

## MAA-NULTH FIRST NATIONS SIDE AGREEMENT SUMMARY

### MAA-NULTH FIRST NATIONS: HARVEST AGREEMENT

#### **Purpose**

The Harvest Agreement (the “HA”) is the mechanism for holding commercial fisheries allocations provided to Maa-nulth First Nations. The HA is not part of the Final Agreement which means the HA does not provide a constitutionally protected commercial right to fish. Rather, the HA provides long-term, guaranteed and renewable commercial fishing privileges for Maa-nulth First Nations to a defined share of the commercial catch.

The Parties to the HA are the Maa-nulth First Nations, Canada, and British Columbia.

#### **How the Agreement Works**

*Nature of the HA:* Fish caught under the HA is for commercial use. The HA is not part of the Treaty and it does not recognize an aboriginal or treaty right to commercial fish. The HA does not provide individual Maa-nulth members with a treaty right to commercial fish. Also, the HA should not be confused with Harvest Documents where domestic fish (food, social and ceremonial fish) caught under Harvest Documents cannot be sold.

*Term of the HA:* The HA begins on the Effective Date of the Final Agreement or such earlier date as the Parties agree. The term of the HA is 25 years, beginning on the date the HA comes into effect. The HA includes terms for renewal, at the option of Maa-nulth First Nations for a further period of 15 years. On the 15<sup>th</sup> anniversary of the HA, Maa-nulth First Nations have the option to renew for further periods of 15 years, in perpetuity (forever). This is what is referred to as the HA being ‘renewable on an evergreen basis’.

*Fishing Licenses Held in the HA:* They are listed as follows:

- SALMON: 8 Area D Gillnet and Area G Troll
- TERMINAL SALMON: 1 Area D Gillnet comparable to 20% of the Terminal Commercial Total Allowable Catch of Henderson Lake sockeye and 25 % of Terminal Commercial Total Allowable Catch of Jensen Lake sockeye
- HALIBUT: Halibut licenses comparable to 0.3506476% of the Halibut Canadian Commercial Total Allowable Catch
- ROCKFISH: One rockfish license
- CRAB: One Area E crab license
- ROE HERRING: Four roe-herring Gillnet licenses
- SABLEFISH: 0.34% of the Sablefish Commercial Total Allowable Catch

*Fishing Contemplated by the HA:* Commercial fishing under the HA remains under the authority of the Minister of Fisheries and Oceans and the same rules and regulations as the General Commercial Fishery will apply to Maa-nulth First Nations.

*Existing Commercial Licenses held by Maa-nulth First Nations:* In recent decades, the primary mechanism to provide commercial fishing opportunities for First Nations has been to purchase licenses from commercial fishers through the government's Allocation Transfer Program (ATP) and re-issue them to First Nations as communally held ATP commercial licenses. ATP Licenses currently held by Maa-nulth First Nations can be relinquished to the Department of Fisheries and Oceans ("DFO") and then moved into the HA.

*Relinquishment of License Process:* The relinquishment of license process is an administrative step used by DFO to convert or transfer ATP licenses into HA Licenses. It could also be used in the future to convert HA Licenses back into the General Commercial Fishery, although there are limits. ATP Licenses relinquished to convert to HA licenses must be relinquished within 15 years of the effective date of the HA.

*Termination and Compensation:* A distinct feature of a HA in comparison to a general commercial fishing license, is that Canada has committed to issue all the commercial fishing licenses listed in the HA to Maa-nulth First Nations. If this commitment is terminated in the future in certain circumstances, then Canada will pay compensation to the Maa-nulth First Nations for termination of that license. There is a limit on the total number of commercial licenses that can be compensated under the HA.

