

B.C. ABORIGINAL PEOPLES' FISHERIES COMMISSION
MINUTES
OCTOBER 18 and 19, 1986

Meeting called to order at 10:05 am. by Chairman Chief Perry Redan.

The Opening Prayer was said by Chief Simon Lucas.

Proposed Agenda

Proposed to switch 3 and 4 and have introductions first.

There was introduction of representatives.

Chief Perry Redan gave a background on why we are here. There are many things happening around the province. DFO putting in another option paper. There was a meeting in Prince Rupert and that group was supposed to draft some papers on how to protect the resources of our land and they will be making a presentation later on. It was decided that we would get together to discuss some very important issues.

Perry ran through the proposed agenda and suggested that minutes be moved to the second day.

Chief Joe Mathias suggested that we deal with number 9 first (Current court cases).

Clifford Atleo wanted to add the operation of the Pacific Salmon Commission and some of the representation that currently being announced by the Minister concerning the small number of Native people involved. Add as 13-A

Chief Gerald Amos spoke regarding goals and objectives of the Fisheries Commission. First have a problem with groups set up around the province, goals and objectives tend to overlap and money that we don't have tend to get spent repeating - repetitive in what we are doing on a number of issues. If possible should also discuss Native Brotherhood; OSSAN etc. and the roles played by each group.

MOTION # 86-16 MOVED BY Richard Watts/Seconded by Earl Smith

THAT the agenda be adopted with amendments and additions.

MOTION CARRIED.

Current Court Cases

Chief Joe Mathias stated would like to raise a number of points leading up to the main concern I have with the Federal Government of Canada; the Department of Justice and the B.C. Indian Food Fish situation. If went around this table would be well aware of the various charges being laid by Fisheries under their regulations regarding food fishery. I think everyone around the table has someone in their Band or Tribal Council who is effected by enforcement provisions of the Fisheries officers. In discussion with our lawyers we have become aware that the Department of Justice has

set aside a team of lawyers whose sole objective in life is to handle food fishery cases in British Columbia and other parts of Canada, mainly the maritimes. This raises some concern to me as I view that as a particular tactic to define food fishery rights through Court Decisions and picking and choosing the best legal cases in favour of the Federal Crown that supports Fishery Regulations and keep moving those cases upwards until we get a final determination say the Supreme Court of Canada level.

I am becoming more aware of this kind of attitude that I'm talking about on a National level because the cases in the maritimes are as numerous as those cropping up here in B.C.

Coming to B.C., Squamish Band with out By-law number 10, although we have through a number of decisions successfully defended that by-law establishing our jurisdiction and ousted fisheries jurisdiction, they still insist on coming on the Reserve and finding ways of laying a charge and developing legal arguments that give the whole situation a different slant and in some cases they pursue it and in others they dropped or stayed the charges.

Although it is clear where we stand with respect to our by-law they are still insisting and charging our people. So we look at the by-laws as a shield to oust the Federal regulations from our territory.

I know our situation is somewhat different than other areas because most of our Reserves are on both sides of the river as opposed to the Fraser River Bands and other areas.

This past five or six months we have juggled four or five different cases ourselves, one case was finally dropped by the justice department with no reason given. They spent alot of time and effort with us and putting a case together.

Basically, what they were saying was that the rivers going through a Reserve, the bed of the river belongs to the Province of British Columbia therefore, Provincial Jurisdiction applys. What they were trying to argue legally was that the Highways Act of B.C. where public route was used for public use that would be deemed public highway. Trying to argue that rivers were public and that they qualified as public highway under the Highways Act and therefore became Provincial Crown Land under Provincial Jurisdiction, and these are rivers going through our Reserves. And in that way overturn our By-law, the Federal Application of Squamish By-law, this was an argument with the Province as well as the Department of Justice. Very similar to Fore-shore problems, whether under federal or provincial jurisdiction. We were prepared to go to Court and prove that they were wrong. The reason I am explaining this is that this is the type of technique I see Justice Department developing, trying to come down with various unique legal arguments to overturn or to strike down or erode our fishing rights. They eventually dropped that case.

This past two months there are 54 charges being laid in the Sto:lo area; various types of charges; although didn't talk to Neil except for two weeks

ago they are beginning to lay their charges there as to the events that happened over the summer. They sat back and watched and gathered evidence and developed their cases and since June up to now beginning to lay charges; Nanaimo we have a number of cases on the line; I guess around the table we could count hands and take a poll and there are a number of charges. The concern I am having here is the strategy that, although can't put a finger on it and say, there definitely is a policy legal strategy to erode our rights through the Courts system but that is what I feel about the whole process.

There are a couple of cases we should discuss today and sort of my background in it and that is the Sparrow Case. This is a case where Sparrow was convicted a few years ago and now being appealed. The case is that the food fishing rights have been extinguished, in fact Aboriginal Rights have been extinguished and that the word existing in Section 35 does not protect Aboriginal Rights. What Aboriginal Rights we had is what the law said it was prior to patriation of the Constitution. This seems to be the interpretation.

There are further problems, the appeal is going ahead and the concern that some of us have in regards to the Sparrow case was their lawyers appear (and I use that word appear) to have made a concession or an admission in their factum regarding their argument. The argument of overturning the conviction. They (Sparrows lawyer) appear to say that Federal fisheries regulations and legislation when concerning conservation will overturn and override Indian Food Fishery Rights, in other words, Aboriginal Rights.

Since then the Province of B.C. joined in the case and they are going further and saying that both Federal legislation and regulation and other forms of regulation, like provincial legislation, can indeed override decisions on land.

So this is not only a Federal Fishery Regulation regarding Food Fishery but regulations pertaining to land, reserve land for example.

What all this means is that our position always has been that within our Reserves, eventually through land claims our traditional lands, we maintain absolute authority within our sphere of jurisdiction. Provincial and Federal regulations cannot make any inroads, they may conflict, they may overlap but we maintain that traditional position.

This Court Case will probably be appealed in the supreme court of Canada. The issue really is the ancient issue of Federal and Provincial regulation. Federal and Provincial law will always override Aboriginal Rights be it fishery, resource or land.

