

## COMPREHENSIVE FISHERIES AGREEMENT

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

AND: Heiltsuk Tribal Council, also known as Heiltsuk Indian Band, for and on behalf of the Constituents listed in section 2 of the Agreement

Signed on: Dec. 9, 2009

Duration: April 1, 2009 to March 31, 2010

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## COMPREHENSIVE FISHERIES AGREEMENT

This Comprehensive 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: Heiltsuk Tribal Council, also known as Heiltsuk Indian Band, for and on behalf of the Constituents listed in section 2 of the Agreement (hereinafter called the "HTC")

OF THE SECOND PART

WHEREAS existing Aboriginal and treaty rights are recognized and affirmed in section 35(1) of the *Constitution Act*, 1982;

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

AND WHEREAS in entering into this Agreement, the Parties are not seeking to determine the existence, nature or scope of Aboriginal or treaty rights but rather are seeking to provide for the orderly management of the fisheries and the involvement of the HTC in the management, protection and enhancement of fisheries resources and fish habitat in the Area;

AND WHEREAS the Parties confirm their commitment to a relationship built on mutual respect and understanding;

NOW THEREFORE the Parties agree as follows:

### **Purpose**

1. The purpose of this Agreement is to provide for the orderly management, protection and enhancement of fisheries resources and fish habitat in the Area.

### **Definition**

2. In this Agreement:

'Aboriginal Affairs Advisor' means a DFO manager having responsibilities that are focused on Aboriginal issues;

'AFS' means the Aboriginal Fisheries Strategy administered by DFO;

'Agreement' means this Agreement, including the Schedules and Appendices attached to it;

'C&P' means the Conservation and Protection sector of DFO;

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'Capital Acquisition' is a tangible asset that is purchased, constructed, developed or otherwise acquired by the HTC with AFS funding, at a price of FIVE HUNDRED DOLLARS (\$500.00) or more before taxes, having a useful life extending beyond one Fiscal Year and is intended to be used for the purpose of carrying out projects agreed to by the Parties;

'Clam Licence' means the communal fishing licence for the harvesting of manila and littleneck clams referred to in Part Two of Schedule C-1;

'Communal Commercial Licence' means any communal fishing licence referred to in Schedule C-1;

'Communal Licence' means any communal fishing licence referred to in Schedule B-1 and Schedule C-1;

'Constituents' means the following bands which are represented by the HTC:

- (i) Xixix [pronounced: Hyhisc];
- (ii) Qvuqvayaitxv [pronounced: Koqwait];
- (iii) Wuixitxv [pronounced: Oowheetleetoh];
- (iv) Wuyaliyxv [pronounced: Oowalito];
- (v) Xisdaitxv [pronounced: Eestait]; and
- (vi) Kviaitxv [pronounced: Koeye];

'Contribution' means a Contribution referred to in subsection 5(c);

'Designated Groundfish Dockside Observer' means an individual designated pursuant to section 39 of the *Fishery (General) Regulations* to monitor the landing of groundfish and the verification of weight, pieces and species of groundfish caught and retained, as referred to in Schedule B-1;

'Dual Fishing' means fishing for and retaining fish under the authority of a licence issued under the *Pacific Fishery Regulations, 1993* (a "Commercial Groundfish Licence") and under this licence on the same fishing trip, as referred to in Schedule B-1;

'Dual Fishing Designation Certificate' means a document issued by the First Nation to fish groundfish under the authority of this licence that designates the vessel master and the commercial fishing vessel that may be used, as referred to in Schedule B-1;

'Eligible Costs' means costs described in Appendix 1 to Schedule F-1 and approved by DFO that are incurred by and are paid or payable by the HTC during the Fiscal Year in carrying out the Project, but does not include any Goods and Services Tax (GST) or Harmonized Sales Tax (HST) paid in relation to those costs for which the HTC may claim reimbursement or exemption;

'Existing Canadian Processors' means provincially-licensed fish processing facilities and provincially-licensed fish buyers;

'Final report' means a report provided by the HTC in accordance with subsections 10(a) and 10(b) of Schedule F-1;

'Fiscal Year' means the twelve-month period beginning with April 1 of a year and ending with March 31 of the next year;

'Fishery Enforcement Officer' means a person designated as a fishery officer or fishery guardian under section 5 of the *Fisheries Act*, R.S.C. 1985, c. F-14 and may include a fishery officer, Aboriginal fisheries officer, RCMP officer, conservation officer and an Aboriginal Fisheries Guardian;

'FSC Fishery' means the food, social and ceremonial fishery described in Schedule B-1;

'Heiltsuk Fishery Monitor' means a Heiltsuk Indian Band employee appointed by the HTC to monitor clam harvesting activities related to Part Two of Schedule C-1;

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'HTC Food Fishery Card' means a designation card issued by the HTC;

'Interim Report' means a report provided by the HTC in accordance with subsections 8(a) and 8(b) of Schedule F-1;

'Minister' means the Minister of Fisheries and Oceans;

'Month' means a calendar month or part of a calendar month;

'Participant' means a Heiltsuk Indian Band member referred to in subsection 4 of Schedule C-1 who is designated by the HTC to participate in the clam fishery;

'Project' means the activities conducted by the HTC as described in Schedule G-1;

'RDG' means the Regional Director General of DFO;

'Schedule' means a Schedule to this Agreement and any attached Appendices; and

'Unique Identification Number' means a unique number the aboriginal organization assigned to a dual fishing designation certificate to differentiate it from any other dual fishing designation certificates it may issue, as referred to in Schedule B-1;

'Vessel' means a vessel no longer than 30 feet or a vessel equipped with commercial fishing gear referred to in Schedule C-1; and

'Vessel Master' means the Captain or Skipper, or any person having charge of the commercial fishing vessel, as referred to in Schedule B-1.

### Interpretation

3. This Agreement:

- (i) does not, and is not intended to, define or extinguish any Aboriginal or treaty rights and is not evidence of the nature or extent of any Aboriginal or treaty rights;
- (ii) is made without prejudice to the positions taken by either Party with respect to Aboriginal or treaty rights;
- (iii) is not a land claims agreement or treaty within the meaning of section 35 of the *Constitution Act, 1982*; and
- (iv) does not affect any Aboriginal or treaty rights of any other Aboriginal group.

### Schedules

4(a) The following Schedules form part of this Agreement:

Schedule A	Area (where the fisheries and Project take place)
Schedule B-1	Food, Social and Ceremonial Fishery
Schedule C-1	Communal Commercial Fisheries Access
Schedule D-1	Joint Technical Advisory Committee
Schedule F-1	Contribution
Schedule G-1	Project Summary

4(b) This Agreement may be amended to add a schedule not originally included or, in the case of a multi-year Agreement, to add a new schedule for the subsequent year. This Schedule will bear the same letter as the schedule to which it relates and will be numbered in chronological order (e.g. "Schedule B-2"). A reference to Schedule B, C, D, E, F or G

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means Schedule B-1, C-1, D-1, E-1, F-1 or G-1 and any schedules that have been added to this Agreement and bear the same letter.

### **Cooperative Management, Allocation Transfer Program, and Funding**

- 5(a) The Parties agree to comply with the provisions of this Agreement, including provisions pertaining to the Contribution described in Schedule F-1, and will work together in good faith to implement this Agreement and to share information pertinent to the management of the fisheries.
- 5(b) In accordance to section 40 of the *Financial Administration Act*, R.S.C. 1985, c. F-11, payment under this Agreement is subject to there being an appropriation for the Fiscal Year in which any commitment under this Agreement would come due for payment, and payments will be terminated or reduced in the event funds are not available in the fiscal year in which payment is to be made.
- 5(c) Subject to subsections 5(b), and 5(d) to 5(f), DFO will, in Fiscal Year 2009-2010, provide a Contribution in the amount of up to TWO HUNDRED AND THIRTY-EIGHT THOUSAND, SEVEN HUNDRED AND SIXTY-NINE DOLLARS AND THIRTY-THREE CENTS (\$238,769.33) to the HTC to help finance the Project. A Contribution may consist of money and other forms of assistance.
- 5(d) DFO will not provide the Contribution referred to in subsection 5(c) for a Fiscal Year until after DFO and the HTC agree upon the portion of the Contribution that will consist of money and the nature and value of the other forms of Contribution to be provided in the Fiscal Year, and the Project to which the Contribution will be applied.
- 5(e) Expenditures to be reimbursed by the financial Contribution referred to in subsection 5(c) must be incurred in the Fiscal Year in which that financial Contribution is provided.
- 5(f) Where the Parties agree, any amount of money that DFO provides under this Agreement, to help finance the Project activities, will decrease if economic opportunities under the Allocation Transfer Program are provided.

### **Debts Owning the Crown**

6. The HTC must declare if any amounts are owing to the federal government under legislation or other contribution agreements. Such amounts owing to the government may be set off against payments due under this Agreement.

### **Confidentiality**

7. Subject to subsection 13(b), DFO will respect the confidentiality of any information provided to, or shared with, DFO in confidence.

### **Technical Standards**

8. Any activities carried out by or on behalf of the HTC and any members of the HTC under this Agreement will be carried out in accordance with standards established jointly by the Parties.

### **No Employee Relationship, Agency Relationship or Assignment**

- 9(a) Nothing in this Agreement, nor any acts of the HTC or a Constituent or of DFO, will constitute or be deemed to constitute DFO as the employer of any member of HTC or a Constituent carrying out activities as described in this Agreement.

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- 9(b) Nothing in this Agreement, nor any acts of the HTC or a Constituent or of DFO, will constitute or be deemed to constitute the HTC or a Constituent as an agent of DFO or DFO as an agent of the HTC or a Constituent.
- 9(c) Neither Party will at any time hold itself out as acting as an agent of the other Party.
- 9(d) The HTC will not assign this Agreement or any part of it.
- 9(e) The HTC will have no claim on Her Majesty the Queen in Right of Canada related to any loan, capital lease or long-term obligation it enters into in relation to this Agreement.

#### **Conflict of Interest**

- 10(a) No member of the House of Commons will be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
- 10(b) No individual for whom the post-employment provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders*, or the *Values and Ethics Code for the Public Service* apply, will derive any direct benefit from this Agreement unless that individual is in compliance with the applicable post-employment provisions. The HTC will disclose to DFO any individual it intends to hire or remunerate who was formerly or is presently a federal public servant.

#### **Lobbyist Registration**

11. The HTC will ensure that any person lobbying on its behalf is registered under the *Lobbyists Registration Act*, R.S.C. 1985, c. 44 (4th supp.).

#### **Indemnification and Insurance**

- 12(a) Where the HTC enters into a loan, capital lease, contract or long-term obligation in relation to the Project or any part of the Project, the HTC assumes all responsibility, liability and risk arising out of, or related to, either directly or indirectly, the loan, capital lease, contract or long term obligation. DFO, in reviewing any loan, capital lease, contract or long-term obligation entered into by the HTC is not making any representations to the HTC or any third party nor assuming any responsibility for the loan, capital lease, contract or long-term obligation and the HTC remains entirely responsible for loans, capital leases, contracts or long-term obligations entered into by it in relation to the Project or any part of the Project.
- 12(b) The HTC will indemnify and save harmless Her Majesty the Queen in Right of Canada, and her Ministers, officers, employees and agents from and against all claims, demands, costs (including legal costs), losses, damages, actions, suits and proceedings, by whomsoever brought or prosecuted, caused by or related to any act or omission of the HTC or any of its Constituents, its officers, members, employees, agents, contractors, or anyone for whom the HTC or any one of its Constituents is responsible in law or any or all of them, in carrying out this Agreement or any part of it.
- 12(c) The HTC will purchase, provide and maintain insurance, including third-party liability insurance, suitable to its own requirements and to the activities carried out by it, its Constituents, the members of a Constituent, or anyone for whom it or one of the Constituents is responsible for in law, under this Agreement. The HTC is responsible for all short and long term disability insurance and all other operating, training, salary and benefit costs for its employees.

