

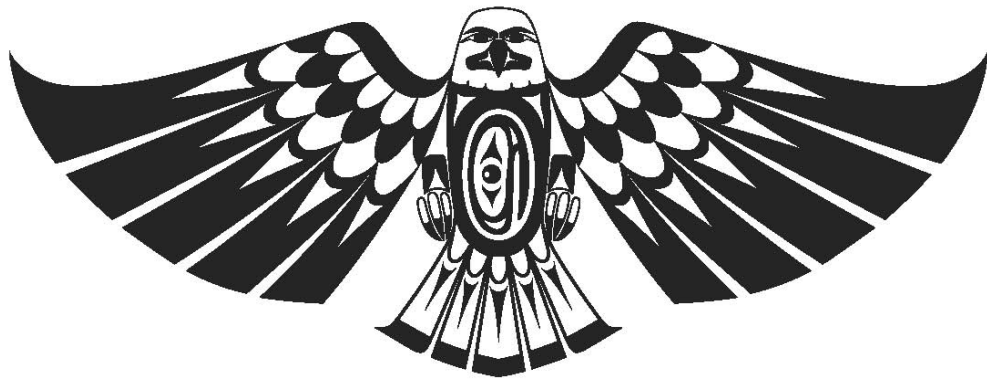
Tsawwassen First Nation Harvest Agreement



TSAWWASSEN FIRST NATION
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TSAWWASSEN FIRST NATION HARVEST AGREEMENT

**Canada
British Columbia
Tsawwassen First Nation**

ACCORD SUR LA RÉCOLTE DE LA PREMIÈRE NATION DE TSAWWASSEN

TSAWWASSEN FIRST NATION HARVEST AGREEMENT

Signed by the Parties to the Tsawwassen First Nation Harvest Agreement and dated for reference this ____ day of _____, _____ / Signé par les *parties* à l'*Accord définitif de la Première Nation de Tsawwassen* et ayant comme date de référence le _____ .

FOR THE TSAWWASSEN FIRST NATION / POUR LA PREMIÈRE NATION DE TSAWWASSEN signed in the province of _____ this ____ day of _____, _____ / Signé dans la province de _____ le _____ .

Kim Baird
Chief, Tsawwassen First Nation/chef de la
Première Nation de Tsawwassen

Witnessed by/Témoin :

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA/POUR SA MAJESTÉ LA REINE DU CHEF DU CANADA : signed in the province of _____ this ____ day of _____, _____ / Signé dans la province de _____ le _____ .

Her Majesty the Queen in Right of Canada as
represented by/Sa Majesté la Reine du chef du
Canada représentée par :

Witnessed by/Témoin

FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA/POUR SA MAJESTÉ LA REINE DU CHEF DE LA COLOMBIE-BRITANNIQUE : signed in the province of _____ this ____ day of _____, _____ / Signé dans la province de _____ le _____ .

Her Majesty the Queen in Right of British Columbia as
represented by/Sa Majesté la Reine du chef de la
Colombie-Britannique représentée par :

Witnessed by/Témoin :

TSAWWASSEN FIRST NATION HARVEST AGREEMENT

BETWEEN: Her Majesty the Queen in right of Canada (hereinafter called “Canada”)

OF THE FIRST PART

AND: Her Majesty the Queen in right of British Columbia (hereinafter called “British Columbia”)

OF THE SECOND PART

AND: Tsawwassen First Nation

OF THE THIRD PART

WHEREAS this Agreement is the Tsawwassen First Nation Harvest Agreement that the Parties agreed to enter into pursuant to clause 102 of the Fisheries chapter of the Tsawwassen Final Agreement;

AND WHEREAS the Parties confirm their commitment to enter into this Agreement with respect to the issuance of commercial fishing licences to Tsawwassen First Nation for Salmon and Crab;

AND WHEREAS Tsawwassen First Nation has indicated that the fishing opportunities that will be provided by the licences described in this Agreement are very important to Tsawwassen First Nation;

