

PUBLIC PROCESS AND THE CREATION OF A MARINE
PROTECTED AREA AT RACE ROCKS, BRITISH COLUMBIA

by

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B. Sc. Hons., The University of Victoria, 1999

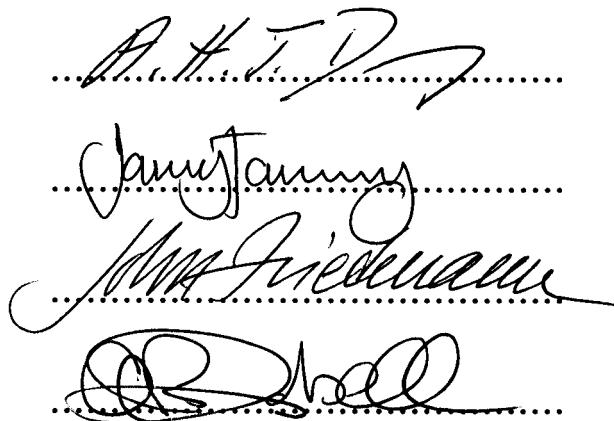
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Abstract

The creation of a marine protected area in British Columbia is a political process that must reconcile the wants of several jurisdictions and interests. One forum for consultation and reconciliation is a consensus process, where individuals representing differing interests engage in long-term, face-to-face discussions, seeking agreement on strategy, plans, policies, and actions. This study employed qualitative methods to examine the successes and shortcomings of the consensus process associated with the forthcoming designation of the X̄wáyən (Race Rocks) Marine Protected Area, which will be Canada's first marine protected area under the federal *Oceans Act*. Known as the Race Rocks Advisory Board, this process included government, aboriginal and stakeholder representatives, and was successful at negotiating consensus recommendations in support of designation. Notable among the recommendations were provisions for the creation of a no-take zone, and for the establishment of a co-management regime involving First Nations, British Columbia and Canada. However, once submitted, these recommendations were misrepresented in the federal government's regulatory approval process, leading to protest by various First Nations and a halt to final designation. Both the misrepresentation and the protest involved groups that were not part of the Race Rocks Advisory Board. This suggests that consensus processes for the creation of marine protected areas should include representatives from each part of the designation process, including delegates from all affected First Nations and all relevant branches of government. To achieve this, it is recommended that future consensus processes be jointly convened by Canada, British Columbia and affected First Nations, respecting the government-to-government relationship between the three parties. The joint convenors would negotiate what form of co-ordination and facilitation should take place in the process, and which stakeholders should be involved. In effect, this would be a co-managed consensus process—an experiment with a new form of public engagement, which is in keeping with the 'learning-by-doing' approach endorsed by federal policies for the creation of marine protected areas under the *Oceans Act*.

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Preface

Qualitative research calls for the inclusion of a personal introduction, as a way to let the reader know, up front, of the background, bias and approach of the researcher to the project at hand. As I write this, I am a 28 year-old male Canadian, with roots stretching via Québec to England, France, Holland and Norway. I grew up on the west coast of Canada, in Victoria, the capital city of the province of British Columbia. Growing up on the west coast influenced me in many ways; among them, it exposed me to the political forces that, through the 1990s, redefined our perception of and approach to the management of natural resources in BC.

The political forces I speak of were dominated by two issues. First, there was the rise of public resistance to forestry practices in BC, particularly the clear-cutting of the temperate rainforests of Vancouver Island. The most dramatic manifestation of this was the 1993 blockade of the Kennedy Lake Bridge in Clayoquot Sound, an event that led to the largest mass arrest—over 900 people—in Canadian history. Though I did not join the blockade, this event resonated in my political conscience. It also affected provincial policy at the time, leading to new models of land use planning built on inclusive forms of decision-making.

Second, the aboriginal land question emerged as a critical issue for the province (though it had always been a critical issue for aboriginal peoples). Most BC First Nations have never ceded title to their land and resources, and a series of court decisions in the 1990s finally pressed the Crown to begin modern treaty negotiations, a process that continues—with difficulty—to this day. In the meantime, the courts said that the Crown was obliged to include First Nations in the management of their traditional territories—a legal requirement for a new form of governance.

It is in this context that I was first exposed to the concept of marine protected areas (MPAs). It was 1997, and I was an undergraduate student taking field courses at Bamfield Marine Station, located in a small community on the west coast of Vancouver Island. Though I was a geography student, I was hooked on the relatively new field of conservation biology, a so-called ‘activist science’ intent on promoting the conservation of biological diversity. As with other communities on the outer coast, Bamfield is on the doorstep of one of the most bio-diverse inter-tidal ecosystems in the world.

One of our class projects was to plan a small MPA (less than a hectare) for the shallow waters surrounding an islet in Barkley Sound. The intent was to create a ‘no-take zone’ that could be visited by future students to monitor long-term changes —from pollution, climate change, the reintroduction of sea otters, etc.— to the marine ecosystem. It was a very modest proposal, too modest for those who dreamed of grand networks of MPAs. Still, the proposal was written, and a meeting was organised to present the idea to the local community.

The community was taken by the fresh enthusiasm of the students, but the logic of our arguments fell flat, for several reasons. The fishermen had heard enough about protected areas—when the Pacific Rim National Park Reserve was created, they had been told that they would be able to continue fishing in the park. «That lasted only a few years, until the promise was broken!» was their response. The sport-fishing lodge owners chimed in: «One small MPA was fine, but what if this gave us the idea of creating more?»

«But we should create a whole network of MPAs!» one student blurted out.

«That’s exactly the problem here,» a lodge owner said, «If you start with this MPA, soon you’ll create more and we’ll have nowhere to fish!»

Then the Chief of the local First Nation declared that this was all their traditional territory anyway: «You folks can restrict your fishing, but we’ll do what we want.» Finally, the director of the marine station upheld the marine station’s right to conduct manipulatory experiments on the proposed site: «Ever wonder why there are no anemones on the islet? They have been removed in order to study the process of re-colonisation. This is important for science.» Let down, by one of our own!

In a few short minutes, all the enthusiasm was gone. Some students were frustrated, and others were resentful. The reality was that we had been taught only one dimension of marine conservation: how to physically design an MPA. We did not know how to convince other people—with views as valid as our own—that an MPA was something worth doing. We had not learned how to build the social consensus needed to turn our idea into reality. In other words, we had not understood the lessons being taught by the historical events (mentioned earlier) that were unfolding around us.

A few years later, I found myself in planning school. I had begun to digest my experiences at Bamfield and elsewhere. I had developed an innocent belief that new forms of citizen involvement in resource management could go a long way to address the environmental ills and historical wrongs of this province. I decided my thesis would be on the consensus process that recommended the creation of a real MPA in the same, spectacular marine ecosystem as Bamfield. This case study appeared to have succeeded where others had failed. How would I approach my research? Here is what I had in mind:

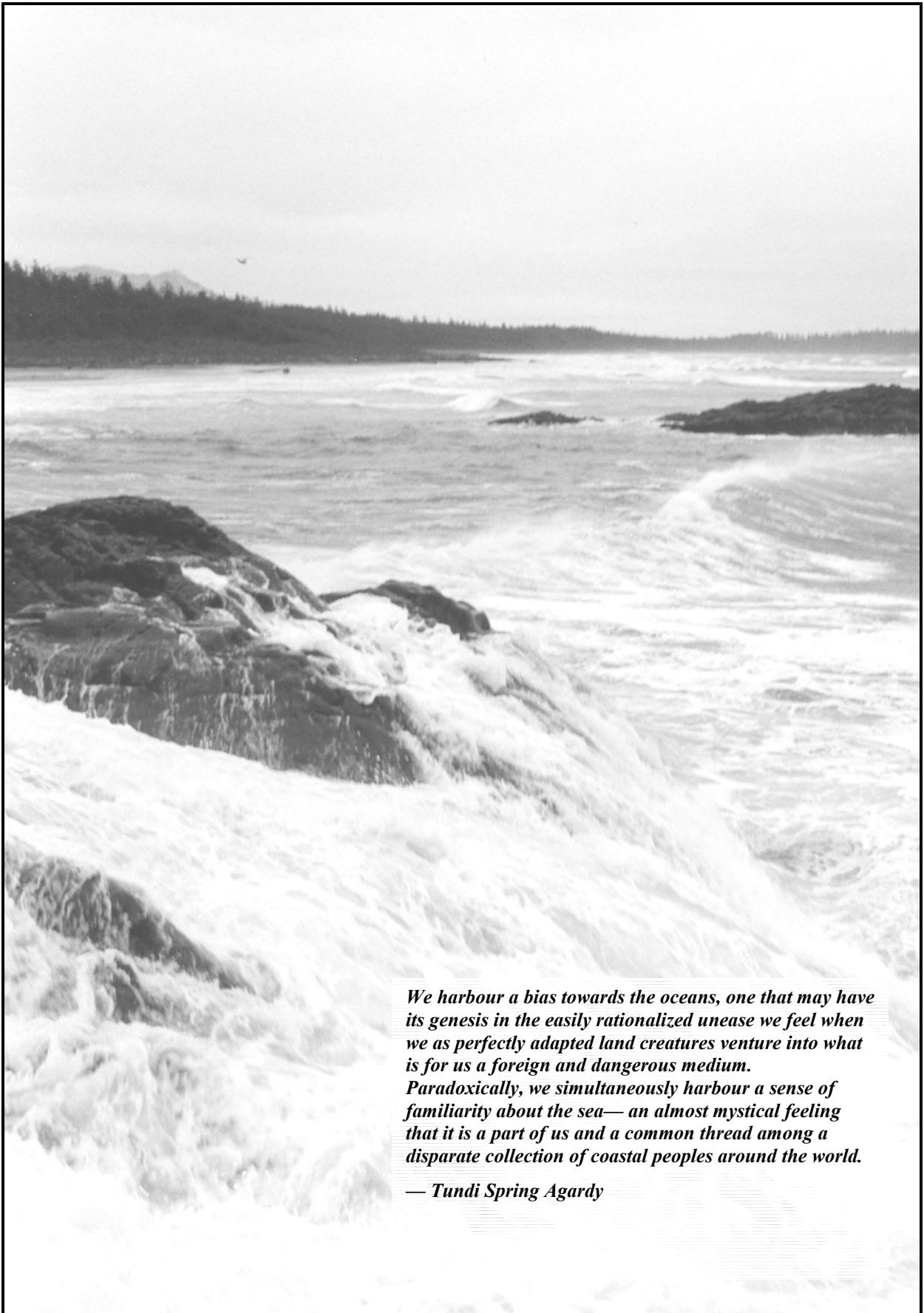
- **Tell the story.** No one else will likely write an entire thesis on the same case study¹. This was my chance to tell what happened, and find meaning in it.
- **Be a critic, not a cynic.** It is easy to be over-critical of government activities. I wanted to capture both the successes and shortcomings that are part of any political process.
- **Be sensitive.** People involved in public consultation processes are there because they care. As Fisher and Ury (1991) would say, I wanted to be ‘easy on the people’.

As a researcher, I had the unique experience of having the confidence of everyone I spoke to, and the responsibility not to ‘spill the beans’ from one interview to the next. In the end, I probably had a more comprehensive understanding of the process than anyone who was actually involved in it! I thank everyone who entrusted me with this privilege.

With all this said, let me tell you about a place called X̄wáyən, or Race Rocks.

Sean LeRoy
Vancouver,
October 2002

¹ Or so I thought—it turns out that several students have been interested in Race Rocks. Notable among them, Louise Murgatroyd (1999) completed a graduate research project on Race Rocks at Dalhousie University, and Sandra Bicego (forthcoming) is completing a graduate thesis on marine reserves (including Race Rocks) at the University of British Columbia.



We harbour a bias towards the oceans, one that may have its genesis in the easily rationalized unease we feel when we as perfectly adapted land creatures venture into what is for us a foreign and dangerous medium.

Paradoxically, we simultaneously harbour a sense of familiarity about the sea—an almost mystical feeling that it is a part of us and a common thread among a disparate collection of coastal peoples around the world.

— *Tundi Spring Agardy*



To see that deliberative processes come with no guarantees is a bit like seeing that we are mortal. We need to bemoan less the facts of our finitude and ask more how we can create rich deliberative processes in the time we have, in the settings we face.

— John Forester

What we kept telling Fisheries is: “move it along, move it along, you’ve got consensus, MOVE!” Consensus is a fleeting moment.

Member of the Race Rocks Advisory Board

Photo by author.

Chapter 1 – Introduction

For much of history, the sea has been perceived as “resilient and so vast as to be essentially limitless” (Agardy 1997, p. 10). The ocean was the ultimate in common property, providing open access to anyone with the means to harvest its wealth (Boersma and Parrish 1999). The regulation of human activity has been either unnecessary, given super-abundant resources, or impractical, given the difficulties involved in enforcement (Jentoft 2000c).

These perceptions have changed with the growing awareness that human activity is having a profound impact on the marine environment. Warning signals such as collapsed fisheries and species extinctions have led to the realisation that the oceans are no longer a limitless frontier. One response to this recognition has been to set aside important marine habitat from the normal scope of human activity, to create marine protected areas.

1.1 Problem definition

Marine protected areas are a relatively new form of marine conservancy, particularly in British Columbia and Canada (Jamieson and Levings 2001)². It is only recently that Canada has had effective legislation for marine protected areas, most notably in the federal *Oceans Act* (1996)³. The implementation of a national system of marine protected areas (required by the *Act*) has the potential to make a significant contribution to the health and sustainability of marine ecosystems in Canada, and (in turn) the coastal communities who depend on them.

The creation of a marine protected area in British Columbia is a political process that must reconcile the wants of several jurisdictions and interests. Federal and provincial agencies are called upon to work together. Aboriginal people must be consulted. User groups and environmental non-governmental organisations want to have a say. The task faced by the government agency responsible for the *Oceans Act* is to fulfil its mandate while reconciling these interests, engaging each of these groups in meaningful consultation.

² While most marine protected areas date from the late twentieth century, there are earlier examples that should be noted. Royal National Park in Australia (1879) is the first known, statutory park to include a marine protected area (Davis 2001). The first marine protected area in British Columbia and Canada was the marine component of Strathcona Provincial Park (1911) (Jamieson and Levings 2001).

Recognition must also be given to sanctuaries and spiritual sites that have existed before and/or in parallel with modern states.

³ While not addressed in this thesis, the *Canada National Marine Conservation Areas Act* (which received Royal Assent on June 13, 2002) will also play an important role in the creation of marine protected areas across Canada, including the Great Lakes.

One forum for consultation and reconciliation is known as a **consensus process**, where “individuals representing differing interests engage in long-term, face-to-face discussions, seeking agreement on strategy, plans, policies, and actions” (Innes and Booher 1999, p. 11). Consensus processes have been found to be particularly useful for addressing environmental issues, of finding solutions beyond the customary ‘zero-sum’ compromise between more and less development (Cormick et al. 1996). For government agencies, consensus processes can bring legitimacy to difficult environmental decisions, providing an alternative to the increasingly hazardous ‘decide, announce, and defend’ (Thomas 1995).

While promising, consensus is “a far-from-simple process of giving voice to and empowering a community” (Few 2000, p. 402). Participants are challenged to rethink their positions, to search for joint solutions that are considered fair by common consent. This challenge is important to the success of a process; however, it is also a normalizing influence, an act of power. The exercise of power must be tempered with the need to respect the people sitting at the table, and the groups that they represent. This is particularly relevant for aboriginal people who are “struggling to move from dependency on the nation state to self-determining agency” (Davis and Jentoft 2001, p. 223).

1.2 Research agenda

The broad research question of this thesis is: How should consensus processes be used to create marine protected areas in British Columbia? More specifically, how should this be done while balancing the need to challenge and respect the participants in the process?

The goal of this thesis is to reflect on these questions, drawing insight from the consensus process associated with the (forthcoming) designation of the **Xʷáyən (Race Rocks) Marine Protected Area**, which will be Canada’s first Marine Protected Area under the *Oceans Act* (1996). Most active from December 1999 to March 2000, the **Race Rocks Advisory Board** was notable for its use of consensus decision-making techniques, the inclusion of government, aboriginal, and stakeholder representatives in the decision-making group, and its success at providing consensus recommendations in support of designation.

The objectives of this thesis are therefore as follows:

- Review the substantive foundation of the case study, including the history of marine protected areas and aboriginal rights in BC;
- Develop a theoretical framework for the interpretation of consensus processes as an artefact of communication and power dynamics among participants;
- Document the geographical and historical context of the Race Rocks area and the functions of the Race Rocks Advisory Board; and
- Apply the theoretical framework to the case study, developing an interpretation, conclusions and recommendations.

1.3 Structure of this thesis

This thesis is divided into nine chapters. Chapter 2 outlines the research methods used in this study. Chapter 3 reviews the history, status, legislation and policies for marine protected areas, and the evolving legal status of aboriginal rights in BC. Chapter 4 reviews the practical and theoretical literature on community involvement in marine protected areas, consensus decision-making and communicative planning theory, leading to a theoretical framework with which to interpret the case study.

Chapter 5 recounts the natural, aboriginal and colonial history of Race Rocks, as well as current activities and the announcement of the Race Rocks Pilot MPA. Chapter 6 documents the proceedings of the Race Rocks Advisory Board and associated events, while Chapter 7 presents the participants' perspectives on the Advisory Board process, structured by the theoretical framework from Chapter 4. Chapter 8 interprets and discusses the implications of the case study. Chapter 9 provides conclusions and recommendations.

1.4 Limitations of this study

Time and expediency have conspired to constrain the scope of this thesis. The theoretical sections cut a narrow swath through the wide array of materials worthy of consideration. A more complete review would have included the literature on (for example) collaborative planning (e.g. Healey 1997), civil society (e.g. Cohen and Arato 1994; Friedmann 1998), radical planning (e.g. Sandercock 1998), institutional theory (e.g. Healey 1999), and the emerging discussion on aboriginal consensus decision-making (e.g. Lam 2002)

The case study approach limits the strength and broad application of the conclusions and recommendations of this research, which only traces the Race Rocks ‘story’ from September 1998 to December 2001. The participant interviews took place over a year after the Race Rocks Advisory Board reached consensus. Not all members of the Advisory Board were interviewed, nor were any federal officials outside of BC. Care was exercised not to undermine the reputation of participants in the Advisory Board. A more aggressive strategy might have yielded further insights, but at the expense of research ethics.

1.5 Note on terminology

This study involves names that come in different languages and spellings. The following versions will be used throughout this text. They have been chosen for their currency or ease of use, with no offence intended to any party:

- **Beecher Bay First Nation:** English name for Scia'new Nation. Also spelled Becher Bay.
- **Clallam:** Canadian English name for *xʷsƛ̕ə́m*, the Coast Salish language spoken by the Beecher Bay First Nation (and others) (Suttles 1990). Also spelled Klallam (American English), Tlallum, and S'Klallum.
- **Race Rocks:** The English name for the islets within the Race Rocks MPA. Attributed to officers of the Hudson's Bay Company (Walbran 1971).
- **Race Rocks MPA:** Short for *Xʷáyən* (Race Rocks) Marine Protected Area, which will soon be designated as Canada’s first MPA under the *Oceans Act* (1996).
- **Songhees First Nation:** English name for the Lekwungen Nation.
- **T'Sou-ke First Nation:** Formerly spelled Sooke, which remains the correct spelling for the nearby District of Sooke.
- **Xʷáyən** (pronounced *shwai'yen*): The Clallam name for Race Rocks, meaning ‘swift water’. This is the proper spelling according to Montler (1997). It is a slight variation on *Xʷayən*, the spelling provided to Pearson College by the Beecher Bay First Nation (Fletcher 2000b). This paper uses the Montler (1997) version simply for ease of use, since it is compatible with the high-quality Anglo-Salishan fonts used throughout the text (see Thom 1997). *Xʷáyən* can be anglicized as XwaYeN (O’Sullivan 2000).

1.6 Commonly used acronyms

The following is a list of the most commonly used acronyms in this thesis. Each acronym is properly introduced in the relevant section; this list is provided for quick reference:

- **BC**: Province of British Columbia, Canada.
- **CPAWS**: Canadian Parks and Wilderness Society (see Table 6.2, p. 55).
- **CSSC**: Coast Salish Sea Council (see Table 6.2, p. 55).
- **DFO**: Department of Fisheries and Oceans, Government of Canada (see Section 3.2.2, p. 13).
- **ENGO**: Environmental Non-Governmental Organisation (see Section 5.3.3, p. 50).
- **IUCN**: International Union for the Conservation of Nature. Also referred to as The World Conservation Union (see Section 3.1.1, p. 10).
- **MARPAC**: Maritime Forces Pacific, Department of National Defence, Government of Canada (see Section 5.3, p. 46).
- **MELP**: Ministry of Environment, Lands and Parks, Government of British Columbia (1991-2001) (see Section 3.2.1, p. 13).
- **MPA**: Marine protected area (see Section 3.1.1, p. 10). **Oceans Act MPA** or **Pilot MPA** refers to ‘Marine Protected Area’ (capitalized), the official term in the *Oceans Act* (1996) (see Table 3.5, p. 14).
- **NRTEE**: National Round Table on the Environment and the Economy (see Section 4.2.2, p. 26).
- **RRAB**: Race Rocks Advisory Board (see Section 6.1, p. 52).
- **SFAB**: Sport Fishing Advisory Board (see Table 6.2, p. 55).
- **WCPA**: World Commission on Protected Areas (see Section 4.1.1, p. 21).
- **WWOA-NW**: Whale Watch Operators Association North West (see Table 6.2, p. 55).

Chapter 2 – Research Methods

This chapter sets out the research methods used in this project, describing the qualitative research approach and the procedures used for primary and secondary research.

2.1 Qualitative approach

This project was a case study of the social process of creating a marine protected area. Lacking the replication of extensive studies, this thesis is the product of a qualitative, interpretive approach to understanding the story of the Race Rocks MPA (Morrow and Brown 1994). As stated in a similar study by Few (2000, p. 404), “the questions and analysis evolved as both the research and the process under study proceeded, ensuring that conceptual outputs were grounded in the empirical findings”.

The philosophical justification for this approach draws on elements of phenomenology, ethnology and grounded theory. Each element will be discussed in turn.

Phenomenology is part of the humanistic tradition, which suggested (initially) that the study of human behaviour is not well served by the logical positivism of the Vienna Circle (Bernard 1995). Alfred Schutz used the analogy of molecules: when you study molecules, you do not have to worry about what the world ‘means’ to the molecules. However,

...when you try to understand the reality of a human being, it's a different matter entirely. The only way to understand social reality is through the meanings that people give to that reality. In a phenomenological study, the researcher tries to see reality through an informant's eyes. (p. 14)

The emphasis of phenomenological research is on producing good descriptions of events and perspectives, regardless of causes or explanations.

Closely related to phenomenology is the **ethnographic** approach. Ethnography draws on analytic realism to suggest that the social world is an interpreted —rather than literal— world. As such, “the researcher, the topic, and the sense-making process are in interaction” (Fontata and Frey 1998, p. 291). Ethnographers “substantiate their findings with a reflexive account of themselves and the processes of their research” (p. 292).

Sharing the naturalist approach of ethnography, **grounded theory** stresses “observations, open-ended interviewing, the sensitising use of concepts, and a grounded (inductive) approach to theorizing” (Denzin 1998, p. 329). This is often referred to as ‘letting the data speak’. At the same time, the empirical foundation of a study “should be judged by the range, density, linkages between, and systematic relatedness of its theoretical concepts, as well as by the theory’s specificity and generality” (p. 329). In other words, grounded theory calls for the ‘triangulation’ of evidence in support of one’s interpretation.

In summary, the qualitative approach employed in this study bases its validity in the following research ethics:

- Providing good description, independent of explanation (from phenomenology);
- Reflecting on the role of the researcher and the research process in the production of interpretations and conclusions (from ethnology); and
- Seeking more than one source of evidence in support of a given interpretation (from grounded theory).

These ethics account for the separate description and interpretation of the case study, the inclusion of a personal introduction in the Preface, and the emphasis —in the interpretative sections— on perspectives that are supported by more than one source.

2.2 Primary and secondary research

Secondary research began with a review of publications and the online archive maintained by Pearson College (Fletcher 2002). This review provided the foundation for primary research, which included personal interviews, attendance at a Race Rocks Advisory Board meeting (December 2001⁴) and a site visit (June 2002). Interviews were sought with most participants in the Advisory Board, as well as other individuals associated with the Board’s activities ($n = 14$ of 16 requests). The interviews took place between August 2001 and May 2002, in a variety of settings in and around Vancouver, Victoria and Nanaimo, BC.

⁴ The Race Rocks Advisory Board was most active from December 1999 to March 2000, the period during which the group negotiated consensus recommendations for the creation of a Marine Protected Area. However, another meeting was held on December 6, 2001, attended by only some of the original Advisory Board members, and by the author (see Table 6.1, p. 52; Table 6.2, p. 55).

All interviews were conducted by the researcher, and ranged in length from 20 to 90 minutes. Interview topics were based primarily on the concepts discussed in Chapter 4. The interview schedule was ‘semi-structured’, setting out areas of discussion while allowing for flexibility in the order and wording of questions (Robson 1993). If requested, a list of interview themes was made available before the interview, as well as a short research prospectus. However, information on the project was limited in order to reduce interviewee bias in favour of (or opposed to) the research agenda (Bernard 1995).

The interview procedure followed a protocol approved by the University of British Columbia’s Behavioural Ethics Review Board. Interviewees were assured of confidentiality. Comments or opinions would not be attributed to the interviewee without their permission. Particular care was taken to ensure that information was not transferred from one interviewee to another. Permission was sought to use a micro audiocassette recorder ($n = 14$ of 14 interviews), which could be stopped at any time ($n = 1$). The one request to stop the recorder did not have a significant impact on the materials included in Chapter 7.

A summary was written after each interview, followed by the transcription of the audiotape. The interview transcripts were then coded and analysed using ATLAS.ti software (Muhr 2002). The coded transcripts provided source material for Chapter 7, as well as the issues and opinions that are discussed in Chapter 8. Permission was obtained for the inclusion of primary material that is or could be readily attributed to one individual or group. For example, permission was obtained for citations of ‘the facilitator’, but not ‘a user group representative’, or ‘a participant’. For clarity, anonymous citations of the same individual are numbered by order of first appearance (Anon. 1, 2, etc.).

Chapter 3 – Marine Protected Areas

The purpose of this chapter is to: (1) introduce the concept of marine protected areas, including their history, definition, goals and rationale; and (2) review the status of marine protected areas in BC, including issues of jurisdiction, legislation and aboriginal rights.

3.1 What are marine protected areas?

The Western concept of marine protected areas traces its roots to terrestrial parks in the so-called New World. For European colonists, the frontier was common property; the regulation of human activity was an attribute of settlement and development, particularly farming (Seed 1995). In this context, wilderness areas gained value only when they became a rare, ecological and/or spiritual commodity to be protected (Taylor 1994). Just over a century ago, this recognition led to the creation of North America's first modern terrestrial parks: Yellowstone in the United States (1872), and Banff in Canada (1885).

These first parks were not perfect—they were based on the political will of a faraway elite in search of a holiday playground (Dearden and Berg 1993). They were ‘fortress parks’ that excluded the aboriginal people who had been stewards of the land. However, they set in motion a tradition that, with various rationales, holds that humanity should set aside certain natural areas from the full scope of human activity (Grumbine 1992). This tradition has led to the protection of 12.4% of BC and 9.1% of Canada’s land base (NDP 2001; WRI 2000)⁵.

It is only recently that attention has turned to the protection of the marine environment. Boersma (1999, p. 288) suggests that the delay is due to the “belated realisation that the ocean, like the land, can be degraded and the fact that Western civilization did not regard marine systems as ownable until recently”. In other words, it is only as exploration and exploitation close the ‘new frontier’ that nations consider the parallel issues of marine conservancy and sovereignty over the coastal zone. This concern has been manifest in many ways, including the adoption of international whaling moratoria, the negotiation of the Law of the Sea (UN 1982), and the movement to create marine protected areas.

⁵ In comparison, MPAs cover 0.01% or less of BC, Canadian and international marine areas (Jamieson and Leving 2001; Symington 2001; WRI 2000).

3.1.1 Definitions and goals

A **marine protected area (MPA)** is defined by The World Conservation Union (IUCN) as:

Any area of inter-tidal or sub-tidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment. (Kelleher 1999, p. xviii)

The IUCN refines this definition into six categories (Table 3.1). Larger MPAs often have several zones that have different levels of protection, separate incompatible activities, or test different management regimes for the same resource. The term **no-take zone** (a zone) or **marine reserve** (an entire MPA) refers to an area where no resource extraction is permitted.

The incorporation of use and non-use areas

implies two goals for MPAs. One goal is “to conserve the biological diversity and productivity (including ecological life support systems) of the oceans” (Kelleher 1999, p. xix). This goal recognises the intrinsic value of marine ecosystems in sustaining life on earth. Agardy (1997, p. 88) proposes a broader goal: “the protection of critical ecological processes that maintain the ecosystem and allow for the production of goods and services beneficial to humankind”. In other words, MPAs conserve marine ecosystems for the benefit of humanity.

Table 3.1 IUCN categories for MPAs.

Category I:	Science or wilderness protection (Strict Nature Reserve/Wilderness Area)
Category II:	Ecosystem protection and recreation (National Park)
Category III:	Conservation of specific natural features (Natural Monument)
Category IV:	Conservation through management intervention (Habitat/Species Management Area)
Category V:	Seascape conservation and recreation (Protected Seascape)
Category VI:	Sustainable use of natural ecosystems (Managed Resource Protected Area)

Source: Kelleher (1999, p. xviii).

One might assume that the first goal implies a higher level of protection (e.g. IUCN Category I), and the second goal a lower level of protection. However, this simple dichotomy is confounded by the suggestion that marine reserves have a **spillover effect**:

Because reserves contain more and larger fish, protected populations can potentially produce many times more offspring than can exploited populations. In some cases, studies have estimated order-of-magnitude differences in egg production. Increased egg output is predicted to supply adjacent fisheries through export of offspring on ocean currents. In addition, as protected stocks build up, reserves are predicted to supply local fisheries through density-dependent spillover of juveniles and adults into fishing grounds. (Roberts et al. 2001, p. 1920)

In other words, a reserve can protect the intrinsic value of marine ecosystems while still improving some local fisheries.

3.1.2 Scientific rationale

It should be noted that the spillover effect continues to be the subject of study and debate. Another debate involves the decision whether or not to close fisheries for migratory or pelagic species within an MPA, if these species are not a target for full protection⁶. One argument is that species-specific regulations are difficult to enforce, and lead to the loss of protected species through by-catch. Another argument is that good fisheries gear can have a low level of by-catch, and compliance will be better if regulations are deemed fair by fishing interests.

The persistence of such debates underlines the importance of understanding the scientific rationale for the establishment of MPAs. The American Association for the Advancement of Science (AAAS) recently published a *Scientific Consensus Statement on Marine Reserves and Marine Protected Areas*, signed by 161 marine scientists from around the world (Table 3.2). Two assertions by the AAAS (2001, p. 2) are of particular relevance to this study:

- ♦ “Increased reserve size results in increased benefits, but even small reserves have positive effects”; and
- ♦ “Full protection (which usually requires adequate enforcement and public involvement) is critical to achieve this full range of benefits”.

The first assertion is important since the Race Rocks MPA will be only 251 ha, considered small by international standards⁷. This last assertion is a noteworthy admission that MPAs with no-take zones require more than the logic of scientific rationale to be successful.

Table 3.2 AAAS Scientific Consensus Statement on Marine Reserves and Marine Protected Areas.

Ecological effects within reserve boundaries

- ♦ Reserves result in long lasting and often rapid increases in the abundance, diversity and productivity of marine organisms.
- ♦ These changes are due to decreased mortality, decreased habitat destruction and to indirect ecosystem effects.
- ♦ Reserves reduce the probability of extinction for marine species resident within them.
- ♦ Increased reserve size results in increased benefits, but even small reserves have positive effects.
- ♦ Full protection (which usually requires adequate enforcement and public involvement) is critical to achieve this full range of benefits. Marine protected areas do not provide the same benefits as marine reserves.

Ecological effects outside reserve boundaries

- ♦ In the few studies that have examined spillover effects, the size and abundance of exploited species increase in areas adjacent to reserves.
- ♦ There is increasing evidence that reserves replenish populations regionally via larval export.

Ecological effects of reserve networks

- ♦ There is increasing evidence that a network of reserves buffers against the vagaries of environmental variability and provides significantly greater protection for marine communities than a single reserve.
- ♦ An effective network needs to span large geographic distances and encompass a substantial area to protect against catastrophes and provide a stable platform for the long-term persistence of marine communities.

Source: AAAS (2001, p. 2).

⁶ In BC, the debate over the protection of migratory and pelagic fish in MPAs would apply principally to salmon and herring.

⁷ Marine scientists generally advocate for MPAs that are several thousand hectares in size (NOAA/DOC 2001).

3.1.3 Parks vs. marine protected areas

Another way to look at MPAs is to distinguish them from a more familiar concept mentioned earlier—terrestrial parks. MPAs are fundamentally different from terrestrial parks, for several reasons:

- **Zones:** In BC, land and resources in terrestrial parks may not be sold or extracted. MPAs are not so simple; only some include no-take zones, and large multi-zone MPAs are more akin to United Nations Biosphere Reserves (Kelleher 1999);
- **Jurisdictions and boundaries:** Unlike most terrestrial parks, effective MPAs usually require the co-operation of several orders of government, and may involve sovereignty or trans-boundary issues;
- **Highly mobile species:** Where terrestrial parks are designed for both mobile and sessile species, popular concern for the marine environment is dominated by an interest in highly mobile species (e.g. migratory fish, whales); and
- **Fishing:** Where land use decisions usually involve several competing economic interests, marine politics are dominated by the allocation of fish.

Taken together, these differences present many challenges for government agencies hoping to transfer their experience with terrestrial parks to the marine environment.

3.2 Marine protected areas in British Columbia

British Columbia has 124 MPAs that meet the broad definition provided by the IUCN (Table 3.3). Most are provincial entities, protecting species and habitats under provincial jurisdiction. Several are also protected by federal fisheries closures covering some of the protected area, and/or some of the constituent species. Only four, very small MPAs (totalling 161.85 ha) are marine reserves, with full protection from fishing and habitat alteration.

Table 3.3 MPAs in BC.

Marine protected areas	No.
Provincial MPAs	116
• Ecological Reserves	15
• Provincial Parks	81
• Wildlife Management Areas	4
• Wildlife Reserves	15
• Protected Areas	1
Federal MPAs	8
• National Park Reserves	1
• Migratory Bird Sanctuaries	5
• National Wildlife Areas	2
Marine reserves (type)	Size
Porteau Cove (Marine Provincial Park)	42 ha
Point Atkinson (protected research site)	0.85 ha
Whytecliffe Marine Sanctuary (municipal park)	19 ha
Williams Head Penitentiary (fisheries closure enforced to prevent inmate escape) ⁸	100 ha

Source: Jamieson and Levings (2001).

⁸ According to Jamieson and Levings (2001, p. 142), the fisheries closure around Williams Head Penitentiary is the only closure in Canada where enforcement is “continuous and totally effective”.

3.2.1 Jurisdiction

As suggested above, MPAs exist in a complex jurisdictional space deriving from the Constitution and other conventions. In Canada, the federal government has the jurisdiction to protect migratory birds, most marine life (including marine mammals), most anadromous fish (including salmon), habitat below high water that falls under federal legislation, and habitat in offshore areas (Jamieson and Levings 2001)⁹. The provincial government has the jurisdiction to protect all other species and habitats, including land above the high water mark, and seabed that is landward from any line drawn from headland to headland¹⁰.

Beyond marine conservancy, the province has jurisdiction over any resource development or electrical generation (i.e. wind or tidal) that could potentially take place at Race Rocks. However, the federal government has jurisdiction over the Race Rocks Lightstation, the nearby Indian Reserves and military base (and their activities), as well as shipping and navigation, including air navigation.

3.2.2 Legislation for marine protected areas

An MPA in BC can be created under any one of five provincial or six federal statutes (Table 3.4). All provincial legislation for MPAs is administered by BC Parks, an agency within the Ministry of Environment, Lands and Parks (MELP)¹¹. The strongest level of provincial protection —equivalent to IUCN Category I— is provided by the

Table 3.4 Legislation for MPAs in BC.

Statute (type)
Provincial legislation (administered by BC Parks)
♦ <i>Ecological Reserve Act</i> (RSBC 1996) (Ecological Reserves)
♦ <i>Environment and Land Use Act</i> (RSBC 1996) (Protected Areas)
♦ <i>Land Act</i> (RSBC 1996) (Designated Wildlife Reserves)
♦ <i>Park Act</i> (RSBC 1996) (Provincial Parks, Marine Provincial Parks)
♦ <i>Wildlife Act</i> (RSBC 1996) (Wildlife Management Areas)
Federal legislation (Environment Canada)
♦ <i>Canada Wildlife Act</i> (RS 1985) (National Wildlife Areas)
♦ <i>Migratory Birds Convention Act</i> (1994) (Migratory Bird Sanctuaries)
Federal legislation (Fisheries and Oceans Canada)
♦ <i>Fisheries Act</i> (RS 1985) (fisheries closures)
♦ <i>Oceans Act</i> (1996) (Marine Protected Areas)
Federal legislation (Parks Canada)
♦ <i>Canada National Marine Conservation Areas Act</i> (2002) (Marine Conservation Areas)
♦ <i>Canada National Parks Act</i> (2000) (National Parks, National Park Reserves)

Source: Jamieson and Levings (2001).

⁹ Offshore areas are seaward of provincial seabed but within the 200-Na. Mi. Exclusive Economic Zone (Jamieson and Levings 2001).

¹⁰ The definition of 'headland' is the subject of disagreement: while the bottom of the Georgia and Juan de Fuca Straits (including Race Rocks) is accepted as provincial seabed, the status of the seabed east of the line between Vancouver Island and the Queen Charlotte Islands is unresolved (Jamieson and Levings 2001).

¹¹ BC Parks was part of the Ministry of Environment, Lands and Parks (MELP) when the Race Rocks Advisory Board was most active (1999-2000). In 2001, the functions of this Ministry were divided into the Ministry of Sustainable Resource Management, whose functions include MPA planning, and the Ministry of Water, Land and Air Protection, whose functions include MPA management. BC Parks is now part of the Ministry of Water, Land and Air Protection.

