

Aboriginal Fisheries Strategy

Pacific Region

Resource Managers' Handbook

June 2, 2003

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AFS HANDBOOK

CHAPTER ONE

INTRODUCTION

1.1 What is the purpose of this book?

This book is intended to serve as a general source of information for field staff in the Pacific Region of the Department of Fisheries & Oceans in the course of their duties with First Nations. It is designed to complement the more comprehensive Resource Managers' Guidebook.

1.2 What is the Aboriginal Fisheries Strategy (AFS)?

THE ABORIGINAL FISHERIES STRATEGY (AFS)

Following the 1990 Supreme Court of Canada decision in R. v. Sparrow, the Department of Fisheries and Oceans (DFO) faced tremendous new challenges in carrying out its responsibility to manage Aboriginal fishing for food, social and ceremonial purposes.

The Sparrow decision affirmed the existence of a constitutionally protected Aboriginal right to fish for food, social and ceremonial purposes. It also stated that the federal government has a fiduciary obligation to accommodate the Aboriginal right in managing the fisheries and that this right must be given a "liberal and generous" interpretation. This means that where allocation is concerned, the Aboriginal right to fish for food, social and ceremonial purposes takes priority over all other users (the commercial and recreational sectors) after provision for conservation. The Court emphasised the importance of consultation with Aboriginal groups on matters affecting exercise of an Aboriginal right to fish. This consultation is crucial where there is an infringement of the Aboriginal right and any such infringement must be justified by a compelling public policy objective such as conservation.

The management challenges raised by the Sparrow decision compounded pre-existing problems in managing the Aboriginal food fishery and in relations between Aboriginals and other users of the resource. The fisheries resource is of great importance to Aboriginal people. It is at the root of most of BC's Aboriginal cultures. Today, fish continues to form a major component of Aboriginal nutritional requirements, but traditionally the importance of fish

extended well beyond its food value. In addition to their ceremonial significance, fish were a major commodity of trade among some Indian bands and tribal groups with many of these groups expanding this trade with Europeans after contact.

Today many Aboriginal communities continue to look towards fisheries resources to provide part of a much-needed economic base.

Aboriginal peoples have long viewed federal laws and regulations on their fishing as unfair interference with their traditions. They have asserted an Aboriginal, or in some case a Treaty right, to fish and sell fish without regulation, which has not been recognized by Canada. In B.C., the first significant restrictions on the Aboriginal fishery came in 1888 when Fisheries Act regulations provided that Aboriginals could, at all times, by any means other than drift nets or spearing, fish for food for themselves, but not for sale or barter. The Aboriginal fishing tradition having been thus restricted, more stringent restrictions were added over the years, with some of them being for the conservation of the resource and others to promote development of new non-Native commercial and recreational fisheries.

Disputes over the scope of Aboriginal rights precluded co-operation between DFO and Aboriginal communities on the management of Aboriginal fishing and led to ongoing, sometimes violent, confrontations between DFO and Aboriginal people. By the 1970's and 1980's, some Aboriginal people complied with regulations, but others refused, and illegal sales grew along with protest fisheries and blockades to register opposition to DFO's restrictions. Tighter regulations meant increased enforcement, which in turn led to charges and court battles. Prosecutions were frequently unsuccessful and provided no real deterrent against uncontrolled fishing and sale of fish.

Conflict was not limited to that between DFO and Aboriginal people. Other users of the resource often became involved when they perceived that uncontrolled Aboriginal fishing threatened conservation or reduced the fish available for commercial allocations, particularly in the Pacific salmon fishery. Responses ranged from conflict on the fishing grounds to protests and lobbying against not only illegal Aboriginal fishing but also recognition of any Aboriginal fishing right.

The Sparrow decision forced Canada to be innovative in arriving at a solution to these serious problems of public order. The result was the Aboriginal Fisheries Strategy, a comprehensive seven-year, \$140 million strategy for federally managed Aboriginal fisheries in B.C., Quebec and the Atlantic provinces, which responded to the Sparrow decision, and to Aboriginal desires for greater involvement in fisheries management.

The objectives of the AFS are to:

- protect and conserve fish resources consistent with the Minister's responsibilities
- manage fisheries consistent with Sparrow;
- enhance Aboriginal employment and community economic development;
- minimize conflict and disruption in the fisheries sector by involving all stakeholders in strategy development and implementation; and,
- facilitate certain, final and affordable resolution of the Aboriginal fishing rights issue through the B.C. Treaty comprehensive land claims process.

1.3 AFS PILOT SALES PROJECTS

The most controversial feature of the AFS is the sale projects in three B.C. Aboriginal salmon fisheries. The 1990 Supreme Court ruling, called the Sparrow decision, did not address the contentious issue of whether the Aboriginal right to fish for food, social and ceremonial purposes includes the right to sell the fish, but it emphasised that the situation is best resolved through a negotiated solution.

Aboriginal groups contend that a liberal and generous interpretation of Sparrow includes the right to sell that fish. In 1993 appeals of three B.C. cases, Van der Peet, Gladstone, and NTC Smokehouse, the B.C. Court of Appeal, in split decisions, reversed the lower court's rulings and found that an Aboriginal right to sell fish had not been established. Leave to appeal to the Supreme Court of Canada has been granted in each of these cases and it is estimated that they will be heard in the fall of 1995.

Two-year pilot sales projects were undertaken in an attempt to balance Aboriginal demands to totally eliminate the prohibition on sale of "food fish" introduced in 1888 and the industry's strong misgivings against such action. Such balancing was viewed as being necessary in order to enlist aboriginal support for management of the aboriginal fishery. The sales projects also were designed to develop and test enforceable, effective management systems which could accommodate the removal of the prohibition on the sale of fish taken in the Aboriginal fishery should that be the outcome of litigation or treaty settlements.

Some of the proceeds of sales are used to fund the fisheries management activities of the aboriginal groups.

All three sales projects specifically targeted Aboriginal fisheries where illegal fishing clearly existed both because these were the areas in which an economic opportunity existed and in order to bring escalating illegal catches under control. The additional allocations these fisheries were obtained by transferring the catch capacity of commercial licences through a voluntary licence retirement program in 1992 and 1993. These fisheries are run under very stringent management controls far exceeding those applicable to other commercial fisheries. An example of one of these management controls is the Mandatory Landing Site Program, which is used in all three projects to count every salmon caught during an open time.

In 1994 the department made the decision to continue with the sales program at its current level. The sales component of the AFS has been invaluable in demonstrating the feasibility of in-river commercial fisheries. Like any new program, the sales program has had and continues to have implementation problems. Responding to these problems has given DFO and First Nations an opportunity to substantially improve the management of the Aboriginal fishery in the sale areas.

CHAPTER TWO

Terms and conditions for contributions under the Aboriginal Fishing Strategy (AFS).

CONTRIBUTIONS UNDER THE ABORIGINAL FISHERIES STRATEGY (AFS) TERMS AND CONDITIONS

2.0 NEGOTIATION AND IMPLEMENTATION OF FISHERIES MANAGEMENT AGREEMENTS INCLUDING INTERIM AGREEMENTS

2.1 ELIGIBLE RECIPIENTS

- a) The class of Indian/Inuit recipients as identified in Schedule 1.

2.1.1 PURPOSES

- a) To provide funding to Aboriginal groups to enable them to negotiate DFO fisheries management agreements leading to Interim Agreements.
- b) To enable Aboriginal groups to participate in fisheries management through carrying out activities set out in agreements as listed in Schedule 2.
- c) To allow Aboriginal groups to test innovative fisheries related economic development opportunities such as:
- construction of aquaculture facilities
 - feasibility studies and start-up of processing capacity for new products and developing markets
 - studies of markets, processing methods and product quality.

2.1.2 METHOD OF APPLICATION

Contributions will fund activities set out in agreements on Aboriginal participation in fisheries and fisheries management negotiated under the AFS.

All recipients will be required to disclose the involvement of former public servants who fall under the federal government Post Employment Guidelines.

2.1.3 CONTRIBUTION ARRANGEMENT

The contribution arrangement will consist of a formal agreement between the Department of Fisheries and Oceans (DFO) and recipients. The agreement will set out the method and schedule of payment and reporting and audit requirements (see page 4). A schedule to the agreement will contain a detailed description of the project (activities to be carried out by the recipient under the agreement), with estimated amounts to be expended on each activity. Recipients will be authorized to transfer funding between tasks. A schedule listing categories of allowable cost as set out in Schedule 3 also will be attached.

2.1.4 SIGNING AUTHORITIES

The Assistant Deputy Minister, Fisheries Management or his/her delegate, will sign on behalf of DFO.

2.1.5 AUTHORITY TO APPROVE PAYMENT

The Director General of the appropriate DFO Region or his/her delegate will have authority to approve payments pursuant to the agreement.

2.1.6 BASIS FOR PAYMENTS

Payment generally will be made in advance, based on cash flow projections for allowable costs (see schedule 3) provided by the recipient as approved by DFO, at the following intervals:

<u>Total Contribution</u>	<u>Initial Advance</u>	<u>Subsequent Advances</u>
\$25,000 to \$99,999	up to 75%	quarterly
\$100,000 to \$249,999	first quarter	quarterly
\$250,000 to \$499,999	first quarter	monthly (beginning in 4th month)

2.1.9 MAXIMUM AMOUNT

The maximum annual amount payable per recipient is \$4,000,000.

2.1.10 FEDERAL ENVIRONMENTAL LEGISLATION

When appropriate, contribution arrangements will include provisions for compliance with federal legislation respecting environmental assessment and review.

2.1.11 EVALUATION

Prior to seeking renewal of the Terms and Conditions of the co-management agreements under the AFS, DFO may conduct an evaluation of the effectiveness of these agreements relating to the objectives of the program. Criteria for the evaluation could include the objectives of the co-management program, including: the improvement of conservation, the management and enhancement of the resource through co-operative management with Aboriginal peoples, the level of contribution to the economic self-sufficiency of Aboriginal communities; and the facilitation of the development of self-government and treaties.

Audits of the effectiveness of financial management of the co-management agreements under the Aboriginal Fisheries Strategy may be conducted as required throughout the life of the program.

2.1.12 PERIOD OF APPLICABILITY

These Terms and Conditions for payments under the contribution arrangements will be applicable for a 5-year period, (currently from April 1, 2003 to March 31, 2008).

**2.1.13 Terms and Conditions that will be included in
the Contribution Arrangement between
DFO and the Recipients.**

- a) Identification of the recipient of the contribution;
- b) Purpose of the contribution (i.e. a description of the activities to be carried out);
- c) Effective date, duration of the arrangement and date of signing;
- d) The financial and/or non-financial conditions attached to the contribution and the consequences of failing to adhere to these conditions;
- e) The allowable costs or the types or classes of expenditures eligible for reimbursement;
- f) The conditions to be met before payment is made and the schedule and basis of payment;
- g) Provision for audit and keeping of appropriate financial and other records by the recipient and with a provision for further audit by the donor if deemed necessary;
- h) A requirement for the recipient to repay overpayments, unexpended balances and disallowed expenses and a declaration that such amounts constitutes debts due to the Crown;
- i) The maximum payable and a provision for the department to terminate the agreement and withdraw if the original objectives are not met.

2.1.14**SCHEDULE 1
INDIAN/INUIT CLASS OF RECIPIENTS**

Listing of eligible recipients of contributions within Indian/Inuit class of recipients.

- Indian Bands/Inuit settlements
- Territorial-based Aboriginal Groups
- District Councils/Chief Councils
- Aboriginal Associations/Organizations
- Aboriginal Fisheries Commissions/Councils/Authorities
- Tribal Councils
- Other Aboriginal Communities
- Aboriginal Economic Institutions/Organizations/Corporations
- Partnerships or aggregations of Aboriginal groups
- Aboriginal Co-operatives
- Aboriginal Societies
- Fisheries Management and Advisory Boards having at least 50% Aboriginal membership

2.1.15

**SCHEDULE 2
ELIGIBLE ACTIVITIES**

List of activities related to fisheries management eligible for contribution funding, Indian/Inuit class of recipients.

A. Negotiation of Fisheries Management Agreements, including Interim Agreements

- establishment and maintenance of a organization to represent an Aboriginal or aggregation of Aboriginal groups in negotiations
- preparation of negotiating positions including background research and internal consultations
- participation in negotiation sessions and other meetings with DFO
conduct feasibility studies on innovative fisheries and fisheries management mechanisms

B. Fisheries Management Activities

Management of Aboriginal fishing

- maintaining an Aboriginal Fishing Authority
- developing fishing plans
- assigning fishing opportunities within communal allocations including making designations under communal licences
- catch monitoring and reporting
- conducting enforcement activities
- selective fishing methods
- conducting product inspections
- participating in Oceans management

C. Related Activities

Habitat enhancement

- developing habitat protection/restoration and enhancement plans and proposals

- monitoring of habitat and enforcement of habitat protection legislation, regulations and by-laws
- restoration and improvement of fish habitat
- construction and operation of enhancement facilities
- non-facilities based fish enhancement activities (e.g. lake fertilization)

Science

- monitoring of spawning escapements
- stock definition and enumeration
- determination of stock productivity and safe harvesting levels
- inventories and monitoring of fish habitat
- gathering of traditional ecological knowledge

Training

- identification of training needs associated with fisheries management and fisheries based economic opportunities
- development of curricula and training programs to address identified needs
- conducting training of First Nations employees

Communications

- production and publication of materials explaining activities under the contribution arrangement and other agreements under the AFS
- production and publication of materials aimed at furthering the understanding of the historic Aboriginal role in the fishery
- community meetings on fisheries related matters

Consultations

- research
- organization and conduct of meetings
- preparation and circulation of position papers

2.1.16

SCHEDULE 3
ALLOWABLE COSTS FOR RE-IMBURSEMENT

Allowable costs for re-imbursements may include reasonable and properly itemised costs for:

A. Negotiation of Fisheries Management Agreements

- Administration including
 - salaries and benefits
 - other labour costs
 - supplies and materials
 - overhead
 - consultant fees

- Operations including
 - salaries and benefits
 - establishing and maintaining offices
 - supplies and materials
 - consultant fees
 - meeting expenses
 - travel and related expenses
 - costs of any audits requested by DFO

B. Fisheries Management and Economic Development Activities

- Administration including
 - salaries and benefits
 - other labour costs
 - supplies and materials
 - overhead
 - consultant fees
 - insurance related to AFS program costs

- Operations including
 - salaries and benefits
 - constructing, establishing and maintaining offices and other facilities
 - supplies and materials
 - equipment purchase, lease or rental
 - repair and maintenance of equipment used for non-profit activities
 - consultant fees
 - professional services
 - meeting expenses
 - land transactions and buildings
 - travel and related expenses
 - training fees and expenses including materials
 - costs of any audits requested by DFO

2.1.17 CONTRIBUTIONS UNDER THE ABORIGINAL FISHERIES STRATEGY (AFS) TERMS AND CONDITIONS STAKEHOLDER CONSULTATIONS

2.1.18 ELIGIBLE RECIPIENTS

Organizations representing Aboriginal people and organizations representing stakeholders in fisheries and the fishing industry which potentially could be affected by the AFS.

2.1.19 PURPOSE

To fund consultations leading to the development of policy advice on the AFS, including the organization and conduct of meetings, research, and preparation and circulation of position papers.

2.1.20 METHOD OF APPLICATION

Selection of recipients will be by DFO, based on consultations with interest groups. Considerations will include the interest group represented by the applicant, letters of support where relevant, and the plan for carrying out consultations.

All recipients will be required to disclose the involvement of former public servants that fall under the federal government Post Employment Guidelines.

2.1.21 CONTRIBUTION ARRANGEMENT

The contribution arrangement will consist of a formal agreement between DFO and recipients. The agreement will set out the method and schedule of payment and reporting and audit requirements (see page 4). A schedule to the agreement will contain a detailed description of the Project (activities to be carried out by the recipient under the agreement), with estimated amounts to be expended on each activity. Recipients will be authorized to transfer funding between tasks. A schedule listing categories of allowable cost as set out in Schedule 1 also will be attached.

2.1.22 SIGNING AUTHORITIES

The Assistant Deputy Minister, Fisheries Management or his/her delegate, will sign on behalf of DFO.

2.1.23 AUTHORITY TO APPROVE PAYMENT

The Director General of the appropriate DFO Region or his/her delegate will have authority to approve payments pursuant to the agreement.

