

Conservation Nations

A Follow-Up Report to "A Gathering of Voices"



Indian Law Resource Center

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Introduction



Conservation leaders from Tribes and First Nations throughout Southeast Alaska and British Columbia gathered in the Spring of 2000, in Sitka, Alaska, to discuss the future of the coastal rainforest ecosystem. With this gathering Native peoples hastened the emergence of a new era of conservation activism in which Native governments take the lead in protecting entire ecosystems, regardless of borders and fragmented administrative jurisdictions. The participants in the Sitka gathering included leaders and conservation experts from the Chenega Bay IRA Council, Douglas Indian Association, Environmental-Aboriginal Guardianship through Law and Education (EAGLE), Ecotrust and Ecotrust Canada, Heiltsuk First Nation, Sitka Tribe of Alaska, Taku River Tlingit First Nation, and the Tseil-Waututh First Nation. These leaders found in each other energy, passion and drive that gave rise to broad strategies of unity and collaboration amongst Tribes and First Nations and with environmental organizations and non-Native governmental agencies.

“Conservation Nations” follows up on that first gathering with the purpose of giving more detailed focus and cohesion to possible long-term collaborative conservation initiatives. This report first reviews the primary factors shaping the historical and political environment of the coastal rainforest ecosystem. Although Tribes and First Nations differ in their legal rights and status, they share a similar history and many common challenges in terms of conservation of traditional territories and the preservation of their governmental authority. The report makes recommendations for collaborative conservation projects amongst Tribes, First Nations, environmental organizations and non-Native governmental agencies which take into account the historical and political environment of the region. We conclude by recommending that a second, more broadly attended gathering take place for the purpose of determining whether specific cross-border collaborations, like those suggested in this report, would yield useful results.

The Sitka gathering made clear the profound connections between the environmental integrity of the rainforest and the vitality of Native health and culture. Each of these Nations will succeed by protecting and building on the strength of the land and sea. Building regional unity must be based on this spirit. The report from the first gathering concluded, **“Having title to the land is not the same as taking responsibility for the resources and life on the land. A relationship is more than a coalition or agreement. It consists of protocols, consultations with entities, both human and non-human, and the refinement of frameworks for neighbors to clarify principles to sustain the integrity and renewal of resources and people. From the acceptance of responsibility flows rights.”**

Organization of Work

At the conclusion of the Sitka gathering, participants expressed great interest in continuing their efforts to work collaboratively in the management of the coastal rainforest ecosystem and to include, where possible, non-Native governmental and environmental organizations in this work. After the report of the Sitka gathering was written and distributed, the Indian Law Resource Center began discussing with the participants their recommendations for following up on the first gathering. These conversations made three things clear:

- + Tribal leaders continue to be strongly committed to the vision of unity and collaboration expressed in Sitka;
- + Tribal leaders desire a second gathering that will be more broadly attended and focused on specific substantive issues that they can effectively organize around; and
- + Tribal leaders suggested that an agenda for a second gathering be developed by (1) contacting Tribes and First Nations which were unable to participate in the first gathering, (2) meeting with tribal leaders and technical experts, and (3) visiting communities in the region to identify areas where common ground exists and collaboration would be most effective.

In fulfilling this mandate, the Center interviewed tribal leaders, in person and by telephone, and visited several communities. Although we would like to have visited every Tribe and First Nation in the region, time and costs mandated that we narrow our list to six communities. We visited the Douglas Indian Association, Council of the Haida Nation, Heiltsuk First Nation, Sitka Tribe of Alaska, Taku River Tlingit First Nation, and the Tsleil-Waututh First Nation. The Gitga'at First Nation and the Organized Village of Kake were also identified as ideal communities to visit. Unfortunately, adverse weather conditions prevented travel to these two communities. These Tribes and First Nations were recommended because of their dynamic activities and because they could provide insight into issues of universal concern.



Historical

In order to be successful, future collaborations between Tribes, First Nations, environmental organizations and non-Native governmental agencies must take into account the historical and political context in which they propose to work. Through our interviews and site visits we have identified five primary factors which shape the historical and political environment of the coastal rainforest region:

✦ ***First, there are very real differences between Tribes in Southeast Alaska and First Nations in British Columbia.*** Alaska tribes are dominated by the effects of the Alaska Native Claims Settlement Act (ANCSA), which extinguished aboriginal land title in Alaska, and the Alaska National Interest Lands Conservation Act (ANILCA), in which subsistence hunting and fishing rights on federal lands are preserved. The current focus in Alaska is on the status of Alaska Native communities as federally recognized, self-governing Tribes; subsistence rights; and the evolving relationship between Tribal governments and the Native corporations that were established pursuant to ANCSA. First Nations in British Columbia are on firmer ground regarding aboriginal title to their traditional territories. First Nations claim aboriginal title to their traditional territories in British Columbia. Although the Canadian government has yet to affirm these claims of title and appurtenant rights of governmental authority, the courts have not extinguished aboriginal title or other aboriginal rights, nor may they uphold any purported extinguishment of aboriginal rights without first meeting very stringent legal standards. First Nations are now engaged in a treaty negotiation process with the Province of British Columbia and the Canadian federal government in order to define the extent of their territories and governmental jurisdiction. The treaty process, however, is fraught with problems and some First Nations have withdrawn from negotiations. A recent British Columbia referendum on the process throws into question the extent to which the Province is committed to fair treaty negotiations. Because of the uncertain nature of the treaty process, First Nations are also pursuing a parallel litigation strategy to protect their lands, resources and jurisdiction. (See for example, *Delgamuukw v. The Queen* [1997] 3 S.C.R. 1010, *Taku River Tlingit First Nation v. Ringstad et al.*, 2002 BCCA 59, and *Haida Nation v. B.C. and Weyerhaeuser*, 2002 BCCA 147). First Nations have thus far had more success in defining their land rights in the courts than in negotiations with the federal and provincial governments.