Ecological Reserve Act (RSBC 1996), which was used to designate the Race Rocks Ecological Reserve in 1980¹². Federal legislation for MPAs is administered by three agencies: Parks Canada, Environment Canada, and Fisheries and Oceans Canada (popularly referred to as DFO¹³). Most relevant to this study is DFO, which administers the *Fisheries Act* (RS 1985) and the *Oceans Act* (1996). The *Fisheries Act* provides the means to create the simplest form of MPA: a fisheries closure. The *Oceans Act*, described below, is the statute under which the Race Rocks MPA will eventually be designated.

3.2.3 Federal *Oceans Act*

The *Oceans Act* (1996) is relatively new legislation¹⁴ that has the purpose of asserting federal sovereignty over the Exclusive Economic Zone, as well as pursuing the integrated management of oceans and marine resources. As part of this mandate, the *Act* (s. 35(2)) calls upon DFO to “lead and co-ordinate the development and implementation of a national system of **Marine Protected Areas**” (capitalized) (Table 3.5).

Two provisions of the *Oceans Act* (1996) are important to this case study. First, in exercising powers and performing duties under the *Act* (s. 33(1)(a)), DFO is required to:

...co-operate with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organisations, coastal communities and other persons and bodies, including those bodies established under land claims agreements.

Second, Marine Protected Areas are created through **regulations**, which are subject to the vetting process set out in the *Statutory Instruments Act* (RS 1985) (except in emergencies¹⁵). After a draft regulation is prepared by DFO (including the consultations described above), the

Table 3.5 Definition of ‘Marine Protected Area’ in the *Oceans Act*.

A **Marine Protected Area** is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section for special protection for one or more of the following reasons:

- 1) The conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;
- 2) The conservation and protection of endangered or threatened marine species, and their habitats;
- 3) The conservation and protection of unique habitats;
- 4) The conservation and protection of marine areas of high biodiversity or biological productivity; and
- 5) The conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.

Source: *Oceans Act*, 1996 (s. 35(31))

¹² Ecological Reserves protect “rare, endangered, or sensitive species or habitats”, “unique, outstanding, or special features”, and “areas for scientific research and marine awareness” (Jamieson and Levings 2001, p. 144).

¹³ The older, more traditional name for Fisheries and Oceans Canada is the Department of Fisheries and Oceans (DFO).

¹⁴ The *Oceans Act* (1996) received Royal Assent on December 18, 1996, with most sections coming into force on January 31, 1997.

¹⁵ The *Oceans Act* (1996: s. 36(1)) allows the Minister to establish Marine Protected Areas on an emergency basis “where the Minister is of the opinion that a marine resource or habitat is or is likely to be at risk”. This emergency designation expires after 90 days.

regulation is examined by the Privy Council Office and the Department of Justice. If found to be satisfactory, the regulation is then published twice in the *Canada Gazette*¹⁶: first in Part I, with an indicated period for final public comments (usually 30 or 60 days); then in Part II, at which point the regulation becomes law.

3.2.4 Policies for Marine Protected Areas

With the *Oceans Act* (1996) in force, DFO released discussion papers on the proposed policy framework for Marine Protected Areas (DFO 1997), as well as the new relationship between DFO, Environment Canada and Parks Canada (DFO 1998b). In August 1998, DFO and BC's MELP co-released a discussion paper on "co-ordinating all existing federal and provincial marine protected areas programs under a single umbrella" (DFO/MELP 1998). In September and December 1998, Minister David Anderson announced several 'pilot' sites for Marine Protected Areas on the Pacific Coast, one of which was Race Rocks (DFO 1998a)¹⁷.

In March 1999, DFO released its final *Marine Protected Areas Policy*, including a *Code of Practice* that pledges to: "establish MPAs in a fair and transparent manner", to "plan and establish MPAs with the active participation of interested and affected parties", and to "promote the use of partnering arrangements in managing MPAs" (DFO 1999b, p. 8) (Table 3.6). The accompanying *Framework for Establishing and Managing Marine Protected Areas* further states that DFO will seek the support of "affected Aboriginal organisations, coastal communities and other persons" (DFO 1999c, p. 5).

The emphasis of these policies is a "learning-by-doing" (DFO 1999c, p. 5) approach, particularly with

Table 3.6 Code of Practice for the MPA Program.

In implementing the Marine Protected Areas program, Fisheries and Oceans will:

- ◆ Establish MPAs in a fair and transparent manner.
- ◆ Adopt the principles of sustainable development, integrated management and the precautionary approach in decision-making.
- ◆ Base decisions on the best available scientific information and traditional ecological knowledge.
- ◆ Adopt an ecosystem approach to planning, establishing and managing MPAs. This will include co-ordinating across jurisdictions and organisations and recognising the interaction of marine ecosystems with the land.
- ◆ Plan and establish MPAs with the active participation of interested and affected parties, building upon existing programs and institutional or community structures wherever possible.
- ◆ Promote the use of partnering arrangements in managing MPAs.
- ◆ Evaluate the design, management and effectiveness of MPAs on a regular basis with respect to their stated goals.

Source: DFO (1999b, p. 8).

¹⁶ The *Canada Gazette* publishes all appointments, notices, regulations and statutes enacted by the Government of Canada.

¹⁷ The pilot sites announced in September 1998 were Race Rocks and Gabriola Passage, followed in December 1998 by Bowie Seamount and Endeavour Hot Vents.

respect to public consultation. The first test case would be the Race Rocks pilot site, and the Race Rocks Advisory Board, the subject of this study.

3.3 Aboriginal rights in British Columbia

As suggested at various points in this chapter, aboriginal rights, title and treaties must be considered in the creation of MPAs in BC. This has not always been so; notably, aboriginal people were not included in the designation of the Race Rocks Ecological Reserve in 1980.

The shift in approach since that time was brought about by a series of court decisions and political events that reached a critical mass in the 1990s¹⁸. Incremental rulings by the Supreme Court of Canada overturned the prevailing assumption that provincial land policy and federal statutes had extinguished aboriginal title in BC, a province with very few treaties. The province was forced to abandon its policy of *terra nullius*, the notion that BC was devoid of aboriginal title (except for Indian Reserves), and that “if there is a problem it is a federal responsibility” (Tennant 1996, p. 45).

Meanwhile, aboriginal blockades and the controversial police and/or military responses at Oka, Québec (1990), Gustafsen Lake, BC (1995) and Ipperwash, Ontario (1995) caused federal and provincial governments to reconsider the state’s relationship with aboriginal people¹⁹. Among the products of this debate was the (also controversial) Royal Commission on Aboriginal Peoples (INAC 1996).

This section focuses on the recent legal history of aboriginal rights and title in BC, to provide context for the theoretical framework developed in the next chapter. Details about the aboriginal history of Race Rocks (including the Douglas Treaties from the 1850s) will be discussed further in Section 5.2 (p. 44).

¹⁸ It has been argued that the origin of the “modern epoch of Indian policy and national Indian politics” (Leech-Crier 2000, p. 1) can be traced to the release (1969) and subsequent withdrawal (1971)—following intense public outcry—of the Trudeau-Chrétien ‘White Paper’ on aboriginal policy. According to the White Paper, aboriginal people “would lose the special protection granted under the *Indian Act*, the Department of Indian Affairs would be abolished, and responsibility for services to Native people would be transferred to the provinces” (NFB 2002, p. 1). This episode was soon followed by the Supreme Court of Canada’s ruling in *Calder vs. Attorney-General of British Columbia* (1973), which confirmed the legitimacy of aboriginal land claims. The *Calder* ruling in turn led to the negotiation of the *James Bay-Northern Québec Agreement* (1975), as well as the initiation of treaty negotiations with the Nisga’a Tribal Council (1976).

¹⁹ A notable attempt at reconciliation was the dialogue that led to the Charlottetown Accord (1992), which was ultimately rejected by national referendum.

3.3.1 A new Constitution

Efforts at furthering aboriginal rights in Canada were helped greatly by the 1982 shift in model of governance, from Parliamentary to Constitutional Monarchy.

Section 35(1) of the new *Constitution Act* (1982) included a statement that was critical for aboriginal people: “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”.

Aboriginal rights “refer to practices, traditions or customs which are integral to the distinctive culture of an aboriginal society” (TNO 2002, p. 1) (Table 3.7). **Aboriginal title** is “a sub-category of aboriginal rights dealing solely with land claims” (p. 1)²⁰. **Treaty rights** refer to aboriginal rights that are set out in a treaty.

It was left to the courts to interpret the meaning and implications of Section 35. In *Regina vs. Sparrow* (1990), the Court held that 'Section 35 rights' are capable of evolving over time, and must be interpreted in a generous and liberal manner. The Court also ruled that governments might regulate the existing aboriginal management of resources, but that after conservation goals are met aboriginal people must be given priority over other user groups to fish for food (MAA 1998).

3.3.2 Treaty negotiations

The *Sparrow* (1990) decision led to a federal-provincial aboriginal agreement to begin the negotiation of modern

Table 3.7 What is an aboriginal right?

Aboriginal rights:

- ♦ Refer to practices, traditions or customs which are integral to the distinctive culture of an aboriginal society and were practiced prior to European contact, meaning they were rooted in the pre-contact society;
- ♦ Must be practiced for a substantial period of time to have formed an integral part of the particular aboriginal society's culture;
- ♦ Must be an activity that is a central, defining feature which is independently significant to the aboriginal society;
- ♦ Must be distinctive (not unique), meaning it must be distinguishing and characteristic of that culture;
- ♦ Must be based on an actual activity related to a resource: the significance of the activity is relevant but cannot itself constitute the claim to an aboriginal right;
- ♦ Must be given a priority after conservation measures (not amounting to an exclusive right);
- ♦ Must meet a continuity requirement, meaning that the aboriginal society must demonstrate that the connection with the land in its customs and laws has continued to the present day;
- ♦ May be the exercise in a modern form of an activity that existed prior to European contact;
- ♦ May include the right to fish, pick berries, hunt and trap for sustenance, social and ceremonial purposes (for example, ceremonial uses of trees and wildlife locations);
- ♦ May include an aboriginal right to sell or trade commercially in a resource where there is evidence to show that the activity existed prior to European contact "on a scale best characterized as commercial" and that such activity is an integral part of the aboriginal society's distinctive culture;
- ♦ May be adapted in response to the arrival of Europeans if the activity was an integral part of the aboriginal society's culture prior to European contact;
- ♦ Do not include an activity that solely exists because of the influence of European contact; and
- ♦ Do not include aspects of aboriginal society that are true of every society such as eating to survive.

Aboriginal rights arise from the prior occupation of land, but they also arise from the prior social organization and distinctive cultures of aboriginal peoples on that land. Treaty negotiations will translate aboriginal rights into contemporary terms.

Source: BC Treaty Negotiation Office (TNO 2002)

²⁰ Aboriginal title is not fee-simple title. This said, aboriginal people might negotiate fee-simple title to a given terrestrial area as part of a treaty settlement. No treaty settlements to date provide either foreshore rights or fee-simple title to federal or provincial seabed. However, this may change with the Haida Nation's claim (launched in March 2002) to part of the seabed in Hecate Strait (Harvey 2002).

treaties across much of BC²¹. This agreement established a ‘government-to-government’ relationship between all three parties, which is reflected in the language of all treaty-related documents. In such a relationship, each party commits to send officials of similar stature to similar forums of discussion, such that Chiefs do not find themselves working with secondary federal or provincial officials.

In 1993, the BC Treaty Commission was formed as an independent body charged with overseeing a six-stage treaty negotiation process (BCTC 2002). This process was open to any First Nation in BC, including the signatories of Douglas Treaties. Though upheld in several court rulings, the terms of the Douglas Treaties were negotiated under questionable circumstances, and had never been properly honoured by the provincial or federal governments (MAA 1998).

In 1995, several Douglas Treaty signatories formed the Te'mexw Treaty Association (2001), and entered negotiations²². In 1996, the Te'mexw negotiations completed Stage 3, the *Framework Agreement to Negotiate a Treaty*, which (among other things) requires that “the parties negotiate interim measures agreements ... when an interest is being affected which could undermine the process” (BCTC 1996, p. 7). The negotiations for Stage 4, the *Agreement-in-Principle*, are ongoing (Te'mexw Treaty Association 2001).

3.3.3 Delgamuukw

In December 1997, the Supreme Court handed down the landmark ruling for *Delgamuukw vs. British Columbia*, which defined the “nature and effect of aboriginal title²³, how it can be proved, whether provincial laws can extinguish aboriginal title or rights, and the Crown’s authority and related fiduciary duties in relation to aboriginal title” (Pape 1998, p. 3). In *Delgamuukw* (1997), the Court found that aboriginal title includes the right to exclusive use and occupation of land, the right to choose to what uses land can be put, and an economic component to land use and occupation (Pape 1998)²⁴.

²¹ This excluded areas of interest for the Nisga'a Treaty (concluded in 1998), and areas covered by Treaty No. 8 (1899) (MAA 1998).

²² The Te'mexw Treaty Association (2001) includes the Beecher Bay, Malahat, Nanoose, Songhees and T'Sou-ke First Nations. The traditional territory of the Beecher Bay, Songhees and T'Sou-ke First Nations extends to Race Rocks.

²³ Aboriginal title is “a sub-category of aboriginal rights dealing solely with land claims” (TNO 2002, p. 1).

²⁴ However, such uses cannot destroy the ability of the land to sustain future generations of aboriginal peoples (Pape 1998).

To establish the existence of aboriginal title, the land must have been exclusively occupied by a group before the assertion of Crown sovereignty (1846 in BC), and occupation must have been continuous since that time²⁵. Infringement on aboriginal title by federal or provincial governments must be justified by a “compelling and substantial legislative objective”—such as conservation—and must be “consistent with the fiduciary relationship between the Crown and aboriginal peoples” (Pape 1998, pp. 6-7). These requirements call for consultation; “some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands” (p. 7).

3.3.4 Marshall

The issue of infringement has been further addressed in other decisions. In *Regina vs. Marshall* (1999), the Supreme Court upheld the treaty right of the Mik'maq to fish for a "moderate livelihood" (para. 24) (rather than just subsistence), stating that:

The Mi'kmaq treaty right to participate in the largely unregulated commercial fishery of 1760 has evolved into a treaty right to participate in the largely regulated commercial fishery of the 1990s. (para. 38)

Conflicting interpretations of this ruling led to violent confrontation between fisheries officers and aborigines at Miramichi Bay, New Brunswick, which took place in the midst of the Race Rocks Advisory Board proceedings (Curtis 2000b; Isaac 2000) (see Section 6.4.1, p. 71).

A few months later, the Supreme Court made the unusual move of releasing a clarification on the *Marshall* (1999) decision, in which it told DFO that the infringement of aboriginal and treaty rights is not justified in order to protect the livelihood of non-aboriginals:

...(This) argument amounts to saying that aboriginal and treaty rights should be recognized only to the extent that such recognition would not occasion disruption or inconvenience to non-aboriginal people. According to this submission, if a treaty right would be disruptive, its existence should be denied or the treaty right should be declared inoperative. This is not a legal principle. It is a political argument. What is more, it is a political argument that is expressly rejected by the political leadership when it decided to include s. 35 in the *Constitution Act, 1982*. ... It is the obligation of the courts to give effect to that national commitment. (*Regina vs. Marshall (clarification)* 1999, para. 45)

However, the Court tempered these comments, stating that:

The Minister's authority extends to other compelling and substantial public objectives which may include economic and regional fairness, and recognition of the historical reliance upon, and participation in, the fishery by non-aboriginal groups. (para. 41)

²⁵ In some circumstances, oral histories may be an acceptable form of evidence for this occupation (Pape 1998).

3.3.5 Recent decisions

There have been two decisions of note since the Advisory Board submitted its recommendations. In *Taku River Tlingit First Nation vs. Ringstad et al.* (2002), the BC Court of Appeal “reinforced the notion that the interests of First Nations in the BC Treaty process, expressed in a framework agreement [n.b. such as exists with the Te’mexw], are sufficiently substantive to deserve the protection of the courts” (BCTC 2002, p. 3).

Then in *Haida Nation vs. BC and Weyerhaeuser* (2002), the BC Court of Appeal said that “the Crown’s duty to consult derives from the ‘trust-like’ relationship between aboriginal peoples and the Crown”, and that consultation “must take place without requiring First Nations to prove their title to the land in a lengthy trial” (BCTC 2002, p. 3).

3.4 Summary

This chapter has introduced the concept of MPAs, and described the historical and legal context for their establishment in BC. To summarise the main points:

- MPAs are a promising new tool for marine conservancy (supported by scientific studies), providing benefits to both marine ecosystems and coastal communities;
- MPAs are conceptually distinct from terrestrial parks;
- Though there are several relevant statutes available to government agencies, only four MPAs in BC qualify as marine reserves—with a complete ban on fishing and full protection from habitat alteration;
- The *Oceans Act* is a promising new tool for oceans governance and marine conservancy, including the creation of Marine Protected Areas. One example, the Race Rocks MPA, is the subject of this study;
- The *Oceans Act* and supporting policies call for public involvement in the establishment of MPAs. This led to the creation of the Race Rocks Advisory Board; and
- The evolving legal understanding of aboriginal rights, title and treaties is a critical consideration in the management of natural resources in BC. First Nations must be fully consulted and included in the establishment and management of MPAs. Such consultation must respect the ‘government-to-government’ relationship between First Nations, BC and Canada.

Chapter 4 – Theoretical Framework

This chapter develops the theoretical framework that will be used to examine the case study, building on discussions about community involvement in marine protected areas, consensus processes, and communicative planning theory.

4.1 Community involvement in marine protected areas

In a recent article, Jentoft (2000c, p. 141) asks the rhetorical question: “how do frustrated and disappointed fishers [or other marine resource users] react to a regulatory regime that they do not perceive to be in their interest?” Jentoft states that they will choose between two responses: exit or voice.

The **exit response** involves “disobeying the rules that the management system has produced” (Jentoft 2000c, p. 141). This strategy is risky: it may bring penalties or moral condemnation, and—if left unchecked—may lead to the destruction of the resource. The **voice response** involves protest that is “expressed publicly, indirectly through an interest organisation, directly to the government agency responsible for the management system, or to the courts” (p. 141). This strategy is also risky, potentially leading to “counter-arguments and criticism, and, in authoritarian societies, repression” (p. 141).

4.1.1 Co-management

For the voice response to work, there must be “institutions which allow [resource users] the right and the opportunity to freely express criticism and alternative interpretations of given premises and ‘facts’” (Jentoft 2000c, p. 141). These institutions should “serve as places for communication and deliberation on the procedures, goals and means of the regulatory system”, which makes them “more robust than any government initiative that relies on force and penalty only” (p. 141). Jentoft (2000a, pp. 528-9) calls this the **co-management** approach to marine resource management, “a collaborative and participatory process of regulatory decision-making between representatives of user-groups, government agencies and research institutions”.

The inclusion of user groups and research institutions in the creation and management of MPAs is recommended by the World Commission on Protected Areas (WCPA). Their *Guidelines for Marine Protected Areas* state that “the fundamental criterion for success is to bring in from the beginning every significant sector that will affect, or be affected by the MPA”, and further recommend “a co-management partnership as one possible model to use” (Kelleher 1999, pp. 21-36) (Table 4.1).

The Guidelines go on to identify fisheries, tourism, aquaculture and scientists as important groups to consider, as well as “the rights of indigenous peoples” (Kelleher 1999, p. 24). They also call for an appreciation of “the full justification for developing management partnerships with local communities and the benefits they will bring” (p. 29).

Agardy (1997, pp. 89-90) supports this inclusion of communities, such that MPAs “empower local users who might not otherwise have a collective voice in decision-making about resource use and allocation”, and “allow for more equitable sharing of benefits than might have existed previously”. Along similar lines, Jentoft (2000b, p. 59) maintains that co-management:

...can only work effectively as part of a larger scheme for community development, which includes the civil society as an arena for social integration, building trust and networks, learning and internalisation of democratic virtues and social responsibility through participation in public affairs.

The common theme in these arguments is that community involvement in the creation and management of an MPA can create a virtuous circle that improves the conservancy of marine resources while strengthening the community that depends on them.

Table 4.1 WCPA Guidelines for MPAs.

Working with relevant sectors

- ◆ The fundamental criterion for success is to bring in from the beginning every significant sector that will affect, or be affected by, the MPA.
- ◆ Assign top priority to cooperation with those responsible for fisheries.
- ◆ Recognise tourism as a sector that often has much to gain from an MPA and that can generate substantial economic benefits from it.
- ◆ Ensure that aquaculture is regulated so as not to damage the MPA.
- ◆ Consider the rights of indigenous peoples.
- ◆ Recognise that land-based activities can threaten or destroy MPAs.
- ◆ Encourage scientists to use the MPA in their research without damaging its conservation objectives.
- ◆ A range of other sectors will be affected by or will affect the MPA and so should be involved.

Making partnerships with communities and other stakeholders

- ◆ Appreciate the full justification for developing management partnerships with local communities and the benefits that these will bring.
- ◆ Understand the local communities that will be affected by the MPA and identify potential partners.
- ◆ Choose the type of management partnership most suitable to the situation.
- ◆ Consider a co-management partnership as one possible model to use.
- ◆ Whatever the management partnership, involve stakeholders from the very beginning
- ◆ Be innovative and creative in the establishment of partnerships.
- ◆ Challenge orthodoxy in institutions.
- ◆ Emphasise flexibility, learning-by-doing and a long-term approach.

Source: Kelleher (1999, pp. 21-36).

4.I.2 Legitimacy in decision-making

Though co-management and community involvement is important, it is only a vague first step in ensuring that “the management system be regarded as legitimate among affected parties” (Jentoft 2000c, p. 141). Hillier (1998) argues that an important foundation of legitimacy in planning institutions is fair participation in decision-making. **Fair participation** “comprises having the ability to express one’s opinions and tell one’s stories (voice)” (p. 17). Further,

...it involves being listened to with respect, having access to adequate information, being able to question others, having some degree of control over the decision-making procedure and resultant outcome, demonstrating that decisions are made impartially, and receiving good feedback. (p. 17)

Forester (1989) warns that legitimacy is threatened by the presence of **misinformation** (accidental or deliberate) in planning processes, which affects the knowledge, comprehension, trust and consent of participants (Table 4.2). Progressive planners should “anticipate and counteract the practical misinformation likely to arise in organisational and political processes” (p. 41).

Dorcey and McDaniels (2001) concur, expanding the criteria for **legitimacy** to include the use of technical information in decision-making, the rules of community engagement, and the representativeness of participants in the decision-making process. In other words, the legitimacy of community involvement in planning processes must be built on a clear understanding of the mechanics of decision-making.

Table 4.2 Misinformation and the management of comprehension, trust, consent and knowledge in planning processes.

Forms of misinformation				
Mode	Comprehension (problem-framing)	Trust (false assurance)	Consent (illegitimacy)	Knowledge (misrepresentation)
Decision-making	Resolutions passed with deliberate ambiguity.	Symbolic decisions, false promises.	Decisions reached without legitimate representation of public interests but appealing to public consent as if this were not the case.	Decisions that misrepresent actual possibilities to the public.
Agenda setting	Obfuscating issues through jargon or quantity of information.	Using respectable personages to gain trust.	Arguing that a political issue is actually a technical issue best left to experts.	Before decisions are made, misrepresenting costs, benefits, risks, true options.
Shaping felt needs	Definition of problem or solution through ideological language.	Encouraging benign dependence on apolitical others.	Appeals to the adequacy and efficacy of formal participatory processes without addressing their systematic failures.	Ideological or deceptive presentation of needs or requirements.

Source: Forester (1989, p. 38).

These mechanics are explored by Fisher and Ury (1991) in *Getting to Yes: Negotiating Agreement without Giving In.*

Fisher and Ury (1991) suggest four strategies for negotiating legitimate, ‘wise agreements’ between parties with conflicting positions (Table 4.3). First, the parties should “**separate the people from the problem**”, coming to “work side by side, attacking the problem, not each other” (p. 17). Second, the parties should “**focus on interests, not positions**”, looking for the reasons that underlie a given argument (p. 40).

Third, the parties should “**invent options for mutual gain**”, “setting aside a designated time within which to think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interests” (Fisher and Ury 1991, p. 56). Finally, both parties should “**insist on using objective criteria**” (p. 81). Echoing the notion of fairness, “the agreement must reflect some fair standard (e.g. expert opinion, custom or law) independent of the naked will of either side” (p. 81).

4.2 Reaching consensus

The strategies for *Getting to Yes* are designed for bi-lateral negotiations, but have been adapted for the multi-party context more common to MPAs. One mechanism for negotiating agreement among multiple parties is known as a **consensus process**, where “individuals representing differing interests engage in long-term, face-to-face discussions, seeking agreement on strategy, plans, policies, and actions” (Innes and Booher 1999, p. 11).

Consensus processes have been found to be particularly useful for finding ‘non zero-sum’ solutions to environmental issues, where “one party’s gain is not necessarily another party’s loss” (Cormick et al. 1996, p. 70). This is important for the creation and management of MPAs, which can degenerate into a battle between those advocating environmental protection and those defending economic opportunity (Davis 2002).

The following sections review the concept of consensus, outline principles for consensus processes, and discuss the importance of skilled facilitation.

Table 4.3 Strategies for *Getting to Yes*.

-
- 1) Separate the people from the problem.
 - 2) Focus on interests, not positions.
 - 3) Invent options for mutual gain.
 - 4) Insist on using objective criteria.
-

Source: Fisher and Ury (1991).

4.2.1 What is consensus?

Consensus is defined by the *Oxford Encyclopaedic English Dictionary* as “general agreement”, “collective opinion”, or the “majority view” (Hawkins and Allen 1991, p. 310). Some authors have expressed dissatisfaction with these definitions (e.g. Hillier 1998). Among them, Kaner (1996, p. 210) argues that the meaning of consensus is closer to its Latin root, *consentire*, which means: “to think and feel together”.

Unanimity is only one, demanding form of consensus, where everyone has an individual veto over the final decision. Rather than this ‘all-or-nothing’ approach, Kaner (1996) suggests that participants refer to a *Gradients of Agreements Scale* (Figure 4.1). The distribution of opinion around various gradients indicates the level of support for a decision:

- “**Enthusiastic support**” for a consensus decision exists when most of the participants indicate their “endorsement”, “endorsement with a minor point of contention”, or “agreement with reservations” (p. 213).
- Some decisions may only get “**lukewarm support**”, where most participants give “agreement with reservations”, “abstain” or “stand aside” (p. 214).
- Difficult compromises may only win “**ambiguous support**”, where endorsements are mixed with an equal number of formal disagreements (p. 215).

Ultimately, the ‘**decision rule**’ —such as unanimous agreement, a majority vote, a gradient of agreement, or a level of support— will have to be negotiated by the participants in the consensus process.

Endorsement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Endorsement with a minor point of contention							
<i>I like it.</i>	<i>Basically I like it.</i>	<i>I can live with it.</i>	<i>I have no opinion.</i>	<i>I don't like this, but I don't want to hold up the group.</i>	<i>I want my disagreement noted in writing, but I'll support the decision.</i>	<i>I don't want to stop anyone else, but I don't want to be involved in implementing it.</i>	<i>I veto this proposal.</i>

Source: Kaner (1996, p. 212).

Figure 4.1 Gradients of Agreement Scale for consensus decisions.

4.2.2 Consensus processes

As this implies, consensus is more than an endpoint; it is “a participatory process by which a group thinks and feels together [*consentire*] en route to their decision” (Kaner 1996, p. 210). Consideration must be given to how such a process might lead to agreement while addressing the concerns discussed in this chapter. Such consideration has been given by the National Round Table on the Environment and Economy (NRTEE), who provide ten *Guiding Principles* for consensus processes (Cormick et al. 1996) (Table 4.4).

Table 4.4 NRTEE Guiding Principles for Consensus Processes.

Principle 1.	Purpose-driven
Principle 2.	Inclusive, not exclusive
Principle 3.	Voluntary participation
Principle 4.	Self-design
Principle 5.	Flexibility
Principle 6.	Equal opportunity
Principle 7.	Respect for diverse interests
Principle 8.	Accountability
Principle 9.	Time-limits
Principle 10.	Implementation

Source: Cormick et al. (1996, p. 5).

The NRTEE argues that consensus processes should be **inclusive**, targeting “those parties affected by any agreement that may be reached, those needed to successfully implement it, or who could undermine it if not included in the process” (Cormick et al. 1996, p. 23). However, there should be **voluntary participation**, reducing the sense of threat felt by wary stakeholders and providing greater legitimacy to an eventual consensus decision.

Willingness to participate will be more forthcoming if a consensus process is **purpose-driven**: “the parties should have a common concern and believe that a consensus process offers the best opportunity for addressing it” (Cormick et al. 1996, p. 15). For a consensus process to be fair, there should be **equal opportunity** for participation. This may call for:

- ♦ Training on consensus processes and negotiation skills;
- ♦ Adequate and fair access to all relevant information and expertise; and
- ♦ Resources for all participants to participate meaningfully. (p. 59)

Also important is a **respect for diverse interests**, a commitment to show respect, share knowledge and invest time to understand other participants and the groups they represent. This may include workshops to break down barriers between groups, a technique “widely used in Canada to introduce non-aboriginal people to the cultural values and circumstances of aboriginal people” (p. 76).

A consensus process should be designed by the participants (**self-design**). At the beginning of any process, the participants should:

- ♦ Define the issues clearly, and assess the suitability of a consensus process for each issue—as opposed to other decision-making processes;
- ♦ Clarify roles and responsibilities for everyone involved; and
- ♦ Establish the ground rules for operating.

(Cormick et al. 1996, p. 40)

However, this design should be **flexible**, able to evolve “as the parties become more familiar with the issues, the process, and each other” (p. 50).

The participants should be **accountable** to “both their constituencies and to the process they have agreed to establish” (Cormick et al. 1996, p. 78):

It is important that the participants representing groups or organisations effectively speak for the interests they represent. Mechanisms and resources for timely feedback and reporting to constituencies are crucial and need to be established. This builds understanding and commitment among the constituencies and minimises surprises. (p. 78)

The NRTEE suggests that “different types of stakeholders require different degrees of accountability from their representatives”, variations that are “reflected in group structure and internal communications” (p. 81).

There should be “clear and reasonable **time limits** for working towards a conclusion and reporting on results” (Cormick et al. 1996, p. 87). Participants “need strong incentives to start and to stay with a demanding consensus process” (p. 88). By setting time limits at the outset, “participants reassure each other of their commitment to reach closure” (p. 88).

Finally, the participants must commit to **implementation** during the consensus process: “failure to think through implementation can undo confidence and mutual trust in negotiations” (Cormick et al. 1996, p. 96). The NRTEE provides a list of key questions that should be addressed in any consensus process dedicated to successful implementation (Table 4.5).

Table 4.5 Questions for the successful implementation of consensus agreements.

-
- ♦ Is the solution technically and legally sound?
 - ♦ Will those whose support will be needed accept the agreement?
 - ♦ How will formal ratification be achieved?
 - ♦ How will implementation be funded?
 - ♦ Who will be responsible for doing what?
 - ♦ When will parts of the agreement be implemented?
 - ♦ Will actions follow agreed commitments?
 - ♦ How will parties hold each other to commitments?
 - ♦ How will promises turn into action?
 - ♦ What about unforeseen difficulties?
-

Source: Cormick et al. (1996, p. 98).

4.2.3 Facilitation

Implicit in these principles is the importance of **facilitation**. Facilitation is a specific role, distinct from convening or co-ordinating. In the context of MPAs in BC, the **convenor** of a consensus process would likely be one or more sponsoring agencies (such as DFO). The **co-ordinator** would be a project manager, likely an employee of one of those agencies. The **facilitator** might be the same person, or someone contracted for the duration of the consensus process.

A facilitator provides guidance to all group communication, “teaching group members how to design and manage an effective decision-making process” (Kaner 1996, p. 36). According to Kaner (1996), a skilled facilitator will encourage full participation, promote mutual understanding, foster inclusive solutions and teach new thinking skills, while ensuring that participants avoid self-censorship, fixed positions and a win or lose mentality. These outcomes are achieved by employing techniques such as the **one-text procedure**, where the facilitator leads the group through the drafting and revision of a written agreement (Fisher and Ury 1991).

Who should face this daunting task? The NRTEE argues that it should be:

...an independent person, acceptable to all of the participants, whose focus and expertise is in the management and shepherding of consensus processes and in assisting disputing parties to find common agreement. (Cormick et al. 1996, p. 12)

Independence is important so that the consensus process can “level the playing field, suspending power imbalances for as long as the process continues” (p. 35). However, independence does not necessarily imply neutrality. Laue and Cormick (1978, p. 221) argue against neutral facilitation, since “neutrality ... almost always works to the advantage of the party in power”. Rather, the responsibility of the facilitator is “to use skills, positions, and power to further the empowerment of the powerless” (p. 229).

Forester (1999, pp. 194-5) captures the balancing act played by an effective facilitator:

[They] must be close enough to listen but far enough away to manage the process. They must be sensitive enough to understand but be tough enough to ask hard questions. They must be attentive enough never to be dismissive, yet they must be insightful enough to probe for what may really matter. They must take each party seriously yet be able to laugh. ...they must enable the parties to move ahead rather than tell them where to go.

This balance is met when facilitators are “civic friends”, who “create a space for speaking and listening, for difference and respect, for the joint search for new possibilities, and ultimately for newly fashioned agreements about how we shall live together” (p. 197).

4.3 Communicative planning theory

These arguments suggest that consensus processes are best led by a facilitator (independent or otherwise) who is respectful of participants, but who has an agenda of seeking to ‘plan in the face of power’ (Forester 1989). In this study, such an agenda might refer to the creation of MPAs in the face of established institutions and economic interests.

Power is “manifest in the relations of social life, in the micro-politics of daily struggles, constraints, and responses to them” (Healey 1999, p. 113). It can be argued that a consensus agreement is the achievement of a facilitated decision-making process that productively manipulates the power relationship between willing participants. What are the implications of this technique? The following sections draw on communicative planning theory to reflect on this question, leading into the conceptual and analytical framework for this study.

4.3.1 Ideal or pragmatic?

Communicative planning theory is a complex of ideas concerned with power and the production of truth in planning and decision-making. As stated by Healey (1999, pp. 116-7):

The ambition of communicative planning theory is to contribute to transforming governance cultures—to provide concepts, critical criteria, and examples of open and participative governance through which conceptions of place qualities can be articulated, debated, disseminated, and used to focus and inform new initiatives and responses to change.

As communicative planning theory is an evolving set of ideas, the approach taken here is to contrast two arguments from the literature—arguments that are not a dichotomy, but are at tension with one another (see Flyvbjerg 1998a; Forester 1999; Healey 1999; Innes 1998).

The first, idealistic argument is that planners should seek to create decision-making spaces that are free from the influence of power. Proponents of this argument often cite Habermas’ theory of communicative action, also known as discourse ethics. In an **ideal speech situation**, “all participants are free to have their say and have equal chances to express their views” (Layder 1994, p. 189).

Decisions are based only on the strength of rational argumentation— independent of power, politics or group dynamics. To Habermas, this creates a “transcendental moment of validity [that] bursts every provinciality asunder” (Ashenden and Owen 1999, p. 5). The universal realisation of ideal speech would be the penultimate achievement of the project of enlightenment.

The second, pragmatic argument is that planners should accept that decisions are always influenced by power, and so act strategically to “make participatory planning a pragmatic reality rather than an empty ideal” (Forester 1999, p. 3). This group is often mindful of Foucault, who suggested that an ideal speech situation is impossible to achieve, since the very arguments we make are part of the historical context in which we make them:

...the transcendence Habermas speaks of is not something about which we could ever have any epistemological assurance so long as our reason is historical, for the historicity of subjectivity and reason places ontological limits on our ability to have such knowledge. (Kelly 1994, p. 388)

Furthermore, this historically contingent, subjective knowledge is part of the structure of power in society: “there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations” (Kelly 1994, p. 10). In short, power relations cannot be separated from the production of truth in decision-making processes (Fischler 2000).

The following sections summarise the essential arguments of the ‘Habermasian’ and ‘Foucauldian’ positions in communicative planning theory.

4.3.2 Habermas’ discourse ethics

Habermas’ **theory of communicative action** is meant to “clarify the presuppositions of the rationality of processes of reaching understanding, which may be presumed to be universal because they are unavoidable” (Flyvbjerg 1998b, p. 212). Although communicative rationality is threatened by modern society, the core of communicative rationality —“the unconstrained, unifying, consensus-bringing force of argumentative speech” (p. 212)— is a central experience in the life of a human being.

According to his theory, validity and truth are ensured when participants in a given discourse respect five key requirements of **discourse ethics** (Table 4.6). The requirement of **generality** ensures that “no party affected by what is being discussed should be excluded from the discourse” (Flyvbjerg 1998b, p. 213). To have **autonomy**, “all participants should have equal possibility to present and criticize validity claims in the process of discourse” (p. 213).

The notion of **ideal role taking** means: “participants must be willing and able to empathize with each other’s validity claims” (Flyvbjerg 1998b, p. 213). **Power neutrality** implies that “existing power differences between participants must be neutralized such that these differences have no effect on the creation of consensus” (p. 213). Finally, as **transparence** suggests, “participants must openly explain their goals and intentions and in this connection desist from strategic action” (p. 213).

4.3.3 A Foucauldian critique

It is not possible, nor appropriate to formulate a ‘Foucauldian theory’ of communicative planning. Foucault did not create any universal theories, but instead sought to:

...criticize the workings of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them. (Flyvbjerg 1998b, p. 223)

To Foucault, a critical analysis of communication begins with an examination of the dynamics of power—to ask questions until “acts, gestures, discourses which up until then had seemed to go without saying become problematic, difficult, dangerous” (Fischler 2000, p. 361).

A more appropriate approach is to conduct a Foucauldian critique of Habermas’ discourse ethics, which would include five main points (Table 4.6). First, rather than focusing on conditions of communication, Foucault would highlight the “construction of intellectual structures that shape and are shaped by non-discursive practices” (Fischler 2000, p. 359).

Table 4.6 Habermas and Foucault.

Habermas’ discourse ethics

- 1) Generality [inclusiveness]
 - 2) Autonomy
 - 3) Ideal role taking
 - 4) Power neutrality
 - 5) Transparence [openness]
-

Foucauldian critique

- ◆ Consider what is shaping the mental and social universe of participants.
 - ◆ Question the interpretation and implementation of decisions.
 - ◆ Question the historical necessity of a given situation.
 - ◆ Question the exertion of power through discourse.
 - ◆ Recognise the dangers of consensus processes.
-

Sources: Ashenden and Owen (1999), Fischler (2000), Flyvbjerg (1998b).

