

Under Their Own Laws: How the Kitsoo/Xai'xais First Nation created a new marine protected area – without the federal government's approval

by

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ABSTRACT

On June 21, 2022, the Kitasoo/Xai'xais, a First Nation on the Pacific coast of Canada, unilaterally declared the Gitdisdzu Lugyek's marine protected area (MPA) in their territorial waters of Kitasu Bay. Whether they have the legal authority to create that protected area, however, is a difficult question to answer. The Constitution Act of Canada protects Indigenous people's fundamental rights to fishing, logging, and land, but technically they remain subjects of the Canadian government. For the Kitasoo/Xai'xais this system is especially frustrating, since like many other Pacific coast nations, they have never signed a treaty with the Canadian government.

The eventual goal, then, for the new MPA is to reach a co-management agreement, where the Kitasoo/Xai'xais and Canadian government establish overlapping MPAs in Kitasu Bay and share authority over the bay's resources. The Kitasoo/Xai'xais have their traditional knowledge and holistic understanding of their territory that is needed to protect and manage Kitasu Bay. Meanwhile, the Canadian government has far-reaching political power and a national perspective that the Kitasoo/Xai'xais lack. Combining these assets could do great things for the bay. By declaring their MPA, the Kitasoo/Xai'xais are, in a sense, just getting a head-start on this process. They still want the federal government involved, after all. They just felt that they couldn't wait any longer.

The Kitasoo/Xai'xais have been fighting for decades to keep their environment intact. They have had to use every tool at their disposal – protests, lawsuits, and industry alliances – to maintain their way of living. Now, the Gitdisdzu Lugyek's MPA represents a new opportunity: if the Canadian government comes to the table, the Kitasoo/Xai'xais will have a renewed chance to safeguard their resources under their own laws and practices, just as they did before European colonization. They are using a vast wealth of traditional knowledge, bolstered by decades of their own scientific research, to guide their management practices and ensure their waters and resources will still be there for generations to come. The Kitasoo/Xai'xais, however, are striving for something bigger than themselves: they believe this MPA can demonstrate the power of Indigenous-led conservation both in Canada and around the world.

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In the early morning of April 1st, 2014, the community of Klemtu, British Columbia awoke to find trespassers in their bay.

Klemtu is the main town of the Kitasoo/Xai'xais First Nation, a small Indigenous nation of just over 500 people. The nation descends from two groups (the Kitasoo and the Xai'xais) that have lived on the Central Coast of British Columbia for millennia. It is a remote place: getting there involves either a 20-hour ferry ride from Vancouver Island or a once-to-twice weekly float plane. Just west of Klemtu, around the backside of the island it is situated on, is Kitasu Bay. For the Kitasoo/Xai'xais, few places are as important. They refer to the area as their "breadbasket" for good reason: it is home to one of the largest annual animal migrations in North America.

In early April, hundreds of millions of Pacific herring swim from the open ocean to inlets and sheltered bays up and down the Canadian Pacific coast to lay eggs and reproduce. Kitasu Bay hosts one of the largest remaining spawns, so large it is measured in the tens of tonnes. The herring there form schools numbering into the millions, rippling the bay's surface and clouding the water with eggs and sperm. Birds, seals, and predatory fish arrive in turn to feast on the herring. This swirling cauldron of life has long been a source of food and trade goods for the Kitasoo/Xai'xais. Being such a remote community, the town cannot depend on typical food distribution networks to support them. They must rely on their territory, and especially on the ocean, for their food, and no part of their territory is more important for this purpose than Kitasu Bay. In a real sense, Kitasu Bay keeps the residents of Klemtu alive.

Usually, only the Kitasoo/Xai'xais are allowed to harvest in the bay. But, in early 2014, the Canadian Department of Fisheries and Oceans (DFO) announced they would open up a herring fishery on the Central Coast of British Columbia. Despite protest from the Kitasoo/Xai'xais and other First Nations, the DFO went ahead with their plan, giving non-Indigenous fishermen permission to take from, among other places, Kitasu Bay. Like clockwork, on the 1st of April, the bay was full of fishing boats.

Community leadership gathered to decide what to do. Vernon Brown, the former marine use planning coordinator, remembers an elder named Ben Robinson silencing the table and saying that the community had only two options to get rid of the fishermen: "The first option is court," he said, "and the second option [is] direct action." The Kitasoo/Xai'xais chose the latter.

