
CHAPTER 8 FISHERIES

GENERAL

Nisga'a Fish Entitlements

1. Nisga'a citizens have the right to harvest fish and aquatic plants in accordance with this Agreement, subject to:
 - a. measures that are necessary for conservation; and
 - b. legislation enacted for the purposes of public health or public safety.
2. Notwithstanding that Nisga'a fish entitlements are treaty rights, a Nisga'a fish allocation that is set out as a percentage of the total allowable catch has the same priority in fisheries management decisions as the remainder of the total allowable catch of that species harvested in recreational and commercial fisheries.
3. This Agreement is not intended to alter federal and provincial laws of general application in respect of property in fish or aquatic plants.
4. Nisga'a fish entitlements are held by the Nisga'a Nation.
5. The Nisga'a Nation may not dispose of Nisga'a fish entitlements.
6. Nisga'a Lisims Government may authorize persons other than Nisga'a citizens to harvest fish or aquatic plants in Nisga'a fisheries, in accordance with this Agreement, the Harvest Agreement and Nisga'a annual fishing plans. This authority is not intended to alter the application of federal and provincial laws of general application in respect of foreign fishing vessels in Canadian waters.

Licences, Fees, Charges, and Royalties

7. Canada and British Columbia will not require the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, Nisga'a citizens, or other persons authorized by Nisga'a Lisims Government to harvest fish or aquatic plants under this Agreement:
 - a. to have federal or provincial licences; or
 - b. to pay fees, charges, or royaltiesin respect of the harvest for domestic purposes of fish or aquatic plants under this Agreement.
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This paragraph does not restrict Canada's ability to require licences for the use and possession of firearms under federal laws on the same basis as applies to other aboriginal people of Canada.

8. Persons who sell fish harvested under this Agreement are subject to fees and charges applied to commercial harvesters in respect of the sale of fish or aquatic plants except to the extent that Nisga'a Lisims Government, a Nisga'a Institution, or a Nisga'a Corporation funds or performs the activities for which those fees and charges are levied.

Trade and Barter

9. Subject to Nisga'a laws, Nisga'a citizens have the right to trade or barter among themselves or with other aboriginal people any fish and aquatic plants harvested in Nisga'a fisheries.

Harvesting Under Other Laws and Agreements

10. This Agreement does not preclude Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens from harvesting fish and aquatic plants throughout Canada in accordance with:
 - a. federal and provincial laws;
 - b. any agreements that are in accordance with laws of general application between the Nisga'a Nation, a Nisga'a Village, a Nisga'a Institution, or a Nisga'a Corporation, on the one hand, and other aboriginal people on the other; or
 - c. any arrangements between other aboriginal people and Canada or British Columbia.

SALMON

Nisga'a Salmon Allocations

11. In every year in which it is necessary for conservation, the Minister will determine a minimum escapement level for one or more species of Nass salmon.
12. The Minister will not permit any directed harvests of a species of Nass salmon in any year if:
 - a. there is a minimum escapement level for that species of Nass salmon; and
 - b. the number of that species of Nass salmon returning to Canadian waters, less incidental harvests, is less than or equal to the minimum escapement level for that species.

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13. In any year:
- a. if the Minister has not determined a minimum escapement level for a species of Nass salmon; or
 - b. if the number of a species of Nass salmon returning to Canadian waters, less incidental harvests, is greater than the minimum escapement level determined by the Minister for that species

the amount of that species that the Nisga'a Nation is entitled to harvest will be determined in accordance with Schedule A and paragraph 16.

14. The amount of each species of Nass salmon in the Nisga'a fish allocations set out in Schedule A varies with the size of the total run of that species returning to Canadian waters in each year, as set out in Schedule A.

Overages and Underages

15. Following the fishing season in each year, the Minister and Nisga'a Lisims Government will conduct an accounting of that year's harvest of Nass salmon, in accordance with Schedule B.
16. If there is an overage or underage of a species of Nass salmon in any year, the amount of that species of Nass salmon to be harvested in Nisga'a fisheries will be adjusted in subsequent years, in accordance with Schedule B.
17. In every year the Minister will manage all Canadian fisheries that harvest Nass salmon in order to minimize overharvests of each species of Nass salmon.
18. The Minister and Nisga'a Lisims Government will endeavour to minimize any overages or underages in each year and to minimize the accumulation of overages and underages in successive years.

Adjustment of Species Composition

19. In any year the Minister and Nisga'a Lisims Government may agree to adjust the species composition of the Nisga'a harvest for that year in accordance with the system of equivalencies set out in Schedule C.
20. If a proposed Nisga'a annual fishing plan includes an adjustment under paragraph 19 that will affect a species or fishery under the management authority of the other Party, the Minister and Nisga'a Lisims Government will consult with the other Party's representatives on the Joint Fisheries Management Committee, and will notify those representatives of any in-season adjustments.

Harvest Agreement

21. On the effective date, the Parties will enter into a Harvest Agreement pursuant to paragraph 22. The Harvest Agreement does not form part of this Agreement.
 22. The Harvest Agreement will:
 - a. include Nisga'a fish allocations equivalent to:
 - i. 13% of each year's adjusted total allowable catch for Nass sockeye salmon, and
 - ii. 15% of each year's adjusted total allowable catch for Nass pink salmon;
 - b. be for a term of 25 years and be replaceable at the discretion of the Nisga'a Nation every 15 years for a further 25 years;
 - c. include provisions for the harvest and disposition of fish, determination of overages and underages, harvest monitoring, and fisheries management that are consistent with the similar provisions set out in this Agreement; and
 - d. include a dispute resolution process and a requirement for fair compensation if the Harvest Agreement is breached by terminating or reducing the Nisga'a fish allocations pursuant to subparagraph (a).
 23. The Harvest Agreement will be established under federal and provincial settlement legislation.
 24. The Harvest Agreement is not intended to be a treaty or land claims agreement, and it is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
 25. The Minister will implement the Harvest Agreement by:
 - a. issuing licences to Nisga'a Lisims Government; or
 - b. other means under federal or provincial laws.
 26. Fisheries under the Harvest Agreement have the same priority as commercial and recreational fisheries in fisheries management decisions made by the Minister.
 27. Fish harvested under the Harvest Agreement may be sold in accordance with the Harvest Agreement.
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Harvest of Surplus Nass Salmon

