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**To:** Trust Council **For the Meeting of:** December 8, 2016  
**From:** Fiona MacRaid, Senior Intergovernmental Policy Advisor **Date prepared:** November 16, 2016  
David Marlor, Director, Local Planning Services  
Clare Frater, Trust Area Policy Analyst

**SUBJECT: MARINE PROTECTION OPTIONS**

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**DESCRIPTION OF ISSUE:**

There has been a growing concern over the last several years about increased industrial and recreational use of the marine waters of the Trust Area. With increasing negative impacts, Trust Council would like to better understand the available tools of marine protection to help determine possible directions for Islands Trust.

**BACKGROUND:**

Relevant resolutions:

- Sept. 2015: That the Islands Trust Council request the Executive Committee to prepare a Request for Decision with respect to Trust Council supporting the preparation of a nomination for the Salish Sea as a Particularly Sensitive Sea Area for Council's consideration at its December meeting.
- Sept 2015: That the Islands Trust Council encourage the Executive Committee to identify and act upon appropriate opportunities for advocacy with respect to impacts of increased freighter anchorages in the Trust Area.
- Dec 2015: That Trust Council request the Executive Committee to look at the possibility for reorganization of committee structure of Trust Council with the possibility of creating in addition or substitution of marine matters generally.
- March 2016: That Trust Council request Executive Committee to review legislative tools, programs and processes that could advance Islands Trust Policy Statement policies 3.4.2 and 3.4.6 to protect marine areas and protect and enhance populations of native marine species (including in the context of the federal government's goal of increasing the proportion of Canada's marine /coastal areas that are protected) to 5% by 2017 and 10% by 2020 and to report back to Trust Council by December 2016 with recommendations.
- March 2016: That Trust Council amend section 2.5 of its strategic plan to complete the tasks related to shellfish aquaculture in the 2016-17 fiscal year using the new capacity created by the Intergovernmental Policy Advisor position.

In November 2016, Bowen Island Municipality received a delegation from Bob Turner requesting support to nominate Howe Sound as a United Nations Educational, Scientific and Cultural Organization (UNESCO) Biosphere Region. By resolution, Bowen Island Municipal Council expressed support, in principle, for this ongoing initiative.

***Analysis of Marine Protected Area Laws Pertaining to Trust Area Waters***

Attached is a comprehensive chart of marine protection tools and process that spans international, multijurisdictional, federal, provincial, First Nations and other tools of marine protection. This is provided by West Coast Environmental Law.

1. Particularly Sensitive Sea Area (International Maritime Organization – U. N. designation)

What is not stated in the chart is the recent experience of this work being stalled by a collective of Canadian and American First Nations who have withdrawn their support due to this process developing to a considerable level before engaging with First Nations. Their lack of support is focused on not being asked by the IMO to help establish the parameters of the designation process at the outset. The Coast Salish Gathering has made the focus of their opposition a commentary about the fact First Nations feel they are the ones to determine what is meant by “early and meaningful” consultation.

2. Man and the Biosphere Reserve (MAB) (UNESCO designation)

One of the weaknesses not identified in the chart is the example of Mount Arrowsmith MAB and the Biosphere Reserve’s UNESCO review (on Vancouver Island) where their MAB designation was very close to being withdrawn several years ago due to a lack of involvement from local Indigenous communities and a too-strong focus on conservation values without the balanced approach of considering sustainable development values as well. The federal committee that receives the applications now requires endorsement by local Indigenous communities before supporting the designation. Securing this endorsement would be challenging with 37 First Nations with asserted interests in the Trust Area.

Staff attended two out of four MAB sessions in Sidney between September 13 and October 25, 2016. Although a broad range of community agencies were invited, a select core group of 8-12 continued in attendance. The most critical factor of local Indigenous community endorsement became the “lightning rod” of discussions, especially after the head researcher of the Mount Arrowsmith MAB Reserve came to share the lessons they had learned. There was a consensus among attendees that, until First Nations (all 37 in the Trust Area) come together and endorse this initiative, the partners should stand down on developing the designation process for the Gulf Islands. The exception to this may be a Howe Sound-specific MAB Reserve, as the First Nations interests in the Howe Sound are much less complicated.

As the same issues and prerequisite for local Indigenous community endorsement applies to UNESCO’s World Heritage Site designations, the Trust Area may want to first wait until each of the 37 local First Nations have indicated their support before Islands Trust provides support of either UNESCO World Heritage Site or Man and the Biosphere designation applications.

3. Marine Protected Areas (MPAs) (federal designation by Fisheries and Oceans Canada)

One of the more interesting MPA examples that have relevance for the Trust Area is the new Darnley Bay MPA in the North West Territories announced November 16, 2016. Not only is it the biggest marine protected area in Canada (about 2,400 square kilometres) but it is the first MPA with conservation objectives based specifically on Indigenous traditional knowledge. It bans oil and gas exploration and commercial fishing from the area, while still allowing for Indigenous hunting and fishing activities. This is an example of a broad conservation initiative based primarily on respecting Indigenous rights, and harvesting rights in particular.

4. National Park Reserves (federal designation by Parks Canada)

The Gulf Islands National Park Reserve has had a varied history of success with local First Nations relations. Within many of the First Nations that have asserted interests in the Southern Gulf Islands, there are residual bad feelings due to the way consultation was done at the outset of designating this Park Reserve. Although Parks Canada is now committing to establishing a model of co-management with these same First Nations, it will take Parks Canada time to restore trust.

5. Aquaculture Licensing Process (multijurisdictional, by Fisheries and Oceans Canada, Transport Canada and Province)

Even though licensing authorities have put some effort into establishing stricter limits on cumulative production through these permit/tenure processes, cumulative effects of aquaculture are increasingly concerning. An interesting legal challenge to cumulative effects of industrial development (despite cumulative impact policies and individual project limitations) is the Treaty 8 Nation of Blueberry First Nation. Although they have been signatories of multiple Benefit Impact Agreements over the course of the oil and gas developments in the northeast of BC, they are claiming their hunting, fishing and trapping treaty rights are impeded by cumulative effects. It is

within the realm of possibility that this may not be the first claim of treaty harvesting rights being impeded and a First Nations drawing a legal “line in the sand”, saying enough is enough.

6. Aboriginal Title and Rights (determined by Canada, First Nations and developing case law) With regard to marine protection in the Trust Area, the most relevant case is the *Claxton v. Saanichton Marina Ltd* case of 1989 which opposed the construction of a marina because it would interfere with their right to “fish as formerly” as guaranteed under their 1854 Douglas Treaty. The Trust Area has 10 Douglas Treaty First Nations with a guaranteed right to “fish as formerly”. Respecting this treaty right could be a very justifiable marine protection tool for any activity – or the cumulative effect of many activities - that would be perceived to impede that treaty right.

7. Marine Planning Partnerships (First Nations and the Province) An excellent and nearby example of this marine protection tool is the North Vancouver Island Marine Plan signed by 17 First Nations on the northern end of Vancouver Island and the Province. This is the fourth such coastal Marine Plan with First Nations (see also Central Coast Marine Plan, Haida Gwaii Marine Plan and the North Coast Marine Plan). The partners agree to co-lead implementation of the marine plans, including ongoing engagement with communities, local governments, and stakeholders. The agreements describe how the Province and First Nations will work together and how implementation activities will be prioritized and managed. Example priorities include continuing collaborative governance arrangements; implementation of marine zoning; fostering marine stewardship, monitoring and compliance; and facilitating sustainable economic development opportunities to support healthy communities.

### Scheduled ***Discussions with First Nations on Marine Protection Priorities***

As the analysis above describes, First Nations have significantly increasing influence on the tools and processes to protect the marine resources of the Trust Area.

Also included in the December 2016 Trust Council package is a First Nations and Public Engagement Strategy RFD. In this 18-month plan to improve relations with First Nations, is a second phase described as “Real Discussions with First Nations about Real Issues” slated for April 2017 to September 2017. This is intended to include marine protection priorities and shared concerns.

As the First Nations Engagement Strategy indicates, Islands Trust needs to first establish a mutually respectful relationship with the 37 First Nations of the Trust Area before earning the right and the trust to hear their meaningful input on issues such as marine protection priorities. With a sincere and comfortable relationship established, we can work together towards shared concerns and objectives in “preserving and protecting” marine resources.

