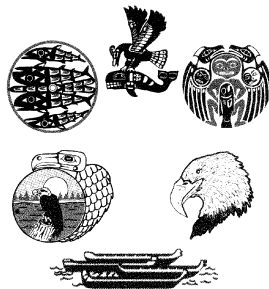


# Hul'qumi'num Treaty Group Status of Negotiations

*Annual Report to the British Columbia Treaty  
Commission*



24 May 2005

Prepared for British Columbia Treaty Commission  
by Brian Thom, Senior Negotiation Support

# Hul'qumi'num Treaty Group Negotiations Status

The 2004-5 fiscal year was an extremely active one for the Hul'qumi'num Treaty Group. During this year, we made substantive progress on the negotiations, working through detailed chapter language in 10 chapters, completing two of them, and scoping in detail the nature of the negotiation gaps between the parties on key issues. Though the year was productive, we were frustrated by a general lack of ability of both governments to have substantive, comprehensive AiP negotiations on key areas of the treaty. This has allowed us to spend more time with our member communities informing them about substantive issues at the treaty table and seek their feedback

We have been active at the negotiating table in a variety of capacities, including full maintainable working groups (MTWG), tripartite technical working groups (TTWG), public maintainables (PMT), and chief negotiator meetings (CN).

The following table enumerates the level and scope of our negotiation activities:

<b>TTWG</b>	<b>MTWG</b>	<b>Chief Negotiator</b>	<b>Public Main Table</b>
Legal	1 Off-TSL	2 Key Gap Issues	4 Public Meetings 2
Fish	3 BC Parks	5	
Intergovernmental Relations	2 Fish	9	
	Forests	2	
Land	1 Water	4	
	Wildlife	7	
	Governance	5	
	Fiscal Relations	2	
	Dispute Resolution	7	
	Capital Transfer	3	
	Access	3	
<i>Totals</i>	7	49	4 2

The intense level of meetings has left the parties a very clear idea of what work remains to be done in order to reach AiP. There are a number of critical areas of 'gaps' in the negotiations in key chapters that the Chief Negotiators have committed to resolving. This process was slowed by lack of Chief Negotiator involvement by British Columbia in the 2004-5 fiscal year. Though all parties have undertaken a process of tabling legal drafting as a way to articulate preferred options in chapters, Canada and particularly British Columbia has been largely unable to respond to language tabled by HTG. This lack of willingness from BC to stray from pre-tabled language has made progress difficult on chapters of particular provincial interest. This legal drafting work continues

to be outstanding for the upcoming fiscal year. The status of AiP chapters follows:

<b>Chapter</b>	<b># of Clauses Tabled</b>	<b># of Clauses Agreed</b>	<b>(% agreement)</b>
Amendment	13	0	(0%)
Heritage Sites & Repatriation	40	17	(43%)
Cultural Landscapes	14	0	(0%)
Dispute Resolution	47	47	(100%)
Dispute Resolution Apdx. 1-6	306	304	(99%)
Fiscal Relations	23	0	(0%)
Capital Transfer	21	19	(90%)
Taxation	11	0	(0%)
Fisheries	under 'concepts' development		
Forestry	39	4	(10%)
Governance	54	36	(67%)
Law-Making Provisions	56	8	(14%)
Self-Government Agreement	64	0	(0%)
Implementation	14	0	(0%)
<i>Indian Act</i> Transition	12	10	(83%)
Land	77	30	(39%)
Access	33	7	(21%)
Subsurface	45	1	(2%)
Land Use Planning	87	1	(1%)
Provincial Parks	38	0	(0%)
Federal Parks	30	27	(90%)
Ratification	11	0	(0%)
Approval	5	0	(0%)
Reconciliation	16	0	(0%)
Water	62	0	(0%)
Wildlife	88	10	(12%)
Migratory Birds	57	16	(28%)

Though legal council from BC was seldom made available at the table in the 2004-5 fiscal year, the parties have renewed the commitment in the new fiscal year to work through legal drafting issues. Finally, for law-making powers in the Governance chapter (and related provisions throughout the AiP) and the economic component of the fisheries chapter, Provincial government (and on the later also the Federal government) has not been able to engage very significant aspects of during the 2004-5 fiscal year. As law making is a pivotal aspect of the negotiations, this has been a very significant stalling point on making overall conceptual progress on the AiP.

