DEVELOPING SUCCESSFUL NATIVE/NON-NATIVE JOINT MANAGEMENT SYSTEMS

Four Case Studies of Interim Measures Agreements For Renewable Resources in British Columbia (Canada)

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ABSTRACT

British Columbia is the only province in Canada with large areas that were not settled under treaties between colonizers and aboriginal populations. This issue has been a long-standing grievance between "First Nations" and the various levels of government established under Canadian law. The British Columbia provincial government and the Canadian federal government, following many years of court battles with First Nations over "the land question" agreed to step aside from the court system and establish a modern day treaty negotiation process in 1991. The first agreement reached under this process is the Agreement in Principle with the Nisga'a Tribal Council signed in February, 1996. The agreement relies on primarily on cash compensation and a land settlement involving approximately 8% of the total traditional Nisga'a territory, rather than a shared management agreement over the entire traditional territory.

This paper explores alternative approaches involving joint management (or "interim measures") agreements for renewable resources pending negotiation of treaties. Such agreements can establish reciprocal obligations for improved management of renewable resources amongst a range of stakeholders, without alienating constitutional rights, pending the resolution of treaty issues.

Several recent examples of joint management agreements for forestry, fisheries and land management in British Columbia are reviewed in the context of common pool resource management regimes. These examples demonstrate the importance of building shared understandings of values and management interests within a broad, enabling regulatory and legislative framework—and of testing alternative approaches in the "real world" of common pool resource management prior to cementing them in treaty settlements.

Suggestions are offered relating to the potential of joint management agreements to address the highly politicized and diverse interests of the involved parties and to provide working models for testing and developing shared management relationships for use in resolution of aboriginal claims.

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1. INTRODUCTION

This study presents a synopsis of recent developments affecting natural resource management between First Nations and other levels of government in British Columbia, followed by a comparative analysis of four evolving processes to build agreements among the parties. These agreements establish vehicles for the shared management of renewable resources within particular territories.

1.1. Objective of Study

The primary objective of this paper is to compare selected approaches used in developing "shared" management systems for renewable natural resources between First Nations and federal and provincial levels of Canadian government. These shared systems of management are being developed in the context of evolving Interim Measures Agreements (IMAs) and Treaty negotiations. The comparative analysis employs an analytical framework derived from the work on collaborative alliances (Gray 1991, Gray and Wood 1991a, 1991b, 1991c, 1991d, Kofinas and Griggs 1996).

A secondary objective is to provide background on recent events which have provided an impetus for the negotiation of interim measures and treaties in British Columbia. These events include a series of court decisions and moves by the provincial government to become involved in the resolution of treaty questions.

1.2. Scope of Study

The foundation for this study is the concept of rights and the evolution of rights under new management arrangements between Native peoples and the various levels of Canadian government (federal, provincial and local). Consistent with prevailing literature in this field, our view is that both explicit and assumed rights provide a real or presumed basis for management actions. As Usher has argued:

> Management is a prerogative that flows from the system of property. Every system of management is based on certain assumptions, frequently unstated, about social organisation, political authority, and property rights, all of which are closely interrelated. As no two societies or cultures are identical in these respects, there can be no such thing as a scientifically or technically neutral management regime that is equally applicable and acceptable to both. Consequently, when two social systems share an interest in the same resource, there must be some accommodation in the sphere of property, as well as in the system of management, unless one is to be completely obliterated by the other. (Usher 1983: 390)

Thus concepts of property rights, as enforceable exclusive claims to "things," are central to the emergence of new, cooperative or joint management systems for renewable resources. While this

study is grounded in the interplay of systems of rights and systems of management, the focus of the work is at a more practical level. As natural resource planning and management practitioners, the authors have directed their attention to the *practical process of evolving management systems* supported by IMAs. This study examines four case studies from which general observations and conclusions are derived. Linkages are drawn with the co-management and common pool resource literature (Berkes, Bromley, Dale, Ostrom, Pinkerton) and the developing literature on collaboration (Gray, Kofinas and Griggs). The authors find the framework of collaboration to be useful as a means of describing and assessing inter-organisational interactions in complex political environments.

The research methodology relies heavily on the incidental experiences of the authors with the cases under study, limited interviews with those more central to each of the cases, and documented materials. The cases are in varying stages of "progress" and each situation will continue to evolve—often in unexpected directions. Furthermore, the case studies differ considerably in many fundamental characteristics, hence the review is necessarily broad brush in nature.

1.2.1. Study Premises

The authors hold to the view that the development and testing of new shared management systems (which include the reframing of rights and relationships among parties) under interim measures is crucially important to the formal resolution of treaties between First Nations and Canadian Governments. It is the authors view that deferring the development of such arrangements pending the final resolution of treaties runs risks of:

- causing lengthy delays in planning and management—affecting sustainability of the resources involved, the stability of local communities and the nature of development;
- causing major political and civil disruption if rights are redistributed abruptly by treaty settlements, particularly in the absence of working relationships between First Nations and other parties; and,
- constraining creativity and preventing experimentation to reach workable solutions to complex common pool resource issues.

1.2.2. Research Questions

This study poses two central questions:

- What are the key parameters that determine the success of processes leading to the creation of shared management systems for renewable resources under interim measures?
- Based on experience to date, what are the prospects for shared management systems developed under interim measures to (i) meet the interests of all parties involved in the agreement, and (ii) ensure sustainability of the resource (pending the ultimate resolution of outstanding questions of land and resource rights and title)?

1.2.3. Selection of Case Studies

Four case studies have been selected for this study based primarily on the experience of the authors and their relevance to the issues at hand. In each case, an Interim Measures Agreement has been attempted or established with the aim of providing a basis for natural resource management initiatives in parallel with the formal treaty process.

Two of the case studies examine different joint management arrangements with the same First Nations Group—the Nuu-Chah-Nulth Tribal Council—on the West Coast of Vancouver Island. These cases demonstrate very different approaches taken to developing shared management

arrangements under IMAs—one establishing a board with broad responsibilities and the other investigating alternative management arrangements for a specific resource (intertidal clams). The two processes are in different stages of evolution, with one underway and the other in the scoping and start-up phase.

The other two case studies examine different approaches taken by the Gitxsan and Wet'suwet'en First Nations in the North of British Columbia to establish IMAs for forest and land management (see Figure 1).

1.3. A Note on Terminology

The terminology used to describe the aboriginal peoples of Canada varies with context, culture and era. In this paper, the term *First Nations* is used to refer to groupings of aboriginal peoples. This term is preferred by many aboriginal peoples, but has elsewhere been interpreted as excluding those aboriginal peoples without formal alliance to Tribal Councils, or from Métis or other peoples of mixed race—no such exclusion is intended by the authors. *Native peoples* is used synonymously with First Nations. The term *Indian* is not used, in recognition of the widely perceived derogatory connotations of this term associated with the much disliked federal *Indian Act* which posits a "paternalistic" relationship between the Canadian federal government and "Indians."

Figure 1: Map of British Columbia showing locations of Tribal Councils.
The case studies examine evolving agreements involving the Gitxsan and Wet'suwet'en peoples in the North, and the Nuu-Chah-Nulth Tribal Council on Vancouver Island.

2. BACKGROUND: FIRST NATIONS AND THE CHANGING FACE OF RESOURCE MANAGEMENT IN BRITISH COLUMBIA[1]

This section of the paper provides an introduction to the evolving relationship between First Nations and Canadian governments in the British Columbia, and the changing face of management systems for renewable resources in the province.

2.1. First Nations In British Columbia

British Columbia is home to more than 77,000 Native Indian (or aboriginal people), which make up 17% of the Native population in Canada (33% of all Bands). Just over 50% of First Nations people live on the 1650 reserves in the province. Many of these reserves are very small and are located at important heritage sights, fishing grounds or settlements. Native people commonly leave reserve lands in search of employment, to escape poor housing conditions or social distress caused by alcoholism or other forms of substance abuse. These ills can be viewed as symptoms of an oppressed people, who's rights have been limited by the *Indian Act* and who have limited access to economic, social and political opportunities.

Prior to contact with European settlers in the 1700's, there were at least 14 Tribal Nations in the province with a total population of some 100,000. This high density of peoples (about 40% of all Native peoples on the North American continent) was in part the result of plentiful natural resources (e.g. salmon), natural barriers (e.g. mountainous terrain) and clearly defined boundaries between neighbouring tribal nations. Contact with Europeans brought new diseases (such as smallpox and influenza) to Native populations, and numbers dropped to as low as 22,000 by 1929. Since that time, First Nations populations have been increasing and are presently among the most rapidly growing segments of the Canadian population (BC, 1990; Kew and Griggs, 1991).

Although a number of treaties were signed between First Nations and the various levels of government (14 on Vancouver Island in the 1850's, and 1 in the N.E. of the province in 1899), the vast majority of the land in British Columbia is not defined under treaty arrangements. Throughout the period of colonialism, the Canadian government continued to allot reserve lands to Native Indians, largely without formal treaties. Primary jurisdiction for Native peoples in Canada comes under the Federal Government. Until the 1950's, the political, social and economic lives of First Nations peoples were strictly regulated by the *Indian Act*. In more recent years, there has been significant progress made towards increased autonomy (For further general information on Canadian First Nations, see Frideres, 1988; Tennant, 1990; Cassidy and Bish, 1989)

2.2. Landmark Court Cases

In recent years, several landmark court cases have redefined the legal context within which the political relationship between First Nations and the Federal, Provincial and Local governments is set. These court cases were the result of First Nations using legal routes to address outstanding claims and rights issues in the face of a reluctance or outright refusal to negotiate on the part of various levels of Canadian government.

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[1] Information for this section of the paper has been drawn from various sources, including: *After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia* (1988); *The Report of the British Columbia Claims Task Force* (1991); and various information bulletins and press releases issues by the B.C., Ministry of Aboriginal Affairs.

In the Calder case of 1973, the Supreme Court of Canada ruling was evenly split on the question of extinguishment of aboriginal title for the Nisga'a Tribal Council in the Nass Valley. The ruling did state that aboriginal title is rooted in the "long-time occupation, possession and use" of traditional territories. This ruling established the *existence of aboriginal title* at the time of contact, irrespective of whether the European colonisers recognised the right. However, the ruling was divided, on the basis of a technicality, over the continued existence of that right. Nonetheless, the recognition of the existence of aboriginal title was a significant moral victory and led to a federal "comprehensive claims policy," including an agreement that *Canada would begin to negotiate treaties to define current aboriginal rights to land and resources.* Negotiations between Canada and the Nisga'a commenced in 1976. The Province of British Columbia maintained its long standing position denying the validity of aboriginal title and did not join in these negotiations.

The Guerin case of 1984 built further on the Calder decision regarding the extent of aboriginal rights. In a ruling which addressed breach of trust on the part of the Canadian government over the leasing of land for a golf course, the Supreme Court ruled that the *Government had a fiduciary responsibility to safeguard the interests of First Nations peoples* which it had failed to live up to. The ruling was also significant in that it established the *existence of pre-existing aboriginal rights both on and off reserves.*

Within weeks of the Guerin ruling, the Nuu-Chah-Nulth peoples of the West Coast of Vancouver Island together with sympathetic environmentalists blocked access of MacMillan Bloedel to the timber on what was considered by the province to be crown land on Meares Island. This blockade was established on the basis that logging interfered with aboriginal title, as define under Guerin, and resulted in an injunction being sought to halt logging operations. Although the B.C Supreme Court denied the request for an injunction, the B.C. Court of Appeal overturned that ruling finding that "there is a problem about tenure that has not been attended to in the past. We are being asked to ignore the problem as others have ignored it. I [Justice Peter Seaton] am unwilling to do that." The ruling also pointedly argued that the "public anticipates that claims will be resolved be negotiations and by settlement. This... is but a small part of a whole process that will ultimately find its solution in a reasonable exchange between government and the Indian Nations." The Meares Island case is currently adjourned and the injunction is still in place.

