

Haida Governance Strategies for Effective Ecosystem-based Management:
A Critical Literature Review

by

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B.A., Vancouver Island University, 2015
M.P.A., University of Victoria, 2021

A Master's Project Submitted in Partial Fulfillment of the
Requirements for the Degree of

MASTER OF PUBLIC ADMINISTRATION

in the School of Public Administration

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University of Victoria

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Table of Acronyms

AFN	Assembly of First Nations
AMB	Archipelago Management Board
BCTC	BC Treaty Commission
CFN	Coastal First Nations (organization)
CHN	Council of the Haida Nation
CMA	Co-Management Agreement
DFO	Department of Fisheries and Oceans Canada
EA	Environmental Assessment
EAO	Environmental Assessment Office
EBM	Ecosystem Based Management
EEZ	Exclusive Economic Zone
FLNRO	(Ministry of) Forests, Lands and Natural Resources Operations and Urban Rural Development (formerly Ministry of Forests)
FN	First Nation
FNFC	First Nations Fisheries Council
FNGC	First Nations Governance Committee
FNMPC	First Nations Marine Policy Committee
G2G	Government-to-Government
GBI	Great Bear Initiative
GH	Gwaii Haanas (place and/or office/field unit)
GHA	Gwaii Haanas Agreement
GHMA	Gwaii Haanas Marine Agreement
GHNPR	Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site

HaiCo	Haida Enterprise Corporation
HCC	Hereditary Chiefs Council
HGMA	Haida Gwaii Management Area
HGMC	Haida Gwaii Management Council
HGMP	Haida Gwaii Marine Plan
HGMSC	Haida Gwaii Marine Steering Committee
HGSLU	Haida Gwaii Strategic Land Use Agreement
LOMA	Large Ocean Management Area
MOU	Memorandum of Understanding
MPA	Marine Protected Area
OA	<i>Oceans Act</i>
PNCIMA	Pacific North Coast Integrated Management Area
SCC	Supreme Court of Canada
TEK	Traditional Ecological Knowledge

Note on Terminology

Terminology relevant to Indigenous populations has a loaded connotation that can, on the one hand, represent colonial methods of identity control and misrepresentation; while, on the other hand, empower people to self-identify. I attempt to navigate through this sensitive landscape by offering some definitions for the purpose of clarification.¹

Note that capitalization is only legally required for the term “Indian,” due to its inclusion in Canadian law. Out of respect, I have chosen to capitalize any term referring to Indigenous Peoples.

“**Aboriginal**” is a term that was popularized following its 1982 inclusion in Section 35 of the Canadian Constitution. The term refers to First Nations, Inuit, and Metis peoples.

“**First Nations**” gained popularity in the 1970s and 1980s, as a term to replace “Indian.” Although it is not a legal definition, the term allows for more flexibility when reference is made to the ethnicity of a community. In the singular, the term refers to a particular community, such as a band or larger grouping of individuals.

“**Government**” in this report means a body that is representative of the nation-state model of governance. The term may be used to broadly describe government response to an activity; it may also be expressed as “dominant government,” depending on the context. It may also reference Indigenous governments, such as government to government (G2G) communications. In whichever way the term is used, I have endeavored to be clear in my meaning of the term within the body of this report.

“**Indian**” is a legal definition under the *Indian Act*, and refers to a First Nations person who has status under authority of the Act. Although the term is not popular, some First Nations people might refer to themselves as Indian, to deliberately acknowledge the colonial policies that have impacted their identity.

“**Indian Band**” means a grouping of status Indians.

“**Indigenous**” is used as an umbrella term within this report, referencing the earliest people to have resided in a particular area since beyond living memory. In acknowledgement of the immense diversity of cultures, nationhoods and worldviews contained within this term, I have endeavoured to refer, where possible, directly to the ancestral heritage of the community discussed, such as “The Haida,” or “The Tagbanua.”

“**Traditional knowledge**” means the knowledge accrued by Indigenous Peoples over time, with regards to the management of the ecosystems within which they have existed since time immemorial. Throughout this report, traditional knowledge may be expressed as Traditional Ecological Knowledge (TEK) or Ecosystem Based Management (EBM) principles.

¹ <https://indigenousfoundations.arts.ubc.ca/terminology/>

Acknowledgements

Thanks to Helga, for providing a safe space for discussion and for setting deadlines that helped me to envision the completion of this project.

Thanks to Emmanuel, for igniting my passion for borders.

Summary

The emerging focus in British Columbia on Indigenous self-determination over negotiated borders requires a detailed focus from governments on the acknowledgement of Indigenous entitlement and the sustainable management of land and marine ecosystems that have stood the test of time. Rich in resources that have provided revenue for the province, these ecosystems have been significantly impacted by exploitative extraction practices that have damaged both the environment and the subsistence and cultural livelihoods of their Indigenous stewards. While B.C. laws have provided some protection to Indigenous Nations and their ancestral domains, these laws have often been created to favour corporations rather than addressing the special protection afforded to Indigenous Nations under international and domestic law. As a result, many Nations are forced to depend on political clout for regaining self-determination (Brunet-Jailly, 2015, p. 29).

For coastal nations like the Haida, management over ancestral domains is particularly challenging due to the complex matrix of legislation over the land and surrounding oceanscapes. Juxtaposed within the liminal state of a Pacific Ocean borderland that encompasses the administrative borders of Canada, the United States, British Columbia, and Alaska, the ancestral domain of the Haida Nation seems a boundless expanse that is consistently unacknowledged and at risk of infringement by a host of entities. With the aim of addressing this policy gap, the Borders in Globalization Project functions as an international academic network to assist policymakers in making informed decisions on equitable co-management agreements that take these points and others into consideration.

This report summarizes the Haida Nation's evolution in governance since the creation of its governing council, through examination of the strategies by which it has managed the resource base within its borders. The aim of this report is to answer the following research question:

1. What are the strategies that the Haida Nation have used to gain self-determination?

The secondary questions related to this research question are:

- i) How are disputes² addressed with the Province of British Columbia and the Government of Canada (government) in co-management relationships?**
- ii) How are borders treated by government in the case of Haida sovereignty?**
- iii) What can be learned from the Haida in terms of other border questions, such as maritime boundaries?**

² Dispute: A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other (Black's Law Dictionary, 2nd ed., The Legal Dictionary, App version 1.0. updated Jan. 24, 2016).

Methodology

This report uses a qualitative approach to answer the above questions. First, a literature review was employed to provide insights into how the Haida Nation manages its land and marine resources and the challenges to shared decision-making over resource governance. This was achieved through an analysis of the existing literature from academic journals, independent research reports, working papers and conference papers. Gray literature gathered throughout this process was organized and stored for use in building a jurisdictional scan for this report.

Using the gray literature, a three-way jurisdictional scan was conducted to assess how the Haida First Nation performs against other island-based Indigenous Nations in managing borders, and the impacts of border infringements upon their ability to effectively manage their marinescapes. The other two jurisdictions selected for the scan were Coron Island in the Philippines and the Cook Islands. Coron Island was selected because of its Indigenous inhabitants, the *Tagbanua* People, and their adaptation to continual marginalization by the colonial population of the Philippines.

The Cook Islands was chosen for several reasons. First, like Haida Gwaii, the Cook Islands is home to an Indigenous majority known as the Mauri, whose ancestral claims extend to the marinescape. Second, the Cook Islands has a unique style of governance, in which it uses a free-association relationship with New Zealand for foreign affairs and national defense. Third, the Cook Islands has formed strategic relationships with governments and non-governmental organizations around the world, to assist with managing marine resources and thereby enhance the effectiveness of its governance.

Key Findings

The literature review revealed the following findings:

1. Strict environmental conservation policies tend to disregard the Haida as stewards of the land and sea.
2. Haida sovereignty is impeded by the actions of the statutory decision maker.
3. Differing policies across Canada-U.S. International borders split and disempower Haida communities.
4. Climate change impacts Haida ancestral domains, due to fluctuating sea levels.
5. Corporatization can fragment communities and make the Haida vulnerable to deception.
6. High-dollar stakeholders vying for salmon catch impact Haida subsistence fishers.
7. Disputes exist between sustainable use and job creation in commercial fisheries.
8. Variability amongst biologist subject matter expertise is greater than that of Haida subject matter expertise and could negatively impact decision-making in conservation of the herring food web.

The jurisdictional scan indicated that:

1. Indigenous Nations seeking to self-determine risk spreading themselves bureaucratically thin when dealing with multiple entities in government, resulting in a lack of capacity for monitoring borders and maintaining vigilance over marine resources.
2. Indigenous Nations run the risk of being boxed into reconfigured identities of indigeneity, and being manipulated by a dominant government or organization for its own self-interest.
3. Claims of indigeneity are generally only enabled by members of Indigenous Nations with the economic means to do so, thereby increasing the vulnerability and marginalization of groups within the Nation.
4. Non-governmental organizations (NGOs) can empower and educate Nations seeking to self-determine, yet they do so to fulfill their own agendas and lack legal accountability to the Nations.
5. Fledgling Nations with decentralized governance structures are at risk of being bribed, manipulated and/or treated with violence by NGOs, researchers and other entities.
6. Strict environmental conservation boundaries imposed by dominant governments tend to block access of Nation members to the subsistence resources that many depend upon for survival.

Discussion

Through analysis of the literature review and the jurisdictional scan, several crosscutting themes emerged:

- Flexibility toward co-management arrangements: the Haida community needs space and time to resolve trade-offs relevant to informed decision-making.
- Balance relationships between government and NGOs: the Haida Nation needs to find a balance between the entities that are representative of these groups.
- Quota holding system and licensing: A reexamination of this system is required to understand its impact upon subsistence fishers and black-market economies.
- Performance measures and tracking: Third party metrics and tracking are needed to gauge the progress and effectiveness of co-management agreements.

The results showed that BIG researchers should seek to understand the roles they could play in supporting Haida self-determination and governance over the marine resources within its ancestral domain.

Recommendations

Based on the research findings, several recommendations emerged that would allow BIG researchers to support Haida leadership and self-government development. They are presented in a chronological fashion, as a means of assisting Dr. Brunet-Jailly in determining next steps for BIG actions:

1. Further qualitative research.

First, further qualitative research by BIG researchers, such as conducting interviews with Haida and federal/provincial officials, would be of benefit in gaining detailed insights on the initial findings of this report.

2. Create a series of standardized approaches for corporations or organizations to use in determining if and how the Haida community would like to be engaged.

Next, BIG researchers should build on existing research to conduct stakeholder consultations that tease out details relevant to issues encountered in co-management processes.

3. Help government re-examine how its roles and actions in co-management of Haida marine territories could negatively impact the economy of subsistence fishers and Haida Gwaii as a whole.

As a third step, BIG directors should utilize policy forums and summer schools to initiate discussions with policymakers on reexamination of the quota holding system and licensing.

4. Use tools during community consultation that allow Haida the flexibility to resolve trade-offs before making decisions.

Next, BIG directors should encourage government to determine how and in what manner the Haida community would prefer to be engaged on policy issues. Consideration must be made toward funding for travel and extending timelines that would allow the community time to make decisions in an informed manner.

5. Provide third-party evaluation to track progress and quality of co-management processes.

Finally, BIG researchers should use Hawkes' (1996) model for gauging the effectiveness of co-management processes. Measurement of performance at points throughout the process would be helpful benchmarks that could also lead to establishing other performance measures, relevant to cultural safety and border monitoring.

The recommendations above would also benefit the Haida Nation and Haida Gwaii in a number of ways. First, BIG researcher follow-up on this report's findings would assist Nation officials in enhancing their scope of understanding on risks posed to the Nation and its resource base. Second, the facilitation of policy forum and summer schools by BIG would educate the academic community and policymakers on the complexities of the risks facing the Haida Nation. This action would release pressure on Haida officials and reduce the risk of bureaucratic thinness posed by dealing with a multi-level governance system. Finally, the establishment of

performance measures and tracking would allow Haida officials to view the Nation's progress within the process, so that mitigation strategies for issues could be applied in a timely manner.

1.0 Introduction

Although many advances in Indigenous governance have occurred in British Columbia since the 1982 repatriation of the Canadian Constitution and the establishment of B.C.'s Treaty process in 1993, movement toward individual Nation sovereignty remains incremental (Frost, 2018). Several factors have been inhibiting Indigenous Nations from successfully governing the resources within their borders, including climate change, internal divisiveness, limited infrastructure and economic development, territorial disputes, border security, corporatization, conflicting land and marine use agendas, and issues within co-management frameworks with government (King, 2004; MacKay, 2015).

The Haida Nation is distinctive in having successfully re-established rights and entitlement over its ancestral domain, during a period of less than forty years (Jones et al, 2017; MacKay, 2015). The strategies by which this has been achieved are numerous, yet their encapsulation within current literature is scant. A lack of published work and research on Haida governance strategies impacts Government ability to understand and respond to the needs of the Haida Nation, and may impact the Nation's ability to identify gaps that might affect the evolution of its governance. As the Haida People move forward in co-management of their marine spaces with the Government, the issue of shared decision-making remains at the root of their discontent (King 2004).

The isolation of Haida Gwaii and its reliance on diesel-powered energy make it expensive for commercial operators to maintain businesses on Haida Gwaii, which limits economic opportunities and media communications for Haida citizens (Takeda & Ropke, 2010). Ferries are sporadic and costly, due to the dangerous currents and strong winds that exist around the islands. With many people living below poverty lines, subsistence fishing, hunting and plant gathering are important lifestyle elements for survival, as are integrative ecological management strategies that ensure the availability of these resources into the future.

The client for this project is the Borders in Globalization research program (BIG), which is represented by Dr. Emmanuel Brunet-Jailly. The BIG is a multi-university consortium that partners scholars with policy makers throughout Canada, the United States, Europe, Asia and the Middle East. Set up and funded in 2013, through SSHRC and European Union Center of Excellence endorsed grants, Dr. Brunet-Jailly leads the BIG from the Centre for Global Studies at the University of Victoria, in conjunction with Victor Konrad at Carleton University.

Of primary interest to the client is how globalization impacts borders and borderlands. BIG is structured according to six themes: culture, flows, governance, history, security, and sustainability. Indigenous governance holds significance because of how it intersects across many of these themes. The Haida Nation is of specific interest because of its geographic isolation from Canada, a rich history embedded within its culture, and its success in gaining self-determination.

1.1 Project Objectives and Research Questions

The primary question of this project is:

What are the strategies that the Haida Nation have used to gain self-determination?

To support the primary question, this project also seeks to answer the following secondary questions:

- 1. How are disputes addressed between the Haida First Nation and government in co-management relationships?**
- 2. How are borders treated by government in the case of Haida sovereignty?**
- 3. What can be learned from the Haida in terms of other border questions, such as monitoring maritime boundaries?**

These questions will frame a comprehensive review of literature, relative to Haida co-management, that will aid in developing a best-practices framework for Indigenous governance.

The objective of this project is to highlight policy gaps and help to ameliorate G2G engagement between First Nations and all levels of government (also called Government-to-Government-to-Government relations). By reminding all levels of government of their fiduciary duty to consult with First Nations, in matters of land and marine use planning and otherwise, consideration of this project could help Government avoid lengthy court battles over land and marine disputes and would reduce the financial drain upon resources on both sides. This project could be of value to other First Nations throughout Canada, by helping to develop a best-practice framework and tools for self-determination.

In support of these objectives, this report will provide three deliverables to the client:

- Literature review: summary and analysis of literature on co-management and the Haida Nation, covering a variety of academic and professional sources, jurisdictions and sectors.
- Jurisdictional scan: summary and analysis of three case studies relevant to Indigenous island nations seeking self-determination and governance over ancestral domains.
- Recommendations: general recommendation flowing from the literature review and jurisdictional scan to assist the client in implementing next steps.

1.2 Organization of Report

This report is composed of eight chapters, including this introduction as Chapter 1. Chapter 2 outlines background information on BIG, Indigenous governance, the concept of collaborative management and an overview of legal precedents relative to the Haida Nation's journey to reaffirm

self-determination. Chapter 3 provides a detailed description of the research methodology employed in conducting this project. Chapter 4 reviews the literature on Haida co-management with Government and analyzes the findings. Chapter 5 provides a three-way jurisdictional scan, by presenting the Haida First Nation as a case study against the Tagbanua People of Coron Island in the Philippines and the Cook Islanders, to develop an understanding of how other jurisdictions have co-managed shared spaces. The final three chapters consist of findings and themes, options and recommendations for the client, and the conclusion of the report.

2.0 Background

Many Indigenous Nations have used values, such as the respect for life and the acknowledgement of self as an integral part of the environment, to govern their ancestral domains (CHN, 2020; Dean, 2009, pp. 33-34; Ingram, 1995, p. 78; Shapcott, 1989, p. 57; Singleton, 2009). These practice-driven values have traditionally ensured the availability of subsistence resources into the future, and underpin Indigenous sovereignty provisions enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”). Under authority of Article 3 of the Declaration:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (U.N., 2018).

Indigenous self-determination, however, has been an issue for colonial administrations, stemming as they do from a Westphalian nation-state model of governance that delineates territories (and the resources within these lines) by virtue of international border lines (Brunet-Jailly, 2009). These dominant governments have tended to disregard the pre-existing sovereignty of Indigenous Peoples over their ancestral domains, relegating them to the status of open-access users who lack a plan of accountability for managing their resource base (Dean, 2009).

Exclusion of Indigenous Peoples from the resource base has had several effects. While adaptation to the dominant society has been a frequent measure, past efforts demonstrate mixed success (Price, 1982, p. 44). Staying together as a cultural group and feeding into oral traditions that supply wisdom on sustainable practices and alternative subsistence strategies has been another mitigation strategy. Yet this strategy has encountered formidable obstacles, such as the banning of potlatch and resultant cultural genocide throughout Indigenous societies across Canada (Lee, 2012, p. 6; Price, 1982).

At some point in time, Indigenous Peoples might go through a process of retreating to borderland communities, where the dominant government’s presence might be less heavily felt. But it is within these borderlands where Indigenous Peoples are also most at risk to criminal elements of the black market. It is here that the tragedy of the commons, or open access, is most at risk of occurring (Horton, 2017).

It is also in the liminal space of the frontier-borderland that Indigenous Peoples can be aided by NGOs. Particularly where the trend toward environmental politics has increased over the ensuing decades, in response to increasing environmental degradation posed by development and often-unbridled resource extraction, the agenda of environmental NGOs often intersects with the interests of Indigenous Peoples in gaining ownership and control over ancestral domains (Alper, 1997). NGOs can often act as coaches or facilitators to Indigenous Peoples, by helping them to

understand their human, subsistence and ancestral rights within the international context. International human rights conventions, such as the 1989 Convention on Indigenous and Tribal Peoples in Independent Countries (ILO) and the Declaration, provide benchmarks against which States can measure their performance rates with Indigenous governments.

While Bryant (2002) cautions that the support of NGOs brings Indigenous Peoples back into the fold of governmentality and surveillance by dominant governments, this is a risk contingent on the available resources that dominant governments have on hand to enforce policies on Indigenous Peoples. In reality, governance by Indigenous Peoples over ancestral domains can be a win-win over the long term: it reduces administrative burden to the dominant government, highlights their compliance with international policies on Indigenous Peoples rights, and creates a space for Indigenous Peoples to empower themselves in their quest for self-determination (Guenette & Alder, 2007; Jones et al, 2010; Low & Shaw, 2012).

To this aim, the collaborative management, or co-management, process seems an important function. When viewed as a means to an end, a co-management process can be a formal G2G partnership, in which Indigenous governments utilize input from the dominant government to reconstruct their traditional governance strategies over ancestral domains, relevant to the current state of global and domestic affairs.

The following section discusses the client, the Borders in Globalization Program, then defines co-management, explores the events leading up to Haida co-management of shared spaces with Government, and then discusses the impact of important legal cases on the co-management process.

2.1 Borders in Globalization

The project client, Borders in Globalization research program (BIG), was created out of a 2013 Partnership Grant supported by Canada's Social Sciences and Humanities Research Council and the European Union's Erasmus+ Program. Border studies are globally placed, so the core partnership for BIG is grounded in Canada, while associating with key academic centers worldwide. This provides support for a global policy-research agenda that serves Canadian interests.

The basic goal of BIG is to build excellence in the knowledge and understanding of borders. To this end, the partners work together to create new policy and foster knowledge transfer in order to address globalization forces such as security, trade and migration flows, and to understand the forces of technology, self-determination and regionalization that are affecting borders and borderlands in regions around the world.

A central tool for developing and transferring knowledge on borders and borderlands is the round table, in which policy makers and academics share the ideas that inform BIG's work. These round tables lead to research, policy forums, summer schools, conferences, policy reports, briefs and

books, and inform both theory and practice related to orders. Policy makers, policy activists and social scientists need more than the existing and narrowly defined explanations of border issues, particularly when borders are being negotiated. In the context of Indigenous self-determination, co-management takes the form of attempting to resolve any issues which may affect the assertion of Indigenous title on the same geographic area as that which is claimed by government.

2.2 Historical Context

Contact between people indigenous to the lands known locally as “Turtle Island” and European newcomers was initially grounded in trading relationships. In 1670, Great Britain created by Royal Charter the Hudson’s Bay Company, with the intent of establishing settlements across these “new” lands and extracting revenue from fur trading (National Centre of First Nations Governance, 2007, p. 7). Increasing European populations and trading posts increased the types of trade offerings (such as European tools and weapons) yet also increased the risk of exposure to new diseases, which severely impacted both the populations and governance systems of the Nations (Ingram, 1995).

Nevertheless, a relationship was forged between the Indigenous Nations and Britain that was enhanced during the French and Indian War of 1754 to 1763 (NCFNG, 2007). Following Great Britain’s defeat of the French and assertion of sovereignty over British North America (BNA), existing Indigenous governance structures were acknowledged through the *Royal Proclamation of 1763*. The Proclamation mandated the British Crown to establish treaties with all Indigenous Peoples, to ensure that land rights were not infringed upon by settlers (Penikett, 2012, p. 3):

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.

Yet once the Indigenous Nations were not required as allies, the Crown changed its treaty agenda to one of land acquisition. Granting the Hudson Bay Company (HBC) exclusive rights to trade with all Indigenous Peoples in unsettled areas throughout BNA in 1821, the Crown renewed this license in 1838 and again in 1849, in response to the established United States-British border culminating from the 1846 Oregon Treaty (Penikett, 2012). This latter license was issued under the condition that the HBC establish a Crown colony on Vancouver Island.

Appointed as governor to the Colony of Vancouver Island in 1851, James Douglas of the HBC negotiated fourteen land purchases from Indigenous Nations throughout the southern part of the Island, all on behalf of the Crown (Penikett, 2012). These transactions (later known as the Douglas

Treaties) protected Indigenous villages and *usufruct*³ rights on the ceded territories, while allowing the Crown to secure lands for resource development.

In 1867, the Dominion of Canada was created under authority of the *British North America Act*, which included provisions for administering over the Indigenous Nations (NCFNG, 2007). The *Indian Act* was passed in 1876, with a provision granting Canada the authority to replace Indigenous hereditary governance systems with elected band council systems of governance. Traditional territories were reduced to tiny Crown land reserves, administered by the respective band council. Membership within each band council relied upon an *Indian Act* provisioned measurement of “blood quantum,” which was afforded according to a set of conditions that separated Indigenous people into categories of band membership “status” and “non-status” (Palmater, 2011).

The expense posed by the treaty process meant that most of British Columbia was unceded Indigenous territory after it joined the Dominion of Canada in 1871. Any challenges to B.C.’s governance by existing Indigenous governance structures were mitigated by Canada’s 1884 amendment to the *Indian Act*, which banned potlatch ceremonies (Ingram, 1995, p. 79). Only in 1899, when issues surfaced relating to the Klondike Gold Rush, did the Federal government step in to arrange treaties with eight First Nations in northeastern British Columbia. As with the Douglas Treaties, the Treaty 8 released Indigenous title to land in exchange for *usufruct* rights and other benefits (Government of B.C., 2020). By this time, British Columbia had benefitted from natural resource extraction province-wide while signing treaties for only 3% of Indigenous land (Takeda & Ropke, 2010, p. 180). In 1927, the historical treaty-making process ended, when the *Indian Act* was amended to criminalize acts of fundraising or litigation in pursuit of advancing Indigenous land claims (NCFNG, 2007).

