



AN OCEAN OF OPPORTUNITY:

Co-governance in Marine Protected Areas
in Canada





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EXECUTIVE SUMMARY

Indigenous peoples have been governing marine territories using their own legal traditions since time immemorial. For the most part, Indigenous legal orders have not been recognized or upheld in the governance of marine protected areas (MPAs) in Canada. The current Government of Canada has committed to “a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.”¹ Co-governance arrangements in MPAs are one way of achieving a true nation-to-nation or Inuit-to-Crown relationship by creating space for the healthy interaction of Canadian and Indigenous laws. With the Government of Canada’s renewed commitment to protect at least 10% of Canada’s oceans by 2020, there is a unique opportunity to implement co-governance arrangements in both new and established MPAs. Co-governance of MPAs is not a new concept and there are models to learn from here in Canada as well as internationally. Under the *Oceans Act*, though the legal traditions and governance rights of Indigenous peoples are not explicitly recognized, there are no legal barriers to establishing co-governance arrangements in MPAs. The Bowie Seamount and Tarium Niryutait MPAs are proof of this point. Still, there is room to improve the *Oceans Act* to explicitly recognize the unique role of Indigenous peoples in governing MPAs.

Purpose: The purpose of this backgrounder is to generate discussion on co-governance of MPAs between Indigenous nations and the Crown in Canada.²

LEGAL AND POLITICAL LANDSCAPE: AN OCEAN OF OPPORTUNITY FOR CO-GOVERNANCE

Co-governance as a Step Towards Fulfilling Commitments

Indigenous peoples have been governing marine territories using their own legal traditions since time immemorial. These legal orders were deeply impacted by colonialism through residential schools, land dispossession, and the explicit banning of the practice of Indigenous law (ie. the potlach ban).³ In recent years, many Indigenous nations have prioritized the rebuilding and revitalizing of their legal orders, which should inform decision-making within protected areas.⁴

Co-governance arrangements in protected areas are one way for the Government of Canada to fulfill their commitments to upholding Indigenous legal orders, most recently articulated in the Truth and Reconciliation Commission's call to "reconcile Aboriginal and Crown constitutional and legal orders...including the recognition and integration of Indigenous laws and legal traditions."⁵

In March 2017, the Standing Committee on Environment and Sustainable Development's report *Taking Action Today: Establishing Protected Areas for Canada's Future* recommended that the federal government "implement and respect co-management arrangements with Indigenous partners for federal protected areas in Indigenous traditional territories."⁶

The Government of Canada counts co-governed protected areas towards their protected area targets, and in 2015, began classifying protected areas by governance type following guidance from the International Union for Conservation of Nature (IUCN).⁷ Shared governance, defined as sharing "authority by making decisions collectively, whether through the establishment of a governance body or other cooperative and co-management mechanisms"⁸, is one of four types of protected areas governance recognized by the IUCN and the Government of Canada.

Co-governance as a Constitutional Imperative

Depending on how they are structured, co-governance arrangements may contribute to fulfilling the Crown's constitutional obligations to Indigenous peoples.⁹ In recognizing Aboriginal title for the first time in *Tsilhqot'in Nation v. British Columbia*, the Supreme Court of Canada affirmed that:

*Aboriginal title confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses. (Emphasis added)*¹⁰

Many Indigenous nations claim title over marine territories, asserting such a right to exclusive decision-making over their territories.¹¹ Many also assert or have proven Aboriginal or treaty harvesting rights within their marine territories.¹² Co-governance arrangements within MPAs offer one mechanism that may be designed to assist in meeting constitutional obligations and pursue reconciliation by upholding Indigenous legal traditions and creating respectful interactions between two orders of law. As law professor Benjamin Ralston notes, "Canada may have a unique opportunity to set the pace for reconciliation with respect to Indigenous water governance."¹³

