

UCHUCKLESAHT TRIBE GOVERNMENT

Enacted under the Resource Harvesting Act section 9.1

FISHERIES REGULATION

UTR 5/2011



This regulation enacted on April 1, 2011

Signed 
Charlie Cootes, Chief Councillor of the
Uchucklesaht Tribe

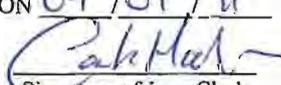
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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This regulation may be cited as the Fisheries Regulation.

Application

1.2 This regulation governs harvesting in Uchucklesaht fisheries.

Definitions

1.3 In this regulation

“Act” means the Resources Harvesting Act;

“application” means the form attached as Schedule 1 to the Wildlife and Migratory Birds Regulation;

“enforcement officer” means

(a) a resource management officer, or

(b) a fishery officer as defined in the Fisheries Act (Canada);

“family member” means a spouse, son, daughter, parent, grandparent, grandchild, aunt, uncle, nephew or niece of a Uchucklesaht enrollee;

“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 the fishing gear of a person and that fish is not the primary target for which that person’s fishing gear is set;

“manager” means a manager of fisheries appointed under section 5.1 of the Act;

“Uchucklesaht fishing authorization” means Uchucklesaht fishing documentation, Uchucklesaht commercial fishing documentation or a Uchucklesaht commercial fishing licence, as the context may require;

“Uchucklesaht fishing authorization number” means the number designating a valid and current Uchucklesaht fishing authorization assigned at the time the Uchucklesaht fishing authorization is issued.

PART 2 - FISHERIES ADMINISTRATION

Manager of Uchucklesaht fisheries

- 2.1**
- (a) The position of manager of fisheries is established as a position within the Department of Lands and Resources.
 - (b) In accordance with section 5.1 of the Act, the chief administrative officer may appoint an individual to hold the office of manager.
 - (c) The manager reports to the director.

Duties of the manager of fisheries

- 2.2** The manager must carry out the following duties:
- (a) manage and administer the Uchucklesaht fisheries;
 - (b) ensure that Uchucklesaht government employees within the Department of Lands and Resources carry out the duties assigned to them relating to Uchucklesaht fisheries
 - (i) under this or any other Uchucklesaht enactment,
 - (ii) by the manager, or
 - (iii) by the director;
 - (c) report, as required by the director, to the Executive on Uchucklesaht fisheries activities; and
 - (d) any other duties assigned to the manager
 - (i) under this or any other Uchucklesaht enactment, or
 - (ii) by the director.

Manager's authority may be delegated

- 2.3**
- (a) Upon the 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
 - (i) another manager within the Department of Lands and Resources,
 - (ii) a Uchucklesaht government employee, or
 - (iii) an independent contractor of the Uchucklesaht Tribe.

- (b) Despite the delegation of any duties or powers under subsection (a), the manager remains responsible for ensuring that those duties are carried out properly and those powers are exercised appropriately.
- (c) In the event that a Uchucklesaht fishing authorization is to be revoked for a family member of the manager, the manager must, in accordance with the Integrity Act, delegate his or her responsibility respecting the revoking of that Uchucklesaht fishing authorization to an individual identified in subsection (a).

PART 3 - UCHUCKLESAHT FISHING AUTHORIZATION

Application for authorization

- 3.1**
- (a) The director has the sole authority to authorize the issuance of a Uchucklesaht fishing authorization and the designation of fishing vessels by means of approving an application.
 - (b) An application must be completed by an applicant applying for a Uchucklesaht fishing authorization and that applicant must include the following information:
 - (i) the full name and mailing address of the applicant;
 - (ii) the phone number of the applicant;
 - (iii) Uchucklesaht enrollee's enrolment number, if applicable;
 - (iv) the type of fishing gear to be used by the applicant;
 - (v) the particulars as defined in section 4.1 for the fishing vessel, if any, to be used by the applicant;
 - (vi) the signature of the applicant; and
 - (vii) a certification on the application stating the information given in the application or any supporting document submitted as required under section 2.6 of the Act is true.
 - (c) When an application for a Uchucklesaht fishing authorization is received by the director, the manager must record the following information:
 - (i) the date the application was received;
 - (ii) the date the Uchucklesaht fishing authorization was issued or refused;
 - (iii) if a Uchucklesaht fishing authorization is issued;
 - (A) its date of issuance and its date of expiration,
 - (B) any conditions imposed on the Uchucklesaht fishing authorization, and
 - (C) the Uchucklesaht fishing authorization number,
 - (iv) the fee paid, if any; and

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

Conditions of authorization

- 3.2**
- (a) For the proper management and control of Uchucklesaht fisheries and the conservation and protection of fish and aquatic plants, the director may attach the conditions the director decides are appropriate to a Uchucklesaht fishing authorization that are not inconsistent with the Act, this regulation, any other Uchucklesaht enactment, a Maa-nulth harvest document and the annual fishing plan.
 - (b) It is a condition of every Uchucklesaht fishing authorization issued that the holder of the Uchucklesaht fishing authorization comply with the Maa-nulth 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.
 - (c) Every person carrying out any activity under the authority of a Uchucklesaht fishing authorization must comply with every condition of that Uchucklesaht fishing authorization.