In the Sparrow case of 1990, the Supreme Court of Canada provided an interpretation of Section 35(1) of the Canadian *Constitution Act, 1982,* which recognises and affirms existing aboriginal and treaty rights. The case involved the conviction of a Musqueam fisherman who was using a longer drift net than was permissible under the terms of the Band's fishing license. The conviction was appealed on the basis that the restriction was inconsistent with Section 35. The ruling overturned the conviction, and stated that the *Constitution Act* provides "a strong measure of protection" for aboriginal rights and that *any government regulation that infringes on the exercise of those rights must be constitutionally justified.* It also ruled that:

- aboriginal and treaty rights evolve over time and must be interpreted in a generous and liberal manner;
- governments may regulate existing aboriginal rights only for a compelling and substantial objective such as the conservation and management of resources; and
- after conservation goals are met, aboriginal people must be given priority to fish for food over other use groups.

The next in the series of court cases that have shaped relationships was the Delgamuukw case of 1993. The Gitxsan and Wet'suwet'en Hereditary Chiefs had asked the B.C. Supreme Court to recognise their ownership of 57,000 km^2 of land, to recognise their right to govern their traditional territories, and to receive compensation for the loss of lands and resources. A 1991 ruling stated that the Crown had extinguished aboriginal rights at the time of Confederation, but as such, the Province had a legal obligation to permit aboriginal sustenance activities on

unoccupied Crown land until the land was dedicated to another purpose. In 1993 the Court of Appeal ruled that the Gitxsan and Wet'suwet'en peoples *do have unextinguished, non-exclusive aboriginal rights, other than right of ownership, to much of their traditional territories.* The Judges also strongly recommended that the scope and content of those rights would best be defined through negotiation rather than litigation. Although the Supreme Court agreed to hear a further appeal, the Province and the Chiefs signed an "Accord of Recognition and Respect" and agreed to work through the Treaty process as an alternative to further legal proceedings.

The Delgamuukw decision is particularly significant in that it obliges the Provincial Government, when making decisions about activities on Crown land, to determine if aboriginal rights exist in any area under consideration and then determine whether the proposed activity would infringe on those rights. If it is determined that such a right exists, and that the Crown action would infringe on the right, negotiations commence to resolve the issue.

The final case that has had particular implications for aboriginal fisheries, is the Jack, John and John case of December 1995. The case, which examined charges against three members of the Mowachat/Muchatlaht Band of the Nuu-Chah-Nulth Tribal Council, was first heard in 1990 but was appealed to the Supreme Court of B.C. and then to the B.C. Court of Appeals. The ruling upheld that there had been an infringement on the aboriginal rights of the defendants to fish, broadly interpreting and providing stronger definition of the principles in the Sparrow ruling *as aboriginal peoples see those principles.* In particular, this judgment has been interpreted by some to indicate that the Federal Department of Fisheries and Oceans can no longer dictate the time, place and means of fishing, and must give more deference to aboriginal beliefs and concepts. The ruling has been further interpreted as indicating that DFO "can no longer maintain the status quo and that there must be fundamental changes to how DFO manages the fishery" (NTC Fisheries Policy Advisor, pers. comm.).

2.3. Treaty Negotiations

In August 1990, in part as a result of legal rulings which impelled the province to negotiate rather than litigate, the Province of British Columbia reversed its historical position that First Nations issues are exclusively a responsibility of the federal government and agreed to enter into treaty negotiations with aboriginal peoples in B.C. The Government of B.C. set out to establish, with the cooperation of the Federal Government, a "made in B.C." process for negotiating and settling Native claims. Given the relatively advanced stage of negotiations in the Nisga'a case, B.C. also agreed on October 3, 1990 to begin active participation on land claims negotiations with the Nisga'a Tribal Council and the Federal Government. Following these announcements, B.C. also recognised the concepts of aboriginal title and the inherent right to self government.

The vehicle established for the development of modern-day treaties was the B.C. Treaty Commission (see Box 1). The Treaty Commission was established by resolution of the First Nations Summit and Orders-in-Council by the two senior levels of Canadian government. This impartial and independent "keeper of the process" serves as the facilitator of the treaty process and is jointly funded by the federal and provincial governments. The Treaty Commission is responsible for receiving statements of intent, convening meetings of the negotiating parties, administering funds to assist First Nations with preparation for negotiations, assessing the readiness of parties to begin negotiations, assisting negotiations and monitoring progress towards agreements.

Box 1: Steps in the Treaty-Making Process in British Columbia

1. As of December 1993, the B.C. Treaty Commission began accepting *statements of intent* to negotiate from First Nations. These statements include a map or description indicating the territory i which the First Nations historically lived. and carried out traditional activities. These statements help to ensure that the Province does not approve commercial resource or other activities that might conflict with traditional aboriginal activities on Crown land.
2. *Preparing for negotiations* is the second stage in the treaty process, during which preliminary meetings are held between the three negotiating parties (Federal and Provincial Governments, and the First Nation).
3. *Framework Agreements* are then developed to identify subjects of negotiation and the negotiating schedule. Topics for negotiation generally include: self-government and jurisdiction; land, resource and cultural heritage management and protection, education, health, justice and family support issues; and treaty implementation.
4. The major agreement, the *Agreement in Principle,* is worked out.
5. Specific details of the Agreement in Principle are worked out and ratified by all parties.
6. Once negotiation and ratification are complete, *implementation* of the treaty begins. During this step, specific details of the treaty that have been set down on paper are put into practice.

During all stages of the Treaty process, consultation activities such as public forums, community meetings and various other educational activities occur. As a result of the 1994 Protocol Agreement between the Province of B.C. and the Union of B.C. Municipalities, municipal representatives form an active part of regional treaty negotiation teams. The Treaty Negotiations Advisory Council (TNAC) represents major industries, labour, environmental, business, recreational and other groups and serves to provide a linkage between the treaty process and other stakeholders.

According to B.C. Government documents, modern-day treaties will determine specific areas of jurisdiction, clearly define rights that apply on Crown lands, and may include guidelines for First Nations involvement in planning and development of resource management. In signing treaties, it is the Province's objective that lands be held communally, in a manner similar to fee simple. However, as with all land in Canada, ultimate title of the land will reside with the Crown. Because Crown title will underlie treaty settlement lands, settlement lands will not be separate countries. Private property (land held in fee simple) is not included in the treaty process. Lease or license terms will be honoured and holders will be consulted with their interests are being discussed. The ownership of the land on which those leases apply may be negotiated. If disruption occurs to commercial interests, leaseholders will receive compensation. (B.C. Ministry of Aboriginal Affairs, Information Bulletin, no date)

2.4. Interim Measures Agreements

Interim Measures Agreements are established between First Nations and Canadian Governments which serve to provide a degree of certainty for management and decision-making while the treaty process is underway. Interim measures do not replace or limit the scope of treaties, but are intended to support the development of cooperative relationships and make long-lasting treaties easier to achieve. IMAs can range from formal agreement which are broad in scope, to limited day-to-day operating agreements. IMAs have been one of the principal tools used by the Federal and Provincial Governments to address their obligations established under the Delgamuukw decision.

To date, IMAs have been used for a wide range of purposes, including:

- providing for management or co-management of lands and resources where aboriginal rights may be affected;

- protecting a specific cultural site while allowing land and resource development to continue; and,
- establishing a framework to transfer responsibility for child welfare, social services or education from the Province to a First Nation.

Many interim measures provide a flexible framework within which sub-agreements can develop and evolve.

2.5. The Nisga'a Agreement in Principle

After 20 years of negotiations under the land claims process and more than 120 years of negotiations in total, an Agreement in Principle was reached between the Nisga'a and the provincial and federal governments in February 1996. This agreement was the first such modern-day treaty and provides full and final settlement of claims.

The Agreement in Principle calls for a cash payment of $190 million and the establishment of a Nisga'a Central Government, with ownership and self-government over 1,930 km^2 of land in the Nass River Valley in Northern British Columbia. The agreement also contains provisions on fisheries, lands and resources, access to lands, environmental assessment and protection, Nisga'a government, taxation, financial transfers and cultural artifacts.

Under the agreement, which is still to be ratified, two types of lands are established—Nisga'a lands and fee simple lands. The 1,930 km^2 of Nisga'a lands will be will owned communally. The reserve lands falling outside of the Nisga'a lands will become fee simple lands owned by the Nisga'a but subject to the laws of the Provincial Government.

Existing legal interests on Nisga'a lands (such as rights of way, traplines and angling and guide outfitter licenses) will continue on their current terms. The Nisga'a will be able to set new conditions on any new interests that they may grant in the future. On Nisga'a lands, resource management responsibilities will gradually be transferred to the Nisga'a people. For example, the Nisga'a may develop their own management standards for these lands, providing they meet or exceed existing standards (such as the provincial Forest Practices Code.) Existing forest license holders will have to meet their existing silviculture obligations for forests on Nisga'a lands and will, after a period of transition, pay stumpage directly to the Nisga'a. For the lucrative Nass River fisheries, the Nisga'a will receive an annual treaty entitlement of salmon which will, on average, comprise approximately 18% of the total allowable catch. Fisheries and Oceans Canada and the Province will retain overall responsibility fir conservation and management of fisheries and fish habitat.

Through the agreement, recognition is given to the existence of a Nisga'a government, and four village governments. A Constitution will be developed and adopted by the Nisga'a which spells out the structure, duties and membership of their government and ensures that it is open and democratic. The Nisga'a will be able to make laws governing such things as culture and language employment, public works, regulation of traffic and transportation, and land use. People residing on Nisga'a lands who are not Nisga'a citizens will be consulted about and may seek a review of decisions that directly affect them, and will be able to participate in elected bodies which directly affect them.

Final Agreement negotiations on the agreement will commence in the fall of 1996. The Final Agreement will be debated and voted in by the Nisga'a, the B.C. Legislative Assembly and the Canadian House of Commons. Once approved and signed, the agreement becomes a treaty and its implementation begins.

To a great extent, the Agreement in Principle transfers land and cash to resolve the claims of the Nisga'a people. Although the agreement is detailed and specific in many aspects, various components of the agreement remain contentious and not yet be resolved. Concerns have been raised, for example, among non-Native public and interest groups that the treaty would give constitutional backing—in other words, a guarantee to the Nisga'a—for a fixed allocation of the catch from the fishery. A compromise was reached among negotiators, and the Agreement in Principle does include a "harvesting agreement" which is not a land claims agreement and does not create treaty rights under the meaning of Section 35(c). A side agreement was also created to resolve additional fisheries issues. This however, not allayed public concerns and fisheries allocation and management remains one of the more contentious area of the agreement.

The difficulty in reaching agreement on the fishery as part of the Nisga'a deal demonstrates the degree of flexibility possible within a formal treaty process under the spotlight of media and public attention. Canadian governments can only act cautiously in such a process, for fear of setting a precedent which may limit their options for future negotiations with other First Nations. Furthermore, to ensure stability, the agreement has to be sufficiently detailed and specific to provide long-term certainty—an exceptionally challenging proposition given the changing dynamics of renewable resource systems, and complex issues of access, allocation, and management.

2.6. First Nations and Renewable Resource Management in B.C.

British Columbia has a total area of 95 million hectares, 93 million of which are land. Ninety-one percent of this land base is "provincial Crown land"— that is, considered under Canadian law to be owned by the province. Of that amount, 78% is designated as Provincial Forest under the Forest Act, with an additional 7% under private management "tree farm licenses." Private land accounts for approximately 6% of the province and 1% is federal government property. Less than 1% of the land base is in the form of "Indian Reservations" but treaty negotiations may significantly alter both the nature of designation and the extent of such lands (BC Land Statistics, Victoria, 1989).

Current natural resource planning and management in the province is a reflection of constitutional responsibilities and ownership patterns. The province retains primary regulatory authority over natural resources and most environmental regulation, while federal jurisdiction includes ports and navigable waters, fisheries and oceans and areas of national or international concern. Natural resource management frequently involves a mix of jurisdictions and government agencies—for example, while the extremely important salmon fishery is constitutionally a federal responsibility, major influences on salmon habitat and populations are a result of land based activities (e.g. logging, mining) that are primarily the responsibility of the province. The authority to regulate the use of private land is largely delegated to local governments, with the province retaining some zoning and subdivision control, primarily in areas without municipal governments.

