

| Assessment Stage  | Fishery   | Date | Name of Individual/Organization Providing Comments  |
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| <b>Opportunity to review and comment on the draft report, including the draft scoring of the fishery.</b> | BC Salmon |      | Representatives from the Marine Conservation Caucus |

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| I wish to comment on the evaluation of the fishery against specific Performance Indicators. <i>A table with these indicators and the scores and rationales provided by CABs can be found in Appendix 1 of the draft assessment report.</i>   |
| <p><b>Nature of comment</b> <i>(Please insert one or more of these codes in the second column of the table below for each PI.)</i></p> <p>1.I do not believe all the relevant information available has been used to score this performance indicator <i>(please provide details and rationale)</i>.</p> <p>2.I do not believe the information and/or rationale used to score this performance indicator is adequate to support the given score <i>(please provide details and rationale)</i>.</p> <p>3.I do not believe the condition set for this performance indicator is adequate to improve the fishery’s performance to the SG80 level <i>(please provide details and rationale)</i>.</p> <p>4.Other <i>(please specify)</i></p> |

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| <b>PI 1.2.1 a, b, f<br/>There is a robust and precautionary harvest strategy in place</b> | <b>I,2</b>                                 | <p>The Assessment Team defends the management system by including fishery dependent catch information for Area 4 fisheries. The argument appears to be that low fisher produced data on chum discards is evidence of a “robust and precautionary harvest strategy”.</p> <p>But the Assessment Team fails to do the same for Area 3 and 6, where chum discards are many times higher.</p> <p>In 2013, for instance, the fisher dependent estimate of chum discards was 85,118. The total estimated chum escapement for Area 6 in 2013 reported in the post-season review was just over 51,000, which is well below the SEG. (see attached report)</p> <p>Further, the management agency is unable to provide any defensible fishery independent estimates of total mortalities or compliance.</p> |

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|  | <p>There has been ongoing work by NGOs and academics to understand bycatch mortality in seine fisheries. The findings to date suggest the critical element in terms of the potential survival of discarded chum salmon is air exposure. If chum salmon can be put back into the water within 2-3 minutes, the potential for survival is relatively high.</p> <p>The missing link is compliance. As shown in our commentary on compliance under Principle 3, there is a disturbing amount of non-compliance in north coast seine fisheries. Also, see attached video clip.</p> <p><a href="http://www.theglobeandmail.com/news/british-columbia/video-proves-unwanted-salmon-being-left-for-dead-on-seiners-group-alleges/article13790930/">http://www.theglobeandmail.com/news/british-columbia/video-proves-unwanted-salmon-being-left-for-dead-on-seiners-group-alleges/article13790930/</a></p> <p>NGOs have proposed alternative measures to industry and DFO which would cost-effectively improve compliance, and encourage discards to be returned to the water within an established time frame.</p> <p>Neither industry, nor DFO, have expressed much interest in such a dialogue.</p> <p>See attached reports</p> <p>This failure should reduce the score in the above to PIs to below 80 in a, b, and f.</p> <p>There is evidence of unaccounted for gillnet mortalities in UofA1 (Area 29) associated with contact with gillnets. A significant proportion of the sockeye in the study had serious injury from gillnet drop-outs. While the fish migrated some distance after being observed and tagged, a significant portion perished before spawning. Please see the attached reports and emails. This, and other information associated with understanding total mortalities, is not incorporated in the harvest strategy.</p> |
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| <p><b>Nature of comment</b> (<i>Please insert one or more of these codes in the second column of the table below for each PI.</i>)</p> <ol style="list-style-type: none"> <li>1. We do not believe all the relevant information available has been used to score this performance indicator (<i>please provide details and rationale</i>).</li> <li>2. We do not believe the information and/or rationale used to score this performance indicator is adequate to support the given score (<i>please provide details and rationale</i>).</li> <li>3. We do not believe the condition set for this performance indicator is adequate to improve the fishery's performance to the SG80 level (<i>please provide details and rationale</i>).</li> <li>4. Other (<i>please specify</i>)</li> </ol> |

