

CHAPTER 10 FISHERIES

10.1.0 FISHING RIGHTS

Maa-nulth First Nation Fishing Rights

- 10.1.1 Each Maa-nulth First Nation has the right to harvest, in accordance with this Agreement, Fish and Aquatic Plants for Domestic Purposes in the Domestic Fishing Area.
- 10.1.2 Each Maa-nulth First Nation Fishing Right is limited by measures necessary for conservation, public health or public safety.
- 10.1.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Fishing Right.
- 10.1.4 Each Maa-nulth First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Fish and Aquatic Plants harvested under its Maa-nulth First Nation Fishing Right. A Maa-nulth First Nation may not Dispose of its right to Trade and Barter.
- 10.1.5 A Maa-nulth First Nation right to Trade and Barter in accordance with 10.1.4 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 10.1.41c.
- 10.1.6 Each Maa-nulth First Nation Fishing Right will be exercised in respect of:
- a. Inter-tidal Bivalves, within the Domestic Fishing Area for Inter-tidal Bivalves; and
 - b. all species of Fish and Aquatic Plants other than Inter-tidal Bivalves, within the Domestic Fishing Area unless otherwise provided for in a Maa-nulth Harvest Document.
- 10.1.7 Nothing in this Agreement precludes a:
- a. Maa-nulth-aht from harvesting Fish and Aquatic Plants under a licence, permit, or other document issued under Federal Law or Provincial Law;
 - b. Maa-nulth First Nation from concluding agreements, that are in accordance with Federal Law and Provincial Law, with other aboriginal groups relating to harvesting Fish and Aquatic Plants; and

- c. Maa-nulth-aht from being designated by another aboriginal group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that aboriginal group.
- 10.1.8 The Minister retains authority for managing and conserving Fish, Aquatic Plants and Fish habitat.
- 10.1.9 Fish and Aquatic Plants harvested under a Maa-nulth First Nation Fishing Right cannot be sold.
- 10.1.10 British Columbia may authorize uses of or Dispose of provincial Crown land and any authorized use or Disposition may affect the methods, times and locations of harvesting Fish and Aquatic Plants under this Agreement, provided that British Columbia ensures that those authorized uses or Dispositions do not deny a Maa-nulth First Nation the reasonable opportunity to harvest Fish and Aquatic Plants under its Maa-nulth First Nation Fishing Right.
- 10.1.11 For the purpose of 10.1.10, British Columbia and the Maa-nulth First Nation will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or Dispositions of provincial Crown land on that Maa-nulth First Nation's reasonable opportunity to harvest Fish and Aquatic Plants.
- 10.1.12 Each Maa-nulth First Nation will exercise its Maa-nulth First Nation Fishing Right in a manner that does not interfere with other authorized uses or Dispositions of provincial Crown land existing on the Effective Date or authorized in accordance with 10.1.10.
- 10.1.13 Each Maa-nulth First Nation has reasonable access to and over federal Crown lands to allow for the exercise of its Maa-nulth First Nation Fishing Right.
- 10.1.14 The Maa-nulth First Nation access in accordance with 10.1.13 will be exercised in a manner that does not interfere with the use, grant, creation or Disposition of an interest in federal Crown land from time to time.
- 10.1.15 If the use, grant, creation or Disposition of an Interest in federal Crown land would deny a Maa-nulth First Nation access in accordance with 10.1.13, Canada will ensure that alternate reasonable access is provided.
- 10.1.16 Notwithstanding 10.1.13, access to and on an Indian Reserve is subject to the applicable Maa-nulth First Nation obtaining the consent of the Indian Band for whom the Indian Reserve is set aside.
- 10.1.17 Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in Fish or Aquatic Plants.

10.1.18 For Fish and Aquatic Plants harvested under its Maa-nulth First Nation Fishing Right, the applicable Maa-nulth First Nation will provide catch data and other information as required by Maa-nulth Harvest Documents, Federal Law or Provincial Law.

Maa-nulth Fish Allocations

10.1.19 The Maa-nulth Fish Allocation for:

- a. chinook salmon is described in Schedule 1;
- b. chum salmon is described in Schedule 2;
- c. coho salmon is described in Schedule 3;
- d. pink salmon is described in Schedule 4;
- e. sockeye salmon is described in Schedule 5;
- f. each of herring, halibut, Rockfish, Groundfish and sablefish, is described in Schedule 6; and
- g. Inter-tidal Bivalves is described in Schedule 7.

10.1.20 Harvesting from the areas described in Schedule 7 is subject to the continuation of Interests described in Part 2 of Appendix P.

10.1.21 Except as described in 2.9.0, nothing in this Agreement creates a responsibility on the part of any Party to remediate contamination within the Domestic Fishing Area.

10.1.22 In any year where the Minister determines, in respect of a species or stock of Fish or Aquatic Plants for which there is a Maa-nulth Fish Allocation that:

- a. is a fixed amount; or
- b. has a minimum amount,

that the quantity of a species or stock of Fish or Aquatic Plant that is available for harvest is not sufficient to meet all quantities anticipated for allocations from the species or stock to the Maa-nulth First Nations and other aboriginal groups for Domestic Purposes, the Minister will take into account any written recommendations from the Joint Fisheries Committee and may reduce the Maa-nulth Fish Allocation for the species or stock for that year.

10.1.23 If the Minister does not follow the recommendations from the Joint Fisheries Committee referred to in 10.1.22 the Minister will provide written reasons for any reduction in the Maa-nulth Fish Allocation.

