

**COMMISSION OF INQUIRY INTO THE DECLINE OF SOCKEYE SALMON
IN THE FRASER RIVER**

In the matter of Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, directing that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable Bruce Cohen as Commissioner to conduct an inquiry into the decline of sockeye salmon in the Fraser River

**CLOSING SUBMISSIONS OF PARTICIPANT GROUP # 14 COMPRISING MAA-
NULTH TREATY SOCIETY¹, MUSQUEAM INDIAN BAND AND TSAWWASSEN
FIRST NATION – OCTOBER 17, 2011**

Part 1 – Closing Submissions of the Musqueam Indian Band

Part 2 - Closing Submissions of the Tsawwassen First Nation

Submitted by:

**James Reynolds,
Counsel for the Musqueam Indian Band**

**Tina Dion,
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¹ The Maa-nulth Treaty Society is not making any written closing submissions.

PART 1

- Closing Submissions of the Musqueam Indian Band²

Introduction & Summary

These Closing Submissions are made on behalf of the Musqueam Indian Band. Consistent with prior oral and written submissions of the Band, they summarize the practical implications of the *Sparrow* decision that led to a negotiated settlement on an annual basis through Comprehensive Fisheries Agreements between the Band and the Department of Fisheries and Oceans (“DFO”) and how those Agreements have failed to provide for any meaningful cooperative management by DFO and the Band of the sockeye salmon fishery in the Fraser River. They conclude by requesting the Commissioner to include as part of his recommendations for improving the future sustainability of the fishery that DFO enter into good faith negotiations on an agreement with a First Nation that has an Aboriginal right to fish, such as Musqueam, for meaningful cooperative management of the fishery. This would better implement the promise of the *Sparrow* decision and enable the traditional knowledge of Aboriginal people to be used to improve the sustainability of the fishery and so help to fulfill the mandate of the Commission.

² The Musqueam Indian Band is a member of a standing group with Maa-nulth Treaty Society and Tsawwassen First Nation.

The Sparrow Case – Musqueam has an Aboriginal right to fish in the Fraser

In 1990, the Supreme Court of Canada in *Sparrow*³ upheld the decision of the B.C. Court of Appeal that the Musqueam have an Aboriginal right to fish in the Fraser River for food and social and ceremonial purposes, leaving aside the question of commercial fishing because of the way the case had been presented in the courts below. This right is protected by section 35(1) of the *Constitution Act 1982*.

The Court noted that the evidence “reveals that the Musqueam have lived in this area as an organized society long before the coming of the European settlers, and the taking of salmon was an integral part of their lives and remains so to this day.”⁴ In his address to welcome the Commission to Musqueam’s Traditional Territory, Elder Larry Grant affirmed the relationship of salmon to the very survival of the Musqueam:

“our people greeted the strangers on those ships [of the Spanish and British explorers in the 1770s] and many of them brought fish forward, fish to give, fish to trade. It was a major, major part of our culture. ... Our culture is dependent on fish. And for 9,000 years up until colonization, it sustained us, sustained our culture. And with the introduction of colonization and industrial fishery, it’s been depleted in a short century. If the salmon disappears ... a big portion of our culture disappears.”⁵

³ [1990] 1 S.C.R. 1075; [1990] 3 C.N.L.R. 160.

⁴ [1990] 3 C.N.L.R. 160 at 171.

⁵ Hearing Transcript, June 15, 2010 at pages 1-2.

Negotiated Settlement – The Comprehensive Fisheries Agreements

In order to avoid disputes over the extent of the Aboriginal right to fish and based on the need to provide employment and economic opportunities, the Band has reluctantly agreed in most years subsequent to *Sparrow*, to enter into Comprehensive Fisheries Agreements with the Department of Fisheries to regulate the exercise of the right to fish by the Band members.⁶ These Agreements form part of the foundation of the DFO Aboriginal Fisheries Strategy that was started by DFO in 1992 as a direct result of the *Sparrow* decision.⁷ Such negotiated agreements were encouraged by the Court in *Sparrow* with its statement that “Section 35(1), at the least, provides a solid constitutional base upon which subsequent negotiations can take place.”⁸ The Band has repeatedly shown that it is prepared to go to the highest level of court to protect its Aboriginal rights and title.⁹ However, its preference is to enter into negotiated settlements such as the 2008 Reconciliation Agreement with the Province of British Columbia.¹⁰ Such negotiated settlements have been encouraged by all levels of courts including by the famous statement of Chief Justice Lamar in *Delgamuukw*:

“Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve

⁶ The Agreements expressly state that they are not intended to define or extinguish any Aboriginal rights and are not evidence of such rights.

⁷ Ministry of Fisheries and Oceans, available at: <http://www.dfo-mpo.gc.ca/fm-gp/aboriginal-autochtones/afs-srpa-eng.htm>

⁸ *Supra* note 3 at 178

⁹ *Guerin v. The Queen*, [1984], 2 SCR 335 (Shaughnessy Golf Course); *Sparrow*, *supra* note 3.

¹⁰ See http://www.gov.bc.ca/arr/firstnation/musqueam-down/musqueam_reconciliation_agreement.pdf; James I. Reynolds, “The Beauty of Compromise – The Musqueam Reconciliation Agreement” in Continuing Legal Education Society of British Columbia, *Aboriginal Law 2008*.

... 'the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.' Let us face it, we are all here to stay."¹¹

The Failure of the Aboriginal Fisheries Strategy to Achieve Cooperative Management

Unfortunately, the experience of the Musqueam in trying to implement the *Sparrow* decision through negotiated settlements as encouraged by the courts has not been successful in achieving the cooperative management of the resource by Musqueam with DFO as was the original intent. Instead, the negotiation and implementation of the Comprehensive Fisheries Agreements has been a source of frustration and confrontation. DFO's approach to "co-management" is based on instructions from DFO as opposed to collaboration, and is focused on a shared delivery of elements of DFO programs and not genuine co-management. This experience has failed to reflect the statement of the Supreme Court of Canada in *Sparrow* that:

"The relationship between the Government and aboriginals is trust-like, rather than adversarial and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship."¹²

Instead, the policy framework has become mired in internal programming audits and reviews, and is more about budgets and politics than upholding the honour of the Crown

¹¹ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at paragraph 186.

¹² *Sparrow*, *supra* note 3 at 180.

and its fiduciary obligations with respect to proven Aboriginal rights.¹³ This has resulted in budget reductions and a shift in the focus of operations to new government programs. Musqueam has seen its “co-management” budget reduced by nearly one hundred thousand dollars, and the allocations for salmon have also been reduced since the mid-1990s despite the large increase in population.

Musqueam has been disappointed by the failure of DFO to have meaningful consultations with it over the fishery. This has resulted in much correspondence and many meetings demanding that the *Sparrow* decision be respected. Musqueam has seen DFO permit other user groups to continue to fish despite conservation concerns and limits placed on Musqueam’s ability to fish. In a letter dated August 17, 2007, Chief Campbell wrote to the Regional Director General:

“We want to make it very clear that the first and paramount concern of Musqueam is conservation of the fish. Our ancestors fished these waters for thousands of years. We want our descendants to be able to continue to do so. If there is a valid conservation concern, Musqueam acknowledges that it is not able to exercise its Aboriginal right. However, it cannot agree with ...DFO’s refusal to allow Aboriginal fishing while it allows sports fishing to continue.”

There was no Comprehensive Fisheries Agreement signed in 2008 because DFO refused to negotiate regarding the changes requested by Musqueam. On July 30, 2008, Chief

¹³ *Sparrow*, *supra* note 3, at 181: “We find that the words ‘recognition and affirmation’ [in section 35(1) of the *Constitution Act 1982*] incorporate the fiduciary relationship referred to earlier and so import some restraint on the exercise of sovereign power.” *Ibid* at 183-4: “[T]he honour of the Crown is at stake in dealings with aboriginal peoples. The special trust relationship and the responsibility of the government vis-à-vis aboriginals must be the first consideration in determining whether the legislation or action in question can be justified.”

Campbell wrote to the RDG demanding that he correct the actions of DFO staff and scientists and respect the *Sparrow* decision. On September 29, 2008, Chief Campbell said that there had been no meaningful consultations regarding the impact of the proposed Pacific Integrated Commercial Fisheries Initiative under which the policy direction would be guided by a commercial interest obtained by a First Nation as opposed to maintaining the priority of access under *Sparrow*. On March 9, 2009, Chief Campbell noted the refusal of DFO to give priority to Musqueam's Aboriginal right to fish over recreational fishing despite the *Sparrow* decision. Likewise, on August 7, 2009, he noted that test fisheries were permitted to catch and sell fish while Musqueam was prevented from doing so.

Musqueam remains concerned that, while the Comprehensive Fisheries Agreements clearly contemplate negotiations as to their contents, there is, in practice, a very real need for meaningful discussions on the language and content of the Agreements, long before the commencement of the fishing season. For example, the Article 2.1 of Schedule 5 of the 2011 Agreement contemplates that Musqueam will "negotiate current and future Comprehensive Fisheries Agreement(s) with DFO." However, year after year the Band is provided with DFO's copy of the Agreement much too late in time (generally in July just before the fishing season gets into its most active phase) to facilitate genuine negotiations and exchange of information. As a consequence, Musqueam remains fundamentally dissatisfied with the Agreements, yet feels compelled to sign them in order to potentially harvest fish under the economic opportunity fishery and avoid legal disputes that are costly and confrontational. This year, for example, the Band was told

that any changes Musqueam requested to the content and language of the Agreement would take two to three weeks to receive a single response from DFO and even longer to re-negotiate problematic provisions. The Band could not risk this delay and as a result, very reluctantly signed an Agreement that does not truly address Musqueam's needs and preferred means of exercising established fishing rights.

The Band has, therefore asked DFO to change the timing of the negotiations to begin the discussion with a view to addressing concerns well before next year's fishing season commences.

The Band is also very concerned at the lack of any meaningful cooperative management over the fisheries in which the Band participates including the sockeye fishery in the Fraser River. At present, the Comprehensive Fisheries Agreements fail to have any meaningful form of cooperative management of the sockeye salmon fishery in the Fraser River or to give Musqueam any ability to have a meaningful say in sustainability of that fishery. Instead, they are a mechanism of program delivery to meet DFO operational objectives for data. The Agreements set up a weak system of a Planning Committee to react to decisions made by DFO on how the participation by Musqueam in the fishery will be managed by DFO, and if the First Nation disagrees, to make written recommendations to the Regional Director General that he is not obligated to accept, and will ultimately be too late to have any practical effect. Despite the case law on timely consultations, there is inadequate time for the Musqueam to effectively react and state their concerns to DFO. There is no say by Musqueam in the management by DFO of the fishery by other user groups who dominate the harvest and so have the dominant impact on the sustainability of the fishery despite the scheme of priority to Musqueam fishing

over fishing by other user groups.¹⁴ The Integrated Harvest Planning Committee which develops the Integrated Fisheries Management Plan has no clearly defined First Nations representation process, and can best be described as ad-hoc. The Comprehensive Fisheries Agreement originally provided funding for enforcement by Musqueam Guardians. However, DFO has for all intents and purposes cancelled the Guardian program in the Pacific Region, so Musqueam Guardians more resemble observers or monitors. Musqueam's traditional knowledge of the fishery, gained over thousands of years, is not taken seriously and preference is given to projections by DFO scientists that have proven to be wrong over many years. DFO does not fully comprehend its fiduciary obligations as part of the Crown with respect to Musqueam's proven Aboriginal rights and, instead, it purports to restrict the exercise of those rights and sidesteps its fiduciary responsibility based on questionable science and bureaucratic considerations and without adequate consultation with the Band.¹⁵

¹⁴ *Sparrow, supra* note 3 at 184-5.

¹⁵ *Ibid* at 187.

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Recommendation for Cooperative Management by DFO and Musqueam Indian Band

Musqueam calls upon this Commission to make recommendations that will better implement the promise of *Sparrow* and *Delgamukw* of a cooperative relationship between the federal Government and the Band as well as the fiduciary obligations of the Crown with respect to Musqueam's proven Aboriginal right to fish.

Applied to the mandate of the Commission, this means that, as part of its recommendations for improving the future sustainability of the sockeye salmon fishery in the Fraser River, the Commission should recommend that DFO enter into good faith negotiations on agreements with those First Nations with an Aboriginal right to fish for meaningful cooperative management of the Fraser River sockeye salmon fishery. This will better implement the promise of section 35 as interpreted in *Sparrow* to recognize and affirm Aboriginal rights. It will also enable the traditional knowledge of Aboriginal people to be used to improve the future sustainability of the sockeye salmon fishery in the Fraser River. The scope and content of the agreement will be dependent on a truly "negotiated settlement, with good faith and give and take on all sides, reinforced by the judgments of [the courts]".¹⁶

Respectfully Submitted on October 17, 2011:



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¹⁶ *Supra* note 11.