2.1.24 BASIS FOR PAYMENTS

Payment generally will be made in advance, based on cash flow projections for allowable costs (see schedule 1) provided by the recipient as approved by DFO, at the following intervals:

<u>Total Contribution</u>	<u>Initial Advance</u>	<u>Subsequent Advances</u>
\$25,000 to \$99,999	up to 75%	quarterly
\$100,000 to \$249,999	first quarter	quarterly
\$250,000 to \$499,999	first quarter	monthly beginning in fourth month
\$500,000 and over	first month	monthly

Positive balances reported at the end of a previous period will be subtracted from cash flow projections for the next period. Agreements also will provide for reimbursement where expenses for a previous period exceed advances. Advances and reimbursements prior to completion of the project and receipt of a final report shall not exceed 95% of the total amount of the agreement.

2.1.25 FINAL PAYMENTS

Final payment will be retained until receipt and review of a final report, due after completion of the project or termination of the agreement.

2.1.27 REPORTING AND AUDIT

Recipients will be required to provide a progress report every three months and a final report. An exception will be for agreements under \$100,000 where a 75% advance has been given. In this case only one progress report will be required, before the second advance. Reports will include expenditures itemised by activity and by allowable cost item, a cash balance and progress reports on each activity set out in the project description.

Final reports will contain a summary of activities carried out under the contribution agreement. Recipients will be required to complete a summary results, identifying contributions of the work towards attainment of program objectives.

All recipients will be required to retain documentation of all expenditures and to submit to an audit upon request. An audit will be required for all contributions equal to or exceeding \$250,000.00.

In the event that an audit indicates that an unallowable expenditure has been reimbursed, such an amount will be considered as a debt due and owing to the Crown. Procedures will be implemented to recover the amount from the recipient.

2.1.27 MAXIMUM AMOUNT

The maximum annual amount payable in respect of an individual contribution agreement shall be \$1,000,000.

2.1.28 FEDERAL ENVIRONMENTAL LEGISLATION

When appropriate, contribution arrangements will include provisions for compliance with federal legislation respecting environmental assessment and review.

2.1.29 EVALUATION

Prior to seeking renewal of the Terms and Conditions of the stakeholder agreements under the AFS, DFO may conduct an evaluation of the effectiveness of these agreements relating to the objectives of the program. Criteria for the evaluation could include the objectives of the stakeholder program including: the improvement of conservation, the management and enhancement of the resource through co-operative management with Aboriginal peoples, the level of contribution to the economic self-sufficiency of Aboriginal communities and the facilitation of the development of self-government and treaties.

Audits of the effectiveness of financial management of the stakeholder agreements under the AFS may be conducted as required throughout the life of the program.

2.1.30 PERIOD OF APPLICABILITY

These Terms and Conditions for payments under this contribution arrangement will be applicable from April 1, 1998 to March 31, 2003.

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**2.1.31 Terms and Conditions that will be included in
the Contribution Arrangement between
DFO and the Recipients.**

- a) Identification of the recipient of the contribution;
- b) Purpose of the contribution (i.e. a description of the activities to be carried out);
- c) Effective date, duration of the arrangement and date of signing;
- d) The financial and/or non-financial conditions attached to the contribution and the consequences of failing to adhere to these conditions;
- e) The allowable costs or the types or classes of expenditures eligible for reimbursement;
- f) The conditions to be met before payment is made and the schedule and basis of payment;
- g) Provision for audit and keeping of appropriate financial and other records by the recipient and with a provision for further audit by the donor if deemed necessary;
- h) A requirement for the recipient to repay overpayments, unexpended balances and disallowed expenses and a declaration that such amounts constitutes debts due to the Crown;
- i) The maximum payable and a provision for the department to terminate the agreement and withdraw if the original objectives are not met.

2.1.32

SCHEDULE 1
ALLOWABLE COSTS FOR RE-IMBURSEMENT

Allowable costs for re-imbursements may include reasonable and properly itemised costs for:

- Administration including
 - salaries and benefits
 - other labour costs
 - supplies and materials
 - overhead
 - consultant fees

- Operations including
 - salaries and benefits
 - supplies and materials
 - consultant fees
 - professional services
 - meeting expenses

- travel and related expenses

- costs of any audits requested by DFO

**2.1.33 CONTRIBUTIONS UNDER THE ABORIGINAL FISHERIES STRATEGY (AFS)
TERMS AND CONDITIONS
ALLOCATION TRANSFER**

2.1.34 ELIGIBLE RECIPIENTS

- a) Holders of valid commercial fishing licences
- b) Owners of registered fishing vessels and/or gear

2.1.35 PURPOSE

To provide adjustment payments for the retirement of commercial fishing licences and vessels so that the commercial fishing opportunity represented by the licences can be made available to Aboriginal organizations as an allocation to an Aboriginal fishery or through issuance of a commercial fishing licence for communal holding by an Aboriginal organization.

2.1.36 METHOD OF APPLICATION

Adjustment payments will be provided in one of two ways:

- a) through DFO entering into contribution arrangements with commercial licence holders to compensate them for the surrender of their licence; or
- b) through DFO entering into contribution arrangements with registered vessel and/or equipment owners to compensate them for the surrender of their fishing vessel and/or equipment.

Where method (a) is employed selection of licensees for adjustment payments will be based on a 'competitive bid' process. Applicants will be required to identify the amount of the adjustment payment they would require for retirement of their licence together with evidence of a valid commercial fishing licence and such information on vessel and equipment operated under the licence and past levels of catch which may be necessary for evaluation of payment or of the commercial fishing opportunity which would be made available through licence retirement. Selection among applications will be based on least

cost for fishing opportunity retired. It is anticipated that adjustment payments will generally reflect the market value of licences, where a market for licences exists.

Where method (b) is employed, selection of owners for adjustment payments will be based on a 'competitive bid' process. Applicants will be required to identify the amount of the adjustment payment they would require for the surrender of their registered vessel and/or equipment together with evidence of ownership. It is anticipated that adjustment payments will generally reflect the market value of registered vessels and/or equipment, where a market for registered vessels and/or equipment exists.

All recipients will be required to disclose the involvement of former public servants that fall under the federal government Post Employment Guidelines.

2.1.37 CONTRIBUTION ARRANGEMENT

The contribution arrangement will consist of a formal agreement between DFO and the recipient.

Agreements will contain the amount of the payment. Agreements also will contain a statement from the recipient surrendering the licence for retirement, arrangements for surrender or disposal of vessel and equipment where appropriate, and clauses sufficient to render the Crown safe from all future claims by the recipient for additional compensation or for damages related to the surrender of the licence or failure to re-issue a licence to the recipient in future seasons (see page 4).

2.1.38 SIGNING AUTHORITIES

The Assistant Deputy Minister, Fisheries Management or his/her delegate, will sign on behalf of DFO.

2.1.39 AUTHORITY TO APPROVE PAYMENT

The Director General of the appropriate DFO Region or his/her delegate will have authority to approve payments pursuant to the agreement.

2.1.40 BASIS FOR PAYMENTS

Compensation will be paid in full upon signing of the agreement and surrender of the licence, and/or surrender of vessel and/or equipment.

2.1.41 MAXIMUM AMOUNT

The maximum amount payable in respect of an individual contribution agreement shall be \$2,000,000.

2.1.42 AUDIT

Special purpose audits may be carried out as requested by DFO. In the event that the final financial report, or the final audit, indicates that an unallowable expenditure has been reimbursed, such an amount will be considered as a debt due and owing to the Crown. Procedures will be implemented to recover the amount from the Recipient.

2.1.43 FEDERAL ENVIRONMENTAL LEGISLATION

When appropriate, contribution arrangements will include provisions for compliance with federal legislation respecting environmental assessment and review.

2.1.44 EVALUATION

Prior to seeking renewal of the Terms and Conditions, DFO may conduct an evaluation of the effectiveness of the ATP. Criteria for the evaluation could include the objective of the ATP program including the provision for increased opportunities to Aboriginal peoples to access the commercial fishery.

2.1.45 PERIOD OF APPLICABILITY

These Terms and Conditions for payments under these contribution arrangements will be applicable from April 1, 1998 to March 31, 2003.

**2.1.46 Terms and Conditions that will be included in
The Contribution Arrangement Between
DFO and the Recipients.**

- a) Identification of the recipient of the contribution;
- b) Purpose of the contribution (i.e. a description of the activities to be carried out);
- c) Effective date, duration of the arrangement and date of signing;
- d) The financial and/or non-financial conditions attached to the contribution and the consequences of failing to adhere to these conditions;
- e) The allowable costs or the types or classes of expenditures eligible for reimbursement;
- f) The conditions to be met before payment is made and the schedule and basis of payment;
- g) Provision for audit and keeping of appropriate financial and other records by the recipient and with a provision for further audit by the donor if deemed necessary;
- h) A requirement for the recipient to repay overpayments, unexpended balances and disallowed expenses and a declaration that such amounts constitutes debts due to the Crown;
- i) The maximum payable; and a provision for the department to terminate the agreement and withdraw if the original objectives are not met.

2.1.47

SCHEDULE 1

ALLOWABLE COSTS FOR REIMBURSEMENT

1. Market value of commercial licences (a premium where a commercial fishing licence is retired but the vessel that was used to fish the retired licence is not purchased);
2. market value of licensed commercial fishing vessels purchased with licence (the market value of a commercial fishing vessel if the vessel was used to fish the retired licence);
3. market value of registered fishing vessels;
4. market value of fishing equipment;
5. associated transaction costs;
6. reasonable compensation for surrender of a commercial fishing licence including market value of the licence and a premium for removing licence from an existing vessel where the licence is retired but the vessel is not purchased.

2.2 Case Law Shaping AFS Policies

The modern legal history of common law Aboriginal land rights begins with the 1973 decision of the Supreme Court of Canada in *Calder v. AGBC*. The Nisga'a plaintiffs sued the Attorney General of BC for a declaration that the Aboriginal title to their ancient tribal territory had never been lawfully extinguished. The territory in question consisted of 1000 square miles in and around the Nass River Valley.

The plaintiffs claimed their title arose out of Aboriginal occupation was not dependent upon treaty, executive order, or legislative enactment. Alternatively, if legislative recognition was required, it could be found in the *Royal Proclamation of 1763*.

The claim was dismissed, but the case was profoundly important. Six of the seven justices held that the "Aboriginal title" was part of the common law of Canada and that its existence did not depend upon treaty, executive order, or legislative enactment. The court did not say whether this right amounted to an interest in land.

In 1980, the Federal Court of Canada considered third party rights in a decision concerning land claimed in and around Baker Lake, Northwest Territories in *Baker Lake v. Minister of Indian Affairs and Northern Development (1980) 1 F.C. 518 Federal Court of Canada*.

In that case the Inuit sought relief from the Crown issuing land use permits and from mining companies from mining, declaring that the *Proclamation of 1763* never applied to the barrens but, on the authority of *Calder*, that Aboriginal rights arise as well at common law. The court in this case upheld the Inuit claim of Aboriginal title to that territory, carrying with it "the right freely to move about and hunt or fish over it." While there was no claim to ownership or sovereignty, they made claims equivalent to ownership which were all dismissed. The mining companies were permitted to continue their operations.

Baker Lake was an important influence on later courts because of its support for the notion that Aboriginal title is part of the common law of Canada, but more for its discussion of the requirements of proof of such title.

This case set out the elements required to establish Aboriginal rights which common law will recognize:

- 1) That they and their ancestors were members of an organized society;
- 2) That the organized society occupied the specific territory over which they asserted their Aboriginal title;
- 3) That the occupation was to the exclusion of other organized societies; and
- 4) England asserted that the occupation was an established fact at the time sovereignty.

The next occasion the Supreme Court of Canada had to consider the nature of Aboriginal land rights was in *Guerin v. The Queen*, (1984) 2 S.C.R. 335. The Musqueam Band surrendered valuable acres of their reserve land to the Crown "forever in trust to lease" in a manner most conducive to the welfare of the Band. It was found that the lease arrangements entered into by the Crown on the Band's behalf bore little resemblance to what was discussed and approved by the Band. The Crown was found liable and damages were assessed at \$10 million.

This case is not about common law Aboriginal interests, but rather about a breach of fiduciary duty of the Crown relating to reserve lands. The Court's finding is that the Crown's obligations to its Aboriginal subjects are legal and not merely political.

The fiduciary obligation of the Crown was again affirmed by the Supreme Court of Canada in *R. v. Sparrow*, (1990) 4 W.W.R. 410 (S.C.C.). Mr. Sparrow, a Musqueam Indian, was charged under the Fisheries Act for fishing with a driftnet larger than permitted by the terms of his Band's food fish licence. He admitted the facts alleged but defended against the charge on the ground he was exercising an existing Aboriginal right to fish and that the net length restriction was invalid because it was inconsistent with Section 35 of the *Constitution Act*, 1982. He was convicted at trial and his appeals to the County Court and the Court of Appeal were unsuccessful. The Supreme Court of Canada in dismissing the further appeal did not acquit Mr. Sparrow of the charge of fishing with an over-length net. Instead, the Court gave an interpretation of Section 35 (1) and instructed the trial judge to consider that interpretation before answering the question whether the net length restriction was inconsistent with Section 35. The Court said that laws that interfere with the exercise of Aboriginal rights are subject to review by the courts. If the interference cannot be justified by reference to legitimate legislative objectives, which uphold the honour of the Crown in its dealings with Native people, the law can be struck down.

The constitutional recognition of Aboriginal and treaty rights does not provide immunity from government regulation. It does, however, give a measure of control over government conduct and a strong check on legislative power. Furthermore, in the imposition of any limitations on the right to fish, there must be consultation between the Aboriginal peoples and the Federal government.

The ***Sparrow*** decision found that the only priority above Aboriginal right to fish for food, social, and ceremonial purposes is conservation and that the Aboriginal fishery should be regulated by government only for the reason of conserving fish. Where there are cutbacks for conservation, those cutbacks are to be borne by other user groups first, and not by both Indians and other users.

The case concerning Gitksan-Wet'suwet'en land and governance claims (***Delgamuukw v. the Queen***) is the leading case on the issue of Aboriginal land rights in British Columbia. The claim (October 1984) asserted ownership of a land area of 22,000 square miles comprising most of the Skeena and Bulkley river systems, and jurisdiction or self-government over both the claimed land and the Native people of these two groups. Claims to ownership and jurisdiction were rejected by the Supreme Court of BC. In summary, the trial judge concluded that Aboriginal rights arise out of occupation or use of specific land for Aboriginal purposes for a long, long time, and are communal. Aboriginal rights are not property rights. Colonial legislation was taken to have extinguished Aboriginal rights as they existed in the colony at the date of sovereignty except for Indian reserves. The judgement was appealed to the BC Court of Appeal where it heard appeals for seven other cases dealing with related issues: ***Van der Peet***, ***Gladstone***, ***NTC Smokehouse (right to sell)***, ***Lewis and Nikal (band bylaw)***, and ***Alphonse and Dick (Wildlife Act)***.

The decisions were released simultaneously. In ***Delgamuukw*** the court found there was no blanket extinguishment of Aboriginal rights, thus reversing the trial court decision. The court also held that these unextinguished Aboriginal rights were not all-encompassing rights of ownership and that there are no rights to sovereignty or jurisdiction.

Van der Peet: A member of Sto: lo nation was convicted of illegally selling salmon caught under an Indian Food Fish licence. First appeal reversed the decision based on Aboriginal ancestors having had the right to barter or sell. Appeal of this to BC Court of Appeal reversed it one more time and found that the members of the Sto: lo people did not have the right to sell or barter fish.

The post-contact commercial activity which was induced and influenced by European influences does not qualify for protection and priority as an Aboriginal right in this case.

Gladstone: convicted of attempting to sell 4200 pounds of spawn-on-kelp. BC Court of Appeal upheld the ruling.

NTC Smokehouse: convicted of purchase and sale of fish caught without the authority of a commercial fishing licence by members of the Sheshaht and Opetchesaht Bands. Judgement was upheld.

The result is that for these three groups, Aboriginal participation in the commercial fishery is on the same terms and under the same restrictions as other participants in the industry.

