COASTAL FIRST NATIONS
GREAT BEAR INITIATIVE

WEST COAST
Environmental Law

Literature Review & Analysis of Shared Indigenous and Crown Governance in Marine Protected Areas

NOVEMBER 2019

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For
Coastal First Nations (CFN) Great Bear Initiative on behalf of the First Nations Oceans Governance and Management Forum

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1. INTRODUCTION

The International Union for Conservation of Nature (IUCN) defines four categories of protected area governance:

A. Governance by Crown government

B. Shared governance

C. Private governance

D. Governance by Indigenous peoples and local communities

Most protected areas established internationally and in Canada would be considered Type A – Governance by Crown government. However, both Indigenous and Crown governments assert jurisdiction over the ocean and coastal areas and have responsibilities as governments to care for these areas. Crown governments have typically been hesitant to share decision-making authority with Indigenous nations in a meaningful way. This is now changing, and shared governance of protected areas is becoming increasingly common.

The IUCN defines shared governance decisions as ones where "partners share the authority by making decisions collectively, whether through the establishment of a governance body or other cooperative and co-management mechanisms."[1] As Parks Canada notes, "formal recognition of Indigenous people and key stakeholders in the planning and management of protected areas has occurred only in the past 30 years, after the International Union for Conservation of Nature (IUCN) developed principles and guidelines for conservation authorities on Indigenous involvement in protected area decision-making processes."[2] Legal requirements in international (i.e. UNDRIP) and national law (i.e. obligations under section 35 of the Constitution including recognizing governance authority in the form of Aboriginal title), political will as expressed in documents such as Cabinet Mandate letters[3] and the broader reconciliation mandate have all supported a trend toward greater recognition of Indigenous nations as governments with decision-making authority in protected area governance across Canada.

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[1] Borrini-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith (2013). Governance of Protected Areas: From understanding to action. Best Practice Protected Area Guidelines Series No. 20, Gland, Switzerland: IUCN. xvi + 124pp

[2] Parks Canada, Status Report on Canada's Parks 2012-5, citing this study: Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies. No. 4. Javier Beltrán, (Ed.), IUCN, Gland, Switzerland and Cambridge, UK and WWF International, Gland, Switzerland, 2000.

[3] Minister of Crown-Indigenous Relations and Northern Affairs Mandate Letter (October 4, 2017). https://pm.gc.ca/eng/minister-crown-indigenous-relations-and-northern-affairs-mandate-letter

In the ocean context, co-governance arrangements in marine protected areas (MPAs) are one way of achieving true Nation-to-Nation or Inuit-to-Crown relationships, upholding the Crown's constitutional obligations, and meeting international standards by creating space for the healthy interaction of Canadian and Indigenous laws. A recent report from the National Advisory Panel on Marine Protected Area Standards recommends that "the government recognize the importance of Indigenous peoples' roles as full partners in all aspects of design, management, and decision-making around marine protected areas."[4]

Several recent developments within Canada show a trend towards this recognition of Indigenous governments as equal partners, including:

1. Marine Managed Area for Nunatsiavut – Imappivut or "Our Waters"

Under the Labrador Inuit Land Claims Agreement, the Nunatsiavut Government can create marine protected areas within the Labrador Inuit Settlement Area. The Nunatsiavut Government has used this authority to propose a marine managed area that will cover the entire coastline of Nunatsiavut territory.

They are currently developing a Nunatsiavut Marine Plan (called Imappivut or "Our Waters") with the aim of fully implementing the Labrador Inuit Land Claims Agreement in the entire coastal and marine waters of Nunatsiavut. The Nunatsiavut Government is working towards full Indigenous governance of the area.

With this plan, they hope to guarantee that for generations to come, these waters will support a healthy marine ecosystem and prosperous Labrador Inuit. In September 2017, the Nunatsiavut Inuit of Labrador and the Government of Canada signed a Statement of Intent related to marine space in Northern Labrador.

[4] Final Report of the National Advisory Panel on Marine Protected Area Standards, submitted on September 26, 2018, online at: http://www.dfo-mpo.gc.ca/oceans/publications/advisorypanel-comiteconseil/2018/finalreport-rapportfinal/page08-eng.html#crown

2. Talluritup Imanga – Canada's largest protected area and a future model of Inuit-led marine governance?

The proposed protected area Talluritup Imanga, also known as Lancaster Sound, will become Canada's largest protected area. The National Marine Conservation Area Reserve in Nunavut is home to about 3,500 Inuit, approximately 75% of the world's narwhal population, 20% of Canadian belugas, the largest subpopulation of polar bears in Canada and some of the largest colonies of seabirds in the Arctic.

The governments of Nunavut, Canada and the Qikiqtani Inuit Association reached an agreement on the boundaries of the conservation area last year after the Inuit pressed for enlargement of the protected area boundaries.

The Inuit expect to negotiate full governance rights and are in the process of deciding on an Impact and Benefits Agreement for the conservation area. The management plan and Inuit Impact and Benefit Agreement need to be completed before the conservation area can be formally established. The *National Marine Conservation Act* requires consideration of traditional knowledge, and in this case Inuit Qauijimajatuqangit (Inuit traditional knowledge) will be an integral part of the management plan.

3. Pikialasorsuaq Commission on the North Water Polynya – Inuit-led transboundary MPA proposal

The **Pikialasorsuaq** (The North Water Polynya), or "The Great Upwelling", is the largest polynya in the Arctic. Polynyas occur when ocean currents push up warm, nutrient-rich water from the deep towards the surface, maintaining an area of open water surrounded by sea ice throughout the year. It is one of the most productive regions within the Arctic Circle.

An exciting example of Indigenous-led protection has galvanized around this area, with the creation of the Pikialasorsuaq Commission, an Indigenous International Commission formed by the Inuit of Greenland and Canada. The Commission's intention is to create a fully Inuit-governed marine protected area, and to allow free movement between both countries for Inuit peoples.

The Commission is led by three commissioners – one international Commissioner (from the Inuit Circumpolar Council); a Greenlandic Commissioner; and a Canadian Commissioner (from Nunavut). NGOs such as Oceans North Canada and the WWF participated in the formation of the Commission.

Report Analysis

In this literature review, we analysed sixteen leading examples of shared Indigenous and Crown governance in international and Canadian MPAs to provide an overview of lessons learned from these models. We were asked to focus primarily on shared governance arrangements between Crown and Indigenous governments (IUCN Type B). We also consider Indigenous Protected Areas in Australia and Tribal Parks in BC as examples of governance by Indigenous peoples (IUCN Type D). Details of the methodology are provided in Appendix A. The following protected areas were analysed:

1. Arborlan Marine Protected Area (Philippines)
2. British Columbia's Provincial Conservancies (Canada)
3. Dhimurru Indigenous Protected Area (Australia)
4. The Finnmark Estate: Finnmarkseiendommen (Norway)
5. Great Barrier Reef Marine Park & World Heritage Area (Australia)
6. Gwaii Haanas National Park Reserve, National Marine Conservation Area & Haida Heritage Site (Canada)
7. iSimangaliso Wetland Park (South Africa)
8. Marae Moana Marine Protected Area (Cook Islands)
9. Ninginganiq National Wildlife Area (Canada)
10. Olympic Coast National Marine Sanctuary (United States)
11. Papahānaumokuākea Marine National Monument (United States)
12. Rapa Nui Marine Protected Area & National Park (Chile)
13. SGaan Kinghlas – Bowie Seamount Marine Protected Area (Canada)
14. Torngat Mountains National Park, Tongait KakKasuangita SilakKijapvinga (Canada)
15. Velondriake Locally Managed Marine Area (Madagascar)
16. Whanganui River (Te Awa Tupua) & Te Urewera (New Zealand)

DOUGLAS NEASLOSS

One-page summaries for each case study can be found in Section 3.

In practice, management of activities within MPAs are divided between various actors. For instance, overall planning of the area and development of a management plan could be determined by a central co-managing body, while research could be coordinated by a Science Advisory Committee, enforcement could be undertaken by a different agency, and monitoring of the area by another. Secretariats and other advisory committees[5] are often in place to support overall governance of a MPA. The central decision-making body can delegate different tasks within the area to these agencies, or the enabling mechanism that designates the MPA can establish the roles of each agency.

While all these bodies are important to MPA governance, this report focused primarily on the function of a central decision-making body made up of representatives from Indigenous and Crown governments. These bodies go by a variety of terms including Boards, Councils, Forums, and Committees.

[5] For example, in Papahānaumokuākea, an advisory body called the Native Hawaiian Cultural Working Group (CWG) ensures that Native Hawaiian input is incorporated into all management actions. The Native Hawaiian Research Plan is dedicated entirely to Native Hawaiian initiatives, focused on how management agencies can understand and support cultural uses of and access to the area, is intended to help direct funding and programmatic development for Papahānaumokuākea over the next three to five years.

The analysis focused on six main themes that are central to the success of MPA governance. These are:

i. True Co-governance:

Asking who could decide, today, to undo the protection for a MPA can determine whether Indigenous governments are in meaningful decision-making roles.[6] True co-governance between Indigenous and Crown governments requires at least equal representation of Indigenous peoples in decision-making processes. In some international and Canadian MPA models, Indigenous governments are limited to play advisory functions and are not empowered as decision-makers. Governance bodies with final decision-making authority are central to true co-governance. Finally, government-to-government agreements, which can include an 'agreement to disagree' on central topics such as ownership of land and waters, and jurisdiction, are beneficial in ensuring true co-governance is in place.

ii. Recognition of Indigenous Law:

Indigenous peoples have been governing marine territories using their own legal traditions since time immemorial. For the most part, Indigenous legal orders have not been recognized or upheld in the governance of MPAs worldwide, and even where they are recognized there is often conflict between statutory regimes and Indigenous law. Co-governance bodies built on a foundation of recognition of both Indigenous and colonial legal orders with clear measures for how conflict of laws are dealt with will be the strongest.

iii. Legal basis for Co-Governance in Crown law:

MPA governance bodies are most successful when supported by clear, robust Crown laws. The strongest MPAs are those established by legislation, which carries greater weight than policy or guidelines. Co-governance requires extra attention to clarity so the law should spell out how different orders of government with different responsibilities will work together. Crown laws that fail to recognize Indigenous governance authority will create uncertainties for all parties.

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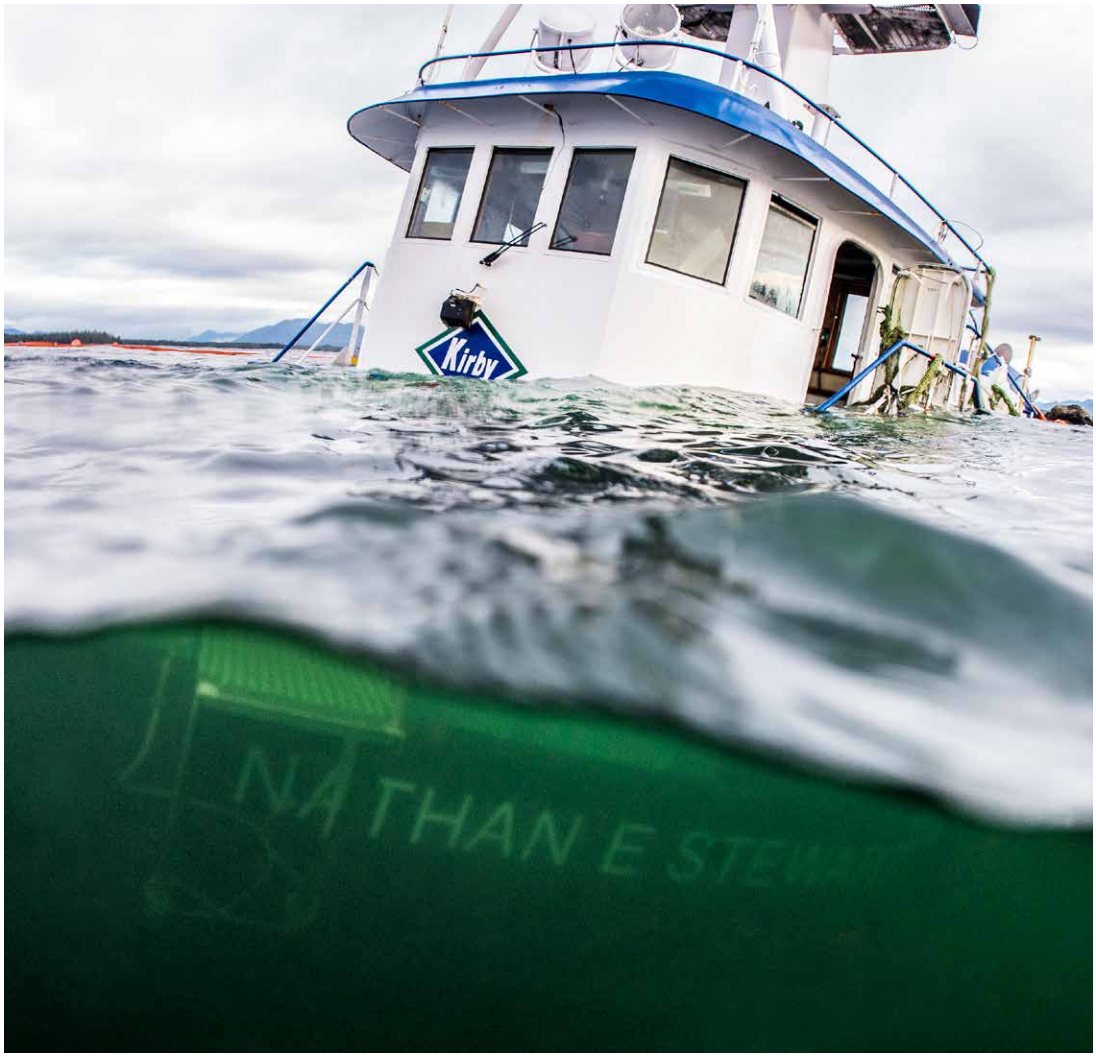
[6] Borrini-Feyerabend, G., and R. Hill. "Governance for the conservation of nature." Protected area governance and management (2015): 169-206.at 180.

iv. Scope of Authority:

MPA governance bodies do not usually have the authority to make decisions regarding all activities within MPAs. For example, authority over shipping is restricted by international standards, and has never been fully delegated to a co-governing body. The law governing MPAs should identify specific responsibilities for the MPA governance body, or otherwise specify how different governmental authorities will share responsibility for activities within the MPA. If the authority of a MPA body is scoped too narrowly, the real power of the body to impact MPAs will be limited. Particular attention should be paid to how the MPA body impacts fisheries management and shipping within the marine area.



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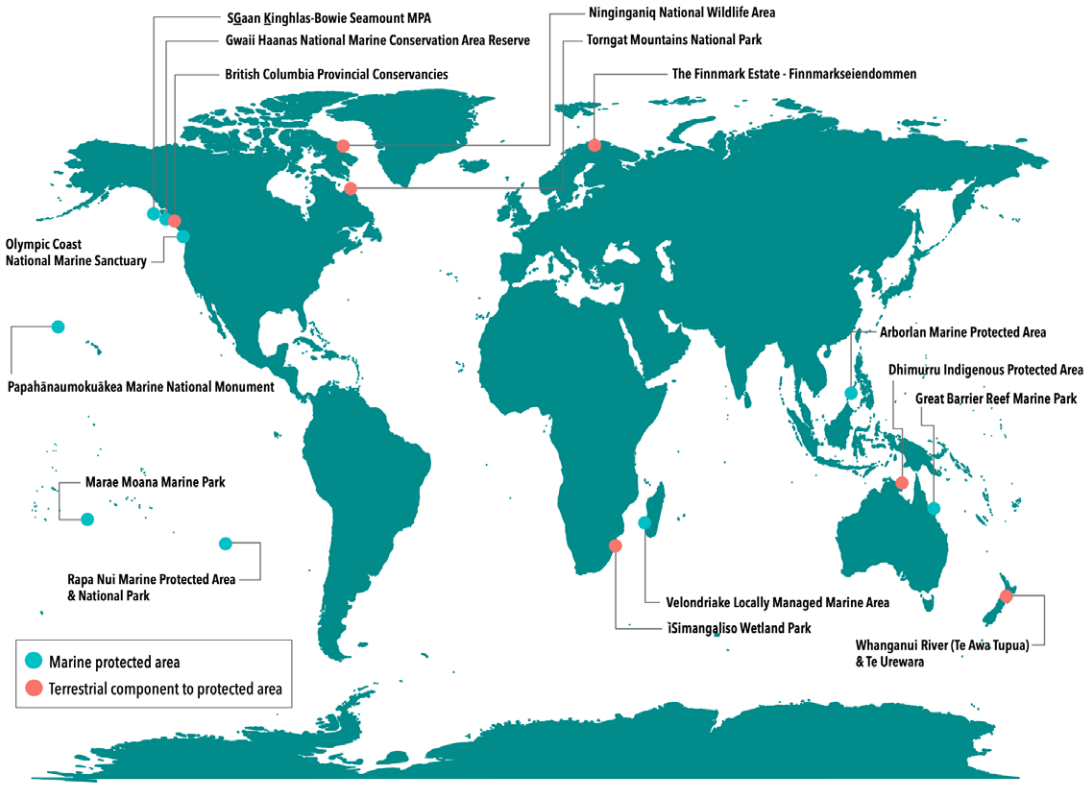
v. Monitoring and Enforcement:

Effective monitoring and enforcement are key to ensuring compliance with MPA laws, especially for restrictions on industrial and fishing activity. MPA models that appear strong on their face may be ineffective in practice because of inadequate monitoring and enforcement. Indigenous peoples have a unique role to play in monitoring and enforcement of MPAs because of their rights and responsibilities for stewardship of their territories, presence on the water in remote areas, and deep cultural and ecological knowledge. Indigenous governance in MPAs can be strengthened by having Indigenous Guardians employed to monitor and enforce both state and Indigenous laws.

vi. Funding:

Governance bodies with secure funding, including the ability to raise revenues independently of external sources, will be more effective than those without dedicated funding. No single method of funding is reliably more effective than another, and several successful MPAs have drawn from diverse sources of funds to manage the area, such as through trusts, user fees, private funding, as well as financial support through the state.



2. CASE STUDY ANALYSIS

I. TRUE CO-GOVERNANCE

KEY LESSONS

- The governance body should have final decision-making authority within the area, preferably over all activities, but at a minimum, over all activities covered by the MPA management plan. Final authority over key governance issues, subject to international legal instruments, is an indicator of true co-governance.
- Effective co-governance with Indigenous peoples requires (at minimum) equal representation from Indigenous nations.
- Increasing the MPA governing body's Indigenous representation over time allows Indigenous nations to adjust to increased governance responsibilities by increasing capacity.
- Negotiated agreements can provide a path to conflict resolution, and greater ability for co-operation.

Co-governance bodies with equal authority among the partners share these characteristics:

1. Equal representation on the decision-making body. At a minimum, equal number of representatives from the Indigenous and Crown governments will be present on the body. In some models, Indigenous representatives form the majority.
2. Final decision-making authority, rather than serving an advisory function.
3. Integration of different legal traditions.
4. A negotiated agreement which can include an 'agreement to disagree' on central topics such as ownership of land and waters, and jurisdiction.

These characteristics are considered below, with illustrations from the 16 case studies.

Equality among decision-makers on the governance body

The case studies showed that these agreements or laws specified an equal number of representatives from the Indigenous and Crown governments:

- Agreements establishing the Archipelago Management Board for the Gwaii Haanas NMCA
- The Memorandum of Understanding for SGaan Kinghlas-Bowie Seamount MPA
- Area Co-Management Committees under the Inuit Impact and Benefit Agreement and Nunavut Land Claims Agreement
- The Co-trustee Memorandum of Agreement for Papahānaumokuākea Marine National Monument
- Labrador Inuit Land Claims Agreements and the Memorandum of Agreement for a National Park Reserve of Canada for the Torngat Mountains National Park
- The *Finnmark Act* establishing the Finnmark Estate

In a few cases, Indigenous peoples form the majority of representatives on the MPA governance body:

- Rapa Nui (Easter Island)
- Dhimurru IPA in Australia
- Velondriake LMMA in Madagascar
- Te Urewera in New Zealand

Representation from Multiple Indigenous Nations

Most of the MPAs examined in this report involve only one Indigenous nation sharing governance responsibilities with a Crown government. However, some protected areas are designated in locations where multiple Indigenous nations have territorial claims. In these cases, co-governance bodies need to address adequate representation from multiple Indigenous nations as well as the Crown.

For example, the Torngat Mountains National Park lies in the territory of both the Nunavik and Nunatsiavut Governments. The Cooperative Management Board is made up of two members from each of the Nunavik Government, Nunatsiavut Government and Parks Canada. An independent chair is jointly appointed by the three parties. The recently declared Edéhzhíe Protected Area will be governed by a body made up

of one representative from each of the five Dehcho First Nations (five First Nations representatives in total) and one representative from the Crown. This body provides consensus recommendations to one Dehcho First Nation representative and one Crown representative for final approval.

The Olympic Coast National Marine Sanctuary lies within the territory of four Coastal Treaty Tribes. The Tribes each have representatives on two advisory bodies to the ONMS, the Olympic Coast Intergovernmental Policy Council (IPC), and the Olympic Coast National Marine Sanctuary Advisory Council (SAC). In this example, each Nation has one voting seat on the SAC, comprising four voting seats out of a total of 15. This model falls short of true co-governance because the Coastal Treaty Tribes lack voting power. Also, both the IPC and SAC serve an advisory function, and final decision-making power rests with the ONMS.