Unallocated Species

- 10.1.24 Where a Maa-nulth Fish Allocation for a species of Fish or Aquatic Plant is not established under this Agreement, that species of Fish or Aquatic Plant may be harvested under a Maa-nulth First Nation Fishing Right in accordance with a Maa-nulth Harvest Document.
- 10.1.25 Where a Maa-nulth Fish Allocation for a species of Fish or Aquatic Plant has not been established under this Agreement, Canada, British Columbia or the Maa-nulth First Nations may propose the establishment of a Maa-nulth Fish Allocation for that species by providing the other Parties with a written proposal and providing a copy of the proposal to the Joint Fisheries Committee.
- 10.1.26 Following receipt of a proposal made in accordance with 10.1.25, the Joint Fisheries Committee will consider the proposal and, where all of the members agree, provide a recommendation to the Parties in respect of a basic harvest entitlement for the species and a Maa-nulth Fish Allocation for the species, taking into account:
- a. base period information on harvesting by Maa-nulth First Nations of that species for Domestic Purposes;
 - b. harvesting by other aboriginal groups of that species for Domestic Purposes;
 - c. measures necessary for conservation;
 - d. harvesting of the species required for:
 - i. the management of that species; and
 - ii. enhancement of that species;
 - e. the impact of harvesting by others on a Maa-nulth First Nation Fishing Right; and
 - f. other relevant information.
- 10.1.27 Where, six months after receipt of a proposal made in accordance with 10.1.25, all of the members of the Joint Fisheries Committee have not agreed on a recommendation, the Joint Fisheries Committee will notify the Parties that they are unable to agree on a recommendation.
- 10.1.28 Following receipt of a recommendation contemplated by 10.1.26 or the notice contemplated by 10.1.27, the Parties will negotiate and attempt to reach agreement on a Maa-nulth Fish Allocation for the species taking into account the recommendations, if any, provided by the Joint Fisheries Committee and any other relevant information.

- 10.1.29 Where the Parties agree on a Maa-nulth Fish Allocation for the species, the Parties will confirm their agreement in writing and Schedule 6 and 10.1.19 are deemed to be amended upon completion of the written confirmation.
- 10.1.30 For the purposes of 10.1.26, 10.1.33 and 10.1.34, the basic harvest entitlement for a species of Fish or Aquatic Plant is the average annual harvest by the Maa-nulth First Nations of that species for Domestic Purposes over the base period for that species.
- 10.1.31 For the purposes of 10.1.26 and 10.1.30, a base period is a period of ten calendar years immediately preceding the date of the proposal made in accordance with 10.1.25 or such other period agreed to by the Parties.
- 10.1.32 Where all members of the Joint Fisheries Committee agree, the Joint Fisheries Committee may recommend to the Parties that studies, in respect of the matters described in 10.1.26, be conducted to assist the members in reaching agreement on a recommendation. Where the Parties agree with the recommendation of the Joint Fisheries Committee for studies, the Parties may agree to extend the time period contemplated by 10.1.27 or 10.1.33.
- 10.1.33 If the Parties are unable to reach agreement on a Maa-nulth Fish Allocation for the species within one year of a proposal being made in accordance with 10.1.25 or a shorter time period if the Parties agree, the basic harvest entitlement for the species will be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two. The arbitrator will determine the Maa-nulth First Nations' basic harvest entitlement for the species of Fish or Aquatic Plant within a period of not more than one year and then the arbitrator will provide a decision to the Parties.
- 10.1.34 In an arbitration referred to in 10.1.33, Canada, British Columbia or the Maa-nulth First Nations may request an arbitrator to describe a basic harvest entitlement for a species as a share of an abundance of the species.
- 10.1.35 In an arbitration referred to in 10.1.33, the arbitrator will take into account the matters described in 10.1.26.
- 10.1.36 Once the arbitrator provides the decision to the Parties as contemplated by 10.1.33, the Parties will negotiate and attempt to reach agreement on the Maa-nulth Fish Allocation for the species, taking into account the decision of the arbitrator.
- 10.1.37 If the Parties agree on a Maa-nulth Fish Allocation for the species in accordance with 10.1.36, the Parties will confirm their agreement and Schedule 6 and 10.1.19 are deemed to be amended on the date the last Party provides its confirmation.

10.1.38 If, six months after the arbitrator provides a decision to the Parties as contemplated by 10.1.33, the Parties are unable to reach agreement on the Maa-nulth Fish Allocation for the species, the Maa-nulth Fish Allocation for the species is 125% of the basic harvest entitlement determined by the arbitrator in accordance with 10.1.33.

Law-Making

10.1.39 Each Maa-nulth First Nation Government may make laws for:

- a. the distribution of the Fish and Aquatic Plants harvested under the Maa-nulth First Nation Fishing Right of the applicable Maa-nulth First Nation among the Maa-nulth-aht of that Maa-nulth First Nation; and
- b. the designation of individuals or vessels used to harvest under the Maa-nulth First Nation Fishing Right of that Maa-nulth First Nation.

10.1.40 Maa-nulth First Nation Law under 10.1.39 prevails to the extent of a Conflict with Federal Law or Provincial Law.

10.1.41 Each Maa-nulth First Nation Government may make laws for:

- a. the documentation of individuals designated by the applicable Maa-nulth First Nation to harvest under its Maa-nulth First Nation Fishing Right;
- b. the documentation of vessels designated by that Maa-nulth First Nation to be used to harvest under its Maa-nulth First Nation Fishing Right; and
- c. the Trade and Barter of Fish and Aquatic Plants harvested under the Maa-nulth First Nation Fishing Right of that Maa-nulth First Nation.

10.1.42 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 10.1.41.

Designation

10.1.43 Each Maa-nulth First Nation Fishing Right may be exercised by those Maa-nulth-aht or other individuals designated by the applicable Maa-nulth First Nation to harvest Fish and Aquatic Plants under its Maa-nulth First Nation Fishing Right.

10.1.44 Where a Maa-nulth Fish Allocation has been established for a species of Fish or Aquatic Plant, each Maa-nulth First Nation may designate its Maa-nulth-aht or other individuals to harvest the species under its Maa-nulth First Nation Fishing Right.

