



# **An Exploratory Review of Select Collaborative Governance and Management Models**

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## Executive Summary

This report is intended to assist the 3 Nations - BC Collaborative Stewardship Forum with their objective of co-designing an arrangement to enable shared responsibility for wildlife management. It explores a select sample of established and emerging collaborative governance and management models between Indigenous and Crown parties currently in place in Canada and New Zealand, examining the basics of their legal mechanisms, decision-making processes and a snapshot assessment by some participants of their effectiveness in practice. It attempts to explore the durability of collaborative governance and management, and to draw attention to where these systems could be strengthened.

Methods of research consisted of interviews with staff and/or Crown and Indigenous-appointed participants from each of the reviewed co-governance and co-management structures. Each interview followed the same line of questioning, allowing for similarities and differences in opinion and experience to become clearly evident. A literary and web-based review of select collaborative governance and collaborative management models was also undertaken. This was accompanied by an examination of literature regarding best practices for collaborative arrangements, and an overview of articles related to relevant legislative and systematic considerations that emerged throughout the research. The scope and limitations of this research should be kept top of mind when reading this report. Our findings only scratch the surface of an ever-evolving arena of learning and practice and of what are highly contextual arrangements.

Our research revealed several concepts and lessons the 3N-BC team may wish to use to drive discussion in design of a collaborative framework. First and foremost, the importance of relationship and trust building and management within arrangements cannot be overemphasized. Processes, practices and institutions to foster and sustain good relationships among the individuals responsible for implementing these agreements ought to be given as much forethought and intention as is typically invested in designing the structures and decision-making processes of the agreements themselves. Parties should explore the influences on trust in a collaborative arrangement, and be particularly mindful about the traits of individuals within an arrangement. Physical presence and time spent within a community are important aspects to consider, as is an individual's solutions-orientation and openness to cross-cultural learning.

The identification of shared values appears to be incredibly important within collaborative arrangements and can assist with fostering trust and consensus-building. Exploration of shared values amongst the parties is where we recommend design of a framework begin. This appears to be just as, if not more important than having clear dispute resolution processes in place.

Capacity constraints are a widespread issue amongst collaborative arrangements that parties should plan to address from the outset and integrate into design of a framework. Parties should be particularly mindful of the issue of over-extension of leaders in small communities. Abating capacity gaps between parties through a phased approach to accountability, a capacity building fund, secondments, regional support bodies, secretariat support, and youth engagement for succession planning are some avenues to consider to mitigate for this systemic issue.

Two-way capacity building is especially prevalent in this era of reconciliation. Sharing stories and lessons learned between Indigenous and non-Indigenous people, respecting and participating in cultural protocols, having Crown enforcement and Indigenous land officer staff work together, and training how to collect and use traditional knowledge effectively within co-management boards are all ways this can be operationalized to allow for more culturally balanced practices over time. The fostering of a two-eyed seeing approach, embracing both Western and Indigenous knowledge and worldviews can also be strengthened through delineating Indigenous constructs in legislation.

The importance of funding for research with arrangements appears to be a key factor to enable boards to perform their duties responsibly and in alignment with an evidence-based decision-making approach. Collaborative bodies cannot effectively manage what they cannot measure. This is a particularly relevant consideration for wildlife management in Northern BC. The authority that accompanies funding for research and direction over what research is conducted ought to be given due consideration within a collaborative agreement. Access to data and authority over research is powerful, and data asymmetry gaps between parties can further power imbalances within frameworks. Moreover, information sharing protocols are integral.

Maintaining a constituency of support within an arrangement is crucial. This can be operationalized through ensuring effective feedback mechanisms for public input on decisions and through providing opportunities for community members to engage with an arrangement through community projects. Continued communication and outreach is also key; sharing progress made and communicating rationale for decisions are important to build public confidence within a body. Creation of dedicated forums, such as a licensee table within a collaborative arrangement, is an increasingly popular mechanism to engage other stakeholders, particularly industry stakeholders.

Co-recognition of jurisdiction appears to be an incredibly important component of a functional collaborative arrangement. Representatives at the table must have the legitimate authority to participate fully and make decisions. For mutual jurisdiction to be effectively advanced, acknowledgement of Indigenous rights regarding the resource in question must adequately be provided for, with the understanding that rights extend beyond mere rights of access to a resource in question. Rights, from an Indigenous perspective, often focus largely on stewardship responsibilities and responsibilities are actualized through the authority to make decisions and judgments for the resource in question.

At the same time, parties ought to give due consideration to accountability that accompanies differing levels of authority; attention should particularly be paid to potential indemnification that can result when a joint decision undergoes a judicial review, potential conflicts of interest, and decision-making parties' compliance with regulatory standards. Ensuring that parties have a mutual understanding of terminology within an arrangement, particularly as it relates to authority, duties and accountability is paramount. Integrating components of both co-governance and co-management may best ensure that parties' objectives are achieved.

Establishment and implementation of a collaborative decision-making arrangement for wildlife in Northern BC provides the Province with ample opportunity to operationalize the principles of UNDRIP and recently introduced Bill 41 in British Columbia.

All in all, collaborative management and governance arrangements appear to be improving in terms of enabling more balanced and representative decision-making over time. This research also illustrates the global challenges faced by Indigenous groups and Crown governments working to improve these arrangements in an era of reconciliation amidst the lasting impacts of colonization. We recommend the parties give careful consideration to the challenges, opportunities and lessons learned that are highlighted within this report. May this help inform an adaptive and effective framework that restores balance and enables Indigenous Nations to fulfill their ancestral stewardship responsibilities to the lands, waters and wildlife they've related with since time immemorial.

*Gunalchéesh. Meduh. Sógá sénlá'. Thank you.*

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## Introduction

Collaborative management and governance models have evolved significantly over the past 30 years. The recognition that many resources (such as forests, watersheds and protected areas) cannot be effectively managed by a single resource agency has provided an impetus for the creation of new models and approaches. As Berkes and Armitage state, co-management agencies, when operating well, have the capacity to provide a unique discussion forum, mobilise, bridge and co-produce knowledge, and to foster participatory research, collaborative monitoring, partnerships and social learning.<sup>1</sup>

At the same time, there have been other drivers which have encouraged a shift in approach. In particular, a series of legal and political developments and imperatives in colonized countries, and a slow but gradual societal shift in consciousness, have advanced efforts to confront and overcome dark colonial histories and reconcile relationships with Indigenous Peoples. Collaborative governance has thus become an avenue through which governments can not only improve resource management, but also implement commitments they have made towards reconciliation.

This report for the 3 Nations Society-BC Collaborative Stewardship Forum is written in the context of the BC Government's evolving approach to its relationship with Indigenous peoples. That evolving approach has been shaped by many legal and political developments, including: New Relationship and Transformative Change Accord, in which the BC Government committed to "to bridging the gaps that have denied Aboriginal people their rightful place in our society"<sup>2</sup>, Section 35 (1) of Canada's Constitution which recognized and affirmed existing aboriginal and treaty rights of Canada's aboriginal people<sup>3</sup>, the 2004 Haida and Taku River Tlingit court decisions<sup>4</sup>, the United Nations Declaration on the Rights of Indigenous Peoples<sup>5</sup>, the Truth and Reconciliation Commission Findings<sup>6</sup>, the 2014 Supreme Court Ruling of the Tsilhqot'in Nation vs. British Columbia<sup>7</sup>, and as of October 24, 2019, the introduction of Bill 41 which requires the BC Government to bring its laws and policies into harmony with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>8</sup>

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<sup>1</sup>Berkes, Fikret and Armitage, Derek. Co-management institutions, knowledge, and learning: Adapting to change in the Arctic. *Études/Inuit/Studies* 34, no. 1. 2010. pp. 109–131. <https://doi.org/10.7202/045407ar>

<sup>2</sup>BC Ministry of Aboriginal Relations and Reconciliation. The New Relationship: Aboriginal People and the Government of British Columbia: Building a healthy and prosperous future together. 2006. [http://www.sfu.ca/~palys/new\\_relationship\\_brochure.pdf](http://www.sfu.ca/~palys/new_relationship_brochure.pdf)

<sup>3</sup>Department of Justice Canada. A Consolidation of the Constitution Acts 1867 to 1982. Consolidated as of January 1, 2013. [https://laws-lois.justice.gc.ca/pdf/const\\_e.pdf](https://laws-lois.justice.gc.ca/pdf/const_e.pdf)

<sup>4</sup>Olynyk, John. The Haida Nation and Taku River Tlingit Decisions: Clarifying Roles and Responsibilities for Aboriginal Consultation and Accommodation. Lawson Lundell LLP. 2005. [https://www.lawsonlundell.com/media/news/236\\_Negotiatorarticle.pdf](https://www.lawsonlundell.com/media/news/236_Negotiatorarticle.pdf)

<sup>5</sup>The University of British Columbia, First Nations & Indigenous Studies. UN Declaration on the Rights of Indigenous Peoples. 2009. [https://indigenousfoundations.arts.ubc.ca/un\\_declaration\\_on\\_the\\_rights\\_of\\_indigenous\\_peoples/](https://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/)

<sup>6</sup>Truth and Reconciliation Commission of Canada. Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada. 2015. <http://www.trc.ca/about-us/trc-findings.html>

<sup>7</sup>Supreme Court of Canada. *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256. 2014. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>

<sup>8</sup>Legislative Assembly of British Columbia. Bill 41 – 2019: Declaration on the Rights of Indigenous Peoples Act. 2019. <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov41-1>

These documents, legislation, findings and outcomes provide a foundation for a new era of government to government relationships between First Nation and Crown governments and set the tone for development of a new collaborative governance and management framework between the 3 Nations and the Government of British Columbia.

## Scope and Limitations of this Research

The scope of this preliminary review of select co-management and co-governance models is limited, and has been constrained by the time available for research and analysis, and in some cases by the challenge of communicating with a diversity of informants in multiple jurisdictions. Readers are also cautioned to acknowledge the unique contextuality of each case when drawing insights for potential applicability to a 3 Nations- BC framework. Furthermore, in agreement with the following lines in Clark and Joe-Strack's "Keeping the "Co" in the Co-Management of Northern Resources" article as it relates to our review, "The broad and comparative evaluation that would be necessary to conclude that co-management across Northern Canada either "works" or doesn't has not been done. Perhaps it needn't be. It's far from clear that such an accountability-culture approach could be either accurate or appropriate given the diversity of voices that would legitimately need to be heard, and given how time- and context-specific judgments about specific situations would be (Westley et al., 2009). Even more fundamentally, defining success is a daunting task since there are multiple legitimate social, cultural, political, economic, and ecological goals within most co-management regimes."<sup>9</sup>

Despite this limitation, we hope this report supports efforts to make progress towards the 3 Nations-BC Collaborative Stewardship Forum's vision for shared capacity for shared outcomes as partners in natural resource stewardship throughout the 3 Nation's territories.

## Methodology

The research methodology employed for this report included the following:

- An initial exploration of the 3N-BC governance team's vision and goals was undertaken through phone calls with members of the team, through review of the 3N-CSF Governance Team's August 5/6 Meeting Draft Outcomes Report (articulating a draft Vision and Principles of the group), and through web-based research of the 3 Nations website.
- To ensure findings were tailored for the greatest relevance to 3N-BC, limited research into the legislative and political context in Northern BC was undertaken through the review of BC Government accords, past court decisions, relevant international agreements and review of the BC Treaty Commission's website.

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<sup>9</sup>Clark, Douglas & Joe-Strack, Jocelyn. Keeping the "Co" in the Co-Management of Northern Resources. Northern Public Affairs. 2017. <http://www.northernpublicaffairs.ca/index/volume-5-issue-1/keeping-the-co-in-the-co-management-of-northern-resources/>

- A draft list of proposed collaborative governance and management arrangements for review was drafted between our team and the 3N-BC governance team, and a combination of arrangements from Canada and New Zealand were agreed upon for our research. Following discussion with the 3N-BC team on their goals and objectives for this review, our team composed the following list of research questions to guide engagement with members of agreed-upon arrangements:
  - *What was the genesis of the agreement? (i.e. Where did this come from? Why was the agreement negotiated?). For example, was it born out of a conflict, or perhaps as a result of a maturing, cooperative relationship?*
  - *What was the intent? What kind of partnership or relationship did it seek to establish?*
  - *To what extent did the signatory parties generate a shared vision of success? How was this vision developed and agreed to? Were there explicit goals or objectives that defined success?*
  - *As the agreement has been implemented, how has the relationship between the parties evolved over time, and why? What has been better than expected? What has been different or worse or harder?*
  - *Can you give me examples of important outcomes that have fulfilled the intent of the Agreement?*
  - *Can you give me examples of ways that this agreement has failed to meet its intent?*
  - *Within your co-governance arrangement, how are decisions or recommendations developed and then implemented by the Parties?*
  - *How does information sharing occur?*
  - *What happens when the parties fail to reach agreement? Are there examples of such a situation taking place and if so, how was this handled?*
  - *Under many co-management arrangements around the world, Indigenous people participate in processes that rely on Western scientific models for ‘resource management’ or stewardship.’ To what extent does your particular arrangement enable the parties to consider different ways of identifying matters of shared concern, frame challenges and opportunities jointly, or devise ways of approaching shared issues in ways that are culturally acceptable for both parties? (e.g., decision-making approaches, meeting formats, etc).*

- *In what ways has the implementation of the agreement unfolded as expected, or not?*
  - *What is the formal funding arrangement for this co-governance agreement? How well has this funding arrangement worked?*
  
  - *To what extent does your arrangement include systematic tracking of implementation steps? To what extent does your arrangement include a structured monitoring and evaluation of (a) outputs and deliverables, or (b) outcomes or impact? If monitoring and evaluation is a feature of your arrangement, how was this undertaken?*
  
  - *What are the most important lessons from the implementation of this agreement that you would want others to know about?*
- A literary and web-based review of select collaborative governance and collaborative management models was then conducted. Upon identifying both Crown and Indigenous-appointed members involved with each regime, we reached out to contacts for all five primary agreed-upon models. Throughout the project's timeframe, we were able to discuss the respective collaborative governance or management model with 16 participants of five of the researched arrangements. Although we endeavoured to standardise our approach by speaking with at least one Crown and one Indigenous-appointed member of each arrangement, this was not possible in all cases. In some cases, we were able to speak with several Crown-appointed members, in other cases, with several Indigenous-appointed members and in other cases still, with operational staff of an arrangement, such as Executive Directors. Thus the perspective for each participant interview was different, and although the above list of questions guided all conversations, additional tailored questions were posed based on where each conversation led with each participant.
  - Findings from desktop research and participant interviews informed the assessment of each model discussed. Analysis of the report's subject of collaborative governance at large was informed by the review of several papers written by practitioners and other experts on subjects such as collaborative consent, shared decision-making and best-practices for natural resource co-governance and co-management. Analysis was also informed by several Senior Analysts hired for their expertise on this subject.

## Researched Models

### The Haida Gwaii Resource Management System

Current resource management legislation for Haida Gwaii is the result of several agreements (and even a Supreme Court decision) working towards a new relationship that were negotiated

following commercial logging activities permitted by the province that were inconsistent with the Haida Nation's cultural values. Following decades of direct action in the form of blockades and more by the Haida, these acts led to implementation of this new model of shared and joint decision-making regarding land and resource use.<sup>10</sup>

Four entities were established by the *Kunst'aa guu – Kunst'aayah Reconciliation Protocol* in 2011 to jointly manage Haida Gwaii's natural resources. These are the Haida Gwaii Management Council, the Solutions Table, the Reconciliation Table, and the Decision Makers. Each entity has distinct functions and authority within the decision-making process.<sup>11</sup> The Reconciliation Protocol was put into effect by the *KaayGuu Ga ga Kyah ts'as — Gin 'inaas 'laas 'waadluwaan gud tl'a gud giidaa* (Council of the Haida Nation Stewardship Law) and the *Provincial Haida Gwaii Reconciliation Act*.

## **Composition of Membership, Authority and Responsibilities of the Four Entities**

### *The Haida Gwaii Management Council*

The Haida Gwaii Management Council (HGMC) is comprised of two members appointed by the Haida Nation, and two members appointed by the BC Government. Each party appoints its representative members in consultation with the other, and the parties jointly appoint the Chair of the Council. All members and the Chair have a term appointment of two years, eligible for re-appointment for two further terms, to a maximum of six years. The Chairperson is mandated to observe, but not participate in, deliberations of members of the Council. Decisions of the Council are to be arrived at by consensus of the members, excluding the Chair. If consensus is unable to be reached, decisions are to be made by vote, with the Chair exercising a deciding vote.

The HGMC is responsible for the following joint decisions:

- Implementation and amendment of the *Haida Gwaii Strategic Land Use Agreement*;
- Establishment, implementation and amendment of *Land Use Objectives for forest practices*;
- Determination and approval of the *Allowable Annual Cut for Haida Gwaii*;
- Approval of management plans for protected areas;
- Developing policies and standards for the identification and conservation of heritage sites; and
- Other strategic level management matters that the Parties delegate to the *Haida Gwaii Management Council*.

The Council also has the following additional responsibilities:

- Development of a comprehensive *Haida Gwaii forestry management strategy that maintains ecological integrity and supports a sustainable Haida Gwaii economy, for consideration by the Parties*;

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<sup>10</sup>Takeda, Louise. *Islands' Spirit Rising: Reclaiming the Forests of Haida Gwaii*. UBC Press. 2015.

<sup>11</sup>Ramsay, Heather. "Haida Nation and BC unveil new decision-making process." *Haida Gwaii Observer*. September. 26, 2011. <https://www.haidagwaiiobserver.com/news/haida-nation-and-bc-unveil-new-decision-making-process/>

- Monitoring and review of the effectiveness of the Solutions Table;
- Identifying policy issues for consideration by the Parties; and
- Monitoring and evaluating the efficiency of its decisions at the operational level.

These authority areas are to be considered as “incremental steps”, with additional authorities to be added by the Haida Nation and the Government of BC in the future.<sup>12</sup>

### *The Solutions Table*

The Solutions Table is a six-person body composed of two Haida and two provincial representatives, and co-chaired by a Haida representative and a representative of the Province.

It supports the HGMC and Decision Makers with informed input for decision-making and is tasked with applying decisions made by the HGMC at the operational level. This table is the technical body responsible for reviewing applications, collecting information, and conducting analysis. The Solutions Table provides reports as requested to the HGMC<sup>13</sup>, but primarily provides recommendations on natural resource permits and technical matters to the joint statutory Decision Makers.<sup>14</sup>

The Council for the Haida Nation explains the Solutions Table’s process as the following:

“Applications for land-use alterations, logging, aquaculture and mining permits, etc. are put into the system through FrontCounterBC HaidaGwaii, located at the ministry office in Queen Charlotte. FCBCHG is designed to be a one-stop service that works with people and businesses to move their applications through the referral and approval process. This process is new in that, now, all Haida process and provincial natural resource ministries and agencies can be accessed through one portal. Business applications are vetted and funneled into one of two process streams.

For what are considered routine applications (Scenario 1), such as replacing an old culvert, there is a projected 1- to 14-day turnaround. If the application meets the criteria and there are no problems, it is then examined by the Solutions Table co-chairs and recommended directly to the provincial statutory decision-maker and to the CHN Vice-president who signs off for the Heritage and Natural Resource Committee.

The Scenario 2 process is designed for projects that need in-depth scrutiny, such as logging plans or mining applications. The table hopes to move applications through this process in about 60 days. To keep applications moving, and for the Solutions table to gather the information required to make recommendations, they can call on local provincial and Haida

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<sup>12</sup>Haida Nation and the Government of British Columbia. *Kunst’aa guu – Kunst’aayah Reconciliation Protocol*. 2009. [http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu\\_Kunstaayah\\_Agreement.pdf](http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu_Kunstaayah_Agreement.pdf)

<sup>13</sup>Belliss, Tyler (Haida Gwaii Management Council Member) in discussion with the author. September 24, 2019.

<sup>14</sup>Takeda, Louise. *Islands’ Spirit Rising: Reclaiming the Forests of Haida Gwaii*. UBC Press. 2015.

experts and, if necessary, hire consultants. Once the applications have been pored over, the Solutions Table makes its recommendations to the CHN and province for sign off.”<sup>15</sup>

### *The Decision Makers*

Each party to the reconciliation protocol has a designated Decision Maker that makes decisions on operational issues that the Solutions Table has reviewed. This is “the person authorized to make decisions on particular operational matters in relation to the Protocol.”<sup>16</sup>

On the provincial side, the statutory Decision Maker changes depending on the decision to be made.<sup>17</sup> Recently, for example, the District Manager for the Ministry of Forests, Lands and Natural Resource Operations (now called FrontCounter BC) has been the province’s decision maker. The Haida Natural Resource Committee is the Decision Maker on the Haida side, but with final signoff on decisions currently made by the Haida Nation Vice President.<sup>18</sup>

### *The Reconciliation Table*

The Reconciliation Table is composed of the Chief Negotiator for the Province and the Chief Negotiator for the Haida Nation, as well as a representative(s) of the federal government. Federal involvement is integrated because parties continue to progress towards a trilateral reconciliation agreement.<sup>19</sup>

The Reconciliation Table “acts much in the same capacity as a treaty table and is responsible for “furthering government-to-government relationships and refining the shared and joint decision-making processes.”<sup>20</sup>

## **Snapshot of the Arrangement in Practice**

The Haida Gwaii Shared decision-making Process is proving to be a model with several lessons for Crown governments and First Nations regarding how conflict can lead to change.

### *Courageous Conversation for Transformation*

When conflict regarding forestry again came to a head with a blockade in 2005, workers of the Province were prevented from going to work by protesters. Yet, these workers were still invited

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<sup>15</sup>Council of the Haida Nation. The Solutions Table Explained. 2016. <http://www.haidanation.ca/?p=1775>

<sup>16</sup>Haida Nation and the Government of British Columbia. Kunst’aa guu – Kunst’aayah Reconciliation Protocol. 2009. [http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu\\_Kunstaayah\\_Agreement.pdf](http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu_Kunstaayah_Agreement.pdf)

<sup>17</sup>Ramsay, Heather. “Haida Nation and BC unveil new decision-making process.” Haida Gwaii Observer. September. 26, 2011.

<sup>18</sup>Belliss, Tyler (Haida Gwaii Management Council Member) in discussion with the author. September 24, 2019.

<sup>19</sup>Ramsay, Heather. “Haida Nation and BC unveil new decision-making process.” Haida Gwaii Observer. September. 26, 2011.

<sup>20</sup>Takeda, Louise. Islands’ Spirit Rising: Reclaiming the Forests of Haida Gwaii. UBC Press. 2015.

by the Haida to sit around the fire and listen to the stories and aspirations of the Haida people at this time. What unfolded suggests that this kind of courageous conversation can be transformative. This is especially the case when a public servant has a vision of what might be possible and is prepared to be innovative.

After listening to stories and concerns shared by the Haida, the District Manager for the Haida Gwaii Natural Resource District wrote a concept paper with a proposal based on what he was hearing that went to the Deputy Minister and then on to the Premier. The Premier reviewed the paper, responded that the Province was not ready to undertake what it contained, and requested amendments. The concept paper then went through three more iterations, with Haida Gwaii-based public servants working together with Haida leadership on each iteration with a new-found level of transparency. The iterations included edits from renowned Haida leader Guujaaw. It was here that more meaningful collaboration between the Haida and the Province began to occur, and in 2006, the idea of the Solutions Table was born. In 2007, both parties began piloting the table. Although the table was initially intended to be a pilot, it evolved into the *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, with the parties entering a period of development and implementation simultaneously.

Although the Crown and Haida continue to disagree about title to Haida Gwaii and some other matters, in speaking with members of the framework, it is clear they are working towards a better working relationship through the arrangement, particularly through the Haida Gwaii Management Council (HGMC).

Whereas co-management bodies in BC were previously only empowered to make recommendations to the Crown Minister responsible for the issue at hand, the HGMC is a statutory decision maker and its decisions are legally binding. As Dr Louise Takeda, Research Affiliate with the POLIS Project on Ecological Governance, explains, “This means that neither the province nor the Haida can unilaterally enact decisions regarding these subjects.”<sup>21</sup>

As Derek Thompson, a retired civil servant who served as the first Chair to the HGMC noted about the HGMC’s authority when the Council began in 2011, “The key is the decision-making power. Things won’t have to go to a minister...there must be a decision. There can’t just be a stand-off. There won’t be years of things not being resolved.”<sup>22</sup>

Some significant management changes have occurred since the HGMC came into authority. In 2012, they set a historic precedent when they decreased the Annual Allowable Cut on Haida Gwaii by 47.6%, from 1,772,616 cubic meters to 929,000 cubic metres.

Haida Gwaii remains the only place where the Annual Allowable Cut is determined by a joint decision-making body rather than by the Chief Forester of BC. Brian Bawtinheimer, who has served as a BC representative on the HGMC since 2015, describes the Council as “a successful

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<sup>21</sup>IBID

<sup>22</sup>Ramsay, Heather. “Haida Nation and BC unveil new decision-making process.” Haida Gwaii Observer. September. 26, 2011.

model of joint-decision-making between the Haida Nation and the Province of BC.” He explained, “We don’t just sign off on these decisions. As members we take the time to sit down and really talk through the issues together - identify the parts that we don’t necessarily see eye-to-eye on and figure out where we can find that common ground.” Haida Nation member Percy Crosby shared, “Even though we might not always agree on everything, we have yet to come to a point of non-consensus. That speaks volumes to how we work together.”<sup>23</sup>

Although the HGMC has not yet reached a point of non-consensus, other key bodies under the agreement, namely The Solutions Table, have reached such a point, and in recent years, such situations have exposed deficiencies in the system that have impacted the entire framework.

Everyone we spoke with noted that the relationship was good when the tables and councils began earlier on. All members mentioned how successful the Solutions Table initially was, mentioning improvements such as how permit turnaround times which previously had taken anywhere from two to 10 years, went to taking just a week. From a BC Government perspective, this was good for business. This was a compelling reason for the government of the day to support the initiative, particularly for officials who didn’t grasp or fully comprehend the significance of a change to the process as a key step towards reconciliation and bicultural integration.

There seemed to be general sentiment that the new process was an improvement from the previous process. Before the Reconciliation Protocol, the process design meant that the province only consulted with the Haida *after* the province had already approved a proposal. “Before the Reconciliation Protocol, the process was very divisive between the two governments. Now, when we look at doing something, we start right at the beginning together, and it’s been very positive,” shared Colin Richardson, Haida representative at the Solutions Table, in 2016. “Before the reconciliation protocol, we would receive a notice of referral for a development proposal from the Ministry of Forests and have 30 days to respond. If we did not respond within that time, it was interpreted that the Haida had no issue with the proposed development. It was a system that didn’t work for us because it didn’t reflect Haida values.”<sup>24</sup>

### *Non-Consensus at the Solutions Table*

However, in reviewing more recent media coverage and in speaking with members in 2019, it’s apparent that the system has, in the last two or three years, hit considerable stumbling blocks. “We’re finding that there are problems with the relationship that are coming to light,” President of the Haida Nation Peter Lantin (kil tlaats 'gaa) said in late 2017. “The pent-up frustration on Haida Gwaii has built up to the place where it’s going to blow out,” he said, likening the feelings amongst Haida to 1985 when blockades were erected to stop clear-cutting of old growth

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<sup>23</sup>Haida Gwaii Management Council. Forest Views: Making Decisions Together on Haida Gwaii. Fall 2018. [http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC\\_FALL18\\_online.pdf](http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC_FALL18_online.pdf)

<sup>24</sup>Coast Funds. Haida Nation: Kunst’aa Guu–Kunst’aayah — Moving to a Sustainable Future Together. August 22, 2016. <https://coastfunds.ca/stories/kunstaa-guu-kunstaayah-reconciliation-protocol-moving-to-a-sustainable-future-together/>

forests.<sup>25</sup> The situation has resulted in well-attended community forums in recent years in which panellists from Haida Gwaii leadership, municipal leaders, and local economic development societies have discussed issues with the process and listened as citizens voiced their concerns.

As a Haida member of the HGMC described, “Haida citizens are not happy with what’s happening on the ground. Even though we may be light years ahead of other nations in forestry policy and joint decision-making, when you’ve long lived here and continue to witness the loss of resources at a high rate while job opportunities remain low for your people, it doesn’t matter.” Another Haida member described the Solutions Table as being in “disarray”, while a Provincial member shared, “We had eight years of really good work. Now we’re in what I call the ‘groundhog decade’ with the Solutions Table” (in reference to the 1993 film where a t.v. weatherman finds himself reliving the same day over and over again).

Non-consensus has been arising at the Solutions Table regarding proposals related to what the Haida feel is an over-harvest of cedar. In 2017, after the Solutions Table couldn’t agree on proposed cut blocks in logging development plans, the non-consensus blocks (127 hectares) were passed on to Provincial and Haida Decision Makers. Decision-makers were unable to resolve the dispute at that forum as well, and as a result, the Province of BC went ahead with offering the blocks to logging companies, “essentially overriding the Haida Nation’s decision”. As the Council of the Haida Nation (CHN) notes, “While CHN and BC designed the Kunst’aa Guu – Kunst’aayah Protocol to avoid direct action on the ground, the situation reveals the lack of a formal process to resolve ‘non-consensus’ decisions. The Province is now in the position of upholding their decision to log in spite of public outcry on a number of fronts.”<sup>26</sup>

### *Shared Decision-Making vs. Joint decision-making*

A long-time Provincial member of the framework emphasized that an understanding of the difference between joint decision-making and shared decision-making is key to understanding how and why the strained relationship situation from non-consensus at the Solutions Table is happening. Joint decision-making, he explained, is where both the Haida and the Province change their laws to empower another joint body to make decisions on their behalf, as was the case with the creation of the Haida Gwaii Management Council. Shared decision-making, on the other hand, is the process the Solutions Table undertakes, in which it vets the nature and content of each operational application, and makes recommendations which then get forwarded *separately* to two Decision Makers (one on behalf of the Haida and one on behalf of the Province). The Decision Makers then make their decisions separately of each other. Crucial to note is that in the current process, the decision of only the Crown Decision Maker moves forward, regardless of whether the Decision Maker for the Haida has agreed or disagreed with it. This is where issues are arising, as the Haida are not satisfied with the BC Government still essentially having ultimately authority on decisions of the Solutions Table.

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<sup>25</sup>Kurjata, Andrew. “On Haida Gwaii, logging plans expose rift in reconciliation”. CBC News. December 9, 2017. <https://www.cbc.ca/news/canada/british-columbia/haida-gwaii-reconciliation-logging-clear-cut-1.4429532>

<sup>26</sup>Council of the Haida Nation. “Islanders Meet to Discuss BCTS Issues”. November 24, 2017. <http://www.haidanation.ca/?p=6141>

As a Provincial member explained, theoretically, the engagement process serves to increase the likelihood that the two parties will come to a consensus agreement on technical and operational recommendations related to any given application. If consensus recommendations are generated, there is a reasonable likelihood that the two governments will ultimately make the same decision. However, each government retains full discretion to make its own decision on the basis of those recommendations. In inquiring about why this was happening, both Provincial and Haida members shared concern that the Solutions Table was debating issues which should really be resolved at the Reconciliation Table level. Problems were reported to emerge when political or ideological issues arise within review of a technical matter, such as disagreement on how much cedar should be cut, or concern that a licensee is overharvesting cedar. As an HGMC member explained, many of the reasons for non-consensus are not only outside of the purview of the Solutions Table, but also outside the domain of the HGMC, and as such, the HGMC can't step in on some of these cases. The issues, thus, appear to lie in both the difference between strategic and operational matters and clarity of mandate for different bodies established by the parties.

Reflecting on these issues within the Solutions Table seems to be generating discussion on how the framework could evolve to be made more effective. The District Manager of the Haida Gwaii Natural Resource District mentioned that there are currently discussions happening around what is being called "Reconciliation 2.0", which revolve around the idea that every decision within the framework would be joint, rather than shared. But transitioning into a comprehensive joint decision-making agreement could be more complex than it may initially appear. Key issues to consider surround complexity and ambiguity regarding accountability for decisions; potential conflicts of interest; and compliance with regulatory standards.

### *Complexity and Ambiguity Regarding Accountability for Decisions*

If a party requests judicial review of a statutory decision, are both the Province and the Council of the Haida Nation held accountable? Issues such as indemnification of a First Nation arise. Currently, for example, a \$20 million lawsuit against the Province for a forestry decision is underway. From a financial perspective, the Province can handle being sued for such an amount, but an amount like that could be extremely financially devastating for a First Nation government, and it isn't necessarily uncommon for large natural resource extraction companies to sue for large amounts when dissatisfied with the outcomes of a decision. In our current system, within a judicial review, statutory decision makers must be able to demonstrate that they have fulfilled the requirements of the specific legislation under which they operate and that they have also fulfilled the requirements of administrative law, which only accounts for Western law, based on Western ontological values and frameworks.<sup>27</sup>

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<sup>27</sup>Munt, Leonard (District Manager, Haida Gwaii Management Council) in discussion with the author. October 3rd, 2019.

### *Potential Conflicts of Interest*

If a First Nation establishes a commercial interest in an area of resource management in which they are also a decision maker, then that First Nation may be in a conflict of interest, or may be perceived to be compromised in some way by outside interests. Taan Forest is a subsidiary of Haico, the Haida Enterprise Corporation, and since 2012, has become the largest forestry licensee on Haida Gwaii. Taan Forest taking over ownership of this big license on Haida Gwaii has been linked to the rate of cut having declined significantly, from the aforementioned 800,000 cubic metres annually to 340,000 cubic metres annually. In addition, the Haida have a separate tenure agreement with the provincial government for another 120,000 cubic metres annually outside of this tree farm license. Although this has been a way that the Haida have been able to have much of the logging occur more on their terms, there are still complaints about the stringency of the standards even within HaiCo. As Bob Brash, the former President of Taan Forest and current CEO of HaiCo, stated in 2015, “I won’t shy away from the fact that in my opinion this is the toughest standard on the coast of B.C.” Brash described the land use plan for Haida Gwaii as “ecosystem-based management on steroids” due to its stringent cultural and environmental standards. He explained, “It’s not easy for our foresters and engineers. They have to do a lot of homework, a lot of field work, and a lot of consultations.”

The challenge on Haida Gwaii, as some see it, is that the population isn’t necessarily large enough to separate the business side from the governance side - there just aren’t that many Haida citizens. This is an issue for most BC First Nations. The shareholders of HaiCo are the Haida people, and separating people from the politics from business may be onerous. Nonetheless, crossover between a First Nation’s leadership and company governance is a problematic consideration if the First Nation is also a decision maker.

