Enforcing the Fisheries Act – Perspectives from the Pacific Coast

Linda Nowlan, Georgia Lloyd-Smith, Alexander Kirby*

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INTRODUCTION

"There is no single Act in the whole of Canada that raises more problems between authorities and Indian people than the *Fisheries Act*."[1]

Though the federal *Fisheries Act* is one of Canada's oldest laws, even older systems of law apply to fisheries in Canada: Indigenous inhabitants were the 'earliest practitioners of law,[2] present with intact legal orders long before settlers arrived. Conflicts over fisheries conservation involving First Nations began soon after, and persist today. From an environmental perspective, recent interesting developments are First Nations' actions to impose conservation limits on fish and shellfish harvesting, through fisheries closures declared under Indigenous law across the Pacific north and central coast. These closures represent one kind of enforceable Indigenous legal norm, and have served as the basis not only for direct action on the water, but as grounds for successful legal challenges in Canadian courts.[3]

This paper discusses four recent cases where Indigenous nations invoked their laws to declare fisheries closures and to object to DFO's management decisions. In two of these cases, the dispute was also pursued through the Canadian legal system. The paper then briefly discusses three among many possible Canadian legal responses to achieve greater reconciliation with Indigenous peoples regarding fisheries management: direct authority to enforce Indigenous law under the *Fisheries Act*, the use of fisheries comanagement boards, and recognition of the enforcement authority of the Guardian Watchmen.

BACKGROUND AND LEGAL FRAMEWORK

The Foundations of Canadian and Indigenous Fishery Law

Constitutional recognition and affirmation of existing Aboriginal and Treaty rights occurred in 1982 with the introduction of s. 35(1).[4] Although section 35 technically only protects pre-existing rights,[5] it has brought about major changes in Aboriginal law in Canada.

The courts have frequently been called upon to decide the scope of Aboriginal and Treaty rights, and many s. 35 cases involve fisheries, reflecting the centrality of fish to many Indigenous societies, and opposition to government intrusion in their rights to manage

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[1] Judge Cunliffe Barnett, *R. v. Cooper*, [1979] 4 C.N.L.R. 81, quoted in Harris, Douglas Colebrook. Fish, law, and colonialism: The legal capture of salmon in British Columbia. University of Toronto Press, 2001 at 214.
[2] Borrows, John. "Indigenous legal traditions in Canada." *Wash. UJL & Pol'y* 19 (2005): 167 at 175.
[3] *Ahousaht Indian Band v Canada (Minister of Fisheries and Oceans)*, 2014 FC 197, and *Haida Nation v. Canada (Fisheries and Oceans)* 2015 FC 290.
[4] The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.
[5] *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para 133.

their fisheries.[6] Many disputes emanate from British Columbia, which encompasses 27,000 kilometres of coastline and 105 river systems, home to 198 First Nations, most with significant interests in fisheries.

Indigenous nations managed fisheries according to their own legal traditions along the Pacific coast before either the Province of British Columbia or any Canadian fisheries laws came into being. Douglas Harris charts how both systems defined and determined access to and ownership of particular fisheries: while the centralized Canadian system used licences and leases to allocate the fishery, local Indigenous law determined ownership through familial and clan ties, until "…the wealth of the fishery became apparent to non-Natives, [when] the state replaced the local with the central, the specific with the general, and reallocated the fisheries in the process."[7] The imposition of Canadian law on these Nations has marginalized their legal traditions in a way that is difficult to justify on either legal or moral grounds.

Since the *Constitution Act* entrenched existing Aboriginal and Treaty rights, First Nations have sought to redress the injustice of being deprived of their rights to fish through the courts. The state of Canadian law is still unfolding, especially with regards to Aboriginal rights to commercially sell fish, recognized to date in only two cases.[8] Indigenous legal traditions are also gaining recognition in the courts, though more slowly.[9]

Aboriginal Rights and Title over Fisheries

The rights guaranteed under section 35 of the Constitution fall broadly into one of two categories: Aboriginal rights and Aboriginal title. The former refers to rights, sometimes site-specific, to engage in certain kinds of activity; the latter to a right to the land itself. Aboriginal rights and title emerge from pre-existing Indigenous practices and customs.

In the context of marine enforcement, the law surrounding both Aboriginal rights and title is particularly unsettled. Though the courts have recognized Aboriginal rights to fish both for sustenance and on a commercial basis, they have yet to recognize rights to the active management of marine resources. Similarly, though Aboriginal title has been proven on land,[10] its application to marine spaces is uncertain, and faces a number of legal hurdles that terrestrial claims do not.

