



Marine Indigenous Protected and Conserved Areas

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

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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 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.



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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 Assembly of First Nations (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.



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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 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:
 - 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.



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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.

for the consideration of broader First Nations interests, in place of the current risk assessment approach.

R10: Adopt a feasibility assessment approach similar to ECCC and Parks Canada for establishing MPAs and OECMs, which allows

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.

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 capacity development, regional diversity and individualization, 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.

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.



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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.

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.

that enable the establishment of Indigenous-led IPCAs.

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

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.



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1. Introduction

The Government of Canada has a legal commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (United Nations 2007) and accompanying mandates to address the Truth and Reconciliation Commission's Calls to Action around reconciliation¹. At the same time, Canada has made international commitments to protect 25% of Canada's oceans by 2025 and 30% by 2030 (Government of Canada 2021a). Marine Indigenous Protected and Conserved Areas (IPCAs) are emerging as a promising approach to meaningfully contribute to both reconciliation and ocean conservation goals². The Assembly of First Nations (AFN)³, mandated by *AFN Resolution 41/2021*, has commissioned this report to provide concrete steps that the Government of Canada can take to support First Nations in establishing, governing, and managing marine IPCAs.

Environment and Climate Change Canada (ECCC) and Parks Canada have advanced support for some terrestrial IPCAs through a co-designation model, which provides a tangible example of how to advance IPCAs in the short-term⁴. However, there is still much work to do in the marine environment. To this end, the report focuses on short-term recommendations that will allow Fisheries and Oceans Canada (DFO) to meet the comparable progress made by Environment and Climate Change Canada (ECCC) and Parks Canada in supporting First Nations to establish IPCAs through a process of co-designation. The report also makes long-term recommendations that move all federal agencies responsible for marine conservation toward an Indigenous-led model of marine IPCAs that will benefit our oceans, relationships between First Nations and the Government of Canada, and all Canadians.

To do so, the Government of Canada will need to make genuine commitments toward operational, policy, and legislative change. The report provides a pathway for realizing such change.

1.1. Background and report objective

The Government of Canada has currently protected 14% of its oceans; however, this is unevenly distributed and not ecologically representative, with over 12% coming from the Arctic and less than one percent coming from each of the Pacific and Atlantic regions (Government of Canada 2022a). The constitutional protection of Indigenous rights, the federal UNDRIP Act, the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples (Canada's Ten Principles) (Government of Canada 2018c) and several independent and Indigenous-led reports (Indigenous Leadership Initiative 2022; David Suzuki Foundation 2018) outline why the Government of Canada will not be able to meet these future targets without the consent and support of First Nations. Marine IPCAs present an approach to realizing meaningful conservation partnerships with First Nations.

¹ Reconciliation requires a new relationship between the Crown, Indigenous peoples, and all Canadians through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change. This includes restoring Indigenous relationships to land and water, and recognition of Indigenous rights and treaties. This report deals with only one facet of what is required under reconciliation and should not detract from or diminish all of the other work needed to achieve the other components of reconciliation.

² While not the focus on this report, IPCAs also support many Indigenous Nations' interests and values. Appendix 1 provides a summary of these benefits.

³ The development of this report was guided by the AFN's marine IPCA sub-working group, which reports to the AFN's Advisory Committee on Climate Action and the Environment.

⁴ ECCC and Parks Canada's approach to IPCAs has deficiencies and gaps; however, there is a demonstrable effort by both agencies to advance the concept of IPCAs and their efforts and experience could prove critical to DFO advancing IPCAs within the 2025 and 2030 marine conservation target timelines.