### *Compliance with Regulatory Standards*

What could further add to the complexity of a joint decision-making framework is if a First Nation’s companies aren’t abiding by the regulations that the nation is part of creating. In 2015, the Vancouver Sun released a report about three companies that were each found guilty of 20 counts of environmentally destructive logging practices near Port Clements on Haida Gwaii, two of whom had Haida ownership with shareholders including two former high-profile vice-presidents of the Council of the Haida Nation.<sup>28</sup>

The Haida Gwaii Natural Resource District office has offered to pilot joint decision-making, and thus far, the CHN has not accepted the offer. Plans need to be figured out regarding how both parties are going to work together if the parties fail to come to a consensus recommendation or if a decision is contested or opposed. Munt expressed his opinion and suggestion that just one Decision Maker role is required to make decisions on recommendations from the Solutions

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<sup>28</sup>Pynn, Larry. “Haida logging faces challenge of balancing profits with sustainability”. Vancouver Sun. December 1, 2015. <http://www.vancouversun.com/haida+logging+faces+challenge+balancing+profits+with+sustainability/11557974/story.html>

Table within the Haida system. He suggested this individual be a Haida person making decisions on behalf of both governments.

### *The Importance of Maintaining Healthy Relationships*

Regardless of whether decision-making transitions to be fully joint, remains partly shared, or another arrangement is reached, all members we spoke with continued to point to how integral relationships are within the framework, particularly relationships between individual members of a council or table. Having healthy relationships amongst members is particularly key when conflicting perspectives arise at the HGMC or Solutions Table. “One important approach we’ve used is to work in an integrated space together, which has taught us how to work together through disagreements. It was great for me to understand what the province is trying to accomplish, and for them to have a Haida around to understand how we reach our decisions. It was important for us to always have a working relationship so that even through disagreements we can always move forward.” said Haida appointee Colin Richardson, former Chair of the Solutions Table, in 2016.<sup>29</sup>

As District Manager Leonard Munt expressed, “Both sides need to fertilize and foster the relationship.” This commitment to each relationship requires resources, and it is difficult to ensure adequate resourcing. Munt believes that the Province working with 203 other First Nations and the Haida Nation challenged with overall human resource capacity, this creates a recipe that strains the relationship. While resourcing for relationship-building and maintenance is not often considered in government budgets, our exploration of these case studies demonstrates that it should be.

In offering advice to other First Nations starting out on this journey, a Haida member discussed how not only is it important to work on the relationship but it is also about the individuals who are brought to the table to establish and maintain that relationship and the personal qualities and experience that they offer.

As a Haida member of the HGMC said, “You really have to hope that you get good people to work with. It’s really pushing to get positive relationships, but if you have them, you can work through those times when there are disagreements or differing opinions on matters at hand. I’ve had really good relationships with the Provincial members I’ve been working with within the HGMC. I’ve found them to be really open-minded and have learned a lot from them.”

It was suggested that First Nation leaders may wish to create an agreement wherein they have a voice regarding which individuals from the Province they work with. He noted that Provincial members being upfront has been really appreciated by the Haida, and contrasted this to some times in the past when the Province had sent up representatives and it had been very obvious

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<sup>29</sup>Coast Funds. Haida Nation: Kunst’aa Guu–Kunst’aayah — Moving to a Sustainable Future Together. August 22, 2016. <https://coastfunds.ca/stories/kunstaa-guu-kunstaayah-reconciliation-protocol-moving-to-a-sustainable-future-together/>

to the Haida that they'd been directed to stall things. "That's not appreciated. Being upfront is best."

A Haida member of the HGMC explained, "It's hard - when you sit on the HGMC, you have to act independently. But it's different with the Province as their direction comes from the Province. Obviously we as Haida check in with the CHN as well, but we don't have the same agenda being pushed on us as Provincial members do. The goal has always been to have decisions made on Haida Gwaii by the people who live here. It's easy for the Haida Gwaii side- I live here, but for the Province, their members don't. Logs go down south. The Province has it a bit harder as they have to answer to more people. It's been challenging for all sides because we don't have the same objectives."

Commitment to place that locally based decision makers have also appears important. As District Manager Munt, who has lived in Haida Gwaii for 16 years, shared, "When you sign an agreement or a protocol, it's important to understand that you aren't signing a solution. You're starting a relationship." This ongoing process is reflected in the Reconciliation Protocol's Haida name, which translates to "the beginning" in the Haida dialects of Old Massett and Skidegate.<sup>30</sup> As Munt expressed, "I've been married to the Haida for 16 years." The rapport between the Haida and someone who has spent this much time in the community and someone who flies in from Victoria or Ottawa is understandably different. "When you're in a relationship with a First Nation, it is personal. Everyone tells me not to take it personally, but I do. It is personal, especially when you live with a First Nation. When I make decisions, it's important I can look people in the eye honourably, even if they don't like the decision."

In asking HGMC members for examples of how they feel the framework has fulfilled its intent regarding joint decision-making, they pointed to the development and implementation of amendments to the Land Use Objectives Order, which is provincial law. In 2017, the Council approved a major amendment to the Order, amending objectives regarding Haida traditional forest features, habitat classes for ecosystem integrity and more, and adding a new objective for the submission of digital data for monitoring purposes. With this set of amendments, they also added two new Northern Goshawk reserves following the discovery of new nests.<sup>31</sup> Haida members further mentioned the development of new policies and standards for the identification and conservation of heritage sites on Haida Gwaii, which is currently underway, as another example of how they feel the HGMC is fulfilling its intent.

### *Information Sharing*

Experience from the HGMC also suggests that the effectiveness of collaborative government to government arrangements also relies on clearly defined processes related to data collection, information management, and data sharing.

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<sup>30</sup>Takeda, Louise. *Islands' Spirit Rising: Reclaiming the Forests of Haida Gwaii*. UBC Press. 2015.

<sup>31</sup>Haida Gwaii Management Council. *Land Use Orders*. 2019. <http://www.haidagwaiimanagementcouncil.ca/land-use-orders/>

HGMC members pointed to the updating of Protected Area Management Plans as a greater inventory of data comes forth to improve and update management. As technology, such as LiDAR, has progressed and allowed for different ways of determining and analysing data for the Timber Supply Review, the Haida have requested an updated Review be conducted, which is currently underway. The HGMC appeared very committed to applying the most updated inventory of data and mapping techniques to inform better management. Regarding information sharing, Munt shared that everything that the Province has is shared and available to all tables within the Haida framework. The Haida have a database that they don't wish to give the Province access to yet. Munt mentioned that the Province and the Haida have recently been involved with an initiative to coordinate monitoring and information sharing. Currently, multiple parties (the Province, the CHN, and industry) all go out and collect data separately, and this can sometimes lead to duplication of efforts and waste of resources. Recently, the parties had been exploring a new way forward through ideas such as a UN-based project called [MapX](#), a GIS-based platform for data visualization and analysis. The initiative was exploring how data could be provided by the Province, CHN and industry into a central system. A quality assurance process would then be undertaken, and the data would be housed by the CHN, with everyone who partnered being granted access to mine all inputted data. Every night at midnight, the servers would get updated with newly inputted data and ensure everyone had the same shared information.

The forest industry was ready to buy into this process, as it would save them money in the long-run by sharing monitoring and evaluation requirements with other actors. These cost savings to forestry companies, as well as the possibility that license turnaround times could be shortened, served as incentives. The draw of UN-monitored data, particularly in developing countries, is the assurance that data provided by companies is real data and not skewed. The UN's interest in exploring the Haida's forestry management system arose after the UN failed at its initial unveiling of this program, and as such, wanted to learn lessons from the Haida situation, which is further along in this work. The UN ended up not receiving the federal government's permission to work on this initiative in Canada, so the UN involvement in the initiative collapsed, but actors on Haida Gwaii are still moving ahead with progress towards a more transparent data sharing initiative on their own.

### *Monitoring and Evaluation*

Robust monitoring and evaluation also appears to strengthen the collaborative arrangement. Within the Haida framework, the Forest and Range Evaluation Program (FREP) under BC's Forest and Range Practices Act is one initiative that the parties use to monitor and evaluate progress. The Program's mission is to "Collect and communicate the best available natural resource monitoring information to inform decision-making, improve resource management outcomes and provide evidence of government's commitment to environmental sustainability." The program conducts monitoring under the following values: Biodiversity, Cultural Heritage,

Fish/Riparian, Forage & Associated Plant Communities, Recreation, Resource Features, Soils, Timber, Visual Quality, Water and Wildlife.<sup>32</sup>

For tasks such as determining the Annual Allowable Cut or amending the Land Use Objectives Order, the HGMC looks to data that's been gathered to illustrate the impact of their decisions. For example, data demonstrating the on-the-ground implications of the amended Land Use Objectives Order on the timber harvesting land base has been used by their Joint Technical Working Group, allowing the HGMC to account for how forestry operations have changed since the implementation of the amendments in 2011. They are then able to build these changes into the Timber Supply Review. They also rely on feedback and information received from licensees by the Solutions Table. The Haida-owned forestry company, Taan Forest, is now the biggest licensee on Haida Gwaii, and they, along with other licensees, provide input to the Solutions Table and HGMC to inform decisions. For the Timber Supply Review currently underway, to ensure licensee feedback is thoroughly integrated into the assessment, a Licensee Committee has even been formed to formalize a relationship with the Joint Technical Working Group.

The HGMC also has thorough public engagement processes to evaluate issues as they make decisions, which include visiting island communities, touring around Haida Gwaii, hosting open houses and more to solicit feedback and input upon sharing information with the public. For example, the Joint Technical Working Group for the Timber Supply Review will compile a Public Review and Data Package describing current forest management, timber supply analysis, future logging predictions and more, which they will publish on the HGMC website and circulate throughout the islands. The public then will have 45 days to review that information, ask the HGMC questions and provide them with feedback, which the HGMC takes into consideration as they determine a new Annual Allowable Cut. Once a new determination is made, the HGMC and the Joint Technical Working Group will host community gatherings throughout the islands to inform the public about the TSR process and answer any questions regarding the new determination.<sup>33</sup>

For feedback and to keep the Haida people informed and engaged with what's happening within the HGMC, Haida members of the HGMC additionally adhere to the CHN requirement for all departments to report to the Haida public at quarterly meetings and at the House of Assembly. These meetings provide the opportunity to give an update directly to citizens and for question and answer sessions.

Through embracing the latest technology, exploring shared and more transparent data platforms, and designing monitoring and feedback processes into multiple levels of the framework, the Haida system appears to be very adaptive.

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<sup>32</sup>Government of British Columbia. Forest & Range Evaluation Program (FREP). n.d.

<https://www2.gov.bc.ca/gov/content/industry/forestry/managing-our-forest-resources/integrated-resource-monitoring/forest-range-evaluation-program>

<sup>33</sup>Haida Gwaii Management Council. Forest Views: Making Decisions Together on Haida Gwaii. Fall 2018.

[http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC\\_FALL18\\_online.pdf](http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC_FALL18_online.pdf)

## Capacity Constraints

Capacity has been somewhat of an issue for the Haida at both the HGMC and the Solutions Table. The Haida currently have a requirement that Haida members of the HGMC must be elected at the time of their appointment to the Council, and it is also preferred that a Haida appointee has forestry experience. The Haida are currently reviewing the elected member requirement, as having an appointee fulfill both criteria has proven to be challenging.<sup>34</sup>

The CHN's Mapping Department and Heritage and Natural Resource Department as well as Provincial members of the Haida Gwaii Ministry of Forests, Lands and Natural Resources provide expert opinion and technical support to the Solutions Table on incoming applications. The HGMC is also supported by joint technical working groups, which are appointed on an ad hoc basis, for tasks such as, for example, conducting a Timber Supply Review to determine an Annual Allowable Cut.<sup>35</sup> But one Haida Council Member mentioned a related capacity issue that has caused some delays on the Haida's behalf. During the most recent Timber Supply Review, the Haida Nation's main technician got injured and was unable to work. Because of this, everything temporarily stopped and progress was delayed. The situation raised the need for skilled alternate staff.<sup>36</sup>

As Colin Richardson, former Chair of the Solutions Table, explained, "The amount of work required for the administration of the Solutions Table is a huge challenge ... But we work together with the Province to tackle it. For example, right now we only have one Haida member on the Solutions Table, and the work load is tremendous. But I work closely with the Provincial members, and between the two teams we are always able to get through it. Sometimes the Haida will take on more and sometimes it's the Province of BC – it's an ebb and flow depending on each party's current staffing capacity."<sup>37</sup>

Capacity and resources were also mentioned as an issue on the Provincial side. Whilst funding for a First Nation is usually involved as part of the package of a co-management framework, a public servant explained that no extra funding is set aside for the provincial or federal sides to offset the extra work that participation in a board requires, in addition to a public servant's day job. The member recommended that a formula be devised to offset provincial capacity to participate when a framework is initially being developed.

A Haida member expressed concern over Provincial capacity constraints specifically in regards to enforcement on the ground, noting that the Province only has two compliance and enforcement sites on Haida Gwaii. The member shared that although monitoring of logging is

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<sup>34</sup>Belliss, Tyler (Haida Gwaii Management Council Member) in discussion with the author. September 24, 2019.

<sup>35</sup>Haida Gwaii Management Council. Forest Views: Making Decisions Together on Haida Gwaii. Fall 2018. [http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC\\_FALL18\\_online.pdf](http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC_FALL18_online.pdf)

<sup>36</sup>Crosby, Percy (Haida Gwaii Management Council Member) in discussion with the author. September 6, 2019.

<sup>37</sup>Coast Funds. Haida Nation: Kunst'aa Guu–Kunst'aayah — Moving to a Sustainable Future Together. August 22, 2016. <https://coastfunds.ca/stories/kunstaa-guu-kunstaayah-reconciliation-protocol-moving-to-a-sustainable-future-together/>

the responsibility of the Province on paper, the CHN see it as their responsibility also with Haida Gwaii being their home, and put a lot more resources into enforcement on the ground than the Province does. The member noted that this lack of on-the-ground enforcement was a weakness of the current framework: “Current practices aren’t even being properly monitored, and then we’re creating new practices.”

### *Financing and Implementation*

The Solutions Table and the HGMC are jointly funded by both parties and members we spoke with felt this funding arrangement has worked well for the most part. Funding for the HGMC and the Solutions Table is dispersed from the Reconciliation Table following the preparation of budgets by each body. An HGMC member expressed that they have generally received the money required to hire experts, modellers, and other expertise necessary to feed into decisions. Members noted that during times when more information is required for decisions, such as during a Timber Supply Review (TSR), which is currently underway, the HGMC hires several experts and costs increase. The working group appointed for the TSR determines what budget is necessary to hire required expertise in these cases, and so far, that process has worked pretty well.

Having an economic partner in [Coast Funds](#) appears to have assisted the Haida with resourcing for sustainable economic development, which research is increasingly proving goes hand in hand with permanent conservation and effective co-management. “It’s amazing to be in the place we are, having this agreement established for co-management ... [b]ut building it on the ground takes work and financing, and it’s been a key part of where Coast Funds’ has been able to support us.”

As Coast Funds shares, “The Haida say that the resources to implement agreements can easily be underestimated, and that a process for developing a governance structure, administrative framework, and financing should be worked out well in advance for any similar agreements.”

When inquiring about whether implementation had unfolded as expected or not, no mention of specific implementation hurdles was brought up. A Haida member reiterated that each iteration of the HGMC is different depending on the individuals it is composed of, and that it really comes down to how each council approaches implementation, which he sees as continuous. “Implementation changes from member to member depending on how they approach it. I don’t necessarily agree with everything that was done in councils before me, and I imagine those who come after me won’t necessarily agree with everything our council does.” Peter Lantin, President of the CHN, also reiterated that the nature of implementation is ever-changing, stating in 2016, “[B]uilding a robust plan and a framework for implementation has also been a big task, and is still ongoing. It’s a living document.”

## *Social and Cultural Outcomes - Integration of Haida Knowledge and Processes*

In terms of how culturally acceptable processes and values for both parties are integrated into the framework, Haida members verified that this is definitely occurring and is reflected within the agreements, whilst noting there is always room for growth in this area. One member pointed to their Heritage Policy and how it identifies sacred places, places of Supernatural Beings (deeply sacred to the Haida), as well as areas of culturally modified trees (CMTs) as an example. Another member shared that the Land Use Order is more “cut and dry” in terms of relying on data that you can measure, see and touch, but noted, “I still do think it gets to our cultural values” as such orders help protect what is important to the Haida. “It’s not necessarily based on Western values because this type of physical data is used.”

A Haida member expressed that there is “tons of traditional knowledge being fed into the current TSR”, noting that the HGMC together has to agree on which information and data is going to be fed into a review. For examples of how traditional knowledge is integrated into decisions, the member suggested reviewing the aforementioned Public Review and Data Package for the TSR, which the HGMC is about to release for the review that’s currently underway. With cultural and traditional stewardship of the land identified as priorities under the Protocol, works such as Land Use Order amendments, development of the Heritage Policy and updated TSR processes appear to have provided protection for important Haida cultural assets, such as Culturally Modified Trees, medicinal plant harvesting sites, and archaeological sites. As Coast Funds, an economic partner to the CHN shared, “Implementation of the protocol and its related departments has also funded training and employment for Haida members in the Mapping Department and Department of Heritage and Natural Resources. Training has included field work for Cultural Feature Identification and assessment of important environmental habitat.”<sup>38</sup>

## **Nunavut Wildlife Management Board**

The Nunavut Wildlife Management Board (NWMB) is both a regulatory and advisory body and serves as the principal instrument for wildlife management within the Nunavut Settlement Area. The board is an institution of public government and was established in 1994 following the ratification of the Nunavut Agreement<sup>39</sup>, a tripartite agreement which created Nunavut as a territory, in 1993. The agreement was signed by the Tungavik Federation of Nunavut on behalf of all Nunavut Inuit, the federal government, and the Government of the Northwest Territories, whose jurisdiction fully transitioned to the Government of Nunavut in 1999.<sup>40</sup>

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<sup>38</sup>Coast Funds. Haida Nation: Kunst’aa Guu–Kunst’aayah — Moving to a Sustainable Future Together. August 22, 2016. <https://coastfunds.ca/stories/kunstaa-guu-kunstaayah-reconciliation-protocol-moving-to-a-sustainable-future-together/>

<sup>39</sup>Nunavut Wildlife Management Board. Home. n.d. <https://www.nwmb.com/en/>

<sup>40</sup>University of Saskatchewan. Chapter 14: Inuit Land Agreements (Part II). n.d. [https://teaching.usask.ca/curriculum/indigenous\\_voices/land-agreements/chapter-14.php](https://teaching.usask.ca/curriculum/indigenous_voices/land-agreements/chapter-14.php)

Article 5 under the Nunavut Agreement is dedicated solely to wildlife and is one of the longest articles of the agreement. As Jason Akearok, Executive Director of the NWMB explained, this fact speaks to how important wildlife are for Inuit, and exemplifies the importance of the work of The Nunavut Wildlife Management Board. Regarding jurisdiction, the Board works with the Government of Nunavut regarding terrestrial species and with the Government of Canada regarding marine species.

While the agreement states that Government retains the ultimate responsibility for wildlife management, it also acknowledges the “need for an effective system of wildlife management that complements Inuit harvesting rights and priorities, and recognizes Inuit systems of wildlife management that contribute to the conservation of wildlife and protection of wildlife habitat.”

## **Purpose, Authority and Responsibilities**

Although the NWMB is an institution of public government, it is an independent and impartial regulatory agency and takes its instructions from the Nunavut Land Claims Agreement (NLCA) rather than from branches of public government.<sup>41</sup> The board’s mission is “to conserve wildlife (and wildlife habitat) for the long-term benefit of all Nunavut residents while fully respecting Inuit harvesting rights and priorities.”<sup>42</sup> Their vision, “conserving wildlife through the application of Inuit Qaujimagatuqangit and scientific knowledge” reflects the board’s responsibility as one of the organizations established out of the Nunavut Agreement, to promote and develop Inuit culture.<sup>43</sup> Inuit qaujimagatuqangit (IQ) can be taken to mean “all the extensive knowledge and experience passed from generation to generation.”<sup>44</sup>

In regards to authority, as mentioned in their Governance Manual for CoManagers, “Under the NLCA, the NWMB is empowered to make legally-binding decisions concerning wildlife management in Nunavut. However, many of the Board’s decisions are subject to ultimate review by the appropriate Minister. Thus, with respect to its decision-making authority, the NWMB operates as a co-jurisdictional body, integrally involved with Government in legal rule-making.”<sup>45</sup>

The NWMB is responsible for the following primary functions:

- *participating in research;*
- *conducting the Nunavut Wildlife Harvest Study;*
- *rebutting presumptions as to need;*

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<sup>41</sup>Nunavut Wildlife Management Board. Manual- Governance for CoManagers. 2012. <https://www.nwmb.com> › 3758-governance-for-comanagers

<sup>42</sup>Nunavut Wildlife Management Board. Mission Statement. n.d. <https://www.nwmb.com/en/about-nwmb>

<sup>43</sup>Lévesque, Francis. Revisiting *Inuit Qaujimagatuqangit*: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999. *Études/Inuit/Studies*. 2014. Vol 38, no 1-2, pp. 115–136. <https://doi.org/10.7202/1028856ar>

<sup>44</sup>Karetak, Joe; Tester, Frank; and Tagalik, Shirley. *Inuit Qaujimagatuqangit: What Inuit Have Always Known to Be True*. Fernwood Publishing. 2017. <https://fernwoodpublishing.ca/book/inuit-qaujimagatuqangit>

<sup>45</sup>Nunavut Wildlife Management Board. Manual- Governance for CoManagers. 2012. <https://www.nwmb.com> › 3758-governance-for-comanagers

- *establishing, modifying or removing levels of total allowable harvest;*
- *ascertaining the basic needs level (the level of harvesting by Inuit);*
- *adjusting the basic needs level;*
- *allocating resources to other residents;*
- *allocating resources to existing operations;*
- *dealing with priority applications;*
- *making recommendations as to allocation of the remaining surplus;*
- *establishing, modifying or removing non-quota limitations;*
- *setting trophy fees;*

In addition to these primary functions, the Board is also authorized to do the following:

- *approve the establishment, disestablishment, and changes to boundaries of Conservation Areas, related to management and protection of wildlife and wildlife habitat;*
- *identify wildlife management zones and areas of high biological productivity and provide recommendations to the NPC with respect to planning in those areas;*
- *approve plans for management and protection of particular wildlife habitats including areas within Conservation Areas, Territorial Parks and National Parks;*
- *approve plans for (i) management, classification, protection, restocking or propagation, cultivation or husbandry of particular wildlife, including endangered species, (ii) the regulation of imported non-indigenous species and the management of transplanted wildlife populations;*
- *provide advice to departments, NIRB and other concerned agencies and appropriate persons regarding mitigation measures and compensation to be required from commercial and industrial developers who cause damage to wildlife habitat;*
- *approve designation of rare, threatened and endangered species;*
- *provide advice as to requirements for the promotion of wildlife education, information and training of Inuit for wildlife management;*
- *establish qualifications respecting guides;<sup>46</sup>*

## **Composition of Membership**

The NWMB consists of nine members. Four are appointed by each of the four DIOs (Designated Inuit Organizations established out of the Nunavut Agreement). The DIOs are Nunavut Tunngavik Inc, the umbrella organization that represents all Inuit under the Nunavut Land Claims Agreement, and three regional organizations that represent the interests of Inuit living within their region.<sup>47</sup> One NWMB member is appointed by the territorial government's Commissioner-in-Executive-Council. Three members are appointed by the Canadian

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<sup>46</sup>Nunavut Tunngavik. Nunavut Agreement: Article 5: Wildlife. n.d. [https://nlca.tunngavik.com/?page\\_id=268#ANCHOR319](https://nlca.tunngavik.com/?page_id=268#ANCHOR319)

<sup>47</sup>Nunavut Tunngavik. Inuit and Land Claims Organizations. 2009. <https://www.tunngavik.com/wp-content/uploads/2009/02/nti-org-chart-english.pdf>

Government's Governor in Council: one on the advice of the Minister responsible for fish and marine mammals, one on the advice of the Minister responsible for the Canadian Wildlife Service, and one ordinarily resident in Nunavut on the advice of the Minister of Indian Affairs and Northern Development, in consultation with the Commissioner-in-Executive Council. The Governor in Council also appoints a chairperson from nominations submitted by the NWMB. Terms are for four years, and members can be reappointed. Non-voting observers are allowed to attend all meetings of the NWMB in only one of two capacities: either as an officer of the Minister's department (for Ministerially appointed members of the NWMB who are not public servants), or as a technical advisor (for DIO appointed members). Costs for these non-voting observers are covered by the organization sending them.

## **Council decision-making**

All decisions of the NWMB are decided by a majority of votes cast, and quorum is constituted by the presence of five members. The chairperson is only mandated to vote in the case where there is a tie of votes. The NWMB meets at least twice per year, and whenever possible, within the Nunavut Settlement Area. The Board is legislated to conduct its business in Inuktitut.

In regards to the legal effect of decisions under territorial government jurisdiction: when the NWMB makes a decision, it forwards that decision to the Minister. The NWMB does not make the decision public at this stage. The Minister may then accept or disallow said decision. If the Minister disallows a decision of the NWMB, he/she must provide reasons for disallowing it within 30 days of receiving the decision. The NWMB is then provided the opportunity to reevaluate their decision in light of the Minister's comments and make a final decision. The NWMB is permitted to make that final decision public if they wish. The Minister may then accept, disallow, or vary the final decision.

For some decisions, however, such as those regarding presumption of needs or adjusted basic needs level, if the Minister decides to disallow the NWMB's final decision, the final decision is then referred to the Commissioner-in-Executive Council, who can accept, reject or vary it. The Minister can reject that decision "only if the Minister determines that the decision is not supported by or consistent with the evidence that was before the NWMB or available to it". This evidence includes Western science and IQ.

The legal effect for Government of Canada jurisdiction decisions is very similar to the territorial jurisdiction process, except that the Minister is allowed 60 days (or a period mutually agreed to by the Minister and the NWMB) to accept or give reasons for rejecting the decision, and if the Minister hasn't rejected the decision in this time period, it is deemed to be approved. The Act also enables the Government of Canada authority for interim decisions, stating that a Minister or their delegated agent can make reasonable interim decisions, to be followed by a review by the NWMB, "when urgent and unusual circumstances require an immediate modification in harvesting activities."

## Support Bodies

### *Hunter Trapper Organizations and Regional Wildlife Organizations*

The NWMB is supported by 27 Hunter Trapper Organizations (HTOs), three Regional Wildlife Organizations (RWOs), and the Nunavut Inuit Wildlife Secretariat, all of which are funded by the NWMB. Each community in the Nunavut Settlement Area has an HTO, with voting membership open to all Nunavut Inuit.

The powers and functions of HTOs in the Nunavut Act are:

- *the regulation of harvesting practices and techniques among members, including the use of non-quota limitations;*
- *the allocation and enforcement of community basic needs levels and adjusted basic needs levels among members;*
- *the assignment to non-members, with or without valuable consideration and conditions, of any portion of community basic needs levels and adjusted basic needs levels; and*
- *generally, the management of harvesting among members.*<sup>48</sup>

RWOs represent HTOs in each of the three regions of the Nunavut Settlement Area<sup>49</sup> and the board of directors of each RWO is composed of representatives from each HTO in the region.

The powers and functions of RWOs, as established in the Act are:

- *the regulation of harvesting practices and techniques among the members of HTOs in the region, including the use of non-quota limitations;*
- *the allocation and enforcement of regional basic needs levels and adjusted basic needs levels among HTOs in the region;*
- *the assignment to any person or body other than an HTO, with or without valuable consideration and conditions, of any portion of regional basic needs levels and adjusted basic needs levels; and*
- *generally, the management of harvesting among the members of HTOs in the region.*<sup>50</sup>

### *The Nunavut Inuit Wildlife Secretariat*

The Nunavut Inuit Wildlife Secretariat (NIWS) supports RWOs and HTOs through logistical, administrative and technical assistance. Following the designation of responsibilities and authorities to HTOs and RWOs through the Nunavut Land Claims Agreement, regional offices were established to assist with administration and technical support to regional boards. This regional support model didn't work however, due to "lack of capacity, lack of exterior support, mismanagement and other factors". Following these issues, The Nunavut Inuit Wildlife

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<sup>48</sup>Nunavut Tunngavik. Nunavut Agreement: Article 5: Wildlife. n.d. [https://nlca.tunngavik.com/?page\\_id=268#ANCHOR319](https://nlca.tunngavik.com/?page_id=268#ANCHOR319)

<sup>49</sup>Nunavut Marine Council. Inuit and Government Partners. n.d. <http://www.nunavutmarinecouncil.com/node/36>

<sup>50</sup>Nunavut Tunngavik. Nunavut Agreement: Article 5: Wildlife. n.d. [https://nlca.tunngavik.com/?page\\_id=268#ANCHOR319](https://nlca.tunngavik.com/?page_id=268#ANCHOR319)

Secretariat was proposed as an alternative to administer regional budgets, disburse annual core funding and provide technical assistance and representation on territorial wildlife issues.<sup>51</sup> The Secretariat's Board is comprised of the chair and vice-chairs from the RWO Boards.<sup>52</sup>

## Snapshot of the Arrangement in Practice

Review of the NWMB revealed several lessons, particularly in regards to the power of a research and data-driven approach, and how to apply and strengthen traditional knowledge within the decision-making processes of a collaborative management board.

### *Applying and Strengthening Inuit Qaujimagatuqangit*

In speaking with Executive Director Jason Akearok, he is clear that ensuring Inuit are part of the wildlife management process is central to the NWMB. He explained how the system's goal—a co-management system whereby Inuit, government and other organisations work together to come up with wise actions for wildlife—is being actualized. The NWMB design ensures traditional knowledge is applied and strengthened through (i) workshops and hearings to provide opportunities for consultation, (ii) collaborative management planning processes, (iii) involvement of Elders in research (the IQ program), and (iv) provisions to ensure socio-economic benefits are offered to Inuit.

Akearok explained how criteria for proposals the NWMB reviews has assisted with ensuring all impacted voices are considered when evaluating a decision. “If we receive a proposal on a management action from government, we have to confirm Inuit have been consulted through means such as a public hearing. We now have more information to evaluate decisions, more processes to ensure Inuit have their say. We've had public hearings and other workshops to get feedback- there's been some challenges with that. For example, if the government is considering lowering the quota for a species, that's really significant to Inuit. There's sometimes conflicting information the Board has to consider.”

The determination of annual allowable harvest levels is one of the most significant decision-making processes that the NWMB participates in, and exemplifies the weight given to Inuit subsistence and Inuit knowledge in decision-making processes.

Regarding examples of important outcomes that have fulfilled the intent of the NWMB, Akearok points to the Polar Bear Management Plan, which was under consideration for nearly five years and recently approved by Nunavut's Minister of Environment. Crafting a plan that was mutually acceptable to all parties was “quite a feat”, as Akearok described. There was a lot of pressure with polar bear being of such importance to Inuit, whilst also being a very internationally

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<sup>51</sup>Nunavut Inuit Wildlife Secretariat. Home. n.d. [http://www.niws.ca/\\_en/index.html](http://www.niws.ca/_en/index.html)

<sup>52</sup>Nunavut Tunngavik. Inuit and Land Claims Organizations. 2009. <https://www.tunngavik.com/wp-content/uploads/2009/02/nti-org-chart-english.pdf>

significant species of concern (Nunavut is home to 12 of 19 of the world’s subpopulations of polar bears).<sup>53</sup>

The total allowable harvest of polar bears didn’t change with this new plan, but the ratio of male to female bears within the total allocation did. Before this new plan, regulations were such that Nunavut communities could hunt one female polar bear for every two male polar bears hunted. There was dissatisfaction within Inuit communities with this two-for-one quota system that was previously in place, primarily due to an increase in defense killings in recent years. Under the former plan, a defense killing of a polar bear counted as two tags when it was a female bear, which was leaving some communities with no further tags (which Inuit communities rely on) after they’ve had to do a defense kill. At a public hearing on the issue, there were representatives from all organisations and governments in attendance. The Board noted they wanted a simpler system but also to alleviate concerns from parties. Akearok explained that outside of Nunavut, moving to a one-to-one male-female harvesting ratio would be considered controversial, and that the decision displays how much the NWMB consider Inuit knowledge.

The Board promotes and develops Inuit culture in research through, for example, its *Inuit Qaujimagatuqangit* (IQ) program. As one of the organizations established out of the 1993 Nunavut Land Claims Agreement with a responsibility to promote and develop Inuit culture, the NWMB’s IQ Program is meant for “conserving wildlife through the application of Inuit Qaujimagatuqangit and scientific knowledge.”<sup>54</sup>

The Government of Nunavut’s creation of a Task Force on IQ composed of Inuit Elders, Nunavut Social Development Council staff and government staff has assisted with the integration of IQ into government bodies, whilst land claim organizations such as the NWMB have proven to be effective bodies through which “to document and encourage Inuit values.”

