

**ABORIGINAL
FISHERIES STRATEGY
ANNUAL REPORT
1999-2000**

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NOTE:

The information contained in this report is believed to be accurate but is not warranted. Any errors or omissions are unintentional.

General Overview of the Aboriginal Fisheries Strategy

The Aboriginal Fisheries Strategy (AFS) is a program that provides for the effective management of the Aboriginal fishery in a manner consistent with the Sparrow decision. This landmark Supreme Court of Canada decision found, among other things, that where an Aboriginal group establishes an Aboriginal right to fish for food, social and ceremonial purposes, this right, after conservation, has priority over any other user of the resource.

In accordance with negotiated, time-limited agreements, Aboriginal groups participate in the management of the fisheries and are provided with both allocations of fish and economic development opportunities. The Program applies where DFO manages the fishery, and where land claims settlements are not in place.

AFS Agreements

AFS Agreements are without prejudice to either party's position on Aboriginal rights. Agreements negotiated under the AFS contain an allocation to be harvested by the Aboriginal group, which is fished under a communal fishing licence. This allocation is determined after consultations with the group regarding their needs for food, social and ceremonial purposes. Agreements detail the conditions to be included in the communal fishing licence, such as quantities, time, gear and data collection. Agreements may also contain other arrangements for the co-management of the Aboriginal fishery by the group and DFO, such as stock assessment, fish enhancement and habitat management projects. Commercial fishing and other economic development opportunities may also be negotiated as part of an AFS Agreement.

Fishing Plans

Fishing Plans, one component/schedule of an AFS Agreement, detail the numerical harvest levels which have been negotiated and established for fish for food, social and ceremonial purposes.

These plans establish the Fishing Authority and the plan to monitor fisheries harvests by members of the community who have been designated on behalf of the community. The allocation sets the species and the quantities, times and gear to be used.

Communal Licences

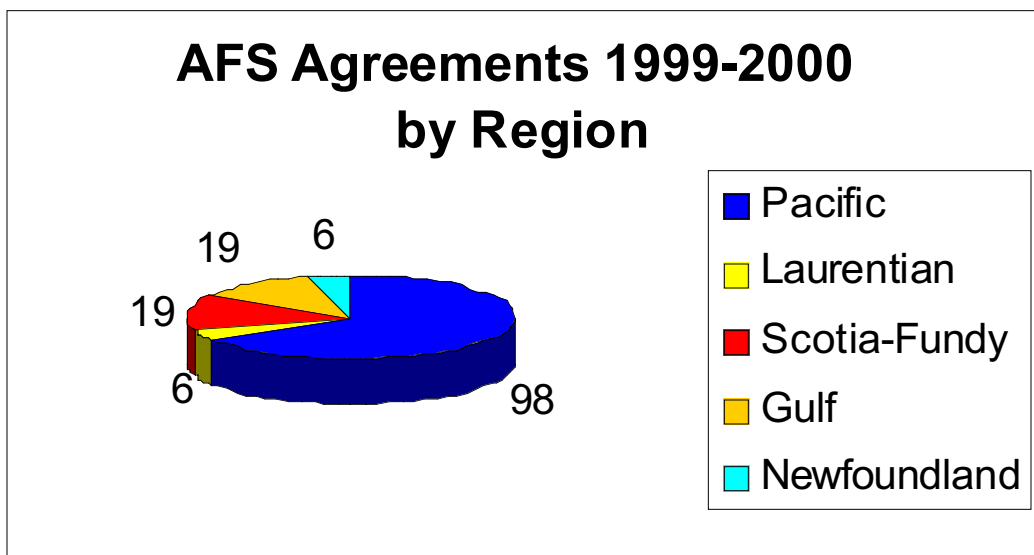
The Aboriginal Communal Fishing Licence Regulations (ACFLR's) provide for the issuance of communal licences to Aboriginal groups. These licences include conditions for quantity of catch by species, gear time and area of harvest, and disposition of fish. The conditions for designating fishers and reporting requirements are also set out in the communal licence. Typically, communal licence conditions flow from the fishing plan within the AFS Agreement. However, where DFO cannot reach an agreement with a First Nation, a communal licence is issued. As per s.6(f) of the Policy for the Management of Aboriginal Fishing, the conditions will be minimal and will contain allocations based on the last offer made by DFO before termination of negotiations.

The communal licences are a way of providing the opportunity for Aboriginal communities to fish for food, social and ceremonial purposes consistent with the priority afforded them, while integrating the management of Aboriginal fisheries with all other fisheries.

National Perspective

The Aboriginal Fisheries Strategy was funded at \$32.221M in 1999-2000. This included \$22.621M for co-management expenditures and \$9.6M for the Allocation Transfer Program (ATP). \$2.6M of the ATP funding came from the departmental budget and \$7M was a result of the Gathering Strength initiative.

