

**THE JAMES SMITH CREE NATION**  
**By-law No. 1 of 1996**

**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**

WHEREAS s.81(1) (a) (b) (c) (d) (f) (h) (l) (o) (p) (q) and (r) and s.81(2) and (3) of the Indian Act empower the Council of an Indian Band to make by-laws respecting:

- a) the health of residents on the reserve;
- b) the regulation of traffic;
- c) the observance of the law and order;
- d) the prevention of disorderly conduct and nuisances;
- f) the construction and maintenance of water courses and local works;
- h) the regulation of the construction, repair and use of buildings;
- l) the regulation of the use of water supplies;
- o) the preservation, protection and management of fish;
- p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prohibited purposes;
- q) with respect to any matter arising out of or ancillary to the exercise of the above powers;
- r) the imposition of fines and imprisonment for violation of this by-law.

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 CREE NATION.

NOW, THEREFORE, the Band Council of the JAMES SMITH CREE NATION 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, an Indian Band as defined by *The Indian Act*, R.S.C. c. I-6.
- 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" (when used as a noun) includes shellfish, crustaceans and aquatic animals.
- 1.5 "FISH" (when used as a verb) means to fish for or catch fish by any method. "FISHING" has a corresponding meaning.
- 1.6 "FISHERY OFFICER" means a Fishery Officer appointed by the Band Council pursuant to s.3 of this By-law.
- 1.7 "BAND WATERS" includes all water situated upon or within the boundaries of any reserves or lands set aside for the use and benefit of the JAMES SMITH CREE NATION.
- 1.8 "TREATY NO. 6" includes the Treaty and its adhesions including the writing and oral components thereof.
- 1.9 "BAND COUNCIL RESOLUTION" OR "BCR"- means a resolution of the JAMES SMITH Band Council as contemplated by s.2(3) of *The Indian Act* and the Indian Band Council Procedure Regulations C.R.C. 1978 c.950.

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

This By-law applies to all Band Waters.

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

- 3.1 The Band Council may, by BCR, appoint one or more fishery officers for the purposes of enforcing this By-law.

- 3.2 The Band Council may, in the BCR, provide for reasonable remuneration to be paid to the Fishery Officer or Officers so appointed pursuant to this section.
- 3.3 Unless restricted by the terms of the BCR appointing him/her, a Fishery Officer may perform all of the duties and functions prescribed herein to be performed by a Fishery Officer, relating to the administration and enforcement of this By-law.

#### **4. FISHING PROHIBITION AND RESTRICTIONS**

- 4.1 Except as permitted by this By-law, no person shall engage in fishing upon or in any Band Waters.
- 4.2 Subject to the remaining provisions of this By-law, members of the Band shall be permitted to engage in fishing upon or in the Band Waters at any time, and by any means other than those means prohibited by the terms of this By-law.
- 4.3 An Indian, as defined by *The Indian Act*, RSC c.I-5, shall, upon registering with the Band Council, be entitled to share in the fish resources in the Band Waters, subject only to the same responsibilities, restrictions and obligations imposed on Band Members of the JAMES SMITH CREE NATION under this By-law.
- 4.4 No person shall fish in any Band Waters at any time by the use of spear guns, explosive materials, rockets, combustibles, projectiles, shells, chemicals, or like substances.
- 4.5 No person shall fish in any Band Waters at any time by any means or method designed or intended to kill, disable, incapacitate or trap several fish at once, without discrimination as to size of the fish so killed, disabled, incapacitated or trapped.
- 4.6 No person shall engage in fishing upon or in any Band Waters by any method that results in the harmful alteration, destruction or disruption of fish or fish habitat.

#### **5. FISHING PERMITS**

- 5.1 A person who is not a member of the JAMES SMITH CREE NATION, nor an Indian as defined by *The Indian Act*, RSC c.I-5, may apply to the Band Council for a permit to fish in the Band Waters.
- 5.2 The application shall be in writing, and shall specify:
  - a) The place for which the permit is sought;
  - b) The time for which the permit is sought;

- c) The species of fish for which the permit is sought;
- d) The type of fishing equipment to be used;
- e) Such other information as is required to enable to the Band Council to address the considerations set out in Subsection 5.3 and 5.4 below.

5.3 In determining whether or not a permit should be issued, the Band Council may take into consideration the following:

- a) Whether or not the applicant is a resident of any Reserves or lands set aside for the use and benefit of the JAMES SMITH CREE NATION;
- b) Whether or not the applicant has previously been issued a permit and, if so, has complied with the provisions of the permit;
- c) Whether or not the applicant has previously been convicted of any violation of this By-law;
- d) The extent of the contribution, if any, which the applicant makes to the Band community;
- e) The number of permits already issued for the species of fish for which the permit is sought; and
- f) Whether or not there are sufficient fish of the species sought in the Band Waters at the time to meet the needs of Band Members and existing permit holders, without detrimentally affecting the said fish species.

