

HAIDA GWAII RECONCILIATION ACT

[SBC 2010] CHAPTER 17

Assented to June 3, 2010

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Preamble

WHEREAS the Haida Nation, as represented by the Council of the Haida Nation, and British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation, have negotiated the Kunst'aa guu – Kunst'aayah Reconciliation Protocol representing the development of a new relationship between the Haida Nation and British Columbia;

AND WHEREAS the Kunst'aa guu – Kunst'aayah Reconciliation Protocol represents an incremental step in the process of the reconciliation of the Haida and Crown titles;

AND WHEREAS the Kunst'aa guu – Kunst'aayah Reconciliation Protocol and the new relationship are intended by the Haida Nation and British Columbia to guide joint decision-making regarding land and natural resource management on Haida Gwaii;

AND WHEREAS the Kunst'aa guu – Kunst'aayah Reconciliation Protocol provides for the commitment of the parties to further refine and develop the processes for operational level decision-making on Haida Gwaii;

AND WHEREAS the Kunst'aa guu – Kunst'aayah Reconciliation Protocol provides that the Haida Nation and British Columbia hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii, under the Kunst'aa guu – Kunst'aayah Reconciliation Protocol the Haida Nation and British Columbia will operate under their respective authorities and jurisdictions;

AND WHEREAS the Kunst'aa guu – Kunst'aayah Reconciliation Protocol provides that British Columbia will introduce legislation to provide the statutory framework, and the Haida Nation will provide its necessary legal authority, to assist in the implementation of the Kunst'aa guu – Kunst'aayah Reconciliation Protocol;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Definitions and publication requirement

1 (1) In this Act:

"council" means the Haida Gwaii Management Council established as set out in section 3;

"decision" includes the following:

- (a) establishing objectives under section 4 (1);
- (b) determining allowable annual cut under section 5 (2);
- (c) approving a management plan under section 6 (2);
- (d) establishing policies and standards under section 7 (2);

"land" includes foreshore and land covered by water;

"management area" means the land comprising Haida Gwaii except

- (a) land within the boundaries of a reserve, as defined in the Indian Act (Canada),
- (b) land within the boundaries of a municipality, and
- (c) land the indefeasible title to which is registered in a land title office in the name of a person other than the Crown;

"reconciliation protocol" means the Kunst'aa guu – Kunst'aayah Reconciliation Protocol between the Haida Nation and British Columbia, dated for reference December 11, 2009, and includes an amendment under section 8 of this Act at the time

- (a) that the amendment is published under subsection (2) (b) of this section, if the amendment can be implemented without an Act of the Legislature, and
- (b) that implementing legislation has been enacted by the Legislature and the amendment is published under subsection (2) (b) of this section, if the amendment requires an Act of the Legislature to be implemented.

(2) The minister must publish in the Gazette

- (a) the reconciliation protocol, and
- (b) an amendment to the reconciliation protocol.

Naming Haida Gwaii

2 The islands known as the Queen Charlotte Islands in the English language and Îles de la Reine-Charlotte in the French language are renamed as Haida Gwaii in both languages.

Haida Gwaii Management Council

3 (1) The Haida Gwaii Management Council is established by the joint operation of a resolution of the Haida Nation and this Act.

(2) The council consists of

- (a) 2 members appointed by resolution of the Haida Nation after consultation with British Columbia,
 - (b) 2 members appointed by the Lieutenant Governor in Council after consultation with the Haida Nation,
- and

(c) a chair appointed both by resolution of the Haida Nation and by the Lieutenant Governor in Council.

(3) A decision of the council must be made by consensus of the members referred to in subsection (2) (a) and (b), but failing consensus, by majority vote of those members.

(4) In the event of a tie vote under subsection (3), the chair must cast the deciding vote.

(5) A decision of the council must be published in the Gazette.

Forest and range practices objectives

4 (1) The council may establish objectives for the use and management of land and resources in the management area for the purposes of the Forest and Range Practices Act.

(2) In establishing objectives under subsection (1), the council must act in accordance with sections 93.5 and 93.6 of the Land Act and regulations made under section 93.81 of that Act, and for that purpose a reference in those provisions

(a) to the "minister" is deemed to be a reference to the council,

(b) to "section 93.4" is deemed to be a reference to subsection (1) of this section,

(c) to an "order" is deemed to be a reference to a decision of the council under subsection (1), and

(d) to an "objective" is deemed to be a reference to an objective established under subsection (1) or continued under section 14 [transition — Land Act objectives] of this Act.

Allowable annual cut

5 (1) In this section, "allowable annual cut" and "chief forester" have the same meanings as in section 1 (1) of the Forest Act.

(2) The council must determine the allowable annual cut for the management area at least once in every 10 years after the date of the last determination.

(3) For the purposes of subsection (2), on request of the council, the chief forester must provide to the council all information that the chief forester would consider under section 8 (1) of the Forest Act if the chief forester were making the determination under subsection (2) of this section, including, without limitation, information respecting the matters, as they relate to the management area, set out in section 8 (8) of the Forest Act.

