

# SUMMARY REPORT

## BC Spill Response Initiative: First Nations Regional Engagement Sessions

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## Executive Summary

The First Nations Fisheries Council (FNFC) and the Ministry of Environment and Climate Change Strategy (Ministry/province) worked collaboratively to plan and carry out 7 regional workshops for First Nations to discuss proposed enhancements to provincial policy regarding spill response. These workshops followed the February 28, 2018 Ministry released 'Policy intentions paper for engagement: Phase two enhancements to spill management in British Columbia'.

Participants were invited to provide feedback on the Ministry's intentions for the development and implementation of phase 2 enhancements and exchange ideas and information on how to improve spill management. Background information, including the intentions paper that outlines the phase 2 enhancements, was provided to participants in advance.

Updates on the phase 1 enhancements were outlined to participants on the day of the presentation, as well as an overview on how the Ministry responds to environmental emergencies.

## Introduction and Background

For the last 10 years BC has been working on improving its spill management legislation, including policies and systems – in 2015 BC announced its intent to create a 'world leading spill response regime' to improve land and marine-based spill preparedness and response; BC also announced its intent to build this regime, in collaboration with First Nations, industry and communities which would be launched in the spring of 2017.

In 2014 the BC First Nations Leadership Council (FNLC) signed a Memorandum of Understanding (MOU) with the Ministry, formerly known as the BC Ministry of Environment with the purpose of establishing a constructive working relationship through joint high-level dialogue – this MOU was one of the results of the Mount Polley disaster, which created an urgent need to improve emergency preparedness and response in BC.

In late 2015, the Ministry approached the BC First Nations Fisheries Council (FNFC) to seek assistance with BC's plan to engage First Nations; FNFC has a strong history and capacity for conducting geographic based regional forums amongst BC First Nations. FNFC's role with the Ministry was to ensure that the engagement with First Nations regarding the BC spill response initiative, was being undertaken properly – this engagement included the organization and delivery of regional workshops for First Nations (held in early May 2016).

## Review of 2016 Sessions

The 2018 engagement sessions built on the work that had previously been done in 2016 regarding provincial spill management. The Ministry, with the support of the BC First Nations Fisheries Council, hosted 6 regional workshops for First Nations to present information, and start discussions regarding the improvements and legislative changes being made to the BC spill response system.

In total, a combined 92 people attended the 2016 regional workshops; 45 First Nations were represented, including 5 First Nation organizations and 5 tribal council organizations. The workshops resulted in an interim First Nations vision of spill management, and spill preparedness and response; outlined expectations from BC regarding spill management, and spill preparedness and response; highlighted concerns regarding the BC spill preparedness and response initiative; and, identified opportunities for First Nations involvement in spill management, spill preparedness and response.

The First Nations Regional Engagement Workshops are part of a process for presenting information to First Nations, and gathering initial feedback, identifying initial concerns, expectations, and providing First Nations an opportunity to express their initial vision for improving spill management, spill preparedness and response. A summary of 2018 sessions is outlined below with a breakdown of location, attendance, material, etc.

## Summary of 2018 Regional Workshops

Seven regional workshops were held over an approximately 2-month period beginning in mid-March and ending in May. These were held in:

- Kamloops, BC (Hotel 540) March 16<sup>th</sup>, 2018
- Nanaimo, BC (Vancouver Island Conference Centre) April 13<sup>th</sup>, 2018
- Terrace, BC (Best Western) April 17<sup>th</sup>, 2018
- Vancouver, BC (Sheraton Vancouver Airport Hotel) April 20<sup>th</sup>, 2018
- Prince George, BC (Coast Inn of the North) April 23<sup>rd</sup>, 2018
- Fort St. John, BC (Best Western Plus Chateau) May 23<sup>rd</sup>, 2018
- Bella Bella, BC (G.E. Darby United Church) May 30<sup>th</sup>, 2018

Each session began at 8:30 AM with a half an hour of networking, ending at around 3:30. The participant numbers ranged from 1-20. In total 59 participants from 32 different First Nations and First Nations organizations were present at the sessions. A complete breakdown is outlined below.

