



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing
Canada's commitments to reconciliation
and marine conservation

SUMMARY REPORT



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing Canada's commitments to reconciliation and marine conservation

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 First 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. In 2021, the First Nations-in-Assembly passed a resolution to mandate the AFN's advocacy on the creation of Marine Indigenous Protected and Conserved Areas (IPCAs) to support First Nations' leadership in conserving their marine and coastal waters. As such, we present this paper and its recommendations to the Government of Canada.

Executive Summary

The Government of Canada has a legal obligation to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and to advance reconciliation. At the same time, the Government of Canada has committed to protecting 25% of oceans by 2025 and 30% by 2030. Marine Indigenous Protected and Conserved Areas (IPCAs) can contribute to both reconciliation and ocean conservation goals. This report provides concrete steps that the Government of Canada can take to support the establishment of marine IPCAs for First Nations.

There is an urgency to doing this work and getting it right. The significant decline of marine species and biodiversity is occurring at local and global scales, and there is ample scientific evidence that protecting marine areas can stop or mitigate these impacts. Additional evidence demonstrates that Indigenous-managed areas contain more biodiversity than existing protected areas. Given the Government of Canada's commitment to reconciliation, its ambitious marine conservation targets (MCTs) cannot be met without meaningful partnerships with First Nations and the appropriate recognition and support of their leadership in this regard.

This report builds on a significant body of previous work on IPCAs and applies these learnings to the actions federal agencies should take to advance marine IPCAs. To achieve this, we interviewed 13 individuals with direct experience developing and



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing Canada's commitments to reconciliation and marine conservation

establishing IPCAs within First Nations and federal government agencies. Through these interviews, we summarized the key constraints for advancing marine IPCAs in Canada. These were grouped into three categories – operational, policy and legislative, and funding and capacity.

Based on these categories, we identify a total of 21 short- and long-term recommendations. The short-term recommendations will allow Fisheries and Oceans Canada (DFO) to support the establishment of IPCAs by First Nations through a process of co-designation. The long-term recommendations apply to all federal agencies that support establishing marine IPCAs and will require legislative and regulatory reform. While the report recognizes that some of these recommendations could take years to achieve, it is critical that the work commences immediately and that the Government of Canada looks for opportunities to make incremental advances.

While Environment and Climate Change Canada (ECCC) and Parks Canada have made progress to support the establishment of IPCAs, DFO has not implemented the IPCA recommendations in the 2018 National Advisory Panel's Report on Marine Protected Area (MPA) Standards. A whole-of-government approach is necessary to provide more certainty for First Nations' stewardship of their lands and waters. Therefore, the AFN is calling upon DFO to adopt the short-term recommendations in this report and to provide timelines and concrete deliverables for their implementation.

The fifth International Marine Protected Areas Congress (IMPAC5), taking place in Vancouver in February 2023, provides a significant opportunity for the Government of Canada and First Nations. Together, the Government of Canada and the AFN, can announce to the world that the Government of Canada along with First Nation partners, are committed to marine conservation and are taking meaningful steps to establishing marine IPCAs that support Canada's obligations under UNDRIP as well as the Global Ocean Alliance.



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing Canada's commitments to reconciliation and marine conservation

Summary of Recommendations

R1: Commit Fisheries and Oceans Canada (DFO) to the short-term recommendations in this report and provide the mandate and direction required to ensure the meaningful advancement of marine Indigenous Protected and Conserved Areas (IPCA).

Short-Term Recommendations

Operational

R2: Create new capacity at the Area Director level for each DFO region with a mandate to advance the support and development of marine IPCAs within both DFO Fisheries Management and DFO Oceans.

R3: Use secondments from Environment and Climate Change Canada (ECCC) and Parks Canada to build the experience needed within DFO to advance marine IPCA support and development.

R4: Require both DFO Oceans and DFO Fisheries Management to participate along with ECCC, Parks Canada, and other relevant departments, on the newly created First Nations Nature Table, a technical body of First Nations representatives, to jointly address how IPCAs can help achieve ambitious conservation commitments across the Ministries including the domestic implementation of Canada's broad Nature Agenda.