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| <i>PI 3.1.1 for North Coast sockeye</i>                                       | 1,2   | <p>Our comments are specific to Skeena River sockeye. The PCDR scores the UoA 95. We believe the PI fails to pass the 60 and 80 Guideposts for this PI. We summarize our reasons below. Additional information, including references and documentation is provided in the attached document.</p> <p>Please note, before continuing our argument, the information in the attached link. It describes DFO's obligations to consult with First Nations under Canadian Law, and lists key consultations with First Nations. None was with the Lake Babine Nation.</p> <p><a href="http://www.pac.dfo-mpo.gc.ca/consultation/fn-pn/index-eng.html">http://www.pac.dfo-mpo.gc.ca/consultation/fn-pn/index-eng.html</a></p> |
| <i>PI 3.1.1a Compatibility of laws or standards with effective management</i> | 1,2   | The refusal by DFO to engage with the Lake Babine Nation in the development of a bilateral consultation protocol means that DFO is not in compliance with Canadian Law, with commitments made by the Government of Canada to   |

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|  | <p>indigenous people, or the spirit of reconciliation.</p> <p>Supreme Court of Canada decisions guarantee First Nations the right to engage in substantive and comprehensive bilateral consultations with Canada. Canada, in this instance, is represented by the Department of Fisheries and Oceans. SA4.3.2.1 provides specific guidance to the Assessment Team. It directs the Assessment Team to ensure <i>‘there is an appropriate and effective legal and/or customary framework’</i> in place, and that to pass the 60 SG, <i>‘the existence of national law, agreements, and policies governing the actions of all the authorities and actors involved in managing the Uof A’</i> and, <i>‘That these laws, agreements, and/or policies provide a framework for cooperation between national entities (e.g. between regional and national, management, state, and federal management, indigenous, and other groups for the context, scale, or intensity of the UofA’</i>.</p> <p>Over 90% of Skeena sockeye return to Lake Babine Nation territories, and Babine Lake is, by far, the largest producer of sockeye in UoA1. The Lake Babine Nation is <i>not</i> represented by any other First Nations organization, nor is it involved in DFO third-party consultation processes.</p> <p>The Lake Babine Nation has made several attempts to negotiate a consultation protocol for the management of Babine salmon, similar to what some First Nations in UoA2 have in place. DFO has refused.</p> <p>The largest rights holder in the management of Skeena sockeye is therefore estranged from the process required to deliver management outcomes. The Lake Babine Nation has attempted, on several occasions, to resolve the situation, but the management agency has refused.</p> <p>The 60 SG is not achieved because DFO has refused to put in place a framework for consultation and cooperation between Canada and the Lake Babine Nation. LBN’s proposed consultation protocol is provided in the attached documentation.</p> <p>The Assessment Team is required to evaluate if there is a effective framework for cooperation in place. We provide objective evidence there is not.</p> |
|  | <p>The 80 SG is not achieved because the absence of a bilateral</p>  |

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|   |     | consultation framework with the Lake Babine Nations means there is no ‘organized and effective cooperation’ between the parties for the purposes of achieving management outcomes  |
| <i>PI 3.1.1b<br/>Resolution of<br/>disputes</i> | 1,2 | We argue that the 60 SG is not achieved. The absence of a consultation protocol between the Lake Babine Nation means that there is no mechanism for the resolution of disputes between the two Nations with constitutional rights in terms of salmon: Canada and the Lake Babine Nation.   |
| <i>PI 3.1.1c<br/>Respect for Rights</i>         | 1,2 | It is unequivocal that the 80 SG is not achieved, and it is likely the 60 SG also fails to meet MSC’s Guidance: SA4.3.6 and SA4.3.7.1/ SA4.3.7.2. The attached information provided proves not only is there an absence of a mechanism that either ‘generally respects’ or ‘observes’ The Lake Babine Nation’s rights, but the management agency rebuffed several invitations to develop the necessary mechanisms. |

