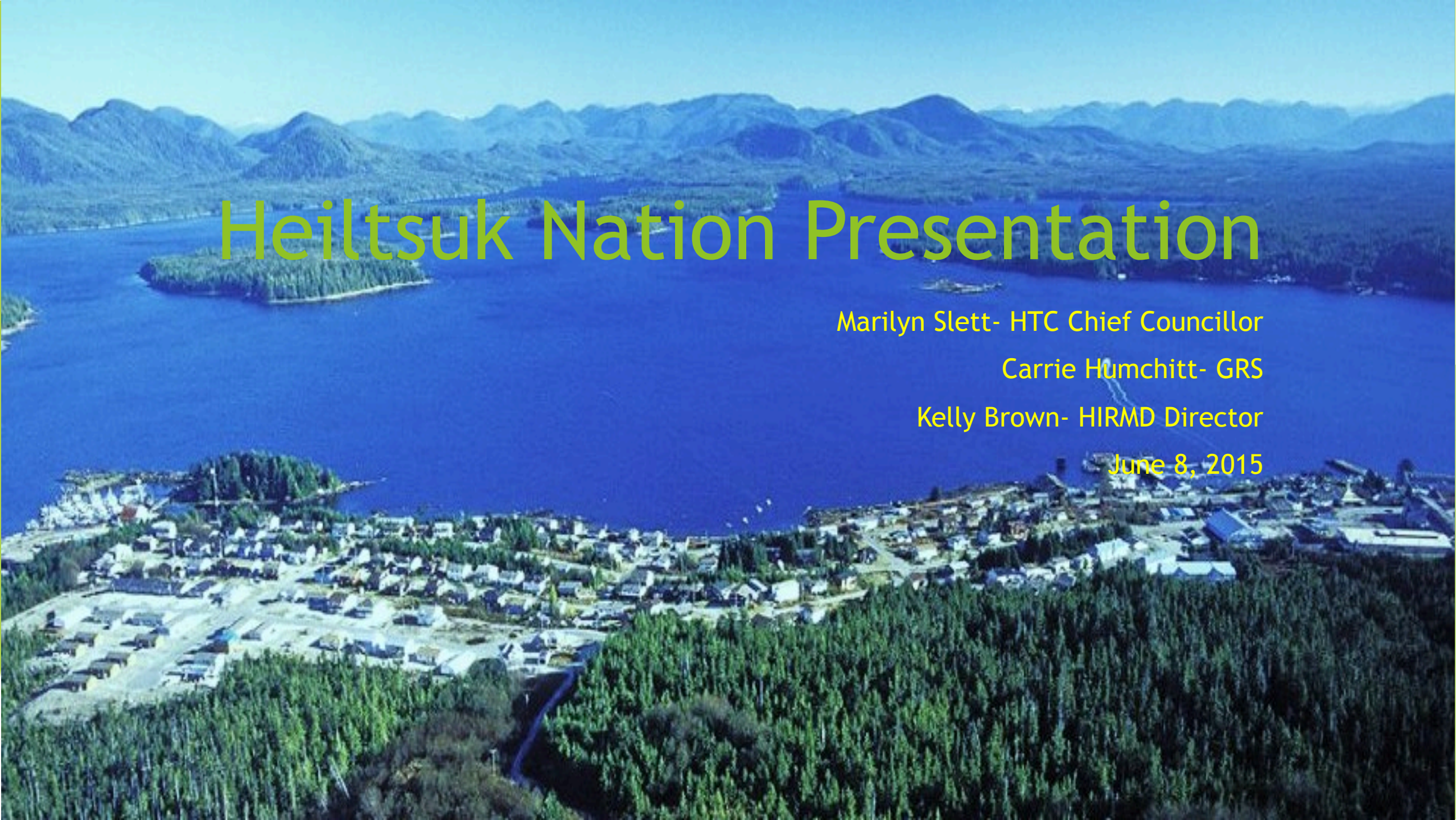


Heiltsuk Nation Presentation

Marilyn Slett- HTC Chief Councillor

Carrie Humchitt- GRS

Kelly Brown- HIRMD Director

June 8, 2015

Heiltsuk Land Use
Our Vision

- Since time immemorial, we the Heiltsuk people have managed all of our territory with respect and reverence for the life it sustains, using knowledge of marine and land resources passed down for generations. We have maintained a healthy and functioning environment while meeting our social and economic needs over hundreds of generations.

