

REPORT FROM THE INDIAN FISHERY WORKING COMMITTEE

INTRODUCTION

At the Native Brotherhood of British Columbia's 1982 Annual Convention, a resolution was passed by the delegates calling for the Brotherhood to host a Conference of all B.C. Tribal Councils and Independent Bands to discuss the recommendations of the Pearce Report for the Indian fisheries and to seek a process for Indian people to achieve their goals in the Pacific fisheries. The Aboriginal Council of B.C. offered to host the Conference, with the Native Brotherhood's agreement, and the meeting was held May 26 and 27, 1983 at the Sandman Inn in Vancouver, B.C.

Issues relating to the Pearce recommendations, the Constitutional process and the relationship between Coastal and Interior bands were discussed at the Conference, and a draft proposal was developed, "Proposed Negotiating Process for an Interim Solution for Management of the Indian Fisheries." Copies of this proposal was forwarded to all B.C. Tribal Councils and Bands.

The proposal dealt with a number of matters outlined below:

- A. A six person Working Committee was formed, with three representatives from the Interior and three from the Coast:

Interior

Gordon Frank
Don Moses
Bill Williams

Association of United Tahltans
Central Interior Tribal Councils
Sto:Lo Nation

Coast

Edwin Newman

Tom Greene, Sr.
Vic Amos

Heiltsuk Tribal Council/Native
Brotherhood of B.C.
Skidegate Band Council
Nuu-Chah-Nulth Tribal Council

*Ex-officio

Joe Mathias
(Larry Point

Special Constitutional Task Force
Musqueam Band Council, Alternate)

B. This Working Committee was charged with the responsibility to:

- i) Comment on the Pearce Commission's recommendations for Indian fisheries policies;
- ii) Where necessary, formulate alternatives to the Pearce recommendations;
- iii) Develop specific plans for the implementation of recommended Indian fisheries policies, including but not restricted to fisheries management provincially and/or individual watersheds; allocation among user groups; mechanisms to ensure targets are met; decisions on enhancement and distribution of direct and spin-off benefits from enhancement; habitat protection issues; regulation and enforcement concerns, etc;
- iv) Report to Tribal Councils and Bands.

C. The Working Committee was also requested to make suggestions on:

- i) The composition and duties of a Native Fisheries Council, including the Council's relationship to the Federal and Provincial governments;
- ii) The composition and duties of the proposed River Management Boards, including the relationship of the Boards to the Native Fisheries Council, other Boards and the Federal and Provincial governments;
- iii) A strategy for negotiating the recommended Indian Fisheries policies with the government.

The proposal also called for the Committee to have available the support of professionals (biologists, economists and lawyers) when required.

ACTION TAKEN BY THE WORKING COMMITTEE

The Working Committee met on four separate occasions in 1983: June 2, July 14, August 11 and October 1. (Minutes of these meetings were sent to all Bands and Tribal Councils, and a

Summary of Motions is attached.) At their meeting with the Minister of Fisheries and Oceans on August 11, 1983, the Working Committee negotiated the abolishing of the DFO regulation which required Indian caught food fish to be marked by mutilation. Several bands expressed their support of this action.

The Committee also prepared budgets for the proposed process and approached the Minister of Fisheries and Oceans for the required funding. Although commitments were made for funding, the DFO bureaucracy continually delayed the Minister's promise and it was not until this month that \$50,000.00 was made available by DFO Pacific Region. Unfortunately, the \$50,000.00 must be spent and accounted for by March 31, 1984. The problem with funding will no doubt again be concern in the 1984/85 fiscal period.

WORKING COMMITTEE RECOMMENDATIONS

1. The matter of representation and authority should be resolved.

Do the Tribal Councils and independent Bands want:

- i) The status quo to remain, where fisheries issues are presently handled by individuals, Tribal Councils, bands as well as by Native organizations such as the Native Brotherhood, the U.N.N., U.B.C.I.C., Aboriginal Council, etc?
- ii) To set up a B.C. Native Fisheries Commission to represent both Coastal and Interior Native people on fisheries issues?
- iii) To set up two B.C. Native Fisheries Boards, one from the Interior and one from the Coast?

The basic problem with the present situation (status quo) is that D.F.O. can continue to use the "divide and conquer" approach, making it difficult for Indian people to reach consensus on various issues. While the "one group" approach, a B.C. Native Fisheries Commission representing all Indian

people, could be viewed by government as a united front on fisheries issues, the Band and Tribal Council political leaders may see this as eroding some of their powers.

