

# General Overview

The Maa-nulth Final Agreement was negotiated by the Government of Canada, the Government of British Columbia and the Maa-nulth First Nations. The five Maa-nulth First Nations are Ucluelet First Nation, Huu-ay-aht First Nations, Toquaht Nation, Ka:yu:k't'h'/Che:k'tles7et'h' First Nations, and Uchucklesaht Tribe, all located on the west coast of Vancouver Island.

The Maa-nulth First Nations represent about 2,000 people. Maa-nulth means “villages along the coast” in the Nuu-chah-nulth language.

The Maa-nulth Final Agreement is among the first Final Agreements reached in the province under the British Columbia treaty process. The Final Agreement sets out each Maa-nulth First Nation's rights and benefits respecting land and resources, and self-government over its lands and resources and its citizens. The Final Agreement provides certainty for all parties with respect to ownership and management of lands and resources and the exercise of federal, provincial and Maa-nulth First Nation governmental powers and authorities.

The negotiation of a Final Agreement marks Stage Five of the six-stage British Columbia treaty process, and is the conclusion of substantive treaty negotiations. Once ratified by all parties, the Final Agreement will become a treaty through legislation.

It will be a constitutionally-protected legal agreement which creates mutually binding obligations and commitments.

## BENEFITS OF A TREATY

A treaty will bring certainty with respect to each Maa-nulth First Nation's Aboriginal rights throughout the Maa-nulth First Nations traditional territory. The treaty will provide modern governance tools that the Maa-nulth First Nations may use to build strong and workable relationships with industry and business as well as other governments, including federal, provincial and local governments on the west coast of Vancouver Island.

Canada, British Columbia and the Maa-nulth First Nations expect that a treaty will resolve long-standing issues regarding undefined Aboriginal rights and title, and bring certainty and economic benefits not only to the Maa-nulth First Nations, but also to the region.

## MAA-NULTH FIRST NATION GOVERNANCE

The Maa-nulth Final Agreement will operate within the framework of the Constitution of Canada, and the Canadian Charter of Rights and Freedoms will apply to the Maa-nulth First Nation governments.

The Maa-nulth Final Agreement contains constitutionally-protected self-government provisions. With the exception of determining Indian status, after a transition period the Indian Act will no longer apply to the Maa-nulth First Nations, their lands or the Maa-nulth-aht (those people who are enrolled in and will benefit from the treaty).

The Final Agreement requires that each Maa-nulth First Nation have a constitution that sets out the structure of Maa-nulth government and ensures it is democratically and financially

accountable to the Maa-nulth-aht and Maa-nulth First Nation citizens. At the discretion of each Maa-nulth First Nation, its constitution may provide for the inclusion of Ha'wiih (Nuu-chah-nulth hereditary chiefs) in its government structure, however the majority of representatives within each Maa-nulth First Nation government will be elected. Each Maa-nulth First Nation's constitution will come into force on the effective date of the treaty.

The Final Agreement contains law-making powers for matters related to lands, resources, and

other areas of governance.

Maa-nulth First Nation areas of authority include the delivery of health services, adoption, education in kindergarten to grade 12, and public works.

## MAA-NULTH FIRST NATION LANDS

The Final Agreement treaty settlement land package consists of approximately 24,550 hectares of treaty land (including former reserves) known as Maa-nulth First Nation Lands. All treaty land will be held in fee simple. Each Maa-nulth First Nation government will have law-making authority over its land, although federal and provincial laws will apply concurrently with Maa-nulth First Nation laws.

The Ucluelet First Nation will also own, as private fee-simple lands, eight surplus federal government lots in the District of Ucluelet. These are not Maa-nulth First Nation Lands, and therefore the Ucluelet First Nation government will not have law-making authority over them; ownership will be the same as for any other private land owner in British Columbia.





Each Maa-nulth First Nation has identified parcels of fee-simple land it may acquire after the effective date of the treaty.

The Final Agreement includes provisions that will allow for these parcels to be declared as Maa-nulth First Nation Lands if they are purchased within 15 years of the effective date.

