

Honouring the Promise

Aboriginal values in protected areas in Canada



A Research
Report
Prepared by:



National Aboriginal
Forestry Association

Association Nationale
de Foresterie Autochtone



WILDLANDS LEAGUE

A chapter of the Canadian Parks and Wilderness Society

Honouring the Promise: Aboriginal values in protected areas in Canada

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Our Mission

Advancing the concepts of Aboriginal control and sustainable development of forest resources to serve the needs of Aboriginal communities.

Background

The creation of a National Aboriginal forestry organization was called for at the landmark conference on Native forestry, entitled the National Native Forestry Symposium - Ethic To Reality. The conference was held in Vancouver, November 22-24, 1989, and was attended by some 450 delegates. At the conference, there was a consensus of support from the delegates in favour of establishing a national organization to promote forestry as a necessary condition for Aboriginal economic development, the repair of environment degradation, and the restoration of cultural and community spiritual health for Aboriginal people across the country.

Objectives

The overall goal of NAFA is to promote and support increased Aboriginal involvement in forest management and related commercial opportunities. In the working toward this goal, NAFA is committed to holistic or multiple-use forestry, which implies the rebuilding and the sustainable development of the forest resource to serve a multitude of community needs, among those being the protection of wildlife and traditional food stuff habitat, protection of fur bearers, protection of clean and adequate supplies of water, establishment of forested areas for recreation and tourism attractions, traditional cultural and spiritual use, as well as the production of fibre for timber, pulp and paper and other wood by-products. Key to the concept of holistic forestry is the idea of community based strategies for transforming this resource ethic into reality.



WILDLANDS LEAGUE
A chapter of the Canadian Parks and Wilderness Society

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The Wildlands League's mission is to protect wilderness through the establishment of protected areas and through the promotion of natural resource use that is sustainable for nature, communities and the economy.

The Wildlands League was founded in 1968 to protect wilderness in Ontario. We joined the Canadian Parks and Wilderness Society (CPAWS) as a chapter in 1980. We are solutions oriented and we get results. We are respected for our science-based campaigns to establish new protected areas, our efforts to ensure that nature comes first in the management of protected areas, and success at addressing issues of resource management and community development.

Wildlands League is a charitable non-profit organization and is affiliated with ten other CPAWS chapters across Canada.

Wildlands League works in partnerships with other conservation organizations, government, individuals, communities, First Nations and business. Specifically, we seek innovative ways to develop new solutions and achieve results that can be used to solve broad conservation challenges.

Some of our most important accomplishments include: key participation in the establishment of 2.8 million hectares of new protected areas through the 1997-1999 Lands for Life land-use planning process; establishment of a park planning system for Ontario; protection of over 160,000 hectares of wild areas in Algonquin Park; successful advocacy to establish Lady Evelyn, Killarney, and Quetico as wilderness parks; and improvement of logging and forest planning practices on public lands in Ontario.



Method and Contributors

The framework for this document was developed by the National Aboriginal Forestry Association (NAFA) and the Wildlands League Chapter of the Canadian Parks and Wilderness Society (CPAWS) in July 2001 based on our mutual interest in taking a closer look at the involvement of Aboriginal Peoples in protected-areas establishment and management.

CPAWS-Wildlands League and NAFA are grateful to all those who provided comments and feedback. We remain responsible for the text and any errors in the discussion document. Interviews with people currently engaged in parks and protected-areas management played a significant role in developing this paper. A draft report was submitted for peer review to a number of people closely involved in parks, protected areas and Aboriginal Peoples: Linda Simon, Deborah McGregor, Peggy Smith, Kevin McNamee, Leanne Simpson, Allen Appleby, Julia Gardner, Alison Woodley, Stephen Woodley, Lawrence Ignace, Karen Hébert and Karen LeGresley Hamre. A special thanks to the following people for their assistance:

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Foreword

This discussion document represents an important convergence of thinking surrounding protected areas in Canada. Together the National Aboriginal Forestry Association (NAFA) and the Wildlands League Chapter of the Canadian Parks and Wilderness Society (CPAWS) have spent the greater part of two years examining the role of Aboriginal Peoples in protected-areas establishment and management in Canada. This endeavour has been a tremendous learning experience for both our organizations and we hope you will find *Honouring the Promise: Aboriginal values in protected areas in Canada* just as valuable. Through research, interviews and lively discussions we have produced a document that we hope will inform protected-area and land-use planning processes occurring throughout the country and that will be a valuable resource for all those engaged in protected-areas discussions in the future. We believe that protected-areas discussions in Canada will benefit and be strengthened with Aboriginal Peoples “at the table” when decisions are being made and when Aboriginal values and aspirations are taken into account. The collective challenge we face as Canadians is doing a better job of protecting our wild areas, ecosystems and many species, while ensuring that Aboriginal Peoples’ rights are honoured and that

their needs, values and aspirations are adequately addressed in protected-areas discussions. We are charting a new way forward in Canada and we hope you will join this journey.

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Introduction

The last few decades have seen a change in the perception of the role and importance of protected areas in the eyes of both conservationists and Aboriginal Peoples.¹ As industrial uses have come to dominate more and more of our shared landscape, people whose interests once seemed far apart have found themselves moving toward a common viewpoint: that protected areas are critically important for both ecological and cultural survival.

Underlying this realization is an equally important recognition that the health of protected areas in the long term is dependent on the active involvement of Aboriginal Peoples and communities in protection and management. Parks should not be places that exclude people, particularly the Aboriginal Peoples in whose traditional lands these areas have been established.

Internationally, IUCN - The World Conservation Union has explicitly acknowledged the need to accommodate Aboriginal traditional uses in protected areas. The new *Canada National Parks Act* — especially as it pertains to newly or more recently established national parks — also makes strides in honouring Aboriginal rights to pursue traditional activities, such as hunting, fishing, gathering and trapping, in national parks.

In Canada, this new paradigm is well illustrated in a number of new protected areas, particularly in the northern territories. Here, the process of developing a framework and infrastructure for ensuring that Aboriginal rights are recognized and that Aboriginal communities benefit from parks creation has become a *de facto* part of park planning. Some barriers remain that need to be addressed in order to ensure that benefits are realized. Nevertheless, everything from hiring practices and contracting criteria to the need to ensure that recreational activities do not interfere with traditional land uses is being carefully considered in the development of these new protected areas.

In part, these changes have been driven by the increasingly clear legal interpretations of Aboriginal rights handed down by the courts in recent decades. But these changes have also been driven by the recognition on the part of park managers and conservationists that the exclusion of the Aboriginal Peoples, who may know these lands best, is a poor recipe for ensuring the long-term health of protected areas. For this reason, interest is growing in making Aboriginal traditional knowledge an integral part of park planning and management.

The concept of protecting areas to ensure that certain values and sites are maintained has been a part of traditional Aboriginal land management. Increasingly, in the Canadian context, Aboriginal Peoples are being included in the decision-making about what to protect and how, thus making room for Aboriginal concepts about protection. Additionally, within many communities there is an understanding that protected areas may represent the best chance for Aboriginal Peoples to continue traditional activities and to pass on important cultural traditions and practices to future generations at a time when much of the traditional landscape has been (or is about to be) transformed by industrial-resource developments.

The result is that the door has been opened to remarkable synergies that can include protecting important ecological landscapes, supporting traditional land-use activities and providing opportunities for often remote communities to enhance community health and prosperity. In fact, one of the greatest synergies is the recognition that by protecting large areas with the active involvement (or at the impetus) of First Nations, society greatly increases the likelihood of protecting intact and functioning natural ecosystems over the long term.



However, as much as the recognition and development of these kinds of opportunities are increasing, there is still a long way to go. Most provinces lag behind the federal government in honouring Aboriginal rights within protected areas. In fact, efforts to engage Aboriginal communities in protected-area and land-use planning are just beginning in many provinces. While looking to the future, we must also address the historical impacts of protected areas on Aboriginal rights and traditions and find ways to both mitigate these impacts and enhance opportunities for Aboriginal communities.

We need always to be cognizant of the fact that the establishment of protected areas is only one land-use planning initiative that will impact on Aboriginal communities.

The effort to create protected areas cannot be examined in isolation of other ongoing land uses that impact on the entire ecosystem, such as mining, forestry, landfill sites, the creation of new municipalities and the privatization of Crown lands. As well, all land-use decisions must also consider the growing and changing needs of Canada's Aboriginal populations, which are continuing to climb.

Aboriginal communities understand the vastness of their traditional territories to be eroding due to a number of resource-based developments across Canada. Aboriginal communities are ever mindful that parts of their original territories are being consumed by other users. The area of land that was available to Aboriginal Peoples upon the signing of the treaties has been greatly diminished through mining, site contamination and privatization, and as a result we must assess carefully the cumulative impacts of all land-use decisions on Aboriginal communities.

Increasingly, Aboriginal communities have become leaders in the conservation movement in Canada and many of the most significant recent conservation accomplishments — the creation of a string of new national parks in the Arctic, the innovative Muskwa-Kechika management plan in northern B.C. and the struggle to protect the priceless cultural and natural heritage of Haida Gwaii — have been spurred by First Nations.

A common understanding of the purpose of protected areas and a common commitment to ensuring that these areas remain healthy and intact for generations to come can help ensure continued momentum for protection initiatives and progress toward addressing historic Aboriginal grievances.

Though the establishment of protected areas in concert with Aboriginal communities may ensure that Aboriginal and treaty-rights issues are addressed in certain parcels of land, there still remains the longstanding issue of unresolved land settlement and jurisdiction in Canada. Until the provincial and federal governments make a serious commitment to finalize negotiations with Aboriginal Peoples on Aboriginal and treaty rights and accelerate their efforts in resolving land claims, the situation of Aboriginal Peoples in Canada cannot improve.

By working together, we can ensure that the critical work of conserving the incredible diversity of this land continues and that, together, we leave a remarkable natural legacy for future generations.





1.0 Parks, Protected Areas and Aboriginal Peoples

Historically, Aboriginal Peoples have seen parks as, at best, an abstract European construct far removed from their own culture’s holistic view of land and place or, at worst, just another way of constraining Aboriginal and treaty rights and expropriating lands.

For non-Aboriginal people, the historic view of parks has been quite different. The establishment of early parks, such as Yellowstone in the United States and Banff National Park in Canada, was driven in part by a desire to preserve “pristine” landscapes at a time when awareness of the destructive impacts of industrialized society was growing. But these areas were also set aside as pleasure grounds, with an emphasis on scenic beauty and the potential to develop recreational activities and businesses within their boundaries.

Despite these significant differences in perspective, both Aboriginal and non-Aboriginal cultures shared one thing in common — they saw parks as places separate from themselves. For Aboriginal Peoples, this was because the rationale and boundaries for parks were usually imposed from outside. For non-Aboriginal people, it was because parks were deliberately created as places to retreat from day-to-day life in an increasingly industrialized society.

Times have changed. In many parts of Canada in recent decades, Aboriginal Peoples have been deeply involved with, and have sometimes led, land-use planning over large areas closely matching their areas of traditional use and habitation. In many cases, Aboriginal Peoples have made protected-areas establishment a key planning component. In the north, they are increasingly shaping the protected-areas creation process to suit their needs and interests.

Why this change? Simply put, society has come to recognize Aboriginal Peoples as key decision-makers in protected-areas establishment and management in their traditional territories. This is due to legal requirements based on court decisions to consult with Aboriginal Peoples. It is also due to the increasing respect from non-Aboriginal people for the values that Aboriginal Peoples bring to the decision-making process.

Since time immemorial, Aboriginal Peoples have exercised long traditions of responsible environmental management. The special relationship with Mother Earth has allowed them to thrive as a people. For many Aboriginal Peoples, protected areas are a useful tool for retaining important values and uses in an increasingly industrialized landscape, and for helping ensure the long-term prosperity and health of their communities. Increasingly, protected areas may play an important role in perpetuating this stewardship in a changing world.

Specifically, Aboriginal Peoples are looking to formalize protection for special sites such as cultural and spiritual areas, medicinal and plant gathering areas, trap lines and hunting grounds. Ensuring that these areas are protected for ecological, educational, scientific, economic, cultural and spiritual benefits continues to be of paramount importance to Aboriginal Peoples.

Equally important from an Aboriginal perspective is ensuring that Aboriginal Peoples are at the table when protected areas are being discussed and that Aboriginal values are addressed in planning processes. Meaningful Aboriginal involvement in protected-areas designation could, in turn, facilitate stronger relationships with park managers as well as stronger management regimes for protected areas in the future.



A concomitant change in the role of parks and protected areas from a non-Aboriginal perspective has also occurred. Conservationists no longer see parks and protected areas as separate from human society, but rather as integral to its long-term success and survival. Parks and protected areas, viewed through the lens of ecological science, are described as cornerstones of wise land-use planning that can help conserve biological diversity and a place on Earth for humanity.

Today, Aboriginal and non-Aboriginal interests in protected areas are converging. In our rapidly changing world, parks and protected areas are critical to the sustainable care and management of landscapes. Among Aboriginal Peoples, there is a realization that new industrial uses, often planned and carried out by Aboriginal Peoples themselves, may require areas set aside from their impacts. Among non-Aboriginal people, there is an acknowledgement that small esthetic- or recreation-focused protected areas are wholly insufficient to achieve long-term conservation goals and that large, landscape-level protection must include opportunities for people to continue to live on, and use, the land.





2.0 The Evolution of Parks and Protected Areas in Canada

Parks and protected areas have undergone a significant evolution over the past 100 years. From a strong focus on scenic beauty and recreation, the emphasis has shifted to ecological protection and integration into the larger landscape and society.

This recognition of the need for an integrated approach to parks establishment and management has also led to a much different treatment of Aboriginal interests in many cases. Aboriginal Peoples have seen recognition of their rights to the land through increased participation in parks and protected-areas planning processes. Aboriginal holistic approaches to maintaining relationships with the land have also been increasingly incorporated into park-management strategies.

But while progress has been made in incorporating Aboriginal interests and aspirations in planning for new protected areas, efforts to address the past impacts of the establishment of such areas on Aboriginal communities remain fragmented at best. In almost every province and territory, this remains an issue that still needs to be addressed.

2.1 Evolution of Protected Areas in Non-Aboriginal Society

James B. Harkin, Canada's first national parks commissioner, recognized the value of protecting lands even at a time when vast areas of the country remained largely unchanged by European settlement:

The day will come when the population of Canada will be ten times as great as it is now, but the national parks ensure that every Canadian . . . will still have free access to vast areas possessing some of the finest scenery in Canada, in which the beauty of the landscape is protected from profanations, the natural wild animals, plants, and forest preserved, and the peace and solitude of primeval nature retained.²

Mr. Harkin's preservationist vision ran against the grain of the prevailing view at the time, according to which parks were for "use," whether that was as tourism destinations or timber reserves. Algonquin Provincial Park in Ontario, for example, was originally established as a forest reserve in response to dwindling timber supplies outside the park and the need to protect headwaters of major rivers used for power generation and log transport.

These divergent views of the value of parks ultimately led to conflicts, which began to reach a peak in the 1920s. A key turning point was the approval of a hydroelectric dam project in Banff National Park in 1923. Resistance to this project came from a newly created organization called the Canadian National Parks Association, which represented the first organized opposition to industrialization in Canadian parks.³ That opposition eventually led to the creation of the *National Parks Act (NPA)* in 1930, which gave national parks protection from forestry, mining and hydro-development. The 1930 act also entrenched preservation policy as a foundation of federal-parks management.

With growing awareness of the scale of human impacts on the environment in the late 1950s and early 1960s came a growing concern about the fate of species and a realization that the source of many problems had shifted, from the impacts of over-hunting to the ongoing and widespread loss of habitat. Awareness of the need to manage parks to preserve habitat for species instead of simply to accommodate human visitors began to grow. But scientific understanding of the full complexity of ecological systems was still limited and park management often continued to emphasize practices that were directly contrary to maintaining the health of the greater park ecosystem (e.g., suppressing wildfire or eliminating large predators such as wolves).



Meanwhile, planning for parks and protected areas continued to be based more on assessments of recreational demand than on ecological needs, and community consultation was often limited or non-existent. As a result, communities and Aboriginal Peoples had little say about the imposition of restrictions on uses of traditional lands that were now part of parks, leading to resentment and opposition to parks creation.

By the 1970s, awareness was growing in scientific and conservation circles that the existing protected-areas system was not adequately protecting species. The developing concept of island biogeography helped explain one of the fundamental problems with the system: The smaller the protected area, the more it functioned like an island that could quickly lose key species through events such as loss of habitat, loss of food sources, disease, predation or other impacts. Parks and protected areas across North America, it seemed, were rapidly becoming isolated — and fragile — islands of protection in a sea of development. In addition, even places as far removed from intensive development as the high Arctic were seen to be vulnerable to human-caused impacts. Such global phenomena as climate change and the long-range atmospheric transport of pollutants posed new and potentially devastating challenges to the long-term health and survival of species and ecosystems.

From these findings, new thinking about the role of parks in conservation has developed with a greater emphasis on designing parks to protect a broad range of ecological values and to accommodate wide-ranging keystone species such as top predators. Natural boundaries are now favoured over straight line borders and the need to develop buffers around parks and connections between protected areas is increasingly recognized.

The relationship of individual sites to larger landscapes and ecosystems has emerged as a new focus for protected-areas management over the past three decades. As a result, there has been a concurrent change in focus from the selection of individual sites to the creation of protected-area networks.

The system-focused efforts that have sprung up largely in the past two decades emphasize the representation of significant ecological “enduring features” and the maintenance of habitats that contribute to maintaining native species diversity by representing examples of these ecosystem types across a system of protected areas. This movement toward an ecosystem approach has been paralleled by a developing view that protected areas exist not only in their larger ecological context, but also within the social, cultural and economic context of the surrounding human environment.

The need to involve surrounding communities, and especially Aboriginal Peoples, in discussions about establishing parks and their long-term management has increasingly gained recognition. As community participation evolves, co-establishment and co-operative management processes have become more commonplace. Governments now see merit in an inclusive, collaborative approach to parks management and, at the urging of both environmental and Aboriginal groups, have worked to create a more inclusive and holistic management regime. In fact, in several places, Aboriginal Peoples are now leading the process to establish protected areas through land-claim settlements. These efforts are discussed in greater detail in Section 3.

2.2 A Global Perspective

In recent decades, the importance of protected areas has been gaining acknowledgement at the global level with two major themes developing. The first relates to the role of protected areas in sustaining societies and the second is recognition of the inadequacy of existing protected-areas networks. A key message of the Fourth World Parks Congress in 1992 was that the relationship between people and protected areas has been too often ignored, that social, cultural, economic and political issues are not peripheral to protected areas, but central to them. The Congress called for community participation and equality in decision-making processes, together with the need for mutual respect among cultures.⁴



To varying degrees, countries around the world have taken up the challenge to establish networks of protected areas that meet the criteria established during these international meetings. IUCN - The World Conservation Union has outlined three steps that should be undertaken in the process of establishing a protected-areas network.

1. Identify the major biogeographic divisions or natural regions of a nation and establish a system of parks and protected areas that represents the natural features in each region.
2. Establish, as a priority, large, major ecosystem reserves, such as national, provincial or territorial parks, within each biogeographic division or natural region. These reserves should include a continuum of many habitat types and preserve the most biologically productive and diverse examples of those habitats.
3. Establish smaller protected areas, such as ecological reserves or nature parks that supplement and complement the major conservation reserves by protecting additional habitat types or by covering regional variants of habitat.

The IUCN has also adopted six categories of protected areas.⁵ They are:

1. Strict Nature Reserve/Wilderness Area — managed mainly for science or wilderness protection;
2. National Park — managed mainly for ecosystem protection and recreation;
3. Natural Monument — managed mainly for conservation of specific natural features;
4. Habitat/Species Management Area — managed mainly for conservation through management intervention;
5. Protected Landscape/Seascape — managed mainly for landscape/seascape conservation and recreation; and

6. Managed Resource Protected Area — managed mainly for the sustainable use of natural ecosystems.

(For full definitions see Appendix I.)

It is important to note that not all of the above categories would be considered protected areas by conservation groups such as the Canadian Parks and Wilderness Society or World Wildlife Fund (WWF) Canada because some permit industrial activities (Categories 5 and 6). For the purposes of this paper, a protected area is one that has been selected for its ecological, biological and/or cultural significance, with boundaries permanently regulated by legislation and that excludes logging, mining and hydroelectric development.

2.3 A Canadian Perspective

The Canadian federal government has responded to this international policy by identifying 39 distinct National Park Natural Regions across the country.⁶ The national strategy is to ensure that at least one national park is established in each of these regions. To date, 25 regions are represented within the national park system. At the time of publication, Parks Canada was focused on the remaining 14 regions. In 2002, Prime Minister Jean Chrétien announced that his government would establish 10 new national parks and five new marine protected areas in unrepresented regions.⁷

At the same time, various provincial and territorial protected-areas initiatives have been designed to address the need for protection at the finer scale of ecoregions based on enduring natural features (such as climate, soil type, topography). These initiatives have all adopted the goal of ecological representation as their key planning principle, but have had mixed success in actually getting protected areas designated. British Columbia, Alberta, Yukon and Ontario lead the country in the representation of ecoregions within their protected-areas systems, with between 17 percent and 25 percent of their regions considered to be “adequately or moderately” represented, while PEI and Newfoundland-Labrador lag behind with none of their ecoregions considered even moderately represented by 2000.



The Endangered Spaces Campaign, led by WWF Canada, was the first national Canadian program to take a systematic approach to protected-areas creation. The Spaces Campaign built on the recommendations contained in the 1986 report of the Federal Task Force on Park Establishment. The task force strongly urged the Canadian government to adopt a more co-ordinated and deadline-driven approach to park establishment or risk losing species and ecosystems forever.

One of the critical achievements of the Spaces Campaign was to get the federal government as well as all of the provinces and territories to agree to the goal of completing a scientifically designed protected-areas system by 2000. The ultimate goal of the campaign was to protect an ecologically representative example of each of Canada's 486 natural regions by 2000. In the 10 years between the launch of the campaign in 1989 and its official end in 2000, 39 million hectares were added to Canada's protected-areas systems.