In *R. v. Jack, John, and John* and *R. v. Sampson and Eliot* the circumstances were very similar. In both cases, the appellants were accused of fishing without a licence or in unauthorized areas and times. Both sets of appellants were fishing 1 traditional First Nations fishing sites but the department had closed fishing in these areas for conservation measures. The bays in which the appellants were fishing were fed by small streams, which were home to specific salmon runs for spawning. These specific species were depleted in number and any fishing in these spawning run areas was deemed to be detrimental to the existence of these salmon species. In both instances, the appellants were acquitted on the grounds that the DFO restrictions on their Aboriginal right to fish were unfair and favoured the commercial and recreational fisheries.

This ruling was based on the premise that these endangered species, in making their way back to their spawning grounds travelled, along with many other species of salmon, through some very heavily fished areas. It was deemed that the interception fisheries along these routes, in taking abundant species of salmon were also taking the endangered species also thereby depleting the numbers of these species left for the Aboriginal groups fishing for them in the spawning areas. The court decided that the DFO was obligated to curtail the commercial and recreational interceptory fisheries in order to provide enough fish for the Aboriginal groups in the terminal locations. If conservation is the ultimate priority, the consequences should not be felt by First Nations and not by other groups.

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2.4 Guerin v. The Queen, (1984) 2 S.C.R. 335.

The Musqueam Band surrendered valuable acres of their reserve land to the Crown "forever in trust to lease" in a manner most conducive to the welfare of the Band. It was found that the lease arrangements entered into by the Crown on the Band's behalf bore little resemblance to what was discussed and approved by the Band. The Crown was found liable and damages were assessed at \$10 million. This case is not about common law Aboriginal interests, but rather about a breach of fiduciary duty of the Crown relating to reserve lands. The Court's finding is that the Crown's obligations to its Aboriginal subjects are legal and not merely political.

2.5 R v. Sparrow

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He admitted the facts alleged but defended against the charge on the ground he was exercising an existing Aboriginal right to fish and that the net length restriction was invalid because it was inconsistent with Section 35 of the *Constitution Act, 1982*. He was convicted at trial and his appeals to the County Court and the Court of Appeal were unsuccessful. The Supreme Court of Canada in dismissing the further appeal did not acquit Mr. Sparrow of the charge of fishing with an over-length net. Instead, the Court gave an interpretation of Section 35 (1) and instructed the trial judge to consider that interpretation before answering the question whether the net length restriction was inconsistent with Section 35. The Court said that laws, which interfere with the exercise of Aboriginal rights, are subject to review by the courts.

If the interference cannot be justified by reference to legitimate legislative objectives, which uphold the honour of the Crown in its dealings with Native people, the law can be struck down. The constitutional recognition of Aboriginal and treaty rights does not provide immunity from government regulation. It does, however, give a measure of control over government conduct and a strong check on legislative power. Furthermore, in the imposition of any limitations on the right to fish, there must be consultation between the Aboriginal peoples and the Federal government.

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Are the leading cases on the issue of Aboriginal land rights in British Columbia. The claim (October 1984) asserted ownership of a land area of 22,000 square miles comprising most of the Skeena and Bulkley river systems, and jurisdiction or self-government over both the claimed land and the Native people of these two groups. Claims to ownership and jurisdiction were rejected by the Supreme Court of BC.

2.7 Summary of Aboriginal Rights

In summary, the trial judge concluded that Aboriginal rights arise out of occupation or use of specific land for Aboriginal purposes for a long, long time, and are communal. Aboriginal rights are not property rights. Colonial legislation was taken to have extinguished Aboriginal rights as they existed in the colony at the date of sovereignty except for Indian reserves.

The judgement was appealed to the BC Court of Appeal where it heard appeals for seven other cases dealing with related issues: **Van der Peet**, **Gladstone**, **NTC Smokehouse** (right to sell), **Lewis and Nikal** (band bylaw), and **Alphonse and Dick** (Wildlife Act).

The decisions were released simultaneously. In **Delgamuukw** the court found there was no blanket extinguishment of Aboriginal rights, thus reversing the trial court decision. The court also held that these unextinguished Aboriginal rights were not all encompassing rights of ownership and that there are no rights to sovereignty or jurisdiction.

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2.12 The result is that for these three groups, Aboriginal participation in the commercial fishery is on the same terms and under the same restrictions as other participants in the industry. In *R. v. Jack, John, and John and R. v. Sampson and Eliot* the circumstances were very similar. In both cases, the appellants were accused of fishing without a licence or in unauthorized areas and times. Both sets of appellants were fishing traditional First Nations fishing sites. The department had closed fishing in these areas for conservation measures. The bays in which the appellants were fishing were fed by small streams, which were home to specific salmon runs for spawning. These specific species were depleted in number and any fishing in these spawning run areas was deemed to be detrimental to the existence of these salmon species. In both instances, the appellants were acquitted on the grounds that the DFO restrictions on their Aboriginal right to fish were unfair and favoured the commercial and recreational fisheries.

This ruling was based on the premise that these endangered species, in making their way back to their spawning grounds travelled, along with many other species of salmon, through some very heavily fished areas. It was deemed that the interception fisheries along these routes, in taking abundant species of salmon were also taking the endangered species also thereby depleting the numbers of these species left for the Aboriginal groups fishing for them in the spawning areas. The court decided that the DFO was obligated to curtail the

commercial and recreational interceptory fisheries in order to provide enough fish for the Aboriginal groups in the terminal locations. If conservation is the ultimate priority, the consequences should not be felt by First Nations and not by other groups.

2.13 The legal context for DFO's Aboriginal Fisheries Strategy in BC: An overview of decisions from the courts relating to Aboriginal Fisheries, contains **PROTECTED** information and thus is accessible on the **afsneg\$** on **'pacrhqfp2'** (N:)

2.14 National Allocation Transfer Program

ALLOCATION TRANSFER PROGRAM NATIONAL POLICY

2.15 Introduction

It is the policy of the Department of Fisheries and Oceans to encourage increased Aboriginal communal participation in and integration with coastal commercial fisheries. Aboriginal involvement in the commercial fishery is a shared goal between DFO and Aboriginal people. It is a means to stimulate Aboriginal economic development opportunities and develop fisheries expertise in Native communities, while serving as the basis for more co-operations between Aboriginal communities and the commercial fishery sectors. In many areas, Aboriginal people are under-represented in resource harvesting and extraction. The commercial fishery is often the greatest economic opportunity for remote Aboriginal coastal communities.

2.16 Background

In 1992, the federal government approved the initial phase of the **Aboriginal Fisheries Strategy** (AFS). The principal focus of the AFS is the management of Aboriginal harvesting for food, social, and ceremonial purposes in a manner consistent with the *Sparrow* decision, and in a manner that integrates this activity with the management of the fishing activities of other stakeholders.

In 1994, the federal government to create the Allocation Transfer Program (ATP) amended the AFS. ATP funding is directed to economically viable commercial opportunities in various fishing sectors, which focus on, but are not limited to, salmon in British Columbia and lobster in Atlantic Canada.

2.17 Program Description

In keeping with DFO's overall objective of resource conservation, the ATP facilitates the voluntary retirement of commercial licences and the issuance of these licences to eligible Aboriginal Organizations in a manner that does not add to the existing effort on the resource,

In British Columbia funding was to be used to facilitate a voluntary process of commercial licence retirement, limited to a ceiling of five per cent of licences per fishery, In Atlantic Canada, there is no such ceiling limit.

Under the Treasury Board's Terms and Conditions, ATP funds may be used to pay the following: section may be amended as a result of Treasury Board exercise.

- market value of commercial licences;
- market value of licensed commercial fishing vessels purchased with licence; - associated transaction costs; and,
- reasonable compensation for surrender of a commercial fishing licence including market value of the licence and a premium for removing licence from an existing vessel where the licence is retired, but the vessel is not purchased.

NOTE: *This policy recognises the distinct practices and policies for each Region. Conditional requirements under this Policy may vary between Regions.*

2.18 ELIGIBILITY

Licences will be issued to Aboriginal Organizations. Eligibility is restricted to Aboriginal Organizations who have fisheries agreements with DFO under the AFS. Priority will be given to those Aboriginal Organizations with a satisfactory record of compliance with conservation and fisheries management principles and practices, and satisfactory compliance with terms of their AFS Agreement. Issuance of ATP licences in future years will be contingent upon the Organizations continued participation in the AFS Program.

Given the finite resources available for funding of the ATP, priority will also be given to providing commercial fishing opportunities to eligible Organizations which contribute to long-term Aboriginal employment and community economic development, as well as increased participation of Aboriginal people in the fisheries.

Aboriginal Organizations wishing to benefit from the ATP will be required to demonstrate good business practices through the preparation of business plans and other strategic planning documents. These plans will indicate the financial benefit, employment and skill-development targets of the Organization.

Aboriginal Organizations which benefit may be required to use a portion of the profits for fisheries-management activities and fisheries-related economic development, in reasonable proportion to the magnitude of the profits. The degree to which a project proposal will permit Aboriginal Organizations to make such contributions will be considered by DFO in evaluating such proposals against other possible uses of these funds.

Where the direct financial benefits to be derived from an ATP licence are relatively small, DFO may waive the above requirement. Such projects will still be required to submit business plans indicating how they will contribute to the fisheries-management capacity of the organization or the building of human or financial capital necessary for other involvement in fisheries-related economic activities.

Association with this Program will not prevent the Aboriginal Organization from harvesting under the authority of other licence(s) issued under the ***Fisheries Act***, or seeking other commercial fishing opportunities (i.e., Aboriginal Organizations are eligible for additional commercial access, using their own resources. Through DFO's standard process of licence retirement and issuance of new licences representing the capacity retired). Access will be restricted to Aboriginal communities and Band councils whose members are not beneficiaries of completed land claim agreements.

CHAPTER THREE

3.0 AFS AGREEMENT PROCESS

Aboriginal Fisheries Strategy

Unit

- Set up in 1992
- Provides a Framework for management of Aboriginal fishery consistent with Sparrow.

3.1 Main objectives of AFS

- Provide First Nations with opportunities to fish for food, social and ceremonial purposes that are consistent with Sparrow and provide for co-operative management of these fisheries.
- Provide a role for the Aboriginal Community in the management of Aboriginal fisheries through AFS agreements.
- Avoid/minimize disruption to non-aboriginal fisheries.

3.2 Types of Fisheries Agreements

- Watershed Agreements
- Contribution Agreements
- Fisheries Agreements

3.3 Purpose of Agreements

- Provide a mechanism for implementing collaborative management arrangements between DFO and First Nations
- Outlines mutual commitments
- Provides a record of projects undertaken

3.4 Composition of Agreements

Three main component areas.

- Harvest Plans
- Collaborative Arrangements
- Commercial Fishing and other economic arrangement

3.5 Reporting Requirements Prior to Advances

- A cashflow Projection
- Projected summary of results (Appendix 4 included in Annex) and
- Descriptions of Project – narrative form (rarely necessary.)

3.6 Reimbursement Reports

- For Agreements signed after April 01
- For reimbursement of allowable costs expended before the Agreement was signed
- Claim must include the following :
 1. Narrative Progress Report
 2. Itemised Allowable Cost Report (Appendix 1 see Annex section)
 3. Itemised Allowable Cost Report (Appendix 2)

CHAPTER FOUR

Acts and Directives that Department and Contractors must abide by.

3.1 Aboriginal Communal Fishing Licenses Regulations(ACFLR's) (SOR/93-332)

Source: <http://laws.justice.gc.ca/en/F-14/SOR93-332/index.html>

3.2 Fisheries Act (FA)

Source: <http://laws.justice.gc.ca/en/F-14>

3.3 Financial Administration Act (FAA)

Source: <http://laws.justice.gc.ca/en/F-11>

3.4 Grants and Contributions

Source: afsneg\$ on 'pacrhqfp2' (N:)

3.5 Contracting Guidelines

Source: http://www.tbs-sct.gc.ca/common/policies-politique_esp

3.6 Travel Directives Effective 01 October 2002

Source: http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/td-dv-PR_e.asp

CHAPTER FIVE

5.0 AFS Mandates

Mandates for the 2003-04 Aboriginal Fisheries Strategy – are classified “**PROTECTED**” for the purposes of negotiation. The document may be accessed on the afsneg\$ on ‘pacrhqfp2’ (N:) under AFS Manager, go to MANDATES 2003-04.

CHAPTER SIX

Department of Fisheries National Policy for the Management of Aboriginal Fishing

DEPARTMENT OF FISHERIES AND OCEANS POLICY FOR THE MANAGEMENT OF ABORIGINAL FISHING

6.0 PURPOSE.

The purpose of this policy is to provide principles and procedural guidelines for DFO's management of Aboriginal fishing which reflect the current state of the law on Aboriginal fishing rights, particularly on the decision of the Supreme Court of Canada in the Sparrow case and the Aboriginal Fisheries Strategy (AFS). The policy applies to all species of fish.

POLICY

6.1 Aboriginal Fishing

Aboriginal fishing for food, social and ceremonial purposes will have first priority, after conservation, over other user groups. Aboriginal fishing to achieve reasonable harvest for such purposes will only be restricted to achieve a valid conservation objective, to provide for sufficient food fish for other Aboriginal people, to achieve a valid health and safety objective, or to achieve other substantial and compelling objectives.

6.2 Regulation of Aboriginal Fishing

DFO will provide for the management of Aboriginal fishing which includes, which may not in all instances be limited to, fishing for food, social and ceremonial purposes.

6.3 Definition of Aboriginal Fishing

Aboriginal fishing means fishing under the authority of a Communal Licence issued pursuant to the relevant regulations the Fisheries Act.

6.4 Issuance of Food Fish Permits to Individuals

Food Fish permits will no longer be issued to individuals.

6.5 Identification of First Nations for the purpose of establishing Aboriginal Fishing Authorities.

First Nation, includes any organization which represents a group of Aboriginal people who have continuously used the resource in the area in question from pre-European contact to the coming in to effect of the Constitution Act, 1982. Such organizations include groups representing First Nations registered or entitled to be registered under the Indian Act, Inuit, non-status First Nations and Metis. DFO may require that the First Nation produce evidence of historical use of the resource in the area.

6.6 Consultations and Negotiations

DFO shall consult with Aboriginal people before taking decisions or actions that may affect Aboriginal fishing for food, social and ceremonial purposes.

6.7 Aboriginal Fishing Allocations

DFO shall give first priority to access to fish, after conservation needs are met, to Aboriginal people to meet their needs for food, social and ceremonial purposes and, to the extent possible given the availability of fisheries resources within areas used historically by the group, provide for such needs through Aboriginal Fishing Agreements and Communal Licences with First Nations.

6.8 Provisions of Watershed Framework Agreements

The migratory nature of salmon demands that some management issues can only be effectively addressed through coordination of the management efforts of all First Nations sharing a watershed. DFO and all First Nations, which share the Fraser and Skeena watersheds, should sign watershed agreements.

6.9 Allocations, Designations and Monitoring

To ensure conservation, all Aboriginal fishing Agreements and Communal Licences shall at a minimum contain the following:

6.10 Fishing Plans:

Where conservation of the stock requires control over fishing places or times (fishing plans), in addition to control over total harvest, Aboriginal Fishing Agreements and Communal Licences also may contain limits on fishing times and the Agreement or Licence with other fishing and to ensure conservation of stocks.

6.11 In-season management: An Aboriginal Fisheries Agreement shall set out procedures for in-season modification of allocations and fishing plans as may be necessary to ensure conservation of stocks.

Such procedures shall include consultation with the affected group but will preserve the discretion of the Minister or his delegate to modify times for conservation purposes.

6.12 Co-operative Sub-agreements

AFS sub-agreements on co-operative management activities may be negotiated in conjunction with the negotiation of Aboriginal Fishing Agreements.

6.13 Designation of Individuals

First Nations, through Aboriginal Fishing Authorities, will have discretion in designating individuals who may fish under their allocation.

6.14 Control of Fishing Methods

First Nations will have discretion to stipulate the fishing methods, which may be utilised by designated individuals, subject to the provisions of the Aboriginal Fisheries Agreement or Communal Licence.

6.15 Negotiation Process

A separate document will set out the details of the process, roles and responsibilities for negotiations under this policy.

6.16 Enforcement

Subject to the terms of Aboriginal Fishing Agreements, normal enforcement procedures will apply. Informal protocols on enforcement may be struck with Aboriginal Fishing Authorities, in accordance with this policy, to clarify consultation procedures. DFO personnel shall in all cases, inform and consult with the relevant Aboriginal Fishing Authority after taking enforcement action.