### ***Local Planning Tools***

The *Islands Trust Act* provides many methods for local trust committees, island municipalities, and Trust Fund Board to protect the marine environment. Advocacy is one tool. However, there are also many opportunities for Islands Trust bodies to make decisions and undertake programs that would directly benefit the marine environment.

Local trust committees have planning jurisdiction over the surface of the sea and the foreshore within their local trust area. Island municipalities have the same planning powers and have other municipal powers such as the ability to issue building permits, and hold licenses of occupation. As such, all of the planning tools available for developing policy and regulating terrestrial land apply to the foreshore and surface of the sea.

The complexity with land use planning on the foreshore is that the owner is generally the Province, with leases or license of occupations provided to individuals and companies. Local government bylaws have no effect on the Province or its agents (as per the *Interpretation Act*), but local bylaws do have effect on third parties that are leasing or otherwise using the Crown foreshore and surface of the sea. Shoreline protection is further complicated because the federal government is responsible for fisheries and navigation. As these are federal powers, local governments cannot regulate those either, regardless of who is undertaking the federally regulated activities.

Local trust committee and island municipalities have the following land use planning tools available to protect shorelines (subject to the limitations listed above):

- Zoning – local trust committees and island municipalities can create zones on the foreshore and regulate the uses within those zones. For example, all or part of the shoreline can be zoned to prohibit docks and other structures on the foreshore.
- Development Permits – local trust committees and island municipalities can establish all or part of the foreshore areas as a development permit area to protect sensitive ecosystems, or protect development from hazardous conditions. A development permit will then contain guidelines to mitigate impacts from development that is permitted by the zoning regulations.
- Heritage Conservation – local trust committees and island municipalities can establish heritage conservations areas along the shoreline to protect identified heritage features.
- Screening - local trust committees and island municipalities can require screening on the upland to protect environmental sensitive areas, such as an identified sensitive shoreline.
- Drainage and runoff – local trust committees and island municipalities can regulate drainage and runoff on upland properties and mitigate impacts of the runoff on the foreshore.
- Tree cutting in relation to areas affected by hazards, such as land slip - local trust committees and island municipalities could establish tree cutting bylaws in upland areas known to be a hazard as a means of preventing erosion and landslips onto the foreshore.
- Restrictive covenants – local trust committee and island municipalities can use covenants to restrict uses along the upland to protect the foreshore. As these are agreements, the landowner at the time of signing would need to be in agreement with the terms of the covenant that would then run with land title. These covenants are typically used during a rezoning for things that cannot be controlled through the zoning authority.

**Trust Fund Board Protection Tools:**

Trust Fund Board can protect the areas upland from shorelines with conservation covenants and through direct ownership.

- Conservation covenants are voluntary agreements placed on the title of a property, binding future owners to the agreed terms.
- The Natural Area Protection Tax Exemption Program (NAPTEP) provides landowners with an annual 65% exemption on the property taxes for the portion of their property protected with a voluntary NAPTEP covenant.
- The Trust Fund Board can acquire nature reserves in a number of ways. Outright purchase is usually impractical due to the price of land in the Trust Area so residents are encouraged to consider donations of their land. There are a number of donation methods available including fee-simple donation, donation of a subdivided lot, life estate, bequest and bargain sale.

**Islands Trust Process, Capacity and Roles for Responding to Marine Issues**

Capacity:

	<b>TAS</b>	<b>LPS</b>	<b>TFB</b>	<b>Total</b>
	10% -Director 25%Senior Policy Advisor 25% Senior Intergovernmental Policy Advisor	(*assumes LTCs uses the planner time allocated for “Projects” for marine shoreline protection policy and regulatory amendments.) 1-% Planner serving LPC		
<b>FTE equivalent</b>	0.65	3.25	.15	<b>4.05</b>

Roles and Responsibilities:

Responsibility	Role	Current Capacity	Comments
Trust Council / EC	After First Nations and Public Engagement, develop and adopt Policy Statement policies in support of marine protection	LOW	Council could amend Policy Statement to include new marine-related prohibitions/directive policies.
	Selecting which projects to fund	HIGH	Council could say it prioritizes marine-related LTC and TAS projects
	Develop toolkits/model bylaws re marine	MED	Already on LPC work program
	Funding mapping to enhance the effectiveness of regulatory tools and education initiatives	MED	More funding would increase capacity
	Funding of enforcement action against local land-use bylaw violations that threaten marine health (e.g. seawall, foreshore structures).	LOW	More funding and changes to staff resources/functions would increase capacity
	Directly conserve heritage properties that support healthy marine processes and cultural/archaeological resources	LOW	Trust Council already owns one property (Denman school). Strategic Plan changes, more funding and changes to staff resources/ functions would increase capacity
	Funding of Trust Fund Board for conserving terrestrial areas that support healthy marine processes and cultural/archaeological resources	MED	More funding would increase capacity
	Educating landowners, island residents and development professionals about actions they can take to protect the marine environment.	LOW	Strategic Plan changes, more funding and changes to staff resources/functions would increase capacity
	Advocating to other levels of government and businesses to place priority on the side of protection for Trust Area ecosystems. (e.g. re shipping)	HIGH	Already within EC scope and achievable if made high priority
	Cooperatively working with other levels of government and businesses to develop initiatives that reduce threats to the marine environment (e.g. derelict vessels, aquaculture)	LOW	Changes to staff resources/functions would increase capacity
LTC/ Island Municipality	Adopting of OCPs and bylaws in support of marine protection	HIGH	More funding and changes to staff resources/functions would increase capacity. Local trust committees and island municipalities could make

			marine topics a higher priority
	Set work programs priorities that focus on marine issues	HIGH	Already within LTC scope if they choose to prioritize
	Cooperatively working with other levels of government and businesses to develop initiatives that reduce threats to the marine environment. (e.g. Participation in local processes Howe Sound Community forum, Saanich Inlet Roundtable, Baynes Sound)	MED	Deeper levels of engagement would require more funding and changes to staff resources/functions
Trust Fund Board	Assist all staff to use ecosystem mapping to enhance the effectiveness of regulatory tools and education initiatives	HIGH	Current emphasis is on orienting new staff as they arrive
	Conserving terrestrial areas that support healthy marine processes	MED	Regional Conservation Plan sets priorities for acquisitions and covenants. More funding would enable more focus on protection for marine processes
	Educating landowners, island residents and development professionals about actions they can take to protect the marine environment (e.g. workshops and targeted landowner contact)	LOW	Strategic Plan changes, more funding and changes to staff resources/functions would increase capacity
Staff	Service delivery on all of the above	MED	More staff resources, more funding and/or fewer Council priorities would increase capacity for addressing marine issues that require cooperative actions developed through trusting relationships.
	Staff training and orientation on best practice for addressing marine issues	MED	Training and orientation on topics such as processing foreshore-related applications, promoting Green Shores concepts, cooperating with others, has not been a priority. Changes to staff resources/functions would increase capacity.
	Staff procedures	MED	Has not been a priority. Changes to staff resources/functions would increase capacity.

**ATTACHMENT(S):**

1. Chart of Marine Protected Area Laws, West Coast Environmental Law, November 2016
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**AVAILABLE OPTIONS:**

1. Receive for information.
2. Direct Executive Committee to develop recommendations on preferred marine protection options.
3. Prioritize marine protection on committee work programs.
4. Allocate additional 2017/18 budget to marine protection initiatives.
5. Request additional information from staff.