The Parties agree as follows:

Definitions

1. In this Harvest Agreement:

“Agreement” means this Harvest Agreement and Appendix A;

“Area E” means Commercial Salmon Licence Area E, as described in the Pacific Region Integrated Fisheries Management Plan for Salmon as established by the Minister, from time to time;

“Area I” means Commercial Crab Licence Area I, as described in the Pacific Region Integrated Fisheries Management Plan for Crab as established by the Minister, from time to time;

“Area J” means Commercial Crab Licence Area J, as described in the Pacific Region Integrated Fisheries Management Plan for Crab as established by the Minister, from time to time;

“Area E Gill Net Licence” means a Category A licence for gillnets for Area E issued under the Pacific Fishery Regulations, 1993;

“Canadian Commercial Total Allowable Catch” in respect of a stock or species of Fish, means the amount of the stock or species that the Minister determines is available for harvest in any commercial, experimental and demonstration fisheries in Canadian waters, but excludes harvests in test fisheries and food, social and ceremonial fisheries;

“Commercial Crab Licence” means a Category R licence issued under the Pacific Fishery Regulations, 1993;

“Crab” means those species of crab that the Minister authorizes to be harvested by a Commercial Crab Licence for Area I or Area J;

“Final Agreement” means the Final Agreement among Canada, British Columbia and Tsawwassen First Nation;

“Fraser River Chum Salmon” means chum salmon that return to the Fraser River drainage system;

“Fraser River Commercial Fishery” means a commercial Salmon fishery in the Fraser River authorized by the Minister, other than a test fishery or an excess salmon to spawning requirements fishery;

“Fraser River Pink Salmon” means pink salmon that return to the Fraser River drainage system;

“Fraser River Sockeye Salmon” means sockeye salmon that return to the Fraser River drainage system, but does not include kokanee salmon;

“General Commercial Fishery” means:

- a. in respect of Salmon, the fishery for Category A licences issued under the Pacific Fishery Regulations, 1993; and
- b. in respect of Crab, the fishery for Commercial Crab Licences for Area I or J;

“Joint Fisheries Committee” means the Joint Fisheries Committee as provided for in the Final Agreement;

“Minister” means, in respect of a matter, the Minister or Ministers of Her Majesty the Queen in right of Canada, or in right of British Columbia, as the case may be, having the responsibility, from time to time, for the exercise of powers in relation to the matter in question and includes a person appointed to serve in the department over which the Ministers presides, in a capacity appropriate to the exercise of those powers;

“Pacific Fishery Management Area” means a management area as defined in section 2 of the Pacific Fishery Management Area Regulations;

“Parties” means Tsawwassen First Nation, Canada, and British Columbia and “Party” means any one of them;

“Salmon” means sockeye salmon, pink salmon, chinook salmon, coho salmon and chum salmon;

“Terminal Commercial Catch” in respect of Fraser River Chum salmon, means the amount of Fraser River Chum salmon that the Minister determines is available for harvest in any commercial, experimental and demonstration fisheries in Pacific Fisheries Management Area 29 and within the Fraser River, but excludes harvests in test fisheries and food, social and ceremonial fisheries;

“Tsawwassen Commercial Allocation” means the Tsawwassen Commercial Allocation described in clause 11 of this Agreement; and

“Tsawwassen Fishing Area” means the Tsawwassen Fishing Area described in Appendix A.

Nature of Agreement

2. This Agreement is not a treaty or land claims agreement, and does not recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 or 35 of the Constitution Act, 1982.

Term of the Agreement

3. The term of this Agreement is 25 years, commencing on the date this Agreement comes into force.
4. Subject to clause 54, on the expiry of the term, this Agreement will be renewed on the same terms and conditions, at the option of Tsawwassen First Nation, for a further period of 15 years. Thereafter, on the fifteenth anniversary date of the Agreement and subject to clause 54, Tsawwassen First Nation will have the option to renew for further periods of 15 years in perpetuity.
5. Subject to clause 6, this Agreement comes into force on the Effective Date of the Final Agreement or such earlier date as the Parties may agree.
6. If the Effective Date of the Final Agreement is later than April 1st in a year and the Parties do not agree on an earlier date for this Agreement to come into force, this Agreement will come into force on January 1st of the following year.

