Marine Protected Areas and Aboriginal People in British Columbia: From Conflict to Collaborative Management

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Abstract

This paper looks at a case study in which a model is used to assess the effectiveness – ecologically, socially and economically – of marine protected areas for aboriginal people.

The Province of British Columbia has devoted much of the last decade to completing an internationally significant system of protected areas. Much emphasis has been placed on the protection of natural values, however the needs of the aboriginal people who rely on resources being protected have often been overlooked.

The authors undertook a five-year case study in the Hakai Luxvbalis Conservancy Area ("Hakai"), the largest Marine Protected Area (MPA) in British Columbia. At over 1,200 square kilometres, Hakai not only protects a huge range of marine ecosystems and habitats, but it is also an area rich in First Nations' history and present day use.

When Hakai was designated as a protected area in the 1980s, it was done without consultation with First Nations, who objected strenuously to protection within their traditional territories. They felt the protected area would restrict their ability to undertake economic development initiatives and that it would infringe on their traditional uses of the land and water. Ten years later and after much conflict between the Province and the Heiltsuk Nation, the parties began discussions to look at the effectiveness of protected status and to determine the impact of the area upon traditional activities and uses. The parties worked on a number of studies over a five-year period and developed a model to assess the interests of the Heiltsuk Nation as well as the desire for government to protect the area.

The work culminated in a negotiated Collaborative Management Agreement (CMA) as well as a change in the legal designation and how the area will be managed. The new cooperative relationship is focused on joint management planning, appropriate economic development and capacity building for aboriginal people.

Introduction

The Hakai Luxvbalis Conservancy ("Hakai"), at over 1200 square kilometers (700 square miles), is the largest MPA in British Columbia. It is located about halfway up the British Columbia coast, midway between Vancouver and Alaska.

Hakai is an extremely diverse area ecologically and is comprised of hundred of small islands and islets. The area has excellent representation of marine and terrestrial ecosystems; in fact, Hakai represents more benthic marine ecounits than any other MPA on the coast. Several ecounits are unique to Hakai.[3]

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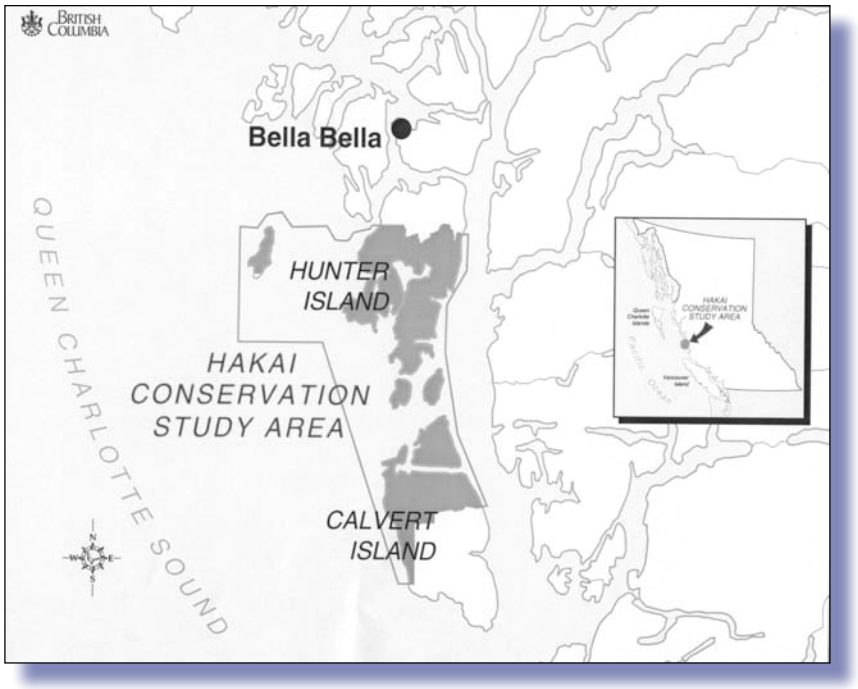
[2] Chief Councilor of the Heiltsuk Nation
[3] The British Columbia Marine Ecosystem Classification scheme divides the benthic marine environment into 1201 ecounits based on seven physical parameters. There are 263 unique ecounit codes along British Columbia's coast. Ministry of Sustainable Resource Management. 2002. *British Columbia Marine Ecological Classification: Marine Ecosections and Ecounits*.

