

PRESENTATION TO THE COMMITTEE OF DEPUTY
MINISTERS ON B.C. COMPREHENSIVE CLAIMS
INCLUDING THE NISHGA LAND CLAIM AND
THREE NEW CLAIMS FOR REVIEW.

Office of Native Claims
September 1981.

E78
.B9
P7
1981
c. 1

ET8
.89
P7
1981
c.1

PRESENTATION TO THE COMMITTEE OF DEPUTY MINISTERS
ON B.C. COMPREHENSIVE CLAIMS INCLUDING THE
NISHGA LAND CLAIM AND THREE NEW CLAIMS FOR REVIEW.



LIBRARY
INDIAN AND NORTHERN AFFAIRS
CANADA
FEB 13 2006
AFFAIRES INDIENNES ET DU NORD
CANADA
BIBLIOTHEQUE

Office of Native Claims
September 1981

INDEX

I	<u>Overview</u>	1
	1. British Columbia Comprehensive Claims	
	2. History of Claims	
II	<u>Profile of Nishgas</u>	3
	1. Nishga Population	
	2. Location	
	3. Cultural Dimension	
	4. Socio-Economic Profiles	
III	<u>Political Organization - Nishga Tribal Council</u>	6
	1. Mandate	
	2. Executive	
	3. Other Representation	
IV	<u>Nishga Land Claim</u>	6
	1. Claim Area	
	2. Overlapping Claims	
	3. Basis of Claim	
	4. Claim Components	
	5. History of Claim	
	6. Distinguishing Characteristics	
	7. Current Status	
	8. Research Funding to the Nishga Tribal Council	
V	<u>Major Issues</u>	11
	1. Tripartite Negotiations	
	A. Provincial Government	
	1) Unilateral Nature of 1973 Federal Claims Policy	
	2) Unilateral Patriation of the Amended Constitution	
	B. Provincial Participation	
	C. Nishga Attitude	
	2. Disincentives to Claim Settlement	
	3. Is Time Working For or Against Settlement?	
VI	<u>Proposed Approach for Negotiations</u>	13
VII	<u>New Comprehensive Claims for Review</u>	15
	1. Introduction	
	a) Comprehensive Claim Validation Process	
	2. Nuu-Chah-Nulth Tribal Council Claim	
	3. Haida Nation Claim	
	4. Heiltsuk Native Claim	
	5. Summary of Justice Opinion	
	6. Issues	
	a) Claims to the off-shore	

- b) Unlikely Prospect of Early negotiations
- c) Funding
- 7. Conclusions
- 8. Recommendations

VIII Appendices 22

- 1. List of Nishga Tribal Council Executive - Appendix "A"
- 2. Claim Components in detail - Appendix "B"
- 3. Attitude of the B.C. Government to the Claim - Appendix "C"
- 4. Fishing - Appendix "D"
- 5. Forest Resource Management - Appendix "E"

IX Maps

1.	Claims area	4
2.	Overlapping claims	7
3.	Nuu-Chah-Nulth Claim	16
4.	Haida Claim	18
5.	Heiltsuk Claim	19

I OVERVIEW

1. British Columbia Comprehensive Claims

Accepted Claims:

The following claims have been accepted by the Federal government for negotiation in conformity with the 1973 claims policy:

1. Nishga Claim (1974)
2. Kitwancool claim (1977)
3. Gitksan-Carrier claim (1977)
4. Kitimaat Village (Haisla Nation) claim (1978)
5. Association of United Tahltans claim (1980)

Of these five, the Nishga claim is the only active one at the moment.

Claims under Review

Claims currently under review by the Office of Native Claims and Justice include:

1. Nuu-Chah-Nulth (Nootka) claim submitted in October 1980
2. Haida Nation claim submitted in November 1980
3. Heiltsuk (Bella Bella) claim submitted in January 1981
4. Nuxalk (Bella Coola) claim submitted in June 1981

The Nuu-Chah-Nulth, Haida and Heiltsuk claims have been reviewed by O.N.C. and the Department of Justice and are recommended for acceptance. The rationale for this recommendation is reviewed in detail in Section VII.

The surface area covered by B.C. claims accepted and those presently under review is some 90,000 sq. miles (including overlaps). The approximate numbers of potential beneficiaries would be in the range of 26,000 to 29,000. Comparable statistics are not available for anticipated claims.

Anticipated claims

Within the year it is anticipated that at least three additional claims will be received:

1. Kootenay Area Indian Council Claim
2. Tsimshian claim
3. Sekani Claim (These bands are currently reviewing comparative benefits of adhesion to Treaty 8 versus a comprehensive claim)

Potentially a considerable number of claims could be submitted in the future, depending on whether the claims will proceed separately or in groups.

2. History of Claims

a) With the exception of the north-east corner of British Columbia (Treaty 8) and the southern tip of Vancouver Island, the Indians of British Columbia have never signed treaties. Under the Colonial government, limited reserve lands were established throughout the province and under the Terms of Union in 1871, the responsibility for Indians and reserve lands was passed to the federal government. Strong differences over jurisdiction arose between the two governments in this regard; and from 1876 to 1938 a series of joint commissions were established and agreements entered into with a view to resolving the "Indian Land" question. However, in all cases the question of aboriginal title was set aside and the commissioners dealt with the matter of setting aside Indian Reserves only.

b) British Columbia Indians have asserted that from an early date they held aboriginal title over their traditional lands. Presentations to this effect were made to the colonial government and taken to the provincial and federal governments. At several intervals from 1895 onward, British Columbia native groups attempted to seek a judicial review of their aboriginal title claim. These efforts culminated in the Supreme Court of Canada's split decision on the "Calder Case" in 1973.

c) Since 1871 British Columbia has held that aboriginal title was superseded by law prior to the Terms of Union. Further, the province has indicated that should such a title be deemed to continue to exist, it is wholly the federal government's responsibility to compensate claimants in exchange for the extinguishment of aboriginal title.

d) Since adopting the 1973 federal claims policy, the federal government has insisted on provincial participation as a prerequisite for the initiation of negotiations with British Columbia native claimants. This condition has been imposed due to British Columbia's exclusive jurisdiction over the lands and the resources which are key elements in the claims. Although consultations have occurred, no understanding has been reached between the governments regarding respective responsibilities. The lack of such an understanding has precluded discussions with all British Columbia claimants except the Nishga Tribal Council, with whom the province has agreed to participate in negotiations on a "socio-economic" basis.

NISHGA

II PROFILE OF NISHGAS

1. Nishga Population

The Nishga Tribal Council does not recognize distinctions based on status and non-status differences among its membership. The Council claims to represent a membership of between 4,000 to 6,000 people of Nishga ancestry. As of December 31, 1979, there were 2,970 status Nishga Indians on DIAND's register.

The status Indian population in B.C. has an annual growth rate of approximately 2.4%, however, comparable statistics are not available for non-status Nishgas. The exact number of potential beneficiaries to a claim settlement will be pursued within negotiations with the Nishga Tribal Council regarding eligibility.

The permanent non-Nishga population within the claim area is approximately 1,500 people who are located primarily in the community of Stewart, British Columbia.

