

HAIDA GWAIH MARINE PLAN IMPLEMENTATION AGREEMENT

The effective date of this Agreement is the date of the last signature on the execution page.

BETWEEN

HAIDA NATION
as represented by the Council of the Haida Nation
(the "Haida Nation")

AND

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**
as represented by the
Minister of Forests, Lands and Natural Resource Operations
(the "Province")

WHEREAS:

- A. The Haida Nation and the Province committed to the *Kunst'aa Guu - Kunst'aayah Reconciliation Protocol* (2009) (the "Reconciliation Protocol") as an incremental step in the process of reconciliation of Haida and Crown titles with the purpose of building upon the relationship between the Parties and guiding land and natural resource management on Haida Gwaii.
- B. The protection, stewardship and governance of the land and waters within the territory of the Haida Nation is integral to the existence and continuation of Haida culture, government, economy, community and Aboriginal rights and title.
- C. Under the Reconciliation Protocol, the Haida Nation and the Province have established governance structures for joint and shared decision-making for Haida Gwaii, described in the Protocol to include foreshore marine areas. In addition to other responsibilities, these governance structures are responsible for joint approval of protected area management plans and technical and operational management, including review of applications for marine tenures.
- D. The Province and Coastal First Nations – Great Bear Initiative, of which the Haida Nation is a member, signed a *Letter of Intent to Collaborate on Coastal and Marine Planning in the Pacific North Coast (2011)* (the "Letter of Intent") along with two other coastal First Nations organizations, North Coast Skeena First Nations Stewardship Society and Nanwakolas Council.
- E. The Letter of Intent committed the Haida Nation and the Province to develop a joint marine plan for Haida Gwaii and an associated implementation agreement.
- F. The Haida Nation and the Province recognize that implementation of the Haida Gwaii Marine Plan may benefit from cooperation with federal government departments and commits to working with them, where appropriate, on initiatives or priorities that may require multi-jurisdictional collaboration.
- G. The Haida Nation and the Province are of the view that implementation of the Haida Gwaii Marine Plan may increase carbon sequestration and reduce carbon emissions in the Haida Gwaii Marine Plan Area as a result of new conservation measures and changes to marine management practices. Subsequently, this may result in greenhouse gas reductions that are capable of being recognized as carbon emission offsets.
- H. On April 27, 2015 the Province and the Haida Nation announced a jointly endorsed final marine plan for the Haida Gwaii sub-region.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS

1.1 In this Agreement and its Schedules, the following definitions apply:

"Agreement" means this Haida Gwaii Marine Plan Implementation Agreement, including the schedules;

"Atmospheric Benefits" means the enhancement of carbon gas removal and the reduction of carbon gas emission (CO₂) resulting from actions by the Parties as a result of the Haida Gwaii Marine Plan including EBM practices, protection management zoning, or any other implementation activities or future amendments.

"Government-to-Government" means formal bilateral discussions between designated representatives of the Haida Nation and the Province.

"Haida Gwaii Management Council" is a body for joint decision-making established under the Reconciliation Protocol.

"Haida Gwaii Marine Plan" means the marine plan jointly developed between the Haida Nation and the Province, and signed by the Parties on April 27, 2015, for the Haida Gwaii Marine Plan Area that provides management objectives and strategies, direction and recommendations on marine zone designations, implementation priorities, and other matters of interest between the Parties, including any amendments or changes that may be approved by the Parties from time to time.

"Haida Gwaii Marine Plan Area" means the area that is subject to this Agreement; namely the marine area defined as the Haida Gwaii MaPP sub-region, excluding the Gwaii Haanas marine area, as shown in the map in Schedule A.

"Land Use Agreement" refers to the Haida Gwaii Strategic Land Use Agreement between the Haida Nation and the Province dated September 13, 2007 and any amendments.

