

9 May 2022

Fabian Manning, MP  
Chair, Senate Standing Committee on Fisheries and Oceans  
Ottawa, ON

Dear Chairman Manning:

**Re: West Coast Perspective on POFO Study of Rights-based Fisheries**

The BC Seafood Alliance (BCSA) is an umbrella organization whose 30 members represent fisheries accounting for about 90% of the value of wild seafood from Canada's Pacific Coast. Our members are associations that represent commercial fishermen—the licence holders and vessel owners and operators in almost all major fisheries in BC with vessels ranging from less than 30 feet to over 150 feet. We also represent most of the major seafood processors, who account for at least 70 per cent of salmon, herring and groundfish production as well as some specialty products, making us by far the most representative commercial fishing organization on the West Coast.

We understand the Committee is concluding its deliberations the implementation of Indigenous rights-based fisheries across Canada and wanted to provide a perspective on how implementation is unfolding on the West Coast.

Let me start by assuring the Committee that we support Reconciliation with Indigenous peoples and understand that this will include increased commercial access to fisheries. We do, however, have a number of issues with how this is being implemented on the West Coast where we are seeing essentially uncompensated reallocation of access in salmon, crab and yelloweye rockfish in the Five Nations' rights-based fishery. This despite assurances from Minister Jordan in 2021 letter to me that "DFO's policy is to mitigate the access provided to the Five Nations through voluntary relinquishment of licences from the commercial sector."

**Area D Chinook Salmon**

Area 25 Chinook is the mainstay of the gillnet fleet. The allocation to the Five Nations has steadily increased from 7.73% in 2019 to 30.5% in 2021. Mitigation has been very limited with fewer than 5% of Area D licences available in PICFI. The uncompensated loss to each Area D licence holder in 2021 was about \$10,000, or roughly one-third of gillnet revenue last year.

**Area E Crab**

In December 2021, without any consultation DFO notified the crab industry that it planned to reallocate 50% of the inside commercial fishery in Area E and 25% of the outside fishery to the Five Nations. DFO was unable to offer any mitigation apart from bringing forward the opportunity to select a different area, thereby compromising other crab fisheries and the crab resource. This would have ruined the livelihoods



of 30 family-run fishing businesses and compromised up to 80 jobs in the Tofino community. Thanks to the Five Nations, not DFO, a two-year transition program is now in effect that will delay the full impact until 2024 since the Nations do not in fact have the capacity to catch the allocation. While DFO has very recently put forward a mitigation plan, it does not meet the needs of harvesters who are being forced out of the fishery.

### **Yelloweye Rockfish**

Yelloweye is SARA-listed as Special Concern and COSEWIC listed as threatened and is important to the commercial groundfish fleets which have made significant sacrifices to rebuild the stock. It is also one of the more valuable inshore rockfish species, commanding a significantly higher ex-vessel price. In the last four years, the Five Nations have consistently exceeded their allocation of Yelloweye Rockfish, in the range of 279% to 448% above the allocation. The management regime is clearly unable to keep the Five Nations fishery within its allocation and the overages are deducted from the total mortality limit, essentially reallocating from the commercial fleet to the Five Nations without compensation. The Five Nations overages also threaten the resource as well as undermining the integrity of groundfish management.

### **Common Elements**

All three examples demonstrate reallocation without compensation or mitigation. DFO has not consulted properly on the Five Nations fishing plans with the commercial sector, certainly not the “full hearing that is fair to all stakeholders” the *Abousabi* court decision requires. DFO is also not transparent—we have not been provided information or data on how the allocations were determined or from where they came and the Five Nations catch data is either not available or very difficult to access.

The message I would like to leave with the Committee is that Canada must bear the cost of Reconciliation in commercial fisheries not individual harvesters or fleets. Canada must be honest with us and propose clear measures of mitigation and compensation for lost access rather than putting fishing families out of business.

Thank you very much for your consideration. I have attached a slide deck providing additional detail.

Yours sincerely,

BC SEAFOOD ALLIANCE

A handwritten signature in blue ink that reads "Christina BurrIDGE".