Index of Authorities

1. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
2. *Guerin v. The Queen*, [1984] 2 SCR 335.
3. *R. v. Sparrow*, [1990] 1 S.C.R. 1075.
4. *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.
5. **Department of Fisheries and Oceans, available at:**
<http://www.dfo-mpo.gc.ca/fm-gp/aboriginal-autochtones/afs-srapa-eng.htm>

Part II

Closing Submissions of the Tsawwassen First Nation¹

Introduction

1. The Tsawwassen people are a Coast Salish fishing people, whose land base is located on the Strait of Georgia, on the Lower Mainland. The Tsawwassen First Nation ("TFN") is the only participant granted standing in this Inquiry to have entered into a comprehensive modern-day Treaty with the Provincial and Federal Governments. The Tsawwassen First Nation Final Agreement ("Final Agreement") was signed by the three parties to it on July 25, 2007 and it ultimately took effect on April 3, 2009.² As such, Tsawwassen's unique perspectives with respect to fisheries operations, particularly co-management, pursuant to the Final Agreement may be of assistance to this Inquiry.

2. The Final Agreement modified the mechanism for determining the TFN's access to the salmon fishery. Prior to 1992, the TFN made applications to the Department of Fisheries and Oceans ("DFO") for a maximum catch allocation. Between 1992 and 2009, the TFN were allocated fish under the Aboriginal Fisheries Strategy ("AFS"), which is applicable in areas where the DFO manages the fishery, but land claims are not yet settled. Under the Final Agreement, TFN's constitutional rights to harvest fish and aquatic plants for food, social and ceremonial purposes ("FSC"), subject to conservation, public health and public safety, were recognized and affirmed, and an allocation mechanism was agreed upon by the parties.

3. As defined in the Final Agreement, the constitutionally-protected Tsawwassen Fishing Right ("TFR") includes "the right to harvest Fish and Aquatic Plants in the Tsawwassen Fishing Area." The TFR is held by the TFN, and the TFN and its Members have the right to trade and barter fish and aquatic plants harvested under the TFR among themselves or with other

¹ The Tsawwassen First Nation is a member of the standing group with the Musqueam Indian Band and the Maa-Nulth Treaty Society ("MTM").

² *Tsawwassen First Nation Final Agreement Act*, S.C. 2008, c. 32 and S.B.C. 2007, c. 39. ["Final Agreement"] Exhibit 283.

aboriginal people of Canada. The Tsawwassen Fishing Area is outlined in Appendix J-1 of the Final Agreement.³ The Tsawwassen Fishing Area includes a large portion of the Strait of Georgia and the lower Fraser River. The Final Agreement provides for the TFN's treaty allocations of salmon for FSC purposes. Appendix J-2 of the Final Agreement outlines the strict process for determining the allocation of sockeye salmon, and other salmon species, in a given year for the TFN. The allocation of salmon under the Final Agreement, in a given year, is a fraction - less than one percent - of the Canadian Total Allowable Catch for the Fraser River-bound sockeye salmon ("CTAC"), as determined by the DFO.

4. Under the self-government powers enumerated in the Final Agreement, the Tsawwassen Government has made laws and regulations with respect to the fisheries. A TFN law made with respect to the TFR prevails to the extent of a conflict with a Federal or Provincial law. These laws regulate, among other things: (1) designation and licensing of individuals and vessels to harvest fish under the TFR; (2) the trade and barter among aboriginal peoples of fish harvested under the TFR; (3) penalties for offences under the laws and regulations; (4) fisheries management and staffing responsibilities; and (5) the distribution of fish caught under the TFR to TFN Members.⁴ The Final Agreement also provided for the establishment of the Joint Fisheries Committee ("JFC"), discussed *infra*. The *TFN Fisheries Act* also outlines the responsibilities of the TFN representative to the JFC.

Topics Specific to Aboriginal Interests

5. As part of the "Aboriginal Worldview, Cultural Context and Traditional Knowledge" panel, Chief Kim Baird⁵ gave evidence about the importance of the fisheries to the Tsawwassen people. She also provided a witness summary with respect to fish and the fishery for TFN, in it, blending comments respecting the pre and post Treaty fishery.⁶ She is a fisherman who comes from a family of fisherman. Salmon has been the mainstay of the TFN diet for all living memory - it is a part of their identity; it is culturally significant. There are many legends which describe

³ Appendix J: Tsawwassen Fishing, with sub-appendices J-1 (Map of Tsawwassen Fishing Area and Tsawwassen Intertidal Bivalve Fishing Area), J-2 (Tsawwassen Allocations for Fish and Aquatic Plants), and J-3 (Principles for Calculating Overages and Underages), Exhibit 287.

⁴ See *Fisheries, Wildlife, Migratory Birds and Renewable Resources Act*, Statute of Tsawwassen First Nation, 2009, as amended ["*TFN Fisheries Act*"], Exhibit 285; and *Fisheries Regulation*, 2009, as amended. Exhibit 286.

⁵ Participant on the panel representing primarily the lower Fraser, December 13, 2010.

⁶ Witness Summary: Chief Kim Baird, Exhibit 281.

Tsawwassen people as salmon people. For the Tsawwassen, cultural transmission of knowledge occurs by practicing fishing through generations, a rich family history is thereby passed along. Given salmon is one of the only resources left in TFN's traditional territory⁷, it is all the more important. There is a sense of excitement when the fish are abundant; but whether there is 1 fish to be caught, or 100; the Tsawwassen people are very involved.

6. Under the Final Agreement, TFN has fewer FSC participants, although almost everyone tries to get out fishing for the commercial fishery. The majority of Tsawwassen Members eligible to fish under Tsawwassen law do so. When negotiating the Final Agreement, TFN gave up a portion of its FSC fish allocation in order to obtain a greater share of commercial fish under harvest agreements. Operationally, the TFN fisheries department establishes how many people may be interested in the FSC fish, based on previous year's numbers. There is a process to determine who wants to be on that list. FSC fish are also put away for Treaty Day, canoe events, and elders' luncheons. Some individual fisherman trade FSC fish with other First Nations. FSC fish are distributed on and off Tsawwassen Lands, and people are generally able to fill their freezers, in times of abundance. In low stock periods, there is a devastating impact on the community.⁸

Management of the Fraser River Sockeye Fishery

7. In her witness summary, Chief Baird explained that TFN tried hard (when negotiating the Final Agreement) to obtain joint management powers, but the DFO wanted to retain ultimate decision making authority. While Chief Baird understands the reasons for it, she does not see why DFO cannot explore ways to make joint decision making or co-management better. Chief Baird would like to see First Nations have involvement in the decision-making, particularly in the area of conservation and restoration.

8. New to the TFN fisheries management is the JFC process, a committee comprised of representatives from each of the three parties to the Final Agreement. The JFC's mandate is to facilitate cooperative assessment, planning and management of: (1) the exercise of the TFR; (2) enhancement initiatives and stewardship activities by TFN; (3) monitoring and enforcement

⁷ *Final Agreement*, Appendix A: Tsawwassen Territory, Exhibit 284.

⁸ *Supra note 6*, p. 1-2.

activities in respect of TFN fisheries; and (4) other matters as the parties may agree. The Final Agreement also provides a list of enumerated activities and functions the JFC will undertake in carrying out its responsibilities.⁹

9. According to Chief Baird, the actual management of fisheries is not all that different post-treaty than pre-treaty. Post-treaty however, TFN has better processes in place for identifying harvest plans for fish, including sockeye. The harvest plan is the annual fish plan prepared by TFN as required by the Final Agreement.¹⁰ TFN works with biologists who provide advice on identifying vulnerable stocks and conservation concerns, and propose fish openings and closings. This advice is helpful to TFN in providing logic to how their fisheries are conducted.¹¹

10. Chief Baird also explained that having a quota system under the Final Agreement has made a big difference in the management of TFN's fishery. Before the Final Agreement, there was no transparency because DFO would manage to an undisclosed allocation number for TFN, which caused antagonism among users, including with First Nations. This issue has been resolved with the Final Agreement, since the allocation is determined by the CTAC, rather than the perception of a political decision by DFO.

11. One unique aspect of the Final Agreement with respect to the management of the fishery is the underage and overage system. According to Chief Baird, to an extent, overages and underages take away opportunity based fishery by imposing consequences if TFN catches more than it should, or not enough. TFN recognizes that some TFN fisherman do not prefer the idea of quotas, preferring instead the opportunities based fishery.¹²

12. However, moving to a percentage based fishery was one of the trade-offs that TFN had to make when negotiating the Treaty. TFN appreciates that the percentage approach may not be the preference of other First Nations. The primary reason TFN agreed to a percentage based model was that it provided a level of certainty sought by the Federal Government of the quantity of fish TFN could harvest under the Final Agreement. With a percentage based model, the parties are able, at the outset, to know what amount of fish TFN can harvest for any opening. The give and

⁹ Final Agreement, Chapter 9, clauses 68-78, Exhibit 283.

¹⁰ *Ibid* clauses 65-69.

¹¹ *Supra* note 8, p. 3.

¹² *Ibid*.

take with this formula is that in years of abundance, TFN gets a higher quantity of fish, and for years of lower abundance, they get less fish.

13. Under the Final Agreement, TFN is required to submit, through the JFC, to DFO, a post-season fisheries report, at the end of each fishing season. The Tsawwassen First Nation Post-Season Report for 2009¹³, indicates that there were difficulties that arose which were not the fault of TFN fishers. The problems centered on determining the in-season estimate of the TFN FSC just prior to the second sockeye opening for the 2009 season.

14. Kaarina McGivney, Director, Salmonid Enhancement Program, Ecosystems Management Branch, DFO, gave evidence about the difficulties experienced by DFO in managing the fishery by percentage quotas.¹⁴ Her evidence was that the estimate of the available stocks was higher than what was ultimately available.¹⁵ While the issue of managing the fishery using overages and underages has added complications, Ms. McGivney's view was that the fishery was managed on the best information available at the time.¹⁶

15. While the process under the Final Agreement provides for a management that is different than for other First Nation stakeholders, this management system exemplifies that where a First Nation and the DFO set out to manage the fishery under a new process, difficulties in responding and adapting to change are inherent for both parties. However, the TFN experience also shows that where both parties have a real interest in finding the best solution for management of the fishery, they will. Important within a new system, is the need for some flexibility in managing a fishery that operates in real time, based on the best available information.

Collaborative Processes with Other First Nations

16. There has been significant evidence in this Inquiry about the importance of salmon to First Nation peoples. There can be no question that the First Nation relationship to and with salmon permeates all aspects of First Nation creation, life and culture.

¹³ Final Tsawwassen First Nation Post-Season Report for 2009, dated October 2010 ["Fisheries Post-Season Report"], Exhibit 1427.

¹⁴ Kaarina McGivney, Examination-In-Chief, August 19, 2011, P. 39, L. 38 to P. 41, L. 5.

¹⁵ Referring to p. 11 of the Fisheries Post-Season Report. Exhibit 1427.

¹⁶ *Supra* note 14., P. 41, L. 8 to P. 41, L. 37.

17. The Commissioner is tasked with making recommendations with respect to, *inter alia*, the future management or co-management, of the fishery for its future sustainability. Whether a First Nation has entered into a treaty or not, Tsawwassen submits, this Inquiry has the ability to make recommendations that would see the creation of space - real and meaningful space - for First Nation decision-making in the management of the fishery, particularly in the area of conservation and restoration.

18. Under the Final Agreement, on the effective date, a Tsawwassen Fisheries Fund ("Fund") was established, in the amount of one million dollars. The Fund may be used for: (1) promoting the conservation and protection of fish and aquatic plants and fish habitat in Tsawwassen Territory; (2) facilitating the sustainable management of fish and fish habitat in Tsawwassen Territory; and (3) promoting and supporting participation by TFN in the stewardship of fish and fish habitat in Tsawwassen Territory. TFN may also seek and consider recommendations from the JFC when pursuing uses of the Fund.¹⁷

19. Reference to the Fund is important because as Chief Baird explained in her witness summary, there is talk in the First Nations community about developing a First Nation regional representative body that would operate based on the context of constituent nations. Having actual and substantial resources committed to First Nations to sustain the fishing is an absolute necessity. Of course, there are wide ranging views on this kind of body, but it may be one process that if First Nations could come together with the same voice, DFO would be forced to listen.¹⁸ Whatever the body, TFN submits that long term committed human and financial resources required to explore and eventually support such a body is necessary.

Future Relationship between First Nations and DFO

20. The Commissioner has heard significant evidence from First Nations respecting their reliance on salmon. First Nations also provided significant evidence about their specific approaches to salmon harvesting, current salmon management or attempts at management, as

¹⁷ *Supra* note 10, clauses 96-98.

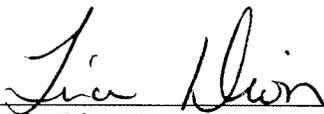
¹⁸ *Supra* note 11, p.2.

well as their desire for more robust and meaningful participation in the future management of the fishery.

