

UNDERSTANDING THE NISGA'A TREATY

September, 1998



PREFACE

The Nisga'a Treaty stands as a symbol of hope and reconciliation between aboriginal and non-aboriginal Canadians.

This summary sets out the basic principles and facts of the Treaty, initialed August 4, 1998 in Gitlaxt'aamiks.

It offers insight into the historic background of the Treaty and emphasizes the importance of traditional Nisga'a culture in accordance with the Ayuuk.

By reconciling the aboriginal rights of the Nisga'a Nation with the sovereignty of the Crown, the Treaty is intended to be a just and equitable settlement of the Nisga'a Land Question that spells out a new relationship based on mutual recognition and sharing.

To the Nisga'a people, a treaty is a sacred instrument, the legal framework for a new society based on self-reliance and self-actualization. Fairly and honourably negotiated, the Treaty represents a major breakthrough for aboriginal self-determination — one of the most pressing issues in contemporary Canada and around the world.

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DISCLAIMER

This booklet is an introduction to the Nisga'a Treaty. It is intended to provide general answers to questions about the Treaty and is for information purposes only. The authors of the booklet have endeavored to provide accurate information, but have simplified Treaty provisions that are very complex. However, it does not describe every provision, and it may include inaccuracies as a result of this simplification. In order to have a complete and fully accurate understanding of the Treaty, it is necessary to refer to the actual text of the Final Agreement.

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GENERAL PROVISIONS

Overview

This chapter sets out the substantive clauses that apply to the entire Agreement and can be thought of as setting out the legal basis of the Treaty. The issue of “certainty” is addressed in the General Provisions chapter and is described in the next part of this summary.

What is the nature of the Final Agreement?

The Final Agreement is a treaty and a land claims agreement within the meaning of the *Constitution Act, 1982*. This means that the rights of the Nisga'a Nation set out in the Agreement are recognized and affirmed. The Agreement is binding on the Parties (the Nisga'a Nation, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of British Columbia). The Parties are entitled to rely on it. Settlement legislation will provide that the Agreement is binding on, and can be relied on by, all persons.

Do we have a right to our culture and language?

Yes. Nisga'a citizens continue to have the right to practice the Nisga'a culture and to use the Nisga'a language in a manner consistent with the Agreement.

What is our relationship to the Constitution of Canada?

As pointed out above, the Treaty will receive constitutional recognition and affirmation. However, it does not alter the Constitution of Canada, including the constitutional distribution of powers between Canada and British Columbia, the identity of the Nisga'a Nation as an aboriginal people of Canada, or sections 25 or 35 of the *Constitution Act, 1982*.

Does the Canadian Charter of Rights and Freedoms apply?

Yes. The Canadian Charter of Rights and Freedoms applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in the Agreement.

What is the relationship between federal and provincial laws and the Treaty?

Federal and provincial laws apply to the Nisga'a Nation and our lands and people. However, if there is any inconsistency or conflict between the Agreement and those federal and provincial laws, the Agreement prevails to the extent of that inconsistency or conflict.

The many licenses, permits and other authorizations that are required to be issued to the Nisga'a under the Treaty (for example the commercial recreation tenure, water licenses and so on) will be governed by federal and provincial laws of general application except, again, to the extent that the Treaty provides for different rules. In those cases, the Treaty prevails to the extent of the inconsistency or conflict. Federal legislation will ensure that provincial laws that would not otherwise apply to the Nisga'a, will apply in accordance with the Agreement.

Will the Treaty affect our other rights as aboriginal Canadians?

No. Nothing in the Agreement alters the identity of the Nisga'a Nation as an aboriginal people of Canada, or the ability of Nisga'a to participate in programs for aboriginal people that are not provided under a Fiscal Financing Agreement. Moreover, Nisga'a citizens who are Canadian citizens or permanent residents will continue to have all of the rights and benefits of other Canadian citizens or permanent residents that are applicable to them.

Will the Nisga'a people still be "Indians"?

Yes. Nisga'a citizens will still be considered to be "Indians" for the purposes of both federal jurisdiction set out in section 91(24) of the *Constitution Act, 1867*, and under the *Indian Act*. However, the *Indian Act* otherwise does not apply to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions or Nisga'a citizens, except as set out in the transition chapter.

On the other hand, it is important to remember that neither Nisga'a Lands nor Nisga'a Fee Simple Lands will be "lands reserved for the Indians" within the meaning of section 91(24).

What happens if a court strikes down some part of our Treaty?

In the unlikely event that a court determines a provision of the Agreement to be invalid or unenforceable, the Parties are committed to making best efforts to amend the Agreement to replace the invalid provision. However, the rest of the Agreement will continue unaffected.

The Parties have agreed not to challenge the validity of any provision of the Agreement and a breach by a Party does not relieve any Party from continuing with the other obligations under the agreement.

What is the relationship between our Treaty rights and the claims of other aboriginal people?

Nothing in the Nisga'a Treaty affects, recognizes or provides any rights under section 35 of the *Constitution Act, 1982*, for any aboriginal people other than the Nisga'a Nation. If a court

determines that another aboriginal people does have aboriginal rights that are adversely affected by a provision of the Treaty, the provision will operate and have effect to the extent that it does not adversely affect those other people's rights. However, if the provision cannot operate in a way that does not adversely affect those rights, the Nisga'a Nation, Canada and British Columbia will make best efforts to amend the Treaty to remedy or replace the provision.

Similarly, if Canada or British Columbia enters into a treaty or a land claims agreement with another First Nation, and the provisions of the other agreement adversely affect Nisga'a rights set out in the Nisga'a Treaty, Canada or British Columbia, as the case may be, must provide the Nisga'a Nation with additional or replacement rights or other appropriate remedies. If, after negotiating, the Parties are unable to reach agreement, the matter will be dealt with by litigation or arbitration under the Dispute Resolution Chapter.

How can the Nisga'a Treaty be amended?

The Nisga'a Treaty can only be amended with the consent of all three Parties. Canada can consent to an amendment by direction of the Governor in Council (or the federal cabinet). British Columbia can only consent to an amendment with the consent of the Provincial Legislature. The Nisga'a Nation can consent to an amendment by a resolution adopted by at least two thirds of the elected members of Nisga'a Lisims Government.

How does federal and provincial freedom of information and privacy laws apply under the Treaty?

Nisga'a Government will be treated as a government for the purpose of federal and provincial freedom of information and privacy legislation. Before Canada or British Columbia provide information to Nisga'a Government in confidence, it will be necessary for Nisga'a Government to have enacted a law to maintain the confidentiality of that information.

What about further negotiations?

While the Agreement is the full and final settlement in respect of the Nisga'a section 35 rights, the rest of the Agreement sets forth many areas in which the Parties have agreed to negotiate and attempt to reach agreement. These other agreements may lead to the addition of a definition of Nisga'a rights in the Treaty, such as Nisga'a fish or wildlife allocations, or they may result in separate agreements, such as agreements for the provision of various government services. Dispute resolution may be available if negotiations do not result in agreements, depending on the specific matter.

What are the Interpretation provisions!

Interpretation provisions of the General Provisions chapter guide the interpretation of the rest of the Agreement. For example, they describe the meaning of "conflict" and "inconsistency". The Agreement is to be read without presuming that doubtful expressions are to be resolved in favour of any particular party. The use of the word "will" indicates something that must be done as soon as practicable after the effective date or the other event that gives rise to the obligation. Other similar interpretative rules are provided.

CERTAINTY

Overview

“Certainty” in the Treaty means nothing more than the assurance to the Parties that they can rely on the Treaty as setting out all of the rights of the Nisga’a Nation that are recognized and affirmed by section 35 of the *Constitution Act, 1982*, and the limitations to those rights, to which the Parties have agreed.

It is important to remember that certainty is provided by all of the provisions of the Treaty, not just by the paragraphs in the General Provisions chapter. Certainty is provided with respect to a matter by the specific provisions in the other chapters that deal with that matter.

However, it is necessary for the General Provisions chapter to set out the Parties’ agreement concerning the nature of the Treaty transaction.

What is extinguishment?

Historically the British Crown, and later the Canadian government, approached treaty making on the basis that aboriginal title and aboriginal rights must be “extinguished” by way of a “surrender”. In most treaties in Canada, including most modern land claim agreements, there has been a surrender of aboriginal title and aboriginal rights, and the granting back by the Crown of new treaty rights to the First Nation. All of the aboriginal rights and title are extinguished, and replaced by new rights created by the Treaty.

Many First Nations, including the Nisga’a Nation, have rejected this approach because it is seen as severing the ancestral ties upon which First Nations’ rights are based. Furthermore, “surrender” carries with it the idea of subjugation, defeat or conquest. The challenge has been to agree on an approach to certainty that does not involve extinguishment or surrender, but that still gives the Parties the necessary confidence that the Agreement can be relied upon.

In the same way that the federal and provincial governments do not wish there to be additional aboriginal rights asserted by the Nisga’a Nation, the Nisga’a Nation does not wish there to be additional limitations to our rights imposed by the federal and provincial governments.

What approach to certainty was agreed to in the Agreement in Principle?

In the Agreement in Principle, the Parties agreed to achieve certainty through a method other than extinguishment and surrender. The Agreement in Principle provided that the Final Agreement will exhaustively set out the rights of the Nisga’a Nation. It also provided that prior to the Final Agreement, the Parties would negotiate the “precise legal technique” required to achieve certainty. The additional provisions in the Final Agreement constitute this “precise legal technique”.

Why does the Treaty modify aboriginal rights and title?

If the Nisga'a aboriginal title continued in its unmodified form in the Treaty, there would be little certainty for either the Nisga'a Nation or the other Parties about the enforceability or effectiveness of many of the other provisions of the Agreement. This uncertainty results from the lack of a clear definition of aboriginal title by Canadian courts. The problem was compounded by many of the rulings made by the Supreme Court of Canada concerning aboriginal title in the Delgamuukw decision.

What are the basic features of aboriginal title?

Some of the important features of aboriginal title, according to the Supreme Court of Canada, include:

- > Aboriginal title is a *sui generis* (unique) interest that cannot be completely explained by reference to common law rules of real property or to the rules of property found in aboriginal legal systems.
- > Aboriginal title has various "dimensions":
 - a. It is inalienable, that is, it cannot be transferred, sold or surrendered to anyone other than the Crown;
 - b. Its source arises not from the Royal Proclamation of 1763, or by grant from the Crown. Rather it arises from the prior occupation of Canada by aboriginal peoples, and from the relationship between common law and pre-existing systems of aboriginal law;
 - c. Aboriginal title is held communally. In a statement that sounds very much like the Nisga'a common bowl philosophy, the Court says:
 - > *"Aboriginal title cannot be held by individual aboriginal persons; it is a collective right to land held by all members of an aboriginal nation. Decisions with respect to that land are also made by that community."*
- > The content of aboriginal title can be summarized by two propositions:
 - a. Aboriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of aboriginal rights; and
 - b. Those protected uses must not be irreconcilable with the nature of the group's attachment to that land.

Aboriginal title is more than a "bundle" of aboriginal rights, or practices, cultures and traditions that are "integral to the group's distinctive culture." Rather, aboriginal title is a right to the land itself. Subject to the limits described below, the land may be used for a variety of activities, none of which need be individually protected as aboriginal rights under section 35(1).

There is an “inherent limit” on the uses to which the land can be put. Lands subject to aboriginal title cannot be put to such uses as may be “irreconcilable” with the nature of the occupation of that land and the relationship that the particular group had with the land, which together have given rise to aboriginal title in the first place. After pointing out that aboriginal title arises from occupation, which is determined by reference to the activities and uses to which the group has put the land, the Chief Justice concluded that there exists a “special bond” between the aboriginal group and the land. This, he continued, creates an inherent limitation on the uses to which the land can be put. By way of example, he continued, if title is established on the basis that the land was used as a hunting ground, it could not be strip mined; if a group claims land because of its “ceremonial or cultural significance”, it may not use the land in such a way as to destroy that relationship by, for example, turning it into a parking lot.

The principle seems to be that the uses to which a group puts aboriginal title land are unlimited, except to the extent that the use would prevent the special relationship from continuing into the future. The limitation would seem to depend on the nature of past use, and the compatibility of present or proposed uses with that use in the future.

However, the Chief Justice continued:

“...what I have just said regarding the importance of the continuity of the relationship between an aboriginal community and its land, and the non-economic or inherent value of that land, should not be taken to detract from the possibility of surrender to the Crown in exchange for valuable consideration. On the contrary, the idea of surrender reinforces the conclusion that aboriginal title is limited in the way I have described. If aboriginal peoples wish to use their lands in a way that aboriginal title does not permit, then they must surrender those lands and convert them into non-title lands to do so.”

An infringement of aboriginal title is valid only if it is intended to address a legislative objective that is “compelling and substantial” and if it is consistent with the special fiduciary relationship between the Crown and aboriginal people.

The Chief Justice ruled that objectives such as “the development of agriculture, forestry, mining, and hydro-electric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims” are all sufficiently compelling and substantial to meet the first test for infringement of aboriginal title.

The second test is whether an infringement of aboriginal title is consistent with the fiduciary relationship. Three aspects of aboriginal title are relevant to the reconciliation of aboriginal title with the sovereignty of the Crown:

- a. Aboriginal title encompasses the right to the exclusive use and occupation of land;

b. It encompasses the right to choose to what uses land can be put, subject to the limit described above; and

c. Lands held pursuant to aboriginal title have an inescapable economic component.

The application of these “aspects” is unclear — the right to the exclusive use is said to be a limited priority. Moreover, it may not require priority. Consultation may suffice.

Moreover, compensation “is relevant to the question of justification” as well, although the Court did not go so far as to say that compensation is due for all past infringements of aboriginal title, nor did it rule on how the amount of compensation should be determined.

How does the Final Agreement deal with these issues?

The Final Agreement builds on the basic approach set out in the Agreement in Principle. The Preamble includes the statement:

“Whereas the Parties intend their relationship to be based upon a new approach to mutual recognition and sharing, and to achieve this mutual recognition and sharing by agreeing on rights, rather than by the extinguishment of rights.”

The key paragraphs of the General Provisions chapter dealing with certainty are as follows:

The Final Agreement is binding on the Parties and they can rely upon it. Settlement legislation will provide that the Agreement is binding and it can be relied upon by all other persons.

The Nisga’a Nation represents that in respect of the matters dealt with in the Agreement, it has the authority to enter and it does enter into the Agreement on behalf of all persons who have aboriginal rights, including aboriginal title, in Canada based on their identity as Nisga’a. This is why a referendum of the Nisga’a Nation is required — in order to apply to all Nisga’a persons and to ensure that all Nisga’a persons are entitled to the rights and benefits set out in the Treaty.

Similarly Canada and British Columbia represent and warrant to the Nisga’a Nation that they have the authority to enter into the Agreement.

The Agreement is the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of the Nisga’a Nation. This means that no further settlement in respect of those rights can be sought or achieved.

The Agreement exhaustively sets out Nisga’a section 35 rights (those rights that are recognized and affirmed by the Constitution of Canada), the geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed. The Agreement clearly states that the Nisga’a section 35 rights are:

a. Aboriginal rights, including aboriginal title, as modified by the Agreement;

b. The jurisdictions, authorities and rights of Nisga'a Government; and

c. The other Nisga'a section 35 rights, which are not aboriginal in origin, but have been achieved through the Treaty.

In order to ensure that the provisions of the Agreement are effective, and can be relied on, the aboriginal rights, including the aboriginal title, of the Nisga'a Nation are modified, and continue as modified, as set out in the Agreement.

"Modified" means "changed" or "altered"; it does not mean "surrendered and replaced". It is necessary to modify the aboriginal title and aboriginal rights to ensure that the Nisga'a Nation has the rights set out in the Treaty, which are in many ways quite different from aboriginal title and aboriginal rights as described by the Supreme Court of Canada. Modification is also necessary to enable the Nisga'a Nation to fulfill its promises of sharing with the other governments, in accordance with the terms of the Agreement.

More specifically, aboriginal title is modified into the estates in fee simple described in the Lands Chapter to Nisga'a Lands and Nisga'a Fee Simple Lands. This estate in fee simple is the largest estate known to law and represents the most complete set of rights to land devised by the English-Canadian legal system. It is not subject to the limitations that exist on aboriginal title described above.

If, despite the Agreement and the settlement legislation, the Nisga'a Nation continues to have an aboriginal right, including aboriginal title, that is other than, or different in attributes (characteristics) or geographical extent from, the rights set out in the Agreement, that right is "released" to Canada to the extent that the right is other than or different from the rights as set out in the Agreement. This is to make it clear that the Parties are entitled to rely upon the description of the rights set out in the Treaty and that there are no other legal attributes to those rights, or other rights that no one has thought of, that are recognized and affirmed by the Constitution of Canada. Otherwise the Agreement would not be the full and final settlement of the claim. Similarly, the Nisga'a Nation releases Canada and British Columbia and all other persons from claims relating to or arising from violations of aboriginal rights, including aboriginal title, in the past.

A "release" is a contemporary legal technique that enables people to reach agreement to settle a dispute, without fear that the dispute will continue despite the negotiated agreement. A release is used in a legal transaction in which the parties reach an agreement about a disputed claim without proceeding to court. For example, a person who is injured in a car accident and receives a cash settlement from the other driver, or his or her insurance company, will sign a release that provides that they have no further right to sue the driver based on that car accident. However, no one could say that the person has "surrendered" to the other driver (or to his or her insurance company).

While a release ensures that no further claims can be brought based upon the same subject matter, it does not suggest defeat and oppression.

Why does the Treaty not clearly set out the rights of the Simigat and the Sigidimhaanak under the Ayuuk?

The Preamble acknowledges the ongoing importance to the Nisga'a Nation of the Simigat and Sigidimhaanak continuing to tell their Adaawak relating to their Ango'oskw. However, it does not set out the ongoing rights that these people will have under Nisga'a law. This is because two fundamental Nisga'a instructions provided at the commencement of negotiations:

- > In dealing with the federal and provincial governments, the Nisga'a Nation would pursue the "common bowl" approach — namely that all Nisga'a share equally in the lands and resources of the Nisga'a traditional territory; and
- > The Ayuuk is not a matter to be negotiated with the federal and provincial governments, but is an internal matter to guide future decisions of Nisga'a Government.

Accordingly the Treaty vests property and rights in the Nisga'a Nation and provides that, within the management regimes set out in the Treaty, Nisga'a Government has the authority to make laws dividing the property and regulating Nisga'a activities. The application of the Ayuuk to the rights in the Treaty is a matter for the Nisga'a Nation to determine, through its governments, after the effective date.

It is clear that under the Treaty different parts of Nisga'a traditional territory will be subject to different rules. Similarly, it is clear that aboriginal title and aboriginal rights to lands have been modified, so as to result in a communal ownership of Nisga'a Lands and Nisga'a Fee Simple Lands, and the continuation of hunting, fishing and other rights throughout the territory. However, this does not mean that the Ango'oskw have been eliminated or that the traditional relationship to those territories must now be ignored. It is up to the Nisga'a Nation to determine how the Simigat and the Sigidimhaanak will continue to be involved in management decisions over which the Nisga'a Nation has authority under the Treaty.

For example, Nisga'a law could require that Nisga'a representatives on the Wildlife Committee (WC) and the Joint Fisheries Management Committee (JFMC) consult with or otherwise seek direction from the relevant Simigat and Sigidimhaanak before determining positions to advance on those bodies. Similarly, Nisga'a law could provide guidance as to where and when Nisga'a citizens exercise their Treaty rights in the various locations throughout the territory.

What are the indemnities?

Indemnities are a way of assigning risk. The indemnities in the General Provisions make it clear that if Canada or British Columbia are successfully sued on the basis of a Nisga'a aboriginal right or title, other than as set out in the Agreement, the Nisga'a Nation will compensate Canada or British Columbia for its costs, not including legal fees and costs, and for any damages they are obliged to pay.