The Task Force was created because by 2002, the Nunavut Government and organizations born out of the Nunavut Act were found to not be effectively applying IQ. “[A]lthough most departments [were] involved in cultural-related and language-related activities [...], they [were] generally failing to incorporate IQ in a significant way into their departments. They [were] not sure what IQ [was] or how to incorporate it into the day-to-day workings of their departments.”<sup>55</sup>

Following this task force, in 2003, the Nunavut Wildlife Act became Nunavut’s first statute to be based on IQ principles, which were the following:

- *Papattiniq* – Guardianship of what one does not own

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<sup>53</sup>George, Jane. “Nunavut has a new polar bear management plan: NWMB”. Nunatsiaq News. September 26, 2019. <https://nunatsiaq.com/stories/article/nunavut-close-to-new-polar-bear-management-plan-nwmb/>

<sup>54</sup>Lévesque, Francis. Revisiting *Inuit Qaujimagatuqangit*: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999. *Études/Inuit/Studies*. 2014. Vol 38, no 1-2, pp. 115–136. <https://doi.org/10.7202/1028856ar>

<sup>55</sup>Inuit Qaujimagatuqanginnut [IQ] Task Force 2002: 1 in Lévesque, Francis. Revisiting *Inuit Qaujimagatuqangit*: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999. *Études/Inuit/Studies*. 2014. Vol 38, no 1-2, pp. 115–136. <https://doi.org/10.7202/1028856ar>

- *Qaujimanilik* – Respect knowledge or experience
- *Surattittailimaniq* – Hunt only what is necessary and do not waste
- *Ilijaaqaqtailiniq* – Harvesting without malice
- *Sirliqaaqtittittailiniq* – Avoid causing animals unnecessary harm
- *Akiraqtuutijariaqanginniq Nirjutiit Pijjutigillugi* – No one owns animals or land and so avoid disputes
- *Ikpigusuttiarniq Nirjutilimaanik* – Treat all wildlife respectfully
- *Pijitsirniq* – Serving
- *Aajiiqatigiingniq* – Consensus decision-making
- *Pilimmaksarniq* – Skills and knowledge acquisition
- *Piliriqatigiingniq* – Collaborative relationships or working together for a common purpose
- *Avatimik Kamattiarniq* – Environmental stewardship
- *Qanuqtuurunnarniq* – Problem solving<sup>56</sup>

The integration of IQ into this Act, one of the primary pieces of legislation the NWMB adheres to in managing wildlife in Nunavut, has proven to carry weight in management decisions. “In 2005, this law justified an increase in polar bear quotas in the Baffin Bay and Western Hudson Bay regions. Although scientists said at the time that polar bear populations were in decline in both regions, Inuit maintained the opposite. Furthermore, they considered the human-polar bear relationship to be threatened by the very existence of the quota system and lobbied the government for its removal to restore the relationship.”<sup>57</sup>

Provisions in the Nunavut Act protect Inuit harvest, ensuring it can only be restricted or limited for a valid conservation purpose or public health and safety issue. The Act also contains several provisions to ensure Inuit can sustain their way of life regarding harvesting, as well as provisions to ensure Inuit benefit first from any economic or commercial opportunities provided by wildlife. Through the Act, Inuit are given the rights of first refusal to establish new sports and naturalist lodges or opportunities for propagation, cultivation or husbandry, and are given the ability to use government land to do so. The Act contains further provisions that ensure Inuit benefit from economic activity generated by wildlife within their homelands, such as a provision that a non-Inuk hunter must be accompanied by an Inuk approved as a guide by an HTO for at least the first two years following receipt of their hunting licence.<sup>58</sup>

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<sup>56</sup>Lévesque, Francis. Revisiting *Inuit Qaujimajatuqangit*: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999. *Études/Inuit/Studies*. 2014. Vol 38, no 1-2, pp. 115–136. <https://doi.org/10.7202/1028856ar>

<sup>57</sup>Dowsley and Wenzel 2008: 185 in Lévesque, Francis. Revisiting *Inuit Qaujimajatuqangit*: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999. *Études/Inuit/Studies*. 2014. Vol 38, no 1-2, pp. 115–136. <https://doi.org/10.7202/1028856ar>

<sup>58</sup>Nunavut Tunngavik. Nunavut Agreement: Article 5: Wildlife. n.d. [https://nlca.tunngavik.com/?page\\_id=268#ANCHOR319](https://nlca.tunngavik.com/?page_id=268#ANCHOR319)

Akearok explained that the Board is always looking to consider better ways of integrating Inuit knowledge into their processes. Recently, for example, the NWMB held a workshop with government and other organisations regarding how to use Inuit knowledge to protect caribou habitat within a land use plan being considered for Nunavut.<sup>59</sup> The NWMB will also soon have an IQ Coordinator role within its staff team. This is another way through which the NWMB aims to ensure it's taking an active role in obtaining traditional knowledge and in fostering intergenerational knowledge transmission.

### *The Power of Research*

Perhaps the greatest takeaway from assessment of the NWMB framework is the benefits of its community-based, research-focused approach to inform decision-making, and how central Inuit Qaujimagatuqangit (IQ) is to such research.

The Act clearly articulates “a need for an effective role for Inuit in all aspects of wildlife management, including research.” Perhaps the strongest aspect of the Nunavut framework we uncovered is its focus on, and resourcing of, research to support wildlife management. The NWMB reiterates that “The Nunavut Agreement puts research squarely at the heart of an effective wildlife management system.” The need for well-funded research to inform the NWMB’s decision-making was clearly acknowledged by all Parties in articles of the Nunavut Agreement, leading to the creation of an \$11 million trust fund for wildlife research by territorial and federal agencies upon the signing of the agreement.<sup>60</sup>

In addition to participating in the research, Inuit play a key role in determining subjects and processes for the research undertaken. The NWMB has actually created its own set of Wildlife Research and Management Priorities in relation to their duties and functions established by the Nunavut Agreement. In ensuring they stay regionally connected, the Board also hosts Regional Wildlife Research and Management Priority Workshops every three years in each of the three regions of Nunavut (Qikiqtaaluk (Baffin), Kivalliq, and Kitikmeot). The workshops provide the opportunity for community representatives to share about and discuss local and regional wildlife management issues. Each region then develops a list of research priorities, which the NWMB shares on their website in Inuktitut and English. Each list is added to or modified annually based on feedback from HTOs and RWOs. As the NWMB shares, “Establishing priorities assists the NWMB and other agencies in setting management work plans for the coming year(s), and assists the NWMB and other agencies in determining funding allocations to address priority issues. NWMB specifically uses these priorities when evaluating applications for funding for the Nunavut Wildlife Research Trust (NWRT) and Nunavut Wildlife Studies Fund (NWSF).”<sup>61</sup>

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<sup>59</sup>Akearok, Jason. (Executive Director, Nunavut Wildlife Management Board) in discussion with the author. October 11, 2019.

<sup>60</sup>Nunavut Wildlife Management Board. Funding- Introduction. n.d. <https://www.nwmb.com/en/funding>

<sup>61</sup>Nunavut Wildlife Management Board. Research Priorities. n.d. <https://www.nwmb.com/en/funding/priorities>

Since 1994, the NWMB has smartly invested the Nunavut Wildlife Research Trust's initial endowment of \$11 million and as such, its current value is \$20 million. This has allowed for \$700,000 to \$800,000 annually to fund researchers in the Department of Fisheries and Oceans, the Canadian Wildlife Service, Parks Canada, and the Government of Nunavut Department of Environment. The NWRT's engagement requirements with local communities is reflected in its application process as applicants are required to send a description of the project, including objectives, justification and methods to each Hunter Trapper Organization (HTO) the project will impact. The NWRT then has a consultation requirement of a letter of support from each of the affected HTO(s) for projects impacting less than five communities or a letter of support from the affected RWO(s) for projects impacting more than five communities.<sup>62</sup>

### *Data Driven Decision-Making*

The NWMB has long employed a data-driven approach to its decisions. Beginning in 1996, a five year study called the Nunavut Wildlife Harvest Study was conducted in each of the three regions of the Nunavut Settlement Area in which harvest data were collected monthly from Inuit hunters over the harvest months. The studies were fully funded by government and allowed the NWMB to get an accurate idea of levels and patterns of Inuit use to assist with tasks such as determining basic needs levels and annual allowable harvest levels.<sup>63</sup>

The Inuit Bowhead Knowledge Study is a further example of early research conducted to ensure NWMB recommendations were informed by traditional knowledge and science. Inuit had expressed interest in resuming a limited hunt for bowhead, and as such, the Nunavut Act required that the NWMB carry out a study and included the allocation of \$500,000 to ensure it was undertaken. The study recorded sightings, location and concentrations of bowhead whales in the Nunavut Settlement Area, including changes and trends in abundance and distribution of bowheads since the end of commercial whaling. As part of strengthening IQ, "the cultural and traditional importance of bowhead hunting for Inuit, and Inuit knowledge of various aspects of bowhead ecology and behaviour in the NSA" were also documented.

Since then, government has continued to accept the Nunavut Wildlife Management Board's recommendations that the quota be increased from one bowhead whale every two to three years in the 1990s to three whales per year for the next three years in 2009<sup>64</sup>, and to five whales per year in 2019.<sup>65</sup> Aerial surveys and public hearings have accompanied such decisions.

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<sup>62</sup>Nunavut Wildlife Management Board. Nunavut Wildlife Research Trust Funding Guide. 2017.

<https://www.nwmb.com/en/conservation-education/list-all-documents/funding-guides/nwrt/7360-nwrt-funding-guide-2017-eng/file>

<sup>63</sup>Priest, Heather and Usher, Peter, J. The Nunavut Wildlife Harvest Study. 2004. <https://www.nwmb.com/inu/publications/harvest-study/1824-156-nwhs-report-2004-156-0003/file>

<sup>64</sup>CBC News. "Nunavut bowhead hunting quota goes up to 3". May 7, 2009.

<https://www.cbc.ca/news/canada/north/nunavut-bowhead-hunting-quota-goes-up-to-3-1.790507>

<sup>65</sup>Rogers, Sarah. "Four of Nunavut's five bowhead tags approved for 2019". Nunatsiaq News. July 19, 2019.

<https://nunatsiaq.com/stories/article/four-of-nunavuts-five-bowhead-tags-approved-for-2019/>

## *Community-Based Monitoring*

A further testament to how the NWMB continues to encourage and support community based research in its decision-making is through resourcing the Nunavut Wildlife Studies Fund, which the board created “to fund community-based management and research projects in Nunavut, in particular projects led by Hunters and Trappers Organizations (HTOs). The NWSF provides an annual allocation of studies funds to encourage Inuit and community-based organizations to undertake and lead research projects that directly address community needs and concerns related to the management of wildlife in Nunavut.”<sup>66</sup> As Akearok explained, this both builds capacity and contributes to the knowledge base.

The way the NWMB gathers information for decision-making through research methods that combine traditional knowledge with scientific modelling provides an example that other co-management bodies may wish to learn from. Through its Community Based Wildlife Monitoring Network, as the NWMB describes, “Participating harvesters are trained to use specially designed hand-held computers (MESAs) to record wildlife sightings, harvests, and other environmental observations while on the land. When harvesters return from the land, trained data clerks in each of the communities transfer the information contained in the hand-held computers into a database.”<sup>67</sup>

The network, which initially began as a pilot study in three communities, has since scaled to onboard a new community each spring. Collected information is “used to improve local, regional, and territorial wildlife management practices in Nunavut by ensuring that decision-making bodies have up-to-date information directly from those who spend the most time on the land.” The network allows harvesters to contribute to answering key questions that impact decision-making, such as how migration routes or seasons ranges are changing, what the most effective harvesting techniques are, where the most important habitats and harvest areas are that require protection from development, where sick or injured animals are being observed, and how populations are changing. The project has created local employment and training opportunities for harvesters and part-time data clerks. Communities have full access to all their community’s data which HTOs and RWOs can use in local wildlife management decisions.<sup>68</sup>

## *Cross-Jurisdictional Cooperation*

The NWMB also recognizes the need for cross-jurisdictional cooperation for many of the wildlife populations they are responsible for. The Nunavut Act acknowledges the issue of migratory wildlife found in the Nunavut Settlement Area that crosses jurisdictional boundaries, and mandates the NWMB to “take account of harvesting activities outside the Nunavut Settlement

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<sup>66</sup>Nunavut Wildlife Management Board. Nunavut Wildlife Studies Fund. 2018. <https://www.nwmb.com/en/conservation-education/list-all-documents/funding-guides/nwsf/7030-nwsf-2018-funding-guide-eng/file>

<sup>67</sup>Nunavut Wildlife Management Board. Community-Based Wildlife Monitoring Network. n.d. <https://www.nwmb.com/en/cbmn>

<sup>68</sup>Nunavut Wildlife Management Board. Community-based Monitoring Network Frequently Asked Questions. n.d. <https://www.nwmb.com/en/cbmn/pilot-study-faq>

Area and the terms of domestic interjurisdictional agreements or international agreements pertaining to such wildlife”. For example, with the rapid decline in Bluenose East and Bathurst caribou herds (a decline of 21% per year since 2010 for the Bluenose East herd), the NWMB is currently working with governments and other agencies in both Nunavut and NWT to address the drop. Following a recent meeting with Environment Ministers, biologists and Indigenous organizations of both jurisdictions, members agreed to jointly managing both herds. They signed an MOU that goes beyond the current research agreement in place between the jurisdictions and includes creation of a joint working group that can recommend harvest levels or call for a moratorium on the herds.<sup>69</sup>

### *decision-making History*

The NWMB functions as a co-management body but is seen by some to have greater influence over decision-making than other co-management agencies in Canada. Berkes and Armitage describe the following as the main differentiator of the NWMB: “While final authority often rests with territorial governments and the relevant federal minister, claims-based co-management institutions like the NWMB have significant scope to regulate resource access, to approve plans and designations, and to set policy. They can also commission background studies and set up working groups as needed.”<sup>70</sup> In exploring its authority, according to the Nunavut Agreement, the NWMB is essentially a process for decision-making. Ultimately, the government has the final say in decisions, but this ability of the NWMB to steer the decision-making process ought to be considered.

There have been times when government has rejected a recommendation from the board. Such an instance of rejection occurred for a quota for the Bathurst Caribou Herd. The NWMB recommended 70 male or female caribou as a quota and the Minister came back to the board and said the government would consider 30 male-only caribou. As per the process established in the Nunavut Agreement, the board then revisited their decision and returned to the Minister with a revised recommendation of 70 male-only caribou. The Minister in this case still stuck to the 30 male-only quota. The Minister must provide rationale for the government’s decision to reject a recommendation by the board, but once a final decision has been made and if there’s a disagreement on a quota, it is not the board’s place to do anything more. The Executive Director made clear that the NWMB’s role in the process is finished at that point.

As described earlier, there have also been times when the government has changed its stance based on the NWMB’s recommendations. A further example of this was when the board made a decision for a quota of 38 polar bears based on information obtained by participants at public hearings. The recommended quota number based solely on western science was 34.

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<sup>69</sup>George, Jane. “Nunavut, N.W.T. team up on joint caribou management”. Nunatsiaq News. May 1 2019.

<https://nunatsiaq.com/stories/article/nunavut-n-w-t-embrace-joint-caribou-management-agreement/>

<sup>70</sup>Berkes, Fikret and Armitage, Derek. Co-management institutions, knowledge, and learning: Adapting to change in the Arctic. *Études/Inuit/Studies* 34, no. 1. 2010. pp. 109–131. <https://doi.org/10.7202/045407ar>

## *Information Sharing and Integration of Community Feedback*

As Berkes and Armitage write about the NWMB, “Information and concerns can be shared at two levels: the meetings of the co-management agency itself, where Indigenous participants from communities and regions typically make up half the membership, and public meetings sponsored by the co-management institution.”<sup>71</sup>

All collected data used within NWMB decisions is to be made available to the Government of Canada, the Government of Nunavut and Inuit. When the board is considering making a decision, there is a public registry of information they put up on the NWMB website that everyone can access. When they can, the Board travels to communities to communicate information. They also use social media to share information and advertize gatherings, through outlets such as Facebook and Twitter. Outreach and getting information across can still be challenging however, as many Nunavut communities are remote, and internet and social media bandwidth are limited.

The ability of the NWMB to establish special and standing committees on issues under its purview as it deems necessary, and the ability to hold public hearings into any issue requiring a decision on the Board’s behalf, appear to be particularly helpful abilities for the NWMB to ensure its decisions reflect community voices. The NWMB is also authorized to create its own by-laws and rules regarding how its meetings, hearings and business is conducted, including procedures for how information and opinions are collected. This allows another avenue through which the NWMB can tailor its processes to ensure they are in alignment with Inuit culture and approaches.

## *Emergent Implementation Challenges*

There are several challenges that the Board has encountered as it moves further into implementation, particularly those related to (i) standards for proposals, (ii) differences in interpretation of the Agreement, (iii) clarity over the role of various support bodies, and (iv) monitoring and evaluation.

One of the challenges confronted by the NWMB relates to standards for proposals submitted by various agencies. The Board is comparative to a judge that evaluates a proposal based on a set of required information. Diversity within the board enables different ways of looking at a set of information, but they have guidelines for what is required in a proposal. An issue the NWMB is increasingly being faced with is what they do when an Inuit organization provides a proposal. The legislation, when it was created, assumed the government would be putting forward proposals before the board. Government proposals are typically rigorous in research, and consist of hundreds of pages with all sorts of assessments undertaken. But what kind of process

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<sup>71</sup>Berkes, Fikret and Armitage, Derek. Co-management institutions, knowledge, and learning: Adapting to change in the Arctic. *Études/Inuit/Studies* 34, no. 1. 2010. pp. 109–131. <https://doi.org/10.7202/045407ar>

should be in place for when an Inuit organization puts forward recommendations and does not have the same resources to undertake similar assessments? Does an Inuit organization have an obligation to consult? These are questions the NWMB has increasingly been facing. So far, the NWMB has been navigating this issue on a case by case basis, drawing on historic files. Often, they'll also ask government to provide reviews on such proposals.<sup>72</sup>

Another issue that parties to the Agreement have encountered is in regards to differences in interpretation of the Agreement between Government and Inuit. Interpretation of the agreement has stalled some processes and means it's taken more time than anticipated to implement certain components. When the board is tasked with making a decision on something and differences in opinion exist, it takes a lot of staff time, money, etc to thread the needle, coming up with a decision that works. As the Agreement spawned from the separation of Nunavut from the NWT, parts of it, for example, fisheries regulations, are derived from NWT regulations, which aren't necessarily tailored to Nunavut. For example, under the agreement, there's no legal limit of harvesting for species such as char. This means Inuit can harvest up to a cultural needs level, but issues emerge when it comes to what Inuit can do economically with a harvest. With no limit in place, Inuit don't require a license, and agencies such as the Department of Fisheries and Oceans have expressed concern over economic opportunities undertaken without a license. Solving interpretation issues such as these have taken more time than one would anticipate. With over 20 years having passed since establishment of the agreement, development of tailored fisheries regulations will take a coordinated effort between government departments and other relevant organisations. Regarding advice to other parties commencing on a collaborative governance arrangement, Akearok reiterated the need for clear and context-specific legislation and strongly recommended that parties consider potential interpretational differences at the time the legislation is being drafted.

The importance of the role of support bodies, a common theme amongst reviewed arrangements, was also mentioned in the case of the NWMB. Akearok noted it's particularly important to consider the role of Hunter Trapper Organizations as fundamental to the process of the NWMB. As these are local organisations, they evolve over time, adjusting with their communities. He explained how having more processes in place that attempt to incorporate both Inuit and public feedback has been a key outcome of evolution of HTOs. Adaptive capacity building (building capacity as bodies adapt to changing circumstances) and resourcing for these bodies, is key however, and is an area that requires improvement. Funding the NWMB and its support bodies is the responsibility of the Government of Canada, with the NWMB creating a budget for review and approval by the government annually. The NWMB then passes funding along to HTOs and RWOs. This arrangement generally works for NWMB purposes, but inadequate funding has been an issue for its support bodies in recent years, particularly for HTOs. With more and more being required of HTOs, their increasingly large mandates (especially within land use planning processes) and small operating budgets need to be considered. It was noted that the funding they receive isn't adequate to provide what is expected from them on all matters. It appears that this issue is being more widely recognized.

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<sup>72</sup>Akearok, Jason. (Executive Director, Nunavut Wildlife Management Board) in discussion with the author. October 11, 2019.

Earlier this year, the Government of Canada allocated \$216,000 through CanNor to HTOs to develop tools to improve their governance system. The funding is dedicated to specifically supporting the development of training material in English, Inuktitut, and Inuinnaqtun on accounting, human resources, governance, policy and procedures for HTOs.<sup>73</sup>

Finally, although the Nunavut Implementation Panel does some monitoring and evaluation of implementation of the Nunavut Agreement, the NWMB internally does not have a system to track monitoring and evaluation of the Board's operations.

## Mackenzie Valley Resource Management Boards

The negotiation and establishment of comprehensive land claim agreements, such as the Inuvialuit Final Agreement in 1984, set the stage for land claim agreements to be settled with the Gwich'in and Sahtu in the NWT in the early 1990s. These land claim agreements resulted in the signing of the Mackenzie Valley Resource Management Act (MVRMA) in 1998 "to provide for an integrated system of land and water management in the Mackenzie Valley, to establish certain boards for that purpose and to make consequential amendments to other Acts". Legislation for the MVRMA was amended in 2005 for considerations of the Tłı̄ch̄ Agreement and amended again in 2013 to accommodate for devolution legislation.

As with the Inuvialuit Final Agreement, the MVRMA is based on two key principles: Integration and coordination; and co-management.<sup>74</sup>

There are four types of boards through which lands and resources are managed in the Mackenzie Valley, which were established pursuant to the Gwich'in and Sahtu final agreements and later, the Tłı̄ch̄ final agreement and self-government agreement. The Tłı̄ch̄ agreement is different in that it is the Mackenzie Valley's first land claim *and* self-government agreement.<sup>75</sup> The four types of collaborative boards established by these agreements are Land Use Planning Boards; Environmental Assessment Boards; Land and Water Regulation Boards; and Renewable Resource Boards.

Due to the time constraints of this project and an inability to explore all 10 boards emanating from Mackenzie Valley final agreements and the MVRMA, we focused on primarily researching the Mackenzie Valley Land and Water Board due to its multi-jurisdictional composition and mandate, and on one Renewable Resource Board (RRB) due to the focus on wildlife. Out of the three RRBs, we chose the Wek'èezhii Board due to it having emanated from the most recent

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<sup>73</sup>Canadian Northern Economic Development Agency (CanNor). Improving governance with Nunavut's Hunters and Trappers Organizations. Cision. February 11, 2019. <https://www.newswire.ca/news-releases/improving-governance-with-nunavut-s-hunters-and-trappers-organizations-825415696.html>

<sup>74</sup>NWT Board Forum. Overview of Land and Resource Management in the NWT. 2013. <https://www.nwtboardforum.com/wp-content/uploads/2013/05/NWTBoardForumPPT.pdf>

<sup>75</sup>Pellissey, Jody (Wek'èezhii Renewable Resource Board Executive Director) in discussion with the author. October 2, 2019.

land claim and only self-government agreement within the Mackenzie Valley. With the limited time frame and resources provided for this project, we were unable to have discussions with Crown government or First Nation appointees of the many MVRMA Boards. Instead, we were able to speak with Executive Directors of the Wek'èezhii Renewable Resource Board, the Mackenzie Valley Land and Water Board, and the Sahtu, Gwich'in and Wek'èezhii Land and Water Boards who offered operational insights into some of the successes and challenges experienced by these boards. These individuals made it clear that some questions regarding assessment of the boards, such as if/how they were fulfilling the intent of their agreements, could not be answered by them and that a proper answer would require an entire suite of research to be conducted with appointees from each party of each board. As this was not possible given our resources and time frame, these Executive Directors could offer operational and logistical insights instead.

## **The Mackenzie Valley Land and Water Board and its Regional Panels**

The Mackenzie Valley Land and Water Board (MVLWB) is a regulatory authority that falls under three Mackenzie Valley First Nations' land claim regimes and is embedded in the Mackenzie Valley Resource Management Act (MVRMA).

The principles that govern the MVRMA are similar to those that govern land claim agreements:

- A system integrating land and water management, licensing, planning, and environmental assessment
- The coordination of land and water management
- Regulatory boards established as institutions of public government
- With all lands and waters, including settlement lands being subject to the system
- Nomination of 50% of board membership by land claim groups<sup>76</sup>

The MVLWB is comprised of five members of the Sahtu Land and Water Board, five members of the Gwich'in Land and Water Board, five members of the Wek'èezhii Land and Water Board, a Chairperson, and four members appointed pursuant to Section 99 of the MVRMA, who provide for consideration of unsettled Nations within the Mackenzie Valley region. These four members include two members appointed following consultation by the federal minister with the First Nations and the Tłıchq̓ Government (these members are currently from the Dehcho and Akaitcho First Nations), one member appointed on nomination of the territorial minister, and one other member (who is currently a representative of the federal government).<sup>77</sup>

Roles and responsibilities of the MVLWB include: “reviewing and making decisions on transboundary projects; ensuring consistent application of the MVRMA up and down the

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<sup>76</sup>Dillon Consulting. Mackenzie Valley Resource Management Act 2016 Workshop Summary Report Final Report. 2016. [https://www.lands.gov.nt.ca/sites/lands/files/resources/2016\\_mvrma\\_workshop\\_summary\\_report\\_-\\_jun\\_7\\_16.pdf](https://www.lands.gov.nt.ca/sites/lands/files/resources/2016_mvrma_workshop_summary_report_-_jun_7_16.pdf)

<sup>77</sup>Mackenzie Valley Land and Water Board. Who We Are. 2019. <https://mvlwb.com/who-we-are>

Mackenzie Valley; and, reviewing and making decisions on applications filed in the regions where land claims have not been settled.”

The Gwich'in, the Sahtu and the Wek'èezhii Land and Water Boards constitute regional panels of the MVLWB and are the legally recognized management authorities for land and water use and waste deposit decisions on public and private lands within their regions. For the issuance of land use permits and water licenses in regions of the unsettled Dehcho First Nations, Akaitcho First Nations, and the NWT Métis Nation (which constitute a large portion of the MVRMA area), ad hoc land and water panels are created and managed by the MVLWB as per each of these nation's interim measures agreements.<sup>78</sup> The ad hoc panels meet frequently, while the regional panels and the ad hoc panels convene as required to address transboundary applications.<sup>79</sup>

The Gwich'in and Sahtu Land and Water Boards and their respective Renewable Resource Boards are slightly different than the Wek'èezhii Land and Water Board and the Wek'èezhii Renewable Resource Board. This is because the Tłı̄ch̄ Land Claims and Self-government Agreement for the Wek'èezhii was negotiated later (in 2005), whilst the Gwich'in Comprehensive Land Claim Agreement was signed off in 1992 and the Sahtu Dene and Métis Comprehensive Land Claim Agreement was assented to in 1993.<sup>80</sup>

The Gwich'in, Sahtu and Wek'èezhii Boards consists of five members, two of whom are nominated by the First Nation, one whom is nominated by the Government of the Northwest Territories and one whom is nominated by the Government of Canada. The four members of each board jointly nominate a Chair. In the case of the Gwich'in and Sahtu Land and Water Boards, members are then appointed by the Minister of Aboriginal Affairs and Northern Development Canada to serve three-year terms and may serve terms consecutively.<sup>81</sup> <sup>82</sup> There is an additional provision for Consultation under the MVRMA for the Wek'èezhii Land and Water Board, stating that “The federal Minister and the Tłı̄ch̄ Government shall consult each other before making their appointments”. Being their own government, the Tłı̄ch̄ is able to appoint members itself.<sup>83</sup>

Within NWT Land and Water Boards, “elected officials of municipal, Indigenous, territorial, and federal governments may not be eligible for appointment”.<sup>84</sup> Quorum of the Land and Water

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<sup>78</sup>Mackenzie Valley Land and Water Board. Policy Directions from the Minister: Interim Measures Agreements. 2019. <https://mvlwb.com/resources/policy-directions-minister>

<sup>79</sup>Mackenzie Valley Land and Water Board. Co-Management: Our Role in Integrated Resource Management Under the Mackenzie Valley Resource Management Act (MVRMA). 2019. <https://mvlwb.com/content/co-management>

<sup>80</sup>NWT Board Forum. Overview of Land and Resource Management in the NWT. 2013. <https://www.nwtboardforum.com/wp-content/uploads/2013/05/NWTBoardForumPPT.pdf>

<sup>81</sup>Gwich'in Land and Water Board. Who We Are. 2019. <https://glwb.com/gwich/our-board>

<sup>82</sup>Sahtu Land and Water Board. Who We Are. 2019. <https://slwb.com/slwb/our-board>

<sup>83</sup>Government of Canada. Mackenzie Valley Resource Management Act. (S.C. 1998, c. 25): Part 3: Land and Water Regulation (continued), Interpretation and Application (continued). Justice Laws Website. 2019. <https://laws-lois.justice.gc.ca/eng/acts/m-0.2/page-7.html#h-346218>

<sup>84</sup>Gwich'in Land and Water Board. Join A Board. 2018. <https://glwb.com/our-board/join-board>

Boards consists of at least three members, being at least one appointed by each respected First Nation, and one non First Nation appointee, other than the Chairperson. In the case of the Wek'èezhìi LWB, this other appointee must be a federal government appointee.<sup>85</sup>

All three of the Land and Water Boards are decision-making authorities that make legally binding decisions for government and developers applying for authorization for projects. These boards are the regulator for the Type B licenses they issue (small and medium size project licenses), which account for over approximately 70% of the licenses issued. For Type B licenses where a hearing has been held, and for Type A licenses (for large projects), Ministerial sign-off is required.<sup>86</sup>

The Tłıchq Agreement contains culturally important text such as that the Land and Water Board and government must exercise powers in alignment with Tłıchq laws, and provisions such as that the Land and Water Board and the Mackenzie Valley Environmental Impact Review Board “shall consider traditional knowledge as well as other scientific information where such knowledge or information is made available to the Boards.” The Tłıchq Agreement also has a provision for the Wek'èezhìi LWB to account for the impact of its decisions on transboundary neighbours: “Where the Wek'èezhìi Land and Water Board is required to make a decision which may affect an area in Nunavut or the Northwest Territories that is adjacent to Wek'èezhìi and that is being used by an Aboriginal people and is within the settlement area of that people under its land claims agreement, that people shall have the right to have representation on the Board.”<sup>87</sup>

The MVLWB and each regional Land and Water Board has a secretariat. Staff numbers vary amongst regional secretariats, from three for the Gwich'in LWB, six for the Sahtu LWB and 12 for the Wek'èezhii LWB. The MVLWB is well supported by a Chairs Committee, an Executive Directors Committee, staff from the MVLWB office (technical advisors, regulatory specialists, executive and outreach coordinators) in Yellowknife and regional office staff as required.

### *Renewable Resource Boards*

Each Mackenzie Valley settlement area (the Sahtu, the Gwich'in and the Wek'èezhìi) also has a Renewable Resource Board that serves as the main instrument for wildlife management in each respective settlement region.

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<sup>85</sup>Government of Canada. Mackenzie Valley Resource Management Act. (S.C. 1998, c. 25):

Part 3: Land and Water Regulation (continued), Interpretation and Application (continued). Justice Laws Website. 2019. <https://laws-lois.justice.gc.ca/eng/acts/m-0.2/page-7.html#h-346218>

<sup>86</sup>Government of Northwest Territories. Water Management and Monitoring: Regulatory decision-making. n.d.

<https://www.enr.gov.nt.ca/en/services/water-management-and-monitoring/regulatory-decision-making>

<sup>87</sup>Land Claims and Self-Government Agreement among the Tłıchq and the Government of the Northwest Territories and the Government of Canada. 2003. [https://slwb.com/sites/default/files/tlicho\\_agreement\\_-\\_english.pdf](https://slwb.com/sites/default/files/tlicho_agreement_-_english.pdf)

Whereas the Land and Water Boards are established by and receive their authority from the MVRMA, the regional Renewable Resource Boards are born out of each Nation's respective land claim agreement. The relationship between the Land and Water Boards and the Renewable Resource Boards is an advisory relationship. The Renewable Resource Boards provide wildlife advice and expertise to the Land and Water Boards as they consider applications for licenses and permits. That advice is usually applied by the Land and Water Boards when they create terms and conditions when they issue licenses.<sup>88</sup>

The Sahtu and Gwich'in RRBs are each composed of six members and a Chairperson. Within each board, three members are nominated by the respective Indigenous government, two are nominated by the federal government, one is nominated by the territorial government and a Chairperson is nominated by members of the board and appointed jointly by the Governor in Council and Executive Council. Each Chairperson must be a resident of the Settlement Area. Members serve for terms of up to five years and may be re-appointed. Quorum is made by a majority of the appointed members, and each board has alternate members. The boards are mandated to hold meetings and calls on an as-needed basis.<sup>89 90</sup>

The Gwich'in and Sahtu RRB Secretariats each have 8-9 staff in roles such as science advisors, administrative staff, communications and policy analysts, on-the-land program managers, youth and wellness coordinators, and wildlife, fisheries, forestry and species-at-risk biologists.<sup>91 92</sup>

The Gwich'in and Sahtu Final Agreements also established Renewable Resource Councils (RRCs), also known as Hunters and Trappers Committees (HTCs), Hunters and Trappers Associations (HTAs) or Hunters & Trappers Organizations (HTOs), within their settlement regions. The RRCs are community-led, advisory organizations that help each community to manage renewable resources in their area, and participate in collection and provision of local harvesting data and other local habitat data.<sup>93</sup> Alongside other consultation the RRBs conduct, the RRCs provide input into RRB decision-making processes to ensure that community input and data is incorporated on recommendations to the Minister regarding limitation of harvest, setting needs levels, approving management plans, making decisions on commercial harvesting, setting research priorities, and more.<sup>94</sup> Government and the Renewable Resource Boards can jointly designate authority to the Renewable Resource Councils in the Sahtu and Gwich'in settlement areas.

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<sup>88</sup>Pellissey, Jody (Wek'èezhii Renewable Resource Board Executive Director) in discussion with the author. October 2, 2019.

<sup>89</sup>Government of the Northwest Territories. Public Board Appointments: Sahtu Renewable Resources Board. 2019. <https://boardappointments.exec.gov.nt.ca/en/boards/sahtu-renewable-resources-board/>

<sup>90</sup>Government of the Northwest Territories. Public Board Appointments: Gwich'in Renewable Resources Board. 2019. <https://boardappointments.exec.gov.nt.ca/en/boards/gwichin-renewable-resources-board/>

<sup>91</sup>Gwich'in Renewable Resources Board. Staff Members. n.d. <http://www.grrb.nt.ca/staff.htm>

<sup>92</sup>Sahtu Renewable Resources Board. Staff Members. n.d. [http://www.srrb.nt.ca/index.php?option=com\\_content&view=category&layout=blog&id=86&Itemid=687](http://www.srrb.nt.ca/index.php?option=com_content&view=category&layout=blog&id=86&Itemid=687)

<sup>93</sup>Gwich'in Renewable Resources Board. Going Fishing in the Gwich'in Settlement Area? n.d. [http://www.grrb.nt.ca/fisheries\\_fishing.htm](http://www.grrb.nt.ca/fisheries_fishing.htm)

<sup>94</sup>Gwich'in Renewable Resources Board. About the Gwich'in Renewable Resources Board. n.d. <http://www.grrb.nt.ca/aboutus.htm>

As mentioned, The Wek'èezhì Renewable Resource Board has a different structure and authority than the Sahtu and Gwich'in Renewable Resource Boards, reflecting the later date at which the Tłıchq Agreement was signed.

