

A BY-LAW FOR THE PRESERVATION, MANAGEMENT, CONSERVATION AND USE OF FISH ON RESERVE AND TRADITIONAL LANDS, RIVERS AND WATERWAYS OF THE GITANMAAX BAND.

WHEREAS the Gitksan-Wet suwet'en Tribal Council Association and its members presented a claim to ownership of 30,000 square miles including the Skeena River upstream from Legate Creek and the Bulkley River to the Minister of Indian and Northern Affairs in November, 1977;

AND WHEREAS the Government of Canada has accepted the claim in principle presented by the Gitksan-Wet'suwet'en Tribal Council Association;

AND WHEREAS this By-Law prepared by the Gitksan-Wet'suwet'en Tribal Council Association and its member bands is without prejudice to the claim of the Gitksan-Wet'suwet'en peoples to their aboriginal territories;

AND WHEREAS it is the intention of the Gitksan-Wet'suwet'en Tribal Council and its eight members bands to enact a blanket Indian fishing By-Law to apply to the reserve lands presently set out under the Indian Act as an interim measure;

AND WHEREAS the Tribal Council and its eight member bands wish to ensure that there will be a sufficient supply of fish for all band members;

AND WHEREAS the Tribal Council and its member bands wish to establish a management and protection scheme that will complement and enhance fisheries management practices, thereby increasing the benefits from the resources for all, and most particularly will conserve the fishing resource of the Gitksan-Wet'suwet'en people and preserve that resource for future generations of the Gitksan-Wet'suwet'en;

AND WHEREAS the Gitanmaax Band Council recognizes the presence of other Skeena and Babine River user groups both upstream and downstream;

AND WHEREAS the Gitanmaax Band Council has authorized and directed the Gitksan-Wet'suwet'en Tribal Council to meet with the Minister of Fisheries and Oceans or his designates, and with the representatives of other user groups to work towards an integration of the Gitksan-Wet'suwet'en fishery management plan with the overall fishery management of the Skeena and Babine River systems:

The Band Council of the Gitanmaax Band enacts as follows:

I. GENERAL

1. This By-Law may be cited for all purposes as the "Gitksan-Wet'suwet'en Indian Fishing By-Law."

a) This By-law applies to all reserves administered by the Gitanmaax Band.

b) The object and purpose of this By-law is to manage, preserve and protect fish on the reserves.

c) The intent and object of the Band Council is to enact a code to govern and manage the fisheries on all reserves administered by the Gitanmaax Band.

d) Insofar as this By-law enacted pursuant to the Indian Act, R.S.C. 1970 c. I-6, as amended, may override legislation which conflicts or is inconsistent with this By-law, it is intended that this By-law is to be so construed.

2. The following definitions apply in this By-Law:

a) "Angling" means sport fishing with a hook and line with or without a rod;

b) "Band" means the Gitanmaax Band of Indians.

c) "Band Council" means the Council of the Indian Band elected pursuant to the Indian Act, RSC 1970 c. 1-6 which have passed the Gitksan-Wet'suwet'en Indian Fishing By-Law at a duly convened meeting of the Band Council;

- d) "Band Manager" means that person so appointed by the Band Council;
- e) "Fish" includes all species of finfish, shellfish, crustaceans and marine animals;
- f) "Fishing" means fishing for or catching fish by any method;
- g) "Fisherman" means those persons authorized to fish in the waters of the Band pursuant to this By-Law;
- h) "Fishing Permit" means a fishing permit issued pursuant to this By-Law;
- i) "Fishery" includes the area, locality, place, rock station or site on reserve or within a river or stream in, or on reserve wherein a net, seine, pound, weir, gaff or other fishing apparatus is used, set, placed or located, and the area, tract or stretch of water in or from which fish may be taken or caught by the net, seine, weir, pound, gaff or other fishing apparatus;
- j) "Fishery Officer" means an officer appointed pursuant to Section 8 of this By-Law who is a person employed for the preservation and maintenance of the public peace on reserve land.
- k) "Gitksan-Wet'suwet'en Persons" means the persons of Gitksan-Wet'suwet'en ancestry who are eligible for membership in the Tribal Council;
- l) "The Gitksan-Wet'suwet'en Indian Bands" means the eight bands of the Gitksan-Wet'suwet'en Tribal Council which are Kitwancool, Gitwangak, Kispiox, Gitanmaax, Glen Vowell, Hagwilget, Kitsegukla, and Moricetown Indian Bands;
- m) "The Tribal Council" means the Gitksan-Wet'suwet'en Tribal Council Association located at Hazelton, British Columbia and comprising of all persons entitled to membership in the Gitksan-Wet'suwet'en Tribal Council Association pursuant to its constitution;
- n) "Juvenile Fish" means sexually immature fish which are in fresh water rearing phase;
- o) "Productive Capacity" means the capacity of the watershed of the waters of the Band to naturally produce fish which shall pass through the waters of the Band;