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While First Nations have been asserting their right to protect their territories and resources for generations, in part through the establishment of conservation areas, momentum around IPCAs as an important conservation tool picked up in 2016 (Indigenous Leadership Initiative 2022). At the same time, separate processes for achieving Canada's conservation ambitions were being established for terrestrial and marine environments. Environment and Climate Change Canada (ECCC) recognized that a collaborative approach was needed to achieve Canada's conservation targets on land. ECCC brought together federal, provincial, territorial, and local governments, in partnership with First Nations and Métis, and launched an initiative known as the Pathway to Canada Target 1 (Government of Canada 2018b). This led to the creation of two expert panels (The National Advisory Panel, and the Indigenous Circle of Experts⁵), and two subsequent reports on how Canada could meet conservation targets in the terrestrial environment, and the role IPCAs could play in supporting this goal. In the culminating report, *One with Nature* (Government of Canada 2018b), Ministers committed to work with Indigenous Peoples to further explore the concept of IPCAs, clarify their contributions to Canada Target 1, and Indigenous cultural and conservation priorities.

This was put into action through the 2018 Canada Nature Fund Target 1 Challenge, a \$175 million, four-year call for proposals to support projects that contribute to Canada's protected and conserved area target of conserving 17% of terrestrial areas and inland waters by the end of 2020. The outcome was over 62 projects (Figure 1) that advanced terrestrial and marine protection, of which over 40 were Indigenous-led. Importantly, the fund was expressly interested in advancing the concept and establishment of IPCAs, both as protected areas and Other Effective Area-based Conservation Measures (OECMs).

Figure 1: Map of Canada Nature Fund Target 1 projects (Government of Canada 2018b)



The Pathway approach provided a tangible example of how ECCC and its partners took a high-level conservation target and worked with a broad number of partners to advance protected areas. This allowed the development of guidance and funding opportunities to achieve collaborative conservation outcomes that helped meet Canada's conservation targets, while advancing reconciliation through IPCA development and establishment. Since the Canada Nature Fund Target 1 Challenge, Parks Canada and ECCC continue to support the advancement of the IPCA concept. Some newly announced IPCAs (see section 2.3) are starting to explore arrangements that may lead to stronger Indigenous-led IPCAs, and many existing IPCAs include provisions that

⁵ Inuit governments did not participate directly in the Indigenous Circle of Experts and the recommendations in *We Rise Together* are not intended to advance Inuit interests on protected areas. Similarly, this report, while drawing on Inuit examples, does not attempt to address Inuit interests.



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require the governance relationship to evolve as new rights-based agreements and arrangements are reached (see section 2.3.1).

By contrast, DFO chose to establish a separate and unilateral approach to marine protected areas, which the department started by commissioning a report from The National Advisory Panel on Marine Protected Area Standards (Bujold et al. 2018). The report, released in 2018, among other things, calls on the Government of Canada to recognize Indigenous governments as full partners in the establishment and governance of marine conservation, and support the establishment of IPCAs. While DFO has adopted some recommendations of the report, such as the minimum conservation standards (Government of Canada 2019), there are only a few examples of DFO meaningfully including Nations as partners in marine conservation (SGaan Kinghlas–Bowie Seamount MPA, Tuvaijuittug MPA). This difference in approach can also be seen in DFO's recent Call for Proposals under the Oceans Management Contribution Program to advance marine conservation, which was significantly different from the 2018 Canada Nature Fund Target 1 Challenge (see Table 1). While Indigenous organizations are eligible to receive funding, it is limited to the areas of focus and does not mention Indigenous governance or IPCAs.

Table 1: Comparison of key elements of DFO's Oceans Management Contribution Program and the ECCC Target 1 Challenge Fund

	DFO Oceans Management Contribution Program	ECCC Target 1 Challenge
Purpose	Support marine conservation initiatives in a community, with an emphasis on outreach, monitoring and stewardship, and capacity building initiatives	Support the conservation of Canada's ecosystems, landscapes and biodiversity, including species at risk. Environment and Climate Change Canada (ECCC) will work with provinces and territories, Indigenous people, and the private and non-profit sectors to achieve significant progress on terrestrial elements of Target 1 of Canada's 2020 Biodiversity Goals and Targets
Applicants	<ul style="list-style-type: none"> • Not-for-profits • Indigenous organizations • Research, academics • Canadian individuals • For-profit, small business • Local organizations 	<ul style="list-style-type: none"> • Provincial and territorial governments • Indigenous organizations • Domestic not-for-profit organizations, such as charitable and volunteer organizations, professional associations, and non-governmental organizations.