Each Maa-nulth First Nation may add fee-simple land to its Maa-nulth First Nation Lands, subject to the agreement of Canada and British Columbia and to the consent of the municipality if the lands are within municipal boundaries.

Each Maa-nulth First Nation will own and manage all forest and range resources on its Maa-nulth First Nation Lands, and will own most of the subsurface resources on or beneath the surface of these lands.

Submerged lands do not form part of Maa-nulth First Nation Lands and will continue to be owned by British Columbia except for those submerged lands which were part of former reserves. These submerged lands will form part of the Maa-nulth First Nation Lands for the applicable Maa-nulth First Nation.

The Final Agreement provides for reasonable public access for hiking, canoeing and other recreational activities on its public lands, as regulated by the Maa-nulth First Nations.

There are provisions to ensure public access for rights-of-way and navigable waters, and specific access for owners of adjacent fee-simple parcels and tenure-holders. Provincial highways and major roads will continue to be owned and maintained by the province. Specified public utility rights-of-way will continue on Maa-nulth First Nation Lands.

## CULTURE AND HERITAGE

Each Maa-nulth First Nation government can make laws applicable on its Maa-nulth First Nation Lands to preserve, promote and develop the Nuu-chah-nulth language and Nuu-chah-nulth culture. The Maa-nulth First Nations will also have a role with respect to the manner and extent to which Maa-nulth First Nations culture will be reflected in the management of federal and provincial parks.

## Maa-nulth First Nation Lands

### Huu-ay-aht First Nations

- » 1,077 hectares of former reserves
- 7,181 hectares of additional lands

### Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations

- » 379 hectares of former reserves
- 5,920 hectares of additional lands

### Toquaht Nation

- » 196 hectares of former reserves
- 1,293 hectares of additional lands

### Uchucklesaht Tribe

- » 233 hectares of former reserves
- 2,834 hectares of additional lands

### Ucluelet First Nation

- » 199 hectares of former reserves
- 5,147 hectares of additional lands
- 92 hectares of land acquired by Canada and British Columbia

## WILDLIFE AND MIGRATORY BIRDS

Under the treaty, each Maa-nulth First Nation will have the right to harvest wildlife and migratory birds for food, social and ceremonial purposes within the Maa-nulth First Nation Areas<sup>1</sup>. This right is limited by measures necessary for conservation, public health or public safety.

Each Maa-nulth First Nation's laws with respect to harvesting, wildlife and migratory birds will apply to the Maa-nulth-aht. Federal and provincial laws, including laws on the use and possession of

firearms, will continue to apply concurrently with Maa-nulth First Nation laws.

If it is necessary to address a conservation risk to a specific wildlife or migratory bird species, the treaty allows the Minister responsible to designate that species as one requiring a harvesting limit to conserve the population. Once a species is designated, the Minister establishes a total allowable harvest for that species. In the case of a designated wildlife species, the Maa-nulth Wildlife Council and British Columbia will negotiate the harvest level for

