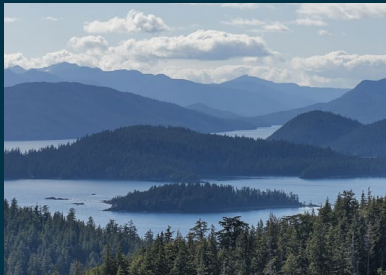


# Indigenous Conservation Agreements in Canada

A REVIEW OF BEST PRACTICES, CHALLENGES, AND IMPLICATIONS FOR THE FUTURE



Prepared for MakeWay by  
Ginger Gibson PhD, Kalene Gould,  
and The Firelight Group

## INDIGENOUS CONSERVATION AGREEMENTS IN CANADA

A Review of Best Practices, Challenges, and Implications for the Future

November 2020

Prepared for MakeWay by Ginger Gibson (PhD), Kalene Gould, and The Firelight Group

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**DISCLAIMER:** The views and opinions expressed in this paper are those of the author alone, and not of MakeWay or the Indigenous Nations referenced in this paper.

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This report delivers detailed information on conservation agreements to support Indigenous Governments, Nations, communities, and organizations that are negotiating, implementing, evaluating, renegotiating, or seeking to learn more about these types of conservation agreements.







# Introduction

Conservation agreements provide a new realm of opportunity for Indigenous communities to enter into agreements that support their stewardship priorities and continued use of their traditional lands. Many existing Impact and Benefit Agreements (IBAs) to date are associated with the extractive industry, often related to mining and oil and gas activities, and the literature and guidance is focused on this sector. Working together with MakeWay, The Firelight Group was mandated to prepare a scan of best practice associated with Indigenous agreements leading to conservation designations of lands in Canada.

This report delivers detailed information on conservation agreements to support Indigenous Governments, Nations, communities, and organizations that are negotiating, implementing, evaluating, renegotiating, or seeking to learn more about these types of conservation agreements. Our focus is on identifying best practice within conservation-related Inuit Impact and Benefit Agreements (IIBAs). Many of the findings and key issues discussed are relevant for Indigenous peoples negotiating conservation agreements in other jurisdictions and contexts.

This scan covers the following key areas:

- **Elements of an Indigenous conservation agreement** — includes a breakdown of the general structure of a modern Indigenous conservation agreement, the general process steps, and funding structures;
- **Negotiation of a strong conservation agreement** — discusses challenges and strategies in the negotiation process, such as using leverage points, building relationships, and strengthening agreements through external connections;
- **Lessons learned from implementation** — tools for successful agreement implementation, including examples of key outcomes; and
- **Moving forward** — looking at the future of conservation agreements, overarching challenges and the ways in which Indigenous governments and organizations can overcome these challenges to protect their homelands, stories, and way of life.

# Methodology

The information presented in this report was sourced from a selection of existing Indigenous conservation agreements and data collected through interviews with representatives from the parties involved in these agreements, including from both Indigenous governments/ organizations and public governments. All agreements referenced in this report are publicly available documents.

A workshop held with designated Inuit organizations in Iqaluit in February 2020 supported the review and expansion of initial findings of the report.

A brief list of agreements and the parties to them is included in Table 1, with additional agreement details provided in Appendix A. Figure 1 provides an overview of the location of these agreements.

Table 1. General details of the Indigenous conservation agreements reviewed

Parties	Effective	Designation
<b>Labrador Inuit Parks Impacts and Benefits Agreement for the Torngat Mountains National Park Reserve of Canada</b>		
Labrador Inuit Association; Government of Canada	January 2005	National Park
<b>Gwaii Haanas Marine Agreement</b>		
Haida Nation; Government of Canada	January 2010	National Marine Conservation Area Reserve
<b>Innu Nation Park Impacts and Benefits Agreement for the Akami-Uapishk<sup>a</sup>-Kakkasuak-Mealy Mountains National Park Reserve of Canada</b>		
Innu Nation; Government of Canada	July 2015	National Park Reserve
<b>Agreement Regarding the Establishment of Edézhzié</b>		
Dehcho First Nations; Government of Canada	October 2018	Indigenous Protected and Conserved Area; National Wildlife Area (proposed)
<b>Tallurutiup Imanga National Marine Conservation Area Inuit Impact and Benefit Agreement</b>		
Qikiqtani Inuit Association; Government of Canada	August 2019	National Marine Conservation Area
<b>Agreement to Establish Thaidene Néné Indigenous Protected Area and National Park Reserve</b>		
Łutsël K'e Dene First Nation; Government of Canada (Parks Canada Agency)	August 2019	National Park Reserve; Indigenous Protected Area; Territorial Protected Area; National Wildlife Area (proposed)

PHOTO LORI TAGOONA



Figure 1: Locations of the Indigenous conservation agreements reviewed in report



**Gwaii Haanas National Marine Conservation Area Reserve**  
*British Columbia*



**Edézhíe Protected Area**  
*Northwest Territories*



**Thaidene Néné Indigenous Protected Area and National Park Reserve**  
*Northwest Territories*



**Tallurutiup Imanga National Marine Conservation Area**  
*Nunavut*



**Torngat Mountains National Park**  
*Newfoundland & Labrador*



**Akami-Uapishkú-Kakkasuak-Mealy Mountains National Park Reserve**  
*Newfoundland & Labrador*



HUMPAK BREACHING, GWAIL HAANAS / PHOTO PARKS CANADA

The following approach to data collection and analysis was used for this report:

- **REVIEW OF INDIGENOUS CONSERVATION AGREEMENT REVIEWS:** Indigenous Conservation Agreements were selected by MakeWay with input from the Firelight team (see Appendix A). Agreements were chosen to represent examples of current conservation agreements that have been recently finalized and older agreements that were a breakthrough at the time to allow for a better understanding of key outcomes, strategies, and best practices.
- **INTERVIEWS:** A total of 10 interviews with key informants were conducted and summarized. The data was then used to assess the key approaches, lessons learned, core successes, and future direction for conservation agreements.
- **CODING DATA:** Each interview was coded using the following key themes: process steps, negotiation challenges, negotiation tools, implementation barriers, implementation strategies, and future of conservation agreements.
- **REPORT DRAFTING:** Initial key findings were drafted in a report and presented to MakeWay staff in preparation for the Indigenous conservation agreement workshop.
- **WORKSHOP ON INDIGENOUS CONSERVATION AGREEMENTS:** A February 2020 workshop focused on information sharing between designated Inuit organizations. Workshop participants reviewed the draft report findings and expanded on ideas for best practice and challenges.
- **REPORT FINALIZATION:** Workshop notes were coded, and the final report updated to reflect the workshop findings.



# Indigenous Conservation Agreements



## Why Negotiate a Conservation Agreement?

Conservation and protected areas agreements are developed for many reasons. For interview and workshop participants these included:

- Fulfilling the mandate given by communities to protect important homelands and key values;
- Protecting an area from development or disturbance to ensure future generations have continued access to maintain their rights and interests in perpetuity;
- Preserving control and sovereignty of Indigenous governments and organizations and ensuring that the management and mitigation of any future impacts on that land is done appropriately;
- Protecting areas alongside, and in addition to, a modern land claim, such as in the case of the Torngat Mountains National Park of Canada; and
- Maximizing economic opportunities for Indigenous governments, organizations, and communities within a conservation-based economy.

## Historical Progression of Conservation Agreements

Conservation agreements now have very different implications for Indigenous peoples compared to historic efforts to establish parks and protected areas. Changes over the decades within Canada's federal, territorial, and provincial policies mean there is now stronger alignment with Indigenous visions and goals, as policies shift and co-governance models are established.

In 2015 Canada adopted a suite of national targets known as the 2020 Biodiversity Goals and Targets for Canada. This plan includes Target 1, which states that “the Government of Canada is committed to conserving 25 percent of Canada’s land and 25 percent of its oceans by 2025.” This aspiration prepares the ground for further establishment of protected areas with Indigenous partners to meet this objective.

## THE RELATIONSHIP BETWEEN INDIGENOUS PEOPLES AND PROTECTED AREAS IN CANADA

The relationship of Canadian National Parks to Indigenous peoples includes the forceful removal of Indigenous peoples from their land, regulations restricting or banning hunting and traditional harvesting and cultural practices, and the incarceration of many Indigenous peoples trying to maintain connections to their homelands despite these impacts (ICE 2018).<sup>1</sup>

Early Parks efforts in Canada were rooted in non-Indigenous values, involving a fundamental separation of human life from nature, and a desire to understand, control and exploit the wild. Early Parks established by Canada and the provinces or territories were based on this world view. For example, Indigenous people were forcibly removed from the area that became Jasper National Park, and Indigenous practices of land and resource management in that region were discontinued. Non-indigenous values were asserted, with Parks Officers controlling and managing human interaction with the environment. These types of parks became places for “playing”, viewing, being in nature without interacting with it, and managing the land from a settler lens.

Grounded in these values, early Parks management approaches resulted in the suppression of resource use, leading to conflict, un-peopling of the land, and alienation of Indigenous peoples from their homelands.

GWAIL HAANAS / PHOTO TYLER AMMERLAAN



<sup>1</sup> [ICE] Indigenous Circle of Experts. 2018. We Rise Together: Achieving Pathway to Canada Target 1 Through the Creation of Indigenous Protected and Conserved Areas in the Spirit and Practice of Reconciliation.



Modern conservation agreements can provide an avenue for creating protected areas while having clear provisions for the continued practice of Indigenous rights and traditional use within those areas. While this is often an aspirational goal of the Indigenous government, it has not always been achieved in practice. Conservation agreements may provide an avenue for reconciliation, by defining areas where Indigenous rights can be expressed, as decisions about lands, resources, and activity on the lands are made by Indigenous peoples.