6.17 Treasury Board Guidelines (TB)

There are three guidelines relating directly to Aboriginal Fisheries Agreements. First, the involvement of other contributions and assistance (double funding). This deals with the overlapping of separate funding sources to make up a shortfall to a project. Second, if a FN has been the recipient of an overpayment, the amount overpaid will be held back. Third, any lobbyist who is working on behalf of a FN must be registered and made known to DFO.

For example, The Hupacasath First Nation Contribution Agreement (under 100k) CA2002-1104 the guidelines are referred to in order of listing.

- Debts Owing the Crown, Section 4,p4, “The Recipient must declare if any amounts are owing to the federal government or other contribution agreements. Such amounts owing to the government may be set off against payments due to the Recipient under this Agreement”.
- Lobbyist Registration, Section 4, p4, “The Recipient will ensure that any person on their behalf is registered pursuant to the *Lobbyist Registration Act*, R.S.C. 1985, c.44 (4th Supp.)”.
- Payments and Disbursements, Section 6(2) p4,6(5),p5 ,“Following entry into force of the Agreement and receipt by DFO from the Recipient of:
 - (a) a Detailed Report, and
 - (b) a Statement of Expenses, covering the period from April 1, 2002 to the date of the last day of the month preceding the month of the date of this Agreement, DFO shall reimburse the Recipient for Allowable Costs paid by the Recipient during that period.”
 Section 6(5) p5,” If the Recipient fails to provide any document or information referred to in subsection 7(1) of this Agreement or the description of the project referred to in subsection 6(14) of this Agreement in a form acceptable to DFO, DFO may, in its discretion, withhold any payment to be made by DFO to the Recipient pursuant to this Agreement pending receipt by DFO from the Recipient of the relevant documentation or information in a form acceptable to DFO.

The Nanoose First Nation, Financial Agreement FA99-728

Debts Owing the Crown: Section 13(3) p29,”The First Nation shall refund to DFO, upon written request by DFO, any monies advanced to the First Nation for which unsatisfactory evidence has been furnished by the First Nation that the monies have been expended in accordance with this Schedule. Section 13(4) p29, defines what a Debt Owing the Crown is, ”Any amount that the First Nation is under an obligation to refund or reimburse under subsection 13(2) or 13(3) shall be a debt owing to Her Majesty the Queen in Right of Canada.

Lobbyist Registration: General section 17(4) p7, “ The First Nation will disclose to DFO any individual it intends to hire or remunerate who was formerly or is presently a federal public servant. The First Nation will make such disclosure prior to hiring or remunerating directly or indirectly, any such individual.”

Holdbacks and Overpayments: section 11(5) "Where the First Nation provides a report referred in subsection 4(1) reimbursement for allowable costs, or subsection 8(2) progress report, report on allowable costs, statement of balance, section 9, Supplementary Reports, Section 10, Final Report, but the information required for the report, DFO may, in its discretion, withhold any payment to be made by DFO to the First Nation pending receipt by DFO from the First Nation of the information required.

Intranet location: http://ops.info.pac.dfo.ca/afs_INTRANET/AFS_POLI.doc

6.18 HARVESTING OF EXCESS PACIFIC SALMON TO SPAWNING REQUIREMENTS

Policy Statement

The Department of Fisheries & Oceans (DFO) is committed to managing salmonid stocks to achieve optimum returns (spawning, production, value) and make the best use of the harvestable portion of the stock.

Where there is a demonstrated abundance of salmon excess to spawning requirements that cannot be harvested in a commercial or sports fishery, special arrangements will be made to enable harvest.

http://ops.info.pac.dfo.ca/afs_intranet/AFS_POLI/ESSR'S/policy.doc

Chapter Seven: Guidelines respecting issuance of licenses under the ACFLR's.

CHANGES TO THE ABORIGINAL COMMUNAL FISHING LICENCES REGULATIONS

7.0 FREQUENTLY ASKED QUESTIONS

Q: I have heard that there is no more separate Aboriginal fisheries because DFO's regulations have been struck down. Is this true?

A: The Aboriginal Communal Fishing Licences Regulations are still in place. Parliament or a court has not declared them invalid.

This means that aboriginal fishing will continue as it has in past years; DFO will work with First Nations and other Aboriginal groups to negotiate mutually-acceptable fishing plans that will then be mirrored in licences issued by DFO.

Q: What is changing in the regulations?

A: The changes are purely technical; there are no changes in substance. The changes have to do with matters of drafting and simply provide greater certainty about the regulatory regime.

7.1 There are two changes:

One change simply clarifies the authority of Aboriginal organizations to designate fishers and designation by the Aboriginal organization will continue to be used where there is a fisheries agreement with DFO. Previously, this authority was provided in a licence condition.

The other change is to clarify that the "fishing rules" that apply in an aboriginal fishery can be different from those in the "regular" fishery (e.g. different gear, different season's etc.). DFO will continue to consult Aboriginal organizations on the measures to be implemented. Where DFO and the Aboriginal organization reach agreement on the measures, they will be set out in a fisheries agreement, and mirrored in licence conditions. Those measures or "fishing rules" could be different from the "regular" fishery. That is, Aboriginal fishers will continue to fish as they did prior to the change in regulations.

DFO remains committed to its policies on Aboriginal fishing; opportunities to fish will continue to be available to First Nations and other Aboriginal groups as they have been in the past.

7.2 Fisheries Act
Aboriginal Communal Fishing Licences
Regulations (SOR/93-332)

P.C. 1993-1318 16 June, 1993

His Excellency the Governor General in Council, on the recommendation of the Minister of Fisheries and Oceans, pursuant to section 43 of the Fisheries Act, is pleased hereby to revoke the Aboriginal Fisheries Agreements Regulations, made by Order in Council P.C. 1992-1456 of June 216,1992, and to make the annexed Regulations respecting fishing carried on in accordance with aboriginal communal fishing licences in substitution therefor.

7.3 REGULATIONS RESPECTING FISHING CARRIED ON IN ACCORDANCE WITH ABORIGINAL COMMUNAL FISHING LICENCES.

Short title

1. These Regulations may be cited as the *Aboriginal Communal Fishing Licences Regulations*

Interpretation

2. In these Regulations,

"Aboriginal organization" includes an Indian Band, an Indian Band Council, a tribal council and an organization that represents a territorially based aboriginal community;

"Designated" means, in respect of a person or vessel, designated in the licence or in accordance with the method of designation specified in the licence **[Repealed, SOR/93- 332]**

"Licence" means a communal licence issued under subsection 4 (1); (permis)**(amended 28 May 2002)**

"Minister" means in respect of

(a) fisheries for fish and species of fish described in subsection 3 (1) of the *Quebec Fishery Regulations*, in the waters referred to in that subsection, the Quebec Minister of the Environment and Wildlife,

(a.1) Fisheries in the non-tidal waters of Ontario, the Minister of Natural Resources for Ontario, and

(b) any other fishery, the Minister of Fisheries and Oceans.

SOR/94-30, s. 1; SOR94/531, ss.1. 2; SOR/95-106, s.1.

Application

3. (1) These Regulations apply in respect of

(a) fisheries in Canadian fisheries waters in and adjacent to Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and the Northwest Territories;

(b) fisheries in the tidal waters in and adjacent to Manitoba;

(c) fisheries in tidal waters in and adjacent to the Yukon Territory and fisheries in the Yukon Territory for fish of an anadromous stock of chum salmon, coho salmon, chinook salmon, pink salmon, sockeye salmon, rainbow trout, the family *Coregonidae* (whitefish and cisco) or Arctic char; and

(d) Fisheries in the waters of the Areas enumerated and described in Schedule II to the *Pacific Management Area Regulations* and salmon fisheries in British Columbia.

(0) These Regulations do not apply in respect of national parks.

(1) SOR/94-390, s.2; SOR94/-531, s. 3, SOR/95-106, s. 2.

7.4 COMMUNAL LICENCES

(1)

(2) The Minister may designate in the licence,

(a) the persons who may fish under the authority of the licence, and

(b) the vessels that may be used to fish under the authority of the licence. (3) If the Minister does not designate the persons whom may fish under the authority of the licence, the aboriginal organization may designate, in writing, those persons.

(4) If the Minister does not designate the vessels that may be used to fish under the authority of the licence, the aboriginal organization may designate, in writing, those vessels. [Amended 28 May 2002]

5 (1) For the proper management and control of fisheries and the conservation and protection of fish, the Minister may specify in a licence any condition respecting any of the matters set out in paragraphs 22 (1) (b) to (z.1) of the *Fishery (General) Regulations* and

any condition respecting any of the following matters, without restricting the generality of the foregoing:

- (a) the species and quantities of fish that are permitted to be taken or transported;
- (b) the method by which and when the licence holder is to notify the Minister of designations, the documents that constitute proof of designation, when, under what circumstances and to whom proof of designation must be produced, the documents or information that designated persons and vessels must carry when fishing and related activities, and when, under what circumstances and to whom the documents or information must be produced; [amended 28 May 2002]
- (c) the method to be used to mark and identify vessels and fishing gear;
- (d) the locations and times at which landing of fish is permitted;
- (e) the methods to be used for the landing of fish and the methods by which the quantity of the fish is to be determined;
- (f) the information that a designated person or the master of a designated vessel is to report to the Minister or a person specified by the licence holder, prior to commencement of fishing, with respect to where and when fishing will be carried on, including the method by which, the times at which and the person to whom the report is to be made;
- (g) the locations and times of inspections of the contents of the hold and the procedure to be used in conducting those inspections;
- (h) the maximum number of persons or vessels that may be designated to carry on fishing and related activities;
- (i) the maximum number of designated persons who may fish at any one time;
- (j) the type, size and quantity of fishing gear that may be used by a designated person;
- (k) the circumstances under which fish are to be marked for scientific or administrative purposes; and
- (l) the disposition of fish caught under the authority of the licence.

(2) A designation referred to in paragraph (1) (b) shall be in writing. SOR/94- 930, s.3.

[Repealed, SOR 93-332]

7.4 In the event of any inconsistency, in respect of fishing and related activities carried on in accordance with a licence, between the conditions of the licence and any other regulations made under the *Fisheries Act*, the conditions of the licence prevail to the extent of the inconsistency. **[Repealed, SOR 93-332]**

7.5 PROHIBITIONS

No person carrying on fishing or any related activity under the authority of a licence shall contravene or fail to comply with any condition of the licence.

8. No person other than a designated person may fish under the authority of a licence.

9. (1) No person who is authorised to fish under the authority of a licence shall fish for or catch and retain any species of fish in any area of the waters referred to in subsection 3 (1) during the close time beginning on December 29 and ending on December 31.

(2) the close time established by subsection (12) is considered to be fixed separately and individually with respect to any species of fish found in any of the waters referred to in subsection 3 (1). SOR/94-390, s. 4.

10. [Revoked, SOR/94-390, s. 4]

*The Amendments and the sections and parts there of are not substantive in nature. They are technical amendments that address drafting concerns raised by Joint Standing Committee.

The amendment address uncertainty around the ACFLR's. How the fishery is conducted and how you (Aboriginal Groups) conduct the fishery will not change. 28 May 2002. JUS-603965 (SOR/DORS)

CHAPTER EIGHT

Roles and Responsibilities of DFO staff

General Roles of Regional Director – Treaties

Effective date June 19, 2000

8.0 Regional director, Aboriginal Affairs & Treaties

- Aboriginal Affairs – Policy
 - DFO focal point on the establishment of Aboriginal policy issues (operational policy and general Aboriginal policy leading to Treaties); ensures effective regional consultation processes, participates in generation of mandates and strategic business plans for any major annual and longer-term operational F.N. negotiations. Leads policy development on aboriginal issues.
 - Primarily responsibilities of RD Ab. Affairs are policy and Treaty related issues.
 - Provides for regional distribution of policy, position papers, legal opinions and identifies training requirements as required for DFO staff to alert them to changing landscape re: First Nation obligations/expectations.
 - Monitors and reports on departmental performance in meeting general and specific obligations to FN's.

8.1 Aboriginal Fishing Strategy

- Develops strategic policy advice and guidance in consultation with AD's and RD Resource Management on complex AFS and ATP issues to meet overall Departmental goals in codifying and implementing aboriginal rights and consistency with long term Treaty direction.
 - I.E. sign off on AGS mandates and agreements
- Accountable (with Dir. Resource Mgmt) for long term effectiveness of AFS/ATP programs in meeting departmental goals and developing capacity for Treaty negotiation.

8.2 Treaty

- DFO focus point for facilitating the development of Treaty related Pacific Regional approaches for the negotiation of Fisheries Settlements. Co-ordinates the review of such approaches with RPC and Aboriginal Affairs HQ.
- Within assigned resources, organises and manages DFO's participation in the Treaty process.
- Develop policy and guidelines to improve consistency in implementation of DFO Treaty obligations.

- In consultation with affected Area and other involved Directors, manages process to identify costs, negotiate funding with FTNO and flow funding for Treaty Implementation, monitors results.
- Establish performance measurement system to ensure DFO meets Treaty obligations efficiently and cost-effectively.

8.3 Senior Negotiator – TNU

Treaty

- Senior technical expert on Aboriginal issues related to Treaty negotiations.
- Within assigned resources, co-ordinates and manages DFO's participation in Treaty negotiation process.
- Under the direction of the RD Ab. Affairs and Treaties, supports the facilitation of Treaty related Pacific Regional approaches for the negotiation of Fisheries Settlements.
- Co-ordination of the review of such approaches with RPC and Aboriginal Affairs Hdq.
- Ensures the co-ordinated input of all Sectors in development of DFO Treaty Mandate MOU's with FTNO and internal Instructions to Negotiators.
- Primary departmental point of contact for DIAND and FTNO as well as DOJ for Treaty issues.
 - Maintains liaison with DG Ab Affairs HQ for Treaty issues.
 - In consultation with appropriate RHQ and Area staff, accountable for co-ordinating the identification of manageability and potential impacts in any affected area of potential Treaty items and resolving such issues at an early date.
 - Responsible, in consultation with affected Area/Program staff, for draft allocation of Treaty Implementation funds across Sectors and Areas.

8.4 Policy Co-ordinator

- **Aboriginal Affairs**
 - Senior technical expert on aboriginal issues and federal gov't obligations to First Nations.
 - Maintains liaison with DG AA for Aboriginal policy issues.
- **AFS**
 - Provides policy advice and guidance on linkages, precedents and strategic issues relating to AFS and ATP.

8.5 Senior Economist

- Co-ordinate collection of information on activities required to implement proposed Treaty obligations develops costing methodology and performance measurement systems.

8.6 Senior Biologist

- In consultation with Resource Management & other affected groups, assesses potential impacts and proposed methodologies meet Treaty obligations.

8.7 Data Management Group

- Develops and maintains information systems to distribute information on aboriginal issues.
- In consultation with appropriate Stock Assessment and Resource Management, develop and maintain catch data elements for data on FN harvests.

8.8 Treaty Negotiators

➤ Treaty

- Negotiates DFO Treaty elements with First Nations through FTNO and in accordance with mandates and "Instructions to Negotiators."
- In consultation with appropriate RHQ and Area Staff, accountable for co-ordinating the identification of specific negotiation impacts and obtaining cost estimates for all potential DFO treaty obligations, and including such costs in MOU's with FTNO.
- In consultation with Area Fisheries Managers and Aboriginal Affairs Liaison, develop strategies and processes to ensure AFS and ATP programs work effectively in conjunction with active Treaty obligations.

8.9 General Roles of Area Directors

Program delivery Renewal principles and goals translate into the following key responsibilities:

8.10 Area Directors

➤ AFS

- Provides input to annual Business Plan regarding priorities and need of First Nations in the Area regarding AFS and ATP programs.
- Consults with and provides input to annual Business Plan on behalf of other local clients and interest groups in this regard.

- Overall accountability for delivery of AFS program within assigned resources and regional priorities.

8.11 Aboriginal Affairs

- Acts as focal point for senior consultants with local First Nations on cross-sectoral or high profile issues and complex negotiations.
- Participates fully in the development of Ab. Policy and long term strategic plans for Treaty negotiation.
- Ensures Area Staff in program areas consults with First nations as required on program issues and in general, accountable to ensure Area programs are delivered consistent with First Nations obligations.

8.12 Treaty

- Ensures Area staff participate in developing Treaty mandates and costing calculations, support Regional Negotiators as required and implement Treaty obligations within assigned resources.