Put differently, we should focus on “what shapes the mental and social universe of speakers rather than on specific statements” (p. 359).

Second, Foucault would emphasise ‘how’ as much as ‘what’ decisions are implemented. The interpretation and implementation of laws and regulations is as important as the process that created them (Flyvbjerg 1998b). Third, Foucault would call attention to “the genesis of a given situation, showing that this particular genesis is not connected to absolute historical necessity” (p. 225). In other words, reaching a rational decision through an ideal speech situation is not the only course of action.

Fourth, Foucault would question the modern rationality of government ('governmentality'), particularly our acceptance of the way it exerts sovereign power (periodic, spectacular displays of force), disciplinary power (continuous surveillance, encouraging self-regulation), and bio-power (defining normal vs. deviant behaviour) (Layder 1994). In other words, Foucault would question the rationale for the exertion of power through discourse (or otherwise). This sentiment is reflected in the assertion that “treating people equally is inherently unequal” (Hillier 1998, p. 16), particularly across cultural and linguistic divides.

Finally, Foucault would ask us to consider the dangers of communicative rationality, specifically, the dangers of consensus processes. Among them:

- **Consensus processes as the suppression of conflict.** As Flyvbjerg (1998b, pp. 228-9) argues: “social conflicts produce themselves the valuable ties that hold modern democratic societies together and provide them with the strength and cohesion they need. ... In a Foucauldian interpretation, suppressing conflict is suppressing freedom, because the privilege to engage in conflict is part of freedom”;
- **Consensus processes as a mechanism of social control.** Consensus processes generally require open communication, revealing one’s “values, needs, feelings, fears, and vulnerabilities” (Fischler 2000, p. 364). This brings personal and cultural issues into the public domain, implying that they are commodities for exchange; and
- **Consensus processes as ‘superior’ to representational government.** A constant reliance on consensus processes can undermine representative democracy and the legitimacy of state intervention (Fischler 2000).

These points are pause for thought for those who would uncritically embrace consensus processes for the creation and management of MPAs.

4.4 Conceptual and analytical frameworks

This section sets out the conceptual and analytical frameworks for this study, built on the foregoing discussion on negotiation, consensus processes and communicative planning theory, as well as the contextual information provided in the previous chapter. The framework will structure the interpretation of the case study, beginning in Chapter 7 (p. 77).

4.4.1 Conceptual framework

The conceptual framework for this study is based on the premise, explored in this chapter, that consensus processes for the creation and management of MPAs in BC should seek to provide voice and fair participation, enable co-management and community development, avoid misinformation, and ensure legitimacy in decision-making.

To do this, a consensus process should balance the need to both challenge and respect participants and the groups they represent (Figure 4.2). A consensus process challenges participants by questioning assumptions and seeking compromise from each participant. However, these questions and demands are an act of power, and for this to be accepted each participant and group will want to be treated with respect.



Figure 4.2 Conceptual framework.

4.4.2 Analytical framework

Balancing challenge and respect is the unifying theme of the analytical framework, which draws on the literature reviewed here to define seven broad, inter-related characteristics of an effective consensus process for the creation of MPAs in BC:

- **Challenge:** A consensus process should challenge participants to be **innovative**, reach **fair decisions**, and form **partnerships in implementation**;
- **Respect:** At the same time, a consensus process should respect participants by being **inclusive**, **accountable to the participants**, and **respectful of identities**; and
- **Balance:** The balance between challenge and respect requires **fair process through skilled facilitation**.

The following sections describe each characteristic of the analytical framework. Supporting material is listed in the accompanying footnotes.

Challenge

Consensus processes should challenge participants to be **innovative**, to explore “thoughtful solutions that could not be created within the constraints of existing political, legal, or administrative processes” (Cormick et al. 1996, p. 5)²⁶. This may include new institutions for marine resource management. A call for innovation may sound like empty rhetoric, but it is important in order to avoid the cynical perception that a consensus process is the ‘same old thing in new packaging’. As stated by the NRTEE, “people need a reason to participate in the process” (p. 15).

A consensus process should also challenge participants to reach **fair decisions**, measured against an independent standard, also agreed to by the participants²⁷. This standard may refer to scientific studies on MPAs, or other forms of knowledge. The use of an accepted

²⁶ The importance of **innovation** is implied in the following sources: **Fisher and Ury** (1991) (Invent options for mutual gain); **NRTEE** (Cormick et al. 1996) (Purpose-driven); and the **WCPA** (Kelleher 1999) (Challenge orthodoxy in institutions; Emphasise flexibility in process outcome, learning-by-doing and a long-term approach).

²⁷ The use of an independent standard to assess **fair decisions** is suggested by the following sources: **Fisher and Ury** (1991) (Insist on using objective criteria); and **Foucault** (Ashenden and Owen 1999; Fischler 2000; Flyvbjerg 1998b) (Reaching a decision in a consensus process is not the only course of action. Though the decision-making process is important, the final agreement should be judged on its own merits. However, Foucault would also question the notions of ‘independence’ and ‘standards’.).

independent standard is important to counteract the resentment that may be felt by minority voices in the process, which can undermine the durability of a consensus agreement.

The third challenge to participants is to explore **partnerships in implementation**²⁸. A consensus agreement should not be an endpoint; it should be a milestone in an ongoing partnership in support of marine conservancy and community development. As such, the consensus agreement should include a full implementation plan. As stated by several authors, a co-management approach is a promising arrangement to consider.

Respect

The first way a consensus process can be respectful to participants is to be **inclusive**, inviting the voluntary participation of all parties affected by the MPA²⁹. Some groups may refuse to join, as is often the case with First Nations concerned about prejudicing treaty negotiations, or of acquiescing to less than ‘government-to-government’ discussions. Self-exclusion may undermine the process; however, it has been argued that this can be overcome by providing good channels of communication between the consensus table and the self-excluded group (Cormick et al. 1996).

Consensus processes are also respectful if they are **accountable to the participants**³⁰. At one level, this means that the consensus process should be designed —from the beginning— by the participants. To be accountable, such a design should be flexible, but with time limits

²⁸ The importance of **partnerships in implementation** is supported by the following sources: **Foucault** (Ashenden and Owen 1999; Fischler 2000; Flyvbjerg 1998b) (The interpretation and implementation of laws and regulations is as important as the process that created them); **Jentoft** (2000a, b, c) (There must be institutions to receive the ‘voice response’; Co-management must be part of a larger scheme for community development); the **NRTEE** (Cormick et al. 1996) (Implementation); and the **WCPA** (Kelleher 1999) (Appreciate the full justification for developing management partnerships with local communities and the benefits that these will bring; Understand the local communities that will be affected by the MPA and identify potential partners; Choose the type of management partnership most suitable to the situation; Consider a co-management partnership as one possible model to use; Be innovative and creative in the establishment of partnerships).

²⁹ **Inclusion** is referred to in the following sources: **Agardy** (1997) (Empower local users who might not otherwise have a voice in decision-making); **Habermas** (Ashenden and Owen 1999; Flyvbjerg 1998b) (Generality); the **NRTEE** (Cormick et al. 1996) (Inclusive, not exclusive; Voluntary participation); and the **WCPA** (Kelleher 1999) (Bring in from the beginning every significant sector that will affect, or be affected by, the MPA; Assign top priority to cooperation with those responsible for fisheries; Recognise tourism as a sector; Ensure that aquaculture is regulated so as not to damage the MPA; Recognise that land-based activities can threaten or destroy MPAs; Encourage scientists to use the MPA in their research without damaging its conservation objectives; A range of other sectors will be affected by or will affect the MPA and so should be involved).

³⁰ **Accountability** is endorsed by the following sources: **Dorsey and McDaniels** (2001) (Representativeness of participants); the **NRTEE** (Cormick et al. 1996) (Accountability; Flexibility in process design; Self-design; Time limits); and the **WCPA** (Kelleher 1999) (Involve stakeholders from the very beginning).

for completion. At another level, participants should be accountable to each other, by committing to the process, and by providing effective representation of their constituencies.

Finally, a consensus process should be **respectful of identities**³¹. Consensus processes seek to treat people as equals. However, as stated by Hillier (1998, p. 16), “treating people equally is inherently unequal”, particularly across cultural, linguistic and economic divides. Consensus processes should include mechanisms for understanding, respecting and accommodating difference, in the hope of ensuring full participation by all. In the case of MPAs in BC, this applies mostly to aboriginal people, who have a distinct place in Canadian history, as well as rights protected under the Constitution.

Balance

The achievement of an appropriate balance between challenge and respect requires **fair process through skilled facilitation**³². As Forester (1999, p. 192) writes, facilitators are creators of “collaborative, deliberative spaces in which ... citizens meet and seek to refashion their lived worlds”. This calls for skill at “gathering diverse points of view, building a shared framework of understanding, developing inclusive solutions, and reaching closure” (Kaner 1996, p. xvi).

The more challenging the issue at hand, the more likely the facilitator will have to be an independent person, neutral on the content of discussion but “advocating for fair, inclusive and open processes that balance participation and improve productivity while establishing a safe psychological space in which all group members fully participate” (Kaner 1996, p. x). Though independent, such a facilitator should still be knowledgeable enough to ensure that misinformation does not undermine the legitimacy of the process.

³¹ **Respect for identities** is supported by: **Foucault** (Ashenden and Owen 1999; Fischler 2000; Flyvbjerg 1998b) (Question the modern rationality of government, particularly the way it exerts power through discourse); **Habermas** (Ashenden and Owen 1999; Flyvbjerg 1998b) (Ideal role taking); the **NRTEE** (Cormick et al. 1996) (Respect for diverse interests) and the **WCPA** (Kelleher 1999) (Consider the rights of indigenous peoples). Though not reviewed here, further discussion can be found in Sandercock (2000).

³² **Fair process through skilled facilitation** is advocated by: **Fisher and Ury** (1991) (Separate the people from the problem; Focus on interests, not positions); **Forester** (1989) (Legitimacy is threatened by the presence of misinformation in planning processes); **Foucault** (Ashenden and Owen 1999; Fischler 2000; Flyvbjerg 1998b) (We should focus on what shapes the mental and social universe of speakers rather than on specific statements); **Habermas** (Ashenden and Owen 1999; Flyvbjerg 1998b) (Autonomy, Transparency, Power neutrality); **Hillier** (1998) (Fair participation involves being listened to with respect and being able to question others); **Kaner** (1996) (A facilitator encourages full participation, promotes mutual understanding and cultivates shared responsibility); and the **NRTEE** (Cormick et al. 1996) (Equal opportunity).

4.5 Summary

Table 4.7 summarises the theoretical framework for this study.

Table 4.7 Theoretical framework.

Concept	Characteristic(s)
Challenge	<ul style="list-style-type: none">◆ Innovative◆ Fair decisions◆ Partnerships in implementation
Respect	<ul style="list-style-type: none">◆ Inclusive◆ Accountable to the participants◆ Respectful of identities
Balance	<ul style="list-style-type: none">◆ Fair process through skilled facilitation

Chapter 5 – Xʷáyən

This chapter reviews the geography and history of Xʷáyən / Race Rocks, including a description of the biophysical setting, aboriginal and colonial history, current activities, and its designation as a Pilot MPA in 1998. This provides context for the chapters describing and interpreting of the proceedings of Race Rocks Advisory Board.

5.1 Biophysical setting

Xʷáyən, or **Race Rocks** (48° 18' N, 123° 32' W) is an archipelago of nine islets located 17 km southwest of Victoria, BC (Figure 5.1, p. 39; Figure 5.2, p. 40; Figure 5.3, p. 41). Located in the rain shadow of the Olympic Peninsula, Race Rocks receives an unusually high amount of sunshine through the winter months, and air temperatures that rarely drop below freezing (DFO 2000b). Dry summers are cooled by constant winds and regular blankets of fog (up to 45 days per year) (Matthews 2000). Terrestrial vegetation consists of lichen, mosses, grasses, and sedges that can survive on rock or on leached and wind-desiccated soils.

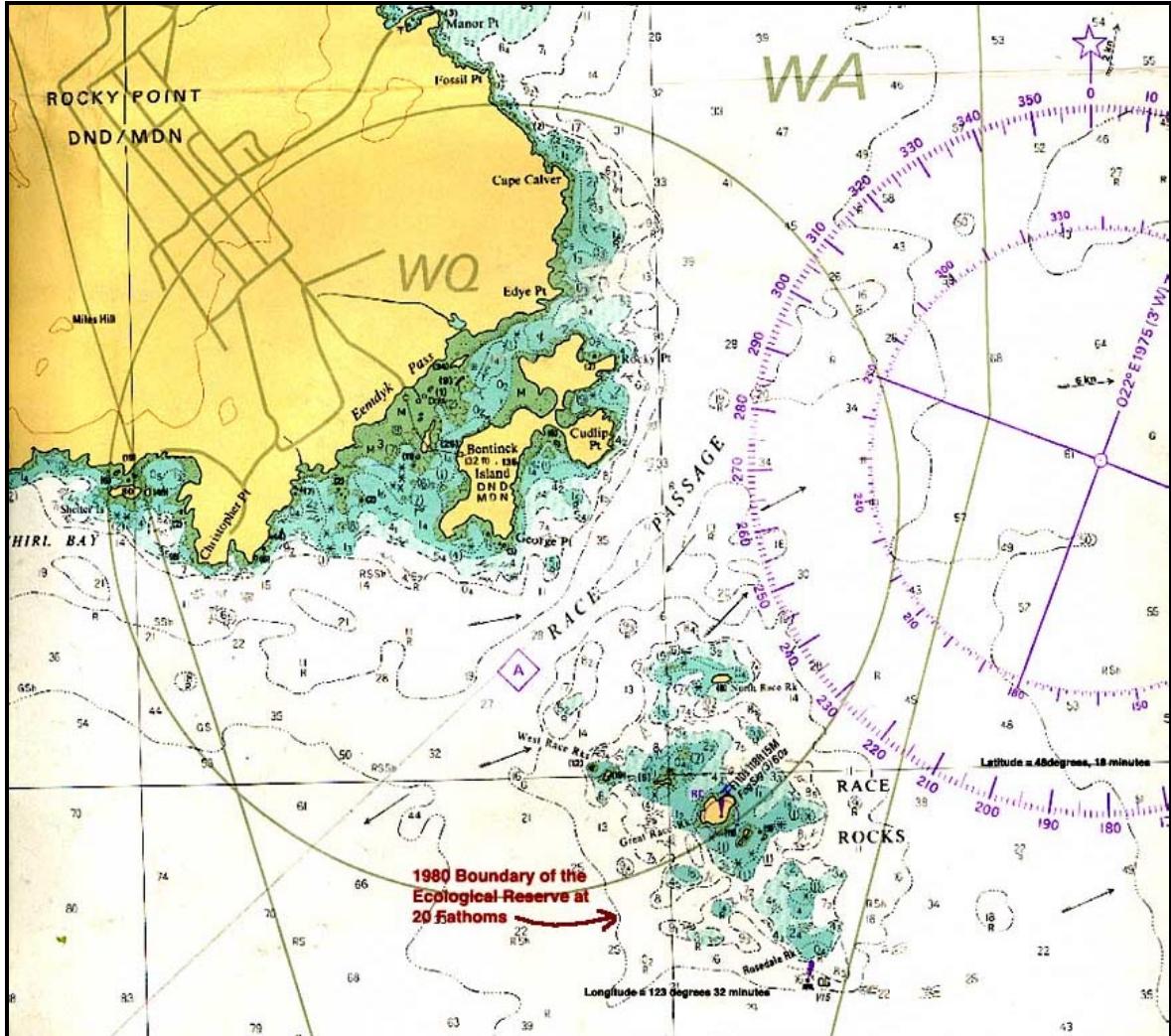
The islets represent the peaks of a submarine mountain consisting of cliffs, chasms, benches, and channels (Murgatroyd 1999) (Figure 5.4, p. 42). Geologically, this mountain consists of fine-grained basalts and coarse crystalline gabbros that make up the Metchosin Igneous Complex, a three-kilometre-thick ophiolite that formed as an oceanic island about 54 million years ago (Yorath and Nasmith 1995). The Metchosin Igneous Complex moves as part of the Crescent Terrane (separated from the rest of Vancouver Island by the Leech River fault), which reached its current position about 42 million years ago.

Both Clallam and English names for the area were inspired by the very strong tidal currents that flow through the islets, reaching up to eight knots in inter-tidal and sub-tidal areas (Thomson 1981). Race Rocks is located at the narrowest point of the Juan de Fuca Strait (12 Na. Mi. wide), exposed to the 1-2 fathom semi-diurnal tides that enter and drain from Georgia Strait and Puget Sound (Matthews 2000). Interacting with the tidal flows are waves whipped up by winds funnelling down the Strait. Dangerous rips form when eastward tidal floods coincide with the westward outflow winds (north-easterlies or south-easterlies) that are present most of the winter (Thomson 1981).



Scale: Approx. 1:750,000. Green areas indicate provincial parks or protected areas, including the Race Rocks Ecological Reserve.
Base map: BC Ministry of Sustainable Resource Management (MSRM 2002).

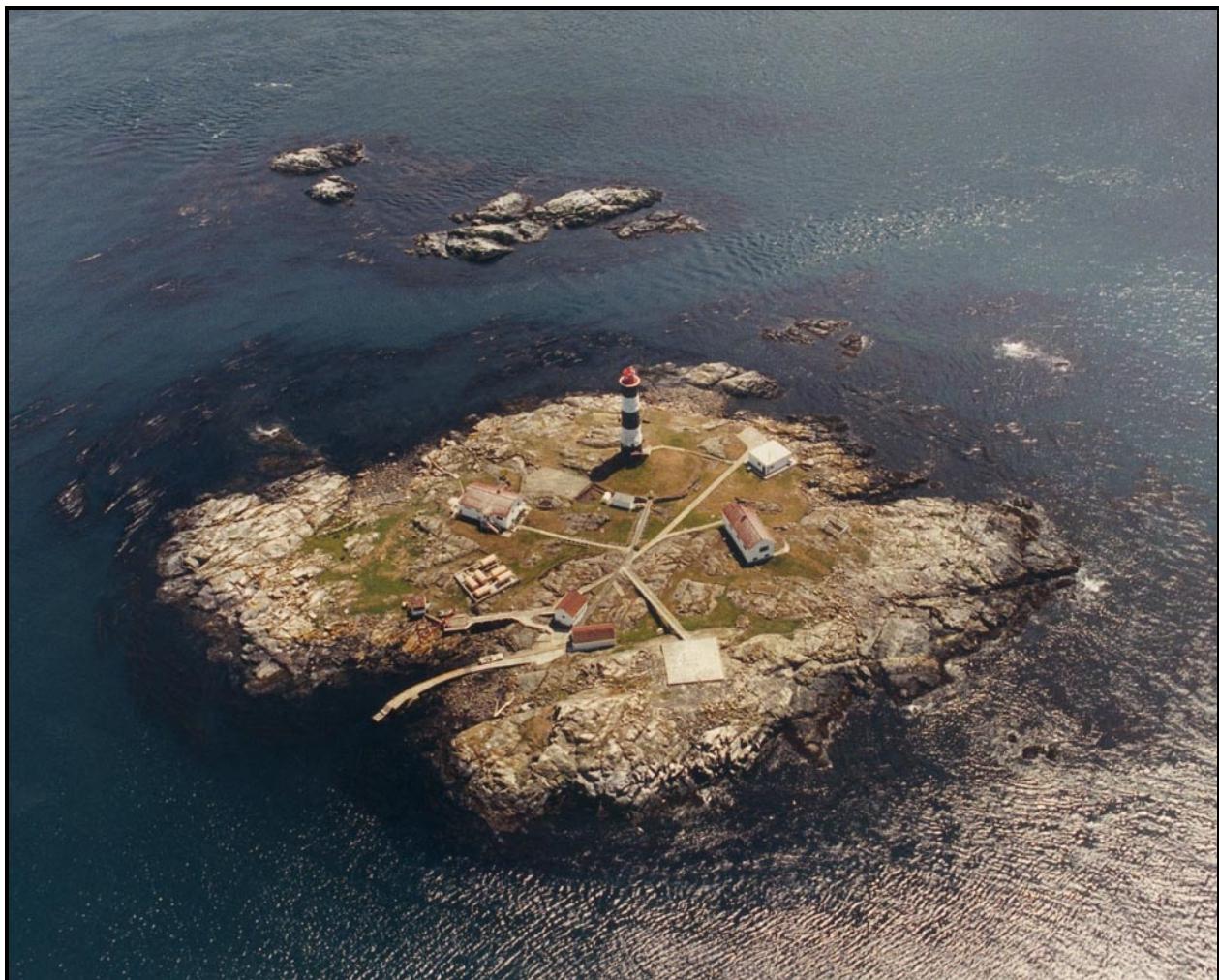
Figure 5.1 Location of X'áyən/Race Rocks, as well as Pearson College and Canadian Forces Base Esquimalt.



Scale: Approx. 1:50,000. Contour interval: 100 ft. Soundings in fathoms reduced to lowest normal tides.

Source: Canadian Hydrographic Service Chart No. 3641 (1982), as modified by Pearson College (Fletcher 2002).

Figure 5.2 Hydrographic chart of Race Rocks, as well as Bentinck Island, Whirl Bay and Rocky Point.

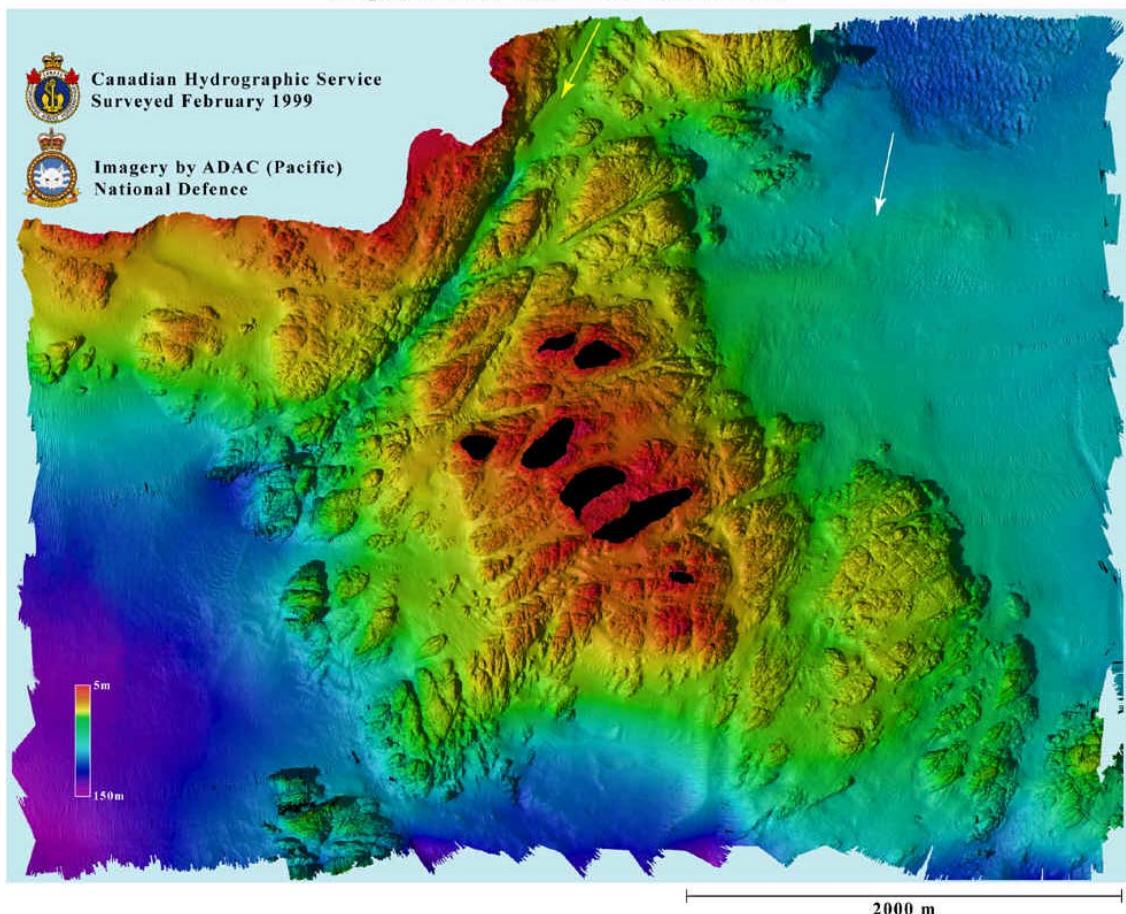


Source: Pearson College (Fletcher 2002).

Figure 5.3 Photo of Great Race Rock.

Race Rocks

Proposed Pilot Marine Protected Area



Scale: Approx. 1:30,000. Black areas indicate < 5 m depth, including islands (the 'rocks').
Source: DFO (1999a).

Figure 5.4 Bathymetry of Race Rocks.

The fast, turbulent currents rushing over the rough underwater topography at Race Rocks provide the marine ecosystem with a constant supply of nutrients from Pacific upwellings to the west, and estuarine-fed waters to the east (Murgatroyd 1999). The currents also prevent the stratification of the water column and promote high levels of dissolved oxygen, supporting a complex, localized food web of remarkable abundance and diversity (Table 5.1; Figure 5.5).

Race Rocks provides important habitat for rockfish, lingcod and Kelp greenling, and a refuge for the threatened Northern abalone (COSEWIC 2000; DFO 2000b). Race Rocks also represents an important resting site for pinnipeds. In particular, Race Rocks is the largest haul-out and breeding area for Harbour seals in the Juan de Fuca Strait, with gatherings of up to 1,000 individuals at a time. These attract many Killer whales, particularly from transient populations.

Table 5.1 Biota at Race Rocks.

Life form	Taxa
Marine algae and vascular plants	41
Phytoplankton	130
Zooplankton	100
Benthic invertebrates, including Northern abalone.	200
Fish, including halibut, Kelp greenling, lingcod, rockfish, salmon, and Wolf eel.	35
Avifauna, including Pelagic and Brandt's cormorants, Pigeon guillemots, Black oystercatchers and Glaucous-winged gulls. Most species nest on the Rocks.	45
Pinnipeds, including California and Northern sea lions; and Harbour, Northern fur, and Elephant seals.	5
Cetaceans, including Dall's and Harbour porpoises, Killer whales, and Grey whales.	10

Sources: DFO (2000b); Murgatroyd (1999).



Common names (clockwise from top left): Killer whale, Oystercatchers, Brooding anemone, Brittle star, and Elephant seal.
Source: Pearson College (Fletcher 2002).

Figure 5.5 Wildlife at Race Rocks.

5.2 Aboriginal and colonial history

X̄wáyəñ has felt the presence of Coast Salish peoples for thousands of years (Suttles 1990). Falling within the traditional territory of Clallam and Northern Straits Salish groups, X̄wáyəñ was harvested for gull's eggs, sea cucumbers, sea urchins, chitons, snails, whelks, mussels, barnacles, seaweeds, crab, and fish, to be used for both consumption and trade (DFO 2000b; Pearson College 2000a, b). According to Suttles (1990), none of these groups hunted pinnipeds, but the Clallam were known to hunt whales.

Though there had been earlier 'voyages of discovery', the European colonisation of Vancouver Island did not begin until the late eighteenth century (Suttles 1990). On June 23, 1790, Don Manuel Quimper, ensign of the Spanish Royal Armada, planted a large wooden cross near Sooke, fired a 21-gun salute, and buried documents of possession of the coast "in the name of His Catholic Majesty Carlos IV" (p. 30). The cross was promptly removed by the local aborigines. Discovering this a few weeks later, Quimper replaced it with a topped and limbed pine tree with the cross beam nailed high above the ground.

The first European identification of X̄wáyəñ may have been by Quimper or other Spanish explorers, or by Captain George Vancouver, who arrived in 1792 to finalise details of the *Nootka Convention*, establishing British sovereignty over Vancouver Island. The name 'Race Rocks' first appears in Hudson's Bay Company records in 1842, then cartographically in the surveys by Captain Kellett (1846), which were incorporated into Arrowsmith's *Map of Vancouver Island and the Adjacent Coasts* (Walbran 1971) (Figure 5.6).



Scale: Approx. 1:970,000.
Source: Arrowsmith (1849), as provided by the BC Archives (2001).

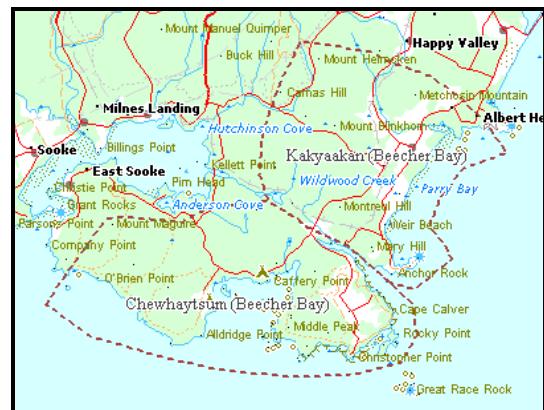
Figure 5.6 'Race Islands' on John Arrowsmith's Map of Vancouver Island and the Adjacent Coasts, 1849.

5.2.1 Douglas Treaties

The Crown Colony of Vancouver Island was established in 1849. Between 1850 and 1854, Governor James Douglas³³ made 14 land purchases from aboriginal groups on Vancouver Island, including the Beecher Bay³⁴, Songhees and T'Sou-ke First Nations, all of whose traditional territories extend to Race Rocks (Te'mexw Treaty Association 2001) (Figure 5.7). Known as the *Douglas Treaties*, they stipulated that the area in question be surrendered “entirely and forever” in exchange for cash, clothing or blankets, but allowed aboriginal groups to retain existing village sites and the “liberty to hunt over unoccupied lands” and the right to “carry on their fisheries as formerly” (MAA 1998, p. 1)³⁵.

5.2.2 Royal Navy and the Lightstation

In 1846, the Royal Navy established a base in Esquimalt Harbour, and would eventually acquire the areas of Mary Hill and Rocky Point that were not already part of Indian Reserves, as well as Bentinck Island (MARPACE 2001). In the 1850s, Captain George Richard conducted a six-year hydrographical survey of the coast, beginning with navigation hazards such as Race Rocks (Clayton 1999). His survey report to the British Admiralty wrote of the many ships lost while navigating into Esquimalt and Victoria Harbours, and of “a great want which is felt by all vessels coming to Vancouver’s Island of a light on the North shore of the Race Islands or Rocks” (Matthews 2000, p. 1).



Scale: Approx. 1:300,000.
Borders of Douglas Treaty areas are subject to dispute.
Source: Treasury Board of Canada (2002).

Figure 5.7 Douglas Treaties in the vicinity of Race Rocks.

³³ James Douglas was appointed Chief Factor of Fort Victoria in 1843, and then Governor of Vancouver Island in 1851 (MAA 1998).

³⁴ Before colonisation, various Northern Straits Salish groups (particularly the T'Sou-ke) occupied the areas of Vancouver Island adjacent to X̄áȳəñ, and the Clallam occupied the northern slopes of the Olympic Peninsula (Harris 1997; Suttles 1990). By the mid-nineteenth century, the Clallam had expanded north to Beecher and Parry Bays on Vancouver Island, into smallpox-depopulated T'Sou-ke territory. This led to intermittent warfare between the Clallam and T'Sou-ke, but this had settled down by the time the *Treaty of Washington* established the British-American border in 1846. This treaty split the Olympic Peninsula Clallam from the Vancouver Island Clallam, who became the Beecher Bay First Nation.

³⁵ The Douglas Treaties were not without their flaws. The Beecher Bay First Nation signed their deed of conveyance with Douglas in 1850, but did not receive any land for a reserve until the Joint Reserve Commission toured the area in 1877 (Harris 2002). By that time, several Crown grants had been allocated to settlers, and the Beecher Bay were forced to settle for two abandoned pre-emptions (abandoned because of their poor quality) and a fishing station at Albert Head. The Commission concluded that “it was unfortunate that lands were not assigned to these Indians in accordance with the spirit of the agreement of 1850” (p. 27).

The Admiralty approved the construction of the Race Rocks Lightstation, shipping pre-cut and numbered Scottish granite as ballast in a timber ship returning to Victoria (Appleton 1967) (Figure 5.8). On Boxing Day, 1860, the Imperial Light on Race Rocks was lit for the first time.

Control of the Lightstation would soon change hands. BC joined Confederation with Canada in 1871, which meant that the Dominion government gained jurisdiction over “Beacons, Buoys, Lighthouses, and Sable Island” (*Constitution Act 1982*, s. 91(9)). However, ownership of the lightstation was disputed until 1894, when the province secured title to Race Rocks, agreeing only to lease the land on Great Race Rock to the Dominion government (Victoria Times-Colonist 2001).

5.3 Current activities

Today, the Race Rocks Lightstation is operated by the Canadian Coast Guard, a civilian agency within DFO (Figure 5.9). Canadian Forces Base Esquimalt continues the military role established by the Royal Navy, serving as the headquarters for Canada’s Maritime Forces Pacific (MARPAC). Included in MARPAC facilities are the Mary Hill and Rocky Point Training Areas, located on Vancouver Island and Bentinck Island, directly adjacent to Race Rocks (Figure 5.2, p. 40). Bentinck Island and nearby Whirl Bay are used for ammunition demolition training, both on land and underwater (MARPAC 2000) (Figure 5.10).



Source: Pearson College (Fletcher 2002).

Figure 5.8 Race Rocks Lightstation, 1875.



Source: Pearson College (Fletcher 2002).

Figure 5.9 Canadian Coast Guard at Race Rocks.



Source: MARPAC (2002).

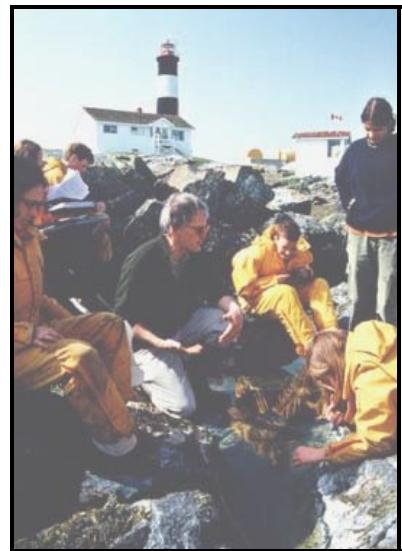
Figure 5.10 MARPAC training at Whirl Bay.

5.3.1 Pearson College and the Ecological Reserve

Lester B. Pearson College of the Pacific was established on Pedder Bay in 1974, on a parcel of land donated by the federal government from MARPAC's Mary Hill Training Area. The United World College was named after the late Liberal Prime Minister of Canada (1897-1972), who had been a proponent of creating an international 'College of the Pacific' (Pearson College 2001). Since its inception, teachers at the College have incorporated Race Rocks into its educational programs, as a case study of marine biology, conservation, aboriginal traditions, and (more recently) Internet technology (Curtis 2000a; Fletcher 2000b) (Figure 5.11).

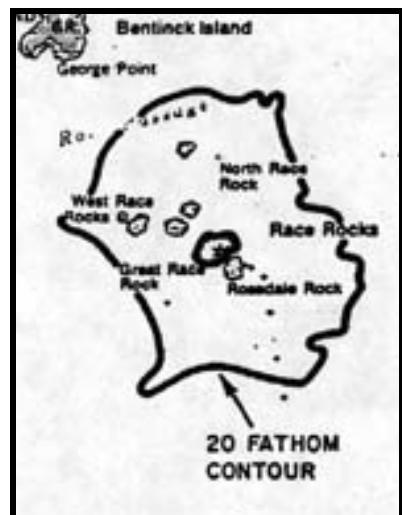
Pearson College was instrumental in having Race Rocks declared a provincial Ecological Reserve in 1980, which protected all resources under provincial jurisdiction on and around Race Rocks above the 20-fathom line (excluding Great Race Rock, still leased for the Lightstation) (Order in Council 692 1980) (Figure 5.12). By 1990, DFO had brought in complementary regulations that prohibited the harvesting of most living resources in the water column, with the exception of halibut and salmon (DFO 2000b).

In 1994, the Canadian Coast Guard announced that it was going to begin automating lightstations along the Pacific Coast. Pearson College sought to keep the lightkeepers at Race Rocks, as 'Eco-guardians' of the Ecological Reserve. The College signed an agreement with the Coast Guard to operate the Lightstation buildings as an educational facility, and solicited the help of donors to cover the salary of the lightkeepers (Canadian Press 1997). Automation eventually went ahead: in 2001, the federal lease on Great Race Rock was reduced from 1.5 ha to 0.15 ha, and the provincial Ecological Reserve was expanded to cover this land (Leyne 2001).



Source: Pearson College (Fletcher 2002).

Figure 5.11 Pearson College's educational programs at Race Rocks.



Scale: Approx. 1:50,000.

Source: MELP (1992), as provided by Pearson College (Fletcher 2002).

Figure 5.12 Boundary of Race Rocks Ecological Reserve.

Pearson College has since acquired the operating permit for the Ecological Reserve, converting the unused Coast Guard buildings into the Great Race Marine Research and Education Centre (ESD 2002). The buildings are used to support research activities, as well as housing the live, interactive components of the RACEROCKS.COM website, which includes several 'webcams' broadcasting continuously to the Internet (Harnett 2000) (Figure 5.13).

5.3.2 Tourism and recreation

The need for Eco-guardians derives from the fact that Race Rocks has become a significant destination for coastal tourism and recreation. Tourism is the second largest export industry in BC, with one in every three tourism dollars spent on marine-related activities (Murgatroyd 1999) (Table 5.2).

Whale watching is the most important tourism activity at Race Rocks, and the most common way for visitors to see the Rocks (Murgatroyd 1999) (Figure 5.13). Paradoxically, the Rocks are not the primary destination for whale watch vessels, since the whales roam throughout the Georgia Basin. Rather, Race Rocks is a stopover en route to viewing whales in the Juan de Fuca Strait, or a 'Plan B' when no whales are seen.

Most whale watching companies are members of the Whale Watch Operators Association Northwest, an industry association that promotes best practices in responsible wildlife viewing. The Association was established to improve co-ordination among the operators, as well as to develop procedures that reduce the impact of whale watching on the endangered southern population of Killer whales³⁶. The Association



Images (from top): Harbour seal with pup; Whale watching vessel at Race Rocks.
Source: Pearson College (Fletcher, 2002).

Figure 5.13 Webcams at Race Rocks.

Table 5.2 Tourism activities in the vicinity of Race Rocks.

