

# NISGA'A TREATY NEGOTIATIONS

## AGREEMENT-IN-PRINCIPLE

DATED: FEBRUARY 15, 1996

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**DEFINITIONS**

1. "Agreement" means this Agreement-in-Principle between the Nisga'a Nation, Canada and British Columbia, negotiated pursuant to the Framework Agreement, dated March 20, 1991.
2. "Ayuukhl Nisga'a" and "Ayuuk" mean the traditional laws and practices of the Nisga'a Nation.
3. "consult" and "consultation" mean, other than in the Dispute Resolution Chapter, 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. a reasonable period of time to permit the Party to prepare its views on the matter;
  - c. an opportunity for the Party to present its views on the matter; and
  - d. a full and fair consideration of any views on the matter so presented by the Party.
4. "disposition" means an act by which an interest in Nisga'a Lands is disposed of or by which Nisga'a Government divests itself of or creates an interest in Nisga'a Lands.
5. "domestic" means, in the Fisheries and Wildlife Chapters of this Agreement, food, social and ceremonial.

6. "effective date" means the date upon which the Final Agreement will take effect.

7. "fair compensation" means compensation as the term is generally applied with respect to a taking by the Crown including:

- a. fair market value;
- b. value to owner;
- c. disturbance damages;
- d. injurious affection; and

in the case of adjusted Nisga'a Indian reserves where Crown access has been established pursuant to paragraph 44 of the Lands and Resources Chapter of this Agreement, any particular cultural values.

8. "Final Agreement" means the agreement between the Nisga'a Nation, Canada, and British Columbia which will be based on this Agreement.

9. "forest resources" includes all timber and non-timber forest resources, including all biota, but does not include wildlife, water or fish;

10. "gravel materials" means gravel, rock and random borrow materials used in highway construction.

11. "law" or "laws" includes federal, British Columbia and Nisga'a legislation, acts, ordinances, regulations, orders in council, bylaws and the common law and, for greater certainty, does not include the Ayuukhl Nisga'a.

12. "Minister" means the Minister or Ministers of Her Majesty the Queen in Right of Canada and British Columbia charged by legislation with the responsibility, from time to time, for the exercise of powers in relation to the matter in question.

13. "Nass Area" means:

- a. the entire Nass watershed;
- b. all Canadian water bodies which flow into portions of Portland Inlet, Observatory Inlet, and Portland Canal, as defined in subparagraph (c);
- 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 and Wales Island and proceeding along Wales Passage southeasterly to Portland Inlet, then northeasterly to the midpoint between Start and Trefusis Point, then south to Gadu Point;
- d. and includes the adjacent lands in Canada surrounding those waters, approximately as set out on Appendix G.

14. "Nisga'a Central Government" means that government described in the Nisga'a Constitution, recognized in paragraph 10 of the Nisga'a Government Chapter of this Agreement.

15. "Nisga'a citizen" means a citizen of the Nisga'a Nation as determined by Nisga'a law.

16. "Nisga'a Fee Simple Lands" means those fee simple lands (including those that cease to be Indian reserves after the effective date) outside Nisga'a Lands that are acquired by or confirmed to the Nisga'a Nation under the Final Agreement.

17. "Nisga'a Government" means Nisga'a Central Government and Nisga'a Village Governments.

18. "Nisga'a Lands" means those lands identified as Nisga'a Lands in the Lands and Resources Chapter of this Agreement.



19. "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.
20. "Nisga'a tribe" means the Laxsgiik (Eagle), Laxgibuu (Wolf), the Gisk'aast (Killerwhale), or the Ganada (Raven) tribe of the Nisga'a Nation.
21. "Nisga'a Urban Locals" are entities recognized by Nisga'a Government for the purpose of participation in Nisga'a Central Government by Nisga'a citizens residing outside of the Nass Area and includes the three Nisga'a locals in:
- a. Greater Vancouver;
  - b. Terrace; and
  - c. Prince Rupert/Port Edward.
22. "Nisga'a Village Governments" means the governments of:
- a. New Aiyansh;
  - b. Gitwinksihlkw;
  - c. Greenville;
  - d. Kincolith; and
  - e. additional village governments within Nisga'a Lands established pursuant to the Nisga'a Constitution.
23. "participant" means a person who is on the enrolment list of the Nisga'a Nation, prepared pursuant to the Eligibility and Enrolment Chapter of the Final Agreement.
24. "Parties" means the parties to this Agreement.
25. "settlement legislation" means the Acts of Parliament and the British Columbia Legislative Assembly which give effect to the Final Agreement.
26. "Simigat and Sigidimhaanak" means persons designated as such in accordance with Ayuukhl Nisga'a .
27. "submerged lands" means lands below the natural boundary.
28. "Village Lands" means Nisga'a Lands that are designated as Village Land of a particular Nisga'a Village pursuant to Nisga'a law or the Nisga'a Constitution.

#### **PREAMBLE**

WHEREAS the Nisga'a Nation has lived in the Nass Area since time immemorial; and

WHEREAS the Nisga'a Nation is an aboriginal people of Canada; and

WHEREAS section 35 of the Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada; and

WHEREAS the Nisga'a Nation has never entered into a treaty with Canada or British Columbia; and

WHEREAS the Nisga'a Nation has sought a just and equitable settlement of the land question since the arrival of the British Crown, including the preparation of the Nisga'a Petition to His Majesty's Privy Council, dated 21st May, 1913, and the conduct of the litigation which led to the decision of the Supreme Court of Canada in *Calder v. the Attorney-General of British Columbia* in 1973; and

WHEREAS the Final Agreement will recognize Nisga'a rights both within and outside of Nisga'a Lands; and

WHEREAS the Parties acknowledge the entitlement of the Simgigat and Sigidimhaanak (hereditary chiefs and matriarchs) to tell their Adaawak (oral histories) relating to their Ango'oskw (family hunting, fishing, and gathering territories) in accordance with the Ayuuk (Nisga'a traditional laws and practices); and

WHEREAS the Parties desire certainty in respect of all of the matters referred to in this Agreement;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

### **GENERAL PROVISIONS**

1. This Agreement-in-Principle will form the basis for concluding the Final Agreement.
2. The Final Agreement will be a treaty for the purposes of sections 25 and 35 of the Constitution Act, 1982.
3. This Agreement does not create legal obligations binding on the Parties. There will be no legally binding treaty until the ratification of the Final Agreement by the Parties.
4. Nisga'a citizens will continue to be Aboriginal people under the Constitution Act, 1982.
5. Subject to the Final Agreement, Nisga'a citizens will have the right to practice their culture and use their language.
6. Nisga'a citizens who are Canadian citizens, or permanent residents of Canada, will continue to be entitled to all of the rights and benefits of all other Canadian citizens or permanent residents of Canada applicable to them from time to time.
7. Nisga'a Lands and Nisga'a Fee Simple Lands are not intended to be "lands reserved for Indians" within the meaning of the Constitution Act, 1867, and, as of the effective date, will not be "reserves" within the meaning of the Indian Act.
8. The Final Agreement will not affect the constitutional division of powers between Canada and British Columbia.
9. The Canadian Charter of Rights and Freedoms will apply to Nisga'a Government and its institutions in relation to all matters within its jurisdiction and authority, bearing in mind the free and democratic nature of Nisga'a Government as set forth in this Agreement.
10. The full exercise of Nisga'a Government jurisdiction and authority set out in the Final Agreement will evolve over time. Subject to the Final Agreement, laws of general application will apply to Nisga'a citizens and on Nisga'a Lands in relation to those areas of jurisdiction and authority not exercised by Nisga'a Government.
11. Federal and provincial laws will apply to Nisga'a citizens and to Nisga'a Lands, provided that in the event of an inconsistency or conflict between the Final Agreement and the provisions of any law, the Final Agreement will prevail to the extent of the inconsistency or conflict.
12. The Final Agreement will not affect the ability of the Nisga'a Government or Nisga'a citizens to participate in and benefit from federal and provincial programmes for aboriginal people in accordance with general criteria established for these programmes from time to time.
13. The Final Agreement will not affect the Nisga'a Nation in respect of the ability of Nisga'a Government, individuals or corporations to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
14. The Final Agreement will not affect, recognize or provide any rights under section 35 of the Constitution Act, 1982 for any aboriginal peoples other than the Nisga'a Nation.
15. Except where otherwise expressly permitted in the Final Agreement, the Final Agreement may only be amended

with the consent of the Parties pursuant to the amendment provisions of the Final Agreement.

16. The Final Agreement will be the entire agreement and, unless otherwise agreed prior to the Final Agreement, there will be no representation, warranty, collateral agreement or condition affecting the Final Agreement.

17. If any provision of the Final Agreement is found by a court of competent jurisdiction to be invalid, the Parties will make best efforts to amend the Final Agreement to remedy the invalidity or replace the invalid provisions.

18. The Nisga'a Tribal Council represents and warrants to Canada and British Columbia that it represents all Nisga'a people who may have any aboriginal claims, rights, title or interest in Canada based on their identity as Nisga'a

19. In the Final Agreement, Nisga'a Government will indemnify Canada and British Columbia from liability for claims and actions initiated after the effective date, relating to or arising from the aboriginal claims, rights, titles and interests of the Nisga'a people it warrants that it represents in this Agreement.

20. Canada or British Columbia will vigorously defend any claim or action referred to in paragraph 19 and will not compromise or settle any such claim or action without the consent of the Nisga'a Government.

21. Nisga'a Government will not be required to pay Canada or British Columbia its costs under paragraph 20.

22. In negotiating the Final Agreement, the Parties will address the question of appropriate indemnities, if any, to be given to Nisga'a Government by Canada and British Columbia.

23. The Final Agreement will include provisions which the Parties agree are necessary to set forth the relationship between the Final Agreement and the provisions of privacy and access to information legislation.

24. The Final Agreement will provide for certainty with respect to:

- a. ownership and use of land and resources within the Nass Area;
- b. the application of laws within the Nass Area; and
- c. the Nisga'a Nation's rights under section 35 of the Constitution Act, 1982.

25. The Final Agreement will constitute the full and final settlement, and will exhaustively set forth the aboriginal title, rights and interests within Canada of the Nisga'a Nation and its people in respect of the Nisga'a Nation's rights recognized and affirmed by section 35 of the Constitution Act, 1982 in and to Nisga'a Lands and other lands and resources in Canada, and the scope and geographic extent of all treaty rights of the Nisga'a Nation, including all jurisdictions, powers, rights and obligations of Nisga'a Government.

26. Prior to ratification of the Final Agreement, the Parties will determine the precise legal technique to achieve certainty.

27. The Parties agree that eventually the Indian Act will no longer apply to the Nisga'a Nation and its people, except for the purpose of determining whether a person is an "Indian". The Final Agreement will include provisions in respect of transition.

28. The rights of the Nisga'a Nation set forth in the Final Agreement will not be affected by any treaties with other First Nations.

## **LANDS & RESOURCES**

### *NISGA'A LANDS*

1. On the effective date, Nisga'a Lands will consist of:

- a. 1,930 square km, more or less, in the lower Nass Valley as shown on the map in Appendix A; and
- b. existing Nisga'a Indian reserves within the boundaries as shown in Appendix A, which will cease to be

Indian reserves, and will become Nisga'a Lands.

2. The precise location and description of the boundaries of Nisga'a Lands will be determined by means satisfactory to the Parties, and will be specified in the Final Agreement.
3. On the effective date, Nisga'a Lands will be owned communally by the Nisga'a Nation.
4. On the effective date, title to Nisga'a Lands will vest in Nisga'a Government.
5. The Nisga'a Nation's ownership of Nisga'a Lands will be subject only to limitations set forth in the Final Agreement and the Nisga'a Constitution.
6. Nisga'a Government may, in accordance with the provisions of the Nisga'a Constitution and the Final Agreement, create or transfer interests in Nisga'a Lands without the consent of Canada or British Columbia.
7. The Final Agreement will include provisions to allow for Nisga'a Lands and parcels thereof to be incorporated into the provincial land registry system. These provisions may include modifications to the existing system necessary to achieve this objective.
8. Nisga'a Lands will not include the Tsimshian Indian Reserve (IR 88) located at Red Bluff, any fee simple lands existing within Nisga'a Lands, or interests referred to in paragraph 28, on the effective date. However, any such lands within Nisga'a Lands which are wholly owned or acquired by Nisga'a Government or its institutions, including the Nisga'a Tribal Council, the existing Nisga'a bands, the existing economic development corporations or their successors may, at the sole discretion of Nisga'a Government, be included in Nisga'a Lands.
9. Any fee simple lands within Nisga'a Lands in which ownership reverts to the Crown or lands in paragraph 28 where the interest ceases, will be offered to Nisga'a Central Government for purchase at a price not to exceed fair market value, and any such lands so acquired by Nisga'a Government may, at the sole discretion of Nisga'a Government, be included in Nisga'a Lands.
10. Any lands abutting Nisga'a Lands which are subsequently acquired by the Nisga'a Nation will become Nisga'a Lands only upon the agreement of the Parties.
11. Nisga'a Lands will include all islands within the boundaries of Nisga'a Lands.
12. Nisga'a Lands, as described in this Agreement, include lands to which the Tsimshian Tribal Council has filed claim with the British Columbia Treaty Commission. The Parties do not wish to finalize the boundaries of Nisga'a Lands without providing the Nisga'a Tribal Council and the Tsimshian Tribal Council an opportunity to resolve this issue, and recognize that the Nisga'a Tribal Council and the Tsimshian Tribal Council have commenced discussions in order to do so. The Parties look forward to the conclusion of these discussions prior to the Final Agreement.
13. Nisga'a Lands other than those designated as Village Lands or Private Lands by Nisga'a Government will be Nisga'a Public Lands. Private Lands include lands in which Nisga'a Government creates an exclusive interest, or are otherwise required by Nisga'a Government for uses that are incompatible with public access, including commercial, cultural or resource development uses.
14. Nisga'a Government will notify Canada and British Columbia of the location and boundaries of Village Lands and Private Lands.
15. Nisga'a Government will provide reasonable notice to British Columbia and Canada of any proposed changes to the locations or boundaries of Village Lands and Private Lands. Nisga'a Government will also take reasonable steps to notify members of the public who may be adversely affected by such changes, and will consider any views advanced in respect of the changes, provided that the changes may not be set aside by a court on the ground of insufficient notice.

#### *SUBSURFACE RESOURCES*

16. Nisga'a Government will own all mineral resources on or under Nisga'a Lands, including:

- a. precious and base metals;
- b. coal, petroleum, natural gases and geothermal resources; and
- c. earth, soil, peat, marl, sand, gravel, rock and stone.

17. Nisga'a Central Government and British Columbia may enter into agreements in respect of the application of provincial administrative systems regarding such matters as claim staking, recording and inspecting of subsurface exploration and development on Nisga'a Lands, and Crown collection of Nisga'a royalties.

18. Federal laws with respect to prospecting for, refining, and handling of uranium will apply on Nisga'a Lands.

#### *SUBMERGED LANDS WITHIN NISGA'A LANDS*

19. British Columbia will own the submerged lands beneath all water bodies within Nisga'a Lands.

20. British Columbia will advise Nisga'a Central Government of any proposed alienation, disposition or development of submerged lands within Nisga'a Lands.

21. British Columbia will obtain the consent of Nisga'a Central Government to:

- a. any permanent alienation of submerged lands within Nisga'a Lands; and
- b. any disposition or development of submerged lands within Nisga'a Lands which would adversely affect Nisga'a Lands or Nisga'a interests recognized in the Final Agreement.

22. Nisga'a Central Government will not unreasonably withhold consent to an alienation, disposition or development to which paragraph 21 applies.

23. British Columbia will not unreasonably withhold consent to an application by Nisga'a Central Government for a disposition or development of submerged lands within Nisga'a Lands, provided that the application conforms to provincial law and policy respecting the disposition and development of submerged lands within British Columbia.

24. A dispute as to whether consent is being unreasonably withheld by Nisga'a Central Government or British Columbia will be referred to binding arbitration pursuant to the Dispute Resolution Chapter of the Final Agreement.

#### *EXISTING INTERESTS WITHIN NISGA'A LANDS*

##### *Utility and Road Access to Existing Fee Simple*

25. Legally vested real property interests on Nisga'a Lands on the effective date, including rights of way, easements, licences or permits, which are associated with existing fee simple interests and which serve purposes of hydro, telephone and water supply, and road access, will be continued by Nisga'a Government in accordance with their terms that exist on the effective date.

##### *Public Utilities*

26. Interests held by public utilities such as BC Hydro and BC Telephone which are partially contained within Nisga'a Lands on the effective date will be assumed by British Columbia, subject to the following conditions:

- a. where British Columbia charges an annual rent for the interest, British Columbia will pay Nisga'a Central Government a pro-rated share of the rent based on the area of the interest located on Nisga'a Lands;
- b. the interest may only be used for the purposes for which the interest exists on the effective date, or for any other purpose that Nisga'a Government and British Columbia agree;
- c. the interest will expire if the existing tenure holder or its legal successor ceases to use the interest for those purposes.

27. Prior to the Final Agreement, British Columbia and the Nisga'a Tribal Council will determine whether interests which are wholly contained within Nisga'a Lands held by public bodies will be assumed by British Columbia, subject to the conditions described in paragraph 26, or whether Nisga'a Central Government will continue these interests.

#### *Other Interests*

28. The Final Agreement will identify Crown land, subject to agriculture leases and wood lot licences existing on the effective date, which will be retained by British Columbia and not included in Nisga'a Lands.

29. Angling guide licences, the guide outfitter licence and traplines which permit activities on Nisga'a Lands may be retained by their holders on the effective date, in accordance with laws of general application and the Wildlife Chapter of the Final Agreement.

#### *General*

30. The Parties acknowledge that some of the interests described in paragraphs 25 and 27 may not be adequately recorded. Prior to the Final Agreement, British Columbia may perfect these interests by granting a tenure, provided that the tenure is no greater than required. Any such interest which is not perfected will cease to exist on the effective date.

31. Prior to the Final Agreement, British Columbia and the Nisga'a Tribal Council will negotiate arrangements which will, where appropriate, include issuing replacement tenures or alterations to the interests described in paragraphs 25, 26 and 27 to reflect Nisga'a Government jurisdiction over and Nisga'a Nation ownership of Nisga'a Lands, including Nisga'a citizens' access to such interests. Where replacement tenures are to be issued the Final Agreement will include provisions for appropriate indemnities.

32. The Final Agreement will exhaustively set forth all interests less than fee simple outside the former Nisga'a Indian reserves, to which Nisga'a Lands will be subject on the effective date.

#### *NISGA'A FEE SIMPLE LANDS OUTSIDE NISGA A LANDS*

##### *Nisga'a Indian Reserves Outside Nisga'a Lands*

33. Subject to the transitional provisions and any adjustments set out in the Final Agreement, Nisga'a Indian reserves outside Nisga'a Lands will cease to be Indian reserves on the effective date and will become fee simple interests owned by the Nisga'a Nation.

34. The boundaries of certain former Nisga'a Indian reserves will be adjusted in accordance with paragraph 35, provided that the total increase in area will not exceed 1250 hectares.

35. In negotiating adjustments pursuant to paragraph 34, the Parties will have regard to the following general criteria:

- a. the economic potential of the site;
- b. the necessary size for current and anticipated land use;
- c. existing relevant provincial Crown land policies;
- d. biophysical features, such as topography, drainage basins, and ecosystem types;
- e. visual quality;
- f. watershed protection;
- g. protection of and access to adjacent cultural or resource harvesting sites;

- h. rules governing the availability of adjacent or nearby foreshore areas for access and harvesting; and
- i. access to the sites by land or water, including foreshore, as appropriate.

36. The Nisga'a Nation will own all mineral resources on or under the adjusted Nisga'a Indian reserves.

37. Interests in the adjusted Nisga'a Indian reserves may be expropriated by a provincial expropriating authority only if the expropriation is:

- a. justifiable and necessary for a provincial public purpose;
- b. by and for the use of a provincial ministry or agency; and
- c. with the consent of the Lieutenant Governor in Council.

38. British Columbia will expropriate only the smallest interest necessary and for the shortest time required for the provincial public purpose.

39. If British Columbia expropriates the full interest, it will provide compensation in the form of equivalent Crown Land, if such land is available.

40. If equivalent Crown land is not available, or if Nisga'a Government and British Columbia otherwise agree, British Columbia will provide fair compensation.

#### *Additional Nisga'a Fee Simple Interests Outside Nisga'a Lands*

41. The Nisga'a Nation will own 15 additional fee simple interests, outside Nisga'a Lands, the total area of which will not exceed 250 hectares.

42. British Columbia will own the mineral resources on or under the additional fee simple interests.

43. If British Columbia expropriates any of the additional fee simple interests, it will provide compensation in the form of equivalent Crown land, if such Crown land is available.

44. If equivalent Crown land is not available, or if Nisga'a Government and British Columbia otherwise agree, British Columbia will provide fair compensation to Nisga'a Government.

#### *General*

45. The Nisga'a Indian reserves to be adjusted pursuant to paragraphs 34 and 35 and the additional Nisga'a fee simple interests to be created pursuant to paragraph 41 are listed in Appendix B and Appendix C respectively on a provisional basis. Prior to finalizing each list and the boundaries of each site, the Parties will:

- a. conduct such site inspections as they deem necessary;
- b. determine whether there are any existing tenures;
- c. carry out such consultations as may be necessary, including referrals to Crown agencies, other First Nations and tenure holders;
- d. determine whether any sites will be subject to conditions such as Crown access or land use restrictions; and
- e. select such alternate sites as the Parties may agree.

46. The Nisga'a Indian reserves to be adjusted, the additional fee simple sites to be created, the boundaries of each site, and any conditions of transfer will be set out in the Final Agreement.

47. The precise location and description of the boundaries of Nisga'a Fee Simple Lands will be determined by means

satisfactory to the Parties and will be specified in the Final Agreement.

48. Nisga'a Fee Simple Lands outside Nisga'a Lands will not be Nisga'a Lands for the purposes of the territorial jurisdiction of Nisga'a Government. Nisga'a Government will have the authority as owner to determine such matters as the use and disposition of these lands, subject to applicable laws, and the terms of the Final Agreement.

49. Except as otherwise provided in the Final Agreement, the Nisga'a Fee Simple Lands will be subject to all provincial and federal laws of general application, including those applicable to a disposition in fee simple of provincial Crown lands.

#### *Existing Interests in Reserve Lands*

50. The conversion of reserves to Nisga'a Lands or to fee simple lands owned by the Nisga'a Nation pursuant to the Final Agreement will not affect any legally vested rights to or interests in land, pursuant to the Indian Act, existing on the effective date.

51. In order to give effect to paragraph 50, Canada and the Nisga'a Tribal Council will, prior to the Final Agreement, identify all of the interests described in paragraph 50 and Nisga'a Government will issue or grant replacement rights or interests on the same terms as prevail on the effective date, with such modifications as are necessary to reflect Nisga'a Government jurisdiction over and Nisga'a Nation ownership of the lands.

52. Notwithstanding paragraphs 50 and 51, the Nisga'a Tribal Council and the persons who have rights or interests determined under paragraph 50 may agree, prior to the Final Agreement, to different forms of replacement rights or interests to be issued or granted on the effective date by Nisga'a Government provided that Nisga'a Government would otherwise have the authority to issue or grant such rights or interests under the Final Agreement.

