CHAPTER 5

FISHERIES

GENERAL

1. Yale First Nation will have a right to harvest, in the Yale First Nation Fishing Area, Fish and Aquatic Plants in accordance with the Final Agreement for Domestic Purposes.

2. The Parties will discuss early access to Yale First Nation commercial fisheries through treaty related measures between this Agreement and the Final Agreement.

3. The Yale First Nation Right to Harvest Fish will be limited by measures necessary for conservation, public health or public safety.

4. The harvest of Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish will be carried out in accordance with the provisions of a Yale First Nation Harvest Document.

5. The Final Agreement will include provisions to address the implications for the amount of Fish and Aquatic Plants that Yale First Nation may harvest in any year where there is not enough abundance of a species of Fish or Aquatic Plants to meet all allocations from that stock or species for other British Columbia aboriginal groups for Domestic Purposes.

6. Before the Final Agreement, the Parties will discuss the inclusion of Wildlife Fish in the Fisheries Chapter.

7. Before the Effective Date, Canada and British Columbia will explore mechanisms to enable Yale First Nation to pursue non-salmon fishing opportunities within the Yale First Nation Area, such as the purchase of an angling guide licence.

8. The Yale First Nation Right to Harvest Fish will be held by Yale First Nation and Yale First Nation may not dispose of that right.

9. The Minister will retain authority for managing and conserving Fish, Aquatic Plants, and Fish habitat.

10. The Final Agreement will not alter Federal or Provincial Law in respect of proprietary interests in Fish or Aquatic Plants.

11. Yale First Nation Members may Trade and Barter Fish or Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish among themselves or with other aboriginal people of Canada who ordinarily reside in British Columbia.

18. In the event of a Conflict between a Yale First Nation Law made under paragraph 17 and a Federal or Provincial Law, the Federal or Provincial Law will prevail to the extent of the Conflict.

DESIGNATION AND DOCUMENTATION

19. The Yale First Nation Right to Harvest Fish will be exercised by those individuals who are designated by Yale First Nation to harvest Fish and Aquatic Plants.

20. Where a Yale First Nation Allocation for a species of Fish or Aquatic Plants has been established under the Final Agreement, Yale First Nation may designate Yale First Nation Members and other individuals to harvest the species under the Yale First Nation Right to Harvest Fish.

21. Where a Yale First Nation Allocation for a species of Fish or Aquatic Plants has not been established under the Final Agreement, Yale First Nation may designate only Yale First Nation Members to harvest the species under the Yale First Nation Right to Harvest Fish.

22. Where Yale First Nation designates an individual to harvest a species of Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish, the Yale First Nation will issue documentation to the individual to evidence the designation.

23. The Final Agreement will provide that, where Yale First Nation designates an individual to harvest a species of Fish or Aquatic Plant under the Yale First Nation Right to Harvest Fish, Yale First Nation may set out methods, timing, location of harvesting and individual allocations consistent with the applicable Yale First Nation Harvest Document.

24. Documentation issued by Yale First Nation to an individual who harvests Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish to evidence the designation:

    a) will be in the English language and, at the discretion of Yale First Nation, in the Nlaka'pamux (Thompson) language, Puchil dialect;

    b) will, in the case of an individual, include the name and address of the individual;

    c) will meet any requirements set out in the Yale First Nation Harvest Document and the fisheries operational guidelines; and

    d) may include any specific provision set out under paragraph 17.

25. An individual who harvests Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish will be required, by a provision of a Yale First Nation Harvest Document, or a Federal or Provincial Law, to be designated and documented by Yale First Nation.

26. On the request of any individual authorized by Canada or British Columbia to enforce Federal Law, Provincial Law or Yale First Nation Law in respect of Fish or Aquatic Plants, an individual who Harvests Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish will be required, by a provision of a Yale First Nation Harvest Document, or a Federal or Provincial Law, to produce certain documents to show that they have been designated and documented by Yale First Nation.