28. In any year, the Minister may determine whether there is a surplus of a species of Nass salmon, and the size of that surplus.
29. The Joint Fisheries Management Committee may:
 - a. recommend to the Minister procedures for the identification of a surplus and terms and conditions for the harvest of the surplus; and
 - b. provide advice to the Minister in respect of the size of the surplus.
30. The Minister may permit Nisga'a Lisims Government to harvest some or all of the surplus Nass salmon on reaching agreement with Nisga'a Lisims Government in respect of:
 - a. the terms and conditions of the harvest; and
 - b. whether all or part of the harvest will be included in the determination of overages and underages.

Disposition of Salmon Harvests

31. Subject to paragraph 33, the Nisga'a Nation, and its agents, contractors, and licensees authorized by Nisga'a Lisims Government, have the right to sell Nass salmon harvested under this Agreement.
32. For greater certainty, in accordance with paragraph 13 of the General Provisions Chapter, federal and provincial laws of general application pertaining to the sale of fish, in respect of commercial transactions, health and safety, transport, inspection, processing, packaging, storage, export, quality control, and labelling of fish, apply to the sale of all Nass salmon harvested in Nisga'a fisheries.
33. If, in any year, there are no directed harvests in Canadian commercial or recreational fisheries of a species of Nass salmon, sale of that species of Nass salmon harvested in directed harvests of that species in that year's Nisga'a fisheries will not be permitted.

ENHANCEMENT

34. Nisga'a Lisims Government may conduct enhancement initiatives for Nass salmon or Nass steelhead only with the approval of the Minister. This approval will include provisions in respect of the determination of surpluses resulting from an approved enhancement initiative. The Joint Fisheries Management Committee may make recommendations in respect of those initiatives and provisions.
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35. In any year, the portion of the return to Canadian waters of chinook, coho, or chum salmon that can be identified as resulting from approved Nisga'a enhancement initiatives in the Nass Area will be excluded from the determination of the Nisga'a fish allocations under paragraph 13 for that year. The Nisga'a fish allocations of these fish are 21% of the chinook, 8% of the coho and 8% of the chum salmon, subject to measures that are necessary for conservation for non-enhanced Nass salmon and non-enhanced Nass steelhead stocks.
36. The Nisga'a Nation has the right to harvest surplus Nass salmon that result from an approved Nisga'a enhancement initiative, in the same proportion as the Nisga'a contribution to the total cost of the initiative. These harvests are not subject to paragraph 16 and are in addition to the Nisga'a fish allocations under paragraph 13 and 35 and the Harvest Agreement.
37. Notwithstanding paragraphs 13, 16, 35, and 36, the Minister and Nisga'a Lisims Government may negotiate agreements in respect of the Nisga'a harvests of Nass salmon or Nass steelhead that result from Nisga'a enhancement initiatives.

STEELHEAD

General

38. Subject to paragraph 43, Nisga'a fish entitlements of Nass steelhead are for domestic purposes.
39. The Parties, or any of them, may conduct studies to determine the status, conservation requirements, and Canadian total allowable catch of Nass steelhead stocks. The studies may include the determination of:
- a. reliable estimates of sustainable harvest, including the determination of escapement requirements and total allowable catch;
 - b. the productive capacity of fish habitat in the Nass Area; and
 - c. measures to improve Nass steelhead stocks and plans to implement those measures.
40. The Joint Fisheries Management Committee will formulate plans for any studies to be conducted under paragraph 39 and will provide recommendations to the Minister and Nisga'a Lisims Government on the conduct of those studies.
41. If a study conducted under paragraph 39 identifies a conservation concern for a Nass steelhead stock, the Joint Fisheries Management Committee will provide recommendations to the Minister and Nisga'a Lisims Government on appropriate measures to address the concern.
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42. After considering studies conducted under paragraphs 44 or 51, if it is necessary for conservation, the Minister will establish an annual escapement goal for summer-run or winter-run Nass steelhead stocks returning to Canadian waters below which no directed harvests for that stock will be permitted.

Disposition of Steelhead Harvests

43. Any sale of Nass steelhead harvested under this Agreement will be in accordance with federal and provincial laws of general application, and any Nisga'a law in respect of sale of fish.

Summer-run Steelhead

44. British Columbia and the Nisga'a Nation will negotiate and attempt to reach agreement about studies required to determine an annual escapement goal for summer-run Nass steelhead. The Minister will not permit any directed harvest of summer-run Nass steelhead during those studies.
45. If no annual escapement goal for summer-run Nass steelhead is established under paragraph 42, subject to paragraph 43, Nisga'a citizens have the right to harvest summer-run Nass steelhead for domestic purposes.
46. If an annual escapement goal for summer-run Nass steelhead is established under paragraph 42, Nisga'a citizens have the right to harvest summer-run Nass steelhead under the Nisga'a fish allocation set out in Schedule D.
47. Subject to the Nisga'a fish allocation of summer-run Nass steelhead set out in subparagraph 2(a) of Schedule D, if the number of summer-run Nass steelhead returning to the Nass watershed is less than the annual escapement goal, the Nisga'a Nation and British Columbia will take measures to limit summer-run Nass steelhead mortalities.