The community drafted up a letter to the outsiders, explaining that the stocks were not high enough to support a whole fleet of non-Indigenous fishermen, and sent Douglas Neasloss and his team out to distribute it. Neasloss was (and still is) the director of the Kitasoo/Xai'xais Stewardship Authority, the office tasked with monitoring his nation's natural resources and designing management plans to keep them safe. He went to each boat, handed a letter to its captain, and implored them to leave the bay. Most fishermen didn't want to cause any trouble, so they simply pulled up anchor and left. A few, though, refused to budge: if the DFO says they can fish there, they said, they will. So, Neasloss and his team returned to Klemtu and got in contact with their neighboring nations. They rallied the Haida, the Heiltsuk, and other coastal First Nations, readying them to converge on Kitasu Bay and drive out the remaining fishing boats. A clash seemed imminent.

Soon, the RCMP, the Canadian national police, arrived on the scene, having been tasked with preventing any conflict. As Brown recalls, they approached Neasloss's boat and asked how they were going to make sure "things aren't going to get out of hand." One community member responded: "Well, I don't want anybody getting hurt. But, if my uncle gets angry, and he wants to come out here and protect his resources...I'm still going to have to be behind [him]." The

RCMP opted to force the last of the fishing boats to leave, and the bay returned to the Kitasoo/Xai'xais once more.

To the Kitasoo/Xai'xais, though, this incident was not a victory, but simply the latest in a long line of battles to protect their waters. The K/X had been in talks with the Canadian government since 2002, imploring the DFO to make Kitasu Bay into a protected area to prevent overfishing. They continued these talks well after the 2014 opening. But the government was slow and inconsistent. By 2022, little had changed. It was clear that these conflicts would happen over and over until something more was done. So, on June 21, 2022, the Kitasoo/Xai'xais yet again chose direct action. Neasloss, now elected Chief Councillor, released an announcement that began:

“We, the Kitasoo/Xai'xais Nation, hereby declare *Gitdisdzu Lugyek*s (Kitasu Bay) to be a Marine Protected Area (MPA) under our laws and inherent stewardship responsibilities.”

Kitasu Bay is now locally considered to be a protected area under the jurisdiction of the Kitasoo/Xai'xais nation. Whether they have the legal authority to create that protected area, however, is a difficult question to answer. The legality of Indigenous self-governance, which is required to designate a protected area within the framework of the settler-colonial Canadian government, is hotly debated. The Constitution Act of Canada protects Indigenous people's fundamental rights to fishing, logging, and land, but technically they remain subjects of the Canadian government. For the Kitasoo/Xai'xais this system is especially frustrating, since like many other Pacific coast nations, they have never signed a treaty with the Canadian government. Their land was firmly and unambiguously stolen by Canada when British Columbia was declared a British colony in 1858.

The Gitdisdzu Lugyek MPA is classified as an Indigenous protected and conserved area, or IPCA, a designation that is not officially recognized within Canadian federal law. This legal gap can lead to problems wherein federal or provincial governments simply ignore pre-existing IPCAs and extract resources regardless.

The eventual goal, then, for the new MPA is to reach a co-management agreement, where the Kitasoo/Xai'xais and Canadian government establish overlapping MPAs in Kitasu Bay and share authority over the bay's resources. The Kitasoo/Xai'xais have their traditional knowledge and holistic understanding of their territory that is needed to protect and manage Kitasu Bay. Meanwhile, the Canadian government has far-reaching political power and a national perspective that the Kitasoo/Xai'xais lack. Combining these assets could do great things for the bay. By declaring their MPA, the Kitasoo/Xai'xais are, in a sense, just getting a head-start on this process. They still want the federal government involved, after all. They just felt that they couldn't wait any longer.

The Kitasoo/Xai'xais have been fighting for decades to keep their environment intact. They have had to use every tool at their disposal – protests, lawsuits, and industry alliances – to maintain their way of living. Now, the Gitdisdzu Lugyek MPA represents a new opportunity: if the Canadian government comes to the table, the Kitasoo/Xai'xais will have a renewed chance to safeguard their resources under their own laws and practices, just as they did before European colonization. They are using a vast wealth of traditional knowledge, bolstered by decades of their own scientific research, to guide their management practices and ensure their waters and resources will still be there for generations to come. The Kitasoo/Xai'xais, however, are striving

for something bigger than themselves: they believe this MPA can demonstrate the power of Indigenous-led conservation both in Canada and around the world.

In December 2022, Chief Neasloss was in Montreal to attend the UN biodiversity conference, COP15. He was set to give a speech and share the trailer for a documentary about his nation's new MPA. The long, white tunnel of a room was packed with listeners. The air in the venue was hot and humid from all the bodies. After a very long opening speech by a local Kahnawá:ke elder and quiet, tense arguments due to growing impatience, and people talking during the opening address, Neasloss rose to the podium. He had a neatly trimmed goatee, a shaved head, and wore a black vest with an orca on the back. He began by addressing the crowd.