- 10.1.45 Where a Maa-nulth Fish Allocation has not been established for a species of Fish or Aquatic Plant, each Maa-nulth First Nation may designate its Maa-nulth-aht to harvest the species under its Maa-nulth First Nation Fishing Right.
- 10.1.46 Where a Maa-nulth-aht harvests Fish or Aquatic Plants under a Maa-nulth First Nation Fishing Right, that Maa-nulth-aht is not required to have a federal or provincial fishing licence.
- 10.1.47 Subject to 10.1.50 and in addition to what is provided for in 10.1.45, where a Maa-nulth Fish Allocation for a species of Fish or Aquatic Plants has not been established, a Maa-nulth First Nation may designate an individual to harvest the species on behalf of a Maa-nulth-aht of that Maa-nulth First Nation for a year if:
- a. the Maa-nulth-aht is unable to harvest the species due to health reasons;
 - b. the individual is a family member of the Maa-nulth-aht; and
 - c. the individual is identified in the written notice for that year contemplated in 10.1.48.
- 10.1.48 Subject to 10.1.50, each year the Maa-nulth First Nations may identify, by written notice to the Minister, individuals who are family members of a Maa-nulth-aht, but who are not a Maa-nulth-aht themselves, who have been designated in accordance with 10.1.47.
- 10.1.49 A Maa-nulth First Nation may not designate a non-Maa-nulth-aht to harvest, on behalf of a Maa-nulth-aht, Fish or Aquatic Plants managed by British Columbia.
- 10.1.50 An individual designated in accordance with 10.1.47 may not use a vessel to harvest under a Maa-nulth First Nation Fishing Right if that vessel is authorized, by licence, to be used for commercial fishing.
- 10.1.51 Before a vessel is used to harvest Fish or Aquatic Plants under a Maa-nulth First Nation Fishing Right, the vessel will be designated by the applicable Maa-nulth First Nation. This provision does not alter the application of Federal Law or Provincial Law in respect of foreign fishing vessels in Canadian waters.
- 10.1.52 When a Maa-nulth First Nation designates a Maa-nulth-aht, other individual or vessel, that Maa-nulth First Nation will issue written documentation to the Maa-nulth-aht, other individual or vessel to indicate the designation.
- 10.1.53 Documentation issued by a Maa-nulth First Nation to a Maa-nulth-aht, other individual or vessel to indicate a designation:
- a. will be in the English language, which version is authoritative, and, at the discretion of the Maa-nulth First Nation, in the Nuu-chah-nulth language;

- b. will, in the case of an individual, include the name and address of the individual;
- c. will meet any requirements described in the applicable Maa-nulth Harvest Document and the Maa-nulth Fisheries Operational Guidelines; and
- d. may set out methods, timing, location of harvesting and individual allocations consistent with the applicable Maa-nulth Harvest Document.

10.2.0 COMMERCIAL FISHERIES

Harvest Agreement

- 10.2.1 Canada, British Columbia and the Maa-nulth First Nations will enter into a Maa-nulth Harvest Agreement which will come into effect on the Effective Date.
- 10.2.2 In accordance with the terms of the Maa-nulth Harvest Agreement, a Party may terminate the Maa-nulth Harvest Agreement and it will compensate the Maa-nulth First Nations.
- 10.2.3 If the highest domestic court that considers the Litigation determines that one or more of the plaintiffs has an aboriginal right to fish for salmon, halibut, Rockfish, roe herring, sablefish, prawn or crab and to sell the fish caught under that right on a commercial basis, upon the written request of the Maa-nulth First Nations provided within eight years of such determination, the Parties will amend this Agreement and the Maa-nulth Harvest Agreement as described in the Maa-nulth Harvest Agreement.
- 10.2.4 No compensation is payable under this Agreement or the Maa-nulth Harvest Agreement as a result of amendments made in accordance with 10.2.3.

New Emerging Fisheries

- 10.2.5 Where the Minister proposes to establish a new emerging commercial fishery in the Pacific region, the Minister will advise the Maa-nulth First Nations of the proposal, and any participation by the Maa-nulth First Nations in any new emerging commercial fishery authorized by the Minister will be determined in accordance with the process established by the Minister.
- 10.2.6 Where the Minister proposes to establish a new emerging commercial fishery off the west coast of Vancouver Island, the Minister will advise the Maa-nulth First Nations of the proposal and Consult with the Maa-nulth First Nations on a process for participants to enter the fishery and on how the fishery should be allocated among participants.

Aquaculture Tenures

- 10.2.7 On the Effective Date the Minister will designate, under section 17(1) of the *Land Act*, for the applicable Maa-nulth First Nation, those lands described as “Designated Shellfish Aquaculture Site – Reserve File Number” in the applicable Appendix O for a term of 25 years, for the purpose of providing that Maa-nulth First Nation with an opportunity to apply for shellfish aquaculture tenures.
- 10.2.8 Notwithstanding section 17(3) of the *Land Act*, the Minister will not amend or cancel a designation referred to in 10.2.7 without the consent of the applicable Maa-nulth First Nation.
- 10.2.9 Subject to 10.2.8, British Columbia will continue to manage and use lands designated in accordance with 10.2.7.
- 10.2.10 A Maa-nulth First Nation may apply to British Columbia for shellfish aquaculture tenures in respect of the lands that have been designated for that Maa-nulth First Nation in accordance with 10.2.7.
- 10.2.11 A Maa-nulth First Nation may not Dispose of any shellfish aquaculture tenure established on or after the Effective Date on an Inter-tidal Bivalve beach described in Schedule 7.

Commercial Fishing Licences

- 10.2.12 On the Effective Date, Canada will issue to the Maa-nulth First Nations the general commercial fishing licences described in Schedule 8. The description of the licences is based on the fisheries management and licensing system at the time this Agreement was initialled by the chief negotiators for Canada and British Columbia and by the lead negotiator for the Maa-nulth First Nations. If the fisheries management or licensing system changes before the Effective Date, the licences described in Schedule 8 will be changed to the new system on the same basis as licences in the general commercial fishery.

10.3.0 HARVEST OF SURPLUS SALMON

- 10.3.1 Each year the Minister may determine whether there is a surplus of a species of salmon that returns to spawn in the Domestic Fishing Area, the size of the surplus, and access to that surplus.
- 10.3.2 The Joint Fisheries Committee may recommend to the Minister procedures for the identification of a surplus and terms and conditions for the harvest of the surplus.