HEILTSUK TRIBAL COUNCIL

BOX 1.
Te Urewera Board: Increasing Indigenous Representation

Two recently designated natural entities in New Zealand, the Whanganui River and Te Urewera, have gained worldwide attention for their recognition as "legal persons". Often overlooked with these novel recognitions is the unique structure of their co-governance boards. Te Urewera is land-based and does not encompass marine areas; however its governance structure is still worth emphasizing.

While the land for Te Urewera (a former national park) is transferred and vested within the legal person itself, activities within the region are managed by a board. The Te Urewera Board has equal representation from Tūhoe Māori and Crown representatives, final decision-making authority over the region, and decisions are made on a consensus basis. Notably, Māori representation on the board increases over time, eventually with six Māori representatives and only three from the Crown.

Final decision-making authority

One way to evaluate whether equal co-governance exists is to examine the governance body's authority to make key decisions, such as:

- Establishing that the territory or marine area will be "conserved", and clarifying its overall extension and perimeter;
- Establishing its long-term goal (vision), main management objective (and IUCN management category) and how both will relate to local livelihoods and development;
- Establishing a zoning system for the area, possibly with different governance and management rules;
- Sanctioning a management plan and/or rules, deciding who will implement them and ensuring the human and financial resources to pursue the management objectives and/or enforce the rules;

- Establishing how to monitor, evaluate and adjust the management plan and implementation process in light of results (adaptive management);
- Establishing how the rule of law and broader international legislation (including human and indigenous peoples' rights) are to be respected and enforced in and around the protected area.[7]

It is rare for the MPA co-governance body to have final decision-making authority. In the case of the Rapa Nui National Park, the terrestrial counterpart to the newly declared MPA, the Chilean government transferred full authority over management to a Rapa Nui organization last year, including the ability to charge fees for park entrance.

In a number of case studies, the MPA co-governance body provided advice to the Crown or state government. In some cases, there were provisions governing how the Minister could reject or accept this advice.

Tatshenshini-Alsek Park has a notable process should the Minister choose to ignore the co-management board's advice. The Minister may set aside recommendations by the board, but must first provide written reasons to the Board, allow the Board to respond, and also seek the advice of the Chief of the Champagne and Aishihik First Nations. The Minister's override power is also restricted by not applying to matters related to harvesting.[8]

Similar constraints on the Minister's ability to accept or reject a board's decision exist for protected areas created through Inuit Impact Benefit Agreements, such as the Ninganganiq NWA.

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[7] Borrini-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith (2013). Governance of Protected Areas: From understanding to action. Best Practice Protected Area Guidelines Series No. 20, Gland, Switzerland: IUCN. xvi + 124pp at 11

[8] "Tatshenshini-Alsek Park Management Agreement," (1996) at s 6.5-6.11. Accessible at <http://www.env.gov.bc.ca/bcparks/planning/mgmtplns/tatshenshini/appendices.pdf?v=1530639446995>

A negotiated agreement

MPAs often involve an agreement negotiated between different parties. Foundational agreements allow for each party to set out their intent to collaborate, and form a working relationship to manage the area. In the Canadian context, government-to-government agreements between Indigenous nations and the Crown set the stage for reconciliation, mutual respect, and can initially establish co-operative bodies that may later be enshrined in Crown legislation and Indigenous law.

In Haida Gwaii, the foundational agreements include an 'agreement to disagree' on the central topics such as ownership of land and waters, and jurisdiction.[9] The Haida Nation designated both SGaan Kinghlas and Gwaii Haanas as Haida Heritage Sites under Haida law. Designation of MPAs under federal law does not affect the Haida Nation's claims to the area. The Haida Nation's claim to marine title continues, which has been adjudicated by the courts as being a strong 'prima facie' case.

COURTESY OF FRANK BROWN

[9] See Preamble, "WHEREAS the Kunst'aa guu – Kunst'aayah Reconciliation Protocol provides that the Haida Nation and British Columbia hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii, under the Kunst'aa guu – Kunst'aayah Reconciliation Protocol the Haida Nation and British Columbia will operate under their respective authorities and jurisdictions;" Haida Gwaii Reconciliation Act. S.B.C. 2010, c. 17.

BOX 2.
Haida Gwaii: Co-Governance in Canada

In Canada, the leading examples of co-governance MPA bodies are found in Haida Gwaii, a part of the country that has negotiated and legislated sui generis (legally unique) arrangements for resource management in the land, water, and ocean. The SGaan Kinghlas-Bowie Seamount MPA and the Gwaii Haanas NMCA each have governance boards that mostly meet the criteria noted above.

Gwaii Haanas is co-governed through the Archipelago Management Board, with three members from the Haida Nation and three from the Crown. Two Crown representatives are from Parks Canada, and the other is from Fisheries and Oceans Canada. Decisions are made on a consensus basis, and are binding.

The ABM has been developing an integrated management plan for Gwaii Haanas, and recently produced a draft of the Gwaii Haanas Gina 'Waadluxan KilGulGa (Talking about Everything) Land-Sea-People management plan for public consultation. The development of this plan has been supported by a planning team made up of Haida Nation, Parks Canada and Fisheries and Oceans Canada technical staff, as well as the Gwaii Haanas Advisory Committee.

Similarly, in SGaan Kinghlas -Bowie Seamount MPA, decisions about the MPA formally rest both with the Minister of Fisheries and Oceans and with the Council of the Haida Nation as set out in the MOU. The strength of the co-governance body can be seen in the recent joint Haida Nation-federal announcement to prohibit all bottom contact fishing in the MPA.

II. INDIGENOUS LAW

KEY LESSONS

- The strongest co-governance bodies are built on a foundation of both Indigenous and colonial legal systems with clear measures for how conflict of laws are dealt with.
- While Indigenous nations have inherent authority to enact and enforce their own laws, state recognition of Indigenous law creates more certainty, especially for dealing with matters external to an Indigenous nation.
- Mandatory application and enforcement of Indigenous laws and knowledge is preferred over broad guiding principles. One way of thinking about this is to ask: How easy is it for the state government or other MPA users to ignore Indigenous laws?
    - For example, the ACMC for Ninginganiq National Wildlife Area must consider Inuit knowledge in making decisions.
- Governance bodies are strongest when Indigenous laws are incorporated directly into the state legislation, as in the New Zealand examples, rather than management plans (see Section III Legal Basis in Crown Law).
- Indigenous laws should be enforceable within the MPA (see Section V Monitoring and Enforcement).
    - In Australia, Aboriginal Rangers programs are well established, but it is remains unclear whether the Rangers have the authority to enforce either Australian or Indigenous laws. The same is true of Guardian Watchmen in British Columbia.

Indigenous peoples all over the world have their own distinct legal and governance systems that pre-date colonization and the imposition of state law. The term Indigenous law is used here to refer to the legal traditions of Indigenous people themselves (as opposed to Aboriginal law or other state law that applies to Indigenous

people). Other terms for Indigenous law include customary law, ancestral law, traditional law, and the names of specific legal traditions (i.e. Haida law or Māori law).

Colonial governments worldwide have deliberately ignored and oppressed Indigenous laws in an attempt to replace them with colonial law. Now, state governments are increasingly recognizing Indigenous laws and governance systems as a result of broader Indigenous resurgence and self-determination movements. However, state recognition of Indigenous law is still lacking in many countries, and even where it is recognized there is often conflict between statutory regimes and Indigenous law.[10]

The status of Indigenous law in MPA governance bodies is inextricably linked to how underlying Indigenous authority and jurisdiction are treated by state governments. Countries where Indigenous governance rights are well established in Crown law (i.e. New Zealand) provide stronger recognition of Indigenous laws. That said, no examples we reviewed have recognized sole Indigenous jurisdiction over governing MPAs. The question then becomes how Indigenous and state legal systems interact within MPA governance bodies.

Models range from little to no recognition of Indigenous law (i.e. Olympic Coast Sanctuary) to extensive recognition of Indigenous law in state legislation that must be followed (i.e. Māori law in Te Pou Tupua and Te Urewera boards). In the middle are models where Indigenous laws are central to the creation of the MPA but it is unclear whether the laws are binding (ie. Papahānaumokuākea). Another common model are MPAs where Indigenous laws are followed by Indigenous peoples but are only recognized by the state if they comply with state law (ie. Dhimurru IPA, Tribal Parks) (See Figure 1).

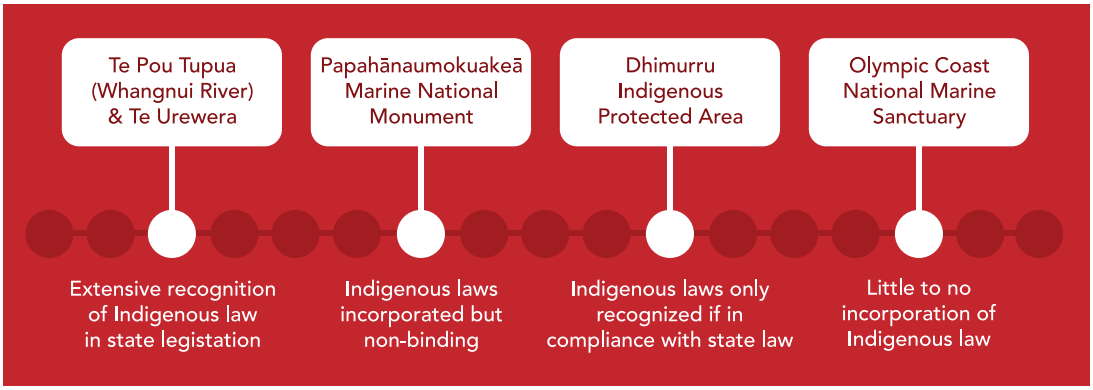


Figure 1. Examples of incorporation of Indigenous laws within MPA laws from the case studies examined.

[10] Cuskelly, Katrina. IUCN, "Customs and constitutions: State recognition of customary law around the world", 2011, available online: https://portals.iucn.org/library/node/10144

Categories of Models:

i. Explicit recognition and foundational in governance bodies

The strongest examples of governance bodies founded on Indigenous laws are the legal personhood boards in New Zealand. Māori legal concepts are written directly into the legislation establishing the Te Pou Tupua and Te Urewera boards. Each piece of legislation incorporates Māori social and legal principles, in the original Māori language, to guide the co-governing boards with their actions. Māori law is likely to be applied and enforced in these areas because there is at least equal Māori representation on these boards and the boards' decisions are final. The underlying legal context in New Zealand (including the Treaty of Waitangi) supports the application of Māori law. That said, it is still unclear exactly how Māori laws will be applied and how conflict of laws issues will be dealt with. It is also unclear how Māori laws will be enforced within these areas (see Monitoring and Enforcement section).

Haida law and the Haida Constitution are recognized in the agreements to establish Gwaii Haanas and SGaan Kinghlas-Bowie Seamount. Both of these areas were first designated by the Haida Nation under Haida law before being designated as state protected areas. Specific Haida legal principles are also articulated in the draft management plans for both protected areas. Neither of these agreements or plans explicitly establish processes for resolving conflict of laws or enforcing Haida laws.

In the Marae Moana Cook Islands MPA, traditional leaders and national government agencies share authority over the coastal environment. Traditional leaders have authority under customary law and government agencies have authority under national legislation. Again, it remains unclear how conflict of laws will be resolved.

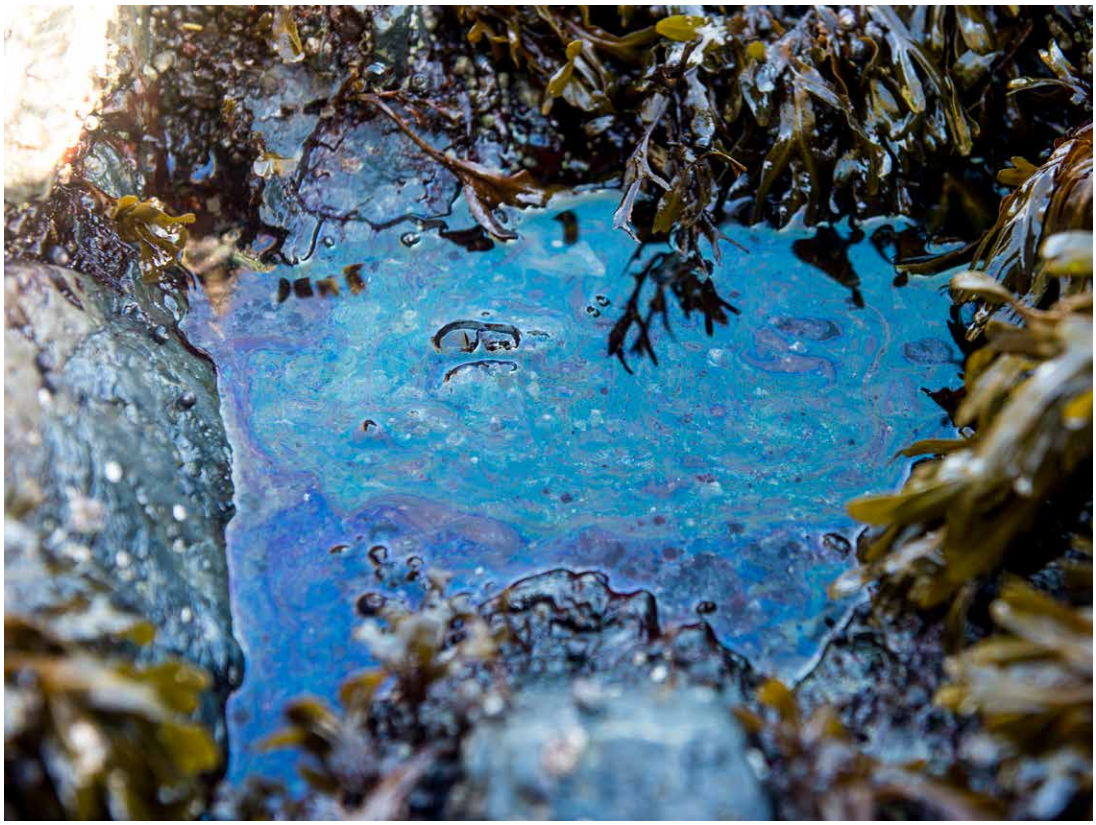
ii. Indigenous laws are core to the creation of the MPA but there is no clear process for how these laws will be applied or implemented by the governance body

In these examples, Indigenous laws and cultural values are clear drivers behind the creation of MPAs and may be referenced extensively in Indigenous languages in agreements or management plans. Often the key concepts of no-take zones and seasonal closures come from Indigenous legal principles and are expressly acknowledged. What sets them apart from the above examples is there is no clear process for how these laws will be applied by the governance body. Of course, this does not mean that Indigenous laws will not be key in decision making. Having Indigenous representation on boards may increase the likelihood of Indigenous laws being incorporated into decisions.

In the Papahānaumokuākea Marine National Monument, Native Hawaiian cultural practices, knowledge and cosmology are recognized as a core part of the MPA, as evidenced by the name and the protection of key cultural sites. However, the PMNM laws and governing bodies do not refer to Native Hawaiian law and there are no explicit requirements to consider Native Hawaiian law in the decision-making process.

Indigenous Cook Islander laws were central to the creation of Marae Moana (or "sacred ocean"). The term 'ra-ui', a traditional resource management law, was used to explain the concept of a protected area and generate Indigenous support for the area. Customary laws in the Indigenous language are referenced throughout the Cook Island Policy, although there is no requirement that customary laws be followed in all MPA decision-making. The implementation plan requires monitoring of an indicator related to increased coverage for ra-ui areas.

The Rapa Nui MPA is based on the Polynesian concept called "Rahui" which is to make an area off-limits from exploitation. Vahi tapu (sacred places) are protected by customary law.



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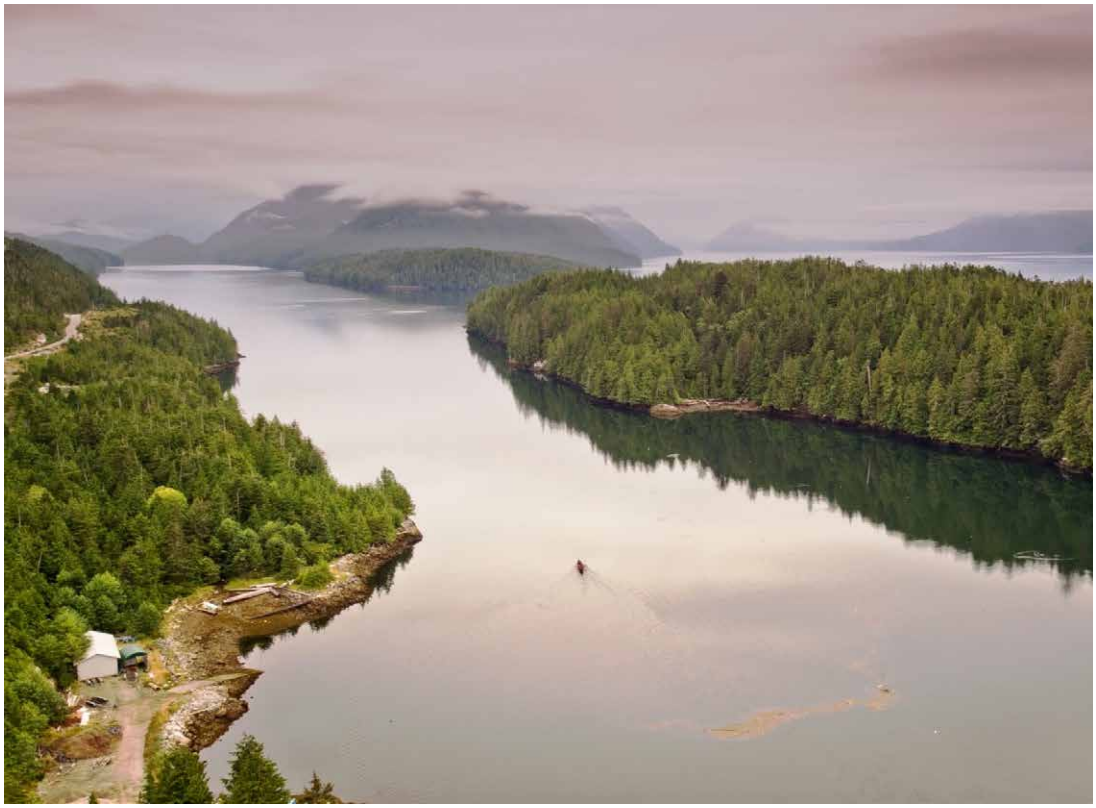
iii. Indigenous laws apply in an area but are restricted to matters internal to the Indigenous nation or need to be consistent with national marine law.

In these examples, Indigenous laws are followed by Indigenous peoples but are only recognized by the state if they are consistent with national marine law and will be overridden if there is a conflict of laws. Voluntary compliance with Indigenous laws, achieved through education and Guardian programs, can be very effective but lack of clarity around ultimate enforcement authority creates frustrations and limitations on the application of Indigenous law.

In Australia, the Dhimurru IPA, the Management Plan makes extensive reference to Yolnu law, including the five dimensions of Yolnu law and the hereditary clan estates. The Yolnu Board can apply their own laws to govern all matters internal to the Yolnu people but their laws have no binding authority on matters within the Australian and territorial governments' jurisdiction. The Yolnu have successfully delayed undersea mining activity based on voluntary compliance from industry and state support but they have no legal authority if these actors choose to proceed with development. This is similar to Tribal Park designations in B.C., though legal uncertainty around Aboriginal title in Tribal Park areas leaves open the possibility of Indigenous laws being upheld by Canadian courts in the case of a legal challenge.

In the Velondriake LMMA in Madagascar, the committee develops locally recognized laws, called dina in Malagasy, that set out no-take areas. Dina are agreed upon by the local community and are enforceable within the LMMA. To be recognized by regional government authorities, they must be consistent with national marine policy. They are well respected by locals and there are clear resolution processes if disputes arise.



iv. Little to no recognition of Indigenous laws and governance systems

Often these examples reference the importance of protecting cultural sites and respecting harvesting rights but do not address Indigenous law or governance in a meaningful way. Though there is little state recognition of Indigenous laws in these examples, Indigenous laws may be applied implicitly through Indigenous representation. For example, in the Torngat Mountain National Park Co-Management Board, there is no recognition of Inuit law but all members are Inuit so Inuit law may implicitly be applied.

Other examples include:

- Finnmark Estate
- Olympic Coast Marine Sanctuary
- Great Barrier Reef
- Ninginganiq National Wildlife Area

BOX 3.
Tribal Parks in British Columbia

Tribal Parks have emerged as a way for Indigenous nations to protect keys areas in their territory from development while maintaining sovereignty and upholding their unique territorial rights. They are part of an international movement known as Indigenous peoples and Community Conserved Areas (ICCAs). In British Columbia, there are currently three established Tribal Parks:

- Tla-o-qui-aht Tribal Parks (comprised of four distinct Tribal Parks)
- K'ih tsaa?dze Tribal Park in Doig River First Nation territory
- Dasiqox Tribal Park in Tsilhqot'in territory

Other Indigenous nations have chosen to use different names (including IPA/IPCA and Haida Heritage Site) for similar initiatives.

Neither federal nor provincial Crown governments officially recognize Tribal Parks through legislation or publically available policies. In the absence of legislative and policy support, Indigenous nations have used a combination of other tools, including seeking relief from the court, negotiation with companies, direct action, and the fear of broader Aboriginal rights and title challenges, to work towards their goals. For example, declaration of the Meares Island Tribal Park has successfully stopped clear-cut logging in the Tribal Park through a combination of a court-granted injunction, direct action, and a global campaign to support their goals. In the K'ih tsaa?dze Tribal Park, the Doig River First Nation negotiated logging deferrals with many of the forestry companies operating within Tribal Park. However, oil and gas licenses continue to operate.

