

LAX KW'ALAAMS FIRST NATION



FISHERIES BRIEF

Lax Kw'alaams Fisheries Issues Brief, November 2017

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Lax Kw'alaams Traditional Territory

The Lax Kw'alaams First Nation and Metlakatla First Nation are descended from the *Giluts'aaw*, *Ginandoiks*, *Ginaxangiik*, *Gispaxlo'ots*, *Gitando*, *Gitlaan*, *Gits'iis*, *Gitwilgyoots*, and *Gitzaxlaal* (commonly referred to as the Nine Tsimshian Tribes, Allied Tsimshian Tribes or Coast Tsimshian). Each of the Nine Tribes has their own individual territories, harvesting areas, and villages. After the demographic, social, and economic pressures that followed European settlement in the region, the Nine Tribes coalesced into a single common entity whose membership is now governed by the elected leadership of Indian Act bands, Lax Kw'alaams First Nation and Metlakatla First Nation. That structure has been accepted by members, governments and the courts as the effective governing body for all s. 35.1 rights and title matters, including fishing rights.

The Lax Kw'alaams First Nation members have strong spiritual and cultural attachments to their traditional territory and the resources collected from it. They view their relationship with the land as one of stewardship and responsibility.

The traditional territory of the Coast Tsimshian (Lax Kw'alaams and Metlakatla) includes all of the lands and waters surrounding the tributaries of the Skeena River, the height of land east of the Zymoetz River, and on the coast, Nass Bay, Wales and Pearse Islands, the Dundas and Stephens Islands groups, as well as lands and waters at the mouth of the Skeena stretching south along Grenville Channel. This territory extends as far north as IR 88 (Red Bluff) on the north side of Nass Bay and, just to the south of that, Nasoga Gulf.

The Lax Kw'alaams First Nation and the BC government have entered into a Strategic Land Use Planning Agreement ("SLUPA") dated May 8, 2008, setting out land use objectives in the Lax Kw'alaams First Nation's traditional territory. That Agreement defines Lax Kw'alaams Traditional Territory as the territory depicted in an included map. The SLUPA is attached to this Brief.

Coast Tsimshian people generally make no distinction amongst themselves at the Band level or tribal level as to their individual or collective right to harvest resources. Any member of either band or any of the tribes can hunt or fish anywhere inside Coast Tsimshian territory. The right to harvest resides in the collective Coast Tsimshian community. Individual community members identify both as Coast Tsimshian people and as members of their respective bands and tribes.

For any aboriginal title and rights or any other political and economic purpose, it is either the elected leadership of the Lax Kw'alaams Band and the Metlakatla First Nation that governs the Coast Tsimshian First Nation members affiliated with either Band. Each band is regarded by Coast Tsimshian people as the caretaker or custodian of the collective aboriginal rights of the Coast Tsimshian people with authority to deal with the Crown with respect to rights and title. Each Band is regarded by its members as having responsibility for the preservation and governance of the traditional lands and resources of the Coast Tsimshian people. This is illustrated by a multitude of agreements made by the Metlakatla First Nation and the Lax Kw'alaams Band (usually separately but sometimes together) with respect to s. 35 rights and title claims of the Coast Tsimshian collective.

Based on Indigenous law the relevant group constituting a First Nation for s. 35.1 rights and title purposes is the Coast Tsimshian First Nation. This is the historic rights-bearing community that shares a common language, traditions, customs and history. This distinguishes the Coast Tsimshian from the Nisga'a to the north, the Gitksan and Canyon Tsimshian (Kitselas and Kitsumkalum) to the east and the Southern Tsimshian (Gitga'at, Gitxaala and Kitasoo/Xai'xai) to the south. This incontrovertible fact of Indigenous law is not respected by DFO. That lack of respect has caused and continues to cause further misunderstanding and conflict with DFO. DFO regularly permits members of other First Nations to fish in Coast Tsimshian territory. DFO exacerbates this by funding programs of other First Nations in Coast Tsimshian territory. That is unacceptable and must stop.

This DFO permission to outside First Nations to fish within Coast Tsimshian Territory is likely a carry-over from a time between 1988 and 2005 there was an attempt to pursue a treat process by an amalgam of First Nations using the descriptor "Tsimshian Tribal Council" ("TTC"). During that period, by consent of the Coast Tsimshian, outlying First Nations were permitted to fish and hunt within Coast Tsimshian territory. After the amalgamated group disbanded in 2005 DFO continued to permit members of the larger group to fish in Coast Tsimshian territory.

During the period 1988-2005 the member First Nations of the TTC undertook extensive research to properly set out the territorial boundaries of the member First Nations. They ultimately reached agreement and developed the map that is attached as an Appendix to this Brief. The process is explained in the affidavit of Arthur Sterritt, described in the Background which is also attached.

DFO's continued permitting of persons who are not members of the Coast Tsimshian is inconsistent with the applicable Indigenous law that requires the permission of the historic rights-bearing First Nation before others can enter and harvest the resources in that First Nation's title territory. This principle of Indigenous law has now been firmly established in Canadian law. In the recent *Tsilhqot'in* case the trial Court said that "Aboriginal title confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses".¹ The Court said that the "historic rights-bearing community" is identified by the group that shares "a common language, traditions, customs and historical experience". With respect to Coast Tsimshian lands and territory that would be the group identified by ethnographers as the descriptor "Coast Tsimshian".²

The Lax Kw'alaams people are therefore entitled to call upon DFO to respect that principle and not to allow other First Nations to fish in Coast Tsimshian territory without permission from Lax Kw'alaams Band and/or Metlakatla First Nation.

¹ *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700 at para 1048

² *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700 at para 458

S. 35.1 challenges

Lax Kw'alaams has the same challenge as every other First Nation in BC: all aboriginal interests exercising s.35.1 food rights must compete with the commercial sport fishery for access. This issue is now acute and needs to be seriously addressed before more court cases are precipitated.

The commercial sport fishery exploits the following species in Lax Kw'alaams territorial waters without any adequate validation or enforcement:

- Chinook salmon
- Halibut
- Dungeness crab
- Clams
- Species of ground fish

Lax Kw'alaams needs to work with DFO and all other BC First Nations to reform the sport fishery allocation and enforcement framework to bring it in to line with the Constitution of Canada and to implement sustainable harvest practices.

Resource Access

The largest issue at Lax Kw'alaams is securing sufficient access to the fishery resource to both supply the s.35.1 needs of the community and provide an economic base for the community.

Lax Kw'alaams is not meeting its food requirements for many species at the present time. There are several reasons for this that include:

1. Past management practices by DFO have extirpated critical food species (e.g. abalone);
2. Competition from other resources users (sport fisheries) in areas that should be managed for s.35.1 fisheries as a priority (salmon & halibut);
3. Existing DFO policies that allow commercial fisheries to be managed on an ITQ basis whereby the bulk of the economic benefit is enjoyed by "armchair fishermen";
4. Existing DFO policies that result in the allocation of PICFI and ATP communal commercial licences to First Nations whose members do not fish them at the expense of Lax Kw'alaams where such licences are used only by members of the First Nation.
5. Existing DFO policies that have shifted commercial salmon harvest access upstream at the expense of coastal First Nations; communal commercial licences have been provided to First Nations upstream on the Skeena River watershed whilst denying such licences to Lax Kw'alaams even though the market quality of marine-caught salmon is much higher;

6. DFO's refusal to permit Lax Kw'alaams First Nation to develop a salmon enhancement/ocean ranching facility in Lax Kw'alaams traditional territory to stem or replace lost commercial access to salmon.

