

JAMES SMITH CREE NATION
By-law #1 of 1992

***A BY-LAW RESPECTING LAW AND ORDER AND THE PRESERVATION,
PROTECTION AND MANAGEMENT OF FISH ON THE JAMES SMITH INDIAN
RESERVE - Indian Act, R.S.C. I-6Y***

WHEREAS s.81(1)(c), (o) and (r) and s.81(2) and (3) of the Indian Act empower the Council of an Indian Band to make by-laws respecting the observance of law and order, the preservation, protection and management of fish on the James Smith Reserve and to impose a penalty for the contravention thereof; and

WHEREAS the Fisheries Act, R.S.C. and The Saskatchewan Fisheries Regulations passed pursuant thereto, as well as other related federal and provincial laws, do not, in the opinion of the Chief and Council, appropriately reflect or adequately provide for the Treaty rights, local concerns and needs of the James Smith Band.

NOW, THEREFORE, the Band Council of the James Smith Band of Indians enacts as a by-law the following:

1. *DEFINITIONS*

In this By-law, unless the context otherwise requires:

- 1.1 ***"BAND COUNCIL"*** means the Council of the James Smith Cree Nation.
- 1.2 ***"BAND"*** means the James Smith Cree Nation.
- 1.3 ***"BY-LAW"*** means this By-law and includes any amendments thereto.
- 1.4 ***"FISH"*** includes shellfish, crustaceans and aquatic animals.
- 1.5 ***"FISHERY OFFICER"*** means that person so appointed by the Band Council.
- 1.6 ***"FISHING"*** means fishing for or catching fish by any method.

- 1.7 **"REGULATIONS"** means a regulation made pursuant to this By-law.
- 1.8 **"JAMES SMITH BAND WATERS"** includes all water situated upon or within the boundaries of any reserves set aside for the use and benefit of the James Smith Band of Indians.
- 1.9 **"TREATY #6"** is a reference to the Articles of Treaty signed at Forts Carlton and Pitt.

2. ***APPLICATION OF BY-LAW***

This By-law applies to all James Smith Band waters.

3. ***APPOINTMENT OF FISHERY OFFICER***

The Band Council may appoint one or more fishery officers whose duties are defined by this By-law and Regulations and whose titles are as specified in their appointments.

4. ***FISHING RESTRICTED TO BAND MEMBERS***

Unless otherwise provided for in this By-law or the Regulations, no person other than a member of the James Smith Band shall engage in fishing upon or in James Smith Band waters.

Notwithstanding the preceding paragraph, an Indian, as defined by the Indian Act, Canada, I-6, shall, upon registering with the Band Council, be entitled to share in the fish resources of the James Smith Band subject only to the same responsibilities, restrictions and obligations imposed on Band members of the James Smith Band under this By-law and its Regulations.

5. ***NON-DANGEROUS FISHING PERMITTED***

Subject to any regulations providing otherwise, members of the James Smith Band shall be permitted to engage in fishing upon or in the James Smith Band waters at any time and by any means except by the use of rockets, explosive materials, projectiles, or shells.

6. ***PROPERTY IN FISH***

Property in all fish in James Smith Band waters is hereby declared to be collectively vested in the James Smith Band, and no person shall acquire any prior or exclusive right or property in any fish otherwise than in accordance with this By-law and the Regulations.

7. ***OBSTRUCTION DETRIMENTAL TO FISH***

Where dams, obstructions, or objects exist which, in the opinion of Council, appear to be detrimental to fish and the owner or occupier of such obstruction thereof does not remove the same after notice is given by the Band Council or where the owner is not a resident of the James Smith Indian Band, or his exact place of residence is unknown to the Band Council, the Band Council may, without being liable for damage or indemnity to the owner or occupier, cause the dam, obstruction or object detrimental to fish to be removed or destroyed, and where notice has been given to the owner or occupier, the Band Council may recover from the said owner or occupier the expense of so removing or destroying the same.

8. ***USE OF MARKERS AND BUOYS***

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.

9. ***OBSTRUCTION OF NAVIGATION***

One-third (1/3) of the width of any navigable lake, river or stream shall always be left open, and no kind of net or other fishing apparatus, logs or any material of any kind shall be used or placed therein.