No cases have yet established the existence of Aboriginal title to marine areas in Canada. Scholars have discussed the possibility of declaring Aboriginal title over submerged

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[6] Harris, Douglas, and Peter Millerd. "Food fish, commercial fish, and fish to support a moderate livelihood: characterizing Aboriginal and treaty rights to Canadian fisheries." *Arctic Review on Law and Politics* 1 (2010): 82-107.
[7] Harris, Douglas. *Fish, law, and colonialism: The legal capture of salmon in British Columbia*. University of Toronto Press, 2001, at 208.
[8] *R v. Gladstone*, [1996] 2 S.C.R. 723 para 26-27 30, and *Ahousaht Indian Band v. Canada* (Attorney General), 2009 BCSC 1494
[9] *R v Van der Peet* [1996] 2 SCR 507 (SCC) at para 263.
[10] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44

lands for over three decades now.[11] Australia and New Zealand recognize limited forms of Indigenous title to marine spaces.[12] With the *Tsilhqot'in* decision, the way is potentially open for Canada to follow suit.

The Supreme Court of Canada has already found that the Haida have a strong *prima facie* case of Aboriginal title to all of Haida Gwaii, including its marine waters and submerged lands.[13] The Haida title claim is active, and the parties remain involved in negotiations.[14]

If and when a First Nation succeeds in proving Aboriginal title to marine areas, there will undoubtedly be further impacts on fisheries management.

The federal government is legally obligated to manage the fishery in a manner that protects Aboriginal rights against unjustified infringement. Although this represents a strong level of protection, the government can still justify infringing these rights in certain circumstances.

Conservation of fisheries resources will generally be a valid objective to justify infringement of fishing rights.

Fishing closures, gear restrictions, or prohibitions against fishing in a traditional fishing territory are examples of activities that could infringe an Aboriginal right to fish.

More recently, courts have confirmed that fisheries openings can also infringe Aboriginal rights, when the Aboriginal group objects to the opening of the fishery on conservation grounds.

The 'duty to consult' requires the government to take active steps to consult with Indigenous communities whose asserted rights or title may be infringed by its actions, whether or not these rights have yet been established in court. The level of consultation required varies both with the strength of the claim and the potential severity of the infringement.[15]

The Role of DFO in Fisheries Management

Outside of Aboriginal rights and title, Canadian authority to manage fisheries flows through the *Fisheries Act*, which grants the Minister wide discretion to manage and

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[11] See for example Billy Garton, "The Character of Aboriginal Title to Canada's West Coast Territorial Sea" (1989) 47 U of T Fac L Rev 571; Rebecca Brown and James Reynolds, "Aboriginal Title to Sea Spaces: A Comparative Study" (2004) 37 UBC L Rev 449.
[12] *The Commonwealth v Yarmirr* (2001), 75 ALJR 1582, 184 ALR 113 (HCA);NZ Marine and Coastal Area (Takutai Moana) Act 2011
[13] *Haida Nation v BC (Minister of Forests*, 2004 SCC 73 (CanLII) at para 71).
[14] See discussion in *Haida Nation v. Canada (Fisheries and Oceans)* 2015 FC 290. at paras. 7-11.
[15] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73.

regulate fisheries. The substantial amendments to the *Act* from omnibus budget bills in 2012 and 2013 are currently being reviewed.[16]

The Department of Fisheries has a number of programs and policies related to Aboriginal fisheries, to give effect to First Nations' food, social and ceremonial (FSC) rights, and to fulfill treaty obligations to First Nations.

Conservation is paramount, and the federal government has the sole responsibility for achieving this objective.[17]

FOUR RECENT PACIFIC FISHERIES CASES

Four recent cases illustrate the evolving law regarding fisheries, conservation, Indigenous law and Aboriginal rights to fish.

1. Nuu-chah-nulth First Nations, Herring Opening Injunction, 2014

An injunction obtained by five Nuu-chah-nulth First Nations prohibiting the opening of a commercial roe herring fishery on the West Coast of Vancouver Island (WCVI) is a chapter in the saga of the longest, and still ongoing, BC Aboriginal fishing rights court dispute.[18] The WCVI is one of five stock areas for BC's commercial herring fishery, and includes portions of the traditional fishing territories of the Nuu-chah-nulth Nations.