Coordinated effort and cooperation in managing natural resources among the various levels of government, as well as with other involved parties is indicated—if not always achieved. "Partnership agreements" and shared management actions involving different levels of government, and other parties, are becoming more common, particularly with reductions in government spending. The primary means for coordination are a wide variety of "referral processes" through which the agency responsible for managing and regulating a particular land use or area circulates or "refers" development applications or plans to other government or non-government parties for comment.

Until recently, First Nations have largely had only a peripheral role in the management of natural resources in the province of British Columbia. However, following a series of court

decisions regarding the nature of aboriginal rights (see sections above), the provincial government has established a policy of consultation with First Nations regarding activities which may infringe on aboriginal rights. In particular, Delgamuukw v. The Queen, together with a growing body of legal opinion, has changed the nature of the relationship between provincial government agencies responsible for resource management and First Nations. Specific legal interpretations that are shaping consultation policies include:

- the Province should make its best effort to determine infringement of aboriginal rights prior to engaging in activities on Crown land. Infringement should be avoided unless it can be justified "pursuant to the principles established by the Supreme Court of Canada in R. v. Sparrow";
- the provincial consultation policy framework applies even though the Province may be engaged in litigation with an affected First Nation; and
- refusal of a First Nation to participate in consultation efforts does not give the Province the right to infringe aboriginal rights.

There is presently no consensus among provincial and federal government agencies and various First Nations as to an appropriate definition of aboriginal rights. As may be expected, Federal and Provincial Governments have a much narrower and point specific interpretation than First Nations. For example, First Nations most commonly interpret aboriginal hunting rights to extend to management of the full range of habitat utilized by the animals, while the provincial government generally views aboriginal rights extending only to hunting activities at specific sites, such as in areas of traditional animal concentration (e.g. mineral licks).

The links between the definition of aboriginal rights and issues of jurisdiction (a primary focus of treaty negotiations) are an important factor in establishing working relationships for resource planning and management. At present, there is not a clear separation between resource planning and management issues and "treaty issues" of jurisdiction and associated decision-making rights. This remains a major sticking point between parties involved in negotiating and establishing IMAs.

3. CASE STUDIES: A COMPARATIVE ANALYSIS OF FOUR EMERGING SHARED MANAGEMENT AGREEMENTS

This study now turns to a comparative analysis of four case studies of emerging agreements for shared management of renewable resources in different parts of the province.

3.1. Analytical Framework

The four case studies are examined from a process perspective, using an analytical framework drawn from the work of Gray and others on collaborative alliances (Gray 1991, Gray and Wood 1991a, 1991b, 1991c, 1991d, Kofinas and Griggs 1996). (See Table 1).

Table 1: Summary Table of Analytical Framework

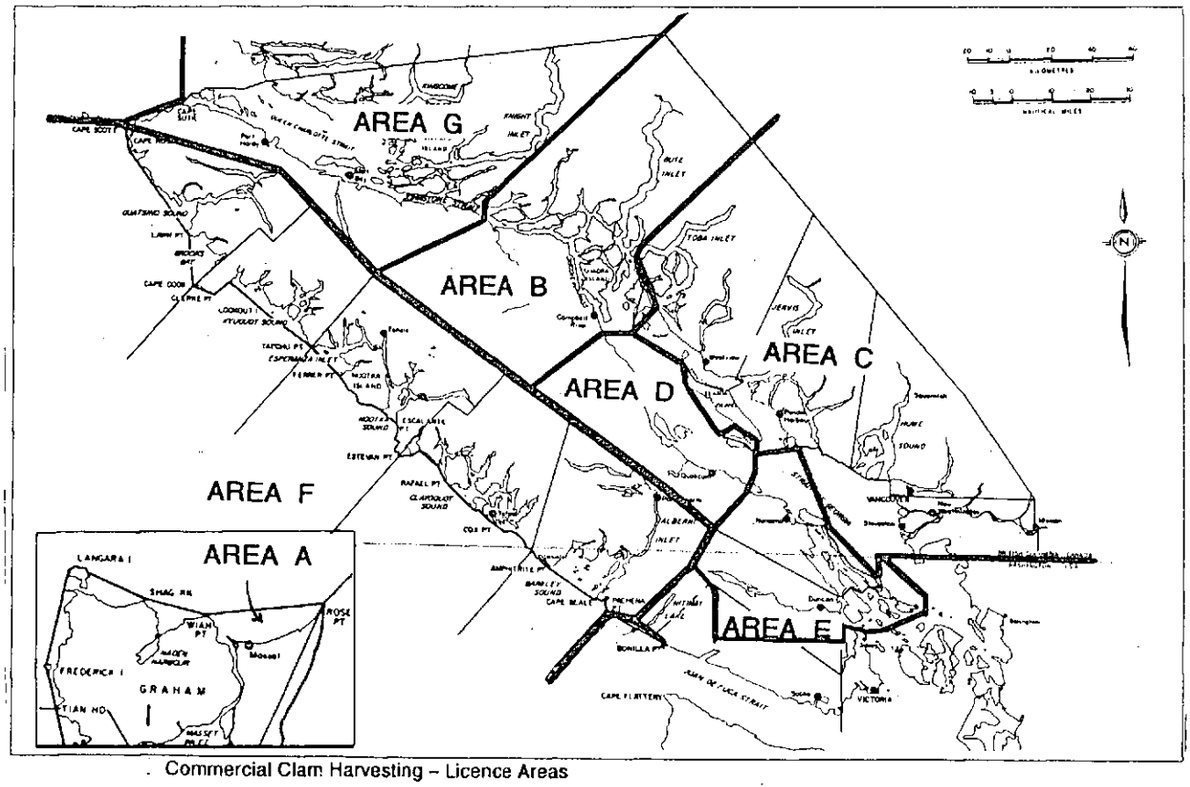
Criteria	Research Questions
Resource Involved	What is the character of the resource involved?
Key Parties and Interests	Who are the parties involved? What are their key interests? What is the nature of their present relationship?
Management System	Which parties have primary responsibility for management? How are other parties involved in the management system?
Catalyst for Change	What has prompted the need for change (e.g., crisis of consent?)
Collaboration Process (after Gray)	To what extent have the conditions facilitating collaboration been met? Problem setting: • identification of stakeholders • legitimacy of stakeholders • common definition of problem • clarity of stakeholders' expectations about outcomes • degree of recognized interdependence • commitment to collaborate • attractive convenor characteristics and leadership capability • identification of adequate resources Direction setting: • developing a shared understanding of and coincidence in values among stakeholders • establishment of mutually acceptable ground rules • setting an agenda that reflects all parties interests • organising sub-groups • reaching agreement • dispersion of power among stakeholders Structuring and Implementation: • emphasizing a high degree of on-going interdependence • external mandates • redistribution of power • geographic factors • influencing the contextual environment
Primary Vehicle for Collaboration	What are the characteristics of the vehicle through which parties collaborate?
Outcome	What are the management system products (e.g., joint management plans)
Assessment	Does the collaboration effort lead to solutions that meet the needs of the parties involved? Does the management system ensure the sustainability of the resource?

3.2. Case Study: The WCVI Clam Fishery in the Nuu-Chah-Nulth Traditional Territories

Over the last six years, efforts have been underway to improve the management framework for intertidal shellfish on the West Coast of Vancouver Island (WCVI). This case study examines the recently initiated collaboration process for developing shared management of clams, under a broad IMA.

The West coast is home to the Nuu-Chah-Nulth First Nations, which is comprised of 14 member bands with traditional territories stretching from Carmannah Point to the Brooks Peninsular. These territories are delineated by DFO as Statistical Areas 23-26 inclusive, which (together with Statistical Area 27, home to the Quatsino Band of the Kwagiutl Tribal Council) make up what is referred to as "Clam Harvesting Area F" (DFO, 1996). (See Figure 2).

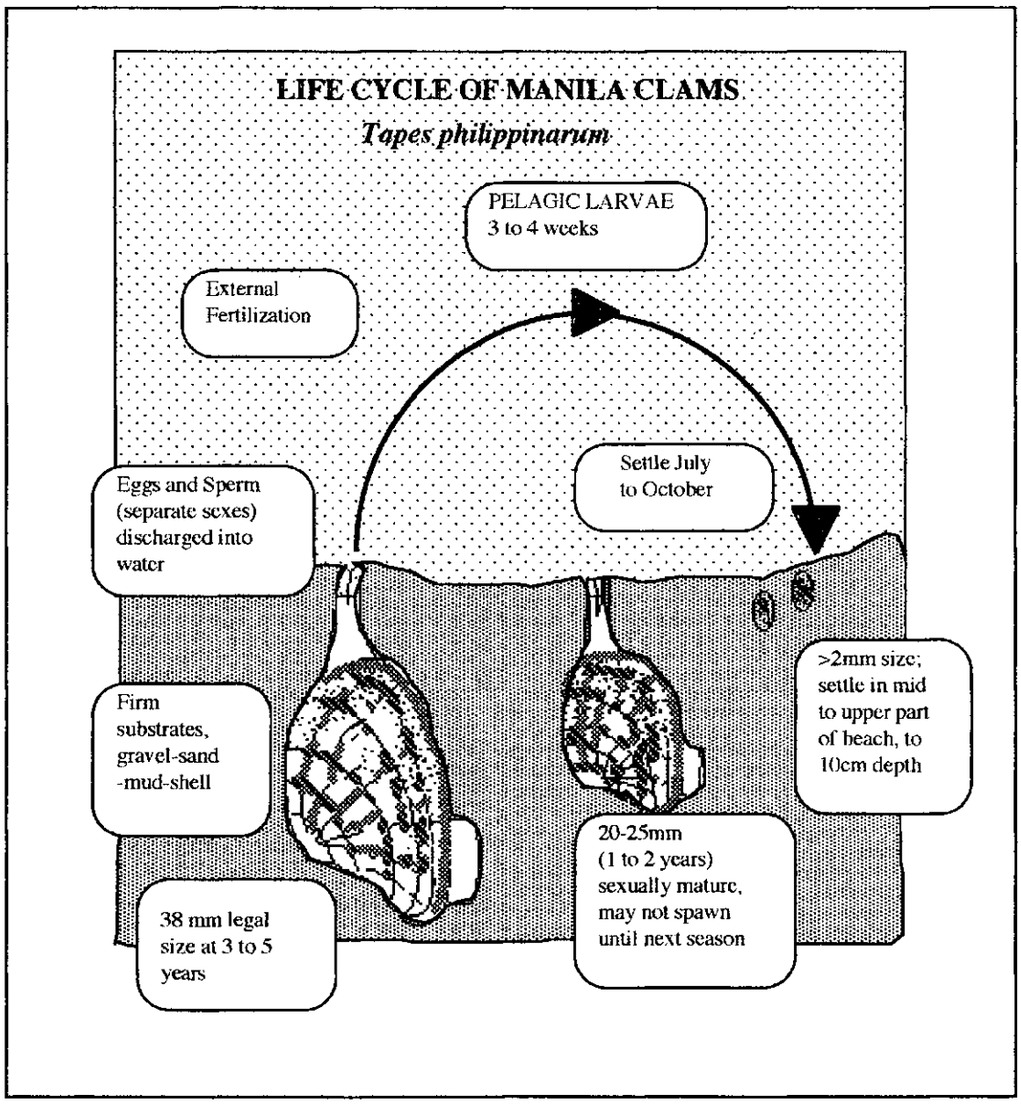
Figure 2: Clam Harvesting Areas in Southern British Columbia.
The WCVI case study concerns Area F only.