Ironically, while federal and provincial governments often dragged their heels on meeting their commitments to the Spaces Campaign's goals, Aboriginal Peoples often restored momentum by pushing for

protected areas as part of land-claim settlements. In Yukon, the Tr'on dek Hwech'in First Nation made the creation of the Tombstone Territorial Park a key part of their land-claim settlement, while the Vuntut Gwich'in First Nation in Yukon played an integral role in the establishment of the 450,000-hectare Vuntut National Park, Fishing Branch Ecological Reserve and Old Crow Flats Management Area (780,000 hectares) through land-claims negotiations. Aboriginal Peoples were also key players in B.C.'s decision to develop an innovative land-use plan for the Muskwa-Kechika area in the Northern Rockies, including a number of large new protected areas, while the Haisla Nation were leaders in seeking protection for the Kitlope Valley on the province's western slopes.

Protocols for national park establishment in Canada

According to National Parks Policy,¹¹ there is no "rigid process" for the establishment of new national parks. Instead, the emphasis is on retaining flexibility to deal with the diverse nature of a large country and the establishment process is guided by the National Parks System Plan. The policy further outlines that the plan:

Table 1. Area Protected From Start Of Endangered Spaces Campaign To The End

	Area protected at campaign start in 1989 (hectares)	%	Area protected at campaign end in 2000 (hectares)	%	Increase in percent protection
Federal	18,205,000	1.82	24,961,500	2.50	0.68
Yukon	3,218,300	6.67	5,008,000	10.38	3.71
NWT/Nunavut	6,978,550	2.03	17,941,954	5.22	3.19
British Columbia	4,958,300	5.25	10,770,100	11.40	6.15
Alberta	5,642,000	8.52	6,612,303	9.99	1.47
Saskatchewan	1,936,000	2.97	3,912,800	6.01	3.04
Manitoba	315,400	0.49	5,579,883	8.61	8.13
Ontario	5,152,900	4.79	9,405,300	8.74	3.95
Quebec	622,800	0.40	6,646,278	4.31	3.91
New Brunswick	88,800	1.22	232,500	3.19	1.97
Nova Scotia	138,700	2.51	458,615	8.30	5.79
PEI	6,000	1.06	23,709	4.20	3.13
Nfld./Labrador	367,500	0.91	1,736,300	4.28	3.38
Total	29,425,250	2.95	68,327,742	6.84	3.90

* percentage of jurisdiction's total land base protected
 * Table re-created from *Endangered Spaces — The wilderness campaign that changed the Canadian Landscape 1989-2000*.



. . . provides a description of each of the 39 National Park Natural Regions and the status of national park establishment in each. Parks Canada will periodically update the plan, including the listing of representative natural areas which are identified during regional analysis studies. . . . Parks Canada, acting alone, cannot protect all the areas identified as representative of Canada's natural regions. But by making public the system plan and action plan, Parks Canada hopes to encourage other public agencies and appropriate private organizations to work towards protecting areas that will not be included within the national park system.

The national park selection process follows a general sequence when identifying potential new areas for protection. First, a representative natural area is identified. This is followed by the selection of a potential park area, assessment of park feasibility, negotiation of a park agreement with relevant interests, transfer of provincial or territorial lands to federal jurisdiction, followed finally by the establishment of the park in legislation.¹²

For a natural area to qualify for protected-area status, it must contain a good representation of natural features and processes that characterize the region, including wildlife, vegetation, geology and landforms. The area must also be in a natural

state or be capable of being restored, which means areas that have been the least disrupted by outside impacts are preferred. In the selection of a specific park area, a number of factors are considered (see Table 2).

Where Aboriginal land claims are present, a new park can be established as part of the claim settlement or a national park reserve can be established as an interim land designation pending a land-claim resolution, such as in the Gwaii Haanas agreement in British Columbia (discussed in Section 4).

Juri Peepre and Phil Dearden¹³ consider Aboriginal Peoples the “most dominant force influencing the establishment of national parks over the last decade.”¹⁴ They point out that “more than 50 percent of the land area in Canada’s national park system has been protected as a result of Aboriginal Peoples’ support for conservation of their lands.”

2.4 Provincial, Territorial and Federal Jurisdictions

In Canada, most public land outside of the three territories (Yukon, NWT and Nunavut) is under the direct constitutional control of provincial governments. This means that south of the 60th parallel, protected-areas establishment requires either direct provincial action or provincial co-operation with the federal

Setting the Record Straight on 12 percent

While the goal outlined by the IUCN is to protect in perpetuity viable examples of the full spectrum of each country's natural diversity, governments and the public have often looked for a more concrete measure of what constitutes a “finished” protected-areas system. Some governments have embraced the figure of 12 percent of a country's total land base as sufficient to consider a protected-areas system as complete. Where does this figure come from? The 12 percent figure has its origins in the United Nations report *Our Common Future*, also known as the Brundtland Report after the former Norwegian prime minister who chaired the commission.⁸ The report found that, at the time of writing in 1987, four percent of the world's terrestrial ecosystems were protected. It went on to argue that this figure needed to be at least tripled to adequately protect enough area for a sustainable global, protected-areas system — thus arriving at the figure of 12 percent.

Conservationists, however, have long argued that the 12 percent figure has no ecological basis and should be treated as a floor and not a ceiling for protection. Adequate ecological protection, they note, will likely require much greater protection in many areas and the determination of how much of a given ecoregion should be protected should be based on an assessment of representation of ecological processes and biotic and abiotic elements of the region.⁹ Monte Hummel and Arlin Hackman¹⁰ of WWF Canada clarify:

To set the record straight, Endangered Spaces is not a campaign to protect 12 per cent of Canada. We never said that 12 per cent was a specific target or ceiling. In fact, it has been carefully used from the start, as it was in the Brundtland Report, as a bare minimum. We never suggested that 12 per cent was a science-based figure, although the important goal of adequately representing all of our natural regions certainly is. Furthermore, we never stated that our goal was to protect 12 per cent of Canada, and therefore 12 per cent of every province, and therefore 12 per cent of every natural region — the interpretation adopted by some jurisdictions and expressed as their official policy!

The goal, we repeat, is to establish a network of protected areas representing all of the natural regions of Canada.



Table 2. Factors To Be Considered When Establishing National Parks

- quality of natural region representation
- exceptional natural features
- cultural heritage features
- provincial/territorial government priorities
- actual threats to the environment
- implications of Aboriginal land claims/treaties and land-claim settlements
- potential for sustainable tourism development
- accessibility
- educational values
- competing incompatible land uses
- opportunities for outdoor recreation
- land ownership
- national and local public support
- presence of other protected areas
- Aboriginal and treaty rights
- cumulative impacts resulting from other land uses
- international commitments

government. In the territories, the situation is reversed, with the federal government enjoying *de facto* control and the territorial governments seeking federal co-operation for the establishment of territorial parks or protected areas. Increasingly, many governments are also recognizing Aboriginal land rights when establishing protected areas and are seeking the co-operation and agreement of the relevant Aboriginal groups before proceeding with protected-area designation.

Under the Constitution, the provinces assume ownership and regulate the natural resources within their boundaries, with exclusive powers to legislate for the enhancement, conservation and management of natural resources. The federal role in resource management is grounded in its responsibilities for the national economy, trade and international relations, science and technology, the environment, federal lands and parks and Aboriginal matters. It is a case where because of the treaties, the federal government must assume a lead role in dealing with Aboriginal issues. However, in many instances the role of both these levels of government intersects. Provincial authority over

natural resources originates in section 92 of the *Constitution Act, 1867*, which gives provinces authority over the management and sale of the provincial lands. The *Constitution Act, 1982* further clarifies provincial powers relating to lands via section 92A and clearly makes them subject to Aboriginal and treaty rights protected in section 35. Not only is there a cross-jurisdictional requirement for the collaboration on the establishment of protected areas, but there exists in Canada a cross-jurisdictional responsibility for providing for Aboriginal and treaty rights in land-use planning.

Even though, every province and territory has developed its own legislation, regulations, and standards, the federal government still holds responsibility for commerce, treaties and conventions related to natural resources. As such, the federal government has a clear mandate to monitor and report on the state of Canada's natural resources as a shared responsibility with the provinces. The transboundary nature of lands in Canada also provides for a federal leadership role in research, setting strategic direction, developing nationally applied programs and articulation of national policies.

In many resource-development issues, however, provinces maintain that Aboriginal and treaty rights are a responsibility of the federal government. It is this disconnect in jurisdictional approaches that often causes discord in the Aboriginal community when land-use planning is undertaken solely at the provincial level.

Lands are uniquely important to Aboriginal Peoples as most Aboriginal communities are located in forested regions. As a result, the land has important spiritual and economic dimensions for the Aboriginal Peoples who use it for subsistence activities like trapping and hunting. Consequently, all land-use policy has a direct impact on the lives of Aboriginal Peoples throughout the country. Canada and the international community have acknowledged that policies should recognize and duly support the identity, culture and the rights of Indigenous people, their communities and other communities and forest dwellers.



Over the last 25 years, Canadian courts have affirmed Aboriginal and treaty rights, thus, requiring that all land-use policies have to reflect the constitutional protection afforded Aboriginal and treaty rights. The federal government also has a lead responsibility towards Aboriginal Peoples, including for *Indians and lands reserved for Indians* under section 91(24) of the *Constitution Act, 1867*.

But this doesn't happen in all cases. In Ontario, for example, the Aboriginal community has been excluded from the largest land-use planning exercise ever undertaken in the province. The Lands for Life¹⁵ process, later referred to as Ontario's Living Legacy, was undertaken without any meaningful Aboriginal consultation.

In British Columbia, for example, many Aboriginal groups have participated in the provincial Land and Resource Management Planning Process (LRMP), while in Saskatchewan the Representatives Areas Network (RAN) process has sought the active involvement of Aboriginal Peoples, particularly in the northern parts of the province. Protected areas and the requirement of public participation were key considerations in these land-use planning processes. The Manitoba government signed a Memorandum of Understanding with the Assembly of Manitoba Chiefs in 1998 for Aboriginal participation in the selection, establishment and management of protected areas.

Programs to establish protected areas at the federal and provincial levels are not formally co-ordinated. However, both levels of government may consider the presence of provincial and national protected areas (e.g., provincial parks or national parks) when assessing the ecological representation of a natural region. The treatment of protected areas is also determined by the relevant legislation, either the *Canada National Parks Act* or the various provincial park or land-use acts (in Ontario, for example, provincial parks fall under the *Provincial Parks Act* while conservation reserves are governed by regulations under the *Public Lands Act*). In the Northwest Territories, the implementation of the NWT Protected Areas Strategy (PAS) is a shared responsibility between the Government of the Northwest Territories and the federal Department of

Indian Affairs and Northern Development. Implementation partners include communities, regional organizations, and land-claims bodies such as the Gwich'in Tribal Council. The PAS is community based and sets out a process for identifying and protecting areas of cultural and ecological significance in the NWT.





3.0 Changing Relations Between Aboriginal Peoples and Protected Areas

3.1 Aboriginal Views of the Land: A Tradition of Respect

Deep connections to the land formed over generations have led Aboriginal Peoples to develop a strong sense of “home place.” Home place is a heavily rooted tradition based on occupancy and/or use of the land. For instance, a family that has occupied and worked a piece of farmland for sustenance for a number of generations would consider that specific area their home place. It can be as simple as a special fishing hole that a father has taken his daughter to since childhood.

A sense of belonging, or kinship, to the land is a bond that is not easily broken, and leads to sincere feelings of guardianship among Aboriginal Peoples. The traditional territories contain countless home places within them that are integral to Aboriginal cultural survival.

Traditionally, Aboriginal Peoples have passed their knowledge and respect for the land from generation to generation through storytelling, ceremonies and sacred teachings from elders and medicine men and women. The Aboriginal bond to the land is expressed differently across many different Aboriginal cultures. For example, Henry Lickers of the Mohawks of Akwesasne of Ontario states:

Communities [that] live in a given area have developed a world view [that] allows [them] to function and live in that area based on the teachings passed down from their ancestors. These fundamental principles or themes help the individual, group or family, community and nation understand their place in the natural order of the world and form the basis of the philosophy and culture of the people. Each local area manifests these themes in unique ways adapted to the area. Principles . . . include:

1. The Earth is our Mother
2. Co-operation is the only way to survive
3. Knowledge is powerful only if shared
4. The spiritual world is not distant from the Earth
5. Responsibility is the best practice
6. Everything is connected to everything¹⁶

Prior to western contact, Aboriginal territories were neither formally owned nor sold. Stewardship and occupancy rather than ownership were the overriding themes. The land was respected and nurtured to produce life-giving plants and animals for Aboriginal communities. The Aboriginal sense of title, however, has broad implications. As stated in a 1999 report by the B.C. Treaty Commission:

First Nations view their title as including ownership, jurisdiction and governance over their land, resources and people. This perspective of aboriginal title is based on the fact that First Nation communities with well-established governing systems existed long before contact with non-Aboriginal people.¹⁷

Traditionally, using resources and land areas on a rotational basis has been a key management tool for many Aboriginal communities. Respect for the land was demonstrated by not over-using an area’s resources, thereby ensuring that the land’s ability to provide sustenance and spiritual offerings was not compromised. Certain areas were more significant than others for spiritual, medicinal or resource-richness reasons. Many members of Aboriginal communities try to continue to maintain a balanced relationship with their surroundings. This balance requires in-depth knowledge of the land and its inhabitants, a knowledge that must continue to build and evolve over time. As Deborah McGregor, professor at the University of Toronto states: “Indigenous knowledge . . . has always been and continues to be dynamic; it is not fixed in time.”¹⁸



Georges Erasmus, current President and Chair of the Aboriginal Healing Foundation, described the ever-evolving knowledge held by Aboriginal Peoples and criticizes one of the problematic assumptions of some conservationists and policy-makers: that Aboriginal Peoples must either live by their ancient ways of life or abandon subsistence living altogether and become assimilated into the dominant society. He notes:

Neither option is reasonable. We [Aboriginal Peoples] should have a third option: to modify our subsistence way of life, combining the old and the new in ways that maintain and enhance our identity while allowing our society and economy to evolve. As original conservationists, we now aim to combine development and conservation, and to put into practice the concept of equitable, culturally appropriate, sustainable development.¹⁹

Mr. Erasmus, reflecting on past Aboriginal concepts and land values, further notes that, “to us, on these continents now known as the Americas, all the land was virtually a conservation area — one large ‘park’ if you can imagine it that way — and that was how our ancestors wanted it maintained.”

Because they do not see themselves as separate from the land, Aboriginal Peoples tend to take a holistic view of what constitutes proper stewardship. For Aboriginal Peoples, there is no contradiction between praising and revering an animal and killing the same creature for sustenance. Traditionally, Aboriginal Peoples are comfortable with the concept of taking advantage of natural abundance while safeguarding the lands and species that made that abundance possible. Historically, this led to a view that protected areas were unnecessary, that Aboriginal Peoples, with thousands of years of experience living within the means of the land, did not need and would not benefit from specially protected areas.

3.2 European Contact and Aboriginal Peoples in Canada

The Royal Commission on Aboriginal Peoples (RCAP) divides the history of contact between Aboriginal Peoples in Canada and European and other settlers into four eras.²⁰ Prior to 1500, Aboriginal and non-Aboriginal societies evolved separately from one another, which represents stage one — “Separate Worlds.” The second stage identified by RCAP is “Contact and Cooperation.” During this stage, Aboriginal Peoples assisted Europeans in surviving in North America. Trading, military alliances and intermarriage were common themes for this era, along with respect for intergovernmental affairs and cultures.

In the third stage, “Displacement and Assimilation,” non-Aboriginal societies were no longer willing to respect Aboriginal societies as equals. As described by RCAP:

In this period, interventions in Aboriginal societies reached their peak, taking the form of relocations, residential schools, the outlawing of Aboriginal cultural practices, and various other interventionist measures of the type found in the *Indian Acts* of the late 1800s and early 1900s.²¹

These interventions, however, did not completely destroy Aboriginal social values or Aboriginal Peoples’ sense of distinctiveness. Gradually, it became apparent that non-Aboriginal societies had failed in assimilating Aboriginal Peoples and would have to deal with Aboriginal Peoples on their own terms.

The fourth and current stage, “Negotiation and Renewal,” is “characterized by non-Aboriginal societies’ admission of the manifest failure of previous cultural interventions and the assimilationist approach. Non-Aboriginal societies are now trying to define a new relationship with Aboriginal Peoples through a period of dialogue, consultations and negotiations.”²²



Perhaps the most profound change that occurred after the arrival of Europeans was the expropriation of land and the relocation of Aboriginal Peoples from their traditional territories to much smaller and often much less productive parcels of land. These forced relocations severed deep spiritual relationships, compounding subsequent cultural, social, political, economic and health problems.²³ Without a healthy land base, Aboriginal Peoples and their cultures suffered.

One of the most significant impacts has been a sense of alienation from the land. Many Aboriginal Peoples identify with places that are significant to them, such as locations for ceremonial activities and geographical features such as mountains and lakes, home places.²⁴ As depicted by RCAP, “[a] people’s confidence develops over the generations when their relationship with the land is as close as your breath.”²⁵ Through relocation, however, connections to familiar lands have been broken, severely impacting traditional ways of life. The idea of homeland and the linking of the past to the present have been disrupted. Aboriginal Peoples have also seen a large decline in their economic base. Traditionally, Aboriginal Peoples had unimpaired access to large tracts of land to sustain their communities. Subsequent to the arrival of Europeans access to the traditional land base has been reduced in a number of ways:²⁶

1. through loss of access to land and resources when people are relocated to new, more restricted environments;
2. through loss of land and resources because of environmental damage, such as flooding by hydroelectric developments; and
3. through loss of employment opportunities when relocation moves people away from settled areas.

Aboriginal Peoples’ health has also suffered, both physically and psychologically. Several studies on Aboriginal health have found an increase in mortality rates among relocated Aboriginal communities due to factors such as environmental change, overcrowded housing, poor sanitation and contact with infectious diseases.²⁷

Aboriginal Peoples have also had to witness their traditional territories being exploited by third-party interests. Industrialization, in the form of logging, oil-and-gas and mineral exploration, urban sprawl and intensive recreation, have expanded across vast areas of their traditional territories. Being denied access to their lands and watching resources being stripped away has had a profound psychological effect on Aboriginal Peoples.

Impact of European contact on Aboriginal views of the land

Many of the views and practices of Aboriginal Peoples have been guided by deep respect for the land. This respect is characterized, for example, by the Anishinaabeg and Haudenosaunee as the “seven generation” concept, which translates as current generations being mindful of how decisions made today will affect the seventh generation of tomorrow.²⁸ However, European contact has had a significant impact on these concepts. As a result, Aboriginal Peoples now struggle with the tension of trying to protect their land and to maintain traditional lifestyles while also developing economic opportunities in an industrial society.

Many Aboriginal communities have struggled to establish a balance between protecting the land and industrial development. This balance has sometimes been difficult to achieve in the face of powerful forces such as the relentless advancement of industrial development, high unemployment rates, low numbers of educated community members and remote community locations.

Aboriginal Peoples are part of the larger Canadian and global economies and their desire to enjoy equality in economic benefits cannot be ignored. According to Monique Ross of the Canadian Institute for Resources Law and Peggy Smith of Lakehead University:²⁹

. . . securing access to natural resources, in particular forest resources, is an imperative for Aboriginal Peoples faced with growing populations and high unemployment rates and with an unwavering commitment to self government and self sufficiency.



. . . They wish to gain and exercise control of forest lands in such a way that the development of the forest resources conforms to their own values and knowledge systems and is not only economically, but also ecologically and culturally sustainable.

Some Aboriginal Peoples believe that a balance can be achieved — that traditional cultures can be maintained or even enhanced while Aboriginal Peoples also gain access to economic opportunities in resource-based economies. Eel Ground First Nation in New Brunswick, for example, has had success within their reserve lands in balancing these two approaches. They have been able to augment the growth of some medicinal plants by opening up the forest canopy in the winter (with minimal impact on the soil). The harvesting of trees has provided economic opportunities for the community as well as enhancing the production of traditional medicines.³⁰

Some Aboriginal Peoples would argue, however, that it is not possible to both protect and economically develop the same piece of land. Some elders and trappers believe that Aboriginal culture and traditions cannot be maintained if industrial development occurs within Aboriginal traditional lands. It is not difficult to imagine why they feel this way in light of the many displaced hunters, fishers and trappers who have had their traditional grounds cleared by industrial-resource development.

Understanding Aboriginal aspirations for future development puts these tensions into context. Typical development goals among Aboriginal communities include: self-governance; maintenance of cultural and economic ties to traditional lands; promotion of self-esteem, social equity, and personal freedom; and maintenance of a healthy mixed economy, involving both domestic, non-wage production and formal cash-generating economic activities. Major challenges such as low employment rates (both in formal and domestic economic sectors), inadequate housing and infrastructure, and social problems motivate leaders and community members to try to find ways to fulfill these aspirations.

3.3 Aboriginal Experiences with Parks and Protected Areas

Aboriginal Peoples' experiences with parks and protected areas in Canada are diverse. The early experiences of many Aboriginal communities were not positive and many parks were established by forcibly removing communities from regions where protected areas were established.³¹ Park-establishment processes tended to reflect non-Aboriginal concepts and priorities. Over time, however, Aboriginal leaders have asserted themselves in the protected-areas process thereby giving voice to Aboriginal concerns and views. The following figure illustrates where protected areas overlap with treaty areas, land-claim areas and areas where treaties and/or land claims have not been signed in Canada. (See map on inside back cover.)

In the early days of park establishment, many national and provincial parks in Canada were created without any consultations with affected Aboriginal communities. Lands were expropriated, communities were displaced and traditional activities were no longer permissible within the boundaries of the new protected area. In addition to losing the ability to trap, hunt, fish with nets and gather within these areas, many Aboriginal Peoples also struggled with the still-foreign concept of what these protected areas were actually meant to protect — from what and from whom?

One of the key contradictions for Aboriginal Peoples was that the areas that non-Aboriginal people wanted to protect from human activity were areas that Aboriginal Peoples had been sustainably using and managing for years. This protection would exclude the same Aboriginal activities and management systems that had played key roles in shaping and forming the very environments and ecological processes that were now to be protected.



Aboriginal title and rights

In Canada, many governments have started to acknowledge the possibilities of working in co-operation with Aboriginal groups to identify common goals with regard to the establishment and management of protected areas. As a result, significant shifts in policy, attitudes and values have begun to take root. Much of the change can be attributed to the persistence of Aboriginal leaders in their efforts to gain recognition for Aboriginal Peoples and of Aboriginal ideas, values and rights.

