

CHAPTER 1 DEFINITIONS

In this Agreement:

“adjusted total allowable catch” means, for Nass sockeye or Nass pink salmon, the total return to Canadian waters less the Nisga’a fish allocation set out in Schedule A to the Fisheries Chapter, and less the escapement goal;

“adopted child” means an individual who, while a minor, was adopted by Nisga’a custom or under laws recognized in Canada;

“aggregate right of way maximum” means 2,800 hectares;

“Agreement” means this Agreement between the Nisga’a Nation, Canada, and British Columbia and all Schedules and Appendices to this Agreement;

“annual management plan” means a plan approved in accordance with the Wildlife and Migratory Birds Chapter;

“aquatic plants” means all marine and freshwater plants, including kelp, marine flowering plants, benthic and detached algae, brown algae, red algae, green algae, and phytoplankton;

“associated records” means records documenting Nisga’a culture including any correspondence, memorandum, book, plan, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, video tape, machine readable record, and any other documentary materials, regardless of the physical form or characteristics, and any copy of those records;

“available flow” means the volume of flow of water above that required:

- a. to ensure conservation of fish and stream habitats and to continue navigability as determined by the Minister in accordance with the provisions of this Agreement, and
- b. under water licences issued before March 22, 1996 and water licences issued under applications made before March 22, 1996;

“Ayuukhl Nisga’a” and “Ayuuk” mean the traditional laws and practices of the Nisga’a Nation;

“British Columbia” means, unless the context otherwise requires, Her Majesty the Queen in right of British Columbia;

“British Columbia right of way” means:

- a. the Nisga’a Highway corridor, or
- b. any right of way on Nisga’a Lands granted by the Nisga’a Nation or a Nisga’a Village to:
 - i. British Columbia, or
 - ii. a public utility

on the effective date under this Agreement, or after the effective date under paragraph 2 of the Roads and Rights of Way Chapter;

“Canada” means, unless the context otherwise requires, Her Majesty the Queen in right of Canada;

“Category A Lands” means the lands defined in paragraph 46 of the Lands Chapter;

“Category B Lands” means the lands defined in paragraph 61 of the Lands Chapter;

“child” means a person under the age of majority in British Columbia;

“child and family service” means a service that provides for:

- a. the protection of children, where the primary objective is the safety and well-being of children, having due regard for:
 - i. the protection from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention,
 - ii. the support of families and care givers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect, or harm, and
 - iii. the support of kinship ties and a child’s attachment to the extended family, or
- b. the promotion of a well-functioning family and community life;

“community correction service” means:

- a. bail, probation, conditional sentences, conditional supervision, parole supervision, and other forms of conditional release of adult and young offenders,
- b. preparation of reports for courts, Crown counsel, and parole boards,
- c. supervision of diverted offenders and operation of diversion programs,
- d. monitoring under the Electronic Monitoring Program,
- e. development and supervision of alternative to custody programs for adult and young offenders,
- f. other similar services that may be delivered by British Columbia or Canada from time to time, or
- g. Family Court counsellor functions described in an agreement under the Administration of Justice Chapter;

“consult” and **“consultation”** mean provision to a party of:

- a. notice of a matter to be decided, in sufficient detail to permit the party to prepare its views on the matter,
- b. in consultations between the Parties to this Agreement, if requested by a Party, sufficient information in respect of the matter to permit the Party to prepare its views on the matter,
- c. a reasonable period of time to permit the party to prepare its views on the matter,
- d. an opportunity for the party to present its views on the matter, and
- e. a full and fair consideration of any views on the matter so presented by the party;

“Crown” means Her Majesty the Queen in right of Canada, or Her Majesty the Queen in right of British Columbia, as the case may be;

“Crown roads” means the Nisga’a Highway and secondary provincial roads;

“descendant” includes a direct descendant notwithstanding any intervening adoption or any birth outside marriage;

“designated species” means:

a. a species of wildlife for which the Minister has determined under the Wildlife and Migratory Birds Chapter that there should be a total allowable harvest in the Nass Wildlife Area, or

b. an initial designated species

in the Nass Wildlife Area;

“directed harvest” means the catching and keeping of:

a. a species of fish from a fishery in which a Nass Area stock of that species is a significant portion of the fish caught and kept, or

b. a Nass Area stock of a species of fish using live capture gear;

“disagreement” means any matter to which the Dispute Resolution Chapter applies as set out in paragraph 7 of that Chapter;

“dispose” means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and to agree to do any of those things;