Winter-run Steelhead

48. Before a Nisga'a fish allocation of winter-run Nass steelhead is established under paragraph 49, subject to paragraph 43, Nisga'a citizens have the right to harvest winter-run Nass steelhead for domestic purposes.
49. If an annual escapement goal for winter-run Nass steelhead is established under paragraph 42, British Columbia and the Nisga'a Nation may negotiate a Nisga'a fish allocation of winter-run Nass steelhead. Any Nisga'a fish allocation established under this paragraph will be added to Schedule D.
50. If a Nisga'a fish allocation of winter-run Nass steelhead is established under paragraph 49,

Nisga'a citizens have the right to harvest winter-run Nass steelhead under that Nisga'a fish allocation.

51. If the Minister determines that it is necessary to suspend directed harvesting of winter-run Nass steelhead because of a conservation concern about winter-run Nass steelhead, studies under paragraph 39 will be conducted. The Minister will not permit any directed harvest of winter-run Nass steelhead during those studies.

NON-SALMON SPECIES AND AQUATIC PLANTS

Nisga'a Fish Entitlements of Non-Salmon Species and Aquatic Plants

52. Subject to paragraph 67, Nisga'a fish entitlements to non-salmon species and aquatic plants are for domestic purposes.
53. Before a Nisga'a fish allocation of a non-salmon species or an aquatic plant is established under this Agreement, Nisga'a citizens have the right to harvest non-salmon species and aquatic plants within the Nass Area for domestic purposes.
54. Canada or British Columbia, in respect of any non-salmon species or aquatic plant within their respective management authority, or the Nisga'a Nation may propose the establishment of a Nisga'a fish allocation that will be the Nisga'a fish entitlement to that non-salmon species or aquatic plant.
55. Unless otherwise agreed by the Nisga'a Nation and Canada or British Columbia for non-salmon species or aquatic plants, within their respective management authority, the Nisga'a fish allocation of each non-salmon species or aquatic plant will be 125% of the basic Nisga'a fish entitlement to that species.
56. The basic Nisga'a fish entitlements to non-salmon species and aquatic plants will be determined by taking into account:
 - a. current and past Nisga'a use for domestic purposes;
 - b. the impact of conservation requirements and harvesting by others on Nisga'a use for domestic purposes;
 - c. the biological status of the species;
 - d. changes in Nisga'a fishing effort; and
 - e. other factors that the Nisga'a Nation and Canada or British Columbia, as the case may be, agree are relevant.

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57. Before a Nisga'a fish allocation of a non-salmon species or aquatic plant is established, the Nisga'a Nation and Canada or British Columbia, for non-salmon species and aquatic plants within their respective management authority, will:
- a. seek the advice of the Joint Fisheries Management Committee on the determination of the basic Nisga'a fish entitlement to that non-salmon species or aquatic plant; and
 - b. conduct any studies they consider necessary to determine the basic Nisga'a fish entitlement to that non-salmon species or aquatic plant.
58. As soon as practicable after the effective date, the Nisga'a Nation and Canada or British Columbia, for non-salmon species and aquatic plants within their respective management authority, will negotiate and attempt to reach agreement on basic Nisga'a fish entitlements to:
- a. dungeness, tanner, and king crab;
 - b. halibut;
 - c. prawns and shrimp;
 - d. herring; and
 - e. aquatic plants used in the herring roe-on-kelp fishery.
59. If the Nisga'a Nation and Canada or British Columbia, for non-salmon species and aquatic plants within their respective management authority, do not agree on the basic Nisga'a fish entitlement to a non-salmon species or aquatic plant, that basic Nisga'a fish entitlement will be finally determined by arbitration under the Dispute Resolution Chapter.
60. Any Nisga'a fish allocation of non-salmon species or aquatic plants established under this Chapter will be set out in Schedule E.
61. If a Nisga'a fish allocation is established for a non-salmon species or aquatic plant, Nisga'a citizens have the right to harvest that non-salmon species or aquatic plant under that Nisga'a fish allocation.

Oolichan

62. The Nisga'a Nation, together with any other persons who have aboriginal rights to harvest oolichan in the Nass Area, has the right to harvest the total harvest of oolichan in the Nass Area.
63. If there are any agreements between the Nisga'a Nation and other aboriginal people in
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respect of the harvesting of oolichan in the Nass Area, Nisga'a harvests of those oolichan will be in accordance with those agreements.

Intertidal Bivalves

64. Nisga'a citizens have the right to harvest, for domestic purposes, intertidal bivalves within those portions of the Nass Area set out in Appendix I.
65. The right to harvest intertidal bivalves set out in paragraph 64 is the Nisga'a fish allocation of intertidal bivalves.
66. The Minister will not permit commercial harvesting of intertidal bivalves within those portions of the Nass Area set out in Appendix I.

Disposition of Non-Salmon Species and Aquatic Plants

67. Any sale of non-salmon species and aquatic plants harvested under Nisga'a fish entitlements will be in accordance with federal and provincial laws of general application and any Nisga'a law in respect of sale of fish or aquatic plants.