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	DFO Oceans Management Contribution Program	ECCC Target 1 Challenge
Amount	\$5 million	\$175 million ⁶
Timeframe	Spring 2022 – may consider multiyear proposals	4 yrs 2019-2023
Prioritizes the advancement and establishment of IPCA	No	Yes

As demonstrated by this comparison, there is a marked difference between the approaches taken by ECCC, Parks Canada, and DFO. While ECCC and Parks Canada have made significant progress in advancing IPCAs as a conservation tool, DFO has not made considerable progress in the 4 years since the release of the National Advisory Panel's report. The intent of this report is to understand the differences and work with First Nations and non-First Nations experts to articulate the hurdles faced in the establishment of marine IPCAs. The report concludes by providing a roadmap for Canada to address both the immediate and long-term constraints to support First Nations to establish, govern, and sustainably manage marine IPCAs.

1.2. Report approach

There is a growing body of literature that provides an excellent source of information about IPCAs,⁷ why they are needed, how they support First Nations and Crown governments to advance conservation and reconciliation mandates, and what makes them successful. This report draws on existing literature and applies these learnings to marine IPCAs, and the actions federal agencies must take to advance marine IPCAs.

To achieve this, we have interviewed 13 individuals with direct experience developing and establishing IPCAs within First Nations and federal government agencies. Interviews with federal government representatives included past and present individuals within ECCC, Parks Canada, and DFO where attempts were made to develop a greater understanding of the opportunities and restrictions regarding marine IPCA establishment. Finally, the work was guided and further shaped by the Assembly of First Nations' sub-committee on Marine IPCAs, which provided necessary review and important guidance in the drafting of this report. As such, while lessons learned and best practices are drawn from some Inuit IPCA examples, the findings and recommendations in this report are intended to advance IPCA development with First Nations partners and not to speak for Inuit priorities. We recognize that a distinctions-based approach is needed to acknowledge the unique rights, interests, and circumstances of First Nations and Inuit in marine conservation.

⁶ On September 22, 2022, Environment and Climate Change Canada opened a new \$40 million funding program to support the development of Indigenous-led area-based conservation.

⁷ Similar to the existing body of literature, this report focuses on the role of Indigenous people in the planning, establishment, and ongoing governance and management of an MPA, rather than the label given to the area. As such, some of the examples used in the report, while not labelled IPCAs, include all of the major elements of an IPCA (see Section 2.1 for a list of these elements).



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1.3. A call to action

There is substantial evidence in Canada and abroad that IPCA establishment can be effectively supported by governments if they are willing (Tran et al. 2022). While the North is leading the way in IPCA establishment in Canada, examples in British Columbia and Atlantic Canada demonstrate that marine IPCAs are effective at achieving Canada's marine conservation commitments and reconciliation goals (see Section 2.3).

There is an urgency to doing this work and getting it right. The decline of marine species and biodiversity are occurring at local and global scales (Frid & Atlas 2020). While these declines are a byproduct of overharvesting, climate change, and ocean acidification, there is ample scientific evidence that strictly protected marine areas can stop or mitigate these impacts (Edgar et al 2014). Additionally, territories managed by Indigenous Peoples have equal or higher biodiversity than conventional protected areas (Schuster et al. 2019). Similarly, marine protected areas increase the resiliency of marine ecosystems and species to the impacts of climate change and mitigate these impacts through enhanced carbon sequestration (Roberts 2017; The Oceans Conservancy 2020).

