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# **Fisheries rights celebrated with packed Hupacasath hall**

By [Eric Plummer](#) / November 17, 2023

**Port Alberni, BC**

Nuu-chah-nulth-aht filled the Hupacasath House of Gathering on Friday, as the hundreds in attendance celebrated the court-affirmed right of five First Nations to commercially harvest fish from their respective territories.

The Ha'oom Fisheries Society hosted the Five Nations' Fisher Ball on Nov. 17, recognizing the continued operations of T'aaq-wiihak fisheries. Run by the Ahousaht, Ehattesaht/Chinehkint, Hesquiaht, Tla-o-qui-aht and Mowachaht/Muchalaht First Nations, this commercial fishery operates based on the rights first upheld by the B.C. Supreme Court in 2009, followed by multiple appeals and court decisions.

The Ha'oom event ran through the afternoon and early evening, with feasting, cultural performances from the nations directly involved with T'aaq-wiihak and the presentation of carved paddles to various individuals. Some speakers noted the benefits upheld by court decisions, while pledging to continue the fight for Canada to fully recognize a livelihood that Nuu-chah-nulth people have exercised for countless generations on Vancouver Island's west coast.

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# **'Reset' on fishing rights: Nations celebrate court decision**

By [Eric Plummer](#) / April 19, 2021

In a decades-long legal battle to allow their people to pursue a livelihood on the water, five Nuu-chah-nulth nations are celebrating a decision from the B.C. Court of Appeal on fishing rights.

Today a unanimous decision came more than two years after three judges heard arguments on the scope of Nuu-chah-nulth fisheries at the appeal court in Vancouver. Over five days in February 2019, Justices Groberman, Fenlon and Fisher heard arguments on how Canada should accommodate the Aboriginal rights of the Ahousaht, Ehattesaht/Chinehkint, Hesquiaht, Mowachaht/Muchalaht and Tla-o-qui-aht First Nations.

Today's judgement eliminates restrictions previously placed on how the five nations should harvest and sell seafood from their territorial waters off the west coast of Vancouver Island. This pertains to language in Justice Humphries' 2019 B.C. Supreme Court decision - known as the Justification Trial - that stated the nations' fisheries are to be "a small-scale artisanal, local, multi-species fishery to be conducted within a nine-mile strip of the shore."

The Nuu-chah-nulth nations challenged this interpretation of their Aboriginal right, resulting in the B.C. Court of Appeal expanding these limits with the new judgement.

"The words 'small-scale', 'artisanal', and 'local' do not add precision to the declaration, and are apt to create confusion. They should be removed," wrote the appeal judges in their decision.

They further clarified the scope to "a non-exclusive, multi-species, limited commercial fishery aimed at wide community participation, to be conducted in their court-defined area for fishing, which extends nine nautical miles offshore."

"We have an inherent right, and we've come before your courts to have those recognized," said Cliff Atleo, Ahousaht's lead negotiator, after the judgment was released. "Today is a good day, and a day to celebrate."

Lisa Glowacki of Ratcliff LLP, who legally represents the nations in the case, said the recent decision is a "significant step forward".

"This means that these nations have a right to participate in commercial fisheries for any species in their territory, and they don't have to stay on the margins of those fisheries," she said. "We're getting closer to full recognition and implementation of the nations' constitutionally protected rights."

The rights of Nuu-chah-nulth nations to commercially catch and sell fish from their waters has been in court for over a decade. A major victory came for the nations in 2009 when the B.C. Supreme Court upheld this right, ordering Canada to negotiate on how to accommodate this within the management of ocean resources. But over the years talks have stalled, resulting in multiple appeals from both sides as catching allocations from Fisheries and Oceans have not aligned with the nations' own management plans.

"They put so many restrictions on our people, a lot of our members didn't really want to go out fishing because we never got enough quota for our members to make a living off of," said Ehattesaht Councillor Ernie Smith. "So now this is going to make a huge difference. Hopefully the Liberal government will give direction to DFO to live up to their promise that they are going to support First Nations people."

"Since 2009 we've had some very limited access to start off our rights-based fishery," added Josh Charleson, chief councillor of the Hesquiaht First Nation. "Knowing now that this appeal has reset everything, it's a new, clear table. We're now on really strong grounds to form the fishery how each nation wants the fishery to run."

Justices Groberman, Fenlon and Fisher determined that, historically, fishing was an integral part of the Nuu-chah-nulth economy – a reality that was originally upheld by the B.C. Supreme Court in 2009.

