



# Nuu-chah-nulth Tribal Council

AHOUSAHT  
DITIDAHT  
ʔIIHATIS / ČIINAŦINT  
HESQUIAHT  
HUPACASATH

HUU-AY-AHT  
KA:YU:K'T'H'/CHE:K:TLES7ET'H'  
MOWACHAHT/MUCHALAHT  
NUCHATLAHT  
TLA-O-QUI-AHT

TOQUAHT  
TSESHAHT  
UCHUCKLESAHT  
YUULUʔI7ATH

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## Nuu-chah-nulth Seek Intervenor Status in T'aaq-wiihak Court Case Appeal

**MEDIA RELEASE: August 28, 2018/Nuu-chah-nulth Tribal Council/Port Alberni, B.C.:** The Nuuchahnulth Tribal Council (NTC) has decided it will seek BC Court of Appeal consent to intervene in the T'aaq-wiihak Fisheries court case that sought a ruling on the Government's past and ongoing infringement of five First Nations' commercial fishing rights.

The NTC Nations intend to provide their views on the court's recharacterization of the T'aaq-wiihak right to a commercial fishery into a "small-scale, artisanal, local, multi-species fishery, to be conducted in a nine-[nautical] mile strip from shore, using small, low-cost boats with limited technology and restricted catching power and aimed at wide community participation."

Andy Callicum, Vice President of the NTC, declared that "Such a recharacterization of the right from the original decision is unacceptable, and is in fact, a 'frozen rights' argument that has been rejected at the Supreme Court of Canada." He went on to say that, "Courts have previously stated that Aboriginal rights should be interpreted 'liberally and generously,' and this decision marks a very different approach."

The court case – known as *Ahousaht et al vs. Canada* – dates back to 2009. The original case that went to the BC Supreme Court ruled that T'aaq-wiihak fishers have an Aboriginal right to catch and sell all species of fish traditionally harvested in their territories. When the federal government failed to implement that decision, the five First Nations involved in the T'aaq-wiihak Fisheries (Ahousaht, Ehattesaht/Chinekintaht, Hesquiaht, Tla-o-qui-aht and Mowachaht/Muchalaht) chose to return to court to determine Canada's infringement of their right. The case on Canada's infringement, known as the 'justification trial,' was heard in 2016, with the decision handed down in April 2018. It is this decision that is being appealed, and that the NTC will intervene on.

"Justice Humphries rewrote the definition of the right in a trial that was about the justification of DFO management through laws and policies," said Judith Sayers, NTC President. "Courts have typically determined the right in one case, and justification and infringement in another." Sayers added that the NTC cannot allow this to happen as it will open the door to other justices revisiting and reinterpreting rights that are already proven.

The NTC will seek to intervene in the 'justification' decision as it sets a dangerous precedent in court conduct, and the ruling sets First Nations back many years. "The justice said that there must be economic viability in the fishery, but her limited definition does not allow that to happen. The NTC seeks to provide forward thinking and co-management on a resource that we have relied on since time immemorial," commented Sayers.

The full 'justification trial' decision can be found at:

[https://www.firstpeopleslaw.com/database/files/library/Ahousaht\\_Indian\\_Band\\_and\\_Nation\\_v\\_Canada\\_\(Attorney\\_General\)\\_2018\\_BCSC\\_633.pdf](https://www.firstpeopleslaw.com/database/files/library/Ahousaht_Indian_Band_and_Nation_v_Canada_(Attorney_General)_2018_BCSC_633.pdf)

The original court case decision that recognizes the Aboriginal right to harvest and sell fish in traditional territories can be found at:

<https://www.canlii.org/en/bc/bcsc/doc/2009/2009bcsc1494/2009bcsc1494.pdf>

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**About Nuuchahnulth Tribal Council:**

The Nuuchahnulth Tribal Council (NTC) provides programs and services to over 10,000 registered members. The role of the NTC is to represent fourteen First Nations in three regions stretching 300 kilometers of the Pacific Coast of Vancouver Island from Brooks Peninsula in the north to Point-no-Point in the south. The Nuuchahnulth Tribal Council represents Ahousaht, Ditidaht, Ehattesaht, Hesquiaht, Hupacasath, Huu-ay-aht, Kyuquot/Cheklesah, Mowachaht /Muchalaht, Nuchatlaht, Tla-o-qui-aht, Toquaht, Tseshaht, Uchucklesaht and Ucluelet First Nations and provides a variety of programs and services to them. For more information, please visit [www.nuuchahnulth.org](http://www.nuuchahnulth.org).