“So today, I have a two-hour presentation,” he said, cracking a warm, tongue-in-cheek smile. The audience laughed, relieved.

As a political entity, Kitasoo/Xai'xais is relatively new. In the 1870s, following a series of epidemics that nearly wiped out their populations, the closely allied Kitasoo and Xai'xais merged into one nation. Not long after, the 1876 Indian Act created a new host of challenges for the newly formed Kitasoo/Xai'xais. First Nations peoples in coastal British Columbia were restricted to reservations, lost the ability to manage their own land and waters, and were prohibited from engaging in certain traditions. Among those practices banned were the ceremonial feasts known as potlaches, where different Indigenous groups strengthened alliances and community through feasting, dancing, storytelling, and exchanging gifts. Indigenous children were also taken from their communities en masse and put into residential schools, where they were not permitted to speak their language or practice their culture and suffered physical, mental, and sexual abuse at the hands of their educators. This system persisted until nearly the end of the 20th century. These policies and practices had the added effect of disrupting the passage of traditions to younger generations in Indigenous communities. First Nations today are still suffering from the knowledge that was lost during this period.

Neasloss began his speech in that tunnel-shaped room with the history of the protected area. He explained how the federal government kept flip-flopping on plans to protect Kitasu Bay, and how the Nation began making deals with industry lobbies themselves. The speech could not have been scheduled for a better time: an hour earlier, Neasloss and his team had just finalized an agreement with the geoduck fisherman lobby. Geoduck is a large clam that sells for anywhere from 15\$ to 30\$ per pound and is common in Kitasu Bay. But, “as of one hour ago, all industry has been kept out,” he said. The audience whooped and applauded.

Neasloss grew up in a difficult time for his nation. In the 1980s and 90s, the economy of Klemtu, where the majority of the Kitasoo/Xai'xais live, was built around fishing and logging. Thanks to decades of exploitation, however, those resources became scarce, and people struggled to make money. Homelessness and hunger were endemic. The Kitasoo/Xai'xais suffered immensely during this time; in 1992 alone, for instance, 13 people in Klemtu committed suicide.

Thirty years later, Klemtu is unrecognizable. A successful “one breadwinner in every home” program, instituted in large part by former Kitasoo/Xai'xais chief and Order of Canada recipient Percy Starr, helped the community flourish. Klemtu has a salmon hatchery, sea cucumber processing facilities, a ferry terminal, a ceremonial Bighouse, and a five-star hotel and resort called Spirit Bear Lodge. Their tourism industry brings in \$2.5 million every year. At the same time, the community has expanded their stewardship office, guardian watchmen program,

and land and marine planning offices to ensure that their natural resources remain intact. In just a few decades, the Kitasoo/Xai'xais have done what for many places around the world seems impossible: achieve economic prosperity while consistently improving the way they protect their natural resources.

Neasloss continued his speech. One of the goals of COP15, where Neasloss was speaking, was to sign an international agreement designating 30% of the world's land and oceans as protected areas by 2030. Neasloss supported this goal but stressed that "we can't wait until 2030 to protect these areas."

Neasloss stepped away from the podium and began the trailer. Kitasu Bay appeared on the screen, a rich blue stretch of water surrounded by snowy conifers. The two-peaked Kitasu Hill loomed above the bay. Seals rode the surf, eagles soared over the bay, sea ducks dove down to feast on herring eggs. Neasloss appeared on screen. "We have always managed our territory," he said. "Who better knows their territory than the people?"

"We're going to continue to assert our stewardship responsibilities," he said. "We're not going anywhere."

The Kitasoo/Xai'xais's declaration is unilateral. Whether or not the Canadian government gets involved, the Kitasoo/Xai'xais will still relentlessly protect their waters. Nonetheless, they still want to create a co-management agreement with the government of Canada in the hopes that it will add further authority and power to their protected area. How precisely that agreement will work, however, is difficult to say.

There is no widely agreed-upon definition of "co-management," but the type that the Kitasoo/Xai'xais are striving for is one in which the government of Canada agrees to equally share its power with the Kitasoo/Xai'xais: "A true partnership," as Neasloss called it. To understand what this partnership would look like, look no further than the Haida.

