

THE KINGSCLEAR INDIAN BAND

SOR/79-472
June 13, 1979

Whereas paragraphs (c), (d), (o), (q) and (r) of Section 81 of the Indian Act, R.S.C., 1970, empower the Council of a band to make by-laws respecting the regulation of law and order, nuisances, and the preservation, protection and management of fur-bearing animals, fish and other game on the reserve, ancillary matters and the imposition of a penalty for the violation thereof:

By-law No. 2A

A BY-LAW FOR THE PRESERVATION' PROTECTION AND MANAGEMENT OF FISH ON THE RESERVE

The Band Council of the Kingsclear Indian Band enacts as follows:

1. In this By-law unless the context otherwise requires:

(a) "Kingsclear Indian Band waters" means all waters situate upon or within the boundaries of Reserves set aside for the use and benefit of the Kingsclear Band of Indians.

(b) "Fish" includes shellfish, crustaceans and marine animals.

(c) "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 is used in connection therewith.

(d) "Fishing" means fishing for or catching fish by any method.

(e) "Band Council" means the council of the Kingsclear Indian Band.

(f) "Band Manager" means that person so appointed by the Band Council.

(g) "Fishery Officer" means persons so appointed by the Band Council and includes Band Constables.

(h) "Closed Season" means a period of time that is not an open season.

(i) "Open Season" means a specified period of time during which specified fish may be taken or caught in accordance with this by-law.

(j) "Member of the Band" means a person whose name appears on the Kingsclear Indian Band List, or who is entitled to be registered and placed on the Kingsclear Indian Band List.

(k) "Vehicle" means an automobile, truck, motorcycle, camper, or any other means of transportation driven by any kind of power, including muscular power.

(l) "Vessel" means a boat, ship, canoe, skiff, punt, raft or other means of transportation used on waterways.

2. This by-law applies over all Kingsclear Indian Band Waters and lands situated within the exterior boundaries of the Kingsclear Indian Reserve.
3. The Band Council may by resolution, appoint fishery officers whose acts and duties are as defined by this by-law and amendments hereto, which include the enforcement of this by-law, and whose titles are as specified in their appointments.
4. (1) Salmon fry, parr and smolt shall not at any time be fished for, caught or killed.
(2) The eggs of fry of fish on the spawning grounds shall not be destroyed at any time; and
(3) No salmon or grilse of less than three pounds in weight shall be caught or killed, by any means other than by angling with hook and line.
5. No person, other than a member of the Band, shall attempt to fish or engage in fishing in any form upon Kingsclear Indian waters or within the boundaries of the Kingsclear Indian Reserve.
6. (1) No person with any sporting implement, fishing rod or tackle in his possession, other than a member of the Band, shall go upon any enclosed, on unenclosed land within the Reserve or upon the Kingsclear Indian Band waters after he has had oral or written notice not to fish thereon by the Band or by a person authorized by the Band Council to give such notice.

- (2) Any notice or sign issued and posted at the direction of the Band Council, constitutes written notice as referred to in subsection (1).
- (3) No person shall
 - (a) without authority, give or cause to give the notice mentioned in subsection (a) hereof, or
 - (b) tear down, remove, deface, damage or interfere with any notice or sign put up, posted or placed pursuant to subsection (1).
7. No person within the boundaries of the Kingsclear Indian Reserve, or upon the Kingsclear Indian Band waters, shall have in his possession during the closed season a fish, or part of a fish caught within said boundaries during the closed season.
8. Members of the Band shall be permitted to engage in fishing upon Kingsclear Indian Band waters or within the Reserve during the open season by any means except by the use of rockets, explosive materials, projectiles, or shells.
9. Any fishery officer appointed hereunder may direct, either in writing or orally on sight, that nets or other fishing apparatus be reduced in size to occupy less than one-half ($\frac{1}{2}$) of the width of any stream or river within the Kingsclear Indian Band Waters.
10. (1) Where 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 such slide, dam, obstruction, or thing detrimental to fish life to be removed or destroyed
 - (2) Any owner or occupier who, upon notice referred to in subsection (1), fails to remove such slide, dam, obstruction, or thing detrimental to fish life, is

liable in full for the costs incurred by the Kingsclear Indian Band or its designated officials in its removal or destruction.