10.3.3 The Minister may permit the Maa-nulth First Nations to harvest some or all of the surplus salmon that return to spawn in the Domestic Fishing Area on reaching agreement with the Maa-nulth First Nations 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 in accordance with the Maa-nulth Fisheries Operational Guidelines.

10.4.0 FISHERIES MANAGEMENT

Joint Fisheries Committee

10.4.1 The Joint Fisheries Committee operates to facilitate, in accordance with this Agreement, the co-operative planning and management of:

- a. the exercise of each Maa-nulth First Nation Fishing Right;
- b. activities of the Maa-nulth First Nations related to stock assessment, Enhancement Initiatives, Stewardship Activities and Fish habitat;
- c. activities of the Maa-nulth First Nations related to fisheries monitoring and enforcement;
- d. activities of the Maa-nulth First Nations related to environmental protection and ocean management activities; and
- e. other matters as Canada and the Maa-nulth First Nations may agree.

10.4.2 In facilitating cooperative activities and functions in accordance with 10.4.1, the Joint Fisheries Committee may:

- a. discuss publicly available information for proposed new emerging fisheries and other fisheries that may be conducted in the Domestic Fishing Area or could significantly affect a Maa-nulth First Nation Fishing Right;
- b. discuss publicly available information that is related to measures necessary for conservation, public health or public safety that could significantly affect a Maa-nulth First Nation Fishing Right;
- c. discuss publicly available information that relates to proposed Enhancement Initiatives in the Domestic Fishing Area;
- d. arrange for the collection and exchange of publicly available data on fisheries;

- e. discuss possible provisions for an Annual Fishing Plan before the Maa-nulth First Nations develop an Annual Fishing Plan and possible provisions for Maa-nulth Harvest Documents;
 - f. discuss an Annual Fishing Plan;
 - g. discuss a proposal by a Maa-nulth First Nation for Enhancement Initiatives;
 - h. communicate with other advisory bodies in respect of matters of mutual interest;
 - i. discuss publicly available information on issues related to international arrangements that could significantly affect a Maa-nulth First Nation Fishing Right; and
 - j. carry out other functions and activities as Canada and the Maa-nulth First Nations may agree.
- 10.4.3 Canada and the Maa-nulth First Nations will establish the Joint Fisheries Committee on the Effective Date. Canada and each Maa-nulth First Nation will appoint one member to the Joint Fisheries Committee.
- 10.4.4 British Columbia may appoint one member to the Joint Fisheries Committee. If British Columbia appoints a member to the Joint Fisheries Committee, references to Canada and the Maa-nulth First Nations in 10.4.1, 10.4.2, 10.4.6, 10.4.8, 10.4.14, 10.4.17, 10.4.18, 10.4.20, 10.4.21, 10.4.22, 10.4.23 and 10.4.26 include British Columbia and references to Canada in 10.4.16 include Canada or British Columbia.
- 10.4.5 Each year, the Maa-nulth First Nations will submit an Annual Fishing Plan to the Joint Fisheries Committee.
- 10.4.6 Canada and the Maa-nulth First Nations will provide each other with such publicly available information as may reasonably be necessary to enable the Joint Fisheries Committee to carry out its functions.
- 10.4.7 Any catch data or other information provided in accordance with 10.1.18 may, on the request of any Party, be reviewed by the Joint Fisheries Committee and, as appropriate, used by the Joint Fisheries Committee in making any recommendation.
- 10.4.8 The Joint Fisheries Committee will, from time to time as appropriate, discuss and make recommendations to Canada and the Maa-nulth First Nations in respect of:
- a. Maa-nulth First Nations fisheries for unallocated species and Maa-nulth Fish Allocations;

- b. relevant fisheries-related data;
- c. conservation, public health and public safety considerations that could affect harvesting under a Maa-nulth First Nation Fishing Right;
- d. other fisheries that could significantly affect harvesting under a Maa-nulth First Nation Fishing Right;
- e. the management and harvesting of Fish in the Domestic Fishing Area;
- f. recommendations to the Minister on the harvesting of Fish and Aquatic Plants in a National Park or National Marine Conservation Area that are developed by an advisory structure and other issues related to Maa-nulth First Nation harvesting of Fish and Aquatic Plants in National Parks or National Marine Conservation Areas;
- g. the coordination of harvesting under the Maa-nulth First Nation Fishing Right with other fisheries;
- h. measures for the monitoring and enforcement of harvesting under a Maa-nulth First Nation Fishing Right;
- i. enhancement activities conducted by Maa-nulth First Nations in the Maa-nulth First Nation Areas;
- j. overages and underages;
- k. in-season amendments to Maa-nulth Harvest Documents;
- l. the provisions for Maa-nulth Harvest Documents, taking into account, among other things, provisions related to:
 - i. matters included in an Annual Fishing Plan, where the Maa-nulth First Nations provide the Annual Fishing Plan to the Joint Fisheries Committee in a timely fashion;
 - ii. measures for establishing harvest amounts for an unallocated species in any given year;
 - iii. access to a specific stock; and
 - iv. other measures for harvest and management of Fish;
- m. other matters that could significantly affect harvesting under a Maa-nulth First Nation Fishing Right;
- n. the management of fisheries outside the Domestic Fishing Area that could significantly affect harvesting under a Maa-nulth First Nation Fishing Right;

