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I. Increase Indigenous Involvement at the Strategic Policy Level

A key principle of *UNDRIP* is for States to seek the free, prior, and informed consent of Indigenous peoples before implementing legislative measures that may affect them (emphasis added):

> States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent *before* adopting and implementing legislative or administrative measures that may affect them.[1]

This principle was acknowledged by the Supreme Court of Canada in 2010. The Crown has a constitutional duty to consult and accommodate First Nations regarding "strategic, higher level decisions" that may have an impact on their rights and claims.[2]

We suggest that before any legislative changes are contemplated, Indigenous people must be involved as partners and in leadership roles with respect to the development of legislation, and strategic, high level policy decisions.

The Standing Committee on Environment and Sustainable Development has already recognized the need for Indigenous involvement in the planning of the MPA regime (emphasis added):

[1] *UNDRIP*, *supra* note **Error! Bookmark not defined.**, Article 19.
[2] *Rio Tinto Alcan v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 43.

Recommendation 1

The Committee recommends that the Government of Canada establish a permanent national conservation body consisting of federal, provincial, territorial, municipal and Indigenous representatives that will lead planning to meet the Aichi targets as well as setting and implementing overarching longer-term conservation plan. In order to facilitate the work of this body, the Committee further recommends:

- That a national stakeholder advisory group to advise the conservation body be established representing, among others, municipal governments, civil society, private landowners, conservation specialists, industry, academics and Indigenous groups; and
- That a process be put in place through which individuals, in particular Indigenous peoples, or organizations may suggest priority areas for protection.[3]

With respect, the Standing Committee on Environment and Sustainable Development improperly views Indigenous peoples as "stakeholders" rather than "rightsholders." Indigenous peoples are not simply stakeholders with the same legal interests as industry, civil society, and private land owners; Indigenous peoples have constitutionally protected rights and interests as set out in section 35 of the *Constitution Act, 1982*.[4] This must be recognized and they should be listed first. Any national advisory panel in relation to MPAs must have an Indigenous-specific process commensurate with the importance of their constitutionally protected rights and interests. As it stands, a merely participatory mechanism as recommended by the Committee will not meet the rights of Indigenous peoples as recognized under s. 35 of the *Constitution Act, 1982*. Nor will it meet the *UNDRIP* standard of free, prior, and informed consent.

Notably, Canada has taken steps towards creating a national advisory panel that includes an Indigenous-specific advisory panel. In February 2017, Canada issued a Commitment to Building a Natural Legacy through the Pathway to Canada Target 1 ("Pathway Project").[5] The Pathway Project will seek advice from a national advisory panel ("Panel") comprised of a broad spectrum of individuals. In addition, an Indigenous Circle of Experts has been established to provide the Panel with Indigenous expert advice, including "advice on the proposed term and definition for a spectrum of Canadian Indigenous conservation areas, along with defining principles, criteria, and indicators."[6] The Panel will produce a Report by October 2017, and Indigenous people and their communities will be consulted thereafter.

It is our view that Indigenous people should always be involved before Panel Reports are produced to best achieve a common approach.

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[3] ENVI Report, *supra* note **Error! Bookmark not defined.**, at p 42.
[4] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.
[5] Pathway to Canada Target 1 (website).
[6] Government Response to "Taking Action Today: Establishing Protected Areas for Canada's Future" (16 June 2017) [Response to ENVI Report].

The creation of the Pathway Project Panel and the Indigenous Circle of Experts was critical to respond to calls to create a new category of MPAs: Indigenous Conservation Areas ("ICAs").[7] The intent of ICAs is to ensure that all legislation and policy amendments, as well as implementation measures, respect the Indigenous perspective.