FISHERIES MANAGEMENT

Responsibilities of the Parties

68. Subject to this Agreement, the Minister is responsible for the management of fisheries and fish habitat.
69. Nisga'a Lisims Government may make laws that are in respect of the Nisga'a Nation's rights and obligations in respect of fish and aquatic plants under, and that are consistent with, this Agreement and the Harvest Agreement and that are not inconsistent with Nisga'a annual fishing plans including matters such as:
 - a. distribution of the Nisga'a fish entitlements under this Agreement and Nisga'a fish allocations under the Harvest Agreement;
 - b. authorization of persons other than Nisga'a citizens to harvest fish or aquatic plants from the Nisga'a fish entitlements under this Agreement and Nisga'a fish allocations under the Harvest Agreement;
 - c. the trade or barter of fish or aquatic plants harvested under the Nisga'a fish entitlements under this Agreement or the Nisga'a fish allocations under the Harvest Agreement;

- d. designation and documentation of fishing vessels;
 - e. identification, in a manner compatible with that required under federal and provincial laws of general application, of fishing vessels and gear; and
 - f. other matters agreed to by the Parties.
70. Nisga'a Lisims Government will make laws that are consistent with this Agreement and the Harvest Agreement and that are not inconsistent with Nisga'a annual fishing plans:
- a. to establish and administer licensing requirements, for the harvest of fish or aquatic plants under this Agreement and the Harvest Agreement; and
 - b. to require the designation and documentation of persons who harvest fish or aquatic plants under this Agreement or the Harvest Agreement.
71. In the event of an inconsistency or conflict between a Nisga'a law made under paragraphs 69 or 70 and a federal or provincial law, the Nisga'a law will prevail to the extent of the inconsistency or conflict.
72. Nisga'a Lisims Government may make laws in respect of sale, in accordance with this Agreement, of fish or aquatic plants that are harvested under this Agreement or the Harvest Agreement.
73. In the event of a conflict between a law made under paragraph 72 and a federal or provincial law of general application, the federal or provincial law will prevail to the extent of the conflict.
74. Nisga'a Lisims Government will make laws to require:
- a. that any fish harvested under this Agreement or the Harvest Agreement that are transported outside Nisga'a Lands for the purpose of trade or barter be identified as fish for trade or barter; and
 - b. Nisga'a citizens and the authorized agents, contractors, and licensees of Nisga'a Lisims Government to comply with Nisga'a annual fishing plans.

Nisga'a Fisheries Operational Guidelines

75. The Parties will prepare and maintain a document to be known as the "Nisga'a Fisheries Operational Guidelines" that will set out the operational principles, procedures, and guidelines to assist each of them, and the Joint Fisheries Management Committee, in carrying out the provisions of this Chapter and the Harvest Agreement, including the preparation and recommendation of Nisga'a annual fishing plans. The Parties will amend

the document as required as improved fisheries management and stock assessment procedures are developed.

76. The Nisga'a Fisheries Operational Guidelines:
- a. is not a part of this Agreement;
 - b. is not intended to be a treaty or land claims agreement, and it is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 or 35 of the *Constitution Act, 1982*; and
 - c. does not create legal obligations.

Management Structure

77. On the effective date, the Parties will establish the Joint Fisheries Management Committee to facilitate cooperative planning and conduct of Nisga'a fisheries and enhancement initiatives in the Nass Area. For this purpose, the Joint Fisheries Management Committee will carry out the responsibilities assigned to it under this Agreement, including:
- a. sharing information and plans for existing and proposed fisheries that could affect or be affected by Nisga'a fisheries;
 - b. arranging for collection and exchange of data required to carry out the provisions of this Chapter;
 - c. providing advice concerning escapement goals;
 - d. making recommendations to the Minister and Nisga'a Lisims Government in respect of other conservation requirements and the management of fish and aquatic plants;
 - e. providing advice to the Parties in respect of the determination of the basic Nisga'a fish entitlements to non-salmon species and aquatic plants;
 - f. making recommendations to the Minister and Nisga'a Lisims Government in respect of Nisga'a overages and underages, in accordance with Schedule B;
 - g. making recommendations to the Minister and Nisga'a Lisims Government in respect of Nisga'a annual fishing plans;
 - h. making recommendations to the Minister and Nisga'a Lisims Government in respect of studies for enhancement and enhancement initiatives;
 - i. making recommendations and providing advice to the Minister in respect of

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- surpluses;
- j. making recommendations to the trustees of the Lisims Fisheries Conservation Trust in respect of projects, programs, and activities to be funded with expenditures from that Trust;
 - k. communicating with other management or advisory bodies in respect of matters of mutual interest;
 - l. providing advice on the coordination of the Nisga'a annual fishing plans and proposed decisions of Nisga'a Lisims Government in respect of methods, timing, and locations of harvests;
 - m. providing advice in respect of any proposed in-season adjustments to the Nisga'a annual fishing plans; and
 - n. carrying out other responsibilities agreed to by the Parties.
78. The Minister will, as far in advance as practicable, give notice to the Joint Fisheries Management Committee of any proposed in-season adjustments to the Nisga'a annual fishing plan, and Nisga'a Lisims Government will, as far in advance as practicable, give notice to the Joint Fisheries Management Committee of any proposed decisions of Nisga'a Lisims Government in respect of methods, timing, and locations of Nisga'a harvests.
79. The Joint Fisheries Management Committee will have six members. The Nisga'a Nation, Canada, and British Columbia will each appoint two members to represent them on the Joint Fisheries Management Committee. The members of the Joint Fisheries Management Committee representing the Nisga'a Nation and Canada are responsible for functions in respect of fisheries managed by Canada. The members of the Joint Fisheries Management Committee representing the Nisga'a Nation and British Columbia are responsible for functions in respect of fisheries managed by British Columbia.
80. The Joint Fisheries Management Committee will meet as often as necessary to carry out its responsibilities and will establish its procedures, including procedures to carry out its responsibilities relating to in-season fisheries management.
81. Whenever possible, the Joint Fisheries Management Committee will carry out its responsibilities by consensus of the members responsible for each function. If there is no consensus, the Joint Fisheries Management Committee will submit the recommendations or advice of each Party's representatives.
82. If it is impracticable for the Joint Fisheries Management Committee to address an issue, each Party's representatives may submit their recommendations or advice.
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Other Fisheries Management Bodies

83. The Parties acknowledge that fisheries management may involve the consideration of issues on a regional or watershed basis. If Canada or British Columbia proposes to establish fisheries management advisory bodies for areas that include any part of the Nass Area, Canada or British Columbia will consult with the Nisga'a Nation in developing those bodies and, if appropriate, will provide for the participation of the Nisga'a Nation in those bodies.