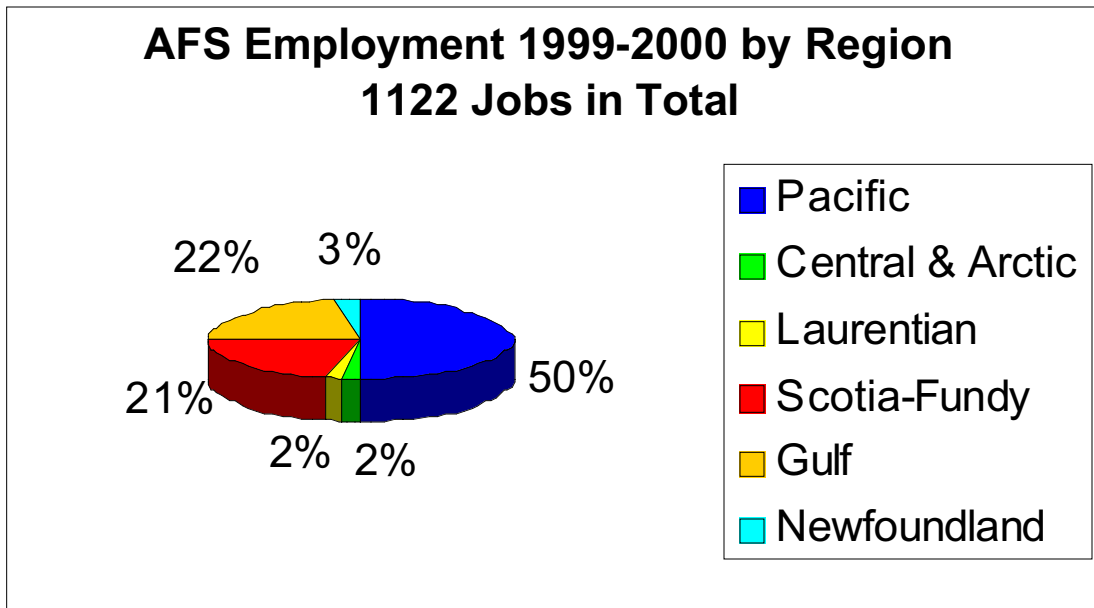
148 AFS Agreements were signed with 125 groups in British Columbia, Quebec and Atlantic Canada.¹ These Agreements have resulted in the creation of 1122 seasonal jobs in areas such as processing, monitoring and enhancement activities. 194 of those employed through the AFS are Aboriginal guardians, trained by DFO and employed by the Aboriginal group. A schedule of the AFS Agreement sets out the duties and responsibilities of Aboriginal guardians. 928 jobs were created nationally in the fisheries management field (habitat restoration, stock assessment, fisheries enhancement, etc.), and in the areas of consultation and economic development.



¹ Central and Arctic Region does not have AFS Agreements but contracts projects with Aboriginal groups.

EMPLOYMENT UNDER AFS – 1999-2000

REGION	GUARDIANS	OTHERS	TOTAL
PACIFIC	92	461	553
CENTRAL & ARCTIC	0	21	21
LAURENTIAN	6	19	25
SCOTIA-FUNDY	36	202	238
GULF	32	220	252
NEWFOUNDLAND	28	5	33
TOTAL	194	928	1122



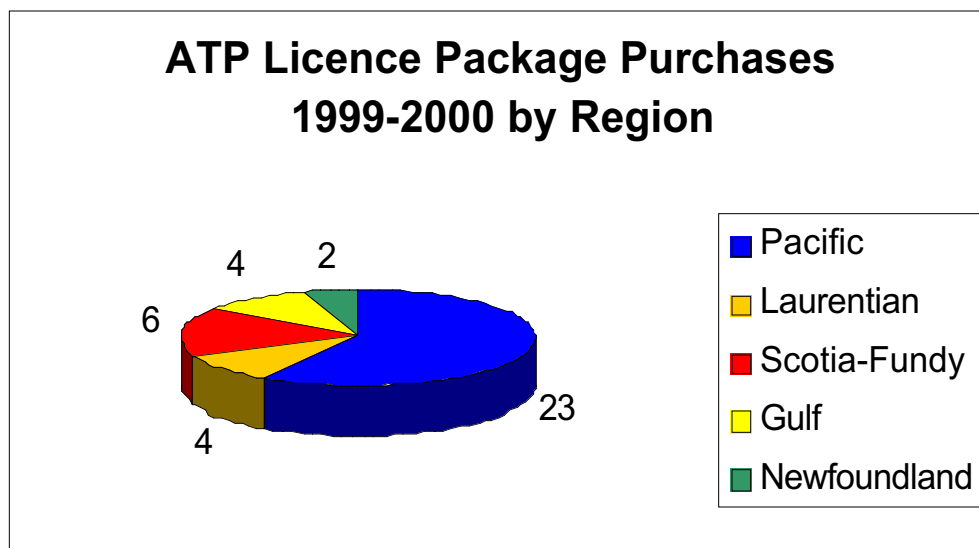
Allocation Transfer Program

BACKGROUND

In 1994 the AFS was amended to include the Allocation Transfer Program (ATP). The ATP supports Aboriginal groups in achieving self-sufficiency through participation in commercial fisheries. The ATP facilitates the voluntary retirement of commercial licences and the issuance of new licences to eligible Aboriginal organizations in a manner that does not add to the existing effort on the resource. As a result of changes in 1998, funding may also be provided to purchase equipment, such as vessels and/or gear necessary for Aboriginal groups to fish these licences. Eligibility is restricted to Aboriginal organizations that have fisheries agreements with DFO under the AFS. It is a means to stimulate Aboriginal economic development opportunities and develop fisheries expertise in Aboriginal communities.

NATIONAL ATP BUDGET

As mentioned earlier, the ATP was funded at \$9.6M in 1999-2000. 39 commercial licence packages were retired nationally, and 35 licence packages were issued to Aboriginal groups in 1999-2000 under the ATP. 10 vessels were purchased and made available to Bands in 1999-2000. The remaining licence packages will be made available to Bands under future agreements.



Pacific Region

TOTAL BUDGET

The core budget for 1999-2000 in Pacific Region was \$19,250,000, which included \$15,950,000 for co-management, \$300,000 additional funding this year for non-signatory groups, and \$3,000,000 for the ATP, down from \$4,000,000 in 1998-99 to create a contingency fund for the response to the Marshall decision. \$205,000 of the non-signatory funds was returned to HQ as an addition to the early Marshall contingency needs. When funding became available for Marshall implementation, an additional \$1,240,610 in ATP funds was provided to this region. The total co-management spending was \$16,045,000, and total ATP spending was \$4,240,610, for a total of \$20,285,610 in AFS expenditures.