However, following World War II, the social landscape changed across Canada. In 1951, the *Indian Act* prohibition over land claims was lifted, and “status” people were given the right to vote in federal elections. These limited freedoms occurred amidst the foil of the B.C. Government intent to build post-war economic growth, through the establishment of forest tenure systems that allowed logging companies to rent Indigenous land at low cost and to extract resources for extended periods (Low & Shaw, 2012, p. 2).

By the 1960s, public alarm over timber scarcities intersected with human rights complaints, to fuel an Indigenous rights movement that soon gained global proportions (NCFNG, 2007; Takeda & Ropke, 2010, p. 180). After more than a decade of lobbying by Indigenous Nations for constitutional recognition of land rights, Canada’s Constitution was patriated and amended in 1982, to include acknowledgement of Indigenous rights over traditional territories and interests.

³ From the Latin phrase, *usus et fructus*, which means “use and enjoyment.” Usufruct rights imply the usage of subsistence resources upon land owned by someone else. <https://www.merriam-webster.com/dictionary/usufruct>

2.3 Linking Indigenous Self-governance to the Canadian Constitution

Today, Indigenous rights to self-govern have been constitutionally protected through section 35 of Canada's *Constitution Act, 1982 – The Canadian Charter of Rights and Freedoms*:

- (1) *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*
- (2) *In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Metis peoples of Canada.*
- (3) *For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.*
- (4) *Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.*

In 1991, British Columbia established the B.C. Claims Task Force, which sought to create a treaty negotiations process that would provide negotiated self-government arrangements with constitutional protection. Through B.C.'s treaty negotiations process, the imposed band system of governance is in the process of being replaced, so that Indigenous Nations may reestablish governance over their traditional domains (B.C. Treaty, 2020). Treaty negotiation is a phased process that follows six steps:

1. *Statement of Intent to Negotiate* – identifies the First Nations governing body and delineates the boundaries of its traditional territory.
2. *Readiness to Negotiate* - demonstrates that the Government of Canada, Government of B.C. and the FN claimant are all committed toward negotiations with a qualified negotiator and agreed-upon mandate.
3. *Negotiation of a Framework Agreement* – includes identifying items to be negotiated and establishes a time frame for concluding negotiations.
4. *Negotiation of Agreement in Principle* – involves detailed negotiations to reach agreement on natural resources, government structures, regulatory processes and other important topics.
5. *Negotiation to finalize a Treaty* – builds on the signed Agreement-in-Principle to resolve any other issues that have arisen.
6. *Implementation of the Treaty* – negotiations on how the treaty is implemented.

The Charter is an important staging point from which reconciliation with Indigenous Nations begins, while the final treaty settlement is the realization of Indigenous self-determination. Yet it is the process between these two states that requires further scrutiny, since the territories over which self-governance is asserted may be subject to degradation posed by extractive industries. Land and marine protection agreements are essential stepping-stones toward establishing final

treaties. It is within these agreements that collaborative management plays an important role (B.C. Treaty, 2020).

2.4 Provisions for Indigenous Self-Determination

One point that continues to impact reconciliation of Indigenous self-determination with Government is that the concept is defined differently by each party, as seen below:

Perspective of Government

Self-government provisions vary from Nation to Nation, and may be either protected under the Constitution (never changed unless Canada, B.C. and the First Nation agree unanimously to the change) or under enactment through Parliament and the B.C. Legislature (municipal-style self-government). The following provisions apply to self-governance:

- Indigenous self-government is statutorily provisioned within Canada's Constitution. Indigenous Peoples are citizens of Canada and the province in which they reside. Different degrees of jurisdiction and authority may be exercised by each Indigenous government.
- As with any government body in Canada, the Canadian Charter of Human Rights and Freedoms and the Criminal Code of Canada apply towards Indigenous governments.
- Statutory authority administered by Indigenous governments applies to laws over treaty land and the provision of public services for treaty citizens, such as (but not limited to) health care, education and social welfare.
- Most treaty laws apply only to treaty citizens, with the exceptions of zoning and transportation laws, which also apply to non-treaty citizens. Federal, provincial, territorial and Indigenous government laws must be harmonized.
- Consultation must be initiated by the Treaty Government with locals on decision-making that affects them (health, school and police boards).

Perspective of Indigenous Governments

In acknowledgement that Indigenous self-government has never been extinguished, many Nations have established self-governance principles within the context of their own constitutions. The following provisions apply to Indigenous self-determination:

- Indigenous Nations have an inherent right to self-determination over territories, which predates European contact. Leadership is determined by citizenship under each Nation's Constitution.

- Nations create governing structures and institutions that align with their cultural needs.
- Self-determining Nations determine citizenship criteria.
- Nations develop their own legislation and policies, including rights over their ancestral jurisdictions.
- Nations have the right to use revenue sources to maintain governance and enforcement of laws and policies over ancestral jurisdictions.
- Self-determining Nations develop fiscal relationships with Canada and depend on a broad range of revenue sources.
- Self-determining Nations negotiate jurisdictional and service delivery agreements on a government to government basis (Centre for First Nations Governance, 2020).

Canada has attempted to mitigate this issue by endorsing the 2010 United Nations Declaration on the Rights of Indigenous People, and taking steps to enshrine the Declaration into federal law (Canadian Press, 2021). As with the treaty process, implementing the Declaration into law and defining provisions to the satisfaction of Indigenous Nations promises to take years to realize.

2.5 Collaborative Management

The harmonization of laws at all levels of government often requires partnerships to be formed. To this end, collaborative management, or co-management, is a power-sharing model that has frequently been used to sustainably manage common-pool resources, and ensure their availability into the future (Carlsson & Berkes, 2005). Yet that model can vary, according to the entities involved and the equitable distribution of legal and institutional power between them.

2.5.1 CO-MANAGEMENT BETWEEN STATES

As the largest common-pool resource, comprising 72% of the Earth's surface, the oceans have required co-management structures to combat unbridled extraction from their depths, and to ensure that coastal states may sustainably govern their marine resources. In 1982, after a 9-year process of negotiations between member coastal states around the world, a multi-lateral treaty over the oceans was created: The United Nations Convention on the Law of the Sea (UNCLOS).

Key provisions of the UNCLOS were as follows (Environment, 2020):

1. Establishment of transit boundaries 12 nautical miles from coasts. Other states have the right of passage through these waters.

2. Coastal states have sovereignty over each respective 200-nautical-mile Exclusive Economic Zone (EEZ), which includes rights of exploration, exploitation, conservation, and management of natural resources.
3. In ice-covered areas within the limits of the EEZ (where applicable), coastal states have the right to prevent, reduce and control marine pollution from vessels.
4. Jurisdiction over the living and non-living resources of the seabed and subsoil of the continental shelf.
5. Regime for developing mineral resources of the deep seabed and sharing benefits for areas beyond coastal borders.
6. Rules bounding the conduct of marine scientific research.
7. Rules dictating conservation and management measures that ensure long-term sustainability of fisheries.
8. Imposed duty for all signed coastal states to protect and preserve the marine environment.

As one of the signatories of the UNCLOS, Canada established Global Affairs Canada as the lead administrative body for the UNCLOS, in partnership with the following federal bodies:

- Environment and Climate Change Canada,
- Fisheries and Oceans Canada,
- Transport Canada,
- Parks Canada,
- Crown-Indigenous Relations and Northern Affairs Canada, and
- Natural Resources Canada.

Canada plays an active role within various bodies created under the UNCLOS, which include the International Seabed Authority, the Commission on the Limits of the Continental Shelf, and the UN Fish Stocks Agreement.

British Columbia's role in regulating oceanscapes is more detailed. Under authority of a 1984 Supreme Court of Canada decision (the Strait of Georgia Reference), British Columbia's formal boundaries upon entering Confederation in 1871 consisted of all land, coastal straits and submerged lands. BC thereby "owns" the waters and submerged lands of the Strait of Juan de Fuca, the Strait of Georgia, Johnstone Strait and Queen Charlotte Strait and the waters and submerged lands between major headlands. This ownership extends over the natural resources and marine resources within these areas. Activities, such as walking on a beach, sailing through a passage, mooring in a bay, building a dock, or raising oysters are all subject to provincial legislation under a complex matrix of government bodies.⁴

2.5.2 CO-MANAGEMENT AND INDIGENOUS NATIONS

⁴ See Appendix I for more details.

Underlying the overlapping boundaries imposed by nation-states are the ancestral domains of Indigenous Nations, which have been sustainably managed using ecosystem-based principles for thousands of years (Singleton, 2009).

In a domestic context, co-management regimes typically occur when disputes exist between local governments or communities and the State (Laidlaw & Passelac-Russ, 2012, p. 3). Co-management is a contested topic amongst Indigenous Nations, largely due to the historic tendency of the State to dominate common-pool resources and to refute the ecosystem-based principle of land-sea integration (Carlsson & Berkes, 2005). The International Union for Conservation of Nature and Natural Resources (IUCN) defines co-management as:

A partnership in which government agencies, local communities and resource users, non-governmental organizations and other stakeholders negotiate . . . the authority and responsibility for the management of a specific areas or set of resources (1997).

As an active participant of the IUCN, Canada is required to take action on a host of initiatives relative to the conservation of oceanscapes and landscapes, along with collaborative consultation with the Indigenous Nations that often directly rely on the sustainable functioning of these ecosystems for their survival (Benidickson, 2009, p. 7). The interconnectedness of healthy marine ecosystems with human health and economic opportunity is a priority; such that political boundaries blur when these ecosystems become degraded (IUCN, 2019).

To that end, since 1975, co-management over oceanscapes and landscapes has been used by the Government of Canada and its provincial/territorial governments as a power-sharing mechanism with Indigenous Nations, using agreements through which the conservation and management of resources is meant to be achieved. Each of these agreements is unique, based on what exactly is co-managed (a species or a geographic area), and contingent upon the socioeconomic and cultural diversity amongst Indigenous peoples in Canada (Notzke, 1995). Co-management agreements with the Haida First Nation are among the most famous and widely publicized in Canada.

2.6 The Haida First Nation

For nearly 40 years, the Haida Nation has sought to regain governance over the archipelago and surrounding oceanscapes that form its ancestral domain (Jones et al, 2017). Following confrontations in the 1980s with corporate logging enterprises over the degradation of the forests and salmon-bearing streams on the southern part of the Haida Gwaii archipelago in Gwaii Haanas, the Haida Nation initiated a series of actions that resulted in the landmark 1993 Gwaii Haanas Agreement with the Government of Canada (Guenette & Alder, 2007).

Administering over Gwaii Haanas as an equal member within the Archipelago Management Board with Parks Canada, the Haida Nation continued to push for resolution of its treaty claim, while using the co-management framework to push for protection over marinescapes adjacent to the

Gwaii Haanas territorial area (Jones et al, 2017, p. 156). The success of the Nation was reflected in the creation of the Gwaii Haanas Marine Agreement in 2010, and the enlargement of the boundaries to include a 10 km perimeter of marine protected area (MPA) along the coast of Gwaii Haanas. The AMB was also expanded, to consist of three elected Haida members, 2 members of Parks Canada, and 1 member of the Department of Fisheries and Oceans (DFO).

Considerably influenced by the commercial fishing industry, the DFO has traditionally taken a divergent management approach of fish stocks to that of the Haida Nation (Jones et al, 2017, p. 156). Yet during a time of enhanced environmental degradation posed by illegal dredging, dumping, and oil spills (Rogers and Stewart, 1997, p. 253), and the demonstrably declining fish populations, work with fish stocks is a sensitive endeavor.

In 2015, the Haida's power within the co-management framework worked in its favour. A Supreme Court injunction was granted, which allowed the Haida Nation to close its herring fishery for conservation measures, against the wishes of the DFO (Jones et al, 2017, p. 154). Yet while Haida authority over its ancestral domains remains contested and the CHN negotiates at the treaty table, the Gwaii Haanas Agreement still functions as a collaborative framework within which G2G relationships can be built through shared decision making over natural resources.

2.7 Legal Proceedings Relevant to the Haida Nation

The Supreme Court of Canada has proven useful for the Haida Nation in charting its journey toward self-governance (King, 2004). Over the last 50 years, several Supreme Court rulings have informed the Haida's actions and pushed the Province of British Columbia and the Government of Canada toward engaging more fully with fiduciary duty relating to Indigenous rights and entitlement.

2.7.1 CALDER V. ATTORNEY GENERAL OF BRITISH COLUMBIA (1973)

Nisga'a Nation chief Frank Arthur Calder initiated this landmark case, which was the first in Canada to articulate pre-existing Indigenous title to land before colonization and issuance of the Royal Proclamation of 1763. Although the ruling was inconclusive on whether title continued to the present day, this case set the stage for the development of the Nisga'a First Nation Treaty in 2000, and influenced future land claim agreements throughout BC.

2.7.2 R. V. SPARROW (1990)

A major impact upon government decision-making was caused by this case, in which Musqueam band member Ronald Sparrow was charged with violating the *Fisheries Act* by fishing with a drift net longer than allowable limits. Arguing that the Act's restriction impeded his Indigenous right to fish, Sparrow's case brought into question the importance of government supporting the Honour of the Crown by maintaining a fiduciary stance toward regulations that could restrict Aboriginal rights and entitlement.

The relevant part of this case is the acknowledgement that Sparrow's Aboriginal right to fish had not been extinguished prior to the Constitution 1982. The onus fell to the Crown to ensure that its regulations did not infringe upon Sparrow's existing right to fish. The Court's ruling established the "Sparrow Test," which uses a set of criteria to determine the justification of government to infringe upon an Aboriginal right:

1. An Aboriginal right has been infringed upon by government activity if:
 - a. It imposes undue hardship on the First Nation
 - b. It is considered unreasonable by the Court
 - c. It stops the right-holder from exercising their right.

2. Justification of infringement of an Aboriginal right could occur if:
 - a. It serves a valid purpose, such as for conservation of natural resources
 - b. The degree of infringement has been controlled to be as little as possible, to achieve the desired result
 - c. Fair compensation was provided to the First Nation
 - d. Aboriginal groups were consulted or informed.

2.7.3 R. v. VAN DER PEET (1996)

The Sto:lo Nation appealed their right to trade fish for money and other goods, arguing trade to be an inherent right prior to European contact. The Supreme Court ruled that pre-contact trade was not an integral part of Aboriginal culture and was, therefore, insufficient to support the claim.

2.7.4 R. v. GLADSTONE (1996)

A Heiltsuk member was charged with selling herring spawn on kelp without a license. The Heiltsuk Nation used application of the Van der Peet test to prove Aboriginal rights to take and sell herring roe on kelp for commercial purposes. But the Supreme Court ruled that Aboriginal commercial rights do not eclipse others' rights for sport and commercial fishing. So applicable regulations hold against Aboriginal people taking commercial allocations.

2.7.5 DELGAMUUKW v. BRITISH COLUMBIA (1997)

In response to B.C.'s refusal to grant Aboriginal title of Gitkan or Wet'suet'en hereditary chiefs over separate portions of a 58,000 square kilometer piece of land in British Columbia, the Supreme court ruled that the Crown's fiduciary responsibility to support Aboriginal rights and land entitlement includes an economic component, and that provincial laws could not legislate over Aboriginal title or rights. The court further ruled that oral traditions were admissible as evidence.

This case confirmed that Aboriginal title is unextinguished in B.C. and is, therefore, a burden on the Crown title. As such, the government must consult with and possibly accommodate First Nations whose entitlement rights are affected.

2.7.6 HAIDA NATION v. BRITISH COLUMBIA (MINISTER OF FORESTS) [2004]

This case involved the transfer of tree farm license 39 to Weyerhaeuser Company Limited in 1999 on Haida Gwaii. The court ruled that the Crown has a legal duty to consult with Aboriginal Peoples prior to making decisions involving rights or lands that are being claimed through legislation. The duty to consult cannot be delegated; third parties cannot be held liable for failing to discharge the Crown's duty. However, the Crown's duty to consult does extend to the Province.

The extent of the duty to consult depends upon the strength of the claim. A strong claim forces the Crown to accommodate aboriginal peoples, by allowing them to participate in the decision-making process. A weak claim only requires notification of action. The Haida's claim to title and Aboriginal right to harvest red cedar translate to a strong case, which requires significant accommodation by the Crown.

2.7.7 TSILHQOT'IN NATION V. BRITISH COLUMBIA (2014)

Through a litigation process, the Tsilhqot'in Nation was able to gain Aboriginal title over a section of their traditional territory. Three tests allowed the court to rule in favour of the Tsilhqot'in:

1. That the claim was highly specific and confined to an isolated area comprising about 5 percent of Tsilhqot'in traditional territory.
2. There were no overlapping claims from other Indigenous Nations.
3. The claim was supported by non-Indigenous residents of the area.

The relevance to the Haida Nation is its fulfillment of the above criteria towards its own ancestral domain; however, the Court encouraged Nations to seek out other options at their disposal before attempting litigation.

3.0 Research Methodology and Methods

This section describes the methodological approach and the methods used in this project. A qualitative methodology drawing on thematic analysis was used so that detailed information on issues relating to shared governance of resources could be explored. In addition, this research draws on a review of the gray literature and a jurisdictional scan. The use of qualitative research methods gave the researcher a better understanding of the challenges that island-based Indigenous governments face in collaborating with government. This section will also highlight the strengths and challenges of the methodology.

The literature review provides an overview of the Haida's journey toward reclaiming control over its ancestral domain, while extracting key aspects that may hold value in resolving issues of shared decision-making with Government over shared resources. The jurisdictional scan identifies the Cook Islanders and the Tagbanua of Palawan Province in the Philippines as two Indigenous Nations that have confronted issues with managing marine resources within their territories.

3.1 Literature Review

The literature review sought to establish an understanding of how Haida governance has evolved over ancestral domains, and builds key guiding principles, and their potential applicability to the issue of shared decision-making. The research process for this project involved a two-pronged approach to provide content for both the literature review and the jurisdictional scan. For the literature review, white papers were sourced from academic journals, independent research reports, working papers and conference papers. Gray literature was channeled toward building the jurisdictional scan.

Data for the literature review was sourced from across a broad scope of databases, using the University of Victoria library portal and Google Scholar. The following terms were searched for in "all fields," and combined using Boolean logic: "Haida" AND "marine resource" AND "border" OR "manage" OR "plan" OR "govern." The inclusion criteria were: 1) published between 1978 and 2019 and 2) written in English. A 40-year publication window was chosen to capture earlier studies that likely used a different conceptual framework than more recent studies when discussing Haida governance. No restrictions were placed on the type of methodology. Literature reviews, abstracts, comments, conference proceedings and books were excluded. Information gathered through the searches above was grouped into themes and similar information was combined.

3.2 Jurisdictional Scan

The purpose of the jurisdictional scan was to develop an understanding of Indigenous Nations like the Haida First Nation, that are encountering issues with governance over their ancestral domains, and the impacts of shared decision-making upon resolution of their claims. The initial stage of the jurisdictional scan involved preliminary research on island nations, to determine those jurisdictions

that might provide relevant perspectives on the issue at hand. Gray literature was sourced from the government websites of the Haida Nation, Cook Islands Government and Philippines Government, along with websites of NGOs and other entities relevant to the case studies. Examination of the latter two Nations against the foil of the Haida Nation was framed through a set of criteria, through which themes emerged for further discussion.

The Cook Islands was chosen because of its formerly colonized status (Durbin, 2018, p. 7), its relationship of “free association” with New Zealand, and its transformation into a “Large Ocean State”: a nation-building model that could have relevance to Haida Gwaii’s future.

The Tagbanua Community of Coron Island in the Philippines was chosen for several reasons. First, the Tagbanua face similar issues to that previously encountered by the Haida, where unbridled resource extraction has severely impacted their cultural, economic and, even, physical health (Lacuna-Richaran, 2003). Second, the Philippines is part of a multi-island initiative that seeks to protect the rights and interests of Indigenous Peoples, and pressure through this initiative has informed legislation as such. Third, the Tagbanua have transformed their lack of awareness and disempowerment to a strong understanding of the issues at stake and a recognized ancestral title-ship over a relatively short space of time (Capistrano, 2010).

3.3 Data Analysis

The literature review and jurisdictional scan were analyzed using thematic analysis. Thematic analysis allowed patterns to be identified, from which key themes emerged. These themes provided further insight into the strategies that the Haida Nation and the other two case studies appear to be employing in their governance.

3.4 Strengths and Limitations

The strength of the methodology employed for this research project is that two different qualitative methods were used to inform the research question. The literature review and jurisdictional scan provided a strong foundation of information and highlighted gaps, to glean necessary insights.

One limitation to this methodology is the absence of interviews, which would have provided additional insights into issues posed by the co-management process. Although interviews with key official from the Haida Nation and government were planned for this project, the operational and social impacts posed by the COVID-19 pandemic prohibited officials from engaging in consultations.

This project may also be affected by the researcher’s role as a public sector employee and cultural upbringing as a European-Canadian. Thus, the potential for bias exists on the part of the researcher.

4.0 Literature Review

4.1 Overview

To explore how the literature reflects the development of the Haida Nation's governance over its ancestral domains for the last 40 years, the studies were divided into time periods that correspond with important milestones.

The first period is from 1980 to 1992, to align with the repatriation of Canada's Constitution and the Supreme Court ruling on Ronald Sparrow and the test to determine infringement of Aboriginal rights, and the establishment of the British Columbia Treaty Commission. The second period is from 1993, with the establishment of the Gwaii Haanas Agreement, to 2003, when the Turning Point Initiative was initiated between the Government of Canada and the Coastal First Nations (Lee, 2012).

The third period is from 2004, following the Supreme Court of Canada's ruling in favour of the Haida Nation on government's duty to Consult, through to 2009, when the *Kunst'aa guu – Kunst'aayah* Reconciliation protocol was initiated between the Haida Nation and the Province of British Columbia. The fourth period runs from 2010, when the Gwaii Haanas Marine Agreement was signed between the Government of Canada and the Haida Nation, to 2014. The fifth period runs from 2015 to 2019, to coincide with Canada's adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and when the Large Ocean Management Area was delineated by the Government of Canada in 2017.

There are several academic articles, books and reports focused on Haida governance of borders and current issues facing the Haida today (Bowie, 2013; Frost, 2018; Horton, 2017; Jones et al., 2017, Low et al., 2012; Reo et al., 2017; Takeda & Ropke, 2010; Tiakiwai et al., 2017; Von der Porten, 2016), along with reports and discussion papers generated by the Council of the Haida Nation and through the Assembly of First Nations (Penikett, 2012; Pynn, 2010). Much of the literature focuses on (what appear to be) strategies used by the Haida to determine land and marine boundary governance (Tiakiwai et al, 2017, p. 75), yet there is very little literature to determine the effectiveness of these strategies.

A major theme throughout the literature highlights the differences in how the border is perceived by different ministries, corporations, environmental NGOs and even within the Haida First Nation community (Bowie, 2013; Frost, 2018; Horton, 2017; Low & Shaw, 2012, p. 8; Takeda and Ropke, 2010, p. 84; Tiakiwai et al, 2017, p. 70, 74; Von der Porten et al, 2016). These differences in opinions have resulted in issues between the Haida and all of the above groups, which has had the effect of exacerbating an already complex problem (Low & Shaw, 2012, p. 10; Tiakiwai, 2017, p. 69).

As such, some of the sources acknowledge Haida determination to utilize G2G communication, to ensure that legislative rights are adhered to (Low & Shaw, 2012, p. 9; Takeda & Ropke, 2010, p.

84; Tiakiwai et al., 2017, p. 72). Limited progress has been made, to date, in understanding how the Haida have strategized their governance on a piece by piece basis, and the results of these strategies (CHN, 2017, p. 5; Low & Shaw, 2012, p. 12; Reo et al., 2017, p. 218; Tiakiwai et al., 2017, p. 74). What is missing from the past studies is a comprehensive and structured approach to self-determined governance.