8.13 Area Chief, Resource Management

- Participates fully in the setting of overall Area priorities and direction, providing, providing input to the generation of Area business plans, and setting priorities (assuming something like this for all Area Exec. Members);

8.14 AFS

- Responsible for the integration of AFS programs into a comprehensive approach to Fisheries Management.
- Operational focal point for AFS consultation and coordination.
- Within assigned resources, organizing and managing the implementation of AFS programs and activities in their respective Area in accordance with Area and regional priorities and within program performance parameters.

8.15 Aboriginal Affairs

Ensures resource management program delivery, practices and procedures meet obligations to First Nations.

Ensures collection and timely reporting of catch data on aboriginal harvests.

8.16 AFS Program Manager

Meets AD need for senior aboriginal expertise, and assists RD Ab Affairs & Treaty in Ab. Policy development.

8.17 Aboriginal Affairs

- Participates fully in the setting of overall Area priorities and direction, providing input to the generation of Area business plans, and setting priorities.
- Advises and supports AD in meeting FN obligations (i.e. signoff of Area Fishing Plans, AFS Agreements.)
- Source of Area expertise and advice on consultation requirements with FNs and Aboriginal issues.
- Reports functionally to RD Ab. Affairs
- In consultation with TNU (Treaty Negotiations Unit,) provides assistance and guidance in complex negotiations to Area staff as required.
 - E.g. complex AFS agreements involving new policy.

8.18 Treaty

Provides information to Treaty Negotiator on complex and broad local issues.

Participates fully in development of Treaty mandates and supports TNU on a shared basis to ensure adequate linkage between TNU and Areas.

8.19 Resource Managers

8.20 AFS & Aboriginal Affairs

- For Area delivered Fishing Plans, responsible for consultation with all stakeholders, including First Nations.
- Participates fully in developing specific mandates for FN in Area.
- Responsible for implementing AFS agreement:
 - Ensuring adequate links to other programs (i.e. coordinating technical committees)
 - Coordinating food fisheries with other fisheries
 - Making reports (quarterly & annually)
 - Responsible for negotiating communal licences
 - Responsible for ensuring collection and dissemination of catch data (as relates to FN harvests at least)

8.21 Treaty

- Support to Treaty Negotiators, by assessing potential impacts and manageability of proposed Treaty commitments, provide activity data for costing purposes, and carry out Treaty implementation as required, within assigned resources.

8.22 Other Area Program Staff

Treaty

- In conjunction with Treaty Negotiators, assess potential impacts and manageability of proposed Treaty commitments, provide activity data for costing purposes, and carry out Treaty implementation as required, within assigned resources.

➤ AFS

- Issuance of communal licences.

8.23 Area Financial Administrator

- Financial tracking and reporting of AFS, ATP and Treaty funding to Area reports as required.

8.24 General Roles of Director, Resource Management

8.25 AFS

- In consultation with involved AD's and RD Ab. Affairs & Treaties, sets regional priorities and direction, generates sector strategic and business plans regarding AFS and ATP to ensure capacity is built to negotiate Treaties. Overall accountability for design and results of AFS/ATP program.
- DFO internal focal point on AFS program.
- In consultation with involved Ads and RD Ab. Affairs & Treaties, assigns resources across Areas to address emerging priorities while allowing Area Directors to continue to meet operational performance standards and other delivery obligations (*must ensure this doesn't handicap ability of Area Directors to manage in year*)
- Provides summary reports to RD Ab. Affairs & Treaties regarding DFO's performance in meeting legal and fiduciary obligations. (*minimize reporting and workload impacts and avoid duplication of normal financial audit role of F&A group*)
- Ensures effective Resource Management systems are provided to meet Treaty needs for mandate development.

8.26 Aboriginal Affairs

- In consultation with involved Directors (RD Ab. Affairs & Area), ensures Resource Management policy and guidelines are consistent with obligations to FN and departmental policy.

8.27 Treaty

- Participate in the setting of regional priorities and direction, providing input to the development to the development of Mandates and policy as they relate to Resource Management issues.

8.28 AFS Program Manager

8.29 AFS/ATP

- In consultation with involved Area Chiefs, co-ordinates the allocation of AFS and ATP resources across Areas as required to meet priorities of approved Regional Business Plan.
- In consultation with involved Area Chiefs, Sr. Treaty Negotiator, Species Co-ordinators and others, develops operational/administrative guidelines and standards for AFS and ATP program.
- Develops, in consultation with involved Area Chiefs and Senior Negotiator TNU, specific AFS mandates (\$, fish and licences)
- Manages the drafting, amending and tracking of AFS agreements. Maintains liaison with DG AA in matters relating to AFS agreements, funding, mandate sign-off. Manages mandate development process.
- Primary point of contact for DOJ on AFS agreements.
- Provides regional rollup for reports on performance of AFS and ATP program.

8.30 Regional Coordinator, ATP

- In consultations with Sr. Treaty Negotiator, and other affected parties, co-ordinates the strategic assignment of licences to FN's.
- Participates directly with local Area staff in AFS negotiations.
- Works directly with FN's and Area staff to assist in the development of economically sound business plans.

8.31 AFS Agreements Clerk

- Responsible for co-ordinating delegation and tracking of AFS and ATP funding.
- Primary liaison with F&A Branch and Area Administrative Officers on AFS funding management.

Annex One**Fiduciary Responsibilities for Managers (Executive Summary)**

Go to: afsneg\$ on 'Pacrhqfp2' (N:) scroll down to Fiduciary Responsibility October 1995 for full text.

Annex Two

Words First: An evolving Terminology Relating to Aboriginal Peoples in Canada

Annex Three

Style Guide (Excerpts taken from the CBC Radio Style Guide)

Annex Four

Schedules in the Agreement Process

Annex Five

Fisheries Agreement

Annex Six

Fisheries Agreement Amendment

Annex Seven

Contribution Agreement or proposed under AFS review the Joint Funding Agreement

Annex One

FIDUCIARY RELATIONSHIP OF THE CROWN WITH ABORIGINAL PEOPLES: IMPLEMENTATION AND MANAGEMENT ISSUES A GUIDE FOR MANAGERS

EXECUTIVE SUMMARY

The purpose of this summary is to provide highlights of the document's key elements and to serve as a brief response point on basic principles for the use of managers. Readers are referred to **afsneg\$ on 'pacrhqfp2' (N:)** Fiduciary Responsibility October 1995, for more specific discussion of topics listed.

Background

- The federal government has a "special" relationship with Aboriginal peoples and the Supreme Court of Canada has characterized this relationship as **fiduciary**.

- Aboriginal peoples have legally protected rights not enjoyed by other Canadians. Government must take these seriously and in many instances may have priority over other interests or considerations.
- Specific fiduciary duties or obligations arise when **expressly derived** from treaties, constitutional provisions, statutes, common law or express undertakings applicable to applicable Aboriginal groups.
- The Crown owes fiduciary duties. Circumstances giving rise to a particular fiduciary obligation will indicate which department has the lead role in discharging that obligation.
- The Aboriginal peoples of Canada include Indians, Inuit and Metis as recognized in s. 35 of the Constitution Act 1982;
- Aboriginal or treaty rights vary considerably among Aboriginal groups.

Fiduciary Obligations

The Courts have identified two specific types of fiduciary obligations:

1. **Guerin-type** obligations may arise where the federal government controls aboriginal assets, such as reserve land, mineral interests or moneys.

These arise in connection with surrenders and designations of reserve land for disposition to third parties, or for use by the federal Crown; expropriation of reserve lands, or authorities to expropriate reserve land; leases of reserve lands by or to the federal Crown; management of Indian moneys. The courts have indicated that the Crown will be held to a very high standard of conduct in these circumstances.

2. **Sparrow-type** obligations arise in connection with constitutionally protected aboriginal and treaty rights. This means that the federal government must **justify proposed infringements** (i.e. legislation, policies) on such rights. Requirements for justification can vary. Depending on the circumstance requirements will include:

- A specific and valid legislative objective, such as conservation or public safety;
- Minimum infringement on the right which is necessary to accomplish the objective;
- Consultation with Aboriginal peoples affected;
- Consideration of whether fair compensation has been paid in a situation of expropriation of aboriginal or treaty rights; and
- That where an allocation of resources is at stake (like fishing), **the aboriginal right takes priority** over all other users **after provision for conservation**, at least where the fishing is for food, and social or ceremonial purposes.

In addition to these two broad categories of obligation, **the Honour of the Crown** is an important element, which should always be maintained in relations with Aboriginal peoples. The federal government should deal fairly, openly and intelligently in all transactions with Aboriginal peoples.

Fiduciary Responsibilities of the Manager

Based on the above, managers must always consider whether or not any program, policy, legislative or other initiative impacts upon the special fiduciary relationship with Aboriginal peoples.

There are a number of issues a manager should address in considerations relating to a fiduciary responsibility:

- An assessment as to whether or not a fiduciary responsibility exists, and if it is unclear consult your departmental legal counsel;
- If it is clear that a fiduciary responsibility exists, the necessary steps to consult with affected Aboriginal peoples are required;
- Where it is determined with legal counsel that there is no fiduciary responsibility, the reasons for this determination should be noted in the file, preferably by the legal counsel on the basis of solicitor-client privilege. Where it is possible that there may be a fiduciary responsibility, but it is not clear, a policy decision should be made as to whether to act as though there is a clear fiduciary responsibility. Legal Counsel may be of assistance in this matter.
- When consulting with Aboriginal peoples it will be necessary for the federal government to be reasonably satisfied that the Aboriginal groups have in their possession, or available to them, the material facts;
- Consultation for the purposes of fulfilling a distinct fiduciary responsibility is only complete when affected and interested Aboriginal groups have had an opportunity to present their position and perspective on the full range of options under considerations for a decision **on an informed basis**.
- In some cases, fiduciary duties will be of an ongoing nature, because the aboriginal and treaty rights are of an ongoing nature, such as rights to hunt or fish;
- In all cases, from a policy stand point, proper documentation and monitoring of both the consultation process and of the implementation of the proposed initiative are important. This is especially important because actions of the federal government may be challenged through the courts many years into the future on fiduciary or other grounds.

- When the Crown on behalf of Aboriginal groups holds lands or resource interests (such as mineral or forest resources), standards of prudent management must be ensured. This will in most circumstances require voluntary, informed consent, with appropriate legal and professional advice, on the part of the Aboriginal groups concerned, in dealings in those assets.
- How the costs will be met for consultation or negotiations with, or independent advice to, Aboriginal groups must be clear in advance. Where federal departments bear some or all of the costs, funding arrangements must comply with Treasury board decisions and obtain appropriate Ministerial or Cabinet approvals.

Specific guidelines, policies and procedures appropriate to the mandates and responsibilities of individual departments should supplement the principles and guidelines in this paper. In addition, the discussion in this paper is intended to apply to future actions and decisions of the federal government. Claims with respect to past actions of the federal Crown on aboriginal matters should be considered on a case-by-case basis in conjunction with legal counsel.

Annex Two

Words First

Words First
An Evolving Terminology Relating to
Aboriginal People in Canada
Communications Branch
Indian and Northern Affairs Canada
October 2002

http://www.ainc-inac.gc.ca/pr/pub/wp/index_e.html

Please note that the provisions of the *Indian Act*, its regulations, other federal statutes and their interpretation by the courts take precedence over the content of this terminology guide. The purpose of Words First: An Evolving Terminology Relating to Aboriginal Peoples in Canada is to provide writers with background information and guidance on appropriate word usage and style issues. This evolving terminology helps answer specific question on language usage those writers may encounter. Sample sentences are given to assist in clarifying these questions.

2.1 Introduction

Aboriginal peoples have occupied the territory now called Canada for thousands of years. Many diverse and autonomous peoples lived in this territory and had distinct languages, cultures, religious beliefs and political systems. Each community or culture had its own name for its people and names for the peoples around them.

When Columbus arrived in North America, he gave the name "Indian" to the people he encountered. This misnomer was based on the mistaken notion that he had landed in India.

Today, terms to describe Aboriginal peoples are continually evolving. Understanding the distinctions among these words and to whom they apply can be a challenge for writers.

This lexicon of words describes or relates to Aboriginal peoples in Canada. It was created by the Communications Branch at Indian and Northern Affairs Canada (INAC) to help departmental

staff with terminology usage. Although it was written with INAC staff in mind, the guide will also be useful to anyone who wants to write or learn about Aboriginal peoples in Canada.

Guidelines

2.2.1 Readers should keep in mind that there is no single lexicon to describe Aboriginal peoples. For example, there isn't a sole agreed upon name for the original peoples that inhabited North America before European settlers arrived. In Canada, "Aboriginal peoples" is often used. In the United States, "American Indian" or "Native American" is commonly used. United Nations documents and organisations (and some Aboriginal scholars and advocates) use the term "Indigenous people." While the term Inuit is used for the Canada Aboriginal inhabitants north of the tree line, many in the U.S. still use the term Eskimo.

This guide gives the recommended usage for the employees of INAC and the Government of Canada. Regardless of the lexicon you choose to follow, try to use these terms correctly and consistently.

2.2.2 The Authors of this guide have tried to use current names and terminology selected by Aboriginal peoples themselves. However, some of the terms listed here have strict legal definitions. They may seem outdated, but they are still necessary in certain contexts explained later in the guide.

2.2.3 This guide does not list the many and varied names of Aboriginal nations. Rather, it provides inclusive terms that describe them collectively. Whenever possible, try to characterise Aboriginal people through their specific identities (e.g., a Haida painter, a Mohawk school, a Blackfoot publication). These types of identifications more accurately capture the unique aspects of the people or things you are describing.

2.2.4 If you are unsure about names and terms, try contacting the Aboriginal people you are writing about to learn which terms they prefer. Also note that many Aboriginal people are using English transliterations of terms from their own languages to identify themselves; e.g. the Mohawk Nation is also called "Kanien'keha': ka", the Blackfoot, "Siksila", the Chippewas, "Anishinabeg", and the Swampy Cree, "Mushkegowuk."

2.3 Organisation of Words First

The terms in this guide are arranged alphabetically. This makes it easy to find a particular term when you know what you are looking for. When you are unsure of the appropriate term, however, a thematic organisation can be helpful. Here, then is a breakdown of the terms in this guide according to various themes.

Collective names to describe the original peoples of North America and their descendants:

- Aboriginal people(s)
- First Peoples
- Indigenous people(s)
- Native people(s)
- Native American
- American Indian

More narrowly defined groups of Aboriginal people:

- First Nation
- Indian
- Innu
- Metis
- Eskimo
- Inuit

Terms associated with communities and community organisations:

- Among First Nations:
- Band
- Tribal Council
- Tribe
- Reservation
- Reserve

Among Inuit:

- Inuit communities
- Inuit Regions
- American Usage:
- American Indian
- Native American
- Eskimo
- Reservation
- Tribe

2.4 Aboriginal People(s)

“Aboriginal people” is a collective name for the original peoples of North America and their descendants. The Canadian Constitution (*the Constitution Act, 1982*) recognises three groups of Aboriginal peoples

- Indians, Metis, and Inuit. These are three separate peoples with unique heritages, languages, cultural practices and spiritual beliefs:

Please not the following uses:

2.4.1 Aboriginal people

When you are referring to “Aboriginal people,” you are referring to all the Aboriginal people in Canada collectively, without regard to their separate origins and identities. Or, you are simply referring to more than one Aboriginal person.

2.4.2 Aboriginal peoples

By adding the “s” to people, you are emphasising that there is diversity of people within the group known as Aboriginal people.

Aboriginal people;	Aboriginal People	Aboriginal peoples
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Aboriginal persons		
-more than one Aboriginal person	Entire body of Aboriginal persons in Canada	Different groups of Aboriginal people with distinct cultures (Often used when referring to different groups among different communities.

Because the term “Aboriginal People” generally applies to First Nations, Inuit and Metis, writers should take care using this term. If they are describing a particular departmental program that is only for First Nations, like band funding, you should avoid using “Aboriginal people” which could cause misunderstanding.

2.4.3 Non-aboriginal people (not peoples)

Refers to anyone who is not an Aboriginal person. Note that the “non” stays lowercase.

2.4.4 Aboriginal nations

This term used by the Royal Commission on Aboriginal Peoples (RCAP) in its final report. RCAP defines Aboriginal nations as a “sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or collection of territories.” The term has gained currency among some Aboriginal groups, but it has not been used at INAC.

Suggested Usage

Capitalize. The Department capitalises “Aboriginal” as it would other designations like “Francophone,” “Arabic” or “Nordic”.