In sum, we saw a major change in the 2004-5 year from, 2003-4 where the parties were previously completely engaged, taking about the whole range of topics and bringing their full resources to bear on getting an Agreement-in-Principle. From our perspective, in 2004-5 Canada and BC 'pulled back' to a certain degree, focussing their energies (particularly in mandate and chapter language development) at the 'lead tables' and leaving HTG room only to negotiate on 'out-of-the-box' solutions developed at other tables. The sense of frustration was evident in all parties, as many of these solutions were not appropriate for either the size of First Nation community represented by Hul'qumi'num Treaty Group, or our particular geo-political (largely urban, surrounded by mostly private land) profile.

Outside of the table, the negotiations team and the Chief Negotiator in particular has been highly active in community consultations. Our massive engagement with the communities has lent us strength and legitimacy at the treaty table, and gives us the confidence that we are making best efforts to develop our approach at an intense pace, while not leaving community members behind. On a monthly basis, we have met with the Elders Advisory Board (appointed representatives of all Bands), community Elders committees (individual groups representing each Band), the Chiefs, and the Youth Committee. We also have had frequent meetings (in pace with our meetings at the table) with our Internal Working Groups, where chief appointed representatives and technical support people meet with HTG staff to review clauses of each chapter. We have had bi-annual General Assemblies where the entire community is invited to discuss progress, and bi-annual "Treaty Council" meetings, where all chiefs and councils are assembled to discuss treaty. Our negotiations support team have had strong mandates to meet with community members and band staff through background interests research projects, and to host open 'Issues Forums' to discuss specific treaty chapter issues or to address particular member community interest groups. The 2004-5 fiscal year saw the continuation of the HTG Newsletter 'Treaty Talk', and regular updates in a fact-sheet mailout. HTG also makes regular efforts to appear in local media with messages directed at our local membership about developments that pertain to the progress of our treaty negotiations. Through these activities, the Chief Negotiator and the negotiations support team have made strong progress in canvassing community opinion and building a baseline of public information for our treaty negotiations work.

# Hul'qumi'num Treaty Group Negotiations Activities

The following section outlines the specific activities undertaken by the negotiations support staff of the HTG. Significant projects were undertaken in 2004-5 to prepare for substantially engaging the issues at the table, and to seek community opinion on the options being developed.

## Senior Negotiation Support

The core duties for Senior Negotiations Support were centred around chapter development, including coordinating, researching, engaging communities and developing negotiation strategies for chapters on Provincial Parks, Forestry, Water, Wildlife, Governance, Migratory Birds, Fiscal Relations, Capital Transfer, and Access. Duties related to the table have also included being the HTG representative on the tripartite work planning group, the tripartite land technical working group and to provide support to HTG Chief Negotiator during Chief Negotiator meetings.

Senior Negotiations Support at HTG also coordinated and participated in a number of major projects which have been developed as a part of the overall HTG strategic plan:

- coordination & support for Parks Canada-HTG Advisory committee
- project director of HTG Interim Strategic Land Use Plan for traditional territory
- project director for on-going HTG Traditional Use Study
- project lead for development of 'Getting to 100%' public communications book
- project oversight and strategic planning for co-management mandate development
- participant on development of strategic responses by First Nations on land tenure through the FNTNA
- participant on development of strategic positions for mandate change with First Nations Summit
- participant in the development of HTG referral/consultation policy
- participant and technical support for Private Lands meetings with Weyerhaeuser
- participant in intergovernmental relationship development processes with Islands Trust
- participant and strategist for MoU development with Archaeology Branch
- liaison for SSHRC-CURA funded language revitalization project with UVic, including developing MoU and contract regarding aboriginal intellectual property

Communications duties for HTG Senior Negotiations Support in 2004-5 included reporting to and attending strategy development meetings with HTG Chiefs, provide briefings to community treaty offices, coordinating and managing the development and implementation of the HTG media strategy.

Administrative duties for HTG Senior Negotiations Support in 2004-5 included workplanning and overall management of negotiations support team, supervision of staff & consultants on negotiations team, and providing oversight for HTG computer systems.

## **Legal Council**

In the 2004-2005 fiscal year, HTG legal counsel has been a team member as part of the drafting and negotiation of AiP chapter language. Specifically, HTG legal council has worked on Amendment, Dispute Resolutio (including Appendixes), Capital Transfer, Governance & Self Government Agreement, Implementation, *Indian Act* transition, and Access. In the process of drafting chapters and in consideration of larger strategic issues HTG Legal Council has also conducted legal research on issues such as changes to the Forestry Act, land status, the legal status of First Nations post treaty, forest and range agreements, and changes to the information sharing laws in Canada.