R5: Require both DFO Oceans and DFO Fisheries Management to participate directly in collaborative governance initiatives with First Nations partners from coast to coast to support the planning, establishment, and management of marine IPCAs that recognize First Nations' rights and interests under a Nation-to-Nation, government-to-government relationship with Indigenous Peoples.

R6: Utilize existing agreements (e.g., Gwaii Haanas, Thaidene Nene) as a starting point to collaboratively advance the creation of new marine IPCAs, which establish a cooperative federalism approach and clarify roles with respect to governance relationships, fettering of a Minister's authority, conservation objectives, and funding.

R7: Conduct a pilot study (such as Pathway to Canada Target 1 funding for multiple innovative projects) to learn from and develop DFO's support for marine IPCAs on each of Canada's coasts, and the St. Lawrence estuary:



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing Canada's commitments to reconciliation and marine conservation

- 7a: Adopt best practices from the Target 1 approach including allowing for regional diversity and individualization, promoting collaboration among different orders of government, and supporting innovative ideas and approaches.
- 7b: Work with federal agencies with experience and positive Nation-to-Nation relationships on marine IPCAs that would benefit from DFO's support.
- 7c: Identify First Nation partners with experience in establishing IPCAs, who can provide important guidance to DFO on efforts to collaboratively advance marine IPCAs.
- R8: Undertake training and adoption of an Ethical Space approach when engaging First Nations on marine conservation, to create open dialogue that can support meaningful, respectful, and cross-cultural discussion, in which Indigenous knowledge systems are valued equally with western institutional systems and science.

Policy and Legislative

- R9: Affirm that cultural objectives must be included alongside ecological objectives in the collaborative establishment of *Oceans Act* Marine Protected Areas (MPAs), Other Effective area-based Conservation Measures (OECMs) and marine IPCAs.
- R10: Adopt a feasibility assessment approach similar to ECCC and Parks Canada for establishing MPAs and OECMs, which allows for the consideration of broader First Nations interests, in place of the current risk assessment approach.
- R11: DFO to work with First Nations to identify existing policy and legislative tools (e.g. Section 4.2 of the *Fisheries Act*) to support the meaningful recognition and implementation of Indigenous laws in the co-designation of marine IPCAs.



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing Canada's commitments to reconciliation and marine conservation

Funding and Capacity

R12: Work with First Nations to identify internal DFO capacity gaps and develop solutions including reprioritizing duties and building new capacity within DFO Oceans and DFO Fisheries Management.

R13: Establish a marine IPCA establishment fund, similar to the Target 1 Challenge Fund established by ECCC for terrestrial conservation. Like the Target 1 Fund, any future fund should promote regional diversity and individualization, promote collaboration among different orders of government, and support innovative ideas and approaches.

Long-term Recommendations

Operational

R14: Build more meaningful partnerships with First Nations and hire more First Nation staff as a way to examine the operational and bureaucratic culture within federal agencies and create opportunities for change that allow for a more holistic approach to Nation-to-Nation, government-to-government relationships.

R16: Work with First Nations and First Nations organizations in Ethical Space to understand and modify aspects of operational and bureaucratic culture within federal agencies and develop successful relationships with First Nations that advance innovative approaches to marine conservation.

R15: Work through the Auditor General's office to conduct a performance audit of DFO progress with a focus on the role of DFO in reconciliation, implementation of United Nations Declaration on the Rights of Indigenous Peoples, and marine conservation.



Marine Indigenous Protected and Conserved Areas

Opportunities and recommendations for realizing Canada's commitments to reconciliation and marine conservation

Policy and Legislative

R17: Modify existing legislation to create designations that provide more flexibility for co-designation, enable joint decision-making tables, and recognize and value Indigenous laws and authorities.

R18: Confirm formal participation at the First Nations Nature Table (Recommendation 4) and empower it to review all related policy, regulation, and legislation, to address issues that enable the establishment of Indigenous-led IPCAs.

R19: Commit to the formal adoption of the policy and regulatory recommendations from the First Nations Nature Table and develop processes that enable changes within and across federal departments to support their implementation.

Funding and Capacity

R20: Establish and contribute to a Project Finance for Permanence fund that supports long-term marine IPCA implementation.

R21: When reviewing legislation and policy under Recommendation 18, enable First Nations governments to collect user and permit fees within IPCAs to support their ongoing management.