



# Guardian Watchmen: Upholding Indigenous Laws to Protect Land and Sea



## Introduction

For thousands of years, the Indigenous peoples of the place now known as British Columbia have protected and managed the lands and waters of their territories. In recent years, many Indigenous nations have continued to uphold their governance responsibilities and this long tradition of stewardship through the creation of ‘Guardian Watchmen’ programs.

Guardian Watchmen are often referred to as the ‘eyes and ears’ of the land and sea. Watchmen are hired by their nations to act as protectors, stewards, and guardians of the lands and waters they and their ancestors have inhabited for millennia. Guardian Watchmen can be found all along the Central and North Coast of British Columbia, as well as elsewhere in Canada, both on land and on water.

Guardian Watchmen programs are rooted in rich Indigenous legal traditions that pre-date the arrival of European settlers and their assertion of sovereignty over the land now known as Canada. Indigenous legal orders are distinct – Haida law differs from Dene law which differs from Mi’kmaq law. Despite the imposition of Canadian law and authority over Indigenous territories, these legal traditions live on in the present alongside Canadian law. They remain the living law of the land and have never ceased to be binding on all who enter and use the traditional territories of the Indigenous peoples of coastal British Columbia.



Photo: Georgia Lloyd-Smith

Because of their inherent jurisdiction in their territories and according to their own laws, Indigenous peoples have a legal obligation to care for the lands and waters they inhabit. This occurs at many levels, from setting strategic direction for use of the territory through land use and marine spatial planning, to on-the ground monitoring of activities and enforcement of laws in their territories. It is the latter responsibilities that Guardian Watchmen work to fulfill.

This brief will explore some of the roles Guardian Watchmen play in fulfilling their responsibilities to the land and water. In performing this duty, Guardians are involved in a wide range of work, from gathering knowledge about the state of ecosystems, to enforcing the prohibitions and restrictions declared under Indigenous law, to seeking further support from the Canadian state.

## Knowing Lands and Waters

Gathering knowledge of the land and waters – the health of fish stocks and wildlife populations, the condition of marine habitats, or the impacts of human use – is an essential responsibility of Guardian Watchmen. Responsible and effective decision-making about the environment depends upon reliable data. Guardians undertake consistent and purposeful monitoring to ensure that relevant and up-to-date data are available to decision-makers within their nations and within the provincial and federal governments.

To this end, Guardian Watchmen receive rigorous training in modern scientific techniques and methods. But Guardian Watchmen also bring a wealth of local knowledge to this work. Watchmen know the land, the plants and animals, and the various user groups who may impact them, and have witnessed changes over long time periods. The value of this local knowledge cannot be overstated. Recent regional planning initiatives, such as the Marine Planning Partnership (“MaPP”), rely on Guardian Watchmen to monitor and implement these plans.<sup>1</sup> Similarly, as Indigenous nations develop their own management plans, Guardian Watchmen play a critical role in making sure the plans are followed.<sup>2</sup>

Additionally, Guardian Watchmen are playing an increasingly prominent role in collecting data formerly collected by government departments like Fisheries and Oceans Canada (“DFO”). For example, the DFO’s ‘Stream Walker’ program provided critical data about the health of salmon streams. Recent cutbacks have threatened the program, leaving crucial salmon streams across the BC coast unmonitored and unprotected. These streams play an essential ecological role in linking ocean and land together. Guardian Watchmen from the Kitasoo/Xai’xais Nation have stepped in to fill this gap. With additional funding, other Guardian programs may be able to do the same within their own territories.

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<sup>1</sup> Central Coast Indigenous Resource Alliance, “Guardian Watchmen Essential for MaPP”, July 6, 2016 <<https://www.ccira.ca/2016/07/guardian-watchmen-essential-for-mapp/>>

<sup>2</sup> See for example, Nanwakolas Council, “Marine Planning” <<http://www.nanwakolas.com/marine-planning-nanwakolas-council-british-columbia-native-people-first-nations>>

Without knowledge, protecting important ecosystems is impossible. Monitoring the health of plant, fish, and wildlife populations, and marine and terrestrial environments is a key role of Guardian Watchmen. Both Indigenous and non-Indigenous decision-makers increasingly rely upon the knowledge gathered by Guardians to make responsible decisions about the environment.

## Caring for Lands and Waters

Knowledge is only one step in effective stewardship, however. Each Indigenous legal tradition contains specific legal obligations, such as obligations to protect important wildlife species, food sources, and significant cultural resources. If human activities endanger these resources, positive action must be taken to prevent harm to the environment. In these circumstances, Guardian Watchmen have the responsibility of enforcing prohibitions and restrictions declared under Indigenous law.

Sometimes, this responsibility dovetails with existing regulations under Canadian law. For example, Guardian Watchmen are often the first to observe and report activities that are illegal under both Canadian and Indigenous law, such as fishing in an ecologically vulnerable area closed under the Fisheries Act. On other occasions, this responsibility falls outside the scope of Canadian environmental protection laws. Canadian law often does not go far enough to meet the obligations under Indigenous law to care for the environment. On these occasions, First Nations have a responsibility to go beyond Canadian legislation, enacting closures under their own laws, which are enforced by Guardian Watchmen.