10. ***DESTRUCTION OF SPAWNING GROUNDS***

The eggs or fry of fish on any spawning grounds in the James Smith Band waters shall not, at any time, be destroyed.

11. ***DELETERIOUS SUBSTANCE***

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, rubbish, or any other deleterious substance or thing, whether the same is of a like character to the substances named in this section or not, in any water frequented by fish, or that flows into such water, nor in or on ice over such waters.

12. ***POLLUTION***

No person engaging in farming, ranching, logging, lumbering, land clearing or other operations shall put or knowingly permit to be put any farm chemicals, animal waste, or animal by-products, slush, stumps or other debris into any water frequented by fish or stream that flows into such water, nor in or on the ice over such water, or at a place from which it is likely to be carried into such waters.

13. ***FISH ADVISORY COMMITTEE***

The Band Council may, in each year, appoint a fish advisory committee consisting of not more than eight (8) members who shall meet upon the request of the Band Council and shall act in an advisory capacity to the Band Council on matters of general interest respecting the carrying out of the provisions of this By-law or Regulations.

The members of the fish advisory committee shall receive such remuneration as the Band Council may determine.

14. ***AGREEMENTS***

The Band Council may enter into and carry out the terms of an agreement with any person, persons, corporation, or government for the purposes of protecting, managing, conserving, or encouraging the propagation of fish or for the purpose of encouraging programs to promote education or other conservation-oriented programs related to fish or fishing.

15. ***SUSTENANCE FISHING***

Notwithstanding anything to the contrary in this By-law or the Regulations, the Chief and Council or a fishery officer authorized by the Chief and Council may issue a permit to a person who is not a Band member permitting him to take such fish as may be necessary for the purposes of providing food for himself and his family.

16. ***SALE OF FISHING RIGHTS***

Subject to this By-law and the Regulations, no Band member shall directly or indirectly dispose, sell, trade, barter, or offer for sale, trade or barter his right to take fish from the James Smith Band waters to a person other than a member of the James Smith Band whether ordinarily a resident on or off the James Smith Reserve.

17. ***OBSTRUCTING FISHERY OFFICER***

No person shall obstruct, hinder, delay, or interfere with a fishery officer in the discharge of his duty.

18. ***POWERS OF FISHERY OFFICERS***

All fishery officers have the powers of peace officers to enforce this By-law and Regulations and shall be entitled, while performing their duties, to all the protection to which peace officers are entitled under the Canadian Criminal Code and its amendments.

19. ***REGULATIONS***

The Band Council may, by appropriate Band Council Resolution(s), make regulations for carrying out the purposes and provisions of this By-law and, in particular, but without restricting the generality of the foregoing, may make regulations providing for:

19.1 the proper management and control of fisheries;

19.2 the conservation and protection of fish;

- 19.3 the catching, loading, landing, handling, transporting, possession, and disposal and sale of fish;
- 19.4 the operation of fishing vessels whether motor- equipped or otherwise;
- 19.5 the use of fishing gear and equipment;
- 19.6 the obstruction and pollution of any waters frequented by fish;
- 19.7 the conservation and protection of spawning grounds;
- 19.8 the closing or varying of any closed time for fishing;
- 19.9 the fishing quota that is to be permitted from time to time;
- 19.10 the powers and duties of fishery officers engaged or employed in the administration or enforcement of this By-law and Regulations providing for the carrying out of those powers and duties;
- 19.11 any matter arising out of or ancillary to the exercise of powers under this By-law.

Regulations shall be effective from the date stipulated in the BCR providing for the said Regulations and shall apply to those waters of the James Smith Indian Band as may be specified therein.

Copies of all regulations passed pursuant to this By-law shall be posted in the Band Office of the James Smith Band and at two other conspicuous places on the Reserve. The BCR may authorize such additional posting or advertising as the Band Council in its sole discretion may determine.

20. ***INJURY TO BAND PROPERTY***

No person shall injure or damage property belonging to the James Smith Band, and no person shall injure or remove any notice, sign or sign board erected, placed or maintained by or on behalf of the Band.