✦ ***Second, although fundamental differences exist in the legal and political status of Tribes and First Nations, profound similarities exist in terms of the physical environment, conservation challenges, cultural priorities, and the constant struggle to defend Native self-determination.*** Every leader and technical staff person interviewed emphasized that traditions and culture are the strength of their people. Conservation is understood to be as much about protecting the place of Native peoples within the land as about protecting the land itself. Each community is studying and developing its cultural values and traditional system of land tenure, resource management, governance, its language, art, history and education. They are using this knowledge to advance land rights, improve resource management and conservation, strengthen governance, and develop economic opportunities for the community. These activities, however, are undertaken in an environment of extreme uncertainty. In Alaska, certain state legislators have recently called for the elimination of Tribes as federally recognized, sovereign governments. In British Columbia, a recent referendum equates First Nations with municipalities and sets guidelines for negotiations in the treaty process which, if implemented, would undermine the ability of First Nations to govern their own lands. These attacks demonstrate that deep ignorance and hostility continue to exist concerning the rights of Native peoples.

Political Context

✦ ***Third, relationships between Tribes and First Nations on the one hand,*** and environmental organizations and certain governmental agencies on the other, are slowly improving through a careful process of consultation and joint decision-making. Tribes and First Nations have long been suspicious of the motives of environmental organizations and have been in an openly hostile relationship with most non-Native governmental agencies. The goals of these entities have in the past been widely divergent with regard to the use and conservation of the coastal rainforest ecosystem. Native peoples understand themselves as an integral part of the landscape and seek to conserve both the physical integrity of the region and the permanent cultural and economic place of their peoples within the region. Environmental organizations have understood conservation primarily as an effort to minimize human influence in certain protected areas. Governmental agencies tend to make policy decisions based on the belief that most areas are appropriate for timber, mineral and other forms of economic exploitation and need little protection.

Despite these divergent views, our interviews and visits in the region indicate that common ground is emerging in discrete areas and that the old understanding of conservation held by environmental organizations and governmental agencies is changing. In Alaska, while certain state legislators continue to be hostile to the interests of Alaska Natives, a recently signed agreement between the executive branch of the Alaska state government and Alaska Tribes pledges a more respectful government-to-government relationship in the future. Further, some non-profit environmental organizations like the Trustees for Alaska have a successful history of working with Native communities. The U.S. Environmental Protection Agency regards Native governments as valuable partners in its mission of protecting the environment and provides extensive funding and training to tribal environmental protection programs. In British Columbia, First Nations have become expert at devising joint management agreements with non-Native governmental agencies for areas of particular cultural or environmental importance. First Nations have also become leaders in alliance building with environmental organizations and local governments. These partnerships succeed when a respectful process of true communication, consultation and joint decision-making defines the relationship.

✦ ***Fourth, successful collaborations have generally been organized around narrowly defined issues and objectives.*** Recent examples of successful initiatives include the coalition of 35 Tribes and First Nations in Alaska, the Yukon, and British Columbia that came together in opposition to a proposed expansion of the Alaska Pipeline. The coalition will ensure that Tribes and First Nations are meaningfully consulted on any pipeline development proposals. Another example of successful collaboration took place in the Spring of 2001, in response to the commercial herring industry virtually wiping out the traditional gathering of herring roe by Sitka tribal members. The Sitka Tribe of Alaska brought together an impressive coalition of tribal, city, industry and state leaders to preserve their rights and ability to gather herring roe in their traditional areas.

✦ ***Fifth, tribal leaders and staff are over-burdened with duties.*** Tribal and First Nation governments are responsible for a massive amount of work, but there is never enough time to accomplish all that they want and need to do. In order for any collaboration to be successful, it must support the key priorities and contribute positively to the current responsibilities of tribal leaders and staff.

Points of Collaboration

Tribal leaders have expressed interest in pursuing collaborations that bring together Tribes and First Nations, and where appropriate environmental organizations and non-Native governmental agencies, to protect the coastal rainforest ecosystem. The ideas proposed for future collaborative work can be organized into two categories: (1) practical, forward-looking collaborations to protect traditional lands, and (2) collaborative efforts which challenge the continuing hostility and destructive management of the region at the hands of corporations and non-Native governments.

Practical, Forward-Looking Collaborations

A theme frequently expressed by every tribal leader and environmental professional is that Natives should work to **forever** conserve their traditional lands and resources. This theme resonates when tribal leaders speak of re-establishing their presence on the land, ensuring that the waters and lands are healthy for the fish and wildlife and for those who depend upon the fish and wildlife, and preserving the land for future generations.

