



TSAWWASSEN FIRST NATION
s'əwaθən məsteyəx^w

2009

FISHERIES, WILDLIFE
MIGRATORY BIRDS AND
RENEWABLE RESOURCES ACT

Enacted on April 3, 2009

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2009

FISHERIES, WILDLIFE, MIGRATORY BIRDS AND RENEWABLE RESOURCES ACT

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The Tsawwassen Legislature enacts as follows:

PART 1 – PRELIMINARY MATTERS

Citation

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

Definitions

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

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

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

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

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

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

Division 1 – Compliance Generally

Compliance

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

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

except in accordance with the applicable provisions of the following:

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

Division 2 – Fishing, Hunting and Renewal Resource Harvesting Licences

Fishing licence required

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

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

Hunting licence required

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

Renewable resource harvesting licence required

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

without a Tsawwassen renewable resource harvesting licence.

Right to licences

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

Issuance of licences

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

Licensing requirements

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

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

Obligation to produce licence

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

Division 3 – Licence Suspensions

Suspension

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

Notice of licence suspension

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

Prohibition against harvesting during licence suspension

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

Compliance with Tsawwassen plans and agreements

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

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

Sale of fish or aquatic plants

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

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

Sale of wildlife

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

Sale of migratory birds

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

Division 5 – Trade and Barter

Trade and barter of fish or aquatic plants

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

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

Trade and barter of wildlife

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

Trade and barter of migratory birds

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

Transporting unidentified wildlife or migratory birds outside Tsawwassen Lands

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

Trade or barter of renewable resources

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

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

Transport and export of plants and other renewable resources

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

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

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

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

Division 1 – Manager and Resource Management Officers

Manager's appointment and responsibilities

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

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

Manager's administrative functions and duties

26 The manager

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

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

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

Appointment of Tsawwassen resource management officers

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

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

Division 2 – Provision of Harvesting Opportunities

Regulations respecting harvesting opportunities

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

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

Advisory committee

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

Manager's responsibilities respecting harvesting opportunities

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

Allocation of Fraser salmon

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

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

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

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

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

PART 4 – JOINT MANAGEMENT

Tsawwassen representation on Joint Fisheries Committee

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

Tsawwassen harvest and gathering plans

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

PART 5 – OFFENCES AND RIGHT OF REVIEW

Offences and penalties

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

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

Repeat offences

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

Offences created by regulation

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

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

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

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

PART 6 – REGULATIONS, TRANSITION AND COMMENCEMENT

Regulations

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

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

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

- (a) respecting Tsawwassen fishing licences, Tsawwassen commercial fishing licences, Tsawwassen hunting licences and Tsawwassen renewable resource harvesting licences, in this section called “licences” including but not limited to regulations
 - (i) prescribing fees for applications for licences or for their issuance,
 - (ii) respecting the form and content of
 - (A) applications for licences, and
 - (B) licences,
 - (iii) requiring applicants for licences to provide, at the time of application or before issuance of them, specified information or documentation pertaining to them,
 - (iv) prescribing conditions and restrictions applicable in respect of licences,
 - (v) specifying the terms of licences,
 - (vi) respecting the suspension of licences,
 - (vii) prescribing the procedure for suspending licences and the effect of suspensions,
 - (viii) respecting the issuance of Tsawwassen fishing licences to persons who are not Tsawwassen Members, and
 - (ix) respecting the amendment or correction of licences;
- (b) prescribing requirements respecting the methods, timing and locations of
 - (i) harvesting in Tsawwassen fisheries;
 - (ii) harvesting of wildlife and migratory birds;
- (c) delegating to the manager the discretion to vary the requirements prescribed under paragraph (c) to suit the circumstances of a particular case;
- (d) respecting the distribution among Tsawwassen Members of
 - (i) fish and aquatic plants harvested under the Tsawwassen fishing right or under the harvest agreement, and
 - (ii) wildlife harvested under the Tsawwassen right to harvest wildlife;
- (e) the designation of individuals and vessels to harvest
 - (i) fish and aquatic plants under the Tsawwassen fishing right or under the harvest agreement, or
 - (ii) wildlife under the Tsawwassen right to harvest wildlife;
- (f) the designation of individuals to harvest fish and aquatic plants under
 - (i) fishing licences, or
 - (ii) harvest documentsthat are issued to Tsawwassen First Nation by the Minister;
- (g) respecting the licensing of

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

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

Transitional

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

Interpretation

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

Commencement

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