Indigenous Protected Areas and their Relationship to Co-Governance

Indigenous governance over marine territories is inherent and exists independently of federally-recognized protected areas. As Chief Steven Nitah reflects, "in effect, because of their attachment to, and dependence on the land, Indigenous peoples have been establishing their own protected areas for millennia."¹⁴ In the past thirty years, Indigenous nations declared their own protected areas to care for some special areas in the face of development. For example, the Tla-o-qui-aht First Nation declared a Tribal Park on what is referred to as Meares Island in 1984 to protect the area from clear-cut logging,¹⁵ and has since declared several more Tribal Parks in their territory. The Haida Nation declared the Haida Heritage Site¹⁶, which was later expanded in the Gwaii Haanas National Park reserve and National Marine Conservation Area Reserve. In Treaty lands, the Doig River First Nation has declared a Tribal Park, called K'ih tsaat?dze, to protect the remainder of their territory from oil and gas development.¹⁷

Indigenous-declared protected areas have many names including Tribal Parks, Indigenous and Community Conserved Areas (ICCAs) and Locally Managed Marine Areas. The term 'Indigenous Protected Areas (IPAs)', a concept adopted from Australia,¹⁸ was discussed by the Standing Committee on Environment and Sustainable Development¹⁹ and the Final Report on the Shared Arctic Leadership Model by the Prime Minister's Special Representative, Mary Simon, recommended that Canada take a lead role by designing a new legislative provision for the IPA designation.

Further conversations with Indigenous peoples are required to explore the concept of IPAs in the marine space, including what the concept might add to the Canadian context, how recognition of IPAs may benefit Indigenous nations, and how IPAs might contribute to the marine conservation targets.

CO-GOVERNANCE: THE NUTS AND BOLTS

Co-governance is a complex, layered topic. There is no single definition of co-governance. Related terms which are sometimes used to refer to shared governance arrangements between Indigenous peoples and different levels of Crown governments (ie. provincial and federal) and/or agencies include joint or shared decision-making, collaborative governance, and co-management.²⁰ This backgrounder uses the term co-governance to describe a nation-to-nation, Inuit-to-Crown relationship of at least equal power sharing between Indigenous and Canadian governments, ideally grounded in both Canadian and Indigenous law.²¹



No two co-governance models are the same. This paper does not attempt to give exact guidance on the components of governance to consider when designing an appropriate co-governance structure. Instead, the examples presented below will illustrate the broad spectrum of models currently operating in Canada and abroad, and highlight some components to consider when designing co-governance arrangements such as:

- Decision-making authority and laws
- Mandate
- Geographic scope
- Membership
- Decision-making process
- Dispute Resolution
- Science and Indigenous knowledge
- Monitoring and enforcement
- Other government bodies/stakeholders
- Adaptive management
- Public participation
- Funding

Monitoring and Enforcement: Indigenous Guardian Programs

Indigenous peoples are often the first to observe changes to their territory, and Indigenous-led initiatives, often referred to as Indigenous Guardian programs, are one option for fulfilling the monitoring and adaptive management that protected areas need. Empowering Indigenous Guardians to undertake consistent and purposeful monitoring of their territories can ensure that relevant, up-to-date data are available to co-governance bodies or other decision-makers. Apart from the practical value of Indigenous Guardian initiatives, the constitutional imperative to recognize Indigenous title and rights increasingly demands a greater role for Indigenous peoples in the management, conservation and enforcement of Indigenous laws in traditional territories.²²

Recently, the Standing Committee on Environment and Sustainable Development recommended that the federal government “establish a national program of Indigenous guardians, who are community-based land and water stewards managing lands and waters using cultural traditions and modern conservation tools.”²³ The Indigenous Leadership Initiative received \$25 million in funding from the federal government to begin work on a national network of Indigenous Guardians programs.²⁴

Indigenous Guardian programs should be explored as a way to ensure monitoring and enforcement take place within co-governed MPAs.