Today, confusion still exists about Aboriginal treaties, rights and title.³² When the *Constitution Act* was amended in 1982, section 35 (1) incorporated the protection and recognition of Aboriginal and treaty rights. However, even though the highest law of the country included this recognition, the definition, interpretation and application of these rights are being disputed in the courts.

Aboriginal title arises from Aboriginal Peoples' occupation of land prior to the assertion of British sovereignty. This distinguishes Aboriginal title from other titles that have their origins in grants made by the Crown after the assertion of the Crown's sovereignty:

Aboriginal title is a collective interest, which is held in trust by all members of an Indigenous Nation. As a collective interest held by each and every member of an Indigenous Nation, aboriginal title cannot be bargained or treated away by anything less than the full consent of all the Indigenous Peoples who collectively hold this title.³³

Aboriginal title is legally a very complex area. There may be an assumption, for example, that if a treaty has been signed³⁴ then title has been ceded. Another common assumption is that if a treaty has not been signed, title still exists. And although some commentators have argued that rights not specifically surrendered in a treaty remain in place,³⁵ title is the right that is specifically surrendered in most treaties (although not the peace and friendship treaties in the Maritimes). Many First Nations continue to assert sovereignty over traditional territories and park establishment is still seen as an affront to this sovereignty.

It should be noted that the *Delgamuukw* decision (see below) establishes a ruling test for Aboriginal title in the absence of a treaty. Despite the delineation of a clear test for Aboriginal title by the Supreme Court of Canada, no First Nation has yet demonstrated Aboriginal title in court. Nevertheless, since *Delgamuukw*, claims to Aboriginal title have successfully led to negotiated land-claims agreements.

Aboriginal rights with respect to traditional lands generally refer to the use of certain areas for the purpose of carrying out communal practices integral to the distinctive culture of the particular Aboriginal community. According to Peggy Smith:

. . . traditional territories are those lands which have been and are currently used by Aboriginal communities. Some of this land may be "Reserve" land . . . but much of it may also be "Crown" land. On some areas of Crown land, Aboriginal Peoples negotiated treaties with the federal government ensuring protection of their way of life and a sharing of the natural resources. In areas where treaties were not negotiated, the Canadian Constitution and courts have recognized "Aboriginal rights." These include continued use of the land. . .³⁶

According to the governing legal test, an Aboriginal right exists if the practice, tradition, or custom has been a central and significant part of the society's distinctive culture prior to contact with European society³⁷ and the right was not extinguished prior to achieving constitutional protection in 1982. Different Aboriginal rights may exist in different places, depending upon the traditional use or occupation of the land in question.

In most of Yukon, Northwest Territories, British Columbia, Quebec and the Atlantic provinces where treaties have not been signed with Aboriginal Peoples,³⁸ and in areas where modern land-claims treaties have not yet been settled, Aboriginal Peoples have not ceded their title by treaty. However, they continue to be denied their Aboriginal rights and title.³⁹ In areas where numbered treaties were negotiated with Aboriginal Peoples from across southern Canada, they are all similar (with some minor variations) in that in exchange for cessation of their title, "Aboriginal Peoples received reserves,



small cash payments, hunting and fishing gear, annual payments to each member of the signatory group, and promises of continued fishing and hunting rights.”^{40 41}

Aboriginal Peoples are the only people in Canada to have constitutional rights to harvest fish and wildlife.⁴² For other Canadians, these activities are generally a privilege (though a non-Aboriginal person could have a right to harvest under a licence). The exercise of these Aboriginal rights within protected areas is a contentious issue between Aboriginal communities and other groups, such as sport-hunting associations, some park users and animal-rights organizations.

Implications of Aboriginal court cases — defining Aboriginal rights

There are several specific court cases that have implications for Aboriginal involvement in protected areas: *Delgamuukw*, *Sparrow*, *Sundown* and *Mikisew*.

The 1990 *Sparrow* case was the first case in Canada to interpret Aboriginal rights under section 35(1) of Canada’s Constitution.⁴³ According to the *Constitution Act*:

The existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed.

Ronald Sparrow, a member of the Musqueam Nation from British Columbia, was charged under the *Fisheries Act* in 1984 with using a drift net that was longer than permitted by a fishing licence obtained by the Band.⁴⁴ *Sparrow* did not challenge the Crown’s allegations regarding the size of the drift net but instead defended his actions based on his existing constitutionally protected right to fish. In its ruling, the Provincial Court “held that the Musqueam did not have an Aboriginal right to fish.” However, when the case was appealed to the British Columbia Court of Appeal, “the Appeal court ruled that the lower Court had erred” and added that the Aboriginal right to fish could not “be extinguished by unilateral action of the Crown.”⁴⁵

The *Sparrow* case was eventually argued before the Supreme Court of Canada in 1987 and the Court affirmed that the Musqueam people have an unextinguished right to fish. The Court “held that prior to 1982 Aboriginal rights continued to exist unless they had been extinguished by an action of the Crown that was clearly intended to do so.”⁴⁶

Furthermore, the Court outlined a framework for ascertaining whether infringements of the rights outlined in Section 35(1) are reasonable or justifiable. It said that the first question to be asked is whether legislation has the *prima facie* effect of interfering with an existing Aboriginal right. If so, three further questions need to be addressed:

- a) Is it unreasonable?
- b) Does it cause undue hardship? and
- c) Does it deny the preferred means of exercising the right?

If an Aboriginal community can establish *prima facie* evidence that any of these conditions are true, then the infringement cannot occur unless it is justifiable. The following two questions need to be asked to ascertain this:

- a) Did the interference have a legitimate objective? and
- b) Was the honour of the Crown upheld?

If the answer to either of these questions is yes, then infringement may occur with compensation or mitigation. In considering the establishment of a protected area, therefore, the extent of the infringement on Aboriginal rights and the extent of First Nations’ agreement to co-operate with park establishment are both issues that will have to be addressed.

In the view of the Supreme Court of Canada, conservation and resource management “constitute justifiable grounds for legislation that may have a negative effect on Aboriginal rights. However, even when such measures must be implemented, the Court held that Aboriginal Peoples must be consulted so as to mitigate any impact on their rights.”⁴⁷



Following from the *Sparrow* decision, it was evident that the Supreme Court directed the government to include Aboriginal Peoples in the co-operative management of resources.⁴⁸ With respect to parks and protected areas, it was clear that Aboriginal Peoples deserved “special recognition” when parks or protected areas overlap traditional territories.⁴⁹

In 1997, the Supreme Court of Canada handed down its decision in the *Delgamuukw* case. This decision found that Aboriginal title is an Aboriginal right to the exclusive use and occupation of land and said that this right, like other Aboriginal rights, is protected under section 35 (1) of the *Constitution Act*.⁵⁰

The court further noted that groups or communities that can demonstrate Aboriginal title to land must be involved in any decision-making process that could result in an infringement on those rights, such as the designation of a protected area. Depending on the particular infringement, First Nations’ consent may be required as well as compensation. If, for example, rights to hunt, fish, trap or gather are to be infringed, the infringement must be justified and compensation or mitigation must be discussed.

Another important legal precedent concerning Aboriginal Peoples and protected areas is the Sundown decision handed down in 1999. John Sundown, a member of the Joseph Bighead First Nation, exercising his Treaty 6 rights in Saskatchewan, erected a hunting cabin in Meadow Lake Provincial Park, contrary to provincial park regulations. He was convicted of building a permanent dwelling on park land without permission. The conviction was later quashed in a decision that affirmed his treaty rights to hunt, fish and construct cabins for shelter during “expeditionary” hunts on provincial Crown lands. This decision led to the conclusion that Aboriginal rights may be legally enforceable within provincial parks.

Based on these precedents, it may be argued that the past establishment of parks on traditional lands has violated Aboriginal rights. While the objectives of the Crown in the case of national and provincial parks may have been legitimate in trying to protect areas for the future health of all Canadians, the honour of the Crown

may be in question because of the burden these areas have placed primarily on Aboriginal Peoples and the costs borne by Aboriginal Peoples.

The *Delgamuukw* Supreme Court decision also made it clear that Aboriginal Peoples are required to demonstrate that Aboriginal rights and/or title exist by showing reasonably continuous use of the land for purposes significant to their distinctive culture prior to contact with Europeans. This part of the *Delgamuukw* decision and the requirement to mitigate and/or compensate infringement of Aboriginal rights have led to the need to do traditional land-use and occupancy studies and to collect baseline information on Aboriginal values and land use.

Based on interpretations of the *Delgamuukw* case, Aboriginal title can be described as a land right that includes the right to exclusive use and occupancy of the land and the right to choose which land uses are acceptable. These decisions, according to the court, are subject to the ultimate limit that they cannot destroy the ability of the land to sustain future generations of Aboriginal Peoples. But the court also noted that lands held pursuant to Aboriginal title have an inescapable economic component — that land rights extend to the right to enjoy economic benefits from its use.

The court also held that Aboriginal title could be justifiably infringed for a broad range of government purposes including conservation and general economic development.

The *Delgamuukw* decision raises many complex questions about who occupied or used traditional lands and who holds title to the lands now. The process for determining title is an expensive, time consuming and ultimately uncertain process, which in many cases could take far longer to complete than the process of establishing a protected area. This is why it is likely more prudent for governments to establish protected areas in co-operation with Aboriginal Peoples rather than waiting for the lengthy process of establishing the existence of title to be completed. (See sidebar about the *Mikisew* case on the next page.)



It is clear from these legal precedents that if the establishment of a protected area is not adequately negotiated with Aboriginal communities, then it can be considered a form of infringement on Aboriginal rights. Many older protected areas have not directly addressed Aboriginal interests, values or rights and these areas can therefore be considered a direct infringement on

Aboriginal rights. To help rectify this situation, governments are beginning to discuss co-operative management agreements and the restoration of traditional hunting, fishing, trapping and gathering rights within park boundaries as well as economic and employment opportunities, with Aboriginal communities who have been affected by the creation of existing parks.

The importance of the Mikisew decision on protected-areas discussions

contributed by Lynda Collins and Margot Venton of Sierra Legal Defence Fund

The recent case of *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* illustrates that the issue of interference with Aboriginal rights may be seen by the courts as a more compelling legal imperative than maintaining ecological integrity in a national park. The case involved the proposed construction of a winter road in Wood Buffalo National Park. An earlier challenge to the road based on alleged violations of the *National Parks Act* and the *Canadian Environmental Assessment Act* failed⁵¹ and the Mikisew Cree proceeded with their own challenge based on treaty rights.

The Mikisew argued that the road would impact their Aboriginal rights to hunt and fish. They argued that the road would require a corridor in which the use of firearms was prohibited (thus interfering with the right to exploit wildlife resources) and would also disrupt and diminish important wildlife populations in the Mikisew's traditional hunting area (thus engaging the First Nation's right to conservation). The Federal Court treated the direct regulatory impact (prohibition of firearms) and the indirect environmental impacts (diminished wildlife populations) on the Mikisew's hunting practices as equally important infringements of their treaty rights.

Having heard evidence that the road would disrupt and reduce important game populations, the Court found that the road represented an infringement of the treaty right to hunt. The judge went on to find that the infringement failed the test set out in *Sparrow* for a justifiable infringement of treaty rights. Significantly, the judge decided that the objective of meeting regional transportation needs did not meet the "compelling and substantial" standard required by *Sparrow*. In fact, she concluded that even if the objective had been sufficient to justify the infringement, there had not been adequate consultation with the Mikisew in any case. Thus the Crown had not fulfilled its fiduciary duty to the Mikisew and the infringement could not be allowed. The Court therefore quashed the Minister's decision to approve the road (an earlier injunction having already been granted pending determination of the application).

The First Nation had argued that "any impact on the environment would have a corresponding impact on Mikisew's rights to hunt and trap in the Park due to Mikisew's reliance on the stability of the wildlife and furbearer populations."⁵² The judge accepted this argument, and went further, holding that the Crown's assessment of environmental effects in general (through an environmental assessment process) was not sufficient to address the treaty right. Rather, the Crown was required to consider the specific environmental impacts that would impinge upon the treaty right, in this case the impacts on the population of furbearers.⁵³

This case raises a number of implications for the relationship between Aboriginal rights (to resources) and protected-areas regulation. First, it illustrates the well-established principle that restrictions on Aboriginal rights will very often be constitutionally impermissible. *Mikisew* (consistent with the Aboriginal law canon) indicates that any attempt to establish a protected area that does not recognize Aboriginal rights to hunt and trap faces having these restrictions legally overturned unless there is compelling evidence of extensive consultation with affected First Nations and/or an overriding conservation concern.

However, the *Mikisew* decision also suggests that by incorporating traditional Aboriginal activities, protected areas could actually enjoy increased protection against development or other inappropriate uses that would in any way infringe or abrogate Aboriginal rights to hunt and fish (such as by causing a decrease in game populations). Unlike other park regulations or plans that can be changed by democratically elected governments at will, Aboriginal or treaty rights are constitutionally protected and can only be infringed in exceptional circumstances.

Of course, the theory of stronger protection through recognition of Aboriginal rights and practices remains largely at odds with the reality on much of our landscape. Lands may theoretically be subject to constitutionally protected rights (through either treaty rights, Aboriginal rights, or Aboriginal title),⁵⁴ but it would be a serious error to assume these lands are safe from development, including logging, mining and road building. In many, if not most, cases, Aboriginal Peoples are still forced to litigate in order to make this theoretical protection a reality.



Recognizing Aboriginal rights

When Parks Canada first began to establish parks north of the 60th parallel, such as Nahanni National Park Reserve, in the early 1970s, it led to an important shift in the agency's thinking. Parks Canada recognized that areas that might be considered "wilderness" by southern Canadians were, in fact, homelands to northern Aboriginal Peoples. Both the federal and territorial governments also agreed that proposed parks should not infringe on the traditional use of wildlife by northern Aboriginal Peoples. In addition, it was agreed that national park creation should not compromise self-government negotiations between Canada and First Nations. The *Canada National Parks Act* officially respects the process of settling land claims. (Prior to the new Act, this was dealt with on a case-by-case basis.)

Today, national parks policy is to honour Aboriginal rights while, "protecting the interests of all users, including the general public and third parties, to ensure resource conservation, to respect international agreements, and to manage renewable resources within jurisdiction."⁵⁵ Parks Canada has applied this change in policy primarily to the creation of new parks, where it, "will consult with affected Aboriginal communities at the time of new park establishment . . . or as part of an Aboriginal land-claim settlement."⁵⁶

The National Park System Plan⁵⁷ also outlines that:

. . . while new national parks are a good way to protect and present a special place for all Canadians, they can also meet the specific needs of native communities. Parks Canada works closely with Aboriginal communities throughout the process in new park establishment in all cases where Aboriginal interests could be affected. The result is a new type of national park where traditional resource subsistence harvesting by Aboriginal Peoples continues and where co-operative management processes are designed to reflect Aboriginal rights and regional circumstances.

Parks Canada's policy with respect to the management of parks in traditional territories is based on a co-operative management model with Aboriginal Peoples. Joint management regimes are specified, though only for "Aboriginal groups who have successfully completed land-claim settlements."⁵⁸ While the *Canada National Parks Act* does not "guarantee joint management for Aboriginal Peoples whose traditional lands fall within national parks," it does grant the federal cabinet the power to pass regulations governing the exercise of traditional rights in any national park:

. . . where an agreement for the settlement of an aboriginal land claim . . . makes provision for traditional renewable resource harvesting activities . . . within any area of a park, or where Aboriginal Peoples have existing aboriginal or treaty rights to traditional renewable resource harvesting activities in any area of a park . . .⁵⁹

The *Canada National Parks Act* also includes a new provision that authorizes, "the use of park lands, and the use or removal of flora and other natural objects, by Aboriginal Peoples for traditional spiritual and ceremonial purposes."⁶⁰

The provinces continue to lag behind the federal government in this area. Aboriginal rights are not explicitly recognized or honoured in the legislation governing parks and protected-areas management in any of the 10 provinces. The situation is somewhat different in the three territories, but varies among them. In Yukon, protected-areas legislation makes no provision for Aboriginal rights, but it is government policy that land-claim settlements must precede protected-areas establishment. In NWT and Nunavut, legislation governing territorial parks explicitly recognizes Aboriginal hunting and fishing rights and states that territorial parks are subject to the outcome of Aboriginal land-claim settlements.⁶¹



International recognition

As well as being recognized in Canadian case law, the need to involve Aboriginal Peoples in environmental management and protection of resources has also been addressed in international law. For example, in 1992, the *Convention on Biological Diversity*⁶² was drafted at the United Nations environment summit in Rio de Janeiro. Principle 22 of the Rio declaration acknowledges the importance of recognizing the role of Aboriginal Peoples in environmental management:

Indigenous peoples and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture, and interests and enable their effective participation in the achievement of sustainable development.

The Convention was ratified in 1993 by 168 countries, including Canada. Article 8(j) of the Convention acknowledges the value of Indigenous knowledge and stipulates that each signatory will:⁶³

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices.

3.4 Park Establishment and Aboriginal Land Claims: A Positive Shift

There has been a positive shift in some Aboriginal communities' views of parks and protected areas over the past 20 years. This change can, in part, be attributed to a significant shift in Aboriginal involvement through co-operative management and co-establish-

ment processes. This increase in Aboriginal involvement, in turn, can be attributed to land-claims processes, growing recognition of Aboriginal rights and the incorporation of Indigenous rights in park-establishment protocols, such as in the IUCN categories.

As a result, Aboriginal support for parks and protected areas has been gaining momentum and the attention paid to Aboriginal values and interests during planning has increased. Many Aboriginal communities have used the land-claim settlement process to establish protected areas that incorporate traditional uses and that are under the direct management or co-management of the First Nation. It is important to acknowledge that the "legal, historical and constitutional contexts within which Northern National Parks have been established is distinct from those in the south . . . [the parks] have been established as a result of constitutionally protected comprehensive land-claim agreements."⁶⁴ Moreover, embedded in these agreements "are provisions for economic opportunities as well as the establishment of co-operative management regimes."⁶⁵ First Nations and the Inuit in northern Canada have negotiated ownership and control over certain areas of their traditional lands and "have agreed to *share* authority over the management of their lands mutually recognized as unique and worthy of protection as National Parks; lands that can be enjoyed by all Canadians as part of a rich heritage."⁶⁶

In the Northwest Territories, both the Gwich'in and the Sahtu land-claim agreements include provisions for establishing national parks and protected areas. Along with provisions for consultation with the regional Aboriginal government, there are requirements for agreements regarding continued traditional use, employment opportunities, mitigation of potential negative impacts on the local communities, and other matters of concern to the communities and Aboriginal governments. In addition, the Gwich'in have stated that new protected areas may be created under the auspices of the Gwich'in Comprehensive Land-Claim Agreement (GCLCA) rather than through territorial or federal legislation.



The Gwich'in are represented on the Protected Areas Strategy (PAS) Implementation Advisory Committee, but are not actively pursuing new candidate protected areas. The Gwich'in have a draft land-use plan that has identified Conservation Zones and Heritage Conservation Zones. They are focusing their protection efforts on getting the land-use plan approved so that it can provide interim protection (for the five-year life of the plan) for those zones.

In the Sahtu Settlement Area, the community of Deline has been working with Parks Canada to protect the cultural landscapes known as Sahyoue/Edacho, which was the first area proposed for protection through the NWT PAS (see case study 4.7). In the northern Nahanni region of the western Sahtu, in the traditional territory of the Begaee Shuhtagot'ine (Mountain Dene) people of Tulita, the Mountain Dene are promoting the protection of the northern part of the Nahanni watershed as an area of interest under the NWT PAS.

In the Deh Cho and Dogrib regions, Aboriginal Peoples from five different communities representing two First Nations have worked together with the Canadian Wildlife Service and environmental groups (CPAWS, Ducks Unlimited and WWF Canada) through the NWT PAS process to obtain interim protection of a large area known as Edehzhie. Edehzhie crosses traditional territories and is a cultural and spiritual gathering place for the Deh Cho and Dogrib people due to the richness and diversity of the land. Large lakes, wetlands and a bounty of wildlife can be found throughout the area. Protecting this land will help ensure that the traditional way of life continues.

Social, economic and ecological values

In terms of traditional Aboriginal land management, Aboriginal communities put maintaining ecological integrity at the foundation of activities within their traditional territories. Social values — such as free access to resources for domestic production — are usually aligned with ecological values. Access to the land for cash-generating economic activities typically must accommodate these social and ecological values.

Social, economic and ecological values are tied closely together within Aboriginal community structures. Many Aboriginal leaders therefore feel it is imperative to include all three values in protected-areas planning and management. Local management of protected areas can provide an opportunity for potential alliances with non-government organizations also concerned with landscape protection.⁶⁸ Such alliances could help to develop attitudes and understandings that support Aboriginal social, economic and ecological values and aspirations.

Although ecological integrity and social values can be considered the root motivations of Aboriginal communities, economic opportunities are increasingly being pursued as a way of creating employment and building community wealth. This is a relatively new idea for Aboriginal communities. The Sand Point First Nation, located along the southeastern shore of Lake Nipigon in Ontario, for example, has decided to pursue the concept of a First Nation park as an economic opportunity. The park concept is being designed to cater to tourists in order to create employment and business opportunities for the community members. Chief Paul Gladu states that “Sand Point’s location on Lake Nipigon is marked with much beauty. We are willing to share that through tourism by developing a park. We will ensure that all necessary planning is completed in order to keep our land beautiful and healthy.”

Aboriginal communities often find themselves at a crossroads when discussing social, economic and ecological issues related to protected areas. In the past, a critical balance was maintained through social organizational and economic activities that blended well with ecological processes. Today, however, changing social structures and increasing levels of economic consumption create the potential for conflict between emerging Aboriginal involvement in more intensive industrial economic activities and efforts to maintain ecological integrity. This, in turn, has led to greater Aboriginal interest in protected areas, including protected areas created directly by First Nations.