<b>Location of Workshop</b>	<b>Number of Participants</b>	<b>Participant Affiliation (First Nations, First Nations Organization, etc.)</b>
Kamloops	7	Stk'emlupsemc te Secwepemc Nation (SSN), Tsuu T'ina, Nooaitch Nation, Neskonalith Nation, Simpcw Nation.
Nanaimo	8	Stz'uminus Nation, Klahoose Nation, Toquaht Nation, Indigenous Advisory and Monitoring Committee (IAMC), Namgis First Nation, K'omoks First Nation, Malahat Nation.
Terrace	9	Kitsumkalum Fish and Wildlife, Kalum Fish and Wildlife, Lax Kw'alaams First Nation, North Coast Skeena Stewardship Society, Tahltan Central Government, Kitsumkalum Fisheries and Wildlife Enforcement.
Vancouver	6	Tseshaht First Nation, Lower Fraser Fisheries Alliance, Sts'ailes Band, Yale First Nation.
Prince George	1	Nak'azdli Band.
Fort St. John	20	Fort Nelson First Nation, Prophet River First Nation, Fort Nelson First Nation, Saulteau First Nation Treaty and Lands, Saulteau First Nation ALP, Dena Tha Nation, Aboriginal Resource Sector Aboriginal Liaison Program, Doig River First Nation, Ts'kw'aylaxw First Nation.
Bella Bella	8	Heiltsuk First Nation.
<b>Total:</b>	59 participants	32 nations

In addition to the First Nations participants and the provincial staff, there was consistent federal representation at all of the meetings inclusive of the Canadian Coast Guard, Transport

Canada, Department of Fisheries and Oceans & Natural Resources Canada. This showcased an effort to work collaboratively at various scales and was appreciated by some First Nations participants.

**Note:** Due to the large number of federal and provincial initiatives, First Nations expressed concerns over meeting fatigue. Additionally, there was concern over the lack of financial compensation for First Nations time. This resulted in some lower numbers at the provincial sessions.

Each regional session began the day with an opening prayer and/or welcome by a local First Nation representative. The agenda (see Appendix A) focused on reaching the following objectives:

**OBJECTIVES of the Regional Workshops**

- a) Inform First Nations of BC's current spill management system (phase 1) and introduce proposed phase 2 requirements
- b) Understand initial and ongoing concerns, interests and involvement from First Nations
- c) Understand current and continuing vision of First Nations interests in spill response management

The presentation style was casual to generate a relaxed atmosphere and participants were encouraged to ask questions throughout which generated good conversations. The FNFC was present at all sessions helping coordinate and capturing the feedback from First Nations.

The sessions began in the morning with a review of the current spill management system (phase 1) which included:

- Pillars of spill management
- Existing legislation and regulations
- Phased approach to improving spill management
- Overview of phase 1 improvements

There was a break and when participants returned a Ministry responder presentation followed regarding the *Environmental Emergency Program: Who we are and what we do*. The presentation touched on:

- Spills in BC
- Mandate of EEP
- Legislative authority
- Provincial Response Model
- Guiding Plans
- Who is involved in a spill? Program capacity, Spill Triage Process, Scale of Response

- Spectrum of EERO roles
- Reasons to modernize EEP & Next steps for modernization
- EERO training & Equipment

After the Ministry responder presentation there was a break for lunch and networking. The afternoon session consisted of an overview of the proposed phase 2 requirements presentation and discussion. There were main themes within the presentation that included:

- Engagement on phase 2
- Response times
- Geographic response plans
- Loss of public use
- Marine application of regulation

There was a significant amount of conversation generated around the length of response times, generally the feeling was they were too long. Participants were also seeking more clarity around Geographic Response Plans (GRPs); the process in creating and determining their locations. The concerns and feedback are expanded on in the following sections.