Tribes and First Nations are already acting on their long view of conservation. Every community surveyed in this report is assessing its traditional territory as a foundation upon which to build itself as a modern Native nation. Traditional territories are being analyzed by tribal staff using the most sophisticated techniques of ecosystem science and management. Data is used by Tribes and First Nations to create detailed management programs for the protection of their lands and resources. In this effort, Tribes and First Nations seek to protect the entire scope of their current and future interests in the land.

At the same time that ecosystems are being studied, cultural and economic relationships with the land are being examined. Tribes and First Nations in the region are analyzing traditional use and management of lands through interviews, surveys, research and analysis. This data is being used to support treaty negotiations, litigation, political initiatives, communications initiatives and efforts to improve relationships with federal, state, provincial and local governments.

Tribes and First Nations have expressed an interest in developing practical, affirmative collaborations which will build upon these efforts to reclaim a deeper understanding of their territories and strengthen the traditional place of their peoples within the land. Specific ideas for future collaborative initiatives amongst Tribes, First Nations, environmental organizations and governmental agencies include:

Inter-tribal natural resource management agreements.

The coastal rainforest ecosystem is crisscrossed with modern boundaries – state and provincial boundaries, national forests, national parks, protected areas, private property lines. These lines are a new phenomenon in the region, which before knew only the territorial boundaries of the Native nations living in this vast temperate rainforest. Tribal and First Nation leaders are proposing an alternate management model in which ecosystems determine the organization of people, rather than people organizing ecosystems into fragmented management areas.

Cooperative inter-tribal resource management regimes have emerged in recent years to address environmental issues which stretch across modern jurisdictional boundaries. The Columbia River Inter-Tribal Fish Commission has coordinated the fishery management policies of the Columbia River treaty tribes since 1977. The Commission employs scientists, attorneys, policy analysts, administrators and many others to fulfill the tribal vision for the future of the Columbia River. The Yukon River Inter-

Tribal Watershed Council, formed in 1997, is a coalition of Tribal and First Nation governments dedicated to cleaning up the Yukon River. In 2001, some forty Tribes and First Nations of the Yukon signed an historic agreement to coordinate their efforts in attacking serious pollution problems which threaten the integrity of the River. These coalitions recognize that nature does not respect the artificial boundaries created by people. These coalitions also recognize that the people who have always lived on these lands, Native peoples, are in the best position to understand and manage them.

Using these models, Tribes and First Nations might commit to inter-tribal agreements to address conservation issues that have broad consequences throughout the coastal ecosystem. In visiting with tribal leaders in the region, we discovered that Tribes and First Nations, as well as environmental organizations and some non-Native governmental agencies, share a strong commonality of interest in the management of migratory species, in particular salmon, herring, and halibut. Several Tribes and First Nations are developing programs to conserve these vital resources. Information sharing and coordinated conservation efforts that are designed to protect these species throughout the entire region will increase the efficacy of these programs.

Ideas for the cooperative management of natural resources include:

✦ **The establishment of an inter-tribal agency to coordinate** the scientific research and conservation efforts of Tribal and First Nation environmental professionals regarding migratory species. This agency, similar to the Columbia River Inter-Tribal Fish Commission, would produce high quality data which Native governments could use to analyze the health of species and ecosystems. This data would be used directly by Tribal and First Nation governments in their individual and joint conservation programs. The information could also be forwarded to non-Native governmental agencies which have in the past managed fisheries using notoriously inaccurate data.

✦ **The establishment of an inter-tribal agency to analyze** and enforce aboriginal rights regarding natural resource use and management. The laws and policies invented under non-Native legal systems which purport to delimit aboriginal rights are in a constant state of flux in both the United States and Canada. Treaty rights, common law, statutory law, government policies, proposed legislation, ongoing litigation, regulations and many other shifting legal regimes affect the rights of Native peoples. The purpose of the agency would be to use existing and emerging laws, including international law, to assert and expand the Native right to manage certain resources.

Establishing inter-tribal resource management regimes is perhaps the most ambitious of the collaborative projects suggested in this report. The success of any such collaborative management regime would depend upon respect for the five primary factors shaping the historical and political context of the coastal rainforest ecosystem, as outlined on pages 4–5 of this report. Any collaborative management plan that contemplated substantially increasing the work load of already strained tribal staff for non-priority goals would, in all likelihood, fail. Collaborative management plans will succeed only if Tribes and First Nations decide to make them a priority.

In August of 2001, at the headwaters of the Yukon River in the territory of the Teslin Tlingit First Nation, an historic Accord was signed by some 40 Tribal and First Nation governments. The Accord – one of the first modern international inter-tribal agreements of its kind – commits the signatory Native governments to communicating and cooperating in their efforts to clean up pollutants in the Yukon River watershed. The Tribes and First Nations established a non-profit organization – the Yukon River Inter-Tribal Watershed Council – to implement the Accord. The Watershed Council, with offices in Anchorage and Whitehorse, operates at the direction of a steering committee consisting of Native leaders chosen from the signatory Tribes and First Nations. Although the Council is new, it will eventually coordinate inter-tribal clean-up projects as well as implement its own projects under the direction of tribal leaders. For more information on the Accord and the Watershed Council, see <http://www.yritwc.com/accord.htm>

Points of Collaboration

Inter-tribal information sharing regarding joint management agreements between Native and non-Native governments.

