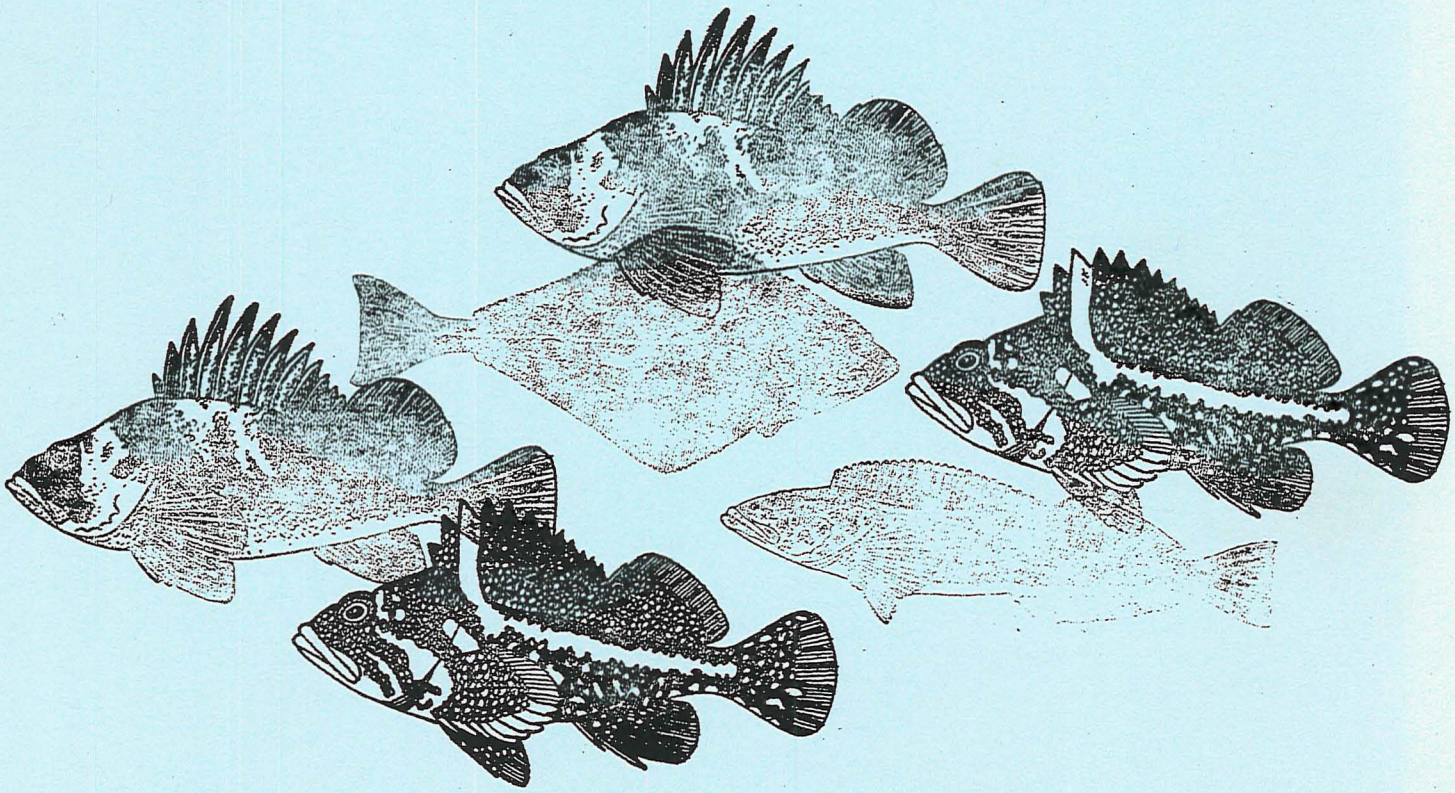
ABORIGINAL FISHERIES STRATEGY

DEPARTMENT OF FISHERIES AND OCEANS
PACIFIC REGION

AFS DESKBOOK



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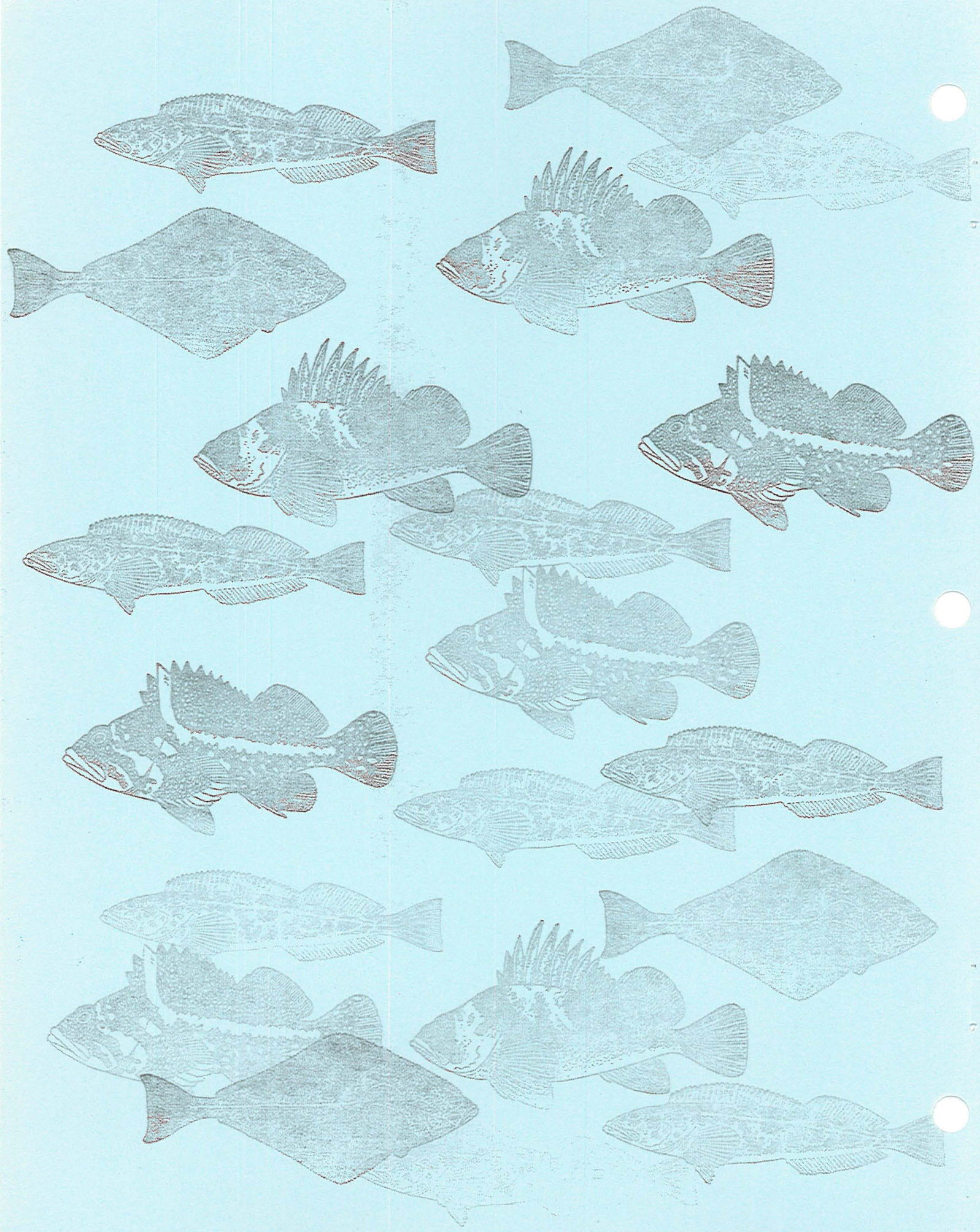

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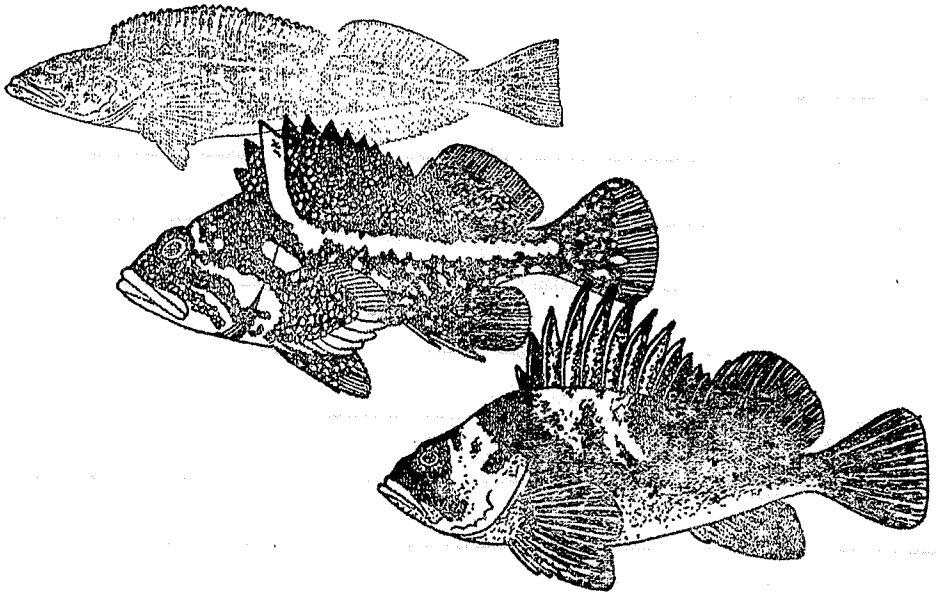

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AFS DESKBOOK

INTRODUCTION

What is the purpose of this book?

This book is intended to provide an understanding about the strategy and course of action that the Department of Fisheries & Oceans (DFO) is taking in response to Court directives and Federal policy for the management of Aboriginal fisheries.

With the evolving comprehensive treaty negotiations in British Columbia the management of fisheries may take some different shapes.

This book will show how the Aboriginal Fisheries Strategy (AFS) can serve to manage the Aboriginal fisheries in the interim period (between now and the settlement of treaties) in a way that is consistent with the exercise of Aboriginal and Treaty Rights and which upholds the honour of the Crown while also experimenting with new potential Aboriginal fisheries and fishing methods and various projects.

This book is intended as a general source of information for field staff in the Pacific Region of the Department of Fisheries & Oceans.

What is the Aboriginal Fisheries Strategy (AFS)?

The Aboriginal Fisheries Strategy is a Federal government initiative approved by Cabinet and announced in June 1992 as a long-term national strategy to enhance Aboriginal participation in fisheries.

Fish resources are of fundamental importance to Aboriginal peoples in Canada.

Since the management of fisheries falls primarily within the Federal jurisdiction, Aboriginal groups in British Columbia are pressing the Federal government for significant policy changes to recognize the Aboriginal fishing rights which they are asserting and to test the Federal commitment to a broader Native agenda regarding Aboriginal rights and economic development.

The Department of Fisheries & Oceans (DFO) does not have the mandate to enter into agreements with Aboriginal organizations which seek to define or limit Aboriginal or treaty rights.

To address policy considerations, however, DFO began:

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- NEGOTIATING interim agreements on fisheries management, SPARROW-related allocations and economic development with Aboriginal organizations;

- ENTERING INTO smaller-scale agreements with Aboriginal groups where Aboriginal or treaty rights are not outstanding;

- ENSURING the interests of others who participate in fisheries are represented and protected through a consultative process; and

- FUNDING Aboriginal groups to support cooperative fisheries management, related training, economic development, and associated negotiation and consultation costs to reach interim agreements.

Why was AFS initiated?

Since 1982 the Constitution of Canada has recognized and affirmed existing Aboriginal (non-treaty) and treaty rights. The Constitution Act, 1982 states:

> "35 (1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed."

In the years which have followed that enactment, the question of the extent of the Aboriginal and treaty rights has been raised anew.

Natives have attempted to determine through the courts, either as civil claims or as defence to fishing and hunting prosecutions, the extent of their Aboriginal rights.

Section 35 (1) of the Constitution Act, 1982 does not create new rights for Aboriginal people. Rather it recognizes and affirms existing rights.

The courts are now attempting to discover the meaning of "existing" and the implications of the new constitutional protection afforded Aboriginal people.

The 1990 Supreme Court of Canada decision in Regina vs. SPARROW has set the stage for a redefinition of government's relationship with Aboriginal people regarding the exercise of their fishing rights. A clear policy agenda was then required to assure all Canadians that the Federal government was prepared to protect and conserve fish stocks, and ensure fair and equitable treatment for all with interests in the fisheries.

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Aboriginal people in British Columbia want to preserve and build their societies and economies. Fisheries have been a component and in many cases a cornerstone of their societies. Aboriginal communities are often located close to fisheries resources, sometimes in isolated areas that offer few other employment options.

Increased participation by Native people in various aspects of fisheries can provide economic development and employment opportunities.

The Aboriginal Fisheries Strategy is a Federal government initiative to help expand the role of Natives in the fisheries while maintaining a stable environment for all interests.

To manage a shared resource effectively, the ability to determine allocations to Aboriginal fisheries is required. One component of the Aboriginal Fisheries Strategy consists of negotiated one-year and multi-year agreements with Native communities for harvest, fisheries management and development.

DFO has designed its approach to Aboriginal policy around negotiation with all user groups and by doing so is attempting to move beyond costly legal challenges and a history of direct action in the form of illegal fishing and disruptive protests and blockades by members of the various user groups. If there is a lesson to be learned from litigation, it is that it is preferable to conclude mutually beneficial agreements through negotiation than to seek definition by the courts.

A price of pursuing a legal issue to the limit is that either one side or the other will have its future options limited by the result.