2. Location

The Nishga claim area encompasses the whole area of the Nass River drainage and its tributaries in north-western British Columbia. In addition, it includes drainages into Observatory Inlet and lands between the Inlet and Portland Canal. The total area comprises 5750 sq. miles. (see map p.4) The Nishga also lay claim to an area within Alaska adjacent to their western boundary along the Portland Canal.

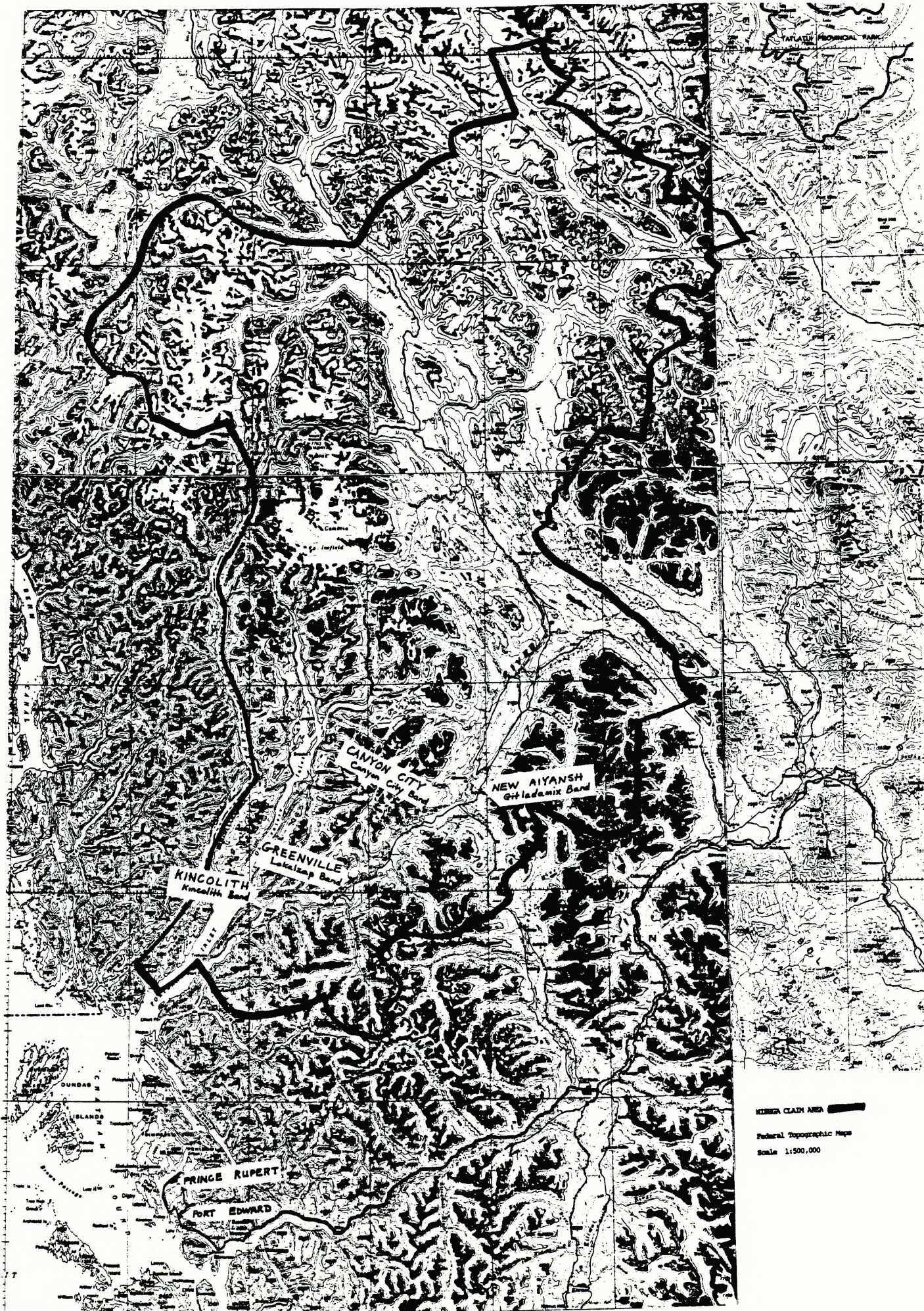
The claim area is predominantly mountainous with large areas of icefields and glaciers. It is rich in timber and fishery resources and has some mineral potential (i.e. molybdenum). The Nass River Valley floor also appears to have agricultural potential.

Within the claim area, the four bands which comprise the status Nishga population reside on reserves at four locations on the Nass; the Gitladamix Band at New Aiyansh, the Canyon City Band at Canyon City, the Lakalzap Band at Greenville and the Kincolith Band at Kincolith.

3. Cultural Dimension

The Nishga as a tribe form part of the Tsimshian linguistic group. Archeological evidence points to occupation of the claim area by Tsimshian for at least 2500 years. Important cultural features of this group included:

1. a strong reliance on traditional food fishery;
2. well-developed trade patterns with other coastal and inland tribes;
3. a clearly defined sense of territory and kinship



4. Socio-Economic Profiles of the Nishga

a) Demography

The majority of the Nishga population (including both status and non-status) lives off-reserve in the cities of Prince Rupert and Port Edward. Some are also resident in Vancouver. Approximately 60% of the status population lives in the four Nishga communities.

The permanent population of these communities fluctuates seasonally, with many people moving off-reserve during the summer for employment purposes and returning to the reserves in winter. The permanent population of each community as of December 31, 1979 is shown below:

. Kincolith	-	379
. New Aiyansh	-	694
. Greenville	-	432
. Canyon City	-	107

The reserve lands held by the Nishga bands, including the four residential sites, comprise 73 separate reserves totaling 17,495 acres. Their reserve allotment is therefore approximately four acres per capita. The reserves are predominantly small parcels situated along the Nass River and Observatory Inlet, originally selected as fishing stations.

b) Employment

The primary occupations of the Nishga are logging and commercial fishing. While logging employs more people, fishing, due to its traditional role in Nishga life, is held in greater esteem.

c) Education

The Nishga have operated their own school district within the provincial education system since 1976 (School District #92) The district consists of elementary schools in each of the four villages and a secondary school in New Aiyansh. The drop-out rate has been considerably lowered since 1976 and the Nishga are now emphasizing and supporting post-secondary education for their students. In this fiscal year approximately forty-three (43) Nishgas are being assisted in receiving post-secondary training.

d) Social Conditions

Due to the isolation of the Nishga communities (i.e. New Aiyansh, Greenville and Canyon City are only accessible by logging road, Kincolith only by boat or sea-plane), employment opportunities are rare. This factor together with housing shortages has contributed to the significant off-reserve population. The individual Band Councils have administered I.I.A. Programs regarding education, health care and social assistance since the mid-seventies. New Aiyansh is the most

progressive of the four communities. Overall, the Nishgas enjoy a higher standard of living than the majority of British Columbia Indians, but have problems due to lack of employment and limited accessibility.

III POLITICAL ORGANIZATION - NISHGA TRIBAL COUNCIL

1. Mandate

The Nishga Tribal Council came into existence in 1955. Its mandate includes the representation of the Nishga people in respect to their aboriginal land claim and also in their pursuit of common social and economic goals.