The Sparrow case involves fathoms of net in the river. It was seventy five (75) fathoms and they reduced it down. They reduced the depth of the net because of conservation reasons. That is what it amounts to and he was found guilty and was convicted and they are appealing that conviction. The Sparrow case stands for the proposition and Aboriginal Rights have been

extinguished and that the word existing does not protect our rights. It is very similar to the Adolf case.

The danger of court action is always that we run the risk of losing.

Given that back ground, what we have is the fine cutting edge of fishery in the Sparrow case in front, and we have a number of other cases in B.C. moving forward; we have the Sto:lo situation and we also now have the Gitksan situation, where it's by-law addresses both reserve control as well as traditional land control over the fishery, so that is going to be tested.

That's how I perceive the Department of Justice Federal Governments legal strategy on one front; on the other front we sit, we talk, we consult, and we meet on developing policy with Siddon and McKnight as a diversion.

We are constantly trying to get policy changed in our favour; gain more control, we control policy, we control management as we are doing that with policy, they are proceeding with money and their lawyers which is unlimited to determine our rights through the Court System.

The concern is that it is a global issue, so we have met the Musqueam council and their legal advisors along with Sto:lo with their lawyers we were assured that there was no concession that Federal regulation would override our fishing rights, that there was not admission to that, and that it was a fallback position and in fact they were arguing in the appeal that fishing rights is an absolute right not subject to anything except pure form standing alone. In case they didn't win that argument and only in the narrow area of conservation will Federal legislation override fishing rights.

The problem with conservation is that is what our argument has been on a policy level with government all along and they are always maintaining that fisheries department is the only authority in the world that decides what is good for conservation. If they win on that point the implications are far reaching that Indian food fishery can always be undercut for conservation purposes on their arbitrary say. That is my gist of the legal implications of that case.

The other concern is the provincial involvement that regulation can undermine our rights on land.

When we met we were hoping that they would amend their argument but, even if they wanted to, they couldn't, because it was submitted in their factim. Because it was submitted in their factum the Department of justice has responded and agreed with it, the provincial government has come aboard and agreed with it also.

We were assured by the Musqueam Council that their intention was not to undermine or hurt or destroy Fishing rights for B.C. Indians. I take that as their sincere belief, however, I bring it to your attention because I have discussed with Chairman of the Nuuchah-Nulth Tribal Council and have

discussed with Squamish we haven't discussed it further with the Sto:lo people but there is room here for intervention.

Would like us to discuss it and come away with some discussion and resolution or motion that we consider the idea of intervening on the Sparrow Case.

Understand one of the technical problems about intervening is that if you are just an individual or Band you have a bigger problem of getting in the door then if you go as a group.

Understand that Sto:lo will be intervening; Squamish will be intervening subject to the political developments here and elsewhere and Carrier Sekani will be intervening and Gitksan will be intervening. AFN talked of intervening but doubt it, they may support it, but not intervene.

Perry Redan suggested should get a list of all those areas where there are charges.

Clarence Pennier gave a brief update on the Sto:lo area. There are 54 charges being laid which only takes into account the events that transpired on the weekends of Aug 15 and 23. There are numerous other charges out in the whole area for fishing out of season starting from July to the present day.

Part of our reason for going out on the river was partly to question the management scheme of DFO. At the beginning of the season they decided to allocate 500,000 peices of fish up and down the Fraser and Thompson Rivers. None of the Tribes or Nations agreed to that amount. During the early part of August they anticipated an extra 1.8 million fish and at the same time they decided that the Sto:lo people were catching approximately 75% of that fish out of the 500,000. In one sense they said we were catching too much fish, there was not enough fish getting up to the people further up river, but at the same time there was a large amount of surplus fish coming up the river anyway.

That was the basis for the two fishing protests. To state that there was no conservation reasons why they should cut us down and at the same time they gave the commercial fishermen additional fishing time. So out of those two weekends there are about 18 people charged with 54 charges. They have all gone to court for their second appearance and their trial date is early February.

We are going to try to advance the best possible case out of the whole group just to get one case through and with the possibility the other charges will be stayed or dropped altogether.

Just to add to what Joe has said about the Sparrow case. We became concerned because we are part of the Alliance of Tribal Councils with our issue against CNR Twin Tracking project. A couple of areas would have an impact on our case. Part of their factim was that the Aboriginal Right to fish and fishing in their territory was an incident of their Reserve and that one of the reasons that they got their reserve is because they fished out there, and if they lost on that point that would have an effect on our Court case because we are trying to establish the fact that Government gave us the reserve, with fisheries and exclusive right to fish in certain areas. So it would impact on that as well as if there was no Aboriginal Right to fish then there would be no reason to prevent the CNR from going through with their double tracking project and encroaching into the river and destroying the fish, habitat and so forth.

MOTION # 86-17 MOVED BY Earl Smith/Seconded by Rod Robinson

THAT the B.C. Aboriginal Peoples' Fisheries Commission intervene in the Sparrow Case.

Rod Robinson stated that this should be opened up for discussion before question is called. This is an example of what is happening today. Our Rights are continuously being eroded All the Aboriginal people of B.C. should be 100% behind this because of the implications. The implications is on all of us. What happens to Sto:lo; Squamish, Nanaimo, Lillooet it is going to happen to all of us. We should mobilize behind the move here. I believe there is dollars available in Ottawa for any legal action when Aboriginal peoples rights are being threatened. This is under section 93.24 of the Constitutional Act.

We are still wards of the Government until we have signed a Treaty. There is no treaty in B.C. and we should continuously remind ourselves of this. Remember you still own the land. Whatever the Judges rule on this, it could be very dangerous. It is risky, however, there are other actions that we could take. We should explore this.

Richard Watts spoke in favour of the motion. We lose our Aboriginal Rights at the whim of DFO. Can't have our Aboriginal Rights handled this way because they are continually being lobbied by other groups such as sportsfishery people, commercial people etc.