In order to reflect the s. 35 right and to move toward implementation of *UNDRIP*, Canada must now commit to making the Panel and a separate Indigenous process like the Indigenous Circle of Experts a permanent body. All future decisions in relation to the implementation of the MPA regime should be guided by a permanent Indigenous Circle of Experts. The Indigenous Circle of Experts must be involved in the development of legislation and policy as it relates to the rights and interests of Indigenous peoples. It is too late for governments to consult them after initial Reports are completed.

The importance of early and on-going engagement with Indigenous peoples in the development of legislation that impacts their rights is illustrated in the context of Bill C-55, *An Act to amend the Oceans Act and the Canada Petroleum Resources Act*.[8] Under Bill C-55, an Interim Protection MPA may be established using a Ministerial Order, leading to a two-stage establishment process:

1. An Interim Protection MPA to designate the initial MPA boundary based on preliminary science and consultations, and "freeze the footprint" of current activities. In other words, on-going activities can continue, new activities would be prohibited, and some ongoing activities regulated under federal fisheries legislation may be restricted further; and
2. Within five years after the Interim Protection MPA is established, the Minister is to recommend that the Governor in Council designate the final MPA based on additional science and consultations.

The implication of Bill C-55 is that Indigenous fishing activities in Interim Protection MPAs will be frozen at their current levels. Bill C-55 has the potential to impact the inherent, Aboriginal, and Treaty rights of Indigenous people, and their ability to expand fishing activities in coastal waters. Successful and constitutionally compliant legislation will require an active role for Indigenous groups. Reconciliation can be achieved when the principles of mutual trust and respect are applied to the legislative drafting and consultation process. To date, Canada continues to take a unilateral approach in relation to legislative instructions and drafting.

A. Indigenous Conservation Areas

Consulting with rightsholders early in the legislative and policy development phase is essential to respecting and upholding s. 35 rights, consultation duties, and principles like free, prior, and informed consent. The Indigenous Circle of Experts will not be able to represent the views of all

[7] *Ibid* at p 4: I should note that while the Committee and Ms. Simon have used the term "Indigenous protected areas," the Government is considering the use of a broader term: "Indigenous conservation areas." The term "Indigenous conservation areas" is an intentionally recognized term used to convey a spectrum of conservation tools that could contribute toward Canada's biodiversity target beyond traditional protected areas. Examples may include areas of sustainable use that are co-managed with Indigenous Peoples."

[8] Bill C-55, *An Act to amend the Oceans Act and the Canada Petroleum Resources Act*, 1st Sess, 42nd Parl, 2017.

Indigenous people. Those with unique territorial lands and waters who do not have a seat at the table will present a fatal gap in the process. Indigenous people are not a homogenous group. There can be no "single perspective" that represents the views of Indigenous peoples across Canada. A flawed consultation process will miss the necessary regional interpretations and factors that should determine what constitutes an ICA. Gathering the views and expertise of Indigenous people across Canada early in the process can only lead to more comprehensive legislative and policy amendments, and a more suitable ICA regime.

In addition, meaningful consultations with Indigenous people are not "one-and-done." Meaningful consultation is an iterative process. Meaningful consultation involves open dialogue during all phases of legislative and policy development: before, during, and after.

There are many considerations when developing the legislative framework for ICAs. One issue is that an ICA cannot truly be "Indigenous" if it is developed, established, and managed by non-Indigenous people. The goal must be a system in which Indigenous governments manage ICAs. Australia is a leading example, having successfully implemented an Indigenous Protected Area regime that is managed by Indigenous governments. Some keys aspects of the regime include:

1. Indigenous Protected Areas are managed by Indigenous government or organizations, combining traditional and scientific knowledge, and advanced collaboratively through management plans developed in partnership with or input from public governments and other organizations.
2. Indigenous Protected Areas are recognized as part of a federally coordinated, national conservation network of protected areas to protect ecological and cultural diversity and contribute to the realization of national and international commitments, including the 2020 Aichi Targets under the Convention on Biological Diversity.
3. Indigenous Protected Areas are supported through multi-year funding agreements by the federal government, supplemented by fee-for-service and other income generating activities, as well as by private and philanthropic donors.[9]

The recommendation to implement and respect the inherent right of Indigenous people in Canada to self-govern the lands and waters in their traditional territories is aligned with the example of the Australian regime that allows Indigenous people to create Indigenous Protected Areas in accordance with their own laws. The Australian model avoids the risk that principles, criteria, and indicators are imposed upon Indigenous people without their input, leadership, and free, prior, and informed consent.