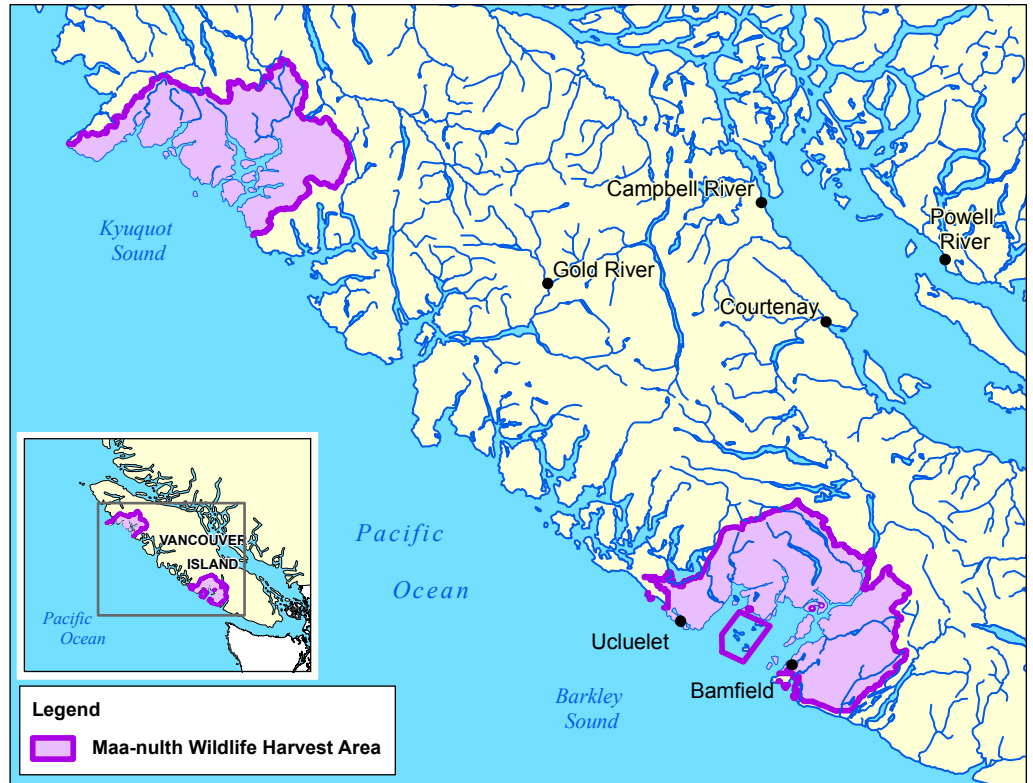
<sup>1</sup> For the purposes of harvesting wildlife and migratory birds, this area does not include land owned by Canada.

the Maa-nulth First Nations, with the Minister taking into account harvesting by non-Aboriginal people. In the case of a designated migratory bird species, the federal Minister will determine a total allowable harvest for that species. The Minister will then establish the Maa-nulth First Nations' allocation of the harvest, taking into account — among other things — the Maa-nulth First Nations' harvesting rights and the interests of other (non-Maa-nulth) parties.

The Maa-nulth-aht will be able to trade and barter wildlife, wildlife parts, migratory birds and migratory bird parts among themselves and with other Aboriginal people of Canada who live in British Columbia. Trade and barter does not include sale.

**FISH CAUGHT FOR FOOD, SOCIAL AND CEREMONIAL PURPOSES**

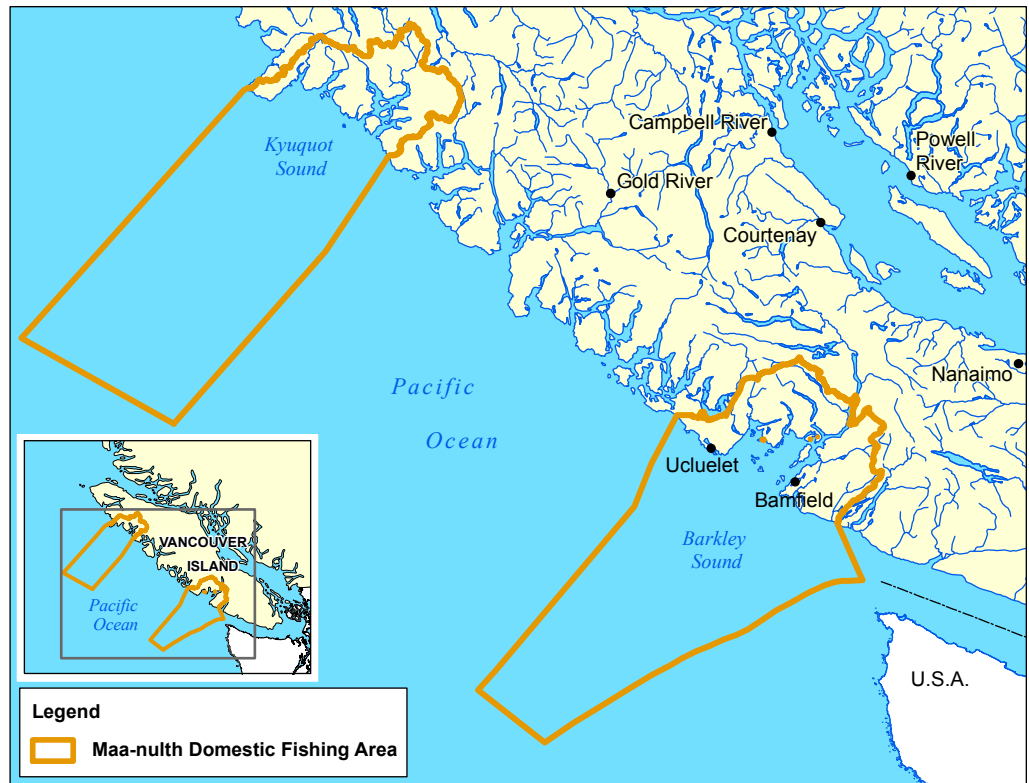
Under the treaty, each Maa-nulth First Nation will have the right to harvest fish and aquatic plants for food, social and ceremonial purposes,