Fishing Under the Harvest Agreement

7. The fishing envisioned by this Agreement is limited by measures necessary for conservation, public health or public safety.

8. For greater certainty, the Minister retains the authority to manage commercial fisheries, including whether to have any commercial fishery and, if so, where and when it will occur.
9. Where the Minister does not issue a licence to implement this Agreement due to measures necessary for conservation, public health or public safety, the Minister will provide written reasons to Tsawwassen First Nation and the Joint Fisheries Committee.

Salmon

10. Tsawwassen First Nation will relinquish an Area E Gill Net Licence to the Minister before the Effective Date.
11. Subject to clause 10, Tsawwassen First Nation will, each year, have a Tsawwassen Commercial Allocation equivalent to:
 - a. 0.78% of the Canadian Commercial Total Allowable Catch for Fraser River Sockeye Salmon for that year;
 - b. 3.27% of the Terminal Commercial Catch for Fraser River Chum Salmon for that year; and
 - c. 0.78% of the Canadian Commercial Total Allowable Catch for Fraser River Pink Salmon for that year.
12. Each year, the Minister will issue to Tsawwassen First Nation licences for the Tsawwassen Commercial Allocation for Fraser River Sockeye Salmon:
 - a. where the Minister authorizes a General Commercial Fishery for Fraser River Sockeye Salmon; or
 - b. where the Minister authorizes a Fraser River Commercial Fishery for Fraser River Sockeye Salmon and there is a Canadian Commercial Total Allowable Catch for Fraser River Sockeye Salmon that could be harvested in the Tsawwassen Fishing Area.
13. Each year, the Minister will issue to Tsawwassen First Nation licences for the Tsawwassen Commercial Allocation for Fraser River Chum Salmon:
 - a. where the Minister authorizes a General Commercial Fishery in Pacific Fisheries Management Area 29 for Fraser River Chum Salmon; or
 - b. where the Minister authorizes a Fraser River Commercial Fishery for Fraser River Chum Salmon and there is a Terminal Commercial Catch for Fraser River Chum Salmon that could be harvested in the Tsawwassen Fishing Area.

14. Each year, the Minister will issue to Tsawwassen First Nation licences for the Tsawwassen Commercial Allocation for Fraser River Pink Salmon:
 - a. where the Minister authorizes a General Commercial Fishery for Fraser River Pink Salmon; or
 - b. where the Minister authorizes a Fraser River Commercial Fishery for Fraser River Pink Salmon and there is a Canadian Commercial Total Allowable Catch for Fraser River Pink Salmon that could be harvested in the Tsawwassen Fishing Area.
15. The fishing envisioned by this Agreement for Salmon will have comparable requirements as a Fraser River Commercial Fishery or a General Commercial Fishery.
16. The licences issued to implement this Agreement for Salmon will provide for sale of fish and will be comparable to licences issued to participants in a Fraser River Commercial Fishery or a General Commercial Fishery.
17. A licence referred to in clause 16 will provide for the fishing to be carried out in the Tsawwassen Fishing Area unless otherwise agreed by Canada and Tsawwassen First Nation or unless the licence is comparable to an Area E Gillnet Licence, in which case the area will be the same area where holders of Area E Gillnet Licences may fish.
18. Each year, where a licence referred to in clause 12, 13 or 14 is to be comparable to licences issued to participants in the General Commercial Fishery, Tsawwassen First Nation will, before the Minister issues the licence:
 - a. complete an application in accordance with Federal Law and identify, in the application, the vessel designated to be used; and
 - b. meet all licence application requirements.
19. If the fisheries management system for a species of Salmon changes to a quota-based or other system and the Tsawwassen Commercial Allocation for the species is incongruent with the new system, the Tsawwassen Commercial Allocation for the species will be changed to the new system on the same basis as the General Commercial Fishery for that species.
20. Each year the Joint Fisheries Committee will conduct a post-season review of the fisheries envisioned by this Agreement, including, among other things, a comparison of the Tsawwassen First Nation harvest and the Tsawwassen Commercial Allocation.