Indigenous people must also lead the development of different categories of ICAs, including: traditional territory, priority protection, cultural, and development. This highlights the importance of consulting Indigenous peoples early in the process to have a fuller understanding of the Indigenous perspective before entering consultations after a Report and with pre-determined categories.

[9] Indigenous Leadership Initiative, "Indigenous Protected Areas: Recognizing Indigenous Stewardship in Canada" at p 4 (28 September 2016).

B. ***Community Engagement***

In practice, we would argue that the Pathway Project has some major shortcomings. To date, very few consultations have been held with Indigenous people or their communities to seek their input in relation to MPA regime. Only after the Panel and Indigenous Circle of Experts complete their report in October 2017 will Indigenous people and their communities be consulted to refine the elements of the report.

In our view, consultation should be at the earliest opportunity to reflect a true partnership. It should be an ongoing process that begins before the first report is tabled. It is imperative to engage Indigenous people, the constitutional rightsholders, early in the process when considering legislative and policy amendments. Consultations that are carried out too late create the perception that the government has already come to a conclusion in relation to any proposed amendment. It reflects an outdated colonial approach that presumes the government can decide for Indigenous peoples.

It is not clear whether ICAs will be involved in "coastal and marine areas," or limited to "terrestrial and inland waters." The Government has responded to the Standing Committee on Environment and Sustainable Development report as follows (emphasis added):

> As part of its work, the Indigenous Circle of Experts will develop a proposed term and definition for a spectrum of Canadian Indigenous conservation areas in terrestrial and inland waters, along with specific defining principles, criteria, and indicators to recognize and support these areas in different contexts. These elements will be developed and refined through a series of regional gatherings and site visits with Indigenous governments and community representatives who have established, or wish to establish, Indigenous conservation areas within their traditional territories.
>
> …
>
> With respect to Indigenous engagement in protected areas in the marine context, indigenous organizations are involved in the process to gather information (scientific, socio-economic and cultural, and traditional ecological knowledge) leading to the identification of Areas of Interest for possible future *Oceans Act* MPA establishment. Indigenous organizations are involved in the establishment and implementation of *Oceans Act* MPAs where they have demonstrated an interest. In most cases, Indigenous organizations participate in MPA governance and management through multi-stakeholder advisory committees.[10]

This is a significant distinction for the Indigenous people in Atlantic Canada who should have their traditional territories, including coastal and marine areas, designated as an ICA. Again, Indigenous organizations must be properly funded, engaged, and involved in a specific process that is distinct from a general multi-stakeholder process.

[10] Response to ENVI Report, *supra* note **Error! Bookmark not defined.**, at pp 4-5.

II. Implement and Respect Indigenous Self-Governance

The *Oceans Act* currently allows the Minister of Fisheries and Oceans to enter into an agreement with any person or body for the purpose of exercising the powers and performing the functions assigned to the Minister in the *Act*.[11] This broad power allows the Minister to enter into agreements with Indigenous peoples to co-manage and to carry out certain functions under the *Oceans Act*.

In order to reflect *UNDRIP* principles, this provision of the *Act* should be amended to also ensure recognition, respect, and autonomous operation of Indigenous laws over waters in traditional territories: particularly where Indigenous laws provide greater environmental protections than those provided in the *Act*. Such an amendment would both implement self-determination and provide greater environmental protection. It would foster a nation-to-nation relationship between Indigenous people and Canada. It also aligns with statements of the current government, and *UNDRIP* principles.