- The Wek'èezhì Renewable Resource Board makes legally-binding Total Allowable Harvest (TAH) and harvest allocation regulations specific to the Wek'èezhì settlement area. For example, in the latest proceeding, the Board set the Total Allowable Harvest to 193 bulls for the Sahti Ekwo (Bluenose East) Herd for the 2019/20 and 2020/21 harvest seasons, and allocated 39.29% of that harvest to Tłıchq citizens. The GNWT is responsible for allocating the remaining 60.71% to different Indigenous subsistence users of other communities, including in Nunavut. All other decisions the board makes about education, habitat, predators, and other issues are recommendations to the responsible Minister, and can be either accepted, altered or rejected by the Minister, with the necessity for rationale to be provided if rejected.
- The Sahtu and Gwich'in Renewable Resource Boards, on the contrary, cannot make legally-binding determinations on harvest as the Wek'èezhì Renewable Resource Board can. Rather, these boards make recommendations to the Minister on these and other topics. A further difference from the Gwich'in and Sahtu RRBs is that there are no Renewable Resource Councils in the Tłıchq region. Instead, the WRRB and others rely on the Tłıchq Government to help facilitate community input by ensuring the correct elders and harvesters are consulted regarding specific matters.<sup>95</sup>
- The Wek'èezhì RRB is composed of eight members, plus a Chairperson, with four members appointed by the Tłıchq Government, two by the territorial government, and two by the federal government (on the basis of one nomination each from Department of Fisheries and Oceans and Environment and Climate Change Canada). All parties must provide nominations to each other before appointments are made. The Wek'èezhì RRB has no alternate members and quorum is made by three people - one of whom must be the Chairperson, and at least one member appointed by either the federal or territorial government, and at least one member appointed by the Tłıchq Government. As with most other co-management boards, boards within the MVRMA are public agencies. For example, the WRRB is considered an institution of public government and is therefore accountable not just to Tłıchq citizens, but also to NWT and Canadian citizens. Appointees thus are not to represent their nominating agency, but rather are to bring their expertise to the table.
- The Wek'èezhì RRB meets four times per year, with rotational meeting locations between Yellowknife and other communities in the Wek'èezhì area. The Board also holds at least one public hearing per year. In its criteria for members of the RRB, the

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<sup>95</sup>Pellissey, Jody (Wek'èezhii Renewable Resource Board Executive Director) in discussion with the author. October 2, 2019.

legislation asks for members to have knowledge not just of wildlife, but also of “the Aboriginal way of life of Aboriginal Peoples of Wek’èezhì”.<sup>96</sup>

## Snapshot Operational Insights of Select Boards of the MVRMA System

### *Wek’èezhì Renewable Resource Board*

Many of the co-management boards of the MVRMA system have had a few decades of insight since their establishment to work through challenges and adapt accordingly. The Wek’èezhì Renewable Resource Board, for example, recently passed the ten-year mark since its genesis. As the Executive Director of the WRRB, Jody Pellissey, explained, in this time since establishment, they’ve worked out many of the kinks. The 3N-BC team can learn from their experience around transparency in decision-making, monitoring and evaluation, cooperation across jurisdictions and among various agencies, dispute resolution mechanisms, the role of a secretariat, and culturally-appropriate processes.

Transparency in decision-making is an aspect the WRRB appears to have operationalized particularly well that offers others in co-management regimes an opportunity to learn from. When the Wek’èezhì releases their Total Allowable Harvest and harvest allocation determinations, they also release a [‘Reasons for Decision’ document](#) to the Minister which is then made public. Their latest report regarding the Bluenose East herd, which is 138 pages long, is thorough and explains in detail to the public through writing and figures how the WRRB came to its decisions. Both scientific evidence and traditional knowledge evidence is presented within the report, as well as analyses of evidence and recommendations regarding harvest and harvesting monitoring, predators, habitat and land use, education, research and monitoring, and more. The integration of both scientific research and monitoring and traditional knowledge research and monitoring is evident throughout the report and reflects the Tłıchq philosophy and saying of “strong like two people” that guides how the WRRB makes decisions. Tłıchq Grand Chiefs have long directed their citizens to have a solid understanding of both Western and Tłıchq knowledge. “This philosophy has been noted in oral narratives where Tłıchq leaders learned the knowledge and experiences of others to better prepare themselves for negotiating at trading posts to ensure the best return for their furs.”<sup>97</sup>

Regarding monitoring and evaluation, the WRRB has a rule that a report summarizing progress and timelines must be submitted by the implementing parties “within one year of the acceptance

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<sup>96</sup>Government of the Northwest Territories. Public Board Appointments: Wek’èezhii Renewable Resources Board. 2019. <https://boardappointments.exec.gov.nt.ca/en/boards/wekeezhii-renewable-resources-board/>

<sup>97</sup>Wek’èezhì Renewable Resources Board. Report on a Public Hearing Held by the Wek’èezhì Renewable Resources Board 9-11 April 2019 Behchokq, NT & Reasons for Decisions Related to a Joint Proposal for the Management of the Sahti Ekwq` (Bluenose-East Caribou) Herd. 2019. <https://www.wrrb.ca/sites/default/files/WRRB%20to%20ENR-TG%20-%202019%20BNE%20RFD%20Report%20-%20Corrected%20Appendix%20FINAL%201aug2019.pdf>

or variance of the Board's recommendations on proposed management actions", which is then posted to the WRRB's website to inform citizens of their progress.<sup>98</sup> The Board reports on its own progress as per their funding agreement with the federal government that is administered through the Tłıchq Implementation Committee. Although the WRRB is an institution of public government, it is independent, even though its funding comes from the federal government via a contribution agreement. The WRRB also reports throughout the year on progress within their work plan, which the board devises themselves. Through mechanisms such as these and annual activity reports and audited financial reports, the board reports to the public on what within the annual work plan was achieved and what was not. An Implementation Committee also monitors progress of implementation of the entire Tłıchq Agreement, releasing progress reports and annual reports regarding components of the entire agreement.<sup>99</sup>

As the WRRB is working with migratory caribou herds, they often have to work with other jurisdictions and have learned lessons about how to improve this process along the way. For example, a Caribou Range Plan that was developed by the GNWT consisted of a 20+ person working group. The group was quite cumbersome with so many participants from multiple organizations (from Indigenous organizations to government to industry) with very differing opinions. As Pellissey explained, "In a case where you're dealing with so many organizations coming from such different backgrounds and perspectives, having a shared Terms of Reference in place for the group is really important to ensure that clear and understood expectations are set out from the beginning, including conflict resolution processes that ensure fairness." In Pellissey's opinion, most challenges arise from co-management agreements being integrated into an already existent system. "Getting already-existent players on board to realise there's a new player in all of this is sometimes challenging."

Pellissey strongly advised that all parties to an agreement have clear expectations set out in an MOU or similar early on with formal steps arranged for when parties come to disagreement. It is perhaps also helpful that the Tłıchq Agreement supercedes other legislation and is a binding document. This way, when tensions arise between legislation, the pathway forward is clear. As the Tłıchq Agreement states, "If there is a conflict between a policy direction from the Tłıchq Government and one from the Minister, the policy direction from the Tłıchq Government prevails."

The governmental process in the NWT is particularly unique in that it is one of just two jurisdictions in Canada in which the entire territorial government is consensus-based. NWT citizens vote for individuals and not parties when they go to the polls. This approach is said to be in keeping with Dene tradition. Although there has been increasing scrutiny of the NWT's consensus-based system in recent decades, with calls for electoral reform arising every election<sup>100</sup> the system remains. Consensus-based decision-making has trickled down into all

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<sup>98</sup>Wek'èezhìi Renewable Resources Board. Rule for Management Proposals. 2018.

<https://www.wrrb.ca/sites/default/files/REV%20FINAL%20Rule%20-%20Management%20Proposals%20-%202016oct18.pdf>

<sup>99</sup>Tłıchq Government. Implementation Committee. 2017. <https://www.tlicho.ca/documents/implementation-committee>

<sup>100</sup>Boon, Jacob. "Where's the party in NWT politics?" Up Here Magazine. September 30, 2019. <https://uphere.ca/articles/wheres-party-nwt-politics>

levels of government, and is employed within the WRRB. As the Executive Director of the WRRB described, when the parties fail to reach agreement, things just take longer until consensus is reached. Consensus processes often have a ‘fallback’ to prevent stalemates with clear circumstances under which the parties involved revert to that fallback. As the Legislative Assembly of the NWT notes, “Consensus government does not mean that unanimous agreement is necessary for decisions to be made, motions passed, and legislation enacted. A simple majority carries the vote.”<sup>101</sup> The same is true of decisions made within the WRRB. The Board reviews and discusses a particular item with the idea to come to a consensus. However, this doesn’t always happen as someone may need to abstain or the Board just cannot reach a full consensus, so a simple majority vote will carry the motion.<sup>102</sup>

One of the factors that appears to have greatly assisted the WRRB in its successes is having a secretariat. As a separate secretariat, the WRRB is truly an independent, non-partisan body, which helps when many parties are at a table. It has also assisted with capacity. The WRRB currently has four staff members (an Executive Director, a Wildlife Management Biologist, a Conservation Biologist, and a Communications Officer) as part of their secretariat. The WRRB has put a concerted effort into relationship building amongst its members, and the secretariat has been able to assist with strengthening this key aspect of shared decision-making through organizing retreats, workshops, and meetings out on the land. The secretariat is able to assist with organizing processes that require sitting down as a group and making an effort to understand and integrate all the different perspectives at the table, as is required with tasks such as creation of a strategic plan. The secretariat formerly had a Traditional Knowledge Officer as part of their staff, but this individual has since begun consulting, so the WRRB now engages her in a contracting capacity. The Tłıchq Government has their own research and training institute, which the WRRB relies on heavily for traditional knowledge input.

The WRRB appears to be making efforts to undertake its business in a manner that is culturally appropriate to both the Tłıchq and Crown parties. As many Tłıchq citizens speak Tłıchq as their first language, all meetings of the WRRB are simultaneously translated into Tłıchq, and all meetings occur in person to assist with understanding. The Executive Director of the WRRB also ensures she meets with Tłıchq members a day before a board meeting to go through the upcoming agenda and ensure understanding of issues. Regarding feedback from community members, the WRRB has learned that public hearings aren’t always the most effective way to gather information. Public hearings, which only allow for a certain time limit of feedback from each attendee, are often the mechanism for engagement that’s written into co-management boards legislation as the means to solicit feedback from community members. As the Executive Director of the Wek’èezhì Renewable Resource Board explained, “Elders are often just getting warmed up after ten minutes of speaking.” Having focus groups has been an additional or alternative solution to this to ensure the board is connecting not just with Elders, but also with youth, harvesters, and both men and women, all of whom Pellisey explained offer different perspectives and knowledge on an issue.

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<sup>101</sup> Legislative Assembly of the Northwest Territories. What is Consensus Government? 2014. <https://www.assembly.gov.nt.ca/visitors/what-consensus>

<sup>102</sup> Pellisey, Jody (Wek’èezhì Renewable Resource Board Executive Director) in discussion with the author. October 2, 2019.

Regarding research, although the WRRB has their own pot of funding, it was a one-time only contribution, meaning it is invested and the WRRB can really only use the interest accrued from investments. Thus, the board hasn't had its own significant research funding to-date but has still been able to conduct science and Traditional Knowledge research using outside funding sources. When the board doesn't conduct its own research it uses information mostly from both the GNWT and the Tłıchq Government in their decision-making. Over the years, however, the WRRB has noted that there are some areas where research they require for decision-making is missing, and has thus decided to move ahead with conducting its own research in these areas.

### *Land and Water Boards*

It's important to recognize the nuanced differences between (a) regional boards that make day to day decisions and (b) the Mackenzie Valley Land and Water Board that works on issues of shared concern across regions or transboundary issues.

Research of Land and Water boards revealed (i) the important role of regionally representative boards within the MVLWB, (ii) capacity constraints and succession planning to make quorum in areas with small rural populations, (iii) the strength of sovereign governments and mutually recognized jurisdiction, (iv) the necessity of adequate financial resources, and (v) how having audits of a system required within its legislation can expose shortcomings- in this case, in environmental monitoring.

In discussion with Land and Water Board Executive Directors, regionally representative decision-making came across as a strength in this system and one that has improved over time. Prior to 2008, the MVLWB was working on their own developing policies and procedures for application across the Mackenzie Valley. The LWBs realised around this same time that they all were doing essentially the same work on common issues such as policy and standardization. To ensure regional representation and consistency within the Mackenzie Valley, in 2008 working groups with members from all regions were formed and resources assigned to each group and by 2010, the first policies were created from those working groups. Executive Directors noted that this had significantly improved the system: "If you're involved in decision-making all the way through, you're more likely to support it, rather than a policy being fully baked." At an operational level, formal planning for collaboration of L&W boards has been helpful. Having all parties come together across regions has assisted with knowing where to prioritize efforts, share resources and coordinate actions. This has allowed for the shared development of regionally relevant policies (on issues such as guidelines for aquatic effects monitoring) and mitigated for technological differences between the regions in terms of infrastructure. The MVLWB convenes and agrees on policies and procedures for areas of shared priorities or high concerns, and discusses opportunities to accomplish strategies devised for these issues.

The LWBs make decisions together aiming for consensus after reviewing evidence from staff reports. Although consensus is technically by majority of votes cast, decision-making almost

never arrives to a point of needing to cast votes. Although Ministerial sign-off is required on some licenses, the Boards' decisions are almost always accepted by the Minister. Executive Directors mentioned just one time in their history when a Minister didn't sign off on a LWB license decision.

An operational challenge that the Land and Water Boards have experienced in recent years has been in ensuring that the administrative panels have enough members to make quorum. Following the expiration of a board member's term, it has sometimes taken a long time to get someone new into that role and trained up quickly enough in board protocol so that they're ready to participate in board decision-making. As such, board vacancies have been an implementation issue. This void isn't incentivized by the honorarium provided to board members, which has been stagnant since 2002. As such, serving on a board is seen as more of a voluntary service to some. As one Land and Water Board Executive Director noted, when their Board puts on an event and caters the affair, the cook is making more money than the Chairperson.

Capacity constraints were also highlighted as an impeding implementation challenge, particularly in scarcely populated regions such as the Sahtu, in which approximately 3600 people live. One Executive Director described the significant challenge in fostering technical development of so few beneficiaries from high school through to university to assume technical skills that are needed for positions at that level. Creative solutions, such as technician programs (to not have to hire non-beneficiaries for those roles) are necessary. As one Executive Director described, "Developing capacity requires capacity, so it's almost like you need two of one position to bring people up to speed." Currently, decision makers are predominantly Elders who grew up on the land, but some struggle with the technical aspects of some of the decisions. This brings about the need for a balanced approach for a board, and succession planning for skills required by decision makers in the future. "After 25 years, we're still wrestling with some of those issues, still trying to sort out how to foster some of those skills in decision-makers." Consultation overload/ fatigue (where multiple organizations are seeking the same citizens' attention on issues) was also mentioned as an issue in regions with small populations.

The strength of having as much authority as possible to make meaningful decisions and not have them circumvented by Ministers appears to allow for matters to be dealt with in a more timely manner. Some significant implementation differences between the The Tłı̨ch̨q and the Gwich'in and Sahtu were mentioned, due to the Tłı̨ch̨q's self-government component of their agreement. For example, the Tłı̨ch̨q Government was able to develop their own land use plan and have it approved within three years, whereas for the Gwich'in, this took a very long time. The ability to make decisions enforceable was also highlighted. A distinction between making decisions and being designated and resourced to enforce policies and procedures for those decisions was made. For example, co-management boards with representation from all parties make decisions through issuance, suspension or cancellation of water licenses, but the on-the-ground enforcement of water licensing is still not shared between parties.

The importance of human resources and financial resources to make good decisions arose. All funding for MVRMA boards is provided through land claim implementation funding through the federal government, or through funding provided to carry out tasks until land claims are settled in unsettled regions. The administration costs of Land and Water boards are pretty minimal, but it was noted that organisations like the Land Use Planning Boards within the MVRMA system can barely “keep the lights on.”

Monitoring and evaluation for the entire Mackenzie Valley Resource Management system is somewhat built into its legislation, with an environmental audit required by the federal government every five years to assess the overall effectiveness of the co-management system. The Cumulative Impacts Monitoring Program (CIMP), as a division of the Department of Environment and Resources, also tracks how the environment is responding to decisions made by boards.<sup>103</sup> CIMP has however, not been reviewed well in meeting its mandate in audits undertaken. Shortcomings of CIMP may be insightful for the 3N-BC team in considering data inventories necessary for an effective co-management system. The audit explained: “Comprehensive and sound trend analyses have been completed for most caribou herds and many of the key watersheds in the NWT. This work needs to be extended to several additional watersheds and to better understand the identified trends in caribou herds. Trend analysis for fish has been limited by data availability. Baseline fish data are being collected and trend analysis work is in progress for a number of waterbodies. NWT CIMP should develop a comprehensive plan to ensure baseline data and trend analysis is completed for key areas and species of interest.”<sup>104</sup>

#### *Evaluations of Effectiveness of the MVRMA by the Auditor General*

Regarding monitoring and evaluation of the Mackenzie Valley regulatory system as a whole, Part 6 of the MVRMA and the Gwich'in, Sahtu, and Tłı̄chǫ Agreements require an independent evaluation of the effectiveness of key components of the system to be undertaken every five years. Three audits have thus far been conducted with the 2020 audit currently underway.

For 3N-BC purposes, we felt it was most useful to review the first (2005) audit that was conducted as this describes initial challenges the system faced early on in its implementation. The Auditor General's report focused on evaluation of effectiveness of the framework's major components (land use planning; regulation; and, environmental impact) and the use of traditional knowledge in regulatory processes.

The audit found that the regulatory process of the MVRMA was “adequately protective of land and water”, but also found that “regulatory and institutional gaps are preventing the regulatory

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<sup>103</sup>DeBastien, Leonard; Dixon, Paul; Fequet, Ryan; Montgomery, Shelagh (Executive Directors, Gwich'in Land and Water Board, Sahtu Land and Water Board, Wek'èezhii Land and Water Board and Mackenzie Valley Land and Water Board, respectively) in discussion with the author. October 28, 2019.

<sup>104</sup>Arcadis Design & Consultancy. 2015 Northwest Territories Environmental Audit Summary Report. 2015. [https://www.enr.gov.nt.ca/sites/enr/files/2015\\_nwt\\_environmental\\_audit\\_-\\_summary\\_report\\_-\\_english.pdf](https://www.enr.gov.nt.ca/sites/enr/files/2015_nwt_environmental_audit_-_summary_report_-_english.pdf)

system from managing potentially adverse impacts to all environmental components in an integrated manner.”

Capacity constraints were noted particularly in communities’ abilities to conduct consultation effectively for meaningful participation. Additionally, although boards were generally found to be “functioning effectively”, the issuance of licenses and permits was reported to be “hampered by delays in a complicated and protracted nomination and appointment process”. Limited performance and accountability reporting and limited training/ orientation were also reported to be contributing to ineffectiveness of boards. The audit recommended “streamlining of the nominations and approvals process, better Board accountability reporting and additional training and support to Board members” to address these issues. Further, uncertainty amongst federal departments and the GNWT regarding responsibility for monitoring and enforcement of permit and license conditions was reported to be detracting from effective land use permitting, water licensing and wildlife management.

The Environmental Impact Assessment (EIA) process was generally reviewed positively in the audit, with praise of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for “developing tools to ensure the effectiveness of the system”. The audit found that TK was “apparent in all stages of NWT environmental management processes” and playing a central role in land use planning (when and where land use planning was underway), and even forming the basis for decisions within regulatory boards. For improvements, the audit recommended the following: “Increased emphasis needs to be placed on documenting TK and ensuring that it is passed between generations. Participants in the environmental management regime should be given the training necessary to ensure they have the capacity to collect and use TK effectively. Further, the expectations of all parties should be clearly stated in processes involving the exchange of TK.”

The finding of the audit that was of most concern to the Auditor General was that insufficient progress had been made in developing land use plans in the Mackenzie Valley, with just  $\frac{1}{5}$  of the Mackenzie Valley region protected with legally-binding plans. “In the absence of land use plans, regulatory and EIA Boards are being asked to make fundamental value decisions on a project-by-project basis. This has created uncertainty in the process for communities, developers, Boards and government and represents a critical stumbling block in efforts to meet the objectives of the MVRMA. Once land use plans are developed and administrative issues resolved, Boards will be in a better position to more effectively address their mandates under the MVRMA.”<sup>105</sup>

With so many co-management boards in the Mackenzie Valley and Inuvialuit systems within the NWT, coordination amongst them all is an obvious concern. The NWT Board Forum was an initiative that started in 2004 as one mechanism to improve coordination and communication amongst boards and has since been addressing some of the Auditor General’s concerns. This platform provides online training materials and courses for all NWT board members on topics

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<sup>105</sup>SENEC Consultants Limited. Northwest Territories Environmental Audit 2005 Main Report. 2005. <http://reviewboard.ca/file/692/download?token=2RrH3BjV>

such as board orientation and administrative law to assist them in fulfilling their duties. The Forum itself consists of the Chairpersons of all boards and committees that were established to co-manage natural resources within the NWT. It also provides a structured arena for industry and other organizations and governments to engage with the NWT's many co-management boards.<sup>106</sup>

Coordination amongst all three of the Renewable Resource Boards on certain issues, such as species at risk, has since been furthered through the Conference of Management Authorities established under the Species at Risk (NWT) Act which came into force in 2010. The three RRBS, the Wildlife Management Advisory Council of the Inuvialuit Final Agreement, the Tłıchǝ Government, and the territorial and federal governments all work within the conference to build consensus on assessment, listing, conservation and recovery of species at risk in the NWT.<sup>107</sup>

The 2015 audit was the first to be conducted since devolution and found that the regulatory system had continued to improve since the 2010 audit. It found that the MVRMA system is generally effectively protecting the environment. It still identified some key foundational challenges around completing unsettled land claims and land use plans, as well as ways to integrate community wellness data into decision-making. It suggested formal plans/commitments with timelines for regulations and guidelines to be developed and enforceable to address identified regulatory gaps, recommendations for consistency and useability for Land and Water Board data, long-term secure funding plans for boards, enhanced tools for enforcement within the system, a more efficient board nomination and approval process, the need to develop approaches to better integrate traditional knowledge into decision-making, and more.<sup>108</sup>

The audio-visual [informational video](#) that the GNWT has created to inform the public about its environmental audit process is impressively available in seven languages.

## The Te Urewera Management Board

### Background

Te Urewera is a living system of 2,127 km<sup>2</sup> of lakes, forest and mountains in New Zealand's North Island that was formerly a national park. It is the ancestral home of the Tūhoe people, who are the tangata whenua (hosts) and kaitiaki (guardians) of Te Urewera.

Te Urewera holds deep ancestral and spiritual significance to the Tūhoe people. As Māori journalist Simon Day describes, "For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui, the

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<sup>106</sup>NWT Board Forum. Overview of Land and Resource Management in the NWT. 2013. <https://www.nwtboardforum.com/wp-content/uploads/2013/05/NWTBoardForumPPT.pdf>

<sup>107</sup>Conference of Management Authorities Species at Risk. About the Conference of Management Authorities. n.d. <https://www.nwt-species-at-risk.ca/CMA/AboutCma>

<sup>108</sup>Arcadis Design & Consultancy. 2015 Northwest Territories Environmental Audit Summary Report. 2015. [https://www.enr.gov.nt.ca/sites/enr/files/2015\\_nwt\\_environmental\\_audit\\_-\\_summary\\_report\\_-\\_english.pdf](https://www.enr.gov.nt.ca/sites/enr/files/2015_nwt_environmental_audit_-_summary_report_-_english.pdf)

heart of the great fish of Maui, pulled from the sea in defiance of his brothers to become the North Island. The forest's rugged hills rise from the mist of the North Island. It's a source of shelter, protection and food for Tūhoe. Essentially it is a deep source of identity for the iwi; Te Urewera is Tūhoe's ancestor."<sup>109</sup>

The purpose of the *Te Urewera Act* is:

“to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance, and in particular to—

- (a) strengthen and maintain the connection between Tūhoe and Te Urewera; and
- (b) preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; and
- (c) provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.”

The Te Urewera Management Board is mandated with providing governance for Te Urewera in accordance with the 2014 Act. The Act appoints the Board to act on behalf of Te Urewera to exercise and perform the rights, powers, duties and liabilities on behalf of, and in the name of Te Urewera.<sup>110</sup>

#### *From National Park to a Legal Person*

Prior to the Te Urewera Act designating Te Urewera as a legal entity in and of itself, it was designated as a national park with Crown ownership of its lands. The *Te Urewera Act*, which gave Te Urewera legal personality, emerged as a separate Act beside *Tūhoe's Claims Settlement Act* in 2014.

The *Te Urewera Act* recognises that Te Urewera is and has always been the Tūhoe homeland and acknowledges the iwi's ancestral stewardship responsibilities there. The following, as excerpted from Section 3 of the Act itself, describes its background and depicts a bi-cultural understanding of Te Urewera:

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<sup>109</sup> Day, Simon. If the hills could sue: Jacinta Ruru on legal personality and a Māori worldview. The Spinoff. November 2017. <https://thespinoff.co.nz/atea/atea-otago/27-11-2017/if-the-hills-could-sue-jacinta-ruru-on-legal-personality-and-a-maori-worldview/>

<sup>110</sup>New Zealand Parliamentary Counsel Office. Te Urewera Act 2014. 2018. <http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html>

### *“Te Urewera*

(1) Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.

(2) Te Urewera is a place of spiritual value, with its own mana and mauri.

(3) Te Urewera has an identity in and of itself, inspiring people to commit to its care.

### *Te Urewera and Tūhoe*

(4) For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe.

(5) For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland.

(6) Te Urewera expresses and gives meaning to Tūhoe culture, language, customs, and identity. There Tūhoe hold mana by ahikāroa; they are tangata whenua and kaitiaki of Te Urewera.

### *Te Urewera and all New Zealanders*

(7) Te Urewera is prized by other iwi and hapū who have acknowledged special associations with, and customary interests in, parts of Te Urewera.

(8) Te Urewera is also prized by all New Zealanders as a place of outstanding national value and intrinsic worth; it is treasured by all for the distinctive natural values of its vast and rugged primeval forest, and for the integrity of those values; for its indigenous ecological systems and biodiversity, its historical and cultural heritage, its scientific importance, and as a place for outdoor recreation and spiritual reflection.

### *Tūhoe and the Crown: shared views and intentions*

(9) Tūhoe and the Crown share the view that Te Urewera should have legal recognition in its own right, with the responsibilities for its care and conservation set out in the law of New Zealand. To this end, Tūhoe and the Crown have together taken a unique approach, as set out in this Act, to protecting Te

The Act establishes that Te Urewera’s land “ceases to be vested in the Crown”, “ceases to be Crown land”, and “ceases to be a national park”. It is the first time in New Zealand’s history that there has been permanent removal of a national park from the national park legislation. The Act rules that “Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person”.<sup>111</sup> Among other abilities, this legal personhood designation means that lawsuits can be brought on behalf of the land itself, without a requirement to demonstrate harm to a particular human<sup>112</sup>. This varies starkly from the commonality in most Western legal systems of land being treated as human property, with land degradation only recognizable in court when harm to a human is associated with such degradation.

## **Composition of Membership, Authority and Responsibilities**

<sup>111</sup> New Zealand Parliamentary Counsel Office. Te Urewera Act 2014. 2018.  
<http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183720.html>

<sup>112</sup> Rousseau, Bryant. In New Zealand, Lands and Rivers Can Be People (Legally Speaking). New York Times. July 2016.  
<https://www.nytimes.com/2016/07/14/world/what-in-the-world/in-new-zealand-lands-and-rivers-can-be-people-legally-speaking.html>

The Te Urewera Board was initially composed of four New Zealand Government and four Tūhoe representatives, and after three years, has recently changed its composition to three New Zealand Government appointees and six Tūhoe appointees. The Chair position is to remain a Tūhoe person in perpetuity. Crown representatives were initially appointed by Ministers of Treaty of Waitangi Negotiations and the Minister of Conservation, but are now appointed solely by the Minister of Conservation after the initial three year rotation.

The inaugural Tūhoe members to the Te Urewera Board were appointed by the Te Uru Taumatua Board - the collective governing body for Tūhoe iwi. Iwi are structured through Māori concepts of whānau (family), hapū (subtribe), marae (meeting grounds) and rohe (district; people of a particular district).<sup>113</sup> The appointment of Te Uru Taumatua Board Members follows a process of several steps and shared decision-making responsibilities between every hapū-marae (a key decision maker within the iwi as per traditional custom) within each rohe.

In the future, appointment of Tūhoe representatives to the Te Urewera Board will be the task of Tūhoe's four Tribal Executive Committees<sup>114</sup>, which represent each of Tūhoe's four "rohe". A Tūhoe Tribal Executive Committee "does not supersede or assume the authority and mana [honour] of the hapū and marae within their rohe" (square brackets mine), but acts as the governing body within each rohe.<sup>115</sup>

The *Te Urewera Act* legally gives the Te Urewera Board "full capacity" and grants it "all the powers reasonably necessary to achieve its purposes and perform its functions."

The Board's functions, as per section 18 of the Act, are the following:

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<sup>113</sup> Te Kete Ipurangi. Tapiritanga 2: Te kuputaka Māori: Appendix 2: Glossary of Māori terms. n.d. <http://tereomaori.tki.org.nz/Curriculum-guidelines/Appendix-2-Glossary-of-Maori-terms>

<sup>114</sup> Tūhoe. Te Uru Taumatua: Governance of Te Urewera. n.d. <http://www.ngaituhoe.iwi.nz/te-urewera-governance>

<sup>115</sup> Tūhoe. Tribal Authorities. n.d. <http://www.ngaituhoe.iwi.nz/tribal-authorities>

*“(1) The functions of the Board are—  
to prepare and approve Te Urewera management plan; and  
to advise the persons managing Te Urewera on the implementation of the  
management plan, including by means such as—  
(i) issuing an annual statement of priorities for implementing the management plan;  
(ii) undertaking any specified functions in relation to the annual operational plan for Te  
Urewera:  
(iii) monitoring the implementation of the annual operational plan; and  
  
(c) to initiate proposals and make recommendations for—  
(i) adding land to, or removing land from, Te Urewera; and  
(ii) acquiring interests in land; and  
(iii) establishing specially protected areas, wilderness areas, and amenity areas within Te  
Urewera; and  
(d) to make bylaws for Te Urewera; and  
(e) to authorise activities that must not otherwise be undertaken in Te Urewera without an  
authorisation under Part 2; and  
(f) to prepare or commission reports, advice, or recommendations on matters relevant to the  
purposes of the Board; and  
(g) to promote or advocate for the interests of Te Urewera in any statutory process or at any  
public forum; and  
(h) to liaise with, advise, or seek advice from any agency, local authority, or other entity on  
matters relevant to the purposes of the Board; and  
(i) to perform any other function of the Board specified in this Act or in any other enactment;  
and*

*Tūhoetanga:*

*Tūhoe concepts of management such as—*

- (i) rāhui:*
- (ii) tapu me noa:*
- (iii) mana me mauri:*
- (iv) tohu.*

*(3) In this section, in accordance with the understanding of Tūhoe,—*

***mana me mauri** conveys a sense of the sensitive perception of a living and spiritual force in a place.*

***rāhui** conveys the sense of the prohibition or limitation of a use for an appropriate reason  
**tapu** means a state or condition that requires certain respectful human conduct, including raising awareness or knowledge of the spiritual qualities requiring respect.*

***tapu me noa** conveys, in tapu, the concept of sanctity, a state that requires respectful human behaviour in a place; and in noa, the sense that when the tapu is lifted from the place, the place returns to a normal state.*

***tohu** connotes the metaphysical or symbolic depiction of things.”*

The Board is mandated with making some decisions by unanimous agreement, (such as the approval of Te Urewera management plan), whilst other decisions are to be made by consensus.

## Snapshot of the Arrangement in Practice

### *A Particularly Unique Arrangement*

Chief Crown Negotiator for the Te Urewera Settlement, Dr John Wood, mentioned that it's important to keep in mind the context of what occurred with Tūhoe's settlement. He feels that what happened with Te Urewera is particularly unique, will remain a one-off achievement in New Zealand and will not be replicated again in the future.

The settlement was particularly unique because Tūhoe did not sign the Treaty of Waitangi, the agreement made in 1840 between representatives of the British Crown and over 500 Māori chiefs, which serves as the basis for most Crown-Māori settlements.<sup>116</sup> Tūhoe also lived in the wilderness in Te Urewera for a long time before ever engaging with the Crown, and once engagement happened, it was particularly disastrous. As Wood described, “The worst offenses ever committed against Māori in this country were against Tūhoe. These offenses included everything from scorched earth policies to unprovoked military invasions to massive seizures of land, and more. Tūhoe treatment was as bad as it got.”

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<sup>116</sup>Orange, Claudia. 'Treaty of Waitangi - Creating the Treaty of Waitangi'. Te Ara - the Encyclopedia of New Zealand. 2012. <https://teara.govt.nz/en/treaty-of-waitangi/page-1>

Wood explained that when you're looking to settle with a history like that, getting creative and unique with solutions is necessary. Other unique characteristic is that Tūhoe is an iwi that has their home in their areas of cultural significance. As Wood explained, it became clear over a long period of negotiation that some elements would be needed in the settlement that would require innovation -one of those key elements was the issue of ownership of the national park. It became very clear to everyone at the negotiating table that the terms of ownership were problematic for Tūhoe. The issue wasn't that the iwi wanted ownership of Te Urewera as part of the settlement. The issue was rather that Tūhoe wanted for the Crown to cease to own Te Urewera.

In discussion with Tūhoe Chief Executive Kirsti Luke, who has been in the role for 20 years and played a large part in the settlement process, she explained that Tūhoe didn't perceive the process they underwent as integrating Tūhoe values into a Western legal system, but rather that the goal was to remove Western values from Te Urewera and to promote Tūhoe values (which come from the land). The main way they removed Western values was through removing the concept of human ownership of Te Urewera. By removing property rights from Te Urewera, the Tūhoe worldview was promoted. Luke explained that because Tūhoe doesn't believe in "ownership", sharing ownership of Te Urewera was not a permission Tūhoe could grant. If there was a competition in any of this, it was a competition about sense of responsibility and adoration for Te Urewera, and ability to exercise their ancestral stewardship responsibilities for Te Urewera. Tūhoe was trying to convey that the land is superior to humans, and "as the youngest sibling in the family", humans only owe respect to Te Urewera. "Treat the land as you treat your Mum," is the mindset they shared in negotiations.<sup>117</sup>

That's where the idea of coming up with Te Urewera as a legal person in and of itself was born. This solved the key issue with the Crown relinquishing ownership and that ownership being vested to what was established as the legal person of Te Urewera. Tūhoe also advocated for the use of some language very deliberately in legislation to further remove Western values from Te Urewera. For example, they used the word "beauty" in the Act as that was a word that had never been used in New Zealand legislation, so there was no precedent for what beauty meant under New Zealand law. Some legal experts have commented critically on Te Urewera's liability as a legal person.<sup>118</sup>

In terms of expert criticisms of the Te Urewera model, we came across the following legal criticism in regards to Te Urewera's liability:

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<sup>117</sup>Luke, Kirsti. (Tūhoe Chief Executive), in discussion with the author. March 2019.

<sup>118</sup>In terms of expert criticisms of the Te Urewera model, we came across the following legal criticism in regards to Te Urewera's liability: "Te Urewera Act appears to give Te Urewera very broad rights. However, it immediately narrows them by specifying that those rights can only be "exercised and performed... in the manner provided for" in the Act. This likely means Te Urewera can only do things the Act specifically allows it to do. By comparison, Te Urewera's liability appears to be almost unlimited." Legal experts also point out that registered proprietor titles adjacent to Te Urewera land titles are not affected by the Act even if they are within Tūhoe traditional territory, and that public access to Te Urewera continues. Lastly, they highlight that while some public activities in Te Urewera are subject to authorization, "a mining activity that is authorized under the *Crown Minerals Act* requires no additional authorization".