S.35.1 rights can only be exercised when the resource as a whole is properly managed and protected. This requires a resource access regime that recognizes in particular the historic reliance of remote First Nations communities on adjacent fishery resources for sustenance and economic support. It requires a social contract between DFO and First Nations to facilitate a 'buy-in' to resource allocation and enforcement practices and policies. It requires the creation of a partnership based recognition of the place of First Nations in all licensing, allocation and enforcement decisions, in other words, true co-management.

PICFI

Lax Kw'alaams has made use of the PICFI program to build its ground fish fleet to support the large, modern processing facility. The processing facility in the village produces up to 200 full time seasonal jobs (nine months) that are hugely important to the village economy.

Lax Kw'alaams fully supports all efforts and initiatives to extend PICFI into a national permanent program and is willing to work with DFO to see that this happens.

It is apparent that Lax Kw'alaams is one of the few First Nations communities that has the underutilized capacity and expertise to actually fish the PICFI licences rather than to lease them out to non-indigenous fishermen. That glaring fact should be recognized and rewarded in DFO decisions concerning PICFI licences.

AAROM

Lax Kw'alaams is not a signatory to the local AAROM group "North Coast Skeena First Nations Stewardship Society" (NCSFNSS) and does not benefit from the funding provided by the AAROM program that enhances effective participation in advisory and decision-making processes used for aquatic resource and oceans management.

The NCSFNSS is comprised of member First Nations (Haisla, Kitselas, Kitsumkalum, Gitxaala and Gitga'at) that do not share s. 35.1 rights and title with the Coast Tsimshian for reasons discussed above. The structure of the NCSFNSS renders impossible any constructive joint management by that body of s. 35.1 issues in Coast Tsimshian traditional territory. Moreover, three NCSFNSS member communities are in the British Columbia Treaty Commission (BCTC) process and aspiring to claim areas that are directly within Lax Kw'alaams traditional territories. With the exception of Metlakatla – whose members are Coast Tsimshian and share with Lax Kw'alaams members all rights and title in Coast Tsimshian territory – the NCSFNSS members have no rights in Coast Tsimshian territory. The NCSFNSS also partners with the Gordon and Betty Moore Foundation, an American organization whose interests are not necessarily aligned with those of the Lax Kw'alaams First Nation.

Lax Kw'alaams requires access to AAROM funding which will allow it to hire technical staff, such as "Sr. Fisheries Biologist", thus increasing the administrative capacity and scientific/technical expertise necessary to facilitate participation in aquatic resource and oceans management. The end goal is to achieve all the objectives set out in the AAROM program that NCSFNSS member communities currently benefit from.

It would be more constructive – and consistent with the evolving law relating to s. 35.1 rights and title – for a new aquatic management board under the AAROM program to be created for the Coast Tsimshian comprised of Lax Kw'alaams and Metlakatla. Fisheries Brief of Minister and RDG/ Proposal for establishment of Chum Hatchery (00301738.DOCX;1)

C&P Issues

On April 16, 2008, after a 125-day trial in the Supreme Court of British Columbia, the claim by the Lax Kw'alaams Band for a s. 35(1) declaration of an aboriginal commercial fishing right was dismissed. The decision left open the question whether a right exists to conduct small scale sales for funding food, social and ceremonial (FSC) fishing. By reason of DFO policies that have virtually eliminated the commercial salmon fishery, there is no other source of funds for the vessels required for FSC fishing. In this situation some sale of FSC fish is required to cover the funding that is necessary to maintain the Lax Kw'alaams FSC fleet.

Even while the Lax Kw'alaams case was before the appeal courts, DFO C&P commenced a program of targeted enforcement against Lax Kw'alaams fishermen. DFO called it "Operation Laundry List". No other Bands are subject to the same targeted enforcement. Charges are laid for minor infractions that for other fishermen would attract only a warning.

So far charges have been laid in about 14 cases. When convictions are obtained DFO tries to obtain forfeiture of the vessels and fishing licences.

In 2015 the Band responded by providing legal representation to raise the right to small scale sales as a s. 35.1 defence. In the first such case DFO dropped the charges after a Constitutional Question Notice was issued. The second case went to trial in the Provincial Court in Prince Rupert but after 20 days of trial the crown stayed the charges.

In another trial, three Band fishermen were acquitted based on due diligence. The Court said that they were the type of fishermen that DFO should be holding up as an example of responsible and prudent fishing practices. Two of the three were in their 70s and had over 50 years each of fishing experience. Yet they were put through the stress of a trial on charges that should never have been laid.

DFO officers have provoked Band fishermen to such an extent that violent confrontations are on the point of occurring. In a recent case a fishery officer unsheathed his firearm while boarding a boat with a Lax Kw'alaams fisherman and his young son on board lawfully fishing. What started out as an inspection of fishing equipment and records (all of which was found to be in

order) became confrontational when the officers became overly detailed and aggressive, failing to allow the fishermen continue his normal fishing operation.

The Supreme Court has said correctly that "The Lax Kw'alaams Indian Band are the modern representatives of a proud fishing people....Indeed, their very existence is attributed to the abundance of marine and riverine foods available to them". This cultural tradition is, however, ignored and disrespected by DFO C&P officers. Instead, deliberate harassment is leading to an unnecessary succession of court cases.

The Lax Kw'alaams Band would like to turn that around - to replace it with a constructive co-management relationship based on co-operation and joint enforcement. However, that can only happen if DFO officers cease their confrontational attitude.

Comprehensive AFS Agreement with DFO

Lax Kw'alaams does not have a long term or resilient agreement with DFO relating to rights or domestic fishery management. Lax Kw'alaams is willing to look again at a comprehensive agreement. This was attempted several years ago but DFO, at that time, could not respond to policy questions and issues brought forward by the community. As a result a comprehensive agreement acceptable to the community has never been developed.

In light of the government's new reconciliation initiative, Lax Kw'alaams is willing to sit with DFO to attempt to establish a longer-term agreement that is tailored to the needs of the community and is acceptable and enforceable.

The Access Agreement under the PICFI Program is insufficient and needs further support from communal commercial fishing licences under the ATP. Lax Kw'alaams is required to have a current AFS comprehensive fisheries agreement with DFO to participate in the ATP.

An AFS comprehensive fisheries agreement could also address the s. 35.1 and enforcement issues that have led to a destructive relationship between Lax Kw'alaams fishers and DFO C&P.

