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POLICY FOR THE MANAGEMENT OF ABORIGINAL FISHING

August 6, 1993

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A. PURPOSE

This policy provides principles and procedural guidelines for DFO's management of Aboriginal fishing reflecting the Department of Fisheries and Oceans' (DFO) Aboriginal Fisheries Strategy (AFS) and the current state of the law on Aboriginal fishing rights, particularly the decision of the Supreme Court of Canada in the Sparrow case. The policy applies to all species of fish.

B. POLICY

1. Aboriginal Fishing

Taking into account the current state of the law on Aboriginal fishing rights, DFO has adopted the following policies related to Aboriginal fishing:

- Aboriginal fishing should occur within the areas that were used historically by the aboriginal group or First Nation.
- Aboriginal fishing opportunities will be provided to the First Nation having historical use and occupancy of the area in question. The First Nation will administer the fishing opportunities for the benefit of its members collectively rather than individually.
- Aboriginal fishing for food, social and ceremonial purposes will have first priority, after conservation, over other uses. Aboriginal fishing 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.

2. Regulation of Aboriginal Fishing

DFO will provide for the management of Aboriginal fishing which includes, but may not be limited to, fishing for food, social and ceremonial purposes, in the following ways:

- Where necessary to ensure that the total harvest by all harvesters of a fish stock does not exceed the conservation limit, Aboriginal fishing will be conducted under the authority of a Communal Licence issued under the Fisheries Act.
- DFO shall endeavour to negotiate with the representatives of First Nations mutually agreeable arrangements for Aboriginal fishing, such arrangements to be described in Aboriginal fishing agreements under the AFS.
- Where agreement cannot be reached on the management of Aboriginal fishing, DFO shall provide a First Nation with access to fish for food, social and ceremonial purpose through a Communal Licence, imposing only such restrictive conditions as are necessary to achieve a valid conservation objective, to provide sufficient food fish for other First Nations, to achieve a valid health and safety objective, or to achieve other substantial and compelling objectives.
- Aboriginal fishing agreements will define and establish Aboriginal Fishing Authorities which will be responsible for managing fishing under the agreements, in co-operation with DFO, according to the terms of the agreements.
- Aboriginal Fishing Authorities will be responsible for:

- designating individuals to fish under allocations made to a First Nation;
 - providing individuals designated to fish under allocations made to a First Nation with suitable evidence of the nature and extent of their designation;
 - monitoring and reporting to DFO on harvests; and
 - participating in enforcement.
- Aboriginal Fishing Authorities will carry out monitoring and enforcement activities by means of Native Guardians who will be employed by the First Nation, trained through programs offered by DFO and designated as Fishery Guardians under the Fisheries Act. The duties of Guardians will be described in Guardian Subagreements which will accompany Aboriginal Fishing Agreements.
 - Aboriginal Fishing Agreements will be without prejudice to the position of either party with respect to Aboriginal and treaty rights.
 - Aboriginal Fishing Authorities may be funded in whole or in part through Contribution Agreements.
 - The terms and conditions of a Communal Licence will require the First Nation to:
 - designate individuals who we authorized to fish within the First Nation's allocation;
 - provide designated individuals with suitable evidence of the nature and extent of their authorization; and
 - monitor and report to DFO on its harvest.
 - Persons fishing under the authority of a Communal Licence must provide proof of designation by the Aboriginal Fishing Authority identified in the Licence in the form specified in the licence.

3. Definition of Aboriginal Fishing

- In this policy, Aboriginal fishing means fishing under the authority of a Communal Licence issued pursuant to the Aboriginal Communal Fishing Licences Regulations under the Fisheries Act.
- Aboriginal fishing under a Communal Licence includes fishing for food, social and ceremonial purposes. In a limited number of cases, it may also include fishing for sale under test sale projects negotiated as part of an Aboriginal Fishing Agreement. The terms of the Communal Licence will set out the extent of the authority of the Aboriginal group to fish.
- In the absence of an Aboriginal Fishing Agreement, all Aboriginal fishing under a Communal Licence will be limited to fishing for food, social and ceremonial purposes.

