

GWAII HAANAS MARINE AGREEMENT

Her Majesty the Queen in Right of Canada, as represented by the Minister of the Environment for the purposes of the Parks Canada Agency and the Minister of Fisheries and Oceans (“Government of Canada”)

AND

**The Haida Nation as represented by the Council of the Haida Nation
 (“Council of the Haida Nation”)**

WHEREAS the Government of Canada and the Council of the Haida Nation have a common desire that the Gwaii Haanas Marine Area shall be regarded with the highest degree of respect and will be managed in an ecologically sustainable manner that meets the needs of present and future generations, without compromising the structure and function of the ecosystems;

AND WHEREAS on January 30, 1993 the Government of Canada and the Council of the Haida Nation signed the *Gwaii Haanas Agreement* which established the Archipelago Management Board (AMB) as a means for the Government of Canada and the Council of the Haida Nation to work cooperatively in the planning, operation, management and use of Gwaii Haanas;

AND WHEREAS the Government of Canada and the Council of the Haida Nation agreed in the *Gwaii Haanas Agreement* to enter into a further agreement with respect to the planning, operation, management and use of the area now referred to as the Gwaii Haanas Marine Area;

AND WHEREAS the Government of Canada and the Council of the Haida Nation wish to fulfill this commitment in the *Gwaii Haanas Agreement* by expanding the roles and responsibilities of the AMB to include the Gwaii Haanas Marine Area;

AND WHEREAS the Government of Canada and the Council of the Haida Nation wish to reaffirm their commitment to work together through the AMB and the processes set out

in this Agreement and the Parties will actively explore pathways and opportunities leading to reconciliation; and

AND WHEREAS the Council of the Haida Nation and the Government of Canada recognize that the Gwaii Haanas Marine Area is a new and complex initiative, and that the Parties are committed to reviewing and adapting the Agreement as necessary.

THEREFORE, the Parties agree as follows:

1.0 DEFINITIONS

“AMB” means the Archipelago Management Board as established pursuant to the *Gwaii Haanas Agreement* between the Government of Canada and the Council of the Haida Nation dated January 30, 1993;

“Government of Canada” means Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment for the purposes of the Parks Canada Agency and the Minister of Fisheries and Oceans;

“Council of the Haida Nation” means the governing body of the Haida Nation pursuant to the Constitution of the Haida Nation;

“Fishing” means, fishing for, catching or attempting to catch fish by any method;

“Gwaii Haanas” means the land and non-tidal waters as shown on the map attached as Appendix 2 to this Agreement, that have been designated by the Haida Nation as part of the Gwaii Haanas Haida Heritage Site and also designated by the Government of Canada as the Gwaii Haanas National Park Reserve of Canada under the *Canada National Parks Act*;

“Gwaii Haanas Agreement” means the Gwaii Haanas Agreement entered into between the Government of Canada and the Council of the Haida Nation on January 30, 1993;

“Gwaii Haanas Marine Area” means that area where the Gwaii Haanas Haida Heritage Site and Gwaii Haanas National Marine Conservation Area Reserve of Canada intersect, as shown on the map attached as Appendix 3 to this Agreement;

“Gwaii Haanas Marine Area Management Plan” means the management plan developed by the AMB pursuant to s.4.1(a) of this Agreement for the Gwaii Haanas Marine Area;-

“Gwaii Haanas Marine Area Strategy” means the strategy developed by the AMB describing the management approaches and actions required for activities, including fishing activities, to meet the ecosystem objectives established for the Gwaii Haanas Marine Area. This strategy does not include management approaches or actions required to prescribe access to fishing resources by any one particular group(s) or the allocation of a particular species or quantity of fish to any particular group(s);

“Gwaii Haanas National Marine Conservation Area Reserve of Canada” means the Gwaii Haanas National Marine Conservation Area Reserve of Canada named and described in Schedule 2 of the *Canada National Marine Conservation Areas Act*;

“Gwaii Haanas Haida Heritage Site” means the lands and waters that the Haida Nation has designated as such, as shown on the map attached as Appendix 1 to this Agreement;

“Interim Management Plan” means the management plan developed by the AMB pursuant to s.4.1(a) of this Agreement for the Gwaii Haanas Marine Area;

“Parties” means, the Council of Haida Nation and the Government of Canada and includes any person with authority to act on their behalf.

2.0 PURPOSE AND OBJECTIVES

2.1 This Agreement establishes the roles and responsibilities of the AMB with respect to the planning, operation, management and use of the Gwaii Haanas Marine Area.

2.2 The Parties wish to affirm that in the planning, operation, management and use of the Gwaii Haanas Marine Area they share the following objectives:

- a) to maintain and restore healthy and productive ecosystems within the Gwaii Haanas Marine Area and conduct all activities and programs in a manner that considers and respects this objective;
- b) to contribute to a benchmark for science and human understanding of the marine environment by supporting and promoting opportunities for research and monitoring;
- c) to maintain the continuity of Haida culture, including traditional renewable resource harvesting and the protection of sites of special spiritual-cultural significance to the Haida;

to provide for continued ecologically sustainable use of the marine resources that considers the economic wellbeing of coastal communities; and
to promote an understanding and appreciation of the marine environment, and provide opportunities for visitor experience, education and awareness.