Number of Agreements

The following Agreements were negotiated in 1999-2000:

- 47 Contribution Agreements;
- 22 Amendments to Contribution Agreements;
- 42 Fisheries Agreements;
- 47 Amendments to Fisheries Agreements;
- 2 Community Fishery Officer Agreements
- 3 Amendments to Commercial Access Agreements
- 7 other Agreements (Framework, Watershed, etc.)

Employment

In 1999-2000 approximately 92 Aboriginal Fisheries Guardians were employed for a total of 496 months and another 461 people were employed for a total of 1633 months in other projects funded through the agreements. Please note that this information is based on final reports received for 1999/2000, and, where final reports were not yet received, on preliminary projected estimates provided by the group at the beginning of the fiscal year.

Commercial Licences

Species	Licence Tab	Gear Type
crab	R165	Trap
prawn	W18	Trap
roe herring	HG925	gillnet
roe herring	HG682	gillnet
roe herring	HG947	gillnet
roe herring	HG708	gillnet
roe herring	Hg1279	gillnet
roe herring	HG414	gillnet
roe herring	HG798	gillnet
roe herring	HG301	gillnet
roe herring	Hg46	gillnet
halibut	L270	hook and line
rockfish	ZN219	hook and line
shrimp	S244	trawl
shrimp	S32	trawl
halibut	L205	hook and line
halibut	L265	hook and line
crab	R126	trap
prawn	W219	trap
schedule II	C934	
roe herring	HG234	gillnet
schedule II	C397	
schedule II	C583	
Western Sunrise vessel		

KEY PROJECTS

Quatsino First Nation: Salmon surveys

The Quatsino First Nation is a small band of 361 members located on the North West Coast of Vancouver Island in an area known as Coal Harbour. This group receives moderate funding from the Aboriginal Fisheries Strategy (AFS) Program in the amount of \$70,000 annually. This group is taking a step forward in self-sufficiency by attempting to conduct surveys on two rivers within their area, to determine the capacity of the system, and, eventually, determine a sustainable harvest level for the system.

The assessment on the Colonial and the Cayeghale Rivers began at the end of summer and concentrated on enumerating the coho and chum salmon within the systems. The project is expected to employ four people for 6 months. About \$18,000 was funded out of the group's AFS budget, and additional funds have been secured from other sources. The long-term goal of this project is to do a number of years of stream enumeration and determine spawning capacity of the systems. Once these two factors are known, the possibility of harvesting salmon that are surplus to spawning requirements may be considered.

Fraser River Scientific Development and Selective Harvest Partnership

This year the Fraser River Scientific Development and Selective Harvest Partnership enters the second phase of their gear development and education training project. This community-based and community-focussed group involves representation from three Lower Fraser First Nations – Matsqui, Kwantlen and Lakahahmen – as well as the commercial and recreational sectors in an effort to develop sustainable opportunities through fisheries.

Last year, the Department provided funding to the Partnership to construct selective fishing gear, which was tied to a series of economic development initiatives being undertaken by the group. This year, the Department provided additional funds to the Partnership in support of continuing work to develop the selective fishing gear, as well as the development and execution of a community selective fishing education and awareness program.

Central and Arctic Region

TOTAL BUDGET

In 1999-2000 the Central and Arctic Region operated on an annual Aboriginal Fisheries Strategy budget of \$360,000, all in O&M. This included a top-up from HQ of \$160,000.

Summary of Projects

PROJECT TITLE: Community Fishery Workers
PROJECT MANAGER: George Low

Project Results:

EXPECTED	ACTUAL
i. Great Slave Lake (\$36.0 K)	
a. Workers recruited - May 1999	3 workers recruited
b. Inconnu sampling completed	200 sampled/100 tagged
c. GSL fisheries monitored	1150 whitefish sampled
d. GSL Gillnet Study completed	2500 fish gillnetted and sampled
ii. Fort Resolution (\$18.0 K)	
a. Workers recruited; June 1999	5 workers recruited
b. Harvest study completed	completed (Aboriginal Harvest – Ft. Resolution)
c. Little Buffalo completed	completed (Aboriginal harvest statistics)
d. GSL Mesh Study completed	Fish quality study completed
iii. Fort Smith: (\$ 6.0 K)	
a. Worker recruited - May 1999	1 worker recruited
b. Harvest study completed	completed (harvest statistics)
Additional studies	300 inconnu tagged
iv. Fort Providence: (\$13.0 K)	
a. Worker recruited - May 1999	1 worker recruited
b. Harvest study completed	completed (harvest statistics)
c. Fish health samples shipped	none observed
d. Size and age sampling completed	cancelled
v. Fort Simpson: (\$12.0 K)	
a. Workers recruited - Nov 1999	2 workers recruited

- | | |
|------------------------------------|--------------------------------|
| b. Bathymetric mapping completed | cancelled |
| c. Sediment core samples collected | cancelled |
| d. Two lakes assessed | Deep and McGill lakes assessed |
| d. Fish health samples shipped | 300 samples shipped |

vi. Kakisa: (\$15 K)

- | | |
|-------------------------------------|----------------------------------|
| a. Kakisa sampling completed | 210 walleye sampled |
| b. Tathlina Lake sampling completed | 210 walleye sampled |
| c. samples aged and analysed | samples aged and analysed |
| d. report published | Data to DFO - Science Assessment |

ix. Co-ordinator: (\$40 K)

- | | |
|--|---|
| a. Co-ordinator contracted - April 1999 | Co-ordinator contracted |
| b. 5 contracts arranged | 5 projects arranged |
| c. 9 field workers trained | 7 field workers trained |
| d. 7 projects co-ordinated | 10 projects co-ordinated |
| e. Program data analysed | all data computer entered and analysed |
| f. Local concerns identified | local concerns dealt with |
| g. Liaison between communities, | liaison with 7 communities/
Aboriginal groups and DFO
completed |
| h. Harvest data analysed | harvest data analysed and reported |
| i. GSL Gillnet Study completed. | Completed |
| j. Fort Simpson lake assessments completed | 4 lakes completed |
| k. 7 study reports completed | 8 reports completed |

x. Aboriginal Technician: (\$40K)