The Gwaii Haanas Agreement is a signed deal between the Canadian federal government and The Council of the Haida Nation that came after decades of protests against logging in their territory. This agreement designated the southern portion of their territory as Gwaii Haanas National Park Preserve and Haida Heritage Site, a protected area under both Canadian federal and Haida governance. It also set up an advisory board consisting of half Haida and half Canadian members that would make decisions about the protected area. If at any point the board members are unable to reach consensus, they call upon the Haida council and the federal government to provide input and mediate until a decision can be made. While this system relies on a good deal of bureaucracy and can easily end up with both sides at loggerheads, it puts the the Haida nation on equal footing with the Canadian government, forcing any decision to benefit both parties. Crucially, the agreement also begins with a clause stating that, while both parties want to protect the land, neither cedes authority over the territory to the other.

The goal of co-management agreements like these is to return some power to the hands of Indigenous nations that have been subjugated by Canada since colonization. These agreements face challenges: if power sharing is unequally weighted, "co-managed" areas can quickly end up being solely controlled by one party, with the other acting as little more than advisors. Power-sharing strategies like the board set up in the Gwaii Hanaas Agreement are crucial to ensuring that these co-management agreements stay collaborative.

Recently, other nations have signed agreements with the federal government to create overlapping protected areas as well. The Mamalilikulla, for instance, underwent a similar process as the Kitasoo/Xai'xais: they declared a protected area in their territory in November 2021, and

this past February, the government agreed to honour their protected area. While there are some key aspects of this agreement that the Kitasoo/Xai'xais would avoid (specifically the fact that even Indigenous food fisheries are not permitted in the Mamalilikulla protected area), this sort of co-governance agreement is the type of designation that the Kitasoo/Xai'xais aspire to with Kitasu Bay.

The other benefit of co-management agreements is that they allow Indigenous groups to manage their territory with less interference. Kitasoo/Xai'xais's wealth of traditional knowledge make them uniquely suited to manage the bay. "We have some really strict rules of our own," said Neasloss, "that are based around conservation and sustainability and respect." The Kitasoo/Xai'xais only harvest a certain quantity of herring and eggs and know not to let blood touch the water or make too much noise during the spawn, or else the herring might disperse altogether (historically, some Kitasoo/Xai'xais would even wrap their oars in cloth as they paddle to limit the amount of noise they generate). A co-management agreement would codify these practices in Canadian law, giving the nation more power to enact them.

Indigenous laws, governed by traditional ecological knowledge, are nearly always better management guidelines than Western conservation strategies. Study after study has encountered this same finding – Brazilian coastal rainforest was safer in Indigenous hands, Mayan farming practices are extremely effective at conserving both soil and rainforest, Sahelian pastoral strategies in Africa keep grassland from turning into forest. Indeed, one study in British Columbia found that Indigenous-tended lands are more biodiverse and more resilient than even those lands that are in their so-called "natural" state. Lands and waters that are managed according to Indigenous practices, which have been developed over thousands of years for that specific area, tend to be well-protected. Kitasu Bay would certainly be no exception.

The connection that the Kitasoo/Xai'xais feel with their bay also highlights a disparity of stakes. To the federal government, declaring a protected area could pose a myriad of problems: it could interrupt shipping, damage the fishing industry, and threaten economic development on the central coast of British Columbia. For the Kitasoo/Xai'xais, meanwhile, not declaring a protected area threatens their very existence. Klemtu relies on Kitasu Bay for their food and livelihoods, and without a protected area, overfishing by outsiders could send the community back to the destitution it faced 30 years ago.

The use and misuse of "science" in the management of Kitasu Bay and its surroundings has always been a significant factor in the ongoing dispute between the Kitasoo/Xai'xais and the Canadian government. Beginning in 1990, during that exceptionally difficult time that Neasloss grew up, the DFO began a program called the Aboriginal Fisheries Strategies (AFS). Through this program, the Canadian government provided funding for biologists to help Indigenous communities manage their fisheries. It all started with a Canadian Supreme Court case called *R. v Sparrow*, which found that Indigenous fishing in all its forms was protected by law as a traditional cultural practice. Therefore, Indigenous communities had a cultural right to fish that superseded the fishing rights of settler Canadians. Consequently, the Canadian government needed to ensure Indigenous communities had enough fish to harvest and eat before commercial companies and settler fishermen could fish there. So, the DFO established the AFS. A program like this was in the DFO's best interest, because if Indigenous fisheries flourish, settler fishermen could be permitted to harvest.

