



## FIRST NATIONS FISHERIES COUNCIL of British Columbia

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### First Nations Fisheries Council of BC DRIPA Task Group Feedback: Draft Recommendations BC Declaration Act “Action Plan”

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#### Overview

In a continuous effort to support the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), the First Nations Fisheries Council of BC (FNFC) has prepared feedback on the development and implementation of the proposed *Declaration Act* “Action Plan.” Supported by a memorandum of understanding (MOU) signed between the Province and FNFC in 2019, several engagement sessions and workshops have been held to garner First Nations’ input on the Action Plan. In September 2020, a DRIPA Task Group was established to inform strategies and produce recommendations. Initial recommendations to inform the creation of the Action Plan were drafted by the Task Group and FNFC, and presented to the Province via the “Turning the Tide: Actions to Implement the Declaration on the Rights of Indigenous Peoples Act” report in early 2021. This document summarizes subsequent Tier 1 and Tier 2 meetings, and provides several high-level and action-item specific recommendations for the Province to consider in the next iteration of the Action Plan.

Generally, the BC Action Plan is ambitious and broad in scope. While the expansive nature of the proposed action items creates ample space to explore collaborative policy/program development and implementation, it also leaves substantial room for expansive expectations regarding scope of the *Declaration Act* and its implementation and timelines. **Clearly identifying the scope and establishing reasonable expectations regarding the Province’s capacity, constraints, and proposed timelines for implementation ahead of time will help to focus collaborative efforts and avoid unnecessary frustration down the road.**

Communicating, and most importantly, meeting expectations will also foster trust between First Nations and the Province, a necessity when building toward the meaningful implementation of UNDRIP and reconciliation. It is important to recognize that BC First Nations view the implementation of the Action Plan as an opportunity to establish a more collaborative and progressive style of governance in Canada, one that fundamentally incorporates First Nations governing bodies. Different ministries from both the federal and provincial governments must work with First Nations governing bodies to create, implement and manage programs and

policies. The Province may want to consider addressing this nuance in the next iteration of the Action Plan.

## **High-Level Recommendations**

1. **Prioritize the co-analysis (BC and Nations) of current laws and legislation that may impact action items outlined in the Action Plan.** This analysis may involve a review of the current laws and legislation in place that are relevant to, or may affect, the implementation of action items. The FNFC does not expect the Province to reform law and legislation via the Action Plan, as it is anticipated that this priority will be actualized through a separate initiative under section 3 of the Declaration Act (the Action Plan falls under section 4 of the Declaration Act). Regardless of this distinction, the FNFC recommends that the Province, in consultation and cooperation with First Nations, expands on the linkage between section 3 and section 4 by identifying and reflecting upon how *current* laws and legislation may impact the implementation of action items. For example, the *BC Water Sustainability Act* will impact the successful implementation of several action items outlined in the Action Plan. Although the Action Plan will not prioritize reformation of this act, it should explore how successful implementation of actions items will be contingent on its reform and in what capacity.

**Rationale:** The Action Plan stipulates that a dedicated secretariat will be established to “ensure new legislation and policies are consistent with the *Declaration Act*,” however, it does not outline intentions to review *current* laws and legislation. Conducting an analysis will help to establish strong linkages between section 3 and section 4 of the Declaration Act, describing how laws and legislation directly affect policies and programs that guide on-the-ground community initiatives. Moreover, a thorough analysis will help to ensure action items are developed and implemented with law and legislative reform in mind, rendering programs and initiatives more durable and sustainable.

FNFC underscores the importance of a thorough legal analysis, as it will set the foundation to the meaningful development and implementation of the Action Plan. Legal analysis will also help to distinguish and discuss the different interpretations of legislation (i.e., UNDRIP terms) and established case-law between the Province and First Nations. Compared to BC, some First Nations have a different interpretation of consent and how it should be applied under UNDRIP. Considering the discrepancies, both parties must work together to communicate their respective understandings and interpretations of UNDRIP terminology and BC case law. Capturing this collaborative commitment in the next iteration of the Action Plan would represent an encouraging step toward meaningful reconciliation.

2. **The Declaration Act “Action Plan” must be viewed as a foundational building block to create enduring programs and relationships.** Effective and enduring capacity will ensure First Nations can meaningfully and sustainably participate in the development, implementation, management, and evaluation of programs. Incorporating this language into the Action Plan will **empower First Nations to contribute to the advancement of fish,**



**fisheries, and aquatic habitat management.** Contributions by First Nations must move beyond harvesting to include items such as business development, governance, management, and operational experience, aquaculture, etc. Creating and maintaining capacity building opportunities will require First Nations-BC collaboration and stable, secure contribution models. The Province must also work with First Nations to set performance targets and establish accountability measures to evaluate program success and impact. Stable capacity will ascertain effective implementation and maintenance of programs and provide security to aquatic resource and oceans management groups.

