FIRST NATIONS SUMMIT

NEWS RELEASE

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SUPREME COURT OF CANADA FINDS ABORIGINAL FISHERIES STRATEGY CONSTITUTIONAL AND NOT "RACE BASED"

Coast Salish Territory (West Vancouver) -- The First Nations Summit is pleased with today's Supreme Court of Canada (SCC) decision in *R v. Kapp* where the Court has indicated that the federal Aboriginal Fisheries Strategy is **not** a race based fishery and is constitutional.

"The SCC clearly recognizes that the purpose of the communal fishery licenses provided to First Nation communities by DFO are to provide "economic opportunities through sale or trade" and that the government's aim was to address the indisputable "disadvantage of aboriginal people ... rooted in history (and which continues today)", said Grand Chief Edward John of the First Nations Summit political executive.

"This is a compelling case for the government to renew this program. Previously, DFO immediately cancelled the "pilot sales" program following a provincial court decision. We welcome the SCC decision that '*ameliorative programs targeting a disadvantaged group do not constitute discrimination'*. Once and for all the weak and racist notion of a race-based fishery advanced by the commercial sector has clearly and undoubtedly been rejected," added Chief John.

"We are extremely pleased that all 9 Justices from the Supreme Court of Canada who heard this case have agreed that the Aboriginal Pilot Sales Program and the Aboriginal Communal Licences did not constitute a "race based fishery" as contended by the appellants", said Grand Chief Doug Kelly, another member of the First Nations Summit Political Executive. "This decision clearly reaffirms First Nations rights to fish and provide for their families".

"The High Court clearly recognized in today's decision that the Pilot Sales Program under the Aboriginal Communal Fisheries Licences Regulations (ACFLR) is nothing more than a "method of allocation" administered by the Department of Fisheries and Oceans (DFO). The High Court in effect recognized and reaffirmed that First Nations' constitutionally protected rights to the fishery were being legally administered under the ACFLR. This decision opens the door for the resumption of the pilot sales program and the negotiation of other interim measures agreements for those First Nations engaged in treaty negotiations", added Chief Kelly.

Background

In the summer of 1998 a number of commercial fishermen conducted a protest fishery. On July 28, 2003, Judge Kitchen of the Provincial Court of British Columbia entered a judicial stay of proceedings for all accused charged in the matter of *Regina vs. John Michael Kapp et. al.* The accused were commercial fishermen who had been fishing in order to protest the pilot sales program of the Department of Fisheries and Oceans (DFO). The pilot sales program allows certain First Nations to sell all, or part of the fish they catch pursuant to their communal fishing licences. Judge Kitchen found that the pilot sales program was unconstitutional as it violated the Charter of Rights and Freedoms. He found that the equality rights of commercial fishermen had been violated, as they were not treated the same as the aboriginal fishermen fishing pursuant to

the pilot sales program. Within twenty-four hours of Judge Kitchen's decision DFO cancelled all aboriginal communal licences issued pursuant to the Pilot Sales Program.

The Crown appealed Judge Kitchen's decision and several First Nations intervened in the appeal to argue that the pilot sales program was not unconstitutional. Chief Justice Brenner of the BC Supreme Court heard the appeal and issued his decision on Monday July 12, 2004. The Chief Justice has allowed the appeal and found that the pilot sales program and the aboriginal communal licences which allow the sale of fish caught do not violate the constitution or the equality rights of commercial fishermen. In giving his decision, the Chief Justice said that aboriginal people are disadvantaged in Canada and have been subject to historical inequality and prejudice. The Aboriginal Fishing Strategy of DFO (which included the pilot sales program) has provided an economic opportunity to First Nations. The Chief Justice further said that the pilot sales program did not result in denial or demeaning of the commercial fishermen. No commercial openings were displaced because of the pilot sales program. Hence, the Chief Justice found there was no breach of the *Charter* equality provisions. The appeal judge later sentenced the ten convicted accused. He suspended sentence for six months without conditions and he imposed a fine of $100 with respect to each of them."

The commercial fishermen appealed the decision of the BC Supreme Court to the BC Court of Appeal, and raised non-Charter constitutional issues concerning the creation of exclusive "race-based" fisheries that were not authorized by Parliamentary legislation or, if so authorized, were ultra vires the federal government. The appellants also argued that they were entitled to a stay of proceedings directed in the trial court because of the breach of their rights under s. 15(1) of the Charter. The BC Court of Appeal dismissed the appeal on June 8, 2006, all five judges agreeing that there is no merit to either the non-Charter constitutional issues argument, or the 15(1) Charter arguments.

Today, the Supreme Court of Canada also dismissed an appeal by those charged.

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The First Nations Summit speaks on behalf of First Nations involved in the treaty negotiation process in British Columbia. Background information on the Summit may be found at www.fns.bc.ca.

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