21. Tsawwassen First Nation and the Joint Fisheries Committee may propose to the Minister and the appropriate integrated planning process, measures to balance Tsawwassen First Nation harvest with Tsawwassen Commercial Allocations over time.
22. If in the General Commercial Fishery for Salmon there is a system to account and adjust for differences between harvest and allocation, the same system will be used for Salmon fishing envisioned by this Agreement.

Crab

23. In any year that the Minister authorizes a General Commercial Fishery for Crab for Area I or J, the Minister will issue a Crab licence to Tsawwassen First Nation for each Commercial Crab Licence for that Area that Tsawwassen First Nation relinquishes in accordance with clause 26, once Tsawwassen First Nation has met the requirements in clause 24.
24. Each year, for each Crab licence for Area I or J to be issued in accordance with clause 23, Tsawwassen First Nation will complete an application in accordance with Federal Law, identify in that application the vessel designated to be used, and meet all licence application requirements.
25. Tsawwassen First Nation may relinquish, to the Minister, Commercial Crab Licences for Area I or J for the purposes of clause 23.
26. Tsawwassen First Nation may not relinquish more than five Commercial Crab Licences in accordance with clause 23.
27. The Crab licences referred to in clause 23:
 - a. will provide for the sale of Crab;
 - b. will provide for the same maximum vessel length as the Commercial Crab Licence that was relinquished; and
 - c. will be comparable to a Commercial Crab Licence for that Area.
28. The fishing envisioned by this Agreement for Crab in Area I or J will have comparable requirements as the General Commercial Fishery for Crab in that Area.
29. If the fisheries management system for Crab in Area I or J changes, the licences issued to implement this Agreement will be changed to the new system on the same basis as the General Commercial Fishery for Crab in that Area.

Designation of Fishers and Vessels

30. The Tsawwassen First Nation will designate individuals to fish under the licences issued to implement this Agreement and the vessels that are used.
31. Subject to clause 32, the vessels that Tsawwassen First Nation designates for a licence issued to implement this Agreement for Salmon must be vessels:
 - a. that are registered as defined in the Pacific Fishery Regulations, 1993 or;
 - b. that have a Department of Transport vessel registration number and meet the requirements for commercial fishing vessels of the Canadian Food Inspection Agency.
32. Where a licence issued to implement this Agreement for Salmon is comparable to licences issued to participants in the General Commercial Fishery, Tsawwassen First Nation will designate one vessel for the licence, which vessel must be registered as defined in the Pacific Fishery Regulations, 1993.
33. Tsawwassen First Nation will designate only one vessel for each Crab licence issued in accordance with clause 23, which vessel:
 - a. must be registered as defined in the Pacific Fishery Regulations, 1993;
 - b. must meet the conditions met by vessels for Commercial Crab Licences; and
 - c. must not exceed the maximum vessel length for the licence.
34. Where the Tsawwassen First Nation designates an individual or a vessel, the Tsawwassen First Nation will issue written documentation to evidence the designation.
35. Documentation referred to in clause 34 will:
 - a. be in the English language and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language;
 - b. in the case of an individual, include the name and address of the individual; and
 - c. meet the same requirements set out in the Tsawwassen Fisheries Operational Guidelines for designation under the Tsawwassen Fishing Right.
36. Tsawwassen First Nation will inform every individual who is designated to fish under a licence issued to implement this Agreement of the provisions of the licence and any other information related to the licence that the Minister requests.

