



December 15 2020

Sport Fishing Advisory Board

Attention: Martin Paish, Chair

Re: BC Federation of Drift Fishers Comments on the Draft Salmon Allocation Policy (SAP)
Terms of Reference

On behalf of the British Columbia Federation of Drift Fishers (BCFDF) as a member group of the Sport Fish Advisory Board (SFAB) we have reviewed the Terms of Reference (ToR) associated with the revised Salmon Allocation Policy (the SAP). We provide this letter as additional support to the review the SFAB have done and the initial comments they provided. We certainly share your concern that the document is heavily biased toward Indigenous participation to the potential detriment of the Public Fishery.

The comment on Page 2 of the SFAB review regarding a First Nation willingness to participate in fisheries management discussions is accurate and perhaps demonstrated best by initiatives under the Fraser River Collaborative Table. This certainly lends credibility to efforts on the Fraser River and these efforts could be used elsewhere as a model to participate in and expand on collaborative table discussions. We have found that the neutral facilitation / moderation of these discussions provides for transparent open dialogue and understanding of matters that are vital to all parties.

Your reference to common law public ownership of fish is supported by the BCFDF; and continuing to enforce this message will play an important role going forward in our challenges towards the continuation of the Public Fishery.

We must also not allow exclusion of those outside of the four SFAB designates mentioned as it is vital that other individuals and groups provide their input into the process. The statement that “everyone is a valued member of the process” isn’t consistent with the exclusion of the recreational and commercial sectors from key elements of technical committee and Bilateral G2G Discussions. Co-chairs from Fisheries and Oceans Canada (FOC) and First Nations further indicates the subservient position intended for the Public Fishing sector by FOC.

Allocation Policy for Pacific Salmon – Version 1

Currently, the 1999 document from FOC entitled Allocation Policy for Pacific Salmon (the Policy) remains the governing policy around salmon fishery allocations. There has been considerable commentary around the Policy and a lot of activities have taken place since 1999, ostensibly with the intention of implementing the Policy. However, there are a few core aspects of the Policy which matter to the Public Fishery under the present context of the decline in salmon populations.

The “overarching principle”/“primary objective” (both phrases are used in the Policy) is conservation, and according to the Policy itself, in reference to setting Allocations, this would be bolstered by the Policy’s second and third priority principles of employing a “precautionary, risk averse approach” – and then with the objective of “achieving a net gain in productive capacity for salmon habitat”.

Respect The Resource – Respect Other Anglers



These themes should not be lost in the SAP as the original Policy was aimed at the big picture of maintaining salmon stocks. Allocation Principle # 4 in the Policy addressed the Recreational Allocation: After conservation needs are met, and priority access for First Nations is factored in by ensuring FSC fishery opportunities are provided, then recreational anglers “will be” provided allocation (note that the Policy stated “will be”). In providing the recreational allocation, priority is:

- *Directed fisheries on Chinook and Coho salmon; and*
- *Predictable and stable fishing opportunities for Sockeye, Pink and Chum salmon.*

Allocation Principle # 4 further stated “the opportunity to harvest Chinook and Coho is the mainstay of the recreational fishery. Where conservation goals cannot be met, recreational fisheries for salmon will be closed. Where abundance is greater, directed recreational fisheries will be permitted, however, the recreational limits for these fisheries will be determined by relative abundance”.

These are important aspects as the Policy stated plainly that the fishery is a common resource and that it is up to FOC to manage it for “everyone” including “future generations”. This is important to our Public Fishery.

FOC liberally uses the term “conservation measures” in the SAP ToR to describe proposed fisheries management decisions. The SAP ToR and the Policy recognize First Nation rights to fish after conservation needs are met. The SAP ToR further highlights Canada’s obligation to provide First Nations the opportunity to harvest fish and on a priority basis.

It has always been agreed that the “overarching principle”/“primary objective” of the Policy is conservation when setting catch or harvest allocations; and importantly that the fishery is a common resource and that it is up to FOC to manage it for “everyone” including “future generations”.