Lax Kw'alaams expects, at a minimum, that an AFS agreement would contain provisions covering the following:

1. The issuance of a communal licence to the Band;
2. A territorial scope that comprises the Coast Tsimshian territory recognized by Indigenous law;
3. Designation by the Band of persons who may fish in Coast Tsimshian territory provided that they have the consent of the Band; this would include members from the Southern Tsimshian, Canyon Tsimshian or other outlying First Nations;
4. A commitment by DFO to refer requests by other First Nations to fish in Coast Tsimshian territory to the Band for decision, other than, of course, Metlakatla;

5. A commitment by DFO to work with the Band on enforcement issues arising out of alleged contravention of any provision of the licence, including enforcement against Band members and against members of other First Nations (except Metlakatla) arising out of FSC fishing activities in Coast Tsimshian territory;
6. A commitment by DFO not to target Lax Kw'alaams fishers but to conduct all monitoring and enforcement on an impartial basis;
7. A commitment by DFO to give advance notice to the Band before entering the harbour or land at Lax Kw'alaams (Port Simpson) similar to arrangements in place with the Sto:lo community in its home territory;
8. A sale provision in the licence to be utilized and managed by the Band for use solely for the purpose of providing FSC fishers with the necessary fuel, start-up and maintenance expenses for the vessels and equipment used for FSC fishing;
9. A commitment to involve the Band and Band members on C&P matters relating to the so-called recreational fishery in Coast Tsimshian territory, including timing of openings and closures, monitoring, creel surveys and validation;
10. A comprehensive funding agreement that enables and reflects the Band's role in fishery management in its traditional territory and that adequately covers consultation, administration, stock assessment, research, capacity building, education, planning, monitoring, enforcement, aquaculture, stream rehabilitation and salmon enhancement (including hatchery) costs.

Part II: Opportunities for Salmon Enhancement/Ocean Ranching

Introduction and Overview

Lax Kw'alaams Band currently has a commercial fishing fleet with over 70 Salmon gillnet vessels and a 35,000 square foot fish processing plant which currently processes Trawl-caught groundfish from a Band owned trawler "Freeport". The Band also owns a 25% asset share of the vessel "Nucleus" and its quota. The Band proposes to research and develop a feasibility study and business plan to identify the organizational, financial and environmental conditions under which ocean ranching can successfully take place in the vicinity of Lax Kw'alaams. This feasibility plan will incorporate environmental and sustainability criteria adopted by the Band and other regional commercial and environmental organizations. Within the next two years, Lax Kw'alaams intends to supplement chum salmon escapement to enhance the commercial harvest of chum salmon by Band members and thereby to increase employment opportunities and income from the fish processing plant. The Band will do this in a manner that is consistent with the Goal of the Wild Salmon Policy ("WSP").

Restore and maintain healthy and diverse salmon populations and their habitats for the benefit and enjoyment of the people of Canada in perpetuity.³

It is expected that the feasibility study, for which funding is requested, will demonstrate the feasibility and benefits of establishing a salmon enhancement/ocean ranching facility. In the operational stage, the project will create a minimum of four seasonal fisheries positions, more opportunity for stable employment at the processing plant and greater opportunities for all commercial fishermen and, in particular, Lax Kw'alaams members. It would bring long-term educational opportunities for young people from the Band to observe and understand the local marine resources and the need for sustainable practices. The Feasibility Study and Business Plan will be used to demonstrate 'Proof of Concept' so as to enable the project to move to the next phase of development. It will provide the investor confidence necessary to move forward to restore the fishing economy in the region.

The total cost of producing the feasibility study and business plan contemplated by this Proposal is estimated to be \$100,000. The recipient of the project funds will be the Lax Kw'alaams Fishing Enterprises Ltd. at 727 2nd Avenue West, Prince Rupert BC., V8J 1H4.⁴

A similar funding request was made to the Aboriginal Aquaculture in Canada Initiative (AACI) but was rejected, presumably because salmon enhancement/ocean ranching is not aquaculture.

³ <http://www.pac.dfo-mpo.gc.ca/fm-gp/species-especes/salmon-saumon/wsp-pss/index-eng.html>

⁴ The main contact for this project is the Fisheries Department Director Bill Shepert, 250-627-8509, bill_fisheries@laxband.com. The author of this application is Kathy Mai R.P.Bio, a senior fisheries biologist working for the Lax Kw'alaams Fisheries Department, and Katherine Butts a senior fisheries biologist will assist project delivery.

The Concept: Salmon Enhancement/Ocean Ranching

This Concept has been fully canvassed in the Final Report – March 2005 – of the Native Brotherhood of B.C. (“NBBC”) entitled: *OCEAN RANCHING: FREE RANGE SALMON - AN UNREALIZED OPPORTUNITY FOR BRITISH COLUMBIA’S COASTAL COMMUNITY DEVELOPMENT*.⁵ In that report the concept, based on Alaskan precedents, was described as follows:

Ocean ranching is a technology, philosophy, and organization of salmon enhancement in Alaska that is intended to supplement the common property harvest of salmon in a way that is ecologically and financially sustainable, and community and stakeholder-based.

The central question addressed in the NBBC pre-feasibility study was: *“Considering the Alaskan experience and from the perspective of the interested parties, is ocean ranching a viable and desirable option for British Columbia to which we should devote more time, money and effort - YES or NO?”*

That study drew heavily on the experience of ocean ranching in Alaska and concluded with an affirmative answer to the question.

Wild salmon and ranched salmon in Alaska are both near record highs after 30 years of ocean ranching; fishers and the State appeared to have seen a good return on their investment; the program is run with broad public and fisher support and input; and substantial benefits have flowed to local communities.

Based upon the project results, at a pre-feasibility level the answer to the question is YES.

The NBBC appears to have been unable to secure funding or government support for their project. During the years of the previous Conservative administration (from 2006 to 2015) one roadblock after another was placed in their way.⁶ Not surprisingly they ran out of steam. Lax Kw’alaams would now like to pick up where the NBBC left off.

No Legal or Institutional Constraints to Ocean Ranching

The state of Alaska, like DFO on the Pacific coast north of Klemtu, has banned salmon aquaculture. However, unlike the fishery authority in Alaska, DFO has refused to authorize ocean ranching. DFO’s rejection of the concept is based on a supposed conflict or inconsistency between ocean ranching and DFO’s policy of maintaining salmon in public waters as a common property resource.⁷ This overlooks the clear message from the Supreme Court of Canada. The Court has said that DFO may lawfully introduce new policies that grant a fisheries access preference to one group over another as part of a program to ameliorate the conditions of a

⁵ nativebrotherhood.ca/wp-content/uploads/.../feasibility-ocean-ranching-nov04.pdf

⁶ www.shoal.ca/wp-content/uploads/NBBC-Letter-to-DFO-re-Ocean-Ranching.pdf

⁷ See letter to Eric Wickham from Deputy Minister dated May 5, 2017.

disadvantaged group.⁸ That ruling arose in a case where DFO opened a commercial salmon fishery to a specific aboriginal group pursuant to a communal commercial licence whilst keeping it closed for all other commercial fishermen. Furthermore, DFO routinely issues ESSR licences to specific aboriginal groups for the commercial harvest of salmon in terminal locations. There is, therefore, ample authority for a communal licence to permit the commercial harvest of surplus chum salmon from an ocean ranching operation in Lax Kw'alaams territory. It would also be acceptable to other stakeholders since the same fish would be accessed by other licensed fishers in the approach waters.

