



Assembly of First Nations

**Submission to the House of Commons Standing
Committee on Environment and Sustainable Development (ENVI)**

***Study on An Act respecting transparency and accountability in Canada's efforts
to achieve net-zero greenhouse gas emissions by the year 2050 (Bill C-12)***

May 17, 2021

Assembly of First Nations

The Assembly of First Nations (AFN) is the national, political organization of First Nations governments and their citizens, including those living on and off reserve. Every Chief in Canada is entitled to be a member of the Assembly, and the National Chief is elected by the Chiefs in Canada, who in turn are elected by their citizens. The AFN has 634 member nations within its Assembly. The role and function of the AFN is to serve as a nationally delegated forum for determining and harmonizing effective, collective, and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action, and to advance the aspirations of First Nations.

The AFN supports First Nations by coordinating, facilitating, and advocating for policy change, while the leaders of this change are the First Nations themselves. Chiefs, and the First Nations they represent, must be an integral part of meeting the challenge of sustainable, transformative policy change. AFN has been acting on this responsibility by leading discussions on climate at the regional, national, and international stage. From the Chiefs-in-Assembly, the AFN is mandated by eleven resolutions since 2016. Most recently, in Resolution 05/2019: *Declaring a First Nations Climate Emergency*, the Chiefs-in-Assembly resolve to:

1. *Declare a global climate emergency.*
2. *Recognize that the climate crisis constitutes a state of emergency for our lands, waters, animals and peoples, and that we will accordingly utilize our local, national, and international forums and partnerships to keep global warming below 1.5 degrees Celsius.*
3. *Call on local, national, and international communities, governments, organizations, and movements to safeguard the inherent, Treaty and constitutionally protected rights of First Nations, respect Indigenous knowledge, and uphold Treaties and other constructive arrangements between First Nations and the Crown.*
4. *Direct the Assembly of First Nations (AFN) to call on the federal, provincial, and territorial governments to take urgent and transformative climate action that meets the requirements outlined in the reports by the Intergovernmental Panel on Climate Change and Canada in a Changing Climate to reduce emissions in Canada by 60% below 2010 levels by 2030 and reach net-zero emissions by 2050.*
5. *Call on the AFN, with guidance from the Advisory Committee on Climate Action and the Environment (ACE), AFN regions, First Nations Elders, Knowledge Keepers, women, youth and leadership, to develop a First Nations-led climate strategy, within six months, to achieve the objectives above and simultaneously address income inequality within First Nations as part of the mobilization for a just transition, and to host a National Gathering to advance local, domestic and international climate advocacy.*

1. Introduction:

The Assembly of First Nations (AFN) appreciates the opportunity to provide a submission to the Standing Committee for its study of *An Act respecting transparency and accountability in Canada's efforts to achieve net-zero greenhouse gas emissions by the year 2050* (Bill C-12 or the Canadian Net-Zero Emissions Accountability Act).

The evidence is clear: we are facing a joint climate and biodiversity crisis. The most up-to-date science, according to *the Intergovernmental Panel on Climate Change*, projects that we have less than ten years to avoid locking in a future where our children are facing the consequences of catastrophic climate change. The *United Nations Emission Gap* report projects that we might hit a global annual temperature of 3.2 degrees by 2100, unless we take transformative action to reduce greenhouse gas emissions by 45% from 2010 levels by 2030 and reach zero by 2050. These statistics align with the observations that First Nations knowledge keepers have been sharing for decades.

In Canada, the situation is urgent. Irreversible warming trends have now been confirmed by the *Canada in a Changing Climate Report* (2019), identifying that Canada's climate has warmed by 2.3°C since 1948 and will warm further, on average, at about double the magnitude of warming globally.¹ This comes as no surprise, as First Nations' knowledge keepers have been raising their voices for decades, sharing information about the changes that they are observing: changes in species migration, weather, and irreversible impacts to the land. These observations are being formally captured as a growing number of First Nations are adding their voices to the call for rapid de-carbonization to meet the target of the Paris Agreement. One such example is the Vuntut Gwitch'in First Nation (VGFN) in Old Crow, Yukon. Their declaration, entitled "Yeendoo Diinehdoo Ji' heezrit Nits'oo Ts' o' Nan He' aa," translates into "After Our Time, How Will the World Be?" laid the foundation for the Chiefs-in-Assembly to declare their own climate emergency, in 2019.