Form of authorization

- 3.3**
- (a) A Uchucklesaht fishing authorization issued by the director must include the following:
 - (i) the Uchucklesaht Tribe logo;
 - (ii) the Uchucklesaht fishing authorization number;
 - (iii) the photograph of the holder of the Uchucklesaht fishing authorization;
 - (iv) the name and address of the holder of the Uchucklesaht fishing authorization;
 - (v) the date of issue of the Uchucklesaht fishing authorization;
 - (vi) the date of expiration of the Uchucklesaht fishing authorization; and
 - (vii) a location for the signature of the holder of the Uchucklesaht fishing authorization.
 - (b) A Uchucklesaht fishing authorization issued by the director to a person that is not a Uchucklesaht enrollee must include the following:
 - (i) the Uchucklesaht Tribe logo;

- (ii) the Uchucklesaht fishing authorization number;
 - (iii) the name and address of the holder of the Uchucklesaht fishing authorization;
 - (iv) the date of issue of the Uchucklesaht fishing authorization;
 - (v) the date of expiration of the Uchucklesaht fishing authorization; and
 - (vi) a location for the signature of the holder of the Uchucklesaht fishing authorization.
- (c) A Uchucklesaht fishing authorization issued by the director is not valid unless it is signed in ink on the place designated on the Uchucklesaht fishing authorization;
- (i) by the holder of the Uchucklesaht fishing authorization, or
 - (ii) in the case of a corporate holder of the Uchucklesaht fishing authorization, by an authorized signatory of the corporate holder.

Term of authorization

- 3.4** (a) A Uchucklesaht fishing authorization issued to a Uchucklesaht enrollee has a term of five years.
- (b) A Uchucklesaht fishing authorization issued to a person that is not a Uchucklesaht enrollee, Uchucklesaht commercial fishing documentation or a Uchucklesaht commercial fishing licence issued to a Uchucklesaht enrollee will have a specified term not to exceed one year.
- (c) If the holder of a Uchucklesaht fishing authorization ceases to be a Uchucklesaht enrollee or otherwise ceases to be an agent or contractor of the Uchucklesaht Nation, the holder must immediately cease fishing and the Uchucklesaht fishing authorization issued to that holder is deemed to be cancelled as of the date that holder ceased to be a Uchucklesaht enrollee or otherwise ceased to be an agent or contractor of the Uchucklesaht Tribe and must be immediately delivered to the manager and, in any event, no later than five business days from the date the Uchucklesaht fishing authorization is deemed cancelled.
- (d) If a person's Uchucklesaht fishing authorization is cancelled or suspended, the person must deliver the Uchucklesaht fishing authorization to the manager within five business days of the notice of cancellation or suspension.

Replacement of authorization

- 3.5** (a) If the holder of a Uchucklesaht fishing authorization has

- (i) a change of name or address,
- (ii) their Uchucklesaht fishing authorization lost, stolen or destroyed, or
- (iii) an illegible Uchucklesaht fishing authorization,

the manager may issue a replacement Uchucklesaht fishing authorization showing any applicable changes.

- (b) On receipt of a replacement Uchucklesaht fishing authorization, the holder of the Uchucklesaht fishing authorization must immediately destroy the Uchucklesaht fishing authorization that has been replaced if it is still in the holder's possession.
- (c) If the holder of a replacement Uchucklesaht fishing authorization recovers the Uchucklesaht fishing authorization that was replaced, the holder must immediately destroy it.

Documentation fees

- 3.6** The fees set out in section 3.7 of the Wildlife and Migratory Birds Regulation are prescribed for the purposes of section 2.6 of the Act as the application fee for Uchucklesaht fishing documentation.

Authorization issued in error

- 3.7** If a Uchucklesaht fishing authorization was issued in error or contains an error, the manager may:
- (a) request the holder of the Uchucklesaht fishing authorization to deliver it to the manager so it can be corrected or replaced, and
 - (b) the holder of the Uchucklesaht fishing authorization must within five business days comply with the request.