Hakai contains many representative features of the coastal marine environment in British Columbia. Fully exposed rocky coastline, huge white sand beaches, dunes, tombolos, shell and boulder beaches, channels of varying tidal current regimes (rapids to brackish lagoons) protected and exposed island groups, bays and lagoons, rolling treed hill and 1,000 meter alpine summits can all be found in this protected area. As well, some of the largest eelgrass meadows and kelp forests on the coast are located within Hakai.



Hakai also contains a wide variety of wildlife. Several huge seabird colonies are found on the outer islands, and there are northern (Steller) sea lion colonies, salmon spawning streams, and one of only two remnant populations of sea otters on the British Columbia coast. Sea otter are a keystone species in maintaining the huge *Macrocystis* and *Nereocystis* kelp forests of Hakai.[4] Gray, killer whale, minke and humpback whales are commonly seen in the waters surrounding the islands, as are porpoise and dolphins.

Hakai's range of intertidal habitats, combined with the wide variety of current, substrate and energy regimes make it the jewel of British Columbia's MPA system. Great diversity with great abundance give Hakai a very high conservation ranking in the provincial system.

The area is considered an internationally significant sport-fishing destination with 7 high end, fly-in fishing lodges, typically targeting 40+ pound Chinook salmon and 100+ pound halibut. Commercial fishing continues in most of the area, however there are two no-take zones within the protected area, which have been designated as Rockfish Conservation Areas.

First Nations Use of Hakai Luxvbalis

The entire Hakai Luxvbalis Conservancy is considered by First Nations to be extremely important, from both a historical and a current use perspective.

First Nations use and occupation of the area dates back thousands of years. The Heiltsuk Nation has collected evidence that dates Namu, a village site close to Hakai Luxvablis, at around 10,000 years old. Many of the First Nations pre-contact stories and histories were oral, passed down from

[4] British Columbia Ministry of Environment, Lands and Parks, March 1995. *Hakai Recreation Area. Subtidal Biophysical Features of the Goose Islands. Occasional Paper Number 3.*

one generation to the next in public forums of the potlatch, before witnesses, which ensured accuracy. [5]

Hakai Luxvbalis has one of the highest concentrations of archaeological sites on the central coast of British Columbia.[6] A large number of villages, camps, settlements and related sites, such as petroglyphs, pictographs, canoe blanks, middens (which are characterized by 2-6 meter deep piles of clam and mussel shells associated with old village sites), canoe runs and fishing weirs, are all located through the area. These formed part of the First Nation settlement system that "existed prior to contact and still forms the basis of resource use patterns for descendants of the people who inhabited these communities."[7]

First Nation interests are not frozen in the past, and while archaeological evidence gives a good picture of past use and occupation, First Nation use of the area and ties to the lands and waters of Hakai are strong. Hakai Luxvbalis is a breadbasket for the 2000 First Nation people who live in the nearby community of Bella Bella, and who rely on this area for food, harvesting salmon and halibut, rockfish, clams, crab, cod, herring, seaweed and countless other marine and terrestrial resources.

The Challenge

The Hakai area had been the subject of a number of studies looking into the creation of new protected areas on the coast, as marine areas were, and still are, significantly underrepresented in the province's park system. From the very beginning of theses studies, the Heiltsuk Nation had opposed the creation of new protected areas in their territory. One letter stated:

> "The Heiltsuk oppose the imposition of a park system in the Study Area. It is their request that no decision in respect of the Study Area be made without consultation with and recognition of the use and occupancy of the Heiltsuk."[8]

The Heiltsuk Nation accompanied their letter with a position paper that opposed designation of the area as a park, and maintained that opposition over the years through a number of other position documents. In particular, the Heiltsuk took exception to statements in the studies that called Hakai "uninhabited wilderness" when their history indicated use and occupation for thousands of years.

