

Indigenous Program Review

DISCUSSION GUIDE

Annex A



**NATIONAL INDIGENOUS
FISHERIES INSTITUTE**

Indigenous Program Review

**INSTITUT NATIONAL DES
PÊCHES AUTOCHTONES**

Examen des programmes autochtones

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History of Fisheries and Oceans Canada's Indigenous Programs

The development of Fisheries and Oceans Canada's Indigenous programs is tied to the history of Indigenous fishing activities and select species on both the west and east coasts. But it really starts with section 35.1 of the *Constitution Act, 1982*, which recognizes and affirms the existing Aboriginal and Treaty rights of Indigenous Peoples of Canada. This includes the right to fish.

The right to fish has been defined through a number of pivotal Supreme Court of Canada decisions and statements. These include (among others):

- *R. v. Sparrow* (1990) which ruled that the Musqueam Band have an Aboriginal right, as defined in the Constitution, to fish for food, social and ceremonial purposes. The Court also ruled that this right takes priority, after conservation, over other users. This case was the first to test the scope of section 35.1 Indigenous rights.
- *R. v. Gladstone* (1996) which ruled that the Heiltsuk have a pre-existing right to harvest herring roe and that there is a commercial component to this right.
- *Delgamuukw v. British Columbia* (1997) which defined Aboriginal title as rights to the land itself, including how the land and its resources may be used, with some limitations. The Court also ruled that the government has a duty to consult First Nations on issues involving Crown land.
- *R. v. Marshall* (1999) which ruled that the Mi'kmaq and Maliseet people on the East Coast have treaty rights to hunt, fish and gather to earn a moderate livelihood, and that these rights are held by the community as a whole, not by individuals. The Court later clarified that these rights were not unlimited and Aboriginal fishing activities could be regulated, if justified, for conservation or other important public objectives.
- *Haida Nation v. British Columbia and Taku River Tlingit First Nation v. British Columbia* (2004) which clarified the role and responsibilities of government, Indigenous groups, and industry during consultations with Indigenous communities, including accommodating Indigenous concerns.

- *Ahousaht Nation v. Canada* (2009) which ruled that Nuu-chah-nulth had Aboriginal rights to fish in their traditional territories and to sell that fish commercially.

In 1990, Fisheries and Oceans Canada did not have programs in place to reflect Indigenous fishing rights as stated in *Sparrow*. The Department therefore used a one-year initiative, called the Aboriginal Cooperative Management Program, to test ways to involve Indigenous groups in delivering programs that would ensure orderly Indigenous fisheries. The initiative also explored ways to involve Indigenous groups in co-operative fisheries management research, habitat restoration, and fisheries enhancement.

Based on the results of the one-year program, Fisheries and Oceans Canada introduced the Aboriginal Fisheries Strategy in 1992. This program provides a framework for Indigenous fishing for food, social, and ceremonial purposes under the authority of a communal licence issued through the *Fisheries Act*.

The program also helps Indigenous communities build capacity so they can meaningfully participate in the management of their food, social and ceremonial fisheries. This includes the capacity to undertake scientific stock assessments and habitat management activities in the field, to monitor their catch and fishing activities, and to enforce the rules set for fishing in the communal licence. The Aboriginal Fishery Guardian Program component was, in fact, designed to help communities develop their capacity in these areas.

The Aboriginal Fisheries Strategy also has an economic component, which allows for commercial fishing and other economic opportunities to be part of the community's harvest agreement. In 1992, there were two such components. The Pilot Sales Program helped participants achieve economic self-sufficiency by licensing the sale of Pacific salmon in three river areas: Lower Fraser River, Skeena River, and Alberni Inlet-Somass River. At the same time, the Pacific Commercial Licence Retirement Program tried ways to reduce the catching power in the commercial fleet so fishing by commercial operators would not be negatively affected when opportunities were given to Indigenous groups. Based on the success of the second initiative, the Allocation Transfer Program was added to the Aboriginal Fisheries Strategy in 1994.

The Allocation Transfer Program permanently retired licences from interested commercial harvesters on a voluntary basis by buying the licences at fair market value. Once the licence was retired, an equivalent commercial fishing capacity licence or allocation was then re-issued to an Indigenous group on a communal basis.

In 1998, the use of Allocation Transfer Program funding was expanded to cover the market value of quota associated with a valid commercial licence in an individual vessel quota fishery or another commercial fishing opportunity, as well as the purchase of an existing or new commercial fishing vessel, fishing gear and equipment. Associated transactions and other related costs also qualified for funding.