11. Every person using stakes, posts, buoys or other materials placed for fishing purposes in an water shall remove the same within forty-eight (48) hours after ceasing to use them.
12. One-half ($\frac{1}{2}$) of the width of any river or stream, and not less than one-half ($\frac{1}{2}$) of the width of the main channel at low water level, 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 therein.
13. No person 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 saw dust or any other deleterious substance or thing, whether the same is of a like character to the substances name in this section or not, in any water frequented by fish, or that flows into such waters.
14. No person, whether engaging in logging, lumbering, land clearing or other operations or not, 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.
15. (1) A fishery officer may, without a search warrant:
 - (a) stop, enter and search any aircraft, vehicle or vessel; and
 - (b) open and inspect any trunk, box, bag, parcel or receptacle,if he as reasonable grounds to believe that any of them contain any fish

killed, taken, shipped or had in possession in contravention of this by-law.

- (2) A fishery officer shall investigate all contraventions of this by-law brought to his notice and may prosecute any person who he has reasonable cause to believe is guilty of any breach of this by-law.
- (3) No person shall obstruct, hinder, or delay or interfere with a fishery officer in the discharge of his duty by violence, or threats, or by giving false information, or in any other manner.
- (4) A fishery office may stop a vehicle or vessel for the purpose of
 - (a) determining whether the occupants of the vehicle or vessel have been fishing, or,
 - (b) obtaining information as to the number of species of fish taken.
- (5) A fishery officer may remove all objects referred to in Section 13 and 14 which endanger water quality or obstruct access to the water.

16. (1) Any fish suspected of having been taken or possessed and anything, except a vehicle, or vessel, suspected of having been used in contravention of this by-law, shall be seized.
 - (2) A vehicle or vessel
 - (a) suspected of having been used; or
 - (b) used in transporting fish suspected of having been taken or possessed, in contravention of this by-law may be seized.
 - (3) Upon conviction, any property seized under this section is forfeited to the band and may be disposed of as the Band Council directs.

17. Everyone who contravenes or attempts to contravene any of the provisions of this by-law, or any resolutions enacted pursuant to this by-law, is guilty of an offense punishable on summary conviction and is liable to a fine of not more

than \$100.00 or imprisonment for a term of not more than thirty (30) days or both.

18. When not otherwise specified every proprietor, owner, agent, tenant, occupier partner or person actually in charge, either as an occupant or servant, shall be deemed to be jointly and severally liable for breach of any of the provisions of this by-law or of any resolution enacted pursuant thereto.
19. The Band Council, including members of the Band Council, and its employees or agents is not liable in tort or otherwise for any actions taken pursuant to this by-law.
20. All actions or proceedings, other than in reference to summary conviction offences, shall be commenced within two years after the act or omission complained of occurred and not afterwards.
21. Except insofar as in this by-law it is otherwise specially provided, all penalties and forfeitures incurred under this by-law or amendments hereto are recoverable and enforceable by summary proceedings taken under the provisions of the Criminal Code relating to summary convictions.
22. Should any violation of this by-law or any regulation continue for more than one day during which such violation continues constitutes a separate offence and may be punished as such.
23. The Band Council may make resolutions for carrying out the purposes and provisions of this by-law and in particular, but without restricting the generality of the foregoing, may make resolutions,
 - (a) for the proper management and control of fisheries;

This by-law may be cited for all purpose as "Fishing By-law,
1979, No. 2A."

Considered and passed by the Kingsclear Band Council, on the
19th day of April, 1979.

Steve Sacobie

CHIEF

Joan Polchies

Councillor

Richard Polchies

Councillor