Cecil Reid stated having problems with the Sparrow Case. In the Sparrow case it was lost because the judge ruled that the Aboriginal Rights of the Musqueam people had been extinguished along with all rights of other Indian people in B.C. and these have been extinguished as far as the judge is concerned by the decision of the appeal court of Calder vs. the Province.

So, have problems with this intervention because if the other judges base their ruling on the appeal on the appeal court decision on Calder then we won't stand much a chance of winning.

Joe Mathias stated that is the whole point. That is why the province is vitally involved because although it went to the supreme court of Canada the issue is not really settled. All that remains is court case law court of appeal decision that indeed Aboriginal Rights in B.C. have been and always were extinguished. When that issue followed up to the Supreme Court of Canada the three judges went one way and the other ever really answered it and the reason they are interested in this case or a case like it is to resolve that question forever. It is going ahead anyway and what they are hoping to do is get a decision at the Supreme Court of Canada level to say that Federal and Provincial law has the effect of extinguishing all Aboriginal Rights including Fishing Rights. Now the Province has intervened and says it includes land.

One of the things as well is the lawyers from Musqueam indicated that they are quite happy if you will come in and intervene they have no objection to it. But they have to be advised pretty quick so that they can advise the Court to change the November court of appeal date to allow us time to intervene. That is a problem, can't get in unless Musqueam lawyers get some reasons to give to the Court to delay it.

Cecil Reid The question for the commission here now is whether we should intervene or should look at some other cases and see what our chances of better winning. Don't understand it. We don't have a very strong case and if we are taking this case only, excluding others, and the Supreme Court rules against our Aboriginal Rights existing then does that mean we have lost.

Joe Mathias stated appreciate concern and understand what Cecil is saying but the horse is out of the barn and running and we have a number of other cases on the line that is dealing with the same issue. Gitksan and Meares Island facing same problem. How do we get around the decision that rights have been extinguished here in B.C. That issue is being addressed by all the cases and when you come down to it whether it is fishing, forestry, mining or whatever rights we are asserting the Province will continually say that Aboriginal Rights have been extinguished and we will argue and argue to the highest court in the land that you have no rights in B.C. and that is the position they took on Calder. So, I'm having difficulty here that you can't frame another case to deal with the same issue because you are going to get bumped right into Calder by the Provincial argument of Calder because the Supreme Court of Canada did not settle the issue, they split on three. Three judges said it has not been extinguished and three agreed that it has been. The guy in the middle left it unsettled and there was no majority ruling on it.

What is happening with Gitksan and Meares and Sparrow is to go on beyond the Court of appeal process and eventually get to the Supreme court of Canada, to either overturn the Calder Court of appeal decision or to reaffirm it. The Province sees it and they are going to go with it. They want to confirm the Court of appeal decision and get a supreme Court of Canada decision to say we were right all along and settle the matter once and for all. This is how I see it.

Gerald Amos stated share same concern in reading memorandum from Ratcliff and Co. everything points back to Calder from a laymans point of view. The question I was going to ask is already before you.

You mentioned in your opening remarks that this is a global issue; same problem occurring out east. Are there any other cases outside of B.C. that are going to be dealing with this same problem, same context, or are there differences that might effect the outcome of this, what? To most of us this is a very confusing arena that we are in where there are numerous cases that are all part and parcel of the fisheries question and yet they have a larger impact should the outcome be negative.

Joe Mathias stated there are a number of cases dealing with hunting on the prairies dealing with constitutional and treaty rights to hunt and also deal with the migratory birds convention act. They've always said that we have a treaty right and it's unaltered and can't pass the migratory bird act interfere with our right to hunt for migratory birds anywhere. So that is Federal legislation. _____ said that this takes precedent over your Treaty rights to hunt. There are a number of cases on that where they have lost. They have argued that the Treaty Rights now protected by Section 35 that the word existing comes into play and have said 'what right you had to hunt in the prairies has been overridden by Federal Legislation mainly the migratory birds act. There are a number of cases in the maritimes dealing with the same issue. Treaty Rights and Aboriginal Rights to fish and they have lost.

To answer your question, should we intervene in Sparrow or not, a better way to answer it is, would it be better for Sparrow to be retired, taken off the Court Registrar, not proceed and proceed with another case with better facts that support us so that we have a better argument to over turn the extinguishment of rights in B.C.?

My first questions, they can't, it's already filed. The conviction has been made. Mr. Sparrow has been convicted, fisheries regulations he violated, he said was not violating, was fishing according to his rights. The trial judge said you are convicted. What they are doing now is appealing that conviction. By the nature of appealing the conviction all the complex issues start to immerge in the one little case. So, even if they withdrew the case what you are faced with is the conviction still. Don't think they can withdraw anyway, Musqueam has made a determined effort to say we're appealing this case because it effects all our fishing in the Fraser River for all time that fisheries can come in and regulate our fishing and the method we fish for all time and they are fighting that, so they have no choice. The legal game that we are involved in there is no chance for us to pick and choose because we don't have our legal heads together or political heads together to decide what case should go. We don't have it. I'm afraid we are being picked off and I'm afraid we're doing it badly; we're not defending ourselves and still faced with the case.

I suggested we discuss it throughly so that this Commission understands the implications of this case. Squamish feels it is serious and that is why we are intervening. I don't think need to resolve it with the Commission as a body doing it I think your Tribal Council or Band can join in. The more Tribal Groups involved the better chance the Court will concede to intervention. The Province has no business in this case if they are intervening.

Gerald Amos stated read that in a recent article by a lawyer from B.C. expressing an opinion that regardless of what the outcome of any litigation that take place in B.C. on this topic that there will be a winner and a loser and Indian people by their very nature are not going to lay down simply because the Courts determine by their own standards that they have overridden title or whatever else you wish to call our ownership of the resources. I think need to play it up very strongly in the newspapers.

Personnally, I have used the election campaign and spoken to both the Socreds and NDP and have attempted to put this before them as a general public in the Province of B.C.

Whatever the Courtcase decides if it goes against Indian people there is more possibility of confrontation, in fact, violence is suggested by this lawyer. And that is not coming from Indian people this is coming from lawyers who have been in the game for many years.