The question for today's complex society is whether it wants to resolve Aboriginal fishing claims through negotiation, compromise and consensus, or run the legal risks inherent in case-by-case definition by the courts.

It is not likely that all issues arising between Aboriginal and non-Aboriginal communities could ever be fully resolved through litigation. These are social issues.

RELATIONSHIP TO COMPREHENSIVE LAND CLAIMS

Treaties or land claims agreements usually set out Aboriginal rights to land and resources. Through the Comprehensive Claims Policy, the Federal government is seeking to resolve issues of Aboriginal rights to lands and resources by negotiating modern treaties with Aboriginal groups which have not previously signed treaties.

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An agreement was signed in September 1992 by the Prime Minister of Canada, the Premier of British Columbia and representatives of the B.C. First Nations Summit which established the B.C. Treaty Commission. The role of this commission is to promote the process of negotiation of land claims in British Columbia. It is estimated that over forty claims will be negotiated depending on how groups organize themselves. Fisheries is a central component of these negotiations.

It will take time to conclude these treaty negotiations. To enable Native people to benefit to some degree during this period, and to decrease or eliminate conflict over resources is one objective of the Aboriginal Fisheries Strategy. This strategy calls for negotiated agreements in the interim which cover fisheries matters, will "test drive" some new concepts and which may be taken into account by the parties in dealing with fisheries benefits in the land claims process.

These agreements provide for Aboriginal participation in the management of fisheries but do not limit or define Aboriginal or treaty rights. Nor are they agreements or treaties within the meaning of Section 35 of the Constitution Act, 1982.

Most of DFO's agreements specify that any benefits flowing from agreements may be considered in future treaty negotiations. Fisheries Agreements are explained in a later section.

FUNDING LEVELS

The Aboriginal Fisheries Strategy is expected to cost about $140 million over a seven-year period.

An estimated $73.5 million will be spent between 1992 and 1997 for economic development, on-the-job training, and Native participation in fisheries management activities.

Up to $7 million was made available in 1992-93 for the retirement of commercial licences in order to reallocate salmon fishing opportunity to Aboriginal groups.

A further $35 million was allocated for a similar multi-species initiative for a six-year period beginning in 1994.

LEGAL IMPETUS

There are several leading Canadian cases which have had a direct influence on where British Columbians stand with respect to Native issues in the 1990's.

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The main issues involve:

1) The nature and scope of Aboriginal rights and whether or not these have been extinguished;

2) Ownership;

3) Self Government; and

4) Sovereignty or jurisdiction.

The primary source of Aboriginal land rights in British Columbia is the common law, developed and shaped in a series of cases which culminates for now with the British Columbia Court of Appeal judgement in DELGAMUUKW vs Her Majesty the Queen on June 25, 1993. These cases inevitably lead to difficult new questions which have not previously been resolved. If the experience since CALDER vs. AGBC [1973] S.C.R 313 is a guide, none of these cases will constitute the last word on any of the issues. Each has though, in some way, contributed to the evolving shape and meaning of Aboriginal presence on the land.

TREATIES IN BRITISH COLUMBIA

Treaty-making on a large scale was never undertaken in this Province.

In the 1850's James Douglas, Governor of the early colony, entered into fourteen agreements with Indian tribes on Vancouver Island. For surrender of their lands, money payments were made along with promises that village sites and enclosed fields would be surveyed and kept for use of the signatory tribes whose people would be "at liberty to hunt over the unoccupied lands and to carry on our fisheries as formerly".

The only other treaty area in British Columbia is a part of the Province lying east of the Rocky Mountain divide. This falls within the boundary of Treaty No. 8, one of the treaties signed by the Government of Canada after Confederation.

There are no treaties in the rest of the Province. Instead, a policy of reserving to Native people their village sites, agricultural lands and fishing was pursued.

ABORIGINAL RIGHTS AND EXTINGUISHMENT

The modern legal history of common law Aboriginal land rights begins with the 1973 decision of the Supreme Court of Canada in CALDER.

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The Nisga'a plaintiffs sued the Attorney General of British Columbia for a declaration that the Aboriginal title to their ancient tribal territory had never been lawfully extinguished. The territory in question consisted of 1000 square miles in and around the Nass River Valley.

The plaintiffs claimed their title arose out of Aboriginal occupation and was not dependent upon treaty, executive order or legislative enactment. Alternatively, if legislative recognition was required, it could be found in the Royal Proclamation of 1763.

The claim was dismissed, but the case was profoundly important. Six of the seven justices held that "Aboriginal title" was part of the common law of Canada and that its existence did not depend upon treaty, executive order, or legislative enactment. The Court did not say whether this right amounted to an interest in land.

The best known judicial expression of this historical reality is found in the following passage from the judgement of Supreme Court Justice Judson in CALDER:

> " ... the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Aboriginal title means and it does not help one in the solution of this problem to call it a 'personal or usufructuary right'. What they are asserting in this action is that they had a right to continue to live on their lands as their forefathers had lived and that this right has never been lawfully extinguished."

CALDER is also important because the Court was asked to find that Aboriginal title had been extinguished during the colonial period (prior to the union of British Columbia and Canada in 1871). The Nisga'a relied upon the Royal Proclamation in support of their claim of unextinguished Aboriginal title. The Court split evenly on the question of whether or not the Royal Proclamation applied in British Columbia. The question remains unresolved twenty years later.

It was held by the British Columbia Court of Appeal on DELGAMUUKW that the Proclamation had never applied to or had any force in British Columbia. The plaintiffs, however, have been granted leave to appeal to the Supreme Court of Canada. It may be some time before that court hears the case because there is currently an initiative underway to negotiate the matter instead.

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In 1980, the Federal Court of Canada considered third party rights in a decision concerning land claimed in and around Baker Lake, Northwest Territories in BAKER LAKE v. Minister of Indian Affairs and Northern Development (1980) 1 F.C. 518 Federal Court of Canada.

In that case the Inuit sought relief from the Crown issuing land use permits and from mining companies from mining, declaring that claimed lands are not public or territorial lands. It was found that the Proclamation of 1763 never applied to the barrens but, on the authority of CALDER, that Aboriginal rights arise as well at common law. The court in this case upheld the Inuit claim of Aboriginal title to that territory, carrying with it "the right freely to move about and hunt or fish over it". While there was no claim to ownership or sovereignty, they made claims equivalent to ownership which were all dismissed. The mining companies were permitted to continue their operations.

BAKER LAKE was an important influence on later courts because of its support for the notion that Aboriginal title is part of the common law of Canada, but more for its discussion of the requirements of proof of such title.

This case set out the elements required to establish Aboriginal rights which the common law will recognize:

1) That they and their ancestors were members of an organized society;

2) That the organized society occupied the specific territory over which they asserted the Aboriginal title;

3) That the occupation was to the exclusion of other organized societies; and

4) That the occupation was an established fact at the time sovereignty was asserted by England.

These criteria paved the way for the large-scale land claims trials such as DELGAMUUKW, but the requirement for proof of historical and sociological facts has made the litigation of such cases complex and lengthy.

In 1982, there was a constitutional affirmation of Aboriginal title.

Reforms which accompanied the patriation of Canada's Constitution included Section 35 of the Constitution Act, 1982 which states:

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"35.(1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed."

The important point here is that this affirmation of Aboriginal and treaty rights does not create rights, but requires the Federal government to ensure that legislators pay special attention to the impact of government on the interests of Aboriginal people.

The next occasion the Supreme Court of Canada had to consider the nature of Aboriginal land rights was in GUERIN v. The Queen, [1984] 2 S.C.R. 335. The Musqueam Band surrendered valuable acres of their reserve land to the Crown "forever in trust to lease" in a manner most conducive to the welfare of the Band. It was found that the lease arrangements entered into by the Crown on the Band's behalf bore little resemblance to what was discussed and approved by the Band. The Crown was found liable and damages were assessed at $10 million.

This case is not about common law Aboriginal interests, but rather about a breach of a fiduciary duty of the Crown relating to reserve lands. The Court's finding is that the Crown's obligations to its Aboriginal subjects are legal and not merely political.

The fiduciary obligation of the Crown was again affirmed by the Supreme Court of Canada in R. v. SPARROW, [1990] 4 W.W.R. 410 (S.C.C.). Mr. Sparrow, a Musqueam Indian, was charged under the Fisheries Act for fishing with a driftnet longer than permitted by the terms of his Band's food fishing licence. He admitted the facts alleged but defended against the charge on the ground he was exercising an existing Aboriginal right to fish and that the net length restriction was invalid because it was inconsistent with Section 35 of the Constitution Act, 1982. He was convicted at trial and his appeals to the County Court and the Court of Appeal were unsuccessful. The Supreme Court of Canada in dismissing the further appeal did not acquit Mr. Sparrow of the charge of fishing with an overlength net. Instead, the Court gave an interpretation of Section 35 (1) and instructed the trial judge to consider that interpretation before answering the question of whether the net length restriction was inconsistent with Section 35. The Court said that laws which interfere with the exercise of Aboriginal rights are subject to review by the courts. If the interference cannot be justified by reference to legitimate legislative objectives which uphold the honour of the Crown in its dealings with Native people, then the law can be struck down.

The Court in SPARROW said the general guiding principle for Section 35 is that:

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> " ... the Government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples. The relationship between the Government and Aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of Aboriginal rights must be defined in light of this historic relationship."

The constitutional recognition of Aboriginal and treaty rights does not provide immunity from government regulation. It does, however, give a measure of control over government conduct and a strong check on legislative power. Furthermore, in the imposition of any limitations on the right to fish, there must be consultation between the Aboriginal peoples and the Federal government.

The Court's SPARROW decision found that, with respect to Aboriginal rights to fish, Indian food, social and ceremonial requirements must be met before other allocations. Fishing by Aboriginal people to meet these needs has priority over any interests except conservation, and the Aboriginal fishery should be regulated by government only for the reason of conserving fish.

Where there are cutbacks for conservation, those cutbacks are to be borne by other user groups first, and not by both Indians and other users. Conservation takes precedence over all.

The Supreme Court of Canada did not address the question of whether fish caught by Aboriginals could be sold legally. The scope of the case at trial was the existing Musqueam Aboriginal right to fish for food, social and ceremonial occasions. It emphasized that the situation of sale was best resolved through a negotiated solution.

The case concerning Gitksan-Wet'suwet'en land and governance claims (DELGAMUUKW v. The Queen) is the leading case on the issue of Aboriginal land rights in British Columbia.

The claim (October 1984) asserted ownership of a land area of 22,000 square miles comprising most of the Skeena and Bulkley river systems, and jurisdiction or self government over both the claimed land and the Native people of these two groups.

The trial of the case lasted three years.

Claims to ownership and jurisdiction were rejected by the Supreme Court of British Columbia.

In summary, the trial judge concluded that Aboriginal rights arise out of occupation or use of specific land for Aboriginal

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purposes for a long, long time, and are communal. Aboriginal rights are not property rights.

As commercial resource users, Indians enjoy no priority of entitlement over anyone else. Colonial legislation was taken to have extinguished Aboriginal rights as they existed in the colony at the date of sovereignty except for Indian reserves.

The trial judgement was appealed to the British Columbia Court of Appeal and was heard in the Spring of 1992 by a five-judge panel.

The Court was also assigned to hear seven other appeals involving related Aboriginal law issues (VAN DER PEET/GLADSTONE/NTC SMOKEHOUSE (right to sell), Lewis and Nikal (band by-law), and Alphonse and Dick (Wildlife Act). The key issues raised in the appeals covered the main issues previously mentioned:

1) The nature and scope of Aboriginal rights;

2) Commerciality;

3) Ownership;

4) Self government; and

5) Extinguishment.

Decisions were released simultaneously with DELGAMUUKW.

On June 25, 1993 the British Columbia Court of Appeal held, in DELGAMUUKW, that there was no blanket extinguishment of Aboriginal rights, thus reversing the trial court decision.

The Court also held that these unextinguished Aboriginal rights are not all-encompassing rights of ownership and that there are no rights to sovereignty or jurisdiction.

A clear theme emerged from the judgement in DELGAMUUKW, that negotiated resolutions of conflicting use claims are preferable to resolutions under the adversarial process of litigation. Special emphasis was placed upon the resolution of competing claims to fish in multi-user sectors.

This can be read as a judicial endorsement of the type of approach taken in the Aboriginal Fisheries Strategy to encourage good faith efforts in the resolution of competing claims at the negotiating table.

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Van der Peet/Gladstone NTC Smokehouse
Right to Sell

In 1990 the British Columbia Provincial Court convicted a member of the Sto:lo Nation (VAN DER PEET) of illegally selling fourteen salmon caught under an Indian Food Fish Licence. On appeal, the British Columbia Supreme Court found that the accused's ancestors had an Aboriginal right to fish which included the right to barter or sell.

In the Spring of 1992 a further appeal brought by the accused and a cross appeal filed by the Crown were heard by a five judge panel along with several other Aboriginal fishing and hunting prosecutions, as well as DELGAMUUKW.

On June 25, 1993, the British Columbia Court of Appeal held in VAN DER PEET that the members of the Sto:lo people did not have an Aboriginal right to sell or barter fish.

While the majority of the Court recognized that the accused's forefathers engaged in some trade of fish prior to the establishment of sovereignty, the trade did not form an integral part of their culture. As such, the post-contact commercial activity which was induced and influenced by European influences does not qualify for protection and priority as an Aboriginal right in this case.

In GLADSTONE, the British Columbia Provincial Court convicted the accused of attempting to sell 4200 pounds of spawn-on-kelp.

The Supreme Court of British Columbia upheld the conviction.

The accused appealed.

On June 25, 1993, the British Columbia Court of Appeal held that they were not exercising an Aboriginal right in attempting to sell herring spawn-on-kelp.

