

**MAA-NULTH FIRST NATIONS TREATY NEGOTIATIONS**

**SUMMARY OF  
AGREEMENT-IN-PRINCIPLE**

**Canada**



This is a general summary of the Maa-nulth First Nations Agreement-in-Principle (AIP) for public information purposes.

The five Maa-nulth First Nations are Ka:'yu:'k't'h'/Che:k'tles7et'h', Ucluelet, Toquaht, Uchucklesaht and Huu-ay-aht and they are all located on the west coast of Vancouver Island.

The AIP includes:

- general concepts that will be reflected in a treaty;
- proposed land, financial and natural resource allocations; and
- commitments by the parties to explore outstanding issues prior to a treaty being finalized.

The summary is intended to provide an overview of the AIP and is organized by subject. Content listed under a particular subject heading may appear under different chapters in the AIP. This summary is not an exhaustive list of the AIP content; the complete AIP is available at [www.bctreaty.net](http://www.bctreaty.net).

Each particular chief negotiator has recommended the AIP for approval by their principals, which are the Maa-nulth First Nations, Canada and British Columbia.

This AIP represents broad consensus among the three parties on the language and provisions contained in the document. It is not a legally binding document. If approved by the principals, the document will form the basis for negotiating the Final Agreement (i.e. the treaty) and the Self-Government Agreement.

## **Introduction**

The AIP is the foundation for final agreement negotiations and completes stage four of the six-stage BC treaty process. The Final Agreement will be a treaty under section 35 of the *Constitution Act, 1982*.

The Maa-nulth First Nations AIP deals with land, cash, resources, culture and governance provisions. The AIP sets out certain law-making authorities related to Maa-nulth First Nations' management of their lands, resources, and culture. A separate Maa-nulth First Nations Self-Government Agreement will be negotiated between AIP and treaty, and this will set out additional authorities.

## **Agreement-in-Principle Overview**

### **General Provisions**

- The AIP is not a final agreement (i.e., a treaty) and is not legally binding.
- To achieve certainty for all parties, the treaty will be the full and final settlement of each Maa-nulth First Nations' Aboriginal land rights and any other Aboriginal rights related to the matters set out in the Final Agreement.
- With respect to the Self-Government Agreement, Maa-nulth First Nations will agree not to assert or exercise any rights other than those set out in the Self-Government Agreement for as long as that agreement is in effect.
- Any other right either not addressed in the Self-Government Agreement, or modified into a right set out in the Final Agreement, may be incorporated into the agreements through an orderly process that requires the agreement of all three parties.
- The Canadian Constitution, including the *Constitution Act, 1867* and the *Constitution Act, 1982* will not be altered, and the *Charter of Rights and Freedoms* will apply to Maa-nulth First Nations governments.
- Federal and provincial laws will apply concurrently with Maa-nulth First Nations laws.
- Maa-nulth First Nations treaty land will not be reserve land, and the *Indian Act* will no longer apply.

### **Land**

- On the effective date of the treaty, treaty settlement lands provided to Maa-nulth First Nations will total no more than 23,005.21 hectares, including 20,900 hectares of provincial Crown land and Maa-nulth First Nations' current 2,105 hectares of Indian reserve land. Each Maa-nulth First Nation will own its treaty settlement lands in fee simple. In addition, 0.21 hectares of federal crown

- land will be provided to the Ucluelet First Nation as fee simple land subject to local municipal jurisdiction.
- Expropriation of treaty settlement lands may occur only in accordance with the provisions of the treaty. This will include provisions to avoid expropriation where reasonably practicable, to provide fair compensation, and to use replacement land as compensation where the parties so agree.
  - Each Maa-nulth First Nation will be able to add fee simple land to Settlement Land in the future, subject to the agreement of Canada and British Columbia, and to the consent of the municipality if the lands are within municipal boundaries. Any such additions will be at no cost to Canada or British Columbia.
  - Each Maa-nulth First Nation will have law-making authority concerning the management and development of treaty settlement land.
  - The Ucluelet First Nation will receive \$6.25 million in order to purchase private land, and therefore will receive a smaller allocation of provincial crown land.
  - Existing third-party legal interests on proposed treaty settlement lands will be identified for protection after treaty.
  - British Columbia will work with each Maa-nulth First Nation to pursue opportunities for commercial recreation tenures, to be effective after the treaty takes effect.