3.2.1. The West Coast Manila Clam Fishery

Although over 400 species of clams are found along the B.C. coast, the commercial catch is dominated by four species, of which the manila clam (*Tapes phillipinarum*) is the most significant, accounting for approximately 70% of the landings. Manila clams were accidentally introduced with imported Japanese oyster seed in the 1930's but spread rapidly throughout the Southern B.C. waters, displacing butter, littleneck and razor clams which provided traditional food sources for Native peoples. Clams reside in the intertidal substrate and though they are non-fugitive, discharge eggs and sperm (known as "bloom") into the water. The resulting pelagic larvae may drift for many weeks and are dispersed by tides and currents for considerable distances (see Figure 3).

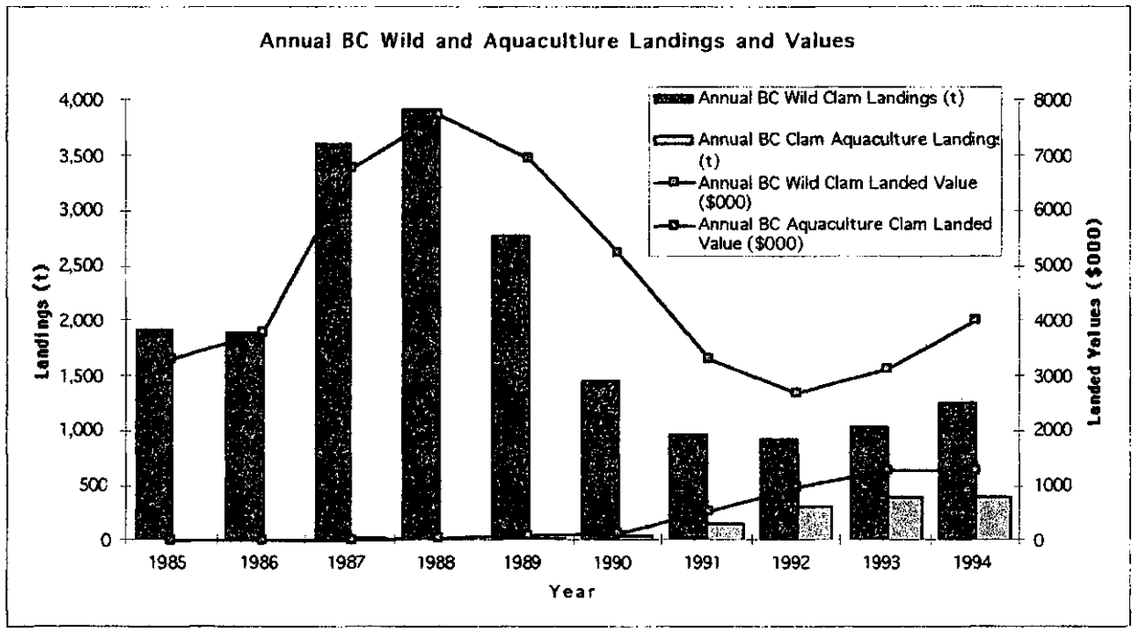
Figure 3: The life cycle of manila clams



Clams are harvested by "recreational" diggers, for First Nations' food, social and ceremonial needs, and for commercial sale. Digging is by hand, often by lantern light as openings are in the

winter when low tides occur in darkness. A commercial fishery for clams started at the turn of the century, but landings were not recorded until the 1950's. Until recently, this fishery has been an important cultural and economic activity, supporting a small number of local Native and non-Native diggers. However, in the 1970's and 1980's, higher prices and a growing market in the U.S. and overseas lead to a growth in the fishery. Landings increased rapidly, peaked in 1988, but have declined since then due to growing concerns over paralytical shellfish poisoning (PSP), pollution from septic systems and run-off, and dwindling stocks. (Landings in 1995 for all species of clams totaled approximately $1.4 million.) In the last decade there has been a major influx of Vietnamese Canadian diggers into the fishery, many of whom reside on the East Coast of Vancouver Island or in the Lower Mainland. In addition, 101 aquaculture leases have been established which have generated considerable landings. There is currently a moratorium on additional clam farms (other than on beaches fronting Native reserves) pending a review of policy by the Provincial Government. (See Figure 4).

Figure 4: Annual Clam Landings in British Columbia, 1985-1994



3.2.2. Stakeholders in the Clam Fishery

The key stakeholders in the clam fishery include the federal, provincial and local governments, First Nations, diggers, buyers, processors, and local communities. (As in many West coast fisheries, the groupings of stakeholders described below are not exclusive—for example, clam diggers may be drawn from any of the ethnic communities described and may also be buyers, processors or have aquaculture interests.)

The federal *Department of Fisheries and Oceans* (DFO) have primary responsibility for the management of the clam fishery. The provincial *Ministry of Agriculture, Fisheries and Food* (MAFF) is responsible for aquaculture, under an agreement with DFO regarding intertidal areas.

The *Nuu-Chah-Nulth Tribal Council* (NTC) is the primary political voice for the 14 First Nations on the West Coast and is engaged in the Treaty process. As of May 1996, the NTC, the parties had reached a Framework Agreement. NTC members Bands have considerable autonomy and have followed independent strategies for community development and resource management, some based on traditional knowledge and indigenous management systems (see for example,

Griggs and KNT, 1991). Band members have numerous fisheries licenses for various finfish and shellfish species, and under various agreements with DFO, maintain active fisheries program which supports several staff biologists, and a range of Fisheries Guardian programs, as well as monitoring and stock assessment activities.

Clam diggers are a diverse group of individuals from the First Nations, Vietnamese Canadian, and European-Canadian communities. Clam diggers are anxious to maintain stable employment from the fishery, in some cases to ensure that they qualify for unemployment insurance (UI) after the fishing season ends. There have been several attempts to establish associations of clam diggers, but none of these have produced organisations that have endured. Diggers sell their product to the "middlemen" of the industry, the clam *buyers*. Buyers are often aligned with a particular processing plant and in come cases, run boats that are financed by the processors. *Processors* are the industrial interests in the fishery, with considerable investments in processing plants and responsibilities for marketing and international sales.

Various communities on the West Coast have a recognised interest in the fishery as residents rely on income to supplement income from other seasonal employment sources (such as logging, salal harvesting, etc.). Communities' interests are represented through Municipal and Regional District governments and through a variety of associations, such as West Coast Sustainability Association (WCSA), a alliance of Native and non-Native fishermen engaged in stock and habitat enhancement activities. The WCSA is one of the strong proponents on the West coast for community-based management of fisheries, overseen by a proposed Regional Fisheries Management Board.

3.2.3. The Management System for Clams

Until 1989, clams were managed loosely, with clam digging licenses ("Z2" licenses, costing $10) for clam digging available to all individuals with a Fisheries Registration Card (FRC, costing an additional $10). The chief conservation tool was a minimum size limit (38 mm), set so as to allow clams to spawn at least once prior to harvest.

Recognising the potential impact of rapidly increasing numbers of licensees on the resource, DFO introduced area licensing in 1989, restricting diggers to only one of six areas on the B.C. coast. The use of fisheries openings was also introduced at this time, with opening times established in consultation with an (ad hoc) advisory committee made up of industry stakeholders. Openings are based on in-season monitoring reports of catch per unit effort (CPUE) and the proportion of undersize clams landed. This is a reactive management method, which relies on the lines of communication between diggers, buyers, processors, and DFO working efficiently to transfer critical information to prevent overharvesting and depletion of the stocks.

The clam fishery presents complex management challenges for resource managers:

- Due to the complex geography of the West coast and the periodic and uneven distribution of clam stocks, reliable stock assessments are not available. Monitoring of stocks on a particular beach relies on reported catch from diggers but there are considerable incentives for diggers to withhold information, as their livelihood is dependent on their individual knowledge productive beaches.
- Enforcement of the fishery is almost impossible, given the number of widely distributed access points along the west coast, and the ability of poachers to conceal their presence on the beach at night with shrouded lights.
- Sampling activities for PSP or fecal coliform contamination are relatively costly and as a result are undertaken infrequently, perhaps once every year. As a result, closures have been imposed for a year at a time, which has the effect of concentrating digging effort on the remaining beaches.

3.2.4. *The Catalyst for Change in the Clam Fishery*

Since 1988, the number of licenses issued for the West coast clam fishery has risen to over 500, stocks have reportedly dwindled, and to protect the resource, openings have been limited to a just few days at a time. This has caused resentment within the industry as diggers are no longer able to dig for sufficient time to qualify for UI, openings have been announced at short notice and often occur during periods of poor weather, and the supply has been unreliable and sporadic with impacts on marketing. At the same time, there is growing controversy over illegal poaching. It is widely believed that illegal diggers are predominantly non-residents of the West Coast, who are often of Asian (Vietnamese-Canadian) origin. DFO has also faced budget cuts, reductions in resources and staff to manage and enforce the fishery, exacerbating the enforcement and management problem. Finally, local communities have complained at disruption caused by harvesting activities on recreational beaches and by the leasing of foreshore areas near settlements for aquaculture.

Since 1993, DFO, MAFF and stakeholders in the industry have been engaged in the Clam Reform process, intended to improve the management regime for the fishery. Following the release of a discussion paper (DFO/MAFF, 1993), several meetings were convened to discuss future management options (including license limitation), and written submissions were invited. A pilot management project involving a community-based management board was initiated in Area C in 1993, with moderate success.[2] Other co-management arrangements have been attempted in the Bella Bella area, in the Queen Charlottes, and in the Kuper Island, Kulleet Bay and Squirrel Cove areas. The Clam Reform process has progressed slowly, however, apparently as a result of concern over equitable allocation, and the complex and poorly organised interests in the fishery.

3.2.5. *NTC/DFO Interim Measures*

In parallel to the Clam Reform process, a second initiative was underway to address clam management on the WCVI under an IMA.

In August 1992, a Framework Interim Measures Fisheries Agreement was signed between Fisheries and Oceans and the NTC confirming a "commitment to a relationship based on mutual respect and understanding." This agreement was carefully defined so as not to define or limit aboriginal rights nor constrain future negotiations, stating that "benefits which may flow pursuant to this agreement may or may not be considered in future treaty negotiations." The agreement covered the traditional territories of the NTC member Bands, corresponding to DFO Statistical Areas 21-26.

The principles upon which the agreement was based include the following:

- to create and maintain a productive and ecologically-sustainable resource base;
- to establish a new relationship between the parties which will provide increased involvement of all aspects of fisheries management, harvesting and economic development within the Areas;
- to determine and to implement possible approaches to cooperative fisheries management;
- to use and to develop opportunities which will contribute to the development of self-financing structures and activities related to fisheries resources;

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2 The Area C management pilot project introduced limited entry licensing based on recent involvement with the fishery and local residency, and divided the licenses on a 50/50 basis between Native and non-Native licensees. This arrangement has provide for greater stability in Area C, but may have displaced large numbers of non-redient diggers who now work in others areas. See Mitchell, 1994.

- to balance local, regional and national concerns in the management of fisheries and other aqua-resources;
- to develop careful, step-by-step development of a cooperative management system; and,
- to develop various programs for reciprocal training and information sharing.

The IMA established a "Cooperative Technical Committee" (known as the "Joint Committee") to implement the agreement, provide advice to both parties on technical matters, recommend fisheries management and enhancement plans, address policy issues, and develop cooperative management projects. The agreement also created a "Cooperative Fisheries Management Support Program" to assist with the development of salmon enhancement strategies, assist member Bands of the NTC to "plan, implement, evaluate and report on fisheries management proposals" and generally support the development of technical capabilities and experience with the First Nations.

The agreement thus provided a vehicle through which the NTC and DFO could develop further sub-agreements and work towards improved management of the fishery on the West Coast. In particular, Section 5.3 of the agreement states that "[s]ubagreements made pursuant to this Agreement will address communal access by the NTC and First Nations to existing recreational and commercial fisheries, and to newly developing fisheries and other aqua-resources. Such sub-agreements also may address management activities, processing, marketing, other aqua-resources and other related activities and infrastructure required to support fisheries management and economic development, as deemed appropriate by the parties."

