

**NISGA'A NATION
HARVEST AGREEMENT**

Canada
British Columbia
Nisga'a Nation

QS-B016-000-BB-A1

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NISGA'A NATION HARVEST AGREEMENT

THIS AGREEMENT made the ■ day of ■, 199■,

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as
represented by the Minister of Fisheries and Oceans**

("Canada")

OF THE FIRST PART

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA, as represented by the Minister of
Fisheries**

("British Columbia")

OF THE SECOND PART

AND:

NISGA'A NATION, as represented by Nisga'a Lisims Government

(the "Nisga'a Nation")

OF THE THIRD PART

WHEREAS:

- A. The Nisga'a Nation, Canada and British Columbia have entered into a treaty, referred to as "the Nisga'a Final Agreement", which provides that, on its effective date, the Nisga'a Nation, Canada, and British Columbia will enter into a Harvest Agreement; and
- B. The Nisga'a Final Agreement provides that the Harvest Agreement will be established under federal and provincial settlement legislation, which was proclaimed on , 1999, and , 1999, respectively.

DEFINITIONS

In this Harvest Agreement:

- a. **“adjusted total allowable catch”** means, for Nass sockeye or Nass pink salmon, the total return to Canadian waters less the Nisga'a fish allocation set out in Schedule A to the Fisheries Chapter of the Nisga'a Final Agreement, and less the escapement goal;
- b. **“aquatic plants”** means all marine and freshwater plants, including kelp, marine flowering plants, benthic and detached algae, brown algae, red algae, green algae, and phytoplankton;
- c. **“consult”** means provision to a Party of:
 - i. notice of a matter to be decided, in sufficient detail to permit the Party to prepare its views on the matter,
 - ii. if requested by a Party, sufficient information in respect of the matter to permit the Party to prepare its views on the matter,
 - iii. a reasonable period of time to permit the Party to prepare its views on the matter,
 - iv. an opportunity for the Party to present its views on the matter, and
 - v. a full and fair consideration of any views on the matter so presented by the Party;
- d. **“directed harvest”** means the catching and keeping of:
 - i. a species of fish from a fishery in which a Nass Area stock of that species is a significant portion of the fish caught and kept, or
 - ii. a Nass Area stock of a species of fish using live capture gear;
- e. **“domestic purposes”** means food, social, and ceremonial purposes;
- f. **“effective date”** means the date upon which the Nisga'a Final Agreement takes effect;

- g. “**escapement goal**” means the number of a species of Nass salmon that the Minister determines is necessary for spawning;
- h. “**fish**” means:
- i. fish, including anadromous fish,
 - ii. shellfish, crustaceans, and marine animals,
 - iii. the parts of fish, shellfish, crustaceans, and marine animals, and
 - iv. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals
- but not “wildlife fish”;
- i. “**incidental harvest**” means the catching and keeping of a species of Nass salmon, other than in a directed harvest;
- j. “**Joint Fisheries Management Committee**” means the committee established under the Fisheries Chapter of the Nisga’a Final Agreement;
- k. “**law**” includes federal, British Columbia, and Nisga’a legislation, acts, ordinances, regulations, orders in council, bylaws, and the common law, but, for greater certainty, does not include *Ayuukhl Nisga’a* or *Ayuuk*;
- l. “**laws of general application**” includes federal and provincial laws that apply generally in British Columbia, but does not include federal laws in respect of Indians or lands reserved for the Indians;
- m. “**Minister**” means, in relation to any matter, the Minister or Ministers of Her Majesty the Queen in right of Canada or in right of British Columbia, as the case may be, having the responsibility, from time to time, for the exercise of powers in relation to the matter in question;
- n. “**Nass Area**” means:
- i. the entire Nass watershed,
 - ii. all Canadian watersheds and water bodies that drain into portions of Portland Inlet, Observatory Inlet, or Portland Canal, as defined in subparagraph (iii), and

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iii. all marine waters in Pearse Canal, Portland Inlet, Observatory Inlet and Portland Canal northeast of a line commencing at the Canadian border, midway between Pearse Island and Wales Island, and proceeding along Wales Passage southeasterly to Portland Inlet, then northeasterly to the midpoint between Start Point and Trefusis Point, then south to Gadu Point

as set out approximately in Appendix I of the Nisga'a Final Agreement;