4. Issuance of Food Fish Permits to Individuals

- As stated in an announcement by the Minister of Fisheries and Oceans in December 1992, and in response to the report on the Pearse Investigation regarding management of Sockeye Salmon returns on the Fraser River in 1992, food fish permits will no longer be issued to individuals.

5. Identification of First Nations for the Purpose of Establishing Aboriginal Fishing Authorities

- For the purposes of this policy "First Nation" includes any organization which represents a group of Aboriginal people who have continuously used the fishery resources in the area in question from pre-European contact to the coming into effect of the Constitution Act, 1982. Such organizations include groups representing Indians registered or entitled to be registered under the Indian Act, Inuit, non-status Indians and Métis. DFO may require that a First Nation produce evidence of historical use of the resources in an area.
- First Nations will be responsible for identifying the organization that is to represent them during negotiations on Aboriginal Fishing Agreements and are encouraged to form tribal, regional or watershed based Aboriginal Fishing Authorities for the purposes of negotiations and to administer Aboriginal Fishing Agreements.
- Where the members of an Indian Band are not known to be represented in negotiations through a First Nation or organization of First Nations, DFO shall request that the Band Council identify a group which represents the Aboriginal fishing interest of its members. If no such group is identified, DFO will initiate negotiations with the Band Council.
- This policy does not apply where a Comprehensive Land Claim Agreement is in place.
- Consultations between DFO and Indian Bands that have established fishing by-laws are encouraged to improve the management of the fishery resource.

6. Consultations and Negotiations

- DFO shall consult with Aboriginal people before taking decisions or actions that may affect Aboriginal fishing for food, social or ceremonial purposes.
- During 1993, negotiations under the Aboriginal Fisheries Strategy will focus on attaining Aboriginal Fishing Agreements with First Nations that have not signed agreements under the Comprehensive Land Claims Policy, in areas where DFO administers fisheries.
- DFO will also attempt to negotiate Watershed Framework Agreements with all First Nations which share the Fraser and Skeena watersheds. These agreements will provide for structures which will coordinate the fisheries management and enforcement activities of DFO and signatory First Nations on a watershed basis.
- DFO shall make reasonable efforts to conclude an Aboriginal Fishing Agreement with a First Nation prior to issuing a Communal Licence. Where an Aboriginal Fishing Agreement is signed, the Communal Licence will reflect the allocation and terms and conditions contained in the agreement.
- In some cases, where it is not feasible because of time limitations or for other reasons, to negotiate an Aboriginal Fishing Agreement, the terms and conditions of a Communal Licence may be negotiated without developing an Agreement.
- Where it is not possible to reach agreement on an allocation or another term or condition of a communal licence, DFO shall issue a Communal Licence to the First Nation for food, social and ceremonial purposes. The allocation contained in such a Communal Licence shall reflect the last offer made by DFO before termination of negotiations with respect to allocations for these purposes.
- DFO shall communicate openly with the commercial and recreational fishing sectors and other interested parties, regarding the government's policies with respect to Aboriginal fishing.

7. Aboriginal Fishing Allocations

- DFO shall give first priority of access to fish, after conservation needs are met, to Aboriginal people to meet their needs for food, social and ceremonial purposes, to the extent possible given the availability of fisheries resources within areas used historically by the group. DFO will provide for such needs through Aboriginal Fishing Agreements and Communal Licences with First Nations.
- DFO will consult with respect to allocations. Information on community size (including but not necessarily limited to band membership), recent food fishery harvests, trends in such harvests, current food preferences and use and availability of other foods may be used to establish the reasonable food requirements of members of the community represented by the First Nation.
- Allocations may also provide fish for sale under pilot projects. Allocations for commercial purposes may be expressed as a percentage of the allowed catch from a particular stock.
- Agreements providing for pilot projects related to sale will include monitoring and enforcement provisions designed to prevent illegal sale, to keep the fishery within its allocation and to maintain the quality of any products entering the market.
- Agreements containing pilot project sale provisions shall include a provision requiring the Aboriginal Fishing Authority to acknowledge that it has consulted with the members of the Aboriginal community it represents and confirms on their behalf that the allocation includes any allocation needed for food, social and ceremonial purposes during the term of the agreement.