21. ***PENALTIES***

Anyone who violates, attempts or prepares to violate any provision of this By-law or any regulations passed pursuant hereto is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding ONE THOUSAND (\$1,000.00) DOLLARS or imprisonment for a term not exceeding thirty (30) days, or both.

Notwithstanding any other penalty provided for by this By-law, a Band member, upon conviction for a violation, shall automatically, upon the conviction being registered and no appeal being taken, lose his right to use the fish resources of the James Smith Band waters unless and until that right has been reinstated upon application by the member to the Band Council.

22. ***JOINT AND SEVERAL LIABILITIES***

Unless otherwise specified, every proprietor, owner, agent, tenant, occupier, partner, or person actually in charge, either as occupant or servant, shall be deemed to be jointly and severally liable for any violation of the provisions of this By-law or any regulations passed pursuant hereto.

23. ***ENFORCEMENT***

Except insofar as otherwise specified in this By-law or Regulations hereto, all penalties and forfeitures incurred under this By-law or Regulations hereto, shall be recoverable and enforceable by summary proceedings taken under the provisions of the Criminal Code of Canada relating to summary convictions.

24. ***CONTINUING VIOLATION***

Should any contravention of this By-law or the Regulations hereto continue for more than one day, then each day during which such contravention shall continue constitutes a separate offence and may be punished as such.

25. ***PROHIBITION***

Where this By-law or any regulations passed pursuant hereto is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

26. ***INJUNCTIONS***

Where this By-law, its amendments or any regulations passed pursuant hereto are contravened, in addition to any other remedy and to any penalty imposed by the By-law, such contravention may be restrained on the application of the Band Council to the appropriate Court.

27. ***TREATY***

This By-law is subject to the terms of Treaty #6, and nothing in this By-law or the Regulations shall be construed to interfere, restrict or otherwise impair, either directly or indirectly, any Treaty rights or benefits accruing either at law or equity to the James Smith Band or its members. In the application of Treaty No. James Smith to this By-law, the said Treaty shall be construed not according to the technical meaning of its words, but in the sense in which it is and has been naturally understood by the Indians, at this time and in the past.

28. ***OTHER LEGISLATION***

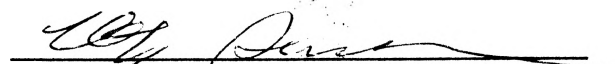
All federal or provincial laws which are inconsistent with the By-law or the Regulations shall, to the extent that such laws are inconsistent with this By-law, the Regulations or Treaty #6, have no application to this By-law and the Regulations.

29. This By-law may be cited for all purposes as "THE JAMES SMITH CREE NATION FISHING BY-LAW".

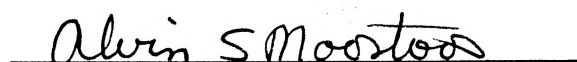
CONSIDERED and PASSED by the James Smith Band Council on the 16th day of April, A.D. 1992.


CHIEF TERRY SANDERSON


PETER SANDERSON, HEADMAN


HERB SANDERSON, HEADMAN


MIKE MORIN, HEADMAN


ALVIN S. MOOSTOOS, HEADMAN

AFFIDAVIT

CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT:)

I, TERRY SANDERSON, Chief of the James Smith Indian Band, make oath and swear that the paper writing to which this Affidavit is attached is a true copy of a document produced and shown to me and purporting to be the original By-law of the James Smith Indian Band entitled, "The James Smith Cree Nation By-law #1 of 1992, a By-law Respecting Law and Order and the Preservation, Protection and Management of Fish on the James Smith Indian Reserve - Indian Act, R.S.C., I-6, made pursuant to the Indian Act and signed by the lawful Chief and Council of the James Smith Indian Band and dated the 16th day of April, A.D. 1992, the said copy having been compared by me with the said original document.

SWORN BEFORE ME at the City of)
Prince Albert, in the Province of)
Saskatchewan, this 16th day of April,)
A.D. 1992.)


CHIEF TERRY SANDERSON

_____)
A Commissioner for Oaths in and for the)
Province of Saskatchewan.)
My Commission Expires:)
OR Being A Solicitor.)