The first (and currently only) such sub-agreement was the development by the Joint Committee of draft Terms of Reference for an Intertidal Shellfish Management Board (ISMB). The proposed Board was to "exercise responsible joint management of inter-tidal clams and gooseneck barnacles so that these resources might sustain and contribute to the well-being of our communities and future generations." The Terms of Reference included as objectives:

- maximizing the long-term social, cultural and economic benefits from the comprehensive management and harvesting of these resources; and,
- exploring local management options to improve the management of these resources and increase the involvement of First Nations and stakeholders in management decision-making.

The proposed responsibilities of the ISMB included:

- developing long-term strategies and plans for management and rebuilding of intertidal shellfish stocks;
- developing annual management plans;
- reviewing the implementation of annual management plans and progress towards the objectives of long term management and rebuilding plans; and,
- consulting with First Nations and stakeholders in the development of long term strategies and annual management plans.

Membership of the ISMB was to be determined after meeting with other interests including commercial non-native harvesters, commercial processors, and the Provincial Government, but was to include 50% of Board membership for the NTC. The Board was also to be structured "to incorporate, insofar as possible, accountability to a representation of, First Nations, local communities and industry." The work of proposed Board was to be supported by a Technical Advisory Committee, made up of representatives of the NTC, DFO, the Provincial Government, and industry stakeholders.

3.2.6. The Collaboration Process for Creating a Shared Management Agreement for Clams

In the early spring of 1996, a Steering Committee comprising DFO, MAFF and the NTC was formed to bring together the two parallel initiatives (Clam Reform, and the IMA) for the restructuring of the clam fishery in Area F. This initiative was intended to lead to a second pilot management project, similar to that undertaken three years earlier in Area C. The Steering Committee contracted an independent consulting firm, to meet one-to-one with various key stakeholders in the industry to:

- confirm the issues of concern for the Area F;
- explore options for improved management, including the possible establishment of an Intertidal Shellfish Management Board, as proposed by the Joint Management Committee; and,
- to recommend a sequence of next steps to move towards improved management.

Problem Setting

Although the process of developing the IMA is complete, the collaboration process for developing shared management of clams in this case is only in the first (problem setting) phase, as defined by Gray (1989). Despite this early stage however, several key issues can be discerned. This analysis is tentative, as the current round of consultations is not yet complete and the results have yet to be fully digested.

First, there has been (and may continue to be) considerable difficulty communicating with the full range of stakeholders involved in the clam fishery. The more established industry participants are readily identifiable, but the clam diggers themselves are from a range of ethnic communities and are geographically highly dispersed. Furthermore, although the legality of licenses holdings cannot be challenged, the *perceived legitimacy* of recent Asian-Canadian entrants to the fishery is nonetheless contested, particularly by those who reside on the West coast and who are angered by repeated experiences of illegal digging, damage to beaches and inadequate enforcement efforts.

Second, although all stakeholders subscribe to a strongly held view that "things must be change," there is no common definition of the problem at hand. On purely biological terms, the state of the stocks, the distribution of clam larvae and recruitment patterns are uncertain. Various groupings of stakeholders thus view the state of the fishery and its projected future under the current management regime in different lights, which are often more than a little tinged by self-interest. Also, from a process viewpoint, each of the government agencies involved has a different conception of the problem. From DFO's perspective, the key challenge is establishing an improved management regime for the wild clam fishery, to protect the resource itself and to meet obligations to the NTC. DFO is under considerable pressure as a result of legal rulings (particularly Jack, John and John), and is keen to use the IMA to further their cooperative relationship with First Nations. The provincial Ministry conceives of the problem more broadly and is anxious to incorporate the initiative under the umbrella of the Clam Reform process. MAFF's position can be traced back to concerns over the setting of precedents, and their wish to advance community-based planning and management initiatives which are not necessarily part of the treaty process. Additionally, there is a high degree of uncertainty over the scope and objectives of the recently launched "Fisheries Renewal Plan," initiated by the provincial Government in the late spring of 1996 (partly in response to a federal buy-back program in the salmon fishery, the "Mifflin Plan," which is vociferously opposed by interests in B.C.).

Third, stakeholders have differing expectations about the outcome of this initiative. The NTC sees this as an opportunity to work towards shared jurisdiction of local fisheries within the broader context of the treaty process and the IMA. They support the creation of a communal

property system with a strong emphasis on local control. While many local non-Native residents support this concept in principle (conceding, for example, that a 50-50 split of licenses between Natives and non-Natives is reasonable and fair), some non-government stakeholders are resistant to the concept of treaties and view any reallocation of the clam fishery as "redistribution along racial lines." Furthermore, some of the aquaculturists (and reportedly, some interests within the provincial Ministry) argue for the privatization of the resource and the creation of aquaculture tenures, thus doing away with the wild fishery and, they contend, providing more stable management, increasing production and employment and reducing enforcement costs.

Fourth, many of the stakeholders in the clam fishery do appreciate their interdependence. Many view the clams as "common property" to which they are fully entitled as British Columbians. While this conceptualisation may be incorrect (clams being state property, *res publica*, not open access resources, *res nullius*), it does underline a "subtractability" problem[3] and supports the need for some cooperative agreement to avoid depletion under what many view as the current "gold rush" management regime.

Fifth, there is varying commitment to collaboration. While many stakeholders see working cooperatively with others in the industry as inevitable and necessary, it appears that many of the non-resident diggers who are recent but highly productive entrants to the fishery have little to gain from collaborating in a process that may lead to their exclusion. License limitation in other areas (the Area C pilot, for example) has been based on the number of years for which licenses have been held or residency, and not on landings.

Sixth, there is as yet no catalyst to bring the various stakeholders together to address the problem collectively. The current round of consultations seems to provide a solid first step in this direction, but for success to be assured, the government agencies will need to agree on a common framework for tackling the problem, and a independent convenor may need to be hired to play an on-going role. This individual or group will have to maintain the respect of a highly diverse set of stakeholders and have the capability to design and manage a process of negotiation which stakeholders believe can acknowledge and address fairly their respective interests. Champions within each of the stakeholder groupings may also have to be nurtured, to maintain the commitment to the process, and to serve as conduits for communication.

Prospects for Direction-Setting, and Structuring and Implementation

Looking ahead, and based on the work of Dale (1989), Ostrom (1992), and others, several other conditions will have to be fulfilled in order for the process to reach a successful outcome:

- *Adequate resources* must be provided to support the negotiation process. Symbolic contributions from non-government stakeholders groups could have a powerful catalytic effect, but the bulk of the support for the process will likely have to be borne by the two levels of government and possibly by the NTC.
- *A shared understanding of and coincidence in values* must be cultivated among stakeholders involved. Distribution of discussion papers and the current round of consultations will have contributed to this task, but further efforts will need to be made to bring parties together for the purposes of mutual education.
- *Terms of Reference for a on-going process* will have to be developed. To ensure the credibility of such a process, the stakeholders themselves will likely have to be involved in developing the Terms of Reference, and setting an agenda that reflects all parties' interests.

A table summarising the collaboration process for this case study is included in Appendix A.

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3 Subtractability is one of the key characteristics of a common pool resource. See Ostrom, 1992.

3.2.7. *Summary Comments*

The process to improve management of clams on the WCVI has the potential to create a more stable shared management regime, based on a local, communal property system (thus defining communal property rights, under *res communes*). An Intertidal Shellfish Management Board could serve to bring local interests to the fore, provide for mutual education and experimental management, help to create a sense of common commitment to the sustainability of the resource, and provide on-going management flexibility to accommodate fluctuations in stocks, and possible reallocation or shifts in jurisdictional authority as a result of the treaty process. Furthermore, a Board arrangement would provide a vehicle to address future the development of aquaculture, including leases to be held by the NTC member Bands to support economic development.

It is debatable however that all current license holders could reasonably been included in the clam fishery under such a management scheme. Such large numbers would necessitate continuing restrictive licensing arrangements, would create on-going difficulties for management decision-making, and would inhibit the development of an identifiable and mutually enforceable group of stakeholders—recognised as one of the keys for effective communal-property management systems (Pinkerton, 1989). Successful license limitation is likely to be a crucial issue which will determine the ultimate success of the initiative.

3.5. Case Study: Forest Development in the Wet'suwet'en Traditional Territories

Since 1994, the Province and the Wet'suwet'en First Nation have been engaged in a collaborative process to develop an agreement for the shared management of lands and resources within the traditional territories of the Wet'suwet'en peoples in Northern B.C. (see Figure 5). This case study examines the key component of this process—the development of IMAs for forest management in the form of a series of bilateral agreements and protocols.

3.3.1. *Stakeholders Involved in Forest Management*

The traditional territories of the Wet'suwet'en have been virtually completely overlaid by provincial tenures granting timber cutting rights to forest companies. Forestry activities have the most extensive impacts of any current land use activity on the traditional territories of the Wet'suwet'en First Nations. Companies have to make long term investments in capital infrastructure (mills and equipment) and planned activities on the basis of such tenures over Crown land. Local communities rely on forest companies as a major source of employment and economic activity. Hence, stakeholders include federal, provincial and local levels of government, forest companies and local communities, as well as the Wet'suwet'en First Nations.

3.3.2. *Components of the Forestry Management System*

Primary responsibility for management of forest resources lays with the provincial government, dominated by the Ministry of Forests. Planning and management is divided into "strategic" and "operational" levels, encompassing a variety of planning processes and management activities. The strategic level, includes Land and Resource Management Planning , Timber Supply Reviews and the setting of Allowable Annual Cut. Operational plans include Forest Development, 5-Year Silviculture, Access Management and Range Use Plans.