21. TFN elected to participate in this Inquiry to provide the Commissioner with information about the Final Agreement, about how the TFN fishery operates pursuant to TFN laws and Regulations, as well as how the JFC operates to co-manage the TFN fishery.

22. Whether First Nations enter into a treaty or not, the fact remains that they seek to have more involvement in managing the fishery beyond the current regime. Shared real time information upon which collaborative approaches can be advanced is necessary in order to properly frame the issues, and collectively decide the best and most sustainable approach to co-management. In our respectful view, and with the few years experience of the JFC operations behind TFN, the fundamental point that TFN would like to make to the Commissioner is that it is imperative that First Nations have, and operate from, the same fish literacy as does DFO.

Respectively Submitted on October 17, 2011:



Tina L. Dion, LL.B, S.J.D.

Barrister & Solicitor, Counsel for Tsawwassen First Nation

Index of Authorities

1. *Fisheries, Wildlife, Migratory Birds and Renewable Resources Act*, Statute of Tsawwassen First Nation, 2009, as amended.
2. *Fisheries Regulation (Fisheries, Wildlife, Migratory Birds and Renewable Resources Act)*, Tsawwassen First Nation, 2009, as amended.



TSAWWASSEN FIRST NATION
s'əwaθən məsteyəx^w

2009

FISHERIES, WILDLIFE
MIGRATORY BIRDS AND
RENEWABLE RESOURCES ACT

Enacted on April 3, 2009

Kim Baird

CHIEF KIM BAIRD

Tsawwassen First Nation

2009

FISHERIES, WILDLIFE, MIGRATORY BIRDS AND RENEWABLE RESOURCES ACT

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The Tsawwassen Legislature enacts as follows:

PART 1 – PRELIMINARY MATTERS

Citation

- 1 This Act may be cited as the *Fisheries, Wildlife, Migratory Birds and Renewable Resources Act*.

Definitions

- 2 In this Act
 - “**approved gathering plan**” means a plan developed and approved by the Minister under clause 25 of Chapter 13 [*Provincial Parks and Gathering*] of the final agreement;
 - “**aquatic plants**” includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all marine and freshwater flowering plants, ferns and mosses, growing in water or soils that are saturated during most of the growing season;
 - “**aboriginal people**” includes the Indian, Inuit and Métis peoples of Canada;
 - “**designated migratory bird population**” means a population of a species of migratory bird designated by the Minister under clause 31 of Chapter 11 [*Migratory Birds*] of the final agreement;
 - “**designated wildlife species**” means a species of wildlife designated by the Minister under clause 27 of Chapter 10 “*[Wildlife]*” of the final agreement;
 - “**enhancement initiative**” means an initiative that is intended to result in an increase in the abundance or variety of a stock or species of fish through
 - (a) the creation of or improvement to fish habitat;
 - (b) the application of fish culture technology;

- “Executive Council”** means the Executive Council of Tsawwassen First Nation established under the *Government Organization Act*;
- “final agreement”** means the Tsawwassen First Nation Final Agreement among Tsawwassen First Nation, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, and includes amendments to that agreement made in accordance with it;
- “fish”** means
- (a) fish, intertidal bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans,
 - (b) the parts of fish, intertidal bivalves and other shellfish, crustaceans, and marine animals, excluding cetaceans, and
 - (c) the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, intertidal bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans;
- “fishing”** means fishing for, catching or attempting to catch fish by any method, and includes harvesting aquatic plants;
- “fishing season”** means the period from April 1 in any year to March 31 of the following year;
- “fishing vessel”** means any vessel used, outfitted or designed for the purpose of catching, processing or transporting fish or harvesting Aquatic plants;
- “Fraser salmon”** means chinook, chum, coho, sockeye, and pink salmon originating in the Fraser River Watershed;
- “harvest agreement”** means the Tsawwassen First Nation Harvest Agreement entered into under clause 102 of chapter 9 [*Fisheries*] of the final agreement;
- “hunting”** means shooting at, attracting, searching for, chasing, pursuing, following after or on the trail of, stalking or lying in wait for wildlife, or attempting to do any of those things, whether or not the wildlife is then or subsequently wounded, killed or captured,
- (a) with intention to capture the wildlife, or
 - (b) while in possession of a firearm or other weapon;
- “hunting season”** means the period from April 1 in any year to March 31 of the following year;
- “Joint Fisheries Committee”** means the committee established under clause 68 of Chapter 9 “[*Fisheries*]” of the final agreement;
- “Judicial Council”** means the Judicial Council established under the *Administrative Review and Judicial Proceedings Act*;
- “manager”** means the Manager of Fisheries, Wildlife, Migratory Birds and Renewable Resources appointed under section 25;
- “migratory birds”** means birds, as defined under Federal Law and enacted further to international conventions, and includes their eggs;

- “**Minister**” means, in respect of a matter, the Minister of Her Majesty the Queen in right of Canada, or in right of British Columbia, as the case may be, having the responsibility, from time to time, for the exercise of powers in respect of the matter in question and includes a person appointed to serve in the department over which the Minister presides, in a capacity appropriate to the exercise of those powers;
- “**national marine conservation area**” means the lands and waters administered under Federal Law that
- (a) lie within Tsawwassen territory, and
 - (b) are named and described in the schedules to the *Canada National Marine Conservation Areas Act*
- and includes a national marine conservation reserve;
- “**national park**” means the lands and waters administered under Federal Law that
- (a) lie within Tsawwassen territory, and
 - (b) are named and described in the schedules to the *Canada National Parks Act* [Canada]
- and includes a national park reserve;
- “**plants**” means flora and fungi but does not include aquatic plants or timber resources except for the bark, branches and roots of timber resources;
- “**provincial park**” means provincial Crown land established as a provincial park under Provincial Law;
- “**renewable resources**” means plants, birds including migratory birds, land mammals and traditional foods, but does not include fish and aquatic plants;
- “**renewable resource harvesting document**” means any authorizing document issued by the Minister under Federal Law in respect of the Tsawwassen right to harvest renewable resources;
- “**resource management officer**” means a Tsawwassen Resource Management Officer appointed under section 28;
- “**total allowable wildlife harvest**” means the amount determined by the Minister under clause 30 of chapter 10 [*Wildlife*] of the final agreement in relation to a designated wildlife species;
- “**Tsawwassen allocation**” means
- (a) in respect of a designated wildlife species,
 - (i) a defined harvest quantity or quota, or
 - (ii) a harvest quantity or quota determined by the use of a formula, for Tsawwassen First Nation, and
 - (b) in respect of fish and aquatic plants,
 - (i) a defined harvest quantity or quota,
 - (ii) a harvest quantity or quota determined by the use of a formula,
 - (iii) a harvest quantity or quota determined by the use of a formula with respect to a defined harvest area within the Tsawwassen fishing Area, or

- (iv) any other definition of quantity or opportunity as the parties to the final agreement may agree, for Tsawwassen First Nation;
- “Tsawwassen annual fishing plan”** means the Tsawwassen annual fishing plan in effect from time to time and referred to in clause 65 of Chapter 9 [*Fisheries*] of the final agreement;
- “Tsawwassen commercial fishing licence”** means a licence issued under this Act identifying an individual who is authorized by Tsawwassen First Nation to harvest fish and aquatic plants under the harvest agreement;
- “Tsawwassen fisheries”** means
- (a) the harvesting of fish or aquatic plants as authorized under the final agreement, and
 - (b) the harvesting of salmon under Tsawwassen commercial allocations as authorized under the harvest agreement;
- “Tsawwassen fisheries operational guidelines”** means the Tsawwassen Fisheries Operational Guidelines referred to in clauses 79 and 80 of Chapter 9 [*Fisheries*] of the final agreement;
- “Tsawwassen fishing area”** means the Tsawwassen fishing area shown in Appendix J-1 of the final agreement;
- “Tsawwassen fishing licence”** means a licence issued under this Act identifying an individual who is authorized by Tsawwassen First Nation to harvest fish and aquatic plants under the final agreement;
- “Tsawwassen fishing right”** means the right under the final agreement to harvest fish and aquatic plants in the Tsawwassen fishing Area and intertidal bivalves in the Tsawwassen intertidal bivalve fishing Area;
- “Tsawwassen harvest documents”** means licences, permits and documents, as amended from time to time, that are issued by the Minister under Federal Law or Provincial Law in respect of the Tsawwassen fishing right;
- “Tsawwassen hunting licence”** means a licence issued under this Act identifying a person who is authorized by Tsawwassen First Nation to harvest wildlife or migratory birds under the final agreement;
- “Tsawwassen intertidal bivalve fishing area”** means the “Tsawwassen intertidal bivalve fishing Area” shown in Appendix J-1 of the final agreement;
- “Tsawwassen Individual”** means an individual who is eligible to be enrolled as a member of the Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the final agreement;
- “Tsawwassen Member”** means a Tsawwassen Individual who is enrolled as a member of Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the final agreement;
- “Tsawwassen migratory bird harvest area”** means Tsawwassen territory except
- (a) Marine Protected Areas,
 - (b) National Parks and National Marine Conservation Areas, and
 - (c) Land owned or in use, or expropriated or otherwise acquired, by Canada, from time to time, other than Indian Reserves and National Wildlife Areas;

- “**Tsawwassen renewable resource harvesting licence**” means a licence issued under this Act identifying a person who is authorized by Tsawwassen First Nation to harvest renewable resources under the final agreement;
- “**Tsawwassen right to harvest renewable resources**” means the right to harvest renewable resources under the final agreement;
- “**Tsawwassen right to harvest migratory birds**” means the right to harvest migratory birds under the final agreement;
- “**Tsawwassen right to harvest wildlife**” means the right to harvest wildlife for domestic purposes in the Tsawwassen wildlife harvest area in accordance with the final agreement;
- “**Tsawwassen territory**” means the area of land that Tsawwassen First Nation identified in its Statement of Intent to the British Columbia Treaty Commission, as shown in Appendix A of the Tsawwassen First Nation Final Agreement;
- “**Tsawwassen wildlife harvest area**” means Tsawwassen territory except
- (a) marine protected areas,
 - (b) national parks and national marine conservation areas, and
 - (c) land owned or in use, or expropriated or otherwise acquired, by Canada, from time to time, other than Indian Reserves;
- “**Tsawwassen wildlife harvesting**” means hunting for wildlife under the final agreement;
- “**wildlife**” means
- (a) vertebrate and invertebrate animals, including mammals, birds, reptiles and amphibians, and
 - (b) the eggs, juvenile stages, and adult stages of all vertebrates and invertebrate animals,
- but does not include fish or migratory birds;
- “**wildlife allocation**” means a defined share, in accordance with the final agreement, of the total allowable harvest of a designated wildlife species;
- “**wildlife harvest plan**” means an annual management plan approved in accordance with chapter 10 [*Wildlife*] of the final agreement.

PART 2 – PROVISIONS RESPECTING HARVESTING, SALE, TRADE AND BARTER

Division 1 – Compliance Generally

Compliance

- 3 A person must not
 - (a) harvest any of the following under the final agreement or the harvest agreement: fish; aquatic plants; wildlife; migratory birds; renewable resources,
 - (b) sell, trade or barter any of the following harvested under the final agreement or the harvest agreement: fish; aquatic plants; wildlife; migratory birds or their inedible byproducts; renewable resources,

- (c) exchange regalia or traditional or artistic objects made from renewable resources harvested under the final agreement, or
- (d) transport or export any harvested or gathered plants or other renewable resources,

except in accordance with the applicable provisions of the following:

- (e) this Act and the regulations;
- (f) the final agreement;
- (g) the harvest agreement;
- (h) another harvest agreement under the final agreement;
- (i) an approved gathering plan;
- (j) any conditions or restrictions of a licence under this Act held by that person;
- (k) an order made, or a direction given, by the manager.

Division 2 – Fishing, Hunting and Renewal Resource Harvesting Licences

Fishing licence required

- 4 A person must not harvest fish or aquatic plants within the Tsawwassen territory under the final agreement unless the person is in possession of a valid Tsawwassen fishing licence that authorizes that person to harvest the fish or aquatic plants.

[Amended by Bill 25-2009; Enacted on September 16, 2009]

Hunting licence required

- 5 (1) A person must not harvest wildlife or migratory birds under the final agreement unless the person is in possession of a valid Tsawwassen hunting licence that authorizes that person to harvest wildlife or migratory birds.
- (2) A person who is under the age of 18 years must not harvest wildlife or migratory birds under the final agreement unless the person
- (a) is in possession of a valid Tsawwassen hunting licence issued to him or her, and
 - (b) is accompanied by another person who is 18 years of age or older and is in possession of a valid
 - (i) Tsawwassen hunting licence issued to the person, or
 - (ii) hunting licence issued to the person under Federal Law or Provincial Law.

Renewable resource harvesting licence required

- 6 (1) Subject to subsection (2), a person must not harvest renewable resources under a Tsawwassen right to harvest renewable resources under the final agreement unless the person is in possession of a valid Tsawwassen renewable resource harvesting licence that authorizes that person to harvest renewable resources.
- (2) A Tsawwassen Member may gather plants
- (a) in accordance with Federal Law on federal Crown lands, other than federal protected areas, and
 - (b) in accordance with Provincial Law on provincial Crown lands

without a Tsawwassen renewable resource harvesting licence.