Nisga'a Annual Fishing Plans

84. Nisga'a annual fishing plans are plans for the harvest, and if applicable the sale, of fish and aquatic plants under this Agreement and the Harvest Agreement. The plans will include, as appropriate, provisions in respect of:
- a. the methods, timing, and locations of harvest;
 - b. monitoring of harvest;
 - c. enforcement;
 - d. stock assessment and enhancement;
 - e. the terms and conditions for the sale of fish or aquatic plants;
 - f. authorized harvest by persons other than Nisga'a citizens or Nisga'a Lisims Government;
 - g. in-season adjustments to any of the matters referred to in this paragraph; and
 - h. other matters that the Parties agree to include in the Nisga'a annual fishing plans.
85. The monitoring provisions referred to in subparagraph 84(b) may include:
- a. requirements for identification of persons authorized to harvest;
 - b. processes for catch monitoring that may include the establishment of designated landing sites and procedures for the transportation of fish;
 - c. processes for reporting and accounting of harvest and sale;
 - d. requirements for compiling and reporting data to the Minister; and
 - e. processes for verification by the Minister of the monitoring processes.

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86. Each year Nisga'a Lisims Government will propose Nisga'a annual fishing plans that:
- a. are consistent with Nisga'a fish entitlements under this Agreement and Nisga'a fish allocations under the Harvest Agreement;
 - b. set out any Nisga'a preferences for methods, timing, and locations of harvest; and
 - c. take into account any management concerns identified by the Minister or Nisga'a Lisims Government.
87. Nisga'a Lisims Government will forward the proposed Nisga'a annual fishing plans to the Joint Fisheries Management Committee on a timely basis.
88. The Joint Fisheries Management Committee, on a timely basis, will:
- a. consider the proposed Nisga'a annual fishing plans;
 - b. make any appropriate adjustments that are necessary to integrate the Nisga'a annual fishing plans with other fisheries conservation and harvesting plans, while giving effect to the Nisga'a preferences in respect of methods, timing, and locations of harvest, to the extent possible; and
 - c. make recommendations regarding the proposed Nisga'a annual fishing plans to the Minister and Nisga'a Lisims Government.

Review of Recommendations

89. In considering recommendations of the Joint Fisheries Management Committee, the Minister will take into account:
- a. conservation requirements and availability of fisheries resources;
 - b. any Nisga'a preferences in respect of methods, timing, and locations of harvests throughout the Nass Area, set out in the recommendations;
 - c. utilization of the fisheries resources for the benefit of all Canadians;
 - d. efficient and effective harvesting of fisheries resources;
 - e. requirements for integration and efficient management of all fisheries;
 - f. accepted scientific procedures for management of fisheries resources; and
 - g. any other matters the Minister considers appropriate.
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90. After considering the recommendations of the Joint Fisheries Management Committee under paragraph 89, the Minister, on a timely basis, will:
- a. approve, or vary and approve, the Nisga'a annual fishing plans recommended by the Joint Fisheries Management Committee, or its members, and provide written reasons for varying Nisga'a annual fishing plans; and
 - b. approve or reject, in whole or in part, all other recommendations made by the Joint Fisheries Management Committee, or its members, and provide written reasons for rejecting, in whole or in part, any of those other recommendations
- but approved Nisga'a annual fishing plans, and approvals and rejections of other recommendations, must be consistent with this Agreement and the Harvest Agreement.
91. If special circumstances make it impracticable to receive advice from the Joint Fisheries Management Committee, the Minister:
- a. may make the decision or take the action that the Minister considers necessary, without receiving advice from the Joint Fisheries Management Committee; and
 - b. will advise the Joint Fisheries Management Committee as soon as practicable of the special circumstances and the decision made or action taken.

Federal and Provincial Laws of General Application

92. In order to:
- a. avoid duplication of requirements between a Nisga'a annual fishing plan and federal and provincial laws of general application; and
 - b. otherwise facilitate the management of Nisga'a fisheries
- if there is an inconsistency between a Nisga'a annual fishing plan and a federal or provincial law of general application, the Nisga'a annual fishing plan prevails to the extent of the inconsistency.

Enforcement

93. The Nisga'a Nation may negotiate agreements with Canada or British Columbia concerning enforcement of federal, provincial or Nisga'a laws in respect of fisheries.
94. Persons who harvest or sell fish or aquatic plants under this Agreement may be required to show proof of their authority to do so.
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95. Nisga'a laws made in accordance with this Chapter may be enforced by persons authorized to enforce federal, provincial, or Nisga'a laws in respect of fish and aquatic plants in British Columbia.

LISIMS FISHERIES CONSERVATION TRUST

Establishment

96. As soon as practicable after the effective date, Canada and the Nisga'a Nation will establish a trust to be known as the Lisims Fisheries Conservation Trust, and will undertake all actions required to register the trust as a charity for the purposes of the *Income Tax Act*.

Appointment of Trustees

97. Canada and the Nisga'a Nation will each appoint an equal number of trustees of the Lisims Fisheries Conservation Trust, and Canada and the Nisga'a Nation will appoint one additional trustee jointly.

Other Charities

98. In order to realize most effectively the objects of the Lisims Fisheries Conservation Trust, Canada and the Nisga'a Nation may establish other charities having substantially the same objects as the Lisims Fisheries Conservation Trust, but they will have no obligation to do so or to contribute any amount to any other charity.

Objects of Trust

99. The objects of the Lisims Fisheries Conservation Trust will be to:
- a. promote conservation and protection of Nass Area fish species;
 - b. facilitate sustainable management of fisheries for Nass Area species and stocks; and
 - c. promote and support Nisga'a participation in the stewardship of Nass Area fisheries for the benefit of all Canadians.

