

MARINE PLANNING AND CONSERVATION



PROJECT FOSTERING THE DEVELOPMENT OF AN INDIGENOUS REFLECTION AND VISION REGARDING MARINE PLANNING AND CONSERVATION INITIATIVES

**Technical sheet for the topic
indigenous conservation sites.**




FNQLSDI
FIRST NATIONS OF QUEBEC AND LABRADOR
SUSTAINABLE DEVELOPMENT INSTITUTE

The objective of this sheet is to support and inform the thinking of First Nations as well as the Department of Fisheries and Oceans Canada (DFO) within the framework of this project. DFO, and more specifically the Marine Planning and Conservation Division (MPCD), Quebec region, is the partner department of this project.

As a reminder, the objective of this project is to allow the communities concerned by the Estuary and Gulf of St. Lawrence Bioregion to develop a reflection and a vision on the topics of marine planning and conservation, in preparation for discussions with the government of Canada on these topics.

This sheet is a working document which aims to shed some light on the topic of "Indigenous conservation sites."

This technical sheet was produced in May 2021 by the First Nations of Quebec and Labrador Sustainable Development Institute (FNQLSDI) with the contribution of the Society for Nature and Parks of Canada - Quebec section (SNAP Quebec).



TECHNICAL SHEET FOR THE TOPIC INDIGENOUS CONSERVATION SITES

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Section 1.

Description of the topic

1.1 Indigenous conservation sites: definition of the concept

Whether designated an Indigenous protected and conserved area (IPCA), Indigenous community conserved area (ICCA) or, the new status recently adopted in Québec, Aboriginal-led protected area (ALPA), Indigenous conservation sites all have as their foundation the conservation of cultural values closely linked to nature, in addition to the conservation of biodiversity.

1.1.1 ICCAs internationally

Internationally, the International Union for the Conservation of Nature (IUCN) and the Convention on Biological Diversity (CBD) use the term ICCA to refer to Indigenous conservation sites. ICCAs have 3 essential and fundamental characteristics:

1. “There is a **strong and deep connection** between an Indigenous people or local community and a territory, area or habitat of a species (e.g. for historical or cultural reasons, or for questions of survival and of dependence on a lifestyle).
2. This people or this community plays a **major role in making decisions and in their implementation (governance and management)** for everything concerning this territory, this area, or this habitat. This implies that there is a **community institution** and that it has the capacity to **develop and enforce regulations** (in many situations, other actors are also involved, but the main decision-making remains in the hands of the people or of the *de facto* community).
3. The decisions in terms of governance and the management efforts of the people or the community allow the **conservation of the nature of the territory**, the area or the habitat, as well as the **associated conservation of cultural values and the wellness of the community** (even if the conscious objective of management is not a conservation objective *per se*, and relates, for example, to material lifestyles, water security, the safeguarding of cultural and spiritual places, etc.).”¹

1.1.2 IPCAs in Canada

Indigenous protected and conserved area (IPCA) is the term that has been proposed by the Indigenous Circle of Experts (ICE). The ICE is a national advisory committee made up of Indigenous and non-Indigenous members formed to consult and develop recommendations to determine how the concept of ICCAs can contribute to achieving Canada's Target 1 (Aichi Target 11) which consists of conserving more than 17% of the country's land areas and inland waters by 2020. In Quebec, only one representative of the Cree Nation government sat on the committee.