DOMESTIC FISHERIES

27. Canada and British Columbia will not charge any fee for a Yale First Nation Harvest Document, or any management fee or landing fee in respect of fisheries authorized by a Yale First Nation Harvest Document.

28. Where an individual is designated to harvest Fish or Aquatic Plants under a Yale First Nation Harvest Document, the individual will not be required to have a federal or provincial licence to harvest Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish.

YALE FIRST NATION DOMESTIC ALLOCATIONS

29. The Yale First Nation Right to Harvest Fish Allocations for Domestic Purposes are described in Appendix H.

30. Canada and Yale First Nation agree to develop approaches in the Final Agreement that contemplate subsequent annual adjustments to account for the Yale First Nation Salmon harvests for Domestic Purposes that exceed or fail to meet an Allocation for Yale First Nation Domestic Purposes in any year. Any adjustments will take into account the actions of the Minister and Yale First Nation with respect to the fishery and other factors. The Minister and Yale First Nation will endeavour to minimize any overages and underages in each year and to minimize the accumulation of overages and underages in successive years.

NON-ALLOCATED SPECIES

31. A species of Fish or Aquatic Plant for which there is no Yale First Nation Allocation established under the Final Agreement may be harvested for Domestic Purposes under the Yale First Nation Right to Harvest Fish in accordance with a Yale First Nation Harvest Document.

32. The Final Agreement will set out that Canada or British Columbia, in respect of any non-allocated species within their respective management authority, or Yale First Nation may propose the establishment of an Allocation for a non-allocated species.

33. The Final Agreement will include provisions describing how Allocations for non-allocated species that are not set out in the Final Agreement will be determined, taking into account factors that the Parties agree are relevant, which may include Yale First

Nation's current and historic harvest levels and the abundance of those species in the Yale First Nation Fishing Area.

COMMERCIAL OPPORTUNITIES

34. Yale First Nation commercial fisheries will have the same priority as commercial fisheries in fisheries management decisions made by the Minister and will not be part of the Final Agreement.

35. After the Effective Date, Yale First Nation may use a portion of the Capital Transfer to assist Yale First Nation to acquire voluntarily-relinquished existing commercial fishing capacity referred to in paragraphs 36 and 37.

36. The acquisition of the capacity set out in paragraph 35, may provide Yale First Nation with the ability to increase their participation in a commercial fishing opportunity of up to 1.15 percent of commercial Total Canadian Catch (TCC) for Fraser River sockeye Salmon, and up to 0.17 percent of commercial TCC for Fraser River pink Salmon.

37. Before the Final Agreement, the Parties will negotiate and attempt to reach agreement on the extent of Yale First Nation's participation in a Lower Fraser River chinook Salmon commercial fishing opportunity and the arrangements to be agreed to by the Parties that describe that participation.

38. Before the Final Agreement, the Parties will negotiate and attempt to reach agreement, consistent with paragraph 34, on how and where Yale First Nation will access the commercial opportunities described in paragraphs 36 and 37, including licensing arrangements, and will describe the process and the licences that will be relinquished to provide for the extent of Yale First Nation participation in the commercial fishing opportunities described in paragraphs 36 and 37.

SELECTIVE HARVEST OPPORTUNITIES FOR SURPLUS SALMON

39. Each year, the Minister may determine whether there is a surplus of a species of Salmon that return to spawn in the Yale First Nation Fishing Area, the size of the surplus and who may harvest that surplus.

40. The Minister may authorize the Yale First Nation to harvest some or all of a surplus of Salmon that return to spawn in the Yale First Nation Fishing Area, on reaching agreement with Yale First Nation in respect of:

    a) the terms and conditions of the harvest; and

    b) whether all or part of the harvest will be included in the determination of underages.

