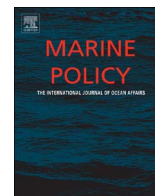




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## Strategies for assertion of conservation and local management rights: A Haida Gwaii herring story

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### A B S T R A C T

Under what conditions can an aboriginal fishing community keep a commercial fishery closed because of persistent low stock abundance when the federal government insists on opening it to commercial fishing? This paper explores a decades long effort by the Haida Nation to protect local herring stocks on Haida Gwaii through a precautionary approach to commercial fishing, recently resulting in a Federal Court-granted injunction that prevented the Canadian Minister of Fisheries and Oceans from opening a commercial herring fishery on Haida Gwaii in 2015. The successful effort by the Haida Nation to protect herring stocks ultimately required a combination of strategies involving confrontation, negotiation and litigation that occurred across two management scales (local and coast-wide) and two levels of dispute resolution. Strategies were successful as a result of four key factors: (a) ongoing conservation concerns about probable harm to herring populations, (b) the existence of aboriginal rights that raises standards for federal government consultation and accommodation, (c) an existing negotiated co-management agreement between the Haida and Canada about the area where most herring stocks are located, and (d) strategic interactions among local and coast-wide forums where herring closures were debated.

### 1. Introduction

The Haida Nation and two other First Nations in British Columbia, Canada, have been pursuing commercial access rights to, and local management of, herring fisheries for close to two decades. In 1993 the Haida Nation entered into an agreement with Canada “to work cooperatively in the planning, operation and management” (or co-management)<sup>1</sup> of Gwaii Haanas, a protected area in southern Haida Gwaii (located on the Pacific northwest coast of Canada); over two decades later, the Haida Nation is seeking to implement a broad level commitment to ecologically sustainable use of the Gwaii Haanas marine area [1], including in the management and use of herring. The Heiltsuk and Nuuchahnulth Nations are seeking to implement court decisions upholding aboriginal rights to fish herring for commercial sale in their traditional territories.

Since 2013, after a protracted closure of herring fisheries, all three nations have taken action to stop Canada’s department of Fisheries and Oceans (DFO) from opening commercial roe herring fisheries in portions of their territory (Fig. 1) through a variety of strategies including litigation, negotiation and direct action (confrontations).

Each stock area has defined boundaries based on the location of herring spawn over decades and most of the Haida Gwaii major stock area lies within Gwaii Haanas boundaries. Gwaii Haanas is located in the southern portion of the archipelago known as Haida Gwaii or *X̱Uṉderline X̱aayda Gwaayyaay* (Islands of the People). In 2014 the Nuuchahnulth, and in 2015 the Haida, obtained court injunctions that prevented the opening of commercial herring fisheries in the West Coast Vancouver Island and Haida Gwaii stock areas respectively. The courts’ decisions were variously based on aboriginal title and/or rights, cooperative management commitments by Canada, and/or conservation concerns. The outcome demonstrates the interplay between conservation of local resources and assertion of aboriginal rights and, specifically, the value of alternative strategies for achieving conservation in a climate where local management rights are minimized by the state.

As outlined in this paper, recent court findings of *de jure* management rights in the Pacific herring fishery based on aboriginal rights impose additional obligations on the state to consult and accommodate First Nation concerns (e.g. [2]). This includes pressure to negotiate and implement co-management arrangements with First Nations. Co-

