

NUNAVUT PLANNING COMMISSION

Parliamentary Standing Committee on Fisheries and Oceans

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Written Brief of the Nunavut Planning Commission to the Parliamentary Standing Committee on Fisheries and Oceans regarding the criteria and process being used to identify and establish Marine Protected Areas (MPAs) areas under the *Oceans Act*

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Introduction: The Nunavut Planning Commission

The Nunavut Planning Commission (the “NPC”) is an Institution of Public Government (“IPG”) established under the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* dated May 25, 1993, as amended (the “**Nunavut Agreement**”). On July 9, 2015 the NPC was continued under the *Nunavut Planning and Project Assessment Act* (Canada) (“**NuPPAA**”). The NPC has a broad mandate under the *Nunavut Agreement* and *NuPPAA* to develop land use plans that guide and direct resource use and development in Nunavut.¹

The NPC conducts consultations and prepares land use plans in accordance with broad social, economic and environmental purposes enumerated in the *Nunavut Agreement* and *NuPPAA*. The NPC established the *Broad Planning, Policies, Objectives and Goals* (2007) through comprehensive consultations with the Government of Canada, Nunavut Tunngavik Inc. and the Government of Nunavut.² These policies, priorities and objectives inform the development of the

¹ The NPC has planning jurisdiction in relation to “lands” in the Nunavut Settlement Area and the Outer Land Fast Ice Zone, including land covered by water, whether in the onshore or offshore, waters and resources, including wildlife. See *Nunavut Agreement*, s. 11.1.2, 11.1.4 and *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2, s. 2(1), 40., s. 2(1), 40, 46(1) [**NuPPAA**].

² See *Nunavut Agreement*, s. 11.4.1(a), and Nunavut Planning Commission, *Broad Planning Policies, Objectives and Goals* (2007), online: <[http://www.nunavut.ca/files/Approved 2007 Broad Planning Policies Objectives and Goals.pdf](http://www.nunavut.ca/files/Approved%20Broad%20Planning%20Policies%20Objectives%20and%20Goals.pdf)> (last checked May 30, 2017).

Draft Nunavut Land Use Plan,³ and are applicable to MPAs created within Nunavut under the *Oceans Act*.⁴

Pursuant to the NPC's *Broad Planning, Policies, Objectives and Goals*, the NPC engaged in consultations with Inuit and residents of Nunavut for the preparation of a Draft Nunavut Land Use Plan ("2016 DNLUP"). The Commissioners are presently engaged in public hearings on the 2016 DNLUP and will be determining what further revisions to the plan are required before it can be submitted to the Government of Canada, the Government of Nunavut, and Nunavut Tunngavik Inc. for their respective reviews and approvals. In the meantime, the NPC continues to implement its two regional land use plans, the North Baffin Regional Land Use Plan which includes Lancaster Sound, and the Keewatin Regional Land Use Plan.

Generally, land use planning in Nunavut involves making decisions to guide how land, water, and resources (including wildlife) should be used in the future.⁵ A land use plan sets out which future land uses will be allowed, which will be prohibited, and under what conditions. With the introduction of the *NuPPAA*, prohibitions on uses of lands and waters in Nunavut in an approved land use plan are enforceable and can result in penalties and imprisonment.

The NPC performs conformity determinations on any MPA initiatives proposed in Nunavut.⁶ The NPC assesses proposed projects for conformity with approved plans, and verifies whether proposed projects must undergo environmental assessment screening. Non-conforming projects may not proceed unless granted a minor variance or specifically exempted from an applicable plan by the Minister of INAC.

The NPC is also a member of the Nunavut Marine Council ("NMC"). The NMC, and the NPC acting by itself, can advise and make recommendations to Government and Government is required to consider such advice and recommendations in making decisions affecting marine areas.⁷ However, the NMC has historically received very limited funding to carry out its mandate.

Importance of the Marine Environment to Inuit in Nunavut

Planning for the use and protection of the marine environment and marine wildlife such as fish, shellfish, seal, walrus, and whales such as beluga, narwhal and bowhead, is highly important to Inuit and their rights under the Nunavut Agreement.⁸ Inuit are heavily reliant on the marine environment for food security from traditional hunting activities and transportation, whether on water or ice.⁹ The NPC has heard that Inuit are concerned by impacts of human activities in the

³ Nunavut Planning Commission, *Broad Planning Policies, Objectives and Goals*, *supra*, p. 4. (The document is structured around 5 goals: Goal 1 - Strengthening Partnership and Institutions; Goal 2 - Protecting and Sustaining the Environment; Goal 3 - Encouraging Conservation Planning; Goal 4 - Building Healthy Communities; and Goal 5 - Encouraging Sustainable Economic Development).