In July 2019, the Chiefs-in-Assembly declared a *First Nations Climate Emergency*, recognizing that "...climate change constitutes a state of emergency for our lands, waters, animals, and peoples." The resolution laid out some immediate steps for AFN to plan a National Climate Gathering and develop a National Climate Strategy. It directed the Strategy to stress urgent and transformative climate action that reduces emissions in Canada by 60% below 2010 levels by 2030 and reach net-zero emissions by 2050, while simultaneously addressing income inequality within First Nations as part of the mobilization for a just transition. Given this clear mandate, First Nations were pleased to see the Speech from the Throne commitment to "...legislate Canada's goal of net-zero emissions by 2050." In December 2020, a new climate plan was released, *A Healthy Environment and a Healthy Economy*, committing to "...position Indigenous climate leadership as a cornerstone of Canada's strengthened climate plan." In doing this, the plan recognized that "...[s]upporting self-determined climate action is critical to advancing Canada's reconciliation with Indigenous peoples." (p. 68-69)

¹ For more details, please refer to *Canada in a Changing Climate*, found here: <https://changingclimate.ca/>.

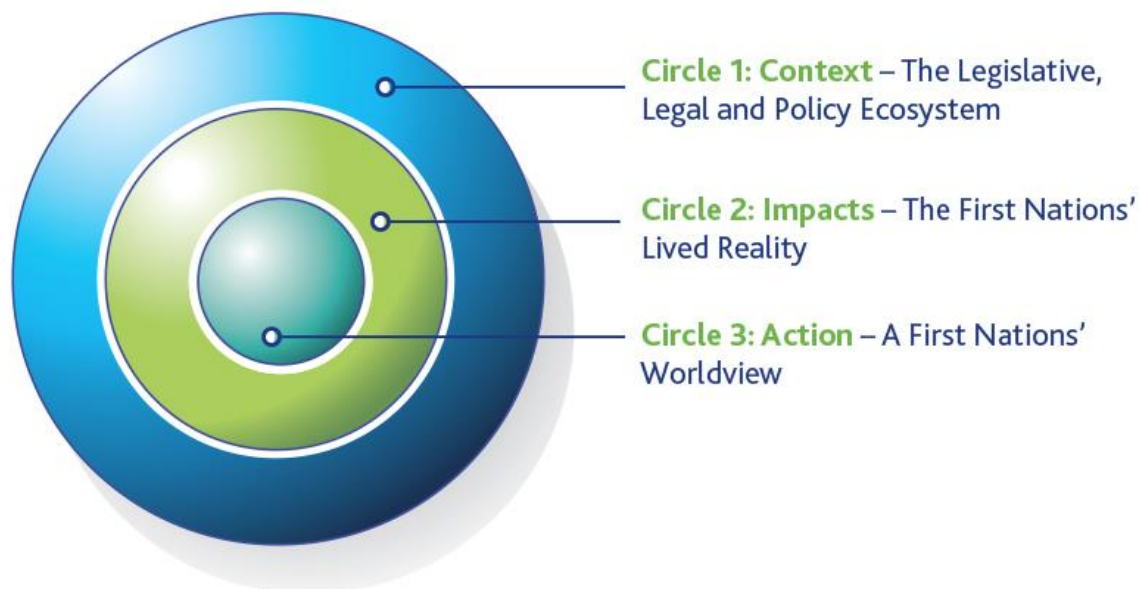
It is in this spirit of leadership, as well as a recognition that Canada must do its part to address the joint crises of biodiversity loss and climate change,² that we make this submission, with recommendations grouped into three themes:

1. First Nations full and effective participation in national climate governance;
2. First Nations rights, knowledge systems, and jurisdiction in climate science and policy; and
3. Oversight and accountability.

To begin, we introduce the First Nations Climate Lens, explore its implications for Bill C-12, and then transition into concrete recommendations to improve First Nations considerations in the Bill.