1. Strict environmental conservation policies tend to disregard the Haida as stewards of the land and sea.
2. Haida sovereignty is impeded by the actions of the statutory decision maker.
3. Differing policies across Canada-US International borders split Haida communities.
4. Climate change impacts Haida territories, due to fluctuating sea levels.
5. Corporatization can fragment communities and make the Haida vulnerable to deception.
6. High-dollar stakeholders vying for salmon catch impacts Haida subsistence fishers.
7. Disputes between sustainable use and job creation in commercial fisheries.
8. Variability amongst biologist subject matter expertise is greater than that of Haida subject matter expertise and could negatively impact decision-making in conservation of the herring food web.
9. Outdated and conflicting statutes fetter Haida sovereignty over its ancestral domain.

4.2 Review of the Literature: 1980 to 1992

Although relatively scant, the literature within this time frame reflects adaptability and an increasing empowerment of the Haida Nation, through observance of traditional practices that reinvigorate cultural health and stewardship capabilities (Pinkerton, 1983; Price, 1982; Shapcott, 1989).

4.2.1 STRATEGIES FOR SELF-DETERMINATION AND DISPUTE RESOLUTION

Price (1982) notes that the Haida Nation's strong chiefdom-based government structures and its sophisticated fishing economy have informed traditional practices that have stood the test of time. In using traditional practices like pattern observance, the Haida people have adapted to fluctuating and oppressive social landscapes by adjusting their degrees of dissent to suit the situation: from litigation and protest marches, to creating community-based organizations that share stories and demonstrate cultural tradition in schools and other institutional settings.

The same pattern observance and adaptability of the Haida is reflected in Pinkerton's (1983) work, which highlights emerging public opinion over the impacts of TFLs upon the Haida lands, waters and economies, as citizens became more aware of the issues at stake and their statutory power to defend their interests. Pinkerton examines Haida opinions over three periods: the early 1970s period of silence and lack of awareness; the mid-1970s period of debate and questioning; and the late 1970s/early 1980s period of legal assertion of unceded territories and the revelation that the Haida people could better manage land and marinescapes than the government and industry had done. In particular, the empowerment of Hereditary Chief Nathan Young (*Tanu*) and Haida food-

gatherer Gary Edenshaw (*Guujaaw*) are examined, whose close relationships with the land and realization of the destructive changes caused by tree farm licences (TFLs) resulted in their lawsuit against the Minister of Forests.

Shapcott (1989) notes a similar trend in her research on the Haida Nation's response to an environmental impact assessment (EIA) off the coast of Haida Gwaii for petroleum exploration. Seeing that the criteria established by the Joint Canada/British Columbia West Coast Offshore Exploration panel didn't fit their need for traditional value-based frameworks for sustainable ecosystem management, the Haida Nation responded by creating its own assessment through the Offshore Alliance of Aboriginal Nations. A relevant point within Shapcott's research is the willingness of Haida participants to learn and adapt: they saw knowledge from scientists as relevant as that of knowledge from Elders.

4.2.2 TREATMENT OF BORDERS

Looking back in time, Price (1982) sees that Haida borders over ancestral domains have been disregarded by government and nearly obliterated, through the banning of potlatch and other forms of legislative discrimination that came close to causing cultural genocide. Price's work reflects that government policies on Indigenous Nations have been created through a narrow lens, without taking into consideration the diversity of each Nation, along with external factors such as access to subsistence resource base, urban proximity, disease susceptibility, and chiefdom practices. Similarly, Pinkerton (1983) sees a trend for inequitable forest policies created by industry-focused administrations, that do not consider Haida boundaries nor their expertise in managing ecosystems.

Shapcott (1989) also notes government's disregard of Haida borders, manifested through its refusal to tailor EIAs to the Nation's needs. The rationale for this refusal was founded upon a lack of government acknowledgement of Haida land ownership rights, along with the seeming conundrum of how the value of fishing and food-gathering could be measured through cost-benefit analysis. During the Island Protection Society's Supreme Court appeal against pesticide applications on Haida lands, Elders expressed concern over the impacts to their health and the health of forthcoming generations. One Elder noted that pesticides would not be necessary if the forests had been sustainably logged rather than clear-cut.

4.2.3 MITIGATION OF RISKS AND LESSONS LEARNED

Price (1982) finds that supporting traditional Indigenous leadership through policymaking is a strategic measure that empowers a Nation's traditional practices and stewardship over shared domains with government, while decreasing dependence on government for support. He recommends aligning marine management policies on both side of the U.S. – Canada border.

Pinkerton (1983) finds that intensive consultation with subject matter experts in EBM is key to effective management planning and decision-making over Protected Areas. Industry and government can easily form a bond that might persuade people their actions are in the public interest. Yet the fact remains that this is a partnership between a self-interested entity and a public

interest entity, and is doomed to fail when the environment (or the proven steward of the environment) is not consulted as a third party. Although industry might provide government with stumpage taxes and other revenue, this pales to insignificance against litigation costs incurred by damage to ecosystems and impacts to the communities that depend upon them (Pinkerton, 1983).

4.3 Review of the Literature: 1993 to 2003

4.3.1 STRATEGIES FOR SELF-DETERMINATION AND DISPUTE RESOLUTION

Collaboration is the leading strategy reflected in the literature for Haida self-determination during this time period (Alper, 1997; Hawkes, 1996; Jessen & Lerch, 1999). The entities with which the Haida Nation collaborates are diverse, and have led to the development of strategies such as the market campaign.

Alper (1997) highlights the effectiveness of this campaigning in his examination of the Haida Nation's collaboration with environmental NGOs (ENGOS). The orchestration by the ENGOS of an international boycott on BC timber products in the 1990s has been a valuable tool for helping the Haida Nation gain worldwide attention toward the logging of South Moresby National Park Reserve. Jessen & Lerch (1999) concur in their research, seeing the Haida Nation in a powerful place for influencing marine species conservation, through their role in co-managing marine protected areas (MPAs).

Hawkes (1996) measures the effectiveness of the Haida Nation's co-management frameworks with government, by examining the Gwaii Haanas Agreement through 16 criteria:

1. local ecosystems and cultural systems are preserved
2. data collection and analysis are shared
3. biophysical and cultural boundaries are defined and scaled
4. enforcement is shared
5. locals receive benefits from the shared resource
6. model is flexible and adaptable
7. all parties can access economical dispute resolution
8. parties are committed to collaboratively seeking solutions
9. all stakeholders are represented and involved in decision-making
10. government brings legalities and inform decision-makers
11. objectives are agreed to by all parties
12. time limits are established for reaching consensus
13. all participants must be able to make decisions
14. government must be committed to timely resolution
15. alternative decision-making bodies must be in place
16. loopback must be enabled.

Of the 16 criteria, only three are not met:

- outline of clear enforcement provisions
- clear time limits for decision making
- existing fallback for failed resolution.

Yet Hawkes (1996) does not see the unmet criteria as a disadvantage to the Haida Nation. Rather, a lack of enforcement shows that the parties have agreed to disagree and clearly indicates a viewpoint of shared sovereignty by government toward the Haida Nation. Similarly, the lack of time limits on decision-making and lack of fallbacks show that power does not rest solely with government and that the Haida Nation is in fact viewed as a sovereign entity.

Building on from the strategy of adaptation, Rogers & Stewart (1997) note that many Haida are becoming increasingly grounded in traditional management of wild salmon stocks as a self-determination measure.

4.3.2 GOVERNMENT TREATMENT OF HAIDA BORDERS

Most of the literature during this time period reflects a lack of acknowledgement of Haida borders. Alper (1997) sees a lack of acknowledgement of Haida borders by industry-focused administrations and inequitable forest policies that do not consider Haida expertise in ecosystem-based management (EBM).

Rogers and Stewart (1997) note this lack of acknowledgement extending to marine boundaries, where the differing policies on licensing for salmon fishing on both sides of the United States-Canada border has negatively impacted Haida subsistence fishers. The research highlights the broad range of players vying for the salmon catch. For instance, one Oak Bay resident has a string of fishing lodges along BC's west coast, which rely upon supplying high volumes of salmon to clients. Similarly, the US has many high dollar stakeholders whose economic livelihoods depend on salmon.

Jessen and Lerch (1999) notice a similar trend, finding that, although legislative borders for MPAs have been established under a matrix of statutes, only 5 pilot projects have to date been created by the DFO. BC's marine protection currently encompasses less than 1 percent of coastal nearshore.

4.3.3 MITIGATION OF RISKS AND LESSONS LEARNED

Jessen & Lerch (1999) suggest that management planning between the CHN and Government over MPAs could be an effective measure for ensuring the protection of migrating marine organisms. The researchers argue that design emphasis on MPAs should be on a network of large areas, supported by research on migrating paths of species that is supported by traditional knowledge.

4.4 Review of the Literature: 2004 to 2009

4.4.1 STRATEGIES FOR SELF-DETERMINATION AND DISPUTE RESOLUTION

Traditional practices are commonly reflected in the literature as a governance strategy during this time frame (Devin & Doberstein, 2004; King, 2004; Turner & Berkes, 2006). Turner & Berkes (2006) highlight that the implementation of traditional practices is helping to ground the confidence of the Haida in knowledge of their ancestral domain. In their study of the co-management of Gwaii Haanas, Devin and Doberstein (2004) note that the Haida Elders' sharing and use of Traditional Ecological Knowledge (TEK) has helped to educate Parks staff on traditional practices. Similarly, King (2004) finds that the process of co-management creates a space in which governments can share different epistemologies in environmental management.

Collaboration is also a strong thread running through the literature; particularly through co-management of MPAs with between the Haida Nation and government (Guenette & Alder, 2007; Singleton, 2009; Wilkes, 2006). Singleton (2009) echoes Guenette and Alder (2007), seeing that alliances with conservation NGOs, like the World Wildlife fund and the Canadian Parks and Wilderness Society, have been essential elements to support the Haida while they are engaged in land claims. Wilkes (2006) notes the effectiveness of the same strategy for defending Lyell Island from logging.

Dean (2009) finds that the strategies by which the Haida have sought to regain control of their ancestral domain are diverse and limited only by the relationships they built with other entities. Highlighting the ability to collaborate and use traditional practices for grounding their knowledge, the prevalent theme running throughout this work is the adaptability of the Haida Nation, in utilizing innovative options for achieving means to an endpoint that has always shifted.

4.4.2 GOVERNMENT TREATMENT OF HAIDA BORDERS

While Guenette and Alder (2007) find that Haida borders are acknowledged and respected by government, most of the literature suggests that sociocultural borders are frequently infringed upon during the co-management process (King, 2004; Singleton, 2009; Turner & Berkes, 2006). Turner and Berkes (2006) see Haida marine borders infringed upon through over-harvesting by industry and laws forbidding traditional fishing techniques. King (2004) notes that environmental assessments are often initiated and structured under tight time frames, which fail to accommodate traditional knowledge, research and participation of the Haida community. Singleton (2009) further argues that the Haida people often experience trade-off disputes in their internal decision-making. Deciding on whether to sustainably manage a marine area through conservation or to commercially harvest fish and create jobs is a difficult and time-consuming process that is not often aided or acknowledged by government.

On a similar note, Dean (2009) highlights that Traditional Ecological Knowledge (TEK) exhibited by the Haida is gained over years of observation and transmission through oral traditions. When working in co-management arrangements, this TEK often gets absorbed into Western scientific ways of managing natural resources. This is not due to alignment of the two epistemologies but because of the difficulty in encompassing TEK into a Western worldview. Consequently, the TEK

becomes transformed into the words of Western-thinking scientists, and the voices originally wielding this knowledge become muted.

4.4.3 MITIGATION OF RISKS AND LESSONS LEARNED

Several cautions are reflected in the literature during this time period. Devin and Doberstein (2004) highlight that the use of TEK is not uniform; it depends partially on who uses it and how it is used. King (2004) sees that sole reliance on Government for research support disempowers Haida direction, which Guenette and Alder (2007) build on, noting that the requirement to negotiate with multiple government bodies creates bureaucratic thinness for the Haida. This thinness can even morph into an invisibility in co-management frameworks, as Singleton (2009) and Dean (2009) posit in their respective studies.

4.5 Review of the Literature: 2010 to 2014

4.5.1 STRATEGIES FOR SELF-DETERMINATION AND DISPUTE RESOLUTION

A major theme running throughout the literature during this time period is the evolution of earlier themes: as the Haida Nation's traditional practices, adaptation and collaborative endeavours are enmeshed within increasingly complex and unique strategies for building self-determination (Augustine & Dearden, 2014; Bowie, 2013; Galbraith, 2014; Gaymer et al, 2014; Jones et al, 2010; Low & Shaw, 2012; McCreary & Lamb, 2014; Penikett, 2012; Robards et al, 2011; Rutherford et al, 2010; Simberloff, 2014; Thomlinson & Crouch, 2012).

STRATEGIC ALIGNMENT WITH CANADA'S CONSERVATION AGENDA

Jones et al (2010) note that the Haida Nation's strategic alignment of ecological value-based frameworks with Canada's sustainable resource management agenda is key to facilitating its power in collaborative governance of marinescapes. With an eye to subsistence dependence on healthy marine ecosystems, the Nation formed alliances and collaborated with Elders, other Coastal First Nations and the Federal Government, to develop conservation plans for the Pacific North Coast Integrated Management Area (PNCIMA).

In a similar context, Low and Shaw (2012) find that the increasing capacity of First Nations in land use decision-making is altering the structure of environmental governance. The Great Bear Rainforest Agreements were conducted by B.C. and the Coastal First Nations (CFN), of which the Haida Nation is a member. Although focused on conservation of the north and central coast areas, the Agreements also recognized the stewardship of the communities within these areas, in which an economic component had to be highlighted.

Building on work by Jones et al (2010), Augustine and Dearden (2014) find that allowing minimal impacts in protected areas actually enhances conservation measures in the long run, and protects organisms against commercial extraction, development and pollution. For instance, Indigenous management of clam gardens in the Pacific NW coast over time shows how the building of rock terraces on beaches captured only the fully matured bivalves, leaving smaller clams to further develop. An integrated approach toward conservation management, which includes local

communities as part of the ecosystem, could ensure conservation measures are met while meeting Indigenous rights and socioeconomic interests.

RELATIONSHIP BUILDING AND INCREASED CAPACITY

As reflected in a number of works, key to the Haida Nation's success in agreements has been the building of alliances to make decisions before they get to the statutory decision-maker (Bowie, 2013; Galbraith, 2014; Low & Shaw, 2012). Galbraith (2014) sees this manifested through the Haida Nation's observation and careful planning on mitigating inequitable power dynamics. Low and Shaw (2012) note the strength of the alliances that the Haida Nation built with other coastal First Nations and ENGOs. These relationships led to the crippling of the forest industry through market campaigns, which in turn gave the Haida Nation capacity in G2G decision-making, rather than as stakeholders.

Likewise, Rutherford et al (2010) and Gaymer et al (2014) see collaboration and adaptability as effective self-determination tools for the Haida. The complexity of interactions within governance systems requires a continuous adaptation in the integration of top-down and bottom-up approaches, which the Haida have mastered in their relationship with Parks Canada and the DFO. Key to Haida success has been the transfer of knowledge and building of understanding between all partners and users of the resources. (Bowie, 2013; Galbraith, 2014). For instance, collaboration with other First Nations and NGOs produced the Turning Point Initiative, which created a framework in which resource management could be negotiated with all players.

Building on this idea, Robards et al (2011) posits that Haida dissent in co-management frameworks has been effectively managed through deliberative democratic forums, which have increased communication and an understanding of Haida needs for the marine ecosystem.

LEGAL PRECEDENTS

McCreary and Lamb (2014) note that case law has helped the Haida with their assertion of Indigenous rights and title. Similarly, Wright and White (2012) find case law to be an important tool in defining government's duty to consult, but suggest that the duty to consult does not translate to absolute rights on the part of Nations to stop resource extraction.

4.5.2 GOVERNMENT TREATMENT OF HAIDA BORDERS

One trend noted throughout the literature is that the government, as statutory decision maker, can always enforce its sovereignty and render the Haida Nation's position ineffective (Galbraith, 2014; McCreary & Lamb, 2014). Galbraith (2014) sees this as actualized through consultations with the Haida Nation that were supposed to occur on impacts of Enbridge Pipeline Project upon the Nation's traditional marinescapes. Although a joint regulatory process was initiated to gauge environmental impacts, the Project was purposefully structured into smaller components that, in the end, did not require consultation.

In their evaluation of the PNCIMA Initiative, Rutherford et al (2010) found that, although ecosystem-based management was meant to be the foundation of the Initiative, little commitment

was demonstrated by the DFO toward designing flexible strategies for meeting goals, tracking progress on plans, establishing performance measures, sharing information and instilling trust with the Haida and other First Nations. Without the trust and expertise of First Nations underpinning the Initiative, the DFO could not tailor LOMA processes toward regional situations and encountered difficulty in balancing an economic focus with ecological conservation. Jones et al (2010) note a similar anomaly: that the PNCIMA plans were initiated by the DFO, yet publication of Haida values was absent from the plan.

Echoing the findings of Gaymer et al (2014), McCreary & Lamb (2014) hold that the input of the Haida Nation toward natural resource management might remap the way by which decision-making is achieved, but it actually reinforces the sovereignty practices already in place. Building on this work, Bowie (2013) posits that differences between institutionalized and Indigenous thought processes as one of the reasons for asymmetrical power relations that have impeded the Haida Nation's governance over resources. This is exemplified by Thomlinson and Crouch (2012), who find that conflicting views between government and the Haida Nation over the certification process and scope of the Guardian Watchmen Program has impeded the Nation's ability to monitor its marine borders.

In focusing on the DFO's role in co-management, Robards et al (2011) find that sustainable ecosystem flows are limited by socioeconomic power dynamics. Three factors limit collective access to ecosystem services: rigidity traps; power asymmetries; and political scientization. Rigidity traps are caused by institutionally enforced norms, which make it difficult for the Haida to reorganize processes for maximum collective ecosystem benefit. Power asymmetries, such as Government-enforced protected areas, have contributed toward forced migration. Scientization blinds decisionmakers to ground-level stakeholders, which Jones et al (2010) exemplify in their finding that Haida values could easily be overlooked in PNCIMA plans, due to their initiation by the DFO.

Conversely, however, Penikett (2012) finds that co-management frameworks have allowed the Haida Nation to exercise its sovereignty while allowing creative options for attaining goals. Although the Gwaii Haanas Agreement and *Kunst'aa – Kunst'aayah* Reconciliation Agreement demonstrate divergent interpretations between government and the Haida Nation on resource management, this indicates respect toward the sovereign borders of the Haida.

4.5.3 LESSONS LEARNED

In his study of Ocean Fertilization (OF) off the coast of Haida Gwaii, Wilson (2014) found that alliances between members of the Haida Nation, academic institutions and corporations all led to a proposal to the Haida community for funding of a 2012 project that would restore depleted salmon stocks. The project involved dumping 100 tons of iron sulfate into the Pacific Ocean, and was a dismal failure that resulted in arrests and environmental impacts that are only now manifesting in ocean acidification and hypoxia. Wilson (2014) notes that government regulation

of OF requires accountability on the part of government to monitor and educate people on safe usage and development of geoengineering practices.

Breinig (2013) notes that the basics of resource management, such as traditional practices of gathering wild foods, hunting and fishing, are an important aspect of Haida cultural health, and integral to the ongoing success of the Haida as a nation. Using auto-ethnography through an interview project of Haida Elders, to detail Haida migration to Haida Gwaii and the migration of the Kasaan Haida to the southern tip of Prince of Wales Island shortly after European contact, the researchers found that the imposition of international borders upon their territory impacted Haida communities on both sides of the US-Canada border, due to different policies administered upon Indigenous Peoples by each state.

To combat the divisiveness posed to the community by differing policies and other measures caused by borders, cultural reinvigoration is proposed as a source of power from which present-day Haida can draw pride, knowledge and a sense of belonging from their ancestors. A powerful way of conveying these values is through sharing stories and building relationships across jurisdictions.

4.6 Review of the Literature: 2015 to 2019

4.6.1 STRATEGIES FOR SELF-DETERMINATION

A continuing thread of collaboration as a self-determination strategy runs through the literature during this time frame (Ban & Frid, 2018; Diggon et al., 2019; Gannon & Hulme, 2018; Haigh et al, 2015; Jones et al, 2017; Lemieux et al, 2019; Loring & Hinzman, 2018; Rodriguez, 2017; Stier et al, 2017; Stronghill et al., 2015; Surma, 2018; Takeda & Ropke, 2017; Tiakiwai et al, 2017; Von der Porten et al, 2019; Watson & Hewson, 2018). Most of the literature on collaboration tends to focus on the success of the Haida in developing their relationships with government and implementation of EBM into management planning. Haigh et al. (2015) and Jones et al. (2017) see collaboration manifesting in co-management processes with Government, with clear communication helpful in resolving disputes. Stronghill et al. (2015) note that collaboration with BC Parks using the conservancy model has been effective in informing the Haida on shared management planning for Haida Gwaii.

Rodriguez (2017) finds that the Marine Ecosystem Based Management Plan (MaPP) created with the Government of Canada is an effective tool for assessing marine-scape sustainability and managing issues. Moreover, Tiakiwai et al (2017) note that the MaPP has been a collaborative engagement that incorporates both EBM and TEK models. Diggon et al (2019) find that the success of the MaPP has relied on the Haida strategy of pre-planning with the other First Nation partners, before collaborating with Government.

More detail over co-management agreements is emerging through the literature during this time frame. For instance, Stier et al (2017) note that the Haida are using collaboration in their shared decision-making with Government over the management of herring, while Takeda and Ropke

(2017) highlight the trend for incorporating the Haida value of *Yah-guudang* (respect for all living things) into G2G collaborative planning frameworks. Surma et al (2018) build on this values-based stewardship in their examination of the CFN's traditional fishing practices of herring. In analyzing stocks using a baseline comparative model, Surma et al found that traditional practices had minimal impacts on herring populations.

COLLABORATION WITH MULTIPLE ENTITIES

The literature also reflects an increasing trend of the Haida to collaborate with other groups; such as industry, academic institutions, and the non-Indigenous community (Gannon & Hulme, 2018; Horton, 2017; Kerr et al, 2015; Krupa et al, 2015; Von der Porten et al, 2019). Kerr et al (2015) and Krupa et al (2015) highlight the Haida's actions in working on tide and wind energy projects to revitalize economic slump. Horton (2017) and Gannon and Hulme (2018) focus on Haida engagement with UBC and a corporate sponsor on a geoengineering project called Ocean Fertilization, with the goal of working to increase salmon populations. Von der Porten et al (2016) find that the Haida Nation fishers negotiate directly with commercial fishers to encourage them to stay out of Haida waters, by sending open notification letters to fishermen that highlight Haida opposition to DFO opening of herring fisheries.

To build an economic component into its sustainable management of fish stocks, the Haida Nation has collaborated with corporations on a number of contexts, such as geoengineering, blue energy projects, and oil and gas exploration (Gannon & Hulme, 2018; Horton, 2017). Gannon and Hulme (2018) argue that Ocean Fertilization (OF) projects have been initiated around the world for increasing food fish yields. Yet the economic element of OF trumps traditional practices of integrative ecological management and divides the Haida community. As Horton (2017) reports of the Haida Salmon Restoration project and Ocean Fertilization event of 2012, community distrust in the project was mitigated by tailoring the message toward an existing oral tradition of salmon.

4.6.2 RESOLVING DISPUTES WITH GOVERNMENT

Although the literature is reflecting the Haida's increasing competence in working collaboratively with Government and other bodies, some disputes are still apparent that are difficult to resolve. One issue that Stier et al (2017) note is the SME variability amongst scientists regarding the herring food web is much greater than the variability amongst Haida SMEs. This could negatively impact decision-making over conservation of the species. Tiakiwai et al (2017) note that even within the Haida community, a lack of consensus exists on a defined EBM model for herring management.

4.6.3 GOVERNMENT TREATMENT OF HAIDA BORDERS

Jones et al (2017) find that friction has arisen from the DFO's consultation and allocation policies, through advisory boards and the political clout of the commercialized fishing industry. Highlighting the DFO's trend toward maintaining the *status quo*, rather than changing fisheries management structures, Jones et al (2017) echoes the point put forward by Haigh et al (2015): that such inaction fetters Haida management of local herring populations.