limited by measures necessary for conservation, public health or public safety. This right will be exercised within a defined geographic area known as the Maa-nulth Domestic Fishing Area, as described in the Final Agreement.

The Final Agreement provides the following harvesting allocations for the Maa-nulth First Nations:

- » Ocean Chinook Salmon: abundance-based formula of 1,875 pieces plus 1.78 per cent of the Ocean Chinook Canadian Total Allowable Catch
- » Ocean Coho Salmon: fixed number of 7,000 pieces
- » Pink Salmon: fixed number of 7,250 pieces, over a two-year period
- » Somass Sockeye Salmon: abundance-based formula based on a percentage of Somass Sockeye Canadian Total Allowable Catch, and capped at 22,886 pieces
- » Henderson Sockeye: abundance-based formula based on a percentage of Henderson Total



**Fish caught for food, social and ceremonial purposes**

<ul style="list-style-type: none"> <li>» Fraser River Sockeye: abundance-based formula of 0.13366 per cent of the Fraser River Sockeye Salmon Canadian Total Allowable Catch</li> <li>» Herring: 90 short tons</li> <li>» Halibut: 26,000 pounds plus 0.39 per cent of the Halibut Canadian Total Allowable Catch</li> <li>» Rockfish: 11,250 pounds plus 2.46 per cent of the</li> </ul>	<ul style="list-style-type: none"> <li>» Groundfish: 13,000 pounds</li> <li>» Sablefish: abundance-based formula of 0.082 per cent of the Sablefish Canadian Total Allowable Catch</li> <li>» The allowable catch from specified inter-tidal bivalve beaches, subject to existing interests on those beaches</li> </ul>	<p>West Coast of Vancouver Island ZN Category Licence</p> <p>Rockfish Commercial Total Allowable Catch of yelloweye, quillback, copper, china and tiger rockfish</p> <p>Allocations for the Maa-nulth First Nations to harvest terminal returns of chinook, chum, coho, Jensen Lake sockeye and Power Lake sockeye are also described in the Final Agreement.</p> <p>The Final Agreement sets out a process to establish, at the request of Canada, British Columbia or the Maa-nulth First Nations, allocations for food, social and ceremonial purposes for other fish species.</p> <p>Each Maa-nulth First Nation will have the right to trade</p>
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and barter fish caught for food, social and ceremonial purposes among themselves or with other Aboriginal people of Canada. Trade and barter does not include sale.

## FISHERY MANAGEMENT AND CONSERVATION

Canada and British Columbia retain authority to manage and conserve fish, aquatic plants and fish habitat, according to their respective jurisdictions. Each Maa-nulth First Nation government will have law-making authority with respect to the internal regulation of their fisheries, including who can participate in the harvest of fish and how the harvest will be distributed.