"There can be no suggestion that Nuu-chah-nulth people fished merely for spiritual reasons or as a hobby," they wrote. "While fishing may have not been the exclusive way that the plaintiffs generated their livelihoods, it was found by the original trial judge to be 'the predominant feature of the Nuu-chah-nulth society'. It clearly had great economic importance."

"I grew up when our communities were totally self-sustaining. I remember that," said Atleo. "There was no government housing program, there was no welfare, we didn't know what those things were because we were able to look after ourselves through a way of life that included a lot of fishing."

Now it remains to be seen how Ottawa will honour the recent court decision in allocations. Tla-o-qui-aht's lead negotiator Autleyu, Francis Frank, expects that Fisheries and Oceans Canada will challenge the ruling.

"Because DFO's mindset is frozen in time of denial, we expect that they and the justice department likely will provide instructions to appeal," he said. "That certainly doesn't match up with the spirit of so-called reconciliation under which we're supposed to be negotiating."

"We need to call on DFO to implement this decision immediately," said Nuu-chah-nulth Tribal Council President Judith Sayers. "Look how long our fishermen have been off the water, how much money they've lost because they haven't been on the water...No more excuses."

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# Feds do not appeal recent ruling on fishing rights

By [Eric Plummer](#) / June 24, 2021

A court battle over Nuu-chah-nulth fishing rights that has spanned nearly two decades appears to be over, with a decision from the federal government not to appeal a recent court ruling.

On June 22 the Ha'oom Fisheries Society, which represents the fishing rights of the Ahousaht, Ehlettesaht/Chinehkint, Hesquiaht, Mowachaht/Muchalaht and Tla-o-qui-aht First Nations, announced that Ottawa would not be pursuing further litigation after reviewing an April 19 decision from the B.C. Court of Appeal. In this spring's unanimous decision, the judges overturned a 2018 ruling from the B.C. Supreme Court that had narrowed the nations' right to commercially harvest and sell species from their territorial waters.

This led representatives from the nations to see this as a victory, and now after multiple court challenges and appeals, Ha'oom is congratulating the Government of Canada on not challenging the recent decision.

This news came after the discovery of the remains of 215 buried children at the former site of the Kamloops Indian Residential School in early June. Ahousaht's lead negotiator Cliff Atleo said that the traumatic aftermath of the residential school discovery was not ignored by the federal government, as they weighed the possibility of challenging Nuu-chah-nulth fishing rights again in court.

"We're on the eve of an election," said Atleo. "We've got the Kamloops stuff, the horror show there. Politically they had no choice."

With the goal of revitalising the historical role Nuu-chah-nulth communities had in commercial fishing, the next step is for the feds to conclude a reconciliation agreement with the five nations this summer, according to Ha'oom.

"The hard work actually begins, because it's our job to convince Canada to accept our perspective of reconciliation, not their limited perspective of keeping us down all of the time," said Atleo. "I think that there's an opportunity. The climate is right for change of approach and attitudes and actually have them start listening to our interests - actually be able to have a way of life that sustains our communities, families and children."

The April court decision removed the terms "small scale", "artisanal", and "local" that were previously applied to the First Nations' fisheries by the B.C. Supreme Court in 2018. Now the courts have defined the scope to "a non-exclusive, multi-species, limited commercial fishery aimed at wide community participation, to be conducted in their

court-defined area for fishing, which extends nine nautical miles offshore," according to the April 19 ruling from Justices Groberman, Fenlon and Fisher.

"It would appear from all that has been said that the plaintiffs' rights are to a fishery of a moderate commercial scale," continued the judgement.

But shortly before this ruling was released, documents drafted by Fisheries and Oceans Canada show an unwillingness to expand the commercial scale the five Nuu-chah-nulth nations can participate in the industry.

"DFO is of the view that wide community participation is facilitated by the use of small, low-cost boats with limited technology and restricted catching power," reads this year's Five Nations Multi-species Fishery Management Plan. "Vessels with a higher level of catching power are also more likely to exceed management measures intended to meet conservation objectives, such as limiting non-target catch."

Current allocations reflect this view, showing the five nations with a small portion of the catch off the west coast of Vancouver Island. Out of 88,000 chinook allocated off the west coast, the nations were given 7,821 for commercial harvest. Another 5,000 is designated for First Nations food, social and ceremonial purposes, while the sports fishery has 40,000 and the Area G troll fleet is allotted 31,738. The treaty Maa-nulth nations are allocated another 3,441.

These numbers came from meetings with the DFO in April, and Atleo has yet to see any improvements to what the five nations are permitted to catch under the federal department's management plan.

"Canada has to quit being scared of us being as successful as the rest of Canada," he said, adding that the management of ocean resources could improve by giving First Nations a larger role. "We've been promoting that Canada simplify things by actually providing all of First Nations in B.C. half of everything."