2. Executive

The Nishga Tribal Council is composed of 15 executive positions. The current president is Mr. James Gosnell. For further details regarding the composition of the Tribal Council, see Appendix "A".

3. Other Representation

Each of the four Nishga Bands also has an elected Band council, as per the provisions of the Indian Act. Under the constitution of the Nishga Tribal Council, the band councils are guaranteed representation on the Nishga Tribal Council executive through the Vice-Presidential and Trustee positions. (Appendix "A") Similar representation is accorded the off-reserve Nishga communities in Prince Rupert and Port Edward. It should also be noted that in economic matters the Kincolith Band is represented by the North Coast Tribal Council. This Band's participation in the Nishga Tribal Council is primarily related to land claim matters.

IV NISHGA LAND CLAIM

1. Claim Area

The Nishga claim area encompasses:

5500 sq. miles of land
262.5 sq. miles of coastal waters





2. Overlapping Claims

A large portion of the claim area is subject to overlapping claims. These overlaps include the claim of the Association of United Tahltans to the north, and the claims of the Kitwancool Band and the Gitksan-Carrier Tribal Council to the east (see map p. 7).

3. Basis of Claim

Traditional use and occupancy of claimed area from time immemorial.

NISHGA LAND CLAIM - OVERLAPPING BOUNDARIES

Nishga Boundary 
Gitksan-Carrier Boundary 
Kitwankool Boundary 
Tahltan Boundary 



4. Claim Components

The Nishgas claim unrestricted ownership of and the jurisdiction over all resources in the land claim area. They demand the return of all artifacts taken from their valley and the refund of all taxes paid. They expect the upgrading of all services.

The claim components can be broken down into sixteen (16) headings: Nishga rights, economic development, self-government, forest resources management, prohibition against damming, resources, crown land, provincial wildlife legislation, "Citizens Plus", tax payments, protection of Nishga culture, education, health care, improved services, funding and enshrining final agreement into statute law. (See Appendix "B" for details)

5. History of Claim

1869 Nishgas travelled to Victoria to petition the Governor of the Colony of British Columbia to recognize their formal demand to the Nass Valley. They were refused permission to see the Governor.

1913 The Nishgas petition the King of England to guarantee their rights to the Nass Valley

1923 The Nishgas joined the Allied Tribes of B.C. in a proposal to a Special Joint Committee of the Senate and House of Commons to resolve all aboriginal land claims in B.C. in exchange for hunting, fishing and trapping rights, \$2.5m. compensation, educational and medical services and additional lands.

The Special Committee did not find in favour of the Allied Tribes' petition but awarded an annual disbursement to B.C. Indians of \$100,000 known as the B.C. Special Fund.

1969-73 The Nishgas lost in the Supreme Court and Appeal Court of B.C. their suit against the Province of B.C. for recognition of aboriginal title but on appeal the Supreme Court of Canada split 3-3 on the validity of the Nishga allegation that aboriginal title has never been extinguished in claim area. The Nishga lost action on

a technicality. Due to the uncertainty raised by this judgement the Federal government introduces a policy to negotiate extinguishment of aboriginal title.

1974

Federal government begins discussions with Nishgas regarding aboriginal land claim. Provincial participation (re: land and resources involved in any claim settlement proposal) not forthcoming at that time.

1976

Provincial government agrees to negotiate - on a basis of socio-economic need - not as acknowledgement of aboriginal rights. First tripartite meeting occurs in January.

Nishga present statement of claim to Federal and provincial governments in April (re: Nishga Comprehensive Claim). In October both governments agree to develop joint responses.

1978

In January, separate federal and provincial response to this claim presented to the Nishga.

Nishgas present position paper on Forestry in October, claiming ownership of the resource.

1979

B.C. government rejects forestry proposal.

1980

Nishgas present position paper on fisheries in March. They urge both governments to respond to both fishing and forestry papers. A draft federal response on fisheries was prepared as the basis for discussion with the province.

The province rejected the forestry proposal out of hand. In the circumstances no unilateral federal response was possible.

In August, Robert Young is appointed to prepare negotiations on behalf of the federal government.

1981

In June, John Bene succeeds Robert Young as Chief Federal Negotiator for the Nishga claim.

6. Distinguishing Characteristics

a) Aside from the Amax operation and B.C. Timber's existing logging activities, there are no new major development projects contemplated by either the federal or provincial government for this area in the near future. However both governments are contemplating the resumption of negotiations on the "Straits of Georgia Reference" and this may have some impact on negotiation of the Nishga claim.

b) The Nishgas are relatively affluent compared to other native groups in Canada.

c) The Nishgas played a pivotal role in the formation of the 1973 federal claims policy, by pursuing a judicial review on the issue of "aboriginal title" in the Calder case.

d) The Nishgas played a prominent role in the presentation made by native groups and organizations before the Parliamentary Committee on the Constitution.

7. Current Status

Introductory meetings have been conducted by the Chief Federal Negotiator with the Nishga Tribal Council and provincial officials. It is expected that formal negotiations will commence by mid-October.

8. Research Funding to the Nishga Tribal Council

The Nishga Tribal Council has received the following monies to facilitate the research and negotiation of their land claim. These monies have been provided by DIAND in the form of interest free loans against settlements.

1974 - 75	-
1975 - 76	-
1976 - 77	\$189,675
1977 - 78	\$300,000
1978 - 79	\$300,000
1979 - 80	\$300,000
1980 - 81	\$330,000
1981 - 82	\$350,000
 Total to March 1982	 \$1,769,675

V MAJOR ISSUES

1. Tripartite Negotiations

A. Provincial Government

The negotiating climate at the provincial level has been quite negative and will no doubt remain at least ambivalent until a federal-provincial agreement on the respective roles and responsibilities of the two governments is reached. The reasons for this situation are two-fold:

. Unilateral Nature of 1973 Federal Claims Policy

British Columbia has no commitment to the negotiation of aboriginal claims, indeed, it refuses to acknowledge their continued existence. The province takes the position that inasmuch as the federal government adopted its 1973 claims policy unilaterally without any prior consultation, it should accordingly bear the full burden of any eventual settlement. Consequently, negotiation sessions to date have been unproductive and characterized by federal-provincial disagreement.

. Unilateral Patriation of the Amended Constitution

It is expected that provincial intransigence on the issue of land claims will be heightened if the government proceeds with its plans to patriate an amended constitution unilaterally. The clause in the proposed Charter of Rights recognizing and affirming aboriginal rights would be of particular concern in this connection.

B. Provincial Participation

Since the federal government's 1973 policy statement on native claims, efforts have been made to secure the participation of British Columbia in the negotiation and settlement of comprehensive claims. The federal government has viewed as necessary the participation of the Province in claims based on assertions of continuing Indian title because of provincial jurisdiction over lands and resources and the rights of other provincial citizens. Furthermore, the federal position considers that the Province clearly benefits from the resolution of native claims through the removal of any possible "cloud" on the Province's title to lands.

The Province agreed to come to the negotiating table "as a full and necessary participant" to assist the Nishgas in fulfilling their political, social, economic and cultural aspirations, while disavowing responsibility regarding extinguishment of native title. In addition to its denial of an unextinguished native interest, the Province has some concerns about the potential magnitude of the costs and the legislative and social complexities entailed in a claims settlement, such as James Bay. It is clearly opposed to providing additional lands and

resources for native people unless such lands and resources are tied to a specific development project. Indications are that if land is required by Canada to achieve extinguishment of the claim to aboriginal title, British Columbia may sell such land at nominal price under the Scott-Cathcart agreement, but they will not transfer lands to Canada at no cost.