Right to licences

- 7 (1) Except in circumstances, if any, prescribed by regulation of the Executive Council, every Tsawwassen Member is entitled to a Tsawwassen fishing licence, Tsawwassen hunting licence, or Tsawwassen renewable resource harvesting licence.
- (2) A person who is not a Tsawwassen Member is not entitled to a licence referred to in subsection (1).
- (3) Despite subsection (2), a person who is not a Tsawwassen Member may be issued a Tsawwassen fishing licence
- (a) if that person is an agent or contractor of Tsawwassen First Nation or is an individual designated by the manager,
 - (b) if a Tsawwassen Allocation has been established under the final agreement for one or more described species of fish, aquatic plants or both and harvesting under the licence is restricted to the described species, or
 - (c) in circumstances prescribed by regulation of the Executive Council.

Issuance of licences

- 8 (1) A person may apply to the manager for one or more of a Tsawwassen fishing licence, Tsawwassen commercial fishing licence, Tsawwassen hunting licence or Tsawwassen renewable resource harvesting licence by submitting to the manager
- (a) an application in the form and with the content prescribed by regulation of the Executive Council,
 - (b) the application fee or fees prescribed by regulation of the Executive Council, and
 - (c) any documentation required by regulation of the Executive Council.
- (2) On receipt of an application under subsection (1), and if satisfied that the relevant requirements of this Act and the regulations have been met, the manager may issue to the applicant the licence or licences for which the applicant has applied.
- (3) The manager may attach conditions to a licence issued under this section.
- (4) If an applicant under this section applies for more than one licence or type of licence mentioned in subsection (1), the manager may issue the licences as a combined licence or as separate licences, as the manager considers appropriate in the circumstances.

Licensing requirements

- 9 Licences provided to individuals and vessels who are authorized by Tsawwassen First Nation to harvest fish, aquatic plants, wildlife, migratory birds or renewable resources must
- (a) be written in English and, at the discretion of the manager, may also be in the Hun'qum'i'num language,
 - (b) in the case of an individual, include the name and address of the individual,

- (c) in the case of harvesting fish, comply with the Tsawwassen fisheries operational guidelines and with the Tsawwassen harvest documents and agreements, and
- (d) in the case of harvesting renewable resources comply with the renewable resource harvesting document or approved gathering plan, whichever applies.

Obligation to produce licence

- 10** (1) In this section “**enforcement officer**” means an individual authorized to enforce Federal Law, Provincial Law or Tsawwassen Law in respect of wildlife, migratory birds, and renewable resources.
- (2) An enforcement officer who believes on reasonable grounds that a person is or has been harvesting or is likely to begin harvesting
- (a) wildlife,
 - (b) migratory birds, or
 - (c) renewable resources
- may request that person to produce, for inspection by the enforcement officer, a valid licence issued under this Act authorizing the harvesting by that person.
- (3) If asked for identification by the person to whom the request is made, the enforcement officer must show appropriate identification confirming his or her credentials as an enforcement officer.
- (4) At the request of an enforcement officer, made in accordance with subsections (2) and (3), the person to whom the request is made must produce to the enforcement officer, for his or her inspection, a valid licence issued under this Act authorizing the harvesting by that person.

Division 3 – Licence Suspensions

Suspension

- 11** (1) If the manager believes that a person who is the holder of a Tsawwassen fishing licence, Tsawwassen hunting licence or Tsawwassen renewable resource harvesting licence has contravened
- (a) section 3, or
 - (b) whichever of sections 4, 5, or 6 is applicable to the particular licence,
- the manager must give written notice, that conforms to section 12 (1), to the licence holder of the manager's intention to suspend the licence for a period specified in the notice.
- (2) After providing an opportunity for a person referred to in this section to be heard, the manager, for any cause he or she considers sufficient, may suspend the person's licence.
- (3) On notice of a suspension under subsection (1), the person must immediately deliver the licence to the manager.
- (4) Promptly after the expiry of the period of suspension of a licence suspended under this section, the manager must return the licence to its holder.

Notice of licence suspension

- 12** (1) A written notice under section 11 (1) must
- (a) be
 - (i) personally delivered to the holder of the licence, or
 - (ii) sent by registered mail to the last known address of the holder of the licence,
 - (b) set out the reasons for the intended suspension, and
 - (c) state that the person who is the holder of the licence is entitled to make representations why the licence should not be suspended, and can do so by giving the manager a written response within 15 days after the earlier of
 - (i) the date the holder is personally served with the notice, and
 - (ii) 5 days after the date the notice was sent by registered mail.
- (2) A written notice sent by registered mail in accordance with subsection (1)(b) is conclusively deemed to have been served on the person to whom it was addressed on
- (a) the 14th day after the notice was deposited with Canada Post, or
 - (b) the date on which the notice was actually received by the person, whether by mail or otherwise, whichever is earlier.

Prohibition against harvesting during licence suspension

- 13** The holder of a licence issued under this Act whose licence has been suspended must not harvest fish, wildlife, migratory birds or renewable resources under the final agreement during the period of suspension.

Compliance with Tsawwassen plans and agreements

- 14** (1) A person who harvests fish or aquatic plants in Tsawwassen fisheries or sells fish or aquatic plants harvested in Tsawwassen fisheries must comply with
- (a) the Tsawwassen harvest document, and
 - (b) the Tsawwassen annual fishing plan.
- (2) A person who harvests designate wildlife species or designated migratory bird populations under the final agreement must comply with the applicable Tsawwassen wildlife harvest plan or Tsawwassen migratory bird agreement.
- (3) A person who harvests renewable resources under the Tsawwassen right to harvest renewable resources must comply with the renewable resource harvesting document and, in the case of plants, any approved gathering plan.

Division 4 – Sales of Fish or Aquatic Plants, of Wildlife and of Migratory Birds

Sale of fish or aquatic plants

- 15** (1) A person may sell fish or aquatic plants harvested in Tsawwassen fisheries only if authorized to do under this Act.
- (2) A person must not sell fish or aquatic plants harvested under the Tsawwassen fishing right.

- (3) A Tsawwassen Member who is in possession of a valid Tsawwassen commercial fishing licence may sell fish or aquatic plants harvested in accordance with
 - (a) the harvest agreement communal licence, or
 - (b) another communal fishing licence issued to
 - (i) Tsawwassen First Nation,
 - (ii) a Tsawwassen Corporation, or
 - (iii) any person who is designated as a purchaser by regulation of the Executive Council.
- (4) Sales of fish authorized under subsection (3) are subject to any applicable restrictions under
 - (a) the harvest agreement,
 - (b) commercial fishing licences issued by Tsawwassen First Nation to Tsawwassen Members, and
 - (c) the regulations.
- (5) An agent or contractor of Tsawwassen First Nation who
 - (a) is in possession of a valid Tsawwassen commercial fishing licence, and
 - (b) is permitted under a contract with Tsawwassen First Nation to sell fish or aquatic plants on its behalfmay sell fish or aquatic plants harvested in accordance with the harvest agreement communal licence or with another communal fishing licence issued to Tsawwassen First Nation by the Minister.
- (6) Sales of fish or aquatic plants authorized under subsection (5)
 - (a) must be consistent with the conditions of the agent's or contractor's contract with Tsawwassen First Nation, and
 - (b) are subject to any applicable restrictions in any of the following:
 - (i) the harvest agreement;
 - (ii) associated licences;
 - (iii) communal fishing licences;
 - (iv) the regulations.
- (7) Either
 - (a) Tsawwassen First Nation, or
 - (b) a Tsawwassen Corporation, authorized in that behalf by regulation of the Executive Council,may sell fish harvested from Tsawwassen commercial fisheries.
- (8) Sales of fish authorized under subsection (7) are subject to any applicable restrictions in any of the following:
 - (a) the harvest agreement;
 - (b) associated licences;
 - (c) communal fishing licences;
 - (d) the regulations.

Sale of wildlife

- 16
- (1) Tsawwassen First Nation may sell wildlife or wildlife parts, including meats and furs, harvested under the Tsawwassen right to harvest wildlife if the sale is permitted under Federal Law or Provincial Law.
 - (2) A person who sells wildlife or wildlife parts harvested under the Tsawwassen right to harvest wildlife by Tsawwassen First Nation must do so in accordance with Federal Law, Provincial Law and this Act.
 - (3) Tsawwassen First Nation may authorize Tsawwassen Members to sell wildlife and wildlife parts, including meat and furs, harvested under the Tsawwassen right to harvest wildlife.

Sale of migratory birds

- 17
- (1) Tsawwassen First Nation may sell migratory birds harvested under the Tsawwassen right to harvest migratory birds if the sale is permitted under Federal and Provincial Law and any sale is in accordance with those laws.
 - (2) Tsawwassen First Nation may sell inedible by-products of migratory birds, including down, harvested under the Tsawwassen right to harvest migratory birds, in accordance with Federal and Provincial Law.
 - (3) A person who sells
 - (a) migratory birds, or
 - (b) inedible by products of migratory birdsharvested under the Tsawwassen right to harvest wildlife by Tsawwassen First Nation must do so in accordance with Federal Law, Provincial Law and this Act.
 - (4) Tsawwassen First Nation may authorize Tsawwassen Members to sell migratory birds (including inedible by-products of migratory birds), harvested under the Tsawwassen right to harvest migratory birds.

Division 5 – Trade and Barter

Trade and barter of fish or aquatic plants

- 18
- (1) Tsawwassen First Nation and every Tsawwassen Member, may trade or barter fish or aquatic plants harvested under the final agreement or the harvest agreement from Tsawwassen fisheries if the trade or barter is between
 - (a) a Tsawwassen Member and another Tsawwassen Member,
 - (b) a Tsawwassen Member and Tsawwassen First Nation, or
 - (c) either
 - (i) Tsawwassen First Nation, or
 - (ii) a Tsawwassen Memberand one or more other aboriginal persons of Canada.
 - (2) A Tsawwassen Member must not trade or barter fish or aquatic plants referred to in subsection (1) other than as permitted under paragraph (a), (b) or (c) of that subsection.
 - (3) A person who, for the purpose of trade or barter, transports fish or aquatic plants harvested from Tsawwassen fisheries outside Tsawwassen Lands,

- (a) must ensure that those fish or aquatic plants are identified by regulation of the Executive Council as being fish or aquatic plants that are available for trade or barter, and
- (b) must not transport those fish or aquatic plants unless they are so identified under those regulations.

Trade and barter of wildlife

- 19 (1) Tsawwassen First Nation and every Tsawwassen Member may trade and barter wildlife or wildlife parts harvested under the Tsawwassen right to harvest wildlife, if the trade or barter is between
- (a) a Tsawwassen Member and another Tsawwassen Member,
 - (b) a Tsawwassen Member and Tsawwassen First Nation, or
 - (c) either
 - (i) Tsawwassen First Nation, or
 - (ii) a Tsawwassen Member
- and one or more other aboriginal persons of Canada resident in British Columbia.
- (2) A Tsawwassen Member must not trade or barter wildlife or wildlife parts referred to in subsection (1) other than as permitted under paragraph (a), (b) or (c) of that subsection.

Trade and barter of migratory birds

- 20 Tsawwassen First Nation and every Tsawwassen Member may trade and barter migratory birds (or their parts), harvested under the final agreement
- (a) with any Tsawwassen Members,
 - (b) in the case of a Tsawwassen Member, with Tsawwassen First Nation, or
 - (c) with other aboriginal people of Canada resident in British Columbia.

Transporting unidentified wildlife or migratory birds outside Tsawwassen Lands

- 21 (1) In this section, “**wildlife or migratory birds**” means wildlife or migratory birds harvested under the final agreement, and includes parts of either of them.
- (2) A person must not, for the purpose of trade or barter, transport outside of Tsawwassen Lands any wildlife or migratory birds unless the person first ensures that the wildlife or migratory birds are among those identified by regulation of the Executive Council as being for trade or barter.

Trade or barter of renewable resources

- 22 (1) Tsawwassen First Nation and every Tsawwassen Member may trade or barter renewable resources harvested under
- (a) the Tsawwassen right to harvest renewable resources, or
 - (b) the Tsawwassen right to gather plants
- only if the trade or barter is between
- (c) a Tsawwassen Member and another Tsawwassen Member,
 - (d) a Tsawwassen Member and Tsawwassen First Nation, or
 - (e) either

- (i) Tsawwassen First Nation, or
 - (ii) a Tsawwassen Member
- and one or more other aboriginal persons of Canada.
- (2) A Tsawwassen Member must not trade or barter renewable resources referred to in subsection (1) other than as permitted under paragraph (c), (d) or (e) of that subsection.