The ICE offers the following definition:

"IPCAs are lands and waters where Indigenous governments have the primary role in protecting and conserving culture and ecosystems through Indigenous laws, governance and knowledge systems. Culture and language are the heart and soul of an IPCA."²

Based mainly on the recommendations of the ICE, the concept of IPCA is clarified in 3 essential characteristics:

1. IPCAs are **led and managed by Indigenous peoples**. Indigenous governments have the primary role in determining the objectives, boundaries, management plans and governance structures for IPCAs as part of their exercise of self-determination.
2. IPCAs represent a **long-term commitment to conservation**. Indigenous peoples take a multi-generational view of stewarding their territories and thus, the conservation of lands and waters for future generations.
3. IPCAs **elevate Indigenous rights and responsibilities, especially natural rights and Indigenous law regarding the uses of natural resources**, but also the responsibility to care for and respect the land and water.²

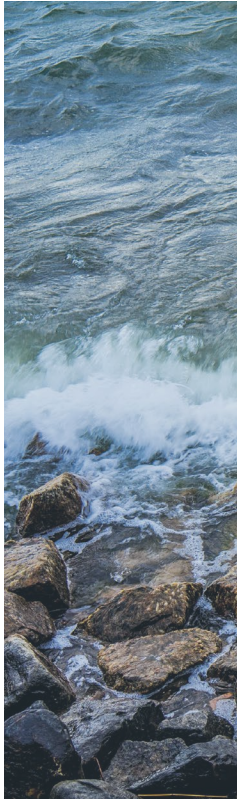
1.1.3 ALPAs in Quebec

On February 10, 2021, the government of Quebec adopted a revised version of the *Natural Heritage Conservation Act* (NHCA) in which a category similar to the concept of ICCA was added: the Aboriginal-led protected area (ALPA).

However, the legislative framework for ALPAs remains to be defined and provisions within the NHCA state that:

- “To allow for the conservation of elements of biodiversity and associated cultural values that are of interest to an Aboriginal community or nation on lands in the domain of the State, the community or nation may propose areas to the Minister to be designated as Aboriginal-led protected areas.
- The Minister shall prepare and make public a guide regarding the creation, management and development of Aboriginal-led protected areas.
- The guide must be prepared and updated in a spirit of collaboration with the Aboriginal communities and nation.
- The Minister may, on the conditions the Minister determines, entrust any natural person or legal person established in the public interest or for a private interest with all or any of the Minister’s powers relating to the management of a protected area under the Minister’s administration or of land that is the subject of another conservation measure under this Act.”³

Indigenous conservation sites are supposed to achieve and promote the conservation of biological, and first are foremost, cultural diversity. To this end, we can already ask ourselves several questions concerning the development of the ALPA category, including the role that First Nations communities will have in the writing of the guide. In addition, section 12 of the NHCA provides that the Ministère de l’Environnement et de la Lutte contre les changements climatiques (MELCC) may delegate all or part of its powers concerning the management of a protected area to a community. However, the delegation would be subject to the conditions that the ministry determines, yet remember that the ICCAs/IPCAs are based on the fundamental criterion where the choice of governance and management is up to the communities themselves.



REFLECTIONS:

How do you see the ALPA category, core vision and conservation goals?
How do you meet your priorities and needs through the development of ALPAs in the NHCA?

Based on what the FNQLSDI understands of the revised NHCA, no regulations specific to ALPAs will be adopted. **So what will be the legal provisions attached to this category once a given area is so designated?**

Under the NHCA, an ALPA could only be designated on lands in the “domain of the state.” What will happen to the possibility of establishing these areas on private land?

1.2 Key elements to consider for the theme

Element 1 - Types of governance for an IPCA

A fundamental characteristic of both an ICCA and an IPCA is the power of the community to determine the governance structure they want. Although exclusive Indigenous governance could be more the desired option, the ICE offers 4 partnership models for the governance of an IPCA due to the sharing of powers between the multiple governmental bodies in the territory.