**FOLLOW-UP:**

1. Staff will provide an update on any emerging discussions with First Nations with regard to areas of shared marine protection priorities at the March 2017 Trust Council meeting.
  2. Staff will report in March about the possibility for reorganization of committee structure of Trust Council with the possibility of creating in addition or substitution of marine matters generally.
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Russ Hotsenpiller, Chief Administrative Officer, November 17, 2016  
Executive Committee, November 23, 2016

<i>Legal Tool</i>	<i>Dept.</i>	<i>Purpose</i>	<i>Strengths</i>	<i>Weaknesses</i>	<i>Examples in BC</i>
<b>International</b>					
<p>International Maritime Organisation (IMO) Particularly Sensitive Sea Area (PSSA)</p> <p>Process Document: <a href="#">A.982(24)</a></p>	<p>Transport Canada</p> <p>Authority to Initiate: Only the federal government (3.1).</p>	<p>Protects an ecologically, socially or scientifically sensitive marine area against international shipping hazards.</p> <p>Area proposed as PSSA should meet at least one of the ecological, social, cultural, and economic scientific and educational criteria defined by IMO to be identified as a PSSA, and will usually meet more than one of these criteria</p>	<p>An IMO designation creates rules that ships follow.</p> <p>Enforcement available in addition to domestic enforcement:</p> <ol style="list-style-type: none"> <li>1) Protective measures entered on charts (9.1),</li> <li>2) Proposing state implements measures (9.2), and</li> <li>3) IMO member states should take all appropriate steps to ensure their flagged ships comply with the measures (9.3).</li> </ol> <p>Impetus to develop more detailed protective measures. A state that proposes a PSSA must suggest associated protective measures (APM) to guard against the PSSA’s international shipping vulnerabilities (unless existing measures already guard against the vulnerabilities). Protective measures include labelling all or part of the PSSA an Area to be Avoided (ATBA), a No Anchoring Area, or a restricted-discharge Special Area. If the IMO approves a protective measure, each of the 171 IMO member states “should take all appropriate steps” to make sure ships flying its flag comply with the protective measure.</p> <p>Available protective measures (6.1):</p> <ol style="list-style-type: none"> <li>1) Into-water discharges restrictions,</li> <li>2) Into-air discharge restrictions,</li> </ol>	<p>Political process to achieve IMO designation, need for support from other states</p> <p>At the time of the adoption of a PSSA, at least APM must be adopted so in practice a State could proceed to designate an APM such as an ATBA (see below) w/o need for lengthy PSSA process</p> <p>PSSAs are strengthened if protective measures are already in place, e.g. if the <i>Oceans Act</i> Marine Protected Area (MPA) designation already protects the area</p>	<p>No example in Islands Trust Area, but note: <a href="#">Friends of the San Juans</a> have launched an initiative proposing the Salish Sea/Puget Sound a PSSA</p> <p>Other Global Examples: Great Barrier Reef, Galapagos, <a href="#">Saba Bank (Caribbean)</a>: Ships over 300 tons <u>should</u> stay out of the ATAB. Ships <u>must not</u> anchor in the area (No Anchoring Area).</p>

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			<p>3) Ship routing restrictions or reporting requirements, or</p> <p>4) Other measures to protect specific sea areas from ships.</p>		
<p>IMO Area to be Avoided (ATBA)</p> <p>Process Document: <a href="#">MSC/Circular 1060</a> (see also the <a href="#">General Provisions on Ships' Routing and SOLAS V Reg. 10</a>)</p>	<p>Transport Canada</p> <p>Authority to Initiate: Only the federal government (1.1).</p>	<p>Recommends or requires that all or certain classes of ships steer clear of an area. The IMO creates and modifies Areas to be Avoided and other sea routing measures on a regular basis.</p>	<p>IMO designations create rules that ships follow.</p> <p>Relatively short designation process- compared to other international designation options -</p> <p>Enforcement available in addition to domestic enforcement: Proposing state may monitor. IMO member states "shall do everything in their power to secure the appropriate use of ships' routing systems adopted by the [IMO]" (SOLAS V 10.6).</p> <p>An ATAB designation will discourage or prohibit all or certain classes of ships from entering an area. The designation is one of the protective measures available under the PSSA scheme. A state may also propose also an ATAB as a stand-alone routing measure. In approving an ATAB proposal, the IMO requires member states to "do everything in their power to secure the appropriate use of [approved] ships' routing systems". Establishing an ATAB or putting in place another IMO routing measure is quicker and easier than winning a PSSA designation</p>	<p>Political process to achieve IMO designation, need for support from other states</p> <p>Stringent requirements to prove need for the designation, must show:</p> <ol style="list-style-type: none"> <li>1) Need for specific routing measure (for example, history of damage to marine environment) (3.1), and</li> <li>2) Why routing measure can reasonably be expected to significantly prevent or reduce risk of damage to marine environment (3.5.2).</li> </ol> <p>If seeking mandatory routing measure, must show that mandatory measure is:</p> <ol style="list-style-type: none"> <li>1) Justified, and</li> <li>2) Limited to what is essential to protect marine environment.</li> </ol> <p>Must also explain whether ports and harbours of littoral states would be adversely affected by mandatory measure (3.6).</p>	<p>No example in Islands Trust Area.</p> <p>The IMO has established many Areas to be Avoided outside of PSSAs. Non-PSSA Areas to be Avoided guard sensitive marine ecosystems in <a href="#">Nova Scotia's Roseway Basin</a>, <a href="#">around Alaska's Aleutian Islands</a>, and in other areas where ships threaten environmental integrity.</p>
<p>MAB Biosphere Reserve</p>	<p>Multiple federal departments</p>	<p>Protects an ecologically important area</p>	<p>Areas recognized as UNESCO Biosphere Reserves fulfill three basic tasks: conservation, sustainable development, and logistics (e.g.</p>	<p>Long designation process- up to ten years.</p>	<p>No example in Islands Trust</p>

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<p>Process Document:  <a href="#">The Statutory Framework of the World Network</a></p>	<p>may be involved</p> <p>Authority to Initiate: Only the federal government (5.1(a)).</p>	<p>(terrestrial or marine) against harm. Zones the area into a core (protected) section, a buffer (light touch) section, and a transition (development) section.</p>	<p>research, education, etc).</p> <p>Provide a platform for stakeholder cooperation</p> <p>Provide a 'brand name' to improve local economies.</p> <p>Impetus to complete a more detailed plan for the area. Proposal should include a domestic management plan and should identify authorities or mechanisms to implement the plan (4.7).</p>	<p>A Biosphere Reserve will receive only as much legal protection as national and sub-national governments provide through domestic legislation and enforcement. Reserves remain solely within national jurisdiction.</p> <p>May entail complex governance structures. For example, the Clayoquot Biosphere Reserve has a co-management Board with 10 Directors, 4 ExOfficio members from Department of Fisheries and Oceans (DFO), Environment Canada (EC), Parks Canada, and Province of BC and 5 local advisory committees. The first periodic review of the Clayoquot Biosphere Trust (CBT) noted that evolving governance institutions entailed delays, occasional setbacks, and conflicting ideas about what the designation meant and the role, purpose, activities, and priorities of the CBT.</p>	<p>Area, but note:</p> <p>Future of Howe Sound Society sent a letter of intent for a Howe Sound UNESCO Biosphere Region in 2016</p> <p>Salish Sea Trust recently revived a proposal to designate the Capital Regional District as a UN Biosphere Reserve.</p> <p><a href="#">Clayoquot Sound</a> in BC is a Biosphere Reserve</p> <p>Canada hosts <a href="#">sixteen Biosphere Reserves</a> in total.</p>

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<p>UNESCO World Heritage Site</p> <p>Process Documents: <a href="#">The Convention</a> (C) and <a href="#">the Operational Guidelines</a> (OG)</p>	<p>Parks Canada</p> <p>Authority to Initiate: Only the federal government (C-11.1, 11.3).</p>	<p>Protects a cultural or natural area of Outstanding Universal Value</p> <p>Proposal should include a domestic management plan (OG-108). All properties must have adequate long-term legislative, regulatory, institutional or traditional measures to protect against harm to the property's Outstanding Universal Value (OG-97,98).</p>	<p>Increased likelihood of conservation success when a site is designated as a World Heritage site is often related to the high level of global scrutiny that World Heritage Sites receive, compared to other protected area designations.</p> <p>Convention requires states to report regularly on each site's State of Conservation. Each site is reviewed every six years as part of the monitoring regime. If a site faces a serious threat a quicker reactive monitoring visit and report can occur.</p> <p>Other benefits of World Heritage Site designation can include increased tourism, funding, public attention, and jobs for the local community.</p> <p>UNESCO may revoke a Site designation if the property loses its qualifying characteristics (OG 192-198).</p> <p>World Heritage Committee may list a Site as In Danger only when the Site meets all of the following requirements (OG 177):</p> <ul style="list-style-type: none"> <li>a) A serious and specific danger threatens the property,</li> <li>b) Conservation of the property requires major operations, and</li> <li>c) Someone has requested assistance for the property.</li> </ul> <p>The Mikisew Cree First Nation <a href="#">petitioned</a> the World Heritage Committee in 2014 to list Wood Buffalo National Park as In Danger. As most dramatically shown in the <a href="#">Great Barrier Reef</a></p>	<p>Long process of designation.</p> <p>Canada updates its Tentative List of World Heritage Sites only once a decade.</p> <p>A World Heritage Site will receive only as much legal protection as national and sub-national governments provide through domestic legislation and enforcement.</p>	<p>No example in Islands Trust Area, but note:</p> <p>The Salish Sea Trust and Vancouver Island &amp; Coast Conservation Society have begun a campaign that will have the Salish Sea considered for designation as a World Heritage Site.</p> <p>SGang Gwaay in Haida Gwaii is the only BC example of a World Heritage Site, designated for its cultural value under <b>Criterion (iii)</b> as it bears unique testimony to the culture of</p>