LANDS

Overview

This chapter establishes the boundaries of, and describes the Nisga'a Nation's ownership of, Nisga'a Lands and Nisga'a Fee Simple Lands. It provides for the granting of a Nisga'a commercial recreation tenure, requires the designation of Nisga'a Heritage Sites and the renaming of Nisga'a geographic features, sets out Nisga'a rights in the Nisga'a Memorial Lava Bed Park and the Gingietl Creek Ecological Reserve, and specifies Nisga'a entitlements to water resources.

What are Nisga'a Lands?

Nisga'a Lands make up 1,992 square kilometres of land, encompassing all four Nisga'a Villages.

Which areas within the outer boundary are not part of Nisga'a Lands?

It includes submerged lands (river and lake bottoms), the Nisga'a Memorial Lava Bed Park, the Gingietl Creek Ecological Reserve, the Nisga'a Highway corridor, Indian Reserve #88 at Red Bluff, existing private fee simple parcels (including the roads inside those parcels), existing agriculture lease areas and the existing woodlot licence area.

(see Nisga'a Lands and Nisga'a Fee Simple Lands map in Appendices)

What is the nature of Nisga'a ownership of Nisga'a Lands?

On the effective date, the Nisga'a Nation owns the "full" fee simple estate in Nisga'a Lands. Under Canadian law, the full fee simple estate is the largest and most complete interest in land that can be owned by any subject of the Crown.

Most private land owners in the province have a "limited" fee simple estate, under which British Columbia owns the subsurface and the roads, can "resume" 1/20th of the land, and has other rights such as the right to take sand, gravel and timber. The Nisga'a Nation's fee simple estate is not subject to any of these limitations.

Can the Nisga'a Nation grant interests in Nisga'a Lands?

Yes. The Nisga'a Nation can grant an interest or estate in a parcel of Nisga'a Lands (the full fee simple estate, a limited fee simple estate, a lease, a right of way, etc.) to a Nisga'a Village, a Nisga'a Corporation, a Nisga'a citizen, or any other person. However, even if the Nisga'a Nation grants the full fee simple estate to a non-Nisga'a person, the land continues to be Nisga'a Lands and therefore remains under the jurisdiction of Nisga'a Government.

Will it be possible to add parcels of land to Nisga'a Lands?

Yes. For example, if the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen becomes the owner of an existing private fee simple parcel within the outer boundary, or an existing agriculture lease or woodlot licence area within the outer boundary, the Nisga'a Nation can add that land to Nisga'a Lands with the consent of the owner. If the Nisga'a become owners of land outside of but touching the outer boundary, that land can be added to Nisga'a Lands on a similar basis, if Canada and British Columbia consent.

What happens if there is a dispute about any of the boundaries of Nisga'a Lands?

The dispute can be settled by arbitration under the Dispute Resolution Chapter.

Who determines the boundaries of Nisga'a Public Lands, Nisga'a Private Lands and Nisga'a Village Lands?

Nisga'a Lisims Government.

Who owns subsurface resources under Nisga'a Lands? Who controls mineral royalties?

On the effective date, all mineral resources are owned by the Nisga'a Nation. Nisga'a Lisims Government controls mineral royalties.

What are Nisga'a rights over submerged lands within Nisga'a Lands?

Unless Nisga'a Lisims Government consents, British Columbia cannot sell submerged lands, or grant a long-term lease, or authorize a use that would adversely affect Nisga'a Lands or Nisga'a Treaty interests. Nisga'a Lisims Government cannot unreasonably withhold its consent to provincial proposals for submerged lands.

If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen proposes to use or acquire an interest in submerged lands, and if Nisga'a Lisims Government consents, and if the proposal conforms to provincial law, British Columbia cannot unreasonably refuse the proposal.

Which existing interests within Nisga'a Lands will be replaced or continued?

Nisga'a Government will replace a number of licences, permits, leases, and other existing interests in Nisga'a Lands, as specified in Appendix C of the Treaty. These include Nisga'a certificates of possession and band council resolutions for the occupation of Village lots, licenses for telecommunications facilities, permits for forestry operations, and licences for government facilities. In addition, existing angling guide licenses and traplines will be continued under provincial law.

Will contaminated sites within Nisga'a Lands be cleaned up?

Yes. British Columbia will inspect the sites specified in Schedule B of the Chapter. If any of these sites is found to be contaminated under provincial law, it will be cleaned up in accordance with provincial law.

What are Nisga'a Fee Simple Lands?

On the effective date, the Nisga'a Nation owns parcels of land at 33 sites outside Nisga'a Lands. These parcels are together called Nisga'a Fee Simple Lands, and are divided into Category A Lands and Category B Lands. Each of these parcels is shown in detail in Appendix D of the Treaty.

What are Category A Lands?

Category A Lands are parcels at the sites of 18 former Nisga'a reserves outside of Nisga'a Lands. The total area of these parcels is approximately 25 square kilometres.

What is the nature of Nisga'a ownership of the Category A Lands?

On the effective date, the Nisga'a Nation owns a fee simple estate in the Category A Lands that is nearly as "full" as the fee simple estate in Nisga'a Lands. There are some differences. For instance, British Columbia can authorize other persons to take water across the Category A Lands. Generally, however, the Nisga'a Nation has full rights of ownership in the Category A Lands.

Are any Category A Lands subject to other interests?

Yes. For example, parts of the Kshwan and Tackuan parcels are subject to existing mineral claims. Part of the Kshwan parcel is also subject to a provincial right of way for public access.

What are Category B Lands?

Category B Lands are parcels at 15 additional sites. The total area of these parcels is approximately 2.5 square kilometres.

What is the nature of Nisga'a ownership of Category B Lands?

On the effective date, the Nisga'a Nation owns a fee simple estate in the Category B Lands that is similar to the "limited" fee simple estate held by most private owners in the province. For example, British Columbia will own the subsurface resources and reserve most of the other standard provincial rights.

Are any Category B Lands subject to other interests or restrictions?

Yes. For example, part of the Hattie Island parcel is subject to a federal licence for a navigation light. Parts of the Nasoga Gulf, Echo Cove, Ohl Creek, Amoth Lake and Amoth Headwaters Lake parcels are subject to restrictive covenants for the protection of creeks and lakes.

Can any interest in Nisga'a Lands, Category A Lands or Category B Lands be expropriated under federal legislation?

Yes, but there are special protections against federal expropriation of any interest in Nisga'a Lands, Category A Lands or Category B Lands. No federal expropriation can take place if other suitable land is reasonably available. Any federal expropriation must be justifiable for a federal public purpose, of the smallest interest necessary, and for the shortest time required. The federal cabinet must give its consent.

What happens if an expropriation under federal legislation does take place?

The owner will receive compensation, taking into account specified factors. Canada will make reasonable efforts to acquire alternative land to offer as all or part of the expropriation. If the expropriated interest subsequently becomes unnecessary for the purpose for which it was taken, the interest will revert to the Nisga'a Nation or the Nisga'a Village.

Can any interest in Nisga'a Lands, Category A Lands or Category B Lands be expropriated under provincial legislation?

In Nisga'a Lands, no.

In Category A Lands, yes, but there are special protections. No provincial expropriation can take place unless it is justifiable and necessary for a provincial public purpose and for the use of a provincial ministry or agency. Any provincial expropriation must be of the smallest interest necessary and for the shortest time required. The provincial cabinet must give its consent.

In Category B Lands, yes, under provincial laws of general application.

What happens if an expropriation under provincial legislation does take place?

British Columbia must provide fair compensation to the owner. If the owner is the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation, British Columbia can be required to provide available Crown land as compensation, and that land may become Category A Lands or Category B Lands, as the case may be.

Who pays for the initial surveys of Nisga'a Lands and Nisga'a Fee Simple Lands?

Canada and British Columbia.

What is the Nisga'a commercial recreation tenure?

The Nisga'a commercial recreation tenure is a licence issued by British Columbia under provincial law and based on an approved Management Plan. Under the Management Plan, the Nisga'a Nation can conduct guided hiking and wildlife viewing activities within the tenure areas on a commercial basis.

The Nisga'a commercial recreation tenure has an initial term of 27 years. For seven years after the effective date the Management Plan will be phased in and British Columbia cannot issue another commercial recreation tenure within the tenure areas that conflicts with the Management Plan for the Nisga'a tenure.

(see Commercial Recreation Areas map in Appendices)

How will Nisga'a Heritage Sites and Nisga'a names for geographic features outside Nisga'a Lands be recognized?

British Columbia will give heritage status to the Nisga'a cultural and historic sites and will rename the Nisga'a geographic features set out in Appendix F of the Treaty.

Will the Nisga'a Memorial Lava Bed Park be continued as a Class "A" provincial park?

Yes, unless the Nisga'a Nation and British Columbia agree otherwise. Provincial funding for the park over time will be similar to funding generally provided to comparable parks in British Columbia. Nisga'a history and culture will continue to be promoted as the primary cultural features of the park.

What rights do Nisga'a Lisims Government and Nisga'a citizens have in the park?

Nisga'a Lisims Government participates in the planning, management and development of the park through the Joint Park Management Committee. This committee has equal numbers of members appointed by Nisga'a Lisims Government and British Columbia, and makes recommendations to the provincial Minister and Nisga'a Lisims Government. Nisga'a citizens have the right to traditional uses of the lands and resources within the park, including domestic resource harvesting.

Will the Gingietl Creek Ecological Reserve be continued as a provincial ecological reserve?

Yes, unless the Nisga'a Nation and British Columbia agree otherwise.

What rights do Nisga'a Lisims Government and Nisga'a citizens have in the Ecological Reserve?

The Joint Park Management Committee reviews and makes recommendations to Nisga'a Lisims Government and the responsible provincial Minister about the management of the Ecological Reserve.

Upon request, the Nisga'a Nation and British Columbia will jointly determine whether and how a road across the Ecological Reserve can be constructed. Any dispute about this matter can be determined by arbitration under the Dispute Resolution Chapter. Nisga'a citizens have the right to traditional uses of the lands and resources within the Ecological Reserve, including domestic resource harvesting.

What is the role of the Nisga'a Nation in other parks in the Nass Area?

British Columbia will consult with Nisga'a Lisims Government about the planning and management of all other provincial parks in the Nass Area. Bear Glacier Provincial Park will remain a Class A park under provincial legislation. On request, the Nisga'a Nation, British Columbia and Canada will attempt to negotiate the establishment of a marine park in the Nass Area.

What is the Nisga'a Water Reservation?

British Columbia will establish a water reservation for the Nisga'a Nation of 300,000 cubic decametres of water per year from the Nass River and other streams within Nisga'a Lands. This volume is equivalent to 6.6 billion imperial gallons per year. This Nisga'a Water Reservation (NWR) is for domestic, industrial and agricultural purposes and has priority over all future water licenses. Up to 50 per cent of the "available flow" of most streams within Nisga'a Lands can be licensed under the Nisga'a Water Reservation. Seven streams have other specified percentages of available flow.

When the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen applies for a water licence under the Nisga'a Water Reservation, British Columbia will issue the licence if the Nisga'a Nation has consented and the application meets provincial regulatory requirements. Water licences issued under the Nisga'a Water Reservation are not subject to any rentals, fees or other charges by British Columbia.

Are there additional Nisga'a rights relating to water licences?

Yes. When the amount of water to which the Nisga'a are entitled under the NWR for a particular stream is completely licensed, the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen can still obtain a regular provincial water licence on the stream if the Nisga'a

Nation consents, the application meets provincial requirements, and there is enough available water in the stream. The Nisga'a can also apply for water licences on streams outside Nisga'a Lands under provincial laws of general application.

British Columbia will consult with the Nisga'a Nation about all applications for water licences on streams within Nisga'a Lands. Nisga'a Lisims Government can nominate a "water bailiff" under the provincial Water Act for streams within Nisga'a Lands.

Are there rights to use land relating to water licences?

Yes. When a Nisga'a water licence holder needs to use Crown land for the construction of authorized water works, British Columbia will provide access to the Crown land, on reasonable terms. When a Nisga'a water licence holder needs to use private fee simple land for the construction of authorized water works, access may be acquired under provincial laws of general application.

When a non-Nisga'a water licence holder needs to use Nisga'a Lands for the construction of authorized water works, Nisga'a Government cannot unreasonably withhold consent if the licence holder offers fair compensation and if there is agreement on such matters as the location, size, duration and nature of the access. Disputes can be determined by arbitration under the Dispute Resolution Chapter.

What is the Nisga'a Hydro Power Reservation?

British Columbia will establish a second water reservation over all the unused water from streams within Nisga'a Lands, to enable the Nisga'a Nation to investigate whether any streams are suitable for hydro power production. This Nisga'a Hydro Power Reservation will have a term of 20 years.

If the Nisga'a Nation applies for a specific water reservation on a stream, British Columbia will establish that reservation if it considers that the stream is suitable for hydro power purposes. When the Nisga'a Nation subsequently applies for a water licence on that stream, British Columbia will grant the licence if the proposed hydro power project conforms to federal and provincial regulatory requirements.

What is the current situation regarding Nisga'a ownership of reserve land?

The four Nisga'a bands currently have a number of reserves established under the *Indian Act*. In all cases, however, the reserves are owned by Canada and "set apart" for the use and benefit of a band. In all cases, the bands are extremely restricted as to how they can use the reserves, both by the *Indian Act* and by the policies of the Minister of Indian Affairs. The total area of these reserves is only 75 square kilometres, approximately.

LAND TITLE

Overview

This chapter explains how the Nisga'a Nation can register the title to a parcel of Nisga'a Lands in the provincial land title system, what rules apply while the title is registered, and how the Nisga'a Nation can cancel the registration.

Why would the Nisga'a Nation wish to register the title to a parcel of Nisga'a Lands in the provincial system?

The provincial land title system is a fundamental part of real property rights in British Columbia. It provides the means for owners and purchasers of land, and holders of interests in land such as mortgages or rights-of-way, to have certainty about their interests. If an interest in land is registered in the provincial system, that interest is guaranteed by the provincial assurance fund. While the Treaty provides the Nisga'a Nation with the authority to establish a Nisga'a land registry or land title system, it may be that to achieve the full economic benefit of a particular parcel of land it will be advantageous to have title to that parcel registered in the provincial system. Under the Treaty, it will be up to the Nisga'a Nation to make that decision.

Will the Nisga'a Nation and the Nisga'a Villages continue to have authority if the title to a parcel of Nisga'a Lands is registered in the provincial system?

Yes. The *Land Title Act* will apply, with its strict requirements for registration, but the roles of the Nisga'a Nation and the Nisga'a Villages will be recognized. The jurisdiction of Nisga'a Lisims Government and the Nisga'a Village Governments will not be reduced, except as set out in the Treaty.

Can the Nisga'a Nation cancel the registration of the title to a parcel of land in the provincial system?

Yes. If a parcel of land is owned by the Nisga'a Nation, a Nisga'a Village or Nisga'a Corporation, and if no other person has a charge against the title, such as a mortgage or a right-of-way, the Nisga'a Nation can apply to cancel the registration, with the consent of the owner of that parcel.

FOREST RESOURCES

Overview

This chapter sets out Nisga'a ownership of all the forest resources within Nisga'a Lands, establishes a transition period during which current provincial forest licensees can continue their operations on Nisga'a Lands and sets out the rules governing forestry activities both during the transition period and afterwards.

Who owns forest resources on Nisga'a Lands?

On the effective date, the Nisga'a Nation owns all forest resources on Nisga'a Lands.

What is the transition period?

A five-year period during which current provincial forest licensees will phase out their operations on Nisga'a Lands. During this period, the Nisga'a Nation and British Columbia will jointly oversee the forestry activities on Nisga'a Lands of such licensees, who are referred to in this summary as "transitional licensees".

(see Forestry Transition Period Planning Criteria for Forest Development Plans map in Appendices)

What volume of timber can be harvested on Nisga'a Lands (other than former Nisga'a reserves) during each year of the Transition Period?

165,000 cubic metres, which will be divided between transitional licensees and the Nisga'a Nation as follows:

Annual Harvest Level on Nisga'a Lands during Transition Period

Year	Nisga'a Government	Licencees	Total
1	10,000	155,000	165,000
2	10,000	155,000	165,000
3	10,000	155,000	165,000
4	30,000	135,000	165,000
5	40,000	125,000	165,000

in cubic metres

What forestry laws will apply on Nisga'a Lands?

British Columbia laws will apply to the activities of transitional licensees on Nisga'a Lands. British Columbia will enforce these laws.

Nisga'a Lisims Government will pass timber management laws that will apply to all other forestry activities on Nisga'a Lands, except fire control and suppression activities for which British Columbia is responsible. The Nisga'a laws must not be more intrusive to the environment than the British Columbia Forest Practices Code. Nisga'a Lisims Government will enforce the Nisga'a laws.

What is the Forestry Transition Committee?

A joint Nisga'a Nation-British Columbia committee which will approve plans and issue permits during the transitional period, as follows:

- a. All forest development plans and amendments in years 1 to 5;
- b. All silviculture prescriptions and amendments for harvesting proposed for years 4 to 5;
- c. Cutting permits and road permits required in year 5;
- d. All road use permits required in years 1 to 5.

Will the Ministry of Forests issue any permits for transitional licensees on Nisga'a Lands during the transition period?

Yes. The Ministry of Forests will issue silviculture prescriptions and amendments required by transitional licensees during years 1 to 3, and cutting permits and road permits required during years 1 to 4. However, all of these prescriptions and permits must be consistent with the forest development plans approved by the Forestry Transition Committee.

Are there special restrictions on where, or how much, transitional licensees can harvest timber on Nisga'a Lands during the transition period?

Yes. The following special restrictions will apply:

- a. No timber harvesting will be permitted in the Nass Bottomlands, within any archaeological site, within any ecological reserve or within 100 metres on either side of the Grease Trail;
- b. At least 80 per cent of the mature timber will be retained within the Pine Mushroom area;
- c. Enhanced visual quality objectives will apply in the Tseax area and in the area around the Nisga'a Memorial Lava Bed Park;

- d. No timber harvesting will be permitted within one kilometre of New Aiyansh, Gitwinksihlkw, Laxgalts'ap or Gingolx, without the agreement of the affected Nisga'a Village Government;
- e. No timber harvesting will be permitted within one kilometre of the Gingietl Creek Ecological Reserve, without the consent of the Gitwinksihlkw Village Government;
- f. No more than 210,000 cubic metres can be harvested in the Ksi Hlginx watershed.

Will transitional licensees replant the areas they harvest?

Yes. All current licensee replanting obligations will continue, and transitional licensees will be required to replant the areas they harvest during the transition period. Licensees will be required to ensure that a free growing stand is established on harvested areas.

Will transitional licensees use Nisga'a contractors during the transition period?

Yes. Transitional licensees will be required to use reasonably available Nisga'a contractors under full-phase logging contracts for 50 per cent of the volume they harvest in year 1, and 70 per cent of the volume they harvest in years 2 to 5.

Will there be annual cut control during the transition period?

Yes, for licences of more than 15,000 cubic metres per year, the licensee will be required to achieve their annual harvest level, plus or minus 50 per cent. However, licensees will not be allowed to exceed their total five-year volume.

What economic benefits will the Nisga'a Nation receive from the transitional licensee timber harvest?

British Columbia will pay the Nisga'a Nation at least \$6.00 per cubic metre harvested by transitional licensees during the transition period. However, if either "industry performance" or billed stumpage exceeds \$6.00 per cubic metre, British Columbia will pay the Nisga'a Nation industry performance (up to a maximum of \$10.00 per cubic metre) plus billed stumpage. "Industry performance" is determined by deducting the estimated industry harvesting costs from the estimated selling price.

What volume of timber can be harvested on Nisga'a Lands (other than former Nisga'a reserves) during years 6 to 9?

135,000 cubic metres in years 6 to 8, and 130,000 cubic metres in year 9.

Are there restrictions on the Nisga'a ability to establish a mill to process timber?

The Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation cannot establish a primary timber processing facility for 10 years after the effective date. However, during this period, the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation can establish a timber processing facility to provide lumber for Nisga'a residential or public purposes, conduct value-added timber processing, or enter into a partnership or joint venture with the owner of an existing timber processing facility.

Will it be possible to export timber harvested on Nisga'a Lands or Nisga'a Fee Simple Lands?

During the transition period, timber harvested from former Nisga'a reserves may be exported in accordance with federal laws as if the timber had been harvested from a reserve under the *Indian Act*. Otherwise, British Columbia laws with respect to manufacture of timber in the province will apply.

Who is responsible for forest fire suppression on Nisga'a Lands?

During the transition period, British Columbia is responsible for the control and suppression of forest fires on Nisga'a Lands to the same extent and in the same manner as it is on Crown land elsewhere in the province.

After the transition period, British Columbia is responsible for the control and suppression of forest fires on Nisga'a Public Lands to the same extent and in the same manner as it is on Crown land elsewhere in the province, and the Nisga'a Nation is responsible for the control and suppression of forest fires on Nisga'a Village Lands and Nisga'a Private Lands.

After the transition period, the Nisga'a Nation may pay the costs incurred by British Columbia in controlling and suppressing a forest fire on Nisga'a Public Lands, depending on the cause and point of origin of the fire.

Who is responsible for forest health problems on Nisga'a Lands?

The Nisga'a Nation is responsible for forest health on Nisga'a Lands, except for the responsibilities of transitional forest licensees.

If a forest health problem on Nisga'a Lands threatens forest resources on adjacent Crown land, British Columbia will notify the Nisga'a Nation and the Nisga'a Nation will take all reasonable mitigative measures. If the Nisga'a Nation does not do so within a reasonable time, British Columbia may enter Nisga'a Lands to take reasonable mitigative measures and the Nisga'a Nation will reimburse British Columbia for its reasonable costs.

If British Columbia becomes aware of a forest health problem on Crown land that threatens forest resources on Nisga'a Lands, British Columbia will take all reasonable mitigative measures within a reasonable time. British Columbia will compensate the Nisga'a Nation for any damage to forest resources on Nisga'a Lands arising from a failure to meet this obligation.

Can the Nisga'a Nation acquire a forest tenure outside Nisga'a Lands?

British Columbia agrees in principle to the Nisga'a Nation acquiring a forest tenure or tenures outside Nisga'a Lands with a total allowable annual cut of up to 150,000 cubic metres. Such an acquisition will require approval of the Minister of Forests in accordance with the *Forest Act*.

Who will regulate pine mushroom harvesting on Nisga'a Lands?

Nisga'a Lisims Government will have the ability to pass laws regulating pine mushroom harvesting on Nisga'a Lands. These laws may include the licensing of harvesters and the levying of charges with respect to the harvest.

ACCESS

Overview

This chapter sets out the rules governing public access to Nisga'a Public Lands for recreation, hunting and fishing. The chapter also includes the rules for federal and provincial government access to Nisga'a Lands, and for Nisga'a Government access outside of Nisga'a Lands. It also includes the rules governing access by Nisga'a citizens to Crown lands.

What are Nisga'a Public Lands?

All Nisga'a Lands will fall into one of three categories. Nisga'a Lisims Government has the authority to designate Nisga'a Lands as Nisga'a Village Lands or Nisga'a Private Lands. Any Nisga'a Lands that are not designated as one of the above are Nisga'a Public Lands.

What are the rules governing public access to Nisga'a Public Lands for recreation?

The Nisga'a Nation will allow reasonable public access to Nisga'a Public Lands for temporary non-commercial and recreational uses. This public access does not include the ability to harvest resources, cause damage, or interfere with other uses authorized by Nisga'a Lisims Government. Nisga'a Lisims Government can regulate the public access to protect public safety, protect sensitive areas and prevent resource harvesting.

Will the public have an opportunity to hunt and fish on Nisga'a Public Lands?

Yes. The Nisga'a Nation will provide reasonable opportunities for the public to hunt and fish on Nisga'a Public Lands. The Annual Management Plan under the Wildlife Chapter will specify the level of this harvest. In order to monitor and regulate public access for hunting and fishing, Nisga'a Lisims Government can require the public to obtain a Nisga'a permit or licence.

How will the public know the rules about access onto Nisga'a Public Lands?

Nisga'a Lisims Government and British Columbia will notify the public about the terms and conditions of public access onto Nisga'a Public Lands. If Nisga'a Lisims Government proposes to change the locations or boundaries of Nisga'a Public Lands, it will give notice to British Columbia and Canada. It will also will take reasonable steps to notify the public, and will consider the views advanced by any individual who would be adversely affected by the proposed change.

Can Nisga'a Lisims Government change routes of public access?

Yes. If Nisga'a Lisims Government designates Nisga'a Village Lands or Nisga'a Private Lands in a way that would prevent public access to a place where there is a public right of access, such as certain lakes, rivers, or Crown roads, Nisga'a Lisims Government will provide reasonable alternative public access to that area or location.

Does the Treaty affect public rights of access on lakes and rivers?

No. The Treaty does not affect public rights of access on navigable waters.

Can federal and provincial government representatives come onto Nisga'a Lands?

Yes, to carry out the terms of the Treaty, to deliver and manage programs and services, to carry out inspections, to enforce laws, and to respond to emergencies, in accordance with the laws of general application. Canada and British Columbia will give the Nisga'a Nation reasonable notice of their access.

Can Nisga'a Government representatives go onto lands outside of Nisga'a Lands?

Yes, to carry out the terms of the Treaty, to deliver and manage programs and services, to carry out inspections, to enforce laws, and to respond to emergencies, in accordance with the laws of general application. Nisga'a Government will give Canada or British Columbia reasonable notice of this access.

Will Nisga'a citizens have access to Crown lands?

Yes. Nisga'a citizens will have reasonable access to Crown lands, including rivers, lakes and highways, to exercise treaty rights and interests. This access includes incidental resource use, such as using firewood while hunting.

This access can not interfere with other authorized uses of Crown lands, or the ability of the Crown to dispose of Crown land. However, if an authorized use or disposition of Crown land would deny Nisga'a citizens reasonable access or use of resources, the Crown will ensure that alternative reasonable access is provided.

What about access to fee simple properties?

There are several private fee simple parcels within Nisga'a Lands that currently do not have an access road. If the owner of one of these parcels reasonably requires a right of access,

Nisga'a Government may not unreasonably withhold consent. However, the owner must offer fair compensation and the terms of access must be agreed.

Similarly, if Nisga'a Government or a Nisga'a citizen reasonably requires access to a parcel of Nisga'a Fee Simple Lands outside Nisga'a Lands, British Columbia may not unreasonably withhold consent. Nisga'a Government or the Nisga'a citizen must offer fair compensation and the terms of access must be agreed.

In either case, if agreement cannot be reached, the matter can be settled by arbitration under the Dispute Resolution Chapter.

ROADS AND RIGHTS OF WAY

Overview

This chapter explains the rules governing ownership and use of all roads within Nisga'a Lands. It also explains the rules governing public utilities on Nisga'a Lands.

What is the Nisga'a Highway?

The British Columbia highway within Nisga'a Lands that connects Highway 16, New Aiyansh, Nass Camp, Gitwinksihlkw and Laxgalts'ap, plus the route to be constructed from Laxgalts'ap to Gingolx (excluding Red Bluff Reserve No. 88) and the route within Nisga'a Lands for the proposed extension from Nass Camp to Highway 37.

How wide is the Nisga'a Highway corridor?

The Nisga'a Highway corridor is generally 30 metres wide, but wider where necessary to include highway works such as bridges, support works, and cuts and fills.

Who owns the Nisga'a Highway corridor?

British Columbia.

What happens if British Columbia closes any part of the Nisga'a Highway corridor?

British Columbia will transfer ownership of that part of corridor land to the Nisga'a Nation.

Can Nisga'a Government request to relocate the Nisga'a Highway?

Yes. If the Nisga'a Nation or a Nisga'a Village needs a portion of the Nisga'a Highway corridor for another purpose, British Columbia cannot unreasonably refuse to relocate that portion of the highway, as long as the proposed new location is reasonably suitable for highway use and as long as the Nisga'a Nation or the Nisga'a Village pays the costs of the relocation.

What happens if a part of the corridor is relocated?

British Columbia will transfer ownership of the vacated land to the Nisga'a Nation or a Nisga'a Village and ownership of the new land will be transferred to British Columbia to become part of the corridor.

What is a secondary provincial road?

A road for which the Nisga'a Nation grants a right of way to British Columbia for use by the public, by industrial resource users, or by public utilities. British Columbia does not own the land on which secondary provincial roads are located, but has a right to use the land for those purposes.

Where are the initial secondary provincial roads?

See Appendix C of the Treaty for the precise location.

What is a secondary provincial road right-of-way area?

The land on which a secondary provincial road is located. A secondary provincial road right-of-way area is generally 20 metres wide, but wider where necessary to include road works such as bridges, support works, cuts and fills.

Who owns secondary provincial right-of-way areas?

The Nisga'a Nation or a Nisga'a Village.

Can Nisga'a Government request the relocation of a secondary provincial road?

Yes, on a similar basis to the Nisga'a Highway.

What happens if part of a secondary provincial road right-of-way area is relocated?

The right-of-way is cancelled for the area that is vacated, and a new right-of-way is granted for the new location.

Can Nisga'a Government transfer ownership of secondary provincial road right-of-way areas?

The Nisga'a Nation can transfer ownership to a Nisga'a Village and vice versa, but transfers to others require the consent of British Columbia.

Can British Columbia transfer its interest in a secondary provincial road right-of-way area?

British Columbia can transfer its interest to a Crown corporation or to a lender as security for borrowing, but cannot transfer its interest to others without the consent of the Nisga'a Nation.

What happens if the Nisga'a Nation or a Nisga'a Village suffers damages arising out of a secondary provincial road right-of-way area?

British Columbia will compensate the Nisga'a Nation or the Nisga'a Village unless the damages were caused by the Nisga'a Nation or the Nisga'a Village.

Can British Columbia abandon secondary provincial roads?

Yes, by giving written notice to the Nisga'a Nation.

What happens if British Columbia abandons a secondary provincial road?

Unless the Nisga'a Nation or a Nisga'a Village agrees to assume responsibility for the road, British Columbia will be responsible for decommissioning the road or taking steps to prevent damage or injury that might result from the continued existence of the road.

Will public utilities be able to use the Nisga'a Highway corridor and secondary provincial road right-of-way areas?

British Columbia will permit public utilities to use the Nisga'a Highway corridor and secondary provincial road right-of-way areas for transmission lines and other works if, in British Columbia's judgement, those works will not interfere with the safe use of the existing roads or utility works.

Can Nisga'a Government authorize other uses of the Highway corridor and secondary provincial road right-of-way areas?

If the Nisga'a Nation or a Nisga'a Village has issued a permit for a use and if, in British Columbia's judgment, the permitted use will not interfere with existing road or utility works, British Columbia will also issue a permit for that use. British Columbia may attach conditions to such a permit, charge fees to recover actual costs, and subsequently terminate the permit if it proves to be unsafe or to interfere with existing or proposed road uses.

Can British Columbia enter Nisga'a Lands adjacent to the Nisga'a Highway corridor and secondary provincial road right-of-way areas?

Yes, to protect and maintain roads and utilities works. British Columbia will submit a work plan to the Nisga'a Nation or a Nisga'a Village for approval. It will minimize time spent and damage caused, and will pay fair compensation for any interference with or damage to the lands.

What happens if there is an emergency involving the Nisga'a Highway or a secondary provincial road?

British Columbia can immediately take steps to protect works constructed on the Nisga'a Highway corridor or on a secondary provincial road right-of-way area, or to protect persons or vehicles.

How will Nisga'a Government be involved in the regulation of traffic and transportation on the Nisga'a Highway and secondary provincial roads?

On request, British Columbia will consult with the Nisga'a Nation or a Nisga'a Village about roads near settled areas.

Who regulates road access to the Nisga'a Highway and to secondary provincial roads?

British Columbia has the right to regulate the location and design of intersecting roads including traffic signs and signals, and contributions to provincial costs.

Can British Columbia regulate the height and location of structures immediately adjacent to the Nisga'a Highway or secondary provincial roads?

Yes, but only to protect the safety of highway and road users.

Can British Columbia temporarily close the Nisga'a Highway or a secondary provincial road?

Yes, for reasons of safety, care, or maintenance.

Does Nisga'a Government have any responsibility for maintaining the Nisga'a Highway or secondary provincial roads?

No. This is a provincial responsibility.

Can British Columbia take gravel from existing gravel pits on Nisga'a Lands?

British Columbia can, without charge, take gravel from gravel pits existing on Nisga'a Lands but only for the construction and maintenance of the Nisga'a Highway and secondary provincial roads. For some gravel pits, British Columbia will submit a gravel management plan to the Nisga'a Nation or the Nisga'a Village for approval.

Can British Columbia explore for new gravel pits on Nisga'a Lands?

Yes, but it must first prepare a written exploration plan for approval by the Nisga'a Nation or the Nisga'a Village and must then prepare a gravel management plan for approval.

Will the public have the right to use Nisga'a roads?

The Nisga'a Nation will be able to close to the public any Nisga'a road outside of Nisga'a Village Lands. Nisga'a Villages will be required to permit public use of Nisga'a roads within Nisga'a Village Lands if those roads would be open to the public in comparable communities elsewhere in the province. A Nisga'a Village will have the right to close Nisga'a Village roads for safety reasons.

Does British Columbia have any responsibility for maintaining Nisga'a roads?

No. This is a Nisga'a responsibility.

Can the Nisga'a Nation take gravel from Crown lands?

The Nisga'a Nation can, without charge, take gravel from natural deposits on Crown lands for public purposes on the same basis that British Columbia can take gravel from Nisga'a Lands.

Will individuals or corporations have private rights to use roads within Nisga'a Lands?

The Nisga'a Nation will grant a right of way to the individuals listed in Appendix C of the Treaty, giving them access to their properties over the designated roads. The Nisga'a Nation will also grant a right of way to B.C. Hydro for access roads.

How will existing public utility works on Nisga'a Lands be authorized?

The Nisga'a Nation will grant rights of way to B.C. Hydro and BC TEL for existing transmission lines outside Nisga'a Villages and outside of secondary provincial road right-of-way areas. For other utilities work, including distribution lines within Nisga'a Villages, B.C. Hydro and BC TEL will be granted licences.

Can British Columbia obtain additional rights of way on Nisga'a Lands for public purposes?

If British Columbia requests an additional right of way for public purposes, including road and utility purposes, the Nisga'a Nation or Nisga'a Villages will grant the right of way on reasonable terms, including location, intended use and compensation if, on the date of the request, the total

area of all British Columbia rights of way within Nisga'a Lands does not exceed 2,800 hectares. If any dispute arises about a British Columbia request for an additional right of way, the matter can be settled by arbitration under the Dispute resolution chapter.

Do Nisga'a laws apply on secondary provincial road right-of-way areas and public utility right-of-way areas?

Nisga'a laws apply to a secondary provincial road right-of-way area or to a public utility right-of-way area if the Nisga'a laws do not impair the authorized ability to use and occupy the right-of-way area and if the Nisga'a laws do not impose more stringent standards.

FISHERIES

Overview

This chapter sets out Nisga'a rights to harvest salmon, steelhead, non-salmon species of saltwater fish, bivalves, marine mammals and aquatic plants. It also sets forth a permanent role for Nisga'a people in managing these resources.

What is the purpose of the Fisheries Chapter?

To provide certainty with respect to Nisga'a rights to harvest fish and to participate in the management of the Nass Area fisheries.

What are the general rules governing our harvesting rights?

The right of Nisga'a citizens to harvest fish and aquatic plants in accordance with the Treaty are subject to measures that are necessary to conservation and to legislation that is enacted for the purposes of public health and public safety.

The rights to harvest fish do not alter federal and provincial laws about property in fish, which provide generally that no one owns fish until they are caught.

Nisga'a can also harvest fish outside the Treaty in accordance with federal and provincial laws that apply to everyone or, in some circumstances, in accordance with agreements with other First Nations.

Nisga'a entitlements to fish are held by the Nisga'a Nation and the right to fish may not be sold or transferred. However, the Nisga'a Nation can authorize others to harvest some of the fish under Nisga'a entitlement from time to time.

Canada and British Columbia cannot require Nisga'a to have federal and provincial licenses or to pay fees, charges or royalties with respect to harvesting fish or aquatic plants for domestic purposes. When Nisga'a sell fish harvested under the Agreement, they are subject to the same fees and charges that apply to commercial harvesters except to the extent to which Nisga'a Government or a Nisga'a Institution is performing the activities for which those fees and charges are levied. (For example, stock rehabilitation programs and marketing.)

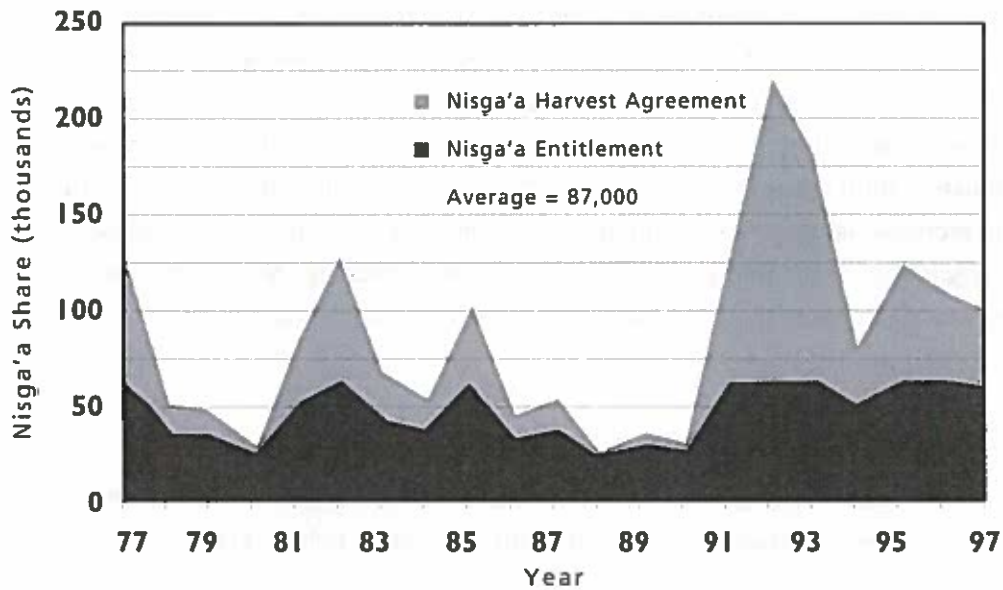
Finally, Nisga'a citizens have the right to trade or barter among themselves or with other aboriginal people any fish or aquatic plants harvested in Nisga'a fisheries, subject to Nisga'a laws.

What are our rights to harvest salmon?