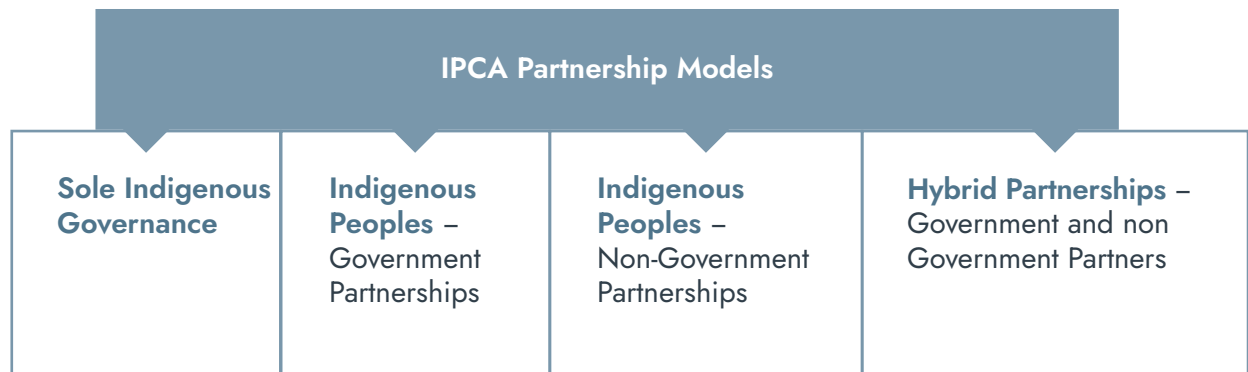


Figure 1. Partnership models proposed by the ICE for the governance of an IPCA.⁴



REFLECTION:

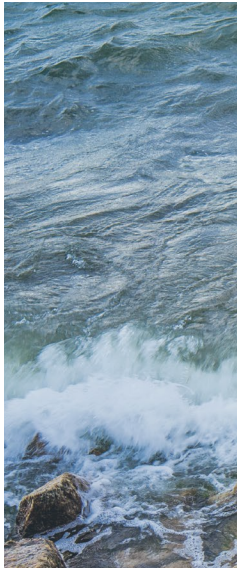
What partnership models would be the most suitable for your projects according to your context and your needs?

Element 2 - Indigenous conservation sites in the marine environment?

There are many examples of Indigenous conservation sites in terrestrial environments, but very few in marine environments. The question arises: is it possible to designate Indigenous protected areas in the marine environment? Ministries, government agencies (e.g. Parks Canada), fishermen's groups, private infrastructure and operating companies, to name a few, represent a range of actors who act simultaneously in the estuary and the Gulf of St. Lawrence, which complicates the emergence of ICCA/IPCA/ALPA.

Along the same line of thought, what about the possibility of designating marine ALPAs in Quebec? Where the seabed is under provincial jurisdiction, the establishment of this category of protected areas may be applicable. Due to the extended division of powers as mentioned above, a double designation with federal status would undoubtedly be necessary.

In this context, the emergence of an MPA, whether Indigenous or not, raises many challenges. Section 3 of this fact sheet deals with concrete examples of the establishment of MPAs in co-management with Indigenous communities. We also invite you to refer to the fact sheet on *marine protected areas* to learn more about other experiences of co-managed MPAs with Indigenous peoples in Canada.



REFLECTIONS :

How can we ensure that marine sites protected and conserved by First Nations can correspond to the categories, standards and instruments concerning current federal MPAs?

How can the socio-economic and cultural objectives of communities be aligned with the conservation objectives of governments?

Section 2.

Portrait of the situation

2.1 Current situation

2.1.1 New approach

Within the context of its national commitments to the CBD, Canada recently announced its new goals of protecting 25% of the country's oceans by 2025 and 30% by 2030. With the objective of achieving these goals and to engage in a process of reconciliation with Indigenous peoples, the federal government is banking on the development of IPCAs.

A National Advisory Panel on Marine Protected Area Standards (NAP) has been set up to gather reflections and make recommendations on protection standards to be adopted in federal MPAs, while referring to IUCN guidelines. This committee, which ensures Indigenous representation, also has the mandate to "examine Indigenous approaches and governance," working in concert with the ICE, which has developed recommendations in this direction.⁵

In its 2018 report, the NAP mentions its support for Indigenous protected areas and suggests that Canada should encourage measures to further recognize and support them. To do this, the committee raises the "need for community support from the start of the process to establish an MPA,"⁵ and also to put forward an oceans management framework that integrates the multiple visions and the interests of all the actors.