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			<p><a href="#">saga</a>, campaigning to label a Site as In Danger brings <a href="#">a wealth of attention</a> (and sometimes improvement) to the quality of a government's conservation efforts.</p>		<p>the Haida.</p> <p>Canada's <a href="#">Tentative List of World Heritage Sites</a> of six sites includes <a href="#">Gwaii Haanas</a>. These sites await full designation.</p> <p>Parks Canada is currently leading a new public process to add to its Tentative List and eventually nominate more Canadian sites to the World Heritage List</p>
Special Areas under the 1973 International Convention for the Prevention of Pollution from Ships, modified by the 1978 Protocol relating thereto (MARPOL 73/78)	Transport Canada	Provide higher level of protection to an area to prevent pollution from ships (by oil, noxious liquid substances, garbage, or air pollution),	Discharges of oily waste and some chemical residues are prohibited in Special Areas Strict enforcement provisions promote compliance of vessels flying flags of MARPOL's States Parties	Requirements of a Special Area designation can only become effective when adequate reception facilities are provided for ships in accordance with the provisions of MARPOL 73/78	No example in Islands Trust Area

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		based on technical reasons relating to its oceanographic and ecological conditions, and to the particular character of its traffic.			
Ramsar Sites under the Ramsar Convention on Wetlands	Environment Canada	Conserve and ensure wise use of all wetlands through local and national actions, and international cooperation, as a contribution toward achieving sustainable development throughout the world	<p>Ecological character of RAMSAR sites must be maintained by the national government who requests the designation.</p> <p>Impetus for more detailed management action and conservation focus as management plan is required for each RAMSAR site</p> <p>Higher local and International profile for site</p>	RAMSAR permits “wise use” of sites, but neither prohibits nor regulates the taking of species for any purpose, although such use must not affect the ecological characteristics of the wetland	<p>No example in Island Trust Area. BC examples include:</p> <p>Ramsar sites include Alaksen National Wildlife Area (NWA) in Delta, the Columbia Wetlands, the Creston Valley Management Area, Burns Bog, and the Fraser River Delta</p> <p>Canada currently has 37 sites designated as</p>

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					Wetlands of International Importance (Ramsar Sites), with a surface area of over 13 million hectares, 17 of which are <a href="#">NWAs</a> or <a href="#">Migratory Bird Sanctuaries</a> .
<b>Multijurisdictional</b>					
Estuary Management Plans (EMP) via Order in Council	Fisheries and Oceans Canada  BC Ministry of Environment  Municipal governments	Bring together multiple jurisdictions to protect and manage estuaries  Each plan has its own stated objectives.	Coordination of multiple jurisdictions is main purpose of these plans; this gives the plans added power once finalized  Flexible plans that allow for buy-in from all stakeholders and sectors; can be adapted to meet the specific needs and concerns in the area  Allows for extensive public participation in planning and review  Allows for balanced form of development  Real potential for small-scale habitat restoration projects	Not adaptive to changing circumstances because formal Cabinet approval required for changes to the plan (for some EMPs)  Maintaining adequate funds is a challenge because no single department is responsible  Balanced management approach means that conservation concerns are not necessarily the top priority  Building consensus amongst jurisdictions can be challenging partially because of changing politicians  Difficulty in large geographic areas	No example in Island Trust Area. BC examples include: <ul style="list-style-type: none"><li>Cowichan Estuary Environmental Plan</li></ul> BC examples include: <ul style="list-style-type: none"><li>Campbell River EMP (good example for conservation)</li></ul>

<i>Legal Tool</i>	<i>Dept.</i>	<i>Purpose</i>	<i>Strengths</i>	<i>Weaknesses</i>	<i>Examples in BC</i>
<b>Federal</b>					
<b>Marine Protected Areas</b> <i>Oceans Act</i> SC 1996, c 31	Fisheries and Oceans Canada (DFO)	Conserve and protect fish, marine mammals, and their habitats; unique areas; areas of high productivity or biological diversity.	<p>Act requires Minister to create network of MPAs (though no deadline or time limit established for this goal)</p> <p>Process of establishment is faster than National Marine Conservation Areas (NMCA), though still takes average of five years to designate</p> <p>Boundaries can be more easily adjusted than those of NMCAs, important for climate change</p> <p>Power to make emergency order for protection, valid for 90 days, unless renewed, where the Minister is of the opinion that a marine resource or habitat is or is likely to be at risk</p> <p>High fines available for violations of the Act.</p>	<p>Each MPA has its own regulations- no minimum protection standards exist.</p> <p>Act does not prohibit any activity outright, and allows for a wide range of activities within MPA boundaries if authorized by relevant Minister.</p> <p>Fishing is allowed in specific areas of all the MPAs established by DFO to date.</p> <p>Does not use International Union for Conservation of Nature (IUCN) categories</p> <p>Zones must appear in regulations establishing the MPA, invalid if only in management plan (Bowie Seamount)</p> <p>No penalty or consequence if deadline to complete management plan for MPA missed</p> <p>No overarching rule on the minimum amount of fisheries observer coverage required within the MPA</p>	<p>No example in Islands Trust Area. BC examples include:</p> <ul style="list-style-type: none"> <li>• <a href="#">Bowie Seamount MPA</a></li> <li>• <a href="#">Endeavour Hydrothermal Vent MPA</a></li> <li>• <a href="#">Race Rocks Area of Interest</a></li> <li>• <a href="#">Hecate Strait/Queen Charlotte Sound Glass Sponge Reefs Area of Interest</a></li> </ul>

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
<b>National Marine Conservation Areas and Reserves Act SC 2002, c 18</b>	Parks Canada	<p>Conserve and protect representative examples of Canada's natural and cultural marine heritage, and provide opportunities for public education and enjoyment</p> <p>"..managed and used in a sustainable manner that meets the needs of present and future generations without compromising the structure and function of the ecosystems, including the submerged lands and water column, with which they are associated."</p>	<p>Mineral and hydrocarbon exploration and development are prohibited within NMCAs</p> <p>Disposal of any substance within an NMCA is prohibited, unless authorized by a permit issued under strict conditions</p> <p>Regulations can be made to restrict both fishing and shipping in conjunction with DFO, Transport Canada, and once made they prevail over regulations adopted under Acts such as <i>Fisheries Act, Canada Shipping Act</i></p> <p>Traditional fishing activities permitted, but managed with the conservation of the ecosystem as the main goal</p> <p>Must include at least one zone that fully protects special features or sensitive elements of ecosystems. ie a no-take zone, only requirement in Canadian federal law for this</p> <p>More budget and staff than <i>Oceans Act</i> MPAs and NWAs</p> <p>Usually larger areas than <i>Oceans Act</i> MPAs and NWAs.</p> <p>Legislative rather than regulatory designation</p> <p>Interim management plan with management objectives and a zoning plan must be tabled in House of Commons as part of establishing MPA.</p>	<p>Process of establishment can take longer than <i>Oceans Act</i> MPAs because of extensive assessments, and consultations</p> <p>Limited guidance on restricting fishing or shipping other than section 9(3), which states, "In order to protect marine ecosystems and maintain marine biodiversity, the primary considerations in the development and modification of management plans and interim</p> <p>More costly to establish than <i>Oceans Act</i> MPAs and NWAs</p> <p>NMCAs do not try to protect marine ecosystems in a state essentially unaltered by human activity - the primary goal for national parks.</p>	<p>In Islands Trust Area:</p> <p>Feasibility Study for the Proposed Southern Strait of Georgia NMCA Reserve released in 2012. Parks Canada currently consulting with affected First Nations.</p> <p>Gwaii Haanas NMCA Reserve and Haida Heritage Site</p>