### **Access and Roads**

- There will be public access to treaty settlement land for recreational and non-commercial use, including hunting and fishing.
- Maa-nulth First Nations may regulate such public access.
- There will be access across treaty settlement lands to existing third-party tenures and private properties identified in appendices to the treaty.
- Provincial and federal representatives, including persons acting in an official capacity and for an authorized purpose, may access treaty settlement land to carry out their duties.
- Maa-nulth government representatives may access federal and provincial Crown lands to carry out their duties.
- Crown roads and private roads will not form part of treaty settlement lands and will remain under either provincial or private ownership as the case may be.
- Specified public utility rights-of-way will continue on treaty settlement lands.

### **Water**

- Prior to the treaty taking effect, the parties will negotiate a volume of water to be reserved for each Maa-nulth First Nation from rivers and streams within treaty settlement land.
- Each Maa-nulth First Nation may apply for water licences in accordance with provincial law.

### **Forest Resources**

- Each Maa-nulth First Nation will own and manage the forest resources on its treaty settlement lands.

### **Subsurface and Mineral Resources**

- Subsurface resources on treaty settlement lands will be owned by each Maa-nulth First Nation.
- Existing third-party legal interests on proposed treaty settlement land will be identified for protection after treaty.

### **Wildlife and Migratory Birds**

- The Minister<sup>1</sup> will retain authority to manage and conserve wildlife and migratory birds and their habitat.
- Each Maa-nulth First Nation will have the right to harvest wildlife and migratory birds for food, social and ceremonial purposes within a specified area, limited by measures necessary for conservation, public health or public safety.
- The treaty will set out a process for determining allocations of wildlife and migratory birds.
- Wildlife and migratory birds harvested under the treaty may not be sold, unless federal and provincial laws were to allow sale.
- Each Maa-nulth First Nation may trade and barter wildlife and migratory birds harvested under the treaty with other Aboriginal people of Canada, resident in British Columbia.
- Harvesting of designated species by each Maa-nulth First Nation will be carried out under a Wildlife Harvest Plan that is developed by each Maa-nulth First Nation, consistent with the treaty, and approved by the Minister.
- The Wildlife Harvest Plan will address the designation and documentation of harvesters, and methods, timing and location of harvest.
- An information-sharing plan will be developed for species not included in a Wildlife Harvest Plan, and will address monitoring and reporting of such wildlife harvested in an identified area.
- Each Maa-nulth First Nation will have law-making authority with respect to the internal management of its harvest, including designation and documentation of Maa-nulth First Nations hunters within the wildlife and migratory bird harvest area.

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<sup>1</sup> Throughout this document, “the Minister” means the federal and/or provincial Minister(s) responsible for the matter in question.

- Each Maa-nulth First Nation may participate in a regional wildlife management process if one is established.
- Prior to the treaty taking effect, the boundaries of the wildlife and migratory bird harvest area will be negotiated. These boundaries will include the Maa-nulth harvest area and may include other Nuu-chah-nulth First Nation areas.

### **Fisheries**

- Each Maa-nulth First Nation will have the right to harvest fish for domestic use, in the domestic fishing area.
- The right to harvest fish for domestic use will be limited by measures necessary for conservation, public health or public safety.
- Maa-nulth First Nations citizens may trade and barter fish with other Aboriginal people of Canada, resident in British Columbia.
- Maa-nulth domestic allocations for sockeye salmon, chinook salmon, coho salmon, chum salmon, herring, halibut, and some species of groundfish, Dungeness crab and prawns are set out in Appendix C of the AIP.
- Canada and Maa-nulth First Nations may enter into a Harvest Agreement that provides for the issuance of commercial fishing licences with licence conditions similar to those in the regular commercial fishery. These licences will be subject to provincial and federal laws.
- Fisheries under a Harvest Agreement will have the same priority as regular commercial fisheries in management decisions by the Minister.
- Maa-nulth First Nations may be issued regular commercial licences comparable to the licences currently issued to Maa-nulth First Nations under the Aboriginal Fisheries Strategy Allocation Transfer Policy.
- Where there is a surplus of a species of salmon originating in the Maa-nulth domestic fishing area, the Minister may permit Maa-nulth First Nations to harvest some or the entire surplus.
- The Minister will retain authority, within their respective jurisdictions, for managing and conserving fish and fish habitat.
- Each Maa-nulth First Nation will participate in fisheries management through a Joint Fisheries Committee (JFC), which will be open to representatives from all Nuu-chah-nulth First Nations, British Columbia and Canada.
- Each Maa-nulth First Nation will develop an annual fishing plan for its annual harvest. The JFC will review these plans.
- Based on the recommendations of the JFC and the Maa-nulth annual fishing plans, the Minister will issue a harvest document authorizing Maa-nulth First Nations fisheries each year.
- Each Maa-nulth First Nation may also participate in a regional fisheries management advisory process where one exists or where one is established.
- Each Maa-nulth First Nation will have law-making authority with respect to who can harvest fish under Maa-nulth allocations, how the harvest will be distributed

