

Commentary: *Treaties in Transition*

“Reading the Actual Implementation Process in this Report by McRae and Pearse is Similar to Figuring out Who is the Winner in a Three-Dimensional Chess Game.”

BY TIM LYNCH

The difference between God and a politician is: God doesn't need an advisor. Political leaders always need advisors. The role of the advisor becomes more challenging when historic, socio-economic, scientific, geopolitical and socio-political forces compete for attention. Under such circumstances the advisory function is to create a policy framework that serves to ameliorate the differences among constituents that demand to be heard. The report, *Treaties in Transition: Towards a Sustainable Fishery on Canada's Pacific Coast*, May 2004 (The McRae / Pearse report), illustrates such an advisory challenge.

McRae / Pearse were required to provide advice on how the fishing industry, primarily salmon fisheries, could be managed when First Nations treaties are finally negotiated. The dilemma being addressed is recognition that the treaty process could last for another decade or more, whereas the pacific fisheries management needs more urgent action. Reading the report one sometimes gets the impression that the authors may be trying to “put the cart before the horse.” Presumably the conclusions and recommendations of this report will influence, if not outright dictate, final settlements involving fishing to treaties under negotiation.

While reference is made to other fish that can be harvested, primarily the report serves to outline how harvesting Pacific salmon stocks can equitably accommodate aboriginal, commercial and recreational fishing interests. The report provides a concise profile of the salmon fishing industry in BC and the challenges that need to be confronted in managing such a sensitive and complex migratory natural resource. The terms of reference for the report did not include assessing the impact that international fishing markets and the fish farm industry may have on the wild salmon industry in BC. Not including such extraneous variables could be a weakness in full implementation of the report. This weakness arises every time there was reference in the report to establishing an integrated and sustainable commercial fisheries industry in BC.

The authors, like so many before them, have attempted to accommodate modern values of human rights, resource conservation and environmental protection within the discriminatory and criminal framework imposed by the 1867 Fisheries Act. The report does stress the need to repeal this antiquated piece of legislation that received Royal Assent before Canada had a west coast fisheries industry.

The underlying logic of the report's recommendations seems to be some generic concept of “rights” in describing the interests of the parties involved. The concept of a “right” rather than “interest” arises from “the right” of the First Nations people to exercise their constitutional prerogative to catch fish for food and ceremonial purposes. This acknowledged legal interpretation of “a right” appears to confuse the reality of business sustainability, wherein bankruptcy should be acknowledged as a consequence of over investing in the production of a product.

After analyzing the realities of doing business in the Canadian Pacific fishing industry the report serves as a navigational aide for arriving at a more sustainable business environment. The need to balance replenishment of future catches by ensuring spawning is

successful, and the constitutional requirement to ensure First Nations rights are protected, means that commercial and recreational fishing rights (interests) will have to be rationalized.

The terms of reference dictate that this rationalization process includes the reallocation of fish to meet treaty obligations first. Serving this objective the authors propose that compensation for the historic inappropriateness in the husbandry of a natural Canadian resource should be borne equitably by all Canadians. This is a polite way of saying the solution requires large federal tax bailout to compensate non-First Nation fishers. Recreational fishers are required to follow the status quo, at least for the next five years, subject to certain, though yet to be defined, Ministerial monitoring mechanism that will assess experience with quota management and the catch-share system in the commercial fishery.

The traditional role of the Department of Fisheries and Oceans in executing fishing policy is acknowledged as being more of a command and control style of management. McRae / Pearse encourage leadership from within the rank and file to assume positions of responsibility. Their report directs DFO to invite each Area Harvest Committee to choose how they will divide their group's allocation of salmon among their members. Further defining the role of DFO in the new order the report states that the Area Harvest Committees should be free to decide on how shares are allocated among their members. Demonstrating the urgency of the situation the report calls for this change in management culture to occur by the end of 2004.

Describing the current system of licenses and quotas for commercial fishing as “hodgepodge of rights” McRae / Pearse provides a new policy framework that they claim will ensure the certainty and security necessary to improve economic performance. This policy framework attempts to take the best of the quota / licensing methodologies currently being employed and implement them in a more equitable manner, subject to the “rights” (interests) of the parties involved.

Reading the actual implementation process in the report is similar to figuring out who is the winner in a three-dimensional game of chess. Any new fishing minister being briefed on this part of the report in particular would likely rely on multi-media PowerPoint presentation. Such a medium is much more palatable than trying to actually read this report with its three-column text on shaded and negative style layout and design. Notwithstanding the complexity of its content, one gets the impression from the report layout that the authors didn't intend their report to be an “easy read.”

The Report concludes with 41 recommendations listing actions that need to be taken. As an instrument of public policy the McRae / Pearse report does provide a deck on which to survey the horizon and hopefully navigate a course. References to actions that must be taken during the current 2004 fishing season, and what must occur during 2005, along with repeated reference to the need for urgent reform, creates the impression that one is standing on a burning deck.



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