It was through the Aboriginal Fisheries Strategy that Ken Cripps first went to Kitasoo/Xai'xais territory. A tall guy with a scraggly white beard, he arrived in Klemtu in 1992 as a young marine biologist to join the town's "co-management fisheries" office. This office was set up as a way for Kitasoo/Xai'xais to manage their fish stocks alongside the DFO. Upon arriving, Cripps remembered walking up to the basketball court where young men were playing pickup, finding the two most athletic guys there, and asking them if they wanted to learn to dive.

Through this program, Cripps began training up young divers and working with the community to establish marine surveys. This program was somewhat successful; it allowed the Kitasoo/Xai'xais to establish baseline population data in their waters that would guide their fisheries management. In theory, this program would help both the DFO and Kitasoo/Xai'xais; in reality, this office was co-management in name only. If there was any disagreement between DFO and the Kitasoo/Xai'xais, the DFO usually got final say. If the Kitasoo/Xai'xais tried to object, however, the DFO would simply argue that their management decisions were validated by science.

In the era of AFS, "science was always used against us," Neasloss said. Science-based models were the DFO's main weapon to justify overfishing in Kitasoo/Xai'xais waters: If a model suggested that there was enough fish that Canadian fishermen could harvest without depriving Indigenous fishermen, theoretically a fishery in those waters should be permitted. These models, according to Neasloss, were rarely built around actual observations: Scientists who had never set foot on Kitasoo/Xai'xais territory would create the models, which the federal government used to inform policy decisions.

According to Neasloss, this policy created something of a cyclical fishery in Kitasoo Bay. Every decade or so, there have been commercial fisheries that have "come in and cleaned up the bay and then left," leaving the Kitasoo/Xai'xais to wait years for those spots to rebuild. Then, before the stocks had even properly reformed, the fishery would reopen and the bay would be emptied. This cycle has had an enormous impact both ecologically and on the livelihood of the community. In some years, herring stocks were so low that even the Kitasoo/Xai'xais were unable to fish in the bay at all.

To the Kitasoo/Xai'xais, science was synonymous with this pattern of environmental destruction and extraction. Naturally, this cycle hurt the relationship between the community and scientists. Whenever scientists would ask to come into the community to perform research, the answer was typically a firm no. "Our leadership would always say, 'Where the hell has your science gotten us?'" Neasloss said. "Science was a really bad word in my community,"

The scientists themselves were often dismissive, too, of Kitasoo/Xai'xais knowledge, traditional or otherwise. Neasloss recalled a time when the nation brought in a biologist to study the grizzly bears that were present in a part of their territory that the Canadian government had no records of occurring there. Neasloss, who was a bear guide at the time and had extensive experience with the bears on these islands, recalled their first meeting:

"The guy says, 'What evidence do you have that there's grizzly bears here?' And I said, 'Oh, I have video, photos, GPS. What do you guys want? I'll send it over.' He said, 'You know, some people don't know the difference between a grizzly bear and a black bear.'"

The scientist, according to Neasloss, did, in fact, find grizzly bears on those islands.

For the Kitasoo/Xai'xais, it was frustrating seeing settler Canadians dismissing their knowledge and making decisions for their territory while being so far removed from it. They knew that these government scientists didn't understand their lands and waters. So, the community decided it was time to change strategy. If the DFO understood the language of

science, the Kitasoo/Xai'xais would start speaking it. As Neasloss put it, they would “start fighting science with science.”

One could argue that it's not fair that the Kitasoo/Xai'xais are forced to use science to defend their ways of life. The Indigenous inhabitants of this continent have been managing their resources for thousands of years and have been effectively guided by traditional ways of life all the while. Nonetheless, as the Kitasoo/Xai'xais have taken up the techniques and tools of Western science to protect their natural resources, they've proven one thing definitively: they're really, really good scientists.

When Western scientists start a study, the first step is always a literature review. They read through the back catalog of scientific journals to see what has been written on their subject and understand what is already known about it. When the Kitasoo/Xai'xais Stewardship Authority begins a study, they undergo a similar process: they do a review of scientific literature, sure, but they also review traditional ecological knowledge, or TEK. The stewardship authority maintains a library of Interviews recorded with elders dating back to the early 2000s. If those interviews don't suffice, they will simply go door-to-door and start talking to people.

This fusion of Indigenous and Western practices lies at the heart of the scientific work that the Kitasoo/Xai'xais do. Sometimes, this TEK review process answers the question by itself; for instance, a TEK review determined that the traditional standard for a healthy crab fishery should be an average of 7.5 crabs per trap. The stewardship authority treated this finding as valid as if it had come from a scientific paper and enforced it; when further review found that some parts of Kitasoo/Xai'xais territory had crab populations so far below this standard, they closed those areas to crab fishing entirely.