53. In the Final Agreement, Nisga'a Government will indemnify Canada from liability for claims and actions initiated after the effective date relating to or arising from Nisga'a Government's replacement of, or failure to replace, rights or interests pursuant to paragraph 51.

54. For greater certainty, nothing in paragraph 53 is intended to impose any obligation or liability upon Nisga'a Government arising from Canada's authority over and administration of rights and interests on reserves prior to the effective date.

#### *BACKCOUNTRY RECREATION TENURE*

55. British Columbia will issue a commercial backcountry recreation tenure to Nisga'a Central Government for an area in the general vicinity of Observatory Inlet/Hastings Arm/Alice Arm/Kinskuch Lake.

56. Prior to the Final Agreement, the Nisga'a Tribal Council and British Columbia will develop a management plan in sufficient detail to permit determination of the boundaries and the appropriate phase in period for the operations of the backcountry recreation tenure.

57. The boundaries of the tenure to be issued to Nisga'a Central Government and the phase in period will be specified in the Final Agreement.

58. During the phase in period, British Columbia will not issue another backcountry recreation tenure within the specified boundaries which conflicts with the management plan for the Nisga'a tenure.

59. Subject to paragraphs 55 - 58, the operation of the Nisga'a backcountry recreation tenure will be subject to applicable provincial law and policy.

#### *PROTECTION OF HISTORIC SITES AND NAMES OF KEY GEOGRAPHIC FEATURES*

60. British Columbia will protect key sites of cultural and historic significance outside Nisga'a Lands agreed to by British Columbia and the Nisga'a Tribal Council prior to the Final Agreement through heritage site designation or other measures agreed to by British Columbia and the Nisga'a Tribal Council.



61. British Columbia will name or rename the key geographic features with the Nisga'a names listed in Appendix D, in accordance with provincial procedures set forth in the document entitled "British Columbia's Geographical Naming Principles; British Columbia's Naming Policy and Procedures".

#### *PARKS AND ECOLOGICAL RESERVE*

62. Unless Nisga'a Central Government and British Columbia agree to the contrary, the Nisga'a Memorial Lava Bed Park (the Park) will be continued as a Class "A" Park, or such other equivalent classification as may be applicable from time to time.

63. Unless Nisga'a Central Government and British Columbia agree to the contrary, the Gingietl Creek Ecological Reserve (the Ecological Reserve) will be continued as an Ecological Reserve or such other equivalent designation as may be applicable from time to time.

64. Prior to the Final Agreement, the Parties will negotiate minor changes in the boundaries of the Park and the Ecological Reserve to accommodate such matters as village expansion, access between existing Gitwinksihlkw reserves, and inclusion in Nisga'a Lands of, or access to, suitable cedar stands in the north Fulmer Creek and Vetter Creek areas.

65. British Columbia's authority and responsibilities in relation to the Park and the Ecological Reserve will continue, subject to the provisions of the Final Agreement.

66. Unless Nisga'a Central Government and British Columbia agree to the contrary, there will be no commercial resource extraction or other commercial activity within the Park and the Ecological Reserve.

67. Nisga'a Central Government will have the right to participate in the management of and planning for the Park and the Ecological Reserve. The Final Agreement will include provisions similar to the existing agreement between the Nisga'a Tribal Council and British Columbia in respect of the Park, and will provide for Nisga'a participation in the management and planning of archaeological activities and scientific research within the Park and the Ecological Reserve.

68. British Columbia will continue to fund the Park in accordance with the normal provincial budgeting process. The Park will not be singled out for less favourable treatment over time than is generally applied to comparable parks in the province.

69. Nisga'a citizens will continue to have the right to traditional uses of the lands and resources within the Park and Ecological Reserve, including domestic resource harvesting, in accordance with the Final Agreement.

70. Nisga'a Central Government and British Columbia will cooperate in determining whether a road across the Ecological Reserve can be located and constructed and, if so, whether it can be controlled, all in a manner which will have minimal adverse impact on the unique ecological values for which the Ecological Reserve was established.

71. Nisga'a Central Government may construct and operate such a road as a Nisga'a Government Road and will have an exclusive and perpetual right of way for that purpose subject to the terms and conditions determined under paragraph 70 or 72.

72. Nisga'a Central Government or British Columbia may refer a dispute under paragraph 71 to binding arbitration pursuant to the Dispute Resolution Chapter of the Final Agreement.

73. Nisga'a Central Government will have a unique consultative role in provincial parks planning and management of parks in the Nass Area.

74. Bear Glacier will be established and continued as a Class "A" Provincial Park within the boundaries set out in Appendix E.

75. The Parties will negotiate and attempt to reach agreement on the establishment of a marine park in the Nass Area.

## *FOREST RESOURCES ON NISGA'A LANDS*

76. Nisga'a Government will own all forest resources on Nisga'a Lands.
77. Nisga'a Central Government may establish rules and standards to govern forest practices on Nisga'a Lands which will meet or exceed provincial standards for Crown lands, such as the Forest Practices Code of British Columbia Act, including such matters as timber harvesting, silviculture and road construction. The Final Agreement will provide for objective methods to evaluate whether Nisga'a forest standards meet or exceed provincial forest standards for Crown lands.
78. Nisga'a Central Government and British Columbia may negotiate agreements in respect of such matters as rate of harvest of timber resources on Nisga'a Lands.
79. Nisga'a Government will not be obliged to harvest timber at a greater rate than that which it may determine from time to time.
80. Timber from Nisga'a Lands will be subject to provincial rules and regional policies respecting manufacture in British Columbia.
81. The Final Agreement will include transitional provisions concerning timber from the existing Nisga'a Indian reserves, including the application of provincial rules concerning manufacture in the province of timber harvested from Nisga'a Indian reserves within and outside Nisga'a Lands commencing five years after the effective date.
82. Nisga'a Central Government may establish rules and standards relating to scaling which will be compatible with provincial rules and standards, and will provide British Columbia with annual reports of volumes of timber harvested on Nisga'a Lands.
83. Provincial rules relating to timber marks will apply to timber harvested on Nisga'a Lands.
84. Subject to the transitional provisions, Nisga'a Government will have the exclusive authority to determine, collect and administer any fees, rents, royalties or other charges relating to forest resources on Nisga'a Lands.
85. The Parties may negotiate arrangements from time to time in order to achieve coordination and administrative efficiencies, in respect of such measures as timber harvesting plans, road building, insect and disease control, forest fire suppression, the protection of fisheries habitat, and non-timber forest resources.
86. Nisga'a Government may establish harvesting and conservation standards in relation to non-timber forest resources which meet or exceed relevant federal and provincial legislation in relation to private lands.

## *TRANSITIONAL PROVISIONS FOR FOREST RESOURCES*

87. The Final Agreement will include detailed measures to provide for an orderly and efficient transition to Nisga'a Central Government control of timber harvesting and management on Nisga'a Lands.
88. To plan for this transition, during the period between the Agreement-in-Principle and the Final Agreement:
- a. British Columbia will consult with the Nisga'a Tribal Council regarding all timber harvesting and management activities on Nisga'a Lands, including existing licensee Forest Development Plans and any annual amendments;
  - b. The Nisga'a Tribal Council and British Columbia will use their best efforts to determine an Annual Allowable Cut (AAC) for Nisga'a Lands, other than on existing Nisga'a Indian reserves, to take effect on the effective date;
  - c. The Nisga'a Tribal Council will determine the AAC to be applicable to Nisga'a Lands at the end of the period in subparagraph 88(d);
  - d. The Nisga'a Tribal Council and British Columbia will use their best efforts to negotiate a schedule of

AAC adjustments to be applied to Nisga'a Lands during the period commencing three years after the effective date and ending eight years after the effective date. The schedule will be structured so as to allow a smooth transition in harvest levels, over this period, to the AAC determined in subparagraph 88(c);

e. The Nisga'a Tribal Council and British Columbia will prepare a plan to provide for other appropriate transitional measures, including mitigation of employment impacts, arrangements for fibre flow, and any other matters the Nisga'a Tribal Council and British Columbia agree upon, to be implemented on or before the effective date; and

f. The Nisga'a Tribal Council and British Columbia will prepare a comparable transition plan for timber harvesting on existing Indian reserves within and outside Nisga'a Lands.

89. Failing agreement pursuant to subparagraph 88(b), the AAC in effect for Nisga'a Lands on the effective date will be set by the Ministry of Forests in accordance with prevailing policies or, at the discretion of the Nisga'a Tribal Council, by an independent British Columbia Registered Professional Forester engaged by the Nisga'a Tribal Council provided it is within 15% of that recommended by the Ministry of Forests.

90. The Final Agreement will include the following measures for the transition period:

a. the AAC determined pursuant to subparagraph 88(b) or paragraph 89 will remain in effect for three years after the effective date and thereafter will be adjusted over five years in accordance with the AAC schedule established under subparagraph 88(d);

b. there will be arrangements whereby Nisga'a Central Government will be in the same economic position eight years after the effective date as if there were no transitional arrangements;

c. there will be provisions to implement the AAC adjustment schedule and the transition plan established under subparagraphs 88(d), (e), and (f);

d. the laws of general application, including the Forest Practices Code of British Columbia Act and other policies of Ministry of Forests, will apply to Nisga'a Lands, other than on existing Nisga'a Indian reserves for five years after the effective date, subject to joint approval of all management and Forest Development Plans, and the application of the transitional AAC schedule determined in subparagraph 88(d);

e. subject to joint approval between Nisga'a Central Government and the Ministry of Forests, the Forest Development Plans of licencees with operations on Nisga'a Lands at the effective date will continue for a five year period after the effective date, subject to adjustments for the AAC established under subparagraph 88(b) or paragraph 89, and the AAC schedule agreed to in subparagraphs 88(d). At the conclusion of this five year period any new Forest Development Plans will be under any Nisga'a Forest Practices Code and subject to Nisga'a management;

f. application of the Dispute Resolution Chapter of the Final Agreement with respect to matters pursuant to subparagraphs 88(d) and 90(d); and

g. the Nisga'a Central Government will not establish a primary timber processing facility for ten years following the effective date. This provision will not preclude a facility to provide Nisga'a domestic lumber, any value-added wood-processing facility, or Nisga'a Central Government from entering into any partnership or joint venture with an existing timber processing facility.

91. British Columbia and Canada recognize that the present and anticipated efforts of the Nisga'a Nation to restore watersheds within the Nass Area are consistent with the objectives of the Forest Renewal Fund.

#### *FOREST RESOURCES OUTSIDE NISGA'A LANDS*

92. Nisga'a Central Government will receive, through the Joint Fisheries Management Committee and the Wildlife Committee, such information concerning forest development plans as is provided to the agencies of Canada and British Columbia represented on those Committees.

93. British Columbia will agree in principle to an acquisition by Nisga'a Central Government of a forest tenure or tenures having an aggregate AAC of up to 150,000 cu. meters.

94. Such an acquisition will require the Minister of Forests approval pursuant to the Forest Act.

95. The Minister of Forests supports and would approve such an acquisition provided the Minister is satisfied that:

- a. there has been a public process in accordance with Ministry policy on tenure transfers and corporate concentration which identifies public interests in relation to such matters; and
- b. the tenure or tenures contain terms and conditions which address local employment and economic opportunities, including in the Nass Valley, and regional fibre supply needs.

96. Where the tenure to be acquired by Nisga'a Central Government is a Tree Farm Licence, the Minister's approval will also be conditional upon Nisga'a Central Government's agreement to the inclusion of a portion of Nisga'a Lands as Schedule A lands within the TFL, such portion to be negotiated at the time of the TFL acquisition, based on appropriate management considerations.

97. The Final Agreement will not limit Nisga'a Central Government's ability to acquire greater or additional forest interests subject to, and in accordance with, the Forest Act.

98. Any tenure acquired by Nisga'a Central Government pursuant to the foregoing provisions will be subject to laws of general application.

#### *SILVICULTURE*

99. British Columbia will ensure that licensee obligations existing up to five years after the effective date under provincial law and policy with respect to Nisga'a Lands will be fulfilled.

100. Nisga'a Government may apply to the Forest Renewal of British Columbia fund after the effective date for the restoration of Nisga'a Lands.

#### *WATER VOLUMES*

101. In this Part:

- a. "available flow" means, in respect of streams within Nisga'a Lands, the volume of flow above that required:
  - i. to ensure conservation of fisheries and stream habitats and to continue navigability as determined by the Minister in accordance with the provisions of the Final Agreement, and
  - ii. under existing water licences on the effective date; and
- b. "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.

102. Nisga'a Central Government will have a reservation of a specified volume of flow from the Nass River, its tributaries and other streams within Nisga'a Lands for Nisga'a uses, large enough to meet present domestic, industrial and agricultural needs and reasonably anticipated future needs.

103. The Final Agreement will specify the volume of the Nisga'a Government water reservation.

104. Existing water licences will be unaffected by the Nisga'a Government water reservation and such licences, as well as applications received by British Columbia prior to the date of this Agreement, will have priority over the Nisga'a Government reservation, but the reservation will have priority over all applications made after the date of this Agreement.

105. Where Nisga'a Government applies for a water licence to be set against the Nisga'a Government water reservation, and the application conforms to provincial regulatory requirements, including safety standards, British Columbia will approve the application. The volume of flow approved under the licence will be deducted from the Nisga'a Government reservation. The licence will not be subject to any rentals, fees or other charges by British Columbia.

106. Nisga'a Government may apply for water licences to be set against the Nisga'a Government water reservation in respect of any stream within Nisga'a Lands, but the total volume of flow set against the reservation from a particular stream may not exceed 50% of the available flow from the stream or, in the case of the streams listed in Appendix F, the specified percentage of the available flow, to be set forth in the Final Agreement.

107. British Columbia will consult with Nisga'a Central Government respecting all applications for water licences in respect of streams within Nisga'a Lands.

108. Where a water licence issued to a person other than Nisga'a Government reasonably requires access across, or an interest in, Nisga'a Lands for the construction, maintenance, improvement or operation of works authorized under the licence, Nisga'a Government may not unreasonably withhold consent to that access or the granting of that interest, provided:

- a. the licence holder offers fair compensation to Nisga'a Government; and
- b. the licence holder and Nisga'a Government agree on the terms of access or the interest, including location, size, duration and nature of interest.

109. British Columbia or Nisga'a Government will refer a dispute respecting consent to access or an interest, terms of tenure, or fairness of compensation to binding arbitration pursuant to the Dispute Resolution Chapter of the Final Agreement.

110. British Columbia will approve an application submitted by Nisga'a Government for a water licence not to be applied against the Nisga'a Government water reservation, provided that:

- a. the volume requested in the application exceeds the volume available in the Nisga'a reservation for the particular stream;
- b. the application conforms to provincial regulatory requirements; and
- c. the stream contains a sufficient volume of unrecorded water to meet the volume requested in the application.

111. Where a water licence approved under paragraph 105 or 110 reasonably requires access across, or an interest in, Crown land for the construction, maintenance, improvement or operation of works authorized under the licence, British Columbia will grant the access or interest on reasonable terms.

112. Where a water licence approved under paragraph 105 or 110 reasonably requires access across, or an interest in, fee simple lands within Nisga'a Lands for the construction, maintenance, improvement or operation of works authorized under the licence, Nisga'a Government may obtain the access or interest in accordance with the laws of general application.

113. Nisga'a Central Government may nominate a water bailiff in respect of streams within Nisga'a Lands, and British Columbia will not unreasonably withhold appointment of that nominee.

114. Except as provided in the Final Agreement, provincial laws of general application respecting water will apply to all water licences in respect of streams within Nisga'a Lands.

115. The Final Agreement will not be construed as granting Nisga'a Government any property rights in respect of water.

116. The Final Agreement will not preclude Nisga'a Government from selling water received under an approved

licence in accordance with applicable federal and provincial legislation.

117. Nisga'a Government may apply for water licences in respect of streams outside Nisga'a Lands in accordance with the laws of general application.

118. Prior to the Final Agreement, British Columbia will take such steps as are necessary to remove the BC Hydro water reservation on the Nass River.

## **ACCESS**

### *NISGA'A PUBLIC LANDS*

1. As owner of Nisga'a Lands, the Nisga'a Nation will have the rights and obligations associated with the ownership of real property, except where modified under the Final Agreement, and in respect of Nisga'a Public Lands will have similar liabilities to those of the Crown in respect of unoccupied Crown land.
2. Nisga'a Central Government will provide reasonable public access to Nisga'a Public Lands for temporary non-commercial and recreational uses, provided that persons entering on Nisga'a Public Lands may not harvest or extract resources except as authorized by Nisga'a Central Government, and may not cause damage to Nisga'a Lands or resources, or otherwise cause mischief, nuisance or interference with other uses authorized by Nisga'a Central Government.
3. Nisga'a Central Government may make laws regulating access to Nisga'a Public Lands, for purposes such as public safety, the prevention of nuisance or damage, the protection of sensitive habitat areas or cultural and historic sites, and the prevention of harvesting or extracting Nisga'a resources.
4. Nisga'a Central Government will provide reasonable opportunities for the public to hunt and fish on Nisga'a Public Lands, in accordance with any regulations enacted by Nisga'a Government respecting public access, and subject to the Wildlife Chapter of the Final Agreement.
5. Nisga'a Central Government and British Columbia will take reasonable measures to notify the public of terms and conditions respecting public access to Nisga'a Public Lands.
6. Nisga'a Central Government will consult with Canada and British Columbia concerning any proposed significant changes to Nisga'a laws in respect of public access to Nisga'a Public Lands.
7. Where a change in the location or boundaries of Village Lands or Private Lands would have the effect of preventing access to another area or location to which there is a public right of access pursuant to the laws of general application, Nisga'a Central Government will provide reasonable alternative means of access to that area or location.

### *ROADS WITHIN NISGA'A LANDS*

8. The Final Agreement will describe the following categories of roads within Nisga'a Lands, and the rights and obligations of Nisga'a Government and British Columbia associated with each category:
  - a. Nisga'a Highway - The Nisga'a Highway will provide public access onto and through Nisga'a Lands and primary access to Nisga'a Villages. On the effective date, it will comprise the road from Terrace north to Nass camp, and the road from New Aiyansh to Greenville, including the road to Gitwinksihlkw. It will subsequently include the extension to Kincolith when the extension is completed, and the road from Nass Camp to Highway 37, when the road becomes a highway in accordance with provincial priorities and the long term goal of upgrading the road to highway standards. The Nisga'a Highway will be a highway under provincial legislation.
  - b. Crown Roads - The Final Agreement will identify certain existing roads as Crown Roads to serve resource purposes, or to provide public access for recreational and other purposes. These roads may include existing Forest Service and other roads agreed to by British Columbia and Nisga'a Tribal Council. British Columbia will bear responsibility and liability for maintenance and repair of Crown Roads, to applicable standards. Nisga'a Central Government and British Columbia may agree to close these roads for temporary

purposes, including the protection of the rights of the Nisga'a Nation under the Final Agreement.

c. Nisga'a Village Roads - Nisga'a Village Roads will be local, community or municipal-type roads within Village Lands. Nisga'a Government will bear responsibility for construction, maintenance and repair of Nisga'a Government Roads to standards determined by Nisga'a Government. Nisga'a Government will bear liabilities similar to those born by municipalities, consistent with the Nisga'a Government Chapter of the Final Agreement.

d. Other Nisga'a Roads - Other roads on Nisga'a Lands may be designated for public or private uses by Nisga'a Central Government. Nisga'a Government may construct other roads for public or private uses on Nisga'a Lands. Nisga'a Government will bear responsibility for construction, maintenance and repair of Other Nisga'a Roads to standards determined by Nisga'a Government. Nisga'a Government will bear liabilities similar to those borne by municipalities, consistent with the Nisga'a Government Chapter of the Final Agreement.

e. rights of way, easements or similar legal interests on the effective date. The private interest holder will have responsibilities and liabilities as set forth in the provisions of the Final Agreement dealing with third party interests.

9. The Final Agreement will specify Nisga'a Government and British Columbia rights relating to consultation on improvements, interconnections and similar matters in respect of all categories of roads.

10. Members of the public and Nisga'a citizens may use the Nisga'a Highway and Crown Roads on the same basis as similar roads in other areas of British Columbia, except as British Columbia and Nisga'a Central Government may otherwise agree.

11. Nisga'a Government will provide public access on Nisga'a Village Roads and Other Nisga'a Roads designated as public.

12. The Nisga'a Nation will own all roads within Nisga'a Lands, but British Columbia will hold a perpetual, exclusive right of way for the Nisga'a Highway and Crown Roads to the standard width of road allowance for each type of road elsewhere in the province and on terms which ensure British Columbia's ability to construct, repair and maintain the roads. British Columbia's right of way will include a right to install, maintain, repair and upgrade utilities and similar uses.

13. If British Columbia decides after the effective date that it does not wish to retain or maintain a Crown Road, its right of way will cease and Nisga'a Central Government may either keep or abandon the road.

14. If a private party decides after the effective date that it does not wish to retain a private road, its right of way will cease and Nisga'a Central Government may either keep or abandon the road.

15. British Columbia will have access at no cost, other than the costs of extraction and transportation, to sufficient quantities of gravel materials from Nisga'a Lands to fulfil provincial obligations related to construction, maintenance and upgrading of the Nisga'a Highway and Crown Roads on Nisga'a Lands.

16. Nisga'a Government will have access at no cost, other than the costs of extraction and transportation, to sufficient quantities of gravel materials from Crown Lands for public purposes on Nisga'a Lands.

17. Nisga'a Central Government and British Columbia may enter into agreements for the establishment of gravel materials management plans.

#### *ACQUISITION OF NEW RIGHTS OF WAY WITHIN NISGA'A LANDS*

18. Nisga'a Government may grant new rights of access to other parties upon such terms as may be agreed to.

19. British Columbia may acquire on reasonable terms and at reasonable costs, new rights-of-way on or through Nisga'a Lands for public purposes, including additions to the Nisga'a Highway and new Crown Roads or public utilities in accordance with the following:

- a. British Columbia may acquire a new right-of-way with the consent of Nisga'a Government, provided British Columbia pays Nisga'a Government fair compensation, and British Columbia and Nisga'a Government agree on the terms of tenure, including location, size, duration and nature of interest.
- b. Provided the new right-of-way does not result in British Columbia holding rights-of-way which exceed a specified maximum area, Nisga'a Government may not unreasonably withhold consent. The specified maximum area will be 3.5 times the area of rights-of-way held by British Columbia on the effective date for the Nisga'a Highway, Crown Roads, and public utility rights-of-way, which British Columbia and the Nisga'a Tribal Council have agreed to be approximately 3,800 hectares.
- c. Where an existing British Columbia right of way is abandoned or terminates according to its terms, the area of that right-of-way will be subtracted from the total area of British Columbia rights-of-way for the purpose of determining whether British Columbia rights-of-way exceed the specified maximum area.
- d. British Columbia or Nisga'a Central Government may refer a dispute respecting consent to an acquisition, terms of tenure or fairness of compensation to binding arbitration pursuant to the Dispute Resolution Chapter of the Final Agreement. The arbitrator will be required to balance the rights and interests of Nisga'a Government and those of British Columbia. The arbitrator may make an order respecting whether consent has been unreasonably withheld, the terms of tenure, or the fairness of the compensation offered, but will not have the power to require that the acquisition proceed.