Currently, "none of Canada's MPA legislation explicitly limits the opportunity for Canada to establish Indigenous protected areas with Indigenous peoples."⁵

The Committee thus proposes 5 recommendations relating to the relationship between the Crown and the Indigenous people on Indigenous protected areas, MPAs and other effective area-based conservation measures (OECM):

1. “That Indigenous knowledge be meaningfully integrated in all aspects of planning, design, management, and decision-making around marine protected areas, Indigenous protected areas and other effective area-based conservation measures.
2. That the government recognize the importance of Indigenous peoples’ roles as full partners in all aspects of design, management, and decision-making around marine protected areas, Indigenous protected areas, and other effective area-based conservation measures.
3. That the government identify long-term, permanent, and stable funding for marine protected areas, Indigenous protected areas, and other effective area-based conservation measures, including through innovative financing mechanisms to support education and capacity for management through ongoing Indigenous coastal and marine stewardship and guardian programs.
4. That the federal government create or amend legislation and regulations to recognize, accommodate, and support implementation of Indigenous protected areas.
5. That Indigenous protected areas be considered to count toward Canada’s conservation targets if they meet the standards of a marine protected area or other effective area-based conservation measure.”⁵

Indigenous protected areas will have an important and essential role to play in achieving Canada’s marine conservation goals. The NAP believes that a strong framework for these areas needs to be put forward.

Section 2.

Portrait of the situation

2.2 Upcoming changes/Next steps

Following up on the NAP report released in 2018, the federal government responded positively to recommendations regarding Crown-Indigenous relations:

“The importance of establishing a renewed relationship with Canada’s Indigenous peoples is at the heart of this Government’s commitment to Canadians; this includes **enabling Indigenous peoples to become partners in the cooperative establishment and management of marine protected areas and collaborating on how Indigenous marine protected areas can contribute to meeting Canada’s marine conservation target.** These are complex topics that require an ongoing dialogue with Indigenous peoples across Canada.”⁶

To do this, **the government indicates that it is continuing discussions with Indigenous peoples and organizations and seeking their support to determine the best way to follow up on the NAP’s recommendations** concerning Crown-Indigenous relations.



REFLECTION:

In the future discussions considered by the Government of Canada in terms of Indigenous protected areas in the marine environment, **how do you see the possibility, the feasibility and the challenges for proposing Indigenous conservation sites in the St. Lawrence?**

FEDERAL BUDGET 2021 INVESTMENT IN NATURE PROTECTION

On April 19, 2021, the Government of Canada announced the largest investment ever made in the protection of nature to fight the biodiversity crisis:⁷

- \$2.3 billion over 5 years to protect 10% of the country's land area, which specifically includes support for IPCA projects and Indigenous Guardian programs.
- \$976.8 million over 5 years to protect 25% of Canada's oceans by 2025 in marine protected areas and 30% by 2030.
- \$200 million over 3 years to support municipal natural infrastructure projects.
- \$1.4 billion over 12 years to enhance the Disaster Mitigation and Adaptation Fund, including \$670 million dedicated to small-scale projects (e.g., restoration of wetlands).

This funding will allow the implementation of projects for the conservation and protection of cultural and natural heritage by and for First Nations communities.

Quebec, having achieved its conservation objectives of 10% of the marine territory in the St. Lawrence by 2020 through the designation of an administrative status of territories reserved for the purposes of a protected area (TRP-PAs), has still however not yet pronounced on its future conservation targets. Many experts and environmental groups have expressed their views on the need to protect more than a third of the planet's oceans,⁸ what will happen to Quebec's participation in this target and how do the First Nations communities wish to position themselves?

Section 3.