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| <b>Example: PI 3.2.4 Monitoring and management performance evaluation</b> | <i>1,2</i>                                 | <p>The PI requires the Assessment Team to interpret “external review” at SG80 to mean external to the fishery specific management system (SA 10.1). And that occasional and regular are interpreted relative to the intensity of the Uof A.</p> <p>GSA4.10.1 describes the types of external review.</p> <p>The justification provided by the Assessment Team fails to address either SA 10.1 or GSA4,10.1</p> <p>Unless the Assessment Team can provide evidence that meets the standard, the score should be downgraded to below 80.</p> <p>GSA4.10.1 provides the following examples of ‘external review’ required:</p> <ul style="list-style-type: none"> <li>• Another department within an agency</li> </ul> |

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|  |  | <ul style="list-style-type: none"><li>• Another agency or organization within the country</li><li>• A government audit that is external to the fisheries management agency</li><li>• A peer organization nationally or internationally,</li><li>• External expert reviewers.</li></ul> <p>Thus, while the Assessment Team concluded the enhancement program is not subject to occasional review, the same could be said for fishery-specific management.</p> <p>The Assessment Team should have evaluated whether there is occasional external review of:</p> <ul style="list-style-type: none"><li>• Monitoring and data collection in UofAs</li><li>• MCS in fisheries with an impact on non-target Primary species of concern</li><li>• Monitoring systems as required by the Management Strategy and Information PIs</li></ul> |
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| <b>PI 3.2.3a<br/>MCS<br/>Implementation</b> | 1/2  | <p>The score provided is unjustified. While there is a monitoring, control and surveillance system in place; it, as is required for a score of 80 to be achieved, fails to demonstrate an ability to enforce relevant management measures, strategies and/or rules.</p> <p>Further, to meet the SG60 there must be a reasonable expectation they are effective.</p> <p>The Department of Fisheries and Ocean's Conservation and Protection, not DFO's Fisheries Management Branch, is responsible for enforcing regulations associated with fishing activities. It's target compliance rate is &gt;95%. <a href="http://www.dfo-mpo.gc.ca/rpp/2015-16/so-rs-2.1-eng.html">http://www.dfo-mpo.gc.ca/rpp/2015-16/so-rs-2.1-eng.html</a></p> <p>The Assessment Team failed to identify the critical management measures, strategies, and/or rules in place in fisheries where Primary species are not the Target Species, or where ETP may</p> |