C. Nishga Attitude

The Nishgas do not trust the British Columbia government but insist upon tripartite negotiations. It is obvious that in such matters as local self-government, fishing, forest harvest, hunting and trapping privileges, education, road access, etc. both levels of government will have to be involved in order to arrive at a satisfactory and cost-effective solution.

2. Disincentives to Claim Settlements

- . The Nishgas are more prosperous than most Indians of B.C., and therefore are not as motivated to settle for quick financial gain as other Indian groups might be.
- . Nishgas, with the assistance of church organizations and their lawyer, Mr. Don Rosenbloom, have organized a strong public relations network and as a result public interest in their claim is not waning.
- . The decision of the federal government and the government of B.C. to negotiate only the Nishga claim for the present eliminates pressures on the Nishgas from the Kitwancool, Tahltans and the Gitskan - Carriers who have overlapping land claims, and who have indicated they probably have a more open negotiating stance vis-a-vis the two levels of government.
- . Research funding provided to the Nishgas by I.A.N.D. which is not tied to measurable progress in negotiations may in fact encourage delays in negotiations.
- . Federal funding of the Nishgas inter alia for the acquisition of additional fishing quota, boats and shore facilities as is currently being considered by I.A.N.D., may remove pressure for a claim settlement if provided outside the context of the claim negotiations.

3. Is Time Working For or Against Settlement?

This question is of critical strategic importance in pursuing negotiations and one on which it would be useful to obtain the views of the Deputy Ministers' Committee. On the one hand the developing trend toward less generous settlements (e.g. the emerging CYI settlement compared to the COPE Agreement-in-Principle) might persuade the Nishgas toward an early settlement. On the other hand, any perception by the Nishgas that their future position would be improved by the inclusion of the aboriginal rights clause in the new constitution might cause them to shy away from an early settlement.

VI PROPOSED APPROACH TO NEGOTIATIONS

James Gosnell, Chief of the Nishga Tribal Council, told the Parliamentary Committee on the Constitution, December 15, 1980 in Ottawa, "Without the aboriginal title there can be no negotiation. Without negotiations there cannot be a just settlement of the land question. Without a just settlement of the land question the Nishga people will have absolutely no economic base upon which to survive."

Our aim is to convince the Nishgas that within a framework which protects the interests of all Canadians, the Nishgas can become increasingly more self-reliant, manage and harvest the rich resources of their valley and become owners and operators of industries based on these resources and thereby create an economic base from which to strike out towards other opportunities open to all Canadians.

We will propose to the Nishgas several steps towards greater involvement in and better management of, their traditional resources: fishing, harvesting of trees, hunting and trapping. For details on the first two items see Appendices "D" and "E" respectively. We will work with them to achieve local self-government for their villages and assist them to preserve and strengthen the roots of their rich cultural heritage.

The Nishgas base their claim of unrestricted ownership to about 5500 sq. miles of land and 262.5 sq. miles of coastal waters on occupancy and use of the Nass Valley since time immemorial. They state that aboriginal rights to the land arise from aboriginal title and they equate aboriginal rights with property rights. They are encouraged in their claim by a split decision by the Supreme Court of Canada in 1973 as to whether their aboriginal right to the land claim area survived, as well as by the currently proposed inclusion in the revised constitution of Articles 25 and 34.

By equating aboriginal rights with property rights, the Nishgas appear to disregard Justice Mahoney's decision in the "Baker Lake" case, where aboriginal rights were ruled to be dependent, among other conditions, on the absence of competing claims over the same territory and were defined as only a right to the traditional use of the land in the same manner as their forebearers.

In 1923 the Nishgas along with other B.C. tribes put forward a joint land claim settlement proposal to a Special Joint Committee of the Senate and House of Commons based on 160 acres of land per capita which, while eventually rejected by the federal government as too costly, would translate into approximately 280,000 acres for the Nishgas (based on 4,000 beneficiaries). Today the Nishgas hold some 17,500 acres (slightly in excess of 4 acres per capita) in 73 separate reserves in the Nass Valley. While they fish from these lands and occasionally harvest some wood or hunt, it is fair to say that most of the time the land is not utilized. Accordingly it

would seem difficult to make a strong case for a significant increase in the Nishgas' land base.

The government of British Columbia has hinted that on request it may sell land required to enlarge the area of the Nishga Villages under the Scott-Cathcart Agreement with Canada. British Columbia does not want to see any proposal for more isolated small patches of land to be created as reserves as this inhibits the development of roads, railroads, powerlines, etc.

We propose that a Nishga owned and operated development corporation be established which would receive funds in return for the extinguishment of their aboriginal land claim. This corporation could facilitate Nishga ownership in fish-packing and marketing enterprises as well as in the forest industry -- possibly even part ownership in the provincially owned pulp mill which has a timber license over a large part of the land claim area.

A major effort will be made to develop the skills which the Nishgas will require in order to assume the many managerial and entrepreneurial challenges in their highly productive valley.

We expect to encourage the apparent preference of the younger people for making a good living from productive work in and around their own communities, and in so doing direct their energy and ingenuity away from the pursuit of ever more benefits from outside as is presently the case.

We have been told by British Columbia officials that there are no major problems in creating a "Nass Valley Administrative District" out of the Kitimat-Stikine district. The Nishgas would have most of the votes in such a district and within the framework of provincial regulations could develop the region according to Nishga preferences.

British Columbia officials also indicated that Nishga representation would be welcomed on all regional advisory bodies.

The funding of the land purchase, additional training of Nishgas, development of new industries or participation in existing ones would come from a Nishga operated Development Corporation.

New Comprehensive
Claims for Review

VII COMPREHENSIVE CLAIMS FOR REVIEW

1. Introduction

There are three additional claims being presented to the Committee for approval. Unlike the Nishga claim, these claims have not yet been accepted by Canada for negotiation and, in fact, are being presented for the purpose of determining their validity. This will mark the first instance in which comprehensive claims have been presented to the Committee as part of the formal acceptance process.

What follows is a brief description of the process for reviewing comprehensive claims, the claims themselves, relevant issues which are unique to these claims, and finally, the recommendation being made to the Committee in each of the three cases.

a) Comprehensive Claim Validation Process

The process for validating claims includes the initial historical and anthropological research carried out by ONC to determine the validity of the claim to traditional use and occupancy of the claim territory, and the review by the Department of Justice to determine whether the aboriginal title has been extinguished by treaty or superseded by law. In the cases of the five claims which have already been accepted, the review period was very brief (one to two months) following which a recommendation was made to the Minister of Indian and Northern Affairs and a final decision was provided to the claimant.

The following three claims are submitted for the Committee's review pursuant to Cabinet's decision on comprehensive claims earlier this year whereby the Committee became the penultimate step in the formal claims' acceptance process.