“We're constantly trying to find ways to incorporate local, traditional knowledge and merge that with some of the Western science,” Neasloss said. The impetus behind Kitasoo/Xai'xais research is always a practical one. “We're not doing a lot of ‘why is bark brown’-type research,” said Christina Service, a biologist with the Kitasoo/Xai'xais stewardship authority. The research is also driven by the community: The stewardship authority holds community meetings to determine research objectives, and traditional knowledge holders weigh in on what unanswered questions are worth pursuing.

“We've pretty much tackled every species that exists in Kitasu Bay,” Cripps said, who now works for the Kitasoo/Xai'xais stewardship authority and marine planning office. The Kitasoo/Xai'xais surveyed rockfish, abalone, salmon, and a variety of other important animals. They began tracking annual herring spawn numbers and began long-term studies into prawn demographics, ensuring that there was a healthy male to female ratio to support a continuing population.

An exceptionally impressive example of the Kitasoo/Xai'xais's cutting-edge science is the nation's work with sea cucumbers. Sea cucumbers are worth upwards of 19\$/pound, and relatively easy to harvest, so the DFO manages a sea cucumber fishery on the Pacific coast. They struggled, however, to accurately survey these animals to ensure they were being fished sustainably. So, they borrowed from the Kitasoo/Xai'xais.

The Kitasoo/Xai'xais had invented a method for surveying sea cucumbers by delineating two-meter-by-five-meter quadrats, positioned at intervals along transect lines that ran from the shallow end of the bay to its depth, and counting the sea cucumbers within each quadrat. They could then expand that data across a whole area and, once they accounted for differences in

substrate and algal cover along the seafloor, ended up with an accurate estimate of the sea cucumber population in the bay. The DFO soon adopted this method, and to this day it is the main way that the DFO measures sea cucumber biomass. “We based it on real science,” Cripps said. Clearly the DFO agreed.

The data generated by all this research meant the Kitasoo/Xai’xais had an even stronger argument that their waters were worth protecting, while also demonstrating their aptitude for protecting them. So, in 2006, that the community finally began talks with the federal government to protect Kitasoo Bay.

These talks were steadily progressing, it seemed. In 2010, Kitasoo/Xai’xais created its stewardship authority. Neasloss, who had first made his name in the nascent Klemtu tourism industry as a bear guide, then as marine planning coordinator since 2006, was chosen as director. Much of the control over marine planning was mostly transferred over to that office. The scientific research continued, and even more detailed studies validated what Kitasoo/Xai’xais already knew: that Kitasoo Bay is a special place worthy of protecting.

In 2013, however, the DFO backed out. The federal government had given the natural gas company Enbridge permission to construct a natural gas pipeline through Kitasoo/Xai’xais territory, which a marine protected area would never allow. Neasloss and his community spent the next five years in court with the federal government arguing that this decision violated their inherent Indigenous rights. “It’s because we don’t have protected areas that we’ve got to spend all this money in court,” he said.

As the Kitasoo/Xai’xais developed their scientific research, suing the DFO became their main method of gaining control over their resources. With sea cucumber, for instance, the DFO permitted fishermen to harvest a quota equivalent to 3.3% of the total sea cucumber biomass. Their modeling suggested that this rate would not negatively impact the population of sea cucumbers. The Kitasoo/Xai’xais, however, disagreed, and could prove they were right: they manage four experimental fishing areas for sea cucumbers, which are partitioned and fished at different rates. When they looked at the sections fished at the same rate as the recommended DFO quota, they saw that sea cucumber stocks were appearing to hold steady year to year, but only because sea cucumbers were moving from other areas to fill these better-fished areas. If the DFO were accounting for this immigration, the sustainable fishing rate should be closer to 2%. Without taking this into account, they might as well have been “pulling numbers out of a hat,” according to Cripps. So, with their data in hand, Kitasoo/Xai’xais took the DFO to court in 2014. The department chose to settle out of court: the DFO established dedicated refugia areas and protected food fishing areas for sea cucumbers around Klemtu, and the Kitasoo/Xai’xais got six sea cucumber fishing licenses and decision-making authority over sea cucumbers in their territory. According to Evan Loveless, an advisor for the stewardship authority, their data was the main reason that the DFO chose to settle.