#### *FEDERAL ACQUISITION OF INTERESTS IN NISGA'A LANDS AND NISGA'A FEE SIMPLE LANDS*

20. Canada agrees that it is of fundamental importance to maintain the size and integrity of Nisga'a Lands and Nisga'a Fee Simple Lands, and therefore Canada agrees that, as a general principle, Nisga'a Lands or Nisga'a Fee Simple Lands will not be expropriated.
21. Notwithstanding paragraph 20, interests in Nisga'a Lands or Nisga'a Fee Simple Lands may be expropriated pursuant to federal legislation, provided that the expropriation is with the
22. The Governor in Council will consent to an expropriation of an interest in Nisga'a Lands or Nisga'a Fee Simple Lands only if the expropriation is justifiable and necessary for a federal public purpose.
23. Prior to making a decision to consent to an expropriation, Canada will:
  - a. consult with Nisga'a Central Government;
  - b. ensure that reasonable efforts are made to acquire the land through agreement with Nisga'a Government, rather than by expropriation; and
  - c. ensure that lands other than Nisga'a Lands or Nisga'a Fee Simple Lands are used, if such other lands are reasonably available.
24. If the Governor in Council decides to consent to an expropriation, it will:
  - a. if means other than expropriation are not reasonably feasible, require that only the smallest interest necessary is expropriated and for the shortest time required; and
  - b. provide Nisga'a Government with the reasons for and all other information relevant to the expropriation.
25. If less than the full interest of the Nisga'a Nation in Nisga'a Lands is expropriated:
  - a. the land will retain its status as Nisga'a Lands;
  - b. the land remains subject to the jurisdiction and authority of Nisga'a Government as set out in the Final Agreement, except to the extent that such jurisdiction and authority is inconsistent with the purpose of expropriation; and



c. the Nisga'a Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the purpose of expropriation.

26. In the event of an expropriation of Nisga'a Lands or Nisga'a Fee Simple Lands pursuant to paragraph 21, Canada will ensure that reasonable efforts are made to acquire alternate land to serve as part or all of the compensation to the Nisga'a Nation for the expropriation. Any such alternate land contiguous to Nisga'a Lands will become Nisga'a Lands by agreement of the Parties.

27. Canada will ensure that Nisga'a Government is compensated for any expropriation of Nisga'a Lands or Nisga'a Fee Simple Lands pursuant to paragraph 21. Such compensation will take into account:

- a. the availability of alternate land of equivalent significance and value;
- b. the market value of the land or interest that is acquired;
- c. the replacement values of any improvements on the land that is acquired;
- d. disturbance caused by the expropriation; and
- e. any adverse effect on any cultural or other special value of the land.

28. If an expropriated interest in Nisga'a Lands or Nisga'a Fee Simple Lands, which is less than the full interest of the Nisga'a Nation in the land, is no longer required for the purpose for which it was expropriated, the interest in Nisga'a Lands or Nisga'a Fee Simple Lands will revert to the Nisga'a Nation. The terms of the reversion will be negotiated by Nisga'a Central Government at the time of the expropriation or at a later date.

29. If the full interest of the Nisga'a Nation in Nisga'a Lands or Nisga'a fee simple lands was expropriated but is no longer required for the purpose for which it was expropriated, the land will be returned to the Nisga'a Nation on terms negotiated at the time of the expropriation or at a later date. If British Columbia provided land which was used as compensation for the expropriation, British Columbia will be a party to the agreement.

30. The consent of the Governor in Council will not be required to determine that the land is no longer required.

31. If the value and nature of the compensation cannot be agreed upon, Nisga'a Government and Canada will refer the matter to binding arbitration pursuant to the dispute resolution chapter of the Final Agreement.

#### *NAVIGABLE WATERS*

32. The Final Agreement will not affect public rights of access on navigable waters within Nisga'a Lands.

#### *CROWN ACCESS TO NISGA'A LANDS*

33. Agents, employees, and contractors of Canada and British Columbia may, in accordance with the laws of general application, enter, cross and stay temporarily on Nisga'a Lands to deliver and manage programs and services, to carry out inspections pursuant to law, to enforce laws, to carry out the terms of the Final Agreement, and to respond to emergencies. Such persons will comply with Nisga'a laws enacted pursuant to paragraph 3 where such compliance does not unduly interfere with the carrying out of their duties. Canada and British Columbia will give prior notice of such access to Nisga'a Central Government when it is reasonable to do so.

34. The Final Agreement will not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security.

35. Canada will provide Nisga'a Central Government with reasonable advance notice of any activities related to national defence and security within the Nass Area.

#### *NISGA'A ACCESS TO OTHER LANDS*

36. Agents, employees and contractors of Nisga'a Government may, in accordance with the laws of general

application, enter, cross and stay temporarily on lands other than Nisga'a Lands to deliver and manage programs and services, to carry out inspections pursuant to law, to enforce laws, to carry out the terms of the Final Agreement, and to respond to emergencies. Nisga'a Government will give prior notice of such access to Canada and British Columbia when it is reasonable to do so.

37. Nisga'a citizens will have reasonable access on lands, watercourses or roads to allow for the exercise of rights and for the normal use and enjoyment of Nisga'a interests outside of Nisga'a Lands set forth in the Final Agreement, including the use of resources for purposes incidental to the normal use and enjoyment of those interests, provided that such access will not interfere with other authorized uses.

## **FISHERIES**

### *DEFINITIONS*

#### 1. In this Chapter:

- a. "directed harvests" means harvests, where fish are caught and kept, of a species from a fishery which targets that species and includes harvests where fish are caught and kept using live capture gear;
- b. "enhancement" means man-made improvements to fish habitat, or the application of artificial fish culture technology, which result in an increase in fish stocks;
- c. "entitlements" means the rights set forth in paragraphs 10 and 47, but does not include the right to fish pursuant to laws of general application;
- d. "fish", as per the Federal Fisheries Act, includes:
  - i. parts of fish,
  - ii. shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
  - iii. the eggs, sperm, spawn, larvae, spat and juvenile stages of fish shellfish, crustaceans and marine animals, excluding those non-tidal species defined in the Wildlife Chapter of this Agreement;
- e. "Lisims" means the Nass River in the Nisga'a language;
- f. "marine plants" includes all benthic and detached algae, kelp and other aquatic plants including marine flowering plants, brown algae, red algae, green algae and phytoplankton;
- g. "Nass salmon" means chinook, chum, coho, sockeye and pink salmon originating in the Nass Area;
- h. "Nass steelhead" means steelhead originating in the Nass Area;
  - i. "non-salmon species" means a species of fish in the Nass Area other than Nass salmon and Nass steelhead, *Oncorhynchus* spp., including marine plants and marine mammals;
- j. "surplus" means Nass salmon that are in excess of the physical incubation and rearing capacity of a natural area or an enhancement facility and are not harvested in Nisga'a other aboriginal, commercial or recreational fisheries;
- k. "Total Allowable Catch (TAC)" means the total allowable catch of a species of Nass salmon, Nass steelhead, or a Nass non-salmon species, in each year as determined by the Minister.

### *GENERAL*

2. Nisga'a citizens will have the right to harvest fish pursuant to the Final Agreement, subject to measures which are

necessary for conservation, and legislation enacted for the purposes of public health and public safety.

3. The Final Agreement is not intended to alter the laws of general application in respect of proprietary interests in fish or marine plants.
4. The Final Agreement will not preclude Nisga'a citizens from harvesting fish and marine plants outside the Nass Area in accordance with any agreements between Nisga'a Central Government and other First Nations, subject to the laws of general application or in accordance with such other harvesting arrangements as may exist between those other First Nations and Canada or British Columbia.
5. The Final Agreement will not preclude Nisga'a Central Government or Nisga'a citizens from fishing under the authority of any other licence issued under legislation.
6. All Nisga'a entitlements will be held communally and may not be alienated.
7. Nisga'a citizens may trade or barter among themselves, or among other aboriginal peoples, any fish and marine plants harvested pursuant to the Final Agreement, subject to regulation by Nisga'a Central Government and compliance with the Nisga'a annual fishing plan.
8. Any fish which are transported outside Nisga'a Lands for trade or barter must be identified as fish for trade or barter.

#### *SALMON HARVEST ENTITLEMENTS*

9. The Minister may, where necessary for conservation, determine a minimum escapement level for each species of Nass salmon. If the number of Nass salmon returning to Canadian waters, less incidental harvests, is less than or equal to the minimum escapement level, no directed harvests of that species will be permitted.
10. If, in any year, the number of a species of Nass salmon returning to Canadian waters, less incidental harvests, is greater than the minimum escapement level determined by the Minister, Nisga'a citizens or Nisga'a Central Government will be entitled to harvest a number of each species which varies with the size of the total run returning to Canadian waters as set out in Appendix H.
11. If the exact amounts of the Nisga'a entitlements set out in paragraph 10, or as adjusted by paragraph 13, are not harvested in any year, the Nisga'a harvest share and annual fishing plans will be adjusted, as agreed by the Minister and Nisga'a Central Government, to take into account any overages or underages in past harvests, in accordance with Appendix I.
12. An underage will not be recognized by the Parties unless Nisga'a citizens or Nisga'a Central Government apply reasonable efforts to harvest their entitlements.
13. In any year, the Minister and Nisga'a Central Government may agree to adjust the species composition of the Nisga'a harvest in that year in accordance with the system of equivalencies described in Appendix J. Any such adjustment will not have the effect of altering the total salmon entitlement set out in the Final agreement. When a species or fishery under the jurisdiction of British Columbia will be affected by the adjustment, Canada and Nisga'a Central Government will consult with British Columbia prior to commencement of fishing for the adjusted harvest, and will notify British Columbia of any seasonal adjustments.
14. The Minister may establish management regimes for aboriginal, commercial and recreational salmon fisheries, such as the development of harvest quotas, to ensure the viability of such fisheries. The form of Nisga'a salmon entitlements may be made compatible with such management regimes, with the agreement of Nisga'a Central Government.
15. Nisga'a Central Government may authorize persons other than Nisga'a citizens to harvest portions or all of the Nisga'a salmon entitlements. Harvests by such persons must be in accordance with provisions of the Final Agreement and the Nisga'a annual fishing plan.
16. The Final Agreement will provide that, on the effective date, Canada and British Columbia will enter into a

harvest agreement, pursuant to paragraph 17, with Nisga'a Central Government, outside the Final Agreement.

17. The harvest agreement will:

a. include a harvest allocation or quota equal to:

i. sockeye salmon equivalent to 13% of the adjusted Total Allowable Catch (TAC) for sockeye salmon, and

ii. pink salmon equivalent to 15.0% of the adjusted TAC for pink salmon, where the adjusted TAC is equal to the Canadian TAC for a species less the Nisga'a entitlement for that species defined in paragraph 10;

b. be for a term of 25 years and be replaceable at the discretion of Nisga'a Central Government every 15 years for a further 25 years;

c. include provisions for the harvest and disposition of fish, determination of overages and underages, harvest monitoring and fisheries management which will be consistent with those for the entitlements in the Final Agreement; and

d. include a dispute settlement process and specified remedies concerning any breach of its terms by any Party, including fair compensation for termination or modification of the harvest allocation or quota pursuant to paragraph 17(a).

18. The Final Agreement will provide that the harvest agreement will be established pursuant to settlement legislation.

19. For greater certainty, the harvest agreement will not be construed to be a land claims agreement and will not create treaty rights within the meaning of section 35 of the Constitution Act, 1982.

20. The Minister will implement the harvest agreement by authorizing through licences or other means, under the laws of general application, the harvest set out in paragraph 17.

21. The harvest allocation or annual quota set forth in paragraph 17 will be subject to the terms and conditions of the harvest agreement.

22. The harvest allocation or annual quota set forth in paragraph 17 will have the same priority as commercial or recreational allocations in fisheries management decisions made by the federal Minister.

23. The Minister may establish management regimes for aboriginal, commercial and recreational salmon fisheries, such as the development of harvest quotas, to ensure the viability of such fisheries. The form of harvest allocation or quota set forth in paragraph 17 may be made compatible with such management regimes, with the agreement of Nisga'a Central Government.

24. For greater certainty, fish harvested pursuant to the harvest agreement may be sold, in accordance with the terms of the harvest agreement.

#### *HARVEST OF SURPLUS SALMON*

25. In any year, the Minister may determine that a quantity of salmon is surplus.

26. The Joint Fisheries Management Committee (the JFMC) may recommend to the Minister procedures for the identification of a surplus, and terms and conditions for the harvest of such surplus. The JFMC may provide advice in respect of the quantity of any surplus.

27. The Minister may permit Nisga'a Central Government to harvest a quantity of surplus salmon, and may establish the terms and conditions of such harvests. Any harvest of surplus salmon which the Minister proposes to take into account in the determination of overages and underages, in accordance with Appendix I, will require the agreement

of Nisga'a Central Government.

#### DISPOSITION OF SALMON HARVESTS

28. Nass salmon harvested pursuant to Nisga'a entitlements and surplus salmon may be sold by Nisga'a Central Government, subject to the following conditions:

- a. only Nisga'a Central Government or its duly authorized agents, contractors and licensees will be permitted to sell such salmon;
- b. subject to the provisions of the Final Agreement, Nisga'a Central Government and its duly authorized agents, contractors and licensees will comply with laws of general application, including laws respecting health and safety, and transport, inspection, processing, packaging, storage, export, quality control and labelling of fish; and
- c. all harvests for sale will be in accordance with the annual fishing plan.

29. Sale will not be permitted for a specific Nass salmon species if, in the year in which it is harvested, there are no directed harvests in Canadian commercial or recreational fisheries of Nass Area stocks of that species.

#### *SALMONID ENHANCEMENT*

30. With the approval of the Minister, Nisga'a Central Government may conduct enhancement initiatives for salmonid resources. The JFMC may make recommendations in respect of such initiatives.

31. Where Nisga'a harvests of chinook, coho and chum can be identified as resulting from Nisga'a enhancement initiatives, these harvests will be in addition to the Nisga'a entitlement defined in paragraph 10. The Nisga'a share of these harvests is set forth in Appendix H.

32. Nisga'a will be entitled to harvest those salmon which result from a Nisga'a enhancement initiative and which are surplus to spawning requirements, in the same proportion as the Nisga'a contribution is to the total cost of the initiative. Such harvests will not be subject to paragraph 11 and will not be counted towards the Nisga'a salmon entitlement pursuant to paragraph 10 and the harvest agreement pursuant to paragraph 17.

33. Notwithstanding paragraphs 10 and 31, the Minister and Nisga'a Central Government may enter into agreements in respect of the Nisga'a harvests of those salmonids which result from Nisga'a enhancement initiatives.

#### STEELHEAD

34. The Parties may conduct studies to determine the status of Nass steelhead stocks, conservation requirements and allowable catch. The studies may include the following matters:

- a. reliable estimates of sustainable harvest including the determination of escapement requirements and TAC;
- b. the productive capacity of various tributaries in the Nass Area;
- c. appropriate measures to improve Nass steelhead stocks; and
- d. a plan to implement any such measures.

35. The JFMC will formulate plans for the studies referred to in paragraph 34 and provide recommendations to the Parties regarding the conduct of studies.

36. British Columbia and Nisga'a Central Government will negotiate and attempt to reach agreement regarding the studies and plans required to determine actions necessary for conservation in respect of summer run Nass steelhead.

37. Upon the commencement of studies referred to in paragraph 36 concerning summer run Nass steelhead, the

Minister will not permit any directed harvest of summer run Nass steelhead during the course of the studies.

38. If any study referred to in paragraph 34 identifies a stock conservation concern for a Nass steelhead stock, the JFMC may provide recommendations to the Minister and Nisga'a Central Government regarding appropriate measures to address the identified concern.

39. Subject to paragraph 40, Nisga'a citizens may harvest winter run Nass steelhead for domestic purposes.

40. If the Minister forms the opinion that there is a conservation concern with winter run Nass steelhead such that it may be necessary to suspend directed harvesting of winter run Nass steelhead, studies pursuant to paragraph 34 will be conducted. The Minister will not permit any directed harvest of winter run Nass steelhead during the course of such studies.

41. Following consideration of the studies pursuant to paragraphs 36 and 40, the Minister may, where necessary for conservation, determine a minimum escapement level for summer or winter Nass steelhead stocks returning to Canadian waters below which there will not be any directed harvest for that stock.

42. Above the level determined in paragraph 41, the Nisga'a entitlement for summer run Nass steelhead will be as set out in the Final Agreement.

43. Sale of Nass steelhead harvested by Nisga'a Central Government or Nisga'a citizens pursuant to the Final Agreement will be in accordance with laws of general application.

44. The authorities and responsibilities of Nisga'a Central Government in respect of the management of steelhead will be carried out upon the recommendations of the JFMC and approval of the Minister as set out in the management provisions of this Chapter.

#### *HARVEST ENTITLEMENTS OF NON-SALMON SPECIES*

45. Nisga'a citizens will be entitled to harvest non-salmon species within the Nass Area for domestic purposes, prior to the establishment of a defined Nisga'a entitlement for that non-salmon species, pursuant to paragraph 47.

46. Canada or British Columbia, with respect to Nass non-salmon species within their respective management authorities, or Nisga'a Central Government may propose that the Nisga'a entitlement be established pursuant to paragraph 47.

47. Unless Nisga'a Central Government and Canada or British Columbia, for species within their respective management authorities, otherwise agree, the defined Nisga'a entitlement for Nass non-salmon species will be equal to 125% of the basic Nisga'a entitlement for that species.

48. The basic Nisga'a entitlement for a non-salmon species will be determined by taking into account:

- a. current and past Nisga'a domestic use;
- b. the impact of conservation requirements and harvesting by others on Nisga'a domestic use;
- c. the status of the species;
- d. changes in Nisga'a fishing effort; and
- e. any such other factors as the Parties agree are relevant.

49. The Parties may conduct such studies as they consider necessary to determine the basic Nisga'a entitlement for any Nass non-salmon species.

50. The Parties may seek the advice of the JFMC on the determination of the basic Nisga'a entitlement for any Nass non-salmon species.

51. If Nisga'a Central Government and Canada or British Columbia, for species within their respective management authorities, do not agree on the basic Nisga'a entitlement for a Nass non-salmon species, determination of the basic Nisga'a entitlement will be referred to binding arbitration pursuant to the Dispute Resolution Chapter of the Final Agreement.

52. Nisga'a Central Government and Canada or British Columbia, for species within their respective management authorities, will negotiate and attempt to reach agreement on basic Nisga'a entitlements, as soon as practicable following the effective date, for the following Nass non-salmon species:

- a. crab, including dungeness, tanner, and snow;
- b. halibut;
- c. prawns and shrimp;
- d. herring; and
- e. marine plants.

53. The Parties will conduct a study to assess the availability of herring and kelp within the Nass Area to determine the feasibility of a Nisga'a roe-on-kelp impoundment.

54. Nisga'a citizens will be entitled to harvest the TAC of oolichan in the Nass Area, together with any persons who have aboriginal rights to oolichan resources in the Nass Area. Such harvests will be in accordance with any agreements that may be reached between Nisga'a Central Government and other First Nations.

55. Nisga'a citizens will have the exclusive right to harvest cockles, clams and other bivalve species, within those parts of the Nass Area defined in Appendix K. These harvest areas will be specified in the Final Agreement and will include some, but not all of the beaches with habitat suitable for such species. This right to harvest is the defined Nisga'a entitlement for these species pursuant to paragraph 47.

56. Nisga'a Central Government may authorize persons other than Nisga'a citizens to harvest portions or all of the Nisga'a non-salmon entitlements. Harvests by such persons must be in accordance with provisions of the Final Agreement and approved Nisga'a annual fishing plans.

57. Sale of Nass non-salmon species harvested by Nisga'a Central Government or Nisga'a citizens pursuant to the Final Agreement will be in accordance with laws of general application.

#### *HARVEST MONITORING REQUIREMENTS*

58. Nisga'a Central Government will comply with monitoring requirements as set out in the Nisga'a annual fishing plan for the harvest and sale of Nisga'a entitlements. Such conditions may include:

- a. requirements for identification of those persons authorized to harvest Nisga'a entitlements;
- b. processes for catch monitoring which may include the establishment of designated landing sites and procedures for the transportation of harvests;
- c. reporting and accounting of the harvest and sale of Nisga'a entitlements by all persons;
- d. requirements for compilation and reporting of data to the Minister; and
- e. verification by the Minister of the monitoring processes.

59. Nisga'a citizens and other persons who harvest or sell pursuant to the provisions of the Final Agreement may be required to show proof of their authority to do so.

60. Canada or British Columbia will not impose fees, licences, charges, or royalties on Nisga'a Central Government

or its authorized agents, contractors or licensees in respect of the harvest of the Nisga'a entitlements for domestic purposes.

61. Nisga'a Central Government and its authorized agents, contractors or licensees will be liable for fees and charges applicable to all commercial harvesters in respect of the sale of the harvest of Nisga'a entitlements except to the extent that Nisga'a Central Government performs the activities for which such fees and charges are levied.

### *FISHERIES MANAGEMENT*

#### *Responsibilities of the Parties*

62. Subject to the provisions of the Final Agreement, the Minister will be responsible for fisheries and fisheries habitat.

63. Nisga'a Central Government will be responsible for and will make regulations in respect of its rights and the carrying out of its obligations pursuant to the Final Agreement, including such matters as:

- a. the allocation among Nisga'a citizens of their entitlements;
- b. the establishment of Nisga'a licensing requirements and their administration;
- c. the designation and documentation of Nisga'a harvesters and its duly authorized agents, contractors, and licensees;
- d. the disposition of harvested fish;
- e. designation of vessels which will conduct the harvest for sale, including documentation of such designation; and
- f. other matters as agreed upon by the Parties.

64. Nisga'a Central Government will make regulations in respect of:

- a. the conduct by Nisga'a Central Government and its agents, contractors and licencees of the harvest of Nisga'a entitlements; and
- b. ensuring that Nisga'a citizens and duly authorized agents, contractors, and licensees comply with the provisions of the Nisga'a annual fishing plan.

#### *Management Structure*

65. The Joint Fisheries Management Committee (JFMC) will be established by the Parties on the effective date to facilitate cooperative planning and conduct of Nisga'a fisheries and enhancement activities in the Nass Area. In furtherance of this purpose, the JFMC will carry out the responsibilities assigned to it under the Final Agreement, including:

- a. sharing information and plans for existing and proposed fisheries which could affect Nisga'a fisheries;
- b. arranging for collection and exchange of data required for the fisheries provisions of the Final Agreement;
- c. providing advice concerning escapement goals and in season adjustments to fishing plans;
- d. providing recommendations to the Minister and Nisga'a Central Government regarding other conservation needs and management of resources subject to the Final Agreement;
- e. providing advice to the Parties respecting the determination of basic Nisga'a entitlements for Nass non-salmon species;



f. making recommendations to the Minister and Nisga'a Central Government regarding the conduct and monitoring of the harvest of Nisga'a entitlements pursuant to the Final Agreement, including a Nisga'a annual fishing plan;

g. making recommendations to the Minister and Nisga'a Central Government respecting studies and projects to enhance salmon production; and

h. carrying out such other responsibilities as the Parties may agree.

66. The JFMC will be composed of two members appointed by each of Nisga'a Central Government, Canada and British Columbia. The members of the JFMC representing Nisga'a Central Government and Canada will be responsible for functions respecting fisheries managed by Canada. The members of the JFMC representing Nisga'a Central Government and British Columbia will be responsible for functions respecting fisheries managed by British Columbia.