2. A First Nations Climate Lens

First Nations face unique climate risks because of how colonialism, in conjunction with capitalism, has shaped where we live, our socio-economic conditions, and how we exercise our relationships with Mother Earth. These experiences, and interconnections, cannot be overlooked when contemplating climate related solutions for (or by) First Nations. To better understand this reality, and advance First Nations climate solutions, the AFN has developed the concept of a First Nations 'Climate Lens' (Figure 1).



This lens challenges conventional conceptualizations of First Nations as 'vulnerable' populations and 'passive recipients' of climate impacts. Indeed, our unique connections to the land, water, air, and non-human beings have enabled us to live reciprocally and in balance with all of Creation. The cultural, spiritual, and social connection to the land may increase First Nations' exposure and

² Canada remains a high emitter ranking [10th highest-emitting country globally](#) and the [fifth highest-emitting country on a per capita basis](#).

sensitivity to climate change impacts, but it also provides a unique source of strength, understanding and resilience. The First Nations Climate Lens is based on an alignment of three concentric spheres of activity to help bring into focus the relationships between First Nations' climate impacts, climate action, and the broader climate context.³ It stresses the fact that First Nations are climate leaders and, as such, are active drivers of positive change.

2.1 Applying the First Nations Climate Lens to Net-Zero

The concept of a First Nations Climate Lens has important procedural, conceptual, and substantive applications to the understanding, and implementation, of net-zero commitments, including the specific role of the *Canadian Net-Zero Emissions Accountability Act*.

First, the commitment to net-zero must not be interpreted as an end goal, where the only focus is on arriving at a point when "...anthropogenic emissions of greenhouse gases into the atmosphere are balanced by anthropogenic removals of greenhouse gases from the atmosphere over a specified period."⁴ Instead, net-zero must be conceptualized as a process leading to a just, equitable, and resilient future for our future generations, founded on the First Nation's right to self-determination. The federal climate plan acknowledges this perspective, committing to "...[support] self-determined climate action is critical to advancing Canada's reconciliation with Indigenous Peoples." (p. 68-9). In saying this, the *process* to arrive at a just, equitable, and resilient future must be grounded in the leadership and direction of First Nations (see specific amendments in Section 3.1).

Second, a First Nations Climate Lens confronts the "mitigation-adaptation" dichotomy – the separation between discussions on mitigation or adaptation action – rampant in federal climate perspectives. This is underlined by the absence of references to adaptation in the Bill.⁵ As highlighted by our Climate Lens, the impacts of climate change are inseparable from First Nations lived realities, whether due to climate change or the ongoing legacy of colonialism. For this reason, the conventional mitigation-adaptation dichotomy rarely considers the complex and multi-dimensional nature of First Nations climate solutions – such as returning to the land, a focus on food sovereignty, locally generated power systems, and language revitalization. Given the interconnections between the sectors and systems upon which First Nations rely (e.g., health, food, energy, transportation, etc.), this false dichotomy must be challenged to enable an acknowledgement of holistic, integrated, and systems-based solutions that get at the existential threat that is climate change (see specific amendments in Section 3.2).

And third, the Climate Lens seeks to introduce a new narrative that does not rely on technological solutions and a market-based system that presumes the continuation of the structurally inequitable and racist systems that have led us to this compounding environmental crisis in the

³ For a full description of the First Nations Climate Lens, please refer to the AFN National Climate Gathering Report found here: https://www.afn.ca/wp-content/uploads/2021/04/Climate_Gathering_Report_ENG.pdf and refer to a video from the Gathering here: <https://www.youtube.com/watch?v=ICZh6uYTh1E&t=2s>

⁴ These are definitions in the legislation, found here: <https://parl.ca/DocumentViewer/en/43-2/bill/C-12/first-reading>

⁵ There are different approaches in the United Kingdom legislation, including specific provisions on the creation of an Adaptation Committee that is required to produce a climate change risk assessment every five years as well as a National Adaptation Programme. More detail can be found here: <https://climatechoices.ca/publications/climate-legislation-in-the-united-kingdom/>.

first place. Rather, instead of embedding a model of tweaking where Canadian oil and gas production increases and is offset by an overreliance on technologies that are not in fact commercially viable,⁶ the Climate Lens offers an opportunity to shift our focus towards the interrelationship between the three C's – colonialism, capitalism, and carbon – centering an approach rooted in relationships that value the nexus of people and land, and their mutual reciprocity. This approach seeks to enable a reset with the systems and structures that seem to trap us in an unproductive cycle, while advancing the self-determination of First Nations to reclaim their rightful place as Nations. Specific amendments and considerations in this regard are found in Section 3.3, the scope and approach of the Net-Zero Advisory Body.