Avenues for reflection – Indigenous experiences from here and elsewhere

3.1 Experience 1: Tawich marine protected area, a community project

3.1.1 Portrait

The Tawich marine protected area project has its origins inland. In fact, from the beginning of the 2000s, members of the Cree Nation of Wemindji discussed strategies to protect certain portions of their territory of high significance from mining or hydroelectric developments, in particular the Paakumshumwaau River (Old Factory River) and its watershed. Through discussions with researchers from McGill and Concordia universities, the idea of creating a protected area emerged. A collaborative research project between the community and a group of researchers and students from the two universities was then set up and funded through the unfortunately now-defunct program of Community-University Research Alliances, under the Social Sciences and Humanities Research Council of Canada. Thanks to these funds, a multidisciplinary and collaborative research program was launched to, in particular, document the ecological, cultural and archaeological values in the territory. The knowledge thus gathered made it possible to lay the foundations for a terrestrial protected area project (designated as the proposed Paakumshumwaau-Maatuskaau biodiversity reserve in 2008).

But quickly, the members of the community of Wemindji indicated that the protected area should not be limited to the land portion of the territory, but rather extend *tawich*, meaning “out in the bay” in Cree, and include the estuary of the Paakumshumwaau River, the coastal islands and a whole marine portion of the territory.



Photo credit: Véronique Bussi eres

Part of the research team made up of academic members and the community was therefore dedicated to documenting this portion of the territory. Then a master's student, Véronique Bussièrès, produced a master's degree thesis based on months of participatory research within the community that documents the biocultural importance of the Old Factory Bay, a gathering place used by the community for generations, and thus proposed the outline of the MPA project.⁹ In the summer of 2007, a one-day workshop was held in the community to discuss the “where, what, why, how, who and when” of the proposed marine conservation area. Expeditions including university researchers and community experts were also organized in the summers of 2007 and 2008 to compile information about species present and cultural values through scuba diving and inventories on the islands. In January 2009, a proposal co-authored by researchers and the community for the establishment of a national marine conservation area (NMCA) was filed with the Parks Canada Agency (PCA). Following this submission, Parks Canada funded another expedition to document the territory, which this time included a Mineral and Energy Resource Assessment (MERA), a required step in the establishment of an NMCA.

In parallel, negotiations and consultations for the Eeyou Marine Region Agreement (Agreement) were taking place. The discussion process for the NMCA was then put on hold until the Agreement was signed in 2010.



Photo credit: Véronique Bussièrès

The Eeyou Marine Region Agreement (EMR) provides a framework for the Crees to participate in discussions on the development of government policies relating to international wildlife protection agreements that affect the wildlife harvesting activities of the EMR.¹⁰

It should be noted that the Agreement includes provisions for the establishment of marine protected areas, namely the consultation, participation and co-management processes, the protection of Cree harvesting rights and the obligation to sign a impact and benefit agreement to secure jobs and benefit sharing.

The area of interest has since been enlarged to include the communities of Chisasibi and Eastmain, and it is the Cree Nation Government that has taken on the file.

Discussions are still ongoing for the creation of the marine conservation area.

3.1.2 Observations

The protection and enhancement of the traditional Cree way of life, and the species and environments that support it, are at the heart of this MPA project.

More than a decade before the popularization of the term by the Indigenous Circle of Experts, an ethical space for co-reflection and co-production of knowledge was created through the research partnership. All research projects were carried out jointly between researchers and/or student researchers and members of the community.

The research partnership made it possible to bring together fundamental knowledge of the targeted territory and to document new knowledge, particularly on the ecology and geology of the targeted area.

The partnership with an NGO made it possible to resolve certain political issues and to articulate the project in a more strategic way for presentation to government authorities. In particular, the James Bay region was not a priority in terms of marine conservation within the ecological reference framework used by the federal government for the establishment of MPAs. However, thanks to the collaboration with SNAP Quebec, it was possible to strategically articulate the MPA proposal and to organize a crucial meeting with the representatives of 3 government agencies in November 2007, namely the MELCC, DFO and PCA.