8. Provisions of Watershed Framework Agreements

The migratory nature of salmon demands that some management issues can only be effectively addressed through co-ordination of the management efforts of all First Nations sharing a watershed. Therefore, Watershed Framework Agreements should contain:

- a list of First Nations with whom DFO will negotiate Aboriginal Fishing Agreements and the fishing area to be covered by each agreement;
- the types of fishery management provisions to be included in agreements with individual First Nations and understandings on enforcement as well as sanctions to be employed for violation of agreements;
- monitoring and enforcement plans to co-ordinate the efforts of all Aboriginal Fishing Authorities and of DFO for all parts of the river;
- a mechanism for the establishment of fishing plans to ensure that the total harvest from each stock does not exceed the number of fish made available in the river, after allowing for spawning escapements;
- a mechanism for in-season modification of these plans as information on run sizes, catches and timing becomes available; and
- a dispute resolution mechanism.
- Although the mechanisms for accomplishing these management functions will be established through negotiation, the recommended approach would include two committees:
 - a Fisheries Planning Committee which would:
 - coordinate the development of fishing plans to be included in agreements with First Nations; and
 - provide recommendations on in-season modification of those plans based on monitoring results and other information provided by DFO.
 - a Monitoring and Enforcement Committee which would:

- suggest standard monitoring and enforcement provisions which could be included in agreements with individual First Nations;

- develop plans for the coordination of the monitoring and enforcement activities of Aboriginal Fishing Authorities and DFO;
- coordinate monitoring and enforcement activities in-season;
- provide information and advice to the Fisheries Planning Committee; and
- generally act as a clearing house for exchange of information between DFO and First Nation Fishing Authorities.

9. Provisions of Aboriginal Fishing Agreements and Communal Licences

a) Allocations, Designations and Monitoring

- To ensure conservation, all Aboriginal Fishing Agreements and Communal licences shall, as a minimum, contain the following provisions or terms and conditions:
 - An allocation to the Aboriginal fishery for each species or stock to be fished for which other fisheries have "limited access" or are "quota-limited"
 - Provision for the designation of individuals by the Aboriginal Fishing Authority to fish under the Agreement or Licence
 - A form of identification to be carried by all designated individuals to evidence their authority to fish
 - Provision for monitoring, by the Aboriginal Fishing Authority in co-operation with the DFO, of the catch by designated individuals sufficient to ensure that the aggregate harvest does not exceed the allocation
 - A maximum limit on the number of individuals who may be designated to fish and on the type and amount of gear to be used by those individuals

b) 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 locations to the extent necessary to coordinate fishing under the Agreement or Licence with other fishing and to ensure conservation of stocks.

c) 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.

d) Joint Technical Committees

- All groups signing Aboriginal Fishing Agreements should provide members for joint DFO-Aboriginal Technical Committees, which will be organized on a regional basis. Technical Committees will attempt to resolve issues related to the implementation of the agreements,

including co-ordination of the implementation of agreements with groups which share stocks.

10. Cooperative Management Subagreements

- AFS subagreements on the following Co-operative Management activities may be negotiated in conjunction with the negotiation of Aboriginal Fishing Agreements:
 - fishery guardian programs;
 - participation in habitat management;
 - habitat restoration;
 - fishery enhancement;
 - stock assessment and other research carried out by Aboriginal communities in co-operation with the DFO;
 - development and testing of new approaches to delivering economic benefits to Aboriginal communities through fisheries; and
 - issuance to the First Nation of a number of licences to participate in one or more commercial fisheries under the terms and conditions prevalent in that fishery, to be held and administered by the First Nation.
- Co-operative management activities may be funded in whole or in part through Contribution Agreements or contracts.

11. Designation of Individuals

- First Nations, through Aboriginal Fishing Authorities, will have discretion in designating individuals, within their membership, who may fish under their Agreements or Communal Licences.
- Designations shall be personal and non-transferable. Fishing by unauthorized persons shall be considered to be outside of the Communal Licence.
- Agreements and Communal Licences may provide for the designation of vessels to catch fish under the allocation contained in the agreement during an opening defined by area and time, consistent with any fishing plan contained in the agreement. DFO shall be notified in advance of fishing by any designated vessels.
- Aboriginal individuals who wish to fish in an area outside their historical area must be designated by an Aboriginal Fishing Authority having a communal licence to fish in the area in question. Such designation must be made under the agreement or licence with the relevant fishing authority and any fish harvested pursuant to the designation will be counted towards the allocation under its licence.