3.0 THE ARCHIPELAGO MANAGEMENT BOARD

3.1 In order to facilitate the AMB’s assumption of the additional roles and responsibilities set out in section 4.0 of this Agreement, the Parties agree that upon execution of this Agreement, the composition and procedures of the AMB will be as follows:

- a) membership will include three (3) representatives of the Government of Canada and three (3) representatives of the Council of the Haida Nation, totaling (6) members. For any meeting or period of time, the total number of members may be increased or decreased by mutual agreement between the Parties, provided that equal representation is maintained;

each Party will designate one of its members as a co-chairperson, both of whom will jointly be in charge of calling and conducting meetings and authenticating minutes. The co-chairpersons may, however, agree that the responsibilities of the chair will alternate between co-chairpersons;

either Party may designate an alternate member to the AMB as required, who may fully participate in meetings when a regular member is absent; and either Party may replace regular AMB members from time to time, on notice to the other Party;

the AMB may seek the expertise and advice of individuals or organizations in carrying out the roles and responsibilities under this Agreement;

the AMB may consider scientific, traditional and local knowledge in carrying out its roles and responsibilities under this Agreement;
with the agreement of members of the AMB, additional individuals may attend AMB meetings at the request of the AMB members to support or assist the AMB;
the AMB may seek external sources of funding to carry out its roles and responsibilities set out in the Agreement;
the Parties will inform the AMB of the existence and availability of data, studies and other documents that pertain to the planning, operation, management and use of the Gwaii Haanas Marine Area that are reasonably necessary to enable the AMB to carry out its roles and responsibilities and subject to the requirements of the *Privacy Act* and the *Access to Information Act*; and
through mutual agreement in writing, the Parties may establish alternative procedures to carry on the roles and responsibilities assigned to the AMB under this Agreement.

4.0 ROLES AND RESPONSIBILITIES OF THE AMB WITH RESPECT THE GWAII HAANAS MARINE AREA

4.1 In addition to those roles and responsibilities set out in section 4.0 of the *Gwaii Haanas Agreement* regarding Gwaii Haanas, upon execution of this Agreement, the AMB will have the following roles and responsibilities with respect to the planning, operation, management and use of the Gwaii Haanas Marine Area:

- a) developing the Interim Management Plan and within five (5) years and reviewing every five (5) years thereafter, the Gwaii Haanas Marine Area Management Plan, which includes, but is not limited to, the management and zoning of activities;

developing ecosystem objectives for the management of activities, including fisheries, as selected by the AMB;

developing a Gwaii Haanas Marine Area Strategy;

consulting with parties, organizations and advisory bodies, which have interests in the management approaches and actions proposed for the Gwaii Haanas Marine Area Strategy or the Gwaii Haanas Marine Area Management Plan;

developing recommendations to the Council of the Haida Nation and the Government of Canada regarding guidelines and processes applicable to business permits or licenses for commercial tour operations, research and other activities within the Gwaii Haanas Marine Area;

collaborating with other departments and agencies or other parties which conduct or authorize activities affecting the planning, operation, management and use of the Gwaii Haanas Marine Area;

- b) developing annual work plans setting out the work to be done and how it is to be accomplished, including staffing requirements, budgets and expenditures of the Council of the Haida Nation and the Government of Canada;

formulating procedures in advance for dealing with possible emergencies concerning public safety and security and threats to the natural resources and cultural features of the Gwaii Haanas Marine Area, recognizing that nothing in this Agreement shall preclude either Party from taking appropriate action or any action that may be required by law, in the case of an emergency;

developing strategies to facilitate the continuity of Haida cultural uses, including traditional renewable resource harvesting, and the protection of sites of special spiritual-cultural significance to the Haida;

developing strategies to assist Haida individuals and organizations to take advantage of the full range of economic and employment opportunities associated with the planning, operation, management and use of the Gwaii Haanas Marine Area; and

- c) developing recommendations to the Council of Haida Nation and the Government of Canada regarding any other matter pertaining to the planning, operation, management or use of the Gwaii Haanas Marine Area.

5.0 DECISION-MAKING

5.1 Deliberations of the AMB on any particular proposal or initiative will strive in a constructive and co-operative manner to achieve a consensus decision of the members, which will be deemed recommendations both to the Council of the Haida Nation and the Government of Canada by way of referral to their designated representatives, agencies or departments, as deemed appropriate by each Party. If the Parties do not object, the matter will be deemed to be approved and ready to implement by the Party(ies).

5.2 The AMB will act in accordance with the Gwaii Haanas Marine Area Interim and subsequent Management Plans, ecosystem objectives and the Gwaii Haanas Marine Area Strategy established for the Gwaii Haanas Marine Area when making consensus decisions in accordance with s.5.1 of this Agreement.