- among Maa-nulth First Nations citizens, and how individuals and vessels will be documented.
- Prior to the treaty taking effect, Maa-nulth domestic allocations for sablefish, butter clams, mussels, horse clams, geoduck, rock oysters, razor clams, abalone, sea urchins, goose barnacles, skates, tuna, pile perch, Pacific hake, and other fish and aquatic plants as agreed by the parties will be negotiated.
  - Maa-nulth aquaculture tenures may be negotiated. Any such tenures will be issued under provincial law and, except as agreed by the Parties, will contain standard terms and conditions.
  - Each Maa-nulth First Nation may be awarded selective terminal salmon fishing opportunities in the Maa-nulth domestic fishing area, at the discretion of the Minister.

### **Environmental Protection and Assessment**

- Maa-nulth First Nations will be able to make environmental protection laws on treaty settlement lands.
- Each Maa-nulth First Nation may participate in established federal or provincial environmental assessment processes for proposed projects that may have adverse effects on its treaty settlement lands or its interests.

### **Pacific Rim National Park Reserve and Parks**

- The Minister retains authority for management and administration of Pacific Rim National Park Reserve.
- Maa-nulth First Nations may harvest renewable resources in parks and protected areas within an identified area, limited by measures necessary for conservation, public health or public safety.
- Renewable resource harvests will not include commercial timber harvests.
- Unless Canada and Maa-nulth First Nations agree, and subject to the treaty, there will be no harvests for commercial purposes of resources of the lands and non-tidal waters of Pacific Rim National Park, except for trapping and making traditional crafts and artistic objects.
- Prior to the treaty taking effect, Canada and Maa-nulth First Nations will set out arrangements for the establishment of a planning and management process for Pacific Rim National Park to provide advice to the Minister. These arrangements will be in a renewable agreement outside the treaty.

### **Culture and Heritage**

- Canada, British Columbia and Maa-nulth First Nations recognize that Maa-nulth First Nations' artifacts play an integral role in the continuation of their culture, values and traditions.

- Maa-nulth First Nations' ancient remains removed from heritage sites will be returned to the appropriate Maa-nulth First Nation, subject to federal and provincial laws.
- Each Maa-nulth First Nation will have a role in the management of Maa-nulth heritage sites on and off treaty settlement lands.
- Each Maa-nulth First Nation government will have law-making authority with respect to Nuu-chah-nulth culture, language and cultural property on treaty settlement lands.
- Geographic features or places may be renamed.
- Prior to the treaty taking effect, Canada, British Columbia and Maa-nulth First Nations will set out provisions for the sharing or transfer to Maa-nulth First Nations of agreed-to Maa-nulth First Nations' artifacts, if any, in the collections of the Canadian Museum of Civilization, Parks Canada, and the Royal British Columbia Museum.

### **Governance**

- Each Maa-nulth First Nation will have democratic and accountable governments.
- Self-government and governance for each Maa-nulth First Nation will be achieved through rights set out in the treaty and through authorities in the Self-Government Agreement.
- Each Maa-nulth First Nation will have a constitution which will provide for the protection of the rights and freedoms of its Maa-nulth citizens.
- The treaty and Self-Government Agreement will provide opportunities for participation by people who are not Maa-nulth First Nations citizens in decisions that affect them.
- Each Maa-nulth First Nation may incorporate appointments of *Ha'wiih* (hereditary chiefs) into its constitution.
- Maa-nulth First Nations will have law-making authorities, the scope and extent of which will be negotiated prior to treaty. Some law-making authorities will be set out in the treaty and some will be set out in a separate Self-Government Agreement that will not form part of the treaty.
- The law-making authorities in the treaty will include government management and administration, financial administration, adoptions, land matters, culture, assets, Maa-nulth First Nation citizenship, and aspects of education and child and family services.
- Together, the treaty and the Self-Government Agreement will enable each Maa-nulth First Nation to control its own affairs, manage public institutions, and administer its collective economic interests.
- There will be a process for appeal or review of administrative decisions made by the Maa-nulth First Nations governments.
- The Self-Government Agreement will be put into effect by federal and provincial legislation and will not be a treaty or a land claims agreement.