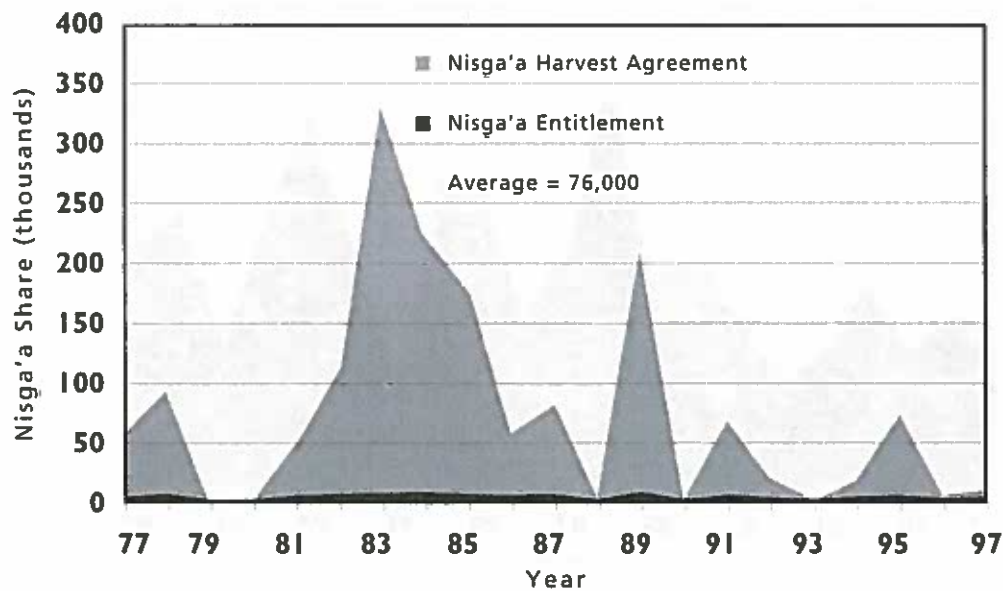
The Minister will be required to establish a minimum escapement level for any of the species of Nass salmon for which it is necessary for conservation. If the Minister determines a minimum escapement level for a species of Nass salmon and the number of fish returning is less than that minimum escapement level, the Minister will not permit a directed harvest of that species by anyone.

Once the number of fish is above the minimum escapement level, the Nisga'a share is determined before the total allowable catch is calculated for non-aboriginal fisheries. The Nisga'a share of each species of salmon varies depending upon the size of the total return to Canada. (See Schedule A of the Final Agreement.)

Nisga'a Share of Sockeye



Nisga'a Share of Pink Salmon



What if our harvest exceeds or falls short of our allocation?

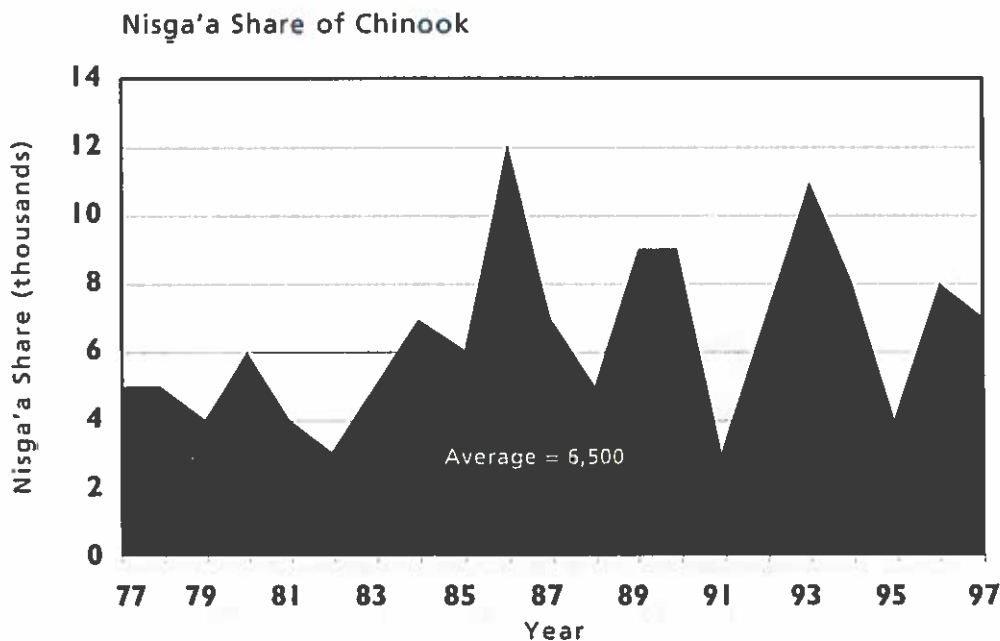
Schedule B sets out a detailed accounting mechanism to ensure that if there is an overage or underage in the harvest of Nass salmon by Nisga'a, adjustments will take place in subsequent years in order to make up for the difference. There will be no underage in any given year if reasonable opportunities for the harvest have been provided.

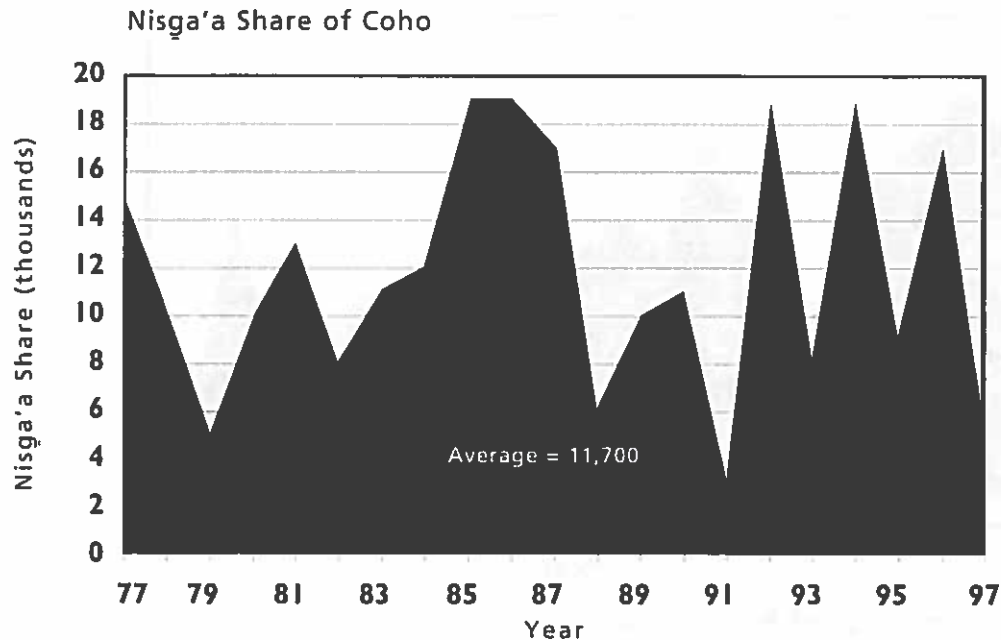
What is the Harvest Agreement?

In addition to the salmon which the Nisga'a are allocated under the Treaty, the Nisga'a are also entitled to a Harvest Agreement with Canada and British Columbia under which the Nisga'a may harvest an additional 13 per cent of each year's adjusted total allowable catch of Nass sockeye salmon and 15 per cent of each year's adjusted total allowable catch of Nass pink salmon. The Treaty requires the Harvest Agreement to be in place on the effective date, to be for a term of 25 years and to be extended for an additional 25 years after every 15-year period. If the allocations under the Harvest Agreement are terminated or reduced, Nisga'a are entitled to fair compensation for the termination or reduction. Because the allocation under the Harvest Agreement is a percentage of adjusted total allowable catch, these allocations have the same priority as the commercial and recreational fisheries comprising the balance of the adjusted total allowable catch. In other words, regardless of the number of fish available for harvesting, the Nisga'a are always guaranteed the same percentage share of those fish, under the Harvest Agreement.

Can salmon harvested under the Treaty or the Harvest Agreement be sold?

Yes, subject to certain federal and provincial laws. The terms and conditions of sale will be established by Nisga'a law in a manner consistent with the annual fishing plan.





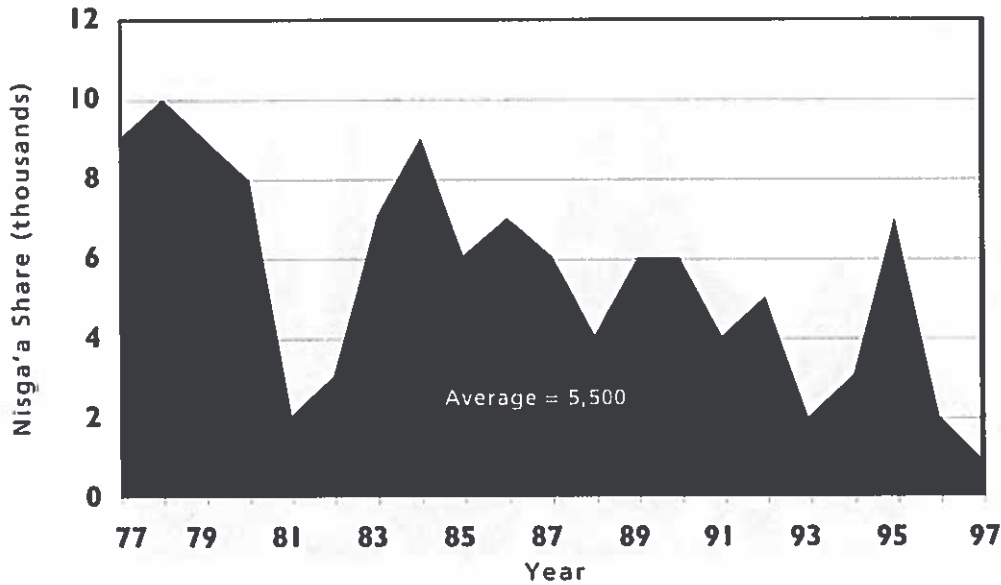
Do we have the right to harvest surplus Nass salmon?

Before Nisga'a will be able to harvest surplus Nass salmon, it will be necessary to reach agreement with the Minister. The Agreement will include the terms and conditions of the harvest and whether any part of the harvest of surplus salmon will be included in the determination of overages and underages. The Joint Fisheries Management Committee (JFMC) may recommend to the Minister procedures for the identification of the surplus and terms and conditions of the harvest of the surplus. However, there is no legal obligation for the Minister to either follow these recommendations or to permit any Nisga'a harvest of surplus salmon.

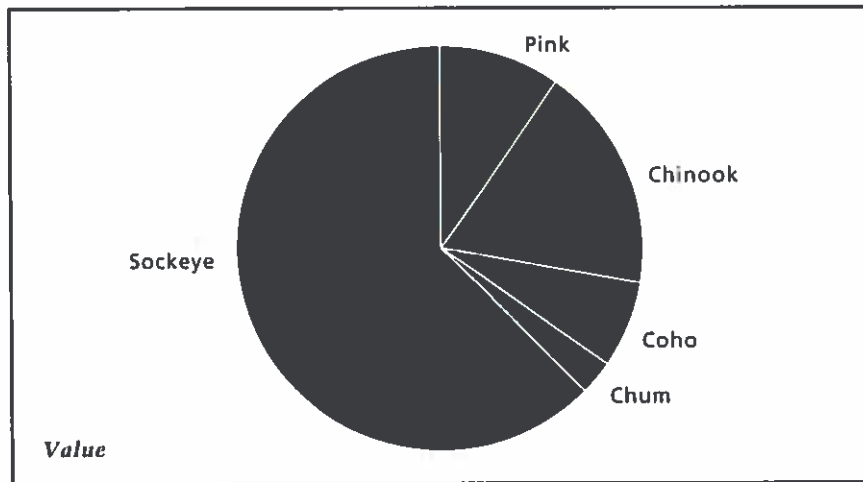
Can Nisga'a take measures to enhance Nass salmon stocks?

Yes, with the approval of the Minister. Because enhancement initiatives can affect wild fish stocks, the Minister has a final responsibility for determining whether they take place. The Minister may receive recommendations from the Joint Fisheries Management Committee. Agreements with the Minister concerning enhancement may include agreements with respect to a Nisga'a harvest of Nass salmon or Nass steelhead that result from Nisga'a enhancement initiatives.

Nisga'a Share of Chum



Composition of Nisga'a Share



Why are there separate provisions for steelhead?

Unlike salmon, steelhead are managed primarily by the provincial government. For a variety of reasons, including the different way in which steelhead are managed, current information concerning the state of Nass steelhead stocks are inadequate. The Treaty provides the means to improve this information through studies to determine the status, conservation requirements and total allowable catch of Nass steelhead stocks. The JFMC will formulate plans for those studies and prepare recommendations to the Minister and Nisga'a Government. If the studies reveal a conservation concern, recommendations will be made on how to address the concern. If it is necessary for conservation, the Minister can establish an annual escapement goal for steelhead stocks which, like the minimum escapement level with respect to salmon, determines the level below which no directed harvests will be allowed.

What is our right to harvest steelhead?

Generally, under the Treaty Nisga'a citizens will continue to have the right to harvest steelhead for domestic purposes.

However, the Parties have also agreed that there is a need to assess the current state of summer run Nass steelhead. The Parties have agreed that an annual escapement goal should be established. On the effective date, British Columbia and Nisga'a Government will negotiate and attempt to reach an agreement on studies required to establish this goal. Once those studies are commenced, there will be no directed harvest of summer run Nass steelhead by anyone, including Nisga'a.

Following those studies, Nisga'a citizens will have the right to harvest summer run Nass steelhead for domestic purposes and, if an annual escapement goal is established, Nisga'a citizens will have the allocation set forth in Schedule D. In any year in which the number of summer run Nass steelhead returning to the Nass watershed is less than the annual escapement goal, the Nisga'a Nation and British Columbia will take additional measures to minimize mortalities in other fisheries.

On the effective date, the Nisga'a will continue to have the right to harvest winter run Nass steelhead for domestic purposes. If in the future it is necessary to establish an annual escapement goal, studies will be conducted and recommendations made. If the Minister decides that there will be an annual escapement goal for winter run steelhead, then British Columbia and Nisga'a Government may negotiate a Nisga'a allocation. If no allocation is established the Nisga'a will continue to have the right to harvest for domestic purposes.

What are Nisga'a rights to harvest other species?

All other fish, marine mammals and aquatic plants are dealt with in the same way. Following the effective date, Nisga'a citizens will continue to have the right to harvest all of these species for domestic purposes. If at any time Nisga'a, Canada or British Columbia (for species they manage) wish there to be an allocation, the Parties are required to establish an allocation under the terms set out in the Treaty. Under this process the Parties must establish a number called the "basic Nisga'a entitlement" which is a number to be determined by taking into account current and past Nisga'a use of the species for domestic purposes, the impact of conservation requirement on harvesting by others on our use for domestic purposes, the biological status of the species, any changes in Nisga'a fishing effort and other factors agreed to be relevant. The Nisga'a allocation is 125 per cent of the basic Nisga'a entitlement. If agreement cannot be reached on the basic Nisga'a entitlement, the matter will be referred to arbitration.

This process will be followed as soon as practicable after the effective date for dungeness, tanner and king crab, halibut, prawns and shrimp, herring, and aquatic plants used in the herring roe on kelp fishery. Once an allocation is established, it will be added to the Treaty.

What are our rights to oolichan?

The Nisga'a Nation, together with any other persons who have to harvest oolichan in the Nass Area, have the right to the total harvest of oolichan in the Nass Area. The Treaty also contemplates agreements between the Nisga'a Nation and other First Nations with respect to oolichan stocks.

What is our allocation of clams, cockles and other bivalves?

The Treaty establishes bivalve harvesting areas in which Nisga'a citizens have the right to harvest intertidal bivalves for domestic purposes.

There will not be any commercial harvesting of intertidal bivalves in those areas.

Can we sell non-salmon species?

Any sale would have to be in accordance with federal and provincial laws of general application and with Nisga'a laws with respect to the sale of fish.

What involvement will Nisga'a have with fisheries management?

The Minister is responsible for management of fisheries and fish habitat, however, the Nisga'a will also have important law-making authority and planning responsibility.

For example, Nisga'a Government may make laws, not inconsistent with the Treaty, the Harvest Agreement or annual fishing plans, about such matters as distribution of our entitlements among Nisga'a citizens, authorizing others to harvest fish from our entitlements, allocations and trade and barter, designation and documentation of fishing vessels, and identification of fishing vessels and gear.

We must make laws to administer and establish licensing requirements and designating and documenting people who harvest fish under the Treaty or Harvest Agreement. The relationship between our laws and federal and provincial laws are set forth in the Treaty.

What involvement will we have in planning and conducting Nisga'a fisheries in the Nass Area?

The Parties must establish a Joint Fisheries Management Committee (JFMC) which will be made up of two representatives each from the Nisga'a Nation, Canada and British Columbia. Federal and provincial representatives will only participate with respect to fisheries which their government manages. It will be the primary institution for cooperative planning and management and its responsibilities are set out in detail in the Agreement.

The JFMC is to function by consensus. If consensus is not reached, the various members may submit their own recommendations to each Party. In the future, additional regional or watershed bodies may be established. The Treaty provides for Nisga'a participation in the development and functioning of any such body.

How will the rules for each year's harvest be established?

The practical instrument for each year's harvest will be the Nisga'a annual fishing plan, recommended by the JFMC and approved by the Minister. These plans will guide the exercise of harvesting rights with respect to such matters as the methods, timing and location of harvest, monitoring and enforcement, stock assessment and enhancement, sale, harvest by others, in-season adjustments and other matters the Parties agree to include.

Finally, the Treaty provides for future agreements that may be negotiated concerning enforcement of federal, provincial and Nisga'a laws.

What is the Lisims Fisheries Conservation Trust?

Canada and the Nisga'a have agreed to establish the Lisims Fisheries Conservation Trust with the objective of promoting conservation and protection of Nass area fish species, facilitating sustainable management of fisheries, and promoting and supporting Nisga'a participation in the stewardship of Nass fisheries.

Canada will contribute \$10 million to this trust while the Nisga'a will contribute \$3 million. The trust will be designed so as to receive additional funds and it is intended that it receive charitable status.

Do we get to participate in the general commercial fishery?

Yes. In addition to having and retaining the same opportunities to participate in the fishery as all Canadians, the Nisga'a Nation will receive \$11.5 million (as adjusted) in order to purchase commercial fishing licenses, or vessels and licenses, to participate in the general commercial fishery in British Columbia. The Nisga'a may spend up to \$3 million of this money for other fishery-related activities.

Are there other provisions?

Under the Treaty, a feasibility study on a Nisga'a herring roe on kelp impoundment will be carried out to determine what opportunities may be available for this sort of development.

Canada will be obliged to consult with Nisga'a Government with respect to Canada's positions in international negotiations affecting Nass fisheries resources and Nisga'a may formally participate in commissions or fisheries management advisory bodies.

The Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions and Nisga'a Corporations may not establish a new fish processing facility capable of processing more than 2,000 tonnes of round weight of fish per year within eight years of the effective date, unless Canada and British Columbia otherwise agree.

(see Nass Area Intertidal Zones for Bivalve Harvesting map in Appendices)

WILDLIFE AND MIGRATORY BIRDS

Overview

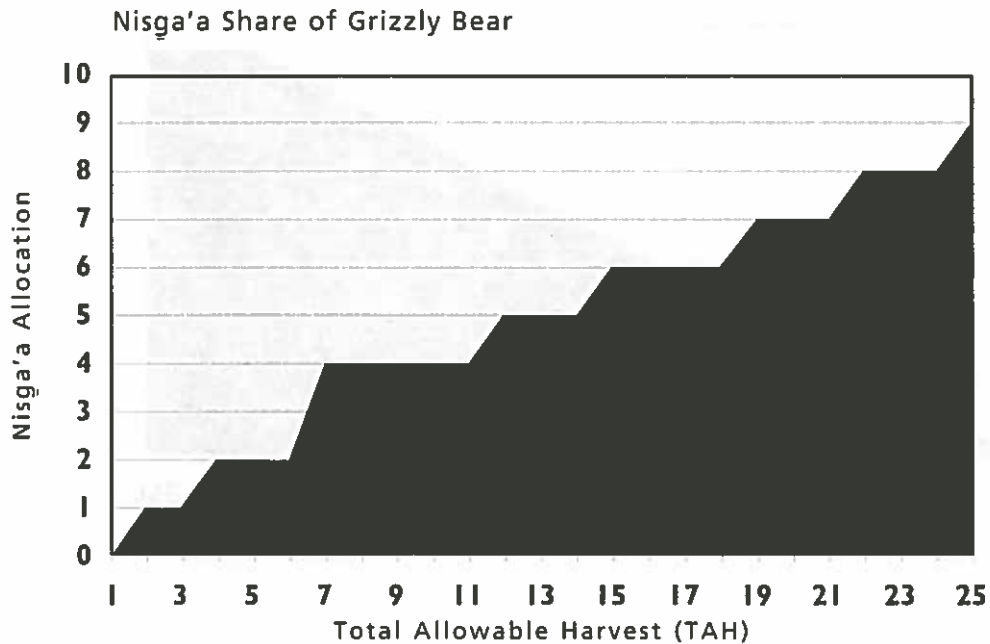
This chapter sets out Nisga'a rights to harvest wildlife and freshwater fish, other than steelhead. It also creates and describes a permanent role for Nisga'a people to manage these resources.