In NTC SMOKEHOUSE, the British Columbia County Court upheld the conviction at trial for the purchase and sale of fish (105,000 pounds) caught without the authority of a commercial fishing licence by members of the Sheshaht and Opetchesaht Bands.

The accused appealed.

As in the case of GLADSTONE, the British Columbia Court of Appeal held that the appellants were not exercising an Aboriginal right to sell fish. It held further that the provisions of the B.C. Fishery Regulations (prohibiting the sale of food fish and commercial sales without a commercial licence) were within the legislative authority of the Parliament of Canada.

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SUMMARY OF LEGAL IMPETUS

Calder (1973)

Supreme Court of Canada.

Territorial claim in and around the Nass River Valley was dismissed, but that Aboriginal title was part of the common law of Canada and its existence did not depend upon treaty, executive order, or legislative enactment.

It was not necessary for the Court to define the precise nature of Aboriginal title, the issue being whether or not it had been extinguished.

Baker Lake (1980)

Federal Court of Canada.

On the authority of CALDER, Aboriginal rights arise out of common law.

The Inuit claim of Aboriginal title was upheld, but claims equivalent to ownership were dismissed.

Third parties (mining companies) were allowed to continue their operations.

Requirements of proof of Aboriginal title were set out.

Constitution Act, 1982

Existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are recognized and affirmed.

Guerin (1984)

Supreme Court of Canada.

The Crown's fiduciary obligations to its Aboriginal subjects are legal and not merely political.

Sparrow (1990)

This was the Supreme Court of Canada's first opportunity to begin to define Section 35.(1) Constitution Act, 1982.

The government has a fiduciary responsibility and laws which interfere with the exercise of Aboriginal rights are subject to judicial review.

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Aboriginal rights to fish for food, social and ceremonial purposes must be met before other allocations.

Conservation takes precedence over all.

The Court was not required to deal with the issue of whether there exists an Aboriginal right to sell fish.

Delgamuukw (1993)

British Columbia Court of Appeal.

Leading case on the issue of Aboriginal land rights in British Columbia which was begun in October 1984.

No blanket extinguishment of Aboriginal rights.

These unextinguished rights are not all-encompassing rights of ownership and there are no rights to sovereignty or jurisdiction. (Being appealed to Supreme Court of Canada).

Van der Peet/Gladstone/NTC Smokehouse (1993)

British Columbia Court of Appeal.

Right to sell.

The Court ruled in each of the three cases that the sale of fish was not integral to the distinctive culture of the group.

The result is that, for these three groups, Aboriginal participation in the commercial fishery is on the same terms and under the same restrictions as other participants in the industry.

(Being appealed to the Supreme Court of Canada).

AGREEMENTS

Native involvement in fisheries and fisheries habitat management is accomplished through written agreements between the Federal government (DFO) and Aboriginal organizations or first nations. These are called Fisheries Agreements, having evolved from a number of separate agreements for allocation, funding, participation, etc.

The single Fisheries Agreement now contains schedules from A to K. These schedules cover a range of specifics involving area, fisheries, allocations, habitat management, and enforcement responsibilities, monetary assistance, and training.

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The schedules accompanying a specific agreement will vary with the organization and the area.

Fisheries Agreements may be negotiated annually or on a multi-year basis. Because of the variability of the fisheries resource, the schedules involving allocations and contributions (fish and money) are negotiated annually for all agreements.

Some of the projects negotiated in Fisheries Agreements may include education programs, catch monitoring, and enforcement of Aboriginal fishing activity, habitat assessment, enhancement, or restoration, fish enhancement, research, fishery guardian and technician training, economic development (aquaculture, recreational and commercial fisheries), and consultation and communications.

Nothing in an agreement defines or limits Aboriginal or treaty rights, nor do they limit the Minister's management authority under the Fisheries Act.

Agreements are presently signed by the Director General, Native Affairs (HQ).

Agreements will continue to have an evolving nature as the treaty-making climate changes. That is, mechanisms and obligations will continue to change and evolve, but not necessarily the management of the fishery.

Where an agreement is struck with a band or other Aboriginal organization, the needs for fish for food, social and ceremonial purposes is continued in the agreement in a communal licence. Where no agreement exists, a communal licence is issued. The distinction should be made here between *consultation* and *negotiation*. SPARROW directs the Federal government to consult with Native people regarding their needs for fish while negotiation is undertaken for agreements on cooperative management, training, enhancement, funding, etc.

ALLOCATION

Despite annual fluctuations in total run sizes, the shares of salmon taken by the commercial, recreational and Native fisheries have remained remarkably stable.

The commercial sector has maintained a prominent 94% share of the catch for over 15 years.

Recent Native and sport fishing shares are about 3% respectively, although the Native component is now rising slightly.

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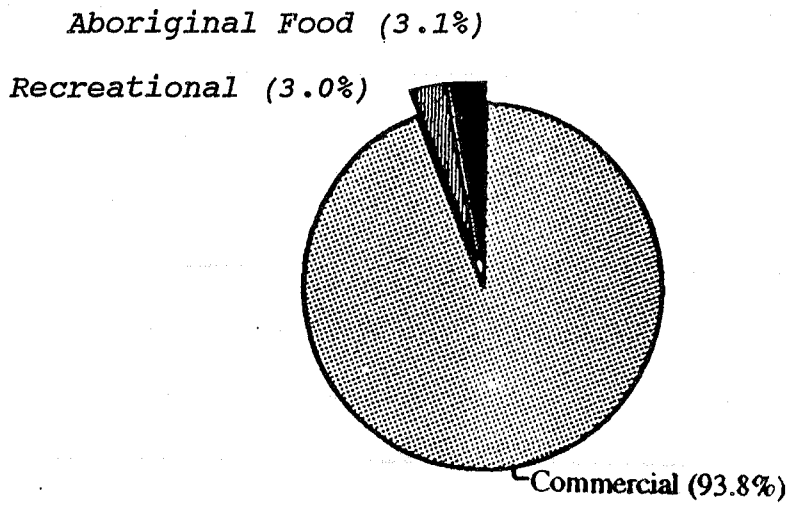
Salmon Catch Allocation
Four Year Average 1988 - 1991



94% of the salmon catch is taken in the commercial fisheries, 3% in the Aboriginal fisheries and 3% in the recreational fisheries. In the commercial fishery, about 20% of the commercial salmon licences are held by Native participants. These are independent commercial harvesters and their catch is not and has never been considered an allocation of fish to the Native community.

The SPARROW decision recognized that Native communities which have traditionally relied on the fishery have a right to fish for food, social and ceremonial purposes. The Federal government will have to consult with Native communities prior to imposing any restrictions on the exercise of that right.

The Pacific Licence Retirement Program announced in June, 1992 was a component of the Aboriginal Fisheries Strategy. This was a voluntary licence retirement program designed to offset reallocation of salmon to Aboriginal groups for commercial purposes through the retirement of commercial salmon seine, troll and gillnet licences by DFO.

Licence holders were invited to submit retirement proposals. A licence retirement selection committee representing commercial and Native interests recommended the licences that would be retired.

The primary criterion for acceptance of proposals was the lowest cost per sockeye equivalent of licensed catching power retired. Catching power was calculated as the average annual catch in

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sockeye equivalents over the previous four years for the gear type and vessel length.

Catching power retired under the program represented reallocation credits necessary to transfer a like number of sockeye to the Native fishery.

Funded at up to $7 million, and with the advice of the B.C. Fisheries Commission, the program resulted in 75 licence retirements by the spring of 1993, representing about 342,000 sockeye equivalents (about 1.6 percent of the commercial salmon catch).

These retirements amount to about two percent of the salmon fleet.

Normally, about ten percent of the fleet is annually offered for sale on the open market.

COMMUNAL LICENCES

Aboriginal fisheries are licensed through communal licences under the authority of the Aboriginal Communal Fishing Licences Regulations, approved June 16, 1993.

Individual food fishing permits are no longer issued by DFO.

The management and distribution of effort and catch is administered by the Native community. Benefits accrue to the entire community, unlike licences issued to individuals in the commercial fishery.

In some select instances, the communal fishing licence may include the opportunity for commercial sale where this has been negotiated as part of a negotiated agreement.

Communal licences are signed by a Fishery Officer.

DFO can control fishing times, area, and gear type through Variation Orders by the Director General, Pacific Region.

Bands designate individuals to fish and provide identification for these designates.

DFO will endeavour to negotiate with Aboriginal groups, mutually agreeable arrangements for Aboriginal fishing, such arrangements to be reflected in the communal licences.

Where agreement cannot be reached on the management of Aboriginal fishing DFO will provide the Aboriginal group with reasonable access to fish for food, social and ceremonial purposes through a

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communal licence, imposing only such restrictive conditions as are necessary to achieve a valid conservation objective, to provide sufficient food fish for other Aboriginal people, to achieve a valid health and safety objective, or to achieve other substantial and compelling objectives.

COMMERCIAL SALE OF FISH

The sale of Native food fish has been prohibited since 1888.

The legal sale of fish has long been sought by Native groups in British Columbia.

Native groups see the sale of fish as an economic opportunity and a route to greater self-sufficiency. These objectives are consistent with those of the Aboriginal Fisheries Strategy.

Although the recent decisions of the British Columbia Court of Appeal in June 1993 found that the appellants had not established an Aboriginal right to sell fish, a clear theme emerged from the judgement in DELGAMUUKW that the negotiated resolutions of conflicting-use claims are preferable to the adversarial process of litigation.

This may be regarded as encouragement of the type of approach adopted by DFO in formulating the Aboriginal Fisheries Strategy.

PILOT SALES

In 1992 three agreements were negotiated between DFO and Native people to allow pilot sale projects.

These were:

1) On the Lower Fraser River;

2) The Somass River; and

3) The Skeena.

These projects were designed to test how Native sales of fish would work within specified allocation levels and to identify potential problems.

In June 1992 the first agreements were signed with:

1) The Sto:lo Nation;

2) The Sto:lo Tribal Council;

3) The Musqueam Nation; and

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4) The Tsawwassen Nation

that allowed for demonstration projects to test a system for commercial sale of Native-harvested salmon.

This was authorized under communal fishing licences. The agreements provided for

a) A specific allocation;

b) Location of fishing operations;

c) Fishing Plans; and

d) Monitoring Plans.

In that year, the Lower Fraser Fishing Authority (LFFA) representing the Sto:lo, Musqueam and Tsawwassen Nations, were allocated:

Sockeye	395,000
Coho	6,500
Chum	12,000
Chinook	1,250

Catches were subject to all applicable laws and regulations and standards of inspection.

B.C. processors had first refusal to process the salmon.

The ten Indian bands of the Sto:lo Tribal Council and the eleven bands of the Sto:lo Nation traditionally fish on the Fraser River between Fort Langley and the Fraser canyon.

The Musqueam and Tsawwassen Nations traditionally fish the mouth and lower reaches of the Fraser River.

These experimental fisheries continued in 1993 and 1994 in the lower Fraser, Port Alberni and the Skeena under negotiated agreements.

PROGRAMS WITHIN ABORIGINAL FISHERIES STRATEGY (AFS)

Pacific Licence Retirement Program

A new program beginning in 1994 to retire commercial fishing licences for transfer to Aboriginal communities has been approved under the Aboriginal Fisheries Strategy (AFS).

Funding has been approved by Treasury Board for $35 million over six years. The licences acquired from commercial fishers (on a

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voluntary basis and at fair market value) will be operated as communally-held licences subject to the usual commercial fishery rules and regulations.

Retirements must involve a competitive process and contribution payments must flow directly from DFO to the current holder of the quota or licence.

This program will apply to a broad range of commercial fishing activities of interest to Aboriginal communities and will be limited to an upper ceiling of five percent of licences per fishery over six years.

The program allows for modest increase in allocations for "in-river" sales projects being limited to small scale "value added" opportunities.

Profits from these commercial opportunities in B.C. would assist in the support of the Aboriginal role in sustainable fisheries management.

The allocation of licences and quotas to Aboriginal groups will be through the AFS agreement process and will only be contemplated for groups with long-term agreements.

The program will be implemented in two phases, both starting in the 1994/95 fiscal year.

The FIRST PHASE would involve immediately initiating a Licence Retirement Program through an independent program agent/administrator who would solicit interest either through the existing market place or through mailout to all eligible licence holders.

Licences retired in the first phase would be "banked" and available for transfer as negotiations proceed.

The SECOND PHASE would be to work with Aboriginal people, commercial fishing interests and Aboriginal Capital Corporations to design a longer term program which will effectively provide economic opportunities to Aboriginal communities.

Training Program for Aboriginal Fishery Guardians

The Native Guardian Training is an important program in the Aboriginal Fisheries Strategy.

Guardian training is in three phases.

NOTES:

PHASE I:

1) Basic enforcement;

2) Salmon management and species identification; and

3) Boat safety and first aid.

PHASE II:

1) Habitat management and protection;

2) An introduction to species other than salmon; and

3) Communications (presentations, meetings and public speaking).

PHASE III:

1) More advanced enforcement such as:
   a) Taking evidence;
   b) Preparing court briefs;
   c) Surveillance; and
   d) Self-defence.

In 1993, sixty trainees attended guardian training courses in Nanaimo, Prince Rupert and Mission. Five trainees also attended a one month Fishery Officer Career Training Program in 1993.

Enforcement

Enforcement involving Aboriginal fisheries receives high level guidance from DFO with close consultation with the Department of Justice (DOJ).

This is mainly to ensure that the fiduciary responsibility of the government and the honour of the Crown are upheld in light of the Supreme Court of Canada's SPARROW decision.

Enforcement policies and procedures are outlined by DFO and continue to evolve.