At the same time, many First Nations are questioning Canada's commitment to reconciliation and are struggling to see how the Government of Canada is addressing past harms and improving outcomes for First Nations today (AFN 2020). Given Canada's commitment to reconciliation, constitutional obligations under section 35, and UNDRIP implementation the Government of Canada cannot meet its ambitious marine conservation targets (MCTs) without establishing meaningful partnerships with First Nations (ILI 2022; DSF 2018).

Marine practitioners and Indigenous and state leaders from around the world will gather in Vancouver, BC for the fifth International Marine Protected Areas Congress (IMPAC5) in February 2023. IMPAC5 provides a significant opportunity for the Government of Canada and First Nations to demonstrate a government-to-government, Nation-to-Nation commitment to marine conservation and IPCA establishment.

To this end, the AFN is calling upon DFO to adopt the short-term recommendations in this report, provide timelines and concrete deliverables for their implementation, and announce a joint commitment to Indigenous-led conservation at IMPAC5.



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2. IPCAs as an opportunity to advance marine conservation and reconciliation

2.1. What are IPCAs and how do they differ from other conservation tools

As defined by the Indigenous Circle of Experts (ICE) in *We Rise Together* (2018), "IPCAs generally share three essential elements: they are Indigenous-led, represent a long-term commitment to conservation, and elevate Indigenous rights and responsibilities". While the specific objectives of an IPCA will differ according to the goals of the Indigenous governments and communities establishing them, "IPCAs should:

- promote respect for Indigenous knowledge systems,
- respect protocols and ceremony,
- support the revitalization of Indigenous languages,
- seed conservation economies, if possible,
- conserve cultural keystone species and protect food security, and
- adopt integrated, holistic approaches to governance and planning" (ICE 2018).

This broad concept described by the ICE facilitates an extensive understanding of what could constitute an IPCA, regardless of whether it is named as such. There are many similarities between the purposes of IPCAs and other conservation tools in Canada. Like all federal marine conservation tools, IPCAs represent a long-term commitment to conservation. Some federal tools reference the importance of Indigenous knowledge systems and the conservation of cultural components (e.g., *National Marine Conservation Area Act*) and keystone species (e.g., *Oceans Act*). Finally, while not explicit in any of the federal conservation tools to date, ECCC and Parks Canada have utilized their tools to: support integrated and collaborative governance, including elevating Indigenous rights and responsibilities; support conservation economies; and promote and respect Indigenous knowledge systems (Banks 2016). The intent and specific objectives are often included in government-to-government implementation agreements and management plans (e.g., Gwaii Haanas).

While the ICE IPCA definition provides a useful standard, what constitutes an IPCA can be seen as existing on a continuum, with varying levels of partnership and governance models. Gould et al. (2021) does an excellent job of comparing the different types of IPCAs internationally. In Canada, there are examples of IPCAs established by Indigenous governments that are not recognized by federal or provincial governments (e.g., Gwaxdlala/Nalaxdlala IPCA, Gidisdzu Lugeyks Marine Protected Area). In these cases, while the Indigenous governments are asserting their jurisdiction and inherent rights over their territories there are uncertainties and anticipated challenges to achieving comprehensive protection without Crown recognition of the Indigenous government's objectives for the IPCA.

A more common model in Canada is one of co-designation, where a First Nation establishes an IPCA and the Crown government uses their own legislation to protect a similar area and features. In these cases, governance and management of the protected area operates collaboratively and is clarified through co-governance agreements (e.g., Gwaii Haanas, Edéhzhíe). Co-designated IPCAs will continue to evolve as



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Indigenous reconciliation agreements or treaties are negotiated to fully reflect Indigenous rights and title and government-to-government relationships (e.g., Parks Canada uses a “reserve” designation to recognize National Marine Conservation Areas subject to treaty negotiations).