Many challenges remain to the creation of conservation agreements and protected areas. Hesitation to enter into agreements and relationships with non-Indigenous governments is based on a long-standing history of false and broken agreements, and ongoing colonial policies and dispossession of land by settler governments. The Indigenous Circle of Experts (2018, 48) identified that although there is an opportunity for reconciliation through conservation agreements, there are also critical barriers that may limit progress including:

- *A history of broken promises and strained relationships with the Crown;*
- *Systemic barriers that continue to disadvantage Indigenous People;*
- *Communities in crisis;*
- *Territories under resource development threats;*
- *Declining languages;*
- *Loss of indigenous knowledge and language; and*
- *Disconnection from lands creating a climate of cynicism and distrust in many communities.*

Understanding the purpose and intent of conservation agreements is vital to their success. There are tensions underlying differing conservation values and interests of the parties involved, which are often in conflict. There needs to be recognition that at their core, these agreements are being negotiated because of the existing negative impacts to Indigenous governments and communities rooted in loss of land and colonization, in which Indigenous communities are continuing to have to negotiate their homelands in order to implement protection measures over them.

There also remains a need for the evaluation and renegotiation of older, “empty” agreements that continue to limit Indigenous rights and access without any community benefit, such as in the case of the Banks Island Migratory Bird Sanctuary.

As one workshop participant (February 2020) said:

*Basically, [for the Banks Island Migratory Bird Sanctuary] we gave back land to the government that we had fought tooth and nail for and they're not holding up their end of the agreement.*

Recognizing the limitations of past agreements is an important step and accepting these failures presents an opportunity to renegotiate stronger and more beneficial agreements between the Crown and Indigenous governments and organizations.

## Steps to a Conservation Agreement

The following process is often followed to establish a conservation agreement and an associated protected area. The example below is of a conservation agreement leading to a protected area, however other types of conservation agreements may include establishing a wildlife co-governance management structure or setting aside land for the purposes established by the Indigenous party.

1. **Understand the legislation, land claim or policy process** that provides the enabling support for a conservation agreement.
2. **Establish community mandate** through direction of leadership, Elders, land users, and the general community.
3. **Develop a community-level steering/advisory committee** to guide the process.
4. **Identify other required groups** (e.g., neighbouring communities, various levels and departments of government, non-profit organizations) and **start developing partnerships**.
5. **Identify other potential stakeholders** (e.g., regional Indigenous organizations, co-management boards) and begin communication with them early and throughout the negotiation process.
6. **Develop a clear vision** that aligns with all partners and is based on the community-directed mandate. A key part of this step is determining the overarching priorities and goals for the area. For example, within one of the reviewed agreements these goals were: 1) the entire area needs to be protected; 2) the conservation agreement cannot have any impact on existing or negotiated land claim agreements; and 3) the agreement can have no impact on access or traditional harvesting practices of community members.
7. **Determine the research that needs to be done** in advance of negotiations, including feasibility studies and baseline studies that include both cultural and ecological research methodologies.
8. **Develop a process agreement** or terms of reference that sets the terms of the negotiation process and requirements for information sharing (including a dispute provisions for when information is not being shared). This report reviews key elements of a process agreement in Appendix B, while noting that each agreement will cover the unique elements required in the context.
9. With partners involved, **develop a general boundary and begin the agreement negotiation process**. Refer to the section on negotiation for strategies related to this step.
10. Once the agreement is finalized, **implementation begins**. This report includes a section describing the challenges and strategies related to implementation.
11. **On-going agreement evaluation and renegotiation**, as per the provisions set out in the agreement.



THAIDENE NĒNĒ INDIGENOUS PROTECTED AREA AND NATIONAL PARK RESERVE / PHOTO PAT KANE

This review mainly focuses on the negotiation and implementation stages of conservation agreements. In particular, some of the agreements reviewed in this report are newly minted, their lessons from implementation are just beginning and will continue to grow over time. However, a fundamental strategy identified in interviews is the importance of Indigenous peoples holding the pen throughout the entire agreement process. The role of Indigenous ownership and authority is an ongoing theme throughout all sections of this review.

## Elements of an Agreement

The conservation agreements we reviewed included the following key sections or elements:

- **PREAMBLE AND DEFINITIONS:** This section sets out the baseline of where the agreement is coming from and its underlying assumptions. Many of the agreements heavily use Indigenous language throughout and the definitions section is especially useful for non-Indigenous speakers to understand the overall purpose and context.
- **GENERAL PURPOSE, OBJECTIVES, AND INTERPRETATION:** This section focuses on the intent of the agreement and sets the overall vision and mission around which all other sections are built on.
- **AGREEMENT SCOPE:** This section focuses on setting clear spatial and temporal boundaries for the conservation areas.
- **GOVERNANCE AND MANAGEMENT:** This section may include the structure of an appointed management body, its roles and responsibilities, and its decision-making authority and process.
- **RIGHTS AND USE OF RESOURCES:** This element was represented in many different ways across agreements and throughout different sections. Broadly speaking, this element can include:
  - Protection and use of Indigenous knowledge, stewardship, and access to maintain Indigenous rights and interests within the area;
  - Promotion, information sharing, heritage interpretation, and visitor reception; and
  - Approach for cultural heritage and archaeological materials within the area.



- **IMPLEMENTATION FOCUS AREAS:** Conservation agreements often have areas of focus that include specific provisions related to research, monitoring, employment, training, infrastructure, and economic/business opportunities, which will be explored in detail in this report.
- **FUNDING AND FINANCIAL PROVISIONS:** Many agreements included the breakdown of funding for the initial years of implementation. This is discussed in greater detail below.
- **REVIEW AND RENEGOTIATION:** This section outlines how implementation and the agreement itself is reviewed over time to measure success and identify any gaps or shortcomings.
- **DISPUTE RESOLUTION:** This element outlines the process for what happens when there is a disagreement between parties, often including the involvement of senior leadership and potentially an external mediator/arbitrator.

There were also some unique provisions that appeared in selected conservation agreements, including:

- Keys places and special provisions required for those locations — for example, some places have been identified as special gathering places with restricted access to non-community members;
- Identification of adjacent areas of interest for potential future protection; and
- Provisions that a new comprehensive rights and resources agreement, such as a modern land claims agreement, would require a review and revision of the existing conservation agreement for consistency.

Many of the older agreements contain elements that have caused issues within the implementation process. In particular, many agreements require annual review and agreement on implementation payments. Indigenous governments report that these annual reviews of payments has led to the continued shrinkage of payments, hampering the ability to implement good agreements. Certainty and predictability of annual contribution agreements is a key factor that can impact on the ability of Indigenous governments and organizations to implement agreements.

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## Conservation Agreement Funding

Negotiation costs for the reviewed agreements varied, and are vital in the development of conservation agreements. These costs were sometimes funded by charitable organizations, by the federal or provincial government, or through own source funding.

The average annual implementation budget of agreements that were reviewed ranged from \$1,040,000 to \$7,830,000. Indigenous governments also had significant up-front costs, as well as transaction costs associated with the agreement negotiation itself.

Costs associated with implementation can be established by reviewing existing programs. Collaborative approaches, through research led with other parties involved in the negotiation, can bring options and programming costs to the table. Budgets were allocated variously, with the main focus being on:

- Employee compensation, benefits and training;
- Contracting capacity development and support;
- Board or agency management and administration costs;
- Infrastructure costs;
- Research costs to consider key issues or species; and
- Equipment costs.

The financial model used in the agreement can affect the duration of funds, accessibility, and amount of available funding.

- **LENGTH:** Different agreement models impact the length of funding and therefore the amount of time that an agency can last, as well as the effectiveness of it (e.g., annual payments for the first 10 to 15 years, compared to one-time trust setup where length is dependent on use).
- **ACCESS:** Annual funding may require reporting and administrative requirements, and if the Indigenous government chooses a trust model, it has its own set of guidelines for accessing funds.
- **AMOUNT:** Similar to length, annual funding models often design a ceiling and a floor for funds, over a designated time period (although there may be some room to review adequacy of funding).

Often funding was focused towards building capacity for stewardship programs, the management board and structure, business opportunities, and on-the-land programming initiatives. Some agreements also included one-time payments at the effective date of the agreement to be used to identify economic development opportunities, prepare plans to take advantage of opportunities, and build capacity.

There were a range of financial models found in conservation agreements, including one-time lump sum payments (that are then set aside in trusts, with the interest and investment income used for annual

spending) and ongoing funding mechanisms through yearly contribution agreements. Each approach has merits, with the annual contribution agreements sometimes causing undue complexity and administrative burden to Indigenous governments and organizations. Social impact bonds and carbon offset payments are newer financial models that are starting to be used as a means of financing conservation agreements. One example is the Great Bear Forest Carbon Project, in which industry can purchase carbon credits from the Great Bear Forest protected areas to offset their emissions, these funds are then used to support on-the-land stewardship initiatives and research. Financial models that include upfront payment of significant capital can be extremely beneficial for Indigenous governments and organizations having control over expenditures and timelines.

Long-term, sustainable financing is a central challenge. The establishment of an Indigenous-controlled trust fund, as in the case of the Thaidene Nënë Indigenous Protected Area and National Park Reserve, is one example of a way to create a long-term funding solution for a conservation agreement. That trust fund took many years, and a tremendous amount of social capital, to develop.

PHOTO NIORE IQALUKJUAK





# Negotiation Process



The following section reviews the key negotiation strategies that lead to negotiation success: developing leverage points, building relationships, and seeking strong connections.