Protecting Aboriginal Cultural Values

Culturally and spiritually important land areas play an important role in Aboriginal society. Protecting these sites can be crucial to protecting community health and culture. The interwoven nature of Aboriginal cultural and spiritual values with natural values also means that these special cultural areas can play a role in more ecosystem-focused protected-areas systems. While there is the risk that protection could raise the profile for sites that Aboriginal Peoples would prefer be left undisturbed by visitors, some Aboriginal communities have seen protection for such sites as imperative. These nations have worked with governments to establish formal protection for areas with cultural and historic importance.

Cultural sites

The Temagami First Nation provides an example of a community that has used protected areas to protect their cultural heritage. The Nation has identified more than 150 special cultural/heritage sites within its homeland, a task completed with assistance from both elders and archaeologists. The sites were originally identified in 1990 during land-claim negotiations between the Teme-Augama Anishnabe and the Ontario Ministry of Natural Resources (OMNR) and all of the sites have been mapped and documented using a geographic information system. There are three classes of cultural/heritage sites identified by the Temagami First Nation: living sites, community sites and gravesites. Resources required to identify and protect the special sites were provided by the OMNR. As part of the forestry planning process, Forest Management Plans in the Temagami region are required to include adequate protection for these sites, including minimum buffers of 120 metres. The sites are legally protected under the *Ontario Heritage Act*.

Culturally modified trees

Culturally modified trees (CMTs)⁶⁷ fall within the *British Columbia Cultural Heritage Resource Act*. CMTs gained protection status in 1991 when archaeologists acknowledged that they were a legitimate cultural resource. Recognition of CMTs was brought to the forefront as a result of the Nuu-Chah-Nulth road blockade in which an injunction was granted to the First Nation to allow them to address the cultural importance of the trees. As a result of these actions, CMTs can no longer be legally harvested in B.C. This has set the stage for CMT-area management.

Pamela Perrault, who has completed her master's thesis on CMTs, suggests that, "culturally modified trees are an indication of past occupancy, skill, time and sacred sites." The protection afforded CMTs represents a micro-approach to protection, but is an important way for First Nations to address issues such as heritage protection. These sites also offer important opportunities for current and future generations to come into contact with their own history.

3.5 A Convergence of Interests

Non-Aboriginal cultures and governments are moving away from the dominant industrial model of land-use to a more holistic landscape model. Although progress and change have been slow, momentum is building. Influencing factors include: societal conflict over the future of wild areas such as Temagami, Gwaii Haanas, and the Stein Valley; greater understanding of species' needs developed through conservation biology; growing recognition of the wide-ranging impacts of global warming; the need to protect biodiversity; globalization and a sense of humanity's place in a global environment; greater community empowerment; and growing respect and awareness of Aboriginal land-use models. Canadian society is taking steps to include people, parks, industry, tourism and other land uses within larger landscape management processes (e.g., the Land and Resource Management Plan process in British Columbia and the Protected Areas Strategy in NWT).

Aboriginal views of protected areas have also changed over the past century. As Aboriginal communities have regained access to and influence over traditional territories through land-claim settlements and other means, they have also seen firsthand the significant changes being wrought on the landscape by industrial development. There has also been growing interest within Aboriginal communities in controlling and using resource development to address the serious social issues, such as access to employment and community health, facing many communities. This has led to an acknowledgement that areas used for economic activities may need to be balanced by areas protected from the impacts of industrial development.

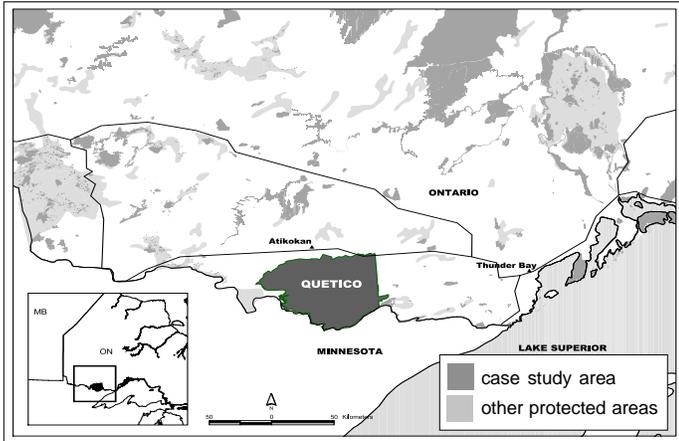
From separate starting points, the views of non-Aboriginal and Aboriginal societies regarding the role and value of protected areas are beginning to merge, with non-Aboriginal societies recognizing the need for a more holistic and inclusive approach to parks establishment and management, and with Aboriginal Peoples seeing greater value in formally protecting areas in a landscape that is under growing pressure from industrial uses.





4.0 Case Studies of Aboriginal Experiences with Protected Areas in Canada

4.1 Quetico Provincial Park, Ontario



Quetico Provincial Park, located approximately 200 kilometres northwest of Thunder Bay was created in 1913. The park was originally designated as a game preserve and important historical area based on its connection to the fur trade, including Voyageur canoe routes and portages. The original intent was to create an international protected area and the area adjoins the large Boundary Waters Wilderness Area in Minnesota. Quetico has become a popular canoeing destination for both Canadians and Americans and is now designated as a wilderness class provincial park, which is accorded the highest level of ecological protection in Ontario's provincial parks system.

Visitor use in Quetico is roughly 150,000 visitor nights from May to October or approximately 30,000 visitors every year. About 70 percent of these visitors utilize the interior, while 30 percent utilize the campgrounds. Approximately 80 percent of the interior visitors are American while the majority of campground users are Canadian.

There are currently about 260 people living in the Lac La Croix community on the western edge of Quetico. The members of the Lac La Croix First Nation (LLCFN)

traditionally call Quetico their home. Some community members were forcibly removed by gunpoint from their reserve on Kawa Bay on Lake Kawnipi inside the park by the Ontario government in December 1910.⁷⁷

Until recently, the Lac La Croix community has remained relatively isolated from non-Aboriginal society. As a result, its Ojibway language, culture and traditions have remained relatively intact. Don Skinaway, who works for the LLCFN Natural Resources Department, stated in an interview:

The land is integral to the community. The community members still depend on the forest surrounding the reserve, including Quetico, for much of their subsistence needs. Trapping, fishing and hunting are still common practices with over 90 percent of the community members.

An all-season road link to Highway 11 was built in the mid-1990s making the community more accessible. The road has increased economic opportunities and services in the community, particularly in the area of tourism.

In the 1970s, Chief Steve Jourdain Sr. began efforts to build a dialogue with the provincial government about park issues and about increasing the benefits that the LLCFN received from the park. In 1994, the Ontario Ministry of Natural Resources (OMNR) and the LLCFN signed a co-existence agreement with the goal of achieving full implementation by 2015. The negotiations required the development of trust between the First Nation and the government and a focus on common goals, such as protecting the ecology of Quetico and the First Nation's culture. At the heart of the agreement is a set of principles signed by both parties. Principles 3, 4 and 5 outline some of the context and expectations that underlie the agreement:

3. The Parties agree that in light of indignities suffered by the citizens of the First Nation: their displacement from their traditional homeland and the loss of significant economic opportunities due to the creation of Quetico Provincial Park, it is vital to foster and promote a co-operative government-to-government relationship of co-existence which recognizes the First Nation as a co-deci-



sion-maker in accordance with the provisions of this Agreement in the Quetico Area while providing significant cultural, social and economic opportunities to the First Nation.

4. The First Nation must be an active and full participant in the future planning, development and management of the Quetico Area in accordance with the provisions of this Agreement and share in the economic benefits derived from that Area.
5. The maintenance of the wilderness values of Quetico Provincial Park is of paramount importance to the people of Ontario and is consistent with sustaining the cultural and social integrity of both the First Nation and the Park.

(See Appendix II for the full set of principles.)

In keeping with the spirit of the agreement, funding has been provided by the Government of Ontario to the First Nation as seed money for the development of new economic opportunities. Operational funding in the first year of the agreement was \$800,000 but by 2000-2001, with the agreement of both parties, was decreased to \$350,000. The long-term goal of this agreement is to create stable community funding through avenues such as the integration of the community in parks management, operation of a youth camp and possibly a park-user surcharge.

Among the projects the LLCFN has invested in are gate control and parking areas, including moving the Lac La Croix entry station into the community, at two of the five park-access points. Two part-time and two seasonal full-time entry station rangers are employed by these activities. The community has also invested in two interior rangers. Other developments include a canoe rental station and a couple of outfitter operations. Agreement funds have also been used to establish an all-season road (now maintained by the Ministry of Transportation), a Natural Resources work-training centre and a ranger station. In addition, the First Nation has been offered opportunities for further employment with the OMNR through Ojibwa cultural interpretation, fisheries assessments and archaeology projects.

LLCFN approached the Federal Economic Development Corporation in Northern Ontario (FEDNOR) and the Department of Indian and Northern Development (DIAND) for funding to complete a work-resource plan strategy in order to gain a better understanding of what the community would like to achieve with regard to long-term economic development. They are currently working on completing this strategy and the next phase is to implement identified projects. The FEDNOR/DIAND money has been important for augmenting the funding received from the Ontario government and has made it possible for the First Nation to develop a broader economic-development strategy.



Brad Cundiff

One of the most contentious issues between the provincial government and the Lac La Croix First Nation is powerboat usage within park boundaries and the motorized guiding services (boat and aircraft) offered by Lac La Croix community members. The LLCFN is situated on a large lake, half of which is located within the United States. Motorboat usage is banned on the American side of the lake (and in most of the Boundary Waters area). According to provincial policy, motorboating is also a prohibited activity within wilderness zones of provincial parks. However exceptions are made for Aboriginal Peoples. In Quetico, for example, First Nation community members who are also members of the Lac La Croix Guides Association are allowed to utilize powerboats for guided fishing on designated lakes in the park. Powerboats can also be used by Lac La Croix community members in the park for trapping, conservation enforcement activities or for spiritual activities.⁷⁸



The agreement of co-existence sets a goal of eliminating motorboat and aircraft access inside the park by 2015. The OMNR and the community have been working to develop other economic opportunities that could potentially replace the First Nation's dependence on motorboat usage and guiding. Don Skinaway warns, however:

LLCFN is agreeable to working towards solutions to find opportunities to replace motorized boats. However, if they [LLCFN] try every avenue/idea, and they do not pan out to be at least equal in benefits, then [LLCFN — community members] will [turn] back to motorized guiding. The province's notion is different — they want to see motorized guiding banned totally from Quetico.

Park Superintendent Robin Riley acknowledges that motorized access is a contentious issue. However, he says, "I would like to see the First Nation community look past this issue in order to examine other potential opportunities. Getting past this old mindset may open doors to building lodges, dog-sledding opportunities and cultural tourism, which are not yet available within Quetico Provincial Park."

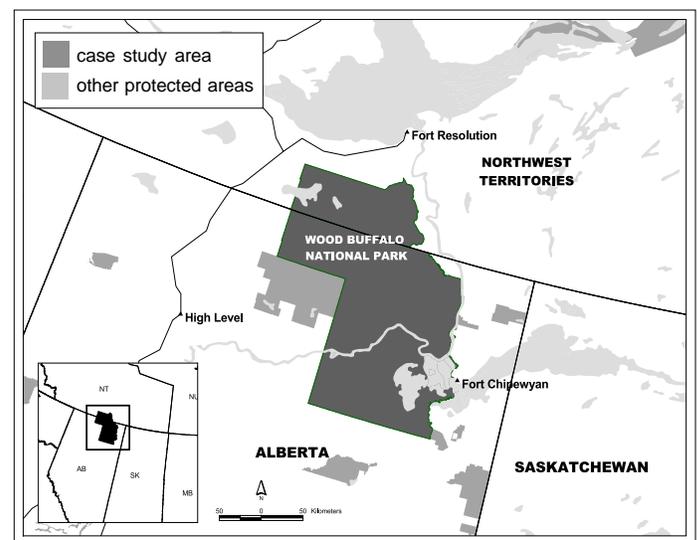
Estimated spending by park visitors is \$15 million per year, with \$1.7 million of that spent on park permits. The average trip expenditure is \$740 with visitors staying on average 7.7 days in the park. Currently, there are 25 to 40 LLCFN guides working within the park. Almost all are employed by a non-Aboriginal-run company called Campbell's Cabins. Guiding is an integral part of employment for the Lac La Croix and has led to a strong interest in protecting the natural assets of the park.

While the building of the road has given the LLCFN greater exposure to non-Aboriginal society, the reverse is also true: The First Nation community now has a greater opportunity to disseminate its culture to visitors of Quetico. This allows non-Aboriginal people to gain a better understanding of Aboriginal Peoples and their values, as well as their struggles. Organized efforts to promote Aboriginal culture to visitors, however, are still relatively uncommon. Mr. Riley says that while

"the park staff would like to see an increase in these types of activities, the First Nation community may have issues with sharing traditional knowledge."

The momentum for building economic and social benefits from Quetico Provincial Park is picking up steam at Lac La Croix, but the First Nation's relationship with the park still faces challenges, particularly the issue of motorized access. Better access to the community and seed money for Aboriginal-run enterprises are helping the community to realize more benefits from the park. And, for a community that has retained a very strong component of traditional land use, the park's protection of fish and game species is important. The Lac La Croix people were not part of creating Quetico, but they will play an important role in shaping its future.

4.2 Wood Buffalo National Park, Alberta



Wood Buffalo National Park (WBNP) was officially created in 1922. As Canada's largest national park, it covers 44,802 square kilometres in northern Alberta and southern NWT.

WBNP was created to protect rapidly disappearing wood bison herds and the habitat that supported them. The park was exempted from sections of the former *National Park Act (NPA)* in order to allow for management, such as logging, that would enhance bison



habitat. Between 1925 and 1928, more than 6,000 plains bison were transplanted from Buffalo Park in Wainwright, Alberta, to Wood Buffalo National Park.⁷⁹ (The Buffalo Park herd was originally established with 709 bison brought in from a private American ranch.) This number climbed to approximately 10,000 in the early 1970s, but more recent figures indicate that the herd is made up of approximately 2,500 animals.⁸⁰ This current figure has been interpreted as a return to the ecological carrying capacity of the herd, according to Parks Canada staff.⁸¹

The western third of Wood Buffalo National Park includes lands that were traditionally used by members of the Little Red River Cree and Tall Cree First Nations (LRRCFN and TCFN). Their traditional-use area encompasses 50,000 square kilometres and includes areas to the southwest and west of WBNP.⁸² There are First Nation community members who still depend on these areas to support traditional lifestyles.

Federal treaty-annuity payments show that in 1922, when the park was created, there were 110 Cree living in the area, all of whom were hunting and trapping within WBNP.⁸³ Pressure from settlers and other non-Aboriginal hunters on game populations and furbearers outside the park led to a decision in 1926 to allow members of the First Nations to apply to the federal government for permits to hunt and trap animals within special reserve areas in the park.

In the late 1980s, the LRRCFN approached Parks Canada about the possibility of joint management of three trapping areas situated in the southwestern quadrant of WBNP. Parks Canada's position is that the establishment of WBNP extinguished treaty rights within the park; however a limited number of Aboriginal Peoples were permitted to hunt and trap within the park as a privilege not as a right.⁸⁴ The LRRCFN has continued to put forward the need for a co-operative management process in the park to resolve a large number of issues. The LRRCFN believe that they have retained their treaty rights and interests within that part of their traditional territories that has been included within the boundaries of WBNP.⁸⁵



Wood Buffalo National Park

Sam Gunesch

The LRRCFN and TCFN have reversed the usual process of asking Parks Canada to involve First Nations in joint or co-operative management by inviting Parks Canada to join them in a co-operative management approach of their own design. The two First Nations have pointed to a number of factors or incentives that they believe will help convince Parks Canada to work with them:

1. LRRCFN members constitute the largest cohort of Aboriginal Peoples having recognized traditional-use privileges under the WBNP permit system;
2. LRRCFN and TCFN forest corporations hold substantial forest tenures on provincial Crown forest lands situated to the west and southwest of WBNP;
3. LRRCFN and TCFN, working jointly with industry, have been instrumental in the creation of the Province of Alberta's largest provincial wilderness park in the Caribou Mountains;
4. LRRCFN and TCFN have a history of co-operative action related to wood bison populations within WBNP and wood bison ranging within their special-management area outside the park; and
5. WBNP, the Caribou Mountain Wilderness Park and the escarpment of the Caribou Mountain plateau, which includes the First Nations' "working forest," provide habitat for Alberta's largest known herd of woodland caribou and the LRRCFN has a history of meaningful participation in Alberta's woodland caribou-management initiatives.



There has been some headway in establishing inter-governmental co-operation outside the park boundaries. In 1996, the government of Alberta, the LRRCFN and TCFN created a co-operative management planning area covering approximately 35,000 square kilometres. These lands are adjacent to the national park's west and southwest sides. The agreement was renewed in 1999 and extended for an additional two years.⁸⁶

The establishment of protected areas will be part of the management of this special area. A total of 5,900 square kilometres in protected areas is being set aside, encompassing five major lakes. The LRRCFN have fishing lodge rights to these lakes and have decided to establish one lodge and two tenting areas around three of the lakes in order to develop tourism opportunities.

Another significant aspect of the co-operative management-planning area is the management of caribou. The First Nation communities are creating a management planning process to adequately address the needs of the caribou herd. In addition to managing for caribou populations, they will also be addressing the wood bison disease problem through their forest management-planning process.

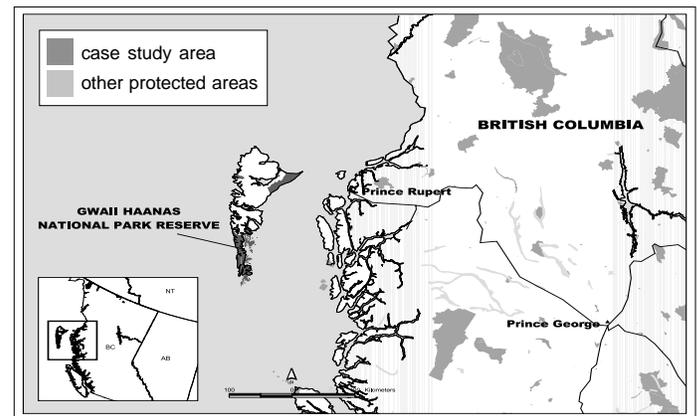
In addition to the co-operative management-planning area, the LRRCFN and TCFN have obtained forest licence tenures located adjacent to Wood Buffalo National Park, which makes these Cree communities the appropriate body to be approached by Parks Canada for boundary management-planning discussions. The LRRCFN and TCFN have also expressed interest in providing services to Wood Buffalo National Park, such as the creation of First Nation park wardens. They would like to have community members trained in the Park Warden Service to work for the national park.⁸⁷

The LRRCFN and TCFN have shown considerable persistence in their desire to participate in the management process within WBNP. According to Jim Webb, a senior negotiator and representative for the two Cree Nations:

Parks Canada must recognize First Nations' needs for ongoing use of the land [in WBNP] to support culture and identity, and the park managers need to recognize and affirm that indigenous people are part of the ecosystems they are trying to conserve. However, they are currently unwilling to recognize First Nations and their needs for ongoing use.

That the First Nation communities wish to be part of the process instead of outsiders looking in is evident from their internal planning processes and attempts to build dialogue with Parks Canada. It is the view of the LRRCFN and TCFN that Aboriginal input will only strengthen the current park-management processes.

4.3 Gwaii Haanas National Park Reserve, British Columbia



Gwaii Haanas are Haida words for “islands of wonder or beauty.” The combined Gwaii Haanas National Park Reserve and Haida Heritage Site (Gwaii Haanas) is located within the Queen Charlotte Islands off the coast of British Columbia and covers 1,495 square kilometres. It was established in 1988 under an agreement between Parks Canada and the Province of British Columbia. The initiative to establish the park, however, actually originated with the Haida Nation, which was concerned about the impacts of heavy logging on its environment and culture. Through alliances with conservation organizations and non-Aboriginal groups, the Haida people drew international attention to the spectacular beauty and diversity of their homeland and the need to protect it.



After a lengthy and often heated campaign for protection in the 1970s and early 1980s, a Memorandum of Understanding between the federal and the provincial governments was signed in 1987. The signing of the South Moresby Agreement between the two governments in 1988 brought the new park formally into being. The Canada Haida Agreement (CHA) on co-management between the Haida Nation and the Government of Canada was signed after five years of further negotiations in 1993.

The South Moresby Agreement committed the Government of Canada and the Government of British Columbia to providing \$126 million (\$106 million from the federal Western Diversification Fund and \$20 million from the province) to compensate logging interests and forestry workers, to invest in enhanced silvicultural operations in areas outside the park, to fund the start up of the park itself and to establish a regional economic-diversification program and trust fund.

This agreement has been described as the most powerful agreement in Canada for Aboriginal Peoples. According to Dr. Leanne Simpson⁸⁸ of Trent University, “the Haida have maintained more rights within the park and have more influence over how the park is managed than any other Nation in Canada.” It is unclear, however, whether this agreement is being used as a model in Parks Canada’s negotiations with other First Nations in the establishment of new national parks.

A 1995 study of the economic impacts of the Gwaii Haanas establishment found that “on Haida Gwaii as a whole, the islands’ population and workforce have barely changed, although there has been a diversification in the kinds of work that people do.” The study further notes that:

What was “lost” from the economy of Haida Gwaii in the way of benefits from logging has clearly been replaced by the [South Moresby] agreement, whether the measure is jobs or cash income. . . . It’s also clear that the logging jobs that were lost have been replaced — if not surpassed — by jobs created in silviculture, tourism and protected-areas management, a trend that will continue with the remaining spending provisions of the agreement.

A key point made by the study is that previously many of the economic benefits of logging were exported from the islands along with the raw logs that were largely sent south for processing. New spending around the national park is much more likely to create direct local benefits. The study points out that:

Local planning and decision-making have challenged islanders to work together — among communities and cultures — to overcome differences that have often divided them. As a foundation for developing sustainability at the community level, this accomplishment alone probably exceeds anything that the authors of the [South Moresby Agreement] had imagined was possible.

One of the keys to this co-operative community-focused approach is the Canada Haida Agreement. The CHA is overseen by the Archipelago Management Board (AMB), which is made up of four board members: two Haida representatives and two Parks Canada representatives. The responsibilities of the AMB focus on operations and park management, including staffing, but the AMB is ultimately responsible for all management decisions affecting the archipelago. The AMB makes decisions by consensus.