⁴ *NuPPAA*, s. 70(3).

⁵ See Nunavut Planning Commission, *Keewatin Regional Land Use Plan* (2000).

⁶ *NuPPAA*, s. 174 – 175.

⁷ *Nunavut Agreement*, s. 15.4.1.

⁸ See Report of the Standing Committee on Environment and Sustainable Development, *Taking Action Today: Establishing Protected Areas For Canada's Future*, 42nd Parliament, 1st Session (March 2017), p. 51 (Harvey Locke, Cathy Towtongie, Paul Crowley, Mr. Taylor) [*Taking Action Today*, 2017].

⁹ *Ibid.* at p. 51, text associated with fn. 176, ENVI, Evidence, 1st Session, 42nd Parliament, 25 October 2016 (Cathy Towtongie) ("Inuit are a primarily maritime people").

marine environment,¹⁰ and that Inuit also want sustainable economic development and employment opportunities.¹¹ The NPC suggests research into whether MPAs have positive economic impacts.¹² There is anticipated growth in the Nunavut economy arising from mineral exploration and production, commercial fishing and tourism that are anticipated to impact the marine environment. Based on traditional Inuit knowledge and scientific research pointing to changes to the marine environment and wildlife abundance and migration, it is becoming increasingly important to take steps to plan for and manage uses of lands, waters, and wildlife in the Arctic.

RECOMMENDATION #1: Research whether MPAs have positive economic impacts.

The NPC also heard that food security and access to country food such as caribou, fish and marine mammals is of the “utmost importance”.¹³ Hunting for food is important for “maintaining and promoting Inuit culture and sharing of social norms and traditions.”¹⁴ During consultations, Inuit frequently referred to impacts of climate change and human disturbance as contributing to changing abundance of wildlife. Store-bought food in Nunavut is also costly and there is high unemployment throughout the territory. Residents of Nunavut also want a stronger economy, and transportation in Nunavut is largely reliant on air travel and seasonal sealifts, whether during the open water season or using icebreakers.

Oceans Act s. 35(1) Criteria

The NPC thanks the Standing Committee for the opportunity to comment on the criteria for MPAs set out in the *Oceans Act*. Below, the NPC cites the criteria contained in subsection 35(1) of the *Oceans Act* followed by comments and recommendations:

35 (1) A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of

¹⁰ In response to community concerns regarding seismic research and oil and gas development off the coast of Baffin Island, Nunavut, the NPC commissioned an expert report that found: there is limited understanding, research or scientific modeling that can help us understand how an oil spill would travel if it occurred in Arctic waters when sea ice is present; a proponent may not be able to find the spill until there is open water delaying clean up for many months in which time the oil could spread for hundreds of kilometres and kill countless sea mammals; and recommended that should oil development proceed with the limited state of knowledge on how to react to an oil spill, communities must be trained “to maintain a high level of response efficiency” as there will be little the industry or government can do until the sea ice melts. See LOOKNORTH Centre for Commercialization and Excellence, *Oil Spill Detection and Modeling in the Hudson and Davis Straits*, Report no: R-13-087-1096 Revision 1.0 2014-03-31.

¹¹ See generally Nunavut Planning Commission, *Consultation Record*, online: <http://www.nunavut.ca/en/draft_plan/consultation_record>, also see e.g. Arctic Council, *Arctic Marine Shipping Assessment 2009 Report* (2009), p 5 (“Human Dimensions” & “Environmental Considerations and Impacts”) available at <<http://www.arctic.noaa.gov>> (last checked November 20, 2015).

¹² See Economic Analysis and Statistics Branch Fisheries and Oceans Canada, *Economic Impact of Marine Related Activities in Canada: Statistical and Economic Analysis Series Publication No.1-1*, prepared by Gardner Pinfold (Ottawa, 2009), online: <<http://www.dfo-mpo.gc.ca/ea-ae/economic-analysis-eng.htm>> (last checked May 30, 2017) (“Ocean tourism: growth potential is tied to several factors including Canada’s ability to maintain an attractive coastal environment, continued development of tourism capacity and opportunity (e.g., cruising, eco-tourism), the general economic climate, and competition from other destinations. ... The long-term outlook is more promising; in an increasingly crowded world, Canada offers excellent opportunities for escape.”).