- o. "Nass salmon" means chinook, chum, coho, sockeye and pink salmon originating in the Nass Area;
- p. "Nisga'a annual fishing plan" means a plan, or an in-season adjustment to a plan, approved in accordance with the Fisheries Chapter of the Nisga'a Final Agreement;
- q. "Nisga'a citizen" means a citizen of the Nisga'a Nation as determined by Nisga'a law;
- r. "Nisga'a Constitution" means the constitution of the Nisga'a Nation adopted in accordance with the Nisga'a Government Chapter of the Nisga'a Final Agreement;
- s. "Nisga'a Corporation" means a corporation that is incorporated under federal or provincial law, all of the shares of which are owned legally and beneficially by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, a Nisga'a Corporation Intermediary, or any combination of those entities;
- t. "Nisga'a Corporation Intermediary" means a corporation that is incorporated under federal or provincial law, all of the shares of which are owned legally and beneficially by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, another Nisga'a Corporation Intermediary, or any combination of those entities;
- u. "Nisga'a fish allocation" means a right to harvest Nass sockeye salmon or Nass pink salmon under this Harvest Agreement or under the Nisga'a Final Agreement, as the case may be;
- v. "Nisga'a fish entitlement" means a right to harvest fish or aquatic plants under the Nisga'a Final Agreement, but does not include the right to harvest fish under this Harvest Agreement, or under federal or provincial laws of general application;
- w. "Nisga'a fisheries" means:

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- i. fisheries to harvest fish under Nisga'a fish entitlements under the Nisga'a Final Agreement,
 - ii. fisheries to harvest Nass salmon under Nisga'a fish allocations under this Harvest Agreement, and
 - iii. harvests of aquatic plants under Nisga'a fish entitlements under the Nisga'a Final Agreement;
- x. **"Nisga'a Institution"** means:
- i. Nisga'a Lisims Government,
 - ii. a Nisga'a Village Government, or
 - iii. a Nisga'a Public Institution;
- y. **"Nisga'a laws"** includes the Nisga'a Constitution;
- z. **"Nisga'a Lisims Government"** means the government of the Nisga'a Nation described in the Nisga'a Constitution;
- aa. **"Nisga'a Nation"** means the collectivity of those aboriginal people who share the language, culture, and laws of the Nisga'a Indians of the Nass Area, and their descendants;
- bb. **"Nisga'a Public Institution"** means a Nisga'a Government body, board, commission, or tribunal established under Nisga'a law, such as a school board, health board, or police board, but does not include the Nisga'a Court referred to in the Administration of Justice Chapter of the Nisga'a Final Agreement;
- cc. **"Nisga'a Village"** means:
- i. the village of New Aiyansh, Gitwinksihlkw, Laxgalt'sap, or Gingolx, or
 - ii. any additional village on Nisga'a Lands, established in accordance with the Nisga'a Constitution and the Nisga'a Final Agreement;
- dd. **"Nisga'a Village Government"** means the government of a Nisga'a Village;
- ee. **"overage"** means the amount calculated in accordance with Schedule B of the Fisheries Chapter of the Nisga'a Final Agreement in any year in which the Nisga'a

harvest of a species exceeds the amount of that species that the Nisga'a Nation is entitled to harvest in Nisga'a fisheries in that year;

- ff. "settlement legislation" means the Acts of Parliament and the Acts of the Legislature of British Columbia that give effect to the Nisga'a Final Agreement;
- gg. "surplus" means the amount, in any year, of a species of Nass salmon that exceeds the physical incubation and rearing capacity of a natural area, or an enhancement facility, for that species, and that has not been harvested in Nisga'a fisheries or other aboriginal, commercial, or recreational fisheries;
- hh. "underage" means the amount calculated in accordance with Schedule B of the Fisheries Chapter of the Nisga'a Final Agreement in any year in which the amount of a species that the Nisga'a Nation is entitled to harvest in that year in Nisga'a fisheries exceeds the Nisga'a harvest of that species;
- ii. "wildlife fish" means:
 - i. lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters,
 - ii. the parts of lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters, and
 - iii. the eggs, sperm, spawn, larvae, spat, juvenile stages, and adult stages of lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters; and
- jj. "year" means a calendar year, unless the Parties otherwise agree.

NISGA'A FISH ALLOCATIONS

- 1. The Nisga'a Nation has Nisga'a fish allocations under this Harvest Agreement equivalent to:
 - a. 13% of each year's adjusted total allowable catch for Nass sockeye salmon, and
 - b. 15% of each year's adjusted total allowable catch for Nass pink salmon.
- 2. The Minister will implement this Harvest Agreement by:
 - a. issuing licences to Nisga'a Lisims Government; or

- b. other means under federal or provincial laws.
3. Subject to paragraph 2, 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 Nass salmon under this Harvest Agreement:
- a. to have federal or provincial licences; or
 - b. to pay fees, charges, or royalties
- in respect of the harvest for domestic purposes of Nass salmon under this Harvest Agreement.
4. Persons who sell Nass salmon harvested under this Harvest Agreement are subject to fees and charges applied to commercial harvesters in respect of the sale of Nass salmon 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.
5. Subject to paragraph 7, in each year the Nisga'a Nation has the right under this Harvest Agreement to harvest the number of Nass sockeye and Nass pink salmon calculated in accordance with paragraph 1.
6. 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 of the Fisheries Chapter of the Nisga'a Final Agreement.
7. If there is an overage or underage of Nass sockeye or Nass pink 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 of the Fisheries Chapter of the Nisga'a Final Agreement.
8. 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.
9. In any year the Minister and Nisga'a Lisims Government may agree to adjust the species composition of the Nisga'a harvest between Nass sockeye and Nass pink salmon under this Harvest Agreement for that year in accordance with the system of equivalencies set out in Schedule C of the Fisheries Chapter of the Nisga'a Final Agreement.
10. If a proposed Nisga'a annual fishing plan includes an adjustment under paragraph 9 that will affect a species or fishery under the management authority of the other Party, the
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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.