Heiltsuk Land Use Our Vision

- Our vision for the area remains unchanged. We will continue to balance our needs while sustaining the lands and resources that support us. We will continue to manage all Heiltsuk seas, lands and resources according to customary laws, traditional knowledge and nuyem (oral tradition) handed down by our ancestors, with consideration of the most current available scientific information" HLUP Executive Summary-

Objectives

- Introduction- Chief Marilyn Slett
- Heiltsuk Herring/Heiltsuk Strong- Carrie Humchitt
- Planning for Resilience- Kelly Brown

What does Herring mean to Heiltsuk?

- Our presentation will give a snapshot of what it means. It has many dimensions all deeply inter-connected to our relationship to the land and sea.
- We are people of the sea - we live, gather and harvest from the sea, as my late uncle Cisco would say, "when the tide goes out....the table is set".
- If we take care of the sea, the sea will take care of us.

Heiltsuk Reflections

- Herring has been the cornerstone of our Heiltsuk culture for thousands of years.
- The annual herring harvest marks our traditional new year. It is our first harvest after our winter ceremonial season.
- Our way of life; our strength in identity - in large part is "where" we are from - it is the foundation on which our health and wellbeing is built upon.
- This was demonstrated with the our Herring Standoff where we occupied a DFO Field Office in Denny Island last March.
- Although the heart of the stand off was on the central coast, our people mobilized and protested in Vancouver at the DFO regional office and at Canfisco, in Nanaimo, and Victoria.

Heiltsuk Reflections

- Our ancestors developed sustainable and sophisticated methods of harvesting herring roe. These ancient techniques form the basis of our present day harvesting method - which a non-kill fishery.
- Our stories, practices and evidence of trade routes were the basis of the Gladstone SCC ruling in 1996, which affirmed Heiltsuk's aboriginal right to commercially harvest herring spawn on kelp.

Heiltsuk Connections

- Our relationship with Herring is fostered in a very balanced approach:
- Spiritually: it's apart of our songs, ceremonies and potlatches. Families historically would harvest and camp together at their "family fish camps" for duration of the season.
- Stewardship: along with the right to harvest is the responsibility for stewardship. Our Gvailas, tell us of both of our ownership and stewardship responsibilities which include protection, restoration and long term sustainability of our ocean resources and the Eco-systems within our traditional territories.
- Sustenance: Herring eggs is a traditional Heiltsuk food source which is harvested utilizing a sustainable method with both kelp and hemlock branches.
- Livelihood: historically and to today, the spawn on kelp commercial fishery is a major economic driver of our Nation’s economy. It involves both the fishers and the processors who are employed in our fish processing plant.

Final Words from HTC

- In closing - before I hand the remainder of presentation to my colleagues. I wanted to touch on our recent standoff.
- The confrontation with DFO was based on two factors:
- 1) Exercising our Gvailas, asserting our jurisdiction to protect the herring. We would not stand by and see this fishery in danger of another collapse.
- 2) DFO's flawed science - we have disputed the formula DFO uses to project herring stocks, which they also refer to as best available science.
- We are committed to the protection and monitoring of herring by using traditional knowledge and western science. We are committed to using this fusion of science to defend and preserve our herring stocks so they may once again be abundant, and sustained for our generations to come.

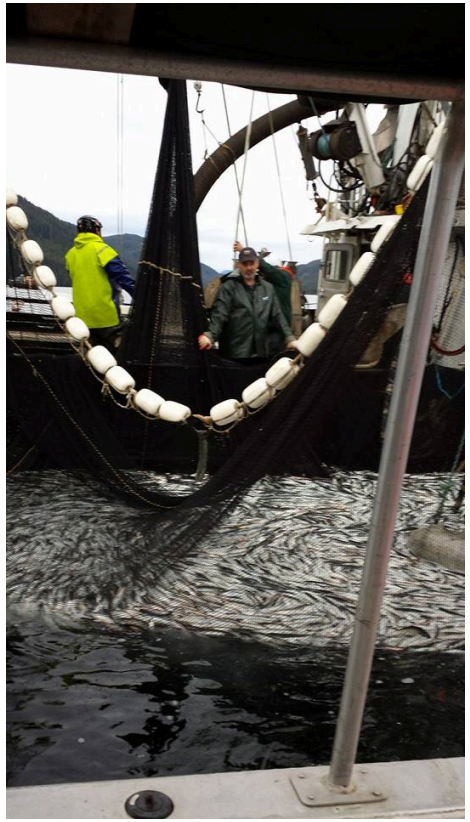
R. v. Gladstone: the Heiltsuk fight for implementation of the SCC affirmed Right

Issues relating to the Spawn-on-kelp commercial Communal right of the Heiltsuk people and the ongoing concern of encroachment in Heiltsuk waters.

