



# AN INTEGRATED ABORIGINAL POLICY FRAMEWORK



Published by:  
Communications Branch  
Fisheries and Oceans Canada  
Ottawa, Ontario  
K1A 0E6

DFO/2007-1239

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Cat. No. Fs23-519/2006  
ISBN 978-0-662-69859-3

Cat. No. Fs23-519/2006E-PDF  
ISBN 978-0-662-46141-8



Printed on recycled paper

# FISHERIES AND OCEANS CANADA

## AN INTEGRATED ABORIGINAL POLICY FRAMEWORK

### THE VISION

Supporting healthy and prosperous  
Aboriginal communities through:

- building and supporting strong, stable relationships;
- working in a way that upholds the honour of the Crown; and
- facilitating Aboriginal participation of in fisheries and aquaculture and associated economic opportunities and in the management of aquatic resources.

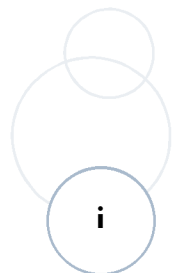
**2006 - 2010**



# Table of Contents

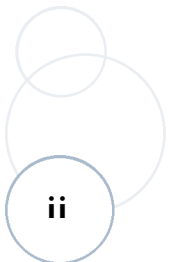


<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>3</b>
<b>REALIZING THE VISION</b> .....	<b>4</b>
a) Guiding Principles .....	4
b) Strategies .....	4
<b>BACKGROUND</b> .....	<b>5</b>
Considerations .....	5
DFO's Mandate and Vision .....	5
Aboriginal Interests and Aspirations .....	6
Interests and Aspirations of Aquatic Resource Users .....	6
Government's Interests .....	7
DFO's Experiences with Aboriginal Interests and Inter-acting with Aboriginal Communities .....	8
<b>SUMMARY OF CHALLENGES AND OPPORTUNITIES</b> .....	<b>11</b>
Challenges .....	11
Opportunities .....	11
<b>ANNEX A</b> .....	<b>12</b>
<b>AN ACTION PLAN OUTLINING STRATEGIES IN REALIZING THE VISION</b> .....	<b>12</b>
Strategy 1: Building and supporting strong, stable relationships .....	12
Strategy 2: Taking into account Aboriginal and treaty rights .....	12
Strategy 3: Participating in negotiation of land claim agreements .....	13
Strategy 4: Supporting increased Aboriginal participation in co-management of aquatic resources .....	13
Strategy 5: Providing for increased Aboriginal participation in integrated commercial fisheries and other economic opportunities in the aquatic sector .....	13
Strategy 6: Building Aboriginal capacity to participate in the aquatic sector .....	14
Strategy 7: Building DFO's capacity to serve Aboriginal groups .....	14
<b>ANNEX B</b> .....	<b>15</b>
1. LAND CLAIMS AGREEMENTS AND SELF-GOVERNMENT .....	15
2. DFO'S ABORIGINAL POLICY AND GOVERNANCE .....	15
Background .....	15
Aboriginal Fisheries Strategy (AFS) .....	16
Allocation Transfer Program (ATP) .....	16
Aboriginal Aquatic Resource and Oceans Management (AAROM) Program .....	16
Aboriginal Inland Habitat Program (AIHP) .....	16
Aboriginal Engagement in the Species at Risk Act (SARA) .....	17
Marshall Response Initiative (MRI) .....	17
At-Sea Mentoring Initiative (ASMI) .....	17
Fisheries Operations Management Initiative (FOMI) .....	17
Atlantic Integrated Commercial Fisheries Initiative (AICFI) .....	17
Pacific Integrated Commercial Fisheries Initiative (PICFI) .....	18





<b>ANNEX C</b> .....	<b>19</b>
ABORIGINAL INTERESTS .....	19
Access and Allocation .....	19
Co-management .....	20
Economic Development .....	20
Capacity Building .....	20
Governance .....	21
<b>ANNEX D</b> .....	<b>22</b>
SECTORAL APPROACHES CONSIDERING ABORIGINAL INTERESTS: .....	22
Science .....	22
Fisheries and Aquaculture Management .....	23
Small Craft Harbours .....	23
Habitat .....	23
Oceans Management .....	24





# EXECUTIVE SUMMARY

Fisheries and Oceans Canada (DFO), as the federal department with primary responsibility for oceans and the management and protection of aquatic resources, has had increasing involvement with Aboriginal communities since the 1990s, particularly in areas where DFO administers the aquatic resources and ocean spaces. Supreme Court of Canada (SCC) decisions have provided guidance on the nature and scope of Aboriginal and treaty rights and of governments' responsibility to manage natural resources in a manner consistent with the constitutional protection provided to Aboriginal and treaty rights.

The fundamental **theme** of DFO's Integrated Aboriginal Policy Framework is on fostering a respectful and mutually beneficial relationship with Aboriginal groups who are seeking a greater share of the fisheries resource, on contributing to the growth and well-being of their communities, and on providing them with a greater role in integrated aquatic resource and oceans management.

The **purpose** of the Integrated Aboriginal Policy Framework is to provide guidance to DFO employees in helping to achieve success in building on our relations with Aboriginal groups. The **objective** of the Integrated Aboriginal Policy Framework is to serve as a guide for DFO employees for the renewal of DFO's Aboriginal policies and programs, to provide strategic policy direction for the development of operational guidelines and programs, and to guide DFO in discussions and collaboration with other federal agencies, provinces, territories, stakeholders and Aboriginal groups.

This framework recognizes that DFO's core mandate has broadened considerably since earlier SCC decisions such as *Sparrow* and *Marshall* and now includes new ecosystem-based management responsibilities under the *Oceans Act*, expansion of its presence in inland habitat management, *Species at Risk Act* (SARA) implementation, an aquaculture framework, and an increasingly sophisticated approach to science. In addition, DFO must continue to take into account new developments in case law.

The need to renew DFO's policies and programs as they relate to Aboriginal communities has been recognized by the Department's five-year Strategic Plan '*Our Waters, Our Future*' 2005-2010. It sets out as a special over-arching objective the need to strengthen and foster the relationship between the Department and Aboriginal groups through the identification of five-year goals. This Integrated Aboriginal Policy Framework builds on and further elaborates the objectives of the Strategic Plan through the activities outlined in the Action Plan.

DFO has developed a Sustainable Development Strategy 2007-2009 that commits the Department to working with interested partners and resource users to drive a cultural shift in decision-making when it comes to fisheries and oceans policy. It outlines objectives and commitments for incorporating sustainable development into daily work.

The Integrated Aboriginal Policy Framework is intended to provide a context of DFO's Aboriginal experience, its program and policy evolution and current state of play in helping to meet DFO's key objectives.