Many Tribes and First Nations in the region have begun or completed negotiations with non-Native governmental agencies for the Native management of traditional territories. In Alaska, a potential window of opportunity for the development of joint management agreements has been opened with the signing, on April 11, 2001, of the "Millennium Agreement" between the State of Alaska and about one-quarter of the federally recognized Tribal governments in the state. This agreement recognizes the sovereign status of federally recognized tribal governments in Alaska and creates a permanent State-Tribal forum to maintain dialogue at the highest level. In British Columbia, First Nations have gained considerable experience at negotiating joint management agreements, due in part to the treaty process through which interim management agreements may be established until treaties become finalized. Although both the Millennium Agreement and the treaty process are severely flawed, they can be beneficially used by Tribes and First Nations to exercise control over their traditional territories through the establishment of joint management agreements. Joint management agreements could also be negotiated outside of these processes if Tribes and First Nations felt that their integrity would be threatened by participation in the Millennium Agreement or in treaty negotiations. Efforts to develop joint management agreements would benefit from information sharing on the specifics of ensuring that such agreements produce tangible results while respecting the culture and political status of Native peoples.

Our interviews and research indicate that joint management agreements succeed when (1) Tribes and First Nations commit their governments to long-term negotiations with governmental agencies to establish common goals and procedures for the management of traditional territories; (2) when non-Native governmental agencies negotiate with full respect for the cultures and political status of Native peoples; and (3) when Tribes and First Nations have their own ecosystem assessment and environmental management programs to support their conservation goals.

Key areas for information sharing include:

- + How to structure joint management agreements so that authority is shared in a manner acceptable to all parties.
- + How to maintain accountability to the community.
- + How to communicate across cultures and resolve conflicts.
- + How to fund joint management agreements so that Tribes and First Nations are not overly dependent upon government funding.
- + How to conduct ecosystem assessments and environmental management programs.



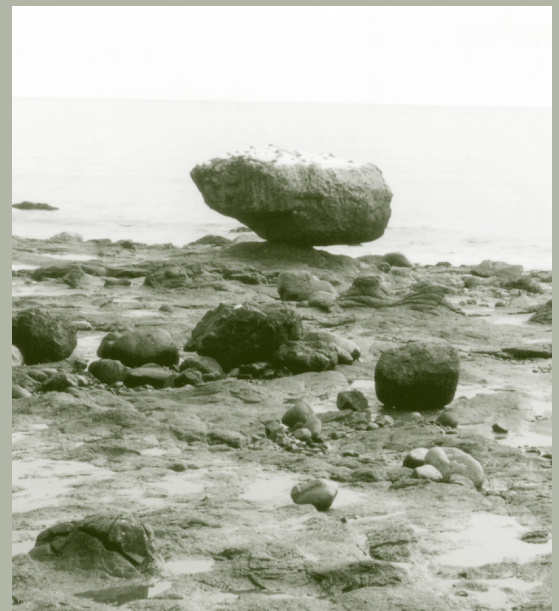
Establishment of sustainable economic development strategies, including the revival of inter-tribal trading relationships and routes.

Conservation, for Tribes and First Nations, means maintaining the economic and cultural place of Native peoples within their traditional lands as well as conserving the environmental integrity of ecosystems. Every community we visited has a keen interest in sustainable economic development. In Canada, federal law recognizes some aspects of economic development as an aboriginal right of Native peoples. In *R. v. Gladstone* (1996), 137 D.L.R. (4th) 648 (S.C.C.), for example, the Supreme Court of Canada recognized the commercial trade in herring spawn as an aboriginal right of the Heiltsuk First Nation. There is broad consensus amongst Tribes and First Nations that sustainable economic development is a critical part of overall conservation strategy.

The creation of sustainable economies could include the revival of trading relationships between Tribes and First Nations. In many communities, initiatives to revive traditional trading relationships are being pursued primarily by individual entrepreneurs rather than as governmental initiatives. This represents a healthy dynamic within these communities which tribal governments are encouraging and supporting.

Tribes and First Nations should consider more actively reconnecting with traditional trading partners as part of their long-term land use and economic development planning. Individual entrepreneurs frequently confront obstacles like import-export regulations and taxes, financing limitations, lack of broad exposure and markets for their trade goods, and the lack of consistent tribal regulations regarding trade and use of lands and resources. Tribes and First Nations could play an effective role in ensuring the smooth functioning of these trading partnerships by mitigating border-crossing and jurisdiction problems, and import-export issues, and by working cooperatively to create broader markets for tribal goods. A network of trading partnerships could conceivably stretch through Alaska, the Yukon Territory, British Columbia, Washington, Oregon and California. In this way products made by Native artisans in Northern British Columbia could, for example, find new markets in California.