In 2015, Canada held a federal election. Stephen Harper’s conservative government lost re-election, and Justin Trudeau’s liberals took power. With a new party in power, the DFO decided they wanted to re-enter talks; they had plans to create an entire MPA network along Canada’s west coast that included all nine Coastal First Nations and wanted Kitasoo Bay to be a part of it. Kitasoo/Xai’xais started negotiating and were ready to move ahead, but the process was “painful,” according to Neasloss. To the Kitasoo/Xai’xais, the DFO’s management strategy was too big picture to suit the needs of small communities like theirs. “DFO said, ‘Well,

Klemtu's approach doesn't meet our course-wide management approach.' We said, 'Well, your course-wide management approach doesn't meet Klemtu's approach.'" The negotiations were often at an impasse, and the community grew frustrated with the DFO's seeming inability to grasp the importance of protected areas in promoting healthy fish populations. "I don't think you need to be a rocket scientist to know if you protect areas, stocks will rebuild," Neasloss said. Nonetheless, some progress was made—the Coastal First Nations and the federal government signed the Fisheries Resource Reconciliation Agreement in 2019, which allocated funding and fishing licenses for the Coastal First Nations, including the Kitasoo/Xai'xais.

The hope was to complete the MPA network planning process by February 2023 so they could announce it at IMPAC5, a global conference on marine protected areas. Before then, though, on December 18, 2021, there was to be a meeting between the Coastal First Nations and DFO. In DFO's letter preceding the meeting, however, there was no item on the agenda for the MPA network. The Coastal First Nations got a sudden sense of déjà vu: the federal government was about to pull out again. So, according to Cripps, the representatives from the Coastal First Nations -- Nanwakolas Council president Dallas Smith, Heiltsuk Chief Marilyn Slett, Haida president Gaagwiis, and Neasloss, among others -- entered that meeting "with a very clear strategy": "to rip them a new asshole."

In that Vancouver conference room, decades of frustration finally boiled over. The Coastal First Nations laid out what they needed to be done to rectify this situation, or else they threatened to cut DFO out of the planning process altogether. Whenever the DFO representatives tried to argue, the group shut them down. "It wasn't pretty," Cripps said. When they were done, they walked out of the room with the threat of "we could be on the world stage at IMPAC5 announcing great things, or we'll just drag you through the mud so badly you won't even know what hit you." The Kitasoo/Xai'xais were done waiting. "December 18 broke the camel's back," Cripps said.

By that point, there was nothing left to do. Neasloss went back to Klemtu and told his community that they wanted to go ahead without the federal government and create their own MPA. The community was near-unanimous in their support. Finally, the Kitasoo/Xai'xais had the chance to be the principal authority deciding how to manage their bay. In the background of these political machinations, the Kitasoo/Xai'xais stewardship authority and other offices had been assembling management plans and doing ground-breaking science to guide their decision making. Soon, they would put it all to work.

But first, on June 22, 2022, the community of Klemtu gathered in the Bighouse, the enormous cedarwood long house that the Kitasoo/Xai'xais use for important ceremonies. Nearly every Klemtu resident was present. The hereditary chiefs and the matriarchs, dressed in traditional style and flanked by enormous totem poles, spoke before the community about the decision to create the new MPA. The official declaration was drawn up and signed by Neasloss and two hereditary chiefs. Soon, the singing and drumming began, with community members dancing in the sandy ground at the center of the Bighouse. There was a lot of work ahead. But, just for a moment, the community could celebrate.

As Neasloss reflects on his work, both as stewardship director and Chief Councillor, he recognizes how much Klemtu has changed since his nation entered talks with the federal government in 2006. "The community has changed a lot. Our leadership has changed, some of

them have passed on.” Above all, though, he thinks that “our message has stayed the same:” the Kitasoo/Xai’xais will do whatever it takes to assert their rights and fight for their future.

Since the declaration, the Kitasoo/Xai’xais have continued to innovate the ways they are studying and protecting their bay. The stewardship authority has been doing dive surveys to find ecological hotspots for rockfish, using satellite imagery to watch how kelp has changed in extent and density, and studying the impact of invasive green crab on eelgrass beds. Their bird surveys have uncovered globally significant populations of birds using Kitasoo Bay as a feeding ground: 16% of the 10,000 Thayer’s gulls and 4% of the 470,000 surf scoters on Earth feast in this bay during the herring spawn. They’re trying to find a way to count these birds using AI-powered drone surveys. And of course, they’re studying the all-important herring.

This research has allowed the Kitasoo/Xai’xais to develop an extensive management plan for their herring, specifically delineating Kitasoo Bay as one of the most crucial spawning areas for the fish. The plan is detailed, covering how their management will account for pressure from fisheries, climate change and ocean acidification while outlining the benchmarks at which they will permit commercial fishermen to harvest in the bay. They also are transporting eggs from within Kitasoo Bay to overfished areas to try to seed new spawns.

