

# Treaty News

Federal Treaty Negotiation Office



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## History is Made

In Vancouver on February 15, 1996, the Nisga'a Tribal Council and the Governments of Canada and British Columbia announced they have reached an agreement-in-principle, a historic milestone in B.C. treaty negotiations. This agreement will form the basis for the first modern-day treaty in British Columbia.



Minister of Indian Affairs and Northern Development Ronald A. Irwin, Chief Joe Gosnell, Sr. of the Nisga'a Tribal Council and John Cashore, B.C. Minister of Aboriginal Affairs announce a Nisga'a agreement-in-principle.

Hundreds of Nisga'a people, and other interested onlookers witnessed Chief Joe Gosnell, President of the Nisga'a Tribal Council, federal Indian and Northern affairs Minister Ronald A. Irwin and provincial Aboriginal Affairs Minister John Cashore initial the agreement.

"This represents a hard-fought compromise that has seen a generation of Nisga'a growing old at the negotiation table but we are making that compromise in order to become full and active participants in the social, political and economic life of this country," said Chief Gosnell.

"Trough all the years of labour, the Nisga'a chose persistence over anger, patience over violence

and perseverance over submission," said Minister Irwin. "To the elders and the chiefs here today and in honour of all those who went before you, I say today we are a step closer to realizing the fruits of your efforts."

The agreement contains provisions on fisheries, lands and resources, access to lands, environmental assessment and protection, Nisga'a government, taxation, financial transfers and cultural artifacts.

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## Four Framework Agreements Signed

Four framework agreements which set the stage for substantive treaty negotiations towards an agreement-in-principle have been signed to date in 1996.

Kaska Dena Council Chief Negotiator David Porter and Teslin Tlingit Chief David Keenan signed their respective agreements with Indian and Northern Affairs Minister Ronald A. Irwin and B.C. Aboriginal Affairs Minister John Cashore in Vancouver on January 12.



On January 30 the first framework agreement completed on Vancouver Island was signed by Ditidaht Chief Jack Thompson, the Honourable Ronald A. Irwin and the Honourable John Cashore.

Chief Negotiator Glen Williams, representing the Gitanyow First Nation, signed a framework agreement with Canada and B.C. on February 28.

The number of First Nations groups currently in the B.C. Treaty Commission process and which have signed framework agreements now totals eight.



**Minister of Indian Affairs and Northern Development Ronald A. Irwin and Kaska Dena Council Chief Negotiator David Porter at signing ceremony.**

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## British Columbia Treaty Commission Act Now in Effect

Legislation formally establishing the British Columbia Treaty Commission (BCTC) came into effect March 1, 1996.

Since the commission opened its doors, 48 First Nation groups, representing over 70 per cent of B.C.'s 196 First Nations, have filed statements of intent to negotiate.

"This is a significant achievement, one that clearly demonstrates commitment to continued progress in treaty negotiations across the province," said Ronald A. Irwin, Minister of Indian Affairs and Northern Development.

"Canada is committed to resolving outstanding Aboriginal claims by negotiation," said Minister Irwin. "The alternatives of litigation and confrontation cannot provide the kind of long-lasting and beneficial results that parties negotiating in good faith can achieve."

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## Life After Treaties: It's Business As Usual

"In no case has the resolution of land claims brought political or economic chaos," concluded a study of the impact of six modern-day treaties.

*Social and Economic Impacts of Aboriginal Land Claims Settlements: A Case Study Analysis* was commissioned by the Federal Treaty Negotiation Office and the B.C. Ministry of Aboriginal Affairs to better understand the possible impact of modern treaties in British Columbia. The study was conducted by ARA Consulting Group.

By studying the 1971 *Alaska Native Claims Settlement Act*, the *James Bay Northern Claims Settlement Act* of 1976, the 1976 *Aboriginal Rights (Northern Territory) Act* of Australia, the *Western Arctic (Inuvialuit) Claims Settlement Act* of 1984, the 1993 *Council for Yukon Indians Umbrella Final Agreement* and New Zealand's *Waikato-Tainui Deed of Settlement* of 1995, researchers determined that Aboriginals and non-Aboriginals can reach acceptable, fair agreements.

In all six cases, opponents and supporters predicted a range of results from economic chaos and political disharmony to cross-cultural understanding, prosperity and political cooperation. The study found the most important reality of the post-settlement period to be that life proceeded much as before.