67. The JFMC will meet as often as necessary to carry out its responsibilities under the Final Agreement.

68. The JFMC will perform its functions by consensus whenever possible. If there is no consensus or it is impracticable for the JFMC to address an issue, each Party's representatives may submit recommendations or advice as the case may be.

69. The JFMC may establish its own rules of procedure.

70. Should Canada or British Columbia establish fisheries management advisory bodies for areas which may include the Nass Area, Canada or British Columbia will consult with Nisga'a Central Government in developing any such fisheries management advisory bodies and, where appropriate, will provide for the participation by Nisga'a Central Government in such fisheries management advisory bodies. Nisga'a Annual Fishing Plan

71. The Nisga'a annual fishing plan for the harvest and, where applicable, the sale of salmon and non-salmon species will include provisions, as appropriate, respecting:

a. fishery management plans for species harvested under the Final Agreement setting out the location, timing, the method of harvest and applicable gear restrictions as required for conservation;

b. fishery monitoring plans;

c. fishery enforcement plans for the Nisga'a fisheries;

d. stock assessment and enhancement plans;

e. the terms and conditions for the sale of fish harvested pursuant to Nisga'a entitlements by Nisga'a Central Government and its duly authorized agents, contractors and licensees;

f. plans regarding harvests by others of Nisga'a entitlements; and

g. other annual plans as may be agreed between the Parties.

72. Nisga'a Central Government will propose an annual fishing plan pursuant to paragraph 71 consistent with Nisga'a harvest allocations for each species, identified management concerns and Nisga'a preferences for harvest locations, methods and times. The proposed fishing plan will be forwarded to the JFMC on a timely basis for review.

73. The JFMC will consider the proposed annual fishing plan and make appropriate adjustments as are necessary to integrate the Nisga'a fisheries with other resource conservation and harvesting plans. The JFMC will recommend a Nisga'a annual fishing plan to the Minister and Nisga'a Central Government, on a timely basis.

*Review of Recommendations*

74. In considering the recommendations of the JFMC, the Minister will take into account, among other things:

- a. conservation requirements and availability of fisheries resources;
- b. utilization of the fisheries resources for the benefit of all Canadians;
- c. efficient and effective harvesting of fisheries resources;
- d. requirements for the integration and efficient management of all fisheries; and
- e. accepted scientific procedures for management of fisheries resources.

75. The Minister will, on a timely basis, accept or vary the recommendations made by the JFMC, in a manner consistent with the Final Agreement, and will provide written reasons for varying the recommendations of the JFMC, including the Nisga'a annual fishing plan.

76. Where special circumstances make it impracticable to receive advice from the JFMC, the Minister may make such decision or take such action as the Minister deems necessary, without receiving advice from the JFMC. The Minister will advise the other Parties and the JFMC as soon as practicable of the decision made or action taken.

#### *Enforcement*

77. Nisga'a Central Government may enter into agreements with Canada or British Columbia concerning enforcement of federal, provincial or Nisga'a laws in respect of fisheries.

#### *LISIMS FISHERIES CONSERVATION TRUST*

78. The Lisims Fisheries Conservation Trust will be established by Canada and Nisga'a Central Government as soon as practicable after the effective date.

79. The objectives of the Trust are to:

- a. promote conservation and protection of Nass Area fish species;
- b. facilitate sustainable management of fisheries for Nass Area species and stocks for the benefit of all Canadians; and
- c. provide opportunity for Nisga'a participation in the stewardship of Nass Area fisheries.

80. The Trustees will be:

- a. an equal number of Trustees appointed by Canada and Nisga'a Central Government;
- b. one person jointly agreed upon by Canada and Nisga'a Central Government; and
- c. additional Trustees if agreed upon by Canada and Nisga'a Central Government.

81. The Trustees will initiate, sponsor, fund and direct:

- a. projects and programs identified in Appendix L; and
- b. any other projects and programs the Trustees determine fulfil the objectives of the Trust.

82. In determining expenditures from the Trust, the Trustees will consider recommendations from the JFMC.

83. Canada and Nisga'a Central Government will contribute to the Trust as follows:

- a. Canada: \$10 million; and

b. Nisga'a Central Government: \$3 million.

84. The Trust may be increased by gifts, donation, grants and other sources of funds.

85. Except for the reasonable costs of administration, all expenditures from the Trust will be directed to the objectives of the Trust and no monies for any other purpose will be expended from the Trust capital.

86. Prior to the effective date, Canada and the Nisga'a Tribal Council will:

a. enter into an agreement to give effect to the Trust; and

b. jointly pursue the requirements to establish the Trust as a charitable trust.

87. Upon contribution by Canada of the full amount referred to in subparagraph 83(a), Canada will have discharged any and all obligations under the Final Agreement to fund activities related to the fulfilment of the objectives of the Trust.

88. For greater certainty, the operation of the Trust will not affect the responsibilities of Canada pursuant to federal legislation, or the responsibilities of Canada or Nisga'a Central Government pursuant to the Fisheries Chapter of the Final Agreement.

#### *PARTICIPATION IN THE COAST-WIDE COMMERCIAL FISHERY*

89. Funding in the amount of \$11.5 million and appropriate support will be provided to Nisga'a Central Government to enable it to increase its capacity, in the form of licences, or vessels and licences, to participate in the coast-wide commercial fishery. Any such commercial licenses or vessels will be subject to laws of general application in respect of commercial fisheries in British Columbia.

90. Nisga'a Central Government may allocate up to \$3 million referred to in paragraph 89 for other fisheries related activities.

#### *INTERNATIONAL ARRANGEMENTS*

91. Canada will consult with Nisga'a Central Government with respect to the formulation of Canada's positions in relation to international discussions or negotiations which may significantly affect fisheries resources referred to in the Final Agreement.

92. The Final Agreement will not affect or preclude participation of Nisga'a Central Government or Nisga'a citizens in commissions or fisheries management advisory bodies.

#### *PROCESSING FACILITIES*

93. Nisga'a Central Government will not establish a new fish processing facility capable of processing more than 5,000 metric tons of round weight of fish within 12 years of the effective date, except as agreed by the Parties.

### **WILDLIFE**

#### *DEFINITIONS*

1. In this Chapter:

a. "designated species" are those species for which there is a total allowable harvest in the Wildlife Management area;

b. "entitlements" means the rights set forth in paragraphs 16 and 17, but does not include the right to hunt pursuant to laws of general application;

c. "fish" means any:

- i. vertebrate of the order Petromyzontiformes (lampreys) or class Osteichthyes (bony fishes), or
  - ii. invertebrate of the class Crustacea (crustaceans) or class Mollusca (mollusks) from or in non-tidal waters of the Nass Area, including the eggs and juvenile stages of these species, and excluding all anadromous species;
- d. "migratory birds" means migratory birds as defined pursuant to federal legislation enacted further to international conventions;
- e. "wildlife" means a mammal, bird, fish, reptile, or amphibian, including the eggs and juvenile stages of these vertebrates, excluding migratory birds and marine mammals.

#### *GENERAL*

2. Nisga'a citizens will have the right, subject to measures which are necessary for conservation, and legislation enacted for the purposes of public health and public safety, to harvest wildlife pursuant to the Final Agreement in a manner:

- a. consistent with:
  - i. the communal nature of the Nisga'a harvest for domestic purposes, and
  - ii. the traditional seasons of the Nisga'a harvest; and
- b. that does not interfere with other authorized uses of Crown land or the ability of the Crown to authorize uses of Crown land.

3. All Nisga'a entitlements will be held communally and may not be alienated.

4. The Final Agreement is not intended to alter the laws of general application in respect of proprietary interests in wildlife or migratory birds.

5. The Final Agreement will not preclude Nisga'a Central Government or Nisga'a citizens from harvesting wildlife throughout Canada under the authority of any other licence issued under legislation.

6. The Final Agreement will not preclude Nisga'a citizens from harvesting wildlife outside the Wildlife Management area in accordance with:

- a. the laws of general application; or
- b. such other harvesting arrangements as may exist between other First Nations and Canada or British Columbia.

#### *WILDLIFE MANAGEMENT AREA*

7. The Nisga'a wildlife harvest pursuant to the Final Agreement may be carried out anywhere within the area defined in Appendix M referred to herein as the Wildlife Management area.

8. British Columbia and Nisga'a Central Government may agree to amend the Wildlife Management area from time to time.

9. For greater certainty, provisions of provincial laws concerning the designation of wildlife management areas and critical wildlife areas will not apply to Nisga'a Lands.

#### *DESIGNATED SPECIES*

10. Nisga'a Central Government or British Columbia may request the Wildlife Committee to recommend whether a species should be or continue to be a designated species.

11. In considering whether a species should be or continue to be a designated species, the Wildlife Committee will obtain from British Columbia and Nisga'a Central Government such information as is reasonably available and necessary to enable it to make a recommendation.

12. A species other than the initial designated species may only be designated in accordance with the Final Agreement when the Minister determines that there is a significant risk to a wildlife population.

13. The Minister will, prior to deciding whether a species within the Wildlife Management area will be a designated species or establishing a total allowable harvest for any species within the Wildlife Management area, obtain and consider the recommendation of the Wildlife Committee.

14. In determining the total allowable harvest for a particular species, the Minister will, in accordance with proper wildlife management, take into account the following:

a. the population of the species within the Wildlife Management area; and

b. the population of the species within its normal range or area of movement outside the Wildlife Management area.

15. Prior to the establishment of total allowable harvest levels for the initial designated species, British Columbia and the Nisga'a Tribal Council will conduct such studies as they consider necessary to enable the Wildlife Committee to recommend the establishment of the appropriate total allowable harvest of each species.

#### *NISGA'A ENTITLEMENTS*

16. Nisga'a citizens will be entitled to harvest a percentage of the total allowable harvest of each designated species with a guarantee of a minimum entitlement in all years when there is an allowable harvest.

17. Prior to the establishment of a total allowable harvest and Nisga'a entitlement for any wildlife species, Nisga'a citizens will be entitled to harvest that species within the Wildlife Management area for domestic purposes.

18. The initial designated species will be moose, grizzly bear, and mountain goat.

19. The Nisga'a allocation of moose from the total allowable harvest will be 80% of the first 50 moose, 32% of the next 50 moose and 56% of all remaining moose.

20. The Final Agreement will set forth the Nisga'a allocations of grizzly bear and mountain goat.

21. British Columbia or Nisga'a Central Government may request that the Nisga'a allocation of an initial designated species be reviewed and varied at any time after five years from the date the entitlement came into effect for that species. British Columbia and Nisga'a Central Government may each request one further review of the Nisga'a allocation of that species at any time after a date five years from the first review, provided that no reviews may occur after fifteen years from the effective date, without mutual consent.

22. The Party requesting a review of the allocation formula for a species will bear the onus of establishing that there should be a change to the allocation.

23. Where the allocation of an initial designated species is varied pursuant to the Final Agreement, that allocation will be deemed to be a part of the Final Agreement.

24. If a species other than the initial designated species is designated in accordance with the Final Agreement, British Columbia and Nisga'a Central Government will negotiate an allocation for that species, and that allocation will be deemed to be a part of the Final Agreement. British Columbia and Nisga'a Central Government may include review provisions in respect of that allocation.

25. If British Columbia and Nisga'a Central Government agree to vary any wildlife allocation, it will be deemed to be a part of the Final Agreement.

26. If British Columbia and Nisga'a Central Government fail to agree on a new allocation for an initial designated species following a review pursuant to paragraph 21, or an allocation for a species other than an initial designated species pursuant to paragraph 24, the issue will be referred to binding arbitration pursuant to the Dispute Resolution Chapter of the Final Agreement. The arbitration will take into account all relevant information presented by British Columbia and Nisga'a Central Government in support of their positions, and in particular will consider information presented in respect of:

- a. the status of the species;
- b. conservation requirements;
- c. current and past Nisga'a domestic usage;
- d. change in Nisga'a harvesting effort; and
- e. the impact of harvesting by others on the species.

#### *WILDLIFE MANAGEMENT*

27. A Wildlife Committee will be established on the effective date to facilitate wildlife management within the Wildlife Management area. For these purposes, the Committee will:

- a. recommend to the Minister and Nisga'a Central Government conservation requirements for any wildlife species within the Wildlife Management area;
- b. recommend to the Minister and Nisga'a Central Government whether any species should be designated or continue to be designated, in accordance with the Final Agreement;
- c. recommend to the Minister and Nisga'a Central Government on an annual basis the total allowable harvest levels for designated species, including the objectives of the harvest in respect of such matters as the distribution of the harvest within the Wildlife Management area, the sex and age composition of the harvest, and monitoring, reporting and auditing requirements;
- d. recommend to the Minister and Nisga'a Central Government annual management plans which are consistent with the provisions of the Final Agreement and proper wildlife management, for the Nisga'a harvest of designated species, and for other species within the Wildlife Management area for which it considers that there should be a management plan;
- e. design and advise the Minister and Nisga'a Central Government concerning any studies necessary to implement the terms of the Final Agreement, or to facilitate proper wildlife management in the Wildlife Management area;
- f. provide advice concerning regulatory amendments in respect of the management of wildlife and harvests within the Wildlife Management area;
- g. provide advice on other issues of wildlife management policies, projects, plans and programs which significantly affect the Wildlife Management area and its wildlife populations;
- h. develop such long-term wildlife management plans as it considers necessary for carrying out its responsibilities; and
- i. such other matters as Nisga'a Central Government and British Columbia may agree.

28. The Wildlife Committee will consist of an equal number of representatives of Nisga'a Central Government and British Columbia, and the Committee will establish its own procedures.

29. The Wildlife Committee will perform its functions by consensus whenever possible. If there is no consensus, British Columbia and Nisga'a Central Government's representatives may each submit recommendations or advice as

the case may be.

30. British Columbia will consult with Nisga'a Central Government prior to enacting regulations or policies which will significantly affect wildlife management or harvesting within the management area. This consultation may take place through the Wildlife Committee.

31. Nisga'a Central Government and British Columbia will provide the Wildlife Committee with all relevant data which is in their possession in respect of all wildlife harvesting and other management matters within the Wildlife Management area.

32. In considering the recommendations of the Wildlife Committee or its members, the Minister will take into account, among other things:

- a. conservation requirements and resource availability;
- b. utilization of the resource for the benefit of all Canadians;
- c. efficient and effective management of wildlife resources;
- d. requirements for the integration and efficient management of the overall wildlife resources;
- e. biologically accepted procedures for wildlife management; and
- f. other relevant statutory considerations.

33. The Minister will provide written reasons for decisions which reject or are in variance from recommendations made pursuant to the Final Agreement.

34. Decisions by the Minister not to accept recommendations will be non-delegable below the Assistant Deputy Minister level.

35. Where special circumstances make it impracticable to receive recommendations or advice from the Wildlife Committee, the Minister may make such decision or take such action as the Minister deems necessary, without receiving recommendations or advice from the Wildlife Committee. The Minister will advise Nisga'a Central Government and the Wildlife Committee as soon as practicable of the decision made or action taken, and will provide written reasons in respect of those matters for which recommendations are normally given.

36. Nisga'a Central Government will propose an annual management plan based on pre-season estimates of the total allowable harvest for each designated species, identified management concerns and Nisga'a preferences for harvest locations, methods and times. The proposed management plan will be forwarded to the Wildlife Committee on a timely basis for review.

37. An annual management plan will set out the management provisions associated with the Nisga'a harvest, and in particular may include provisions consistent with the Final Agreement in respect of:

- a. the identification of Nisga'a hunters;
- b. the methods, times and locations for the Nisga'a harvest;
- c. monitoring and data collection;
- d. possession and transportation of wildlife or wildlife parts;
- e. the number of any designated or other species that may be harvested on Nisga'a Public Lands by persons other than Nisga'a citizens, pursuant to paragraph 48;
- f. provisions in respect of angling guiding pursuant to paragraph 68, including training, insurance and reporting; and

g. other matters agreed to by British Columbia and Nisga'a Central Government.

38. Where a proposed management plan or any amendment thereto is consistent with the Final Agreement, the Minister will approve the management plan, or any amendment thereto.

39. For greater certainty, the Minister will not approve any methods of harvest that differ from those permitted under laws of general application unless the Minister is satisfied that those methods are consistent with public safety.

40. Where the Minister does not approve a management plan pursuant to this Chapter, the Minister will provide written reasons and will specify what changes to the proposed management plan are necessary for its approval.

41. Subject to the terms of the Final Agreement and approved management plans, laws of general application will apply to the Nisga'a harvest.

42. Hunting in the management area will be managed in a manner consistent with the total allowable harvest and harvest objectives established pursuant to the Final Agreement.

43. Nisga'a Central Government may make regulations in respect of its rights and the carrying out of its obligations pursuant to the Final Agreement, including such matters as:

- a. the allocation among the Nisga'a of their entitlements;
- b. the establishment of Nisga'a licensing requirements and their administration;
- c. the conduct of the harvest of Nisga'a entitlements;
- d. designation and documentation of harvesters of the Nisga'a entitlement; and
- e. ensuring that harvesters of Nisga'a entitlements comply with the provisions of the annual management plan.

44. Nisga'a Central Government may develop and carry out training programmes for individual hunters in relation to conservation and safety, which are comparable to training programmes that are carried out pursuant to the laws of general application.

45. Canada and British Columbia will not impose fees, licences, charges or royalties on Nisga'a Government or Nisga'a citizens in respect of the harvest of wildlife entitlements pursuant to the Final Agreement. This paragraph does not restrict Canada's ability to require licences for the use and possession of firearms under laws of general application on the same basis as applies to other aboriginal people of Canada.

46. From time to time Nisga'a Central Government and British Columbia will negotiate and attempt to reach agreements concerning Nisga'a Central Government contributions to any provincial fund dedicated to wildlife conservation and habitat protection, at a level commensurate with the contributions made by licenced hunters throughout British Columbia, the applicability of such a fund to the Wildlife Management area, and wildlife management activities performed by Nisga'a Central Government.

47. Nisga'a Central Government will provide non-Nisga'a hunters reasonable opportunities to harvest wildlife on Nisga'a Public Lands.

48. The management plan will specify the number of each designated species that may be harvested on Nisga'a Public Lands by non-Nisga'a hunters, having regard to Nisga'a preferences for harvesting Nisga'a entitlements on Nisga'a Lands, and the availability of that species in the rest of the Wildlife Management area.

49. Persons harvesting wildlife on Nisga'a Lands will be required to comply with Nisga'a laws in respect of public safety and public access on Nisga'a Lands.

50. In addition to any other requirements imposed by provincial or federal laws of general application, Nisga'a Government may require persons hunting or fishing on Nisga'a Lands to obtain a permit or licence for the purpose



of monitoring and regulating public access to hunt and fish on Nisga'a Lands, provided that such permits or licences will be made reasonably available at a reasonable fee in respect of the administrative and other costs of such monitoring.

51. Subject to paragraph 14 of the General Provisions Chapter of this Agreement and paragraphs 48-50, as owners of the land, only Nisga'a citizens will have the right to harvest wildlife on Nisga'a Lands.

52. Nisga'a Central Government will be entitled to appropriate representation on any regional or provincial advisory body established to provide advice to the Minister in respect of wildlife matters in an area that includes any portion of the Wildlife Management area or with respect to wildlife populations within the management area.

#### *TRADE, BARTER AND SALE OF WILDLIFE*

53. Nisga'a citizens may trade or barter among themselves, or among other Aboriginal peoples, any wildlife or wildlife parts, including meat, harvested pursuant to the Final Agreement, subject to regulation by Nisga'a Central Government, provided that laws of general application in respect of export from British Columbia will apply.

54. Any wildlife or wildlife parts which are transported outside Nisga'a Lands pursuant to paragraph 53 must be identified as wildlife for trade or barter.

55. Sale of wildlife and wildlife parts, including meat, will be in accordance with laws of general application.

#### *TRAPPING*

56. Existing vacant traplines located wholly or partially on Nisga'a Lands will be transferred to Nisga'a Central Government.

57. Where the holder of a trapline within the Wildlife Management area agrees to transfer the trapline to Nisga'a Central Government, British Columbia will consent to the transfer.

58. Where a trapline wholly or partially on Nisga'a Lands becomes vacant by reason of its abandonment or the operation of law, it will be transferred to Nisga'a Central Government.

59. Nisga'a citizens who hold traplines outside Nisga'a Lands will continue to hold those traplines in accordance with the laws of general application.

60. British Columbia will not issue any new traplines within Nisga'a Lands without the consent of Nisga'a Central Government. British Columbia will consult with Nisga'a Central Government concerning any proposed transfer of, or change in terms and conditions of an existing trapline.

61. Prior to the Final Agreement, British Columbia and Nisga'a Central Government will negotiate and attempt to reach agreement in respect of Nisga'a Central Government authority for the management of specified traplines, including annual fur management planning.

62. For the purposes of the regulation of trapping, other than on existing traplines which are held by an individual, Nisga'a Lands will be dealt with in the same manner as fee simple land in British Columbia. The Final Agreement will include appropriate licensing provisions.

63. The laws of general application will apply to the sale of furs.

#### *GUIDING*

64. The Final Agreement will include provisions in respect of Nisga'a guide outfitting.

65. British Columbia will not issue a new guide outfitter certificate on Nisga'a Lands without the consent of Nisga'a Central Government. British Columbia will consult with Nisga'a Central Government concerning any proposed transfer of, or change in terms and conditions in an existing guide outfitter certificate.

66. On the effective date, British Columbia will issue an angling guide licence to Nisga'a Central Government, for water courses outside of Nisga'a Lands, to be specified in the Final Agreement. This licence will be subject to the laws of general application.

67. British Columbia will not issue any new angling guide licences, for waters within Nisga'a Lands without the consent of Nisga'a Central Government. British Columbia will consult with Nisga'a Central Government concerning any proposed transfer of, or change in terms and conditions in an existing angling guide licence.

68. The annual management plan will include provisions in respect of Nisga'a guiding of anglers within Nisga'a Lands that will include provisions comparable to those applicable outside of Nisga'a Lands in respect of such matters as training, insurance and reporting.

#### *MIGRATORY BIRDS*

(NOTE: The provisions of this Part anticipate the ratification of the Protocol dated December 14, 1995 between Canada and the United States of America to amend the 1916 Convention for the Protection of Migratory Birds in Canada and the United States.)

69. Nisga'a citizens will have the right, subject to measures which are necessary for conservation, and legislation enacted for the purposes of public health and public safety, to harvest migratory birds and their eggs throughout the year, for domestic purposes within the Nass Area, pursuant to the Final Agreement.

70. Canada and Nisga'a Central Government may agree to amend the area within which Nisga'a citizens will have the right to harvest migratory birds and their eggs.

71. Nisga'a citizens may trade or barter among themselves, or among other Aboriginal peoples, any migratory birds and eggs harvested pursuant to the Final Agreement, subject to regulation by Nisga'a Central Government, provided that laws of general application in respect of export from British Columbia or Canada will apply.

72. Sale of migratory birds and eggs will be governed by the laws of general application.

73. Nisga'a citizens may sell the down and inedible byproducts of migratory birds, in accordance with any legislation concerning such sales.

74. Canada will consult with Nisga'a Central Government on the management of aboriginal migratory bird harvests within the Nass Area.