## Leverage and Strength in Negotiations

Leverage in the negotiation process is central to establishing a negotiated agreement. This section highlights examples of leverage points that were crucial in getting parties to the table or negotiating particular terms of an agreement.

### **Community-Directed Mandate**

Entering negotiations with a mandate that is based in strong community support is important in creating both internal and external leverage points. Some nations relied on assembly level resolutions or voting, in order to establish their community support. Agreements often take years to negotiation, and this means a strong mandate allows the negotiation process to weather internal political changes in leadership. This was vital in one negotiation, which spanned more than 10 years, with three different political leaderships over that time. Despite these political shifts, the negotiation team was able to continue the negotiation and succeed in creating an agreement.

### **Setting up the Agreement with a Story**

Understanding and clearly identifying the origin, importance, history of loss, and legacy of the proposed conservation area is an important step in creating and maintaining leverage throughout the negotiation process. Once a story is clearly in place and communicated, it can be used to push negotiations forward at key trigger points and to bring everyone back to true intent of negotiations. There are different ways in which these stories can be communicated across the negotiation table, from introductory presentations on community history, spatially mapped traditional land use research projects, or through conversations and dialogue with Elders.

## THE WATER HEART — A SAHTU STORY

Déline Elders have passed down stories and prophecies through generations regarding the importance of Great Bear Lake as being the last pristine place to fish in the future. In one story, a Déline spiritual teacher travelled in his dreams to the centre of Great Bear Lake searching for a missing fishhook. There in the centre of the lake, he became aware of a great power surrounded by every species of fish in the lake — the heart of the lake or “water heart” — which is interconnected to all beings and gives life to the entire watershed of the Great Bear Lake.

This story was vital in the framing of the *Management Plan for Great Bear Lake and its Watershed* (2005) and establishing the Tsa Tué UNESCO Biosphere Reserve in 2016, an area that the Déline people have a sacred responsibility to protect and care for.

*Great Bear Lake Working Group. May 31, 2005 with Caveat of February 7, 2006.  
“The Water Heart”: A Management Plan for Great Bear Lake and its Watershed.  
Directed by the Great Bear Lake Working Group and facilitated and drafted by Tom Nesbitt.*

### **Joint Vision and Goal Setting**

A joint vision between all parties is an important step in setting the context and the premise of the negotiation. A joint vision that is established early can provide direction during negotiations, moving the process forward when negotiations stall.

Having a common goal that is clearly defined and understood by all parties at the table can not only change the outcomes of an agreement, but also create a smoother overall process.

### **Connections to Legislation, Other Agreements and External Partners**

Connections to existing or forthcoming agreements (e.g., land claims, adjacent protection agreements) can strengthen the negotiation position and outcomes. In particular, land claims can be leveraged strategically to protect additional areas outside of the land claim quantum identified as Indigenous owned land. Protected areas allow Indigenous governments and organizations to have significant control of how key places are managed and are an option complementary to the land claim process. Conservation agreements can also have provisions for modification to come into compliance with future land claim agreements.

It is vital to map out the context — particularly the enabling legislation and existing resources. For example, in the Thaidene Nëné Establishment Agreement both territorial and federal legislation was relied on to strengthen the Indigenous governments and organizations negotiating position. In this case, drawing on the NWT Wildlife Act, NWT Protected Areas Act, and Canada National Parks Act were vital to establishing the agreement.

Another key leverage point is to seek out additional partners that may be willing to provide technical or funding resources. Often it is much easier to get matching funding when there are already resources in place. “It was easy to bring money to money,” said one negotiator. It is also easier to mobilize resources where there is strong community support (e.g., community mandate). External partnerships are often developed with regional and municipal governments, neighbouring communities, philanthropic organizations, and non-government organizations.

These partnerships can also increase access to information, which is key in building a strong negotiation position. Open source data and public documents can also be extremely helpful for framing agreements, such as the Indigenous Guardians Toolkit,<sup>2</sup> which was used by the Qikiqtani Inuit Association to frame its management objectives.

### **Showcasing Existing Authority and Capacity**

Indigenous governments and organizations also establish their authority, and where their leverage derives from at the outset of negotiations. When negotiators spoke of establishing their authority, they spoke to acting as a government and what that means. One negotiator (February 2020 workshop participant) illustrates this point well:

*It is really important in these co-op management structures to believe in your heart, not just window dressing around your authority, I really believe that [the Indigenous government or organization] has authority in the marine area, in my actions and the way I operate, that allows my partner [DFO] to be able to feel our authority.*

Many Indigenous governments also showcased their capacity before and during negotiations. This can include highlighting successful Guardian and cultural programs in place and building those into agreements, and coming prepared with research on the legislative process and examples of success or failure from other Indigenous conservation agreements. This strategy works to encourage partnership, as it is easier to build from existing programs than to start from scratch. Early initiatives can be used to highlight the capacity and capabilities of an Indigenous government, while simultaneously providing examples of ways to build connections to culture and way of life into an agreement.

Another way to build authority with other parties is to hold the pen and develop the first drafts of the agreement. By developing discussion papers and preparing materials for each negotiation topic, the negotiation space becomes proactively framed with positions of the Indigenous government or organization.

Having a common goal that is clearly defined and understood by all parties at the table can not only change the outcomes of an agreement, but also create a smoother overall process.

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<sup>2</sup> Nature United, *Indigenous Guardians Toolkit*, [indigenousguardianstoolkit.ca](http://indigenousguardianstoolkit.ca)



## Strengthening Negotiation Positions and Building Leverage

In every negotiation there are key moments and friction points that emerge in which Indigenous governments and organizations can use circumstances to strengthen their negotiation position. For example, changes in the key territorial and federal officials creates an opportunity to find synergies between new public commitments and negotiation goals to move forward in an agreement.

Developing position papers, creating a social media presence, and building trusted relationships with high-level political leaders directly are examples of how the Qikiqtani Inuit Association navigated the political field with great effect in the creation of the Tallurutiup Imanga National Marine Conservation Area.

*[QIA] could take advantage of staff that could shake the political trees at arm's length from the table... don't think the bureaucracy had ever experienced the level of game brought [by QIA] — [Canada] had to back away from their positions a number of times due to the political capital of Inuit.* — February 2020 workshop participant

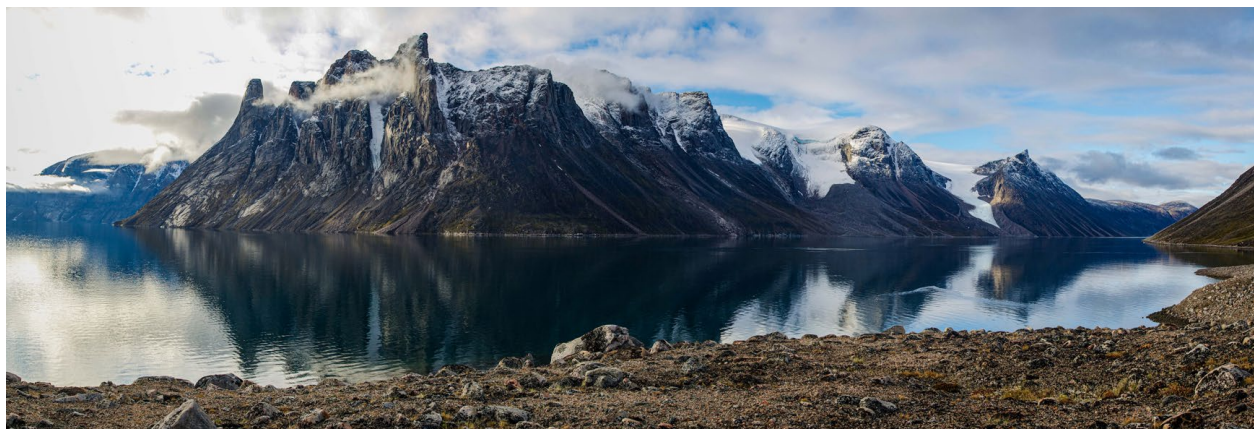
## Incorporation of Indigenous Law

The inclusion of Indigenous laws within the negotiation process strengthens negotiation positions. Getting Indigenous law recognized by all the parties at the table can be a challenge. One strategy to deal with this is to develop a framework in advance and assert the laws throughout the negotiation process.

The negotiation process can also be a catalyst for the drafting of Indigenous laws. For example, the Agreement Regarding the Establishment of Edézhíe designated the area as a Dehcho protected area under Dehcho traditional law. This prompted the Dehcho First Nations to enact their own Dehcho Protected Area Law (2018)<sup>3</sup>, with Edézhíe as its first schedule.

For Indigenous governments and organizations that do not have identified Indigenous laws, there are tools and resources available to support the process of revitalizing, identifying, and applying Indigenous laws.

PHOTO NIORE IQALUKJUAK



<sup>3</sup> Dehcho First Nations, Annual Assembly Resolution, [dehcho.org/docs/REGARDINGEdehzhieDehchoAnnualAssembly2018.pdf](https://dehcho.org/docs/REGARDINGEdehzhieDehchoAnnualAssembly2018.pdf)

## Building Relationships for Stronger Agreements

Through this review, it was clear that there are many different contexts when it comes to the formation and maintenance of relationships that underpin conservation agreements.

Relationship challenges that can arise during the negotiation process include:

- Turnover in the negotiating teams;
- Additional partners and stakeholders joining negotiations at different times; and
- Misalignment between parties' goals and mandates.

The following strategies are examples from the conservation agreement case studies on ways to manage dynamics for the best outcomes.

### **Developing a Negotiation Team**

To be most effective, the negotiation team should have a varied skillset, but also have a solid understanding of each other's skills and responsibilities.