The two Board concept, one from the Coast and one from the Interior, would allow Coastal people to deal with coastal issues, (all the resources of the sea), and Interior people to deal with the upriver salmon and freshwater fisheries. The major drawback to setting up two boards is that the process will still be left open to DFO's "divide and conquer" approach, pitting one group against the other on certain issues (e.g. allocation). However, this problem could be overcome if each Board elected, for example, three members each to establish a Working Committee similar to the existing one, to work towards consensus. The Committee members would be accountable to and report to their respective Boards, maintaining communication between the two groups.

In any event, the present Working Committee recognizes the need for Indian people to have their own formal consultative mechanism, similar to the Sports Fishery Advisory Board and the Minister's Advisory Council.

2. A formal structure (a B.C. Native Fisheries Commission or Boards) should be established for consultation between the Department of Fisheries and Oceans and Indian people involved in fisheries.

The B.C. Native Fisheries Commission or Boards should have:

- i) their own office(s)
 - ii) their own secretariat(s)
 - iii) funding provided by the Federal Government and reviewed every 5 years.
3. Once the matter of representation has been resolved, the B.C. Native Fisheries Commission or Boards together with the respective Working Committee(s) should include the following as a mandate:
 - i) Establish its own terms of reference to have input into:

- a) Policy matters;
- b) Management (co-management approach with D.F.O.);
- c) Programs (fieldwork, pilot projects, CEDP, etc.)

It should be noted that actual participation in management and programs would be at the Tribal Council or band level:

AND TO

- d) Provide a forum for consensus.

This could be achieved through a Working Committee, as noted above.

- e) Ensure access to the DFO policy-making process;
- f) Advise on decision making affecting all elements of the fishery (Indian and non-Indian.) including allocation, management, enhancement and catch statistics.

The present mechanism DFO uses is the Minister's Advisory Council (MAC), which is comprised of sixteen members with only two Indian representatives, Mr. Edwin Newman and Mr. Chris Cook. The new DFO "Comprehensive Package on Pacific Fishery Policy", which will be considered by Cabinet, calls for a consultative mechanism, a Senior Council, to include representatives from the Indian, sports and commercial fisheries and probably the mining and forestry sectors.

- g) Ensure accountability in the decision making process.

The Working Committee is of the opinion that Indian representation in any consultative mechanism or Fisheries Council must have accountability from all participants, including DFO and government, for it to work effectively. This requires a strong commitment from all parties involved.

- h) Have a direct relationship to our national body, the Assembly of First Nations;

- i) Ensure that the habitat is protected, abusers are penalized and pay for restoration costs (It should be noted that habitat management is an area of joint federal and provincial responsibility.)
- j) Support the position of the Offshore Alliance of Aboriginal Nations on offshore oil drilling: "THAT there be no lifting of the moratorium on offshore drilling UNTIL land and sea claims are settled:

The Native Fisheries Commission or Boards should also:

- ii) Establish monitoring systems for a co-management approach between Indian bands and the Federal and (when necessary) Provincial governments to deal with allocation of stocks between:
 - Bands situated on the same river system;
 - Coastal bands, where the stocks are subject to interception by the other user groups;
 - The Indian and non-Indian component.
- a) The purpose of monitoring systems is to account for the numbers of fish caught and to ensure sufficient spawning stock reach the grounds. This is necessary if the stocks are to be rebuilt and if fisheries are to continue to be a major economic component for future generations.
- b) The Working Committee felt that a general tagging policy is unacceptable to Indian people. Monitoring systems should be developed which are acceptable to all bands. Current information on watershed inventories, catches, band by-laws and controls should be made available for analysis as to their effectiveness. Monitoring systems developed should create employment at the community level.
- c) The Working Committee further noted that monitoring systems should include involvement of Indian people in enforcement, research, collecting statistics and test fisheries.
- iii) Identify and have input into new economic opportunities.

The new comprehensive package on Pacific fisheries policies includes new economic measures for the future of fishermen. The Working Committee strongly recommends Indian involvement at the outset. Economic opportunities such as increased sports fishing, ocean farming, mariculture and aquaculture are being promoted in the new package. As most Indian villages are located in settings conducive to new opportunities, it is paramount that Indian people become actively involved in these new developments.

iv) Ensure that the process will:

- a) Enhance and complement the settlement of sea claims.

The Working Committee respects the fact that certain tribal groups are actively pursuing the settlement of their sea claims, based on traditional use and occupancy. The Working Committee sees the consultative process as on-going even when sea claims are settled because the other fisheries user groups (processing companies, non-Indian commercial fishery, sports fishery, special interest groups, other resource users, etc.) continually try to enhance their own positions usually at the expense of Indian people.

