

COWICHAN INDIAN BAND

Preamble

This by-law may be cited as the "Cowichan Indian Band Fishing By-Law, 1983, No. 2."

This by-law is made pursuant to section 81 (c), (o), and (r) of the Indian Act.

This by-law replaces the Cowichan Indian Fishing By-law, 1956, #1.

Definitions

1. In this by-law, unless the context otherwise requires:
 - (a) "Band Council" means the duly elected Council of the Cowichan Indian Band;
 - (b) "Band Manager" means that person so appointed by Band Council;
 - (c) "Band member" means any member of the Cowichan Indian Band;

(d) "Cowichan Indian Band waters" means all waters situated upon or within the boundaries of reserves established for the use and benefit of the Cowichan Indian Band;

(e) "deleterious substance" means:

(i) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(ii) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man or fish that frequent that water;

- (f) "Fish" includes shellfish, crustacans and marine animals;
- (g) "Fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.
- (h) "Fishery" includes the area, locality, place or station in or on which a pound, seine net, weir or other fishing appliance is used, set, placed or located, and the area, tract or stretch of water in or from which fish may be taken by the said pound, seine, net, weir, or other fishing appliance, and also the pound, seine, net, weir, or other fishing appliance used in connection therewith;
- (i) "Fishing" means fishing for, catching or attempting to catch fish by any method;
- (j) "Reserve" means the Cowichan Indian Reserves.
- (k) "River Management Personnel" means a person appointed as such by Band Council pursuant to this by-law, whose duties and powers are as specified

by this by-law;

(l) "Traditional fishing methods" means fishing by use of dip nets, weirs, gaffs, spears, or hooks and rods;

(m) "waters frequented by fish" means Cowichan Indian Band waters;

Jurisdiction

2. This by-law applies to Cowichan Indian Band waters, and such areas of reserve land adjacent to Cowichan Indian Band waters as maybe necessary for the proper enforcement of this by-law, whether such land be surrendered land or otherwise.

River Management Personnel

3. (a) Band Council may appoint, by Band Council Resolution, any person to act as a River Management Personnel.
- (b) Any River Management Personnel appointed pursuant to these by-laws may direct, either in writing or orally on site that nets or other fishing

apparatus be reduced in size to occupy less than 1/3 of the diameter of any stream or river.

- (c) Any River Management Personnel appointed hereunder may enforce the provisions of this by-law or any regulations made hereunder.

Fishing

4. No person, other than a Band member, may engage in fishing in Cowichan Indian Band waters unless that person possesses a permit pursuant to section 18 of this by-law.
5. Unless otherwise ordered by a special order pursuant to section 16 of this by-law, Band members may fish in Cowichan Indian Band waters as follows:
- (a) Band Members who are elders, single mothers, handicapped or disabled may fish by use of set nets 3 days per week, such days to be specified by order of the Band Council pursuant to section 17 hereof, provided that there shall be maximum of one such person per family fishing by this method during these times;

(b) Band members specified in section 5 (a) hereof may appoint a Band Member to fish for him or her pursuant to that section;

(c) Except as provided in Section 5 (a) hereof, Band Members may fish at all times by traditional fishing methods only and, without restricting the generality of the foregoing, Band members may not fish by use of:

- (i) set nets;
- (ii) spear guns;
- (iii) explosives or projectiles.

unless otherwise ordered pursuant to section 16 hereof.

6. No Band member shall fish for salmon fry, parr or smolt at any time, and no salmon or grilse of less weight than 3 pounds shall be caught or killed, otherwise than by angling with a hook and line.

7. The eggs or fry of fish on the spawning grounds shall not at any time be destroyed.

Obstructions or Deleterious Substances

8. Where unused slides dams, obstructions or anything detrimental to fish exist, and the owner or occupier thereof does not after notice given by the Band Council to remove the same, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Band Council, the Band Council may cause the slide, dam, obstruction, or thing detrimental to fish life to be removed or destroyed and in cases where notice has been given to the owner or occupier Band Council may recover from the said owner or occupier the expense of so removing or destroying the same.

9. Every person using stakes, posts, buoys or other materials placed for fishing purposes in any water shall remove the same within forty-eight (48) hours after ceasing to use them.

10. One third (1/3) of the width of any river or stream, and not less than two-thirds (2/3) of the width of the main channel at low tide, in every tidal stream shall be always left open, and no kind of net or other fishing apparatus, logs, or any material of any kind shall be used or placed there.

11. No persons shall cause or knowingly permit to pass into, or put or knowingly permit to be put, lime, chemical substances or drugs, poisonous matter, dead or decaying fish, or remnants thereof, mill rubbish or sawdust or any other deleterious substance or thing, whether the same is of a like character to the substance named in this section or not, in any water frequented by fish or on any ice over such waters.

12. No person engaging in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water.

Prohibition

13. No person shall destroy fish by any means other than fishing as authorized or specified by this by-law.

14. No person shall carry on any work or undertaking that results in the harmful alteration, destruction or disruption of fish habitat.

Possession of Fish

15. No one shall fish for, buy, sell or have in his possession any fish, or portion of any fish, at a place where at that time fishing for such fish is contrary to this by-law.

Special Orders

16. Band Council may by Band Council Resolution specify that Band members:
- (a) Shall not fish as allowed under these by-laws, at any time or place specified in the special order until further order of Band Council;
 - (b) May fish otherwise than as allowed under these by-laws by reason of special circumstances, at any time or place specified in the special order.
17. Band Council may make other special orders for carrying out the purposes and provisions of this by-law as follows:
- (a) for the proper management and control of fisheries;

- (b) respecting the catching, loading, landing, handling, trasporting, possession and disposal of fish;
- (c) respecting the operations of fishing vessels;
- (d) respecting the use of fishing gear and equipment;
- (e) respecting the obstruction and pollution of any waters frequented by fish;
- (f) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this by-law and providing for the carrying out of those duties and powers;

18. Band Council may issue a permit to any person other than a Band member to fish in Cowichan Band waters at the time and place and according to the method specified in the permit.

19. With regard to Sections 16, 17 and 18 of these

by-laws, Band Council shall:

- (a) give notice to all persons affected by the special orders by posting a copy of such orders at conspicuous places on the Reserve at least 24 hours prior to the special order coming into effect;
- (b) all special orders shall be for the purpose of furthering the conservation and protection of fish or spawning grounds.

Interpretation

- 20. In the event that any ambiguity or uncertainty arises in the interpretation of this by-law, Band Council may, if requested to do so by a Band Member, provide its interpretation of the by-law by Band Council Resolution.

Violation

- 21. Every person who violates or prepares to violate any provision of this by-law or any order made pursuant to Sections 16 and 17 hereof, is guilty of an offense and is punishable on summary conviction to a fine of not

more than \$100.00 or to imprisonment of not more than 30 day.

22. Should any violation of this by-law or the orders made pursuant to Sections 16 and 17 hereof, continue for more than one day, then each day which such violation continues constitutes a separate offense and may be punished as such.

Considered and passed at a duly convened meeting of the Cowichan Indian Band Council the _____ day of _____, 1982.

Signed _____

Chief