p) "Reserve" means all reserves under the administration of the Gitanmaax Band;

q) "Sports Fishing" means fishing for other than commercial purposes and does not include fishing pursuant to Sections 4(a) and 4(c) of this By-Law;

r) "Waters of the Bands" means all water, waterways, rivers or streams which are located upon, or within boundaries of the reserves set aside for the use and benefit of the Gitanmaax Band.

3. This By-Law applies in respect and over all waters of the Band.

4. a) Gitksan-Wet'suwet'en persons are permitted to engage in fishing in waters of the Bands at any time and by any means except by the use of explosive materials, rockets, combustibles, projectiles, shell or other like substances, subject to variations or restrictions as may be made pursuant to this By-Law;

b) Any variations or restrictions on fishing shall be publicized to the Gitksan-Wet'suwet'en people by written notice, except in emergencies in which case oral notice to the fisherman shall be sufficient notice;

c) The Band Council may authorize persons other than Band members to fish. Such authorization shall be based on the traditional rights of those persons under Gitksan or Wet'suwet'en law to fish within the waters of the Band.

5. No person other than a member of the Band or a person authorized by the Band Council shall engage in fishing or attempt to fish in or upon waters of the Band except in accordance with this By-Law.

6. Gitksan-Wet'suwet'en people are permitted to use, buy, sell, trade, or barter fish caught within the waters of the Band in accordance with their traditional laws and customs.

7. Salmon fry, parr and smolts shall not at any time or place be fished for, caught or killed.

8. The Band Council authorizes the Tribal Council to appoint fishery officers whose acts and duties are as defined by this By-Law and amendments thereto, and whose titles are as specified in their appointment.

9. The Band Council shall authorize the fishery officers to work with and under the direction of the Tribal Council, its officers and employees.

10. The Band Council authorizes the Tribal Council to carry out and administer this By-Law on behalf of the Band.

11. Any fishery officer appointed hereunder may direct in writing or orally on sight that fishing nets or apparatus be adjusted, altered or modified in such a way as to preserve and protect fish at a specific place and time.

12. The eggs or fry of fish on the spawning grounds, or juvenile fish in rearing areas, shall not at any time be destroyed or interfered with.

13. No person shall cause or knowingly permit to pass into or put or knowingly permit to be put, lime, chemicals, substances or drugs, poisonous matter, mill rubbish or saw dust or any other deleterious substance or thing whether the same is of a like character to the substance named in this section or not, in any waters of the band.

14. No person engaging in logging, lumbering, landclearing or mining or other such operations shall put or knowingly permit to be put, any slash, stumps or other debris, or effluent into any waters of the band.

15. Where unused slides, dams, obstructions, or anything detrimental to fish exist on reserve and the owner or occupier thereof does not after notice given by the Band Council 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.

16. Any fishery officer appointed hereunder may enforce the provisions of this By-Law.

17. Everyone who violates any provisions of this By-Law, is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$100.00 or to be imprisoned for a term not exceeding 30 days or both.

18. Proceedings under this by-law and any of its amendments hereto shall not be instituted more than six months after the time when the subject matter of the proceedings arose.

19. All penalties incurred under this By-Law, are enforceable by summary proceedings under the provisions of the Criminal Code of Canada relating to summary conviction matters.