5.3 The Parties intend to act in accordance with the Gwaii Haanas Marine Area Interim and subsequent Management Plans, as well as the ecosystem objectives and the Gwaii Haanas Marine Area Strategy.

6.0 DISPUTE RESOLUTION

6.1 In the event of a clear and final disagreement of AMB members on a matter, the matter will be referred to senior representatives of the Parties to attempt to reach agreement on the matter in good faith.

6.2 The Parties may request the assistance of an agreed neutral third party(ies) in attempting to reach an agreement.

6.3 The Parties intend to act in accordance with the purposes and objectives set out in s. 2.0 of the Agreement when attempting to resolve disagreement between members of the AMB on a matter.

6.4 In the event there remains a clear and final disagreement on a matter after the process in ss. 6.1 to 6.3 has taken place, senior representatives of the Parties may agree

that any actions arising will be held in abeyance in accordance with s.6.5.

6.5 Matters held in abeyance under s. 6.4 will be set aside from the normal business of the AMB until such time as the members receive instructions from senior representatives of the Parties regarding their understanding on the matter.

6.6 Any matters which are required to be addressed under ss. 6.1 to 6.3, or held in abeyance under s.6.4 and s.6.5, will not change the obligation or reduce the ability of the AMB to continue to deliberate in good faith and to strive to achieve consensus decisions on other proposals and initiatives in accordance with s.5.0.

7.0 ACCESS

7.1 Nothing in this Agreement shall prevent authorized representatives of the Government of Canada, the Council of the Haida Nation and the AMB from having free access to and within the Gwaii Haanas Marine Area to carry out their duties.

7.2 Nothing in this agreement shall prevent access to and use of Gwaii Haanas by fisherman for essential activities in support of fishing in adjacent waters.

8.0 FUNDING

8.1 As part of its commitment to the Gwaii Haanas Marine Area, the Government of Canada and the Council of Haida Nation will seek to reach agreement on a contribution agreement to provide financial resources for on-going costs to

- a) support the activities of the AMB; and
- b) support the Council of the Haida Nation's participation in the Agreement.

9.0 AUTHORIZATION AND EXECUTION

9.1 This Agreement will be authorized and executed by the Parties in the following manner:

- (i) in the case of the Council of the Haida Nation, in accordance with the Constitution of the Haida Nation; and,
- (ii) in the case of the Government of Canada, by signatures of the Minister of the Environment and the Minister of Fisheries and Oceans.

9.2 The Parties may amend this Agreement from time to time. All amendments to this Agreement must be made in writing and signed by the Parties.

9.3 This Agreement, and any subsequent amendment thereto that has been agreed to in writing by the Parties, shall:

- (i) apply to the Gwaii Haanas Marine Area:
- (ii) remain in effect until

- (a) resolution of the divergent viewpoints of the Parties with respect to sovereignty, title or ownership provides otherwise, or
 - (b) it is terminated sooner by agreement of the Parties or pursuant to s.10.1.
- 9.4 The Parties shall jointly review this Agreement two years after it comes into effect and thereafter every five years. In addition, at any time after the initial two-year review, either Party may request a special review by providing written notice to the other Party. In either case, the review shall be completed within a six month period.

10.0 TERMINATION

- 10.1 Either Party may terminate this Agreement by providing sixty (60) days written notice to the other Party.

11.0 WITHOUT PREJUDICE

- 11.1 This Agreement represents the Parties' understanding of their reciprocal good faith and common cause in the protection and preservation of the Gwaii Haanas Marine Area and is without prejudice to the viewpoint of either Party respecting sovereignty, ownership or title. This Agreement shall not constitute or be deemed to constitute a land claims agreement or treaty within the meaning of s.35 of the *Constitution Act, 1982*, nor shall it or any actions taken pursuant to it be construed as creating, affirming, recognizing or denying any aboriginal or treaty right or as transferring any competence of either Party.
- 11.2 Nothing in this Agreement shall fetter or limit, or be deemed to fetter or limit, in any manner the rights, jurisdiction, authority, obligations or responsibilities of either Party or their representatives, except to the extent of the requirement that all reasonable efforts must have been made to reach consensus through the process set out in sections 5 and 6 of this Agreement.

12.0 COMING INTO EFFECT

- 12.1 This Agreement will come into effect when Schedule 2 of the *Canada National Marine Conservation Areas Act* is amended to add the name and description of the Gwaii Haanas National Marine Conservation Area Reserve of Canada. This does not prevent the Parties from implementing sections of this Agreement before the schedule is amended, if they choose to do so.

This Agreement signed in Vancouver, British Columbia, on January ___, 2010 by:

**For Her Majesty the Queen in Right
of Canada**

**For the Council of the Haida
Nation**

The Honourable Jim Prentice
Minister of the Environment
Nation

Guujaaw
President, Council of the Haida

The Honourable Gail Shea
Minister of Fisheries and Oceans

April Churchill-Davis
Vice-President, Council of the Haida
Nation

Witnesses:

Title:

Appendix 1