For example, when negotiating the Edézhie agreement, the Dehcho First Nations included an experienced community leader and land user, a resource management staff with extensive community engagement experience, and legal counsel with in-depth understanding of the negotiation and legislative processes. During the negotiations they would draw on each other's skills. In another example from a workshop attendee, one of the key members on the negotiation team was politically active and able to speak to the issue at political tables through lobbying.

### **Opportunities for Indigenous Space and Realities**

Many negotiators spoke to the importance of where negotiations take place, and emphasized the power of bringing government and other partners out of their comfort zone into community and Indigenous spaces. Community-based meetings allow Elders and community members to attend, and establish the meaning of the area to the nation, so that outside partners get a tangible feel that is difficult to achieve in meetings in other places.

Interviewees expressed high preference for holding meetings on the land at the intended protected area. For example, for the Torngat Mountain National Park negotiations having those meetings on the land meant that there was a reliance on community knowledge for navigation and understanding the landscape. This put the control in the hands of the Indigenous party and provided an experience that helped connect parties to each other and to the land.

*A couple of times we would arrange with the provincial and federal negotiators to come to Nain and head to the land in the winter and summer so they would no longer be in control, no maps or tools that they would typically use to manage their day and their time, they would be turning over control to Inuit that knew their way on the land...There is something that happens in a trip like that that becomes a lightbulb moment for those people. — 2020 Interviewee*

Negotiators emphasized that it is vital to rotate meeting locations, and to include land-based meetings, especially during initial relationship and trust building phases. Once trust and accountability has been firmly established, more options open up for holding meetings in other locations or through other conferencing alternatives. Many negotiator incorporated the Indigenous language into negotiations and the agreement itself. This was another way to ensure that there was space created for Indigenous traditions and for the way of life. Indigenous terms and concepts framed the negotiation dialogue.

### **Building Community Relationships and Support**

It is important to provide opportunities for community-level engagement throughout the negotiation process. This has been achieved through hosting meetings in the community and events on the land. At the same time, keeping a community aligned and engaged throughout the negotiation process, which at times took up to 10 years or more, requires strong communication skills. Negotiators are often from the community, and they are aware of the political dynamics and local realities. This ensures that they are able to communicate in a strong and effective voice, often in the language, over the years. Local negotiators are often also aware of the ways that people are updated, and are able to plan for those updates, whether it be through direct briefings, community meetings, virtual updates, newsletters, or all of these communication modes.

Negotiators emphasized understanding the relationship of the conservation agreement to other local and regional priorities. Community-level priorities may not always align with regional or territorial desires. Indeed they can conflict, and understanding these conflicts is vital to long term success.

### **Developing a Strong Communication Strategy**

Communications are critical for maintaining and building strong relationships between negotiating parties. Tools for creating a strong communication basis include developing a detailed communications strategy, involving effective communicators on the negotiation team, maintaining regular communication between parties, and holding meetings in-person out on the land.

Another important tool for negotiation is the involvement of senior representation throughout the entire process and keeping those representatives apprised of the negotiation status. That way when issues arise that require senior-level resolution, seeking their support does not require extensive briefing. At the same time, negotiators indicated that the senior representatives can only be mobilized to solve problems occasionally — choosing when and how to involve them in decision-making is vital.



## Implementation Success Begins in Negotiation

Successful implementation of an agreement requires focusing on implementation logistics throughout the entire negotiation process. Having one person on the negotiation team constantly thinking about the implementation logistics for every negotiation topic helps build the necessary requirements into the agreement itself. In particular, the following key questions should be continually brought forward in negotiations:

- How much is it going to cost?
- Who will be responsible for getting it done?
- When will it be done by?

As a rule of thumb, implementation will always take more time and more resources than anticipated, particularly in terms of the administrative burden. Detailed costing needs to be in place for financials, operations, and infrastructure provisions, including building out resources for a large team to support agreement implementation.

A smooth transition between negotiation and implementation staff is vital for implementation success. This transition phase typically includes on-boarding meetings, orientation packages, establishing a crossover period between incoming and outgoing staff, and other strategies to ensure implementation staff fully understand the intent and purpose of the conservation agreement.

EDÉHZHÍE RIVER / PHOTO ENVIRONMENT AND CLIMATE CHANGE CANADA





# Implementation Phase

Several interviewees mentioned that the initial measure of success for a conservation agreement is always the completion of the agreement itself. However, implementation of the agreement, including evaluating the agreement and flexibility as implementation progresses, is often the true measure of a successful agreement. This section breaks down additional possibilities of what can be achieved in the implementation phase. However, interviewees mentioned that the benefits of conservation agreements are not limited to the agreement in itself. For example, in earlier agreements it was unclear what the benefits were going to be, and they expanded far beyond what was initially set out in the agreement. For instance, the Torngat Mountains National Park agreement was used as a base, not a benchmark for implementation achievements. In particular, there was a requirement to have a presence in northern Quebec, that presence has since turned into a full-time office with two staff conducting frequent community engagement.

## Conservation Economy and Employment

Financial security provides a way for Indigenous peoples to control their own destinies while maintaining and protecting an important area. A conservation economy provides opportunities for economic development that focus on maintaining environmental values in these areas, such as supporting intact ecosystems, continuation of Indigenous rights and interest through sustainable wildlife populations, and other values important to Indigenous governments and organizations. Direct employment and local business opportunities are the direct benefits of developing a conservation economy through an agreement.

As noted in a previous section, at minimum the annual cost of agreement implementation is approximately \$1 million annually. This funding is needed for many key aspects of implementation, and is often used to support local employment and infrastructure development. Table 2 outlines the total implementation funding and employment opportunities (where available) for the reviewed conservation agreements.

Implementation of the agreement, including evaluating the agreement and flexibility as implementation progresses, is often the true measure of a successful agreement.

Table 2. Annual implementation funding and employment values for reviewed conservation agreements

Parties	Trust fund contributions	Implementation funding	Employment
<b>Labrador Inuit Parks Impacts and Benefits Agreement for the Torngat Mountains National Park Reserve of Canada</b>			
Labrador Inuit Association; Government of Canada	Not listed in agreement	\$15 million for first 10 years	Not listed in agreement
<b>Gwaii Haanas Marine Agreement</b>			
Haida Nation; Government of Canada	Not listed in agreement	Not listed in agreement	Not listed in agreement
<b>Innu Nation Park Impacts and Benefits Agreement for the Akami-Uapishk<sup>u</sup>-Kakkasuak-Mealy Mountains National Park Reserve of Canada</b>			
Innu Nation; Government of Canada	Not listed in agreement	\$36 million for first 12 years	Not listed in agreement
<b>Agreement Regarding the Establishment of Edézhhié</b>			
Dehcho First Nations; Government of Canada	Canada to match third party contributions up to \$10 million	\$5.19 million for first five years	1.5 full-time and 12 part-time positions employed by Dehcho First Nation; one full-time position employed by CWS
<b>Tallurutiup Imanga National Marine Conservation Area Inuit Impact and Benefit Agreement</b>			
Qikiqtani Inuit Association; Government of Canada	Not listed in agreement	\$54.83 million for first seven years Annual \$4.65 million after 2025–2026	Parks Canada to hire and retain two Inuit trainees for five years to full management positions when they become available
<b>Agreement to Establish Thaidene Néné Indigenous Protected Area and National Park Reserve</b>			
Łutsël K'e Dene First Nation; Government of Canada	\$15 million one time; additional \$15 million from private donors	\$31.78 million for first 12 years	Not listed in agreement

Employment opportunities in the reviewed Indigenous conservation agreements were varied, and included guardians/safety monitors, administrative staff, and adjacent tourism businesses. The Edézhíe agreement created 15 positions, including both full-time and halftime staff, 14 of which were to be hired directly through the Dehcho First Nations. While we raised the question of salary, we were unable to identify how salaries in the conservation economy compare to that of the extractive industry and public service, taking into account the personal, family, and community benefits of having a local and land-based position.

Many of the example agreements aimed to have every position (including those held by Parks Canada and territorial government staff) filled by local Indigenous staff.

Implementation for employment provisions may be limited by existing community capacities and incompatibilities with external human resources requirements. For example, one interviewee identified

Direct employment and local business opportunities are the direct benefits of developing a conservation economy through an agreement.

that in order to maximize employment opportunities, Parks Canada's internal hiring structure and requirements had to be changed dramatically. This was also noted in the Thaidene Néné agreement which required Parks Canada to change their contracting structure, breaking up large contracts to permit smaller and more specialized local businesses to apply.

Similarly, contracting for northern Indigenous businesses can also be a challenge as these businesses are often too small to fit within existing protocols and requirements. It is important to be upfront about these challenges that arise in implementation to create the push for internal re-structuring of government processes.

## Infrastructure and Community Presence

Despite the tangible nature of infrastructure, it can often be a complex discussion in negotiations. Securing infrastructure through agreements is a common goal in many processes, and can include a variety of forms from roads to buildings to equipment. In many of the cases below, the funding for the infrastructure was not necessarily secured by the agreement, however its use and ownership are connected to the overall protected area and described below. In any event, the Table 3 illustrates the many different infrastructure components sought. It is important to note that as agreements age, so does infrastructure. Further, some of this infrastructure becomes a symbol of the agreement failing. For example, buildings that are held by Parks but not made available for public usage, or equipment that is held and not shared or updated becomes a symbol of external Parks control and authority.



