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AL93-01

This Allocation Agreement dated as of the 24th 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: Lheit-Lit'en Nation Indian Band
(hereinafter called the "First Nation")

OF THE SECOND PART

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 First Nation are interested in the development and maintenance of an effective harvest management system for fishing by the members of the Bands;

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

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

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) "Aboriginal Fishery Officer" means a member of the First Nation hired by the First Nation and designated as a fishery guardian by the Minister pursuant to section 5 of the Fisheries Act;
- (c) "Communal Licence" means any communal fishing licence specified in subsection 1.1 of Schedule "B";
- (d) "Minister" means the Minister of Fisheries and Oceans;
- (e) "Participant" means a person designated by the First Nation in accordance with this Agreement to harvest fish under a licence referred to in this Agreement;
- (f) "Fishery" means the harvesting of the fish by Participants under and in accordance with this Agreement;
- (g) "Plan" means DFO's 1993 Management Plan for the species of fish identified in Schedule "B", as amended by DFO from time to time;

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(h) "RDG" means the Director General, Pacific Region, Department of Fisheries and Oceans.

2.0 Purpose

2.1 The purpose of this Agreement is to increase the involvement of the First Nation in the management of fishing by the First Nation 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 the First Nation, 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 First Nation 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 First Nation will ensure that its members understand that the allocation in any Communal Licence includes the allocation for food, social and ceremonial purposes for the term of this Agreement.

3.3 The First Nation agrees to fish for the species of fish referred to herein only in accordance with this Agreement and the Plan for the species during the term of this Agreement.

3.4 Nothing in this Agreement precludes the Parties from entering into negotiations on harvesting of fish species other than those referred to in this Agreement.

4.0 Licensing, Designation and Effort Fishing Limits

4.1 DFO will issue to the First Nation a Communal Licence as may be specified in Schedules "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 The First Nation will designate, and will issue personal and non-transferable designation cards to all Participants.

4.5 Before fishing under the applicable licence referred to in this Agreement commences, the First Nation will provide to DFO a list of the names of all Participants, together with their designation card number.

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- 4.6 (a) The First Nation may amend the list of names and designation card numbers referred to in subsection 4.5.
- (b) The First Nation will provide the amended list referred to in paragraph 4.6(a) to DFO before the newly designated Participants set out therein commence fishing.
- 4.7 The designation card provided by the First Nation to each Participant will specify that the card is personal and non-transferable, will identify the Participant and will bear a unique card number.
- 4.8 The designation card provided by the First Nation to each Participant harvesting under a Communal Licence will identify the Participant and will bear a unique card number.
- 4.9 The First Nation will ensure that each Participant is made aware of the terms and conditions of this Agreement and will incorporate the terms and conditions of the licence referred to in this Agreement into the terms and conditions of the designation card provided to each Participant and the First Nation will inform each Participant of any amendments to this Agreement and of any amendments to the terms and conditions in the licence.
- 4.10 A Participant will carry a valid designation card at all times while engaged in any fishing activities referred to in this Agreement (including the harvesting, transporting and landing) and will present such designation card to a DFO fishery officer, a DFO fishery guardian, or an Aboriginal Fishery Officer upon request.
- 4.11 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.
- 4.12 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 First Nation 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 First Nation 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 First Nation, but the RDG must consult with the First Nation at the first available opportunity.
- 7.0 Monitoring and Enforcement

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- 7.1 The First Nation will provide Aboriginal Fishery Officers to monitor the fishing activities referred to in this Agreement.
- 7.2 The Aboriginal Fishery Officers will conduct monitoring at the locations referred to in Schedule "B" 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 card;
 - (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 a designation card or the applicable licence referred to in this Agreement;
 - (g) misreporting or failure to report catch;
 - (h) unauthorized sale;
 - (i) in-season patrols during both open and closed times;
 - (j) monitoring roads;
 - (k) other matters as agreed to by DFO and the First Nation.
- 7.4 The First Nation will share with DFO all information related to catch monitoring and enforcement patrols.
- 7.5 The First Nation 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 will account for all fish caught under either a 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 or on the ground.
- 7.7 The First Nation will have Aboriginal Fishery Officers present during fisheries openings. DFO may, in its discretion, verify the monitoring processes, including on-site inspections.
- 8.0 Aboriginal Fishery Officers
- 8.1 In addition to provisions in this Agreement, the powers, duties and responsibilities of Aboriginal Fishery Officers may be set out in a separate agreement between the Parties related to this Agreement.

