

DRAFT

DUAL FISHING INFORMATION PACKAGE



"To support and empower a unified approach to First Nation fisheries which will ensure food security and health for all communities for the next seven generations".



INTRODUCTION¹

Dual fishing is the term DFO uses to describe when a commercial fishing boat is fishing for commercial purposes and for legitimate First Nation's food and ceremonial purposes at the same time.

DUAL FISHING GUIDING PRINCIPLES AND CRITERIA

1. Support and ensure suitable access to Section 35(1) fisheries while ensuring the conservation of species as needed, to ensure sustainability of those fisheries for future generations.
2. To recognize the Aboriginal right, as defined by the Constitution Act, and outlined in the *Sparrow* decision that Section 35(1) needs take priority over all others, after conservation.
3. To make Section 35(1) access a priority of the Department and allow the required opportunities and access for obtaining Section 35(1) fish.

Dual fishing has long been recognized by First Nations and DFO as a viable opportunity for First Nations to access food and ceremonial fish. DFO supports dual fishing, but there is evidence to indicate that the activity is being abused to the detriment of First Nations at an increasing rate and scale.

Dual Fishing is abused when:

- 1) the fisher sells fish caught for First Nation's food and ceremonial purposes into the commercial market;
- 2) when fishers claim excess catch (overage) as food and ceremonial fish to avoid penalties (specifically for species of concern like Yelloweye, Bocaccio, and other inshore rockfish) when they were never designated to fish for First Nations Food and Ceremonial needs. In these cases, the fishers go looking for First Nations to take delivery of their overage, before their catch is validated at the dock;
- 3) the fisher is designated to fish for food and ceremonial purposes, but the amounts requested by the First Nations are greatly exceeded; and
- 4) a fisher fishes in an area closed to commercial harvest, but opened for First Nation's food and ceremonial fishing (for example Rockfish Conservation Areas). If they get caught the fisher claims to be fishing for First Nation's food and ceremonial purposes.

¹ Adapted from Draft Nuu-chah-nulth Dual Fishing Authorization document, provided to IMAWG prior to 2016

DUAL FISHING DEFINITION

The harvest of fish for commercial and Section 35 (1) purposes during the same fishing trip under the authority of both a commercial licence (including communal commercial) and a communal and/or supplemental licence (Section 35(1)), with the allowance of any mortally wounded fish caught as bycatch (i.e., non-target salmon species) during the commercial fishery to be retained for Section 35 (1) purposes.

WHY IS THIS IMPORTANT?

While some First Nations may actually get a portion of the fish from these activities, it represents uncontrolled fishing in traditional territories. If this fishing behaviour is not addressed, there is substantial potential for over-fishing and possible conservation concerns for targeted and non-target species. **To protect legitimate Dual fishing activities, and to make it more difficult for illegitimate fishers to abuse Dual fishing, two standardized documents are prudent:**

1. **Dual Fishing Designation Certificate**
2. **Dual Fishing Landing Form**

The purpose of a Dual Fishing Designation AND Landing Certificates are to protect First Nation access to fish and Dual Fishing, while making it harder for non-designated fishers to abuse the practice.

1. DUAL FISHING DESIGNATION CERTIFICATE- PRIOR TO FISHING-

Prior to fishing, individual First Nations designate a commercial licence holder to fish for Section 35(1) purposes on the Nation's behalf under that Nation's communal licence. The designated vessel/ vessel master must have a valid commercial licence in order to engage in dual fishing. Any dual fishing will be consistent with the conditions outlined in the designating Nation's communal licence. This will be done using a Dual Fishing Designation Certificate issued by the designating Nation. The Dual Fishing Designation Certificate **MUST** include, at a minimum, the following information:

- The designating organization/band
- The applicable communal/supplemental licence number
- **The designated fishing period (dates)**
 - **NOTE: Designation Certificates must include end/expiry dates, to prevent fishers from continuing to fish under the Designation Certificate after the agreed upon Food fish has been captured and delivered.**



- The name of the designated vessel master
- The name of the designated vessel
- The type of gear that will be used to harvest the Section 35(1) fish
- The authorized area where the designated vessel will be fishing; note that the area must match the area designated by the communal fishing licence and must reference current communal fishing licence.
- The quantity of Section 35(1) fish designated by the Nation to be harvested by the dual fishing vessel (compliant with the communal and/or supplemental licence);
- The designated species to be harvested (compliant with the communal licence);and,
- Any additional specific requirements as outlined by the designating Nation (e.g. No fishing in Rockfish Conservation Areas, First Nation Protocol Agreement specifications, etc.).

A suggested Dual Fishing Designation Certificate template is provided in Appendix I.

Additional requirements that must be met prior to fishing include the following:

- The vessel master must hail out indicating the intent to dual fish and fish under the terms and conditions of the designation certificate.

Nations are responsible for ensuring commercial harvesters have complete designation certificates prior to fishing.

Nations are responsible for ensuring Nation-to-Nation Protocol Agreements have been established prior to dual fishing.

DURING FISHING

As previously mentioned, any designated vessel/vessel master will adhere to any conditions outlined in the applicable commercial and communal licences and must meet any applicable requirements, including monitoring and reporting requirements, outlined in the appropriate Integrated Fisheries Management Plan. Additional requirements to be met while dual fishing include the following:

- Vessel master must have a copy of the **complete** dual fishing designation certificate on board at all times while dual fishing.
- Vessels must fish within the start and end dates identified on the Dual Fishing designation certificate.
- Vessels are only permitted to fish for Section 35(1) purposes within the area identified in the Dual Fishing Designation Certificate issued by the authorizing Nation.
- Only the designated species and quantities, as outlined in the designation certificate, can be retained for Section 35(1) purposes.
- Record in the fishing log the number of fish retained by species under the authority of the dual fishing designation certificate, by each set.