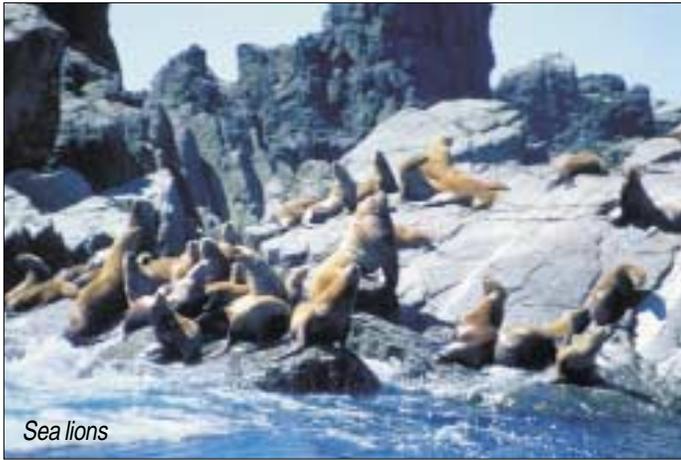
Ernie Gladstone, a member of the Haida Nation and park superintendent, notes “both parties bring resources and skills to the table. This has allowed for much more effective management than if one party or government were to do it on their own.” For instance, the Haida bring an established presence as well as knowledge of the area that has been gained through many generations of living closely with its lands and seas. Parks Canada brings resources, skills, experience and knowledge gained through over a century of managing protected areas.

Land-claim negotiations continue separately. Mr. Gladstone places the Gwaii Haanas National Park Reserve working arrangement in this perspective:

At the very heart of the Gwaii Haanas agreement is an agreement to disagree. Both the Haida Nation and the Government of Canada believe themselves to be the rightful owners of the land within Gwaii



Haanas. The agreement recognizes this diverging viewpoint, but allows this to be put aside and provides a framework for the two nations to work together in managing and protecting the area.



Sabine Jessen/CPAWS/BC

There are five heritage sites that are particularly important to the Haida within Gwaii Haanas: K'uuna 'l'nagaay, T'anuu 'l'nagaay, SGang Gwaay, Hlk'yaah GaawGa and Gandll K'in Gwaayaay. The Haida are working closely with Parks Canada on protecting and recognizing these heritage sites, including consulting with hereditary leaders. To protect these areas from impacts, the Haida Watchmen Program was initiated through a contract with Parks Canada. Kim Goetzinger, general manager of the Haida Watchmen Program and a Haida member, explains that the "Haida Watchmen Program is a visitor tracking program [employing Haida community members] within Gwaii Haanas designed for both visitor protection, as the 'emergency eye,' and site protection."

To the Haida, it is important that they be able to continue their traditional ways of life, including retaining contact with their history through heritage sites, within the national park structure. For this reason, parks management has emphasized ecological and cultural protection more than the development of tourism and other outside economic opportunities.

In the case of Gwaii Haanas, Parks Canada's jurisdiction ends at the water's edge where the federal Department of Fisheries and Oceans' responsibility begins. Mr. Gladstone suggests that the various government

bodies must find ways to work together to integrate their management approaches to the homeland of the Haida. Efforts to designate a National Marine Conservation Area Reserve around the archipelago are continuing.

Both Parks Canada and the Haida see a need to protect the ecological integrity of Gwaii Haanas. For the Haida, a healthy environment means an opportunity to continue with traditional activities and to pass on Haida history and culture to future generations. The Haida's Aboriginal rights are formally recognized in the park agreement, from hunting, fishing, trapping and harvesting of plants to harvesting cedar trees for ceremonial and cultural purposes. These activities help maintain the Haida relationship with the land and sea.

Cindy Boyko, a Haida representative on the AMB, states, "the lands and sea allow us [the Haida] to get to a time and place to help define self-worth. In the old days there was a time and place for everyone, babies, elders, youth, all traditional activities were important to pass on [in our] culture." In Ms. Boyko's view, the protection of Gwaii Haanas is the protection of the Haida culture itself. "To see the Haida look upon Gwaii Haanas as a place to receive themselves, to receive their culture and spirituality in order to develop respect not only for the lands, but for themselves" is of paramount importance in managing the park, she adds.

Dennis Madsen is a member of the AMB who represents Parks Canada interests. His focus is on "ecological integrity and preservation . . . preservation of endemic species and wilderness places takes high priority." He feels that, "parks are a way of communicating wilderness to people and offering them a sense of belonging to natural processes." Mr. Madsen would also like to see information about the Haida culture become more prominent in the park.

Ernie Gladstone notes that "the main objective is to protect and preserve Gwaii Haanas." At the same time, he believes there is room for some economic opportunities, specifically tourism, but cautions that:



One of the challenges occurring with economic opportunity establishment is to involve the Haida in starting up these opportunities. . . . The Haida do not see themselves as performers for tourism, but at the same time, they are not opposed to sharing their knowledge. However, the process for [developing] tourism opportunities needs to be natural. Formalizing the culture with schedules, determining who is performing what tasks and how many can be gathered to perform or teach, will not succeed [with the majority of the Haida].

Approximately 50 percent of Gwaii Haanas staff are Haida who have been recruited through Parks Canada training and development programs. Park staff and, ultimately, the AMB are responsible for managing over 20,000 visitor nights per year in the park with the active season occurring from May to September. Visitors stay an average of 9 to 14 days each because of the park's remote location and the expense involved in reaching it. The main attraction is sea kayaking. Visitors can travel independently, with a commercial non-Aboriginal guide or with a Haida guide. The park, Aboriginal and non-Aboriginal groups have each been allocated a quota of 11,000 user nights per year (for tourism purposes). This ensures that there will be a maximum of 33,000 user nights total for the entire park and ensures that the Haida will control one-third of them.

The AMB has taken a cautious approach to tourism development by initiating scientific studies to determine tourism and development capacity within Gwaii Haanas. The board has initiated a visitor-impact study taking into account both ecological and social perspectives to further determine levels of sustainable use. The current limit of 33,000 user nights may shift based on the findings of the study. However, there will be no limit imposed on the Haida regarding their use of their traditional lands.

The Haida generally feel that the consultations that have occurred during the establishment and management of Gwaii Haanas have been adequate. This can be attributed to the fact that the Haida have always been at the table during discussions and, in fact, often drove the process over the five-year period it took to reach an agreement. Mr. Gladstone suggests that the success of this agreement is based on communication. He says "the first step in building trust was to establish a relationship between the First Nation and government to build a solid foundation prior to negotiations."

Funding for park establishment and management has come from Parks Canada. Revenues generated through park operations are shared with the AMB. The AMB, in turn, provides \$320,000 per year to the Haida Watchmen Program to manage the five key heritage sites. Kim Goetzinger acknowledges, "the basic funding is in place to assist with everyday operations of Haida Gwaii; however, extended funding is required to reach other important goals set by the Watchmen Program, such as furthering traditional training."

The Canada-Haida partnership must be renewed every five years and requires full consensus for program extension. This review was established to ensure that both Parks Canada and the Council of the Haida Nation continue to have their concerns and values addressed. The five-year review provides an opportunity for all parties to review current, past and future events, aspirations and plans and to address issues that may have developed over the interim period.

All issues, such as film permits, licensing quotas, business licensing, research, staffing, boating safety, campsites and camp closures, must be brought to the attention of the AMB. While this can lead to delays in decision-making, it also ensures that the concerns and values of both the Haida and Parks Canada are addressed. For example, Parks Canada's desire to build a base camp in the park was initially opposed by the Haida, who were concerned about the perception of federal control of lands the Haida believe are theirs. With time and understanding, an agreement was reached. A base camp managed by the AMB has been erected with a sign that recognizes both governments.



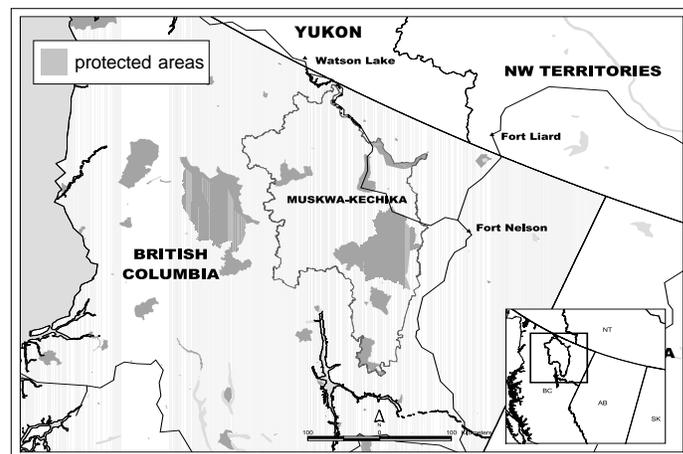
As well as working in the park, the Haida, through the Skidegate Tribal Council, are also leading the development of a multi-agency cultural centre that will enhance cultural learning experiences in Gwaii Haanas. This \$20-million project will involve a museum, teaching facilities, interpretation facilities and economic cultural training. As well, Parks Canada has identified Aboriginal Peoples as the obvious choice for developing and delivering interpretive programs focused on traditional ecological knowledge and culture in the Gwaii Haanas.⁸⁹

The Watchmen Program currently employs 30 Haida community members, who take pride in presenting visitors with a living culture. One of the stumbling blocks for the program, however, has been the need for Watchmen employees to be certified in areas such as first aid, WHMIS (Workplace Hazardous Materials Information System),⁹⁰ boating safety and marine radio. These requirements have deterred some Haida community members from fully participating and asking elders to become certified in these areas continues to be a challenge. But while it may be easier to find non-Aboriginal people with these qualifications, they lack the cultural knowledge of the Haida and the Haida's traditional knowledge of the often treacherous waters of the archipelago.

An economic impact study completed in 1996 found that \$106 million had been invested in Gwaii Haanas by the federal government, with \$20 million designated for infrastructure and \$12 million for management. The remaining \$74 million was channeled to the local communities as compensation for loss of logging revenues. A \$34-million trust fund was also established for the Haida; this has since increased to more than \$50 million.

While logging is no longer a significant employer in the southern tip of Gwaii Haanas, new and more diversified economic opportunities have been created. Most importantly, with a substantial core area of their homeland now off-limits to clearcut logging, the Haida are more confident that they will be able to pass on a healthy environment and culture to future generations.

4.4 Muskwa-Kechika Management Area, British Columbia



In the northeastern corner of British Columbia, a unique land-use plan has been taking shape over the past decade with the guidance and support of the area's Aboriginal Peoples. In November 2000, the Government of British Columbia accepted the near-consensus report (only a single mining industry representative objected) of the Mackenzie Land and Resource Management Planning Panel. This plan increased the reach of a unique blend of protected areas and special-management zones to cover a total of 63,000 square kilometres in B.C.'s Northern Rockies.

The Mackenzie plan linked 500,000 hectares in new parks and 119,000 hectares in existing parks in the Mackenzie District to the hundreds of thousands of hectares protected during earlier land-use planning exercises in the Muskwa-Kechika Management Area (MKMA). At the core of this system is the 343,000-hectare Gataga-Kechika-Frog Park (also known as Dune Za Keyih). Located in the traditional homeland of the Kwadacha Band and the Kaska Nation, this protected area is embedded in special-management zones covering a further 409,000 hectares. In addition, the Mackenzie plan created a new designation known as Wildland Zones that will prevent logging on a further 900,000 plus hectares. In total, about one-quarter of the MKMA land base is included in protected areas with the other three-quarters contained in special-management zones. The MKMA plan also includes a trust fund designed to support the research and development of wildlife and



integrated resource-management techniques and to ensure that the natural diversity and abundance of wildlife in one of North America's richest wildlife areas is maintained in perpetuity. The trust fund receives \$3 million per year from the British Columbia government plus a "top up" allowance of \$400,000 allocated on a matching-funds basis. The MKMA plan is governed by an advisory board made up of 22 members representing interests ranging from guides, outfitters and conservation groups to the oil-and-gas, mining and forestry sectors. First Nations directly appoint seven members to the board. However, it is important to note the "advisory" role of the board — the province retains the ultimate authority to accept or reject the board's recommendations under the *MKMA Act*.

"The Kaska Dena Nation and the Kwadacha Band were leaders in seeking a bold protection plan for their homeland," notes George Smith, National Conservation Director for the Canadian Parks and Wilderness Society. "They had a vision for the Muskwa-Kechika area — an area covering 50 undeveloped watersheds - and helped see it through."⁹¹

For the Kaska Dena Nation, participating in the land-use planning process for their homeland area was a calculated risk. It was clear that the planning process would address fundamental issues for the Kaska, such as the survival of wildlife. It was also clear that the treaty negotiation process through which the Kaska were already seeking recognition of their rights and occupancy of this area was "proceeding at a glacial pace," explains David Porter, the Kaska's chief negotiator.

Concerned about the impact development could have on the 50 interconnected watersheds that make up the Muskwa-Kechika Management Area, the Kaska decided to participate in the Land and Resource Management Planning process and try to use the process to ensure the protection of wild species and spaces in their homeland even while the treaty process continued. Any legislation, decisions or actions within the MKMA, however, would be "without prejudice" with respect to any future treaty with the Kaska Dena. This understanding is set out in a Letter of Understanding signed by the Kaska Dena and the provincial government in 1997.



A statement from the Fort Nelson First Nation explains the importance of the MKMA agreement for Aboriginal Peoples in the area: "With the intense development of lands to the east, the MKMA may be the only land base available that can sustain the treaty and Aboriginal rights of First Nations."⁹²

"Much of the Muskwa-Kechika and lands adjacent to it are in the traditional territory of the Kaska Dena. There couldn't be a decision without our involvement," Mr. Porter notes. With this in mind, the Kaska secured a commitment directly from the premier that "guaranteed the involvement of the Kaska Dena in all processes and subsequent management of the area," he explains. Given the Kaska Dena's long occupancy of the lands they call Dena Keyeh, Mr. Porter says that a key issue for the Kaska was recognition of Aboriginal Peoples' deep roots in the area. The Kaska asked that this be reflected in all efforts to tell the world about the Muskwa-Kechika, whether it was through the use of Aboriginal languages on signs or through the use of traditional knowledge in drafting conservation plans.

Mr. Porter points out that Aboriginal Peoples have been leaders in understanding the importance of declaring some areas off-limits to industrial development. "If you look north, from Nunavut to Alaska, most special-management areas or national parks have come about as a result of First Nation initiatives, particularly as part of land-claim agreements," he says. "There needs to be a clear delineation of special lands, like those in the Muskwa-Kechika, that are set aside to sustain wildlife values, unique habitats and the health of our watersheds," he believes.



Mr. Porter thinks that one of the most innovative parts of the Muskwa-Kechika agreement is that conservation planning was to be completed prior to any industrial or economic development taking place. “This is a unique way to have protected areas and economic activity,” he notes. In fact, the *MKMA Act* requires the development of five local strategic plans that must be consistent with the act’s emphasis on putting planning before development. The five are a recreation-management plan, oil-and-gas pre-tenure plans, park-management plans, wildlife-management plans and landscape-unit objectives.

During 2000, oil-and-gas exploration activities were undertaken in one of the MKMA’s special management areas. In keeping with the plan’s requirement that “a pre-tenure plan must be developed that identifies objectives and strategies for the plan area to maintain wilderness characteristics and wildlife and its habitat over the long term,”⁹³ a winter road was constructed to the drilling site using natural and human-made snow. “Field inspections by representatives of First Nations, the OGC [Oil and Gas Commission] and government revealed minimal impact to the vegetation due to this sensitive and innovative method of access.”

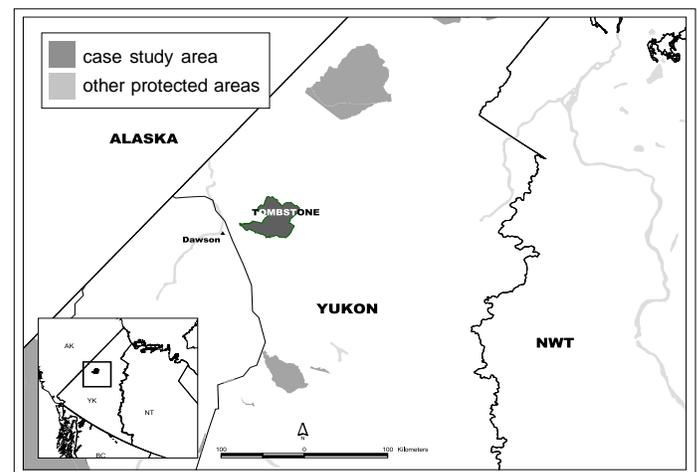
Similarly, forestry plans for two areas within the MKMA will emphasize partial strip cutting, which will leave strips to protect riparian areas and esthetics for recreation.

As the actual on-the-ground implementation of the Muskwa-Kechika agreement goes forward, Mr. Porter says it will be important for all parties to remember that “we’ve been walking back and forth here for thousands of years.” Opportunities for Aboriginal Peoples, including opportunities to develop new tourism and other ventures, must be a priority, he feels. The Kaska, for example, are already working to make the most of their extensive traditional trail network in the region and Mr. Porter says he hopes Aboriginal Peoples will also play a large role in staffing the new parks. Given the enormous potential popularity of the area, it is critical that Aboriginal Peoples be given access to training, small business assistance, and other skills to help manage the impact of change on their homeland, he stresses.

In 2001, the MKMA trust fund sponsored a program on “Involving Youth & Communities in Guide Outfitting/ Eco-tourism careers in the MKMA.” The project gave 15 Aboriginal and non-Aboriginal youths training in horsemanship, client relations, plant and animal identification, water safety, small-engine use and maintenance, and certification in safety. Eleven of the participants graduated and found jobs with guide outfitters throughout northern B.C.

“I hope we have Kaska guides, Kaska park officials and Kaska conservation officers all helping to introduce this country to visitors,” Mr. Porter says. The Kaska’s pride in this beautiful country will also be shared through a video. “Our goal,” says Mr. Porter, “is to ensure that the wildness of this place remains forever and that minimal changes happen to the landscape.”

4.5 Tombstone Territorial Park, Yukon



The Tombstone Mountains represent one of the most spectacular wild areas in Yukon. Located roughly 90 kilometres north of Dawson City, the Tombstone area is folded into the rugged Ogilvie Mountains and transected by the Continental Divide. Its fast-flowing rivers are rich in cold-water fish like salmon, grayling and Dolly Varden while its mountain slopes, boreal forest and tundra steppes are home to both woodland and barren-ground caribou, dall sheep, grizzly and black bear and moose.



The resource richness and beauty of the Tombstone area have drawn people to it for thousands of years. Aboriginal Peoples have lived, hunted and fished in the area for millennia. Today, Tombstone's sharp peaks are featured in many books, magazines, pamphlets and videos extolling the beauty of Yukon.

In 1999, a 2,160-square kilometre area of the Tombstone Mountains and Blackstone Uplands was designated as a Yukon Territorial Park. But the road to that protected designation winds back decades, notes Tim Gerberding, Implementation Manager for the Tr'ondëk Hwëch'in First Nation in whose traditional territory the park has been established.

Originally, Mr. Gerberding explains, the Tombstone area was considered for national park status. By the late 1980s, the Tr'ondëk Hwëch'in had indicated their desire to see the area protected as part of their negotiations for a land-claim settlement. "This area had been under the continuous use and occupation of Aboriginal Peoples for millennia," so some form of protection made sense to the Tr'ondëk Hwëch'in, he says.

At first, the Yukon government's desire to designate the area as a territorial park led to "a lot of tension at the land-claim negotiating table," he adds. "The Tr'ondëk Hwëch'in wanted [Tombstone] for settlement land and the Yukon government wanted it for a park." In the end, the area was given the status of a "special management area" under the Tr'ondëk Hwëch'in final agreement, which opened the door for its designation as a territorial park.

Public enthusiasm for the creation of Tombstone Park remained strong throughout the land-claims negotiation process, and was an important factor in achieving a large park with boundaries reflecting ecological values. The Yukon Chapter of the Canadian Parks and Wilderness Society led the public campaign in support of the Tr'ondëk Hwëch'in efforts. CPAWS helped by raising public awareness and gaining the support of the Yukon government to double the size of the park proposed by a previous administration.

Among the objectives for the park outlined in the agreement are, "to recognize and protect the traditional and current use of the area by Tr'ondëk Hwëch'in in the development and management of the Park" and "to recognize and honour Tr'ondëk Hwëch'in history and culture in the area through the establishment and operation of the Park."⁹⁴

Mr. Gerberding, who is also a park management plan steering committee member, says that the Tr'ondëk Hwëch'in realized that park status could work to their advantage:

It was very important [for the Tr'ondëk Hwëch'in] to see [Tombstone] protected for all time. Park status also guaranteed economic opportunities. And finally, the First Nation had a finite quantity of settlement land available to choose from. Selecting other areas as settlement lands led to a win-win situation.

Tombstone would be protected while the Tr'ondëk Hwëch'in would still receive the same amount of settlement land outside of the park.

A key to reaching agreement on park status was the guarantee that Aboriginal harvesting rates within the park "are totally protected," Mr. Gerberding adds. Aboriginal hunting and gathering activities cannot be infringed upon by any other park activities and must take precedence over recreational activities like sport fishing, he explains.

Mr. Gerberding acknowledges that this may lead to future concerns that will have to be addressed in discussions between the Tr'ondëk Hwëch'in and park managers. For example, in keeping with the park's character as a remote natural area, motorized access will likely be tightly restricted in the park management plan. But such restrictions will not bind Tr'ondëk Hwëch'in community members who may wish to use snowmobiles or ATVs to reach hunting areas. It may turn out that the Tr'ondëk Hwëch'in government will have to use its direct authority over Tr'ondëk Hwëch'in citizens to manage these activities in a way that is in keeping with the park management plan, Mr. Gerberding suggests.



The agreement to establish the park called for a steering committee with two members appointed by the Tr'ondëk Hwëch'in and two members appointed by the Yukon government. This committee has been charged with recommending final boundaries for the park (which was done in early 2000) and with recommending a management plan for the park.

The final management plan has been completed, Mr. Gerberding notes, and is now awaiting approval from both the Tr'ondëk Hwëch'in and the Yukon government. At that point, the Tr'ondëk Hwëch'in and the Yukon government will have 90 days to achieve consensus on the elements of the plan. If agreement cannot be reached, a dispute-resolution process will then be followed. If agreement still cannot be reached, the Yukon government has the final authority to implement the plan as it sees fit.



