

SOR/85-281 March 22/8

THE Ahousaht INDIAN BAND

This by-law shall be cited as the " Ahousaht Indian Band Fishing By-law # 1985 #1 ".

WHEREAS Paragraphs (o) and (r) of section 81 of the Indian Act empower the Council of a Band to make by-laws respecting the preservation, protection and management of fish on the reserve and the imposition of a penalty for the violation thereof;

NOW THEREFORE the Council of the Ahousaht Band enacts as a by-law thereof the following:

1. DEFINITIONS

In this by-law unless the context otherwise requires:

- (a) "Band Council" means the duly instituted Council of the Ahousaht Band;
- (b) "Band member" means any member of the Ahousaht Band registered as such pursuant to the Indian Act;
- (c) "Ahousaht Band waters" means all waters;
 - (i) situated upon or within the boundaries of reserves established for the use and benefit of the Ahousaht Band.
- (d) "Band Fisheries Conservation Officer" means any person appointed as such by Band Council pursuant to this by-law, whose duties and powers are as specified by this by-law;
- (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 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 deleterious to fish or fish habitat or to the use by man or fish that frequent that water;
- (f) "Fish" includes finned fish, shellfish, crustaceans and marine animals;
- (g) "Fish habitat" means spawning grounds and nursery, rearing, food

- (g) *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 used in connection therewith;*
- (i) *"Fishing" means fishing for, catching or attempting to catch fish by any method;*
- (j) *"Traditional Fishing Methods" means fishing by means of pound, seine, dip nets, gill nets, weirs, gaffs, spears, or hooks and rods.*

2. JURISDICTION

This by-law applies to all Ahousaht Band waters.

3. BAND FISHERIES CONSERVATION OFFICER

- (a) *Band Council may appoint any person to act as a Band Fisheries Conservation Officer.*
- (b) *Band Council may terminate the Band Fisheries Conservation Officer.*
- (c) *The Band Fisheries Conservation Officer shall enforce the provisions of this by-law.*

4. DUTIES AND POWERS OF BAND FISHERIES CONSERVATION OFFICER

- (a) *The Band Fisheries Conservation Officer shall determine, according to the best information available to him, the capacity of the waters on each of the Band's reserves to sustain production of fish.*
- (b) *The Band Council may close any area for fishing for any period of time he considers appropriate in the interest of conservation of any species of fish.*

- (c) *The Band Fisheries Conservation Officer shall prohibit any gear type he considers inappropriate for any location.*
- (d) *The Band Fisheries Conservation Officer shall collect statistics on all fish caught or sold under this by-law.*
- (e) *The Band Council shall maintain a record of all permits issued.*

5. OPENINGS AND CLOSURES

The Band Council shall designate openings and closures for the On-Reserve Fishery. (see also Section 20).

6. SALE OF FISH

Any fish caught under this by-law may be sold to any person, provided that the person selling the fish issues the required information to the Band Fisheries Conservation Officer.

7. FISHING

- (a) *The Band Council shall, in the interests of more effective fish management, designate by issuance of permits to those persons who are to be permitted to harvest fish on the reserve.*
- (b) *The issuance of permits shall be on a calendar year basis, with each permit expiring on December 31st of each year. Such permit shall indicate expiry date and be signed by a member of the Band Council.*
- (c) *Members of the Ahousaht Band shall be permitted to engage in fishing upon Ahousaht Band waters at any time and by any means, pursuant to Sections 1(j), 5 and 7(a) of this by-law.*
- (d) *No person shall engage in fishing by the use of rockets, explosive materials, projectiles, shells or spear guns.*
- (e) *No Band member or other person who prior to this enactment was entitled to harvest or sell fish shall be denied a permit provided however that the Council may by future by-law approved*

- (e) pursuant to section 82 of the Indian Act set out guidelines and procedures governing the issuance and suspension of permits.
- (f) No person shall catch or attempt to catch, sell or offer for sale any fish, without being the holder of a valid and subsisting permit to do so, issued pursuant to this section. Any person acting in contravention to this section is guilty of an offence. Each eight hour period or any portion thereof during which a person continues to harvest, sell or offer for sale fish without being the holder of a valid permit after being requested to apply for same by a Council member, the Band Fisheries Conservation Officer shall constitute the commission of an additional and separate offence.
- (g) All apparatus for fishing shall be attended at all times while in use, except that gear may be left unattended when in use if clearly labelled with permit holders name.
- (h) Band Council may authorize, from time to time, a "Community Fishing" which shall be done by use of drag seine from a boat.