The Haida Nation has become known for its successes in court and on the ground in asserting its authority over its traditional territory—Haida Gwaii. The *Gwaii Haanas Agreement*, signed in January 1993, is an example of a cooperative management agreement between the Haida Nation and the federal government of Canada. The agreement took more than six years to negotiate and required a sustained movement on the part of the Haida Nation, involving legal action, political negotiation, support from a broad spectrum of Native and non-Native interests, and instances of civil protest and unrest. The result is the protection of a significant portion of the traditional lands of the Haida Nation. Approximately 138 islands stretching 90 kilometers from north to south, are cooperatively managed by the Archipelago Management Board which is made up of equal representation from both the Council of Haida Nation and the Government of Canada. To see a copy of the Gwaii Haanas Agreement, see <http://parkscan.harbour.com/gwaii/agreement.htm>.



Points of Collaboration

Collaborative efforts to challenge the continuing hostility and destructive management of the region at the hands of corporations and non-Native governments

Tribes and First Nations share a common history as sovereign nations whose existence long predates non-Native governments on this continent. Tribes and First Nations also share a common history of violence and dispossession at the hands of non-Native governments and peoples. The policies of the United States and Canada have long been aimed at incapacitating Native nations in order to facilitate the extraction of natural resources located within Native territories. Unfortunately, the current laws and policies of these countries carry forward centuries-old efforts to undermine Native sovereignty and gain unfettered access to Native resources. Every effort by a modern Tribal government or First Nation to assert an interest in traditional lands or to assert governmental authority is met with opposition. This results in a cycle in which Tribes and First Nations must constantly react to preserve and assert themselves as nations, leaving fewer resources and little energy for managing their peoples and lands.

Although some governmental agencies have reformed their policies to recognize aspects of Native sovereignty, and there have been improvements in some laws, Tribes and First Nations must still fight an ongoing battle to defend their rights, even as corporations and non-Native governments exploit their lands. A priority identified by all tribal leaders is to respond effectively when federal, state and provincial officials attack Tribal and First Nation sovereignty and land rights. Woody Widmark, Chairman of Sitka Tribe of Alaska, has commented, "It's a game we have to play. We're not fond of it, but if we don't respond, we'll lose everything." Collaborative responses which take advantage of the differing legal and political status of Native governments on both sides of the border may succeed where isolated efforts have failed.

Develop collaborative legal strategies on specific cross-border environmental threats.

The laws and policies of Canada and the United States with regard to Native peoples contain some positive aspects which could be used by Tribes and First Nations to challenge environmentally damaging activities in their traditional territories. In Alaska, Tribes are recognized by the federal and state governments as self-governing entities. Rural Alaska Natives also have a federally protected right to harvest fish and wildlife for subsistence purposes on federal lands and from navigable waters in which the federal government has reserved water rights. First Nations in British Columbia must be meaningfully consulted by the Province and by corporations before these entities can take any action which may infringe upon the claimed aboriginal rights of Native peoples, including aboriginal title to lands and resources. First Nations asserting aboriginal rights and title over certain territories must be consulted, even if the validity of the claimed aboriginal rights has never been agreed to by the government or ruled upon by a court. These aspects of law in the United States and Canada could be used in combination to stop projects that threaten the environmental integrity of Native territories.

➔ **The proposed Tulsequah Chief Mine in British Columbia** threatens the entire Taku River, which begins in B.C. and passes through southeast Alaska on its way to the Pacific Ocean. The Taku River Tlingit First Nation won a decision from the Canadian courts requiring the Province to meaningfully consult with the Tribe before approving mining permits which may infringe upon the claimed aboriginal rights of the Taku River Tlingit. The Ministry of Sustainable Resource Management of British Columbia, however, has recently issued a project approval certificate which will allow the mine project to move ahead. Tribes in Alaska could explore opportunities to support the Taku River Tlingit through their

subsistence priority or through international mechanisms like the Boundary Waters Treaty or the Pacific Salmon Treaty.

✦ **The problem of cruise ship dumping adversely affects Tribes** and First Nations throughout the coastal rainforest ecosystem. First Nations may be able to assert aboriginal rights to certain of the areas used for dumping by cruise ship corporations. Under Canadian law, these corporations must consult with First Nations if their actions could infringe upon aboriginal rights – for example, the right to commercially harvest herring spawn. Tribes in Alaska, as federally recognized self-governing entities, could pursue litigation under federal environmental laws and pursuant to their subsistence priority, while maintaining their own sovereign immunity from suit.

✦ **Proposals for large-scale oil drilling off the coast of British Columbia** are gaining momentum as an economic panacea for the depressed economy of the Province. The enormously destructive Exxon Valdez oil spill off the coast of Alaska in 1989 serves as a recent example of the high costs to be paid when oil development goes awry. During the Sitka gathering, Pete Kompkoff of the Chenega Bay IRA tribal council recounted how his people are still struggling with the effects of the oil spill – more than 10 years later. In response to the proposals for off-shore oil drilling, the Haida Nation has already filed suit claiming title and authority over the area which is the focus of development interest. Alaska tribal governments could weigh in on the debate by communicating to the provincial and federal governments their hard-earned knowledge about the disastrous and long-lasting effects of accidental oil spills into marine environments.