Table 3: Examples of infrastructure included in conservation agreements

Infrastructure type	Infrastructure ownership and notes
<b>Banks Island Migratory Bird Sanctuary</b>	
Equipment (vehicles – trucks, ATVs, tents, etc.)	Parks Canada – Either no longer in use or was sent to other Parks
Buildings (garages, office, administration building)	Parks Canada – According to the community is often unoccupied despite serious local need for the space
<b>Torngat Mountains National Park</b>	
Administration office, and visitor reception and orientation centre	Parks Canada
Cabins, huts, emergency shelters and campgrounds	Parks Canada
<b>Thaidene Nënë</b>	
Administration office, visitor reception, interpretation and orientation centre	Not specified in agreement
Patrol and monitoring cabins	Not specified in agreement
Operation storage of historical and cultural information and objects for ongoing interpretation, research and monitoring	Not specified in agreement
<b>Akami-Uapishk<sup>u</sup>-Kakkasuak-Mealy Mountains National Park Reserve of Canada</b>	
Administration office, visitor reception and orientation centre	Parks Canada - Discussions to take place with Innu Nation for the supply of the administration office
<b>Edézhzié</b>	
Infrastructure and equipment annual maintenance (as well as capital expenses/expenditures)	Edézhzié Management Board – Funding provided by Canada
<b>Tallurutiup Imanga National Marine Conservation Area</b>	
Transport Canada centre	Transport Canada
Visitor centres	Parks Canada – One or more within adjacent communities

It should be noted that negotiating for infrastructure is only part of the challenge many IIBA negotiation teams face. What happens to infrastructure, the way it is used, who uses it, and its long-term administration and maintenance (and associated costs) are all essential considerations. In some cases, infrastructure arrangements can be inadequate which can quickly erode trust or goodwill built during a negotiation process. In the case of the Aulavik National Park, Inuit from the Inuvialuit region noted with frustration that Parks Canada offices and accommodations in Sachs Harbour (Ikaahuk) sit largely empty despite the lack of space in the community and the need for this space.

## Research Activities

Research procedures and funding requirements are typically explored in a conservation agreement. A range of issues are often addressed in conservation agreements, for example— identification of research topics, the role and importance of Indigenous knowledge, and the application of ethical reviews.

Communities are increasingly recognizing the power of research to act as an instrument of community development, whether this is economic development through generating jobs and accessing funding or capacity development by bringing training opportunities to the community. One example of this approach is the case of the Ittaq Heritage and Research Centre in Clyde River, which has aligned its efforts with those of the Hamlet Council and the local Hunters and Trappers Organization to ensure that the benefits of community-led research include the development of knowledge, capacity, and local economies.

The importance of working within and through Indigenous values and laws is a consistent theme throughout the field of conservation agreements on Indigenous territory. In the case of Nunavut, Inuit *Qaujimagatuqangit*, Inuit traditional knowledge, is a concept that is inherently included in the spirit and intent of the 1993 Nunavut land claim and yet the Government of Nunavut as well as other organizations and institutions operating in the territory continue to struggle with its definition and how to ensure it is implemented correctly. A key solution is to return to knowledge holders and involve them within the process, including as decision-makers.

The importance of ethical review was identified by negotiators from across Inuit Nunangat, the homeland of the Inuit, where federal agencies (including Parks Canada and DFO) independently determined that they were not obligated to follow standard research procedures regarding informing communities and seeking consent or partnerships.

While Nunavut has a territorial research licensing process governed and administered by the Nunavut Research Institute, there is currently no ethics review board. Defining a code of ethical conduct for research in Nunavut is becoming an urgent priority. Defining jurisdiction and the application of these rules is also an ongoing concern. Currently the Government of Nunavut is not held to the obligation of a research license, nor are federal agencies such as the Department of Fisheries and Oceans. Journalists are also not covered under the scientific focus of the licensing system and there exists no current system to manage their access and interventions in the lives of communities.

To address these concerns, some Inuit Nunangat jurisdictions are building clauses into agreements to ensure reviews of research applications, conditions such as Free, Prior, Informed Consent (FPIC) and models that describe transitioning research or related facilities to Inuit ownership over time (as in the case of the proposed research facilities planned by Laval University). As research pressure intensifies, strategies like these are critical to ensuring that the needs and consent of a community are respected, fatigue is avoided, and the highest standards of research are maintained.

Research will continue to be driven by forces external to Inuit Nunangat as long as there is not a clear plan to outline the conditions under which this research will occur. Inuit Tapiriit Kanatami's National Inuit Strategy on Research (2018)<sup>4</sup> is an important first step towards outlining the path forward on a national level, and should form the foundation of further action in this area. Articulating what research will occur, how it will be done and under what terms is a clear priority for Inuit, particularly for communities adjacent to the conservation areas which are often focal points for research.

## Wellbeing and Mental Health Impacts

Re-establishing connections to the land improves the overall wellbeing of community members. Land-based employment through conservation agreements can also provide additional positive impacts beyond financial gain. For example, one interviewee explained how through the conservation agreement they were able to hire a guardian who had their first full-time job and was being recognized for their land-based skills and knowledge, which can be ignored or underappreciated in other modern employment and business opportunities.

At the same time, there also needs to be recognition of the emotional and psychological load that conservation agreements negotiation and implementation can have on the Indigenous peoples within these processes. In particular, long-standing land-based conflicts and issues can arise at a community-level.

*The heaviness of the job we're asking people to do...White people don't carry it the same way as Indigenous people. I don't know if it's always acknowledged how much work it is, how deeply tied people have to be back to their communities. At times I can see it tear away at people, because of the conflicts back at home they have to manage. — February 2020 workshop participant*

One interviewee explained how through the conservation agreement they were able to hire a guardian who had their first full-time job and was being recognized for their land-based skills and knowledge, which can be ignored or underappreciated in other modern employment and business opportunities.

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<sup>4</sup> Inuit Tapiriit Kanatami. 2018. *National Inuit Strategy on Research*. Ottawa: Inuit Tapiriit Kanatami. [itk.ca/wp-content/uploads/2018/04/ITK\\_NISR-Report\\_English\\_low\\_res.pdf](https://itk.ca/wp-content/uploads/2018/04/ITK_NISR-Report_English_low_res.pdf)

## Language and Cultural Promotion

*The intent, the measure of success of the conservation agreement is that country food is available to hunt.* — February 2020 workshop participant

Conservation agreements provide many opportunities to incorporate language and culture into every aspect of establishing and managing the conservation area. Specific examples from the reviewed agreements include:

- Establishing harvesting provisions for community members;
- Elder and youth programming focusing on knowledge transfer;
- Building culture into tourism opportunities incorporating both cultural and ecological ways of knowing; and
- Creating provisions for the inclusion of Indigenous languages in all public written materials.

Overall, conservation agreements create opportunities to bring more people back to the land. One interviewee described this as real, on-the-ground reconciliation through re-connection and re-establishment of traditional teachings.

However, issues around harvesting rights have arisen in established conservation areas particularly around the right to sell and harvest from the protected area, as well as determination of who is considered a rights holder. Maintaining harvesting rights is an integral part of conservation agreements, however, the interpretation of rights needs to be consistent between parties to avoid implementation issues. A range of issues can emerge during implementation, regarding harvesting rights, how they are interpreted, and issues that arise in their implementation.

Cultural and archeological heritage resources require consideration in advance to manage these resources, including maintaining access for community members and ensuring there is no disturbance through tourism activities. Sharing cultural information, such as hotspots maps of key locations, can pose a danger to the cultural integrity of an area. Indigenous control over these key values is often vital, to determine what information can be shared publicly.

PHOTO LORI TAGOONA



## Co-Governance Structures

Government-to-government management systems were incorporated in each Indigenous conservation agreement, and they must be created in a way that best reflects the needs of that specific agreement.

The role of a co-governance body often focuses on management planning, including:

- Wildlife management and directing studies in the area (e.g., caribou sustainable harvest research and fish surveys);
- Site access, including not only appropriate travel routes, but also guiding which areas need restricted or limited access by site visitors;
- Directing visitor interpretation and programming initiatives; and
- Providing guidance on the appropriate ways for language and culture inclusion, among other things.

While each arrangement has its own set of rules, broadly speaking many co-governance structures share similar characteristics. Many involve three to seven people from across multiple agencies or governments, working together in a board forum. These bodies often have decision making authority, or act as advisory bodies to the principals. Decision-making itself is often designed to take place through consensus, although this is not always the case and voting is a frequent alternative. Some Indigenous communities (for example the Edézhzié Management Board) have found that by ensuring a high-level of Indigenous representation on a board, there is a greater likelihood that a mutual understanding of the Board's core goals can be arrived at and the potential power of any one non-Indigenous stakeholder (e.g., the federal government) may be diluted. Another structure which may address balance is to ensure the running of any meetings or communications are shared and that a co-chair system is in place. Other strategies for successful co-governance boards include ability to have non-representative positions and developing terms of reference that are in close alignment with the negotiated agreement.

These structures work best when there is a clear understanding of each other's strengths and weaknesses, as well as expectations of roles and responsibilities. It is important that a co-governance body is built on Indigenous perspectives and that people who share this worldview are appointed to these governing bodies.

A key theme of successful agreements lies in finding alignment of goals. For example, a workshop attendee stated: "The intent, the measure of the success of a conservation agreement is whether there is country food available to hunt." This goal may not be incompatible with the goal of conservation of an ecosystem or landscape, but it will likely not be the primary goal unless there is cooperation and communication to ensure compatibility and alignment. Co-governance or co-management must begin with the understanding, by all involved parties, of community goals.

In Inuit Nunangat, the goal of conservation is, for Inuit, sustainable and continued use of natural resources. This is distinct from western and southern understanding of conservation which focuses on limiting the use of depleted resources. Understanding the northern context of conservation is particularly important, where remote locations will necessarily mean that visitor numbers to conservation areas are always going to be very low. In these contexts, it may become necessary to have a clearer definition of roles in relation to stakeholder goals—for example stipulations that while the conservation authority has jurisdiction over industrial or tourist land uses, all harvesting and cultural land uses remain the jurisdiction of local communities.