Lemieux et al (2019) note that, instead of showing an integrated approach to whole system management of marine and coastal ecosystems, and closing fisheries when dwindling populations and the Haida artisanal fishers suggest to do so, the DFO closes fisheries after the fact and then temporarily designates them as marine protected areas. In addition to negatively impacting Haida control over managing fish populations, this move also jeopardizes Canada's ability to meet international environmental targets and compromises the nation's credibility in an international context.

Another area of concern inherent within co-management agreements has been a lack of acknowledgement of marine-scape boundaries and the enforcement mechanisms for guarding the boundaries (Watson & Hewson, 2018; Williams et al, 2015). However, the scope of conditions that impact marine boundaries is continually being defined, as Williams et al (2015) find in their examination of commercial shipping noise disruption upon Chinook salmon and whale feeding patterns. Although this activity encroaches on traditional fishing ground boundaries, which were established through the MPAs between Government and the CHN, no effort has been taken by Government to divert shipping channels outside of the MPA boundaries.

Watson & Hewson (2018) highlight a similar issue with the SGaan Kinghlas-Bowie Seamount MPA, which is co-managed by the CHN and the DFO, under authority of the *Oceans Act*. Against the objections of the CHN and the terms of the agreement, the DFO has allowed industry fishers to continue hunting for sablefish within the boundaries of the MPA. This activity has destroyed the seafloor habitat.

4.6.4 LESSONS LEARNED

Some researchers note that building relationships with international bodies has helped the Haida Nation gain worldwide attention and political clout toward the protection of its resources (Watson & Hewson, 2018). Watson and Hewson (2018) see this exemplified in the strong collaborative relationship between the Haida Nation and the International Union for the Conservation of Nature.

Stronghill et al (2015) assert that, although Haida Gwaii is managed jointly through the *Haida Gwaii Reconciliation Act*, British Columbia can unilaterally rescind the Act at any time.

Stier et al (2017) see that variances between SMEs must be accounted for when decision-making occurs on ecosystem conservation and sustainability. Subject matter experts are affected by individual biases that could result in marked variability and even error in marine resource management decision-making.

Simberloff (2014) further notes that external forces, such as global markets and social policies, can often threaten the effectiveness of co-management plans in conserving marinescapes. Building on this theory, Diggon et al (2019) find that industry pressure on government reduces effectiveness in planning with Haida. Surma et al (2018) suggests lobbying policy-makers to carefully weigh trade-offs on ecological, cultural and socioeconomic risks to herring conservation.

4.7 Summary of Literature Review Findings

The three main strategies that the Haida Nation uses to gain self-determination over its ancestral domain are collaboration, adaptation and utilization of traditional practices. Over the last 40 years, the Haida have combined these strategies to create more complex and innovative strategies; such as utilizing relationship-building with NGOs to learn more about global issues, or leveraging their traditional knowledge toward sharing stories and demonstrating cultural traditions in schools and other institutions.

Regarding the treatment of Haida borders, the following findings emerged:

1. Strict environmental conservation policies tend to disregard the Haida as stewards of the land and sea.
2. Haida sovereignty is impeded by the actions of the statutory decision maker.
3. Differing policies across Canada-US International borders split and disempower Haida communities.
4. Climate change impacts Haida ancestral domains, due to fluctuating sea levels.
5. Corporatization can fragment communities and make the Haida vulnerable to deception.
6. High-dollar stakeholders vying for salmon catch impact Haida subsistence fishers.
7. Disputes exist between sustainable use and job creation in commercial fisheries.
8. Variability amongst biologist subject matter expertise is greater than that of Haida subject matter expertise and could negatively impact decision-making in conservation of the herring food web.

5.0 Jurisdictional Scan

Research for jurisdictional scans was conducted to see how the Haida Nation governs its borders, in comparison with two other Indigenous governments. The following three jurisdictions were scanned to examine their planning, implementation and governance of marine resources and borders: Haida Gwaii, the Cook Islands and Coron Island of the Philippines. The research questions were applied toward analysis of each of the jurisdictions (as “nations”), using an abridged framework:

- **What are the strategies that the nation has used to gain self-determination?**
- **How are disputes addressed with government in co-management relationships?**
- **How are borders treated by government in the case of the nation’s sovereignty?**
- **What can be learned from the nation, in terms of other border questions, such as maritime boundaries?**

The Cook Islands provide a good comparative study as it has a similar history of colonialism and emerging Indigenous empowerment with New Zealand. Moreover, the Cook Islands partner with several island nations on shared marine resource initiatives, with varying degrees of success. The Philippines is of importance because of its colonial policies upon the Indigenous Tagbanua people, who have been similarly dispossessed of their land and marine resource rights and subjected to resource exploitation on traditional territories.

Data included in the jurisdictional scans was gathered through the examination of grey literature on the web sites of each of these entities, along with web sites of other governments, academic institutions, corporations and NGOs relevant to the entities examined. Findings from white papers were added to the case studies on the Cook Islands and the Tagbanua People, to increase the scope and complexity of information.

5.1 Haida Gwaii

Perched on the edge of the continental shelf, 80 km west of the northern coast of British Columbia across Hecate Strait, and 40 km south of Alaska across Dixon Entrance, Haida Gwaii exists in the liminal state of a borderland (Gannon & Hulme, 2018). Consisting of more than 150 islands stretched out across a million-hectare expanse of shallow-water inlets and bays, the archipelago is surrounded by warm Pacific Ocean currents and subject to strong winds, extreme wave surges and annual rainfalls of up to 4 metres. These conditions have isolated residents from the mainland, while supporting diverse ecosystems that have been relied upon by the Haida People for subsistence since time immemorial.



Considered part of a glacial refugium that was once connected to the mainland 13,000 years ago (Cohen, 2014, p. 22 – 23), Haida Gwaii sports a unique biodiversity that has earned it the title of “Galapagos of the North.” Its diverse volcanic geography supports forests of red and yellow cedar and countless streams of spawning salmon. Immense siliceous sponge reefs off to the west filter vast volumes of ocean water on a daily basis, supporting ecosystems rich with diverse species of kelp, eelgrass, corals, mollusks, crustaceans, rockfish, pelagic fish and marine mammals (Lee, 2000).

Sustainable management of the archipelago by the Haida People has relied upon complex strategies that include integrative positioning with the environment and all living things (Bowie, 2013). Economic opportunities building from these resources include commercial fishing, fish processing, ecotourism, recreational fishing, marine transportation, research, and monitoring.

Approximately half of Haida Gwaii’s 4200 residents claim ethnic Haida descentance, according to a traditional matrilineal kinship system that derives from the Eagle and Raven clans. Residents are mostly spread across the archipelago on the main islands of

Graham and Moresby, within the communities of Old Massett, Massett, Port Clements, Tlell, Skidegate, and Queen Charlotte. Another 2000 Haida live throughout the world, with large populations located in Vancouver and Prince Rupert (CHN, 2020).

Pursuant to the Constitution, the CHN consists of fourteen elected representatives, as seen below:

- President
- Vice-President
- Four regional representatives from Skidegate
- Three regional representatives from Old Massett
- Two regional representatives from Vancouver

- Two regional representatives from Prince Rupert
- Two Chief Councillors are appointed to the CHN, one from each of the Indian Act-imposed bands in Haida Gwaii: Old Massett Village Council and Skidegate Band Council.

Under the Haida Constitution, the Haida Nation is bound to establish land and marine policies and regulations for Haida Gwaii, that align sustainably with Nature’s growth cycles, allow access and encourage self-sufficiency and the continuation of Haida cultural identity (CHN, n.d.). To that end, the CHN works in collaboration with the Province of British Columbia and the Government of Canada. Decisions on land-use plans are made through the Haida Gwaii Management Council, while decisions on marine use are made through a variety of partnerships, depending on the scope and focus of the work.

Table 1 - Snapshot of the entities with which the Haida Nation is involved

	Canada	British Columbia	Other
Council of the Haida Nation	Crown-Indigenous Relations and Northern Affairs Canada	Aboriginal Relations and Reconciliation	Academic Institutions
	Environment and Climate Change Canada	Advanced Education	Industry Training Authority
	Fisheries and Oceans Canada	Agriculture	NGOs
	Natural Resources Canada	Community Services	
	Parks Canada	Energy, Mines and Petroleum Resources	
	Transport Canada	Environment	
		Environmental Assessment Office	
		Forests and Lands	
		Health	
		Labour and Citizens’ Services	
		Tourism	
		Transportation	

The CHN also works with other Nations and Indigenous Peoples across North America to build relationships and realize alignment of inherent rights and interests, through active participation in organizations such as the Union of British Columbia Indian Chiefs, the Assembly of First Nations and the Centre for First Nations Governance. *Haida Laas* is the official newsletter publication for the Haida Nation.

5.1.1 HISTORY

The Haida Nation's occupation of Haida Gwaii extends back to time immemorial. Subsisting upon a rich fishing-gathering economy that derives from a sophisticated system of hereditary chiefdom over sedentary villages (Price, 1982, p. 46), the Haida people's ancestral domain extends across the archipelago and surrounding Pacific Ocean waters to several sea mounts and islands, some of which now lay across the United States borders in the states of Alaska and Washington (Breinig, 2013). As with other chiefdom-level societies along the west coast, the Haida Nation's strong leadership and societal structure have distinguished it as an exemplar for other Indigenous Nations.

With a fierce warlike visage and a pre-contact population of approximately 20,000, the Haida were a force to be reckoned with by colonial powers (MacKay, 2015). Renowned for their trading acumen with other coastal nations in the area, the Haida were nevertheless impacted by swelling populations caused by the Gold Rush, which precipitated a smallpox epidemic that decimated the Nation's population to a mere 600 (Wilson, 2017). By the time British Captain George Dixon dubbed the Nation the Queen Charlotte Islands in 1787, Haida Gwaii's governance had been sufficiently weakened as to allow it to be subjected to claims by various colonial powers, prior to its annexation by the Colony of British Columbia in 1851 (Ingram, 1995, p. 77).

Upon joining the Dominion of Canada in 1871, BC administrators disagreed with the fiduciary duty of the Crown extending to provincial governments and refused to acknowledge the Haida Nation's rights and title over traditional territories. *Indian Act*-imposed band councils were established in the villages of Masset and Skidegate, upon Crown land that was administered by the federal government (MacKay, 2015). The southern part of the archipelago, named *Gwaii Haanas* by the Haida People, was excluded from the reserve allotment process, leaving the area rife for exploitation by unsustainable resource extractive enterprises. Unrestricted logging, mining, whaling, fishing, canning and milling was initiated by these companies, with little thought of the finite carrying capacity of the lands and surrounding marinescapes (King, 2004).

The pristine forests of cedar, hemlock and Sitka spruce in *Gwaii Haanas* had earlier been assessed for their revenue-producing capacity, as had the abundant salmon, herring and abalone fisheries in the area. In the 1930s, the BC Government established forest tenure systems that allowed logging companies to rent land for extended periods at low cost, with little deference to the degraded ecosystems caused by resource extraction (Low & Shaw, 2012, p. 2). By the 1960s, public alarm over timber scarcities intersected with emerging international human rights legislation, to fuel an Indigenous rights movement that soon gained global proportions (Takeda & Ropke, 2010, p. 180).

The actions of the Haida People were key to this movement, which set the stage for creating boundaries around the Haida Nation's ancestral domain (King, 2004). Following industrial logging giant ITT-Rayonier's proposal for a five-year logging plan on Burnaby Island, the Haida Nation filed suit against the government for unregulated resource extraction on their land and the drastic impact upon their subsistence resources (Takeda & Ropke, 2010, p. 181). After winning the case, and to protect Moresby Island from a similar fate, the Haida partnered with environmental NGOs

to form the Islands Protection Society (IPS). To ensure the resolution of land claims, the IPS then united with the Skidegate Band Council to form the Council of the Haida Nation (CHN, 2010).

5.1.2 (RE)GAINING INDEPENDENCE

From 1975 to 1978, ITT Rayonier continued logging on Lyell Island until its Tree Farm License expired. Hoping to prevent the license renewal, Skidegate Chief *T'aanuu* (Nathan Young) and CHN Chief *Guujaaw* (*Gary Edenshaw*) sued ITT Rayonier and the Ministry of Forests (Penikett, 2012, p. 6). However, their case was thrown out by the Supreme Court when the Minister of Forests announced indecision regarding further license issuance, along with intent to consult with the CHN should re-issuance of a license be considered. Eventually, consultations between the CHN and the Province occurred, and changes to the license were agreed upon by the Minister. Yet when ITT Rayonier's license was renewed, the agreed-upon changes were not added (MacKay, 2015).

The CHN responded in 1981 by registering a formal land claim with the federal government over the Nation's traditional territories, and acting in the capacity of a sovereign state by delineating its own protected areas. After designating the *Duu Guusd* Tribal Park on the west coast, the CHN received agreements from the two commercial fisheries in that area to halt fishing operations. A few months later, the CHN successfully petitioned a Japanese logging company in the park to halt operations.

While the Province continued to allow logging operations on Lyell Island, the Haida's determination to act in a sovereign capacity to guard its borders resulted in the development of the Haida Guardian Watchmen Program in 1985. The creation of a blockade on Lyell Island, while resulting in Haida arrests, also served to bring national and international attention to the issue faced by the Nation (Stronghill et al, 2015, p. 41).

In 1987, the provincial and federal governments signed a Memorandum of Understanding, designating Gwaii Haanas as a National Park Reserve and Haida Heritage Site (Alper, 1997; Stronghill et al, 2015, p. 41). The CHN was not included as a signatory on the MOU, due to its proposed role as an advisor, rather than as an active participant.

5.1.3 THE TURNING POINT

In 1993, the Gwaii Haanas MOU was amended to include the Haida Nation as an active participant, and formalized as the Gwaii Haanas Agreement, which highlighted government-to-government and co-management frameworks, along with promised later inclusion of the marine scape (Stronghill et al, 2015). As seen in Figure 1, the Agreement was designed to include the divergent perspectives on sovereignty over Gwaii Haanas.

FIGURE 1 - DIFFERING G2G PERSPECTIVES IN THE GWAII HAANAS AGREEMENT

<p>The Haida Nation sees the Archipelago as Haida Lands, subject to the collective and individual rights of the Haida citizens, the sovereignty of the Hereditary Chiefs, and jurisdiction of the Council of the Haida Nation. The Haida Nation owns these lands and waters by virtue of heredity, subject to the laws of the Constitution of the Haida Nation, and the legislative jurisdiction of the Haida House of Assembly.</p>	<p>The Government of Canada views the Archipelago as Crown land, subject to certain private rights or interests, and subject to the sovereignty of her Majesty the Queen and the legislative jurisdiction of the Parliament of Canada and the Legislature of the Province of British Columbia.</p>
<p>The Haida have designated and managed the Archipelago as the "Gwaii Haanas Heritage Site", and thereby will maintain the area in its natural state while continuing their traditional way of life as they have for countless generations. In this way the Haida Nation will sustain the continuity of their culture while allowing for the enjoyment of visitors.</p>	<p>By virtue of the above, the <i>Constitution Act</i> and, more particularly, by an agreement between the Governments of Canada and the Province of British Columbia dated July 12, 1988, the Crown in right of Canada is or will become the owner of the Archipelago and an area within the Archipelago Marine Park Area in order that these lands may constituted as a reserve for a National Park of Canada and a reserve for a National Marine Park of Canada respectively, to which the National <i>Parks Act</i> will apply. The Government of Canada intends to establish the park reserves pending the disposition of any Haida claim to any right, title or interest in or to the lands comprised therein.</p>
<p>"Haida" means all people of Haida ancestry.</p>	<p>For purposes of the Government of Canada's authorization and implementation of this agreement "Haida" refers to the aboriginal people of Haida Gwaii with respect to whom sub-section 35 (1) of the <i>Constitution Act, 1982</i> applies.</p>

Geographic isolation and the spread of Haida residents across the archipelago meant a strong dependence upon artisanal fishing and gathering for survival. To ensure that subsistence resources would not be negatively impacted by overlapping claims of other coastal Nations, the CHN began building relationships. The culmination of this action was manifested in the Declaration of First Nations of the North Pacific Coast, otherwise known as the Turning Point Conference. Collectively signed on June 13, 2000, the Conference marked the Haida's decision, in conjunction with eight other coastal First Nations⁵, to assert rights and entitlement, local control and ecosystem-based management plans upon ancestral domains. The effect of this alliance had tremendous influence on public and Crown perception of the readiness of the Coastal First Nations (CFN) to engage as sovereign entities.

Two years later, the BC Court of Appeal upheld Government's Duty to Consult with First Nations over land use planning (Low & Shaw, 2012, p. 3; Penikett, 2012, p. 6). The CFN responded in 2003 by creating the Turning Point Initiative Society, to oversee implementation of the Duty to Consult. The Society is run by a Board of Directors, each of whom represents one of the following Nations:

- Wuikinuxv Nation
- Heiltsuk Nation

⁵ Haisla First Nation, Kitkatla First Nation, Nuxalk First Nation, Hartley Bay First Nation, Laz Kw'alaams First Nation, Oweekeno First Nation, Heiltsuk First Nation, Old Massett Band, Skidegate Band, Kitasoo First Nation, Metlakatla First Nation, and the Tsimshian Tribal Council.

- Kitasoo/XaiXais First Nation
- Gitga'at First Nation
- Haisla Nation
- Metlakatla First Nation
- Homalco First Nation
- Old Massett Village Council
- Skidegate Band Council, and
- Council of the Haida Nation.

In 2003, the CHN also adopted its Constitution, under which the Haida Nation's governance structure, mandate and other relevant articles were outlined (see Appendix II). Predicating the Constitution is the Haida Proclamation:

The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect; and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to ensure that our heritage is passed on to following generations. On these islands our ancestors lived and died and here too, we will make our homes until called away to join them in the great beyond.

5.1.4 BUILDING A NATION

Once the CHN was functioning as a political body and was engaged within the treaty claims process, it could then direct attention to exercising governance over its ancestral domain. This began through the communication of values-based governance:

The Haida People have always relied heavily on the natural resources within their territories and surrounding maritime areas. They define their relationship with the environment through the Haida term, "Yah'guudang," which means respect for all living things. This respect includes an understanding of themselves within the web of life and a respect for the carrying capacity of the land and sustainable outcomes for future generations (CHN, 2005, p. 4).

In March 2004, the Haida Nation began establishing protocol agreements with local governments in Haida Gwaii, to cement community-based alliances. These alliances enhanced the Nation's political clout, while acknowledging the needs and interests of the non-Haida community within the archipelago. Starting with the Protocol Agreement with the Municipalities of Massett and Port Clements, the language highlighted a "shared commitment to work together to ensure the well-being of the land, waters and people of Haida Gwaii." Ensuing agreements with the Skeena-Queen Charlotte Regional Electoral Areas (2006 & 2008) and the Village of Queen Charlotte (2006) were more detailed:

- A shared commitment to design healthy ecosystems and a sustainable Island economy.
- Discussions on the implications of Indigenous rights and title, economic development, land and coastal resource planning and governance.
- A shared goal to collaborate, regardless of future court decisions.

In 2005, Canada's Oceans Action Plan identified the PNCIMA as one of five priority Large Ocean Management Areas (LOMAs) for the implementation of integrated ocean management planning. A MOU was signed two years later, between the Government of Canada, First Nations and the Province of British Columbia, which stipulated the establishment of a Steering Committee for support of planning efforts. In 2006, the Coast Land Use Decision was announced by BC and FN, with a commitment toward managing the Great Bear Rainforest using ecosystem-based principles.

In 2006, the CHN established the Haida Marine Work Group, to prioritize the development of a Haida Gwaii marine use plan. Comprised of CHN members, Hereditary Chiefs, members of the Old Masset Village Council, the Skidegate Band Council and the Haida community, the Work Group commissioned two studies to inform their work: the *Haida Marine Traditional Knowledge Study* and the *Haida Gwaii Marine Market Sector Analysis*. One of the findings of these studies was the realization of the value of commercial fisheries in Haida Gwaii. From 1996 to 2006, fisheries generated \$84 million in revenue, totaling nearly 22% of the total landed value for BC.

In 2007, following two decades of negotiations to establish international mandates for ensuring Indigenous rights and entitlement over ancestral domains, the United Nations Declaration on the Rights of Indigenous Peoples was endorsed by a majority of 144 states (UN, 2007).⁶ That same year, the CHN released a discussion paper entitled, "Towards a Marine Use Plan for Haida Gwaii." The paper identified the richness and diversity of the marine ecosystem surrounding Haida Gwaii, the environmental threats to the ecosystem and identified the health of the marine environment as essential to healthy economies and cultures. The paper highlighted a vision, set of ethics and values, and overarching goals, objectives and strategies, to frame the Haida Nation's intent to reverse the trend of ocean degradation:

HAIDA MARINE VISION

...to achieve a future with healthy intact ecosystems that continue to sustain Haida culture, communities, and an abundant diversity of life, for generations to come.

HAIDA ETHICS AND VALUES

Our way of life teaches respect for all life. We live between the undersea and sky worlds that we share with other creatures and supernatural beings. Our responsibilities to the sea and land are guided by ancestral values:

⁶ Canada initially dissented against the resolution, stating objections to overly broad claims that were open to diverse interpretations and concerns that the resolution could negatively impact treaty rights and claims. However, Canada assented to UNDRIP in

1. *Respect – We take only what we need, give thanks, and acknowledge those who behave accordingly.*
2. *Responsibility - We accept the responsibility passed on by our ancestors to manage and care for our sea and land. We will ensure that our heritage is passed onto future generations.*
3. *Balance - We seek balance in our interactions with the natural world.*
4. *Giving and Receiving - We continually give thanks to the natural world for the gifts that we receive.*
5. *Seeking Wise Counsel - Our elders teach us about traditional ways and how to work in harmony. Like the forests the roots of our people are intertwined. Together we consider new ideas and information in keeping with our culture, values and laws.*

In 2007, the Haida Gwaii Strategic Land Use Agreement was signed between the CHN and the Province of British Columbia, represented by the Minister of Agriculture and Lands. The Agreement was the culmination of a six-year co-management process, which originated from the 2001 Haida Protocol on Interim Measures and Land Use Planning (MacKay, 2015). Guided by the 2005 Haida Land Use Vision, the agreement extended the protection of Haida lands to 52% and coastline to 72%. The remaining lands were assigned an ecosystem-based management model of sustainable development that connected land and marinescapes and included planning for the protection of marine nearshore and foreshore.

In 2008, the CHN signed the Interim Forest Revenue-Sharing Agreement with the Province of British Columbia (Minister of Forests and Range), to gain a source of revenue as an interim accommodation toward reconciliation. The Agreement also allowed the Haida Nation to play a greater role in licensing and resolving divergent interests on sustainable forest management between the parties (B.C., n.d.b).

In 2009, the *Kunst'aa guu – Kunst'aayah*⁷ Reconciliation Protocol was signed with the Province of British Columbia, represented by the Minister of Aboriginal Relations and Reconciliation (MacKay, 2015). This protocol formed the basis for a future proposed Reconciliation Agreement, the relevant points of which were to be negotiated bilaterally between B.C. and the Haida Nation, if possible. Discussions between the Province and the Haida Nation include carbon offsets, resource revenue sharing, forest tenures and socioeconomic health of the Haida People.

The same year, the Haida House of Assembly approved the creation of the Haida Enterprise Corporation (HaiCo), with the goals of generating revenue for the CHN and improving the quality of life for the Haida People. HaiCo was incorporated under the BC Business Corporations Act on July 20, 2009. In 2010, HaiCo created Taan Forest Limited Partnership and began negotiations for Haida Gwaii's largest forest tenure: TFL 60 (MacKay, 2015). The same

⁷ The Massett and Skidegate words that mean “The Beginning” (BC/CHN, 2010).

year, HaiCo purchased Tlell River House, a former bear hunting lodge, and revamped it as a tourist destination with a new name: the Haida House at Tllaal.