✦ **Salmon farming is posing increasing hazards** to the Tribes and First Nations who have built their economies and cultures upon the harvest of wild Pacific salmon. Although Alaska does not allow the farming of Atlantic salmon, the pollution, disease and genetic disorders that fish farming in British Columbia introduces into the environment threaten native Pacific salmon throughout the coastal ecosystem and is causing severe damage to clam and shell fish populations. Native governments could use a variety of environmental and aboriginal rights laws, international law, and political pressure to challenge existing farms and prevent the expansion of the fish farming industry.

✦ **Unsustainable logging within the traditional territories of Tribes** and First Nations has severely impacted the coastal rainforest ecosystem. Native corporations in Alaska – which were created under state law pursuant to the Alaska Native Claims Settlement Act of 1971 and which are distinct from Tribal governments – have come under intense criticism from environmentalists for logging vast areas in an unsustainable manner. In British Columbia, industrial logging in the last 60 years is now threatening the environmental integrity of the ecosystem. A study by the Gitga'at First Nation has concluded that, at current rates of logging, all merchantable timber in the Nation's traditional territory will be gone in 20 years. Native governments should share legal and other strategies for ensuring that any logging which takes place on their territories occurs in a sustainable manner, with their full consent and participation.

The Turning Point Agreement, signed on April 4, 2001, between the Province of British Columbia and the Gitga'at First Nation, Haida Nation, Haisla Nation, Heiltsuk Nation, Kitasoo/Xaixais First Nation and the Metlakatla First Nation, commits the signatories to working together on a government-to-government basis, to develop land use plans for the traditional territories of the First Nations of the central coast region. The Agreement recognizes that both the First Nations and the Province will be guided by the principles of "ecosystem based management" in their land use planning efforts, which is defined as "a strategic approach to managing human activities that seeks to ensure the coexistence of healthy, fully functioning ecosystems and human communities." The Agreement came about as part of an effort by First Nations to replace unilateral, unsustainable corporate exploitation of their territories with environmentally sustainable and responsible resource extraction, with the full consent and participation of First Nations. For more information on the Turning Point Agreement, see <http://www.davidsuzuki.org>.

Points of Collaboration

Survey sources of international law and policy for opportunities to more effectively protect Native territories and peoples.

Every tribal leader interviewed during the course of our visits expressed an interest in exploring the usefulness of international law as a means to further the protection of their peoples and territories. Some communities have already explored international mechanisms as part of broader campaigns to protect and manage sensitive cultural areas. For example, the Haida Nation petitioned for Gwaii Hanaas to be recognized as a United Nations World Heritage Site. Other tribal leaders expressed an interest in exploring how international trade agreements like NAFTA and current issues like the US-Canada softwood trade negotiations could be used to their advantage. Coupled with this interest, however, is a healthy skepticism about the extent to which international law can produce practical results for Tribes and First Nations.

As a first step in exploring the efficacy of international law, Tribes and First Nations should sponsor a survey of international laws, regimes and other mechanisms to identify opportunities for expanded legal and political action in the conservation of Native territories.

✦ **International human rights law is evolving** to recognize and protect the rights of indigenous peoples. For example, the Inter-American Court on Human Rights recently issued the first binding decision of an international human rights court recognizing and protecting the land rights of indigenous peoples. (*Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-American Court of Human Rights, August 31, 2001). The Inter-American Commission on Human Rights also recently released a report holding that the manner in which the U.S. federal government claims to have extinguished Western Shoshone land title violates international human rights standards. (*Mary and Carrie Dann v. United States*, Report No. 113/01, October 15, 2001). The Carrier and Sekani First Nations of British Columbia have filed a complaint before the Inter-American Commission on Human Rights which relies upon these advances in international human rights law. The complaint alleges that the government of Canada has systematically violated the human rights of the Carrier and Sekani First Nations by granting leases, ownership rights and other concessions to private corporations allowing logging and mineral development on lands traditionally used and occupied by the Carrier and Sekani peoples.

✦ **International trade law**, with a focus on NAFTA and GATT, may offer opportunities for Tribes and First Nations to influence trade agreements that may have a detrimental effect on their territories;

✦ **International treaties and agreements** that particularly affect the coastal rainforest ecosystem should be carefully examined by Tribes and First Nations. For example, the Boundary Waters Treaty, the Jay Treaty, the Pacific Salmon Treaty, and the Softwood Lumber Agreement between US and Canada may all offer mechanisms for increased Native influence and participation.

Collaborative communications campaigns to effectively respond to ignorance and distortions amongst non-Natives regarding Native rights and interests.

As the recent referendum in British Columbia and the attacks on tribal sovereignty in Alaska demonstrate, Tribes and First Nations are losing the communications war. State and provincial governments seem unrestrained in their hostility towards sovereign Native governments with jurisdiction over distinct territories. Whether this hostility is due to profound ignorance of Native governments as sovereign entities co-existing with non-Native governments or to a deep bureaucratic fear of sharing power with Native governments or simply to racism,

Tribes and First Nations must educate the constituents who elect these governments in order to change their behavior. The lack of accurate information regarding modern Native Nations must be counteracted with Native-led dissemination of accurate information regarding the cultures, heritage, and *future* of the Native peoples who have always inhabited the region.