“domestic purposes” means, in the Fisheries Chapter, and in the Wildlife and Migratory Birds Chapter, food, social, and ceremonial purposes;

“effective date” means the date upon which this Agreement takes effect;

“eligible voter” means an individual who:

a. is eligible to vote under paragraph 6 of the Ratification Chapter, or

b. who votes under paragraph 7 of the Ratification Chapter and whose vote is counted in accordance with paragraph 8 of that Chapter;

“enhancement initiative” means an initiative that is intended to result in an increase in fish stocks through:

a. an artificial improvement to fish habitat, or

b. the application of fish culture technology;

“enrolled” means entered in the enrolment register provided for in the Eligibility and Enrolment Chapter;

“Enrolment Appeal Board” means the board established under paragraph 19 of the Eligibility and Enrolment Chapter;

“Enrolment Committee” means the committee established under paragraph 8 of the Eligibility and Enrolment Chapter;

“environmental assessment” means the evaluation of impacts on the environment, and includes screening, study, and review;

“escapement goal” means the number of a species of Nass salmon that the Minister determines is necessary for spawning;

“fair compensation” means, in respect of land, compensation as that term is generally applied in respect of a taking by the Crown, and will be based on:

a. fair market value of the land or interest that is expropriated or otherwise taken,

b. the replacement value of any improvement on the land that is expropriated or otherwise taken,

- c. disturbance caused by the expropriation or taking, and
- d. in the case of Category A Lands, any particular cultural values;

“fish” means:

- a. fish, including anadromous fish,
- b. shellfish, crustaceans, and marine animals,
- c. the parts of fish, shellfish, crustaceans, and marine animals, and
- d. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals

but not “wildlife fish”;

“forest resources” means all timber and non-timber forest resources, including all biota, but does not include wildlife, migratory birds, water, or fish;

“geothermal resource” means the natural heat of the earth and all substances that derive an added value from it, including steam, water, and water vapour heated by the natural heat of the earth, and all substances dissolved in the steam, water, or water vapour obtained from a well, but does not include:

- a. water that has a temperature less than 80 degrees Centigrade at the point where it reaches the surface, or
- b. hydrocarbons;

“gravel management plan” means a written description of the development, use, and closure of a gravel materials pit, that contains information such as its location, size and extent, access roads, soil and gravel materials descriptions, topographical and geotechnical mapping, development plans, anticipated volumes of gravel materials extracted per time period, reporting, and reclamation;

“gravel materials” means gravel, rock, and random borrow materials used in highway construction;

“heritage sites” includes archaeological, burial, historical, and sacred sites;

“Hydro” means British Columbia Hydro and Power Authority and its successors and assigns;

“incidental harvest” means the catching and keeping of a species of Nass Area fish, other than in a directed harvest;

“initial designated species” means a species designated under paragraph 15 of the Wildlife and Migratory Birds Chapter;

“initial enrolment period” means:

- a. for the purposes of the Enrolment Committee, from October 1, 1997 to September 30, 1999, and
- b. for the purposes of the Enrolment Appeal Board, from the effective date to the day before the second anniversary of the effective date;

“intertidal bivalves” means littleneck clams (*Protothaca staminea*), butter clams (*Saxidomus giganteas*), horse clams (*Tresus* spp.), cockles (*Clinocardium nuttallii*), mussels (*Mytilus edulis*), and manila clams (*Tapes philippinarum*);

“intoxicants” includes liquor;

“Joint Fisheries Management Committee” means the committee established under paragraph 77 of the Fisheries Chapter;

“Joint Park Management Committee” means the committee referred to in paragraph 106 of the Lands Chapter;

“land claims agreement” means:

- a. a land claims agreement in Canada within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, or
- b. a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982* that comes into effect in Canada after the effective date;

“law” includes federal, British Columbia, and Nisga’a legislation, acts, ordinances, regulations, orders in council, bylaws, and the common law, but, for greater certainty, does not include *Ayuukhl* Nisga’a or *Ayuuk*;

“laws of general application” includes federal and provincial laws that apply generally in British Columbia, but does not include federal laws in respect of Indians or lands reserved for the Indians;

“liquor” means:

- a. fermented, spirituous and malt liquors,
- b. combinations of liquors, and
- c. drinks and drinkable liquids that are intoxicating

and liquor that contains more than 1% alcohol by volume will be conclusively deemed to be intoxicating, and “liquor” includes beer, or a substance which, by being dissolved or diluted, is capable of being made a drinkable liquid that is intoxicating and which substance is declared by order of the Lieutenant Governor in Council to be liquor;