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Legal experts also point out that registered proprietor titles adjacent to Te Urewera land titles are not affected by the Act even if they are within Tūhoe traditional territory, and that public access to Te Urewera continues. Lastly, they highlight that while some public activities in Te Urewera are subject to authorization, “a mining activity that is authorized under the *Crown Minerals Act* requires no additional authorization”.<sup>119</sup>

### *A Deliberately Imbalanced Board*

The imbalance in the governance structure for Te Urewera is also particularly unique and was deliberate. Tūhoe, with a long-term, intergenerational view, made it clear that sooner or later they wanted their iwi to have the potential for dominance within a governance regime of their ancestor, so the parties had to come up with an arrangement that provided for that. It was decided that the initial 50/50 Crown - Tūhoe appointment arrangement for the Te Urewera Management Board would transition to three New Zealand Government appointed members and six Tūhoe appointed members after three years. As John Wood explained, this imbalance in the governance structure is an element that will likely never recur in a New Zealand arrangement and was unique to the circumstances of Tūhoe. And although a move to deliberately imbalanced appointments might be viewed as unpalatable or even unacceptable by a Crown government, in actual practice, consensus has never failed to be achieved in the first five years of the Board’s operations, even in the face of a very innovative and what some may call controversial management plan. Lots of robust discussions have occurred, but consensus is always reached.

The fact that members of the Board are not there to represent the Crown or to represent Tūhoe has always mitigated for this so far, explained Wood. When I asked how non-Western/ Tūhoe ways of decision-making are integrated into the Board’s management, Luke explained that the Tūhoe way of decision-making is the only way decisions are made, as the management board exists not to represent humans, but to represent Te Urewera itself. The Board is legally obligated to speak for and act in the best interests of the land. As the management plan states, “The Te Urewera Board is the voice and servant of Te Urewera”.<sup>120</sup>

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<sup>119</sup>Zurba, M., Beazley, K., English, E. & Buchmann-Duck, J. Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada’s Pathway to Target 1: Focusing Conservation on Reconciliation. Land. January 2019. <https://www.mdpi.com/2073-445X/8/1/10/html>

<sup>120</sup>Tūhoe Management Board. Te Kawa o Te Urewera- English. 2017. <http://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera>

In inquiring about how Tūhoe shared their worldview and ways of being with non-Tūhoe members of the management board, Kirsti shared that at this stage, the opinion of Tūhoe is that non-Tūhoe members don't need to culturally understand Tūhoe to serve their role on the board. "We bring with us all the knowledge we need of the Tūhoe worldview. The non-Tūhoe members exist to bring us a connection to what is going on in New Zealand." The non-Tūhoe board members span a diversity of disciplines- for example, one is an ex Prime Minister and one is highly involved with the tourism industry. The board is designed to give diversity of opinion and allow Tūhoe members to absorb the thinking of the non-Tūhoe board members.

An important action Tūhoe took was that following settlement, when a board was established, they did not go out and immediately appoint lawyers, scientists and academics to those roles, because they wanted to attract the hunters and the people still living on the land. Attracting these people took time and space and a lack of pressure in order for them to step forward. Having these land users on the board has significantly impacted what the board discusses and how it operates. Having people who know how to mobilize families to be just as concerned and involved in the issues of management is important. In terms of Tūhoe processes regarding appointment of Tūhoe's representatives on the board, Luke referred to the whānau (family) and hapū (subtribe) traditional process described above. Appointment to the board relies on decision-making of a collective of families whom have always made decisions for their people, and that is the best structure for their people as it's ensured their continued survival.

As the Board makes its transition into having the majority of its members appointed by Tūhoe, it was particularly interesting and a testament to the functionality of the Board, to hear that some Crown-appointed members such as John Wood, have simply transitioned to becoming Tūhoe-appointed members. This also seems to suggest a deep level of trust among the individuals involved in the arrangement.

### *Fostering Consensus-Based Decision-Making and Values-Based Management*

The strength of appointing people with the right skills, experience and attitudes to collaborative governance boards was made apparent in speaking with New Zealand Crown staff involved in negotiating and implementing these arrangements. In discussion with John Wood, the Chief Crown Negotiator/ current Board Member for the Te Urewera Agreement, Katherine Gordon, Chief Crown Negotiator- Treaty of Waitangi Negotiations, and Rachel Houlbrooke and Ian Hicks, the Deputy Chief Executive and Negotiations Manager at Te Arawhiti, it was easy to understand why the arrangement was negotiated so well and appears to be successful in fulfilling its objectives.

Even in our discussion, these Crown negotiators were extremely candid in their truth-telling about past Crown behaviour and atrocities and injustices committed against Māori, and clear about the need for innovative approaches that work towards reconciliation. The level of understanding of Māori culture and aspirations that was conveyed on the call was impressive, from pronunciations of Māori terms and place names to the unique contexts of iwi. This

suggests that a deep commitment to reconciliation is important amongst members involved in an arrangement.

John Wood discussed how consensus-building skills and training are particularly important in a co-governance board. He expressed his opinion that parties need to make achieving consensus the goal within a decision-making framework. A structure needs to be established that provides all parties with assurance that neither party can override a consensus-based decision. As Wood explained, government opposition to collaborative governance entities often exists where government retains an anxiety that the co-governance body is not going to adhere to the rules. Having clear dispute resolution processes in place is important indeed, but Crown representatives discussed how fostering consensus-based decision-making is key. Having shared values and objectives is conducive to this they explained, and investing time collaborating to determine the what those shared values are among the parties is time well spent. Wood explained that in these negotiations, the parties typically start with sharing aspirations and exchanging values with each other. There has to be a lot of similarity from both sides in what values they attach to the natural entity/ area/ resource they are negotiating an arrangement for. He explained that within a negotiation, it's helpful to start with the large number of values which both parties have in common, and to deal with issues in which there are differing perspectives last. As the Crown they assume they can find a way of meeting iwi's aspirations, and with that attitude, determine what would need to be taken into account in going forward, and what principles can co-habit with shared values. It's important to ensure there is a robust understanding of what those values are amongst the parties.<sup>121</sup>

The reflection of cultural values and law in clauses of the bill appears to have been embraced by the Board in its management thus far. In 2017, the Te Urewera Management Board released its draft management plan, titled "Te Kawa o Te Urewera" (broadly, "the dedication to Te Urewera"). The management plan strongly interweaves Tūhoe worldview, responsibilities and methods. For example, the Māori worldview is expressed through management changes such as concessions like permits and licenses being renamed "friendship agreements" to reflect Te Urewera as a being and make the human stronger, wiser and in relationship with nature.

As Te Urewera Board Chairman Tamati Kruger explained,

"Te Kawa o Te Urewera (management draft) is different. It asks us to stop and reflect on Te Urewera and what it means as a living system. A system we depend on for survival, culture, recreation and inspiration ... Te Kawa does not work the same way as other management plans, which focuses on rules and stocktaking. The traditional approach can frame nature as a set of discrete resources to be managed and used ... This work

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<sup>121</sup>Gordon, Katherine; Hicks, Ian; Houlbrooke, Rachel & Wood, John (Chief Crown Treaty of Waitangi Negotiator; Deputy Chief Executive- Te Arawhiti/ the Office of Maori Crown Relations; Negotiations Manager- Te Arawhiti/ the Office of Maori Crown Relations; Chief Crown Te Urewera Settlement Negotiator, respectively) in discussion with the author. November 4, 2019.

brings back Māori process and views of a collective vision about what is the benefit to all people, families and the wider community rather than the individual.”<sup>122</sup>

Luke explained that they have retained many of the beneficial aspects about the *National Parks Act* in the process. “It’s not about saying our system is better than yours.”

### *A Truly Bi-Cultural Act*

As Tūhoe states, “*Te Urewera Act* is a fundamental change to the way we see, respect and live off the land”.<sup>123</sup> The Act has been described by Indigenous lawyers as “legally revolutionary”, both within New Zealand “and on a world scale”.

The *National Parks Act* that Te Urewera was formerly governed by was seen as “mono-cultural” as it bespoke solely Western values of land preservation. As Māori lawyer Jacinta Ruru explained, “The *National Parks Act* is premised on preserving national parks in perpetuity “for their intrinsic worth and for the benefit, use, and enjoyment of the public,” areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest (s 4)”. In contrast and as demonstrated in the aforementioned excerpts, the *Te Urewera Act* strongly recognizes and reflects the cultural and spiritual connection of Tūhoe people to Te Urewera, in addition to reflecting Western values of conservation<sup>124</sup>.

The legal personhood designation for ecosystems and recognition of Te Urewera as an entity in and of itself, is more fitting with a Māori worldview, which doesn’t see humans as owners of the land, but rather as kaitiaki (guardians) of the land for the time we are here. As Māori Legal Professor Jacinta Ruru explains, “Our lands around us have always had personality. And this is probably for the first time our legislation, our laws have really moved beyond the usual as to what we have had, to be disrupted in many ways, and be transformed to embrace a Māori understanding of the worldview around us.”<sup>125</sup>

The Act appears to be shifting the way many New Zealanders, Pākehā (non-Māori New Zealanders) alike, engage with Te Urewera. As New Zealand’s Minister of Conservation, the Hon Dr Nick Smith commented, “If you had told me 15 years ago that Parliament would almost unanimously be able to agree to this bill, I would have said “You’re dreaming mate”. It has been a real journey for New Zealand, iwi, and Parliament to get used to the idea that Māori are

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<sup>122</sup> Kupenga, Talisa. Te Urewera management plan future of conservation – Kruger. Te ao Māori news. May 2017. <https://www.maoritelevision.com/news/national/te-urewera-management-plan-future-conservation--kruger>

<sup>123</sup> Tūhoe. Te Uru Taumatua: Te Urewera. 2019. <http://www.ngaituhoe.iwi.nz/te-urewera>

<sup>124</sup> Ruru, Jacinta. Tūhoe-Crown settlement – Tūhoe Claims Settlement - Te Urewera Act 2014. Māori Law Review. October 2014. <http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/>

<sup>125</sup> Day, Simon. If the hills could sue: Jacinta Ruru on legal personality and a Māori worldview. The Spinoff. November 2017.

perfectly capable of conserving New Zealand treasures at least as well as Pākehā and departments of State.”<sup>126</sup>

Provisions for Tūhoe culture and accommodation to Tūhoe’s ways of decision-making are written explicitly into the Act with subsections claiming the Board must recognize and reflect “Tūhoetanga” (the Tūhoe way of life) and that “The Board must consider and provide appropriately for the relationship of iwi and hapū and their culture and traditions with Te Urewera when making decisions.”

### *Anticipating Challenges as Part of the Process*

Luke was very candid about her people’s attitudes towards their arrangement. In asking if her people are happy with the functioning of the arrangement so far, she was honest that some are not. This is because the whole system has been turned on its head with Te Urewera’s arrangement. “Many people get comfortable with being controlled by the colonizer for a long time, and then when you’re saying ‘get up and do it yourself’, some people aren’t happy”. She explained that colonization has undermined some people’s understanding of what it is to be a steward, and that Tūhoe, like other colonized Indigenous peoples, have a lot of work to do if they want to make real what it means to be a steward. Over time, the right people are rising to the challenge though, and that is having a marked impact. Luke explained that Tūhoe wanted *real* change with the way Te Urewera was managed, and that the gain is a generational gain. “There’s nothing that changes overnight. It’s about being okay with that. We’re happy to be at this stage.”<sup>127</sup>

Regarding areas in which there are multiple assertions of authority and jurisdiction by different tribes, the parties dealt with this on a case by case basis in each of three instances. For one iwi, their ancestral mountain was within Te Urewera (they could see it from their marae) but this iwi was not party to the Te Urewera Agreement. The iwi had symbolic cultural attachment to this mountain, however, so as a solution the mountain was excluded as part of Te Urewera and vested with this iwi, the first time in history that vesting of a natural entity with an iwi had occurred in New Zealand. Other mechanisms were embraced to “massage around the edge” of Te Urewera to make sure to not trample across other iwi’s sacred sites on the border of the new legal person. Katherine Gordon, Crown Chief Negotiator for Treaty of Waitangi Negotiations who is also on the BC government’s Panel of Chief Negotiators, shared that the 3N-BC team may gain some helpful and more applicable insights from a co-governance arrangement for a former National Park/ new legal personality that is currently in the process of being negotiated between the New Zealand Crown and eight iwi of Taranaki.<sup>128</sup>

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<sup>126</sup>Ruru, Jacinta. Tūhoe-Crown settlement – Tūhoe Claims Settlement - Te Urewera Act 2014. *Māori Law Review*. October 2014. <http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/>

<sup>127</sup>Luke, Kirsti. (Tūhoe Chief Executive), in discussion with the author. March 2019.

<sup>128</sup>Gordon, Katherine; Hicks, Ian; Houlbrooke, Rachel & Wood, John (Deputy Chief Executive- Te Arawhiti/ the Office of Maori Crown Relations; Negotiations Manager- Te Arawhiti, the Office of Maori Crown Relations; Chief Crown Treaty of Waitangi Negotiator; Chief Crown Te Urewera Settlement Negotiator) in discussion with the author. November 4, 2019.

The Te Urewera Management Board is currently undergoing a review that was mandated for five years after its establishment in its legislation. This review may contain some helpful insights for the 3N-BC team upon its completion.<sup>129</sup>

## The Waikato River Authority

*The co-management solution in relation to the Waikato River... provides an opportunity to bring an end a paradigm of exclusion and usher in a new era that promises enhanced governance and management of this 'majestic stream'. - Linda Te Aho*

### Background

The Waikato River is Aotearoa/ New Zealand's longest river at 442 kilometres. It represents about one fifth of all water from the main North Island rivers, encompassing a catchment of 11,000 square kilometres. Over the centuries, the Waikato River has been a source of food, transport, culture, and economic benefit. Alongside geothermal fields, the river now houses eight hydro-electric power stations which have created a series of dams and reservoirs along what were formerly steep and turbulent sections of the river. Complex ecological habitats associated with wetlands and lakes along the lower river floodplain provide a habitat for a range of species, including many native species that are considered threatened.

The economic importance of the Waikato River has increased over time, primarily due to heightened water supply demands to towns and cities, alongside increasing agricultural production and electricity generation. Today, the Waikato River runs through the biggest export region in the country.

The Waikato River is of immense spiritual and cultural significance to local iwi (tribes), the tangata whenua (people of the land; Māori) who have lived along its shores for many centuries. The river has played a key role in the lives of Māori who depended on the river for physical and spiritual sustenance. Importantly, the river is an ancestor of the iwi, personified. She has historically been central to connecting whānau (family) through the generations with ancestral Indigenous knowledge being passed down from tīpuna (grandparents/ancestors) to mokopuna (grandchildren/future generations). The historical diminishing of the river's wairua (life force) and

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<sup>129</sup>In terms of expert criticisms of the Te Urewera model, we came across the following legal criticism in regards to Te Urewera's liability:

"Te Urewera Act appears to give Te Urewera very broad rights. However, it immediately narrows them by specifying that those rights can only be "exercised and performed... in the manner provided for" in the Act. This likely means Te Urewera can only do things the Act specifically allows it to do. By comparison, Te Urewera's liability appears to be almost unlimited." Legal experts also point out that registered proprietor titles adjacent to Te Urewera land titles are not affected by the Act even if they are within Tūhoe traditional territory, and that public access to Te Urewera continues. Lastly, they highlight that while some public activities in Te Urewera are subject to authorization, "a mining activity that is authorized under the *Crown Minerals Act* requires no additional authorization". Source: Zurba, M., Beazley, K., English, E. & Buchmann-Duck, J. Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada's Pathway to Target 1: Focusing Conservation on Reconciliation. Land. January 2019. <https://www.mdpi.com/2073-445X/8/1/10/htm>

mana (integrity) is thought to have contributed to the disconnect felt in Māori communities today.<sup>130</sup>

## History and Guiding Legislation

In 1994, the Waikato-Tainui iwi settled the Raupatu Settlement land claim. Three percent of the 1.2 million acres of land confiscated by the Crown was returned to the iwi. The Waikato River was left out of that settlement essentially “because it was too hard to manage.”<sup>131</sup> At the time, the Crown stipulated that they would only ever be able to return the river bed because it was the only part of the claim that could be defined as ‘land’. Waikato’s definition of the river includes the beds, banks, airspace, flora, fauna, wetlands, and streams. As the iwi says, “We sing about the river, not the bed.” Because the New Zealand Government was unable to return the entire river at that time, the iwi decided to leave the river settlement for the time being.

In 2006, the iwi decided to revive river negotiations, lead by Lady Raiha Mahuta and Tuku Morgan as the lead co-negotiators. The underlying purpose of the settlement was that the “beneficiary of the settlement should be the Waikato River - the river itself, not the people.”

The iwi determined two guiding principles in the settlement:

1. Te Mana o te Awa (the power and prestige of the river; you can’t give it mana and you can’t take away it’s mana); and
2. Mana Whakahaere (restoring the rights and control of the river back to the iwi).

The Settlement Act works in conjunction with the Resource Management Act 1991 (the RMA) and a number of other statutes, to provide direction for planning documents created under the RMA to protect the health and wellbeing of the Waikato River for future generations. The Settlement Act addresses a number of issues related to the Waikato River such as redress for certain assets, the regulation of customary activities, and the management of the Waikato River. The Settlement Act establishes key initiatives and entities to manage the Waikato River, such as the Waikato River Authority (“the Authority”), which the Act states is to act as the custodian of the ‘Vision and Strategy’ for the Waikato River.

The Waikato iwi’s traditional area of responsibility is only a small portion of the river’s entirety (from Lake Karapiro to Port Waikato). The iwi recognised that they needed to be able to look after the entire river, so they invited four other river iwi to be involved (Raukawa, Maniapoto, Tuwharetoa and Te Arawa).

In addition to the Settlement Act, the Waikato River Authority is given authority by the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, with additional responsibilities arising from the Nga Wai o Maniapoto (Waipa River) Act 2012 and He Mahere

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<sup>130</sup>Journal of Water Law. Indigenous challenges to enhance freshwater governance and management in Aotearoa New Zealand - the Waikato river settlement. 2010. PDF.

<sup>131</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

Taiao – The Maniapoto Iwi Environmental Management Plan. The Resource Management Act 1991 (the RMA) is also a key piece of legislation pertinent to the management of the Waikato River.

## Composition of Membership, Authority and Responsibilities

The Waikato River Authority is the single co-governance entity responsible for the Waikato River. It consists of 10 members appointed by the Waikato River Clean-Up Trust (“the Trust”), local iwi, and the Minister for the Environment in consultation with other relevant Ministers. The Authority is led by co-chairpersons Tukoroirangi Morgan (iwi appointee) and Hon John Luxton (Crown appointee), who are appointed by the Minister for the Environment and the iwi respectively. The 10 total members of the Authority include five iwi appointees and five Crown appointees. The five iwi appointees represent each river iwi: Tainui, Te Arawa, Tuwharetoa, Raukawa and Maniapoto. As Waikato-Tainui negotiator Julian Williams explained, “We wanted all iwi to be involved, and to hold the Crown accountable for the last 150 or so years of degradation.”<sup>132</sup>

The co-governance arrangement stipulates the primary purpose of the Authority is to:

- Set the primary direction, through the Vision and Strategy, to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations;
- Promote the integrated, holistic and co-ordinated approach to the implementation of the Vision and Strategy and the management of the Waikato River; and
- Fund rehabilitation initiatives for the Waikato River in its role as trustee for the Waikato River Clean-up Trust.<sup>133</sup>

The functions that the Authority performs are:

- advising on giving effect to the Vision and Strategy;
- acting as trustee of the Trust;
- carrying out monitoring and reporting;
- periodically reviewing the vision and strategy;
- requesting call-ins under the RMA; and
- appointing iwi commissioners to river-related resource consent hearings.<sup>134</sup>

## Snapshot Assessment in Practice

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<sup>132</sup>Journal of Water Law. Indigenous challenges to enhance freshwater governance and management in Aotearoa New Zealand - the Waikato river settlement. 2010. PDF.

<sup>133</sup>Waikato River Authority. Five Year Report. 2015. <http://versite.co.nz/~2016/18579/files/assets/basic-html/page-4.html>

<sup>134</sup>Environment Guide New Zealand. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act. 2017. <http://www.environmentguide.org.nz/regional/waikato-tainui-raupatu-claims-waikato-river/>

The Waikato River Authority, at its creation, was faced with an enormous challenge – to reverse the degradation of the Waikato River that has occurred over the last 100-150 years, and make substantial progress in restoring the Waikato River within the next 25 years while protecting it from further degradation. The Authority, in their Five Year Report (2015), explained that “even at the end of that 25 years the job will not be finished. Management of our natural and physical resources has been, and will continue to be, a complex and contentious cross-sector, multigenerational issue.”<sup>135</sup>

The creation of the Waikato River Authority truly seems to portray reconciliation in action. With this co-governance arrangement, the Crown accepted its failure to respect, provide for and protect the special relationship Waikato have with the river as their ancestor, and accepted responsibility for the degradation of the river that occurred while the Crown had authority over it. The 'paradigm of exclusion' alluded to by Linda Te Aho at the outset of this review refers to the historical ostracism of Māori from decision-making and resource management processes for as long as Pākehā (non-Māori New Zealanders) have occupied New Zealand. Te Aho continued to explain that “through Māori eyes, rivers are generally seen as whole and indivisible entities, not separated into beds, banks and waters, nor into tidal and non-tidal, navigable and non-navigable parts”<sup>136</sup>; in essence, Māori worldviews do not align with Pākehā systems. Where Pākehā systems divide the natural resource up into separate exploitable parts, the Māori perspective welcomes the river as a whole and indivisible entity.

Although the Act represents a negotiated compromise, and although that compromise has been a painful process, rather than perpetuating decades of conflict and collision, it is widely felt that this co-governance agreement provides space for the coming together of two often contrasting perspectives and has enabled mutual regard towards a single purpose- to restore and protect the health and wellbeing of the Waikato River for future generations. While not overriding or giving priority to one perspective over the other, the Authority as a co-governance agreement is widely accepted by both local iwi and the Crown to have been a success.

Julian Williams, a Waikato-Tainui member and Waikato's Principle Advisor of Engagement and Policy was a negotiator during the Waikato-Tainui Settlement from 2012 to 2015. Williams explains that the unique relationship between the Crown and Waikato River iwi that has been embodied in the establishment of the Authority has meant a successful start to the extensive task of restoring and protecting the rivers. Williams said the Authority's establishment arose from the recognition that “the river needed a voice”<sup>137</sup>, and went on to explain that through the co-governance model, the iwi was able to ensure that they would have two tangible tools to act as kaitiaki (guardians) of the river. These tools are a) the Vision and Strategy, and b) Funding and Policy Projects.

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<sup>135</sup>Waikato River Authority. Five Year Report. 2015. <http://versite.co.nz/~2016/18579/files/assets/basic-html/page-4.html>

<sup>136</sup>Journal of Water Law. Indigenous challenges to enhance freshwater governance and management in Aotearoa New Zealand - the Waikato river settlement. 2010. PDF.

<sup>137</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

## 1. *The Vision and Strategy: Te Ture Whaimana o Te Awa o Waikato*

The Authority sets the primary direction for the Waikato River through a ‘Vision and Strategy’ (published in 2008) to protect the health and wellbeing of the Waikato River for future generations. The Vision and Strategy is there to guide the restoration and protection of the health and wellbeing of the river through an integrated, holistic and co-ordinated approach.

The Vision and Strategy is found in the Second Schedule of the Settlement Act. Section 18 of the Settlement Act requires that within three months of the settlement date, the Authority must begin a review for the purpose of considering whether targets and methods should be developed for inclusion in the Vision and Strategy. These are now included in the Vision and Strategy.

Local authorities that come within the catchment of the Waikato River must review their Regional or District Plans to initiate changes to ensure consistency between plans and the Vision and Strategy. The Vision and Strategy prevail over any national policy statements that affect the Waikato River, including the New Zealand Coastal Policy Statement. The Vision and Strategy is binding on all national, regional, and district policy and decisions for the management of the river.

To actualise the Vision and Strategy, the Authority accepted the requirement to work with major stakeholders who affect the river. This includes the Waikato Regional Council and a variety of industry partners, such as DairyNZ (“the industry organisation that represents all New Zealand dairy farmers and invests in practical on-farm tools, science, resources and support and advocacy to ensure farmers have a profitable, sustainable and competitive future”).<sup>138</sup> The Authority, Council and DairyNZ are working on a restoration strategy for the Waikato and adjoining Waipa Rivers. “As at November 2015, the Waikato River Authority and DairyNZ have contributed \$200,000.00 each in direct costs, with the Council contributing \$75,000.00. Other costs... [are] met by significant in-kind support, such as staff time from DairyNZ and the Council”. This strategy (the Restoration Strategy) will help to guide the Authority’s investment thinking for the next 5 to 15 years. The main goal of this strategy is to ensure that the combined work between these agencies and others, is followed out as efficiently as possible, whilst maintaining maximum benefit for the river. This ensures that restoration work “is integrated and co-ordinated to avoid duplication.”<sup>139</sup>

The Waikato River Restoration Forum was created in response to the involvement of the many strategy partners as listed above, but also other Waikato River iwi, local councils, the Department of Conservation, Fonterra, Genesis Energy Limited, and Mighty River Power Limited. The Forum offers advice and input into the restoration strategy.

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<sup>138</sup>DairyNZ. Industry Good and the Levy. 2018/19. <https://www.dairynz.co.nz/about-us/how-we-operate/industry-good-and-the-levy/>

<sup>139</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

Williams explained that the Vision and Strategy is the best way that the iwi can restore the health and wellbeing of the river. From a cultural standpoint, he explained that the tangata whenua “bless themselves with the water of the river; not the shingle, not the mud” and so it is of the utmost importance to maintain the mauri (life-force) of the river. The river clean-up initiatives funded by the Authority therefore have a multi-dimensional interest and impact in restoring the health of the river; the ecological benefits of a clean and healthy river are synonymous with cultural significance for the iwi.

The Vision and Strategy influences 20 pieces of legislation and the decisions that are made under those pieces of legislation - the most impactful one being the RMA. As Williams explained, coordinating the various pieces of legislation was intentional:

*“For example, when we’re dealing with whitebait (a local fish species), our marae (local indigenous meeting house) members, to solve an issue, would have to speak to five agencies and that’s not very effective. We’re getting passed from District Councils, Regional Councils, DOC (Department of Conservation), Fisheries (before they were MPI) and LINZ (Land Information New Zealand) for the structure. So there was no real coordination of those pieces of legislation that determined what activities happened on our river. And the tribe was not given the position to be decision-makers. So we agreed, after two years of going to talk to communities and different sectors (farmers, energy sector etc), we all agreed to establish a Vision that all of those pieces of legislation could aspire to. That was to restore and protect the health and wellbeing of the Waikato River and all it embraces for future generations.”<sup>140</sup>*

The Vision and Strategy now simultaneously influences regional policy statements, the conservation management strategy, fisheries, historic places, and the public works act.

## 2. Funding and Policy Projects

The Settlement Act guarantees the Authority \$7 million per year from the Crown for 30 years (until 2037). One million of this is invested each year, to ensure that the funds continue beyond the 30-year cap. The Authority also maintains an endowment fund to counter the likelihood that the restoration vision is likely to exceed the 30-year cap. Any funds not allocated to a clean-up initiative within a funding year are added to the endowment fund. The Authority also has a policy to “not spend the full amount of funding each year, but not at the expense of grants for the projects”.<sup>141</sup>

This fund is contestable; the Authority holds the funds and can allocate them to local river clean up groups, aligning with the Authority’s role to “restore, protect, fund.” The fund is audited yearly. As Williams explained, “We negotiated a \$210 million dollar fund: \$7 million dollars a year for 30 years. This was contestable despite it being the tribe settlement; to best achieve

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<sup>140</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

<sup>141</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

things for the river, it should be a contestable fund. Whoever can best deliver projects to achieve that Vision should be given funding. The fund complements the regulation and vice versa.” Local whānau-led groups can apply to the fund to supplement their river clean-up initiatives. This of course benefits the river but also extends the capability of the locals and reconnects those who might be dislocated from their cultures, to their river ancestor. The Authority has recently created an app that community members can download on their smartphones, called My Waikato. The app allows locals to keep apprised of what planting and restoration projects are happening around them, through planting project pins of projects funded by the Waikato River Authority.<sup>142</sup>

The Authority purposefully took its time to thoughtfully establish its funding processes before allocation of any funds was made for restoration initiatives. They sought auditing and policy advice to ensure it had robust processes in place. It was decided that the Authority would make no monetary allocations within the first financial year whilst the funding strategy was still in its infancy. This particular approach ensured that it was understood amongst groups who were interested in seeking funding for clean-up initiatives that the right processes would be in place before it could begin funding. The funds not invested in the first year were added to the endowment fund.

Williams explained the initial structure of the Authority had “policy on one side, projects on the other. That was to get some quick wins on the board because regulation is so slow. There was some things we could do 'now': planting, fencing, retirement of land, training our people and community groups to develop programmes themselves, wetland restoration etc.” Williams went on to talk about the importance of the Authority and the accessibility of its funds to the local iwi. “The general community is not interested in policy. Most people on the ground are well aware of the Vision and Strategy, so much so that they promote it quite a lot. Even the farmers do! But it's the fund that helped them understand more about the settlement and the genesis of the river authority. So you need both. Compared to other settled Indigenous peoples, our fund is quite small, compared to some of the billions that they get through their negotiations. So we've got to work a lot smarter with our fund, because it's limited.” New Zealand's National Institute of Water and Atmospheric Research said that to improve the health and wellbeing of the river at least \$4 billion dollars would be needed. “We have \$210 million. That's 5% of what we 'needed'. That's all we've got. So we've got to use regulation a lot more to help us.”<sup>143</sup>

### *Tino Rangatiratanga (Sovereignty)*

The co-governance model also best befits the iwi in their (and the general Māori population's) plight for tino rangatiratanga (sovereignty) under te Tiriti o Waitangi, the Treaty of Waitangi. This is because co-governance provides a place for iwi to:

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<sup>142</sup>Waikato River Authority. Waikato River Authority Funding Projects. 2019. <https://www.waikatoregion.govt.nz/community/your-community/wra/>

<sup>143</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

- “Regain or restore mana (which includes recognising the historical and cultural importance of the resource to iwi);
- To actively exercise their responsibilities of kaitiakitanga (guardianship); and
- For some iwi, to encourage economic development.”<sup>144</sup>

The Authority stipulates its responsibility to regularly review their aspirations within the co-governance agreement, with the understanding that the context and circumstances around the initiative are subject to change. The Authority regularly reviews its arrangement both formally and informally, with the goal of ensuring that their approach is still relevant and that the river’s needs are still in line with the purpose for which the Authority was established.

Williams also explained that iwi recovering full ownership might never be off the table completely: “Ownership is ‘saved for another day’, in the sense that if we believe that the Crown is acting akin to ownership, then we sit back at the table to discuss that.” He explained that in other land settlements in the country, the Crown had settled and then ‘walked away’ leaving the iwi to deal with the problem. “In the land settlement, the Crown handed over some land and some mechanisms, and then walked away. We didn’t want to let them walk away from the river because it was their fault that she was degraded and unwell by allowing the drainage... getting rid of all the wetlands, etc.”<sup>145</sup>

### *The Importance of Maintaining Healthy Relationships, Mitigating Tension and Non-Consensus*

When investigating conflicts and tension between the iwi and Crown representatives, it became clear that, overwhelmingly, issues are dealt with in an extremely positive and productive manner.

The Authority uses a consensus decision-making model, as is required in its legislation. The Authority members must work together to reach decisions through “the highest level of good faith engagement.”<sup>146</sup> A consensus model ensures that the board are discussing and agreeing on their objectives, strategies and initiatives and are concluding with board-wide agreement. Whilst this may mean that the decisions take longer to establish, the outcome is likely to be more enduring. Williams explained that there is a requirement that the board members must “take their hats off” and do what has to be done to best achieve the Vision and Strategy.

### *Shared Decision-Making and Joint Management Agreements*

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<sup>144</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>145</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

<sup>146</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

Amendments made to the RMA in 2005 included new sections to provide explicitly for joint management agreements (JMAs). The new sections provide a framework for public authorities, iwi authorities and groups that represent sub-tribes to enter into JMAs concerning natural or physical resources. The framework is aimed at developing and encouraging collaborative projects between councils and Māori. There are a growing number of successful joint management models operating where title to resources such as lakebeds and the foreshore may be vested in Māori groups with joint management and protection of public use rights.<sup>147</sup>

Williams explained that the benefit of this particular structure is that “the collaboration is much better - not so much in the policy space but in the practical sense. It’s improving. There’s a lot of funds available in our area. We’ve just got to work together to strategically distribute it. We don’t see the fund as a grant, we see it as an investment into the river. So you’ve got to prove that you’re going to use that investment well.”<sup>148</sup>

### *Capacity Constraints and Succession Planning*

As the Auditor General of New Zealand’s co-governance report states, “Finding experienced people with the capacity to engage in co-governance can be challenging. Many community groups or hapū (subtribes) are starting from a base of low experience and capacity... The risk of not addressing this matter is that iwi may lessen their involvement or try to be involved in too many matters... No one solution can resolve capacity matters, because the circumstance of each project are different... The important part is that all parties involved in co-governance work together to agree on solutions that are appropriate to them.”

Under the terms of the Settlement Act, a fund was set up to support capability and capacity building for the five Waikato River iwi. Each iwi receive \$1 million a year for 30 years. The fund enables the five iwi to engage in new co-management arrangements for the river, increasing the likelihood that the right people with the right skills are appointed to the board, moving through into the future. “The biggest risk is that someone is appointed who is not the right person”.<sup>149</sup> Such an appointee might have in mind their own agenda, instead of the interests of the river, or might not be able to work well with others. The Authority consult with the other appointers (both the Ministers and iwi) about the right mix of skills and experience of potential board members. One useful approach to succession management (and to build capacity and capability) was having co-chairpersons and deputy chairpersons. Co-chairpersons and deputy chairpersons learned from each other and increased the knowledge of others. This helped to raise capacity and reduce the pressure on the co-chairpersons. Appointing deputy chairpersons can provide an opportunity to prepare for a future co-chairperson role. As well as helping to manage

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<sup>147</sup>Journal of Water Law. Indigenous challenges to enhance freshwater governance and management in Aotearoa New Zealand - the Waikato river settlement. 2010. PDF.

<sup>148</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

<sup>149</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016.  
<https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

succession, having co-chairpersons sends a message that the governance is true co-governance.

### *Accountability Processes*

The Authority's Annual Report is its key accountability document, which is presented to the Minister for the Environment. The Authority is audited by the Auditor General each year.

The accountability processes in place for the Authority are generally thought to be of a stringent, high standard, due in part to the fact that it is fairly new. The Authority spent a lot of time at its establishment ensuring that their accountability processes were robust (particularly in the areas of financial and risk management). For example, the Authority uses a four-stage process for approval of a funding application, including full peer reviews, to ensure that proposed projects are achievable. The Authority also refers to external consultants for legal and financial advice, and then reviews that advice. This is because it is funded by public money and wants to be transparent about where every dollar goes. The initiatives that the Trust funds are compiled into a report which is presented to the Crown and the river iwi at least every five years.