The case began in court in 2003. In 2009, a BC Supreme Court trial judge decided that the Nations had proved their Aboriginal rights to fish and sell fish, and further found that the cumulative effect of Canada's entire fisheries legal regime *prima facie* infringed these rights.[19]

This area was closed to commercial herring fishing in 2006 due to conservation reasons, and remained closed until 2014, when, in contravention of DFO's science advice, the Minister agreed to a re-opening of the commercial roe fishery.[20] The plaintiffs in the *Ahousaht* case sought to prohibit the re-opening and the Federal Court granted their application for an injunction, in part because the Minister disregarded the DFO's own science.

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[16] See Government of Canada, Fish Habitat Protection, "Fish Habitat Protection" online: <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/fish-habitat-protection.html>

[17] *R v. Marshall,* [1999] 3 S.C.R. 533, para 40.

[18] *Ahousaht Indian Band v. Canada (Attorney General),* 2009 BCSC 1494, aff'd 2011 BCCA 237, 2011 CSCR 353, aff'd 2013 BCCA 300, leave to appeal to SCC refused, 34387 (January 30, 2014). A case summary is found at Estella Charleson, "Justifying Canada's Infringement: Trial Heads to Ahousaht in Nuu-Chah-Nulth Fisheries Justification Trial" March 9, 2016, http://www.jfklaw.ca/justifying-canadas-infringement/.

[19] *Ahousaht Indian Band v. Canada* (Attorney General), 2009 BCSC 1494

[20] Denise Ryan, "Judge overrules minister's decision to open herring fishery", (February 23, 2014), online: <http://www.vancouversun.com/technology/Judge+overrules+minister+decision+open+herring+fishery/9541803/story.html>

Remarkably, the judge admonished the Minister for "fudging the numbers," by setting the total allowable catch at 10% instead of 20%, stating that:

> "It is not science-based, but in effect a statement 'there is a conservation concern here, but if the fishery is to be opened, take less.' Adoption of this approach is being used to sidestep the conservation assessment. It seems to me once the Minister and the DFO depart from science-based assessments the integrity of fisheries management system is harmed."[21]

However, when DFO scientists recommended that the minister open the fishery in 2015 the same Nation applied for and lost an injunction on similar grounds.[22] There was little risk of irreparable harm, the court ruled, due to the change in the recommendation.

2. Haida Herring Injunction, 2015

In 2015, the Haida Nation obtained an injunction to prevent the re-opening of the commercial Pacific herring fishery authorized by the Minister of Fisheries and Oceans in Haida Gwaii.[23]

The traditional territory of the Haida Nation includes the Haida Gwaii archipelago. The Nation has relied on food from the sea since time immemorial.

The Haida fish Pacific herring stocks for food, roe (eggs), K'aaw or spawn-on-kelp, and bait for halibut and black cod fishing, practices which are central to their culture, traditions and way of life. Over the last century, this forage fish of tremendous cultural, economic, and ecological importance has declined in abundance, likely due to industrial harvesting.[24] Traditional knowledge from Haida Gwaii demonstrates the extent of the decline. One Haida elder spoke in an interview of "great big herring the size of humps" but it is very rare today to find herring as big as a 2-3 lb. pink, or hump, salmon.[25] This decline is of grave concern to the Haida and to many other First Nations who rely on this food.

In 2014, DFO decided to open the Haida Gwaii herring fishery after years of sporadic closures. The Haida asked the commercial fishing industry to abstain from fishing, and the industry agreed. When DFO again proposed reopening the Haida Gwaii herring fishery in 2015, the Council of the Haida Nation ("CHN") alerted DFO of their intention to seek court action, and when DFO did not respond, the CHN sought an injunction on the basis that the vulnerable state of the herring stock, the failure of the DFO to consult

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[21] *Ahousaht First Nation v. Canada (Fisheries and Oceans)*, 2014 FC 197 at para 26 (c).
[22] *Ahousaht First Nation v. Canada (Fisheries and Oceans)*, 2015 FC 253.
[23] *Haida Nation v. Canada (Fisheries and Oceans)*, 2015 FC 290.
[24] McKechnie, Iain, et al. "Archaeological data provide alternative hypotheses on Pacific herring (Clupea pallasii) distribution, abundance, and variability." *Proceedings of the National Academy of Sciences* 111.9 (2014): E807-E816.
[25] Jones, R. R. "Application of Haida oral history to Pacific herring management." *Fishers' Knowledge in Fisheries Science and Management*(2005).

adequately, and the lack of a long-term plan to rebuild the herring population threatened to cause them irreparable harm.

