

First Nations Summit

NEWS RELEASE

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First Nations Summit congratulates Nuu-chah-nulth Nations for BC Supreme Court Decision

Coast Salish Territory/Vancouver – First Nations Summit (FNS) leaders are applauding the efforts of five Nuu-chah-nulth Nations for their efforts that led to yesterday's BC Supreme Court (BCSC) decision which confirms the Nuu-chah-nulth right to fish on a commercial basis and Canada's infringement on these rights is not justified and must be rectified within one year.

"We hold up the Nuu-chah-nulth for their steadfast determination for their continuing legal fight to confirm their aboriginal right to harvest and sell all species of fish in their territories. Yesterday's BCSC decision clearly confirms those rights", said Grand Chief Edward John of the FNS Political Executive. "This decision confirms the fishery of these five Nuu-chah-nulth Nations has a clear priority over other fisheries such as the recreational fishery. Our clear expectation following this decision, is that Canada will immediately take steps to engage with the Nuu-chah-nulth to discuss how they will implement today's decision within the 1-year time frame set out by the court".

The FNS encourages the Government of Canada to work with the five Nuu-chah-nulth Nations to implement the findings of the decision. In particular, the FNS calls for discussions with BC First Nations on the following decisions of the Judge:

- (1) The Judge found that the salmon allocation framework cannot be justified and must be changed.
- (2) The Judge found that the Fisheries and Oceans Canada (DFO) policy of giving recreational fishermen priority to Chinook (spring) salmon cannot be justified and must be changed to give effect to the aboriginal priority.
- (3) The Judge found that DFO policy of giving recreational fishermen priority to Coho salmon cannot be justified and must be changed to give effect to the aboriginal priority.
- (4) The Judge found that the plaintiff First Nations have the right to fish for halibut and other ground fish and sell their catch, that was previously not followed by DFO.
- (5) The Judge found that the aboriginal commercial fishing right must be a viable one.

"After 13 years of perseverance in the courts, we must once again hold our hands up to the leaders and citizens of the Nuu-chah-nulth Nation for having the strength to continue this fight for their people", said Robert Phillips, also on the FNS Political Executive.

"What is truly shameful is this case represents 7 years of wasted time and untold financial resources that the Nuu-chah-nulth have been forced to invest to have the original 2009 BCSC and subsequent 2011 BCCA decisions respected and implemented by the federal government.



While the decision provides a strong win in recognizing and confirming the right of these five Nuu-chah-nulth Nations to fish and sell fish in their territories, it clearly identifies areas where Canada has failed. DFO must come to the table to engage with the Nuu-chah-nulth to fix these wrongs”, concluded Phillips.

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The First Nations Summit speaks on behalf of First Nations involved in treaty negotiations in British Columbia. The Summit is also a NGO in Special Consultative Status with the Economic and Social Council of the United Nations. Further background information on the Summit may be found at www.fns.bc.ca.

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Background

Brought to the courts nearly 13 years ago, in this action, five Nuu-chah-nulth First Nations, the Ehattesaht, Mowachaht/Muchalaht, Hesquiaht, Ahousaht and Tla-o-quiaht, sought a declaration that they have an aboriginal right to fish on a commercial basis. In the 2009 BC Supreme Court decision, the original trial judge found that the five First Nations have the aboriginal right to harvest and sell all species of fish in their territories. This decision was upheld by the BC Court of Appeal in 2011.

In 2012, the Supreme Court of Canada (SCC) rejected Canada’s application to appeal the 2011 BCCA decision and instead asked the BCCA to reconsider their earlier decision in light of the 2011 SCC decision in *Lax Kw’alaams v. Canada*.

The five Nuu-Chah-Nulth First Nations returned to court in 2015 after negotiations with Canada on how to accommodate their Aboriginal right to fish and sell fish failed. This most recent stage of court hearings, known as the justification trail lasted a total of 155 days of proceedings. The April 19, 2018 BCSC decision will determine whether Canada’s infringement of these rights is justified and what, if any, steps Canada has to take to accommodate the Nuu-Chah-Nulth’s rights.

UN Declaration on the Rights of Indigenous Peoples

Nuu-chah-nulth fishing rights are consistent with the *UN Declaration on the Rights of Indigenous Peoples*, which the Government of Canada has committed to implement, in particular, Articles 20 and 26 which state;

- Article 20*
- 1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*
 - 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.*

- Article 26*
- 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
 - 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
 - 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*