

2020 – 2023 Island Marine Aquatic Working Group

STRATEGIC FRAMEWORK





**Sonora Thompson, Executive Director, Nicole
Frederickson, Biologist, and Nick Chowdhury
(Oomaglaees), President**

Message from the Island Marine Aquatic Working Group (IMAWG) President

IMAWG's foundation is to support the assertion of food security rights in reference to Section 35.1 of the Constitution Act, associated treaties and litigation. This foundation can include several subtopics that lead into the long term sustainability of all fishery aspects for Indigenous Communities/First Nations. IMAWG is not an Indigenous organization that holds any title or rights, so we cannot be considered a consultation process, nor do we speak for or on behalf of any Nation or organization. We provide a platform for conversation, a communications network for information sharing, and the ability to bring Indigenous Communities/First Nations together from around the Island and mainland inlets to create “one voice” for priorities.

There are many priorities and objectives outside of the fisheries planning process in terms of engagement with Fisheries and Oceans Canada (DFO). We hope to inform as many Indigenous Communities/First Nations leadership and fisheries staff as possible in the Vancouver Island Region for the needed engagements and discussions. To support Indigenous Communities/First Nations we provide technical support through our biologist and Island Marine Aquatic Technical (IMAT) working group, who have also built a tool box of resources that are available to use. Our combined effort with the DFO to date has also shown progress in reconciliation and building a better working relationship.

To help us share management updates, advice and recommendations and notices of upcoming engagement for Vancouver Island and mainland inlets Indigenous Communities/First Nations please let us know who within your community/team we can send communication to and invitation to attend fisheries meetings. To do this email our Executive Director - myclan@telus.net.

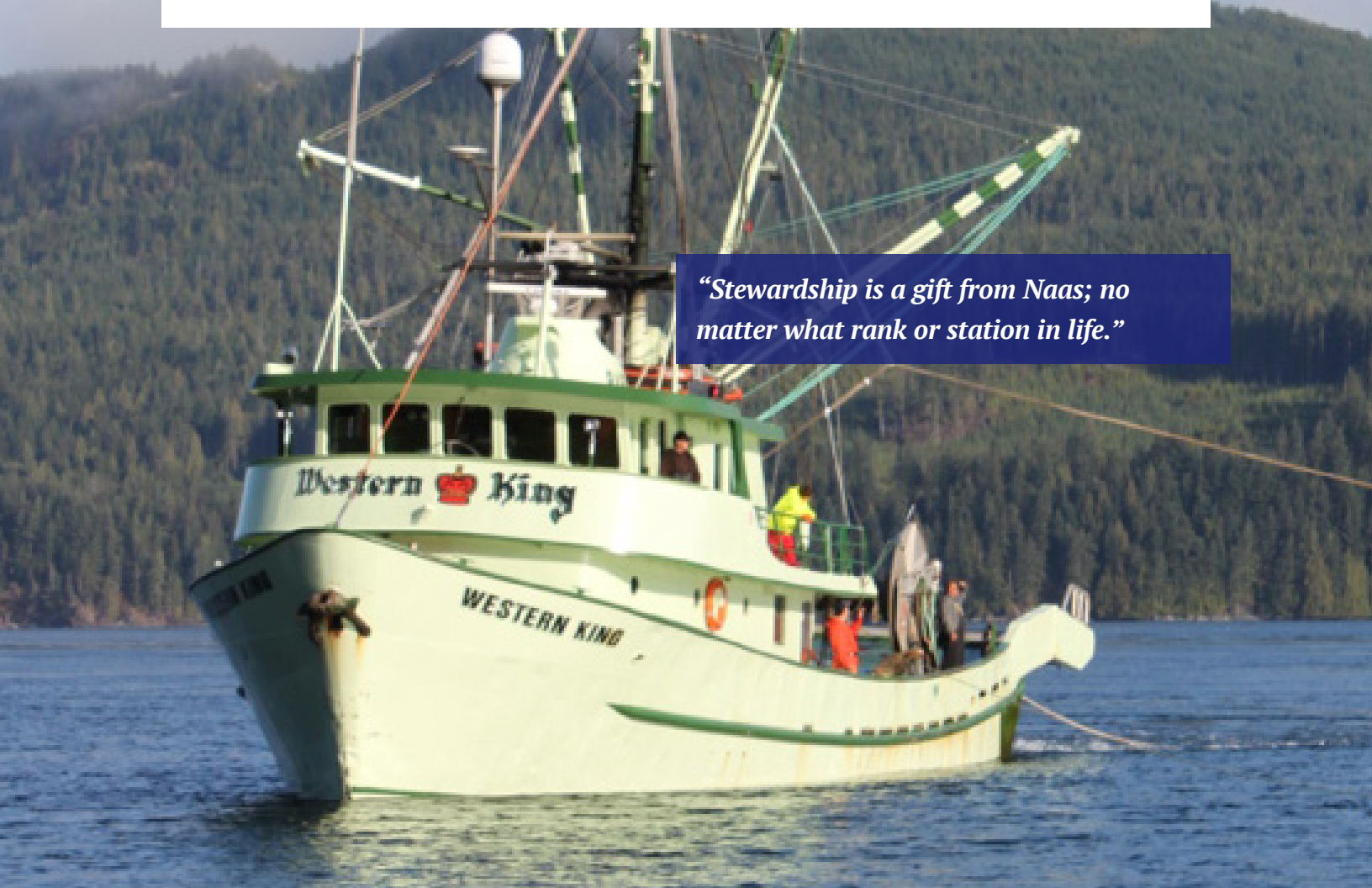
Ongoing engagement and discussions with Indigenous Communities/First Nation chiefs, hereditary chiefs, and leadership will help shape and mold the future goals of IMAWG. All we hope is to continue to be of service and support to develop a unified voice for our region.