Item	Number
Commercial whale watching boats based in Victoria (in 1998)	40
Commercial whale watching trips from Victoria (in 1997) (n.b. not all to Race Rocks)	8,000
Scuba divers recorded at the guest book on Great Race Rock (in 1995) (n.b. not all divers moor)	1,300
Scuba divers taken to Race Rocks by Ogden Point Dive Centre (in 1999)	500
Sport fishing angler-days in the Victoria area (in 1995)	200,000

Source: Murgatroyd (1999).

³⁶ Studies suggest that the primary threats to the southern resident population of Killer whales are declining salmon populations and the presence of toxic pollutants in the marine environment (Garrett 2002).

has posted specific guidelines for the Race Rocks area, where the primary concern is causing a stampede among pinnipeds resting on the Rocks (WWOA-NW 2002).

Race Rocks is a major destination for sport scuba divers, who rate the area as one of the premier diving destinations in the world, despite the cool ocean temperatures (Figure 5.14). The presence of strong currents means that diving at Race Rocks requires “advanced dive experience and mobile surface support from vessels” (Murgatroyd 1999, p. 22). Ecological Reserve regulations prevent anchoring or the harvesting of any benthic species.

The Rocks are also “an extremely popular [sport] fishing ground for local residents due both to its accessibility from Victoria and local marinas, and the natural features which make it conducive to catching fish” (Murgatroyd 1999, p. 23) (Figure 5.15). Most sport fishing companies participate in the activities of the Sport Fishing Advisory Board, which represents the interests of recreational fishers in DFO’s regulatory processes. Fisheries regulations for the Race Rocks area only allow for salmon and halibut fishing³⁷; however, there have been concerns that these regulations are not enforced, and that other species are regular victims of by-catch.

The Rocks are also a destination for recreational boaters, who generally stop by to look at marine mammals. Ignorant boaters can pose a threat to wildlife, and as such are the target of an education campaign by the Veins of Life Watershed Society’s Marine Mammal Monitoring Program, which is supported in part by DFO (M3 2001) (Figure 5.16).



Source: Ogden Point Dive Centre (2002).

Figure 5.14 Sport diving at Race Rocks.



Source: DFO (2001).

Figure 5.15 Sport fishing near Race Rocks.



Source: VLWS/DFO (2002).

Figure 5.16 Recreational boater interacting with wildlife in Juan de Fuca Strait.

³⁷ These regulations will continue to be in force until the final designation of the Race Rocks MPA.

5.3.3 Environmental advocacy

Many environmental non-governmental organisations (ENGOs) engage in marine environmental advocacy in the Georgia Basin (Table 5.3). These ENGOs generally promote the establishment of a large network of MPAs and marine reserves throughout coastal BC and Washington State. Advocacy campaigns usually focus on high priority areas, where a high risk of environmental degradation coincides with a low level of protection. Notably, ENGOs were not the original proponents of an *Oceans Act* MPA at Race Rocks, given that there was already a high level of protection provided by the Ecological Reserve.

5.4 Designation as a Pilot MPA

On September 1, 1998, Minister David Anderson (Member of Parliament for Victoria) announced that Race Rocks and Gabriola Passage would be the “first Pilot Marine Protected Areas [under the *Oceans Act*] in Canada” (DFO 1998a, p. 1). The Pilot MPAs were a new concept that would “provide an opportunity to learn and test different applications of MPA identification, assessment, legal designation, and management” (p. 1). Formal designation would “require further consultation and collaboration with local communities, First Nations, stakeholders and the public” (p. 1).

Why choose Race Rocks? Though not a priority for the ENGO community, Race Rocks had many features that made it an appealing candidate for designation:

- **Legacy of conservation:** Pearson College had established an international reputation as custodian of Race Rocks, particularly through its education and research programs, including RACEROCKS.COM. An MPA would build on this legacy of conservation, both for marine ecosystems and the historical site;

Table 5.3 ENGOs engaged in marine conservancy in the Georgia Basin.

Adopt-A-Stream Foundation
BC Environmental Network
Campaign for the Northwest
Canadian Parks and Wilderness Society
Coastal Community Network
David Suzuki Foundation
Ecotrust Canada
First Fish
First Nations Environmental Network
Fish Forever
Friends of the San Juans
For the Sake of the Salmon
Georgia Strait Alliance
Living Oceans Society
Marine Stewardship Council
Pacific Marine Conservation Council
People for Puget Sound
Puget Sound Society for Conservation Biology
Puget Soundkeeper Alliance
Raincoast Conservation Society
Salish Sea Expeditions
Sea Shepherd Conservation Society
Sierra Club of British Columbia
Sierra Legal Defence Fund
Southeast Alaska Conservation Council
Underwater Council of British Columbia
Western Canada Wilderness Committee
The Whale Museum

Source: Living Oceans Society (2002).

- **Lightkeepers:** Facing public outcry, the Coast Guard's lightstation automation program had been halted abruptly in 1998, leaving some lightstations at safer locations with their keepers, and some dangerous locations —such as Race Rocks— without. Through the MPA designation process, DFO might reinstate the lightkeepers or provide financial support for the 'Eco-guardians';
- **Provincial co-operation:** The existence of the Race Rocks Ecological Reserve meant that the area was already closed to resource activities under provincial jurisdiction. This would reduce provincial resistance to the federal initiative, at a time when federal-provincial relations were strained by ongoing Pacific Salmon Treaty negotiations with the United States (see Smyth 1998); and
- **Legacy of Lester B. Pearson:** An MPA at Race Rocks would be another way to support Pearson College, a legacy of the Liberal Party of Canada.

With the announcement made, DFO conducted surveys of the pilot sites (Figure 5.4, p. 42), and finalised its policy documents for the MPA Program. The stage was set for the formation of the Race Rocks Advisory Board.

5.5 Summary

This chapter has reviewed the geography and history of Race Rocks. The highlights of this story are as follows:

- The proposed Marine Protected Area is situated in an extraordinary biophysical setting;
- The identity of Race Rocks and the surrounding area is closely tied to the aboriginal and colonial history of southern Vancouver Island, including the policies and activities of Douglas, the Navy and later the Coast Guard;
- Pearson College has played a key role in the stewardship of Race Rocks, sponsoring its designation as an Ecological Reserve in 1980;
- Race Rocks is a popular tourism and recreation destination, and is vulnerable to the impact of these activities;
- Though there are many ENGOs active in the Georgia Basin, none actively promoted the designation of an *Oceans Act* MPA at Race Rocks; and
- The designation of Race Rocks as a Pilot MPA was a political decision based on many factors, only one of which was the imperative of increased ecosystem protection in the Race Rocks Ecological Reserve.

Chapter 6 – Race Rocks Advisory Board

This chapter documents the proceedings of the Race Rocks Advisory Board and associated events, drawing largely on primary research material and the minutes of Advisory Board meetings (Table 6.1). All primary material in this chapter is presented anonymously. Comments that derive from the minutes of Advisory Board meetings or other secondary sources (in the public domain) are cited as such. This text should not be considered a complete record of events; rather, it is an interpretation based on the available information.

6.1 Formation of the Advisory Board

As discussed in earlier chapters, DFO policies only provide broad guidance as to what form of public involvement should be involved in the establishment of MPAs. Though DFO had extensive experience consulting with fisheries groups, including First Nations, the agency had limited experience working in a multi-stakeholder context. Race Rocks would be the first test case in implementing these policies, and a point of reference for future endeavours.

Formed in December 1999, the Race Rocks Advisory Board (RRAB) represented “a reasonably comprehensive cross-section of interest groups and activities” (RRAB 2000f, p. 2). The objectives of the RRAB were to:

- ♦ Represent key constituent groups or stakeholders;
- ♦ Provide advice to DFO and BC Parks on the consultation process;
- ♦ Collate and analyse feedback from consultations;
- ♦ Make interim management recommendations to DFO and BC Parks for the establishment of an MPA at Race Rocks; and
- ♦ Ensure community involvement in the establishment and on-going management of the Race Rocks MPA. (p. 2)

The following sections describe the co-ordination, facilitation, representation and attendance in the RRAB, leading into a review of the proceedings and associated events.

Table 6.1 Timeline for the RRAB and associated events, Dec. 1999- Dec. 2001.

Date	Event
Dec. 1, 1999	RRAB Meeting No. 1
Dec. 22	Workshop on 13-moon seasonal round
Jan. 5, 2000	RRAB Meeting No. 2
Jan. 21	MARPAC tour of demolition training sites
Jan. 26	RRAB Meeting No. 3 <ul style="list-style-type: none">♦ Terms of Reference
Feb. 23	RRAB Meeting No. 4
Mar. 9	Beecher Bay Burning Ceremony
Mar. 22	RRAB Meeting No. 5 <ul style="list-style-type: none">♦ Recommendations
Aug.-Sept.	Escalation of DFO-Mi’kmaq conflict at Miramichi Bay
Sept. 14	‘Official designation’ of MPA by Dhaliwal and Sawicki, protested by First Nations
Oct. 28	Proposed regulations published in Part I of <i>Canada Gazette</i>
Nov.	T’Sou-ke, Songhees and Beecher Bay First Nations object to proposed regulations
Jun. 2001	First Nations endorse MPA concept, but call for more consultation and recognition of Douglas Treaty rights
Dec. 6	RRAB Meeting No. 6

Sources: DFO (2000a), O’Sullivan (2000), RRAB (1999, 2000a, b, c, d, 2001), Somerville (2000).

6.1.1 Co-ordination and facilitation

In the terminology introduced in Section 4.2.3 (p. 28), the RRAB was **convened** by the Oceans Directorate of the Pacific Region offices of DFO, with the cooperation of BC Parks and the support of Parks Canada. The Board activities were **co-ordinated** by an employee of the Oceans Directorate, in consultation with the Department. The co-ordinator also **facilitated** most of the RRAB meetings. The exception was Meeting No. 5, when an independent facilitator was contracted to help the RRAB produce consensus recommendations³⁸.

6.1.2 Representation

The RRAB included representatives of government agencies, First Nations, Environmental Non-Governmental Organisations (ENGOs), user groups, scientists, educators, and others. The most active government agencies were:

- **BC Parks**, working to ensure that the MPA complemented the existing provincial Ecological Reserve, particularly the management planning process that was underway;
- **DFO (Oceans Directorate, Pacific Region)**, guiding the designation of the MPA;
- **Maritime Forces Pacific (MARPAC)**, seeking to continue demolition training activities at Bentinck Island and Whirl Bay; and
- **Parks Canada**, providing advice on public consultation processes, and in return, gaining insight as to what will be involved in the creation of National Marine Conservation Areas (see Section 3.2.2, p. 13).

First Nations were represented by the **Coast Salish Sea Council (CSSC)**, led by a widely respected Coast Salish elder. The CSSC had been recently launched “to bring together the ... Coast Salish tribes on both sides of the Canada-US border, to develop agreements and move forward on social and environmental issues” (Georgia Strait Alliance 2000, p. 9). The CSSC was contracted by DFO to provide a form of representation that would not interfere with ongoing treaty negotiations. The CSSC was to liaise and build support among the relevant Douglas Treaty First Nations, promote aboriginal values in the RRAB discussions, and ensure that the recommendations respected treaty and aboriginal rights.

³⁸ The contracted facilitator was Judith Cullington, of Judith Cullington & Associates (RRAB 2000).

The ENGO community was represented by three groups:

- **Canadian Parks and Wilderness Society** (CPAWS), supporting “the development of policy and legislation for MPAs, public awareness and education, and the identification and documentation of large marine areas as potential MPAs” (CPAWS-BC 2001);
- **Friends of Ecological Reserves**, promoting “the establishment, management and maintenance of Ecological Reserves in British Columbia” (Borris 2001, p. 2); and
- **Georgia Strait Alliance**, seeking “to protect and restore the marine environment and promote the sustainability of Georgia Strait, its adjoining waters and communities” (Georgia Strait Alliance 2002).

There were four marine resource user groups represented on the RRAB:

- **Local marina operators** (not formally organised), representing the interests of marina and sport fishing charter operations, particularly the nearby Pedder Bay Marina;
- **Sport diving community** (not formally organised), seeking to maintain access to one of the premier sport diving locations in Canada;
- **Sport Fishing Advisory Board** (SFAB) (Vancouver Island/South Coast region), formally representing the interests of sport fishers in all DFO consultation processes; and
- **Whale Watch Operators’ Association North West** (WWOA-NW), advocating a best practices approach to the regulation of whale watching in BC and Washington State.

Marine scientists (not formally organised) were represented by a local scientist (unaffiliated with local universities), who sought to ensure continued research opportunities at Race Rocks and to inform the discussion on no-take zones and ecosystem dynamics.

Pearson College was represented by employees of the college, who sought to improve marine stewardship at Race Rocks, particularly through the creation of a no-take zone.

6.1.3 Attendance

Attendance was strongest among government, First Nations, Pearson College, ENGO and sport diving representatives (Table 6.2, p. 55). Attendance was lowest among other user group representatives, who often sent proxies to the meetings. Seven people were in full attendance at Meeting Nos. 1-5, which led to the consensus recommendations. Only three participants attended all six meetings.

6.2 Proceedings

The RRAB meetings were preceded by discussions with BC Parks, Parks Canada, Pearson College and others, each of whom suggested participants for the process. Potential members were personally contacted by the RRAB co-ordinator and facilitator. Though certain interests were sought out, other self-identified groups would have been welcome at that early stage.

6.2.1 Meeting No. 1

The first meeting of the RRAB took place from 11:00 to 15:30 on December 1, 1999, at the Coast Guard Base in Victoria, BC (RRAB 1999). After introductions took place, the facilitator presented the agenda for the meeting (Table 6.3, p. 56), and gave a slide presentation on the *Oceans Act* (1996), MPAs, and Race Rocks. The meeting was then opened to general discussion (RRAB 1999).

Prompted by Pearson College, the CSSC established the **First Nations perspective** on MPAs:

- “First Nations support MPAs where there is no conflict with existing agreements ... or the treaty process” (RRAB 1999, p. 2);
- The CSSC offered to organise a workshop on the 13-moon traditional seasonal round of Coast Salish peoples; and
- “Using First Nations language in any documentation produced on Race Rocks would greatly facilitate the acceptance and understanding of a management plan for the area by local First Nations” (p. 3).

Table 6.2 Attendance at RRAB Meeting Nos. 1-6.

Participant (number of meetings attended)
Government representatives
♦ BC Parks: Doug Biffard (4), Chris Kissinger (1), Jim Morris (5), Marty Roberts (2)
♦ DFO (Pacific Region): <i>Communications and Policy Branch:</i> Nancy Holman (1); <i>Oceans Directorate:</i> Kelly Francis (5), Marc Pakenham (6); <i>Science Branch:</i> Dr. John Pringle (1)*, Brian Smiley (1), Cindy Wright (1)
♦ Maritime Forces Pacific (MARPAC): Duane Freeman (3), Lt. Com. Bill Laing (4), Andrew Smith (1)
♦ Parks Canada: Bill Henwood (1)*, Jennie Sparkes (6)
First Nations representatives
♦ Coast Salish Sea Council (CSSC): Gordon Hanson (4), Tom Sampson (5)
ENGO representatives
♦ Canadian Parks and Wilderness Society (CPAWS): Keith Symington (4)
♦ Friends of Ecological Reserves: Cheryl Borris (5)
♦ Georgia Strait Alliance: Howard Breen (4), Peter Ronald (1)
User group representatives
♦ Local marina operators: Sean Moore (2)
♦ Sport diving community: Erin Bradley (5)
♦ Sport Fishing Advisory Board (SFAB): Dan Kukat (3)*
♦ Whale Watch Operators Association – North West (WWOA-NW): Kevin Walker (3)*
Science and education representatives
♦ Marine scientists: Dr. Anita Brinckmann-Voss (4)
♦ Pearson College: Garry Fletcher (5), Angus Matthews (6)
Non-participant observers
♦ BC Land Use Co-ordination Office: Kaaren Lewis (1)
♦ DFO (Headquarters): <i>Oceans Directorate:</i> Tiina Kurvits (1)
♦ DFO (Pacific Region): <i>Fisheries Management:</i> Paul Preston (1); <i>Oceans Directorate:</i> Sean MacConnachie (4), Louise Murgatroyd (1)
♦ Georgia Strait Alliance: Rupert Gale (3)
♦ South Islands Aquatic Stewardship Society: Judith Burke (1)
♦ Sustainable Development Research Institute, University of British Columbia: Sean LeRoy (1)
Source: RRAB (1999, 2000a, b, c, d, 2001). * Sent proxy representative to some meetings.

The Georgia Strait Alliance then led a discussion on the need for a traditional use study at Race Rocks, and explored funding possibilities (RRAB 1999). The CSSC suggested that the RRAB commission such a study. BC Parks and DFO were open to the idea, but made no commitments. BC Parks then introduced the **draft management plan** for the Ecological Reserve (which had been distributed ahead of time), and emphasised the importance of recognising the parallel Ecological Reserve and MPA designation.

Table 6.3 Agenda for Meeting No. 1.

- 1) Introduction of Board Members.
 - 2) Draft Terms of Reference.
 - 3) Frequency of meetings and schedule for information/consultations.
 - 4) Format and process for information/consultations.
 - 5) Managing the information/feedback.
 - 6) Making recommendations: consensus or strong majority?
 - 7) Other business.
-

Following lunch, the RRAB turned to discuss the development of a **Terms of Reference** for the RRAB (RRAB 1999). The CSSC stressed the importance of “recognising First Nations as a level of government (not a stakeholder) in the MPA process” (p. 4). BC Parks indicated that the RRAB could provide a mechanism for revising the draft management plan for the Ecological Reserve. This prompted Pearson College to argue that matters of jurisdiction and protocol between BC Parks and DFO “be addressed immediately” (p. 4).

Parks Canada suggested that the Terms of Reference should include a definition of consensus (RRAB 1999). After more discussion, Parks Canada proposed that a sub-committee create a draft Terms of Reference before the next meeting. A sub-committee was formed, including representatives from DFO, BC Parks, the Georgia Strait Alliance, Pearson College, Parks Canada and the CSSC.

The facilitator then set out an aggressive **meeting schedule** for the RRAB, including three meetings before the end of January 2000 (RRAB 1999). It was important that “the Minister of Fisheries and Oceans and the [BC] Minister of Environment, Lands and Parks be comfortable with designation by fiscal year-end [end of March]” (p. 5). The meeting then shifted to a discussion about the **meaning of consensus**, and what supplementary consultations would take place. This did not get very far, apparently for lack of time.

In closing, MARPAC offered to give a **tour of their training activities** at Bentinck Island and Whirl Bay (RRAB 1999). To create goodwill, the MARPAC representative further suggested that the Navy would be able to lower the training charge limit at Whirl Bay from 50 lbs. to

20 lbs., and time the training sessions to limit the impact on fish and other species near Race Rocks.

In the month between Meeting Nos. 1 and 2, the facilitator gave presentations to a number of groups (including some on the RRAB) (Table 6.4), and the CSSC offered a workshop on the 13-moon seasonal round, held at Pearson College (RRAB 2000b). The CSSC also began discussions with local First Nations, who later reported: “all are interested in the process but don’t want to be involved if it interferes with the Treaty process. They would like to meet separately” (p. 9).

6.2.2 Meeting No. 2

The second meeting of the RRAB took place from 11:00 to 15:30 on January 5, 2000, at Pearson College in Metchosin, BC (RRAB 2000b). After introductions and a discussion of the agenda (Table 6.5), the facilitator led a discussion on the draft **Terms of Reference**. Pearson College and the Georgia Strait Alliance found the draft satisfactory and wanted to move on with the process.

Others were not satisfied, seeking clarification on goals, ground rules, timelines, and the definition of consensus (RRAB 2000b). Once this topic was raised, Pearson College suggested that consensus “is where everybody is reasonably content and walks away from the table satisfied” (p. 3). After further deliberation, the facilitator asked the participants to submit comments in the days after the meeting, so that the sub-committee could prepare a new draft within a week.

This discussion was followed by an **Ecosystem Overview Presentation** by a representative of the Science Branch of DFO (Pacific Region) (RRAB 2000b). This presentation reviewed the species and ecosystems at Race Rocks, as well as “major gaps in our current knowledge and general recommendations on future research” (p. 3). The Georgia Strait Alliance enquired if

Table 6.4 Presentations given by RRAB facilitator, Dec. 1999.

BC Land Use Co-ordination Office
BC Ministry of Fisheries
BC Parks
Capital Regional District Roundtable on the Environment
Department of National Defence
Rural East Sooke Association
Saanich Inlet Protection Society
Sea to Sea Blue/Green Belt Conservancy
Society for the Protection of Ayum Creek
Sport Fishing Advisory Board
The Land Conservancy

Source: RRAB (2000b).

Table 6.5 Agenda for Meeting No. 2

- 1) Purpose of meeting
- 2) Draft Terms of Reference
- 3) Consensus decision-making
- 4) MPA boundaries
- 5) Draft management plans
- 6) Updates from meetings / consultations
- 7) Other business

Source: RRAB (2000b).

the ecosystem overview supports the extension of the Ecological Reserve boundary. The Science Branch representative replied:

[the] objective which is focused upon will determine the requirements of the boundaries, e.g. if the objective is to protect a nesting area, the boundaries are probably sufficient. If the objective is to protect foraging sites the boundaries may be too small. (p. 4).

Pearson College suggested the existing boundary “would work very well if everybody abided by it”, and that they “would hate at this stage for boundary discussions to prevent decisions being made” (p. 4).

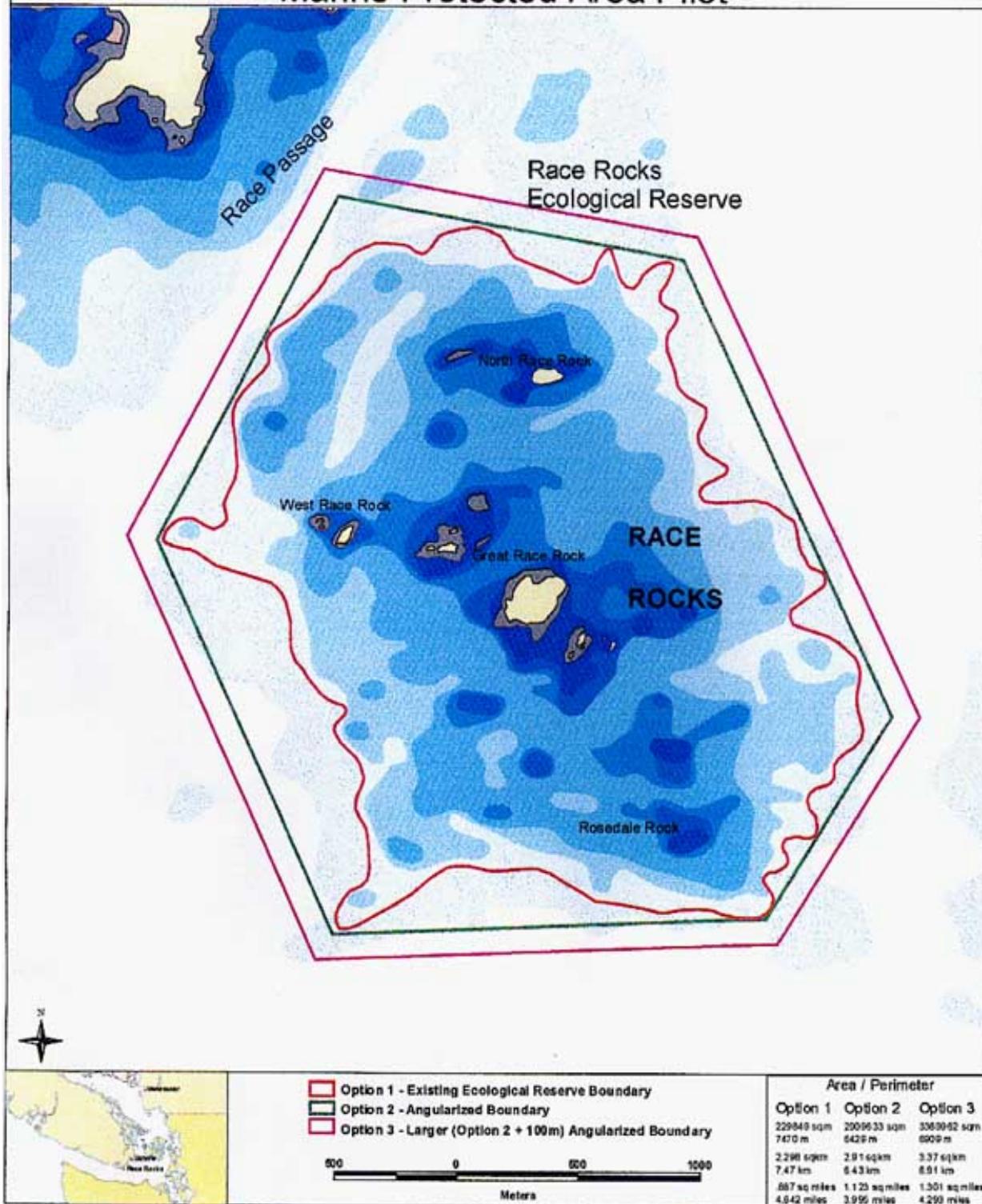
The RRAB returned to the **boundary discussion** after lunch (RRAB 200ob). Before the first meeting, the facilitator had distributed a map depicting three options for the boundary of the MPA (Figure 6.1, p. 59). Option 1 was to keep the existing boundaries of the Ecological Reserve, which represent the 20-fathom contour line. Option 2 was to ‘angularize’ the Ecological Reserve boundaries, such that they are easier to mark and enforce. Option 3 was to add 100 m to the angularized boundaries.

This map generated a great deal of discussion (RRAB 200ob):

- The Georgia Strait Alliance and the Science Branch representative promoted the concept of buffer zones, such that a larger area of protected seabed would surround a smaller no-take zone.
- The Science Branch representative further argued that a “bathymetric definition of the area would not be an effective method to enforce” (p. 6). The Georgia Strait Alliance concurred: “as a precedent, it is not an effective system for future MPAs” (p. 6). The Parks Canada representative also noted that in other parts of the world, “straight lines have been shown to be more effective and easier to understand” (p. 6);
- The SFAB indicated that it supported a closure for rockfish, but sought “the continuation of fishing opportunities for transient species (e.g. halibut and salmon) within the existing reserve” (p. 5);
- Pearson College reminded the group “that the objective for an MPA in general is not only to protect species and habitat but to increase research and public education” (p. 5). Overlaying the existing boundary of the Ecological Reserve “would be easier politically” (p. 5), since there are two halibut fishing spots on the southwest edge of the Ecological Reserve. “The SFAB might agree to a no-take in the existing area if the boundaries did not increase” (p. 5).

Race Rocks

Marine Protected Area Pilot



Scale: Approx. 1:20,000.

Source: RRAB (2000b), as provided by Pearson College (Fletcher 2002).

Figure 6.1 Boundary options for the Race Rocks MPA, Jan. 2000.

- BC Parks said “this MPA cannot solve all problems today” (p. 5). The management plan could recommend a future increase of the MPA and/or Ecological Reserve;
- The WWOA-NW was concerned that no-take meant ‘no-go’ (i.e. no human access), but was assured by an Oceans Directorate representative that the MPA would “continue to offer public access under some guidelines or regulatory authority” (p. 5);
- The facilitator agreed that “enforcement is a major issue”, and perhaps “stakeholders would support relatively small MPAs if they were properly enforced” (p. 5); and
- The CSSC reminded the RRAB that “there are existing Supreme Court decisions that grant First Nations absolute rights to the fishery resources as well as treaty rights that supersede any new rules” (p. 5), and further suggested: “the MPA could be in place for a certain amount of time and then re-evaluated” (p. 6).

The SFAB representative closed the discussion by asking for “a better-defined map with bathymetric lines and boundaries” (p. 6), for a SFAB meeting on January 20, 2000. The RRAB was then presented with a draft **Ecological Reserve/MPA management plan**, built on a proposal written by Pearson College (RRAB 200ob). The RRAB was asked to review the draft before the next meeting.

Between Meeting Nos. 2 and 3, the MARPAC representative led a tour of the facilities and training sites at Bentinck Island and Whirl Bay (MARPAC 2000). The facilitator (with BC Parks) met separately with the SFAB and the sport diving community (RRAB 200oc).

6.2.3 Meeting No. 3

The third meeting of the RRAB took place between 12:00 and 16:00 on January 26, 2000 at Pearson College (no agenda available) (RRAB 200oc).

Terms of Reference

The meeting began with the revision and endorsement of the **Terms of Reference**, which “clarifies the objectives, process, role and conduct of the Advisory Board” (RRAB 200of, p. 1) (Table 6.6, p. 61; full text in Appendix A, p. 125). Of particular note are the following sections:

- **On the RRAB’s advisory role:** “The RRAB shall act solely as an advisory body to BC Parks and DFO. Nothing in these terms of reference constitutes authority to perform operational or management functions, or to represent or make decisions on behalf of BC parks and/or DFO and/or First Nations” (p. 3);

Table 6.6 RRAB Terms of Reference (excerpts).

Source: RRAB (2000f). Full text in Appendix A (p. 125).

Purpose	<ul style="list-style-type: none">◆ Make a best faith effort to work toward an agreement at the table;◆ Represent the perspectives, concerns and interest of respective agencies or constituencies wherever possible to ensure that agreements developed are acceptable to the organisations, agencies or constituents that you represent;◆ Maintain dialogue with your constituency regarding the activities and discussions of the RRAB; and◆ Refer media contacts regarding the activities of the Board to the Chair/facilitator. Board members can speak on behalf of the Board not on the behalf of individual members.
Objectives	<ul style="list-style-type: none">◆ Represent key constituent groups or stakeholders;◆ Provide advice to DFO and BC Parks on the consultation process;◆ Collate and analyze feedback from consultations;◆ Make interim management recommendations to DFO and BC Parks for the establishment of a marine protected area at Race Rocks; and◆ Ensure community involvement in the establishment and on-going management of Race Rocks MPA.
Participation	<p>The Race Rocks area is of interest to a wide range of constituents representing a broad spectrum of activities. The RRAB represents a reasonably comprehensive cross-section of interest groups and activities. The RRAB shall be comprised of, but not limited to, representatives from the following groups:</p> <p>[list removed]</p> <p>If a member/participant is unable to attend a scheduled Board meeting, they may invite an alternate from their constituency. Participants are encouraged to invite other members of their groups to attend RRAB meetings, with prior notification of the Chair and subject to space limitations.</p>
Roles	<p>The RRAB shall provide advice to BC Parks, DFO and First Nations regarding the development of a management plan for the MPA.</p> <p>The RRAB shall act solely as an advisory body to BC Parks and DFO. Nothing in these terms of reference constitutes authority to perform operational or management functions, or to represent or make decisions on behalf of BC Parks and/or DFO and/or First Nations.</p> <p>The RRAB shall draw on the expertise of its members and other sources in order to provide advice to BC Parks and DFO.</p> <p>The RRAB may serve as a forum for consultation and deliberation among its participants and as a source of consensus-based advice to BC Parks and DFO. Such consensus advice shall fairly represent the collective and individual views of the RRAB members and the constituencies they represent.</p>
Participants on the Race Rocks Advisory Board are encouraged to	<ul style="list-style-type: none">◆ Provide advice and information on their activities within and surrounding Race Rocks;◆ Actively participate in discussions;◆ Share airtime with others;◆ Offer respect for different viewpoints and attention when others are speaking;◆ Ask questions for clarification and mutual understanding;◆ Verify assumptions;◆ Deal with differences as problems to be discussed, not battles to be won;◆ Refrain from distracting others through side conversations, cell phones off;
Process	<p>Recommendations by the RRAB will be made through a consensus-based process. The intent of this process is to provide the opportunity for all parties to participate in a manner which responds to their interests. If issues arise, whenever possible, final decisions will be made on the basis of recommendations supported by consensus as opposed to being unilaterally imposed.</p> <p>Consensus shall mean the "general agreement of all participants on a package of decisions or recommendations" and shall embody the following concepts:</p> <ul style="list-style-type: none">◆ Consensus does not mean total concurrence on every aspect of a decision, but all participants must be willing to accept the overall decision package.◆ If a participant withholds agreement on an issue(s), that participant is responsible for explaining how their interests are adversely affected or how the proposed agreement fails to meet its interests. The participant withholding agreement must propose alternatives and other participants must consider how all interests may be met.◆ Once consensus is reached on the overall package, it is assumed to be binding (Cormick et al. 1996).◆ All participants to a recommendation on which consensus had been achieved agree to exercise their rights, mandates, and responsibilities consistent with that recommendation and to take such further steps as may be necessary to give it effect.◆ If consensus is not achieved through this process, each participant will exercise their rights, responsibilities, and mandates as they see fit—unfettered as to statutory decision-making responsibilities and without prejudice to their rights and obligations by reason of having participated in the process.
Deliverables	<p>The RRAB will deliver recommendations on levels of protection, goals and objectives to BC Parks, DFO and First Nations on the establishment of an MPA at Race Rocks. The Federal and Provincial Government in accordance with the joint MPA strategy for Canada's Pacific Coast will determine the final recommendations for a MPA at Race Rocks.</p>
Responsibilities of DFO and BC Parks	<p>DFO and BC Parks support the sharing of all information and dialogue from the consultative process. Representatives from the respective departments on the RRAB will endeavour to fairly represent the interim management recommendations developed by the RRAB. BC Parks and DFO will review the recommendations of the Advisory Board and consider those recommendations when developing criteria for the designation, management and regulation of Race Rocks Marine Protected Area and future MPA strategies.</p>

- **On respectful deliberation:** Participants are encouraged to: “share airtime with others; offer respect for different viewpoints and attention when others are speaking; ask questions for clarification and mutual understanding; verify assumptions; deal with differences as problems to be discussed, not battles to be won; [and] make a best faith effort to work toward an agreement at the table” (pp. 3-4);
- **On representing constituencies:** Participants are encouraged to: “ensure that agreements developed are acceptable to the organisations, agencies or constituents that you represent; [and] maintain dialogue with your constituency regarding the activities and discussions of the RRAB” (p. 4);
- **On the meaning of consensus:** “Consensus shall mean the ‘general agreement of all participants on a package of decisions or recommendations’” (p. 4). “Once consensus is reached on the overall package, it is assumed to be binding (Cormick et al. 1996) [citation in original]” (RRAB 2000f, p. 4); and
- **On the responsibilities of DFO and BC Parks:** “Representatives from the respective departments on the RRAB will endeavour to fairly represent the interim management recommendations developed by the RRAB” (p. 5).

With the Terms of Reference established, discussion resumed on the **boundary issue** (RRAB 2000c). The facilitator described the results of various information sessions, reporting that the SFAB endorsed the bathymetric model, and the sport diving community “supported the bathymetric model with an extension to the 50 metre depth contour” (p. 2). Extensive discussion ensued:

- CPAWS suggested that the RRAB focus on “what is important at the end of the day ... the establishment of the first MPA in Canada” (p. 2);
- The local marina operators’ representative indicated that many people know and recognise the existing footprint of the Ecological Reserve, but reminded the RRAB that the SFAB only supports “no-take of resident species”, and is “still looking for fishing opportunities for transient species” (p. 3);
- The CSSC expressed concern that “if this process was to establish a protected area then it should be protected in its entirety” (p. 3). First Nations “would be looking at this project for 4 to 5 years to see if MPAs work” (p. 3);
- The Friends of Ecological Reserves “felt that the College is the primary constituent at Race Rocks and not fish harvesters. ...First Nations have suggested that they would suspend harvesting for 5 years. Is SFAB willing to do that?” (p. 3).
- CPAWS and the Georgia Strait Alliance responded by saying: “to facilitate completion of the process [they] would rather support Option 1 with a no-take provision” (p. 3);

- Pearson College reminded the RRAB that the 20-fathom boundary of the Ecological Reserve was not based on science but on the limit of scuba diving. “The RRAB has to come to terms with the fact that this area is not scientifically defensible in terms of conservation and protection but that there is an urgency to move forward” (p. 3). There may have to be “a 20-year study to determine where to put boundaries, but until that time use the existing boundaries of the Ecological Reserve” (p. 3);
- BC Parks suggest that the real problems lie with “compliance, enforcement and education” (p. 3). The Georgia Strait Alliance concurred, reiterating: “the RRAB should not get hung up on boundaries” (p. 3);

After more discussion, Parks Canada suggested “until the objectives of the MPA are defined it is not possible to make a decision on boundaries” (p. 4). The marine scientists’ representative asked when the boundary questions would have to be decided, and was told by an Oceans Directorate representative: “we would have to finish public consultations before a boundary decision can be made” (p. 4).

Not resolving this issue, the facilitator moved on to the latest **draft management plan** (RRAB 2000c). There was discussion on the existing format of management plans for provincial Ecological Reserves, and a quick interjection by Pearson College that “the governments have to work together in the development of a unified management plan” (p. 4). The Friends of Ecological Reserves “inquired if the Province had a problem going forward with a joint plan” (RRAB 2000c, p. 4). BC Parks said it was only a question of format, which would be brought up with senior managers. In closing, the facilitator discussed expanding the **representation of marine scientists** on the RRAB, asking for names of people to contact.

Between Meeting Nos. 3 and 4, the CSSC began organising a traditional burning ceremony that would take place on the shores of Beecher Bay (RRAB 2000d). The CSSC later reported: “...the MPA initiative goes beyond Race Rocks. ... First Nations people are looking at Race Rocks as what role they will play in future processes and in their interaction with senior levels of government” (p. 2). Also during this time, the Oceans Directorate and BC Parks held two public information meetings on February 13 and 16, 2000, which were attended by over 100 people, including the Mayors of Colwood and Metchosin, BC.

6.2.4 Meeting No. 4

The fourth meeting of the RRAB took place from 12:00-16:00 on February 23, 2000 at the BC Parks office in Victoria (RRAB 2000d). The SFAB and local marina operators' representatives were conspicuously absent from the meeting. After the acceptance of the agenda (Table 6.7) and minutes, the CSSC, DFO and BC Parks provided an **update on their activities** (described above) (RRAB 2000d). The WWOA-NW distributed draft guidelines for whale watching operations at Race Rocks, which included a 200-m exclusion zone from shore. The WWOA-NW further suggested: "implementing many regulations would create an atmosphere of trying to find loopholes as opposed to an atmosphere of compliance" (p. 4).

The facilitator then gave a slide presentation on the **draft management recommendations**, which had been distributed before the meeting (RRAB 2000d). The RRAB then worked on refining the draft, addressing issues such as the management of vessel traffic, fishing, educational activities and whale watching. Though not discussed at length, the RRAB began developing a management and governance model where the MPA would be co-managed by DFO, BC Parks and First Nations, with the advice of the RRAB.