A year later, HaiCo purchased West Coast Resorts, the five fishing lodges of which added substantial revenue to Haida Nation accounts. This was followed by HaiCo's purchase of Seapak QCI Processing Limited and, finally, negotiations with energy corporations and BC Hydro to establish clean energy projects on Haida Gwaii's north coast.

5.1.5 IMPLEMENTATION OF ECOSYSTEM-BASED MANAGEMENT IN HAIDA GWAI

2010 was a landmark year for the Haida Nation. In June, the *Haida Gwaii Reconciliation Act* received royal assent, which showed the Province's commitment toward the *Kunst'aa Guu – Kunst'aayah* Protocol (BC/CHN, 2010). In addition to the recognition of the name change of the archipelago from the Queen Charlotte Islands to Haida Gwaii, the HGRA also authorized the establishment of the Haida Gwaii Management Council, with two appointees from each of the Haida Nation and the Province, along with a jointly appointed chair. The Council was authorized to implement the Haida Gwaii Strategic Land Use Agreement and establish consensual decision-making over the following across most of Haida Gwaii:

1. Forest and range practices objectives
2. An allowable annual cut
3. Protected areas management plans
4. Identification and conservation of heritage sites within each management area.

On December 17, 2010, a ministerial order established that the management objectives of the Haida Gwaii Strategic Land Use Agreement were to be legally binding land use objectives. Ecosystem-based management principles were established on Haida Gwaii, with an equal focus on cultural, ecological, social and economic objectives for the Haida People (BC, n.d.a).

Also in 2010, the *Gwaii Haanas* Marine Agreement was signed between the Government of Canada and the Haida Nation. The agreement included the promised marine component to the original agreement, and followed the establishment of the *Gwaii Haanas* National Marine Conservation Area Reserve, under authority of the *Canada National Marine Conservation Areas Act*. Under the terms of the agreement, a cooperative management approach toward managing marine ecosystems was agreed upon by the enhanced AMB, which expanded to include representatives from Parks Canada, Fisheries and Oceans Canada and the Haida Nation.

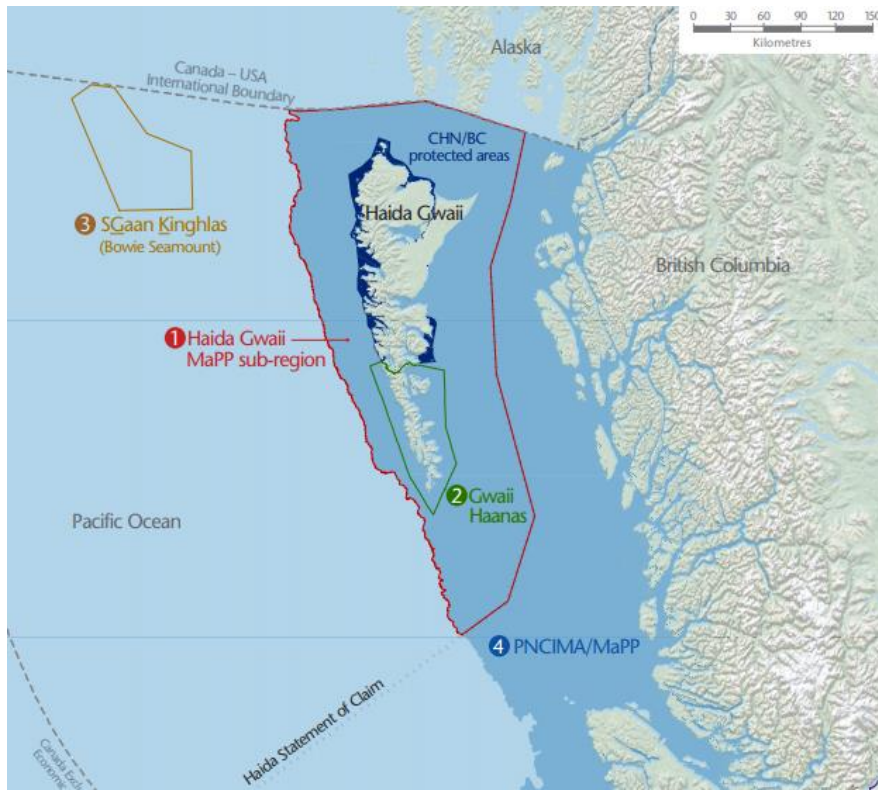
In 2011, the CHN created the Haida Gwaii Marine Advisory Committee from a broad range of stakeholders with diverse levels of expertise on the marinescape around Haida Gwaii. This work was to inform the launch of the Marine Planning Partnership (MaPP) in the spring of 2012, in which the B.C. Government and several First Nations (including the Haida Nation) began working together on marine use plans specific to their ancestral domains (CHN, Mar. 2017).

The MaPP supported work being done on a larger scale through the Pacific North Coast Integrated Management Area (PNCIMA) planning process (CHN, Mar. 2017). The result of this process was the Haida Gwaii Marine Use Plan, which sought to pinpoint marine uses that sustainably matched with the socio-cultural and economic needs of the community, while at once protecting and restoring marine ecosystems. As seen in Table 1 and Figure 3 below, the Haida Nation is involved in four separate G2G marine-based initiatives under different legislative regimes and time scales.

TABLE 2 - HAIDA NATION G2G MARINE PLANNING INITIATIVES

Process	Partners	Product
Marine Planning Partnership (MaPP) – Haida Gwaii sub-region	Province of British Columbia	Haida Gwaii Marine Use Plan
Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site	Parks Canada, Fisheries and Oceans Canada	Gwaii Haanas Integrated Land-sea-People Management Plan
SGaan Kinghlas – Bowie Seamount Marine Protected Area	Fisheries and Oceans Canada	SGaan Kinghlas – Bowie Seamount MPA Management Plan
Pacific North Coast Integrated Management Area (PNCIMA) Initiative	Canada (Fisheries and Oceans), First Nations, BC	PNCIMA Integrated Management Plan

FIGURE 2 - LOCATION OF HAIDA MARINE PLANNING INITIATIVES



In 2012, the Haida Salmon Restoration Corporation began a project to enhance fish populations, using the concept of ocean fertilization (Bennett, 2012). Taking an ecosystem-based approach to artificially boosting salmon returns, the project proposed dumping 100 tonnes of iron sulphate off the west coast of Haida Gwaii, to stimulate a phytoplankton bloom and trigger consumption up through the food chain. While the bloom did occur, results were inconclusive as to whether the project had achieved its goal (Gannon & Hulme, 2018).

In 2013, the Haida Accord was signed by all Hereditary Chiefs, CHN members, and members of the Old Massett Village Council and the Skidegate Band Council, to document solidarity on the governance of Haida land and marine boundaries, encapsulated resources, culture and heritage, and economic needs of the people. On 9 May 2014, the HGMC amended the 2010 ministerial order to provide legal authority for its actions under the *Haida Gwaii Reconciliation Act*. Under the Act, the HGMC was responsible for approving management plans for the 17 protected areas within its mandate.

5.1.6 OCEAN PROTECTION

In 2015, Haida Laas published a number of news items that highlighted the importance of planning toward sustainable management of Haida Gwaii's oceanscapes. In June, the near grounding of a disabled cargo ship and its 500+ metric tonnes of contaminants off the coast of Haida Gwaii triggered the CHN to host a workshop on developing a marine emergency response protocol for the MaPP (Haida Nation, 2015a). In the same issue, Canada's role in creating a network of MPAs was criticized by the David Suzuki Foundation as a failure, which required more engagement in planning at the regional level (Haida Nation, 2015b).

A year later, at the 18th meeting of the House of Commons Standing Committee on Fisheries and Oceans (2016), the T. Buck Suzuki Environmental Foundation criticized government policies on fisheries licensing and quota holders. Executive Director Jim McIsaac spoke out, citing that of the \$80 million worth of harvested fish from the waters around Haida Gwaii, less than 5% was linked to the local communities. McIsaac assigned blame to the Individual Transferable Quota (ITQ) fishery model established by the DFO, the cost of which was choking out the average artisanal fisher (Ecotrust Canada, 2015). No resolution of policy occurred as a result of McIsaac's argument, and the licensing and quota model continued to hold.

However, work on marine planning continued. In August 2016, the Haida Nation signed the Haida Gwaii Marine Plan Implementation Agreement with the Province of British Columbia, represented by the Minister of Forests, Lands and Natural Resource Operations. The Agreement confirmed both parties' intent to jointly implement Haida Gwaii Marine Plan, described the roles and responsibilities of the parties and the G2G decision-making framework. The Agreement also identified priorities, structures and mechanisms necessary for implementing the Plan.

In November of the same year, the Government of Canada launched the Oceans Protection Plan (OPP), with the objectives of enhancing environmental response capacity, preserving and restoring degraded ecosystems, creating stronger partnerships with Indigenous coastal communities and clarifying the effects of human activities upon the marine environment through research and modelling (Transport Canada, Mar 2019). Follow-up to the OPP manifested in the Reconciliation Framework Agreement for Bioregional Oceans Management and Protection, which was signed by the CHN and representatives from the Government of Canada (Minister of Fisheries, Oceans and Coast Guard, Minister of Transport, Minister of Environment and Climate Change and Minister of Crown-Indigenous Relations and Northern Affairs) in 2018. The goal of the Agreement was to commit to a shared intent to facilitate reconciliation through achieving the following:

- governance of sustainable oceans
- resilience of marine ecosystems
- stable investment environment for marine economic opportunities
- economic opportunities for the Pacific North Coast Nations, related to oceans management and protection.
- capacity of the PNCN in governance, management and stewardship of marine ecosystems, resources and activities.

In February 2019, the Haida Nation signed the 2019 Indigenous Atmospheric Benefit Agreement with the Province of British Columbia, represented by the Minister of Indigenous Relations and Reconciliation and the Minister of Forests, Lands and Natural Resource Operations. Building on 2006 G2G discussions on carbon sequestration from land and resource planning initiatives on Haida Gwaii, along with the 2007 Strategic Land Use Agreement and the 2016 amended Reconciliation Protocol, the CHN agreed to share benefits with the Province on carbon emission offsets (B.C., 2019).

Also building on from the SLUA In June 2019, the Government of Canada passed the *Oil Tanker Moratorium Act*, prohibiting any vessel with more than 12,500 tonnes of crude oil from accessing, loading or unloading at any ports along Hecate Strait, Dixon Entrance and Queen Charlotte Sound (Transport Canada, 2019). By July of the same year, the completion of the *SGaan Kinghlas-Bowie Seamount Management Plan* was announced by the CHN and the DFO. Co-signed by the Minister of the DFO and the President of the CHN, the Plan marked the evolution of collaboration over marine protected areas.

5.1.7 DISCUSSION

WHAT ARE THE STRATEGIES THAT THE NATION HAS USED TO GAIN SELF-DETERMINATION?

Haida self-determination has been enabled through flexible approaches toward strategic relationship-building with other Indigenous Nations, government and NGOs. These relationships have empowered the Haida in their dealings with government in co-management over shared spaces. The 2007 SLUA has been a key element of settings goals for ocean management and G2G collaborations on actions toward those goals. The Government of Canada and the Province of British Columbia appear to be receptive toward establishing reconciliation frameworks in their co-management relationship with the Haida Nation.

HOW ARE DISPUTES ADDRESSED WITH GOVERNMENT IN CO-MANAGEMENT RELATIONSHIPS?

Litigation has been an effective strategy for resolving disputes with government, but is not sustainable over the long term due to the costs involved on both sides. The Haida's engagement in relationships with a diverse range of advocacy groups has assisted with solving issues before they get to the statutory decision-maker. This has not only reduced costs but has also built Haida empowerment and showcased the Nation's evolving leadership acumen.

One other theme that has emerged from this case study is the risk of bureaucratic thinness posed to the Haida Nation. Given the many ministries with which the Haida Nation is involved, there is a risk of bureaucratic thinness, which could result in a lack of capacity for monitoring borders and maintaining vigilance over marine resources.

HOW ARE BORDERS TREATED BY GOVERNMENT IN THE CASE OF THE NATION'S SOVEREIGNTY?

Government acknowledgement of the Haida ancestral domain and its borders continues to evolve through the co-management process over marine protected areas. Pressure upon the federal government to meet UN-established performance measures, such as (but not limited to) Aichi Targets, Indigenous rights, and environmental targets, have aided the self-determination agenda of the Haida Nation.

WHAT CAN BE LEARNED FROM THE NATION IN TERMS OF OTHER BORDER QUESTIONS?

One troublesome area that could impact Haida self-determination and control over marine resources is the licensing and quota holding system, which is managed by the DFO. While licensing is an effective source of revenue for government and the CHN, the attachment of quota holdings over a finite catch limit commoditizes the quota and favours commercial fishing companies over artisanal fishers. This is an attractive option for industry investors, whom, under the current ITQ regime, may lease out their quota for increasingly high dollar-value amounts. Yet it also makes it difficult for artisanal fishers to afford quota and, therefore, gain a share of the allocated catch.

As demonstrated during Scotland's 2012 Black Fish Scandal⁸, the legal holding of catch limits by a restricted number of high-dollar licensees encourages illegal landing of fish on the black market by smaller companies and individual fishers. This seriously impacts the populations of fish species, while undermining the work of the Haida Nation and government to sustainably manage fisheries. Drastic and unresearched measures to re-establish fish populations, like the Haida Salmon Restoration Corporation's ocean fertilizations projects, have only served to reduce the credibility of the Haida Nation and divide its community.

⁸ <https://www.bbc.com/news/uk-scotland-north-east-orkney-shetland-17153085>

5.2 The Cook Islands

The Cook Islands are comprised of 15 islands, spread over a 2 million square kilometer expanse in the South Pacific Ocean, between Fiji and New Zealand (Cook Islands, 2013). Divided into northern and southern island groupings, the country's population density is determined by geography and arable land. Five of the nine southern islands are elevated volcanic with fertile soils.

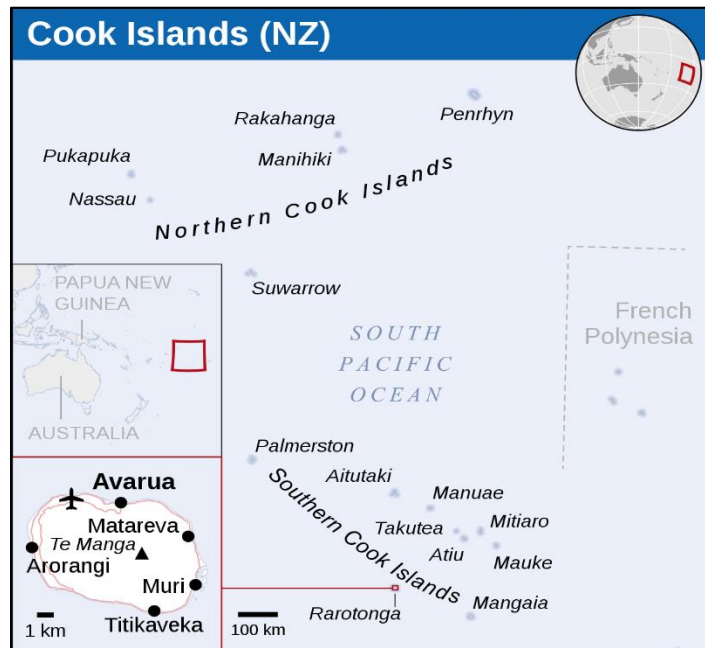
The largest and most populated of these, Rarotonga, holds most of the country's 17,000 residents (De Scally, 2014, p. 14) and functions as the its economic driver (Campbell, 2002, p. 222). The remaining

islands of the southern group host 20% of the country's population: Palmerston, Aitutaki, Manuae, Atiu, Mauke and Mitiaro. Manihiki, Rakahanga, Pukapuka, Nassau and Penrhyn are the northern group of low-lying coral atolls, which function as the country's diaspora.

Scarce resources in the diaspora, threats posed by climate change and the cost of administering to its residents across such large distances has created economic disparities throughout the Cook Islands. As such, New Zealand plays a major role in supplying development assistance to the Islands, with a focus on public sector assistance, education, diaspora infrastructure, marine resource management and civil society supports (NZMFAT, 2007). A special relationship between the two nations has provided a permeable border, through which Cook Islanders travel freely as dual citizens, but which requires substantial hurdles on the part of outsiders seeking citizenship.

While a small minority of immigrant residents are present upon the islands, Cook Island citizenship is largely derived through ancestral ties to Indigenous peoples known as the Maori. Land hold tenure within the Cook Islands is based upon these kinship ties and extends to traditional fishing grounds that are bounded by corals and other natural markers (Maki, 2014, p. 8). Land and marine tenure have always carried responsibilities for sustainable management of resources, which is imposed through *ra'ui*, an enforcement system of taboos.

Fisheries are managed on both a commercial and subsistence basis: pelagic species like tuna are often targeted for international markets, while bycatch species and yields from coastal fishing often appear on local markets (FAO – UN, 2017). Approximately 22% of the population of the Cook Islands are involved in subsistence fishing, with pearl and other fishery production making up about 10% of the total GDP. Although the Cook Islands government issues licenses and builds



agreements with individual countries on fishing allotments, New Zealand is in control of the quota holding system within the Cook Islands' maritime boundaries.

Trade between the Cook Islands and New Zealand is skewed. New Zealand imports \$0.26M in pearls and other trade goods from the Cook Islands, which in turn import more than \$98M in products from New Zealand. Infrastructure deficits, the high cost of administering to the outer islands and overspending have left the Nation with mounting debts, increased government instability, enhanced public mistrust and growing levels of emigration from the Islands to New Zealand and Australia (Durbin, 2018).

The Government of the Cook Islands consists of a 24-member Parliament and Queen Elizabeth II as Head of State. A Queen's Representative functions in the stead of the Queen, and is appointed (or reappointed) by the Queen every three years. Appointment of the Prime Minister is through the Queen's Representative, based on the appointee's membership in Parliament and the confidence of a majority of the members of Parliament. Ministers are appointed from Parliament by the Queen's Representative, on the advice of the Prime Minister. Parliament members are elected by secret ballot by electors across the Cook Islands, along with constituents located in New Zealand and other areas outside of the Cook Islands.

Under the *Cook Islands Constitution Act*, the Cook Islands are governed in "free association" with New Zealand, under the following conditions:

1. The Cook Islands Government retains the rights to make its own laws.
2. Full executive power is given to the Cook Islands Government.
3. The Cook Islands are part of the geographic "Realm of New Zealand."
4. Cook Islanders are considered New Zealand citizens.
5. At the request of the Cook Islands Government, the Government of New Zealand is responsible for the Cook Islands' external affairs and defense.
6. The Cook Islands may unilaterally gain full independence from New Zealand at any time.

The Government of the Cook Islands relies on two legislative bodies for advisory duties: the House of *Ariki* and the *Koutu Nui*. The House of *Ariki* consists of hereditary chiefs from each of the islands. The *Koutu Nui* consists of traditional *mata'iapo*, or headmen. Both bodies work together to provide cultural advice to the Government, such as traditional fishing practices and fishing boundaries between families.

5.2.1 HISTORY

Oral tradition asserts that the Cook Islands were originally populated more than 5000 years ago (Evans, 2015) by semi-nomadic seafarers fleeing resource shortages in French Polynesia (Cook Islands, 2018). Adapting their habitation patterns to a stable environment characterized by the Medieval Warm Period (AD 750 – 1250), the nomads initially settled along shorelines in nuclear groups that were each headed by a hereditary chief (*ariki*) and a group of headmen (*mata'iapos*)

(Sissons, 2007). This leadership model became fragmented, however, with the advent of the Little Ice Age in AD 1250, when a sudden drop in ocean levels created food shortages and forced people to disperse and migrate inland to avoid disputes (De Skally, 2014, p. 14). The *arikis* imposed a traditional resource management system upon their lands and marinescapes known as *ra'ui*.

Colonial interest in the Cook Islands began with sightings from Spain around 1600 and tentative landings by Britain from 1764, but the perilous reefs and fierce locals were strong deterrents. In 1821, following the establishment of a base on Tahiti (Campbell, 2002), the first British missionaries arrived in Rarotonga, and unwittingly interrupted a military dispute that had been enduring for several years (Sissons, 2007, p. 51). Having earlier been exposed to the Tahitians' centralized governance structure, the missionaries unwittingly unbalanced the Cook Islands' governance system by assuming kingship (and Christian conversion) upon the first *ariki* they encountered.

The *ariki* showed alliance with the missionaries by burning the sacred structure that represented his kinship-based leadership, thereby sparking further dispute against the remaining *arikis* and *mata'iapos*. Over time, however, curiosity amongst the other *arikis* won over and sparked a collective migration back to the shorelines (De Skally, 2014, p. 15). The *arikis* and the missionaries went on to create partnerships, leaving the *mata'iapos* to fight for land and leadership rights (Sissons, 2007).

Other factors affected the balance of power amongst the Cook Islanders during the 19th century. While missionaries estimated the local population at 6000-7000, disease and kidnappings by Peruvian slavers reduced that number to less than 2000 by mid-century (Campbell, 2002, p. 225; Evans, 2015). Cognizant of their vulnerability, particularly after France violently appropriated nearby Tahiti and the Society Islands in 1843, the Cook Islands' *arikis* began documenting their traditional laws on each Island, and appealed to Britain for protection. The British seized upon the opportunity to establish a Central Pacific coaling station to facilitate construction of the (relatively) nearby Panama Canal, and formally declared the Cook Islands a protectorate in 1888. Frederick Moss was formally appointed by Britain as the Resident Leader of the Islands.

5.2.2 IMPACTS UPON TRADITIONAL LAWS AND GOVERNANCE

Like his missionary predecessors, Moss did not consider the existing governance structure and resource management system already in place within the individual Islands (Maki, 2014). With foreknowledge gained through experience of the potential risks to their governance structures, the *arikis* of Rarotonga had by 1879 already mobilized themselves into a Council and established the Laws of Rarotonga. In 1890, shortly after the appointment of Moss, the Council gave the *arikis* of Rarotonga authority to appoint judges. This action was followed in 1891 by several other documented statutory declarations:

- Rule of law, establishment of Council, appointment of land-dispute judges and responsibilities of the *ariki* for the future government of the Island of Mangaia.

- Rule of law, establishment of Council and its power to appoint land-dispute judges, for the good government of the Island of Aitutaki.
- Structure of judges on settling land disputes on Aitutaki.
- Election of the *au* (district council) for each district on Rarotonga, for the purpose of making laws, maintaining order and imposing *ra'ui* on crops.
- Election of the *au* for the Island of Mangaia.

In 1894, a more concrete documentation of land declaration was announced by the Council:

We, the Parliament of the Cook Islands Federation hereby declare the customs of the Maori in that matter from time immemorial to the present day. The Land is owned by the tribe; but its use is with the family who occupy that land. The family consists of all the children who have a common ancestor, together with the adopted children, and all the descendants who have not entered other tribes. The control of that land rests with the head of the family; but it is for the support of all the family. No Maori can sell to another Maori, or to a foreigner. Therefore, on that point we need not say more (Maki, 2014).

The Declaration confirmed open access to water and the use of roadways, unless expressly prohibited by a law of Council. In addition, the Rarotonga Council of Ariki established the *Land Occupants Act*, which required district judges to send judgements to their *au* for final decision.

Ross' attempts to balance power between the *arikis* and the *mata'iapos* were challenged by the collective might of the *arikis*, who eventually overthrew his leadership in lieu of Colonel Walter Gudgeon (Campbell, 2002, p. 227). As a land court judge, whose influence was thought by the *arikis* to work in their favour, Gudgeon secretly sought to reduce the *arikis*' power while preparing the Islands for annexation by New Zealand.

In 1901, Gudgeon's goal was realized and the Cook Islands were annexed (NZMFAT, 2007). New Zealand sought to increase the agricultural productivity of the islands by protecting the land tenure of native producers (Campbell, 2002, p. 227). Although the terms of the annexation specified self-governance, the New Zealand government assumed legislative administration over the Cook Islands, without developing infrastructure or initiatives (Evans, 2015). With the passing of the *Cook Islands Act 1915*, Cook Islands Mauri lost their custodial rights over land and marine resources (FAO, 2017).