The development of a nation-to-nation relationship with Indigenous people is consistent with the recommendation of the Standing Committee on Environment and Sustainable Development (emphasis added):

> **Recommendation 21**
>
> The Committee recommends that the Government of Canada pursue common conservation objectives and reconciliation through a nation-to-nation relationship with indigenous peoples. More particularly, the Government of Canada should:
>
> - In partnership with Indigenous peoples, pursue the expansion of federal protected areas to protect areas of highest ecological value within traditional territories of Indigenous peoples;
> - Implement and respect co-management arrangements with indigenous partners for federal protected areas in Indigenous traditional territories
> - Establish a federal point of contact with decision-making authority to facilitate negotiations for federal protected areas in Indigenous traditional territories; and
> - Work with Indigenous peoples to designate and manage Indigenous protected areas within their traditional territories, and incorporate these areas into Canada's inventory of protected areas by amending applicable legislation, for example the *Canada Wildlife Act*.[12]

While the Standing Committee recommendation to implement and respect co-governance agreements with Indigenous people is a welcome step forward, Canada should aspire to go beyond co-management agreements and recognize and respect the inherent right of Indigenous people to be self-governing in their traditional territories.

[11] *Oceans Act*, *supra* note **Error! Bookmark not defined.**, s 33(1)(b): In exercising the powers and performing the duties and functions assigned to the Minister by this Act, the Minister may enter into agreements with any person or body or with another minister, board or agency of the Government of Canada.
[12] ENVI Report, *supra* note **Error! Bookmark not defined.**, at p 61.

In addition, the legislation should require both a federal and an Indigenous government point of contact.

Recommendations to implement and respect Indigenous self-governance aligns with several *UNDRIP* principles (emphasis added):

> **Article 18** - Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedure, as well as to maintain and develop their own indigenous decision-making institutions.[13]
>
> **Article 20.1** - Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.[14]
>
> **Article 32** - States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water and other resources.[15]

The Food and Agricultural Organization of the United Nations Guidelines on Small-Scale Fisheries, adopted by Canada in May 2014, also recognizes the importance respecting the rights of Indigenous small-scale fisheries, as well as the importance of harmonizing domestic and international laws (emphasis added):

> **Article 5.4**: States, in accordance with their legislation, and all other parties should recognize, respect and protect all forms of legitimate tenure rights, taking into account, where appropriate, customary rights to aquatic resources and land and small-scale fishing areas enjoyed by small-scale fishing communities. When necessary, in order to protect various forms of legitimate tenure rights, legislation to this effect should be provided. States should take appropriate measures to identify, record and respect legitimate tenure rights holders and their rights. Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities including indigenous peoples and ethnic minorities, should be recognized, respected and protected in ways that are consistent with international human rights law. The UN DRIP and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities should be taken into account, as appropriate. Where constitutional or legal reforms strengthen the rights of women

[13] *UNDRIP*, *supra* note **Error! Bookmark not defined.**, Article 18.
[14] *Ibid*, Article 20.1.
[15] *Ibid*, Article 32.

> and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure system.[16]
>
> **Article 10.1**: States should recognize the need for and work towards policy coherence with regard to, inter alia: national legislation; international human rights law; other international instruments, including those related to indigenous peoples; economic development policies; energy, education, health and rural policies; environmental protection; food security and nutrition policies; labour and employment policies; trade policies; disaster risk management (DRM) and climate change adaptation (CCA) policies; fisheries access arrangements; and other fisheries sector policies, plans, actions and investments in order to promote holistic development in small-scale fishing communities. Special attention should be paid to ensuring gender equity and equality.[17]

Canada has a long way to go in its recognition of "local norms and practices, as well as customary or otherwise preferential access to fishery resources and land" for its Indigenous people.