What are our rights to harvest wildlife?

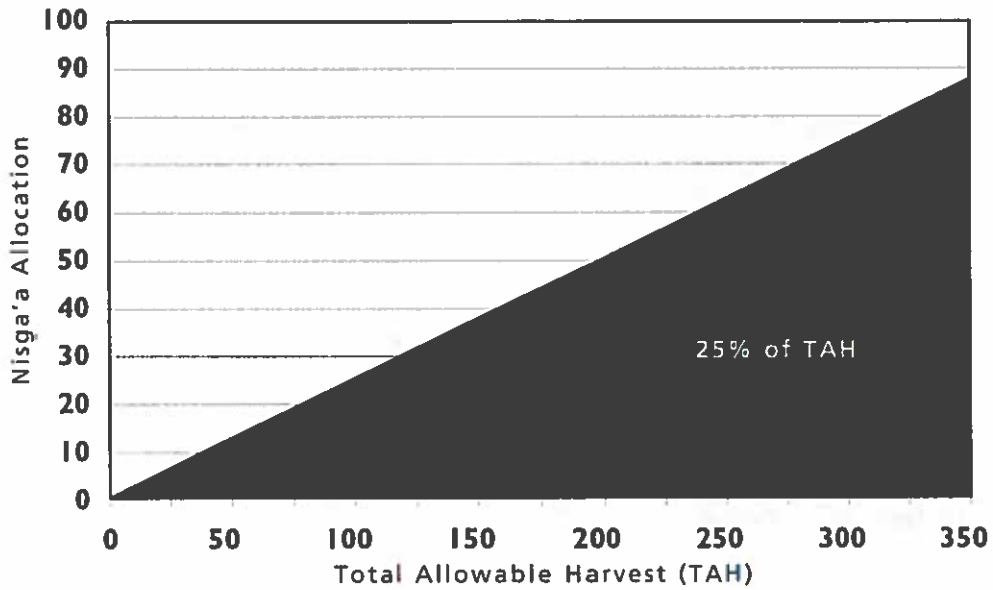
Nisga'a have the right to harvest wildlife in the Nass Wildlife Area. For those species designated by the Minister, a harvest allocation will be established according to formulas agreed to in the Treaty. For all other species, we can harvest as many as we need for domestic purposes, subject only to conservation and legislation that is enacted for the purposes of public health and safety.

(see Nass Wildlife Area map in Appendices)

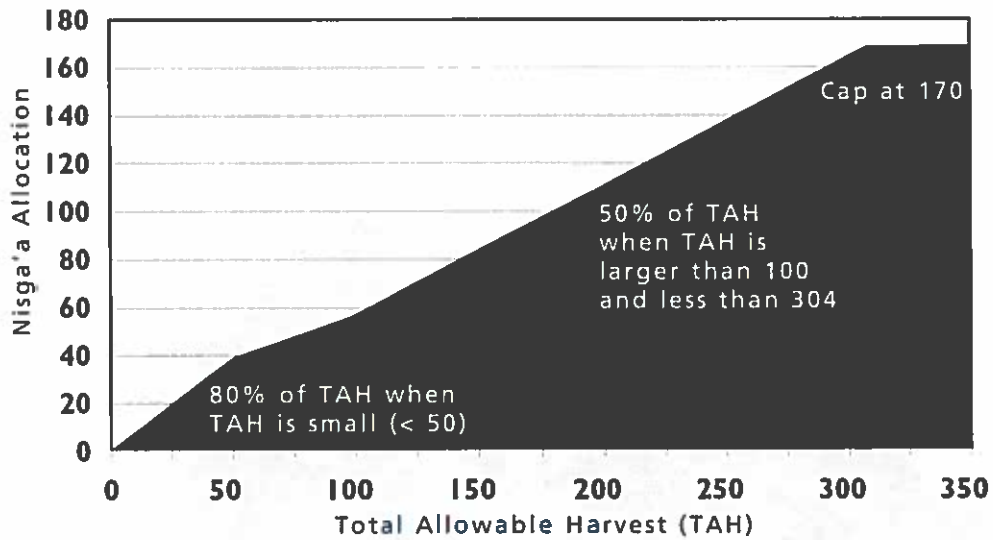
What are the Nisga'a allocations?



Nisga'a Share of Mountain Goats



Nisga'a Share of Moose



Can wildlife harvested under the Treaty be sold?

Any sale of wildlife must be in accordance with to federal and provincial law of general application, as well as Nisga'a laws.

How will Nisga'a Government be involved with managing wildlife?

While the Minister is responsible for management of wildlife, Nisga'a Government will also have important law-making authorities and planning responsibilities with respect to the Nisga'a harvest.

Nisga'a Government may make laws about most aspects of the management of the Nisga'a harvest provided those laws are not inconsistent with the Treaty or annual management plans. Examples include:

- > The distribution of our entitlements among Nisga'a citizens;
- > The authorized methods, timing and locations of the harvest;
- > The designation and documentation of persons who may harvest wildlife; and
- > Trade and barter of wildlife.

Each year, Nisga'a Government must develop and propose an annual management plan for review by the Wildlife Committee and approval by the Minister. It will include such matters as:

- > How people hunting under the Treaty can be identified;
- > Methods to be used in the harvest of wildlife and wildlife fish;
- > Where and when the harvest will take place;
- > Monitoring of the harvest; and
- > The number of animals on Nisga'a Public Lands that persons other than Nisga'a citizens will be allowed to harvest.

In addition, the Nisga'a Nation will appoint four of the nine members of the Wildlife Committee which will review and recommend an annual management plan to the Minister.

What is the role of the Wildlife Committee?

A body established to make recommendations and give advice, designation of species, harvest levels, annual management plans, as well as studies and other matters. It will facilitate sharing of information with other management and advisory groups.

Will my trapline be affected?

Existing traplines will not be affected by the Treaty. Nisga'a Government will obtain traplines on Nisga'a Lands that become vacant.

Will there be new guiding opportunities?

More opportunities are likely. Currently, the permit to guide hunters in the entire territory is held by a single guide-outfitter. However, if this permit becomes available in the future, British Columbia will issue a licence and certificate to the Nisga'a for an area set out in Appendix K of the Treaty. Nisga'a Government will have an angling guide licence identified in Schedule D.

What are Nisga'a rights to harvest migratory birds?

Nisga'a citizens have the right to harvest migratory birds for domestic purposes and the right to trade and barter in accordance with the Treaty.

ENVIRONMENTAL ASSESSMENT AND PROTECTION

Overview

This chapter sets out the rules governing the environmental assessment of proposed projects. The chapter also explains the rules about environmental protection laws and environmental emergencies.

Which governments can pass laws about the environmental assessment of projects on Nisga'a Lands?

The Nisga'a Nation, Canada and British Columbia can all pass laws. If there is a conflict between a Nisga'a law and a federal or provincial law, the federal or provincial law will prevail.

Will the environmental assessment of projects on Nisga'a Lands be harmonized?

On request, the Nisga'a Nation, Canada and British Columbia will negotiate agreements to coordinate Nisga'a, federal and provincial environmental assessment processes to avoid duplication of requirements.

Will Canada and British Columbia be notified about projects on Nisga'a Lands that could have adverse environmental effects?

Yes. The Nisga'a Nation will notify Canada and British Columbia, consult them about the environmental effects of the proposed project and, if the proposed project could have significant adverse environmental effects outside of Nisga'a Lands or on federal or provincial interests, give them an opportunity to participate in any Nisga'a environmental assessment.

Will the Nisga'a Nation be notified about projects outside of Nisga'a Lands that may adversely affect Nisga'a interests?

Yes. If a proposed project could have adverse environmental effects on Nisga'a Lands or other Nisga'a Treaty interests, Canada or British Columbia will give notice of the project, consult the Nisga'a Nation about the environmental effects of the project and, if the project could have significant adverse environmental effects, give the Nisga'a Nation an opportunity to participate in any federal or provincial environmental assessment.

Will the Nisga'a Nation be able to participate in federal or provincial environmental assessment processes that adversely affect Nisga'a interests?

Yes. If a project can be expected to have adverse environmental effects on Nisga'a Lands or on Nisga'a Treaty interests, the Nisga'a Nation will have the right to make submissions to the federal or provincial board and, if the board is not a decision-making body, will be able to nominate a member of the board.

Will there be common requirements for Nisga'a, federal and provincial environmental assessment processes?

Yes. All environmental assessment processes will meet certain requirements, such as assessing whether a proposed project can be expected to have adverse environmental effects on Nisga'a Lands or Nisga'a Treaty interests, assessing the effects of the project on the economic, social and cultural well-being of Nisga'a citizens who might be affected, and taking into account any agreements between the Nisga'a Nation or a Nisga'a Village and the project proponent.

Can Nisga'a Lisims Government make laws about environmental protection on Nisga'a Lands?

Yes, but federal or provincial laws will prevail if there is a conflict between those laws and the Nisga'a law.

Who will respond if there is an environmental emergency or natural disaster?

The Nisga'a Nation, Canada and British Columbia can all respond, and the government with primary responsibility will be notified as soon as possible.

Will the Nisga'a Nation, Canada and British Columbia coordinate environmental protection activities?

The Nisga'a Nation and British Columbia will negotiate and attempt to reach agreements under which certain provincial environmental protection functions will be performed by Nisga'a Government and its agencies. The Nisga'a Nation and Canada may attempt to negotiate similar agreements about federal environmental protection functions.

NISGA'A GOVERNMENT

Overview

This chapter sets out the Nisga'a Nation's right to self-government. It includes provisions for the establishment of a Nisga'a Constitution, basic rules for the structures of Nisga'a Government, a number of areas of Nisga'a Government jurisdiction and rules governing the relationship between Nisga'a laws and federal and provincial laws. Other areas of Nisga'a law making authority are set out elsewhere in the Agreement.

What is the purpose of the Nisga'a Government section?

The Nisga'a Treaty is the first treaty or land claims agreement in Canada to expressly include self-government as an integral part of the Treaty. It provides certainty with respect to Nisga'a rights to self-government, Nisga'a law making authority and the relationship between Nisga'a, federal and provincial laws. The exercise of Nisga'a jurisdiction and authority will evolve over time.

What is the legal status and capacity of Nisga'a Government?

The Nisga'a Nation and each Nisga'a Village will be separate and distinct legal entities. The Nisga'a Nation and each Nisga'a Village will have the capacity, rights, powers and privileges of a natural person, that is, each of them can:

- > Enter into contracts and agreements;
- > Acquire and hold property or an interest in property, and sell or otherwise dispose of that property or interest;
- > Raise, spend, invest or borrow money;
- > Sue and be sued; and
- > Do other things ancillary to the exercise of its rights, powers and privileges.

The phrase "Nisga'a Government" means both Nisga'a Lisims Government and Nisga'a Village Governments. Most of the jurisdictions are assigned specifically to either Nisga'a Lisims Government or Nisga'a Village Governments. Reference should be had to the text of the Final Agreement to determine which level of Nisga'a Government has jurisdiction over a particular matter.

The Nisga'a Nation will act through Nisga'a Lisims Government and each Nisga'a Village will act through its Nisga'a Village Government.

“Nisga’a Institution” means:

- > Nisga’a Lisims Government;
- > A Nisga’a Village Government; or
- > A Nisga’a Public Institution.

“Nisga’a Public Institution” means a Nisga’a Government body, board, commission or tribunal established under Nisga’a law, such as a school board, health board, or police board, but does not include a Nisga’a Court established under the Administration of Justice Chapter. A Nisga’a Public Institution is not a separate legal entity. The existing School District 92, the Nisga’a Valley Health Board and Wilp Wilxo’oskwhl Nisga’a (WWN) are not Nisga’a Public Institutions, because they have been created under provincial law. If, in the future, Nisga’a Government decides to exercise jurisdiction over education or health, and to create new boards, the new boards would be Nisga’a Public Institutions.

What is the structure of Nisga’a Government?

Nisga’a Lisims Government is made up of all of the members of the Nisga’a Village Governments, at least one representative of each Nisga’a Urban Local and at least three officers — the President, Chairperson, and Secretary-Treasurer — who will be elected by the Nisga’a Nation in a general election.

Each Nisga’a Village Government consists of elected members as set out in the Nisga’a Constitution. There will also continue to be Nisga’a Urban Locals in Greater Vancouver, Terrace and Prince Rupert-Port Edward, to enable Nisga’a citizens residing outside of the Nass Area to participate in Nisga’a Lisims Government. Elections for Nisga’a Government must be held in accordance with the Nisga’a Constitution and Nisga’a law.

What are the requirements for the Nisga’a Constitution?

While the detailed contents of the Nisga’a Constitution are for the Nisga’a to determine, paragraph 9 of the Chapter lists certain fundamental matters which the Parties have agreed must be included or addressed in the Nisga’a Constitution.

In order to be adopted, the Nisga’a Constitution must receive the support of at least 70 per cent of Nisga’a voters who vote in a referendum. This is a different test than that for the Treaty, which requires more than 50 per cent of eligible Nisga’a voters to vote in favour of entering into the Treaty.

Can administrative decisions of Nisga'a public institutions be appealed or reviewed?

Yes. Nisga'a Government will provide appropriate procedures for Nisga'a citizens and other individuals who are ordinarily resident in Nisga'a Lands to appeal or seek review of administrative decisions of Nisga'a Public Institutions.

Administrative decisions are different from legislative decisions, or law making. They concern the application of laws to particular matters, including such matters as the administration and issuance of licences or permits and the regulation of hunting, fishing and other activities.

The procedures, to be determined by Nisga'a Government, will vary depending on the type of the decision and the nature of the interests that are affected. They could include anything from a formal hearing before a panel or tribunal, to a review by a more senior Nisga'a Government official.

Will Nisga'a Laws be available to the public?

Yes. Nisga'a Lisims Government will maintain a public registry of Nisga'a laws in the English language and, at the discretion of Nisga'a Lisims Government, in the Nisga'a language.

What relations will exist between Nisga'a Government and residents of Nisga'a Lands who are not Nisga'a citizens?

The Nisga'a Treaty recognizes that non-Nisga'a persons residing within Nisga'a Lands may be affected by some Nisga'a Government decisions. These persons include residents of the Villages, including non-Nisga'a spouses, workers and others, as well as our neighbours who reside on the fee simple properties that are excluded from Nisga'a Lands.

Nisga'a Government will consult with these individuals about any decision that directly and significantly affects them. Moreover, where the activities of a Nisga'a Public Institution directly and significantly affect these persons, such as those of a future school board or health board, Nisga'a Government will ensure that these persons can participate, through such means as the opportunity to make representations, to vote for or run for office, to have guaranteed seats on the Institution, or other comparable measures.

Who will be the first members of Nisga'a Government?

The detailed transitional measures for Nisga'a Government are set out in the Nisga'a Constitution. The Parties have agreed that, until the first elections for Nisga'a Lisims Government and Nisga'a Village Governments are completed, the officers of the Nisga'a Tribal Council and the chief councillors and councillors of the four bands will, together with the Nisga'a Urban Local representatives, comprise Nisga'a Government. Elections must be held no later than six months after the effective date.

What is the relationship between Nisga'a laws and the Treaty?

In the event of an inconsistency or conflict between the Treaty and the provisions of any Nisga'a law, the Treaty prevails to the extent of the inconsistency or conflict. This is the same relationship that exists between the Treaty and federal and provincial laws.

What is the relationship between Nisga'a laws and federal and provincial laws?

For the most part, Nisga'a laws will operate "concurrently", or at the same time, with federal and provincial laws. This approach is different from that in which a government's jurisdiction is "exclusive". The question that must be answered for each area of jurisdiction is, what happens if a valid Nisga'a law is different from a valid federal or provincial law?

There are two kinds of differences. Some laws are "inconsistent". This means they require people to do different things. Other laws are in "conflict". This means that if a person complies with one law, he or she must violate the other law.

For each subject matter, the Treaty specifies which laws prevail. When Nisga'a laws prevail, the test is inconsistency or conflict. When federal and provincial laws prevail, the test is whether the laws are in conflict.

It is necessary to read the Treaty to see which laws prevail in each circumstance. Generally Nisga'a laws prevail with respect to matters that are primarily internal, and federal and provincial laws prevail if the subject matter is governed by national or provincial laws or standards.

What areas of Nisga'a jurisdiction are set out in the Nisga'a Government section?

Some subject matters are assigned to Nisga'a Government. These are areas in which Nisga'a Lisims Government and Nisga'a Village Governments can both make laws, as determined by the Nisga'a Constitution. Most subject matters are assigned specifically to either Nisga'a Lisims Government or Nisga'a Village Governments.

Nisga'a Government

Nisga'a Government may make laws with respect to the administration, management and operation of Nisga'a Government, including such matters as the establishment of Nisga'a Public Institutions, the powers, duties, and remuneration of members, officials, employees and appointees of Nisga'a Institutions, financial administration, and elections, by-elections and referenda.

Nisga'a Lisims Government may also make laws with respect to the creation, amalgamation, dissolution, or naming of Nisga'a Villages on Nisga'a Lands, and Nisga'a Urban Locals.

Nisga'a citizenship

Nisga'a Lisims Government may make laws with respect to Nisga'a citizenship.

Culture and language

Nisga'a Lisims Government may make laws to preserve, promote and develop Nisga'a culture and Nisga'a language, including laws to authorize or accredit the use, reproduction and representation of Nisga'a cultural symbols and practices, and the teaching of Nisga'a language. This does not, except as may be provided by a future federal or provincial law, include jurisdiction to make laws with respect to intellectual property, such as patents or copyrights, the official languages of Canada, or the prohibition of activities outside of Nisga'a Lands.

Nisga'a property in Nisga'a Lands

Nisga'a Lisims Government may make laws with respect to matters relating to the property interests of the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation in Nisga'a Lands, such as:

- > The use and management of those Nisga'a Lands;
- > The possession of those Nisga'a Lands, including the granting of rights and any conditions or restrictions on those rights;
- > The disposition of an estate or interest in any parcel of those Nisga'a Lands;
- > The conditions on, and restrictions subject to which, the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation may create or dispose of estates or interests in any parcel of Nisga'a Lands;
- > The conditions or restrictions, to be established at the time of the creation or disposition of an estate or interest of the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation with respect to that and any subsequent disposition; and
- > The reservation or exception of interests, rights, privileges and titles from any creation or disposition of an estate or interest in those Nisga'a Lands.

Regulation, administration and expropriation of Nisga'a Lands

Nisga'a Government may make laws with respect to matters related to the regulation and administration of Nisga'a Lands, such as:

- > The use, management, planning, zoning and development of Nisga'a Lands;
- > The establishment and operation of a land title or land registry system, for those Nisga'a Lands to which provincial land title legislation does not apply;
- > Regulation, licensing and prohibition of the operation on Nisga'a Lands of businesses, professions, and trades, including the imposition of licence fees or other fees;
- > Designation of Nisga'a Lands as Nisga'a Private Lands or Nisga'a Village Lands;
- > Expropriation by Nisga'a Government for public purposes and public works, of estates, or interests in Nisga'a Lands.

Nisga'a assets

Nisga'a Government may make laws with respect to matters relating to the property interests of the Nisga'a Nation, Nisga'a Villages and Nisga'a Corporations in their assets, other than real property, such as:

- > The use, possession, and management of those assets;
- > The conditions on, and restrictions subject to which, the Nisga'a Nation, Nisga'a Villages and Nisga'a Corporations may dispose of those assets that are on Nisga'a Lands.

