

THE COUNCIL OF THE QUALICUM BAND  
OF THE DISTRICT OF NANAIMO  
IN THE PROVINCE OF BRITISH COLUMBIA

FISHERIES BY-LAW

QUALICUM BAND

A BY-LAW FOR THE PRESERVATION, PROTECTION  
AND MANAGEMENT OF THE RESERVE FISHERY

1. In this by-law unless the context otherwise requires;
- (a) "Band Council" means the council of the Qualicum Indian Band;
  - (b) "Band Waters" means the traditional waters of the Qualicum Indian Band and includes without limiting the generality of the foregoing or the title of the Qualicum Indian Band to the entire Band Waters all waters situate upon or within the boundaries of the Reserve;
  - (c) "Contaminant" means any solid, liquid, gas, odor, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from the activities of man that may,
    - (i) impair the quality of the Band Waters for any use that can be made of them,
    - (ii) cause any damage to the Fish in the Band Waters,
    - (iii) render any Fish normally found in the Band Waters unfit for use by man;
  - (d) "Fish" includes shellfish, crustaceans, marine animals and the eggs, spawn, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;
  - (e) "Fishery" includes the area, locality, place or station within the Reserve 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 within the Reserve 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;

- (f) "Fishing" means fishing for, catching or attempting to catch fish by any method;
- (g) "Manager" means the individual appointed to that office as created by this by-law;
- (h) "Reserve" means those areas set aside for the use and benefit of the Qualicum Indian Band.

2. This by-law applies over all Band Waters.

3. Band Fisheries Conservation Officer

The office of Band Fisheries Conservation Officer is hereby established. The remuneration for this office will be determined by the Band Council to be paid from Band funds and shall be reviewed from time to time in the discretion of the Band Council. The position is to be filled through resolution of the Band Council by a Band member and the person so appointed shall serve until removed from office by resolution of the Band Council. In the case of vacancy in this position, the Band Manager shall perform the duties and functions assigned to the Band Fisheries Conservation Officer.

4. Band Manager

The office of Manager is hereby established. The remuneration for this office shall be determined by the Band Council to be paid from Band funds and shall be reviewed from time to time in the discretion of the Band Council. The Manager may make regulations, in respect of matters not specifically provided for in this by-law, as are designed to

achieve the objective of this by-law including, but without restricting the generality of the foregoing, regulating:

- (a) the proper management, control and preservation of the Fishery;
- (b) the conservation and protection of Fish;
- (c) the Fishing, handling, transporting, possession and disposal of Fish;
- (d) the operation of fishing vessels;
- (e) the use of any device proposed to be used in Fishing;
- (f) the conservation and protection of spawning grounds in the Fishery;
- (g) the powers, duties and responsibilities of those persons engaged or employed in the administration or enforcement of this by-law and providing for the carrying out of those powers, duties, and responsibilities.

5. Powers and Duties of Band Fisheries Conservation Officer

- (a) The Band Fisheries Conservation Officer shall determine, having conducted all inquiries reasonably possible in the circumstances, the capacity of the Band Waters to sustain the reproduction of Fish.
- (b) Notwithstanding section seven, the Band Fisheries Conservation Officer may close any area for Fishing for any period of time he considers appropriate in the interests of conservation and management of the Fishery.
- (c) The Band Fisheries Conservation Officer may prohibit the use of any apparatus designed for the catching of Fish where he, in his absolute discretion, deems such apparatus inappropriate.

- (d) The Band Fisheries Conservation Officer shall enforce this by-law.
- (e) The Band Fisheries Conservation Officer shall maintain records of all Fish caught and sold from the Band Waters.
- (f) The Band Fisheries Conservation Officer may search or break open and search any building, vehicle, vessel or place other than a permanent dwelling place situated on the Reserve, where he believes, on reasonable and probable grounds, that any Fish taken in contravention of this by-law, may be concealed.
- (g) The Band Fisheries Conservation Officer may arrest without warrant a person who he, on reasonable and probable grounds, believes to have committed an act contrary to this by-law, or whom he finds committing or preparing to commit an act contrary to this by-law.
- (h) Everyone who resists or willfully obstructs the Band Fisheries Conservation Officer, or any person acting in aid of such officer, is guilty of an offence punishable on summary conviction.
- (i) In the discharge of his duties the Band Fisheries Conservation Officer may enter upon and pass through or over private property without being liable for trespass.
- (j) The Band Fisheries Conservation Officer shall be charged with the general administration of the Fishery and shall take such action as he deems appropriate to ensure that the Fishery is adequately stocked in conformity with general principles of conservation and good management of which he shall be the sole judge.

6. Entitlement to Fish

No person other than a member of the Qualicum Indian Band shall engage in Fishing upon Band Waters without first obtaining a permit from the Band Council entitling that person to fish on the Reserve. No person shall fish on the Reserve except as permitted by this by-law.

7. Opening and Closure

The Band Council shall designate the periods in the year during which the Band Waters shall be open or closed for Fishing. No closure shall take effect until notice of the closure or prohibition is posted near the place at which the closure or prohibition is to take effect.

8. Non-Members

It is an offence against this by-law for any person who is not a member of the Qualicum Indian Band to fish in Band Waters without a permit issued pursuant to section six.

9. Offence

It is an offence against this by-law to fish in contravention of a closure or prohibition under this by-law.

10. Penalties

The maximum penalties for commission of an offence under this by-law shall be:

- (a) A fine not exceeding \$10 or imprisonment not exceeding three days for the first offence in any calendar year; and
- (b) A fine not exceeding \$100 or imprisonment for not more than 30 days or both for the second offence committed in any calendar year.

11. Additional Penalties

The Band Fisheries Conservation Officer may prohibit any person who has committed any offence under this by-law from Fishing in Band Waters for any portion of the calendar year following the date on which the offence was committed. Such prohibition shall not exceed one year and shall become effective upon being communicated to the individual who is subject to the prohibition. The individual shall be deemed to have been informed of the prohibition three days subsequent to the date on which notice was given through prepaid registered mail. Any violation of a prohibition is also an offence under this by-law.

12. Discharge of Contaminants

No person shall deposit in, add to, emit or discharge into the Band Waters any Contaminant, and no person responsible for a source of Contaminant shall permit the addition to, emission or discharge into the Band Waters of any Contaminant.

13. Co-operation with the Federal Fisheries Department

The Band Fisheries Conservation Officer shall provide any information requested by any Fisheries Officer appointed pursuant to the Fisheries Act RSC 1970c.I-6 on demand.

14. Sale of Fish

Any Fish not caught in contravention of this by-law may be bartered, sold or otherwise disposed of to any person, firm, or corporation. Any person who barters, sells or otherwise dispose of Fish pursuant to this paragraph 14 will, within 24 hours after he does so, report to the Band Fisheries Conservation Officer the number and species of the Fish so bartered, sold, or otherwise disposed of.

15. Band Council Power

The Band Council may overrule any decision a Band Fisheries Conservation Officer or the Band Manager made pursuant to this by-law.

16. Severability

If any part of this by-law is declared or adjudged to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of this by-law.

17. Name

This by-law may be cited for all purposes as "Fishing By-law, 1982, No. 4".

18. This by-law repeals "Fishing By-law, 1980, No. 3".

Considered and passed by the Qualicum Indian Band Council on the 27 day of June, 1982.

D.J. Reid *David J. Reid*  
Chief

R.M. Recalma *Mark Recalma*  
Councillor

G.M. Recalma *G.M. Recalma*  
Councillor