The issue of protecting our sea resources and claims from habitat degradation, over-fishing by other user groups, etc. will always require Indian people's constant vigilance.

- b) Complement the Indian bands goals towards the sale of Indian fish and surplus stocks, whether enhanced or naturally produced.
4. The process should continue to have available the support of professionals (biologists, economists, resource staff and lawyers) when required.

The need to set up special programs through schools, technical institutions and universities to train our own professional Indian people carries the strongest recommendation from the Working Committee. A commitment from government to assist in this regard will be one of the

most important components in ensuring the rightful place of Indian people in the Pacific fisheries for the generations to come.

It should be noted that the consultative process finally agreed to should in no way take away the ability or power from individual Tribal Councils or bands to seek, negotiate or plan for their own fisheries programs to attain their own goals and objectives.

The overall "consultative process" should always complement the process of Tribal Councils and bands and ensure that the Indian position in the fisheries is protected and enhanced.

ISSUES REQUIRING CABINET DECISIONS: "TOWARDS A NEW COMPREHENSIVE POLICY FOR THE PACIFIC FISHERIES"

Last year (February 18, 1983) the Minister of Fisheries and Oceans Honourable Pierre DeBane met with his Advisory Council (MAC) following the DFO stingraids, and in his opening remarks stated that:

"Since our last meeting, the issue with Indian people came up. I met and discussed it with them; together we talked about our problems and aspirations. I am committed to do what I can to help Indian people; they have been in this country before any of us. For them, the fishery is an important part of their life. Through fruitful negotiations on some major issues, we will go to the maximum extent possible to devise the most generous and sensible policies. I am willing and able to establish a National Advisory Council to the Minister of Fisheries on Native affairs, with provincial chapters to deal with particular problems in each province. We hope that both sides will begin working on this issue.

"We resented the impression left that Indian people are the worst offenders of the Fisheries Act. It was my duty to go public and say 'that's not the case.' Over 80 percent of all charges (against the Fisheries Act) are laid against white people. As stated in the Native Brotherhood magazine, Indian people are against illegal fishing."

The Minister re-iterated his support for Indian people at the Native Brotherhood Convention in November, 1983 and at his recent meeting with MAC held February 12, 1984.

However, before Indian people can enhance their economic position in the fisheries, there are a number of problems that have to be resolved. (Enclosed for a reference is the document prepared by DFO in late January, 1984, "Pacific Fisheries Policy: Issues and Options.") The following is an overview of the problem.

Escapement

The major problem facing the Pacific fishery is the severe decline of the stocks. Some salmon species are nearing extinction if immediate actions are not taken. DFO plans to further reduce fishing efforts 30 - 35% on stocks harvested by all user groups, in order to commence a rebuilding program.

Fleet Rationalization

All parties agree that the present commercial fleet is over-capitalized, over-financed and has too much catching power. This coupled with the fleet's mobility makes fleet reduction one of the major problems to be addressed by Cabinet.

Any increased Indian participation in the fisheries must include a massive reduction in the non-Indian commercial fleet. The Minister of Fisheries and Oceans has agreed that native commercial fishermen are not to be included in any fleet reduction scheme as they already suffered severe set backs through previous and present government policies. The Native Brotherhood together with the Department of Indian Affairs is presently preparing material for Cabinet proposing measures to:

- a) Stabilize the Indian commercial fleet
- b) Protect Indian licences
- c) Implement the B.C. Indian Fishermen's Economic Development Program to include:
 - an Indian buy-back scheme to keep Indian owned vessels and licences in Indian hands
 - Purchase of Indian operated rental vessels

- Training component
- New economic opportunities in the fisheries
- d) Stabilize Indian co-operative processing plants.

The Minister of Fisheries and Oceans has told his Advisory Council not to expect the government to fund a buy-back program to reduce fishing capacity. However, the Minister did suggest that the government could help provide a legal mechanism for a self-financing system by the participants. The Minister also stated that any buy-back program must get to the root of the problem, be politically acceptable and help design a fleet which meets three objectives:

- a) Protection of the stocks for future generations;
- b) Economic viability; and
- c) Provide for fair allocation.

Royalties and/or Increased Licence Fees

The Minister stated that the costs of any buy-back scheme would have to be paid back by those remaining in the industry, either through a royalty tax or a substantial increase in licence fees. Those who stay in the industry pay for those getting out.