Need to hear a little about the accord that was reached on the constitution.

Joe Mathias stated appreciate if we had a number of options to assert our rights, where are they, one is confrontation, one is litigation and one is negotiation. The Constitutional forum is a negotiating political process in B.C. a number of decisions have been made to assert Aboriginal Rights to the Courts being the Gitksan case, Meares Island Case and now these fishing cases. They are all pointed to one thing, Aboriginal Rights. Once they reach the Supreme Court of Canada and a judicial decision is coming down one way or the other will affect what we are doing now. The discussions at the Forum of the Constitutional level has not dealt with the legal issues except in one instance when I raised the fishing issue with the Minister of Justice in June. This time we did not raise it again. The problem with raising it at the table is we are trying to develop an argument here the Federal Government of Canada, why are you here trying to negotiate our rights through this process in good faith when you are suing us and putting our people in jail in B.C. Where is you good faith? There are some legal technical problems involved. Some of these cases the Federal Government is the defendant they have no choice but to advance the interests of the general public, so they are defendants. The other problem we had is they won't speak to the issue, its in courts, you speak to our lawyers on this issue, and rightly so, they better speak to the lawyers of Gitksan, Meares Island etc.

If there is a magical way to solve our Aboriginal Rights its to drop the word existing from Section 35 and to entrench self-government with land and resources.

The best way for us to manage and control food fisheries is for the fisheries act to be amended. To take the authority away from Fisheries officers and give it to us. This is how I understand we have been talking. They can do that if there is the political will in the Government of Canada. We can be the enforcement officers, we can have the money, we can control and manage the fishery.

Similarly, our rights can be reaffirmed and entrenched through the Constitutional process and if it is really reaffirmed by these negotiations then all these court cases could go by the board. Then all the court would have to do is interpret what those rights are in the Constitution. If it is clear as fishing rights not extinguishable then we could control it under our government jurisdiction and if that is the wording we find in the constitution then the fisheries officers would not have any power over us because we are dealing with a Aboriginal Right protected by the Constitution, as opposed to a right subjected to Federal regulation under the Fisheries act. Now that is the negotiation, we can clear up all these problems, all these conflicts by clearly arriving at proper wording in the constitution. But so long as we don't achieve a proper amendment we will be stuck with these conflicting opinions for all time. If we don't come to an amendment in the constitution next year then what we are faced with is what the courts will interpret our right to be under the acts and the existing wording.

We are looking at two tracks. One is the legal position of government on the court cases which would take a time frame 1990; 1995 before they come down with a Supreme Court decision; your rights have been extinguished or not extinguished and the Constitutional ends in April 1987; the work we are doing is on both tracks to resolve our rights politically and if that fails we are stuck with the court. There was no accord made last week. What we arrived at is a piece of paper that sets out the issues that we will be negotiating between now and April; there is no final draft; no working draft; what we have is a number of paragraphs setting out the issue. I have a copy here; you can get a copy of the statement.

What we have done at the AFN is said self-government includes land and resources, physical relations, aboriginal title, treaties and treaty rights. If the amendment does not include those broad principles then the conference is doomed for failure. In B.C. its TITLE TITLE and that is what we have said plus a commitment to negotiate.

Rose Point stated does not quite understand the legal implications of the Sparrow case but do know that it is very important to Musqueam to get a case such as this and deal with the issues of aboriginal rights and conservation issue.

In 1982 after the sting fisheries stated that we had overfished and that there were 58000 fish caught by the Musqueam people. It was that folowing year that they shortened net length from 75 fathoms to 25 fathoms.

In that year 1982 they extended the commercial fishing a few days and some of those days conflicted with our days and there was no use in us fishing. That was the issue we were taking. Have full confidence with our legal advisors that it would not jeopardise other fishing cases because they are aware of other cases and they do now our plight for our Aboriginal title on our Aboriginal land areas.

Musqueam does welcome intervention because the Provincial Government is intervening.

Meeting adjourned at 11:45 am. for lunch.

Meeting reconvened at 1:15 p.m.

Perry Redan recapped the motion on the floor.

Rod Robinson stated think we have discussed this quite thoroughly in addition suggested that we have to take a look at alternatives, legislation and political options. Joe has quite adequately explained the options. Suggest we now take back to our Bands.

I recall a statement made by Moses Smith in Prince Rupert. He said we sit around and talk and talk 50 years I have been in a group and every year we sit and discuss the same issues and pass motions and it doesn't go anywhere. I think in our lifetime when we pass these motions it is the time for action. Can't over emphasise the importance that this is the time for action. How much longer are we going to sit by and watch the Courts and governments gradually erode our rights. We have to go back to our constituents and jointly, when I say jointly I mean all Aboriginal nations of B.C., tell all of them the importance of it.

Some things we should go back with is advising to take out a by-law. Get some type of agreement that we jointly stand together. As stated by Joe we are being picked off one at a time. Have to stick together; once one Band goes under it sets a legal precedent and that will guide all further decisions.

Earl George stated in favour of motion. Issues are on going. We are all fighting the same type of law which B.C. government are a fisheries official in their parliament saying that we as Indian people have to live by their law.

George Esquiro stated the Taku River Tlingits are intervening in the Sparrow case and I think it is important that all Bands and Tribal Groups support on their own whether with their Tribal Council or Band. I am not sure if it is necessary for the Commission to intervene although they should demonstrate their support. The groups are intervening using the same arguments that were used in the Meares Island Case and also information in another fisheries case.

The Aboriginal Title and Aboriginal Rights question must be settled and we all have to support it and have to do it as our Tribal Groups and individual Bands.

Tom Greene stated the Province is challenging the Haida Nation. Challenging our Aboriginal Rights by granting cutting permits on the Lyell Island again. Therefore, we will have to regroup and we are not going to go in there and blockade the road we are going to go in there and stop logging in its entirety this time.

In the paper there was a write up on McKnight who has never been west of Saskatchewan so what I wonder is what our Federal Government is thinking about when they make a man like that the Minister of Indian Affairs.