However, from a transparency perspective, it's worth noting that the Authority is very unique in its capacity as a public entity because it is not bound to legislation such as the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987. This means that aspects of the Authority's movements can be kept away from the public eye; minutes of meetings are not required to be taken, and meeting locations do not have to be publicised. Essentially, trustee meetings can be held 'behind closed doors.' Iwi appointees do however give summaries of the trustee's discussions to their respective iwi boards, and the Authority presents its annual report to the Minister for the Environment by way of Parliament. This includes the financial statements and meeting attendance.

The Authority has acknowledged where the length of time it takes to achieve results can greatly affect public perceptions of the project's effectiveness. "It is important to manage people's expectations about the pace of progress to keep stakeholders and the public engaged to sustain support for the project. This can be done by keeping people informed about the progress made to date, and by explaining why it takes so long."<sup>150</sup>

The Authority, in 2015, released a [Report Card](#) for the Waikato (and adjoining the Waipa) River. This document is of particular significance because it measures in a holistic way the health and wellbeing of these waterways. The Authority's Five Year Report explains that "as the ultimate clean-up of the Waikato River is an inter-generational undertaking, this Report Card will serve as an enduring measure of our progress." This Report Card is also an effective accountability tool. It uses holistic measures which align with the kaupapa (philosophy) of the iwi and grades the health of each section of the river in relation to the Vision and Strategy.

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<sup>150</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

“It is crucial that partners and stakeholders believe we can be successful even though the task ahead is considerable. We know that some of the key contaminants to waterway health we seek to address have lengthy lag times measured over decades. Despite the multi-million dollar investment of the Authority, and other organisations, it seems likely that key indicators of waterway health and wellbeing will continue to decline. Keeping the river communities engaged and supportive of positive change to the health and wellbeing of the catchment’s waterways will require understanding that the journey will be across many generations”.<sup>151</sup>

### *Social and Cultural Outcomes/ Integration of Local Knowledge and Processes*

Williams spoke to the community’s dedication to the fund by matching it with their own resources: “We have funded \$51 million dollars worth of projects. With every dollar we give out, we expect the applicant to provide a dollar; whether that be in cash, sweat equity, contribution of machinery. So our \$50 million has created over \$100 million in projects in nine years. Around 1.6 million trees planted, around 70km of fencing, retirement of over 1,000 hectares of land, training and education material. These projects get the community involved and back to the river and restore that relationship of the people with the river.” This is key in demonstrating how the community’s buy-in with the Authority has cycled back to benefit all involved; the Authority, the Crown, the community and the river.

Williams explains that one of the most powerful aftereffects of the co-management of resources is “with our community, our marae members, who now have the confidence to deliver \$100,000 of projects, to create employment, the social benefits, transfer knowledge- from how to make hinaki, how to capture eel, how to catch a koi, how to eradicate them. The transfer of knowledge to our youth has probably been the most beneficial thing that we’ve seen, because the interest is growing there.”<sup>152</sup>

## **Components of Other Agreements for Consideration**

### **A Phased Approach to Joint Decision-Making for BC and shíshálh Nation**

The shíshálh Nation Foundation Agreement, signed in October 2018, is early in its days of implementation, but its structure provides some insights the 3N-BC team may find helpful. The Agreement strives for transformative change “in a staged, structured and shared manner” by setting out a joint vision and principles, describing immediate measures the Province will take (such as land transfers and economic and socio-cultural investments), and identifying milestones to achieve over a longer term. The Agreement’s immediate measures are to be

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<sup>151</sup>Waikato River Authority. Five Year Report. 2015. <http://versite.co.nz/~2016/18579/files/assets/basic-html/page-4.html>

<sup>152</sup>Williams, Julian (Principle Advisor, Engagement and Policy, Waikato-Tainui) in discussion with Holly Diepraam. October 5 2019.

implemented within five years of the effective date and longer-term milestones have different staggered dates.

The Agreement creates various tables and forums with different responsibilities. The parties agree to continue the Solutions Forum that was created pursuant to the Government-to-Government Agreement. It also establishes a Relationship and Implementation Forum composed of two representatives from each party to oversee the Agreement's implementation. This Forum strives to operate by consensus, and can establish working groups, or identify individual leads to report to them on any activity contemplated within the Agreement. The Relationship and Implementation Forum's duties are the following:

- (a) oversee implementation and monitoring of the forestry, land use planning, resource management, socio-cultural, and land transfer commitments set out in this Foundation Agreement;
- (b) oversee implementation of the Shared Decision-Making Process;
- (c) oversee the exploration of consent-based decision-making processes in accordance with sections 4.73 and 4.74;
- (d) explore and discuss potential opportunities to implement shíshálh Nation exclusive decision-making in specific areas as a future Milestone in accordance with this Foundation Agreement;

The Agreement also creates a Shared decision-making Board and Working Group for different functions related to the establishment and roll-out of the shared decision-making process. As stated in the Agreement, "The Shared Decision-Making Process will establish a new way of co-operating between shíshálh and the Province that will:

- (a) move towards a more holistic, shared and transparent process where there is equal accountability;
- (b) enhance and develop a working relationship between us that is based on trust and respect for each other's perspectives and constraints;
- (c) improve the efficiency and harmony of engagement between us in relation to resource development decisions;
- (d) be a consensus-building space for land and resource decisions in the shíshálh swiya that are subject to the Shared Decision-Making Process; and
- (e) build process predictability in the shíshálh swiya."

Shared decision-making occurs via the assessment of applications requiring decisions. The Province is tasked with commencing engagement on an application by providing a review package with the application and any required additional information to the Working Group. The Working Group is comprised of at least two and no more than three members appointed by shíshálh Nation and at least two and no more than three members appointed by the Province. The Working Group undertakes review of the package and works towards a consensus recommendation on the application, which it provides to the Board.

The Board is comprised of at least two and no more than three members appointed by shíshálh Nation and at least two and no more than three members appointed by the Province. Their purpose is to review the initial assessment of applications reviewed by the Working Group and provide recommendations on the application. They are also mandated to establish policies and procedures related to the shared decision-making process and conduct an annual review of the shared decision-making process, recommending how the process may be improved or re-designed over time. The Board strives to provide consensus recommendations on each application to the Decision Maker and shíshálh Nation Chief and Council, but ultimately, the recommendations are forwarded to two governments who each make their own decisions.

If the Board cannot agree by consensus on recommendations, the board members are to provide non-consensus recommendations to shíshálh Nation Chief and Council and to the Decision Maker. If either the shíshálh Nation or the province intends to make a decision that is not consistent with the consensus recommendations of the board or, if the board has not reached consensus recommendations, the Solutions Forum convenes to discuss the decision. Both parties agree to give serious consideration to the issues raised by the other party at this forum meeting. Following this meeting, if a decision by shíshálh Nation or the Province is not consistent with the board's recommendations or the issues raised by the other party at the Solutions Forum meeting, the deciding party in disagreement must "notify the other Party of the decision and, if requested, provide a written rationale for the decision identifying how the other Party's interests and concerns have been addressed."

The phased implementation approach to shared decision-making that the Agreement establishes is perhaps the most pertinent consideration for the 3N-BC team. Initially and immediately upon the effective date, the shared decision-making process applies just to forestry decisions. Within three months of the effective date, it applies to decisions on dock tenures. By the second anniversary of the effective date, it will apply to decisions made by the provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development on other authorizations in addition to the aforementioned. And, by the fourth anniversary, it will additionally apply to all other authorizations.

Formal processes are established to address a future situation in which the parties wish to exclude specific types of authorizations set out in the agreement from this shared decision-making process. Should a party wish for an authorization to be excluded, the concerned party is to raise the issue with representatives within the Relationship and Implementation Forum. If consensus on their exclusion cannot be reached there, the issue goes to the Solutions Forum for resolution. If the Solutions Forum also cannot reach agreement on the issue, the Solutions Forum will refer the issue to the Senior Representatives of parties for resolution. Finally, if Senior Representatives cannot resolve the issue, the contested authorizations will be excluded from the shared decision-making process, unless all parties agree to include such authorizations at a later date.

The agreement also contains several clauses allowing either party to invoke a suspension of the shared decision-making process for applications that create a "climate of serious conflict"

between the parties. This mechanism enables parties to suspend the shared decision-making process for such applications, and outlines a process for parties to take in such an instance. The party wishing to suspend the process must give written notice of this wish to the other party within 45 business days. The party utilising the suspension mechanism must provide detailed written explanation of a demonstrable pattern of challenges that exist that has given rise to such conflict. Within 10 days of receipt of such notice, the Solutions Forum must meet to discuss the issues raised by the notice and provide perspectives regarding whether there is a demonstrable pattern of challenges that merits a suspension.

Following these Solutions Forum Meetings, the Party that made the initial suspension request must provide final written notice to the other Party indicating whether or not it is suspending the Shared Decision-Making Process. If they indicate that they are suspending the process regarding certain identified applications, then the Shared Decision-Making Process will be suspended for those Applications. The suspension issue will then again go to the Solutions Forum to address the reasons for the suspension and work to create solutions to issues to bring those specific applications back into the Shared decision-making process. The parties are also required to meet to discuss the specific applications that were suspended and next steps for engagement processes of other applications of that type which have been suspended.

Other highlights of the Agreement include the following:

- A commitment by the Province to provide shíshálh Nation with phased funding for establishment and operation of a Forest Licensee Engagement Table to address operational obstacles with forest licensees.
- The establishment of a joint land use planning table (also with a phased approach to shared decision-making) and a Resource Management Table to make recommendations to both parties' agencies on joint management processes for natural resources within shíshálh Nation traditional territory, including joint compliance and enforcement mechanisms.
- Establishment of a Socio-Cultural table of representatives from each party.

Perhaps most relevant to Bill C41, the agreement includes an adaptive, time-bound, milestone-based plan for evolving self-government within shíshálh Nation with objectives to reach agreement on consent-based decision-making initiatives primarily for land and resource decisions. The parties agree to “explore, design and implement agreed-to models of consent-based decision-making and the operationalization of the standard of free, prior, and informed consent as expressed in the UN Declaration.”<sup>153</sup>

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<sup>153</sup>shíshálh Nation / British Columbia Foundation Agreement. 2018. [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh\\_nation\\_foundation\\_agreement\\_-\\_final\\_-\\_redacted\\_signed.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh_nation_foundation_agreement_-_final_-_redacted_signed.pdf)

## Creating Regenerative Economies Through Collaborative Arrangements with Coast Funds

Other First Nations have taken a different approach to ensuring stewardship of their ancestral territories that's in alignment with their values whilst simultaneously working to ensure their people benefit from development that occurs within their homelands.

The Great Bear Rainforest Order, although not a model of shared decision-making, recognizes aboriginal rights to shared decision-making whilst protecting culturally-significant old growth forests and improving economic opportunities for the 26 First Nations who call the region home. Some argue that the agreement's focus on evolving the region's economy has allowed Coastal First Nations to take control over their economy and environment simultaneously.<sup>154</sup>

Over the 1980s and 1990s, conflict over extractive industry (primarily logging of temperate rainforest) along BC's coast increasingly heightened while Coastal First Nations, who experienced considerable economic, social and cultural damage due to the last century's extractive activities, became increasingly mobilized to safeguard the wellbeing of their communities and ancestral lands and waters. First Nation Leaders from across the Great Bear Rainforest region began to work together following a convening in 2000, eight years after the Province had launched a collaborative land-use planning process. As described, "From the outset, the goal of the First Nations was to restore and implement responsible land, water, and resource management approaches on the Central and North Coast of British Columbia, and Haida Gwaii that are ecologically, socially, and economically sustainable. First Nations wanted to promote economic development on the coast while at the same time protecting the environment and quality of life of those who lived there. They agreed they needed to create increased economic development opportunities and create more jobs for First Nations people and others. They recognized they needed to sit down and work towards mutually acceptable solutions and that, if they did so, these issues could and would be resolved."

A coast-wide alliance was formed, and critical discussions surrounding the idea of attracting conservation financing capital began between First Nations and environmental groups. Soon after, the Conservation Investments and Incentives Initiative was established by First Nations, the BC government, environmental groups, and the forest industry. "Conservation financing meant more than simply injecting money into the local economy—an approach that had been tried unsuccessfully in the past. Instead it linked clear, lasting conservation commitments to new investments supporting innovative new businesses and building conservation management capacity in First Nation communities." In 2006, the Great Bear Rainforest Agreements were signed, paving the way for the Conservation Investments and Incentives Initiative to come to fruition. \$60 million from private donors was raised largely by the Nature Conservancy and First Nations, while \$30 million from the Government of BC and \$30 million from the Government of

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<sup>154</sup>Hunter, Justine. "Final agreement reached to protect B.C.'s Great Bear Rainforest." *The Globe and Mail*. 2016. <https://www.theglobeandmail.com/news/british-columbia/final-agreement-reached-to-protect-bcs-great-bear-rainforest/article28475362/>

Canada was committed to the initiative, which collectively would be called Coast Funds. As Coast Funds describes, “The conservation financing concept would be borne out as two complementary streams of investment. First, \$60 million dollars of private funds would be allocated to a conservation endowment fund would be dedicated solely to conservation management, science and stewardship jobs in First Nations communities. Second, \$60 million dollars of public funds would be used to invest in sustainable business ventures in First Nations’ territories and communities.” Coast Funds now makes grants to Great Bear Rainforest First Nations who have completed their land use plans and committed to ecosystem-based management within their territories.<sup>155</sup>

The Coast Funds initiative has had substantial impact environmentally, socially, and economically since its inception. Over the last ten years, Coast Funds has helped attract nearly \$300 million to the region.<sup>156</sup> With funding from Coast Funds, 1033 permanent jobs have been created, 796 of which are held by First Nation community members, which is 12% of the working age population of First Nations communities in the region.<sup>157</sup> 388 initiatives in workforce development and skills training have trained 1106 people<sup>158</sup>. Simultaneously, 222 scientific research or habitat restoration initiatives on 58 different species have been conducted<sup>159</sup>, 75 traditional stewardship projects for youth education, traditional use studies, the identification of cultural features, and more have been undertaken<sup>160</sup>, and 14 regional guardian watchmen programs enable regional monitoring for 2.5 million hectares annually.<sup>161</sup>

As multi-party decision-making arrangements between First Nations and Crown governments evolve, some experts are increasingly recognizing that creation of an avenue for participation from industry and philanthropy in arrangements may be more sustainable and effective at achieving mutual objectives over the long-term. As Eli Enns, Coordinator for North America in the Indigenous and Community Conserved Areas (ICCA) Consortium states, “We’ve realised that sustainable economic development strategies and plans need to be part of First Nations’ arrangements for long-term sustainability of protected areas.”

## Analysis

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<sup>155</sup>Coast Funds. Great Bear Rainforest and Haida Gwaii. n.d. <https://coastfunds.ca/great-bear-rainforest/>

<sup>156</sup>Gilpin, Emilee. “How Coastal First Nations took control of their economy and environment”. National Observer. June 10, 2019. <https://www.nationalobserver.com/2019/06/10/news/how-coastal-first-nations-took-control-their-economy-and-environment>

<sup>157</sup>Coast Funds. Social Empowerment Outcomes: Job Creation. 2018. <https://coastfunds.ca/outcomes/social-empowerment/?tab=job-creation>

<sup>158</sup>Coast Funds. Social Empowerment Outcomes: Training. 2018. <https://coastfunds.ca/outcomes/social-empowerment/?tab=skills-training>

<sup>159</sup>Coast Funds. Environmental Conservation Outcomes: Research. 2018. <https://coastfunds.ca/outcomes/environmental-conservation/?tab=research>

<sup>160</sup>Coast Funds. Cultural Vitality Outcomes: Stewardship. 2018. <https://coastfunds.ca/outcomes/cultural-vitality/?tab=stewardship>

<sup>161</sup>Coast Funds. Environmental Conservation Outcomes: Guardians. n.d. <https://coastfunds.ca/outcomes/environmental-conservation/?tab=guardians>

Our exploratory review of the models researched and broader literature review revealed insights and some common themes that may serve the 3 Nations-BC team in moving forward with design of a collaborative framework for natural resource management in Kaska, Tahltan and Tlingit territories.

## **“In the end, it’s about relationships, trust, and being solution focused”<sup>162</sup>**

As Filkret Berkes from the University of Manitoba’s Natural Resources Institute writes, “In addition to legitimacy and compliance, justice, equity, and empowerment are also relevant because the basic idea behind co-management is that people whose livelihoods are affected by management decisions should have a say in how those decisions are made. Hence, co-management is not merely about resources; it is about managing relationships.”<sup>163</sup>

As a New Zealand review of co-governance arrangements stated, “The quality of the relationship between the parties to co-governance affects its chances of success. The objectives and aspirations of parties can evolve. Effective relationships help parties respond to changing circumstances. Parties need to be prepared to invest in their relationship. Having people who value relationships involved in co-governance helps to build mutual respect and trust. This allows parties to have the difficult conversations they need to ensure that they have a shared understanding of what they are trying to achieve and compromise when they have to.”

Our research within and beyond the researched arrangements echoed this important theme. As Aaron Dale, Policy Analyst for Torngat Wildlife Plants and Fisheries Secretariat acknowledged, “It’s important to focus on co-management as a process and not as a means to some end. In that sense, it’s a relationship, so it works best in all the same ways that relationships work well.”<sup>164</sup> The commencement of a relationship even underpins Haida Gwaii’s Reconciliation Protocol’s Haida name, which translates to “the beginning” in the Haida dialects of Old Massett and Skidegate.<sup>165</sup>

Simon Fraser University’s Shared decision-making in BC Collaborative Research Project remarked on the widespread published literature and anecdotal evidence that has found how important trust and relationship-building is. They shared, “Strategies identified include starting slowly, identifying easy wins that can be achieved relatively quickly, communicating often and clearly, seeking to build a constituency of support, and sharing updates on implementation

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<sup>162</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>163</sup>Berkes, Filkret. Evolution of co-management: Role of knowledge generation, bridging organizations and social learning. *Journal of Environmental Management*. 2009. pp. 1692–1702. [http://forestpolicy.com/wp-content/uploads/2010/11/berkes\\_2009\\_adaptive-co-management.pdf](http://forestpolicy.com/wp-content/uploads/2010/11/berkes_2009_adaptive-co-management.pdf)

<sup>164</sup>“Living North” of Wildlife Management Advisory Council North Slope. [Podcast]. Nunatsiavut: building on co-management. November 2012. <https://itunes.apple.com/ca/podcast/the-living-north/id482725189?mt=2&i=1000125760516>

<sup>165</sup>Takeda, Louise. *Islands’ Spirit Rising: Reclaiming the Forests of Haida Gwaii*. UBC Press. 2015.

actively and widely to demonstrate progress and highlight accomplishments. Earlier research has also suggested that ensuring continuity of involvement for some or all of the key players can also be very helpful in maintaining a degree of stability.”<sup>166</sup>

As one co-governance participant in the New Zealand Auditor General's review shared, “If I was starting from the beginning, it's about forming a really good relationship first before getting into the detail. So each party understands who you are and what you are about. I appreciate that now, whereas before I didn't – in the past it was about getting on with the job. I'm proud to be part of the process.”<sup>167</sup>

These comments mirror a growing body of research highlighting trust as a vital component of collaborative governance agreements.<sup>168</sup> As Gulay Ciftcioglu writes of adaptive co-management in North Cyprus, “Systematic learning under conditions of complexity and uncertainty requires meaningful social interaction and a concerted effort to build trust.”<sup>169</sup>

What this suggests is that parties negotiating forms of shared or joint decision-making should consider the factors that contribute to fostering and sustaining trust and good relationships among the individuals that will be responsible for implementing these agreements with immense forethought and intention. These factors should be top of mind when designing the structures and decision-making processes of the agreements, as research and anecdotal evidence increasingly demonstrates that these contextual factors may have as much or more of a lasting impact on success than the formal agreements themselves.

## Influences on Trust in a Multi-Party Governance Arrangement

A study examining the influences on trust in the context of collaborative natural resource governance involving Indigenous and non-Indigenous governments was conducted via a Haida Gwaii case study in 2017. The study, conducted by Ngaio Hotte and others, uncovered findings particularly relevant to the 3N-BC team in designing a collaborative framework, especially since the decision-making arrangement for Haida Gwaii has occurred in the absence of a treaty or land-claim agreement.<sup>170</sup>

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<sup>166</sup>Simon Fraser University. Discussion Paper: Understanding the Sharing of decision-making in BC. SFU Centre for Dialogue. 2014. PDF.

<sup>167</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>168</sup>Ostrom, E. Toward a behavioral theory linking trust, reciprocity, and reputation. In *Trust and reciprocity: interdisciplinary lessons from experimental research*. 2003. E. Ostrom and J. Walker (Eds). Russell Sage Foundation, New York. pp. 19–79. Davenport, M.A., Leahy, J.E., Anderson, D.H., and Jakes, P.J. Building trust in natural resource management within local communities: a case study of the Midewin National Tallgrass Prairie. 2007. *Environmental Management*. Volume 39, Issue 3. pp. 353–368. <https://link.springer.com/article/10.1007%2Fs00267-006-0016-1>

<sup>169</sup>Ciftcioglu, G.C. Evaluating resilience for the management of social–ecological production landscapes and seascapes in Lefke Region of North Cyprus through adaptive comanagement. *Sustainability Science*. 2019. Vol 14: pp. 1117–1130. <https://www.es-partnership.org/wp-content/uploads/2018/08/G-Cetinkaya-Ciftcioglu.pdf>

<sup>170</sup>Bowie, Ryan. Indigenous self-governance and the deployment of knowledge in collaborative environmental management in Canada. *Journal of Canadian Studies*. 2013. Vol, 47(1): pp. 91– 121. doi:10.3138/jcs.47.1.91

The authors of Hotte’s study employ the following definition of trust: “a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behavior of another.”<sup>171</sup>

Their study identified five individual influences, five interpersonal influences, and four institutional influences on trust within Haida Gwaii’s collaborative forest governance framework, many which mirror feedback we received from interviewees for this report:

**Fig. 2.** Clustered themes and codes for individual, interpersonal, and institutional influences on trust. [Colour version available online.]

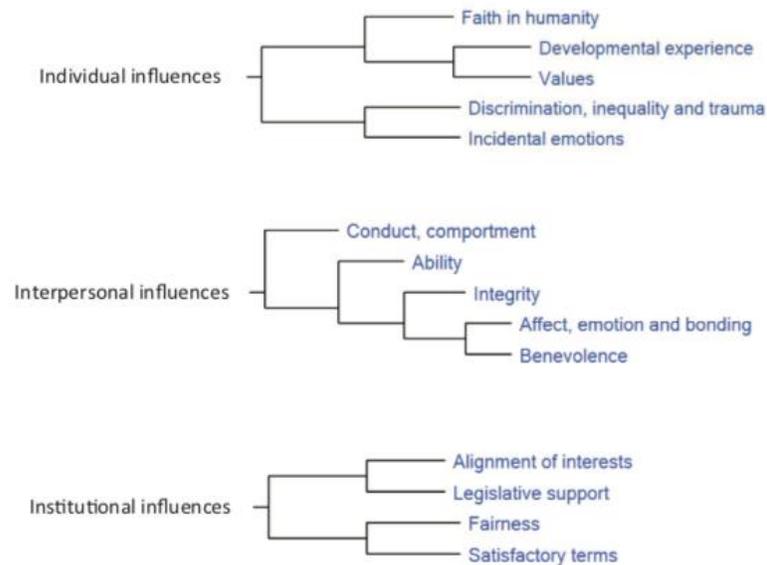


Diagram: Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert (2018). Influences on trust during collaborative forest governance: a case study from Haida Gwaii. In *Canadian Journal of Forest Research*.

The study, which consisted of interviews with 19 participants within the collaborative arrangement, found that the time required to build trust “varied from as little as 6 months to nearly a decade”, and that “collaborators reported greater success building trust between individuals than building trust in the organizations that they represent”. As one interviewee in their study stated, “You can’t really trust an organization, it’s the individuals of the organization you build trust with.”<sup>172</sup>

<sup>171</sup>Rousseau, Denise.M., Sitkin, Sim, Burt, Ronald S., and Camerer, Colin Farrell. Not so different after all: a cross-discipline view of trust. *Academy of Management Review*. 1998. Vol 23: pp. 393–404. doi:10.5465/amr.1998.926617

<sup>172</sup>Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert. Influences on trust during collaborative forest governance: a case study from Haida Gwaii. *Canadian Journal of Forest Research*. 2018. Vol. 49: pp. 361-374.  
[https://www.researchgate.net/publication/329199011\\_Influences\\_on\\_trust\\_during\\_collaborative\\_forest\\_governance\\_A\\_case\\_study\\_from\\_Haida\\_Gwaii](https://www.researchgate.net/publication/329199011_Influences_on_trust_during_collaborative_forest_governance_A_case_study_from_Haida_Gwaii)

Another comment made by a participant in the New Zealand Auditor General's Co-Governance Review was, "At the end of the day, you can have all the arrangement you want ... it comes down to the quality of the people."<sup>173</sup>

Parties ought to give due consideration to the personal qualities and experience offered by individuals who are brought to the table to establish and maintain relationships. In connecting these findings on trust-building to our research, we found that two traits that are particularly important for individuals of an arrangement to possess are commitment/ continuity of involvement and an open, solutions-oriented mindset to cross-cultural learning.

### **Traits of Individuals within an Arrangement**

#### *Commitment to Community/ Continuity of Involvement*

The rapport between a First Nation and someone who has spent a lot of time in the community is understandably different than the rapport with someone who flies in from Victoria or Ottawa.

In researching wildlife co-management in Northern Canada and Alaska, agreements that were deemed to be effective were found to be built upon relationships of continuity. In the late nineties, Kruse and others assessed effectiveness of joint management bodies for caribou using the measures of "knowledge of the management system, agreement on acceptable harvest and herd monitoring practices, shared beliefs and perceptions on caribou population changes, perceptions of communications between management boards and caribou users, and expectations for cooperation of users with management actions". They surprisingly found that direct user involvement in joint management boards did not increase the effectiveness of a system. Instead, the most integral factor to success was the frequent and continued presence of government biologists in Indigenous communities. This government presence allowed joint management bodies to build trust and social capital with Indigenous partners.<sup>174</sup>

Commitment to place that locally based decision makers have also appears important within the Haida Gwaii arrangement. This relates to the higher degree of accountability that locally based people have to a community. As District Manager Leonard Munt who has lived in Haida Gwaii for 16 years expressed, "I've been married to the Haida for 16 years." As Munt explained, "It is personal, especially when you live with a First Nation. When I make decisions, it's important I can look people in the eye honourably, even if they don't like the decision."

Regarding their Haida Gwaii collaborative governance case study on influences on trust, Hotte and others mentioned that "Ability, described in terms of relevant knowledge, familiarity with local issues and interests, and accountability to local communities, was emphasized by several

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<sup>173</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>174</sup>Kruse, Jack; Klein, Dave; Braund, Steve; Moorehead, Lisa; and Simeone, Bill. Co-Management of Natural Resources: A Comparison of Two Caribou Management Systems. Human Organization. 1998. Vol. 57, No. 4, pp. 447-458. <https://stajournals.net/doi/10.17730/humo.57.4.q5825utw35841p11>

interviewees.” As one of their study’s interviewees stated, “[Trust is] established and reaffirmed on an ongoing, probably daily, basis, as opposed to [collaborators who live elsewhere], who do not have that experience with the people on Haida Gwaii.” Our conversations with interviewees for this report, Hotte’s case study, and other research and anecdotal evidence demonstrate that there is no substitute for time spent together. “Studies have found that social distance contributes to low trust (Stern 2008), that informal interactions are important, and that turnover among participants can be disruptive (Davenport et al. 2007; Davis et al. 2018), in part, due to the importance of routine (Möllering 2006).”<sup>175</sup>

Provisions within legislation can assist with ensuring there is a continued relationship between individuals of arrangements. The provision within the Nunavut Act for one of the federal government’s appointees to the Nunavut Wildlife Management Board to be “ordinarily resident in Nunavut” provides an example.

### *Solutions-Orientation & Openness to Cross-Cultural Learning*

A solutions-oriented mindset and openness to cross-cultural learning are traits that appear to strengthen mutual respect and trust amongst individuals within an agreement. These are important traits amongst all individuals within an arrangement, but are especially integral amongst Crown participants. As the vast majority of legislation for environmental governance frameworks in western anglo-settler nations is overwhelmingly modelled after western ontological perspectives and values, an openness to Indigenous worldviews is integral in a postcolonial era of reconciliation. Certain individuals are more open to co-learning and co-validation of different ontological perspectives than others. This should be a consideration when determining which individuals may be most effective at progressing towards mutually-agreed upon objectives within an arrangement.

In our research, the District Manager for Haida Gwaii recounted when Provincial workers were invited by the Haida to sit around the fire and listen to the stories and aspirations of the Haida people during the 2005 forestry conflict. After listening to stories and concerns shared by the Haida, the District Manager wrote a concept paper with a proposal based on what he was hearing that went to the Deputy Minister and then on to the Premier. This action enabled more meaningful collaboration on co-development of an arrangement between the parties.

On a similar note, the New Zealand Crown negotiators we spoke with in this review were extremely candid about past Crown atrocities to Māori and adamant about the need for innovative approaches that work towards reconciliation. The level of understanding of Māori culture and aspirations that they conveyed was impressive, from pronunciations of Māori terms and place names to the unique contexts of iwi. This further demonstrates how important an

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<sup>175</sup>Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert. Influences on trust during collaborative forest governance: a case study from Haida Gwaii. *Canadian Journal of Forest Research*. 2018. Vol. 49. Pp. 361-374.  
[https://www.researchgate.net/publication/329199011\\_Influences\\_on\\_trust\\_during\\_collaborative\\_forest\\_governance\\_A\\_case\\_study\\_from\\_Haida\\_Gwaii](https://www.researchgate.net/publication/329199011_Influences_on_trust_during_collaborative_forest_governance_A_case_study_from_Haida_Gwaii)

openness to cross-cultural learning and a deep commitment to reconciliation is important amongst members involved in an arrangement.

## Identifying Shared Values

As Danesh and McPhee offer, “FPIC [Free, Prior and Informed Consent] is best thought of as a process of structuring proper nation-to-nation and government-to-government Indigenous-Crown relations in which decisions and authorities are aligned, and there are established dispute resolution mechanisms when they are not.”<sup>176</sup> The establishment of very clear, specific dispute-resolution criteria at the outset of an agreement is an aspect that many experts deem necessary for success of an arrangement. Although it is too early to evaluate, the BC - shíshálh Nation Agreement appears to provide clear and specific dispute resolution processes, as described earlier in this report.

But just as if not more important, is fostering conditions for consensus-building. Although deliberations may take longer, practitioners in BC have noted that a consensus-based approach to decision-making allows for “cooperative formulation of a recommendation” for proposals and applications under consideration by both parties. First Nation practitioners have noted that this enables interactive discussion that’s not allowed for in the standard BC referrals process.<sup>177</sup>

Chief New Zealand Crown Negotiator and Te Urewera Management Board member John Wood explained the importance of having shared values and objectives to foster consensus-based decision-making. He expressed his opinion that parties need to make achieving consensus the goal within a decision-making framework. The importance of determining shared values to co-create a shared vision was a critical part of the collaborative governance process reiterated by Wood. Investing time collaborating to determine what those shared values are among the parties is time well spent. Wood shared that in negotiations he’s been involved with, the parties typically start with sharing aspirations and exchanging values with each other. He recommended beginning by identifying the usually large number of overlapping values attached to the natural entity/ area/ resource the parties are negotiating a collaborative arrangement for, and determining what legislative principles can cohabit with shared values.<sup>178</sup>

Hotte and others’ case study similarly “illustrated how trust was built as collaborators explored alignment of interests through designing institutions, including shared values, objectives, and visions.” They share, “The literature notes similarities between the constructs of integrity and values in terms of embodying a shared set of standards for how individuals interact with one

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<sup>176</sup>Danesh, Roshan and McPhee, Robert. Operationalizing Indigenous Consent through Land-Use Planning. Institute for Research on Public Policy. 2019. <https://irpp.org/research-studies/operationalizing-indigenous-consent-through-land-use-planning/>

<sup>177</sup>Simon Fraser University. Discussion Paper: Understanding the Sharing of decision-making in BC. SFU Centre for Dialogue. 2014. PDF.

<sup>178</sup>Gordon, Katherine; Hicks, Ian; Houlbrooke, Rachel & Wood, John (Chief Crown Treaty of Waitangi Negotiator; Deputy Chief Executive- Te Arawhiti/ the Office of Maori Crown Relations; Negotiations Manager- Te Arawhiti/ the Office of Maori Crown Relations; Chief Crown Te Urewera Settlement Negotiator, respectively) in discussion with the author. November 4, 2019.

another (Rokeach 1973; Braithwaite 1998). Braithwaite (1998) notes that value systems capture worldviews that are linked with criteria used to make judgements about others' trustworthiness and that conflicting values can have implications for perceptions of integrity among collaborators."

## Fostering Epistemic Fluency and a "Two-Eyed Seeing" Approach

In addition to identifying shared values within an agreement, it is important to prepare for when and where values between parties diverge, often due to worldview differences. "In an intercultural context involving Indigenous and non-Indigenous government representatives, how differences in worldviews are handled by collaborators can have important implications for trust."<sup>179</sup>

Epistemic fluency can be defined as "the capacity to understand, switch between and combine different kinds of knowledge and different ways of knowing about the world."<sup>180</sup> It corresponds strongly with the concept of "two-eyed seeing", which is increasingly used within the Indigenous Protected and Conserved Area (IPCA) vernacular. Mi'kmaw Elder Albert Marshall refers to two-eyed seeing as, "To see from one eye with the strengths of Indigenous ways of knowing, and to see from the other eye with the strengths of Western ways of knowing, and to use both of these eyes together."<sup>181</sup>

Two-way capacity building among individuals of a collaborative governance arrangement is especially prevalent in this era of reconciliation. As articulated by the Indigenous Circle of Experts in their Final Report and Recommendations regarding how Canada can achieve its international biodiversity targets, "[Capacity building] is often perceived as a one-way process for empowering Indigenous Peoples in relation to Crown-led and science-based processes, tools and mechanisms. But it should be a two-way collaboration and learning platform where Indigenous People are given the means to understand and make decisions within a western-based system, while non-Indigenous participants are supported in learning, appreciating and integrating Indigenous knowledge into western based decision-making processes."<sup>182</sup> Safe

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<sup>179</sup>Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert. Influences on trust during collaborative forest governance: a case study from Haida Gwaii. *Canadian Journal of Forest Research*. 2018. Vol. 49. Pp. 361-374.  
[https://www.researchgate.net/publication/329199011\\_Influences\\_on\\_trust\\_during\\_collaborative\\_forest\\_governance\\_A\\_case\\_study\\_from\\_Haida\\_Gwaii](https://www.researchgate.net/publication/329199011_Influences_on_trust_during_collaborative_forest_governance_A_case_study_from_Haida_Gwaii)

<sup>180</sup>Markauskaite, Lina, and Goodyear, Peter. About. Epistemic fluency innovation, knowledgeable action and actionable knowledge. n.d. <https://epistemicfluency.com/about/>

<sup>181</sup>Iwama, M. & Marshall, M. & Marshall, A. & Bartlett, Cheryl. Two-eyed seeing and the language of healing in community-based research. 2009. *Canadian Journal of Native Education*. Volume 32: pp. 3-23.  
[https://www.researchgate.net/publication/309725911\\_Two-eyed\\_seeing\\_and\\_the\\_language\\_of\\_healing\\_in\\_community-based\\_research](https://www.researchgate.net/publication/309725911_Two-eyed_seeing_and_the_language_of_healing_in_community-based_research)

<sup>182</sup>The Indigenous Circle of Experts. We Rise Together Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation. The Indigenous Circle of Experts' Report and Recommendations March 2018.  
[https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE\\_Report\\_2018\\_Mar\\_22\\_web.pdf](https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE_Report_2018_Mar_22_web.pdf)

forums that allow fundamental differences in worldviews to be highlighted and better understood may assist when disagreements over approaches occur in decision-making.