5.4 Where the Band Council determines that:

- a) The issuance of a permit will not detrimentally affect the fish species in respect of which the permit is sought;
- b) The fishing equipment or method proposed in the application is consistent with the conservation and protection of fish and fish habitat; and
- c) The applicant is a suitable person to have a permit to fish in the Band Waters;

then the Band Council may issue a written permit authorizing the person to fish in the Band Waters. The permit shall specify the time, place, type of fishing equipment, catch limit, size limit (if any) and species of fish that may be fished by the person holding the permit.

- 5.5 The fee, if any, for issuance of a fishing permit shall be as established from time to time by the Band Council, by BCR.
- 5.6 A permit issued pursuant to this Section or Section 15 is nontransferable.
- 5.7 A person holding a permit issued under this Section or Section 15 shall not fish in any Band Waters except in accordance with the terms of the permit.
- 5.8 A person fishing in Band Waters under the authority of a permit issued pursuant to this Section or Section 15 shall carry the permit on his person at all times while so fishing.
- 5.9 A Fishery Officer may, at any time, require a permit holder fishing in Band Waters to produce his permit.
- 5.10 The Band Council may, after notice and hearing, cancel the permit of any permit holder, where the Band Council is satisfied that:
  - a) The permit holder has contravened the terms of the permit, or this By-law; or
  - b) The continuation of the permit would be detrimental to the preservation and protection of fish or fish habitat.

**6. PROPERTY IN FISH**

Property in all fish in the Band Waters are collectively vested in the JAMES SMITH CREE NATION, and no person shall acquire any prior or exclusive right or property in such fish otherwise than in accordance with this By-law.

**7. OBSTRUCTION DETRIMENTAL TO FISH**

Subject to s.35 of *The Fisheries Act* R.S.C. F-14, where:

- a) a dam, obstruction, or object upon or in the Band Waters, in the opinion of the Band Council, is detrimental to fish or fish habitat; and
- b)
  - i) the owner or occupier of such dam, obstruction, or object does not remove the same after notice is given by the Band Council; or
  - ii) where the owner is not a resident of any Reserve or land set aside for the use and benefit of the JAMES SMITH CREE NATION, or his exact place of residence is unknown to the Band Council;

then 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 or fish habitat 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**

No markers or buoys shall be placed in any Band Waters unless authorized by the Band Council by BCR, or by the terms of a fishing permit issued under Section 5 of this By-law.

## **9. OBSTRUCTION OF NAVIGATION**

Navigable lakes, rivers or streams within the Band Waters 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 which obstructs navigation.

## **10. PROTECTION OF FISH SPAWN AND SPAWNING GROUNDS**

10.1 No person shall fish for, catch, collect, gather or destroy the eggs, fry or spawn of any fish species in any Band Waters.

10.2 No person shall alter, destroy or disrupt the spawning grounds of any fish species in the Band Waters, nor carry on any work or undertaking that results in alteration, destruction or disruption of such spawning grounds.

10.3 The Band Council may, by BCR, in accordance with the procedure set out in Section 19, close any part or parts of the Band Waters to fishing, for such period or periods of time as the Band Council may see fit, for the preservation and protection of fish, fish spawn, and spawning grounds.

## **11. DAMAGING SUBSTANCE**

No person shall cause or knowingly permit to pass into, or put or knowingly permit to be put into any Band Waters or any creek or stream that flows into such waters or in or on the ice over such water, or at any place from which it is likely to be carried into such waters, any lime, chemical substances or drugs, poisonous matter, dead or decaying fish or animal remains, rubbish, sawdust, sand, gravel, or any other deleterious substance or thing, whether the same is of a like character to the substances named in this section or not.

## **12. POLLUTION**

No person engaging in fishing, farming, ranching, logging, lumbering, land clearing or other operations shall cause or knowingly permit to pass into, put or knowingly permit to be put into any Band Waters, or creek or stream that flows into such waters, or in or on the ice over such waters, or at any place from which it is likely to be carried into such waters any farm chemicals, animal waste, or animal by-products, slush, stumps or other debris.

## **13. FISH ADVISORY COMMITTEE**

13.1 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.

13.2 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, providing such Agreement is consistent with this By-law.