The Integrated Aboriginal Policy Framework further elaborates the objectives not only of DFO's Strategic Plan and the Sustainable Development Strategy, it also constitutes a core element of departmental planning, including Reports on Plans and Priorities, Annual Business Plans, Audits and Evaluations. It cuts across various sector-based legislation, regulations, policies and programs, including the Oceans Strategy, Fisheries Management Renewal, and the way forward on Pacific and Atlantic integrated commercial fisheries with all harvesters (Aboriginal and non-Aboriginal), fishing under common and transparent rules.







# INTRODUCTION

The need for a framework for DFO's policies and programs as they relate to Aboriginal communities was recognized by the Department's five-year Strategic Plan 'Our Waters, Our Future' 2005-2010. The Strategic Plan calls for the development of a fully integrated departmental policy and program approach. It sets out as a special over-arching objective, the need to strengthen and foster the relationship between the Department and Aboriginal peoples.

The Strategic Plan further identifies the following five-year goals for maintaining and strengthening relationships between DFO and Aboriginal groups:

1. Enhance the involvement of Aboriginal groups in fisheries management decision-making processes using a model of shared stewardship in which Aboriginal groups collaborate with the Department in decision-making.
2. Increase the involvement of Aboriginal groups in the decision-making processes in other areas of DFO's responsibility including integrated oceans management, species at risk, habitat management, scientific research and aquaculture development.
3. Improve the stability of the west and east coast fisheries by resolving commercial access issues.
4. Continue to manage the fisheries in a manner that is consistent with the constitutional protection provided to Aboriginal and treaty rights by Section 35 of the *Constitution Act*, 1982 and the *Fisheries Act*.

5. Contribute to the broader Government of Canada objective of greater economic development for First Nations by assisting with greater access to economic opportunities, such as commercial fishing.

This Integrated Aboriginal Policy Framework builds on and further elaborates on the objectives of DFO's Strategic Plan.



## THE VISION

Supporting healthy and prosperous Aboriginal communities through:

- building and supporting strong, stable relationships;
- working in a way that upholds the honour of the Crown; and
- facilitating Aboriginal participation of in fisheries and aquaculture and associated economic opportunities and in the management of aquatic resources.



## REALIZING THE VISION

### A) Guiding Principles


In developing and implementing policies and programs to achieve the vision, DFO is guided by the following principles:

- be respectful of Aboriginal peoples and their communities, their rights, values and aspirations;
- be proactive; seek timely, innovative approaches to resolving emerging issues through discussion, negotiation and reconciliation;
- access the knowledge, wisdom and skills of Aboriginal people through participatory and collaborative management and decision-making processes; and
- attempt to accommodate Aboriginal interests in aquatic resources and oceans management, taking into account the need for conservation of the resource, its effective and efficient management and the interests of other Canadians.

### b) STRATEGIES

Seven strategies, together with associated critical outcomes and needed actions, have been identified to guide DFO's progress towards attainment of the vision (Annex A):

1. **Building and supporting strong, stable relationships** – by maintaining and improving working relationships with Aboriginal people through *fostering an internal culture and external climate of mutual understanding and respect*.
2. **Taking into account Aboriginal and treaty rights** – by carrying out its mandate in a manner consistent with the constitutional protection provided for existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.
3. **Participating in the negotiation of land claims agreements, also referred to as modern treaties (land claims agreements)** – as part of the negotiation processes led by Indian and Northern Affairs Canada (INAC), address matters related to the use and management of aquatic resources, habitats and ocean spaces.
4. **Supporting increased Aboriginal participation in co-management of aquatic resources** – by working with Aboriginal groups to increase their participation in the management and protection of aquatic resources, habitats and ocean spaces, including policy and program formulation, planning, resource management decision-making and program delivery.
5. **Providing for increased Aboriginal participation in integrated commercial fisheries and in other economic opportunities in the aquatic sector** – by facilitating greater participation in sustainable integrated commercial fisheries and aquaculture opportunities and in aquatic resource management.
6. **Building Aboriginal capacity to participate in the aquatic sector** – by working with Aboriginal groups through programs such as: Aboriginal Fisheries Strategy (AFS); Aboriginal Aquatic Resource and Oceans Management (AAROM); Aboriginal Inland Habitat (AIHP); *Marshall* Response Initiative (MRI); Atlantic Integrated Commercial Fisheries Initiative (AICFI); Pacific Integrated Commercial Fisheries Initiative (PICFI) and with other agencies of the Government of Canada, to increase the capacity of Aboriginal groups to participate in the aquatic resource sector.

- 
7. **Building DFO's capacity to serve Aboriginal groups** – providing organizational and staff capacity to serve Aboriginal groups and respond to emerging issues through organizational and training initiatives.

## BACKGROUND

### CONSIDERATIONS

The Integrated Aboriginal Policy Framework takes a number of considerations into account including:

- DFO's evolving mandate and vision including legislation impacting on the management of marine resources;
- Aboriginal interests and aspirations with respect to fisheries and oceans and aquatic resources;
- the interests, needs and aspirations of stakeholders in fisheries and aquatic resource management;
- evolving case law on Aboriginal and treaty rights;
- ongoing negotiation of land claims agreements;
- DFO's experiences in consulting on and addressing Aboriginal interests; and
- linkages between DFO's policies and programs and those of other departments of the Government of Canada, and of the provinces and territories.

### DFO'S MANDATE AND VISION

DFO's main strategic objective is that the Department's policies and programs respond to the values, objectives and priorities of Canadians and form a fully integrated approach.

The Strategic Plan specifically recognizes the importance of involving Canada's Aboriginal communities in attaining these objectives. It sets out as a special over-arching objective, the goal of strengthening and fostering the relationship between the Department and Aboriginal groups and collaborating with them in activities including: fisheries, integrated oceans management, habitat management, scientific research and aquaculture.

Six initiatives are important in attaining this strategic objective:

1. Implementation of an Oceans Action Plan as an innovative approach for the way Canada manages its ocean spaces in the 21<sup>st</sup> century.
2. Development of a strategy for international governance of Atlantic fishing to address over fishing.
3. Development of a new governance model for fisheries administered by DFO, including renewal of the *Fisheries Act*.
4. Support for development of an environmentally sustainable, internationally competitive Canadian aquaculture industry.
5. Improvement to the quality of Canadian Coast Guard services.
6. Renewal of DFO's Science program to enhance delivery of scientific information, advice and services.



## ABORIGINAL INTERESTS AND ASPIRATIONS

Fisheries and the harvest and management of aquatic resources have particular importance to many Aboriginal communities. Many Aboriginal communities are located adjacent to key fishing sites, oceans and aquatic resources, and consider the management of these resources to be matters important to these communities.

There are Aboriginal groups who are seeking greater access to economic opportunities from aquatic resources as a potential driver for economic development in their communities; more stability in food, social and ceremonial (FSC) fisheries; a greater role in the aquatic resource and oceans management decisions that affect them; and a greater role in stewardship, including stock assessment, oceans and habitat management, conservation and protection, and recovery strategy development and implementation.