Issues concerning the Heiltsuk 2015 SOK

- That the biomass level of the herring fishery forecasted is insufficient to support a SOK, FSC and Commercial Fishery
- That the Doctrine of Priority is not being followed with respect to the established Aboriginal right of the Heiltsuk as per R. v. Gladstone
- The DFO intends to open up Area 7 despite the Heiltsuk assertion that it is a no-go zone (Heiltsuk only).

Unjustifiable Infringement on the Heiltsuk Right, the illegal fishery in Spiller on March 22, 2015, 50 tons being sucked out of Heiltsuk priority SOK/FSC area by Kill Fishery seiner.

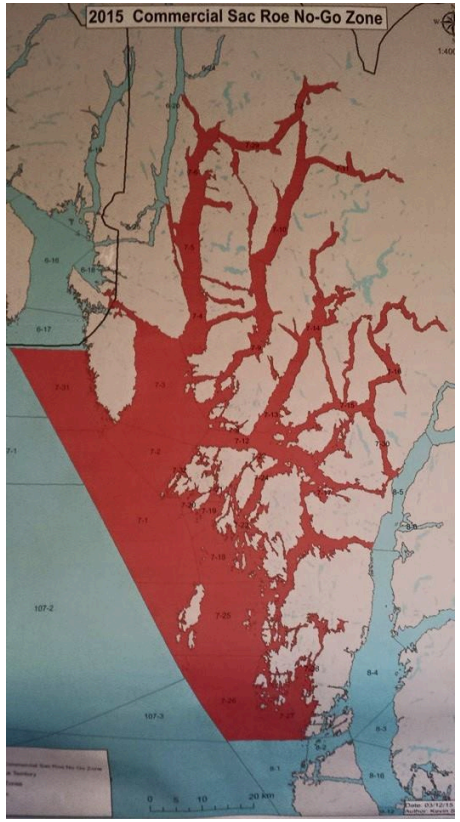


Heiltsuk First Nation says commercial herring fishery violated constitutional rights

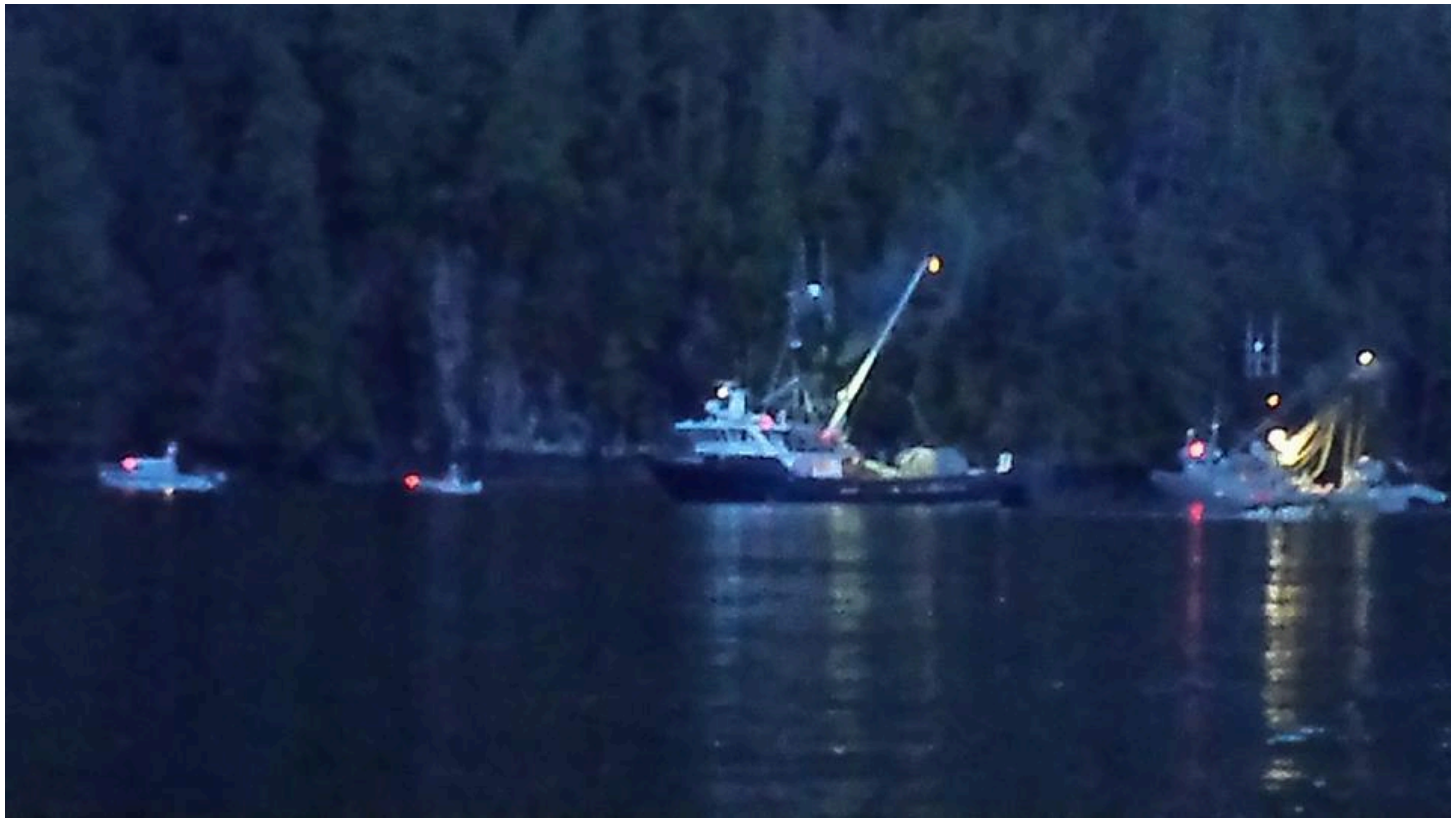
Heiltsuk claim Fisheries and Ocean Canada's method of measuring herring stocks is flawed