“Lisims” means the Nass River;

“migratory birds” has the meaning set out in any federal legislation that is enacted further to international conventions and that is binding on British Columbia, and includes the eggs of migratory birds;

“mineral resources” includes minerals and geothermal resources;

“minerals” means ores of metal and all natural substances that can be mined, and includes:

- a. rock or other materials from mine tailings, dumps, and previously mined deposits of minerals,
- b. coal, petroleum, gas, earth, soil, peat, marl, sand, gravel, rock, stone, limestone, dolomite, marble, shale, clay, volcanic ash, and diatomaceous earth, and
- c. all precious and base minerals;

“Minister” means, in relation to any matter, the Minister or Ministers of Her Majesty the Queen in right of Canada or in right of British Columbia, as the case may be, having the responsibility, from time to time, for the exercise of powers in relation to the matter in question;

“minor” means an individual under the age of majority in that person’s place of residence;

“Nass Area” means:

- a. the entire Nass watershed,
- b. all Canadian watersheds and water bodies that drain into portions of Portland Inlet, Observatory Inlet, or Portland Canal, as defined in subparagraph (c), and
- c. all marine waters in Pearse Canal, Portland Inlet, Observatory Inlet, and Portland Canal northeast of a line commencing at the Canadian border, midway between Pearse Island and Wales Island, and proceeding along Wales Passage southeasterly to Portland Inlet, then northeasterly to the midpoint between Start Point and Trefusis Point, then south to Gadu Point

as set out approximately in Appendix I;

“**Nass salmon**” means chinook, chum, coho, sockeye, and pink salmon originating in the Nass Area;

“**Nass steelhead**” means summer-run Nass steelhead and winter-run Nass steelhead originating in the Nass Area;

“**Nass Wildlife Area**” means the area described in Appendix J;

“**natural boundary**” means the visible high water mark of any lake, river, stream, or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

“**neutral**” means a person appointed to assist the Parties to resolve a disagreement and, except in paragraph 24 of the Dispute Resolution Chapter and Appendix M-4, includes an arbitrator;

“**neutral appointing authority**” means the British Columbia International Commercial Arbitration Centre or, if the Centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties;

“**Nisga’a annual fishing plan**” means a plan, or an in-season adjustment to a plan, approved in accordance with the Fisheries Chapter;

“**Nisga’a artifact**” means any object created by, traded to, commissioned by, or given as a gift to a Nisga’a person or Nisga’a community, or that originated from a Nisga’a community or Nisga’a heritage site and that has past and ongoing importance to Nisga’a culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to another aboriginal people;

“**Nisga’a Certificate**” means a certificate of Nisga’a Lisims Government described in subparagraph 7 (b) of the Land Title Chapter;

“**Nisga’a child**” means a minor who is or is eligible to become a Nisga’a citizen;

“**Nisga’a citizen**” means a citizen of the Nisga’a Nation as determined by Nisga’a law;

“**Nisga’a Constitution**” means the constitution of the Nisga’a Nation adopted in accordance with the Nisga’a Government Chapter;

“**Nisga’a Corporation**” means a corporation that is incorporated under federal or provincial law, all of the shares of which are owned legally and beneficially by the Nisga’a Nation, a

Nisga'a Village, a Nisga'a settlement trust, a Nisga'a Corporation Intermediary, or any combination of those entities;

“Nisga'a Corporation Intermediary” means a corporation that is incorporated under federal or provincial law, all of the shares of which are owned legally and beneficially by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, another Nisga'a Corporation Intermediary, or any combination of those entities;

“Nisga'a Court” means a court established under the Administration of Justice Chapter;

“Nisga'a Fee Simple Lands” means Category A Lands and Category B Lands;

“Nisga'a fish allocation” means a Nisga'a fish entitlement under this Agreement, or a right to harvest fish under the Harvest Agreement referred to in the Fisheries Chapter, for which there is:

- a. a defined harvest quantity or quota,
- b. a formula defining a harvest quantity or quota, or
- c. a defined harvest area other than the entire Nass Area;

“Nisga'a fish entitlement” means a right to harvest fish or aquatic plants under this Agreement, but does not include the right to harvest fish under the Harvest Agreement referred to in the Fisheries Chapter, or under federal or provincial laws of general application;

“Nisga'a fisheries” means:

- a. fisheries to harvest fish under Nisga'a fish entitlements under this Agreement,
- b. fisheries to harvest Nass salmon under Nisga'a fish allocations under the Harvest Agreement, and
- c. harvests of aquatic plants under Nisga'a fish entitlements under this Agreement;