Discussion then turned to the **permitting process** for the Ecological Reserve, which was administered by Pearson College on behalf of BC Parks (RRAB 2000d). The meeting closed with the indication by the Oceans Directorate that there would be one final meeting "where the vision will be vetted and recommendations are accepted", and that "if there were interests in particular areas, groups could get together to discuss the recommendations" (p. 6).

The month between Meeting Nos. 4 and 5 was filled with activity. The SFAB began lobbying publicly against the creation of a no-take zone. On February 27, 2000, the front page of the *Victoria Times-Colonist* read: "A Rocky Road: Not everyone wants Race Rocks declared a protected marine area" (Curtis 2000b, p. A1). In the article, the SFAB representative argued: "recreational fishermen should have a right to fish salmon and halibut in the proposed refuge. They are migratory species and it's hard to take away historic use" (p. A1). However, most

Table 6.7 Agenda for Meeting No. 4.

-
- 1) Purpose of meeting
 - 2) Agenda and minutes
 - 3) Update on public consultation
 - 4) Roundtable updates
 - 5) Draft Management Recommendations
 - 6) Permit process for research and education
 - 7) Next steps
 - 8) Other business
-

Source: RRAB (2000d).

media coverage was balanced or in favour of the MPA (see Gilbert 2000), particularly with the launch of RACEROCKS.COM (March 11, 2000), attended by (among others) David Anderson, Thor Heyerdahl and Queen Noor of Jordan (Harnett 2000).

About this time, side negotiations took place between the facilitator, various RRAB members and the SFAB. Negotiating directly with the SFAB, several ENGOs provided a guarantee that they would support boundary Option 1 (the Ecological Reserve boundary) if the SFAB agreed to the no-take zone. At a critical SFAB meeting attended by the facilitator and other representatives, the SFAB agreed to endorse a no-take zone at Race Rocks —to support the *Oceans Act* (1996)— provided it was not considered a precedent for other MPAs.

6.2.5 Burning ceremony

On March 9, 2000, the Beecher Bay First Nation (with the support of DFO) hosted a burning ceremony on their Indian Reserve closest to Race Rocks (Fletcher 2000a). The ceremony was led by an aboriginal elder from Kuper Island, BC, and was attended by many members of the RRAB, other government representatives, students from Pearson College and representatives from several First Nations from southern Vancouver Island and from Washington State (Table 6.8).

The ceremony centred on the symbolic burning of a cedar table served with traditional food (Fletcher 2000a). It was later described in an anecdote written by one of the Pearson College representatives:

Everyone stood back a few meters and for 15 minutes or more the whole table and food burned. ... When the fire started going down, more sticks were piled on the top after they went along the edge with a bucket pouring water, probably to cool the outer log along the side. Then the two blankets were carefully folded and placed on top, again the fire burned. As we sat watching, the smoke went straight up in the air and drifted out to sea over the graveyard for the first 10 minutes. Then at a certain point it turned back and swept back down to the earth, enveloping everyone. Lea Charles [Beecher Bay First Nation] later told us this was a good sign, and that the ancestors had touched our faces welcoming us to their land, and they now knew who we were. The fire burned vigorously and then subsided to smoking embers. Tom and the ceremony leader talked for a few minutes about what message to convey to us. The leader spoke, saying that the elders were pleased and that indeed they would be with the young servers for the rest of their lives whenever they needed help. There was a very positive feeling about the ceremony in those present. At this time, the elders came around with a basin of water and we were all asked to wash our hands and faces, thus ending the ceremony. (Fletcher 2000a, p. 1)

Table 6.8 Participants in the burning ceremony at Beecher Bay, March 9, 2000.

First Nations: Beecher Bay First Nation (incl. Chief Burt Charles and Lea Charles); Coast Salish Sea Council (Tom Sampson, Gordon Hanson); Lummi Nation; Penelakut First Nation (incl. ceremony leader) and other First Nations.

Federal and Provincial Governments: BC Parks (Dave Chater, Doug Biffard, Jim Morris); DFO (Marc Pakenham, Kelly Francis); MARPAC: (Duane Freeman, Lt. Com. Bill Laing, base commander) and Parks Canada (Jennie Sparkes).

Pearson College: Garry Fletcher, Angus Matthews, Dr. Joe MacInnes and others (including students).

Source: Fletcher (2000a).

After the ceremony was over, a CSSC representative said: “whenever major decisions were being made it was the custom of their people to ask the ancestors for advice” (p. 1). Before First Nations “can talk and make decisions about important issues like this marine protected area proposal, we must get to know each other on their terms” (p. 1).

6.2.6 Meeting No. 5

The fifth meeting of the RRAB took place from 10:00-16:30 on March 22, 2000 at the BC Parks office in Victoria (RRAB 2000e). After the introduction of observers (including a representative from DFO Headquarters) and the acceptance of the minutes and agenda (Table 6.9), the CSSC thanked the RRAB members who participated in the burning ceremony. Pearson College described the launch of RACEROCKS.COM, and the facilitator thanked the SFAB for their endorsement of a no-take zone at Race Rocks.

The SFAB then remarked that “over 100,000 potential anglers could be affected by this process”, that “this outcome is not precedent setting … each candidate MPA [is] a unique area and situation” (RRAB 2000e, p. 2). Pearson College replied that it was “important to recognise that the success of the MPA process at Race Rocks is based on the ongoing goodwill and cooperation of the primary users” (p. 5).

The DFO co-ordinator and facilitator then introduced the independent facilitator who would lead the **negotiation of the final recommendations** (RRAB 2000e). This allowed the co-ordinator to sit as a DFO representative and full participant in the discussions. The independent facilitator walked the group through the recommendations using the ‘single-text approach’, which involves going through the draft as a group, line by line (see Fisher and Ury 1991).

The following section reviews the consensus recommendations in their final form, and their progression through DFO’s regulatory process. The proceedings of Meeting No. 6 will be discussed toward the end of the Chapter, in Section 6.4.4 (p. 75).

Table 6.9 Agenda for Meeting No. 5.

-
- 1) Purpose of meeting
 - 2) Recommendations for interim management of Race Rocks MPA—facilitated by Judith Cullington
 - 3) Governance
 - 4) Developing a Race Rocks MPA budget
 - 5) Updates from meetings/consultations
 - 6) Other business
-

Source: RRAB (2000e).

Recommendations

The recommendations are divided into six sections: designation, area boundaries, human use, environmental protection, management/governance framework and stewardship (Table 6.10; full text in Appendix B, p. 128) (RRAB 2000a). The **designation** section “recommends that Race Rocks be designated as a Marine Protected Area under the *Oceans Act Section 35*” (p. 10). The **area boundaries** section specifies that the MPA should “coincide with the Ecological Reserve” (p. 10).

The **human use** section includes provisions for boating, aviation, fishing, diving and educational activities, as well as a traditional use study (RRAB 2000a). Most notable is the voluntary stewardship approach to most activities, except for the creation of a no-take zone.

The **environmental protection** section includes provisions to prohibit dredging, the development of non-renewable resources (e.g. mining, petroleum), and the installation of pipelines or utility corridors (RRAB 2000a). The RRAB further recommends the establishment of a conservation partnership for the protection, monitoring and research of birds, marine mammals and habitat.

The **management / governance framework** calls for several co-management and multi-stakeholder committees, a local operator, and an enforcement

Table 6.10 Consensus recommendations (excerpts).

Area boundaries

- ♦ Recommend that the boundary for Race Rocks MPA coincide with the Ecological Reserve boundary, being all waters within the 36.5-metre (20-fathom) line as described on Canadian Hydrographic Chart 3641.

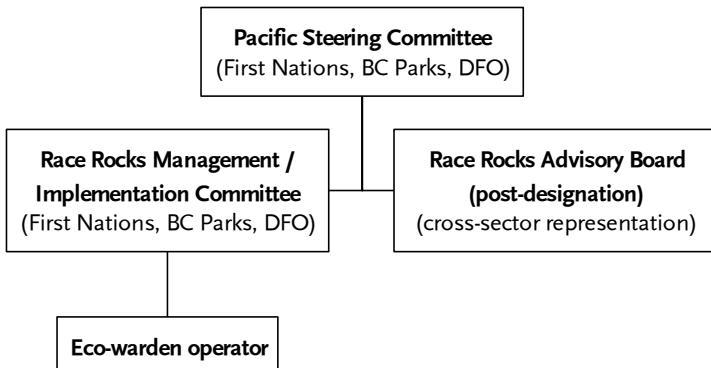
Human use

- ♦ **Recommendations for vessel and boating management guidelines addressing the following areas will be developed in consultation with user groups:** speed limits; anchoring restrictions; shoreline restriction; considerations when whales are within the MPA boundary; sensitive areas restrictions (i.e. kelp beds); ballast water discharge and vessel traffic considerations; vessel and boating management guidelines will be developed in consultation with user groups; and routine monitoring and reporting of vessel activity.
- ♦ **Recommendations for the management of aviation activities:** helicopter traffic by authorization; and no over flights.
- ♦ **Recommendation for the management of fishing activities:** establish a “no-take” zone for all species within the 20-fathom contour line with other conservation and protection measures as recommended by the Steering Committee.
- ♦ **Recommendations for management of diving activities to be developed in consultation with user groups:** volunteer stewardship developed in cooperation with the dive community; educational and training programs for the dive community; adaptive development and application of Reef-keepers and other observation programs; and routine monitoring and reporting of diving activity.
- ♦ **Recommendations for the management of educational activities and research:** adaptive and integrated permit process for education and research, as per Ecological Reserve Act example monitored by Eco-warden Operator; develop a spectrum of learning opportunities including internet-based learning opportunities about MPAs; educational and research activity reported annually; and develop learning and research opportunities which have minimal impact on ecosystem.
- ♦ **Recommendations for the development of a Traditional Use Study:** through consultation with First Nations, develop terms of reference and framework for a traditional use study, including translation; conduct traditional use study; and working cooperatively, develop marine ecosystem-related curriculum for schools to further understanding of First Nations’ relationship with Race Rocks.

Environmental protection

- ♦ **Recommendations for the management of dredging and dumping:** dredging of any kind is prohibited in Race Rocks MPA; and disposal of any material, including overboard discharge of sewage, is prohibited in the Race Rocks MPA.

(Continued next page)



Source: Interpreted from RRAB (2000a).

Figure 6.2 Proposed Management / Governance Framework.

regime based on partnerships and voluntary compliance (RRAB 2000a) (Figure 6.2). The management committees would be as follows:

- Operating coast-wide, a **Pacific Steering Committee** of First Nations, BC Parks and DFO representatives (co-managers) would guide the designation of MPAs in BC;
- At Race Rocks, a **Management / Implementation Committee** of First Nations, BC Parks and DFO representatives (co-managers) would guide the management of the Race Rocks MPA; and
- This committee would receive advice from a multi-stakeholder **Race Rocks Advisory Board**, in its post-designation form.

Echoing earlier recommendations, the final section on **stewardship** calls for a “voluntary compliance and stewardship program” (RRAB 2000a, p. 13):

Rather than develop a complex regulatory framework for protection and conservation, there are strong indications that a voluntary compliance and stewardship program will achieve the goals and objectives as described herein. Principal stakeholder groups have expressed a keen interest in not only developing “best practices” but also working towards ensuring a high degree of compliance. (p. 13)

• **Recommendations for the management of exploration for, and development of, non-renewable resources:** that the exploration for, or development of, non-renewable resources is prohibited in the Race Rocks MPA; and no pipelines or utility corridors.

• **Recommendations for the protection of birds and habitat:** develop a structured monitoring program and protocol for other activities; establish appropriate conservation measures and protection areas; develop partnerships with CWS [Canadian Wildlife Service], Rocky Point Bird Observatory Society etc.; use Internet capability for non-intrusive observation; and routine monitoring and reporting.

• **Recommendations for the protection of marine mammals and habitat:** develop partnerships with all groups for monitoring and research within a structured program; establish protection measures where appropriate; partnerships with whale watching industry for public education; work with marine mammal viewing industry to develop best practices; use Internet capability for non-intrusive observation; and routine monitoring and reporting.

Management / Governance Framework

• **Pacific Steering Committee:** consists of a representative from First Nations, BC Parks and DFO; develops policy and management recommendations for ERs [Ecological Reserves] / MPAs; and identifies areas of interest and process for designation; and provides general direction for Race Rocks Management / Implementation Committee.

• **Race Rocks Management / Implementation Committee:** consists of a representative from First Nations, BC Parks and DFO; implements and co-ordinates the management of Race Rocks ER / MPA; provides policy and management recommendations to government departments regarding ER / MPAs; provides direction for the Race Rocks ER / MPA Eco-warden Operator; works with the Race Rocks Advisory Board; and provides direction for ER / MPA evaluation.

• **Race Rocks Advisory Board (post designation):** Cross-sector representation; provides advice to Pacific Steering Committee and Race Rocks Management / Implementation Committee on management issues; facilitates communications with constituents; makes recommendations for the operations of Race Rocks Marine Protected Area; and provides advice and participates in ER / MPA evaluation.

• **Eco-warden operator:** direction provided by Race Rocks Management / Implementation Committee; manages day-to-day operations in Race Rocks ER / MPA; facilitates permit system for research and education; facilitates compliance program; develops information and education programs; and assists with ongoing evaluation and monitoring.

• **Recommendations for compliance:** Emphasise partnerships and voluntary compliance through education; support stewardship initiatives; develop enforcement response by appropriate government agencies, as required; and develop a protocol for reporting to the Steering Committee and Management / Implementation Committee.

Source: RRAB (2000a). Full text in Appendix B (p. 128).

6.2.7 Consensus vs. written recommendations

For the most part, the negotiation of the final recommendations involved few significant differences in opinion (RRAB 2000e). Further, the consensus negotiations —as recorded in the minutes of Meeting No. 5— are well reflected in the written recommendations (RRAB 2000a). There are two notable exceptions: the negotiation of the provisions for a no-take zone (important differences in opinion), and the provisions for funding the Race Rocks MPA (changed in the written recommendations).

No-take zone

The CSSC led the final negotiations for the no-take zone by proposing a “no-take for a trial five-year period”, arguing that “First Nations support conservation and suggest a 5-year period to research the effects of an MPA on the surrounding area” (p. 4). Pearson College supported “the suggestion of the five-year window to ensure that we review the goals and achievements of the MPA” (p. 4). The Georgia Strait Alliance then indicated support for any wording that “wouldn’t prejudice First Nations and their rights” (p. 4).

Having already endorsed the no-take zone (with no conditions), the SFAB responded: “the intent is no fishing for everybody” (RRAB 2000e, p. 4). This zone should include “the entire water column to the 20-fathom contour line” (p. 4). After some discussion, the RRAB agreed to this, and reached consensus on the following statement:

Existing fishery and harvesting closures be expanded to a no-take zone within the 20-fathom contour line with other conservation measures as recommended by the steering committee. (p. 4)

This was shortened slightly in the written recommendations.

Establish a "no-take" zone for all species within the 20-fathom contour line with other conservation and protection measures as recommended by the Steering Committee. (RRAB 2000a, p. 10)

Funding the Race Rocks MPA

As part of the compliance provisions for the Race Rocks MPA, the RRAB proposed that: “all levels of government financially support compliance, research and education” (RRAB 2000e, p. 6) at Race Rocks. In the written recommendations, this was shortened to “support stewardship initiatives” (RRAB 2000a, p. 13), with no explicit commitment to funding.

6.3 Proposals for designation

To recapitulate, the RRAB negotiated consensus recommendations for the creation of Canada's first *Oceans Act MPA*, including a no-take zone. Among other things, the MPA would be co-managed, provide for a traditional use study, support the self-regulation of user groups, and reinforce the stewardship of Pearson College. As put by the co-ordinator, it was time for the recommendations to "move up the line" (RRAB 2000e, p. 7).

6.3.1 Draft Feasibility Report

Before being submitted to the Minister of Fisheries and Oceans (now Herb Dhaliwal), the recommendations would be wrapped into larger, more comprehensive documents. The first of these was entitled the *Draft Feasibility Report and Recommendations*, which was prepared by the Oceans Directorate of DFO (Pacific Region), with the assistance of Parks Canada, BC Parks and Pearson College (RRAB 2000a). The *Report* was also circulated for review by the RRAB (RRAB 2000e).

The *Report* included background information, an account of the public consultation process, and the recommendations reviewed above (RRAB 2000a). It also described the relationship between First Nations and the Race Rocks MPA:

From a First Nations perspective, the Race Rocks area has cultural significance with respect to traditional use and management of the area's resources. There is recognition that, should a Marine Protected Area be established, it will not infringe on First Nations' existing Treaty rights, traditional, food, ceremonial interests or relationship with the area. Further, there developed a significant opportunity to develop co-operative management and First Nations' educational opportunities. (p. 7)

6.3.2 Proposal to Designate

The role of First Nations was reinforced in DFO's formal *Proposal to Designate Xʷáyən (Race Rocks) Marine Protected Area* (DFO 2000b). As is evident in the title, Xʷáyən was now given a prominent place in the name of the proposed MPA. The *Proposal* also strengthens provisions for the co-management of Race Rocks:

Stewardship of the Xʷáyən (Race Rocks) area is entrusted to all Canadians. To ensure that the interests of all Canadians are fairly represented in management processes for the area, three lead steward groups will oversee the management of the Xʷáyən (Race Rocks) area. The tri-partite management will be comprised of the Coast Salish First Nations people; the provincial government through the Ministry of Environment, Lands and Parks; and the federal government through Fisheries and Oceans Canada.

(p. 5)

This arrangement is further described in a section proposing a “joint Management Committee” (p. 17):

Co-operative Management: It is recommended that a joint Management Committee consisting of First Nations, Fisheries and Oceans Canada and BC Parks be established to ensure that the planning and management of the area is co-ordinated, effective and efficient and that Fisheries and Oceans Canada and BC Parks, as the lead public agencies, are publicly accountable for achieving the area’s goals and objectives.

Among further provisions, the *Proposal* includes an assessment of Race Rocks based on IUCN criteria, and a timetable for the final designation of the MPA (Table 6.11).

6.4 Subsequent events

With the *Proposal* finalised by DFO (Pacific Region) and ‘sent to Ottawa’, the RRAB awaited Ministerial agreement-in-principle and an announcement of designation. On July 29, 2000, an editorial in the *Vancouver Sun* read:

A remarkable advisory board representing 17 different community interests from sports anglers to the Navy to First Nations to scientists and environmentalists —miracle of miracles in this polarized province— achieved consensus. ... Dhaliwal has the power to simply declare Race Rocks a Marine Protected Area. This is a win-win scenario that almost everybody wants. Why doesn’t he just do it? (Hume 2000, p. B5)

As time passed, it became clear that Xʷáyən was but one set of rocks in the national landscape of political agendas and events. Most salient was the conflict in Miramichi Bay, New Brunswick, which escalated in the late summer of 2000.

6.4.1 Conflict at Miramichi Bay

As discussed in Section 3.3.4 (p. 19), the *Regina vs. Marshall* (1999) ruling had recently reaffirmed the Mi’kmaq’s claims of “a treaty right to participate in the commercial fisheries” (Davis and Jentoft 2001, p. 226). As described by Davis and Jentoft (p. 227):

...the Mi’kmaq immediately made plans to begin fishing commercially, targeting the lucrative lobster fishery. ... Non-aboriginals threatened direct action to stop what was now being framed as a frontal assault on the conservation of sustainable lobster stocks and the basis of their livelihoods. DFO fisheries and Royal Canadian Mounted Police officers were engaged in keeping the sides separated as well as in seizing boats and gear, charging Mi’kmaq for fishing out of season and without licenses, and arresting non-aboriginals for destroying Mi’kmaq fishing gear.

Table 6.11 Proposed timetable for the designation of the Race Rocks MPA.

Date	Milestone
Jun. 30, 2000	Preparation of the Race Rocks MPA proposal
Jul. 31	Agreement/support from key stakeholders, relevant provincial and federal agencies and committees
Aug.	Minister (agreement-in-principle)
Sept.	Federal / Provincial announcement of designation or the timing of designation and implementation of interim management arrangements
Sept. 30	Commence management planning process
Jun. 8, 2001	Canada / BC approval of management plan
Dec. 1	Regulatory regime completed

Source: DFO (2000b).

The Burnt Church First Nation was the most assertive Mi'kmaq group, "insisting that the *Marshall* decision enabled them to implement their own fisheries management system" (Davis and Jentoft 2001, p. 228). The escalation of tension between members of the Burnt Church First Nation and DFO officers led to open displays of force on each side.

The most publicized clash took place on August 30, 2000, when a DFO boat rammed and ran over a Mi'kmaq vessel, forcing all the occupants to jump into the water. This event was recounted by a Mi'kmaq reporter for the Canadian Broadcasting Corporation:

I looked up ... just in time to see three natives jumping off their rammed boat. A friend of mine was being clubbed by the officers as he was trying to rescue the guys in the water. He was saved from being hauled onto the DFO boat by other natives throwing stones. The officers had to let him go to shield themselves from the rocks. It was satisfying to finally see a national network actually video a DFO boat ramming a native boat. It's been a tactic used by the DFO before, but of all the media that gathered here during these past weeks, none had managed to get it on camera. A picture can tell you a million stories.
(Somerville 2000, p. 1)

Video of the clash was broadcast on the national news, leading to public disapproval of DFO's actions (see Isaac 2000). It also greatly exacerbated tensions between DFO and First Nations across the country, many of which felt a responsibility to demonstrate their solidarity with the Mi'kmaq at Burnt Church.

6.4.2 'Official designation'

The conflict at Miramichi Bay continued into September 2000, overlapping with the 'official designation' of the Xʷáyən (Race Rocks) Marine Protected Area. Though the regulatory process was still underway, a ceremony was held at Race Rocks on September 14, 2000, attended by Herb Dhaliwal, Joan Sawicki (BC Minister of Environment, Lands and Parks), as well as members of the RRAB (Figure 6.3).

The ceremony represented the joint Ministerial endorsement of the recommendations of the RRAB,



Source: Pearson College (Fletcher 2002).

Figure 6.3 Ministers Dhaliwal and Sawicki with the RRAB and students from Pearson College.

including an indication that “Race Rocks will now be managed co-operatively by the Advisory Board, along with First Nations, DFO and BC Parks” (DFO 2000c, p. 1). However, the whole event was a strain for a representative of the CSSC, who told a reporter: “it’s hard for me to sit there as an aboriginal ... it took all my energy to sit there” (Watts 2000, p. F4). The situation was made all the more difficult by the presence of protestors from the T’Sou-ke and Songhees First Nations, who arrived with drums and placards. As fellow members of the Te’mexw Treaty Association, they argued that the MPA “will protect the area, but in the end it will just keep us out” (p. F4).

In the end, most participants in the ceremony felt that the protests did not compromise the Race Rocks MPA, or the work of the RRAB. The net effect of the ceremony was to bring the RRAB’s recommendations into the public spotlight, to strengthen Race Rocks’ public identity (complete with a logo; Figure 6.4), and to give many an impression that the Race Rocks MPA was a *fait accompli*.



Source: Pearson College (Fletcher 2002).

Figure 6.4 Logo for Xwáyən/Race Rocks.

6.4.3 Gazette regulations

Throughout this time, DFO (Headquarters) was preparing draft regulations and the *Regulatory Impact Analysis Statement* for the Xwáyən (Race Rocks) Marine Protected Area, which would have to be approved by the Privy Council Office and the Department of Justice. On October 28, 2000, the approved draft regulations appeared in the *Canada Gazette, Part I* (O’Sullivan 2000). As described in Section 3.2.3 (p. 14), interested persons were called upon “to make representations with respect to the proposed Regulations within 30 days after the date of publication of this notice” (p. 3369).

The proposed regulatory text was short, reflecting the only ‘hard’ outcome of the RRAB: the agreement to create a no-take zone (Table 6.12, p. 74). The accompanying *Regulatory Impact Analysis Statement* (see Appendix C, p. 131) incorporates most other sections of the *Proposal to Designate Xwáyən (Race Rocks) Marine Protected Area* (DFO 2000b). However, the *Statement* includes two provisions that represent a departure from both the *Proposal* and the RRAB consensus recommendations.

First, the *Statement* refers to the voluntary restriction of traditional resource activities at Race Rocks, a concept not discussed by the RRAB:

Four Coast Salish First Nations, Beecher Bay, T'Sou-ke, Songhees and Esquimalt Nations, claim the eastern end of the Strait of Juan de Fuca as part of their traditional territory. Although the creation of the MPA does not restrict harvesting by First Nations for food, social or ceremonial purposes, they volunteered to forego this activity in support of the designation of the MPA. (O'Sullivan 2000, p. 3367)

Second, the management/governance framework proposed by the RRAB was not included. The sections on co-management make no mention of First Nations, referring instead to co-operation between DFO and BC Parks, as well as “marine mammal watching, guided diving, research and education, ballast water management, National Defence and Transport Canada programs in the area” (p. 3366).

The *Statement* claims that these new provisions were recommended by the RRAB, which was a surprise to the CSSC, other members of the RRAB, and DFO (Pacific Region). This also caused offence to several Douglas Treaty First Nations. In November 2000, the Chiefs of the Beecher Bay, T'Sou-ke and Songhees wrote a letter of objection to the Minister of Fisheries and Oceans, citing the *Delgamuukw vs. British Columbia* (1997) decision, infringement of Douglas Treaty rights, and lack of consultation (RRAB 2001).

It is not clear whether this objection was a direct result of the *Gazette* publication, or whether it derived from earlier events such as the ‘official designation’ ceremony. Regardless, the regulatory process was halted immediately. In December 2000, Oceans Directorate personnel (DFO, Pacific Region) met individually with the Chiefs, acknowledging that proper consultation had not taken place (RRAB 2001). A subsequent meeting appears to have taken place between the Chiefs and Herb Dhaliwal. By June 2001, the Chiefs had written a letter of support for the MPA, on the condition that there was true co-operation and acknowledgement of Douglas Treaty rights.

Table 6.12 Regulations published in the *Canada Gazette* (excerpts).

XwaYeN (RACE ROCKS) MARINE PROTECTED AREA REGULATIONS

DESIGNATION

1. The area within the 20-fathom (36.58 metre) contour line as shown on the chart set out in the schedule is hereby designated as the XwaYeN (Race Rocks) Marine Protected Area.

PROHIBITION

2. (1) [definitions removed]

(2) No person shall remove from XwaYeN (Race Rocks) Marine Protected Area any

- (a) fish;
- (b) part of the fish habitat; or
- (c) living marine organism that forms part of the ecosystem of fish.

(3) Subsection (2) does not apply to removal for scientific research for the protection and understanding of the XwaYeN (Race Rocks) Marine Protected Area.

COMING INTO FORCE

3. These Regulations come into force on the day on which they are registered.

Source: O'Sullivan (2000). Full text (including *Regulatory Impact Analysis Statement*) in Appendix C (p. 131).

6.4.4 Meeting No. 6

Little further progress was made before the sixth meeting of the RRAB, which took place from 11:00-14:30 on December 6, 2001 at the Coast Guard base in Victoria (RRAB 2001). The meeting was only attended by government, ENGO and Pearson College representatives, and many of these representatives had changed from previous meetings.

The primary purpose of the meeting was to keep the RRAB abreast of the status of the Race Rocks MPA (RRAB 2001). The Oceans Directorate began by providing an update on the **ongoing discussions with Douglas Treaty First Nations** (reviewed above). There was:

...the need for another version of the regulations that better captures First Nations rights to access resources for Food, Social and Ceremonial purposes and indicates that these rights are not being infringed upon. (RRAB 2001, p. 2)

This prompted extensive discussion:

- Pearson College indicated that there were “very serious flaws in the wording of the Gazette piece, not reflecting the recommendations of the RRAB”, and that there was a “serious disconnect between Ottawa and the RRAB”. Further, it was hoped that “the new wording would be reviewed by the Board so that it can go through the second time without difficulties”, since “failure at this juncture would be disastrous” (pp. 1-2);
- CPAWS “pointed out that a lesson to be learned from this is to talk of co-operative management and steering committee participation, that First Nations must be invited as co-chairs for meetings, rather than participants” (p. 2);
- Pearson College concurred that tripartite arrangements are necessary, then expressed concern “that the Board was under the impression that [the CSSC] had been present as overall representative of First Nations”, and asked “whether future boards will have representatives from the CSSC”, given that “a great deal had been learned [from them]” (p. 2);
- The Oceans Directorate replied: “First Nations must be allowed to decide how they wish to be represented, whether as individual Chiefs or with one person representing all”. Thought the CSSC’s role “has been critical to the process ... in retrospect, there should have been more active communication with Chiefs who had a specific interest in the area” (p. 2); and
- BC Parks agreed that “First Nations want government-to-government meetings first ... the process is challenging and frustrating for those who wish to see [the Race Rocks MPA] happen, but First Nations have a protocol they expect to be adhered to” (p. 2).

The meeting then turned to discuss the status of other Pilot MPAs, and the **draft management plan** for the Race Rocks Ecological Reserve (RRAB 2001). With the MPA process on hold, BC Parks again sought to develop its own management plan (completed in 2002, see ESD 2002). BC Parks led the RRAB through the most recent draft, seeking comments.

6.5 Summary

The RRAB process and surrounding events can be summarised as follows:

- The RRAB was convened by the Oceans Directorate of DFO (Pacific Region), with the cooperation of BC Parks and support of Parks Canada. The RRAB was co-ordinated by an employee of the Oceans Directorate, who also facilitated most of the meetings. The negotiation of the consensus recommendations was led by an independent facilitator;
- The RRAB included representatives from government agencies, First Nations, ENGOs, user groups, marine scientists and Pearson College. Attendance at RRAB meetings was strongest among government, First Nations, Pearson College, ENGO and sport diving representatives;
- The RRAB developed a Terms of Reference that provided guidance on the RRAB's advisory role, respectful deliberation, representing constituencies, the meaning of consensus, and the responsibilities of DFO and BC Parks;
- The RRAB co-ordinator/facilitator presented three boundary options to the RRAB. The boundary discussion dominated the proceedings until a compromise was negotiated outside the consensus process, in which the SFAB agreed to a no-take zone if the ENGOs agreed to the smallest boundary option;
- The consensus recommendations provide for a series of co-management (First Nations-BC Parks-DFO) and multi-stakeholder (RRAB) committees, as well as a local operator for the Race Rocks MPA. The co-management provisions were strengthened in the MPA proposals written by DFO (Pacific Region). The proposals included 'Xʷáyən' in the name of the MPA;
- Coincident events at Miramichi Bay compromised the relationship between DFO and First Nations across Canada, and complicated the 'official designation' ceremony;
- The *Regulatory Impact Analysis Statement* prepared by DFO (Headquarters) departed from the proposals submitted by DFO (Pacific Region), prompting a formal objection by Douglas Treaty First Nations. DFO (Pacific Region) is working with Douglas Treaty First Nations to develop a regulatory text that respects aboriginal and treaty rights, as well as a government-to-government relationship between Canada, BC and First Nations; and
- With the MPA on hold, BC Parks has proceeded with the finalisation of a management plan for the Race Rocks Ecological Reserve.

Chapter 7 – Voices of the Participants

This chapter summarises the views of participants in the Race Rocks Advisory Board, structured by the theoretical framework developed in Chapter 4 (Table 7.1). The text is based on primary research material, most of which is presented anonymously. Permission was obtained for the use of primary material that is or could be readily attributed to one individual or group. For example, permission was obtained for citations of ‘the facilitator’, but not ‘a user group representative’, or ‘a participant’. For clarity, anonymous citations of the same individual are numbered by order of first appearance (Anon. 1, 2, etc.).

As a preface, all the participants interviewed expressed their respect for the DFO co-ordinator/facilitator (henceforth the ‘facilitator’; see Section 6.1.1, p. 53), and distinguished these sentiments from their views on the RRAB process.

7.1 Challenge

This section reviews participants’ opinions on the degree to which the RRAB process challenged participants to be innovative, reach fair decisions, and form partnerships in implementation (see Section 4.4.2, p. 34).

7.1.1 Innovative

Participants’ opinions on the innovativeness of the RRAB process focused on the means by which the group produced consensus recommendations for the creation of a **no-take zone**, and for the **co-management** of Race Rocks by First Nations, BC Parks and DFO.

No-take zone

Most participants felt that the no-take zone/boundary discussion was a ‘make or break’ issue, and therefore supported the compromise negotiated between ENGOs and the SFAB. One ENGO representative dealt directly with the SFAB:

The key thing was getting the designation and that it be no-take. I thought it was silly to argue over boundaries in this particular case—the differences between the options were, ecologically speaking,

Table 7.1 Theoretical framework.

Concept	Characteristic(s)
Challenge	<ul style="list-style-type: none">◆ Innovative◆ Fair decisions◆ Partnerships in implementation
Respect	<ul style="list-style-type: none">◆ Inclusive◆ Accountable to the participants◆ Respectful of identities
Balance	<ul style="list-style-type: none">◆ Fair process through skilled facilitation

insignificant. We did not see what role a 50-metre buffer zone could play except to look silly and to slow down the process even more. We knew SFAB didn't want to see the boundaries extended one centimetre. So I called them and we chatted a long while, and I hinted that we wouldn't create a clamour at the table on boundaries if the no-take was agreed to. I don't know how much this affected their decision, but I do know that it wasn't the sort of thing that could be talked about at the broader table without it becoming a larger, more political and potentially painful discussion. (Anon. 1)

In another instance, a participant joined the facilitator at a SFAB meeting, playing a critical role in convincing the SFAB to endorse the no-take zone at Race Rocks:

...it's an interesting role that the community volunteers play in this. We ended up with a consensus at a really, really aggressive Sport Fish Advisory Board meeting—a small group, but an aggressive meeting. We ended up with a consensus that everybody had to give up something. That the Sport Fish Advisory Board would in fact recommend a complete closure at Race Rocks, provided that we didn't make the reserve any bigger. And that was really tough thing to give up. ... I went to that with [the facilitator]. Had [the facilitator] gone to that meeting alone, they'd still be arguing, I really believe it. But luckily, there was some common sense, just about: "look, it's a tiny area, you're going to bust all your gear there anyway, aren't fishermen concerned about conservation?" There were things that I could say that perhaps a government official couldn't say. And they said, "well you can't make it any bigger", and [the facilitator] at that point had shown them a map, which shows the circles of expansion. And I was able to say: "this expansion's nuts! No way! What's the point? We don't know what's down there anyway." ... So before you know it I'm sort of ganging up on [the facilitator] as well, but the consensus was reached because they saw some common sense to what we were putting forward. (Anon. 2)

Other participants were concerned that the no-take zone, as negotiated, will be unenforceable. As put by one participant:

When it comes time to enforce regulations, how to prove that someone is inside or outside a park, when you've got all these spider fingers. These people aren't even going to know if they are inside or outside of the park at times. From an enforcement perspective, it's far easier to have angled, straight-line boundaries, so that you can say that this person is clearly in, or clearly out. If you have a no-take MPA, and you're going to charge anybody who's fishing in it, first you're going to have to prove that they were in it. That's going to be near impossible at Race Rocks, unless they're standing on the shoreline. So from an enforcement perspective, I'm not really sure how DFO's going to do that yet. (Anon. 3)

Co-management

Most participants felt that the incorporation of the co-management model in the recommendations was a remarkable accomplishment, and credited the role played by the CSSC. In the words of one:

[The CSSC] had promoted the role of First Nations and our understanding to the extent that we all agreed—even [the SFAB] and others who had a real problem with it—we all agreed that First Nations weren't a stakeholder, they were a governing agency. And the recommendation of the Advisory Board quotes what [CSSC representative] called a three-legged milk stool, they are equal to the federal government and provincial government, and the rest of us just sort of fall in line behind. (Anon. 2)

Another participant felt that the co-management provisions were all the more important in light of the events at Miramichi Bay:

I remember having a conversation with [a CSSC representative] ... I said that what I think you can do here is basically to get DFO to come to the table and commit to the sort of things that your people are fighting for on the east coast. It's basically saying the same thing: ... if you feel you have the right—the jurisdiction—to fish, that's also the right or jurisdiction to manage protected areas. You have a right to full, or at least equal partnership in the management of a protected area. To me, I thought this was helping that cause, though there would be many First Nations who thought [the CSSC] was a traitor. To me, [s/he] was a bit of a hero to be fighting hard to make sure that there was that co-operative, co-managed condition. Everything else follows from that.

(Anon. 1)

At the same time, this participant knew that co-management would be problematic for DFO:

It would be problematic to some lawyers in DFO to call it “co-management”, so we call it “co-operative management”. Parks Canada has the same problem—they don’t want to call it “co-management” because the final authority—in their mind—rests with the Minister. You can have these co-management boards or steering committees, but if there’s a contentious issue, and things are split down the middle, then the final authority rests with the Minister.

(Anon. 1)

7.1.2 Fair decisions

For most participants, the fairness of decisions made by the RRAB revolved around the **scientific defensibility of the no-take zone**, as negotiated. To the ENGOs, the boundaries of the no-take zone were too small to be defensible. In the words of one ENGO representative:

What I said, honestly ... if you really wanted to do this thing right, you should look at the whole area of Vancouver Island. There's ballast water coming in, there's heavy fishing of rock fish outside the Ecological Reserve/MPA, compromising protection goals inside it.

(Anon. 1)

In contrast, some user groups felt that the no-take itself was indefensible. As argued by one user group representative:

The thing to remember is that the marine protected area only works for the protection of resident species; it does nothing for migratory species, unless you cover the whole coast, and that's not a factor in the solution. ... no matter what you did with the Race Rocks area you're not going to protect salmon runs, for instance. You're not going to protect Fraser River, Thompson stocks, Skeena stocks, by instituting an MPA at Race Rocks. It's just not going to happen.

(Anon. 4)

Another representative countered that the no-take was defensible on the practical grounds that it reduces poaching:

...it's very difficult ... to go out and say "you're bottom fishing in an [MPA]", and then to be able to have them say "we're only fishing for salmon", or halibut. So you can't have a split definition for fishing. You're either fishing or you're not fishing.

(Anon. 5)

7.1.3 Partnerships in implementation

In addition to the recommendations for co-management reviewed above, opinions on the success of the RRAB at creating partnerships in implementation centred on the issues of

voluntary stewardship by user groups and Pearson College, **funding the Race Rocks MPA**, and a **continued role for the RRAB**.