CBC News Posted: Mar 23, 2015 5:35 AM PT Last Updated: Mar 25, 2015 9:57 AM PT

The Heiltsuk No-Go Zones Map



The little Nation that could, Heiltsuk speedboats squaring off with kill fishery seiners.



The cavalry arrives, Heiltsuk speedboats confronting the Kill fishers at Spiller.

THE HEILTSUK UNEXTINGUISHED ABORIGINAL RIGHT TO COMMERCIAL HARVEST OF SOK

The Heiltsuk people have been harvesting, trading and exporting herring SOK in large commercial quantities in the CC area of BC since time immemorial. This is the Heiltsuk Traditional Territory. The SCC has recognized that our people were a dominant economic entity in the commercial trading, bartering and sales systems established throughout BC's central coastal prior to first contact, and that these rights have not been extinguished. The Heiltsuk herring SOK resource was harvested by the people of the region for the benefit of the people of the region. By virtue of the 1996 decision in the *R. v. Gladstone* case, we are the only aboriginal people in Canada to have established a court-affirmed unextinguished aboriginal right to commercially harvest and sell herring SOK. This right is unique and distinct from the DFO commercial licensing and allocation process for the herring fisheries and is protected by the Constitution. This right is administered by the HTC and extends to every Heiltsuk individual and this must, therefore, be recognized, respected and supported by all departments of the Canadian government.

The Doctrine of Priority & R. v. Gladstone

- “The Doctrine of Priority requires that the government demonstrate that, in allocating the resource, it has taken account of the existence of the aboriginal rights and allocated the resource in a manner respectful of the fact that those rights have priority over the exploitation of the fishery by other users”
- **the allocation for the SOK is deducted before any allocation is made to the roe fishery is a priority ascribed to all SOK fishers, whether First Nations or not, and in every management area. Thus, this is a general priority that does not provide any particular recognition of the Doctrine of Priority associated with the Gladstone decision**.

> The correct order of priority in the herring fisheries is:
>
> "(i) conservation; (ii) Indian fishing; (iii) non-First Indian commercial fishing; or (iv) non-Indian sports fishing ".

From *R. v. Gladstone, [1996] 2 S.C.R. 723.para. 54, Sparrow, and Jack,* SCC case law, Canada.