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### Acts and Regulations

- 13(a) Where the Project, or any part of it requires an environmental assessment under the *Canadian Environmental Assessment Act*, S.C. 1992, c.37, DFO will fulfill its responsibilities under the *Canadian Environmental Assessment Act* before any advances, reimbursements or payments can be made under this Agreement. Should the Project, or any part of it, change after the environmental assessment is completed, the HTC will immediately provide DFO with a detailed description of the changed Project. If this changed Project description meets with DFO's approval and the changed Project requires an environmental assessment under the *Canadian Environmental Assessment Act*, DFO will fulfill its responsibilities under the *Canadian Environmental Assessment Act* before any advances, reimbursements or payments can be made under this Agreement.
- 13(b) Any information to be provided by or to DFO or shared by or with DFO under this Agreement will be subject to the *Access to Information Act*, R.S.C. 1985, c. A-1, and the *Privacy Act*, R.S.C. 1985, c. P-21.
- 13(c) Where the HTC carries out activities under this Agreement, the HTC will comply with the *Fisheries Act* and regulations and will ensure that any authorizations required under subsection 35(2) of the *Fisheries Act*, and any other authorization required by law, are obtained prior to the commencement of any activities. The HTC will also ensure that the activities are conducted in accordance with those authorizations.
- 13(d) Nothing in this Agreement affects any applicable federal or provincial requirement with respect to the conservation and protection of fish and fish habitat or to the processing of fish.
- 13(e) Nothing in this Agreement affects any applicable federal requirement under the *Species at Risk Act*, S.C. 2002, c.29.

### Amendment

14. The Parties may amend this Agreement but such amendment will have no force or effect unless made in writing and signed by both Parties.

### Effect, Duration and Termination

- 15(a) This Agreement sets out the entire agreement and understanding between both Parties.
- 15(b) This Agreement will replace all other understandings and agreements between the Parties with respect to the matters addressed by this Agreement.
- 15(c) The obligations of the HTC under subsection 12(a) and 12(b) will survive the termination of this Agreement
- 15(d) This Agreement will come into force on execution by both Parties and, subject to subsections 15(e) to 15(g), will terminate on March 31, 2010, or on the date this Agreement is replaced by a treaty, whichever is earlier.
- 15(e) This Agreement or a Schedule to this Agreement, may be terminated by either Party on sixty (60) days notice in writing to that effect given to the other Party.
- 15(f) Notwithstanding subsection 15(e), this Agreement, or a Schedule to it, may be terminated for non-compliance with this Agreement or the Schedule immediately on notice in writing to that effect given to the other Party.
- 15(g) A Constituent may advise DFO that the HTC no longer acts for and on behalf of the Constituent by sending a notice in writing to that effect to DFO. Where DFO receives such notice, DFO will meet with the HTC and the Constituent giving notice. After meeting, the Parties may amend this Agreement or, notwithstanding subsection 15(e),

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DFO may terminate this Agreement immediately on notice in writing to that effect to the HTC.

### Issue Resolution

- 16(a) If any issue arises under this Agreement that is not readily resolved by the Parties, the immediate supervisor of the representative from the Party raising the issue will provide a written description of the issue to the immediate supervisor of the representative of the other Party. The supervisors will attempt, in a timely manner, to resolve the issue.
- 16(b) If the issue remains unresolved, DFO's local area Resource Manager, Assistant Resource Manager or other staff member responsible for implementation of this Agreement, will be provided with the written description of the issue and will meet with the Parties' field representatives to attempt to resolve the issue.
- 16(c) If the issue remains unresolved, and a Joint Technical Advisory Committee or an Implementation Committee exists, the Parties will arrange a meeting with the Committee and the local Aboriginal Affairs Advisor for the area, to attempt to resolve the issue.
- 16(d) If the issue remains unresolved, the local Aboriginal Affairs Advisor will discuss the matter with the responsible DFO managers and the DFO staff directly involved, and will arrange to meet with senior representatives of the HTC to attempt to resolve the issue.
- 16(e) If the issue remains unresolved, the Parties may refer the matter, with written details, to the RDG for review. Representatives of the HTC will have an opportunity to meet directly with the RDG to discuss the issue if they wish. On completion of the review, the RDG will notify the HTC in writing of the RDG's decision and the reason(s) for the decision.
- 16(f) At any point prior to referring the issue to the RDG, the Parties may agree to seek the services of a mediator or facilitator to assist in resolving the issue. Costs for the mediator or facilitator will be shared equally by the Parties.
- 16(g) After the fishing season, the Parties may review any issues dealt with through this issue resolution process and document any recommendations for resolving similar issues in a more effective way. The Joint Technical Advisory Committee or Implementation Committee, if one exists, may be used to assist in this final step.

### Notices and Representatives

- 17(a) Except as otherwise provided in this Agreement, where any notice, request, information or other communication is required under this Agreement, it will be in writing and delivered personally, by courier, regular mail, e-mail or facsimile and will be addressed to the Party at the address or number set out below:

To DFO:

Department of Fisheries and Oceans  
Treaty and Aboriginal Policy Directorate, Room 1230  
#200 – 401 Burrard Street  
Vancouver, BC  
V6C 3S4

Attention: Manager  
Aboriginal Fisheries Strategy

Telephone: (604) 666 8385  
Facsimile: (604) 666 2336

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To HTC:

Heiltsuk Tribal Council  
Box 880  
Waglisla, BC  
V0T 1Z0

Attention: Marilyn Slett, Chief

Telephone: (250) 957-2381

Facsimile: (250) 957-2544

- 17(b) A notice, request, direction, information or other communication will be deemed to have received the following business day if sent by courier, e-mail, facsimile or delivered in person, or five days after the posting if sent by regular mail.
- 17(c) A Party may change its representative, address or telephone or facsimile number by giving written notice of the change to the other Party.

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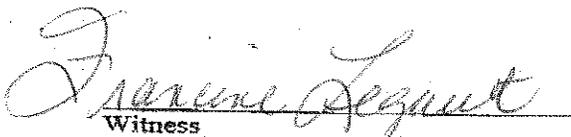
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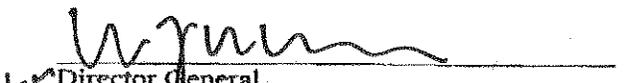
**Ratification**

- 18(a) The HTC warrants that the representative who executes this Agreement on behalf of the HTC has authority to bind the members of the HTC and its Constituents.
- 18(b) The representative who executes this Agreement on behalf of DFO has authority to enter into this Agreement on behalf of, and to bind, DFO.
- 18(c) Execution of this Agreement by the representative referred to in subsection 18(a) constitutes ratification of this Agreement by the HTC and its Constituents.
- 18(d) The HTC will inform its Constituents of the contents of this Agreement and will provide members with a copy of this Agreement upon request.

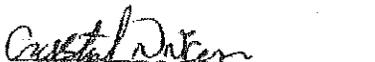
IN WITNESS WHEREOF the Parties have executed this Agreement under the hands of their proper officers duly authorized on their behalf this 9 day of Dec, 2009.

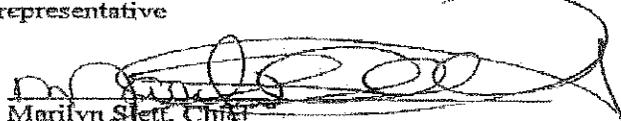
Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans by Director General, Aboriginal Policy and Governance Branch

  
Witness

  
Director General  
Aboriginal Policy and Governance Branch  
Department of Fisheries and Oceans 8-12-09

Heiltsuk Tribal Council by its duly authorized representative

  
Witness

  
Marilyn Stett, Chief

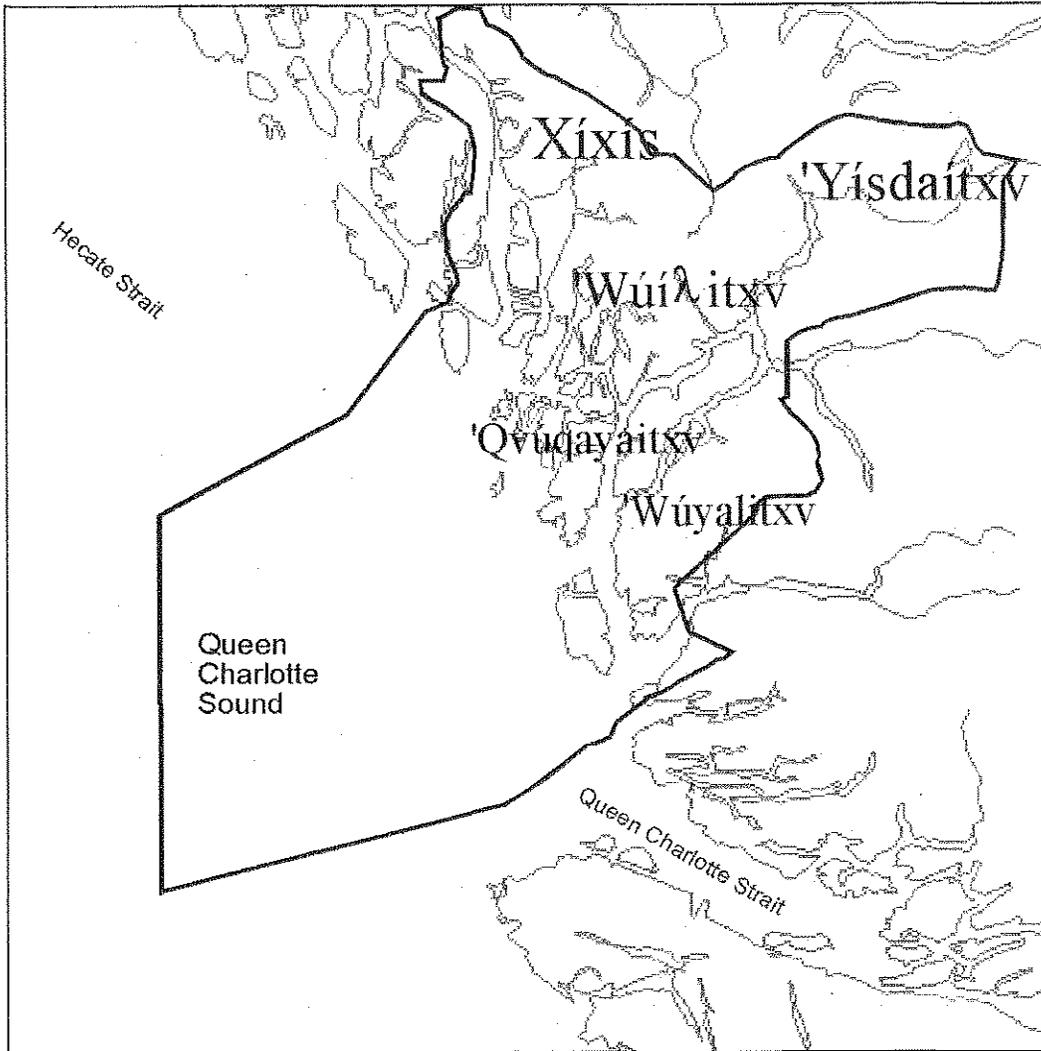
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### SCHEDULE A

#### Area

(Where the fisheries and Project take place)



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## SCHEDULE B-1

### Food, Social and Ceremonial Fishery

#### Species and Quantity

- 1(a) The HTC may fish for the following species in the quantities set out in Appendix 1:
- (i) salmon;
  - (ii) groundfish;
  - (iii) shellfish; and
  - (iv) herring spawn-on-seaplants or boughs.
- 1(b) Any quantity of each species of fish set out in subsection 1(a) and Appendix 1 and the Communal Licence includes any fish of that species taken as by-catch where fishing is directed against any other species of fish.

#### Fishing Plan

- 2(a) DFO agrees to manage the various fisheries, based on the principle of Aboriginal fisheries having highest priority of access after conservation, with the goal of providing the HTC with a reasonable opportunity to catch the fish set out in subsection 1(a) and Appendix 1 in accordance with this Schedule.
- 2(b) The quantity, gear, dates and times, and area provisions for fishing under the Communal Licence may occur are as set out in Appendix 1.
- 2(c) The RDG may, by order, vary the waters in which, or the dates and times on which, a designated person may fish.
- 2(d) DFO may, for the purposes of conservation and protection of fish, amend the conditions of the Communal Licence.
- 2(e) No variations or amendments described in subsections 2(c) and 2(d) will be implemented unless DFO has first consulted with the HTC, except where circumstances require immediate action, in which case DFO will meet with the HTC at the first available opportunity, to discuss the reasons for the action taken.
- 2(f) Where DFO and the HTC have entered into a consultation protocol, the Parties agree to follow the procedures outlined in the protocol.
- 2(g) The Parties have developed a monitoring and enforcement protocol, attached as Appendix 2 to assist them in conducting monitoring and enforcement activities pursuant to this Agreement.

#### Disposition of Fish

- 3(a) The HTC agrees that the fish referred to in subsection 1(a) are for food, social and ceremonial purposes and may not be sold, traded or bartered.
- 3(b) For greater certainty, subsection 3(a) does not preclude the traditional exchange or distribution of fish or fish products within and between Aboriginal people and Aboriginal communities.

