

# HYBRID FISHERY AGREEMENT

between

**THE PESKOTOMUHKATI NATION AT SKUTIK**

and

**THE PASSAMAQUODDY RECOGNITION GROUP INC.**

and

**THE GOVERNMENT OF CANADA**



**Canada**

# HYBRID FISHERY AGREEMENT

(referred to as the “Agreement”)

This Agreement is made in triplicate between:

THE PESKOTOMUHKATI NATION AT SKUTIK  
As represented by its Sakom (“Peskotomuhkati”)

-and-

THE PASSAMAQUODDY RECOGNITION GROUP INC.  
As represented by its President (“PRG”)

-and-

HIS MAJESTY THE KING IN RIGHT OF CANADA  
As represented by the Minister of Fisheries, Oceans and the Canadian Coast Guard  
And the Minister of Crown-Indigenous Relations

Hereinafter referred to collectively as the “Parties” or individually as a “Party”

## DEFINITIONS

“Council” means the Council of the Peskotomuhkati Nation at Skutik;

“DFO” means the Department of Fisheries and Oceans, the Department of the Government of Canada established by the *Department of Fisheries and Oceans Act*, RSC 1985, c. F-15;

“Hybrid Lobster Fishery” contemplated by this Agreement means a lobster fishery conducted primarily for the purpose of harvesting food for the Peskotomuhkati, which will also involve the sale of lobster for the purpose of covering the operating expenses of the fishery and that includes scientific protocols that implements collaborative research between the Partners;

“Legal Proceeding” means any action, application, charge or hearing before any court or tribunal in Canada;

“Minister” refers to the Minister of Fisheries, Oceans and the Canadian Coast Guard;

“Partners” means DFO, Peskotomuhkati, and PRG.

## CONTEXT

1. For thousands of years the Peskotomuhkati have been the people of their traditional lands and waters. To guide their existence in those lands and waters, and to foster peace and

- prosperity, the Crown and the government of the Peskotomuhkati entered into a treaty relationship, beginning in 1725, and confirmed with respect to fisheries in 1760.
2. The Peskotomuhkati have an Aboriginal right to fish for food, social, and ceremonial purposes, and a Treaty Right to fish in pursuit of a moderate livelihood. Treaty and Aboriginal rights are recognized and affirmed in Canada's constitution.
  3. This Agreement reflects a joint effort by the Peskotomuhkati and DFO to fulfill aspects of the spirit and intent of the Peace and Friendship treaties.

## **GENERAL**

4. This Agreement is legally binding on the Parties and is not a treaty within the meaning of that word in sections 25 and 35 of the *Constitution Act, 1982* of Canada, but is made in the context of our treaty relationship.
5. This Agreement does not create, define or extinguish any Peskotomuhkati Aboriginal or treaty rights, and for greater certainty, it does not define the nature, scope or location of specific treaty or Aboriginal rights. The Peskotomuhkati and DFO may have differing views on the nature, scope and location of treaty and Aboriginal rights, and will continue to work toward agreement on those matters.
6. Where the Peskotomuhkati have or assert a treaty or Aboriginal right which is related to the harvesting of lobster, they will only exercise those treaty or Aboriginal rights in a manner consistent with this Agreement and other lobster licenses issued by DFO and held by the Peskotomuhkati or the PRG, for the duration of this Agreement.
7. The Peskotomuhkati will not initiate or support any Legal Proceedings about the exercise of Aboriginal or treaty rights to harvest lobster, if the cause of the Legal Proceedings arises or arose while this Agreement was or is in effect. This clause will survive and continue to have effect following the termination or expiration of this Agreement. For greater certainty, research activities which do not deal with or address lobster harvesting are not subject to paragraphs 6 and 7.
8. This Agreement shall not be understood, applied or interpreted to affect, define or limit the rights of any nation, tribe, band or group or Aboriginal or Indigenous people other than the Peskotomuhkati.