Use as an adjective: Despite the wide use of “Aboriginal” as a proper noun by many Canadian and Aboriginal media, the Department uses the term as a modifier.

E.g.

Wrong. The government’s new strategy will support increased with Aboriginals.

Correct. The government’s new strategy will support increased business with Aboriginal people.

Avoid describing Aboriginal people as “belonging” to Canada. Use neutral terms instead.

E.g.

Wrong. Canada's Aboriginal people have traditions and cultures that go back thousands of years.

Correct: Aboriginal people in Canada have traditions and cultures that go back thousands of years.

2.4.5 Aboriginal rights

Rights that some Aboriginal peoples of Canada hold as a result of their ancestor's long-standing use and occupancy of the land. The rights of certain Aboriginal peoples to hunt, trap and fish on ancestral lands are examples of Aboriginal rights. Aboriginal rights vary from group to group depending on the customs, practices, and traditions, treaties and agreements that have formed part of their distinctive cultures.

2.4.6 Aboriginal self-government

Governments designed, established and administered by Aboriginal peoples under the Canadian Constitution through a process of negotiation with Canada and, where applicable, the provincial government.

2.4.7 Aboriginal Title

A legal term that recognises an Aboriginal interest in the land. It is based on the long-standing use and occupancy of the land by today's Aboriginal peoples as the descendants of the original inhabitants of Canada.

2.5 American Indian

"American Indian" is a commonly used term in the United States to describe the descendants of the original peoples of North America (see also Native Americans). Some people are dissatisfied with this term, because it: (a) retains the misnomer of "Indian" in its name, and (b) covers peoples who consider themselves distinct from Indian peoples, namely the Inuit, Yupik and Aleut peoples in Alaska. The term is not popular in Canada.

2.6 Band

A band is a body of Indians for whose collective use and benefit lands have been set apart or money is held by the Crown, of declared to be band for the purposes of the *Indian Act*. Each band has its own governing band council, usually consisting of one chief and several councillors. Community members choose the chief and councillors by election, or sometimes through custom. The members of a band generally share common values, traditions and practices rooted in their ancestral heritage. Today, many bands prefer to known as First Nations (e.g., the Batchewana Band is now called the Batchewana First Nation).

2.7 Band Council

This is the governing body for a band. It usually consists of a chief and councillors, who are elected for two or three-year terms (under the Indian Act or band custom) to carry out band business, which may include education; water; sewer and fire services; by-laws; community buildings; schools; roads; and other community businesses and services.

Suggested usage:

Capitalize “band” when used as part of a name. Unless you are naming a specific band (e.g., the Bonaparte Indian Band), the word “band” can remain lowercase.

2.8 Bill C-31

The pre-legislation name of the 1985 *Act to Amend the Indian Act*. This act eliminated certain discriminatory provisions for the *Indian Act*, including the section that resulted in Indian women losing their status and membership when they married non-Status men. Bill C-31 enabled people affected by the discriminatory provisions of the old *Indian Act* to apply to have their Indian status and membership restored.

2.9 Custom

A traditional Aboriginal practice. For example, First Nation’s peoples sometimes marry or adopt children according to custom, rather than under Canadian family law. Band councils chosen “by custom” are elected or selected by traditional means, rather than by the election rules contained in the *Indian Act*.

2.10 Eskimo

“Eskimo” is the term once given to Inuit by European explorers and is now rarely used in Canada. It is derived from an Algonquin term meaning “raw meat eaters”, and many people find the term offensive. The term is still used in the United States in reference to Inuit in Alaska.

2.11 First Nation(s)

A term that came into common usage in the 1970’s to replace the term “Indian” which some people found offensive. Although the term First Nation is widely used, no legal definition of it exists. Among its uses, the term “First Nations peoples” refers to the Indian peoples in Canada, both Status and Non-Status. Some Indian peoples have also adopted the term “First Nation” to replace the word “band” in the name of their community.

2.12 First Nation

Some Indian communities to replace the term “Indian Band” have adopted “First Nation”. A band is defined as a body of Indians for whose collective use and benefit lands have been set apart or money is held by the Crown, or declared to be a band for the purposes of the *Indian Act*. Many Indian bands started to replace the word “band” in their name with “First Nation” in the 1980’s. It is a matter of preference, and writers should follow the choice expressed by individual First Nations/bands.

Suggested Usage:

Capitalise: the Department capitalises “First Nations” as it would other designations like “Francophone,” “Arabic” or “Nordic.”

Use as a noun and a modifier. The term is acceptable as both. When using the term as a modifier, the question becomes whether to use “First Nation” or “First Nations” Note the different uses in following examples.

(plural modifier, plural noun)

The number of First Nations students enrolled at Canadian universities and colleges has soared over the past twenty years.

(singular modifier, plural noun)

The association assists female First Nation entrepreneurs interested in starting home businesses.

(plural modifier, singular noun)

Containing recipes from across the country, the First Nations cookbook became an instant hit at church bazaars.

(singular modifier, singular noun)

Many people have said that *North of 60* and *The Rez* were the only shows on television that depicted life in a First Nation community with any realism.

There is no clear right or wrong in this area, provided that writers are consistent about the way they choose to use modifiers.

2.13 First Nations people:

Many people today prefer to be called “First Nations” or “First Nations people” instead of “Indians”. Generally, “First Nations people” is used to describe both Status and Non-Status Indians. The term is rarely used as a synonym for “Aboriginal peoples” because it usually doesn’t include Inuit or Metis people.

Because the term “First Nations people” generally applies to both Status and Non-Status Indians, writers should take care in using this term. If they are describing a departmental program that is for only Status Indian youth, for example, they should avoid using “First Nations youth,” which could cause misunderstanding.

2.14 First Peoples

“First peoples” is another collective term used to describe the original peoples of Canada and their descendants. It is used less frequently than terms like “Aboriginal peoples” and “native peoples.”

2.15 Indian

The term “Indian” collectively describes all the indigenous people in Canada who are not Inuit or Metis. Indian peoples are one of three peoples recognized as Aboriginal in the *Constitution Act, 1982*. It specifies that Aboriginal people in Canada consist of the Indian, Inuit and Metis people. There are three categories of Indians in Canada: Status Indians, Non-Status Indians and Treaty Indians.

2:15.1 Status Indians

Status Indians are people who are entitled to have their names included on the Indian Register, an official list maintained by the federal government. Certain criteria determine who can be registered as a Status Indian. Only Status Indians are recognized as Indians under the *Indian Act*, which defines an Indian as a “person who, pursuant to this Act, is registered as an Indian or is entitled to be registered as an Indian.” Status Indians are entitled to certain rights and benefits under the law.

2.15.2 Non-Status Indians

Non-Status Indians are people who consider themselves Indians or members of a First Nation but whom the Government of Canada does not recognize as Indians under the *Indian Act*, either because they are unable to prove their status or have lost their status rights. Many Indian people in Canada, especially women, lost their Indian Status through discriminatory practices in the past. Non-Status Indians are not entitled to the same rights and benefits available to Status Indians.

2.15.3 Treaty Indian

A Status Indian who belongs to a First Nation that signed a treaty with the Crown. The term “Indian” is considered outdated by many people, and there are many debates over whether to continue using this term. The Department, following popular usage, typically uses the term “First Nation,” instead of “Indian,” except in the following cases:

- in direct quotations
- when citing titles of books, works or art, etc.
- in discussions of history where necessary for clarity and accuracy
- in discussions of some legal/constitutional matters requiring precision in terminology
- in discussions of rights and benefits provided on the basis of “Indian” status
- in statistical information collected using these categories (e.g. the Census).

Suggested usage:

Capitalise: The Department capitalises “Indian,” “Status Indian,” “Non-Status Indian,” and “Treaty Indian” as it would other designations like “Francophone,” “Arabic” or “Nordic.”

Use as a noun and modifier. The term is acceptable as both.

2.16 Indian Act

Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal obligations and regulates the management of Indian reserve lands, Indian moneys and other resources. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian Lands and to approve or disallow First Nations by-laws. In 2001, the national initiative *Communities First: First Nations Governance* was launched, to consult with First Nations peoples on the issues of governance under the *Indian Act*. The Process will likely take two to three years before any new law is put in place.

2.17 Indian Status

An individual's legal status as an Indian, as defined by the *Indian Act*.

2.18 indigenous/Indigenous

Indigenous means "native to the area." In this sense, Aboriginal people are indeed indigenous to North America. As a proper name for a people, the term is capitalised to form "Indigenous peoples." Its meaning is similar to "Aboriginal peoples," "Native peoples" or "First Peoples" The term is rarely used in the Department, and when it is used, it usually refers to Aboriginal people internationally. Outside the Department, the term is gaining currency, particularly among some Aboriginal scholars. The term is also used by the United Nations in its working groups and in its Decade of the World's Indigenous People (note that, in this instance, no "s" is placed at the end of "people").

2.19 Innu

Naskapi and Montagnais First Nations (Indian) people who live in Northern Quebec and Labrador. Not to be confused with Inuit.

2.20 Inuvialuit

Inuit who live in the Western Arctic and who speak Inuvialuktun.

2.21 Inuit

Inuit are the Aboriginal people of Arctic Canada. Inuit live primarily in Nunavut, the Northwest Territories and northern parts of Labrador and Quebec.

They have traditionally lived above the treeline in the area bordered by the Mackenzie Delta in the west, the Labrador coast in the east, the southern point of Hudson Bay in the south, and the High Arctic islands in the north.

Inuit are not covered by the *Indian Act*. However, in 1939 the Supreme Court interpreted the federal government's power to make laws affecting "Indians, and Lands reserved for Indians" as extending to Inuit.

The word "Inuit" means "the people" in Inuktitut, the Inuit language, and is the term by which Inuit refer to themselves. Avoid using the term "Inuit people", as the use of "people" is redundant. The term "Eskimo," applied to Inuit by European explorers, is no longer used in Canada.

Suggested Usage:

Use as a noun and a modifier: The term is acceptable as both. According to the national organization Inuit Tapiriit Kanatami, the preferred use of "Inuit" as a noun is simply "Inuit," not "the Inuit" nor "Inuit people."

(wrong) As hunters, *the* Inuit led a seasonal existence, living according to nature's schedule.

(wrong) Contact between Inuit and Europeans increased with the arrival of whaling ships in the 19th century.

(Correct) As hunters, Inuit led a seasonal existence, living according to nature's schedule.

(Correct) Contact between Inuit and Europeans increased with the arrival of whaling ships in the 19th century

(Correct) With the birth of Nunavut in 1999, Inuit embarked on an exciting new era in their history.

Capitalize. The Department capitalizes "Inuit" as it would other designations like "Francophone," "Arabic" or "Nordic."

"Inuk" is the singular form of Inuit. Use Inuk when referring to one Inuit person.

2.22 Inuit Communities

Inuit live in communities. They are referred to as communities in the Arctic, and more commonly as Inuit communities in Southern Canada.

Inuit have never lived on reserves. Therefore, the terms “on-reserve” and “off-reserve” do not apply to Inuit, only to First Nations. Wording that is supposed to cover all Aboriginal communities-----for example, a reference to people “living on a reserve, off a reserve, or in urban areas”-----must add in “Inuit communities” to be inclusive of Inuit living in the North.

2.23 Inuit Regions

Inuit live in regions. They are referred to as regions in the Arctic, and more commonly in southern Canada as Inuit regions.

There are four Inuit comprehensive land claims regions covering one-third of Canada: They are Inuvialuit (Western Arctic, Northwest Territories), Nunavut, Nunavik (northern Quebec) and Labrador. The Nunavut territory has three-sub regions-----Kitikmeot, Kivalliq and Qikqtaaluk-----which are called regions. Sometimes Inuit regions are called Inuit territories, or Inuit territory, individually or collectively.

2.24 Land Claims

In 1973, the federal government recognized two broad classes of claims-----comprehensive and specific.

Comprehensive claims are based on the assessment that there may be continuing Aboriginal rights to lands and natural resources. These kinds of claims come up in those parts of Canada where Aboriginal title has not previously been dealt with by treaty and other legal means. The claims are called “comprehensive” because of their wide scope. They include such things as land title, fishing and trapping rights and financial compensation.

Specific claims deal with specific grievances that First Nations may have regarding the fulfilment of treaties. Specific claims also cover grievances relating to the administration of First Nation’s lands and assets under the Indian Act.

2.25 Metis

The word “Metis” is French for “mixed blood” applied to the children of French fur traders and Cree women in the Prairies, and of English and Scottish traders and Dene women in the North. Today, the term is used broadly to describe people with mixed First Nations and European ancestry that *identify* themselves as Metis, distinct from Indian people, Inuit, or non-Aboriginal people. (Many Canadians have mixed Aboriginal and non-Aboriginal ancestry, but not all identify themselves as Metis.) Note that Metis organizations in Canada have differing criteria about who qualifies as a Metis person.

Suggested Usage:

Capitalize. The Department capitalizes “Metis” as it would other designations like “Francophone,” “Arabic” or “Nordic.”

Accent or no accent? Many people and groups, particularly in the West and the North, have dropped the accent in Metis. Both spellings are acceptable, but the Department continues to use the accent. Regardless of your preference, it is a good idea to always check the names of individual Metis organizations before you publish them. For example, the Metis Council of Ontario and the Metis Association of the NWT do not take an accent; the Metis National Council does take an accent.

This Department is not involved with Metis issues. These are dealt with by the federal Interlocutor’s office at PCO.

2.26 Native

“Native” is a word similar in meaning to “Aboriginal.” “Native peoples” is a collective term to describe the descendants of the original peoples of North America. The term is increasingly seen as outdated (particularly when used as a noun) and is starting to lose currency.

2.27 Native American

This is another commonly used term in the United States to describe the descendents of the original peoples of North America. The term has not caught on in Canada because of the apparent reference to U.S. citizenship. However, some Aboriginal peoples in Canada have argued that because they are descendents of the original peoples of the *Americas*, the term Native American should apply to them regardless of their citizenship.

2.28 The North vs. the north

Land in Canada located north of the 60th parallel. INAC's responsibilities for land and resources in the Canadian North relate only to the three territories, Nunavut, Northwest Territories and Yukon.

Capitalize: the "N" in North only when used in reference to the three territories (Nunavut, Northwest Territories and Yukon) as a geographical region.

(correct) I look at different circumstances, having been up in the North and looked at the company that is building diamond mines in the Northwest Territories.

(correct) Inuit reside in the North.

(correct) I travelled to Thunder Bay to see the North.

2.29 Northerner(s) vs. northerner(s)

Capitalize: the "N" in Northerner(s) is capitalized only when referring to a person or persons living in one of the three territories (Nunavut, Northwest Territories or Yukon.)

(correct) there are many Northerners living in Yukon.

(correct) there are many northerners living in Cochrane.

2.30 Nunavut

The territory created in the Canadian North on April 1, 1999 when the former Northwest Territories was divided in two. Nunavut means "our land" in Inuktitut. Inuit, whose ancestors inhabited these lands for thousands of years, make up 85 percent of the population of Nunavut. The territory has its own public government.

2.31 Off-reserve

A term used to describe people, services or objects that are not part of a reserve, but relate to First Nations.

2.32 Oral history

Evidence taken from the spoken words of people who have knowledge of past events and traditions. This oral history is often recorded on tape and then put in writing. It is used in history books and to document land claims.

2.33 Reservation

A reservation is land set apart by the United States government for the use and occupation of a group of Native Americans. The term does not apply to Canada.

2.34 Reserve

A reserve is tract of land, the legal title to which is held by the Crown, set aside for the use and benefit of an Indian band. Some bands have more than one reserve.

Many First Nations now prefer the term “First Nation Community,” and no longer use “reserve.”

Suggested Usage:

Capitalize “reserve” when used as part of a name. Unless you are naming a specific reserve, the word “reserve” can remain lowercase.

On-reserve/off reserve

These are modifiers to qualify people or things that are or are not part of a reserve, e.g.

(correct) the government has announced a new approach to on-reserve housing.

(correct) on-reserve businesses are eligible for the new training program.

However, sometimes people move the “on-reserve/off reserve” modifier after the noun and remove the hyphen, so sentences read:

(wrong) the government has announced a new approach to housing on reserve.

(wrong) Businesses on reserve are eligible for the new training program.