Indian fishermen are basically opposed to royalties or any increase in licence fees. However, this revenue could be negotiated to contribute directly to Indian economic development programs and possibly self-government. In any event, increased fees or royalties would require negotiation and input from Indian people.

Non-transferability of Licences

The federal Fisheries officials also stated that they would like to see the asset value of licences removed. This could be done by making the licences non-transferable. Licences would then be removed from the industry when:

- a) a fishermen retires;
- b) the vessel is seized by a financial institution
- c) a fishermen dies.

Non-transferability of licences would no doubt substantially decrease the value of a fisherman's vessel. Without the licence attached to the vessel, once a fisherman leaves the industry for any reason, his vessel loses the privilege to continue fishing.

Quotas and the Common Property Resource

The Minister of Fisheries stated to his Advisory Council in February, 1984, that while a common property resource is "a great thing," it causes irrational over-investment. With quotas, ideally there would not be over-investment because fisherman could only increase his quota (and, it follows, his capital investment) when he acquires his neighbour's fleet. In other words, if a fisherman needs more production to make his operation economically viable, he would buy out another fisherman's quota, thereby removing one more vessel from the fishery.

Some MAC members voiced their opposition to area licensing and privatization of the resource through projects such as the Qualicum and Sliammon surplus fisheries. However, the Minister again stated that the Qualicum and Sliammon projects offered a good basis for Indian economic development through the use of the fishery. The Minister expressed his support and commitment to this concept, as it also provided an opportunity for employment for Indian people.

Indian Fishery

Although the Department of Fisheries and Oceans was putting pressure on the Minister and the Advisory Council to commercialize the "food fishery," this met with a degree of opposition from certain members of the Council. It was decided that the "status quo" should be left in place until the Indian people had an opportunity to develop their own programs and controls for the sale of Indian fish.

Further to the issues outlined above, the comprehensive package which will be considered by Cabinet should deal with the following:

- a) A new management regime:
- b) Stringent regulations for the 1984 fishery, moving towards a co-management approach, area and gear licensing as early as 1985;

- c) Cleaning out unused licences;
- d) Taking the asset value of the licence (through measures such as non-transferability, quotas and progressively higher licences fees):
- e) A directed buy-back program;
- f) New economic measures for the future (such as ocean farming, mariculture, development of new species, etc.);
- g) A new approach to the Salmonid Enhancement Program, where stocks are naturally rebuilt and non-producing streams and rivers rehabilitated
- h) Increased Native and sports fishing opportunities; and
- i) A new "phased-in" consultative process replacing MAC.