While B.C. has much to learn from example, the report cautioned that the very diversity of British Columbia, with its resource-rich industries and large urban centers, adds additional complexity to negotiations in this province.

The summary pointed out that since the most contentious issue of treaty settlements was the management of resources, third party interests and participation is of utmost importance. It found that the business communities resisted negotiations at first but as the process evolved business leaders, desiring certainty, became supportive of the process. According to the study, "where the public was kept well-informed of the progress of the discussions, public opposition and third-party concern declined substantially."

For Aboriginal groups, the study determined that treaties provide the financial and administrative means to map a new future for themselves. Aboriginals have learned that education and training is critical to negotiation. The report found that underlying the treaty process for Aboriginals was a strong desire to keep their language and culture strong, to recover from the difficulties of the past and to educate non-Aboriginals about their



heritage.

Perhaps most importantly, the study concluded that "the negotiation process, while focusing heavily on legal, administrative and financial matters, has the potential to begin creating cultural bridges and helps to build lasting, culturally-based links between peoples."



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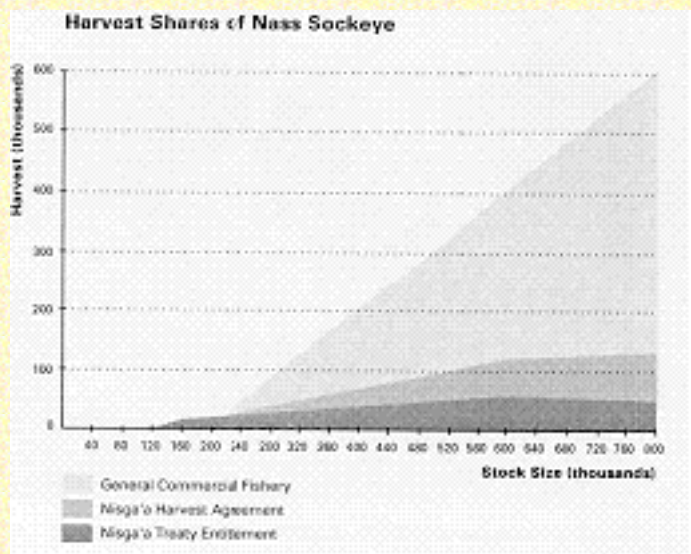
# Treaty News

Federal Treaty Negotiation Office



## Nisga'a Agreement Addresses Fish Management Concerns

The background for Canada's commitment to deal with Aboriginal fisheries in the context of the treaties is the *Constitution Act, 1982*, which recognizes and affirms the treaty and Aboriginal rights of the Aboriginal peoples of Canada.



The Nisga'a agreement-in-principle leads to certainty in fisheries management. In it, the Nisga'a exchange undefined Aboriginal rights to harvest fish for specific, clearly-defined allocations.

Thus, the amount of the Aboriginal harvest ceases to be tied to factors such as population increase, and becomes a known and established quantity. Conservation of fish stocks is the primary consideration in the fisheries component. Overall responsibility for conservation and management will be retained by the Minister of Fisheries and Oceans.

The Nisga'a salmon entitlement will be calculated from two sources. A baseline component for domestic purposes will receive treaty protection. The Nisga'a will also receive access to the salmon fishery through a harvest agreement outside the treaty.

On average, the treaty would provide the Nisga'a with an annual catch of approximately 116,000 fish, roughly double the current Nisga'a domestic harvest. On a per capita basis, this translates into about 20 salmon per person per year based on current population. Under the treaty entitlement, the allocation



Nisga'a at the initialing ceremony



does not increase though the population might.

This is how it works:

1. To ensure conservation targets are met, if the returning salmon run is below a minimum amount, there will be no fishing by anyone.
2. When the returning run is above the conservation target, the Nisga'a may take a minimal number of fish for subsistence purposes. These may not be sold. The precise number to be harvested will depend on the total size of the run.
3. When returning stocks are sufficient to permit opening a commercial harvest, the Nisga'a may also fish and only at this point may they also sell their harvest. The number of fish the Nisga'a may harvest is a percentage of the total allowable catch and will vary depending on the numbers of salmon available up to a predetermined cap.

Other components of the arrangements include:

- The fishery is held communally by the Nisga'a Central Government.
- Matters having to do with Nisga'a sales of harvest would be subject to general laws of application.
- A joint Fisheries Management Committee would be established to provide advice and recommendations to the federal and provincial ministers on Nisga'a fishery.
- Federal Minister of Fisheries retains overall authority to manage the resource and set allocations.