Indigenous self-governance is key to remediate these gaps. It is also instrumental to pursuing a nation-to-nation relationship with Canada. Self-governance will improve the socio-economic conditions within Indigenous communities in relation to income, employment, education, health, housing, social support, and the environment. These outcomes will facilitate healing, wellness, economic development, and the alleviation of poverty among Indigenous communities.

III. Invest in the Capacity Development of Indigenous People

Indigenous people require support that is effective and well managed to develop their internal capacity to be involved in all stages of the MPA designation regime, including: Indigenous Knowledge, science, law, policy, economics, and sociology. The development of Indigenous capacity will ensure the capacity of Indigenous people to establish and manage ICAs in accordance with their Indigenous laws.

The development of Indigenous capacity will also support and strengthen Indigenous Knowledge Systems. While Indigenous Knowledge focuses on what one specifically knows, Indigenous Knowledge Systems focuses on the methodology or "way of knowing" in relation to gaining Indigenous Knowledge. Indigenous Knowledge Systems have been discussed in the same vein as the scientific method or the "Two-Eye Seeing."[18] They must be understood and implemented in a respectful and meaningful way.

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[16] Food and Agriculture Organization of the United Nations, "Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication," Article 5.4 (Rome: FAO, 2015) [FAO Guidelines].

[17] *Ibid*, Article 10.1.

[18] Two-Eyed Seeing refers to learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of Western knowledges and ways of knowing, and learning to use both these eyes together, for the benefit of all.

Investments in Indigenous peoples can reduce the timelines for designating certain areas as MPAs by building capacity in Indigenous communities and governments. Without this investment and effective funding and capacity building Canada cannot achieve Target 11 by 2020. The current timeline for establishing a MPA under the *Oceans Act* is 7 years.[19] The process for designating a body of water as an MPA is set out in the Fisheries and Oceans National Framework for Establishing and Managing Marine Protected Areas.[20]

Clearly, Canada needs an effective funding and inclusive process urgently. There is no time for Canada to fail in this regard.

Without the appropriate support and capacity, there will continue to be significant barriers preventing Indigenous people from being adequately involved in MPA designation. For example, Indigenous Knowledge alone is not sufficient to have a marine area designated as an MPA.

A marine area becomes an MPA through:

1) Identification of an Area of Interest ("AOI");

2) Initial screening of the AOI;

3) Evaluation of the AOI;

4) Management Planning;

5) Designation of the MPA; and

6) Management of the MPA.[21]

As part of the AOI initial screening stage, Indigenous people must provide leadership and information describing:

1) the proposing organization;

2) the significance of the AOI;

3) the location of the proposed AOI;

4) the rationale for establishing an MPA as it relates to section 35 of the *Oceans Act*;[22]

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[19] ENVI Report, *supra* note **Error! Bookmark not defined.**, at p 64.
[20] Fisheries and Oceans Canada, "National Framework for Establishing and Managing Marine Protected Areas" (March 1999).
[21] *Ibid*.
[22] *Oceans Act*, *supra* note **Error! Bookmark not defined.**, s 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 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; (b) the conservation and protection of endangered or threatened marine species, and their habitats; (c)

5) the biophysical description and socio-economic profile of the AOI and surrounding areas;

6) the types of management measures and regulations that might apply to the AOI; and

7) the suggested involvement of other stakeholders in the future management of the area.[23]

At the AOI evaluation stage, detailed information in relation to jurisdiction, environmental, ecological, social, economic, protection mechanisms, and a list of interested individuals must be provided.[24]

These are all areas where the Indigenous customs, laws, and practices will be key.

During the AOI management planning stage, detailed information is required in relation to the management goals and objectives, the interpretation of regulations, the core and special use zones, buffer areas, resource studies, awareness, surveillance and enforcement, Indigenous uses, administration, and evaluation cycles.[25]

Indigenous people require an effective support strategy to develop mentorship programs to facilitate Indigenous involvement at all stages of the MPA regime. Mentorship programs are necessary to train Indigenous people in the traditional, technical, legal, and scientific processes that are currently required under the *Oceans Act* regime. The development and support of mentorship programs will also assist Indigenous people to establish their own ICAs in accordance with Indigenous laws. The development of this additional expertise represents a win-win for all involved.