John Meikle

The Tombstone Mountains

“It’s not co-management in the classic sense — it’s something slightly less than that. But there is no doubt that the Tr'ondëk Hwëch'in have an important role,” Mr. Gerberding explains. In fact, the steering committee will be recommending co-operative implementation and monitoring of the park-management plan with regularly scheduled management-plan reviews, he adds.

“I think it is very likely that we will reach a consensus” on the management plan, Mr. Gerberding continues, noting that while the initiative to establish the park originated with the government, the Tr'ondëk Hwëch'in are now fully invested in seeing the area permanently protected.

Beyond protecting an area that has been a homeland for generations, the Tr'ondëk Hwëch'in also have been guaranteed benefits from economic opportunities flowing from what is already the second-most visited park in Yukon. The Tr'ondëk Hwëch'in will be given priority for hiring for park jobs and bidding on park contracts. The territorial government and the Tr'ondëk Hwëch'in have also been discussing the creation of training programs for local Aboriginal Peoples to ensure they are in a position to benefit from park opportunities. Mr. Gerberding is optimistic that an agreement will be hammered out.

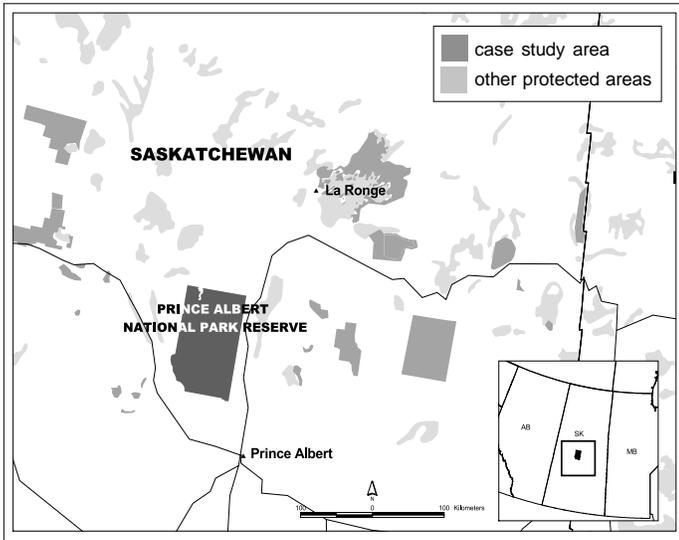
Should a permit system for travel in the park by non-Aboriginal people be established, Tr'ondëk Hwëch'in outfitters, guides or ecotourism ventures are guaranteed first right of refusal for at least 25 percent of the available permits.

One of the most interesting opportunities for Tr'ondëk Hwëch'in involvement in Tombstone will be in the area of cultural interpretation. As part of the Beringia area that escaped the last ice age, Tombstone is particularly rich in Aboriginal artifacts and archaeological sites. Already, 80 archaeological sites have been identified in the park, “and that may be just scratching the surface,” Mr. Gerberding notes. Under the terms of their settlement, any Aboriginal objects found in the area belong to the Tr'ondëk Hwëch'in people. There is also a strong recommendation in the draft management guidelines that the Tr'ondëk Hwëch'in be involved in anything that touches on archaeology and culture in the park. As well, park signage and interpretative displays will incorporate wherever possible the Han language used by the Tr'ondëk Hwëch'in.

Mr. Gerberding is convinced that the now-protected beauty and diversity of Tombstone will provide the Tr'ondëk Hwëch'in with many opportunities, both traditional and new. Visitation to the area has increased rapidly over the past ten years, he points out, and park status will raise Tombstone's profile even further, leading to a continued increase in visitation. “This is really a remarkable area, one that's rich in just about every way you can look at it,” he points out. And now it is protected for both the Tr'ondëk Hwëch'in and visitors alike.



4.6 Prince Albert National Park, Saskatchewan



The land where the boreal forest meets the prairie has long been an important part of the territories of many western Aboriginal Nations. The Sioux and Plains Cree Peoples would migrate north into the region to take advantage of its forest environment. Tribes from the north regularly moved south through the area.

For the grandparents and great-grandparents of the Woodland Cree, whose descendants now reside at the reservations of the Montreal Lake, Sturgeon Lake and Lac La Ronge First Nations, this was home. Of particular significance was an area on Waskesiu Lake called the Narrows. This has been a gathering place since time immemorial for these families and people from other Aboriginal Nations. There was an expansive existence, moving through a wide territory to take advantage of different ecosystems and unique places according to the season and personal desires. In addition to being a home place to many local Aboriginal families, the Narrows has been an important gathering point for Aboriginal Nations for generations. It is now the site of a camping area within Prince Albert National Park.

In 1876, a treaty (Treaty No. 6) was signed between the Aboriginal leaders and the Canadian government covering the southern portion of the region. The Treaty 6 Adhesion of 1889 includes the northern part of the park. According to Parks Canada and the Prince Albert Grand Council, Treaty 6 and its adhesion include the

entire park area.⁶⁹ Under the treaty, the government promised to set aside land for the exclusive use of the Cree and guaranteed their right to pursue hunting and fishing activities throughout the region. By this treaty, the Aboriginal inhabitants of the region ceded their “rights, titles and privileges” to the land in exchange for certain considerations from the Crown. Foremost among these were allocation of land, based on population, and continued rights to carry out hunting and fishing activities throughout the land, subject to certain conditions. As set out in the treaty:

Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefore by the said Government.

There is some indication that concerns about the impacts of non-Aboriginal logging and trapping on the area’s wildlife and on the Cree’s livelihoods led to some early support among the Cree for a protected area. However, the Cree view of “protection” did not encompass the idea of excluding the Aboriginal Peoples who had lived, hunted and fished in the area for generations. Rather, protection, from the Cree perspective, would restore the ecological balance that Aboriginal Peoples had maintained over centuries.

In the 1920s, the Prince Albert Chamber of Commerce recognized the potential commercial opportunities at Waskesiu Lake and began to lobby for a national park in the area. At the time, Saskatchewan’s Crown lands were directly controlled by the federal government and not the province. Other proposals for a park would have placed it further north where wilderness camping and canoeing opportunities would have been greater. The business community, however, exerted its political influence and Prince Albert National Park was officially established in its current location by Prime Minister Mackenzie King in 1927.



Later, the Cree had some influence in modifying the park boundaries. Initially, the boundaries extended further east, surrounding the Montreal Lake Reserve. The hunting prohibition within the park meant that people from the reserve had to travel long distances to find land where they could hunt. In the 1940s, the Cree succeeded in having the park boundary shifted away from the reserve to its current location west of Montreal Lake, while the northern boundary was pushed north.



Wayne Lynch

Today, there are a number of commercially operated services in the park, including hotels, a restaurant, conference facilities, a variety of stores, a marina and a golf course. There are 451 cabins and 118 cottages located within the park on lots leased from Parks Canada. In addition, there are 47 commercial lots with a total commercial floor area of nearly 20,000 square metres. The townsite of Waskesiu is now a major resort destination for residents of Saskatchewan. Some 5,000 residents and visitors stay overnight in Waskesiu during summer weekends.

Woodland Cree attitudes toward the Prince Albert National Park might best be described as ambivalent.⁷⁰ There has been relatively little interaction between the Cree and the park in terms of political activism for greater access or for greater benefits for the Cree and there is no formal involvement of the Cree in the ongoing management of the park. Rather, they are treated as stakeholders whose views are sought alongside those of other groups. And yet, a recent process for developing a community plan for the Waskesiu townsite did not specifically seek out Aboriginal views.

The Montreal Lake Cree Nation (MLCN) has representation on the Prince Albert National Park Management Plan Committee but the committee is not active at this stage.⁷¹ A draft Memorandum of Understanding exists between MLCN and the park, to formalize the intent to work together in achieving mutually beneficial goals and objectives and is awaiting formal approval.

Currently the park is in the process of developing a new park management plan that will emphasize ecological integrity. In this case, Cree perspectives are being specifically sought. As partners in the Prince Albert Model Forest — which encompasses the national park and other traditional territories — the Cree have some voice in the broader landscape issues that may arise during the park-planning process.

Potential benefits of the park from the viewpoint of local Aboriginal communities fall into three main areas: protection of ecological systems for the sustenance of traditional activities; generation of new economic opportunities; and maintenance of culturally important sites and opportunities to interpret First Nation heritage for new generations and visitors.

The park's potential value as a seed source for local wildlife is recognized by the Cree. There are concerns, however, about the enhancement of boating recreational opportunities.⁷² According to local community members, park planning appears to be still strongly focused on recreational and business development despite Parks Canada's mandate to focus on the ecological integrity of its protected areas. Conservation groups in Saskatchewan have been actively challenging Parks Canada on this issue.

In spite of the significant commercial activity in the park and the fact that the surrounding population is predominantly Aboriginal, there are no Aboriginal-owned businesses in the park and current economic benefits are very limited. Opportunities provided, for example, in marina contracts and fire contracts have had limited success.⁷³



Currently, there is a zero vacancy rate for commercial business lots in the park and the recent community plan for the Waskesiu townsite allows for the development of only three new commercial lots, which will be tendered on a competitive basis. Parks Canada notes that a heritage tourism program is in place to promote planning for mutually supportive commercial developments outside the park area and for Aboriginal entrepreneurs.

Prohibition of hunting and traditional fishing in areas most familiar to the families who have lived in the area for generations has created significant hardship. The current economic status of families living on the reserves around the park is lower than the neighbouring non-Aboriginal communities in Saskatchewan.

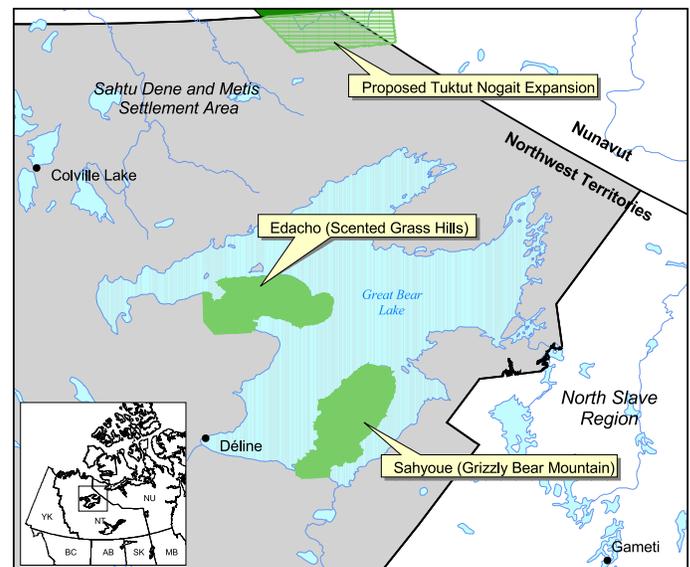
There have been, nevertheless, some direct park employment opportunities particularly in the areas of firefighting, firewood contracts, fire-break work and in park operations and management. For example, four MLCN interpreters were hired in the summer of 2002 to conduct interpretation on Woodland Cree culture and heritage. Aboriginal employment targets exist for the Warden Service, Visitor Services, and in the General Works sections. Currently Prince Albert National Park staff has approximately 24 percent representation of Aboriginal Peoples from areas immediately surrounding the park and the park superintendent is a person of Métis heritage.⁷⁴

Up until recently, heritage interpretation at the park focused exclusively on European connections. The visitor's centre continues to present the life of Grey Owl,⁷⁵ an Englishman who adopted an Aboriginal persona and then became famous by espousing conservation and animal-rights values. Interpretive programming on Grey Owl ended in 1995 but images of Grey Owl are still on display in the centre.⁷⁶ Recognition in park literature and at park displays of the deep connections of living members of the surrounding Aboriginal communities to the park is minimal. However, Aboriginal programming has been developed for the summer interpretive program, with two to three sessions per week focusing on Woodland Cree heritage and culture. Spiritual healing walks, traditional skills

and interpretive stories have been organized with local elders as leaders. These are some of the most popular programs amongst park visitors. There has also been interest expressed by Aboriginal leaders in developing an Aboriginal centre at the park that might be a focal point for presenting Aboriginal heritage.

There is a general perception among Aboriginal Peoples in the area that the government imposed the park on the Woodland Cree and that the communities were not significantly involved in the establishment process. There have been many decisions made throughout the history of this particular park that have negatively affected the First Nation communities in the area. The current circumstances for the Woodland Cree would not be acceptable to an Aboriginal community forging ahead in parks and protected-areas discussions today.

4.7 Sahyoue/Edacho,⁹⁵ Northwest Territories



Sahyoue and Edacho are large peninsulas on the western side of Great Bear Lake, Northwest Territories. Great Bear Lake is cut by the Arctic Circle and is the world's largest lake at this northerly latitude. It is also Canada's largest wholly contained freshwater lake and the ninth-largest lake in the world. The lake drains into the Great Bear River, and then into the Mackenzie River. In Slavey, Sahyoue means "Where the Bear Lived" and Edacho means "Large Point." These local names are those used by the people of Deline, the only community on Great Bear Lake.



Sahyoue and Edacho are important cultural and spiritual areas for the Sahtu Dene of Deline, as well as outstanding examples of northern wilderness characterized by extensive boreal forests and healthy wildlife populations. Sahyoue and Edacho are approximately 5,587 square kilometres (Sahyoue being about 2,925 square kilometres and Edacho about 2,662 square kilometres, or 553,623 hectares total).

All of Sahyoue is an important wildlife area. The peninsula has excellent woodland caribou winter habitat, and its north shore is a hunting area for moose and barren-ground and woodland caribou, especially in autumn. There are also large areas used for trapping marten, beaver and mink. A fish migration route and spawning grounds have been identified in the north-west edge of the area and whitefish migrate into a lake where the peninsula joins the land.

Edacho is covered by extensive spruce forests and numerous small ponds. Marten and moose are common, and caribou and fish are present inland. Mink, marten, beaver, muskrat, lynx and white fox are trapped there by the community.

Protection of the lands associated with Sahyoue and Edacho was identified as an issue by the community as far back as 1991. To the Sahtu Dene, the oral tradition and stories that are tied to the land help to define their culture and who they are as a people. Legends are from the land and these stories create maps for the people. Names that are given to the land often tell the stories. To protect their culture the land must also be protected, because the places where the stories are told give the stories their meaning. Without these places, the value of the stories would be lost.

The Sahtu Dene and Métis Comprehensive land-claim agreement between the Dene and Métis of the area and the Government of Canada, finalized in 1994, provided for the establishment of a joint working group to consider and make recommendations on Sahtu heritage places and sites, including Sahyoue and Edacho. This



section of the claim established the Sahtu Heritage Places and Sites Joint Working Group, which recommended full surface and subsurface protection for Sahyoue and Edacho in their January 2000 report. This is the strongest form of protection available. (In the NWT, even when surface land is protected, the mining industry is allowed to stake claims and have rights to the underground minerals. Unless these subsurface rights are withdrawn, an area is not truly protected.)

In 1996, the Historic Sites and Monuments Board of Canada formally recognized Sahyoue and Edacho as cultural landscapes of national historic significance, and recommended that Parks Canada, the Government of the NWT and the federal Department of Indian Affairs and Northern Development enter into discussions with the Sahtu Dene to determine and put in place mechanisms to ensure the long-term protection of Sahyoue and Edacho.

In 1999, Sahyoue and Edacho were commemorated as a single National Historic Site by Parks Canada, a designation that recognizes their cultural significance, but does not provide protection for the land. At the National Historic Site commemoration ceremony in Deline, Leroy Andre, then Chief of Deline, said that the community would be seeking full protection for the areas, as the work to protect the land was not yet completed.



In September 2000, Deline invited Parks Canada to partner with the community and provide interim protection of Sahyoue and Edacho for five years under the NWT Protected Areas Strategy (PAS). This would be the next step towards permanent protection of these sacred lands, which are vital to the future of the Sahtu Dene culture and people. “If the land does not remain intact and healthy, our stories and culture will die,” says Mr. Andre.

In his request to Parks Canada, Mr. Andre stated: “Joining with us to permanently protect these lands will demonstrate federal co-operation with Aboriginal Peoples, a need identified by the Panel on the Ecological Integrity of Canada’s National Parks.”

Parks Canada agreed to Deline’s request, and in March 2001, Canadian Heritage Minister Sheila Copps travelled to Deline to formally announce the five-year interim protection of Sahyoue and Edacho. Minister Copps stated that after the interim protection period, the peninsulas would become part of the national parks system, and that “we are taking the next step into the preservation of these lands forever and the telling of our stories. We can and will protect these lands for the boys and girls of tomorrow.”

In the two years since, however, little progress has been made on what the final management and protective designation will be for the areas. Parks Canada is currently examining protection and management options, but has not definitively stated that it will provide the designation required for long-term protection of Sahyoue and Edacho.

In the meantime, cultural, ecological and economic evaluations of the area, required under the PAS are completed or are nearing completion. Deline, which is currently negotiating a self-government agreement with Canada, has started work on developing a vision for a sustainable economy on their lands. This is to be based on culturally and ecologically oriented tourism through the integrated management of protected areas (Sahyoue and Edacho and an expansion of Tukut Nogait National Park in Deline territory) and cultural sites (two other National Historic Sites, Franklin’s Fort

and the Deline Fishery are located near the community), along with guiding and outfitting for fishing and hunting. The community is working to develop their leadership capacity in order to meet the challenges of maintaining their culture and land while creating a new economy to serve the community into the future. Sahyoue and Edacho are viewed as a resource for cultural education as well as an opportunity for employment. Deline will be working with Parks Canada to develop management options that will ensure decision-making power from the community.

While much progress has been made in recognizing the significance of Sahyoue and Edacho over the past decade, there are still a couple of years of work ahead to develop a protective designation that will permanently protect the areas. As well, work on a management regime that will protect and present Sahtu Dene culture and the significance of the areas for all Canadians is needed.





5.0 Looking Toward the Future

The previous chapters have examined protected areas and their evolution during the 20th century, along with Aboriginal experiences with specific protected areas in Canada. In this chapter, we turn to the future — how might protected areas continue to evolve in a direction that meets the needs of Aboriginal Peoples?

5.1 Aboriginal Peoples and Protected Areas in the Modern Context

There are two important factors to consider when looking at the compatibility of protected-areas system expansion with the goals and aspirations of Aboriginal Peoples. First, in northern regions, such as in Yukon, NWT and Nunavut and in the northern parts of many provinces, Aboriginal Peoples are in the majority and their traditional land-use activities continue to be widespread. Creating new protected areas in these regions will require active Aboriginal involvement and consent.

Second, the growing emphasis on maintaining and enhancing ecological integrity in the existing park systems will require the establishment of wildlife corridors or buffers around parks as well. It will be important for Aboriginal Peoples to be involved in addressing the creation of these conservation devices and in assessing their compatibility with traditional rights and aspirations.

Today, many Aboriginal communities are seeking to balance values related to cultural survival and protection of the ecological integrity of traditional territories with the need to establish strong local economies. This economic base is needed to support the goal of self-determination and to meet the demand of growing populations for jobs and productive roles in society.

In considering the allocation of traditional territories to protected status, Aboriginal leaders and communities must weigh the potential impacts and benefits. First

Nations recognize, for example, that attaining the goal of self-government will require the development of a sustainable economic base. Increased Aboriginal participation in resource sectors, such as forestry, mining, and oil and gas, will make the question of how to strike a balance between protection and development on traditional land bases a key question for many.

5.2 Impacts and Benefits of Protected Areas on Aboriginal Peoples

Many recent efforts to expand our protected-areas systems across the country have actively sought to involve Aboriginal communities. These efforts have led to a more positive view of protected areas among many Aboriginal Peoples. However, historic grievances with many older existing protected areas have yet to be addressed and these grievances continue to undermine the support and goodwill for protected areas gained through more inclusive park planning and management initiatives. In some instances there has been significant interference with traditional Aboriginal activities and traditions. In addition, intensive visitor use and related developments have caused significant ecological damage to areas whose integrity was previously sustained through generations of Aboriginal stewardship. Finally, Aboriginal rights and land-claim issues have often been disregarded in park creation, leading to the exclusion of Aboriginal Peoples and their interests in protected-areas planning. These historic injustices must be addressed.

Economic development approaches will also have to change where protected areas take up a significant part of the landscape and where the emphasis will have to be on development that is compatible with the protected-area regime. This includes facilitating economic opportunities for communities who have consented through land-claim agreements to establish national parks.



Fortunately, there is an emerging trend to increase benefits and mitigate impacts when it comes to creating new protected areas. Benefits come in a number of forms: ecological, economic, and cultural, including opportunities for research, co-management, cultural development and preservation.

The development of a number of new national parks in the western Arctic, for example, has been accompanied by detailed park benefit agreements negotiated between Parks Canada and Aboriginal interests (e.g., the Inuvialuit with Ivvavik National Park, Yukon). These comprehensive agreements cover a wide range of issues, from the structure and responsibility of management boards to traditional access rights and protocols for archeological work. The agreements seek to ensure that the Aboriginal Peoples in the park's area will benefit economically and culturally from park creation. Some of the mechanisms include:

- location of park offices in local communities;
- encouragement for visitors to hire Aboriginal guides;
- hiring policies that give preference to local Aboriginal Peoples including priority notification of job openings; training, including on-the-job training for Aboriginal applicants; and hiring criteria that do not unnecessarily exclude local applicants;
- joint preparation of economic development or community development plans for communities around the park;
- giving Aboriginal-controlled businesses the first opportunity to take on park contracts or to establish park-based businesses;
- joint tourism promotion (including, in one case, promoting package tours to the new park);
- the right to continue to remove cultural resources such as carving stone from the park area;
- a commitment to integrate traditional knowledge into park planning and to involve local communities in planning;
- joint management and inclusion in decision-making; and
- recognition of traditional hunting rights and priority for access to fisheries.⁹⁶

Although many new northern national parks have provisions contained in land-claim agreements to ensure that Aboriginal groups take advantage of economic opportunities in relation to national parks,⁹⁷ significant barriers still exist. For example, Nellie Cournoyea, Chair and Chief Executive Officer of the Inuvialuit Regional Corporation, told the Senate Subcommittee on Aboriginal Economic Development in relation to Northern National Parks of Parks Canada's approach was restrictive and inflexible, frustrated communities and resulted in a loss of economic benefits. She added:⁹⁸

. . . it has been a serious disappointment for the Inuvialuit Regional Corporation . . . that these economic opportunities have not materialized We have seen this in extremely restrictive Parks management plans, combined with Parks policy, that limit visitor access, even in the very short tourist season, that prevent visitor access to the most impressive parts of the Park, giving the attitude that these parks are exclusive preserves. Park policy has even begun to impinge upon our efforts to promote renewable resource economic activities. Without economic activities, Inuvialuit can neither participate in the northern economy or sustain our communities. In setting aside large areas for national park status, Inuvialuit have foregone very significant potential for economic opportunity that would otherwise be possible through development of non-renewable resources, in particular mining and oil and gas. Having set aside these areas and thereby help[ed] the federal government to meet its protective priorities we believe there is onus on the government to ensure that these National Parks provide alternate economic opportunities for the Inuvialuit.

