

BY-LAW NO. 2000-1
of the Cowichan Indian Band
A BY-LAW FOR THE PRESERVATION,
PROTECTION AND MANAGEMENT OF FISH

WHEREAS the Council of the Cowichan Indian Band desires to make a by-law governing the preservation, protection and management of fish in Band waters, matters ancillary thereto, and a penalty for the violation thereof;

AND WHEREAS the Council of the Band has the power to make such by-law pursuant to sub/section 81(1)(o), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary to provide for the preservation, protection and management of fish in Band waters;

AND WHEREAS the Council of the Band did enact By-law Number #2000-1 on the 11th day of July, 2000 and wishes to repeal the said By-law Number 1983 No.2 and replace it with this by-law;

NOW THEREFORE the Council of the Cowichan Indian Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Cowichan Tribes Fishing By-law".

Interpretation

2. In this by-law:

- (a) "band" means the Cowichan Indian Band also known as the Cowichan Tribes.
- (b) "band waters" means all those bodies of water over which the band Council has jurisdiction and includes present and traditional fishing waters in tidal and non-tidal waters abutting the reserve.
- (c) "deleterious substance" means:
 - (i) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or
 - (ii) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water.

(d) "council" means the Council' as defined in section 2(1), 74 and 75 of the *Indian Act*.

(e) "fishing committee" means a committee formed by Council to provide oversight and direction as related to this by-law and management of the Cowichan fishery and shall include the manager of the Cowichan River Hatchery.

(f) "Cowichan River Hatchery" is an entity which will develop and operate a fish incubation and rearing facility and undertake restoration activities within Band waters.

(g) "fish" means, when used as a noun, all marine animals and without limiting the generality of the foregoing, includes shellfish and crustaceans, the eggs sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals and when used as a verb, means to catch fish or to attempt to catch fish by any method.

(h) "fish habitat" means spawning grounds, nursery, rearing, food supply and migrations areas on which fish depend directly or indirectly in order to carry out their life processes.

(i) "fishery officer" means a fishery officer appointed under section 3, and includes an officer who has been designated by the Council, pursuant to section 4, to administer and enforce this by-law.

(j) "officer" means a police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and a by-law enforcement officer or any other person appointed by the Council for the purpose of maintaining law and order on the reserve.

(k) "reserve" means the reserve of the Cowichan Indian Band and includes Cowichan Indian Reserve No.1, Theik Indian Reserve No.2, Kilpahlas Indian Reserve #3, Est Patrolas Indian Reserve No.4, Tzartlam Indian Reserve No.5, Kakalatza Indian Reserve No. 6, Skutz Indian Reserve No. 7, Skutz Indian Reserve #8 and Cowichan Indian Reserve No. 9.

Administration

3. The Council may, by resolution, appoint one or more fishery officers to perform such functions in respect of the administration and enforcement of this by-law as are prescribed herein.

4. The Council may designate any officer to perform such functions in respect of the administration and enforcement of this by-law as are prescribed herein to be performed by a fishery officer.

Application of By-law

5. Should a court determine that a provision of this by-law or a regulation pursuant to the said by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

(a) This by-law comes into force forty days after the date of mailing as required by section 82 of the *Indian Act*.

General Prohibition on Fishing

6. No person shall fish within Band waters or be in possession of fish caught in Band waters except as permitted by this by-law and the regulations.

Fishing by Band Members

7. Subject to the provisions of this by-law and regulations, members of the Band may fish in Band waters at any time.

Fishing Permits for Non Band Members

8. A person who is not a member of the Band may apply to the Council for a permit to fish in Band waters.

(a) The application shall specify:

- (i) the place for which the permit is sought;
- (ii) the species of fish for which the permit is sought;
- (iii) the type of fishing equipment to be used; and
- (iv) such other information as is required to enable the Council to address the considerations set out in subsection (b) and the criteria set out in subsection (c).

(b) In determining whether or not a permit should be issued, the Council shall take into consideration:

- (i) whether or not the applicant is of Cowichan ancestry;
- (ii) whether or not the applicant is a resident of the reserve;
- (iii) whether or not the applicant has previously held a permit and, if so, has complied with the provisions of the permit and this or any previous by-law with respect to fishing;
- (iv) the extent of the contribution, if any, the applicant makes to the reserve community;
- (v) the number of permits already issued for the species of fish for which the permit is sought; and
- (vi) whether or not there are sufficient fish of that species in Band waters at the time to meet the needs of Band members and permit holders without detrimentally affecting the species.