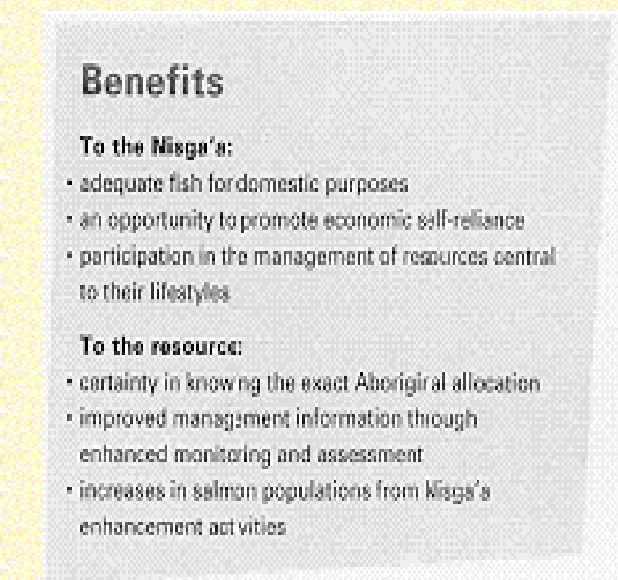


**Highlights of the fisheries component**

- Nisga'a exchange existing, constitutionally guaranteed rights for treaty entitlements
- Nisga'a forego food catches in low run years
- Harvest entitlements do not increase as Nisga'a population grows
- Nisga'a provide \$3 million toward a conservation trust

A fisheries Conservation Trust will be established to:

- promote conservation and protection of Nass area fish species
- facilitate sustainable management
- provide opportunity for Nisga'a participation in the stewardship of Nass area fish
- Canada to provide \$10 million; Nisga'a Central Government to provide \$3 million



**Benefits**

**To the Nisga'a:**

- adequate fish for domestic purposes
- an opportunity to promote economic self-reliance
- participation in the management of resources central to their lifestyles

**To the resource:**

- certainty in knowing the exact Aboriginal allocation
- improved management information through enhanced monitoring and assessment
- increases in salmon populations from Nisga'a enhancement activities

**\*Sockeye equivalents**--an industry and government yardstick to make comparisons between salmon species. It is a measurement that takes into account the prices and weights of different salmon species.

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## Highlights of the Nisga'a Agreement-in-Principle

### General Provisions

- *Charter of Rights and Freedoms* will apply to Nisga'a government and its institutions
- Criminal Code of Canada and other laws of general application will continue to apply
- eventually, the *Indian Act* will no longer apply to the Nisga'a

### Lands

- 1990 square kilometres of Nisga'a lands in the Lower Nass River area to be communally owned by the Nisga'a government
- Nisga'a will own both surface and subsurface resources on Nisga'a lands
- existing legal interests on Nisga'a lands will continue on their current terms
- there will be public access to Nisga'a lands for hunting, fishing and recreation

### Fisheries

Nisga'a will receive:

- an annual treaty-entitlement of salmon, which will , on average, comprise approximately 18 per cent of Canadian Nass River total allowable catch
- a supplementary allocation of sockeye and pink salmon under a harvesting agreement outside the treaty
- an allocation of steelhead and non-salmon species such as halibut, oolichan and shellfish for domestic purposes
- \$11.5 million towards increased participation in the coastal commercial fishing industry

(See article [Agreement addresses fish management concerns](#) for more details on the fishery component of the agreement.)

## Resources

- Nisga'a will manage Nisga'a forest resources following an 8 year transition period
- Nisga'a will be entitled to hunt moose and other species to be designated
- may harvest migratory birds according to an international convention and applicable laws
- environmental protection standards on Nisga'a lands may be set by the Nisga'a but must meet or exceed those set by the federal or provincial government

## Governance

Nisga'a will:

- have a Nisga'a government and four village governments, similar to local government structures
- be able to make laws regulating such things as Nisga'a culture, Nisga'a language, health services delivery, and public works on Nisga'a land
- be able to provide full policing services on their lands
- be able to establish a Nisga'a court with jurisdiction over Nisga'a laws on Nisga'a lands

## Financial Component

Nisga'a will receive:

- \$190 million which will be paid over a period of years
- periodically negotiated fiscal transfers outside the treaty to assist Nisga'a government to provide government services at levels generally comparable to those available in the north west region of B.C.