Many Aboriginal groups assert an Aboriginal right to fish for FSC purposes. Many also assert that Aboriginal rights of self-government extend to many aspects of the management of aquatic resources and that they have Aboriginal rights to wider management and protection of these resources.

In the Gulf, Maritimes, Newfoundland and Labrador, Pacific, Central and Arctic, and Québec Regions, DFO and other federal departments are actively involved in implementing treaties and land claim agreements reached with the Inuit and First Nations. The arrangements reflect specific negotiations and may include constitutionally protected rights with regard to fish harvesting, fisheries and aquatic resource management and self-government. The impact of climate change and the implementation of SARA are also key areas of interest for Aboriginal groups.

Aboriginal people seek a significant increase in economic opportunities from integrated commercial fisheries; increased quantities of fish for FSC purposes; and a greater role in all aspects of aquatic resource management decisions.

## INTERESTS AND ASPIRATIONS OF AQUATIC RESOURCE USERS

Use of aquatic resources remains important for many Canadian coastal communities. There are increasing demands from the fishing industry, other industries, governments and non-government interests for the Government of Canada to provide more stability, certainty and predictability with respect to aquatic resource access and co-management.

The resource users also look to DFO to take the required steps to ensure harmony prevails in the management of these aquatic resources. For instance, most commercial fishing groups are supportive of stabilizing shares for Aboriginal and non-Aboriginal participants, contingent on voluntary retirement of licences. Many in the commercial sector understand and accept that there will be increased access to fisheries by Aboriginal groups both through the treaty process and through other mechanisms. DFO's Integrated Aboriginal Policy Framework addresses interests and objectives of all users in a positive, responsive and equitable fashion.

## GOVERNMENTS' INTERESTS

In 2004, the SCC in its *Taku/Haida* decisions considered governments' obligation to consult with Aboriginal groups who assert, but have not established, Aboriginal title or other Aboriginal rights. The Court concluded that government has a duty to consult and, where appropriate, accommodate their interests where government has knowledge of the potential existence of Aboriginal title or other Aboriginal rights and contemplates conduct that might adversely affect the asserted right. This duty is grounded in the honour of the Crown. The Court held that the scope of the duty will vary depending on the circumstances, including the strength of the claim for Aboriginal title or other Aboriginal rights and the seriousness of the potentially adverse effect upon the right or title claimed.


To ensure effectiveness, it is vital that there be coordination between all departments and agencies engaged in Aboriginal programming. Therefore, DFO carries out its Aboriginal programs in consultation with a number of other departments of the Government of Canada and the provinces and territories (Annex C). Most notable of these is INAC.

INAC, in general, has primary, but not exclusive responsibility for meeting the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Northerners. To fulfill this mandate, INAC works collaboratively with First Nations, Inuit and Northerners, as well as with other federal departments and agencies, provinces and territories. Increasingly, INAC's role has become one of managing change and bringing together the partners and interests needed to facilitate this change.

INAC's primary role is to support First Nations and Inuit in developing healthy, sustainable communities and in achieving their economic and social aspirations. INAC negotiates comprehensive and specific land claims and self-government agreements on behalf of the federal government, oversees implementation of settlements and promotes economic development.







A major and ongoing responsibility for DFO has been supporting the development and establishment of various inter-governmental, treaty and governance relationships through its participation in the negotiation, settlement and implementation of land claims agreements and self-government arrangements in partnership with INAC, provincial and territorial governments, and Aboriginal people. This is a growing and ever-changing segment of DFO's Aboriginal policy agenda. In addition to the development of negotiating positions relating to fisheries and oceans matters, DFO also has involvement in such things as Treaty Related Measures and Incremental Treaty Arrangements.

Land claims agreements in Canada set out co-management arrangements between the government and beneficiaries. For example, the Nisga'a Treaty, Arctic land claims agreements, and land claims agreements in Québec and Labrador establish structures and processes for the cooperative management of fisheries.

Generally speaking, the provinces and territories support the progress that has been achieved from Aboriginal programming in the transition period leading to land claims agreements.

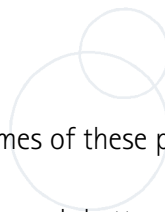
## DFO'S EXPERIENCES WITH ABORIGINAL INTERESTS AND INTER-ACTING WITH ABORIGINAL COMMUNITIES

DFO has been working with Aboriginal groups to implement the fisheries and oceans provisions of land claims agreements through treaty implementation. DFO and Aboriginal groups have been able to reinforce this relationship through greater self-governance, cooperation and coordination on aquatic resource management.

Since the 1990 Sparrow decision, DFO has been working closely with Aboriginal groups. DFO has made many changes in the management of the fisheries and it has introduced a number of programs to provide Aboriginal groups access to, and a role in the management of these resources.

DFO's Aboriginal programs are designed to strengthen the relationship between the federal government and Aboriginal groups and communities by supporting integration in the commercial fishery and the development of scientific, technical and administrative capacity of Aboriginal groups. This allows them to more effectively manage their activities around aquatic resources and oceans management and to participate in the multilateral decision-making and advisory processes used to manage aquatic resources and ocean spaces. DFO has generally operated with a strategy to provide:

- access to fisheries resources to address asserted rights and socio-economic aspirations;
- annual agreements to secure an orderly fishery and increase stability; and
- increased Aboriginal participation in fisheries co-management.



The key outcomes of these programs include benefits to:

- industry through better integrated commercial fisheries with improved accountability and more certainty, which supports improved economic viability;
- Aboriginal communities in the form of enhanced fisheries related job opportunities and income and increased capacity building and greater involvement in management; and
- Canadians, with more certainty and stability.

In addition, DFO's programs are supportive of the over-arching objective of obtaining greater stability and certainty through the negotiation and implementation of land claims agreements.

These programs (described in Annex B) include:

- Aboriginal Fisheries Strategy (AFS);
- Allocation Transfer Program (ATP) – a component of AFS and AAROM;
- Aboriginal Aquatic Resource and Oceans Management (AAROM) Program;
- Aboriginal Inland Habitat Program (AIHP);
- *Marshall* Response Initiative (MRI) (2000 – 2007);
  - Fisheries Access Program;
  - At-Sea Mentoring Initiative (ASMI); and
  - Fisheries Operations Management Initiative (FOMI);
- Atlantic Integrated Commercial Fisheries Initiative (AICFI);
- Pacific Integrated Commercial Fisheries Initiative (PICFI); and
- *Species at Risk Act* (SARA).

The AFS, which applies where DFO manages the fishery and where land claims settlements have not already put in place a fisheries management framework, provides the framework for the provision of access for FSC purposes, consistent with the 1990 *Sparrow* decision. The ATP facilitates the voluntary retirement of commercial licences and issuance to Aboriginal groups of communal licences for commercial fisheries without increasing pressure on the resource.