Indigenous nations differ in their approaches around seeking Crown recognition for their Tribal Parks. The Doig River First Nation is in active negotiations about co-governance of the K'ih tsaa?dze Tribal Park with the provincial and federal governments. The Tsilhqot'in communities have rejected a co-management model and opted not to seek provincial protected area designation, because they approach the Dasiqox Tribal Park as an assertion of their Indigenous law over unceded territory. The Tla-o-qui-aht have also never asked for recognition of their Tribal Park network.

Additional Themes:

i. Conflict of laws

Co-governance bodies that are built on a foundation of both Crown and Indigenous laws will need to address how conflicts between laws will be resolved. This raises important, complex questions about operating within a multi-juridical society. For example, will the Canadian Constitution, including the Canadian Charter of Rights and Freedoms, always be the highest law? How will Indigenous laws be articulated so there are clear rules for everyone to follow? How will conflicts between different Nations' Indigenous laws be resolved?

None of the case studies we analysed provided useful guidance on these questions. However, lessons for how to deal with multiple legal systems can be drawn from the relationship between federal and provincial laws or common and civil laws here in Canada. There are mechanisms for determining which level of government has jurisdiction over a subject matter. Litigation is used as a last resort to clarify complex jurisdictional questions.

ii. Conservation benefits of Indigenous law

There is some evidence that fisheries closures declared under Indigenous law have had proven benefits for the environment.

For example, in 2014, four First Nations from the British Columbia Central Coast region proposed and declared a network of Dungeness crab closure areas to combat declines in stocks and to better meet conservation and community needs. The Canadian government, however, initially refused to recognize them. The nations communicated the closures directly, and asked for compliance from commercial and recreational fishers, and conducted their own patrols. Through these means, Guardian Watchmen were able to secure high voluntary compliance with the closures. Eventually, partial closures for approximately half of the areas were recognized by DFO. A scientific study of the closures showed that both the body size and numbers of Dungeness crab increased at the closed sites.[11]

[11] Frid A, McGreer M, and Stevenson A. "Rapid Recovery of Dungeness crab within spatial fishery closures declared under indigenous law in British Columbia," Global Ecology and Conservation 6 (2016)

iii. Underlying ownership

Indigenous law is interwoven with underlying authority over the physical area. In none of the examples does the Crown recognize full authority or ownership of Indigenous nations to marine areas.

- In the two Haida Gwaii examples and with provincial conservancies, there are parallel statements of authority and jurisdiction; the parties essentially agree to disagree over ownership.
- In the New Zealand legal personhood examples, ownership over land is transferred to the newly recognized legal entity, so that the areas own themselves. This in part acts as a way to get around underlying ownership issues.
- In the Finnmark Estate, the creation of the Estate does not result in Sami ownership of the area. The area is criticized because although it was created to recognize Sami rights, Sami and non-Sami residents own the land equally.

iv. Traditional governance structures

It is important to consider how Indigenous nations make decisions when creating co-governance models. Indigenous nations have traditional decision-making processes that may differ from modern, state-imposed arrangements (i.e. Indian Act Band Councils). This means co-governance arrangements will need to address the question of legitimate decision-makers if they are to be consistent with Indigenous as well as state law.[12]

The structure of governance bodies themselves should take into account Indigenous laws and governance structures. Most bodies we looked at were essentially Western-style governance institutions with Indigenous representation. Indigenous laws around decision-making process should inform how the bodies function and operate.

Some models refer to an Indigenous governance body and leave the details to be figured out by the Indigenous nations (i.e. Council of Haida Nation legislative process is not detailed in the agreement). Others require that specific traditional leaders be involved in decision-making (i.e. Dhimurru IPA requires referring directly to Wana Watanu (hereditary owners) for all decisions that may impact their estates). In the Rapa Nui MPA, some fishing zones are defined by traditional clans and the Council of Elders is explicitly recognized.

Many Indigenous nations are in the process of revitalizing their laws. This means that not all Nations will be ready at the table with clear ideas of their laws to apply. This should not be seen as a weakness or a barrier to moving forward. Measures that allow space for Indigenous law revitalization while the MPA bodies operate (including the use of agreed-upon, interim laws until Indigenous laws can be articulated and increased Indigenous representation over time) are preferred.

[12] West Coast Environmental Law, "Paddling Together: Co-Governance Models for Regional Cumulative Effects Management", 2017, available online: https://www.wcel.org/sites/default/files/publications/2017-06-wcel-paddlingtogether-report.pdf.

BOX 4.
Māori Legal Personhood Boards

Indigenous laws are most extensively referenced and applicable in the Māori examples. Legal personhood enshrines the Māori's ancestral relationship with the land. Each piece of legislation enshrines this ancestral relationship and uses Māori language to accurately represent the Māori legal system and worldview.

Both co-governing boards are guided by Māori legal principles, in the original language. The boards themselves have either equal or majority Māori representation, which allows for Māori law to be applied at each stage of decision-making.

HEILTSUK TRIBAL COUNCIL

III. LEGAL BASIS IN CROWN OR COLONIAL LAW

KEY LESSONS

- A clear legal mandate for an MPA governance body is central to success.
- The strongest MPAs are those established by legislation, which carries more weight than agreements, guidelines or policy.
- The law creating the MPA governance body should clearly outline its scope of authority to ensure there are no unintended gaps in the topics the body is meant to govern, and also to address how decisions are made among different levels of government and different agencies with overlapping mandates.[13]
- Co-governance requires extra attention to legal drafting clarity. The law should spell out how orders of government with different responsibilities will work together, and how disputes between different orders will be resolved.
- A strong legal basis has the following benefits:
    - It shows Crown governments take co-governance of the MPA seriously. Legislation underscores that the issues at stake are more important than those covered by policy.
    - It creates certainty for ocean users, by establishing what can and can't happen in a particular ocean area and clearly establishing who has authority to make and enforce decisions in the MPA.
    - MPAs with a strong legal basis are harder to revoke so are less likely to be impacted by changes in governments.

[13] Young, T.R. 2007. "The Legal Framework for MPAs, and Successes and Failures in their Incorporation into National Legislation." FAO Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations. FAO Fisheries Report. No. 825. 2007. at 255, also see Section IV Scope of Authority, this report.

This section describes the importance of having a clear legal framework that establishes MPA governance. It focuses on Crown or colonial law (see Section II, Indigenous Laws for a discussion on Indigenous laws and the relationship between Indigenous and Crown laws within co-governance bodies).

Importance of Legal Framework for MPA Co-governance

Experts agree that MPA implementation requires clearly defined and supportive legal and jurisdictional frameworks. A clear legal mandate for an MPA management body is 'central to success.'[14] There are many ways to design legal provisions related to MPAs, including:

- Provisions encompassed in a nation's overall protected area law,
- One or more separate laws that apply to all MPAs in the country, as in the *Oceans Act* and the *National Marine Conservation Areas Act*, and
- A stand-alone law that governs one particular MPA, as in the St. Lawrence-Saguenay Marine Park in Quebec, where the federal and provincial governments produced 'mirror' legislation to co-designate the MPA. The two Acts are similar in many ways, but respect each government's jurisdictions, leaving the seabed within the proposed protected area under the jurisdiction of the provincial government, and the water column and activities within it under the jurisdiction of the federal government.

Benefits of Clear MPA Co-governance Legal Frameworks

The strongest MPAs are those established by legislation, which has more weight than regulations, guidelines, or policy. Strong MPA laws will cover a range of topics that are central to any successful MPA. The Marae Moana Act provides a good example of a strong law that deals with most of the key issues that impact the success of MPAs (see Box below).

The law creating the MPA governance body should clearly outline its scope of authority to ensure there are no unintended gaps in the topics the body is meant to govern, and also to address how decisions are made among different levels of government and different agencies with overlapping mandates.[15]

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[14] Christie, Patrick, and Alan T. White. "Best practices in governance and enforcement of marine protected areas: an overview." FAO Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations. FAO Fisheries Report. No. 825. 2007.

[15] Young, T.R. 2007. "The Legal Framework for MPAs, and Successes and Failures in their Incorporation into National Legislation." FAO Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations. FAO Fisheries Report. No. 825. 2007, also see Section IV Scope of Authority in this report.

A key question for the law is how statutory decision-making under other statutes will be managed within the context of MPA governance.[16] Fisheries and biodiversity protection are likely the most common areas of overlap, though cultural heritage, economic development, and capacity building are growing areas of importance for MPAs and may also need to be spelled out in the governing statute.

A strong legal basis provides a number of benefits:

- It confers both legitimacy and authority for the MPA co-governance body. Statutory enshrinement of the body's duties and procedures conveys the symbolic weight the Crown government attaches to MPA co-governance. Legislation underscores that the issues at stake are more important than those covered by policy.
- It creates certainty for ocean users, by establishing what can and can't happen in a particular ocean area and who has the power to make decisions about permitted activities and enforce these rules.
- Well-drafted legislation explains the critical governance functions of who does what, and how. Marine and foreshore tenure and ownership rights are complex and require clarity. Governments, including Indigenous governments, will want to be involved in protected area establishment due to a variety of factors such as:
    - their understanding of their position as owners or grantors of legally recognised access and user rights to the concerned land, water and/or wildlife populations;
    - their customary rights of ownership, governance, access and use of the land, water and natural resources (even if not legally recognised); and
    - their historic, cultural and spiritual or recreational association with the land, water and natural resources, which may confer governance, access, use or other rights.[17]
- Co-governance requires extra attention to clarity and the law should spell out how different orders of government with different responsibilities will work together. The law should be "unambiguous about which governing body has the authority to review, maintain, strengthen or revoke the constituent act or acts."[18]

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[16] Alley, J. Options for Future Public Engagement and Governance of Oceans Act MPAs in Canada's Pacific Region, Prepared for DFO, March 2015.

Young, T.R. 2007. "The Legal Framework for MPAs, and Successes and Failures in their Incorporation into National Legislation." FAO Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations. FAO Fisheries Report. No. 825. 2007.

[17] Borrini-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith (2013). Governance of Protected Areas: From understanding to action. Best Practice Protected Area Guidelines Series No. 20, Gland, Switzerland at p15.

[18] Borrini-Feyeraband, G. and Hill, R. (2015) 'Governance for the conservation of nature', in G.L. Worboys, M. Lockwood, A. Kothari, S. Feary and I. Pulsford (eds.) Protected Areas Governance and Management, 169-206 at 174, ANU Press, Canberra Australia.

BOX 5.
Marae Moana, Cook Islands: Detailed MPA Law

A recent phenomenon is the rise of large scale MPAs, particularly in Oceania. One case study examines one of these large scale MPAs: Marae Moana in the Cook Islands. In the Cook Islands, as in much of Oceania, and many other countries, 'customary law' is directly incorporated into the country's constitution.[19] It is further incorporated in the Cook Islands Environment Act 2003.[20] The Marae Moana Act is the stand-alone statute that governs a large marine managed area with multiple MPAs for Marae Moana, the Sacred Sea.[21]

The legal structure is strong and addresses many of the criticisms of unintegrated and difficult to enforce MPA laws with no mandatory duties and no timelines for completing actions. This Act requires ocean zoning, gives the comprehensive Marae Moana policy a statutory basis, clearly sets out membership roles and responsibilities not only on the Council, but on the Technical Advisory Group. Accountability is strengthened by reporting obligations.

A Marae Moana Action Plan is under development and will include contributions from all relevant government agencies, traditional leaders and non-government agencies. These will be reviewed and evaluated by both the technical advisory group and the Marae Moana Council.

Agencies will also be required to align their policies and legislation with the overall principles of Marae Moana. The marine managed area has a co-ordination office in the Office of the Prime Minister, indicating support at the highest political level.

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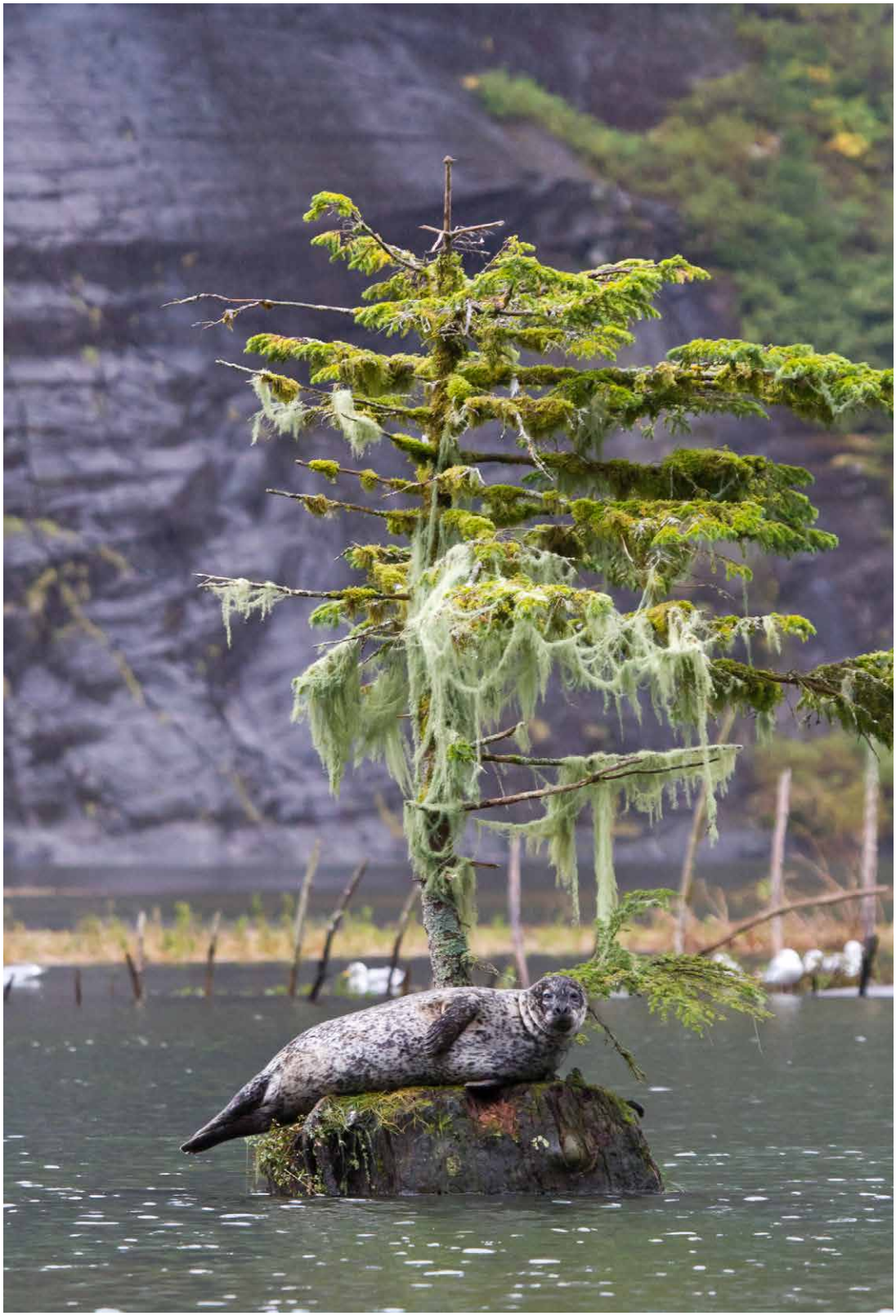
[19] Cuskelly, Katrina. (2011). Customs and Constitutions: State recognition of customary law around the world. IUCN, Bangkok, Thailand. vi + 151 pp. ISBN: 978-2-8317-1429-5.

[20] The Act provides that a protected area can be declared based upon its 'ecological, cultural, archaeological, historical or scenic importance as a protected area for the purpose of environment and natural resource conservation and management'. For example, the island of Takutea has been declared a community-conserved area under the management and control of the Trustees, preventing the disturbance of any animal on the l and, in the lagoon and within 5 nautical miles of the reef. This relies in part upon the formal authority of Island Councils, as management plans for these areas must be approved by the Council and any affected landowners under the Environment (Atiu and Takutea) Regulations 2008. Sue Farran (2018): Regulating the environment for blue-green economy in plural legal states: a view from the Pacific, The Journal of Legal Pluralism and Unofficial Law.

[21] Marae Moana Act 2017 (No. 10 of 2017). See also https://www.sprep.org/news/journey-cook-islands-marae-moana



DOUGLAS NEASLOSS

IV. SCOPE OF AUTHORITY

KEY LESSONS

- Decision-making authority over fisheries and other extractive activities within MPAs is a key component of the governing body and effectiveness of the pro-tected area.
- Authority needs to be clearly defined and understood by all parties within a shared governance structure.
- Limits on authority exist due to lack of clarity in decision-making, jurisdiction-al limitations of the body, or because the body's role was scoped to be advi-sory.
- Dispute resolution processes are also critical to the authority of a shared gov-ernance structure and can be used to define representation within decision-making or requirements for advisory processes.
- Stronger co-governance bodies are those with full authority to make decisions regarding all fisheries that occur within, and may impact the success of, a marine protected area.

The scope of authority exercised by the governing bodies is a critical component of the governance structure. Clearly defined authority and responsibilities minimizes potential for disagreement and need for dispute resolution. Decisions on fisheries activities are particularly critical to the ability of the body to successfully manage an MPA for fish populations, communities, biodiversity, and overall ecosystem health.

Various state government departments other than the MPA governance body have the jurisdictional power to regulate activities such as fishing, oil and gas, shipping, and tourism that occur in the ocean, and in MPAs as a consequence. MPA governance bodies do not usually have the authority to make decisions regarding all activities within MPAs. The law governing MPAs can identify specific responsibilities for the MPA governance body, or otherwise specify how different governmental authorities will share responsibility

for activities within the MPA. An example of this is the Canada National Marine Conservation Areas Act, which allows regulations respecting fisheries management and conservation or restricting or prohibiting fishing or aquaculture to be made in NMCAs but only on the joint recommendation of the Environment Minister and the Minister of Fisheries and Oceans. Similarly, the Act allows regulations that restrict or prohibit marine navigation or activities related to marine safety to be made only on the recommendation of the Environment Minister and the Minister of Transport.[22]

Alternatively, a negotiated agreement can specify the scope of authority of the MPA governance body, as illustrated in Box 6.

If the authority of an MPA governance body is scoped too narrowly, the real power of the body to impact MPAs will be limited. The impact of Indigenous representation within decision-making bodies is limited by the authority of the body to make decisions, and if the authority is restricted by other state legislation or ministries.

Clarity on decision-making authority is critical. Inadequate or absent legislation and policies, including lack of clarity regarding authority and responsibility, has been noted as an ongoing challenge for shared governance arrangements. Because of this, the authority of shared governance bodies to make decisions on fisheries occurring within MPAs were limited in all of our case studies. These were limited either by the advisory function of the body (i.e. final decision-making authority did not rest with the body), the scope of fishing activities under the body's authority (i.e. bodies had authority to make decisions on Indigenous fishing practices and subsistence fishing harvesting rights but not commercial fisheries), or because the body had not been delegated any authority over fisheries decisions.

Spectrum of Scope of Authority in Shared Governance MPAs

Under Canadian law, the federal government retains authority over fisheries management in MPAs. Conservation is always the first priority in fisheries management decisions.[23] Food, social and ceremonial (FSC) fishing is allowed where there is an overlap between this activity and an MPA.[24]

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[22] Canada National Marine Conservation Areas Act (S.C. 2002, c. 18), s. 16 (2) and (3).

[23] R. v. Sparrow

[24] "In areas of the ocean where there is an overlap between a Marine Protected Area established by Fisheries and Oceans Canada and an existing food, social and ceremonial fishery, this fishery will continue to take place within the marine protected area provided that conservation objectives will not be compromised"

Environment and Climate Change Canada (ECCC). "Canadian protected areas status report: 2012–2015." (2016): 129. https://www.canada.ca/en/environment-climate-change/services/wildlife-habitat/publications/protected-areas-report-2012-2015/chapter-4.html#_4

Even where shared governance arrangements have been established, such as the Archipelago Management Board for the Gwaii Haanas Marine Conservation Area and Haida Heritage Site, the joint management board for SGaan Kinghlas -Bowie Seamount Marine Protected Area, and the Te Pou Tupua for the Whanganui River (Te Awa Tupua), the scope of authority over fisheries management has been challenged or limited.

For example, the decisions of the Gwaii Haanas AMB were undermined by a lack of clarity on authority in the 2013 herring fishery dispute, when the Canadian Minister of Fisheries decided to open the fishery against the final recommendation of the AMB to keep the fishery closed.[25] This dispute centred on a fundamental difference in the interpretation by the parties to the AMB of their role in fisheries management, as defined by the Gwaii Haanas Agreements.[26]

In the case of the Whanganui River, the co-governance board with the authority to represent the River, Te Pou Tupua, is limited in their ability to manage fisheries because their authority is scoped to activities which impact the river bed.

[25] Sargeant J. 2015. Assessing the cooperative management regime in Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve and Haida Heritage Site. Masters Thesis, University of Akureyri.

[26] Jones R. et al. 2017. Strategies for assertion of conservation and local management rights: A Haida Gwaii herring story. Marine Policy 80: 154-167.

Full Control over Agreed Activities

In other cases, Indigenous governing or management bodies have collaborated to design a set of agreed regulations on management and fisheries practices which are then ratified by the state government, giving the management body authority to carry out practices within their plans (e.g. Velondriake Locally Managed Marine Areas local laws (dina), Australia Great Barrier Reef Traditional Use of Marine Resource Agreements (TUMRAs), and the Dhimurru Indigenous Protected Area (IPA)), but these may not extend to commercial fisheries (i.e. TUMRA's, IPAs) and must be in alignment with National laws and regulations to be approved (i.e. dina ratification).

Advisory Role

Where management bodies are in solely advisory roles, the successful management of the protected areas can be compromised if responsibility of the decision-makers to use advice is not clearly defined. For example, an Advisory Council assessment of the effectiveness of the Olympic Coast National Marine Sanctuary highlighted that management decisions were failing to incorporate local priorities.