37. Where Tsawwassen First Nation wishes to change the vessel designated to be used for a licence referred to in clause 32 or 33, Tsawwassen First Nation will:
- a. surrender, to the Minister, the previously issued licence and any related documents and decals; and
 - b. complete an application for vessel re-designation and identify, in the application, the new vessel designated to be used, and meet all application requirements.

Licence Fees and Charges

38. The Minister will not charge a fee for the licences issued to implement this Agreement.
39. Should participants in other commercial fisheries that harvest stocks or species included in this Agreement be required to pay management costs other than licence fees, Tsawwassen First Nation will be required to pay management costs on the same basis.

Harvest Agreement Fishing Plan

40. Each year, Tsawwassen First Nation may prepare a fishing plan for fishing envisioned by this Agreement that describes Tsawwassen First Nation's preferences with respect to:
- a. the stock or species of Salmon or Crab to be fished;
 - b. the method, location and timing of the fishing;
 - c. the size, type, identification, marking and quantity of fishing gear and the manner in which it may be used;
 - d. the description of the vessels to be used and how many;
 - e. catch monitoring and reporting of harvest;
 - f. other matters for which there may be provisions in a licence; and
 - g. other matters.
41. In any year where, under clause 40, Tsawwassen First Nation prepares a fishing plan, Tsawwassen First Nation will provide the fishing plan to the Joint Fisheries Committee in a timely fashion for review.
42. The Parties agree that the Joint Fisheries Committee will review the fishing plan and will provide the fishing plan and recommendations of the Joint Fisheries Committee to the appropriate integrated planning process for review and possible comment.

43. If the Joint Fisheries Committee is unable to convene due to special circumstances, or for any other reason has been unable to reach agreement on a recommendation, any Party may submit their written recommendations to the appropriate integrated planning process and will provide a copy to the other Parties.
44. The Minister will, in a timely fashion, provide Tsawwassen First Nation and the Joint Fisheries Committee with a copy of any comments that the Minister receives from an integrated planning process concerning the fishing envisioned by this Agreement.
45. Where Tsawwassen First Nation disagrees with any comments from an integrated planning process made under clause 42, Tsawwassen First Nation may, in writing, explain its disagreement and make a proposal to the Minister in a timely fashion. Tsawwassen First Nation will provide a copy of its written explanation and proposal to the Joint Fisheries Committee and the integrated planning process.
46. Each year, when the Minister issues a licence to implement this Agreement, the Minister will take into account:
 - a. any comments received in a timely fashion from the appropriate integrated planning process in respect of fishing for that year; and
 - b. any proposal received in a timely fashion from Tsawwassen First Nation under clause 45, in respect of fishing for that year.
47. In the event that a licence has material differences from the proposals received in a timely fashion from Tsawwassen First Nation under clause 45, the Minister will provide to Tsawwassen First Nation and the Joint Fisheries Committee written reasons for the differences.

Commercial Fishing Planning Processes

48. Tsawwassen First Nation's participation in integrated planning processes established by the Minister that are appropriate for the fishing envisioned by this Agreement will be on the same basis as participants in the General Commercial Fishery for Crab and a Fraser River Commercial Fishery for Salmon.
49. Where the Minister establishes consultative processes with respect to:
 - a. changes in the fisheries management system for Salmon referred to in clause 19 or Crab described in clause 29,
 - b. a system to account and adjust for differences between harvest and allocation referred to in clause 22, or
 - c. management costs referred to in clause 39,

Tsawwassen First Nation may participate in these consultative processes on the same basis as participants in other commercial fisheries.

Amendment

50. At any time, a Party may give notice in writing to the other Parties that it wishes to amend this Agreement.
51. Within three months of a Party giving notice under clause 50, the Parties will indicate whether they are willing to negotiate and attempt to reach agreement on the amendment.
52. This Agreement may be amended with the written agreement of the Parties.
53. If this Agreement is amended to provide access to other stocks or species of fish, there will be no recompense under clause 55 for that access.