2. FOLLOWING FISHING- COMPLETED LANDING FORM

To further ensure Nations are receiving the designated food fish from Dual Fishing, a Landing Form should be completed.

Following completion of a dual fishing trip the following requirements must be met:

- Vessels must Hail in and report estimated pieces by species of Section 35(1) catch.
- Separate offload of Section 35(1) fish will be permitted if a fisheries representative designated by the First Nation organization (e.g. fishery guardian/observer) monitors the landing and the verification of pieces and species of salmon caught and retained.
 - **Note: It is important to validate and report separate Section 35(1) offloads to help prevent failed audits for First Nations commercial fishers** (See Appendix 3 for more information).
- The designating Nation is responsible for submission of Section 35(1) catch records from dual fishing to the Department, in accordance with communal and/or supplemental licences and/or treaties.
- Any additional applicable catch monitoring and reporting requirements outlined in the IFMP will be completed.

Should the Department require third party validators, the Department will be responsible for covering any associated costs.

DUAL FISHING REQUIREMENTS

Dual fishing for Section 35(1) is subject to all conditions of applicable AFS agreements, the applicable communal and/or supplemental licence(s), as well as all appropriate conditions of the designated commercial licence (e.g., use of selective fishing techniques, fishing and catch monitoring and reporting requirements). All dual fishing activities must adhere to measures outlined in the applicable Integrated Fisheries Management Plan (IFMP).

BENEFITS TO ISLAND NATIONS

It is expected that this dual fishing proposal would provide the following benefits to Coastal Nations:

- Increased access to Section 35(1) fish for First Nation communities.
- Increased efficiency and cost savings related to harvesting Section 35(1) fish, including fuel and equipment savings, use of crew expertise, gear improvements.
- Decreased exposure to unsafe conditions by allowing the use of larger more seaworthy commercial vessels that may be able to fish through unfavourable weather conditions.
- Allows for the opportunity for the delivery of commercial quality fish for Section 35(1) purposes.



- Opportunities for capacity building (i.e., dockside observers).
- Potential job opportunities for community members.

BENEFITS TO DFO

It is expected that this dual fishing proposal would provide the following benefits to the Department:

- Increase the Departments ability to meet its fiduciary obligation to provide access to Section 35(1) fish for Coastal Nations. Of which, it is currently failing to meet.
- Increased catch reporting data, which may help with stock assessment, escapements, run-size estimates, etc.

MUTUAL BENEFITS

As Coastal Nations meet their needs for Section 35(1) fish, it may allow for increased opportunities for trust and relationship building between the Department and Coastal Nations. Additionally, this dual fishing proposal aligns with many of the key commitments outlined in Prime Minister Trudeau's mandate letter, that have yet to be fulfilled, including:

- To set a higher bar for openness and transparency in government;
- Work with [...] Indigenous peoples [...] to better co-manage our three oceans;
- It is time for a renewed, nation-to-nation relationship with Indigenous Peoples based on **recognition or rights, respect, co-operation, and partnership.**



APPENDIX I – DUAL FISHING DESIGNATION CERTIFICATE TEMPLATE



DUAL FISHING DESIGNATION CERTIFICATE

Certificate is valid from: ___/___/___ to ___/___/___
DD / MMM / YYYY DD / MMM / YYYY

Designating Organization: _____

Communal Licence Number: _____

Designation Certificate Number (any # provided by Nation):

This Designation Certificate authorizes the following vessel and vessel master to catch and retain the listed species for food, social and ceremonial purposes on behalf of the First Nation organization that issues this certificate, up to the amounts in the areas defined by this certificate. The designation certificate must be properly completed and issued before participating in a dual fishing trip. This designation certificate must remain on the designated vessel and/or vessel master for the entirety of the trip.

Vessel Master (Print full name): _____

Vessel Name: _____

Gear Type: _____

The table below sets out the amount, in pieces, by species and area that the designated vessel may land under the authority of this dual fishing designation certificate.

Species	Authorized Fishing Areas (PFMA)	Quantity (pieces) ²

Vessel Master Signature _____ Date _____

Organization Authorizing Signature _____ Date _____

² It is very important to fill out the authorized quantity prior to issuing this certificate.



APPENDIX II – DUAL FISHING LANDING FORM



DUAL FISHING LANDING FORM

NOTE: three copies are required:

- Copy to Vessel Operator
- Copy to First Nation
- Copy to DFO

Designating Organization: _____

Communal Licence Number: _____

Associated Designation Certificate Number: _____

Validator Name: _____

Validation Location: _____

Validation Date: ____/____/____

DD / MMM / YYYY

Vessel Master (Print full name): _____

Vessel Name: _____

Gear Type: _____

The table below outlines the amount, in pieces, of fish by species and area that the designated vessel landed and delivered under the authority of dual fishing designation certificate listed above.

Species	Authorized Fishing Areas (PFMA)	Quantity Delivered (pieces)

Vessel Master Signature _____ Date _____

Organization Validator Signature _____ Date _____



APPENDIX III - COMMERCIAL AUDIT PROCESS



COMMERCIAL AUDIT PROCESS

- Upon completion of each commercial groundfish trip an audit is conducted on the following:
 - Piece count from logbook to piece count at dockside
 - 10% video footage is reviewed to compare total retained and released fish for all quota species
- First Nations commercial harvesters offloading Section 31(1) fish prior to the commercial catch validation are encountering problems with their audits.
- **Failed audits may be subject to 100% video review at the cost of the harvester, and may prevent harvesters from hailing out on another commercial fishing trip.**