3. Proposed Amendments

These applications of the First Nations Climate Lens bring into focus the issues and conversations required to uplift First Nations climate-solutions and support the re-framing of the climate conversation towards more transformative and systemic change. To this end, we offer amendments broadly organized in three themes.

3.1. Full Nations full and effective participation in national climate governance

The source of First Nations jurisdiction is independent of Canada, stemming from the Creator, who placed us on Turtle Island. In so doing, we were instructed on how to interact and make decisions that respect our obligations of stewardship and responsibility for all of our waters and lands. Bill C-12 must reflect and honour this jurisdiction, and the duty to the right to self-determination, in structuring climate governance and accountability in Canada. Indeed, the Government's broader commitments to the UN Declaration on the Rights of Indigenous Peoples (UN Declaration), the Truth and Reconciliation Commission's Calls to Action, and the Calls for Justice from the National Inquiry on Missing and Murdered Indigenous Women and Girls, necessitate more than a reference in the preamble⁷ and a commit to providing an "opportunity to make submissions" as part of the responsibility for Public Participation (Section 13).

Recommendations:

1. *Recognize, respect, and affirm the inherent jurisdiction of First Nations by removing the reference to 'recognition-of-rights'⁸ and collaboration in the preamble, replacing it with three new sentences:*

"...Canada is committed to strengthen its partnership with the Indigenous Peoples of Canada with respect to measures for mitigating and adapting to climate change by

⁶ A recent report, *Correcting Canada's "one eye shut" climate policy*, uses Government of Canada data (drawn from the Canadian Energy Regulator) to show that more oil and gas is expected to be produced in 2050 than in 2019—the oil and gas sector in Canada will still be emitting some 200 megatonnes of CO2 equivalent in 2050. This raises an important concern for Canadian climate policy.

⁷ For more detail on the Legal significance of the Preamble, please refer to Joffe, P. (2021). Bill C-15 – Legal Significance of the Preamble. Retrieved from: https://www.afn.ca/wp-content/uploads/2021/01/C-15_Preamble_ENG-1.pdf

⁸ To be clear, First Nation rights are not dependent on recognition by the Crown. A clear discussion of this can be found in Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press. MN: Minnesota.

ensuring respect for the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982.”

“...Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples.”

“...Canada recognizes that all relations with Indigenous Peoples must be based on the recognition and implementation of the inherent right to self-determination, including the inherent right of self-government ...”

2. *Differentiate the participation of First Nation governments from ‘Public Participation’ in all decision-making processes related to setting and amending national greenhouse gas emissions targets or establishing or amending emission reduction plans (Section 13).*

3.2 First Nations rights, knowledge systems, and jurisdiction in climate science and policy

First Nations are rights holders, who hold inherent, Treaty and constitutionally protected rights set out in their own governance and legal systems, as well as under Section 35 of the Constitution. In practice, this means that First Nations rights cannot be undermined by a colonial interpretation of their rights. Instead, First Nations must first interpret and describe their inherent rights, grounded in Indigenous law, Indigenous legal traditions, and customary law. These legal orders, which lay the foundation for First Nations’ concepts of self-determination and sovereignty, are essential to starting true “Nation-to-Nation” dialogues and expressing the respect for our rights and title. A rights-based approach to climate accountability is essential to support First Nations Climate Leadership.