Christina BurrIDGE  
Executive Director



**Full Members**

Area A Crab Association  
BC Northern Trollers Association  
BC Salmon Purse Seine Association  
BC Tuna Fishermen's Association  
Canadian Sablefish Association  
Deep Sea Trawlers Association  
Gulf Troll Association  
Pacific Halibut Management Association  
Pacific Prawn Fishermen's Association  
Pacific Sea Cucumber Harvesters' Association  
Pacific Urchin Harvesters Association  
Underwater Harvesters Association

**Associate Members**

BC Salmon Marketing Council  
Canadian Groundfish Research and Conservation Council  
Canadian Pacific Kazunoko Association  
Global Freight Solutions  
Herring Conservation and Research Society  
Pacific Coast Mutual Marine Insurance Co.

**Processor Members**

Aero Trading Co.  
Canadian Fishing Co.  
C.B. Island Fisheries Ltd.  
Cloverdale Cold Storage Ltd.  
Fisher Bay Seafood Ltd.  
French Creek Seafood Ltd.  
Grand Hale Marine Products Co. Ltd.  
Keltic Seafoods Ltd.  
Lions Gate Seafood Ltd.  
North Delta Seafoods Ltd.  
Osprey Marine Ltd.  
Pacific Seafood  
West Coast Reduction Ltd.

# Five Nations Multi-Species Fishery

- What The Courts Have Said
- What The Government of Canada Has Said
- What Is Actually Happening
  - No Industry Consultation / Lack of Transparency
  - Reallocation Without Compensation
  - Undermining Conservation Efforts and Other Commercial Fisheries
  - Fisheries Reconciliation Agreements and Treaty Settlements at Risk
- The Way Forward – Reconciliation Transition Plan

# What The Courts Have Said

- real concern over negotiations between DFO and First Nations that directly affect stakeholders, as DFO does not and cannot represent stakeholders' interests
- interpreted Five Nations' right as a "limited commercial right", limited to the defined area of their traditional fishing grounds.
- determined Five Nation's right to a commercial fishery provides for a reasonable right of opportunity, but not a right of outcome, in respect of viability.
- reaffirmed fishing outside of the defined territory not subject to any aboriginal right and is regulated in the same way as other commercial users of the resource, and that in a number of cases the allocation sought by the First Nation was excessive.
- confirmed rights of the affected First Nations are non-exclusive and rights and interests of other users of the resource must be properly taken into account in the management of the fishery.
- agreed allocations provided to Nations are for the most part appropriate and sufficient given present circumstances; and, *Gladstone* factors (economic and regional fairness, historical reliance by non-aboriginal groups) come into play if Nations assert allocation is not sufficient to satisfy the Aboriginal right
- process of delineating right through fishing plans must engage stakeholders.

***The Courts have been clear Five Nations right applies to a non-exclusive, defined area and not meant nor intended to create massive disruptions or re-organizations of fisheries at local or coastwide level.***

# What The Government of Canada Has Said

- *“Canada takes the position that the mitigation policy and PICFI and ATP do not stand in the way of granting appropriate priority to the plaintiffs’ right. It says that policy achieves reconciliation between the plaintiffs with their aboriginal right and all the other sectors. If reconciliation can be achieved in a way that properly accommodates the right, then it should not be necessary to require involuntary relinquishment of licences from other sectors.” [emphasis added]*

Supreme Court of British Columbia (Ahousaht Indian Band and Nation v. Canada (Attorney General), Paragraph 830), April 19, 2018

- *“Regarding compensation, DFO’s Policy is to mitigate the allocation provided to the Five Nations through voluntary relinquishment of licences from the commercial sector.”*

The Honourable Bernadette Jordan (correspondence to BC Seafood Alliance, February 4, 2021)

# What Is Actually Happening: No Industry Consultation / Lack of Transparency

- **no engagement with the commercial fishing sector**

- webinar on initial Five Nations draft management plan
- provide comments on initial and subsequent draft management plans with no dialogue on allocations, details or implications
- little or no DFO response to questions or comments

*Does not constitute “a full hearing that is fair to stakeholders”*

- **lack of transparency**

- growing concern over how mitigation policy is being implemented
  - no information/data on from where the allocations came
- Five Nations catch data either not available or very difficult to access
- implications for commercial fisheries (e.g., MSC certifications, US MMPA requirements)

# What Is Actually Happening: Reallocation Without Compensation

## Salmon – Area 25 Nootka Conuma Chinook

- mainstay of Area D gillnet fleet
  - even more so now given recently announced massive salmon closures
- Five Nations allocation has been steadily increased
- limited mitigation
  - deficit of ~25% (fewer than 5% of Area D licences available in PICFI inventory)
- implications
  - lost revenue to Area D licence holders (many of whom are Indigenous)
    - ~\$10,000 (1/3 of total revenue) in 2021 alone