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CO-GOVERNANCE EXAMPLES IN MARINE SPACES

Existing models of co-governance bodies in MPAs provide lessons that can shape the future development of MPAs in Canada. The examples presented below go far in establishing nation-to-nation or Inuit-to-Crown relationships of at least equal power sharing between Indigenous and Crown governments, grounded in both Crown and Indigenous law. They represent a small sample of the wide array of co-governance arrangements in operation worldwide.²⁵

Gwaii Haanas – The Archipelago Management Board

The Archipelago Management Board (AMB) is a unique example of co-governance between the Haida Nation and the Government of Canada over both the marine and terrestrial areas of Gwaii Haanas. Gwaii Haanas was first designated by the Haida Nation as a Haida Heritage Site in 1985, and later by Canada as a National Park Reserve in 1988 and a National Marine Conservation Area Reserve (NMCAR) in 2010. The AMB derives its authority from the Gwaii Haanas Agreement (GHA) between the Government of Canada and Haida Nation in 1993.²⁶

The AMB is an illuminating example of how protected areas can be co-governed here in Canada. It is a model of equal power sharing between the Haida Nation and Canada. One unique element is how different viewpoints on sovereignty, title, and ownership are dealt with.²⁷ In the GHA, ultimate jurisdiction in the Archipelago is

claimed by both the Haida Nation and the Government of Canada. As the Federal Court noted, “the 1993 Gwaii Haanas Agreement recognizes the dual assertions of sovereignty, title and ownership by the Government of Canada and the Haida Nation in Gwaii Haanas, including both lands and waters.”²⁸ The Agreement does not resolve the underlying dispute. Instead, the parties agree to set aside their differences on underlying jurisdiction and instead focus on constructively and co-operatively managing the Archipelago for its care and protection.²⁹ This model allows the parties to “agree to disagree” on underlying ownership disputes and move on to effectively co-govern the area.

The AMB is also remarkable for how it recognizes and upholds Haida law and allows for healthy interaction between Canadian and Haida laws. As an example, the Canadian Parks Service can enforce regulations under the *National Parks Act* while simultaneously, the Council of the Haida Nation maintains the right to enforce its own laws.³⁰

Area Co-management Committees (ACMC) for Environment and Climate Change Canada’s Protected Areas in Nunavut

In Nunavut, co-management of Environment and Climate Change Canada’s (ECCC) protected areas is established through the Inuit Impact and Benefit Agreement (IIBA) that covers 5 National Wildlife Areas (NWA) and 8 Migratory Bird Sanctuaries (MBS).³¹ In the IIBA, the Government of Canada and the Inuit of the Nunavut Settlement Area commit to: i) ensuring the effective co-management of NWAs and MBSs by Inuit and the Canadian Wildlife Service in accordance with the Nunavut Agreement; (ii) ensuring that decisions are informed and influenced by *Inuit Qaujimajatuqangit*; and (iii) ensuring local Inuit involvement in the planning and management of protected areas.³² An Area Co-Management Committee (ACMC) has been created for each of the NWAs and MBSs to fulfill these commitments.



The Ninginganiq, Akpait, and Qaqulluit National Wildlife Areas are examples of NWAs in Nunavut that are co-managed by ECCC and Inuit through ACMCs. For example, the Ninginganiq National Wildlife Area, established in 2010, provides important summer feeding habitat for bowhead whales and other marine mammals and seabirds. The NWA is located on the Northeast coast of Baffin Island and measures over 3360 square kilometers, making it the largest NWA in Canada.³³ Ninginganiq NWA is co-managed by Environment and Climate Change Canada (Canadian Wildlife Services) and the Ninginganiq APMC of Clyde River, Nunavut. The APMC is responsible for preparing a Management Plan, day-to-day operations, and advising the Minister on all matters related to the planning and management of the Ninginganiq NWA.³⁴ ACMCs provide lessons for how to share management of day-to-day operations within protected areas.