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
<b>National Park and National Park reserves with marine components</b> <i>Canada National Parks Act SC 2000, c 32</i>	Parks Canada	National Parks of Canada are dedicated to the people of Canada for their benefit, education and enjoyment, and shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.	<p>The first priority for National Park management is the maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes: s.8 (2).</p> <p>The Act defines "ecological integrity" as "a condition that is determined to be characteristic of its natural region and likely to persist, including abiotic components and the composition and abundance of native species and biological communities, rates of change and supporting processes."</p>	The case law provides that the duty to maintain ecological integrity in National Parks is not as strong as the wording appears. <sup>1</sup>	<p>In Islands Trust Area:  <a href="#">Gulf Islands National Park Reserve of Canada</a></p> <p>BC examples include:            Gwaii Haanas National Park Reserve, NMCA Reserve, and Haida Heritage Site</p> <p><a href="#">Pacific Rim National Park Reserve of Canada</a></p>
<b>Marine Wildlife Areas and National Wildlife Areas</b> <i>Canada Wildlife Act RSC 1985, c. W-9</i>	Canadian Wildlife Service, Environment Canada	Conserve and protect habitat for a variety of wildlife,	<p>Wide range of activities prohibited outright,</p> <p>Regulations Respecting the Management of Wildlife Areas and Control Thereof prohibit these activities within any wildlife area:</p>	<p>Discretionary powers of the Minister to allow exceptions to the prohibited activities</p> <p>Limited budgets compared to</p>	No examples in Islands Trust Area. BC examples

<sup>1</sup> "The Federal Court has effectively ruled that ecological integrity is simply one of many factors for Parks Canada to consider in exercising its legal power to manage the national parks, despite how poorly this reading fits with the literal terms of subsection 8(2)." Shaun Fluker, *How Legal Design May Constrain the Power of Law to Implement Environmental Norms: The Case of Ecological Integrity in Canada's National Parks*, 2012 *Environment in the Courtroom Symposium Papers*.

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
		<p>including migratory birds and species at risk</p> <p>Main objective of this type of protected area is conservation and research</p>	<p>a) hunting and fishing</p> <p>b) causing damage, destruction, or removal of plants</p> <p>c) swimming</p> <p>d) carrying on any commercial or industrial activity</p> <p>e) disturbance or removal of any soil, sand, gravel, or other material</p> <p>f) dumping or depositing any rubbish, waste material, or substance that would degrade or alter the quality of the environment</p>	<p>other MPAs</p> <p>2008 Commissioner of the Environment and Sustainable Development (CESD) Status Report identified that:</p> <ul style="list-style-type: none"> <li>Environment and Climate Change Canada (ECCC) has identified specific threats to each of its protected areas, but has not assessed whether conditions are improving or deteriorating at the sites, or used the information collected to address threats on a priority basis</li> <li>Most protected areas still lack up to date management plans</li> <li>ECCC has allocated insufficient human and financial resources to address urgent needs or activities related to maintaining the sites and enforcing regulations in protected area</li> </ul>	<p>include:</p> <ul style="list-style-type: none"> <li>Scott Islands: A Proposed Marine NWA</li> </ul> <p>NWAs in BC with marine component:</p> <ul style="list-style-type: none"> <li>Alaksen NWA</li> <li>Qualicum NWA</li> </ul>
<p><b>Fisheries closures</b></p> <p><i>Fisheries Act</i> R.S.C., 1985, c. F-14</p>	<p>Fisheries and Oceans Canada</p>	<p>Spatial fishery management measures intended to protect a portion of fish stocks from harvest</p>	<p>Can be established faster than MPAs</p> <p>Easier implement or adjust than formally established MPAs, a benefit in a changing climate.</p> <p>May be addressing the only threat that needs management attention.</p>	<p>Lack the permanency of an MPA.</p> <p>No authority over non-fishing activities.</p> <p>Minister has unconstrained discretion to impose, adjust or end fisheries closures.</p>	<p>Various: see <a href="http://www-ops2.pac.dfo-mpo.gc.ca/fns-sap/index-eng.cfm?pg=fishery_search">http://www-ops2.pac.dfo-mpo.gc.ca/fns-sap/index-eng.cfm?pg=fishery_search</a> for current closures</p>

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
			Ease of implementation potentially allows for the speedy creation of large networks of protected areas, effective species-level management	Fishery management areas with no wider stated conservation aims are not considered to be MPAs. "For such sites to meet IUCN's definition of a protected area, managers would need to address the overall health and diversity of the ecosystem and have a stated primary aim to this effect." <sup>2</sup>	
<b>Rockfish Conservation Areas</b> <i>Fisheries Act R.S.C., 1985, c. F-14</i>	Fisheries and Oceans Canada	Conservation of rockfish and rockfish habitat	The special 'Rockfish Conservation Area' designation, imposing strict restrictions on fishing in areas critical to the conservation of Rockfish, has been applied to over 160 sites in BC  Targeted approach to conservation, tailored to the particular vulnerabilities of Rockfish  As above, ease of implementation allows for effective network-level planning and implementation	Do not address the 'overall health and diversity' of the ecosystem: not technically MPAs  Limited to restricting fishing activities  Poor levels of recreational compliance  Lack of baseline data from before designation makes assessment of effectiveness difficult	In Islands Trust Area: <ul style="list-style-type: none"> <li>• <a href="#">Area 18</a> – Gulf Islands</li> <li>• <a href="#">Area 17</a> – Northern Gulf Islands</li> <li>• <a href="#">Area 29</a> – Valdes + Northern Galiano</li> <li>• <a href="#">Area 19 + 20</a> – Victoria</li> </ul>
<b>Protection of environmentally sensitive areas</b> <i>Fisheries Act R.S.C., 1985, c. F-14</i>	Fisheries and Oceans Canada	Identification and protection of ecologically sensitive areas (ESAs) that	s 37(3) allows the minister to define certain areas as 'ecologically significant areas'  Any person proposing to undertake any activity in an ESA must provide the minister with any	New and untested provision  Regulations required to define, designate and control activities in ESAs	None have yet been designated by regulation

<sup>2</sup> Day J., Dudley N., Hockings M., Holmes G., Laffoley D., Stolton S. & S. Wells, 2012. Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas. Gland, Switzerland: IUCN. at pg 16.

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
		require enhanced protection.	information regarding the work, as well as the water, place or fish habitat likely to be affected (s 37(1.1)). If the minister believes the proposed activities are likely to be harmful to fish, s/he may require modifications to the activity, or prohibit it altogether (s 37(2))		
<b>Migratory Bird Sanctuaries (MBS) listed under the <a href="#">Schedule in the Migratory Bird Sanctuary Regulations</a> under the <a href="#">Migratory Birds Convention Act</a></b>	Canadian Wildlife Service (CWS), Environment Canada	Protect migratory birds from killing, harm and harassment during a critical part of their life cycle, such as breeding, nesting, moulting, or staging and stopover during their migration	A Migratory Bird Sanctuary can be established on private, provincial, territorial or federal land.  Strong limitations on a defined list of activities  CWS provides detailed technical guidance for avoiding harm to migratory birds	Few designated. Wildlife agencies seem to prefer other designations.  CWS has limited enforcement capacity	In Islands Trust Area: <ul style="list-style-type: none"><li><a href="#">Christie Islet MBS</a></li></ul> BC examples include: <ul style="list-style-type: none"><li>Victoria Harbour MBS</li><li><a href="#">Esquimalt Lagoon MBS</a></li><li><a href="#">George C. Reifel MBS</a></li><li><a href="#">Nechako River MBS</a></li><li><a href="#">Vaseux Lake MBS</a></li></ul>
<b>Species at Risk Act – Critical Habitat Designation</b>	Environment Canada  Fisheries and Oceans Canada (for	Prevent Canadian species, subspecies and distinct populations of	Identifying critical habitat is a legislative requirement for all listed species (in both the recovery plan and the action plan).  SARA includes legislated timelines for identifying critical habitat.	Provides species by species protection (not by geographic area)  For species that are not aquatic or migratory birds, SARA only	In Islands Trust Area:  <a href="#">Critical habitat order</a> of Northeast Pacific

