

AB

AL93-83

This Allocation Agreement dated as of the 22nd day of June, 1993 made

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans

(hereinafter called "DFO")

OF THE FIRST PART

AND: Carrier Sekani Tribal Council for and on behalf of the Bands it represents (hereinafter called the "Tribal Council")

OF THE SECOND PART

WHEREAS a Fraser Watershed Agreement was entered into between DFO and the Tribal Council (hereinafter called the "Watershed Agreement");

AND WHEREAS the Parties are both interested in the conservation, protection and management of fisheries resources in the area identified in Schedule "A" hereto, hereinafter called the "Area";

AND WHEREAS both DFO and the Tribal Council are interested in the development and maintenance of an effective harvest management system for fishing by the Tribal Council;

AND WHEREAS the Parties recognize the need to achieve a climate of ongoing cooperation and stability;

AND WHEREAS the Tribal Council wishes to assume a more active role in management of fishing by Tribal Council members;

NOW THEREFORE the Parties agree as follows:

1.0 Definitions

1.1 In this Agreement,

- (a) "Agreement" means this agreement and attached Schedules "A" and "B";
- (b) "Tribal Council Monitor" means a member of the Tribal Council hired by the Tribal Council to carry out monitoring activities in accordance with this Agreement;
- (c) "Communal Licence" means the communal fishing licence specified in section 1.0 of Schedule "B";
- (d) "Minister" means the Minister of Fisheries and Oceans;
- (e) "Participant" means a person designated by a Band in accordance with this Agreement to harvest fish under a licence referred to in this Agreement;

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- (f) "Plan" means the management plan for salmon developed cooperatively by the Parties through the Technical Committees in accordance with the Watershed Agreement as the plan is amended from time to time;
- (g) "Technical Committee" means the Technical Committee established in the Watershed Agreement.
- (h) "RDC" means the Director General, Pacific Region, Department of Fisheries and Oceans.
- (i) "Band" means one of the Bands;
- (j) "Bands" means the following ten Indian Bands:
 - (i) Broman Lake Indian Band;
 - (ii) Burns Lake Indian Band;
 - (iii) Nak'axdli Indian Band;
 - (iv) Stellaquo Indian Band;
 - (v) Stoney Creek Indian Band;
 - (vi) Takla Lake Indian Band;
 - (vii) Chesatta Indian Band;
 - (viii) Tl'axt'en Nation Indian Band;
 - (ix) Tsay Keh Dese Indian Band; and,
 - (x) Nadlay Whut'en Indian Band.

2.0 Purpose

- 2.1 The purpose of this Agreement is to increase the involvement of the Tribal Council in the management of fishing by the Tribal Council in the Area and to provide for the control and monitoring of harvesting under this Agreement for the term of this Agreement.
- 2.2 This Agreement is not intended to be, and shall not be interpreted to be, an agreement or a treaty within the meaning of section 35 of the Constitution Act, 1982 and is made without prejudice to the positions taken by either Party with respect to aboriginal or treaty rights or the settlement of comprehensive claims.
- 2.3 The Parties agree that this Agreement addresses fisheries management issues and shall not serve to define or to limit aboriginal rights.
- 2.4 The Parties also acknowledge that, in any future treaty negotiations between the Federal Crown and any of the Bands, and without prejudice to those negotiations, benefits which may flow pursuant to this Agreement or any subagreement contemplated by this Agreement could be considered in such negotiations.

3.0 Allocation

- 3.1 During the period from April 1, 1993 to March 31, 1994, the Tribal Council will be entitled to harvest fish in accordance with this Agreement, the Plan and the terms and conditions of the Communal Licence.
- 3.2 The Tribal Council will ensure that its members understand that the allocation in the Communal Licence includes the allocation for food, social and ceremonial purposes for the term of this Agreement.