"MaPP Implementation Fund" means the fund, including its governance and administration structures, created by the partners to the Marine Planning Partnership for the North Pacific Coast (MaPP) to allocate monies to implementation recommendations approved by the MaPP partners;

"Marine Planning Partnership" (hereinafter referred to as "MaPP") means the partnership between the Province, the Coastal First Nations-Great Bear

Initiative, the North Coast-Skeena First Nations Stewardship Society and Nanwakolas Council, (hereinafter “the MaPP partners”), to collaborate in the development and implementation of marine plans for the region known as the North Pacific Coast of Canada, and its four sub-regions of Haida Gwaii, North Coast, Central Coast and North Vancouver Island.

“**Parties**” means the Council of the Haida Nation and the Province.

“**Reconciliation Protocol**” means the *Kunst’aa Guu - Kunst’aayah Reconciliation Protocol* (2009) between the Council of the Haida Nation and the Province of British Columbia which, in addition to other matters, established a framework for joint and shared decision-making between the Parties for land and natural resource management on Haida Gwaii.

“**Regional Action Framework**” means the document, approved by the MaPP partners, that establishes regional MaPP implementation actions that the MaPP partners have identified as being most appropriately implemented at a regional scale and that are consistent with and, where applicable, support sub-regional plan recommendations.

2 PURPOSE OF AGREEMENT

2.1 The purpose of this Agreement is to:

- a) confirm the intention of the Parties to jointly implement the Haida Gwaii Marine Plan.
- b) describe the roles and responsibilities of the Parties and the government-to-government decision-making framework that will be used to collaboratively implement the Haida Gwaii Marine Plan and address marine issues.
- c) identify general implementation priorities, structures and mechanisms for implementation of the Haida Gwaii Marine Plan.

3 SCOPE AND LIMITATIONS

3.1 This Agreement applies to the Haida Gwaii Marine Plan Area as shown in Schedule A.

- 3.2 This Agreement does not apply to the Gwaii Haanas marine area that is designated as a National Marine Conservation Area Reserve and Haida Heritage Site and which is subject to a separate management planning process.
- 3.3 The intention of the Parties is that the management plans for existing CHN-BC Protected Areas previously designated by the Parties will be updated to be consistent with the Haida Gwaii Marine Plan.
- 3.4 The Parties acknowledge that some of the objectives and strategies in the Haida Gwaii Marine Plan may benefit from the cooperation and support of the federal government.
- 3.5 This Agreement does not alter commitments under the *Kunst'aa Guu - Kunst'aayah Reconciliation Protocol* (2009) and, where practical, the decision-making framework described in Schedule B of the Reconciliation Protocol will be utilized to address land and natural resource decisions including, but not limited to, approval of management plans for protected areas and review of applications for marine-based tenures.

4 ROLES AND RESPONSIBILITIES

- 4.1 The Council of the Haida Nation (CHN) will implement this Agreement on behalf of the Haida Nation.
- 4.2 Ministry of Forests, Lands and Natural Resource Operations (FLNRO) will coordinate implementation of this Agreement on behalf of ministries and agencies of the Province, and will actively engage other ministries and agencies in implementation of this Agreement as necessary.
- 4.3 The Parties will ensure that their respective representatives have the necessary authority to carry out their decision-making and technical level responsibilities contained in Section 5 in this Agreement and will work cooperatively to implement this Agreement.
- 4.4 The Parties will support implementation of this agreement through relevant processes of decision making in accordance with each of their respective laws, regulations, policies and customs.
- 4.5 The Parties will jointly and individually, as appropriate and needed, engage with federal agencies to assist with implementation of recommendations in the Haida Gwaii Marine Plan as appropriate.
- 4.6 The Parties share the objective of engaging local governments and stakeholders in implementation of the Haida Gwaii Marine Plan.

