ABORIGINAL RELATIONS COMMITTEE
2015 YEAR END REPORT

Update on Ahousaht
The role and significance of BCWF representation in the Ahousaht trial is important. Most of the issues arising so far have been around the relationship amongst aboriginal fishing rights, the public fishery (both recreational and commercial) and Canada's authority and obligations pertaining to each. Our counsel, Keith Lowes, acting for the BCWF and the BC Seafood Alliance has argued successfully that the interests of those relying on the "public fishery" cannot be effectively represented by Canada given its obligations to aboriginal people. So, Madame Justice Humphries allowed the BCWF/BCSA intervener status in the Ahousaht trial. This is quite uncommon and an exceptional opportunity.

I attended the BC Supreme Court last March 11, the day this testimony was offered, and was disappointed, however, that the opportunity was very restricted and only allowed two witnesses from the commercial sector to testify on two quite narrow issues; 1 – the operating costs of an individual commercial fishing operation on the West Coast of Vancouver Island and 2 – the contribution of an individual West Coast of Vancouver Island commercial fisherman to management, science and other costs.

I have been assured, however, that prior BCWF counsel has argued for a broad scope of evidence including the scale of value, both monetary and non-monetary, of the recreational fishery. Also, quite fortunately for us, much of the evidence pertaining to the recreational fishery was led by Canada (particularly through Devona Adams, Recreational Fisheries Manager). This evidence about these values was additional to that led in the first phase of the trial. There are reasons to expect that further opportunities to lead additional evidence on the value of the public fishery, both commercial and recreational, will present themselves.

Tsilhqot'in National Government meeting
On July 21 the BCWF sent George Wilson President, Jim Glaicar Vice President, Rod Wiebe Past President, Al Martin Director for Strategic Initiatives went to Williams Lake to meet with Tsilhquot'in National Government: Chief Joe Alphonse Tribal Chairman, Luke Doxtator Stewardship Manager, Sam Zirnhelt Resource Advisor and Myanna Desaulniers Communications Coordinator. Terry Street Region 5 President participated by phone. Several news sources reported hunting for BC residents in the Tsilhqot'n Title lands being disallowed for 2015 while accommodation for Guide Outfitters to continue operation was made. It was seen as vital that the BCWF meet the TNG to build relationships based on common values and interests.

BCWF representatives held a pre-meeting conference where a general approach with Chief Joe Alphonse was discussed. The focus of the agenda was one of respect for the Supreme Court of Canada decision which recognized aboriginal title of six Tsilhqot'in First Nations to over seventeen hundred square kilometers of land. Based on that and with reference to other successful collaborations with other FNs on fish and wildlife resource sustainability we were able to proceed to build a better understanding of our common interests and needs.

The meeting went well with Al Martin being the lead spokesman, firstly, on the William decision and then leading into areas of shared interests. The two young TNG officials were very sharp, and forthright. Chief Joe Alphonse did make reference, near the end of the meeting, to examining the idea of access to their lands for BCWF members. Further meetings with TNG are planned.

THE NENQAY DENE ACCORD

On Feb 11, 2016 the Nenqay Dene Accord between the Province of BC and six Tsilhqot'in First Nations came into effect. This has emerged more than a year and a half after the Supreme Court of Canada ruled those FNs had proven title to over seventeen hundred square kilometres of land West of Williams Lake. Now the Province and the Tsilhqot'in National Government (TNG) have agreed on a process, over the next five years, to reconcile the two government's authority over resource and land use decision making. This report intends to summarize the structure and main points of interest to BCWF members and the public who share our values.

P. 7 of the "Accord" describes the Purpose

> "2.1 The purpose of this agreement is to establish the shared vision, principles and structures for the parties to negotiate one or more agreements to effect a comprehensive and lasting reconciliation between the Tsilhqot'in Nation and British Columbia."

Pillars of Reconciliation
The "Pillars" are the list of objectives the two governments agree to achieve. It is within these "Pillars" that some concerns for the needs and interests of the public present themselves. There are eight of them from governance, land and resource management through to healthy communities with "guiding principles" on how to progress and attain the shared vision. A prior Letter of Understanding calls for a "Leadership Table" and "Working Group" to continue to provide oversight and coordination for the implementation of the "Accord".

The "Governance Pillar" – the main objective here is to negotiate with the Province an agreement around recognition of the Tsilhqot'in FN as a government within Canada and reconcile the jurisdictions of the different governments.