Canada and the Maa-nulth First Nations will establish a Joint Fisheries Committee (JFC) to undertake cooperative planning for Maa-nulth First Nation fishing, fisheries management activities and other fisheries-related matters. The committee may make recommendations to the Minister of Fisheries and Oceans on these matters.

The Maa-nulth First Nations will prepare an annual fishing plan for the harvest of fish under their treaty fishing rights. The JFC will review the plan and forward any recommendations to the Ministers.

The Final Agreement also provides for the Maa-nulth First Nations' participation or representation in any multi-sectoral fisheries advisory process for the west coast of Vancouver Island, should one be established.

## MAA-NULTH COMMERCIAL FISHING

Maa-nulth commercial fishing will be fully integrated within the general commercial fishery on the west coast of Vancouver Island. Resources will be available for the Maa-nulth First Nations to obtain access to the commercial fishery. This access will be obtained from within the existing commercial fishery in the same manner as for all other fishers.<sup>2</sup>

Licences issued to Maa-nulth will be fished according to comparable terms and conditions as those for

other licences in the general commercial fishery. Maa-nulth commercial fishing will not take place unless a general commercial fishery is open for a given species. The same standards for catch monitoring and reporting will apply to Maa-nulth as to other commercial fishers.

The Maa-nulth First Nations' commercial fishing access for salmon, halibut, herring, rockfish, sablefish, crab and prawns may be included in the Maa-nulth Harvest Agreement, up to a maximum amount. The Harvest Agreement provides for Canada to issue commercial fishing licences to Maa-nulth and if this commitment is terminated, compensation may be payable to the Maa-nulth First Nations. The maximum number of licences that may be issued through the Harvest Agreement is:

- » Salmon: eight Salmon Area D Gillnet and Area G Troll licences
- » Terminal Salmon: one Area D Gillnet licence, comparable to 20 per cent of the Terminal Commercial Total Allowable

Catch of Henderson Lake sockeye and 25 per cent of Terminal Commercial Total Allowable Catch of Jensen Lake sockeye

- » Halibut: Halibut licence(s) comparable to 2.00 per cent of the Halibut Canadian Commercial Total Allowable Catch
- » Rockfish: Rockfish licence(s) comparable to 2.6178 per cent of the Total Allowable Catch for Outside Area Commercial Rockfish Licences
- » Crab: one Area E crab licence
- » Roe Herring: four Roe Herring gillnet licences
- » Sablefish: 0.34 per cent of the Sablefish Commercial Total Allowable Catch
- » Prawn: one licence

The Maa-nulth Harvest Agreement is separate from the treaty and is not constitutionally protected. Commercial fishing licences issued to Maa-nulth through the Harvest Agreement will be fished according to comparable terms and conditions to those for licences

<sup>2</sup> The process involves an existing licence holder willingly relinquishing a licence and nominating Maa-nulth to be issued an equivalent licence.

held by other fishers in the general commercial fishery. Federal and provincial laws will continue to apply with respect to the sale of fish.

## **AHOUSAHT ET AL. LITIGATION**

If the highest court that considers the *Ahousaht et al.* litigation rules that the plaintiffs in that litigation have a right to fish commercially for a species described in the Maa-nulth Harvest Agreement, Canada and British Columbia agree to amend the Maa-nulth treaty by moving Canada's obligation to issue commercial licences for those species from the Maa-nulth Harvest Agreement into the Maa-nulth treaty.

## **WATER**

On the effective date of the treaty, British Columbia will establish water reservations under the Water Act for each Maa-nulth First Nation for domestic, agricultural and industrial uses: Huu-ay-aht First Nations – 75,000 cubic decametres of water per year; Ka:yu:k't'h'/Che:k'les7et'h' First Nations – 50,000 cubic decametres of water per year; Toquaht Nation – 15,000

cubic decametres of water per year; Uchucklesaht Tribe – 50,000 cubic decametres of water per year; Ucluelet First Nation – 57,000 cubic decametres of water per year.

In addition to these water reservations, British Columbia will establish water reservations of the unrecorded water of specific streams, to enable each Maa-nulth First Nation to investigate the suitability of those streams for hydro power purposes.