5 DECISION-MAKING FRAMEWORK

5.1 The Parties will establish the following structures to coordinate and support the Parties' implementation of the Haida Gwaii Marine Plan:

- a) A Haida Gwaii Marine Management Board that will:
 - i. consist of two senior representatives for the Haida Nation and the province appointed by the Parties in consultation with each other;
 - ii. meet quarterly or as needed;
 - iii. make best efforts to achieve consensus in their recommendations and decisions;
 - iv. approve Haida Gwaii Marine Management Board and Haida Gwaii Marine Implementation Technical Team terms of reference and annual work plans for the implementation of the Haida Gwaii Marine Plan;
 - v. appoint and provide direction to the Haida Gwaii Marine Implementation Technical Team on issues and oversee implementation of this Agreement;
 - vi. evaluate the progress and outcomes of this Agreement on an annual basis and may, by mutual agreement, recommend amendment;
 - vii. address other matters or issues that may be referred to the Haida Gwaii Marine Management Board by the Haida Gwaii Management Council or the Parties.
- b) A Haida Gwaii Marine Implementation Technical Team that will:
 - i. consist of up to two technical representatives for the Haida Nation and the province appointed by the Haida Gwaii Marine Management Board, with additional appointments as necessary;
 - ii. meet on a monthly basis or as needed;
 - iii. prepare terms of reference and annual work plans consistent with 6.0, including timeframes and budgets;

- iv. coordinate and undertake technical and administrative tasks associated with implementation of this Agreement and the Haida Gwaii Marine Plan;
 - v. submit recommendations to the Haida Gwaii Marine Management Board on adaptive management and requests for variance for changes to the Haida Gwaii Marine Plan;
 - vi. make all reasonable efforts to achieve consensus in their recommendations and decisions; and
 - vii. report to and facilitate communication within CHN committees/departments and Provincial agencies.
- 5.2 The Haida Gwaii Marine Implementation Technical Team will prepare and submit to the Haida Gwaii Marine Management Board its terms of reference and an annual work plan within ninety (90) days of signing this Agreement, and thereafter, on an annual basis, annual work plans. The Haida Gwaii Marine Management Board will approve, or approve with changes, the terms of reference and annual work plans within thirty (30) days of receipt from the Haida Gwaii Marine Implementation Technical Team.
- 5.3 The Parties hereby agree to utilize existing governance structures, within the scope of their respective mandates, to support and assist with implementation of the Haida Gwaii Marine Plan, including, but not limited to:
- a) The Haida Gwaii Solutions Table for operational matters, as appropriate; and
 - b) The Haida Gwaii Management Council for strategic matters, as appropriate.
- 5.4 The Parties agree that a review of the *Kunst'aa Guu - Kunst'aayah Reconciliation Protocol* (2009) is a priority, and that final governance structures supporting implementation of the Haida Gwaii Marine Plan will, in part, be considered by the review process.
- 5.5 The Parties acknowledge that there is value in coordinating marine planning and implementation around Haida Gwaii and commit to continue to engage in coordinated planning and implementation activities, utilizing the Haida Gwaii Marine Coordinating Committee and Haida Gwaii Marine Steering Committee shown in Schedule B, as appropriate.
- 5.6 The Parties acknowledge that implementation of the Regional Action Framework requires the participation of other MaPP partners, and will pursue

the implementation of the Regional Action Framework employing appropriate organizational structures reflecting the regional nature of those implementation activities.

6 IMPLEMENTATION PRIORITIES AND WORKPLANNING

- 6.1 Work plans for the first two years of implementation will be based on the following key priority topics and associated outcomes described in Section 9.2 of the Haida Gwaii Marine Plan:
- a) Integrated Governance Framework
 - b) Marine Economic Development
 - c) EBM Monitoring and Research
 - d) Compliance and Enforcement
 - e) MPA Network Planning
 - f) Communication and Education
 - g) Geographic Response Planning
- 6.2 The Parties may, by mutual agreement, include additional priorities in annual work plans.
- 6.3 Subsequent annual work plans will be based on content in the Haida Gwaii Marine Plan, prepared and prioritized by the Haida Gwaii Marine Implementation Technical Team.
- 6.4 Work plans will identify implementation priorities, descriptions of work activities, timelines, costs/estimates or other resourcing requirements. Implementation activities will reflect a balanced approach across the topics identified in 6.2 and other priorities as may be agreed in 6.3 and 6.5.
- 6.5 The Parties agree to work together with other MaPP partners to implement the Regional Action Framework.