Public order, peace and safety

Nisga'a Government may make laws with respect to the regulation, control or prohibition of any actions, activities or undertakings on Nisga'a Lands or, with some exceptions, on submerged lands within Nisga'a Lands, that constitute, or may constitute, a nuisance, a trespass, a threat to public order, peace or safety or a danger to public health.

Duty to accommodate

Under federal and provincial human rights legislation, there is a duty on employers and employee organizations to reasonably accommodate people's religion and culture. The extent and nature of the accommodation will vary depending on the circumstances and is normally adjudicated by

human rights tribunals. However, it is often unclear what cultural aspects of a people or group require accommodation.

Nisga'a Lisims Government may make laws prescribing the aspects of Nisga'a culture, including aspects such as cultural leave from employment, to be accommodated in accordance with federal and provincial laws of general application. For example, Nisga'a Lisims Government could prescribe the nature of the duties associated with a death in a Nisga'a citizen's family. However, the extent of any requirement by an employer to accommodate those duties would be determined by the federal or provincial law.

Industrial relations

The Treaty does not provide jurisdiction over industrial relations to Nisga'a Government. However, labour issues often affect cultural matters and could have an impact on the Agreement. Therefore, where in any industrial relations matter or industrial relations proceeding involving employees employed on Nisga'a Lands, other than a matter or proceeding under a collective agreement (such as a grievance arbitration), an issue arises with respect to this Agreement or Nisga'a culture, the matter or proceeding will not be concluded until notice has been served on Nisga'a Lisims Government. Nisga'a Lisims Government will have the right to make representations concerning this Agreement or the effect of the matter or proceeding on Nisga'a culture.

It is important to note that this right to make representations does not affect federal or provincial jurisdiction with respect to industrial relations, employment standards and occupational health and safety.

Human resource development

At the request of any Party, the Parties will negotiate and attempt to reach agreements for Nisga'a Lisims Government delivery and administration of federal or provincial services or programs that are intended to improve the employability or skill level of the labour force and persons destined for the labour force, or to create new employment or work experience opportunities.

Buildings, structures, and public works

Subject to the Roads and Rights of Way Chapter, Nisga'a Government may make laws with respect to the design, construction, maintenance, repair, and demolition of buildings, structures and public works on Nisga'a Lands.

Traffic and transportation

Nisga'a Government may make laws with respect to the regulation of traffic and transportation on Nisga'a Roads to the same extent as municipal governments have authority with respect to the regulation of traffic and transportation in municipalities in British Columbia.

Solemnization of marriages

Nisga'a Lisims Government may make laws with respect to solemnization of marriages within British Columbia including prescribing conditions under which individuals appointed to perform marriages under Nisga'a law can perform the marriage ceremony.

Individuals appointed by Nisga'a Lisims Government to solemnize marriages will be registered by British Columbia as persons authorized to solemnize marriages, and they will have all the associated rights, duties and responsibilities of a marriage commissioner.

Social services

Nisga'a Lisims Government may make laws with respect to the provision of social services by Nisga'a Government to Nisga'a citizens, other than the licensing and regulation of facility-based services off Nisga'a Lands.

If Nisga'a Lisims Government makes laws with respect to the provision of social services, at the request of any Party, the Parties will negotiate and attempt to reach agreements with respect to exchange of information, avoidance of double payments, and related matters. Moreover, at the request of any Party, the Parties will negotiate and attempt to reach agreements for administration and delivery by Nisga'a Government of federal and provincial social services and programs for all individuals residing within Nisga'a Lands.

Health services

Nisga'a Lisims Government may make laws with respect to health services on Nisga'a Lands.

At the request of any Party, the Parties will negotiate and attempt to reach agreements for Nisga'a Lisims Government delivery and administration of federal and provincial health services and programs for all individuals residing within Nisga'a Lands.

Aboriginal healers

Nisga'a Lisims Government may make laws with respect to the authorization or licensing of persons who practice as aboriginal healers on Nisga'a Lands.

Any Nisga'a law with respect to aboriginal healers will include measures, with respect to competence, ethics and quality of practice that are reasonably required to protect the public.

Child and family services

Nisga'a Lisims Government may make laws with respect to child and family services on Nisga'a Lands, provided that those laws include standards comparable to provincial standards intended to ensure the safety and well-being of children and families.

At the request of Nisga'a Lisims Government, Nisga'a Lisims Government and British Columbia will negotiate and attempt to reach agreements with respect to child and family services for Nisga'a children who do not reside on Nisga'a Lands.

Laws of general application with respect to reporting of child abuse apply on Nisga'a Lands.

Child custody

Nisga'a Government has standing in any judicial proceedings in which custody of a Nisga'a child is in dispute, and the court will consider any evidence and representations with respect to Nisga'a laws and customs in addition to any other matters it is required by law to consider.

Adoption

Nisga'a Lisims Government may make laws with respect to the adoption of Nisga'a children, provided that those laws:

- > Expressly provide that the best interests of the child be the paramount consideration in determining whether an adoption will take place; and
- > Require Nisga'a Lisims Government to provide British Columbia and Canada with records of all adoptions occurring under Nisga'a laws.

Nisga'a law applies to the adoption of a Nisga'a child residing off Nisga'a Lands if:

- > The parent, parents or guardian of the child consent to the application of Nisga'a law to the adoption; or

> A court of competent jurisdiction dispenses with the requirement for that consent.

There are special rules governing what happens if the Director of Child Protection becomes the guardian of a Nisga'a child.

Pre-school to Grade 12 education

Nisga'a Lisims Government may make laws with respect to pre-school to Grade 12 education on Nisga'a Lands of Nisga'a citizens, including the teaching of Nisga'a language and culture, but those laws must provide for:

- > Curriculum, examination and other standards that permit transfers of students between school systems at a similar level of achievement and permit admission of students to the provincial post-secondary education systems; and
- > Certification of teachers, other than for the teaching of Nisga'a language and culture, by:
 - a. A Nisga'a Institution, in accordance with standards comparable to standards applicable to individuals who teach in public or independent schools in British Columbia; or
 - b. A provincial body having the responsibility to certify individuals who teach in public or independent schools in British Columbia; and
- > Certification of teachers, for the teaching of Nisga'a language and culture, by a Nisga'a Institution, in accordance with standards established under Nisga'a law.

If Nisga'a Lisims Government makes laws with respect to education, at the request of Nisga'a Lisims Government or British Columbia, those Parties will negotiate and attempt to reach agreements concerning the provision of Kindergarten to Grade 12 education to:

- > Persons other than Nisga'a citizens residing within Nisga'a Lands; and
- > Nisga'a citizens residing off Nisga'a Lands.

Post-secondary education

Nisga'a Lisims Government may make laws with respect to post-secondary education within Nisga'a Lands, including:

- > The establishment of post-secondary institutions with the ability to grant degrees, diplomas or certificates;
- > The determination of the curriculum for post-secondary institutions established under Nisga'a law;

- > The accreditation and certification of individuals who teach or research Nisga'a language and culture; and
- > The provision for and coordination of all adult education programs.

These laws will include standards comparable to provincial standards with respect to:

- > Institutional organizational structure and accountability;
- > Admission standards and policies;
- > Instructor qualifications and certification;
- > Curriculum standards sufficient to permit transfers between provincial post-secondary institutions; and
- > Requirements for degrees, diplomas or certificates.

Nisga'a Lisims Government may prescribe the terms and conditions under which Nisga'a post-secondary institutions may enter into arrangements with other institutions or British Columbia to provide post-secondary education outside Nisga'a Lands.

Gambling and gaming

British Columbia will not licence or approve gambling or gaming facilities on Nisga'a Lands other than in accordance with any terms and conditions established by Nisga'a Government that are not inconsistent with federal and provincial laws of general application. Any changes in federal or provincial legislation or policy that permits the involvement of aboriginal peoples in the regulation of gambling and gaming will, with the consent of Nisga'a Lisims Government, apply to Nisga'a Government.

Intoxicants

Nisga'a Government may make laws with respect to the prohibition of, and the terms and conditions for the sale, exchange, possession or consumption of intoxicants, on Nisga'a Lands.

The Nisga'a Nation, its agents and assignees have:

- > The exclusive right to sell liquor on Nisga'a Lands in accordance with laws of general application; and
- > The right to purchase liquor from the British Columbia Liquor Distribution Branch in accordance with federal and provincial laws of general application.

British Columbia will authorize persons designated by Nisga'a Government, in accordance with provincial laws of general application, to approve or deny applications for special occasion or temporary permits to sell liquor.

Devolution of cultural property

"Cultural property" includes:

- > Ceremonial regalia and similar personal property associated with a Nisga'a chief or clan; and
- > Other personal property that has cultural significance to the Nisga'a Nation.

Nisga'a Lisims Government may make laws with respect to who inherits of the cultural property of a Nisga'a citizen who dies without a will.

Nisga'a Lisims Government has standing in any judicial proceeding in which the validity of the will of a Nisga'a citizen, or the inheriting of the cultural property of a Nisga'a citizen is at issue, including any proceedings under wills variation legislation.

Nisga'a Lisims Government may commence an action under wills variation legislation in British Columbia to vary a will of a Nisga'a citizen that provides for a devolution of cultural property.

Other areas of jurisdiction

In addition to the laws that Nisga'a Government may make under this Chapter, Nisga'a Government may make laws with respect to other matters as set out in, and in accordance with, other Chapters of the Agreement.

Emergency preparedness

Nisga'a Lisims Government, with respect to Nisga'a Lands, has the rights, powers, duties, and obligations of a local authority under federal and provincial legislation with respect to emergency preparedness and emergency measures.

This means, in part, that Nisga'a Lisims Government may declare a state of local emergency, and exercise the powers of a local authority with respect to local emergencies in accordance with federal and provincial laws with respect to emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia set out in those federal and provincial laws.

Other matters

The authority of Nisga'a Government to make laws with respect to a subject matter includes the authority to make laws and to do other things as may be necessarily incidental to, or connected with exercising that authority. Nisga'a Government may also make laws and do other things that may be necessary to enable each of the Nisga'a Nation, a Nisga'a Village, and Nisga'a Government to exercise its rights, or to carry out its responsibilities, under this Agreement.

Nisga'a Government may provide for the imposition of penalties, including fines, restitution, and imprisonment for the violation of Nisga'a laws, within the limits set out for summary conviction offences in the *Criminal Code of Canada* or the *British Columbia Offence Act*.

Nisga'a Government liability

Elected members of Nisga'a Government are immune from actions for damages for matters arising in the course of their duties, while that person is, or was, an elected member. However, these protections do not apply if the person is guilty of dishonesty, gross negligence or malicious or wilful misconduct or if the cause of action is libel or slander.

Otherwise, Nisga'a public officers and Nisga'a Government will have similar protections from liability as apply to municipalities in British Columbia.

ADMINISTRATION OF JUSTICE

Overview

This chapter sets out the involvement of Nisga'a Nation in policing, the provision of community correction services, and the establishment of a Nisga'a Court. The general approach is one of establishing structures that are integrated into the overall structures established by British Columbia and Canada that relate to the administration of justice. The chapter balances the need for local involvement in these matters with the desirability of avoiding completely separate structures.

How can the Nisga'a Nation establish a Nisga'a police service?

The Nisga'a Nation will have authority with respect to the provision of policing within Nisga'a Lands, similar to those of municipalities in British Columbia with a population greater than 5,000 people. If Nisga'a Lisims Government chooses, it may make laws to establish a Nisga'a police board and a Nisga'a police service. Or instead, it may enter into agreements by which some or all of the policing will be provided by the provincial police service (RCMP) or other police services. It may also have a combination of a Nisga'a police service as well as the continued presence of the provincial police. The Parties wish any Nisga'a police service to be responsive to the needs and priorities of the Nisga'a Nation, to have the full range of police responsibilities and authorities and to contribute to the administration of justice, social order and public security.

If Nisga'a Lisims Government decides to establish a Nisga'a police board, it must make laws including provisions that substantially conform with provincial laws with respect to standards, swearing in, use of force, discipline and dismissal, and the consideration of public complaints. It must also include laws that are compatible with provincial legislation with respect to selection standards and code of conduct for police officers, mechanisms to ensure police independence, accountability and competence, and police operations generally.

The Nisga'a police board must carry out a number of roles in the direction and administration of the Nisga'a police service. It will be the employer of members of the police service.

Once the Nisga'a Lisims Government has enacted laws to establish a police board, the Lieutenant Governor In Council must consider and decide whether the appropriate standards have been met as set out in the Treaty. If so, it approves the structure and membership and appoints the members of the Nisga'a police board.

Why is the approval of Lieutenant Governor In Council necessary?

It is necessary that policing be provided by police services that are accountable to the public and independent of politicians. The elaborate structures set out above are intended to ensure this. The

Attorney General of British Columbia has ultimate authority with respect to administration of justice in British Columbia.

Do Nisga'a police officers have the same authority as other police officers?

Yes. Members of the Nisga'a police force will have all of the same powers, duties, privileges, liabilities and responsibilities of other peace officers according to law. Their authority extends throughout British Columbia, however, it will normally be restricted to Nisga'a Lands, except in the case of an emergency or upon request for assistance from other police services.

As a part of the Attorney General's overall responsibility for administration of justice, he or she retains the same powers he or she has over other police services to ensure that effective policing is provided in accordance with standards prevailing elsewhere in British Columbia. This power extends to, if necessary, the reorganization of policing or by appointing individuals as constables, using the provincial police service or by other means. This power is similar to the Attorney General's power with respect to other police services in British Columbia.

What are community correction services?

These services are set out in the Treaty and include matters relating to bail, probation, conditional sentences, parole supervision and other forms of conditional release, preparation of reports for courts and other justice agencies, alternative custody programs and certain family court counsellor functions to be set out in the agreement.

Nisga'a Government has the authority to appoint persons to provide services with respect to persons charged and convicted of offences under Nisga'a laws. In addition, agreements can be negotiated with British Columbia or Canada to allow persons appointed by Nisga'a Government to deliver federal and provincial services.

The Treaty does not authorize Nisga'a Government to establish places of confinement to punish people for offences, unless this is otherwise achieved through an agreement.

Can the Nisga'a establish a Nisga'a Court?

Yes. Until the date that Nisga'a Lisims Government decides to establish a court, any offences under Nisga'a laws will be tried in the Provincial Court of British Columbia. If Nisga'a Lisims Government does decide to establish a Nisga'a Court, it will make laws to ensure that the court and its judges comply with generally recognized principles with respect to judicial fairness, independence and impartiality, provide for means of supervision of the judges, and provide for the means of appeals from decisions of the court to the ordinary courts of British Columbia.

The court may commence functioning when the Lieutenant Governor in Council (the Provincial Cabinet) has approved the Nisga'a Court's structure, procedures and method of selection of judges. The Court's powers will include reviewing administrative decisions of Nisga'a public institutions, adjudicating prosecutions arising out of Nisga'a laws, and adjudicating disputes between Nisga'a citizens on Nisga'a Lands that would otherwise be in small claims courts. The court may also adjudicate, with the consent of the parties, in disputes between persons. The court will have the authority to impose penalties and other remedies under the laws of Nisga'a Government, British Columbia and Canada, in accordance with generally accepted principles of sentencing and may apply traditional Nisga'a methods and values such as using Nisga'a elders to assist in adjudicating in a sentencing. If an accused person may receive a sentence of imprisonment under Nisga'a law, he or she has the choice to be tried in the Provincial Court of British Columbia. The Nisga'a court may not impose on persons who are not Nisga'a citizens any sanction or penalty different in nature generally imposed by the ordinary courts, without the person's consent. In this way, the court could utilize traditional methods that are unique to Nisga'a culture with respect to Nisga'a citizens, and others if they consent to the application of the Nisga'a approach.

Can decisions of the Nisga'a Court be appealed?

Yes. The Treaty provides generally for appeals to the Supreme Court of British Columbia and then, in accordance with the ordinary law, to the British Columbia Court of Appeal and the Supreme Court of Canada.

Can the Court serve other functions?

The Nisga'a Court may be assigned additional powers and duties by laws of British Columbia or Canada. The Lieutenant Governor in Council may appoint judges of the Nisga'a Court as Provincial Court judges, justices of the peace or referees. If this happens, the Nisga'a Court judge would be able to sit as the Provincial Court and carry out the functions of that court. However, there is no Treaty right that would require this to occur.

Can the Administration of Justice Chapter be reconsidered?

Yes. The Parties agree to review the Chapter no later than 10 years after the effective date. This is in order to assess how well the Chapter has functioned and to make any changes to which the Parties may agree.

INDIAN ACT TRANSITION

Overview

This chapter sets out certain provisions of the *Indian Act* that will continue to apply for a transitional period after the effective date. It also describes the transition from the existing Nisga'a bands to the Nisga'a Villages, and from the Nisga'a Tribal Council to the Nisga'a Nation.

In what circumstances will the Indian Act apply to Nisga'a citizens during the transitional period?

The *Indian Act* will apply to the estates of Nisga'a citizens who die before the effective date and who were, at the time of their death, members of a Nisga'a band.

The Minister of Indian Affairs will continue to have authority over the property of Nisga'a citizens who were "mentally incompetent Indians" within the meaning of the *Indian Act* immediately before the effective date.

The Minister of Indian Affairs will continue to administer the property of infant children whose property the Minister was administering immediately before the effective date.

What happens to Nisga'a band bylaws?

They will continue to be in effect on Nisga'a Village Lands for 30 days after the effective date unless repealed by the Nisga'a Village Government.

What happens to the Nisga'a bands and their assets?

Subject to the Treaty, the four Nisga'a bands cease to exist and all of their rights, obligations, assets and liabilities vest in the Nisga'a Villages that replace them.

What happens to Nisga'a Indian reserves within Nisga'a Lands?

Nisga'a Lisims Government will designate lands that were formerly Nisga'a Indian reserves as Nisga'a Village Lands of the appropriate Nisga'a Village.

What happens to the Nisga'a Tribal Council and its assets?

Subject to the Treaty, the Nisga'a Tribal Council ceases to exist. All of its rights, obligations, assets and liabilities will be vested in the Nisga'a Nation.

CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT

Overview

This chapter sets out the terms under which:

- > Canada and British Columbia will each pay their respective shares of the \$190-million capital transfer to the Nisga'a Nation; and
- > The Nisga'a Nation will repay the monies it has borrowed over the years to finance the negotiation of the Agreement in Principle and the Final Agreement.

How will Canada and British Columbia make capital transfer payments to the Nisga'a Nation?

Canada and British Columbia have agreed to pay the Nisga'a Nation a total capital transfer of \$190 million, as may be adjusted upward, or downward, in recognition of inflation, or deflation, that occurs between the date of the Agreement in Principle and the effective date of the Final Agreement. The Final Domestic Demand Implicit Price Index for Canada will be used as the basis for determining the amount of the inflation adjustment.

The inflation-adjusted capital transfer will be remitted to the Nisga'a Nation through a series of 15 annual payments, commencing on the effective date of the Final Agreement, and ending on the 14th anniversary of that effective date.

Payments of \$22 million will be received on each of the effective dates and the first anniversary of that date. The annual payments then will be reduced to \$13 million for each of the second through seventh anniversaries. The final seven payment amounts, to be received on each of the eighth through 14th anniversaries and estimated to be in the range of \$23 million each, will be determined shortly before the effective date, as discussed below.

The exact amounts of the last seven annual capital transfer payments will be calculated so that the total of all amounts received by the Nisga'a Nation during the capital transfer payment period equals the inflation-adjusted capital transfer plus a factor to compensate the Nisga'a Nation for interest during that period. The factor used to compensate the Nisga'a Nation for interest will be based on a rate that is one eighth of one per cent less than the rate of interest charged by Canada on loans made under comparable terms to parties borrowing from the Consolidated Revenue Fund of Canada. That Consolidated Revenue Fund Lending Rate will be selected based on the latest published data available approximately two weeks prior to the signing of the Final Agreement.

