criteria and veto authority to reject the sites.
- Use of local knowledge.
- Restoring habitat and restoring wild salmon stocks and other species.
- Management of own traditional territories.
- Habitat enhancement, enhancement facilities and protocol for enhancement facility activities (for example, transportation and disposal of eggs)

What types of issues are better dealt with at a regional or BC wide scale?

- Regional sea lice monitoring.

- Local testing and research, with the Department contracting First Nations to conduct this research.
- Monitoring and enforcement.
- Incidental catch.
- For specific species issues, more information is needed about the work being conducted by the Aboriginal Aquaculture Association and the Fisheries Council.
- DNA sampling and database are needed to determine escapements in local systems.

What criteria should be used to determine the geographic scale for IMAPs?

- Traditional tribal groupings.
- Tenure area cannot be used (dependent on impacts).
- Based on concentration of aquaculture activity.
- For clarification, there could be a hybrid with general management principles (for example, sea lice standards) over all regions and more area-specific management principles (for example, different processes for dealing with sea lice).
- In regards to the provincial government, this government might have a similar interest in building upon the recommendations put forward through this process.
- If you consider timber lines, electoral lines, etc. Each sector is at a different scale, but the traditional tribal group approach is a simple way of determining the scale of areas.
- The traditional tribal groups or contemporary First Nation groups should be responsible for governance in their each area, as there is potential for division among communities.

What do you think of the suggested components for IMAPs? Are there other components that should be included?

- In reference to other potential components, conditions of licenses are a potential tool for enforcement. However, adequate monitoring is required for adequate enforcement.
- Moving forward, First Nations have not supported IFMP, so a novel approach to area management is required. The IFMP model has been largely dismissed so further clarity is needed.
- If there is an IMAP for an individual territory, what is the vehicle to engage First Nations in the decision making process?
- With regards to the IMAP, has the Department evaluated alternatives to the IMAP? *Answer: The Department has not evaluated alternatives, as the IMAP is in the planning process. Has the Department considered completely different models? The Scottish government has implemented an alternative model, possibly this could be documented for the community dialogue sessions. This information should be brought together and presented to the Aquaculture Working Group.*
- In reference to treaty claims, enforcement and nation-to-nation will have to occur.
- As many First Nations disagree with the IMAP process, each First Nations should develop alternative criteria to this process. The Department should engage with First Nations about individual plans.
- Closed containment should be a priority.
- The interim measures agreement appeared to work in some areas; possibly, a representative body should be established to participate in the IMAP process.
- The court cases and legal precedents need to be included in the IMAP process. A whole list of the cases and litigation need to be compiled. All of the established rights must be considered in the development of a new process. First Nations must remind the Department that First Nation rights and title have been addressed.
- In reference to science, is joint science (First Nation and Fisheries & Oceans Canada scientists) a consideration? Is independent science and study a consideration? Independent studies provide the objectivity required to produce optimum data.

Summary of Worksheets

- Alex Gagne provided an overview of the worksheets results.

Fisheries & Oceans Canada Concluding Presentation by Andy Thomson & Gary Reay

- The Department is interested in feedback and will continue to respect ongoing treaty negotiations. The license conditions were structured in a way that they can be changed in a relatively expedient manner.
- Question: If an integrated management plan is going to be changed as a result of input from First Nations, how is the industry approached? *Answer: If the conditions of licenses are changed, industry has to comply. At some point, the IMAPs will have to be presented to industry. Industry stills maintains the right to lobby the ministry.*
- Question: First Nations do not have the financial capacity to lobby the government, so First Nations rely on Fisheries & Oceans Canada personnel to communicate the interests to government. *Answer: At the provincial scale, the minister must attend some of these meetings and hear First Nations concerns directly. What will the decision-making matrix look like?*
- Thirteen of the Twenty sites that obtained licenses already had impacted the environment. Ten years later, the impact of these activities has increased substantially. More CEA studies are required (as a comprehensive study). At this point, there is insufficient scientific data and research informing management decisions. *Answer: Concern that the information resulting from some of the research initiatives produces inaccurate data. Interestingly, this is a solely federal responsibility. There is an opportunity with the introduction of a new regulatory regime to measure the effectiveness of the new regulations.*
- Area management is the most appropriate mechanism to evaluate the multitude of concerns and considerations, which moves beyond a site-by-site basis.