

THE WATER-SHED SOURCE

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July 2008

Upper Fraser Fisheries Conservation Alliance

Update – July 2008

PICFI and the move toward transferable Shares

In July, 2007, Fisheries Minister Loyola Hearn announced the \$175 million "Pacific Integrated Commercial Fisheries Initiative (PICFI)." In some respects, the PICFI resembles a conventional licence "buyback" initiative to accommodate greater aboriginal access to the salmon fishery, coupled with improved catch-monitoring and product traceability. More than that, however, PICFI anticipates the cooperative management of "shares" in the fishery, and a move towards "clear harvest sharing arrangements" within the salmon fleet and between fishery sectors.

The federal government has initiated several "buy-back" schemes in the past to reduce the number of salmon-fishing boats and reduce the catching power of the fleet. The aim of each of these initiatives was to make the salmon fishery efficient and economically viable. However, under the competitive derby-style regime, quotas were more often than not exceeded, putting even more pressure on an already over-subscribed resource.

Under old-style management

systems, fishermen compete with one another for greater portions of the allowable catch, and fisheries managers attempt to control fishing effort by restrictions on the number of vessels, fishing time, fishing area and gear-type. In contrast, commercial fisheries managed through transfer-

greater share of the fishery at the outset. Fishermen no longer focus on catching as much fish as possible in the time permitted.

In theory, this sounds better than what we have now, however it will do very little to change the nature of the "mixed stock" ocean fishery. Upper Fraser First Nations are arguing for a consistent reduction to the mixed stock ocean fishery while increasing access for First Nations beyond the town of Hope. PICFI, on the face of it, will do little for upper river people and meeting their FSC requirements, let alone provide commercial access.



able shares control the outputs of fishing, or the catch. Fisheries do not compete against one another for catch. A licence holder is granted a defined share of the target catch before the fishing begins. Each individual fisherman is then held accountable to keep his or her catch within each defined share.

Under transferable share management, each fisherman is assigned a percentage share of the fishery's target catch. Fishermen know how much fish they can take before the fishing begins. The competitive nature of the fishery is removed, except for the competition to acquire a

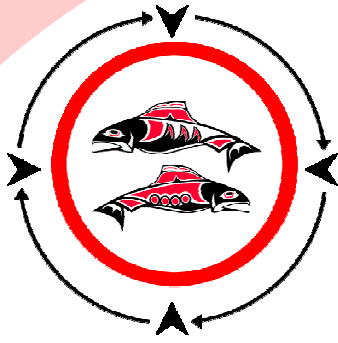
It is also worth mentioning that we are now into year three of PICFI, and we have still not seen any action on the ground, other than a licence buy back which is sitting somewhere waiting for groups (most of them coastal), to submit proposals, once again not looking particularly enticing from an up river perspective.

Of further interest to upper Fraser First Nations are the control mechanisms being imposed by the PICFI program -which is to say- the amount or the manner by which DFO insists on its involvement in any First Nations organizational development. This may only aggravate the situation and lead to reduced participation by some.



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“There is a current focus on determining food, social and ceremonial allocations for Fraser salmon.”



Salmon shares appear to form the basis for implementation of a PICFI process; therefore it is worth reviewing some of the issues raised in relation to salmon shares:

- It is not possible for First Nations to develop business plans if there is no definition of shares and how they will work, especially in the context of moving access in-river. Even then it will be difficult given fluctuations in opportunity due to abundance, recreational access, and food, social and ceremonial needs.
- First Nations business planning is also dependent on resolving policy issues associated with First Nations title and rights claims to fish, including the relationship of PICFI access to Treaty settlements, licencing provisions, and other issues (identified in ‘policy issues’ list).

There is a current focus on determining food, social and ceremonial allocations for Fraser-salmon. There is sensitivity associated with some Nations gaining economic access while others are not able to access sufficient food, social and ceremonial fish. This reflects a general concern around when commercial fisheries start competing with food, social and ceremonial fishing. Recreational access is another issue, in terms of how it competes with aboriginal commercial access.

- First Nations are concerned that DFO’s approach in PICFI will result in licences/quota being purchased at higher prices than their actual worth. This is of special concern given DFO’s position that licence/quota purchases will be deducted from Treaty settlement.

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- Many First Nations do not believe the current licencing system reflects their title and rights. Canada’s position is that such title and rights do not exist except where proven in Court. Some Nations are interested in finding ways of making licences more appropriate to First Nations on an interim basis while First Nations engage in court cases on this topic.
- DFO needs to be mindful when transferring commercial access under PICFI where there is an impact on food, social and ceremonial harvesting. There will be political problems if a Nation is meeting its commercial needs while others are not achieving their food needs.