Voluntary stewardship

Several participants felt that a success of the RRAB was to build a foundation for voluntary stewardship, regardless of government regulations. As stated by one participant:

The way the stakeholder groups worked was interesting, because some of them were not all that well formed when this started. ... The whale watch community is better organised now than it was then. Their standards didn't really exist, they said they did, they were scrambling to find them and put them together, and they were using the North West Whale Watchers stuff, and they've since refined that a bit. The Sport Fish Advisory Board ... it's really ironic that it's 2 1/2 years ago that they agreed to a complete closure at Race Rocks, and DFO still hasn't done it. We're treating it as if it is, and they're cooperating. It's an interesting example of folks getting along with each other and government someday catching up.

(Anon. 2)

Most participants felt that another success of the RRAB was to build support for the stewardship role provided by Pearson College. In the words of a user group representative:

If Pearson College has anything to do with it [improved stewardship], they will. ... I have a group of school kids from Victoria who want to see the inside of our organisation. I phoned [Pearson College representative] up and [s/he]'s going to have us up on to the island. That's huge. These kids are going to come out of high school with an appreciation for this MPA that will do society well. So now I see that the success of the MPA will be rooted in the effectiveness of the management of the area. Fortunately, Pearson College is sitting right there doing this for us.

(Anon. 6)

The facilitator also felt that voluntary stewardship would improve simply because people think Race Rocks is an MPA:

In most people's minds, it's a marine protected area. When John Turner wrote in the *Globe and Mail* ... he talked about Race Rocks as a marine protected area, as one of Canada's first marine protected areas. And so, *ipso facto*, there you have it. In most people's minds, it's a marine protected area. If Fisheries and Oceans Canada doesn't have it all signed off in the regulatory *Gazette* process in Ottawa, my question is, does it really matter? In an existential kind of way, does that matter?

(Facilitator)

Funding the Race Rocks MPA

Some participants were concerned that the written recommendations did not include any financial commitments for the implementation of the Race Rocks MPA, as was negotiated in Meeting No. 5. In the words of one:

There's one recommendation that has mysteriously disappeared, and that is the recommendation that "governments" provide ongoing funding to sustain Race Rocks. That was agreed to at the meeting, and it's in the minutes, but it's not in the recommendations.

(Anon. 2)

Continued role for the RRAB

Several participants were further disappointed that the RRAB was now (for the most part) excluded from discussions on the future of Race Rocks, contrary to the consensus recommendations. This led to fresh scepticism about consensus processes in general, as described by one participant:

As a result of doing this, I've become very sceptical with the whole concept of Round Table negotiations, stakeholders, all of that area.... It was fine up to a certain point. But from then on, you feel you're being used. You feel that at a certain point they will bring out: "oh, but we've involved consultation with stakeholders", but yet they have not followed through the mandate of the *Oceans Act* to really totally come up with a new process and make it work. And at one point we had the chance to do that, and that's, I guess, the biggest regret. And it may come around, you don't want to throw it all saying it's been a total failure. But it was a total success in community and stakeholder involvement up to that point.

(Anon. 5)

Another participant was reflective about the nature of consensus processes:

I think it's about democracy. The big fear of process is that you think the process has attained the perfect design and co-ordination and facilitation, and it never does. It's always going to be that imperfect gem. It has to be reworked and revisited continually throughout that process. The ideal process is transformative. It should affect everyone involved in it, because it's really about democracy making. You get glimpses of it, you always do. You kind of go, "this is the way it should be", but there's always going to be that person who's not represented fairly by that person at the table. So it's an unattainable objective, really, because it's only as good as the players that are there, and if they're not fairly representing and reporting back, it's still a backroom deal as far as everybody that person's supposed to be representing.

(Anon. 7)

7.2 Respect

This section summarises participants' views on the degree to which the RRAB respected participants by being inclusive, accountable to the participants, and respectful of identities (see Section 4.4.2, p. 35).

7.2.1 Inclusive

The participants were mostly satisfied with the inclusiveness of the RRAB process. However, there were concerns with the representation of **First Nations** and two **stakeholder groups**— marine scientists and sport divers.

First Nations

Concern over the representation of First Nations only emerged after several Douglas Treaty First Nations objected to the draft regulations in the *Gazette*. One participant felt that this problem should have been foreseeable:

DFO was a bit opportunistic in deciding who to bring to the table, and probably a bit selective too, because [CSSC representative] is someone who's approachable and doesn't get clouded by the preachy rhetoric that we see slow down tables or processes like this all the time. [The CSSC representative] was looking after the interests of [their] people I think, but they [CSSC] were created to move things along on the environmental front. So that was probably selective, and purposeful. They [DFO] shouldn't have been surprised, that they had a bit of a problem afterward when they announced it. (Anon. 1)

Another participant suspected that First Nations were seeking concessions in the treaty negotiation process:

Clearly, if you were seeking in treaty making to win a particular concession from the federal government negotiators it would be around MPAs. I think that has been the case almost in every instance. So one shouldn't be naïve about that larger context playing out. I think the federal government did what they could do initially, and didn't get much interest. And so to have people cry foul at the end of the day is a bit ... predictable, and will be repeated *ad nauseam*. So the question becomes: do we stop creating marine parks until such time that the treaties are concluded ... well we can't. (Anon. 7)

One participant felt that the facilitator did all that was possible in the circumstances:

There could have been an assumption that the First Nation representative actually represented the Bands near Race Rocks. It was later on that there was some feeling that this wasn't the case. We did not know this at the time. No Advisory Board member could question that if someone came to the table, that they didn't really represent all First Nations interests in the area. Sometimes we invite people [Douglas Treaty First Nations] to participate and they aren't able to. I give credit to [the facilitator] for really trying to involve First Nations, and providing the Advisory Board members with a better understanding of First Nations traditions, through the burning ceremony and the 13-moons workshop. There was a great deal of encouragement to members to listen to First Nations concerns, and to have First Nation involvement. If we didn't include enough First Nations representation, well I'm not sure whose fault that was, if indeed that is anybody's fault. (Anon. 8)

The facilitator was forthright:

[The CSSC] did not really have a clear mandate from First Nations to be participating in this process. I think in fairness to [CSSC representative], [s/he] thought [s/he] was doing the right thing. We thought [s/he] was doing the right thing. We thought that the communications [s/he] had with the Douglas Treaty bands was clear and they understood that they were representing their interests, but it wasn't that way. [CSSC representative] is very astute and well respected everywhere. [CSSC representative] has a great degree of respect, and I'm not trying to fault [him/her] in this observation, but we didn't know how to bring First Nations into this discussion in a way that First Nations were entirely comfortable with. (Facilitator)

Stakeholders

Some participants were concerned with the low participation of marine scientists. In the words of one:

I think one of the shortcomings was that we had low representation from the academic community. We did have representatives from Pat Bay [DFO Institute of Ocean Sciences], but not from the university [University of Victoria and/or Bamfield Marine Station]. ... I recall suggesting someone, and that wasn't followed through with. ... The only real scientist that had been involved there was [the marine scientists' representative]. And [s/he] was certainly able to present the idea that we should have a larger area ... and I think [s/he] was quite upset that this was eventually ignored.... But there was nobody on here who could go in and say, with some level of scientific accuracy, that this is the reality. (Anon. 5)

Another participant was concerned about participation of sport divers on the RRAB. The sport diving representative spoke for the major dive charter operations in Victoria, but did not represent other diving clubs, including the local dive club for military personnel:

I'm still a little concerned that we haven't got broad representation from the dive community. ... It never involved the military dive team, which it probably should have early on, because they've always played a role.... [There have been] three or four violations of the standards of the reserve, all by fleet dive folk. (Anon. 2)

7.2.2 Accountable to the participants

Participants' views on the accountability of the process focused on the period after the negotiation of the consensus recommendations: **waiting for Ministerial agreement-in-principle, and the failure of the regulatory process.**

Waiting for Ministerial agreement-in-principle

The delay between the submission of consensus recommendations and the Ministerial agreement-in-principle was a source of frustration for most participants. As described by one:

...around March, when we had this consensus meeting where we came up with the recommendations that were sent off to the Minister, everyone was so jubilant at the end of that meeting that we were actually able to craft something to send to the Minister, that there were expectations that the Minister would embrace this, and move ahead with designation. Because we had been put on this fast track, the six-month fast track to get this going, they thought that the Minister wanted this stuff right away, and they certainly wanted this to happen right away, and they wanted their work recognised, that this volunteer effort wasn't a waste of time. I think it was May or June— still no word from the Minister or DFO. Memos started to circulate among the stakeholders, that were then sent to DFO, about the integrity of this process. We had worked hard to put together these recommendations, and what are you doing with them, we expected this to be announced by now! Two months, and we haven't heard "boo" from you. (Anon. 3)

Another participant was concerned that the consensus of the RRAB would break down:

What we kept telling Fisheries is: "move it along, move it along, you've got consensus, MOVE!"
Consensus is a fleeting moment. (Anon. 2)

However, one participant felt the delay was understandable:

We finished our work by the end of March, and it went off to Ottawa. And it sat, and sat, and sat. People like [participant] got really hot under the collar, because [s/he] wanted immediate results. Well ... I figured it would take six months for Ottawa to go through its processes. David Anderson changed portfolios ... so that held things up a bit. Everybody was getting a bit antsy. ... [The facilitator] pulled us together, and brought us all together at Dunsmuir Lodge for a presentation and update, in August, just before the announcement. This was to calm everyone down—"yes, everything's on track, yes, Ottawa's on side, yes, it's all happening, it's just happening really slowly...." Then the announcement came! In my mind, it was about six months later, which is about par for the course! (Anon. 9)

Failure of the regulatory process

To many participants, the language contained in the *Gazette* was an affront to the consensus achieved by the RRAB. Most participants felt that the recommendations were the result of a careful effort to respect aboriginal rights and treaties, notably through the support of traditional activities and the provisions for co-management. The anger at seeing these recommendations rejected and/or misrepresented in the *Gazette* is evident in the following statement from one participant:

...we learned all this [the importance of traditional activities and co-management], and we came to understand this, and we came to respect all this. And [the facilitator] and [a DFO representative] and even [another DFO representative] were on side with this. This got to Ottawa. The original *Gazette* language you need to get. It's a complete screw-up. It was a disastrous turning point in the First Nations relationship. It was written by people who had no understanding of what the Advisory Board process had done. Had no understanding, in fact it ignored a number of the recommendations. And actually, even breaks the basic fundamentals of the Douglas Treaty. It was a slap in the face. (Anon. 2)

Another participant felt disillusioned and used:

So don't mislead us to thinking that we do have power, or we do have influence in this process. Don't mislead us that way. The ... *Oceans Act* sets us up for that. Maybe it was a bit too open, it is the one part that was not honourable or not straightforward on the real facts on this. I like to claim that when you go into something like this you should go into it naively, without baggage. But yet that whole process was not set up naively, without baggage. And yet here we are going in as stakeholders thinking that we're really representing our interests in coming to consensus, and being prepared to give and take with other stakeholders, who we recognise as other valid players in it. If that's being treated as a token process then at a certain point you feel used in that. (Anon. 5)

The facilitator was frustrated as well:

...somebody in Ottawa decided that they thought it was important to put in the *Gazette* that First Nations agreed to forego their traditional rights. ... Take a look at the *Gazette*!— "agreed to forego their traditional rights in the Race Rocks area". And you know what, that was not the discussion at all. From the outset we reiterated, over and over again, this does not abridge or affect First Nations traditional rights for food, ceremonial, cultural or whatever. We hope that First Nations will support the conservation concerns we have, and work on a conservation basis in this area. (Facilitator)

7.2.3 Respectful of identities

For most participants, respecting identities in the RRAB process was about **respecting and involving First Nations**. To one participant, the best way to achieve this was:

...people-to-people, usually involving elders, usually involving ceremony, and certainly involving a lot of respect, and this desire to wipe the slate clean and figure out what's the best way of doing things. And that's what [CSSC representative] was all about, and that's who the relationship was with.... (Anon. 2)

All the participants interviewed were impressed with the presence provided by the CSSC. However, the incorporation of cultural awareness activities drew a wide range of responses. Some participants expressed frustration at being called upon to resolve large, intractable issues. In the words of one:

First Nations were given very generous amounts of time to present their perspective on what was taking place. From the First Nations side of things, there was very good participation, a positive contribution in the end. The process to me was frustrating, in that culturally I don't have the kind of time they want to take to try and understand each other. I was unwilling to do two, three day retreats to understand their language, which was one of the requests they brought to the table. So it was awkward for moments where I had to express that "as much as I know your language is important, and culturally, over time it's something I want to learn more about, I can't lock myself up for three days to learn that right now. If that becomes what's required for me to participate in this process, I would have to withdraw". That was very awkward to make those statements. But again, as I step back and look back with a retrospective sort of glance, I see that it was okay, that it was quite positive in the end, although in that moment I can still feel the frustration that I was feeling: why are we thrown into these environments where we are expected to solve all of the cultural frustrations that society is experiencing? This is just not right. As much I would like to solve that over my lifetime, I don't feel compelled to want to solve it over 3 days. I don't think that's realistic. (Anon. 6)

Most other participants were supportive of cultural activities, particularly those who attended the burning ceremony at Beecher Bay. The ritual of the burning ceremony had a marked impact on many of the participants. In the words of another participant:

... it was a very, very amazing ceremony. That was where the ancestors were coming on board, as it was explained to us, and there I really do believe that we had the blessing of the elders. ...we thought we had all of this resolved. (Anon. 2)

7.3 Balance

This section summarises participants' views on the degree to which the RRAB was a fair process guided by skilled facilitation (see Section 4.4.2, p. 36).

7.3.1 Fair process through skilled facilitation

Participants' opinions on the fairness and facilitation of the RRAB process focused on the implications of **combined co-ordination and facilitation by DFO**. This issue was further highlighted by the presentation of **boundary options** for the MPA, and the experience of **independent facilitation** in Meeting No. 5.

Combined co-ordination and facilitation by DFO

The facilitator was of two minds about the possibility of independent facilitation:

...when you try to be a facilitator, you don't want to push your agenda. Being employed by Fisheries and Oceans was perhaps not the best construct. But, looking for independent or contract facilitation, I didn't think that was the best way to go, either. There's luggage with both particular ideas. You have the independent facilitator who really doesn't know the territory, doesn't understand a lot of the detail, a lot of the complexity, but is quite independent in some respects, although still working for whoever's paying the bill. So not entirely independent. Or someone who wants to facilitate who is working for Fisheries and Oceans, and we know who's paying for that facilitation, and I would suggest that both people are accountable, and I think the people participating understood that. (Facilitator)

Most participants felt that the discussion at the consensus table was inclusive and fair. In the words of one participant:

I like the way it was set up. It was informal, everybody was put at ease right at the start, that's all [the facilitator] kept saying: "we think we can accommodate everybody here, we want to know what impacts are happening and how we can mitigate, so by all means speak up, and by all means don't be afraid to say why and when and how you need it". So I thought [s/he] was very good at putting everybody at ease very early in the process. (Anon. 10)

For another participant, the facilitator's personal approach was important:

...[The facilitator] is a big, gregarious, gentle [person], who is very friendly and open, and doesn't have a hidden agenda of any kind, and wants the very best in what is done. If the success of what happened can be laid on any person's doorstep it would be because of [the facilitator], just because of who that person was and how that person was able to make everyone as comfortable as possible. (Anon. 9)

In contrast, several user group representatives felt that the discussion was biased against them, threatening their trust in the process. To one representative, this suggested the need for independent facilitation:

If any of the participants —any of the participants— aren't able to trust the process, and trust the facilitator, then I think you've created scepticism at the very least, and I think out of that can fall some...you know there's repercussions from that, there's costs that are attached to that. So to have somebody that is not only seen as being independent, but is absolutely independent in appearance, as well, in all aspects, not just in the goings-on of the meetings, not just through the proceedings. I think that's absolutely key and fundamental to any process. (Anon. 4)

To another user group representative, facilitation is of particular concern if the process is being convened by government, and being driven by a government agenda:

I don't think it was particularly effectively facilitated. I don't want to be unnecessarily critical, but it may have been better to have someone like Pearson College as the key facilitator, rather than government, because government always has an axe to grind, they always have an agenda. Pearson College does too, but it is a slightly softer agenda. (Anon. 6)

However, there was also recognition that the user groups brought with them a long-standing resentment of DFO. As put by another representative:

Most people would come in very defensive. There would be questions asked that were answered very impertinently to even the question. Lots of people, I believe, were "already already listening", which means that they had decided what DFO was saying, before they had even said it. It's called "already already listening", which is going in with a predetermined answer to any question that's going to be asked anyhow. Which was inaccurate, and not very effective. (Anon. 11)

The ENGO representatives were less fixed in their views. One ENGO representative maintained that independent facilitation is important, but was not necessary in this instance:

If this was a broader process, I would have taken issue to DFO facilitation. It kind of falls apart when government is both the convenor and chair of a process. But, because it's Race Rocks, it's pretty straightforward, we were surprised with how long it took. (Anon. 1)

To another ENGO representative, the issue of facilitation is not as critical as the co-ordination of the process itself, which should have involved both First Nations and BC Parks:

I don't think any facilitator is independent. Having hired our own facilitators to work in a similar sort of way, and I know that you still direct the facilitator, because we're paying their way. The only possibility is for all parties to pay for that facilitation, and to pick the facilitator. I didn't see the need for that; with respect to this...what I see is the process co-ordination being more important than the facilitation. You have to have good facilitation skills, but the process co-ordination should have involved First Nations. BC Parks would tell you that they were quite upset with Fisheries and Oceans through the course of this, at different times. They didn't feel like they were being heard on a number of things. (Anon. 7)

Boundary options

Many participants were troubled when the facilitator presented three options for the boundary of the MPA. As recounted by one participant:

...[the facilitator] led us through the options— they came directly from DFO. This is one criticism: in public planning processes, you shouldn't begin by predetermining what your three options are, especially since they are all the same, ecologically. (Anon. 1)

This view is echoed by another participant:

A facilitator cannot express any personal philosophy or positions or anything else. The facilitator cannot take the role of a participant. If [s/he] does, you need a different facilitator, and [s/he] needs to get at the table, to have a seat at the table as if [s/he]'s one of the players. (Anon. 4)

Reflecting back on the process, the facilitator is uncertain about using this approach:

When you talk about a protected area, you are setting up a fence, you are setting up a boundary, you are setting up an obstacle, and that obstacle is one of the fundamental issues with any discussions you have. When we started talking about Race Rocks, I did know that this would be the big issue. How big is this going to be? Where is the fence going to be drawn, and who is going to be in, and who is going to be out? To the creatures it doesn't matter so much because they can't quite read the bathymetry on the chart, and they can't say, "let's make a run for the marine protected area! Here come the fishermen, let's go!" I drew a map representing three sizes for the proposed MPA...they were all relatively small increments of each other...the biggest, the medium-sized one, and then the existing outline of the ecological reserve. So we could initiate some discussion about how big this should be, and for what reasons. I knew that the big one wasn't going to be big enough for the environmental groups. I knew that. And I knew that the small one was going to be too big for the SFAB. But of all three, the SFAB would buy in to the smallest one. And in many respects, there was no scientific, ecosystem analysis-based reasons for drawing the three different maps. (Facilitator)

Independent facilitation

The switch to independent facilitation in Meeting No. 5 took place so that the facilitator could join in the negotiation of the final recommendations:

I said, I'd really like to be able to participate in that discussion. ... And everybody thought that was OK. Then how about we get a facilitator who knows the area, and the conservation stuff generally, to come in and help with that final distillation of recommendations and all the rest of it. (Facilitator)

This independent facilitation was a new experience for several participants, who noticed the contrast with the previous meetings. In the words of one participant:

There was a key meeting at which the consensus suddenly occurred. Looking back on it I give more credit to the [independent] facilitator.... We got together in the room having talked through a whole lot of this stuff, and we banged through these recommendations pretty darned quickly, and I now realise that the [independent] facilitator was the key to making it happen. The meeting wasn't being chaired by a Fisheries person, and Fisheries was an active player at the meeting, and it freed us up to march through this stuff. And those recommendations —which I think all the advisory board members are quite proud of— were hammered out at that meeting. (Anon. 2)

7.4 Summary

Table 7.2 (p. 89) summarises the dominant voices of participants in the RRAB process.

Table 7.2 Dominant voices of participants in the RRAB.

Framework	Issues	Dominant voices
Challenge		
<i>Innovative</i>	<ul style="list-style-type: none"> ♦ No-take zone ♦ Co-management 	<p>Mostly positive. Most supported the negotiation of a compromise between ENGOs and the SFAB. However, some felt the boundaries are unenforceable.</p> <p>Mostly positive. Most consider the co-management provisions to be groundbreaking, and credit the involvement of the CSSC. However, some knew that the provisions would be problematic for DFO.</p>
<i>Fair decisions</i>	<ul style="list-style-type: none"> ♦ Scientific defensibility of the no-take zone 	Somewhat negative. Some were concerned that the no-take zone was not based on scientific rationale.
<i>Partnerships in implementation</i>	<ul style="list-style-type: none"> ♦ Voluntary stewardship ♦ Funding the Race Rocks MPA ♦ Continued role for the RRAB 	<p>Positive. Most felt the RRAB process improved opportunities for the voluntary stewardship of Race Rocks by user groups and Pearson College.</p> <p>Somewhat negative. Some were concerned that the written recommendations do not include provisions for the financial support of the Race Rocks MPA, something that was negotiated in Meeting No. 5.</p> <p>Negative. Many were concerned that the RRAB no longer plays a significant role in determining the future of Race Rocks.</p>
Respect		
<i>Inclusive</i>	<ul style="list-style-type: none"> ♦ First Nations ♦ Stakeholders 	<p>Mixed voices. Some felt that the objections raised by Douglas Treaty First Nations were foreseeable and avoidable. Others felt the objections were inevitable and motivated by an interest to win concessions in treaty negotiations.</p> <p>Mostly positive. Some would have preferred more participation by marine scientists and sport divers.</p>
<i>Accountable to the participants</i>	<ul style="list-style-type: none"> ♦ Waiting for Ministerial agreement-in-principle ♦ Failure of the regulatory process 	<p>Negative. Most considered the wait too long, which was disrespectful to participants and threatened the consensus achieved by the RRAB.</p> <p>Negative. Most considered the language in the <i>Gazette</i> to be an affront to the consensus achieved by the RRAB.</p>
<i>Respectful of identities</i>	<ul style="list-style-type: none"> ♦ Respecting and involving First Nations 	Mostly positive. Most considered the RRAB process an important cultural learning experience made possible by the successful involvement of the CSSC. However, some considered the cultural activities too time demanding.
Balance		
<i>Fair process through skilled facilitation</i>	<ul style="list-style-type: none"> ♦ Combined co-ordination and facilitation by DFO ♦ Boundary options ♦ Independent facilitation 	<p>Mixed voices. Most considered the facilitation inclusive and fair. However, several participants would have preferred independent facilitation and/or joint co-ordination with First Nations and BC Parks.</p> <p>Negative. Most did not consider it appropriate for a facilitator to present predetermined options to a consensus table.</p> <p>Positive. Most participants were proud of the consensus recommendations, which were credited in part to the independent facilitator.</p>

Chapter 8 – Interpretation

This chapter examines the outcomes of the case study, guided by the theoretical framework from Chapter 4 and the issues and opinions presented in Chapter 7 (Table 8.1). Each section reviews the relevant theoretical material, interprets the issues at hand, and then discusses the implications for the use of consensus processes to create marine protected areas in BC.

8.1 Innovative

To be innovative, a consensus process should explore “thoughtful solutions that could not be created within the constraints of existing political, legal, or administrative processes” (Cormick et al. 1996, p. 5). This can be achieved by ‘inventing options for mutual gain’ (Fisher and Ury 1991), challenging orthodoxy in institutions, and emphasising a learning-by-doing approach (Kelleher 1999).

8.1.1 No-take zone

From the beginning, the RRAB had a bold agenda: to deliver Canada’s first MPA under the *Oceans Act* (1996), complete with a no-take zone. Race Rocks was already a provincial Ecological Reserve, and the commercial fishery had been closed for a decade. As such, the two parties most affected by a no-take zone would be sport fishers and First Nations with aboriginal and treaty rights in the area.

Sport fishers

The potential boundary of the no-take zone ended up being a matter of negotiation between ENGOs who sought a large, multi-zone MPA, and sports fishers (SFAB and local marina operators) who sought to retain access to migratory fish species. Other issues were also at play: some ENGOs sought to ‘get this one done’ so that DFO could move on to other

Table 8.1 Outline for Chapter 8.

Section	Issues
Challenge	
8.1 Innovative	♦ No-take zone ♦ Co-management
8.2 Fair decisions	♦ Scientific defensibility of the no-take zone
8.3 Partnerships in implementation	♦ Voluntary stewardship ♦ Funding the Race Rocks MPA ♦ Continued role for the RRAB
Respect	
8.4 Inclusive	♦ First Nations ♦ Stakeholders
8.5 Accountable to the participants	♦ Waiting for Ministerial agreement-in-principle ♦ Failure of the regulatory process
8.6 Respectful of identities	♦ Respecting and involving First Nations
Balance	
8.7 Fair process through skilled facilitation	♦ Combined co-ordination and facilitation by DFO ♦ Boundary options ♦ Independent facilitation
8.8 Summary	

MPAs, and the SFAB wanted to demonstrate its support for the *Oceans Act* (1996). The negotiated solution was a no-take MPA (henceforth ‘marine reserve’; see Section 3.1.1, p. 10) that matched the boundaries of the Ecological Reserve.

Fisher and Ury (1991) would call this ‘positional bargaining’, finding the middle ground between two lines in the sand. There had been an attempt to find creative solutions, most notably in two proposals:

- Create an experimental marine reserve for five years, to see if by-catch by sport fishers was indeed a problem for bottom fish species; and
- Create a core no-take zone, surrounded by an extension of the provincial Ecological Reserve (protecting the seabed).

Rather than exploring these and other options further, there appeared to be a rush to get the SFAB’s endorsement and move on to other issues. This could be explained by several factors, including:

- An acknowledgement that marine reserves are a new concept in BC, and will not gain the ready support of fishers until they have a track record of success;
- The fear of straining the relationship between the SFAB and DFO, leading to a retrenchment of positions and the failure of the RRAB process; and
- The fear that a proposal to modify the provincial Ecological Reserve would provoke jurisdictional conflict with the province.

These are important considerations. However, the net result was a fisheries closure that could have been created under the long-standing *Fisheries Act* (RS 1985), rather than something distinctive to the integrated management approach embodied by the *Oceans Act* (1996). The possible implications of this outcome are twofold:

- It is not possible to dovetail the interests of NGOs and sport fishers, at least until there is more support among sport fishers for marine reserves that include closures for migratory and pelagic species. As such, the initial creation of small marine reserves may represent an incremental, ‘learning by doing’ approach (Kelleher 1999) to improved marine conservancy; and/or
- Seeking thoughtful solutions for the integrated management of marine resources (including the creation of marine reserves) requires more time and groundwork than was accorded the RRAB process.

First Nations

The support of a marine reserve by the CSSC likely resulted from the inclusion of provisions for the co-management of the Race Rocks MPA by First Nations, BC Parks and DFO. These provisions represent the most innovative outcome of the RRAB process, a serious ‘challenge to the orthodoxy’ (Kelleher 1999) of DFO.

8.1.2 Co-management

It is very difficult to create a *fully protected* marine reserve in coastal BC, most of which is subject to modern treaty negotiations. As discussed in Section 3.3 (p. 16), the aboriginal and treaty rights of aboriginal people in Canada are protected by the Constitution. X̄wáyən falls within the traditional territory of the Beecher Bay, Songhees and T’Sou-ke First Nations, conferring them aboriginal rights that are partly defined by the Douglas Treaties.

To create a fully protected marine reserve at Race Rocks, these rights would have to be redefined in the modern treaty negotiation process, and/or infringed upon by BC and Canada:

- **Treaty negotiations:** Would require the completion of the treaty negotiations ongoing between the Te’mexw Treaty Association, BC and Canada, which have been stalled at Stage 4 since 1996. The restriction of aboriginal access to Race Rocks would probably require some form of compensation; and/or
- **Infringement:** Would require extensive consultation, and perhaps the full consent of affected First Nations (Pape 1998). This consent is unlikely while treaty negotiations are underway.

In either case, the creation of a fully protected marine reserve would require consultation with First Nations over an extended period of time, and would have to be designed to respect the ‘government-to-government’ relationship between First Nations, BC and Canada.

Neither option was appealing for an Advisory Board convened by DFO (not tri-partite) and running under tight deadlines. The solution proposed by the RRAB was to create a *highly protected* marine reserve³⁹ that does not infringe on aboriginal and treaty rights:

There is recognition that, should a Marine Protected Area be established, it will not infringe on First Nations’ existing Treaty rights, traditional, food, ceremonial interests or relationship with the area.

(RRAB 2000a, p. 7)

³⁹ The marine reserve would be ‘highly protected’ because of the low impact of aboriginal activities at X̄wáyən.

The RRAB then recommended the establishment of a co-management regime for Race Rocks (Race Rocks Management / Implementation Committee) and all future *Oceans Act* MPAs (Pacific Steering Committee). Built on a respect for the ‘government-to-government’ protocol, these committees would create a dialogue between First Nations, government agencies and stakeholders (the post-designation RRAB), supporting marine stewardship and the treaty negotiation process. And should this be desirable, First Nations might eventually agree to restrict their activities at Xʷáyən.

The subsequent misrepresentation and/or rejection of these recommendations will be discussed in Section 8.5.1 (p. 99). The direct implications of this outcome are as follows:

- Consensus processes can be very successful at negotiating innovative proposals for the creation and management of highly protected marine reserves that include aboriginal people and respect aboriginal and treaty rights; and
- Given that the inclusion of co-management provisions was credited (by participants) to the CSSC, the form of aboriginal representation provided by the CSSC (the dialogue and activities, not necessarily the CSSC itself) is worth considering for other consensus processes for the creation of MPAs in BC.

8.2 Fair decisions

To reach fair decisions, consensus processes should refer to an independent standard agreed to by the participants. The use of an independent point of reference would address Foucault’s concerns with the dangers of communicative rationality (Ashenden and Owen 1999)⁴⁰. Such ‘objective criteria’ (Fisher and Ury 1991) might be provided by scientific studies or other forms of knowledge, such as traditional ecological knowledge.

The debate surrounding the scientific defensibility of the no-take zone at Race Rocks revolved around two arguments:

- The no-take zone needs to be larger than 251 ha (the size of the Ecological Reserve) to have a significant impact on marine ecosystems; and
- There is no justification for the closure of fisheries for migratory or pelagic species. They do not benefit from the closure, and by-catch is not a serious issue.

⁴⁰ Foucault would also suggest a critique of the historicity and subjectivity of science and traditional knowledge (Ashenden and Owen 1999).

The RRAB did not make a concerted effort to examine or resolve this debate. Except for anecdotal discussion, the RRAB did not explicitly draw upon scientific research or traditional ecological knowledge from the Race Rocks area. The explanations for this include:

- There are not enough scientific studies at Race Rocks to draw upon, and a traditional use study has not been conducted at Race Rocks; and
- The participants did not want to address this issue, choosing instead to accept a small no-take zone and move on to other topics.

The implications of this outcome are as follows:

- If there are not enough studies to inform no-take/boundary discussions at Race Rocks (the subject of a research program by Pearson College and others), it will be even harder to find baseline studies for most other areas of the coast. This suggests that DFO and other agencies should sponsor scientific research and traditional use studies in preparation for the designation of future MPAs; and
- Though scientific and traditional use studies would undoubtedly be of benefit, the absence of such studies is not a major hindrance to the creation of an MPA when the participants in a consensus process are motivated to reach closure.

8.3 Partnerships in implementation

The implementation of consensus agreements is as important as the process that created them (cf. Foucault, in Ashenden and Owen 1999). Successful implementation calls for partnerships in support of marine conservancy and community development, which may involve co-management (Jentoft 2000a, b, c; Kelleher 1999).

As introduced in Section 4.2.2 (p. 26), the NRTEE provides a series of questions with which to examine the implementation of consensus agreements (Cormick et al. 1996). These questions are addressed in various parts of this chapter (Table 8.2); this section will discuss the issues of voluntary stewardship, funding for the Race Rocks MPA, and a continued role for the RRAB.

Table 8.2 Implementing the consensus agreement negotiated by the RRAB.

Question from NRTEE	Section
Is the solution technically and legally sound?	8.5 Accountable to the participants
Will those whose support will be needed accept the agreement?	8.4 Inclusive
How will formal ratification be achieved?	8.5 Accountable to the participants
How will implementation be funded?	8.3 Partnerships in implementation
Who will be responsible for doing what?	8.3 Partnerships in implementation
When will parts of the agreement be implemented?	8.5 Accountable to the participants
Will actions follow agreed commitments?	8.5 Accountable to the participants
How will parties hold each other to commitments?	8.3 Partnerships in implementation
How will promises turn into action?	8.5 Accountable to the participants
What about unforeseen difficulties?	8.3 Partnerships in implementation

8.3.1 Voluntary stewardship

The RRAB considered several options for the management of human activities at Race Rocks, including prohibitions, regulations, and/or volunteer guidelines and stewardship. The RRAB made the following choices:

- **Prohibition:** Helicopter traffic, dredging and dumping, exploration or development of non-renewable resources;
- **Regulation:** Fishing activities; and
- **Volunteer guidelines and stewardship:** Vessel and boating management, diving activities, education and research activities, protection of birds and habitat, protection of marine mammals and habitat.

In other words, the RRAB prohibited only the most egregious activities, regulated fishing in order to create a highly protected marine reserve, and relied on volunteer guidelines and stewardship for all other activities. These choices were likely made for the following reasons:

- The activities of the RRAB forced several user groups to self-organise, and pushed them to develop guidelines that were then found to be acceptable to the RRAB; and
- The stewardship of Pearson College and the presence of Eco-guardians reassured participants that volunteer guidelines would be enforced through moral suasion.

The implications of these outcomes are as follows:

- Consensus processes are a catalyst for the improved organisation and capacity of user groups to engage in volunteer stewardship for MPAs; and
- The presence of a local warden at an MPA reduces the need for government regulations for many human activities.

8.3.2 Funding the Race Rocks MPA

Race Rocks is in the unique circumstance of having benefited from the presence of lightkeepers who voluntarily conducted warden-like activities, then lost their jobs to lightstation automation, and then were hired by Pearson College to be Eco-guardians while volunteering to do many of their former lightkeeping tasks. As recounted in Section 5.4 (p. 50), one of the intents of creating a Pilot MPA at Race Rocks was to potentially reinstate the lightkeepers, and by doing so support the implementation of the Race Rocks MPA.

Given this history, there was surprisingly little discussion of money in the RRAB process, except for the recommendation that “all levels of government financially support compliance, research and education” (RRAB 2000e, p. 6) at Race Rocks. The low level of discussion and the exclusion of this item in the written proposals may have been for the following reasons:

- It was a given that DFO would provide adequate funding for implementation;
- There was concern that ‘all levels of government’ was beyond DFO’s jurisdiction; and/or
- There was an assumption that Pearson College was willing and able to continue paying for the Eco-guardians.

Whichever the reasons, the net result is that —pending official designation— there is little dedicated government funding for the implementation of the Race Rocks MPA⁴¹. The implications of this outcome are as follows:

- Consensus processes should negotiate explicit funding arrangements as part of the consensus recommendations (oral and written); and
- MPAs benefit from the co-sponsorship of a non-governmental institution.

8.3.3 Continued role for the RRAB

The RRAB negotiated a sophisticated management/governance framework for the Race Rocks MPA, including provisions for the co-management of Race Rocks, and the continued involvement of stakeholders (a post-designation RRAB). However, these recommendations hinged on the successful implementation of the Race Rocks MPA. The failure of the *Gazette* process created one of the NRTEE’s ‘unforeseen difficulties’ (Cormick et al. 1996).

Faced with a crisis, DFO did not call another RRAB meeting until December 2001. By then, the RRAB was no longer the central forum for deciding the future of the Race Rocks MPA. This led to the disillusionment and/or non-participation of several members of the (original) RRAB. The implication of this outcome is as follows:

- Consensus agreements for the creation of MPAs should include contingency plans for the involvement of stakeholders if implementation does not go as planned.

⁴¹ This excludes the various government grants that have supported environmental surveys and the implementation of the RACEROCKS.COM web site (Millennium Bureau 1999), as well as funding for the environmental remediation of Coast Guard facilities.

8.4 Inclusive

A fundamental concern in any consensus process is that it be inclusive (Habermas' 'generality', see Flyvbjerg 1998b), "bringing in from the beginning every significant sector that will affect, or be affected by the MPA" (Kelleher 1999, p. 21). Agardy (1997) suggests this will empower local users who might not otherwise have a voice in decision-making.

The RRAB facilitator used a two-tier approach to public consultation: incorporating First Nations and primary stakeholders in the RRAB, and meeting with other groups separately (48 in all). For the most part, this was successful. The only groups that could have been better represented were:

- **First Nations:** the problems with the *Gazette* would not have been as serious had there been better representation from Douglas Treaty First Nations; and
- **Stakeholders:** some participants felt there was insufficient representation by marine scientists from local universities, and by local sport diving clubs.

8.4.1 First Nations

A discussion on the inclusion of First Nations raises fundamental questions about the involvement of aboriginal people in the management of natural resources in BC, some of which were introduced earlier in the discussion on co-management (see Section 8.1.2, p. 92). As discussed in that section, the involvement of First Nations was seen to be successful up until the publication of draft regulations in the *Gazette*, and the subsequent objection by several Douglas Treaty First Nations.

The representation of First Nations by the CSSC was an attempt to be inclusive without interfering with the treaty negotiation process. Had the *Gazette* been properly written, it is quite possible that the Race Rocks MPA would have had the tacit blessing of Douglas Treaty First Nations, as was initially indicated by the burning ceremony at Beecher Bay. One could even speculate that the successful designation of the Race Rocks MPA, with all the provisions proposed by the RRAB, would have strengthened the role of the CSSC in representing First Nations in similar fora throughout the 'Salish Sea'.

Despite these possibilities, the selection of the CSSC to represent First Nations was a risky strategy, for several reasons:

- Given the size of the Canadian government bureaucracy, regulatory processes are not failsafe. Some would say they are even prone to mistakes (and subsequent correction, of course);
- Though the CSSC has connections and influence with local First Nations, the Douglas Treaty First Nations did not choose the CSSC as their representative; and
- Though the CSSC played a prominent role in the RRAB, it did not participate as an equal partner with DFO, as required by the government-to-government protocol.