20. When an offence against this by-law is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

II. APPOINTMENT OF FISHERY OFFICERS AND THEIR POWERS AND RESPONSIBILITIES

21. The Band Council authorizes the Tribal Council to appoint fishery officers to regulate and administer the Gitksan-Wet'suwet'en Indian Fishery By-Law and authorize such fishery officers to operate within the reserve lands controlled by the Band and operate in the waters of the Band.

22. Any person not appointed pursuant to this by-law may not

enforce the Gitksan-Wet'suwet'en Indian Fishery By-Law without the authorization of the Band Council.

23. A fishery officer appointed pursuant to this regulation may arrest without a warrant a person whom he, on reasonable and probable grounds, believes to have committed an offence against the Gitksan-Wet'suwet'en Indian Fishery By-Law or whom he finds committing an offence against this By-Law.

24. Any person who resists or willfully obstructs a fishery officer is guilty of an offence under the Gitksan-Wet'suwet'en Fishery By-Law.

25. Fishery officers may operate test fisheries within the waters of the Band.

26. Fishery officers may impose emergency closures as directed by the Tribal Council pursuant to Part IV of this By-law.

27. Fishery officers may inspect nets within waters of the Band and other gear which is being used in the waters of the Band for the purposes of determining actual catch within the waters of the Band.

28. Fishery officers appointed under this By-Law shall comply with the staff directives and staff policies established by the Tribal Council.

29. Fishery officers may require any person fishing within the waters of the Band pursuant to Part III of this By-law to produce his permit.

30. A fishery officer may cancel any permit issued pursuant to these by-laws where he has reasonable grounds to believe that the holder of the said permit has violated the terms of the permit or has committed an offence under this by-law.

III GITKSAN-WET'SUWET'EN SPORTS FISHING REGULATIONS

31. No person other than Gitksan-Wet'suwet'en persons, shall fish from reserve lands or fish in waters of the bands, except under the authority of a fishing permit issued by the Band Council.

32. A fishery officer may issue a fishing permit authorizing persons to fish in the waters of the Band with such restrictions as to time, place, type of gear and species of fish, and the payment of such a fee as hereinafter set out in Schedule "A".

33. The Band Council reserves the right upon reasonable notice to make the changes in the fishing permits as from time to time are now required for the conservation, preservation and management of the fishery.

34. A fishing permit issued pursuant to Section 32 shall be valid only for the period inscribed thereon and shall be subject to any fees that may be established from time to time by the Band Council on behalf of the Band.

35. The holder of a fishing permit under this Part shall be entitled to fish in the waters of the Band by means of angling methods only.

IV REGULATIONS GOVERNING CLOSURE AND NOTICES OF CLOSURE

36. Where notice of a variation or restriction in fishing in the waters of the Band is required to be given, or may be given by the By-Law, except in emergencies, such notice shall be given no less than twenty-four (24) hours prior to the variation or restriction coming into effect.

37. The notice shall be authorized by the Tribal Council or a fishery officer appointed under this By-Law.

38. No such notice shall be effective unless duly authorized by the Tribal Council.

39. The notice may be in a standard form and shall be posted in prominent spots around the Gitksan-Wet'suwet'en fishing sites as well as in the offices of the Band and the Tribal Council.

40. The notice shall specify the date and time the variation or restriction is to commence and to cease, the nature of the variation or restriction and to whom it is to apply.

41. Notice of a variation or restriction shall also be given at least twice over a local radio station and/or citizen bands no less than twenty-four (24) hours prior to the variation or restriction becoming effective.

42. In an emergency situation, to be determined by the guidelines in Section 45 of this By-law, a fishery officer may vary or restrict fishing in the waters of the Band by giving oral notice to the members of the Gitksan-Wet'suwet'en Bands without the necessity of giving advance notice.

43. A fishery officer may give written or oral notice on a fishing site to vary or restrict fishing so long as there exists an emergency situation.

44. Such emergency variation or restrictions shall not last longer than forty-eight (48) hours at any one time, and shall be to further the objects of the By-Law.

45. In determining whether or not an emergency exists a fishery officer shall consider an emergency under the following conditions:

a) If a special stock is in danger of extinction and a conservation problem exists; or

b) If a stock which is not in danger of extinction is below the level which Tribal Council agrees would be optimal.