As Tipa & Associates write, “Tangata whenua [local people] are often confronted by a dichotomy when many valued environments are viewed as a collection of “natural resources”, to be “managed” through dismembering and biological and social simplification (Scott, 1998).” In highlighting the example of rivers from both western and Māori perspectives to illustrate this point, they write “the western construct of the ‘elements of a river’ (for example, the water, the bed, the space the water occupies, the air above it), compared to a traditional Maori view of a tupuna awa (the river as an ancestor) as described by Muru-Lanning (2009), or the river as an undivided and indivisible entity (Durette, 2009).”<sup>183</sup>

Cross-cultural learning can be operationalized through sharing stories and lessons learned between Indigenous and non-Indigenous participants within a collaborative arrangement. The value in this was demonstrated in our review through the aforementioned Haida Gwaii fireside conversation, which was transformative for those individuals in attendance. As the Indigenous Circle of Experts suggest, other ways to operationalize two-way capacity building may involve Crown members of a framework respecting and participating in traditions and ceremonies on the land, or by Crown enforcement staff working with Indigenous Land Guardians.

## **Delineating Indigenous Constructs in Legislation**

Cultural protocols can be found in some shared decision-making frameworks in BC, which SFU Shared decision-making researchers note, is an opening that may allow for the adoption of more culturally balanced practices over time. The use of Indigenous constructs in Indigenous languages within state legislation is a protocol that appears to be increasing in multi-party governance arrangements.

As SFU Shared decision-making researchers note, institutional processes can form quickly and can be incredibly difficult to change. For this reason, formalization of such values, processes or ways of being from inception may be wise for truly shared decision-making processes. Some highlight the limitations of Westernized processes “to really come to terms with the spiritual or philosophical underpinnings of Indigenous norms regarding human interactions with each other and the environment.”<sup>184</sup> The inability of English terminology and Western processes to capture the essence of Indigenous constructs may at least begin to be addressed through delineating Indigenous terms in legislation, which can be educational.

For example, in the section of the Te Urewera Act describing functions of the Te Urewera Management Board, the parties relate the following:

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<sup>183</sup>Tipa & Associates. A Cultural Perspective on Ostrom’s Predictors of Collective Action. 2012. <https://wheelofwater.files.wordpress.com/2015/09/working-draftreport-tw-collaborations-oct-12.pdf>

<sup>184</sup>Simon Fraser University. Discussion Paper: Understanding the Sharing of decision-making in BC. SFU Centre for Dialogue. 2014. PDF.

(2) In performing its functions, the Board may consider and give expression to—

- (a) Tūhoetanga:
- (b) Tūhoe concepts of management such as—
  - (i) rāhui:
  - (ii) tapu me noa:
  - (iii) mana me mauri:
  - (iv) tohu.

(3) In this section, in accordance with the understanding of Tūhoe,—

**mana me mauri** conveys a sense of the sensitive perception of a living and spiritual force in a place

**rāhui** conveys the sense of the prohibition or limitation of a use for an appropriate reason

**tapu** means a state or condition that requires certain respectful human conduct, including raising awareness or knowledge of the spiritual qualities requiring respect

**tapu me noa** conveys, in tapu, the concept of sanctity, a state that requires respectful human behaviour in a place; and in noa, the sense that when the tapu is lifted from the place, the place returns to a normal state

**tohu** connotes the metaphysical or symbolic depiction of things.<sup>185</sup>

The Nunavut Wildlife Act similarly depicts Inuktitut terms, as mentioned earlier in this report.<sup>186</sup>

The benefit of the use of Indigenous terminology for First Nation parties is that only First Nations themselves can define what those terms mean. Similar reasoning applies to (a)

The first purpose of the Te Urewera Act, which is to “strengthen and maintain the connection between Tūhoe and Te Urewera.” As a citizen of Tūhoe explained, only Tūhoe can define what strengthening and maintaining their connection with Te Urewera looks like.

Beyond mere terminology, an example of a framework that seemingly weaves worldviews and embraces a two-eyed seeing approach is the *Te Kawa o Te Urewera* Management Plan.<sup>187</sup>

Exploration of this management plan may provide examples to prompt discussion about how to build epistemic fluency for management decisions within the 3N-BC context.

## Applying Traditional Knowledge

As effectively engaging and validating indigenous knowledge in full partnership with scientific knowledge is integral within authentic collaborative governance<sup>188</sup>, expanding participants’

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<sup>185</sup>New Zealand Parliamentary Counsel Office. Te Urewera Act 2014. 2018. <http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html>

<sup>186</sup>Lévesque, Francis. Revisiting *Inuit Qaujimaqatuqangit*: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999. *Études/Inuit/Studies*. 2014. Vol 38, no 1-2, pp. 115–136. <https://doi.org/10.7202/1028856ar>

<sup>187</sup>Tūhoe Management Board. Te Kawa o Te Urewera- English. 2017. <http://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera>

<sup>188</sup>Natcher, David C., Davis, Susan, and Hickey, Clifford G. Co-Management: Managing Relationships, Not Resources. *Human Organization*. 2005. Vol. 64, No. 3: pp. 240-250.

Goetze, T.C. Empowered co-management: towards power-sharing and Indigenous rights in Clayoquot Sound, BC. *Anthropologica*. Vol. 7, Issue 2. [https://www.researchgate.net/publication/292733479\\_Empowered\\_co-management\\_towards\\_power-sharing\\_and\\_Indigenous\\_rights\\_in\\_Clayoquot\\_Sound\\_BC](https://www.researchgate.net/publication/292733479_Empowered_co-management_towards_power-sharing_and_Indigenous_rights_in_Clayoquot_Sound_BC)

ability to engage with traditional knowledge (TK) is recommended. Both the Nunavut and NWT models we reviewed included capacity building initiatives regarding how to collect and use TK effectively within co-management boards.

As the collection and use of traditional knowledge can be sensitive, some shared decision-making agreements, in recognizing and respecting the confidentiality of certain information held and stewarded by First Nations, have established discretionary processes to safeguard and honour how it may be accessed and used. The Government of the Northwest Territories, for example, has created a document outlining best practices for applying traditional knowledge within their programming. Among the practices are ensuring the protection of sensitive information, ensuring informed consent, ensuring local ownership and control of information, and establishing clear communication and reporting links.<sup>189</sup>

## Planning to Address Capacity Constraints

Capacity-building needs at the institutional, community, and individual levels ought to be considered by parties in design of a framework.<sup>190</sup> Capacity constraints, particularly amongst Indigenous parties, were commonly mentioned as an issue within collaborative decision-making arrangements we explored.

### Over-Extended Leaders in Small Communities

Because of all the other responsibilities and commitments that Indigenous leaders often have placed on them, they are spread thin, particularly in communities with small populations. This often results in high demands being placed on a few people, and little capacity for additional tasks. We even experienced this when trying to reach some Indigenous leaders for an interview for this review. As the Auditor General of New Zealand's Report states, "A lack of experienced, capable people means high demands are placed on the few. As one iwi leader said to us: My favourite statement is – 'be careful what you ask for.' Because you might get it. Have we got the capacity to be able to deliver on any responsibilities that we are given?" The report noted that other interviewees in their review echoed this statement, recommending indigenous parties "think about and prioritise what they need to be involved in, rather than try to be involved in everything."

As the New Zealand review further stated, "The important point is that all parties involved in co-governance work together to agree on solutions that are appropriate to them. Again, this highlights the value of effective relationships."

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<sup>189</sup>Government of Northwest Territories. Summary of Best Practices for Applying Traditional Knowledge in Government of the Northwest Territories Programming and Services. n.d. [https://www.enr.gov.nt.ca/sites/enr/files/reports/tk\\_best\\_practices\\_summary.pdf](https://www.enr.gov.nt.ca/sites/enr/files/reports/tk_best_practices_summary.pdf)

<sup>190</sup>Raik, Daniela. Capacity Building for Co-management of Wildlife in North America. Human Dimensions Research Unit. Cornell University. 2002. <https://pdfs.semanticscholar.org/ac7b/0720b16488fe296868a3b9b18d7bf68771cd.pdf>

Although no single solution can resolve capacity gaps, we came across some innovative examples to begin to address this systemic issue.

### *A Phased Approach*

A phased approach to implementation may assist with capacity constraints and allow for capacity to be built along the way. This approach, employed in the design of the shíshálh Nation agreement, allows the newly established Shared decision-making Board to assume increasing authority and jurisdiction over time. Initially and immediately upon the effective date of the agreement, the shared decision-making process applies just to forestry decisions, then extends to decisions made by the provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development for other authorizations at set dates.<sup>191</sup> “Public entities need to be careful not to make unrealistic demands straight away, and help build capability among the co-governors.” Another phased approach to succession management (and to build capacity and capability) is having co-chairpersons and deputy chairpersons, which reduces pressure on the co-chairpersons and provides an opportunity for future chairpersons to be trained.

### *A Fund*

Under the Waikato River Agreement, a fund was established to support capability and capacity building amongst each of the five iwi (tribes) involved. The fund enables each iwi to receive \$1 million NZD per year for 30 years to build capacity amongst tribal members and enable them to further engage with co-management arrangements for the river.<sup>192</sup> On a lesser scale, the Government of Canada recently allocated \$216,000 through CanNor to some support bodies of the Nunavut Wildlife Management Board to develop tools to improve their governance system<sup>193</sup> but the support bodies continue to face resource shortage and capacity issues.<sup>194</sup>

### *Secondments*

In their review, the Auditor General of New Zealand’s Office found that some local Crown authorities had hired iwi members as employees to help build capacity in necessary skills such as management that are required of members within co-governance arrangements. The iwi

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<sup>191</sup> shíshálh Nation / British Columbia Foundation Agreement. 2018. [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh\\_nation\\_foundation\\_agreement\\_-\\_final\\_-\\_redacted\\_signed.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh_nation_foundation_agreement_-_final_-_redacted_signed.pdf)

<sup>192</sup> Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>193</sup> Canadian Northern Economic Development Agency (CanNor). Improving governance with Nunavut’s Hunters and Trappers Organizations. Cision. February 11, 2019.

<sup>194</sup> Akearok, Jason. (Executive Director, Nunavut Wildlife Management Board) in discussion with the author. October 11, 2019.

member was able to share how the local authority works with their iwi, whilst the local authority was able to learn about the operation and perspectives of the iwi.<sup>195</sup>

### *Regional Support Bodies*

Support bodies that provide critical management information at a technical level to co-governance bodies, such as Hunter Trapper Organizations in Nunavut, appear to be critical to the success of many models and ensure the co-governance body remains regionally relevant. Resources for these support bodies' continued capacity development often appears to be an afterthought in collaborative arrangements. Planning for financial resourcing for regional support bodies is an aspect that may be especially relevant to the 3N-BC team in creation of a model in a geographically large, sparsely populated region.

### *Secretariat Support*

Sharing technical and administrative support through a secretariat has proven to assist some Indigenous organizations in capacity constraints within collaborative arrangements. For example, when lack of administrative and technical capacity and support became an issue for Hunter Trapper Organizations and Regional Wildlife Organizations within Nunavut, the Nunavut Inuit Wildlife Secretariat was established to provide support in these arenas.<sup>196</sup> For the Mackenzie Valley's non-self governing First Nations (the Gwich'in and the Sahtu) well-staffed secretariats assist with capacity for their Renewable Resource Boards also, with 8-9 staff each in administrative, policy, organizational and technical roles.

### *Youth Engagement for Succession Planning*

Further investment in youth and long-term succession planning through creative solutions such as collaborating with secondary schools or community colleges may be an avenue to foster necessary technical and management skills for up-and-coming generations to assume roles within co-governance frameworks. In some cases, such as the Executive Director of the Sahtu Land and Water Board described, attempts to build technical capacity amongst community members in regions with small populations, such as via technician programs, still continue to struggle. As we also found in our review however, building capacity within a First Nation in the spirit and intent of reconciliation doesn't lie solely in strengthening Indigenous members' capabilities to perform westernised tasks. It can also happen through strengthening traditional knowledge by reconnecting youth with Elders, documenting Elders' and harvesters' knowledge, mapping using Indigenous place names, and more. The Nunavut Wildlife Management Board

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<sup>195</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016.

<https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>196</sup>Nunavut Tunngavik. Inuit and Land Claims Organizations. 2009. <https://www.tunngavik.com/wp-content/uploads/2009/02/nti-org-chart-english.pdf>

provides a good example of this through their objective of strengthening and promoting Inuit culture in wildlife management, which they've operationalized through initiatives such as their Inuit Qaujimagatugangit (IQ) program described in this report.

## **“We Can’t Manage What We Can’t Measure” - The Pivotal Role of a Strong Research Program and Information Sharing Mechanisms to enable Evidence-based decision-making**

One of the key beliefs of the 3 Nations Society - “We Can’t Manage What We Can’t Measure” - is particularly significant in negotiating a multi-party decision-making arrangement for wildlife. Evidence-based decision-making appeared to be a best practice in co-governance frameworks we reviewed. Adequate research funding, participatory research, and clear information sharing protocols can assist in ensuring that ethical, evidence-based decision-making occurs.

### **Adequate and Flexible Funding to Address Data Gaps**

Last year, a study reviewing 667 management plans for 27 species that are hunted and trapped in Canada and the United States revealed data-poor logic that was concerning to some scientists. Kyle Artelle, lead author of the review and a biologist with Simon Fraser University and the Raincoast Conservation Foundation, explained, “We highlighted four foundational hallmarks that would be required for a wildlife policy to be considered science-based: transparency, external scrutiny, clear objectives and evidence.” The study found that 60% of plans had fewer than half of those hallmarks, with half not reliant on population data. Artelle expressed, “You’d be hard pressed to call any given activity science if it’s missing any of those pieces.” Artelle contended that wolf management in BC was “a prime example of missing hallmarks of science.”<sup>197</sup>

As stated in the Nunavut Agreement, “there is a need for an effective system of wildlife management, and to be effective, the system of management requires an efficient, coordinated research effort.” To address this, parties to the Nunavut Agreement committed to the creation of an \$11 million trust fund for wildlife research by territorial and federal agencies upon the signing of the agreement.<sup>198</sup>

Members of the HGMC who we spoke with explained that new forestry inventory information that could significantly assist in decision-making for the Annual Allowable Cut determination they’re legislated to make, such as vegetation resource inventory and LIDAR, had become available through technological progress. Their funding arrangement has enabled them to carry

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<sup>197</sup>Lavoie, Judith. “Seeking the Science Behind B.C.’s Wolf Cull”. The Narwhal. April 5, 2018. <https://thenarwhal.ca/seeking-science-behind-b-c-s-wolf-cull/>

<sup>198</sup>Nunavut Tunngavik. Nunavut Agreement: Article 5: Wildlife. n.d. [https://nlca.tunngavik.com/?page\\_id=268#ANCHOR319](https://nlca.tunngavik.com/?page_id=268#ANCHOR319)

out necessary research with these new tools with their budget and support from both Haida and Provincial forestry staff in working groups. The nature of required research is not uniform year to year, and research endeavours often take more than one year to undertake, so the ability to carry over funds between fiscal year budgets has been “a significant advantage to the HGMC work since it ensures that contract work proceeds appropriately rather than being driven by fiscal year end pressures.” This is enabled through the Secretariat of the Haida Nation financial administrative process<sup>199</sup>, and is something the 3N-BC Team may wish to integrate into its framework.

All considered, all parties involved in a decision-making framework should cooperatively assess the resources that will be required to deliver on a jointly developed mandate. If that mandate is to include evidence-based decision-making, including a research fund is strongly recommended.

## Participatory Research

As Berkes notes, “[Power sharing] can be further strengthened by institution and capacity building and knowledge sharing.”<sup>200</sup> It appears that one effective way to build capacity, strengthen institutions and share knowledge is in making some financed research participatory. In the Nunavut Act, the assertion of Inuit to not only participate in research, but to help determine what research is undertaken and how it’s undertaken is designed to strengthen community capacity along the way. The Nunavut Wildlife Management Board’s initiatives, such as its Community Based Wildlife Monitoring Network that trains harvesters to use hand-held computers to record wildlife data is an example of co-production of knowledge that can result from research collaborations between parties. This is one of the strengths of collaborative arrangements that invest in research - they co-produce knowledge that is necessary to effectively manage natural resources. As Berkes and Armitage explain, “Different groups hold different kinds of knowledge. Science and Indigenous knowledge can together result in co-production of knowledge that neither party can produce alone.”<sup>201</sup>

The power that accompanies funding for research and direction over what research is conducted ought to be given due consideration within a collaborative agreement. Collaborative arrangements that have to rely on crown government data and research priorities can create power imbalances within systems. A Māori collaborator who has assisted in strengthening iwi’s ability to access and utilise data for several initiatives, including co-governance arrangements, mentioned how it is his perception that a data imbalance issue is a major part of why

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<sup>199</sup>Haida Gwaii Management Council. 2017-18 Annual Report. <http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/2018AnnualReport.pdf>

<sup>200</sup>Berkes, Fikret. Evolution of co-management: Role of knowledge generation, bridging organizations and social learning. *Journal of Environmental Management*. 2009. pp. 1692–1702. [http://forestpolicy.com/wp-content/uploads/2010/11/berkes\\_2009\\_adaptive-co-management.pdf](http://forestpolicy.com/wp-content/uploads/2010/11/berkes_2009_adaptive-co-management.pdf)

<sup>201</sup>Berkes, Fikret and Armitage, Derek. Co-management institutions, knowledge, and learning: Adapting to change in the Arctic. *Études/Inuit/Studies* 34, no. 1. 2010. pp. 109–131. <https://doi.org/10.7202/045407ar>

collaborative arrangements between Crown institutions and iwi can struggle. “The co-governance partner who has the data writes the story,” he explained. He shared several examples about how he has witnessed Māori become empowered in recent years in arrangements with regional councils through having the ability to access and use data they require, and how this has levelled the playing field. “You can’t have some of these co-governance discussions if one party is flying blind.”<sup>202</sup>

Indigenous data sovereignty expert Matthew Snipp articulates this power imbalance issue: “Of course, relying on outsiders typically involves significant compromises over the control of data and therefore data sovereignty. Thus, these compromises entail important questions about from whom data are collected, the content of these data, the purposes for which these data are to be used and who will ultimately control access to these data. These questions are critical for understanding the vestiges of colonial dependency of indigenous people on the settler state ... “[Data] sovereignty reflects the desire and ability of nation-states to continue to manage information in ways that are consistent with their laws, practices and customs. Such ability has long been beyond the reach of indigenous nations, who are smaller, poorer and politically weaker than the settler states that typically surround them. As long as this remains the case, it makes little sense to talk about a fully postcolonial world. Nonetheless, thinking of postcolonialism as a continuum, instead of a simple binary, does make it possible to consider how indigenous peoples might claim greater control over data connected to them.” Snipp outlines preconditions for “data decolonisation”, and explains that for data sovereignty to be realised, Indigenous communities must be able to direct the content of data collected about them and be able to determine who has access to that data. “This requires the building of indigenous expertise in the production and management of data and the formation of governance arrangements that allow for institutional oversight of research and data collection in indigenous communities.”<sup>203</sup>

Research that is participatory at all stages, from priority-setting, through to design and execution can assist in working towards closing information asymmetry gaps between parties.

## Clear Information-Sharing Protocols

Clearly outlining processes for information sharing within agreements assists with clarity for all parties. Some experts suggest that information sharing, prior to even reaching an agreement, facilitates relationship building among parties. SFU’s Shared decision-making in BC Collaborative Research Project described how in the establishment of some agreements, an independent expert body dedicated solely to information collection and sharing has been established. This was the case with the formation of the Coast Information Team to feed into the Strategic Land Use Agreements linked to Reconciliation Protocols for BC Coastal First Nations.

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<sup>202</sup>Taitoko, Mike (CEO, Takiwā Data Analytics) in discussion with the author. September 20, 2019.

<sup>203</sup>Kukutai, Tahu, and Taylor, John, eds. *Indigenous Data Sovereignty: Toward an Agenda*. Chapter 3: What does data sovereignty imply: what does it look like? (pp. 39-56). Acton ACT, Australia: ANU Press, 2016. <http://www.jstor.org/stable/j.ctt1q1crgf>.

Some parties of shared decision-making arrangements, such as those in the Skeena Region, have been working towards an online Shared Engagement Record, to record and compile engagement by all parties and thereby serve as a shared point of reference for decision-making.<sup>204</sup> In development of an information sharing protocol, as agreed to at the second 3N-CSF Governance Team Meeting, the 3N-BC team may wish to follow the progress of the information sharing portal initiative that the Province is exploring within the Haida Gwaii arrangement, mentioned earlier in this report. Advancing how data can be provided by the Province, First Nation partners and industry into a central system may improve efficiencies.

## Maintaining a Constituency of Support

Collaborative decision-making bodies must ensure they are maintaining a constituency of support as they make decisions and deliver on their mandate. Engaging and communicating meaningfully with the community and other stakeholders, and adapting arrangements as circumstances change, is integral. Through providing designated forums for stakeholder feedback, creating opportunities for stakeholders to tangibly participate in projects, communicating frequently on progress made and reasons for decisions, and remaining responsive to feedback through adaptations, collaborative bodies can work towards maintaining support.

## Engaging with the Community

Having thorough public engagement processes to allow for feedback from community members is crucial within an arrangement. The HGMC also has thorough public engagement processes to evaluate issues as they make decisions, which include visiting island communities, touring around Haida Gwaii, hosting open houses and more to solicit feedback and input upon sharing information with the public.

Within the Nunavut Wildlife Management Board, since Indigenous participants from communities and regions compose roughly half of the board, community concerns and questions can be shared at meetings of the Board, which are open to the public. The NWMB also has the ability to establish special and standing committees on issues under its purview as it deems necessary, and the ability to hold public hearings into any issue requiring a decision on the Board's behalf.<sup>205</sup>

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<sup>204</sup>Simon Fraser University. Discussion Paper: Understanding the Sharing of decision-making in BC. SFU Centre for Dialogue. 2014. PDF.

<sup>205</sup>Berkes, Fikret and Armitage, Derek. Co-management institutions, knowledge, and learning: Adapting to change in the Arctic. *Études/Inuit/Studies* 34, no. 1. 2010. pp. 109–131. <https://doi.org/10.7202/045407ar>

Feedback mechanisms and processes may need to be tailored over time to ensure they are effective for the context. Public hearings, although the most common process to gather public opinion within collaborative arrangements, may not always be the most impactful. As Executive Director Jody Pellissey of the Wek'èezhì Renewable Resource Board offered, "Elders are often just getting warmed up after ten minutes of speaking." Having focus groups has been an additional or alternative solution to public hearings to ensure their board is connecting not just with Elders, but also with youth, harvesters, and both men and women, all of whom Pellissey explained offer different perspectives and knowledge on an issue.

## Providing Opportunities to Engage through Projects

Alongside participatory research projects already mentioned, allowing the public to engage with a collaborative governance arrangement through restoration projects can bolster community engagement.

Julian Williams, Principle Advisor of Engagement and Policy for Waikato-Tainui, explained the initial structuring of the Waikato River Authority with policy on one side and projects on the other "was to get some quick wins on the board because regulation is so slow. There was some things we could do 'now': planting, fencing, retirement of land, training our people and community groups to develop programmes themselves, wetland restoration etc."

The Waikato River Authority serves as trustees for the Waikato River Clean-Up Trust, a \$210 million dollar fund that allocates \$7 million dollars a year for 30 years to restoration initiatives for the river. The fund is contestable and allocates money to groups to deliver projects to achieve the Vision of the Waikato River Authority, complementing its regulation. This of course benefits the river but also extends the capability of the locals and reconnects those who might be dislocated from their cultures, to their river ancestor.

As Williams made clear, "The general community is not interested in policy." He explained that although people are aware of the Vision and Strategy, the fund and its projects have helped them understand more about the Waikato River Authority. The Authority has acknowledged where the length of time it takes to achieve results can greatly affect public perceptions of the project's effectiveness. "It is important to manage people's expectations about the pace of progress to keep stakeholders and the public engaged to sustain support for the project. This can be done by keeping people informed about the progress made to date, and by explaining why it takes so long."<sup>206</sup> The Authority has recently released an app that community members can download on their smartphones to keep aware of planting and restoration projects at different locations along the river. The app has project pins dropped within an interactive map that allows the public to learn more about projects they're funding.<sup>207</sup>

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<sup>206</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>207</sup>Waikato River Authority. Waikato River Authority Funding Projects. 2019. <https://www.waikatoregion.govt.nz/community/your-community/wra/>

## Engaging Other Stakeholders

Collaborative governance arrangements often provide a dedicated forum for engagement with other stakeholders. For example, the NWT Board Forum, which consists of the Chairpersons of all boards and committees that were established to co-manage natural resources within the NWT, provides a structured arena for industry and other organizations and governments to engage with the NWT's many co-management boards.<sup>208</sup>

Another way that engagement with other stakeholders, such as surrounding landowners or industry representatives is increasingly occurring in collaborative arrangements is through having an advisory or strategy partner table allocated to such stakeholders. Tables including industry appear to be beneficial in enabling common understanding amongst parties and synchronizing efforts towards common objectives. Creation of a Licensee Table which is part of the shíshálh Nation agreement and has been a component of Haida Gwaii's management regime, seems like a smart addition to an agreement to enable co-governance parties to remain ahead-of-the-curve regarding challenges. To actualise the Vision and Strategy of the Waikato River Authority, the Authority accepted the requirement to work with major stakeholders who affect the river on a restoration strategy. This includes the Waikato Regional Council and a variety of industry partners, such as DairyNZ. The New Zealand Auditor General's Review on Collaborative Governance arrangements described the following:

"One dairy industry representative commented on how the Waikato River Authority had helped to bring industry partnerships and interests together: [Industry members] have a group called the Waikato Dairy Leaders Group. It involves the chairs of the milk companies in the Waikato and the president of Waikato Federated Farmers, and Fonterra. We are interacting with the Waikato River Authority, it's about how dairy interacts with policy-makers around the [Healthy Rivers: Plan for Change]. In the past, there has been an "us and them" tension. But now we have lots more interaction and are working in partnership ... anything is better than fighting in the Environment Court." As they explained, there are some common objectives: "For all parties, including community and industry groups, co-governance provides new ways of managing a resource to: • achieve conservation or environmental outcomes; • build a relationship and understanding of each other; and • reduce the number of incidents where parties feel the need to use the courts to achieve their purposes."<sup>209</sup>

## Continued Communication and Outreach

### *On Progress Made*

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<sup>208</sup>NWT Board Forum. Overview of Land and Resource Management in the NWT. 2013. <https://www.nwtboardforum.com/wp-content/uploads/2013/05/NWTBoardForumPPT.pdf>

<sup>209</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

Reporting to the public on progress made at agreed upon milestones is a common feature of arrangements we reviewed.

Coast Funds provides a good example of reporting publicly on progress made towards social, environmental, economic and cultural indicators, in a way that's digestible, interesting and readily accessible. The "[Well-Being Outcomes](#)" tab of their webpage clearly demonstrates the four categories of environmental conservation, economic prosperity, social empowerment, and cultural vitality that they measure their initiatives by. These categories are further broken down into specific indicators accompanied by statistics displayed through diagrams, tables and more. For example, from their 'Environmental Conservation Outcomes' tab, users can click on 'Management Plans', 'Protected Areas', 'Guardians', 'Research', or 'Regulation' and be guided to specific outcomes. Stories with photos accompany many of these tabs. Reporting via a user-friendly interface like this keeps the public informed, and satisfies and motivates parties and external funders of a collaborative arrangement.

The Waikato River Authority releases a [Report Card](#) for the Waikato River and adjoining Waipa River, which grades the health of each section of the river in a holistic manner in relation to the Vision and Strategy.

#### *On Reasons for Decisions*

The greater the transparency regarding decisions the better within in an arrangement. "[Reasons for Decision](#)" documents such as the one the Wek'èezhì Renewable Resource Board releases or the [Public Review and Data Package](#) that the Haida Gwaii Management Council releases to the public on its website are examples of good board transparency. Newsletters can assist with keeping the public informed of a board's activity also. When the Nunavut Wildlife Management Board is considering making a decision, there is a public registry of information they put up on the NWMB website that everyone can access. When they can, the Board travels to communities to communicate information. They use social media to share information also, but due to the remote nature of many Nunavut communities, internet and social media bandwidth are limited.

Collecting data that illustrates the impact of a board's decisions, such as the Haida Gwaii Management Council does, is helpful as this can then be fed into future decisions and reviews. For example, data demonstrating the on-the-ground implications of the amended Land Use Objectives Order on the timber harvesting land base has been used by their Joint Technical Working Group, allowing the HGMC to account for how forestry operations have changed since the implementation of the amendments in 2011. They are then able to build these changes into the Timber Supply Review.

#### *Remaining Responsive and Adaptive*

Parties can foster constituencies of support through ensuring their arrangement is flexible enough from the outset to adapt as circumstances change. Arrangements require ongoing adaptation and need the ability to change when support within constituencies is waning.

As Hotte and others noted in their case study examining influences on trust within forest co-governance in Haida Gwaii, “Several interviewees mentioned that agreements can support alignment, but that they must be adaptable to evolving needs and information over time.”<sup>210</sup>

As our interviews with participants in the Haida Gwaii Management Council and a review of news articles revealed, immense community frustration has built up in recent years from what is perceived as a process that is not working for many constituents at the Solutions Table level. Support for this arrangement from much of the Haida community appears to have been lost as a result of frustration that changes are either not happening or happening too slowly, damaging the relationship between parties.<sup>211</sup>

This suggests that measures to regularly assess what is and what is not working within an arrangement are important, as is the ability to respond in a timely manner.

The essence of this issue in particular - the distinctions between the functionality of joint decision-making (the Haida Gwaii Management Council) versus shared decision-making (the Solutions Table) - also highlights the need for parties to clarify and carefully consider mutual understanding of responsibilities and processes attached to different terms within an arrangement.

## Mutual Jurisdictional Recognition

Mutual recognition of jurisdiction appears to significantly strengthen functionality of a collaborative arrangement. In other words, within a collaborative arrangement, representatives at the table must have the legitimate authority to participate fully and make decisions.

As New Zealand Chief Crown Negotiator and Te Urewera Management Board Member John Wood noted, “A structure needs to be established that provides all parties with assurance that neither party can override a consensus-based decision.”<sup>212</sup> This assurance, in the form of co-recognition of authority, appears to be an important component of well-functioning arrangements.

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<sup>210</sup>Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert. Influences on trust during collaborative forest governance: a case study from Haida Gwaii. *Canadian Journal of Forest Research*. 2018. Vol. 49: pp. 361-374.  
[https://www.researchgate.net/publication/329199011\\_Influences\\_on\\_trust\\_during\\_collaborative\\_forest\\_governance\\_A\\_case\\_study\\_from\\_Haida\\_Gwaii](https://www.researchgate.net/publication/329199011_Influences_on_trust_during_collaborative_forest_governance_A_case_study_from_Haida_Gwaii)

<sup>211</sup>Kurjata, Andrew. “On Haida Gwaii, logging plans expose rift in reconciliation”. *CBC News*. December 9, 2017.  
<https://www.cbc.ca/news/canada/british-columbia/haida-gwaii-reconciliation-logging-clear-cut-1.4429532>

<sup>212</sup>Gordon, Katherine; Hicks, Ian; Houlbrooke, Rachel & Wood, John (Chief Crown Treaty of Waitangi Negotiator; Deputy Chief Executive- Te Arawhiti/ the Office of Maori Crown Relations; Negotiations Manager- Te Arawhiti/ the Office of Maori Crown Relations; Chief Crown Te Urewera Settlement Negotiator, respectively) in discussion with the author. November 4, 2019.

The 3 Nations negotiating an arrangement together with BC is likely a strength for the purposes of regulatory consistency. Although an approach uniquely tailored to each First Nation's cultural and legal traditions may be preferable to some First Nation parties, in their review of shared decision-making models in BC, Griggs and others found that inefficiencies and errors have resulted from substantial differences in agreements across BC (especially when two or more SDM agreements apply to the same region). This is due to an inability of Crown regulatory agencies to cope as they must maintain consistency on resource management matters between regions.<sup>213</sup>

For mutual jurisdiction to be effectively advanced, acknowledgement of Indigenous rights regarding the resource in question must adequately be provided for. The history of lengthy court battles in BC and across Canada and the ineffectiveness it causes for all parties has been recognized by Prime Minister Justin Trudeau, which he has publicly attributed to Indigenous rights not having been implemented by our governments.<sup>214</sup>

These rights must extend beyond mere rights of access to a resource in question. They must recognize that rights, from an Indigenous perspective, often focus largely on stewardship responsibilities for the resource. These responsibilities come through the authority to make decisions and judgments for the resource.

One way that mutual recognition of jurisdiction can occur is through a collaborative consent arrangement, although this is by no means the only way. A collaborative consent arrangement is one in which all governments recognize each other as legitimate authorities. "In a collaborative consent process, each government recognizes that the others hold relevant jurisdiction, but do not necessarily need to agree about the scope or basis for that authority, simply that each exerts authority legitimately in participating at the decision-making table." As in the Haida Nation-BC Reconciliation Protocol, for example, it is stated outright that "The Parties hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii", which they set out. They then state, "Notwithstanding and without prejudice to the aforesaid divergence of viewpoints, the Parties seek a more productive relationship and hereby choose a more respectful approach to co-existence by way of land and natural resource management on Haida Gwaii through shared decision-making and ultimately, a Reconciliation Agreement."<sup>215</sup>

Crown governments may gain some helpful insights and comfort regarding the common crown fear of power-sharing in discussing the rationale and subsequent outcomes from creation of a deliberate Indigenous-appointed majority board for Te Urewera with Crown negotiators and board members involved in that arrangement. A healthy collaborative governance arrangement

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<sup>213</sup>Simon Fraser University. Discussion Paper: Understanding the Sharing of decision-making in BC. SFU Centre for Dialogue. 2014. PDF.