2. Nuu-Chah-Nulth Tribal Council Claim

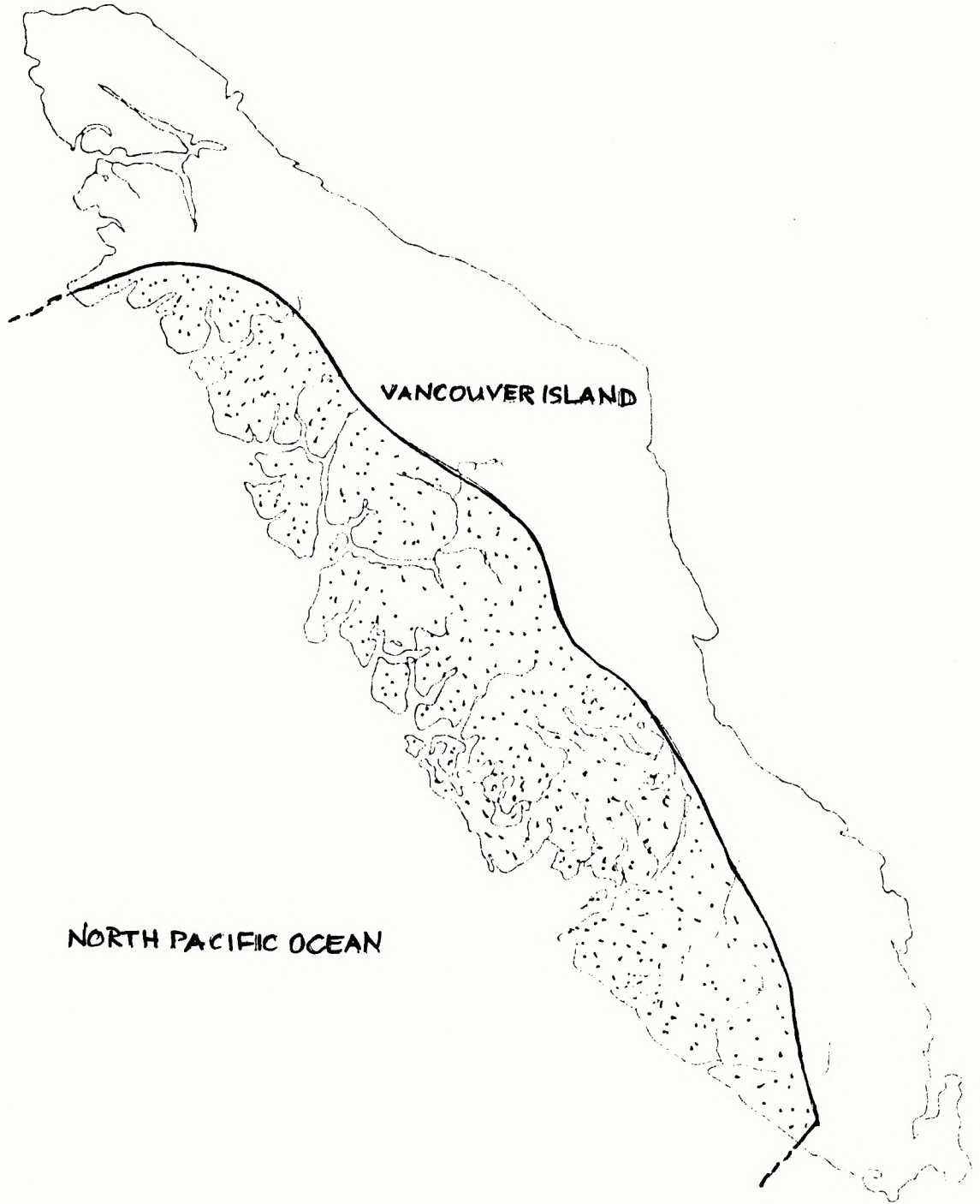
The Nuu-Chah-Nulth Tribal Council submitted its claim in October 1980, claiming traditional use and occupancy of the Western Coastal area of Vancouver Island including adjacent islands and water (see sketch map attached).

Nuu-Chah-Nulth Tribal Council represents 15 band whose population totals over 4,000 registered Indians. The land claim area totals 5,200 sq. miles.

Summary of ONC Research

Historically the claimants have been defined as the Nootka people of the West Coast. Recent archeological evidence demonstrates the Nootka (Nuu-Chah-Nulth) have occupied the West Coast of Vancouver Island for over 4,000 years. Survival was based on the abundant resources of the seas and rivers. The 15

NUU-CHAH-NULTH



NORTH PACIFIC OCEAN

CLAIM 

bands represented by the Nuu-Chah-Nulth claim presently occupy reserves which represent a portion of the lands that were traditionally the summering (coastal) and wintering (inland) locations of the ancient Nootkan confederacies and tribal groups. No treaties were signed between the Nootka (Nuu-Chah-Nulth) and the Hudson Bay Co., established on Vancouver Island in the 1840's.

3. Haida Nation Claim

The Haida Nation submitted its claim in November 1980, claiming traditional use and occupancy of the Queen Charlotte Islands, including the adjacent islands and waters (see sketch map attached).

The Haida Nation represents approximately 1560 registered members in the Skidgate and Masset Band (per 1978 census). The land area claimed is 5,100 sq. miles not including a sea claim which covers an area out to the 200 mi. limit.

A distinguishing feature of the Haida claim is the fact that it is confined to a very identifiable area - the total area of the Queen Charlotte Islands.

Summary of ONC Research

Archeological evidence demonstrates continual occupation of the Queen Charlotte Islands by the ancestors of the present day Haida for over 4,000 years. Traditionally the main food harvest was from the sea and rivers. The Haida population was badly decimated in the last century by small-pox and tuberculosis epidemics and the remaining population moved from the many ancient villages dotted over the Queen Charlotte Islands to the towns of Skidegate and Masset. The Haida never signed any treaties or surrenders.