Nick Chowdhury (Oomaglaees), President

Executive Summary (Purpose, Governance Structure, and Support)

PURPOSE: “To facilitate Tier One and Two forums for Indigenous people to exchange and analyze information on fisheries management, build a unified voice, and to support bilateral discussions between Indigenous Communities/First Nations and Government.”

The Island Marine and Aquatic Working Group (IMAWG) is an incorporated not for profit society that has been in existence since 2008. Our main purpose is to facilitate regional wide fisheries management meetings between both Indigenous and Fisheries and Oceans Canada (DFO) to discuss all fisheries matters of interest. We are funded by the DFO program Aboriginal Aquatic Resource and Oceans Management (AAROM). Our ultimate purpose is to create a space for engagement for a unified approach to co-management, while empowering Indigenous people within their local fisheries supported by the most up to date information, technical advice and recommendations. IMAWG is supported by a technical team called the Island Marine Aquatic Technical Working Group (IMAT) who uses both historical and modern science to review data and information to provide the best sound advice to Nations when engaging in co-management with DFO. It's important to understand that IMAWG is not a rights holding organization or a decision making body, therefore does not replace fiduciary bilateral consultations between Indigenous Communities/First Nations and the Government; we are here to support those discussions with shared information and advice.



“Stewardship is a gift from Naas; no matter what rank or station in life.”

During inception, IMAWG had been an amalgamation of Indigenous delegates from Vancouver Island and Marine Approach areas; now IMAWG has 15 appointed/elected members made up of all the three language groups on and around Vancouver Island: Coast Salish, Nuu-chah-nulth and Kwakwaka'wakw who systematically follow a set of bylaws, constitution, policies, this strategic plan and the AAROM agreement reporting requirements. IMAWG is managed by a contracted executive director and supported by one full time biologist. The executive director administers the program, while the biologists provide technical advice and recommendations to fisheries data, information, management planning and co-chair IMAT. The contractors work with IMAWG members, the IMAWG Board of Directors, DFO and other regional Indigenous Communities/First Nations fishery organizations/processes.

Even though IMAWG focuses on a regional approach to fisheries engagement, IMAWG recognizes that the language group Nations may take direction and share information with tribal or hereditary chief councils; for example IMAWG partners with the Council of Ha'wiih where they appoint the five Nuu-chah-nulth members to IMAWG and we are invited guests to their meetings. Ultimately it's the Indigenous Communities/First Nations themselves IMAWG takes full direction from, and will always remain in service to whatever systems those communities have in place.

IMAWG continues to strive to improve operations and through this 2020-2023 strategic plan they hope to build regional and local partnerships, enhance communications with local communities, share information, increase engagement with FNFC delegates, build on the relationship with DFO and seek out long term sustainable funding that will ensure a consistent service of business.