## **OBJECTIVES**

9. This Agreement is intended to:
  - a. Facilitate the creation and operation of the Hybrid Lobster Fishery in a manner that reflects the priority of allocation of the Peskotomuhkati fishery for food and the objectives for the communal fishery;
  - b. Establish a collaborative approach for the implementation and administration of this Agreement;

- c. Establish a Peskotomuhkati-DFO Joint Committee for the management of this Agreement, including discussions on: access, seasons, data collection and sharing, monitoring, enforcement and other fisheries-related interests.
10. The Partners share responsibility for the protection and conservation of the health and sustainability of the marine and aquatic ecosystems of traditional Peskotomuhkati waters and lands. Within the Government of Canada, DFO bears primary responsibility for fulfilling those purposes, and for the management of the fisheries as a resource.
11. In October 2019, the Peskotomuhkati, the Government of Canada, and the Government of New Brunswick entered into a Negotiation Framework Agreement that includes a commitment to negotiations about natural resources and about fisheries. This Agreement is not intended to supplant those negotiations.

## **FUNDING**

### **The Hybrid Lobster Fishery**

12. Any work plan, budget or contribution agreement described in this Agreement shall be consistent with the Policy on Transfer Payments of the Treasury Board of Canada, and is subject to the appropriation of funds by Parliament for the fiscal period(s) in which the funds are provided.
13. To enable the Hybrid Lobster Fishery, DFO will provide access to PRG to fish lobster in Lobster Fishing Area 36 or Lobster Fishing Area 38, in the form of a licence issued in accordance with the *Aboriginal Communal Fishing Licenses Regulations*. DFO will use funds from the Access Vessel Gear (AVG) funding described in Schedule A to this Agreement to acquire the licence.
14. PRG will establish a trust in accordance with the terms and conditions set out in a contribution agreement for access, vessels and gear.
15. Once the licence described in paragraph 13 has been issued, the contribution agreement referenced in paragraph 14 has been signed, and the trust described in that paragraph has been created, DFO will transfer the remaining funding described in paragraph 1 of Schedule A of this Agreement, in a lump sum by transferring it to an account held in trust by a lawyer, notary, or financial institution acting as trustee. All interest accrued by this funding will be used by the PRG in keeping with object, terms and conditions of the trust.
16. PRG will use this funding towards obtaining fisheries access, which could include licences, quota; and/or to acquire vessels and gear.
17. Further details regarding this funding and the object, terms and conditions of the related trust will be negotiated by DFO and PRG and set out in a contribution agreement.

### **Funding for governance and collaboration**

18. Upon the signing of a contribution agreement for governance development, Canada shall provide the PRG one-time funding in the amount set out in paragraph 2 of Schedule A of this Agreement.
19. The one-time governance development funding will support the further development of Peskotomuhkati governance structures, policies and plans required for the implementation, direction and management of Peskotomuhkati fisheries.
20. The details of the governance development funding, including its object, terms and conditions, will be negotiated between DFO and PRG and set out in the contribution agreement.

### **Annual implementation and governance funding**

21. Upon signing of a contribution agreement for implementation and governance, DFO shall provide PRG with annual funding in the amount specified in paragraph 3 of Schedule A of this Agreement for the duration of the Agreement.
22. The implementation and governance funding will support the implementation of this Agreement and the Peskotomuhkati role in the governance and management of fisheries.
23. The details of the implementation and governance funding including its object, terms and conditions, will be negotiated by DFO and PRG and set out in the contribution agreement.

### **The Joint Committee**

24. Within six (6) months after this Agreement comes into effect the Partners will establish a Joint Committee consisting of two representatives each for Canada and the Peskotomuhkati. One of the representatives of Canada will be the Regional Director General of the Maritimes Region of DFO.
25. The Peskotomuhkati and DFO will select the chair of the Joint Committee from amongst its members.
26. The Joint Committee is established as a joint advisory body, and shall be used to implement a collaborative process for reviewing and providing advice and recommendations to the Minister regarding Peskotomuhkati fisheries issues.
27. The Joint Committee will discuss and consider any fisheries-related matters affecting Peskotomuhkati and may provide written recommendations to the Minister concerning these matters, including regarding the following:
  - a. existing or new and emerging fisheries activities in areas of interest to Peskotomuhkati;