The experience of Inuvialuit within the Inuvialuit Settlement Region is instructive when it comes to considering the role that co-governance structures play within the negotiation of conservation agreements, and the role that these areas have to play in supporting the rights of Inuit. Restrictions on rights to harvest and the removal or limitation of access, are infringements on the rights of Inuit who subsequently feel that structures like Migratory Bird Sanctuaries are effectively a ritualized seizure by the federal government (through its agencies) of land that had been formally ceded to Inuit control via land claims.

GWAII HAANAS / PHOTO PARKS CANADA



It is important to realize that, while co-management may be the end goal for some communities, it can also be an unlooked-for result of a land claims negotiation where the goal was not partial, but full control. This gap between the expectations of communities with regard to their post-claim sovereignty and the continuing realities of an ongoing federal presence by virtue of Crown authority may be outside of the scope of this investigation but is worthy of future consideration.

Co-governance remains an important focus and an issue that requires ongoing attention in future agreements. Examples persist in existing agreements where grey areas have not been adequately defined and decision-making structures remain unclear or agencies are unable to resolve them. Despite 25 years of negotiation, a Nunavut Fisheries Agreement is still not in force, in part because of challenges around defining the difference between commercial and subsistence harvesting rights – an issue which continues to crop up in conservation agreements.

## Agreement Evaluation and Renegotiation

Parties generally set metrics of success and accountability for agreements, although not all agreements held evaluation provisions. While some agreements had these provisions, there was no evidence of these evaluations occurring.

Older agreements held provisions that required a refresh of the agreement in the event that new arrangements between other parties in the region were entered into. This has increasingly frustrated those Indigenous peoples who negotiated agreements some time ago, and are finding that there is no momentum or appetite to renew and refresh the provisions. This is the case with the Banks Island Migratory Bird Sanctuary Agreement, which is becoming increasingly unfair as it pales in the light of contemporary agreements.

Conducting regular independent reviews can be an important tool to ensure the spirit and intent of agreements are fulfilled, particularly when it comes to components or conditions such as infrastructure which may be overlooked, or which may age and require ongoing care and maintenance to maintain their value and utility. Providing ongoing funds for operations and maintenance of infrastructure, as well as ensuring there are staff plans in place for continued community presence are needed throughout the implementation process.

A good agreement is one which includes provisions for assessment. Failure to refresh or evaluate every so often can lead to an “empty” agreement with unfulfilled promises. Negotiating parties need to determine the process for review including frequency, selection of approach, and how review recommendations will be implemented.

# Challenges and Tools for Success



The following section provides examples of the general challenges (and accompanying solutions) noted during this review. Overall challenges can arise from reliance on adjacent lands or legislation, lack of understanding of the other parties' perspective, addition of new members to the negotiation team, inconsistencies and lack of transitional processes, among other key themes as noted in the below examples.

## **CHALLENGE: Reliance on Adjacent Lands or Legislation**

Conservation agreement can stall when they rely on adjacent agreements moving forward—such as a land claims agreement.

To offset this, it is important that the negotiation team is attentive to related negotiation frameworks and design at the outset for circumstances to change (e.g., creating a provision for re-opening the negotiation).

## **CHALLENGE: Political Boundaries and Barriers**

Changing mandates of federal, territorial and provincial bodies can create lag in the negotiation process of agreements. In addition, changing governments can lead to those new bodies and representatives not understanding the role or respecting the authority of the Indigenous government and requiring additional time to rebuild understanding and trust.

Indigenous governments and organizations need to be aware of public commitments made by federal, territorial, and provincial bodies and to move quickly when the right political party is in power. Securing a mandate and commitment quickly means having background information already in place to act.

Barriers between and within territorial and federal governments can also hinder implementation and negotiation success. Providing educational opportunities for staff within government systems to understand the purpose of the agreement and what it entails is needed to address those barriers.

## **CHALLENGE: Internal Stressors Between Organizations**

When negotiating a conservation agreement, it is particularly important that there is unity between umbrella organizations and their constituent communities. In the case of Nunavut this means that Designated Inuit Organizations (usually the Regional Inuit Organizations or Nunavut Tunngavik Inc.) need



to have clear and close communication with their constituent communities to ensure that their needs and concerns are addressed effectively. In many cases individual communities may not have a mandate to negotiate agreements, and can benefit from the support of a larger organization with significant funds and internal capacity. However, while this is a benefit on paper, community members may only feel it to be a benefit if there is communication and clear alignment in goals.

It may be valuable to create a space where this difference between local desires and the needs of the majority can be mediated to provide a solution which respects the jurisdiction of the RIA (or other body) and also respects the will of the community. Successful agreements will create this space for disagreement through binding arbitration clauses for both communities and umbrella organizations.

Resolving these internal stressors is an important goal, as disunity continues to be exploited by other parties to negotiations. Parks Canada continues to demand direct access to communities through Inuit Qaujimagatuqangit Committees and other structures, despite the existence of RIAs (such as QIA) which in most cases is the representative of community-level interests. In some cases, it may be appropriate to have community councils or other interests represented but these are largely special cases with particular issues. There needs to be a line of communication in place to ensure that disagreement is not used to sow discord amongst communities and RIA's and weaken negotiating positions.

#### **CHALLENGE: Introduction of New Representatives**

Keeping the agreement moving forward when there has been a derailment involving new representatives can be a significant challenge.

To avoid this, there needs to be a clear outline of who is involved at the onset of the agreement, defining who is taking central roles and what those responsibilities mean. This includes clarifying the level of consultation and decision-making power of all different bodies at the beginning of the process. Negotiation teams need to have a clear on-boarding process in the event that a new representative joins the table partway through negotiations.

#### **CHALLENGE: Lack of Transition Process**

A disconnect between negotiations and implementation phases can result in the actions during implementation not adhering to the spirit and intent of the agreement. This can often occur when negotiators — who are often exhausted from the effort — take a break or transition the relationship to new staff.

One identified solution was to include objectives within each section of the agreement that link that section back to the overarching purpose, create an implementation plan during negotiations, or ensure that staff that will be involved are brought on board near the tail end of negotiations. Creating space for a transitional process between negotiation and implementation teams is vital to ensuring implementation begins from a point of common understanding.

### **CHALLENGE: Misinformation and Miscommunication**

One interviewee identified concerns regarding the spreading of misinformation about the conservation agreement and the impact that this misinformation had on community understanding and acceptance.

Negotiators emphasized the importance of not staying silent, and their role in correcting misinformation as soon as it appears. A communication strategy should be in place that provides frequent updates and provides avenues where people can ask direct questions.

### **CHALLENGE: Implementing Agreement Opportunities to the Fullest Extent**

There are challenges around the viability of tourism-related economic opportunities as set out in agreements for remote locations in which tourism interest may be limited.

One solution is to develop strategies for how to communicate the importance of the area to potential tourists, as well as seek out other options such as partnerships with universities and other research organizations to increase interest and traffic in the area. It is also important to recognize that there may be areas in which tourism is not of interest to the Indigenous community.

### **CHALLENGE: Federal Cultural Competencies**

The approach of federal government departments and staff can be colonial and paternalistic, and at times there can be a great variance within federal departments on their level of interest and cultural understanding. Concerns were raised that the institutions and people that work within federal governments are continuing to damage relationships in ways that are difficult to manage and control.

One of the biggest challenges for federal partners can be for them to even acknowledge that they have limited culture competency in the first place and that they have to listen and learn.

One solution is to find advocates within the federal institution, namely those individuals that express a clear interest in understanding how to work in collaboration with Indigenous governments and organizations, and find ways to bring those people to the negotiation table. They can often become an internal advocate within the federal government, educating the people around them about the intent and meaning of the agreement.

There is a deep tension between Indigenous and non-Indigenous resource management values, as illustrated in this statement.

*National Parks — what are they? Queen's spaces, places for rich Americans to come up and set up tents for proper dining, or are they spaces for Inuit to protect their way of life? — February 2020 workshop participant*

Conservation agreements, and the people that negotiate them, can set their values down deeply in the processes and practices that are set out. People that are aware of their own values and biases, and are live to foregrounding those of Indigenous peoples, can influence the success of an agreement process and outcome.

# Lessons Learned



This scan of six conservation agreements has identified a number of fundamental building blocks that are consistent across successful agreements, including:

- Maintaining harvesting rights within conservation and protected areas;
- Establishing long-term financial security that is dependable and not renegotiated annually;
- Creating opportunities for self-determination and ownership of the agreement;
- Recognizing and including the culture, language and way of life of the Indigenous group;
- Developing agreements with a clearly defined and shared vision, goal, and measurable objectives; and
- Developing a long-term, relationship-based approach rather than short-term transactions.

Table 4 includes an overall summary of the actions needed for the successful negotiation and implementation of conservation agreements based on the findings of this review.

## Future of Conservation Agreements

Indigenous conservation agreements provide an opportunity to develop a land-based economy, one that brings Indigenous employment, business, and land and resource management to the forefront.

Based on this review, the approaches that hold the most promise for future conservation agreements are those that deeply engage the people that have traditionally used the area, without infringing on their rights. In particular, government-to-government relationships built on a shared vision show promise in creating ways to experience Indigenous lands and culture in a way that is authentic and has integrity, with each government bringing their own resources to the table.

The next step for conservation agreements will be to move from a rights-based to a responsibilities-focused conservation approach, in which Indigenous governments will no longer have to seek recognition of their rights and authorities, but rather be resourced to fulfil their inherit responsibilities on the land. Enforcement through programs — such as guardian or stewardship programs — will be a key component in increasing Indigenous authority and power in managing these protected areas.