(c) Where the Council determines that:

- (i) the issue of a permit will not detrimentally affect the species of fish in respect of which the permit is sought; and
- (ii) the applicant is a suitable person to have a permit to fish in Band waters, the Council may issue a written permit authorizing the person to fish in Band waters, specifying therein the time, place, type of fishing equipment, catch limit, size limit and species of fish that may be fished by the person holding the permit.

(d) The fee for a permit will be determined by Council and will be attached to this by-law as a regulation in schedule 'B'.

(e) A permit issued pursuant to this section is non-transferable.

(f) The Council may delegate all or part of the duties and authorities contained in section 8 of this by-law to a duly formed fishing committee.

9. A person holding a permit issued under section 8 of this by-law shall not fish in Band waters except in accordance with the terms of the permit issued by the Council.

10. A person fishing under the authority of a permit issued pursuant to section 8 of this by-law shall have the permit on his person while fishing in Band waters.

(a) A fishery officer may at any time require any permit holder fishing in Band waters to produce his permit.

11. The Council may, after notice and hearing, cancel the permit of any person where it is satisfied:

(a) that the person has contravened the terms of the permit or this by-law, or

(b) that the continuation of the permit would be detrimental to the preservation and protection of fish or fish habitat.

Fishing by Non Band Members Under the Age of Sixteen Years

12. A non Band member who is under the age of sixteen years may apply for a permit to fish while accompanied by and under the supervision of a Band member or a person holding a permit issued under section 8 of this by-law.

(a) This permit otherwise known as the non band member youth fishing license may be issued provided the applicant can demonstrate a family relationship to a Cowichan Band member or members.

Temporary Variation or Restriction Imposed by Council

13. The Council may impose a temporary variation or restriction on fishing by persons authorized by this by-law to fish in Band waters, by giving notice in accordance with subsections (a) and (b).

(a) Notice of the variation or restriction shall be posted, not less than 24 hours prior to the variation or restriction coming into force:

- (i) in a conspicuous place at or near the fishing site or sites where the variation or restriction applies; and
- (ii) in the office of the Band Council.

(b) The notice shall specify the date and time the variation or restriction is to come into force and to cease, and the particulars of the variation or restriction imposed.

(c) No variation or restriction imposed under this section shall remain in force for a period of more than fourteen days, unless a further variation or restriction is imposed and further notice is given in accordance with subsections (a) and (b).

- (d) During this period, if an elder or disabled Band member is determined to be in need of fish for sustenance purposes Council may direct a fishery officer to fish on the individual's behalf in order to meet the required need.

Temporary Restrictions by Fishery Officer

14. If a fishery officer determines, on reasonable grounds, that fishing as otherwise permitted by this by-law would place at risk any species of fish, the fishery officer may, by oral or written notice, order that fishing, or fishing for that species, shall not be engaged in a prescribed location.

(a) An order made pursuant to section 14 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.

(b) An order made pursuant to section 14 may be extended to more than 48 hours but not beyond the next regular meeting of Chief and Council provided that:

- (i) the senior fishery officer in consultation with the Chief of the Cowichan Tribes and the Manager of the Cowichan River Hatchery, conclude that an extended fishing restriction is necessary.

Conservation and Protection

15. No person shall fish in Band waters at any time by the use of jigging, snagging, spear guns, explosive materials, rockets, combustibles, projectiles, shells or like substances.

(a) A fishery officer may remove and seize any fishing equipment or material situated in Band waters or reserve lands if the fishery officer is of the opinion, based on reasonable and probable grounds that the equipment or material contravenes conditions prescribed by this by-law.

(b) The Council may, by resolution, authorize the construction and use of a weir to accommodate a traditional fishery and cultural or scientific practices.

(c) A resolution authorizing a weir shall be accompanied by an operational plan attached to this by-law in Schedule 'D' which details the size and configuration and also sets out the duration and general management of the weir.

16. Salmon fry, part and smolt shall not at any time be fished, caught or killed except as authorized by Council for research and/or restoration purposes in the regulations.

17. Salmon or grilse of less weight than three pounds shall not at anytime be caught or killed, except by angling with hook and line or as authorized by Council for research and/or restoration purposes.

18. The eggs or fry of fish on the spawning grounds shall not at any time be destroyed unless authorized by Council for research and/or restoration purposes.

19. No person shall destroy fish in Band waters by any means other than fishing as authorized by this by-law.

20. No person shall carry on any work or undertaking that results in harmful alteration, destruction or disruption of fish or fish habitat.