7 RESOURCING

- 7.1 The Parties acknowledge that this Agreement is of mutual benefit, and agree to diligently pursue the financial and human resources necessary to successfully implement this Agreement.
- 7.2 The Parties acknowledge and confirm that implementation of this Agreement is subject to availability of funding from the MaPP Implementation Fund
- 7.3 The Parties will establish a trust or similar arrangement to administer and manage implementation funding secured through the Marine Planning Partnership for the North Pacific Coast Support Project.
- 7.4 Distribution of implementation funding will reflect the annual work plans approved by the Haida Gwaii Marine Management Board.
- 7.5 The Parties agree to negotiate additional Atmospheric Benefits to support implementation of this agreement

8 DISPUTE RESOLUTION

- 8.1 The Parties recognize that successful implementation of this Agreement, and their building of cooperative working relations, will depend on their ability to recognize, explore and resolve disputes.
- 8.2 Any dispute relating to the interpretation or implementation of this Agreement will be resolved in the following manner:
 - a) Disputes at the Haida Gwaii Marine Implementation Technical Team will be documented, with rationale and options, and presented to the Haida Gwaii Marine Management Board for decision;
 - b) Disputes at the Haida Gwaii Marine Management Board, including disagreements relating to the resolution of disputes submitted by the Haida Gwaii Marine Implementation Technical Team, will be documented and submitted to senior representatives of both governments; and,
 - c) Dispute resolution mechanisms will be considered with the review of the *Kunst'aa Guu - Kunst'aayah Reconciliation Protocol* (2009) referenced in 5.4, and by further senior level discussion and agreement by the Parties.

- 8.4 In the event a disagreement cannot be resolved, the Parties may consider alternative dispute resolution measures, including mediation. The Parties will be responsible for their own costs and will share all joint costs equally.
- 8.5 The Parties will make best efforts to reach resolution of the issues within sixty (60) days of convening a dispute resolution process.

9 TERM AND TERMINATION

- 9.1 This Agreement takes effect on the date of the last signature to this Agreement.
- 9.2 This Agreement will remain in effect until:
- a) Five (5) years from the date under 9.1; or
 - b) it is terminated by the Haida Nation or the Province on thirty (30) days prior written notice to the other Party, stating the date of termination and the reasons for termination; or
 - c) the execution of other agreements signed by both Parties that replace or supersede this Agreement.
- 9.3 The Parties may renew or amend the Agreement in advance of the termination date under 9.2(a).

10 GENERAL PROVISIONS

- 10.1 For the purposes of this Agreement:
- a) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
 - b) the use of the singular includes the plural and use of the plural includes the singular; and
 - c) there will be no presumption that doubtful or ambiguous expressions, terms or provisions in this Agreement are to be resolved in favour of any Party;
- 10.2 Nothing in this Agreement will be interpreted in a way that fetters the discretion of either Party or their representatives, including any legislative

authority of British Columbia or the discretion given to any decision-making authority of either Party.

10.3 This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
- b) create, define, evidence, amend, recognize, affirm or deny any Aboriginal rights, Aboriginal title and/or treaty rights or Crown title and rights, and is not evidence of the nature, scope or extent of any Aboriginal rights, Aboriginal title or Crown title and rights.

10.4 This Agreement will not limit any position that the Haida Nation or the Province may take in any discussions, negotiations or administrative, regulatory or court proceedings, including the positions the Parties may have relating to jurisdiction and decision-making authority.

10.5 This Agreement is not intended to amend or otherwise modify any existing protocols and agreements between the Parties on other matters, unless expressly noted.

10.6 This Agreement may be amended by the Parties in writing.

10.7 This Agreement may be executed in counterparts by signing a separate copy, including an emailed, photocopied or faxed copy and delivering it to the other Parties.