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	aquatic species)	wildlife from being extirpated or becoming extinct  Critical habitat is the habitat which is necessary for the survival or recovery of listed species	It is an offence to destroy any part of the critical habitat of any listed endangered or threatened species.  Critical habitat now includes both geographic and biophysical features (ie. important feeding areas).	applies to critical habitat that is on federal lands.  Provinces consider critical habitat as science advice only, not as binding on provincial land.  Government have often failed to identify critical habitat, claiming that there is scientific uncertainty about extent of habitat	northern and southern orca ( <i>Orcinua orca</i> )  Through extensive litigation, recovery strategy exists and is being implemented and will entail additional regulatory actions.
<b>Shipping Regulations</b> <i>Canada Shipping Act</i> S.C. 2001, c. 26	Transport Canada	“protect the marine environment from damage due to navigation and shipping activities”	Offers various regulatory mechanisms for regulating or prohibiting marine traffic in certain areas.  S 120(1)(j) allows the minister to set out compulsory and recommended routes; (k) allows the regulation or prohibition of marine traffic for the purpose of protecting environmentally sensitive areas  S 136(i) allows the minister to regulate or prohibit navigation for the purpose of protecting the environment	Largely regulatory in nature: few long-term designations  Strict regulations/prohibitions on navigation more typical of inland waters than marine waters  Discretionary: competing environmental and economic purposes may impede the imposition of adequate regulation	In Islands Trust Area:  Regulations prohibit shipping for : "That part of Howe Sound north of Porteau Cove extending 300 m from the shoreline of Lot 2808".  Examples in BC: Speed limits in Pendrell Sound

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<b>Designated Sewage Areas</b> <i>Vessel Pollution and Dangerous Chemicals Regulations, SOR/2012-69 under Canada Shipping Act S.C. 2001, c. 26</i>	Transport Canada	Allows the designation of Designated Sewage Areas (DSA) listed in SCHEDULE 2(Section 83) of the <i>Regulations</i>	All ships within Designated Sewage Areas must treat waste before discharge, and ensure any such discharge does not exceed a given fecal coliform count (s 96(1)(b)); if not equipped with the necessary equipment to ensure this, ships must carry temporary waste storage (s 86(2)(b).	Designated Sewage Areas tend to be small in area  Without wider implementation, ineffective means of mitigating risks of pollution	In Islands Trust Area: <ul style="list-style-type: none"> <li>• Montague Harbour</li> <li>• Pilot Bay</li> </ul> Examples in BC: <ul style="list-style-type: none"> <li>• Carrington Bay</li> <li>• Cortes Bay</li> <li>• Manson's Landing</li> <li>• Prideaux Haven</li> <li>• Roscoe Bay</li> <li>• Smuggler Cove</li> <li>• Squirrel Cove</li> </ul>
<b>Aquaculture Licencing Process – conditions of licence</b>	Fisheries and Oceans Canada  (with Transport Canada and Province of BC – have single harmonized application)	Regulate aquaculture industry in B.C.  Ensure that licence holders operate legally and are in compliance with the <i>Fisheries Act</i> and regulations	DFO can change licence conditions for conservation and protection purposes at any point during licence  Failure to comply with licence conditions can result in investigation and enforcement actions  Goal of Siting Guidelines is to locate aquaculture in environmentally suitable places, while promoting economy	Dual mandate of DFO allows economy to be prioritized over environment  No limits to the number of licences for a given species  Limited public consultation  Issue multi-year licences with no necessary reviews	No examples in Islands Trust Area. BC examples include: <ul style="list-style-type: none"> <li>• Plover Point, Fortune Channel (#1413555)</li> </ul>

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				DFO has limited capacity to investigate and enforce licence conditions	licence contains extra conditions: Must submit annual monitoring report  Stricter limit on cumulative production
<b>Provincial</b>					
<b>Ecological Reserves</b> <i>Ecological Reserve Act, RSBC 1996, c 103</i>	Ministry of the Environment	Reservation of areas of ecological importance. Purposes include: research; preserving representative examples of ecosystems; observation of modified ecosystems allowed to return to natural state;	Established by order in council  Highly restrictive: no extractive activities permitted (up to and including camping)  Research/education use and occupation allowed, but only with permit  Minister can prohibit all access at any time	s 3(2): government can cancel entirely or delete any portion of an established ecological reserve, unless established under <i>Protected Areas of British Columbia Act</i>  Generally small in area, and limited to areas of special ecological importance  Lack of coordination between provincial management and federal DFO can undercut management intent: as of 2008, commercial fishing was permitted in 21 Pacific marine	In Islands Trust Area: <ul style="list-style-type: none"><li>• Satellite Channel Ecological Reserve</li><li>• Canoe Islets Ecological Reserve</li><li>• Rose Islets Ecological Reserve</li><li>• Ballingall Islets Ecological</li></ul>

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		protection of rare or endangered species; preservation of unique/rare phenomena		ERs, despite the apparent ban on extractive activities in such areas <sup>3</sup>  Many ERs only partly marine: management intent with regard to the terrestrial portion may not be implemented with regard to the marine area	Reserve  BC examples include: <ul style="list-style-type: none"> <li>• Robson Bight Ecological Reserve</li> <li>• Race Rocks Ecological Reserve</li> </ul>
<b>Provincial Parks (Classes A, B, C + Recreational Areas)</b> <i>Park Act, RSBC 1996, c 344</i>	Ministry of the Environment	Protection and maintenance of natural and cultural values; recreational opportunities	Broad protection of natural resources: no sale, removal, destruction, disturbance etc. without permit:  Classes A & C: permits can be granted only where 'necessary for the preservation and maintenance of recreational value.'  Class B: can be issued provided not 'detrimental to recreational values': lower standard Recreational Areas: permits issued at minister's discretion: potentially the lowest standard  s 5(1)(b): Lieutenant Governor in Council (LGIC) can designate 'wildland areas' within parks where no such permits can be issued  s 12(3) forbids activities contrary to the park's	'Recreational value', not ecological concern, provides the primary limitation on granting of licenses  Highly discretionary: permit system allows a range of potentially damaging activities, and though the Act allows gov. to make far-reaching regulations, it does not require it to do so  As of 2011, only 3 Class A Parks demonstrated an intent to prohibit all commercial fisheries in their management plans; 25 noted 'issues or vulnerability to commercial fishing'; and 24	In Islands Trust Area: <ul style="list-style-type: none"> <li>• Helliwell Provincial Park</li> <li>• Squitty Bay Provincial Marine Park</li> <li>• Broughton Archipelago Provincial Park</li> <li>• Wallace Island Marine</li> </ul>

<sup>3</sup> Carolyn Robb et al., "Commercial fisheries closures in marine protected areas on Canada's Pacific coast: The exception, not the rule," (2011) *Marine Policy* 35.3: 309 at 315.

<i>Legal Tool</i>	<i>Dept.</i>	<i>Purpose</i>	<i>Strengths</i>	<i>Weaknesses</i>	<i>Examples in BC</i>
			designated purpose s 29: LGiC gets broad powers to make regulations controlling fishing, access etc.	<p>stated a need ‘for better coordination with the DFO’.<sup>4</sup></p> <p>Lower standards for permits to tourism/resort projects: must be ‘consistent with or complementary to recreational values’ (s 9.1)</p> <p>Fishing does not need a permit provided it adheres to the Wildlife Act (s 9)</p> <p>If a park is not included in the Protected Areas of BC Act, LGiC can increase or decrease area of park</p> <p>Little consideration for First Nations cultural/economic practices (but see conservancies)</p> <p>Standards of protection vary significantly depending on the park, and do not necessarily offer meaningful protection to marine environments</p> <p>Coordination issues with federal DFO makes it hard to control fisheries effectively, where such</p>	<p>Provincial Park</p> <ul style="list-style-type: none"> <li>• Bodega Ridge Provincial Park</li> <li>• Montague Harbour Marine Provincial Park</li> </ul> <p>Examples in BC:</p> <ul style="list-style-type: none"> <li>• Newcastle Island Marine Park</li> <li>• Discovery Island Marine Provincial Park</li> <li>• Jáji7em and Kw’ulh Marine Provincial Park</li> </ul>

<sup>4</sup> Carolyn Robb et al., “Commercial fisheries closures in marine protected areas on Canada’s Pacific coast: The exception, not the rule,” (2011) *Marine Policy* 35.3: 309 at 313.