New Zealand: Te Urewera Act

In New Zealand, a novel legal concept for imagining protected areas has emerged in the past decade. In 2014, Te Urewera – a National Park since 1954 - was granted its own legal personhood with the passing of the *Te Urewera Act*.³⁵ As Māori legal scholar Jacinta Ruru notes: “Te Urewera Act is undoubtedly legally revolutionary here in Aotearoa New Zealand and on a world scale.”³⁶

In addition to novel concepts in legal personhood, the *Te Urewera Act* offers lessons in co-governance that can be applied to MPAs here in Canada. Decisions about management are made by the Te Urewera Board, which acts “on behalf of, and in the name of, Te Urewera.”³⁷ While the Board began with equal Tūhoe and Crown membership, the ratio of Tūhoe members will increase over time, and the Board is directed to reflect Māori values and law.³⁸

With the passing of the *Te Urewera Act* the New Zealand state recognized Māori laws and governance systems, as articulated by the Honourable Dr. Nick Smith (Minister of Conservation):

It has been a real journey for New Zealand, iwi, and Parliament to get used to the idea that Māori are perfectly capable of conserving New Zealand treasures at least as well as Pākehā and departments of State...³⁹

The *Te Urewera Act* is also notable for how it deals with underlying disputes to title of protected areas. Underlying title to Te Urewera was claimed by the Tūhoe and by the New Zealand government.⁴⁰ By granting the area legal personhood, Te Urewera now, in effect, owns itself, thereby neutralizing title disputes.

An Ocean of Opportunity: Potential for Co-governance of Marine Protected Areas in the *Oceans Act*

Among other requirements, the *Oceans Act* requires the development and implementation of integrated marine and coastal plans developed “in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements”.⁴¹

While this brief concentrates on co-governance in federal MPAs, co-governance is also a critical feature for integrated marine plans. The Marine Planning Partnership between 17 First Nations and the Government of British Columbia is an example of co-governance in marine space that deserves further recognition.⁴²



Bowie Seamount, Sgaan Kinghlas: A Case Study

The Bowie Seamount MPA was established to protect Sgaan Kinghlas, a submarine volcano which means “Supernatural Being Looking Outward” in Haida. The MPA is managed by the Bowie Seamount Management Board (BSMB), which consists of two representatives from the Government of Canada and two representatives from the Council of Haida Nation (CHN).⁴³ The BSMB was established through a Memorandum of Understanding (MOU) between the Government of Canada and the Council of Haida Nation.⁴⁴ The MOU “confirms the commitment to facilitate the cooperative management and planning of the marine protected area and demonstrates the shared goal of the DFO and the CHN to protect and conserve Bowie Seamount for present and future generations.”⁴⁵ The advice of the BSMB is taken into account by the Minister and the CHN when they are faced with decisions “relating to the Protected Area.”⁴⁶ The BSMB is a notable example of co-governance within an *Oceans Act* MPA. However, it has not been without challenges; for example, ten years since the Bowie Seamount MPA was designated, the final terms of the Management Plan are still under negotiation.

Oceans Act and Marine Co-governance in MPAs

The *Oceans Act* contains no provision that explicitly recognizes the role of Indigenous nations in governing MPAs, or the inherent rights of Indigenous peoples within marine spaces.⁴⁷

Nothing in the *Oceans Act* prevents the federal government from establishing co-governance arrangements with Indigenous nations. The Bowie Seamount MPA, or Sgaan Kinghlas in Haida, is an example of an *Oceans Act* MPA that is co-governed by the Haida Nation and the Government of Canada. The Tarium Niryutait MPA is another example of shared management between the DFO and the Inuvialuit nation.⁴⁸ These MPAs illustrate that where the Government of Canada commits to sharing decision-making power, the *Oceans Act* does not prevent co-governance within a MPA. In a sense, when it comes to co-governance of MPAs, “where there’s a will, there’s a way.”

Under the *Oceans Act*, co-governance arrangements can be created through agreements, management bodies, or regulations. The Act gives the Minister the broad power to enter into agreements with any person or body.⁴⁹ This could include entering into agreements with Indigenous nations to establish co-governance bodies within MPAs. The MOU between the Council of Haida Nation and Government of Canada for the Bowie Seamount Sgaan Kinghlas is an example of this manner of establishing a co-governance body. The Act also authorizes the Minister to establish advisory or management bodies involving a wide range of representatives for the purpose of implementing management plans.⁵⁰ This provision allows for the creation of management bodies that include representatives from Indigenous nations. Finally, it may also be possible to establish co-governance bodies directly in the regulation that establishes an MPA. The Cabinet, on recommendation of the