75. Canada will consult with Nisga'a Central Government with respect to the formulation of government positions in relation to international agreements which may significantly affect migratory birds or their habitat within the Nass Area.

#### *OTHER*

76. The Parties may enter into agreements with each other for purposes of managing habitat critical for conservation of migratory birds or endangered species.

77. Persons authorized to enforce wildlife laws in British Columbia may enforce the provisions of this Chapter.

### **ENVIRONMENTAL ASSESSMENT AND PROTECTION**

#### *DEFINITIONS*

1. In this Chapter:

a. "environmental assessment" means the evaluation of impacts on the environment, and includes screening, study or review; and

b. "project" means any physical work or activity which may have an impact on the environment.

## *ENVIRONMENTAL ASSESSMENT*

2. The Parties will negotiate and attempt to reach agreements for the coordination of any Nisga'a, federal, and provincial environmental assessment requirements, and to avoid duplication where a project is subject to more than one environmental assessment process.
3. Nisga'a Central Government may make laws in relation to the environmental assessment of projects which are on Nisga'a Lands, provided that, in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws will prevail to the extent of the conflict.
4. Unless otherwise agreed, where a Nisga'a Central Government law and the law of another Party requires an environmental assessment of a project on Nisga'a Lands, the project will be assessed under the process prescribed by Nisga'a law, where the assessment provides the information required by the other Parties for decision-making concerning the project.
5. Where a project on Nisga'a Lands may reasonably be expected to have adverse environmental effects, Nisga'a Central Government will ensure that Canada and British Columbia:
  - a. receive timely notice of, and relevant information on, the project and the potential adverse environmental effects;
  - b. are consulted regarding the environmental effects of the proposed project where there may be adverse environmental effects outside Nisga'a lands, or on federal or provincial lands or interests set forth in the Final Agreement; and
  - c. where there may be significant adverse environmental effects outside Nisga'a Lands, or on federal or provincial lands or interests set forth in the Final Agreement, receive an opportunity to participate in any environmental assessment related to those effects, in accordance with applicable legislation.
6. Where a proposed project which will be located off Nisga'a Lands may reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests recognized in the Final Agreement, Canada or British Columbia, as the case may be, will ensure that Nisga'a Central Government:
  - a. receives timely notice of, and relevant information on, the proposed project and the potential adverse environmental effects;
  - b. be consulted regarding the environmental effects of the proposed project; and
  - c. where there may be significant adverse environmental effects, receives an opportunity to participate in any environmental assessment related to those effects, in accordance with applicable legislation.
7. If Canada or British Columbia establishes a board, panel or tribunal to provide advice or make recommendations with respect to the environmental effects of a project referred to in paragraph 6, Nisga'a Central Government will:
  - a. have standing before the board, panel or tribunal; and
  - b. be entitled to nominate a member of the assessment board, panel or tribunal, except where the board, panel or tribunal is a decision making body such as the National Energy Board.
8. All environmental assessment processes that will be subject to the Final Agreement will, in addition to the requirements of applicable environmental assessment legislation:
  - a. coordinate to the extent possible the assessment requirements placed upon a project proponent by the Parties;
  - b. require the provision of information or studies, as appropriate, by the project proponent about the proposed project and its potential environmental effects and the measures that can be taken to prevent or mitigate such effects;

- c. ensure that all information relevant to the assessment of the proposed project is available to the public, other than information which is required to be kept confidential under applicable law;
- d. provide for public participation in the assessment process, including public notice of the proposed project, an opportunity to make submissions, and, when deemed appropriate by the Party conducting the assessment, public hearings conducted by an independent review panel;
- e. assess whether the project can reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests recognized in the Final Agreement and, where appropriate, make recommendations to prevent or mitigate those effects;
- f. assess the effects of the project on the existing and future economic, social and cultural well-being of Nisga'a citizens who may be affected by the project;
- g. set forth timeframes in which the assessor must make its recommendation regarding whether or not the proposed project should proceed;
- h. provide for recommendations, based on the assessment, regarding whether the proposed project should or should not proceed to the Party or Parties with decision-making authority over the proposed project;
- i. take into account any agreements between the project proponent and Nisga'a Government concerning the effects of the project; and
- j. be conducted and completed by a Party before that Party issues final approval.

9. Decisions by any Party regarding the issuance of a permit or approval for a project will take into account the recommendations of the environmental assessment.

10. In exercising decision making authority for projects which may have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests recognized in the Final Agreement, the decision maker will take into account, but will not be bound by, any agreements between Nisga'a Government and the project proponent concerning the project.

#### *ENVIRONMENTAL PROTECTION*

11. Nisga'a Central Government may make laws in relation to environmental protection on Nisga'a Lands, including discharges into watercourses within Nisga'a Lands, with respect to activities which are not covered by provisions relating to environmental protection in other Chapters of the Final Agreement, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws, federal or provincial laws will prevail to the extent of the conflict.

12. Any Party may respond to an environmental emergency or natural disaster where the Party with primary responsibility for responding has not responded or is unable to respond in a timely manner.

13. If there is an environmental emergency, the Party responding to the emergency will, if possible, notify the Party with primary responsibility in advance of taking action, but, in any case, will notify that Party as soon as practicable after responding to the emergency.

14. Canada and Nisga'a Central Government may enter into agreements concerning Nisga'a Government responsibility for the performance of specified federal environmental protection functions.

15. After the effective date, British Columbia and Nisga'a Central Government will negotiate and attempt to reach agreements concerning Nisga'a Government responsibility for the performance of specified provincial environmental protection functions within an area to be defined.

16. Any agreements entered into pursuant to paragraph 15 will be in accordance with the technical and administrative capacity and resources of Nisga'a Government to adequately carry out the functions in accordance with relevant provincial standards.

17. Each Party will enforce its environmental laws in a fair, impartial and effective manner, through appropriate governmental action, consistent with the exercise of prosecutorial discretion.

18. No Party should relax its environmental standards for the purpose of providing an encouragement to the establishment, acquisition, expansion or retention of an investment.

19. The Final Agreement will not preclude a Party, within the scope of its jurisdiction, from establishing environmental standards which take into account the specific environmental conditions of a region, location or type of project.

## **NISGA'A GOVERNMENT**

### *DEFINITIONS*

1. In this Chapter:

a. "child and family services" means services that have as their objectives:

i. the protection of children from harm as a result of the conduct of parents and other caregivers or from other misadventure, and

ii. the promotion of well-functioning family and community life;

b. "liquor" means:

i. fermented, spirituous and malt liquors,

ii. combinations of liquors, and

iii. 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; and

c. "subordinate elected body" means an elected body created by Nisga'a law, and does not include Nisga'a Central Government or the Nisga'a Village Governments.

### *RECOGNITION OF NISGA'A GOVERNMENT*

2. Nisga'a Central Government and the Nisga'a Village Governments are the primary government institutions of the Nisga'a Nation.

3. Except as may otherwise be agreed from time to time by the relevant Parties in respect of particular matters, Nisga'a Central Government is responsible for relations between the Nisga'a Nation and Canada and British Columbia.

### *LEGAL STATUS AND CAPACITY OF THE NISGA'A NATION*

4. The Nisga'a Nation and the villages of New Aiyansh, Gitwinksihlkw, Greenville and Kincolith are separate and distinct legal entities, each with the capacity, rights, powers and privileges of a natural person, such as to:

a. enter into contracts and agreements;

b. acquire and hold property or any interest therein, and sell or otherwise dispose of that property or interest;

c. raise, expend, invest or borrow money;

- d. sue and be sued; and
  - e. do other things ancillary to the exercise of its rights, powers and privileges.
5. The powers of the Nisga'a Nation and of each village will be carried out in accordance with the Final Agreement, and with the Nisga'a Constitution and laws enacted thereunder.
6. The Nisga'a Nation will act through Nisga'a Central Government in exercising its capacity, rights, powers and privileges and in carrying out its duties, functions and obligations.
7. Each village will act through its Village Government in exercising its capacity, rights, powers and privileges and in carrying out its duties, functions and obligations.
8. Elected members of Nisga'a Government will have immunity from:
- a. personal liability for actions of Nisga'a Government; and
  - b. personal liability for actions carried out in the course of their duties, absent dishonesty, gross negligence, or malicious or willful misconduct.
9. The Final Agreement will include provisions in respect of liability of Nisga'a Government which will be similar to the provisions in respect of the liability of municipalities in Part 23 of the British Columbia Municipal Act.

#### *NISGA'A CONSTITUTION*

10. The Nisga'a Nation will adopt a Constitution which, among other things, will:
- a. provide for Nisga'a Central Government and Nisga'a Village Governments, including their respective duties, composition, and membership;
  - b. provide for the division of powers assigned to Nisga'a Government under the Final Agreement between Nisga'a Central Government and Nisga'a Village Governments;
  - c. provide for the establishment of subordinate elected bodies and other institutions, including their respective powers, duties, composition, and membership;
  - d. provide for privileges of elected members of Nisga'a Government;
  - e. provide for the role of the Nisga'a elders, Simgigat and Sigidimhaanak in providing guidance and interpretation of the Ayuuk to Nisga'a Government;
  - f. provide for the enactment of laws by Nisga'a Central Government and Nisga'a Village Governments within their respective jurisdictions;
  - g. require that Nisga'a Government institutions be democratically accountable to Nisga'a citizens;
  - h. require a system of financial administration that is comparable to standards generally accepted for governments in Canada through which Nisga'a Government will be financially accountable to Nisga'a citizens;
  - i. require conflict of interest rules that are comparable to standards generally accepted for governments in Canada;
  - j. provide for the prior approval of any disposition of Nisga'a Lands that does, or could result in a change of ownership;
  - k. recognize and protect rights and freedoms of Nisga'a citizens;
  - l. provide that all participants who are Canadian citizens or permanent residents of Canada will be entitled

to be Nisga'a citizens;

m. provide for the challenging of the validity of laws passed by Nisga'a Government;

n. provide for its amendment; and

o. be consistent with the Final Agreement.

11. The Nisga'a Constitution will come into force upon its approval by at least 70% of those participants 18 years of age and older who vote in a referendum conducted for that purpose.

12. The Nisga'a Constitution will only be amended if the amendment is approved by at least 70% of those Nisga'a citizens who vote in a referendum conducted for that purpose.

#### *NISGA'A GOVERNMENT STRUCTURE*

13. Nisga'a Central Government will consist of the following elected members:

a. at least three officers elected at large by Nisga'a citizens;

b. the Chief Councillors and other councillors of the Nisga'a Village Governments; and

c. one representative from each of the Nisga'a Urban Locals.

14. On the effective date, there will be four Nisga'a Village Governments, known as:

a. New Aiyansh;

b. Gitwinksihlkw;

c. Greenville; and

d. Kincolith.

15. Each Nisga'a Village Government will consist of the following elected members:

a. a Chief Councillor; and

b. the number of councillors set forth in the Nisga'a Constitution.

16. On the effective date, there will be three Nisga'a Urban Locals as follows:

a. Greater Vancouver Urban Local;

b. Terrace Urban Local; and

c. Prince Rupert/Port Edward Urban Local.

#### *ELECTIONS*

17. Subject to residency and other requirements that may be set forth in Nisga'a law, all Nisga'a citizens who are at least 18 years of age are eligible to vote and run for office.

18. The elected members of Nisga'a Central Government and Nisga'a Village Governments will be elected at regular intervals, not to exceed five years, to be specified in the Nisga'a Constitution.

#### *APPEALS AND REVIEW OF ADMINISTRATIVE DECISIONS*

19. Nisga'a Government will provide for appropriate mechanisms to enable persons to appeal or seek review of

administrative decisions of Nisga'a Government institutions which affect their interests.

20. The Supreme Court of British Columbia has jurisdiction in respect of applications for judicial review of administrative decisions of institutions of Nisga'a Government, provided no application for judicial review of such decisions may be brought until all mechanisms for appeal or review established by Nisga'a Government have been exhausted.

#### *REGISTER OF LAWS*

21. Nisga'a Central Government will:

- a. maintain a public registry of the Nisga'a Constitution and of all laws enacted by Nisga'a Government:
  - i. in the English language; and
  - ii. at the discretion of Nisga'a Central Government, in the Nisga'a language;
- b. provide Canada and British Columbia with copies of all Nisga'a laws as soon as practicable after a law is enacted; and
- c. establish procedures for the proclamation and publication of Nisga'a laws.

#### *RELATIONS WITH INDIVIDUALS WHO ARE NOT NISGA'A CITIZENS*

22. Nisga'a Government will provide that individuals residing on or within Nisga'a Lands who are not Nisga'a citizens:

- a. are consulted about Nisga'a Government decisions which directly and significantly affect them;
- b. have means of participation in subordinate elected bodies whose activities directly and significantly affect them, through such measures as:
  - i. eligibility to vote and run for office on the subordinate elected body,
  - ii. guaranteed seats with full or partial voting powers,
  - iii. guaranteed opportunity to make representations, or
  - iv. other comparable measures; and
- c. may avail themselves of any mechanisms established by Nisga'a Government pursuant to paragraph 19.

23. Nisga'a Government may appoint individuals who are not Nisga'a citizens to other institutions of Nisga'a Government.

#### *TRANSITIONAL PROVISIONS*

24. The Nisga'a Tribal Council and the Band Councils will assume the powers, duties, and obligations, other than legislative jurisdiction, of Nisga'a Central Government and the Nisga'a Village Governments, respectively, on a transitional basis until elections under the Nisga'a Constitution are held.

25. The Final Agreement will include transitional provisions in respect of the Nisga'a Tribal Council, the four Nisga'a Band Councils, School District #92, Nisga'a Valley Health Board, Wilp Wilxo'oskwhl Nisga'a and participation on such bodies as the Northern Native Fishing Corporation.

26. The Final Agreement will include transitional provisions in respect of the ownership of relevant public works for infrastructure and appropriate indemnities.

#### *NISGA'A GOVERNMENT LEGISLATIVE JURISDICTION AND AUTHORITY*



27. Nisga'a Government is the government with primary responsibility to make laws in respect of the matters in paragraphs 28 to 31. In the event of an inconsistency between Nisga'a laws pursuant to paragraphs 28 to 31 and federal or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.

#### *Nisga'a Government*

28. Nisga'a Government may make laws in respect of the administration, management and operation of Nisga'a Government, including:

- a. the creation of institutions and bodies of Nisga'a Government for public purposes;
- b. the powers, duties, responsibilities, remuneration, indemnification and other similar matters in relation to elected officials, employees and appointees of Nisga'a Government and its institutions and bodies;
- c. financial administration of Nisga'a Government; and
- d. Nisga'a elections and referenda.

29. Nisga'a Central Government may make laws in respect of the administration, management and operation of Nisga'a Government, including:

- a. Nisga'a citizenship, provided that the conferring of Nisga'a citizenship will not confer or deny rights or benefits under any law of Canada or British Columbia, including rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the Indian Act, or any of the rights or benefits conferred by the Indian Act; and
- b. the creation, continuation, amalgamation or dissolution of Nisga'a Village Governments and Nisga'a Urban Locals.

#### *Culture and Language*

30. Nisga'a Government may make laws to preserve, promote and develop Nisga'a culture and 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, provided that Nisga'a Government jurisdiction to make laws in respect of culture and language does not include jurisdiction to make laws in respect of intellectual property or the authority to prohibit activities outside of Nisga'a Lands except as provided for by federal or provincial law.

#### *Nisga'a Lands and Assets*

31. Nisga'a Government may make laws in respect of Nisga'a Lands and assets, including:

- a. the use, possession, and management of Nisga'a Lands and the assets of the Nisga'a Nation;
- b. the conditions upon which Nisga'a Government may dispose of Nisga'a Lands and other assets of the Nisga'a Nation;
- c. zoning, development planning, and land use planning in respect of Nisga'a Lands; d. regulation, licensing and prohibition of the operation on Nisga'a Lands of businesses, professions, and trades, provided that federal and provincial laws will apply in respect of the accreditation and certification of professions and trades;
- e. designation of Nisga'a Lands as Private Lands or Village Lands;
- f. expropriation by Nisga'a Government, for public purposes and infrastructure, of interests in Nisga'a Lands created by Nisga'a Government; and
- g. the expenditure of Nisga'a Government funds.

### *Public Order, Peace and Safety*

32. Nisga'a Government may make laws in respect of the control or prohibition of any actions, activities or undertakings that constitute, or may constitute, a threat to public order, peace or safety or a danger to public health on Nisga'a Lands, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws of general application will prevail to the extent of the conflict.

### *Employment*

33. Nisga'a Central Government may, by enactment, prescribe those aspects of Nisga'a culture, including such matters as cultural leave from employment, in respect of which employers and employees' organizations have the duty to accommodate employees pursuant to federal and British Columbia laws of general application.

34. The Final Agreement will include provisions regarding the means by which Nisga'a Central Government may, in industrial relations matters and proceedings involving employees on Nisga'a Lands, make representations concerning the Final Agreement or the effect of the matter or proceeding on Nisga'a culture. These provisions will not affect federal or provincial jurisdiction in respect of industrial relations, employment standards and occupational health and safety.

35. The Parties will negotiate and attempt to reach agreements for Nisga'a Government delivery and administration of federal and provincial human resources development services or programs. The Final Agreement will identify the services or programs to be negotiated or the procedures for their identification.

### *Public Works, Buildings and Other Structures*

36. Nisga'a Government may make laws in respect of the design, construction, maintenance, repair, and demolition of public works, buildings and other structures on Nisga'a Lands, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws will prevail to the extent of the conflict.

### *Traffic and Transportation*

37. Nisga'a Government may make laws in respect of the regulation of traffic and transportation on Nisga'a Government roads to the same extent as municipalities in British Columbia, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws will prevail to the extent of the conflict.

### *Solemnization of Marriages*

38. Nisga'a Central Government may make laws in respect of solemnization of marriages within British Columbia including prescribing conditions under which persons appointed to perform marriages under Nisga'a law can perform the marriage ceremony, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws will prevail to the extent of the conflict.

39. Persons appointed by Nisga'a Central Government to solemnize marriages have authority to perform marriages under British Columbia law, and have all the rights, duties and responsibilities associated with that authority.

### *Social Services*

40. Nisga'a Government may make laws in respect of the provision of social services by Nisga'a Government to Nisga'a citizens, except the licensing and regulation of facility-based services off Nisga'a Lands, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws will prevail to the extent of the conflict.

41. The Parties will negotiate and attempt to reach agreements respecting exchange of information, avoidance of double payments, and related matters.

42. The Parties will negotiate and attempt to reach agreements for Nisga'a Government delivery and administration of federal and provincial social services or programs for all persons residing within Nisga'a Lands. Any such agreements will include a requirement that Nisga'a citizens and persons who are not Nisga'a citizens be treated equally in the provision of social services and programs. The Final Agreement will identify the services or programs to be negotiated or the procedures for their identification.

#### *Health Services*

43. Nisga'a Government may make laws in respect of health services on Nisga'a Lands, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph, and federal or provincial laws of general application, federal or provincial laws of general application will prevail to the extent of the conflict.

44. Federal or provincial laws of general application will not prevail in respect of:

- a. determining the organizational structures for the delivery of health services on Nisga'a Lands; and
- b. authorizing or licensing persons who practice as aboriginal healers, provided that any authorization or licencing will not include the regulation of products or substances which are regulated under federal or provincial laws of general application.

45. The Parties will negotiate and attempt to reach agreements for Nisga'a Government delivery and administration of federal and provincial health services or programs for all persons residing within Nisga'a Lands. Any such agreements will include a requirement that Nisga'a citizens and persons who are not Nisga'a citizens be treated equally in the provision of health services and programs.

#### *Adoption*

46. Nisga'a Government may make laws in respect of the adoption of Nisga'a children, provided that:

- a. Nisga'a law will expressly provide that the best interests of the child be the paramount consideration in determining whether an adoption will take place;
- b. Nisga'a Government will provide British Columbia and Canada with records of all adoptions occurring under Nisga'a laws; and
- c. Nisga'a law will apply to the adoption of a Nisga'a child residing off Nisga'a lands only where the parent, parents or guardian having lawful custody of the child consent to the application of Nisga'a law to the adoption.

47. In the event of an inconsistency between Nisga'a laws pursuant to paragraph 46 and federal or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.

48. Where a Nisga'a child is in custody of the Superintendent of Child Welfare, the Superintendent will consent to the application of Nisga'a law to the adoption unless there are good reasons to believe it is in the best interests of the child to withhold consent.

#### *Child and Family Services*

49. Nisga'a Government may make laws in respect of child and family services on Nisga'a Lands, including the protection of children, provided that:

- a. it establishes standards comparable to provincial standards intended to ensure the safety and well-being of children and families; and
- b. where there is an emergency and a child is at risk, British Columbia may act to protect the child provided that British Columbia refers the matter back to Nisga'a Government following the emergency.

50. In the event of an inconsistency between Nisga'a laws pursuant to paragraph 49 and federal or provincial laws of

general application, Nisga'a laws will prevail to the extent of the inconsistency.

51. Upon request of Nisga'a Government, Nisga'a Government and British Columbia will negotiate and attempt to reach agreements in respect of child and family services for Nisga'a children residing outside Nisga'a Lands.

*Pre-school to Grade 12 Education*

52. Nisga'a Central Government may make laws in respect of pre-school to grade 12 education of Nisga'a citizens on Nisga'a Lands, including the teaching of Nisga'a language and culture, provided that any Nisga'a laws will provide for:

- a. curriculum, examination and other standards which permit articulation between school systems and admission to provincial universities; and
- b. certification of persons teaching subjects other than Nisga'a language and culture to a standard comparable to those of the College of Teachers or the Inspector of Independent Schools, or a requirement for certification by either of these bodies.

53. In the event of an inconsistency between Nisga'a laws pursuant to paragraph 52 and federal or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.

54. Nisga'a Central Government and British Columbia will negotiate and attempt to reach agreements concerning the provision of Kindergarten to Grade 12 education to:

- a. persons other than Nisga'a citizens residing on Nisga'a Lands; and
- b. Nisga'a citizens residing outside of Nisga'a Lands.

*Post-Secondary Education*

55. Nisga'a Central Government may make laws in respect of post-secondary education within Nisga'a Lands, including:

- a. the establishment and determination of the curriculum for post-secondary institutions with the ability to grant degrees, diplomas or certificates;
- b. the accreditation and certification of persons who teach or research Nisga'a language and culture; and
- c. the provision for and coordination of all adult education programs.

56. Laws enacted by Nisga'a Central Government in respect of post-secondary education will be comparable to provincial standards respecting:

- a. institutional organizational structure and accountability;
- b. tuition and fee schedules;
- c. admission standards and policies;
- d. instructors' qualifications and certification;
- e. curriculum standards sufficient to permit articulation with provincial institutions; and
- f. degree requirements.

57. In the event of an inconsistency between Nisga'a laws pursuant to paragraphs 55 and 56 and federal or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.

58. Nisga'a Central Government may operate and provide post-secondary education services outside Nisga'a Lands

in accordance with laws of general application.

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

#### *Child Custody*

60. Nisga'a Government will have standing in any proceedings in which custody of a Nisga'a child is in dispute, and the courts will consider any evidence and representations concerning Nisga'a laws and customs when considering the custody of a Nisga'a child in addition to any other matters they are required by law to consider.

61. The participation of Nisga'a Government pursuant to paragraph 60 will be in accordance with the applicable Rules of Court and will not affect the Court's ability to control its process.