With respect to the increased enumeration issue, First Nations wonder whether there is a level playing field; currently First Nations in the lower Fraser claim 100% catch monitoring to enumerate food, social and ceremonial access while recreational fisheries operating in the same areas are simply subjected to a random creel survey. Some nations do not want to share numbers with DFO because of these past practices. Others believe that if numbers are tracked, FSC can be protected; if numbers are not tracked and recorded, how can FSC be protected? Now is a critical time to start nailing down data and common data requirements, as it is the backbone of any quota system.

Back in 2002 I co-authored a report entitled, "Our Place At The Table" which specifically proposed a moratorium on the introduction of any new quota fisheries. First Nations from all across BC were concerned about the fishery being trans-

formed into an” individual property rights regimes" At that time it seemed absurd to be talking about shares at a time when many First Nations were not able to meet, food, social and ceremonial needs, so the report called for steps to ensure that First Nations have access to adequate fish for food, social and ceremonial purposes. In other words the current regime is/was not able to provide the fish necessary to meet the fiduciary obligation.

The question, from a First Nations perspective, should be whether or not a new quota system would better meet the needs of First Nations people? There has been a lot of discussion about whether or not transferable shares confer "property rights" to the resource, but even if they don't the question still remains.

I have been a long time member of the, Fraser Panel, Integrated Harvest Planning Committee, and the Pacific Fisheries Resource Conservation Council, which brings me into contact with many different players in the industry. If I understand their arguments correctly, the move to transferable quotas holds the promise of better controlling commercial harvests and enabling managers to better meet their constitutional obligations. With the continued decline in many stocks , and global warming a grim reality that puts further strain on an already stressed situation, I am still not convinced that ITQ’s are the answer.

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Here are some final points to consider:

- Transferable shares might also be used as the means by which either licences, or shares of the total-allowable catch (which varies from year to year, from species to species, and also varies between conservation units) might be transferred, by lease or sale, by a government-funded independent board or trust of the kind proposed by First Nations organizations and some industry groups.



- The flexibility built into transferable-share fisheries is well-suited to accommodate variations in the abundance of salmon runs. Those variations provide both opportunities and obstacles to both in-river aboriginal fisheries—which tend to be more selective and stock-specific—and to saltwater commercial fisheries, which tend to be concentrated in mixed-stock areas where fisheries often present threats to small and endangered runs.

- Share based fisheries open up the possibility of upriver aboriginal fisheries and saltwater commercial fisheries engaging in share-trading and lease arrangements on an annual basis, determined by the abundance or scarcity of specific salmon runs, and by fluctuations

in the level of conservation concern associated with small or weakened stocks.

- Transferable shares may also serve the terms of interim agreements, providing economic benefits to First Nations until such time as comprehensive treaty agreements are settled. Ultimately, for the purpose of treaty settlement, transferable

shares provide a greater range of options, and may provide a greater degree of certainty.

The UFFCA is interested in the PICFI process and is actively working with the First Nations, PICFI technical working group (which is currently being directed under the newly formed, BC First Nations Fisheries Council); there will be further updates on the PICFI process.

Court Ruling Rules on DFO Consultations

(BC Appeal Court Suggests the Large Assembly Consultations Appropriate)

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 both for what it says about Consultation but also 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 migration wide meetings that have been held since January this year.

Paragraph 40 reads:

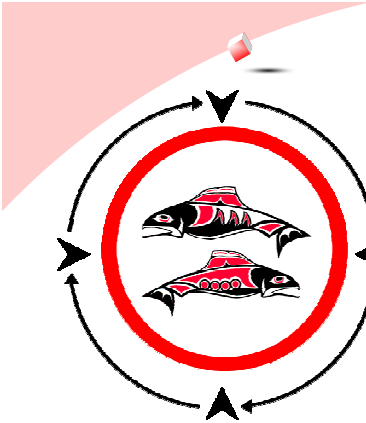
“[40] In this case, DFO conducted extensive and detailed

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



“Canada’s position is that such title and rights do not exist except where proven in Court.”





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Calendar of Upcoming Events

- Inter-tribal Fisheries Treaty (ITFT) Meeting – August 11-14, Takla Lake BC
- Fraser River Aboriginal Fisheries Secretariat (FRAFS) Thursday afternoon technical update teleconference calls (every Thursday from July 10 – September 4) *
- UFFCA board meeting – Thursday August 28, TBD

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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 suggests 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/07/02/2007
bcca0265.htm](http://www.courts.gov.bc.ca/jdb-txt/ca/07/02/2007/bcca0265.htm)



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