

May 24, 2005

By Fax: 613-947-7081

Ministry of Fisheries and Oceans
Centennial Towers
Suite 1570 - 200 Kent Street
Ottawa, ON K1A 0E6

**Attention: The Honourable Geoff Regan,
Minister**

By Fax: 604-666-8956

Fisheries and Oceans Canada
Suite 200 - 401 Burrard Street
Vancouver, BC V6C 3S4

**Attention: Paul Sprout,
Acting Regional Director General**

By Fax: 819-953-4941

Indian Affairs and Northern Development
Terrasses de la Chaudière, North Tower
Suite 2100 - 10 Wellington Street
Gatineau, Quebec K1A 0H4

**Attention: The Honourable Andy Scott,
Minister**

By Fax: 604-775-7149

Indian and Northern Affairs Canada
Suite 600 - 1138 Melville Street
Vancouver, BC V6E 4S3

**Attention: Steven Jourdy,
Regional Director General**

Dear Sirs:

**Re: Individual Quota Demonstration Fisheries
Area F (North Coast) Troll Fishery**

Please be advised that we are lawyers representing the Council of the Haida Nation ("CHN").

We are writing over concerns raised by the CHN about the proposed "Individual Transferable Quota Demonstration Fishery" ("ITQDF") presently set for Area F on the North Coast in the upcoming fishing season. The area in question is located within the Haida Nation territorial waters as defined in the lawsuit, *The Council of the Haida Nation and Guujaaw, suing on his own behalf and on behalf of all members of the Haida Nation v. Her Majesty the Queen in Right of the Province of British Columbia and the Attorney General of Canada*, Supreme Court of British Columbia File No. L020662, Vancouver Registry. In direct contradiction to what the Supreme Court of Canada has stated in *Haida Nation v. B.C. (Ministry of Forests) and Weyerhaeuser*, 2004 SCC 73, there has been no consultation about the impacts of this initiative on the Haida.

On April 14, 2005, the Honourable Geoff Regan, Minister of Fisheries and Oceans announced a "Plan of Action" to reform the Pacific Fisheries, in particular the salmon fishery. The Crown's legal duty to consult and accommodate First Nations engages, when decisions are contemplated that may affect Aboriginal rights and title. The courts have also now established that such consultation must be early in the process before third party tenures are granted. Clearly the decisions to reform the salmon fishery and to grant individual transferable quotas to participants in the Area F troll fishery are decisions that will affect the Haida Nation's rights and title to their fishery.

On November 4, 2004, Arnie Bellis wrote to Paul MacGillivray requesting the commencement of discussions about accommodation of their Aboriginal rights and title to the fishery. Two weeks later on November 18, 2005, the Supreme Court of Canada handed down its decision in favour of the Haida. This should have been notice to your government to sit down and discuss with the Haida any proposed changes that the Department was contemplating within the fishing industry in and around the territorial waters of Haida Gwaii.

Instead, DFO chose to initiate discussions with the Area F troll fleet to discuss how the Department was going to grant to third parties stronger rights over the fishery than ever before. On February 21, 2005 Paul Sprout responded to Mr. Bellis' letter regarding consultation and accommodation, stating that the Department was still formulating a response to the Pearce – McRae and the First Nation Panel reports and expected to have a strategy within a couple of months. It is apparent that DFO was already contemplating experimenting with ITQDF as shown in the "Pacific Region Integrated Fisheries Management Plan for Consultation Salmon Northern BC, June 1, 2005 to May 31, 2006".

The Court stressed that consultation and accommodation should not be confined to operational decisions but is required at the strategic planning level. A decision to grant a portion of the commercial harvest of chinook, coho and pink salmon to participants in the ITQDF is a strategic level decision.

In a letter from Paul Sprout to Mr. Bellis on February 21, 2005 Mr. Sprout also indicated that Paul MacGillivray contacted Steven Jourdy, Regional Director General for Indian and Northern Affairs regarding a process to respond to Haida issues concerning Haida rights and title and fisheries. This has not occurred.

The Department states that the decision to grant this type of fishery to the commercial fishing sector is only a "pilot" project done on an experimental basis. The CHN have valid concerns over these so-called pilot fisheries as they tend to become permanent and it makes more difficult for their fishers to gain access to those fisheries, especially where third parties gain a vested interest. The Haida access to resources of the ocean has been steadily eroded due in part to DFO licencing policies to the point where very few of the Haida people are able to make a living from the resources of their territorial waters.

It is very important to the Haida that the decision to grant individual transferable quotas be put on hold until their rights, title and interests have been adequately dealt with to their satisfaction. We would ask for a response to this letter no later than June 7th, because the fishing season is fast approaching. We understand that DFO did a mail-out to all Area F licence holders in early May, asking them to reply by May 31st to an Expression of Interest to participate in the Individual Quota Fisheries.

Yours very truly,

MANDELL PINDER

Louise Mandell, Q.C.
Barrister and Solicitor

LM/lu

cc: Clients