## Taxation

- the personal tax exemption for Nisga'a citizens will be eliminated following an 8-12 year transition period

Nisga'a government will have the power to tax Nisga'a citizens on Nisga'a land

Copies of the Nisga'a agreement-in-principle (AiP) and/or a detailed summary are available from the Federal Treaty Negotiation Office at (604) 775-7114 or toll free at 1-800-665-9320. The agreement is also on the B.C. Ministry of Aboriginal Affairs' Web Page:<http://www.aaf.gov.bc.ca/aaf/>.

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for negotiations.

- **1992** - The three parties sign an interim protection measures agreement regarding resources and land use.
- **1996** - Canada, British Columbia and the Nisga'a Tribal Council complete an agreement-in-principle which will form the basis for the first modern-day treaty in B.C.

communities in the Nass River Valley:

- New Aiyansh (Gitlakdamiks)
- Greenville (Lakalzap)
- Canyon City (G twinksihikw)
- Kincolith (Gingolix)

• about 3,500 live elsewhere in Canada

• traditional territory: 24,862 square kilometres in the Nass River Valley

• proposed settlement lands: 1990 square kilometres, including the four Nisga'a villages

• proposed fiscal agreement: \$190 million to be paid to the Nisga'a Tribal Council over a number of years

• \$21.5 million for a fisheries management trustfund and for voluntary purchase of fishing vessels and licenses

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## Nisga'a: questions and answers

### *Will the proposals for environmental assessment replace the existing government regulations?*

No. All federal and provincial environmental and conservation laws will apply on Nisga'a lands. The Nisga'a can enact more stringent laws for environmental protection on their land or make laws to protect resources which are not now regulated by Canada or British Columbia.

### *Will the Nisga'a still be exempt from taxation?*

At the effective date of the treaty, Section 87 of the *Indian Act* will cease to apply to any Nisga'a citizen or to Nisga'a lands. However, a transition period has been built in for Nisga'a citizens. The Indian tax exemption for Nisga'a citizens will be eliminated after a transition period of eight years for transaction (ie. sales taxes) and 12 years for other taxes (ie. income tax).

### *How does this agreement achieve certainty?*

Canada, British Columbia and the Nisga'a Tribal Council agree that the final agreement will be an exhaustive, full and final set of Nisga'a rights, title and interests including all powers, rights and obligations of self-government.

### *How was the advice of the fishing industry reflected in the agreement?*

Considerable effort has been made to seek out and consider the interests of the fishing industry in the development of federal negotiating positions. In the Nisga'a negotiations alone, there have been over 200 meetings with interest groups, public briefings and town hall meetings since early 1992.

This is particularly true of Nisga'a fisheries negotiations. Federal and provincial negotiators have consulted with a regional advisory committee of industry and sports fishery representatives. Commercial fishing interests are represented in that committee by organizations such as the Pacific Trollers Association, the United Fishermen and United Allied Workers Union, B.C. Packers, the Prince Rupert Fishing Vessel Owners Association, the Northern Trollers Association, the Fisheries Council of B.C., and others.



**Minister of Indian Affairs Ronald A. Irwin, Chief Joe Gosnell and John Cashore, B.C. Minister of Aboriginal Affairs at the Nisga'a agreement-in-principle.**

Consultations on the Nisga'a fisheries negotiations have also taken place with a province-wide fisheries advisory committee which meets monthly to discuss treaty-related fisheries issues. In total, since 1991, there have been over 40 consultation meetings on the Nisga'a fisheries negotiations.

A wide range of possible provisions had been considered for the fisheries component of the agreement-in-principle with the Nisga'a. Because the interests and positions were so varied, no solution could have addressed every party's concerns. The approach agreed upon by the parties was chosen because it has a positive effect on fisheries management and conservation on the Nass River and elsewhere in B.C. Many fisheries experts have agreed that this is a very positive approach for the B.C. fishery.

### ***How will a contractual agreement on fisheries outside the treaty work?***

This mechanism was used to resolve a difficult impasse. It will work as any other legally binding agreement. Canada will strive to meet its obligations under the contract, but the arrangements will not be included in the agreement-in-principle. The fisheries agreement will be brought into effect through legislation and will establish the supplementary entitlement for the Nisga'a.

### ***Will I still have access rights to Nisga'a settlement lands?***

The Nisga'a Central Government will gain ownership of and self-government over approximately 1,990 square kilometres of Nisga'a Lands in the Lower Nass River area. The lands which are designated to become Nisga'a lands are currently existing Indian reserves and provincial Crown land.