Minister, has the authority to designate MPAs through regulations and to prescribe MPA measures that are consistent with the purpose of the MPA.⁵¹

In short, nothing in the *Oceans Act* precludes the Government of Canada from entering into co-governance arrangements with Indigenous nations within MPAs. That said, at present, there is no guidance in how to do so. As Mary Simon concludes in her recent report on Indigenous Protected Areas in the marine Arctic:

The innovative arrangements developed for Gwaii Haanas confirm that indigenous communities and government can reach beyond the thin provisions of the applicable statutes and use the vehicle of agreements (and/or treaties) to adopt concepts such as mutual and reciprocal dedication of protected areas, shared responsibility for and management of protected areas and benefits arrangements. *But there is value in explicitly recognizing these ideas and mandates in legislation. Explicit recognition serves to give clear policy and budgetary direct to department officials and allows the endorsement and celebration of Indigenous involvement at the highest legal level.* (Emphasis added)⁵²

Conclusion and Recommendation

In New Zealand, the Ministry of Environment is proposing a new Marine Protected Areas Act to consolidate and improve upon the existing legislative tools for MPAs. One of the concerns with the existing law is that it “provides few mechanisms for iwi/ Māori participation in decision-making.”⁵³ As such, an “important purpose” of the proposed Act is to “recognize the Treaty of Waitangi appropriately and strengthen iwi/ Māori involvement in all stages of the marine protection process.”⁵⁴ This new Act will also take account of the *NZ Marine Coastal Area (Takutai Moana) Act* of 2011 which contains a section on protected customary rights, and customary marine title. We should pay attention to how this process unfolds as it will provide lessons for the Canadian context.

Here in Canada, we face similar challenges within our existing MPA legislation. The *Oceans Act* provides no recognition of the unique role Indigenous nations must play in creating and governing MPAs. With the Government of Canada’s renewed commitments to renewing nation-to-nation, Inuit-to-Crown relationships, upholding Indigenous legal traditions and creating new MPAs, we have a unique opportunity to create innovative co-governance arrangements within new and established MPAs. While all of this is possible under the current *Oceans Act*, there is value in explicitly recognizing Indigenous rights in marine space in legislation.

In collaboration with Indigenous nations across Canada, reform of the *Oceans Act* should provide greater consideration of co-governance models within MPAs. Specific legislative amendments for the nomination process for MPAs, guiding principles for co-governance, monitoring and enforcement and others would need to be developed in collaboration with Indigenous nations. Through a new *Oceans Act*, Canada has an opportunity to become a world leader in recognizing and implementing meaningful co-governance in MPAs in law.