The Legal Counsel provided support for ongoing consultation and accommodation matters in regard to issues relating to heritage and sacred site protection. HTG Legal Council has also participated in a Summit Chief Negotiators' technical working group on consultation and accommodation. She continues to work in this manner and will assist in the building of documents that support such processes for First Nations in British Columbia. As a part of administrative duties, HTG Legal Council did a variety of other legal work for the treaty group such as reviewing and drafting of contracts, letters and other correspondence.

## **Legal Researcher**

In the 2004-2005 fiscal year, the legal researcher completed a variety of research papers for the Chief Negotiator and the Senior Negotiations Support. Topics covered included the E&N Railway Grant, the Seabed & Foreshore, First Nations' Land Tenure Options, Canada's International Law Obligations and First Nations and Aboriginal Rights to Water. In addition, the legal researcher also compiled summaries of existing AiPs and Final Agreements for the Chief Negotiator and the Senior Negotiations Support.

The legal researcher took the lead, on the part of Hul'qumi'num, in the tripartite Inter-governmental Relations Working Group. This group was established to consider whether local government's could play an active role in the protection of Hul'qumi'num sacred sites. An initial report was completed for the Main Table; however, the work of this group is still continuing.

The legal researcher also provided negotiations support to the Tripartite Working Group when Senior Negotiations Support was unavailable and administrative support by drafting legal memos and aiding in the development of funding proposals and responses to referrals.

## **Fisheries Biologist**

A total of twelve days of negotiations on the fisheries chapter of the AiP were completed in the 2004-05 fiscal year. In preparing for these negotiations HTG undertook the following projects:

- A review of allocation modelling and determination of Hul'qumi'num needs for marine resources.
- A detailed model for determining Hul'qumi'num commercial interests in fisheries, including the research on current fishing licence value and determining

- the economic viability of different licence options.
- Analysis and assessment of marine zones of interest for the establishment of Hul'qumi'num Management and Harvest Areas (HMHAs), including data from existing sources and underwater video transects.
- A shellfish aquaculture strategy document was produced to help guide negotiations for key components of the economic opportunities in Treaty relating to shellfish aquaculture.

Further policy work was conducted on the development of a co-management model for fisheries including the preparation of applications for AAROM and Capacity Initiative Program funding. Hul'qumi'num also participated in a tripartite technical process to review potential allocation models for select marine resources and jointly developed a background technical report which was presented to the tripartite parties.

Pre-treaty work completed included participating in BC Aboriginal Fisheries Commission meetings and workshops, organizing and hosting a number of meetings with other Vancouver Island First Nations for internal discussions on government proposed Marine Protected Areas and Canada Oceans Strategy, reviewing scientific papers and participating in the PSARC Groundfish sub-Committee on issues pertaining to rockfish and lingcod and liaising with technical staff from the six Hul'qumi'num member nations on fisheries and marine resource issues and AFS agreements. The Shellfish Aquaculture Project continued in the 2004-05 fiscal year which required considerable coordination and facilitation by HTG.

## **Environment Consultant**

### *Treaty Chapters - Water and Environmental Management*

Meetings were held with Community representatives on the Land Technical Working Group to review environmental and water issues in the Communities. This included an analysis of community water supply concerns, marine and foreshore pollution, and of the low water levels during the past summers. We also contracted EBA Engineering to carry out a preliminary assessment of Hul'qumi'num needs for water supplies over the next 30 years. An approach was then developed for negotiating the Water and Environmental Management Chapters, starting with a complete review of all AIPs in British Columbia, a full analysis of provincial environmental policies, as well as analysis of Agreements across Canada. A Water Interest Paper was completed and Draft Language was developed for the Table negotiations.

### *Getting to 100% - the Co-Management Issue*

We initiated research and assessment of co-management options for the management of natural resources across the Core Traditional Territory as one of our strategies in getting to 100%. SERC Consultants were retained to carry out a review of First Nation co-management initiatives across British Columbia and Canada. We then had this work reviewed by academic and legal expertise, while carrying out an internal co-management analysis and the development of an Assessment of Current Provincial Policy Direction for Co-Management with First Nations in British Columbia. Funding was successfully sought from the federal Capacity Initiative to advance this work and to develop with the Communities a viable model of Hul'qumi'num co-management with federal and

provincial partners.

