

Canada, B.C. and First Nations Leadership Council sign agreement on conservation and land management

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On November 3, 2023, Canada, British Columbia (B.C.) and the First Nations Leadership Council (FNLC) (collectively, the Parties) signed the Tripartite Framework Agreement on Nature Conservation (the [Agreement](#)). This is a non-binding agreement that establishes an approach to collaboration between the Parties on nature conservation and ecosystem-scale land management in B.C.

The Agreement is the latest in a series of recent developments in B.C.'s approach to integrating Indigenous representation in land use policy and decisions. Among other things, the Agreement commits up to \$1 billion in matched federal-provincial funding for various nature conservation, restoration and climate solution funds.^[1] These funds will be distributed over the course of the Agreement's term, which will expire on March 31, 2030, unless terminated earlier by the Parties.^[2]

Work carried out under it will not amount to Crown consultation where such consultation is required. Nonetheless, the Agreement indicates an intention on the part of B.C. and Canada to pre-emptively involve bodies that represent the Indigenous peoples of B.C. in land use, development and conservation planning and decision-making processes, beginning at the early policymaking stage. Though the outcome of work done and funded under the Agreement remains to be seen, greater collaboration between B.C., Canada and Indigenous groups on up-front land use planning may reduce the risk of legal challenges to individual projects in the future.

Particular mandates set out by the Agreement with respect to carbon and biodiversity offsets,^[3] conservation financing^[4] and ecological restoration^[5] may also signal future opportunities for industry collaboration and investment once put into practice.

Background

The Agreement is one of three recent "Nature Agreements" made by the federal government, the others being the Canada–Nova Scotia Nature Agreement and the Canada–Yukon Nature Agreement. These agreements are similar in structure to the Agreement, but do not include a party representing the Indigenous peoples of their respective regions. The Nature Agreements are non-binding policy documents that set out mutually agreed-upon actions and financial commitments to advance shared conservation goals. They are a relatively new tool, intended to guide policymaking decisions at various levels of government. Nature Agreements and the committees made under them have yet to impose binding restrictions on regulators or industry proponents.

The Agreement is also the latest in a series of recent developments in land use decision-making and conservation policy structures in B.C. These developments have increased the participation of bodies representing Indigenous peoples and increased the authority of those bodies' voices within planning and approval processes.

Since introducing the *Declaration on the Rights of Indigenous Peoples Act* (the Declaration Act) in 2019, B.C. has begun to adopt the concept of "free, prior and informed consent" (FPIC) from the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in its regulatory approval frameworks. For example, B.C. has implemented this concept within its environmental assessment processes by requiring "consent" in certain circumstances, or explicit justification where consent is not obtained.^[6]

The Agreement also comes on the heels of a significant period of change to the regulatory landscape in northeast B.C., spurred by the British Columbia Supreme Court's *decision* in *Yahey v. British Columbia*. In response to *Yahey*, B.C. and the Blueberry River First Nations (BRFN) entered into the Blueberry River First Nations Implementation Agreement (the Blueberry River Agreement) in early 2023. The Blueberry River Agreement establishes new parameters for resource management in BRFN's territory through measures including land restoration, land protection and caps on new disturbances. B.C. has since signed similar agreements with four other Treaty 8 First Nations and is in discussions with several others.^[7]

The Agreement

The Tripartite Nature Committee

The Agreement establishes an interim Tripartite Nature Committee (Committee), tasked with coordinating activities under the Agreement.^[8] The Committee consists of representatives from Canada, B.C. and the FNLC.^[9]

The FNLC itself is a representative organization made up of executive members of the B.C. Assembly of First Nations, the First Nations Summit and the Union of B.C. Indian Chiefs.^[10] Its members report to their respective Chiefs Assemblies and the Agreement states that the Chiefs Assemblies have directed the FNLC to advocate for land and nature protection and First Nations' rights via the Agreement.^[11]

Notably, the FNLC is not an Aboriginal title or rights holder or a treaty rights holder, and it cannot engage in consultation on behalf of individual First Nations.^[12] This means that while FNLC members may be engaged at a policymaking level with the federal and provincial governments as part of the Committee, FNLC members' participation on the Committee cannot in itself fulfill the Crown's duty to consult and accommodate with Indigenous peoples.