In contrast, one has to look globally to find examples of areas protected by Indigenous Peoples that are supported by state governments. In Australia and Aotearoa/New Zealand (e.g., Dhimurru Indigenous Protected Area, Te Urewera), examples exist where Indigenous nations lead the governance and management of the conserved area, while the state supports the Indigenous nation through legislation or policy, and funding. Benefits and limitations of these Sea Country Indigenous Protected Area (IPA) policies are briefly summarized in Table 2.

Table 2. Benefits and limitations of policies for Australian Sea Country IPAs (summarized from Gould 2020).

Benefits	Limitations
Supports Indigenous leadership in conservation work through clear criteria and process for establishment	Limited recognition of conservation benefits of Sea Country IPAs in policies
Incorporates cultural values and priorities and supports cultural conservation work	Don't resolve conflicts over resource allocation and use
Provide potential for evolving legal recognition and autonomy over time	Limited recognition of traditional rights and title
Supports “boots on the ground” through Ranger programs	Little research to document conservation outcomes
	Depends on stakeholder support and requires ongoing engagement
	Higher administration costs

The co-designation model, when done right, can enhance Indigenous governance, elevate Indigenous rights and responsibilities, and ensure long-term protection. This model, used extensively in Canada, provides a short-term solution that could allow the rapid establishment of marine IPCAs in Canada. **Over the long term, Canada should adopt an Indigenous-led marine IPCA model that builds on the best practices in Aotearoa/New Zealand and Australia, and which does not require co-designation.** This will require reviewing and modifying conservation legislation and policy to allow for a stronger model of Indigenous-led marine IPCAs. IPCAs created today should also have the opportunity to evolve toward a more Indigenous-led model as reconciliation and Indigenous rights advance.



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2.2. The Government of Canada's goals and priorities for reconciliation and marine conservation

Through a series of reports, international commitments, policy positions and mandate letters, the Government of Canada has made significant commitments to reconciliation with Indigenous Peoples as it relates to marine conservation. This section of the report lays out the various commitments made by the Government of Canada over the last decade and demonstrates how marine IPCAs can help support goals of reconciliation and marine conservation priorities.

As part of global efforts to reverse biodiversity loss, Canada has joined the High Ambition Coalition and the Global Ocean Alliance of countries that are committed to protecting 30% of their oceans by 2030 through the expansion of protected areas. A recent report by the United Nations Special Rapporteur on the rights of Indigenous Peoples (UNSRIP) warns that achieving these ambitious targets should not come at the expense of Indigenous Peoples (UNSRIP, 2022). Globally, Indigenous Peoples have been displaced and dispossessed by colonial governments for the purpose of environmental protection and conservation (Goyles & South 2019, Papadopoulos 2021). Canada is not excluded from this dark history of displacing its Indigenous Peoples for the establishment of parks (ICE 2018, ILI 2022). It is imperative that a new approach be taken to achieve Canada's conservation commitments.

The Government of Canada formally endorsed UNDRIP in 2016 and passed the UNDRIP Act in 2021. Multiple articles in UNDRIP articulate the need for states to obtain free, prior, and informed consent (FPIC), as well as meaningful and on-going engagement on issues related to lands, territories, and resources. This includes the legislation and administrative actions that affect those rights (e.g., Articles 19, 26, 27, 29, and 32). In 2018, the Department of Justice released the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples to clarify how Canada will implement UNDRIP. These Principles affirm the Government of Canada's commitment to many of the key elements of UNDRIP, such as securing the free, prior, and informed consent of Indigenous Peoples when taking actions that impact their rights (Principle 6) and facilitating space for Indigenous jurisdictions and laws when involving Indigenous Peoples in decision-making and governance (Principle 4). These principles provide direction on how federal departments should implement UNDRIP, but do not provide specific mechanisms for doing so.