What seems to be an unanswered question, or a complete omission is the fiduciary duty owed by the Crown to the Public fishery. To find a “right”, you first have to establish there is a fiduciary duty. The word “meaningful” as used by FOC throughout the SAP ToR is also useful in arguing or potentially assuming there is a fiduciary responsibility; it goes to establish at least that FOC believes, on some level, that they do owe such a duty, but whether recreational anglers (in this case the Public Fishery) have a “right” to fish is open for debate.

The current reality dictates that legal options may be a new priority.

Rodney Clapton

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*Cc Jason Harris, North Coast SFAC Chair
Gerry Dewar, Upper Fraser Valley SFAC Chair
Mike Kelly, South Coast SFAB Chair
Urs Thomas, North Coast SFAB Chair
BCFDF Directors*

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Questions / comments (Q/Cs)below:

Page 1 Paragraph 1: In April 2018, then Minister of Fisheries and Oceans and the Canadian Coast Guard, the Honourable Dominic LeBlanc released a statement following the B.C. Supreme Court Ahousaht decision. The statement contained the following commitment – “As an immediate step, I have directed Fisheries and Oceans Canada to review the Pacific Salmon Allocation Policy”

Q/C What in the Ahousaht decision needed “an immediate step” and [direction] to review the Pacific Salmon Allocation Policy?

Page 1 Paragraph 4: Most recently, within the 2018 BC Supreme Court Ahousaht decision, the application of the SAP (1999) was found to be an unjustified infringement of the five Nuu-chah-nulth Nations’ (Ahousaht, Ehattesaht/ Chinekint, Hesquiaht, Mowachaht/Muchalaht, and Tla-o-qui-aht) Aboriginal rights to fish and sell fish insofar as the SAP accords priority to the recreational fishery over the Five Nations’ right-based sale fishery for Chinook and Coho salmon. To the extent that the SAP applies to the Five Nations in the manner declared an unjustifiable...

Q/C Do all Canadians have a right to fish?

Q/C Do all Canadians have a right to recreation?

Page 2 Paragraph 2: The process for replacing the SAP (1999) will entail provincial scale engagement that will reflect Canada’s nation-to-nation relationships with First Nations, and involve affected stakeholders, in a collaborative approach.

Q/C This is interesting wording - “entail provincial scale engagement that will reflect Canada’s nation-to-nation relationships with First Nations” – do the “affected stakeholders” have a relationship with Canada or First Nations or both in this “collaborative approach”?

Q/C Would we then not be engaging with First Nations as well and potentially outside of FOC or is FOC representing the First Nations in this engagement?

Q/C If FOC is playing an intermediary role there is always concern that some of the messaging or understanding will get lost in the translation.

Page 2 Paragraph 7: Policy discussions are anticipated to include topics such as, but not limited to:

- *Relative priority of allocation among the different harvest groups;*
- *Inter-sectoral allocation between recreational and commercial harvesters;*
- *Principles for priority, management and allocation of fish caught as by-catch, and incidental mortality; and*
- *The priority of fish for scientific and management purposes (e.g. test fisheries).*

Q/C Does FOC believe that this process will result in decisions that reflect the interests and concerns of all stakeholders and rights holders?

Q/C Why are First Nation harvesters not mentioned in bullet #2?

Q/C What is the relative priority of allocation among harvest groups. (this is obviously a key issue in any new allocation document). Is there a process flow that describes this?

Q/C Inter-sector allocation (How would this apply in a Public Fishery? An example might be tidal vs / non tidal. Is there a process flow that might describe an example?

Page 3 Paragraph 2: The intent is that, once recognized, the SAP will clearly outline how these fisheries receive priority of allocation. However, negotiated agreements and court cases remain the vehicles through which First Nations' rights-based fisheries are recognized and delineated. The SAP review will not in any way define or limit any treaty or Aboriginal title or rights of First Nations and will be without prejudice to the positions of the parties with respect to reconciliation processes, and treaty and Aboriginal title or rights.

Q/C There is a plethora of language around "rights" (all in the Aboriginal context) and constitutional obligations. But no similar language with respect to the Public Fishery.