 **Planning Process**



 **2019-2022 Priorities**



Prawn and Crab

- Remove and provide alternatives for supplemental licensing
- Black market harvest discussion
- Research and new approaches to the Spawner Index Tool
- Value of prawn to indigenous people in integrated fisheries Management Plan



Bivalves

- Define high use areas
- Contaminated shellfish sanitation program package and community outreach
- Clam pilot project implementation



Herring

- Population genetic research for resident stocks via Academia and Communities
- Management strategy evaluation information package and workshops
- Herring spawn observation information outreach



Groundfish

- Rockfish conservation area workshops
- International Pacific Halibut Commission information package and community support
- Creation of Indigenous Landing Forums and Designation Certification



Salmon

- Parental based tagged research
- Incidental mortality research
- Improving science engagement, stock assessment work and habitat rebuilding
- Chinook conservation management
- Coho assessment and management framework



**Fisheries and Oceans
Canada**

Fisheries and Oceans Canada

- 100% recreational guides and lodge catch reporting and catch data / licensing improvements
- Prawn, crab and clam added to Creel surveys
- Relationship with recreational partners
- Indigenous data collection improvements
- Traditional ecological knowledge incorporation
- AAROM National Commitments and increased funding and supporting mandated tables
- Rebuilding of the access and allocation framework collaboratively
- Reconciliation, cultural and relationship capacity building processes
- Public education outreach on indigenous fisheries

☐ Mission

“With an untied voice, IMAWG will support and restore all aspects of Indigenous fisheries, by taking an inclusive collaborative approach with all communities within Vancouver Island and Mainland Inlets, extending relations and partners. IMAWG will work strategically to advance Indigenous fisheries in relation to policy, traditional ecological knowledge, modern science, habitat, stewardship, protection and management.”

☐ Vision

“To strengthen and empower a unified approach for Indigenous fisheries, supporting ecosystems and respected rights ensuring food security and health for all communities and the next seven generations.”



“My role and responsibility is to maintain and sustain a natural delicate balance and harmony with nature, natural law and all creatures.”

🗨️ Objectives / Principles

Communication

Empowered Indigenous Communities/First Nations by providing co-management participation/engagement meeting forums.

Engagement through advice and recommendations on fisheries management to DFO through regular communiqué before, during and after Tier meetings.

High-level functioning standard of business between IMAWG, DFO AAA, and DFO Area Director.

Full exchange of information between Indigenous Communities/First Nations, IMAWG and DFO.

A well-maintained and useable tracking system of all priorities and recommendations.

Improving public awareness through education and outreach.



Fisheries Engagement

Empowered Indigenous Communities/First Nations by working as a unified voice in fisheries co-management through engagement forums.

Empowered Indigenous Communities/First Nations by working as a unified voice to provide advice and recommendations for DFO and Indigenous communities.

Strengthened local Indigenous fisheries management.

Bolstered Tier One engagement and discussions.

In-season collaborative management through expanded roundtables for Vancouver Island.

Working towards resource ownership.

Healthy communities through access to traditional diet.

Increased capacity and economics.



Technical Support

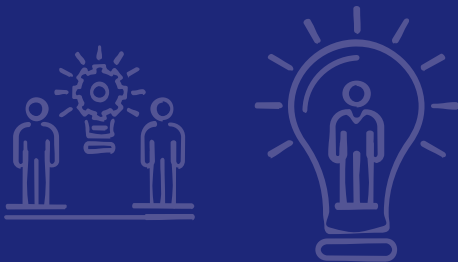
Collaborative partnerships between IMAWG and DFO technical.

Empowerment of Indigenous participation/engagement in co-management through traditional ecological knowledge and modern science.

Full engagement in other technical forums that support co-management outcomes of IMAWG.

Incorporation and acknowledgement of traditional and local knowledge.

Technical support for Indigenous Communities/First Nations in habitat assessment, restoration, stock assessment and data collection.



Partnerships

Empowered and unified voice between IMAWG and VI Indigenous Communities/First Nations.

Open and transparent relationship, while helping to create a “one voice”, with other Indigenous Communities/First Nations Regional watershed fishery groups.

Open and transparent relationship with the recreational fishery.

Open and transparent relationship with the First Nation Fisheries Council.

Functioning, fully engaged and responsible relationship with DFO.

Expansion in AAROM funds to allow for adequate engagement and community technical support.

Secured own source revenue for independent direction.

Direct, in season, regional focused management with commercial and recreational interests.

Increase partnership strength and rights recognition with Council of Ha'wiih.

Applying and utilizing Truth and Reconciliation.