For information on these the following should be consulted:

1. Department of Fisheries and Oceans policy for the management of Aboriginal Fishing (1993);

2. DFO national procedural guidelines for enforcement of Aboriginal fishing for food, social and ceremonial purposes. (February 12, 1993 Protected); and

NOTES:

3. National enforcement policy relating to Indian band fishing by-laws.

These policies and procedures form a framework for detailed enforcement procedures.

BRITISH COLUMBIA NATIVE ORGANIZATIONS

British Columbia has a population of approximately:

STATUS INDIANS	87,700
NON-STATUS INDIANS & METIS	67,500

This is about 17% of Canada's Aboriginal population and 32% of all bands.

The Province also has 1,634 of Canada's 2,323 reserves, but most of these are small compared to those in the rest of the country.

About half of the status Indians in B.C. live on reserves in 350 communities.

Using language as a basis of classification, there are ten major Aboriginal groups in British Columbia:

1. ATHAPASKAN (central and northeast B.C.);
2. INLAND TLINGIT (west coast);
3. HAIDA (west coast);
4. TSIMSHIAN (west coast);
5. KWAKUITL (west coast);
6. NOOTKA (west coast);
7. BELLA COOLA (west coast);
8. COAST SALISH (west coast);
9. INTERIOR SALISH (southeast B.C.); and
10. KOOTENAY (southeast B.C.).

Historically, the most important unit of the organization has been the band or tribe. These were small groups of people, usually related, who lived together throughout the year. In most areas, these small groups joined with others, shared a degree of internal organization, and named themselves.

NOTES:

In recent years, many bands have organized within tribal council structures which deal with administrative, political and land use issues on behalf their member bands.

There are currently 33 Tribal Councils in British Columbia.

For a list of Bands, their mailing addresses and contacts (Band Chiefs), refer to "A Guide to Aboriginal Organizations and Services in British Columbia", March 1992, Ministry of Aboriginal Affairs, Province of British Columbia.

Also to note is that the Treaty Negotiations Unit of the Aboriginal Fisheries Sector (DFO Operations Branch) is assembling Negotiating Manuals. Within the Manual an updated list will track name changes and affiliations as Bands and Tribal Councils develop policy.

To note also is that Bands will at times affiliate objectively with various Tribal Councils for specific tasks at hand and the following list has not indicated the relationship to that level.

The following is a list of Bands and Affiliated Tribal Councils as of December 1994.

BANDS AND AFFILIATED TRIBAL COUNCILS
Updated December 1994

Adams Lake Indian Band	SHUSWAP NATION TRIBAL COUNCIL
Ahousaht Indian Band	NUU-CHAH-NULTH TRIBAL COUNCIL
Aitchelitz Indian Band	STO:LO FISHERIES AUTHORITY
Alexandria Band c/o Rancherie Group	TS'ILHQOTIN TRIBAL COUNCIL
Alexis Creek Indian Band	TS'ILHQOTIN TRIBAL COUNCIL
Alkali Lake Indian Band	Unaffiliated Band
Anaham Indian Band	TS'ILHQOTIN TRIBAL COUNCIL
Anderson Lake Indian Band	COAST MOUNTAIN DEVELOPMENT CORPORATION
Ashcroft Indian Band	NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Beecher Bay Indian Band	FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Bella Bella Band	See Heiltsuk Band
Bella Coola Band	See Nuxalk Nation
Blueberry River Indian Band	TREATY NO. 8 TRIBAL COUNCIL COUNCIL
Bonaparte Indian Band	SHUSWAP NATION TRIBAL COUNCIL
Boothroyd Indian Band	NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Boston Bar Indian Band	NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Bridge River Indian Band	LILLOOET TRIBAL COUNCIL
Broman Lake Indian Band	CARRIER-SEKANI TRIBAL COUNCIL
Burns Lake Indian Band	CARRIER-SEKANI TRIBAL COUNCIL
Burrard Indian Band	ALLIANCE TRIBAL COUNCIL
Campbell River Indian Band	KWAKIUTL DISTRICT COUNCIL
Canim Lake Indian Band	CARIBOO TRIBAL COUNCIL
Canoe Creek Indian Band	CARIBOO TRIBAL COUNCIL
Canyon City Band	See Gitwinkshihkw Band
Cape Mudge Indian Band	KWAKIUTL DISTRICT COUNCIL
Cayoose Creek Indian Band	LILLOOET TRIBAL COUNCIL
Chawathil Band ALSO KNOWN AS:	Hope Band
Chawathil Indian Band (formerly Hope Band)	STO:LO FISHERIES AUTHORITY
Cheam Indian Band	STO:LO FISHERIES AUTHORITY
Chehalis Indian Band	Unaffiliated Band
Chemainus Indian Band	Unaffiliated Band
Cheslatta Carrier Nation Indian Band	CARRIER-SEKANI TRIBAL COUNCIL
Clayoquot Band	See Tla-o-qui-aht First Nations
Clinton Band	See Whispering Pines Band

NOTES:

Coldwater Indian Band . . . . . NICOLA VALLEY TRIBAL COUNCIL
Columbia Lake Indian Band . . . . . KTUNAYA/KINBASKET TRIBAL COUNCIL
Comox Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Cook's Ferry Indian Band . . . . . NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Coquitlam (Kwayhquitlum)Indian Band . . . . . Unaffiliated Band
Cowichan Indian Band . . . . . Unaffiliated Band
Cowichan Lake Indian Band . . . . . KTUNAYA/KINBASKET TRIBAL COUNCIL
Deadman's Creek Band . . . . . See Skeetchestn Band
Ditidaht Indian Band (formerly Nitinaht) . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Doig River Indian Band . . . . . TREATY NO. 8 TRIBAL COUNCIL COUNCIL
Douglas Indian Band . . . . . COAST MOUNTAIN DEVELOPMENT CORPORATION
Ehatteshaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Esquimalt Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Fort George Band . . . . . See Lheit Lit'en Nation
Fort Nelson Indian Band . . . . . TREATY NO. 8 TRIBAL COUNCIL COUNCIL
Fort Ware Band . . . . . Unaffiliated Band
Fraser Lake Band ALSO KNOWN AS . . . . . Nadleh Whuten Band
Gitanmaax Indian Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Gitanyow Indian Band (formerly Kitwancool) . . . . . Unaffiliated Band
Gitlakdamix Indian Band . . . . . NISGA'A TRIBAL COUNCIL
Gitsegulka Indian Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Gitwangak ALSO KNOWN AS . . . . . Kitwanga Band
Gitwangak Indian Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Gitwinksihlkw Indian Band (formerly Canyon City) . . . . . NISGA'A TRIBAL COUNCIL
Glen Vowell Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Gwa'sala-'Nakwaxda'xw Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Gwa'sala'Nakwaxda'xw Band ALSO KNOWN AS: . . . . . Tsulquate
Hagwilget Indian Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Haisla Nation ALSO KNOWN AS . . . . . Haisla Tribal Council
Halalt Indian Band . . . . . Unaffiliated Band
Halfway River Indian Band . . . . . Unaffiliated Band
Hartley Bay Indian Band . . . . . NORTH COAST TRIBAL COUNCIL & TSIMSHIAN TRIBAL COUNCIL (see below)
Heiltsuk Indian Band (formerly Bella Bella) . . . . . Unaffiliated Band
Hesquiaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
High Bar Indian Band . . . . . SHUSWAP NATION
Homalco Indian Band . . . . . ALLIANCE TRIBAL COUNCIL
Hope Band . . . . . See Chawathil Band
Ingenika Band ALSO KNOWN AS . . . . . Tsay Kay Dene
Iskut Indian Band . . . . . TAHLTAN TRIBAL COUNCIL (now Stikine Tribal Council)
Kamloops Indian Band . . . . . SHUSWAP NATION TRIBAL COUNCIL
Kanaka Bar Indian Band . . . . . FRASER CANYON INDIAN ADMINISTRATION
Katzie Indian Band . . . . . ALLIANCE TRIBAL COUNCIL
Kincolith Indian Band . . . . . NISGA'A TRIBAL COUNCIL
Kispiox Indian Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Kitamaat Band ALSO KNOWN AS: . . . . . Kitamaat Village Council
Kitamaat Indian Band . . . . . Unaffiliated Band
Kitasoo Indian Band . . . . . TSIMSHIAN TRIBAL COUNCIL
Kitkatla Indian Band . . . . . TSIMSHIAN TRIBAL COUNCIL & NORTH COAST TRIBAL COUNCIL (see below)
Kitselas Indian Band . . . . . TSIMSHIAN TRIBAL COUNCIL
Kitsumkalum Indian Band . . . . . TSIMSHIAN TRIBAL COUNCIL
Kitwancool ALSO KNOWN AS . . . . . Gitanyow
Kitwancool Band . . . . . See Gitanyow Band
Klahoose Indian Band . . . . . ALLIANCE TRIBAL COUNCIL
Kluskus Indian Band . . . . . CARRIER-CHILCOTIN TRIBAL COUNCIL
Kwa-Wa-Aineuk Indian Band . . . . . MUSGAMAGW-TSAWATAINEUK TRIBAL COUNCIL
Kwakiutl Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Kwantlen First Nation Band (formerly Langley) . . . . . STO:LO FISHERIES AUTHORITY
Kwaw-Kwaw-A-Pilt Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Kwiakah Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Kwicksutaineuk-Ah-Kwaw-Ah-Mish Indian B . . . . . MUSGAMAGW-TSAWATAINEUK TRIBAL COUNCIL
Kyuquot Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Lakahahmen Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Lakalzap Indian Band (formerly Greenville) . . . . . NISGA'A TRIBAL COUNCIL
Lake Babine Indian Band (also known as Nat'oot'en) . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Langley Indian Band . . . . . See Kwantlen First Nation Band
Lax-Kw-alaams Indian Band(wasPortSimpson) . . . . . TSIMSHIAN TRIBAL COUNCIL & NORTH COAST TRIBAL COUNCIL
Lheit Lit'en Nation Indian Band (formerly Fort George) . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Lillooet Indian Band . . . . . LILLOOET TRIBAL COUNCIL

NOTES:

Little Shuswap Band . . . . . Unaffiliated Band
Lower Kootenay Indian Band . . . . . KTUNAYA/KINBASKET TRIBAL COUNCIL
Lower Nicola Indian Band . . . . . NICOLA VALLEY TRIBAL COUNCIL
Lower Similkameen Band . . . . . OKANAGAN TRIBAL COUNCIL
Lyackson Indian Band . . . . . MID ISLAND TRIBAL COUNCIL (c/o Halalt Band Office)
Lytton Indian Band . . . . . NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Malahat Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Mamaleleqala Que'Qwa'Sot'Enox Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Masset ALSO KNOWN AS . . . . . Old Masset Village Council
Matsqui Indian Band . . . . . STO:LO FISHERIES AUTHORITY
McLeod Lake Indian Band . . . . . Unaffiliated Band
Metlakatla Indian Band . . . . . TSIMSHIAN TRIBAL COUNCIL & NORTH COAST TRIBAL COUNCIL (see below)
Moricetown Indian Band . . . . . OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Mount Currie Indian Band . . . . . Unaffiliated Band
Mountain Indian Band . . . . . Unaffiliated Band
Mowachaht/Muchalaht Indian Band Council (formerly Mowachaht) . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Musqueam Indian Band . . . . . Unaffiliated Band
Nadleh Whuten Band ALSO KNOWN AS: . . . . . Fraser Lake Band
Nadleh Whuten Band . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Nak'azdli ALSO KNOWN AS: . . . . . Necoslie
Nak'azdli Indian Band (formerly Necoslie) . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Namgis First Nation (formerly Nimpkish) . . . . . MUSGAMAGW-TSAWATAINEUK TRIBAL COUNCIL
Nanaimo Indian Band . . . . . ALLIANCE TRIBAL COUNCIL
Nanoose Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Natoot'en . . . . . See Lake Babine Band
Nazko Indian Band . . . . . CARRIER-CHILCOTIN TRIBAL COUNCIL
Necoslie ALSO KNOWN AS . . . . . Nak'azdli
Necoslie Band . . . . . See Nad'asdli Band
Nee-Tahi-Buhn Indian Band . . . . . GITK'SAN WET'SUWET'EN
Nemaiah Valley Indian Band . . . . . TS'ILHQOTIN TRIBAL COUNCIL
Neskonlith Indian Band . . . . . SHUSWAP NATION TRIBAL COUNCIL
Nicomen Indian Band . . . . . FRASER CANYON INDIAN ADMINISTRATION
Nimpkish Indian Band . . . . . See Namgis First Nation Band
Nitinaht Band . . . . . See Ditidaht Band
Nooaitch Indian Band . . . . . NICOLA VALLEY TRIBAL COUNCIL
North Thompson Indian Band . . . . . SHUSWAP NATION TRIBAL COUNCIL
Nuchatlaht Indian Tribe Admin. . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Nuwitti Band . . . . . See Tlatlasikwala Band
Nuxalk Nation (also known as Bella Coola Band) . . . . . Unaffiliated Band
Ohamil Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Ohiaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Okanagan Indian Band . . . . . OKANAGAN TRIBAL COUNCIL
Old Masset Village Council ALSO KNOWN AS: . . . . . Masset
Old Massett Village Council(form'lyMassett) . . . . . COUNCIL OF HAIDA NATION & NORTH COAST TRIBAL COUNCIL
Opetchesaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Oregon Jack Creek Band . . . . . NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Osoyoos Indian Band . . . . . OKANAGAN TRIBAL COUNCIL
Oweekeno Indian Band . . . . . Unaffiliated Band
Pacheenaht Indian Band . . . . . Unaffiliated Band
Pauquachin Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Pavilion Indian Band . . . . . LILLOOET TRIBAL COUNCIL
Penelakut Indian Band . . . . . MID ISLAND TRIBAL COUNCIL (c/o Halalt Band Office)
Penticton Indian Band . . . . . OKANAGAN TRIBAL COUNCIL
Peters Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Popkum Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Prophet River Indian Band . . . . . TREATY NO. 8 TRIBAL COUNCIL
Qualicum Indian Band . . . . . Unaffiliated Band
Quatsino Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Quesnel Band . . . . . See Red Bluff Band
Red Bluff Indian Band (formerly Quesnel) . . . . . CARRIER-CHILCOTIN TRIBAL COUNCIL
Samahquam Indian Band . . . . . COAST MOUNTAIN DEVELOPMENT CORPORATION
Saulteau Indian Band . . . . . TREATY NO. 8 TRIBAL COUNCIL COUNCIL
Scowlitz Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Seabird Island Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Sechelt Indian Band . . . . . Unaffiliated Band
Semiahmoo Indian Band . . . . . Unaffiliated Band
Seton Lake Indian Band . . . . . LILLOOET TRIBAL COUNCIL
Shackan Indian Band . . . . . NICOLA VALLEY TRIBAL COUNCIL
Shuswap Indian Band . . . . . KTUNAYA/KINBASKET TRIBAL COUNCIL