Elsewhere in Canada, advisory boards for protected area management have been established through legally-binding land claims agreements, such as the Ninginganiq Area Co-Management Committee, and the Torngat Mountains National Park Co-Management Board which may develop area-specific management plans and recommendations. The agreements require the Minister to seek the boards' advice on policy matters, however the Minister maintains ultimate decision-making power of the management of the area.

In the large Pacific marine protected areas examined, such as Rapa Nui, Papahānaumokuākea National Marine Monument, and Marae Moana, fisheries management restrictions, including no-take areas for commercial fishing were established within the founding state laws for the MPAs.

No Control

The Finnmark Estate mandate does not have authority over fisheries. This is seen as a significant limitation to the security of Sami rights in the coastal areas. The Sami Parliament is pushing to extend the scope of authority of the Finnmark Estate to include fisheries.

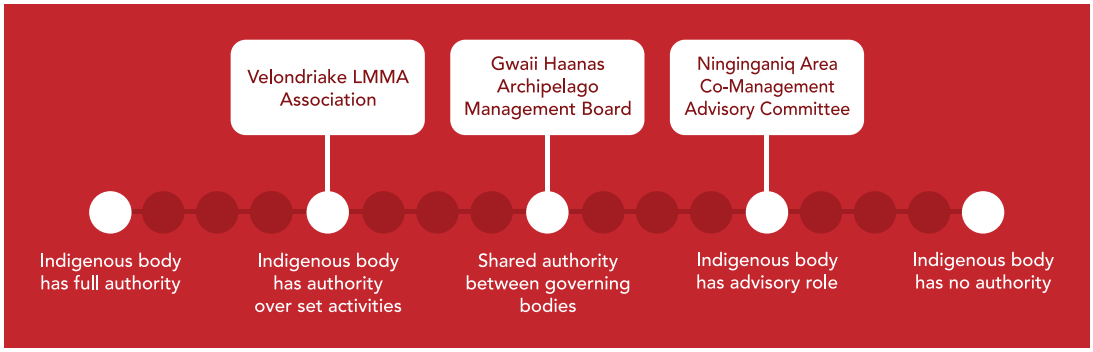


Figure 2. Examples of scope of authority from the case studies examined.

Dispute Resolution Processes for Decisions

Inclusion of a clear process for resolving disputes is a key component of defining decision-making and the authority of shared governance structures. In our case studies examined, where dispute resolution processes were defined for protected areas, these often involved referral of the decision to an alternative body.

- Within the Velondriake LMMA, the ratified local community laws for the LMMA defined a hierarchical enforcement procedure for cases where rules are unable to be resolved at the local management level. This involved moving decisions from local community, to regional committee, to the Velondriake Protected Area Committee and finally, if a decision could not be reached at these more local-levels, elevated to the magistrate's court where a decision would be made without community consultation. The importance of the ability to elevate dispute resolution within a community-based committee process is underscored by concerns over enforcement of fishing regulations where social cohesion within communities has been highlighted as an issue for enforcement.

- The Archipelago Management Board for Gwaii Haanas National Marine Conservation Area similarly defines a process for dispute resolution within the Gwaii Haanas Agreements, to refer disputed decisions to senior representatives of the Parties to the Board.

- The Labrador Inuit Land Claims Agreement, which establishes the Torngat Mountains National Park and Co-Management Board, also sets out provisions for a dispute resolution board comprised of individuals appointed by consensus of the Parties to the Agreements.

- Where decision-making rests with the management board, as with the iSimangaliso Wetland Park, decisions were finalized through a voting process, where the Regulations define representation on the board and that the chairperson acts as tie-breaking vote. Indigenous and local representation in management decisions were defined through giving local land claimants, Traditional Councils and Local Governments equal voting rights.
- Where the co-management boards role in decision-making is advisory, such as for the Ninginganiq Area Co-Management Advisory Committee, the process for consideration of advice by the Minister is clearly defined within the Agreement, including timelines and requirements for response.

BOX 6.
SGaan Kinghlas -Bowie Seamount Marine Protected Area

The SGaan Kinghlas -Bowie Seamount MPA Management Board was established through a Memorandum of Understanding between the Government of Canada and the Council of the Haida Nation in 2007. The MOU confirms the commitment to facilitate the cooperative management and planning of the MPA and demonstrates the shared goal of DFO and the CHN to protect and conserve SGaan Kinghlas -Bowie Seamount for present and future generations.

The Management Board has the ability to develop joint recommendations related to fisheries management in the MPA which are then given to the Minister of Fisheries and Oceans and the CHN Executive Committee for decision.

The northern seamount sablefish trap-fishery, which uses weighted traps dropped onto the seafloor, was the only active commercial fishery within the boundaries SGaan Kinghlas -Bowie Seamount at the time of designation. Following negotiations with the sablefish industry, DFO controversially allowed this activity to continue after MPA designation. Due to CHN concerns regarding the ecological impacts of this fishery, a scientific research program was established.

In the years following the MPA's designation, scientific monitoring showed that the traps were damaging ecologically important sessile organisms (corals and sponges). As a result, in 2018 DFO and the Council of the Haida Nation jointly decided to close all bottom-contact fishing at SGaan Kinghlas -Bowie Seamount while the governments finalize the MPA's management plan, which is expected to include longer-term measures to protect seafloor habitat.

How the Management Board's authority applies to other activities, for example shipping, may be tested in the finalization of the Management Plan. Transport Canada maintains control of shipping activities on the coast and within the SGaan Kinghlas -Bowie Seamount. Currently, the Canadian Coast Guard lists the MPA as a Voluntary Exclusion Zone for tanker vessels. However, the Haida Nation has recently expressed that they want a mandatory exclusion zone for shipping traffic.[27]

[27] CBC News. Haida Nation wants shipping traffic banned from culturally significant underwater volcano. July 12 2018. Accessed at < https://www.cbc.ca/news/indigenous/haida-sgann-kinghlas-bowie-seamounts-protected-1.4743418>

V. MONITORING & ENFORCEMENT

KEY LESSONS

- Regular, mandatory reporting from the MPA governing body improves transparency and public accountability.
- Indigenous employment in monitoring and enforcement should be made mandatory in co-governed MPAs.
- Well-funded, culturally appropriate training programs should be developed for all MPA staff, including operational and decision-making roles.
- Many MPAs struggle to achieve their objectives because adequate, long-term funding for monitoring and enforcement is not secured from the outset (see Funding theme).
- Community-based monitoring programs can increase compliance by demonstrating the value of conservation to locals.
- Indigenous Guardians should have clear authority to enforce both state and Indigenous laws within MPAs.

A collaborative approach to monitoring and enforcement is fundamental to the success of shared governance and is also key to ensuring compliance with MPA laws, especially for restrictions on industrial and fishing activity. MPA models that appear strong on their face may be ineffective in practice because of inadequate monitoring and enforcement.

Indigenous peoples have a unique role to play in monitoring and enforcement of MPAs because of their rights and responsibilities for stewardship of their territories, presence on the water in remote areas, and deep cultural and ecological knowledge. Indigenous governance in MPAs can be strengthened by having Indigenous Guardians employed to monitor and enforce both state and Indigenous laws.

Employment and Training

Some MPAs have mandatory hiring of Indigenous staff. For example, in the areas of the Arctic governed under land claims agreements, Impact and Benefit Agreements (IBAs) need to be agreed prior to the creation of MPAs. The Inuit IBA for Ninginganiq National Wildlife Area requires Inuit participation in monitoring and sets out expectations for Indigenous employment by Canadian Wildlife Service. The IIBA states that "Inuit should fully benefit from and fully participate in opportunities arising" from the National Wildlife Area (section 2.1.3). Other MPAs have only Indigenous staff (e.g. Torngat Mountains National Park; Dhimurru IPA; Velondriake LMMA).

Training programs for Indigenous Guardians help build capacity and increase employment opportunities. Examples of successful training programs include the Australian Aboriginal Ranger program, Guardian Watchmen program, and the emerging Rapa Nui program.

Monitoring and Reporting

Monitoring is required to ensure MPAs are properly managed to meet their objectives. The best MPA monitoring plans establish objectives and then use indicators to measure how well the MPA is meeting the objectives (e.g. Marae Moana in the Cook Islands; Papahānaumokuākea). Regular and mandatory reporting of progress in achieving objectives can ensure that MPA governance bodies are transparent and accountable to the public.

A notable example is the Great Barrier Reef Outlook Report, a comprehensive update on the state of the MPA required by law to be prepared every 5 years and submitted to the Australian Parliament. The Marae Moana Act also requires reporting. The Council must prepare an annual report that updates Parliament on the key indicators outlined in the Policy as well as monitoring and risk management strategies. The Council must also submit to the Prime Minister a Marae Moana outlook report every six years.

Other MPA governance bodies are required to prepare annual reports on the progress of management plan goals (e.g. Ninginganiq; Finnmark Estate).

Responsible and effective decision-making in MPAs depends upon reliable data. Because of their extensive knowledge of their territories, Indigenous guardians are often best suited to collect and provide reliable data to MPA bodies. Community-based monitoring programs can also increase compliance by involving potential users in the conservation goals and status, as seen in the Velondriake LMMA example.

Enforcement

MPA laws (Crown or Indigenous) are only as effective as their enforcement. Indigenous Guardians can play a key role in enforcement within MPAs but they are often limited in their ability to do their jobs because they are not given the same enforcement powers as state enforcement officers. Though Indigenous Guardians can play a role in both monitoring and enforcement of MPAs, most of the state-supported Indigenous Guardian programs enable Indigenous Guardians to collect data and monitor but do not recognize the enforcement authority of Indigenous Guardians. For example, in the Dhimurru IPA local fishers admitted to not following fishery rules set out in the IPA because they knew Aboriginal Rangers did not have authority to enforce them. This highlights the need for Indigenous Guardians to have clear enforcement authority that includes the ability to enforce state laws as well as Indigenous laws. In the Great Barrier Reef Marine Park, the Aboriginal Rangers are trained and authorized to carry out Marine Inspectors duties. The Haida Watchmen play a crucial role in monitoring Gwaii Haanas and enforcing regulations developed by the Council of the Haida Nation and Parks Canada. It helps that for the summer months Haida Watchmen reside full time at a number of Haida village sites in Gwaii Haanas.

The two Māori legal personhood examples have not yet fully grappled with the issue of enforcement authority. The Te Urewera board is responsible for establishing a compliance and enforcement policy. The need to establish training programs for staff is set out in the legislation and there is no mandate that requires staff to be of Tūhoe descent. It will be interesting to see how monitoring and enforcement, especially of Māori laws, evolve in these otherwise innovative examples.

With their focus on the health and sustainability of the natural world, Indigenous legal traditions have an important role to play in caring for the environment all people rely upon. Enhanced recognition of the authority of Indigenous guardians could improve the health and relationship to the natural world for the benefit of all.[28]

A coordinated approach to enforcement using both State and Indigenous enforcement officers is an indicator of true co-governance.

BOX 7.
Great Barrier Reef Marine Park and World Heritage Area

In this area, the Australian Government's Specialised Indigenous Ranger Program in partnership with the Great Barrier Reef Marine Park Authority (GBRMPA) trains the rangers to take on formal marine park inspector roles in addition to regular ranger duties. Working alongside state authorities, they monitor and enforce harvesting. They also send all the information they collect back to the governing body, which allows decisions to be made based on reliable data.[29]

[28] For an in-depth discussion on the enforcement of Indigenous laws, see Guardian Watchmen: Upholding Indigenous Laws to Protect the Land and Sea (https://www.wcel.org/publication/guardian-watchmen-upholding-indigenous-laws-protect-land-and-sea).

[29] Zurba et al 2012. Building Co-Management as a Process: Problem Solving Through Partnerships in Aboriginal Country, Australia. Environmental Management 49: 1130-1142.

VI. FUNDING MODELS

KEY LESSONS

- Secure, long-term funding is required for successful implementation of governance bodies.
- Overreliance on one source of funding can undermine the success of an MPA.
- Trusts provide reliable long-term funding and can be supported by diverse parties including state governments, Indigenous governments and private organizations.
- User fees can allow independent funding of management at the local level.
- Creative funding models (including carbon credits and industry contribution agreements) should be explored.

Central to any Marine Protected Area's implementation and success is a reliable source of funding. Adequate funding is needed to cover the various costs of running an MPA, including governance body operations, training programs, on-going monitoring and robust enforcement. Governance bodies with secure funding, including the ability to raise revenues independently of external sources, will be more effective than those without dedicated funding. No single method of funding is reliably more effective than another, and several MPAs have drawn from diverse sources of funds to successfully manage the area.

DOUGLAS NEASLOSS

These strategies include:

- State Government Funding (SGaan Kinghlas -Bowie Seamount MPA, Provincial Conservancies, Ninginganiq NWA, Great Barrier Reef TUMRAs, Olympic Coast IPC, iSimangaliso Wetland Park, Papahānaumokuākea MNM, Dhimurru IPA)
- Private Funding (Dhimurru IPA, Velondriake LMMA, Rapa Nui MPA, Marae Moana)
- Trusts (Te Awa Tupua/Te Urewera, Finnmark Estate, Marae Moana)
- User Fees (Dhimurru IPA, iSimangaliso Wetland Park, Great Barrier Reef MPA, Velondriake LMMA)
- Shared Contribution Agreement (Gwaii Haanas NMCA, Torngat Mountains National Park)
- Self-Funded (Finnmark Estate, Tribal Parks)

State Government Funding

State government funding can provide consistent financial support for the implementation and continued success of a MPA governance body. State governments typically have a statutory obligation to continue funding their protected areas. However, while the government can be a reliable source of funding, over-reliance on indeterminate government funding can lead to long term issues with effectiveness, such as for the Dhimurru IPA in Australia, where uncertainty about the national IPA program's funding has limited the impact of the governing body.

Within Canada, Inuit Impact Benefit Agreements (IIBAs) are required to create parks within areas falling under land claims agreement. These IIBAs set out financial obligations for the State, and expectations to create financial opportunities for Inuit communities. However, even with these agreements, some management bodies have struggled: the Ninginganiq NWA, though supported by an IIBA, has struggled with the high costs of supporting a management board in a remote area.

Without a strong statutory obligation for funding, changes in government can affect the ability of a management body to function effectively. Two American examples, the Olympic Coast IPC and the Papahānaumokuākea MNM board, rely on commitments from state and federal governments to sustain their existence, without statutory mandates to do so. While funding has not been an issue so far, it could potentially cause issues in the future.

Private Funding

Funding from private sources, such as NGOs, has been instrumental in the formation of several Marine Protected Areas around the world. Even without financial support from the national government, Madagascar's Locally Managed Marine Area system in the Velondriake coastal area has been highly successful, due to the support of the NGO Blue Ventures, and high community support from local fisherman seeking to preserve fish stocks. While private funds can be key in establishing MPAs, they can have limitations, including a desire to influence outcomes and a risk of short-term investments, and therefore should not relied upon as a catch-all solution for funding MPA bodies.

BOX 8.
Velondriake Locally Managed Marine Area

An absence of state funding has proven not to be conclusively detrimental to the implementation of a marine protected area. Madagascar's Velondriake LMMA (Locally Managed Marine Area) has thrived, due to significant participation of NGOs and high support from fisherman within the area

Originally developed through the guidance and financial support of the NGOs Wildlife Conservation Society and Blue Ventures, the Velondriake LMMA was successfully implemented in 2006. Beginning with a seven-month closure of an octopus fishing site, the project resulted in a noticeable increase in catch upon reopening the site.

The success of the protected area, and implementation of Malagasy law (dina) into the protection strategies of each area, has led to wide community support, replication and success along Madagascar's coast. Management decisions are made through a community-based organization, the Velondriake Association, and monitoring is done through the community as well. NGOs provide funding for training programs of these community representatives. And the community will soon be able to share in the profits of the protected area, with plans to implement an entrance fee system for tourists.

User Fee Agreements

Sharing agreements surrounding user fees have created new funding opportunities for protected areas, allowing Indigenous nations to share in the revenue generated by tourism within the area. The Dhimurru IPA is able to offset the costs of management through its permitting process. South Africa's iSimangaliso Wetland Park allows successful land claimants to get a percentage of revenue from gates, concession fees, and game sales within the park, in exchange for the use of their land by the state. Frustrated by their exclusion from economic opportunities coming from the creation of the terrestrial park, the Rapa Nui began collecting their own fees from tourists, which prompted persecution and jail time by the Chilean authorities. Eventually, the Rapa Nui gained the ability to administer most of the terrestrial park, including collecting and distributing park fees. It is not yet clear whether the Rapa Nui will have the same power in the new MPA.

Trusts

Trusts provide a reliable source of funding, often managed by the body for the area. Trust funds allow independence of the governing body, and facilitate funding from a variety of sources, including government, private, and funding from the Indigenous nation. Te Awa Tupua (the Whanganui River) and Te Urewera (a former national park), two natural entities declared "legal persons," are backed by multi-million dollar trusts to sustain management of the area. The establishment of trusts was partially in order to settle historic violations of Maori rights in the area. As a result of these trusts, the management boards for these areas have not struggled to implement themselves successfully. Trusts also act as a secure instrument for private funding. In Canada, there are plans to develop a Trust for the future Thaidene Nëné National Park Reserve and Territorial Protected Area, which will provide long-term funding for protection of the area, partially supplied by private organizations.

When the Great Bear Rainforest Agreements were announced, a trust fund was established in order to support the project. First Nations, environmental groups, and the Nature Conservancy, worked together to raise $60 million in private funds. Private philanthropy played a major role in funding the project. The purpose of the fund, now known as "Coast Funds", is not only for conservation management but also to create economic opportunities within First Nations territories and communities.[30]

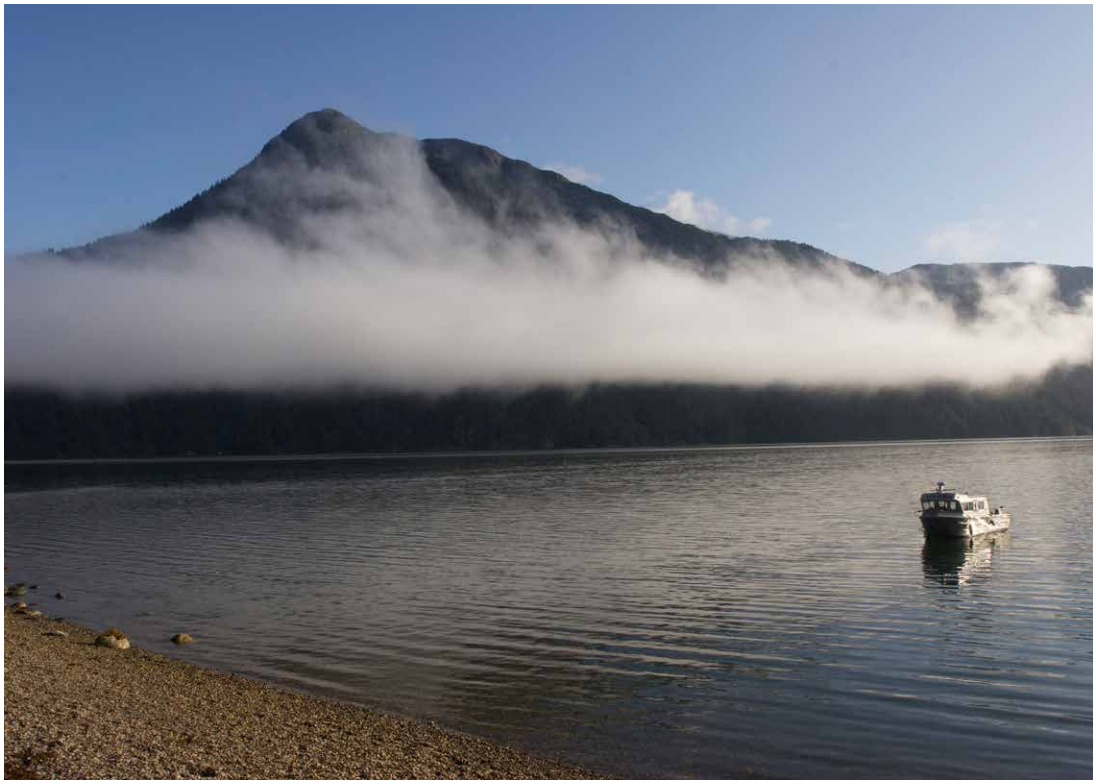
Shared Contribution Agreements

Some of the more modern co-governance agreements in Canada, those that allow actual decision-making authority to be vested in the board, rely on a shared contribution agreement between the Crown and Indigenous government. The Gwaii Haanas NMCA has a shared funding agreement described in the 2010 Marine Agreement, but details of the funding agreement are not public. Similarly, the tri-partite Torngat Joint Fisheries Board will be funded through each of its three members: the Federal Government, the Government of Newfoundland and Labrador, and the Nunatsiavut Government.

[30] Coast Funds, "Great Bear Rainforest and Haida Gwaii." Accessible at <https://coastfunds.ca/great-bear-rainforest/>

BOX 9.
The Thaidene Nëné Trust

"What makes TDN truly unique is the development of the Thaidene Nëné Trust, which will provide long-term funding for the protection of TDN. Public funds and private donations will provide the initial capital for TDN Trust Fund, which will be managed by LKDFN trustees to generate income to fund First Nations staff and operational requirements for the governance, management and operation of TDN. The fund will also support the education and training of Lutsel K'e Denesoline to work in TDN; promote the Dene Way of Life; and foster a viable tourism economy in Lutsel K'e."[31]



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[31] Indigenous Circle of Experts Report and Recommendations. 2018. We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation.