## **15. SUSTENANCE FISHING**

15.1 Notwithstanding anything to the contrary in this By-law or the Regulations, the Band 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.

15.2 In determining whether or not a permit should be issued pursuant to this section, the Band Council may take into consideration the following:

- a) Whether or not the applicant is a resident of any Reserves or lands set aside for the use and benefit of the JAMES SMITH CREE NATION;
- b) Whether or not the applicant has previously been issued a permit and, if so, has complied with the provisions of the permit;

- c) Whether or not the applicant has previously been convicted of any violation of this By-law;
- d) The extent of the contribution, if any, which the applicant makes to the Band community;
- e) The number of permits already issued for the species of fish for which the permit is sought; and
- f) Whether or not there are sufficient fish of the species sought in the Band Waters at the time to meet the needs of JAMES SMITH CREE NATION Members and existing permit holders, without detrimentally affecting the said fish species.
- g) Whether or not the applicant requires the permit for the purpose of providing food for himself and his family.

**16. SALE OF FISH**

- 16.1 No person other than a member of the JAMES SMITH CREE NATION shall directly or indirectly sell, trade, barter or offer for sale, trade or barter fish taken from the Band Waters.
- 16.2 Subject to this By-law, no member of the JAMES SMITH CREE NATION shall directly or indirectly sell, trade, barter or offer for sale, trade or barter fish taken from the Band Waters to a person other than a member of the Band, whether ordinarily a resident of the Reserves and lands set aside for the use and benefit of the Band or not.

**17. OBSTRUCTING FISHERY OFFICER**

No person shall obstruct, hinder, delay, or interfere with a fishery officer in the discharge or execution of his/her duties under this By-law.

**18. VARIATION OR RESTRICTION OF FISHING**

- 18.1 The Band Council may, by BCR, impose a temporary variation or restriction on fishing by persons authorized by this By-law to fish in the Band Waters, and in such event shall give notice in accordance with subsections 18.2 and 18.3 hereof.



- 18.2 Notice of the variation or restriction shall be posted, not less than 24 hours prior to the variation or restriction coming into force,
- a) in a conspicuous place at or near the fishing site or sites where the variation or restriction applies; and
  - b) in the office of the Band Council.
- 18.3 The Notice shall specify the date and time that the variation or restriction is to come into force, particulars of the variation or restriction imposed, and the date or time when the variation or restriction shall cease.
- 18.4 No variation or restriction imposed under this Section shall remain in force for a period of more than 14 days, unless a further variation or restriction is imposed and further notice is given in accordance with subsections 18.2 and 18.3.

## **19. TEMPORARY RESTRICTION BY FISHERY OFFICER**

- 19.1 If a fishery officer determines, on reasonable grounds, that fishing as otherwise permitted by this By-law would place at risk any spawning grounds or any species of fish, the fishery officer may, by oral or written notice, order that all fishing, or fishing for a particular species, shall not be engaged in at a prescribed location.
- 19.2 An order made pursuant to subsection 19.1 shall take effect immediately upon the giving of notice, and shall remain in force for the period specified by the fishery officer, such period not to exceed 48 hours from the giving of notice of such Order.

## **20. FISHING QUOTAS**

- 20.1 The Band Council may, by BCR:
- a) Limit the number of fish, by species, which may be taken or possessed from the Band Waters by a Band Member, Indian, or other person; or
  - b) Vary the limits established by previous BCRs;
- 20.2 Notice of each such BCR shall be provided in accordance with Section 21.
- 20.3 Every fishing permit issued pursuant to this By-law shall include particulars of any catch or possession limits in effect at the time of issuance.
- 20.4 Everyone who exceeds a catch or possession limit established by the Band Council pursuant to this Section commits an offence.

## **21. NOTICE OF BY-LAW AND BCR'S**

- 21.1 The Band Council may, by appropriate Band Council Resolution, where permitted by this By-law, make such decisions, issue such appointments or instructions, and authorize such actions as may be necessary to carry out the purposes and provisions of this By-law.
- 21.2 A copy of this By-law and any BCR passed pursuant to this By-law shall be posted at the Band office of the JAMES SMITH CREE NATION and may be posted at such other conspicuous places on the Reserve as in the opinion of the Band Council are appropriate.
- 21.3 Copies of the By-law and any BCR passed pursuant to this By-law shall be made available to any person requesting the same during regular business hours at the Band office of the JAMES SMITH CREE NATION and upon payment of a fee of \$2.00 for each copy of the By-law and \$1.00 for each copy of any BCR.