(4) Promptly after making a determination under subsection (2), the council must

(a) give written notice of the determination to the chief forester, and

(b) publish the determination on a publicly accessible website.

Protected areas management plans

6 (1) In this section:

"management plan" means a plan respecting the protection, use or management of the natural resources, including wildlife and wildlife habitat, or the cultural or recreational values, of a protected area that is developed under the direction of the council and in consultation with the minister charged with the administration of the Park Act;

"protected area" means any of the following located in the management area:

(a) a park, as defined in section 1 of the Park Act;

(b) a conservancy, as defined in section 1 of the Park Act;

(c) an area established or continued as an ecological reserve under the Ecological Reserve Act or the Protected Areas of British Columbia Act.

(2) A management plan respecting a protected area does not take effect until approved by the council.

(3) A management plan approved by the council must be published on a publicly available website.

(4) A management plan respecting a park or conservancy must be consistent with the Park Act, and a management plan respecting an ecological reserve must be consistent with the Ecological Reserve Act.

(5) A provision of a management plan is not inconsistent with the Park Act or the Ecological Reserve Act, as applicable, if a person who complies with the management plan does not, by this compliance, contravene the applicable Act.

(6) A provision of a management plan is of no force or effect if the provision applies

(a) to a park or conservancy and is inconsistent with the Park Act, or

(b) to an ecological reserve and is inconsistent with the Ecological Reserve Act.

(7) The minister charged with the administration of the Park Act may not issue a park use permit under that Act authorizing a person to do anything in a park or conservancy that is prohibited by a management plan that applies in the park or conservancy.

(8) The minister charged with the administration of the Ecological Reserve Act may not issue a permit under that Act authorizing a person to do anything in an ecological reserve that is prohibited by a management plan that applies in the ecological reserve.

Heritage sites

7 (1) In this section, "conservation" and "heritage site" have the same meanings as in section 1 of the Heritage Conservation Act.

(2) Despite section 7 (1) of the Heritage Conservation Act, with the approval of the Lieutenant Governor in Council, the council may establish policies and standards for the identification and conservation of heritage sites within the management area.

Amending reconciliation protocol

8 The minister, on behalf of the government, may enter into agreements amending the reconciliation protocol.

Act binding on the government

9 Despite section 14 (2) of the Interpretation Act, this Act and the regulations made under it are binding on the government.

Application of Offence Act

10 Section 5 of the Offence Act does not apply to this Act.

Regulations

11 The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

Repeal

12 (1) The Lieutenant Governor in Council may repeal the following provisions of this Act by regulation:

(a) the preamble and sections 1, 3 to 11 and 13 to 15;

(b) this section;

(c) any of sections 16 to 21 that have not been brought into force.

(2) If the provisions referred to in subsection (1) (a) are repealed by regulation under subsection (1), the Lieutenant Governor in Council, for the purposes of bringing those repeals into operation, may make regulations amending the Forest Act, the Forest and Range Practices Act, the Heritage Conservation Act and the Land Act to

(a) remove references to this Act, the council or the management area,

(b) reassign the council's powers and duties under those Acts, and

(c) prevent, minimize or otherwise address any transitional difficulties caused by the repeals.

(3) A regulation made under subsection (2) ceases to have effect at the end of the last day of the next session of the Legislative Assembly after the regulation is made.

(4) A regulation may not be made under subsection (2) if a regulation having the same effect has been made under that subsection.

(5) A regulation may not be made under subsection (2) later than one year after a regulation is made under subsection (1).

Transition — Forest Act

13 The chief forester under the Forest Act must provide to the council, on or before March 31, 2011 and without a request from the council, the information described in section 5 (3) of this Act.

Transition — Land Act objectives

14 Objectives established by the minister under section 93.4 of the Land Act, and objectives continued under section 93.8 of that Act, that apply to all or a part of the management area before the date section 4 [forest and range practices objectives] of this Act comes into force

(a) continue in force and to apply to all or the part of the management area, as applicable, on and after that date, and

(b) are deemed to have been established under section 4 (1) of this Act until they are repealed or replaced by the council.

Transition — regulation-making authority

15 (1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the purpose of more effectively bringing into operation the reconciliation protocol, including, without limitation, modifying a provision of this Act, the Forest Act or the Forest and Range Practices Act to ensure consistency with that protocol.

- (2) A regulation under subsection (1) modifying a provision of an Act
- (a) may only be made during the 2 year period after the date this section comes into force,
 - (b) may not be made if a regulation having the same effect has been made under subsection (1), and
 - (c) ceases to have effect at the end of the last day of the next session of the Legislative Assembly after the regulation is made.

Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 16 to 21.]

Section(s)	Affected Act
16	Forest Act
17-19	Forest and Range Practices Act
20	Heritage Conservation Act
21	Land Act

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