Table 4. Summary of key actions to achieve successful conservation agreements.

NEGOTIATION	
<ul style="list-style-type: none"> <li>■ Start with a community-directed mandate of the highest level (e.g., assembly resolution).</li> <li>■ Identify the origin, importance, and vital history of the area based in traditional knowledge and Indigenous law.</li> <li>■ Build a negotiation team with varied skills and backgrounds.</li> <li>■ Be aware of any connections to existing or forthcoming agreements that can strengthen a negotiation position (e.g., land claims).</li> <li>■ Know the federal and provincial or territorial legislation like the back of your hand.</li> <li>■ Seek out external partnerships and resources.</li> </ul>	<ul style="list-style-type: none"> <li>■ Develop a strong communications strategy to report back to the community.</li> <li>■ Prepare positions for each negotiation topic.</li> <li>■ Create room for Indigenous spaces, languages, and voices (e.g., community-based and on-the-land meetings).</li> <li>■ Establish and adhere to a joint vision and common goal between all negotiation parties.</li> <li>■ Establish, as possible, long-term, sustainable funding model (e.g., Indigenous-controlled trust).</li> <li>■ Have discussions on implementation early and often.</li> </ul>
IMPLEMENTATION	
<ul style="list-style-type: none"> <li>■ Begin implementation with a clear transition phase between negotiation and implementation teams to ensure the intent of the agreement is understood and adhered to.</li> <li>■ Provide the supports, including training and system restructuring, needed for local people and businesses to be part of economic opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>■ Plan for the ongoing maintenance and care of infrastructure.</li> <li>■ Ensure the roles and responsibilities of co-governance board representatives are clear and there is understanding of key community goals.</li> <li>■ Evaluation, including independent assessment, is essential in upholding accountability and measuring agreement success.</li> </ul>

Government-to-government relationships built on a shared vision show promise in creating ways to experience Indigenous lands and culture in a way that is authentic and has integrity, with each government bringing their own resources to the table.



At the same time, there is a need for increased accountability from federal partners to return back to the table on older agreements that are no longer standing the test of time. These older agreements, such as the Banks Island Migratory Bird Sanctuary, need to be re-opened and re-evaluated.

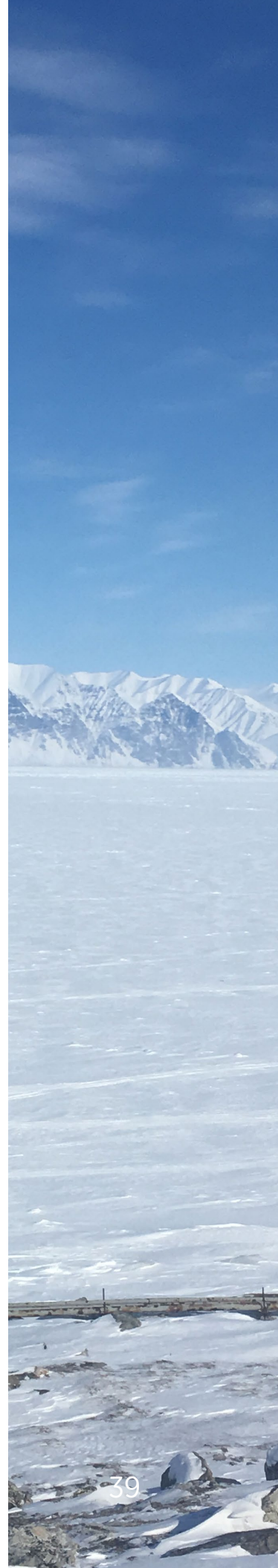
As conservation agreements are established and implemented, there are more opportunities to learn and to change how conversation is viewed within Canada. Creating a stewardship network between Indigenous governments and organizations provides an avenue for Indigenous groups to learn from other approaches and incorporate key elements into future agreements, which have Indigenous governments representing the people that have always been there, and public government representing those that have come after, working in a diverse view of what it means to be on the land. Eventually the goal will be to move from co-managed to Indigenous-managed for these important conservation areas.

## Further Work

Much work has been done, and of course there is much needed for Indigenous governments to develop strong conservation agreements.


Interviewees and workshop participants identified the following three actions as critical next steps for moving this work forward:

1. Development of a Conservation Agreement Implementation Toolkit, which would focus on providing tools specific to what is required to successfully implement an agreement, including costing models and other guides;
2. Hold a joint workshop between the federal, territorial, and Indigenous governments and organizations to begin setting expectations for the negotiation of future agreements, considering in an open space the roles, responsibilities and paths forward; and
3. Hold a broader knowledge exchange workshop or develop an informal peer-to-peer network to support information exchange across Indigenous groups.



# Appendix A: List of Agreements

**Gwaii Haanas National Marine Conservation Area Reserve** *British Columbia*



**AGREEMENT:** *Gwaii Haanas Marine Agreement*

<p><b>PARTIES:</b> Haida Nation; Government of Canada (Minister of the Environment; Minister of Fisheries and Oceans)</p>	<p><b>EFFECTIVE DATE:</b> January 2010</p>
<p><b>IMPLEMENTATION/TRUST FUNDING:</b> Not listed in the agreement.</p>	<p><b>GOVERNANCE:</b> Archipelago Management Board. Representative composition: three Council of Haida Nation; three of Government of Canada.</p>

**INFRASTRUCTURE/EMPLOYMENT:** Not listed in the agreement.

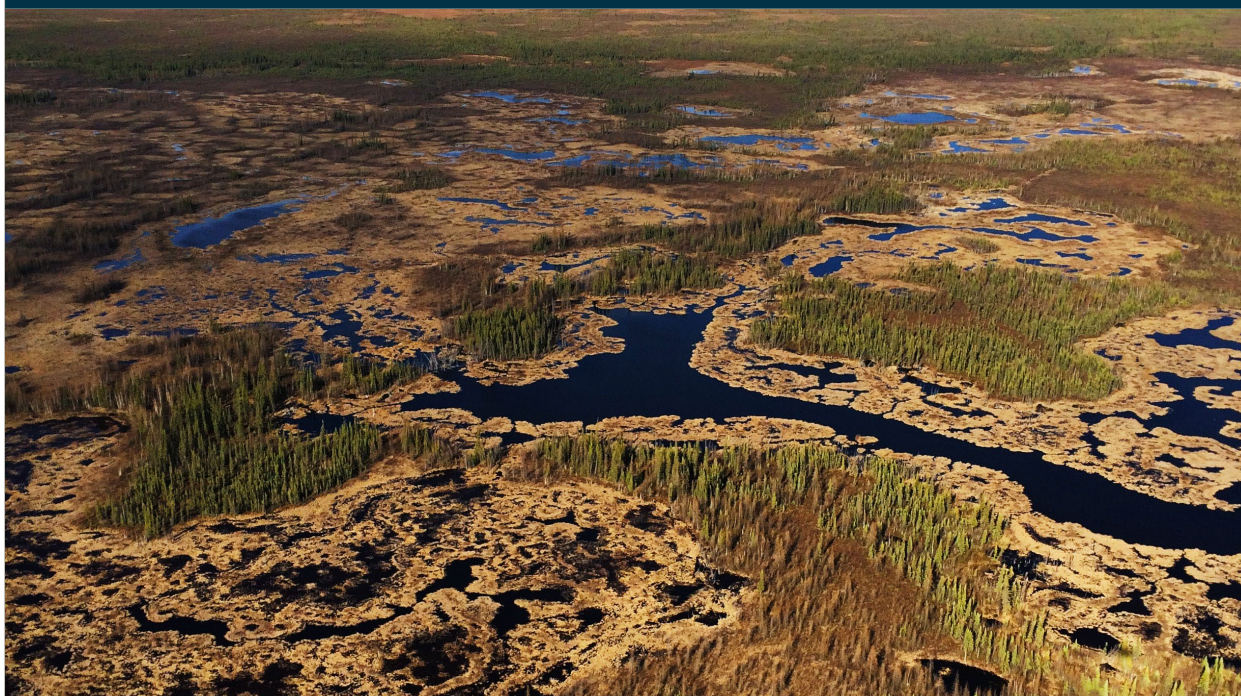
**UNIQUE FEATURES:**

- Expanded on the terrestrial Gwaii Haanas Agreement responsibilities to include the Gwaii Haanas Marine Area.

PHOTO: PARKS CANADA



**Edézhíe Protected Area** *Northwest Territories*



**AGREEMENT:** *Agreement Regarding the Establishment of Edézhíe*

**PARTIES:** Dehcho First Nations;  
Government of Canada (Minister of Environment)

**EFFECTIVE DATE:**  
October 2018

**IMPLEMENTATION/TRUST FUNDING:**  
Implementation: \$5.19 million for first five years. Trust fund: Canada to match third party contributions up to \$10 million.

**GOVERNANCE:** Edézhíe Management Board.  
Representative composition: Five appointed by Dehcho First Nations; one appointed by ECCC; one independent chair).

**INFRASTRUCTURE:** Infrastructure: Include provisions for infrastructure and equipment annual maintenance (as well as capital expenses/expenditures).

**EMPLOYMENT:** Employment: 1.5 full-time and 12 part-time positions employed by Dehcho First Nations; one fulltime position employed by CWS.

**UNIQUE FEATURES:**

- Each signing party decided on how the area would be defined, for the Dehcho First Nations it is a Dehcho Protected Area, for Canada it was a National Wildlife Area. Collectively, the area is called Edézhíe.
- Required each party to complete their own government processes to establish (Dehcho First Nations: passing of an Assembly resolution; Canada = add to Schedule 1 of the Wildlife Area Regulations).
- Edézhíe Management Board representatives act impartially and are not representatives of any party, but act in the public interest.
- Establishment of the Edézhíe Fund, a long-term endowment under which the management board and guardian program are funded.