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				control is part of the management plan.	
<b>Provincial Parks (Conservancies)</b> <i>Park Act</i> , RSBC 1996, c 344	Ministry of the Environment	<i>Park Act</i> s 3.1: “(a) for the protection and maintenance of their biological diversity and natural environments, (b) for the preservation and maintenance of social, ceremonial and cultural uses of First Nations, (c) for protection and maintenance of their recreational values, and (d) to ensure that development or use of their natural	Incorporation of First Nations cultural/economic/social concerns: more holistic understanding of conservation involving both human and natural aspects  Both more, and less, permissive than a Class A Park: larger range of low-impact human activities permitted, but permits cannot be issued for commercial logging, mining, hydro-electric power, or any activity that might restrict or hinder the purposes listed in s 3.1.  Selection process involves First Nations as well as government  Joint management with local communities  Tool for First Nations to protect and manage valued areas through formal legal protections  Though only established in 2006, conservancies now cover almost 3,000,000 h of land, the second highest amount of any Park or Ecological Reserve designation in BC in general (Class A parks are #1) <sup>6</sup> . Conservancies with marine components, meanwhile, cover the largest marine area of any designation (1082 km <sup>2</sup> ) <sup>7</sup>	Many of the same weaknesses as other provincial parks  Lack of coordination with DFO  Though this designation provides extra protections against logging, mining and hydroelectric development, there are no specific prohibitions against potentially damaging marine activities, like shipping, fishing, offshore oil and gas development, mineral extraction	No examples in Islands Trust Area. BC examples include: <ul style="list-style-type: none"> <li>• Hakai Lúxvbálís Conservancy (also the largest provincial MPA)</li> <li>• Fjordland Conservancy</li> </ul>

<sup>6</sup> British Columbia, BC Parks. “Summary of designations and protected area activities”, online (2016) at 2 <<http://www.env.gov.bc.ca/bcparks/aboutBCParks/summary-of-pa-designations-activities.pdf>>

<sup>7</sup> Carolyn Robb et al., “Commercial fisheries closures in marine protected areas on Canada’s Pacific coast: The exception, not the rule,” (2011) *Marine Policy* 35.3: 309 at 310.

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
		resources occurs in a sustainable manner consistent with the purposes of paragraphs (a), (b) and (c)."  Created "expressly to recognize the importance of some natural areas to First Nations for food, social, and ceremonial purposes." <sup>5</sup>			
<b>Wildlife Management Areas</b> <i>Wildlife Act</i> , RSBC 1996, c 488	Ministry of Forests, Lands, and Natural Resources	Protection of "diverse and sustainable wildlife supporting varied uses for current and future generations"	Minister can designate wildlife management areas by regulation with consent of Lieutenant Gov. in Council  Flexible tool granting broad powers of regulation, with a number of 'creative sentencing options'  Fine-grained local management possible through regional managers with extensive powers over WMAs	Doesn't prohibit commercial fisheries  Generally small in area: difficult to control effects of activities outside the WMA  Varying levels of protection, rarely, if ever, going as far as creating 'no-take' areas  Can accommodate a wide variety	No examples in Islands Trust Area. BC examples include: <ul style="list-style-type: none"> <li>• Parksville WMA</li> <li>• Roberts Bank WMA</li> <li>• Boundary Bay WMA</li> </ul>

<sup>5</sup> British Columbia, BC Parks. "Summary of designations and protected area activities", online (2016) at 1 <<http://www.env.gov.bc.ca/bcparks/aboutBCParks/summary-of-pa-designations-activities.pdf>>

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
			<p>s. 5 allows designations of 'critical wildlife areas' and 'wildlife sanctuaries'</p> <p>s. 26(1)(b) makes it an offence to hunt, take, or kill wildlife in a wildlife sanctuary</p> <p>Protections against damaging wildlife habitat in WMAs: s 7(1) makes it an offence to damage wildlife habitat or deposit substances in a manner harmful to wildlife and their habitats within a wildlife management area</p> <p>s. 7(4) gives broad powers to regional managers to prohibit entry, disturbance to wildlife etc.</p> <p>s. 8 gives government a right of action against those who destroy or damage wildlife habitat</p> <p>s. 108 gives LGiC power to make regulations regarding WMAs in general.</p>	<p>of commercial activities</p> <p>Granting of permits can allow damage to habitat/wildlife, despite designation</p> <p>Relatively few WMAs with significant marine components</p>	<ul style="list-style-type: none"> <li>• Tofino Mudflats WMA</li> </ul>
<p><b>Reserves of Crown Land and Aquatic Crown Land</b></p> <p><b>Orders in Council</b> <i>Land Act</i>, RSBC 1996, c 245</p>	Ministry of Forests, Lands and Natural Resource Operations	Means of preventing or restricting the disposition of the land due to an acknowledged value or concern in the public interest	<p>s. 15-17: LGiC can reserve Crown land from disposition</p> <p>Reserves can prevent dispositions of Crown land altogether (either permanently or temporarily) or can place conditions on disposition to meet a specific purpose (ie. wildlife management)</p> <p>Often used to protect estuarine or foreshore habitat, but aquatic Crown land can be reserved as well</p>	<p>No administrative or regulatory framework inherent in the reserve process</p> <p>Often an interim measure before designation as a WMA or other form of protected area</p> <p>Reserves only prevent lands from being turned over to private interests under the <i>Land Act</i>. Grants under other Acts (ie. Mineral Tenure Act) may still be made.</p>	<p>No examples in Islands Trust Area. BC examples include:</p> <ul style="list-style-type: none"> <li>• Nanaimo River Estuary Wildlife Reserve</li> <li>• Fanny Bay Wildlife Reserve</li> </ul>

<b>Legal Tool</b>	<b>Dept.</b>	<b>Purpose</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Examples in BC</b>
				Only for aquatic crown land under provincial jurisdiction	
<b>Tenures that restrict specific uses</b> <i>Land Act, RSBC 1996, c 245</i>	Ministry of Forests, Lands and Natural Resource Operations		s 66(1): LGiC can prohibit specific uses of Crown land  Allows specific uses that harm conservation values to be prohibited	See above	
<b>Protected Areas</b> <i>Protected Areas of British Columbia Act, SBC 2000, c 17</i>		Ecological Reserves and Parks can be designated, or, if already designated, given more formal legal status by inclusion in the schedules of this Act.	Parks and ERs protected under this act cannot be cancelled or altered by the LGiC without amending the Act itself (i.e. through the Legislature)  Designation under the Act provides identical protections, but a more formal legal status	See above under headings 'Ecological Reserves and "Provincial Parks"	Robson Bight ER  Hakai Lúxvbálís Conservancy
<b>Environment and Land Use Designations</b> <i>Environment and Land Use Act, RSBC 1996, c 117</i>	Environment and Land Use Committee	"[E]nsure that all aspects of the preservation and maintenance of the natural environment are fully considered in the administration of land use and	Empowers the BC Government's Environment and Land Use Committee to make a range of recommendations to the LGiC, who can then make any orders "necessary or advisable respecting the environment or land use."  Grants a general wide discretionary power over the environment that can be used to create protected areas, establish management direction  Targeted, flexible: in the creation of protected	Similar problems as above	No examples in Islands Trust Area. BC examples include:  <ul style="list-style-type: none"> <li>• Kitlope Heritage Conservancy Protected Area (establishe</li> </ul>

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		resource development” <sup>8</sup>	areas, usually the provisions of the Park Act are applied, with additional prohibitions against specific activities  More specific protections/regulations are possible.		d under the Act; has a marine component )
<p><b>Licensing process for commercial harvest of wild aquatic plants</b> <i>Fisheries Act, RSBC 1996, c 149</i></p> <p>Nb: <i>Fish and Seafood Act</i> will be brought into force on January 1, 2017</p>	Ministry of Agriculture	<p>Ensure seafood is safe for public consumption (seafood includes aquatic plants grown or cultivated for commercial purposes)</p> <p>Requires licences for commercial aquatic plant growing and harvesting</p>	<p>Failure to comply with licence conditions can result in investigation and enforcement actions</p> <p>Harvesting kelp for commercial purposes is prohibited except with a licence</p>	<p>No public consultation involved in issuance of licences</p> <p>No legislated limit on commercial harvest of aquatic plants</p> <p>No zoning in the Act, no off-limits geographic areas</p> <p>Focus is on food safety and not on marine environmental protection</p>	<p>No examples in Islands Trust Area. BC examples include:</p> <p>Beach-cast Seaweed on east coast of Vancouver Island</p> <p>Gov’t taking adaptive management approach to regulation (see <a href="#">here</a>)</p> <p>Stricter licence conditions</p> <p>Harvest Plan proposals are required</p>

