

HUU-AY-AHT FIRST NATIONS



FISHERIES REGULATION

Provisions of the *Resource Harvesting Act, HFNA 2011*, relevant to the enactment of this regulation: section 13.

REGISTRY OF LAWS CERTIFICATION

I certify that the *Fisheries Regulation* was passed by Executive Council on:

April 1, 2011


Chief Councillor Robert Dennis Sr.

I certify that the *Fisheries Regulation* is enacted as law on:

April 1, 2011


Ta'yii Hawilth Derek Peters

I certify that the *Fisheries Regulation* came into force on:

April 1, 2011


Law Clerk Connie Waddell

FISHERIES REGULATION

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Definitions

- 1 In this regulation:
- “**Act**” means the *Resource Harvesting Act*;
 - “**application**” means the forms as set out in the Schedule;
 - “**director**” means the Director of Lands and Natural Resources as defined in the *Community Planning and Development Act*;
 - “**enforcement officer**” means
 - (a) a resource management officer, or
 - (b) a fishery officer as defined in the *Fisheries Act* (Canada);
 - “**fishing gear**” means any equipment or methods used to catch fish and, for certainty, includes a fishing vessel;
 - “**incidental catch**” means any fish unintentionally caught in a person’s fishing gear that is not the primary target for which that person’s fishing gear is set;
 - “**manager**” means a manager of fisheries appointed under section 27 of the Act;
 - “**Huu-ay-aht fishing authorization**” means Huu-ay-aht fishing documentation, Huu-ay-aht commercial fishing documentation or a Huu-ay-aht commercial fishing licence, as the context may require;
 - “**Huu-ay-aht fishing authorization number**” means the number designating a valid and current Huu-ay-aht fishing authorization assigned at the time the Huu-ay-aht fishing authorization is issued.

Application

- 2 This regulation governs Huu-ay-aht fisheries under the Treaty.

PART 1 - FISHERIES ADMINISTRATION**Manager of Huu-ay-aht fisheries**

- 3 The position of manager of fisheries is established as a position within the Department of Lands and Natural Resources.

Duties of manager of fisheries

- 4 The manager must carry out the following duties:
- (a) managing and administering the Huu-ay-aht fisheries;
 - (b) ensuring that government employees within the Department of Lands and Natural Resources carry out the duties assigned to them relating to Huu-ay-aht fisheries
 - (i) under this or any other Huu-ay-aht enactment,
 - (ii) by the manager, or
 - (ii) by the director;
 - (c) reporting, as required by the director, to Executive Council on Huu-ay-aht fisheries activities;

- (d) any other duties assigned to the manager
 - (i) under this or any other Huu-ay-aht enactment, or
 - (ii) by the director.

Delegation of manager's authority

- 5
- (1) On approval of the director, the manager may delegate the performance of any of the manager's duties or the exercise of any of the manager's powers to
 - (a) another manager within the department of Lands and Natural Resources,
 - (b) a government employee, or
 - (c) an independent Huu-ay-aht contractor .
 - (2) Despite the delegation of any duties or powers under subsection (1), the manager remains responsible for ensuring the duties are carried out properly and the powers are exercised appropriately.

PART 2 – HUU-AY-AHT FISHING AUTHORIZATION**Application for authorization**

- 6
- (1) The director has sole authority to authorize the issuance of a Huu-ay-aht fishing authorization and to designate fishing vessels by means of approving an application.
 - (2) An completed application for a Huu-ay-aht fishing authorization must include all of the following information:
 - (a) the applicant's full name and mailing address;
 - (b) the applicant's phone number;
 - (c) the Huu-ay-aht treaty participant's enrolment number, if applicable;
 - (d) the type of fishing gear to be used by the applicant;
 - (e) the particulars, as defined in section 17, of any fishing vessel to be used by the applicant;
 - (f) the applicant's signature;
 - (g) a certification stating the information given in the application or any supporting document submitted as required under section 13 (1) of the Act is true.
 - (3) After the director receives an application for a Huu-ay-aht fishing authorization, the manager must record the following information:
 - (a) the date the application is received;
 - (b) the date the Huu-ay-aht fishing authorization is issued or refused;
 - (c) if a Huu-ay-aht fishing authorization is issued
 - (i) its date of issuance and expiration,
 - (ii) any conditions imposed on the Huu-ay-aht fishing authorization,
 - (iii) the Huu-ay-aht fishing authorization number,
 - (iv) any fee paid, and

- (v) the name of the authorized government employee who processed the application.