The judge agreed, and found that the failure to consult meaningfully and the unilateral imposition of "a highly questionable opening" of the fishery constituted irreparable harm.

In December 2015, the Department of Fisheries and Oceans announced that there would be no 2016 commercial herring fishery in Haida Gwaii waters.

3. Heiltsuk blockade of DFO office to protest commercial herring fishery, 2015

The Heiltsuk Nation opposed the opening of a commercial herring fishery in 2015 and used a variety of strategies, including a blockade of the local DFO office, to enforce their decision, rather than seeking court relief. On land, Indigenous communities have used blockades on numerous occasions to protest unwanted development on their traditional territories.[26] Marine blockades have proven effective as well, in the hands of both Indigenous and non-Indigenous communities.[27] The Heiltsuk occupation of DFO offices is an example of an action that resulted in a successful resolution.[28]

In March 2015, after negotiations over a commercial herring gillnet fishery stalled, over a hundred members of the Heiltsuk Nation occupied the local DFO office, giving the DFO until noon the next day to close the waters to this fishery.[29] Ultimately, the DFO closed the fishery and the commercial boats exited Heiltsuk waters escorted by Heiltsuk patrols.[30] The occupation was a response to the opening of the commercial herring fishery without the consent of the Heiltsuk. It also represents a deeper, long-standing dispute over the management of fisheries along the coast.

The Heiltsuk maintain a right to manage the herring fishery that is grounded in both Heiltsuk and Canadian law.[31] Under Canadian law, the Heiltsuk established a right to the herring fishery and to gather herring-roe.[32] Heiltsuk law requires members have a responsibility to care for the land and sea that predates the arrival of the Canadian state

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[26] For more on the topic of Indigenous civil (dis)obedience, see: Borrows, John. *Freedom and Indigenous Constitutionalism*. University of Toronto Press, 2016.
[27] Non-indigenous fishermen in Newfoundland have used blockades on numerous occasions as well.
[28] CBC, "Bella Bella herring fishery to re-open with much smaller catch" (January 19, 2016), online: <http://www.cbc.ca/news/canada/british-columbia/heiltsuk-dfo-herring-agreement-1.3409704>
[29] Justin McElroy, "Heiltsuk Nation Occupying Local DFO Office to Protest Proposed Fishery" (March 29, 2015), online: <http://globalnews.ca/news/1910658/heiltsuk-nation-occupying-local-dfo-office-to-protest-proposed-fishery/>
[30] "It is confirmed. All commercial gill-netters are exiting Heiltsuk waters," Vancouver Observer, "Heiltsuk celebrate as fishing boats forced to leave traditional waters", (April 2, 2015), online: <http://www.vancouverobserver.com/news/breaking-heiltsuk-celebrate-fishing-boats-forced-leave-traditional-waters>
[31] Harris, Douglas. "Territoriality, aboriginal rights, and the Heiltsuk spawn-on-kelp fishery." *U. Brit. Colum. L. Rev.* 34 (2000): 195.
[32] *R v. Gladstone*, [1996] 2 SCR 723.

and legal system.[33] From this perspective, the occupation of the DFO office was as an assertion of Heiltsuk law and authority, reflected in the eviction notice tacked up to the DFO office, which read:

> Due to Lack of Respect for Heiltsuk Gvilas ["laws"] You are Hereby Given a Notice of Eviction From the Heiltsuk Nation.

In 2016, to avoid another conflict, the DFO and Heiltsuk attempted to reach an agreement on the terms of the herring season, and when those meetings came to an impasse, Heiltsuk worked directly with commercial fishermen, culminating in the Herring Management Plan signed by DFO and Heiltsuk First Nation.[34] The terms of the Plan include no-go zones[35], a significantly smaller catch (approximately 7% of the usual catch)[36], and prohibition of the night fishery.

4. Central Coast Crab fishery closures, 2014

In 2014, four Central Coast First Nations – Heiltsuk, Kitasoo/Xai'Xais, Nuxalk, and Wuikinuxv – enforced their Indigenous laws by declaring crab closures in their waters. Concerned about declining Dungeness crab populations along the coast and frustrated by the lack of DFO presence, the Nations decided to conduct their own research on the crab populations.

