



2013 Aboriginal Relations Committee Report

Meeting with the Maa-Nulth Wildlife Council (MWC)

On July 26, 2012, Rod Wiebe, BCWF Past President, and I attended a Maa-Nulth Wildlife Council (MWC) meeting in Courtenay. BCWF representatives, along with Darlene Clark and Willi Wagner of the BC Trappers Association, were invited to come and participate in discussions around the concept of collaboration in wildlife management.

Some areas of the common interest that were discussed were as follows:

Harvest Reporting. The Maa-Nulth have developed an electronic reporting program which is aimed at creating accountability in fisheries management. Each First Nations group within the Council gives reports to DFO. This sharing of data helps in co-management decisions. The Huu-ay-aht First Nation has taken on the job of preparing a 5 year consolidation of Maa-nulth data (the first 5 year period under Treaty).

Rod Wiebe asked for a more formal process of sharing information amongst stakeholders – ie having a Maa-Nulth representative come to a BCWF meeting. Our information sharing model might be used by other First Nations groups with upcoming treaties in other regions.

The Ti'unium (Elk) Herd was discussed. There are concerns about herd growth. Only young bulls are allowed to be harvested. As far as deer go, Maa-Nulth members have agreed to close harvesting of bucks from February to June and all does. A limited number of "sustenance" permits will be given to MFN so people will not go hungry. The idea is to try to increase deer populations. BCWF has been asked for an opinion on this strategy and the harvest plan is to be forwarded to us for our perusal in the future.

A decision was made to take into account the reduction of predators in any elk/deer management plan. Under predator management, FN would like to see the animals that are killed be put to some use. The Trappers Association was asked what might work. The Association is to give them a list of people who might be interested in taking the furs.

Habitat Management such as controlled burns and the impact of logging was discussed. Strategies for working with government collectively could be looked into.

As far as elk go, there are opportunities for FN, BCWF, and government to work together on further elk transplants. We can work on our past successes and experience. Clements Creek and Sarita Valley were mentioned as possibilities.

There were also discussions around the possibility of getting government to put more fishing and hunting license revenue into better management of wildlife resources. Now that there is a Treaty in place in this area, it is time to look at ways to help manage the resources collectively. Ron Frank, chief negotiator for the Maa-Nulth group of FNs, planned to contact Al Martin to perhaps come up with a model /pilot project we can work together on.

Ron Frank mentioned that government does not always see a monetary value in wildlife. The value to society is missed. We have to change this perception. How do we change the "value" perception of our wildlife resources? This is something that we need to work on in the future.

BCWF and BC Trappers Association and the Guide Outfitters of BC were to be invited to another meeting of the Maa-Nulth Wildlife Council in January 2013 for further discussions. BCWF may want to decide who should be at this meeting. Should it be just regional representatives or someone from the provincial level? So far, I don't think a meeting has been arranged and we are into March 2013.

No Moose Hunting Area in the Anahim Range

In July 2012, with the rationale being "low moose populations", the Tl'etinqox-t'in announced a no-hunting area for the Anahim Range for hunters other than Tsilhqot'in hunters and guide operators who are Tl'etinqox-t'in. BCWF is working with the provincial government and First Nations in the area to look at improving moose populations and to increasing the hunting opportunities for all. This comes under the BCWF Wildlife Committee jurisdiction and I am sure more detailed information will be included in their report.

Status of *Ahousaht et al* and *William* Cases

The Fisheries Access Legal Program met January 7, 2013. As BCWF is a member of this group, Rod Wiebe and I attended as representatives. The purpose of the meeting was two-fold - to discuss the direction to take over the next twelve months and the renewal of Keith Lowes' contract.

Keith Lowes gave an overview report on the *Ahousaht et al* and *William* cases.

An application for leave to appeal the *William* case to the Supreme Court of Canada has been made although so far it has not been granted. Keith thinks this will happen in the very near future. Then there will be a 90 day period in which appellants can file a factum. After that, there is a 30 day window in which we can seek leave to intervene. This is something that requires careful deliberation.

Although this case involves hunting rights and aboriginal title, it also has a broader theme that affects more stakeholders. There is the relationship between rights and title and species specificity and the definition of what is a moderate livelihood. I think it takes a lawyer to truly understand the case.

Keith gave us information meant to disentangle the timelines, issues and decisions around the *Ahousaht et al*. This case involves the possibility of needing additional work. Again, he went into a discussion on species specificity.

Ahousaht et al was remanded to February 13, 2013, back to a BC Court of Appeal panel by the Supreme Court of Canada. The panel is to consider the implications of the *Laxkw'alaams* case around species specificity and *Sappier* (another case). No new evidence is allowed. The appeal is against the order of a "right to harvest and sell all species" that has caused considerable confusion and angst to the public. A favourable result would be to have the *Ahousaht et al* go back to trial with instructions to focus on "species" when looking at pre-contact practice. An example would be geoduck which was excluded because pre-contact there was no exchange.

The final decision of the BC Court of Appeal panel could be appealed to the Supreme Court of Canada before going to trial. The Ahousaht are fed up with trying to negotiate on the original decision and are seeking to go back to trial for more certainty as well.

Because the issue of species specificity is so important to this appeal, Keith Lowes believes we should hire a court expert researcher to review evidence for us ahead of the hearing. Costs were discussed and the group agreed to go ahead.

It was decided to retain Keith Lowes for another year. Rather than include information on Keith's strategies in our report to the Board, it was suggested that Keith be invited to a meeting or to attend the AGM to ensure confidentiality.

The recent Federal Court decision, *Daniels v Canada* that came down January 8, 2013, clarifies and extends federal jurisdiction to Metis and non-status Indians. This decision could create broad reaching policy and financial implications for the federal government and maybe pose additional wildlife access issues for our membership. However, from what I have read, it appears that this case relates more to government jurisdiction over Indians constitutionally rather than consultation issues or an assessment of Aboriginal Rights.

The issue in this case was whether Metis and non-status Indians (MNSI) are included in the definition of "Indians" under Section 91(24) of the Constitution Act, 1967 (Constitution). Up until this decision, MSNI were considered excluded from the definition "Indian" under the Indian Act and thus ineligible for many programs or policies.

The Plaintiffs had sought recognition as "Indians" under the Act and all of the benefits, rights to consultation, and negotiation that would follow. The court only gave the Plaintiffs recognition as "Indians" under the Act. The Court decided that there was insufficient evidence to say that MSNI were owed a fiduciary duty from the Crown or that they have the right to be consulted or negotiated with by the federal government.

There may be a problem in Alberta as it has provincial legislation that has created Provincial jurisdiction over the Metis. This may lead to some court challenges based on the federal government having exclusive jurisdiction over Indians as well as the Metis.

Where does this leave us? The case could still have financial and political impacts because the federal government is seen as having responsibility for these people (MNSI). It is rumoured that an appeal by the federal government is in the works. Meanwhile, resource developers are seeing the Daniels decision as creating more certainty as there is no need to consult MSNI, only those First Nations who hold rights under the Constitution.

If the Board were to invite Keith Lowes to a meeting to make a presentation I am sure he could explain the implications of the decision with more legal insight.

Respectfully submitted by

Virginia Persson, Chair
BCWF Aboriginal Relations Committee