Just wondering since Aboriginal people are not getting such a fair shake through our Justice System being tried one at a time and not in our favour is there any way we could deal with this justice system through the United Nations.

Cecil Reid stated getting away from the basic issue which has to do with a Judge in B.C. has ruled in the Sparrow case that we have no Aboriginal Rights and that is pretty serious. He has made this decision on the Appeal Court decision in the Calder case.

It would be good if we could say, as a Commission, what options do we have to fight for our Aboriginal Rights and to find that our options are quite limited.

This is a very serious issue, our Aboriginal Rights.

As Joe mentioned we are being picked apart, this is a weakness of our group, we can't seem to function as a group. This is the reality three are groups are intervening and other bands should be asked to intervene and we need to raise some money and need to hope that we win the appeal in the Sparrow case. Apparently, that is the cutting edge of Aboriginal Rights. We have lost that serious level in the Court system and we have one more appeal to go, if we lose that we are in serious trouble and that's the issue. With that we could support the motion on the floor but still have to ask our individual Tribal Areas if they support that.

John Sam stated there are a number of Bands along the Fraser/Thompson drainage in the interior that are fighting the CNR and basically it has to do with our rights to take fish from the Fraser and Thompson River and it is an important case to all of our Bands. I understand the Musqueam Case where they want to fish 25 fathoms to 75 fathoms and want to defend that by saying they have a clear Aboriginal right to fish so they will use 75 fathoms or 50 fathoms or whatever.

Just a couple of comments regarding our court case. Our court case is going to be the third one to follow the Meares and the Gitksan and it is going to go before the supreme court. Notwithstanding that some courts say the lower courts usually those are the lower courts and once this thing gets to the Supreme Court we are going to have the supreme ruling. If the Musqueam case goes ahead and it rules against our rights, how does it affect our case up river? It could go towards our detriment up there if the case is tried before ours and the judgement is handed down regarding our up river Indian fishing rights. I just want to make that perfectly clear. The case up river is so important to us and have been preparing for the past year and will be preparing for the next six to nine months in terms of preparing elders for evidence, historical research, archival research, archaeologist, anthropologists etc., they will be testifying before the Court.

I think it's important, we will be intervening as a group and whether the B.C.A.P.F.C. choose to intervene that is there business, just want to make that clear.

Gerald Amos stated he would have to say at this point and time he would support the Commission would also be asking his Council to support in being intervenor.

Edwin Newman stated we have done alot of talking and no action. But why does that happen? We are here because we are concerned about one thing the survival of our people and resource that our people depends on so much. The resource of the sea and yet when you put a motion on the floor you don't want to deal with it you want to take it back to the Tribal Council. What is this Commission set up for? There is no question that this Commission should intervene. We shouldn't have to take it back to our people. It has been discussed at our Tribal level for years and we all know that is why we come here to represent our people. I don't think you should take this motion back to your Tribal Council. We should pass it here and ask the Tribal Councils to support it. Otherwise it is going to be lost again. We have lost so many issues by taking it back. During the last three months we have made so many decisions on how we are going to tell the world about our problems with the white men, about the abuse of our rights as Indian people and yet we don't deal with the issue.

You have been sent by your people to represent them and deal with their problems. I think you should pass that motion and go back and tell them this is what we have decided to do. We all have to support it.

Jim Johnny agreed with Edwin; pass that motion now.

Lavina Lightbown spoke in support of the motion. This motion should be easy to pass, shouldn't have had to spend a day talking about it.

Ron George spoke in support of motion.

George Esquiro spoke again in favour of the motion.

Perry Redan stated if Commission intervening as one of the co-chairman need direction, what is mechanism of intervening.

Clarence Pennier stated the cost if using same set of lawyers would be about \$20,000.00.

MOTION CARRIED.

Perry Redan stated all those who are intervening or wish to give financial support to stay back after the meeting.

It was stated that there probably is governmental dollars available for intervention and the lawyers to be contacted are either Harry Slade or Art Pape.

Co-Chairmen should get details and time frame etc.

Restructuring of Consultation Process

Perry Redan gave a background on this. Throughout the last year or so there started off with the Commission asking a meeting with the two Ministers Fisheries and Oceans and Department of Indian Affairs. We were successful in getting an audience with those two people in Ottawa with John Fraser and David Crombie. Fraser didn't show up so they promised a meeting in Vancouver. At a meeting in Ottawa they handed out "Indian Community somthing" they keep changing the name. As early as this month a new paper came out called "The Options for Restructuring the Pacific Fisheries Consultation Process". Basically what the Government of Canada wants is to have all user groups sit down as a consultation group and make recommendations as to various aspects of the fisheries and report to the Department of Fisheries and Oceans.

At meeting in Nanaimo and in Kamloops it was strongly put that Native peoples or the leaders of this Province would not sit down with the other user groups RE; the non-Native commerical fishermen and the sportsfishermen in the same group to discuss fisheries mainly because of the scare tactics used in the media etc.

They have now restructured the paper and I don't see any mechanism whereby any of the Tribal Councils or groups who submitted recommendations are included in their options. They appear to be going ahead their own way.

We should go through this and decide how we are going to be represented.

The government of Canada want us to sit down with other user groups and diminish our rights to that salmon through that process.

Rod Robinson stated disappointed how this directive was distributed. Received it on the 7th and Minister wanted comments by the 15th. We don't see why we have to sit down with user groups at this time because we have to continuously remind ourselves that we have not yet formalized any treaty or agreement with Canada. We have not given up our sovereignty as yet.

Various comments were made regarding the options but basically it was decided that they were unacceptable, (there is no mention of meaningful input for Native People) we need to be in the decision making process and we will stand by our "Inter-Tribal Response" and that we must stick together on this position.

There was discussion that we need to work together; develop our own scheme and agree on it. We are always divided (the government likes to divide and conquer) and when we are divided then they have already won the game.

There was complaint that the document did not reach the Tribal Areas until a week before the deadline.

Cliff Atleo stated that the Native Brotherhood withdrew from MAC because of the unwillingness to address Native Issues.