The court battle that became known as the Ahousaht et al. case can be traced back to April 2003, when Nuu-chah-nulth nations filed a writ of summons against Canada and British Columbia for not honouring their Aboriginal fishing rights. This resulted in the Nov. 3, 2009 B.C. Supreme Court ruling that the five nations have an Aboriginal right to harvest and sell fish from their respective territories, a decision that Canada challenged multiple times unsuccessfully.

After a 144-day justification trial on the scope of the Aboriginal right that concluded more than four years ago and this year's updated decision from the B.C. Court of Appeal, the time is now for meaningful negotiations, said Judith Sayers, president of the Nuu-chah-nulth Tribal Council.

"We call on the DFO to come to the table immediately and begin dialogue with these five nations to determine sufficient allocations," she said in a statement. "It is past time to

do so. Our fishermen have waited long enough to pursue their livelihood and the court has definitively ruled on this right. It is a sad reflection on Canada that they fought the Nuu-chah-nulth in court for 18 years instead of negotiating."

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## Five nations assert right to half of overall catch

By [Eric Plummer](#) / August 5, 2021

Five Nuu-chah-nulth nations have responded to stalled talks with the federal government with a declaration from their Ha'wiih, authorizing members to discard DFO's catch allocations and harvest according to their own fishing plans.

Effective immediately, the decision announced on Wednesday by hereditary leaders from the Ahousaht, Ehettesaht/Chinehkint, Hesquiaht, Mowachaht/Muchalaht and Tla-o-qui-aht provides the nations with half of what is caught in their territorial waters, allowing the remainder to be shared with other sectors, such as commercial and recreational boats.

Hasheukumiss (Richard George), a hereditary chief with the Ahousaht First Nation, said the Ha'wiih declaration follows his nation's inherent right to harvest and sell fish from his territory.

"I have been continually shocked with the various allocations of fish species that the federal government has deemed appropriate," he said in a press release. "The DFO and the rest of Canada need to understand that our traditional territories, and the resources within, are ours to manage. Everything within our waterways is 100 per cent ours, and it is our right to continue our fishery. We are willing to share 50 per cent of our resources with other user groups, but at the end of the day, the resources are ours to manage through our own conservation practices."

This declaration goes far beyond allocations for the five nations that were set by Fisheries and Oceans Canada this year. In the spring the five nations were allocated 7,821 chinook salmon out of the 88,000 in total allowable catch off the west coast of Vancouver Island, while the sports fishery got 40,000. Another 5,000 chinook were set aside for First Nations food, social and ceremonial purposes, while nations in the Maanulth treaty got 3,441. The Area G troll fleet was allocated 31,738 chinook, but this was cut this summer as part of the government's decision to close 60 per cent of commercial salmon fisheries in B.C. in an effort to reverse steep declines in West Coast stocks.

After those numbers were issued a ruling came from the B.C. Court of Appeal that stated the five nations have the right to a fishery "of a moderate commercial scale". The

court decision removed the terms “small scale”, “artisanal” and “local” that were used in a prior judgement to define the scope of the nation’s fisheries. DFO responded by increasing the nations’ chinook allocation to 13,000, but this fell far short of the 23,000 chinook that the Nuu-chah-nulth First Nations believe to be a fair catch in their waters, said Cliff Atleo, Ahousaht’s lead negotiator.

“Our five Nuu-chah-nulth nations demand reconciliation and recognition of their rights as affirmed in the constitution and declared by the courts,” said Kekinusuqs (Judith Sayers), president of the Nuu-chah-nulth Tribal Council. “They can not wait any longer for Canada to work with them on fishing plans and will be fishing under the authority of their Ha’wiih and asserting their rights as they have done since time immemorial.”

Talks of a reconciliation agreement between the five nations and DFO that was expected to be completed this summer have brought only “stale space” said Atleo.

“Prior to COVID, the regular meetings with DFO were two full days,” he said. “Since COVID we’ve been an hour and a half here, two hours there. We’re stretching it when we get three hours out of them.”

The Ha’wiih declaration is likely to impact the sports fishery’s share of Vancouver Island’s west coast catch, part of an industry that generates \$6 million in annual expenditures in British Columbia, according to the Survey of Recreational Fishing in Canada.

Atleo said that this sector’s considerable share of DFO’s allocations shows where the government’s priorities are. He noted how, unlike the commercial sector, the recreational fishery did not face severe cuts this summer in the interest of conservation.

“The government favours them considerably,” said Atleo. “The action they called for with regards to conservation of endangered species on the west coast of Vancouver Island, they excluded them totally.”