The aim of the closures was to determine whether the commercial and recreational fisheries were contributing to the decline in Dungeness crab size and numbers. The Central Coast Nations declared crab closures at ten sites while allowing fishing at another ten control sites.

The DFO chose not to recognize or communicate these closures.[37] The Nations communicated the closures directly, and asked for compliance from commercial and recreational fishers. Compliance with the closures was high, in part because the closures were reasonably sized and located. Members from the Nations also conducted regular patrols as part of the Guardian Watchmen program.

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[33] Brown F and Y Kathy Brown. "Staying the Course, Staying Alive: Coastal First Nations Fundamental Truths: Biodiversity, Stewardship and Sustainability." (December 2009), online: <http://www.biodiversitybc.org/assets/Default/BBC_Staying_the_Course_Web.pdf>

[34] Heiltsuk Nation, "Historic Joint Management Agreement Marred by Conflict", (March 27, 2016), online: <http://www.heiltsuknation.ca/historic-joint-management-agreement-marred-by-conflict/>

[35] Heiltsuk Tribal Council, "Exciting News for Heiltsuk Herring", online: <https://heiltsuktribalcouncil.wordpress.com/2016/01/16/exciting-news-for-heiltsuk-herring/>

[36] CBC, "Bella Bella herring fishery to re-open with much small catch", (Jan 19, 2016), online: <http://www.cbc.ca/news/canada/british-columbia/heiltsuk-dfo-herring-agreement-1.3409704>

[37] Frid, A, McGreer M, and A Stevenson. "Rapid Recovery of Dungeness crab within spatial fishery closures declared under indigenous law in British Columbia," *Global Ecology and Conservation* 6 (2016) at 49.

Over a 2-year period, the study showed that both the body size and the numbers of Dungeness crab increased at the closed sites. Meanwhile, at the open sites, the size and population of crabs decreased.[38]

THREE RESPONSES TO ADDRESS INDIGENOUS FISHERIES LAW AND RECONCILIATION IN BC

There are a number of possible responses to the issue of recognition of Indigenous law related to fisheries and potential 'bridging' mechanisms between Canadian and Indigenous law on this topic.

Three of these possible responses are briefly touched upon here: enforcement of Canadian and Indigenous law by Guardian Watchmen; the use of fisheries comanagement Boards which may apply both Indigenous and Canadian law; and formal recognition of Indigenous law though the *Fisheries Act*.

First Nations and the DFO are also exploring other responses, such as the negotiation of fisheries enforcement Memoranda of Understanding. Marine spatial planning conducted by the Marine Planning Partnership (MaPP), which resulted in completed plans for the north and central BC coasts based on both Canadian and Indigenous legal principles, is another promising response to the challenges of oceans management.[39]

1. Guardian Watchmen

The Guardian Watchmen Program is part of the Coastal Stewardship Network and Coastal First Nations Great Bear Initiative. Guardian Watchmen are a collection of people who "monitor and protect the lands and waters on their territory to ensure a vibrant future for generations to come."[40]

The Coastal Stewardship Network exists independently of the Canadian state. A partnership between various First Nations along the Central and Northern Coast, it was created by Indigenous communities and engages with both Indigenous and Canadian law primarily as an 'enforcement' agency. Guardians range in title from resource technicians and fisheries guardians to park rangers and community watchmen.

The Watchmen website states:

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[38] Ibid at 52.

[39] See Haida Gwaii Marine Plan 2015, North Coast Marine Plan 2015, Central Coast Marine Plan 2015, and North Vancouver Island Marine Plan 2015, all at mappocean.org. For a description of the MaPP process see Nowlan, Linda. "Brave New Wave: Marine Spatial Planning and Ocean Regulation on Canada's Pacific." *Journal of Environmental Law and Practice* 29 (2016): 151.

[40] Coastal Stewardship Network, Coastal First Nations Great Bear Initiative, "Guardian Watchmen Programs Overview", online: http://coastalguardianwatchmen.ca/guardian-watchmen-programs-overview

> We derive our authority and jurisdiction from our traditional laws to manage and safeguard the lands and waters of our territories for the health of future generations.[41]

The Watchmen program has been successful at getting eyes and ears on the territory every day.[42] The program is growing every year and now includes an extensive two-year First Nations Stewardship Technicians Training Program. The Coastal Stewardship Network hosts annual gathering for Watchmen from all along the coast to share their experiences and learn from each other.