### *Environmental Projects impacting Hul'qumi'num Interests*

We have provided strong Hul'qumi'num representation of Hul'qumi'num interests on a number of key environmental issues. This included participation on:

- The federal Offshore Oil and Gas Moratorium Panel, and First Nations Offshore Oil and Gas Engagement Process
- The Chemainus Well Project
- The Norske Citizens Advisory Forum

### **Culture & Heritage Consultant**

Major work at HTG in 200-2005 involved assisting the completion of treaty-related research projects, including the HTG Heritage Law Study with the Department of Law at the University of Calgary, the HTG Traditional Use Study in the Gulf Island National Park with Parks Canada, and the first phase of the Museum Study with a successful grant at the Department of Canadian Heritage. Negotiation support work at the treaty table in 2004-2005 involved supporting research for the tripartite meeting on Culture & Heritage in February 2004, participating in four sessions of the HTG Intergovernmental Working Group on the protection of heritage sites, and conducting two negotiation meetings with the Archaeology and Registry Services Branch, Ministry of Sustainable Resource Management. On-going pre-treaty work involved review of MSRM archaeological permits in HTG territory, preparation of correspondence for Crown Land and Local Government referrals, and external and internal communication on culture & heritage issues, such as Poets Cove, Walker Hook, Channel Ridge, Somenos Creek and other heritage sites.

### **Forestry & Wildlife Consultant**

Chapter drafting and conducting community consultations on forestry and wildlife were the main centres of work for in forestry and wildlife. Two major research projects were completed; the Coretx study on forestry economic opportunities and the ESSA project on state of wildlife, plant and bird resources in the Coast Salish world. Pre-treaty strategic work included involvement in several Forestry referrals. Most significant of these was the 'Block 0109' referral where HTG met with the Chemainus leadership and elders, applied for funding from West Coast Environmental Law, hired Mandell Pinder to complete a legal opinion, and developed a strategy for challenging the cutting on this significant block. HTG was also involved in regional wildlife meetings with Vancouver Island First Nations.

### **Geographic Information System Team**

The GIS coordinator has provided on-demand mapping and statistical summary as required by negotiators and supporting staff. Examples include a map of cedar supply; a comparative analysis of crown & private lands across BC; or, an analysis of the implications of the Canada BC Cost Sharing MOU to forest land. Other major mapping projects for the 2004-5 fiscal year included:

- GINPR support - placenames, IMG's
- water demand support
- cultural land selection map
- regional parks mapping
- Acquire hydro poles; MOF forest service roads; digital road atlas; satellite imagery
- TFL sale statistics compilation & analysis
- New Statement of Intent to BCTC
- publication maps for the HTG treaty book and HTG land use plan
- extent of settlements for Douglas treaty communities
- Major comparative analysis of HTG statement of intent in the socio-economic & geographic contexts of other First Nations in BC.

HTG has also undertaken the acquisition, spatial integration, and analysis of BC Assessment Authority land status data, which has greatly improved the HTG's ability to handle site specific negotiations and other issues. A selection of this information has been presented to the land technical working group to guide the land selection process. Another significant project was to perform the spatial component of the ESSA ecological assessment of plants and wildlife in the Coast Salish world. HTG member first nations have benefited from various maps and shared data. TUS database quality control is underway, in the interim several draft reports have been produced in response to specific issues using a new query tool developed by CloverPoint Cartographics. Mapping of selected place names has been carefully completed particularly for inclusion in the upcoming Land Use Plan publication.

### **Governance Development**

Building on previous research, the Governance Project is continuing the work of preparing a constitution for the Hul'qumi'num People. A review was undertaken of the constitutions of other First Nations in Canada and elsewhere with the intention of using relevant portions as guidelines for the Hul'qumi'num situation. The goal of blending traditional Hul'qumi'num governance with contemporary Canadian society is being addressed. As well, the particular challenges of defining the future relationship between the different Bands that make up the Hul'qumi'num People is being considered. The next steps in process during the 2005-6 fiscal year will be working on actual drafting with representative groups of the Hul'qumi'num People and presenting the results to community forums.

### **Shared Territory Coordinator**

Most of the Shared Territory meetings in the 2004-5 fiscal have been held with staff from neighbouring First Nations that hold technical positions. Areas like parks, fish, shellfish, hunting, and language have all been cause to bring people together. Each of our neighbours has a different interests; some want economics to drive shared territory talks, while some are not interested in developing any formal relationships in a BCTC context.

We have had meetings with Saanich Tribes on issues like remains of our ancestors that have been unearthed. This issue is one that we have got political and technical consensus the will for all tribes to come up with an agreement for.

The island tribes came together on short notice to deal with Marine Protected Areas, with HTG taking the lead in arranging these meetings and developing a response to governments on from the unified perspective of Island First Nations. This was a very successful demonstration of the power and utility of our shared territory work.

HTG continues to participate in the meetings with Lower Fraser Aquatic Resource Management Forum, Georgia Basin Action Plan Steering Committee, the BCAFC, an Island elk management group, and the First Nation Summit.