- o. the management, conservation and protection of Fish, Fish habitat and Aquatic Plants in the Domestic Fishing Area; and
 - p. any other matters agreed to by Canada and the Maa-nulth First Nations.
 - 10.4.9 On receipt of an Annual Fishing Plan, the Joint Fisheries Committee and an advisory structure will:
 - a. review and, as appropriate, discuss the Annual Fishing Plan with one another, and make recommendations to the Minister and the Maa-nulth First Nations in respect of provisions that the Minister should put in a Maa-nulth Harvest Document;
 - b. discuss the coordination of harvesting under the Maa-nulth First Nation Fishing Rights with other fisheries; and
 - c. provide each other with any recommendations they make to the Minister.
 - 10.4.10 For purposes of 10.4.8 and 10.4.9, an “advisory structure” is the advisory structure, if any, established in accordance with 23.10.4.
 - 10.4.11 The Joint Fisheries Committee will conduct a post-season review of the harvesting under each Maa-nulth First Nation Fishing Right and other matters contemplated by 10.4.1, and may make recommendations to the Parties.
 - 10.4.12 The Joint Fisheries Committee will:
 - a. establish its own procedures; and
 - b. seek to operate on a consensus basis.
 - 10.4.13 The Parties will include the procedures of the Joint Fisheries Committee in the Maa-nulth Fisheries Operational Guidelines.
 - 10.4.14 Where all the members of the Joint Fisheries Committee do not agree on a recommendation contemplated by this Chapter, each of Canada and the Maa-nulth First Nations may submit written recommendations to the Minister.
 - 10.4.15 A reference in this Chapter to a Joint Fisheries Committee recommendation includes a recommendation made to the Minister contemplated by 10.4.14.
-

10.4.16 Where the Maa-nulth First Nations believe that a recommendation made in accordance with 10.4.8 or 10.4.14 has not been acted upon by Canada, the Maa-nulth First Nations may discuss it at a meeting of the Joint Fisheries Committee. Following a discussion at the Joint Fisheries Committee, where the Maa-nulth First Nations still believe a recommendation made in accordance with 10.4.8 or 10.4.14 has not been acted upon by Canada, the Maa-nulth First Nations may, in writing, request the Minister to respond and the Minister will respond in writing.

Regional First Nations Fisheries Management Advisory Process

10.4.17 Where a regional fisheries committee is proposed or established for aboriginal fisheries in an area that includes all or part of the Domestic Fishing Area and that committee has functions and activities similar to the Joint Fisheries Committee, Canada and the Maa-nulth First Nations will determine which functions and activities of the Joint Fisheries Committee can be more effectively undertaken by a regional fisheries committee and discuss the mechanism for the Maa-nulth First Nations' participation in the regional fisheries committee.

10.4.18 Either Canada or the Maa-nulth First Nations may request that any function or activity of the Joint Fisheries Committee be undertaken by the regional fisheries committee.

10.4.19 In considering a request made in accordance with 10.4.18, in respect of those functions and activities of the Joint Fisheries Committee undertaken in accordance with 10.4.2 no Party will unreasonably withhold consent to the request.

10.4.20 Where Canada and the Maa-nulth First Nations agree, other functions and activities undertaken in accordance with 10.4.8 may be undertaken by a regional fisheries committee.

10.4.21 Where Canada and the Maa-nulth First Nations agree that a function or activity of the Joint Fisheries Committee will be undertaken by a regional fisheries committee:

- a. the Parties will update the Maa-nulth Fisheries Operational Guidelines, as required, to reflect the agreement; and
- b. a reference in this Agreement to the Joint Fisheries Committee will be read as a reference to the regional fisheries committee for that function or activity.

10.4.22 Where a regional fisheries committee undertakes a function or activity of the Joint Fisheries Committee either Canada or the Maa-nulth First Nations may request that a function or activity that is not effectively addressed or efficiently coordinated by the regional fisheries committee be resumed by the Joint Fisheries Committee.

- 10.4.23 Where Canada and the Maa-nulth First Nations agree that a function or activity will be resumed by the Joint Fisheries Committee, the Parties will update the Maa-nulth Fisheries Operational Guidelines, as required, to reflect the change.
- 10.4.24 In considering a request made in accordance with 10.4.22, in respect of those functions or activities of the regional fisheries committee undertaken in accordance with 10.4.17 no Party will unreasonably withhold consent to the request.
- 10.4.25 If a regional fisheries committee contemplated by 10.4.17 is terminated and not replaced by another process, the Joint Fisheries Committee, as necessary, will resume its original functions or activities.
- 10.4.26 Canada and the Maa-nulth First Nations will, from time to time, review and discuss the effectiveness of the Joint Fisheries Committee and regional fisheries committee.

Public Fisheries Management Advisory Processes

- 10.4.27 Where Canada or British Columbia has or establishes a public fisheries management advisory process that encompasses all or a portion of the Domestic Fishing Area, or is for a species or stock of Fish or Aquatic Plants in the Pacific Region, the Maa-nulth First Nations may participate in that process on the same basis as other aboriginal groups. For greater certainty, the public fisheries management advisory processes contemplated by this paragraph do not include international fisheries advisory processes and the design, establishment and termination of the public fisheries management advisory processes is at the discretion of the Minister.
- 10.4.28 Where in accordance with 10.4.27, Canada or British Columbia proposes to establish a public fisheries management advisory process for the west coast of Vancouver Island, Canada or British Columbia will Consult with the Maa-nulth First Nations in developing that public fisheries management advisory process.

Annual Fishing Plans

- 10.4.29 Each year, the Maa-nulth First Nations will develop an Annual Fishing Plan in respect of allocated and unallocated species of Fish and Aquatic Plants. That plan will set out the preferences of the Maa-nulth First Nations, in respect of Maa-nulth First Nation Fishing Rights, as to:
- a. what stocks and species would be harvested and, where appropriate, in what amounts;
 - b. the description of Fish and Aquatic Plants to be harvested;
 - c. the location and timing of harvest;

- d. the method of harvest, including the size, type, identification, marking, and quantity of gear to be used and the manner in which it may be used;
- e. the monitoring of harvest, including notification, catch monitoring, identification and reporting of harvest;
- f. the transportation of harvested Fish and Aquatic Plants;
- g. enforcement measures;
- h. the provisions of a Maa-nulth Harvest Document; and
- i. other matters.