DFO has also cited sustainability concerns as a reason for delaying the introduction of ocean ranching. However, again the Alaskan experience provides the answer. As the NBBC study noted:

In 2000 the Marine Stewardship Council certified Alaskan salmon fishery management as sustainable. Today both wild and ranched salmon production in Alaska is near record levels.

DFO itself has contributed to the success of the Alaska salmon fishery. DFO funds half of a sockeye "egg-taking" facility on Tatsamenie Lake in the upper Taku. The eggs go to a hatchery in Alaska near Juneau to be raised and released into the sea. The expenses are recovered by an ocean ranching recovery operation run by the hatchery.

Scope of the Proposed Feasibility Study

The NBBC study suffered from trying to develop an overall strategy and policy for ocean ranching rather than focusing in its practical aspects. Accordingly, this proposal by Lax Kw'alaams is for funding for a study of the practical aspects of the proposal on specific sites in Lax Kw'alaams territory. It would be in the nature of a pilot project.

To some extent, this was described in the NBBC study as the "logical next phase required for feasibility and business planning purposes".

4. A Pilot Project approach provides a logical next phase required for feasibility and business planning purposes. It would be very difficult to conclude a feasibility analysis without going through a Pilot Project evaluation and assessment process that would entail detailing several good potential sites.

6. With regard to an ocean ranching financing analysis, Phase III objectives should include but not be limited to an assessment of what combination of contributions could get a Pilot Project off the ground and make it sustainable? For instance, a landing tax, license fees, Cost Recovery Harvests, grants, loans, and land or facility transfers may be considered; and

⁸ *R. v. Kapp*, [2008] 2 S.C.R. 483, 2008 SCC 41

7. The Phase III feasibility level ocean ranching analysis should be based upon a Pilot Project evaluation and assessment process that would entail detailing several good potential sites. This assessment would entail factors such as, but not limited to:

- a. Projected production targets by species for specific sites;
- b. Monitoring and assessment requirements;
- c. Market assumptions and price by species;
- d. Management policies and transportation; and
- e. Infrastructure costs.

Why Lax Kw'alaams is Appropriate Location for a Pilot Project

Lax Kw'alaams is located near the Alaskan border and has contacts within their sister Coast Tsimshian community in Metlakatla, Alaska. That community has valuable experience with ocean ranching. It has operated a successful hatchery at Tamgas Creek for many years.

Members of the Lax Kw'alaams community depend on access to marine resources for their economic sustenance. By tradition they are fishermen. In the last 20 years, they have successfully leveraged PICFI funding to increase and develop a large commercial fleet and fish processing plant. None of their PICFI licences are leased out of the community. These ventures currently employ over 150 fish plant staff and approximately 120 skippers and deckhands 100% band members. To continue to augment these enterprises, the proponent intends to increase the chum escapement into the off-shore marine environment by as many as one million fish per season. This number is based on studies and personal communication with fisheries personnel with practical experience in similar successful (and some unsuccessful) projects in British Columbia and SE Alaska.

Lax Kw'alaams' Fisheries Resource Director, Bill Shepert, has 25 years of experience in local marine fisheries, fisheries research and fish plant development. The Band has already engaged the services of a senior fisheries biologist with familiarity and expertise in B.C. coastal fisheries, hatchery operations, Alaska State Non-Profit Regional Aquaculture program, cost-benefit analysis and relevant provincial and federal government policies. It is intended that the fisheries biologist will work under the supervision of the fisheries resource director to produce a feasibility study and business plan for the proposed ocean ranching facility. The study will:

- Present harvesting and gear protocols to protect wild stocks
- Propose an optimal local site for the facility
- Formulate specifications regarding access, infrastructure and equipment
- Identify suitable brood-stock based on regional standards and procedures
- Identify permits required under the *Fisheries Act*, the *Health of Animals Act*, the *Food and Drugs Act* and the *Species at Risk Act*.
- Identify egg and juvenile transportation methods
- Identify staffing requirements and training
- Develop a community governance structure integrating the existing commercial fisheries enterprises within the Band
- Assess the current and future capacity of the existing harvest and processing resources
- Identify a variety of stable funding options for construction and sustainable operation

Parallel to the development of the feasibility study, specific expertise within the Band will be expanded by providing opportunity for a Lax Kw'alaams fisheries technicians to work at a chum hatchery facility in the NW coast geographic region for a complete chum salmon rearing-to-release cycle.

A visit of the Band Council and Fisheries Resources/Fisheries Enterprise personnel to the Metlakatla Alaska ocean ranching facility will be organized. The purpose of the visit is to provide 'hands-on' understanding of the opportunities created by an ocean ranching operation, to understand how the facility is governed and operated and to further regional support and education amongst aboriginal communities with similar commercial concerns.

Careful consideration has been given to the potential environmental implications of developing ocean ranching, in terms of existing fish stocks, fresh-water/marine fish habitat capacity and fish health. The proposed development will be integrated into the framework of the previous draft titled "Regional Salmon Development Project" which also aims to create diversified and expanded fishing opportunities within clear geographic and environmental development criteria. So far as applicable, consideration of potential siting will incorporate the Department of Fisheries and Oceans 'Siting guidelines for Marine Finfish Aquaculture'.