Without a cohesive system of infrastructure and economic development on the islands, many Cook Island Mauri were forced to migrate to New Zealand to find work. Increasing public discontent over the ensuing decades finally manifested in the election of a Legislative Council in 1946.

5.2.3 (RE)GAINING INDEPENDENCE

In 1965, the Cook Islands became a self-governing entity, through enactment of New Zealand's *Cook Islands Constitution Act 1964* (Maritime Cook Islands, 2019). Under authority of the

Constitution, an independent Legislative Assembly was elected, with Premier Albert Henry at its head. Noting the costs involved in administering water, electricity and other amenities to citizens in outlying islands, Henry realized that he needed a working partnership with New Zealand that would allow a phased-in style of leadership to stabilize over time (NZMFAT, 2007).

Although formally declared a nation, the Cook Islands' reliance on New Zealand meant that it was still a developing nation on the world stage. New Zealand provided defense of the Cook Islands' geographic borders for military purposes, but this did not include monitoring borders on a consistent basis. Monitoring of borders for anything other than defense was the responsibility of the Cook Islands Government, which relied on support through partnerships, sponsorships and generated revenue from tourism, fisheries, seabed mining and pearl farming.

5.2.4 BUILDING A NATION

The initial focus of the Cook Islands Government was on generating revenue from which to build infrastructure throughout the islands. Henry sought to expand upon commercial fisheries and seabed mineral mining, while developing the Cook Islands' ancestral culture into a commodity that would attract tourists and allow the islands to stand apart from other tourist destinations in the South Pacific. Focused on centralized leadership under the rubric of togetherness, Henry engaged all the *ariki*s from the surrounding islands and established the House of *Ariki*, to advise parliament on Cook Island cultural norms, and to publicly promote customs and traditional practices as a way of nation-building (Durbin, 2018).

By controlling the media and traditional leaders, Henry created the Ministry of Internal Affairs to effectively communicate citizens' value in building their nation and engage voluntary human resources. Hundreds of committees were formed to address necessary projects. On the weekends, men were enlisted into the physical work of creating roads and water infrastructure throughout many of the islands, while women were encouraged to form planning committees, organizing tasks such as cooking for labourers and creating handicrafts in the diaspora for tourist consumption. Even youth provided value, by participating in drumming and dancing brigades that gained international attention for their uniqueness and expertise (Cook Islands).

Once he had established a strong sense of nationhood within the islands, Henry began fostering international relationships. This strategy had been precluded several years earlier, during a visit from Britain's Royal Family, in which Henry presented his nation as akin to a debutante, by coordinating citizens to adorn themselves with flowers and smiles, and to dress in ways that would showcase their physical beauty. This strategy engaged the Crown's support for the young nation, and internationally publicized the nation's promise as a future development prospect.

Henry's initial venture into international affairs commenced with the Cook Islands' partial founding of the South Pacific Forum and the 1973 signing of the *South Pacific Bureau for Economic Cooperation* (SPEC) treaty with Australia, Fiji, Nauru, New Zealand, Tonga and Western Samoa. During the same year, Rarotonga's International Airport was completed, finally

giving Government the ability to attract a global audience directly to the Cook Islands shores, rather than via New Zealand (Durbin, 2018, p. 18). Henry went further by appealing to the UN Convention on the Law of the Sea, to establish a 200 square kilometer Exclusive Economic Zone (EEZ) around the islands that would allow his government control over marine resources.

While a developing presence upon the international stage allowed the Cook Islands government to compete for tourism infrastructure funding from an increasing number of nations, domestic issues temporarily sabotaged Henry's vision for togetherness. The House of *Ariki*, although an advisory body, had become increasingly vocal against government decision-making. To mitigate this risk, Henry created the *Koutu Nui*, another advisory body consisting of *mata-iapos*⁹ and *rangatira*, to temper the voice of the House of *Ariki* (Sissons, 2007, p. 60).

Henry's strategy, however, failed to stem the mistrust in his administration generated by the *Ariki*. In 1978, Tom Davis was voted in. The democratic focus of the Davis Administration was directed toward equality and interdependence between islands, through the promotion of tertiary education to citizens and an expansion of the tourism industry that did not include cultural components (Durbin, 2018, p. 18-19). The Ministry of Cultural Development was dissolved and, with it, the power of the Ministry of Internal Affairs to manage committees and councils.

Creating ministries, while relieving governance pressure on a centralized administrator, also generated issues due to allotment of funds to each ministry and the competence of each minister to handle the funds. In one instance, the Minister of Tourism contracted an Italian construction company to build a luxury hotel on Rarotonga. But when the company was placed under receivership by the Italian government and connections to organized crime were brought to light, loan payments to the Cook Islands froze and the hotel development was permanently halted. Subsequent accrual of a \$57 million debt again generated public distrust of government, particularly in the outer islands where the socio-economic impacts were most felt (Durbin, 2018, p. 10).

5.2.5 MAINTAINING A BALANCE WITH THE DIASPORA

With little in the way of infrastructure to support local economics in the diaspora, and vast ocean distances separating many of the outer islands from Rarotonga, diasporic residents had relied largely on subsistence strategies for their survival. Artisanal fishing, shellfish-gathering and selling mother-of-pearl within gathered *trochu* mollusks (trochus) was the basis of the diasporic economy.

In 1956 and prior to enactment of the Cook Islands Constitution, New Zealand had introduced trochus to Aitutaki shores as an export income from which artisanal fishers could benefit, in addition to remittances from family stationed abroad. By 1980, the Aitutaki Island Council began expressing concern of trochus encroachment upon traditional food sources and harvesting of the invasive mollusks began in earnest. After 18 months of unrestricted access to the trochus fishery,

⁹ Lesser chiefs and chiefly nobles, respectively.

the Council was forced to restrict harvests, to allow regeneration of the reef walls and marine ecosystems surrounding the island.

Degradation of fisheries had been a growing concern in the since the 1960s. As the nation had been developing itself and building infrastructure, little attention had been given to impacts upon the marine environment. Mooring channels were blasted out of coral beds and the clearing of land for hotel developments had facilitated coastal erosion and increasing levels of pollution, all of which impacted reef fish populations across the Cook Islands' EEZ.

Decreasing reef fish populations led to the need for artisanal fishers to travel further from shore. Although fishing of pelagic species was lucrative, it required investment in expensive equipment and fuel, while in competition with commercial fishers from other jurisdictions (Durbin, 2018, p. 10). Many of the fishers found themselves forced to fish increasingly further out to sea, which proved unsustainable cost-wise and posed safety risks because of the lack of oversight on illegal activities.

Another impact to fisheries was ciguatera poisoning. A marine food chain toxicity that is transmitted from bacteria to reef fish (Rongo & Van Woesik, 2011, p. 346), ciguatera became increasingly prevalent in the 1960s, with 2% of Cook Islanders affected annually. Manifesting symptoms ranging from gastrointestinal disturbances to neurological disorders and even death, the number of affected people began increasing in scope every year. Fearful of poisoning, many Cook Islanders began emigrating to New Zealand, while diasporic residents changed their traditional, fish-based diets to less risky (and more expensive) fare. The revenue loss to the fishing industry by ciguatera was estimated at \$534K/year.

5.2.6 EVOLVING STATUS AND MARITIME BOUNDARY OVERSIGHT

In 1981, the evolving state of the Cook Islands was captured in an amendment to the Constitution, under authority of the *Constitution Amendment (No. 9) Act 1980-81*. Changes to the Constitution included:

- The Legislative Assembly became “Parliament”
- The Premier became “Prime Minister”
- The New Zealand High Court sitting as the Cook Islands Appellate Court was replaced by “the Cook Islands Court of Appeal”¹⁰
- A Bill of Rights was introduced.

In 1982, with the goal of engaging nations in sustainably managing the world’s oceans through a centralized governance strategy, the United Nations established its Convention on the Law of the Sea, to promote transborder communication and cooperation over stewardship of the marinescape (UNCLOS, 1982, p. 25). By using the International Marine Organization to implement the

¹⁰ A present or former judge of the Court of Appeal of New Zealand was included as a member of the Cook Islands Court of Appeal. <https://www.maritimecookislands.com/the-cook-islands/legislative-political-system/>

convention through its integrated Technical Co-operation Programme, the UN could help small island nations focus on enhancing sustainable socio-economic development while protecting marine resources for increased levels of tourism revenue and access to unpolluted marine protein (IMO, 2019).

In 1984, oversight of the Cook Islands' marinescape was enacted with the passing of the *Ministry of Marine Resources Act*. In addition to creating a relevant administrative body, the Act further stipulated a list of objectives that were tailored around managing the well-being and marine subsistence resources of Cook Island residents. Australia gifted the Cook Islands with a patrol boat, to aid in the surveillance effectiveness of the Cook Island Police Maritime Division (DFAT).

5.2.7 SURVEILLANCE OF MARINE AREAS AND A LACK OF OVERSIGHT

However, nationalized marinescape oversight took a back seat again in 1989, following election of Henry Puna. With a refocus onto cultural nationalism, funding was channeled back toward the Ministry of Cultural Development, to fund initiatives like the re-enactment of Polynesian voyages, which instilled pride and national identity in Cook Islanders, while generating tourism revenue (Durbin, 2018). With its oversight impacted by the reduced funding posed by the administrative change of focus, the Ministry of Marine Resources lost its authority over the marinescape.

Taking immediate action to protect its local fisheries, the Island of Aitutaki passed bylaws banning shellfish gathering, scuba-based spearfishing and net fishing (Aitutaki, 1990). Taking its lead from this action, the Cook Islands government turning to treaty-making. In 1992, the *Te Vaka Toa Arrangement* was signed as a subsidiary to the *Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region*. Using a planning strategy to map out areas banned to commercial fishing, the Arrangement was meant to function as a fisheries management and border enforcement tool. To provide further oversight on commercial fishing, the Cook Islands signed an MOU with China a few years later, with the understanding that Chinese commercial fishing boats would respect the banned areas.

However, the Cook Islands' weak political clout on the international stage resulted in infringements upon the Arrangement without repercussions, thereby generated further public distrust in government. By 1995, the Cook Islands' economy had collapsed, with massive public service layoffs and budget cuts causing a further lack of oversight on environmental infractions during development projects. Coastal erosion, marine environmental degradation, over-fishing and increased pollution continued unchecked (Durbin, 2018, p. 10), all of which was exacerbated by the pronounced emigration of Cook Islanders as they sought work and refuge in New Zealand and Australia.

5.2.8 MOVING TOWARD COLLABORATIVE GOVERNANCE OF OCEANSCAPES

In 1999, the Pacific Regional Follow-up Workshop on the Implementation of the Law of the Sea Convention (Secretariat, 2005) was convened, with a recommendation that a regional ocean policy be developed. In 2005, the Pacific Islands Regional Ocean Policy was published, with its guiding

principles founded upon international laws established through the United Nations Convention on the Law of the Sea.

The Policy was an important document that established boundaries upon the oceanscape that aligned with marine boundaries of neighbouring island states. It was also a landmark document, in that island state boundaries were described in three dimensions: through air, the water and on the surface. The Policy's language was also reframed, referring to each nation as a "Large Ocean Developing State," instead of a small island connotation. This language and the content of the Policy strongly informed a shift in thinking of ocean boundaries and an increasing responsibility toward sustainability, through implementation of the traditional practices of each island community that had stood the test of time (Secretariat, 2005, p. 4).

With the goal of ensuring the future sustainable use of the ocean and its resources by Pacific Islands communities and external partners, the vision of the Policy was:

*A healthy ocean that sustains the livelihoods and aspirations of
Pacific Island Communities.*

The guiding principles of the Policy were as follows:

1. To improve understanding of the ocean
2. To sustainably develop and manage the use of ocean resources
3. To maintain the health of the ocean
4. To promote the peaceful use of the ocean
5. To create partnerships and promote cooperation.

While a framework was initiated to guide implementation of the Policy, individual nations were responsible for legislative follow-up.

5.2.9 LEGISLATION ON MANAGING MARINESCAPES

In 2005, the Cook Islands began managing its marinescapes under authority of the *Marine Resources Act*. From the beginning, the nation was challenged with balancing trade-offs between environmental conservation and revenue gains through resource development, and with policing marine borders against illegal fishers. Fisheries poaching was common by Korean and Taiwanese skippers, who received paltry fines that were little deterrent (Jonassen, 2008). When it was discovered that the MMR had issued fishing licenses to Taiwanese fishing vessels through the Cook Islands Northern Fishing Company in 2008, the resulting scandal spurned so much public instability that Parliament was temporarily dissolved by the Queen's Representative (Durbin, 2018).

Yet by 2009, the Cook Islands began expanding upon earlier ideas of shared resource management, through establishment of the *Te Vaka Moana* Arrangement with the neighbouring nations of New Zealand, Samoa, Tonga, Niue, and Tokelau (Mitchell, 2020). Grounding the terms of the

Arrangement in ties to international and regional organizations that dealt with fisheries problems, such as the Western and Central Pacific Fisheries Commission, the Arrangement relied upon six objectives:

1. To strengthen cooperative ties for increasing economic benefit by protecting fisheries resources.
2. To co-develop fisheries capacity through control, surveillance and enforcement strategies.
3. To promote information sharing with other participants, on fisheries policy and management.
4. To collaborate with the Pacific Islands Forum Fisheries Agency (FFA) and Secretariat of the Pacific Community (SPC) on regional and sub-regional fisheries initiatives.
5. To counter illegal, unregulated and unreported fishing.
6. To strengthen fisheries development initiatives between fishing industry sectors.

This partnership was to spurn a series of marine species-specific regulations and amendments, including shark conservation, an enlargement of the Cook Islands EEZ and the creation of a quota management system for large pelagic fish.

5.2.10 BIG OCEAN PLANNING

The Cook Islands' proficiency in embedding itself within partnerships and initiatives was to prove valuable in defining the next stage of its governance over marine resources. In 2012, following the success of Australia, Chile and many countries in managing large scale ocean reserves, the Cook Islands created Marae Moana Marine Park, with the support of Conservation International. Delineating an area around the southern belt of the Cook Islands, the Park encompassed 1.065 million square kilometers (Big Ocean Managers, n.d.).

The primary value of this collaborative initiative was to harness revenue from the Cook Islands' marine resources: seabed mining, pearl farming, fisheries, tourism; and development. Secondly, the park provided membership of the Cook Islands to a Big Ocean Network, that would gain increasing levels of political clout, and from which best practices regarded marine resource management could be shared and learned.

In 2017, the marine park was encapsulated within legislation. The *Marae Moana Act* (MMA) designates the entire 1.9 square kilometer area of the EEZ of the Cook Islands as a multi-use marine park. The goal of the Act is to “promote sustainable development by balancing economic growth interests such as tourism, fishing and deep-sea mining, with conserving core biodiversity and natural assets, in the ocean, reefs and Islands.”

Under authority of the MMA, the Marae Moana Council was established. The Council was comprised of nine members, including the Prime Minister, the leader of the Parliamentary Opposition, the President of the House of Ariki, representatives from the northern and southern islands in the Cook Islands, along with leaders from the private, religious and non-profit sectors

of the Cook Islands. Advisement of the Council was through a Technical Advisory Group, which is composed of representatives from the Office of the Prime Minister, National Environment Service, Ministry of Marine Resources, Seabed Minerals Authority, Ministry of Transport, House of *Ariki* or *Koutu Nui*, and NGOs with marine science and social policy expertise. The MMA also authorized the establishment of a Marae Moana Coordination Office within the Office of the Prime Minister, which was responsible for assisting the Council and Technical Advisory Group with administrative and consultative functions.

5.2.11 DISCUSSION

WHAT ARE THE STRATEGIES THAT THE NATION HAS USED TO GAIN SELF-DETERMINATION?

Collaboration is the main strategy by which the Cook Islands has gained self-determination. Working with New Zealand to establish a governance model of free association has allowed the Cook Islands to build nationhood, develop tourism infrastructure and manage fisheries and other marine resources, without worrying about border infringements in times of war. Building relationships with other South Pacific nations and NGOs has allowed the Cook Islands to gather best-practice information and gain assistance on monitoring its marinescapes.

The Cook Islands News reports on activities throughout the Cook Islands, using public scrutiny to initiate legislation. Citizens who move abroad to study or work often provide an international scrutiny to Cook Islands activities, by posting annual reviews by the news provider, such as Jonassen's (2008) submissions of yearly reviews on academic databases.

HOW ARE DISPUTES ADDRESSED WITH GOVERNMENT IN CO-MANAGEMENT RELATIONSHIPS?

Although the establishment of a big ocean space might seem an effective way of managing such a widespread domain, several disadvantages have been highlighted for Marae Moana Marine Park (Durbin, 2018). Since the Park was delineated, the northern group of the Cook Islands wants to be included in future expansion plans, to protect residents from overfishing. Foreign fishing vessels are frequently sighted within areas banned to commercial fishing, but enforcement is absent.

HOW ARE BORDERS TREATED BY GOVERNMENT IN THE CASE OF THE NATION'S SOVEREIGNTY?

Just as border management is an iterative process that is constantly changing in response to stimuli, border monitoring is also iterative across the islands. Watchdogs form the first group of monitors, with the vantage point of fishers from outlying islands as the most valuable in terms of reporting illegal activities. However, due to the reduced telecommunication and internet on the outliers, fishers cannot always get news out in time to prevent problems. Even then, New Zealand's conditional defense of Cook Islands borders relates only to military defense, rather than monitoring infringements upon the nation's ancestral domain within its EEZ.

Furthermore, other governments with which the Cook Islands collaborates tend to ignore

WHAT CAN BE LEARNED FROM THE NATION IN TERMS OF OTHER BORDER QUESTIONS?

One topic that is not mentioned within the Cook Islands' Free Association Agreement with New Zealand is the fisheries quota system. New Zealand controls the zoning and allocation of quota for pelagic species and trochus, a mollusk that New Zealand introduced to the waters around Aitutaki in the late 1950s (FAO, 2002).

5.3 Coron Island, Philippines



FIGURE 3 - THE CALAMIANES ARCHIPELAGO AND ITS 4 MUNICIPALITIES (CORON ISLAND IS CIRCLED IN RED) [SOURCE: GARCES ET AL, 2013].

Coron Island is one of the main islands of the Calamian Archipelago, located in the northernmost corner of the province of Palawan in the Philippines. Bounded by the South China Sea and the Sulu Sea, the archipelago sits within one of the Philippines’ most productive fishing grounds (NSO, 2000; Eder, 2005, p. 155). Supporting a rich biodiversity, these oceanscapes generate more than US\$3.5 billion in annual economic benefits and are relied upon for subsistence by Filipinos for more than 50% of their dietary protein (FAO, 2013; CRC, 2018).

The island's volcanic topography is reflected in a largely mountainous terrain that is interspersed with rolling hills, pockets of flatlands and several lakes (Holden, 2013). Approximately 2600 residents are spread between the two main *barangays*¹¹ of *Banuang Daan* and *Cabugao*.

Coron Island is part of the ancestral domain of the Tagbanua People, who have sustainably managed the ecosystems across the Philippines archipelago since time immemorial (Capistrano & Charles, 2012, p. 456; De Rueda, 2008). Organizing themselves according to kinship networks, the Tagbanua have used oral traditions to regulate these ecosystems, ensuring that knowledge of taboos, sacred sites, and values relevant to conservation and respect are passed down through the generations. For example, some oral traditions assert fish conservation through designating sanctuaries, while other traditions assert taboos against logging near "sacred" waters, or warn of the danger of a certain type of fish to pregnant women (Capistrano & Charles, 2012, p. 457).

Although the Tagbanua's communities are grounded in matriarchally managed "clan caves," external influences forcing the Tagbanua into a semi-nomadic state have rendered them highly adaptable. In addition to small-scale farming, fishing, hunting and gathering, the Tagbanua also engage in market trading of some of their subsistence resources. Gathered edible birds' nests garner US\$125 – 380 per kilo, while turtle meat and eggs are sold on the black market (Poonian et al, 2016, p. 70). Tourism is also a major revenue source.

As one of seven groups indigenous to the Calamian archipelago, the Tagbanua People of Coron Island have been the first to regain governance over their ancestral domain since the *Indigenous Peoples Rights Act* was enacted by the Republic of the Philippines in 1997 (Borg, 2010; Theriault, 2019). However, the Island is still considered to belong to the Municipality of Coron. Rodolpho Aguilar governs the island with the aid of a 16-member ruling council of elders, his family having been appointed as rulers by the Government of the Philippines before the Tagbanua achieved autonomy (Borg, 2010).

Over the last twenty years, the Philippines government has become more involved in supporting Indigenous communities like the Tagbanua, seeing the value of their sustainable stewardship on frontier areas that have suffered the effects of deforestation and fisheries degradation under former regimes (Eder, 2005, p. 153; FAO, 2013). Partnering with USAID to jointly sponsor co-management initiatives such as the Coastal Resource Management Project (CRMP) and the Fisheries Improved for Sustainable Harvest (FISH) Project, the Philippine government is encouraging community-based stewardship by the Tagbanua over their designated marine protected areas (Eder, 2005, p. 148).

5.3.1 HISTORY

Living upon the Philippine archipelago's lowlands and its oceanscapes since time immemorial, the Tagbanua People were one of several Indigenous communities impacted by the occupation of

¹¹ A *barangay* is the lowest level governmental unit in the Philippine political system, and otherwise known as a community (Eder, 2005).

Islamic-based rulership in the 14th century (Holden, 2013, p. 214; Theriault, 2019). Resisting this religious bondage by retreating to the relative safety of upland mountainous areas, the Tagbanua were again impacted in 1521, when Spain proclaimed all unregistered land in the Philippine archipelago as “public” and henceforth held by the Spanish Crown and the Church under *Jura Regalia* (Capistrano, 2010, p. 455; De Rueda, 2008; Dressler & Fabinyi, 2011; Holden, 2013). All local chiefs and their families were granted privileges and power over people and land, while the rest of the Indigenous population was relegated to usufruct users on the chiefs’ farmlands (Dressler & Guieb III, 2015, p. 327-8).

Adapting to the Regalian Doctrine by retreating higher into the mountains, the remaining Tagbanua were again disenfranchised following the 1894 enactment of Spain’s *Maura Law*, which gave landowners a year to register their property titles, under penalty of government appropriation of landowner property. The isolation of the Tagbanua landholders gave them limited exposure to newspapers communicating the terms of the decree: this, along with sparse funds for travel and legal fees, resulted in government appropriation and resale of the Tagbanua lands to wealthy land-grabbers (Dressler & Guieb III, 2015).

In 1898, Spain ceded the Philippine archipelago to the United States (De Rueda, 2008). The US Government redefined property laws to allow private ownership over usufruct lands and the US Bureau of Forestry targeted the uplands for the harvest and export of dipterocarp trees (Dressler & Guieb III, 2015).¹² The affairs of Indigenous People across the archipelago, including the Tagbanua, were henceforth managed by the US Bureau of Non-Christian Tribes (Holden, 2013).

From the early 1900s until mid-century, disenfranchised people like many of the Tagbanua began grouping with the goal of establishing a more equitable social order across the Philippines (Dressler & Guieb III, 2015). During WWII, these pockets of resistance consolidated into the *Hukbo ng Bayan Laban sa Hapon* or People’s Anti-Japanese Army, which was utilized by the US Government to fight against Japanese troops and then dissolved by the US military following the Philippines gaining of independence in 1946 (Woolley and Peters, 1999; Dressler & Guieb III, 2015).

In 1965, with an eye to generating efficiencies for increasing revenue, President Marcos put WWII military machinery into use for improving logging operations, thereby increasing the rate of deforestation across the archipelago (De Rueda, 2008; Dressler & Guieb, 2015). Having already been impacted by the rising costs associated with intensified agricultural production and increasingly aggressive defense of the territorial borders of designated areas of resource extraction, the Tagbanua were forced to retreat to isolated clan caves in the uplands of nearby Delian Island (Dressler & Guieb III, 2015).

¹² Dipterocarp timber was marketed as mahogany and sought after for its hardness and resilience in furniture-making.

In 1969, the Communist Party of the Philippines (CPP) began initiating guerrilla warfare against the Philippine state through its New People's Army (NPA) (Holden, 2013, p. 217). Publicizing an anti-resource extraction platform to enhance the CPP's agenda, the NPA used mountainous areas as ideal terrains for guerrilla activity against mining and logging industries. Indigenous Peoples like the Tagbanua were either caught in the cross-fire or they elected to join the NPA.