The "Lands and Resource Management Pillar" – This is the part of the Nenqay Dene Accord that could be of most serious concern to the rest of British Columbians. The main objective here is for the parties to develop an "..efficient and effective management framework through this Agreement, for lands and resources in Tsilhqot'in Territory…". This is not just Title Lands being referred to here. The Tsilhqot'in continues to assert title over their entire territory although they failed to prove title over it all in the Supreme Court of Canada. Regardless, it appears the Province intends to accommodate an increased level of Aboriginal Rule over the entire traditional territory of their six FNs.

Category A lands
In addition to recognizing Title Lands the Province is "…committed to establishing Tsilhqot'in ownership, management and control over additional areas of Tshihqot'in Territory. "Category 'A' Lands" are to be created where aboriginal ownership of those lands and resources are also recognized. The expectation is that the two governments will collaborate on a management framework for lands and resources on Crown lands, Title Lands, Category A lands and other remaining Tsilhqot'in traditional lands. It is difficult to determine if Crown or "public" land would even exist as I could not find it mentioned anywhere in the Accord. Successful management of a governance regime that would coordinate lands and resource use decision making on so many levels of land status sounds like a tall order.

It is certain that other FNs across the Province will have expectations that negotiated principles with the Tsilhqot'in around the creation of "Category A Lands" will be extended to them too.
So, it appears the Province is prepared to use principles set out in William" to grant aboriginal "ownership, management and control" over other lands where title is asserted without regard to the strength of claim or any court hearing to prove title.

Several critical questions arise from the creation of Category A Lands out of Crown lands for FNs Province wide. Given that resident hunters have lost all hunting rights in Tsilhqot'in Title Lands, how will the public right to access particularly for hunting be impacted on Category A lands? How vast will these Category Lands be; will "public" land even exist anymore?

BCWF members should be concerned that their only voice in fish and wildlife management in Tsilhqot'in territory is limited to the Province representing their interest through "collaborative management of fish and wildlife" in Wildlife Panel. We should expect protecting the public interest to be their duty. However, our experience is that Provincial government officials, both elected and appointed, have done an abysmal job of protecting our interests. We only seem to lose either on allocations, access to public lands and resources and habitat.

1. *William* - What is the test for Aboriginal title to land?

The Supreme Court of Canada relied on the Delgamuukw test for Aboriginal title to land, which is based on "occupation" prior to assertion of European sovereignty (in British Columbia, 1846).

To establish Aboriginal title, this occupation must meet three requirements

(1) it must be sufficient, which is a context-specific inquiry that gives equal weight to the Aboriginal perspective, which focuses on laws, practices, customs and traditions of the group, and to the common law perspective which imports the idea of possession and control of the lands,

(2) if present occupation is relied upon as evidence then it must be continuous, rooted in presovereignty times, and

(3) it must be exclusive, in the sense that the Aboriginal group must have had the intention and capacity to retain exclusive control over the lands.

> In *William* the Court confirmed this test applies to a semi-nomadic group seeking Aboriginal title to lands. In this case the Court decided that the Appeal Court had interpreted the test too narrowly. The Supreme Court of Canada agreed with the Tsilhqot'in Nation's argument that the Trial Judge's territorial boundaries and conclusions of sufficient occupation, continuity, and exclusivity were logical and supported by the evidence. So, the Supreme Court of Canada declared Aboriginal title over the claim area designated by the Trial Judge.

Klappan (Ealeu Lake Rd) Blockade

Around mid-August rumours and then social media postings indicated a strong possibility that the blockade of resident hunters into the Klappan River area in Region 6 would occur. This appeared to be a repetition of the one last year, one difference being the outside group joining with a splinter group of the Tahltan First Nations, the Klabonna Keepers, was the Wildlife

Defense Alliance rather than the "Beyond Boarding" group from the year previous. It quickly became obvious that there were expectations out there by members and others that the BCWF should be proactive and do everything possible to protect hunter opportunity from further damage by these protesters.

There were a couple of conference calls and much email exchange between BCWF leadership and some committee chairs discussing our options for action. A memorandum from Counsel Keith Lowes provided some basic information around the purpose and process around court injunctions which proved useful. Several lines of defense were taken; firstly the BCWF communicated with the Tahltan Central Council to inform them of our concern, clarify our recognition of Tahltan FN representation and decision making and our opinion of non-FN groups who would interfere or otherwise attempt to damage BCWF FN relations. Next, an emergency conference call with the Board of Directors resulted in approval to use a fixed sum out of the Action Fund to engage counsel for legal action should it be needed. Finally, that counsel was engaged thereby completing the action plan. The Board was unanimous in the feeling that the BCWF could not sit by fully aware of this threat and do nothing.
The blockade did not happen.