#### *Gambling and Gaming*

62. British Columbia will not permit gambling and gaming on Nisga'a Lands other than in accordance with terms and conditions established by Nisga'a Government which are not inconsistent with federal and provincial laws of general application.

63. Any changes in federal or provincial policy or legislation which permit First Nations' involvement in the regulation of gambling and gaming will apply to Nisga'a Government with the consent of Nisga'a Central Government.

#### *Intoxicants*

64. Nisga'a Government may make laws in respect of the control or prohibition of the sale, exchange, possession or consumption of intoxicants on Nisga'a Lands, provided that in the event of a conflict between Nisga'a laws pursuant to this paragraph and federal or provincial laws of general application, federal or provincial laws of general application will prevail to the extent of the conflict.

65. Nisga'a Central Government, its agents and assignees will have the exclusive right to sell liquor on Nisga'a Lands and will have the right to purchase liquor from the British Columbia Liquor Distribution Branch or its successors, in accordance with laws of general application.

66. British Columbia will approve all applications made by or with the consent of Nisga'a Central Government for licenses or permits to sell liquor on Nisga'a Lands, where the proposed sale complies with applicable provincial laws.

67. British Columbia will authorize a person or persons designated by Nisga'a Government for the purpose of carrying out the responsibilities of considering and approving or denying applications for special occasion or temporary permits to sell liquor, in accordance with applicable laws.

#### *Wills and Estates*

68. Nisga'a Central Government will have standing in any proceeding in which the validity of the will of a Nisga'a citizen, or the devolution of the cultural property of a Nisga'a citizen, is at issue, including any proceedings pursuant to wills variation legislation in British Columbia.

69. The cultural property of a Nisga'a citizen who dies intestate will devolve in accordance with Nisga'a law.

70. Nisga'a Central Government may commence an action pursuant to wills variation legislation in British Columbia with respect to the will of a Nisga'a citizen which provides for a devolution of cultural property which is inconsistent with Nisga'a laws or customs.

71. In proceedings to which paragraphs 68, 69, or 70 applies, a court will consider any evidence and representations concerning Nisga'a laws and customs relating to the devolution of cultural property.

72. In paragraphs 68-71, "cultural property" includes:

- a. communal interests in Nisga'a lands, or assets owned by Nisga'a Government;
- b. ceremonial regalia and similar personal property associated with a Nisga'a chief or clan; and
- c. other personal property which has cultural significance to the Nisga'a Nation.

73. The participation of Nisga'a Central Government in proceedings pursuant to paragraphs 68, 69 or 70 will be in accordance with the applicable Rules of Court and will not affect the court's ability to control its process.

*Other Areas of Jurisdiction*

74. Nisga'a Government may make laws in respect of matters pursuant to other Chapters of the Final Agreement, including:

- a. administration of justice;
- b. taxation;
- c. lands and resources;
- d. environmental assessment and protection;
- e. fisheries;
- f. wildlife; and
- g. subsurface resources.

**OTHER MATTERS**

75. Nisga'a Government may make laws or do such other things as may be necessarily incidental to the exercise of Nisga'a Government jurisdiction or to enable Nisga'a Government to exercise its rights or to carry out its responsibilities pursuant to the Final Agreement.

76. 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 forth for summary conviction offences in the Criminal Code of Canada or the British Columbia Offence Act.

77. Nisga'a Government may adopt federal or provincial laws regarding matters within Nisga'a Government jurisdiction.

78. Laws of general application regarding reporting of child abuse will apply on Nisga'a Lands.

79. The Final Agreement will set forth Nisga'a Government authority and responsibility for emergency preparedness on Nisga'a Lands and procedures for integration with federal and provincial emergency measures, legislation and initiatives.

80. The Final Agreement is not intended to bind other provincial or territorial governments on matters within their jurisdiction without their consent.

**ADMINISTRATION OF JUSTICE**

**DEFINITIONS**

1. In this Chapter:

- a. "community correction services" means:

- i. bail, probation, conditional sentences, conditional supervision, and parole supervision of both adult and young offenders;
  - ii. preparation of reports for the court, Crown Counsel and the Parole Board;
  - iii. supervision of diverted offenders and operation of diversion programs;
  - iv. monitoring under the Electronic Monitoring Program;
  - v. development and supervision of alternative to custody programs for both adult and young offenders;
  - vi. other similar services as may be delivered by British Columbia or Canada from time to time; and
  - vii. specified Family Court Counsellor functions;
- b. "judge" means a judge of the Nisga'a Court appointed pursuant to the Final Agreement; and
- c. "specified family court counsellor functions" means those functions described in an agreement between Nisga'a Central Government and the Attorney General of British Columbia or the Attorney General of Canada pursuant to this Chapter.

#### *POLICE SERVICES*

2. Nisga'a Central Government may provide policing within Nisga'a Lands by:

- a. enacting laws for the establishment, organization, administration and regulation of a Nisga'a Police Service in accordance with the provisions of the Final Agreement;
- b. entering into agreements under which some or all of the policing will be provided by the provincial police service, other First Nations' police services or municipal police services; or
- c. both (a) and (b).

3. It is the objective of the Parties that a Nisga'a Police Service:

- a. be responsive to the needs and priorities of the Nisga'a Nation;
- b. have the full range of police responsibilities and the authority to enforce Nisga'a laws, the laws of British Columbia, the criminal law, and other applicable federal laws within Nisga'a lands; and
- c. contribute to the administration of justice, the maintenance of social order, and public security.

4. If Nisga'a Central Government decides to establish a Nisga'a Police Service, Nisga'a Central Government will make laws to provide for the establishment, organization, composition, indemnification, and roles and responsibilities of a Nisga'a Police Board which will provide general direction and training to the Nisga'a Police Service, and determine priorities and goals of the Nisga'a Police Service.

5. The Nisga'a Police Board will be independent and accountable in accordance with the standards that apply generally to police boards in British Columbia and will:

- a. act as the employer of the members of the Nisga'a Police Service;
- b. appoint members of the Nisga'a Police Service, including a chief constable who will have, under the direction of the Nisga'a Police Board, general supervision and command over the Nisga'a Police Service and the powers and authorities necessary to direct the members of the Nisga'a Police Service;
- c. make rules respecting standards for the administration of the Nisga'a Police Service, the prevention of

neglect and abuse by its officers, and the efficient discharge of their duties and functions;

d. enforce the code of conduct established for the Nisga'a Police Service and take any necessary disciplinary action; and

e. enter into agreements from time to time for training, specialized training, exchange of information, expertise and mutual support and assistance.

6. The Nisga'a Police Board may exercise its functions when the Lieutenant Governor in Council has approved the Board's structure and membership or an amendment to the structure or membership and has appointed members.

7. The Lieutenant Governor in Council will approve the Nisga'a Police Board's structure and membership, or any amendment to the structure or membership and appoint the members of the Board recommended by Nisga'a Central Government if Nisga'a Central Government has enacted laws pursuant to paragraph 4 which include provisions:

a. in substantial conformity with applicable provincial legislation in respect of:

i. minimum standards for certification of members of the Nisga'a Police Service,

ii. the swearing in of the members of the Nisga'a Police Service and the Nisga'a Police Board,

iii. use of force by members of the Nisga'a Police Service,

iv. discipline and dismissal procedures for members of the Nisga'a Police Service, and

v. a public complaint procedure; and

b. compatible with applicable provincial legislation in respect of:

i. selection standards for the members of the Nisga'a Police Service,

ii. a code of conduct for members of the Nisga'a Police Service,

iii. appropriate mechanisms to ensure police independence, accountability and competence, and

iv. police operations.

8. The Lieutenant Governor in Council will appoint to the Nisga'a Police Board only those persons who have been recommended by Nisga'a Central Government, and will not revoke the appointment of any Nisga'a Police Board member, other than for cause, without the concurrence of Nisga'a Central Government.

9. When the Lieutenant Governor in Council has approved the structure and membership of the Nisga'a Police Board and appointed its members, Nisga'a Central Government will:

a. provide policing sufficient to maintain law and order within Nisga'a lands;

b. ensure that there are adequate physical resources for the proper operation of police services within Nisga'a lands; and

c. be jointly and severally liable for torts committed by a Nisga'a police officer or other employees of the Nisga'a Police Board in the performance of their duties, and the Nisga'a Police Board and its members will not be liable for any such claim.

10. A duly appointed member of the Nisga'a Police Service:

a. has the powers, duties, privileges, liabilities and responsibilities of a peace officer according to law;

b. has the immunity from personal liability provided to police officers under the British Columbia Police Act; and



c. has authority throughout British Columbia while carrying out the powers, duties, privileges, and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out according to law.

11. Where a member of the Nisga'a Police Service performs duties outside of Nisga'a Lands, the member will, if possible, notify in advance the municipal police service or the provincial police service of the area in which the member performs duties, but in any case will promptly notify the municipal police service or provincial police service after performing these duties.

12. Where a provincial or other police constable performs duties within Nisga'a Lands, the constable will, if possible, notify the Nisga'a Police Service in advance, but in any case will notify the Nisga'a Police Service promptly after performing these duties.

13. British Columbia will be jointly and severally liable with respect to torts committed by a member of the Nisga'a Police Service when acting in the performance of the member's duties outside of Nisga'a Lands.

14. At the request of Nisga'a Central Government, the Parties will, to the extent of their respective jurisdictions, negotiate and attempt to reach such agreements or protocols as may be necessary to enable Nisga'a Central Government to carry out its policing responsibilities, including agreements concerning:

- a. the role and responsibility of the provincial police service in the provision of police services within Nisga'a Lands;
- b. mutual assistance and operational cooperation between the Nisga'a Police Service and other police services;
- c. other matters required by the provisions of this Chapter; and
- d. any other matters relating to police services.

15. Where the Minister is of the opinion that effective policing in accordance with standards prevailing elsewhere in British Columbia is not being delivered within Nisga'a Lands, or is of the opinion that it is necessary or desirable to ensure effective delivery of policing in accordance with standards prevailing elsewhere in British Columbia, the Minister may, on terms approved by the Lieutenant Governor in Council, provide or reorganize policing within Nisga'a Lands by appointing persons as constables, using the provincial police force to provide policing, or by other means.

16. The Minister will not exercise authority under paragraph 15 if that exercise discriminates against the Nisga'a Police Force or is aimed at aboriginal police forces generally throughout British Columbia.

17. Where practicable, the Minister will, prior to acting under paragraph 15, provide Nisga'a Central Government with:

- a. notification of the reasons or circumstances which form the basis of the Minister's decision to provide or reorganize policing;
- b. reasonable opportunity to show cause why no action should be taken; and
- c. reasonable opportunity to correct or modify any Nisga'a Central Government acts or omissions which form the basis for the Minister's decision to provide or reorganize policing.

18. In the event that it is not practicable for the Minister to comply with paragraph 17 prior to acting, the Minister will forthwith thereafter provide Nisga'a Central Government with the notification and opportunities described in paragraph 17.

#### *COMMUNITY CORRECTIONS SERVICES*

19. Nisga'a Central Government may appoint one or more persons to provide Community Correction Services with

respect to offenses under Nisga'a laws.

20. Upon request by Nisga'a Central Government, Nisga'a Central Government and British Columbia will negotiate and attempt to reach agreements under which the persons appointed pursuant to paragraph 19 will provide Community Correction Services delivered pursuant to applicable provincial legislation within Nisga'a Lands.

21. An agreement pursuant to paragraph 20 will contain provisions:

- a. ensuring that Community Correction Services are delivered in accordance with generally accepted standards;
- b. confirming the authority of the official charged with the responsibility for investigations, inspections and standards pursuant to provincial legislation; and
- c. for Nisga'a Central Government to provide Community Correction Services consistent with the needs and priorities of the Nisga'a Nation.

22. Nisga'a Central Government and British Columbia may enter into an agreement under which the persons appointed pursuant to paragraph 19 will provide Community Correction Services delivered pursuant to applicable provincial legislation outside Nisga'a Lands.

23. Persons performing duties pursuant to agreements described in paragraphs 20 to 22 will comply with all provincial standards respecting professional and personal qualifications, except as modified by such agreements.

24. Nisga'a Central Government and Canada may enter into agreements:

- a. under which the persons appointed pursuant to paragraph 19 will provide Community Correction Services delivered pursuant to applicable federal legislation; and
- b. for the provision of services or programs for offenders, including their care and custody.

25. The Final Agreement does not authorize Nisga'a Central Government to establish places of confinement, except for jails or lockups operated by the Nisga'a Police Service, or pursuant to an agreement referred to in paragraph 24.

#### *NISGA'A COURT*

26. Nisga'a Central Government may make laws to provide for the constitution, maintenance, and organization of a Nisga'a Court for the better administration of Nisga'a laws.

27. Until such time as Nisga'a Central Government establishes a Nisga'a Court and that Court has been approved by the Lieutenant Governor in Council, alleged violations of Nisga'a law will be heard in the Provincial Court of British Columbia.

28. If Nisga'a Central Government decides to establish a Nisga'a Court, Nisga'a Central Government will make laws to:

- a. ensure that the Court and its judges comply with generally recognized principles in respect of judicial fairness, independence, and impartiality;
- b. provide for means of supervision of judges by the Judicial Council of British Columbia or similar means; and
- c. provide procedures relating to appeals of decisions of the Nisga'a Court.

29. The Nisga'a Court may exercise its functions when the Lieutenant Governor in Council has approved the Court's structure, procedures, and method of selection of judges of the Court, or an amendment to the structure, procedures, or method of selection of judges of the Nisga'a Court.

30. The Lieutenant Governor in Council will approve the Nisga'a Court's structure, procedures, and the method of selection of the judges of the Nisga'a Court or any amendment to the structure, procedures, or method of selection of judges, if Nisga'a Central Government has enacted laws in compliance with paragraph 28.

31. Nisga'a Central Government may appoint the judges of the Nisga'a Court.

32. The Nisga'a Court may exercise all of the powers and perform all the duties conferred or imposed on it by or under an enactment of Nisga'a Central Government, British Columbia or Canada and, in particular, may adjudicate in respect of:

- a. the review of administrative decisions of any institution of Nisga'a Government;
- b. violations of Nisga'a laws; and
- c. disputes arising under Nisga'a laws between Nisga'a citizens on Nisga'a lands which would be within the jurisdiction of the Provincial Court of British Columbia if the disputes arose under provincial law.

33. The Nisga'a Court may also adjudicate in respect of other disputes where the parties to a dispute agree in advance:

- a. to the Court's authority to decide the dispute;
- b. to the Court's authority to grant the remedies sought by the parties to the dispute; and
- c. that any order of the Court will be final and binding, except for an appeal under paragraph 40.

34. The Nisga'a Court may:

- a. impose penalties and other remedies as provided for by enactments of Nisga'a Government, British Columbia or Canada in accordance with generally accepted principles of sentencing recognized in law;
- b. in disputes under paragraph 32(c), make any order that could be made by the Provincial Court of British Columbia if the disputes arose under provincial law;
- c. in disputes under paragraph 33, grant any remedy authorized under paragraph 33(b);
- d. apply traditional Nisga'a methods and values, such as the use of elders in adjudication and sentencing, and emphasis on restitution; and
- e. issue process, such as summons, subpoenas, and warrants, which will have the same force and effect as if issued by the Provincial Court of British Columbia.

35. In proceedings in which an accused person may receive a sentence of imprisonment pursuant to Nisga'a law, the accused person may elect to be tried in the Provincial Court of British Columbia.

36. The Nisga'a Court may not impose on a person who is not a Nisga'a citizen, a sanction or penalty of a kind other than those generally imposed by provincial or superior courts in Canada, without the person's consent.

37. An appeal from a final decision of the Nisga'a Court in respect of alleged violations of Nisga'a laws may be taken to the Supreme Court of British Columbia on the same basis as summary conviction appeals pursuant to the Criminal Code of Canada.

38. An appeal from a final decision of the Nisga'a Court in respect of a review of an administrative decision pursuant to paragraph 32(a) may be taken to the Supreme Court of British Columbia only on the grounds of an error of law or jurisdiction.

39. An appeal from a final decision of the Nisga'a Court in respect of a matter pursuant to paragraph 32 (c) may be taken to the Supreme Court of British Columbia on the same basis as a similar order could be appealed from the

Provincial Court of British Columbia.

40. An appeal from a final decision of the Nisga'a Court in respect of a matter pursuant to paragraph 33 may be taken to the Supreme Court of British Columbia on an error of law or fact.

41. An order of the Nisga'a Court may be registered in the Supreme Court of British Columbia and once registered will be enforceable as an order of that court.

42. The Lieutenant Governor in Council may, upon recommendation of Nisga'a Central Government and with the concurrence of such persons or bodies as may be required under provincial laws, appoint one or more judges of the Nisga'a Court as a provincial court judge, justice of the peace, or referee.

43. Nisga'a Central Government will be responsible for the prosecution of all matters before the Nisga'a Court arising from Nisga'a laws, and may appoint persons to conduct such prosecutions in a manner which is consistent with the principle of prosecutorial independence.

#### *DURATION AND REVIEW*

44. The Parties will review the Administration of Justice provisions at a time to be agreed and, in any event, no later than ten years after the effective date, and may amend these provisions if all Parties agree.

### **FINANCIAL TRANSFERS**

#### *CAPITAL TRANSFER*

1. The capital transfer from Canada and British Columbia to Nisga'a Central Government will be \$190.0 million in accordance with the provisions of this Chapter.

2. The capital transfer amount referred to in paragraph 1:

a. will be adjusted by multiplying the amount by the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the latest quarter prior to the signature of the Final Agreement for which FDDIPI has been published by Statistics Canada, and dividing by the value of FDDIPI for the fourth quarter of 1995; and

b. will be paid to Nisga'a Central Government in accordance with a schedule of payments to be provisionally set out in the Final Agreement and further adjusted pursuant to paragraph 6.

3. The present value on the effective date of the payments listed on the provisional schedule of payments will equal the capital transfer amount as adjusted pursuant to paragraph 2(a).

4. The present value referred to in paragraph 3 will be calculated using the most recent appropriate Consolidated Revenue Fund Lending Rate available prior to the signature of the Final Agreement, less one eighth of one percent.

5. The schedule of payments will provide for a first payment on the effective date and subsequent payments on each annual anniversary date as set out on the schedule.

6. The amounts on the provisional schedule of payments set out in the Final Agreement will be further adjusted for each yearly payment by multiplying it by the value of FDDIPI for the latest quarter prior to the effective date for which FDDIPI has been published by Statistics Canada, and dividing by the value of FDDIPI for the latest quarter prior to the signature of the Final Agreement as referred to in paragraph 2(a).

7. A final schedule of payments will be determined prior to the effective date pursuant to paragraph 6.

#### *NEGOTIATION LOAN REPAYMENT*

8. The Final Agreement will set out:

a. the outstanding amount of the negotiation loans made by Canada to the Nisga'a Tribal Council, including any interest that may have accrued as of the date of signature of the Final Agreement; and

b. a provisional schedule of repayments of the negotiation loans bearing interest at the rate set out in paragraph 4 and proportional to the provisional schedule of payments to be made to Nisga'a Central Government by Canada and British Columbia pursuant to this Chapter.

9. The amounts set out in the provisional schedule of loan repayments will be adjusted by adding to the loan amount in paragraph 8(a) any interest that may have accrued between the date of signature of the Final Agreement and the effective date in accordance with the terms and conditions of the loans, and prorating the repayments accordingly.

10. Canada may deduct any amounts due pursuant to the adjusted schedule of loan repayments referred to in paragraph 9 from capital transfer payments payable to Nisga'a Central Government.

#### *OTHER FUNDS*

11. The amounts described in paragraphs 83 and 89 of the Fisheries Chapter of this Agreement will be adjusted by multiplying each amount by the value of FDDIPI for the latest quarter prior to the effective date for which FDDIPI has been published by Statistics Canada, and dividing by the value of FDDIPI for the fourth quarter of 1995.

### **FISCAL FINANCING AGREEMENTS**

#### *DEFINITIONS*

1. In the Chapters of this Agreement titled "Fiscal Financing Agreements" and "Taxation":

a. "Direct Taxation" means direct taxation within the meaning of subsection 92(2) of the Constitution Act, 1867;

b. "Excise Tax Act" means the Excise Tax Act, S.C. 1985, c.E-15, as amended, or any other act of Parliament which imposes tax to replace or succeed any tax imposed under the Excise Tax Act;

c. "Income Tax Act" means the Income Tax Act, S.C. 1985 (5th Supp.) c.1, as amended, or any other act of Parliament which imposes a tax to replace or succeed any tax imposed under the Income Tax Act,;

d. "Nisga'a Capital" means all land, cash and other assets transferred to, or recognized as owned by, Nisga'a Nation or a Nisga'a Village under the Final Agreement;

e. "Nisga'a Economic Lands" means those fee simple lands, including those that cease to be Indian reserves after the effective date of Nisga'a Lands, that are acquired by or confirmed to Nisga'a Nation under the Final Agreement;

f. "Nisga'a Government Corporation" means any corporation, commission or association, all of the shares or capital of which are owned by Nisga'a Nation or any Nisga'a Village, any Nisga'a Settlement Trust, or any combination of the foregoing, or a wholly-owned corporation subsidiary to any such corporation, commission or association;

g. "Nisga'a Settlement Trust" means any trust having the following characteristics:

i. the trust is resident in Canada,

ii. the beneficiaries of the trust are limited to Nisga'a Central Government, any Nisga'a Village Government, another Nisga'a Settlement Trust, all Nisga'a Citizens, all Nisga'a Citizens in any Nisga'a Village, and any registered charity or non-profit organization, within the meaning of the Income Tax Act, that in the reasonable opinion of the trustees directly or indirectly benefits one or more Nisga'a Citizens or any combination of such entities and Persons,

iii. its only undertaking is the investments of its funds in :

(1) investment instruments that are described as qualified investments for a trust governed by a Registered Retirement Savings Plan within the meaning of section 146 of the Income Tax Act or in any other investments that may be agreed upon from time to time among the Nisga'a Central Government, the Minister of Finance of Canada and the government of British Columbia,

(2) loans to a Nisga'a Citizen, Nisga'a Government or NISGA'A Government Corporation at a rate of interest equal to the rate prescribed under Regulation 4301(c) of the Income Tax Act in effect at the time the loan was made or last renewed,

(3) investments in a share of a Nisga'a Government Corporation where the average annual rate of dividends on such share over any five year period cannot exceed the rate prescribed under Regulation 4301 (c) to the Income Tax Act at the beginning of such period, and provided the amount receivable on redemption of the share or on liquidation of the company is limited to the amount of the consideration for which the share was originally issued, and

(4) low interest or interest free loans to a Nisga'a Citizen, or a partnership or trust in which Nisga'a Citizens hold all the interests as partners or beneficiaries, where the purpose of the loan is to assist the borrower to:

(a) acquire, construct or renovate a residential property for his or her own habitation in British Columbia;

(b) attend courses to further his or her own education, technical or vocational skills, or attend courses in native studies, culture or language programs; or

(c) acquire funding for purposes of carrying on a business on Nisga'a Lands or Nisga'a Economic Lands where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates;

where, at the time the loan was made, bona fide arrangements were made for repayment of the loan within a reasonable period of time;

iv. it is not permitted to carry on a business as a proprietor or member of a partnership, or acquire any beneficial interest in a trust engaged in a business where one or more Nisga'a Governments, Nisga'a Government Corporations, Nisga'a Settlement Trusts or Nisga'a Citizens, either alone or in combination, hold more than 10% of all of the beneficial interests in the trust;

v. the trust does not borrow money except as required to finance the acquisition of qualified investments or to carry out its operations;

vi. contributions to the trust are limited to contributions by Nisga'a Government of capital transfer payments received by it under the Financial Transfers Chapter or amounts contributed by another Nisga'a Settlement Trust where substantially all of the funds of that contributing Trust reasonably can be considered to have been derived from a contribution to a Nisga'a Settlement Trust by Nisga'a Government of capital transfer payments received by it under the Financial Transfers Chapter and income derived therefrom; and

vii. it is not permitted to make any distributions other than to one or more beneficiaries pursuant to the trust, or to another Nisga'a Settlement Trust.

h. "Person" includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives.