Transport and export of plants and other renewable resources

- 23 Tsawwassen First Nation and every Tsawwassen Member may export or transport plants and other renewable resources harvested under
- (a) the Tsawwassen right to harvest renewable resources, or
 - (b) the Tsawwassen right to gather plants,
- but must not do so except in accordance with Federal Law and Provincial Law.

Exchange of regalia or traditional or artistic objects made from renewable resources

- 24 (1) Tsawwassen First Nation and every Tsawwassen Member may exchange regalia or traditional or artistic objects made from plants or other renewable resources harvested under the final agreement,
- (a) in the case of Tsawwassen First Nation, with Tsawwassen Members or one or more other Coast Salish persons, or
 - (b) in the case of Tsawwassen Members, with one or more other Coast Salish persons.
- (2) A Tsawwassen Member must not exchange regalia or traditional or artistic objects described in subsection (1) other than as permitted under that subsection and in accordance with the *Culture and Heritage Act*.

**PART 3 – TSAWWASSEN FISH, WILDLIFE, MIGRATORY BIRDS,
RENEWABLE RESOURCES AND PLANT MANAGEMENT**

Division 1 – Manager and Resource Management Officers

Manager's appointment and responsibilities

- 25 (1) The Executive Council must appoint a Manager of Fisheries, Wildlife, Migratory Birds and Renewable Resources.
- (2) The manager is responsible for
- (a) managing Tsawwassen fisheries and Tsawwassen wildlife, migratory bird and renewable resource harvesting,
 - (b) exercising the manager's authority, and
 - (c) carrying out the manager's responsibilities,
- in a manner consistent with this Act, and the regulations and with
- (d) the final agreement,
 - (e) the harvest agreement,
 - (f) Tsawwassen harvest documents,
 - (g) the Tsawwassen annual fishing plan,

- (h) wildlife harvest plans,
- (i) migratory bird agreements, and
- (j) policies adopted by the Executive Council.

Manager's administrative functions and duties

26 The manager

- (a) may issue Tsawwassen fishing licences, Tsawwassen commercial fishing licences, Tsawwassen hunting licences and Tsawwassen renewable resource harvesting licences,
- (b) must participate in the annual accounting of salmon harvesting required by the final agreement,
- (c) may propose enhancement initiatives, including seeking recommendations of the Joint fisheries Management Committee and the approval of the Executive Council and the Minister,
- (d) must conduct enhancement initiatives approved by the Executive Council and the Minister,
- (e) must participate in studies or other activities approved by the Executive Council,
- (f) must oversee the process of the development and implementation of any wildlife harvest plans and migratory bird agreements, and
- (g) may establish a training program for Tsawwassen hunters.

Manager may make orders and take actions as necessary after consulting Executive Council

- 27** (1) Subject to subsection (2), the manager, after consulting with the Executive Council, may make any order or take any action that is reasonably necessary for the purpose of carrying out the manager's responsibilities with regard to matters including, but not limited to, the following:
- (a) opening or closing any areas or locations for harvesting all or any species of fish or aquatic plants in Tsawwassen fisheries;
 - (b) permitting or prohibiting the harvesting or sale of any species of fish or aquatic plants in Tsawwassen fisheries;
 - (c) cooperating with provincial and federal officials to fulfill Tsawwassen First Nation obligations under the final agreement in accordance with any agreements reached between Tsawwassen First Nation and British Columbia or Canada;
 - (d) enforcing the provisions of this Act, the regulations and the final agreement in respect of fish, aquatic plants, wildlife, migratory bird and renewable resource matters.
- (2) The manager may make any order that is reasonably necessary prohibiting any person from harvesting or selling fish or aquatic plants in Tsawwassen fisheries until the person satisfies the manager that the person has the right to do so.

Appointment of Tsawwassen resource management officers

- 28** (1) For the purposes of this Act, the manager may designate a person, or a person in a class of persons, as a Tsawwassen resource management officer.

- (2) The manager may limit and define, in any manner the manager considers appropriate, the powers that a resource management officer may exercise under this Act, the regulations and any other enactment.
- (3) The manager may assign responsibilities to a resource management officer, including but not limited to, the following:
 - (a) ensuring that any person who is harvesting fish, wildlife, migratory birds or renewable resources in Tsawwassen territory is properly licensed and authorized to carry out that activity;
 - (b) ensuring that any harvesting activity that takes place in Tsawwassen territory is in compliance with this Act and regulations, any harvesting or gathering plans or agreements, and the final agreement;
 - (c) the monitoring of harvesting activities, including the verification of species of wildlife, migratory birds and renewable resources that are harvested;
 - (d) the examination and measurement of fishing gear, the recording of scientific data and observations and the taking of samples;
 - (e) the monitoring of the landing of fish and the verification of the weight and species of fish caught and retained;
 - (f) conducting biological examination and sampling of fish, wildlife, migratory birds and renewable resources.
- (4) The manager must provide each resource management officer with a document in the form approved by the manager
 - (a) certifying the resource management officer's designation, and
 - (b) if the resource management officer's powers are limited under subsection(2), specifying the powers that the he or she may exercise.
- (5) On entering any place as permitted under this Act, the regulations, or any other enactment, a resource management officer, on request, must show the certificate of designation to the person in charge of the place.

Division 2 – Provision of Harvesting Opportunities

Regulations respecting harvesting opportunities

- 29** (1) Without prejudice to the generality of section 40, the Executive Council by regulation may
- (a) provide for the distribution among Tsawwassen Members of harvesting opportunities under the final agreement and under the harvest agreement,
 - (b) provide for the distribution among Tsawwassen Members of commercial crab harvesting opportunities under the harvest agreement and in accordance with the regulations,
 - (c) provide for the distribution among individuals of harvesting opportunities in relation to fish and aquatic plants, and
 - (d) specify
 - (i) particular individuals or classes of individuals that may harvest fish and aquatic plants, and

- (ii) particular vessels or classes of vessels to be used for that harvest by those individuals or classes of individuals under commercial Tsawwassen fishing licences.
- (2) In a regulation under this section, the Executive Council must take into account
- (a) the collective interests of Tsawwassen First Nation,
 - (b) the estimated requirements for fish, aquatic plants, wildlife, migratory bird, renewable resource and plant harvesting for both
 - (i) Tsawwassen Members who reside in Tsawwassen Lands, and
 - (ii) Tsawwassen Members who reside elsewhere,
 - (c) available information about the annual harvests of each species of fish, aquatic plants, wildlife, migratory birds, renewable resources and plants by Tsawwassen Members, and
 - (d) any other matters that the Executive Council considers to be relevant.

Advisory committee

- 30 (1) The Executive Council may appoint a committee of persons responsible for providing advice and recommendations to the Executive Council regarding
- (a) the distribution of harvesting opportunities in accordance with the regulations prescribed for the purposes of this section, and
 - (b) the designation of fish purchasers under section 15.
- (2) A committee appointed under subsection (1) may include persons who are not members of the Executive Council.

Manager's responsibilities respecting harvesting opportunities

- 31 The manager must manage the methods, timing and locations of harvesting under the final agreement or under the harvest agreement in a way that, to the extent practicable,
- (a) provides fair and reasonable opportunities for Tsawwassen Members to harvest
 - (i) fish and aquatic plants at locations within the Tsawwassen Fishing Area or Tsawwassen Intertidal Bivalve Fishing Area,
 - (ii) at locations within the Tsawwassen wildlife harvest area,
 - (A) wildlife of any designated wildlife species, and
 - (B) migratory birds in any designated migratory bird population,
 - (iii) renewable resources at locations within national parks and national marine conservation areas, and
 - (iv) plants in those areas set out in Appendix M- 2 [*List of Tsawwassen Plant Gathering Areas*], and
 - (b) achieves the distribution of harvesting opportunities provided for by the Executive Council under section 29.

Allocation of Fraser salmon

- 32 (1) The Executive Council by written direction to the manager must determine for each fishing season in a year

- (a) the portion of that year's Tsawwassen fish allocations of Fraser salmon, as defined in the harvest agreement, that is to be used for food, social or ceremonial purposes,
 - (b) the portion of that year's Tsawwassen fish allocations of Fraser salmon, as defined in the harvest agreement, that is to be available for sale, and
 - (c) the percentage of the portion described in paragraph (b) that may be harvested and sold on behalf of Tsawwassen First Nation.
- (2) The manager must manage the methods, timing and locations of harvesting Fraser salmon in Tsawwassen fisheries in a way that, to the extent it is practicable to do so, achieves the apportionment of each year's Tsawwassen fish allocations of Fraser salmon as determined by the Executive Council under subsection (1).

Agreements with Canada, British Columbia, First Nations and other aboriginal people

- 33 (1) The Executive Council may enter into agreements that are necessary or advisable for the purposes of this Act, including but not limited to, agreements
- (a) with the Minister
 - (i) to adjust the species composition of the Tsawwassen harvest of Fraser salmon under Tsawwassen fisheries for a fishing season,
 - (ii) in respect of the harvest of surplus Fraser salmon for a fishing season, or
 - (iii) in respect of the harvests by Tsawwassen First Nation of Fraser salmon or Fraser steelhead that result from Tsawwassen enhancement initiatives,
 - (b) with Canada, British Columbia or both of them in respect of
 - (i) the enforcement of federal, provincial or Tsawwassen laws in relation to fisheries, wildlife, migratory birds and renewable resources,
 - (ii) Tsawwassen fish allocations of winter-run Fraser steelhead, other non-salmon species or aquatic plants,
 - (iii) consultations by either or both of those governments with, and advice to them by, the Tsawwassen Government on matters affecting Tsawwassen First Nation in relation to
 - (A) a national park or national marine conservation area, or
 - (B) a provincial park, provincial protected area or provincial wildlife management area
 that is in or partly in Tsawwassen territory,
 - (iv) developing cooperative working relationships in relation to fisheries, wildlife and renewable resources management,
 - (v) harvesting, conserving and managing wildlife, migratory birds and renewable resources,
 - (c) with British Columbia in respect of
 - (i) Tsawwassen First Nation contributions to any provincial fund dedicated to
 - (A) conservation of fish, wildlife, migratory birds or renewable resources, or

- (B) habitat protection,
 - (ii) the development of cooperative working relationships in the Fraser River estuary,
 - (d) with Canada in respect of access to migratory birds and their conservation and harvesting by Tsawwassen Members on land owned or in use by a federal department or agency,
 - (e) with First Nations or other aboriginal people in respect of
 - (i) harvesting fish or aquatic plants in the Fraser area and wildlife in the Tsawwassen wildlife harvest area, and
 - (ii) the harvesting, conservation and management of fish, wildlife, migratory birds and renewable resources,
 - (f) in respect of any Tsawwassen wildlife allocation of a designated wildlife species or of a designated migratory bird population, and
 - (g) for the purposes of managing habitat critical for the conservation of fish, wildlife, migratory birds, threatened and endangered species.
- (3) The Executive Council may
- (a) request a review by the Minister of the Tsawwassen wildlife allocation of a designated species identified by the Executive Council in making the request,
 - (b) request that any species of wildlife or migratory bird be designated under the final agreement, and
 - (c) propose any Tsawwassen allocation of a designated wildlife species or designated migratory bird population.
- (4) The Executive Council must seek the Minister's agreement regarding the allocation of wildlife harvesting opportunities for Tsawwassen Members in locations outside of Tsawwassen territory so that Tsawwassen Members may exercise the Tsawwassen right to harvest wildlife in those locations.

PART 4 – JOINT MANAGEMENT

Tsawwassen representation on Joint Fisheries Committee

- 34**
- (1) The manager, or a person designated by the manager, must act as Tsawwassen First Nation representative on the Joint Fisheries Committee.
 - (2) The Executive Council may assign additional individuals to participate in meetings of the Joint Fisheries Committee in order to support or assist the Tsawwassen representative to the Joint fisheries Committee.
 - (3) The Executive Council or manager may appoint an alternate Tsawwassen Member to represent Tsawwassen First Nation on the Joint Fisheries Committee where the manager and his or her designated replacement are unable to attend a meeting of the Joint Fisheries Committee.
 - (4) Any Tsawwassen First Nation representative to the Joint Fisheries Committee must represent Tsawwassen First Nation in accordance with the direction of the Executive Council.

Tsawwassen harvest and gathering plans

- 35 (1) Each year, before the date specified in the *Tsawwassen Fisheries Operation Guidelines*, the manager must prepare for approval and adoption by the Executive Council a draft annual fishing plan for the harvest under the Tsawwassen fishing right of
- (a) non-allocated species of fish and aquatic plants, and
 - (b) species of fish for which there is a Tsawwassen allocation.
- (2) Each year, before the date prescribed by regulation of the Executive Council, the manager must prepare for approval and adoption by the Executive Council a draft wildlife harvest plan for the harvest under the Tsawwassen right to harvest wildlife, of
- (a) designated wildlife species, and
 - (b) wildlife species proposed by Tsawwassen First Nation or British Columbia for inclusion in a wildlife harvest plan.
- (3) By a date specified in the *Tsawwassen Fisheries Operation Guidelines*, the manager must forward
- (a) the proposed annual fishing plan, adopted by the Executive Council, to the Joint fisheries Committee for its approval, and
 - (b) the proposed wildlife harvest plan, adopted by the Executive Council, to the Minister for his or her approval.
- (4) The manager must prepare a draft plant gathering plan according to the requirements of the final agreement.
- (5) The Executive Council must forward an approved plant gathering plan to the Minister for approval.