The First Nations Climate Lens recognizes that First Nations face unique vulnerabilities because of the historical and ongoing legacy of colonization. These practices require climate plans to consider the intersectional and diverse impacts that face First Nations when considering climate solutions.⁹ A framing of Indigenous ‘climate justice’¹⁰ could be captured in this Bill, including how it must be considered in the design of emission reduction plans and the analysis of impacts on First Nations. In a similar context, the act in Aotearoa/ New Zealand (2019) requires the Minister to include in their emissions reduction plan a strategy to recognize and mitigate the impacts of reducing emissions on Indigenous Peoples and to ensure their adequate consultation. It also directs the Minister and the Climate Change Commission to have regard to “the distribution of [impacts of actions to achieve the emissions budget and the 2050 target] across the regions and communities of New Zealand, and from generation to generation” when considering how the

⁹ These policies are numerous, such as forcibly locating First Nations’ reserves in ecologically sensitive areas, removing children, and forcing them into Indian Residential Schools, banning languages and ceremony. A clear description can be found in the Truth and Reconciliation’s Final Report (2015).

¹⁰ Indigenous scholars, such as Professor Deborah McGregor and Professor Kyle Whyte, have written about the considerations of climate justice from through an Indigenous lens. For background reading, refer to McGregor, D., Whitaker, S., & Sritharan, M. (2020). Indigenous environmental justice and sustainability. *Current Opinion in Environmental Sustainability*, 43, 35-40; and Whyte, K. (2020). Too late for indigenous climate justice: Ecological and relational tipping points. *Wiley Interdisciplinary Reviews: Climate Change*, 11(1), e603.

emissions budget and 2050 target may realistically be met.” These experiences are illustrated to preemptively avoid the disproportionate and intersectional potential of harm faced by First Nations.

First Nations knowledge systems are grounded in an understanding that we are one with the land. This recognition lays the foundation for a set of legal principles and orders that, while unique to each individual First Nation, represent natural, spiritual, and environmental law. It is this sacred responsibility that continues to guide how First Nations interact with, protect, and respect Mother Earth. Though ‘scientific knowledge’ and ‘Indigenous Knowledge systems’ are two distinct forms of knowledge, and one should not be used to validate the other, there are existing collaborative frameworks, such as ‘Two-eyed Seeing’ and ‘Ethical Space’, that could be used to operationalize the braiding of diverse knowledge systems for our collective and future benefit. Indigenous Knowledge systems must be used to inform climate policies and adaptation responses and should be considered alongside science – something that is essential for the current Bill.

Recommendations:

3. *Reflect Indigenous rights and the disproportionate impacts on Indigenous Peoples by adding two provisions in Section 10 (Emission reduction plan – contents):*

(c): “a description of any impact on First Nations and any adverse impact on the rights of First Nations of Canada recognized and affirmed by the United Nations Declaration on the Rights of Indigenous Peoples and section 35 of the Constitution Act, 1982.”

(d): “a description of any relevant strategies to mitigate disproportionate impacts of climate change and climate policies on groups most affected, including Indigenous Peoples and future generations.”¹¹

4. *Legislate the importance of considering Indigenous Knowledge Systems in setting targets and making plans to mitigate and adapt to climate change.*

Amend Section 4 of the Bill to read: “...based on Indigenous knowledge systems and the best available science.”

Amend Section 8 of the Bill to read: “...must take into account Indigenous knowledge systems and the best available science as well as Canada’s international commitments with respect to climate change and Indigenous Peoples.”

5. *Legislate a 2030 target that aligns with the Chiefs-in-Assembly Declaration of a First Nations Climate Emergency.*

¹¹ This is drawn from similar legislation in Aotearoa/ New Zealand and the United Kingdom, where plans must consider “the distribution of [impacts of actions to achieve the emissions budget and the 2050 target] across the regions and communities of New Zealand, and from generation to generation” (Aotearoa) and “...the social circumstances, notably how specific decisions or advice could contribute to, or prevent, fuel poverty.” (United Kingdom).

The Chiefs-in-Assembly have been clear in their expectations: urgent and transformative climate action that reduces emissions in Canada by 60% below 2010 levels by 2030, and to reach net-zero emissions by 2050.

6. *Ensure that all emission removal methods contemplated, such as nature-based solutions and carbon capture, utilization, and storage, uphold First Nations right to self-determination, including the minimum standard of free, prior, and informed consent.*¹²
7. *Introduce new provisions that ensure adaptation and climate risk related action is incorporated into emission reduction plans, the work of the Advisory Body, among other efforts, including those led by First Nations.*

3.3 Oversight and Accountability

Canada has not yet met a single emissions reduction target that it has ever set. While this Bill, and the most recent climate plan, *A Healthy Economy and A Healthy Environment*, are constructive, there remains a need for credible, independent, and transparent oversight to avoid missing another emission target. The combination of the Net-Zero Advisory Body and the new requirements on the Commissioner for Environment and Sustainable Development (CESD) are not enough, as currently designed, to hold future governments accountable.