Each Maa-nulth First Nation may apply for water licences in accordance with provincial law. Water licences existing on Maa-nulth First Nation Lands as of the effective date of the treaty will continue.

With respect to groundwater, if British Columbia brings into force provincial law regulating the volume of groundwater under Maa-nulth First Nation Lands which may be extracted and used, British Columbia will negotiate with the affected Maa-nulth First Nation the volume of groundwater which may be extracted for domestic, agricultural and industrial purposes.

## **PARKS AND ENVIRONMENT**

Under the Final Agreement, Canada may establish as part of Pacific Rim National Park those portions of Pacific Rim National Park Reserve lying within the Maa-nulth First Nation Areas. The Minister will retain authority for the overall management and administration of parks. However, a separate agreement between Canada and the Maa-nulth First Nations defines how the parties will work together to cooperatively plan and manage Pacific Rim National Park.

Each Maa-nulth First Nation has the right to gather plants and the bark of timber for food, social and ceremonial purposes in provincial parks and protected areas that are wholly or partly within its Maa-nulth First Nation Area. This right is subject to measures necessary for conservation, public health or public safety. A Maa-nulth First Nation may be required to submit a gathering plan in respect of the exercise of this right to the provincial Minister. Maa-nulth-aht who gather plants and bark of timber under this right will be required to carry documentation issued

by the appropriate Maa-nulth First Nation government.

Where a national park or a national marine conservation area lies within a Maa-nulth First Nation Area, that Maa-nulth First Nation also has the right to gather traditional foods for food, social and ceremonial purposes, gather plants and timber resources for medicinal, ceremonial or artistic purposes, trap fur-bearing land mammals and hunt birds and land mammals for food, social and ceremonial purposes within that national park or national marine conservation area.

Consistent with other provisions in the Final Agreement, a treaty-defined right to access renewable resources may be limited by necessary conservation, public health or public safety measures.

The Maa-nulth First Nations will also have law-making authority concerning environmental protection on Maa-nulth First Nation Lands and will be able to participate in environmental assessment processes regarding its Maa-nulth First Nations Lands.

## THUNDERBIRD'S NEST

Thunderbird's Nest (T'iitsk'in Paawats) is located on the west side of Henderson Lake on Vancouver Island, covering an area of approximately 2,185 hectares. The area is of cultural and spiritual significance to the Maa-Nulth First Nations. Under the Final Agreement, British Columbia has agreed to remove Thunderbird's Nest from the working forest and protect it as a provincial protected area.

## POWER RIVER WATERSHED

Under the Final Agreement, British Columbia has also agreed to establish Power River Watershed as a provincial protected area.

## FINANCIAL COMPONENTS

The Final Agreement will provide the Maa-nulth First Nations with capital transfers over 10 years, less any outstanding negotiation loans.

## RESOURCE REVENUE SHARING

Over a 25-year period, the Maa-nulth First Nations will receive annual resource revenue

Maa-nulth First Nation	Total Capital Transfer	Projected Annual Average Resource Revenue Sharing Payments	Time-limited funding	Ongoing funding
Huu-ay-aht First Nations	\$22.2 million	\$350,000	\$13.2 million	\$2.2 million
Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations	\$18.5 million	\$300,000	\$11 million	\$2.9 million
Toquaht First Nation	\$4.7 million	\$70,000	\$4.5 million	\$760,000
Uchucklesaht Tribe	\$6.1 million	\$100,000	\$5.6 million	\$1.1 million
Ucluelet First Nation	\$21.6 million	\$380,000	\$13 million	\$2.9 million

sharing payments which will vary depending on actual provincial stumpage revenues. Huu-ay-aht First Nations will receive an additional \$900,000 payment over a period of five years. All resource revenue sharing payments will be indexed to inflation.

Under the terms of the Fiscal Financing Agreements, the Maa-nulth First Nation governments will deliver agreed upon programs and services. For programs and services provided by Canada or British Columbia that are not included in the Fiscal Financing Agreements, the Maa-nulth-aht will continue to be able to access programs and services for which they are eligible. The Fiscal Financing Agreements will be renegotiated every eight years.