<sup>214</sup>Danesh, Roshan and McPhee, Robert. Operationalizing Indigenous Consent through Land-Use Planning. Institute for Research on Public Policy. 2019. <https://irpp.org/research-studies/operationalizing-indigenous-consent-through-land-use-planning/>

<sup>215</sup>Haida Nation and the Government of British Columbia. Kunst'aa guu – Kunst'aayah Reconciliation Protocol. 2009. [http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu\\_Kunstaayah\\_Agreement.pdf](http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu_Kunstaayah_Agreement.pdf)

with legislated authority for all decision-makers at the table is also in the works with the Taranaki Maunga Arrangement in New Zealand (formerly under the colonial name of Mt Egmont National Park). We recommend the 3N-BC team, particularly BC members, speak with New Zealand Crown Negotiator Katherine Gordon regarding this progressive collaborative consent-based arrangement.

Co-recognition of authority helps to create legal certainty for involved parties within an arrangement. The Haida Gwaii Management Council provides a commendable example of this, with all members having full authority as a statutory body to make decisions. This appears to stand in contrast to Haida Gwaii's Solutions Table, in which final decisions regarding licensing can be overrode by the Crown, which has resulted in immense frustration amongst the Haida and done damage to the new relationship.<sup>216</sup>

In Hotte and others' review of influences on trust during collaborative forest governance through their Haida Gwaii case study, "fairness" was found to be one of the primary institutional influences on trust within participants of the framework. They found that fairness "was linked to unfettered authority to make decisions."<sup>217</sup>

As Judith Sayers, Strategic Adviser to First Nations and corporations and adjunct professor at the University of Victoria, writes, most models in BC that claim to embed concepts of shared decision-making (SDM), don't really exist in actuality. "As you can tell, there is only recommendations from the SDM model and not shared decision-making. The processes established are meant to bring the parties to a place of consensus and agreement on a recommendation." Sayers highlights the issue of "fettering" and recommends this be taken into account as shared decision-making models are designed.

As Sayers further explains, "One of the arguments First Nations hear all the time is that there cannot be shared decision-making as you cannot "fetter" the decision of the Minister. Most of the legislation in BC requires the Minister or his "delegate" to make the decisions within the legislation whether it is for permits or licenses. Therefore, the Minister is the only person who can make the final decision. One of the main purposes of the proposed "Recognition Act" was to allow First Nations and the Minister to make decisions together and to get away from the problem of "fettering". As we know, that legislation did not even get drafted, so in any attempts to do shared decision-making, this concept of fettering has to be taken into account."<sup>218</sup>

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<sup>216</sup>Kurjata, Andrew. "On Haida Gwaii, logging plans expose rift in reconciliation". CBC News. December 9, 2017.  
<https://www.cbc.ca/news/canada/british-columbia/haida-gwaii-reconciliation-logging-clear-cut-1.4429532>

<sup>217</sup>Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert. Influences on trust during collaborative forest governance: a case study from Haida Gwaii. Canadian Journal of Forest Research. 2018. Vol. 49: pp. 361-374.  
[https://www.researchgate.net/publication/329199011\\_Influences\\_on\\_trust\\_during\\_collaborative\\_forest\\_governance\\_A\\_case\\_study\\_from\\_Haida\\_Gwaii](https://www.researchgate.net/publication/329199011_Influences_on_trust_during_collaborative_forest_governance_A_case_study_from_Haida_Gwaii)

<sup>218</sup>Sayers, Judith. "Shared decision-making(SDM) Models in BC: Are they really Shared?" First Nations in BC Knowledge Network. 2012.  
<https://fnbc.info/blogs/judith-sayers/shared-decision-makingsdm-models-bc-are-they-really-shared>

## Considerations Regarding Authority and Accountability

While distinctions between the functionality of joint decision-making (the Haida Gwaii Management Council) versus shared decision-making (the Solutions Table) as illustrated in our exploration of the Haida Gwaii arrangement ought to be carefully considered, so too should accountability associated with the different arrangements.

### *Potential Indemnification of a First Nation from a joint decision that undergoes a Judicial Review*

As discussed under the Haida Gwaii section of this report, if a party wishes to sue decision makers on a joint decision, is the Council of the Haida Nation subject to indemnification alongside the Province? Currently, for example, a \$20 million lawsuit against the Province for a forestry licensing decision is underway and it isn't necessarily uncommon for large natural resource extraction companies to sue for large amounts when dissatisfied with the outcomes of a decision. Under our current legislative system, deciding parties must be able to rationalize within Western-based provincial laws why they've made every decision.<sup>219</sup> Long-term, discussion of legislative changes related to this consideration may need to occur.

### *Potential Conflicts of Interest*

If a First Nation establishes a commercial interest in an area of resource management in which they are also a decision maker, then that First Nation may be in a conflict of interest, or may be perceived to be compromised in some way by outside interests. As mentioned in the case of Haida Gwaii, Taan Forest is a subsidiary of Haico, the Haida Enterprise Corporation, and since 2012, has become the largest forestry licensee on Haida Gwaii.

It appears to be that in some communities, the population isn't necessarily large enough to separate the business side from the governance side - there just aren't enough citizens. As citizens in small communities are the shareholders of native development corporations, First Nation governments may need to consider crossover between a First Nation's leadership and company governance if the First Nation is also a decision maker.

### *Compliance with Regulatory Standards*

Building off of the conflict of interest issue, what could further complicate a joint decision-making framework is if a First Nation's company isn't abiding by regulations that the nation is part of creating as a decision-maker. As reported, in 2015, the Vancouver Sun released a report about three companies that were each found guilty of 20 counts of environmentally destructive logging practices near Port Clements on Haida Gwaii, two of whom had Haida ownership with

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<sup>219</sup>Munt, Leonard (District Manager, Haida Gwaii Management Council) in discussion with the author. October 3rd, 2019.

shareholders including two former high-profile vice-presidents of the Council of the Haida Nation.<sup>220</sup>

## Ensuring Mutual Understanding of Terminology

Phase 2 of this project will allow parties within the 3N-BC forum to explore what jurisdiction they each desire and feel comfortable with within an arrangement. As we move into Phase 2, we recommend parties explore descriptions of terms used within decision-making frameworks amongst two or more parties (such as in the draft document provided to the 3N-BC team-Appendix A) to get a high level idea of processes and jurisdiction associated with different terms. Perhaps most important to highlight is the ambiguity and inconsistency regarding interpretation of terms such as “shared decision-making”.

For example, in their report *Operationalizing Indigenous Consent through Land-Use Planning*, Roshan Danesh and Robert McPhee note that “In the past few years, it has become commonplace to talk about co-design and co-development between the Crown and Indigenous peoples.” But what co-design means differs amongst parties. They further explain, “While the current focus on “co-design” and “co-development” is strong, there is little consistency about what these terms mean and how they are being used. In the legislative development and policy context, they clearly mean different things to different people. For example, many Indigenous nations utilize the terms to mean that they are actively drafting the end products (legislation or policy) with their Crown counterparts. On the other hand, some governments use the terms to mean they are building the vision and elements of the end products through a shared or joint process, but that they maintain control of core aspects of drafting and finalizing end products. Understandings of these terms will continue to evolve.” Their report also makes the considerable point that, “Legislative development in particular engages complex legal matters related to such principles as parliamentary supremacy and cabinet confidentiality, which limit or constrain how processes may be designed and operate.”<sup>221</sup>

### *Co-Governance and Co-Management can be mutually inclusive*

Our exploratory review also suggested that an arrangement may be most effective if it involves components of both governance and management.

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<sup>220</sup>Pynn, Larry. “Haida logging faces challenge of balancing profits with sustainability”. Vancouver Sun. December 1, 2015. <http://www.vancouversun.com/haida+logging+faces+challenge+balancing+profits+with+sustainability/11557974/story.html>

<sup>221</sup>Danesh, Roshan and McPhee, Robert. *Operationalizing Indigenous Consent through Land-Use Planning*. Institute for Research on Public Policy. 2019. <https://irpp.org/research-studies/operationalizing-indigenous-consent-through-land-use-planning/>

Although much literature out of the early 2000s criticized co-management as an attempt by crown governments to extend their power over Indigenous peoples<sup>222</sup>, some Indigenous scholars in recent years have warned against such critical analyses, whilst at the same time, encouraging the move towards co-governance, which Clark and Joe-Strack explain, “denotes a sharing of both authority and control, as opposed to simply shared technical duties.” As Clark and Joe-Strack state in regards to a Canadian context, “even at its fullest expression, co-management is still only a part of what’s required to realize the vision of self-determination that land claim agreements were intended to move society towards.”<sup>223</sup>

A move towards a co-governance arrangement doesn’t mean that co-management components should be overlooked. As a Haida member shared, shortages in on-the-ground capacity for enforcement of decisions is a weakness of their framework: “Current practices aren’t even being properly monitored, and then we’re creating new practices.” Co-management in the form of shared enforcement authorities may need to be strengthened within some agreements, and may wish to be explored, particularly for co-management of wildlife.

All considered, we recommend the 3N-BC team give consideration to distinct differences in authority, duties and accountability that may accompany different terminology used within an arrangement, and ensure there is mutual understanding of terms used.

## Operationalizing Bill 41 - UNDRIP through an Arrangement

During the writing of this report, on October 24, 2019, Bill 41, the *Declaration of the Rights of Indigenous Peoples Act*, was introduced in the BC legislature. Establishment and implementation of a collaborative governance arrangement in Northern BC provides the Province with ample opportunity to bring the principles of UNDRIP into action in British Columbia. With the vast majority of the province being unceded Indigenous territory, BC has a unique opportunity to apply UNDRIP. With the First Nations of the 3 Nations currently being at stages varying from not participating in the Treaty Process to declaring readiness to negotiate (Stage 2) to negotiating an Agreement in Principle (Stage 4), there’s much opportunity to operationalize UNDRIP and implement Bill 41 through a decision-making arrangement for wildlife.<sup>224</sup>

The recent Expert Panel for the Review of Environmental Assessment Processes made it a key goal of their review to reflect the principles of UNDRIP. Mandated by the Minister of Environment and Climate Change to review federal environmental assessment processes, in their final report, they made the following recommendations regarding Indigenous

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<sup>222</sup>Lele, 2000; Gelcich et al., 2006; Nayak and Berkes, 2008 in Berkes, Filkret. Evolution of co-management: Role of knowledge generation, bridging organizations and social learning. *Journal of Environmental Management*. 2009. Pp. 1692–1702. [http://forestpolicy.com/wp-content/uploads/2010/11/berkes\\_2009\\_adaptive-co-management.pdf](http://forestpolicy.com/wp-content/uploads/2010/11/berkes_2009_adaptive-co-management.pdf)

<sup>223</sup>Clark, Douglas & Joe-Strack, Jocelyn. Keeping the “Co” in the Co-Management of Northern Resources. Northern Public Affairs. 2017. <http://www.northernpublicaffairs.ca/index/volume-5-issue-1/keeping-the-co-in-the-co-management-of-northern-resources/>

<sup>224</sup>BC Treaty Commission. Negotiations Update. 2019. <http://www.bctreaty.ca/negotiation-update>

considerations in Impact Assessment (IA), which the 3N-BC forum may wish to review in design of a framework. They recommended that:

- Indigenous Peoples be included in decision-making at all stages of IA, in accordance with their own laws and customs.
- IA processes require the assessment of impacts to asserted or established Aboriginal or treaty rights and interests across all components of sustainability.
- any IA authority be designated an agent of the Crown and, through a collaborative process, thus be accountable for the duty to consult and accommodate, the conduct of consultation, and the adequacy of consultation. The fulfilment of this duty must occur under a collaborative framework developed in partnership with impacted Indigenous Groups.
- any IA authority increase its capacity to meaningfully engage with and respect Indigenous Peoples, by improving knowledge of Indigenous Peoples and their rights, history and culture.
- a funding program be developed to provide long-term, ongoing IA capacity development that is responsive to the specific needs and contexts of diverse Indigenous Groups.
- IA-specific funding programs be enhanced to provide adequate support throughout the whole IA process, in a manner that is responsive to the specific needs and contexts of diverse Indigenous Groups.
- IA legislation require that Indigenous knowledge be integrated into all phases of IA, in collaboration with, and with the permission and oversight of, Indigenous Groups.
- IA legislation confirm Indigenous ownership of Indigenous knowledge and include provisions to protect Indigenous knowledge from/against its unauthorized use, disclosure or release.

The Panel ultimately recommended that a single authority be established as a quasi-judicial tribunal to undertake a full-range of facilitation and dispute resolution processes on behalf of the federal government. The Panel recommended that such an IA authority be co-designed with Indigenous groups: “In keeping with the Panel’s mandate to reflect the principles of UNDRIP in the new IA process, members of Indigenous Groups would play a central role in the Commission. In circumstances where Indigenous Groups had their own assessment process, the Commission and interested Indigenous Groups would create an appropriate co-operative approach to integrate processes to best satisfy the “one project, one assessment” objective. The goal of both the IA process and the Commission itself would be to recognize the importance of Aboriginal rights and title and the role IA has to play in reconciliation.”<sup>225</sup> The 3N-BC team may wish to look further into this review’s recommendations as a collaborative arrangement is designed.

**-END-**

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<sup>225</sup>Expert Panel for the Review of Environmental Assessment Processes. Building Common Ground: A New Vision for Impact Assessment in Canada. 2017. <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>

## Appendix

### Appendix A: Draft Definitions for Exploration

*Please note: the following are descriptions of terms used within collaborative decision-making frameworks. These definitions are not necessarily definitive or complete, but are intended to give readers a good sense of what they do at a high level.*

It will be helpful to be mindful of the difference between governance and management when reading these descriptions of decision-making roles and models involving two or more parties:

**Governance:** *Focuses on strategic matters; sets policy; provides leadership and direction and oversees management (e.g. vision and mission statements (purpose) and strategic plans)*

**Management:** *Focuses on application of policy and gives direction day-to-day operational responsibilities (e.g. development of annual budgets and operational plans consistent with strategic plan for approval of governing group; manages recruitment, administration; implements operational plan).<sup>226227</sup>*

Said another way, “governance is the role of leading an organisation and management is its day-to-day running or operating.”<sup>228</sup>

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There appears to be the most ambiguity surrounding the term “**Shared decision-making**”. The term “Shared decision-making” was introduced in the BC context in 2005 in the New Relationship document signed by then-Premier Gordon Campbell and BC First Nation Chiefs. No definition for Shared Decision-making is provided in the document, but in it, the Province states,

*“We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the right to aboriginal title “in its full form” including the inherent right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by s. 35.”<sup>229</sup>*Some scholars

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<sup>226</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>227</sup>Gordon, Katherine, Crown Chief Negotiator - Treaty of Waitangi Negotiations, (personal communication, February 24, 2020).

<sup>228</sup>CommunityNet Aotearoa. Governance and Management. 2019. <https://community.net.nz/resources/community-resource-kit/4-2-governance-governance-and-management/>

<sup>229</sup>Government of British Columbia. The New Relationship. 2005. [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/new\\_relationship\\_accord.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/new_relationship_accord.pdf)

and practitioners use this term as an umbrella term to encompass *all* arrangements between two or more parties that involve decision-making models and processes. Others, however, are now attaching a more specific meaning and process to this term, as exemplified in the Haida Gwaii case study (2019) definition provided here, which makes a clear distinction between shared decision-making and joint decision-making.

**Shared Decision-Making:** A collaborative process where consensus-based recommendations are typically strived for amongst a body composed of representatives from both parties, but where one party retains authority for making final decisions. This is the case with the Solutions Table within the Haida Gwaii forestry co-governance framework. Recommendations are forwarded *separately* to two Decision Makers (one on behalf of the Haida and one on behalf of the Province). The Decision Makers then make their decisions separately of each other and the decision of only the Crown Decision Maker moves forward, regardless of whether the Decision Maker for the Haida has agreed or disagreed with it. The final decision maker remains the only one accountable in that decision (i.e. the only party subject to judicial review processes).

**Joint Decision-Making:** A consensus-based process wherein both parties are provided with equal influence when making a joint decision. This is typically done through empowerment of a joint statutory body to make such decisions, as was the case with the creation of the Haida Gwaii Management Council. Both parties are also equally accountable for the decision, and subject to judicial review.

**Joint Authority:** I suggest changing a request for a definition of “Joint Authority” (which I haven’t come across) to the term “**Joint Decision-Making**” as provided for above.

**Collaborative Management:** “a partnership by which two or more relevant social actors collectively negotiate, agree upon, guarantee and implement a fair share of management functions, benefits and responsibilities for a particular territory, area or set of natural resources.”<sup>230</sup>

Collaborative Management is sometimes used as an umbrella term that includes the array of collaborative agreements that can exist.<sup>231</sup>

**Cooperative Management:** “Cooperative management can take many forms. In the Parks Canada context, it is best described as a spectrum of decision-making influences. Cooperative bodies range from informal structures that provide ad hoc advice to those that are established through formal agreements such as park establishment agreements. The actual structure of the various types of cooperative bodies also varies greatly and is highly dependent upon the legal, political, or policy context under which they were established.”

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<sup>230</sup>Borrini-Feyerabend, G., A. Kothari, and G. Oviendo. Indigenous and local communities and protected areas: towards equity and enhanced conservation. 2004. *Best practice protected areas guidelines series No. 11*. A. Phillips, series editor. IUCN, Gland, Switzerland.

<sup>231</sup>Hughey, K. F. D, C. Jacobson, and E. F. Smith. A framework for comparing collaborative management of Australian and New Zealand water resources. 2017. *Ecology and Society* 22(4):28.  
<https://doi.org/10.5751/ES-09582-220428>

“The choice of the word “cooperative” is deliberate insofar as the authority of the minister to make final decisions, and his or her responsibilities to Parliament, remain unfettered.”<sup>232</sup>

In that respect, use of the term cooperative management is often interchangeable with the term shared decision-making.

**Consensus:** “Reaching consensus means the parties are talking and agreeing on shared objectives.”<sup>233</sup> Consensus does not necessarily mean unanimous agreement.

As the Legislative Assembly of the Northwest Territories states, “Consensus government does not mean that unanimous agreement is necessary for decisions to be made, motions passed, and legislation enacted. A simple majority carries the vote.”<sup>234</sup> This is the way that “consensus” is interpreted and handled within agreements researched in this Phase 1 review, and in examples mentioned in other literature.

For example, within the Wek’èezhìi Renewable Resource Board, items are reviewed and discussed with the objective of arriving at a consensus. However, if the Board cannot reach a full consensus, a simple majority vote will carry the motion.<sup>235</sup>

Decisions of the Haida Gwaii Management Council are to be arrived at by consensus of the members, excluding the Chair. If consensus is unable to be reached, decisions are to be made by vote, with the Chair exercising a deciding vote.<sup>236</sup>

Other arrangements handle consensus differently. Within the Ngā Poutiriao o Mauao arrangement, if consensus in the form of everyone agreeing on a decision is not achieved, then resolutions can be passed only when a 75% majority agrees. Within the Maungatautari Ecological Island Trust, if a consensus decision cannot be reached on a question, the motion is decided by a majority of votes. Each member gets one vote. If voting is tied, the motion is lost.<sup>237</sup>

In the Te Waihora interim co-governance agreement, which consists of a Joint Officials Group, a Management Board, and a Governance Group, “a consensus means a consensus between a

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<sup>232</sup>Langdon, S., Prosper, R., and Gagnon, N. Two paths one direction: Parks Canada and Aboriginal Peoples working together. 2010. *George Wright Forum*, 27(2). pp 222–233.

<sup>233</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

<sup>234</sup>Legislative Assembly of the Northwest Territories. What is Consensus Government? 2014. <https://www.assembly.gov.nt.ca/visitors/what-consensus>

<sup>235</sup>Pellissey, Jody (Wek’èezhii Renewable Resource Board Executive Director) in discussion with the author. October 2, 2019.

<sup>236</sup>Haida Nation and the Government of British Columbia. Kunst’aa guu – Kunst’aayah Reconciliation Protocol. 2009. [http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu\\_Kunstaayah\\_Agreement.pdf](http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu_Kunstaayah_Agreement.pdf)

<sup>237</sup>Auditor General of New Zealand. Principles for effectively co-governing natural resources. 2016. <https://www.oag.govt.nz/2016/co-governance/docs/co-governance-amended.pdf>

majority of the Commissioners and a majority of the Board, rather than a consensus between all of the individual members of the Group.”<sup>238</sup>

In other mechanisms used in Aotearoa New Zealand, some decisions can only be made by unanimous agreement (typically the most important decisions).<sup>239</sup>

**Collaborative Consent** is a term used to describe **Mutual Consent-based Decision-Making:**

Collaborative consent “describes an ongoing process of committed engagement between Indigenous and non-Indigenous governments— acting as equal partners, each with their asserted authority—to secure mutual consent on proposed paths forward related to matters of common concern and all aspects of governance. Collaborative consent is about changing how decisions at all levels are made: from individual projects up to law and policy. These are long-term processes requiring both Indigenous and non-Indigenous governments to build their own structures to engage and ultimately to build new institutions and shared processes for decision-making.”<sup>240</sup> In other words, with respect to certain agreed matters, neither party will proceed without the other party’s agreement.

**Stewardship** is not a defined term in arrangements I have come across. However, it is mentioned in the definition of *kaitiakitanga* (“a way of managing the environment, based on the traditional Māori world view”), which is provided for in New Zealand’s Resource Management Act. There, *kaitiakitanga* is defined as “the exercise of guardianship by the *tāngata whenua* [the people of the land] of an area in accordance with *tikanga* [custom] Māori in relation to natural and physical resources; and includes the ethics of stewardship.”<sup>241</sup>

**Authority:** To “exercise control, access to and management of” [a natural system] and its resources.<sup>242</sup>

In South Africa, in accordance with their Biodiversity Act, “**conservation authority**’ means any organ of state in the national or provincial sphere of government responsible for the conservation of biodiversity.”<sup>243</sup>

- Further definitions of Co-governance and Co-management:

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<sup>238</sup> Te Runanga o Ngai Tahu & Environment Canterbury Regional Council. Te Waihora Interim Co-Governance Agreement and Terms of Reference. 2013. <https://ngaitahu.iwi.nz/wp-content/uploads/2013/06/Terms-Of-Reference.pdf>

<sup>239</sup>Gordon, Katherine, (personal communication, February 24, 2020).

<sup>240</sup>Phare, Merrell-Ann, Simms, Rosie, Brandes, Oliver M., & Miltenberger, Michael. Collaborative Consent and Water in British Columbia: Towards Watershed Co-Governance. Polis Project on Ecological Governance. January 2018. <https://poliswaterproject.org/files/2017/09/POLIS-CC-summary-4b-web.pdf>

<sup>241</sup>Te Ahukaramū Charles Royal, 'Kaitiakitanga – guardianship and conservation'. Te Ara - the Encyclopedia of New Zealand. 2007. <http://www.TeAra.govt.nz/en/kaitiakitanga-guardianship-and-conservation/print>

<sup>242</sup>Norman, Phillippa. Crown and Iwi Co-Management: A Model for Environmental Governance in New Zealand? 2011. [http://www.kaiparaharbour.net.nz/Content/Publications/Norman2011Crownlwico\\_management\\_a\\_model\\_for\\_envtal\\_goverance\\_NZ.pdf](http://www.kaiparaharbour.net.nz/Content/Publications/Norman2011Crownlwico_management_a_model_for_envtal_goverance_NZ.pdf)

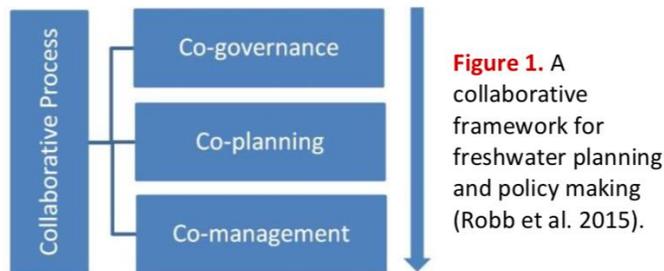
<sup>243</sup>Government of South Africa. General Notice: Draft Norms and Standards for the Management of Damage-causing Animals in South Africa. 2010. [https://www.environment.gov.za/sites/default/files/gazetted\\_notices/nemba\\_draftnormsandstandards\\_g33806gen1084.pdf](https://www.environment.gov.za/sites/default/files/gazetted_notices/nemba_draftnormsandstandards_g33806gen1084.pdf)

**Co-governance:** Formal arrangement to share decision-making. In terms of iwi/hapū [tribes/ sub-tribes] and the Crown this should be based on the Treaty of Waitangi. Through principles and collaborative guidelines, the Treaty provides the basis for meaningful ongoing relationships. Co-governance agreements between iwi/hapū and the Crown are essential early on in the collaborative process.

**Co-planning:** Planning together under co-governance agreements. A shared process where iwi/hapū/tangata whenua [tribes/ sub-tribes/ people of the land] interests and values, and the use and understanding of mātauranga Māori [Māori knowledge] are incorporated into local or regional planning, including the development of policies, goals and objectives in council, regional and district plans, and/or urban design.

**Co-management:** Actions and responsibilities implemented jointly by the parties. Deciding how a desired goal, objective or outcome is best achieved (e.g. catchment, wetland, and farm plans, consents, riparian planting, river clean-ups, restoration, etc.). Iwi/hapū groups work together with partner agencies.<sup>244</sup>

From a Māori perspective, co-governance, co-planning and co-management (Fig. 1) are key steps in a collaborative process, and are important to achieve desired and mutually agreed outcomes.



(Figure from Harmsworth et al., 2015: [https://www.researchgate.net/publication/293657137\\_Maori\\_Values\\_and\\_Perspectives\\_to\\_Inform\\_Collaborative\\_Processes\\_and\\_Planning\\_for\\_Freshwater\\_Management](https://www.researchgate.net/publication/293657137_Maori_Values_and_Perspectives_to_Inform_Collaborative_Processes_and_Planning_for_Freshwater_Management))

- *Co-governance* “denotes a sharing of both authority and control, as opposed to simply shared technical duties.”<sup>245</sup>
- Unfortunately for the purposes of clarity, the terms of co-management and co-governance have been applied to a variety of circumstances and arrangements, and as such, there appears to be ambiguity amongst what these terms mean. Some scholars and practitioners are attempting to clarify these terms to demystify them. In the 2003 book, *The Fisheries Co-management Experience*, co-management expert Evelyn Pinkerton speaks about the term ‘co-management’ and “argues that over the years the concept has become so broad that ‘it risks losing important aspects of its original thrust’, and that there is now time to assign it with a more specific meaning.” As you read her

<sup>244</sup>Harmsworth et al. Māori Values and Perspectives to Inform Collaborative Processes and Planning for Freshwater Management. 2015.

[https://www.researchgate.net/publication/293657137\\_Maori\\_Values\\_and\\_Perspectives\\_to\\_Inform\\_Collaborative\\_Processes\\_and\\_Planning\\_for\\_Freshwater\\_Management](https://www.researchgate.net/publication/293657137_Maori_Values_and_Perspectives_to_Inform_Collaborative_Processes_and_Planning_for_Freshwater_Management)

<sup>245</sup>Clark, Douglas & Joe-Strack, Jocelyn. Keeping the “Co” in the Co-Management of Northern Resources. Northern Public Affairs. 2017. <http://www.northernpublicaffairs.ca/index/volume-5-issue-1/keeping-the-co-in-the-co-management-of-northern-resources/>

notes on co-management, be mindful the distinction between co-management and co-governance was not heavily discussed at the time this book was published (2003).

Pinkerton notes the distinction of granting “a *collective choice right* (decision-making about harvest planning) to a group in order for it to exercise an *operational right* (taking an allocation of fish).” Co-management, at the time this book was published, was being applied to such a range of cases, many in which a group was simply exercising operational rights, and Pinkerton was stressing the necessity of the collective choice component for it to be truly characterized as “co-management”. Pinkerton at the time, wrote, “Co-management is misnamed unless it involves the right to participate in making key *decisions about how, when, where, how much, and by whom fishing will occur.*”

- Pinkerton uses the term “**complete co-management**” to refer to “**collective choice**” arrangements. In the context of a Washington fishery, she describes seven aspects that are key to a “complete co-management” arrangement.<sup>246</sup>
- Some aspects of what scholars such as Pinkerton were describing in 2003 as “co-management” have evolved in the 17 years since to encompass elements of what many scholars and practitioners may now define as “co-governance”. As some Indigenous scholars state in regards to a Canadian context, “even at its fullest expression, co-management is still only a part of what’s required to realize the vision of self-determination that land claim agreements were intended to move society towards.”<sup>247</sup>
- A case study from Haida Gwaii examining influences on trust during collaborative forest governance wrote the following in regards to **joint decision-making versus shared decision-making**:

“Interviewees described the different ways that collaborators hold and exercise power, particularly in the form of decision-making. The Council of the Haida Nation and the Haida community were described as exercising power through social organization, negotiation, and legal action, while the Province of B.C. exercised power through the provincial legislative framework and the design of collaborative institutions. This creates a power imbalance in the context of collaborative natural resource governance, with joint decision-making supporting more balanced power-sharing than shared decision-making.

Joint decision-making, which aims for consensus among Haida Gwaii Management Council members, provides both parties with equal influence when making five key forest management decisions and was viewed as having a positive influence on trust.

<sup>246</sup>Pinkerton, Evelyn. Toward Specificity in Complexity. In In: Wilson D.C., Nielsen J.R., Degnbol P. (eds) The Fisheries Co-management Experience. Fish and Fisheries Series, vol 26. Springer, Dordrecht. 2003. Pp 61-77. [https://www.researchgate.net/publication/42760835\\_Toward\\_Specificity\\_in\\_Complexity\\_Understanding\\_Co-Management\\_from\\_a\\_Social\\_Science\\_Perspective](https://www.researchgate.net/publication/42760835_Toward_Specificity_in_Complexity_Understanding_Co-Management_from_a_Social_Science_Perspective)

<sup>247</sup>Clark, Douglas & Joe-Strack, Jocelyn. Keeping the “Co” in the Co-Management of Northern Resources. Northern Public Affairs. 2017. <http://www.northernpublicaffairs.ca/index/volume-5-issue-1/keeping-the-co-in-the-co-management-of-northern-resources/>

This was described as appropriate by representatives from both governments given the strength of the claim to Aboriginal title of the Haida.

*[It's a] very positive process. It's not perfect but it's very positive and it was built together. And we have equal say there. (Interviewee 1)*

*[It has] gone beyond, to the true spirit of Section 35 of the Constitution [Act, 1982], gone beyond the common law, to say, "This is what it means. Reconciliation means making decisions jointly, by statute." You have representatives that have equal authority, no more, no less, than the representatives that the other party has. (Interviewee 14)*

The Solutions Table uses shared decision-making, which has created tensions between the two governments. Under shared decision-making, the Province of B.C. retains authority for making final decisions on applications and consensus is not required among collaborators. While collaborators attempt to reach consensus on applications, the Province of B.C. can and, in some cases, must under provincial legislation make a unilateral decision to sign off on an application if it meets the technical requirements established under the LUOO — even if it is opposed by representatives of the Council of the Haida Nation.

*At the Solutions Table proper, it's pretty equal. When it [leaves] the Solutions Table, it's unequal. The Crown still makes the decision. (Interviewee 5).<sup>248</sup>*

- “Consent is not simply an extension of existing processes of consultation and accommodation, nor is the law of consultation — being heavily procedural in its orientation — a particularly practical or helpful way for thinking about how to operationalize consent. We need to see consent as part and parcel of the new relationship we seek to build with Indigenous Nations, as proper title and rights holders, who are reconstituting and rebuilding their political, economic, and social structures.

In this context there is a better way to think about consent...grounded in the purposes and goals of section 35 and the UN Declaration. Consent is analogous to the types of relations we typically see, and are familiar with, between governments. In such relations, where governments must work together, there are a range of mechanisms that are used to ensure the authority and autonomy of both governments is respected, and decisions are made in a way that is consistent and coherent, and does not often lead to regular or substantial disagreement.

These mechanisms are diverse, and can range from shared bodies and structures, to utilizing the same information and standards, to agreeing on long term plans or arrangements that will give clarity to how all decisions will be made on a certain matter

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<sup>248</sup>Hotte, Ngaio; Wyatt, Stephen; and Kozak, Robert. Influences on trust during collaborative forest governance: a case study from Haida Gwaii. *Canadian Journal of Forest Research*. 2018. Vol. 49. Pp. 361-374.  
[https://www.researchgate.net/publication/329199011\\_Influences\\_on\\_trust\\_during\\_collaborative\\_forest\\_governance\\_A\\_case\\_study\\_from\\_Haida\\_Gwaii](https://www.researchgate.net/publication/329199011_Influences_on_trust_during_collaborative_forest_governance_A_case_study_from_Haida_Gwaii)

or in a certain area over time. Enacting these mechanisms is achieved through a multiplicity of tools — including legislation, policy, and agreements.”<sup>249</sup>

- A term used in New Zealand is **joint management**, which pertains to co-management arrangements in which a joint decision-making approach is applied.

Many iwi (tribes) and local authorities (regional councils, of which the closest Canadian equivalent are regional districts with some additional powers in relation to freshwater management and allocation) have what are called “joint management agreements” between them. Joint management agreements can be created out of the Resource Management Act (RMA) 1991. As stated in the RMA, “A decision made under a joint management agreement has legal effect as a decision of the local authority.” All members of the joint management body have equal voting rights on decisions, and the Chairperson has the casting vote in the case of a split vote. Decisions within JMAs typically pertain to *operational* decisions. They don’t typically replace the regional council’s authority to make decisions about district plans or zoning, for example. Within the Waiapu Catchment JMA, The Council and Te Runanganui make the following decisions jointly:

- a) Decisions on notified resource consent applications under section 104 of the RMA within the Waiapu Catchment;
- b) Decisions on RMA planning documents under clause 10(1) of Schedule 1 of the RMA that affect the Waiapu catchment, including the Waiapu Catchment Plan; and
- c) Decisions on private plan changes under clause 10(1) of Schedule 1 of the RMA that affect the Waiapu catchment.<sup>250</sup>

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<sup>249</sup>Canada, Department of Justice, “The Recognition and Implementation of Rights Framework Talk,” notes for an address by the Honourable Jody Wilson-Raybould, to the Business Council of British Columbia (Vancouver, April 13, 2018), <https://www.canada.ca/en/departement-justice/news/2018/04/the-recognition-and-implementation-of-rights-framework-talk-1.html>

<sup>250</sup>Gisborne District Council & Te Runanganui o Ngati Porou Trustee Limited. Joint Management Arrangement to Manage the Waiapu Catchment. 2015. <https://www.gdc.govt.nz/joint-management-agreement/>