VII. CONCLUSION: EFFECTIVENESS

KEY LESSONS

- State legislative recognition is not essential, but extremely helpful for effective management. Legislative backing carries more certainty and clarity (e.g. for decision-making authority and dispute resolution) than agreements.
- Successful management requires more than just the support of the state. Support from Indigenous governments and local communities is essential.
- Effective MPAs require secure, long-term funding.
- Indigenous Guardians with authority to monitor and enforce will improve the effectiveness of MPAs.
- Effective co-governance requires full decision-making authority, and measures to ensure decisions of the shared governance body are not unilaterally overturned by individual governments.

Effectiveness of MPAs is often measured by the impact of the governing body on conservation outcomes. In this section, we will examine not just the conservation impact of the body, but also the strength of Indigenous governance in the MPA.

Even with a well-constructed co-governance structure on paper, there may be serious issues that undermine effective management of the protected area. The effectiveness of a governance body can be undermined for various reasons, including:

- **Financial Difficulties:** Several governance bodies, in Canada and abroad, have experienced financial problems that undermine an otherwise strong governance structure. The Area Co-Management Committee for the Ninganganiq NWA has struggled with the high costs of effectively managing an area in the Arctic. The Finnmark Estate's Uncultivated Land Tribunal, set up to settle land claims disputes within the region, ceased operations due to a lack of funding.

- **Failure to Gain Indigenous Government and Local Community Support:** Support from all relevant governments and stakeholders is essential to the success of a MPA. The proposed Race Rocks MPA failed due to a breakdown in negotiations with the four affected Coast Salish First Nations. The future effectiveness of the newly designated Rapa Nui MPA has been questioned. While the Rapa Nui have expressed strong support for the designation through a Referendum, the government of Chile is often criticized for insufficiently funding and managing its MPAs. Conversely, the Papahānaumokuākea MNM was a result of strong local and national support, including implementation of Indigenous management and strong financial backing, leading to the effective designation of a large MPA.
- **Failure to Address Shared Indigenous Territories:** Many protected areas in Canada fall within the territory of multiple Indigenous nations. The negotiation process of the Race Rocks MPA broke down partially as a result of a failure to address these overlapping claims. Conversely, the Torngat Mountains National Park Reserve, falling within the jurisdiction of the Crown, the Nunatsiavut, and the Labrador Inuit, has successfully implemented a tri-partite board with equal representation from each party.

BOX 10.
Race Rocks Proposed Marine Protected Area

The proposed Race Rocks MPA is a current Ecological Reserve, at the southern tip of Vancouver Island. The area falls within the territory of at least four Coast Salish First Nations (T'Sou-ke Nation, Songhees Nation, Esquimalt Nation, and Beecher Bay First Nation) [the CSFNs]. Negotiations for this MPA have been ongoing since 1998, with the hope to establish a joint management board between the government and the CSFNs.

The failure to designate Race Rocks MPA can be traced to multiple causes, including:

- Crown attempts to relegate the management board to an advisory function
- Vague assertions by the Crown that traditional fishing rights will be given up
- Failure to differentiate and negotiate overlapping claims
- Lack of financial commitment from the DFO
    - Including a lack of education or training for CSFN members
- Failure to negotiate on a "government-to-government" basis
- Segregation in the planning process, and a failure to allow CSFN to jointly lead stakeholder engagement

- **Uncertain Legal Foundation:** Some protected areas established by Indigenous nations have not received state legal recognition. Their effectiveness in management remains uncertain as a result, such as with the Tribal Parks network in British Columbia. The Dhimurru IPA has had mixed-success with this approach. The Indigenous governing board has full authority over hiring locals as officers and setting priorities in the area. However, they have also struggled to receive consistent funding from the state and faced the problem of local fishermen ignoring their restrictions. The iSimangaliso Wetland Park's segmented process of negotiating land claims has led to uncertainty in practice. Many locals expressed the perception that they had no role in management within the area.

- **State Government Intervention:** Even the most effective co-governance structure can be undermined through government intervention. Mechanisms within legislation can allow the state to set aside the decision of the Board, in some cases even without written reasons or justification. A decision to temporarily close herring fisheries by the Archipelago Management Board was set aside in 2014 through intervention of the Minister, undermining the decision-making authority of an otherwise co-governing board.
    - The ability of the government to impede on the body's decision-making authority can be lessened through procedural requirements. The Tatshenshini-Alsek Provincial Park allows the provincial Minister to set aside the Board's decision, but not without first providing written reasons, allowing the Board to respond, and also seeking the advice of the Chief of the Champagne and Aishihik First Nations. The Minister's ability is also limited by not applying for matters related to harvesting.
- **Advisory Function:** Without binding decision-making authority, Indigenous nations do not have incentive to participate in management. The Olympic Coast Intergovernmental Policy Council, created to act as a "government-to-government" body, has been relegated to an advisory role. As a result, Indigenous support for the Council has been low, with respondents from those communities perceiving "a lack of transparency, little inclusion of local priorities into management decisions, and a failure to jointly set management goals."
- **Ineffective Leadership:** Even with Indigenous representatives on a board, effective representation can be undermined due to conflicts of interest, and related issues with the representatives themselves. One representative on the iSimangaliso Wetland Park Board, meant to serve the interests of local communities, has had his status questioned by locals, noticing a perceived ease that private tourism ventures are able to gain development contracts within the park.

BOX 11.
Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site

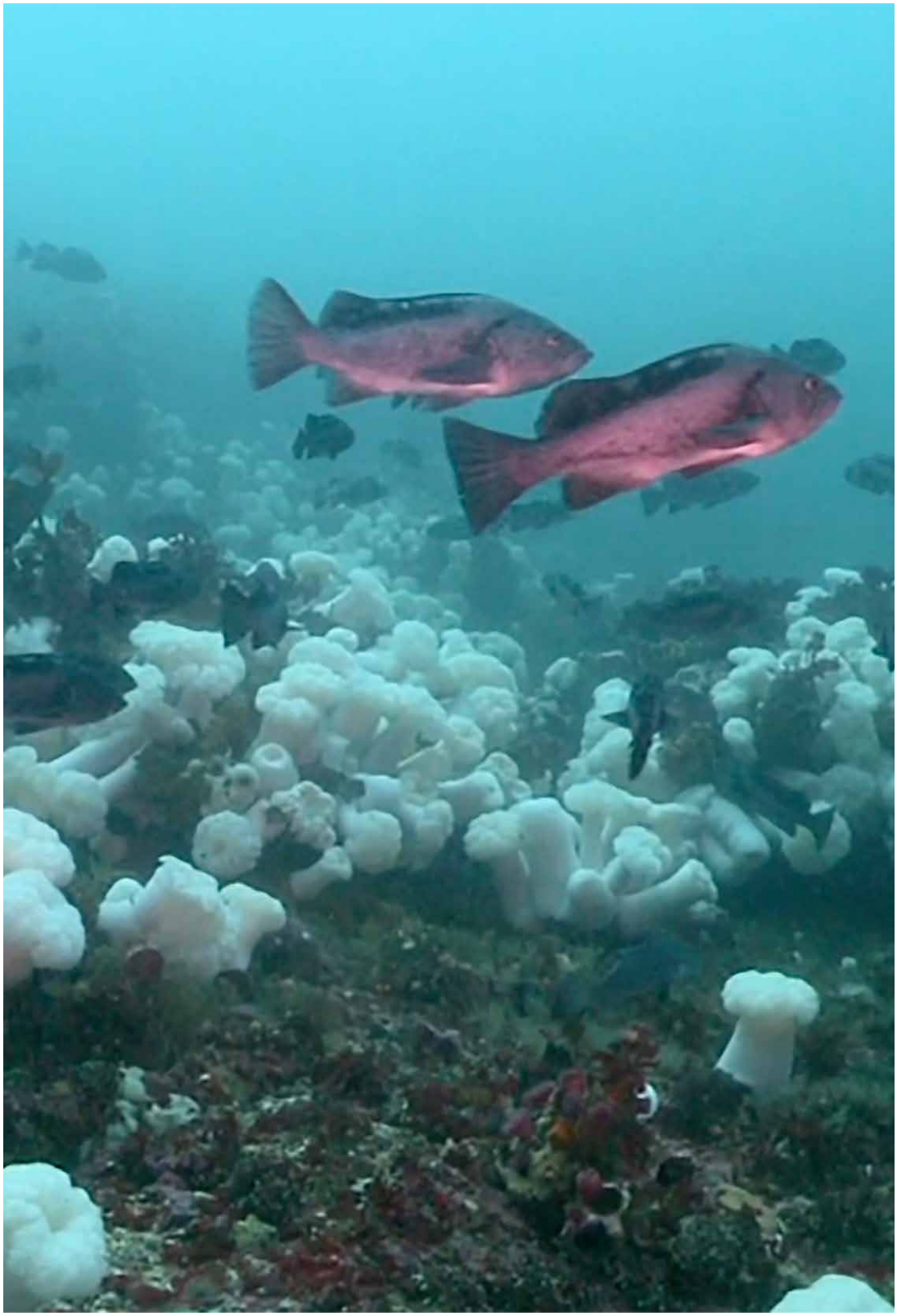
Widely considered a successful example of Indigenous and Crown co-governance of a protected area, the success of Gwaii Haanas can be traced to its origins. Unlike Race Rocks, the protected area was designated following years of relationship-building between the Haida Nation and the Canadian government.

Gwaii Haanas was first designated by the Haida Nation as a Heritage Site in 1985. In the decades that followed, negotiations led to this designation being incorporated into Canadian law, through the Gwaii Haanas Agreement of 1993 and Gwaii Haanas Marine Agreement of 2010.

Governance of the area is shared by the Council of the Haida Nation, Parks Canada, and the DFO, acting together as the Archipelago Management Board (AMB). The AMB is driven by consensus-based decision making, with the Haida Nation having an equal role in governance of the area. Haida law is incorporated within the existing and draft management plans for the area.

The strong legislative basis for the shared governance of Gwaii Haanas is unique in its recognition of divergent viewpoints of the Haida Nation and the Government of Canada with respect to the sovereignty, title and ownership to the Gwaii Haanas area, and use of both the Canadian and Haida constitutions to provide equal decision-making authority to both parties of the AMB.

While there are still many challenges in governing the marine area, such as the segmentation of land and marine areas, and an intervention by the Crown in a 2014-15 herring fishery opening dispute, the proposed Gwaii Haanas Gina 'Waadluxan KilGulGa (Talking about Everything) Land-Sea-People plan may help the partners overcome some of those challenges to set a strong foundation for the future of this area.



3. CASE STUDY SUMMARIES

ABORLAN MARINE PROTECTED AREA

PHILIPPINES

Aborlan is a coastal 'barangay' (village) and municipality in mainland Palawan Island, which is the largest Island in the province of Palawan, Philippines. Aborlan's 79,910 hectares of municipal waters are officially a protected area, which encompasses half of the Seven Line Reef, an ecological rich and diverse coral reef and prized local fishing ground.

Aborlan's municipal waters were first declared an Integrated Coastal Resource Management Area in 2016 through a local municipal ordinance, and subsequently recognized as a protected area by the state Philippine House of Representatives in 2018.

Fishing is a main source of livelihood and food sustenance for the local habitants of Aborlan. However, poverty and food insecurity have shaped the fishing activities in the coastal community, so that some fishermen engage in illegal and environmentally harmful fishing practices in order to survive economically. For example, the development of the Life-Reef-Fish-For-Food trade brought destructive practices such as cyanide and dynamite fishing to Palawan's waters. These practices have in turn created further problems with food security, as over fishing has led to reduced availability of seafood in the region. One of the major challenges for the state and provincial government was to regulate and reduce harmful fishing practices in a manner that also balances the needs of local fishermen to be able to make a sufficient livelihood and provide food for their families.

The Aborlan MPA case study is significant, as it demonstrates an example of community driven initiative to delegate state authority of marine resources to municipal councils and local fishermen. With the creation of the MPA in Aborlan, there was a high degree of local participation, which contributed to outstanding local support and success. The way in which MPAs were framed as a solution to many of the issues that local fisherfolk were facing, such as food security and poverty, was also key in gaining such a high degree of local support.

The municipal waters and aquatic resources are now managed by the Aborlan municipal council and the Barangay Fisheries and Aquatic Resources Management Council (BFARMC). The BFARMC was organized in 2012 and has 40 members, including long-time residents and local fishermen.

BRITISH COLUMBIA'S PROVINCIAL CONSERVANCIES

CANADA

During government-to-government (G2G) negotiations between First Nations and BC in 2005-06 related to the Great Bear Rainforest Agreement, a key discussion focused on the need for a new form of protected area, one which would give priority to protection and maintenance of Indigenous uses and also enable a range of low-impact economic activities that would contribute to the human well-being goals of the First Nations.

By mutual agreement, the British Columbia Park Act was amended to include a new form of protected area designation called conservancies. This was the first type of protected area in BC to identify protection of Indigenous rights and uses as a primary purpose.

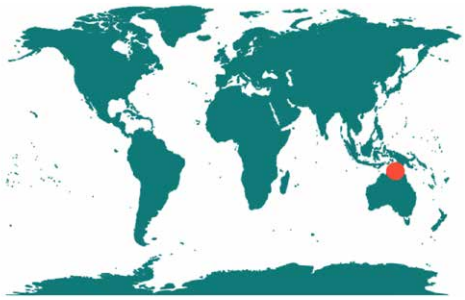
A majority of First Nations with territories in the GBR also entered into protected area collaborative management agreements (CMAs) with BC. The CMAs establish a shared governance arrangement in which First Nations and BC Parks collaborate to prepare and approve protected area management plans, identify and allocate an equitable share of economic opportunities to the First Nations, and review and approve applications by third parties for protected area use permits.

Under the CMAs, senior representatives from the relevant First Nation and from BC Parks are bound to make all reasonable efforts to achieve consensus in their work preparing conservancy management plans and reviewing conservancy permit applications from third parties. Recommendations are forwarded to both First Nation and Provincial decision makers. If consensus cannot be achieved, dispute resolution procedures are followed.

The establishment of conservancies and development of the CMAs was precedent setting, but implementation has been challenging. Technical capacity to undertake required planning, implementation and monitoring activities for 120 newly established conservancies totalling 1.5 million hectares has been noted as a constant challenge. Twelve years on, many management plans have yet to be completed. Some issues, such as the continuation of guided commercial hunting and fishing, remain unresolved.

Nonetheless, the conservancies and CMAs have created an arrangement through which the Nations and BC are exploring how to implement shared governance. Some Nations are using the new arrangements to advance local economic activity while ensuring the long-term environmental integrity of their territory and the exercise their Aboriginal rights and title. Many Nations are actively involved in the permitting process for conservancies within their territories.

DHIMURRU INDIGENOUS PROTECTED AREA



AUSTRALIA

The Dhimurru Indigenous Protected Area (IPA) was initially declared in 2000 and expanded to include a marine zone in 2013.

An IPA is an area of land and/or sea country, dedicated by Traditional Owners and Custodians for the protection and management of natural and associated cultural values, through legal and other effective means in accordance with guidelines of IUCN, and recognized as part of Australia's National Reserve System of Protected Areas.

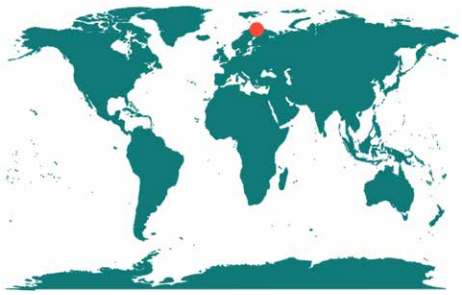
IPAs are not supported by IPA-specific legislation but are instead based on a combination of existing legal rights and other measures that arise from diverse sources such as include tenure regimes, fisheries regulations, cultural heritage legislation and environmental protection legislation, as well as Indigenous law and non-legal measures, such as management planning and implementation by Indigenous Rangers.

A Board of Directors for the IPA is elected by the Dhimurru Aboriginal Corporation and makes operation and administrative decisions for management of the IPA. The terrestrial zone of IPA is Aboriginal Land and the Traditional Owners and Custodians have sole responsibility for governance and management. The Sea Country Zone of IPA is governed and managed through collaboration with the Australian federal and territorial government, and marine resource users.

The Wessel Commonwealth Marine Reserve overlaps with the marine area of the Dhimmuru IPA. However no management plan has yet been established for the reserve, and restrictions on activities established through the management plan would override the decisions made for the marine areas of the IPA.

The Dhimmuru IPA Management Plan for 2015-2022 was completed in 2015, and contains extensive reference to Indigenous law, and objectives for the role of the Indigenous Rangers in monitoring. The Dhimurru Rangers are incorporated in the Territory's Parks and Wildlife Service as honorary conservation officers under Northern Territory legislation, but uncertainty remains regarding Rangers' authorities.

THE FINNMARK ESTATE: FINNMARKSEIENDOMMEN (FeFo)



NORWAY

The Finnmark Estate (FeFo) is a land-owning body in northern Norway. FeFo holds title to 95% of Finnmark, a county in Norway, where the indigenous Sami people have resided for thousands of years. FeFo is an independent legal entity, which administrates natural resources and land for residents of the county.

FeFo was created through the Finnmark Act, legislation designed to be consistent with the UN's Indigenous and Tribal Peoples Convention of 1989 (ILO 169). An original land management bill for Finnmark County was criticized by Sami Parliament, for its failure to implement ILO 169. As a result, Norway consulted with Sami representatives, and chose to transfer the fee simple estate of the county to this new independent body.

FeFo is managed through a six-person board, three from Sami Parliament, and three by the Finnmark County Council. Notably, the national government does not take part in management of the area. Management costs are covered by the activities of the Estate.

Although FeFo was designed in order to meet Norway's international obligation to its Indigenous peoples, the Estate has been called "ethnically blind." Land is owned equally by Sami and non-Sami residents, regardless of heritage. Some scholars have criticized the Estate for this reason; indigeneity was the foundation of the new legislation, yet not represented in the legal framework itself.

Chapter 5 of the Finnmark Act establishes the Finnmark Commission, created to investigate rights within the area of both Sami and non-Sami residents. The Commission was added in order to meet Norway's commitment to ILO 169. The Uncultivated Land Tribunal is also created to consider rights disputes after the Commission investigates a field. The Finnmark Commission has, as of 2016, investigated four areas in Finnmark. In none of these areas have land ownership rights been found, nor have they found alienation rights, regulatory rights, or benefit from uses of the land. Due to a lack of funding, operations for the Uncultivated Land Tribunal in Finnmark ceased in 2015, after only one decision in 2014.

GREAT BARRIER REEF MARINE PARK & WORLD HERITAGE SITE

AUSTRALIA

The *Great Barrier Reef Marine Park Act* established the marine protected area and the Great Barrier Reef Marine Park Authority (GBRMPA) in 1975.

Aboriginal and Torres Strait Islander peoples are the two Indigenous groups of Australia and are also referred to as Traditional Owner groups. There are more than 70 Aboriginal and Torres Strait islander Traditional Owner groups that have long continuing relationships with the Great Barrier Reef region and its natural resources. Zoning provisions provide for 'as of right' access in most circumstances, and for permits to be obtained where the Traditional activity involves hunting, fishing or gathering in zones where those activities would not generally be allowed. Regulations also require the GBRMPA to address the need to protect the cultural and heritage values held in relation to the GBRMP by traditional inhabitants.

In 1994, the Great Barrier Reef Marine Park Act 1975 was amended to include a fourth member on the Great Barrier Reef Marine Park Authority to represent the interests of Aboriginal communities adjacent to the Marine Park. Additionally, the Indigenous Reef Advisory Committee provides advice to the Authority, currently 11 of the 13 members of the committee are listed as Traditional Owners.

Traditional Owner groups may develop and enter into formal agreements called Traditional Use of Marine Resource Agreements (TUMRAs). TUMRAs are developed by Traditional Owner groups and accredited by the Great Barrier Reef Marine Park Authority and the Department of National Parks, Recreation, Sport and Racing. Accreditation provides statutory power for Traditional Owner groups to manage the harvest of specified marine species, including the right to issue hunting permits. These Agreements are designed so that they can be fully integrated into existing zoning and management plans for the GBRMPA.

TUMRAs enable a mutually agreed of exercise of traditional activities, but are limited in their scope, providing primarily for hunting and management rights of specific marine species. They do not provide the area-wide and more holistic management authority that Indigenous Protected Areas and terrestrial co-management arrangements in Australia offer. While these frameworks for co-governance in the marine environment are developing, it has been noted that a stronger, Great Barrier Reef-wide legal foundation for co-governance agreements is still needed.

GWAII HAANAS NATIONAL PARK RESERVE, NATIONAL MARINE CONSERVATION AREA & HAIDA HERITAGE SITE

CANADA

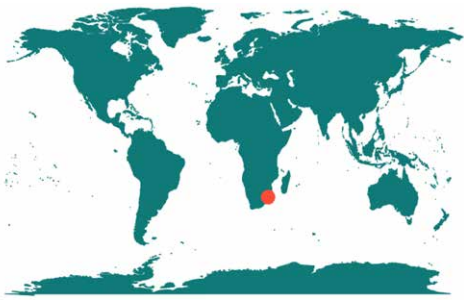
The Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site encompasses the southern portion of the Haida Gwaii archipelago. The archipelago of 350 islands sits 100 kilometres off the north Pacific coast of British Columbia. The Gwaii Haanas area was first designated as a Haida Heritage Site by the Haida Nation in 1985. The land and marine components of the protected area were then designated under Canadian law, as a National Park Reserve through the Gwaii Haanas Agreement (1993), and a National Marine Conservation Area through the Gwaii Haanas Marine Agreement (2010), respectively.