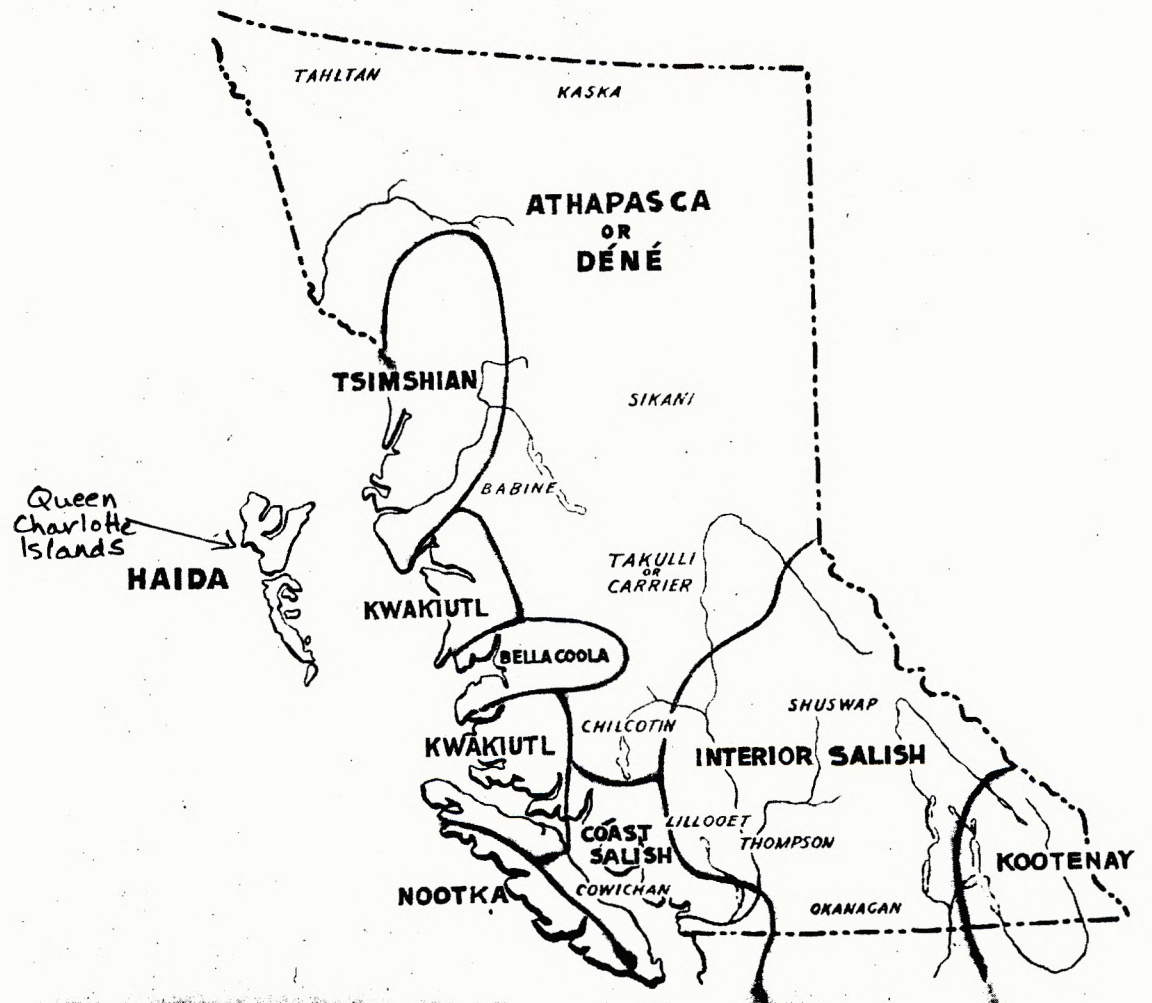
4. Heiltsuk Native Claim

The Heiltsuk Nation submitted its claim in January 1981, claiming traditional use and occupancy of an area of central, coastal British Columbia and the adjacent islands and waters, extending to the 200 mile limit (see sketch map attached).

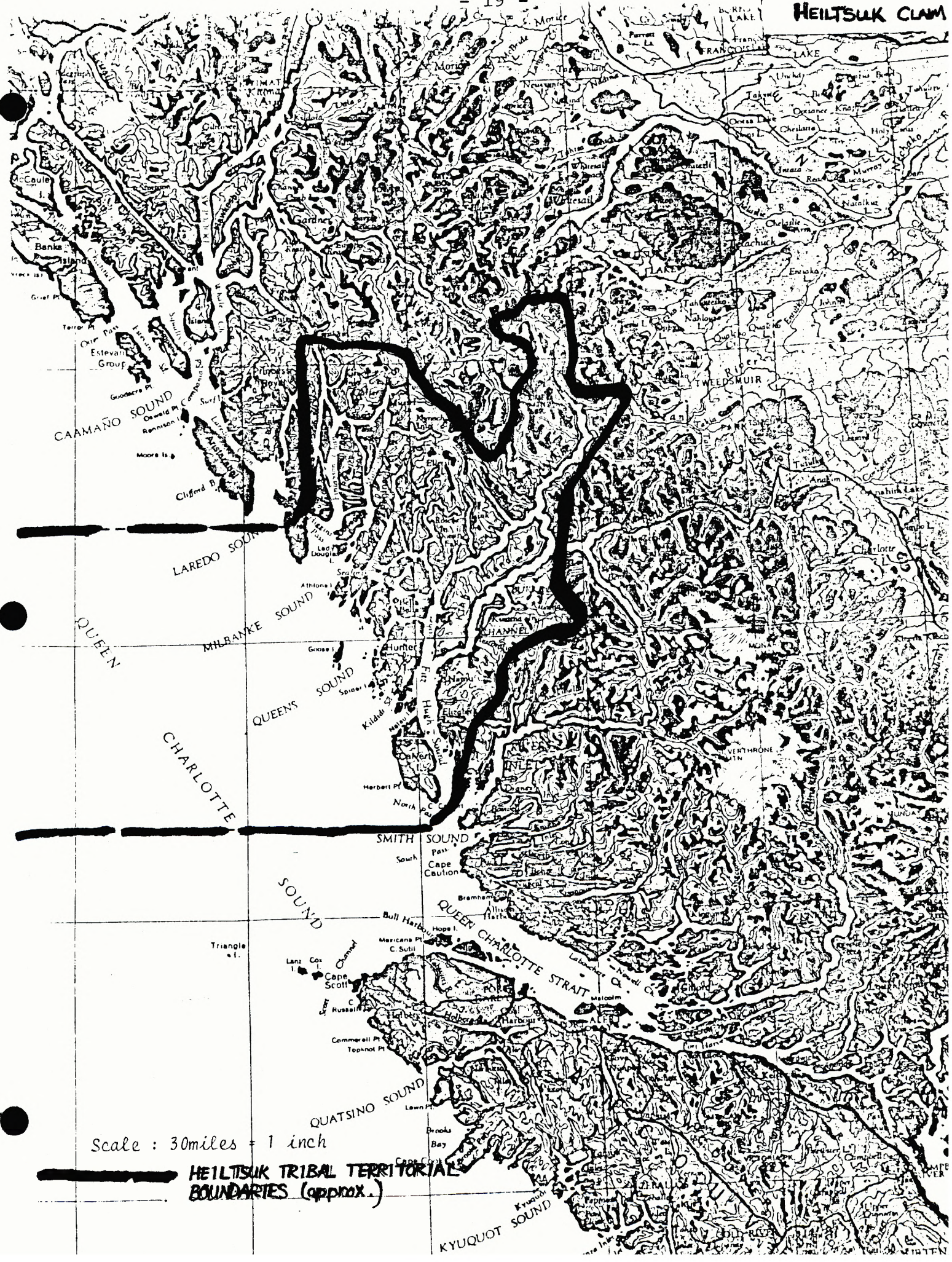
The present population on and off-reserve according to the claimants is 1270 band members. The land area claimed is approximately 5,000 sq. miles.

One feature which distinguishes the Heiltsuk claim from Nuu-Chah-Nulth and Haida claims is the possibility of overlaps in the claim area particularly with the Nuxack (Bella Coola) claim which has just been received.

HAIDA CLAIM



Haida Nation claim to all of Queen Charlotte Islands adjacent islands and waters.



Scale : 30miles = 1 inch

HEILTSUK TRIBAL TERRITORIAL BOUNDARIES (approx.)

Summary of ONC Research

The Heiltsuk Nation is comprised of several ancient coastal tribal groups which amalgamated in the late 19th century to form the Bella Bella band. The archeological evidence indicates continuous settlement of the area since 7000 B.C. The sea provided the main source of traditional subsistence, and today fishing is a major commercial enterprise. The Heiltsuk have never signed any treaties, sales or surrenders.