Work Plan and Performance Management

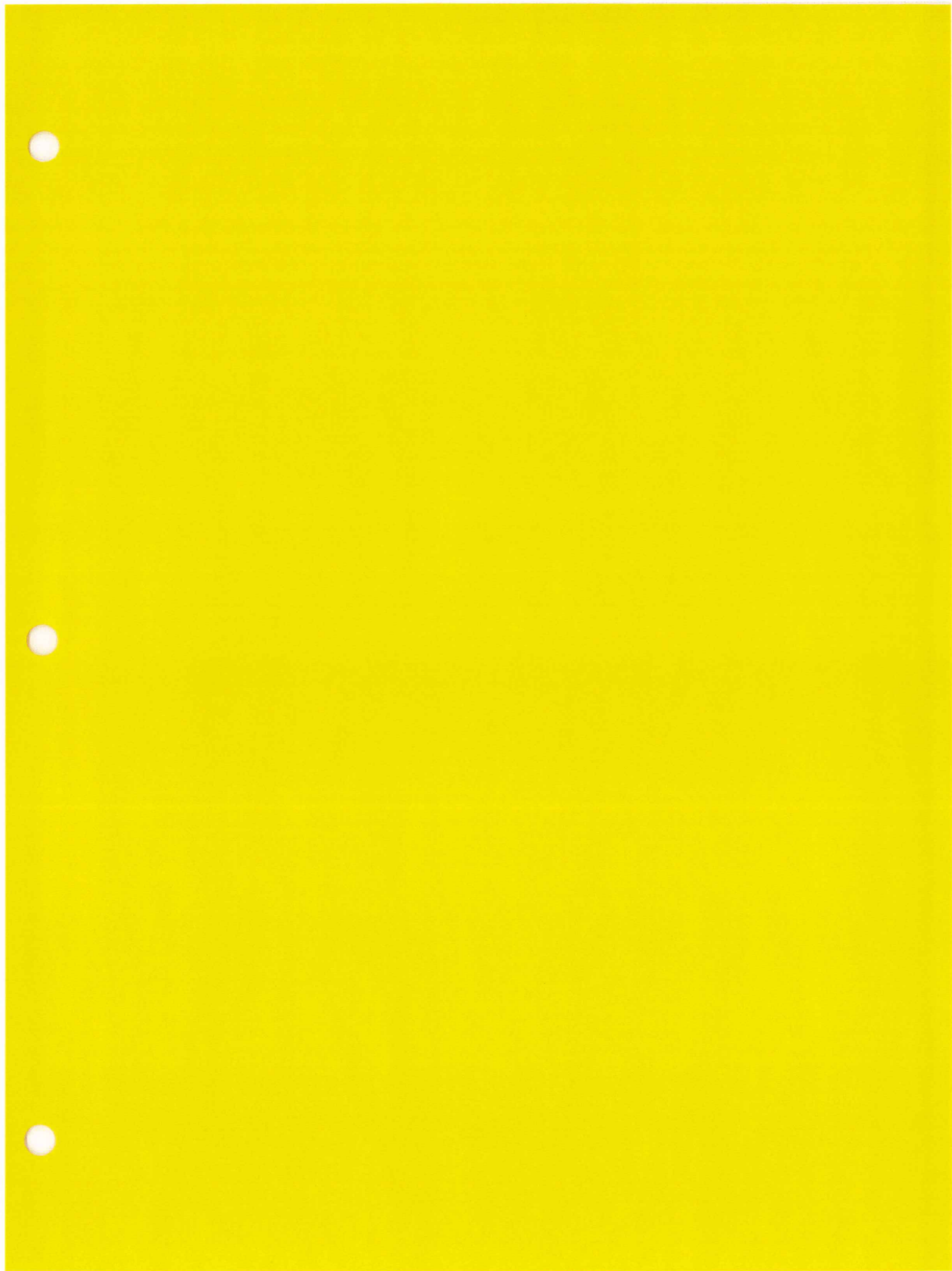
The collection of background information and technical 'hands-on' experience will contribute to the development of a feasibility study and a Lax Kw'alaams community business plan for a chum hatchery 'ocean ranching' facility. During this nine month period, alternative potential locations will also be investigated and supplemental funding secured, so that the facility can be constructed as soon as possible. Lax Kw'alaams Band has several very experienced fisheries staff and intends to engage local experts with experience in ocean ranching to assist in the set-up and early operations process.

Careful consideration will be given to the potential of negative interactions with wild fish populations. Procedures and methodologies to mitigate for any potential harm will be developed and documented in the Feasibility Study and Business Plan. The Feasibility Study will also take into consideration all current federal and provincial regulations pertaining to salmon enhancement hatcheries. This includes the Sustainable Fisheries Framework, the Wild Salmon Policy and Federal-Provincial Introductions, transfers policies, and licence requirements under the Fisheries Act.

Project Milestones:

	July 2018	Aug. 2018	Sept. 2018	Oct. 2018	Nov. 2018	Dec. 2018	Jan. 2019	Feb. 2019	March 2019
Development of Feasibility Study	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Orange	
Technical internship at an operating facility		Blue	Blue	Blue	Blue	Blue	Blue	Blue	Orange
Band visit to Alaska Metlakatla facility			Orange	Orange					
Development of Business Plan					Blue	Blue	Blue	Orange	

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 Project Milestones, including Particulars of Task Completion Milestones, Project Team, Project Budget and Project Financial Information will be developed following initial discussions with, and positive response from, DFO.



STRATEGIC LAND USE PLANNING AGREEMENT

(the "Agreement")

BETWEEN

LAX KW' ALAAMS FIRST NATION

(The "Lax Kw'alaams" or the "First Nation")

AND

THE PROVINCE OF BRITISH COLUMBIA

(The "Province")

as represented by

The Minister of Agriculture and Lands

(Each a "Party" and collectively the "Parties")

May 9, 2008

WHEREAS:

- A. The Province facilitated the development of the North Coast Land and Resource Management Plan recommendations (the "LRMP") and is in the process of implementing the LRMP recommendations and strategic land use planning agreements;
- B. The Lax Kw'alaams developed their land use plan: the Lax Kw'alaams First Nation Strategic Land and Resource Use Plan (the "Lax Kw'alaams LUP"), which creates certain zones, including Cultural and Natural areas that are not the same in area or permitted uses as the Land Use Zones;
- C. The Parties are committed to fostering a respectful, coordinated working relationship in the implementation of their respective land use plans in that portion of the Lax Kw'alaams Traditional Territory which falls within the area of the North Coast LRMP;
- D. The Parties wish to enter into this Agreement to confirm their desire to continue to work on a government-to-government basis towards reconciling differences in their views on strategic planning for the use of land and resources in the area of overlap of the LRMP area and the Lax Kw'alaams Traditional Territory;
- E. The Lax Kw'alaams asserts that:
 - (i) The historic and contemporary management, use, and stewardship of land and resources by Lax Kw'alaams are integral to the maintenance of the Lax Kw'alaams as a Nation, and to their governance and economy within Lax Kw'alaams Traditional Territory;
 - (ii) Section 35 of the *Constitution Act, 1982* recognizes and affirms any existing aboriginal rights (including aboriginal title) of the First Nation;
 - (iii) The Lax Kw'alaams has aboriginal title and rights, resource stewardship and economic interests in the Traditional Territory;
 - (iv) The Lax Kw'alaams shares common territory and common interests with its Tsimshian First Nation neighbours and desires that this Agreement be respectful of those common territories and common interests;
 - (v) The Province has duties of consultation and accommodation in respect of the LRMP which have not yet been met;

- (vi) Lax Kw'alaams intends that its Land Use Plan will remain a separate stand alone document, and that Lax Kw'alaams has not consented to the government LRMP or Land Use Zones;

F. The Province asserts that:

- i) The lands, waters and resources included in the North Coast LRMP area are Crown lands, waters and resources, and are subject to the sovereignty of Her Majesty the Queen and the legislative jurisdiction of the Province;
- ii) It has meaningfully consulted with the Lax Kw'alaams on the LRMP, the land use decision on the LRMP, and on the subsequent government decisions respecting the establishment of conservancies, biodiversity areas and EBM Land Use Objectives; and

G. Senior Provincial officials and First Nations representatives are engaged in other discussions that are expected to result in new arrangements for land and resource decision-making and management; and

H. The Parties intend that this Agreement will enable participation of Lax Kw'alaams in the Coast Opportunities funds.

THE PARTIES AGREE AS FOLLOWS:

1.0 Definitions

In this Agreement and any Attachments:

- A. **"Agreement"** means this Strategic Land Use Planning Agreement, and any future amendments subsequently agreed upon by the Parties;
- B. **"Cultural and Natural Areas"** means the areas designated for protection by Lax Kw'alaams under the Lax Kw'alaams LUP, and by the mechanisms and authorized uses set out under that plan;
- C. **"EBM Land Use Objectives"** means the management objectives signed by Order of the Minister of Agriculture and Lands on December 19, 2007 and any subsequent amendments, that prescribe requirements for conducting ecosystem based management of forest resources in the North Coast LRMP area;
- D. **"Ecosystem Based Management"** (herein "EBM") means an adaptive, systematic approach to managing human activities, that seeks to ensure the co-existence of healthy, fully functioning ecosystems and human communities;