Figure 5: Traditional Territories of the Wet'suwet'en

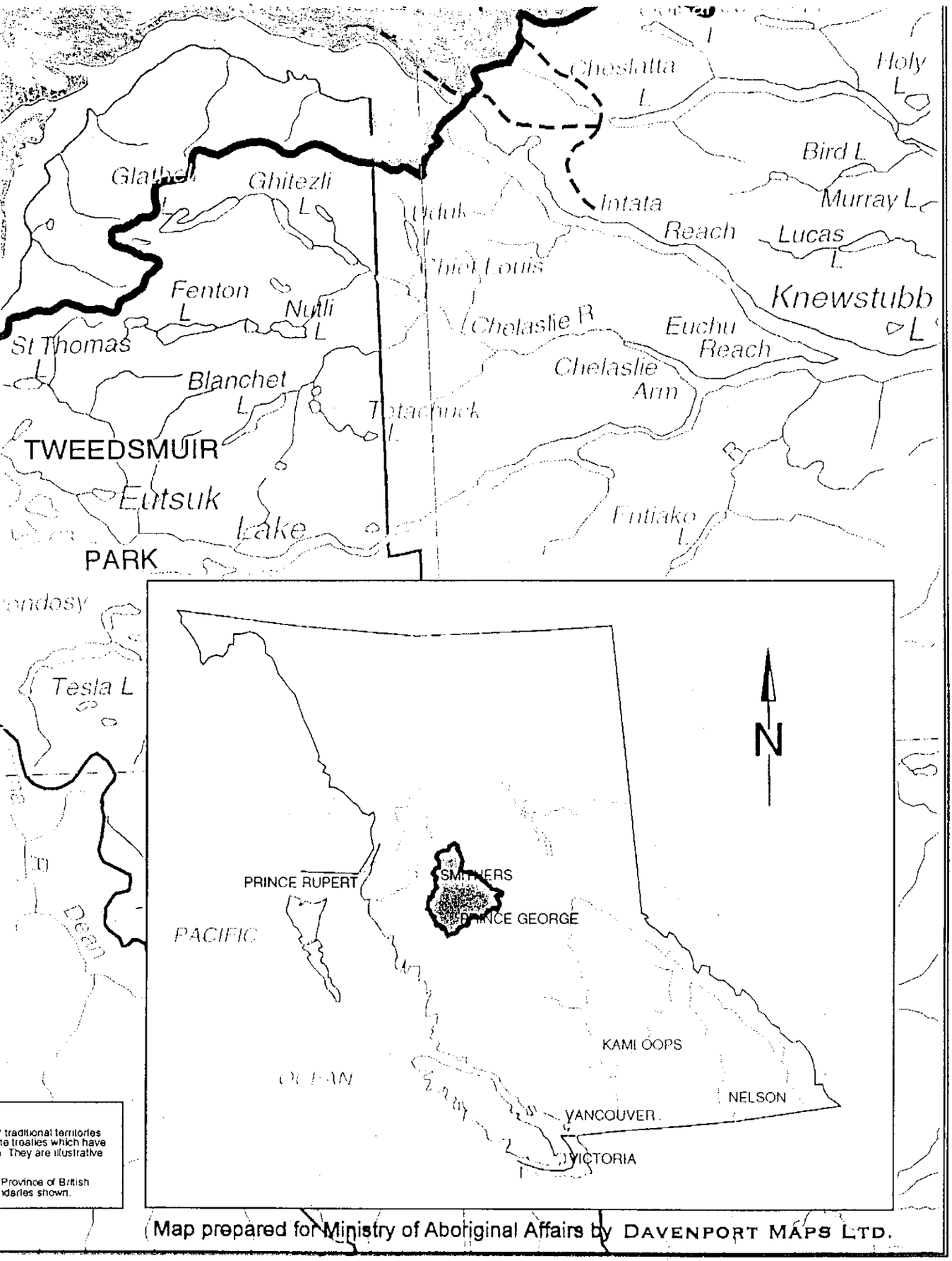


Figure 5 - Traditional Territories of the Wet'suwet'en

3.3.3. Catalysts for Change

The 1993 Delgamuukw appeal court decision that the Gitxsan and Wet'suwet'en peoples do have "unextinguished non-exclusive aboriginal rights, other than the right of ownership" has been the major factor in the changed relationship between First Nations and the provincial government in B.C. The Province has been compelled to discuss both the nature and extent of aboriginal rights with individual First Nations and to interpret how these rights might relate to forest harvesting and management activities.

A second key factor mitigating for change has been the split between the Gitxsan and Wet'suwet'en peoples following the Appeal Court decision. The establishment of a separate Wet'suwet'en Office of Hereditary Chiefs and Treaty negotiation process enabled discussion of some long standing issues between the involved parties from a relatively "clean slate."

The combination of court decisions and directives, an amenable Provincial government and a willingness on the part of the Wet'suwet'en First Nations to address issues of mutual interest provided a limited "window of opportunity" to engage in a fresh process to develop agreements regarding resource management and planning that the key parties chose to explore, rather than let pass.

3.3.4. B.C./Wet'suwet'en Bilateral (Interim Measures) Agreements

On June 13, 1994, the Wet'suwet'en, Gitxsan and British Columbia signed an *Accord of Recognition and Respect*. The *Accord* provided for an adjournment of the Delgamuukw appeal in the Supreme Court of Canada for up to eighteen months to allow negotiations to proceed between the parties.

An Agreement Regarding Significant Progress in the Wet'suwet'en- British Columbia Negotiations Pursuant to the Accord of Recognition and Respect was signed on April 10, 1995, in which the Wet'suwet'en and British Columbia agreed on objectives, an approach to bilateral negotiations and dates for assessments of the progress of negotiations.

Bilateral negotiations between the Wet'suwet'en and British Columbia concerning three specific matters—land and resources, economic initiatives and human services—commenced in April of 1995, leading to the *Wet'suwet'en - British Columbia Bilateral Agreement Pursuant to the Accord of Recognition and Respect and the Agreement Regarding Significant Progress in the Wet'suwet'en - British Columbia Negotiations*, signed on March 8, 1996. In the area of lands and resources, the *Bilateral Agreement* outlined a framework for negotiating how the bilateral relationship between the parties regarding land and resource matters will be defined, and how the Wet'suwet'en will participate in land and resource planning and referral processes prior to the conclusion of a treaty.

Specific negotiations on land and resource issues pursuant to the then draft *Bilateral Agreement* commenced in October of 1995 and concluded on March 1, 1996, when the parties reached tentative agreement on two protocols outlining a pre-treaty operational relationship on land and resource matters—the *Wet'suwet'en - British Columbia Land and Resources Referral Process Consultation Protocol* and the *Wet'suwet'en - British Columbia Forestry Operational Planning Consultation Protocol*. This unique negotiation process included the active participation of local "third party" (community and industry) representatives.

At the outset of the negotiations leading to the two protocols, the parties agreed that not all relevant issues relating to lands and resources could be negotiated within the short time allotted for the negotiations. As well, during the course of negotiations the parties concluded that perspectives on some land and resource matters discussed during the development of the

protocols would be best outlined in a letter outlined in a letter jointly signed by the parties. This *Joint Letter* contains provisions for: the establishment of Joint Committees to oversee the implementation of projects; resources required for implementation of protocols; evaluation of protocols, information and expertise sharing and training; an operational planning pilot project; discussions regarding environmental assessment matters; and consideration of involvement in strategic planning activities.

3.3.5. The Collaboration Process for Creating a Shared Management Agreement for Forestry

A review of the collaboration process used in this case is presented below, based on the three stages set out by Gray (1989): problem setting; direction setting; and structuring and implementation. The process in this case has progressed through the problem and direction setting stages and is presently grappling with structuring and implementation issues.

Problem Setting

The Wet'suwet'en and the Province of British Columbia established a "Lands and Resources Working Group" to discuss issues and develop interim agreements. The group included a range of interested or involved Provincial government agencies and Wet'suwet'en representatives, including the provincial Ministry of Aboriginal Affairs in a convenor role. From the onset of the group, "third party" (forest company and municipal government) representatives were invited to sit with the group as "observer/participants." While the Wet'suwet'en representatives had no objection to these parties having full participant status, the Province preferred that they have remain as "observers." This group discussed issues and expectations, as well as identifying a number of short term projects to provide information for further discussions. Such projects included:

- Wet'suwet'en Information System Project, to investigate and recommend actions for development of a functional information system in support of land and resource management for the Wet'suwet'en First Nations;
- Wet'suwet'en—B.C. Planning/Referral Review Project, to describe and analyse planning and referral activities of the Provincial government and identify opportunities for Wet'suwet'en involvement in planning processes; and
- Wet'suwet'en Decision-making Processes for Lands and Resources Project, to provide information concerning Wet'suwet'en cultural systems for management of lands and resources.

These activities, largely funded by the Provincial government with material and personnel support from the Wet'suwet'en, confirmed the parties' commitment to collaborate while clarifying expectations and increasing the parties' recognition of mutual interdependence.

Direction Setting

The Lands and Resources Working Group established (after much discussion) six mutually agreed upon goals:

1. Establish an improved relationship between the Wet'suwet'en and the Province in regard to land and resource activities.
2. Ensure the Wet'suwet'en participate effectively and efficiently in land and resource planning and approval processes.
3. Ensure that sustainable resource use and ecological integrity form the basis of land and resource decisions in Wet'suwet'en territories.
4. Restore damaged ecologies in Wet'suwet'en territories for the benefit of future generations.

5. Ensure an integrated approach to land and resource planning and approval processes.
6. Ensure that regional economic activity benefits all.

These goals, and each of the preceding bilateral agreements, are used as "touchstones" when additional actions or unresolved issues are under discussion within the group. Negotiations regarding the co-existence of Wet'suwet'en and Crown rights and jurisdictional arrangements (two particularly divisive issues) are set aside for discussion by other groups established under the *Accord of Recognition and Respect*. These issues are of fundamental importance to the Wet'suwet'en and, unless properly addressed, threaten to overwhelm other efforts toward cooperation with Provincial interests.

The Lands and Resource Working Group has served as the primary vehicle for discussing issues and setting direction for future activities. The group has agreed on a series of bilateral agreements, each specifically referring to antecedents and providing for increasingly specific activities. For example, separate "protocols' have been established for "forestry operational planning consultation" and for "land and resources referral process consultation." Each of these protocols sets out principles, information sharing provisions and a consultation process with roles and responsibilities. Specific projects in support of these protocols are set out in the framework *Bilateral Agreement* and include a cultural heritage, forest resources and wildlife habitat inventories, information systems, forest survey training and impact assessment funding. The agreements to date within the Lands and Resources Working Group have been explicit regarding the maintenance of existing power, decision-making and dispute resolution systems. At present, considerable "decision-making" latitude remains with government agency regional and district managers, with avenues for appeal outlined in existing agency aboriginal rights and consultation policies.

Structuring and Implementation

Much of the work initiated under the Lands and Resources Working Group is in the planning or early initiation stages, hence consideration of effects on external mandates, short or long term redistribution of power and influence on the contextual environment are premature.

3.3.6. Summary Comments

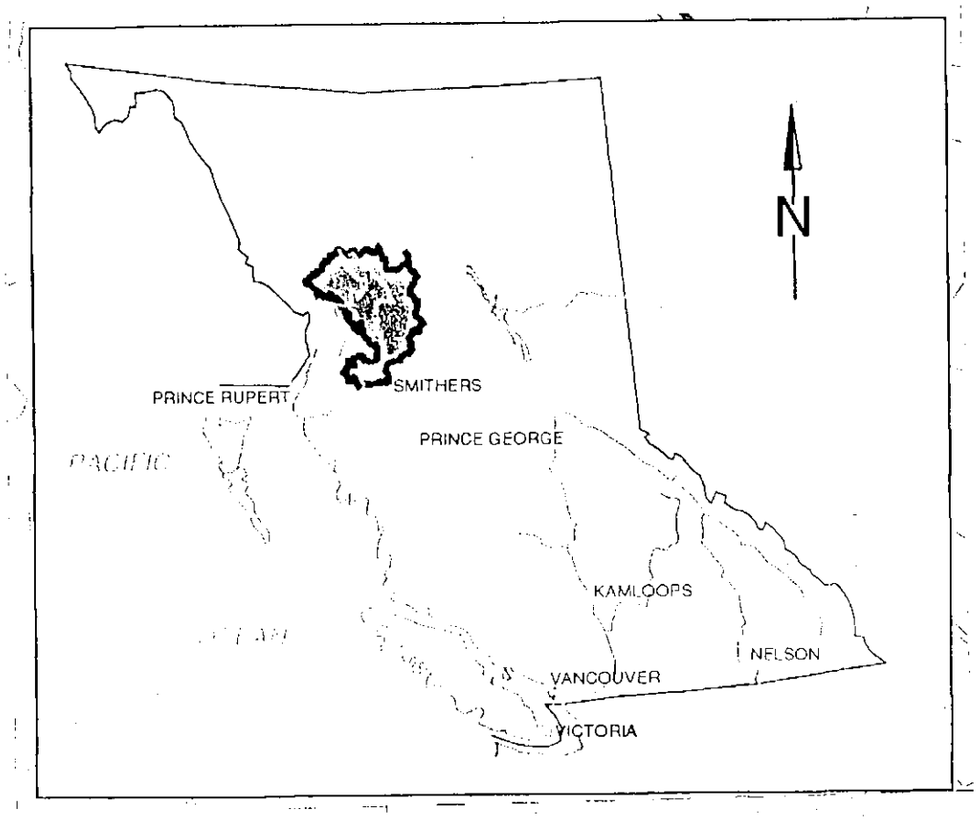
The Wet'suwet'en First Nations and the Provincial government appear to have developed an environment of cooperation and activity in land and resource management. Much of this positive environment is a result of a Wet'suwet'en strategic decision to participate within the existing system of management in the near term, rather than challenging and advocating an alternative approach based more closely on Wet'suwet'en cultural values. In the short term, the Wet'suwet'en have chosen to develop their capacity for resource analysis and participation, and to "engage" with a wide variety of government agencies across their entire traditional territory. There has yet to be a true testing of the effectiveness of this type of engagement (i.e. a situation has not arisen where the Wet'suwet'en explicitly oppose a (forest) development which has been approved within the provincial system).