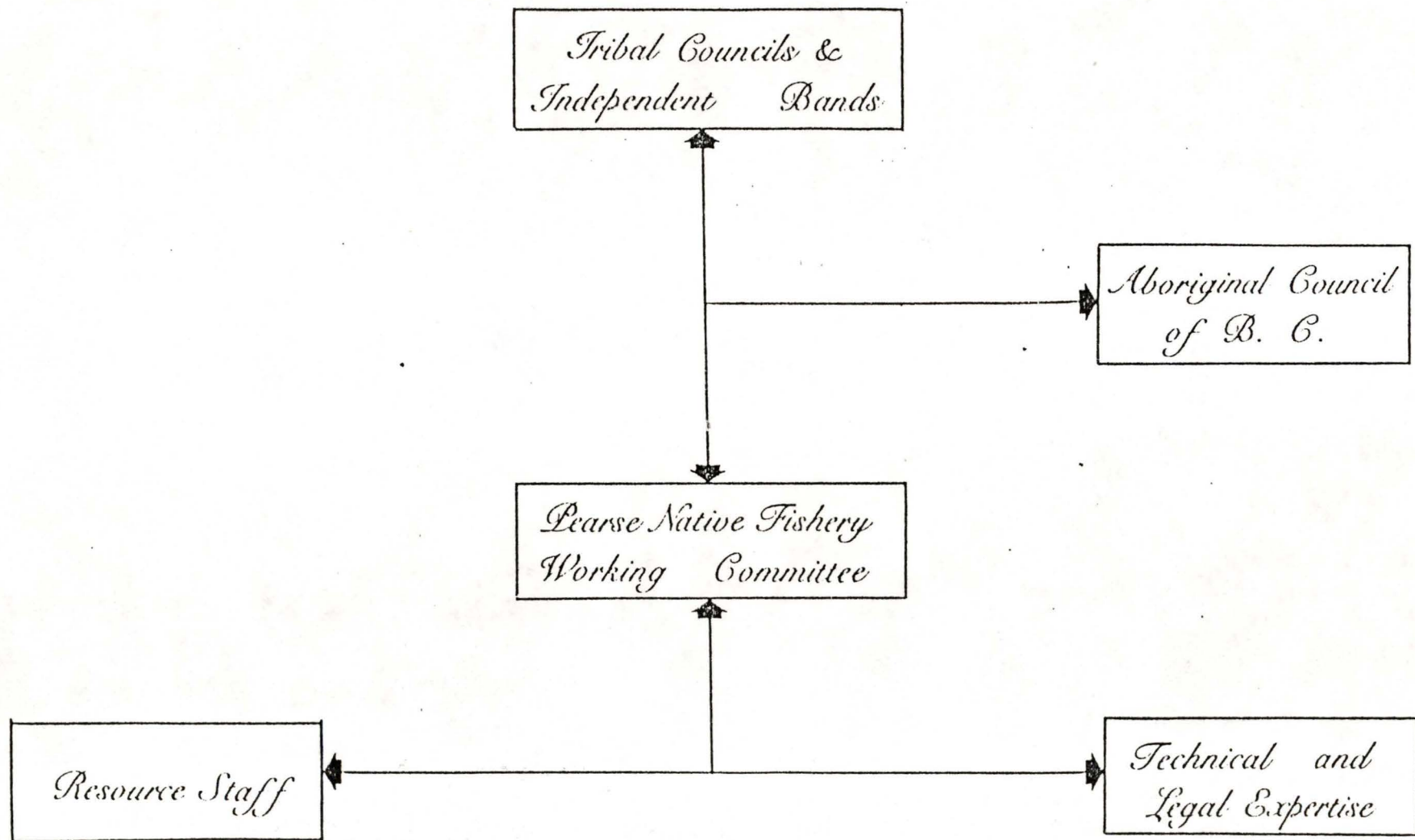
It is apparent that fishing as we know it today is not working and therefore a new management approach is needed for the future viability of the Indian fisheries.

** For the purpose of this report, we have applied the following definitions

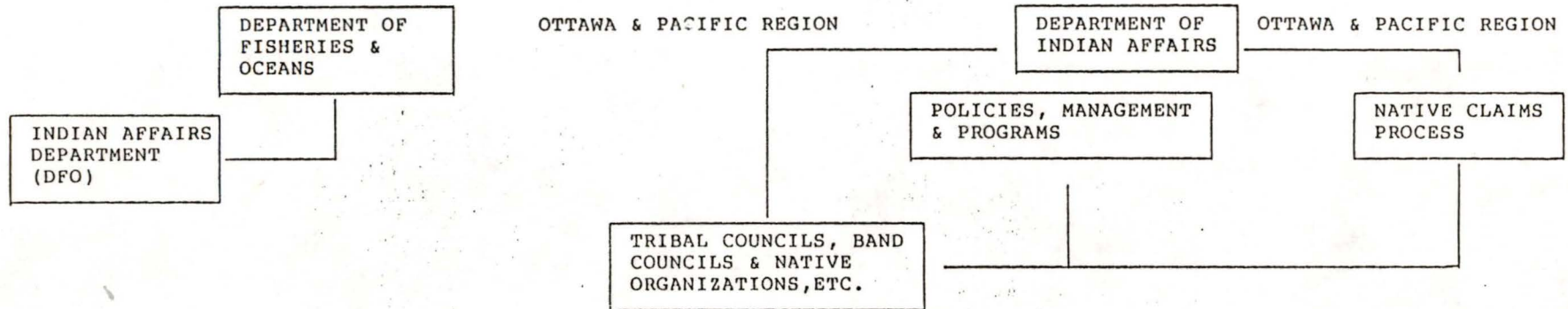
PROGRAM	POLICY	MANAGEMENT	OPERATIONS	MONITORING
OUTLINES THE WHOLE INTENT. INCLUDES POLICY OBJECTIVES, MANAGEMENT, OPERATIONS, MONITORING	SETS OUT THE COURSE OF ACTION SELECTED TO GUIDE DECISION-MAKING. USUALLY REQUIRES LEGISLATION OR REGULATION.	DESIGNS THE GOALS AND OBJECTIVES, AND CONTROL OF POLICY.	HOW THE PROGRAM AND POLICY ARE CARRIED OUT.	EVALUATING THE PROGRAM TO SEE IF POLICY IS BEING CARRIED OUT AND IF THE DESIRED RESULTS ARE BEING ACHIEVED.
EXAMPLES.				
A-I licences for Indian Fishermen.	Moratorium on selling A-I licences to non-Indian fishermen.	Issue A-I licences.	Ensure that A-I licences remain in Indian hands.	See if policy is being carried out. Are all A-I licences being fished by Indians?
Economic Development Program.	Increased native participation in the management of the fisheries resource.	Allocate monies for Economic Programs, design criteria for projects.	Hire staff, construct hatcheries and/or other management programs.	Check results, project reports
Monitoring Program for Indian fisheries	Co-management of fisheries between Indian people and DFO. Ensure escapement targets are met.	Allocate monies, set up River Management Boards, design methods to control catches.	Hire staff, record catches and assess escapement numbers.	Check results.