Conditions of authorization

- 7 (1) For the proper management and control of HUU-ay-aht fisheries and the conservation and protection of fish and aquatic plants, the director may attach the conditions the director decides are appropriate to a HUU-ay-aht fishing authorization that are not inconsistent with the Act, this regulation, any other HUU-ay-aht enactment, a Maa-nulth harvest document and the annual fishing plan.
- (2) Every holder of a HUU-ay-aht fishing authorization must comply with the Treaty, Maa-nulth harvest documents, the Act, this regulation, any directions issued by the manager or director as permitted under the Act or this regulation and the annual fishing plan.
- (3) Every person carrying out any activity under the authority of a HUU-ay-aht fishing authorization must comply with every condition of that HUU-ay-aht fishing authorization.

Form of authorization

- 8 (1) A HUU-ay-aht fishing authorization issued by the director must include all of the following:
 - (a) the HUU-ay-aht logo;
 - (b) the HUU-ay-aht fishing authorization number;
 - (c) a photograph of the holder of the HUU-ay-aht fishing authorization;
 - (d) the name and address of the holder of the HUU-ay-aht fishing authorization;
 - (e) the date of issue of the HUU-ay-aht fishing authorization;
 - (f) the date of expiration of the HUU-ay-aht fishing authorization;
 - (g) a designated line for the signature of the holder of the HUU-ay-aht fishing authorization.
- (2) A HUU-ay-aht fishing authorization issued by the director to a person that is not a HUU-ay-aht treaty participant must include all of the following:
 - (a) the HUU-ay-aht logo;
 - (b) the HUU-ay-aht fishing authorization number;
 - (c) the name and address of the holder of the HUU-ay-aht fishing authorization;
 - (d) the date of issue of the HUU-ay-aht fishing authorization;
 - (e) the date of expiration of the HUU-ay-aht fishing authorization;
 - (f) a designated line for the signature of the holder of the HUU-ay-aht fishing authorization.
- (3) A HUU-ay-aht fishing authorization issued by the director is not valid unless it is signed in ink on the designated line in the HUU-ay-aht fishing authorization
 - (a) by the holder of the HUU-ay-aht fishing authorization, or
 - (b) in the case of a corporate holder of the HUU-ay-aht fishing authorization, by an authorized signatory of the corporation.

Term of authorization

- 9** (1) A Huu-ay-aht fishing authorization issued to a Huu-ay-aht treaty participant has a term of up to 5 years.
- (2) The following must not exceed a one year term:
- (a) a Huu-ay-aht fishing authorization issued to a person that is not a Huu-ay-aht treaty participant;
 - (b) Huu-ay-aht commercial fishing documentation;
 - (c) a Huu-ay-aht commercial fishing licence issued to a Huu-ay-aht treaty participant.
- (3) If the holder of a Huu-ay-aht fishing authorization ceases to be a Huu-ay-aht treaty participant or otherwise ceases to be an agent or contractor of the Huu-ay-aht, the holder must immediately cease fishing, and that Huu-ay-aht fishing authorization
- (a) is deemed to be cancelled as of the date that holder ceased to be a Huu-ay-aht treaty participant or otherwise ceased to be an agent or contractor of the Huu-ay-aht, and
 - (b) must be delivered to the manager no later than 5 business days from the date the Huu-ay-aht fishing authorization is deemed cancelled.

Replacement of authorization

- 10** (1) If the holder of a Huu-ay-aht fishing authorization has
- (a) a change of name or address,
 - (b) their Huu-ay-aht fishing authorization lost, stolen or destroyed, or
 - (c) an illegible Huu-ay-aht fishing authorization,
- the manager may issue a replacement Huu-ay-aht fishing authorization showing any applicable changes.
- (2) On receipt of a replacement Huu-ay-aht fishing authorization, the holder of the Huu-ay-aht fishing authorization must immediately destroy the previous Huu-ay-aht fishing authorization if it is still in the holder's possession.
- (3) If the holder of a replacement Huu-ay-aht fishing authorization recovers a lost or stolen Huu-ay-aht fishing authorization, the holder must immediately destroy it.

Documentation fees

- 11** The fees set out in section 12 of the *Wildlife and Migratory Birds Regulation* are the prescribed application fees for Huu-ay-aht fishing documentation for the purposes of section 13 of the Act.