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### Licensing

- 4(a) For management purposes, DFO will issue to the HTC a Communal Licence to catch the species and quantity of fish that will reflect the provisions outlined in this Schedule. The Communal Licence may be issued as one or more licences relating to a particular species, area or period of time.
- 4(b) During the term of this Agreement, the HTC agrees to manage fishing by its members to fishing as set out in this Schedule and the rest of this Agreement. In the event that the HTC identifies an increase in the food, social and ceremonial needs of its members, during the fishing season, the Parties will review the quantities specified in the Communal Licence issued to the HTC and, if agreed by the Parties, DFO will amend the Communal Licence. The quantities of fish reflected in the Communal Licence are subject to consultation each year, at which time the needs of the members of the HTC and conservation requirements will be reviewed by the Parties.
- 4(c) Notwithstanding subsection 4(b), nothing in this Schedule or the Communal Licence will prevent the HTC from fishing under the authority of any other licence issued under the *Fisheries Act* and regulations.

### Designation to Fish

- 5(a) The HTC will designate all members of the HTC who may fish in the FSC Fishery by issuing each designated person a designation document.
- 5(b) If the HTC chooses to designate additional persons to fish in the FSC Fishery, it will issue such persons a designation document. Each document will be personal and non-transferable and will bear a unique number and the name of the person designated. The HTC will notify DFO of any additional people designated to fish prior to commencement of the time the additionally designated people can commence fishing.
- 5(c) No person other than a designated person may participate in the FSC Fishery.
- 5(d) HTC will designate vessels that may be used to fish in the FSC Fishery by issuing designation documents to each vessel. Each document will be non-transferable and will bear a unique document number, the name of the vessel designated and the vessel registration number. The HTC will provide such information to DFO before the vessel is used in the FSC Fishery. No vessel other than a designated vessel will be used in the FSC Fishery.

### Withdrawal of Designation and Amendments

- 6(a) The HTC may withdraw or amend the designation of a person who was designated to fish in the FSC Fishery and will notify DFO in writing that the person is no longer designated, or how the person's designation has been amended. Once the notification in writing is provided to DFO, the persons named are not designated to fish in the FSC Fishery or the person's designation is amended as indicated in the notification.
- 6(b) The HTC may amend the information referred to in subsections 5(c) and will provide any amendments to DFO before any newly designated vessels fish in the FSC Fishery.

### Management Responsibility of HTC

- 7(a) A person participating in the FSC Fishery will carry a designation document at all times while engaging in fishing or any other activity referred to in this Schedule, including the harvesting, transporting and landing of fish, and will present the documentation to a Fishery Enforcement Officer upon request.

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- 7(b) The HTC will notify each person designated to participate in the FSC Fishery of the provisions of this Schedule, the conditions of the Communal Licence and any amendments to the Communal Licence, including the provision that the fish harvested are not for sale, trade or barter.
- 7(c) The HTC will provide a copy of this Agreement, the Communal Licence and any amendments to the Communal Licence to any fisheries management or enforcement staff it has.
- 7(d) Before the fishing described in this Schedule commences, the HTC will provide to DFO:
- (i) a list of the names of the members of the HTC who have documentation establishing membership with the HTC, but who nevertheless are not designated to fish; and
  - (ii) a list of the names of all additional persons designated to fish pursuant to subsection 5(b), together with their designation document number.

**Costs**

8. The HTC is responsible for all costs associated with fishing and monitoring activities referred to in this Schedule.

**Other Species**

9. Nothing in this Schedule precludes the Parties from entering into negotiations on harvesting fish species other than those referred to in this Schedule.

**Coming into Force**

10. This Schedule will come into force as of April 1, 2009, and, subject to section 15 of the Agreement, will terminate on March 31, 2010.

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## Appendix 1 to Schedule B-1

### General Conditions of Communal Licences

1. Without limiting the generality of any other provision in this Schedule, and subject to subsection 2(d) of Schedule B-1, no fishing referred to in this Schedule shall be carried out under the Communal Licence, other than in accordance with the following conditions:

**(a) Area, Species, Quantity, Dates, Times, Gear and Gear Identification:**

Subject to amendments to the conditions of this licence and subject to close times as may be varied by the Director-General, Pacific Region, DFO in accordance with the *Fishery (General) Regulations*, a species of fish set out in a schedule to this licence may be harvested under this licence,

- (a) in the maximum specified quantities,
- (b) during the specified dates and times,
- (c) with the specified gear, identified or marked in accordance with the specified method,
- (d) at the specified locations, and
- (e) in accordance with the other conditions,

set out in that schedule.

Subject to closures and other conditions of this licence, the authority to fish each species set out in a schedule will expire on the date specified in that schedule or earlier if DFO, after consultation with the HTC, has determined that the maximum quantity for the species has been reached.

This licence is for a maximum quantity for the term of this licence, for management purposes only, and is without prejudice to maximum quantities in future years. Should the HTC reach their maximum specified quantities and require more, DFO will enter into discussions with the HTC on the fish species they require.

**(b) Use of Fish:**

Fish caught under this licence are for food, social and ceremonial purposes. Without prejudice to future agreements or regulations, sale of Fish caught under this licence is not permitted.

**(c) Designation of Individuals:**

All members of the Heiltsuk Tribal Council who are issued a designation certificate from the Heiltsuk Co-management Office are designated to fish under the authority of this licence. The Heiltsuk Tribal Council may designate additional persons to fish under this licence by issuing to them a designation certificate.

Each designation certificate will bear a unique number and contain details of this licence, including:

- (a) Name of designated participant,
- (b) The species which may be caught,
- (c) Harvesting times,
- (d) Maximum quantity,
- (e) Fishing gear,
- (f) Fishing areas, and
- (g) Reporting requirements.

Before fishing under this licence commences, the HTC will provide the C&P Supervisor, DFO Conservation & Protection, in Bella Bella (phone: 250-957-

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2363 and fax: 250-957-2767) with a list of the persons designated to harvest and their designation certificate number.

Proof of designation must be carried at all times by designated persons while participating in the Fishery and transporting product harvested in the Fishery. Proof of designation must be presented to any Fishery Officer or Fishery Guardian on request. Designations are personal and non-transferable.

The HTC may designate persons to transport Fish harvested under the authority of this licence. The HTC will issue each person so designated with a transport permit that will contain:

- (a) The name of the person(s) transporting the Fish,
- (b) The quantity and species to be transported,
- (c) The date of transport (departure and arrival),
- (d) The destination of the product,
- (e) The vehicle and vehicle licence plate number or the vessel name and the Canadian Fishing Vessel (CFV) Licence number or Ministry of Transportation number, and
- (f) The names of the individuals receiving the product, and the amounts thereof.

Before transporting under this licence commences, the HTC will provide the C&P Supervisor, DFO Conservation & Protection, in Bella Bella (phone: 250-957-2363 and fax: 250-957-2767) with a list of the persons designated to transport and their transport permit number.

Transport permits must be carried at all times by designated persons transporting product harvested in the Fishery. Transport permits must be presented to any Fishery Officer or Fishery Guardian on request. Transport permits are personal and non-transferable.

**(d) Designation of Vessels:**

If a person designated to fish intends to use a Vessel to participate in the Fishery, the HTC must designate the Vessel in writing and notify the C&P Supervisor, DFO Conservation & Protection, in Bella Bella (phone: 250-957-2363 and fax: 250-957-2767) at least 24 hours prior to using Vessel in the Fishery. The Vessel designation certificate must set out the fishing times, areas, and gear authorised by this licence.

The Vessel designation certificate must be carried on the Vessel at all times while the Vessel is being used in the Fishery or while transporting Fish harvested in the Fishery. Proof of Vessel designation must be presented to any Fishery Officer or Fishery Guardian by the operator of the Vessel on request.

Commercial fishing vessels participating in the Fishery must be available for inspection prior to engaging in a commercial fishery.

Where a commercial fishing vessel is used to harvest Fish under the authority of this licence, Fish harvested must be landed prior to the commercial fishing vessel participating in a commercial fishery opening for the same species.

**(e) Monitoring and Harvest Reporting:**

Catch monitoring will be conducted by DFO and the HTC. The HTC will keep a record of all harvests under this licence and will provide such information to the following DFO contacts:

**Salmon:** Where, during a week, salmon fishing is carried out under this licence, the HTC will keep a weekly and running total by species of the number of salmon harvested and the area and method of harvest. The HTC shall provide Kristen Smith, DFO Resource

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Manager, in Bella Coola (phone: 250-799-5345 and fax: 250-799-5540) with information on a weekly basis on Monday of the following week, and at the end of the fishery.

**Herring:** Where, during a week, herring fishing is carried out under this licence, the HTC will keep a record of the total harvested, tons of herring, pounds of spawn on kelp or boughs, plus the area and method of harvest. The HTC shall provide Kristen Smith, DFO Resource Manager, in Bella Coola (phone: 250-799-5345 and fax: 250-799-5540) with information by May 15, 2009.

**Groundfish:** The HTC will provide the number of pounds of halibut, sablefish and other groundfish by species to Kristen Smith, DFO Resource Manager, in Bella Coola (phone: 250-799-5345 and fax: 250-799-5540), on a quarterly basis (every 3 months). For better management purposes, it is requested that the other groundfish be recorded under the following categories: lingcod, flatfish, yellow-eye rockfish (red snapper), and "other" rockfish.

**Shellfish:** The HTC will provide the number of pounds of shellfish by species to Kristen Smith, DFO Resource Manager, in Bella Coola (phone: 250-799-5345 and fax: 250-799-5540), on a quarterly basis (every 3 months).

**(f) Other Provisions:**

Pursuant to subsection 22(6) of the *Fishery (General) Regulations*, compliance with the *Fisheries Act* and the regulations made under the Act is a condition of this licence.

**SALMON**

**Species Quantity:**

This licence authorizes fishing for the following species and quantities:

Sockeye ( <i>Oncorhynchus nerka</i> )	20,000 pieces
Coho ( <i>Oncorhynchus kisutch</i> )	3,000 pieces
Pink ( <i>Oncorhynchus gorbuscha</i> )	6,000 pieces
Chum ( <i>Oncorhynchus keta</i> )	6,000 pieces
Chinook ( <i>Oncorhynchus tshawytscha</i> )	2,000 pieces

during the term of this licence.

**Gear and Gear Identification:**

The following gear is permitted to be used:

- (a) Gill nets, on condition that they are marked at both ends with a floating buoy clearly marked with name of the participant and the HTC.
- (b) Hook and line, and
- (c) Seine.

**Dates and Times:**

Fishing is authorized by this licence  
from 00:01 hours March 1, 2009 to 23:59 hours February 28, 2010.

**Area:**

Fishing is permitted in the following area:  
Management Areas 7 and 8.

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**Other Provisions:**

A commercial fishing vessel shall not be used to fish under authority of this licence for salmon:

- a) six (6) hours prior to that vessel being used to fish for salmon under the authority of a commercial licence;
- b) while that vessel is being used to fish for salmon under the authority of a commercial licence; or
- c) twelve (12) hours after that vessel has been used to fish for salmon under the authority of a commercial licence.

**GROUND FISH****Species Quantity:**

The fishery is limited to those species of fish listed in Part I of Schedule I of the *Pacific Fishery Regulations, 1993*, excluding salmon and herring.

This licence authorizes fishing for the following species and quantities:

Halibut	22,000 pounds
Sablefish	7,300 pounds
Groundfish: other than Halibut and Sablefish	22,000 pounds

during the term of this licence.

**Gear and Gear Identification:**

The following gear may be used:

- (a) Hook and line, and where long line gear is used, the line must be marked at both ends with a floating buoy clearly marked with the name of the participant and the HTC;
- (b) Traps, subject to the following conditions:
  - (i) All individual traps must be marked with a floating buoy clearly marked with the name of the participant and the HTC.
  - (ii) Where a number of traps are set on a line, the line must be marked at both ends with a floating buoy clearly marked with the name of the participant and the HTC.

**Dates and Times:**

Fishing is authorized by this licence

from 00:01 hours March 1, 2009, to 23:59 hours February 28, 2010.

**Area:**

Fishing is permitted in the following area:

Management Areas 7 and 8.