5. Summary of Justice Opinion

The review by Justice Canada of these three comprehensive claims has determined that there does exist a basis for each of the claims, in that it is not evident that aboriginal title has been extinguished in each case. While aboriginal title to certain portions or aspects of the respective claim areas may have been extinguished, as in the effect of the B.C. Forest Act on timber or the effect of international boundaries on offshore areas, nevertheless, there is sufficient doubt as to the extinguishment of aboriginal title in other parts of the land claim areas such that it is recommended that each of the three claims be accepted by Canada for negotiation.

6. Issues

a) Claims to the Off-shore

A common feature of all three claims in the inclusion of substantial off-shore area. Anthropological evidence confirms that the Nuu-Chah-Nulth were proficient deep sea fishermen and whalers; the Haida people did indeed fish off the Queen Charlotte Islands for quite some distance; and; the while Heiltsuk fished off the British Columbia coast the substantiation of this element of their claim is not as significant as in the former two cases.

This aspect of the claims would clearly be the subject for clarification and discussion during the course of negotiations, if the claims are accepted. The position of both the federal government and the province will clearly be influenced by other concerns as well, such as the proposed negotiations on the Straits of Georgia Reference.

b) Unlikely Prospect of Early Negotiations

Another issue which has to be faced is the prospect that, even if the claims are accepted, it will be a considerable time before negotiations could commence, given the waiting list of claims within B.C., the position of British Columbia on aboriginal title and, the limited federal resources which restricts the number of claims that can be negotiated at any one time.

Clearly, if the claims are accepted, the groups must be advised that negotiation of their claim will have to await the resolution of prior claims.

c) Funding

Similarly, if the claims are accepted, it is unlikely that research funding assistance will be available until 1982-83 due to the limited budget currently available for such loans. Although this should not preclude a valid claim from being accepted, the groups would have to be informed of this situation. The need is recognized however for at least a basic maintenance level of funding for all groups whose claims fall within the parameters of the policy on comprehensive claims.

7. Conclusions

The anthropological and historical evidence clearly documents a basis for the Nuu-Chah-Nulth, Haida and Heiltsuk claims under the terms of Canada's policy on comprehensive claims. The Department of Justice has expressed the opinion that native interest has not clearly been extinguished throughout the claim areas. Therefore, it would appear that these are valid claims and that it would be in the best interests of all concerned to attempt to reach a negotiated settlement.

8. Recommendation

That the Nuu-Chah-Nulth, Haida and Heiltsuk claims be accepted for negotiation when circumstances permit.

VIII APPENDICES

1. List of Nishga Tribal Council Executive - Appendix "A"
2. Claim Components in detail - Appendix "B"
3. Attitude of the B.C. Government to the Claim - Appendix "C"
4. Fishing - Appendix "D"
5. Forest Resource Management - Appendix "E"

Cover Credit: Wooden carving of a Cormorant, part of a totem pole from the Nass River, Royal Ontario Musuem Collection, Toronto. Negative 103401-B

NISHGA TRIBAL COUNCIL

President	James Gosnell	
Chairman	Hubert Doolan	
Secretary	Edmund Wright	
Treasurer	Percy Tait	
Executive Assistant	Frank Calder	
Research Director	Rod Robinson	- New Aiyansh
Vice - Presidents	Henry McKay	- Greenville
	Hubert Stevens	- Kincolith
	Jacob Nyce	- Canyon City
	Hubert Haldane	- Prince Rupert
Trustees	Joe Gosnell	- New Aiyansh
	Allan Moore	- Greenville
	Henry Stevens	- Kincolith
	Chester Moore	- Canyon City
	Charlie Dennis	- Prince Rupert

The executive of the Nishga Tribal Council is elected annually at a convention held in the spring. All people of Nishga ancestry over 21 years of age are eligible to vote. Two positions, that of Executive Assistant and Research Director, are not elected positions but rather appointments made at the executive's discretion.

Claim Components

1. Nishga Rights

- Nishga wish to negotiate recognition of rights that do not extinguish their title to the land such as hunting, trapping, deep-sea and fresh-water fishing.
- Nishga acknowledge this recognition may require amending present legislation at both levels of government.
- Nishga wish for complete, unrestricted rights to hunt and fish on their land without government intervention. (Nishga may set up management and conservation committees.)

2. Economic Development

- Nishga wish to negotiate joint government-Nishga programs such as eventual construction of CN line from Terrace to Meziaden Lake, forestry development, mining projects, fish processing plants and numerous other economic projects in the region.
- Possible future agreements with private companies involving the Nass Valley, with initial negotiations between the Nishgas and two levels of government.
- Nishga considerations in an economic partnership include employment possibilities, type of resource (renewable or non-renewable), economic gain, interface between Nishga way of life and outsiders.
- no new economic development projects to take place in the claim area unless there is an agreement from the Nishga people.

3. Self-Government

- Nishga foresee statutory amendments to legislation at both levels of government in the acquisition of self-government.

4. Logging

- Nishga wish to commence negotiations on immediate cessation of logging operations on west side of the Nass River.

5. Prohibition Against Damming

- Nishga wish to negotiate an agreement with two levels of government prohibiting damming the Nass River or its tributaries.
- In cases of future agreements, Nishga reserve the right to veto any damming in claim areas and if such an agreement goes ahead the dam and hydro electric power will be owned by Nishga people.

6. Resources

- Nishga wish to negotiate a joint governmental declaration that all resources in the claim area are owned by the Nishga people.
- Consent required from Nishga people from this time onward for new resource extraction.
- Nishga wish to embark on discussions with the two levels of government towards the payment of a sum as compensation for all past resources extracted by non-native people within the claimed area.

7. Crown Land

- Nishga wish a quick agreement from both levels of government that there can be no further alienation of crown land either for home, agricultural or industrial use unless there is the consent of the Nishga people.

8. Provincial Wildlife Legislation

- Nishga Tribal Council wishes to discuss with Provincial government the immediate cessation of any further prosecutions of Nishga people under various provincial wildlife statutes.

9. "Citizens Plus"

- "Citizens Plus" means that Nishgas wish to have all services rendered to other Canadians as well as additional rights in light of their aboriginal title to the land.

10. Tax Payments

- The Nishga Tribal Council takes the position that all income tax paid by the Nishga people to the two levels of government should be returned to the individual taxpayers.
- This position, based on the fact that in most cases the Nishga people have earned their incomes from the very resources that they themselves own.

11. Protection of Nishga Culture

- Nishga Tribal Council wants to ensure the proper protection and furtherance of the Nishga culture, in particular Nishga language.
- Nishga people wish to undertake the returning of all Nishga cultural artifacts from museums around the world.

12. Education

- Nishga Tribal Council wish to pursue discussion with the two levels of government towards improving and settling many problems regarding the educational system within the claim area.

13. Health Care

- Nishgas wish to negotiate towards improved medical care services rendered by the Provincial government in the claim area.

14. Improved Services

- Upgrading of Roads: Nishga hope agreement can be reached regarding upgrading of all roads in the claim area, including roads leading out of the Nass Valley towards major centres.
- Telephone and Hydro: Nishga hope for improved telephone and hydro service to certain Nishga villages.