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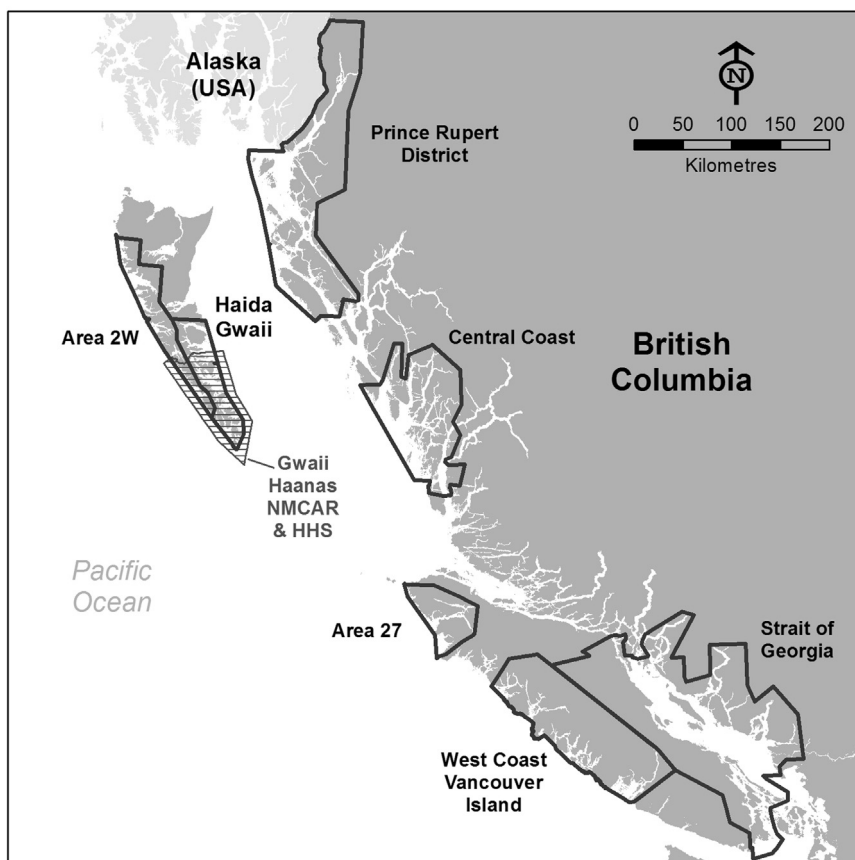
<sup>1</sup> The Gwaii Haanas Agreement (1993) references working “cooperatively” and the Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site Interim Management Plan and Zoning Plan (2010) references “collaboration in planning and management”. In this paper, the term “co-management” will be used to encompass both cooperative and collaborative management which are used by the Haida Nation and Government of Canada to describe their relationship.

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**Fig. 1.** British Columbia Pacific herring major stock areas (Haida Gwaii, Prince Rupert District, Central Coast, West Coast of Vancouver Island and Strait of Georgia) and minor stocks areas (Area 2 West and Area 27) and overlap with Gwaii Haanas National Marine Conservation Area and Haida Heritage Site. Adapted from DFO and Gwaii Haanas base maps.

management includes a range of arrangements, with different degrees of power, for joint decision-making by the state and communities (or user groups) about a set of resources or an area [3,4]. It is useful to conceptualize co-management as a process and sharing of power as an outcome that can occur at any stage of the co-management process [4–9]. But power relationships are rarely equal [10,11] and, as demonstrated in the following herring story, communities must often employ various strategies to influence policy and actions and to change the discourse about issues [8,12]. This paper considers how the Haida were able to exercise co-management rights in the herring fishery, illustrated by their successful closure of the herring fishery in 2015 for conservation purposes.

## 2. Frameworks for analysis of the assertion of management rights

Three frameworks are useful for analysis and interpretation of the Haida Gwaii herring story. Table 1, based on Schlager and Ostrom [13], provides a framework for analysis of property rights in fishing. Schlager and Ostrom describe rights as either *de facto* or *de jure* (legally based), and as functioning at an operational or collective choice level. These latter higher level rights usually include and are built on the lower level rights, together constituting a cumulative “bundle” of rights. As discussed later, recent Canadian court rulings indicate that the bundle of rights held by First Nations in herring fisheries contains a component of collective choice management rights in addition to operational rights.

The co-management framework adapted from Schlager and Ostrom [13], as well as political ecology in anthropology and geography, has been used to identify broader factors for successful co-management of common pool resources and barriers to the same [12,14–17]. Agrawal

**Table 1**  
Types of rights in fishing (adapted from Schlager and Ostrom [13]).

<i>Operational rights:</i>	
Access	Authorize entry into the fishery, or a component of the fishery, or a specific fishing ground
Withdrawal	The right to engage in a specific level of fishing effort or to take a specific catch
<i>Collective choice rights:</i>	
Management	Authorize the holders to participate in management and governance of the fishery
Exclusion	Provide the authority to determine the qualifications necessary to access the fishery and ‘withdraw’ resources – thus holders of exclusion rights are mandated to allocate use rights

[15] identified a minimum of 24 conditions relevant to successful management of common pool resources in four categories: resource characteristics, group characteristics, institutional arrangements, and the external environment. Armitage et al. [17] list ten conditions that “must all be met to some extent” for successful adaptive co-management. Conservation has not often been explicitly identified as a factor or a right, although “sustainable management” usually assumes conservation, and authors have described conservation as a benefit of co-management (e.g. [18]). The 2014 FAO Voluntary Guidelines for Small-Scale Fisheries identify the “right to sustainable resource management” as fundamental, but how to achieve this is to be determined [19].

Finally, the Institutional Analysis and Development (IAD) Framework [20] also provides a way of conceptualizing how herring management operates interactively across several scales and dispute resolution levels, and is influenced by different “action situations”. For

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