Authorization issued in error

- 12** If a Huu-ay-aht fishing authorization was issued in error or contains an error
- (a) the manager may request the holder of the Huu-ay-aht fishing authorization to deliver it to him or her so it can be corrected or replaced, and
 - (b) the holder of the Huu-ay-aht fishing authorization must comply with the request within 5 business days.

Ownership of authorization

- 13 A Huu-ay-aht fishing authorization is the property of the Huu-ay-aht and is not transferable.

Surrender of authorization on suspension

- 14 If a Huu-ay-aht fishing authorization is suspended, the holder of the Huu-ay-aht fishing authorization must,
- (a) within 5 business days, deliver the Huu-ay-aht fishing authorization to the manager, and
 - (b) immediately cease fishing under the Huu-ay-aht fishing authorization.

Requirement to carry and produce authorization

- 15 A holder of a Huu-ay-aht fishing authorization must
- (a) carry that Huu-ay-aht fishing authorization at all times while harvesting in Huu-ay-aht fisheries, and
 - (b) produce on request of an enforcement officer
 - (i) the Huu-ay-aht fishing authorization, and
 - (ii) if the person is not a Huu-ay-aht treaty participant, government issued photo identification.

Restrictions on alteration and use of authorization

- 16 (1) A person other than the manager must not do any of the following:
- (a) alter or deface a Huu-ay-aht fishing authorization;
 - (b) use or produce an altered or defaced Huu-ay-aht fishing authorization;
 - (c) use or produce a Huu-ay-aht fishing authorization that has been issued to another person under the pretence of being the holder of that Huu-ay-aht fishing authorization;
 - (d) use or produce a Huu-ay-aht fishing authorization that has since been replaced under section 10.
- (2) A holder of a Huu-ay-aht fishing authorization must not permit another person to use that Huu-ay-aht fishing authorization.

PART 3 – HARVESTING REQUIREMENTS**Fishing vessels**

- 17 Vessels fishing in Huu-ay-aht fisheries must
- (a) be designated by the director,
 - (b) be compliant with applicable marine safety enactments, and
 - (c) have a Huu-ay-aht decal or flag prominently displayed on the vessel.

Identification of fishing gear

- 18** (1) No person may set, operate or leave unattended in the water any fishing gear, other than hand lines, unless the fishing gear is marked, with a Huu-ay-aht fishing authorization number, in accordance with subsections (2) to (5).
- (2) A Huu-ay-aht fishing authorization number must be painted on or otherwise securely affixed to an orange tag, float or buoy attached to the fishing gear and be legible and readily visible at all times without the necessity of raising the fishing gear from the water or, if the water is ice covered, without the necessity of removing any snow or ice.
- (3) The numerals or letters, as applicable, of a Huu-ay-aht fishing authorization number marked on fishing gear referred to in subsection (1) must be
- (a) in solid block Arabic numerals or block capital letters in Roman characters, as applicable,
 - (b) without ornamentation,
 - (c) not less than 75 mm high, and
 - (d) in a colour that contrasts with their background.
- (4) A tag, float or buoy referred to in subsection (2) must have only one Huu-ay-aht fishing authorization number marked on it.
- (5) A tag, float or buoy referred to in subsection (2) must,
- (a) if one end of the fishing gear is fastened to the shore, be affixed to the end of the fishing gear farthest from the shore, and
 - (b) in any other case, be affixed to each end of the fishing gear.

Fishing gear with mesh

- 19** A person fishing for a species of fish with fishing gear for which the director's order requires a minimum mesh size, must not use any device by which openings smaller in size than the mesh size ordered for that species are created in any part of the fishing gear.

Release of incidental catch

- 20** (1) Subject to subsection (2), every person who exercises the right to harvest fish and aquatic plants and harvests incidental catch that is alive must immediately return that incidental catch
- (a) to the place from which it was taken, and
 - (b) in a manner that causes it the least harm.
- (2) Every person who exercises the right to harvest fish and aquatic plants and harvests incidental catch that subsequently dies or is likely to die must retain that incidental catch and not return it to the place from which it was taken.