Q/C Is there any fiduciary duty owed to the Public Fishery and do they have any rights?

Q/C Is there a responsibility, or a fiduciary duty owed to "Canadians" to preserve the recreational fishery for "all Canadians"?

Page 3 Paragraph 2: Given the limited timeframe for this SAP process, discussions will need to focus on issues central to a revised SAP. Other related interests will therefore be recorded and potential venues where they could be addressed will be identified.

Q/C Why is there a limited timeframe for this SAP process? The previous Policy was functional for twenty-years.

Q/C Reference is made to other related interests and venues created. There are other collaborative tables and Provincial boards (such as the Provincial Advisory Process - PAAT) where non tidal salmon and steelhead issues are discussed and may be of interest to the Public Fishery especially if this process has the potential to result in exploitation of Provincial managed species.

Q/C There are current initiatives such as FOC / First Nation / Public Fishery discussions which occur outside of the official SFAB process. These are becoming common and should be considered as another source of communication towards identifying issues such as allocation.

Page 4 Bullet 1: The overarching context in which the SAP is rooted is conservation. The conservation and sustainable use of Pacific salmon is promoted through a precautionary approach to managing fisheries; addressing incidentally caught species; actions to maintain fish habitat and ecosystem integrity; and recognition of the need for timely and accurate fisheries catch information.

Q/C The previous Policy recognized the overarching principle / primary objective of conservation when setting catch or harvest allocations... is overarching context better?

Q/C Timely and accurate fisheries catch information. There has been concern in past on the Fraser River where FOC projections of non-tidal Chinook retention by the Public fishery was grossly inflated and despite our demands to correct this error it was never done. These number are still impacting the allocation decisions.

Q/C The Public fishery is always offering to assist in timely and accurate fisheries reporting be it tidal or non tidal. The opportunity to enhance and further support the accuracy of stock numbers should be explored. In addition, we have offered stock assessment support to help get fisheries recovering and open. FOC must recognize the motions and effort put forward by the various groups and committee to try to get fisheries open because without these Public Fishery volunteers many stocks would suffer and be unavailable for any sector.

Page 5 Bullet 2: In general, the precautionary approach in fisheries management is about being cautious when scientific information is uncertain, unreliable or inadequate and not using the absence of adequate scientific information as a reason to postpone or fail to take action to avoid serious harm to the resource.

Q/C The fact that 20 years after implementing the Policy there is still no scientific understanding of what is causing the decline in many fisheries, lends itself to the application of the precautionary principle.

Q/C This would be bolstered by the Policy's second and third priority principles of employing a "precautionary, risk averse approach" in setting Allocations... There is no objective of "achieving a net gain in productive capacity for salmon habitat" mentioned.

Q/C If we assume science plays a primary role in decision-making and if "yes", who will provide the "science"?

Q/C Does FOC believe that science is impartial?

Q/C Does FOC believe science can be biased?

Q/C Does FOC mitigate the potential for interest / biased based science?

Page 4 Number 5: The federal government has constitutional responsibility for fisheries management including the conservation and protection of salmon resources. This includes responsibility for determining whether or not salmon fishing activities may be carried out and the particular rules under which they may be carried out, consistent with the Constitution (including s. 35 constitutional obligations), treaties, statutes, and common law.

Q/C Does Fisheries and Oceans Canada have final decision-making authority for Pacific salmon in Canada?

Q/C Is FOC non partisan?

Page 7 Number 4: Pacific salmon are an icon of Canada's Pacific coast and rivers, providing important cultural, economic and social benefits to Canadians.

Q/C We confirm that FOC acknowledges Pacific salmon are iconic to all Canadians and provide important cultural, economic and social benefits to all Canadians.

Page 7 Number 4: Sustainable fisheries will assist in maintaining the potential for future generations to meet their aspirations around these resources.

Q/C Is this statement confirming future generations have a right to fish?

Page 7 Number 4: Recreational and commercial Pacific salmon fisheries play an important role in the social, cultural and economic life of British Columbia serving as a source of enjoyment, food, income and employment.