Year	Five Nations Allocation
2018	7.73%
2019	15.2%
2020	30.5%
2021	30.5%



# What Is Actually Happening: Reallocation Without Compensation

## Crab – Licence Area E

- significant increase in Five Nations allocation proposed for 2022
- Recent mitigation plan unacceptable
  - Will force out harvesters with inadequate compensation
- coastwide implications
  - all licence holders (Indigenous and non-Indigenous) impacted as Area E vessels select other areas
  - lost access
  - Increased effort in other areas
  - increased pressure on crab resource
  - reduced incomes

Management Area	Total Trap Limit	Five Nations Allocation (% , # of traps)		
		2021	2021 Adjusted <sup>1</sup>	2022 Proposed
E-Tofino	8,400	10.85% (911)	4.79% (402)	25.97% (2,182)
E-Tofino Area 24	1,600	10.85% (174)	4.79% (77)	50.00% (800)
E-Tofino Amphitrite Hole	3,200	10.85% (338)	4.79% (153)	25.97% (831)

<sup>1</sup> allocation adjusted at request of Five Nations, PICFI allocations utilized in commercial crab fishery

# What Is Actually Happening: Reallocation Without Compensation

## Groundfish - Yelloweye (YE) Rockfish

- courts found rockfish are a bycatch species, not a target species
  - allocation to enable fisheries for halibut, lingcod and dogfish
- consistent and significant YE catch overages in Five Nations fishery
- no mitigation
  - deducting overages from total mortality limit is reallocation without compensation
- coastwide implications
  - all halibut and outside rockfish licence holders have share of YE TAC
  - impacts all groundfish fishery participants (Indigenous and non-Indigenous) who need access to YE

Five Nations YE Rockfish			
	Adjusted Allocation <sup>1</sup> (lbs)	Landed Catch (lbs)	Overage (%)
<b>2019</b>	1,072	5,874	448%
<b>2020</b>	3,263	12,353	279%
<b>2021</b>	4,684	22,672 <sup>2</sup>	384%

<sup>1</sup> ATP/PICFI access removed at request of Five Nations

<sup>2</sup> Five Nations 2021 YE landed catch represents:

- 32% of entire hook & line commercial YE catch in Groundfish Management Area
- 22% of halibut, lingcod and dogfish landed in Five Nations fishery (compared to 2% in the hook & line commercial groundfish fishery)

# What Is Actually Happening: Undermining Conservation Efforts & Other Commercial Fisheries

- **Example – Yelloweye (YE) Rockfish**

- **Undermining Conservation**

- species under DFO rebuilding plan, priority (Batch 1) species for fish stock provisions, SARA-listed as “Special Concern” and recently re-assessed as “Threatened” by COSEWIC
- allowing ongoing catch overages inconsistent with precautionary approach and increases risk to species
- increasing Five Nations allocation does not address problem (and Courts stated not justified on basis of conservation and on general economic and regional fairness)
- allowing use of longline gear in Five Nations fishery will only exacerbate the problem

- **Undermining Other Commercial Fisheries**

- demonstrates different rules from commercial fishery inconsistent with proper care and management of the resource
- diminishes significant sacrifices commercial sector has taken to support YE rebuilding
- undermines integrity of commercial groundfish management
- threatens future viability of the Integrated Commercial Groundfish Fishery and participants (Indigenous and non-Indigenous)

# What Is Actually Happening: Fisheries Reconciliation Agreements & Treaty Settlements at Risk

- How will the substantial licence relinquishment necessary to accommodate the proposed Five Nations allocations be realized, given PICFI commitments?
- Extrapolating current rights-based First Nations (and treaty) allocations, will there be enough access (licences, quota) to go around for many species?
  - Nations that negotiate/reconcile later risk not getting anything; won't be any allocation left
- If communal-commercial, Reconciliation agreements or treaty-negotiated commercial access can be eroded by the rights-based fishery, will First Nations choose litigation instead of negotiation?

# The Way Forward – Reconciliation Transition Plan

1. Current path inconsistent with what Courts and Canada have said
2. Reconciliation is a national imperative, but BC commercial fishing families disproportionately bearing the costs
3. A comprehensive Reconciliation transition plan, including compensation and transitional support for BC commercial fishermen, is essential
4. We need committed and consistent engagement by DFO to outline how to do this.