<sup>8</sup> British Columbia, BC Parks. “Summary of designations and protected area activities”, online (2016) at 6 <<http://www.env.gov.bc.ca/bcparks/aboutBCParks/summary-of-pa-designations-activities.pdf>>

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<b>Provincial Heritage Sites</b> <i>Heritage Conservation Act</i> , RSBC 1996, c 187	Ministry of Forests, Lands and Natural Resource Operations	“...encourage and facilitate the protection and conservation of heritage property in British Columbia.”	<p>Protects areas of historical and archaeological significance</p> <p>Sites can be designated by minister (s 9), by agreement with First Nations (s 4), or automatically, where a site contains artifacts from before 1846 (s 13)</p> <p>Strong prohibition on alteration or damage to heritage sites</p>	<p>Automatic protections require a material basis (sacred sites not sufficient)</p> <p>Arbitrary division into pre- and post- 1846</p> <p>No arrangements have been concluded with First Nations under s 4</p> <p>Costly to identify/designate sites with archaeological significance</p> <p>Limited application to marine spaces</p>	<p>In Islands Trust Area.</p> <ul style="list-style-type: none"> <li>Grace Islet</li> </ul>
<b>First Nations</b>					
<b>Aboriginal Title and Rights</b>		Number of cases claiming Aboriginal title to marine space now underway in BC	<p>Asserted or established ab. title/rights over certain areas can be used to prevent the establishment of fisheries which threaten these rights in those areas.</p> <p>Full extent of Aboriginal title to marine areas not yet determined, likely includes other powers to restrict activities such as industrial development and shipping</p> <p>Duty to consult, and possibly accommodate may apply even if ab. title/rights not yet established</p> <p>See e.g. <i>Ahousaht Indian Band v Canada (Minister of Fisheries and Oceans)</i>, 2014 FC 197, where the Ahousaht Band’s motion for an</p>	<p>Uncertainty</p> <p>Cost/duration of litigation</p> <p>Limited, unsystematic protections</p>	<p>No example or Aboriginal title yet established in Islands Trust Area:</p> <p><i>Haida Nation v Canada (Fisheries and Oceans)</i>, 2015 FC 290 (injunction prohibiting re-opening commercial herring fishery)</p>

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			injunction prohibiting the creation of a commercial roe herring fishery succeeded on the basis of an established Ab. right to fish commercially		on basis of a breach of the duty to consult)
<b>Tribal Parks</b>			<p>First Nations-led initiatives: incorporate FN concerns, traditional governance, and ecological/cultural practices</p> <p>Allow for a higher degree of (sustainable) human presence and activities in the park, and a higher degree of community involvement</p> <p>Though they lack formal legal recognition, various political and legal concerns can crystallize around declarations of tribal parks, leading ultimately to formal recognition: for example, the Duu Guusd Tribal Park, established by the Haida Nation in 1981, has subsequently been recognized as a heritage site and conservancy.</p> <p>TPs can also find legal protection outside the strict Precautionary Approach (PA) framework. Meares Island Tribal Park, for example, declared by the Tla-o-qui-aht First Nation in 1984, has not yet been recognized as a park. An injunction against logging on the island still stands, however, providing some degree of protection without formal PA recognition.</p> <p>Gwaii Hanaas provides an example of an MPA which began as a tribal park. The Haida Nation designated a 'Haida Heritage Site' in 1985 over mixed terrestrial and marine territory, which</p>	<p>No formal legal recognition; complex and uncertain interactions with provincial/federal law and policy, Ab. rights and title claims</p> <p>Legal and political strength of TPs dependent on the strength of FN claims to land (a strong claim to ab. title or rights over/affecting the area may provide the basis for more robust legal action and protection)</p> <p>Few tribal parks currently declared over marine waters</p>	<p>No examples in Islands Trust Area. BC examples include:</p> <ul style="list-style-type: none"> <li>• Duu Guusd Tribal Park</li> <li>• Meares Island Tribal Park</li> <li>• Gwaii Hanaas (now recognized as National Park Reserve and Heritage Site)</li> <li>• Dasiqox Tribal Park</li> </ul>

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			eventually gained federal recognition as a National Park Reserve and Heritage Site, jointly managed by agreement.		
<b>Indigenous Peoples' and Community Conserved Territories and Areas (ICCA)</b>	Recognized by the Convention on Biological Diversity's Aichi Targets:  Target 11 "...other effective area-based conservation measures..."  Target 18: "...the traditional knowledge, innovations and practices of indigenous and local communities" .. are respected"		Defined as "[n]atural and/or modified ecosystems containing significant biodiversity values, ecological services, and cultural values, voluntarily conserved by indigenous, mobile and local communities, through customary laws and other effective means." <sup>9</sup> A tribal park could be considered a kind of ICCA  Offers a form of international recognition to pre-existing local systems of conservation and land use; collective and traditional ecological knowledge; indigenous legal traditions  Integrates cultural, economic, and ecological concerns  Contextually tailored to local cultural and ecological conditions  Potential locus of community involvement and activism, participatory governance; raises awareness of community conservation efforts	No formal legal recognition in Canada  Inadequate political, legal, and economic support  Conflict/competition with formal, state-managed conservation approaches  Loss of cultural knowledge, large-scale economic and environmental change threaten the existence of ICCAs	No examples in Islands Trust Area.  None formally established in Canada, but many de facto ICCAs exist  See also the 'Nakwaxda'xw Nation's efforts to declare ICCA status for the Ba'as/Blunden Harbour Protection Management Zone (PMZ)
<b>Contemporary Indigenous legal tools (eg. RELAW project)</b>	Individual Indigenous communities	To create legal tools for environmental decision-making	Recognizes the deep connections of Indigenous peoples to the lands and waters and their right and responsibility to manage them according to their respective laws and governance systems.	Uncertainty about Canadian legal implications; non-binding under Canadian law	No examples yet in Islands Trust Area, but of special note:

<sup>9</sup> IUCN, "Indigenous and Community Conserved Areas: A Bold New Frontier for Conservation", *IUCN* online: <<https://iucn.org/about/union/commissions/ceesp/topics/governance/icca/>>.

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		<p>that are grounded in Indigenous legal orders</p> <p>These include policies, codes, Constitutions, assessment processes and more.</p>	<p>Draws on Indigenous legal traditions that have different understandings of marine protection and governance that go beyond the PA-framework.</p> <p>Can have significant impact on negotiations with Canadian government.</p> <p>Can mobilize public opinion and crystallize other political and legal concerns which can lead ultimately to formal recognition</p> <p>Can serve as “bridging” mechanism between Canadian and Indigenous legal orders</p>	<p>Complex and uncertain interactions with provincial/federal law and policy, ab. rights and title claims</p> <p>Process of revitalizing Indigenous legal traditions takes time and capacity</p>	<ul style="list-style-type: none"> <li>• Tsawout Marine Planning Process (under way)</li> <li>• Tsleil-Waututh Kinder Morgan Assessment</li> </ul> <p>Examples in BC:</p> <ul style="list-style-type: none"> <li>• Gitanyow Land Use Plan</li> <li>• Central Coast Crab Fishery Closure</li> </ul>
<b>Other</b>					
<b>Marine plans</b>	<p>Marine Planning Partnership (MaPP)</p> <p>17 First Nations and Province of BC</p>	<p>MaPP’s purpose was to identify acceptable marine uses that support sustainable communities while protecting and, where</p>	<p>Large scale integrated ocean zones approved after intensive 3.5 year scientific and community stakeholder process. Three types of ocean zone: General Management, Special Management, Protection Management (each assigned an IUCN protected area category).</p> <p>Adopted ecosystem based framework</p>	<p>Plans are voluntary, no legal duty to implement</p> <p>Federal nonparticipation meant key ocean issues under federal jurisdiction like fishing and shipping were excluded from the plans.</p>	<p>No example in Islands Trust Area.</p> <p>MaPP applicable to Central and North Coasts</p>

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		necessary, restoring marine ecosystems	Unique co-governance structure- co-led by First Nations and the Province with substantial participation and input from local governments. Federal government now re-engaging.		