## **22. PROHIBITED CONDUCT**

- 22.1 No person shall injure, remove, damage or deface any notice, sign or sign board, buoy or marker erected, placed or maintained by or on behalf of the JAMES SMITH CREE NATION.
- 22.2 No person shall disrupt or interfere with the lawful exercise of fishing rights by any other person pursuant to this By-law.
- 22.3 No person shall operate a ship, boat, or vessel in or upon Band Waters, without reasonable consideration for the health and safety of other users of the said waters.
- 22.4 No person shall operate any ship, boat or vessel in or upon Band Waters in a manner detrimental to fish, fish habitat, or spawning grounds.

## **23. DISORDERLY CONDUCT AND NUISANCE**

- 23.1 In this section:
  - a) "disorderly conduct" means any act or behaviour that disrupts public order, scandalizes the community, or causes public inconvenience, annoyance or alarm, including, without restricting the generality of the foregoing:
    - i) fighting;

- ii) using or threatening to use any article as a weapon;
- iii) making or causing unreasonable noise;
- iv) using foul or abusive language;
- v) using offensive or indecent gestures or displays; or
- vi) being intoxicated;

b) "nuisance" means any activity or condition that materially impairs the use and enjoyment of the Band Waters, or that prejudicially affects the health, comfort, safety or welfare of users of the Band Waters, or disrupts or interferes with the exercise of fishing rights pursuant to this By-law, including, without restricting the generality of the foregoing:

- i) the storage or abandonment of cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- ii) the dumping or storage of tires, garbage, rubbish, or other refuse;
- iii) the burning of tires, grass, garbage, leaves, or other refuse;
- iv) the discharge of any substance into the air or water;
- v) the making or causing of unreasonable noise.

23.2 a fishery officer may order any person who is engaging in any disorderly conduct in, upon, or near any Band Waters to stop such conduct immediately.

23.3 a fishery officer may order any person who is causing or threatening to cause a nuisance in, upon or near Band Waters to refrain from causing the nuisance and to abate the nuisance within such period as is reasonable in the circumstances.

23.4 where a person who has been ordered to stop engaging in disorderly conduct, or to refrain from causing a nuisance, or to abate a nuisance within a specified period, fails or refuses to comply with the Order, a fishery officer may take such reasonable measures as are necessary to stop the disorderly conduct, or to prevent or to abate the nuisance.

23.5 everyone who fails or refuses to comply with an Order made by a fishery officer under this Section, commits an offence.

## **24. PENALTIES**

24.1 Anyone who violates or attempts to violate any provision of this By-law 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.

24.2 Notwithstanding any other penalty provided for by this By-law, a Band member, upon conviction for a violation, may, in addition to any fine or term of imprisonment, have his right to use the fish resources of the Band Waters suspended pursuant to a BCR for a period not to exceed 6 months for each violation.

24.3 Any Indian or other person upon conviction for violation of this By-law or a BCR shall in addition to any fine or imprisonment be prohibited from fishing in Band Waters for a period determined by the Band Council, by BCR.

## **25. JOINT AND SEVERAL LIABILITIES**

Unless otherwise specified, every proprietor, owner, agent, tenant, occupier, partner, or person actually in charge, of any ship, boat, vessel, fishing equipment, dam, obstruction, object, work or undertaking, marker, buoy, apparatus, damaging substance, pollutant, or other thing, shall be deemed to be jointly and severally liable for any violation of the provisions of this By-law.

## **26. ENFORCEMENT**

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

## **27. CONTINUING VIOLATION**

Should any contravention of this By-law 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.

## **28. PROHIBITION**

Where this By-law or any amendment 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.

## **29. INJUNCTIONS**

Where this By-law or any amendment hereto, is 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.

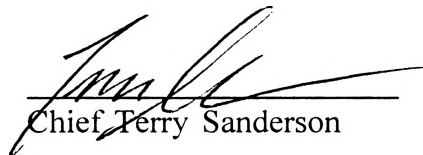
**30. TREATY**

30.1 This By-law is subject to the terms of Treaty No. 6. Nothing in this By-law 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 CREE NATION or its members. In the application of Treaty No. 6 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 Indian people, at this time and in the past.

30.2 To the extent this By-law complements and reinforces the Treaties, it shall be enforceable. To the extent this By-law conflicts or derogates from the Treaties, it is unenforceable.

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

CONSIDERED and PASSED by the Chief and Band Council of the JAMES SMITH CREE NATION on the 18 day of September, A.D. 1996.

  
Chief Terry Sanderson

  
Councillor Mike Marion

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Councillor Eddie Head

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Councillor Peter Sanderson

  
Councillor Garnet Sanderson