These two key agreements established the shared governance of the Gwaii Haanas areas through creation of the Archipelago Management Board (AMB), which has three representatives from each of the Council of the Haida Nation, and from the Government of Canada (two from Parks Canada, and one from Fisheries and Oceans Canada). The AMB has authority for planning, operations and management of the Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site. Consensus-based decision-making is used by the AMB through recommendations by members to their respective AMB representatives (Council of the Haida Nation and Government of Canada).

The strong legislative basis for the shared governance of Gwaii Haanas is unique in its recognition of divergent viewpoints of the Haida Nation and the Government of Canada with respect to the sovereignty, title and ownership to the Gwaii Haanas area, and use of both the Canadian and Haida constitutions to provide equal decision-making authority to both parties of the AMB. The Gwaii Haanas marine component is also unique in that the planning process built on existing terrestrial protected areas and agreements. However, challenges remain for this model of shared governance, such as the interpretation of the role of the AMB in fisheries management decisions.

The National Marine Conservation Areas Act calls for designation of zones within protected areas, one of which must be a zone that fully protects special features or sensitive elements of ecosystems. The draft Gwaii Haanas Gina 'Waadluxan KilGulGa (Talking about Everything) Land-Sea-People plan will replace existing terrestrial and marine management plans and integrate management of the land and sea through newly developed goals, objectives and targets, complemented by a zoning plan.

ISIMANGALISO WETLAND PARK



SOUTH AFRICA

The iSimangaliso Wetland Park is a 3280-km^2 protected area on the northeast coast of South Africa, encompassing both land and marine areas. It contains Africa's southernmost coral reefs and has been home to African tribes for over 1000 years. After the advent of colonialism, hunting was rampant in the area. The site was originally designated as a park due to overhunting, forcing local South Africans out of their homelands and restricting their ability to hunt in the area.

After the fall of apartheid, the new government passed legislation allowing dispossessed people to file land claims for the return of their lands. Because the Park was designated a World Heritage Site in 1999, successful land claimants could not return to possess their land. Instead, they hold title, but cannot reside on their park. These claimants gain representation on the management body of the park, and financial restitution for the use of their lands, including a percentage of revenue from gates, concession fees, and game sales.

The park is managed through the iSimangaliso Wetland Park Authority (IWPA). On the nine-person board of directors there is one representative from Traditional Councils, and one representing Land Claimants. There is also a representative from Local Government. For claimant representatives on the board, there is a capacity-building program to aid in the development of leadership skills. Most decision-making is done by the IWPA, but the Minister may review decisions, actions and policies of the Board.

The effectiveness of the IWP has been mixed. A 2015 study found little community engagement in the area, with many locals expressing the perception they had no voice in management. The legitimacy of one of the community representatives has been questioned. Land claims agreements tend not to be well defined, and claimants have been frustrated by the slow progress in finalizing their claims.

However, the IWPA has had some successful community programs. They have established food gardens in the Park through working with locals. They have also employed "community-based contractors" creating an average of 3,625 temporary jobs annually, and a craft program supporting local women. Training programs for local students have also been successful.

MARAE MOANA: THE COOK ISLANDS MARINE PARK

COOK ISLANDS

Marae Moana ("Sacred Ocean") is a multiple-use marine park that spans the Cook Islands' entire exclusive economic zone (EEZ), over 1.9 million square kilometres. It is an example of 'large scale' MPAs that have increased dramatically over the past five years, especially in Oceania.

The Cook Islands Parliament passed legislation for this MPA in 2017. A multi-use park was needed due to the increase in tuna fishing, foreign fishing, presence of manganese modules and a new legal framework for deep-sea mining, growing understanding of the impacts of shipping especially on the Islands' whales, a focus for the tourism industry and protected by a whale sanctuary, and the expansion of tourism.

The Marae Moana MPA grew out of concerns from Cook Islanders about declining fish catches, and national pride in having the largest marine park in the world to better attract environmentally concerned tourists. Marae Moana was partially funded through the establishment of the Marae Moana Establishment Trust, and through the support and efforts of NGOs, such as Conservation International.

Indigenous laws were a key factor in the formation of the MPA. In initial public meetings, fears that an MPA would prohibit local fishing were overcome by comparing the marine park to ra'ui, traditional resource management. Traditional resource management had included seasonal bans, no-take zones, and other harvesting restrictions based on cultural and spiritual beliefs; all of these mechanisms have parallels in the contemporary fisheries regulation and marine management. Fishing and mineral exploration will still exist in the EEZ, but these activities will take place in designated zones, and are meant to be done sustainably.

The MPA is managed by the Marae Moana Council, which has nine members total. Two members are Indigenous representatives from the Pa Enua, one from the southern group and another from the northern group. Another representative is from the House of Arikis, a parliamentary body composed of Cook Islands high chiefs. The Council also includes a representative from the NGO sector. The Council oversees the implementation of the Marae Moana policy, which covers almost all marine activities. The policy has statutory force.

It is too soon to tell how effective this MPA will be. While not a true co-governance structure, the governing statute is comprehensive, and the management body appears to be well balanced and inclusive of Indigenous leadership.

NINGINGANIQ NATIONAL WILDLIFE AREA

CANADA

The Ninginganiq National Wildlife Area (NWA) is located 120 km south of Clyde River, on the NE coast of Baffin Island. It includes the shoreline and islands of Isabella Bay and ocean waters out to 12 nautical miles from shore. It protects an important marine habitat, which is home to the largest concentration of Bowhead whales in Canada.

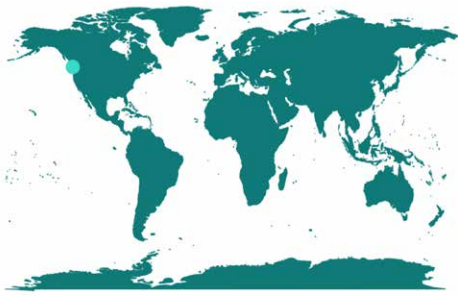
The Ninginganiq NWA was established through the Inuit Impact and Benefit Agreement (IIBA) for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area, as per the Nunavut Land Claims Agreement. In 2010 an Area Co-Management Committee (ACMC) was created to manage the Ninginganiq NWA and provide advice to the Minister on all aspects of planning of the NWA.

ACMCs are made up six members; three are appointed by the Ministry of Environment and Climate Change Canada, and three are appointed by the Regional Inuit Association. The ACMC provides advice to the Minister on a variety of different issues, including: management plans; permit applications; removal of carving stone from NWAs; inventories of resources important to Inuit; NWA research; management and protection of wildlife and wildlife habitat within NWAs; visitor use and access; and establishment, enlargement, status change, reduction or disestablishment of an NWA. The Minister retains the discretion to reject any advice, so long as she provides written reasons for rejecting the advice within 60 days of receiving it. If the Minister rejects the ACMC's advice, the ACMC can then revise its advice and re-submit it within another 60 days of receiving the written reasons. The Minister is then required to consider the revised advice and make a final decision within 60 days. If, again the Minister chooses to reject the revised advice of the ACMC they must provide written reasons.

ACMC business is conducted in Inuktitut and English, and the ACMC and Minister must consider Inuit Qaujimajatunqangit: traditional, current and evolving body of Inuit values, beliefs, experience, perceptions and knowledge regarding the environment. Notably, any Minister's written reasons given for rejecting ACMC advice are required to address any Inuit Qaujimajatunqangit documented and presented to the Minister by the ACMC.

The Ninginganiq ACMC continues to face a number of challenges related to capacity issues in the north, high operational costs with such a limited budget, scheduling conflicts, and lengthy processes. A main challenge to the conservation of the NWA is the increased shipping for hydrocarbon exploration and development in the area, and the increase in visiting cruise ships.

OLYMPIC COAST NATIONAL MARINE SANCTUARY



UNITED STATES

The Olympic Coast National Marine Sanctuary (OCNMS) is part of the United States' National Marine Sanctuary System, 14 sites managed by the Office of National Marine Sanctuaries (ONMS). The OCNMS spans 8,259 km2 of marine waters off of the coast of Washington. Before the establishment of the OCNMS, there were multiple oil spills in the area, between 1988 and 1991. The Sanctuary was designated partially in response to those disasters.

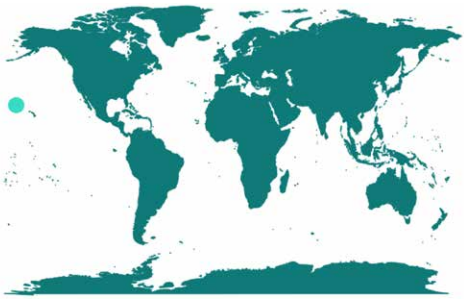
The OCNMS falls into the jurisdiction of four Indigenous nations (The Makah Tribe, Quilleute Tribe, Hoh Tribe, and Quinault Indian Nation), each recognized through treaty as sovereign governments. These four nations are collectively known as the "Coastal Treaty Tribes" for the purposes of the sanctuary.

The four Coastal Treaty Tribes have representatives on two advisory bodies to the ONMS, the Olympic Coast Intergovernmental Policy Council (IPC), and the Olympic Coast National Marine Sanctuary Advisory Council (SAC). Each of the Coastal Treaty Tribes have a voting representative on the IPC, while the State of Washington has one vote on the Council. Each Nation also has one voting seat on the SAC, four voting seats out of a total of 15. Ultimately, both the IPC and SAC serve an advisory function, and final decision-making power rests with the ONMS.

There is also a designated section within the Management Plan drafted by the Coastal Treaty Tribes, to guide the SAC and IPC with their actions. It includes a brief history of American case law on Aboriginal sovereignty, and details consultation duties. It also explicitly includes reference to the Tribes' right to fish, and continued sovereignty in the area.

In a 2012 assessment of the OCNMS, representatives from the Coastal Treaty Tribes were surveyed to determine the effectiveness of the IPC's co-management regime. Five of six respondents stated they do not believe the OCNMS is achieving effective collaborative and coordinated management, perceiving "a lack of transparency, little inclusion of local priorities into management decisions, and a failure to jointly set management goals." Many respondents discussed the lack of communication and coordination between the ONMS and IPC, stating the ONMS was interested in broad discussion but not specific management choices.

PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT



UNITED STATES

Papahānaumokuākea Marine National Monument (PMNM), formerly known as the Northwest Hawaiian Islands, has been protected under various federal and state laws for more than a century, starting with designation as a National Wildlife Refuge for migratory birds in 1909. In 2006, it became a National Marine Monument, designated by the President under the Antiquities Act. In 2016 the Monument was renamed Papahānaumokuākea, and its boundaries were expanded to the full extent of the US Exclusive Economic Zone.

There are 4 co-trustees entrusted with governance: The National Oceanic and Atmospheric Administration (NOAA), the US Fish and Wildlife Service (FWS), the State of Hawaii, and the Office of Hawaiian Affairs (OHA), a constitutionally established body responsible for representing the interests of the Native Hawaiian community. The OHA was added in 2016, due to the initiative of native Hawaiians and support of the State.

The co-trustees have successfully developed a monument management plan, a new multi-agency permitting process, and a successful application for World Heritage Site designation.

The importance of Hawaiian law and culture is reflected in the MPA's name: Papa means "earth mother", hānau means birth, moku means a small island or large land division, and ākea means wide. Together, the name suggests "a fertile woman giving birth to a wide stretch of islands beneath a benevolent sky." Native Hawaiian cultural practices, knowledge and cosmology are at the heart of the area's governance. The islands and waters and all living things in the region are considered 'aina akua', ancestral beings that are higher than man in the ecological hierarchy and order of the Hawaiian universe. Co-Trustee status will provide the opportunity to shape decision making in favor of Native Hawaiian rights at the executive level of management.

The PMNM seems to be effective and is lauded as a model for ecological and cultural integration and multiple agency coordination. The creation of PMNM is credited with starting a race to create more large scale MPAs, and also inspiring other Indigenous peoples such as the Rapa Nui and Austral Islanders of French Polynesia to use traditional approaches and values in large scale MPAs to strengthen ocean management. All commercial fisheries have ceased to operate within the PMNM.

RAPA NUI RAHUI MARINE PROTECTED AREA & NATIONAL PARK

RAPA NUI (EASTER ISLAND)

The government of Chile designated the Rapa Nui Multiple Use Marine and Coastal Protected Area in 2017, spanning approximately 579,368 km^2 of the marine area around Rapa Nui, also known as Easter Island. It is the largest marine protected area in all of Latin American.

The Rapa Nui people have been struggling for self-determination of their homeland for the past century. The Rapa Nui National Park was designated without consent in 1935, excluding them from access to their own land and sacred sites, and requiring them to pay admission. The Rapa Nui began occupations of park land in 2011 and 2015, setting up roadblocks and charging admission fees to tourists, later being jailed and prosecuted for their actions.

In 2016, the Chilean National Forest Corporation (CONAF) signed an agreement with the Ma'u Henua committee of the Rapa Nui to co-administer the Park. The Rapanui people now collect park entry fees, administer the funds, and maintain the public spaces in this protected area. Control of the park was finally returned to Rapanui last November by the Chilean president, allowing them full technical and administrative capacity to take charge of the park's administration for a concession period of 50 years.

A 2017 Referendum to designate the MPA passed with an unprecedented 73% support of islanders. The Rapa Nui are now set to have a majority of votes on the MPA's Board of Directors, with six representatives from the Rapa Nui people and only five from the Chilean government.

There is currently an initiative to revitalize Rapa Nui law, for both the Park and MPA. The Polynesian concept "Rahui", to make an area off-limits from exploitation, was proposed early on and was a major factor in gaining support for the MPA. Protections will prevent industrial fishing and mineral extraction, but still allow traditional fishing.

There is as yet no enforcement plan for the MPA. A recent study found that Chile's MPAs lacked management plans and enforcement. However, for the National Park, enforcement has increased since the co-administration agreement took effect. Islanders have begun training as monitors for the MPA, while Chile is set to assist with satellite observation of the MPA to ensure foreign vessels abide by its rules.

SGAAN KINGHLAS-BOWIE SEAMOUNT MARINE PROTECTED AREA

CANADA

SGaan Kinghlas -Bowie Seamount and the surrounding area have been designated by both the Council of the Haida Nation and Fisheries and Oceans Canada as a marine protected area. The submarine volcano is called SGaan Kinghlas -Bowie Seamount, meaning "Supernatural Being Looking Outward." This seamount has long been recognized by the Haida Nation as a special and protected place. SGaan Kinghlas -Bowie Seamount is particularly rich in marine life as its peak is so close to the surface, offering shallow and productive waters in the deep sea to unique and diverse marine species.

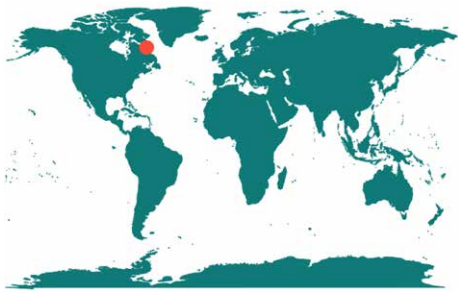
The area was first designated by the Haida Nation in 1997. A federal designation followed in 2008 as Canada's seventh MPA, under the Oceans Act. The announcement was jointly made by the Fisheries Minister and the President of the Council of the Haida Nation, in Skidegate on Haida Gwaii.

Haida culture and values are incorporated into the management of the protected area. The draft management plan lists Haida ethics and values (in the Haida language) as "Guiding Principles" for management of the area. The Haida name is also formally part of the MPA's name.

The management board for SGaan Kinghlas -Bowie Seamount is comprised of two representatives from CHN and two from the Crown. Total numbers of members may be increased or decreased, as long as equal representation is maintained, and the board is co-chaired by a member from each government. The management board has the authority to develop joint recommendations related to fisheries management in the MPA which are then given to the Minister of Fisheries and Oceans and the CHN Executive Committee for decision.

While collaboration between the Haida Nation and the Crown has been mostly successful, there have been disputes over commercial fishing within the area. In the years following the MPA's designation, scientific monitoring showed that the traps were damaging ecologically important sessile organisms (corals and sponges). As a result, in 2018 DFO and the Council of the Haida Nation jointly decided to close all bottom-contact fishing at SGaan Kinghlas-Bowie Seamount while the governments finalize the MPA's management plan, which is expected to include longer-term measures to protect seafloor habitat.

TORNGAT MOUNTAINS NATIONAL PARK, TONGAIT KAKKASUANGITA SILAKKIJAPVINGA



CANADA

The Torngat Mountains National Park, Tongait KakKasuangita SilakKijapvinga was established to protect a representative area of the Northern Labrador Mountains natural region, to be enjoyed by this and future generations. It encompasses significant areas of Inuit ancestral homelands.

In 1984 active negotiations on a land claim agreement began between the Government of Canada, provincial Government of Newfoundland and Labrador, and the Labrador Inuit Association. The Labrador Inuit Land Claims Agreements and the Memorandum of Agreement for a National Park Reserve of Canada and a National Park of Canada in the Torngat Mountains was signed in 2005 along with a Labrador Inuit Park Impacts and Benefits Agreement for the Torngat Mountains National Park Reserve. The park was designated under the National Parks Act in 2007 with the Nunavik Inuit through the signing of the Nunavik Inuit Land Claims Agreement. The establishment of the park through constitutionally protected land claims agreements provides a strong foundation for governance.

The Park Impact and Benefits Agreement established the Torngat Mountains National Park Co-Management Board, a five member board with equal representation from Parks Canada and the Nunatsiavut Government and an independent chair appointed by the two parties. Currently, all members of the Co-Management Board are Inuit, the only such board in the parks system to have all Inuit staff. The Board may provide advice to the Torngat Wildlife and Plant Co-Management Board, the Torngat Joint Fisheries Board, the Nunatsiavut Government, Parks Canada, and to other agencies on all matters related to management of the National Park and any other matters related to the National Park for which its advice is requested.

The park recognizes and protects key sites of Inuit culture, including tent circles, sod houses, food caches, burial sites, and Aullâsimauet (Inuit settlement camps). The Management Plan includes reinforcement of Inuit connection to ecological and spiritual elements of their homelands.

Establishing and operating the park's base camp has played an important role in the employment and economic benefits created for the Inuit. The base camp has also improved access to the park. A watchmen programme for the park is being designed along the lines of the Haida Gwaii watchmen programme at Gwaii Haanas National Park Reserve and Haida Heritage Site.

VELONDRIAKE LOCALLY MANAGED MARINE AREA

MADAGASCAR

Locally Managed Marine Areas (LMMAs) are areas of near-shore waters and coastal resources that are largely or wholly managed at a local level by the coastal communities, land - owning groups, partner organizations, and/or collaborative government representatives who reside or are based in the immediate area. The Velondriake Community Managed Protected Area in southwest Madagascar is the country's oldest LMMA, and one of the largest in Madagascar, spanning nearly 1000km2 of coral reef, mangrove, lagoon and seagrass habitat.

Velondriake began as an initiative to improve the sustainability of the octopus fishery through implementation of several temporary no-take areas. The success of these areas for local fisheries led to the establishment of a community-based management committee to make decisions on implementing further regulations.

The LMMA is managed by a committee formed of representatives from each of the 25 villages, the Velondriake Association. Resource use and access rights within the area are governed by a legally recognised laws called dina in Malagasy. The dina bans destructive fishing practices including beach seining and poison fishing, regulates temporary and permanent closures and grants conflict resolution and enforcement powers to local communities. The dina of the Velondriake were developed by the member villages and ratified by representatives of relevant ministries and the courts. Ratification of local laws, dina, applies these laws to the management of the LMMA and allows decisions to be undertaken and enforced by the Velondriake Association. At the same time, these dina must be in accordance with national laws to be ratified and once ratified, are difficult to adapt.

The management committee for the Velondriake LMMA achieved temporary protected status in 2010 under Madagascar's Protected Areas Act. The MPA got status of permanent protection in 2015, increasing the power of the management committee to implement the management plan and decide on the MPA's direction.

Partnerships have been key to the development and implementations of the LMMA, including with Blue Ventures and the Wildlife Conservation Society, and with local industry partners. High levels of compliance with regulations, participation in management decisions has been reported, and positive local perceptions of the impact of the management decisions. Challenges remain including ongoing reliance from partner NGOs for financial and technical assistance, and development of alternative livelihood activities.

WHANGANUI RIVER (TE AWA TUPUA) & TE UREWERA

NEW ZEALAND

Te Awa Tupua (the Whanganui River) and Te Urewera (a former national park), two natural entities in New Zealand, were each recently recognized as a "legal person" to be represented by a co-governance board. The board acts as the entity's "human face," meant to act on behalf of the entity's best interests. As a result of legislative recognition of personhood, ownership over land of both entities was vested in the entity itself. Each recognition and subsequent land transfer took place to settle a history of Māori rights violations by the Crown.

For each entity, the co-governing board has equal Crown-Māori representation. Notably, the Te Urewera board has increasing Māori representation over time, set to grow to majority representation of the Tūhoe Māori. Decisions of each board are binding. Each co-governance board has broad authority over the entity's land area, with rights and responsibilities equivalent to an actual person. Should disputes arise over infringement of the entity's rights, the governing board has legal standing to defend those rights in court.

The enabling legislation for each legal person is unique to the common law, frequently implementing Māori language and intrinsic values. The Te Urewera Act allows the Board to consider Tūhoe concepts of management during decision-making. In the Te Awa Tupua Act, the Crown formally acknowledges the inalienable connection that the Whanganui Iwi have with the river, and acknowledges that this connection is founded on tikanga (the Māori legal system).

Each body is funded through the establishment of a fund, funded through a Deed of Settlement from the Crown. Members of each Māori nation have their traditional access and usage rights to the area preserved. The board for Te Awa Tupua does not hold decision-making authority over fishing activities within the River, merely ownership of the river bed. Instead, members of the Whanganui Iwi will form part of a "fisheries co-ordination group," alongside representatives from government and industry.

