



# FISH(ING) LINES

with Duane Radford

## Fisheries Bombshell Revelations



*"Tagging laws have been suspended, possibly as long ago as 2020."*

**R**ecent "fisheries bombshells", two in the form of Justice and Solicitor General (JSG) "All Personnel Memoranda" (APM) arising from Alberta Environment and Parks (AEP) policy changes, and another regarding a Variation Order omission, have caught the eye of Alberta's outdoorsmen and women. Not to mention crestfallen game wardens who are dumfounded with these directives and repeal of Special Harvest Licence (SHL) tagging legislation.

The controversial APM's concern (1) Indigenous persons fishing for food and removal of domestic fishing licensing and conditions and (2) Recognized Métis

Harvests fishing outside of approved areas/zone. According to the APM directives, Indigenous people are no longer subject to open/closed seasons, size limits, daily/possession limits, tags, etc., when fishing for food. A glitch occurred respecting omission of tagging laws in "Variation Orders" and because they were repealed, charges were rendered invalid. This was discovered when an angler pleaded not guilty on a failure to tag charge. Variation Orders are an archaic form of federal overreach that allow Alberta to "vary" regulations such as open/closed seasons and daily/possession limits while Ottawa retains the authority to amend the actual "wording"

of legislation, crazy though it may sound.

One of the APM's advised the following enforcement direction in consideration of officers encountering Indigenous persons fishing for food in Alberta:

- In the absence of specific and extenuating circumstances, angling or fishing with nets is considered as "fishing for food" (not sportfishing) under constitutionally-protected rights.
- Any licences and associated conditions previously obtained and carried to authorize fishing for food by angling or netting are no longer required or expected to be followed.
- Angling or fishing with nets is allowable on all water bodies including lakes, flowing waters, and trout ponds, etc.

The Alberta Fish and Game Association (AFGA) became aware of these directives as early as May 23, 2022, when they queried officials in JSG and AEP requesting an explanation. AGFA President Victor Benz subsequently attended a briefing in July. This is yet another example of why Alberta's anglers and hunters require a strong AFGA because it's the main organization that has their backs. GOA officials advised that Alberta was the only Canadian jurisdiction that had licensing requirements respecting First Nations peoples and that the province would likely lose any cases on appeal so they were not going to enforce such provision for Indigenous peoples fishing for food. Seriously? Alberta is not the same as other provinces. The nature of our fisheries is unique so the comparison is ridiculous. Further, the difference in the number of lakes in Alberta compared with other provinces is always being rammed down the throats of Alberta anglers in support of draconian fishing regulations, which justifies fish conservation practices.

In the May 23 correspondence, AFGA also raised an issue centered on piloting an electronic tagging system. They mentioned that a "Search of *General Fisheries (Alberta) Regulation 203/1997* current as of April 1, 2021 provides no mention of tags, physical or electronic." Other sources say it appears that tagging provisions may have actually been repealed in 2020. If so, should the GOA do the right thing and refund failure to tag fines? An AEP spokesperson advised, "In preparation for the planned implementation of an electronic tagging

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pilot program, the tagging provisions for a Special Harvest Licence were removed from legislation. This means that tagging requirements become a condition of the licence. The department was unable to implement the electronic tagging pilot in 2022, so Special Harvest Licences in 2022 were issued without the new conditions requiring tagging. The requirement to tag is stated in the annual guide to sportfishing regulations.

“In 2023, these licences will include tagging requirements as conditions when the electronic tagging pilot is implemented, allowing anglers to choose to use either the physical tag or electronic means to validate their harvest.”

AEP claims, “Tagging provisions are not part of a variation order in terms of a regulation.”

However, sources say that in a “catch-22 situation”, JSG is not enforcing SHL tagging requirements, which is denied by AEP.

Angling or fishing with nets being allowable on all waterbodies including lakes, flowing waters and trout ponds is concerning, (especially) respecting threatened species with zero limits (e.g., bull trout and lake sturgeon), and notwithstanding potential issues related to Indigenous persons trafficking in poached fish, particularly taken during spawning runs. Most Albertans are law-abiding citizens; however, even a small number of poachers could abuse this loophole and devastate Alberta’s fisheries. It’s extremely difficult for Fish and Wildlife Division and Conservation Officers to enforce trafficking laws. Paramount is the need for conservation laws and common sense in the application of conditions for fishing for food, which seem to have been discarded, at variance respecting constitutional law.

“Allowing all aboriginals to fish for protected species, in all waterbodies flies in the face of conservation efforts, Federal court rulings and responsible management,” said retired veteran game warden Shane Ramstead. “Not having restrictions on species in threatened categories is baffling. How can one now take bull trout or sturgeon, as an example, and thwart conservation requirements set out in Supreme Court cases?”

The *Sparrow* case is largely considered a significant victory for Indigenous rights in Canada. The ruling provided a code for interpretation of section 35 of the *Constitution Act, 1982*, and it confirmed



- Shane Hansen photo

“Threatened lake sturgeon have no protection under changes to Indigenous fishing policies.”

the Crown’s constitutional duty to provide certain guarantees to Indigenous peoples. However, some critics argue that while the *Sparrow* ruling upholds Indigenous rights, it also confirms that the government can legally justify infringing on those rights for purposes of “conservation.”

The Métis Nation of Alberta issues cards for those deemed eligible and while they were formerly allocated only in four large regional Métis Harvesting Areas in central and northern Alberta (<https://albertametis.com/app/uploads/2021/05/Release-Metis-Harvesting-Agreement.pdf>), a new APM directive absolves this “harvesting area” requirement.

Todd Zimmerling, Alberta Conservation Association (ACA) President and CEO said, “Certainly, there is potential for a small put-and-take fish pond to be severely impacted by netting; however, harvesting fish for food is a constitutional right and the ACA fully supports these rights, whether the rights are exercised on a stocked fish pond or through harvesting deer on a conservation site.” He added, “At this point, I really can’t comment much on the potential impact to threatened species such as bull trout

or lake sturgeon, as I am not clear what, if any, impact there will be.” Zimmerling also said, “I am not a constitutional lawyer, but my understanding is that Métis people also have a constitutional right to harvest fish for food. As such, the ACA would fully support these rights no matter where a Métis Harvester may choose to exercise them.

“While there is definitely some potential for the changes identified in these APMs to impact how non-Indigenous people enjoy or use fisheries in Alberta, perhaps instead of speculating on the potential impacts, we should take this as an opportunity to meet with, talk to, and gain a better understanding of the rights of Indigenous people in Alberta.”

Bill Peters, retired game warden, special investigations covert operative and area manager said the government is abdicating their responsibility to conserve Alberta’s fish and wildlife resources. Peters said the APM directives defy common sense and will be a disaster, adding that a lack of tagging provisions is bizarre. The changes may well result in conflicts between user groups going much like what has happened on the Fraser River salmon fishery and Nova Scotia lobster fishery. ■



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