**Other Provisions:**

1. The First Nation may engage in dual fishing only if the following conditions are met:
  - a) The First Nation designates the vessel master and the commercial fishing vessel, in accordance with the *Aboriginal Communal Fishing Licences Regulations*, to catch and retain groundfish under the authority of this licence.
  - b) The First Nation issues a dual fishing designation certificate to the vessel master prior to the commercial fishing vessel participating in a commercial groundfish fishing trip. The dual fishing designation certificate must include:
    - i. the name of the vessel master and commercial fishing vessel;

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- ii. the start and end date of the groundfish fishing trip;
- iii. the amount of groundfish by species the commercial fishing vessel may land under the authority of this licence during the fishing trip;
- iv. the licence number of this licence;
- v. the name of the aboriginal organization that issued the dual fishing designation certificate, and
- vi. the unique identification number of the dual fishing designation certificate.

2. While dual fishing under this licence:

- a) Subject to subsection 2(b), all fish taken when fishing under the authority of this licence and a Commercial Groundfish Licence must be landed at the same time and must be validated by the designated groundfish dockside service provider;
- b) The First Nation may request that fish taken under the authority of this licence be landed at a different time and location from the fish caught under the authority of the Commercial Groundfish Licence if a fishery guardian, a fisheries representative designated by the First Nation or a designated groundfish dockside observer monitors the landing of groundfish and the verification of weight, pieces and species of groundfish caught and retained;
- c) The designated groundfish dockside observer, fishery guardian or fisheries representative designated by the First Nation, as the case may be, must record landed catch information by weight, species and piece count, the name of the commercial fishing vessel, the vessel master and the dual fishing designation certificate unique identification number to the First Nation and to the DFO Groundfish Management Unit at 604-666-8525 (fax) within seven days of the validation;
- d) Fishing under the authority of this licence must occur in the area where this licence authorizes fishing.
- e) The vessel master is responsible for recording fish retained under the authority of this licence in the Integrated Groundfish Fishing Logbook by set in the comments section.

## SHELLFISH

### Species and Size Limits:

The fishery is limited to those species listed in part II of Schedule I of the *Pacific Fishery Regulations, 1993*, during the term of this licence, with the exception of abalone which is closed for conservation.

No person shall catch and retain, or have in his possession, any:

- (a) Dungeness Crab that measures less than 165mm in a straight line through the greatest breadth of the carapace; or
- (b) Red Rock Crab that measures less than 115mm in a straight line through the greatest breadth of the carapace.

### Gear and Gear Identification:

The following gear is permitted to be used:

- (a) Hand picking, rake, shovel, dip net, and diving; and
- (b) Ring nets, on condition that:
  - (i) they are marked with a floating buoy clearly marked with the name of the participant and the HTC;
  - (ii) where a number of ring nets are set on a line, the line must be marked at both ends with a floating buoy clearly marked with the name of the participant and the HTC.
- (c) Traps, on condition that:
  - (i) they are marked with a floating buoy clearly marked with the name of the participant and the HTC;

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- (ii) where a number of traps are set on a line, the line must be marked at both ends with a floating buoy clearly marked with the name of the participant and the HTC.
- (iii) All traps must be fitted with the following escapement mechanisms:
- (iv) No participant shall fish with rigid framed traps with hinged lids, unless the trap lid is secured by a loop of no greater than # 120 untreated cotton twine such that the trap lid will open freely when the rot cord is broken. The rot cord must be attached to the hook by a cow hitch as per the attached illustration to this schedule. If the hook is attached permanently to the trap, the trap lid shall close using a single loop of the rot cord from the rubber strap.
- (v) All other traps without hinged lids: No participant shall use a non-hinged lid trap, unless it has a section in a side wall or panel that has been laced, sewn or otherwise secured by a single strand of no greater than # 120 untreated cotton twine that on deterioration or parting produces in the wall of panel, an opening a minimum of 35cm square.

No chemicals are allowed to be used in marine or inter-tidal areas.

**Dates and Times:**

Fishing for shellfish is authorized by this licence  
from 00:01 hours March 1, 2009 to 23:59 hours February 28, 2010.

**Area:**

Fishing for shellfish is permitted in the following area:  
Management Area 7 and 8.

**Other Provisions:**

Where and when PSP monitoring is not being conducted, the harvest of bivalve shellfish is not authorized by this licence.

**HERRING SPAWN ON SEAPLANTS AND BOUGHS**

**Species Quantity:**

This licence authorizes fishing for the following quantity:  
herring spawn on boughs, kelp and other vegetation 184,000 pounds

**Gear and Gear Identification:**

The following gear is permitted to be used:

- (a) Hand picking.
- (b) Ponding (All ponds must be marked with the names of the participants and the HTC.)

**Dates and Times:**

Harvesting of herring spawn on seaplants and boughs is authorized by this licence from  
from 00:01 hours March 1, 2009 to 23:59 hours May 31, 2009.

**Area:**

Fishing is permitted in the following area:  
Management Area 7 and 8.

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## SCHEDULE C-1

### Part One: Communal Commercial Licences

#### Licensing

1. DFO will issue to the HTC, Communal Commercial Licences for 2009 that include the conditions respecting species, gear type and vessel description set out in Appendix 1.

#### Proof of Designation to Fish under a Communal Commercial Licences

- 2(a) No person other than a designated person may fish under a Communal Commercial Licence.
- 2(b) A person fishing under a Communal Commercial Licence will carry a communal commercial designation document at all times while engaged in fishing or any other activity referred to in this Schedule, including the harvesting, transporting and landing of fish, and will show the communal commercial designation document, and proof of identity, to a Fishery Enforcement Officer, upon request.

#### Management Responsibility of HTC

- 3(a) The HTC will designate persons to fish under each Communal Commercial Licence by issuing, before fishing under the Licence commences, a communal commercial designation document to each person designated. Each document will bear the Communal Commercial Licence number, the names of the persons designated to fish under the Licence, and the name and registration number of the Vessel.
- 3(b) The HTC may amend the list of names of persons designated to fish under each Communal Commercial Licence, and the names and registration numbers of the Vessels referred to in subsection 3(a).
- 3(c) The HTC will notify each person designated to fish under the authority of each Communal Commercial Licence of the provisions of this Schedule and the Communal Commercial Licence. The HTC will notify each person designated of any amendments to this Schedule or the Communal Commercial Licence.

#### Costs

4. HTC is responsible for all costs associated with the fishing activities referred to in this Schedule.

#### HTC Contribution to Fisheries Management

- 5(a) The HTC has prepared and submitted a business plan to DFO for the Communal Commercial Licences issued under the ATP as set out in Appendix 1 to Schedule C-1.
- 5(b) The HTC commits to an annual contribution of THIRTEEN THOUSAND, THREE HUNDRED AND SEVENTEEN DOLLARS AND SIXTY-SEVEN CENTS (\$13,317.67) in 2009-2010 consisting of a contribution to project activities and a contribution for use of the Communal Commercial Licences/and or Quotas issued as set out in Appendix 1 to Schedule C-1.

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- 5(c) The HTC agrees to pay to DFO, or third parties as the case may be, for every year in which a Communal Commercial Licence is issued, the management fees which are associated with a commercial fishing licence containing the same conditions as the Communal Commercial Licence respecting species, gear type and, where applicable, quota.

#### **General**

6. Any sale of fish harvested under a Communal Commercial Licences will be subject to all federal and provincial laws related to sale, including, but not limited to, laws respecting health and safety, inspection, processing, packaging, storage, export, quality control and labelling.

#### **Coming into Force**

7. This Schedule will come into force as of April 1, 2009, and, subject to section 15 of the Agreement, will terminate on March 31, 2010.

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## Part Two: Communal Commercial Fishery

### Manila Clam

#### Species Allocation

- 1(a) The Parties agree that the HTC will fish for manila clams in accordance with this Part and the "Pacific Region, Joint 2009/2010 Management Plan, Intertidal Clam", and in accordance with the conditions of the Aboriginal Communal Fishing Licence for the Heiltsuk Tribal Council for Clam Harvesting (CC-CL09-042 HEILTSUK).
- 1(b) The manila clam total allowable catch (TAC) is set at 134,078 pounds (60,817 kgs.) with the following sub-areas having these harvest thresholds:

Sub-area	2009/10 Threshold (pounds)
7-09	6,260
portion south of Moss Pass	
7-12	19,184
7-13	2,205
7-14	2,205
7-15	21,437
7-17	19,318
7-18	2,205
7-19	2,205
7-20	2,205
7-21	31,318
7-22 and 7-23	4,869
7-24	11,847
7-25	2,205
7-27	2,205
7-28	2,205
7-32	2,205
8-04	0
portion north of Koeye River	

The Littleneck clam TAC is set at 25,000 pounds (11,338 kgs.) with the following sub-areas having these harvest thresholds:

Sub-area	2009/10 Threshold (pounds)
7-09	N/A
portion south of Moss Pass	
7-12	N/A
7-13	N/A
7-14	N/A
7-15	N/A
7-17	N/A
7-21	N/A
7-22 and 7-23	N/A
7-24	N/A
7-25	N/A
8-04	5,000
portion north of Koeye River	

Sub-areas will close for all harvesting (including Littlenecks) when the threshold level for Manila clams has been reached, unless there is no manila threshold, in which case, the sub-area will close when the Littleneck threshold has been attained. The fishery will close when the TAC for Manila clams is attained.

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Harvesting is authorized by this licence from November 14, 2009, to March 31, 2010, subject to closures and other conditions of the communal licence. The authority to fish under this licence will expire on March 31, 2010, or earlier if DFO, after consultation with the HTC, has determined that the maximum quantity has been reached.

- 2(a) The HTC will:
- (a) notify each person designated to fish under the authority of CC-CL09-042 HEILTSUK (Clam Licence) of the provisions set out in this Schedule;
  - (b) notify each person designated to fish of the conditions of the Clam Licence; and
  - (c) notify each person designated of any amendments to this Part and of any amendments to the Clam Licence.
- 2(b) The HTC may sell any clams harvested under the Clam Licence.
- 2(c) The HTC will direct up to a maximum of ten (10) percent of the landed value of any clams harvested and sold under the provisions of the Clam Licence towards the cost of fisheries activities carried out by the HTC and agreed to by DFO.
- 2(d) The HTC will give Existing Canadian Processors a right of first refusal to process any clams harvested and sold under the Clam Licence.
- 2(e) The Parties understand that the issuance of a Clam Licence in subsequent years will depend upon the outcome of formal reviews of the state of the industry to be carried out by the Pacific Scientific Advice Review Committee, in conjunction with the HTC.

#### Licensing

3. DFO will issue the Clam Licence to the HTC for the harvesting of manila and littleneck clams under the Aboriginal Communal Fishing Licence Regulations.

#### Gear and Effort

4. The Parties agree that a maximum of 60 people shall participate in the clam fishery. The HTC will designate the Participants and provide them with documentation of their designation.

#### Harvest Conditions

- 5(a) No Participant shall harvest manila or littleneck clams that measure less than 38 millimetres through the longest diameter of the shell.
- 5(b) The HTC is aware that the *BC Fish Inspection Act* and regulations thereto prohibit sale of bivalve molluscs directly to the public, restaurants, retail outlets, or distributors. The HTC will ensure that all clams harvested by Participants will be inspected at a federally registered shellfish plant prior to sale.
- 5(c) All manila clams harvested under the Clam Licence must be weighed and validated by a DFO certified observer with a government certified scale and the weight entered onto the validation sheet. The validation sheet is to be sent to DFO at completion of the offloading.

#### Costs

6. The HTC is responsible for all costs associated with all the fishing and monitoring activities referred to in this Part.

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### Stock Assessment

7. An assessment program has been developed jointly by the Heiltsuk Fisheries Program and the Stock Assessment Unit of DFO. The Program requires assessment surveys of index beaches in the main sub-areas where clams are to be harvested. Survey protocols and reporting requirements are outlined in "A Manual for Intertidal Clam Surveys" (Canadian Technical Report of Fisheries and Aquatic Sciences, 2270). The purpose of these surveys is to monitor stock abundance and population characteristics, primarily age structure and recruitment. Analysis and reports will be completed by the Heiltsuk Fisheries Program and submitted to the Stock Assessment Unit of DFO for review, prior to the beginning of the 2009-10 season of the fishery.

### Reporting

- 8(a) The HTC will ensure that Participant's complete the DFO approved clam sales slip at the time of each sale of clams harvested under the Clam Licence.
- 8(b) For each week where there are sales of clams harvested under the Clam Licence, the HTC will mail copies of all clam sales slips to the DFO Catch Statistics unit in Vancouver by Friday of the following week.
- 8(c) In addition to the reporting provided for in section 8(b), the HTC will ensure that Participants keep daily records of their harvesting activities in the format of the log attached as Appendix 2 to this Schedule. Records are to be sent weekly during the fishery to Todd Johansson, Resource Manager Central Coast.