Q/C We confirm that recreational and commercial Pacific salmon fisheries play an important role in the social, cultural and economic life of British Columbia serving as a source of enjoyment, food, income and employment.

Page 7 Number 4: The SAP renewal process will meaningfully engage an appropriately broad range of groups with harvest rights and interests.

Q/C We confirm that the word “meaningful” is important and believe, on some level, that FOC does owe the duty of meaningful engagement with a broad range of groups with “harvest rights and interests”.

Q/C Does FOC consider the Public Fishery to be a Stakeholder, a Rights Holder or an Interest holder?

Page 7 Number 4: The process will engage through a variety of methods, that are responsive to regional differences, to encourage full participation for the dissemination of information and collection of feedback.

Q/C We confirm that capable decision makers and experts can be found beyond large urban centers and the SFAB vision implementation should acknowledge that.

Page 10 Numeral iv: Recreational salmon harvesting interests will coordinate their participation through the SFAB. Representation will include four members: Main Board chair, North Coast chair, South Coast chair, and past Main Board chair. The SFAB will select participants for the Options Development Working Group and Technical Working Group from amongst these members. Alternates may be named, and representation may expand as needed...

Q/C Does this define the extent to which the Recreational Fishery will be included in this and future “collaborative” processes?

Page 13 Section c: Multiparty Technical Working Group; the Technical Working Group is ad hoc and issue dependent and participants will be identified internally by each group based on who has expertise and knowledge to contribute to the identified issues.

Q/C Duly qualified is important especially if activities include analysing, identifying and developing policy options and needing “the expertise and knowledge to contribute to the identified issues”.

Q/C The section states “conducting technical work or assessing the technical work / reports / analyses of third parties”. We assume the other members will have the expertise available.

Page 5 Number 7: Enabling

- The SAP must provide sufficient guidance and clarity in the immediate term, while being able to adapt to changing contexts over time.
- The policy will be drafted so as to not require revisions to account for other First Nations’ rights to fish that may be recognized in the future.

Q/C Is this to read as a blank cheque for First Nation rights to fish?

Page 5 Number 9: Clarity

- The SAP will seek to provide increased predictability and transparency around allocation priorities, while recognizing that changing environmental conditions and fluctuating abundance may result in uncertainty regarding year-to-year harvest opportunities.

Q/C Having predictable / sustainable fisheries are important for the commercial sector of the Public Fishery.

Page 5 Number 10: Sustainable Use

- With respect to Pacific salmon fisheries, selective fishing is an important component of sustainable use.

Q/C Selective fisheries to date have primarily been reviewed with First Nations resulting in several submissions by First Nations to BCSHRIF. Very little discussion with the Public Fishery was had regarding the impact these had on opportunities.

Q/C There is concern regarding the lack of monitoring of catches from fish traps, weirs and fences which could significantly impact some runs. The Public Fishery is supportive of selective fishing but must be directly involved in the development of these proposals should the approval result in an allocation shift, Public Fishery closure or potential navigational hazard.

Page 6 Section D: The Government of Canada has a duty to consult, and where appropriate, accommodate Indigenous groups when it considers conduct that might adversely impact potential or established Aboriginal or treaty rights.

Q/C concern with the suggestion that the Public fishery shut down to provide unfettered access for First Nations. There is concern that this practice will be emulated Province wide.

Page 10 Number 2: Methods of Engagement

Q/C As mentioned previously, venues that compliment the SFAB process and facilitate respectful collaborative discussion (Tier 3) with First Nations. Public forums and open houses should be reviewed and perhaps hosted jointly by all sectors including First Nations.

Page 15-16 Section H: Roles and Responsibilities

Q/C Consider the use of independent facilitators and maximize the use of social media tools to keep all sectors and the public informed. Consider coordinating with the many sites available through the member "harvester" organizations.

Page 18 Section L: Resourcing

Q/C Funding must be provided for expenses and time for all participants not just the selected sectors.

Page 20-21 Section 8: Precautionary Approach

Q/C The current lack of updated assessment data has closed fisheries - the Pitt River Coho closure based on a 1994 assessment as an example. How can the various sectors work together to support assessment and keep fisheries open?