- | | |
|----------------------------|--------------------------------|
| a. recruited June 1999 | worker recruited (2 contracts) |
| b. GSL projects supervised | completed |
| c. data entered | completed |
| d. 4 winter lakes surveyed | 6 lakes completed |
| e. 4 persons trained | 7 persons trained |
| f. data entered | completed |

xi. Fort Simpson: Liidli Kue (\$35K)

- | | |
|-------------------------------|-------------------------|
| a. Habitat workshop Organized | 40 participants |
| b. workshop hosted | Band contract completed |

c. 20 aboriginal contractors attend working near water workshop

21 contractors attended.

xii. Jean Marie First Nation: (\$12K)

a. 2 workers recruited
b. 2 field workers trained
c. 2 lakes surveyed

2 workers contracted by band completed
completed

xiii. Lutsel Ke: (\$50K)

a. 2 workers recruited
b. 300 anglers interviewed
c. data entered
d. maps produced

Band contracted 2 workers
350 anglers interviewed
completed
completed

xiv. Hay River Metis Govt. Council (\$13K)

a. Mosquito creek hatchery manual
b. 2 workers trained

completed
2 trained

TOTAL BUDGET : Community Fishery Workers **\$333.4K***

*The original budget was \$290K but it was augmented when it became clear that GSLAC would not require its full allocation and the \$10K set aside for International aboriginal travel would not be spent.

PROJECT TITLE: Support For Great Slave Lake Advisory Board (GSLAC)

PROJECT MANAGER: S. Charlie

GSLAC held 2 meetings and provided advice to DFO on matters relating to the management on fisheries in Great Slave Lake. Expenditures were \$24.7K.

Laurentian Region

NORTHERN QUÉBEC

Kativik Regional Government Agreement

This agreement allowed for the conservation, protection and management of fisheries resources in the marine waters surrounding Northern Québec. The agreement covers the whole territory of Nunavik. Fourteen communities take part and 21 seasonal jobs (one coordinator, six fishery guardians and fourteen community agents) are created. Total costs for this agreement were \$413,700

Makivik

In conjunction with Makivik's Nunavik Research Centre (NRC), this agreement allows DFO to have a coordinated collection of beluga samples from the harvest within Nunavik. Members of the local Hunting, Fishing and Trapping Associations (HFTA) gather samples from beluga and related information and send them to the NRC for analysis. Total project costs were \$13,000.

A second Agreement provided materials and specialized expertise to produce two brochures on beluga whale research. These brochures will help to communicate the scientific methods used in the management of beluga whales to the Inuit of Nunavik. The text explains in plain language the techniques used to define beluga whale stocks in the Arctic and to track the movement and migration patterns. Total project costs were \$32,000.

EMC-Eco Marine Corporation

This agreement provides material and specialized expertise to carry out the publishing of two brochures : "**Studying the Movements of the Beluga Whale**" and "**Identifying the stocks of Belugas in Nunavik- the role of genetics**". These brochures, translated from English into Inuktitut and French, will help to communicate information important to the Inuit communities. Total project costs are \$22,280 over two fiscal years, \$15,250 for 1998-1999 and \$7,030 for 1999-2000.

Grand ERE

Before the Northern Quebec beluga management plan is revised, Grand ERE carried out a survey among the population of Inuit hunters of Nunavik. The purpose of the survey is to gather the opinions of the Inuit hunters regarding the use and conservation of the Northern Quebec belugas. It also takes into account their knowledge and their own experience. Total cost for this Agreement was \$31,000.

In addition, aid was given to help promote educational activities intended for all schools across Nunavik, with regard to beluga management. The cost for this project was \$5,000.

SOUTHERN QUÉBEC

Subsistence agreements

In total six agreements were signed with various band councils to establish the needs and quantities required for an AFS agreement :

Innu Nation :	Essipit :	\$ 11,800
	Sept-Iles	\$21,000
Micmac Nation :	Gaspé	\$21,445
	Restigouche	\$80,185
	Maria	\$96,600

One Agreement was signed to establish the traditional and contemporary use of the marine fishery resource for food, social and ceremonial purposes.

Native Alliance of Quebec	\$19,500
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Student Projects

One student project was initiated in the Sept-Iles office for a cost of \$9,800.

AGREEMENT	NUMBER EMPLOYED	TYPE OF EMPLOYMENT	COMMENTS
Kativik	21	<ul style="list-style-type: none"> • 1 co-ordinator • 6 fishery guardians • 14 community agents 	Seasonal
Makivik (beluga)	0		
Makivik (brochures)	0		
EMC-Eco (translation)	0		
Grand ERE (survey)	0		
Grand ERE (schools)	0		
Essipit	1	<ul style="list-style-type: none"> • 1 fisheries co-ordinator 	Seasonal
Sept-Iles	1	<ul style="list-style-type: none"> • 1 fisheries co-ordinator 	Seasonal
Gaspé	0		
Restigouche	1	<ul style="list-style-type: none"> • 1 fisheries co-ordinator 	Seasonal
Maria	1	<ul style="list-style-type: none"> • 1 fisheries co-ordinator 	Seasonal
Native Alliance of Quebec	0		
Student	1		Seasonal

Commercial licences

Under the Allocation Transfer Program, DFO Laurentian retired four commercial licences;

Lobster licence – Area 18D	\$80,000
Lobster licence – Area 16	\$125,000
Groundfish licence (turbot IQ)	\$130,000
Groundfish licence (turbot IQ)	\$150,000.

These licences will be issued to First Nations under future AFS Agreements.