This would suggest that a preferred approach to the involvement of First Nations would be more robust, have the explicit endorsement of local First Nations, and respect the government-to-government protocol. Such an approach might proceed as follows:

- Before anything else, DFO initiates contact with local First Nations;
- Assuming there is support for the MPA, DFO invites First Nations to be a joint convenor of the consensus process; then
- As joint convenors, DFO and local First Nations negotiate what form of co-ordination, facilitation and aboriginal representation should take place. Possibilities include joint co-ordination (co-chairs), and/or independent facilitation.

In other words, DFO would initiate a co-management partnership from the start.

8.4.2 Stakeholders

It is in the nature of consensus processes to discover, partway through the process, that important stakeholders are missing (Cormick et al. 1996). Some RRAB participants indicated that they would have preferred more representation from marine scientists and sport divers. The possibility of including more marine scientists was discussed but not successfully acted on. The sport diving club at the military base was part of the wider consultations conducted by the facilitator, but perhaps should have been included in the RRAB itself.

This may have been for several reasons:

- The facilitator did not follow up on the request for more marine scientists;
- No other scientists were available to join the RRAB, particularly with its time demands; and/or

- The sport diving club at the military base did not appear to be a primary stakeholder until after the RRAB process concluded.

These possibilities suggest that:

- Consensus processes should have mechanisms for addressing concerns about the inclusiveness of the process;
- If representation by more marine scientists is crucial, consensus processes may have to be more accommodating of academics' time constraints— perhaps by holding some meetings at the university campus; and
- Consensus processes should be prepared to adapt to the incorporation of new members partway through. This adaptation (and delay) will be less difficult than the subsequent problems in implementing a consensus agreement.

8.5 Accountable to the participants

To be accountable, a consensus process should be designed by the participants, be flexible, and have time limits for completion. In addition, participants should be accountable to the process and each other, most importantly by providing effective representation of their constituencies (Dorcey and McDaniels 2001).

One of the strengths of the RRAB process was the development of a comprehensive Terms of Reference, which was approved by the group in Meeting No. 3. Apart from the fact that the RRAB was convened, co-ordinated and facilitated by DFO (rather than any other arrangements suggested in this chapter), the design of the RRAB process was inclusive, and for the most part successful. Furthermore, the RRAB process was relatively open and flexible, and had a brisk but plausible timeline for reaching consensus.

As such, the accountability of the process revolves around the events that transpired after the RRAB produced consensus recommendations: the wait for Ministerial agreement-in-principle and the failure of the regulatory process.

8.5.1 Waiting for Ministerial agreement-in-principle

When the RRAB first met in December 1999, the facilitator proposed an aggressive timeline for the completion of the process, including three meetings before the end of January 2000. In the end, there were five meetings in less than four months, which was an

ambitious, concerted push to reach consensus before the ‘end of fiscal’ (March 31). After that rush, it took DFO almost six months before the ‘official designation’ ceremony, which indicated joint Ministerial agreement-in-principle.

Most participants found this too long, and pointed out that the ceremony would have gone off without a hitch if it had taken place before the escalation of violence in Miramichi Bay. Furthermore, the *Proposal to Designate Xʷáyən (Race Rocks) Marine Protected Area*, which sets out a timeline for designation (Table 6.11, p. 71), was not released until September 2000, toward the end of the waiting period (DFO 2000b).

This delay may be understandable, particularly since this was the first MPA regulation to be written by DFO. However, the concern expressed by participants suggests the following:

- Consensus agreements for the creation of MPAs should include a tentative timeline for the completion of government regulatory processes (or whatever process will lead to final designation); and
- As proposed earlier, consensus agreements should include a mechanism for reconvening the consensus table should the regulatory process not go as planned.

8.5.2 Failure of the regulatory process

As discussed earlier, the *Regulatory Impact Analysis Statement* in the *Gazette* includes statements to the effect that local First Nations agree to ‘voluntarily forego’ their traditional activities at Race Rocks, and excludes the provisions for the co-management of the Race Rocks MPA. This may have been for several reasons:

- **Traditional activities:** The recommendations received by DFO (Headquarters) were logically inconsistent—strictly speaking, it is impossible to create a no-take zone (no fishing by anyone, including aboriginal people) while at the same time allowing traditional activities. Since the CSSC endorsed the creation of a no-take zone, and the CSSC was understood to represent First Nations, it was logical to conclude that First Nations had agreed to forego their traditional activities; and
- **Co-management:** The *Oceans Act* (1996) falls under the jurisdiction of DFO. Co-management with BC Parks and First Nations would compromise this jurisdiction and fetter the discretion of the Minister. The less threatening option was the ‘co-operative management’ of Race Rocks with government agencies and stakeholders, which does not threaten DFO’s jurisdiction or the Minister’s discretion (Figure 8.1, p. 101).

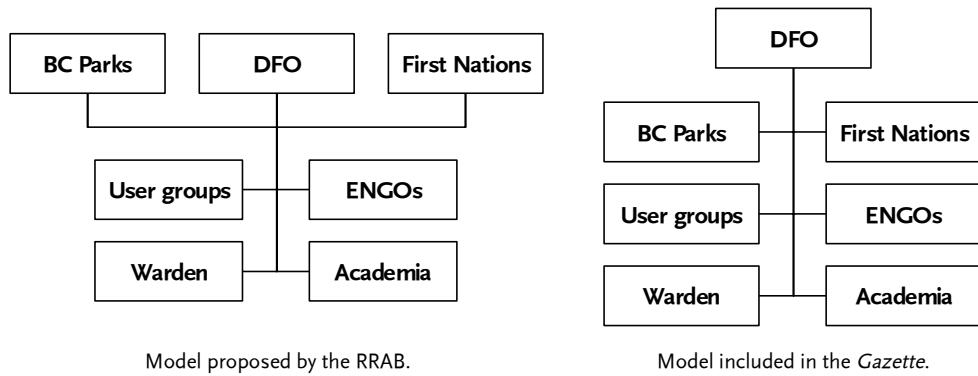


Figure 8.1 Model proposed by the RRAB.

Model included in the *Gazette*.

Whatever the reasons, these sections in the *Statement* are a significant departure from the consensus recommendations provided by the RRAB. Of even greater concern, the *Statement* claims that these provisions were recommended by the RRAB. Forester (1989, p. 38) would call this the management of public consent through misinformation, reaching decisions “without legitimate representation of public interests but appealing to public consent as if this were not the case” (see Table 4.2, p. 23). Foucault would further call this an example of ‘governmentality’, of the exertion of power through discourse (Layder 1994)⁴².

It is inappropriate to lay the blame for this on the RRAB, the facilitator, or even DFO, which had no experience with the preparation of regulations for MPAs. The issue at hand is that DFO (Headquarters) was clearly unprepared for the recommendations proposed by the RRAB and approved by DFO (Pacific Region). This suggests the following:

- Consensus processes for the creation of MPAs should include representatives from DFO (Headquarters), who are able to provide immediate feedback on the acceptability of proposals on the table. In other words, DFO (Headquarters) should be treated as a separate government agency; and
- If recommendations are to be rejected —by DFO, the Privy Council Office or the Department of Justice— they should be openly rejected and returned to the consensus table, where alternatives can be negotiated by the participants.

⁴² Foucault would also question the supposition that the recommendations of a consensus process are superior to the decisions made by the authorities of representational governments (Fischler 2000).

8.6 Respectful of identities

As stated succinctly by Hillier (1998, p. 16), “treating people equally is inherently unequal”. Consensus processes should seek to understand, respect and accommodate difference, providing for the full involvement of all participants. In the context of MPAs in BC, the principal cultural divide is with First Nations. Accommodating this difference should include an effort to understand the cultural heritage of aboriginal people, supporting Habermas’ ‘ideal role-taking’ at the consensus table (Flyvbjerg 1998b).

The RRAB process provided several opportunities for non-aboriginal participants to learn Coast Salish perspectives on marine resource management, including the 13-moons workshop and the burning ceremony at Beecher Bay. Most participants were supportive of these activities; however, one participant was concerned that cultural activities have the potential to be unreasonably time demanding. Nevertheless, these activities contributed to the negotiation of several recommendations that reflect aboriginal perspectives, including provisions for co-management and a traditional use study.

These outcomes have the following implications:

- Given that the cultural activities were credited (by participants) to the CSSC, the form of aboriginal representation provided by the CSSC (the dialogue and activities, not necessarily the CSSC itself) is worth considering for other consensus processes for the creation of MPAs in BC.
- Cultural awareness activities should be in a format that is acceptable (particularly with respect to time), if not appealing to other participants in the consensus process.

8.7 Fair process through skilled facilitation

A fair and productive consensus process is one where the participants are able to ‘separate the people from the problem’ and ‘focus on interests, not positions’ (Fisher and Ury 1991). The facilitator’s role is to create conditions of discourse that approximate a Habermasian ‘ideal speech situation’ (Flyvbjerg 1998b), while at the same time seeking to ‘plan in the face of power’ (Forester 1989). The more difficult the issue, the more likely the facilitator should be an independent person trusted by all participants to be neutral to the outcome of the consensus process.

As discussed in Section 8.5 (p. 99), one of the successes of the RRAB process was the quick negotiation of a comprehensive Terms of Reference. This document provided extensive guidance for fair and respectful discourse, such as:

- ♦ Share airtime with others;
- ♦ Offer respect for different viewpoints and attention when others are speaking;
- ♦ Ask questions for clarification and mutual understanding;
- ♦ Verify assumptions; [and]
- ♦ Deal with differences as problems to be discussed, not battles to be won. (RRAB 2000f, pp. 3-4)

The Terms of Reference also included a sophisticated definition of consensus, which roughly corresponds to Kaner's (1996, p. 212) "agreement with reservations":

Consensus shall mean the "general agreement of all participants on a package of decisions or recommendations" and shall embody the following concepts:

- ♦ Consensus does not mean total concurrence on every aspect of a decision, but all participants must be willing to accept the overall decision package.
- ♦ If a participant withholds agreement on an issue(s), that participant is responsible for explaining how their interests are adversely affected or how the proposed agreement fails to meet its interests. The participant withholding agreement must propose alternatives and other participants must consider how all interests may be met.
- ♦ Once consensus is reached on the overall package, it is assumed to be binding (Cormick et al. 1996 [citation in original]).
- ♦ All participants to a recommendation on which consensus had been achieved agree to exercise their rights, mandates, and responsibilities consistent with that recommendation and to take such further steps as may be necessary to give it effect.
- ♦ If consensus is not achieved through this process, each participant will exercise their rights, responsibilities, and mandates as they see fit— unfettered as to statutory decision-making responsibilities and without prejudice to their rights and obligations by reason of having participated in the process. (RRAB 2000f, p. 4)

With these ground rules in place, participants' concerns with the facilitation of the RRAB process were more about 'who' and 'what' rather than 'how' the RRAB was facilitated. These concerns focused on three issues: combined co-ordination and facilitation, the presentation of boundary options, and the change to independent facilitation.

8.7.1 Combined co-ordination and facilitation

The RRAB process was convened, co-ordinated, and for the most part facilitated by DFO. As described in Section 7.3.1 (p. 86), the DFO co-ordinator/facilitator felt that this was preferable to independent facilitation, for the following reasons:

- An independent facilitator may not “know the territory”;
- A contracted independent facilitator is not very independent, given that DFO would still be paying the bills; and
- A DFO facilitator is accountable for what happens in the process.

Most participants were satisfied with this arrangement, or were not aware that there was an alternative. In the words of one participant, this was “DFO’s show”. However, one ENGO would have preferred joint co-ordination with BC Parks and First Nations—a co-management approach from the start. Moreover, user groups had “learned from experience” to be mistrustful of any consultative process that is led by government, DFO or otherwise.

It would appear that the more a group interacts with government consultation processes, the less trustful they are of their sincerity and integrity. This suspicion is made worse when the outcome of the consultation process will have a direct impact on a person’s livelihood. For example, ENGOs —concerned with promoting long-term ideals— may feel less threatened than user groups, who are faced with a potential loss in economic opportunity⁴³. Put differently, the more a group feels threatened, the less trusting they will be.

The point of this discussion is to reinforce the notion —suggested by Kaner (1996) and others—that consensus agreements are built on participants’ trust in the facilitator, independent or otherwise. This suggests the following:

- The participants in consensus processes should choose what form of facilitation should take place (independent vs. non-independent), and who the facilitator should be; and
- If the participants call for an independent facilitator, they should choose someone who is knowledgeable about the topic under discussion, and consider joint funding arrangements.

8.7.2 Boundary options

Before the RRAB process began, the facilitator prepared a map depicting three boundary options for the Race Rocks MPA. The presentation of these options early in the RRAB process raised the concerns of several participants, who felt it was an inappropriate attempt to

⁴³ This rule does not hold fast, however, when ENGOs are fighting to protect a species or ecosystem that is under serious threat.

determine the outcome of the process. The facilitator later concurred that this was not the best way to have proceeded.

Though the boundaries were presented as options for discussion, Forester (1989, p. 38) would ask whether this had the effect of “misrepresenting actual possibilities to the public”. The three options certainly loomed large over the RRAB, dampening the search for other possibilities. This suggests the following:

- Regardless of good intentions, a co-ordinator and/or facilitator should not develop options for discussion without the prior consent of participants in the consensus process; and
- Preferably, options would be proposed by participants in the process, not the facilitator.

8.7.3 Independent facilitation

DFO contracted an independent facilitator to guide the negotiation of the final recommendations in Meeting No. 5. All participants interviewed were very impressed with the role played by this facilitator, who used the ‘one-text procedure’ to reaching consensus. The participants further reported a strong feeling of accomplishment —one called it “an incredible rush of excitement”— at having finally reached consensus, and on time.

The success of the independent facilitation in Meeting No. 5 suggests the following:

- Independent facilitation is a promising approach to the negotiation of final recommendations; and
- Facilitators should consider using the ‘one-text procedure’ for the negotiation of final recommendations.

8.8 Summary

The implications of the case study are listed in Table 8.3 (p. 106).

Table 8.3 Implications of the case study.

Framework	Issues	Implications
Challenge		
<i>Innovative</i>	<ul style="list-style-type: none"> ◆ No-take zone ◆ Co-management 	<ul style="list-style-type: none"> ◆ The initial creation of small marine reserves may represent an incremental, 'learning by doing' approach to improved marine conservancy. ◆ Seeking thoughtful solutions for the integrated management of marine resources (including the creation of marine reserves) requires more time and groundwork than was accorded the RRAB process. ◆ Consensus processes can be very successful at negotiating innovative proposals for the creation and management of highly protected marine reserves that include aboriginal people and respect aboriginal and treaty rights.
<i>Fair decisions</i>	<ul style="list-style-type: none"> ◆ Scientific defensibility of the no-take zone 	<ul style="list-style-type: none"> ◆ DFO and other agencies should sponsor scientific research and traditional use studies in preparation for the designation of future MPAs. ◆ Though scientific and traditional use studies would undoubtedly be of benefit, the absence of such studies is not a major hindrance to the creation of an MPA when the participants in a consensus process are motivated to reach closure.
<i>Partnerships in implementation</i>	<ul style="list-style-type: none"> ◆ Voluntary stewardship ◆ Funding the Race Rocks MPA ◆ Continued role for the RRAB 	<ul style="list-style-type: none"> ◆ Consensus processes are a catalyst for the improved organisation and capacity of user groups to engage in volunteer stewardship for MPAs. ◆ The presence of a local warden at an MPA reduces the need for government regulations for many human activities. ◆ Consensus processes should negotiate explicit funding arrangements as part of the consensus agreement. ◆ MPAs benefit from the co-sponsorship of a non-governmental institution. ◆ Consensus agreements for the creation of MPAs should include contingency plans for the involvement of stakeholders if implementation does not go as planned.
Respect		
<i>Inclusive</i>	<ul style="list-style-type: none"> ◆ First Nations ◆ Stakeholders 	<p>A consensus process for the creation of an MPA might proceed as follows:</p> <ol style="list-style-type: none"> 1) Before anything else, DFO initiates contact with local First Nations. 2) Assuming there is support for the MPA, DFO invites First Nations to be a joint convenor of the consensus process. 3) As joint convenors, DFO and local First Nations negotiate what form of co-ordination, facilitation and aboriginal representation should take place. Possibilities include joint co-ordination (co-chairs), and/or independent facilitation. <p>In other words, DFO would initiate a co-management partnership from the start.</p> <ul style="list-style-type: none"> ◆ If representation by more marine scientists is crucial, consensus processes may have to be more accommodating of academics' time constraints— perhaps by holding some meetings at the university campus; ◆ Consensus processes should be prepared to adapt to the incorporation of new members partway through. This adaptation (and delay) will be less difficult than the subsequent problems in implementing a consensus agreement;
<i>Accountable to the participants</i>	<ul style="list-style-type: none"> ◆ Waiting for Ministerial agreement-in-principle ◆ Failure of the regulatory process 	<ul style="list-style-type: none"> ◆ Consensus agreements for the creation of MPAs should include a tentative timeline for the completion of government regulatory processes (or whatever process will lead to final designation). ◆ Consensus processes for the creation of MPAs should include representatives from DFO (Headquarters), who are able to provide immediate feedback on the acceptability of proposals on the table. In other words, DFO (Headquarters) should be treated as a separate government agency. ◆ If recommendations are to be rejected, they should be openly rejected and returned to the consensus table, where alternatives can be negotiated by the participants.
<i>Respectful of identities</i>	<ul style="list-style-type: none"> ◆ Respecting and involving First Nations 	<ul style="list-style-type: none"> ◆ The form of aboriginal representation provided by the CSSC (the dialogue and activities, not necessarily the CSSC itself) is worth considering for other consensus processes for the creation of MPAs in BC. ◆ Cultural awareness activities should be in a format that is acceptable (particularly with respect to time), if not appealing to other participants in the consensus process.

(Continued next page)

Balance		
<i>Fair process through skilled facilitation</i>	<ul style="list-style-type: none"> ◆ Combined co-ordination and facilitation by DFO 	<ul style="list-style-type: none"> ◆ The participants in consensus processes should choose what form of facilitation should take place (independent vs. non-independent), and who the facilitator should be. ◆ If the participants call for an independent facilitator, they should choose someone who is knowledgeable about the topic under discussion, and consider joint funding arrangements.
	<ul style="list-style-type: none"> ◆ Boundary options 	<ul style="list-style-type: none"> ◆ Regardless of good intentions, a co-ordinator and/or facilitator should not develop options for discussion without the prior consent of participants in the consensus process. ◆ Preferably, options would be proposed by participants in the process, not the facilitator.
	<ul style="list-style-type: none"> ◆ Independent facilitation 	<ul style="list-style-type: none"> ◆ Independent facilitation is a promising approach to the negotiation of final recommendations. ◆ Facilitators should consider using the 'one-text procedure' for the negotiation of final recommendations.

Chapter 9 – Conclusions

This chapter sums up the main implications of the case study, proposes conclusions and recommendations for the implementation of consensus processes to create marine protected areas in BC, and then suggests avenues for further study.

9.1 Successes and shortcomings

This section reviews the successes and shortcomings⁴⁴ of the RRAB process. As discussed at various points in this thesis, Race Rocks was DFO's first experience with MPAs. The co-ordinator of the RRAB process was working mostly from scratch, drawing only on broad policies, professional experience and the insights of colleagues. Regardless of the critique presented here, the RRAB process and recommendations are a laudable achievement.

The successes of the RRAB process were as follows:

- **Innovation:**

- *Boundaries:* The creation of a small marine reserve will likely improve public support for future MPAs in BC. Concerns about the enforcement of the MPA boundaries will likely be offset by volunteer stewardship and the presence of Eco-guardians;
- *Co-management:* The co-management provisions would have allowed the creation of a highly protected marine reserve that respects aboriginal and treaty rights. It would have also provided a strong precedent for future MPAs;

- **Partnerships in implementation:** The RRAB process improved the capacity of user groups to engage in volunteer stewardship at Race Rocks;

- **Inclusive:** With the exception of Douglas Treaty First Nations, the RRAB process included most groups that “will affect, or be affected by the MPA” (Kelleher 1999, p. 21);

- **Respectful of identities:** The RRAB was an important cultural learning experience made possible by the successful involvement of the CSSC; and

- **Fair process through skilled facilitation:** Most participants considered the facilitation of the RRAB meetings to be inclusive and fair. Most were also proud of the consensus recommendations negotiated under the guidance of the independent facilitator.

⁴⁴ The categories used in this section are a rough grouping of the ratings used to summarise the voices of the participants (see Table 7.2, p. 89). The change in terminology is intended to distinguish the author's from the participants' voices.

Many of the successes of the RRAB process can be attributed to the energy and resolve of the DFO co-ordinator/facilitator. The co-ordinator/facilitator was going to create an MPA *with* the support of everyone in the RRAB. There was a determined effort to do this right: to accommodate needs, get everyone on board, and create a new community for marine stewardship, all within a few short months.

The deliberation at the consensus table was inclusive and respectful. The participants were challenged to think differently, but in the words of one participant: “there was leaning, but not to the point that the person said ‘ouch’”. Of particular note was the successful involvement of the CSSC, including the organisation of aboriginal workshops and ceremonies.

The shortcomings of the RRAB process were as follows:

- **Innovative?** The boundary of the marine reserve was a line drawn in the sand between two adversaries, rather than a creative solution that reflects the integrated management approach embodied by the *Oceans Act* (1996);
- **Partnerships in implementation?** The problems with the regulatory process have meant that there is no stable funding for the management of the Race Rocks Pilot MPA, and the RRAB is no longer the primary forum for guiding final designation;
- **Inclusive?** Douglas Treaty First Nations were not properly represented on the RRAB;
- **Accountable to the participants?** The wait for Ministerial Agreement-in-Principle was too long for most participants. The *Regulatory Impact Analysis Statement* did not respect the consensus reached by the RRAB, and —by claiming otherwise— compromised the integrity of participants in the process; and
- **Fair process through skilled facilitation?** The combined role played by the DFO co-ordinator/facilitator weakened several participants’ trust in the process. This trust was further jeopardised by the proposal of predetermined boundary options for the MPA.

The shortcomings of the RRAB process derive mostly from a lack of prescience and caution. In hindsight, it might have been expected that the user groups would be suspicious and could be reassured by independent facilitation. It could have been foreseen that the presentation of preconceived boundary options would create wedges rather than bridges. It could have been further understood that contracting the CSSC to represent First Nations was a risky approach. Though less predictable, there might also have been concern that the provisions of the consensus agreement would be rejected and/or modified by ‘Ottawa’.

9.2 Planning for consensus

The apparent disconnect between the Pacific Region and Headquarters offices of DFO suggests the central conclusion of this thesis: a consensus process for the creation of MPAs in BC should incorporate—and gain the consent of—representatives from each part of the full designation process (Figure 9.1).

Why should this be? In the case study, the RRAB (Meeting Nos. 1-5) appears to have been a relatively successful consensus process, one of Forester's (1999, p. 197) "...spaces for speaking and listening, for difference and respect, for the joint search for new possibilities". All would seem to be well. However, this was not the whole story:

- The Pilot MPA was created by Ministerial directive;
- DFO arrived at the first RRAB meeting with preconceived boundaries for the MPA;
- After the RRAB reached consensus, the recommendations were reworked by DFO (Pacific Region) and then modified by DFO (Headquarters), the Privy Council Office and the Department of Justice; and
- The final status of the Race Rocks MPA is being negotiated behind closed doors between DFO and Douglas Treaty First Nations.

After negotiating a hard-fought consensus, the RRAB (Meeting No. 6) has been marginalized, acting as little more than a forum for information dissemination.

A generalized interpretation of this conclusion is that in employing consensus techniques, planners should think 'outside the process'. Although fair discourse is critical, planning for consensus also means *planning for the consensus recommendations*—making sure the right people are party to the consensus, and that there will not be any surprise reactions from the powers that be. This calls for a contemplation and critique of how the consensus process will

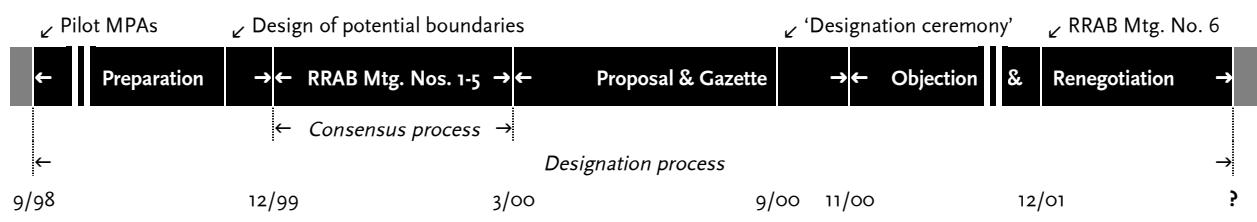


Figure 9.1 Consensus vs. designation processes at Race Rocks.

interact with the political landscape that surrounds it— where the consensus process came from and where the consensus decision will go.

To ignore these issues is to limit the ability of a consensus process to implement “thoughtful solutions that could not be created within the constraints of existing political, legal, or administrative processes” (Cormick et al. 1996, p. 5). There is little to be accomplished by negotiating a ready consensus among like-minded individuals, while avoiding those who will make the final decisions. To ‘plan in the face of power’ (Forester 1989) is to have a clear understanding of what powers are at hand, and to include them in the push for change.

9.3 Recommendations

The successes of the case study and the conclusions presented above suggest that a consensus process for the creation of MPAs in BC should proceed as follows:

- **Initiation:** DFO initiates contact with affected First Nations (and BC Parks in areas with provincial seabed or adjoining foreshore). Assuming there is support for the MPA, DFO invites First Nations (and BC Parks) to be a joint convenor of the consensus process;
- **Co-ordination and Facilitation:** As joint convenors, DFO and local First Nations (and BC Parks) negotiate what form of co-ordination and facilitation should take place. Possibilities include joint co-ordination, and/or independent facilitation;
- **Representation:**
 - *DFO:* Representatives from the Pacific Region and Headquarters, with regular contact with the Minister’s office, Privy Council Office and Department of Justice;
 - *First Nations:* Representative(s) with the mandate to negotiate on behalf of all affected First Nations;
 - *BC Parks:* Representative(s) with the appropriate level of authority, depending on whether BC Parks is a contributing participant, a joint convenor, or a joint convenor contemplating parallel designation under provincial legislation;
 - *Stakeholders:* Appropriate representatives as identified by the convenors, and with an open door policy at the beginning of the process. At minimum, this would include user groups, NGOs, academics and local stewards. There should also be mechanisms for the incorporation of stakeholders identified during the process;
- **Terms of Reference:** Negotiated by the participants, including (among other things) a clear definition of the meaning of consensus, and a timeline for reaching consensus;

- **Options:** The options to be considered in the designation of the MPA should be developed by the participants in the consensus process. This may include the commissioning of studies (scientific and otherwise) in support of the negotiations;
- **Decision-making:** All participants (including DFO Headquarters) should accede to the consensus recommendations negotiated in the process;
- **Agreement:** Should address the NRTEE questions set out in Table 4.5 (p. 27), including a tentative timeline for designation and explicit funding arrangements;
- **Designation:** The consensus table should meet throughout the designation process, so that it is able to provide advice and address complications as they arise; and
- **Implementation:** The participants in the consensus process should have continued involvement in the implementation and management of the MPA.

As stated earlier, these recommendations represent a co-management approach to the creation of MPAs, combined with a respect for the government-to-government protocol with First Nations. As such, they are similar to the RRAB recommendations that were rejected during the preparation of the *Regulatory Impact Analysis Statement for the Gazette*.

What makes this proposal different? The recommendations presented here outline the design of a co-managed *consensus process* for the creation of a future MPA. Consensus processes are relatively self-contained, non-threatening fora for experimenting with new forms of public engagement. This would be another way to ‘learn by doing’, as called for in DFO’s (1999b) MPA Policy and the *Oceans Act* (1996).

Just as the creation of a small marine reserve is a stepping-stone for future MPAs, so would an experiment with a joint or tri-partite consensus process (with BC Parks if necessary) be a stepping-stone to the joint or tri-partite co-management of MPAs. A representative from ‘Ottawa’ would not only contribute to and strengthen the consensus agreement, but also gain a meaningful appreciation of the potential of the co-management approach to address the unique challenges faced by marine resource managers in the areas of coastal BC that are subject to treaty negotiations.

9.4 Suggestions for further study

The recommendations presented above derive from the theoretical and substantive materials developed in the first half of this thesis. As such, there is an inherent limit to their scope and comprehensiveness, and hence their ability to represent the full 'story' on Race Rocks and consensus processes. Several issues remain to be explored, hopefully by future students of planning and marine conservancy. Three such issues will be introduced here, as they are on the cusp of the materials included in this thesis.

First, a major focus of this study has been on the theory and practice of *facilitation*. Regretfully, the focus on facilitation (i.e. independent vs. non-independent) has been at the expense of any meaningful discussion of *co-ordination*. Many of the successes of the RRAB can be attributed to the leadership, energy and (for lack of a better word) *chutzpah* of the DFO co-ordinator. If this was so, what is the role of the co-ordinator in consensus processes? More specifically:

- **Co-ordinator as planner:** Is the co-ordinator of a consensus process the same as a *planner*? If so, should the co-ordinator try to be one of Forester's (1989) *progressive planners* (see Section 4.1.2, p. 23)?
- **Co-ordinator vs. facilitator:** What is the relationship between the co-ordinator and the facilitator? Can one person effectively play both roles? If not, should the co-ordinator provide strong leadership or should s/he only give broad direction to the process?

Second, this thesis has been critical of the *Gazette* process, especially the misrepresentation of the recommendations provided by the RRAB. For example, Section 8.5.2 (p. 100) states: "if recommendations are to be rejected, they should be returned to the consensus table, where alternatives can be negotiated by the participants". It would be fruitful to explore the implications of this statement:

- **Role of advisory boards:** Is this statement a challenge to the Westminster tradition of representational government? Are advisory boards a supplement or obstacle to democracy in Canada?
- **Terms of Reference:** The Terms of Reference for the RRAB states that: "the RRAB shall act solely as an advisory body to BC Parks and DFO" (RRAB 2000f, p. 1). Was this mandate clearly understood by the participants, or was it forgotten with the "rush of excitement" that accompanied the consensus agreement? If so, is this a phenomenon experienced in other consensus processes?

Finally, this thesis has the structure and appearance of a *deductive* research study. The research question in Chapter 1 suggests the scope for the literature review and theoretical framework, which in turn guides the content and structure of Chapters 7 and 8, and the conclusions and recommendations presented above. Though there is a brief reference to grounded theory in Chapter 2, the structure of the thesis belies the balance of inductive and deductive analysis that was part of the research process. It would be a challenging but worthy endeavour to explore a thesis format that would better capture the nuances and vagaries of qualitative research.

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Appendices

Appendix A. Race Rocks Advisory Board Terms of Reference

Race Rocks Advisory Board Terms of Reference

Source: RRAB (2000f). Translated from HTML format.

1. Introduction:

The *Oceans Act* provides the authority for the nomination or recommendation and establishment of Marine Protected Areas (MPAs).

The Race Rocks area has been recommended as a pilot Marine Protected Area for a number of reasons. As a transition zone between the Pacific Ocean and coastal waters, the area is renowned for its exceptional diversity of marine life.

From a First Nation's perspective the area has cultural significance with respect to traditional use and management of the area's resources. There is recognition that, should a Marine Protected Area be established, it will not infringe on First Nations' existing Treaty rights, traditional, food, ceremonial interests or relationship with the area; and allow for cooperative management opportunities.

Race Rocks was designated as an Ecological Reserve in 1980 under the province of British Columbia's authority and a cooperative management relationship has been developed with Lester B. Pearson College of the Pacific. Fisheries and Oceans Canada and BC Parks, in collaboration with First Nations, stakeholders and the public, are aiming to develop further management strategies to support protection and conservation objectives for the area. The Race Rocks Advisory Board (RRAB) has been convened with representation from a number of stakeholder groups and levels of government.

2. Purpose:

The Race Rocks Advisory Board has been established to enable a Marine Protected Area designation under the *Oceans Act* at Race Rocks. The terms of reference have been developed to clarify the objectives, process, role and conduct of the Advisory Board.

3. Objectives:

The Race Rocks Advisory Board will:

- ♦ Represent key constituent groups or stakeholders;
- ♦ Provide advice to Fisheries and Oceans Canada and B.C. Parks on the consultation process;
- ♦ Collate and analyze feedback from consultations;
- ♦ Make interim management recommendations to Fisheries and Oceans Canada and B.C. Parks for the establishment of a marine protected area at Race Rocks; and
- ♦ Ensure community involvement in the establishment and on-going management of Race Rocks MPA.

4. Participation, Roles and Responsibilities:

Participants:

The Race Rocks area is of interest to a wide range of constituents representing a broad spectrum of activities. The RRAB represents a reasonably comprehensive cross-section of interest groups and activities. The RRAB shall be comprised of, but not limited to, representatives from the following groups:

- ♦ Fisheries and Oceans Canada
- ♦ BC Parks

- ◆ First Nations Council of the Salish Sea
- ◆ Lester B. Pearson College
- ◆ Department of National Defence
- ◆ Sports Fishery Advisory Board
- ◆ Whale Watchers Operators Association - North West
- ◆ Scientific Community
- ◆ Dive Community
- ◆ Georgia Strait Alliance
- ◆ Friends of Ecological Reserves
- ◆ Canadian Parks and Wilderness Society
- ◆ Local Marina Operators
- ◆ Parks Canada (Advisor/Observer Status)
- ◆ Underwater Harvesters of BC

If a member/participant is unable to attend a scheduled Board meeting, they may invite an alternate from their constituency. Participants are encouraged to invite other members of their groups to attend RRAB meetings, with prior notification of the Chair and subject to space limitations.

Roles:

The RRAB shall provide advice to BC Parks, Fisheries and Oceans Canada and First Nations regarding the development of a management plan for the MPA.

The RRAB shall act solely as an advisory body to BC Parks and Fisheries and Oceans Canada. Nothing in these terms of reference constitutes authority to perform operational or management functions, or to represent or make decisions on behalf of BC Parks and/or Fisheries and Oceans Canada and/or First Nations.

The RRAB shall draw on the expertise of its members and other sources in order to provide advice to BC Parks and Fisheries and Oceans Canada.

The RRAB may serve as a forum for consultation and deliberation among its participants and as a source of consensus-based advice to BC Parks and Fisheries and Oceans Canada. Such consensus advice shall fairly represent the collective and individual views of the RRAB members and the constituencies they represent.

Responsibility of Advisory Board Participants:

Participants on the Race Rocks Advisory Board are encouraged to:

- ◆ Provide advice and information on their activities within and surrounding Race Rocks;
- ◆ Actively participate in discussions;
- ◆ Share airtime with others;
- ◆ Offer respect for different viewpoints and attention when others are speaking;
- ◆ Ask questions for clarification and mutual understanding;
- ◆ Verify assumptions;
- ◆ Deal with differences as problems to be discussed, not battles to be won;
- ◆ Refrain from distracting others through side conversations, cell phones off;
- ◆ Make a best faith effort to work toward an agreement at the table;
- ◆ Represent the perspectives, concerns and interest of respective agencies or constituencies wherever possible to ensure that agreements developed are acceptable to the organisations, agencies or constituents that you represent;

- Maintain dialogue with your constituency regarding the activities and discussions of the Race Rocks Advisory Board; and
- Refer media contacts regarding the activities of the Board to the Chair/facilitator. Board members can speak on behalf of the Board not on the behalf of individual members.

5. Process:

Recommendations by the RRAB will be made through a consensus-based process. The intent of this process is to provide the opportunity for all parties to participate in a manner which responds to their interests. If issues arise, whenever possible, final decisions will be made on the basis of recommendations supported by consensus as opposed to being unilaterally imposed.

Consensus shall mean the "general agreement of all participants on a package of decisions or recommendations" and shall embody the following concepts:

- Consensus does not mean total concurrence on every aspect of a decision, but all participants must be willing to accept the overall decision package.
- If a participant withdraws agreement on an issue(s), that participant is responsible for explaining how their interests are adversely affected or how the proposed agreement fails to meet its interests. The participant withholding agreement must propose alternatives and other participants must consider how all interests may be met.
- Once consensus is reached on the overall package, it is assumed to be binding (Cormick et al. 1996).
- All participants to a recommendation on which consensus had been achieved agree to exercise their rights, mandates, and responsibilities consistent with that recommendation and to take such further steps as may be necessary to give it effect.
- If consensus is not achieved through this process, each participant will exercise their rights, responsibilities, and mandates as they see fit — unfettered as to statutory decision-making responsibilities and without prejudice to their rights and obligations by reason of having participated in the process.

6. Meetings:

Meetings will be held periodically to assess and evaluate RRAB's activities and input. The chair / facilitator will be responsible to call meetings as interest or issues develop. RRAB members are also able to call a meeting if a topic has to be addressed.

7. Deliverables:

The RRAB will deliver recommendations on levels of protection, goals and objectives to BC Parks, Fisheries and Oceans Canada and First Nations on the establishment of an MPA at Race Rocks. The Federal and Provincial Government in accordance with the joint MPA strategy for Canada's Pacific Coast will determine the final recommendations for a MPA at Race Rocks.

8. Timeline:

It is expected that the Race Rocks Advisory Board, as outlined by these terms of reference, will complete the tasks described by 31 March, 2000.

9. Responsibilities of Fisheries and Oceans Canada and B.C. Parks:

Fisheries and Oceans Canada and B.C. Parks support the sharing of all information and dialogue from the consultative process. Representatives from the respective departments on the Race Rocks Advisory Board will endeavour to fairly represent the interim management recommendations developed by the Race Rocks Advisory Board. B.C. Parks and Fisheries and Oceans Canada will review the recommendations of the Advisory Board and consider those recommendations when developing criteria for the designation, management and regulation of Race Rocks Marine Protected Area and future MPA strategies.

Appendix B. Race Rocks Advisory Board Recommendations

Recommendations for Designation and Management of Race Rocks Marine Protected Area

Source: Section 3.3 of RRAB (2000a). Translated from HTML format.

Recommendations for the designation and management of the Race Rocks Marine Protected Area have been developed as a result of extensive consultations over the past eighteen months. The Race Rocks Advisory Board unanimously supports these recommendations. Key recommendations are categorized into the following six areas:

(a) Designation:

Recommend that Race Rocks be designated as a Marine Protected Area under the *Oceans Act* Section 35.

(b) Area Boundaries:

Recommend that the boundary for Race Rocks Marine Protected Area coincide with the Ecological Reserve boundary (1980); being all waters within the 36.5 metre (20 fathom) line as described on Canadian Hydrographic Chart 3641 [1980]. Total area 200 hectares.