In I987, the Province designated the area a "Recreation Area" under the *Park Act*. This designation is typically used as a "park in waiting" category, which provides much of the protection as a Class A Park, but allows for mineral exploration to continue for a 10-year period. At the end of that period, if no significant mineral resources are found, Recreation Areas are typically "upgraded" to Class A Parks.

In 1989, several years after designation, BC Parks produced an "Interim Management Statement" for the Recreation Area, which acknowledged the importance of the area to the Heiltsuk and recommended that:

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[5] Heiltsuk Tribal Council Submission to the Central Coast Land and Coastal Resource Management Plan on the Hakai Recreation Area. February 2000.

[6] Phil M Hobler, 1988. *Archaeological Survey in the Hakai Area*. Report on file with BC Archaeology Branch. 80 pages.

[7] Heiltsuk Tribal Council for the Central Coast Land and Resource Management Plan. April 2000. *Occupation, Use and Management of the 'Hakai-Spiller Hotspot' by the Heiltsuk Nations*.

[8] January 31 1986 letter to the Wilderness Advisory Committee from W.A. Ferguson, Barrister and Solicitor

> "… every effort … be made to work with the Heiltsuk Tribal Nation of Waglisla; basic to this must be an understanding that the Recreation Area is part of their traditional use area; the archaeological sites are a cherished part of their culture; subsistence fishing, gathering and hunting and trapping are still carried on…"[9]

In 1993, the owner of a parcel of private land within the Hakai Recreation Area began planning the development of a fishing resort on the property. The Heiltsuk strongly opposed this development, as they felt it was in opposition to Regional District by-laws and would significantly disturb an existing Heiltsuk archaeological site on the private property. The resort was developed, and a dock was built without obtaining a BC Parks permit. The Heiltsuk felt the government was not prepared to stop the development, despite the Heiltsuk claims that the archaeological site was being damaged.

In 1995, BC Parks began the process to upgrade the Recreation Area to a Class A Park, and informed the Heiltsuk Tribal Council of its intention. The Heiltsuk again responded by saying they did not wish the area to be upgraded to a park, stressing their belief that "it is highly debatable whether land set aside for the use and enjoyment of all British Columbians could possible be on the table as potential treaty settlement land" [10] and that the creation of a park would affect their ability to practice aboriginal rights within the area.[11]

Around this time, the Province also made the decision to initiate a major land use planning process on the Central Coast of British Columbia. This process, called the Central Coast Land and Resource Management Plan (CCLRMP), was intended to create new protected areas and provide strategic direction on the use of land and resources in the area. The decision was made to defer the upgrade and future of the Hakai Recreation Area to this planning process.

The Heiltsuk, and other First Nations on the coast, began to participate in the process. A Heiltsuk brochure on the CCLRMP stated:

> "The Heiltsuk Tribal Council is participating in the CCLRMP …. The process is not what the Heiltsuk Tribal Council wants. When we objected to this process we were told it would happen with or without our participation … As part of the LRMP, the government intends to decide what areas will become parks. In the past, this was done without consultation. The Heilstuk plan to have a major role in the management and declaring of protected areas in our lands. We will not tolerate parks being declared against our wishes and without our participation."[12]

Given the very public nature of this planning process, the ability of international environmental NGO's to successfully bring market campaigns against British Columbia, and recent changes in aboriginal law that established new common law requirements for consultation, it was clear that new ways of working with First Nations would need to be created if the province wished to establish any new protected areas on the coast of British Columbia.