The AAROM program, which applies in areas where DFO manages the fishery and land claims have not been settled, is designed to bring Aboriginal groups together at a broad watershed or ecosystem level and build capacity to participate in the decision-making processes used for aquatic resources and oceans management.

The AIHP was developed to assist Aboriginal groups located in inland provinces to be involved in the management of fish habitat activities. It is intended to increase capacity of Aboriginal communities in inland Canada to participate in decision-making related to habitat management activities, and to foster relations between DFO and Aboriginal groups.

The MRI was introduced in 2000 in response to the SCC decision in the *Marshall* case in the fall of 1999, which decided that treaties signed in 1760 and 1761 by Mi'kmaq and Maliseet First Nations (MMFN) include a communal right to hunt, fish and gather in pursuit of a "moderate livelihood". The SCC decision affected 34 MMFNs located in New Brunswick, Nova Scotia, Prince Edward Island and the Gaspé area of Québec.



The MRI program, which concluded in March 2007, consisted of negotiated interim fisheries agreements that provided MMFNs with access to the commercial fishery. Licences to fish for various species, as well as vessels, gear and equipment, capacity building, and training and infrastructure were provided to MMFNs. Fisheries Agreements were successfully negotiated with 32 of the 34 First Nations.

The ASMI is a four-year program instituted in 2004 as part of the MRI to further develop the skills of MMFN members to fish safely and effectively in various fisheries. It was also designed to build the capacity within MMFN communities to become independent in providing their training requirements.

FOMI, created in February 2004, is a four-year program aimed at providing individuals with business and management mentoring as well as strengthening community-level fisheries management structures within individual MMFNs. Delivery is through Chiefs and Councils of First Nations and Aboriginal organizations. The initiative helps Aboriginal people to manage fishery operations and establish rules so that benefits from the fishery are shared by the community.

The AICFI program announced in the 2007 Federal Budget as a successor to the MRI, is designed to assist MMFNs to maximize potential from existing access and strengthen the accountability and transparency of their fishing enterprises. DFO continues to work in close collaboration with MMFNs to meet its commitments in Fisheries Agreements and to facilitate the transition towards the longer process in reaching land claims agreements.

The PICFI, announced July 16, 2007, is designed, in part, to support; British Columbia (BC) First Nations participation in integrated commercial fisheries; the development of sustainable fisheries enterprises; and increased participation in fisheries management decision making processes. The initiative provides for greater certainty and stability around fisheries access and allocation, as well as enhanced monitoring, reporting and enforcement, in support of strengthened economic viability and fisheries resource sustainability.

DFO works with Aboriginal communities regarding the SARA, which includes: awareness and education of SARA information; regulatory process for listing of species; engagement and consultation; and recovery planning and implementation.





## SUMMARY of CHALLENGES AND OPPORTUNITIES

### CHALLENGES

- Aboriginal groups have an increasing interest in all aspects of aquatic resources, including co-management and participation in fisheries.
- Negotiations to reach land claims agreements are lengthy.
- Canada's Aboriginal groups need to further develop their financial, technical and scientific capacity in order to achieve the level of participation in the aquatic sector and its management to which they aspire.
- Many of Canada's fisheries resources are fully subscribed and cannot sustain continued or increased pressure without biological or economic impacts.
- Management of Canada's fisheries is a complex task, involving the balancing of many considerations and interests, conducted under conditions of imperfect information and limited financial resources.
- Resource users (Aboriginal and non-Aboriginal), environmental non-governmental agencies and other groups often have competing interests.
- Many Aboriginal communities are ideally situated to participate in the aquatic sector and its management and their people have a wealth of relevant traditional knowledge and skills.
- Aboriginal groups have growing technical capacity to participate in the aquatic sector and its management, due in part to existing DFO programs.
- The foundation has been laid for a more productive working relationship between DFO and Canada's Aboriginal people, through Aboriginal programs and under comprehensive land claims agreements.
- DFO supports Aboriginal participation in integrated commercial fisheries, which provide all resource users (Aboriginal and non-Aboriginal) with an opportunity to work together to maximize the value of the fisheries.
- DFO engages Aboriginal groups in a broad-based renewal of its policies and programs including fisheries management, habitat management, science and oceans management, and species at risk.
- DFO pursues the renewal of the *Fisheries Act*. Aboriginal Policy and Governance proposes amendments that provide the flexibility to pursue activities in support of the departmental vision.

### OPPORTUNITIES

- DFO provides assistance to INAC with respect to the fisheries and oceans components of land claims and self-government agreements.
- These negotiations are led by INAC and aim to achieve certainty with respect to Aboriginal and treaty rights.



# ANNEX A

## AN ACTION PLAN OUTLINING STRATEGIES IN REALIZING THE VISION

### STRATEGY 1: BUILDING AND SUPPORTING STRONG, STABLE RELATIONSHIPS

DFO maintains and improves its working relationship with Aboriginal people through continuing to *foster an internal culture and external climate of mutual understanding and respect*. DFO will also continue to maintain and improve its working relationships with other agencies of the Government of Canada and of the provinces and territories in order to better serve Aboriginal communities.

#### CRITICAL OUTCOMES

- continued and expanded exchange of information and viewpoints between Aboriginal groups and DFO staff at all levels;
- encouragement of the exchange of information and viewpoints between Aboriginal groups and stakeholders;
- continued and enhanced training of DFO staff to aid DFO in building internal capacity to support the DFO-Aboriginal relationship; and
- effective work with other federal, provincial and territorial agencies to resolve issues and improve the quality of life for Canada's Aboriginal people.

### STRATEGY 2: TAKING INTO ACCOUNT ABORIGINAL AND TREATY RIGHTS

DFO carries out its mandate in a manner consistent with the constitutional protection provided for existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.

#### CRITICAL OUTCOMES

- DFO consults with Aboriginal groups when its management of Canada's aquatic resources may affect the exercise of Aboriginal or treaty rights;
- where a land claims agreement has been negotiated with an Aboriginal group, DFO manages aquatic resources in a manner consistent with the fishing rights and fisheries management regimes under the agreement;
- for Aboriginal groups who are not party to a land claim agreement and where DFO manages the fishery, DFO will continue the current AFS policy of conducting consultations and accommodating interests, including FSC fishing opportunities, through time-limited fisheries management agreements; which (often) includes communal fishing licences issued under the *Fisheries Act* through the *Aboriginal Communal Fishing Licences Regulations (ACFLR)*;
- when agreement cannot be achieved, DFO accommodates FSC fishing through communal fishing licences issued under the ACFLR; and
- DFO continues to encourage Aboriginal groups to participate in regional or watershed forums (including AAROM and AIHP groups) where relevant management information can be disseminated efficiently to a number of groups as part of the consultation process.



### **STRATEGY 3: PARTICIPATING IN NEGOTIATION OF LAND CLAIMS AGREEMENTS**

DFO continues to support and participate in negotiation processes, led by INAC, through mandate development with regard to the identification of aquatic resource allocations and habitat protection provisions, oceans, etc.