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END NOTES

- ¹ November 15, 2015 Ministerial Mandate Letter from Prime Minister to the Minister of Fisheries and Oceans, online: <http://pm.gc.ca/eng/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>
- ² Many thanks to Karla Letto, Ben Ralston, Linda Nowlan, and Jessica Clogg for their comments on this background.
- ³ Val Napoleon, "Thinking About Indigenous Legal Orders," (2007) online National Centre for First Nations Governance, online: http://fngovernance.org/ncfng_research/val_napoleon.pdf
- ⁴ See for example, the work of the Indigenous Law Research Unit and the "Revitalizing Indigenous Laws for Land, Air and Water" Project of West Coast Environmental Law, online: <http://www.uvic.ca/law/about/indigenous/indigenouslawresearchunit/> and <http://www.wcel.org/our-work/relaw-revitalizing-indigenous-law-land-air-and-water>
- ⁵ Truth and Reconciliation Commission, Calls to Action, 45(iv).
- ⁶ Standing Committee on Environment and Sustainable Development, "Taking Action Today: Establishing Protected Areas for Canada's Future," online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=8847135&Language=E&File=9>
- ⁷ Environment and Climate Change Canada, "Canadian Protected Areas Status Report: 2012-2015", 2016, online: <http://www.ec.gc.ca/ap-pa/EFA5678C-203C-42E1-994B-D2DE0F991E18/Canadian%20Protected%20Areas%20Status%20Report%202012%20-2015.pdf>
- ⁸ Environment and Climate Change Canada, "Canadian Protected Areas Status Report: 2012-2015", 2016, at 13, online: <http://www.ec.gc.ca/ap-pa/EFA5678C-203C-42E1-994B-D2DE0F991E18/Canadian%20Protected%20Areas%20Status%20Report%202012%20-2015.pdf>
- ⁹ For a more thorough exploration of key elements of effective co-governance see Jessica Clogg et al, *Padding Together: Co-Governance Models for Regional Cumulative Effects Management* (Vancouver: West Coast Environmental Law Research Foundation, forthcoming June 2017) (*Padding Together*).
- ¹⁰ *Tsilhqot'in Nation v. British Columbia*, [2014] 2 SCR 257, at para 88.
- ¹¹ For example, a 2002 Haida Nation claim asserts Aboriginal rights and title to "the land, inland waters, seabed, archipelagic waters, air space, and everything contained thereon and therein comprising Haida Gwaii". Council of the Haida Nation, Statement of Claim, Action No L020662, Vancouver Registry.
- ¹² See for example: *R v Marshall*, 1999 3 SCR 456; *R v Gladstone*, 1996 2 SCR 723; *Ahousaht Indian Band v Canada (Attorney General)*, 2013 BCCA 300.
- ¹³ Benjamin Ralston, "Aboriginal Title to Submerged Lands in Canada: Will *Tsilhqot'in* Sink or Float?", *Indigenous Law Bulletin*, December 2017, 8:27.
- ¹⁴ Standing Committee on Environment and Sustainable Development, "Taking Action Today: Establishing Protected Areas for Canada's Future," at 57.
- ¹⁵ Enns, Eli, "Tla-o-qui-aht Tribal Parks: A Different Conception of Humanity", *Living in the Anthropocene*: Smithsonian Institution, Fall 2014.
- ¹⁶ Parks Canada, "History of the Establishment of Gwaii Haanas", online: <https://www.pc.gc.ca/en/pn-np/bc/gwaiihaanas/info/index/plans/plans-3>
- ¹⁷ Rana Law, "K'ih tsaa'dze Tribal Park", online: <http://www.ranalaw.com/kih-tsaadze-tribal-park/>
- ¹⁸ For a description of IPAs in Australia see, Dermot Smyth and Hanna Jaireth, "Shared governance of protected areas: recent developments" (2012) 2 *National Environmental Law Review* 55 – 63, 60. "IPAs are planned, voluntarily declared (or dedicated) as protected areas managed by Indigenous people themselves. The IPA Program is an Australian Government initiative to support these activities, and to formally recognise IPAs as part of the NRS; but the IPAs are not government protected areas."
See also: Bruce Rose, "Indigenous Protected Areas – innovation beyond the boundaries", online: http://www.nature.org/cs/groups/webcontent/@web/@australia/documents/document/prd_062372.pdf
- ¹⁹ Taking Action, Standing Committee on Environment and Sustainable Development, "Taking Action Today: Establishing Protected Areas for Canada's Future," at 57 defined IPAs as protected areas "declared by an Indigenous people in accordance with their own inherent authorities." From Indigenous Leadership Initiative, *Indigenous Protected Areas: Recognizing Indigenous Stewardship in Canada*, Brief, 28 September 2016, p. 3
- ²⁰ There is much debate about what each of these terms means. See for example, Assembly of First Nations, "Co-Management Discussion Paper", online: http://www.afn.ca/uploads/files/env/comanagement_paper.pdf
"The confusion regarding co-management has resulted in a general disdain for activities attempting to establish an academic definition of the term. First Nations have expressed a clear preference to move away from co-management and towards technical-implementation based activities centred on an understanding of "joint-management.""
- ²¹ *Padding Together*, supra.
- ²² *Padding Together*, supra.
- ²³ Standing Committee on Environment and Sustainable Development, "Taking Action Today: Establishing Protected Areas for Canada's Future": Recommendation 20.
- ²⁴ Indigenous Leadership Initiative, "National Indigenous Guardians Network Receives Funding In Federal Budget", March 22, 2017, online: <http://www.ilinationhood.ca/2017/03/22/release-federal-budget-indigenous-guardians/>
- ²⁵ These examples were chosen, in part, because they will be discussed during the Oceans Act Workshop.
- ²⁶ Gwaii Haanas Agreement, 1993.
- ²⁷ Government of Canada, "Archipelago Management Board", online: <http://www.pc.gc.ca/eng/pn-np/bc/gwaiihaanas/plan/Plan1A.aspx>.
- ²⁸ *Council of the Haida Nation v Minister of Fisheries and Oceans*, 2015 FC 290 at paras 12 – 15.
- ²⁹ Gwaii Haanas Agreement, 1993, 1.3 In full: "Notwithstanding and without prejudice to the aforesaid divergence of viewpoints, and in recognition of the convergence of viewpoints with respect to objectives for the care, protection and enjoyment of the Archipelago, the parties agree to constructively and co-operatively share in the planning, operation and management of the Archipelago."
- ³⁰ Suzanne Hawkes, "Gwaii Haanas Agreement: from Conflict to Cooperation" (1996), online: <http://www.thefreelibrary.com/Gwaii+Haanas+Agreement%3A+from+conflict+to+cooperation.-a030375699>.
- ³¹ 2016 – 2023 Inuit Impact and Benefit Agreement (IIBA) for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area, online: http://www.tunngavik.com/files/2017/05/6980_EC_IIBA_EN_F_av-4.pdf
- ³² IIBA, Art. 3.1.1.
- ³³ Environment and Climate Change Canada, "Ninginganiq National Wildlife Area", online: <https://www.ec.gc.ca/ap-pa/default.asp?lang=En&n=2A61DE20-1>