Future talks with sports fishing groups are expected, said Atleo.

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## **Fisheries warriors: A look back at Nuu-chah-nulth-aht prior to the Ahousaht case**

By [Denise Titian](#) / May 6, 2021

## **West Coast Vancouver Island, BC**

"If we lose the herring we will have no salmon!" said Simon Lucas at a Nuu-chah-nulth fisheries meeting more than 30 years ago. Nearly four years after the Hesquiaht elder's passing, Julia Lucas recalled how passionate her husband was about Nuu-chah-nulth-aht's right to harvest and to manage fisheries in their respective territories.

She said it was Simon who tabled a motion at an NTC fisheries meeting that the nations challenge DFO in court to assert their rights to harvest and sell fish. After more than a decade in the courts, five Nuu-chah-nulth nations are celebrating an April 19 decision from the B.C. Court of Appeal. The unanimous decision eliminates restrictions previously placed on how the nations should harvest and sell seafood from their territorial waters off the west coast of Vancouver Island.

Hesquiaht elder and fisherman Stephen Charleson hopes this will change how the fisheries have gone for his community over the last generation.

"For sure it was a dismal feeling to be a fisherman in the 1990s and 2000s," he said. "By the time the court case was being contemplated I was hardly fishing at all."

Charleson pointed to exclusionary DFO policies that pushed Indigenous fishermen out of the industry.

"The seasons were starting to get shorter and shorter and the allocations were getting smaller and smaller," he recalled.

As each year went by there were fewer Nuu-chah-nulth boats tied up in the villages.

"Most of us were fishermen who didn't really chase the big loads," he told Ha-Shilth-Sa. "We were happy to get by comfortably year in and year out."

But DFO began to change the licensing and allocation systems in favor of the larger commercial fishing vessels.

Jon Manson, 43, of Tla-o-qui-aht said he had his own small boat by the age of 12 to fish off of Long Beach, selling his catch to the local fish plants. Manson said he only made it to Grade 9, opting to earn a living starting on his 16-foot boat.

Manson said his father used to have an A license, allowing him to fish all species, but it got taken away with the new licensing and allocation rules. Manson said his father's license was given to larger, commercial fishermen.

"To be eligible for species like halibut, for example, you had to have a certain amount of poundage in the previous years in order to be allowed to fish for them," Charleson noted. The same rule applied for all species.

Charleson's boat, the Sashmaray, was a combination troller and gillnet vessel. Charleson had to choose one or the other under the new rules, along with an area to fish in. Gone were the days when fishermen could go in other zones under the new DFO rules.

"There was a whole slew of new rules like that combined with a whole bunch of new paperwork and license fees," said Charleson.

"It became too much after a while and I was losing interest in commercial fishing," he added, saying that his boat became simply a home-use fishing boat before he gave up in 2005 and beached her.

But Charleson said he maintained hope throughout the years while the fisheries court case dragged on through the appeals that followed.

"I had high hopes that were dashed again and again with DFO's appeals and Canada's stance and refusal to honor the court decisions until the last one, last week," he said.

### **Management for a Living Hesquiaht Harbour**

In the meantime, Hesquiaht people saw commercial harvesters setting crab traps and fishing herring and salmon in their remote home of Hesquiaht Harbour, effectively wiping out what was left of the natural resources.

"They closed down Hesquiaht Harbour to save the fish," Julia recalled.

According to Charleson, who formerly served as elected chief, his people launched a program called Management for a Living Hesquiaht Harbour back in 1992 after the people passed a motion to protect their resources at a band meeting.

"It was originally a motion regarding logging in the territory," Charleson said.

The people wanted logging to stop in their territory until they could figure out how to repair damages to their mountainsides and creeks, which became destabilized due to forestry and poor road design. The landslides were destroying salmon habitat.

"The logs were disappearing off the land and we were being left to clean it up while we watched the herring, clams, spawning beds being destroyed and our livelihoods and food sources irrevocably lessening and disappearing," Charleson added.

Manson noted that millions of dollars have been spent over 30 years on watershed rehabilitation efforts in Clayoquot Sound. The goal was to repair salmon habitat destroyed by logging practices of the past in an effort to increase critically depleted wild salmon stocks. Charleson says Hesquiaht is also working on repairing habitat in their territories and both note that it isn't making much of a difference. Manson believes the nations need to work to restock the creeks through salmon hatcheries.

Besides putting a stop to industrial logging in their hahulthi, the Hesquiaht management plan demanded the commercial closure of herring, clam, geoduck, sea urchins, crab and any fin fish in Hesquiaht Harbour.

“Sports fishing was added to the list, whether it was in the salt water or in the creeks and lakes,” said Charleson.