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|  | <p>be encountered. It then failed to evaluate whether the MCS system was capable of enforcing rules and management strategies associated with Primary and ETP species encounters, survival, or whether they were ‘returned to the water with the least possible harm’.</p> <p>The Assessment Team uncritically accepted a MCS plan without making any attempt to evaluate there is a reasonable expectation the plan is effective, or there is demonstrated evidence it is effective.</p> <p>The Assessment Team should have identified the core elements required in any plan required to ensure compliance with requirements to return non-target primary species to the water with the least possible harm. It could then have evaluated whether the plan delivered these core elements, and whether they were effectively enforced.</p> <p>The evaluation should have included the likelihood a possible infraction may occur, the probability it would be observed by C&amp;P, whether the implementation plan was consistent across fisheries, the likelihood C&amp;P or other fishery independent observers would be available at any fishery opening, how the compliance plan in BC salmon compares to MCS schemes for other significant BC fisheries, or other performance measures.</p> <p>The Assessment Team could also have looked to FAO guidance in developing a framework to understand the efficacy of the MCS program in terms of unwanted catch in BC salmon fisheries.</p> <p><a href="http://www.fao.org/docrep/005/y3427e/y3427e0a.htm">http://www.fao.org/docrep/005/y3427e/y3427e0a.htm</a></p> <p>The team, as mentioned above, could have looked at the MCS measures in place in other BC fisheries, and compared them with the measures and outcomes in the BC salmon fishery.</p> <p>Once the Assessment Team identified the performance measures to use in evaluating the MCS program in terms of nonretained Primary species and ETF species, it could have collected evidence from reports provided by the management agency. We have attached such reports. From these, a reasonable person would have to conclude it is unreasonable to expect the MCS system in place is, or could be, effective.</p> <p>Further, there is demonstrable objective evidence from the</p> |
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|                                       |            | <p>management agency that it fails to systematically enforce management measures or strategies. (See ‘evidence’ below and attached documents)</p> <p>If additional evidence is required of the inability of the current MCS system to deliver outcomes to the MSC standard; it is the promise by the management agency to bring current MCS programs in the salmon fishery into compliance with BC and National policy. Presumably, such actions would not be required if MCS programs were already compliant.</p> <p>But DFO has not provided a timetable for when fisheries identified as requiring improved MCS programs will have them implemented, other than to say it will be some years in the future. <i>(Confirmed by DFO in a conference call with stakeholders January 16<sup>th</sup> 2017, Karen Leslie DFO lead).</i></p> <p>This should not comfort the Assessment Team as the last MSC certification of BC salmon was supported by an Action Plan that promised Conditions would be addressed through the implementation of the Wild Salmon Policy. Neither DFO, nor the client, made any significant attempt to implement the WSP as it was detailed in the Action Plan. The existence of a Policy or promise of future implementation is insufficient to meet the MSC standard.</p> |
| <p><b>PI 3.2.3b<br/>Sanctions</b></p> | <p>1,2</p> | <p>The 80SG requires, ‘Sanctions to deal with non-compliance exist, are consistently applied and thought to provide effective deterrence.</p> <p>The Assessment Team should have evaluated this on three levels to be compliant with MSC guidance: one, do sanctions exist; two, are they consistently applied; and three, do they provide effective deterrence.</p> <p>The Assessment Team evidently evaluated only the first. And that they did poorly. The Team should have evaluated whether sanctions exist for regulations and management strategies governing unwanted catch. This evaluation should have incorporated an analysis of the specific regulations in place, whether they can be effectively enforced, what evidence is required, does the evidence withstand scrutiny in the courts, and the number of sanctions relative to amount of noncompliance identified by C&amp;P. See the attached documents.</p> <p>An analysis of whether fishery meets the second requirement</p>   |

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|  |     | <p>and sanctions are consistently applied would generate significant evidence they are not. This is because monitoring and enforcement is inconsistently applied across all UofAs. Therefore, sanctions must also be inconsistently applied.</p> <p>That sanctions are ineffective is underlined by the degree of noncompliance identified in BC fisheries. This evidence is provided by C&amp;P. Page 4 of their 2016 post-season report suggests violations are inversely related to C&amp;P presence. Therefore, sanctions must be ineffective as the mere presence of potential sanctions is ineffective in reducing violations. Further, C&amp;P responded to poor compliance in 2014/15 in JS gillnet fisheries by conducting enhanced monitoring in 2016. C&amp;P identified significant levels of non-compliance in 2016 providing evidence that any sanctions applied after the 2015 season were ineffective.</p> |
| <b>PI 3.2.3c Compliance</b>                | 1,2 | <p>The 60SG requires, ‘Fishers are generally thought to comply with the management system for the fishery...including, when required, providing information of importance to the effective management of the fishery’</p> <p>It is improbable, from C&amp;P’s reports and analysis, that a reasonable person would find that fishers are generally thought to comply with the management strategy. And this is particularly evident in terms of compliance with rules and regulations around non-target Primary species.</p> <p>Please see the ‘Evidence’ section below and the attached documents. Both show high levels of non-compliance in the most recent fishing seasons. Note MSC’s letter of January 13, 2017 that speaks to stakeholder’s ability to provide current information to the Assessment Team.</p>  |
| <b>Evidence (see supporting documents)</b> |     | <p>The following are extracts documents supporting our arguments above. The documents are either attached or guidance provided on how to access them. Much of the evidence speaks to the scoring requirement 9.3 as it comes from the management agency.</p>   |

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