PART 5 – OFFENCES AND RIGHT OF REVIEW

Offences and penalties

- 36 A person who
- (a) obstructs a resource management officer in the discharge or performance of a duty or the exercise of a power or authority under this Act,
 - (b) fails or refuses to comply with an order made by the manager under section 25 (1) or (2),
 - (c) fails or refuses to comply with a condition of a licence under this Act, or
 - (d) contravenes section 3, 4, 5 (1) or (2), 6 (1), 11 (3), 13, 14 (1), (2) or (3), 15 (1), (2) or (3), 16 (2), 17 (3), 18 (2) or (3) (b), 19 (2), 21 (2), 22 (2) or 24 (2).

commits an offence and is liable on conviction to a fine not exceeding \$5 000.

Repeat offences

- 37 The maximum fine to which a person is liable on a second or subsequent conviction for the same offence is double the amount set out section 36.

Offences created by regulation

- 38 (1) The Executive Council may provide by regulation that

- (a) a contravention of a regulation is an offence, and
 - (b) a person convicted of an offence for a contravention of a regulation is liable to a fine not exceeding a maximum amount of not more than \$10,000 prescribed for that offence.
- (2) If the maximum fine prescribed under a regulation referred to in subsection (1) is less than that provided by a provision of this Act, then the regulation prevails.

Right to review by Judicial Council of decision to refuse or suspend licence

- 39 (1) A person whose application under section 8 for a Tsawwassen fishing licence, Tsawwassen hunting licence or Tsawwassen renewable resources harvesting licence is refused by the manager or whose licence is suspended under section 11 by the manager may apply to the Judicial Council for a review of that refusal or suspension.
- (2) As soon as practicable after receipt of an application under subsection (1) to the Judicial Council for a review, the Judicial Council must conduct the review, and by order may
- (a) confirm the manager's decision to refuse the application or to suspend the licence, or
 - (b) require the director
 - (i) in the case of a refusal, to accept the application and issue the licence that was the subject of the application, or
 - (ii) in the case of a suspension, to end the suspension and return the licence to the person.
- (3) As soon as practicable after completion of the review, the director must notify the person who applied for the review of
- (a) the outcome of the review, and
 - (b) the person's right under the *Judicial Review Procedure Act* (British Columbia) to apply to the Supreme Court of British Columbia for judicial review of the order.

PART 6 – REGULATIONS, TRANSITION AND COMMENCEMENT

Regulations

- 40 (1) The Executive Council may make regulations it considers necessary or advisable for purposes under this Act.
- (2) Without prejudice to the generality of subsection (1), the Executive Council may make regulations
- (a) for any purpose in relation to which regulations are provided for in this Act,
 - (b) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,
 - (c) respecting the form and content of applications, notices and reports that are required or permitted under this Act,
 - (d) defining words and expressions that are used but not defined in this Act, and

(e) generally for the purpose of giving effect to this Act.

(3) Without prejudice to the generality of subsection (1), the Executive Council may make regulations as follows:

(a) respecting Tsawwassen fishing licences, Tsawwassen commercial fishing licences, Tsawwassen hunting licences and Tsawwassen renewable resource harvesting licences, in this section called “licences” including but not limited to regulations

(i) prescribing fees for applications for licences or for their issuance,

(ii) respecting the form and content of

(A) applications for licences, and

(B) licences,

(iii) requiring applicants for licences to provide, at the time of application or before issuance of them, specified information or documentation pertaining to them,

(iv) prescribing conditions and restrictions applicable in respect of licences,

(v) specifying the terms of licences,

(vi) respecting the suspension of licences,

(vii) prescribing the procedure for suspending licences and the effect of suspensions,

(viii) respecting the issuance of Tsawwassen fishing licences to persons who are not Tsawwassen Members, and

(ix) respecting the amendment or correction of licences;

(b) prescribing requirements respecting the methods, timing and locations of

(i) harvesting in Tsawwassen fisheries;

(ii) harvesting of wildlife and migratory birds;

(c) delegating to the manager the discretion to vary the requirements prescribed under paragraph (c) to suit the circumstances of a particular case;

(d) respecting the distribution among Tsawwassen Members of

(i) fish and aquatic plants harvested under the Tsawwassen fishing right or under the harvest agreement, and

(ii) wildlife harvested under the Tsawwassen right to harvest wildlife;

(e) the designation of individuals and vessels to harvest

(i) fish and aquatic plants under the Tsawwassen fishing right or under the harvest agreement, or

(ii) wildlife under the Tsawwassen right to harvest wildlife;

(f) the designation of individuals to harvest fish and aquatic plants under

(i) fishing licences, or

(ii) harvest documents

that are issued to Tsawwassen First Nation by the Minister;

(g) respecting the licensing of

- (i) individuals and vessels designated by Tsawwassen First Nation to harvest fish and aquatic plants under the Tsawwassen fishing right, and
 - (ii) Tsawwassen Members designated by Tsawwassen First Nation to harvest wildlife under the Tsawwassen right to harvest wildlife;
- (h) respecting the management of wildlife habitat on Tsawwassen lands;
- (i) respecting how wildlife (including wildlife parts) harvested under the Tsawwassen right to harvest wildlife, may be
 - (i) identified as to type, and
 - (ii) transported by undocumented First Nation citizens or by aboriginal trading partners other than First Nation people;
- (k) respecting
 - (i) the trade or barter of fish, aquatic plants, wildlife, migratory birds, renewable resources and plants, and
 - (ii) their identification and the identification of their parts;
- (l) respecting the sale of
 - (i) fish and aquatic plants harvested in Tsawwassen fisheries, and
 - (ii) harvested wildlife and migratory birds;
- (m) respecting the registration of fishing vessels that may be used for harvesting, for the purposes of sale, in Tsawwassen fisheries including but not limited to regulations
 - (i) prescribing fees for registration applications or for the registration of vessels,
 - (ii) respecting the form and content of
 - (A) registration applications, and
 - (B) registrations
 under this Act,
 - (iii) requiring applicants for registration to provide, at the time of application or before the registrations applied for, specified information or documentation pertaining to the registrations,
 - (iv) prescribing conditions and restrictions applicable in respect of registrations,
 - (v) specifying terms and conditions of registrations,
 - (vi) respecting suspension of registrations,
 - (vii) the procedure for suspending registrations under this Act,
 - (viii) the effect of suspensions, amendment or correction of registrations,
 - (ix) the identification of registered fishing vessels, and
 - (x) the change of ownership of a registered fishing vessel;
- (n) specifying the type of fishing gear and identification of fishing gear that may be used for harvesting in Tsawwassen fisheries;
- (o) respecting the dumping and wasting of fish;
- (p) respecting the release of incidental catch;
- (q) respecting the cleaning of fishing gear and authority to permit the cleaning of fishing gear;

- (r) respecting the carrying out of inspections and examinations of harvesting activities;
- (s) respecting the alteration of aquatic habitat and activities conducted in aquatic habitat;
- (t) prescribing landing and reporting requirements for harvesting fish and requirements related to the identification of harvested fish;
- (u) respecting the designation of landing sites for fish harvested under authority of this Act and permitting the manager to make those designations;
- (v) respecting the exchange of regalia or traditional or artistic objects, made from renewable resources, including plants, harvested under the Tsawwassen right to harvest renewable resources;
- (w) the taxation of, or levies associated with, the sale of fish harvested in Tsawwassen fisheries.

Transitional

- 41** (1) Despite any other provision of this Act or the regulations, until December 31, 2010 Tsawwassen Members may continue to harvest fish in accordance with existing licensing and permitting systems and any rules currently in force.
- (2) Despite any other provision of this Act or the regulations, until December 31, 2010
- (a) a Tsawwassen Member who is 10 years of age or older is deemed to be the holder of a Tsawwassen hunting licence and a Tsawwassen renewable resource harvesting licence, and
 - (b) for purposes of section 5 (1) and section 6 (1) of this Act a person who is in possession of proof that he or she is 10 years of age or older and is a Tsawwassen Member is deemed to be in possession of a valid Tsawwassen hunting licence and a valid Tsawwassen renewable resource harvesting licence.

Interpretation

- 42** The *Interpretation Act* (British Columbia) applies to this Act and the regulations, unless the context or another Tsawwassen enactment otherwise requires.

Commencement

- 43** This Act comes into force on the date of its enactment by the Tsawwassen Legislature.

Order Number: 092-2009

Date Enacted: September 16, 2009



TSAWWASSEN FIRST NATION
scəwaθən məsteyəx^w

Fisheries, Wildlife, Migratory Birds and Renewable Resources Act

FISHERIES REGULATION

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Part I Interpretation and Application

Authority

- 1 These regulations are made under the Tsawwassen Fisheries, Wildlife Migratory Birds and Renewable Resources Act.

Application

- 2 Unless specifically provided otherwise, these regulations apply to all harvesting of Tsawwassen fisheries.

Definitions

- 3 (1) In these regulations,
- “**Act**” means the Tsawwassen Fisheries, Wildlife Migratory Birds and Renewable Resources Act;
 - “**enforcement officer**” means
 - (a) a Tsawwassen resource management officer, or
 - (b) a fishery officer as defined in the *Fisheries Act* (Canada).
 - “**family member**” means a spouse, child, parent, grandparent or grandchild.
 - “**fishing gear**” means any equipment or methods used to catch fish and, for greater certainty, includes a fishing vessel;
 - “**manager**” means the manager of Fisheries, Wildlife, Migratory Birds and Renewable Resources appointed under section 25 [*Manager’s appointment and responsibilities*] of the Act.
 - “**non Tsawwassen Member**” means a person who is not a Tsawwassen Member.
 - “**Tsawwassen fishing licence**” means any type of official fishing licence issued by the Tsawwassen First Nation that permits a Tsawwassen Member, spouse of a Tsawwassen Member or Coast Salish Band Member to participate in a Tsawwassen fishery.
 - “**Tsawwassen fishing licence number**” means the number assigned to a Tsawwassen fishing licence at the time the licence is issued;
 - “**Tsawwassen landing site**” means any place, premises, vessel or vehicle that is designated by the manager under section 26.
- (2) Unless specifically provided otherwise in these regulations, the terms used have the same meaning as defined in the Act.

Part II Tsawwassen Fishing Licences

Manager’s authority to delegate

- 4 (1) In the event that the manager is unavailable to undertake any of his or her responsibilities under this regulation, he or she may delegate his or her responsibility to the chief administrative officer.
- (2) In the event that a family member of the manager makes an application for a Tsawwassen fishing licence, the manager must delegate his or her responsibility respecting the issuance of that licence to the chief administrative officer.

Licence for non-Tsawwassen

- 5
- (1) If an agent or contractor of the Tsawwassen First Nation is:
 - (a) applying for, or the holder of, a Tsawwassen fishing licence in order to carry out the instructions of or a contract with the Tsawwassen First Nation, and
 - (b) intends to employ a non-Tsawwassen Member to perform those services, that non-Tsawwassen Member may apply for a Tsawwassen fishing licence for purposes of performing those services.
 - (2) Despite section 7 [*Right to licences*] of the Act, a Tsawwassen fishing licence issued to a non-Tsawwassen Member described in subsection (1) is automatically, and without notice,
 - (a) suspended if the Tsawwassen fishing licence held by the agent or contractor described in subsection (1) is suspended by the manager in accordance with section 11 [*Suspension*] of the Act, and
 - (b) cancelled, surrendered or otherwise comes to an end if the Tsawwassen fishing licence held by the agent or contractor described in subsection (1) is cancelled by the manager, or is surrendered or otherwise comes to an end.
 - (3) If a person's Tsawwassen fishing licence is cancelled under subsection (2)(b), the person must deliver the licence to the manager forthwith, and any event, within 5 business days of the notice of cancellation.