There is still no accountability factor built into the process of their proposals. There has to be a review process to the management of the resource. Somebody has to sit down and account for any mismanagement of the resource.

Cliff Atleo also commented that whoever drafter the paper within the Department drafted it without paying too much attention to what is contained in the Fisheries Act as far the consultative process. Frequently the paper refers to a review of funding of the consultative process. I think the Fisheries Act states quite clearly that it is mandatory that the Department fund a consultative process. The paper eludes to that it is an option and it is not it is regulatory requirement within the Fisheries Act that the DFO fund a consultative process.

I am a member of the Pacific Salmon Commission and sit in on some of the Panel meetings and sat in with the Fraser Panel. Sam Douglas participated in discussions, he was conducting him self in a reasonable, sound data supporting what he was saying, very knowledgeable about decisions that had been made and consultations that had been taking place before the summer started between the upper and lower Fraser Bands and the Department. And I heard him go against arguments against the whole panel. I saw two or three guys on the panel take a flip flop in their positions. Sam was of one position, he was trying to argue for a delay of an opening because it means so much for a run pattern that goes up the river, talking about a commercial opening which creates vacuums in the run pattern because there is such a concentration of gear and taking of the Salmon that if you don't delay it for 24 hours at a certain point where they have food fishing days they don't get anything. There was certain agreement prior to the summer by the Bands and this was completely overlooked by the panel. Eventually Sam was overruled.

But still think we have to take advantage of opportunities that happen and have a say in some of these things.

If Sam had someone else there to help him it might have been different. We are sadly lacking in representation. Native people have 4 people on the three panels, two official panel members and two alternates. We should all lobby for more representation on the Commission and Panels.

Simon Lucas stated at some point will have to take a day and just discuss philosophy.

Joe Mathias stated if you took a poll this scheme would be rejected. I would consider it important if the Commission got some organizational expert of some type if that is the word a technician put him in place and develop the kind of consultative mechanism that suits the need of all fishermen who are Indian in B.C. Develop a top notch, first class proposal; we review it and if it meets the need of the Interior people, coast people, the river fishery, the lake fishery, restocking of those places that are extinct, the islands, off-shore, in shore and all the legal issues surrounding it and saying this is the kind of mechanism we want to put in place in our relationship between Indian people and Canada. This is what we believe suitable to meet our needs and take measures to implement this type of proposal. If we set up those objectives of an overall fisheries scheme for commercial, sports, full cultural etc. then I think best list what those objectives are, what those long term goals are, how much it is going to cost us, put it together and go with it and keep punching it home until it is accepted. That is our scheme, because when I look at this all we are trying to do is bang on the window trying to get in and the Minister controls the process. Everyone in that scheme is protecting his own interests, commercial white fishermen, white sports fishermen, the bureaucracy, and all the minister is doing is allowing the division amongst ourselves to prevent us from coming down with a true scheme that represents us.

Because we don't know what the goals of the B.C.A.P.F.C. is, we have it down on paper but three weeks later it's split.

So reject it, don't know what that is going to do, he doesn't care, he expects us to reject it because it is catered to deal with his constituents. His white people, that's who he's protecting. He expects us to reject it. No surprise. If we are going to get anywhere with the fishery resource we're going to fight for it over the long term, maybe we need to hire somebody, travel this province, speak to the villages and come down with a scheme. One of the goals I'm thinking of here is amend the fisheries act that affirms Indian fishery rights and put in legislative form that consultative mechanism that we propose. This is an option. Amend Indian Act or create a new legislation.

Until we define the purpose of what we are doing, we are going to be back here talking the same issues until we gain a scheme, action plan and move on it and we all agree with it together because we are divided. Already we are divided because we are pointing to Musqueam. They have won the game we are pointing to Calder, pointing to Gitksan, they love it, Indians are pointing at each other and they are protecting their people. Have to get our philosophical goals put down and work it out before we can deal with this kind of stuff we have to put our scheme together.

Perry Redan recapped the afternoon session as discussing the documents that have been issued by DFO and DIA and it is quite adamant from the Chairs point of view that we reject the options that they outlines and it was also suggested that we resubmit the 'Joint Inter-Tribal Response' to the governments. And also possibly for tomorrows agenda it was recommended or suggested that we strictly go after the goals and objectives of the B.C.A.P.F.C.

Meeting adjourned at 4:30 pm.

October 19, 1986

Meeting Called to order at 10:00 am. by Chairman Chief Perry Redan.

Opening prayer was said by Chief Simon Lucas.

Perry Redan recapped the previous days session.

The list of Tribal Councils and Bands intervening in the Sparrow Case or contributing dollars are:

Sto:lo Tribal Council has 11 Bands intervening.

George Alfred is going to return to his Band and see what the situation is there.

Lak Kw Alaams Band is going to be contributing dollars.

Kitamaat Band is looking at contributions.

North Coast Tribal Council as intervenors.

Taku River Tlingits will be intervening.

Nanaimo Band will be intervening.

Carrier Sekani will be intervening.

ADOPTION OF MINUTES:

Simon Lucas stated with regards to #86-9 met twice with directors and on October 14 went to Victoria to talk about those licences. Unfortunately our whole coast is caught up in licences. There are 460 section 10's. We should be worried about these.

MOTION # 86-19 MOVED BY Richard Watts/Seconded by Earl George

THAT the minutes of March 3 and 4, 1986 be adopted as presented.

Gerald Amos responded to Simon Lucas about concern regarding fin fish department of the Provincial Government. This department spoke to us at the OSSAN conference. We didn't have enough concerned voice of allocation of permits along the coast of B.C.

I feel the addition of the clause in the Fisheries Department from Section 9 to allow for further alienation of foreshore leases along the coast. For the sum \$125. any individual can tie up for years. There is no onus for a workplan for development of the future.

We are missing the boat as Simon says. Need to put our position forward more strenuously.

MOTION CARRIED.

Perry Redan stated the July 10 and 11 minutes of Nanaimo is where we replied to the two ministers proposed policy on Indian Community Salmon Fishery. And this is where it was moved by Dennis Alphonse and Seconded by Wilfred Humchitt regarding Section 10 licences.