11. Following the accounting referred to in paragraph 6, the Minister and Nisga'a Lisims Government may agree to adjust the species composition of the Nisga'a harvest of Nass sockeye and Nass pink salmon to be harvested under this Harvest Agreement in subsequent years in accordance with the system of equivalencies described in Schedule C of the Fisheries Chapter of the Nisga'a Final Agreement, to account for incidental harvests of Nass chinook, Nass coho and Nass chum salmon.
12. Fisheries under this Harvest Agreement have the same priority as commercial and recreational fisheries in fisheries management decisions made by the Minister.

HARVEST OF SURPLUS NASS SALMON

13. The Minister may permit Nisga'a Lisims Government to harvest some or all of the surplus Nass sockeye or Nass pink 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

14. 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 Harvest Agreement in accordance with the Nisga'a Final Agreement and Nisga'a annual fishing plans.

FISHERIES MANAGEMENT

15. Nisga'a annual fishing plans will include provisions for the harvest, and if applicable the sale, of Nass salmon under this Harvest Agreement.
16. Persons who harvest or sell Nass salmon under this Harvest Agreement may be required to show proof of their authority to do so.

TERM

17. The term of this Harvest Agreement is 25 years commencing on the effective date.
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REPLACEMENT

18. At any time between the 14th and the 15th anniversaries of the commencement of this Harvest Agreement, the Nisga'a Nation may give notice in writing to the other Parties that it wishes to commence negotiation of a replacement Harvest Agreement.
19. Within six months of the Nisga'a Nation giving notice under paragraph 18, the Parties will negotiate and attempt to reach agreement on a replacement Harvest Agreement.
20. A replacement Harvest Agreement will:
 - a. include the same Nisga'a fish allocations set out in paragraph 1 of this Harvest Agreement; and
 - b. have a 25 year term commencing on the 15th anniversary of the commencement of this Harvest Agreement.
21. If the Parties enter into a replacement Harvest Agreement, this Harvest Agreement will expire as of the 15th anniversary of the commencement of this Harvest Agreement.

EXTENSION

22. If the Parties do not enter into a replacement Harvest Agreement, this Harvest Agreement will be extended for an additional 25 year term, commencing on the 15th anniversary of the commencement of this Harvest Agreement, with the modifications that are necessary to reflect the commencement date of the extended term.

COMPENSATION

23. If a Nisga'a fish allocation under this Harvest Agreement is reduced or terminated, the Nisga'a Nation is entitled to fair compensation from the Party or Parties that reduced or terminated that Nisga'a fish allocation.

DISPUTE RESOLUTION

24. The dispute resolution process set out in the Dispute Resolution Chapter of the Nisga'a Final Agreement applies to any disagreement arising under this Harvest Agreement.

GENERAL

25. For greater certainty, this 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*.

NOTICE

26. If any notice, request, information or other communication is required to be given under this Harvest Agreement, it will be in writing and delivered personally, by courier, registered mail, or facsimile transmission, and will be addressed to the Party at the address or number set out below:

For: Canada
Attention: Minister of Fisheries and Oceans
House of Commons
Room 807, Confederation Building
Ottawa, Ontario
K1A 0A6
Fax Number: (613) 996-9632

For: British Columbia
Attention: Minister of Fisheries
Room 151, Parliament Buildings
Victoria, British Columbia
V8V 1X4
Fax Number: (250) 356-2961

For: Nisga'a Nation
Attention: President
P.O. Box 231
New Aiyansh, British Columbia
V0J 1A0
Fax Number: (250) 633-2367

Any notice, request, information or other communication will be deemed to have been received when the postal receipt is acknowledged by the other Party if sent by registered mail and the following business day if sent by courier, facsimile transmission or delivered in person. A Party may change its representative, address or telephone or facsimile number by giving a notice of change to the other Parties in accordance with this paragraph.

AMENDMENT

27. This Harvest Agreement may only be amended by written agreement of all of the Parties.

JUDICIAL DETERMINATIONS IN RESPECT OF VALIDITY

28. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines any provision of this Harvest Agreement to be invalid or unenforceable:
- a. the Parties will make best efforts to amend this Harvest Agreement to remedy or replace the provision; and
 - b. the provision will be severable from this Harvest Agreement to the extent of the invalidity or unenforceability, and the remainder of this Harvest Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.