For about a decade the closure remained in place while the Hesquiaht collected data and built on research. They reviewed recorded information from elders of the past and hired a western scientist who helped them study and plan for the protection and renewal of their natural resources.

### **A resurgence of wildlife**

In the decade that it was closed to commercial harvesting, Hesquiaht Harbour residents noticed an abundance of birds that came back. Charleson attributes that to the growing number of herring returns.

“It has attracted a lot of birds and mammals during the spawning season from January to April,” Charleson noted.

He went on to say it is a noisy time of year with eagles, sea gulls, cormorants, scoters, loons, seals, sea lions, and grey whales that converge in the area.

“Sometimes hundreds of grey whales are in the harbour from February to the end of March during herring spawn,” he said.

In the fall, when the salmon return to spawn, sea gulls and eagles come back along with bears and wolves.

But the resurgence of the once extinct sea otter has meant no more crab or clams in Hesquiaht for the past 20 years since the predator began feasting there.

Julia Lucas said the protection of natural resources was so important to past leaders like Simon Lucas, George Watts and Nelson Keitlah that one time her husband was summoned to sign court documents while he was on a fishing trip.

“He was fishing off of Ucluelet with our son Linus when George (Watts) sent a plane there to get Simon to Vancouver to sign the documents,” said Julia.

“He was there and back in Ucluelet on the same day,” recalled Linus Lucas.

### **Ahousaht harbor filled with boats**

Julia Lucas, an elder herself, was called to testify in the fisheries court case. She said the court wanted to hear how fishing was in previous generations.

At one point, the judge and lawyers arrived in Ahousaht to hear testimony at the Thunderbird Hall. The court heard elders testifying about how the people lived on fish.

Julia, who is originally from Ahousaht, said she was asked by the court how her father and uncles fished.

"Ahousaht harbor was filled with fishing boats, the mosquito fleet and even skiffs," said Julia.

She recalled her late sister-in-law, Margaret Titian, would leave Ahousaht harbor in a skiff to go fishing off of the front beach.

"She got nine big smilies," said Lucas. A smiley is a term fishermen use to describe exceptionally large salmon.

"Late Mary Amos did the same thing at Hesquiaht Harbour," Julia recalled, saying Amos landed a few Chinook salmon in her skiff. "Fish did not go to waste – we ate it three times a day."

### **Two out of 56 crab licenses**

Today, Manson fishes through the court-won rights-based fishery, which allows him to fish "pretty much anything that bites the hook". But he wishes to see more "brothers" out there.

"We're only allowed a certain number of crab traps in Clayoquot Sound," Manson noted.

He said there are 56 crab licenses in Clayoquot Sound and only two of those are Nuu-chah-nulth owned. Manson is tired of seeing licenses going to non-local, non-Indigenous large-scale commercial fishermen.

"Those guys don't spend a dime here," he said, adding that they come to make their money then go back to the mainland. "I'd like to see half the fleet being kou-uss."

In order to survive as a fisherman, he needs to fish all species and he has to get creative when it comes to marketing.

"I have people willing to pay a fair or even better price than the local buyers," said Manson, adding they are not a big operation but it's enough to feed his family.

In the latest B.C. Court of Appeal ruling on Aboriginal Fishing Rights, which came out April 19, 2021, the court ruled that restrictions previously placed on how the five nations (Ahousaht, Ehattesaht, Hesquiaht, Mowachaht/Muchalaht and Tla-o-qui-aht) should harvest and sell seafood from their territorial waters be removed.

The courts determined that the nations have a right to a non-exclusive, multi-species, limited commercial fishery aimed at wide community participation, to be conducted in their court-defined area for fishing, which extends nine nautical miles offshore.

"This means that these nations have a right to participate in commercial fisheries for any species in their territory, and they don't have to stay on the margins of those fisheries," said Lisa Glowacki of Ratcliff LLP, lawyers for the Nuu-chah-nulth plaintiffs.

Proud of her late husband, Lucas said Simon put his whole life into fishing. He, along with other elected Hesquiaht chiefs, including Joe Tom Jr. and Stephen Charleson, supported the court case with monetary donations, said Julia.

"It was Si, George and Nelson that started it all," she said. "Those three men really dedicated their lives to the court case."

Both Simon and Nelson Keitlah were commercial fisherman and Nuu-chah-nulth leaders. George Watts was a prominent leader with the Nuu-chah-nulth Tribal Council and Tseshah First Nation. All men have since passed away.

But thanks to their efforts, and the work of those who followed, Stephen Charleson's hope has been revived.

"I have hope again and am getting ready to go out again in my little boat," he said