NOTES:

Siska Indian Band . . . . . NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Skawahlook Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Skeetchestn Indian Band (formerly Deadman's Creek) . . . . . SHUSWAP NATION TRIBAL COUNCIL
Skidegate Indian Band . . . . . COUNCIL OF HAIDA NATION
Skookumchuck Indian Band . . . . . COAST MOUNTAIN DEVELOPMENT CORPORATION
Skowkale Indian Band (formerly Skulkayn) . . . . . STO:LO FISHERIES AUTHORITY
Skulkayn Band . . . . . See Skowkale Band
Skuppah Indian Band . . . . . FRASER CANYON INDIAN ADMINISTRATION
Skwah Indian Band . . . . . Unaffiliated Band
Skway Indian Band Council . . . . . STO:LO FISHERIES AUTHORITY
Sliammon Indian Band . . . . . Unaffiliated Band
Soda Creek Indian Band . . . . . CARIBOO TRIBAL COUNCIL
Songhees Indian Band . . . . . Unaffiliated Band
Sooke Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Soowahlie Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Spallumcheen Indian Band . . . . . SHUSWAP NATION TRIBAL COUNCIL
Spuzum Indian Band . . . . . FRASER CANYON INDIAN ADMINISTRATION
Squamish Indian Band . . . . . ALLIANCE TRIBAL COUNCIL
Squiala Indian Band . . . . . STO:LO FISHERIES AUTHORITY
St. Mary's Indian Band . . . . . KTUNAYA/KINBASKET TRIBAL COUNCIL
Stellaquo Indian Band . . . . . See Stellat'en First Nation Band
Stellat'en First Nation Band . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Stone Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Stony Creek Indian Band . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Stuart-Trembleur Band . . . . . See Tl'azt'en Nations
Sugar Cane Band ALSO KNOWN AS . . . . . Williams Lake Band
Sumas Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Tahltan Indian Band . . . . . TAHLTAN TRIBAL COUNCIL (Now known as Stikine Tribal Council)
Takla Lake Indian Band . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Taku River Tlinget Indian Band . . . . . Unaffilaited Band
Tanakteuk Indian Band . . . . . KWAKIUTL DISTRICT COUNCIL
Tl'azt'en Nation (formerly Stuart-Trembleur) . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Tla-o-qui-aht First Nations Band (formerly Clayoquot) . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Tlatlasikwala Indian Band
c/o Whe-La-La-U Area Council (formerly Nuwitti) . . . . . KWAKIUTL DISTRICT COUNCIL
Tlowitsis-Mumtagila Band
Tobacco Plains Indian Band . . . . . KTUNAYA/KINBASKET TRIBAL COUNCIL
Toosey Indian Band . . . . . CARRIER-CHILCOTIN TRIBAL COUNCIL
Toquaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Tsartlip Indian Band . . . . . Unaffiliated Band
Tsawataineuk Indian Band . . . . . MUSGAMAGW-TSAWATAINEUK TRIBAL COUNCIL
c/o Whe-La-La-U Area Council (formerly Turnour Island) . . . . . MUSGAMAGW-TSAWATAINEUK TRIBAL COUNCIL
Tsawout Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Tsawwassen Indian Band . . . . . ALLIANCE TRIBAL COUNCIL
Tsay Kay Dene ALSO KNOWN AS: . . . . . Ingenika Band
Tsay Keh Dene Indian Band . . . . . CARRIER-SEKANI TRIBAL COUNCIL
Tseshaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Tseycum Indian Band . . . . . FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Tsulquate Band . . . . . See Gwa'sala-nakwaxda'xw Band
Turnour Island Band . . . . . See Tlowitsis-Mumtagila Band
Tzeachten Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Uchucklesaht Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Ucluelet Indian Band . . . . . NUU-CHAH-NULTH TRIBAL COUNCIL
Ulkatcho Indian Band . . . . . CARRIER-CHILCOTIN TRIBAL COUNCIL
Union Bar Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Upper Nicola Indian Band . . . . . NICOLA VALLEY TRIBAL COUNCIL
Upper Similkameen Indian Band . . . . . OKANAGAN TRIBAL COUNCIL
West Moberly Indian Band . . . . . TREATY NO. 8 TRIBAL COUNCIL COUNCIL
Westbank Indian Band . . . . . OKANAGAN TRIBAL COUNCIL
Whispering Pines Band (formerly Clinton) . . . . . SHUSWAP NATION TRIBAL COUNCIL
Williams Lake ALSO KNOWN AS . . . . . Sugar Cane Band
Williams Lake Indian Band . . . . . CARIBOO TRIBAL COUNCIL
Yakooche . . . . . Unaffiliated Band
Yakweakwioose Indian Band . . . . . STO:LO FISHERIES AUTHORITY
Yale Indian Band . . . . . Unaffiliated Band

NOTES:

TRIBAL COUNCILS & AFFILIATED BANDS:

ALLIANCE TRIBAL COUNCIL
Burrard Indian Band
Homalco Indian Band
Katzie Indian Band
Klahoose Indian Band
Nanaimo Indian Band
Sliammon Indian Band
Squamish Indian Band
Tsawwassen Indian Band

CARIBOO TRIBAL COUNCIL
Canim Lake Indian Band
Canoe Creek Indian Band
Soda Creek Indian Band
Williams Lake Indian Band

CARRIER-CHILCOTIN TRIBAL COUNCIL
Kluskus Indian Band
Nazko Indian Band
Red Bluff Indian Band (formerly Quesnel)
Toosey Indian Band
Ulkatcho Indian Band

CARRIER-SEKANI TRIBAL COUNCIL
Broman Lake Indian Band
Burns Lake Indian Band
Cheslatta Carrier Nation Indian Band
Lake Babine Indian Band (Nat'oot'en)
Lheit Lit'en Nation Indian Band (formerly Fort George)
Nadleh Whuten Band
Nak'azdli Indian Band (formerly Necoslie)
Stellat'en First Nation Band
Stony Creek Indian Band
Takla Lake Indian Band
Tl'azt'en Nation (formerly Stuart-Trembleur)
Tsay Keh Dene Indian Band

COAST MOUNTAIN DEVELOPMENT CORPORATION
Anderson Lake Indian Band
Douglas Indian Band
Samahquam Indian Band
Skookumchuck Indian Band

FIRST NATIONS OF SOUTH ISLAND TRIBAL COUNCIL
Beecher Bay Indian Band
Esquimalt Indian Band
Malahat Indian Band
Nanoose Indian Band
Pauquachin Indian Band
Sooke Indian Band
Stone Indian Band
Tsawout Indian Band
Tseycum Indian Band

FRASER CANYON INDIAN ADMINISTRATION
Kanaka Bar Indian Band
Nicomen Indian Band
Skuppah Indian Band
Spuzum Indian Band

COUNCIL OF HAIDA NATION
Old Massett Village Council (formerly Massett) (also NCTC affiliated)
Skidegate Indian Band

KTUNAYA/KINBASKET TRIBAL COUNCIL
Columbia Lake Indian Band
Cowichan Lake Indian Band
Lower Kootenay Indian Band
Shuswap Indian Band
St. Mary's Indian Band
Tobacco Plains Indian Band

KWAKIUTL DISTRICT COUNCIL
Campbell River Indian Band
Cape Mudge Indian Band
Comox Indian Band
Gwa'sala-'Nakwaxda'xw Indian Band (formerly Tsulquate)
Kwakiutl Indian Band
Kwiakah Indian Band
Mamaleleqala Que'Qwa'Sot'Enox Indian Band
Quatsino Indian Band
Tanakteuk Indian Band
Tlatlasikwala Indian Band
c/o Whe-La-La-U Area Council (formerly Nuwitti)

LILLOOET TRIBAL COUNCIL
Bridge River Indian Band
Cayoose Creek Indian Band
Lillooet Indian Band
Pavilion Indian Band
Seton Lake Indian Band

MID ISLAND TRIBAL COUNCIL (c/o Halalt Band Office)
Chemainus Indian Band
Halalt Indian Band
Lyackson Indian Band
Penelakut Indian Band

MUSGAMAGW-TSAWATAINEUK TRIBAL COUNCIL
Kwa-Wa-Aineuk Indian Band
Kwicksutaineuk-Ah-Kwaw-Ah-Mish Indian B
Namgis First Nation (formerly Nimpkish)
Tlowitsis-Mumtagila Band
Tsawataineuk Indian Band
c/o Whe-La-La-U Area Council (formerly Turnour Island)

NICOLA VALLEY INDIAN ASSOCIATION
Coldwater Indian Band
Lower Nicola Indian Band
Nooaitch Indian Band
Shackan Indian Band
Upper Nicola Indian Band

NISGA'A TRIBAL COUNCIL
Gitlakdamix Indian Band
Gitwinksihlkw Indian Band (formerly Canyon City)
Kincolith Indian Band
Lakalzap Indian Band (formerly Greenville)

NKLA'KA'PAMUX NATION TRIBAL COUNCIL
Ashcroft Indian Band
Boothroyd Indian Band
Boston Bar Indian Band
Cook's Ferry Indian Band
Lytton Indian Band
Oregon Jack Creek Band
Siska Indian Band

NOTES:

NORTH COAST TRIBAL COUNCIL (social, economic & education arm of primarily Tsimshian Council Bands)
Hartley Bay Indian Band
Kincolith
Kitkatla
Metlakatla
Old Masset
Skidegate

NUU-CHAH-NULTH TRIBAL COUNCIL
Ahousaht Indian Band
Ditidaht Indian Band (formerly Nitinaht)
Ehatteshaht Indian Band
Hesquiaht Indian Band
Kyuquot Indian Band
Mowachaht/Muchalaht Indian Band Council (formerly Mowachaht)
Nuchatlaht Indian Tribe Admin.
Ohiaht Indian Band
Opetchesaht Indian Band
Tla-o-qui-aht First Nations Band (formerly Clayoquot)
Toquaht Indian Band
Tseshaht Indian Band
Uchucklesaht Indian Band
Ucluelet Indian Band

OFFICE OF GITKSAN-WET'SUWET'EN HEREDITARY CHIEFS
Gitanmaax Indian Band
Gitsegulka Indian Band
Gitwangak Indian Band (also known as Kitwanga)
Glen Vowell Band
Hagwilget Indian Band
Kispiox Indian Band
Moricetown Indian Band
Nee-Tahi-Buhn Indian Band

OKANAGAN TRIBAL COUNCIL
Lower Similkameen Band
Okanagan Indian Band
Osoyoos Indian Band
Penticton Indian Band
Upper Similkameen Indian Band
Westbank Indian Band

SHUSWAP NATION TRIBAL COUNCIL
Adams Lake Indian Band
Bonaparte Indian Band
High Bar Indian Band
Kamloops Indian Band
Neskonlith Indian Band
North Thompson Indian Band
Skeetchestn Indian Band (formerly Deadman's Creek)
Spallumcheen Indian Band
Whispering Pines Band (formerly Clinton)

STO:LO FISHERIES AUTHORITY
Aitchelitz Indian Band
Chawathil Indian Band (formerly Hope Band)
Cheam Indian Band
Kwantlen First Nation Band (formerly Langley)
Kwaw-Kwaw-A-Pilt Indian Band
Lakahahmen Indian Band
Matsqui Indian Band
Ohamil Indian Band
Peters Indian Band
Popkum Indian Band
Scowlitz Indian Band
Seabird Island Indian Band
Skawahlook Indian Band
Skowkale Indian Band (formerly Skulkayn)
Skway Indian Band Council
Soowahlie Indian Band
Squiala Indian Band
Sumas Indian Band
Tzeachten Indian Band
Union Bar Indian Band
Yakweakwioose Indian Band

STIKINE TRIBAL COUNCIL (previously known as TAHLTAN TRIBAL COUNCIL)
Iskut Indian Band
Tahltan Indian Band