MOTION # 86-19 MOVED BY Bill Williams/Seconded by Richard Watts

THAT the minutes of July 10 and 11, 1986 be adopted as presented.

MOTION CARRIED.

OSSAN

Received report from Cliff Fregin regarding the conference held September 23 - 26, 1986 entitled Native People, Resources and Jurisdiction on our West Coast.

About 150 people attended with about 75 Tribal representatives.

The conference had two objectives, the first was to have a variety of technical information and coastal resource information to the OSSAN delegates. The second was for OSSAN to begin a process of developing strategies towards a more responsible and accountable coast management regime.

There were four workshops covering Coastal Zone management; Environmental and Economic Impacts of Off-Shore Oil and Gas; Management Problems associated with logging areas containing fish habitat resources and jurisdiction and co-management.

There was a six hour in-camera session with Tribal Groups and OSSAN to develop a strategy for OSSAN and the role of the future.

See attached report from the ad hoc planning committee which is the result of the in-camera session.

Simon Lucas stated happy with the conference. The different speakers give good insight to what their areas go through.

Rod Robinson stated he seems to hear that the direction that we should be going would be to call for an integrated resource management. What that means is that there has to be a balanced policy that you cannot extract, we don't object to development but it must be done in such a way so that it would not damage another resource.

There was discussion regarding licences with various view points suggesting such things as a moratorium on further leases; a buffer zone around Indian Reserve foreshore of three (3) Miles. Another statements was that should push position of ownership and take the word "existing" out of section 35.

Bill Wilson suggested we should set up a lobby office in Victoria in that way we can be on top of all issues as they come up.

Meeting adjourned at 11:45 am. for lunch.

Meeting reconvened at 1:25 pm.

Goals and Objectives of the Fisheries Commission

Chief Perry Redan gave a brief background on the Commission and discussed the size of the working committee and representation. He suggested that perhaps should look at a wider range of representation to cover the various drainages and cover more of B.C.

Stated that the problem with the last 8 or 10 months the Co-Chairmen and Working Committee has been diverted and working on the aquaculture projects consequently other issues have been ignored or left behind.

Discussed the eight (8) objectives of the Commission as established in 1984 when the Commission was formed which at that time contained 4 working committee members from the Interior and 4 from the Coast. In the Kamloops meeting it was agreed that there would be two co-chairman one from the Coast and one from the Interior; Chief Simon Lucas and Chief Perry Redan were appointed as co-chairman.

He feels that this Commission has great potential in establishing our foothold or re-establishing our foothold in the fisheries of this Province. Have noticed there is a link between all Aboriginal Peoples of this province and that is the fisheries.

One of our main concerns with the Commission is the protection of the fish.

Should perhaps set a priority list. We have been caught up lately in allocation and I feel it to be secondary to protection of that habitat and resource.

My points of concern are:

representation - who does this organization represent?
how can we set up representation to represent Bands and Tribal Councils throughout this whole land?

goals and objectives: our primary goal is to protect that resource.
how: implementation: maybe set up Boards of management
for example: Skeena Board, Nass Board, etc.

At one time the Interior was ready to sit down with this Commission and start planning but our Commission was diverted into aquaculture program. The working Committee and Commission spent the last eight months setting up 10 projects and weren't addressing other issues. Think that was quite detrimental to this organization when it comes to the Interior people. We are not addressing the whole issue of fisheries.

I see potential for commission so that all peoples of this land can effectively protect that resource. We have the expertise here.

Simon Lucas added our role should be support, support programs. Take example Aquaculture we got totally involved in that and we drifted away from the overall objectives. This commission shouldn't get into dealing with that but support those things.

We have to take the approach of the Quinault speaker, our economy is based on our rivers.

Have to get away from the argument that those guys fishing on that reserve are poachers or the seine boats are getting more than the gill netters or trollers, that mentality belongs to those people who are competing against us. What we have to do is make sure we talk about how are we going to survive in each of our nations.

One of the things we must accept is that commercial fisheries is going to be around forever regardless of how it is done. Have drastic changes in my lifetime in the Commercial fleet.

Our goal should be to control.

We shouldn't be afraid of investment when talking control. Take a hard look at where we are putting our dollars.

How do we get together politically in the area of fisheries to help smaller communities. We can do politically assist organization like the Brotherhood, the North Coast people we shouldn't stop there. We should go for control in the Commercial fishery whether it is seining, trolling or gillnetting, we have to grab ahold of that control. Then if our objective is 10 years lets put our objective at grabbing another 40% from the seine fleet. This should be an objective for our Bands. Getting control of the different commercial fisheries.

We can reverse the situation.

George Esquiro had several questions. What percentage of Natives involved in fishing in any form does the Commission represent? How much power does the Commission have in swaying Government toward our interests and how can we increase this power? How much input in helping develop Native Management plans does the Commission have?

The Commission has to represent all Natives in order to have any credibility among other groups as to what our position is. If only representing part of the people then they are only going to listen to us partially and not take us seriously. We must have a clear position and a management plan and have to educate the public as to what that position is so that they are not wondering whether or not we are still divided or still don't understand what our position is. Have to make it clear. Should be studying the Washington and Oregon co-management plans to use as a guideline to develop a plan because if planning co-management in B.C. no one is going to take us seriously if we don't have some sort of plan to say this is what we are going to do if the time arrives.

Perry Redan responded that figures are not available but there has been representatives from all Bands and Tribal Councils in attendance at one point or time.

With regards to power the Commission has been initiated and have secured some dollars for administration purposes.

The Commission was formed to assist the Bands and Tribal Councils in developing their own strategies.

One of the two things supported by the Commission is the N.B.B.C. buy-back program and the Aquaculture programs.

Also supported the Interior Bands in trying to secure 600,000 pieces of fish for the Interior people.