Organization Chart as it relates to the
Pearse Native Fishery Working Committee

SCHEDULE I



OPTION I STATUS QUO
FOR PACIFIC FISHERY CONSULTATION



DEPICTS SOME FORMAL RELATIONSHIP _____
DEPICTS SOME INFORMAL RELATIONSHIP

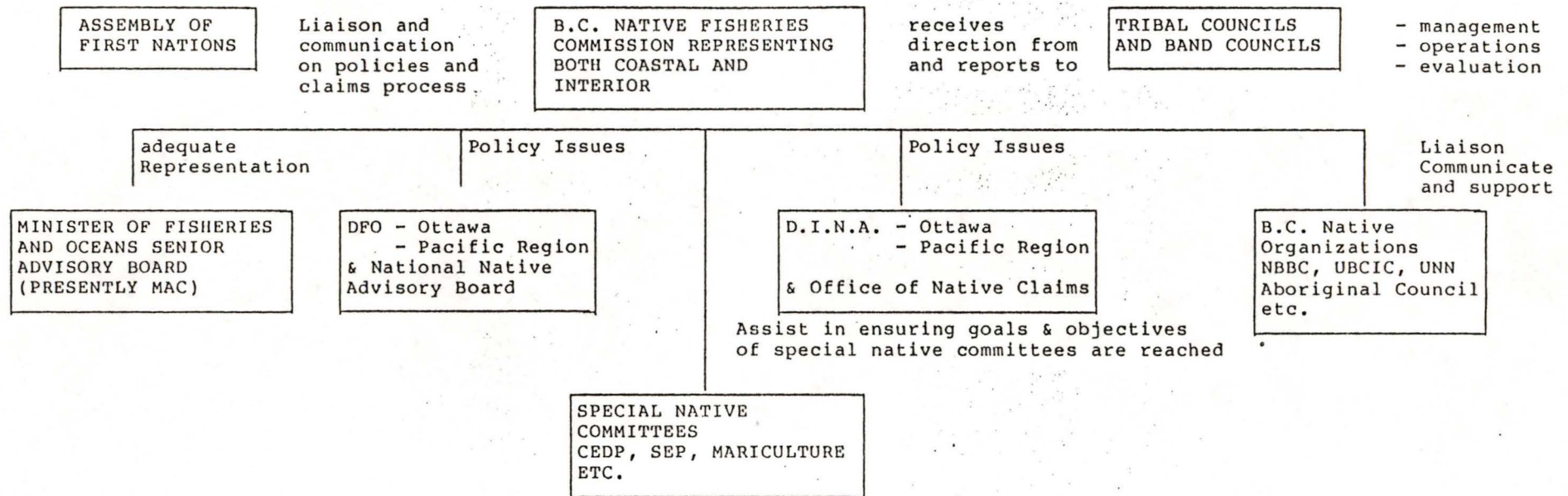
ADVANTAGES

- requires very little structural change

DISADVANTAGES

- no consistent overall approach to co-management
- Government will continue divide and conquer techniques
- no formal link between DIA policies, programs and claim process
- no formal process between Indian people, DIA & DFO on policies, management of programs or how process can complement claims
- no formal communication process
- present system ad hoc at best
- creates factions amongst Indian groups.