*Termination Process:* Any Party, on giving 120 days notice to the other Parties, may terminate or reduce any or all of the fishing access described in the HA, or may terminate this HA. There are basically four ways that Canada may terminate or reduce any or all of the fishing access in the HA:

- Reduce the percentage of commercial catch
- Reduce the number of licenses in an Area
- Terminate a license(s) in an Area
- Terminate the HA

*Fair Compensation:* The HA sets out that if any action is taken to terminate or reduce any or all fishing access under the HA, Maa-nulth is entitled to be paid fair compensation by the Party or Parties. The Parties will negotiate and attempt to reach agreement on fair compensation. The HA provides that fair compensation could consist in whole or in part of:

- Money
- Access to other species through an amendment to the HA
- Issuance of licences for the General Commercial Fishery.
- Such other compensation as they may agree.

*Amendment:* The HA may be amended at any time with the written agreement of the Parties. Each of the Parties is responsible for their own costs for their participation with the HA. If a superior court or the Supreme Court of Canada finally determines that any provision of this HA to be invalid or unenforceable, the Parties will make their best efforts to amend the HA to remedy or replace the provision.

*Other provisions:* The HA is based on the fisheries management system at the time the HA is negotiated. If the fisheries management system, including but not limited to category of license and a quota system, for a fishery in an area changes, the licenses issued in this HA for the fishery in the area will be changed to the new system on the same basis as licenses in the General Commercial Fishery for the fishery in that area.

Maa-nulth First Nations participation will be on the same basis as for participants in the General Commercial Fishery with respect to processes established by the Minister of DFO for:

- Integrated planning processes
- Any consultative process with respect to changes in the fisheries management systems or management costs

*Designation of Fishers and Vessels:* Maa-nulth First Nations will designate individuals to fish under the licences issued to implement the HA, and the vessels to be used. Maa-nulth will issue written documentation to the individual or vessel to indicate their designation. Maa-nulth will inform every designated individual of the provisions of the license.

Maa-nulth First Nations will designate only one vessel for each license issued in the HA. The vessel must be registered on the same basis as vessels in the General Commercial Fishery.

*License Fees and Charges:* Maa-nulth First Nations will not be charged any license fees to implement the HA. Maa-nulth First Nations will pay management costs for stocks and species on the same basis as participants in the General Commercial Fishery.

*Ahousaht Litigation:* 10.2.3 (the “Me-Too Clause” or **change to the proposed “Fisheries Litigation Clause”**) of the Final Agreement describes the process for the Parties following a decision from the highest court in Canada (the “Decision”) that hears *Ahousaht et al.* (the “NTC Litigation”).

If the result of the Decision finds one or more of the Maa-nulth First Nations has an aboriginal right to fish on a commercial basis for salmon, halibut, rockfish, roe herring, sablefish, prawn or crab, then amendments will be made to the Final Agreement and the HA as described in Appendices I - VII of the HA. This means that any of the relevant commercial licences set out in the Decision, will be deleted from the HA and added to the Final Agreement as a new appendix.

*Legal Challenges to the HA:* If any person initiates a legal challenge to the validity of some or all of the HA, the Parties will defend its validity. If a superior court or the Supreme Court of Canada finally determines that any provision of this HA to be invalid or unenforceable, the Parties will make their best efforts to amend the HA to remedy or replace the provision.

*Dispute Resolution:* If a dispute arises over the interpretation of the HA and the Parties cannot reach an acceptable solution, the Parties agree to use the process described in the Dispute Resolution Chapter of the Final Agreement.

### **What Comes Next**

For Maa-nulth First Nations to fish under a license issued to implement the HA, they will need, on the same basis as participants in the General Commercial Fishery, to have made the appropriate arrangements to have been allocated quota for other species. This means for those commercial licenses where by-catch quotas must be identified.

Before the HA comes into effect, the Parties will agree on provisions to provide Maa-nulth First Nations with the ability to area re-select for fisheries in the HA on the same basis as other in the General Commercial Fishery for those fisheries. Maa-nulth First Nations may have commercial licenses that include the opportunity for Area re-selection.