Annual Planning Cycle

ISLAND MARINE AQUATIC WORKING GROUP



- SPAWNING
- GROUND FISH
- ▨▨▨▨ PELAGIC
- SHELL FISH
- ~~~~~ SALMON

Supporting Legislation

Aboriginal Rights

“Aboriginal rights are collective rights which flow from Aboriginal peoples’ continued use and occupation of certain areas. They are inherent rights which Aboriginal peoples have practiced and enjoyed since before European contact. Because each First Nation has historically functioned as a distinct society, there is no one official overarching Indigenous definition of what these rights are. Although these specific rights may vary between Aboriginal groups, in general they include rights to the land, rights to subsistence resources and activities, the right to self-determination and self-government, and the right to practice one’s own culture and customs including language and religion. Aboriginal rights have not been granted from external sources but are a result of Aboriginal peoples’ own occupation of their home territories as well as their ongoing social structures and political and legal systems. As such, Aboriginal rights are separate from rights afforded to non-Aboriginal Canadian citizens under Canadian common law.”

It is difficult to specifically list these rights, as Aboriginal peoples and the Canadian government may hold differing views. Some rights that Aboriginal peoples have practiced and recognized for themselves have not been recognized by the Crown. In a move towards addressing this gap, in 1982 the federal government enshrined Aboriginal rights



“We are past making recommendations or suggestions; we provide direction.”

in Section 35 of the Canadian Constitution, and in Section 25 of the Charter of Rights in Freedoms, the government further ensured that Charter rights cannot “abrogate or derogate” from Aboriginal rights. Yet the ensuing First Ministers’ Conferences could not reach a consensus on what specifically qualifies as an Aboriginal right, and the federal government has since recognized that, while Aboriginal rights exist, what these specific rights are will have to be determined over time through the court system.”

Constitution Act, 1982 Section 35

“Section 35 is the part of the Constitution Act that recognizes and affirms Aboriginal rights. The Canadian government did not initially plan to include Aboriginal rights so extensively within the Constitution when the Act was being redrafted in the early 1980s. Early drafts and discussions during the patriation of the Canadian Constitution did not include any recognition of those existing rights and relationships, but through campaigns and demonstrations, Aboriginal groups in Canada successfully fought to have their rights enshrined and protected.

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Section 35 of The Constitution Act, 1982 recognizes and affirms existing Aboriginal rights, but does not define them. What Aboriginal rights include has been the topic of much debate and discussion, and they have been defined over time through Supreme Court cases such as *R. v. Calder* and *R. v. Sparrow*. Aboriginal rights have been interpreted to include a range of cultural, social, political, and economic rights including the right to land, as well as to fish, to hunt, to practice one’s own culture, and to establish treaties.”



“When the tide is out the table is set.”

R. v. Sparrow (1990)

“R v. Sparrow was a precedent-setting decision made by the Supreme Court of Canada that set out criteria to determine whether governmental infringement on Aboriginal rights was justifiable, providing that these rights were in existence at the time of the Constitution Act, 1982. This criteria is known as “the Sparrow Test.”

Section 35 had been added to the Constitution in 1982 to protect Aboriginal rights. However, those rights had yet to be explicitly defined. The Supreme Court of Canada ruled that Musqueam’s Aboriginal right to fish had not been extinguished prior to the 1982 Constitution and that, as such, Mr. Sparrow had an “existing” right to fish at the time of his arrest. The Court also ruled that the words “recognized and affirmed,” as they appear in Section 35, mean that the government cannot override or infringe upon these rights without justification. This point essentially upheld the then-recent R. v. Guerin decision that the government has a fiduciary duty to First Nations.

Section 35(1) does not promise immunity from government regulation in contemporary society but it does hold the Crown to a substantive promise. The government is required to bear the burden of justifying any legislation that has some negative effect on any aboriginal right protected under s. 35(1).”



“We are instructed to be accountable for our thoughts, words and deeds as well as our actions and/or in actions for the health and well being of our environment and sustainability.”

R. v. Van der Peet (1996)

“The Van der Peet case was pivotal in further defining Aboriginal rights as outlined in Section 35 of the Constitution Act, 1982.

The ruling also resulted in what is known today as the Van der Peet Test, or the “Integral to a Distinctive Culture Test,” which determines how an Aboriginal right is to be defined. Specifically, the right must be proven to be integral to the culture of the claimant. The test outlines ten criteria that must be met in order for a practice to be affirmed and protected as an Aboriginal right pursuant to Section 35. These ten criteria are as follows:

1. Courts must take into account the perspective of Aboriginal peoples themselves;
2. Courts must identify precisely the nature of the claim being made in determining whether an Aboriginal claimant has demonstrated the existence of an Aboriginal right;