### Sampling

- 9(a) The HTC will provide Heiltsuk Technicians to collect, preserve and provide shellfish samples to the Canadian Food Inspection Agency (CFIA) for testing for the presence of paralytic shellfish poison.
- 9(b) DFO will use the information gathered by CFIA from samples in determining whether or not to lift a prohibition order and in determining open and close times and areas.
- 9(c) The HTC is responsible for all costs associated with collecting the shellfish samples referred to in subsection 9(a) and providing the samples to CFIA.
- 9(d) From time to time DFO may monitor the collection of shellfish samples by the HTC referred to in this Part.

### Monitoring and Enforcement

- 10(a) The HTC will provide Heiltsuk Fisheries Monitors to monitor the harvesting of manila clams by the Participants.
- 10(b) The Heiltsuk Fisheries Monitors will conduct the monitoring on the waters referred to in the Clam Licence and at dockside, and may be accompanied by DFO Fishery Officers.
- 10(c) The HTC will have Heiltsuk Fisheries Monitors present during fisheries openings. DFO may, in its discretion, verify the monitoring processes, including by undertaking on-site inspections.

### Coming Into Force

- 11 This Schedule, both Part One and Part Two, will come into force as of April 1, 2009, and, subject to section 15 of the Agreement, will terminate on March 31, 2010.

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## Appendix 1 to Schedule C-1

### Communal Commercial Licence(s) and/or Quotas

1. The following lists the communal commercial fishing licences issued to HTC for which business plans apply and which are referred to in section 1 and subsection 5(a) of this Schedule:

- (a) Species of fish: salmon (FAG 34)  
 Gear type: gillnet  
 Area: C  
 Maximum Vessel length: 10.52 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a salmon "A" commercial fishing licence
- (b) Species of fish: salmon (FAG 15)  
 Gear type: gillnet  
 Area: C  
 Maximum Vessel length: 11.58 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a salmon "A" commercial fishing licence
- (c) Species of fish: salmon (FAG 36)  
 Gear type: gillnet  
 Area: C  
 Maximum Vessel length: 11.18 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a salmon "A" commercial fishing licence
- (d) Species of fish: red sea urchin (FZC 04)  
 Gear type: dive  
 Area: North  
 Maximum Vessel length: 7.26 metres  
 Contribution for use: \$530.00  
 Contribution for Project activities: \$1,500.00  
 Containing the usual conditions of a red sea urchin "ZC" commercial fishing licence
- (e) Species of fish: rockfish (FZN 07)  
 Gear type: hook and line  
 Area: Outside  
 Maximum Vessel length: 11.58 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a rockfish "ZN" commercial fishing licence
- (f) Species of fish: salmon (FAG 56)  
 Gear type: gillnet  
 Area: C  
 Maximum Vessel length: 9.79 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a salmon "A" commercial fishing licence
- (g) Species of fish: herring (FH 35)  
 Gear type: gillnet  
 Contribution for use: \$200.00

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Contribution to Project activities: \$1,100.00  
Containing the usual conditions of a herring "HG" commercial fishing licence.

- (h) Species of fish: herring (FH 36)  
Gear type: gillnet  
Contribution for use: \$200  
Contribution to Project activities: \$1,100.00  
Containing the usual conditions of a herring "HG" commercial fishing licence.
- (i) Species of fish: halibut (FL 27)  
Gear type: hook and line  
Quota: 0.221507 % of TAC (equals 14,867 pounds in 2009 fishing season)  
Maximum Vessel length: 19.4 metres  
Contribution for use: \$1,254.29  
Contribution to Project activities: \$7,433.38  
Containing the usual conditions of a halibut "L" commercial fishing licence.

2. The following lists the communal commercial fishing licences issued to the HTC for which no business plans apply and which are referred to in section 1 of this Schedule:

- (a) Species of fish: salmon (FAS 02)  
Gear type: seine  
Area: A  
Maximum Vessel length: 15.14 metres  
Contribution for use: \$0  
Contribution for Project activities: \$0  
Containing the usual conditions of a salmon "A" commercial fishing licence
- (b) Species of fish: rockfish (FZN 02)  
Gear type: hook and line  
Area: Outside  
Maximum Vessel length: 9.93 metres  
Contribution for use: \$0  
Contribution for Project activities: \$0  
Containing the usual conditions of a rockfish "ZN" commercial fishing licence
- (c) Species of fish: rockfish (FZN 03)  
Gear type: hook and line  
Area: Outside  
Maximum Vessel length: 12.57 metres  
Contribution for use: \$0  
Contribution for Project activities: \$0  
Containing the usual conditions of a rockfish "ZN" commercial fishing licence
- (d) Species of fish: salmon (FAG 38)  
Gear type: gillnet  
Area: C  
Maximum Vessel length: 13.87 metres  
Contribution for use: \$0  
Contribution for Project activities: \$0  
Containing the usual conditions of a salmon "A" commercial fishing licence
- (e) Species of fish: salmon (FAG 35)  
Gear type: gillnet  
Maximum Vessel length: 14.23 metres  
Designated area: C  
Contribution for use: \$0  
Contribution for Project activities: \$0  
Containing the usual conditions of a salmon "A" commercial fishing licence

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- (f) Species of fish: salmon (FAG 37)  
 Gear type: gillnet  
 Maximum Vessel length: 13.41 metres  
 Designated area: C  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a salmon "A" commercial fishing licence
- (g) Species of fish: Schedule II species as defined by  
 the Pacific Fishery Regulations  
 (1993) (FC 02)  
 Gear type: hook and line  
 Maximum Vessel length: 10.98 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a Schedule II species "C" commercial fishing  
 licence
- (h) Species of fish: Schedule II species as defined by the Pacific  
 Fishery Regulations (1993) (FC 01)  
 Gear type: hook and line  
 Maximum Vessel length: 9.75 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a Schedule II species "C" commercial fishing  
 licence
- (i) Species of fish: Schedule II species as defined by the  
 Pacific Fishery Regulations (1993) (FC 03)  
 Gear type: hook and line  
 Maximum Vessel length: 11.30 metres  
 Contribution for use: \$0  
 Contribution for Project activities: \$0  
 Containing the usual conditions of a Schedule II species "C" commercial fishing  
 licence
3. In accordance with subsection 22(6) of the *Fishery (General) Regulations*, compliance with the *Fisheries Act*, the *Pacific Fishery Regulations, 1993* and all other regulations made under the *Fisheries Act* will be a condition of the Communal Commercial Licence.

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**SCHEDULE D-1****Joint Technical Advisory Committee**

1. To help fulfill the purpose of this Agreement, and to carry out activities under this Agreement, the Joint Technical Advisory Committee will provide recommendations to the Parties on biological, technical and project-planning issues, including specific harvesting plans for the FSC Fishery.

**Committee Membership**

- 2(a) The Committee will consist of:
  - (i) two (2) members appointed by the HTC; and
  - (ii) two (2) members appointed by DFO.
- 2(b) On invitation by the Parties, representatives from provincial ministries may participate in Committee meetings.
- 2(c) The Committee may establish its own rules of procedure.
- 2(d) The members of the Committee will work cooperatively with the goal of reaching unanimous decisions.
- 2(e) The Committee will establish its own meeting schedule, but will meet no less than two (2) times per year and on the request of either Party.
- 2(f) Each Party will be responsible for all costs associated with the participation of its appointees on the Committee.

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## SCHEDULE E-1

### Aboriginal Fisheries Guardians

#### Designation

- 1(a) The Aboriginal Organization will, during the 2009-2010 Fiscal Year, select one/or (see note) member of the Aboriginal Organization as a suitable candidate to be an Aboriginal Fisheries Guardian. The Minister will be requested to designate that individual as a fishery guardian for that Fiscal Year under section 5 of the *Fisheries Act*. The powers of the Aboriginal Fisheries Guardian will be defined in the certificate issued to that person under subsection 5(2) of the *Fisheries Act* and will be limited to the FSC Fishery and fisheries initiated under provisions in Schedule C-1.
- 1(b) The Aboriginal Fisheries Guardian must meet DFO's training requirements, security clearance and reliability checks.

#### Role and Duties

- 2(a) The Aboriginal Fisheries Guardian's role is to monitor the fisheries associated with this Agreement and to carry out other duties in accordance with this Agreement under the direction of the Aboriginal Organization. Duties of the Aboriginal Fisheries Guardian may include the following:
- (i) stock assessment activities;
  - (ii) providing catch information;
  - (iii) carrying out patrols on land and water to monitor fishing and habitat activities;
  - (iv) carrying out enforcement functions including:
    - (A) issuing warnings;
    - (B) inspecting fishing gear and fish and otherwise gathering evidence;
    - (C) detention without physical contact and with the appropriate Charter warnings;
    - (D) taking statements from accused persons, with appropriate Charter warnings, and from witnesses;
    - (E) seizing fish and fishing gear;
    - (F) issuing Appearance Notices;
    - (G) assisting in the preparation of court briefs and other documents; and
    - (H) testifying in court and providing evidence in court.
  - (v) reporting activities that are harmful to fish habitat and participating in other habitat matters, habitat enhancement activities, monitoring water levels and fish-ways, and collecting samples in accordance with procedures specified by DFO;
  - (vi) interacting with members of the First Nations engaged in fishing, persons engaged in commercial and recreational fishing, and other members of the public;

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- (vii) consulting and working cooperatively with C&P personnel when monitoring fishing activities or carrying out other activities and calling on C&P personnel when circumstances require action beyond the authority of the Aboriginal Fisheries Guardian; and
  - (viii) providing reports and their activities to the Aboriginal Organization and to the local C&P personnel.
- 2(b) The Aboriginal Fisheries Guardian will consult with and work cooperatively with local C&P personnel and other DFO staff when monitoring a fishery or carrying out other activities referred to in the Agreement.
- 2(c) The Parties have developed a monitoring and enforcement protocol, attached as Appendix 1 to assist them in conducting monitoring and enforcement activities.

### **Participation in Fishery**

3. The Aboriginal Fisheries Guardian will not participate in the FSC Fishery while on duty and will not participate in any commercial fishing at all.

### **Funding**

4. The Aboriginal Organization is responsible for all short- and long-term disability insurance and all other operating, training, salary and benefit costs for the Aboriginal Fisheries Guardian.

### **Training**

5. DFO and the Aboriginal Organization will attempt to provide academic, technical and safety training. The training may include: participation in DFO's training program, training provided by or through the Aboriginal Organization and joint patrols with C&P personnel.

### **Review of Designation**

6. The Minister may review the designation of an Aboriginal Fisheries Guardian at the request of the Aboriginal Organization, or after any conduct considered by the Minister to be a serious breach of the duties or roles set out in this Schedule or in the designation certificate, or after any conduct considered to be inappropriate for a fishery guardian. If the Minister revokes the designation, DFO will require the immediate return of the designation document issued by DFO.

### **Uniforms and Equipment**

- 7(a) The Aboriginal Organization is responsible for providing the Aboriginal Fisheries Guardian with uniforms or other working attire and will ensure that no DFO logo is used on the uniforms or attire. No persons other than the Aboriginal Fisheries Guardian will wear the uniform or other working attire provided by the Aboriginal Organization. The Aboriginal Fisheries Guardian will not wear the uniform or other working attire except when on duty. The Aboriginal Fisheries Guardian will at all times perform Guardian duties in a professional manner and will maintain all equipment provided, to carry out the responsibilities, in good working condition.
- 7(b) The Aboriginal Organization will provide the Aboriginal Fisheries Guardian with the appropriate equipment for operations, communications and personal safety needs, including communications equipment that allows Aboriginal Fisheries Guardians to communicate with each other, the Aboriginal Organization and DFO.

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- 7(c) The Aboriginal Organization will obtain the appropriate licences for any communication equipment that it provides to the Aboriginal Fisheries Guardian and will ensure that the Aboriginal Fisheries Guardian is trained in the appropriate use of radio equipment. The Aboriginal Organization will also request DFO to contact Industry Canada to issue a letter of Authority for the Aboriginal Organization to employ radio frequencies assigned to DFO.
- 7(d) Unless otherwise agreed by DFO, DFO will not provide office space, office furniture or office equipment to the Aboriginal Fisheries Guardian.