Edwin Newman just listening to comments here about what the Commission is all about. I'm wondering why we have doubts of why we are here? I firmly believe in why the Commission was set up. I remember going to Kamloops to attend an interior meeting to sway the Interior people to be part of this organization. Think we did a very good job. We had a large number of Interior people sitting here the first few meetings, somewhere along the line they have got drawn away.

I hear questions of how strong is this organization and what powers does it have? I thought that is what we are trying to achieve is strength in numbers when we formed this organization. As stated the Government plays games with us, they play the Interior against the Coast, the North against the south.

We let them play hoaxes on us. The reason for that is not total support among all of us in Indian Organizations, there is no communication among us. When you come here and there is a crisis situation, the UNN and the NBBC are members of organization. We have come here for support and got that support. We create our own problems. We have to start practicing what we preach, start working together in a more positive way. We can't continue to blame the white man for our problems.

The overall discussions were the above and to work closely and honestly with each other and our organization will become strong and show the Government that we do support one another. Help each other and support each other.

Tom Greene spoke regarding the Haida Nation. Miles Richardson sent a message that the Haida Nation will need support. They have gone back to Lyell Island and are going to stop logging period.

MOTION # 86-20 MOVED BY Rod Robinson/Seconded by Richard Watts

THAT the B.C. Aboriginal Peoples' Fisheries Commission support the Haida People in their efforts to stop logging on Lyell Island.

MOTION CARRIED.

Back to the Goals and Objectives it is an understanding the UNN was to have a seat.

Perry read a motion from February 1985 a motion passed that the membership be determined by BCR or in case of the UNN by motion and that membership should consist of Tribal Nations and Independant Bands. This gives the UNN and organizations ability to sit in these meetings.

One point of concern that Rod has is that there is no follow up to all the discussions that we have been making from meeting to meeting. So I believe we should followup up on all the motions that we have been making so that we will not have a back-log.

Earl George brought up the subject of foreshore leases and that we approach the Provincial Government in this regard for our water rights and should request a moratorium on all leases.

There was discussion on the objectives and goals and the following were changed and added:

MOTION # 86-21 MOVED BY Rod Robinson/Seconded by Richard Watts

THAT the objectives of the B.C. Aboriginal Peoples' Fisheries Commission be reaffirmed with the following changes:

Items numbered 2 & 3 where Bands and Tribal Councils appear be changed to all Aboriginal People;

Addition of item number 9 to state:

9. To undertake setting up a lobby office in both capital cities, Victoria and Ottawa.

Andrew Charles stated that when talking about setting up lobby offices must set up a time frame and look at funding sources and that the new Government may set up an office in Victoria. This person must be accountable to Native people not the government.

Simon Lucas stated that dollars are hard to find.

Rod Robinson stated that we can use this as setting up our budget for 1986-87.

Could also look at someone already resident in Victoria.

MOTION CARRIED.

Dennis Francis approached the Commission for support regarding their hatchery, they have been directed by DFO that they must buy their fish stocks from DFO and their position is that they hold title to the fish. The Sliammon position is that they hold Aboriginal Rights over their fish stocks. They should not have to be purchasing their stocks from DFO. They need our support because negotiations start tomorrow and they say they will not buy the stocks from DFO.

Rod Robinson stated we must support all our Aboriginal people in their efforts.

MOTION # 86-22 MOVED BY Richard Watts/Seconded by George Esquiro

THAT the B.C. Aboriginal Peoples' Fisheries Commission support the Sliammon Bands position that they hold jurisdiction over the salmon and other marine resources of their territory.

MOTION CARRIED.

There was a discussion regarding Native Affairs and that there is concern that Indian portfolio within Fisheries has become useless for various reasons and it is felt because of Mr. Chamut. There are few Indian people work under that portfolio and they feel they are just there. All information relating to any kind of policy is not put through Mr. Hindles section.

Cliff Atleo stated that Native Affairs is in a difficult position especially with the discrimination to Native people. Native Affairs has been shuffled around physically and are now being moved again with Lonnie remaining at 1090 West Pender. Also their positions are now being downgraded.

Dan Smith spoke on the United Native Nations efforts to get food fish permits for their people. They have been told by DFO that they must get permission from the Bands where they wish to fish.

It was decided that this would be tabled to next meeting.

Working Committee representation and the Audit is tabled to next meeting.

PACIFIC SALMON COMMISSION

Cliff Atleo stated we are all affected by the Treaty and the boundaries. I feel that it is important that Bands and Tribal Councils and the Commission itself address itself to the concerns of what I feel is inadequate representation of Native people on the whole P.S. Commission. There are two Commissioners; a Commissioner, Cliff Atleo, and an alternate, Joe Gosnell. The other people represented are the Sports fish people, Bob Write, Paddy Green is the Commissioner representing the Commercial Fishermen Jack Nichol is his alternate from UFAWU and the new lady appointed is the biologist from the Vancouver Public Aquarium and there are two government people, Wayne Shinnars and Garnet Jones are the Canadian representatives.

In the Northern Panel we have Heber Clifton, he is the only Native Person in that Northern panel, so we only have one in a possible 12 positions.

In the Southern Panel we have 2 Native people, Bobby Clifton is the Panel member and Robert Duncan is the alternate.

Fraser Panel we did have Sam Douglas as an interim appointee and he was replaced with Denise Douglas and Bill Wilson from Bella Bella was also on the Fraser panel but he has not been included in the final appointment only Denise Douglas.

Out of three panels, very important panels, they take the information from advisory groups and formulate the fishing plans for the year that cover every geographical area on the coast that commercial fishery goes on. What we have is four Indian people on all three Panels. Feel we should have at least three or four in that Northern Panel alone. The trans-boundary people should be represented, there is nobody from the central coast represented, that Northern Panel covers Cape Caution and to the North boundary.

We have to lobby for more Native representation.

This year starting November and in February there is going to be some hard negotiating going on between Canada and the United States on terms of the annex and the annex covers the fishing regimes that are going to occur in each area.

Bands and Tribal Groups should send letters to Tom Siddon; Bill McKnight and your local MP that there be more participation of Native people in this process.

Closing Prayer said by Simon Lucas.

Meeting adjourned at 4:40 pm.