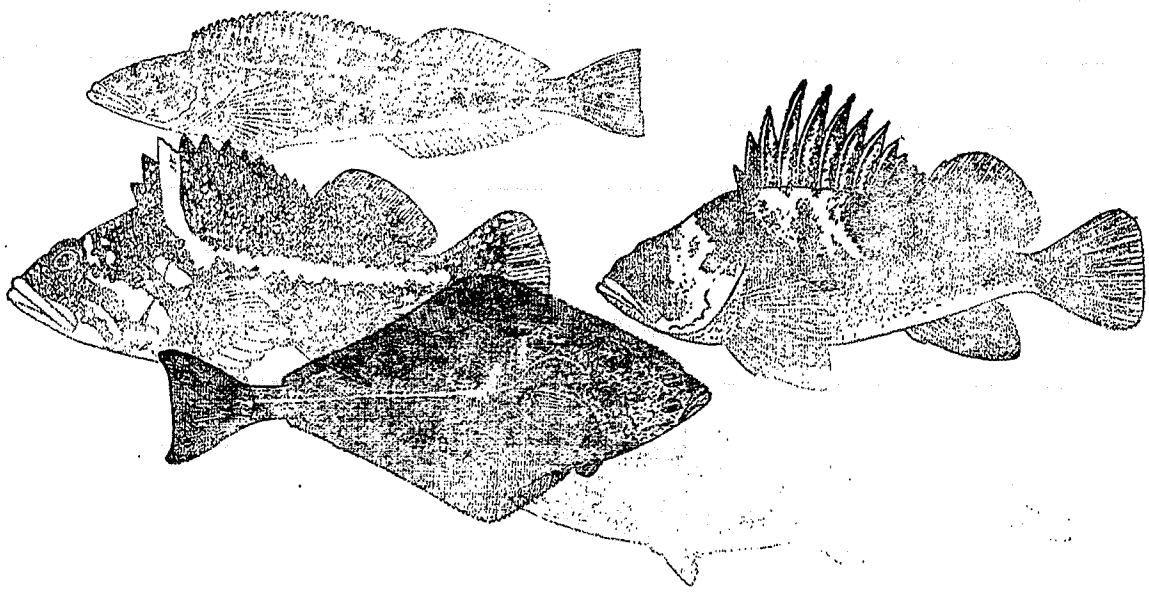
TREATY NO. 8 TRIBAL COUNCIL
Blueberry River Indian Band
Doig River Indian Band
Fort Nelson Indian Band
Prophet River Indian Band
Saulteau Indian Band
West Moberly Indian Band

TS'ILHQOTIN TRIBAL COUNCIL
Alexandria Band c/o Rancherie Group
Alexis Creek Indian Band
Anaham Indian Band
Nemaiah Valley Indian Band

TSIMSHIAN TRIBAL COUNCIL (political arm of North Coast Tribal Council (NCTC-for education,social,economics):
Hartley Bay
Kitasoo Indian Band
Kitkatla Indian Band
Kitselas Indian Band (not affiliated with NCTC)
Kitsumkalum Indian Band (not affiliated with NCTC)
Lax-Kw-alaams Indian Band (formerly Port Simpson)
Metlakatla Indian Band

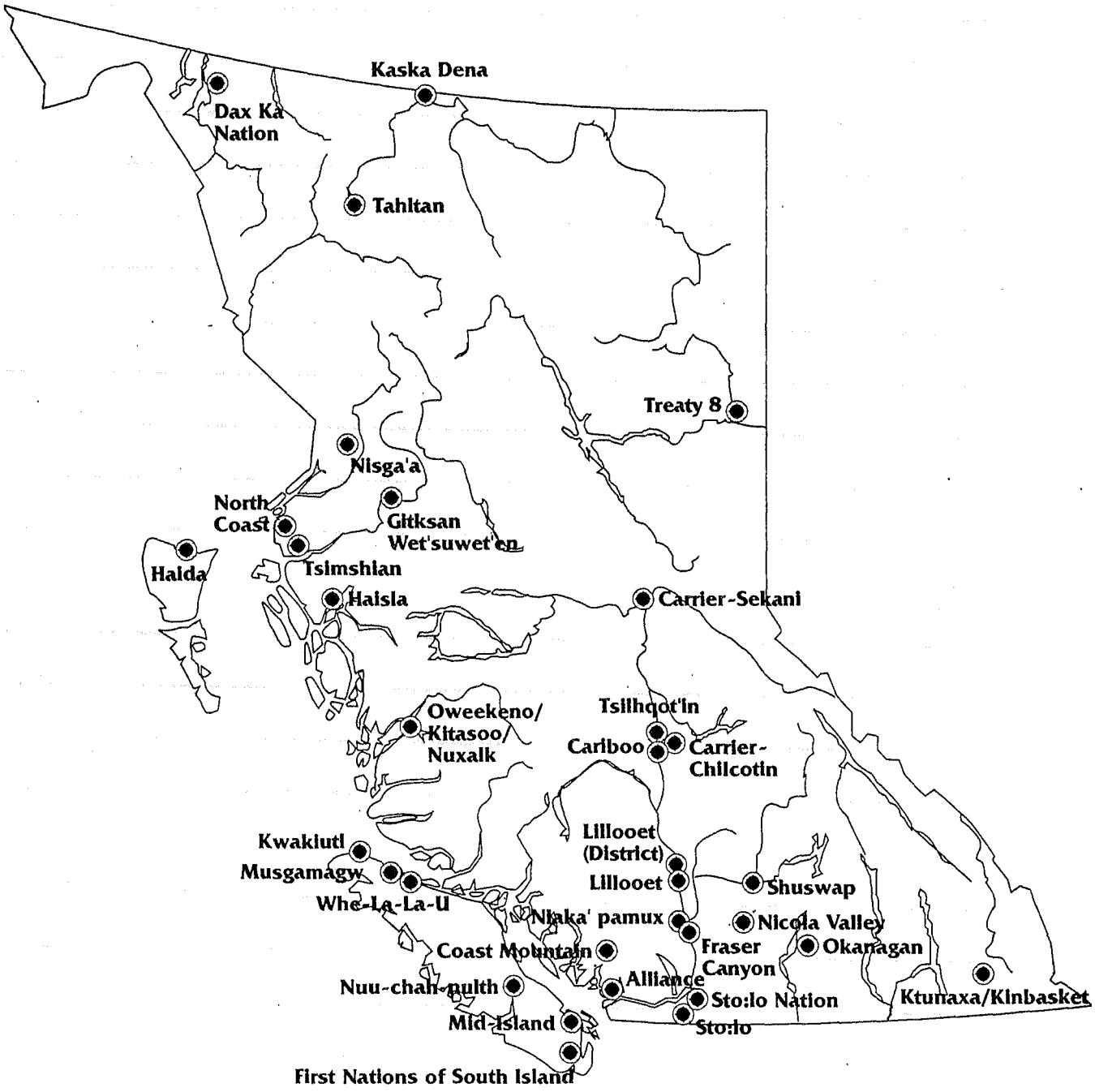
NOTES:

UNAFFILIATED BANDS:
Alkali Lake Indian Band
Chehalis Indian Band
Chemainus
Coquitlam (Kwayhquitlum)Indian Band
Cowichan Indian Band
Fort Ware Band
Gitanyow Indian Band (formerly Kitwancool)
Halalt
Halfway River Indian Band
Heiltsuk Indian Band (formerly Bella Bella)
Kitamaat Indian Band
Little Shuswap Band
McLeod Lake Indian Band
Mount Currie Indian Band
Mountain Indian Band
Musqueam Indian Band
Nuxalk (Bella Coola)
Nuxalk Nation (Bella Coola Band)
Oweekeno Indian Band
Pacheenaht Indian Band
Qualicum Indian Band
Sechelt Indian Band
Semiahmoo Indian Band
Skwah Indian Band
Songhees Indian Band
Taku River Tlinget Indian Band
Tsartlip Indian Band
Yakooche Indian Band
Yale Indian Band



NOTES:

TRIBAL COUNCILS IN BRITISH COLUMBIA



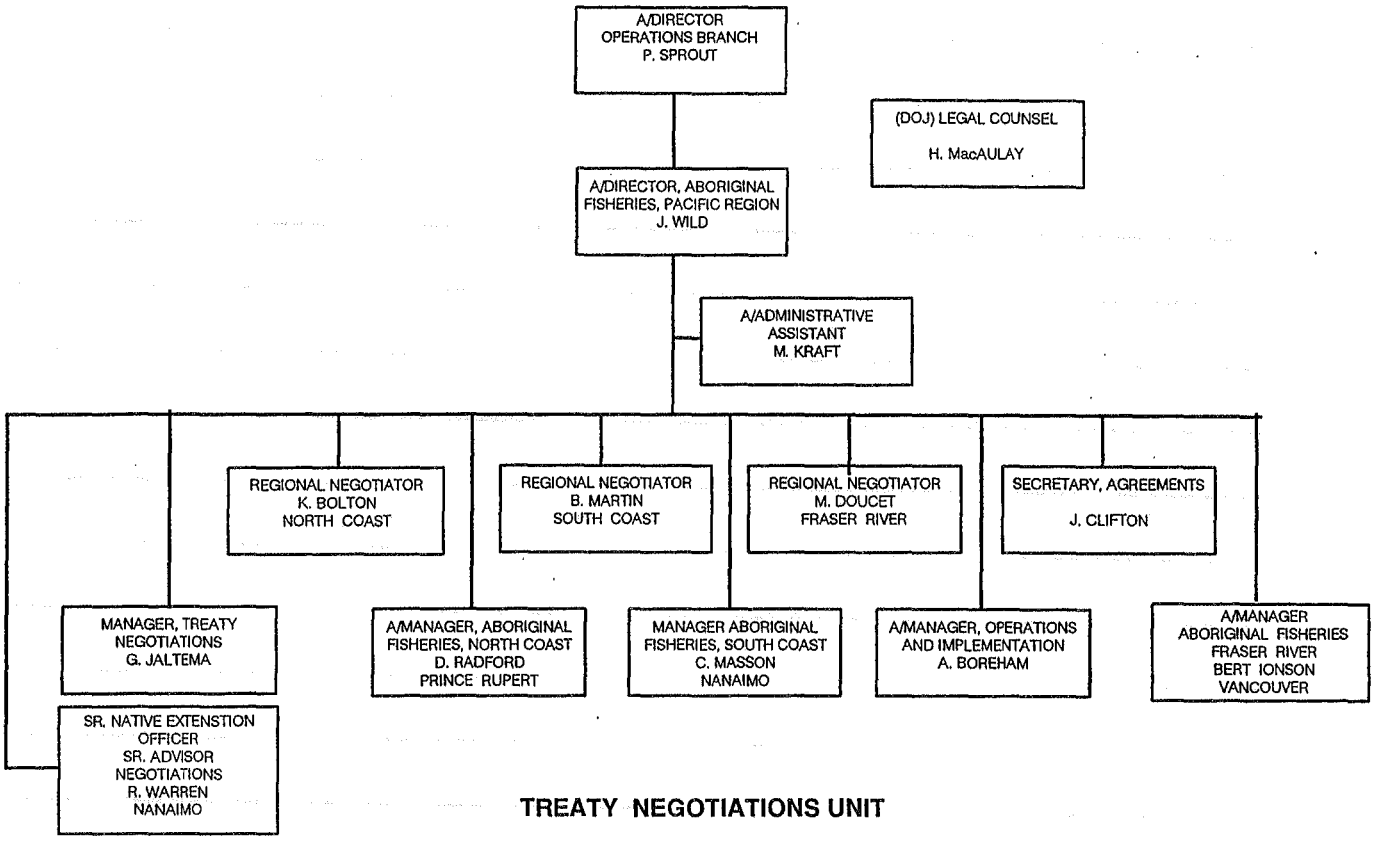
NOTE: The information given on the following pages is based on the best data available at the time of printing. Because band/tribal council affiliations change from time to time and sometimes overlap, this directory should be used as a guide only. Some bands may also be affiliated with more than one tribal council. Except where noted, population figures are taken from Indian and Northern Affairs Canada 1989 Indian Register. The Ministry of Aboriginal Affairs welcomes updated information on bands and tribal councils.

NOTES:

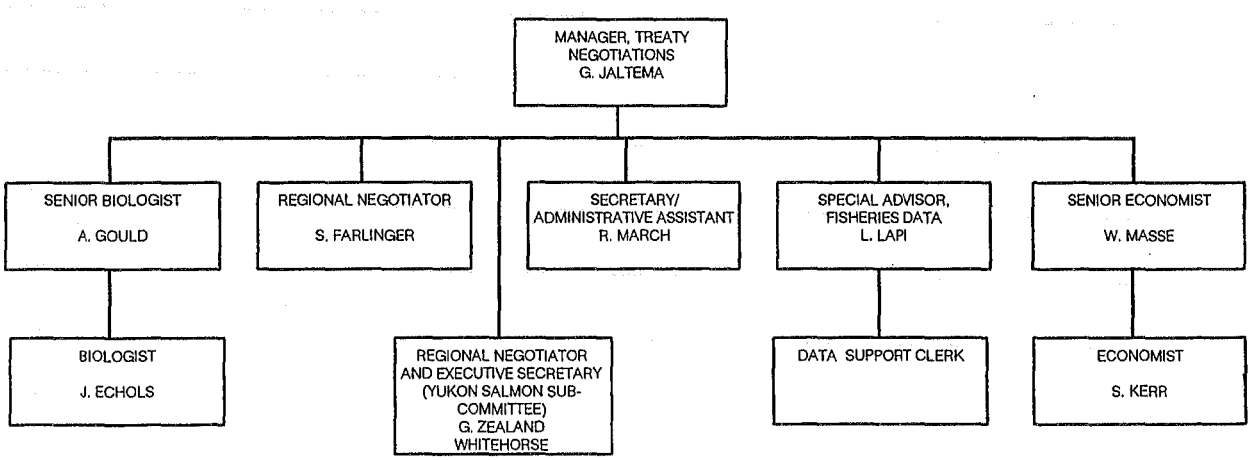
ORGANIZATION CHART

ABORIGINAL FISHERIES SECTOR
DEPARTMENT OF FISHERIES & OCEANS - PACIFIC

AFS DIRECTOR'S OFFICE (HQ)



TREATY NEGOTIATIONS UNIT



NOTE: Many positions shown, particularly in Treaty Negotiations, are acting or temporary secondments (or work assignments) effective December 1994.