In these cases, Aboriginal Peoples see themselves as part of the "park ecology" and consider parks to be "working landscapes" and not exclusively natural preserves.⁹⁹ In response, the Senate Subcommittee outlined a series of recommendations to improve and expand economic opportunities in northern parks.



Negative impacts

In order to improve future relationships between Aboriginal communities and protected areas, we need a comprehensive understanding of past problems. In addition to helping us to avoid repeating these mistakes, this knowledge will help Aboriginal leaders and protected-areas managers understand the roots of local Aboriginal perceptions of protected areas.

a) Interference with Aboriginal traditional activities

Many of the existing national and provincial parks prohibit traditional Aboriginal land uses, including hunting, trapping and gathering, within their boundaries. In some cases, these prohibitions have severed an Aboriginal link to the land stretching back generations. It is the Government of Canada's position that treaty rights do not apply to older national parks.¹⁰⁰

Even in protected areas where Aboriginal land uses have been explicitly included as part of the management regime, the right to practise these activities may still be interfered with. One Haida community member noted, for example, that the ability to go on a vision quest at a certain shoreline area had been compromised because the area was no longer secluded and interruptions were inevitable. Part of recognizing Aboriginal rights will have to involve managing other activities to ensure that these rights can be properly exercised.

b) Infringement on Aboriginal and treaty rights

Tensions often arise from a lack of understanding of Aboriginal and treaty rights or from conflicting interpretations of what these rights entail between protected-areas managers and Aboriginal Peoples. Failure to address these unresolved rights can have significant impacts on Aboriginal communities, both in terms of a lost or compromised ability to take part in traditional activities as well as a loss of the sense of empowerment and personal esteem that comes from exercising one's rights. In many provincial parks, Aboriginal rights have generally not been clearly defined, legally recognized or thoroughly integrated into management policies.¹⁰¹

c) Management models that exclude Aboriginal Peoples

Significant barriers remain in the implementation of co-operative management and co-management of parks in northern Canada. These have repercussions for those involved in the establishment of new parks and protected areas as a result of land claims throughout Canada. Misunderstandings have arisen, for example, when, as a result of land-claims agreements, co-operative management regimes are established between Parks Canada and northern Aboriginal groups. The parties tend to interpret the co-operative management regime differently. For instance, Aboriginal groups:

... see these agreements as establishing co-management and not strictly speaking co-operative management regimes. This interpretive difference has led to, in some cases unattainable expectations and disappointment. Whereas co-management denotes equal partners, co-operative management leaves the final decision-making authority with Parks Canada.¹⁰²

Additional issues identified by the Senate Subcommittee include the following:¹⁰³

1. Aboriginal groups are prevented from taking a legitimate part in park management because of funding and capacity issues; and
2. Parks Canada representatives need to appreciate that Aboriginal Peoples see themselves as full and equal participants in the decision-making process.

According to the Senate Subcommittee it is "unlikely that the co-operative management processes set out in final agreements can be truly effective until these two fundamental issues are first addressed." It seems that shedding the old model of top-down management and moving towards a model of co-operative or even co-management for protected areas will entail many growing pains if the barriers outlined by the Senate Subcommittee are to be overcome. Monitoring the responses of Parks Canada and Aboriginal groups to these barriers and to the recommendations of the Senate Subcommittee will be critical to advancing the protected-areas discussion in Canada. Capacity build-



ing, funding, and decision-making issues all transcend northern parks. Those involved in parks establishment and management in southern Canada can learn from these experiences and build on the momentum created in the north.

d) Limiting future economic-development options

When lands are identified for protected status, the ability to use this land to develop resource-based economic initiatives is curtailed since industrial development, including logging, mining and hydroelectric development, is prohibited in protected areas. Many First Nations have shown increasing interest in resource development, be it forestry, oil-and-gas development or mining, as a way of increasing economic development and employment in their communities. Some First Nations have also developed tourism initiatives that depend on access to sport fishing and hunting opportunities (which may or may not be allowed in protected areas, depending on the jurisdiction).

Aboriginal communities will have to consider carefully to what extent future developments of these kinds should be curtailed by establishing protected areas and how much the potential benefits of protected areas — including direct employment, tourism, visitor-related businesses and protection of culture and traditional land uses — may offset the potential revenue and employment benefits of resource development. The potential economic opportunities arising from protected areas represent something of a conundrum for Aboriginal Peoples. Because historically they have been left out of park planning and management, there has been little chance for them to get involved with park-related economic activities. Today, the emphasis in many parks, especially national parks, is on scaling back or freezing the level of commercial activity within parks and shifting from recreational to ecological management. For Aboriginal communities, these changes may inadvertently create a new barrier to economic involvement in protected areas just at a time when community members are increasingly developing the skills, interests and capacity to become involved in park-related businesses and economic activities.

e) Inadequate interpretation of Aboriginal culture and heritage

Despite the fact that most protected areas in Canada are located within the traditional homelands of Aboriginal Peoples, there is often little indication of this in park literature or interpretive programs. The limited attention paid to Aboriginal cultural heritage interpretation must be confusing to Aboriginal youth who visit parks, perhaps expecting to find validation of the stories told them by their grandparents. Further compounding this problem may be the severe budget cuts made to interpretive programs in many park systems.

Benefits from protected areas

Protected areas can create benefits for Aboriginal Peoples in three major areas: wildlife and habitat conservation; employment and economic-development opportunities; and support for cultural awareness and knowledge.

a) Wildlife and habitat conservation

Aboriginal Peoples have a long history of maintaining ecological integrity within their traditional territories, while accessing resources sufficient for their physical, cultural and social needs. However, as industrial development has spread across North America, pressures on natural habitat have increased dramatically and wildlife populations have come under increasing threat. Protected areas have played a positive role in maintaining significant wildlife populations in many areas and with an increased emphasis on managing protected areas to protect ecological systems, this role is likely to continue to grow in importance.

For Aboriginal Peoples, this benefit will be most useful in protected areas where Aboriginal hunting rights have been maintained or have been re-established. Protected areas that protect calving grounds, or nesting or staging areas for wildlife populations upon which Aboriginal Peoples depend could be equally important. Vuntut National Park, for example, was established to protect the calving grounds of the porcupine caribou herd, which is essential to the Inuit.



Protected areas may also play a key role in conserving healthy populations of traditionally important foods or ceremonial plant species. As with wildlife conservation, these benefits will depend on the extent to which Aboriginal use is allowed. Increasingly, park authorities are entering into agreements with Aboriginal groups to allow the harvesting of culturally important plants while ensuring that plant populations remain healthy.

b) Employment and economic-development opportunities

Many Aboriginal communities are located in regions where there are limited development options. Some of these regions may have potential for resource-extraction activities such as logging. Other regions may be beyond the northern boundary for commercial logging or community members may choose not to pursue these opportunities. Communities may also wish to balance resource-extraction activities with protected areas that protect traditional land-use activities. Whatever the situation, parks and protected areas can present another development pathway that can augment or enhance economic-development activities.

Protected areas have generally created two broad types of economic benefits for surrounding communities. The first is direct employment in protected-areas management or services. The Watchmen at Gwaii Haanas and the gatekeepers at Quetico are two examples of this, while firefighters employed by Parks Canada at parks such as Prince Albert National Park are another. While Aboriginal employment levels have not historically been in proportion to Aboriginal populations surrounding protected areas, efforts are now being made to monitor these levels and to work to achieve better Aboriginal employment rates in parks.

The second development opportunity involves businesses related to the proximity of protected areas. These may include the supply of goods and services to parks or the development of businesses that serve the needs of visitors to the parks. Examples of the former include firefighting or park maintenance contracts, while the latter include everything from guiding and outfitting in the park to cultural tourism and accommo-

ation. Studies have found that park status is a major draw for ecotourists, who associate such status with a diverse and undisturbed environment. Ecotourism activities are the fastest growing sector in the tourism industry, growing on average four to 10 percent per year. Canadian ecotourists spend on average \$5,000 per year on nature-related travel. Canadians overall spent \$7.2 billion on outdoor activities in natural areas in 1996.¹⁰⁴

Some parks are now giving Aboriginal-run businesses preferential access to economic opportunities. Training programs are also helping more Aboriginal Peoples to become involved in parks as wardens, interpretative staff and managers.

c) Cultural awareness and knowledge

Some parks have provided Aboriginal Peoples with an opportunity to present important aspects of their culture and knowledge through the design and programming of visitor centres and the development of interpretive programs. These cultural activities can provide inspiration and instill pride among Aboriginal Peoples as well as improve cultural understanding among non-Aboriginal people.

For example, in 1999, leaders of the Rainy River First Nations, federal and provincial officials and business partners officially opened the Kay-Nah-Chi-Wah-Nung Historical Centre. The centre is situated on the grounds of the national historical site commonly known as the Manitou Mounds. According to the Kay-Nah-Chi-Wah-Nung website,¹⁰⁵ Kay-Nah-Chi-Wah-Nung is Ojibway for “Place of the Long Rapids.” More than just a physical location on the Rainy River in northwestern Ontario, Kay-Nah-Chi-Wah-Nung is a “place of spirituality, history and beauty.” Manitou Mounds was designated as one of Canada’s National Historical Sites in 1970 and its importance has been acknowledged for generations by Aboriginal and non-Aboriginal people.

Cultural facilities developed in association with parks also offer a place for Aboriginal Peoples to practise and share their traditions with each other. These facilities may support programs that help to maintain forms of



traditional knowledge such as artisanal crafts, knowledge of medicinal and culinary herbs, knowledge of Aboriginal systems of land stewardship, etc. The summer interpretive program at Prince Albert National Park, for example, has provided opportunities for elders to speak about the importance of medicinal herbs gathered from the forest. In Ontario, Quetico Provincial Park is asking elders from the Lac La Croix First Nation to share their knowledge of the area and its creatures. Such opportunities can enrich the visitor experience while also opening an important channel for the transfer of knowledge and traditions to future generations of Aboriginal Peoples.

Protected-area managers are also becoming more interested in learning from and integrating Aboriginal ecological knowledge in park planning and management. The recently initiated park-management planning process at Prince Albert National Park, for example, will include a round of consultation specifically designed to integrate the knowledge and perspectives of local Aboriginal Peoples.

5.3 Approaches to Mitigating Impacts and Improving Benefits

This section presents some of the approaches that have been taken to mitigate negative impacts and to improve the level of benefits arising from protected areas. In particular, it addresses four approaches — systems of access for traditional use; Aboriginal participation in protected-areas management; promotion of Aboriginal entrepreneurship; and impact and benefit agreements.

Systems of access for traditional use

Opposition to the practice of traditional harvesting activities in protected areas has its basis in three general areas: lack of recognition that Aboriginal Peoples have any special access rights; concern over the impact of Aboriginal harvesting on species health; and concern that Aboriginal hunting may present safety problems for park visitors. Approaches to overcoming these concerns have been implemented in a number of protected areas, particularly in more northern parks. For example, many of the new national parks in the western Arctic have provisions for Aboriginal-run outpost camps and for visitor management to ensure

that visitors do not interfere with traditional harvest activities. The park agreements also set out how conservation measures may be implemented to protect wildlife populations if necessary.¹⁰⁶

Generally, the first step in implementing an access system involves the recognition of an Aboriginal access right. This recognition may arise at the outset of park development (such as in the case of Gwaii Haanas), may come later as a result of discussion and negotiation (such as in the case of Algonquin Provincial Park), or it may arise through court action.

Once it is accepted that Aboriginal Peoples should have access, specific systems can be designed to address conservation and safety concerns. These may include Aboriginal-run harvest control systems like those adopted for hunting at Algonquin and for the harvest of medicinal plants in some national parks. Aboriginal hunting can also be separated from other visitor activities by time or space (e.g., restricting hunting to seasons or periods when recreational use is low, or restricting visitor access to certain park areas where hunting may be occurring) and protocols for joint monitoring of wildlife populations can be established with park staff.

Aboriginal participation in protected-areas management

The direct involvement of Aboriginal Peoples in park establishment and management is becoming more and more common. Co-management agreements offer Aboriginal communities an opportunity to shape the development of protected areas to reflect their values. Gwaii Haanas is an excellent example of co-management. As a co-management body, the park's Archipelago Management Board is built on a foundation of mutual respect and on formal recognition of the legitimate authority held by the Haida over their traditional lands.

In other situations, Aboriginal participation in management may be more limited. The involvement of Aboriginal communities in Prince Albert National Park's management-planning process through a targeted consultation process is one such example. In this case, there is limited recognition on the part of Parks Canada



that Aboriginal communities have any existing rights to their former traditional territories now within the park. Nonetheless, this separate consultation process may help to strengthen relationships while bringing Aboriginal insights and values into play in the park's management.

The ability to participate in protected-areas management, whether through formal co-management arrangements or through ad hoc input, is important in designing management regimes that build on the unique knowledge Aboriginal Peoples have generated over centuries of contact with specific habitats. Aboriginal communities have a special connection to the animals and their habitat and are often very in tune with the health of these populations. This allows them to bring great value to the protected-areas planning table, a fact that is increasingly being recognized by park planners.

Promotion of Aboriginal entrepreneurship and employment

Millions of dollars are spent by visitors to Canada's national and provincial parks each year. Revenues from visitor expenditures to Alberta's Rocky Mountain National Parks (Banff, Jasper and Waterton) alone in 1998 were estimated at \$954 million. The table below contains a breakdown of visitor expenditures.¹⁰⁷

Tourist Activity		
Accommodation	\$372,384,000	39%
Meals and Refreshments	\$215,716,000	23%
Vehicle and Car Rental	\$93,841,000	10%
Local and Community Transportation	\$56,586,000	5%
Recreation and Entertainment	\$95,708,000	10%
Retail Purchase and Other	\$120,542,000	13%
Total	\$954,777,000	100%

While the majority of business opportunities in existing parks are dominated by non-Aboriginal businesses, Aboriginal Peoples are taking a stronger role in directing and developing such opportunities in many new protected areas.

The allocation of a percentage of total visitor nights to the Haida at Gwaii Haanas is a good example of one measure that places some control over business development in the hands of local Aboriginal Peoples. This control will allow the community to influence the direction in which tourism develops, with a view to avoiding negative impacts on other values held by community members. It will also help the community decide on an appropriate model for tourism in the protected area, such as ecotourism, cultural-tourism or facility-based tourism.

Impact and benefit agreements

Recognition of the potential benefits and impacts that can arise when parks are established has led Aboriginal communities and their organizations to negotiate agreements specifically designed to increase these benefits and to mitigate impacts. Some of these agreements may be comprehensive, covering employment, training, economic development and cultural maintenance, while others may focus on just one particular area, such as employment. Many modern protected-area agreements include Aboriginal employment targets. In order for these targets to be achieved, however, education and training programs must also be implemented.

For example, an Employment Benefit Agreement covering Quetico Provincial Park states that a minimum of 50 percent of park positions will be filled by Aboriginal Peoples. The agreement calls for adequate training to ensure that Aboriginal employees have appropriate qualifications and skill levels that will allow for employment at all levels of park management. A similar agreement has been put in place at Gwaii Haanas.

Education and Training Benefit Agreements are typically established with cost sharing, two-way knowledge sharing and long-term needs analysis and monitoring. These agreements help to ensure successful protected-area operations while also meeting Aboriginal employment targets. Efforts to bridge cultural and institutional differences in understanding have also been made in order to create effective working relationships between Aboriginal and non-Aboriginal parks staff.





6.0 A Way Forward: Applying the Lessons Learned

In moving forward with a protected-areas agenda in Canada, the following points could serve as a framework for assessing whether the needs, values and aspirations of Aboriginal Peoples are being adequately addressed in the establishment and/or management of particular protected areas.

Compatibility with Aboriginal perspectives and values

It is important to consider the extent to which the objectives or aims of the protected area are in line with the perspectives and values of Aboriginal Peoples whose traditional territories are involved. Good relations between local Aboriginal communities and protected areas are best achieved when the values that these areas are based on are agreed to by both Aboriginal communities and park managers. Protected areas can combine differing world views through mutual recognition and respect for the alternative Aboriginal perspectives that may exist. This recognition creates a foundation for the construction of protected-areas management systems that allow for co-existence between Aboriginal values and the conservation, recreation and heritage values that typically are held by non-Aboriginal protected-areas advocates.

Compatibility with Aboriginal aspirations

Historically, Aboriginal Peoples' interest in protected areas was focused on maintaining access to traditional hunting territories in the face of rapid industrial-resource development, agricultural transformation of the landscape and encroaching European settlement. More recent aspirations relate to the establishment of viable and sustainable economies that may be based on a combination of commercial and traditional land uses.

Protected areas have an important role to play in bolstering the well-being of local Indigenous cultures. The natural richness of the land has provided Aboriginal Peoples with opportunities to pursue and meet their aspirations over many generations. Ensuring that protected areas truly help meet Aboriginal aspirations will require considerable effort to establish strong partnerships between Aboriginal communities and protected-areas managers.

Aboriginal and treaty rights

In the past, processes for establishing and defining Aboriginal and treaty rights have been distinct from processes used to establish protected areas. More recently, land-claim agreements have often integrated these two processes. Aboriginal Peoples have been most successful in gaining involvement in protected areas through activism based on treaty claims or land-claims negotiations. This situation has led to two distinct scenarios for increasing Aboriginal involvement in parks and protected areas. In the first, protected areas are established within modern treaties or as part of a modern treaty-making process. The second scenario occurs in the context of protected areas established prior to modern treaty arrangements. This scenario is characterized by a lack of recognition or a narrow view of previously established treaty rights. Typically under this scenario, Aboriginal activists challenge laws or policies, which deny them access to undertake traditional activities.

Many Aboriginal communities will find themselves in scenario two. These communities have had little opportunity to influence how protected areas impact them. Court actions to ensure existing rights are respected with regard to protected areas can take a significant toll on their limited human and financial resources. As a result, many instances where Aboriginal or treaty rights may exist — and might support Aboriginal Peoples receiving enhanced benefits from protected areas — simply go unrealized.



Involvement in establishment and management

Many of the issues above can only be addressed by involving Aboriginal Peoples in the process of protected-area establishment. The decision-making authority and consent of Aboriginal Peoples should be considered. Ongoing management of a protected area can benefit from incorporating the knowledge of Aboriginal Peoples.

Aboriginal participation and influence are needed if Aboriginal perceptions, values and aspirations are to be reflected in protected-areas design and management. With increased involvement, Aboriginal communities are able to influence park development directions related to tourism, heritage interpretation and land management. Active Aboriginal participation and consent in protected-areas establishment and management are therefore a key requirement.

Impacts and benefits to Aboriginal communities

Today, for many Aboriginal communities, the impacts of protected areas continue to outweigh the benefits. But in many newly established protected areas where planning has addressed Aboriginal rights, values and aspirations, this balance is shifting in favour of Aboriginal communities.

The experience of Canadian Aboriginal Peoples with protected areas suggests that, in the absence of specific efforts to generate positive benefits, Aboriginal communities are likely to suffer negative impacts from the establishment of protected areas. The experience also suggests, however, that, given a reasonable level of cooperative effort, Aboriginal communities may be able to achieve net benefits from protected areas — benefits that support Aboriginal economic and cultural-development aspirations.

Generating benefits for Aboriginal communities will often require a different approach involving more time and offering more opportunity to gain a feel for non-Aboriginal systems of business. Deliberate steps need to be taken to offer Aboriginal Peoples a chance to participate more fully in economic-development initiatives and to close the gap between the standard of living in Aboriginal communities and Canadians in general. It will be important to pace development decisions so that Aboriginal Peoples whose traditional lands may be affected are given a real opportunity to shape any potential development to meet their needs and aspirations.

The future of parks and protected areas in Canada rests on the ability of Aboriginal Peoples and other Canadians who have a stake in these areas to find common ground through mutual respect, consent and equality in decision-making. A growing interest in ensuring that protected areas fulfill their increasingly critical role as protectors of ecological systems and species represents an opportunity to incorporate the knowledge and values of Aboriginal Peoples in managing lands that they have known and cherished for generations.





Endnotes

¹ For the purposes of this paper, we use the term Aboriginal Peoples when referring to Canada’s Indigenous peoples and this term includes Indian, Inuit and Métis peoples of Canada as noted by the Royal Commission on Aboriginal Peoples in 1996 and as recognized in *Canada’s Constitution*.

² Canadian Advisory Council. 1991. *A Protected Areas Vision for Canada*. p. 18.

³ Ibid, p. 20.

⁴ IUCN - The World Conservation Union. World Commission on Protected Areas: World Parks Congress. iucn.org/themes/wcpa/wpc2003/about/about.htm

⁵ Stevens, Stan. 1997. *Conservation Through Cultural Survival: Indigenous Peoples and Protected Areas*. Covelo California: Island Press. p. 17.

⁶ Parks Canada. 1997. *National Park System Plan*. p. 4. www2.parksCanada.gc.ca/library/downloaddocuments/documentsarchive/sysplan_e.pdf

⁷ See www.parksCanada.gc.ca/apps/cp-nr/release_e.asp?id=636&andor=nr for the news release.

⁸ World Commission on Environment and Development. 1987. *Our Common Future*. p. 147.

⁹ World Wildlife Fund Canada. *2000 Endangered Spaces — The Wilderness Campaign that Changed the Canadian Landscape 1989-2000*.

¹⁰ Hummel, Monte (Ed.). 1995. *Protecting Canada’s Endangered Spaces — An Owner’s Manual*. Toronto: Key Porter Books.

¹¹ The National Parks Policy can be accessed at www.parksCanada.gc.ca. Site visited January 28, 2003.