Identification

- 21** A person who harvests fish must not, before processing or preserving that fish on shore, possess fish that has been skinned, cut, packed or otherwise dealt with in such a manner that

- (a) the species of the fish cannot be readily identified,
- (b) the number of fish cannot be readily determined,
- (c) if weight is used to determine catch limits, the weight of the fish cannot be readily determined, or
- (d) if size, age, weight or sex restrictions are applicable, the size, age, weight or sex of the fish cannot be readily determined

unless that person consumes that fish off shore.

Reporting catch

- 22** (1) A holder of a Huu-ay-aht fishing authorization must report to the manager the quantity of fish and aquatic plants harvested in Huu-ay-aht fisheries in accordance with the terms and conditions established by order of the director.
- (2) The catch reporting requirements referred to in subsection (1) must be consistent with those described in any Maa-nulth harvest document, the Maa-nulth fisheries operational guidelines and any management plan developed for Huu-ay-aht fisheries.

Time and location of harvests

- 23** (1) The times and locations of harvesting in Huu-ay-aht fisheries permitted or prohibited under this section are subject to an order of the director under section 30 of the Act or under section 28 of this regulation.
- (2) A person must not harvest in Huu-ay-aht fisheries at a time or in a location other than as permitted under this section.
- (3) Subject to the Treaty, the Act and this regulation, every person with valid Huu-ay-aht fishing documentation is authorized by the Huu-ay-aht to exercise the right to harvest fish and aquatic plants under the Treaty at the times and locations permitted by order of the director.
- (4) Subject to applicable federal and provincial law, every person with valid Huu-ay-aht commercial fishing documentation or a valid Huu-ay-aht commercial fishing licence is authorized by the Huu-ay-aht to exercise the right to harvest fish and aquatic plants under the Treaty at the times and locations permitted by order of the director.
- (3) Subject to applicable federal and provincial law, the Treaty, the Act and this regulation, every person with a valid Huu-ay-aht fishing authorization is authorized by the Huu-ay-aht to exercise the right to harvest fish and aquatic plants under the Treaty at the times and locations permitted by order of the director

Restrictions

- 24** A person who catches and retains fish under a Huu-ay-aht fishing authorization must comply with any applicable size, age, weight and sex restrictions contained in an order made by the director under section 30 of the Act or under section 28 of this regulation.

PART 4 – GENERAL

Trade and barter of fish and aquatic plants

- 25** (1) A person who harvests fish or aquatic plants in Huu-ay-aht fisheries may trade and barter those fish or aquatic plants with other aboriginal people of Canada if
- (a) the harvester is a Huu-ay-aht treaty participant,
 - (b) the species of fish or aquatic plants is approved for trade and barter by the director, and
 - (c) the harvester is in possession of a transportation certificate referred to in section 26 (1) if the trade and barter will occur outside British Columbia.
- (2) All species of fish and aquatic plants harvested in accordance with the Act and this regulation are approved for trade and barter unless otherwise prohibited by order of the director.

Transportation of fish and aquatic plants

- 26** (1) A person that transports outside of British Columbia, for their own personal use or for trade and barter, fish or aquatic plants harvested in Huu-ay-aht fisheries is required to have in their possession a transportation certificate issued by the manager that specifies
- (a) the quantity of each species of fish or aquatic plant being transported, and
 - (b) the destination of the transported fish or aquatic plants.
- (2) A transportation certificate referred to in subsection (1) must be
- (a) in a form approved by the director, and
 - (b) signed by the manager.
- (3) A person must not alter or deface a transportation certificate issued under this section.
- (4) If a transportation certificate is issued under subsection (1), a person that is transporting fish or aquatic plants for trade and barter must produce that transportation certificate on demand by an enforcement officer.

Fish harvesting rights outside Huu-ay-aht territory

- 27** (1) A Huu-ay-aht treaty participant must not exercise his or her right to harvest fish and aquatic plants outside of Huu-ay-aht territory except in compliance with this section.
- (2) If a Huu-ay-aht treaty participant wishes to exercise his or her right to harvest fish and aquatic plants outside of Huu-ay-aht territory, that Huu-ay-aht treaty participant must request the manager, in the manner required by the director, for permission to exercise that right.
- (3) A request made under subsection (2) must be in writing and include
- (a) the particular Maa-nulth First Nation area in which that Huu-ay-aht treaty participant wishes to exercise his or her right to harvest fish and aquatic plants,