IN WITNESS WHEREOF the Parties hereby execute this Agreement as of the date first written above

SIGNED ON BEHALF OF THE HAIDA NATION, as represented by the Council of the Haida Nation:

Original signed by:

Peter Lantin, President
Council of the Haida Nation

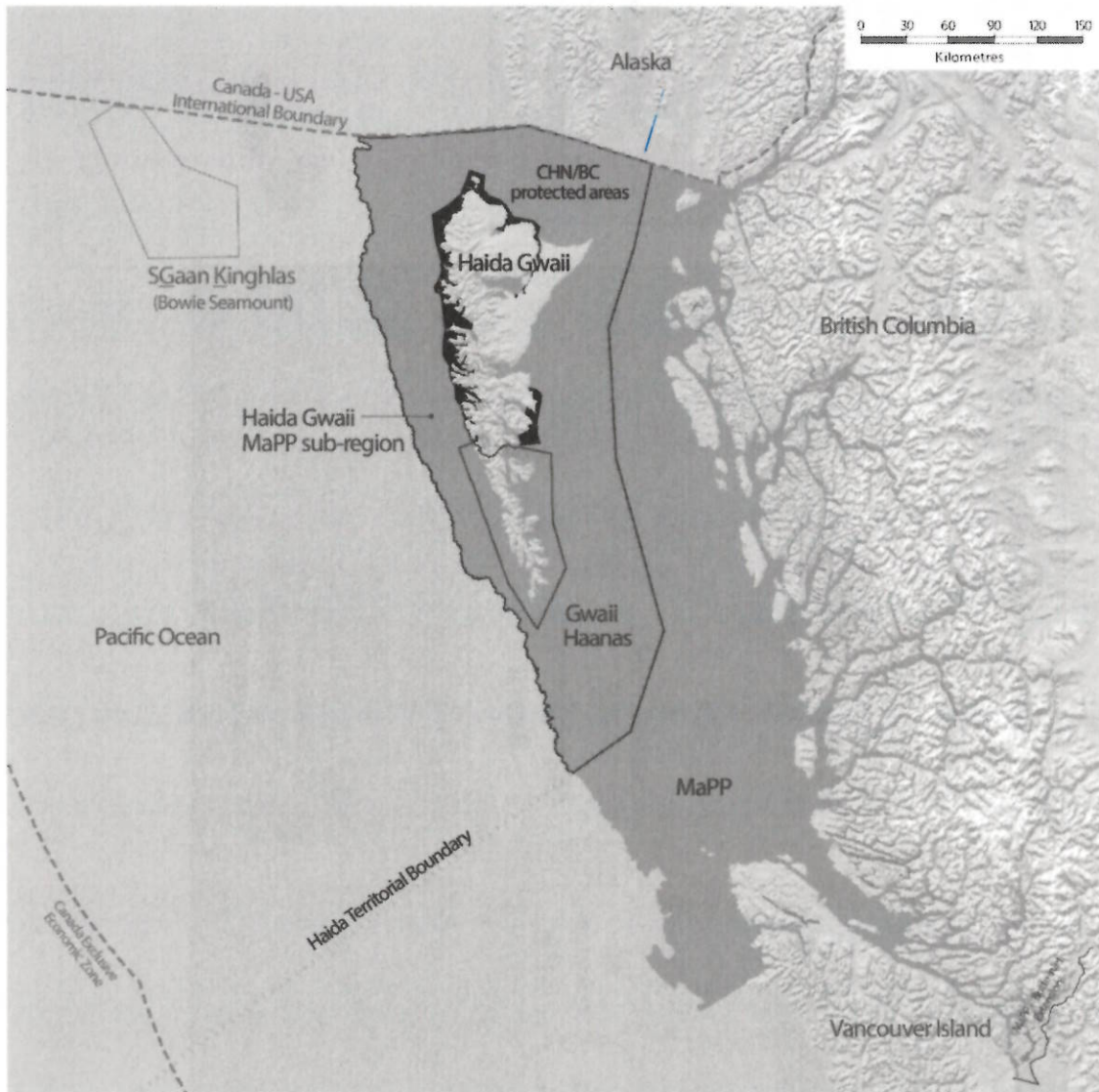
SIGNED ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, as represented by the Ministry of Forests, Lands and Natural
Resource Operations:

Original signed by:

Honourable Steve Thomson
Minister of Forests, Lands and Natural Resource Operations

Dated August 3, 2016

SCHEDULE A: HAIDA GWAII MARINE PLAN AREA



SCHEDULE B: HAIDA GWAII GOVERNANCE STRUCTURES