OPTION II ONE GROUP REPRESENTING
ALL INDIAN PEOPLE COASTAL AND INTERIOR
FOR PACIFIC FISHERY POLICIES



DISADVANTAGES

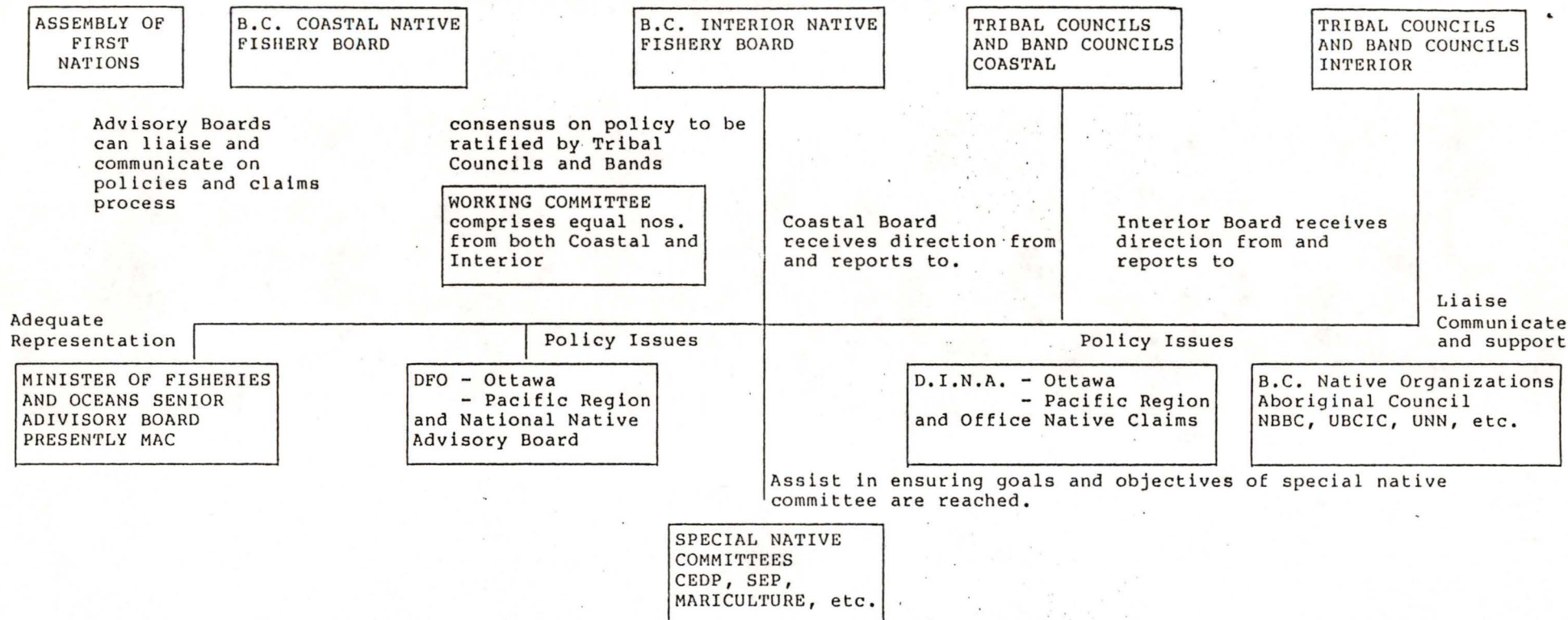
- requires changes to present structure (status quo)
- could be viewed by some as eroding political power
- coastal claims to fishery differs from that of interior
- could be viewed by DFO & DIA as taking away some of their authority

ADVANTAGES

- could be viewed as united front
- would have its own office and secretariat
- consensus should be easier to attain on Policy issues
- could assist Tribal Councils and Bands, in reaching goals and objectives, e.g. S.E.P., Mariculture, etc.
- should have adequate representation on Ministers Advisory Council to ensure Indian People's position on fisheries is voiced and protected.

OPTION III TWO GROUPS REPRESENTING
ONE FOR COAST AND - ONE FOR INTERIOR
FOR INDIAN PEOPLE CONSULTATION INTO
PACIFIC FISHERY POLICIES

- management
- operation
- evaluation



DISADVANTAGES

- requires changes to present structure (status quo)
- could be viewed by some as eroding political power
- could be viewed by DFO and D.I.N.A. as taking away some of their authority
- policy issues could to some extent still cause divisions between coastal and interior Boards (allocation).

ADVANTAGES

- could be viewed united front, with working committee endeavoring to to call consensus on policy issues.
- each Board would have its own office and secretariat
- could assist in Tribal Councils and Bands reaching goals and objectives in Fisheries.
- each Board should have adequate representation on Minister's Senior Advisory Council.

NOTE: The Working Committee could evolve into a B.C. Native Fisheries Commission to interpret policies from the band level up to work towards consensus and to ensure policies are carried through the political process (becomes reality).