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- 8.2 The powers, duties and responsibilities of Aboriginal Fishery Officers will reflect their training and experience.
- 8.3 Aboriginal Fishery Officers will carry out any enforcement activities within the scope of their designation by the Minister pursuant to section 5 of the Fisheries Act.
- 8.4 The Aboriginal Fishery Officers will not be issued firearms or any other weapons nor be allowed to carry firearms or any other weapons in the course of their duties and will not be authorized to use force in the course of their duties.
- 8.5 Aboriginal Fishery Officers will not be authorized to search or arrest in the course of their duties.
- 8.6 Aboriginal Fishery Officers must meet DFO security clearance and reliability checks.
- 8.7 The First Nation will provide insurance coverage for Aboriginal Fishery Officers, including short term and long term disability insurance, and will provide third party liability insurance suitable to both Parties.
- 8.8 The First Nation will issue to Aboriginal Fishery Officers the appropriate equipment for operations, communications and personal safety needs.
- 8.9 Aboriginal Fishery Officers will not participate in the Fishery in an area where they have enforcement responsibilities.
- 8.10 The Aboriginal Fishery Officers will consult with and work cooperatively with DFO fishery officers and DFO fishery guardians when monitoring fishing and related activities or 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 First Nation 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 by the other party 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:

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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 Lheit Lit'en Nation Indian Band

Lheit Lit'en Nation
R. R. #1, Site 27, Comp. 60
Prince George, B. C.
V2N 2H8

Attention: Peter Quaw
Chief

Telephone: (604) 963-8451
Facsimile: (604) 963-8324

- 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 First Nation is responsible for all costs associated with fishing activities referred to in this Agreement, including but not limited to all costs associated with providing the monitoring activities by Aboriginal Fishery Officers and the reports, logs, and landing slips and other documentation referred to in this Agreement.
- 13.2 The First Nation is responsible for all operating, training, salary and benefit costs, including short and long term disability insurance, for the Aboriginal Fishery Officers.

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14.0 Ratification

- 14.1 The First Nation will ensure that its members are aware of the contents of this Agreement.
- 14.2 The First Nation warrants that the representative who executes this Agreement on behalf of the First Nation has authority to bind the members of the First Nation.
- 14.3 Execution of this Agreement by DFO and the representative referred to in subsection 14.2 constitute ratification.

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 First Nation 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 Office 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 First Nation or of DFO shall constitute or be deemed to constitute the First Nation as an agent of DFO or DFO as an agent of the First Nation.
- 16.6 Neither Party shall at any time hold itself out as acting as an agent of the other Party.
- 16.7 The First Nation will comply with the Fisheries Act and regulations thereunder as amended from time to time.
- 16.8 The First Nation 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.

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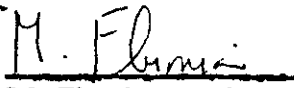
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IN WITNESS WHEREOF the Parties have executed this Agreement under the hands of their proper officers duly authorized in that behalf.