Trustees' Responsibilities

100. The trustees will hold the Lisims Fisheries Conservation Trust property in trust exclusively

- for the objects of the Lisims Fisheries Conservation Trust and will administer the property in accordance with the trust agreement establishing the trust.
101. In pursuance of the objects of the Lisims Fisheries Conservation Trust, the trustees will review, sponsor, and fund, projects, programs, and activities that the trustees in their discretion determine serve some or all of the following objectives:
- a. to evaluate specific and integrated conservation needs and habitat requirements for all species of Nass Area fish;
 - b. to assess the status of Nass salmon and non-salmon species;
 - c. to provide for appropriate salmon escapement monitoring processes;
 - d. to facilitate the seasonal estimation of Nass salmon and non-salmon species production including providing procedures required to give effect to the Nisga'a fisheries;
 - e. to facilitate the discrimination of Nass salmon stocks and to evaluate factors limiting the production of Nass salmon and non-salmon species; and
 - f. to obtain gifts, donations, grants, and other contributions to the Lisims Fisheries Conservation Trust.
102. In pursuance of the objects of the Lisims Fisheries Conservation Trust, the trustees may, in their discretion, initiate and direct projects, programs, and activities that the trustees, in their discretion, determine serve some or all of the objectives set out in paragraph 101.
103. In reviewing, sponsoring, funding, initiating, and directing, projects, programs, and activities under paragraphs 101 and 102, the trustees will give priority to the monitoring of Nass salmon escapement, the monitoring of harvests in the Nisga'a fisheries and the determination of factors limiting the production of Nass salmon and non-salmon species.
104. In addition to any projects, programs, and activities undertaken under paragraphs 101 and 102, the trustees may review, sponsor, fund, initiate, or direct any other projects, programs, or activities that the trustees, in their discretion, determine appropriate in pursuance of the objects of the Lisims Fisheries Conservation Trust.
105. The trustees will not use the Lisims Fisheries Conservation Trust property to support:
- a. projects, programs, or activities that:
 - i. monitor fisheries, other than Nisga'a fisheries, outside the Nass Area, or
 - ii. collect stock assessment data for salmon stocks originating from streams

outside of the Nass Area, except as required to assess Nass salmon stocks;

- b. the establishment or operation of, or representation on, the Joint Fisheries Management Committee;
 - c. salaries of full time employees of the Department of Fisheries and Oceans; or
 - d. the purchase of equipment for the Department of Fisheries and Oceans.
106. In pursuance of the objects of the Lisims Fisheries Conservation Trust, the trustees will seek and consider recommendations from the Joint Fisheries Management Committee regarding projects, programs, and activities to be funded by the Lisims Fisheries Conservation Trust.

Settlement

107. Within 60 days of the effective date, or later if Canada and the Nisga'a Nation agree, Canada and the Nisga'a Nation will each settle on the trustees the respective amounts described in Schedule F.
108. The Lisims Fisheries Conservation Trust property may be increased by gifts, donations, grants, and other contributions.
109. When Canada has contributed the full amount referred to in subparagraph 1(a) of Schedule F, Canada will have discharged its obligations under this Agreement to fund projects, programs, and activities that are funded by the Lisims Fisheries Conservation Trust.

Other Responsibilities

110. The operation of the Lisims Fisheries Conservation Trust will not affect the responsibilities of Canada under federal legislation, or the obligations of Canada or the Nisga'a Nation under this Agreement.

PARTICIPATION IN THE GENERAL COMMERCIAL FISHERY

111. On the effective date, Canada and British Columbia will each provide funding in the respective amounts described in Schedule G to the Nisga'a Nation to enable it to increase its capacity, in the form of commercial licences, or vessels and commercial licences, to participate in the general commercial fishery in British Columbia. These commercial licenses and vessels will be subject to federal and provincial laws of general application in respect of commercial fisheries in British Columbia.
112. At the request of the Nisga'a Nation, Canada, and British Columbia will provide the Nisga'a

Nation with support for the acquisition of the commercial licences, or vessels and commercial licences, referred to in paragraph 111, including:

- a. general fishing industry information;
 - b. available information concerning the fleet composition and number of commercial vessels;
 - c. available commercial fishing industry cost and earnings information;
 - d. estimated commercial vessel and commercial licence costs; and
 - e. recent estimates of commercial harvests and landed values.
113. Notwithstanding paragraph 111, the Nisga'a Nation may spend up to \$3 million, as adjusted under Schedule G, of the amounts referred to in paragraph 1 of Schedule G for other fisheries related activities.

HERRING ROE-ON-KELP STUDY

114. As soon as practicable after the effective date, the Parties will conduct a study to assess the availability of herring and kelp within the Nass Area to determine the feasibility of a Nisga'a herring roe-on-kelp impoundment.

INTERNATIONAL ARRANGEMENTS

115. Canada will consult with the Nisga'a Nation with respect to the formulation of Canada's positions in relation to international discussions or negotiations that may significantly affect fisheries resources referred to in this Agreement.
116. This Agreement will not affect or preclude participation of the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens in commissions or fisheries management advisory bodies.

PROCESSING FACILITIES

117. The Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, or Nisga'a Corporations will not establish a new fish processing facility capable of processing more than 2,000 metric tons of round weight of fish per year, within eight years of the effective date, except as agreed to by the Parties.