MANAGEMENT OF THE YALE FIRST NATION DOMESTIC FISHERY

41. Before the Final Agreement, the Parties will negotiate and attempt to reach agreement with respect to the processes that will be required to carry out fisheries management functions arising from the Final Agreement. The cooperative planning and management functions will include:

    a) Yale First Nation fisheries under the Final Agreement;

    b) Yale First Nation Enhancement Initiatives and Stewardship Activities;

    c) Yale First Nation fisheries monitoring and enforcement activities;

    d) Yale First Nation environmental protection activities associated with Fish, Fish habitat and Aquatic Plants;

    e) coordination of Yale First Nation fisheries, enhancement, stewardship, monitoring, enforcement and environmental protection activities with other aboriginal groups; and

    f) other matters by agreement of the Parties.

42. Canada and Yale First Nation may negotiate agreements concerning Yale First Nation activities related to the management of Fish habitat.

43. Before the Final Agreement, the Parties will prepare and maintain an initial document to be known as the Yale First Nation fisheries operational guidelines, that will set out the operational principles, procedures and guidelines to assist each of them in carrying out the provisions of this Chapter, including the preparation and recommendation of annual fishing plans.

44. The Parties will amend the Yale First Nation fisheries operational guidelines as required as improved fisheries management and stock assessment procedures are developed or as the Parties may agree.

45. The Yale First Nation fisheries operational guidelines:

    a) will not be part of the Final Agreement;

    b) will not be a treaty or land claims agreement;

    c) will not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*; and

    d) will not create legal obligations.

46. Between this Agreement and the Final Agreement, the Parties will, through treaty related measures or interim arrangements, test provisions of this Agreement related to management of Yale First Nation fisheries.

47. The Final Agreement will address how recommendations and advice will be provided to the Minister for issuance of a Yale First Nation Harvest Document.

48. Each year, unless otherwise agreed, the Minister will issue a Yale First Nation Harvest Document to Yale First Nation in respect of the Yale First Nation Right to Harvest Fish. The Yale First Nation Harvest Document will be consistent with the Final Agreement.

49. The Final Agreement will address how to deal with issues that arise where Yale First Nation does not agree with the proposed terms and conditions of the Yale First Nation Harvest Document, including in-season adjustments.

RESOURCE STEWARDSHIP AND MANAGEMENT

50. Before the Final Agreement, the Parties will negotiate and attempt to reach agreement on how the Parties will address matters related to the management of Fish, Fish Habitat, and Aquatic Plants within the Yale First Nation Fishing Area, including:

    a) management of fisheries other than Yale First Nation fisheries;

    b) Enhancement Initiatives and Stewardship Activities;

    c) monitoring and enforcement activities;

    d) environmental protection activities associated with Fish and Fish habitat and Aquatic Plants;

    e) Consultation; and

    f) other matters as agreed to by the Parties.

51. Yale First Nation will participate in any regional process established by the Minister for the purpose of exchanging information relevant to the management of Fish and Aquatic Plants within an area including the Yale First Nation Fishing Area between the Minister and aboriginal groups.

52. Yale First Nation may conduct, with the approval of the Minister, and in accordance with Federal and Provincial Law, Enhancement Initiatives and Stewardship Activities in the Yale First Nation Fishing Area.

ENFORCEMENT

53. The Parties may negotiate agreements concerning enforcement of Federal and Provincial Law and Yale First Nation Law in respect of fisheries. Those agreements will not be a treaty or land claims agreement, and will not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

54. Yale First Nation Law made in accordance with this Chapter may be enforced by persons authorized to enforce Federal or Provincial Law, or Yale First Nation Law in respect of Fish or Aquatic Plants in British Columbia.

55. Where the Minister issues a Yale First Nation Harvest Document to the Yale First Nation, Yale First Nation will make a copy of the Yale First Nation Harvest Document available for inspection by any individual who Yale First Nation designates to harvest under the Yale First Nation Harvest Document and will inform those individuals where and when the Yale First Nation Harvest Document is available for inspection.

56. Where Yale First Nation designates an individual, the Yale First Nation will inform the individual that:

    a) a Yale First Nation Harvest Document may have terms and conditions;

    b) the terms and conditions of a Yale First Nation Harvest Document may be amended from time to time; and

    c) it is the responsibility of the individual to verify what are the terms and conditions of a Yale First Nation Harvest Document.