**Rationale:** The importance of creating enduring, collaborative, and impactful government-to-government relations is an established key priority of First Nations and the Task Group. At times, First Nations are frustrated with engagement processes because they do not emphasize the desire for long-term collaboration. First Nations are discontent with limited participation in the creation and implementation of delivery frameworks that guide programs and initiatives. Nations are also concerned that the development and implementation of the Action Plan will detract from the adequate maintenance of on-going initiatives and programs. Relevant and collaborative frameworks to address these concerns will ascertain program longevity and effectiveness, build momentum for future programs and initiatives, and positively impact broader policy objectives.

- 3. Communicate the Province’s intention to weave Indigenous knowledge (IK) frameworks into the Action Plan and into specific action items.** Such a framework(s) does not require specific details, as every scenario involving IK will be contextual and iterative; however, articulating a commitment to working with First Nations to weave IK into programs, initiatives, and projects will set the expectation that IK is equally valued to Western science and Western structures/processes. Where and when applicable IK is weaved into programs and initiatives, there must be established parameters in place to protect IK. These parameters can be established by asking questions that include, but are not limited to, what knowledge is being shared? How is the knowledge being stored and who has access and control of how it is shared? Who is using it and how is it being used? In addition, the protection of IK will require an analysis of the BC Freedom of Information and Protection of Privacy Act (FIPPA). Such an analysis and subsequent amendment would incorporate protections for IK into FIPPA.

**Rationale:** First Nations and participants of the Task Group have stressed the importance of including IK frameworks in the Action Plan on several occasions. The MOU between BC and FNFC articulates a Provincial commitment to continuing the IK conversation. The Province has expressed during Task Group engagement sessions an intent to iteratively weave IK into programs and initiatives when appropriate. This commitment, as well as an assurance to build in protections (i.e., through an amendment of FIPPA), must be explicitly documented in the Action Plan.

- 4. In collaboration with First Nations, clearly communicate the roles, responsibilities, and expectations of Nations, the Province, and relevant stakeholders.** Ensuring the successful



creation, implementation, and management of programs and initiatives under the Action Plan will require explicit direction regarding scope, authority, and expectations. The full actualization of rights under UNDRIP requires First Nation participation in creating this direction. Defining and communicating roles and responsibilities will take time, and it may be unrealistic to expect such distinctions to be articulated fully in the Action Plan; however, the Province should incorporate a clear commitment to work with Nations to establish these parameters prior to program/initiative implementation. Initial ideas to establish roles, responsibilities, and expectations include the creation of a communications matrix and a process mapping exercise.

**Rationale:** Nations are frustrated with the lack of collaborative follow-through on program creation, implementation, and management. The use of ‘co-managed’ language is often used in government documents to suggest programs and initiatives will be co-delivered and co-managed after implementation. Despite written commitments, this element of ‘co-management’ has rarely transpired. Therefore, future iterations of the Action Plan must clearly define government language and bring clarity to the specific details of these commitments.

### **Action-Item-Specific Recommendations**

1. **Action Item 2.7**— “Co-develop and enhance strategic-level policies, programs, and initiatives reflecting collaboration and cooperation on stewardship of the environment, land and resources.” (Led by: Ministry of Indigenous Relations and Reconciliation, Ministry of Environment and Climate Strategy, Ministry of Forests, Lands, Natural Resource Operations and Rural Development, Ministry of Energy, Mines and Low Carbon Innovation, BC Oil and Gas Commission).

**Recommendation:** Revise the action item to add detail and clarity, specifically regarding project scope, desired outcomes, and organizational structures/processes. The Province should also consider adding the Ministry of Agriculture, Food, and Fisheries to the list of ministerial leads. Action items pertaining to the environment and resources may directly impact aquatic habitats, fisheries, and **food production**.

**Rationale:** Expanding this action item to include specific details will help to articulate short-term and long-term goals, identify relevant stakeholders and First Nations/First Nations organizations that may be involved, and clarify roles and responsibilities for involved parties. For example, what core issue(s) is the Action Plan aiming to address with these programs and what long-term goals are being pursued? How can the Action Plan tie these short-term and long-term goals back to UNDRIP? Regarding structures and processes, how will these ministries work together (and with Nations) to develop, implement, manage, and evaluate these programs?

2. **Action Item 2.8**— “Engage with First Nations in matters related to the sustainable management of water including, for instance, the development of the Watershed Security



Strategy and associated Watershed Security Fund.” (Led by: Ministry of Environment and Climate Change Strategy).