¹³ Nunavut Planning Commission, *Draft Nunavut Land Use Plan* (June 2016), § 1.4.2 [DNLUP 2016]. Note the DNLUP 2016 is presently undergoing public hearings and remains subject to revision.

¹⁴ *Ibid.*

Canada and has been designated under this section for special protection for one or more of the following reasons:

(a) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;

Nunavut is in a food security crisis.¹⁵ Inuit have relied on fish and Arctic marine mammals including walrus, beluga whales, bowhead whales, narwhal, and seals, for subsistence since time immemorial and have rights to harvest. Due to large scale and dramatic changes to the marine environment in the Arctic Ocean, including marine ice, the need to protect subsistence fisheries using available tools, including MPAs under the *Oceans Act*, is becoming particularly pressing, if not an issue of survival for the Inuit.

While current mandate letters helpfully identify the importance of reconciliation with indigenous peoples, mandate letters may change. The NPC suggests a more permanent commitment to reconciliation by expressly listing indigenous subsistence fishing and harvesting as distinct from commercial and non-commercial fishing, so that MPA can both conserve and protect fishery resources for (Inuit/Indigenous) uses.

RECOMMENDATION #2: Add a distinct reference to indigenous (Inuit) subsistence fisheries in *Oceans Act* paragraph 35(1)(a) as distinct from commercial and non-commercial fisheries.

RECOMMENDATION #3: Ensure Inuit subsistence harvesting is not affected by MPAs.

35(1)(b) the conservation and protection of endangered or threatened marine species, and their habitats;

35(1)(c) the conservation and protection of unique habitats;

It is reasonable for MPAs to provide for conservation and protection of endangered or threatened marine species and their habitats, and of unique habitats. For example, the NPC heard through its consultations that beluga calving grounds in shallow estuaries are unique and need protection. It is also important to recognize that Arctic marine mammals rely on both terrestrial (including frozen ocean) and marine habitats (e.g. walrus use haul-outs, seals pup on ice), and many Inuit have told the NPC they don't want boats or land-based activities disturbing them.

In the Arctic, some unique areas are transitory and may move from year to year or season to season (e.g. polynyas), and may be non-permanent (e.g. marine ice). These remain important to protect due to various uses by Inuit for on-ice travel, marine travel, and wildlife migration routes

¹⁵ Nunavut Food Security Coalition, *Nunavut Food Security Strategy and Action Plan 2014-16* (2014), online: <<http://www.nunavutfoodsecurity.ca>> (last checked May 29, 2017) at p. 2 ("The Inuit Health Survey reported that nearly 70 per cent of Inuit households in Nunavut are food insecure. This is over eight times higher than the national average and among the highest documented food insecurity rates for an indigenous population in a developed country." [citations omitted]).

and habitat. However, pursuant to the NPC's *Broad Planning, Policies, Objectives and Goals*, protections need to be weighed against their impact on economic activities and other interests.

RECOMMENDATION #4: The *Oceans Act* should expressly recognize that many marine mammals in the Arctic rely on the foreshore and marine ice as habitat, meaning that to adequately protect unique areas and endangered or threatened marine species using MPAs, there must be complimentary protections of the terrestrial and marine ice habitats of those species.

RECOMMENDATION #5: MPAs under the *Oceans Act* should expressly recognize that in the Arctic Ocean, water is often frozen and provides a “unique” albeit transitory habitat. It is necessary to design MPAs that can protect unique marine ice habitats from icebreaking that do not prevent human uses at other times.

35(1)(d) the conservation and protection of marine areas of high biodiversity or biological productivity; and

No comment.

35(1)(e) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.

The 2015 mandate letter of the Minister of Fisheries and Oceans and the Canadian Coast Guard reads in part: “Work with the Minister of Environment and Climate Change to increase the proportion of Canada’s marine and coastal areas that are protected – to five percent by 2017, and ten percent by 2020 – supported by new investments in community consultation and science.” It also says that: “No relationship is more important to me and to Canada than the one with Indigenous Peoples” and says [i]t is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.”