4. APPENDICES

Appendix A. Methodology

There are approximately 11,000 MPAs in the global database of the Atlas of Marine Protection.[32] A vast and growing literature exists on the topic of protected areas co-governance and the integration of Indigenous rights and protected areas, both terrestrial and marine. Rapidly evolving guidance from international bodies such as the Convention on Biological Diversity (CBD) and the IUCN continues to inform practice. The Subsidiary Body on Technical Advice of the CBD will submit proposed updated guidance on 'other effective area-based conservation mechanisms' to the CBD Conference of the Parties in November 2018, which include substantive references to Indigenous peoples' rights. The IUCN World Commission on Protected Areas is updating its 2012 guidance document due to the rapidly changing landscape characterized by multiple new large scale MPAs, a global race to reach Aichi Target 11's numeric protection target of 10% by 2020, and continuing scientific evidence of the decline of ocean health.

The case studies used for our analysis and synthesis were determined through a literature review to establish a framework for analysis, expert consultation and recommendation of notable case studies, and the authors' knowledge of key examples highlighting successful elements of co-governance.

The literature review conducted included academic papers, and major international reports, publications, national sources, and court cases. Our review began with a scan of existing work in our own organization. In 2017 we organized and hosted a multi-day national workshop on a retrospective of 20 years' experience and the future of Canada's Oceans Act. One of the themes of this workshop was co-governance. A background theme paper for the workshop, An Ocean of Opportunity[33] provided an overview of this theme. Another background paper traced the development of the Oceans Act, and revealed that co-governance and substantive involvement of Indigenous peoples in MPAs was a key concern of Indigenous peoples and ENGOs twenty years ago that remains today.[34] Multiple sessions at this workshop involved

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[32] Atlas of Marine Protection. http://www.mpatlas.org/

[33] WCEL. 2017. An Ocean of Opportunity: Co-governance in Marine Protected Areas in Canada. https://www.wcel.org/publication/ocean-opportunity-co-governance-in-marine-protected-areas-in-canada

[34] Beckmann L. and Bankes N. 2017. Bill C-98 and the Oceans Act: a retrospective. < https://www.wcel.org/sites/default/files/publications/1_oceansact_20yearson_final.pdf>

speakers with expertise and experience in Indigenous led or co-governed MPAs, including a presentations from Inuit and Canadian Wildlife Service representatives of the Ninginganiq National Wildlife Area Co-management Committee, an analysis of co-governance structures for New Zealand's protected areas, and perspectives from the Council of the Haida Nation on challenges with MPA establishment on Canada's west coast.[35]

We reviewed lessons from our work on individual MPAs such as Scott Islands marine National Wildlife Area, and Gwaii Haanas National Marine Conservation Area Reserve, as well as submissions we have made to the House of Commons Standing Committees on federal protected areas and marine protected areas, preparation of reports such as 2017 Paddling Together Paddling Together: Co-Governance Models for Regional Cumulative Effects Management,[36] as well as reviewing case studies from projects of West Coast Environmental Law's program Revitalizing Indigenous Law for Land, Air and Water (RELAW).

From this review, a preliminary list of criteria with which to analyze case studies was produced. These included whether the case has a basis in Indigenous laws, the existence of rules for equal governance in MPA management agreements, and recognition in legislation. These criteria were refined through discussions with the Coastal First Nations Steering Committee (See Appendix B, Case Study Analysis Framework for full list).

To compile a preliminary list of case studies for review, we consulted with experts in MPA governance, Indigenous governance, and environmental law. Requests were sent to expert networks for case studies, including to the IUCN World Commission on Protected Areas, Environmental Law Alliance Worldwide, UBC's Institute for Resources and Environmental Sustainability, and online in MPA News,[37] a key resource for MPA practitioners around the globe.

From these recommendations, a preliminary list of 51 international and 44 Canadian case studies was produced and evaluated against the determined criteria. Examples that illustrated full Indigenous and equal Indigenous-Crown and provincial-Crown and community-Crown governance models were prioritized, as well as novel governance features in MPA governance bodies and governance bodies established in both Indigenous and Crown law.

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[35] WCELA. 2017. Oceans 20: Canada's Oceans Act Workshop Report. Available at < https://www.wcel.org/publication/oceans20-canadas-oceans-act-workshop-report>

[36] WCEL. 2017. Paddling Together: Co-Governance Models for Regional Cumulative Effects Management. https://www.wcel.org/publication/paddling-together-co-governance-models-regional-cumulative-effects-management

[37] MPA News. https://mpanews.openchannels.org/mpanews

At a review meeting, the authors compared evaluations of the cases and narrowed the preliminary list of 95 candidate sites to 16 case studies for our detailed case study review (Table 1).

Additional considerations for final case study selection included several from Canada as these are most relevant to the legal context for which this analysis aims to make recommendations. Cases of terrestrial protected area co-governance were included where the co-governance arrangement included novel elements to examine, particularly in the context of Indigenous co-governance, as in the New Zealand and Norway case studies.

Table 1. Final list for case study review.

Location	Name
Philippines	Aborlan Marine Protected Area
Canada	British Columbia's Provincial Conservancies
Australia	Dhimurru Indigenous Protected Area
Norway	The Finnmark Estate: Finnmarkseiendommen (FeFo)
Australia	Great Barrier Reef Marine Park and World Heritage Area
Canada	Gwaii Haanas National Park Reserve, National Marine Conservation Area & Haida Heritage Site
South Africa	iSimangaliso Wetland Park
Cook Islands	Marae Moana (Cook Islands Marine Environment)
Canada	Ninginganiq National Wildlife Area
USA	Olympic Coast National Marine Sanctuary
USA (Hawai'i)	Papahānaumokuākea Marine National Monument
Chile	Rapa Nui Rahui Marine Protected Area
Canada	SGaan Kinghlas - Bowie Seamount Marine Protected Area
Canada	Torngat Mountains National Park
Madagascar	Velondriake Locally Managed Marine Area
New Zealand	Whanganui River (Te Awa Tupua) & Te Urewera

Appendix B. Case Study Analyis Framework

(1) Name: What is the protected area?

(2) Description/Background/Authority

- Purpose(s) behind the marine protected area
- History behind formation of the MPA
    - Of particular relevance: the negotiation process, how the legislation evolved over time
- Scope of Authority: What topics can the body decide? What standards can they set?
    - Authority over fisheries and other marine uses?
    - Ability to prohibit activities? No-take?

(3) Legal Basis: What is the legal basis in both Indigenous and state law?

- What is the enabling state legislation?
- Alternatively, identify if the marine area has not yet been recognized through statute
- Are there designations from multiple jurisdictions? How do they work together?
- Relevant case law (if applicable)

(4) Governing Body: Is governance truly joint or shared?

- What is the composition of the board?
    - Indigenous representation?
    - Technical staff? Leadership?
    - Stakeholder representatives?
- How are decisions made? (Ie. Consensus) and communicated? (must decisions be published?)
- Are there mechanisms for dispute resolution?
- Where does the authority for final decision-making rest?
    - Are the decisions of the body binding? Non-binding?
    - Does final decision rest with a Minister or other state body?

(5) Indigenous Involvement: Are Indigenous governance rights formally recognized?

- Do Indigenous nations have voting rights on the management body?
  - Majority voting rights? Some voting rights? Non-voting participatory rights?
- How are overlapping claims resolved?
- Incorporation of Indigenous law?
  - (e.g. Use of law in original language, legal personhood, recognition of community law)
- How is Indigenous knowledge used in decision-making?
- What is the role of Indigenous governments in monitoring, compliance, and enforcement?

(6) Legislative Strengths & Weaknesses

- What issues are identifiable through the legislation itself?
- How is Indigenous law applied (or undermined) within the marine protected area?
- Is there jurisdictional space for Indigenous governance and law?
- How has the MPA evolved over time - did the legislation or policy enable this evolution?

(7) Implementation

- How is the body funded?
  - Are there own source revenues? User fees?
- Does Indigenous nation have secure access to economic opportunities (Indigenous or commercial)?
- Are there mechanisms for dispute resolution?
- How is the MPA enforced? Is there Indigenous involvement in enforcement?
- Is there capacity and/or training for Indigenous participation in governance?

(8) Effectiveness

- How has the governing body functioned in practice?
  - How are decisions by the body enforced?
- Community support? Industry support? Financial difficulties?

Appendix C. Case Study Sources

1. ARBORLAN MARINE PROTECTED AREA

Alya Honasan, Aborlan Collaboration for Conservation: A Case Study on the Philippines (Quezon City, Philippines: WWF-Philippines, 2016), report available online: <https://d2ouvy59p0dg6k.cloudfront.net/downloads/aborlan_case_study_1_.pdf>

Cornered by Protected Areas Report (2018), available online at: <https://www.corneredbypas.com/world>.

Creating Fisheries and Aquatic Resource Management Councils (FARMCS) In Barangays, Cities and Municipalities, Their Composition and Functions, Executive Order No. 240 signed April 28, 1995, available online at: <http://extwprlegs1.fao.org/docs/html/phi22515.htm>.

Jose E. Padilla et al., Sustainability Assessment of the Life Reef-Fish for Food Trade Industry in Palawan, Philippines (2003) WWF, available online at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.514.7131&rep=rep1&type=pdf>.

Michael Fabinyi, Fishing for Fairness: Poverty, Morality and Marine Resource Regulation in the Philippines (Canberra, Australia: Australian National University Press, 2012) available online at: <https://www.jstor.org/stable/j.ctt24h9fn.1> at 1-2.

Michael Fabinyi & Dante Dalabajan, "Policy and practice in the live reef fish for food trade: A case study from Palawan, Philippines" (2011) 35 Marine Policy 371, available for download online at: <https://www.researchgate.net/publication/227420168_Policy_and_Practice_in_the_Live_Reef_Fish_for_Food_Trade_A_case_study_from_Palawan_Philippines>.

PCSD Environmentally Critical Areas Network: Main Strategy (6 July 2018), online: <https://pcsd.gov.ph/igov/strategic-environmental-plan-palawan/environmentally-critical-areas-network-ecan-main-strategy/>.

Republic of Philippines: Philippines Statistics Authority, (29 June 2018), online at: <http://nap.psa.gov.ph/activestats/psgc/listmun.asp>.

Roozie Quea Elkanah I. Idlana, "Leo's Incredible Experience" in Tales from the Coral Triangle: Philippines (Philippines: Asian Development Bank, 2016) .

Stategic Environmental Plan (SEP) for Palawan Act, Republic Act 7611, available online at: <http://pcsd.gov.ph/sep_law/ra7611.htm>.

Seven Line Reef Protected Seascape Act of 2018, House Bill No. 7183, available online at: <http://www.congress.gov.ph/legisdocs/basic_17/HB07183.pdf>.

Tales from the Coral Triangle: Philippines (Philippines: Asian Development Bank, 2016), online at: <https://www.adb.org/sites/default/files/publication/198481/coral-triangle-phi.pdf>.

The Indigenous Peoples' Rights Act of 1997, National Commission on Indigenous Peoples Administrative Order No. 1 Series 1998, available online at: <http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph083en.pdf>.

United Tribes of Palawan webpage (6 July 2018), available online at: <http://balogbog.wixsite.com/natripal/about-us>.

WWF, "MPAs are for people, too" (10 November 2016), online: <http://wwf.panda.org/?284114/MPAs-are-for-people-too>.

2. BRITISH COLUMBIA'S PROVINCIAL CONSERVANCIES

Curran D. 'Legalizing' the Great Bear Rainforest: Colonial Adaptations Towards Conservation and Reconciliation. 2017. 62:3 MLJ 813.

Turner KL. Conservancies in British Columbia, Canada: Bringing Together Protected Areas and First Nations' Interests. 2011. International Indigenous Policy Journal, 2(2).

Stronghill J et. Al. Conservancies in Coastal British Columbia: A New Approach to Protected Areas in the Traditional Territories of First Nations. 2015. Conservation and Society 13(1): 39-50.

3. DHIMURRU INDIGENOUS PROTECTED AREA

Bas Verschuuren. Mawalan II Marika, and Phil Wise. Power on this land; managing sacred sites at Dhimurru Indigenous Protected Area Northeast Arnhem Land, Australia. Chapter · January 2009 In book: The Sacred Dimensions of Protected Areas, Edition: first, Chapter: 2, Publisher: IUCN, Editors: Josep-Maria Mallarach, Thymio Papayannis, pp.26-45

Dhimurra IPA Management Plan (2015)

Nanni Concu and Katherine May. Managing the Northern Australian Coastline through Indigenous Protected Areas, 2010, online at:
https://coastnet-littoral2010.edpsciences.org/articles/litt/pdf/2011/01/litt-03002.pdf

Smyth D et al. Indigenous-driven Co-governance of Sea Country through Collaborative Planning and Indigenous Protected Areas, Indigenous Law Bulletin, 2017, Volume 8 Issue 26.

Steve Szabo and Dermot Smyth. Indigenous protected areas in Australia: Incorporating Indigenous owned land into Australia's national system of protected areas, 2003, online at:
https://www.researchgate.net/profile/Dermot_Smyth/publication/242390828_Indigenous_Protected_Areas_in_Australia_Incorporating_Indigenous_Owned_Land_into_Australia's_National_System_of_Protected_Areas1/links/553100bf0cf27acb0de8ceac.pdf

Verschuuren, Bas, et al. "Mixing Waters: A Cross Cultural Approach to Developing Guidelines for Fishers and Boaters in the Dhimurru Indigenous Protected Area, Australia" (2015) 21.1 PARKS 74.

4. THE FINNMARK ESTATE: FINNMARKSEIENDOMMEN

Broderstad, Else Grete, "The Finnmark Estate: Dilution of Indigenous Rights or a Robust Compromise?" (2015) 39 Northern Review 8.

Eva Josefsen , Siri U. Søreng , and Per Selle, "Regional Governance and Indigenous Rights in Norway: The Finnmark Estate Case" (2016). From T.M. Herrmann, T. Martin (eds.), Indigenous Peoples' Governance of Land and Protected Territories in the Arctic, Springer International Publishing, Switzerland, 2016.

"Master in our own house - The Finnmark Act." Youtube. Available at <https://www.youtube.com/watch?v=6AwZrJfyW5M>

Nygaard, Vigdis, "Do indigenous interests have a say in planning of new mining projects? Experiences from Finnmark, Norway" (2016) 3 The Extractive Industries and Society 17.

Ravna, Øyvind, "The Process of Identifying Land Rights in Parts of Northern Norway: Does the Finnmark Act Prescribe an Adequate Procedure within the National Law" (2011) 3 Y. B. Polar L. 423.

Ravna, Øyvind, "The First Investigation Report of the Norwegian Finnmark Commission" (2013), 20 International Journal on Minority and Group Rights 443.

Ravna, Øyvind, "Recognition of Indigenous Lands Through the Norwegian 2005 Finnmark Act: An Important Example for Other Countries with Indigenous People?" (2016). From T.M. Herrmann, T. Martin (eds.), Indigenous Peoples' Governance of Land and Protected Territories in the Arctic, Springer International Publishing, Switzerland, 2016.

Ravna, Øyvind, "Operation of the Uncultivated Land Tribunal for Finnmark has ceased due to lack of funds" (2015) 6:2 Arctic Review on Law and Politics 176. Accessible at <https://arcticreview.no/index.php/arctic/article/download/183/196>

Ween, Gro B., and Lien, Marianne, "Decolonialization in the Arctic? Nature Practices and Land Rights in the Norwegian High North" (2012) 7 Journal of Rural and Community Development 93.

5. GREAT BARRIER REEF MARINE PARK AND WORLD HERITAGE AREA

Australian Government, Department of the Prime Minister and Cabinet. Indigenous Rangers – Working on Country. Accessed online at <https://www.pmc.gov.au/indigenous-affairs/environment/indigenous-rangers-working-country>

Australian Government, Department of the Prime Minister and Cabinet, Indigenous Affairs. Indigenous Rangers: Protecting the Great Barrier Reef. Accessed online at < http://www.indigenous.gov.au/news-and-media/stories/indigenous-rangers-protecting-great-barrier-reef-0>

Dale, A., George, M., Hill, R. and Fraser, D. (2016) Traditional Owners and Sea Country in the Southern Great Barrier Reef – Which Way Forward?. Report to the National Environmental Science Programme. Reef and Rainforest Research Centre Limited, Cairns (50pp.)

Great Barrier Reef Marine Park Act 1975.

Great Barrier Reef Marine Park Regulations 1983, made under the Great Barrier Reef Marine Park Act. Accessible online at <https://www.legislation.gov.au/Details/F2009C01194>

Great Barrier Reef Marine Park Authority. Indigenous Reef Advisory Committee. Accessed at <http://www.gbrmpa.gov.au/our-partners/reef-advisory-committee/indigenous-reef-advisory-committee>

Great Barrier Reef Marine Park Authority. Traditional Use of Marine Resources Agreements. Accessed online at <http://www.gbrmpa.gov.au/our-partners/traditional-owners/traditional-use-of-marine-resources-agreements>

Nusey-Bray, 'Social Contexts and Customary Fisheries: Marine Protected Areas and Indigenous Use, Australia' (2011) 47 Journal of Environmental Management 671, 678.

Nursey-Bray M. and Rist P. 2009. Co-management and protected area management: Achieving effective management of a contested site, lessons from the Great Barrier Reef World Heritage Area (GBRWHA). Marine Policy 33: 118-127.

Ross et al, 'Co-Management and Indigenous Protected Areas in Australia: Achievements and Ways Forward' (2009) 16 Australasian Journal of Environmental Management 242, 247.

Woppaburra Traditional Owner Heritage Assessment Guidelines. GBRMPA. http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3215/5/Woppaburra-Traditional-Owner-Heritage-Assessment-PDF-for-eLibrary.pdf

Zurba et al 2012. Building Co-Management as a Process: Problem Solving Through Partnerships in Aboriginal Country, Australia. Environmental Management 49: 1130-1142.

6. GWAII HAANAS NATIONAL PARK RESERVE, NATIONAL MARINE CONSERVATION AREA, HAIDA HERITAGE SITE

Akins, P. 2017. Making collaboration work: An evaluation of marine protected area planning processes on Canada's Pacific Coast. PhD Thesis, University of Victoria.

Gwaii Haanas Gina 'Waadluxan KilGulGa Land-Sea-People Management Plan 2018.

Gwaii Haanas Agreement, 1993.

Gwaii Haanas Marine Agreement, 2010.

Jones R. et al. 2017. Strategies for assertion of conservation and local management rights: A Haida Gwaii herring story. Marine Policy 80: 154-167.

Parks Canada. Gwaii Haanas Archipelago Management Board. Accessed online: <http://www.pc.gc.ca/eng/pn-np/bc/gwaiihaanas/plan/Plan1A.aspx>.

Sargeant J. 2015. Assessing the cooperative management regime in Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve and Haida Heritage Site. Masters Thesis, University of Akureyri.

Suzanne Hawkes, "Gwaii Haanas Agreement: from Conflict to Cooperation" (1996), online: <www.thefreelibrary.com/Gwaii+Haanas+Agreement%3A+from+conflict+to+cooperation.-a030375699>.

7. iSIMANGALISO WETLAND PARK

Chellan, Noel, and Sultan Khan, "Contesting Ecotourism Development in the iSimangaliso Wetland Parkl in KwaZulu-Natal" (2008) 15:1 Alternation 268.

Durbin, Trevor J. "" What Now, Fishgate?": Scandal, Marae Moana, and Nation Making in the Cook Islands." The Contemporary Pacific 30.1 (2018): 1-31.

iSimangaliso Wetland Park, South Africa: Recognizing the people's right to restitution but the state's role in conservation" (2010) 12:2 MPANews.

Hansen, Melissa, "Struggles over conservation space Social justice in the iSimangaliso Wetland Park, South Africa" (2014), Doctoral Dissertation, Lund University.

Hansen, Melissa, Turaj Faran and David O'Byrne, "The Best Laid Plans: Using the Capability Approach to Assess Neoliberal Conservation in South Africa—The Case of the iSimangaliso Wetland Park" (2015) 0(0) Journal of Environment & Development 1.

iSimangaliso Wetland Park. History. Accessed at <https://isimangaliso.com/useful-information/history/>

Kepe, Thembala, "Land Claims and Comanagement of Protected Areas in South Africa" (2010). Chapter 13 of Land, Memory, Reconstruction, and Justice: Perspectives on Land Claims in South Africa, by Cherryl Walker, Anna Bohlin, Ruth Hall, Thembela Kepe, Ohio University Press, 2010.

Nustad, Knut G., "Performing Natures and Land in the iSimangaliso Wetland Park, South Africa" (2011) 76:1 Ethnos 88.

Siyabona Africa. iSimangaliso Wetland Park, St Lucia, KwaZulu-Natal, South Africa. <http://www.nature-reserve.co.za/greater-stlucia-wetland-wildlife-preserve.html>

Sunde, Jackie, "Marine Protected Areas and Small-scale Fisheries in South Africa: Promoting Governance, Participation, Equity and Benefi t Sharing" (2014) International Collective in Support of Fishworkers, India.

Sue Farran (2018): Regulating the environment for blue-green economy in plural legal states: a view from the Pacific, The Journal of Legal Pluralism and Unofficial Law

World Heritage Convention Act, 1999. Accessed at <https://www.ecolex.org/details/legislation/world-heritage-convention-act-act-no-49-of-1999-lex-faoc028730/>

8. MARAE MOANA MARINE PROTECTED AREA

Alger, Justin, and Peter Dauvergne. "The global norm of large marine protected areas: explaining variable adoption and implementation." Environmental Policy and Governance 27.4 (2017): 298-310.