- b. development of fishing plans affecting the Peskotomuhkati's fisheries and related fisheries activities, including the conditions and issuance of the Peskotomuhkati's Aboriginal Communal Fishing Licences;
- c. enhance the skills of Peskotomuhkati with respect to fisheries management;
- d. enable shared responsibilities among the Partners with respect to the management of the Peskotomuhkati's fisheries and related fisheries activities;
- e. promote a common understanding of the Partners' respective needs and issues in relation to fisheries activities;
- f. ensure the integration of Peskotomuhkati knowledge and expertise in researching, developing and implementing measures to protect fisheries resources and their habitat;
- g. measures necessary for the management and conservation of fisheries resources; and
- h. any other issues concerning Peskotomuhkati fisheries and related fisheries activities, including the following:
  - (i) discussing information related to measures necessary for conservation, public health or public safety;
  - (ii) gathering and exchanging data on species, fisheries, and science activities;
  - (iii) continuing to develop enforcement measures related to Peskotomuhkati fisheries and related fisheries activities;
  - (iv) developing measures to protect Peskotomuhkati fisheries activities;
  - (v) communicating with other advisory bodies regarding questions of common interest;
  - (vi) exchanging information about questions related to international agreements that could have an impact on Peskotomuhkati fisheries or related fisheries activities.

28. The Joint Committee shall prepare an annual workplan.

29. The Joint Committee will use best efforts to operate on a consensus basis.

30. When the Joint Committee reaches consensus as to any matter listed in paragraph 27, if required, the Joint Committee shall submit a joint written recommendation reflecting such consensus to the Minister.

31. In the event the Joint Committee is unable to reach an agreement, each Party may submit its own recommendations and an explanation of the nature of the disagreement to the Minister.
32. When making any decisions in relation to the Hybrid Lobster Fishery, and in responding to any recommendation of the Joint Committee the Minister shall take into account:
  - a. the rationale for the recommendations;
  - b. the principles and objectives of this Agreement;
  - c. the traditional knowledge that Peskotomuhkati have provided;
  - d. any adverse effects the decision may have on the Aboriginal and Treaty rights of the Peskotomuhkati as recognized and affirmed by section 35 of the *Constitution Act, 1982*;
  - e. the Partners' Nation-to-Nation relationship and the objectives of reconciliation; and
  - f. the federal government's commitment to the implementation of United Nations Declaration on the Rights of Indigenous Peoples.
33. The Joint Committee will meet at least four times a year and may meet as often as deemed necessary by the Partners and in the manner the Committee deems appropriate to implement its obligations under this Agreement.
34. The Partners shall provide each other with access to all relevant available information, including relevant available catch data, as may reasonably be necessary to enable the Joint Committee to carry out its functions and activities.
35. The Partners may invite individuals to provide technical and governance support to their representatives on the Joint Committee. These individuals may attend Joint Committee meetings.
36. The Joint Committee may strike technical subcommittees to support its activities, including regarding the assessment of commercially exploitable fisheries resources, the collection of the necessary information and data, and scientific and technical questions.
37. In keeping with the management and planning process for the Hybrid Lobster Fishery, the PRG shall, each year, prepare one or more Annual Fishing Plans setting out their preferred means of conducting their fishery.
38. The Partners may explore approaches for collaboration on fishery science and management activities related to the Hybrid Lobster Fishery.
39. The Committee will compile, evaluate, and report to the Partners any pertinent information collected on an annual basis.

## **DESIGNATION, MONITORING, COMPLIANCE AND ENFORCEMENT**

40. The Council will designate, in writing, the harvesters and vessels to harvest under the Hybrid Lobster Fishery licence and share those designations with the Minister prior to fishing taking place under the Hybrid Lobster Fishery licence.
41. PRG holds the primary responsibility for ensuring that the terms of the Hybrid Lobster Fishery licence are complied with.

## **COMMUNICATION**

42. The Partners will consider collaborating on approaches for communicating with the Province of New Brunswick, and any other relevant provinces or non-Canadian entities and fish buyers and processors, as part of the implementation of the Hybrid Lobster Fishery, as agreed to in this Agreement.
43. The Partners will collaborate on approaches for communicating with non-Indigenous commercial fishers and the general public with regard to the implementation of the Hybrid Lobster Fishery as agreed to in this Agreement.