By comparison, both the Aotearoa/ New Zealand and United Kingdom climate accountability frameworks have created clear guidance on the role and impartiality of each climate committee. For example, the Climate Change Committee in the UK is not only independent, but it has explicit direction in legislation (see Sections 33 and 34) to provide advice on setting and meeting carbon budgets and preparing for climate change. It is also responsible for monitoring and reviewing Government's progress towards its climate change goals (Section 36), also requiring the Secretary of State to respond to the Committee's suggestions in Parliament. Similarly, the Climate Change Commission in Aotearoa/ New Zealand provides expert advice on setting emissions budgets, the direction of the policies required to meet them and to adapt to the effects of climate change, as well as monitoring and reviewing Government's progress towards its climate change goals. The Commission also has considerations for Māori (Indigenous Peoples in Aotearoa) built into the process of setting budgets, developing action plans, and managing climate change risks.¹³

Recommendations:

8. *Provide guidance on the reporting and impartiality of the Advisory Body by legislating duties, functions, and reporting procedures.*

¹² To be clear, this is not an endorsement of any emission removal technology. First Nations believe emission reduction must be prioritized over removal, however given the emphasis in the most recent federal budget, any pursuit of emission removal approaches or technologies must be done with the free, prior, and informed consent of First Nations.

¹³ There are many opportunities to learn from best practices around the globe, and in provinces. A good place to begin is the recent study released by the Canadian Institute of Climate Choices (2020), found here: <https://climatechoices.ca/reports/marking-the-way/>.

Remove the Advisory Body reference to Section 13: Public Participation to make explicit reference to their role in providing guidance on the long-term and milestone targets, such as what is found in the UK Legislation.

Amend Section 20 (1) of the Bill (Establishment and Mandate) to provide additional guidance on the mandate of the Advisory Body, including the provision of expert advice on the level and scope of greenhouse gas emission targets, advice in setting and achieving emission reduction plans, and direction on the Crown-First Nations relationship, and specific climate-related effects (environmental, social, cultural, etc.) on First Nations.

Amend Section 20 (2) of the Bill (Terms of Reference) to include specific detail on the functions and duties of the Advisory Body to include powers to: review the 2050 target; provide advice on the preparation of the interim targets and plans, as well as any necessary amendments; monitor and report on progress towards meeting these targets; and the ability to create Sub-committees, including a focus on adaptation.¹⁴

Amend Section 21 (2) of the Bill (Composition of Body) to include specific requirements for representation from First Nations on the Advisory Body.

Amend Section 22 (1) of the Bill (Report) to require the Advisory Body's report to be submitted to Parliament and include, at a minimum, information on progress that has been made towards meeting the greenhouse gas emission targets; further progress that is needed to meet that target and whether those targets are likely to be met.

Amend Section 22 (2) of the Bill (Minister's response) to require the Minister to respond in Parliament to the points raised by each report of the Advisory Body, as well as a written rationale for any areas that will not be considered, within three months.

4. Conclusion

The magnitude of this challenge will require a transformational shift in the approach that Canada and the world take to address the climate crisis. Current approaches are failing, as emissions and inequality rise exponentially. We have laid out the three sets of recommendations to help guide the review of Bill C-12: First Nations full and effective participation in national climate governance; First Nations rights, knowledge systems, and jurisdiction in climate science and policy; and oversight and accountability. Together, these recommendations apply a First Nations Climate Lens to federal climate accountability, enabling a more meaningful conversation about how First Nations' solutions can re-frame the conversation and lead to transformative systems change.

¹⁴ Adaptation is completely overlooked in Bill C-12. This is problematic given the importance of understanding and acting on lock-in temperature rise. Scientists are even beginning to question the utility of focusing on mitigation at all. For example, refer to Sobel, A. (2021). Usable climate science is adaptation science. *Climatic Change*, (166)8. <https://doi.org/10.1007/s10584-021-03108-x>