A New Relationship

In British Columbia, First Nations have a number of critical interests around protected areas. The following list is by no means exhaustive and each band or nation often has different issues and perspectives. A number of these key interests include:

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[9] British Columbia Ministry of Parks. Northern Region. May 1989. *Hakai Interim Management Statement*.
[10] *Heiltsuk Tribal Council Submission to the Central Coast Land and Coastal Resource Management Plan on the Hakai Recreation Area*. February 2000. P 5.
[11] *Heiltsuk Tribal Council Submission to the Central Coast Land and Coastal Resource Management Plan on the Hakai Recreation Area*. February 2000. P 5.
[12] *The Heiltsuk and the LCRMP*. 2001. Heiltsuk Tribal Council website.

1. Ensuring protected areas do not affect First Nation ability to access resources for food, social, ceremonial use, or for potential commercial use;
2. The creation of protected areas will not prejudice future treaty negotiations;
3. To be involved as **partners** in the management of protected areas, not as stakeholders; and,
4. The ability to benefit economically from the resources in protected areas and from public use of protected areas.

In 1998 BC Parks and the Heiltsuk Nation began discussions on the future of Hakai. Initially these were very difficult and positional discussions, as the Heiltsuk had taken the perspective that the Recreation Area status should be removed, while government began with the idea that protection designation stay and that Hakai would be upgraded to a Class A Park, with a higher level of protection and boundaries designated through legislation.

After several years of difficult discussions, a breakthrough occurred when the parties agreed to change the name and purpose of Hakai. In 2001, the "Hakai Recreation Area" was changed to the "Hakai Conservation Study Area", with the purpose of:

> "…replac[ing] the Hakai Recreation Area in order to expedite public discussions on the development and establishment of a protected area in and around the existing area with boundaries and management structures acceptable to the Heiltsuk Nation and the Province."[13]

Other than this change in the purpose of the area, all other aspects of the previous legislation governing uses and acceptable activities in the area continued to apply.

Following on this very positive development, the parties agreed to create a "Task Group" to look at the future of Hakai.[14] The intention was to look at various management models for cooperation and communication between the parties, capacity building and legislative options. The agreement also recognized that the Heiltsuk would work with neighboring First Nation to resolve boundary issues, and that it would not supercede any legal requirements that the Province had to discuss these issues with other First Nations. The Task Group then commenced the development of a project it called a "Social Impact and Boundary Rationale Study of the Hakai Recreation Area."

Social Impact and Boundary Rationale Study

The Social Impact and Boundary Rationale Study (the Study) was something new to BC Parks. Through the Study, the parties were proposing to look at the effectiveness of a protected area for First Nations; redesigning the MPA to ensure that it was respectful of First Nations' interests and involving First Nations as partners. This Study was a huge leap of faith, both for government and for the Heiltsuk, who, by agreeing to the Study were for the first time acknowledging the presence of the MPA, something they had not previously done.

The Study was researched and written by a neutral contractor who reported to the Task Group, so neither party could claim the work was biased in favour of the other party. The study, which took about 6 months to complete, included a number of components:

1. A review of documents relating to the protected area, including a summary of how BC Parks had managed the area as well as the original rationale for protection and boundary selection;

[13] Province of British Columbia. March 2, 2001. *Order of the Lieutenant Governor in Council 226*.
[14] *Terms of Reference, Heiltsuk/Province Protection and Conservation Areas Task Group*. January 10, 2001.

2. Information on the key spatial marine and terrestrial values in the area, including Heiltsuk use of resources;
3. An identification of the positive and negative effects of *Park Act* designation on the natural, cultural and recreational values of the area, including Heiltsuk perceptions of change;
4. A determination if protection had increased use of the area, as well as the extent of the social, cultural, environmental and economic impacts of protection; and,
5. Suggestions and recommendations to the parties on potential boundary changes and resource management guidance to mitigate any adverse effects on Heiltsuk use and occupancy.[15]

The Study used a number of information sources. Interviews were conducted with government resource managers, stakeholders with knowledge of the area and tenure holders in the area. The Heiltsuk used a number of reports that had been written regarding Hakai and surrounding areas, as well as much of the information developed to support participation in the Central Coast LRMP. They used archaeological overview assessments, ongoing traditional use studies, and a series of interviews with Heiltsuk government, staff, community members, elders and Hereditary Chiefs. All of these sources provided a wealth of information from which to make assessments and recommendations.