In addition, Indigenous people require a direct source of funding to enable them to contract appropriate expertise in specific areas of need. This includes areas of traditional, technical, legal, and scientific knowledge. Until further capacity is built, Indigenous people will require this direct source of support to navigate the MPA designation process.

Our recommendation to support and develop the capacity of Indigenous people, and to contract for the necessary expertise in relation to the *Oceans Act*, is consistent with the Standing Committee on Environment and Sustainable Development's recommendations to accelerate data collection for inventory management, as well the identification of priority areas to Indigenous peoples (emphasis added):

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the conservation and protection of unique habitats; (d) the conservation and protection of marine areas of high biodiversity or biological productivity; and (e) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.

[23] *Supra*, note 20.

[24] *Ibid*.

[25] *Ibid*.

Recommendation 2

> The Committee recommends that the Government of Canada lead a science-based, whole-of-Canada, terrestrial and marine, conservation assessment in partnership with the provinces and territories, Indigenous people, municipalities and other stakeholders.
>
> The assessment should look to the integration of greater protected area ecosystems, identify priority areas and important connection corridors to ensure a sustainable ecosystem, maintain our biodiversity and develop appropriate targets for Canada.[26]

Recommendation 8

> The Committee recommends that the Government of Canada accelerate data collection for inventory management of protected areas. This could include the creation of a complementary conservation database where individuals and groups could upload data independently as part of a national collection of other effective area based conservation measures above and beyond Canada's Aichi targets.[27]

The Food and Agricultural Organization of the United Nations Guidelines on Small-Scale Fisheries also calls for investments in programs that develop the capacity of Indigenous people (emphasis added):

> **Article 6.2** - States should promote investment in human resource development such as health, education, literacy, digital inclusion and other skills of a technical nature that generate added value to the fisheries resources as well as awareness raising. States should take steps with a view to progressively ensure that members of small-scale fishing communities have affordable access to these and other essential services through national and subnational actions, including adequate housing, basic sanitation that is safe and hygienic, safe drinking-water for personal and domestic uses, and sources of energy. Preferential treatment of women, indigenous peoples, and vulnerable and marginalized groups – in providing services and giving effect to non-discrimination and other human rights – should be accepted and promoted where it is required to ensure equitable benefits.[28]
>
> **Article 11.6** – All parties should ensure that the knowledge, culture, traditions and practices of small-scale fishing communities, including indigenous peoples, are recognized and, as appropriate, supported, and that they inform responsible local governance and sustainable development processes. The specific knowledge of women fishers and fish workers must be recognized and supported. States should investigate and document traditional fisheries knowledge and technologies

[26] ENVI Report, *supra* note **Error! Bookmark not defined.**, at p 44.
[27] *Ibid* at p 35.
[28] FAO Guidelines, *supra* note 16, Article 6.2.

in order to assess their application to sustainable fisheries conservation, management and development.[29]

Article 11.7 – States and other relevant parties should provide support to small-scale fishing communities, in particular to indigenous peoples, women and those that rely on fishing for subsistence, including, as appropriate, the technical and financial assistance to organize, maintain, exchange and improve traditional knowledge of aquatic living resources and fishing techniques, and upgrade knowledge on aquatic ecosystems.[30]

The already established Aboriginal Aquatic Resource and Oceans Management ("AAROM")[31] program is well-positioned to provide capacity building and contracting services to Indigenous peoples in relation to MPAs. One of the objectives of AAROM is to assist Indigenous groups with the acquisition of scientific and technical expertise to facilitate their participation in aquatic resources and oceans management.