3. In order to be integral a practice, custom or tradition must be of central significance to the Aboriginal society in question;
4. The practices, customs and traditions which constitute Aboriginal rights are those which have continuity with the practices, customs and traditions that existed prior to contact;

“Everything is one and connected.”





“The rewards are the fruits of our efforts and labor, providing we manage, nurture and protect our environment, habitat and creatures to the best of our abilities for future generations.”

5. Courts must approach the rules of evidence in light of the evidentiary difficulties inherent in adjudicating Aboriginal claims;
6. Claims to Aboriginal rights must be adjudicated on a specific rather than general basis;
7. For a practice, custom or tradition to constitute an Aboriginal right it must be of independent significance to the Aboriginal culture in which it exists;
8. The integral to a distinctive culture test requires that a practice, custom or tradition be distinctive; it does not require that that practice, custom or tradition be distinct;
9. The influence of European culture will only be relevant to the inquiry if it is demonstrated that the practice, custom or tradition is only integral because of that influence;
10. Courts must take into account both the relationship of Aboriginal peoples to the land and the distinctive societies and cultures of Aboriginal peoples.”

Calder v. Attorney-General of British Columbia (1973)

“In 1967, Frank Calder and other Nisga’a elders sued the provincial government of British Columbia, declaring that Nisga’a title to their lands had never been lawfully extinguished through treaty or by any other means. While both the BC Supreme Court and the Court of Appeal rejected the claim, the Nisga’a appealed to the Supreme Court of Canada for recognition of their Aboriginal title to their traditional, ancestral and unceded lands. Their appeal was a landmark move that posed considerable risk not only to the Nisga’a, but to all Aboriginal peoples hoping to have their rights and title affirmed and recognized.”

Tsilhqot’in Nation v British Columbia (2014)

“Landmark decision of the Supreme Court of Canada which established Aboriginal land title for the Tsilhqot’in First Nation, with larger effects. As a result of the landmark decision, provinces cannot unilaterally claim a right to engage in clear-cut logging on lands protected by Aboriginal title; they must engage in meaningful consultation with the title-holder before proceeding. Although the Aboriginal title holder does not have to consent to the activity, without meaningful consultation no infringement of the right can take place.



*“We are the stewards of the land;
managing to ensures there is enough
for everyone for generations to come.”*

The court held that Aboriginal title constitutes a beneficial interest in the land, the underlying control of which is retained by the Crown. Rights conferred by Aboriginal title include the right to decide how the land will be used; to enjoy, occupy and possess the land; and to proactively use and manage the land, including its natural resources. But, the court set out a Sparrow-style mechanism by which the Crown can override Aboriginal title in the public interest:

1. the Crown must have carried out consultation and accommodation;
2. the Crown's actions must have been supported by a compelling and substantial objective; and
3. the Crown's action must have been consistent with its fiduciary obligation to the Aboriginal body in question."



“Wealth is the abundance of resources within a local territory that provides nutrient-rich food sources to sustain the people with the ability to share outside of the community.”


Ahousaht Indian Band and Nation v Canada (2018)

“Ruling that the Ehattesaht, Mowachaht/Muchalaht, Hesquiaht, Ahousaht and Tla-o-qui-aht’s (the ‘Plaintiffs’) declared right to fish within their fishing territories and to sell that fish was unjustifiably infringed by Canada in certain circumstances, and that other asserted infringements of the Plaintiffs’ right were either justified or did not amount to an infringement.

This trial was the second stage of a bifurcation of the proceedings in this case. The first stage was heard by the Honourable Madam Justice Garson (‘Garson J.’). Following a lengthy trial that took place in the BCSC over 120 days, Garson J. issued the following declarations and orders:

1. the Plaintiffs have Aboriginal rights to fish for any species of fish within their fishing territories and to sell that fish;
2. the seaward boundary for each fishing territory is nine miles from a line drawn from headland to headland within each of the Plaintiffs’ fishing territories;
3. the Fisheries Act, RSC 1985, c F-14 prima facie infringes the Plaintiffs’ Aboriginal rights to fish and to sell fish; and
4. Canada has a duty to consult and negotiate with the Plaintiffs in respect of the manner in which their Aboriginal rights can be accommodated and exercised without jeopardizing Canada’s legislative objectives and societal interests in regulating the fishery.

Garson J. also ordered that if Canada and the Plaintiffs were unable to reconcile their interests through consultation and accommodation within two years, either party could apply to the court for a determination of whether the prima facie infringement of the Plaintiffs’ declared rights was justified.”



“Need is not a number, but a holistic sense in which spirit and culture are first and foremost and the ability to provide for community.”

Partnerships

- First Nations Fisheries Council
- Lower Fraser Fisheries Alliance
- QARS
- Council of Ha'wiih
- Fisheries and Oceans Canada
- Pacific Salmon Foundation



“We take only what is needed.”