Application for licence

- 6
- (1) Subject to section 4 [*Manager's authority to delegate*] of this regulation, the manager has the sole authority to authorize the issuance of a licence by way of signing an application.
 - (2) The application form appended in Schedule A [*Fishing Licence Application Form*] to be completed by an applicant for a Tsawwassen fishing licence or a Tsawwassen commercial fishing licence must contain the following:
 - (a) the full name and mailing address of the applicant;
 - (b) the birth date of the applicant;
 - (c) the phone number of the applicant;
 - (d) Tsawwassen Member enrolment number, if applicable;
 - (e) the type of fishing gear to be used by the applicant;
 - (f) the size of fishing vessel, if any, to be used by the applicant; and
 - (g) the signature of the applicant.
 - (3) The application form appended in Schedule B [*Spousal Fishing Licence Application Form*] to be completed by an applicant for a Tsawwassen Fishing Licence – Spousal must contain the following:
 - (a) the full name and mailing address of the applicant;
 - (b) the birth date of the applicant;
 - (c) the phone number of the applicant;
 - (d) Tsawwassen Member enrolment number for their spouse, if applicable;
 - (e) the type of fishing gear to be used by the applicant;
 - (f) the size of fishing vessel, if any, to be used by the applicant; and
 - (g) a place for the signature of the applicant.
 - (4) The application form appended in Schedule C [*Deckhand Fishing Licence Application Form*] to be completed by an applicant for a Tsawwassen Fishing Licence – Deckhand must contain the following:

- (a) the full name and mailing address of the applicant;
 - (b) the birth date of the applicant;
 - (c) the phone number of the applicant;
 - (d) the Tsawwassen Member enrolment number if the applicant for a Tsawwassen Fishing Licence – Deckhand is a Tsawwassen Member;
 - (e) the band registration number for that band member, or some other means of identification, as approved by the manager, in cases where the applicant is Coast Salish but not part of an Indian Band, if under this subsection a member of a Coast Salish First Nation listed in Schedule D [*Coast Salish Nations*] of this regulation;
 - (f) the type of fishing gear to be used by the applicant;
 - (g) the size of fishing vessel, if any, to be used by the applicant; and
 - (h) a place for the signature of the applicant.
- (5) The manager may require an applicant for any type of Tsawwassen fishing licence, including a Tsawwassen commercial fishing licence, to make a statutory declaration verifying the information given in the application or any supporting documents submitted as required by the manager under section 8 [*Issuance of licences*] of the Act.
- (6) When an application for any type of Tsawwassen fishing licence is received by the manager, the following information must be recorded:
- (a) the date the application was received;
 - (b) the date the licence was issued or refused;
 - (c) if a licence was issued;
 - (i) its date of issuance and its date of expiration,
 - (ii) any conditions imposed on the licence, and
 - (iii) the Tsawwassen fishing licence number of the licence
 - (d) the fee paid, if any; and
 - (e) the name of the authorized Tsawwassen official who processed the application.

Conditions of licences

- 7
- (1) For the proper management and control of Tsawwassen fisheries and the conservation and protection of fish and aquatic plants, the manager may attach conditions to any type of Tsawwassen fishing licence that are not inconsistent with the Act, these regulations, and the Tsawwassen annual fishing plan.
 - (2) It is a condition of every Tsawwassen food, social or ceremonial fishing licence issued that the holder of the licence comply with the Tsawwassen Treaty, harvest documents, the Act, these regulations, any directions issued by the manager as permitted under the Act, and the Tsawwassen annual fishing plan.
 - (3) It is a condition of every Tsawwassen commercial fishing licence issued that the holder of the licence comply with the harvest agreement, the Act, these regulations, any directions issued by the manager as permitted under the Act, and the Tsawwassen annual fishing plan.
 - (4) Every person carrying out any activity under the authority of any type of Tsawwassen fishing licence must comply with every condition of that licence.
 - (5) Individuals with a valid Tsawwassen Fishing Licence – Spousal may participate in Tsawwassen fisheries, provided that they fish with their Tsawwassen Member spouse.

- (6) The manager may authorize a spouse to fish with their child, if the Tsawwassen Member who is their spouse can not fish for medical reasons (documented with a Doctor's note) and the child is 14 years of age or older.
- (7) Notwithstanding subsections (5) and (6), the manager may authorize a non-Member to fish with a Tsawwassen Member, provided that a Tsawwassen Member applies to the manager by submitting a written request and Schedule E [*Special Circumstance Form*] for a special circumstance.
- (8) The manager has the sole discretion to approve or reject a request for a special circumstance and must respond to the applicant in subsection (7) in writing notifying that applicant of the decision.
- (9) If an application for a special circumstance is approved, the non-Member referred to in subsection (7) must have the written notice referred to in subsection (8), or other documentation as approved by the manager, on his or her possession when fishing.
- (10) A special circumstance approved under subsection (7) is valid from April 1st of the year it is issued or the date of approval to March 31st of the following year or an earlier date as determined by the manager.
- (11) Individuals with a valid Tsawwassen Fishing Licence – Deckhand may participate in Tsawwassen fisheries, provided that they fish with a Tsawwassen Member on a vessel owned and operated by that Tsawwassen Member.

Form of licence

- 8 (1) Every type of Tsawwassen fishing licence issued by the manager must include the following:
 - (a) the Tsawwassen fishing licence designation number;
 - (b) the photograph of the holder of the licence;
 - (c) the name and address of the holder of the licence;
 - (d) the date of issue of the licence;
 - (e) the date of expiration of the licence; and
 - (f) a location for the signature of the holder of the licence.
- (2) Every type of Tsawwassen fishing licence issued by the manager is not valid unless it is signed in ink on the place designated on the licence;
 - (a) by the holder of the licence, or
 - (b) in the case of a corporate holder of the licence, by an authorized signatory of corporate holder.

Term of licence

- 9 (1) Every type of Tsawwassen fishing licence issued to:
 - (a) a Tsawwassen Member has a term of two years,
 - (b) an agent or contractor of the Tsawwassen First Nation has a specified term not to exceed one year, and
 - (c) a non-Tsawwassen individual employed by an agent or contractor of the Tsawwassen First Nation shall have a specified term, as determined by the manager, of the Tsawwassen fishing licence, which term shall not be exceeded.
- (2) If the holder of a Tsawwassen fishing licence or Tsawwassen commercial fishing licence ceases to be a Tsawwassen Member or ceases to be an agent or contractor of the Tsawwassen First Nation as contemplated in section 7(3) [*Right to licences*] of the Act, the Tsawwassen fishing licence issued to

that holder is automatically cancelled and must be delivered to the manager forthwith, and in any event no later than 5 business days from un-enrolment or ceasing to be an agent or contractor.

Replacement of licence

10 (1) If the holder of a Tsawwassen fishing licence

- (a) has a change of name or address,
- (b) has had their licence lost, stolen or destroyed, or
- (c) has an illegible licence,

the holder of the licence must notify the manager in writing within 10 days after the occurrence of that event described in this section and the manager may issue a replacement licence showing any applicable changes.

- (2) On receipt of a replacement Tsawwassen fishing licence, the holder of the licence must immediately deliver to the manager the licence that has been replaced if it is still in the holder's possession.
- (3) If the holder of a replacement Tsawwassen fishing licence recovers the licence that was replaced, the holder must immediately deliver it to the manager.

Licence issued in error

11 If any type of Tsawwassen fishing licence was issued in error or contains an error, the manager may:

- (a) request the holder of the licence to deliver it to the manager forthwith, and
- (b) the holder of the licence must immediately, and must within 5 business days, comply with the request.

Ownership of licence

12 Every type of Tsawwassen fishing licence is the property of the Tsawwassen First Nation and is not transferable.

Surrender of licence on suspension

13 If any type of Tsawwassen fishing licence is suspended under section 11 of the Act, the holder of the licence must immediately and within 5 business days:

- (a) deliver the licence to the manager, and
- (b) remove from the water all fishing gear operated under the licence.

Requirement to carry and produce licence

14 Every holder of any type of Tsawwassen fishing licence must

- (a) carry that licence at all times while harvesting in Tsawwassen fisheries, and
- (b) produce that licence on the demand of an enforcement officer.

Restrictions on alteration and use of licence

15 (1) A person must not

- (a) alter or deface a Tsawwassen fishing licence,
- (b) use or produce a Tsawwassen fishing licence that has been altered or defaced,
- (c) use or produce a Tsawwassen fishing licence that has been issued to another person under the pretence of being the holder of that licence, or

- (d) use or produce a Tsawwassen fishing licence that has since been replaced under section 10 [*Replacement of licence*] of this regulation.
- (2) A holder of any type of Tsawwassen fishing licence must not permit another person to use that licence.

Part III Harvesting Requirements

Fishing Vessels

- 16 Vessels fishing in a Tsawwassen fishery must:
- (a) be registered with the Tsawwassen First Nation;
 - (b) must be greater the 16 ft. (4.92 m) in length;
 - (c) have a current Tsawwassen Decal visibly displayed on the fore-port (front-left side) of the vessel; and
 - (d) be operated by a Tsawwassen Member that has, in their possession, a valid Tsawwassen fishing licence.

Identification of fishing gear

- 17 (1) This section does not apply to a fishing vessel.
- (2) No person may set, operate or leave unattended in the water any fishing gear, other than handlines, unless the gear is marked as required in subsections (3) to (6) with a Tsawwassen fishing licence number of a valid and current Tsawwassen fishing licence.
 - (3) A Tsawwassen fishing licence number must be painted on or otherwise securely affixed to a tag, float or buoy attached to the fishing gear and be legible and readily visible at all times without the necessity of raising the gear from the water or, if the water is ice covered, without the necessity of removing any snow or ice.
 - (4) The numerals or letters, as the case may be, in a Tsawwassen fishing licence must be in solid block Arabic numerals or block capital letters in roman characters, as the case may be,
 - (a) without ornamentation,
 - (b) not less than 75 mm in height, and
 - (c) in a colour that contrasts with their background.
 - (5) A tag, float or buoy referred to in subsection (3) must have only one Tsawwassen fishing licence number displayed on it
 - (6) A tag, float or buoy referred to in subsection (3) must:
 - (a) if one end of the fishing gear is fastened to the shore, be affixed to the end of the gear farthest from the shore, and
 - (b) in any other case, be affixed to each end of the gear.

Gear with mesh

- 18 A person who is fishing for a species of fish with fishing gear for which these regulations prescribe a minimum mesh size must not use any device by means of which openings are created in any part of the gear that are smaller in size than the mesh size prescribed for that species.

Release of incidental catch

- 19 (1) This section applies if a person catches fish

- (a) at a time or place at which the person is prohibited from fishing for that fish,
 - (b) by a method or with fishing gear that the person is prohibited from using to fish for that fish, or
 - (c) the possession or retention of which is prohibited.
- (2) Except where the retention of an incidental catch is expressly authorized by these regulations, every person who incidentally catches a fish must immediately return it
- (a) to the place from which it was taken, and
 - (b) if it is alive, in a manner that causes it the least harm.

Dumping and wasting of fish

- 20 (1) A person who is fishing for the purpose of sale under the authority of any type of Tsawwassen fishing licence must not dump from a fishing vessel any fish that has been caught in accordance with the Act and these regulations.
- (2) A person who is fishing for domestic purposes must not waste any fish that is suitable for human consumption.

Identify, count, weigh and measure fish

- 21 (1) A person who catches and retains a fish under the authority of any type of Tsawwassen fishing licence must not have that fish in that person's possession if the fish has been skinned, cut, packed or otherwise dealt with in such a manner that
- (a) the species of the fish cannot be readily identified,
 - (b) the number of fish cannot be readily determined,
 - (c) if weight is used to determine catch limits, the weight of the fish cannot be readily determined, or
 - (d) if size limits are applicable, the size of the fish cannot be readily determined before processing or preserving these fish at the fisher's place of residence.
- (2) A person who harvests Fraser salmon during a Tsawwassen fishery using a fishing vessel licenced by Canada to participate in the general commercial fishery must off load the Fraser salmon before engaging in the next opening for the general commercial fishery.

Authority to clean nets

- 22 (1) An enforcement officer may, in writing, authorize a person to place a net in waters closed to fishing with that net for the sole purposes of cleaning that net.
- (2) An authorization under subsection (1) must specify the location at which the net may be placed, the manner in which the net may be placed and the period of time for which the authorization is valid.

Identification of fish/aquatic plants for trade or barter

- 23 (1) The manager may determine whether a person that transports fish and aquatic plants harvested in Tsawwassen fisheries outside Tsawwassen Lands for the purpose of trade or barter is required to have in their possession a transportation certificate issued by the manager that specifies
- (a) the quantity of each species of fish or aquatic plant being transported for trade or barter, and
 - (b) the destination of the fish or aquatic plants.
- (2) A transportation certificate referred to in subsection (1) must be
- (a) in a form approved by the manager, and
 - (b) signed by the manager.

- (3) A person must not alter or deface a transportation certificate issued under this section.
- (4) If a transportation certificate is issued under subsection (1), a person who is transporting fish or aquatic plants for trade or barter must produce the transportation certificate referred to in subsection (1) on demand of an enforcement officer.

Time and location of harvests

- 24
- (1) The times and locations of harvests in Tsawwassen fisheries that are permitted or prohibited under this section are subject to an order of the manager under section 31 of the Act or under section 30 [*Certificates of designation*] of this regulation.
 - (2) A person must not harvest in Tsawwassen fisheries at a time or in a location other than as permitted in this section.
 - (3) Every Tsawwassen member with a valid Tsawwassen fishing licence may harvest for domestic purposes fish and aquatic plants in the Tsawwassen Fishing Area at times and locations permitted by the manager.