(c) Human Use:

Managing human use and impacts are the principal issues for Race Rocks as a combined marine protected area and ecological reserve

(c) 1. Recommendations for vessel and boating management guidelines addressing the following areas will be developed in consultation with user groups:

- ♦ speed limits
- ♦ anchoring restrictions
- ♦ shoreline restriction
- ♦ considerations when whales are within the MPA boundary
- ♦ sensitive areas restrictions (i.e. kelp beds)
- ♦ ballast water discharge and vessel traffic considerations
- ♦ vessel and boating management guidelines will be developed in consultation with user groups
- ♦ routine monitoring and reporting of vessel activity

(c) 2. Recommendations for the management of aviation activities:

- ♦ helicopter traffic by authorization
- ♦ no over flights

(c) 3. Recommendation for the management of fishing activities:

- ♦ establish a "no-take" zone for all species within the 20 fathom contour line with other conservation and protection measures as recommended by the Steering Committee

(c) 4. Recommendations for management of diving activities to be developed in consultation with user groups:

- ♦ volunteer stewardship developed in cooperation with the dive community
- ♦ educational and training programs for the dive community
- ♦ adaptive development and application of Reefkeepers and other observation programs
- ♦ routine monitoring and reporting of diving activity

(c) 5. Recommendations for the management of educational activities and research:

- ♦ adaptive and integrated permit process for education and research, as per Ecological Reserve Act example monitored by Eco-warden Operator
- ♦ develop a spectrum of learning opportunities including internet-based learning opportunities about MPA's
- ♦ educational and research activity reported annually
- ♦ develop learning and research opportunities which have minimal impact on ecosystem

(c) 6. Recommendations for the development of a Traditional Use Study:

- ♦ through consultation with First Nations, develop terms of reference and framework for a traditional use study, including translation
- ♦ conduct traditional use study
- ♦ working cooperatively, develop marine ecosystem-related curriculum for schools to further understanding of First Nations' relationship with Race Rocks

(d) Environmental Protection:

(d) 1. Recommendations for the management of dredging and dumping:

- ♦ dredging of any kind is prohibited in Race Rocks Marine Protected Area
- ♦ disposal of any material, including overboard discharge of sewage, is prohibited in the Race Rocks Marine Protected Area

(d) 2. Recommendations for the management of exploration for, and development of, non-renewable resources:

- ♦ that the exploration for, or development of, non-renewable resources is prohibited in the Race Rocks Marine Protected Area
- ♦ no pipelines or utility corridors

(d) 3. Recommendations for the protection of birds and habitat:

- ♦ develop a structured monitoring program and protocol for other activities
- ♦ establish appropriate conservation measures and protection areas
- ♦ develop partnerships with CWS, Rocky Point Bird Observatory Society. etc.
- ♦ use internet capability for non-intrusive observation
- ♦ routine monitoring and reporting

(d) 4. Recommendations for the protection of marine mammals and habitat:

- ♦ develop partnerships with all groups for monitoring and research within a structured program
- ♦ establish protection measures where appropriate
- ♦ partnerships with whale watching industry for public education
- ♦ work with marine mammal viewing industry to develop best practices
- ♦ use internet capability for non-intrusive observation
- ♦ routine monitoring and reporting

(e) Management/Governance Framework:

Recommendations for management/governance:

(e) 1. Pacific Steering Committee

- ◆ consists of a representative from First Nations, B.C. Parks and Fisheries & Oceans Canada
- ◆ develops policy and management recommendations for ER/MPA's
- ◆ identifies areas of interest and process for designation
- ◆ provides general direction for Race Management/ Implementation Committee

(e) 2. Race Rocks Management/Implementation Committee

- ◆ consists of a representative from First Nations, B.C. Parks and Fisheries & Oceans
- ◆ implements and co-ordinates the management of Race Rocks ER/MPA
- ◆ provides policy and management recommendations to government departments regarding ER/MPA's
- ◆ provides direction for the Race Rocks ER/MPA Eco-warden Operator
- ◆ works with the Race Rocks Advisory Board
- ◆ provides direction for ER/MPA evaluation

(e) 3. Race Rocks Advisory Board (post designation)

- ◆ cross-sector representation
- ◆ provides advice to Pacific Steering Committee and Race Rocks Management/Implementation Committee on management issues
- ◆ facilitates communications with constituents
- ◆ makes recommendations for the operations of Race Rocks Marine Protected Area
- ◆ provides advice and participates in ER/MPA evaluation

(e) 4. Eco-warden operator

- ◆ direction provided by Race Rocks Management/Implementation Committee
- ◆ manages day to day operations in Race Rocks ER/MPA
- ◆ facilitates permit system for research and education
- ◆ facilitates compliance program
- ◆ develops information and education programs
- ◆ assists with ongoing evaluation and monitoring

(e) 5. Recommendations for compliance:

- ◆ emphasize partnerships and voluntary compliance through education
- ◆ support stewardship initiatives
- ◆ develop enforcement response by appropriate government agencies, as required
- ◆ develop a protocol for reporting to the Steering Committee and Management/Implementation Committee

(f) Stewardship:

As the consultative process unfolded, it soon became apparent that there was significant support for the creation of a Marine Protected Area at Race Rocks. Rather than develop a complex regulatory framework for protection and conservation, there are strong indications that a voluntary compliance and stewardship program will achieve the goals and objectives as described herein. Principal stakeholder groups have expressed a keen interest in not only developing "best practices" but also working towards ensuring a high degree of compliance. The development of stewardship initiatives and "best practices" guidelines has already commenced; the results will be reflected in the development of a management plan.

Appendix C. XwaYen (Race Rocks) Marine Protected Area Regulations

Source: O'Sullivan (2000). Copied from PDF document.

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October 28, 2000

XwaYen (Race Rocks) Marine Protected Area Regulations

Statutory Authority

Oceans Act

Sponsoring Department

Department of Fisheries and Oceans

Règlement sur la zone de protection marine XwaYen (Race Rocks)

Fondement législatif

Loi sur les océans

Ministère responsable

Ministère des Pêches et des Océans

REGULATORY IMPACT ANALYSIS STATEMENT

Description

The *Oceans Act* (the Act) came into force on January 31, 1997. Part II of the Act authorizes the establishment of an Oceans Management Strategy (OMS) based on the principles of sustainable development, integrated management and the precautionary approach. This part of the Act also provides authority for the development of tools necessary to carry out the OMS, tools such as the establishment of Marine Protected Areas.

Section 35 of the Act authorizes the Governor in Council to designate, by regulation, Marine Protected Areas for any of the following reasons:

- (a) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals and their habitats;
- (b) the conservation and protection of endangered or threatened species and their habitats;
- (c) the conservation and protection of unique habitats;
- (d) the conservation and protection of marine areas of high biodiversity or biological productivity; and
- (e) the conservation and protection of any other marine resource or habitat as is necessary to fulfill the mandate of the Minister of Fisheries and Oceans.

In 1998, the Minister of Fisheries and Oceans announced four pilot Marine Protected Area initiatives on Canada's Pacific Coast. One of these, Race Rocks in British Columbia, meets the criteria set out in paragraphs 35(1)(b), (d) and (e) above. This regulatory initiative proposes to formally designate, under the *Oceans Act*, the waters surrounding Race Rocks as XwaYen (Race Rocks) Marine Protected Area (MPA). In addition, the harvesting of living marine resources within the MPA will be prohibited subject to existing aboriginal or treaty rights.

XwaYen (pronounced shwai'yen) is located in the Juan de Fuca Strait, 17 kilometres off the coast of Vancouver Island, southwest of Victoria. The islets of XwaYen (Race Rocks) form the most southerly part of Canada's Pacific Coast.

Named for its strong tidal currents and rocky reefs, the waters surrounding XwaYen (Race Rocks) are a showcase for Pacific marine life, featuring whales, sea lions, seals, birds and a wide variety of underwater plants and animals. These waters are home to a thriving community of sub-tidal invertebrates, including sponges, anemones, hydroids and soft corals. Crowds of

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

Description

La *Loi sur les océans* (la Loi) est entrée en vigueur le 31 janvier 1997. La partie II de la Loi permet l'établissement d'une stratégie de gestion des océans (SGO) basée sur les principes du développement durable, de la gestion intégrée et de la prévention. Cette partie de la Loi prévoit aussi l'élaboration d'outils nécessaires à la SGO, notamment l'établissement de zones de protection marines.

L'article 35 de la Loi autorise le gouverneur en conseil à désigner, en vertu de la réglementation, des zones de protection marines pour l'une ou plusieurs des raisons suivantes :

- a) la conservation et la protection des ressources halieutiques commerciales ou autres, y compris les mammifères marins, et de leur habitat;
- (b) la conservation et la protection des espèces en voie de disparition et des espèces menacées et de leur habitat;
- c) la conservation et la protection d'habitats uniques;
- d) la conservation et la protection des espaces marins riches en biodiversité ou en productivité biologique;
- e) la conservation et la protection d'autres ressources ou habitats marins, au besoin, pour la réalisation du mandat du ministre des Pêches et des Océans.

En 1998, le ministre des Pêches et des Océans a annoncé la création de quatre projets pilotes concernant des zones de protection marine sur la Côte du Pacifique canadienne. L'une d'elles était la zone pilote de protection marine Race Rocks, qui satisfait aux exigences établies aux alinéas 35(1)b), d) et e) décrits ci-dessus. Par le biais de cette initiative réglementaire, on propose de désigner formellement, en vertu de la *Loi sur les océans*, les eaux avoisinant le secteur de Race Rocks comme zone de protection marine (ZPM) de XwaYen. De plus, le prélèvement de ressources marines vivantes à l'intérieur de la zone sera défendu, sauf si ce dernier est relatif à des traités ou droits autochtones.

XwaYen (dont la prononciation est shwai'yen) est situé dans le détroit de Juan de Fuca, à 17 kilomètres de la côte de l'île de Vancouver, au sud-ouest de Victoria. Les îlots de XwaYen (Race Rocks) forment la partie la plus méridionale de la Côte du Pacifique canadienne.

XwaYen (Race Rocks) doit son nom à ses courants de marée puissants et à ses récifs rocheux, et ses eaux avoisinantes abritent une riche vie marine : baleines, otaries, phoques, oiseaux et une grande diversité de plantes et d'animaux sous-marins. Les eaux de XwaYen (Race Rocks) accueillent une communauté foisonnante infralittorale d'invertébrés, notamment des éponges, des

barnacles, tunicates, urchins and sea stars adorn the underwater cliffs. Fish such as sculpin, rockfish and lingcod seek refuge in the rocky crevices and undulating kelp forests.

The area's high velocity tidal currents — up to seven knots — in combination with the climate and the temperature and salinity of the water in the area supplies a generous stream of nutrients and promotes high levels of dissolved oxygen. These factors contribute to the creation of an ecosystem of high biodiversity and biological productivity.

The waters surrounding XwaYeN (Race Rocks) are an important nursery and recruitment area for Northern abalone. In 1999, Northern abalone (*Haliotis kamtschatkana*) was designated as a threatened marine species by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). Protecting this nursery and recruitment area will aid the nurturing of this species. Furthermore, efforts to conserve and protect the biodiversity and biological productivity of the XwaYeN (Race Rocks) marine ecosystem will also enhance the protection of this threatened species.

To provide long-term and comprehensive protection of the diverse species and to maintain the biological productivity of the ecosystem, a prohibition of the harvesting of all living marine resources in the waters surrounding XwaYeN (Race Rocks) is being proposed. Although seasonal fisheries closures under the *Fisheries Act* have restricted all commercial fishing of finfish and shellfish in the area since 1990, recreational harvesting of salmon and halibut and harvesting of non-commercial species continues. The prohibition of living marine resource harvesting under the *Oceans Act* will provide a longer-term commitment to the conservation and protection of the XwaYeN (Race Rocks) ecosystem.

In 1980, the province of British Columbia, under the authority of the provincial *Ecological Reserves Act*, established the Race Rocks Ecological Reserve, which provides for the protection of the terrestrial natural and cultural heritage values (nine islets) and of the ocean seabed (to the 20 fathoms contour line). Ocean dumping, dredging and the extraction of non-renewable resources are not permitted within the boundaries of the Ecological Reserve.

However, the Ecological Reserve cannot provide for the conservation and protection of the water column or for the living resources inhabiting the coastal waters surrounding XwaYeN (Race Rocks). The federal government is using its authority to complement the protection afforded by the Ecological Reserve by prohibiting the harvesting of living marine resources.

Adopting an integrated management approach within the Race Rocks area will provide for a more comprehensive level of conservation and protection for the ecosystem than can be achieved by either an MPA or an Ecological Reserve on its own. Designating a Marine Protected Area within the area corresponding to the Ecological Reserve will facilitate the integration and increase the synergy of conservation, protection and management initiatives under the respective authorities of the two governments.

The *Oceans Act* mandates the Minister to lead and facilitate the development and implementation of plans for the integrated management of all activities with other ministers and agencies of the Government of Canada, with provincial governments and with affected Aboriginal organizations and coastal communities for the purposes of conservation and protection of Canada's oceans.

anémones de mer, des hydriées et des coraux mous. Des colonies de cirripèdes, de tuniciers, d'oursins et d'étoiles de mer ornent les falaises sous-marinées. Des poissons comme des chabots, des sèbastes et des morues-lingues cherchent refuge dans les crevasses rocheuses et les peuplements d'algues brunes ondulantes.

Les courants de marée à haute vitesse de la zone — jusqu'à sept nœuds — combinés au climat, à la température et à la salinité de l'eau de la zone fournissent un apport généreux de nutriments et favorisent des niveaux d'oxygène dissous élevés. Ces facteurs contribuent à créer un écosystème dont la biodiversité et la productivité sont importantes.

Les eaux avoisinant XwaYeN (Race Rocks) constituent un secteur important pour la reproduction et le recrutement de l'ormeau nordique. En 1999, l'ormeau nordique (*Haliotis kamtschatkana*) a été désigné espèce marine menacée par le Comité sur le statut des espèces menacées de disparition au Canada (CSEMDC). La protection de cette zone de reproduction et de recrutement favorisera la conservation de l'espèce. De plus, les efforts déployés pour conserver et protéger la biodiversité et la productivité biologique des écosystèmes marins de XwaYeN (Race Rocks) contribueront également à la protection de cette espèce menacée.

Afin de fournir une protection complète et à long terme de ces diverses espèces, et de maintenir la productivité biologique de l'écosystème, on doit mettre un terme au prélèvement de toutes les ressources marines vivantes dans les eaux avoisinant XwaYeN (Race Rocks). Bien que les fermetures des pêches saisonnières en vertu de la *Loi sur les pêches* aient restreint la pêche commerciale des poissons et des mollusques et crustacés dans la zone depuis 1990, la pêche du saumon et du flétan à des fins créatives et la récolte d'espèces non commerciales se poursuit. L'interdiction de prélever les ressources marines vivantes en vertu de la *Loi sur les océans* correspondra à un engagement à long terme envers la conservation et la protection de l'écosystème de XwaYeN (Race Rocks).

En 1980, la province de la Colombie-Britannique, en vertu de l'*Ecological Reserve Act*, une loi provinciale, a institué la réserve écologique de Race Rocks, qui assure la protection du patrimoine naturel et culturel des neuf îlots terrestres et du fond océanique (20 lignes de profondeur). Les rejets en mer, le dragage et l'extraction des ressources non renouvelables sont interdits dans les limites de la réserve écologique.

Toutefois, la réserve écologique actuelle n'assure pas la conservation et la protection de la colonne d'eau ou des ressources vivantes des eaux côtières avoisinant XwaYeN (Race Rocks). Le gouvernement fédéral exerce donc son autorité afin d'ajouter une protection complémentaire à ce qu'offre déjà la réserve écologique en interdisant le prélèvement des ressources marines vivantes.

L'adoption d'une approche de gestion intégrée au sein de la zone de Race Rocks permettra de mieux conserver et protéger l'écosystème qu'une seule zone de protection marine ou réserve écologique. La désignation d'une zone de protection marine à l'intérieur de la zone correspondant à la réserve écologique favorisera l'intégration et la synergie des initiatives de conservation, de protection et de gestion en vertu des pouvoirs respectifs des deux gouvernements.

La *Loi sur les océans* permet au ministre de guider et de faciliter l'élaboration et la mise en œuvre de plans de gestion intégrée de toutes les activités entreprises de concert avec les autres ministères et organismes fédéraux, les gouvernements provinciaux, ainsi que les organisations autochtones et les collectivités côtières concernées, en vue de la conservation et de la protection des océans au Canada.

This proposal to designate the XwaYeN (Race Rocks) area as a Marine Protected Area under the *Oceans Act* provides the necessary foundation for the Minister to lead and facilitate the development of an integrated, cooperative ecosystem-based management regime utilizing:

- (a) a cooperative, integrated management approach involving several federal and provincial government agencies using their respective authorities to conserve and protect the area;
- (b) compliance based on best practices, stewardship and voluntary guidelines; and
- (c) assessment of effectiveness of the voluntary initiatives and further restriction as warranted.

Integrating the management of the terrestrial and marine components of the XwaYeN (Race Rocks) ecosystem will facilitate coordinated, effective and efficient management of the area. This cooperative management regime is the preferred approach to the conservation and protection of XwaYeN (Race Rocks) as determined through the consultation process. Candidate activities for cooperative management include marine mammal watching, guided diving, research and education, ballast water management, National Defence and Transport Canada programs in the area.

The designation of the XwaYeN (Race Rocks) as an MPA and the prohibition of harvesting of living marine resources are an important and necessary element in the overall conservation and protection of an ecosystem which is biologically diverse and highly productive.

Alternatives

The status quo was considered unacceptable because even though the area is currently afforded some protection under the *Fisheries Act*, an MPA designated by regulation under the *Oceans Act* provides an opportunity to use integrated management tools for conserving and protecting the biodiversity and biological productivity of the area and the threatened Northern abalone.

The proposed option is the designation of the XwaYeN (Race Rocks) MPA by regulation with a prohibition on the harvesting of all living marine resources. This option will provide the primary element required to manage the MPA while allowing the Minister to lead and facilitate the development of an integrated management approach to comprehensive ecosystem management of the area.

This alternative to comprehensive regulation conforms to Regulatory Policy by limiting regulatory burden on Canadians. However, should it become necessary, control of activities in the area by regulation would be considered.

Benefits and Costs

The primary benefit of the proposed Regulations establishing the XwaYeN (Race Rocks) Marine Protected Area is that the foundation will be set for ensuring the conservation and protection of a highly diverse and productive ecosystem of Canada's oceans. It will aid in the prevention of potential ecological deterioration and protect the Northern abalone in that area.

A subsidiary benefit of designating the XwaYeN (Race Rocks) MPA is the opportunity to initiate an integrated management regime based on a cooperative, integrated, ecosystem-based management approach to conserve and protect the area involving several federal and provincial government agencies using their

La proposition pour la désignation de XwaYeN (Race Rocks) en tant que zone de protection marine en vertu de la *Loi sur les océans* fournira le fondement nécessaire au ministre pour diriger et favoriser la mise en œuvre d'un régime de gestion intégrée et coopératif fondé sur l'écosystème, et basé sur les éléments suivants :

- a) une approche de gestion intégrée et coopérative impliquant plusieurs organismes fédéraux et provinciaux qui exercent leur autorité respective pour conserver et protéger la zone;
- b) le respect volontaire fondé sur les pratiques exemplaires, l'intendance et les lignes directrices volontaires;
- c) l'évaluation de l'efficacité des initiatives volontaires et d'autres restrictions au besoin.

L'intégration de la gestion des composantes terrestres et marines de l'écosystème de XwaYeN (Race Rocks) contribuera à une gestion coordonnée, efficiente et efficace de la zone. Ce régime de gestion coopératif est l'approche privilégiée pour la conservation et la protection de XwaYeN (Race Rocks) tel qu'il a été établi par le processus de consultation. Les activités proposées pour une gestion coopérative comprennent l'observation de mammifères marins, la plongée guidée, la recherche et l'éducation, la gestion des eaux de ballast et les programmes des ministères de la Défense nationale et des Transports (niveau fédéral) dans le secteur.

La désignation de XwaYeN (Race Rocks) comme ZPM et l'interdiction de prélever les ressources marines vivantes représentent des éléments importants et nécessaires pour la conservation et la protection d'un écosystème très productif et riche en biodiversité.

Solutions envisagées

Le statu quo était considéré inacceptable. En effet, même si la zone est actuellement protégée d'une certaine façon en vertu de la *Loi sur les pêches*, une ZPM désignée par règlement en vertu de la *Loi sur les océans* fournira l'occasion d'utiliser des outils de gestion intégrée pour conserver et protéger la biodiversité et la productivité biologique de la zone ainsi que l'ormeau nordique, une espèce menacée.

La solution envisagée est la désignation de la ZPM de XwaYeN (Race Rocks) par règlement, avec l'interdiction de prélever toute ressource marine vivante. Cette solution apportera l'élément clé requis pour gérer la ZPM tout en permettant au ministre de guider et de faciliter la création d'une approche de gestion intégrée de l'écosystème dans son ensemble.

Cette solution proposée pour la réglementation est conforme à la Politique de réglementation car elle réduit le fardeau réglementaire des Canadiens. Cependant, si la situation l'exige, la solution qui consiste à contrôler les activités par la réglementation demeure possible.

Avantages et coûts

L'avantage principal du règlement proposé pour désigner XwaYeN (Race Rocks) zone de protection marine est l'établissement des fondements nécessaires pour veiller à la conservation et à la protection d'un écosystème marin canadien fort productif et riche en diversité. Ceci contribuera à prévenir la détérioration écologique de la zone et à protéger l'ormeau nordique dans cette zone.

Un avantage secondaire à la désignation de la ZPM de XwaYeN (Race Rocks) est l'occasion d'instaurer un régime de gestion intégrée qui sera fondé sur une approche de gestion écosystémique, coopérative et intégrée pour conserver et protéger la zone, et qui impliquera plusieurs organismes fédéraux et

respective authorities; and voluntary compliance through stewardship and cooperation with an alliance of stakeholder groups.

The establishment of this MPA will also demonstrate Canada's resolve to fulfill its commitments under the United Nations Conference on the Law of the Sea (UNCLOS) and the Convention on Biological Diversity (UNEP 1994), as well as Canada's commitment to the IUCN World Commission on Protected Areas Program.

The costs related to the administration and management of the MPA will be managed within existing budgetary allotments.

Consultation

Since its announcement in 1998, the pilot Marine Protected Area process has identified and galvanized strong local support for designation of XwaYeN (Race Rocks) as an MPA. The consultative process has developed new trust-based relationships and the regulatory designation of the MPA will maintain the level of momentum and stakeholder confidence that have now been established.

To facilitate the consultative process, the Race Rocks Advisory Board was established with representation from:

- the Department of National Defence
- Parks Canada
- Fisheries and Oceans Canada
- the Ministry of Environment, Lands and Parks of British Columbia
- the Lester B. Pearson College of the Pacific
- Aboriginal groups through the Coast Salish Sea Council
- the Scientific community
- the Friends of Ecological Reserves
- the Dive community
- the Georgia Strait Alliance
- the Sport Fish Advisory Board — Victoria, representing the recreational fishing community
- local marina operators
- the Canadian Parks and Wilderness Society
- The Northwest Whale Watchers Association

The role of the Race Rocks Advisory Board role was to:

- represent key constituent groups or stakeholders;
- provide advice to Fisheries and Oceans Canada and British Columbia Parks on the consultation process;
- collate and analyze feedback from consultations;
- make consensus-based, recommendations to Fisheries and Oceans Canada and British Columbia Parks for the establishment of a Marine Protected Area in the waters surrounding XwaYen (Race Rocks); and
- ensure community involvement in the establishment and ongoing management of XwaYen (Race Rocks) MPA.

Four Coast Salish First Nations, Beecher Bay, T'souke, Songhees and Esquimalt Nations, claim the eastern end of the Strait of Juan de Fuca as part of their traditional territory. Although the creation of the MPA does not restrict harvesting by First Nations for food, social or ceremonial purposes, they volunteered to forego this activity in support of the designation of the MPA.

provinciaux aux pouvoirs distincts; de plus, la désignation favorise la conformité volontaire au moyen d'activités d'intendance et de coopération avec des groupes d'intervenants.

La création de cette ZPM démontrera aussi la volonté du Canada à s'acquitter de ses engagements en vertu de la Conférence des Nations Unies sur le droit de la mer (UNCLOS) et de la Convention sur la biodiversité (PNUE 1994), ainsi que ses responsabilités dans le cadre du programme des aires protégées de l'Union mondiale pour la nature (IUCN).

Les sommes nécessaires à la gestion de la ZPM proviendront des affectations budgétaires existantes.

Consultations

Depuis son annonce en 1998, le processus de la ZPM pilote a recueilli et stimulé un appui local considérable pour la désignation de la ZPM de XwaYeN (Race Rocks). Le processus de consultation a contribué à tisser des liens basés sur la confiance, et la désignation réglementaire de la ZPM aidera à préserver l'élan et la confiance des intervenants.

Le Conseil consultatif de Race Rocks a été créé afin de faciliter le processus de consultation. Les représentants sont les suivants :

- le ministère de la Défense nationale
- Parcs Canada
- Pêches et Océans Canada
- le Ministry of Environment, Lands and Parks de la Colombie-Britannique
- le Collège du Pacifique Lester B. Pearson
- les groupes autochtones, par l'intermédiaire du Coast Salish Sea Council
- la communauté scientifique
- les Friends of Ecological Reserves
- la communauté des plongeurs
- la Georgia Strait Alliance
- le Conseil consultatif de la pêche récréative — Victoria (représentant la collectivité de la pêche récréative)
- les exploitants de marinas locales
- la Société pour la protection des parcs et des sites naturels du Canada
- The Northwest Whale Watchers Association

Le Conseil consultatif de Race Rocks remplissait les fonctions suivantes :

- représenter les groupes ou les intervenants clés;
- donner des avis à Pêches et Océans Canada et au ministère des Parcs de la Colombie-Britannique sur le processus consultatif;
- assembler et analyser les résultats du processus de consultation;
- faire des recommandations consensuelles à Pêches et Océans Canada et au ministère des Parcs de la Colombie-Britannique sur l'établissement d'une zone de protection marine dans les eaux avoisinant XwaYen (Race Rocks);
- veiller à la participation de la collectivité à l'établissement et à la gestion continue de la ZPM de XwaYen (Race Rocks).

Quatre Premières nations Salish du littoral soit Beecher Bay, T'souke, Songhees et Esquimalt revendiquent la partie est du détroit de Juan de Fuca comme leur territoire traditionnel. Bien qu'on ne prévoie pas limiter les activités des Premières nations en créant la ZPM, ces dernières ont offert, durant les consultations, de renoncer à leurs activités de pêche à des fins alimentaires et rituelles pour manifester leur appui à la désignation de la ZPM.

The Race Rocks Advisory Board provided an excellent forum for issue identification, discussion and resolution. It has functioned well and guided the development of the proposed cooperative management regime. The resulting commitment to stewardship and cooperation in the protection of this area as an MPA has laid the groundwork for a management regime through voluntary compliance that is unprecedented.

In discussing and developing recommendations for designation and management of the Race Rocks Marine Protected Area, all members of the Race Rocks Advisory Board and their constituents clearly understood that, upon designation, the area would be closed to harvesting (commercial and recreational) of all living marine resources. It was also accepted that this would not prevent the removal of marine organisms for scientific or educational purposes as part of an ongoing research program to assess and monitor the long-term health of the XwaYen (Race Rocks) marine ecosystem.

The most direct impact of this prohibition is on the recreational fishing community who have endorsed the implementation of a "no-take" zone within the boundaries of the proposed Marine Protected Area. There will be no impact on the commercial fishing sector as the area has been closed to commercial fishing since 1990 and there is no expectation on the part of the commercial sector that the area will be re-opened in the future. Aboriginal groups have indicated their support to the Race Rocks Advisory Board for the creation of the XwaYeN (Race Rocks) Marine Protected Area by voluntarily choosing not to fish in the area.

The recommendations reflect the outcome of a consensus-based process by the Race Rocks Advisory Board and directions expressed by the public, stakeholders and other partners through consultations conducted over a two-year period.

In addition to sectoral consultations with stakeholders, two public sessions were conducted in February 2000. The public consultations were held to provide opportunities for information and discussion with those persons not represented by particular interest groups. With an attendance of 101 persons, the consultations provided useful fora for the discussion of both the MPA and Ecological Reserve aspects of the initiative. Results of these discussions indicated a high level of support for establishment of a Marine Protected Area at Race Rocks to complement the area's Ecological Reserve status.

Media coverage since the initial announcement of the pilot initiative at XwaYeN (Race Rocks) has been regular, positive and resulted in continued public discussion and interest. Ranging from local newspapers to the Knowledge Network and the Discovery Channel, the coverage has highlighted the ecological values of the proposed MPA and public support for it.

Compliance and Enforcement

Principal stakeholder groups have expressed a keen interest in not only developing "best practices" but also working towards ensuring a high degree of compliance. The development of stewardship initiatives and "best practices" guidelines has already commenced.

The unanimous support for the creation of a Marine Protected Area in the waters surrounding XwaYeN (Race Rocks) suggests that enforcement interventions will rarely be required. XwaYeN (Race Rocks) has resident guardians and an Internet-based series of live video cameras strategically placed in the area. These

Le Conseil consultatif de Race Rocks représentait un excellent forum pour la définition, la discussion et la résolution des problèmes. Il a bien fonctionné et a guidé la mise sur pied du régime de gestion coopératif proposé. L'engagement résultant en matière d'intendance et de coopération pour la protection de cette zone en tant que ZPM, a jeté les bases d'un régime de gestion par conformité volontaire sans précédent.

Au cours des discussions et de l'élaboration des recommandations pour la désignation et la gestion de la Zone de protection marine de Race Rocks, tous les membres du conseil consultatif et leurs commentants ont bien compris qu'avec la désignation, le prélèvement de toute espèce marine vivante (commerciale et récréative) serait interdit. Ils ont aussi accepté que cette restriction n'empêche pas le prélèvement d'organismes marins à des fins scientifiques ou académiques dans le cadre d'un programme de recherche continu pour évaluer et effectuer le suivi de la santé à long terme de l'écosystème marin de XwaYeN (Race Rocks).

L'impact le plus direct de cette interdiction porte sur la collectivité de pêche récréative, qui a accepté l'établissement de la zone sans prélèvement à l'intérieur des limites de la zone de protection marine proposée. Le secteur de pêche commerciale ne sera pas touché, car la zone est fermée à la pêche commerciale depuis 1990, et le secteur commercial ne s'attend pas à la réouverture de cette zone dans un avenir prochain. Les groupes autochtones ont manifesté au Conseil consultatif de Race Rocks leur appui envers la création de la zone de protection marine de XwaYeN (Race Rocks) en optant volontairement pour ne pas exercer la pêche dans ce secteur.

Les recommandations traduisent le résultat du processus de concertation mené par le Conseil consultatif de Race Rocks et les opinions exprimées par le public, les intervenants et les autres partenaires au moyen de consultations qui ont duré deux ans.

En plus des consultations sectorielles avec les intervenants, deux séances publiques ont eu lieu en février 2000. Les consultations publiques ont été tenues afin de permettre aux personnes non représentées par des groupes d'intérêt d'obtenir de l'information et de discuter sur ces questions. Les consultations, auxquelles ont participé 101 personnes, ont représenté un forum utile pour la discussion sur divers aspects de la ZPM et de la réserve écologique. Les résultats de ces discussions témoignent d'un appui considérable à la création d'une zone de protection marine à Race Rocks comme complément au statut de réserve écologique.

Depuis l'annonce première de l'initiative pilote de XwaYeN (Race Rocks), la couverture médiatique a été positive, continue et a stimulé la discussion et l'intérêt de la part du public. Parmi les médias qui ont traité du dossier, on comptait des journaux locaux et des émissions de télévision éducatives (Knowledge Network et Discovery Channel) qui ont souligné les avantages écologiques de la ZPM proposée et l'appui du public.

Respect et exécution

Les principaux groupes d'intervenants ont manifesté un vif intérêt, non seulement envers l'élaboration de pratiques exemplaires, mais aussi envers l'atteinte d'un niveau élevé de conformité aux exigences réglementaires. La mise sur pied d'initiatives d'intendance et de lignes directrices visant des pratiques exemplaires a déjà commencé.

L'appui unanime à la création d'une zone de protection marine dans les eaux avoisinant le secteur XwaYeN (Race Rocks) suggère que des interventions coercitives seront rarement requises. Le secteur de XwaYeN (Race Rocks) compte des gardiens résidants et abrite une série de caméras vidéo en ligne (liées à

provide the foundation for a strong community-based compliance environment.

Therefore, management will be achieved through voluntary compliance/best practices guidelines for a number of activities, such as recreational boating, eco-tourism activities, including marine mammal viewing, and diving activity. Monitoring and assessment of the effectiveness of these guidelines will take place over a two-year period. Depending on the results, activity regulations can then be considered if necessary.

Contacts

Camille Mageau, Director, Marine Ecosystem Conservation, Department of Fisheries and Oceans, 200 Kent Street, Ottawa, Ontario K1A 0E6, (613) 991-1285 (Telephone), (613) 998-3329 (Facsimile), mageauc@dfo-mpo.gc.ca (Electronic mail), or Mary Ann Green, Director, Legislative and Regulatory Affairs, Department of Fisheries and Oceans, 200 Kent Street, Ottawa, Ontario K1A 0E6, (613) 990-0162 (Telephone), (613) 990-0120 (Facsimile), greenma@dfo-mpo.gc.ca (Electronic mail).

Internet) disposées stratégiquement. Ces mesures contribuent à un environnement local propice à la conformité.

Par conséquent, la gestion sera assurée au moyen de lignes directrices sur la conformité volontaire relative à un certain nombre d'activités telles les bateaux plaisanciers, les activités liées à l'écotourisme y compris l'observation de mammifères et la plongée. Le suivi et l'évaluation de l'efficacité de ces lignes directrices se feront sur une période de deux ans. Selon les résultats, des règlements relatifs aux activités seront alors considérés au besoin.

Personnes-ressources

Camille Mageau, Directrice, Conservation des écosystèmes marins, Ministère des Pêches et des Océans, 200, rue Kent, Ottawa (Ontario) K1A 0E6, (613) 991-1285 (téléphone), (613) 998-3329 (télécopieur), mageauc@dfo-mpo.gc.ca (courriel), ou Mary Ann Green, Directrice, Affaires législatives et réglementaires, Ministère des Pêches et des Océans, 200, rue Kent, Ottawa (Ontario) K1A 0E6, (613) 990-0162 (téléphone), (613) 990-0120 (télécopieur), greenma@dfo-mpo.gc.ca (courriel).

PROPOSED REGULATORY TEXT

Notice is hereby given that the Governor in Council, pursuant to subsection 35(3) of the *Oceans Act*^a, proposes to make the annexed *XwaYeN (Race Rocks) Marine Protected Area Regulations*.

Interested persons may make representations with respect to the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Camille Mageau, Director, Marine Ecosystem Conservation, Fisheries and Oceans Canada, 200 Kent Street, Ottawa, ON, K1A 0E6. Telephone: (613) 991-1285; FAX: (613) 998-3329, E-mail: mageauc@dfo-mpo.gc.ca.

Ottawa, October 19, 2000

MARC O'SULLIVAN
Assistant Clerk of the Privy Council

PROJET DE RÉGLEMENTATION

Avis est donné que la gouverneure en conseil, en vertu du paragraphe 35(3) de la *Loi sur les océans*^a, se propose de prendre le *Règlement sur la zone de protection marine XwaYeN (Race Rocks)*, ci-après.

Les intéressés peuvent présenter leurs observations au sujet du projet de règlement dans les 30 jours suivant la date de publication du présent avis. Ils sont priés d'y citer la *Gazette du Canada* Partie I ainsi que la date de publication, et d'envoyer le tout à Camille Mageau, Directrice, Conservation des écosystèmes marins, Ministère des Pêches et Océans, 200, rue Kent, Ottawa (Ontario) K1A 0E6. Téléphone : (613) 991-1285, Télécopieur : (613) 998-3329, Courriel : mageauc@dfo-mpo.gc.ca

Ottawa, le 19 octobre 2000

Le greffier adjoint du Conseil privé,
MARC O'SULLIVAN

XwaYeN (RACE ROCKS) MARINE PROTECTED AREA REGULATIONS

DESIGNATION

1. The area within the 20-fathom (36.58 metre) contour line as shown on the chart set out in the schedule is hereby designated as the XwaYeN (Race Rocks) Marine Protected Area.

PROHIBITION

2. (1) The definitions in this subsection apply in this section.
“fish” has the same meaning as in section 2 of the *Fisheries Act*.
(*poisson*)
“fish habitat” has the same meaning as in subsection 34(1) of the *Fisheries Act*. (*habitat du poisson*)

DÉSIGNATION

1. L'espace situé à l'intérieur de la ligne de contour de 20 bras- ses (36,58 m) dont le tracé figure sur la carte hydrographique en annexe est désigné comme la zone de protection marine XwaYeN (Race Rocks).

INTERDICTION

2. (1) Les définitions qui suivent s'appliquent au présent article.
« habitat du poisson » S'entend au sens du paragraphe 34(1) de la *Loi sur les pêches*. (*fish habitat*)
« poisson » S'entend au sens de l'article 2 de la *Loi sur les pêches*. (*fish*)

^a S.C. 1996, c. 31

^a L.C. 1996, ch. 31

(2) No person shall remove from XwaYeN (Race Rocks) Marine Protected Area any

- (a) fish;
- (b) part of the fish habitat; or
- (c) living marine organism that forms part of the ecosystem of fish.

(3) Subsection (2) does not apply to removal for scientific research for the protection and understanding of the XwaYeN (Race Rocks) Marine Protected Area.

COMING INTO FORCE

3. These Regulations come into force on the day on which they are registered.

(2) Il est interdit d'enlever de la zone de protection marine XwaYeN (Race Rocks) :

- a) tout poisson;
- b) tout élément de l'habitat du poisson;
- c) tout organisme marin vivant faisant partie de l'écosystème du poisson.

(3) Le paragraphe (2) ne s'applique pas à l'enlèvement aux fins de recherche scientifique visant la protection et la compréhension de la zone de protection marine XwaYeN (Race Rocks).

ENTRÉE EN VIGUEUR

3. Le présent règlement entre en vigueur à la date de son enregistrement.