15. Funding

- The Nishgas seek commitments from the two levels of government to ensure that funding is not in any way contingent upon the progress state of the ongoing negotiations.

16. Enshrining Final Agreement into Statute Law

- Nishgas wish that final agreement be enshrined in both federal and provincial legislation.

APPENDIX "C"

THE PROVINCE OF B.C.'S REACTION TO THE NISHGA LAND CLAIM

- 1) B.C. does not recognize aboriginal title. It relies on the decision of the Supreme Court of B.C. and the B.C. Appeal Court. If Canada considers that native title in B.C. was not extinguished prior to Union in 1871 and that there is a cloud on the provincial title to lands, it regards it as entirely a federal responsibility to extinguish native title. If Canada wishes to negotiate the provision of lands and resources in a claim settlement, it should first negotiate with B.C. to acquire lands and resources. (The Scott-Cathcart agreement of 1929 made provision for the purchase from the Province of reserve lands at a nominal price)
- 2) B.C. accuses Canada of acting unilaterally in 1973 in announcing that comprehensive land claims would be negotiated and that B.C. would be expected to contribute land and money towards extinguishment of aboriginal title.
- 3) B.C. is concerned about the inclusion by Canada in the proposed Charter of Rights of sections 25, 34 (1) and 34 (2).
- 4) B.C. agreed (The Honourable Allan Williams A.G. with Judd Buchanan, Minister IAND) in New Aiyansh January 13, 1976 that it would come to the negotiating table to discuss elements of the claim only and was not committed to negotiations towards settlement of the claim. Mr. Exell, the responsible officer in the provincial Attorney General's Department, has repeatedly stated that B.C. is at the table at the behest of Canada and the Nishgas and is participating in the negotiations on socio-economic grounds only.
- 5) Mr. Exell stated on January 12, 1981 to the former Chief Negotiator and federal officials that "Canada should respond in detail to questions that have been posed by the Province, that Canada should identify the component parts of a settlement that it anticipate and identify how the costs would be shared.

It is proposed to explore with the Nishgas in the presence of the Province's representative whether the provision of a modest amount of land, forest license etc. would lead to the extinguishment of the land claim and then negotiate with the Province participation in the Claim settlement.

APPENDIX "D"

FISHING

Fishing has been a traditional Nishga occupation since time immemorial. The Nishgas claim ownership of 262.2 sq. miles of fishing waters within their land claim area.

As part of a land claim settlement we propose to facilitate greater Nishga involvement in the management of fisheries and a bigger share in the harvesting of fish, shellfish and seaweed within the land claim area. If the Nishgas so wished, they could become owners, or partners of fish processing and marketing organizations with the backing of a Nishga Development Corporation.

In 1981 the Department of Fisheries and Oceans initiated a two-year training program for native fishery officers on the West Coast. To date, four people have been enrolled and we hope to prevail upon the Department to enlist a sufficient number of Nishgas so that eventually it can involve them in fish management within the land claim area.

Recent Fisheries initiatives to provide scope for economic development opportunities based on the Indian food fishery should go a long way towards satisfying Nishga needs. At this stage we can only inform the Nishgas that such a program is under consideration.

The Pearse Commission is considering a proposal to combine terminal fishing with area licensing. To the extent that such proposals will be implemented, Nishga fishing involvement in the land claim area will be further enhanced. The Nishga share in commercial fisheries has reportedly dropped from about 20% to 10% in the land claim area during the last 10 years. A Nishga Development Corporation, could assist with the up-grading of fishing gear and fish-boats.

The Nishga Development Corporation could also enable the Nishgas to acquire a share in a reputable, well-managed fish packing and marketing organization and to secure a greater involvement in fishing. It could further assist the Nishgas, if so desired, to establish MARICULTURE for shell-fish and seaweed and, possibly, PENNCULTURE for salmon.

Federal and Provincial license fees for natives are already a fraction of the fees charged to other fishermen where they are not waived altogether. We would aim to enshrine this preferential treatment in the agreement to be negotiated with the Nishgas.

It is further proposed that we would confirm in the agreement with the Nishgas the privilege of priority access to the Oolichan fishery in the Nass as long as this does not detrimentally affect other fish and as long as conservation is assured.

The Salmon Enhancement Program (S.E.P.) at Kincolith already provides full-time employment to two Nishgas and four more are employed from time to time. After an agreement has been reached with the U.S.A. (and this is expected within one year) it is planned to extend S.E.P. to all of the land claim area.

Mr. James Gosnell, the Nishga Tribal Chief serves on an advisory committee to the International Salmon Negotiations on the N.W. Pacific Coast and our aim would be to create advisory positions for Nishgas on fishery committees in the Skeena-Nass region.

By promoting Nishga education and training for all levels of fish-management, harvesting, processing and marketing, by extending preferential licence fees; and, by providing capital for improving fishing vessels and gear as well as for participation in the industry and for enlargement of the fish resource, we expect to be able to convince the Nishgas that, for all practical purposes, they will receive more benefits in this way than from the right of exclusive, traditional use of the resource.

APPENDIX "E"

FOREST RESOURCE MANAGEMENT POTENTIAL NISHGA
INVOLVEMENT IN THE MANAGEMENT OF THE FOREST
RESOURCES IN THE NISHGA LAND CLAIM AREA

Fishing has been the traditional occupation of the Nishgas but in recent years forest management and forest harvest is creating more employment in the Nishga Land Claim Area.

The Nishga policy statement on Forest Reserve Management of September 1978 was rejected by the Province of British Columbia because the Nishgas claimed ownership of the forest. A relatively small change, essentially a semantic one, could lead to an agreement between British Columbia and the Nishgas which would give them a dominant position in the management and utilization of the resource in the land claim area.

The Government of the B.C. has repeatedly expressed interest in making forest tenure available to the Nishgas. On April 1, 1981 the policy of the Ministry of Forests was changed to give native people preference in securing forest tenure by combining Crown and reserve land management.

The Stuart Tremblay Band near Fort St. James in B.C. is expected to be the first native group to acquire tenure under the new arrangement in the immediate future. Another application by the Nuu-Chah-Nulth Indians is under consideration.

Regulations of the B.C. Forest Service compels holders of tree farm licences to contract at least 50% of logging to independant contractors. The Twin River Logging Co. of Terrace, the largest operator in the Nishga Land Claim Area is contracting 75% of the logging to independant contractors. Many Nishgas are employed in the operation but no Nishga logging contractors have been established so far.

Much of the forest of the region is over mature and is deteriorating rapidly. Contrary to Nishga statements, a larger timber harvest is required and vast areas should be replanted. Opportunity for a Nishga operated tree nursery and for employment in treeplanting are believed to be excellent and some of these activities could be intergrated with the Nishga managed school system.

Some Nishgas of Greenville failed recently in a logging venture and this has left a bad taste in the mouth of the community. It will require some prudence to acquire the knowledge required for successful business management and one way to acquire it would be in partnership with knowledgeable, reliable operators. The Province of B.C. controls B.C. Timber Ltd., the

Nishga participation in ownership, backed by the Nishga Development Corporation would be welcomed.

To place the Nishgas in the position to take advantage of the many opportunities, post secondary professional and semi-professional training of Nishga should be stepped up.