**Disclaimer:** These workshops were not considered Crown consultation for any specific project and were intended to provide forums for information sharing and engagement with First Nations across BC regarding the spill preparedness and response initiative. This engagement is part of a broader process BC is undertaking with First Nations, industry and communities. The First Nations Fisheries Council has made every effort to accurately reflect the comments and discussions held during the regional workshops.

## Opportunities: Spill Management, Spill Preparedness, Monitoring & Enforcement

Consistent with the 2016 sessions, a common theme captured from all First Nations was their interest in having a greater stewardship role in their territories. First Nations have a strong bond and responsibility to the land and a shared vision of a healthy and sustainable environment for future generations.

In regards to spill management specifically, a common concern was around how long-term effects from spills are monitored and accounted for, as well as a shared desire to be more involved in the monitoring, enforcement and response efforts. Within the sessions there were

many opportunities presented by First Nations to facilitate their meaningful participation in spill management:

#### OPPORTUNITIES

- engage in training and build meaningful careers in **monitoring, response, and prevention** of spills in their territories. They also desire to be engaged in monitoring their water quality, fish populations, habitat, etc.
- take the lead as first responders when spills happen in their territories—lead the cleanup efforts.
- design their own programs and processes related to spill response, as they have the best knowledge of the land and would be ideal for this work. Concern that some programs are being used against them.
- have **enforcement** power in their territories. The Aboriginal Guardian program is a good example of this and there is a desire to get an agreement between both levels of government and First Nations Guardians directly involved with similar authority. Currently First Nations can only ‘observe, record and report’, desire for enforcement. The Guardian program is under review and it could easily be complementary to this work and enforcement
- be involved directly, don’t want 5 or 6 spill responses—desire to streamline the process lead by First Nations. Too many players and there is a potential for major gaps.

## Expectations

First Nations seek high standards in their relationship with the crown, especially regarding their traditional territories, and potential risks to them. They expect a government-to-government relationship based on mutual respect and understanding to develop processes and capacity that benefit all parties.

Recent government commitments to working with First Nations have set a strong foundation for future relations and have created a level of accountability on the part of government to uphold these commitments. Significant—and recently adopted—documents inclusive of international, federal and provincial scales of government include:

- The 2016 United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)
- The 2017 ‘Principles respecting the Government of Canada’s relationship with Indigenous peoples’ (‘Ten Principles’)

- The 2018 province of BC’s ‘Draft Principles that guide the provincial government’s relationship with Indigenous Peoples’

These are mechanisms that First Nations use to advance their rights and interests and can be tools to hold government accountable to their commitments. Adherence to these documents within the provincial spill management processes—particularly UNDRIP— was brought up multiple times in the 2018 sessions.

Other **expectations** that were communicated by First Nations more specially to spill response and management included:

<p><b>Training, Partnerships, and Capacity Building</b></p>	<ul style="list-style-type: none"> <li>• Relationship building is integral to this process; must cultivate strong relationships before training, partnerships, and capacity building can take place.</li> <li>• Co-management, co-development and joint decision making especially at the conceptual stages—First Nations are not interested in the old way of being notified after the fact.</li> <li>• First Nations want to be involved in the response processes as they are often located in ideal locations to be first responders. Being involved includes taking part at various stages from planning to response. Request for training and career paths.</li> <li>• Desire for the Watchman Program to be explored further.</li> <li>• Would like to see CN help set up a training programs and to supply equipment.</li> <li>• First Nations need to have proper funding and training to retain staff.</li> <li>• Expectation that industry builds real partnerships with First Nations; rarely see representation on board of directors; often tokenistic.</li> </ul>
<p><b>Meaningful Engagement</b></p>	<ul style="list-style-type: none"> <li>• Meaningful engagement and discussion around the different and sometimes unclear jurisdiction of the provincial and Office of the Government of Canada (OGC) in regards to spill response; this came up a significant amount of time in the regional sessions.</li> <li>• Expectation that companies that ship dangerous goods are held accountable to engage with First Nations.</li> <li>• When looking at increased Indigenous engagement, some First Nations see it as checking a box on the governments side. Meaningful engagement is needed.</li> </ul>