KEY PROJECTS

For Northern Québec, the key project was the survey on beluga management within the population of Inuit hunters of the Nunavik.

In Southern Quebec it is impossible to single out one key project, as all are very important at this stage. It is encouraging that much new interest in the Aboriginal Fisheries Strategy is evident in this Region.

Maritimes Region - Scotia-Fundy Sector

TOTAL BUDGET

The total operating budget for Scotia-Fundy Sector for 1999-2000 was \$3,677,640. This included \$2,451,300 for co-management and \$1,226,340 for the ATP. It also included a top-up of \$70,100 from NHQ.

Number of Agreements

A total of 19 Agreements were signed with 17 groups.

Employment

In 1999-2000 approximately 36 Aboriginal Fishery Guardians were employed for a total of 180 months. Approximately 203 other workers were employed for a total of 852 months in other projects funded through AFS Agreements.

Commercial Licences

The ATP mandate for Scotia-Fundy Sector for 1999-2000 was \$1,500,000. \$318,760 was frozen and held at HQ at the time of the Marshall decision. A top-up of \$45,100 was provided from HQ late in the fiscal year. Total spending under ATP was \$1,226,340. Two licence packages and 6 vessels were purchased and made available to Aboriginal groups in this region.

1999-2000 Allocation Transfer Program expenditures:

Lobster licences

- 1 licence and vessel \$84,600
- 1 licence and vessel \$369,400
- \$45,100

Vessels

- 1 vessel (cost shared with INAC) (Eskasoni) \$200,000
- 1 vessel (Wagmatcook) \$210,000
- 1 vessel (Saint Mary's) \$133,215
- 1 vessel (Indian Brook) \$45,100

Gear and Equipment/Repairs \$163,925

Grand Total \$ 1,226,340

KEY PROJECTS

Oromocto First Nation – Mactaquac Fish Culture Station

To improve the management of the Atlantic salmon stocks in the Saint John River, DFO, through the Mactaquac Fish Culture Station, marked 720,000 fingerlings and smolts for release from the hatchery. Oromocto First Nation provided eight workers to the project. The workers received valuable training in the process of fish marking using scissors to clip the adipose fins from the Atlantic salmon parr while anaesthetized. The workers also gained experience in hatchery releases, a variety of fish-rearing duties, pond cleaning, fish fielding and fish weighing.

Wagmatcook First Nation – Family Activity Day

The First Nation's Family Activity Day was held in June. This one-day event was held so that all families could come and enjoy various activities and food. It was organized to show the First Nation's members that the lines of communications were open and

that they could discuss fishing matters and concerns. A number of local businesses contributed to the success of this event. Displays explaining the importance of conservation and environmental cleanliness were provided. A number of activities were also available for the children that attended. This event was a great success enjoyed by both the children and their parents. Wagmatcook First Nation hopes to be able to continue holding this event each year so that these important messages are communicated.

Fort Folly First Nation – Stream Restoration, Back Brook

In 1998, Fort Folly established a single channel flow in a portion of Back Brook, New Brunswick as part of that year's initiative. The next step was to determine the pattern in which digger logs should be placed and what areas along the Brook were in need of stabilizing. Their surveyed positions were inspected, and the team discussed a number of areas where the Brook's banks were in need of extensive stabilization to be provided through the construction of log cribs backfilled with rock and wood materials. At the end of their in-stream work for the 1999-2000 year, approximately 60 digger logs had been installed. A dozen large bank stabilizers were also constructed during the year.

Maritimes Region - Gulf Sector

TOTAL BUDGET

Gulf Sector AFS had a total operating budget for 1999-2000 of \$3,779,350. This included \$3,143,350 for co-management and \$636,000 for the ATP. It also included a top-up from NHQ of \$500,000.

Number of Agreements and Employment

19 Agreements were signed resulting in employment for approximately 252 Aboriginal people. 32 of those employed were Aboriginal Guardians, and the others were in the fields of Science, Habitat, and Administrative Support.

Commercial Licences

The ATP mandate for Gulf Sector was \$1,500,000 for 1999-2000. \$864,000 was frozen and held by HQ at the time of the Marshall decision, leaving a balance of \$636,000. A final payment was made on one commercial multi-licence packages and 3 vessels, as well as assorted electronic and fishing gear were purchased in 1999-2000 under the ATP. All were made available to Aboriginal groups in this region. Two additional packages were negotiated but the transactions could not be completed and the funding was re-allocated as co-management funding to four Aboriginal groups at year-end.

1999-2000 Allocation Transfer Program licence retirement:

Licence package final payment

- **lobster, herring, mackerel, smelt oyster and wooden vessel** **\$30,000**

Vessels

- **44'10" wooden boat** **\$120,000**
- **44' wooden boat** **\$72,500**
- **44' Wooden boat** **\$62,500**

Total **\$285,000**

KEY PROJECTS

Lennox Island Fishery Management Committee:

Lennox Island First Nation has established a Fishery Management Committee which consists of seven members who are responsible for the management of both the Food, Social and Ceremonial and the Commercial fishery programs.

For the year of 1999-2000, there were one hundred and fifty-three food fishers and they were issued three tags per person. The food fishery quota for that year was 80,000 lbs . The quota was reached on August 30, 1999 at 7 pm. The LIFN officially closed the food fishery program on August 31, 1999. All LIFN fishers cooperated with the closure.

In order to manage the food fishery efficiently, the Fishery Board established a monitoring system which included the monitoring of the lobster landed. Three monitors were hired and there was full coverage from dawn to dusk. All lobster catches were weighed and a weekly report was submitted to DFO offices in Charlottetown and Alberton.