Regional collaborations focused on providing accurate information through effective communications campaigns may do much to prevent the outbreak of hostile state and provincial policies regarding Native peoples. For example, Native cultural education centers could take the lead in disseminating accurate information regarding Tribes and First Nations to non-Native communities and media outlets. Many Tribes and First Nations have good relations with the press. These relationships and communication skills can be shared with Tribes and First Nations that do not have similar capacities. Regional communications strategies could be effective in bringing national and international exposure to situations that are mired in local animosities.

Any communications strategy needs to be joined to a broader strategy involving fund raising, cost-sharing and alliance building. Tribes and First Nations are overly dependent on funding from state, provincial and federal sources. Diversifying their income will be vital to increasing the effectiveness of any communication campaign. Cost-sharing is critical to implementing an effective communications campaign. For example, it is often useful to conduct regular surveys, polls and focus groups to get a better understanding of what people in a region or nation are thinking and how they might respond to a particular message. Surveys and polls can sometimes provide critical information, but they are often too expensive for any one Tribe or First Nation. Sharing this expense in the region may bring remarkable results. Additionally, these communications efforts will benefit from strong relationships with institutions of higher education and with non-profit organizations like E.A.G.L.E., Ecotrust and the Sierra Club Legal Defense and Education Fund.

Collaborative strategies to support Tribal and First Nation direct action campaigns.

“Direct action” in this report refers to community-based action that places people on the land. It acknowledges a human and spiritual presence on the land which reclaims Native responsibility for and ownership of the land. Examples of direct action include the Heiltsuk elders’ blockade of Weyerhaeuser’s attempts to build logging roads into Heiltsuk traditional territory; the Taku River Tlingit First Nation and Douglas Indian Association’s joint strategy of re-establishing traditional trails, camp sites and village sites along the Taku River; the Sitka Tribe of Alaska’s efforts to clean, reclaim and protect old burial sites; and the Haida Nation’s use of protest boats to drive fish away from commercial herring boats.

In every successful example of direct action which we encountered, four components were present. First, action is taken by individuals within the community. Second, that action carries the intent of protecting the environment and strengthening a traditional responsibility of the Tribe or First Nation. Third, the action is supported and sanctioned by the tribal government. It may be started by an individual or group within the community, but it is inevitably sanctioned by the tribal government. Fourth, the direct action has the effect of educating, informing and building a base of support across multiple communities and interests.

Regional collaboration could bolster Tribal and First Nation direct action strategies. Effective communications efforts about these direct action campaigns could be particularly effective in bringing widespread scrutiny to a problem and precipitating change.

Next Steps

This follow-up report outlines several areas of collaboration which could form the agenda of a second gathering of Tribes and First Nations. The report reflects a movement away from pursuing environmental protection through the conservation of particular species or the preservation of small areas of land. Rather, conservation is understood to be a broader enterprise in which human communities – and in particular Native communities – constitute an integral part of large ecosystems. Many of the ideas and examples put forth in this report are new and relatively untested: the formation of international inter-tribal management agreements, for example, or the use of international law to assist in the protection of local resources. Some of these new ideas may become the tools used by First Nations and Tribes to reclaim responsibility for their traditional territories and protect the place of their peoples within those territories. Others of these ideas may not be fruitful. Tribal and First Nation governments must exercise their judgment in determining how best to use the information and suggestions contained in this report. We now place this report in the hands of Native governments in the hope that it proves to be useful.

Resources

The following is a list of resources and organizations that work in the coastal rainforest area or that may have an interest in aspects of this report. The list serves as a starting point and is not intended to be exhaustive.

Existing Collaborations:

Aboriginal Mapping Network–Tel: (604) 682-4141, Fax: (604) 682-1944; www.nativemaps.org

Affiliated Tribes of Northwest Indians–Tel: (503) 249-5770, Fax: (503) 249-5773; www.atnitribes.org

Alaska Federation of Natives–Tel: (907) 274-3611, Fax: (907) 276-7989; www.nativefederation.org

Alaska Inter-Tribal Council–Tel: (907) 563-9334, Fax: (907) 563-9337; www.aitc.org

British Columbia Aboriginal Fisheries Commission–Tel: (604) 913-9060, Fax: (604) 913-9061; www.bcafc.org/index.html

First Nations Forestry Program–Tel: (250) 363-6041, Fax: (250) 363-0775;

http://www.pfc.forestry.ca/programs/fnfp/index_e.html

Native Brotherhood in Alaska and B.C.–<http://nativevoice.bc.ca/>

Northwest Indian Fisheries Commission–Tel: (360) 438-6014; fax: (360) 753-8659; www.nwifc.org

Turning Point–Tel: (604) 732-4228; Fax: (604) 732-0752 <http://www.turning-point.ca>

Union of British Columbia Indian Chiefs–Vancouver office: Tel: (604) 684-0231;

Fax: (604) 684-5726) (Kamloops office: Tel: (250) 828-9746; Fax: (250) 828-0319) <http://www.ubcic.bc.ca>

Funding Sources:

Alaska Conservation Foundation–Tel: (907) 276-1917; Fax: (907) 274-4145 <http://www.akcf.org>

Brainerd Foundation - Tel: (206) 448-0676; Fax: (206) 448-7222; <http://www.brainerd.org>

Funding Exchange–Tel: (212) 529-5300; Fax: (212) 982-9272; <http://www.fex.org>

Walter & Duncan Gordon Foundation–Tel: (416) 601-4776; Fax: (416) 601-7689; <http://www.gordonfn.org>