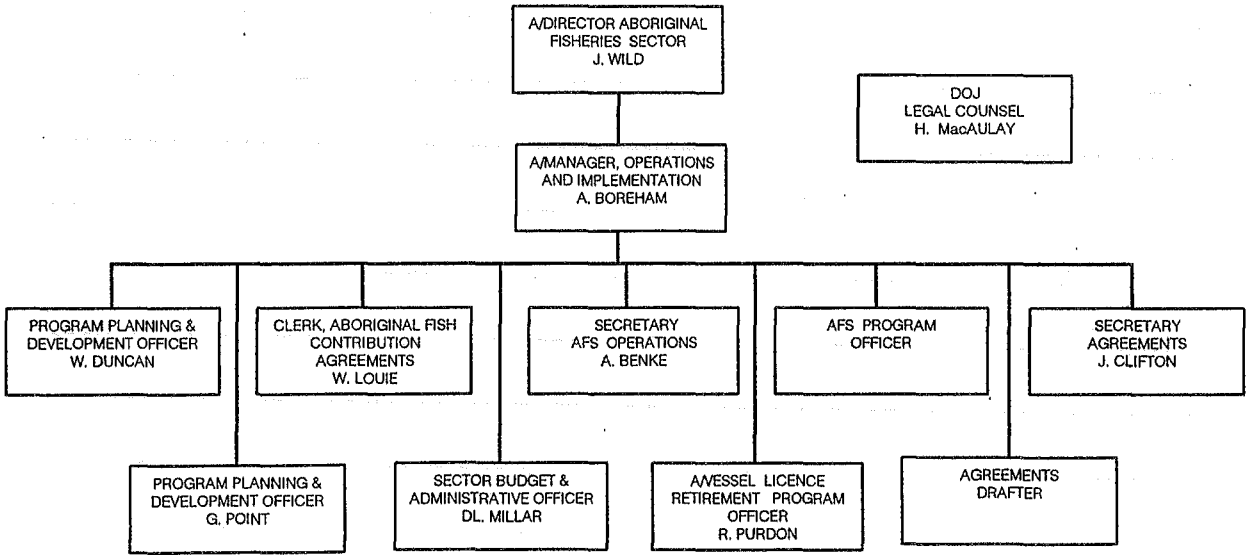
NOTES:

ORGANIZATION CHART

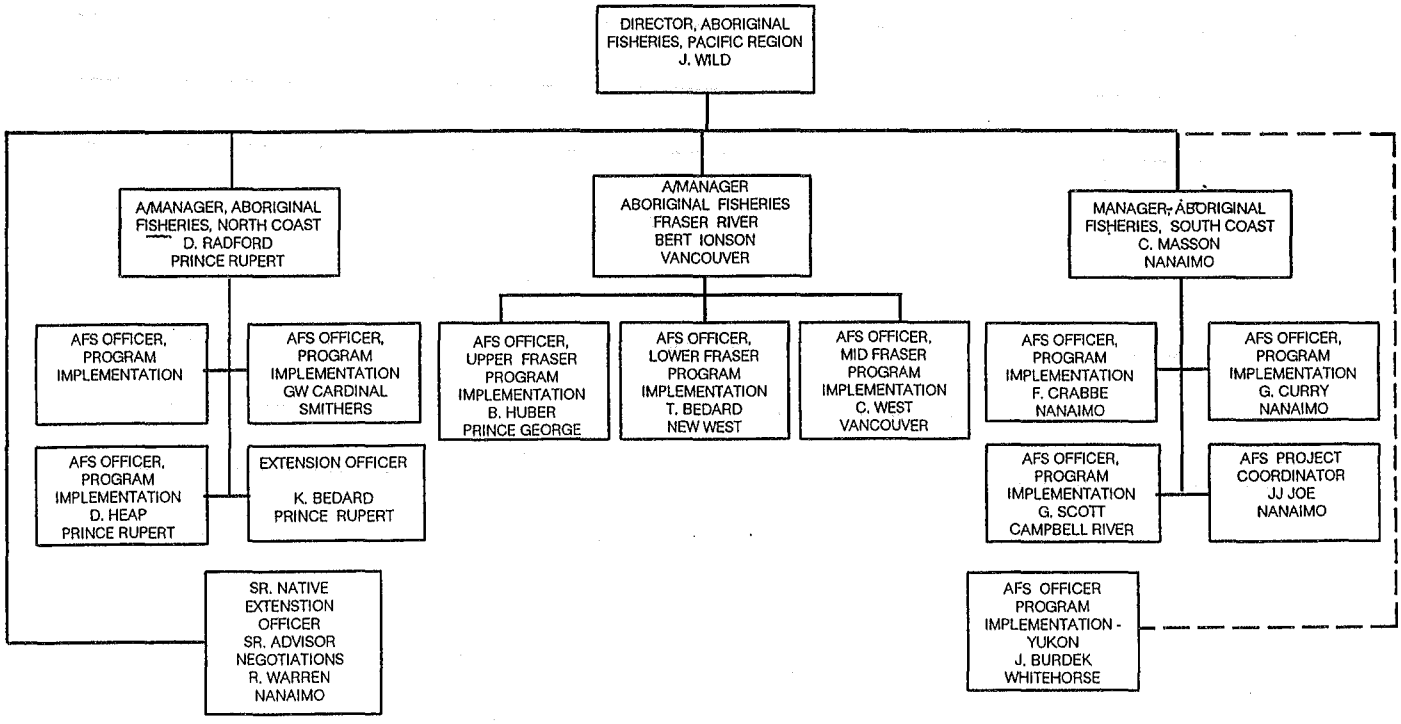
ABORIGINAL FISHERIES SECTOR
DEPARTMENT OF FISHERIES & OCEANS - PACIFIC

AFS OPERATIONS UNITS

(1) AFS REGIONAL HEADQUARTERS OPERATIONS UNIT



(2) AFS AREA OPERATIONS UNITS



NOTE: Many positions shown, particularly in Treaty Negotiations, are acting or temporary secondments (or work assignments) effective December 1994.

NOTES:

GLOSSARY OF TERMS

Aboriginal Communal Fishing Licences Regulations

Regulations made under the Fisheries Act respecting fishing carried on in accordance with Aboriginal communal fishing licences. Promulgated June 16, 1993.

Aboriginal Fisheries Strategy (AFS)

A national seven-year initiative announced in June 1992 to expand the role of Natives in fisheries while conserving fish stocks and maintaining a stable environment, predictable resource sharing and profitable fisheries for all interests.

Aboriginal Fisheries Agreement

An annual or multi-year agreement between DFO and an Aboriginal organization to provide for involvement by the organization in the management, protection and enhancement of fisheries resources and fish habitat in the area.

Aboriginal Fishing Authority

Defined and established in the Aboriginal Fisheries Agreement and responsible for managing fishing under the agreement in cooperation with DFO.

May be tribal, regional or watershed-based.

They may be funded in whole or in part through Contribution Agreements.

The authority will designate individuals to fish within the group allocations, will monitor and report their harvest to DFO, and participate in enforcement.

(Example: Skeena Fisheries Commission, representing the Nat'oot'en, Gitksan and Wet'suwet'en people and the Tsimshian Tribal Council as well as the Gitanyow Band (formerly Kitwancool).

Aboriginal People

Includes Indian, Inuit and Metis peoples of Canada {Section 35 (2) Constitution Act, 1982}.

In B.C. the Aboriginal population is about 155,000 (1993). Source: B.C. Ministry of Aboriginal Affairs.

NOTES:

Aboriginal Rights

> Rights arising from ancient occupation or use of land, to hunt, fish, take game animals, wood, berries and other foods and materials for sustenance and generally to use the lands in the manner Native people say their ancestors used them {BAKER LAKE v. Minister of Indian Affairs (1980)}.

(or)

> "Rights to live in their villages and to occupy adjacent lands for the purpose of gathering the products of the lands and waters for food, social and ceremonial purposes." (DELGAMUUKW)
>
> With respect to Aboriginal rights to fish, such rights are communal in nature. Aboriginal rights to fish for food, social and ceremonial purposes must be met before other allocations (SPARROW).

Where there are cutbacks for conservation, those cutbacks are to be borne by other user groups first, and not by both Indians and other users. Conservation takes precedence over all.

In the judgements rendered by the British Columbia Court of Appeal on June 25, 1993, the core idea is that Aboriginal rights are those practices which are integral to the organized society and its distinctive culture. Practices, however, which became prevalent as a result of European influences do not qualify as Aboriginal rights. All judges stressed the importance of context--Aboriginal rights are likely to vary from group to group and are site-specific.

The basic result of the majority ruling is that certain general rights are declared to exist, but the precise determination of such rights are left to be negotiated.

Any continuing differences are to be dealt with in future court actions.

Allocation Agreement

An agreement between DFO and an Aboriginal organization (Band, Tribal Council, First Nation) on the number of fish to be caught, including the details of monitoring and enforcement. These are signed by the Director General, Native Affairs (HQ).

Assembly of First Nations

The largest organization of Indian groups in Canada, although not all bands are members.

NOTES:

Baker Lake

BAKER LAKE v. Minister of Indian Affairs and Northern Development (1980) 1 F.C. 518 Federal Court of Canada, Trial Division: A case regarding Aboriginal title over an undefined portion of the Northwest Territories, including approximately 78,000 sq. km. surrounding the community of Baker Lake.

This case set out the elements required to establish Aboriginal rights which the common law will recognize:

1) That they and their ancestors were members of an organized society;

2) That the organized society occupied the specific territory over which they asserted the Aboriginal title;

3) That the occupation was to the exclusion of other organized societies; and

4) That the occupation was an established fact at the time sovereignty was asserted by England.

Band Council

First established by an early Indian Act and continued under successive revisions. Under this legislation various band councils have been established, usually associated with Indian reserves and geographic locations. These councils are normally elected by the registered members of the bands.

B.C. Aboriginal Fisheries Commission (BCAFC)

An organization of tribal groups formed to advise on a broad range of fisheries matters. Formerly the B.C. Aboriginal Peoples Fisheries Commission (BCAPFC).

B.C. Claims Task Force (BCCTF)

A task force for comprehensive claims resolution. The Task Force completed its work in June 1991 making nineteen recommendations to the three parties (First Nations, Federal and Provincial governments) outlining a process which included the establishment of a B.C. Treaty Commission.

NOTES:

B.C. Fisheries Commission (BCFC)

A representative third party group funded by DFO to ensure that commercial and recreational fishing interests would be informed and consulted, and that their interests would be considered.

Replaced by the All-Party Board in February 1993, and a new consultative process currently under development by Aboriginal, recreational and commercial interests.

B.C. Fishermen's Survival Coalition

B.C. Fishermen's Defence Alliance reincarnated in the fall of 1992 by fishermen who were concerned about the implementation of the AFS on the Fraser and elsewhere.

Boldt Decision

A 1974 decision in the Boldt case in Washington State where fishing rights in five treaties were interpreted to provide 50% interest in fisheries resources to tribal fishing authorities. This had a profound effect on the fishing industry, experienced a traumatic initial implementation and resulted in dualistic management processes.

B.C. Treaty Commission

An agreement was signed September 21, 1992 by Prime Minister Mulroney, Minister Siddon, Premier Harcourt, B.C. Aboriginal Affairs Minister Petter, and representatives of the B.C. First Nations Summit establishing the tripartite B.C. Treaty Commission.

This commission is to promote the process of the negotiation of treaties. It will "facilitate" rather than "negotiate", or as has been suggested, be the "keeper of the process".

It consists of a full-time Chief Commissioner and four commissioners:

1. Two appointed by First Nations;

2. One Federal representative; and

3. One Provincial government appointee.

The principals accepted the recommendations of the B.C. Claims Task Force.

NOTES:

Calder (CALDER v. AGBC, [1973] Supreme Court of Canada)

A case brought by the Nisga'a people of northwestern British Columbia asserting that Aboriginal title or Indian title to their ancient tribal territory of the Nass valley had never been lawfully extinguished. Although dismissed, the case held that Aboriginal title was part of the common law of Canada and that its existence did not depend upon treaty, executive order, or legislative enactment.

CALDER is also important because the Court was asked to find whether or not Aboriginal title had been extinguished during the colonial period (prior to the union of B.C. and Canada in 1871).

Cooperative Management ("Co-Management")

An Aboriginal fisheries cooperative management program to involve Aboriginal people in the design and delivery of programs to manage the fisheries, to collect information needed for fisheries management and to increase fish production through habitat restoration and fish enhancement.

In 1991, about 150 agreements involving over $11 million were entered into nationally. Project proposals in the Pacific Region alone far outstripped the available resources relfecting the high interest in cooperative management.

Communal Fishing Licence

A licence issued pursuant to the Aboriginal Communal Fishing Licences Regulations under which fish for Native people are allocated to the entire community with the management and distribution of communal effort administered by the Native community.

This will include fishing for food, social and ceremonial purposes.

In some select instances, it may include an experimental fishery for commercial sale where this has been negotiated as part of an Aboriginal Fisheries Agreement.

After the 1992 fishing season, individual Native food fishing permits were no longer issued by DFO. The Aboriginal Communal Fishing Licences Regulations were approved on June 15, 1993.

NOTES:

Contribution Agreements

Governmental financial administrative procedure for the purpose of providing funding in whole or in part for cooperative management activities between a Native group and DFO.

This includes obligations and audit provisions.

Delgamuukw (Gitksan-Wet'suwet'en) (DELGAMUUKW v. The Queen,) (B.C. Court of Appeal, June 25/93)

This is the case concerning Gitksan-Wet'suwet'en land and governance claim and it is the leading case on the issue of Aboriginal land rights in British Columbia.

The claimants (October 1984) asserted ownership of a land area of 22,000 square miles comprising most of the Skeena and Bulkley river systems, and jurisdiction or self government over both the claimed land and the Native people of these two groups.