SCHEDULE A -- NISGA'A FISH ALLOCATIONS FOR SALMON

1. Subject to paragraphs 2 and 3 of this Schedule, in each year the Nisga'a fish allocation of each species of Nass salmon is:
 - a. the percentage for that species set out in Table 1, Row 1, multiplied by
 - b. the estimated number of that species returning to Canada in that year, and
 - c. if a portion of the return to Canadian waters of chinook, coho, or chum salmon can be identified as resulting from Nisga'a enhancement initiatives in the Nass Area approved under paragraph 34 of the Fisheries Chapter, that portion will be subtracted from the estimated number of Nass salmon of that species returning to Canadian waters in that year.
2. If the Minister has established a minimum escapement level for a species under paragraph 11 of the Fisheries Chapter, and the number of Nass salmon of that species returning to Canada exceeds the minimum escapement level but does not exceed the small return to Canada for that species set out in Table 1, Row 2, the Nisga'a fish allocation will increase in a linear manner, from zero at the minimum escapement level to the threshold for that species set out in Table 1, Row 3, except that the Nisga'a fish allocation will not exceed the return to Canada minus the minimum escapement level.
3. If the number of Nass salmon of a species returning to Canada exceeds the large return to Canada for that species set out in Table 1, Row 2, the Nisga'a fish allocation will not exceed the maximum for that species set out in Table 1, Row 3.
4. If, in any year, a portion of the return of chinook, coho, or chum salmon is identified as resulting from Nisga'a enhancement initiatives in the Nass Area, as described in subparagraph 1(c) of this Schedule, the Nisga'a fish allocations of these fish are as set out in paragraph 35 of the Fisheries Chapter.

SCHEDULE A -- continued

Table 1.

	Species	Sockeye	Pink	Chinook	Coho	Chum
1.	<u>Nisga'a share (%) of return to Canada</u>	10.5%	0.6%	21.0%	8.0%	8.0%
2.	<u>Return to Canada</u>					
	Small	160,000	300,000	13,000	40,000	30,000
	Large	600,000	1,100,000	60,000	240,000	150,000
3.	<u>Nisga'a fish allocations at small and large returns to Canada</u>					
	Threshold (at small return to Canada)	16,800	1,800	2,730	3,200	2,400
	Maximum (at large return to Canada)	63,000	6,600	12,600	19,200	12,000

SCHEDULE B -- OVERAGES AND UNDERAGES**Determination of Overages and Underages**

1. For the purpose of catch accounting, harvests for each salmon species are classified into two groups of fisheries:
 - a. Nisga'a fisheries; and
 - b. other Canadian fisheries harvesting Nass salmon.
 2. To determine the overage or underage for a Nass salmon species in Nisga'a fisheries, the following post-season estimates are required for each species of salmon:
 - a. the total return to Canada (the "TRTC") for that species of Nass salmon;
 - b. the total escapement to Nass Area streams (the "Post-Season Escapement Estimate");
 - c. the harvest share for Nisga'a fisheries (the "Nisga'a Share") for that year determined in accordance with the Nisga'a fish allocations set out in the Fisheries Chapter and the Harvest Agreement using the post-season estimate of the TRTC and the escapement goal for that year, including any adjustments to the Nisga'a Share for overages and underages;
 - d. the harvest allowed for other Canadian fisheries (the "Remaining Allowable Catch") based on the post-season estimate of TRTC, the escapement goal and the Nisga'a Share for that year;
 - e. the total number of fish of that species caught in Nisga'a fisheries (the "Nisga'a Catch");
 - f. the total number of Nass salmon of that species caught in other Canadian fisheries (the "Other Catch"); and
 - g. the total catch for a year (the "Total Catch") determined by adding the Nisga'a Catch to the Other Catch.
 3. In each year, the Nisga'a Account will be calculated for each species, as set out below, to determine if an overage or underage has occurred for that species. If the Nisga'a Account is a number greater than zero, then there is an overage. If the Nisga'a Account is a number less than zero, then there is an underage.
 4. The Nisga'a Account for salmon in each year will be calculated as follows:
-

a. if the Post-Season Escapement Estimate is greater than or equal to the escapement goal and the Minister has provided reasonable opportunities for the harvest of the Nisga'a fish allocations and the Nisga'a Catch is less than the Nisga'a Share, and the Other Catch is less than or equal to the Remaining Allowable Catch, the Nisga'a Account is zero;

b. if the Post-Season Escapement Estimate is greater than or equal to the escapement goal and the Nisga'a Catch is more than the Nisga'a Share, the Nisga'a Account is:

$$\text{Nisga'a Account} = \text{Nisga'a Catch} - \text{Nisga'a Share};$$

c. if the Post-Season Escapement Estimate is greater than or equal to the escapement goal and the other Canadian fisheries harvest more than their share, the Nisga'a Account is:

$$\text{Nisga'a Account} = \text{Remaining Allowable Catch} - \text{Other Catch};$$

d. if the Post-Season Escapement Estimate is less than or equal to the escapement goal and there is a Nisga'a Share and there is no Remaining Allowable Catch, the Nisga'a Account is:

$$\text{Nisga'a Account} = \text{Nisga'a Catch} - \text{Nisga'a Share} - \text{Other Catch};$$

e. if the Post-Season Escapement Estimate is less than the escapement goal and there is a Nisga'a Share and there is a Remaining Allowable Catch, the Nisga'a Account for sockeye salmon is:

$$\text{Nisga'a Account} = \text{Nisga'a Catch} - \text{Nisga'a Share} - 13\% \text{ of the Overharvest};$$

and the Nisga'a Account for pink salmon is:

$$\text{Nisga'a Account} = \text{Nisga'a Catch} - \text{Nisga'a Share} - 15\% \text{ of the Overharvest};$$

and the Nisga'a Account for each of the other salmon species is:

$$\text{Nisga'a Account} = \text{Nisga'a Catch} - \frac{\text{Nisga'a Share} \cdot \text{Total Catch}}{(\text{Nisga'a Share} + \text{Remaining Allowable Catch})}$$

5. In each year, the "Cumulative Nisga'a Account" for each species will be calculated by adding that year's Nisga'a Account for that species, to the previous year's Cumulative Nisga'a Account for that species as adjusted under paragraph 6 of this Schedule or paragraph 30 of the Fisheries Chapter.