An organization like the CSN/Guardian Watchmen is a powerful tool in the hands of these communities. Although at this point Watchmen have no formal authority to enforce Canadian law, the organization has the potential to embody a kind of uniquely Indigenous enforcement, empowering these communities to protect and regulate their traditional marine territories according to their own priorities and legal traditions.

2. Comanagement Board

Creating a fisheries comanagement body designed to implement both Canadian and Indigenous laws could help reconcile the two systems of law.

A type of this body exists in the Pacific – the Archipelago Management Board (AMB) in Haida Gwaii was created to govern management and operation of the Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve (NMCAR), and Haida Heritage Site.[43] The AMB is tasked with developing ecosystem objectives.[44] Not surprisingly, the ecosystem objectives for Gwaii Haanas' marine area revolve primarily around fisheries. The *Canada National Marine Conservation Areas Act* gives the federal Environment Minister general powers to make regulations regarding NMCARs; where such regulations affect fisheries, however, they can be made only on the recommendation of the Minster of Fisheries and Oceans.[45]

In response to the dispute over re-opening the commercial herring fishery which arose in Haida Gwaii, the AMB debated what action to take about that part of the herring fishery conducted in NMCAR waters, and recommended that the DFO Minister keep the herring fishery closed. However, when the Minister decided in favour of re-opening, the AMB's DFO representative had to support his Minister's decision, triggering the first dispute resolution process in the AMB's history.[46]

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[41] *Ibid.*
[42] For a video on the Watchmen program, see: https://vimeo.com/8317295#at=0
[43] *Gwaii Haanas Agreement*, 1993, *Gwaii Haanas Marine Agreement*, 2010.
[44] *Gwaii Haanas Marine Agreement*, 2010, s 4.1 (b)
[45] *Canada National Marine Conservation Areas Act*, S.C. 2002, c. 18, Section 16 (2).
[46] Sargeant, Jean Phillip. "Assessing the cooperative management regime in Gwaii Haanas national park reserve, national marine conservation area reserve and Haida heritage site." (2015).

Comanagement bodies designed specifically for managing fisheries may provide better models for the Pacific Coast. One model to consider is the Fisheries Joint Management Committee (FJMC) composed of representatives appointed by the Federal and Inuvialuit governments pursuant to the 1984 *Inuvialuit Final Agreement* (IFA).[47] The Committee's advisory role is strengthened by the legal requirements for the Minister to implement, reject or vary an IJMC recommendation and to provide written reasons for that response.[48]

3. Fisheries Act recognition of treaty rights/Indigenous law

Modern treaties may recognize the authority of a First Nation to enact certain laws in relation to fisheries. The federal *Fisheries Act* grants powers to enforce certain Indigenous fisheries law as recognized in select Final Agreements. For example, a fishery officer or fishery guardian may enforce Nisga'a laws made under the Fisheries Chapter of the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*. The power also extends to Tla'amin Laws, Tsawwassen Laws, and Maanulth Laws, as defined in their respective *Final Agreement Acts*.[49] This section could be expanded in future to cover other Nations' laws, outside of the Treaty process.

CONCLUSION

This short discussion highlighted recent conflicts between Indigenous and Canadian federal government management of fisheries on the north and central Pacific Coast. The cases reflect a state-First Nations conflict as well as competition between "two different but increasingly intertwined legal traditions."[50] The discussion of the three possible responses scratches the surface of the many different possible ways that an exercise of Indigenous law authority over fisheries can be recognized in Canadian law. The precarious health of the global oceans and of fisheries, documented by numerous recent studies, is a strong warning to take a different approach to management. BC's experience with a broad range of declining fisheries echoes this warning. Ultimately, Indigenous legal traditions can and should play a critical role in fisheries management and in environmental governance more generally in Canada.[51]

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[47] *Inuvialuit Final Agreement*, 1984, s 14(61).
[48] Ayles, Burton, Louie Porta, and Red McV Clarke. "Development of an integrated fisheries co-management framework for new and emerging commercial fisheries in the Canadian Beaufort Sea." *Marine Policy* (2016).
[49] *Fisheries Act*, R.S.C., 1985, c. F-14, s. 5(4).
[50] Harris, Douglas C. "Territoriality, aboriginal rights, and the Heiltsuk spawn-on-kelp fishery." *U. Brit. Colum. L. Rev.* 34 (2000): 195 at 199.
[51] Clogg, Jessica, et al. "Indigenous Legal Traditions and the Future of Environmental Governance in Canada." *Journal of Environmental Law and Practice* 29 (2016): 227.