Picture of Herring Spawning on Kelp (SOK)

SOK Harvesting integral to Heiltsuk people

Chief Robert Germyn v. Canada

(i) From the March 12, 2010 "Unpacking the Germyn Case" submission at p. 2:

The Crown has failed to accommodate the Heiltsuk right by: "Failing to issue SOK commercial licenses to the Heiltsuk in areas the Heiltsuk traditionally harvest SOK (statistical areas 7, 8 and 9; e.g. Burke Channel)";

(ii) From January 25, 2002 letter from Chief Germyn to DFO Minister Thibault:

Second, prior to Gladstone, the Heiltsuk only had two licences: one issued in 1975, and another issued in 1991. After Gladstone, the DFO increased the number of licences from two to five, but the three additional open pond licences were located in what is designated by the DFO as Area 8, an area which is widely recognized in the industry as a location of secondary importance for herring harvesting. The Heiltsuk's traditional herring harvesting grounds are included in what the DFO has designated as Area 7. Despite the Heiltsuk's good faith negotiations to increase our ability to harvest herring spawn from our traditional fishing grounds, the DFO has consistently refused to issue us new licences in Area 7, with one minor exception. In 1997, the Heiltsuk again entered into negotiations for an increase in the number of licences. While we obtained three more licences, again two of these new licences were located in Area 8. The other licences was issued as an open pond licence. It only generated an approximate average gross income of $5,000 in 1997, even though there were over 9000 tons of herring quota available for the commercial fishery on the abundant herring runs in our traditional territory.

Political Strategy Ottawa Meeting with the DFO

Meeting with Aboriginal Affairs Critic Ottawa

Heiltsuk delegation in Ottawa to meet with the DFO on reconciliation of our rights.

Related Litigation and Court Actions (Injunctions)

HAIDA GWAII (NEWS1130) – A First Nation in Haida Gwaii says it will take legal action if the federal government decides to open a herring roe fishery in its territory.

The Haida Nation says the Department of Fisheries and Oceans is considering opening a large commercial fishery this year in the community on the north coast.

Haida Nation president Peter Lantin says herring stocks have not rebuilt enough to support the opening, saying department's management process flawed.

The First Nation has declared the fishery closed, saying it can't be harvested safely.

A year ago, the Haida joined two other First Nations to oppose a plan to open a commercial herring fishery that had been closed on Vancouver Island since 2006.

Last March, a Federal Court judge granted an injunction stopping the opening, saying the fisheries minister went against the advice of scientists in her own department. (Reported by The Canadian Press January 15, 2015 3:28 pm)

What is the Gladstone Reconciliation Process?

- The result of litigation filed in 2000 by then Chief of the Heiltsuk Robert Germyn, *Chief Germyn (Heiltsuk First Nation) v. Canada* in which the Heiltsuk and the DFO agreed to negotiate rather than go to court with the DOJ and DFO.
- There are 2 parties at the GR negotiations table, Heiltsuk Nation and Canada. The intent of the parties in the GR process is to agree on a settlement of the Gladstone litigation guided by the SCC Gladstone Decision.
- The next critical event in the GR negotiation process is Canada's (DOJ) risk assessment and countering that with the Heiltsuk's Perspective. This could lead to the settlement of the unfinished business.

Heiltsuk Ottawa Submission

Dear Honourable Mesdames / Sirs:

Background Information on Meeting with Heiltsuk Nation

Gladstone Reconciliation has 3 objectives in this meeting, firstly, we are calling for the final reconciliation of the Gladstone Mediation process which has taken 26 years since the Gladstone decision was made and has yet to be resolved. In good faith, we are calling upon Canada to negotiate this long outstanding claim immediately with respect to a final resolution on the Gladstone Reconciliation process. We have made the inquiry on when this process will be settled numerous times and the Honourable Minister Gail Shea advised us on September 18, 2009 that her officials would be communicating with us in a few months with respect to our claim, it is now 6 years later, this is unacceptable.

Secondly, The Heiltsuk Nation is united with the Haida, Nuu-Chuh-Nulth in support for our mutual opposition of the 2015 commercial roe herring fisheries in the waters of Haida Gwaii, Central Coast and West Coast of Vancouver Island due to ongoing conservation concerns and the cumulative impacts of commercial overfishing by industry. Last year the herring stocks in our traditional territories were insufficient to support DFO's current allocation to our people and the opening of the commercial sac roe fishery caused us to have a shortfall in achieving our SOK quota by 81,000 lbs, this represents a 30% shortfall in our SOK quota. The Commercial fishery received a full share, we did not, this is unacceptable and a breach of our Constitutional rights under s. 35 and our people suffered as a result.

The Heiltsuk Nation is putting a formal call to the Fisheries Minister, DFO, and the commercial herring industry to jointly work with the Heiltsuk Nation and affected First Nations from the decision to open up commercial herring fisheries to resolve this matter to avoid conflict on the water in the Central Coast.