#### **CRITICAL OUTCOMES**

- effective support for INAC in its negotiation of land claims agreements for matters within DFO's mandate and in particular fisheries access and management, oceans management and environmental assessment issues.

### **STRATEGY 4: SUPPORTING INCREASED ABORIGINAL PARTICIPATION IN CO-MANAGEMENT OF AQUATIC RESOURCES**

DFO works with Aboriginal groups to increase Aboriginal participation in aspects of the management and protection of aquatic resources, including policy and program formulation, planning, resource management decision-making and program delivery (Sectors are described in Annex D).

#### **CRITICAL OUTCOMES**

- implementation of land claims agreements;
- Aboriginal participation in the renewal of DFO's policies and programs as set out in the Strategic Plan;
- Aboriginal participation in co-management structures and processes through which responsibility for resource management is shared between government and users of the resource;
- *Fisheries Act* amendments that provide for greater involvement of Aboriginal groups and others in decision-making processes;

- involvement of Aboriginal groups in the development of integrated fisheries management plans; and
- development, on a regional or watershed basis, of the capacity of Aboriginal groups to participate in aquatic resource management through the AAROM and AIHP program.

### **STRATEGY 5: PROVIDING FOR INCREASED ABORIGINAL PARTICIPATION IN INTEGRATED COMMERCIAL FISHERIES AND OTHER ECONOMIC OPPORTUNITIES IN THE AQUATIC SECTOR**

DFO supports the strengthening of the economies of Aboriginal communities through provision of opportunities to participate in integrated commercial fisheries and aquaculture opportunities and in aquatic resource management.

#### **CRITICAL OUTCOMES**

- increased Aboriginal participation in integrated commercial fisheries through the ATP on both coasts;
- interim commercial agreements with the MMFNs under the MRI, further supported by the participation of the MMFNs in AICFI;
- Aboriginal groups to carry out fisheries management activities under the AFS;
- provision to AAROM groups and other Aboriginal groups of opportunities to obtain contracts to carry out fisheries resource management activities;
- increased BC First Nation participation in integrated commercial fisheries through PICFI; and
- leadership in establishing arrangements with DFO, Aboriginal Business Canada, Canada's regional development agencies, INAC and Human Resources and Social Development Canada to encourage support for Aboriginal access to economic development in the fisheries and oceans sector.



## **STRATEGY 6: Building Aboriginal Capacity to Participate in the Aquatic Sector**

DFO works with Aboriginal groups through its programs and with other agencies of the Government of Canada to increase the capacity of Aboriginal groups to participate in the aquatic resource sector.

### **CRITICAL OUTCOMES**

- through the AFS, provide Aboriginal groups with support to participate in consultations regarding fisheries management;
- through the AAROM, MRI, AICFI and PICFI programs, improve the capacity of Aboriginal groups, on a regional or watershed basis, to:
  - interpret and disseminate aquatic resource management information;
  - access economic fishing and aquaculture opportunities; and
  - participate in the delivery of aquatic resource management programs.
- through the MRI, AICFI and PICFI, develop the governance capacity and acquire the skills, infrastructure and equipment necessary to participate in commercial fisheries; and
- assist Aboriginal groups to identify and access programs administered by other agencies of the Government of Canada.

## **STRATEGY 7: Building DFO's Capacity to Serve Aboriginal Groups**

DFO builds its organizational and staff capacity to serve Aboriginal groups and respond to emerging issues through organizational and training initiatives.

### **CRITICAL OUTCOMES**

- increasing internal coordination and communication respecting service to Aboriginal groups;
- using the Aboriginal Affairs Directors' Committee to improve the cooperation between the Headquarters staff of Aboriginal Policy and Governance Directorate and Regional staff who have major responsibilities for Aboriginal programs;
- using the Aboriginal Caucus, which consists of Directors General throughout DFO, to strengthen coordination within DFO of policy and program activities pertaining to Aboriginal groups;
- enhanced training for departmental staff to enable them to more effectively address the interests of Aboriginal groups in relation to fisheries and oceans; and
- fostering secondments and exchanges within the Department to broaden the knowledge and experience of staff working on Aboriginal issues.



# ANNEX B

## 1. LAND CLAIMS AGREEMENTS AND SELF-GOVERNMENT

AFS agreements allow DFO and the Aboriginal organization to test fisheries and related initiatives in advance of land claims agreements in order to assess their effectiveness. DFO contributes to the negotiation and implementation of land claims agreements. Some examples include, but are not limited to the following:

- Newfoundland and Labrador - Labrador Inuit Association – implementation;
- Maritimes - participating in the longer term Made-in-Nova Scotia Process and entering into discussions on interim measures;
- Québec - work continues with INAC on fisheries issues flowing from the Atikamekw/Montagnais Agreement-in-Principle (Entente principale);
- Central and Arctic - Five (5) claims settled (Inuvialuit, Sahtu, Gwich'in, Nunavut, and Tlicho [ratified in August 2005]. Two claims under negotiation in Northwest Territories (NWT) – Akaitcho and Deh Cho First Nations. Negotiations are continuing with Manitoba/Saskatchewan Denesuline; groups in Saskatchewan and Manitoba want access to traditional land use areas in Nunavut and NWT; NWT Métis Nation negotiations ongoing (contract based); and

- Pacific – DFO participates in the British Columbia Treaty Commission (BCTC) process and coordinates its policy responses with INAC on treaty and Aboriginal programming. As of December 9, 2006, three groups, the L'heidli Tenneh, Tsawwassen and the Maa-Nulth First Nations have reached Final Agreements under the BCTC process.

## 2. DFO'S ABORIGINAL POLICY AND GOVERNANCE

### BACKGROUND

DFO, as the federal department with primary responsibility for oceans and the management and protection of aquatic resources, has had increasing involvement with Aboriginal communities since the 1990s, particularly in areas where DFO administers the aquatic resources and ocean spaces. SCC decisions have provided guidance on the nature and scope of Aboriginal and treaty rights and of governments' responsibility to manage natural resources in a manner consistent with the constitutional protection provided to these rights.

DFO has developed Aboriginal programs in order to foster a respectful and mutually beneficial relationship with Aboriginal groups who are seeking a greater share of the fisheries resource, to contribute to the growth and well-being of their communities, and to provide a greater role in aquatic resource and oceans management. As a result of these programs, DFO has had increasing involvement with Aboriginal communities and has a large on-the-ground presence in Aboriginal communities.





## ABORIGINAL FISHERIES STRATEGY (AFS)

- in its 1990 *Sparrow* decision, the SCC found that where an Aboriginal group has an Aboriginal right to fish for FSC purposes, it takes priority, after conservation, over other uses of the resource;
- in 1992, DFO introduced the AFS to provide, among other objectives, for the effective management of the Aboriginal fishery in a manner consistent with the *Sparrow* decision;
- the AFS was also designed to serve as a bridging arrangement in fisheries matters during the negotiation of comprehensive land claims and self-government agreements;
- the AFS applies where DFO manages the fishery and where land claims settlements have not already put in place a fisheries management framework; and
- the AFS provides for the negotiation of mutually acceptable and time-limited Fisheries Agreements on harvest plans with approximately 250 Aboriginal groups, as well as funding for fisheries management and economic opportunities, including the provision of commercial fishing opportunities.