12. Control of Fishing Methods

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

13. Negotiation process

- A separate document will set out the details of the process, roles and responsibilities for negotiations under this policy during 1993.
- Negotiations of Aboriginal Fishing Agreements shall be led by the Assistant Deputy Minister (ADM), Policy and Program Planning who will delegate responsibility for negotiations to Headquarters or regional staff under defined negotiation mandates.
- All AFS agreements, including Aboriginal Fishing Agreements, must be signed by the ADM, Policy and Program Planning.
- Signed agreements will be available to the public.
- Aboriginal Fishing Coordinators will be appointed in each area. They will be responsible for ensuring that:

- an Aboriginal Fishing Agreement or Communal Licence is in place two weeks before fishing is likely to commence for the species in question;

- the First Nation and all concerned DFO staff are informed of the terms of the Agreement or Licence before the commencement of fishing; and

- all signed agreements are available to the public.

- Framework agreements under the AFS will not be required before negotiation and signing of an Aboriginal Fishing Agreement.
- Nevertheless Framework Agreements, setting out the complete range of topics to be covered in negotiating an Interim Agreement under the AFS should be negotiated with Aboriginal groups, as time and resources permit. Mandates for negotiating Framework Agreements will originate with the ADM, Policy and Program Planning.

14. Enforcement

- Subject to the terms of Aboriginal Fishing Agreements, normal enforcement procedures will apply.
- Where delay will not compromise the effectiveness of enforcement, DFO personnel shall consult with the relevant Aboriginal Fishing Authority before taking any enforcement action.
- Informal protocols on enforcement may be struck with Aboriginal Fishing Authorities, in accordance with this policy, to clarify consultation procedures.
- In all cases, DFO personnel will inform and consult with the relevant Aboriginal Fishing Authority after taking any enforcement action.

15. Native Fishery Guardians

- Fishery guardians employed by First Nations (Native Fishery Guardians) may engage in enforcement activities in accordance with Aboriginal Fishing Agreements. The authority of individuals will be set out in their designations and will be consistent with the terms of the relevant agreement and appropriate to their level of training.
- Native Fishery Guardians will not be authorized to carry weapons or use force in the course of their duties.
- Agreements will specify that Native Fishery Guardians will be prohibited from fishing while on duty.
- Enforcement protocols should be developed with Aboriginal Fishing Authorities to ensure the activities of Native Fishery Guardians and DFO Fishery Officers are fully integrated and to co-ordinate enforcement activities.
- Enforcement activities of Native Fishery Guardians should include on-the-job training with DFO Fishery Officers conducted through joint patrols.

16. Responsibilities

- Regional Directors General are responsible for the implementation of these procedures and for ensuring that all personnel involved in the management of Aboriginal fishing are properly informed, are given a copy of this policy, other relevant policies or guidelines, licences and agreements, and are performing their duties in a manner consistent with this policy and the guidelines.
- Area Managers/Directors will be responsible for ensuring that:
 - all consultation requirements set out in Aboriginal Fishing Agreements or Communal Licences within their areas are met; and
 - the activities of Native Fishery Guardians are co-ordinated with those of DFO enforcement staff to provide for effective enforcement and training, including on-the-job training through joint patrols.
- Aboriginal Fishing Co-ordinators will be responsible for:
 - issuing Communal Licences;
 - ensuring that Aboriginal Fishing Agreements or Communal Licences are in place for all First Nations in their area two weeks before fishing is likely to commence for the species in question;
 - ensuring that First Nations and all concerned DFO staff are informed of the terms of the Agreements or Licences before the commencement of fishing;
 - ensuring that all signed agreements are available to the public;
 - co-ordinating implementation of this policy within the area through consultations with the area manager/director;
 - reporting on implementation of this policy in their area to the regional aboriginal fisheries co-ordinator; and
 - maintaining written records of all consultations with First Nations.

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[Important Notices](#)