<p><b>Effective Communication</b></p>	<ul style="list-style-type: none"> <li>• Request to be notified immediately when there is a spill; notification to First Nations never happened with the Kinder Morgan Spill (Jasper). It was bounced around departments with no one taking responsibility. Request for a coordinated response plan.</li> <li>• Expectation that First Nations be told what has been spilled and the potential danger to their community (concern that if the spiller has to inform the community they won't do their due diligence in informing the correct people).</li> <li>• Frustration that participants didn't hear about the 'Spill Management Working Groups' until too late. First Nations need more advance notification and more time to be able to participate in these processes. This is an expectation.</li> </ul>
<p><b>Accountability and Transparency</b></p>	<ul style="list-style-type: none"> <li>• Expectation that industry and companies that bring risk must be held accountable at all stages and that they address potential impacts to First Nations rights and interests.</li> <li>• Processes must be transparent, open and uphold First Nations rights and interests.</li> </ul>

Additional Expectations raised:

- The need for collaboration among various scales of government. First Nations communicated a desire to see more integrated and collaborative work between levels of government—inclusive of First Nations—and to avoid working in silos. Participants asked where the BC Ministry of Indigenous Relations and Reconciliation (MIRR) was? And were curious where the alignment with the Oceans Protections Plan (OPP) fit in?
  - It was also communicated that it is difficult for First Nations to try and follow different and sometimes conflicting regulations (federal vs. provincial scale). There is an expectation that government will work together and mitigate this.
- The respect for and inclusion of Indigenous Traditional Knowledge (ITK) in spill management, particularly to be included in the response plans as there are many sensitive areas that need to be protected.
  - When exploring impacts on cultural heritage sites, government doesn't have knowledge on how to assess appropriately— expectation that First Nations are a part of this process and are provided with the capacity necessary to carry it out.

## Concerns

First Nations expressed both shared common concerns at the sessions, and unique regional ones. The shared concerns can be categorized into 4 main areas:

- |      |  |
|------|--|
| I.   | historical and current state of environmental safeguards |
| II.  | lack of capacity and cost recovery                       |
| III. | current state of spill management                        |
| IV.  | lack of confidence in provincial initiatives             |

There was a significant amount of feedback from First Nations regarding the poor historical track record, current state, and future of spill management in BC. Concern around the effectiveness of environmental safeguards was consistent, as well as a shared lack of confidence in provincial initiatives (both historical and current). More specific questions and feedback under the four headings have been categorized below:

### **I. historical and current state of environmental safeguards**

- A question around the province's stance on diluted bitumen; unclear.
- Environmental liability; what is the process around dealing with abandoned railways, mine sites, oil and gas/mining camp sites, etc.? They cause significant environmental damage. Where is the province on this?
- Dumping; contaminated soil, vehicles, equipment, garbage, etc. Significant issue on First Nations territory, brought up at multiple sessions. Uncertain of the provincial response to this.
- Seeking clarity around pipelines and the process when there is a spill.
- Potential detrimental aquaculture 'spill'. Is this within the provincial jurisdiction? Is it considered a spill? What is the response plan?
- When a spill happens First Nations food is impacted for generations. Will BC as a regulator engage in research that looks at new and innovative ways of recovering ecosystems? If so, First Nations want to be meaningfully involved in this research, especially when concerning culturally sensitive areas.
- Certain areas have significant numbers of both logging trucks carrying fuel and petroleum holding tanks in close proximity to important waterways. There is increased risk in the areas where there is higher traffic, e.g. salmon bearing streams adjacent to highway. Where are the safeguards here?
- Many fish stocks are extremely low, there is no capacity for risk. Salmon extinction is a very real possibility, spill management must take this into account.