Readers outside this Department may have trouble interpreting these sentences. They are either (a) ungrammatical or (b) suggest that we are talking about businesses and housing that have been set apart for future use (i.e., are in reserve.) please avoid this use and either leave the modifier before the noun or make the sentences grammatically complete:

(correct) the government has announced anew approach to housing *on reserves*

(correct) Businesses located *on reserves* are eligible for the new training program.

Another common usage is “people who live on reserve” and “people who live off reserve”

(wrong) Students who live on reserve are eligible for the summer employment program.

(wrong) The Friendship Centre can be a welcome place for First Nation’s people who live off reserve.

Again, these sentences are not grammatically complete. Try

(correct) Students *living on a reserve* are eligible for the summer employment program.

(correct) the Friendship Centre can be a welcome place for First Nations people *living off a reserve*.

(correct) The Friendship Centre can be a welcome place for First nations people *who don't live on a reserve*.

2.35 Surrender

A formal agreement by which a band consents to give up part or all of its rights and interests in a reserve. Reserve lands can be surrendered for sale or for lease, on certain conditions.

2.36 Tribal Council

A Tribal Council is a group made up of several bands that represents the interests of those bands and may administer funds or deliver common services to those bands. Membership in a tribal council tends to be organized around geographic, political, or cultural and linguistic lines.

2.37 Tribe

A tribe is a group of Native Americans sharing a common language and culture. The term is used frequently in the United States, but only in a few areas of Canada (e.g., the Blood Tribe in Alberta).

Annex Three Style Guide

Disclaimer

These excerpts have been taken from the CBC Radio Style Guide. Verbal consent was obtained from the CBC Human Resources from Dawn Rae McLaren. The CBC Vancouver is acknowledged for its kind permission to use the excerpts.

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STYLE

3.0 Commonly Misused Words

The following are examples of some commonly misused words.

3.1 As vs. like

An advertising writer can say:

Winston tastes good *like* a cigarette should:

But we would say:

...As a cigarette should.

Unless we were directly quoting this old cigarette advertising campaign. The rule for like is:

Don't use it when *as*, *as if*, or *as though* fits your sentence comfortably.

3.2 Hopefully

Many of us use hopefully to mean hope that – which it doesn't; it means "in a hopeful manner or state of mind."

We offend literate people when we say:

Hopefully, my cheque is in the mail.

Or

I 'm waiting hopefully for my cheque.

3.3 Pronouns

Manly of us seem to have trouble with pronouns in compound constructions and particularly when they follow prepositions.

He asked Mary and I to the party.

Among we journalists.

Between you and she.

In each example, the pronoun is the object of either the verb or preposition and therefore takes that case. A simple way to remember this is to use the pronoun, which sounds right when you ask “whom?”

He asked Mary and *me* to the party.

Among *us* journalists.

Between you and *her*.

3.4 Among vs. Between

Some of us don’t know or don’t bother with the useful distinction between *among* and *between*.

The Prime Minister can choose *between* three options.

Between usually deals with only two people, places or things *among* with more than two. The above example should read:

The Prime Minister can choose *among* three options.

We can argue these are fine, nit-picking grammatical points, and that by stressing them we’re fighting against the tide of general conversational use. Yes, and it may be true that the useful distinction between *among* and *between* is rarely made in everyday speech.

Illiteracy does not breed respect. When we use “bad grammar” we offend some of our listeners. The standard alternative offends nobody and does not sound stuffy.

CBC Radio Style Guide

3.5 Clichés

The list of clichés gets longer every year, but here are a few to think about.

- Across the board
- Last-ditch effort
- At the eleventh hour
- By the same token
- On tender hooks

- Short Shrift
- Part and parcel
- Toe the party line
- Bad vibes
- Waiting with bated breath

Do these and so many other tired expressions create even the faintest picture in the listener's mind? Do we know what most of them mean? Or do we write them automatically?

3.6 **Headline Language**

Then there is headline language: short words that fit into a small space. These newspaper words infiltrate from print into radio. They are words that hardly anyone has ever been heard to say.

- Ousts
- Felled
- Ban
- Boost
- Laud
- Shun
- Wed
- Raps
- Ire
- Slay
- Ink ("Lindros inks multi-year pact.")
- Bid
- Probe
- Drive
- Clash
- Famed
- Death toll...and so on

3.7 Political Terminology

Politicians and bureaucrats have their own “language of mutilation.”

- Bilateral
- Trilateral
- Multilateral
- Bipartisan
- Tripartite
- Objectivity
- Ameliorate
- Magnitude
- Subsequent
- Termination
- Comprehensive
- Consultative process
- Cost-price spiral

3.8 Professional terminology

We should also stay away from the inside vocabulary of any profession or group.

- Vertical integration
- Preliminary funding
- Single-family low -density housing units
- Teacher-student ratio
- Parenting procedures
- Learning disadvantaged
- Visually handicapped
- Non-hearing impaired
- Domestic violence incidence
- Negative and positive reinforcement
- Velocity and location (Baseballese for speed and location)

We must translate this vocabulary, using the facts and context to describe what it means in clearly understood language.

3.9 Slang

The slang of the young presents problems because it is both imprecise and so quickly changing. Many of these words will have disappeared by the time you have read them.

- Cop out
- Screw up
- Dude
- Foxy
- Funky
- Karma
- Chill out
- Rip-off
- Vibes

Some slang will survive, but we must ask if they are necessary and appropriate. Simple words aren't enough. We must put them together insensible ways, in ways real people speak.

3.10 Constructions

We use many constructions in news that no other human lips have uttered.

- The five-foot-ten, 175 pound left-winger from Digby, Nova Scotia...
- London's West End...
- The 145-metre CN Tower...
- Vancouver's Lion's Gate Bridge...
- The twice-defeated Liberal candidate...
- An ex-Torontonian, Whett Whistle...
- Colourful golfer Lee Trevino...
- Born in High River, Alberta, Joe Clark...
- Former Heisman Trophy winner Q.J. Simpson...

Whew! People don't talk like that.

Such stuff may look like news and evens sound like news. But it doesn't serve the listener.

3.11 Language and Gender, Race and Disabilities

Reporters, Editors and producers seek to avoid language, which reinforces sexism, racism, discrimination and stereotypes. We don't want to use awkward and artificial constructions in the name of "political correctness" but we do need to be mindful of the pluralistic and diverse nature of the country and its population. They are our listeners and supporters (through their tax dollars). Besides, anything, which unduly distracts from the message with clumsy, biased wording, however unintentional, gets in the way of understanding. That's reason enough to pay attention to the words we use.

Over the years, many minds within the CBC have wrestled with issues of language usage. There have been numerous policies and guides issued to CBC broadcasters. The following points on discriminatory language are excerpted from the current CBC Language Guide.

Female, Woman; Male, Man

A point worth noting: *female* are an adjective and a noun. It can be used to modify human and non-human beings.

- *Woman* is a noun and pertains exclusively to humans.
- *Woman* can also be used as an adjective, but this is discouraged: the male parallel is weak when used the same way. We feel free to talk about "women engineers" but wouldn't describe people as "men nurses." Of course, if the story is about men and women entering those professions in greater numbers, we might use "male nurses" and "female engineers."

A little thought and common sense go a long way in such matter.

3.12 Language equivalency should extend as far as is practical.

Of course, courtesy dictates that individuals be addressed or designated according to their wishes.

(Accordingly, if a woman prefers to be known as the "chairman" and not "chairperson," her preference should prevail.)

The following is a list of replacement terms for words that may reflect a sexist bias.

Masculine/Feminine	Neutral
• Anchorman	Anchor
• Businessman	Business person, executive

• Businessmen business	Business community, or people in business
• Cameraman	Camera operator
• Cleaning lady/woman	Cleaner, Housekeeper
• Craftsman	Artisan
• Delivery boy	Messenger
• Draftsman	Drafting Technician, drafter
• Fireman	Fire-fighter
• Fisherman	Fisher
• Fishermen	Fishers, fishing community
• Gentlemen's agreement	Honourable agreement
• Housewife	Homemaker
• Lady doctor	Doctor
• Maid	House-worker, housekeeper
• Mailman	Letter carrier, mail carrier
• Male Nurse	Nurse
•	
• Man-hours	Person hours, work hours, labour hours
• Newsman	Reporter, journalist
• Policeman	Police Officer, constable
• Salesman	Sales- clerk, sales- representative
• Spokesman	Representative, spokesperson
• Stewardess	Flight attendant
• Waitress	Server
• Watchman	Security guardian
• Workmen's Compensation	Worker's compensation

3.13 Language and Sexual Orientation

The words "homosexual," "gay" or "lesbian" are commonly used to describe sexual orientation. Please exercise great care if using the word *homophobic* and others like it. This word, like

sexist and racist, defines specific attitudes. Using these terms without being able to substantiate the claim is defamatory.

Native, Indian

Not all Indigenous Canadians accept the description of “native.” While some prefer the term, others find it demeaning. The advice is that “native” can be used to modify *people, leaders, communities*, etc. Otherwise, the term can be confusing. All Canadians born here are natives of the country. But aboriginal Canadians are “native people” or “First Nations people.”

Some advisors say Europeans should avoid “Indian” if at all possible, as most indigenous peoples equate this word with subjugation. But in some parts of the country, such as Saskatchewan, the word does not have a negative tone. It is preferred to “native”

As with “native,” the word “Indian” is used as an adjective to speak about *people, leaders, communities, etc.*

Also, “Indian” is the name used in federal and other legal documents when defining those indigenous peoples who are not “Inuit” or “Metis.” We talk about the Ministry of Indian Affairs and Northern Development, and federal legislation outlined in the Indian Act.

The term “tribe” should be completely avoided. However, “tribal councils” is a term used by several indigenous groups when describing certain administrative bodies.

We should avoid references to “Canada’s aboriginal people/Indians/First Nations, etc.”

Indigenous people are definitely not a possession of the country. They are aboriginal/indigenous/native people of Canada. The “Metis” are legally recognized as one of three original indigenous peoples of Canada: Inuit, Metis, and Indian.

METIS

The pronunciation “MAY-tee” is accepted across Canada. The pronunciation “meh-TISS” is also heard in Western Canada. CBC recommends “MAY-tee.”

Previously the terms “Status” and “Non-status” were commonly used. These referred to aboriginal Canadians whose ancestors had or had not signed treaties with the government. But those who have been called “Non-status” now refer to themselves as “Hereditary First Peoples.”

When writing about native/aboriginal /indigenous people it’s best to be as specific as possible. It is never wrong to refer to a particular “Nation,” when dealing with any of the “First Nations” the Haida nation, for example. Or, the writer/reporter could specify that it is a “Cree” meeting, or native “people” are watching such and such, or “aboriginal leaders” are talking about, etc.

As always, a good rule is to avoid generalizations when possible. This issue will eventually clear itself up, but it will take some time.

Know whom you are writing about. When in doubt, check it out.

Indian/South Asian

There is possibility of confusion when using the term, “Indian.” Someone from India is an “Indian.” An Indigenous North America can be referred to as an “Indian.”

If the *context of the term is unclear*, it is recommended that someone from India be referred to as “South Asian.” South Asia includes Pakistan, India, and Bangladesh, and the term “South Asian” **can** be used to denote people from those countries.

Language and Race

In Canada we use the term “black/s” to describe people with an African heritage. Collectively they are “black people.” We also use the term “white/s” to describe people with a European background. Collectively they are “white people.”

For example, we have regularly described juries made up of seven whites and five black persons. In most stories, we don’t focus on race or ethnic background. That could be seen as a subtle form of discrimination. But there are times when that information needs to be included. The context informs any decision about references to race or ethnic background. For example, a reporter is doing stories about lobbying efforts over certain immigration rules or school curriculum content. Then it helps listener understanding to know who’s doing the lobbying and why. In such stories, you get greater listener understanding when you say the “Asian-Canadian community” or “black students.”

The term “coloureds” is specifically South African. Traditionally it refers to South Asians who migrated to Africa and are not considered either black or white. We would only use the term in a story with a South African context.

CBC Radio Style Guide

WORDS

3.15 Language and Disability

The essentials

- “Impairment” refers to having a limb, organ or mechanism of the body, which is missing or doesn’t work properly.
- “Disability” is the resulting lack of function.
- “Handicap” refers to the limitations on day to day activity that result from the disability.

“The Disabled” and “The Handicapped”

- Use “People with disabilities “ instead.

“Mental Handicap” versus “Learning Difficulties”

- “Learning Difficulties”: a more open definition avoids stigma.

To Be Avoided:

- “Confined to a wheelchair/wheelchair bound”

Wheelchairs liberate rather than confine; they provide mobility. Substitute “wheelchair user” or “in a wheelchair.”

- “Suffered, stricken, afflicted.”

Emotive words. Use instead: “Contracted, has”(a particular condition, and then describe the resulting disability).

- “Invalid”

Suggests that someone is ill, don’t confuse disability with illness.

- “Deaf and dumb”

Be accurate about hearing impairment: “profoundly Deaf” means no useful hearing, “hard of hearing” or “hearing impaired.”

- “Spastic”

Pejorative. Use instead

- “someone with cerebral palsy.”

-

3.16 Labelling

To say that someone *is* arthritic or epileptic defines them only in terms of their disability. It is better to say:

Has arthritis, epilepsy, etc.

3.17 Euphemisms

“physically challenged,” “differently abled,” and “special” attempt to side step the stigma of disability, disliked by disabled people generally.

3.18 Leave it out!

Mongol, subnormal, vegetable, cripple, retarded, freak, defective, deaf-mute, cretin, idiot paralytic.

3.19 Body Language

Watch a normal conversation between two people. Watch how we use our bodies as we speak. Watch how we use our faces, our hands, our heads and our shoulders to help get our message across.

Body language is something we all learn from birth. Babies only a few days old have recognizable body movements that can be interpreted.

All of us learn to recognize and interpret body movement- “Read” it instinctively. It’s true the listener can’t literally see us. But listeners do “see” a mental picture of us. All too often, as radio performers, we restrict our body movement to an absolute minimum. We sit motionless, our hands gripping the script, or lying flat on the table, or clenched in front of us. Listeners “hear” it when we’re transmitting appropriate body language and when we’re not.

3.20 Appropriate Body Language

All our gestures and body movements must spring spontaneously from the thoughts we’re speaking and the meaning of the thought. They cannot be forced or imposed. We don’t mean large Shakespearean gesture. We mean small appropriate gestures. They help in the telling of our story. And they also colour our voices. Try pointing up as you say, “down.” Try pointing down as you say the word, “up.” Then say the same words with the appropriate gestures. Hear how the gesture affects the voice. The appropriateness and naturalness of our body language are a measure of our involvement in the story. The appropriateness and naturalness of our body language are a measure of our involvement in the telling of our story to one listening. We should move as naturally when we’re performing as we do in real life. This includes how we use our eyes.

3.21 Eye Contact

Our eyes are the most expressive form of body language we use. They should be part of our performance. Watch two people talking. The listener watches the speaker closely, not only the eyes but the entire face and as much of the body possible. The listener reads the speaker's facial expressions and body language for information in addition to the words. But the listener watches the speaker's eyes especially. On the other hand, the speaker looks at the listener less than half the time. The eyes move around in search for thoughts and the words to express those thoughts.

Two interesting observations:

- The speaker always makes strong eye contact while delivering important information or making a key point.
- Second, the speaker always completes important thoughts directly to the listener.

This is to be sure the listener is following and understanding.

How does this apply to radio performance?

Remember that we're talking to one listener. Remember we should see that person in front of us.

Remember we're telling a story to that person.

Eye contact with that imaginary person at the appropriate times helps us tell our story more naturally and more effectively. It helps us because it forces us to concentrate on the meaning of the words on the page. And it helps us to complete one thought to our listener before we move on to the next. In this way, it helps to create natural punctuation and natural pauses in our story.

3.22 The Strength in Eye Contact

Try this exercise on someone:

- Say: "Listen, this is the most important thing I'm going to tell you today."
- Say it while looking at the person's feet.
- Say it again to the person, but this time look away when you come to the words, "I'm going to tell you today."
- Still looking away, start the sentence again, but look straight at your listener as you speak the words, "most important thing I'm going to tell you today."
- Hold the look for a second or two.
- Then ask your listener which of the three messages has the most impact.

There's no argument. The third message was the most effective.