Heiltsuk Management Principles

- Heiltsuk have managed according to our laws for 100's of generations
- Planning for now and into the future
- Rebuilding the Herring stocks should be our focus
- Willing to co-develop a herring management plan that creates certainty and sustainability
- Finding the best science available and applying Heiltsuk knowledge to create a strong measurement of herring biomass

Heiltsuk/DFO Plan

- Commitment through the Letter of Understanding signed on April 1, 2015
- Meetings with internal agencies to preplan for implementation
- 4 meetings so far with DFO Minister, Deputy Minister, Assistant Deputy Minister, Regional Director General and delegated senior staff of both parties
- Series of meetings set for next couple of months
- Commitment from DFO that the lateness of scheduled meetings will not affect the desire for both parties to have an agreed to Herring Management Plan for 2016
- Desire to deal with compensation of the loss of commercial herring spawn on kelp for last two years
- Loss of wages, IE eligibility for the infringement on our right to access the SOK quota.

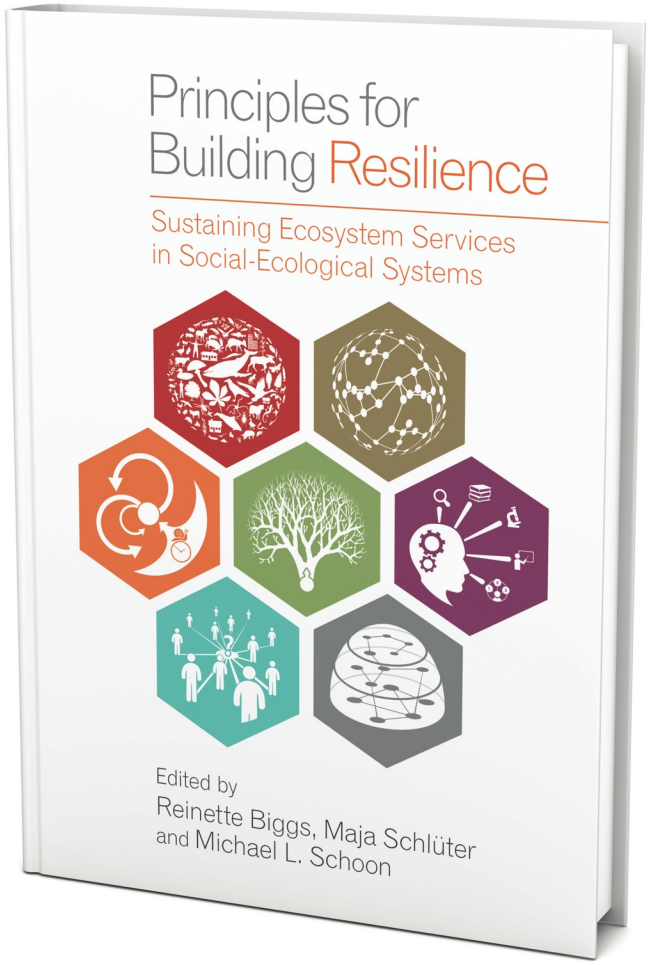
Heiltsuk Resilience Considerations

- Integrity of the seas, lands and resources are imperative
- Natural Stewards of the Heiltsuk Territory
- Eco System Based Management is a new term that embodied our relationship to the land for hundreds of generations
- SFU Archeological dig showed that we have existed here for thousands of years- we knew this but most didn't listen
- Land/Sea and resource use in a sustainable way
- Gather both traditional and science to affirm our way of life as it was and is today.

Principles for Building Resilience

7 Key Principles for Building Resilience

- Maintain diversity and redundancy
- Manage connectivity
- Manage slow variables and feedbacks
- Foster complex adaptive systems thinking
- Encourage learning
- Broaden participation
- Promote polycentric governance



Acting on the assessment

Stewardship strategies to enhance social-ecological resilience (Chapin et al., 2009)

Foster biological, economic, and cultural diversity

- Prioritize biodiversity hotspots and the corridors that link them together & enable species to adjust to rapid change
- Retain genetic and species diversity
- Precautionary approach to assisted migration
- Retain stories that illustrate past patterns of adaptation to change
- Subsidize innovations that foster economic novelty and diversity