Even with this plan though, Klemtu seems like far too small a community to enforce it. Fortunately, they have built connections that mean they rarely need to.

The Kitasoo/Xai’xais maintain business relationships with lobbies and corporations from a variety of industries, but especially fishing. Through these relationships, they’ve been able to strike deals where the Kitasoo/Xai’xais permit fishermen to harvest in certain parts of their territory and at certain designated rates, and the fishermen agree to abide by Kitasoo/Xai’xais regulations and designate some areas as no-fish zones, sometimes even providing funding for stewardship activities. These relationships persisted as the nation designed its management plan. When the plan was being designed, “there was a process that was transparent,” according to stewardship advisor Evan Loveless: the Kitasoo/Xai’xais didn’t just “say ‘this is it, deal with it.’”

The power of these industry relationships means that the Kitasoo/Xai’xais can somewhat trust the fishermen to regulate themselves; any fishermen caught violating these agreements risks repercussions from both their fishery organizations and the Kitasoo/Xai’xais. As each industry deal was signed, fisheries ceded authority to the Kitasoo/Xai’xais, giving them more and more control over their waters. “We’re just cutting [the DFO] out of it now,” said Loveless. “We’re dealing directly with the commercial interests.”

Unfortunately, poachers still sometimes attempt to harvest in off-limits areas, necessitating direct enforcement from the Kitasoo/Xai’xais Coastal Guardian Watchmen program. The nation employs eight guardians whose job it is to patrol Kitasoo/Xai’xais territory, driving away poachers, removing traps, and educating and welcoming visitors. In 2022, not long after Kitasoo Bay was declared an MPA, the British Columbian government granted Kitasoo/Xai’xais guardian watchmen the same legal authority as provincial park rangers, allowing them to hand out tickets themselves. “Now we have zero illegal activities in our territory,” Neasloss said. “That is a huge difference than how it was twenty years ago.”

Two months after COP15, there was another presentation, at the international conference on marine protected areas IMPAC5. The presentation was an announcement: the federal government, provincial government, and 15 First Nations across the British Columbia coast were jointly announcing their endorsement of the Northern Shelf Bioregion MPA Network. The DFO

had come back to the table and agreed to move forward with the MPA Network. The Coastal First Nations' strategy had worked.

Dallas Smith was there, one of the First Nations Leaders present in the December 2021 meeting in which the federal government pulled out of the MPA network plan. He was helping announce that his nation and so many others got the MPAs that they wanted. "Miraculous might be too strong [a word]," said Smith in his speech onstage. "We worked too hard for it to be a miracle."

Unlike in Montreal, Neasloss was not on stage, but his nation's work – and the work of so many others – was on full display. The DFO released a map of all the MPAs involved, either already extant or soon to be established. Tucked away on the central coast, in a sheltered inlet called Kitasu Bay, was the Gitdisdzu Lugyek's MPA. According to the DFO's current timeline, they will declare it an official Canadian government MPA in 2025. The Kitasoo/Xai'xais had gotten exactly what they hoped for: parallel designations and an opportunity to manage their waters alongside the Canadian government.

Of course, the DFO has backed out of deals before, so it remains to be seen whether they will follow through on their promise to declare an MPA alongside the Kitasoo/Xai'xais's Gitdisdzu Lugyek's. The federal government would do well to stay true to their word, though. There are, of course, a myriad of pragmatic mutual benefits: Indigenous stewardship promotes intact ecosystems, fosters sustainable resource management, helps fight the global climate crisis, and provides a variety of tools that could help settler Canadians to manage their natural resources too. There is a greater reason, however, to support Indigenous-led conservation projects like the Kitasu Bay MPA. Reconciliation -- as Canada aims to achieve with its First Nations communities -- requires rectifying past wrongs. If settler Canadians are going to agree that colonialism is wrong, they should do whatever they can to undo its harmful effects. Canada has stolen Indigenous land, resources, knowledge, and power. The least that they can do is return some of that power.

If the deal goes through, the Kitasoo/Xai'xais's fight will still not be done. They are already planning more protected areas in their territory to ensure their resources are safeguarded, for themselves and for future generations. "We want to see more protected areas," said Neasloss, "but we also want to have a say in those protected areas...In an ideal world, we would be dictating all stewardship [in our territory]."

More First Nations in Canada are establishing protected areas than ever before. The federal government has invested in at least 27 IPCAs currently in the process of being designated. That number is likely to only increase as Canada tries to conserve more and more of its territory. "I would imagine you're going to see more and more of this," Neasloss said. "Things are going to change in the next few years, and we're going to help make that change."

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