Lannan Foundation–Tel: (505) 986-8160; Fax: (505) 986-8195; <http://www.lannan.org>

Resources

Alida R. Messinger–Tel: (212) 649-5600

Packard Foundation–Tel: (650) 948-7658; Fax: (650) 917-1968; <http://www.packfound.org>

Hewlett Foundation–Tel: (650) 234-4500; Fax: (650) 234-4501; <http://www.hewlett.org>

Wilburforce Foundation–Tel: (206) 632-2325; Fax: (206) 632-2326; <http://www.wilburforce.org>

Technical Resources:

Environmental-Aboriginal Guardianship through Law and Education, EAGLE–Tel: (604) 536-6261; Fax: (604) 536-6282; <http://www.sierralegal.org/eagle.html>

Ecotrust Canada–Tel: (604) 682-4141; Fax: (604) 682-1944; <http://www.ecotrustcan.org/index.shtml>

Ecotrust–Tel: (503) 227-6225; Fax: (503) 222-1517; <http://www.ecotrust.org> (see in particular the information on Ecotrust’s Buffett Award for Indigenous Leadership)

David Suzuki Foundation–Tel: (604) 732-4228; Fax: (604) 732-0752; <http://www.davidsuzuki.org/>

Sierra Club Legal Defense Fund–Tel: (415) 977-5500; Fax: (415) 977-5799; <http://www.sierraclub.org/>

Indian Law Resource Center–Tel: (406) 449-2006; Fax: (406) 449-2031; <http://www.indianlaw.org>

Indigenous Peoples Biodiversity Information Network (IBIN) - Tel: (250) 828-9761; Fax: (250) 828-9787; <http://www.ibin.org/>

Native American Rights Fund–Tel: (907) 276-0680; <http://www.narf.org/>

Pacific Salmon Commission–Tel: (604) 684-8081; Fax: (604) 666-8787; <http://www.psc.org/Index.htm>

Ministry of Sustainable Resource (Stan Hagan)–Tel: (250) 356-9076; Fax: (250) 356-8273; <http://www.gov.bc.ca/srm/>

Portland State University Tribal Administrative Program–Tel: (503) 725-5155 or 1-800-547-8887, ext. 5157; <http://www.tribaladmin.pdx.edu/2Revisedovrvw.html#Welcome>

Evergreen State College MPA Program–Tel: (360) 867-6707; <http://www.evergreen.edu/mpa/>

Harvard University Kennedy School of Government– Tel: (617) 495-1100; <http://www.ksg.harvard.edu/>

“Researching the Indian land Question in B.C.” [ca/manual.htm](http://www.ubcic.bc.ca/manual.htm) <http://www.ubcic.bc.ca/manual.htm> and “Chief Kerry’s Moose: A guidebook to Land Use and Occupancy Mapping, Research Design” by Terry Tobias. A joint publication of the Union of BC Indian Chiefs and EcoTrust Canada; Tel: (604) 684-0231; Fax: (604) 684-5726; <http://www.ubcic.bc.ca/tus.htm>

University of British Columbia First Nations House of Learning–Tel: 604) 822-8940; Fax (604) 822-8944; <http://www.longhouse.ubc.ca>

Relevant Instruments and Laws:

Alaska Native Claims Settlement Act (ANCSA)–<http://www.ankn.uaf.edu/ancsa.html>
(Resource Center–<http://www.lbblawyers.com/ancsa.htm>)

Alaska National Interest Lands Conservation Act (ANILCA)–<http://resourcescommittee.house.gov/106cong/fullcomm/anilca990208.htm>

Canada-American Treaties–http://www.lexum.umontreal.ca/ca_us/index_en.html

Convention between His Majesty and The United States of America respecting the Boundary between the Dominion of Canada and Alaska–Signed at Washington, 21, 1906–http://www.lexum.umontreal.ca/ca_us/en/cus.1906.171.en.cfm?langue=en

Boundary Waters Treaty–<http://www.ijc.org/ijcweb-e.html>

1992 Declaration of Sovereignty, Confederated Tribes of Warm Springs–<http://www.warmsprings.com/history/treaty/stmtsov.htm>

Resources

NAFTA–<http://www.nafta-sec-alena.org>

GATT–http://www.wto.org/english/docs_e/legal_e/legal_e.htm

Northern Pacific Halibut Act–<http://ipl.unm.edu/cwl/fedbook/npachali.html>

The Jay Treaty–http://www.lexum.umontreal.ca/ca_us/en/bsp.1.784.en.cfm?langue=en

Pacific Salmon Treaty–<http://www.psc.org/Treaty/TREATY.HTM>

Softwood Lumber Agreement between US and Canada; http://www.lexum.umontreal.ca/ca_us/en/cts.1996.16.en.cfm?langue=en

Treaty to Protect Cultural Resources, Northwest American Indian Applied Research Institute of Evergreen State College. Briefing Memorandum: A Treaty among Indigenous Nations; <http://www.evergreen.edu/nwindian/projects-cultural.html#development>

National Tribal Environmental Council–<http://www.ntec.org/>

American Indian Environmental Office–<http://www.epa.gov/indian/>