PHOTO: ECCC

**Thaidene Nënë Indigenous Protected Area and National Park Reserve** *Northwest Territories*



**AGREEMENT:** *Agreement to Establish Thaidene Nënë Indigenous Protected Area and National Park Reserve*

<p><b>PARTIES:</b> Łutsël K'e Dene First Nation; Government of Canada (Parks Canada Agency)</p>	<p><b>EFFECTIVE DATE:</b> August 2019</p>
<p><b>IMPLEMENTATION/TRUST FUNDING:</b> Implementation: \$31.78 million for first 12 years. Trust fund: \$15 million one time.</p>	<p><b>GOVERNANCE:</b> Thaidene Nënë xá dá yáłtı. Representative composition: equal number of members from each party, but the number is not specified.</p>

**INFRASTRUCTURE:** Visitor reception, interpretation and orientation centre; patrol and monitoring cabins; administration offices; operation storage.

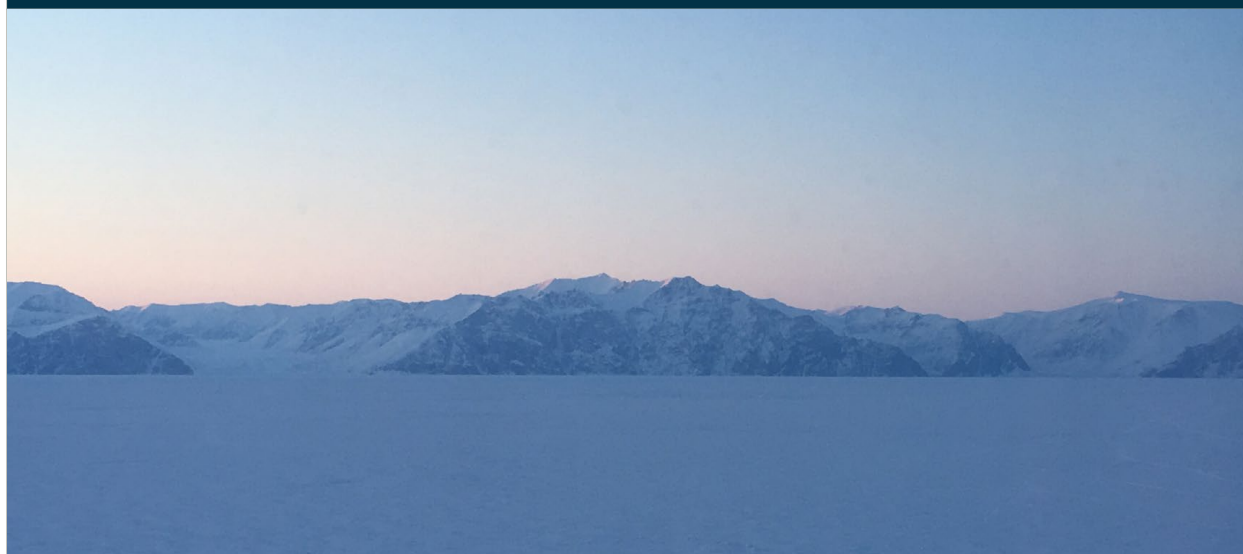
**EMPLOYMENT:** Includes provisions on hiring and training employees.

**UNIQUE FEATURES:**

- Very clear objectives broken down for each section at the beginning of the agreement in short and simple paragraphs such as for training and employment, infrastructure, visitor experience, and contracting.
- Thaidene Nënë xá dá yáłtı representatives act impartially and independently of any party.
- Employment opportunities include: 1) yearly employment and career event; 2) yearly youth camp; 3) a summer orientation and job-shadowing program (every other year).
- Requirement for Parks Canada contracting bids to provide all reasonable opportunity for LKDFN businesses to apply (including breaking up contracts to permit smaller and more specialized firms to bid).
- Establishment of trust for the long-term management and operation of the park.

PHOTO: PAT KANE





**AGREEMENT:** *Tallurutiup Imanga National Marine Conservation Area Inuit Impact and Benefit Agreement*

<p><b>PARTIES:</b> Inuit of the Qikiqtani Region (by Qikiqtani Inuit Association); Government of Canada (Minister of Environment and Climate Change; Minister of Fisheries and Oceans and Canadian Coast Guard; Minister of Transport)</p>	<p><b>EFFECTIVE DATE:</b> August 2019</p>
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<p><b>IMPLEMENTATION/TRUST FUNDING:</b> Implementation: \$54.83 million for first seven years. Ongoing: \$4.65 million after 2025–2026. Trust fund: Not listed in the agreement.</p>	<p><b>GOVERNANCE:</b> Aulattiqatigiit Board. Representative composition: three appointed from QIA; three appointed from Government of Canada; co-chaired.</p>
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**INFRASTRUCTURE:** Transport Canada Centre; visitor centres.

**EMPLOYMENT:** Parks Canada to hire and retain two Inuit trainees for five years to full management positions when they become available.

**UNIQUE FEATURES:**

- Agreement begins with Inuit legend as to why the area is being protected and Inuit marine stewardship values.
- Includes reference to the connection of the conservation agreement to the implementation of UNDRIP.
- Requires at least one board meeting in a community near the National Marine Conservation Area (NMCA).
- Includes compensation if there is an accidental or emergency kill of wildlife that impacts Inuit harvest quota.
- Includes requirements on marine navigation matters (such as strengthening collaboration with communities on marine vessel movements and communications strategies).
- Includes article on potential protection of the High Arctic Basin area, if that area is protected it would not be an expansion of the NMCA but separate, though all articles of the agreement are applicable with appropriate modifications.

PHOTO: KNUT KITCHING

**Torngat Mountains National Park** *Newfoundland and Labrador*



**AGREEMENT:** *Labrador Inuit Parks Impacts and Benefits Agreement for the Torngat Mountains National Park Reserve of Canada*

**PARTIES:** Inuit of Labrador (by Labrador Inuit Association);  
Government of Canada (Minister of Environment)

**EFFECTIVE DATE:**  
January 2005

**IMPLEMENTATION/TRUST FUNDING:** Implementation:  
\$15 million for first 10 years. Trust fund  
contributions: Not listed in the agreement.

**GOVERNANCE:** Cooperative Management  
Board. Representative composition: two  
appointed by Nunatsiavut Government; two  
by Parks Canada; one independent chair.

**INFRASTRUCTURE:** Administration office; visitor reception and orientation centre; cabins, huts,  
campgrounds; emergency shelters.

**EMPLOYMENT:** Employment includes provisions on hiring and training Inuit park employees.

**UNIQUE FEATURES:**

- Connected to the land claim process (Canada could not establish this park until the land claim agreement was settled).
- Inuk right to access up to 10 cubic metres of carving stone annually from the park without permit.
- Inuk right to use Inuit camps (Aullâsimavet and Aullâvik), with specific requirements for when a permit or business licence is required.
- Provision to reduce possibility of emergency kill of polar bear in park (e.g., visitor education programs) and established compensation measure in the event of an emergency kill.

PHOTO: DENISE KITAGAWA



**AGREEMENT:** *Innu Nation Park Impacts and Benefits Agreement for the Akami-Uapishku-Kakkasuak-Mealy Mountains National Park Reserve of Canada*

**PARTIES:** Innu Nation; Government of Canada (Minister of Environment)

**EFFECTIVE DATE:**  
July 2015

**IMPLEMENTATION/TRUST FUNDING:**  
Implementation: \$36 million for first 12 years.  
Trust fund: Not listed in the agreement.

**GOVERNANCE:** Cooperative Management Board. Representative composition: two appointed by Innu Nation; two by Parks Canada; one independent chair.

**INFRASTRUCTURE:** Administration office; visitor reception and orientation centre.

**EMPLOYMENT:** Includes provisions on hiring and training Innu park employees.

**UNIQUE FEATURES:**

- Cooperative Management Board representatives act impartially and are not representatives of any party, but act in the public interest.
- Innu right to access up to 10 cubic metres of carving stone annually from the park without permit.
- Includes provision for one full-time position at the park to assist in capacity building by Innu and Innu businesses to take advantage of economic and employment opportunities.

PHOTO: PAUL GIERSEWSKI

# Process Agreement Example

A process agreement or terms of reference sets the terms of the negotiation process, including how information will be shared between negotiating parties. The following section provides a series of headers that are typically used in these types of agreements:

- **PREAMBLE:** This section includes “whereas” statements that set the context of the negotiation, includes any actions taken previously by the parties, and outline the intent of negotiations.
- **DEFINITIONS:** Defines the key terms used in the document.
- **NEGOTIATION REPRESENTATIVES:** Outlines the number of representatives for each party and how they will be appointed.
- **OBJECTIVE:** States the general reasons as why the parties are seeking a conservation agreement.
- **SUBJECT MATTERS:** Includes the list of subjects that the parties may address in an agreement. These sections have been discussed in this report and may include relation to existing lands and resources agreements, management approach and principles, special management areas, fish and wildlife management, boundary considerations, cultural use and management of cultural resources, visitor access and use, infrastructure, benefits, implementation, and evaluation.
- **APPROVAL PROCESS:** States the conditions required for both parties to endorse the conservation agreement.
- **SCHEDULING:** Sets the timelines for when the agreement is intended to be completed by.
- **FUNDING:** Outlines how the Indigenous government or organizations costs for negotiation will be compensated.
- **AMENDMENT AND TERMINATION:** Provides the approach for process agreement amendments or termination.