V. REGULATIONS GOVERNING HABITAT PROTECTION

46. No person through their act or omission shall reduce the productive capacity of the waters of the Band to produce fish except as authorized pursuant to Section 48.

47. Notwithstanding Section 48 of this regulation, the Band Council may authorize the Gitksan-Wet'suwet'en Tribal Council to:

a) Review any proposed project to determine if it would effect the productive capacity of the waters of the Band pursuant to the review procedure set out in these regulations;

b) Recommend that the Band Council issue permits authorizing any person to reduce the productive capacity of the waters of the Band on such terms and conditions as the Tribal Council deems appropriate.

48. a) The Tribal Council may conduct a test fishery in the waters of the Band to determine the capacity of the run of different species of fish within the waters of the Band.

b) The Tribal Council may recommend that the Band Council issue a permit authorizing a person to reduce the productive capacity of the waters of the Band on such terms and conditions as are appropriate to best conserve, preserve and manage the fishery.

49. No person authorized to fish under the Gitksan-Wet'suwet'en Indian Fishing By-Law shall be required to mark any fish that they have caught from the waters of the Band prior to transporting those fish from the fishing site.

50. Notwithstanding any other Act or Regulation any person authorized to fish in the waters of the Band shall be in lawful possession of fish which he has caught in the waters of the Band

and shall be authorized to transport said fish which he has caught to any place for any purpose authorized by this By-law.

51. a) The Tribal Council may establish a review panel consisting of not more than five persons to review any potential project which would affect the productive capacity of the waters of the Bands pursuant to Section 48 of this By-Law.

b) The panel shall have a majority of persons of Gitksan or Wet'suwet'en descent.

c) No member of the Board of Directors, the Executive or employees of the Tribal Council shall be members of the review panel.

d) The Chairman of the panel shall be of Gitksan or Wet'suwet'en descent.

52. The review panel established pursuant to Section 52 of this By-Law has jurisdiction to inquire into any project which would affect the productive capacity of the waters of the Band and has jurisdiction to make recommendations to the Band whose waters are affected or to the Tribal Council as to the terms and conditions which should be placed on any project which would affect the capacity of the waters of the Band.

53. The review panel shall review the merits and justice of each case and is not bound to follow legal precedent.

54. The review panel shall hold informal hearings, but may cross-examine witnesses who appear before the panel and may allow cross-examination of witnesses who appear before the panel by proponents and intervenors.

55. The Tribal Council may intervene as an independent party to present the Indian interest at any hearings conducted by the review panel.

56. The review panel can recommend terms and conditions for the approval of any project which would affect the productive capacity of the waters of the Bands and the Band Council can

accept or reject the recommendations of the review panel, but may not alter those recommendations.

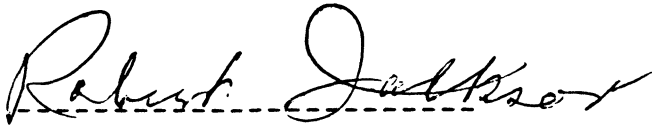
57. The review panel shall be restricted in its investigations to reviewing the effects of any proposed project on the productive capacity of the waters of the Bands and may consider the Indian interest in the productive capacity of the waters of the Bands in the course of its hearings.

58. The review panel has the authority to establish its own procedure.


REGULATIONS GOVERNING THE APPOINTMENT OF WET'SUWET'EN AND
GITKSAN ADVISORY BODIES

59. The Band Council shall appoint members to a Gitksan advisory board consisting of the hereditary Chiefs of the Lakh Seel, Lakh Gibuu, Lax Sgiik and Kisgaast Clans of the Gitksan people to make recommendations to the Tribal Council regarding closures, use of specific sites, use of specific gear and regulations based on the traditional ownership and rights of access to traditional fishing sites within the waters of the Band which has nominated them as a member of the Gitksan Advisory Board.

This By-Law has been passed at a duly convened meeting of the Gitanmaax Band Council at which a quorum of the Band Councillors were present and voting in favour of this By-Law on the 21 day of February, 1986.



CHIEF COUNCILLOR



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