- Significant concern around poor water quality from industry pollution; is the province monitoring this? First Nations want to take on meaningful careers in this field.

## II. lack of capacity and cost recovery

- First Nations are not being compensated for their time to attend these sessions and are spread thin. Many nations don't have the people to even attend sessions, or they are busy with other more important meetings. Meeting fatigue is a significant issue, desire to have more streamlined processes amongst government so time could be used in a more efficient way.
- Does the Province have a program to assist financially? This could enable First Nations to hire staff and get staff and/or participants to meetings.
- Concern there aren't enough enforcement staff; look at federal and provincial authority in enforcing each other's rules. E.g. conservation and fisheries officers.
- There was a consistently brought up concern that First Nations are not getting reimbursed in a timely manner for their response efforts (E.g. Marathassa Spill, Tseil-Waututh used their own funds—which took away from other important sources— to respond and were not reimbursed in an appropriate time-frame).
- Concern that spillers won't be able to pay for the recovery as many are small companies (e.g. owner operated trucking companies).

## III. current state of spill management

*The discussions around the current state of spill management centered largely around the response process and jurisdiction. There was a lot of confusion around jurisdiction and questions about the limits of provincial and federal jurisdiction were very consistent. There were also a lot of requests for clarification around response process and a general desire to synchronize in order to be more effective. The specific feedback is separated into 'Response' and 'Jurisdiction' and is detailed below.*

### *Response:*

- Concern that the provincial response times are too long and that there are too few full-time response officers. Extreme weather should not be used as an excuse for slow response times.
- First Nations are frustrated with not being able to conduct a full response without government being present. The example of the Nathan E. Stewart spill (2016) was brought up many times. First Nations were first on the scene but were only able to contain the spill

until the government staff came. If they were able to play more of an active response role the damage would have been greatly mitigated. This lack of response jurisdiction is a significant issue, as well as the layers of bureaucracy and red tape involved in spill response.

- Question of whether response times are based on risk.
- Concern over when the response plans will be developed? Before or after spill?
- Seeking clarity around the process and hierarchy surrounding Incident Command Systems (ICS) as it related to spill response. There should be a discussion about ICS with First Nations—need to set up a line of command in advance.
- During floods on reserve, there have been significant conflicts with the ministry responsible for highways; have had major disagreements. Would be good to talk to First Nations in advance to come up with a response plan to potentially mitigate this in the future.
- Desire to synchronize response; different levels of government and First Nations working together.
- Will independent companies be doing the spill reporting? Potential conflict of interest.

#### *Jurisdiction:*

- Who cleans up in federal jurisdiction? E.g. accumulation of old railway ties; federal or provincial?
- Seeking clarification around the jurisdiction surrounding spill response (consistently requested at most sessions).
- Overlapping traditional territory—can pose challenges.
- Land code nations; unique and complex with many overlapping jurisdictions.
- Clarity around the process when a spill occurs on a First Nations reservation (federal) land. Where does the province come in? What is the province's role on federal land (also consistently asked at most sessions)?
- Due to multiple overlapping jurisdictions and overlap there is no clear middle; huge gaps due to lack of monitoring by government.

#### **IV. lack of confidence in provincial initiatives**

- Long history of spills, history of negligent response; First Nations are not satisfied and don't have trust. The general view of government response to local incidents is negative. First Nations have learned that they have to rely on local people to respond and don't rely on the province when there is an emergency. Don't like province coming in because they muck things up, history has shown us. With these current practices, steep hill to climb before First Nations will be on board.
- Feeling that the province has never been a partner with First Nations. Will use every bit of legislation to try and assert their jurisdiction.

- Mercury levels in Stuart Valley (Bralorne) very high due to mining—province was seen as negligent in mitigating this and First Nations don't forget.

## Comments to Key Areas

There were a few key topics within the presentations that generated a lot of discussion:

- a) Recovery Plans
- b) Geographic Response Plans (GRPs)
- c) Loss of Public Use

The feedback is summarized below with the main concerns and suggestions.