Size limits

- 25
- (1) A person must not harvest for purposes of sale any Fraser salmon that is less than 30 cm in nose-fork length.
 - (2) A person must not harvest a crab that measures less than the following for each species, as measured in a straight line through the greatest breadth of the crab shell:
 - (a) Dungeness crab - 165 mm; and
 - (b) Red Rock crab - 115 mm.
 - (3) A person who captures a crab that is less than the measurement required in subsection (2), or a female crab, must immediately return the crab to the water in the vicinity in which it was captured.

Part IV General

Distribution of harvesting opportunities

- 26 For purposes of section 15 [*Sale of fish or aquatic plants*] of the Act,
- (a) Tsawwassen Member who possesses a valid Tsawwassen fishing licence has the opportunity to harvest for domestic purposes in every Tsawwassen fishery,
 - (b) Tsawwassen Member who possesses a valid Tsawwassen commercial fishing licence has the opportunity to harvest salmon for the purpose of sale in fisheries conducted under the Tsawwassen harvest agreement, and
 - (c) The Tsawwassen First Nation and a Tsawwassen Corporation, on behalf of the Tsawwassen First Nation, has the opportunity to harvest salmon for the purpose of sale in fisheries conducted under the Tsawwassen harvest agreement.

Designated Tsawwassen landing sites and levies

- 27 The manager may designate as a Tsawwassen landing site any place, premises, fishing vessel or vehicle used to receive landed fish, whether directly or indirectly, from a fishing vessel.
- 28
- (1) Members or non Tsawwassen Members participating in Tsawwassen commercial salmon fisheries may be required to pay a levy to the Tsawwassen First Nation based on the number of each salmon species sold by that person.

- (2) Any levies charged for a fish species in a given year will be determined by the Executive Council at the beginning of the fishing season for that species.

Required reporting forms

- 29 (1) Each sale of Fraser salmon transacted at a Tsawwassen landing site must be recorded by an authorized Tsawwassen official and the following information:
 - (a) the name of the person who harvested the salmon;
 - (b) Tsawwassen fishing licence number of person who harvested the salmon;
 - (c) the dates when the salmon were harvested;
 - (d) the location or locations where each species were harvested;
 - (e) the date when the salmon were delivered to the Tsawwassen landing site;
 - (f) the Tsawwassen landing site and location;
 - (g) the total number of each species of salmon sold;
 - (h) the total weight of each species of salmon sold;
 - (i) the price paid for each species of salmon sold;
 - (j) the total amount paid to the person who harvested the salmon; and
 - (k) the name of the authorized individual, company or other authorized entity who received the salmon at a Tsawwassen landing site.
- (2) Each harvest of a species, other than a species of Fraser salmon, must be recorded by an authorized Tsawwassen official and contain the following information:
 - (a) the name of the person who harvested the species;
 - (b) the Tsawwassen fishing licence number of the person who harvested the species;
 - (c) the date when each species were harvested;
 - (d) the location where each species were harvested;
 - (e) the date when the harvest of each species was reported;
 - (f) the location where the harvest of each species was reported;
 - (g) the total number of each species harvested; and
 - (h) the name of the authorized Tsawwassen official who received the report of the harvest of each species.
- (3) A person who has sold Fraser salmon as contemplated in subsection (1), or harvested species, other than Fraser salmon, as contemplated in subsection (2), must provide the information described in the relevant subsection to a Tsawwassen official authorized by the manager on request of that official.
- (4) A Tsawwassen member who has provided the information required in subsections (1) to (3), and who is in receipt of documentation showing they complied with those requirements, may sell their fish from any location, including their residence.

Certificates of designation

- 30 A document approved by the manager to be used to certify a designation under section 28 [*Appointment of Tsawwassen resource management officers*] of the Act must contain the following:
 - (a) the name of the designated Tsawwassen enforcement officer and the designation given;

- (b) the photograph of the designated officer or guardian;
- (c) any limitation on the authority of the designated Tsawwassen enforcement officer;
- (d) the date the document was issued and the date of its expiration; and
- (e) the signature of the manager.

Variation of regulations

- 31 (1) If a time or location for harvesting, a fishing quota or a limit on the size or weight of fish is permitted or prohibited under these regulations, the manager may, by order, vary that time, location, fishing quota or limitation and make different orders for different classes of holders of Tsawwassen fishing licences, different species of fish or aquatic plants.
- (2) The manager may not make an order under subsection (1) that is inconsistent with the harvest documents issued by the Department of Fisheries and Oceans or the Ministry of the Environment, or the Tsawwassen harvest agreement.
- (3) If the manager makes a variation order under this section, notice of the variation must be given by the manager by one or more of the following methods:
- (a) posting the notice in the area or in the vicinity of the area affected by the variation;
 - (b) transmitting the notice by electronic means to those persons affected by the order;
 - (c) posting the notice in a visible location in the Tsawwassen administration offices and in the community newsletter; and
 - (d) having an enforcement officer give oral notice to those affected by the order.

Offences

- 32 (1) Every person who contravenes these regulations commits an offence punishable under the Act.
- (2) Executive Council will determine the maximum fine associated for each offence punishable under the Act.

SCHEDULE A

FISHING LICENCE APPLICATION FORM

APPLICATION FOR: Commercial Licence: ___ Non commercial Licence ___ (check one)

SURNAME: _____ Given Name(s): _____
D.O.B.: Year ___ Month ___ day ___ Enrolment #: _____
STATUS No. (if any): _____
ADDRESS: _____

PHONE No.: (H) _____ (C) _____

FISHING GEAR: _____ VESSEL SIZE: _____

I acknowledge that I am responsible to inform myself and comply with the Final Agreement, *Fisheries, Wildlife, Migratory Bird and Renewable Resources Act*, regulations, harvest documents, annual fishing plan and any direction or conditions that may be issued by the Manager. If I fail to comply with any of the aforementioned laws, regulations, documents, directions or conditions, I understand that my licence may be suspended.

APPLICANT SIGNATURE: _____ DATE: _____

OFFICE USE ONLY:

Date of Manger's approval: Year ___ Month ___ Day ___ Fishing Designation No. _____

Date of Expiration: Year ___ Month ___ Day ___ Spousal Card No. (if any): _____

Date of suspension (if any): Year ___ Month ___ Day ___

Term of suspension: _____ Fee (if any): \$-

Conditions on licence (if any): _____

Comments: _____

Authorized official who processed
application: _____

Authorized official issuing licence (manager or CAO): _____

SCHEDULE B

SPOUSAL FISHING LICENCE APPLICATION FORM

APPLICATION FOR: Commercial Licence: ___ Non commercial Licence ___ (check one)

SURNAME: _____ Given Name(s): _____
D.O.B.: Year ___ Month ___ day ___ Enrolment #: _____
STATUS No. (if any): _____
ADDRESS: _____

PHONE No.: (H) _____ (C) _____
FISHING GEAR: _____ VESSEL SIZE: _____

I acknowledge that I am responsible to inform myself and comply with the Final Agreement, *Fisheries, Wildlife, Migratory Bird and Renewable Resources Act*, regulations, harvest documents, annual fishing plan and any direction or conditions that may be issued by the Manager. If I fail to comply with any of the aforementioned laws, regulations, documents, directions or conditions, I understand that my licence may be suspended.

APPLICANT SIGNATURE: _____ DATE: _____

OFFICE USE ONLY:
Date of Manger's approval: Year ___ Month ___ Day ___ Fishing Designation No. _____
Date of Expiration: Year ___ Month ___ Day ___ Spousal Card No. (if any): _____
Date of suspension (if any): Year ___ Month ___ Day ___
Term of suspension: _____ Fee (if any): \$ _____
Conditions on licence (if any): _____
Comments: _____
Authorized official who processed application: _____
Authorized official issuing licence (manager or CAO): _____

SCHEDULE C

DECKHAND FISHING LICENCE APPLICATION FORM

APPLICATION FOR: Commercial Licence: __ Non commercial Licence __ (check one)

SURNAME: _____ Given Name(s): _____

D.O.B.: Year ____ Month ____ day ____ Enrolment #: _____

STATUS No. (if any): _____

ADDRESS: _____

PHONE No.: (H) _____ (C) _____

FISHING GEAR: _____ VESSEL SIZE: _____

I acknowledge that I am responsible to inform myself and comply with the Final Agreement, *Fisheries, Wildlife, Migratory Bird and Renewable Resources Act*, regulations, harvest documents, annual fishing plan and any direction or conditions that may be issued by the Manager. If I fail to comply with any of the aforementioned laws, regulations, documents, directions or conditions, I understand that my licence may be suspended.

APPLICANT SIGNATURE: _____ DATE: _____

OFFICE USE ONLY:

Date of Manger's approval: Year ____ Month ____ Day ____ Fishing Designation No. _____

Date of Expiration: Year ____ Month ____ Day ____ Spousal Card No. (if any): _____

Date of suspension (if any): Year ____ Month ____ Day ____

Term of suspension: _____ Fee (if any): \$ _____

Conditions on licence (if any): _____

Comments: _____

Authorized official who processed application: _____

Authorized official issuing licence (manager or CAO): _____

SCHEDULE D
COAST SALISH NATIONS

BC Coast Salish

- | | |
|----------------------|--------------------|
| 1. Aichelitz | 28. Saanich |
| 2. Chawathil | 29. Scowlitz |
| 3. Cheam | 30. Seabird Island |
| 4. Chehalis | 31. Sechelt |
| 5. Chemainus | 32. Semiahmoo |
| 6. Cowichan | 33. Shxw'ow'hamel |
| 7. Esquimalt | 34. Shawahlook |
| 8. Halalt | 35. Skowkale |
| 9. Homalco | 36. Skawh |
| 10. Hwilitsum | 37. Skway |
| 11. Katzie | 38. Sliammon |
| 12. Klahoose | 39. Snuneymuxw |
| 13. Kwantlen | 40. Songhees |
| 14. Kwaw-kwaw-a-pilt | 41. Sooke |
| 15. Kwikwetlem | 42. Soowahlie |
| 16. Lakahahmen | 43. Squamish |
| 17. Lake Cowichan | 44. Squiala |
| 18. Lyackson | 45. St. Mary's |
| 19. Malahat | 46. Sumas |
| 20. Matsqui | 47. Tsartlip |
| 21. Musqueam | 48. Tsawout |
| 22. Nanoose | 49. Tsawwassen |
| 23. Pauquachin | 50. Tseycum |
| 24. Penelakut | 51. Tseil-Waututh |
| 25. Peters | 52. Tzeachten |
| 26. Popkum | 53. Yakwekwioosse |
| 27. Qayqayt | 54. Yale |

Washington Coast Salish First Nations

- | | |
|----------------|---------------|
| 55. Darrington | 60. Swinomish |
| 56. Deming | 61. Tulalip |
| 57. Lummi | 62. Samish |
| 58. Marietta | 63. Puyallup |
| 59. Nooksack | 64. Anacortes |

SCHEDULE E

SPECIAL CIRCUMSTANCE FORM

SURNAME: _____ Given Name(s): _____
D.O.B.: Year ____ Month ____ day ____
ADDRESS: _____

PHONE No.: (H) _____ (C) _____

NAME OF MEMBER YOU ARE APPLYING ON BEHALF OF: _____

Enrolment # of Member: _____
STATUS No. of Member (if any): _____

FISHING GEAR: _____ VESSEL SIZE: _____

I acknowledge that I am responsible to inform myself and comply with the Final Agreement, Fisheries, Wildlife, Migratory Bird and Renewable Resources Act, regulations, harvest documents, annual fishing plan and any direction or conditions that may be issued by the Manager. If I fail to comply with any of the aforementioned laws, regulations, documents, directions or conditions, I understand that my licence may be suspended.

APPLICANT SIGNATURE: _____ DATE: _____

OFFICE USE ONLY:
Date of Manger's approval: Year ____ Month ____ Day ____ Fishing Designation No. _____
Date of Expiration: Year ____ Month ____ Day ____ Spousal Card No. (if any): _____
Fee (if any): \$ _____
Conditions on licence (if any): _____
Reason for granting Special Circumstance:

Authorized official issuing licence Special Circumstance (manager or CAO):

**COMMISSION OF INQUIRY INTO THE DECLINE OF SOCKEYE SALMON
IN THE FRASER RIVER**

In the matter of Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, directing that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable Bruce Cohen as Commissioner to conduct an inquiry into the decline of sockeye salmon in the Fraser River

**CLOSING SUBMISSIONS OF PARTICIPANT GROUP # 14 COMPRISING MAA-
NULTH TREATY SOCIETY¹, MUSQUEAM INDIAN BAND AND TSAWWASSEN
FIRST NATION**

MUSQUEAM INDIAN BAND

Index of Authorities

1. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
 2. *Guerin v. The Queen*, [1984] 2 SCR 335.
 3. *R. v. Sparrow*, [1990] 1 S.C.R. 1075.
 4. *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
 5. Department of Fisheries and Oceans, available at:
<http://www.dfo-mpo.gc.ca/fm-gp/aboriginal-autochtones/afs-srapa-eng.htm>
-