The criteria in subsection 35(1) paragraph (e) that references conservation and protection of marine resource or habitat as is necessary to fulfil the mandate of the Minister should not be relied upon alone as a basis for starting an MPA process. Based on the length of time it has taken to establish other MPAs, a mandate letter may change before an MPA can be established. Additionally mandate letters are not always released to the public,¹⁶ meaning MPA processes may be commenced for reasons unknown to anyone outside of government.

RECOMMENDATION #6: The *Oceans Act* should enshrine reconciliation with Canada’s indigenous peoples, in a manner consistent with its full, unqualified support of the *United Nations Declaration on the Rights of Indigenous Peoples*, rather than rely on mandate letters which may change before MPAs can be established.

¹⁶ Justin Trudeau, Prime Minister of Canada, “Prime Minister of Canada makes ministerial mandate letters public”, News (November 13, 2015), online: <<http://pm.gc.ca/eng/news>> (last checked May 29, 2017)

Canada's *Strategic Plan for Biodiversity 2011-2020*, outlines a five-point plan to reach its national and international marine conservation targets.¹⁷ These are:

1. Finish What Was Started

The NPC suggests that DFO consider prioritizing the completion of MPAs in the Arctic Ocean to meet its conservation targets. The NPC is aware of at least one potential MPA near Igloodik, Nunavut, that was underway but seems to have been discontinued in 2010 for unknown reasons. Although Lancaster Sound is not a DFO MPA, if the area of the proposed National Marine Conservation Area is expanded from 44,000 km to 105,000 km as proposed by the Qikiqtani Inuit Association, that area alone would triple the amount of marine areas being protected and represent approximately one fifth of Canada's MPA target of 10% by 2020.

2. Protect Pristine Areas

Most of Nunavut's marine environment is currently "Pristine". However, the Canadian Arctic is quickly becoming subject to increased shipping, cruise ships, and other human activities. It can be anticipated that at current rates of increases in use, many "pristine" areas will be altered by human activity unless conservation and protection measures are identified and put in place in a timely way.

3. Protect Areas Under Pressure

Many areas of Nunavut's marine environment are under pressure from human activities not within Nunavut, but rather from activities on a global scale. Climate change poses risks to unique habitats and wildlife, as well as to infrastructure, transportation, and Inuit and other residents of Nunavut who rely on wildlife for food and marine ice for harvesting and transportation. Additional shipping is anticipated, bringing more economic opportunities, but changes in sea ice and increased human activities are anticipated to increase pressures on the Nunavut marine environment and require investments in infrastructure including fixed marine structures, mapping, and navigational systems.¹⁸

4. Advance Other Effective Area-based Conservation Measures

DFO has issued operational guidance for identifying Other Effective Area-based Conservation Measures (OEABCM) that includes the following five broad criteria:

1. *Clearly defined geographic location*
2. *Conservation or stock management objectives*
3. *Presence of ecological components of interest*
4. *Long-term duration of implementation*

¹⁷ Fisheries and Oceans Canada, *Guidance on Identifying "Other Effective Area-Based Conservation Measures" in Canadian Coastal and Marine Waters*. DFO Can. Sci. Advis. Sec. Sci. Advis. Rep.2016/002 (2016), online: <<http://www.dfo-mpo.gc.ca/oceans/publications/oeabcm-amcepz/index-eng.html>> (last checked May 9, 2017)

¹⁸ See Nunavut Climate Change Centre, *Upagiaqtavut: Climate Change Impacts and Adaptation in Nunavut* (2011), p. 17 – 18, and *Pan-Territorial Adaptation Strategy* (2011), p. 15 online: <<http://www.climatechangenunavut.ca/en/resources/publications>> (Last checked May 29, 2017)

5. *The ecological components of interest are effectively conserved*

A Land Use Plan prepared by the NPC under *NuPPAA* is a long-term adaptive management approach to resource use and development throughout Nunavut including in the marine environment that is ultimately approved by the Governor in Council and the Executive Council of Nunavut. At present, the NPC has a draft Nunavut Land Use Plan that proposes setbacks and seasonal restrictions on human activities in specific locations in the marine environment for the purpose of preserving unique habitats for Inuit traditional uses and travel routes and wildlife that rely on ice and marine areas. Some participants in the hearings process have raised concerns about restricting navigation and icebreaking in the marine environment in a Land Use Plan. However, subject to any revisions that may occur at the end of the public hearing process, the NPC suggests that any restrictions on uses of the marine environment in the final Nunavut Land Use Plan that are incompatible with ecological components of interest could be considered an OEABCM and counted towards Canada's Aichi biodiversity targets. The NPC hopes that a final plan can be submitted for approval prior to 2020.