- (b) the times during which that HUU-ay-aht treaty participant wishes to exercise his or her right to harvest fish and aquatic plants,
 - (c) the species of fish or aquatic plants that HUU-ay-aht treaty participant wishes to harvest, and
 - (d) the fishing gear and methods of harvest that HUU-ay-aht treaty participant intends to use in exercising his or her right to harvest fish and aquatic plants.
- (4) If the manager receives a request under subsection (2), the manager must, before issuing authorization under subsection (5),
- (a) contact the appropriate representative of the applicable Maa-nulth First Nation in whose Maa-nulth First Nation area the HUU-ay-aht treaty participant making that request wishes to exercise his or her right to harvest fish and aquatic plants, and
 - (b) seek permission on behalf of that Maa-nulth First Nation in accordance with Nuu-chah-nulth traditional practices and protocols or any written protocols or agreements between the Maa-nulth First Nations for the exercise of that right.
- (5) If permission is given under subsection (4), the manager may
- (a) issue written authorization to the HUU-ay-aht treaty participant making the request under subsection (2), and
 - (b) impose such reasonable conditions on that harvesting as the manager decides are necessary or advisable in the circumstances.
- (6) A HUU-ay-aht treaty participant issued written authorization under subsection (5) must only exercise his or her right to harvest fish and aquatic plants outside of the HUU-ay-aht territory in accordance with the laws of the applicable Maa-nulth First Nation and any conditions the manager imposes under subsection (5).

Variation of regulations

- 28**
- (1) If a time or location for harvesting fish or aquatic plants, a fishing quota or a limit on the size or weight of fish is permitted or prohibited under these regulations, the director may, by order, vary that time, location, fishing quota or limitation and make different orders for different classes of holders of HUU-ay-aht fishing authorizations, or for different species of fish or aquatic plants.
 - (2) The director may not make an order under subsection (1) that is inconsistent with a Maa-nulth harvest document.
 - (3) If the director makes a variation order under this section, the manager must give notice of the variation in accordance with HUU-ay-aht law and by doing one or more of the following:
 - (a) posting the notice in the area or in the vicinity of the area affected by the variation;
 - (b) transmitting the notice by electronic means to those persons affected by the order;
 - (c) providing verbal notice to those affected by the order.

Offences

- 29** (1) Every person who contravenes these regulations commits an offence subject to a penalty under the Act.
- (2) Subject to the Act and any other applicable Huu-ay-aht enactment, the director may determine the fine associated for each offence punishable under the Act.

SCHEDULE

[The following Schedule includes 4 application forms for harvesting:

- 1. Harvesting Licence*
- 2. Fish and aquatic plants*
- 3. Wildlife and Migratory birds*
- 4. Park gathering (and non timber forest products)]*

Huu-ay-aht First Nations Harvesting Licence Application

Enrollee # _____ Licence # _____

Last Name: _____ Given Name: _____

Date of Birth: _____

Address: _____

Telephone: _____ E-mail: _____

Emergency Contact: _____

Telephone: _____

Restrictions: _____

I certify that the information provided by me in this application is true

Signature: _____

Date: _____

OFFICE USE ONLY

Approved by: _____

Signature: _____

Date Issued: _____

Date Expires: _____

Huu-ay-aht First Nations Harvesting Licence Application - Fish and Aquatic Plants

Commercial Fishing Licence # (if applicable) _____ Licence # _____

Vessel Name: _____

Transport Canada Registration # _____

Length: _____ Make: _____

Construction: _____ Gear: _____

Registered Owner:
Address: _____

Restrictions: _____

I certify that the information provided by me in this application is true

Signature: _____

Date: _____

OFFICE USE ONLY

Approved by: _____

Signature: _____

Date Issued: _____

Date Expires: _____

**Huu-ay-aht First Nations Harvesting Licence Application
Wildlife & Migratory Birds**

Licence # _____

Firearm
Acquisition Number: _____

Restrictions: _____

Required?: Plate
Vehicle Make: _____ Number: _____

I certify that the information provided by me in this application is true

Signature: _____

Date: _____

OFFICE USE ONLY

Approved by: _____

Signature: _____

Date Issued: _____

Date Expires: _____

**Huu-ay-aht First Nations Harvesting Licence Application
Park Gathering (and non timber forest products)**

Licence # _____

Restrictions: _____

I certify that the information provided by me in this application is true

Signature: _____

Date: _____

OFFICE USE ONLY

Approved by: _____

Signature: _____

Date Issued: _____

Date Expires: _____