Photo: Central Coast Indigenous Resource Alliance

Most Guardian Watchmen are not currently empowered under Canadian law to use force, or otherwise exercise the powers routinely granted to Canadian law enforcement officers. Enforcing Indigenous law requires more creative solutions. Indigenous nations have utilized a variety of strategies to enforce their law in this area, including protests, blockades, and informational campaigns.

Closures declared under Indigenous law, and enforced through such alternative measures, have had proven benefits for the environment. For example, in 2014, four Central Coast First Nations proposed a network of Dungeness crab closure areas to combat declines in stocks and to better meet conservation and community needs. These closures were proposed and declared under Indigenous law. The Canadian government, however, initially refused to recognize them.

Unable to rely on the government, the Nations communicated the closures directly, and asked for compliance from commercial and recreational fishers. They conducted their own patrols, placing tags on traps in the affected areas, explaining that a closure had been declared under Indigenous law. Through these means, Guardian Watchmen were able to secure high voluntary compliance with the closures. A scientific study of the closures showed that both the body size and numbers of Dungeness crab increased at the closed sites.<sup>3</sup>



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<sup>3</sup> Frid A, McGreer M, and Stevenson A. "Rapid Recovery of Dungeness crab within spatial fishery closures declared under indigenous law in British Columbia," *Global Ecology and Conservation* 6 (2016)

A similar closure is currently in force on land in the Great Bear Rainforest, where nine Indigenous nations have declared the trophy hunting of grizzly bears illegal under Indigenous law. The new provincial government in BC has vowed to support the ban with its own prohibitions in November 2017. Guardian Watchmen, however, will continue to play a crucial role enforcing the ban.<sup>4</sup>

At the present time Guardian Watchman do not have all of the powers of Canadian law enforcement officers. The law they enforce, however, is no less legitimate or authoritative than the law of Canada. With its focus on the health and sustainability of the natural world, Indigenous law has an important role to play in caring for the environment all Canadians depend on for life and livelihood. Thus, cooperative efforts to enhance recognition of the authority of Guardian Watchman helps all of us build a better relationship with the natural world, for the benefit of all who inhabit it.



Photo: Defenders of Wildlife

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<sup>4</sup> Coastal First Nations, “Coastal First Nations and Central Coast Bear Working Group respond to the opening of 2017 fall trophy hunt”, September 17, 2017 <<http://coastalfirstnations.ca/coastal-first-nations-central-coast-bear-working-group-respond-opening-2017-fall-trophy-hunt/>>

## Developing Partnerships with Crown Governments

First Nations are working with provincial and federal governments to strengthen the role of Guardian Watchmen. In general, Canadian law has been slow to recognize the authority of Indigenous law. Though Indigenous legal traditions do not require validation from the Canadian state to be legitimate, the enforcement of Indigenous law can be severely curtailed under Canadian law and in some cases come under threat of criminal prosecution.

As Crown governments come to realize the value of Indigenous knowledge, and to recognize the legitimacy of legal and political authority of Indigenous jurisdictions, there is growing interest in developing partnerships between Indigenous nations and various governmental agencies. Where there is agreement over land and sea governance, the partners can work together to ensure that rules are followed. Guardian Watchmen play a crucial role in implementing these partnerships.



Photo: Georgia Lloyd-Smith

One of the best-known examples of cooperation is the co-governance agreement between the Government of Canada and the Haida Nation regarding the lands and waters of Gwaii Haanas, an archipelago of densely forested islands and rich ocean waters. This agreement allows for equal power sharing between the Haida Nation and Canada in managing the area. The agreement is often held up as an example of how protected areas can be co-governed in Canada. Haida Watchmen play a crucial role in this arrangement, monitoring Gwaii Haanas and enforcing the regulations imposed by the Council of the Haida Nation and Parks Canada under the agreement. During the summer months, Haida Watchmen live full time at a number of Haida village sites in Gwaii Haanas.

Despite the success of partnerships like this, they are the exception rather than the rule. It can take decades of committed pressure and activism to force the government to relinquish any of its illegally attained power, even in the context of such a partnership. Where the government is unwilling to cooperate, many Indigenous nations have turned to the courts to uphold their jurisdiction. Many nations have launched or are considering legal proceedings to secure judicial recognition of Aboriginal title and/or governance rights over their traditional territories.

Whether or not the Canadian government chooses to cooperate, Guardian Watchmen form part of a growing movement for Indigenous self-determination, and the reassertion of control over the lands and waters that Indigenous peoples have successfully stewarded for millennia.

## Conclusion

Whether pursuing knowledge, enforcing laws, developing partnerships, or all three simultaneously, Guardians are becoming an increasingly common sight, particularly on the Central and North Coasts of British Columbia.

Guardian Watchmen act under the lawful authority of Indigenous legal traditions. Although this authority is currently not well recognized by Canadian law, it is legitimate and time-honoured.

In all of their roles, Guardian Watchmen are working to uphold laws that have never ceased to be binding on all who enter and use the traditional territories of the Indigenous peoples of coastal British Columbia. As Canadian law struggles to provide adequate protection for marine spaces in Canada, the legal orders Guardians uphold offer a legal and regulatory paradigm rooted in thousands of years of successful stewardship. In the midst of a time of unprecedented environmental disruption, the wisdom and knowledge contained within these traditions has assumed an even greater importance. Guardian Watchmen follow, enforce, and uphold these traditions not merely on behalf of their own nations, but on behalf of all Canadians.





Photo: Georgia Lloyd-Smith

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