RECOMMENDATION #7: Once the Nunavut Land Use Plan is approved, if it meets DFO's criteria for OEABCMs, it should be counted towards Canada's Aichi biodiversity target.

5. **Establish MPAs Faster.**

A lengthy process of establishing protection measures means sensitive areas may be largely unprotected while studies and discussions are ongoing. As Canada's *Federal Marine Protected Areas Strategy* explains, the precautionary principle "recognizes that decisions and action on conservation measures can and will be taken in the absence of scientific certainty." However, in the NPC's experience of consulting to formulate a territory-wide land use plan for approximately 12 years, decision-making processes can sometimes enter a cycle of consultations and studies to identify the "best available information", while the establishment of protection and other conservation measures are being postponed to attempt to resolve uncertainties in knowledge before decisions are made. As a result, the precautionary principle may not be implemented in a timely way.

RECOMMENDATION #8: The *Oceans Act* should provide for establishment of non-permanent interim protection measures to allow temporary restrictions for the purpose of studying effects of imposing MPAs.

DFO summarizes the following Process of "Establishing and Managing MPAs under the *Oceans Act*":

- Step 1: Selection of Area of Interest (AOI) Through the Bioregional MPA Network Process
- Step 2: Ecological/biophysical, Social, Cultural and Economic Overview & Assessment of the AOI
- Step 3: Development of the Regulatory Intent & Consultation with Interested/Affected parties
- Step 4: Regulatory Process & Designation of the MPA
- Step 5: MPA Management

The NPC appreciates the efforts of DFO to engage the NPC in the selection of potential Areas of Interest for future MPAs in Nunavut through recent workshops, as well as its commitment to continue to work with the NPC on this initiative. Because the NPC's *Broad Planning, Policies, Objectives and Goals* (2007) are applicable to initiatives and conservation areas including MPAs under the *Oceans Act*,¹⁹ and because the NPC will perform a conformity determination on any DFO proposal for an initiative to establish an MPA in Nunavut, it is important that the NPC continue to be consulted through a collaborative process.

CONCLUSION:

In conclusion, the NPC thanks the Standing Committee of Fisheries and Oceans for the opportunity to comment on the criteria and process for establishing MPAs under the *Oceans Act*. The NPC looks forward to working with DFO to provide additional information on the policies, priorities and objectives that govern MPAs in Nunavut, and on the conformity determination process in Nunavut.

LIST OF RECOMMENDATIONS:

1. Research whether MPAs have positive economic impacts.
2. Add a distinct reference to indigenous (Inuit) subsistence fisheries in *Oceans Act* paragraph 35(1)(a) as distinct from commercial and non-commercial fisheries.
3. Ensure Inuit subsistence harvesting is not affected by MPAs.
4. The *Oceans Act* should expressly recognize that many marine mammals in the Arctic rely on the foreshore and marine ice as habitat, meaning that to adequately protect unique areas and endangered or threatened marine species using MPAs, there must be complimentary protections of the terrestrial and marine ice habitats of those species.
5. MPAs under the *Oceans Act* should expressly recognize that in the Arctic Ocean, water is often frozen and provides a "unique" albeit transitory habitat. It is necessary to design MPAs that can protect unique marine ice habitats that do not prevent human uses at other times.
6. The *Oceans Act* should enshrine reconciliation with Canada's indigenous peoples, in a manner consistent with its full, unqualified support of the *United Nations Declaration on the Rights of Indigenous Peoples*, rather than rely on mandate letters which may change before MPAs can be established.
7. Once the Nunavut Land Use Plan is approved, if it meets DFO's criteria for OEABCMs, it should be counted towards Canada's Aichi biodiversity target.
8. The *Oceans Act* should provide for establishment of non-permanent interim protection measures to allow temporary restrictions for the purpose of studying effects of imposing MPAs.

About the Nunavut Planning Commission

The NPC is an Institution of Public Government ("IPG") established under *Nunavut Agreement* and *NuPPAA*, and has jurisdiction to plan in Nunavut's marine environment. The NPC is responsible for developing land use plans that guide and direct resource use and development in Nunavut, and has jurisdiction to plan for over 3 million km², of which over 1.2 million km² are marine areas.

¹⁹ *NuPPAA*, s. 70(3)