Existing legal interests on Nisga'a Lands, such as rights of way, angling and guide outfitter licenses and traplines will continue on their current terms. The public will have access to Nisga'a Lands for hunting, fishing and recreation and use of public and village roads.

### ***What safeguards for Nisga'a and non-Nisga'a have you built into the agreement?***

Numerous safeguards are provided for in the agreement. These are based on the Nisga'a having a democratically-elected government. Review and appeal procedures are also included. These are broad and intended to ensure that governmental decisions can be revisited. The Charter of Rights and Freedoms will apply to Nisga'a government and its institutions. Non- Nisga'a citizens living in the area will have the right to consult on and appeal decisions which may adversely affect them as well as the right to participate on subordinate elected bodies such as the school board or health board.



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## Reaction from around B.C.

*"I feel good about this, and I think a lot of people around here feel good about this... Am I concerned? No. I think this is a good treaty for all of us"*

**Bill Young**, owner of a former logging camp in the Nass Valley as quoted in the Vancouver Sun, February 17, 1996

*"This treaty proposal is a good deal for the fish. There is no doubt in my mind that the Nisga'a have demonstrated they are great conservationists. This proposal puts the Nisga'a in a good position to help conserve fish stocks."*

**Dr. Peter Larkin**, Fellow, Royal Society of Canada)

*"I feel the commercial fishermen are being asked to pay a disproportionate share of this land-claim settlement."*

**Dave Prosser**, a fisherman on the northern B.C. coast

*"At one end of the spectrum, people see this as far too much preference being given to these Native people; the government has set precedents that will be the province's and the country's undoing and given too much away. At the other end, people are viewing it as the Nisga'a people caving in to pressure and accepting less than their due; the precedents they perceive being set will be the Native peoples' undoing."*

**Penticton Herald**, editorial, February 14, 1996

*"This proposal offers a reasonable solution, at last, to the problem of Nisga'a claims. Most important, it will improve the way we manage our salmon, and that will benefit everyone."*

**Dr. Peter Pearse**, Professor of Resource Management, University of British Columbia

*"This deal was built on compromise, and there's still room for some fine-tuning. But let's distinguish between constructive repairs, and pure obstinacy based on political expediency and old-fashioned racial rabble-rousing."*

**Vancouver Province**, February 18, 1996

*"There is no justice in doing an injustice to another group of people. No justice for the Nisga'a will be settle in that manner."*

**Dennis Brown**, United Fishermen and Allied Workers' Union

*"The Nisga'a have demonstrated a solid commitment to conservation. The proposed agreement will enable them to continue 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 of Mathematics and Statistics, Simon Fraser University

*"I'm very disappointed that 80 years of negotiating has provided so little for the Nisga'a."*

**Chief Frank Boucher**, vice-president of the Union of B.C. Indian Chiefs

*"The agreement reflects a classic compromise leading to an honourable settlement. Both sides yielded on important issues. Since the selling of the agreement will be more difficult among non-aboriginals, it's vital to understand where the Nisga'a showed flexibility."*

**Jeffrey Simpson**, The Globe and Mail, February 20, 1996

*"We support salmon going to the people who fish selectively. This proposal increases the potential for better assessment and monitoring of fish stocks."*

**Dr. Craig Orr**, Executive Director, Steelhead Society of B.C.

*"Canada's proposal is fair to the Nisga'a and to the B.C. fishing industry. A settlement with the Nisga'a is a step towards a sustainable fishery, a step toward more salmon for everyone."*

**Jim Fulton**, Executive Director, David Suzuki Foundation

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## B.C. forest industry: treaty issues on-the-air

On January 12 CKNW radio host Gary Bannerman spoke with several B.C. forest industry members at the annual Truck Loggers' Association convention in Vancouver. The topic was Aboriginal land claims and forestry in B.C. Below are excerpts of responses to questions from the public.

*Q: How is the forest industry expected to carry on when the list of demands from First Nations gets longer and longer?*

**Andrew Petter, Minister of Forests:** Traditional use issues flow directly from court decisions that say in the absence of treaties and in the absence of negotiation, First Nation rights are protected by the courts, which allows the First Nation to come in and protect certain traditional activities and values....We need treaty negotiations so we can get beyond those kinds of court decisions and these kinds of peripheral issues and start to get some real stability on the land.