“Nisga'a Government” means Nisga'a Lisims Government and Nisga'a Village Governments;

“Nisga'a Highway” means the following:

- a. the British Columbia highway existing on the effective date connecting Highway 16, New Aiyansh, Nass Camp, Gitwinksihlkw, and Lagalt'sap, and
- b. the portion of the route for the proposed highway from Nass Camp to Highway 37 that is within Nisga'a Lands, and the route for the proposed highway from Laxgalt'sap to Gingolx;

“Nisga'a Highway corridor” means the area of land on which the Nisga'a Highway is located, as determined under paragraphs 9 and 10 of the Roads and Rights of Way Chapter and as described in Schedule A of the Roads and Rights of Way Chapter;

“Nisga'a Institution” means:

- a. Nisga'a Lisims Government,
- b. a Nisga'a Village Government, or
- c. a Nisga'a Public Institution;

“Nisga'a Lands” means those lands identified in paragraphs 1 and 2 of the Lands Chapter and includes additions under paragraphs 9 or 11 of the Lands Chapter;

“**Nisga’a laws**” includes the Nisga’a Constitution;

“**Nisga’a Lisims Government**” means the government of the Nisga’a Nation described in the Nisga’a Constitution;

“**Nisga’a Nation**” means the collectivity of those aboriginal people who share the language, culture, and laws of the Nisga’a Indians of the Nass Area, and their descendants;

“**Nisga’a participant**” means an individual who is enrolled;

“**Nisga’a Police Board**” means a board established under the Administration of Justice Chapter;

“**Nisga’a Police Service**” means a police service established under the Administration of Justice Chapter;

“**Nisga’a Private Lands**” means Nisga’a Lands that are designated as Nisga’a Private Lands by Nisga’a Lisims Government;

“**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 the Nisga’a Court referred to in the Administration of Justice Chapter;

“**Nisga’a Public Lands**” means Nisga’a Lands other than Nisga’a Village Lands or Nisga’a Private Lands;

“**Nisga’a public officer**” means:

- a. a member, commissioner, director, or trustee of a Nisga’a Public Institution,
- b. a director of a Nisga’a Corporation, the documents of incorporation of which have been approved by the Inspector of Municipalities for British Columbia,
- c. an officer or employee of the Nisga’a Nation, a Nisga’a Village, a Nisga’a Institution, or a Nisga’a Corporation, the documents of incorporation of which have been approved by the Inspector of Municipalities for British Columbia,
- d. an election official within the meaning of a Nisga’a law, or
- e. a volunteer who participates in the delivery of services by the Nisga’a Nation, a Nisga’a Village, a Nisga’a Institution, or a body referred to in subparagraph (b) or (c), under the supervision of an officer or employee of the Nisga’a Nation, a Nisga’a Village, a Nisga’a Institution, or a body referred to in subparagraph (b) or (c);

“**Nisga’a road**” means a road on Nisga’a Lands that is not a provincial secondary road or a private road;

“**Nisga’a section 35 rights**” means the rights, anywhere in Canada, of the Nisga’a Nation, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“**Nisga’a tribe**” means the *Laxsgiik (Eagle)*, *Laxgibuu (Wolf)*, the *Gisk’aast (Killerwhale)*, or the *Ganada (Raven) tribe of the Nisga’a Nation*;

“**Nisga’a Urban Locals**” means the entities established for the purpose of participation in Nisga’a Lisims Government by Nisga’a citizens residing outside of the Nass Area;

“**Nisga’a Village**” means:

- a. the village of New Aiyansh, Gitwinksihlkw, Laxgalt’sap, or Gingolx, or

b. any additional village on Nisga'a Lands, established in accordance with the Nisga'a Constitution and this Agreement;

“Nisga'a Village Government” means the government of a Nisga'a Village;

“Nisga'a Village Lands” means Nisga'a Lands that are designated as Nisga'a Village Lands of a particular Nisga'a Village by Nisga'a Lisims Government;

“Nisga'a wildlife allocation” means a Nisga'a wildlife entitlement to a defined share of the total allowable harvest of a designated species;

“Nisga'a wildlife entitlement” means a right to harvest wildlife or migratory birds under this Agreement, but does not include a right to harvest wildlife or migratory birds under federal or provincial laws of general application;

“non-salmon species” means a species of fish in the Nass Area other than Nass salmon and Nass steelhead;

“overage” means the amount calculated in accordance with Schedule B of the Fisheries Chapter in any year in which the Nisga'a harvest of a species exceeds the amount of that species that the Nisga'a Nation is entitled to harvest in Nisga'a fisheries in that year;