## **DISPUTE RESOLUTION**

44. Unless the Partners agree otherwise, before a disagreement about the implementation or interpretation of this Agreement is taken to court, the Partners will seek to resolve it through direct, collaborative negotiations, and through mediation if the negotiations do not lead to resolution.
45. Before beginning collaborative negotiations pursuant to paragraph 44, the Partner seeking the negotiations shall deliver written notice to the other Partner, setting out the nature and grounds of the disagreement, and the documents in its possession upon which it intends to rely.
46. The Partners intend to conduct any collaborative negotiations in a just and timely manner. Once a notice pursuant to paragraph 45 has been delivered, each Partner in the disagreement will within ten (10) business days appoint a senior official as its negotiator, and the negotiators will meet within twenty (20) business days, unless the Partners agree otherwise, after the notice has been delivered.
47. If a disagreement referred to collaborative negotiations is not resolved within twenty (20) business days after the first meeting of the negotiators, any Partner engaged in the negotiations may require the matter to be referred to mediation. If the Partners cannot agree upon a mediator, the Partners shall jointly make application to the Court of King's Bench of New Brunswick in the Judicial District of Saint John for the Court to exercise its inherent and equitable jurisdiction as a Superior Court to name a mediator.



48. Where a disagreement has been resolved through negotiations or mediation pursuant to this Agreement, the Partners will document the resolution in writing and they and any mediator will sign it, and the resolution will become binding upon the Partners when it is signed.
49. A mediator named pursuant to paragraph 47 will be retained by the Partners to a disagreement jointly. After consulting with the negotiators for the Partners, the mediator will propose to the Partners the process, terms, and rules of the mediation, which the mediator will seek to draft in a manner that respects the honourable relationship. Each Partner will be responsible for its own costs incurred in the conduct of the mediation. The costs associated with the mediator and other costs of the mediation will be shared equally between Partners.

## **TERM, EFFECTIVE DATE AND TERMINATION**

50. The term of this Agreement is five (5) years. It shall come into effect once it has been signed by the Parties. If the Parties sign at different times, it comes into effect on the latter of the dates.
51. The Council or DFO may give written notice to terminate this Agreement, which either may do at any time for any reason by providing written notice of the intent to terminate, including reason(s) for termination.
52. Upon termination of this Agreement, the Peskotomuhkati:
  - a. shall reimburse Canada for amounts unspent and uncommitted from the original amount of the annual governance and implementation funding in Schedule A at the time of termination; and
  - b. will no longer be eligible to receive annual implementation and governance funding as described in this Agreement. Notwithstanding the expiry or termination of this Agreement, any amount of the trust spent will be considered as being part of the implementation of the Peskotomuhkati's Treaty Right.

## **REVIEW AND AMENDMENT**

53. At the request of either Party, the Parties shall review this Agreement to consider the following:
  - a. any substantial advancements, developments, or benefits arising from the jurisprudence or common law;
  - b. any amendments to federal legislation that are directly related to the issues set out in this Agreement;
  - c. any changes in federal policy, programs, or mandates concerning the issues set out in this Agreement;
  - d. any agreements of a similar nature with Indigenous groups benefiting from Peace and Friendship Treaties or with fisheries governance and fishing rights otherwise

recognized and affirmed by sections 25 and 35 of the *Constitution Act, 1982* or in relation to general recognition of rights by Canada;

- e. any changes required because of unforeseen circumstances with a significant impact on the rights of the Peskotomuhkati and the performance of its fisheries activities;
- f. any difficulties in implementing the terms of, or obligations imposed by, this Agreement; or
- g. any other matters that may be agreed to by the Parties concerning the implementation of the provisions of this Agreement.

54. As provided for in this Agreement, this Agreement may be amended with the written consent of the Parties.

#### **RENEWAL**

55. The Peskotomuhkati may, no later than six (6) months prior to the expiry of this Agreement, choose to renew it for additional periods of five (5) years, up to a maximum term of twenty-five (25) years. If the Peskotomuhkati renew this Agreement, the one-time contributions referred to in paragraphs 15 and 18 are not renewable.

#### **RATIFICATION**

56. The Peskotomuhkati has ratified this Agreement by Peskotomuhkati council resolution.

THE PARTIES AGREE that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

**In witness whereof, the Parties have signed:**

**For the Peskotomuhkati, as represented by its Council, through its Sakom**



Mr Hugh Akagi  
Sakom of Peskotomuhkati Nation at Skutik and  
President of the Passamaquoddy Recognition Group Inc.

April 21, 2023  
Date

**For His Majesty the King in Right of Canada as represented by the Minister of Fisheries,  
Oceans and the Canadian Coast Guard**



The Honorable Joyce Murray  
Minister of Fisheries, Oceans and the Canadian Coast Guard

APR 26 2023  
Date

**and the Minister of Crown-Indigenous Relations**



The Honorable Marc Miller  
Minister of Crown-Indigenous Relations

APR 27 2023  
Date