Ownership of authorization

- 3.8** A Uchucklesaht fishing authorization is the property of the Uchucklesaht Tribe and is not transferable.

Surrender of authorization on suspension

- 3.9** If a Uchucklesaht fishing authorization is suspended, the holder of the Uchucklesaht fishing authorization must,
- (a) within five business days deliver the Uchucklesaht fishing authorization to the manager, and

- (b) immediately cease fishing under the Uchucklesaht fishing authorization.

Requirement to carry and produce authorization

3.10 A holder of a Uchucklesaht fishing authorization must

- (a) carry that Uchucklesaht fishing authorization at all times while harvesting in Uchucklesaht fisheries,
- (b) in the case of a person that is not a Uchucklesaht enrollee, carry government issued photo identification, and
- (c) produce that
 - (i) Uchucklesaht fishing authorization, and
 - (ii) in the case of a person that is not a Uchucklesaht enrollee, that government issued photo identification,on the request of an enforcement officer.

Restrictions on alteration and use of authorization

3.11 (a) A person other than the manager must not

- (i) alter or deface a Uchucklesaht fishing authorization,
 - (ii) use or produce a Uchucklesaht fishing authorization that has been altered or defaced,
 - (iii) use or produce a Uchucklesaht fishing authorization that has been issued to another person under the pretence of being the holder of that Uchucklesaht fishing authorization, or
 - (iv) use or produce a Uchucklesaht fishing authorization that has since been replaced under section 3.5.
- (b) A holder of a Uchucklesaht fishing authorization must not permit another person to use that Uchucklesaht fishing authorization.

PART 4 - HARVESTING REQUIREMENTS

Fishing vessels

4.1 Vessels fishing in Uchucklesaht fisheries must:

- (a) be designated by the director;
- (b) be compliant with applicable marine safety enactments; and
- (c) have a Uchucklesaht Tribe decal or flag prominently displayed on the vessel.

Identification of fishing gear

- 4.2
- (a) No person may set, operate or leave unattended in the water any fishing gear, other than hand lines, unless the fishing gear is marked in accordance with subsections (c) to (e) with a Uchucklesaht fishing authorization number.
 - (b) A Uchucklesaht 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.
 - (c) The numerals or letters, as the case may be, of a Uchucklesaht fishing authorization number marked on fishing gear as referred to in subsection (a) must be in solid block Arabic numerals or block capital letters in Roman characters, as the case may be,
 - (i) without ornamentation,
 - (ii) not less than 75 mm in height, and
 - (iii) in a colour that contrasts with their background.
 - (d) A tag, float or buoy referred to in subsection (b) must have only one Uchucklesaht fishing authorization number marked on it.
 - (e) A tag, float or buoy referred to in subsection (b) must
 - (i) 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
 - (ii) in any other case, be affixed to each end of the fishing gear.

Fishing gear with mesh

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

Release of incidental catch

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

Identification

- 4.5** A person who harvests fish must not, before processing or preserving that fish on shore, have that fish in that person's possession if the fish 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

except for fish consumed by that person off shore.

Reporting of catch

- 4.6** (a) A holder of a Uchucklesaht fishing authorization must report to the manager the quantity of fish and aquatic plants harvested in Uchucklesaht fisheries in accordance with the terms and conditions established by the director, by order.

- (b) The catch reporting requirements referred to in subsection (a) must be consistent with those described in any Maa-nulth harvest document, the Maa-nulth fisheries operational guidelines and any management plan developed for Uchucklesaht fisheries.

Time and location of harvests

- 4.7**
- (a) The time and location of harvesting in Uchucklesaht fisheries that are permitted or prohibited under this section are subject to an order of the director under section 5.4 of the Act or under section 5.4 of this regulation.
 - (b) A person must not harvest in Uchucklesaht fisheries at a time or in a location other than as permitted in this section.
 - (c) Subject to the Maa-nulth Treaty, the Act and this regulation, every person with valid Uchucklesaht fishing documentation is authorized by the Uchucklesaht Tribe to exercise the right to harvest fish and aquatic plants under the Maa-nulth Treaty at the times and locations permitted by the director from time to time, by order.
 - (d) Subject to applicable federal law and provincial law, every person with valid Uchucklesaht commercial fishing documentation or a valid Uchucklesaht commercial fishing licence at the times and locations permitted by the director from time to time, by order.

Restrictions

- 4.8** A person who catches and retains fish under a Uchucklesaht fishing authorization must comply with any applicable size, age, weight and sex restrictions contained in an order made by the director under section 5.4 of the Act or under section 5.4 of this regulation.