21. Projects or undertakings related to scientific or restoration purposes which would otherwise be prohibited by this by-law may be carried out, provided work plans have been approved and recommended by the Fishing Committee.

Pollution of Band Waters

22. No person shall cause or knowingly permit to be put into any Band water frequented by fish or that flows into such water:

(a) lime, chemical substances or drugs;

(b) poisonous matter;

(c) any other substance or thing that has a deleterious effect on fish or fish habitat, whether or not it is of a like character to the substances named in this section.

23. No person engaging in logging, milling of wood, land clearing or other operations shall cause or knowingly permit to be put any slash, stumps or other debris into any Band water frequented by fish, or that flows into such water, or at any place in which it is likely to be carried into either such water.

Fishing Nets

24. One-third of the width of any river or stream, and not less than two-thirds of the width of the main channel at low tide in every tidal stream, shall be left open at all times, and no form of net or other fishing equipment, logs or any material of any kind shall be used or placed therein.

25. For conservation purposes a fishery officer may direct, either in writing or verbally, that nets or other fishing equipment be reduced in size to occupy less than one-third of the width of any stream or river.

26. Where, in the opinion of a fishery officer, based on reasonable grounds, the placing of nets or other fishing equipment in Band waters excessively restricts the passage of fish, the fishery officer may order the removal or relocation of any such net or fishing equipment by the person in control thereof, and any person so ordered shall comply with the direction of the fishery officer.

27. A person who fails to observe or who otherwise contravenes any provision of this by-law, or any order made or variation or restriction imposed pursuant to this by-law, commits an offence.

28. A person who resists or wilfully obstructs a fishery officer in the performance of any duty or in the exercise of any power under this by-law commits an offence.

Seizure and Forfeiture

29. A fishery officer may remove and seize any fish or equipment in use for fishing purposes situated in band waters or on reserve lands if the fishery officer is of the opinion, based on reasonable grounds, that the fish caught or the presence of such fishing equipment contravenes conditions prescribed by this by-law.

(a) A fishery officer who has custody of any fish or other perishable things, or fishing gear seized under this by-law may dispose of it in any manner that the officer considers appropriate in accordance with any regulations and any proceeds realized from its disposition shall be paid to the Cowichan Tribes.

(b) Where the person is convicted of an offence under this by-law, the court may, in addition to any punishment imposed, order that anything seized under this by-law by means of or in relation to which the offence was committed or any proceeds realized from its disposition be forfeited to the Cowichan Tribes.

Penalty

30. A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding 30 days, or to both.

Schedule

31. The following schedules form part of this by-law:

Schedule 'A' – Mandate and Membership of Fishing Committee.

Schedule 'B' – Copy of a non band member permit to fish on Band lands or Band waters.

Schedule 'C' – Copy of a non-native youth permit to fish on Band land or Band waters.

32.

(a) When required by this by-law, additional provisions to regulate fishing on band lands and in band waters, those provisions will be set out in additional schedules.

(b) Where pursuant to section 30(1) an additional schedule becomes part of this by-law, the additional schedule will make reference to the particular section of this by-law to which it relates.

Repeal

33. By-law number 1983, No. 2 enacted on the 27th day of February, 1983, and being a By-law to regulate the Preservation, Protection and Management of fish, be and the same is hereby repealed.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Cowichan Indian Band this 11 day of July, 2000.

Voting in favour of the by-law are the following members of the Council:

Chief Lydia Hwitsum
Chief Lydia Hwitsum

Dora Wilson
Councillor Dora Wilson

Diane Daniels
Councillor Diane Daniels

Lloyd Bob Sr.
Councillor Lloyd Bob Sr.

Louise Underwood
Councillor Louise Underwood

R. Harvey Alphonse
Councillor R. Harvey Alphonse

Councillor

Dexter Johnny
Councillor Dexter Johnny

Councillor

Andrew Canute
Councillor Andrew Canute

Councillor

Arvid Charlie
Councillor Arvid Charlie

Councillor

being the majority of those members of the Council of the Cowichan Indian Band present at the aforesaid meeting of the Council.

There are 13 Council members and a quorum of Council is 5 members.

Number of members of the Council present at the meeting: 9.

I, Lydia Hwitsum Chief/Councilor of the Cowichan Indian Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development, Registrations and Band Governance, Ottawa, Ontario pursuant to subsection 82(1) of the *Indian Act*, this 13 day of July, 2000

Nieda August
Witness

Chief Lydia Hwitsum
Chief/Councilor