**Marlie Beets, Vice-President of Aboriginal Affairs, Council of Forest Industries:** George Watts reminded us that there are Supreme Court-affirmed, legal and, in fact, constitutionally-protected Aboriginal rights on the land. I think what that does is remind us that right now we have rights on the land which, for the most part, do not give the Aboriginal community what they need or what they desire in the way of economic activity, but they do cause a great deal of headaches and problems for those other resource and recreation interests that want to take part in activities on Crown land.

**Gerry Stoney, President of International Wood and Allied Workers - Canada:** We'd like to see the land claims settled. The sooner they're out of the way and they're done the sooner we don't have this problem. There's no line in the sand out there that says a particular area has been set aside, that it is part of a land claim settlement. It's just areas that might become part of a land claim settlement and therefore no cutting permits are being issued.

**Ken Diesen, Vice-President, Truck Loggers' Association:** We're being held as the currency in this debate and we are losing. We have members that are laid off and we need to address these points. We need finality. We need certainty, investment, and community stability. We need equality in this decision. We need openness. We need fairness. Let's quit putting the natives against the white people. Let's sit down and come up with an answer.

*Q: I think there's a great opportunity for your member companies to work with First Nations, not just on bottom-end jobs but actually working with them to manage a small portion of the great forest resources that you're contracting with the B.C. government. I'd like to know what your member companies are prepared to do and how they are prepared to help in these treaty negotiations?*

**Marlie Beets:** The forest companies have a legal responsibility. It's part of their contractual arrangement with the provincial government in terms of management of those resources that they have access to. In terms of consulting with Aboriginal people regarding their legally-protected rights over the land base which is being operated on, that is happening and will continue to happen.

(COFI) did a research project two years ago to try and give pointers to companies on what kinds of activities would be successful to help them bring native people into the economic mainstream in all facets of the operating side of the business. They're doing as much as they can given that they do not want to displace the existing workforce and they are all working particularly under (Forest Renewal B.C.) to try and bring more Aboriginal people into the scene where they can benefit from the economic activity in the forest. But we are looking at an industry under huge pressure in terms of reduced annual cut and greater operating expenses.

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## Treaty Status Report

The following is an update on the status of treaty negotiations throughout B.C. as of March 1, 1996.

### Team North-Central

**Stage 2:** Lake Babine

**Stage 3:** Haisla(Kitamaat)\*, Tsimshian

**Stage 4:** Gitxsan\*, Wet'suwet'en\*, Gitanyow\*

### Team North-Coast

**Stage 1:** Haida, Tahltan

**Stage 3:** Taku River Tlingit\*, Tsay Keh Dene\*

**Stage 4:** Champagne and Aishihik, Teslin Tlingit, Kaska Dena\*

### Team North-East

**Stage 1:** Cheslatta

**Stage 3:** Lheit-Lit'en\*, Yekoochet'en\*, Carrier Sekani\*

### Team South 1:

**Stage 1:** Nazko, Katzie

**Stage 2:** Esket(Alkali Lake)\*, Cariboo Tribal Council\*, Heiltsuk, Oweekeno

**Stage 3:** Tsleil Waututh (Burrard)\*, Squamish\*

**Stage 4:** Sechelt\*

### Team South 2:

**Stage 1:** Ktunaxa\Kinbasket, Sto:lo, Spallumcheen

**Stage 2:** Yale\*, Westbank\*, Musqueam, Xaxli'p, Pavilion\*, In-SHUCK-ch/N'Quatqua\*, Tsawwassen\*

6 Stage Treaty Negotiation Process:	
<b>Stage 1:</b>	Statement of Intent
<b>Stage 2:</b>	Preparing for Negotiations
<b>Stage 3:</b>	Negotiating a Framework Agreement
<b>Stage 4:</b>	Negotiating an Agreement in Principle
<b>Stage 5:</b>	Negotiating to Finalize a Treaty
<b>Stage 6:</b>	Treaty Implementation

## Team Vancouver Island

**Stage 1:** Hul'qumi'num\*, Comox, Kwakiutl, Qualicum, Klahoose, Quatsino

**Stage 3:** Nanaimo, Sliammon, Homalco\*, Te-mexw\*, Nuu-chah-nulth (initialled)\*, Ditidaht (signed)\*

\* Openness protocols are in place for these negotiations. These protocols outline the negotiating parties' commitment to public information and consultation in the treaty negotiation process.

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