3.4. Case Study: Access to Forest Lands in the Gitxsan Traditional Territories

This case study has the same starting point as the Wet'suwet'en case (Section 3.3, above) but presently rests in a much different state. The catalysts for change, stakeholders and components of the resource management system are similar, although different individuals, organisations and approaches to collaboration exist among the involved parties. The Gitxsan First Nations participated in the signing on June 13, 1994 of the *Accord of Recognition and Respect*, involving the Wet'suwet'en, Gitxsan and British Columbia providing for an adjournment of the

Delgamuukw appeal in the Supreme Court of Canada for up to eighteen months to allow negotiations to proceed between the parties. This discussion will focus on the collaboration process that was attempted for forestry planning and management, in comparison to the approach used by the Wet'suwet'en.

Figure 6: Traditional Territories of the Gitxsan



3.4.1. The Collaboration Process for Creating a Shared Management Agreement for Forestry

Problem Setting

The Gitxsan chose to negotiate a "Forest Resource Management Agreement" (FRMA) directly with representatives of the provincial Ministry of Forests, rather than attempting discussions with an inter-ministry group. The rationale and desire of the First Nations group (acknowledged and accepted by the Provincial government) was that as forestry activities had historically been the point of greatest contention between the involved parties, the negotiations should focus on this area of resource management first.[4] Third parties did not participate in the negotiations, although forest company representatives, and other interested parties, did participate as observers.

The hope for the Forest Resources Management Agreement was to detail "how joint planning between Gitxsan House Chiefs and the Crown will take place. The outcome will mean taking the aboriginal rights won in the Delgamuukw appeal decision and making them real on the land" (Daxgyet - Gitxsan Treaty Negotiations Journal, November 1994). The agreement was intended to be a framework, with additional "side table" agreements to be undertaken on the basis of individual watersheds. Negotiations around the framework agreement bogged down over conflicting definitions of aboriginal rights between the two parties with the sixth draft dated June 23, 1995 remaining unsigned after more than a year of direct negotiations. Court actions and conflict continued between the parties through this period, as well as abortive attempts by both the Gitxsan and the Ministry of Forests at consultation and comment regarding forestry activities. An attempt to reach agreement with the services of a third party mediator late in the year also failed. In the spring of 1996, the Province broke off treaty negotiations with the Gitxsan on the basis of concerns regarding civil disobedience on the part of individual House Chiefs and Gitxsan refusal to provide "guarantees" that no further such actions would take place. The BC Treaty Commission is currently (June 1996) assessing the situation in an attempt to persuade the parties to return to the treaty negotiation process.

3.4.2. Summary Comments

The attempt at collaboration with a view to shared management of forest resources has resulted in frustrations and an entrenching of positions in this case. Both major involved parties (Gitxsan and the Provincial government) are considering or actively pursuing the use of courts to advance their interests and little but animosity remains between the parties. The major factor in this "failed" attempt at collaboration is a fundamental difference in views regarding aboriginal rights between the two parties and their inability to set the issue aside in order to explore areas of mutual interest.

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4 There has been a long history of civil disobdience, court injunctions and conflict between the Gitxsan, the Ministry of Forests and (in particular) the largest forest company operating in Gitxsan traditional teritories. A major roadblock and court actions preventing the construction of a major river crossing leaves a significant portion of Gitxsan traditional territories unroaded, while concentrating logging activities in accessible areas (with cut levels based on calculations which include the unaccessed area).

3.5. Case Study: The Clayoquot Sound Central Region Board

Background information and interview responses for this case study remain unavailable at the time of writing this draft.

This case study was chosen because of its precedent-setting nature in establishing a joint management process dealing with resource management and planning in British Columbia. An Interim Measures Agreement was signed between the Province and the Tla-o-qui-aht, Ahousaht, Hesquiaht, Toquaht and Ucluelet First Nations of Clayoquot Sound in March of 1994 and renewed in March of 1996. The IMA contains provisions for creating a "Central Region Board" composed of representatives from local communities appointed by the Province and First Nations and funded by the Province.

The Board established under the IMA has broad review and recommendation powers, including forestry and land use plans, alienation of land or water resource, aquaculture, land tenures, wildlife management and mining. No other joint management board involving First Nations and community representatives has subsequently been established in the province. As the Central Region Board has been in operation for over two years, and has grappled with some longstanding and contentious resource issues, a review of the collaborative process will provide additional insights regarding potential obstacles or factors in success.

4. INSIGHTS AND CONCLUSIONS

Based on a comparative analysis of the four case studies, key insights and conclusions can be derived regarding the creation of shared management agreements for renewable resources under IMAs. The sections below address the two principal research questions posed in this study:

- What are the key parameters that determine the potential success of processes leading to the creation of shared management systems for renewable resources under interim measures?
- Based on experience to date, what are the prospects for shared management systems developed under interim measures to (i) meet the interests of all parties involved in the agreement, and (ii) ensure sustainability of the resource (pending the ultimate resolution of outstanding questions of land and resource rights and title)?

4.1. Insights: Key Parameters Determining Success

The four case studies illustrate different approaches to the creation of shared management for renewable resources in the context of IMAs. By applying Gray's "conditions facilitating collaboration" and in the knowledge of other work on (i) the emergence, survival and performance of common pool resource management institutions (Ostrom, 1992), and (ii) social learning (Dale, 1989), the authors have derived the following insights. Given that each of the case studies is in a different stage of progression, and the none of the situations are static, these insights are limited to the "problem setting" and "direction setting" phases of the collaborative processes only.

The following insights address the first of the two research questions posed by the study: What are the key parameters that determine the success of processes leading to the creation of shared management systems for renewable resources under interim measures?

4.1.1. Confirming Legitimate Stakeholder Interests

The potential success of the WCVI process for clam management appears to hinge, in part, on confirming the legitimacy of stakeholders. In this case, DFO is committed to working with the NTC, and the Province, through MAFF, appears to be committed to local planning and management initiatives which legitimizes the local communities on the West coast. However, the *perceived* legitimacy of the Asian-Canadian clam diggers is contested. Until limited licensing is introduced, on-going uncertainty over who is to be involved in the shared management system, whatever its form and scope, will likely hamper further progress.

The successful identification and involvement of third parties is also a key issue in the Gitxsan and Wet'suwet'en case studies. The willingness of the Wet'suet'en to discuss issues with other interests on an "equal" basis is a significant factor in building trust and future success. Conversely, the close working relationship of the Ministry of Forests with forest companies in the case of the Gitxsan, in combination with the open animosity between the Gitxsan and other parties, did not allow legitimate interests to be identified or to participate in the process. The absence of a accepted neutral convenor in the case of the Gitxsan also limited identification of legitimate stakeholders.

4.1.2. Developing a Common Definition of the Problem, Clear Expectations about Outcomes, and Commitment to the Process

The case studies highlight several issues related to the development of common definitions of the problem at hand, instilling a sense of mutual interdependence, and fostering commitment to collaboration.

Clarifying Distinctions between Planning and Treaty Issues

Collaboration processes can be hampered by unclear or "inappropriate" definitions of the problem at hand. When parties have a long standing history of conflict, the "problem" can assume such proportion as to be insurmountable. In several of the cases, lack of a clear separation between resource planning and management issues and "treaty issues" of jurisdiction and associated decision-making rights remains a major sticking point between parties involved in negotiating and establishing IMAs. Separating large issues into several component "problems" for discussion or agreeing to set aside some aspects of the issue can be critical to success of the collaboration process.

In the WCVI Clam fishery case study, the different conceptions of the scope of the process as held by MAFF and DFO appear to originate from confusion on this point. MAFF sees the process as part of an on-going planing initiative and resists being drawn into negotiations under the IMA which may set a precedent for the treaty process. At the same time, DFO, propelled by recent court decisions, sees the process as a key step forward in a new relationship with First Nations. It is unlikely that the process will proceed smoothly until a common frame of reference has been agreed.

The Gitxsan and Wet'suwet'en cases highlight several other recurrent difficulties which arise from the lack of a common definition of the problem. In both cases, the Provincial Government hopes to minimize the work involved in referrals of all development activities that might infringe on aboriginal rights (as necessitated under Delgamuukw) by involving First Nations in strategic level planning processes. However, at the same time, provincial agencies are under considerable pressure to avoid setting jurisdictional precedents related to treaty negotiations. This juxtaposition of pressures reduces the scope for creativity and flexibility in planning process design. IMAs appear to provide one approach to overcoming these difficulties by striking a balance between treaty negotiations, which pit First Nations against government interest, and planning issues which are framed in terms of multi-stakeholder interests. The contrast between the Wet'suwet'en and the Gitxsan cases is notable on this point. The insistence of the Gitxsan on addressing the issue of "aboriginal rights" within a "Forest Resource Management Agreement" ultimately proved to be the undoing of the process. The Wet'suwet'en have chosen to address this issue in other forums, rather than explicitly within "Lands and Resources" agreements. It must be remembered however, that the Wet'suwet'en approach may not, in the end, meet their interests if their view of aboriginal rights is not sufficiently accommodated in the practice of implementing collaborative agreements — the issue remains central to First Nations interests.

Addressing the Mismatch between Scales of Administrative Systems and Interests

Another aspect of common definitions of problems is the difference between the scale of administrative and decision-making systems for the provincial and federal governments on the one hand, and First Nations on the other. This difficulty exacerbates the difficulty of separating jurisdictional and planning issues, discussed above.

First Nations traditional territories are small relative to the scale of the land over which the Province currently has jurisdiction. The resulting difference in administrative scales and interests has implications for fair and balanced First Nations involvement in decision-making for land and resources. In the Gitxsan and Wet'suwet'en cases, the Province's "operational"

scale of planning (Forest Development Plans) requires consultation only on specific activities (e.g. the location of timber cutting blocks), rather than on "strategic" issues (e.g. the level of timber harvest). It is at this "operational" scale, covering large portions of traditional territories, that First Nations desire to have "strategic" input regarding land use and management.

In the WCVI clam fishery case study, the view of the NTC is clearly focused on its own traditional territories and building cooperative and productive relationships with local residents and communities. The viewpoint of MAFF however is heavily influenced by the Province's strategic concern that pilot management projects not set precedents for other areas. Furthermore, non-government stakeholders may see the approach taken to improved management in Area F as setting the tone. If this occurs, further difficulties may arise as a result of diggers purchasing licenses purely to establish a history of involvement. Finally, Area F, as defined by DFO, currently include the traditional territories of the Quatsino Band. This First Nation has declined to participate in the current round of consultations, underlining the incompatibility of DFO administrative boundaries and those of First Nations.

Fostering Commitment to the Process of Collaboration

The case studies reiterate that the ultimate success of collaboration hinges on the parties commitment to the process. In the WCVI case, the commitment of NTC and DFO is apparent, but uncertainties over the scope of the project and the fear of precedents may undermine the involvement of the Province. The recently announced "Fisheries Renewal Plan" has raised further concerns. The involvement of diggers in the process is problematic as many believe that an "improved management system" may in fact exclude them from the fishery. As noted above, clarifying the legitimacy of parties to be involved in the process is critical.

The Gitxsan and Wet'suwet'en cases demonstrate different degrees of commitment to the process of collaboration leading to an IMA. The Wet'suwet'en case acted tactically to stay on board, despite their reservations, and used side processes to address thorny issues that threatened to undermine the collaboration process. In contrast, the Gitxsan held firm on principles, presumably on the basis that other alternatives, including recourse to the courts, was just as likely to produce a favourable outcome. The continued "falling back" to traditional behaviours ("autocratic" decision-making, civil disobedience, use of the Courts) by the involved parties, while attempting to negotiate a collaborative process ultimately led to a loss of faith regarding intentions on the part of all parties.

4.1.3. Providing Adequate Resources for the Process and Effective Convenors

Building Capabilities for Shared Management

The success of any negotiation is determined in part by the ability of all parties to participate effectively in both the collaboration process and its implementation. The case studies underline this point, and demonstrate very different approaches taken to resourcing the process.