By the 1970s, with the devolution of power to municipal governments, the Tagbanua's clan caves were appropriated and sold off to generate revenue (Capistrano & Charles, 2012, p. 204). This was followed in the 1980s by illegal encroachments on Tagbanua fisheries by migrants from Visayas Province, who fished using unsustainable methods like dynamite blasting, cyanide and seine nets (OneOcean). Without the support or means to monitor their marine boundaries, the Tagbanua were forced to relocate to Coron Island.

While the future seemed bleak for the *Tagbanua*, three specific international agendas provided impetus for their empowerment.

5.3.2 THE ROLE OF THE CHURCH IN HELPING THE POOR

The initial role of the Church in aligning with the Spanish Crown, colonialist policies and wealthy landowners drastically changed in the 1960s, as increasing numbers of Filipino sisters and priests began advocating for the large majority of Indigenous People that were disenfranchised and destitute (Holden, 2013, p. 210). Following the Vatican Council's publicized commitment to focus on the health and wellbeing of Indigenous Peoples worldwide, the Church created a Diocesan Social Action Center in every diocese throughout the Philippines, while focusing on environmental remedies that would aid those communities living closely upon the land and oceanscapes. In 1977, the Catholic Bishops' Conference of the Philippines created the Tribal Filipino Apostolate, an organization that advocated for Indigenous rights.

In addition to promoting and increasing the scope of Tagbanua advocacy, and connecting the Tagbanua with NGOs that provide legal assistance, the Church also played a strategic role in highlighting the connection between healthy people and healthy environmental domains. Moreover, the Church brought into question the wisdom of neoliberalism, for its lack of engaging marginalized peoples within the government's economic development agenda and the subsequent creation of space for potential insurgencies.

5.3.3 THE ROLE OF POLITICAL NGOS

While the Marcos Regime either obliterated or absorbed the bulk of insurgent groups, a fragmented few had gone on to form the new Communist Party of the Philippines (CPP), which created the New People's Army (NPA) and the National Democratic Front (NDF). While the CPP-NPA operated clandestinely in armed disputes with the Armed Forces of the Philippines throughout the upland areas, the NDF influenced change and facilitated the guerrilla work of the NPA by communicating the potential for agrarian reforms (Dressler & Guieb III, 2015). This covert

insurgency, along with the actions of the Church, was to channel the Tagbanua toward establishing political advocacy for themselves.

5.3.4 THE ROLE OF ENVIRONMENTAL NGOS

In the 1980s, the effects of environmental degradation throughout the Philippines' coastal areas sparked attention from environmental NGOs and academic institutions around the world, and work began on the establishment of marine parks across the archipelago (OneOcean). However, the top-down approach espoused by the Philippines government did nothing to prevent destructive fishing methods. In discussing options for mitigation of this crisis, NGOs resuscitated 1970s research from the Philippines' Silliman University, which had proposed community input into coastal resource management programs. This model was to be known as Community-based Coastal Resource Management (CBCRM).

Connecting with local communities within the most at-risk coastal areas, NGOs used the CBCRM model to delineate and plan for marine protected areas (OneOcean). As the success of the model manifested, the Philippines government established its first CBCRM initiative: the Central Visayas Regional Project. In the early 1990s, the Department of Agriculture created the Fisheries Sector Program, followed by the DENR's Coastal Environment Program. Both programs focused on a devolution of responsibility to local government units, to facilitate collaboration with local communities. This was a stepping-stone toward Tagbanua understanding of the context of their role as environmental stewards, and served as another vehicle for empowerment.

5.3.5 STEPS TOWARD RIGHTS-BASED GOVERNANCE CAPACITY

Based on the 1909 US Supreme Court case of *Igorot* farmer Mateo Carino and his petition for land ownership, after the territory that his family had raised cattle on for countless generations was appropriated and sold to the U.S. Military, *Carino vs. Insular Government* had been a landmark case that acknowledged the rights of Indigenous people and their management of the land in the Philippines since time immemorial (Capistrano, 2010, p. 457). Although the Court had ruled in favour of Carino, the State had challenged the verdict on the grounds of *Jura Regalia*¹³, and the ruling was reversed.

Nearly 80 years later, and following a familiar pattern of municipal taxing, land grabs and resource shortages precipitated by an influx of migrant fishers, the Tagbanua community resuscitated Carino's case and took action. With the help of NGOs, the community created the Tagbanua Foundation in 1985, to formalize their application for a Community Forest Stewardship Agreement (CFSA) with the Department of Environment and Natural Resources (DENR). The CFSA was to give the Tagbanua Peoples tenure over a 25-year term, to conditionally manage their ancestral domains using traditional practices that were renamed community-based forest management (CBFM).

¹³ Royal rights.

In 1987, the Philippines Constitution was created, with provisions guaranteeing Indigenous rights and entitlement (Capistrano, 2010, p. 455). This further fueled the resolve of the Tagbanua. With the 1990 signing of the CFSA, the government repatriated the Tagbanua's traditional territories, returned imposed taxes and nullified tax declarations for the islands of Coron and Delian (p. 457). Two years later, the National Integrated Protected Area System (NIPAS) was created, to provide a legal framework that would allow Indigenous People active participation and decision-making in management of protected areas.

However, the CFSA was just the first stage of self-determination over traditional territories. In 1993, DENR issued Department Administrative Order 02, which outlined the steps required for Indigenous communities to gain control over their delineated territories. Once awarded by the government, the Certificate of Ancestral Domain Claim (CADC) would allow the Tagbanua to possess official, albeit conditional, tenure. Reaching out to NGOs for assistance, the Tagbanua were able to engage the Philippine Association for Intercultural Development in helping them map and 3-D model their genealogy, sacred place names and burial sites on Coron Island (Capistrano, 2010).

Three years later, the Tagbanua were informed, through Department Administrative Order 34, of the next step to their claim: formulation of the Ancestral Domain Management Plan (ADMP). The ADMP was to reflect Tagbanua governance intent, based on resource use, sacred place identification, inheritance transfer, development planning, water management, recognition of official decision-makers and law enforcement. As before, the Tagbanua enlisted the aid of NGOs like Conservation International and the Environmental Legal Assistance Center, to assist with assessments and training.

5.3.6 CERTIFICATE OF ANCESTRAL DOMAIN CLAIM

Although the claims process seemed to be in full swing, impediments still arose. It was discovered that the marine areas that the Tagbanua had subsisted upon for millennia were not considered subject to tenurial rights (Capistrano and Charles, 2012, p. 204). Yet given their semi-nomadic lifestyle as fishers, the idea of separating the Tagbanua from their ancestral oceanscapes was inconceivable.

Drawing upon existing policy from the *Republic Act 7611*, which highlights the extension of land tenures to marine environments, the Tagbanua finally gained ground when the Philippines' *Indigenous People's Rights Act (IPRA)* was passed in 1997. The IPRA acknowledged Indigenous ownership rights over ancestral territories and marinescapes, and highlighted the need for traditional ecosystem management strategies and free, prior and informed consent prior to any project development upon ancestral lands and waters (Capistrano, 2010, p. 457).

Under authority of the IPRA, the National Commission on Indigenous Peoples was established to develop policies that would promote and protect the rights of Indigenous people. Defining the uniqueness of Indigenous ownership as a both private, yet communal, activity that required

management over both land and marine territories, the IPRA streamlined approval for the Tagbanua’s CADC. In 1998, the CADC was granted by the DENR, and management over Coron Island and a portion of its surrounding seas was awarded to the Tagbanua (Capistrano, 2010).

5.3.7 MANAGING COASTAL RESOURCES AND USAID

Since receiving their CADC, the Coron Island Tagbanua have functioned as participants within conservation initiatives. In 1996, the Coastal Resource Management Project (CRMP) commenced over a 7-year period, with the goal of promoting sustainable management of coastal resources throughout the Philippines (OneOcean). Funded by USAID, the project was implemented by DENR, DABFAR, and the Department of Interior and Local Government (DILG), along with local government units (ie. Municipalities), NGOs and people’s organizations like the Tagbanua.

Following the conclusion of the Coastal Resource Management Project (CRMP), USAID initiated the Fisheries Improved for Sustainable Harvest (FISH) Project in 2003, with the goal of addressing declining fish stocks using ecosystem-based management principles (Sanders et al, 2013). Managed by the Tetra Tech Corporation of the Philippines, the FISH Project was jointly implemented by the DA and Bureau of Fisheries and Aquatic Resources, in partnership with local governments, local government units and other NGOs.

As with the CRMP, planning and implementation of the FISH was iterative and incremental. In 2008, the Calamianes Comprehensive Fisheries Management Plan was presented to the municipalities of Busuanga, Coron, Culion and Linapacan for review and consideration (USAID, 2010). Coron officials, in particular, were focused solely on tourism development and did not consider fisheries management a priority. Yet once some of the other FISH-supported MPAs began attracting tourists and user-fee revenues, Coron officials became more engaged.

In 2015, the Siete Pecados Marine Park was created through a signed MOU between the Municipality of Coron and USAID, to implement a comprehensive master plan that would protect marine biodiversity in the oceanscapes surrounding Coron Island (USAID, 2019). The island is now reportedly a model for sustainable tourism and earns the Tagbanua annual revenue of Php 2 million pesos, which funds boundary monitoring and enforcement.

In 2018, USAID rolled out its Fish Right program, using an ecosystem-based management of fisheries that was communicated directly to “local fisher-folk” (CRC, 2018). Recommendations of the program were to:

1. Reduce human activities upon fisheries through regulation and enforcement.
2. Enforce boundaries of marine protection networks.
3. Engage fishers in managing fisheries.
4. Enhance science and monitoring capabilities.
5. Offer alternative economic options to fisherfolk and improve education.

5.3.8 CORAL TRIANGLE INITIATIVE

While academic institutions and other NGOs were busy trying to engage local communities like the Tagbanua in marine resource management strategies, governments around the world also mobilized. In 2007, Indonesia initiated a multilateral partnership with the other governments of the Coral Triangle: the Philippines, Malaysia, Papua New Guinea, the Solomon Islands and Timor-Leste. The aim of the Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTICFF) was for participating governments to create 10-year Plans of Action to reduce threats to the marine ecosystems within their respective EEZs, with the ultimate goal of creating a “highly productive archipelagic state” (Philippines).

The Philippines’ National Plan of Action was documented in 2009, and included five goals:

1. Designating and managing priority seascapes.
2. Implementing an EBM approach to marine resources.
3. Establishing and managing MPAs.
4. Measuring climate change adaptation.
5. Improving the status of threatened species.

To track progress on these goals, the CTICFF captured data from each government in annual reports. As of 2019, the Philippines had achieved a number of benchmarks, including:

- Implementation of an expanded National Integrated Protected Area System.
- Implementation of seasonal fishing closures in northern Palawan fisheries.
- Creation of a National Scientific Advisory Group of Experts (NSAGE).
- Establishment of a Marine Turtle Protected Area Network (MTPAN).
- Strengthening of coastal fisheries governance of municipal fisherfolk over marine resources.

Two of the several challenges noted by the Philippines government were: 1) the disregard of local leaders on prioritization of environmental protection; and 2) language/dialect barriers in communication between government and local leaders (CTI-CFF, 2019).

5.3.9 DISCUSSION

Several criticisms have elicited from the way the Philippines Government has encouraged Tagbanua governance over oceanscapes.

WHAT ARE THE STRATEGIES THAT THE NATION HAS USED TO GAIN SELF-DETERMINATION?

Tagbanua self-determination seems to have been enabled with the help of NGOs and other actors, yet without follow-up to determine the effectiveness of traditional practices upon their ancestral domains. Bryant (2002) suggests that Indigenous empowerment in the Philippines is “bought at a price,” where the presence of NGOs as advisors or facilitators might assist with self-determination, yet also exposes the Indigenous community to government surveillance and an expectation to follow pre-established government processes (p. 286-7). This constrains Tagbanua identity into “boxes” that can then be manipulated by the government and NGOs for achievement of their own

respective agendas. Self-determination might then be defined as the ability of the Tagbanua to make themselves invisible, thereby escaping detection and manipulation.

Furthermore, claims of indigeneity may only be achieved by those Tagbanua with the economic means to do so, leading to the “reconfiguring” of Tagbanua identity and further marginalization and vulnerability of those communities living more closely upon the land and surrounding oceanscapes (Eder, 2004, p. 641; Theriault, 2019, p. 108). An inherent risk of this identify reconfiguration is that other Indigenous groups may seek alignment with Tagbanua kinship networks, in order to access designated resources as scarcities increase. Claims may be based on more than subsistence resourcing over time; like over nostalgia (Eder, 2004, p. 639).

HOW ARE DISPUTES ADDRESSED WITH GOVERNMENT IN CO-MANAGEMENT RELATIONSHIPS?

As earlier noted, the hardening of borders by government against the Tagbanua serves to box them into an identity, while blocking their access to subsistence resources. Dressler and Guieb III (2015) find that the intersection of conservation values and border protection can often result in criminalizing the intent of subsistence resource-reliant households, thereby enhancing the vulnerability of the Coron Island Tagbanua. For instance, the hardening of upland borders by the state military and park rangers has prevented the Tagbanua from swidden farming and resin harvesting of the more mature trees. This puts pressure on the Tagbanua and creates space for the need to participate in insurgencies that pose a threat to the Philippines state authority (Dressler and Guieb, 2015, p. 341). It also creates participation in black market economies, as evidenced by the increase in the illegal live fish trade over the last twenty years (Fabinyi, 2007). Mendoza (2019) notes that such pushback against the State generally results in violence, and increasing suspicion of any Indigenous groups.

HOW ARE BORDERS TREATED BY GOVERNMENT IN THE CASE OF THE NATION’S SOVEREIGNTY?

The ancestral domain of the Tagbanua appears to be completely disregarded by NGOs, academic institutions and government entities. Capistrano and Charles (2012) highlight that the Philippines’ legal regime on natural resource extraction often supersedes provisions in the IPRA and the NIPAS Act, thereby deactivating any claims upon ancestral domains (p. 204).

WHAT CAN BE LEARNED FROM THE NATION IN TERMS OF OTHER BORDER QUESTIONS, SUCH AS MARITIME BOUNDARIES?

Eder (2005) suggests that the institutionalization of co-management frameworks between local governments of the Philippines and Indigenous communities requires further scrutiny by the national government and NGOs, to ensure that the rights of the communities are being incorporated into marine planning and implementation (p. 150). The absence of any mention of the Tagbanua within marine planning documents brings into question the effectiveness of consultation, or indeed, whether consultations have even taken place.

In their working paper on bioprospecting for marine samples within the Tagbanua’s domain, Liebig et al (2002) note the difficulty in obtaining prior and informed consent: “the indigenous

community of the Tagbanua are very restrictive on any projects that want to make use of their natural resources.” However, the researchers also indicated that they were able to obtain consent by manipulating their discussions with the Tagbanua and bribing them with food.

5.4 Summary of Jurisdictional Scan Findings

Each of the three case studies is unique from the others in its experience of self-determination and control over ancestral domains. Yet what the three case studies have in common is their position within the Pacific Ocean as borderland, and juxta-positioning within the land-water borderlands of multiple nation-states. This geographic positioning exposes each of these Nations to a broad range of stakeholders and relationships that could impact evolving self-determination both negatively and positively.

While a government top-down approach to co-management, with little or no input from the Indigenous Nation, obscures the needs and human rights of the Nation, a bottoms-up approach may be equally problematic, due to the potential risk of bureaucratic thinness posed to the fledgling Nation.

WHAT ARE THE STRATEGIES THAT THE NATIONS HAVE USED TO GAIN SELF-DETERMINATION?

The Haida Nation's strategic engagement with other Indigenous nations and advocacy organizations has strengthened and expanded the scope of its governance capacity and confidence over managing the resources within its ancestral domain. Through its creation of HaiCo, the Haida Nation has played an active role in generating revenue and jobs for Nation members. Further, the collaborative alignment of the Haida Nation with environmental NGOs and the conservation agenda of government creates space and empowerment for innovative options in co-management processes.

Underpinning these strategies are the traditional practices and values of the Haida Nation, such as Elder teaching of sustainable herring-on-roe management, sharing stories and using watchers to protect maritime boundaries. These practices have been revitalized and adapted to align with evolving cultural norms and the needs of the Nation.

The Cook Islands appears to be making strides with its strategic relationship building with the UN and other governments and NGOs, to gain stability and strength as a fledgling nation. Like the Haida Nation, the Cook Islanders have revitalized traditional practices, while sharing knowledge with other island nations during their implementation of *Marae Moana*.

Like the Haida Nation and the Cook Islands, the Tagbanua of Coron Island use collaboration with a diverse range of entities to their advantage. The continued use of the traditional practices of taboo helps to inform sustainable resource management, while participation in the black market appears to allow the Tagbanua to circumnavigate the political actions of the dominant government and rebel forces. In this context, invisibility might also be seen as a strategy for self-determination.

HOW ARE DISPUTES ADDRESSED WITH GOVERNMENT IN CO-MANAGEMENT RELATIONSHIPS?

Litigation has been a powerful way for the Haida Nation to address disputes with the governments of Canada and BC, relative to co-management relationships. However, given the costs involved in litigation, the Haida Nation have adapted to find other ways for addressing disputes, such as

working with other Nations on solving issues before they get to the government, using media and political clout to drive market closures, and applying reconciliation frameworks to discussions with government.

The Cook Islands' free-association nationhood indicates a co-management element with New Zealand that is utilized at the behest of the Cook Islands. Disputes within this collaborative arrangement are not readily obvious from government and academic literature, although the skewed trade between the two nations and New Zealand's control of the licensing and quota process on fisheries suggests that the Cook Islands may have little in the way of political clout for supporting self-determination.

Although seemingly supported by the efforts of the Republic of the Philippines, the Church and NGOs, the Tagbanua People of Coron Island appear to play a passive role in the co-management of their ancestral domain. Disputes are being addressed with the government using subversive strategies like black market trading of fish and other marine-based commodities.

HOW ARE BORDERS TREATED BY GOVERNMENT IN THE CASE OF THE NATION'S SOVEREIGNTY?

The Haida Nation's sovereign borders are generally acknowledged, but not necessarily agreed to, by government bodies. For instance, Parks Canada has focused solely on the conservation element of protected areas, while the DFO manages fisheries and administers the licensing and quota process, in a manner that is contrary to the recommendations of the Haida Nation.

Similar to the Haida Nation, New Zealand controls the quota and licensing process for the Cook Islands, which indicates a lack of acknowledgement toward the Cook Islands' sovereign borders. This argument is also evidenced by the foreign fishing vessels within the Cook Islands' maritime boundaries. Although the *Marae Moana* has delineated these boundaries, the lack of enforcement tools for deterring these vessels renders the Cook Islanders as powerless to prevent overfishing.

The same pattern is seen with the Coron Island Tagbanua's sovereign borders. Although the Philippines government publicly acknowledges the ancestral domain of the Tagbanua, behind-the-scenes acknowledgement is not apparent. Nor are the Tagbanua's domains acknowledged by other governments, as evidenced by the foreign fishing boats within its boundaries.

WHAT CAN BE LEARNED FROM THE NATIONS IN TERMS OF OTHER BORDER QUESTIONS, SUCH AS MARITIME BOUNDARIES?

One risk to the Haida Nation might be the potential for bureaucratic thinness in dealing with so many different government entities over a short space of time. This could result in a lack of capacity of the Haida Nation for monitoring borders and maintaining vigilance over its domain.

As with the Haida Nation, the Cook Islands also runs the risk of bureaucratic thinness, based on its engagement with diverse entities and the challenges inherent in administering vast distances across the marine diaspora. Furthermore, New Zealand only provides military defense to the Cook Islands, not border monitoring of its EEZ.

Decentralized governance structures put the Tagbanua at risk of being bribed, manipulated and otherwise exploited by other governments, political parties, NGOs, researchers and even tourists. While NGOs have succeeded in empowering and educating the Tagbanua, they have done so to fulfill their own agendas and, in turn, demonstrated their lack of legal accountability to the Tagbanua. In short, the Tagbanua have been towed into deep water, and then left to sink or swim.

The value of having achieved self-governance over their ancestral domain has not been utilized by the Tagbanua. Instead, they appear to be boxed into reconfigured identities of indigeneity and manipulated by government or other entities. While government's strict environmental conservation policies and boundaries might be seen to aid in sustainable management of subsistence resources, the lack of capacity for the Tagbanua to access these resources defeats the purpose of achieving self-determination.

TABLE 3 - SUMMARY OF JURISDICTIONAL SCAN

	Haida	Cook Islands	Tagbanua
What are the strategies that the nation has used to gain self-determination?	<ul style="list-style-type: none"> • Strategic relationship-building with other First Nations, NGOs and govt. • Collaboration w/ govt. • Incremental shared governance w/ govt • Strategic use of media. • Revitalize traditional practices / cultural norms. • Establishment of Guardian Watch program. 	<ul style="list-style-type: none"> • Collaboration w/ NZ, other island nations and NGOs. • Incremental shared governance w/ NZ • Public scrutiny using media reports. • Coordination of arikis. • Traditional practices. • Watchdogs on outer islands. • Building a large-scale marine park. 	<ul style="list-style-type: none"> • Collaboration with NGOs and the Church. • Traditional practices of taboo inform sustainable resource mgmt. • Revenue through black market engagement. • Maintaining invisibility, to escape detection and manipulation by Government and rebels.
How are disputes addressed with government in co-management relationships?	<ul style="list-style-type: none"> • Litigation. • Working with other First Nations on solving issues before they get to govt. • Gaining political clout through alignment with UN-established performance measures, like Aichi Targets. • Applying reconciliation frameworks. 	<ul style="list-style-type: none"> • Not readily obvious. • Arikis establish by-laws on individual islands. • Collaborates with New Zealand, while gaining political clout through partnerships with a diverse range of nations and the UN. 	<ul style="list-style-type: none"> • Top-down role of Government and rebel forces create violence and renders them powerless within the co-management framework. • Undermining of Government by participating in insurgencies and black-market activities.
How are borders treated by government in the case of the nation's sovereignty?	<ul style="list-style-type: none"> • Varied across all levels of government and ministries / departments. • Acknowledged but not necessarily agreed to. • Ignored by DFO re: quota and licensing process. 	<ul style="list-style-type: none"> • New Zealand does not protect Cook Island borders from illegal fishing. • Cook Islands is expected to allow open access to New Zealand tourists. 	<ul style="list-style-type: none"> • Ignored. Government forces a conservation agenda on the Tagbanua, by closing fisheries without considering their subsistence needs. • No effort is made to solve language barrier.

		<ul style="list-style-type: none"> • Trade is skewed, in favour of New Zealand. 	
<p>What can be learned from the Nation, in terms of other border questions, such as maritime boundaries?</p>	<ul style="list-style-type: none"> • Relationship with government may prove helpful in mitigating risks posed by corporate exploitation. • Industry investors squeeze out artisanal fishers through the ITQ licensing regime. 	<ul style="list-style-type: none"> • Fisheries quota system places an unfair advantage over subsistence fishers. • New Zealand controls zoning and allocation of pelagic species and the invasive trochus mollusk. 	<ul style="list-style-type: none"> • Caught in the violence between Philippines and insurgents. • Resistant to research of subsistence resources, but consent of access can be manipulated through discussion and offers of food.

6.0 Discussion: Findings, Themes and Strategic Implications

This section examines findings from the literature review and jurisdictional scan, to identify commonalities and differences that manifested between the two methods chosen for this project. The first part of this section summarizes the findings. The second section provides a synopsis of the common themes arising from the findings. The third section examines strategic implications from the findings.

6.1 Summary of Findings

The literature review provided a fundamental understanding of the key principles of co-management between Indigenous Nations and government, including examples of the applicability of the co-management process toward the borders of the Haida Nation's ancestral domain. It demonstrated that the key to effective co-management is its acknowledgement by the involved parties as an iterative, evolving process that is based on the needs and capacity of Indigenous Nations.