Most recently, the Prime Minister's December 2021 mandate letter to the DFO Minister re-affirmed many of these commitments, including to:

- Implement the United Nations Declaration on the Rights of Indigenous Peoples and to work in partnership with Indigenous Peoples to advance their rights;
- Continue to work with the Minister of Environment and Climate Change and partners to ensure Canada meets its goals to conserve 25% of our lands and waters by 2025, and 30% of each by 2030;
- Ensure that the work to protect Canada's oceans remains grounded in science, Indigenous knowledge, and local perspectives; and
- Work with Indigenous partners to better integrate traditional knowledge into planning and policy decisions (Government of Canada 2021c).



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Lastly, the Minister of ECCC was mandated to “work with First Nations, Inuit, and Métis partners to support new Indigenous Guardians programs and...support Indigenous communities to build capacity to establish more Indigenous Protected and Conserved Areas” (Government of Canada 2021d). These combined mandates provide a strong directive for DFO to work with ECCC and First Nations to advance marine IPCAs.

By centering Indigenous knowledge, laws, and responsibilities in conservation, IPCAs can transform marine conservation in a manner that allows for governance and management processes to evolve over time as reconciliation advances.⁸ The Government of Canada has an opportunity to align efforts to seek the free, prior, and informed consent of First Nations in ways that encourage respectful ongoing co-operation, where consent is reaffirmed continually through ongoing collaboration (Askew et al. 2017). This type of collaborative ongoing relationship is a cornerstone of recent IPCA establishment and implementation in the terrestrial environment. Done well, IPCAs can help Canada achieve its marine conservation commitments, implement UNDRIP and advance reconciliation, use both Indigenous knowledge and western science in decision-making, and take a more holistic approach to conservation management.

2.3. Current examples of IPCAs in Canada

Since 2016, IPCAs have moved beyond the theoretical to provide concrete examples of how to achieve Canada's conservation goals while advancing reconciliation and transformative change. A well-known example is the Edézhíe Protected Area, an IPCA and candidate National Wildlife Area, located on the Horn Plateau of the Northwest Territories. The Gwaii Haanas Heritage Site and National Marine Conservation Area Reserve in southern Xaayda Gwaay (Haida Gwaii), and the recently announced feasibility assessment for a proposed Indigenous protected area adjacent to Torngat Mountains National Park in Labrador, also provide informative examples of how marine IPCAs can advance marine conservation and reconciliation goals. Finally, the SGaan Kinghlas –Bowie Seamount MPA provides an example of a co-designated marine IPCA, where DFO is the lead federal agency.

While unique to each of the Indigenous Nations' interests, each of these examples have been supported by the Government of Canada and incorporate the essential elements and commonalities of IPCAs outlined in the ICE report and summarized in section 2.1 of this report. While there are many more examples that demonstrate the utility of IPCAs and provide important insights into best practices (e.g., Mi'kmaq's Kluskap IPCA; Australia's Indigenous Protected Areas), the four examples below are included in this report to demonstrate that Canada has already developed a process for IPCA establishment. If willing, the Government of Canada can achieve many of its policy and mandate commitments over the short-term while advancing First Nations' marine conservation interests.⁹

⁸ As Canada's Ten Principles emphasizes, the principles are meant to be read holistically and with their supporting commentary. Achieving full reconciliation with Indigenous peoples will require innovative and transformative approaches across all aspects of reconciliation and cannot be achieved by focusing on only some of the principles. For the sake of clarity and simplicity, this report has summarized those Principles that apply most readily to IPCAs.