Fisheries Stewardship in the Gulf Fisheries Management Region - the Aboriginal Connection

Aboriginal Communities and Organizations in Atlantic Canada have been involved with the stewardship of fisheries resources in cooperation with DFO for the last nine years, as part of one of the most pro-active fisheries management programs in the world. One co-management process is being carried out under the Aboriginal Fisheries Strategy or AFS, through Fishing Agreements negotiated between the Department of Fisheries and Oceans and individual Aboriginal groups. A major portion of work to date in the Gulf Fisheries Management Region has been on fisheries resource conservation and protection through the guardian program and the determination of resource status through the fisheries stock assessment program. One major focus of this effort has been on the Atlantic salmon, a world renowned

fisheries resource. This species is currently experiencing difficulty over much of its range on a world wide basis, particularly in North America, due to low marine survival. The following is an example of stock assessment projects being carried out in co-operation with Aboriginal Communities.

The Miramichi River is one of the largest and most famous salmon-producing river in the world. Two Micmac First Nations have joined forces with DFO Gulf Fisheries Management Region's science staff to help conduct stock assessment population estimates of Atlantic salmon returning to the Miramichi River from distant waters. Annual investigations carried out through the AFS, include the tagging and releasing of large salmon and grilse by Natuaquanek (Eel Ground) First Nation and recapture of tagged fish up-river by Metepenagiag (Red Bank) First Nation, in the tidal waters of the Northwest Miramichi River. Natuaquanek First Nation staff also tag and release large salmon and grilse caught in a trap net they operate for scientific purposes only in the lower tidal waters of the Southwest Miramichi River, and collect recapture data from a trap net located further up the tideway. The upper trap net is fished in the food fishery as well as for scientific purposes. Most trap nets that are fished for stock assessment purposes by the Aboriginal Communities, double as food fishery traps for them. To ensure that sufficient tags are applied down-river to achieve a reliable population estimate, however, Natuaquanek First Nation uses other gear to harvest a limited number of large salmon in their food, social and ceremonial fishery. Their staff tag and release all MSW salmon (large egg bearing fish) captured in the First Nation's trap nets. Metepenagiag First Nation on the other hand, has decided not to fish gill nets. Their staff harvest a limited number of Atlantic salmon for food, social and ceremonial purposes from the First Nation's recapture trap nets. This is done after all appropriate scientific data has been recorded from individual fish. Food fishery statistics collected and assembled by Aboriginal Fisheries Guardians and trap net crews are reported to DFO for inclusion in stock assessments. Data from tagging and recapture traps are used along with other information to provide an evaluation of current stock status and expectations for returns the following year.

The guardians also carry out joint patrols with DFO fishery officers in tidal and marine waters in support of conservation and the orderly management of the fishery.

Newfoundland Region

TOTAL BUDGET

The co-management budget for Newfoundland Region for 1999-2000 was \$995,000. This included a top-up from HQ reserve of \$295,000.

Number of Agreements and Employment

Agreements were signed with five Aboriginal groups in this region in 1999-2000. These agreements resulted in the seasonal employment of 33 Aboriginal people. 28 were employed as fishery guardians and five in other areas of fisheries management.

COMMERCIAL LICENCES

Newfoundland Region was able to participate in the Allocation Transfer Program of the AFS for the first time this year. An Atlantic wide tuna licence was retired as well as a core fishing enterprise consisting of groundfish, lobster, scallop, herring and mackerel licences. These licences will be issued to First Nations under future AFS Agreements.

KEY PROJECTS

Communal Commercial Char Licence - LIA

A Communal Commercial char licence was issued to the LIA under which the LIA designated 50 of its membership to individually harvest the quota of char assigned to the Areas. The Quotas were assigned to specific Bays which were all north of Nain, and once again provided Aboriginal access to the fish resource and also employment for LIA members in the Nain fish plant.

Sentinel Fishing – Conne River

As part of the Conne River Communal food fishing licence, the Region, in conjunction with Science Branch and the Conne River Band, became involved in sentinel fishing in 1999. Sentinel fishing is carried out in various locations around the province. It is coordinated by Science Branch and conducted by commercial fishers. The Conne River project is unique in that Aboriginals are directly involved working cooperatively

with DFO to harvest cod in the 3PS area. Aboriginal people in Conne River are directly involved with the Science work, and when the Science work is completed, the cod are then distributed throughout the Community for food. This arrangement has been very successful since its inception as it meets the needs of Science as well as providing fish for food for the Conne River Band. This fishing arrangement will serve the Band well as they move into Communal Commercial fishing activity.

Significant Issues for the 1999-2000 Season

Aboriginal Guardian Program Review

The Aboriginal Guardian Program, initiated as a key component of the Aboriginal Fisheries Strategy in 1992, was intended to build capacity, enhance co-management, and foster improved working relationships with First Nations.

Funding was provided to First Nations to hire Aboriginals who would assist Fisheries and Oceans Canada in the conduct of enforcement of Aboriginal fisheries; training of Guardians was provided by DFO. The focus of the Program initially emphasized Conservation and Protection functions but was expanded to include stock assessment and habitat activities.

While the program has enjoyed more success in some areas such as the Skeena Watershed than others, it has generally not met the full expectations of First Nations or the Department.

A comprehensive review of the Program was launched two years ago by Bob Warren of Pacific Region, and included consultations with First Nations from Pacific to Atlantic, DFO staff, other government departments, and Aboriginal policing proponents.

The review reached a number of key conclusions. These include significant uncertainty about the value and the objectives of the program; no definitive role for Aboriginal Guardians and; inadequate administrative structures to support this initiative.

As well, uncertainty with respect to continuity of funding has created gaps in employment and difficulties in retaining qualified staff. However, despite these problems, improved compliance has been achieved in those Aboriginal fisheries where Guardians have been introduced.