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

Their Lit'en Nation Indian Band by its duly authorized representative



Witness



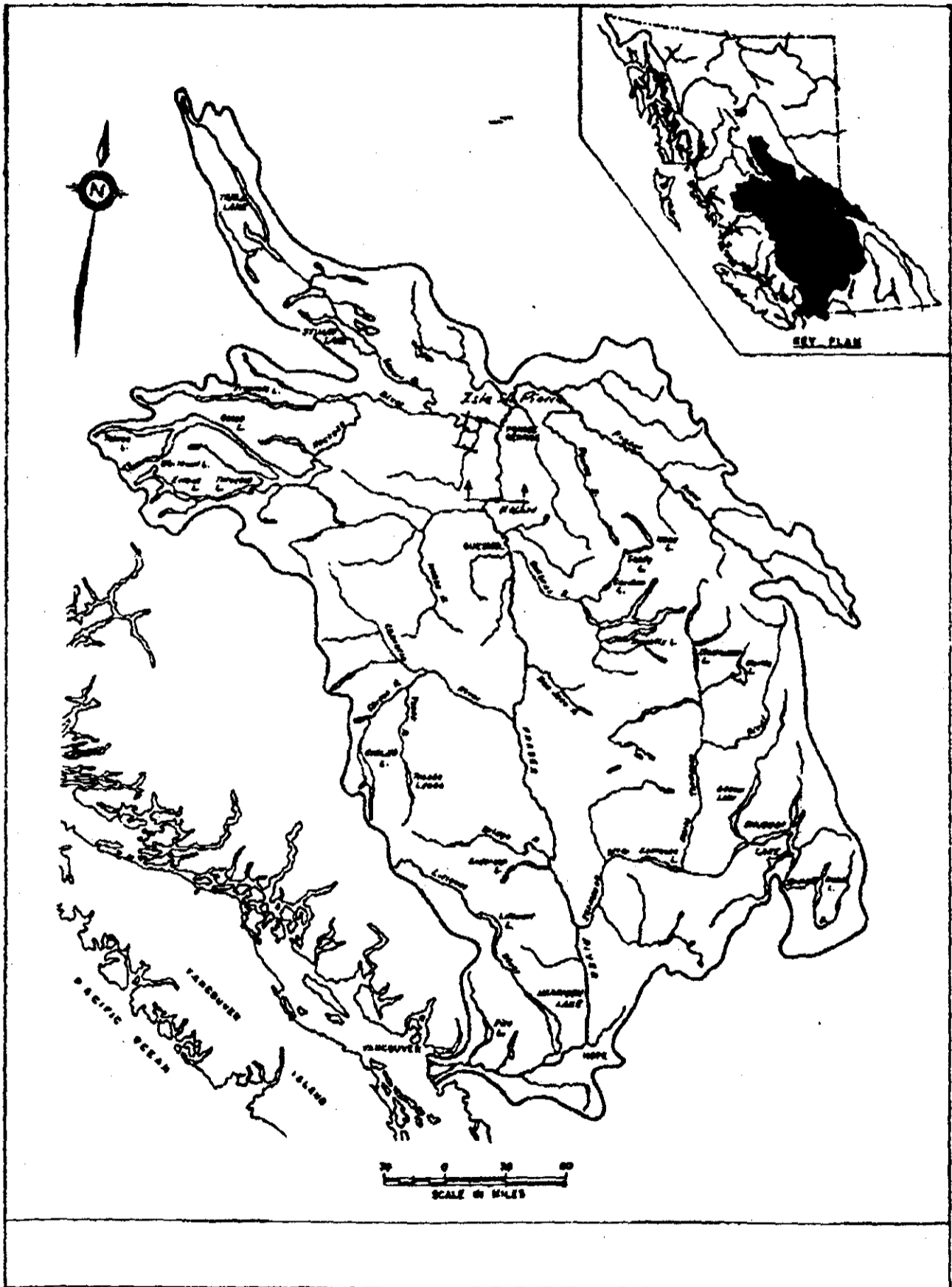
Chief Peter Quaw

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SCHEDULE "A"

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SCHEDULE "B"

1.0 Communal Licence

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: 10,000 Sockeye (3,500 of these will be used for a local pow-wow and river rafting excursion)
500 Chinook
- (b) Location: Nechako River Drainage downstream of Isle Pierre and Fraser River Drainage upstream of Hixon
- (c) Dates and Times: 12:00 hrs. June 24, 1993 to 24:00 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
- (e) Maximum Number of Fishing Gear/Type at Any One Time: One net per person.
- (f) Gear Marking: By agreement with the First Nation

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

AND: Lheit-Lit'en Nation Indian Band (First Nation)

Allocation Agreement

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