- The Self-Government Agreement will be legally binding on all parties and can be relied on by all persons.
- The *Canadian Constitution Act, 1982* will not be altered and the Canadian *Charter of Rights and Freedoms* will continue to apply.
- Federal and provincial laws will continue to apply.
- Where a Maa-nulth First Nation has enacted laws, federal and provincial laws will apply concurrently.
- The Self-Government Agreement will be negotiated prior to the treaty taking effect, and will address matters such as First Nations' law-making authority over aspects of education, child and family services, health, solemnization of marriage, fire protection and emergency preparedness on treaty settlement lands.

### **Local and Regional Government Relationships**

- The treaty and Self-Government Agreement will address relationships of each Maa-nulth First Nations government with the Alberni-Clayoquot and Comox-Strathcona Regional Districts.

### ***Indian Act* Transition**

- Transitional provisions will address the fact that the *Indian Act*, including Section 87 tax exemptions, will no longer apply.

### **Fiscal Relations**

- Fiscal agreements with Maa-nulth First Nations will be negotiated periodically for funding of agreed-upon programs and services.
- Fiscal agreements will not be part of the treaty.
- Each Maa-nulth First Nation will contribute to the funding of its services from its own revenues.

### **Capital Transfer**

- Maa-nulth First Nations will receive \$62.5 million according to a negotiated schedule of payments.
- When the treaty is initialled by the parties, Canada will determine the outstanding amount of the negotiation loans made by Canada to Maa-nulth First Nations, and will prepare a schedule for the repayment of the loans.
- Prior to the treaty taking effect, Canada, British Columbia and Maa-nulth First Nations will negotiate and attempt to reach agreement on sharing with Maa-nulth First Nations agreed-upon revenues originating in British Columbia and flowing to Canada or British Columbia.

## **Taxation**

- Each Maa-nulth First Nation will have law-making authority in respect of direct taxation of its Maa-nulth First Nation citizens on treaty settlement land.
- British Columbia agrees not to impose property tax on persons on treaty settlement land if British Columbia and Maa-nulth First Nations successfully negotiate, prior to the treaty, the terms and conditions for the taxation of all persons on Maa-nulth First Nation treaty settlement lands.
- Prior to the treaty taking effect, Canada, British Columbia and Maa-nulth First Nations agree to negotiate transitional tax measures to address the fact that section 87 of the *Indian Act* will no longer apply after the Effective Date.
- Canada agrees to enter into taxation agreements for the direct taxation, in respect of sales tax and income tax, over Maa-nulth citizens living on treaty settlement lands.

## **Eligibility and Enrolment**

- The AIP sets out the eligibility criteria for enrolment for benefits under the treaty.
- An Enrolment Committee and Enrolment Appeal Board will be established.

## **Ratification of the Final Agreement**

- A ratification committee, comprised of representatives of each Maa-nulth First Nation, British Columbia and Canada, will be established to oversee the ratification process.
- Ratification of the treaty by Maa-nulth First Nations requires at least 50% plus one of eligible voters to vote in favour of entering into the treaty and Self-Government Agreement.
- Ratification by British Columbia and Canada requires signatures of respective Ministers of the Crown who are authorized to do so and the coming into force of provincial and federal settlement legislation that will give effect to the treaty.

## **Implementation**

- Prior to the treaty taking effect, Canada, British Columbia and Maa-nulth First Nations will conclude an implementation plan, which is not to be part of the treaty.
- The implementation plan will identify the activities to be undertaken to fulfill the obligations of the treaty, and the party responsible and timelines for carrying out those activities.

## **Dispute Resolution**

- The treaty will have a dispute resolution process.
- The parties agree that, as a general principle, they will work to prevent or minimize disagreements and to resolve disagreements, should they arise, in a non-adversarial, collaborative and informal manner.

**For more information, please contact:**

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