Forming strong partnerships with academic researchers and NGOs can bring significant resources to a community-led project.

3.2 Experience 2: Gwaii Haanas National Marine Conservation Area Reserve, a successful co-management

3.2.1 Portrait

Gwaii Haanas is often cited as a notable example of co-management and integrated management at the land-ocean interface. Several elements make it an example from which the First Nations in Quebec can draw inspiration for the establishment of marine protected areas. Today, this protected area contributes to the preservation and enhancement of a unique natural and cultural heritage, in a co-management approach that is the result of decades of discussions and collaborative work between the Haida and the federal government and including the participation of other stakeholders such as NGOs, including the Canadian Parks and Wilderness Society. **The first NMCA to be designated in Canada, Gwaii Haanas serves as a refuge for more than 40 species at risk, including several endemic species.**

Integrated protection

Protection is offered by the juxtaposition and superposition of 3 protected area statuses, namely a Haida heritage site Gwaii Haanas (designated by the Haida Nation since 1985), a national park reserve (Parks Canada, since 2003) and a national marine conservation area reserve (Parks Canada since 2010). The sum of these protected areas therefore offers protection ranging from mountain top to sea bottom, and this with the help of a master plan that ensures management integrating the sea and the land, as well as the human aspects and nature.

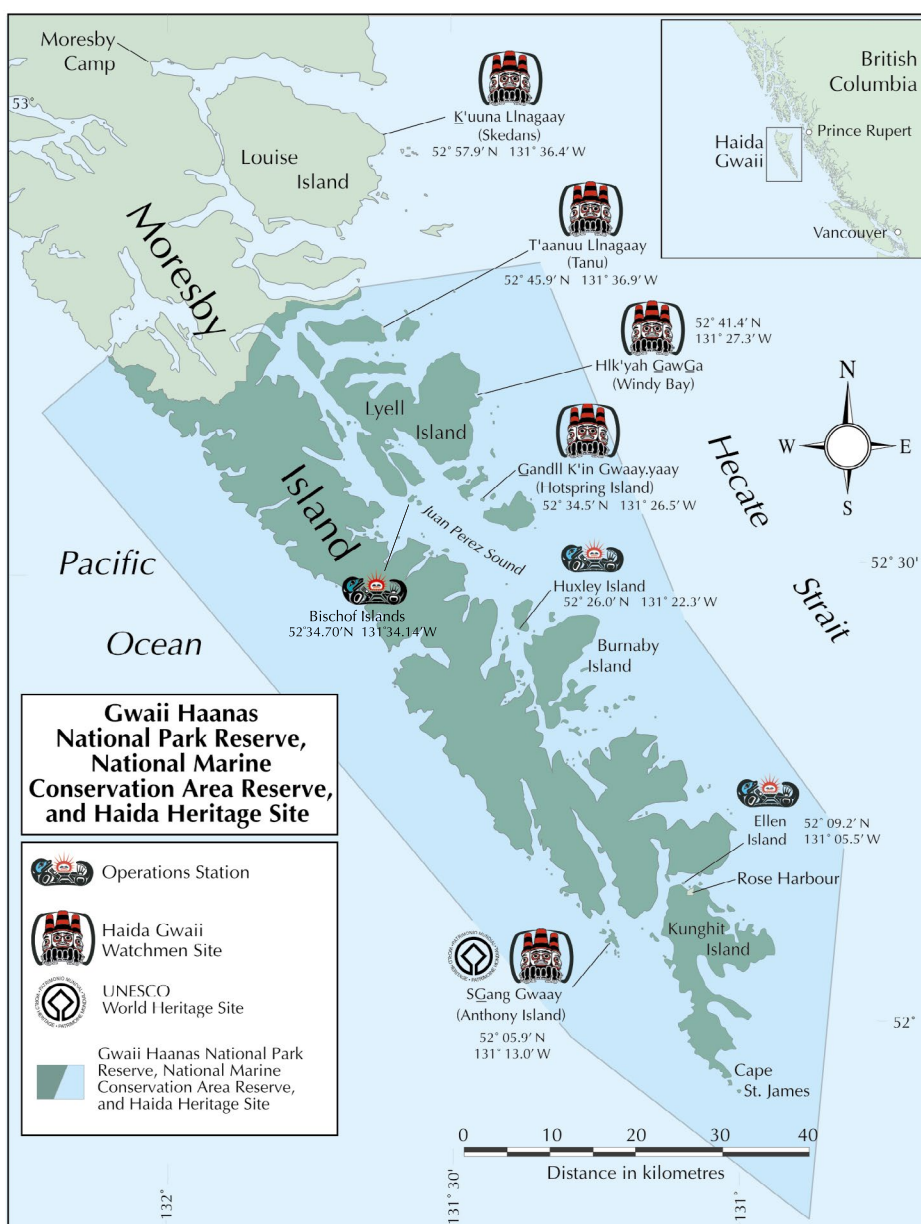
Co-governance

Co-management between the Haida and the federal government is framed and guided by two agreements, namely the Gwaii Haanas Agreement signed in 1993 and the Gwaii Haanas Marine Agreement signed in 2010. It is important to note that the provincial government of British Columbia is not involved since the territory has been ceded to the federal government, a prerequisite for the establishment of a federal national park or an NMCA.

Another factor that has contributed to the establishment of this co-governance is the following fundamental principle, which is at the heart of the Agreement signed in 1993: “Although Canada and the Haida Nation have divergent points of view as regards the right of ownership of land in the region, they succeeded, within the framework of the Agreement, in setting aside their differences of opinion to work together.”¹¹

The agreement therefore makes it possible to focus on the points on which the two parties agree in order to move forward, rather than attempting to settle disagreements before putting in place conservation measures.