Beyond broadly coordinating activities under the Agreement, the Committee's work remains to be defined by terms of reference that are anticipated within the next year.^[13] The Agreement contemplates that B.C. and Canada will enter into arrangements with First Nations that are complementary to the Committee's role, to ensure First Nations' involvement in implementing the Agreement and seeing its benefits in their respective territories.^[14] B.C. and Canada are also tasked with exploring complementary mechanisms to enable local governments, stakeholders and citizens to be involved.^[15]

Purpose and objectives

The Agreement's stated purpose "is to establish a framework to achieve a more integrated and collaborative landscape-based approach to ecosystem health and biodiversity conservation through ambitious and sustained actions by the Parties on the stewardship, protection, restoration and recovery of diverse ecosystems, habitats, and species within the province of [B.C.]."^[16] To these ends, the Agreement sets out more specific objectives in four key areas:

1. habitat and ecosystem conservation and protection^[17]
2. habitat enhancement and restoration^[18]
3. species at risk protection and recovery^[19]
4. foundational knowledge and information sharing^[20]

These objectives are to be reached by, among other things,

- identifying new areas to conserve and protect
- establishing new conservation funds and restoration initiatives
- funding First Nations-led land use planning initiatives
- establishing a new restoration framework in consultation with industry
- evolving approaches to species at risk protection and recovery
- piloting new species at risk conservation action plans
- revising legal and policy tools to prioritize ecosystem health and species recovery
- developing a shared data and information collection plan to report on the progress of the Agreement

The Agreement also aims to facilitate cooperation between the Parties to achieve conservation goals set out in various international agreements and domestic commitments, including UNDRIP, the Kunming-Montréal Global Biodiversity Framework and the Paris Agreement.^[21]

UNDRIP and its underlying principles feature prominently in the Agreement.^[22] In particular, consultation and cooperation initiatives under the Agreement aim to "obtain First Nations free, prior and informed consent", while acknowledging the Parties' respective authorities and jurisdictions. Decision-making by all Parties is to be conducted in a manner that acknowledges First Nations' rights to participate in a decision-making process where it would affect their rights or impact their traditional territories.

Finally, the Agreement sets out objectives for carbon and biodiversity offsets, conservation financing and ecological restoration. In particular, the Agreement provides for the development of a \$100-million Old Growth Nature Fund, information sharing on opportunities for habitat enhancement and restoration and a longer-term restoration framework and ongoing restoration program, which may provide opportunities for the involvement of other interested stakeholders.

Implications

While its specific impacts on land use in B.C. remain to be seen, the Agreement signals that the federal and B.C. governments are taking steps toward their conservation goals, such as

achieving 30% land protection by 2030^[23] and protecting and recovering at-risk species.^[24] Policy actions taken in furtherance of these goals under the Agreement may impact future regulatory approval processes for industrial development in B.C., but the scope of this impact is yet to be seen.

The Agreement's tripartite approach to cooperation between federal, provincial and Indigenous representative bodies is in line with recent trends in B.C. towards incorporating bodies that represent Indigenous peoples in land management decision-making, a trend we expect to see continue in the coming years. The Agreement represents an opportunity for policymakers to engage collaboratively with Indigenous representation and to pre-emptively address concerns that would otherwise arise during project-specific consultation processes. However, engagement between B.C., Canada and the FNLC under the Agreement will not restrict the autonomy of individual B.C. First Nations that may have independent concerns and views with respect to the land use and conservation matters addressed by the Committee.

While the Agreement aspires to coordinate efforts between Canada, B.C. and B.C. First Nations in meeting shared conservation benchmarks, the document lacks detail on how the Committee will achieve this goal and what initiatives will be given priority among the Agreement's many objectives. Specific outcomes will depend on the continued commitment of all Parties and on details provided in the Committee's anticipated terms of reference.

[1] Agreement, s. 11.1.

[2] Agreement, s. 13.1.

[3] Agreement, s. 2.1(f).

[4] Agreement, ss. 11.5, 11.7.

[5] Agreement, s. 7.0.

[6] See *Environmental Assessment Act*, SBC 2018, c. 51, ss. 7, 16, 17 and 29.

[7] <https://news.gov.bc.ca/releases/2023PREM0005-000060>.

[8] Agreement, s.10.1.

[9] Agreement, s.10.0.

[10] Agreement, Preamble (K.).

[11] Agreement, Preamble (L., M.).

[12] Agreement, Preamble (N.).

[13] Agreement, s 10.1.

[14] Agreement, s 10.2.

[15] Agreement, s 10.3.

[16] Agreement, s.1.1.

[17] Agreement, s.6.0.

[18] Agreement, s.7.0.

[19] Agreement, s. 8.0.

[20] Agreement, s. 9.0.

[21] The Agreement Preamble references the Kunming-Montréal Global Biodiversity Framework (D.), the Paris Agreement (E.), UNDRIP (F., H., J.), the Together for Wildlife Strategy (Q.), the Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada (T.), and '*One with Nature: A Renewed Approach to Land and Freshwater Conservation in Canada*' (U.).

[22] UNDRIP or the principles underlying UNDRIP are referenced in the Agreement at ss. 2.1, 3.2, 4.1, 6.3, and 8.4.6.

[23] Agreement, ss. 4.1(b), 6.4.1.

[24] Agreement, s. 8.0.