- 3.3 The Tribal Council agrees to fish for the species of fish referred to herein only in accordance with this Agreement, any licence referred to in this Agreement and the Plan during the term of this Agreement.
- 3.4 Nothing in this Agreement precludes the Parties from entering into negotiations with respect to the harvesting of fish species other than those referred to in this Agreement.
- 4.0 Licensing, Designation and Effort Fishing Limits
- 4.1 Subject to subsection 4.2, DFO will issue to the Tribal Council the communal Licence specified in Schedule "B".
- 4.2 The licence referred to in subsection 4.1 may be issued as one or more licences relating to a particular species, area or time period.
- 4.3 No one shall fish under a licence referred to in this Agreement unless the person is a Participant.
- 4.4 Bands will designate Participants:
- (a) for persons possessing status cards issued by the Department of Indian Affairs and Northern Development identifying them as a member of a Band, by issuing them a copy of a certificate summarizing the terms and conditions of the Communal Licence in a form to be provided by DFO; and
 - (b) for all other persons, by providing them with a letter signed by an authorized official of the Band evidencing that they have been designated to fish under the Communal Licence and a copy of the certificate referred to in paragraph 4.4 (a).
- 4.5 The Tribal Council will provide to DFO a list of the names of all Participants before they commence fishing under the Communal Licence.
- 4.6 The certificates provided by the Tribal Council to each Participant will specify that the designation is personal and non-transferable, and will bear the name of the Participant.
- 4.7 The Tribal Council will ensure that each Participant is made aware of the terms and conditions of this Agreement and will inform each Participant of any amendments to this Agreement and of any amendments to the terms and conditions in the Communal licence.
- 4.8 A Participant will carry a certificate and a status card or the letter referred to in subsection 4.4(b) at all times while engaged in any fishing activities referred to in this Agreement and will present such documents to a DFO fishery officer, a DFO fishery guardian or a Tribal Council Monitor upon request.
- 4.9 Each Participant fishing under a Communal Licence shall fish using only the number and type of fishing gear specified in Schedule "B" for that species of fish.
- 4.10 The total number of each type of gear identified in Schedule "B" in use at any one time under a Communal Licence shall not exceed the maximum number identified in Schedule "B".

5.0 Specific Requirements

5.1 Without limiting the generality of subsection 3.1, no Participant shall fish under a Communal Licence except in accordance with the conditions set out in Schedule "B".

6.0 Amendments in Season

6.1 Where the RDG consults with the Tribal Council on changes to the waters in which, or the dates and times on which a Participant may fish, the RDG may make the changes by issuing a public notice.

6.2 The RDG may, for conservation reasons, reduce or eliminate the amount of fish authorized to be taken under this Agreement if the RDG has consulted, where possible, with the Tribal Council on the reduction or elimination.

6.3 Notwithstanding subsection 6.2, where it is necessary for conservation of a stock, the RDG may make changes referred to in subsections 6.1 or 6.2 before consulting the Tribal Council, but the RDG must consult with the Tribal Council at the first available opportunity.

7.0 Monitoring and Enforcement

7.1 The Tribal Council will provide Tribal Council Monitors to monitor the fishing activities referred to in this Agreement.

7.2 The Tribal Council Monitors will conduct monitoring at the locations to be established jointly by the Tribal Council and DFO and may be accompanied by DFO fishery officers or DFO fishery guardians.

7.3 The Parties will develop a monitoring and enforcement protocol to govern monitoring and enforcement activities related to this Agreement. This protocol will address:

- (a) fishing for the species of fish referred to in this Agreement other than under a licence referred to in this Agreement;
- (b) fishing without a designation;
- (c) fishing during closed times;
- (d) use of unauthorized gear;
- (e) improper and inadequately marked gear;
- (f) failure to comply with terms and conditions of the applicable licence referred to in this Agreement;
- (g) unauthorized sale;
- (h) in-season patrols during both open and close times;
- (i) monitoring roads; and
- (j) other matters as agreed to by DFO and the Tribal Council.

7.4 The Tribal Council will share with DFO all information related to catch monitoring and enforcement patrols.

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7.5 Tribal Council Monitors will work cooperatively with DFO fishery officers and DFO fishery guardians to conduct ground hails (catch statistics gathering) for the purpose of gathering detailed information on the number of fish caught under a Communal Licence.

7.6 Hails referred to in subsection 7.5 will account for all fish caught under the Communal Licence and will be documented in a log book format mutually agreed to by the Parties, verified by DFO fishery officers or DFO fishery guardians and Tribal Council Monitors on the ground.

8.0 Tribal Council Monitors

8.1 The Tribal Council will provide insurance coverage for Tribal Council Monitors, including short term and long term disability insurance, and will provide third party liability insurance suitable to both Parties.

8.2 The Tribal Council will issue to Tribal Council Monitors the appropriate equipment for operations, communications and personal safety needs.

8.3 Tribal Council Monitors will not be designated as Participants and will not participate in fishing under any of the licences referred to in this Agreement.

8.4 The Tribal Council Monitors will consult with and work cooperatively with DFO fishery officers and DFO fishery guardians when monitoring fishing and related activities and when carrying out other activities referred to in this Agreement.

9.0 Record Keeping and Reports

9.1 Each Participant shall keep a running total of the number of fish by species harvested by the Participant under a Communal Licence and the Tribal Council shall keep a running total of the number of fish by species harvested by all of the Participants under a Communal Licence.

10.0 Duration and Termination

10.1 This Agreement will take effect upon execution by both Parties and, subject to subsections 10.2 and 10.3, will continue in effect until March 31, 1994.

