

Adopted May 11, 1992
Amended and Adopted April 21, 1994

Opetchesaht FISHERIES LAW

WE THE OPETCHESAHT state that we are the original occupants of what is now called the Alberni Valley;

OUR TRADITIONAL TERRITORY is bordered by the Beaufort Range to the North, follows the McLaughlin Range and all the highest peaks to the Southeast including Douglas Peak, Limestone Mountain, Mount Spencer, Mount Olson, Logan Peak, Mount Grey, Mount Parsons follows Coleman Creek to the canal down the canal out to Handy Creek, up the Creek to Hannah Mountain going around Henderson Lake on the higher peaks to Clemens Creek to a point called Kachque, and all the highest peaks. Northwest to Nahmint Mountain, to Klitsa Mountain, Mount Gibson, west to the next highest peak from Mount Gibson to 9 peaks and all the highest peaks beside the rivers flowing inward (watershed of- Great Central Lake) North to Big Interior Mountain, to Mount Septius, Mount Rousseu, with highest peak to Mount Harrison to Argus Mountain, to Blackcap Mountain, Hookjoy Mountain, to Sable Mountain, Big Chief Frank Mountain, Mount Henry Spencer back to the Beaufort Range. Our traditional territory includes the islands of the Barclay Sound known as the Broken Group, that were used by our ancestors and are continued to be used by is today. We recognize that other peoples have use of these islands. Our territory is illustrated by the map appended to this Fisheries Law.

THIS TERRITORY has been used by Opetchesaht and descendants of Opetchesaht since ?iix-muut and we claim title and jurisdiction, and all rights privileges and benefits;

OUR INHERENT RIGHT to the fishery within our territory is based on our use, control and management of the fishery since ?iix-muut. AND THIS USE control and management is integral to continuing and maintaining our way of life;

OUR TRADITIONS and way of life is that we have shared our resources with our family, relatives and extended family and we shall continue to do so.

WE THE OPETCHESAHT declare that the foundation of our fishery is the continuation of our fishery and fishery resources, its conservation and preservation for our peoples today and tomorrow and every generation to come.

IT IS OUR STEWARDSHIP given to us by the Creator to respect all life, to use the fishery in a traditional way, but above all to perpetuate the fishery; we intend to restore original fishery resources to our waters and return their numbers to historical levels.

WE RECOGNIZE THAT THE CREATOR has given us, Mother Earth/and all her resources for our survival and livelihood in exchange we must maintain a stewardship over our territory;

IT IS IMPERATIVE TO THE OPETCHESAHT that we have jurisdiction and control over our fishery to fulfill our responsibilities to the Creator and Mother Earth and our future generations;

IN KEEPING WITH OUR TRADITIONS, we the OPETCHESAHT, accept this law and declare this law to be in effect in our territory as described herein and as illustrated by the map attached here to;

DEFINITION:

IN THIS LAW AND REGULATIONS

Council: Shall mean the duly elected Council of the Opetchesaht

Electors: shall mean Opetchesaht that fit the criteria for electors as set out by the Opetchesaht.

Enforcement Officers: shall mean the persons appointed by the Council of the Opetchesaht under the direction of a band meeting that has been duly convened, to carry out the provisions of this law and regulations.

Fisheries Council: A group of Opetchesaht appointed to determine what penalty will be given for breaches of this law and its regulations.

Fishery: all waters, rivers, lakes, stream, creeks, bodies of water in which fishing and other related activities occur within the Opetchesaht traditional territory.

Fishery Resources: all fish, seafood, crustaceans, marine plants and animals, rockfish, shellfish and other traditional foods used by Opetchesaht.

Fish Stocks: the number of fish

Fish Species: kind or sort of fish - such as sockeye, spring, chum, dog salmon, etc.

Membership Cards: non-transferable cards that are issued by Opetchesaht to recognized Opetchesaht, which entitles the holder of all the rights, benefits and privileges of the Opetchesaht.

Pollution: any contamination of the water or dumping of deleterious substances, making the water impure or unclean so that it is safe or unhealthy for humans or other living species which would result in death or disease or sickness. It will include the blocking or impeding passage of fish in the waters and interfering with the development or enhancement of fish stocks.

Spouse: Shall mean:

- (a) A husband and wife that are living together
- (b) A man or woman not married to each other, who lived together as husband and wife for a period of two years.

Traditional Territory: includes the area which the Opetchesaht have used and occupied since ?iix-muut and has been recognized by other tribes as their traditional territories.

JURISDICTION:

1. This law applies to the traditional territory of the Opetchesaht as described in the preamble and illustrated by the map attached hereto and marked Appendix "A".

2. The Opetchesaht shall take whatever measures or actions as are necessary in order to preserve, enhance and conserve the fishery and where possible to increase the fishery resources to their historical levels and to restore the habitat and fisheries grounds to their original condition.