#### **Firearms and Other Authority**

- 8(a) The Parties agree that the Aboriginal Fisheries Guardian will not be issued firearms or any other weapons and will not carry firearms or any other weapons in the course of the Guardian's duties except:
- (i) rifles or shotguns in a situation where rifles or shotguns are needed for protection from bears and other dangerous wildlife and the Aboriginal Fisheries Guardian carrying the rifle or shotgun meets the requirements of all applicable laws for the possession and use of the rifles or shotguns;
  - (ii) pepper spray, if the Aboriginal Fisheries Guardian carrying the pepper spray is certified as having successfully completed current training or recertification approved by DFO in the use of pepper spray; and
  - (iii) a baton, if the Aboriginal Fisheries Guardian carrying the baton is certified as having successfully completed current training or recertification approved by DFO in the use of a baton.
- 8(b) The Aboriginal Fisheries Guardian will not be authorized to use physical contact in detaining any person, use force, search, arrest or seize vehicles or vessels in the course of the Guardian's duties.

#### **Copies of Schedule**

9. The Aboriginal Organization will provide a copy of this Schedule to the Aboriginal Fisheries Guardian.

#### **Coming into Force**

10. This Schedule will come into force as of April 1, 2009, and, subject to section 15 of the Agreement, will terminate on March 31, 2010.

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## Appendix 1 to Schedule E-1

### Monitoring and Enforcement Protocol

#### Guidelines

1. The following guidelines will be used to assist the Parties in conducting monitoring and enforcement activities, but do not, and are not, intended to restrict the powers of a DFO fishery officer.

#### Interaction

- 2(a) The following shall be the designated representatives of the HTC for the purposes of consultation under this Protocol:

<u>Name</u>	<u>Telephone Number</u>
Marilyn Slett, Chief Councilor	(250) 957-2381
Cerelina Humchitt, A/Executive Director	(250) 957-2381

- 2(b) The following shall be the designated representative of DFO for the purposes of consultation under this Protocol:

<u>Name</u>	<u>Telephone Number</u>
Bob Tupniak, C&P Supervisor	(250) 799-5698

- 2(c) Interaction between the HTC, its representatives and DFO personnel will be of a cooperative and respectful nature.
- 2(d) The Parties will engage in a regular schedule of meetings and informational exchange sessions to continue to develop a professional working relationship and to develop an effective monitoring and enforcement program.
- 2(e) The basis of the interaction between the HTC and DFO fishery officers will be through discussion and attempts to reach consensus in relation to any issues that arise.
- 2(f) As much as possible, interaction will be at a local level between the Bella Bella Field Unit C&P staff and the HTC.
- 2(g) Issues that cannot be resolved at a local level will be jointly referred and dealt with in accordance with section 5 of this Protocol.

#### Protocol

- 3(a) The Parties agree that contravention of any section of the *Fisheries Act* and regulations will be treated seriously; prompt and responsible actions are essential to ensure that stock conservation is not jeopardized. The Parties understand that both have financial and human resource limitations and priorities that may limit responses to specific situations.
- 3(b) In instances of co-monitoring and co-patrolling as provided for in this Agreement, the Parties shall meet on a regular basis to plan and schedule such cooperative field activities.
- 3(c) Regularly scheduled meetings between DFO personnel and the HTC will be used to:
  - (a) coordinate patrols using staggered patrols by area and/or time;
  - (b) coordinate and establish communications between Aboriginal Fisheries Monitors and DFO fishery officers;
  - (c) develop criteria for evaluating situations requiring back-up and assistance.

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- (d) develop system for ensuring DFO fishery officer assistance when needed;
  - (e) develop training options and recommendations for Aboriginal Fisheries Monitors;
  - (f) review the performance of the Aboriginal Fisheries Monitors; and
  - (g) review the implementation of this protocol and develop improvements.
- 3(d) The HTC and DFO will maintain regular communications in order to discuss expected staff activity, availability and priorities for the following period. The purpose of this communication will be to assist in scheduling enforcement field activities to maximize patrol area and identify co-patrolling opportunities.
- 3(e) Radio (VHF) communication will be established using the DFO frequency for the purpose of official communication between trained Aboriginal Fisheries Monitors, the Heiltsuk Fishery Administrator and DFO fishery officers. DFO will assist the HTC by identifying the proper frequency, recommending radio equipment and providing assistance where possible.
- 3(f) Aboriginal Fisheries Monitor and DFO patrols will be conducted on a regular basis, subject to program limitations and other priorities. The purpose of co-patrols will be to provide on-going field training to Aboriginal Fisheries Monitors, develop a basis of mutual respect and confidence and encourage Aboriginal and non-Aboriginal fishers' confidence in the HTC and DFO monitoring and enforcement programs.
- 3(g) If a HTC and DFO co-patrol identifies a *Fisheries Act* violation, DFO will take the lead in enforcement action.
- 3(h) If Aboriginal Fisheries Monitors observe a *Fisheries Act* violation, they will contact DFO for advice on further action, unless otherwise previously agreed. Possible options may include, but not be limited to:
- (i) observe, record, and report incident to local DFO fishery officer. The report must be in a form that is acceptable for further investigation and/or action.
  - (ii) wait for DFO back-up and maintain visible contact. Observe record and report incident to local DFO fishery officer. The report must be in a form that is acceptable for further investigation and/or action.
  - (iii) If the Aboriginal Fisheries Monitor submits an occurrence report to the DFO fishery officer, the DFO fishery officer advises the Aboriginal Fisheries Monitor of the outcome of each report.
  - (iv) The Aboriginal Fisheries Monitors will provide support to DFO as needed for each case file that stems from a HTC occurrence report until resolved.

### Cooperation

- 4(a) The Parties agree to review and coordinate field activities so as to obtain the greatest efficiency between the HTC and DFO activities.
- 4(b) The Parties will cooperate to exchange relevant information as provided for in this Comprehensive Fisheries Agreement Amendment.
- 4(c) Where there is a violation as set out in this Protocol and the HTC has taken or intends to take action against the person(s), DFO shall take into account the HTC's actions in determining what action DFO will take.

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## Disputes

- 5(a) Ideally, disputes will be resolved at the local level between local DFO and HTC staff.
- 5(b) Any dispute that may arise which cannot be resolved at the local level will be jointly referred to the DFO Bella Coola Field Unit C&P Supervisor and to the Heiltsuk Fishery Administrator.
- 5(c) Disputes that cannot be resolved at the level noted in subsection 5(b) will be referred to the DFO Area Chief of C&P for resolution between the HTC and DFO. The Area Chief of C&P may appoint an internal policy group to assist in dispute resolution.

## Covert Operations

- 6(a) The Parties agree that covert operations undertaken by DFO within the Area may be executed under the joint authority of the HTC and DFO.
- 6(b) Refer to section 7 for instances where prior consultation would compromise the effectiveness of an enforcement action.

## Enforcement Guidelines

- 7. C&P staff will attempt to consult with the representatives of the HTC before taking any enforcement action relating to this Protocol, except where prior consultation would compromise the effectiveness of an enforcement action. Where prior consultation would compromise the effectiveness of the enforcement action, DFO will consult with the HTC as soon as possible after taking the enforcement action.

DFO shall carry out the disposition of any seized fish or fishing gear in accordance with the *Fisheries Act*. Any proceeds realized from such disposition shall be paid to the Receiver General for Canada. When it is appropriate and at the discretion of the DFO fishery officers, seizures of fish within the Area may be distributed among the Heiltsuk elders.

The Parties agree that DFO fishery officers may respond to the following circumstances by the procedure set out below:

- (a) Food, Social and Ceremonial (FSC) Fishing without a designation document:

**Procedure:** Attempts should first be made to determine if the person has a designation document. Depending upon the circumstances the individual(s) may be warned and advised to obtain and/or carry the designation document. Nets may be removed from the water. Nets and caught fish may be seized. Charges may be recommended.

On the first instance where a fisher who is not designated, is FSC fishing with a spouse (including a common-law spouse) who is designated, the non-designated fisher may be warned and advised to obtain the designation letter. Charges may be recommended.

Where a person does not have a designation document and is not FSC fishing, but is in the company of a designated person who is FSC fishing, the information will be gathered and would be provided to the Band Council, Band Administrator and/or Fisheries Coordinator. Charges may be recommended.

- (b) Failure to comply with terms and conditions of the Communal Licence:

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**Procedure:** Designated fishers and/or transporter(s) of fish may be warned on the first instance. Nets, equipment, vehicles and fish may be seized. Charges may be recommended.

In instances where FSC fish are being transported without a transport permit to family members outside the Area, the incident would be documented and the information gathered (name of transporter and destination, species, quantity, etc.) would be provided to the Band Council, Band Administrator and/or Fisheries Coordinator. Discussions would occur between the HTC and DFO to determine if further action is required. Charges may be recommended.

In instances where FSC fish are being transported without a transport permit to members of neighbouring First Nations, the incident would be documented and the information gathered (name of transporter and destination, species, quantity, etc.) would be provided to the Band Council, Band Administrator and/or Fisheries Coordinator. Discussions would occur between the HTC and DFO to determine if further action is required. Charges may be recommended.

In instances where FSC fish are being transported without a transport permit by a commercial carrier, the incident would be documented and the information gathered (name of sender and destination, species, quantity, etc.) would be provided to the Band Council, Band Administrator and/or Fisheries Coordinator. Discussions would occur between the HTC and DFO to determine if further action is required. Charges may be recommended.

Where large quantities of FSC fish are being transported without a transport permit the fish, equipment and vehicles may be seized and the Band Council, Band Administrator or the Fisheries Coordinator will be consulted. Charges may be recommended.

Where FSC fish are transported without a transport permit in minor quantities, the incident would be documented and the information gathered (name of sender and destination, species, quantity, etc.) would be provided to the Band Council, Band Administrator or the Fisheries Coordinator. Discussions would occur between the HTC and DFO to determine if further action required. Charges may be recommended.

(d) Unauthorized sale of FSC fish:

**Procedure:** Equipment, vehicles, vessels and fish may be seized. Charges may be recommended.

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## SCHEDULE F-1

### Contribution

#### Financial Contribution

- 1(a) DFO will contribute to the HTC up to TWO HUNDRED AND THIRTY-EIGHT THOUSAND, SEVEN HUNDRED AND SIXTY-NINE DOLLARS AND THIRTY-THREE CENTS (\$238,769.33) during the Fiscal Year 2009-2010 to be used exclusively for paying Eligible Costs. Any interest earned by the HTC on the Contribution or any part of it will also be used exclusively for paying Eligible Costs.
- 1(b) In addition to this Contribution, the HTC will provide funding of THIRTEEN THOUSAND, THREE HUNDRED AND SEVENTEEN DOLLARS AND SIXTY-SEVEN CENTS (\$13,317.67) resulting from opportunities related to fisheries as described in Schedule C-1, to be used exclusively for paying Eligible Costs.

#### Requirements Prior to Advances

- 2(a) The HTC will provide to DFO, as soon as possible after this Agreement comes into force a cash flow projection of Eligible Costs to be paid during Fiscal Year 2009-2010 commencing on the day following the date this Agreement comes into force.
- 2(b) If the total funding level is changed, a revised cash-flow projection is required showing the Eligible Costs the HTC expects to incur during the remainder of the Fiscal Year.

#### Method of Payment

#### Reimbursement

- 3(a) Where this Agreement comes into force after April 1, 2009, the HTC may prepare and provide to DFO a claim for reimbursement of Eligible Costs paid or payable during the period from April 1, 2009, to the date this Agreement comes into effect, which claim will include a report on the progress of the HTC in carrying out projects during that period, itemized by project category in the form set out in the Contribution Progress Report.
- 3(b) Subject to subsections 11(a) and 11(d), where pursuant to subsection 3(a), the HTC submits a claim for reimbursement, DFO will reimburse the HTC for Eligible Costs paid or payable by the HTC during the period covered by the claim.

#### Advances

- 4(a) Following receipt of the cash flow projection referred to in subsection 2(a) or 8(b) and subject to subsection 11(a) and 11(d), at the beginning of the first quarter and monthly thereafter beginning in the fourth month, DFO will provide, upon request, an advance to the HTC equal to the Eligible Costs for that one month period that the HTC projected in the cash flow projection.
- 4(b) Where a Contribution Progress Report referred to in subsection 8(a) or section 9 indicates that the total of the reimbursement, advances and payments paid to the HTC pursuant to this Agreement exceed Eligible Costs paid or payable by the HTC during the period covered by the Contribution Progress Report, DFO shall deduct the Balance from any advance or advances, or payment or payments to be made by DFO to the HTC pursuant to subsection 4(a) or section 6.

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### Supplementary Payments

5. Following receipt of a supplementary report referred to in section 9, DFO may, in its discretion, increase the amount to be paid during the period covered by the revised cash flow projection contained in the supplementary report by:
- (i) adjusting the amounts of the advances to be provided, pursuant to subsection 4(a) during the period; or
  - (ii) paying an additional payment to the HTC.