10.2 This Agreement may be terminated by either Party upon one (1) month notice in writing to that effect given to the other Party.

10.3 Notwithstanding subsection 10.2, this Agreement may be terminated by either Party for non-performance of an obligation under this Agreement immediately upon notice in writing to that effect given to the other Party.

11.0 Notice and Representatives

11.1 Where any notice, request, information or other communication is required to be given pursuant to this Agreement, it shall be in writing and delivered personally, by courier or registered mail or telecopier, and unless notice to the contrary is given, shall be addressed to the Party at the address or number set out below:

To DFO

Native Affairs
Department of Fisheries and Oceans
200 Kent Street
11th Floor
Ottawa, Ontario
K1A 0E6

Attention: M. Lefebvre
Director
Native Affairs

Telephone: (613) 991-0181
Facsimile: (613) 993-7651

To Tribal Council

Carrier Sekani Tribal Council
1460-6th Avenue
Prince George, British Columbia
V2L 3N2

Attention: Chief Justa Monk
Tribal Chief

Telephone: (604) 562-6279
Facsimile: (604) 562-8206

11.2 Such notices, requests, direction, information or other communications shall 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, telecopier or delivered in person.

11.3 A Party may change its representative or its address by giving a notice of change to the other Party in accordance with subsection 11.1.

12.0 Other Aboriginal Groups

12.1 Nothing in this Agreement is intended to, or shall be interpreted to, affect any aboriginal or treaty rights of any other aboriginal group.

13.0 Costs

13.1 The Tribal Council is responsible for all costs associated with fisheries management activities referred to in this Agreement, including but not limited to all costs associated with providing the monitoring activities by Tribal Council Monitors and the reports, logs and other documentation referred to in this Agreement.


- 13.2 The Tribal Council is responsible for all operating, training, salary and benefit costs, including short and long term disability insurance, for the Tribal Council Monitors.
- 14.0 Radification
- 14.1 The Tribal Council will ensure that its members are aware of the contents of this Agreement.
- 14.2 The Tribal Council warrants that the representative who executes this Agreement on behalf of the Tribal Council has authority to bind the members of the Tribal Council.
- 14.3 Execution of this Agreement by DFO and the representatives referred to in subsection 14.2 constitute radification.
- 15.0 Evaluation
- 15.1 The Parties will develop and carry out a process for reviewing and evaluating this Agreement, and any activities carried out pursuant to this Agreement.
- 15.2 The process referred to in subsection 15.1 will include reporting to the Parties.
- 16.0 General
- 16.1 Subject to the final decision making authority of the Minister of Fisheries and Oceans, DFO and the Tribal Council will work cooperatively to implement this Agreement.
- 16.2 No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
- 16.3 No former Public Office Holder who is not in compliance with the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Officer Holders shall derive any direct benefit from this Agreement.
- 16.4 No amendment to this Agreement nor waiver of any of the terms and conditions shall have any force or effect unless made in writing and signed by both Parties.
- 16.5 Nothing contained in this Agreement nor any acts of the Tribal Council or of DFO shall constitute or be deemed to constitute the Tribal Council as an agent of DFO or DFO as an agent of the Tribal Council.
- 16.6 Neither Party shall at any time hold itself out as acting as an agent of the other Party.
- 16.7 The Tribal Council will comply with the Fisheries Act and regulations thereunder as amended from time to time.
- 16.8 The Tribal Council shall not assign or subcontract this Agreement or any part thereof.
- 16.9 Any information to be provided or shared by DFO pursuant to this Agreement shall be subject to the Access to Information Act, R.S.C. 1985, c. A-1, and the Privacy Act, R.S.C. 1985, c. P-21, as amended from time to time.

IN WITNESS WHEREOF the Parties have executed this Agreement under the hands of their proper officers duly authorized in that behalf.

Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans by the Assistant Deputy Minister, Policy and Program Planning




Witness

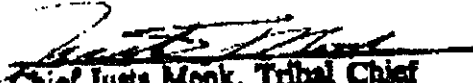


M. Flumiat, Assistant Deputy Minister, Policy and Program Planning, Department of Fisheries and Oceans

Carrier Sekani Tribal Council by its duly authorized representative(s)