Foster a mix of stabilizing feedbacks and creative renewal

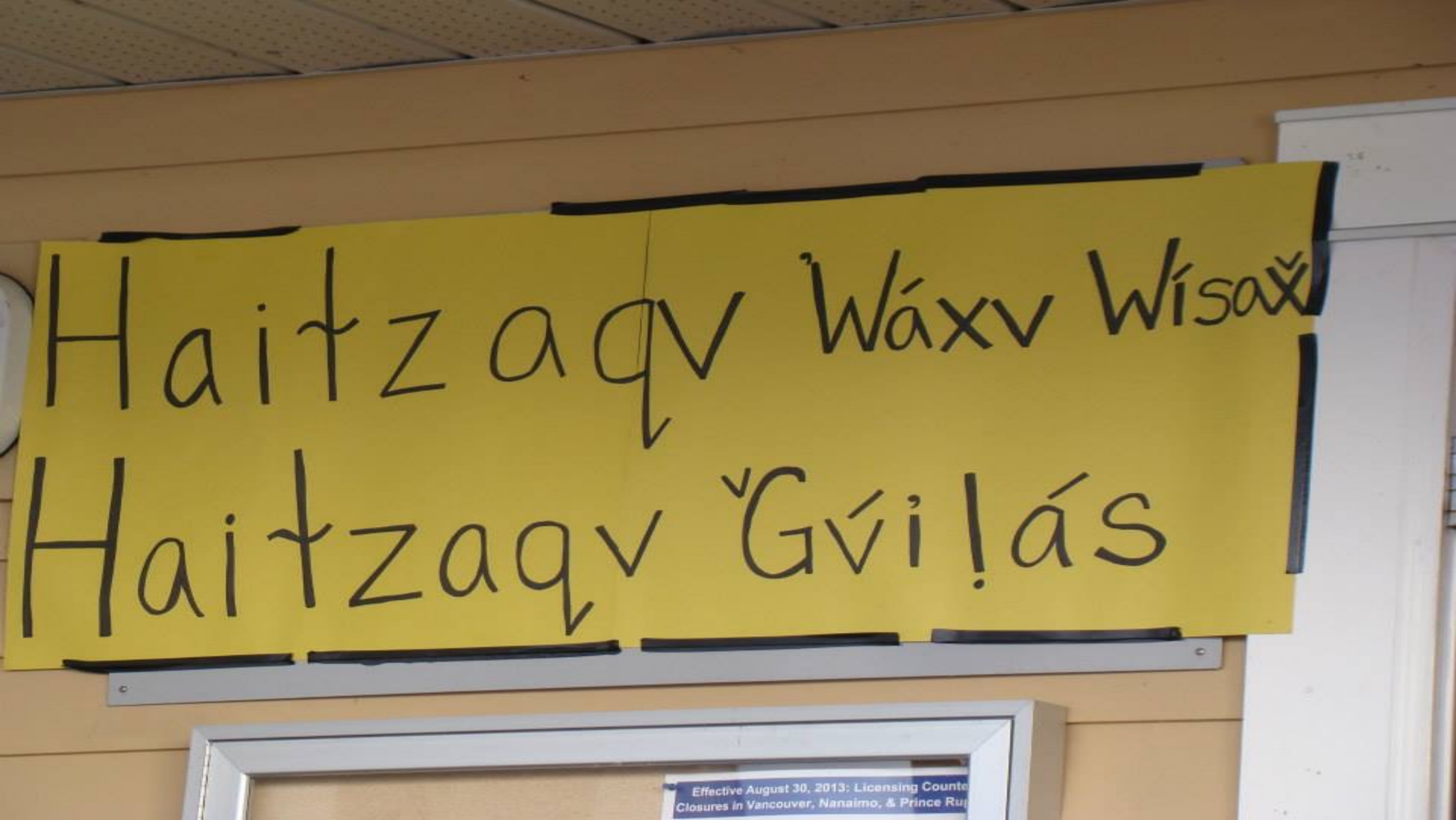
Foster learning through experimentation and innovation

Why do we do this? For our future generations.

Pacific Coast Declaration

- The Desire to sign a declaration with First Nations on the Coast to manage the herring and other marine resources jointly
- We the coastal first nations of BC have a common interest in promoting, protection, restoration and long term sustainability of our ocean resources and our ecosystems in our traditional territories.
- This Herring Declaration comes at a crucial time as our nations agree on the need for sustainable development in our communities. We are committed to protect, monitor of herring by using traditional knowledge and western science.
- The Draft Declaration is available from Marilyn Slett and Reg Moody.