The Study also included a governance component, where a range of legal options were considered, ranging from removing the protection designation to providing even more protection.

The Final Report indicated a range of the usual costs and benefits associated with protected areas. Non-First Nations highlighted the benefits of protection, which included protecting a baseline example of a coastal environment for future monitoring, continued access to the public, increased commercial and public recreational opportunities, increased knowledge and research, protection of environmental values. Costs included those lost from resource extraction (logging, mining, fish farming) as well as the potential negative effects of increased tourism.

The main focus of the Study however, was on the concerns and comments from the Heiltsuk. There was a range of awareness and perceptions within the community regarding the MPA. Many Heiltsuk members felt the area was set up "as a playground for sports fishermen" and to protect the interests of the sport fishing lodges in the area.[16] In terms of Heiltsuk use of the area, many maps were produced that showed a tremendous amount of use, including camps, former village sites and major seasonal camps throughout the area. This knowledge had been passed down from generation to generation by those who camped, lived or harvested "on the land" and has only recently been recorded on maps and charts.

The Study showed that the Heiltsuk considered all archaeological sites (burial, structural remains, house depressions, middens, fish traps, rock art, culturally modified trees, lithic sites, canoe runs) sacred and evidence of their ancestor's use of the land. These sites corroborated oral traditions as well as the extent of past use. In addition, the Study indicated that there were many "First Generation" stories from Hakai about the origins of families and extraordinary beings before humans were created.[17]

The Heiltsuk identified a long list of the species that were used for both food (sustenance and commercial) and ceremonial purposes within Hakai. The Study says that Hakai is:

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[15] *Social Impact and Boundary Rationale Study of the Hakai Recreation Area. Final Report.* April 20,2001.
[16] Ibid, page 12.
[17] *Ibid.*

> "[t]he landscape of our ancestors. This is what sustains our spirit. This must be protected for future generations. This landscape remains a living testimony to our heritage, in spite of the loss of so many other aspects of our culture due to the contact experience."[18]

The Heiltsuk identified only one positive aspect of the establishment of Hakai, and that was the increased number of tourists in the area, from which a limited number of Heiltsuk community members were able to benefit. The remaining comments were negative. Many Heiltsuk people saw themselves as being treated with hostility by the sport fishing lodges and fishermen in the area, and felt displaced by the non-aboriginal users in the area. Increased floatplane and boat traffic in traditionally used areas, such as Pruth Bay and Kwakshua Pass, and depletion of crab, salmon, cod, and other bottom fish were also attributed to the creation of the protected area.

Pollution associated with fecal coliforms from increased boat traffic was also a major concern, as was increased poaching of species such as abalone and salmon. A major concern was the lack of protection of archaeological sites. Middens and beach artefacts are particularly at risk from poorly located campsites and souvenir hunters.

Many of the comments and concerns related to the fact that First Nations had not been involved in the establishment of the area, had not benefited from the establishment of the MPA, and their information had not been used in the management of the area.

Based on all the available information, the Study made a number of key recommendations. They included

1. The parties should develop an effective and positive working relationship, focused on a governance framework for cooperative management;
2. Maintain the current legal protection designation of the area, and consider adding other existing or new protected areas into a new cooperative management relationship;
3. Maintain the existing boundaries for the time being, and possibly expand them in the future;
4. Change the name to recognize the presence of First Nations;
5. The parties should jointly develop a management plan and build capacity for First Nations to be more involved in management of the area; and,
6. Improve monitoring of the area to ensure greater compliance with laws and regulations and to ensure Heiltsuk use of the area has not been impaired.