APPENDIX
MINISTER OF FISHERIES AND OCEANS
ADVISORY COUNCIL (MAC)

During the month of January 1984, the Minister's Advisory Council (MAC) hired a professional facilitator to help design a consultative process that would eventually replace MAC. The facilitator held a series of meetings with MAC and came up with the following option to a consultative process.

SENIOR PACIFIC FISHERY
COUNCIL OR ITS NOMINEE
20 MEMBERS WITH AN
INDEPENDENT CHAIRPERSON

- have its own secretariat
- have its own office
- control its own budget

INDIAN FISHERY
ADVISORY BOARD

- have its own Executive Secretary Ass't
- have its own Secretariat
- have its own office
- control its own budget

SPORT FISHERY
ADVISORY BOARD

- have its own Executive Secretary
- with Executive Ass't
- have its own Secretariat
- have its own office
- control its own budget

COMMERCIAL FISHERY
ADVISORY BOARD

- have its own Executive Secretary
- have its own Secretariat
- have its own office
- control its own budget

THE THREE EXECUTIVE SECRETARIES TO

- reach consensus on issues where possible and if not file diverse position reports
- presumably, 3 Executive Secretaries would from time to time work out of Senior Pacific Fishery office thereby making it necessary for each Board to have its own Executive Secretary to look after day to day operations
- report through independent Chairman to Senior Pacific Fishery Council
- be accountable and responsible to each of its own Advisory Boards.

CONSULTATIVE PROCESS

The Minister's Advisory Council sees the consultative process including:

1. Major perceived components:
 - a) Commercial Fishery
 - b) Sports fishery
 - c) Native fishery

2. Participation in:
 - a) Catch levels
 - b) Number of participants
 - c) User groups
 - d) Economic and Social value
 - e) Geography
 - f) Species fished
 - g) Organizations
 - h) Allocation;
3. A consultative or advisory body with decisions based on consensus and an agenda of priorities. Where consensus cannot be reached, there should also be a mechanism to present all divergent positions to the Minister for his considerations;
4. A neutral chairperson appointed for a fixed term;
5. A permanent secretariat with its own office, established for the Council;
6. Funding for the Secretariat and Council to be provided by the Department of Fisheries and Oceans.

The purpose of the consultative body is to:

1. Ensure a mechanism which presents fairly the positions of all elements of the fishery;
2. Provide a forum for consensus by the fishery;
3. Ensure access by the fishery to the DFO policy making process;
4. Advise on decisions affecting all elements of the fishery, and;
5. Ensure accountability in the decision-making process.

MAC was of the opinion that the consultative process should be accountable to the fishery and must therefore communicate with the participants and the public on a regular basis. MAC also felt that as its mandate was very limited, any consultative process requires formal commitment and recognition by government in order to be legitimate in the eyes of the fishery.

Based on the information available and meetings held with MAC on the subject of consultation, the facilitator has proposed the following steps:

1. That the process for consultation evolve from the present Minister's Advisory Council;
2. That membership be open to nominees of elements of the fishery whose the consultative process; that it should not

exceed 20 members; and that the body be appointed by the Minister of Fisheries and Oceans, upon recommendations by MAC;

3. That a neutral chairpersons be appointed by the Minister from a list of not more than five and not less than three nominees, identified and unanimously accepted by the Council;
4. That a secretariat for the Council, made up of three senior secretaries with appropriate support staff and an independent office, be established for the co-ordination and administration of the Council's affairs;
5. That funding be provided by DFO for the Council and Secretariat for an initial period of five years;
6. That the time schedule to accomplish the above be by December 31, 1984.

While it is generally agreed by MAC that the consultative process should include the aforementioned, and while the current members of MAC recognize the inequalities in the present Council, there has not been any consensus on what "fair" representation would consist of. MAC members would also want to ensure the consultative process would not be subject to being undermined by the senior secretaries. As well, the matter of how the consultative process would relate to other DFO advisory groups such as the Skeena River Management, Herring Advisory, Salmon Enhancement, etc. has yet to be determined.

However, the facilitator has suggested the following for representation, after reviewing the material and holding meetings with MAC:

1. The major components of the fisheries (commercial, native and sport) should have a senior secretary, for co-ordination, administration, research and communication services. It is hoped that many sectoral issues could be resolved at this level, leaving the Council to deal with policy matters.
2. One can assume that each major component could have its own advisory board so as to increase the chances of consensus on sectoral questions.
3. One can also assume that the senior secretaries could report to the chairperson on day-to-day matters.
4. An orderly "phase-in" period from the present situation to the new consultative process should be undertaken.