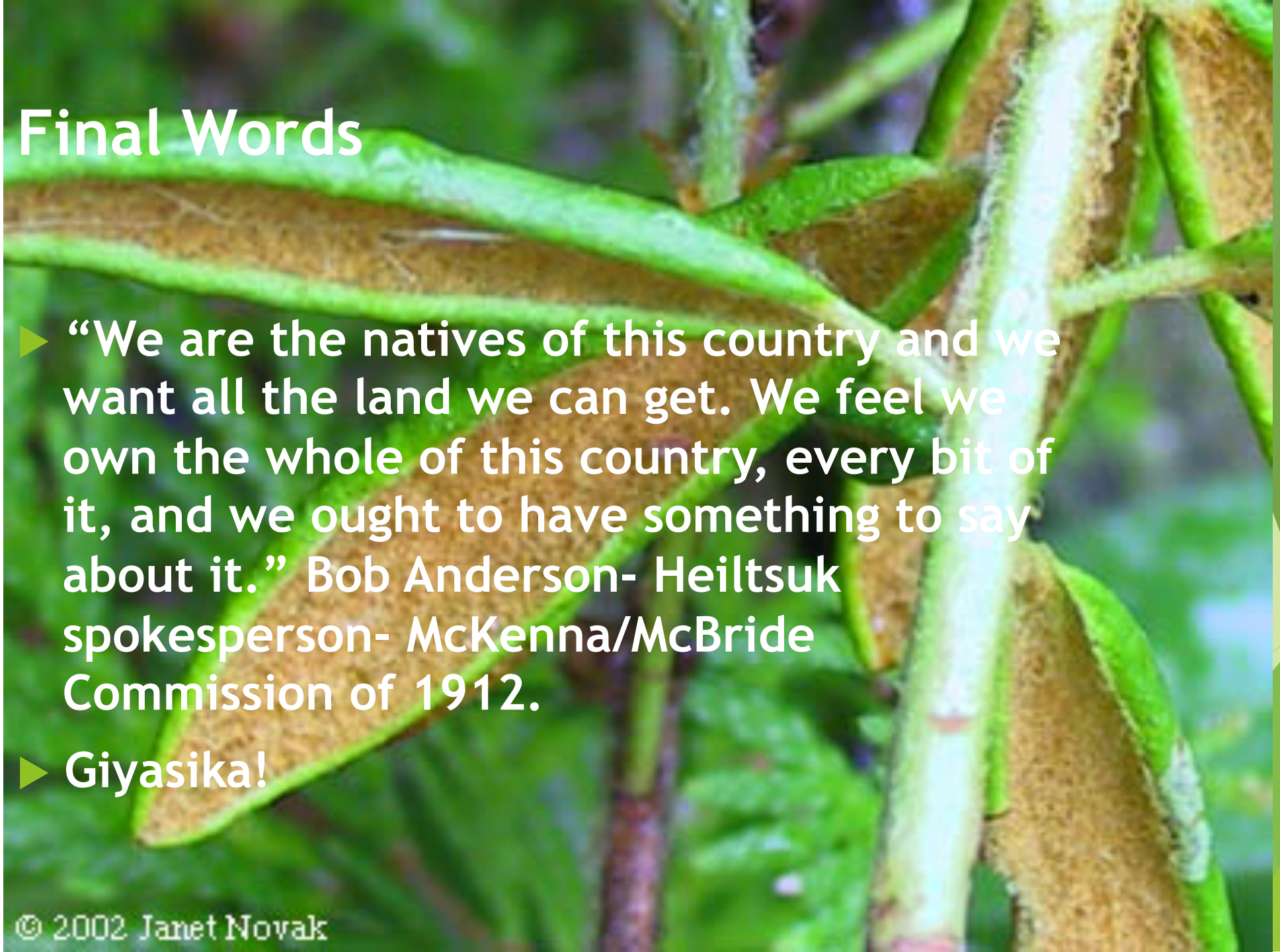
Due to Lack of
Respect for Heiltsuk
Gvila you are
Hereby Given a
Notice Of Eviction
From the Heiltsuk
Nation
Hemas, HTC, Heiltsuk Members



Haitzaqv Wáxv Wísaǩ

Haitzaqv Ǧvi!ás

Effective August 30, 2013: Licensing Counte
Closures in Vancouver, Nanaimo, & Prince Ru

Final Words

- “We are the natives of this country and we want all the land we can get. We feel we own the whole of this country, every bit of it, and we ought to have something to say about it.” Bob Anderson- Heiltsuk spokesperson- McKenna/McBride Commission of 1912.
- Giyasika!