### Final Payment

6. Subject to subsection 11(c) of this Agreement, following receipt and approval of the Final Report referred to in section 10, DFO will pay to the HTC the amount, if any, by which the HTC's total Eligible Costs as reported in the Final Report exceed all payments, advances and reimbursements made by DFO under this Agreement.

### Reports

7. Reports will be submitted pursuant to subsections 3(a), 8(a) and sections 9, 10 and 11. All payments, other than the initial advance, where such has been requested, will be subject to receipt and approval of progress/supplementary/final reports.

### Interim Reports

- 8(a) As required under subsections 3(a) and 4(a), the HTC will complete and submit to DFO a report on the progress of the HTC in carrying out projects during that period, itemized by category in the form set out in the Contribution Progress Report.
- 8(b) The HTC may, in conjunction with an interim report referred to in subsection 8(a), submit a revised cash flow projection showing Eligible Costs the HTC expects to incur during the remainder of the applicable Fiscal Year referred to in subsection 1(a).

### Supplementary Reports

9. The HTC may, at any time prior to the submission of the Final Report referred to in section 10, submit a supplementary report consisting of a report on the progress of the HTC in carrying out the projects to the date of the report, itemized by project category in the format as set out in the Contribution Progress Report.

### Final Report

- 10(a) Within one-hundred and twenty (120) days following the end of each of the Fiscal Years referred to in subsection 1(a) of this Schedule, the HTC will complete and submit a final report to DFO containing
- (i) a report on the progress of the HTC in carrying out the projects, itemized by category in the format as set out in the Contribution Progress Report,
  - (ii) a summary of results,
- but in the event that, during the Fiscal Year,
- (i) the HTC incurs Eligible Costs in an amount equal to or exceeding the maximum amount payable in the Fiscal Year as identified in subsection 11(b);

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- (ii) the Project is completed;
- (iii) this Agreement is terminated; or
- (iv) the HTC abandons the Project,

The HTC will complete and submit the final report within one-hundred and twenty (120) days of that event.

- 10(b) Notwithstanding anything in this Schedule, no payments will be made by DFO to the HTC following review by DFO of the Final Report except the final payment referred to in section 6.

### Holdback and Overpayments

- 11(a) A five percent holdback will apply. In no event will the total amount of the reimbursement (if applicable), the advances and payments made by DFO pursuant to subsections 3(b), 4(a), and section 5 respectively, exceed ninety-five percent of the amount referred to in subsection 1(a) of this schedule.
- 11(b) In no event will the total of all reimbursements, advances and payments made by DFO pursuant to this Agreement exceed TWO HUNDRED AND THIRTY-EIGHT THOUSAND, SEVEN HUNDRED AND SIXTY-NINE DOLLARS AND THIRTY-THREE CENTS (\$238,769.33) during Fiscal Year 2009-2010.
- 11(c) All payments made pursuant to this Agreement are subject to DFO approving the HTC's projected costs and actual expenditures as set out in the cash flow projections referred to in subsections 2(a), 2(b) and 8(b) and the reports submitted pursuant to subsections 3(a) and 8(a) and sections 9 and 10.
- 11(d) Where the HTC provides a report referred to in subsections 3(a) or 8(a) or sections 9 or 10 but the report does not, in DFO's opinion, contain the information required for the report, DFO may, in its discretion, withhold any payment to be made by DFO to the HTC pending receipt by DFO from HTC of the information required.
- 11(e) Where the HTC fails to provide:
- (i) a report referred to in subsections 3(a) or 8(a) or sections 9 or 10;
  - (ii) the cash flow projection referred to in subsections 2(a) or 8(b); or,
  - (iii) the Contribution Progress Report
- in a form acceptable to DFO, or by the date the report or information is due, DFO may, in its discretion, withhold any payment to be made by DFO to the HTC pending receipt by DFO from the HTC of the relevant document or information in a form acceptable to DFO.
- 11(f) (i) Within fifteen (15) days following the completion of the Project, termination of this Schedule or the Agreement, or abandonment of the project by the HTC, whichever first occurs, the HTC will repay to DFO any amount of the contribution not used to pay Eligible Costs.
- (ii) The HTC will refund to DFO, forthwith upon written request by DFO, any funds advanced to the HTC for which unsatisfactory evidence has been furnished by the HTC that the funds have been spent in accordance with this Schedule.
  - (iii) Any amount that the HTC is under obligation to refund under (i) and (ii) will be a debt owing to Her Majesty the Queen in Right of Canada.

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- 11(g) DFO may, in its discretion, require the HTC to provide a Contribution Progress Report at any time.

### Audit

12. The HTC shall, on demand, permit DFO, or any person that DFO may from time to time designate, to audit, take copies and extracts from and examine the books, accounts, records, supporting documentation, reports and any other documents referred to in subsection 13(a)(i) as DFO deems fit and shall provide all necessary assistance for the audits and examinations. Any discrepancies identified by an audit or otherwise shall be promptly adjusted between the Parties.

### General Provisions

- 13(a) The HTC shall:
- (i) keep books, accounts, records and supporting documentation with respect to all financial transactions related to the Contribution in accordance with Canadian generally accepted accounting principles;
  - (ii) preserve the books, accounts, records and supporting documentation mentioned in subsection (i) together with reports and any other documents related to the Activity for a period of two years following termination of this Agreement;
  - (iii) on request, provide to DFO any of the documentation mentioned in subsection (i) for audit, copying or extracting by any person that DFO may designate and the HTC will provide all necessary assistance for such activities.
- 13(b) The HTC will maintain an inventory of Capital Acquisitions. A Capital Acquisition will remain listed on the inventory until:
- (i) DFO authorizes the disposition of the Capital Acquisition;
  - (ii) replacement is required due to wear;
  - (iii) the Capital Acquisition is no longer of use to carry out projects associated with the AFS; or
  - (iv) no further agreements between DFO and the HTC under the AFS are anticipated.
- 13(c) The HTC agrees that, at the end of the Project, or upon termination of this Agreement, if earlier, Capital Acquisitions will be:
- (i) maintained and stored if a subsequent agreement between DFO and the HTC under the AFS is anticipated; or
  - (ii) disposed of in a manner agreed to by the Parties.
- 13(d) Within thirty (30) days following the end of the Fiscal Year referred to in subsection 1(a) of this Agreement, the HTC shall repay to DFO any amount of the Contribution and interest earned thereon not disbursed for Eligible Costs.
- 13(e) Should the HTC fail to immediately pay any debt to DFO in full, interest on the outstanding debt shall accrue in accordance with the federal government's *Interest and Administrative Charges Regulations* until the full amount payable has been received by DFO.
- 13(f) In no event will DFO make a reimbursement pursuant to subsection 3(b) or adjust the amounts of advances or pay an additional payment pursuant to section 5 following receipt of the Final Report referred to in section 10.

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### Stacking and Other Financial Assistance

14(a) The HTC declares that the Contribution, provided under this Agreement is the only financial assistance for the Project it has received or expects to receive from any level of government (federal, provincial or municipal) or from any other source for the Fiscal Year. If subsection 14(a) does not apply, the HTC must provide details and amounts of additional assistance in subsection 14(b).

14(b) The HTC declares that it has or will be receiving assistance for the Project from the following sources.

\$ \_\_\_\_\_ from other federal departments \_\_\_\_\_  
 \$ \_\_\_\_\_ from the government of the province of \_\_\_\_\_  
 \$ \_\_\_\_\_ from \_\_\_\_\_ (regional or municipal government)  
 \$ \_\_\_\_\_ from \_\_\_\_\_ (Crown corporation)  
 \$ \_\_\_\_\_ from \_\_\_\_\_ (private sector organisation)

14(c) The HTC agrees to inform DFO promptly in writing of any additional financial assistance received, after the date on which this Agreement is signed, for the Project other than that referred to in subsections 1(a) and/or 14(b).

14(d) DFO shall have the right to reduce the Contribution by the amount of any additional assistance referred to in this section that is to be received by the HTC, or to require payment of an equal amount of such assistance if the contribution has already been paid. Upon receipt of notice to repay under this section, the HTC agrees to repay the amount as a debt due to DFO.

### Coming into Force

15. This Schedule will come into force as of April 1, 2009, and, subject to section 15 of the Agreement, will terminate on March 31, 2010.

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## Appendix 1 to Schedule F-1

### Description of Eligible Costs

#### Eligible Costs for Re-Imbursement

The Eligible Costs for reimbursement may include reasonable and properly itemized costs for:

- (i) office lease or rent
- (ii) administrative expenses (e.g. phone, fax, internet, other utilities, bank fees, office supplies and materials)
- (iii) costs incurred in carrying out an audit associated with the Agreement
- (iv) human resource costs, including salaries and benefits (in-house)
- (v) contracted and professional service costs other than travel or litigation costs
- (vi) travel and related expenses for contracted professional service providers or other non-employees
- (vii) insurance expenses related to activities under the Agreement
- (viii) travel and related expenses for employees
- (ix) purchase of equipment, supplies and materials
- (x) lease or rental of equipment, supplies and materials
- (xi) repair and maintenance of equipment, facilities, vessels and vehicles related to the Agreement
- (xii) meeting expenses (e.g., hall, rent, supplies, hospitality)
- (xiii) consultation costs
- (xiv) GST or HST paid that is not eligible for reimbursement or exemption
- (xv) training fees and expenses, including materials
- (xvi) legal fees related to the agreement (excluding litigation costs)
- (xvii) outreach materials (e.g. printing costs, web sites)
- (xviii) bank interest fees if incurred where DFO is at fault
- (xix) purchase or lease of equipment and equipment upgrades, vessels and vessel upgrades, commercial licenses, vehicles and/or gear in support of the Agreement activities
- (xx) operating expenses for equipment, vessels and vehicles for non-commercial enterprises
- (xxi) purchase, lease, rent or construction of facilities (e.g. storage and mobile accommodation but excluding rolling stock, wharfage and administrative buildings) in support of Agreement activities
- (xxii) construction of new vessels and/or gear.

Costs other than those herein allowed are ineligible, unless specifically approved, in writing by the individual in DFO with agreement signing authority.

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## SCHEDULE G-1

### Project Summary

The project consists of activities carried out by the Heiltsuk Tribal Council and approved by the Parties related to the following:

<u>DESCRIPTION OF ACTIVITY</u>	<u>ESTIMATED EXPENDITURE</u>
--------------------------------	------------------------------

#### 1. Aquatic Resource Management and Stewardship

- |   |             |
|---|-------------|
| <p>(a) <b>Capacity Development (Development of Aquatic Resource Management Structures(s) and governance –includes organization strategic planning, administration and overall program management)</b></p> | \$52,093.00 |
|---|-------------|

(i) Participation at the AFS Joint Technical meetings \$1,200

Representatives designated by the Heiltsuk Tribal Council (HTC) will participate in negotiation sessions with DFO and provide technical support and advice to the HTC.

Salaries & Benefits \$1,200

Expected Results:

- Interests of the First Nation are set forth and reflected in various projects under this agreement.

(ii) Maintaining An Aboriginal Fishing Authority \$50,893

The office administrator's duties will include: ordering office supplies, answering phones, designating persons and vessels to fish and issuing transport permits. See the Catch Monitoring and Reporting section (3c) for more details.

Under this heading individuals will be responsible to track the 2008, 2009 and 2010 AFS expenditures and complete the narrative and financial AFS quarterly reports for the Comprehensive Fisheries Agreement (CFA2008-1724) and this agreement (CFA2009-1919). Methods will also be employed to track staff wages and project costs associated with the AFS project funds versus other funding sources.

Salaries & Benefits \$25,893  
Administrative Expenses \$25,000

Expected Results:

- Individuals are employed or contracted by the First Nation in support of maintaining an Aboriginal Fishing Authority.
- Administration and project management will be maintained by the First Nation.
- The First Nation will complete their 2008-09 AFS reporting requirements and submit their 2009-10 AFS reports in a timely manner.

- |  |            |
|--|------------|
| <p>(b) <b>Capacity Development (Training – (Excluding Commercial Fisheries Training) and Professional Development)</b></p> | \$5,468.00 |
|--|------------|

(i) Health & Safety Courses

Pleasure Craft Operators Card – Up to 4 individuals will attend a

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day and a half course to receive their Pleasure Craft Operators Card to operate the HFP boats.

Course cost \$320  
Salaries & Benefits \$742

Canadian Fire Arm Training (PAL) – Up to 7 individuals will attend this two and a half day course.

Course cost \$1,000  
Travel \$1,150  
Salaries & Benefits \$2,256

Expected Results:

- Safety courses provide the knowledge that allows employees to do their jobs, particularly in remote areas, with minimized risk to their health and welfare.