### **Recovery Plans**

First Nations had many questions surrounding the process of creating the recovery plans and where the space for their involvement is. There was a desire for Indigenous Traditional Knowledge to be included in these plans, which could facilitate a more successful response. There was also a lot of conversation generated around financial compensation around the recovery efforts and if this would be included in the recovery plans.

### **Geographic Response Plans (GRPs)**

A consistent concern around GRPs was who determines the hot spot for GRP creation. The question of whether First Nations would be meaningfully engaged in the process was brought up multiple times.

There were also questions around the oversight process regarding GRPs and if it is updated regularly. First Nations communicated that they want to have a meaningful role in deciding where to locate GRPs and there is concern over the hierarchy surrounding where they are located. Is it systemic and fair?

### **Loss of Public Use**

In the initial sessions there was a lot of feedback from First Nations surrounding the tendency to lump them in with other stakeholders with the 'Loss of Public Use' example. There was a feeling that their special relationship with the crown was not being respected.

There was also concern that 'public use' wouldn't accurately capture First Nation's socio-cultural impacts and a 'Loss of Public Use Plan' for First Nations would be very different than one for non-First Nations. Social, cultural, economic and environmental impacts are all linked for First Nations. How would this be measured? A significant task to take this assessment on.

**Note:** It must be noted that the province revised the presentation to include 'Loss of Public and Cultural Use' after the first initial sessions.

## Additional Comments and Concerns:

- Account for impacts of traditional territory need baseline data. This assessment should be done in the future and include the 'Spill Response Working Group'; need input and feedback.
- A lot of discussion was around jurisdictional issues and GRPs. Potential follow up meeting to dive into material deeper? Potential full day on GRP?
- Has regulatory oversight improved, what is the current status? The change?
- Cumulative impacts are not taken into consideration. Over time if there are many spills the impacts are significant. How does the province understand cumulative effects over time? (Marine: intentional contaminations; shipping, abandoned vessels, etc., Inland: dumping, contaminated soils, vehicles, machinery, etc.)
- The sheer volume of consultations with First Nations make it challenging to explore the breadth and depth of these issues.
- Concern over the tight timeline (April 30<sup>th</sup>, 2018) for feedback as First Nations need time to review. Request for the province to communicate out information from working group

**Note on Process:** Some First Nations communicated their appreciation of seeing different levels of government participating in the sessions. They saw this as an effort to work together and streamline processes.

## Recommendations

The following recommendations are designed to be measurable and practical.

- 1) Processes are streamlined to avoid unnecessary duplication; meeting fatigue is experienced by most First Nations communities and needs to be avoided. Government must align their processes before engaging with First Nations.
- 2) Proper communication and appropriate time-frames must be given to First Nations in order to prepare for and attend meetings, as well as participate in working groups. This would demonstrate a genuine desire to work collaboratively.
- 3) Following the 2016 and 2018 engagement sessions there was a continued desire from First Nations to protect and monitor their territories and to be the first responders to spills. Training sessions should be held to equip First Nations with the tools and training they need to protect their territories and take on a leading role in spill response.
- 4) Possible follow up workshops to go into more depth about certain issues that were of interest to First Nations; GRPs, jurisdiction, etc.
- 5) Meaningful partnerships be built with the province and other levels of government to develop trust and facilitate a good working relationship with First Nations. A government-to-government relationship is expected inclusive of joint-decision making and an adherence to the 'Ten Principles' and UNDRIP.

## Appendix A

### Agenda for the day

08:30-09:00	Networking (light refreshments)
08:45-09:15	Introduction
09:15-10:45	Current spill management system (phase 1)
10:45-11:00	BREAK
11:00-12:00	Ministry responder presentation
12:00-13:00	LUNCH (provided)
13:00-14:30	Proposed phase 2 requirements presentation and discussion
14:30-16:00	Discussion