- E. **“Land Use Zone”** means an area of land as shown and described in Attachment B that has been assigned values, uses and management provisions that are distinct from adjacent areas;
- F. **“Lax Kw’alaams First Nation Land Use Plan”** (herein “Lax Kw’alaams LUP”) means the strategic land use plan developed and approved by the First Nation to provide its guidance and direction for the planning, management and use of land and resources within the Traditional Territory;
- G. **“Management Area”** means a geographic area identified by the Lax Kw’alaams on Attachment C with distinct values that requires establishment of distinct objectives to address those values. Management objectives for Lax Kw’alaams LUP Management Areas are consistent with the Lax Kw’alaams LUP; and
- H. **“Traditional Territory”** means the land territory over which the Lax Kw’alaams asserts aboriginal rights, including title, as shown on Attachment A.

2.0 Purpose

- 2.1 This Agreement is intended to provide a basis for continuing government-to-government discussions on reconciling the interests of the Province and the Lax Kw’alaams, as expressed through their respective strategic land use plans.
- 2.2 This Agreement is intended to provide a framework that will assist the Parties to work collaboratively to implement this Agreement and subsequent land use planning and management activities.

3.0 Parts of this Agreement

- 3.1 This Agreement includes sections 1.0 to 8.0 and the following attachments:
 - a) Attachment A – Map of Lax Kw’alaams Traditional Territory;
 - b) Attachment B – Map of Land Use Zones for North Coast LRMP Area;
 - c) Attachment C – Map of Lax Kw’alaams LUP Cultural and Natural Areas and Management Areas.
- 3.2 The attachments to this Agreement are an integral part of this Agreement, as if set out at length in the body of this Agreement.

4.0 Conservancy Areas

- 4.1 The Lax Kw’alaams acknowledges the government’s intent to proceed with the provincial legal designation of conservancies in the LRMP area, using its laws, policies and decision-making processes.
- 4.2 The Province acknowledges the Lax Kw’alaams intent to implement its Lax

Kw'alaams LUP designations using its laws, policies, customs, traditions and decision-making processes.

- 4.3 The Parties agree to continue to discuss their differences regarding the conservancies designated by the Legislature and Lax Kw'alaams LUP Cultural and Natural Areas and Management Areas designated for protection by the Lax Kw'alaams in the continuing government to government process.

5.0 Ecosystem Based Management (EBM)

- 5.1 Lax Kw'alaams commits to the use the principles of EBM in its management of land use within its Traditional Territory.
- 5.2 The Province acknowledges the Lax Kw'alaams intent to implement its Lax Kw'alaams LUP Management Area objectives for ecosystem based management, using its laws, policies, customs, traditions and decision making processes.
- 5.3 The Lax Kw'alaams acknowledges the establishment of provincial EBM Land Use Objectives by Ministerial Order on December 19, 2007.
- 5.4 The Parties agree to continue to discuss their differences regarding the implementation of the legislated EBM Land Use Objectives established by the Province and the Lax Kw'alaams LUP Management Area objectives identified in the Lax Kw'alaams LUP.

6.0 Biodiversity Areas

- 6.1 The Lax Kw'alaams acknowledges the government's intent to proceed with the finalization and designation of biodiversity areas in the LRMP area.
- 6.2 The Province acknowledges the Lax Kw'alaams intent to implement its Lax Kw'alaams Management Areas and designations related to biodiversity using its laws, policies, customs, traditions and decision-making processes.
- 6.3 The Parties agree to continue to discuss their differences regarding the biodiversity areas designated by the Province and the Management Areas designated by the Lax Kw'alaams for similar purposes.

7.0 Term of Agreement

- 7.1 This Agreement takes effect on the date that it is signed by the Parties ("the Effective Date").
- 7.2 On the Effective Date, the Parties will each name a contact, to be jointly responsible for overseeing the implementation of this Agreement on behalf of the Parties.
- 7.3 The Parties may agree to initiate a review and amendment of this

Agreement, upon written request by either Party.

- 7.4 This Agreement may be terminated by either Party on sixty (60) days notice to the other Party in writing, stating the reasons for termination.
- 7.5 Lax Kw'alaams may terminate this Agreement or seek revisions in the event that it is not acceptable for Coast Opportunities funding purposes.

8.0 General Provisions

- 8.1 This Agreement is a legal agreement intended to clarify and improve the working relationships and communications between the Parties. It is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 8.2 Other than the rights and responsibilities expressly indicated in this Agreement, this Agreement does not create, recognize, define, deny, limit or amend any of the rights and responsibilities of the Parties, or of any other aboriginal group.
- 8.3 This Agreement does not change or affect the positions either Party has, or may have, regarding its jurisdiction, responsibilities and/or decision-making authority, nor is it to be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority.
- 8.4 The signing of this Agreement by the Parties does not limit the Province's commitments made in strategic land use planning agreements to other First Nations in the North Coast LRMP area.
- 8.5 When the Parties engage in negotiations and discussions, or any other actions to implement this Agreement, those negotiations, discussions or other actions will be conducted in good faith.
- 8.6 Nothing in this Agreement is intended to reduce or replace any of the Province's general obligations to consult with the Lax Kw'alaams on provincial land use management decisions, whether made under this Agreement or otherwise. Participation by Lax Kw'alaams in land use processes established under agreements made with other First Nations will not constitute consultation with Lax Kw'alaams unless so agreed by the Parties.
- 8.7 This Agreement will not limit the positions that either Party may take in treaty negotiations, or in other future negotiations or court actions.

This Agreement signed on the 17th day of July, 2008 by:

[Signature]

John Helin
Chief Councillor, Lax Kw'alaams First Nation

Date: July 17th, 2008

Witness: [Signature]

Honourable Stanley B. Hagen
Minister of Agriculture and Lands
Province of British Columbia