In addition, from a more practical point of view, the 1993 Agreement also allowed the creation of the Archipelago Management Board (AMB) whose mandate was to work on the establishment and then ensure the management of protected areas around the Gwaii Haanas archipelago. It is made up of an equal number of representatives of the 2 parties (3 from the Haida Nation and 3 from the federal government, including 2 from Parks Canada and one from Fisheries and Oceans Canada), and all decisions are consensus based.



Source: Parks Canada, 2021

3.2.2 Observations

It is through the use of 3 distinct statuses of protected areas that it was possible to establish conservation measures that are aligned with the Haida vision of interconnection between the different elements of the world, in other words the establishment of a holistic conservation approach.

The Haidas do not have a historic treaty or comprehensive land claims agreement. The National Park Reserve and the NMCA Reserve are therefore the result of special bilateral agreements.

The current situation is the result of a long process (over 30 years):

- **Recognized in 1985, managed and protected as a Gwaii Haanas Haida Heritage Site in response to pressure from the logging industry on the archipelago's forests;**
- **Gwaii Haanas Agreement signed in 1993;**
- **Management plan for the terrestrial area (Gwaii Haanas National Park Reserve and Haida Heritage Site) published in 2003;**
- **Designated NMCA and an interim master plan for the marine portion in 2010;**
- **Integrated land-sea-people management plan adopted in 2018.**

The choice of an NMCA as the status of marine protected areas allows de facto actions and resources for the enhancement of the site. The co-management approach allows the Haidas to introduce visitors to their culture on their own terms, with their own approaches and preferences.

The management of the site is based in part on Haida principles which play a central role in the implementation of management measures and activities in the area.

As in many protected areas, different zones have been set up in order to respond to the particularities of the environment and offer increased protection to certain places of cultural importance or certain ecosystems or particularly fragile species, while allowing more activities to be carried out in other places.

Haida traditional knowledge and law are at the heart of the integrated land, sea and people management plan, in addition to local knowledge and science. This management plan makes it possible to compare several traditional Haida principles with equivalent principles derived from an ecosystemic approach grounded in science-based management.



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