## ALLOCATION TRANSFER PROGRAM (ATP)

- commercial fisheries access is a priority of Aboriginal groups throughout DFO's management regions, Gulf, Maritimes, Newfoundland and Labrador, Pacific, Central and Arctic, and Québec; and
- the ATP facilitates the voluntary retirement of commercial licences and the issuance of communal licences to eligible Aboriginal groups. Fisheries related economic opportunities provide Aboriginal groups with much needed employment and income.

## ABORIGINAL AQUATIC RESOURCE AND OCEANS MANAGEMENT (AAROM) PROGRAM

- in September 2004, DFO introduced the AAROM program for capacity building and collaborative management initiatives;
- supports the involvement of Aboriginal groups in integrated watershed / ecosystem based planning and management processes;
- applies in areas where DFO manages the fishery but where land claims have not been settled, it provides funding to assist Aboriginal groups that are working together to obtain access to technical, scientific and administrative expertise in order to facilitate their participation in decision-making processes for aquatic resource and oceans management;
- funding can be used for training, commercial fishery access and some capacity building in the aquaculture sector; and
- Aboriginal groups transition from capacity building to collaborative management.

## ABORIGINAL INLAND HABITAT PROGRAM (AIHP)

- in October 2003, DFO introduced AIHP to assist Aboriginal groups in inland provinces to become involved in the regulatory and non-regulatory activities of the Department's fish habitat management activities. AIHP helps Aboriginal groups to work more effectively with DFO.





### ABORIGINAL ENGAGEMENT IN THE SPECIES AT RISK ACT (SARA)

- DFO works with Aboriginal communities regarding the *Species at Risk Act*, which includes awareness and education of SARA information; regulatory process for listing of species; engagement and consultation; and recovery planning and implementation.

### MARSHALL RESPONSE INITIATIVE (MRI)

- introduced in 2000 in response to the SCC decision in the *Marshall* case in the fall of 1999, which decided that treaties signed in 1760 and 1761 by MMFNs include a communal right to hunt, fish and gather in pursuit of a "moderate livelihood;"
- the SCC decision affected 34 MMFNs located in New Brunswick, Nova Scotia, Prince Edward Island and the Gaspé area of Québec;
- the MRI program, which concluded in March 2007, consisted of negotiated interim Fisheries Agreements that provided First Nations with access to the commercial fishery;
- provided licences to fish for various species, as well as vessels, gear and equipment, capacity building, training and infrastructure to MMFNs; and
- Fisheries Agreements were also successfully negotiated with 32 of the 34 First Nations.

### AT-SEA MENTORING INITIATIVE (ASMI)

- the ASMI is a four-year program instituted in 2004 as part of the MRI to further develop the skills of MMFN members to fish safely and effectively in various fisheries. It was also designed to build the capacity within MMFN communities to become independent in providing their training requirements.

### FISHERIES OPERATIONS MANAGEMENT INITIATIVE (FOMI)

- in February 2004, FOMI was created as a four-year program aimed at providing individuals with business and management mentoring as well as strengthening community-level fisheries management structures within individual MMFNs;
- delivery is through the Chiefs and Councils of First Nations and Aboriginal organizations; and
- the initiative helps First Nations Aboriginal organizations to manage fishery operations and establish rules so that benefits from the fishery are shared by the community.

### ATLANTIC INTEGRATED COMMERCIAL FISHERIES INITIATIVE (AICFI)

- created in 2007 as a successor to the MRI to ensure that MMFNs are able to maximize potential from existing access and to strengthen the accountability and transparency of their fishing enterprises; and
- DFO continues to work in close collaboration with MMFNs to meet its commitments in Fisheries Agreements and to facilitate the transition towards the longer process in reaching land claims agreements.

## PACIFIC INTEGRATED COMMERCIAL FISHERIES INITIATIVE (PICFI)

- PICFI was developed to facilitate increased BC First Nation participation in integrated commercial fisheries consistent with, and supportive of, the BC treaty process. The initiative provides for:
  - obtaining commercial fisheries access (quota, licences, gear) through voluntary commercial fisheries licence retirement;
  - providing commercial fisheries access to BC First Nations;
  - business development and fisheries training in support of sustainable First Nation owned and operated fisheries enterprises; and
  - greater participation in fisheries management decision making processes including policy development.



Photo credit: T. McErcy



# ANNEX C

## ABORIGINAL INTERESTS

In order to examine the environment of Aboriginal interests in fisheries and oceans, the following section provides some context under the five major components: access and allocation; co-management; capacity building; economic development; and governance.

INAC has the lead role on behalf of the Government of Canada in the negotiation and implementation of land claims agreements which establish rights to aquatic resources, and processes and structures for management of aquatic resources.

### ACCESS AND ALLOCATION

- access is defined as: *“the opportunity to harvest or use fisheries resources, generally permitted by licences issued under the authority of the Minister of Fisheries and Oceans. The Department must take Aboriginal and treaty rights to fish into account when providing these opportunities;”*
- allocation is defined as: *“the amount or share of the fisheries resource or allowable catch and/or effort that is distributed or assigned by the Minister of Fisheries and Oceans to those permitted to harvest the resource;”*
- in its *Sparrow* decision, the SCC found that where an Aboriginal group has an Aboriginal right to fish for FSC purposes, it takes priority, after conservation, over other uses of the resource;
- FSC allocations have been developed with most Aboriginal groups where DFO manages the fishery;
- in commercial fisheries and under land claims agreements, Aboriginal people seek assured access to the fisheries resource on a long-term and sustainable basis;
- in the FSC and commercial fisheries, access is generally provided by licences issued by DFO under the authority of the ACFLR;
- many commercial fisheries are now fully subscribed;
- during the course of the MRI, DFO entered into Fisheries Agreements with 32 of the 34 MMFNs in the Maritimes and Gaspé region of Québec;
- agreements under the AICFI program will assist the MMFNs to realize the economic potential of their existing fishing licences and encourage them to be involved in fisheries management decision making; and
- on the west coast, there are approximately 200 groups with whom DFO has entered into fisheries arrangements.



## CO-MANAGEMENT

- co-management is defined as: *"the sharing of responsibility and accountability for fisheries management between Fisheries and Oceans Canada and resource users. Co-management will eventually encompass the sharing of authority for fisheries management;"*
- it is the policy of DFO to shift from top-down, centralized management of the fisheries resource by the Department to a shared stewardship of the resource that includes the devolution of certain fisheries management authorities to resource users;
- co-management processes are being put in place in many coastal fisheries;
- however, co-management processes are constrained by sunsetted DFO programs (e.g., ASMI); and
- capacity-building initiatives are required to improve the ability of some partners to contribute effectively to the shared management process.