Date: Aug 5 2008

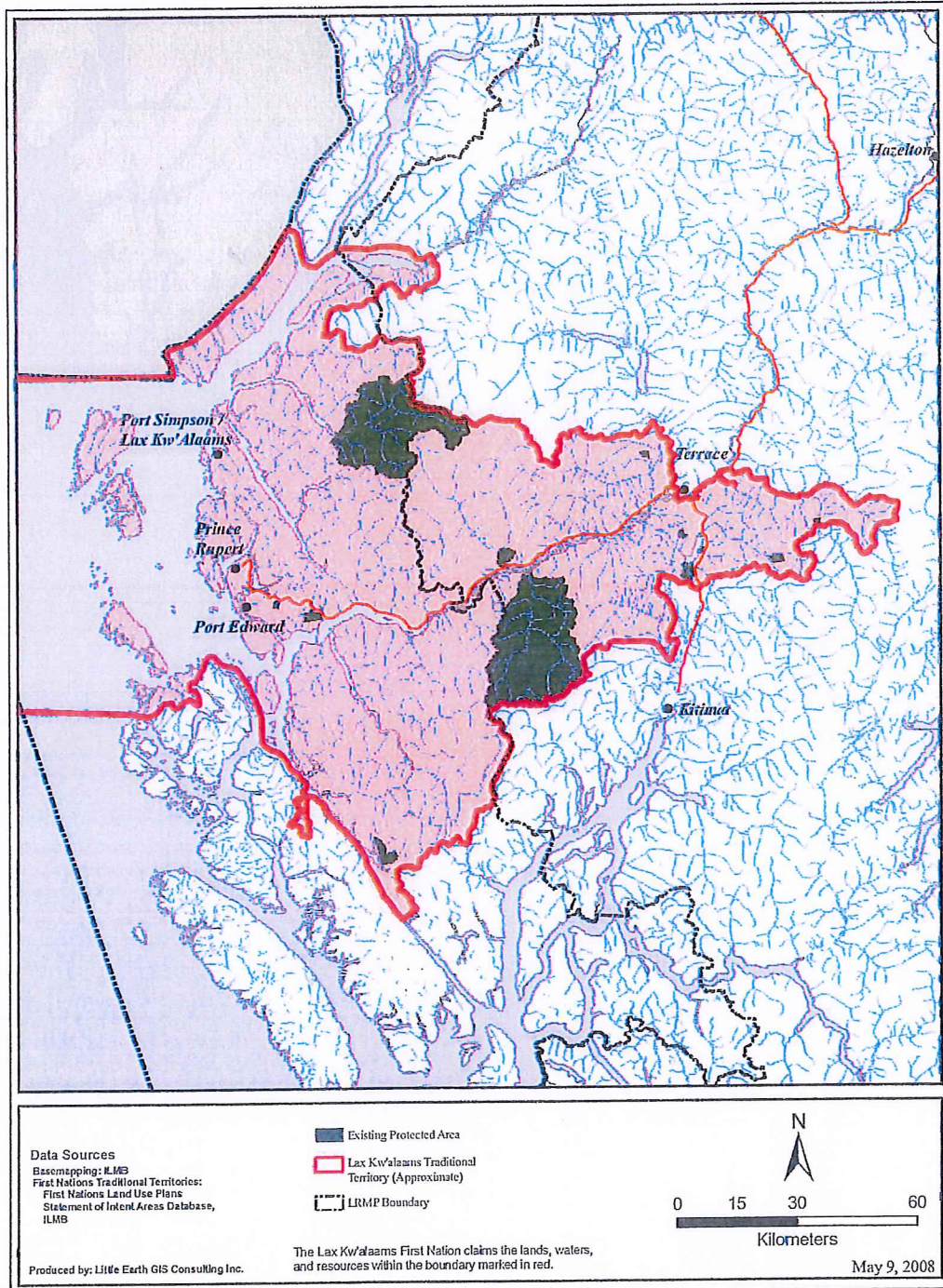
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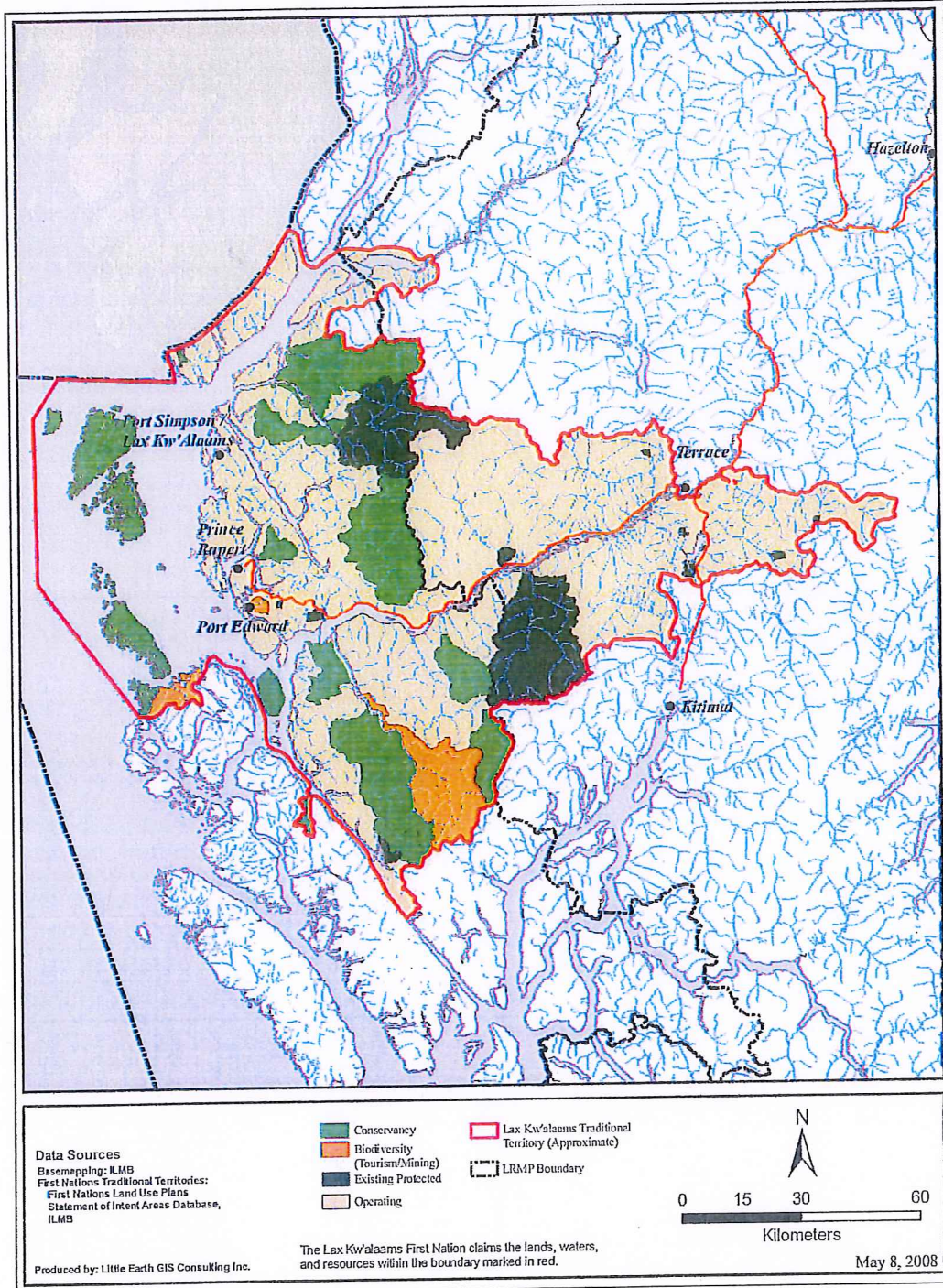
ATTACHMENT A