To be eligible for the Allocation Transfer Program, Indigenous groups were required to have a current Aboriginal Fisheries Strategy agreement, or a comprehensive fisheries agreement, and a satisfactory record of compliance with the terms of their agreement and with conservation and fisheries management principles. Groups also needed to demonstrate good business practices by preparing a business plan which detailed financial benefits and targets for employment and skills-development. In addition, a reasonable portion of the benefits were to be reinvested in fisheries management activities and fisheries-related economic development. The Allocation Transfer Program became a permanent component of the Aboriginal Fisheries Strategy in 2000. While it is still in place today, its activities have been largely overtaken by the Department's more recent commercial economic programs.

In 1999, the Aboriginal Fishery Guardian Program underwent national review. The program was found to have initially created a closer relationship between Indigenous communities and Fisheries and Oceans Canada, but it was not being used to its potential. The momentum generated at the start of the program had also waned. While the review made a number of recommendations to improve and restore the original intent of the program, these have not been implemented.

When the *Marshall* decision was made by the Supreme Court in 1999, Fisheries and Oceans Canada launched the Initial *Marshall* Response Initiative. This was a one-year program to negotiate Interim Fisheries Agreements so that the 34 Mi'kmaq and Maliseet Nations could immediately increase their access to the commercial fishery. In 2001, the Longer-term *Marshall* Response Initiative built on the initial program by negotiating more permanent fisheries agreements. While set to end in March 2004, the program was subsequently extended until March 2007 to give the Department more time to negotiate agreements.

In the Pacific region, meanwhile, a one-year First Nations Selective Fisheries Gear Purchase Program funded more than 30 projects in 2000. As a result, 35 First Nations in British Columbia and the Yukon Territory received a combined total of \$500,000 to try to individually meet their own training requirements.

By 2002, the Aboriginal Fisheries Strategy had been in operation for a decade. The Department thus set out to find out what was working and what was not, and what could be changed to make it better. The review concluded that the program was providing some benefits to Indigenous communities and groups, but it also needed improvements. For example, while the program was found to be a reasonable way to build capacity and to plan activities, the program's agreements needed to be more flexible, simpler and longer term. Likewise, while the program had created jobs and provided training, the training programs needed to be more professional to meet the skills needs of harvesters, guardians, and administrators. Indigenous participants in the review also called for other improvements, including a re-designed guardian program.

As a result of this review, Fisheries and Oceans Canada began to work on multi-year, simpler agreements, streamlined and straight-forward reporting requirements, and a flexible approach to capacity-building and economic opportunities. However, these efforts do not seem to have been completed.

The creation of the Aboriginal Aquatic Resource and Oceans Management program in 2004 was another outcome of the Aboriginal Fisheries Strategy review. This program was intended to follow the example of Indigenous groups who were creatively pooling funding – from the Aboriginal Fisheries Strategy and their own resources (and, in some cases, other funding sources) – in order to collaborate in habitat, science, and oceans activities along an ecosystem or watershed.

The Aboriginal Aquatic Resource and Oceans Management program sets up groups along an ecosystem. Once the group is in place, the program helps it build capacity to participate in the management of fisheries, oceans and aquatic resources by funding the hiring of professionals. These may include fisheries managers, biologists, technologists, and administrative staff, among others.

Two short-term support programs also began in 2004 to help First Nations in the *Marshall* Response Initiative to better manage their fishing operations and to fish safely: the Fisheries Operations Management Initiative and the At-sea Mentoring Initiative. These programs ended in March 2007 when their activities, and the investments made in the *Marshall* Response Initiative, were rolled into a new and comprehensive Atlantic commercial fisheries program.

The Atlantic Integrated Commercial Fisheries Initiative provides involved Mi'kmaq and Maliseet First Nations with the means to develop and operate successful commercial fishing enterprises and to have a more effective voice in fisheries co management. It also takes a unique approach to program delivery: using Indigenous organizations and highly specialized business development teams that operate at arm's length from government.

The Pacific Integrated Commercial Fisheries Initiative was launched in 2007. This program built on the fisheries reform work undertaken by Fisheries and Oceans Canada in response to the 2004 reports of the Joint Task Group on Post-treaty Fisheries and the First Nations Panel on Fisheries. It also benefitted from the investments made by the Department in earlier economic programs, including the Allocation Transfer Program.

The Pacific Integrated Commercial Fisheries Initiative supports First Nations involvement in commercial fisheries in British Columbia by helping them develop sustainable fishing enterprises and increase their participation in fisheries management decision-making processes.