## ECONOMIC DEVELOPMENT

- DFO's primary fisheries mandate relates to conservation of the fisheries resource and its sustainable use;
- however, Aboriginal people and communities look to DFO to provide them with access to the fisheries and oceans resources and to help them realize related opportunities;
- while DFO does not have a specific mandate for economic development, it is departmental policy to create the circumstances for resource users to become more self-reliant, economically viable and self-sustaining on a long-term basis;

- reporting to the Minister of Industry, Aboriginal Business Canada has an economic development mandate for Aboriginal people;
- the federal regional development agencies have economic development mandates and programs that can be used to help Aboriginal people realize some economic opportunities in the fisheries and other sectors;
- other government departments have a number of programs (e.g., Aboriginal Human Resources Development Strategy, Aboriginal Skills and Employment Partnerships) that can provide skill development and training assistance to Aboriginal people in the fisheries and other sectors; and
- as noted earlier, DFO has some programs (e.g., AFS, AIHP, ATP, AAROM, MRI, AICFI, PICFI, ASMI, FOMI) that can work with Aboriginal groups to realize some economic opportunities in the fisheries sector.

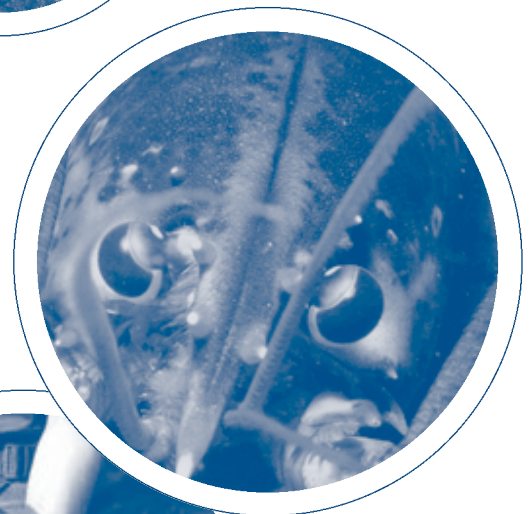
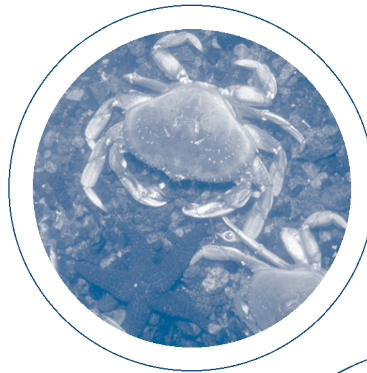
## CAPACITY BUILDING

- capacity building is defined as: *"helping individuals and organizations to acquire the knowledge, skills and resources they need to become involved in decision-making. It also includes creating the conditions necessary for these organizations to participate in decision-making processes;"*
- capacity building is also seen as helping individuals and organizations to deliver more effectively on their jobs;
- many Aboriginal people and organizations need assistance to build capacity in fisheries and oceans related activities, such as harvesting, fisheries management, aquaculture, etc.;

- the AFS, AAROM, MRI, AICFI, PICFI and AIHP programs have been used to help increase the organizational capacity of Aboriginal groups so that they can be effective and successful participants in the fisheries and oceans sector; and
- DFO is also addressing its own internal capacity.
- where land claims are settled, renewable resource boards are involved in co-management, provision of advice and decision-making processes; and
- DFO wishes to improve its structures and processes for involving Aboriginal people in decision making for fisheries and oceans issues.

## GOVERNANCE

- governance is defined as: *"the various systems of authority and decision-making in fisheries management combined. It also includes the participation of resource users and other interested parties in consultation, planning and decision-making;"*
- there are questions of how best to respond to the vision and needs of Aboriginal people, to involve them in DFO's decision-making processes;
- in its management of the aquatic resources, DFO works with about 250 Aboriginal groups, usually at the local level, and it deals with a wide range of topics (e.g., food fisheries, participation in commercial fisheries, habitat, aquatic management, treaties, land claims agreements, enforcement, and capacity building);
- on a regular basis, the Department is called upon to make related decisions, many of them affecting the interests of Aboriginal groups;
- Aboriginal groups are seeking access to fisheries advisory councils that operate at the regional level;







# ANNEX D

## SECTORAL APPROACHES CONSIDERING ABORIGINAL INTERESTS

Aboriginal policy and governance issues cut across most of DFO's programs and activities. The Department has five-year goals (2005-2010) for Aboriginal policy and governance that are focused on strengthening and fostering the relationship between Aboriginal groups and all sectors of the Department.

### SCIENCE

The Science Sector is responsible for conducting research that: supports fisheries management; provides a description of oceanographic phenomena; and supports the conservation and protection of aquatic habitat and species. Science also carries out inspections regarding the health of the wild and cultured fisheries resources. This is accomplished by:

- monitoring the aquatic living resources and their environment, maintaining related databases and providing environmental information for marine and freshwater related activities; and
- maintaining scientific capacity to deliver credible advice to assess risk, to develop resource management practices, regulations and standards, and to transfer the knowledge to the clients, public and media to foster the protection, conservation and sustainable development of living aquatic resources and ecosystems.

All fisheries require an effective and wide-ranging aquatic science for their effective management. In this sense, Aboriginal groups involved in FSC and commercial fisheries are part of the Science Sector's wide user base. The development of good aquatic science calls for an inclusive, participatory and integrated method of developing aquatic science that includes Aboriginal knowledge and viewpoints.

The Science Sector is aware that it is important to address the interests of Aboriginal peoples comprehensively. Strengthened "partnerships" among all science interests, between science and industry, and between the science community and Aboriginal peoples are helpful.

In addition, the Science Sector is responsible for delivering the aquatic segments of the SARA and the United Nations' Convention on Biological Diversity. This work is done through the SARA Secretariat and the Biodiversity Science Branch respectively.

DFO supports Aboriginal ecological knowledge. SARA calls this "Traditional Aboriginal Knowledge" while the Biodiversity Convention contains language "which encourages governments and Aboriginal people to work together to establish processes for empowering Aboriginal communities." DFO Science Sector has noted this and continues to work to increase its working relationship with Aboriginal people.



## FISHERIES AND AQUACULTURE MANAGEMENT

While Aboriginal groups have an interest in greater participation in decision-making processes used for aquatic resource and oceans management, under AFS and AAROM, there has been considerable experience gained in fisheries management. There are common objectives between the government and Aboriginal coastal communities to:

- ensure that conservation and sustainable use of the fishery are the top management priorities;
- promote the economic viability of fisheries by encouraging increased self-reliance and shared stewardship;
- provide greater stability and transparency respecting access and allocation, as the key to establishing a more stable and predictable business and operating environment;
- improve fisheries management decision making by increasing transparency and the participation of Aboriginal groups, stakeholders and others; and
- manage the fisheries in a manner consistent with the constitutional protection provided to Aboriginal and treaty rights.