Adjustment of the Nisga'a Harvest

6. The Minister and Nisga'a Lisims Government will endeavour to minimize any overages or underages in each year and to minimize the accumulation of overages and underages in successive years, but in any year:
 - a. unless otherwise agreed by the Minister and Nisga'a Lisims Government, any adjustments to the Nisga'a harvest in that year for past overages will not exceed 5% of the total Nisga'a fish allocations of that species;
 - b. any adjustments to the Nisga'a harvest in that year for past underages will only be made if those adjustments:
 - i. are approved by Nisga'a Lisims Government, and
 - ii. unless otherwise agreed by the Minister and Nisga'a Lisims Government, do not exceed 5% of the pre-season estimate of the Remaining Allowable Catch for that species;
 - c. the Minister and Nisga'a Lisims Government may agree to reduce an overage for one species by an underage for another species, in accordance with the system of equivalencies set out in Schedule C, in order to reduce the overages and underages in the Cumulative Nisga'a Account; and
 - d. if an adjustment is made to the Nisga'a harvest under subparagraphs (a), (b), or (c) or paragraph 30 of the Fisheries Chapter, a corresponding adjustment will be made to the Cumulative Nisga'a Account.

Joint Fisheries Management Committee Recommendations

7. The Joint Fisheries Management Committee will recommend to the Minister and Nisga'a Lisims Government adjustments to the Nisga'a harvest in Nisga'a fisheries for each year to account for cumulative overages and cumulative underages in accordance with this Schedule.

SCHEDULE C -- SYSTEM OF SALMON EQUIVALENCIES

1. Equivalencies for conversions among salmon species will be expressed as sockeye equivalents, where the value of each species is calculated relative to the value of sockeye salmon. Sockeye equivalents will be based on average weights and average commercial landed value statistics for salmon in the Nass Area, unless otherwise agreed by the Minister and Nisga'a Lisims Government.
2. The sockeye equivalent factor for each salmon species will be calculated as follows:

$$SE_{Chinook} = \frac{\text{Chinook average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Chinook average price/weight}}{\text{Sockeye average price/weight}}$$

$$SE_{Coho} = \frac{\text{Coho average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Coho average price/weight}}{\text{Sockeye average price/weight}}$$

$$SE_{Pink} = \frac{\text{Pink average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Pink average price/weight}}{\text{Sockeye average price/weight}}$$

$$SE_{Chum} = \frac{\text{Chum average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Chum average price/weight}}{\text{Sockeye average price/weight}}$$

SCHEDULE D -- DETERMINATION OF THE NISGA'A FISH ALLOCATION OF STEELHEAD

1. In this Schedule, the adjusted total allowable catch of summer-run Nass steelhead is equal to 95% of the total number of the summer-run Nass steelhead returning to the Nass Area less the annual escapement goal.
2. The Nisga'a fish allocation of summer-run Nass steelhead under paragraph 46 of the Fisheries Chapter will be equal to:
 - a. 5% of the total number of summer-run Nass steelhead returning to the Nass Area;
plus
 - b. 25% of the adjusted total allowable catch

but, in any event, the Nisga'a fish allocation will not exceed 1000 summer-run Nass steelhead.

**SCHEDULE E -- NISGA'A FISH ALLOCATIONS OF NON-SALMON SPECIES OR
AQUATIC PLANTS**

This schedule will set out Nisga'a fish allocations of non-salmon species or aquatic plants established under this Chapter after the effective date.

SCHEDULE F -- PROVISIONAL SCHEDULE OF LISIMS FISHERIES CONSERVATION TRUST SETTLEMENT AMOUNTS

1. The amounts to be settled on the trustees of the Lisims Fisheries Conservation Trust are:
 - a. \$10 million by Canada; and
 - b. \$3 million by the Nisga'a Nation.

Note 1 to this Schedule will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with that note and the effective date occurs.

Note 1

The amounts stated in (a) and (b) will be adjusted on the revision date by multiplying each amount by N and dividing by O

where:

N is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the revision date;

O is the value of the FDDIPI for the last quarter in the 1995 calendar year published by Statistics Canada at the same time as the value used in N; and

FDDIPI is the Final Domestic Demand Implicit Price Index for Canada, series D15613, published regularly by Statistics Canada in Matrix 6544: Implicit Price Indexes, Gross Domestic Product.

The revision date will be a date 14 days before the effective date, or such other date as the Parties may agree. On the revision date, the amounts in (a) and (b) will be replaced by amounts adjusted in accordance with this note, the title of this schedule will be changed to "Schedule F - Lisims Fisheries Conservation Trust Settlement Amounts".

**SCHEDULE G -- PROVISIONAL SCHEDULE OF FUNDING UNDER PARAGRAPH 111
OF THE FISHERIES CHAPTER**

1. Funding under paragraph 111 of the Fisheries Chapter will be as follows:
 - a. \$5.75 million will be paid by Canada; and
 - b. \$5.75 million will be paid by British Columbia.

Note 1 to this Schedule will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with that note and the effective date occurs.

Note 1

The amounts stated in (a) and (b) will be adjusted on the revision date by multiplying each amount by N and dividing by O

where:

N is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the revision date;

O is the value of the FDDIPI for the last quarter in the 1995 calendar year published by Statistics Canada at the same time as the value used in N; and

FDDIPI is the Final Domestic Demand Implicit Price Index for Canada, series D15613, published regularly by Statistics Canada in Matrix 6544: Implicit Price Indexes, Gross Domestic Product.

The revision date will be a date 14 days before the effective date, or such other date as the Parties may agree. On the revision date, the amounts in (a) and (b) will be replaced by amounts adjusted in accordance with this note, the title of this schedule will be changed to "Schedule G - Funding under paragraph 111 of the Fisheries Chapter".