In our view, the objectives of the AAROM program should be expanded to ensure support for the involvement of Indigenous people at all stages of the MPA regime. The development of Indigenous capacity, particularly in areas of local and regional governance as it pertains to ocean management, will facilitate the establishment of an ICA regime that is successfully managed and able to reflect and respect constitutional norms, international norms, and Indigenous laws.

The objectives of the AAROM program should further be expanded to support Indigenous people with the establishment or expansion of existing Indigenous decisions-making institutions. By supporting existing Indigenous institutions, AAROM could play an active role to enable existing Indigenous governing bodies to fulfill key objectives for ocean and ICA management.

Further support for Indigenous peoples with respect to internal capacity development will facilitate Indigenous involvement at all stages of the MPA designation regime. Beyond governance and institutional structure, other areas that will require capacity building support include Indigenous Knowledge, science, policy, economics, and sociology. The increased Indigenous capacity in these areas will facilitate the establishment and management of ICAs.

IV. Indigenous Monitoring and Enforcement

As previously discussed, the designation of an MPA requires monitoring and enforcement measures to ensure compliance with the Management Plan. In our view, Indigenous people should be considered leaders in relation to the monitoring and enforcement of MPAs in their traditional territories.

Indigenous involvement in all stages of the MPA regime, including monitoring and enforcement, is consistent with the recommendation of the Standing Committee on Environment and Sustainable Development (emphasis added):

[29] *Ibid*, Article 11.6.
[30] *Ibid*, Article 11.7.
[31] Fisheries and Oceans Canada, "Aboriginal Aquatic Resource and Oceans Management Program."

Recommendation 20

> The Committee recommends that, in partnership with indigenous peoples, the Government of Canada establish a national program of Indigenous guardians, who are community based land and water stewards managing lands and waters using cultural traditions and modern conservation tools. The program should support sustainable livelihoods and protected areas operations. All Indigenous peoples should have the opportunity to participate in the program.[32]

A March 2017 Report by Ms. Mary Simon to Minister Bennet also "recommended that Canada work with Indigenous organizations to conceive a new federal policy directive that sets out a process for the identification, funding and management of Indigenous protected areas, and to identify long-term stable funding to support locally-driven terrestrial guardian and Arctic coastal and marine stewardship programs".[33]

The involvement of Indigenous people in the monitoring and enforcement of MPAs in their traditional territories is further supported by *UNDRIP* (emphasis added):

> **29.1** Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
>
> **29.2** States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
>
> **29.3** States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.[34]

The Government indicated that Budget 2017 announced $25 million over five years starting in 2017-2018, to support the development of a pilot Indigenous guardians network.[35] AAROM is well-positioned to develop the capacity of Indigenous guardians in Atlantic Canada as the pilot program aligns closely with the program's existing mandate.

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[32] ENVI Report, *supra* note **Error! Bookmark not defined.**, at p 58.
[33] Mary Simon, "A new Shared Arctic Leadership Model" (March 2017); also see Response to ENVI Report, *supra* note 6, at p 4. Note: Mary Simon is a former Canadian diplomat and current fellow with the Arctic Institute of North America. Early in her career, she was a producer and announcer for CBC North, and later entered public service as secretary of the board for the Northern Quebec Inuit Association. Simon was Canada's first Ambassador for Circumpolar Affairs, and was a lead negotiator for the creation of the Arctic Council. She also later served as ambassador to Denmark.
[34] *UNDRIP*, *supra* note **Error! Bookmark not defined.**, Article 29.
[35] Response to ENVI Report, *supra* note 6, at p 5.

V. Conclusion

In summary, the current federal review of the *Oceans Act* and protected areas regime presents a ripe opportunity for Atlantic First Nations to take up jurisdiction over Indigenous Conservation Areas, and to become partners and leaders within the federal government's protected areas regime. Canada's unqualified support for the implementation of *UNDRIP* has furthermore provided the political conditions necessary for the recommendations of the Atlantic Policy Congress to make a lasting impact on the legislative regime, governance, and institutional infrastructure of Atlantic First Nations.