The Chapter contemplates adjusting the capital transfer payments, if Canada experiences any unusual delay in completing its ratification procedures. It provides that, if the Parliament of Canada fails to enact the necessary settlement legislation within 15 months of the signing of the Final Agreement, then the calculation of the capital transfer payment schedule will be altered to:

- > Cut off the inflation-adjustment period referred to above at the date ("transition date") that is 15 months after the date of signing the Agreement, rather than at the effective date; and
- > Provide for an additional interest factor to be built into the final seven capital transfer payments on the schedule to compensate the Nisga'a Nation for lost interest attributable to the period between the transition date and the eventual effective date of the Final Agreement.

How will the Nisga'a Nation repay its Negotiation Loans?

The Nisga'a Tribal Council financed the Nisga'a costs of negotiating the Final Agreement by borrowing funds from Canada. Money for costs incurred in negotiating the Agreement in Principle was borrowed by way of interest-free loans. Money for the costs incurred in negotiating the Final Agreement has been borrowed under a series of loans at various rates of interest. Shortly before the effective date, all such loans, and any unpaid accrued interest on those loans which bear interest, will be consolidated into a single amount ("consolidated loan amount"). The consolidated loan amount will then become a liability of the Nisga'a Nation on the effective date of the Final Agreement. The actual consolidated loan amount at the effective date, of course, will depend on the length of the period before the effective date during which interest accrues on the interest-bearing loans and on the amount of payments, if any, made on account of the loans in that period.

The Nisga'a Nation will repay the consolidated loan amount through a series of 13 annual payments, commencing on the second anniversary of the effective date of the Final Agreement, and ending on the 14th anniversary of that effective date.

Six \$2-million payments will be made on each of the second through seventh anniversaries of the effective date. The final seven payments, to be made on the eighth through 14th anniversaries, will be equal amounts that will be determined shortly before the effective date, as discussed below.

The exact amounts of the last seven payments will be determined shortly before the effective date. They will be calculated so that the total of all loan payments to be made by the Nisga'a Nation equals the total of the consolidated loan amount at the effective date plus a factor to compensate Canada for interest during the loan repayment period. The factor used to compensate Canada for interest will be based on a rate that is one eighth of one per cent less than the rate of interest charged by Canada on loans made under comparable terms to parties borrowing from the Consolidated Revenue Fund of Canada. That Consolidated Revenue Fund Lending Rate will be selected based on the latest published data available approximately two weeks prior to the signing of the Final Agreement.

The Nisga'a Nation will have the right to make loan repayments before their scheduled due date. Such prepayments can be made at each anniversary, and up to three times during the first nine months after an anniversary. Each prepayment will be credited against future scheduled loan repayments in a manner which compensates the Nisga'a Nation for interest on the prepayment, and in

that manner, will result in savings in the total payments that ultimately have to be made on account of the consolidated loan amount.

A loan repayment due on an anniversary date may be paid by the Nisga'a Nation in cash. Alternatively, Canada may deduct that loan repayment from the amount of any capital transfer payment due to the Nisga'a Nation on that anniversary date.

FISCAL RELATIONS

Overview

This chapter explains the core elements of the fiscal relationship between the Nisga'a Nation, Canada and British Columbia, including:

- > How the public programs and services provided by Nisga'a Government and other Nisga'a bodies will be negotiated and funded, in Fiscal Financing Agreements;
- > How a part of certain revenues of Nisga'a Government and other Nisga'a bodies will be contributed to the cost of providing those public programs and services, in Own Source Revenue Agreements;
- > The characteristics of a Nisga'a settlement trust.

What is a Fiscal Financing Agreement?

An agreement between the Nisga'a Nation, Canada and the Province that:

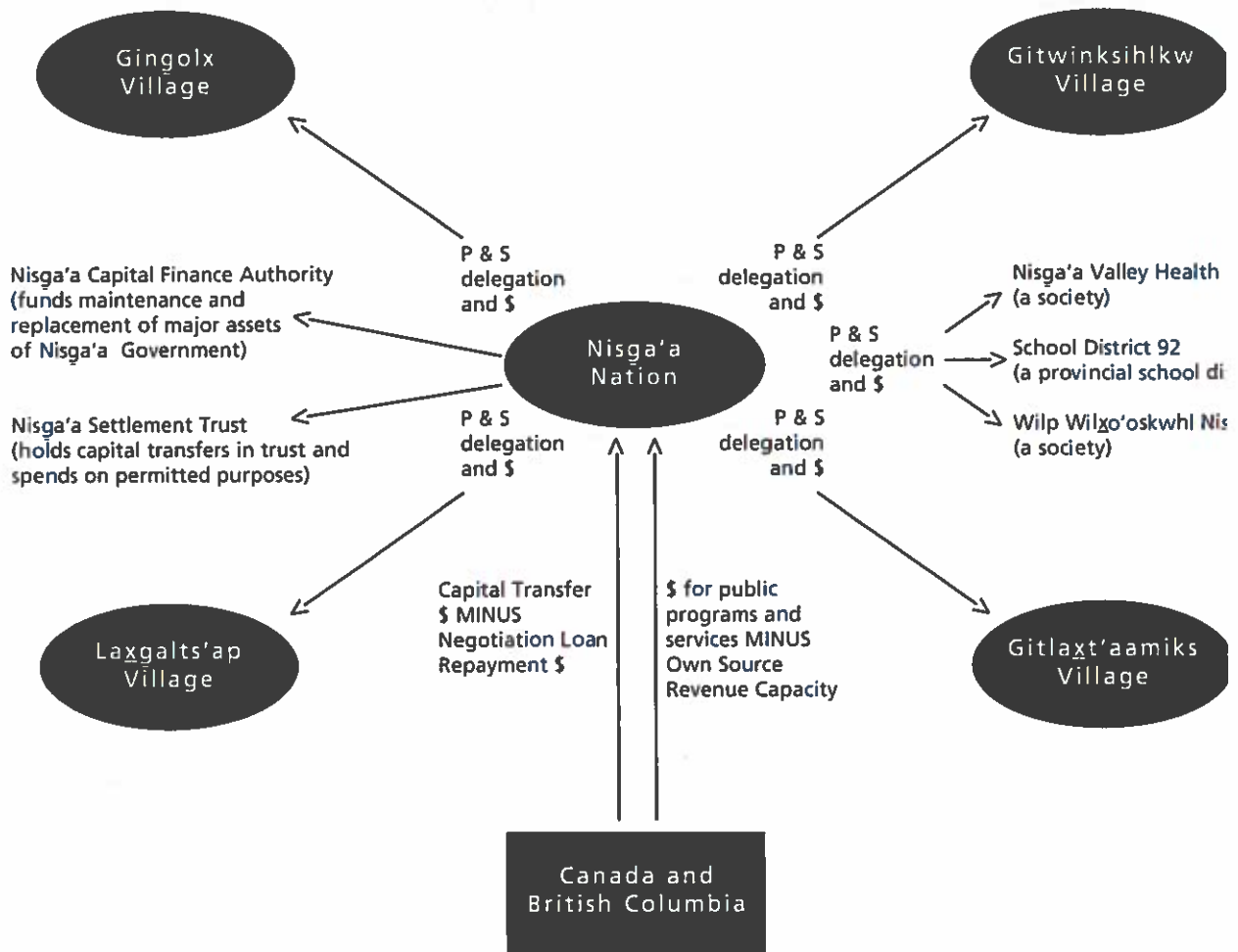
- > Sets out in detail the public programs and services that the Nisga'a Nation will be responsible for; and
- > Provides for the funding of those programs and services.

How will Fiscal Financing Agreements be negotiated?

The Nisga'a Nation will negotiate Fiscal Financing Agreements with Canada and British Columbia, and will involve representatives of the Nisga'a Villages, the Nisga'a Valley Health Board, School District No. 92, Wilp Wilxo'oskwahl Nisga'a and other Nisga'a bodies, as appropriate.

How will the Nisga'a Villages and other Nisga'a service providers be funded under Fiscal Financing Agreements?

The Nisga'a Nation will delegate responsibility for various programs and services to the Nisga'a Villages and to other Nisga'a service providers, and will provide for payment of funding for those programs and services, under its financial administration laws and in related agreements.



NISGA'A VILLAGES:

- > Provide Village governance, and certain programs and services;
- > Can create Nisga'a Nation Own Source Revenue Capacity.

THE NISGA'A NATION:

- > Enters Fiscal Financing Agreement and Own Source Revenue Agreement with Canada and B.C.;
- > Is responsible to ensure provision of agreed-upon public programs and services;
- > Delegates delivery of certain agreed-upon public programs and services to Nisga'a Villages and other Nisga'a entities;
- > Enters Taxation Agreement with Canada and B.C.

Fiscal Financing Agreement sets out agreed-upon public programs and services and federal and provincial funding to enable their provision. (Nisga'a Nation delegates delivery of certain programs and services: "P&S".)

Own Service Revenue Agreement sets out rules on Nisga'a Nation financial contribution to the cost of the Nisga'a Government and agreed-upon public programs and services. Nisga'a Own Source Revenue Capacity ("OSR") includes revenue capacity of Nisga'a Nation, Nisga'a Villages, Nisga'a Government Corporations, other non-taxable Nisga'a Corporations and Nisga'a Settlement Trust.

How long do Fiscal Financing Agreements last?

A new Fiscal Financing Agreement will be negotiated every five years, or at other intervals if the Parties agree.

Are Fiscal Financing Agreements themselves part of the Treaty?

No.

Has the first Fiscal Financing Agreement been negotiated?

Yes. It will come into effect on the effective date of the Treaty and has a term of five years. It is summarized below.

What is an Own Source Revenue Agreement?

An agreement between the Nisga'a Nation, Canada and the Province that sets out in detail how the Nisga'a Nation will contribute to the cost of public programs and services (including Nisga'a governance) that it is responsible for under Fiscal Financing Agreements. This contribution will mainly be made from revenues under the control of the Nisga'a Nation, Nisga'a Villages and certain other Nisga'a bodies. These "own source revenues" include the income and capital gains of a Nisga'a settlement trust, and revenues available from taxation, commercial and investment activities, and other sources.

Who creates the Nisga'a Nation's Own Source Revenue Capacity?

The Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, a Nisga'a Government corporation, or a tax-exempt corporation in which the Nisga'a Nation or a Nisga'a Village owns an interest. Nisga'a Nation Own Source Revenue Capacity generally arises from activities that are not subject to income tax.

How will Nisga'a Nation Own Source Revenue Capacity be administered?

Nisga'a Lisims Government can make laws to ensure that the Nisga'a Nation, Nisga'a Villages and other Nisga'a bodies that deliver public programs or services are not unfairly affected by own source revenue capacity created by any one of them, and that own source revenues can be recovered and properly adjusted among them.

How long do Own Source Revenue Agreements last?

A new Own Source Revenue Agreement will be negotiated every 10 years, or at other intervals if the Parties agree.

Are Own Source Revenue Agreements themselves part of the Treaty?

No.

Has the first Own Source Revenue Agreement been negotiated?

Yes. It will come into effect on the effective date of the Treaty, and has a term of 12 years. It is summarized below.

What is a Nisga'a Settlement Trust?

A special Nisga'a trust that can be established to receive financial transfers paid to the Nisga'a Nation by Canada and British Columbia under the Financial Transfers and Loan Repayment Chapter of the Treaty.

What are the main characteristics of a Nisga'a Settlement Trust?

- > Tax Status. The trust will not be subject to income tax if it is operated in accordance with the Taxation Agreement. The income it earns will be included in Nisga'a Nation Own Source Revenue Capacity, but at considerably lower rates than income tax rates.
- > Trust Beneficiaries. The only beneficiaries of the trust are the Nisga'a Nation, any Nisga'a Village, another Nisga'a settlement trust, all Nisga'a citizens, all Nisga'a citizens in a Nisga'a Village, or any registered charity or non-profit organization that benefits Nisga'a citizens.
- > Investment and Loan Activities Allowed. The trust can:
 - a. Make certain types of investments and borrow money to finance those investments;
 - b. Make loans at prescribed interest rates to a Nisga'a citizen, the Nisga'a Nation, Nisga'a Villages or Nisga'a Government Corporations;
 - c. Invest in shares of Nisga'a Government Corporations in certain circumstances; and
 - d. Make low-interest or interest-free loans to Nisga'a citizens for specified purposes, including to assist in acquiring or renovating a home, to attend educational, technical or vocational courses, or to carry on a business on Nisga'a Lands or Nisga'a Fee Simple Lands in certain circumstances.
- > Business Activities Not Allowed. The trust cannot carry on a business directly.

How will a Nisga'a Settlement Trust be established?

By trust documents that will include the above matters and will also deal with such matters as financial management and reporting requirements, and the qualifications, appointment, and replacement of trustees. A Nisga'a settlement trust will be established on, or very shortly after, the effective date.

What are the main benefits of the Nisga'a Settlement Trust?

Because of the considerable tax advantages, if Treaty capital transfers are deposited to a Nisga'a settlement trust, the value of that money can be maintained or increased at a better rate than can normally be achieved. Growth will be achieved if the trust's funds are properly managed and the amount paid out of the trust each year is carefully considered and controlled by the trustees.

A well-managed Nisga'a settlement trust can enable the Nisga'a to maintain Treaty money over a long period of time, while still being able to apply a reasonable part of the annual income earned by the trust to the above purposes.

First Fiscal Financing Agreement

Overview

The first Fiscal Financing Agreement explains in detail:

- > The public programs and services that the Nisga'a Nation will be responsible for over the first five years after the effective date of the Treaty;
- > The persons who will receive those programs and services; and
- > The funding for those programs and services.

Does the first Fiscal Financing Agreement replace existing funding arrangements?

It will entirely replace existing funding arrangements for the Nisga'a bands and the Nisga'a Tribal Council. It will also replace some of the existing funding agreements for the Nisga'a Valley Health Board, School District No. 92, and Wilp Wilxo'oskwhl Nisga'a (all three of which will continue to operate after the effective date).

What programs and services are covered by the first Fiscal Financing Agreement?

All public programs and services that are currently provided by Nisga'a bands, the Nisga'a Tribal

Council, the Nisga'a Valley Health Board, School District No. 92, and Wilp Wilxo'oskwhl Nisga'a, plus a number of new programs and services:

> Health programs and services, including:

- a. Community health programs and services for all Nisga'a citizens who ordinarily live in Nisga'a Lands;
- b. Non-insured health benefits for all Nisga'a citizens who ordinarily live in Canada; and
- c. Payment of Medical Services Plan premiums and Provincial Ambulance Service fees for all Nisga'a citizens who are registered Indians.

> Social services, including:

- a. Child and family services under the Nisga'a Child and Family Services Agreement;
- b. Income assistance and services for all Nisga'a citizens who ordinarily live in Nisga'a Lands;
- c. Training, education and employment programs (to reduce reliance on income assistance) for all Nisga'a citizens who ordinarily live in Nisga'a Lands; and
- d. Local community programs that contribute to physical, emotional and social well-being for all persons who ordinarily live in Nisga'a Lands.

> Education programs and services, including:

- a. Nursery school programs and services, pre-school to Grade 12 services, financial support for delivery of post-secondary programs, and Nisga'a language and culture programs for all Nisga'a citizens who ordinarily live in Nisga'a Lands; and
- b. Financial support to attend accredited post-secondary education or training institutions for all Nisga'a citizens who ordinarily live in Canada.

> Functions of Nisga'a Government, including:

- a. Legislative, executive and administrative functions of Nisga'a Lisims Government;
- b. Land and environmental management;
- c. Fisheries and wildlife management; and
- d. Legislative, executive and administrative functions of Nisga'a Village Governments.

> Capital programs and services, including:

- a. Maintenance and replacement of certain existing public buildings; and
- b. Construction and rehabilitation of residential housing for Nisga'a citizens on Nisga'a Lands.

What else is covered by the first Fiscal Financing Agreement?

A number of related matters, including:

- > Establishment of a Nisga'a capital finance authority for the Nisga'a Nation and all Nisga'a Villages, to enable the financing of capital projects on Nisga'a Lands;
- > Funding of one-time start-up activities to support implementation of the Treaty, including training for Nisga'a citizens, fisheries management, land management, community communications, and preparation of Nisga'a laws;
- > The ability to negotiate the addition of policing, correction or court programs or services during the term of the Agreement;
- > Access to emergency preparedness training; and
- > Establishment of a Nisga'a population data base.

How does the level of funding for programs and services under the first Fiscal Financing Agreement compare with current levels?

Generally, funding will either be maintained or improved. Adjustments will be made to the funding levels to account for changes in costs between now and the effective date, and to account for inflation and population changes over the course of the Agreement.

How does Nisga'a responsibility and control over programs and services under the first Fiscal Financing Agreement compare with current arrangements?

Generally, there will be equal or greater Nisga'a responsibility for delivery of public programs and services and Nisga'a control over spending on those programs and services.

Will the next Fiscal Financing Agreement be the same as the first one?

Not necessarily. The next Fiscal Financing Agreement will be negotiated in five years, and there could be changes at that time. However, it can be expected that the first Fiscal Financing Agreement will be the starting point for that negotiation.

First Own Source Revenue Agreement

Overview

The first Own Source Revenue Agreement explains in detail:

- > The revenue sources from which the Nisga'a Nation will contribute to the cost of public programs and services over the first 12 years after the effective date of the Treaty; and
- > The amount from each of those revenue sources that will be contributed over that time.

What are the major categories of Own Source Revenue from which the Nisga'a Nation will contribute?

Commercial and investment income, taxes, Nisga'a settlement trust income and capital gains, charges and fees, and other sources.

In general terms, what amounts will be contributed from these revenue sources?

- > Commercial and Investment Income. The amount contributed from income earned from commercial and investment activities (including from exploitation of a natural resource, such as the Nisga'a forest resource) will be reasonably comparable to the additional amount that would be paid as taxes if the activity were carried out by a taxable private enterprise.
- > Taxes. The amount contributed from tax revenue (if Nisga'a Government decides to raise taxes) will vary substantially depending on a number of factors, including whether Canada or British Columbia makes "tax room" available to the Nisga'a (such as by reducing the level of one of their taxes to let the Nisga'a raise that amount).
- > Nisga'a Settlement Trust Income and Capital Gains. For 12 years after the effective date, no amount will be contributed from the income and capital gains of a Nisga'a settlement trust. This will allow significant growth of the capital transfer amounts paid into the trust during that period. After that period, the amount contributed from trust income and capital gains will be fairly comparable to additional tax that Canadian governments would receive if trust income and capital gains had been distributed during the fiscal year to all Nisga'a citizens.
- > Charges and Fees and all other Own Source Revenue. The amount contributed from charges and fees, and from all other own source revenues, will be 46 per cent.

Will these amounts of Own Source Revenue be contributed immediately?

No. The Nisga'a contribution from each own source revenue (except Nisga'a settlement trust income and capital gains) will be gradually phased in to the above levels over the 12 years of the Agreement. The Nisga'a contribution from Nisga'a settlement trust income and capital gains will remain at zero for the 12 years.

Does the Agreement specify the types of Nisga'a revenues from which no amount will be contributed?

Yes. These include proceeds from any sale of Nisga'a Lands or Nisga'a Fee Simple Lands, certain amounts provided for in the Fiscal Relations Chapter, and gifts to the Nisga'a Nation and Nisga'a Villages.

TAXATION

Overview

This chapter explains core elements of the taxation relationship between the Nisga'a Nation, Canada and British Columbia, including:

- > The primary taxation powers of Nisga'a Lisims Government;
- > How Nisga'a Lisims Government can obtain further taxation powers;
- > How and when the current tax exemption under section 87 of the *Indian Act* will end;
- > A number of tax exemptions of Nisga'a Government.