The literature also revealed a number of key points:

- Strict environmental conservation policies tend to disregard the Haida as stewards of the land and sea.
- Haida sovereignty is impeded by the actions of the statutory decision maker.
- Differing policies across Canada-US International borders split Haida communities.
- Climate change impacts Haida territories, due to fluctuating sea levels.
- Corporatization can fragment communities and make the Haida vulnerable to deception.
- High-dollar stakeholders vying for salmon catch impacts Haida subsistence fishers.
- Disputes between sustainable use and job creation in commercial fisheries.
- Variability amongst biologist subject matter expertise is greater than that of Haida subject matter expertise and could negatively impact decision-making in conservation of the herring food web.

The jurisdictional scan revealed the manner by which other Indigenous Nations deal with achieving governance over and managing their ancestral domains as shared spaces with dominant governments. A summary of the jurisdictional scan includes the following key points:

1. Indigenous Nations seeking to self-determine risk spreading themselves bureaucratically thin when dealing with multiple entities in government, resulting in a lack of capacity for monitoring borders and maintaining vigilance over marine resources.
2. Indigenous Nations run the risk of being boxed into reconfigured identities of indigeneity, and being manipulated by a dominant government for its own self-interest.

3. Claims of indigeneity are generally only enabled by members of Indigenous Nations with the economic means to do so, thereby increasing the vulnerability and marginalization of groups within the Nation.
4. NGOs can empower and educate Nations seeking to self-determine, yet they do so to fulfill their own agendas and lack formal accountability to the Nations.
5. Fledgling Nations with decentralized governance structures are at risk of being bribed, manipulated and/or treated with violence by NGOs and researchers.
6. Strict environmental conservation boundaries block access to subsistence resources.

The findings are broken down below between the three case studies. Findings from the Haida Nation context include as follows:

- The inferred boundlessness of the Haida Nation's ancestral domain in its visionary statements manifests in public consciousness as a frontier or borderland, a state which leaves the Nation at risk to predation by other entities at functioning within the borderland.
- MPAs have not proved to be a foolproof measure for sustainably managing species populations and reducing impacts posed by excessive shipping traffic, disabled cargo ships, ocean fertilization projects and illegal fishing practices.
- Haida EBM conservation models diverge from strict conservation (no take) models. This divergence could result in the loss of environmental NGOs as allies, and the political clout that their participation entails.
- The governments of Canada and BC have been receptive toward establishing reconciliation frameworks in their co-management dealings with the Haida Nation. Yet given the many ministries and varying levels of government with which the Haida Nation is involved, there is a risk of bureaucratic thinness. This may result in a lack of capacity of the Haida for monitoring borders and maintaining vigilance over marine resources.
- The quota holding system imposed by the DFO on species catch limits may have the most relevance in subverting Haida governance within the co-management process, due to its connections with artisanal fishers, local economies, participation in black market activities and decreasing fish populations.

In the context of the Cook Islands, the jurisdictional scan revealed the following findings:

- Bureaucratic thinness is a major issue for the Cook Islands government. Dependence on a limited revenue base from a steadily decreasing population has challenged the Nation with balancing trade-offs between fisheries management, marine conservation, economic development and policing the borders of the Marae Moana. This has led to the illegal sales of licenses and quota to Taiwanese and Korean commercial fishing companies, which exploit fisheries and leave behind debris that threatens marine species.
- New Zealand manages the quota holding system for the Cook Islands fisheries. The attachment of fixed quota allocations to fisheries licensing has created revenue for the Cook Islands government. Yet the nature of quota over finite numbers of fish has increased

demand of the commodity, which is often leased out and capitalized upon by wealthy industry holders. In addition to restricting fishing opportunities for artisanal fishers, the control of quota also promotes avoidance, through illegal fisheries exploitation that occurs under the radar of government.

- While artisanal fishers in the diaspora act as monitors for reporting illegal fishing activities, they are bound by substandard levels of communication and internet access, which prohibits the functioning of an effective emergency management plan.
- Although the model of nationhood in free association with New Zealand might be seen to act in the favour of the Cook Islands government, gaps exist in the monitoring of the Cook Islands borders. New Zealand's provisioning of defense only applies to periods of war, and does not extend to monitoring the Cook Islands' EEZ for illegal fishers and other border infringements.
- The networking acumen of the Cook Islands government has been key to the establishment of building initiatives with other island nations across the South Pacific and relevant NGOs. Union with other island nations provides a host of benefits, including the establishment of marine protected areas networks for pelagic species; increasing political clout on the international stage; and the sharing of ideas for engagement with NGOs and effective resource management. NGOs have been particularly helpful as advisors to the Cook Islands government on policy issues and mitigation of risks.

In the context of the Tagbanua of Coron Island in the Philippines, the jurisdictional scan revealed the following findings:

- Self-determination of the Coron Island Tagbanua People over their ancestral domain has largely been managed as a top-down process by the Republic of the Philippines. Leadership over the Island appears to be based on kinship networks established through the former colonial regime, and there appears to be little connection and relationship-building with Tagbanua leaders in other areas.
- Although NGOs have been instrumental in assisting the Coron Island Tagbanua with gaining empowerment over their ancestral domain, the lack of Tagbanua "voice" in published documents or media lends credence to the possibility that the community is being manipulated as a front, behind which black market trading, insurgency and violence are occurring.

6.2 Themes across Methods

When considered together, several key themes emerge from the research methods. The commonalities presented through the literature review and jurisdictional scan include:

- the need for flexibility toward co-management of shared spaces
- the need to balance government relationships with those of NGOs, and maintain open communication

- the need to reexamine the licensing and quota holding system, in order to make fishing sustainable for artisanal fishers, and reduce black market fish trading
- the need to balance ecological conservation with acknowledgement of human interactions as part of the EBM model (need to agree upon a model)
- the need for performance measures to chart progress of process and effectiveness.

The following sections consider each theme in turn.

THEME 1: FLEXIBILITY TOWARD CO-MANAGEMENT ARRANGEMENTS

Across all lines of evidence, what has become clear is the importance of continuing to build strong G2G relationships that accommodate space and time for the Haida community to resolve trade-offs within co-management processes. The governments of Canada and BC have become increasingly receptive toward establishing reconciliation frameworks in their co-management dealings with the Haida Nation. Yet given the many ministries and varying levels of government with which the Haida Nation is involved, there is a risk of bureaucratic thinness. This may result in a lack of capacity of the Haida for making informed decisions on monitoring borders and maintaining vigilance over marine resources. As seen in the Cook Islands, bureaucratic thinness creates space for illicit activities that could cripple a Nation's economy and its governance system.

The co-creation and co-management with government over marine protected areas has been demonstrated as an evolving process that has helped to safeguard fisheries and natural resources for Haida subsistence use and revenue sharing. However, MPAs have not proved to be a foolproof measure for keeping out marine impacts posed by excessive shipping traffic, disabled cargo ships, ocean fertilization and illegal fishing practices. Continued efforts need to be channeled toward understanding the needs of Haida communities and the ecosystems involved. A starting point for these efforts might be the establishment of an agreed-upon model for EBM, that satisfies the Haida community across the board, and government.

THEME 2: BALANCING RELATIONSHIPS WITH GOVERNMENT AND NGOS

Haida Gwaii's juxtaposition within the land-water borderland of Canada, British Columbia, Alaska and the Pacific Ocean has meant that the Nation's borders are often unacknowledged by government and industry. Where are these borders? Dimensionality is spelled out in media communications from the CHN, yet without any delineations or landmarks. This could infer that the Haida domain is boundless; a state which, within the context of nation-state borders, could mistakenly render the Haida domain in public consciousness as a frontier or borderland. Seen in this context, a strong, binding relationship with the multiple levels of government in Canada and BC is imperative, for the protection that such a relationship offers.

Yet the Haida Nation has also relied on the building and maintaining of relationships with NGOs, for the expertise these entities have provided in the areas of governance, environmental advocacy and market campaigning. The Haida Nation's goal for sustainable resource management includes a need to accommodate an economic component into conservation models, which creates a

divergence from strict conservation agendas. This divergence requires sensitivity and strategic awareness moving forward, to ensure the retention of these allies, and the political clout that their participation entails.

Since their laws overlap over shared spaces, Indigenous Nations and government need to be equally informed on projects that involve NGOs. As seen in the Ocean Fertilization case, the exploitation of the Old Masset Village Council caused turmoil within the Haida community and reduced the credibility of the Nation in a national and international context.

THEME 3: QUOTA HOLDING SYSTEM AND LICENSING

The quota holding system imposed by the DFO on species catch limits may have the most relevance in subverting Haida governance within the co-management process, due to its connections with artisanal fishers, local economies, industry stakeholders, participation in black market activities and decreasing fish populations.

While government and the Haida Nation negotiate over the sustainable management of shared spaces and the resources within, fish species continue to dwindle. At fault may be climate change or overfishing or environmental degradation posed by transport or development. Mitigation measures have included observation and monitoring, establishing no-take zones, fish farming and iron dumping for ocean fertilization, among others. Yet nothing appears to be stopping the dwindling of a sustainable resource that provides sustenance for over 3 billion people worldwide per year (FAO, 2020).

The very tool that has been implemented to conserve fish stocks may be at risk of generating overfishing and the causing the participation of fishers and fishing companies in black market fish trading. Findings from across all jurisdictions studied in this report, along with academic literature and government documents, point to the need for further scrutiny on the quota holding system. This scrutiny must be exercised by both the Haida Nation and government, to understand the effects of corporate quota holding and leasing upon artisanal fishers.

THEME 4: PERFORMANCE MEASURES AND TRACKING

Due to challenges posed both by government and Indigenous Nations in determining criteria for tracking performance within the co-management structure, BIG could act as an objective third party for establishing performance measures and tracking progress. Hawkes' (1996) model could be a useful tool.

6.3 Strategic Implications

The above findings show the strategic implications for BIG scholars as they seek to assist the Haida Nation and government in resolving issues around co-management of marinescapes, to remove obstacles to Haida self-governance over ancestral domains.

The client should examine how best to foster continued relationship-building between the Haida Nation and government entities. The findings show that long-term relationship building is an

avenue that could assist in resolving issues within co-management processes. Strategies should take into consideration how to keep communications going between both parties, so that an understanding of needs on both sides may be taken into account.

BIG should use summer schools and develop other forums for understanding the types of roles it could play in supporting the continuing development of the relationship between the Haida Nation and government. Consideration should be given toward creating the time and space for the Haida community to resolve trade-offs.

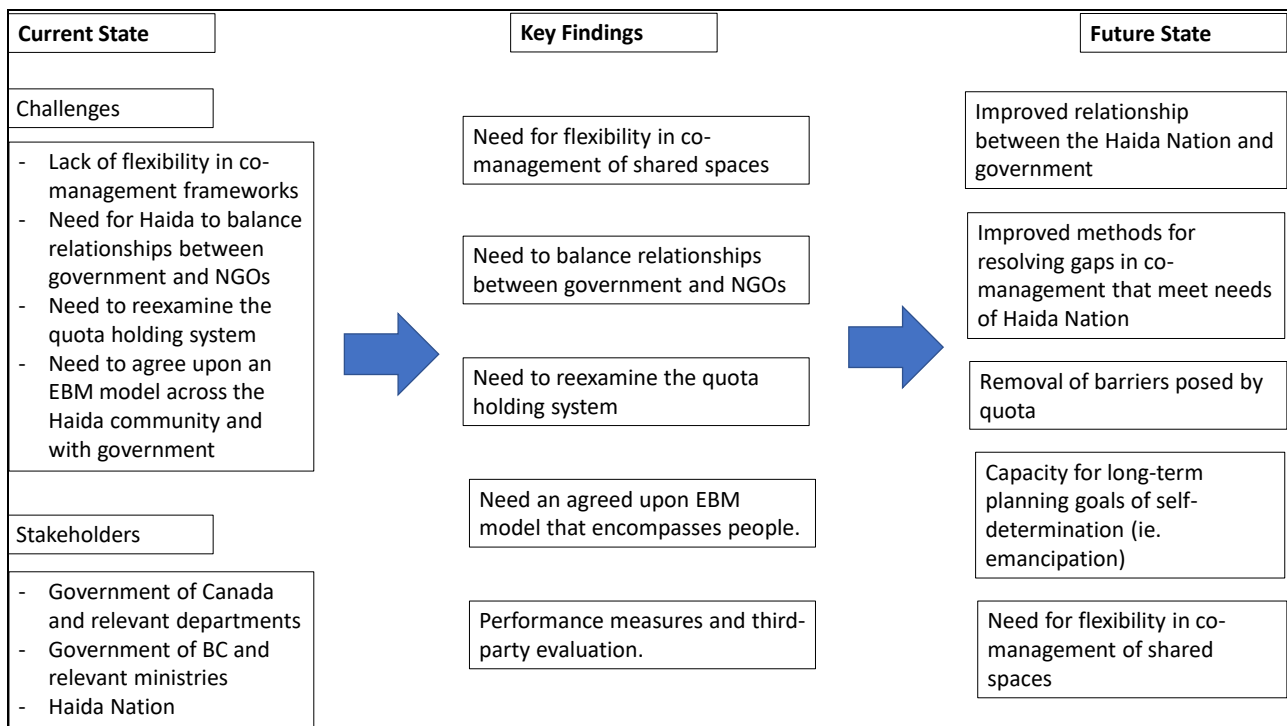


FIGURE 4: REVISED ANALYTICAL FRAMEWORK

7.0 Recommendations

This section presents five recommendations for BIG to take under consideration when supporting Haida leadership and self-government development, within the context of co-management relationships with government. The recommendations are presented in chronological order, to assist Dr. Brunet-Jailly in mapping next steps for BIG actions. Other recommendations are expected to emerge, following consultation with members of the CHN and government.

1. Further qualitative research.

First, further qualitative research by BIG researchers, such as conducting interviews with Haida and federal/provincial officials, would be of benefit in gaining detailed insights on the initial findings of this report.

2. Create a series of standardized approaches for corporations or organizations to use in determining if and how the Haida community would like to be engaged.

Next, BIG researchers should build on existing research to conduct stakeholder consultations that tease out details relevant to issues encountered in co-management processes.

3. Help government re-examine how its roles and actions in co-management of Haida marine territories could negatively impact the economy of subsistence fishers and Haida Gwaii as a whole.

As a third step, BIG directors should utilize policy forums and summer schools to initiate discussions with policymakers on reexamination of the quota holding system and licensing.

4. Use tools during community consultation that allow Haida the flexibility to resolve trade-offs before making decisions.

Next, BIG directors should encourage government to determine how and in what manner the Haida community would prefer to be engaged on policy issues. Consideration must be made toward funding for travel and extending timelines that would allow the community time to make decisions in an informed manner.

5. Provide third-party evaluation to track progress and quality of co-management processes.

Finally, BIG researchers should use Hawkes' (1996) model for gauging the effectiveness of co-management processes. Measurement of performance at points throughout the process would be helpful benchmarks that could also lead to establishing other performance measures, relevant to cultural safety and border monitoring.

The recommendations above would also benefit the Haida Nation and Haida Gwaii in a number of ways. First, BIG researcher follow-up on this report's findings would assist Nation officials in enhancing their scope of understanding on risks posed to the Nation and its resource base. Second, the facilitation of policy forum and summer schools by BIG would educate the academic community and policymakers on the complexities of the risks facing the Haida Nation. This action would release pressure on Haida officials and reduce the risk of bureaucratic thinness posed by dealing with a multi-level governance system. Finally, the establishment of performance measures and tracking would allow Haida officials to view the Nation's progress within the process, so that mitigation strategies for issues could be applied in a timely manner.

8.0 Conclusions

In assessing the current state of Haida governance exercised over the Nation's ancestral domain, one of the most glaring conclusions is the need for further examination of co-management. The reviewed literature showed the Haida Nation's evolution through the co-management process with government, while providing some useful metrics for future areas of quantitative research. The jurisdictional scan examined the varying states of how nationhood could look, relative to an Indigenous-governed island nation within the Pacific Ocean's Ring of Fire. The nations highlighted for the scan provided useful as a foil against which the Haida Nation and the Governments of Canada and British Columbia can measure their success within the co-management process.

Further research might include the qualitative consultations initially planned for this project, from subject matter experts within both the Haida Nation and the Governments of British Columbia and Canada. Another thread might include a quantitative analysis of perhaps 10 – 15 Indigenous-governed island nations outside of the Ring of Fire. One option might be to use Hawkes' (1996) criteria as a benchmark against which the other nations are measured, to gauge the effectiveness of their co-management frameworks and identify trends in the co-management framework.

This project is beneficial because of the implications to Canada, British Columbia and the Haida Nation, relative to the Haida Nation's governance over its marinescapes. Working toward the potential for the Haida Nation to exist in a state of sovereignty in free association with Canada, as the Cook Island functions with New Zealand, is a win/win. Rather than envisioning overlapping boundaries between the three government entities as a detriment, we might instead view these overlapping borders as a triple layer of protection over the Pacific Ocean, with the three styles of government working together to achieve a common goal of conservation in balance with socioeconomic and environmental sustainability, so that we can all contribute toward, and depend upon, healthy oceanic systems in the time to come.

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Appendices

Appendix I – BC Government Bodies and Statutes Relevant to Ocean Management

Official Body	Legislation	Function
Ministry of Aboriginal	<i>Treaty Commission Act</i>	Through the BC Treaty Commission, facilitates negotiation of treaties between First Nations and the Crown.

Relations and Reconciliation	<i>New Relationship Trust Act</i>	Funding assistance for First Nations to facilitate governance, leadership and institutional capacity for addressing socioeconomic needs.
Ministry of Advanced Education	<i>British Columbia Innovation Council Act</i>	Development and application of innovation to meet industry needs.
	<i>College and Institute Act</i>	Designates higher learning institutions and degrees.
	<i>Degree Authorization Act</i>	Authority for schools to grant degrees.
	<i>Private Career Training Institutions Act</i>	Standards of quality for accredited institutions.
	<i>University Act</i>	Enables certain universities to grant degrees.
Ministry of Agriculture and Lands	<i>Fish Protection Act</i>	Protection of fish.
	<i>Fisheries Act</i>	Licensing of fisheries, fish and aquatic plant processors and fish buying stations. Allows inspectors to enter private property.
	<i>Farm Practices Protection Act</i>	Protects farmers right to farm and provides for local government aquaculture planning.
	<i>Land Act</i>	Allocates, manages and reserves Crown lands such as marine foreshores and estuaries.
Ministry of Community Services	<i>Local Government Act</i>	Legal framework for local governments.
Ministry of Energy, Mines and Petroleum Resources	<i>Natural Gas Price Act</i>	Authorizes revenue from petroleum and natural gas production.
	<i>Mineral Tax Act</i>	Authorizes revenue from mineral production.
	<i>Mineral Tenure Act</i>	Provides renting rights for mineral extraction.
	<i>Mines Act</i>	Authorizes regulation of mining activities.
	<i>Petroleum and Natural Gas Act</i>	Royalties, freehold production taxes and regulation of tenure, production and plants.
	<i>Pipeline Act</i>	Regulation of pipelines and facilities.
	<i>Oil and Gas Commission Act</i>	Regulates oil and gas activities and pipelines, through the Oil and Gas Commission.
Ministry of Environment	<i>Dike Maintenance Act</i>	Maintains dikes.
	<i>Drainage, Ditch and Dike Act</i>	Drainage, ditching and diking of lands.
	<i>Ecological Reserve Act</i>	Reserves Crown land for ecological purposes.
	<i>Environment and Land Use Act</i>	Designation of Crown land for conservation purposes.
	<i>Environmental Assessment Act</i>	Mitigates environmental impacts through major project review and assessment processes.
	<i>Environmental Management Act</i>	Protection of human health and water quality, includes regulations for waste management.
	<i>Fish Protection Act</i>	Protects fish.
	<i>Hunting and Fishing Heritage Act</i>	Affirms that a person has the right to hunt and fish in accordance with the law.
	<i>Park Act</i>	Establishes parks, recreation areas and conservancies.
	<i>Protected Areas of British Columbia Act</i>	Legal designation of parks, recreation areas and conservancies.
	<i>Sustainable Environment Fund Act</i>	Provides funding for programs to protect and enhance the environment.

	<i>Wildlife Act</i>	Creation of wildlife management areas and critical wildlife areas and sanctuaries. Continues Habitat Conservation Trust Fund for conservation of fish, fish habitat and the acquisition of land for conservation of a species of fish.
Environmental Assessment Office	<i>Environmental Assessment Act</i>	Provides for an Environmental Assessment process.
Industry Training Authority	<i>Industry Training Authority Act</i>	Grants powers of authority regarding training programs.
Ministry of Labour and Citizens' Services	<i>Employment Standards Act</i>	Set minimum wage standards and working conditions, including for those in aquaculture.
Ministry of Tourism, Culture and the Arts	<i>Tourism Act</i>	Leadership in the tourism, sport and arts sectors, to foster job creation, business development, dynamic communities and healthy citizens.
Ministry of Transportation	<i>Coastal Ferry Act</i>	Establishes the B.C. Ferry Authority, which holds all shares in the British Columbia Ferry Corporation.
	<i>Fish Inspection Act</i>	Allows inspectors to enter establishments, vehicles, boats or aircraft, and open any container that is believed to carry fish.
	<i>Local Services Act</i>	Authorizes public access onto subdivisions bordering navigable waters.
Land Title and Survey Authority of British Columbia	<i>Land Title Act</i>	Provides for the registration of land titles and subdivision of lands, under the Land Title and Survey Authority of British Columbia.

Appendix II – Constitution of the Haida Nation 2018-10 (double-click)



Constitution of the Haida Nation

HAIDA PROCLAMATION

Iid kuunisiid asii id gii isda gan. Tllgaay ad siigaay Gan t'alang aaxana ad yahguudang. Huu tllguu Giidan hlk'inxa gaa ngang xaayda hllng aay gud giijaagids, gaay Gaaganuu gam gina daaGang nga id gwii is hllnga Gang ga. XaaydaGa Gwaay yaay Gaaganuu iid xaynanga ga. Asii gwaay yaay guu, iid kuunisiid xaynang nga, ad siing gwaa'ad gan. Sah 'Laana Tllgaay Gaa id gii kyaagang ngaay Gaaw aan t'ang naaxang sGwaan nang Gas ga. Iid sihlGa ga xaynangas gii t'alang t'aas slas, asii kyang gaay lllaay 'waagii kilxii gang ga.
- HlGaagilda Xaayda kil translation by the Skidegate Haida Immersion Program

Iitl' kuniisii aajii gwaayee iitl' ga t'asdlagan. Aajii gwaayee inggu gin 'waadluwaan t'alang isdaas Gan t'alang yahgudang-gaa, gin 'waadluwaan t'alang isdaas uu aajii tlagee, isgyaan siis, isgyaan sangee sda isgaagang. Aajii gwaayee kiid k'ulaas gingaan iitl' xaadaas asan Giidang, ahlii ahluu thiidluu iitl' ga 'wajaagahls dluu, itl' gwii asan kaahlasang. Aajii gwaayee uu iitl' ga xiinang-gee isdagan. Iitl' kuniisii gin Gaatlaandagiinii gingaan uu weed xaadee gin Gaatlaahlaal hlangaas gin Gan unsadasaang. Aajii gwaayee inggu iitl' kuniisii xiinangaagiinii, weed aadlan 'l hlGiwaawaang. Aajii gwaayee inggu iitl' asan xiinangaas k'yaahl gu thiidluwaan iitl' asan aadlan hlGiwaa'asaang.
- Gaaw Xaad Kil Translation by L. Bell and Dr. M. Boelscher Ignace

The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect, and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to ensure that our heritage is passed on to following generations. On these islands our ancestors lived and died and here too, we will make our homes until called away to join them in the great beyond.

ARTICLE 1 HAIDA TERRITORIES

- AI.S1 The Territories of the Haida Nation include the entire lands of Haida Gwaii, the surrounding waters, sub-surface and the air space. The waters include the entire Dixon Entrance, half of the Hecate Straits, halfway to Vancouver Island and Westward into the abyssal ocean depths.
- AI.S2 The Haida Nation recognizes the independent and separate jurisdiction of the Kaigani Haida.