Maa-nulth Harvest Document

- 10.4.30 Each year, the Minister will issue one or more Maa-nulth Harvest Documents to the Maa-nulth First Nations in respect of the Maa-nulth First Nation Fishing Rights. Each Maa-nulth Harvest Document will be consistent with this Agreement.
- 10.4.31 Where the Minister issues a Maa-nulth Harvest Document, the Minister will take into account:
- a. conservation measures and the availability of fisheries resources;
 - b. the recommendations that the Minister has received in a timely manner from the Joint Fisheries Committee on the provisions of Maa-nulth Harvest Documents;
 - c. utilization of the fisheries resources;
 - d. efficient and effective harvesting of fisheries resources;
 - e. requirements for integration and efficient management of all resources;
 - f. accepted scientific procedures for management for fisheries resources; and
 - g. any other matters that the Minister considers relevant.
- 10.4.32 Harvesting under a Maa-nulth First Nation Fishing Right will be conducted in accordance with the provisions of a Maa-nulth Harvest Document.
- 10.4.33 The Maa-nulth First Nations are not required by Canada or British Columbia to pay any fee or charge for a Maa-nulth Harvest Document.
- 10.4.34 Each Maa-nulth First Nation will make the applicable Maa-nulth Harvest Documents available for inspection by its Maa-nulth-aht and other individuals designated to harvest under its Maa-nulth First Nation Fishing Right.

- 10.4.35 The Minister will provide written reasons to the Maa-nulth First Nations, the Joint Fisheries Committee and the advisory structure if the Maa-nulth Harvest Document has significant differences from the licence provisions recommended by the Joint Fisheries Committee or the advisory structure.
- 10.4.36 Where the Minister amends a Maa-nulth Harvest Document, the Minister will provide notice to and, where practicable, discuss the amendment and reasons in advance with:
- a. the Maa-nulth First Nations;
 - b. the Joint Fisheries Committee; and
 - c. an advisory structure, where harvesting of Fish and Aquatic Plants may occur in a National Park or a National Marine Conservation Area.
- 10.4.37 If special circumstances make it impracticable to discuss an amendment in accordance with 10.4.36 with the Maa-nulth First Nations, the Joint Fisheries Committee or an advisory structure, the Minister:
- a. may make the decision or take the action that the Minister considers necessary; and
 - b. will notify the Maa-nulth First Nations, the Joint Fisheries Committee and an advisory structure of the special circumstances and the decision made or action taken.
- 10.4.38 For purposes of 10.4.35, 10.4.36 and 10.4.37 an “advisory structure” is an advisory structure, if any, established in accordance with 23.10.4.

Maa-nulth Fisheries Operational Guidelines

- 10.4.39 The Parties will prepare the Maa-nulth Fisheries Operational Guidelines that set out the operational principles, procedures, and guidelines regarding the implementation of the provisions of this Chapter. The Parties will update and maintain the Maa-nulth Fisheries Operational Guidelines as required.
- 10.4.40 The Maa-nulth Fisheries Operational Guidelines describe when and how an adjustment is made to a Maa-nulth Fish Allocation to account for harvests that exceed or fail to meet a Maa-nulth Fish Allocation in a year.
- 10.4.41 Any adjustment in accordance with 10.4.40 will take into account the actions of the Minister and the Maa-nulth First Nations in the conduct of the fishery in question.
- 10.4.42 The Minister and the Maa-nulth First Nations will endeavour to minimize any overages and underages in each year and to minimize any overages and underages in successive years.

10.5.0 STEWARDSHIP AND ENHANCEMENT

- 10.5.1 The Maa-nulth First Nations may conduct, with the approval of the Minister and in accordance with Federal Law or Provincial Law, Enhancement Initiatives and Stewardship Activities in the Domestic Fishing Area.
- 10.5.2 Canada and the Maa-nulth First Nations may negotiate agreements concerning the Maa-nulth First Nations' activities related to Enhancement Initiatives and Stewardship Activities.
- 10.5.3 The Parties may enter into agreements concerning the harvest of surpluses of a species of salmon in the terminal area that result from an approved Enhancement Initiative in which the Maa-nulth First Nations invested. One of the factors that the Minister will take into account concerning the agreement is the amount of the investment that the Maa-nulth First Nations have made in the approved enhancement facility. An enhancement facility is a fish hatchery (including an incubation box) or other facility that the Parties agree is an enhancement facility.

SCHEDULE 1 – CHINOOK SALMON ALLOCATION

1. In this Schedule:

“Ocean Chinook Salmon” means chinook salmon taken into account in the calculation of Ocean Chinook Salmon Canadian Total Allowable Catch;

“Ocean Chinook Salmon Canadian Total Allowable Catch” means the amount established by the Minister as available for harvest in Canadian waters off the west coast of Vancouver Island by aboriginal, commercial and recreational fisheries of chinook salmon that are predominantly of non-west coast of Vancouver Island stocks; and

“Terminal Chinook Salmon” means chinook salmon in those parts of Areas 23, 26, 123 and 126 as defined in the *Pacific Fishery Management Area Regulations, 2007* that are landward of a line that is one nautical mile seaward from the surfline, but does not include Ocean Chinook Salmon.

Allocation

2. Each year, the Maa-nulth Fish Allocation for chinook salmon is:
 - a. an amount of Ocean Chinook Salmon equal to 1,875 pieces plus 1.78% of the Ocean Chinook Salmon Canadian Total Allowable Catch; and
 - b. an amount of Terminal Chinook Salmon equal to:
 - i. 200 pieces, when the return of Terminal Chinook Salmon is critical;
 - ii. 1,500 pieces, when the return of Terminal Chinook Salmon is low;
 - iii. 2,000 pieces, when the return of Terminal Chinook Salmon is moderate; and
 - iv. 2,600 pieces, when the return of Terminal Chinook Salmon is abundant.
3. For the purpose of paragraph 2, the terms “critical”, “low”, “moderate” and “abundant” are determined by the Minister in accordance with the Maa-nulth Fisheries Operational Guidelines.

-
4. Where a Maa-nulth First Nation harvests chinook salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of:
 - c. Ocean Chinook Salmon is authorized by the Minister, those chinook salmon are counted as Ocean Chinook Salmon; and
 - d. Terminal Chinook Salmon is authorized by the Minister, those chinook salmon are counted as Terminal Chinook Salmon.