Atlas of Marine Protection. Accessed at <http://www.mpatlas.org/mpa/sites/68808362/>

Conservation International. Marae Moana - Cook Islands Marine Park. Accessed at <https://www.conservation.org/projects/Pages/marae-moana-cook-islands-marine-park.aspx>

Conservation International. Conservation International Statement on Cook Islands' Legislation of Marae Moana, the World's Largest Marine Park. 2017. Accessed at <https://www.conservation.org/NewsRoom/pressreleases/Pages/Conservation-International-Statement-on-Cook-Islands%E2%80%99-Legislation-of-Marae-Moana,-the-World%E2%80%99s-Largest-Marine-Park.aspx>

Conservation International. 2012. Spotlight on Kevin Iro, Rugby Player and Ocean Advocate. Accessed at <https://www.youtube.com/watch?v=QTW6POwGtXs>

Cook Islands Environment Act. 2003, No. 22, https://www.ecolex.org/details/legislation/environment-act-2003-no-23-of-2003-lex-faoc048637/

Hoffmann, Tegan Churcher. "The reimplementation of the Ra'ui: Coral reef management in Rarotonga, Cook Islands." Coastal Management 30.4 (2002): 401-418.

Leonardo DiCaprio Foundation. Establishing a community trust for the Marae Moana Marine Park, Cook Islands. Accessed at <https://www.leonardodicaprio.org/establishing-a-community-trust-for-the-marae-moana-marine-park-cook-islands/>

Marae Moana Cook Islands marine Park. Accessed at <http://maraemoana.gov.ck/index.php/>

Marae Moana Act 2017 (No. 10 of 2017). https://www.ecolex.org/details/legislation/marae-moana-act-2017-no-10-of-2017-lex-faoc170527/

Marae Moana Policy 2016-2020. Accessed at <https://policycookislands.files.wordpress.com/2017/05/2016_marae-moana-policy-2016-2020_final.pdf>

Techera E.J. 2015. Enhancing legal frameworks for biodiversity conservation in the Pacific. Pacific Conservation Biology, 21: 87-96. http://dx.doi.org/10.1071/PC14906

Secretariat of the Pacific Regional Environment Programme. 2018. The Journey of the Cook Islands Marae Moana. Accessed at <https://www.sprep.org/news/journey-cook-islands-marae-moana>

Wikipedia. Politics of the Cook Islands. <https://en.wikipedia.org/wiki/Politics_of_the_Cook_Islands>

9. NINGINGANIQ NATIONAL WILDLIFE AREA

Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada. Available online at,
<https://www.gov.nu.ca/sites/default/files/Nunavut_Land_Claims_Agreement.pdf>.

Canada Wildlife Act, RSC C 1985, c W-9.

Environment Canada. Ninginganiq National Wildlife Area. Available online at,
<http://www.sdinfo.gc.ca/ap-pa/default.asp?lang=En&n=2A61DE20-1>.

Frank James Tester & Peter Irniq, "Inuit Qaujimajatuqangit: Social History, Politics and the Practice of Resistance" (2008) 61:1 Arctic J 48, online:
<https://arctic.journalhosting.ucalgary.ca/arctic/index.php/arctic/article/view/101/135 >.

Government of Nunavut. Inuit Qaujimajatuqangit Education Framework. Available online at
<https://www.gov.nu.ca/sites/default/files/files/Inuit%20Qaujimajatuqangit%20ENG.pdf>

Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area. Available online at,
<http://qia.ca/wp-content/uploads/2017/02/IIBA-NWA-MBS-NSA-Final-ENG.pdf>.

West Coast Environmental Law. 2017. Oceans20 – Canada's Oceans Act Workshop Report. Available online at <https://www.wcel.org/publication/oceans20-canadas-oceans-act-workshop-report>

Wildlife Area Regulations, CRC, c 1609.

10. OLYMPIC COAST NATIONAL MARINE SANCTUARY

Charter of the Olympic Coast Intergovernmental Policy Council, 2007. Accessed at
< https://nmsolympiccoast.blob.core.windows.net/olympiccoast-prod/media/archive/management/ipc_charter_5-30-2007.pdf>

Geiger, Kristina, et al. "An Assessment of Institutional Relationships at the Olympic Coast National Marine Sanctuary" (2012), accessible at <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/90863/OCNMSAssessment_FINAL2012.pdf?sequence=1&isAllowed=y>

Intergovernmental Policy Council. IPC Condition Report Addendum. IPC 2009. Web. 27 June 2018. http://sanctuaries.noaa.gov/science/condition/ocnms/addendum.pdf

"Memorandum of Agreement between NOAA and the Hoh Tribe, Makah Tribe, Quileute Tribe, Quinault Indian Nation and State of Washington" (2012) MOA-2012-056/8583.

National Marine Sanctuary Program Regulations, 15 C.F.R. § 922 1995.

Olympic Coast National Marine Sanctuary Advisory Council Charter (February 2007). Accessed at
< https://nmsolympiccoast.blob.core.windows.net/olympiccoast-prod/media/archive/involved/sac/2006_sac_charter.pdf>

"Olympic Coast National Marine Sanctuary Final Management Plan and Environmental Assessment" https://nmsolympiccoast.blob.core.windows.net/olympiccoast-prod/media/archive/management/managementplan/mgmtplan_complete.pdf

11. PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT

Alison Reiser 'The Papahanaumokuakea Precedent:

Ecosystem-scale Marine Protected Areas in the EEZ' (2012) 13 APLPJ 210

Friedlander, Alan M., et al. "Understanding the Scale of Marine Protection in Hawai 'i: From Community-Based Management to the Remote Northwestern Hawaiian Islands." Advances in marine biology. Vol. 69. Academic Press, 2014. 153-203.

Freestone, David, et al. "Place-based dynamic management of large-scale Ocean Places: Papahānaumokuākea and the Sargasso Sea." Stan. Envtl. LJ 33 (2013): 191.

Kerr, J. et al. 2016. Pu'uhonua: A place of Sanctuary. The cultural and biological significant of the proposed expansion for the Papahānaumokuākea Marine National Monument. Accessed at <http://expandpmnm.com/wp-content/uploads/PMNM06142016.pdf >

Kikiloi, Kekuewa, et al. "Papahānaumokuākea: integrating culture in the design and management of one of the world's largest marine protected areas." Coastal Management 45.6 (2017): 436-451.

Kittinger, John N., et al. "Marine protected areas, multiple-agency management, and monumental surprise in the Northwestern Hawaiian Islands." Journal of Marine Biology2011 (2011).

MOA for Promoting Coordinated Management of the Northwestern Hawaiian Island Marine National Monument. Accessed at <https://nmspapahanaumokuakea.blob.core.windows.net/papahanaumokuakea-prod/media/archive/PDFs/MOA_Dec06_Color.pdf>

O'leary, Bethan C., et al. "Addressing criticisms of large-scale marine protected areas." BioScience 68.5 (2018): 359-370.

Office of Hawaiian Affairs. FAQs on Proposed Papahānaumokuākea Expansion. Accessed at <https://www.oha.org/ExpansionFAQs>

Papahānaumokuākea Marine National Monument. Accessed at <https://www.papahanaumokuakea.gov>

Sproat, D. Kapua, and Aarin F. Gross. "The NW. Hawaiian Islands Marine National Monument." Natural Resources & Environment 22.4 (2008): 57-59.

Toonen, Robert J., et al. "One size does not fit all: the emerging frontier in large-scale marine conservation." Marine pollution bulletin 77.1-2 (2013): 7-10.

12. RAPA NUI MARINE PROTECTED AREA AND NATIONAL PARK

Aburto, Jaime A., et al. "Management of marine resources through a local governance perspective: Re-implementation of traditions for marine resource recovery on Easter Island." Ocean & Coastal Management 116 (2015): 108-115.

Aburto, Jaime A., and Carlos F. Gaymer. "Struggling with social-ecological mismatches in marine management and conservation at Easter Island." Marine Policy 92 (2018): 21-29.

Aburto, Jaime A., Carlos F. Gaymer, and Georgina Cundill. "Towards local governance of marine resources and ecosystems on Easter Island." Aquatic Conservation: Marine and Freshwater Ecosystems 27.2 (2017): 353-371.

Ante Propuesta de Conservacion Marina - Mesa Del Mar - Sept 2015

https://www.scribd.com/document/279510696/Ante-Propuesta-de-Conservacion-Marina-Mesa-Del-Mar-Sept-2015

Chartier, C., A. Chirif, and Violet Tomas. "Report on the Human Rights of the Rapa Nui People on Easter Island." (2012).

Coulter, Robert T. "The Situation of the Indigenous People of Rapa Nui and International Law: Reflections on Indigenous Peoples and the Ethics of Remediation." Santa Clara J. Int'l L.13 (2015): 293.

Chartier, C., A. Chirif, and Violet Tomas. "Report on the Human Rights of the Rapa Nui People on Easter Island." (2012).

Crippa, Leonardo A. "THE INSPIRING RAPA NUI NATION'S EFFORTS TO REBUILD ITS GOVERNMENT AND REGAIN CONTROL OF ITS TERRITORY." Griffith Journal of Law & Human Dignity 2.2 (2014).

de la Maza, Francisca. "Tourism in Chile's indigenous territories: the impact of public policies and tourism value of indigenous culture." Latin American and Caribbean Ethnic Studies 13.1 (2018): 94-111.

Gaymer, Carlos F., et al. "Merging top-down and bottom-up approaches in marine protected areas planning: experiences from around the globe." Aquatic Conservation: Marine and Freshwater Ecosystems 24.S2 (2014): 128-144.

Government of Chile, June 8, 2018, "Latin America's largest Marine Protected Area created around Rapa Nui" https://www.gob.cl/en/news/latin-americas-largest-marine-protected-area-created-around-rapa-nui

Marley, J.E. Easter Island votes for world's newest marine reserve. February 27 2018. Mongabay. https://news.mongabay.com/2018/02/easter-island-votes-for-worlds-newest-marine-reserve/

Ma'u Henua, Rapa Nui National Park. Accessed at <http://www.comunidadmauhenua.org/en/about-us/>

Minority Rights Group International. Chile – Rapanui. Accessed at <http://minorityrights.org/minorities/rapanui/>

Ministerio de Relaciones Exteriores de Chile. Foreign Minister accompanies President Bachelet in handing over of Rapa Nui National Park. November 23, 2017. https://minrel.gob.cl/foreign-minister-accompanies-president-bachelet-in-handing-over-of-rapa/minrel/2017-11-24/152311.html

MoeVarua RapaNui. 2016. Ma'u Henua Indigenous Community. Accessed at <http://www.moevarua.com/mau-henua-comunity/>

O'leary, Bethan C., et al. "Addressing criticisms of large-scale marine protected areas." BioScience 68.5 (2018): 359-370.

Pueblo Indígena Rapa Nui v Chile (2011) MC-321-10, Inter-American Commission on Human Rights

Petit, Ignacio J., et al. "Protected areas in Chile: are we managing them?." Revista Chilena de Historia Natural 91.1 (2018): 1.

Pew Charitable Trusts. Rapa Nui Marine Protected Area. Accessed at <http://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2018/rapa-nui-marine-protected-area>

Radwin, M. "Marine park divides Easter Island's indigenous Rapa Nui" Al Jazeera 9 March 2016

Radwin, M Chile's Easter Island approves marine protection zone Al Jazeera 5 Sept 2017

Rebulica de Chile. Consejo de Ministros para la Sustentabilidad, Ministerio del Medio Ambiente. Propone a S.E. Presidenta de la Republica la Creacion del Area Marina Costera Protegida de Multiples Usos Rapa Nui. 22 November 2017. Accessed at <http://portal.mma.gob.cl/wp-content/uploads/2017/12/Acuerdo-N34.pdf>

Santiago Times "Chile creates five new marine protected areas", March 1 2018, http://santiagotimes.cl/2018/03/01/chile-creates-five-new-marine-protected-areas-video/

Teave, Erity, and Leslie Cloud. "Rapa Nui National Park, Cultural World Heritage: The Struggle of the Rapa Nui People for their Ancestral Territory and Heritage, for Environmental Protection, and for Cultural Integrity." World Heritage Sites and Indigenous Peoples' Rights. IWGIA Documen 129 (2014): 403-422.

Wei-Haas, M. "Chile Announces Protections for Massive Swath of Ocean With Three New Marine Parks" Smithsonian Magazine, February 27, 2018, https://www.smithsonianmag.com/science-nature/chile-protects-massive-swath-ocean-new-marine-parks-180968275/

Young, Forrest Wade. "Rapa Nui." The Contemporary Pacific29.1 (2017): 173-181.

Young, Forrest Wade. "Rapa Nui." The Contemporary Pacific30.1 (2018): 195-204.

Young, F. W. 2012. 'I Hē Koe? Placing Rapa Nui. The Contemporary Pacific 24 (1): 1-30.

Youkee, M. Easter Island candidate puts self-rule on ballot in Chile election. November 18 2017. The Guardian. Accessed online at <https://www.theguardian.com/world/2017/nov/18/easter-island-candidate-self-rule-chile-election>

13. SGAAN KINGHLAS – BOWIE SEAMOUNT MARINE PROTECTED AREA

Council of the Haida Nation Marine Planning Program. SGaan Kinghlas – Bowie Seamount MPA Management Plan. Accessed at <https://haidamarineplanning.com/initiatives/sgaan-kinghlas-bowie-seamount-mpa-management-plan/>

Council of the Haida Nation. Fisheries and Oceans Canada, Haida Nation and Canada increase protection at the SGaan Kinghlas – Bowie Seamount Marine Protected Area, 2018. Accessed at < http://www.haidanation.ca/?nooz_release=haida-nation-and-canada-increase-protection-at-the-sg%CC%B2aan-k%CC%B2inghlas-bowie-seamount-marine-protected-area>

DFO. 2011. SGaan Kinghlas Bowie Seamount Marine Protected Area Monitoring Indicators,

Protocols and Strategies. DFO Can. Sci. Advis. Sec. Sci. Advis. Rep. 2010/036.

DFO. SGaan Kinghlas -Bowie Seamount MPA. Accessed at <http://www.dfo-mpo.gc.ca/oceans/mpa-zpm/bowie-eng.html>

Government of Canada. Regulatory Impact Analysis Statement. Canada Gazette Part II, Vol. 142, No. 9. Accessed at <http://www.dfo-mpo.gc.ca/oceans/documents/mpa-zpm/bowie/SK-B-CGII-RIAS.pdf>

Memorandum of Understanding between Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans and the Haida Nation as represented by the Council of the Haida Nation. Accessed at < http://www.pac.dfo-mpo.gc.ca/oceans/protection/mpazpm/bowie/docs/Bowie%20MOU_Apr18_07_signed_version.pdf>

14. TORNGAT MOUNTAINS NATIONAL PARK, TONGAIT KAKKASUANGITA SILAKKIJAPVINGA

Canadian Parks Council. Aboriginal Peoples and Canada's Parks and Protected Areas. Accessed at <http://www.parks-parcs.ca/english/cpc/aboriginal.php>

Labrador Inuit Land Claims Agreement: Annual Report 2013-2014. https://www.aadnc-aandc.gc.ca/eng/1504191997659/1504192084911

Lemelin H. et al. 2016. Two Parks, One Vision – Collaborative Management Approaches to Transboundary Protected Areas in Northern Canada: Tongait KakKasuangita SilakKijapvinga/Torngat Mountains National Park, Nunatsiavut and le Parc national Kuururjuaq Nunavik . Chapter in Indigenous Peoples' Governance of Land and Protected Territories in the Arctic. 2016. Herrmann T.M. & Martin T. Eds.

Maher P.T. and Lemelin R.H. 2011. Northern Exposure: opportunities and challenges for tourism development in Torngat Mountains National Park, Labrador, Canaa. Polar Record 47(240):40-45.

Nunatsiavut Government. Co-management, working together. Accessed at <http://www.nunatsiavut.com/department/co-management/>

Parks Canada. Tongait KakKasuangita SilakKijapvinga / Torngat Mountains National Park of Canada Draft Management Plan. April 2018.

Parks Canada. Torngat Mountains National Park: Two paths, one destination. Accessed at <https://www.pc.gc.ca/en/nature/science/autochtones-indigenous/torngat>

Reports of the Auditor General of Canada. Fall 2015. Report 3 Implementing the Labrador Inuit Land Claims Agreement. Accessed at < http://www.oag-bvg.gc.ca/internet/English/att__e_41082.html>

15. VELONDRIAKE LOCALLY MANAGED MARINE AREA

Andriamalala G., Gardner C.J. 2010. L'utilisation du dina comme outil de gouvernance des ressources naturelles : leçons tirés de Velondriake, sud-ouest de Madagascar. Mongabay Open Access Journal – Tropical Conservation Science 3(4):447-472.

Cinner J.E. et al. 2009. Toward institutions for community-based management of inshore marine resources in the Western Indian Ocean. Marine Policy 33: 489-496.

Gardner C.J. et al. 2018. The rapid expansion of Madagascar's protected area system. Biological Conservation 220: 29-36.

Harris A.R. 2011. Out of sight but no longer out of mind: A climate of change for marine conservation in Madagascar. Madagascard Conservation & Development 6(1): 7-14.

Mayol T.L. 2013. Madagascard's nascent locally managed marine area network. Madagascar Conservation & Development 8(2):91-95

United Nations Development Programme. 2012. Village of Andavadoaka, Madagascar. Equator Initiative Case Study Series. New York, NY.

LMMA Network. Accessed at <http://lmmanetwork.org/who-we-are/vision/>

16. WHANGANUI RIVER (TE AWA TUPUA) AND TE UREWERA

Boyd, David. Rights of Nature: A Legal Revolution That Could Save the World. ECW Press, 2017.

Morris, James and Jacinta Ruru. "Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water?" (2010) 14:2 AILR 49.

Jones, Carwyn. New Treaty New Tradition: Reconciling New Zealand and Māori Law, (Canada: UBC Press, 2016).

Te Urewara Act 2014 (NZ).

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (NZ).

Whanganui River Deed of Settlement Ruruku Whakatupua - Te Mana o Te Awa Tupua 2014 (NZ).

Whanganui River Deed of Settlement Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui 2014 (NZ).

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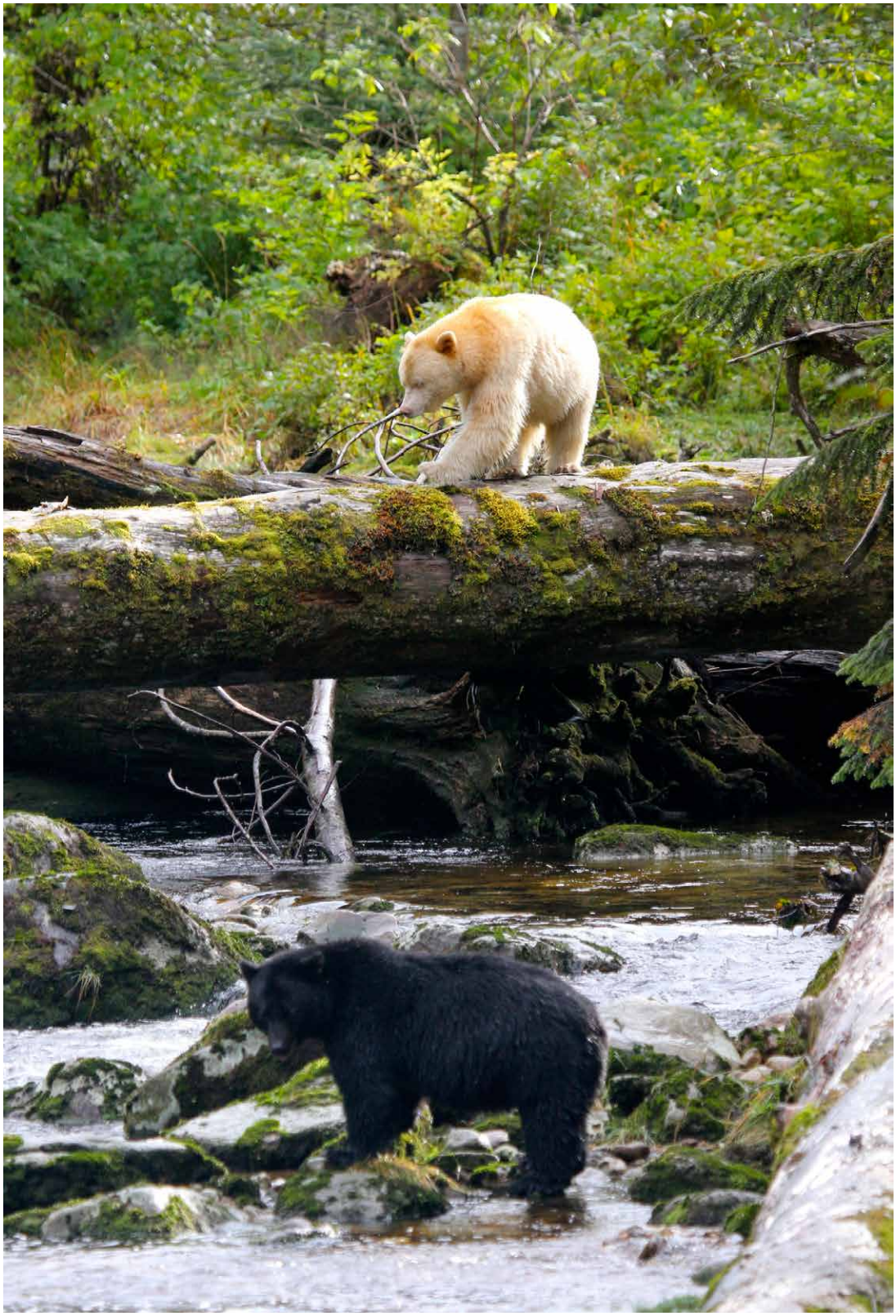

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