### SMALL CRAFT HARBOURS

Small Craft Harbours (SCH) operates and maintains a national system of harbours to provide commercial fishers, recreational fishers, Aboriginal fishers and recreational boaters with safe and accessible facilities. SCH operates under the authority of the *Fishing and Recreational Harbours Act* and the *Federal Real Property and Federal Immovables Act*. The mandate of SCH is to keep harbours that are critical to the aquatic sector open and in good repair.

SCH is responsible for over 100 fishing harbours and 220 plus recreational harbours.

SCH are often the only federal presence in small coastal communities and provide the most direct and visible link between the communities and the federal government. In isolated locations such as northern BC and the territories, these harbours provide not only a major transportation link for the largely Aboriginal population, but are also a major source of employment for the communities.

The Government of Nunavut identified the lack of small craft harbours as a major hindrance to its economic development.


Where SCH is considering divesting itself of a small craft harbour, DFO determines whether another organization is interested in assuming responsibility for managing the harbour. First refusal is always given to other federal departments or provincial or territorial agencies. If these agencies express no interest, then municipalities and Aboriginal groups in the area where the harbour is located are approached.

### HABITAT

Canada's fish habitat, the life-support system essential for fish to reproduce, grow and live, is critical to the security and sustainability of Canada's marine and freshwater fisheries resources.

Fish habitat, however, can be easily damaged and lost due to human activities that occur in or near water. These often result in changes either big or small to fish habitat in ways that are both obvious and subtle. The changes often have profound effects on the economic, social, cultural and environmental benefits that marine and freshwater fish provide to Canadians.





Given the importance many Aboriginal groups place on fish and other aquatic resources, the protection of the fish habitat on all three coasts as well as in inland provinces assumes a major significance in Aboriginal fisheries management. In the Pacific Region, for example, Aboriginal involvement in habitat management and protection is usually outlined in AFS agreements, which detail the cooperative management projects for the improvement of the management of fisheries, such as stock assessment, fish enhancement and habitat management to be undertaken by the Aboriginal organization.

Inland, Aboriginal involvement with habitat protection and restoration is administered through the AIHP. Managed by the Habitat Sector, the objectives of the AIHP are to:

- assist Aboriginal groups in acquiring the administrative capacity and scientific/technical expertise to facilitate their participation in habitat protection and restoration;
- encourage the establishment of collaborative management structures that contribute to integrated ecosystem/watershed management and planning processes;
- strengthen relationships through improved information sharing between Aboriginal communities, DFO and other stakeholders and among Aboriginal communities; and
- contribute to the federal government's broader objective of improving the quality of life of Aboriginal people.

The program goal is to facilitate the engagement of inland Aboriginal groups in the regulatory and non-regulatory activities of DFO's fish habitat management program, with the anticipated result being better informed decisions. The program is expected to encourage new collaborations among Aboriginal groups and to build on established working relationships where these already exist.

## OCEANS MANAGEMENT

Oceans are a finite resource, yet the scale and diversity of oceans-related activities are growing dramatically. Commercial fishing fleets, the aquaculture sector, recreational boaters, ecotourists, cruise ship operators, off-shore oil and gas developers and marine transport companies all compete for use of the ocean spaces. The growth of coastal and marine activities has resulted in ecosystem imbalances, degradation of the marine environment and the introduction of potentially harmful species.

In January 1997, Canada enacted the *Oceans Act*, which established a new and innovative approach for the way Canada manages its ocean spaces in the 21<sup>st</sup> century.

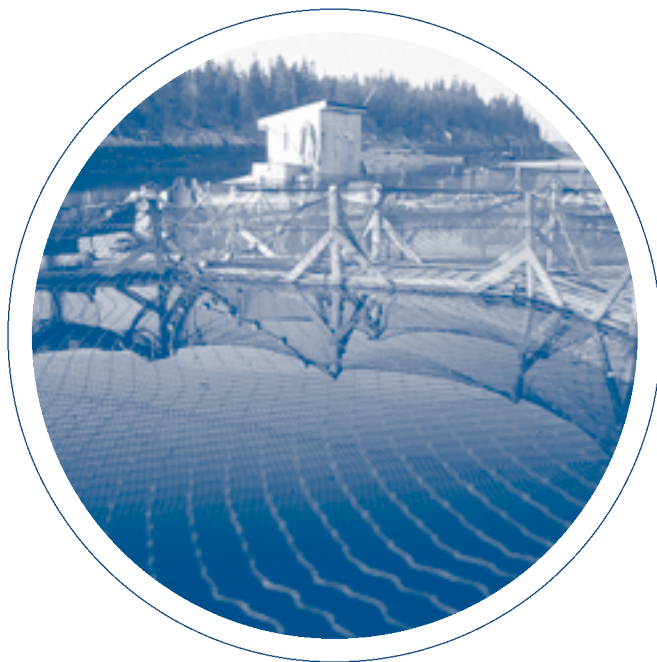
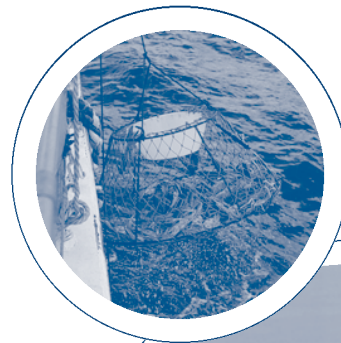
Canada released its Oceans Strategy on July 12, 2002. The Oceans Strategy provides policy direction and assists in building partnering arrangements and pursues a number of key activities, which include:

- integrating science and traditional ecological knowledge to increase our understanding of marine ecosystems;
- reducing marine pollution;
- developing a Federal Marine Protected Areas Strategy;
- using Integrated Management to resolve conflicts and manage human activities in ocean areas where multiple interests are involved;
- promoting stewardship and public awareness; and
- promoting international collaboration to protect globally shared fisheries and ocean resources.

As a first step in implementing the Ocean's Strategy, DFO led discussions with provinces and territories to seek their support for a joint work plan to implement the Oceans Strategy. At the same time, DFO seeks opportunities to cooperate with industry, Aboriginal people and ocean stakeholders in working towards a modern oceans management regime that involves Canadians in decisions that affect them.

To ensure that Marine Protected Areas are part of a comprehensive initiative to protect the health and function of marine ecosystems, they are developed and established within a context of integrated management planning. Such planning considers the protection of each area in light of both environmental and socio-economic benefits.

A coordinated approach, as directed in the *Oceans Act*, ensures that the federal government will work together with Aboriginal groups as well as provincial and territorial governments and individual communities, to advance marine conservation in an efficient and effective manner.



# Aboriginal Programs

# Programmes autochtones







Canada