A number of further tax exemptions of Nisga'a Government and other Nisga'a bodies are explained in the Taxation Agreement, which is summarized below.

What taxation power does Nisga'a Lisims Government have under the Treaty?

Nisga'a Lisims Government can make direct taxation laws that apply to Nisga'a citizens on Nisga'a Lands. The power of "direct taxation" is the same power of taxation as British Columbia has.

Nisga'a Government will only be able to tax persons who are not Nisga'a citizens on Nisga'a Lands if Canada or British Columbia delegates taxation power over those other persons to a Nisga'a Government, at a future time.

When will section 87 of the Indian Act cease to apply to Nisga'a citizens?

Section 87 will cease to apply to Nisga'a citizens in two stages:

For "transaction taxes" (such as provincial sales tax), it will cease to apply eight years after the effective date of the Treaty. For all other taxes (such as income tax), it will cease to apply 12 years after the effective date.

Will section 87 be continued on any Nisga'a Lands, until the eight- and 12-year periods?

Yes. Canada and the Province will pass remission orders that will result in the former Indian reserve lands, within Nisga'a Lands, being treated as reserve lands for the purposes of section 87, until the eight- and twelve-year periods.

Are there tax exemptions in the Treaty?

Yes. The Nisga'a Nation and Nisga'a Villages are exempt from capital taxation (including property taxes) on Nisga'a Lands that do not have buildings (or other improvements) on them, and on Nisga'a Lands that have certain kinds of buildings (or improvements) on them.

Also, transfers of Nisga'a capital are exempt from taxation. "Nisga'a capital" means all land, cash, and other assets transferred to, or recognized as owned by, the Nisga'a Nation or a Nisga'a Village under the Treaty. It does not include any land added to Nisga'a Lands after the effective date.

Does the Treaty require a Taxation Agreement between the Nisga'a Nation, Canada and British Columbia?

Yes.

Is the Taxation Agreement itself part of the Treaty?

No.

Has the Taxation Agreement already been negotiated?

Yes. It will come into effect on the effective date of the Treaty and is summarized below.

Taxation Agreement

Overview

The Taxation Agreement explains certain tax exemptions that will apply to the Nisga'a Nation and Nisga'a Villages.

What tax exemptions are covered in the Taxation Agreement?

They include the following:

- > Deemed Public Bodies. The Nisga'a Nation and each Nisga'a Village will receive the same exemption from income tax under the *Income Tax Act* as municipalities receive, and their corporations will receive the same exemption from income tax under the *Income Tax Act* as corporations owned by municipalities receive.

- > **Federal Goods and Services Tax.** The Nisga'a Nation, Nisga'a Villages and certain bodies established by them will be entitled to receive a refund of federal goods and services tax paid, in certain circumstances.
- > **Provincial Sales Tax and Motor Fuel Tax.** The Nisga'a Nation, Nisga'a Villages, and certain bodies established by them will be entitled to receive a refund of provincial sales tax or motor fuel tax paid, in certain circumstances.
- > **Property Transfer Tax.** If a parcel of Nisga'a Lands is registered in the provincial land title system, the Nisga'a Nation and Nisga'a Villages will be exempt from taxes that would normally apply under the provincial *Property Transfer Tax Act*.
- > **Mineral Resource Taxes.** Persons are exempt from tax under the provincial *Mineral Tax Act*, *Mining Tax Act* and *Petroleum and Natural Gas Act*, on certain revenues connected to Nisga'a Lands.
- > **Real Property Taxation.** The Nisga'a Nation and Nisga'a Villages will not be subject to property tax on Nisga'a Fee Simple Lands, while those lands are used only for government activities or non-profit activities.
- > **Nisga'a Settlement Trusts.** A Nisga'a settlement trust, beneficial interests in the trust, and amounts distributed from the trust to a beneficiary (other than a Nisga'a citizen) are generally not taxable, except for goods and services tax.
- > **Gifts To The Nisga'a Nation or a Nisga'a Village.** Persons who make gifts to the Nisga'a Nation or a Nisga'a Village will receive the same tax benefit that they would if they made the gift to a registered charity.
- > **Cultural Property and Import Act.** The Nisga'a Nation (and any non-profit organization it establishes to receive, store and display cultural artifacts) will be treated as an institute "designated" under the *Cultural Property Export and Import Act*, under certain circumstances. This will allow a person who contributes cultural artifacts to the Nisga'a Nation (or the organization) to receive tax benefits under the *Income Tax Act*.

How long does the Taxation Agreement last?

Twelve years. However, it will continue in effect after that time unless one of the Parties to the Treaty provides notice to the other Parties to end the Agreement. In that case, the Parties will attempt to negotiate a further Taxation Agreement.

CULTURAL ARTIFACTS AND HERITAGE

Overview

This chapter sets out the return and sharing of Nisga'a artifacts currently held at the Canadian Museum of Civilization and at the Royal British Columbia Museum. It also addresses the protection of heritage sites on Nisga'a Lands, the ownership of Nisga'a artifacts discovered in the future, and the treatment of human remains.

Will Nisga'a artifacts be returned to the Nisga'a Nation from the two museums?

Yes. A portion of the Nisga'a artifacts presently held at the two museums will be returned. It is intended that a facility will be built in the Nass Valley for these artifacts. The transfer of the artifacts is expected to take place within five years after the effective date of the Treaty.

Are the Nisga'a artifacts remaining with the two museums addressed in the Treaty?

Yes. Separate agreements will be negotiated that govern the care, maintenance and preservation of the Nisga'a artifacts remaining with the two museums. These "custodial agreements" are expected to be in place by the effective date of the Treaty.

What happens if there is a dispute about whether an artifact is a Nisga'a artifact?

If the artifact has been returned to the Nisga'a Nation under the Treaty, or if it is in the permanent collection of either of the museums, the dispute can be settled by arbitration under the Dispute Resolution Chapter.

Will there be a way to protect Heritage Sites on Nisga'a Lands?

Yes. Nisga'a Government will develop processes to preserve Heritage Sites on Nisga'a Lands from proposed land and resource activities. British Columbia will develop or continue processes for similar purposes. Until Nisga'a Government does so, British Columbia's processes for heritage site preservation will apply on Nisga'a Lands.

Who owns Nisga'a artifacts discovered on Nisga'a Lands or Category A Lands in the future?

The Nisga'a Nation, unless another person establishes ownership.

What will happen to Nisga'a human remains found in Heritage Sites?

Subject to federal and provincial laws, they will be returned to the Nisga'a Nation.

LOCAL AND REGIONAL GOVERNMENT RELATIONSHIPS

Overview

This chapter sets out the relationships between the Nisga'a Nation, Nisga'a Lands and the Kitimat-Stikine Regional District.

Will Nisga'a Lands be part of the Kitimat-Stikine Regional District after the effective date?

Yes. For purposes of representation, Nisga'a Lands will be continue to be part of Electoral Area A in the Regional District after the effective date. Residents of Nisga'a Lands will have the right to vote in Regional District elections and referendums.

Could British Columbia change the boundaries of Electoral District A?

Yes, after consulting with the Nisga'a Nation. However, Nisga'a Lands would continue to be in a single electoral area, unless the Nisga'a Nation gives its consent.

Can the Nisga'a Nation, the Nisga'a Villages and the Regional District coordinate services?

The Nisga'a Nation and the Nisga'a Villages can make agreements with the Regional District for delivery of services to the Regional District by Nisga'a Government, and for delivery of services on Nisga'a Lands by the Regional District. The Nisga'a Nation and the Regional District can make agreements to coordinate activities such as planning, health services and infrastructure development.

DISPUTE RESOLUTION

Overview

This chapter sets out the steps to resolve disputes between the Parties that arise under the Treaty. The section is based upon several objectives shared by the parties:

- > To cooperate with each other to develop harmonious working relationships;
- > To prevent or alternatively to minimize disputes;
- > To identify disputes quickly and resolve them in the most expeditious and cost-effective manner possible;
- > To resolve disagreement in a non-adversarial, collaborative and informal atmosphere.

What disputes must use this process?

All disputes involving interpretation, application or implementation of the Treaty or a breach of the Treaty must use these processes.

What happens if a question of the interpretation of the Treaty issue comes up in another judicial or administrative proceeding?

Before the question can be dealt with, all three Parties must be given notice of the question and the opportunity to participate in those proceedings.

What are the steps to resolve disputes?

The Parties agree to try to resolve most differences by informal discussions. If these are not successful, a Party may move the dispute into Stage One:

- > Collaborative Negotiations. The disputing Parties will try to resolve the dispute through formal negotiations without the assistance of any independent third party.

If the dispute is not resolved in Stage One, a Party may move the dispute into Stage Two:

- > Facilitated Process. The Parties to the dispute will select one of four specified processes to help them to resolve the dispute.

These processes use independent third parties to assist the Parties to overcome any obstacles to reaching agreement. The independent third parties do not have any authority to resolve the dispute but assist the Parties to reach their own agreement. If the Parties are unable to resolve their dispute under Stage Two, the dispute may be referred to a judge or an arbitrator for a final and binding decision.

What are the four processes in Stage Two?

The four processes are mediation, technical advisory panel, neutral evaluation and Elders Advisory Council.

How do the Stage Two processes work?

The detailed procedure for all of the processes in this section are contained in the Appendices to the Treaty.

A mediation is simply a confidential negotiation assisted by a neutral mediator. The function of the mediator is to assist the Parties to negotiate as effectively as possible to reach an agreement by helping them to establish the order of discussions, identify underlying interests, identify irrelevancies or unproductive discussions, identify the obstacles to reaching agreement, defuse anger or hostility, keep focussed on the issues, move from fixed positions, develop creative solutions, and encourage compromise where appropriate. The mediator does not resolve the disagreement by making a decision.

The Technical Advisory Panel provides the Parties with technical or scientific assistance to help to resolve disagreements. The members of the panel are not required to be independent or impartial of the Parties but they must be recognized as having skill and knowledge in their field of expertise. This assistance may take the form of written advice, determinations of disputed facts, conducting and reporting studies, making recommendations, etc. The panel's assistance is not binding on the parties.

The Elders Advisory Council is made up of elders appointed by the Parties to help with a particular dispute. The elders of the Council are expected to bring their wisdom and life experience to the Parties as they attempt to resolve a disagreement. This Council is expected to be very helpful in dealing with sensitive cultural or political issues or to consider such things as the reasonableness of actions taken by the parties.

A neutral evaluation allows the Parties to submit the issues in a dispute to an independent person who is experienced in the subject matter of the dispute, for an opinion on the probable disposition of the disagreement if it were submitted to arbitration or litigation. The neutral evaluation will usually be based only on written submissions and documents provided by the parties. The opinion of the neutral evaluator is not binding on the parties.

The four processes offer the Parties quite different options for overcoming any issues which are preventing them from reaching an agreement. If the Parties cannot reach agreement on which process to use, the dispute will be referred to mediation.

If two Parties have a dispute and reach an agreement, is the third Party bound by that agreement?

No, the third Party is not bound by that agreement unless it also chooses to sign the agreement.

How does an arbitration work and when will it be used?

An arbitration is a quasi-judicial hearing before an arbitral tribunal consisting of one or three arbitrators appointed by the Parties to the dispute. The arbitrators are required to act impartially and independently. The arbitrators will hear the submissions and evidence led by the Parties and will make a decision called an arbitral award. This award is binding on the Parties as if it were a judgment of the court. It cannot be set aside or challenged except under specific circumstances.

The Treaty requires certain unresolved disputes to be finally settled by arbitration. This is intended to help secure a speedy resolution without having to go to the courts and to make it possible to select an arbitral tribunal that has expertise in the subject matter of the dispute. The Parties to a dispute can always agree to refer a matter to an arbitral tribunal rather than the courts — but agreement of all of the Parties to the dispute is necessary before this can happen.

If two Parties have a dispute that is finally decided by arbitration, is the third Party bound by that arbitral award?

Yes, unless that Party did not have proper notice of the arbitral proceedings or was denied the opportunity to participate in the proceedings by the arbitral tribunal. The third Party must be given the opportunity to participate in all three stages of the Chapter to resolve the dispute — including arbitration. If the third Party decides not to participate in the arbitration, it will still be bound by the arbitral award.

Can the arbitral award be appealed to the courts?

An arbitral award may be set aside by a court if the arbitration was conducted in an unfair manner or contrary to the procedural requirements of the Chapter. If a Party alleges that the arbitral tribunal made an error in law, the Party must obtain the permission of the Supreme Court of British Columbia before the appeal may be heard. No appeal may be taken on an arbitral award to the Supreme Court of Canada.

Who are the Parties to the processes under the Chapter?

The only possible Parties to the processes are the three Parties to the Treaty. Even if one of the Parties is not a Party to a particular dispute, that Party has the right to fully participate in the resolution of that dispute.

Who pays for the costs of these processes?

As a general rule, each of the Parties will pay the costs of its own participation in a process but the other costs will be shared by the Parties participating in the process. A Party participating in an arbitration may ask the arbitral tribunal to order another Party to pay the costs of the process. The arbitral tribunal will decide if it is appropriate to make such an order.

ELIGIBILITY AND ENROLMENT

Overview

This chapter explains the rules governing who is eligible to be enrolled under the Treaty and how enrolment takes place.

Who is entitled to be enrolled under the Treaty?

An individual is eligible to be enrolled under the Treaty if the individual is:

- a. Of Nisga'a ancestry, and his or her mother was born into one of the Nisga'a tribes;
- b. A descendant of an individual described in sub-paragraph (a) or (c);
- c. An adopted child of an individual described in sub-paragraphs (a) or (b); or
- d. An aboriginal individual who is married to someone described in sub-paragraphs (a), (b) or (c) and who has been adopted by one of the Nisga'a tribes in accordance with Ayuukhl Nisga'a, that is, the individual has been accepted by a Nisga'a tribe, as a member of that tribe, in the presence of witnesses from the other Nisga'a tribes at a settlement or stone moving feast.

Does enrolling under the Treaty affect rights or benefits under the Indian Act?

No.

Can an individual be enrolled under the Treaty and at the same time be enrolled under another land claims agreement in Canada?

No.

How does an individual become enrolled under the Treaty?

By applying to the Enrolment Committee. During the initial enrolment period, until September 30, 1999, the Enrolment Committee will consider each application made to it, and will enrol each individual who demonstrates they are eligible.

How is the Enrolment Committee established?

The Enrolment Committee is established by, and is governed by enrolment rules adopted by, the General Executive Board of the Nisga'a Tribal Council. The Committee has two members from the Laxsgiik (Eagle) Tribe, two members from the Gisk'aast (Killer Whale) Tribe, two members from the Ganada (Raven) Tribe, and two members from the Laxgibuu (Wolf) Tribe.

Is there a connection between enrolling under the Treaty and voting in the referendum on the Treaty?

Yes. The voters list for the referendum on the Treaty will be based on information supplied by the Enrolment Committee.

Can an individual whose application may be refused provide the Committee with more information?

Yes. Before the referendum on the Treaty, if the Enrolment Committee forms the opinion that an individual's application will be refused, the Enrolment Committee will provide the individual with a reasonable opportunity to provide more information or make more submissions.

Can children be enrolled? Or adults who cannot manage their own affairs?

Yes. An individual may apply to the Enrolment Committee on their own behalf, or on behalf of a minor or an adult whose affairs they have the legal authority to manage.

How will an individual know if his or her application has been accepted by the Enrolment Committee?

The Enrolment Committee will provide written notice of its decision to each applicant. If an application is refused, the Enrolment Committee will include written reasons for its decision.

Can decisions of the Enrolment Committee be appealed?

Yes. For two years after the effective date, an Enrolment Appeal Board will hear and decide appeals from decisions of the Enrolment Committee. The Enrolment Appeal Board will consist of one member appointed by the Nisga'a Nation, one member appointed by Canada, and a jointly appointed chairperson.

Who can bring an appeal to the Enrolment Appeal Board?

Any applicant, the Nisga'a Nation, a Nisga'a Village, Canada or British Columbia.

Can decisions of the Enrolment Appeal Board be reviewed?

Yes. An application for judicial review can be made to the Supreme Court of British Columbia by an applicant, the Nisga'a Nation, a Nisga'a Village, Canada or British Columbia.

Who will be responsible for enrolment after the initial enrolment period?

After the initial enrolment period ends on September 30, 1999, the Nisga'a Nation will be responsible for ongoing enrolment.

IMPLEMENTATION

Overview

This chapter provides for an Implementation Plan to guide the Parties in carrying out obligations and activities arising out of the Treaty, and for an Implementation Committee to discuss the implementation of the Treaty.

What does the Implementation Plan contain?

Activity sheets, a communications strategy, and operational guidelines for the Implementation Committee.

What are the activity sheets?

The activity sheets identify in detail obligations and activities arising out of the Treaty, and the manner in which the Nisga'a Nation, Canada and British Columbia anticipate fulfilling those obligations and carrying out those activities. The plan contains many activity sheets, covering nearly every Chapter of the Treaty.

Each activity sheet outlines what the activity is, who performs it, and when it takes place. Some activity sheets may also state planning assumptions and guidelines.

What is the communication strategy?

The plan contains a communication strategy to provide information about the Treaty to Nisga'a citizens, federal and provincial government departments and employees, other First Nations and aboriginal organizations, other interested parties and members of the general public.

What is the mandate of the Implementation Committee?

The Committee will discuss implementation of the Treaty and will attempt to resolve any implementation issues that arise. This Committee will be established for a term of 10 years, and will then make recommendations to the Parties about the further implementation of the Treaty.

Is the Implementation Plan part of the Treaty?

No. The Plan does not create legal obligations and is not part of the Treaty.

RATIFICATION

Overview

This chapter sets out the rules for the ratification of the Treaty and the Nisga'a Constitution.

Who must ratify the Treaty before it comes into effect?

The Nisga'a Nation, British Columbia and Canada.

What steps are required for the Nisga'a Nation to ratify the Treaty?

- > The calling of an assembly of the Nisga'a Nation, to consider the Treaty and whether to refer the Treaty to a referendum.
- > At the assembly, a simple majority voting to refer the Treaty to a referendum.
- > The conducting of a referendum on the Treaty, as described below.
- > In the referendum, at least 50 per cent plus one of all eligible voters must vote to accept the Treaty.

What happens if an eligible voter does not vote?

Every eligible voter who does not vote will be counted as a vote against the Treaty.

What is the Ratification Committee?

The Committee established by the General Executive Board of the Nisga'a Tribal Council to ensure an independent, fair and accurate referendum. The Ratification Committee includes a member named by Canada and a member named by British Columbia.

What does the Ratification Committee do?

The Committee takes steps to enable the the Nisga'a Nation to review the Treaty, publishes a preliminary voters list based on the information provided by the Enrolment Committee, publishes and updates an official voters list, approves the ballot for the referendum, provides general directions to voting officers and conducts and counts the vote.

Can a Nisga'a person not on the voters list still vote on the Treaty?

Yes. A person who has not been included on the voters list can still go to a voting place. They can vote if he or she completes an enrolment application form, demonstrates that he or she is at least 18 years old and ordinarily lives in Canada, and declares in writing that he or she is eligible and not enrolled in any other land claims agreement in Canada.

Their ballots will be placed in a secret envelope together with the details of their applications. The Enrolment Committee will determine whether they are eligible without examining their ballots. If they are found to be eligible, their ballots will be counted.

What steps are required for Canada and British Columbia to ratify the Treaty?

- > Signing of the Treaty by a federal Minister of the Crown, and enactment of settlement legislation by the federal Parliament.
- > Signing of the Treaty by a provincial Minister of the Crown, and enactment of settlement legislation by the provincial Legislative Assembly.

How will the Nisga'a Constitution be adopted?

A referendum on the Nisga'a Constitution will be held at the same time as the same referendum on the Treaty. In order to adopt the Nisga'a Constitution, at least 70 per cent of those voting must be in favour. However, persons who do not vote will not be counted as a vote against the Nisga'a Constitution.

NOTES