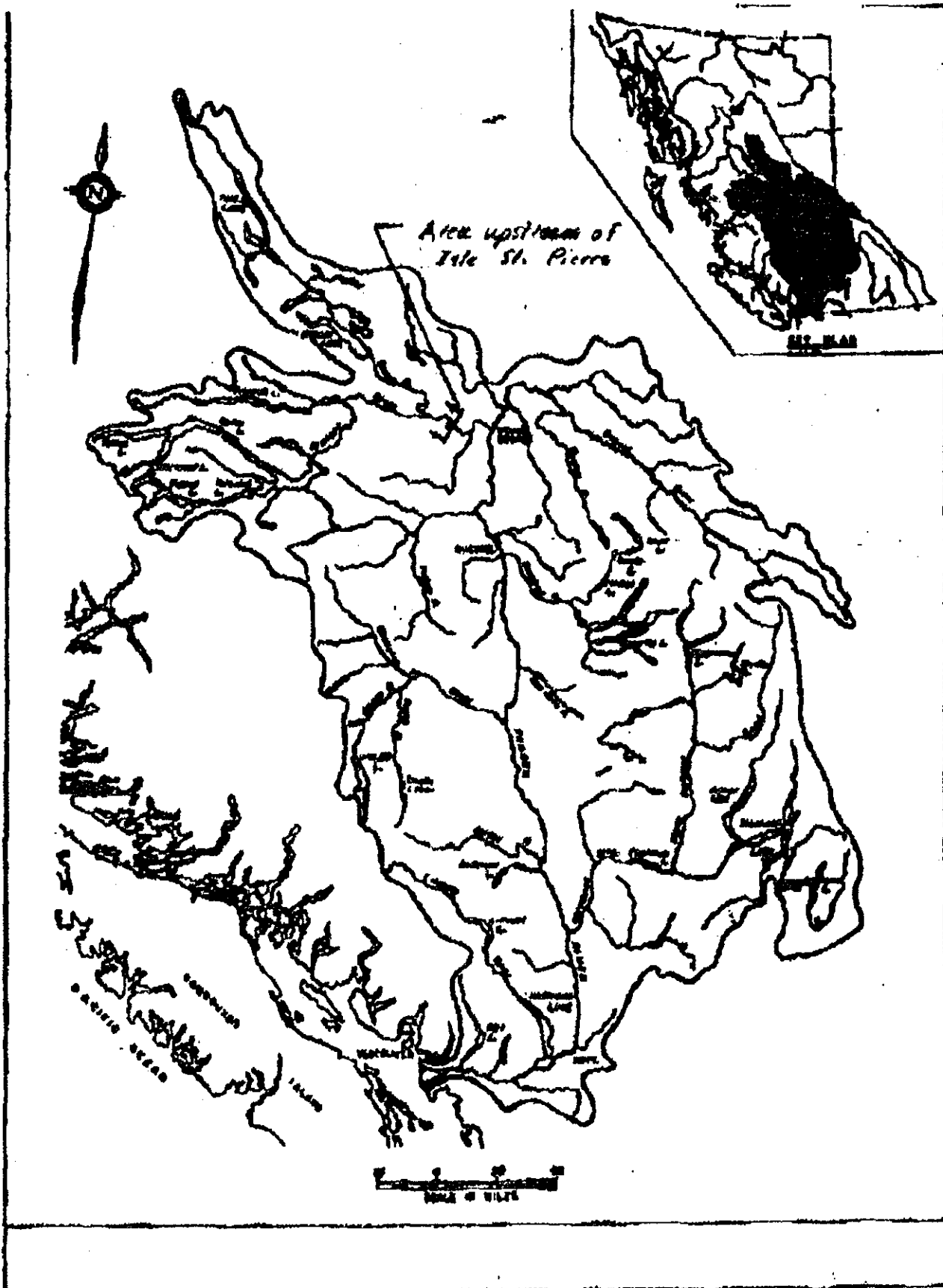
Witness



Chief Justa Monk, Tribal Chief
Carrier Sekani Tribal Council

SCHEDULE "A"

(Attach map or sketch with the Area identified)



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SCHEDULE "B"

1.0 Communal Licences

1.1 Without limiting the generality of any other provision in this Agreement, no Participant shall fish under a communal fishing licence for salmon other than in accordance with the following conditions:

- (a) **Maximum quantity:** Sockeye - 65,000 pieces
Chinook - 100 pieces
- (b) **Location:** Nechako River Drainage upstream of Isle Pierre
- (c) **Dates and Times:** 1200 hrs. June 22, 1993 to 2400 hrs. March 31, 1994 subject to amendments to the conditions of the communal licence and subject to close times as may be varied by the Director-General, Pacific Region, DFO in accordance with the Fishery (General) Regulations.
- (d) **Type per Participant:** River Set Net - 60 foot maximum
Lake Set Net - 100 foot maximum
- (e) **Maximum Number of Fishing Gear/Type at Any One Time:** One net per person.
- (f) **Gear Marking:** By agreement with local Bands.

BETWEEN: Her Majesty the Queen in Right of Canada as
represented by the Minister of Fisheries and Oceans
(DFO)

AND: Carrier Sekani Tribal Council (Tribal Council)

Allocation Agreement