One of the key components of the NTC/DFO Interim Measures Agreement is a commitment to build technical planning and management for fisheries within NTC member Bands. This commitment to the sharing of resources and information is viewed to be an essential step in the development of a new, cooperative relationship between the parties.

In other cases however, supporting the development of First Nations technical capabilities is viewed as "high risk" by the Province. In the Wet'suwet'en and Gitxsan cases for example, the Province is extremely cautious about making significant contributions to "building capacity" in any one case for fear of the potential costs to the Crown when such contributions are be called for in other situations across the Province. The development of capacity to analyse and manage natural resources within their traditional territories remains central to First Nations objectives

The present lack of capacity on the part of First Nations is acknowledged by the Province to be a major stumbling block in present consultation efforts. The funding source for increased First Nations capacity however, remains a point of contention.

Identifying Effective Convenors

As indicated by Gray, the emergence of a convenor to act as a catalyst and champion for the process is critical to the success of the initiative. In the WCVI clam fishery case study, no such convenor has yet to be identified, and the future of the process is uncertain. This case study, which is marked by tension among all parties, also underlines the importance of an independent agent to pay this convening role.

In the Wet'suwet'en case, the Ministry of Aboriginal Affairs played a valuable convening role, particularly in terms of ensuring the participation of key provincial government ministries. In the Gitxsan case, however, no such independent party was involved, rather the two major parties (with a long history of conflict) undertook negotiations without explicit mediating parties until very late in the process.

4.1.4. Developing Ground Rules and Mutually-Agreeable Agendas

In the Gitxsan case, the history between the parties (involving extensive use of the Courts) and the use of lawyers as primary negotiators by both parties led to the exact wordings and possible legal interpretations of any ground rules, agendas and agreements. Discussions were time consuming and often circular, leading to a feeling of a lack of progress on the part of all involved in the negotiations.

Wet'suwet'en case built mutually agreed upon agendas on a "step by step" basis. Reaching individual agreements (e.g. concerning objectives for the Lands and Resources Working Group) could involve lengthy, and often heated, discussions however, once reached were used as stepping stones to subsequent issues. Subsequent agreements make referral to areas agreed to at each earlier step, rather than reopening unresolved concerns.

In the WCVI case study, the format for on-going negotiations has yet to be determined.

4.1.5. Using Sub-Groups and Building Agreements

The success of collaboration depends on the careful orchestration of negotiations such that small, but sticky issues do not derail the greater effort. The contrast between the Wet'suwet'en and the Gitxsan cases highlights this point graphically. Although both First Nations built on the same foundation, the Wet'suwet'en worked within the provincial framework and built agreements that were limited in scope but kept the process moving forward, successfully setting potential intractable issues aside for discussion either in other venues or at later times. The Gitxsan "held out" for very specific agreements, attempting to build towards a clearly articulated "Gitxsan vision." This vision, or worldview, is based on a "wilp" or "House" based management system as "the key fundamental, political, economical, social, biological and legal unit" throughout the Gitxsan territory (Daxgyet Gitxsan Treaty Negotiations Journal, September 1995). This vision was put forward as a direct challenge to the federal and provincial view of land, resources and people—and its expression in a "land selection model" for treaty negotiations and the desire to "extinguish" aboriginal rights. The Wet'suwet'en goal for treaty negotiations is also based on the House territory system throughout their traditional territory however, this desire does not explicitly pervade all sub-agreements or discussions.

While the goals of the two First Nations groups may not differ fundamentally—their tactics in attempting to reach these goals differ radically. For the Gitxsan, acceptance of the Gitxsan

vision and its inherent basis in "aboriginal rights" is a starting point for all subsequent discussions and agreements. For the Wet'suwet'en, shared management across their entire territory is an "'endpoint" and sub-agreements can used to build expertise, relationships and acceptance among various parties of the Wet'suwet'en worldview.

The WCVI case study highlights the same point, although the outcome is as yet uncertain. The IMA on the West coast is of a very general nature and is intended to be a broad, enabling framework within which specific initiatives can proceed. However, it has yet to be seen whether (i) technical uncertainties on clam stocks and biology can be addressed effectively in parallel with the main collaborative process, and whether (ii) the IMA can survive the ultimate success or failure of the clam initiative and provide a basis for subsequent fisheries co-management initiatives.

4.2. Conclusions

The following sections present conclusions drawn by the authors based on the analysis of the case studies presented. Conclusions are drawn with respect to (i) the utility of the analytical framework, (ii) the general merits of IMAs, and (iii) prospects for the use of IMAs in the future.

4.2.1. Utility of the Analytical Framework

This study applies the literature on collaborative alliances Gray 1991, Gray and Wood 1991a, 1991b, 1991c, 1991d, Kofinas and Griggs 1996) to analyses of emerging shared management agreements. Based on this study, the authors contend that:

- Gray's (1989) "conditions facilitating collaboration" are of particular relevance for analyses of inter-organisational interactions in complex political environments—a consistent feature of many Native/Non-Native negotiation processes; and,
- the framework applied here has the potential to serve as both a *descriptive* and a *prescriptive* analytical tool.

4.2.2. Merits of Interim Measures

This study also confirms the potential value of IMAs as a complementary tool in the ongoing work to establish modern day treaties in British Columbia. By providing an enabling framework within which specific agreement can be crafted, IMAs provide a flexible vehicle for developing working relationships and experimenting with new resource management regimes.

The sections that follow draw further conclusions related to the second research question: What are the prospects for shared management systems developed under interim measures to (i) meet the interests of all parties involved in the agreement, and (ii) ensure sustainability of the resource (pending the ultimate resolution of outstanding questions of land and resource rights and title)? A summary of the points that follow is presented in Table 2.

Meeting the Interests of all Parties

Interim Measures Agreements provide a broad, enabling framework within which parties can negotiate—and, just as importantly, renegotiate—agreements to satisfy their respective interests. By freeing the negotiations of the formality and finality of the treaty process, all parties have considerably more latitude to be creative and innovative in establishing new management regimes.

Interim Measures Agreements further allow for the involvement of all parties who are perceived to have a legitimate stake in the outcome. This degree of involvement contrasts with the formal treaty process, in which third parties have only an advisory role. In the WCVI case study, the collaboration process has the potential to involve the West Coast Sustainability Association, a group also advocating for community-based management. The inclusion of the WCSA would help working relationships between stakeholders in the clam fishery to develop prior to the formal and binding resolution of treaty issues.

The case studies also demonstrate that IMAs can provide for working certainty on the land base during the period of negotiation. This degree of certainty allows resource management and planning, and in some cases, investment by tenure holders, to proceed. In the Gitxsan and Wet'suwet'en cases, IMAs have the potential to provide for a climate of certainty concerning forestry planning, management and investment. In the case of the Wet'suwet'en, this potential appears to be in the process of being realized through active engagement involving First Nations, governments and forest companies. The potential remains to be tapped in the case of the Gitxsan however, the adversarial relationships entrenched among the parties may as yet only be suited to resolution in the formal Court and legal system (although at high social and monetary cost).

Finally, the case studies demonstrate that the scale of IMAs can be used to address interests of the involved parties in a different manner than in treaty negotiations. IMAs can provide for shared management regimes that cover the entire traditional territories of First Nations. By contrast, the formal treaty process (if the Nisga'a Agreement in Principle is the model on which future negotiations are based) relies on the delineation of a core of lands to be identified as First Nations land which are managed under their jurisdiction. In the absence of IMAs, resource management and planning is unstable pending the definition of the extent of this core area.

Ensuring the Sustainability of the Resource

The case studies demonstrate that IMAs can be valuable tools in ensuring the sustainability of ecological systems during the politically unstable period of transition to treaties. It must be remembered that IMAs are a means, rather than an end—their effectiveness in addressing sustainability is entirely dependent on the desire of involved parties to maintain sustainable levels of resource use The existence of IMAs is by no means a sufficient condition for resource sustainability, but may well be a necessary one. IMAs are an important vehicle for bringing parties and resources to bear on a common cause such as resource sustainability.

In the WCVI case, the long-term sustainability of the clam resource is in doubt. Stocks are dwindling and with rising numbers of diggers, the impact of each opening is increasing, with potentially disastrous results. In the absence of the IMA, it is doubtful that DFO could impose a new management regime to address this concern without running foul of their legal obligations to work with the NTC.

The Gitxsan and Wet'suwet'en cases provide an interesting contrast in considering potential sustainability of forest resources. In the Gitxsan situation, the "vehicle of choice" for both the Province and the Gitxsan apparently remains to be the court system, rather than any Interim Measures Agreements. A significant portion of Gitxsan territory with high timber value remains undeveloped at this point due to past court actions and civil disobedience on the part of Gitxsan house members. So it can be said that the forest resource remains "sustainable", although it has not yet been "used" to a significant degree for timber harvesting (in this unaccessed area). Whether this situation will continue in the long—or even near—term however, is very uncertain.

The forest resources in Wet'suwet'en traditional territories have been more widely accessed and developed than in the Gitxsan situation. Significant areas however, remain to planned and managed and the Wet'suwet'en approach to management may be considerably different than is

the present case. The success of the Wet'suwet'en in ensuring sustainability of the resource—and differences among interested parties in definitions of "sustainability"— remain to be discussed and tested as the Interim Measures Agreements are implemented.

Table 2: A Comparison of Interim Measures Agreements and Treaties

Aspects of the Agreement	Interim Measures Agreements	Treaties (as per the Nisga'a Agreement in Principle model)
Purpose	An enabling framework Provides working agreements and shared management systems during period of transition to Treaties	A formal and binding agreement Provides final settlement of outstanding claims including the establishment of rights and jurisdiction
Scope (Area)	Potentially covers all of the traditional territory of First Nations	Likely to result in First Nations jurisdiction for a percentage of traditional territories
Scope (Content)	May be broad or limited to a specific resource management regime	Comprehensive
Degree of Certainty	Provides for working certainty during the period of transition but is not binding	Provides for high degree of certainty and finality
Complexity and Cost	Depends on the scope of the agreements	High
Flexibility of Agreement(s)	Highly flexible	Limited flexibility, although side agreements can be attached
Robustness	Not binding and thus vulnerable to challenges from other interests Public profile not high and therefore rarely contested	Binding
Involvement of third parties	All stakeholders who are perceived to have a legitimate stake in the outcome can be included Working relationships can develop	Negotiations are tri-lateral, involving the First Nation(s), federal and provincial governments Third parties are advisory only
Potential to ensure resource sustainability	IMAs provide a basis for introducing improved management regimes to protect resource values in full consultation with First Nations during the transition period to treaties	In the absence of treaties or IMAs, agencies cannot impose new management regimes to protect resource values given their obligations under Delgamuukw, and yet have no standing forum for full consultation with First Nations

4.2.3. Prospects

On the basis of the case studies, presented, IMAs represent an invaluable framework for developing shared management regimes for renewable resources during the period of transition to treaties. However, IMAs are complex collaboration processes are the case studies demonstrate that both strategic level and tactical level issues must be successfully managed to assure success. Collaboration is thus more akin to an art form, than a science. The respective (apparent) success and failure of the Wet'suwet'en and Gitxsan cases provide clear evidence of the difficulties that have to be faced. Other recent studies that have applied the collaboration framework to complex, inter-organisational interactions echo this point. Kofinas and Griggs comment that "collaboration can be lethargic, labour intensive, highly dependent on interpersonal interactions, and limited in efficacy to make decisions. Such processes are relatively foreign and our collective ability to adapt today's rigid institutions to such an approach may be limited." (Kofinas and Griggs, 1996:36)

In the specific context of treat making in B.C., the case studies also suggest that concern over the setting of precedents is a major difficulty in negotiating Interim Measures Agreements. Negotiations concerning IMAs can assume "mini-Treaty" proportions. An environment in which flexibility, testing and (even) explicit experimentation is encouraged is needed in order to utilize the full potential of IMAs in support of appropriate and effective treaty settlements.

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