The trial of the case lasted three years.

Claims to ownership and jurisdiction were rejected by the Supreme Court of British Columbia in 1991.

In summary, the Court concluded that Aboriginal rights arise out of occupation or use of specific land for Aboriginal purposes for a long, long time, and are communal.

Aboriginal rights are not property rights.

As commercial resource users, Indians enjoy no priority of entitlement over anyone else.

Colonial legislation was taken to have extinguished Aboriginal rights as they existed in the colony at the date of sovereignty except for Indian reserves.

The trial judgement was appealed to the British Columbia Court of Appeal and was heard in the Spring of 1992 by a five judge panel. On June 25, 1993 the British Columbia Court of Appeal held that there was no blanket extinguishment of Aboriginal rights, reversing the trial court decision. The Court also held that these unextinguished Aboriginal rights are not all-encompassing rights of ownership and that there are no rights to sovereignty or jurisdiction. A clear theme emerged from the judgement, that negotiated resolutions of conflicting-use claims are preferable to resolutions under the adversarial process of litigation.

(See VAN DER PEET/GLADSTONE/NTC SMOKEHOUSE).

NOTES:

DFO

Department of Fisheries and Oceans, Canada.

DIAND

Department of Indian Affairs and Northern Development, now Indian and Northern Affairs Canada.

A Federal government department responsible for administration of the Indian Act.

Federal Treaty Negotiation Office (FTNO)

A division of DIAND which exists for the purpose of negotiating Comprehensive Treaties with First Nations.

The FTNO is the official Federal government negotiating body and it coordinates and receives assistance from the other Federal departments.

Fiduciary Duty

Definition: held or given in trust, trustee.

The government has the responsibility to uphold the honour of the Crown in dealing with Aboriginal people.

> " ... the Government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples. The relationship between the Government and the Aboriginal peoples is trust-like, rather than adversarial, and contemporary recognition and affirmation of Aboriginal rights must be defined in light of this historic relationship." (SPARROW)

> " ... is not to undermine [the Crown's] ability and responsibility with respect to creating and administering overall conservation and management plans regarding the salmon fishery." (SPARROW)

First Nations Summit

An assembly of chiefs aimed at developing approaches to land claims and other related Province-wide issues.

NOTES:

Fisheries Council of B.C.

A coalition of B.C. fish buyers and processors formed to negotiate fish prices and act as liaison with government on matters affecting the fishing industry.

First Nation

An Aboriginal governing body, however organized and established by Aboriginal people within their traditional territory in British Columbia, which has been mandated by its constituents to enter into treaty negotiations on their behalf with Canada and British Columbia (Def., B.C. Treaty Commission Agreement).

Framework Agreement (AFS)

A multi-year AFS agreement between DFO and an Aboriginal group setting out a complete range of topics to be covered in negotiating another type of agreement such as an allocation agreement or contribution agreement.

This originates with the Director General, Native Affairs (Ottawa).

It may be superseded by the newer Fisheries Agreement but some of these still exist in places.

Guerin: (GUERIN v. the Queen, ([1984] 2 S.C.R. 335)

A Supreme Court of Canada case involving a breach of fiduciary obligation by the Department of Indian Affairs (DIAND or INAC) on behalf of the Crown relating to the lease of reserve lands of the Musqueam Band on the lower Fraser River.

Liability was found against the Crown and damages of $10 million were assessed.

Interior Indian Fisheries Commission (IIFC)

A coalition of tribal groups from the Fraser River watershed, mostly up-river from Boston Bar formed to represent Native fisheries interests.

Inuit

Included within the word "Indians" in the Constitution Act, 1867 but are not entitled to be registered under the Indian Act. An Inuk is defined in a number of fishery regulations as a direct descendent of a person who is or was of the race of aborigines commonly referred to as Eskimo.

NOTES:

Metis

Persons of mixed Indian and non-Indian blood who are specifically mentioned in Section 35 (1) of the Constitution Act, 1982 as one of the Aboriginal peoples of Canada whose Aboriginal and treaty rights are protected.

Nation (Indian Nation)

A fundamental precept of Native people that within Canada there are Nations of Indians whose language and culture are not only different from those of non-Aboriginal society, but from one another. They consider that in negotiations with the Government of Canada and the Province of British Columbia, they must be considered nations and dealt with on that basis.

Native Brotherhood of B.C. (NBBC)

An organization representing mainly the interests of Native commercial fishermen.

Non-Status (Indian)

A person who identifies as an Indian but is either unwilling or unable to gain status under the Indian Act. Most often he or she will be someone of Indian ancestry who does not fit the statutory definition of "Indian" contained in the Act.

Pacific Licence Retirement Program

A six-year program initiated under the Aboriginal Fisheries Strategy in 1994 with Treasury Board funding to acquire commercial fishing licences from the general commercial fishery on a voluntary basis at fair-market-value to be used as communally-held licences by Aboriginal communities.

DFO Pilot Sales

The sale of Native food fish has been prohibited since 1888.

In the SPARROW decision the Supreme Court of Canada did not deal with the issue of the right to sell fish but the Government of Canada decided not to wait for further British Columbia court decisions on this matter because these could take several years and the delay in taking action could have a destabilizing effect on the fishery.

In 1992 three agreements were negotiated between DFO and Native people to allow pilot sale projects.

NOTES:

These were on the lower Fraser River, the Somass River, and the Skeena. These projects were designed to test how Native sales of fish would work within specified allocation levels, and to identify potential problems. These experimental fisheries were continued in 1993 and 1994 in the lower Fraser, Port Alberni and the Skeena under negotiated agreements.

In decisions handed down June 25, 1993, the British Columbia Court of Appeal ruled that the right to fish does not include the opportunity of sale.

Right to Sell

In the judgements of the British Columbia Court of Appeal on June 25, 1993, the result of the rulings was that for the groups whose claims were being adjudicated upon, Aboriginal participation in the commercial fishery is on the same terms and under the same restrictions as other participants in the industry.

This is not to say that there could not exist a trading component of Aboriginal rights.

Royal Proclamation of 1763

A Proclamation issued by King George III following the Treaty of Paris ending the Seven Years War.

This Proclamation established governments in Britain's newly acquired colonies and provided for the creation of large hunting reserves for the Indians in an area outside those colonies. By this Executive Act the Crown created, or at least recognized, an Aboriginal interest in lands which are now Canada.

It has been held by the courts that it does not apply to British Columbia or Rupert's Land, the territories held by the Hudson's Bay Company.

This was again affirmed by the British Columbia Court of Appeal in its June 25, 1993 decision on DELGAMUUKW.

The Gitksan-Wet'suwet'en have been granted leave to appeal the case in the Supreme Court of Canada.

NOTES:

Section 35 (Section 35 Constitution Act, 1982)

> "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed".

In most cases, these rights have not been defined or quantified. In British Columbia this will be a task of the land claims process or alternatively of the litigation process.

Skeena Fisheries Commission

A fishing authority for the Skeena River watershed representing Nat'oot'en, Gitksan and Wet'suwet'en Houses, as well as the Gitanyow Band (formerly Kitwancool) and the Tsimshian Tribal Council.

(Also see Aboriginal Fishing Authority.)

Sparrow (Regina vs SPARROW, [1990] 1SCR 1075 Supreme Court of Canada)

The Supreme Court of Canada had its first opportunity to begin to interpret Section 35 of the Constitution Act, 1982 in Regina v. SPARROW in its decision handed down on May 31, 1990.

Mr. Sparrow, a Musqueam Indian, was charged under the Fisheries Act for fishing with a driftnet longer than permitted by the terms of his Band's food fishing licence. He admitted the facts alleged but defended the charge on the ground he was exercising an existing Aboriginal right to fish and that the net length restriction was invalid because it was inconsistent with Section 35 of the Constitution Act, 1982.

Mr. Sparrow was convicted at trial and his appeals at County Court and the British Columbia Court of Appeal were unsuccessful.

The Supreme Court of Canada, in dismissing the further appeal, did not acquit Mr. Sparrow of the charge of fishing with an overlength net. Instead, the Court gave an interpretation of Section 35 (1) and instructed the trial judge to consider that interpretation before answering the question of whether the net length restriction was inconsistent with Section 35.

The Court said that laws which interfere with the exercise of Aboriginal rights are subject to review by the courts. If the interference cannot be justified by reference to legitimate legislative objectives which uphold the honour of the Crown in its dealings with Native people, then the law can be struck down.

The Court in SPARROW said the general guiding principle for Section 35 is that:

NOTES:

> " ... the Government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples. The relationship between the Government is trust-like, rather than adversarial, and contemporary recognition and affirmation of Aboriginal rights must be defined in light of this historic relationship" (SPARROW).

The constitutional recognition of Aboriginal and treaty rights does not provide immunity from government regulation. It does, however, give a measure of control over government conduct and a strong check on legislative power. Furthermore, in the imposition of any limitations on the right to fish, there must be consultation between the Aboriginal peoples and the Federal government.

Aboriginal rights to fish for food, social and ceremonial purposes must be met before other allocations. Where there are cutbacks for conservation, those cutbacks are to be borne by other user groups first.

Conservation takes precedence over all.

Status (Indian)

Aboriginal people having status as Indians under the Indian Act, which is about half of the B.C. population of 185,000 Aboriginal people (1993). Those person's names are included in the Register maintained by Indian and Northern Affairs Canada.

Sui Generis

A Latin phrase meaning unique, or peculiar to itself.

Use of this phrase by the Courts was intended to suggest the inappropriateness of defining Aboriginal rights in terms of conventional property law.

Third Party (Interests, Consultation)

The general public, and non-Aboriginal interests of various industries including fisheries, agriculture, forestry, mining industries, and municipalities.

Tribal Council

Quite recently, Tribal Councils have been established by the Indians as coordinating agencies for a number of bands or villages and could be described as a political instrument of the band councils.

NOTES:

Van der Peet/Gladstone/NTC Smokehouse (Right to Sell)

In 1990 the British Columbia Provincial Court convicted a member of the Sto:lo Nation (Van der Peet) of illegally selling 14 salmon caught under an Indian Food Fish Licence. On appeal, the British Columbia Supreme Court found an Aboriginal right to sell food fish caught under an Indian food fish licence.

Van der Peet appealed on other grounds and the Crown cross-appealed.

In the Spring of 1992, the appeal was heard by a five-judge panel along with several other Aboriginal fishing and hunting prosecutions, as well as DELGAMUUKW.

On June 25, 1993, the British Columbia Court of Appeal held in VAN DER PEET that there was no Aboriginal right of the group in question to sell or barter fish.

While the majority of the Court recognized that the accused's forefathers engaged in some trade of fish prior to the establishment of sovereignty, the trade did not form an integral part of their culture. As such, the post-contact commercial activity which was induced and influenced by European influences does not qualify for protection and priority as an Aboriginal right.

In GLADSTONE, the British Columbia Provincial Court convicted the accused of attempting to sell 4200 pounds of spawn-on-kelp. The Supreme Court of British Columbia upheld the conviction. The accused appealed. On June 25, 1993, the British Columbia Court of Appeal held that the appellant was not exercising an Aboriginal right in attempting to sell herring spawn-on-kelp.

In NTC SMOKEHOUSE, the British Columbia County Court upheld the conviction at trial for the purchase and sale of fish (105,000 pounds) not caught under the authority of a commercial fishing licence by members of the Sheshaht and Opetchesaht Bands. The accused appealed.

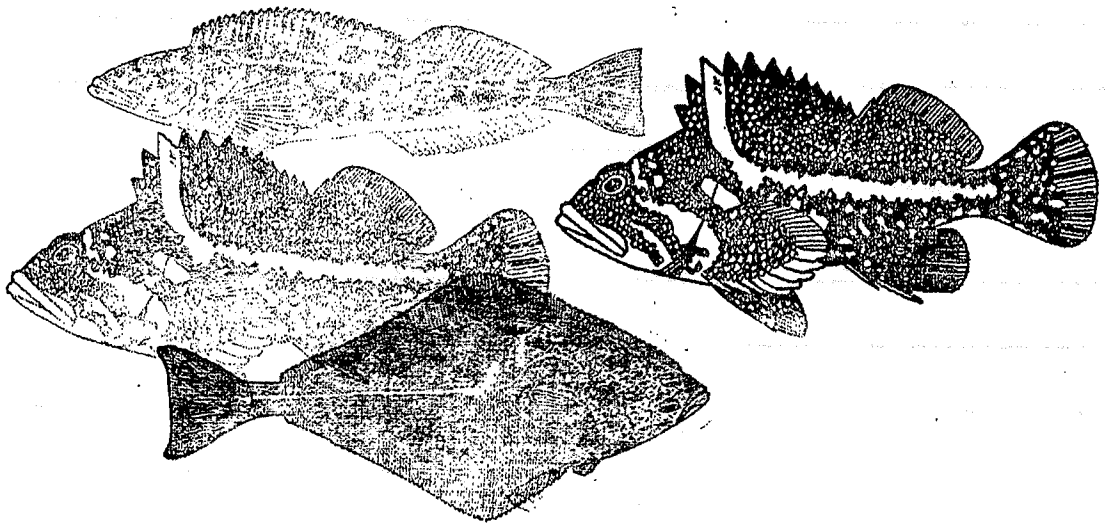
On June 25, 1993, the British Columbia Court of Appeal held that the accused were not exercising an Aboriginal right to sell fish and that the provisions of the B.C. Fishery Regulations prohibiting the sale of food fish and commercial sales without a commercial licence were within the legislative authority of the Parliament of Canada.

(Also see Right To Sell.)

NOTES:

United Native Nations (UNN)

The largest organization in British Columbia representing non-status Indians.



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