 5. Within the Domestic Fishing Area, the time and location for the harvest of:
 - a. Ocean Chinook Salmon under the Maa-nulth First Nation Fishing Rights; and
 - b. Terminal Chinook Salmon under the Maa-nulth First Nation Fishing Rights;will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

SCHEDULE 2 – CHUM SALMON ALLOCATION

1. In this Schedule:

“Terminal Chum Salmon” means chum salmon in those parts of Areas 23, 26, 123 and 126 as defined in the *Pacific Fishery Management Area Regulations, 2007* that are landward of a line that is one nautical mile seaward from the surfline.

Allocation

2. Each year, the Maa-nulth Fish Allocation for chum salmon is:
 - a. 3,000 pieces, when the return of Terminal Chum Salmon is critical;
 - b. 6,500 pieces, when the return of Terminal Chum Salmon is low;
 - c. 10,000 pieces, when the return of Terminal Chum Salmon is moderate;
 - d. 14,000 pieces, when the return of Terminal Chum Salmon is abundant; and
 - e. 17,500 pieces, when the return of Terminal Chum Salmon is very abundant.
3. For purposes of paragraph 2, the terms “critical”, “low”, “moderate”, “abundant” and “very abundant” are determined by the Minister in accordance with the Maa-nulth Fisheries Operational Guidelines.

SCHEDULE 3 – COHO SALMON ALLOCATION

1. In this Schedule:

“Ocean Coho Salmon” means coho salmon harvested in those parts of Areas 123 and 126 as defined in the *Pacific Fisheries Management Area Regulations, 2007* seaward of a line that is one nautical mile seaward from the surpline; and

“Terminal Coho Salmon” means coho salmon in those parts of Areas 23, 26, 123 and 126 as defined in the *Pacific Fishery Management Area Regulations, 2007* that are landward of a line that is one nautical mile seaward from the surpline, but does not include Ocean Coho Salmon.

Allocations

2. Each year, the Maa-nulth Fish Allocation for coho salmon is:
- a. an amount of Ocean Coho Salmon equal to 7,000 pieces; and
 - b. an amount of Terminal Coho Salmon equal to,
 - i. 1,200 pieces, when the return of Terminal Coho Salmon is critical;
 - ii. 1,850 pieces, when the return of Terminal Coho Salmon is low;
 - iii. 3,050 pieces, when the return of Terminal Coho Salmon is moderate; and
 - iv. 3,630 pieces, when the return of Terminal Coho Salmon is abundant.
3. For purposes of paragraph 2, the terms “critical”, “low”, “moderate” and “abundant” are determined by the Minister in accordance with the Maa-nulth Fisheries Operational Guidelines.
4. Where a Maa-nulth First Nation harvests coho salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of:
- a. Ocean Coho Salmon is authorized by the Minister, those coho salmon are counted as Ocean Coho Salmon; and
 - b. Terminal Coho Salmon is authorized by the Minister, those coho salmon are counted as Terminal Coho Salmon.

5. Within the Domestic Fishing Area, the time and location for the harvest of:
 - a. Ocean Coho Salmon under the Maa-nulth First Nation Fishing Rights; and
 - b. Terminal Coho Salmon under the Maa-nulth First Nation Fishing Rights;will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.
6. During the ten year period immediately following the Effective Date, Canada will gather information on coho salmon that return to spawn in the Malksope River.
7. At the end of the ten year period referred to in paragraph 6, the Parties will review and discuss the information referred to in paragraph 6 to determine whether the information is representative of coho salmon stocks in Area 26.
8. In making the determination in accordance with paragraph 7, the Parties will take into account:
 - a. the information referred to in paragraph 6;
 - b. the information about coho salmon in streams in Area 26, other than the Malksope River; and
 - c. other relevant information.
9. If the Parties determine that the information referred to in paragraph 6 is representative of coho salmon stocks in Area 26, upon the request of any Party, the Parties will negotiate and attempt to reach agreement on amendments to paragraph 2 that result in an average allocation of 4,300 pieces, based on the information referred to in paragraph 6.
10. The Parties may request that the Joint Fisheries Committee consider and provide recommendations regarding the matters described in paragraphs 8 and 9.

SCHEDULE 4 – PINK SALMON ALLOCATION**Allocation**

1. In the first two year period following the Effective Date, and in each subsequent two year period, the Maa-nulth Fish Allocation for pink salmon is 7,250 pieces.
2. The time, location and amount of harvests of west coast of Vancouver Island pink salmon under the Maa-nulth First Nation Fishing Rights will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

SCHEDULE 5 – SOCKEYE SALMON ALLOCATION

1. In this Schedule:

“Fraser River Sockeye Salmon Canadian Total Allowable Catch” means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Fraser River watershed;

“Henderson Lake Sockeye Total Allowable Catch” means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Henderson Lake watershed;

“Somass Sockeye Canadian Total Allowable Catch” means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Somass River watershed;

“Terminal Jansen Lake Sockeye Salmon” means sockeye salmon that originate in the Jansen River and Lake watershed and are present in the area landward of a line one nautical mile seaward from the mouth of the Jansen River; and

“Terminal Power Lake Sockeye Salmon” means sockeye salmon that originate in the Power River and Lake watershed and are present in the area landward of a line one nautical mile seaward from the mouth of the Power River.