This demonstrates the importance of eye contact in lending strength to a thought. It also shows how lack of eye contact at the right time weakens our thought. We come to the end of a sentence and we're afraid we'll lose our place in the script. We look for our next words. What happens is we fail to deliver our message effectively because we're already thinking about what comes next. We must complete the entire thought before we look away. We must complete one action before we move on to the next.

maintenance of stock assessment materials, equipment and supplies, vehicle and boat rentals and related transportation costs, and crew safety gear;

- (vi) travel, accommodation, meeting and related expenses; and
 - (vii) professional fees, consultants' fees and other services other than litigation costs; and
- (c) costs incurred in carrying out any audits required by DFO.

Appendix 2 to Schedule H-1

4.2 Description of Project

The Project consists of activities carried out by the First Nation and approved by DFO related to the following:

DESCRIPTION OF ACTIVITY	ESTIMATED EXPENDITURE
<p>1. Negotiation of Fisheries Management</p> <p>(information only for mandate development -- if the required support is for a specific project, please place the information in another area below)</p> <p><u>(a) Negotiation Support</u></p> <ul style="list-style-type: none"> - negotiation of agreement (and other AFS documents) between DFO and Aboriginal Organization - support contracts for fisheries agreement negotiation - legal support for review of fisheries agreements 	<p>\$0.00</p>

- technical support for fisheries agreement negotiation

(b) Negotiations Positions Development

- prepare detailed operational plan for fishing activities

(c) Education/Awareness Programs

- production of videos related to fishing activities
- workshops relating to fishing activities
- sockeye recovery workshop to secure outside funding for stock assessments
- Pow-Wow and ceremonies where AFS provides funding (e.g. food, travel costs) dealing with fishing activities

(d) Community Meetings

- consultation with other Aboriginal organizations
- planning meetings and community consultations
- community members' travel costs to attend related meetings
- Watershed planning meetings (travel costs)

(e) Administrative Support

(f) Policy Development

2. Management of Aboriginal Fishing \$0.00

(a) Fishing Authorities and Services

- new position: First Nation Project Leader (with **minimal** list of duties)
- coordinate activities of First Nations represented by a commission

(b) Fishing Plans

(c) Catch Monitoring

- issuance of fishing designation cards
- record keeping and catch monitoring (detail species -- eg. coho; clams)
- short detail of area
- dates of monitoring
- designated person to submit required data to DFO by designated date
- \$\$ allocated to hire untrained person to participate in gathering data

(d) Enforcement

- Guardians (anything dealing with guardians **except** training expenses)
- develop harvesting plan and monitoring and enforcement protocol to establish roles and responsibilities of each party
- develop plan for enforcement activities (detail species - eg. coho; clams)
- observe, record and report *Fisheries Act* violations to C&P staff as per protocol
- patrols
- providing proper equipment to AFO as per guidelines provided by C&P staff

- develop and complete a monitoring and enforcement protocol between the First Nation and DFO to document the understanding of roles and responsibilities in this regard, and to identify C&P enforcement priorities and the coordination mechanisms for enforcement activities.

(e) Technical Support

- consultants

3. Habitat Restoration \$0.00

(a) Development and Planning

- prepare comprehensive restoration strategy
- list of habitat improvement opportunities

(b) Implementation of Habitat Protection

- restoring existing habitat
- detail particular projects (eg. Beaver Control Program)
- outline area
- outline dates of monitoring
- BRIEF detail of project

(c) Habitat Assessment and Monitoring

- meetings to review restoration assessments
- labour assistance from AFOs and AFTs
- brief detail of area and BRIEF detail of project (if any)
- inventory and mapping of spawning habitat
- water quality, flow and temperature monitoring

(d) Habitat Enhancement(e) Feasibility Studies

- explore potential for further restoration projects

4. Fish Enhancement**\$0.00**(a) Feasibility Studies

- detail of area and BRIEF detail of study
- stream assessment
- stock enumeration
- spawning channel operation
- downstream fry monitoring
- DFO to provide on-site supervision and training for projects
- adult spawner enumeration (escapement)
- DFO to provide on-site supervision and training for projects
- reintroduction of species to a creek/river
- meetings regarding long-term biological enhancement plans

(b) Facilities Construction (e.g. hatcheries, channels)(c) Facilities Operation(d) Non-facility Based Enhancement (e.g. lake fertilization)

- salmon brood rearing and release
- salmon brood stock collection
- salmon incubation and ponding

(e) SEP projects

5. Community-based Research \$0.00

(gathering information in a particular area (community) without naming a specific project)

(a) Surveys and Assessment Projects

- project planning (specific to this category)
- flow-monitor water gauging station
- Fish/Forestry research project (eg. bedload movement and gravel sampling)
- include salary for technical trainee
- fish trap
- counting fence
- Water Temperature Monitoring Program
- salmon spawner enumeration of local streams
- bivalve sampling of the area surrounding [a certain area]
- stock assessment activities

(b) Database and Mapping

- Fisheries Database (including spawner escapement numbers)
- report to be submitted to DFO

(c) Historical Research and Documentation

(d) Technical Support

- access to biologist/technician staff for analysis of samples

(e) Charter Patrol Activities

- charter patrols

6. Training **\$0.00**

(a) Identification of Training Needs

- Project Leader training courses (eg. health and safety, water and boating)
- swift-water and salmon enumeration training

(b) Development of Curricula

- prepare training plan for each AFO and AFT for individual needs

(c) Guardian Training

(include any training for guardians only - not other employees)

Examples include, but are not limited to:

- Phase I, II and/or III guardian training (eg. travel and accommodation for staff only - not payment of salary)
- health and safety
- water and boating safety
- bear safety
- radio operators certificate course (prior to using VHF radios)
- two-day electro-fishing course (prior to using electro-shocker)
- first-aid upgrades
- outboard motor repair
- diver training
- coastal navigation
- Power Squadron
- river rescue
- computer skills and data management

- (d) Fisheries Management Training
 (include any training for non-guardian employees)

Examples include, but are not limited to:

- catch monitoring
- scale and fin sampling
- escapement monitoring

7. Economic Development \$0.00

- (a) Aquaculture

- (b) Recreational Facilities

- (c) Commercial Fisheries

- (d) Feasibility Studies

- clam stock assessment and management plan development
- clam depuration harvest potential
- shellfish stock assessment and management

8. Licence Retirement Program \$0.00

- (a) Retire Licences and Purchase Vessels

(b) Feasibility Studies

- develop business plan for access and operation to commercial communal fishing licences available through licence retirement/allocation program

9. Stakeholder Consultation \$0.00(a) Community Meeting

- meetings with interest groups regarding annual fishing and the Aboriginal Organization's activities

(b) Policy Consultations(c) Communications**10. Facilities Transfer \$0.00**(a) Hatcheries(b) Small Craft Harbours

TOTAL \$ _____

4.3

Appendix 3 to Schedule H-1

Cash-Flow Projection

for the Fiscal Year

MONTH	AMOUNT IN DOLLARS
April	
May	
June	
July	
August	
September	
October	
November	
December	
January	
February	
March	
TOTAL	

NOTE: The First Nation should only include Allowable Costs to be incurred in the future.
Previous months should be left blank.

B. Cooperative Management

1. Description of environmental improvements such as stream clearing or river-bank revegetation.

2. Summary of results of scientific research projects (attach final reports).

3. Description of fish enhancement other than hatchery activities.

4. Salmon hatchery activities:

SPECIES →	SOCKEYE (number)	CHINOOK (number)	CHUM (number)	COHO (number)	PINK (number)
ACTIVITY ↓					
BROODSTOCK					
RELEASES:					
1. Unfed Fry					
2. Fed Fry					
3. Smolts					

C. Commercial Fisheries

1. Fish sold from Aboriginal Fisheries (allocations or Aboriginal-only harvesting areas).

SPECIES	AMOUNT SOLD (Specify unit, e.g. pieces, weight)	AVERAGE PRICE obtained per unit (e.g. per lb.)	DOLLARS RE-INVESTED in Fisheries Management

2. Licences for Commercial Fisheries (commercial or Communal Commercial Licences)

SPECIES	LICENCE TYPE/GEAR	NUMBER OF LICENCES HELD THIS YEAR

3. ESSR Licences (surplus)

SPECIES	LOCATION	LICENSED AMOUNT (lbs., pieces)	CATCH	REVENUES	
				GROSS	NET of Catching Costs

D. Employment Summary

1. Employment in fishery management and cooperative management activities, excluding employment in harvesting and processing resulting from pilot sales arrangements and operation of Vessels under Communal Commercial Licences:

EMPLOYMENT	NUMBER OF PEOPLE	TOTAL NUMBER OF MONTHS OF FULL-TIME EMPLOYMENT	TOTAL WAGES AND BENEFITS
ABORIGINAL:			
- Aboriginal Fisheries Officers			
- Other			
NON-ABORIGINAL:			
- Aboriginal Fisheries Officers			
- Other			

2. Employment in harvesting and processing, including employment resulting from pilot sales arrangements and operation of Vessels under Communal Commercial Licences:

EMPLOYMENT	NUMBER OF PEOPLE	TOTAL NUMBER OF MONTHS OF FULL-TIME EMPLOYMENT	TOTAL WAGES AND BENEFITS
HARVESTING:			
Aboriginal			
Non-Aboriginal			
PROCESSING:			
Aboriginal			
Non-Aboriginal			

E. Training Summary

TYPE OF TRAINING	NUMBER OF PEOPLE	TOTAL COST (\$)	TOTAL DURATION (Days/Weeks/Months)
Aboriginal Fisheries Officers			
Observer			
Scuba Diver			
Technical or Trade School			
Other			
TOTAL			

F. Capital Acquisitions

(durable goods with an initial value of \$500 or more):

DESCRIPTION		COST (\$)
1.		
2.		
3.		
4.		
TOTAL		

G. Other Revenues Generated/Leveraged
 (e.g. funding from other economic development programs)

SOURCE	AMOUNT	PURPOSE	PROJECTED JOBS CREATED	PROJECTED ANNUAL REVENUES GENERATED

4.5 Appendix 5 to Schedule H-1

Statement of Balance

For the Period April 1, 2003 to March 31, 2004

Allowable Costs paid or payable	\$
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MINUS:

Contributions from DFO received to date	\$
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BALANCE	\$
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Annex Five**FISHERIES AGREEMENT**

This Fisheries Agreement made

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans (hereinafter called "DFO")

OF THE FIRST PART

AND: «BandName» Indian Band, also known as XXX First Nation (hereinafter called the "«FirstNation_AbOrganization»")

OF THE SECOND PART

WHEREAS the Parties confirm their commitment to a relationship based upon mutual respect and understanding;

AND WHEREAS the Parties are both interested in the conservation, protection and management of fisheries resources in the area described in Schedule A hereto, hereinafter called the "Area";

NOW THEREFORE the Parties agree as follows:

Purposes

- 1(1) The purpose of this Agreement is to provide for the management of the Fishery and the involvement of the «FirstNation_AbOrganization» in the management, protection and enhancement of fisheries resources and fish habitat in the Area.
- 1(2) The «FirstNation_AbOrganization» agrees to the provisions with respect to the Fishery and the other provisions set out in this Agreement, for the period of their applicability as set out in this Agreement, for the purpose of ensuring orderly management of fisheries and conservation of fisheries resources.
- 1(3) The Parties agree that this Agreement shall not serve to define or to limit Aboriginal or «Aboriginal_or_DouglasTreaty» treaty rights, if any, and is not intended to be, and shall not be interpreted to be an agreement or a treaty within the meaning of section 35 of the *Constitution Act, 1982*.
- 1(4) The Parties recognize that this Agreement is the result of negotiations conducted within the context of current legislation, jurisprudence and government policy and as such, does not constitute, and shall not be interpreted as, evidence of the nature or extent of Aboriginal or treaty fishing rights and is made without prejudice to the positions taken by either Party with respect to Aboriginal or treaty rights or title.
- 1(5) The Parties acknowledge that the subject matter of this Agreement may become the subject of treaty negotiations between the federal Crown and the First Nation and that should this occur, the value of any benefit that has been obtained by the «FirstNation_AbOrganization» through this Agreement may be considered in those negotiations and, if the First Nation agrees, may be listed in the resulting treaty as partial fulfilment of the federal Crown's responsibilities under the treaty.

The first page consists of the legal wording that comprises the agreement between The Department of Fisheries and Oceans and the First Nation of interest. Within the fisheries agreement there is also contained the following Appendices and Schedules.

Schedules

The following Schedules form part of this Agreement:

Schedule A	description of Area
Schedule B	provisions pertaining to the Fishery
Schedule C	provisions pertaining to communal commercial fisheries access
Schedule D	provisions pertaining to access to salmon excess to spawning requirements
Schedule E	provisions pertaining to Aboriginal Fisheries Officers
Schedule F	provisions pertaining to the integration of the management of fisheries
Schedule G	provisions pertaining to habitat
Schedule H	provisions pertaining to monetary assistance
Schedule I	provisions pertaining to assistance other than monetary assistance
Schedule J	provisions pertaining to the Joint Technical Advisory Committee
Schedule K	provisions pertaining to fisheries management

The Fisheries Agreement is available in full text format located on afsneg\$ on 'pacrhqfp2' N:\Agree_Templates\FA

The document is not secure in the sense that the text is subject to further review and amendment as directed.

Annex Six**FISHERIES AGREEMENT AMENDMENT**

This Fisheries Agreement Amendment made

BETWEEN: Her Majesty the Queen in Right of Canada as represented
by the Minister of Fisheries and Oceans (hereinafter called
"DFO")

OF THE FIRST PART

AND: (hereinafter called the "First Nation")

OF THE SECOND PART

WHEREAS on or about February 10, 1995, the Parties entered into a multi-year Fisheries Agreement, hereinafter called the "Fisheries Agreement";

AND WHEREAS on or about May 15, 1995, the Parties entered into an agreement to amend the Fisheries Agreement;

AND WHEREAS on or about March 7, 1996, the Parties entered into an agreement to further amend the Fisheries Agreement;

AND WHEREAS on or about May 15, 1996, the Parties entered into an agreement to further amend the Fisheries Agreement by adding Schedules B-3, D-3, H-3 and J-2;

AND WHEREAS both Parties are interested in further amending the Fisheries Agreement in the manner set out herein;

NOW THEREFORE the Parties agree as follows:

Amendment

1(1) Subsection 2(1) of Schedule H-2 is hereby deleted and the following subsection is substituted therefor:

2(1) DFO will contribute to the First Nation up to FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00) during the Fiscal Year 1996-1997 to be used exclusively for paying Allowable Costs. Any interest earned by the First Nation on the Contribution or any part thereof shall also be used exclusively for paying Allowable Costs.

1(2) Subsection 6(2) of Schedule H-2 is hereby deleted and the following subsection is substituted therefor:

6(2) In no event will the total amount of the reimbursement (if applicable), the advances and payments made by DFO pursuant to subsections 4(2), 5(1) and 6(1) respectively, exceed FORTY-NINE THOUSAND, FIVE HUNDRED DOLLARS (\$49,500.00).

1(3) Subsection 11(1) of Schedule H-2 is hereby deleted and the following subsection is substituted therefor:

The Fisheries Agreement Amendment is the amendment of Schedule H, which pertains to matters of monetary assistance. The document is available in full-text format located on afsneg\$ on 'pacrhqfp2' N:\Agree_Templates\AMEND-A

Annex Seven

Contribution Agreement or the proposed Project Funding Agreement. This new agreement is a result of the AFS Review of 2003.

This document is subject to further changes. The document may be accessed in full-text form on afsneg\$ on 'pacrhqfp2' on N:\Agree_Template\CA\New2003Template.

PFA2003-1234

PROJECT FUNDING AGREEMENT

This Project Funding Agreement made

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans (hereinafter called "DFO")

OF THE FIRST PART

AND: XYZ Aboriginal Organization (hereinafter called the "Recipient")

OF THE SECOND PART

Purpose

1. The purpose of this Agreement is to set out the provisions under which DFO will provide funding to the Recipient to cover the costs associated with carrying out the project described in Schedule A.

Effect and Duration

- 2(a) This Agreement sets out the entire agreement and understanding between the Parties.
- 2(b) This Agreement will be for the fiscal year from April 1, 2003 to March 31, 2004 and will be effective once signed by all Parties.

DFO's Financial Contribution

- 3(a) DFO will contribute funds to the Recipient, as administrator of the funds, in an amount not to exceed a maximum of TWO HUNDRED AND SIXTY DOLLARS (\$260,000.00) to be used exclusively towards the payment of allowable costs referred to in subsection 5(b).