**(c) Operational Programming (Oceans and Habitat Management and Stewardship)**

**(d) Operational Programming (Science: Stock Assessment, Research and Traditional Ecological Knowledge)**

\$58,288.00

(i) Pink & Chum Salmon Creek Walks \$20,395

Four Heiltsuk Co-management Staff will work up to 30 days to enumerate salmon returns in creeks and streams and determine in-season escapement. The systems enumerated include: Bullock Channel Creeks, Cooper Inlet Creeks (Ada Cove, Fancy Cove, Jane Cove and Fannie Cove), Kunsoot, Kadjusdis Creek, Kwakusdis River, Tankeeah River and Webster Lake Creek.

Data will be entered in the BC 16 Program after each walk and forwarded to the DFO Office in Bella Coola on a weekly basis. All data is to be entered and sent to the DFO Office in Bella Coola by October 30, 2009.

A portion of the project will be funded by Simon Fraser University who will be working with the Heiltsuk to enumerate some of the above listed creeks and other river systems in Area 7 & 8 (i.e. Hook Nose Creek, Evans Inlet Creeks, Sagar Creek, Codville Creek (in Codville Lagoon), and Beales Creek (in Gunboat Pass).

Salaries & Benefits	\$13,215
Boat Maintenance & Repair	\$1,500
Fuel	\$4,680
Equipment & Supplies	\$1,000

(ii) Sockeye Salmon Creek Walks \$7,700

The Tankeeah (Tinkey) River supports populations of pinks, chums, and sockeye salmon. It is an important system to the Heiltsuk community as it has supported a small sockeye food, social and ceremonial fishery for many years. In recent years, the Heiltsuk Fisheries Program has augmented, and continues to augment, the wild sockeye population with a small scale enhancement program.

Two Heiltsuk Co-management staff will trail clear and conduct stream walks of the Tinkey River system between September 5 and October 30. Inspections should take place every 7 to 10 days, with at least 6 inspections of the entire system during the duration of the spawning

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period.

Salaries & Benefits	\$5,184
Boat Maintenance & Repair	\$ 500
Fuel	\$1,116
Equipment & Supplies	\$ 900

Expected Results:

- Spawning escapement areas adjacent to communities are closely monitored.
- Spawning escapement data is systematically collected, stored and/or disseminated to DFO and others.
- Field related equipment is acquired, issued and maintained.
- Individuals are deployed to targeted areas to conduct field work in support of spawning escapement monitoring activities.
- First Nation members gain technical expertise.
- Individuals are employed by the First Nation in support of monitoring of spawning escapement.

(iii) Manila Clam Surveys \$20,000

Manila clam beaches in Area 7 will be surveyed in July with weight, length and aging work to be completed by the end of the same month. Survey design and protocol will follow the method in Gillespie and Kronlund (1999). Field methods will be coordinated with DFO staff. Data analysis and report writing will occur in August.

This project is carried out in relation to the Heiltsuk Commercial Clam Fishery. The survey information is used by DFO to determine sub-area thresholds for the management of the clam fishery.

Salaries & Benefits	\$16,900
Boat maintenance & repair	\$ 1,200
Fuel	\$ 600
Equipment and supplies	\$1,300

Expected Results:

- Stock definition, enumeration, and assessment surveys are defined and implemented in accordance with technical requirements.
- Results of stock definition, enumeration and assessment surveys, including data, are systematically collected, stored and/or disseminated to DFO and others and valuable information is added to the knowledge database.
- Field related equipment is acquired, issued and maintained.
- Individuals are deployed to targeted areas to conduct field work in support of stock definition, enumeration, and assessment surveys.
- First Nation members gain technical expertise.
- Individuals are employed or contracted by the First Nation in support of stock definition, enumeration, and assessment surveys.

(iv) Paralytic Shellfish Poison (PSP) Monitoring \$10,193

Paralytic Shellfish Poison (PSP) monitoring will be conducted (19 days) in relation to the Heiltsuk Commercial Clam Fishery.

Salaries & Benefits	\$5,837
Boat Maintenance & Repair	\$ 680
Fuel	\$1,976
Freight	\$1,500
Station Maintenance & Dives	\$ 200

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Expected Results:

- Individuals are deployed to targeted areas to conduct field work in support of safe harvesting levels assessments
- Samples are collected and sent to the Canadian Food Inspection Agency
- Individuals are employed by the First Nation in support of safe harvesting levels assessments.

**(e) Operational Programming (Fisheries Monitoring, Catch Reporting and Other resource Management Operations)**

See Activity 1 (a) and 2 (b)

**Collaborative Planning, Consultation and Engagement –****(f) Bilateral/Multilateral/Among Aboriginal Organizations**

\$15,737.00

**(i) Resource Management and Planning Meetings \$12,965**

Representatives designated by the Heiltsuk Tribal Council (HTC) will attend relevant fisheries related meetings over the 2009-10 fiscal year including the Central Coast Advisory Board meeting.

Specifically, Heiltsuk Fisheries representatives will participate in meetings regarding: 1) the Gladstone Reconciliation Process, 2) BC Timber Sales, 3) review of Forest Stewardship Plans, 4) the Referrals Process, 5) PNCIMA forums, 6) Guardian-Watchmen conferences, 7) EBM learning forums, and 8) other related fisheries processes in a fisheries advisory capacity.

Salaries &amp; Benefits \$12,965

Travel costs will be covered by external funding.

Expected Results:

- The First Nation is actively participating in various fisheries related-meetings and forums to ensure that fisheries protection, buffering and monitoring, enhancement and restoration concerns are addressed.
- Community input is appropriately reflected in fisheries negotiations and discussions.
- The First Nation is actively participating in various fishery management planning processes.
- Individuals are employed or contracted by the First Nation in support of fisheries related meetings.
- An increased understanding has been gained by all Parties of the positions of the other stakeholders involved with the fishery.

**(ii) Heiltsuk Fisheries Program Support and Development \$2,772**

The Heiltsuk Co-management Committee is a group of 3 members nominated and elected to help guide the Heiltsuk Co-management staff in the development and delivery of AFS fisheries projects. Local fisheries issues and projects will be presented by Heiltsuk Co-management staff to be discussed by the committee during quarterly meetings.

Members of the Heiltsuk Fisheries Program will attend Heiltsuk Marine Use Planning meetings and discuss the projects being carried out under their AFS Agreement with the Marine Use Planning Committee.

An individual will be hired to develop Heiltsuk Fisheries personnel job descriptions.

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Salaries & Benefits     \$2,212  
 Meeting Costs             \$ 560

Expected Results:

- Interests of the First Nation are set forth and reflected in various projects under this agreement.
- The Heiltsuk Co-management (Fisheries) Committee will provide input on the Heiltsuk Fisheries Program AFS projects for 2009-10.
- AFS projects will be reviewed in relation to a longer term strategic direction.
- Heiltsuk Fisheries personnel job descriptions will be completed.

**(g) Business Planning and Feasibility Studies**

**(h) Public and Community Outreach and Education** \$1,000.00

(i) Community Awareness \$ 1,000.00

Heiltsuk Co-management representatives will provide regular briefings and supporting materials to the HTC on all AFS projects and other Co-management activities. Mike Reid, Senior Fisheries Technician, will be responsible for providing information into community newsletters. The information provided into these newsletters will be attached to the 2009-10 final report.

Salaries & Benefits     \$1,000

Expected Results:

- Production and publication of fisheries issues and opportunities explaining the activities supported under the AFS Project Agreement.
- Community members are informed to increase their understanding of fisheries issues influencing the FSC fishery and the job opportunities available.

**(i) Project Monitoring and Evaluation Activities**

**(j) Stream Enhancement and Restoration** \$54,254.00

(i) Emily Lake Hatchery \$54,254

The Tankeeah River system has had an average estimated sockeye escapement far less than historic figures (less than 500 with a historic target of 5,000). The Tankeeah River is a key system that the Heiltsuk wish to obtain their food fish. The Heiltsuk want to ensure there are food fish opportunities throughout the area and have indicated they will use their experience with Tankeeah to determine if enhancement efforts would be required on other stocks in the area.

The Emily Lake Hatchery project is a continuation of Tankeeah Lake sockeye enhancement. The project includes: set-up, Tankeeah broodstock collection, operation of the hatchery, ponding, rearing, and fry release. In addition to the above listed activities, the hatchery site requires: 1) heath tray installation; 2) deck work and rearing tub installation; and 3) aeration tower and water line maintenance.

The 2009-10 AFS Final report will include photos of the hatchery site improvements that have been made over the past 3 years.

Salaries & Benefits                     \$38,804

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Boat Maintenance & Repair	\$ 2,500
Fuel	\$ 7,530
Sampling Costs	\$ 800
Equipment & Supplies	\$ 4,620

Expected Results:

- Enhancement facilities are maintained and operate efficiently
- Enhancement operations contribute to First Nation enhancement plans and/or objectives
- First Nation members have gained expertise in enhancement techniques
- Individuals are employed by the First Nation in support of construction and operation of enhancement facilities.

**(k) Policy Analysis, Development and Input**

**2. Food Social and Ceremonial Fisheries (FSC) Management  
(FSC Elements are also being covered under other headings)**

**(a) FSC Planning and Negotiations (Allocations, Areas, Identification of Capacity Requirements, etc.)**

**(b) FSC Designation Procedures, Governance and Systems \$40,591.00**

**(i) FSC Catch Monitoring & Reporting \$40,591**

The office administrator will maintain and up-date the licensing information system. The office administrator will be responsible for the issuance of HTC food fishery designations and provide Kristen Smith, Resource Manager, weekly food fish figures during the salmon season and other catch numbers monthly throughout the year.

A new FSC catch database will be used in 2009 along with FSC catch calendars. This is the first year that the FSC catch calendars will be used by Heiltsuk food fishers. Catch reporting duties include: issuing the calendars to the fishers, collecting information from fishers, entering the information into the database, and reviewing calendar catch information and entering any missed catches from the regular observations into the database. The goal is to more accurately record all FSC catches and fishing effort for 2009.

The Heiltsuk Senior Fisheries Monitor and the Aboriginal Guardian will carry out monitoring activities in relation to the Heiltsuk food, social and ceremonial fisheries.

Salaries & Benefits	\$28,515
Boat Maintenance & Repair	\$ 1,500
Boat Fuel	\$ 5,226
Vehicle Fuel	\$ 400
Equipment	\$ 650
Materials & Supplies	\$ 4,300

Expected Results:

- The new catch calendars will assist the Sr. Fisheries Monitor and Guardian in collecting catch data, increase the accuracy of catches and landed numbers, and increase community awareness and support for the catch monitoring program.
- Catch data is provided to a DFO Resource Manager within a specified schedule in the agreement.
- Field related equipment is acquired, issued and maintained.

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- Individuals are employed by the First Nation in support of catch monitoring and reporting.

(c) **Implementation of FSC Plans**

(d) **Acquisition and Maintenance of Appropriate Equipment**

3. **Commercial Fisheries and Aquaculture Capacity**

4. **Aquatic Resource Management Compliance and Accountability**

(a) **Restorative Justice**

(b) **Compliance Promotion**

\$24,656.00

(i) Conducting Enforcement Activities \$24,656

The Heiltsuk Senior Fisheries Monitor and Aboriginal Guardian will carry out monitoring and enforcement activities in relation to the Heiltsuk food, social and ceremonial fisheries and in relation to the monitoring and enforcement protocol's coordination mechanisms (i.e. exchange of information, co-monitoring and co-patrolling).

Monitoring for possible logging infractions as reported by community members will also occur. Infractions will be reported to the North Coast Forestry Office (Miles Muna).

Salaries & Benefits	\$17,280
Boat Maintenance & Repair	\$ 1,500
Fuel	\$ 5,226
Equipment & Supplies	\$ 650

Expected Results:

- Aboriginal fisheries are monitored for compliance with the specified schedule in the agreement or conditions of the communal licence, whichever prevails.
- Field related equipment is acquired, issued and maintained.
- Individuals are employed or contracted by the First Nation in support of enforcement activities, including an Aboriginal Guardian.
- The First Nation Aboriginal Guardian will be operating under designation status by DFO and assigned by the First Nation.

(c) **Establishment or Negotiation of Enforcement Protocols**

(d) **Surveillance and Enforcement and Appropriate Training**

**TOTAL**

**\$252,087.00**

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

AND: Heiltsuk Tribal Council (HTC)

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**COMPREHENSIVE FISHERIES AGREEMENT**

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