The draft report resulting from the review recommends a number of important changes and improvements to the Program. These include:

- The Aboriginal Fisheries Officer/Guardian (AFO/Guardian) Program should be continued and re-established as a DFO program housed within C&P with defined objectives, policies and procedures. Provision must be made for ongoing evolution and improvement of the program through, among other avenues, serious consideration of proposals put forth by Aboriginal groups. (AFS would continue to lead Agreement negotiations).
- The AFO/Guardian Program should advance DFO and First Nations objectives for improved fisheries and habitat management and Government objectives for the development of Aboriginal self reliance and self-

governance through the development of Aboriginal capacity to conduct law enforcement activities in the area of fisheries and habitat management.

- A National Steering Committee should be formed to provide advice on program design changes. Representation should include First Nations, Fisheries and Oceans Canada, Indian Affairs and Northern Development, the Solicitor General's First Nations Police Forces, and Human Resources Development Canada.
- The AFO/Guardian Program should be defined around compliance, enforcement and perhaps monitoring activities and ensure compatibility with DFO organization and the maintenance of profession law enforcement standards.
- The Steering Committee should make recommendations to Senior Management on command, control and support standards which must be met for organizations employing AFO/Guardians at each level of designated enforcement power to be provided under the program.
- Consideration must be given to methods of ensuring the independence of Aboriginal Fisheries Officer/Guardian forces from political bodies.
- Consideration must be given to methods of ensuring uniform and equal application of the law by enforcement personnel employed by Aboriginal groups and by DFO, including requirements that the former adhere to DFO policies, procedures, directives and standards.
- Training and recruitment standards for all Fishery Officers and AFO/Guardians having unrestricted powers under the Fisheries Act should be identical.
- Conservation and Protection should work with AFS negotiators and Aboriginal groups to develop three-year plans for the development of Aboriginal Fisheries Officer/Guardian and forces with accompanying training plans (including field training). These training plans should be reviewed annually.
- DFO should explore methods of increasing the capacity of Conservation and Protection to deliver field training while maintaining the equivalency of training for all Aboriginal and non-Aboriginal guardians and fishery officers.
- The Conservation and Protection Branch should consider seeking increases in DFO's reference levels to support increased conservation and protection activities, including expanding the role and period of employment of AFO/Guardians. When seeking new resources from outside DFO, consideration should be given to the contributions of the program to government objectives relating primarily to Aboriginal people.

- Consideration should be given to the automatic extension of AFO/Guardian Agreements and funding for AFO/Guardian Programs over the normal negotiation period for renewing AFS agreements.
- DFO senior management should consider the implementation of selective pilot AFO/Guardian projects through the National Steering Committee in order to test concepts put forward by this review for implementation of program renewal.

Prior to finalizing the report and moving toward implementing a revitalized Guardian program, DFO began consultations with First Nations and key Aboriginal leaders in the spring of 2000 to ensure their views have been reflected in the report. DFO staff, specifically those in C&P, will also be consulted. It is anticipated that enforcement pilot projects will be phased in over the next several years

The Supreme Court of Canada Decision on Marshall

Interpretation, Implications and Interim Guidelines

1. Context

The Department of Fisheries and Oceans' policies regarding Aboriginal fishing in Canada have rapidly evolved since 1990 when the Supreme Court found in *R. v. Sparrow* that an Aboriginal right existed to fish for food, social, and ceremonial purposes. As a result, a regulatory and policy framework is currently in place that is flexible and allows DFO and Aboriginal communities to co-manage a wide variety of activities ranging from subsistence to commercial fisheries.

The *Marshall* decision is a significant step towards increased Aboriginal involvement in commercial fisheries. As with the *Sparrow* decision before it, the *Marshall* decision will require a re-examination of existing policies and management regimes as discussions with Aboriginal groups and the commercial industry proceed.

2. The Marshall Decision: What it Said

The Supreme Court found that a 1760 Treaty of Peace and Friendship between the British Crown and the Mi'kmaq, affirmed the right of the Mi'kmaq people to continue to provide for their own sustenance by taking the products of their hunting, fishing, and gathering activities and trading them for what in 1760 were described as "necessaries". The Court noted that the genesis of this Mi'kmaq trade clause came from earlier negotiations with the Maliseet and Passamaquoddy, who lived in present-day New Brunswick. The Mi'kmaq agreed to "make peace upon the same conditions."

The Court concluded that in today's terms securing "necessaries" is equivalent to a "moderate livelihood". In turn, this was interpreted to include basics such as food, clothing and housing supplemented by a few amenities. It does not extend to the accumulation of wealth. The Court went on to conclude that in order to exercise this right to trade in a meaningful way, the Treaty beneficiaries have an implied right to hunt, fish and gather in order to have something to trade for necessities. It added that this right to harvest and trade for necessities can be regulated by Government and contained within limits.

On November 17, 1999, in its reasons for dismissing a motion for a rehearing of the *Marshall* appeal and a stay of the judgement, the Court explained and clarified a number of aspects of its earlier decision. For example, the Court emphasized the regulatory authority of federal government to regulate the treaty right. It clarified that treaty rights are collective in nature, but may be exercised by members of the communities holding these rights under the authority of these communities. Further, it noted that the exercise of treaty rights is limited to the area traditionally used by the local community with which the particular treaty was made and in connection to wildlife, fish and resources traditionally "gathered" in an Aboriginal economy.

3. The Marshall Decision, Interpretation

The Department of Fisheries and Oceans' view is that the following points are clear from the *Marshall* decision and reaffirmed in the reasons for judgement in previous case law:

- The Treaty benefits apply to the Canadian successor groups of those Mi'kmaq, Maliseet, and Passamaquoddy groups that signed the Treaty of 1760 and similar treaties in 1761.