MAP OF LAX KW'ALAAMS TRADITIONAL TERRITORY



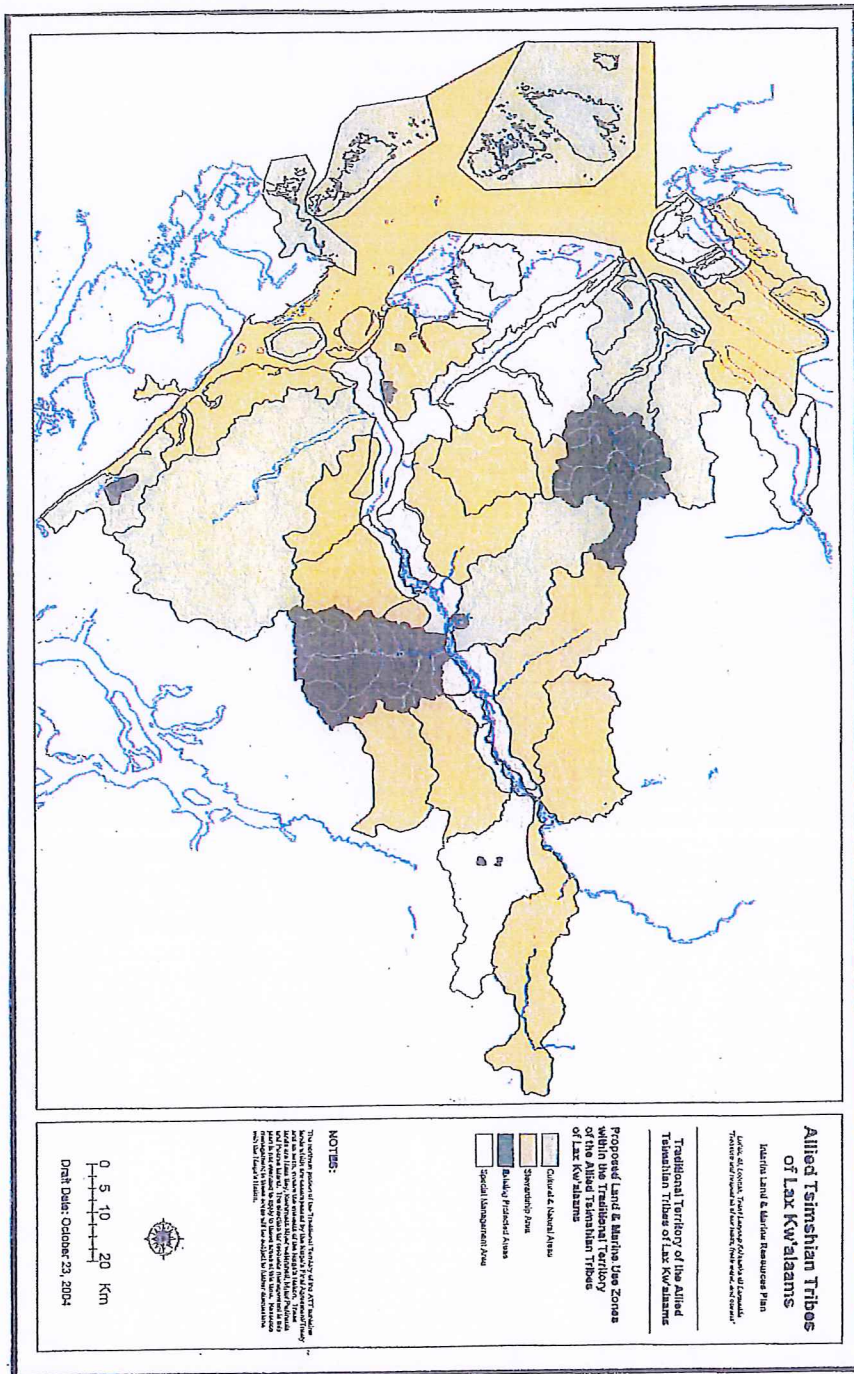
ATTACHMENT B

MAP OF LAND USE ZONES FOR NORTH COAST LRMP AREA



ATTACHMENT C
MAP OF LAX KW'ALAAMS LUP CULTURAL AND NATURAL AND
MANAGEMENT AREAS

ATTACHMENT C



**BACKGROUNDER:
THE DEVELOPMENT OF THE TSIMSHIAN TRIBAL COUNCIL
TERRITORY BOUNDARY MAPS**

The Tsimshian Tribal Council (“TTC”) existed between 1988 and 2004. It was a central organization which coordinated the activities of its seven member First Nations: Gitg’at, Gitxaala, Kitasoo, Kitselas, Kitsumkalum, Lax Kw’alaams and Metlakatla. The TTC entered the BC treaty process in 1994 to conduct negotiations on behalf of its seven member Nations.

Prior to entering treaty negotiations, the TTC and its member Nations undertook comprehensive research during the late 1980s and early 1990s to support their involvement in treaty. A significant part of this work was to properly set out the traditional territory boundaries of the TTC’s member Nations.

“It was crucial to the Member First Nations’ engagement in treaty negotiations that both the external Tsimshian Nation and internal Member First Nations’ boundaries were agreed to and set out. Without an external boundary, no Statement of Intent to negotiate could be filed with the BC Treaty Commission and without internal boundaries, the Member First Nations could not define their territory of interest within the larger Nation boundary.”

Affidavit of Arthur Sterritt (Past President of TTC)
Filed in BC Supreme Court Action VLC-S-S-110049

Hundreds of thousands of dollars were spent to support the work undertaken to set out the internal territory boundaries of the member Nations. This work was undertaken in the Member Nations’ communities with the close involvement of elders, by the Nations’ representatives to the TTC and by qualified researchers hired for that purpose (e.g., ethnohistorians, ethnographers, archaeologists).

Maps were produced which were based on the work noted above, the historical assertions of aboriginal informants, all of the historical and ethnographic maps available, oral history, and the knowledge of elders. These maps were entitled “Provisional Draft Map of Tsimshian Nation Territories Based on Statements by Tsimshian Sm’oogit in 1915, 1926, 1982 and 1992.”

“Each community intended these maps to reflect their traditional territory, as part of the overall Tsimshian Tribal Council Statement of Intent area. These maps were reviewed, discussed and approved by the member First Nations’ representatives to the TTC among themselves and in the Member First Nations’ communities... The territory boundaries set out on the Boundary Map was the key focus

of the representatives and their communities in this review. Everyone was concerned about the accuracy of these boundaries. Meetings were held to discuss the Boundary Map over many months during 1992 and 1993. Meetings were held in each community.”

Affidavit of Arthur Sterritt

The maps that were produced in this process were presented in and accepted by each community.

The process to develop the maps also included the opportunity to identify areas of disputed territory or competing claims. These areas are marked with cross-hatching on the maps. Where there is no cross-hatching, no competing claim was identified during this extensive mapping process. No comments or disagreements, aside from the cross-hatched areas, were noted by the Member Nations' representatives during this process that the boundaries of their territories as noted on the maps were incorrect.

“After extensive research and extensive discussions at both the TTC and the community level, the territory boundaries set out on the Boundary Map were formally accepted by all the Member First Nations of the TTC. Kitkatla, along with the other TTC participants, proceeded into and throughout their treaty negotiations based upon the boundaries as outlined by this map, and all communities relied upon the assertions contained within it.”

Affidavit of Arthur Sterritt