**Recommendation:** Revise this action item to include details on scope and specific goals, i.e., to provide stable, multi-year core capacity via the Watershed Security Fund. The action item should also detail how the province intends to engage with First Nations, and it should summarize relevant policies, laws, and/or issues that may be pertinent to the successful implementation of the action item (i.e., the *Water Sustainability Act*).

**Rationale:** Adding additional details on specific goals and desired scope will help to direct efforts toward established priorities, i.e., First Nations fish, fisheries, and aquatic habitat initiatives. Expressing an intention to provide reliable and stable funding to reach these goals will incentivize capacity building to ensure the collaborative development, implementation, and management of programs and initiatives. Lastly, expanding on engagement processes and considering how policies, laws, and/or broader issues impact this action item will demonstrate to Nations that BC has taken the time to analyze known concerns/priorities and draft thoughtful responses.

- 3. Action Item 2.9**— “Engage with Indigenous partners on issues related to conservation and biodiversity in BC, including the protection of species at risk.” (Led by: Ministry of Environment and Climate Change Strategy).

**Recommendation:** Revise this action item to include more detail on scope, engagement processes, and desired goals. Specifically, the Province should elaborate on the “issues” referenced in the action item. What specific conservation and biodiversity issues are of concern to Nations and how will these concerns be prioritized? Regarding prioritization, conservation efforts must extend beyond salmon to include other species. This action item could include a non-inclusive list of species considered a priority throughout the province, accompanied by a clear statement that articulates the iterative process of establishing and addressing priorities. In addition, more details on the engagement process should be reflected in the action item. For example, how does the Province intend to engage with Nations, and what are the desired goals of this engagement? Is the goal to resource First Nations targeted long-term environmental stewardship programming to enable First Nations to manage, monitor, restore, and respond to aquatic habitat threats?

**Rationale:** Expanding this action item to include some of these details will ensure any created programs are poised to be managed and monitored by First Nations, and such details will help to clarify roles and responsibilities. Adding more inclusive and nuanced language to the action plan may help to alleviate Nations’ concerns regarding species, and Nations may feel more inclined to participate if their concerns are reflected in the Action Plan. Simultaneously, such nuanced and inclusive language will help to **set tangible expectations** for established priorities, allowing the Province to clearly articulate capacity requirements and what can and cannot be achieved in the short-term and long-term.



4. **Action Item 2.10**— “Lead work with the federal government to develop new strategies to protect and revitalize BC’s wild salmon populations, including the development and implementation of a cohesive BC Wild Pacific Salmon Strategy.” (**Led by:** Ministry of Agriculture, Food and Fisheries).

**Recommendation:** Revise this action item to include the following components,

- expand language to include the role First Nations will play in the development, implementation, management, and evaluation of any strategy designed to revitalize wild salmon populations;
- consider resourcing needs and current funding models. i.e., How will BC contribute to First Nations resourcing? Will current and problematic funding models, such as BCSRIF, be re-evaluated?
- consider how the BC Wild Pacific Salmon Strategy will align with relevant First Nations’ strategies and initiatives. For example, what key documents, programs, and partnerships will be sourced to realize this action item?
- re-consider the ministerial lead on this action item.

**Rationale:**

- Regarding language: Language in this iteration, specifically the words, “lead work with the federal government to develop new strategies...”, suggests that BC and the Crown will establish strategies without collaborating with First Nations. Establishing (in writing) the expectation that Nations will be full partners with both levels of government on the design, implementation, management, and evaluation of salmon protection programs from the onset is crucial to an enduring and respectful relationship.
- Regarding resourcing models: Questions around resourcing must be answered to establish short-term/long-term priorities and set expectations. For example, will resourcing efforts support the development of First Nations-BC governance, coordination frameworks and decision-making structures for provincial funding initiatives (i.e., *Watershed Security Fund*)? Is the goal to ensure Nations are established as full partners with BC on designing and managing funds and investments?
- Regarding alignment: Considering how the BC Wild Pacific Salmon Strategy will align with relevant First Nations’ strategies, initiatives, and programs will help to coordinate efforts, reduce deliverable repetition, and ensure the creation of a strategy that includes Indigenous knowledge and acknowledges nuances (i.e., overlapping/interconnected issues and the impact/interplay of current laws and policies).
- Regarding ministerial lead: The Ministry of Agriculture, Food, and Fisheries may not be the appropriate ministry to lead this item, as FLNRORD is the primary ministry managing fish stocks and fish habitats and AFF’s primary focus is food production, processing, and merchandising. A co-lead initiative between AFF and FLNRORD may be more appropriate to ensure strategic alignment.