Collaborative Management

Soon after the Boundary Rationale Study was completed, the Heiltsuk and the Province began formal negotiations to implement the study's recommendations. The focus of these negotiations was upon a cooperative agreement for the management of Hakai. In September 2003, after two years of discussions and many drafts, British Columbia and the Heiltsuk Nation signed a Collaborative Management Agreement for Hakai at a huge feast in the Heiltsuk community of Bella Bella. At this time, the area was renamed the "Hakai Luxvbalis Conservancy Area." In the Heiltsuk language, Hakai means roughly "wide open passage" and Luxvbalis means "waves rolling on a point" and is also the name of an ancient village site and gathering area within the protected area.

The Collaborative Management Agreement formalized a new relationship between the Heiltsuk and the Province of British Columbia, one based on mutual respect and acknowledgement. The

[18] *Ibid*.

agreement recognizes that the Heiltsuk assert they have never ceded or surrendered their territory, and it recognizes that the Heiltsuk have existing aboriginal rights in their territory, and that they claim title to their lands and waters. It recognizes the role of the Canadian Constitution in affirming aboriginal rights and granting constitutional protection to them, and it also provides that the Heiltsuk can continue to use the lands and waters of the area for food, social and ceremonial uses.[19]

The focus of the agreement is upon operationalizing this new relationship. The agreement creates a "Hakai Luxvbalis Management Board" (the Board) with representatives from the Province and the Heiltsuk. Provisions allow other governments (such as other First Nations or the Federal Government) to join the Board. The Board has the responsibility over the creation of a management plan for the area, as well as reviewing all research, permits and operations within the MPA. The Board also has the task of building the capacity of the Heiltsuk to be involved in the management of Hakai Luxvbalis, as well as identifying appropriate economic opportunities.

Since the Board was created in 2003, it has been very active. The Board meets every two months, and has developed a terms of reference for its operations, has been reviewing all new and renewed permits for use within the protected area, and has started work on a major management planning process for Hakai Luxvbalis.

BC Parks has opened an office in the First Nations community, and the Heiltsuk Nation and BC Parks are jointly undertaking archaeological work, fisheries patrols and dives in the area to look at the impact of potential activities. As well, the Province and the Heiltsuk have been discussing the additional creation of a number of new protected areas within Heiltsuk territory that may be added to the responsibility of the Board.

Conclusion

What lessons can be learned from this case study and what elements are necessary to build this kind of new relationship? To begin with, the Heiltsuk Nation was open to building new relationships and partnerships. There were several changes in leadership within the community, and the new leaders made a conscious choice to build new bridges and be open to new ways of doing business.

Forgiveness is a big word, but the Heiltsuk were able to forgive government for some decisions that had negatively affected them. "Outsiders" have been making decisions that have affected First Nations' territories for more than a century and half in British Columbia, mostly to the detriment of aboriginal people.

The leap of faith that both parties were willing to take was also key to the positive outcomes. Neither the Heiltsuk or the Province knew what the study would recommend, but its neutrality was an important element in allowing each to step back from very strong emotions and positions and make decisions based on objective criteria.

Above all, personal relationships were critical to developing the new cooperative relationships. So often organizations focus on results-based management, looking to meet numeric targets and specified results. In doing so we can forget that organizations and governments are made up of people, who want to trust and want to be effective in doing their jobs, and in turn want to be trusted themselves. Building these relationships are very important, because, in the end, strong relationships mean great results.

[19]Heiltsuk Nation and British Columbia. September 29, 2003. *Hakai Luxvbalis Conservancy Area Collaborative Management Agreemen.*

Acknowledgements

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Heiltsuk Nation Chief Ross Wilson and Joyce Murray, Minister of Water, Land and Air Protection, walk the huge sandy beaches of Hakai Luxvbalis and talk about the future management of the MPA.