Also in 2007, an evaluation and an audit of the Aboriginal Fisheries Strategy program still showed that the program needed improvements by highlighting administrative and performance measurement shortfalls. For example, information requirements to measure the program's impact needed to be established and reflected in agreements. A training needs and feasibility review of the Aboriginal Fishery Guardian Program also reported that the program was operating well below its potential.

The Aboriginal Aquatic Resource and Oceans Management program was evaluated and audited in 2009. The evaluation found the program was an appropriate way to ensure Indigenous participation in fisheries and oceans matters with its two-staged funding approach requiring groups to demonstrate capacity before moving from one level of funding to the next. The evaluation also found, however, that the delivery of the program needed some improvements, including formal service delivery standards and a more stringent performance measurement strategy. The evaluation in fact recommended that the Department establish targets for performance measurement and create a way to get feedback from groups on program success and service delivery.

In 2011, Fisheries and Oceans Canada started to address the recommendations made in the 2007 or 2009 evaluations and audits by taking steps to streamline agreements and introducing public service standards for the review, approval and payment of program work plan activities. They also brought in a more flexible approach to agreement

administration and reporting based on the capacity of program recipients. However, a 2013 evaluation of the Aboriginal Strategies and Governance Program, revealed that further steps still needed to be taken to reduce the complexity of agreements and to improve proposal and reporting processes from the perspective of Indigenous program participants.

In 2010, an evaluation of the Atlantic Integrated Commercial Fisheries Initiative found that this program was successfully achieving its objectives and benefitting First Nations in a number of ways:

- increasing community member skills to fish safely and successfully
- increasing the business management capacity of commercial fishing enterprises
- developing strong governance structures within commercial fishing enterprises
- increasing access to business development and diversification opportunities
- improving capacity by funding commercial fisheries liaison coordinators
- improving relations with Fisheries and Oceans Canada and fisheries stakeholders

Participants in the commercial fisheries program were also benefitting through the Atlantic Commercial Fisheries Diversification Initiative. This strategic partnership activity pooled the funds of several federal departments to help commercial fishing enterprises diversify their operations into aquaculture, seafood processing and other value-added businesses.

Meanwhile, the 2010 evaluation of the Pacific Integrated Commercial Fisheries Initiative uncovered several administrative issues. For example, potential participants did not have clear guidance about how to create commercial fishing enterprise aggregates and the Department's response to expressions of interest was too slow. Participants in training and mentoring activities were also unsatisfied, as these activities did not incorporate cultural or community needs or preferences. In addition, participants were concerned about the program's lack of communication and consultation.

To resolve these issues, the evaluation recommended that the Department improve overall consultation and communication, including by increasing co-operation with the First Nations Fisheries Council. It also recommended that the program consider making a business development team available to Indigenous organizations, which had proven to be successful in the Atlantic program.

When the Pacific Integrated Commercial Fisheries Initiative was ‘refreshed’ a few years later, the program was focused on addressing the business development needs of commercial fishing enterprises to set them on a self-sustaining path. An external business support system with a business development team, third-party evaluator and training coordinator was put in place. The Pacific Commercial Fisheries Diversification Initiative was also launched to help commercial fishing enterprises diversify their operations into processing, aquaculture, marketing and other fishery-related services.

In 2015, another evaluation of the Atlantic Integrated Commercial Fisheries Initiative showed that the program continued to be successful in helping participating First Nations strengthen their capacity to manage, expand and diversify their commercial fishing enterprises. Only one recommendation was made to improve the program: that it should develop, through discussions with participating First Nations, a clear staged process to help commercial fishing enterprises transition to self-reliance.

The 2016 evaluation of the Pacific Integrated Commercial Fisheries Initiative also showed that the program was successfully operating. The program had addressed the administrative issues identified in 2010. It had also improved communications and engagement amongst participants, and increased co-operation with the First Nations Fisheries Council and other government departments.

The success of the two commercial fisheries programs was recognized in the 2017 federal budget when the programs received funding to be renewed and expanded into Canada’s North. The Northern Integrated Commercial Fisheries Initiative will fund and support Indigenous groups and communities that are not eligible for the Atlantic or Pacific programs in all areas where Fisheries and Oceans Canada manages the fishery. Funding for the new program will be aimed at commercial fishing enterprise and aquaculture development, with a particular focus on business development planning and targeted training.

Budget 2017 also announced increased annual funding to renew and improve the Aboriginal Fisheries Strategy and the Aboriginal Aquatic Resource and Oceans Management programs.