Fraser River Peacemakers

Last October 14 the Fraser River Peacemakers hosted a "Dinner – Gathering" in Abbotsford. It was advertised as a "social" evening but it actually was a dinner meeting with an agenda and a couple of presentations. The "River Manners" video opened the meeting session with about twenty four guests in total. There was representation from the Driftfishers, BCWF, Fraser River Guides Assn, DFO, PSF, SFAB, Fraser Basin Council, and nine or ten representatives and staff from the aboriginal sector.

The Fraser River Peacemakers has worked for over six years now. Groups similar to this have sprung up in the past but none lasted this long. The agenda focused on future directions of the group, growth of its ethic of collaboration and cooperation amongst users of the rivers fisheries.

The Fraser River Peacemakers group is a good example of where the BCWF seized an opportunity to resolve conflict between the aboriginal and public fisheries, improve relations and opportunities for the public and generally make the world a better place to live in.

Regarding First Nation Consultation – Misunderstandings

After the 2004 Supreme Court ruling in Haida Nation v British Columbia governments were ordered to proactively consult with First Nations where possible infringement of treaty or aboriginal rights might exist. At first consultation by governments was based on meeting the minimum legal requirement. Subsequently controversy arose and a policy framework around how First Nation consultation is developing over time. Clarity around this still does not exist so the common populace and many FNs have difficulty making sense of demands for consultation and the complaints around this so commonly heard in the media.

The duty to consult can be misunderstood by First Nations in giving rise to unreasonable expectations like a veto on all government decisions. Courts have consistently confirmed that consultation is not an opinion poll of support in the First Nation community. The aim of consultation is to determine if there is an infringement on asserted or established Treaty or aboriginal rights.

The duty to consult is only concerned with new impacts. It is not to deal with past breaches of aboriginal or Treaty rights. Continued breaches are dealt with in other ways. An example of this principle is the Kinder Morgan Pipeline where its expansion is being done only on existing rights of way so there is no duty to consult. The Northern Gateway Pipeline, however, needs many new rights of way across Crown land in many FN traditional territories with unresolved land claims. The issues arising from the duty to consult in association with this project are substantial.

A misunderstanding on the public side might be that the duty to consult is meaningless because government makes decisions anyway regardless of what issues consultations raise. But that presumption is countered by the honour of the Crown to avoid unfair dealings with First Nations.

A democratic state needs orderly ways of resolving disagreements so that an economy can function and the benefits flow to all communities throughout the country. Calls for consultation with the intent to deny others their legal rights render those legal rights meaningless and the rule of law is harmed. However, the duty to consult is a doctrine that has grown out of respect for rights that may yet be recognized.

Some misunderstandings grow from unreasonable expectations. Consultation is about government endeavouring to balance public interest with pursuit of reconciliation with aboriginal communities. Demands for consultation by FNs can amount to blatant abuse of a measure intended to help them and it can be seen as an aggravating inconvenience by industry. Those days are gradually disappearing and First Nations that are open for business are not generally frivolous in their demands. Government and business investors that understand and respect the intent of the duty to consult process are generally similar in their diligence.

Where the public sits in terms of their access to crown lands and resources might be another thing. It is important that BCWF clubs, members and representatives are visible and heard by making our needs and interests known to those officials dealing directly with First Nations and to First Nations themselves.

BCWF Aboriginal Relations Committee

Other committees in the BCWF such as Wildlife and Allocations, Fisheries (both tidal and inland) Access, or Land Use have overlapped the Aboriginal Relations Committee in both purpose and action quite frequently. A good example would be the Euleau Lake Rd blockade; it is both an access issue, an Aboriginal Relations issue and a Wildlife Committee issue. Over time different committees have acted for BCWF members on aboriginal matters and there is no formal coordination for this. Reporting between the committees is infrequent so what information comes through is often learned indirectly from random sources.

Further, in recent years the BCWF has hired some very qualified staff who has taken on much of the role of advocacy, relationship building and collaboration with First Nations which has resulted in less work and cost for maintaining our major committees. This is a good thing as I have always believed that our members would never have professional representation of their interests until we were able and willing to pay for it. I believe those days have begun and our profile and importance in those circles relevant to our future will continue to grow so long as the BCWF is capable of generating the funding required to steadily raise the quality of our advocacy. Volunteerism is great but best suited to grass roots work. For politics, however, our members can do the voting and our senior staff and leadership can do the lobbying. In this day and age poorly trained or experienced representation in the real world just doesn't cut it.

In summary it is fair to say that the "Aboriginal Relations Committee" is in a period of transition. My opinion is the real "Aboriginal Relations" work is being best taken care of by our leadership and senior staff leaving the volunteer Committee in need of a new job description.

Respectfully Submitted By:

Rod Wiebe
Aboriginal Relations Committee Chair