“overharvest” means the amount in any year by which, as a result of harvesting in Canadian fisheries, the escapement goal exceeds the actual escapement for a species of Nass salmon;

“participating Party” means a Party that:

- a. is required or agrees to participate in, or
- b. initiates

a process described in the Dispute Resolution Chapter to resolve a disagreement;

“Party” means a party to this Agreement;

“private road” means a road on a private right of way area on Nisga'a Lands;

“project” means any undertaking or proposed undertaking in relation to a physical work or activity;

“provincial Torrens system” means the *Land Title Act* and all other laws of British Columbia in respect of the registration of title to, rights in, claims against, and estates and interests in, land, whether legal or equitable;

“public utility” has the meaning as set out in the *Utilities Commission Act*, and includes Hydro, BC TEL, and a water, sewage, or petroleum distribution utility;

“Ratification Committee” means the committee established under the Ratification Chapter;

“Regional District of Kitimat-Stikine” means the Regional District of Kitimat-Stikine as it exists on the effective date, and any successor regional government;

“Registrar” means “Registrar” as defined in the *Land Title Act*;

“right of way area” means a defined portion of Nisga'a Lands on which a grant is given by the Nisga'a Nation or a Nisga'a Village for a specified use, including use for a public or private road, or a public utility;

“road” means the surface area of lands constructed and used for vehicular passage, and includes surfacing, bridges, drainage and support works, traffic control structures, and other works required to maintain the integrity of the travelled surface;

“secondary provincial road” means a road existing on the effective date located on a right of way area granted by the Nisga’a Nation or a Nisga’a Village to British Columbia as described in Appendix C-1, subject to changes permitted under this Agreement;

“settlement legislation” means the Acts of Parliament and the Acts of the Legislature of British Columbia that give effect to this Agreement;

“Simgigat and Sigidimhaanak” means individuals who are Nisga’a chiefs, and Nisga’a matriarchs, respectively, in accordance with *Ayuukhl Nisga’a*;

“stream” includes a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, spring, ravine, swamp, and gulch;

“submerged lands” means lands below the natural boundary;

“summer-run Nass steelhead” means:

- a. those Nass steelhead within the Nass River that migrate from marine environments to fresh water environments between June 1 and October 31 in any year, and
- b. all Nass steelhead within watersheds draining into the Nass River upstream of the confluence of the Tseax River and the Nass River;

“surplus” means the amount, in any year, of a species of Nass salmon that exceeds the physical incubation and rearing capacity of a natural area, or an enhancement facility, for that species, and that has not been harvested in Nisga’a fisheries or other aboriginal, commercial, or recreational fisheries;

“survey plan” means a plan based on a survey, made by a British Columbia Land Surveyor, that complies with the regulations in respect of surveys and plans made by the Surveyor General of British Columbia;

“total allowable harvest” means the maximum number of a designated species, as determined by the Minister, that may be harvested in the Nass Wildlife Area in each year, commencing on April 1 and ending on March 31;

“underage” means the amount calculated in accordance with Schedule B of the Fisheries Chapter in any year in which the amount of a species that the Nisga’a Nation is entitled to harvest in that year in Nisga’a fisheries exceeds the Nisga’a harvest of that species;

“voting officer” means an individual who has been authorized by the Ratification Committee to issue ballots for the referendum at a place of voting;

“wildlife” means:

- a. all vertebrate and invertebrate animals, including mammals, birds, wildlife fish, reptiles, and amphibians, and
- b. the eggs, juvenile stages, and adult stages of all vertebrate and invertebrate animals but does not include “fish” or “migratory birds”;

“Wildlife Committee” means the committee established under paragraph 45 of the Wildlife and Migratory Birds Chapter;

“wildlife fish” means:

- a. lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters,
- b. the parts of lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters, and
- c. the eggs, sperm, spawn, larvae, spat, juvenile stages, and adult stages of lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters;

“winter-run Nass steelhead” means:

- a. those Nass steelhead within the Nass River that migrate from marine environments to fresh water environments between November 1 in any year, and May 31 in the next year,
- b. all Nass steelhead within watersheds draining into the Nass River downstream of the confluence of the Tseax River and the Nass River, including the Tseax River watershed, and
- c. all Nass steelhead within watersheds draining into the Nass Area, other than the Nass River watershed and watersheds draining into the Nass River; and

“year” means a calendar year unless otherwise provided, or unless the Parties otherwise agree.