

Nisga'a final agreement

ISSUES & RESPONSES



Fisheries

THE ISSUE:

Salmon has always been a precious resource in British Columbia. But, as we know all too well today, the resource is under stress. Stocks are limited, demand is high, and the number of fish available for catch can vary from year to year. Given these conditions, some British Columbians are concerned that the Nisga'a Final Agreement gives Aboriginal people an unfair advantage in the northern salmon fishery.

THE ANSWER:

These views are simply not warranted by what is in the Nisga'a Final Agreement. Here are the reasons why.

First and foremost, the fisheries provisions in the Nisga'a Final Agreement are about the good management of the Nass River salmon fishery; conservation is the paramount concern. The Lisims Fisheries Conservation Trust will fund fisheries work such as stock assessment, which will benefit all Canadians.

Unless returning salmon stocks are above a minimum escapement level determined by the Minister of Fisheries and Oceans, no one, Nisga'a or otherwise, can fish. The Nisga'a may sell salmon only if commercial and recreational sectors can fish for those salmon. The point of these arrangements is to share the salmon resource, not give one group an unfair advantage over others.

Under the Nisga'a Final Agreement, the Nisga'a salmon allocation will be determined by a percentage formula set out in the Final Agreement. The Nisga'a allocation for each species of Nass salmon will vary according to the run size for each species. In years when the run size for a species is expected to be low, the Nisga'a allocation will be low. In years when the run size for a species is expected to be large, the Nisga'a allocation will increase to a certain extent.

Canada will provide funds for the voluntary retirement of commercial fishing licences to offset the additional salmon the Nisga'a will receive through the Treaty.

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MORE TO CONSIDER:

What about decision making? Who's in control of the process?

Under the Nisga'a Final Agreement, the Minister of Fisheries and Oceans will continue to have responsibility for the management of fisheries in the Nass River, including Nisga'a fisheries. A Joint Fisheries Management Committee with equal representation from the Nisga'a, Canada and B.C. will provide advice and recommendations to the Minister, including recommendations regarding Nisga'a annual fishing plans. Nisga'a annual fishing plans must be approved by the Minister to be effective.

Can the Nisga'a take their allocation in one species of salmon?

The term "sockeye equivalent" seems to suggest this.

Under the Nisga'a Final Agreement, the Nisga'a salmon allocation is based on five species. The Final Agreement refers to "sockeye equivalent"¹ as a means of adjusting the species composition of the Nisga'a salmon harvest in any year. Such adjustments, which could provide some flexibility in the management of the Nisga'a salmon fishery, may only be made with the agreement of the Minister of Fisheries and Oceans.

What does the Nisga'a Final Agreement say about fish other than salmon?

The Final Agreement gives the Nisga'a the right to fish for species other than salmon. However, the Final Agreement provides that, unless laws of general application respecting sale of fish change, the Nisga'a harvest of species other than salmon will be for food, social or ceremonial purposes.

Will other treaties have fisheries arrangements similar to those in the Nisga'a Final Agreement? If they do, will there be any fisheries jobs left for non-Aboriginal people in British Columbia?

The Nisga'a Final Agreement is not necessarily a template for other treaties. Its fisheries provisions address the particular circumstances on the Nass River. What works there won't necessarily work on the Skeena, or the Fraser, or in other areas with different circumstances.

Fisheries arrangements in any treaty have to work for both the First Nations and other resource users. There has to be room in the fishery for everyone, and future treaties will also reflect this fact. Canada will provide funds for the voluntary retirement of commercial fishing licences to offset the reallocations of salmon provided in the Treaty.



"The Nisga'a have demonstrated a solid commitment to conservation. The... agreement will enable them to develop their already successful fish management regime. We must involve communities like the Nisga'a as active partners in the management of our fish stocks."

DR. RICHARD ROUTLEDGE
PROFESSOR
SIMON FRASER UNIVERSITY

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¹ The term "sockeye equivalent" is a benchmark using the landed values of each species to compare them.

But what is the basis for negotiating these fisheries arrangements? In 1996, didn't the Supreme Court of Canada determine that there is no Aboriginal right to a commercial fishery?

In 1996, the Supreme Court of Canada released its decisions in three independently argued cases about Aboriginal fishing rights: *Van der Peet*, *N.T.C. Smokehouse*, and *Gladstone*. In the first two cases, the court said that the plaintiffs (from the Sto:lo and Nuu chah nulth First Nations, respectively) failed to prove that they had an Aboriginal right to fish for salmon commercially. However, in *Gladstone*, the court said that the Heiltsuk plaintiffs met the test for establishing an Aboriginal right to harvest herring spawn on kelp commercially: they showed that their ancestors engaged in a commercial trade of herring spawn on kelp prior to contact with European settlers. Therefore, the court confirmed that an Aboriginal right to fish for commercial purposes can exist.

What happens when the Nisga'a Treaty is finalized? Will the fisheries provisions become part of the constitution where we can't change them, even if they don't work out?

No. Just because a treaty right is protected, it doesn't mean that the treaty becomes part of the constitution. Treaties are "protected" by section 35 of the *Constitution Act, 1982*; they are not "enshrined" in the constitution. Although constitutionally protected, the treaty right contained in the Final Agreement can be amended in accordance with the provisions of the agreement. Any infringement of the treaty right must be justified.

Find more information on the Nisga'a Final Agreement at www.inac.gc.ca, or contact:

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