The Fiscal Financing Agreements provide annual transfers from Canada and British Columbia to the Maa-nulth First Nations to support the delivery of agreed upon programs and services, as well as funding to support activities to implement the treaty. The agreements provide for time-limited and ongoing funding. Time-limited funding will support: fisheries management, National Parks and Marine Conservation Areas, treaty management and capacity development and support. Ongoing funding will support programs and services such as: health, social development, education, local programs and services and physical works; and incremental implementation and governance activities such as lands and resource management and self-government.

The Maa-nulth First Nations will contribute to the funding of agreed-upon programs and services from their own sources of revenue. The Own Source Revenue Agreements negotiated among Canada, British Columbia, and the Maa-nulth First Nations set out how Maa-nulth First Nations' contributions will change in step with their capacity to generate revenues.

## TAXATION

The Maa-nulth First Nation governments will have the ability to levy direct taxes on the Maa-nulth-aht. Taxation is an important element of the Maa-nulth Final Agreement as it can contribute to the foundation of future revenue capacity for each Maa-nulth First Nation government. The Indian Act tax exemption for



the Maa-nulth-aht will be phased out after eight years for transaction (i.e., sales) taxes and 12 years for other taxes, including income tax.

Outside of the treaty, Canada and British Columbia are prepared to negotiate how a Maa-nulth First Nation tax could also apply to non-members within Maa-nulth First Nation Lands. A Maa-nulth First Nation government's tax powers will operate concurrently with the continuing tax authority of Canada and British Columbia provided in the Constitution of Canada.

## **PUBLIC INPUT INTO THE FINAL AGREEMENT**

Treaty negotiators rely on the advice of local stakeholders to ensure that the interests of the broader community are fairly represented. Prior to the signing of the Maa-nulth Agreement in Principle (AIP), negotiators consulted primarily with local government and potentially affected fisheries sectors.

After the AIP was signed in October 2003, further

consultation occurred with a variety of interests. Over 70 consultations with local and regional governments, public utilities, resource sectors (forestry, fisheries, wildlife) and community-based public information open houses and main table meetings took place. In addition, Maa-nulth First Nations and British Columbia held consultation meetings on topics within their respective jurisdictions.

After the Final Agreement is initialled and the ratification process begins, Canada, British Columbia and the Maa-nulth First Nations will continue to communicate with local stakeholders and the general public about the Final Agreement.

## **OVERLAPS**

First Nations' claimed traditional territories can and do overlap. In British Columbia, there are often multiple overlapping claims. As part of the British Columbia treaty process, First Nations must establish a process to resolve overlaps.

Canada, British Columbia

and the Maa-nulth First Nations are consulting with neighbouring First Nations and will continue to work to resolve any remaining overlap issues. The harvesting areas set out in the Final Agreement are not exclusive, and other First Nations and the general public may fish and hunt there as they do now on provincial Crown land.

## **NEXT STEPS**

By initialling the Final Agreement, the chief negotiators for Canada and British Columbia and the lead negotiator for the Maa-nulth First Nations recommend that their respective principals ratify the agreement.

The first step in the ratification process is acceptance of the Final Agreement by the Maa-nulth First Nations. Each Maa-nulth First Nation will initiate a community approval process.

If the Maa-nulth First Nation communities ratify the Final Agreement, the Province of British Columbia will then proceed through its ratification process. A Minister from

the provincial Cabinet must recommend the agreement for approval, and settlement legislation will then be introduced into the Legislative Assembly for debate.

If British Columbia ratifies the Final Agreement, the Government of Canada will proceed through its ratification process. Similar to the procedure at the provincial level, a federal Cabinet Minister must recommend the Final Agreement, and settlement legislation would be introduced in Parliament for debate. Once enacted through legislation, the Final Agreement will become a treaty and will be brought into effect on a date agreed to by the parties.



*If you would like more information about the Maa-nulth Final Agreement, contact:*



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