AGREEMENTS, TREATIES:

The Opetchesaht have the power and authority to share all or part of their fishery and fishery resources within their territory as they wish as is evidenced by a treaty or other agreement acceptable to them. Such agreement or treaty shall be with the consent of 75% of the electors of the tribe present at a duly convened meeting of which 30 days notice is given.

The Opetchesaht have the authority to enter into co-management agreements or treaties with other tribes with the consent of the majority of the electors of the tribe present at a duly convened meeting of which 30 days notice is given.

REGULATION MAKING POWERS:

5. The Opetchesaht have the authority to pass policies and regulations including, but not limited to:

- open and close seasons/restrictions on amount of catch if necessary.
- lengths of nets, types of vessels and gear
- commercial and domestic fishery
- special provisions for elders or disabled members
- fish days
- conservation and management
- enhancement
- monitoring amount of fish caught, including diseased or abnormal fish
- pollution
- monitoring all activities in traditional territory

6. Any changes to policies and regulation made under the authority of this law requires 75% approval of electors present at a duly called meeting in which members have had the proposed changes in their possession for fourteen days prior to the meeting.

ENHANCEMENT:

7. The Opetchesaht shall have the authority to establish an enhancement program for the fishery and fishery resources.

USE OF FISHERY:

Every person using the fishery shall have in their possession a non-transferrable membership card stating that they are Opetchesaht and have inherent rights, privileges and benefits to the fishery. This would include fish, crustaceans, shell fish, rockfish, marine plants, and marine animals, and other traditional foods as used by Opetchesaht. These cards must remain with the individual they are issued to, unless revoked for breach of this law or its regulations. Non-Opetchesaht shall participate in the fishery only to the extent set out in this law or regulations.

It is the responsibility of every Opetchesaht to participate in the fishery in order to obtain their share of the fishery resource.

11. No person shall waste, or destroy needlessly any fishery resources that is obtained in the fishery.

BREACH OP REGULATIONS

12. Any person not obeying this law or its regulations, will face one of the following penalties:

- 1) (a) Have their membership card revoked for:
 - 1 week on their first offence
 - 2 weeks on their second offence
 - 1 month on their third offence
 - the entire season of their fourth offence

Any person not surrendering their membership card when asked to do so under this act, may face further suspensions from the right to use the fishery as determined by the fishery Council set up under this law.

A list shall be circulated to the enforcement officers as to who is not entitled to fish for what time period. Any person caught fishing while they are under suspension, may be further suspended from their right to use the fishery, as determined by the Fishery Council.

- (b) Have their catch seized and forfeit any rights to that catch
- (c) have their net and/or boat and/or any other equipment seized for:

- 1 week on their first offence
- 2 weeks on their second offence
- 1 month on their third offence
- for the entire season on their fourth offence.

(d) Any person found selling their membership card for any period of time or receiving any monetary gains for the use of the card, shall lose their right to use the fishery for the entire season and their card confiscated. If after a period of suspension, a person has been caught selling their card or using it for monetary gains, their right to fish shall be suspended for five years.

- (e) Any other penalty as set out in the specific regulations.

2. (a) A Fisheries Council shall be established by the Council with defined powers, upon approval by Opetchesaht at a duly convened meeting. This Fishery Council shall:

determine if a breach has occurred under this law and its regulations.

allow the person who has been said to have breached this law or its regulations the opportunity to speak for themselves.

determine what penalty should be placed upon that individual if individual has breached the law or its regulations.

any person not complying with the penalty can have their nets, boats, equipment sold.

ENFORCEMENT OFFICERS:

The Opetchesaht may appoint any person or persons to carry out the provisions of this law, and its regulations and shall be called enforcement officer. The appointment shall include the extent of the enforcement officers powers.

LIABILITY

Any person having authority to fish under this law or regulation, does so voluntarily, at their own risk, and there shall be no liability or responsibility with the Opetchesaht for any injuries, actions, or damages incurred while fishing.

FISHERIES REGULATIONS
FISH DAYS

Definitions:

1. (a) Opetchesaht: those people who are duly recognized Opetchesaht pursuant to the membership rules of the Opetchesaht.

Chasers: those persons who go out in the canoe/boat to assist in locating and directing the fish to the seine net.

Disabled Persons: a person who is physically or mentally disabled such that they cannot participate in fishdays, and may be asked to provide a medical letter or other relevant proof.

Fishermen: shall be those persons who dispense the seine net, and operate the boat to dispense the net.

Fishery Resources: all fish, seafood, crustaceans, marine plants and animals, rock fish, shellfish, and other traditional foods used by Opetchesaht.

Spouse: Shall mean:
a husband and wife that are living together.
a man or woman not married to each other, who lived together as husband and wife for a period of two years.

Participants:

All Opetchesaht may attend fish days.