2. Every five years, or at such other periods as the Parties may agree, the Parties will negotiate a fiscal financing agreement by which funding will be provided to Nisga'a Government in order to enable the provision of agreed-upon public services and programs to Nisga'a Citizens and, where applicable, non-Nisga'a occupants of Nisga'a Lands, at levels reasonably comparable to those generally prevailing in northwest British Columbia.
3. Fiscal financing agreements will not be part of the Final Agreement and will not receive constitutional protection.
4. The recognition of Nisga'a Government legislative authority will not create or imply any funding or financial obligation for Canada, British Columbia or Nisga'a Government.
5. Nisga'a Citizens will be eligible to receive public services from Canada and British Columbia and to participate in programs established by Canada and British Columbia, in accordance with conditions in effect from time to time, to the extent that Nisga'a Government has not assumed responsibility for such public services or programs under a fiscal financing agreement.
6. The parties will negotiate and attempt to reach agreements in relation to grants, between them, in lieu of property taxes.
7. The funding for Nisga'a Government will be a shared responsibility of the Parties and it is the shared objective of the parties that, where feasible, Nisga'a Government reliance on transfers will be reduced over time.

*MATTERS TO BE TAKEN INTO ACCOUNT*

8. In negotiating fiscal financing agreements the Parties will take into account, among other things:
  - a. costs necessary to establish and operate Nisga'a Government institutions;
  - b. efficiency and effectiveness in the provision of public services and programs;
  - c. location and accessibility of Nisga'a Lands;
  - d. population and demographic characteristics of persons receiving agreed-upon public services and benefits from Nisga'a Government;
  - e. other funding or support related to agreed-upon public services or programs provided to Nisga'a Government or Nisga'a Nation by Canada or British Columbia;
  - f. the level, type and condition of agreed-upon public works and utilities provided by Nisga'a Government on Nisga'a Lands;
  - g. necessary training requirements for agreed-upon services and programs;
  - h. the desirability of reasonably stable, predictable and flexible funding arrangements;
  - i. the jurisdictions of, and authorities, obligations, programs and services assumed, or to be assumed, by, Nisga'a Government;
  - j. prevailing fiscal policies of Canada and British Columbia;
  - k. Nisga'a cultural values; and
  - l. Nisga'a Government own source revenue capacity.

*NISGA'A GOVERNMENT OWN SOURCE REVENUE CAPACITY*

9. For greater certainty, Nisga'a Government own source revenue capacity will not include the capital transfer payments received by Nisga'a Nation pursuant to the Financial Transfers Chapter.
10. Prior to the Final Agreement, the Parties will negotiate the manner in which Nisga'a Government own source

revenue capacity will be taken into account in the negotiation of fiscal financing agreements.

11. The negotiations referred to in paragraph 10 will take into account the following:

- a. there should be a fair basis of comparison between Nisga'a Government's revenue capacity from commercial activities it carries on, including through wholly owned corporations, and the revenue capacity of other Canadian governments from taxation of similar commercial activities;
- b. Nisga'a Government own source revenue capacity in respect of a Nisga'a Settlement Trust should not include the inflation component of gains or income of the trust;
- c. resource revenues included in Nisga'a Government revenue capacity should take into account associated costs including habitat restoration, enhancement or management of natural resources, silviculture, reclamation and other similar activities;
- d. Nisga'a Government own source revenue capacity will not include proceeds from the sale of Nisga'a Lands or Nisga'a Economic Lands;
- e. Nisga'a Government own source revenue capacity will not be taken into account so as to unreasonably reduce Nisga'a Government incentive to raise revenues; and
- f. Nisga'a Government own source revenue capacity will be phased in on a staged and incremental basis over a 12 year period after the effective date.

12. Prior to the Final Agreement, the Parties will negotiate which of the principles and provisions resulting from the negotiations referred to in paragraphs 10 and 11 will be contained in the Final Agreement, which in legislation, and which will be given effect through other mechanisms.

#### *EXPIRY OF FISCAL FINANCING AGREEMENTS*

13. If the Parties have not reached a further fiscal financing agreement by the date of the expiry of a fiscal financing agreement, the provisions of the expiring fiscal financing agreement will continue to be honoured by the Parties for a period of two years or such other period as the parties may agree, while the Parties attempt to reach the further fiscal financing agreement.

#### *NEGOTIATION OF FIRST FISCAL FINANCING AGREEMENT*

14. Unless the Parties otherwise agree, they will settle the first fiscal financing agreement before the date of the Final Agreement.

#### *TRANSITION*

15. Until the first fiscal financing agreement comes into effect, the Nisga'a Tribal Council, Gitlakdamix Indian Band, Gitwinksihlkw Indian Band, Lakalzap Indian Band, Kincolith Indian Band, Nisga'a Valley Health Board, Board of Trustees of School District No. 92 (Nisga'a), Wilp Wilxo'oskwhl Nisga'a Nisga'a Family Law Program and Nisga'a Child and Family Services Program will continue to receive federal and provincial funding for which they are eligible in accordance with policies and programs which apply generally for like entities in British Columbia and are in effect from time to time. This Agreement will not affect such funding arrangements.

#### *MATTERS TO BE NEGOTIATED*

16. The Parties will address the following matters in negotiating the Final Agreement or first fiscal financing agreement:

- a. procedure for negotiating the fiscal financing agreements;
- b. program transfer mechanisms;



- c. supplementary funding procedures;
- d. emergency funding procedures;
- e. payment mechanisms;
- f. dispute resolution procedures; and
- g. information exchange provisions.

## **TAXATION**

### *NISGA'A NATION DIRECT TAXATION*

1. Nisga'a Central Government may make laws in relation to Direct Taxation applicable to Nisga'a Citizens on Nisga'a Lands for Nisga'a Government purposes.
2. Nisga'a Central Government powers provided for in paragraph 1 will not limit the powers of Canada or British Columbia to impose or levy tax or make laws in respect of taxation.

### *OTHER TAXATION AND TAX ADMINISTRATION AGREEMENTS*

3. From time to time Canada and British Columbia, together or separately, may negotiate with Nisga'a Central Government and attempt to reach agreements on:
  - a. the extent, if any, to which Canada or British Columbia will provide Nisga'a Central Government Direct Taxation authority over Persons other than Nisga'a Citizens, on Nisga'a Lands; and
  - b. the manner in which Nisga'a Government taxation will be coordinated with existing federal or provincial tax systems.
4. Nisga'a Government may make laws in relation to the implementation of any taxation agreement entered into between it and Canada or British Columbia.

### *NISGA'A LANDS*

5. Nisga'a Government will not be subject to capital taxation, including without limitation real property taxes and taxes on capital and wealth, in respect of the interest of the Nisga'a Nation or any Nisga'a Village in Nisga'a Lands that are not improved or on which there are exempt improvements.
6. Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement upon a definition of exempt improvements which will include:
  - a. Nisga'a Government public works;
  - b. Nisga'a Citizen residences;
  - c. forest resources; and
  - d. such other matters as the Parties may agree.
7. Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement on whether paragraph 5 will be expanded to apply to other taxes.
8. Where within twenty years of the effective date, Canada or British Columbia enacts legislation pursuant to another land claims agreement applicable in northwest British Columbia which provides that all of the lands of the First Nation will cease to be lands reserved for the Indians within the meaning of subsection 91(24) of the Constitution Act, 1867, and provides tax exemptions with respect to the interest of a First Nation government in settlement lands such as referenced in paragraph 5, Canada and British Columbia will, upon request of Nisga'a

Central Government, negotiate and attempt to reach agreement on the provision of similar tax exemptions for Nisga'a Government.

9. For the purposes of the Income Tax Act, Nisga'a Capital transferred to, or recognized as owned by, Nisga'a Government under the Final Agreement will be deemed to have been acquired by Nisga'a Government on the Effective date at a cost equal to its fair market value on that Date.

10. For greater certainty, nothing in paragraph 5 is intended to affect the taxation of interests in Nisga'a Lands granted by Nisga'a Government to any Person nor to exempt from taxation dispositions of capital by Nisga'a Government.

11. The interest of Nisga'a Nation and any Nisga'a Village in Nisga'a Lands will not be subject to attachment, charge (except for liens by Canada or British Columbia), seizure, distress, execution or sale, except where such interest has been disposed of pursuant to a law under paragraph 31(b) of the Nisga'a Government Chapter of this Agreement.

#### *CAPITAL TRANSFERS*

12. The transfer, or recognition of ownership, of Nisga'a Capital under the Final Agreement will not be taxable.

13. For greater certainty, a transfer of Nisga'a Capital from Nisga'a Government to a Nisga'a Citizen will be considered to occur under the Final Agreement if such transfer occurs within 90 days after ownership of such Nisga'a Capital by Nisga'a Government has been acquired or recognized under the Final Agreement.

#### *NON-TREATY PROVISIONS*

14. Paragraphs 15 to 41 will neither constitute nor create an aboriginal or treaty right within the meaning of section 35 of the Constitution Act, 1982. Furthermore, it is the intention of the Parties that these paragraphs will not form part of the Final Agreement but, rather, will be given effect through legislative enactment or under further agreements between the Parties.

#### *TAXATION TREATMENT OF NISGA'A GOVERNMENT INSTITUTIONS*

15. For greater certainty, nothing in paragraphs 16 through 20 will prevent the application of section 149 of the Income Tax Act to Nisga'a Government or Nisga'a Government Corporations.

16. Nisga'a Central Government and Nisga'a Village Governments will, for purposes of paragraph 149(1)(c) of the Income Tax Act, each be deemed to be a public body performing a function of government in Canada in a taxation year where at all times during the year:

a. all of its real property and all or substantially all of its tangible personal property was situated on Nisga'a Lands or Nisga'a Economic Lands;

b. it did not carry on any business for profit other than a business on Nisga'a Lands or Nisga'a Economic Lands, the primary purpose of which was to provide goods or services to Nisga'a Citizens, Nisga'a Government Corporations, or individuals resident on Nisga'a Lands or, in the case of Nisga'a Economic Lands, Nisga'a Citizens, or such other business as the Parties may from time to time agree and

c. all or substantially all of its activities were devoted to the exercise of powers of government authorized under the Final Agreement or any subsequent agreement with respect to the performance of public functions of government between Nisga'a Central Government and Canada and British Columbia, together or separately.

17. Where Nisga'a Central Government or a Nisga'a Village Government is deemed to be a public body under paragraph 16 for a particular year, no income tax or capital tax will be imposed on the Nisga'a Government by British Columbia in respect of that year.

18. No tax will be payable under the Income Tax Act for a taxation year on the income, property or capital of a Nisga'a Government Corporation where at all times during the year:

a. no part of the income, as that term is used within the Income Tax Act, of the Nisga'a Government Corporation for that year is available to, or for the benefit of, any person other than Nisga'a Central Government, any Nisga'a Village Government, any Nisga'a Government Corporation, or any Nisga'a Settlement Trust, or any combination of the foregoing;

b. all of its real property and all or substantially all of its tangible personal property throughout the year is situated on Nisga'a Lands; and

c. it did not carry on in that year any business other than a business on Nisga'a Lands, the primary purpose of which was to provide goods or services to Nisga'a Citizens, non-taxable Nisga'a Government, non-taxable Nisga'a Government Corporations, or individuals resident on Nisga'a Lands, or such other business as the Parties may from time to time agree, and the revenue arising in that year from the provision of goods or services to other Persons is only an incidental portion of the total revenue from the business in that year.

19. No tax will be payable under the Income Tax Act for a taxation year on the income, property or capital of a wholly owned subsidiary (the "Subsidiary") of a Nisga'a Government Corporation where at all times during the year:

a. no part of the income, as that term is used within the Income Tax Act, of the Subsidiary for that year is available to, or for the benefit of, any person other than Nisga'a Central Government, any Nisga'a Village Government, any Nisga'a Government Corporation, any Nisga'a Settlement Trust, or any combination of the foregoing;

b. all of the real property and all or substantially all of the tangible personal property of the Subsidiary throughout the year is situated on Nisga'a Lands; and

c. the Subsidiary did not carry on in that year any business other than a business on Nisga'a Lands, the primary purpose of which was to provide goods or services to Nisga'a Citizens, non-taxable Nisga'a Government, non-taxable Nisga'a Government Corporations, or other individuals resident on Nisga'a Lands, or such other business as the Parties may from time to time agree, and the revenue arising in that year from the provision of goods or services to other Persons is only an incidental portion of the total revenue from the business in that year.

20. Where, under paragraph 18 or 19, no income tax is payable by a Nisga'a Government Corporation or Subsidiary for a particular year, no income tax or capital tax will be imposed on the Nisga'a Government Corporation or Subsidiary by British Columbia in respect of that year.

21. Nisga'a Central Government, a Nisga'a Village Government or a trust, board, commission or similar body established by Nisga'a Government, or a corporation wholly owned by any one such entity or combination thereof, may claim a refund of any tax paid by it under Part IX of the Excise Tax Act that is not otherwise recoverable by it under any law, to the extent that the property or service in respect of which the tax was paid was acquired by it for consumption or use in the course of exercising the public functions of government within Nisga'a Lands authorized under the Final Agreement or any subsequent agreement between Canada and British Columbia, together or separately, and Nisga'a Central Government and not for consumption, use or supply in the course of any business or other activity engaged in by it for profit or gain if, at the time at which the tax is paid:

a. all of its real property is Nisga'a Lands or Nisga'a Economic Lands and all or substantially all of its tangible personal property is situated on those Lands; and

b. it does not engage in any business or other activity for profit or gain, other than an activity engaged in by it on Nisga'a Lands or Nisga'a Economic Lands, the primary purpose of which is to provide property or services to Nisga'a Citizens, Nisga'a Government, Nisga'a Government Corporations, or individuals resident on Nisga'a Lands or, in the case of Nisga'a Economic Lands, Nisga'a Citizens, or such other business as the Parties may from time to time agree.

22. The provisions of Part IX of the Excise Tax Act will apply, with such modifications as the circumstances require, in respect of a refund paid or payable under paragraph 21 as though it were a rebate payable under Division VI of that Part.

23. Any transfer of Nisga'a Capital, other than cash, between Nisga'a Nation, any Nisga'a Village and any Nisga'a Government Corporation will not be taxable.

#### OTHER PROVINCIAL TAXES

24. Nisga'a Central Government, a Nisga'a Village Government or a trust, board, commission or similar body established by Nisga'a Government, or a corporation wholly owned by any one such entity or combination thereof, may claim a refund of any tax paid by it under:

- a. the Social Service Tax Act, excluding those sections which impose a 10% tax on the purchase of alcoholic beverages; or
- b. the Motor Fuel Tax Act;

that is not otherwise recoverable by it under any law, to the extent that the property or service in respect of which the tax was paid was acquired by it for consumption or use in the course of exercising public functions of government on Nisga'a Lands authorized under the Final Agreement or any subsequent agreement between Canada and British Columbia, together or separately, and Nisga'a Central Government and not for consumption, use or supply in the course of any business or other activity engaged in by it for profit or gain if, at the time at which the tax is paid:

- c. all of its real property is Nisga'a Lands or Nisga'a Economic Lands and all or substantially all of its tangible personal property is situated on those Lands; and
- d. it does not engage in any business or other activity for profit or gain, other than an activity engaged in by it on Nisga'a Lands or Nisga'a Economic Lands, the primary purpose of which is to provide property or services to Nisga'a Citizens, Nisga'a Government, Nisga'a Government Corporations, or individuals resident on Nisga'a Lands, or in the case of Nisga'a Economic Lands, Nisga'a Citizens, or such other business as the Parties may from time to time agree.

#### NISGA'A ECONOMIC LANDS

25. No interest of Nisga'a Government or any Nisga'a Government Corporation in Nisga'a Economic Lands will be subject to real property taxation other than an interest in an area within Nisga'a Economic Lands when it is used for a purpose other than government activities or non-profit activities.

#### TRANSITIONAL TAX TREATMENT

26. As of the effective date, Canada and British Columbia will each grant a remission of, respectively, federal and provincial tax imposed or levied in respect of:

- a. the interest of an Indian in the lands that were reserves immediately prior to the effective date and that are within Nisga'a Lands;
- b. the personal property of an Indian situated on such lands; and
- c. an Indian's ownership, occupation, possession or use of any property referred to in subparagraph a or b.

27. The orders authorizing the remissions of tax referred to in paragraph 26 will cease to be effective:

- a. in respect of transaction taxes as of the eighth anniversary of the effective date; and
- b. in respect of all other taxes as of the twelfth anniversary of the effective date.

28. Section 87 of the Indian Act will have no application to Nisga'a Citizens:

- a. in respect of transaction taxes as of the eighth anniversary of the effective date; and

b. in respect of all other taxes, as of the twelfth anniversary of the effective date.

29. Canada and British Columbia will negotiate and attempt to reach agreement on appropriate mechanisms pursuant to which Canada and British Columbia will address enforcement and other matters arising from paragraph 28.

30. For greater certainty, as of the effective date, neither Nisga'a Central Government nor Nisga'a Village governments will be Indian bands for the purposes of the Indian Act.

#### *NISGA'A SETTLEMENT TRUSTS*

31. A Nisga'a Settlement Trust, beneficial interests in a Nisga'a Settlement Trust, and any amount contributed to a Nisga'a Settlement Trust or distributed as income or capital by a Nisga'a Settlement Trust to a beneficiary will not be taxable except that:

a. any amount of income or capital distributed in a particular year to a beneficiary who is a Nisga'a Citizen will be deemed for purposes of subsection 104(13) of the Income Tax Act to be income of the trust that was payable to the beneficiary in the particular year;

b. a Nisga'a Settlement Trust will be subject to the provisions of Part XI of the Income Tax Act, as if that Part was stated to be specifically applicable to Nisga'a Settlement Trusts and was amended as required to take into account the investments described under paragraph (iii) of the definition of "Nisga'a Settlement Trust";

c. a Nisga'a Settlement Trust will be subject to tax under Parts I and I.1 of the Income Tax Act and for that purpose its taxable income will be calculated as the total of:

i. the amount of any income derived during the year from a property, including any taxable capital gain from the disposition of such property, that is not a qualified investment for the Trust or that is not acquired in the course of carrying on a permitted activity of the Trust; and

ii. any amount contributed to the Trust that is not permitted under the terms of the Trust; and

d. goods and services tax or similar taxes may be imposed on goods or services consumed by the Trust or the trustee.

32. Where the Minister of National Revenue is of the opinion that a Nisga'a Settlement Trust has failed to comply with the provisions of paragraph 31 or any of the terms set out in the definition of Nisga'a Settlement Trust, the Minister may notify the Trust in writing and if the Trust does not address the default to the satisfaction of the Minister within 100 days after the registered mailing of such notice, the Minister may revoke the status of the Trust as a Nisga'a Settlement Trust subject to the same right of appeal as applies to a revocation of the registration of a registered charity under the Income Tax Act.

33. If the Minister of National Revenue revokes the status of a Nisga'a Settlement Trust, the taxation year of the Trust that would otherwise have included the time of revocation will be deemed to end immediately before the time of the revocation, and the Nisga'a Settlement Trust will be deemed to dispose of all its assets immediately before that time for proceeds equal to their fair market value and to re-acquire such assets at the time at a cost equal to such fair market value, and for the purposes of calculating the taxable income of the trust in paragraph 31(c), an amount equal to the amount by which such fair market value exceeds the cost amounts of the assets of the Trust will be deemed to be a capital gain from the disposition of property that is not a qualified investment for the Trust.

34. For purposes of paragraph 32, the distribution by a Nisga'a Settlement Trust of any amount to a beneficiary of the trust in respect of the beneficiary's interest in the Trust will not be considered to be cause for the revocation of the status of the Nisga'a Settlement Trust.

35. The rule against perpetuities will not apply to a Nisga'a Settlement Trust.

#### *NISGA'A TAXATION OF REAL PROPERTY*

36. Nisga'a Central Government and British Columbia will negotiate and attempt to reach agreements before the Final Agreement with respect to Nisga'a Lands:

- a. to provide to Nisga'a Government the power to make laws in relation to taxation of Persons in respect of their land or interests in land, including rights to occupy, possess or use land; and
- b. to determine the conditions under which British Columbia will suspend, in whole or in part, the liability of Persons to taxation in respect of their land or interests in land.

#### *GENERAL*

37. Where a tax has been introduced by British Columbia that it is reasonable to anticipate will result in a tax liability of Nisga'a Government in the course of exercising the public functions of Nisga'a Government on Nisga'a Lands then, at the request of Nisga'a Central Government, British Columbia will consult with Nisga'a Central Government with respect to the possible impact of the tax on Nisga'a Government.

38. Donations to Nisga'a Government will have the same tax treatment as donations to a charity registered under the Income Tax Act.

39. Nisga'a Central Government will be treated as a public authority designated pursuant to section 32(2) of the Cultural Property Export and Import Act, subject to:

- a. availability of a Nisga'a Central Government facility which meets accepted Canadian museological standards for long term storage and display of donated cultural artifacts; or
- b. availability, through long term agreement between Nisga'a Central Government and an institution or public authority designated pursuant to section 32(2) of the Cultural Property Export and Import Act, of facilities for long term storage and display of donated cultural artifacts.

40. Where within 15 years of the Effective date, Canada or British Columbia enacts legislation pursuant to a land claims agreement applicable within British Columbia that provides that all of the lands of the First Nation will cease to be the lands reserved for the Indians within the meaning of subsection 91(24) of the Constitution Act, 1867 and that provides tax powers or exemptions to a band or other aboriginal polity in northwest British Columbia that are not available to Nisga'a Government, Canada and British Columbia, at the request of Nisga'a Central Government, will negotiate and attempt to reach an agreement with Nisga'a Central Government to provide appropriate adjustments to the tax powers and exemptions available to Nisga'a Government, taking into account the particular circumstances of the other First Nation and of its land claim agreement.

41. Any legislation enacted by Nisga'a Government will be subject to relevant obligations of Canada under international treaties, conventions and protocols respecting taxation.

### **CULTURAL ARTIFACTS & HERITAGE**

#### *DEFINITIONS*

1. In this Chapter:

- a. "archaeological human remains" mean non-contemporary human remains found in archaeological sites;
- b. "archaeological site" means a locality with physical evidence of past human activity;
- c. "associated records" mean 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 thereof;
- d. "heritage sites" includes archaeological, burial, historical and sacred sites; and

e. "Nisga'a artifact" means any object having past and ongoing importance to Nisga'a cultural and spiritual practices.