¹² Parks Canada. 1997. *National Park System Plan*. p. 4. www2.parksCanada.gc.ca/library/downloaddocuments/documentsarchive/sysplan_e.pdf

¹³ Peepre, J. and P. Dearden. 2002. “The Role of Aboriginal Peoples,” in P. Dearden and R. Rollins (Eds.) *Parks and Protected Areas in Canada: Planning and Management*. Second Edition. Oxford University Press. p. 324.

¹⁴ Ibid.

¹⁵ Lands for Life was a comprehensive land-use planning program launched by the Government of Ontario in February 1997 covering central and northern Ontario. The process had a four-part mandate:

- * Complete the province’s protected-areas system;
- * Increase certainty for the forestry and mining sector;
- * Recognize the land-use needs of the resource-based tourism industry; and
- * Enhance hunting and fishing opportunities (added after the process was launched).

After 18 months of public hearings conducted by three regional Round Tables, a consolidated report was presented to the government. The public response to the report, which failed to fulfill the mandate of the Lands for Life Round Tables, was

overwhelmingly negative. The government then decided to hold negotiations with the Partnership for Public Lands (Federation of Ontario Naturalists, CPAWS-Wildlands League, and World Wildlife Canada) and the forest industry to try to resolve the impasse Lands for Life had reached. These negotiations led to the announcement on March 29, 1999 of 378 new protected areas and the signing of the Ontario Forest Accord.

The provincial government called the plan that resulted from the Lands for Life process “Ontario’s Living Legacy.” A government announcement has seldom rung more true - the 378 new parks and conservation reserves that are a central part of the Legacy are a gift to future generations. And now we also have a mechanism to establish additional protected areas in the future while addressing economic goals. See www.wildontario.org

¹⁶ National Aboriginal Forestry Association (NAFA). 1996. *Aboriginal Forest-Based Ecological Knowledge in Canada — Discussion Paper*. Ottawa.

¹⁷ British Columbia Treaty Commission. 1999. *Annual Report*. www.bctreaty.net/annuals/99negotiations.html

¹⁸ McGregor, D. 2000. *From Exclusion to Co-existence — Aboriginal Participation in Ontario Forest Management Planning*. PhD Thesis, University of Toronto.

¹⁹ Erasmus, Georges. 1989. “A Native Viewpoint,” in M. Hummel (Ed.). *Endangered Spaces: The Future for Canadian Wilderness*. Toronto: Key Porter Books.

²⁰ Royal Commission on Aboriginal Peoples (RCAP). 1996. *Report of the Royal Commission on Aboriginal Peoples. Volume 1 — Looking Forward, Looking Back*. Ottawa: Canada Communication Group.

²¹ Ibid, p. 38.

²² Ibid.

²³ RCAP. 1996. *Volume 1 — Looking Forward, Looking Back*. p. 491.

²⁴ Ibid.

²⁵ Ibid, p. 491.

²⁶ Ibid p. 494.

²⁷ Ibid p. 498.

²⁸ Lillian Trapper of Moose Cree First Nation, Ontario, offered the following account to better illustrate this concept. As part of a land-use planning process in her community, individuals were asked what areas they would like to have protected. They were dumbfounded. Protecting all the land had always been a part of their approach to land use. Identifying specific bits for “protection” didn’t make sense. Community researchers recognized that the question needed to be more appropriately phrased as, “What areas could be potentially developed, and how might this development be appropriate to the land in question?”

²⁹ Ross, Monique. M. and P. Smith. 2002. *Accommodation of Aboriginal Rights: the need for Aboriginal Forest Tenure a synthesis report*. Alberta: Sustainable Forest Management Network. p. 4.



³⁰ Presentation by Steve Ginish. First Nation Forestry Program — Provincial Territorial Management Committee Meeting - Fredericton, New Brunswick. March 2000.

³¹ Juri Peepre and Phil Dearden, 2002.

³² The Delgamuukw decision (see section 3.3) described Aboriginal title as a particular type of Aboriginal right, being a right to the land itself. When proven, Aboriginal title is a proprietary interest, held communally, and includes the right to choose how the land can be used. Aboriginal title is subject to the ultimate limit that Aboriginal uses of land cannot destroy the ability of the land to sustain activities that gave rise to the claim of title in the first place.

³³ Union of British Columbia Indian Chiefs. 2001. *Certainty: Canada's Struggle to Extinguish Aboriginal Title*. www.ubcic.bc.ca/certainty.htm.

³⁴ Treaties are usually signed between the Government of Canada, individual provincial government and the affected Aboriginal Nation.

³⁵ See Leonard I. Rotman, *Taking Aim at the Canons of Treaty Interpretation in Canada*. 1997, 46 UNBLJ 12.

³⁶ Smith, P. 1998. "Aboriginal and Treaty Rights and Aboriginal Participation: essential elements of sustainable forest management." *Forestry Chronicle*. 74 (3):7.

³⁷ *R. v. Van der Peet*, Supreme Court of Canada. August 1996.

³⁸ Peepre and Dearden. 2002.

³⁹ *Ibid*.

⁴⁰ *Ibid*, p. 325.

⁴¹ Since Van der Peet, we have a reasonably clear test for Aboriginal rights. The real problem is that governments are forcing First Nations to litigate, and it can be prohibitively expensive and difficult to prove the facts necessary to meet the test (since it involves establishing facts that go way back).

⁴² Ontario's *Heritage Hunting Act* received Royal Assent in June 2002. With this Act, sport hunting and fishing are legally recognized before anything else in Ontario. For example, according to the CPAWS-Ottawa Valley Chapter, "we have no 'right' to clean air, safe water, protected ecosystems, protected species, or even the right to quiet enjoyment of nature." Furthermore it is unclear, "whether this legislation [will] be just a piece of 'feel-good' paperwork with little impact on the ground, or whether it serves to obstruct conservation or other policies concerning land or wildlife management of interest to the public at large, only time will tell." For more information see www.cpaws-ov.org/action8.htm.

⁴³ A number of earlier cases addressed Aboriginal rights under other branches of law, such as trust law.

⁴⁴ Peepre and Dearden. 2002.

⁴⁵ *Ibid*, p. 328.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ Delgamuukw — A Summary of the Supreme Court of Canada Decision. Pape and Salter. January 9, 1998.

⁵¹ See *Canadian Parks and Wilderness Society v. Canada (Minister of Canadian Heritage)* [2001] F.C.J. No. 1543; this decision is currently under appeal.

⁵² *Ibid*, para. 92.

⁵³ *Ibid*, para 172.

⁵⁴ See *Keewatin v. Minister of Natural Resources, Ontario Superior Court of Justice*, Court File Number 211/2000 (ongoing) for an example of a constitutional challenge to clearcutting in northern Ontario, based on the applicant's treaty-protected right to trap.

⁵⁵ Parks Canada. 1994. *Parks Canada Guiding Principles and Operational Policies*. Hull: Minister of Supply and Services Canada, p. 3. www2.parkscanada.gc.ca/Library/DownloadDocuments/DocumentsArchive/PCPolicy_e.PDF

⁵⁶ *Ibid*, p. 4.

⁵⁷ Parks Canada Agency. 1997.

⁵⁸ Peepre and Dearden. 2002.

⁵⁹ *Canada National Parks Act*, Sec. 17 (2) "Land-claim agreements."

⁶⁰ See section 16 w of the *Canada National Parks Act*. laws.justice.gc.ca/en/N-14.01/18250.html (site visited April 24, 2003).

⁶¹ Boyd, David R. 2002. *Wild by Law: A report card on laws governing Canada's parks and protected areas, and a blueprint for making these laws more effective*. POLIS Project, University of Victoria.

⁶² The United Nations Environmental Program (UNEP) convened the Ad Hoc Working Group of Experts on Biological Diversity to explore the need for an international convention on Biological Diversity. The Convention was inspired by the world community's growing commitment to sustainable development.

⁶³ United Nations Environment Program. 1994. *Convention on Biological Diversity*. Text and Annexes.

⁶⁴ Subcommittee on Aboriginal Economic Development in Relation to Northern National Parks. 2001. *Northern Parks — A New Way: A Report of the Subcommittee on Aboriginal Economic Development in relation to Northern National Parks of the Standing Senate Committee on Aboriginal Peoples*. www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/park-e/rep-e/rep01sep01-e.htm

⁶⁵ *Ibid*.

⁶⁶ *Ibid*.

⁶⁷ One definition of a culturally modified tree (CMT) is "a tree that has been altered by native people as part of their traditional use of the forests." (See: otaku.unbc.ca/nfrep/features_march.html)

⁶⁸ Gardner, J. 2001. *First Nations Co-operative Management of Protected Areas in British Columbia: Tools and Foundation*. Vancouver: Canadian Parks and Wilderness Society and Ecotrust Canada. p.39.

⁶⁹ Personal communication, Parks Canada staff, November 2002 and personal communication, Charles Whitecap, Prince Albert Grand Council, February 2003.

⁷⁰ Personal communication. Nolan Henderson. 2001.

⁷¹ Personal communication, Parks Canada staff, November 2002.

⁷² The Kingsmere River dam was removed in 1999 and there have been no further dams constructed since the early years of the park.



- ⁷³ Personal, communication, Parks Canada staff, November, 2002.
- ⁷⁴ Personal communication, Parks Canada staff, November 2002.
- ⁷⁵ The Cree called Grey Owl “Wapoooh” meaning “White Owl” - he preferred to avoid the allusion to “white” however.
- ⁷⁶ Personal communication, Parks Canada staff, November 2002.
- ⁷⁷ Lac La Croix First Nation information page — www.advancenet.net/~barnard/11cfn.htm and personal communication, Henry Ottetail, Lac La Croix, 2002.
- ⁷⁸ According to *Quetico Provincial Park Revised Park Policy 1995*, watercraft by not more than 10 horsepower. and used by a member of Lac La Croix First Nation who is also a member of the Lac La Croix Guides Association, may operate for the purposes of guiding. Additionally, watercraft of unlimited horsepower and used by a member of LLCFN who is also a member of the Lac La Croix Guides Association may be operated for the purposes of guiding on Wegwagum Bay of Lac Lacroix up to Twin Falls.
- ⁷⁹ Personal communication, R. Schneider, Edmonton Chapter of the Canadian Parks and Wilderness Society, 2002.
- ⁸⁰ IUCN - The World Conservation for Nature. 2000. *Indigenous and Traditional Peoples and Protected Areas — Principles, Guidelines and Case Studies (series no. 4)*.
- ⁸¹ Personal communication, Stephen Woodley, Parks Canada. 2002.
- ⁸² Webb, Jim. *Land-Use Planning and Protected Areas*. The LRRCFN-TCFN Co-operative Management Planning Approach. October 2001.
- ⁸³ Ibid.
- ⁸⁴ LRRCFN assert that the present membership of the nation, being natural descendants of the 210 members of the Little Red River Band of Indians documented as using Wood Buffalo Park in 1922 have treaty and Aboriginal rights within the northern portion of the current park (i.e., the park established in 1922), and the southwestern quadrant of the current park is a “special reserve” (i.e., the 5,000 square kilometres added to the park in 1926). Personal communication, Jim Webb, February 2003.
- ⁸⁵ Ibid.
- ⁸⁶ Parks Canada Agency. 2000. “Unimpaired for Future Generations? Protecting Ecological Integrity with Canada’s National Parks. Vol. I, A Call to Action,” and “Vol. II, Setting a New Direction for Canada’s National Parks,” *Report of the Panel on the Ecological Integrity of Canada’s National Parks*. Ottawa.
- ⁸⁷ Personal communication, Jim Webb, Little Red River Cree Nation.
- ⁸⁸ Personal communication, Leanne Simpson, Trent University. 2002.
- ⁸⁹ Parks Canada Agency. 2000. “Unimpaired for Future Generations? Protecting Ecological Integrity with Canada’s National Parks. Vol. I, A Call to Action,” *Report of the Panel on the Ecological Integrity of Canada’s National Parks*. Ottawa. pp. 10-12.
- ⁹⁰ WHMIS (Workplace Hazardous Materials Information System) is a comprehensive program providing information on the safe use of hazardous materials used in Canadian workplaces.
- ⁹¹ Personal communication, George Smith, Canadian Parks and Wilderness Society. 2002.
- ⁹² Fort Nelson First Nation. 2001. “Treaty No. 8 First Nation and the MKMA,” *Muskwa-Kechika Management Area News*. p. 3.
- ⁹³ Oil and Gas Commission. 2001. “Industry Update,” *Muskwa-Kechika Management Area News*. p. 3.
- ⁹⁴ Tombstone Steering Committee. 2000. Tr’ondek Hwech’in Final Agreement, Schedule A.
- ⁹⁵ This case study was generously contributed by Greg Yeoman and Karen LeGresley Hamre of the NWT Chapter of the Canadian Parks and Wilderness Society.
- ⁹⁶ Parks Canada Agency. An Agreement for the Establishment of a National Park on Banks Island, 1992; Inuit Impact and Benefit Agreement for Auyuittuq, Quttinirpaaq and Sirmilik National Parks 1999; The Tukut Nogait Agreement: An Agreement to Establish a National Park in the Inuvialuit Settlement Region Near Paulatuk, Northwest Territories, 1996.
- ⁹⁷ Senate Subcommittee. 2001.
- ⁹⁸ Ibid.
- ⁹⁹ Ibid.
- ¹⁰⁰ Personal communication, Parks Canada staff, 2002. Moreover Section 17 of the *Canada National Parks Act* allows the Minister to make regulations regarding traditional resource harvesting in certain parks. The Act reads:
17. (1) The Governor in Council may make regulations respecting the exercise of traditional renewable resource harvesting activities in
- (a) Wood Buffalo National Park of Canada;
 - (b) Wapusk National Park of Canada;
 - (c) Gros Morne National Park of Canada;
 - (d) any national park of Canada established in the District of Thunder Bay in the Province of Ontario;
 - (e) Mingan Archipelago National Park Reserve of Canada; and
 - (f) any national park of Canada established in an area where the continuation of such activities is provided for by an agreement between the Government of Canada and the government of a province respecting the establishment of the park.
- ¹⁰¹ Boyd, David R. 2002. *Wild by Law: A report card on laws governing Canada’s parks and protected areas, and a blueprint for making these laws more effective*. POLIS Project, University of Victoria.
- ¹⁰² Senate Subcommittee. 2001.
- ¹⁰³ Ibid.
- ¹⁰⁴ “Eco Audit: Play,” *Canadian Geographic*, May/June 2002. p. 36.
- ¹⁰⁵ www.longsault.com/menu.html visited February 2003.
- ¹⁰⁶ Parks Canada Agency. An Agreement for the Establishment of a National Park on Banks Island, 1992; Inuit Impact and Benefit Agreement for Auyuittuq, Quttinirpaaq and Sirmilik National Parks 1999; The Tukut Nogait Agreement: An Agreement to Establish a National Park in the Inuvialuit Settlement Region Near Paulatuk, Northwest Territories, 1996.
- ¹⁰⁷ Alberta Economic Development. 2000. *The Economic Impact of Visitors to Alberta’s Rocky Mountain National Parks in 1998*. p. 4.





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Appendix I: IUCN - The World Conservation Union's Categories of Protected Areas Management

CATEGORY Ia : Strict Nature Reserve

Protected area managed mainly for science

Definition: Area of land and/or sea possessing some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.

CATEGORY Ib : Wilderness Area

Protected area managed mainly for wilderness protection

Definition: Large area of unmodified or slightly modified land, and/or sea, retaining its natural character and influence, without permanent or significant habitation, which is protected and managed so as to preserve its natural condition.

CATEGORY II : National Park

Protected area managed mainly for ecosystem protection and recreation

Definition: Natural area of land and/or sea, designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations, (b) exclude exploitation or occupation inimical to the purposes of designation of the area and (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.

CATEGORY III : Natural Monument

Protected area managed mainly for conservation of specific natural features

Definition: Area containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

CATEGORY IV : Habitat/Species Management Area

Protected area managed mainly for conservation through management intervention

Definition: Area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species.

CATEGORY V : Protected Landscape/Seascape

Protected area managed mainly for landscape/seascape conservation and recreation

Definition: Area of land, with coast and sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area.

CATEGORY VI : Managed Resource Protected Area

Protected area managed mainly for the sustainable use of natural ecosystems

Definition: Area containing predominantly unmodified natural systems, managed to ensure long term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.

(Source: www.unep-wcmc.org/protected_areas/categories/index.html)





Appendix II: Quetico Agreement of Co-Existence Principles

Principles:

The Parties agree upon the following principles in respect of this Agreement:

- (1) All governments in Ontario, provincial and First Nations alike, have a shared responsibility to preserve, protect and enhance lands and natural resources for the benefit of future generations.
- (2) The creation of Quetico Provincial Park has partially severed the people of Lac La Croix First Nation from their sacrosanct relationship with their ancestral homeland, the social health of Mind, Body and Spirit which is attributable to their relationship with the land and the economic benefits derived from the land area.
- (3) The Parties agree that in light of indignities suffered by the citizens of the First Nation; their displacement from their traditional homeland and the loss of significant economic opportunities due to the creation of Quetico Provincial Park, it is vital to foster and promote a co-operative government-to-government relationship of co-existence which recognizes the First Nation as a co-decision-maker in accordance with the provisions of this Agreement in the Quetico Area while providing significant cultural, social and economic opportunities to the First Nation.
- (4) The First Nation must be an active and full participant in the future planning, development and management of the Quetico Area in accordance with the provisions of this Agreement and share in the economic benefits derived from that Area.
- (5) The maintenance of the wilderness values of Quetico Provincial Park is of paramount importance to the people of Ontario and is consistent with sustaining the cultural and social integrity of both the First Nation and the Park.
- (6) The Parties agree that courses of action must be developed and implemented to meet the First Nation's economic needs and aspirations while consistent with the wilderness values of Quetico Provincial Park.

- (7) The Parties recognize that the lands and resources of Quetico Provincial Park have always been relied upon to fill many of the economic needs of the First Nation but that Quetico Provincial Park cannot be relied completely upon to fill all of the economic development needs of the First Nation.
- (8) The Parties recognize that improved power boat and aircraft access by the First Nation, in the short term, to Quetico Provincial Park by the First Nation is critical for the First Nation to realize its economic development needs and viability.
- (9) The Parties agree that in keeping with the principles outlined above, to work towards the elimination of power boat and aircraft access to Quetico Provincial Park.



First Nations, Metis and Inuit Land Claims

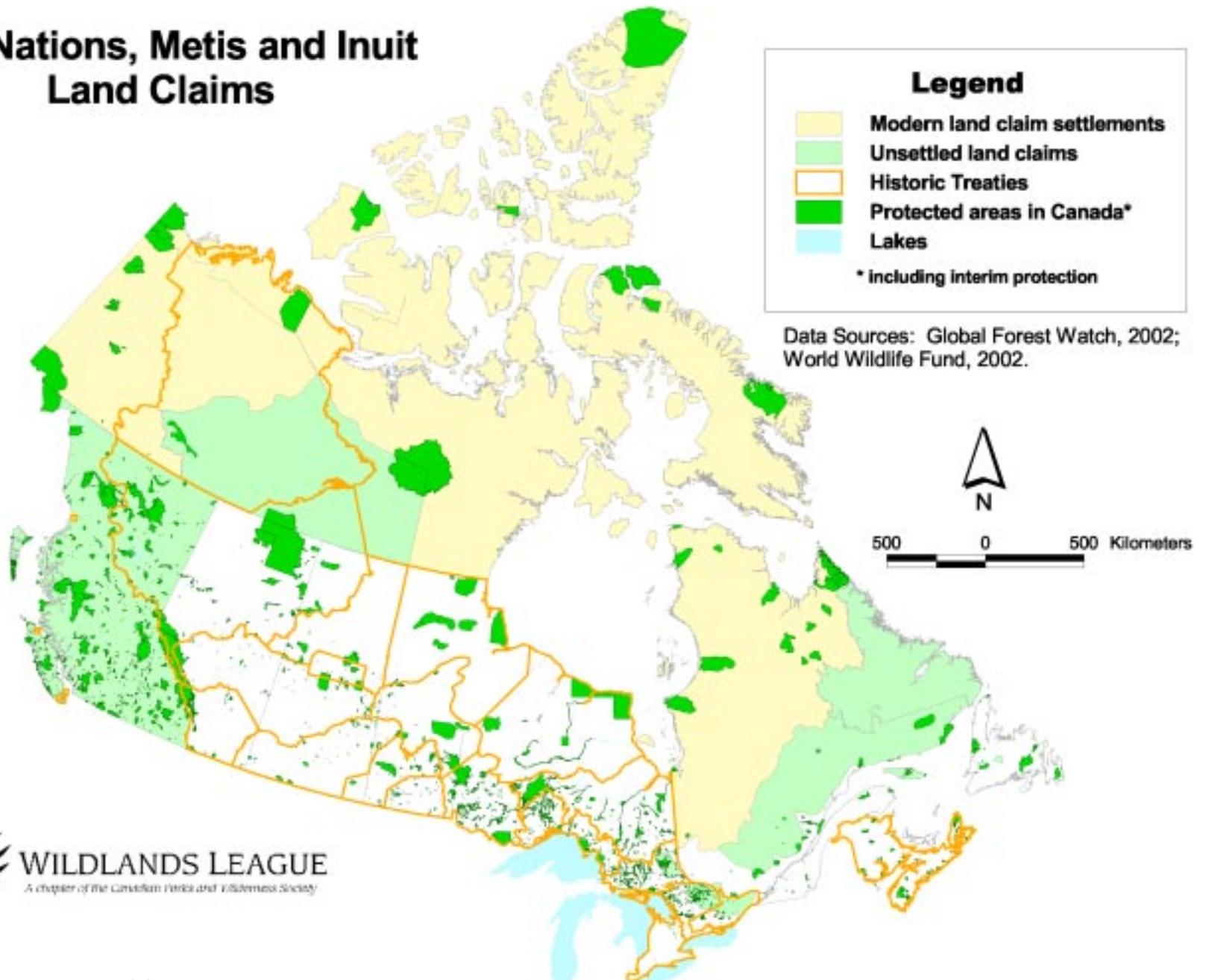


Figure 1: A map of Canada illustrating modern land claim settlements, unsettled land claims, historic treaties and protected areas



National Aboriginal
Forestry Association

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de Foresterie Autochtone

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