8. No person shall fish for salmon fry, parr or smelt at any time, and no salmon or grilse of less weight than 2 pounds shall be caught or killed otherwise than by angling with a hook and line.

9. The eggs or fry of fish on the spawning grounds shall neither be disturbed or destroyed.

10. OBSTRUCTIONS OR DELETERIOUS SUBSTANCES

Where unused/abandoned slides, dams, obstructions or anything detrimental to fish life, and the owner or occupier thereof does not comply after notice has been given by the Band Council to remove 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 without being liable to damages, or in any way to indemnify the said owner or occupier, cause such 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 may recover from the said owner or occupier the expense of so removing or destroying same.

11. *One third (1/3) of the width of any river or stream, and not less than two-thirds (2/3) of the main channel at low tide in every tidal stream shall be left open, and no kind of net or other fishing apparatus, logs, or any material of any kind shall be used or placed there.*
12. *No person shall cause or knowingly permit to pass into, or put or knowingly permit to be put lime, chemical substance or drugs, poisonous matter, mill rubbish or sawdust or any other deleterious substance or thing, whether the same is of like character to the substances named in this section or not, in any Band waters frequented by fish, or that flows into such water, nor on the ice over such waters.*
13. *No person engaged in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put any slash, stumps, or other debris into any Band water frequented by fish or water that flows into such waters or on the ice over either such waters.*

14. BAND COUNCIL

Band Council may overrule any decision of the Band Fisheries Conservation Officer made pursuant to this by-law. The Band Council as required in the interests of conservation and good fisheries management may from time to time convene special Band meetings to discuss by-law regulations and policy with the Band members to determine/modify openings and closures and gear type.

15. PROHIBITION

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

16. *No person shall use any apparatus to catch fish on reserve except for that type approved pursuant to section 1(j) of this by-law.*

17. SPECIAL ORDERS

Band Council may issue Special Orders that Band members:

(a) shall not fish as allowed under this by-law, at any time or place as specified by Special Order, by reason of low run of fish or other special circumstances having bearing on preservation and protection of fish;

(b) may fish in addition to fishing under this by-law, by reason of high run of fish or other certain circumstances.

18. *Band Council may issue a permit to a person other than a Band member to fish in Ahousaht Band waters provided that such permit shall be subject to the provisions of this by-law and to any further restrictions the Band Council deem advisable.*

19. *Subject to section 83 of the Indian Act, the Band Council may set a tax on fish sold pursuant to this by-law.*

20. *Special Orders made pursuant to this by-law shall be posted at the Band Office and near the place where the Special Order is to take effect.*

21. CO-OPERATION WITH FEDERAL FISHERIES

The Band Fisheries Conservation Officer shall provide any information requested by any Fisheries Officer appointed pursuant to the Federal Fisheries Act, on demand.

22. *The Band Fisheries Conservation Officer, and any such persons as the Band Council may appoint, together with persons appointed by the Minister of Fisheries & Oceans (not to exceed the number appointed by the Band Council) shall, constitute a joint management committee, with power to make recommendations to the Band Council concerning the fishery.*

23. VIOLATION

Every person who violates any provision of this by-law is guilty of an offence and is punishable on summary conviction by a fine of not more than

One Hundred Dollars (\$100.00) or to imprisonment of not more than thirty (30) days, or both fine and imprisonment.

Considered and passed at a duly convened meeting of the Ahousaht Band Council this 15 day of January, 1985.

(Signed) Corbett George

Chief

(Signed) Percy Campbell Jr
Counsellor

(Signed) Edwin Frank
Counsellor

(Signed) John R. Keitlah Jr
Counsellor

Counsellor

(Signed) Josepheus Campbell
Counsellor

Counsellor

A quorum for this Band consists of 5