Termination and Recompense

54. Any Party may, on giving one year's notice to the other Parties:
 - a. reduce one or more of the percentages in clause 11;
 - b. reduce the number of licences in clause 23;
 - c. terminate clause 11 or clause 23; or
 - d. terminate this Agreement.
55. If, under clause 54, a percentage in clause 11 or the number of licences in clause 23 is reduced or clause 11 or clause 23 or this Agreement is terminated, Tsawwassen First Nation will be entitled to be paid fair recompense from the Party or Parties that reduced the percentage or number of licences, or that terminated clause 11 or 23 or that terminated this Agreement.
56. The Party that took action under clause 54 and Tsawwassen First Nation will negotiate and attempt to reach agreement on fair recompense.
57. If the Party that took action under clause 54 and Tsawwassen First Nation cannot agree on determination of fair recompense, the Party and Tsawwassen First Nation agree to submit the issue to the process described in the Dispute Resolution Chapter of the Final Agreement.
58. If the Party that took action under clause 54 and Tsawwassen First Nation agree, the fair recompense could consist in whole or in part of money, or such other fair recompense as they may agree.
59. If all Parties agree, the fair recompense could consist in whole or in part of access to other species through an amendment to this Agreement made under clause 52.

60. If Tsawwassen First Nation and the Minister agree, the fair recompense could consist in whole or in part of the issuance of licences for the commercial fishery.

Notification

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

- a. To Canada: (Canada to confirm)
- Regional Director General
Fisheries and Oceans Canada
Suite 200, 401 Burrard Street
Vancouver, British Columbia, V6C 3S4
Phone: (604)-666-6098
Facsimile: (604)-666-8956
- b. To British Columbia:
- Assistant Deputy Minister
Oceans and Marine Fisheries Division
Ministry of Environment
PO Box 9339 Stn Prov Govt
Victoria, British Columbia,
Phone: (250)-356-9203
Facsimile: (250)-953-3414
- c. To Tsawwassen First Nation
- Fisheries Manager
Tsawwassen First Nation
#131 North Tsawwassen Drive
Delta, British Columbia, V4M 4G2
Phone: (604)-943-2112
Facsimile: (604)-943-9226

62. Such notices, requests, directions, information or other communication 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, facsimile or delivered in person.

Judicial Determinations in Respect of Validity

63. The Parties agree that if any person initiates legal proceedings that challenge the validity of some or all of this Agreement, the Parties will defend the validity of the Agreement in any such proceedings.

64. If a superior court of British Columbia or the Supreme Court of Canada finally determines any provision of this Agreement to be invalid or unenforceable, the Parties will make best efforts to amend this Agreement to remedy or replace the provision.

Dispute Resolution

65. If any issue arises with respect to the interpretation of this Agreement where the Parties cannot reach an acceptable solution, the Parties agree to use the process described in the Dispute Resolution Chapter of the Final Agreement.

General

66. This Agreement shall be interpreted in accordance with the law in force in the Province of British Columbia, subject to any paramount or applicable federal laws.
67. This Agreement constitutes the entire Agreement among the Parties.
68. Tsawwassen First Nation may not assign or subcontract this Agreement or any part thereof.
69. For greater certainty, clause 68 does not affect the ability of Tsawwassen First Nation to designate individuals and vessels under clause 30.
70. In this Agreement, a reference to a regulation includes every amendment to it, and any law enacted in substitution for it or in replacement of it.

**TSAWWASSEN
FIRST NATION**

**LAND
FACING
THE SEA**



If you would like more information about the Tsawwassen First Nation Harvest Agreement, contact:

Canada

Indian and Northern Affairs Canada
600 - 1138 Melville Street
Vancouver, BC V6E 4S3
1-800-567-9604
www.ainc-inac.gc.ca
infopubs@ainc-inac.gc.ca

Tsawwassen First Nation

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British Columbia

Ministry of Aboriginal Relations
and Reconciliation
PO Box 9100 Stn Prov Govt
Victoria, BC V8W 9B1
1-800-880-1022
www.gov.bc.ca/arr
ABRInfo@gov.bc.ca