Allocation

2. Each year, the Maa-nulth Fish Allocation for sockeye salmon is:
- a. an amount of Somass sockeye salmon equal to:
 - i. when the Somass Sockeye Canadian Total Allowable Catch is 50,000 or less, 20% of the Somass Sockeye Canadian Total Allowable Catch;
 - ii. when the Somass Sockeye Canadian Total Allowable Catch is greater than 50,000 and less than or equal to 85,000, then 10,000 plus 10% of that portion of the Somass Sockeye Canadian Total Allowable Catch that is greater than 50,000 and less than or equal to 85,000;

- iii. when the Somass Sockeye Canadian Total Allowable Catch is greater than 85,000 and less than or equal to 412,421, then 13,500 plus 2.87% of that portion of the Somass Sockeye Canadian Total Allowable Catch that is greater than 85,000 and less than or equal to 412,421; and
 - iv. when the Somass Sockeye Canadian Total Allowable Catch is greater than 412,421, then 22,886;
 - b. an amount of Fraser River sockeye salmon equal to 0.13366% of the Fraser River Sockeye Salmon Canadian Total Allowable Catch;
 - c. an amount of Henderson Lake sockeye salmon equal to 26.85% of the Henderson Lake Total Allowable Catch up to a maximum of 17,055 pieces;
 - d. an amount of Terminal Jansen Lake Sockeye Salmon equal to 50% of the amount of Terminal Jansen Lake Sockeye Salmon that the Minister determines is available for harvest; and
 - e. an amount of Terminal Power Lake Sockeye Salmon equal to 50% of the amount of Terminal Power Lake Sockeye Salmon that the Minister determines is available for harvest.
 - 3. Where a Maa-nulth First Nation harvests sockeye salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of:
 - a. Somass sockeye salmon is authorized by the Minister, those sockeye salmon are counted as Somass sockeye salmon;
 - b. Fraser River sockeye salmon is authorized by the Minister, those sockeye salmon are counted as Fraser River sockeye salmon;
 - c. Terminal Jansen Lake Sockeye Salmon is authorized by the Minister, those sockeye salmon are counted as Terminal Jansen Lake Sockeye Salmon;
 - d. Terminal Power Lake Sockeye Salmon is authorized by the Minister, those sockeye salmon are counted as Terminal Power Lake Sockeye Salmon; and
 - e. Henderson Lake sockeye salmon is authorized by the Minister, those sockeye salmon are counted as Henderson Lake sockeye salmon.
 - 4. Within the Domestic Fishing Area, the time and location for the harvest of:
 - a. Somass sockeye salmon under the Maa-nulth First Nation Fishing Rights;
 - b. Fraser River sockeye salmon under the Maa-nulth First Nation Fishing Rights;
 - c. Terminal Jansen Lake Sockeye Salmon under the Maa-nulth First Nation Fishing Rights;
-

- d. Terminal Power Lake Sockeye Salmon under the Maa-nulth First Nation Fishing Rights; and
- e. Henderson Lake sockeye salmon under the Maa-nulth First Nation Fishing Rights,

will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

SCHEDULE 6 – NON - SALMON ALLOCATIONS

General

1. The time and location for harvest of non-salmon under the Maa-nulth First Nation Fishing Rights will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

Herring Allocation

2. Each year the Maa-nulth Fish Allocation for whole herring is 90 short tons or a corresponding amount of herring spawn on kelp or herring spawn on boughs in accordance with the conversion rates for whole herring to herring spawn on kelp or herring spawn on bough as described in the Maa-nulth Fisheries Operational Guidelines.

Halibut Allocation

3. In paragraph 4:

“Halibut Canadian Total Allowable Catch” means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of Pacific halibut.
4. Each year, the Maa-nulth Fish Allocation for halibut is 26,000 pounds (net weight, dressed, head off) plus 0.39% of the Halibut Canadian Total Allowable Catch (net weight, dressed, head off).

Groundfish and Rockfish Allocations

5. In paragraph 6:

“Rockfish Commercial Total Allowable Catch” means the amount, established by the Minister that is calculated to be available for the harvest in Canadian waters by commercial fisheries described as the outside rockfish category ZN Total Allowable Catch for west coast of Vancouver Island Yelloweye, Quillback, Copper, China and Tiger.
6. Each year, the Maa-nulth Fish Allocation of Rockfish is 11,250 pounds of whole fish, plus 2.46% of the Rockfish Commercial Total Allowable Catch.
7. Each year, the Maa-nulth Fish Allocation of Groundfish is 13,000 pounds of whole fish.

Sablefish Allocation

8. In paragraph 9:

“Sablefish Canadian Total Allowable Catch” means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of Pacific sablefish.

9. Each year the Maa-nulth Fish Allocation for sablefish is 0.082% of the Sablefish Canadian Total Allowable Catch.

SCHEDULE 7 – INTER-TIDAL BIVALVE ALLOCATION

1. Each year the Maa-nulth Fish Allocation of Inter-tidal Bivalves is the harvestable surplus from the beaches between the high water mark and the low water mark in the area described as “Inter-tidal Bivalve Harvest Areas” in:
 - a. Part 1, Plan 1 of Appendix P for Toquart Bay;
 - b. Part 1, Plan 2 of Appendix P for Effingham Inlet;
 - c. Part 1, Plan 3 of Appendix P for Tzartus Island;
 - d. Part 1, Plan 4 of Appendix P for Sarita River;
 - e. Part 1, Plan 5 of Appendix P for Big Bunsby;
 - f. Part 1, Plan 6 of Appendix P for Kauwinch River;
 - g. Part 1, Plan 7 of Appendix P for Artlish River; and
 - h. Part 1, Plan 8 of Appendix P for Amai Inlet.

SCHEDULE 8 – COMMERCIAL FISHING LICENCES**Salmon**

1. One Category A licence for Area D gill net issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 11.25 metres.
2. One Category A licence for Area G troll issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 14.74 metres.
3. One Category A licence for Area G troll issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 11.58 metres.

Halibut

4. One Category L licence issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 21.23 metres and an amount equivalent to the quota of 0.147686 percent of the Canadian commercial total allowable catch for Pacific halibut.
5. One Category L licence issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 20.35 metres and an amount equivalent to the quota of 0.097124 percent of the Canadian commercial total allowable catch for Pacific halibut.
6. One Category L licence issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 20.48 metres and an amount equivalent to the quota of 0.1058376 percent of the Canadian commercial total allowable catch for Pacific halibut.

Rockfish

7. One Category ZN licence for the outside area issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 12.90 metres and an amount equivalent to the quota of 1/191st of the Rockfish Canadian commercial total allowable catch for the Category ZN licences for the outside area fishery.