PART 5 - GENERAL

Trade and barter of fish or aquatic plants

- 5.1** (a) A person who harvests fish or aquatic plants in Uchucklesaht fisheries may trade and barter those fish or aquatic plants with other aboriginal people if
- (i) the harvester is a Uchucklesaht enrollee,
 - (ii) the species of fish or aquatic plants is approved for trade and barter by the director, and
 - (iii) the harvester is in possession of a transportation certificate referred to in section 5.2(a) if the trade and barter will occur outside the Maa-nulth domestic fishing area.
- (b) 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 the director by order.

Transportation of fish and aquatic plants

- 5.2** (a) A person that transports outside the Maa-nulth domestic fishing area, for their own personal use or for trade and barter, fish or aquatic plants harvested in Uchucklesaht fisheries is required to have in their possession a transportation certificate issued by the manager that specifies
- (i) the quantity of each species of fish or aquatic plant being transported, and
 - (ii) the destination of the transported fish or aquatic plants.
- (b) A transportation certificate referred to in subsection (a) must be
- (i) in a form approved by the director, and
 - (ii) signed by the manager.
- (c) A person must not alter or deface a transportation certificate issued under this section.
- (d) If a transportation certificate is issued under subsection (a), a person who is transporting fish or aquatic plants for trade and barter must produce that transportation certificate on demand of an enforcement officer.

Fish harvesting rights outside Uchucklesaht territory

- 5.3** (a) A Uchucklesaht enrollee must not exercise his or her right to harvest fish and aquatic plants outside of the Uchucklesaht territory except in compliance with this section.
- (b) If a Uchucklesaht enrollee wishes to exercise his or her right to harvest fish and aquatic plants outside of the Uchucklesaht territory, that Uchucklesaht enrollee must request of the manager, in the manner required by the director, permission for the Uchucklesaht enrollee to exercise his or her right to harvest fish and aquatic plants outside of the Uchucklesaht territory.
- (c) A request made under subsection (b) must be in writing and include
- (i) the particular Maa-nulth First Nation area in which that Uchucklesaht enrollee wishes to exercise his or her right to harvest fish and aquatic plants,
 - (ii) the times during which that Uchucklesaht enrollee wishes to exercise his or her right to harvest fish and aquatic plants,
 - (iii) the species of fish or aquatic plants that Uchucklesaht enrollee wishes to harvest, and
 - (iv) the fishing gear and methods of harvest that Uchucklesaht enrollee intends to utilize in exercising his or her right to harvest fish and aquatic plants.
- (d) If the manager receives a request under subsection (b), the manager must, before issuing authorization under subsection (e), contact the appropriate representative of the applicable Maa-nulth First Nation whose Maa-nulth First Nation area the Uchucklesaht enrollee who made the request under subsection (b) wishes to exercise his or her right to harvest fish and aquatic plants in and 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 to harvest fish and aquatic plants by that Uchucklesaht enrollee in that Maa-nulth First Nation area.
- (e) If permission is given as contemplated in subsection (d), the manager may issue written authorization to the Uchucklesaht enrollee who made the request under subsection (b) to exercise his or her right to harvest fish and aquatic plants in the Maa-nulth First Nation area of the Maa-nulth First Nation on whose behalf permission was given under subsection (d) and the manager may place the reasonable conditions the manager decides are necessary or advisable in the circumstances on that harvesting.

- (f) A Uchucklesaht enrollee issued written authorization under subsection (e) must only exercise his or her right to harvest fish and aquatic plants outside of the Uchucklesaht territory in accordance with the laws of the applicable Maa-nulth First Nation and any conditions of the manager under subsection (e).

Variation of regulations

- 5.4**
- (a) If a time or location for harvesting fish or aquatic plants, a fishing quota or a restriction on the size, age, weight or sex 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 a Uchucklesaht fishing authorization, or for different species of fish or aquatic plants.
 - (b) The director may not make an order under subsection (a) that is inconsistent with a Maa-nulth harvest document.
 - (c) If the director makes a variation order under this section, notice of the variation must be given by the manager by posting the notice in accordance with Uchucklesaht law and one or more of the following methods:
 - (i) posting the notice in the area or in the vicinity of the area affected by the variation;
 - (ii) transmitting the notice by electronic means to those persons affected by the order; and
 - (iii) providing verbal notice to those affected by the order.

Offences

- 5.5**
- (a) Every person who contravenes these regulations commits an offence punishable under the Act.
 - (b) Subject to the Act and any other applicable Uchucklesaht enactment, the director may determine the fine associated for each offence punishable under the Act.