#### *GENERAL PROVISIONS*

2. The Parties recognize the integral role of Nisga'a artifacts in the continuation of Nisga'a culture, values and traditions.

3. The Parties recognize the Nisga'a Nation's traditional and sacred connection with Nisga'a artifacts regardless of whether such artifacts are held by Nisga'a Government, the Canadian Museum of Civilization (CMC) or the Royal British Columbia Museum (RBCM).

#### *REPATRIATION OF NISGA'A ARTIFACTS AND RELATED MATTERS*

##### *Canadian Museum of Civilization*

4. The Canadian Museum of Civilization (CMC) currently holds artifacts which it and the Nisga'a Tribal Council have identified as Nisga'a artifacts, and which are listed on Appendix N and Appendix O.

5. CMC will transfer to Nisga'a Central Government, without condition, all its legal interests in and possession to those Nisga'a artifacts listed in Appendix N, as soon as practicable following the request of Nisga'a Government, and in any event, within 5 years from the effective date unless otherwise agreed to by CMC and Nisga'a Central Government.

6. Prior to the delivery to Nisga'a Central Government of the Nisga'a artifacts listed in Appendix N, those artifacts will remain with the CMC under the same conditions as they are currently held.

7. In the event that other artifacts held by CMC on the effective date are identified as Nisga'a artifacts, they will be included on either Appendix N or Appendix O.

8. At any given time, some of the Nisga'a artifacts listed in Appendix O may be in the possession of Nisga'a Central Government. The Nisga'a artifacts listed in Appendix O will be subject to custodial arrangements negotiated from time to time pursuant to paragraph 10.

9. The CMC will remain responsible for the care, maintenance and preservation of the Nisga'a artifacts listed in Appendix O, in accordance with resources available to CMC for such activities from time to time and agreements negotiated pursuant to paragraph 10.

10. The CMC and Nisga'a Central Government will negotiate and attempt to reach agreements to establish the custodial arrangements in respect of Nisga'a artifacts listed in Appendix O.

11. The agreements negotiated pursuant to paragraph 10 will respect Nisga'a laws and practices relating to Nisga'a artifacts, will comply with laws of general application, including the statutory mandate of the CMC, and may include:

a. identification of the Nisga'a artifacts to be in the possession of Nisga'a Government and the CMC at the commencement of any particular agreement;

b. conditions of maintenance, storage, and handling of the Nisga'a artifacts;

c. conditions of access to and use, including study, display and reproduction, of the Nisga'a artifacts and associated records by the public, researchers and scholars;

d. provision for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and

e. provision for enhancing public knowledge of the Nisga'a Nation through the participation of the Nisga'a in public programs and activities at the CMC.

12. In the event of disposal of Nisga'a artifacts listed in Appendix N and O by the CMC or Nisga'a Central Government, the other party will be consulted and may exercise a right of first refusal to purchase such artifacts.

13. Prior to the Final Agreement, Canada and the Nisga'a Tribal Council may negotiate arrangement pertaining to:

- a. the replication of certain Nisga'a artifacts listed in Appendix O; and
- b. professional and technical training for Nisga'a citizens in museum skills and conservation expertise.

*Royal British Columbia Museum*

14. British Columbia, through the RBCM, currently holds artifacts which it and the Nisga'a Tribal Council have identified as Nisga'a artifacts, which are listed in Appendix P and which the Parties have provisionally divided into categories "0", "1", "2", "3", and "4".

15. Prior to the Final Agreement, British Columbia and the Nisga'a Tribal Council will divide the Nisga'a artifacts listed in Appendix P into two lists.

16. British Columbia will transfer to Nisga'a Central Government, without condition, all its legal interests in and possession to one of the two lists referred to in paragraph 15, as soon as practicable following the request of Nisga'a Central Government, and in any event, within 5 years from the effective date unless otherwise agreed to by British Columbia and Nisga'a Central Government.

17. Prior to the delivery of Nisga'a artifacts pursuant to paragraph 16, they will be maintained by RBCM, and British Columbia will not be liable for any loss or damage to such Nisga'a artifacts absent dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.

18. In the event that other artifacts held by British Columbia as of the effective date are identified as Nisga'a artifacts, they will either be transferred to Nisga'a Central Government pursuant to paragraph 16 or managed in accordance with custodial arrangements negotiated pursuant to paragraph 19.

19. British Columbia and Nisga'a Central Government will negotiate and attempt to reach agreements to establish custodial arrangements in respect of Nisga'a artifacts which are not transferred to Nisga'a Central Government pursuant to paragraph 16.

20. The agreements negotiated pursuant to paragraph 19 will respect Nisga'a laws and practices relating to Nisga'a artifacts, will comply with laws of general application, including the statutory mandate of the RBCM, and may include:

- a. conditions of maintenance, storage, and handling of the Nisga'a artifacts;
- b. conditions of access to and use, including study, display and reproduction, of the Nisga'a artifacts and associated records by the public, researchers and scholars;
- c. provision for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
- d. conditions of de-accession.

21. British Columbia and Nisga'a Central Government may negotiate agreements which:

- a. establish processes by which Nisga'a artifacts listed in Appendix P may be loaned by one party to the other;
- b. provide for replication of Nisga'a artifacts;
- c. provide for professional and technical training for the Nisga'a in museum skills and conservation expertise;



- d. provide for enhancing public knowledge of the Nisga'a Nation through the participation of the Nisga'a in public programs and activities at the RBCM; and
- e. such other matters as may be agreed.

#### *ACCESS TO OTHER COLLECTIONS*

22. Canada and British Columbia will use reasonable efforts to facilitate Nisga'a Central Government access to Nisga'a artifacts held in other public and private collections.

#### *PROTECTION OF ARCHAEOLOGICAL AND OTHER HERITAGE SITES*

23. British Columbia and Nisga'a Central Government will each develop processes to manage archaeological and other heritage sites where proposed land development may impact them.

Those processes will be designed to:

- a. identify archaeological and other heritage sites;
- b. provide notice to the other Parties of identified sites;
- c. assess the significance of identified sites;
- d. ensure appropriate protective or management measures are taken to protect, or where necessary to mitigate the effects of unavoidable impacts on, identified sites and associated material; and
- e. ensure that management implementation measures and costs are borne by the appropriate party.

24. Until such time as Nisga'a Central Government establishes the processes referred to in paragraph 23, processes developed by British Columbia will apply on Nisga'a Lands.

#### *OWNERSHIP OF NISGA'A ARTIFACTS DISCOVERED*

25. Nisga'a Central Government will own Nisga'a artifacts discovered:

- a. within Nisga'a Lands; and
- b. on adjusted Nisga'a Indian reserves outside of Nisga'a Lands which become fee simple lands.

26. Any Nisga'a artifact discovered on provincial lands elsewhere in British Columbia will be subject to provincial jurisdiction. These artifacts will be loaned to Nisga'a Central Government, and may be transferred to Nisga'a Central Government.

#### *HUMAN REMAINS*

27. The Final Agreement will contain provisions in respect of Nisga'a Central Government authority over the disposition of Nisga'a archaeological human remains.

### **LOCAL AND REGIONAL RELATIONSHIPS**

1. The Final Agreement will include provisions in respect of the relationship between Nisga'a Government and the Kitimat-Stikine Regional District including such matters as:

- a. the delivery of Regional District services;
- b. coordination between Nisga'a Government and the Regional District with respect to common areas of responsibility, such as land use planning, health services, and infrastructure development; and
- c. representation of Nisga'a Government and residents of Nisga'a Lands on the Regional District.

2. The Nisga'a Tribal Council is committed to the continuation of the cooperative relationships that have existed for many years with the non-Nisga'a residents of the fee simple lands within Nisga'a Lands.

## **DISPUTE RESOLUTION**

### *COOPERATION*

1. The Parties will at all times endeavour to agree on the interpretation, application and implementation of the Final Agreement, and will make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of the Final Agreement.

### *RECOURSE TO DISPUTE RESOLUTION PROCEDURES*

2. Except as otherwise provided in the Final Agreement, the dispute resolution provisions of this Chapter will apply with respect to the avoidance or resolution of all disputes between the Parties regarding the interpretation, application and implementation of the Final Agreement.

### *CONSULTATIONS*

3. Any Party may request, in writing, consultations with any other Party regarding any matter that it considers might affect the operation of the Final Agreement and will advise the other Party of the request.

4. Any Party that wishes to participate in consultations will be entitled to do so on delivery of written notice to the other Parties.

5. The participating Parties will make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations requested pursuant to paragraph 3. To this end, the participating Parties will:

a. provide sufficient information to enable a full examination of how the matter might affect the operation of the Final Agreement; and

b. treat as confidential any information provided to them on that basis.

6. The participating Parties will notify the other Party forthwith of any resolution reached through consultations.

### *CONCILIATION, MEDIATION AND OTHER DISPUTE RESOLUTION PROCEDURES*

7. If the participating Parties fail to resolve a matter pursuant to paragraph 5, they may, by consensus:

a. call on such technical advisors, or create such working groups or expert groups as they deem necessary; and

b. have recourse to conciliation, mediation, or such other dispute resolution procedures as may assist the participating Parties to reach a mutually satisfactory resolution of the dispute.

8. Where the participating Parties agree to utilize working or expert groups, each Party will select its own representatives to sit on these bodies and will bear its own costs.

9. Where the participating Parties agree to jointly engage technical advisors pursuant to paragraph 7(a) or to have recourse to conciliation, mediation or other dispute resolution procedures pursuant to paragraph 7(b), the costs associated with such procedures will be shared on an equal basis between the participating Parties.

### *ARBITRATION AND JUDICIAL PROCEEDINGS*

10. Where a participating Party considers it advisable, that Party may, upon notice to the other participating Parties, terminate proceedings under paragraphs 7 to 9 and initiate arbitration or judicial proceedings.

11. Any Party may participate as a party in arbitration or judicial proceedings commenced by any Party, whether or not it has participated in the dispute resolution process pursuant to paragraphs 3 to 9.

12. Where a dispute arises under the following paragraphs of this Agreement, the Parties will employ the arbitration process to be set forth in the Final Agreement instead of judicial proceedings pursuant to paragraph 14:

- a. Lands and Resources Chapter -- paragraphs 24, 72, 90(f), and 109;
- b. Access Chapter -- paragraphs 19(d) and 31;
- c. Fisheries Chapter -- paragraph 51; and
- d. Wildlife Chapter -- paragraph 26.

13. Any dispute arising under the Final Agreement may be referred to arbitration instead of judicial proceedings pursuant to paragraph 14 with the consent of the Party complained against.

14. Except as otherwise provided in the Final Agreement, any Party may commence proceedings in the Supreme Court of British Columbia in respect of the interpretation, application or implementation of the Final Agreement at any stage in the dispute resolution process.

#### *OTHER PROCEEDINGS*

15. Where in any judicial or administrative proceeding, an issue arises as to the interpretation of the Final Agreement or the validity or applicability of:

- a. any federal or British Columbia law giving effect to the Final Agreement; or
- b. any Nisga'a law enacted pursuant to the Final Agreement;

the issue will not be decided until the party raising the issue has served notice on the Attorney General of British Columbia, the Attorney General of Canada and Nisga'a Central Government.

16. In any judicial or administrative proceeding to which paragraph 15 applies, the Attorney General of British Columbia, the Attorney General of Canada or Nisga'a Central Government may appear as a party and will have the same rights as any other party.

### **ELIGIBILITY AND ENROLMENT**

#### *DEFINITIONS*

1. In this Chapter:

- a. "adopted child" means a person who while a minor was adopted by Nisga'a custom or pursuant to laws recognized in Canada;
- b. "applicant" includes a person applying for enrolment on behalf of another person;
- c. "descendant" includes a direct descendant notwithstanding any intervening adoption or any birth outside marriage;
- d. "enrolled" means being unconditionally entered in the enrolment register;
- e. "initial enrolment period" means two years following a date to be agreed upon by the Parties;
- f. "minor" means a person under the age of majority in that person's place of residence;
- g. "Nisga'a child" means a person under the age of majority who is or is eligible to become a Nisga'a citizen;

#### *ELIGIBILITY CRITERIA*

2. A person is entitled to be enrolled if that person is:

- a. of Nisga'a ancestry and their mother was born into one of the Nisga'a tribes;
- b. a descendant of a person described in paragraphs 2(a) or 2(c);
- c. an adopted child of a person described in paragraphs 2(a) or 2(b); or
- d. an aboriginal person who is married to someone described in paragraphs 2(a), 2(b), or 2(c) and has been adopted by one of the four Nisga'a tribes in accordance with Ayuukhl Nisga'a , (ie. the person 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).

3. Except where otherwise provided in the Final Agreement, or in any federal or provincial law, enrolment pursuant to the Final Agreement will not confer or deny rights or benefits under any law of Canada or British Columbia, including rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the Indian Act, or any of the rights or benefits conferred by the Indian Act.

4. The burden of demonstrating eligibility will be on the applicant.

#### *APPLICATIONS*

5. A person may apply for enrolment on behalf of themselves, a minor, or an adult whose affairs they have the legal authority to manage.

#### *OTHER LAND CLAIMS AGREEMENTS*

6. A person enrolled under another land claims agreement in Canada will not at the same time be enrolled under the Final Agreement.

7. A person enrolled under another land claims agreement in Canada may apply to enrol under the Final Agreement provided they agree that if the application succeeds they will withdraw from enrolment under the other agreement.

8. Where the Enrolment Committee determines that a person who is enrolled under another land claims agreement meets the eligibility criteria, the person will be conditionally enrolled, and the person's enrolment will be effective when the person ceases to be enrolled under the other agreement.

9. A person who has been conditionally enrolled will within sixty days of written notification by the Enrolment Committee demonstrate that they have withdrawn from enrolment from the other agreement, or the Enrolment Committee will remove their name from the enrolment register.

10. Where a participant applies to have their name removed from the enrolment register, the Enrolment Committee will remove the name and so notify the participant.

#### *THE ENROLMENT COMMITTEE*

11. The Nisga'a Tribal Council will establish an Enrolment Committee (the Committee) comprising eight Nisga'a persons, two from each Nisga'a tribe, selected by their tribe.

12. The Nisga'a Tribal Council will notify Canada and British Columbia of the members of the Committee.

13. Members must understand Ayuukhl Nisga'a, Nisga'a culture, ancestry, tribes and institutions and reside in a Nisga'a village.

14. The Committee will:

- a. establish enrolment procedures and time limits;
- b. consider each application, enroll each person who meets the eligibility criteria and refuse to enroll other

applicants;

- c. establish and maintain a public enrolment register containing the names of all enrolled persons;
- d. publish its procedures, including the documentation and information required of each applicant;
- e. publish the enrolment criteria and provide information and application forms;
- f. notify in writing each applicant, the Nisga'a Tribal Council and Canada of its decision and, where enrolment is refused, provide written reasons;
- g. provide information on request to the Parties and the Enrolment Appeal Board;
- h. add or delete names from the enrolment register in accordance with decisions of the Board;
- i. subject to this Chapter, keep information provided by and about applicants confidential; and
- j. provide a true copy of the official enrolment register to the Parties each year and at other times on request.

15. Subject to this Chapter, all decisions and orders of the Committee will be final and binding.

16. During the initial enrolment period, the Committee may, prior to the bringing of an appeal, vary a decision on the basis of new information where it considers the decision was in error.

17. Where the Committee fails to decide upon an application for enrolment within the time established in its procedures, the application will be deemed to be refused pursuant to paragraph 14(b).

#### *THE ENROLMENT APPEAL BOARD*

18. An applicant, a party or a band council may appeal to the Enrolment Appeal Board (the Board) any decision of the Committee made pursuant to paragraph 14(b) or 16.

19. The Board will have three members, one person and an alternate to be appointed by each of the Nisga'a Tribal Council and Canada, and a Chairperson and an alternate chosen by the other two members and jointly appointed.

20. The Board will:

- a. establish its own procedures and time limits;
- b. hear and determine any appeal brought pursuant to paragraph 18 and decide whether the applicant will be enrolled;
- c. conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality which outweigh the public interest in having an open hearing;
- d. provide written reasons for its decisions to the appellant, the applicant, and the Parties;

21. A member of the Board may:

- a. by summons require any person to appear before the Board as a witness and produce any document in his possession; and
- b. require any witness to answer on oath or solemn affirmation any question posed to him.

22. Where a person fails to comply with a direction of the Board made under paragraphs 21(a) or 21(b), on application by the Board, a judge of the Provincial Court of British Columbia may enforce the direction.

23. The Board will permit any applicant, party, band council or witness appearing before it to be assisted by counsel

or an agent.

24. No action lies against the Board or any member for anything done or omitted in good faith in the performance or intended performance of a duty under this Chapter.

25. Subject to paragraphs 26 to 29, all decisions of the Board will be final and binding.

#### *JUDICIAL REVIEW*

26. An appellant, applicant or a party may apply to the Supreme Court of British Columbia to review and set aside a decision of the Board, on the grounds that the Board acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction, failed to observe procedural fairness, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

27. On an application for judicial review the court may either dismiss the application, or set aside the decision and refer the matter back to the Board for determination in accordance with such directions as the Court considers appropriate.

28. Where the Board refuses or fails to hear or decide an appeal, an appellant, applicant or a party may apply to the court for an order directing the Board to hear or decide the appeal in accordance with such directions as the Court considers appropriate.

29. An application for judicial review will be made within sixty days of notification of the decision or a longer time that may be determined by the court.

#### *COSTS*

30. Canada and British Columbia will pay the reasonable and necessary costs of the Committee and the Board for the initial enrolment period.

31. The Committee and the Board will each submit an annual budget to Canada and British Columbia for approval and will operate within their approved budgets.

32. After the initial enrolment period, Nisga'a Central Government will bear all costs associated with enrolment.

#### *ENROLMENT AFTER THE INITIAL ENROLMENT PERIOD*

33. Subject to paragraph 34, at the end of the initial enrolment period, the Committee and the Board will be dissolved and enrolment will be the responsibility of Nisga'a Central Government.

34. Following the initial enrolment period, Nisga'a Central Government will continue to maintain an enrolment register, to provide a true copy of the enrolment register to the other Parties each year or as they request and to provide information concerning enrolment to the other Parties as they request.

35. Once an application or appeal is commenced before them, the Committee or the Board will render a decision in respect of that application or appeal.

36. On dissolution the Committee and Board will provide their records to the Nisga'a Central Government.

### **IMPLEMENTATION**

1. The Parties will, prior to the ratification of the Final Agreement, prepare an Implementation Plan which will:

- a. identify the obligations and activities required to implement the Final Agreement;
- b. identify how and by whom the activities will be carried out and identify the associated time frames and how the obligations will be discharged;
- c. identify the level of funding the Parties will agree to provide for implementing the Final Agreement;

- d. identify the actions required to implement the Final Agreement;
  - e. provide for a regulatory impact assessment by Canada;
  - f. describe the employment opportunities and training needs for Nisga'a citizens to participate in the implementation of the Final Agreement;
  - g. include a communication strategy to inform all interested parties of the implementation and content of the Final Agreement;
  - h. specify how implementation of the Final Agreement will be monitored and amended;
  - i. provide for annual reports on Final Agreement implementation; and
  - j. address other matters agreed to by the Parties.
2. The Implementation Plan will be appended to, but will not be part of, the Final Agreement.

### **RATIFICATION OF THIS AGREEMENT**

1. This Agreement will be submitted to the Parties for ratification forthwith after its initialling by the negotiators for the Parties.
2. The Nisga'a Nation will have ratified this Agreement when it is signed by the President of the Nisga'a Tribal Council authorized by a Special Assembly of the Nisga'a Nation called for the purpose.
3. Canada will have ratified this Agreement when it is signed by a Minister of the Crown authorized by the federal Cabinet.
4. British Columbia will have ratified this Agreement when it is signed by a Minister of the Crown authorized by the provincial Cabinet.
5. Once this Agreement is ratified by the Parties, they will jointly make it public and will continue negotiations towards a Final Agreement based on this Agreement.

### **RATIFICATION OF THE FINAL AGREEMENT**

#### *GENERAL*

1. Once the Final Agreement is initialled by the negotiators for the Parties, it will be submitted forthwith for ratification by the Parties.

#### *NISGA'A RATIFICATION*

2. The Nisga'a will have ratified the Final Agreement when:
  - a. it has been debated at a special assembly of the Nisga'a Nation called for the purpose of considering the proposed Final Agreement and a majority of those voting at that assembly vote to refer it to a referendum; and
  - b. at least fifty percent plus one of the eligible voters on the Nisga'a official voters list vote in favour of approving the Final Agreement.
3. The ratification vote will be by secret ballot.
4. A ratification committee will be established by the Nisga'a Tribal Council and will include a representative of Canada and a representative of British Columbia. The Committee will:
  - a. prepare and publish a preliminary list of eligible voters;

- b. establish a process to hear applications or appeals arising from inclusion on, or exclusion from, the preliminary voters list;
- c. provide eligible voters in each of the four Nisga'a villages and three urban locals with a reasonable opportunity to review the substance and detail of the proposed Final agreement;
- d. prepare and publish an official voters list at least 30 days prior to the ratification vote;
- e. approve the form and content of the ballot; and
- f. conduct the ratification vote.

5. An eligible voter will be a person who:

- a. is eligible to be enrolled as a participant in accordance with the criteria established in the Eligibility and Enrolment Chapter of the Final Agreement;
- b. is at least 18 years of age;
- c. is ordinarily resident in Canada; and
- d. is not enrolled in any other land claims agreement.

6. The ratification vote will be on the same day or days for all eligible voters except for advance polls or where circumstances require an alternate day.

7. Canada and British Columbia will pay the costs of the ratification vote within an agreed upon budget.

#### *CANADA RATIFICATION*

8. Canada will have ratified the Final Agreement when:

- a. the Final Agreement is signed by a Minister of the Crown authorized by the federal Cabinet; and
- b. legislation giving effect to the Final Agreement is passed by Parliament and comes into force.

#### *BRITISH COLUMBIA RATIFICATION*

9. British Columbia will have ratified the Final Agreement when:

- a. the Final Agreement is signed by a Minister of the Crown authorized by the provincial Cabinet; and
- b. legislation giving effect to the Final Agreement is passed by the Legislative Assembly and comes into force.

### **INTERIM PROTECTION MEASURES**

1. Forthwith following the signing of this Agreement, the Parties will negotiate and attempt to reach agreement on interim protection measures to be in effect until the earlier of the effective date or three years following the date of this Agreement.

2. The interim protection measures will include the following matters:

- a. measures by which the adjusted Nisga'a Indian reserves, the subsurface resources under the adjusted Indian reserves, and the additional Nisga'a fee simples will be protected once their locations and boundaries have been finalized;
- b. protection from disposition of the lands, non-timber forest resources and subsurface resources within the boundaries of Nisga'a Lands;



- c. the measures and level of protection which will be afforded to the commercial backcountry recreation tenure area once the boundaries of such area have been defined through the development of the management plan;
- d. the implementation of the Wildlife Committee referred to in the Wildlife Chapter of this Agreement as a pilot project;
- e. the implementation or conduct of all matters set forth in this Agreement that require finalization prior to the effective date;
- f. such consultations as are appropriate to the provisions of this Agreement;
- g. Nisga'a participation in environmental review processes in respect of reviewable projects proposed for the Nass Area;
- h. arrangements in respect of the funding of the agreed upon matters; and
- i. such other matters as the Parties may agree.