Non-Opetchesaht may not participate in any way at fish days unless specifically asked to do so by the person in charge. Such person can only be asked to assist if there is no Opetchesaht available to provide the necessary assistance.

No children under the age of 12 shall be allowed on the island. Children between the ages of 12 - 18 who participate at fish days shall be the total responsibility of the parent or guardian. Opetchesaht shall not be responsible for any injuries, actions, or damages incurred by the children. Any children creating a disturbance or being a continual nuisance may be asked to leave the island by the person in charge.

Person in Charge:

5. Two people shall volunteer or be appointed at a band meeting with the meetings consent to organize and coordinate fish days, and bring fish to the elders and disabled persons. Council shall also appoint an alternate person in case the person appointed cannot attend.

6. Persons in charge shall:
familiarize themselves with the Fisheries law and this regulation and carry out its provisions
Tell members present at fish days of these regulations.
make sure the boat, net and other necessary equipment is transported to and from fish days.
make sure that the boat, net and other necessary equipment is properly cared for.
work with Council to make sure extra equipment is on hand for use when needed.
make sure the distribution of fish is done fairly.
make sure that the elders and disabled persons have their fair share of fish.

Distribution of Fish:

7. All fish shall be counted prior to distribution.

8. The person in charge shall oversee the distribution of fish. Any elder or disabled person asking a person to take their share of fish shall do so in writing. Written authorizations should be into the band office prior to 1:00 pm on Fridays.

The fish caught shall be divided equally to all Opetchesaht present and who have participated.

Elders and disabled persons and children under 12 years of age do not have to assist in order to obtain a fair share.

Chasers, and fishermen, and person in charge shall obtain and receive additional compensation as determined by the person in charge.

Breach of Regulations:

Any person not observing these regulations, creating a disturbance, or in any way interfering with the processes involved in fish days, can be prohibited from attending the next fish day. The person in charge shall make that recommendation to council and council shall immediately send a letter to that person informing him or her of their temporary suspension.

Opetchesaht has no Responsibility:

Each person who attends fish days does so voluntarily and at their own risk. Any injuries or accidents which occur are the sole responsibility of the individual.

FISHERIES REGULATIONS AUTHORITY TO FISH

All Opetchesaht whose names are on the membership list of the Opetchesaht shall be issued a Membership Card. This card shall entitle the person thereon all the rights, privileges and benefits of the Opetchesaht including, but not limited to, the right to the fishery and fishery resources,

For the purposes of gill net fishing, fishing privileges are extended to any Opetchesaht who are 18 year and older.

The membership card shall be used as proof of right to fish and must be produced when asked by an enforcement officer.

17. Opetchesaht are entitled to fish anywhere in their traditional territory as set out in the fisheries law.

Spouses of Opetchesaht may assist the Opetchesaht member while gill net fishing. The Opetchesaht must be in the boat at all times with the spouse. Spouses shall be issued special permits.

Elders who cannot fish for themselves may specifically designate an extended family member to fish on their behalf. Such person must have the valid permit to fish as issued through Opetchesaht Band Office.

CONSERVATION AND PRESERVATION

The conservation and preservation of the fishery is of utmost importance. If at any time there is any threat to the fishery due to limited stocks, overfishing, etc., the council in consultation with the fisheries committee and other technical persons have overriding authority to close the fishery or limit the fishery in order to preserve the fish stocks.

If there is to be any limit or closure of the fishery, notices must be posted in the band office and a notice sent to all residents on the reserve and any other members who may fish.

COMMERCIAL GEAR

No mechanically driven clear_ commonly used in commercial fishing may be used in the fishery. Anyone using this type of gear may have their gear seized and held for a two week period. On a second offence may have the gear forfeited.

Exceptions to the use of mechanically driven gear are in relation to:

- 1) rock fish fishing

NET LENGTHS

Opetchesaht are allowed to use the following nets in the following cases:

- 20 fathom sets in the river
- 40 fathoms sets in the harbour
- 40 fathom circle set
- 100 fathom set below Polly's Point

25. Nets shall not be tied together. Nets ust be clearly marketed. On 20 and 40 fathom nets, there must be four markings, with both ends being marked. Over 40 fathoms, nets must be marked at owner's discretion, but at night must be marked by lights at the ends.

26. Each person is responsible for their own nets so as not to endanger any other person or vessel.

At a duly convened meeting of the Opetchesaht on April 21, 1994, it was unanimously decided:

THAT the Opetchesaht work with the Tsessaht in a joint venture to be called Tsu-ma-uss Fisheries as equal partners on a Nation-to-Nation basis.

THAT the joint venture be formalized by the signing of the final agreement that was developed by the Tsu-ma-uss Committee and referred to each individual First Nation as attached.

If the Tsessaht are unwilling to agree to this, the Opetchesaht shall pursue their own Fishery and Management Plan.

The members emphasized that the key to this working relationship is respect for one another as First Nations and not by the population of the First Nation.