- ³⁴ IIBA, Art. 3.2.3.
- ³⁵ *Te Urewera Act*, 2014. The bi-cultural nature of the Te Urewera Board is reflected in the inspiring language in the Background to the Act.s.3, online: <http://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html>
- ³⁶ Jacinta Ruru, "Tūhoe-Crown settlement – Te Urewera Act 2014", *Māori Law Review*, October 2014, online: <http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/>
- ³⁷ *Te Urewera Act*, s.17(a).
- ³⁸ Jacinta Ruru, "Tūhoe-Crown settlement – Te Urewera Act 2014", *Māori Law Review*, October 2014, online: <http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/>
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- ⁴¹ *Oceans Act*, s. 31.
- ⁴² See Marine Planning Partnership, online: <http://mappocean.org> and Nowlan, Linda. "Brave New Wave: Marine Spatial Planning and Ocean Regulation on Canada's Pacific." *Journal of Environmental Law and Practice* 29 (2016): 151.
- ⁴³ Memorandum of Understanding between Government of Canada and the Council of the Haida Nation, (18 April 2007) online: www.pac.dfo-mpo.gc.ca/oceans/protection/mpa-zpm/bowie/docs/Bowie%20MOU_Apr18_07_signed_version.pdf at s 3.1.
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- ⁴⁵ Fisheries and Oceans Canada, "Bowie Seamount Marine Protected Area Consultations", online: <http://www.pac.dfo-mpo.gc.ca/consultation/oceans/bowie/index-eng.html>
- ⁴⁶ Memorandum of Understanding between Government of Canada and the Council of the Haida Nation, (18 April 2007) online: www.pac.dfo-mpo.gc.ca/oceans/protection/mpa-zpm/bowie/docs/Bowie%20MOU_Apr18_07_signed_version.pdf at s 5.2.
- ⁴⁷ The *Oceans Act* does have a standard non-derogation clause. *Oceans Act*, s. 2(1).
- ⁴⁸ Tarium Niryutait Marine Protected Area – Management Plan, online: http://www.beaufortseapartnership.ca/wp-content/uploads/2015/05/tnmpa-mgmt-plan_final.pdf
- ⁴⁹ *Oceans Act*, s. 33 (1)(b).
- ⁵⁰ *Oceans Act*, s. 32 (c)(i)(ii).
- ⁵¹ *Oceans Act*, s. 35(c).
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