- Treaty beneficiaries have the right to harvest fisheries resources so that they can sell fish in support of a “moderate livelihood” but not for the accumulation of wealth.
- The right is communal in nature. Although individuals may fish under the right, the right is held by the collective/community and it may only be exercised in the area traditionally used.
- The right can be regulated and not all regulations infringe the right.
- Even in cases where regulation of the right may infringe the right to some extent, such infringement can take place for legitimate reasons such as conservation, public health and safety, maintaining the orderly management of the fisheries, regional and economic fairness, and taking into account historical reliance on the fishery by others.
- In regulating the right, with justification, criteria can be established with respect to the area to be fished, the amount to be fished, the gear to be used, monitoring and reporting requirements, and closed seasons.
- The treaty right does not have to be satisfied ahead of all other users. What is required is “equitable access” to the resource for the purpose of treaty beneficiaries earning a moderate living.

4. The Marshall Decision, Implications

Under the Aboriginal Fisheries Strategy, DFO has provided Aboriginal groups with access to fish for food, social, and ceremonial purposes, as well as access to commercial fisheries through the Allocation Transfer Program and other means. The *Marshall* decision will require DFO to provide Treaty beneficiaries with additional access to fisheries in response to the Treaty right.

Most commercial fisheries are more-or-less fully subscribed, and participation in them is limited by licence. The accommodation of new entrants into such fisheries will need to be carefully managed. In addition, previous Supreme Court decisions emphasize the importance of Government discussing issues such as access with Aboriginal people involved. DFO is also committed to consult with commercial interests on the best way of accommodating new entrants to fully subscribed fisheries. These discussions will take time to complete.

The *Marshall* decision will result in significant adjustment to the commercial fishery in Atlantic Canada. In the course of discussions, alternative fisheries management models may be proposed. DFO is open to new approaches to fisheries management provided they are fair and effective, and meet government standards regarding health and safety of the food supply.

5. Response

The Minister of Fisheries and Oceans has appointed Mr. James MacKenzie as Chief Federal Representative responsible for discussions on new fishing arrangements for Aboriginal groups. These discussions are currently underway and are initially focused on the process to be followed over the course of the winter.

Discussions took place over the winter to reach interim agreements between Aboriginal groups and the Federal Government on fishing arrangements for the year 2000 fisheries. To date, Agreements have been signed with 29 groups. Discussions are still ongoing with remaining non-signatory groups.

To assist Mr. MacKenzie, Mr. Gilles Thériault has been appointed as Assistant Federal Representative. It is his job to liaise and facilitate consultations with commercial and other interests. He reports directly to Mr. MacKenzie and represents an integral part of the overall process, which seeks to fairly accommodate new entrants into fully subscribed fisheries.

Fishing by some Aboriginal groups commenced immediately after the September 17th, 1999 Supreme Court decision. Pending the completion of agreements between Aboriginal groups and DFO on fishing arrangements, interim measures must be adopted to ensure, among other things, that conservation goals are met, that the fishery is orderly, and that the interests of other users of the resource are considered. These interim measures will be based on the existing policy and regulatory framework as adjusted to accommodate the Treaty right.

While these measures are intended to accommodate the Treaty right in the near-term, they do not preclude changes to fisheries management regimes in the longer-term that may arise in the course of discussions to accommodate Aboriginal access.

6. Interim Guidelines

DFO will be guided by the following interim guidelines that will apply, pending the outcome of discussions Aboriginal groups. These interim arrangements are without prejudice to the legal positions of DFO and Aboriginal groups, or the longer-term arrangements to be agreed upon in the ongoing discussions.

DFO will respect the Treaty right in the following manner:

- DFO will negotiate access to commercial fisheries with Aboriginal groups.
- DFO will provide interim fisheries access to Aboriginal groups on a case by case basis taking into account:
 - The primary importance of conservation goals and the precautionary approach when developing ways to accommodate new entrants.

- The displacement or impact upon existing harvesters and economic and regional fairness issues.
- DFO will consult with Aboriginal groups on the management of their fisheries, and where agreements are reached, ensure that steps are taken to have their communities play a role in the management of their fisheries consistent with the agreement and communal licence.
- In cases where no agreement is reached, DFO will issue a communal licence. The licence will establish conditions for harvest.

Pending the outcome of discussions on fishery access, DFO will regulate all fisheries, including those conducted with respect to the Treaty right, in the following manner:

Fishing activity in fisheries managed by DFO must be authorised by DFO. In the commercial fishery, this is achieved through licences issued to individual or corporate fishers and fishing enterprises, and in Aboriginal fisheries through communal licences issued to Aboriginal groups (unless alternative means become available). To accommodate the Treaty right on an interim basis, DFO will:

- Issue communal licences that:
 - establish enforceable conservation measures such as type and quantity of fishing gear,
 - establish an agreed upon quantity/quota for the fisheries, or in the absence of an agreement, establish a reasonable quantity/quota for the fisheries,
 - establish the time and area of harvest where required,
 - establish monitoring and reporting procedures.
- In addition to the fisheries management measures described above, harvesting will be conducted in compliance with regulations relating to public health and safety.
- To protect the integrity of the Treaty right and to ensure the orderly management of the fishery, if requested by either a Guardian or a Fishery Officer, those persons fishing under the authority of a communal licence must provide proof of designation by the Aboriginal group that has been authorised to fish.
- Unless otherwise agreed to between an Aboriginal group and DFO, normal enforcement procedures will apply to non-Aboriginal people on board a vessel used to fish outside of authorised, licensed commercial fisheries.
- Unauthorised entry into, and fishing in, Canadian waters by persons who are not citizens of Canada will be subject to enforcement action under the *Coastal Fisheries Protection Act* regardless of any claim by them to be Treaty beneficiaries.

7. Next Steps

DFO will continue discussions with Aboriginal groups and commercial interests and will be moving toward establishing fishing agreements between DFO and Aboriginal groups for 2000. This process is not meant to yield final arrangements that define the

Treaty right. Rather its purpose is to establish practical fishing arrangements to accommodate fishing interests of Aboriginal groups. The interim measures noted above will remain in effect until they are superceded by revised management measures derived from the discussion process.