⁹ See West Coast Environmental Law's *Literature Review & Analysis of Shared Indigenous and Crown Governance in Marine Protected Areas*, November 2019 for a detailed review of state government and Indigenous approaches to marine conservation: <https://coastalfirstnations.ca/wp-content/uploads/2019/12/CFN-WCEL-CoGov-Study-Analysis.pdf>



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2.3.1 Edézhíe Protected Area

Over twice the size of Banff National Park, the Edézhíe Protected Area is the result of a collaborative process between the Dehcho First Nations and the Government of Canada. The Dehcho First Nations work collectively through the Dene government which represents ten Dene Nations and two Métis Locals. Established in 2018, it was the first IPCA recognized under the Pathway to Canada Target 1 and the launch of the Canada Nature Fund. While the Dehcho First Nations established the Dehcho Protected Area under Dehcho law in 2018, the parallel establishment of the Edézhíe National Wildlife Area (NWA) is still in progress. Despite this, ECCC and the Dehcho already co-manage the Edézhíe protected area under a consensus-based jointly appointed Edézhíe Management Board, created through the Edézhíe Agreement (Government of Canada 2022b). The agreement uses a consensus-based shared decision-making model and requires the agreement to be amended to conform with any rights or benefits subsequently recognized or afforded. This is a key clause which ensures that the relationship established under the agreement evolves in concert with the continued advancement of reconciliation.

Critical to an IPCA, management of the Edézhíe Protected Area encourages continued Dehcho Dene presence on the land and promotes the continuance of language, harvesting, and other aspects of Dehcho Dene culture. A Dehcho K'éhodi Stewardship and Guardian Program, administered by the Dehcho First Nations, contributes to Edézhíe monitoring and stewardships programs, including conducting patrols, research projects, and youth mentoring. Once the Edézhíe Protected Area is dually recognized as an NWA, access to the area will be addressed through the Wildlife Area Regulations, the Establishment Agreement, and a management plan developed by the consensus-based management board. Until that time, ECCC discourages visitors to Edézhíe. Such an approach respects the establishment of the IPCA, while the longer process of establishing an NWA is completed.

2.3.2 Gwaii Haanas Heritage Site and National Marine Conservation Area Reserve

The Gwaii Haanas area, both land and sea, was formally designated in 1985 by the Haida Nation as a Haida Heritage Site.¹⁰ Canada and British Columbia subsequently committed to protect Gwaii Haanas through the designation of a national park reserve and a surrounding marine protected area in the South Moresby Memorandum of Understanding (1987) and the South Moresby Agreement (1988). An agreement relating to management of the terrestrial area was reached in 1993. However, it was not until 2010 that the Gwaii Haanas Marine Agreement was signed, and the Gwaii Haanas National Marine Conservation Area Reserve (NMCAR) was established (Council of the Haida Nation 2019). It took another eight years to complete the Gwaii Haanas Gina 'Waadluxan KilGuhlGa Land-Sea-People Management Plan.

Gwaii Haanas is governed under the Archipelago Management Board (AMB), where three Haida Nation and three Government of Canada representatives (two from Parks Canada and one from the Department of Fisheries and Oceans) sit together to make consensus decisions. The management plan aims to integrate traditional knowledge and science and reflects the experience and knowledge the AMB has gained through decades of cooperative management. Unique to the AMB and a key aspect for marine IPCAs, all commercial

¹⁰ While not expressly an IPCA, the Haida Heritage Site includes all of the essential elements outlined in the ICE report.



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and recreational fisheries within Gwaii Haanas are managed by DFO consistent with the management plan and related policies. Management approaches include the application of long-term non-extractive spatial closures (50% of the area) and an ecosystem-based management (EBM) framework to fisheries within Gwaii Haanas.

Consensus decisions by the AMB carry a lot of weight but are deemed recommendations to the Council of the Haida Nation and the Government of Canada by way of referral to their designated representatives, agencies, or departments (Government of Canada 2010). In this way, the agreement encourages consensus decision-making while not fettering a Minister's or First Nation's authority.

Similar to the Edézhíe Protected Area, the management plan reflects the importance of Gwaii Haanas to the maintenance and strengthening of Haida culture and spirituality in its vision, goals, objectives and targets. Haida watchmen are recognized as an important component to realizing these cultural objectives and sharing of traditional knowledge.

2.3.3 Proposed Indigenous protected area adjacent to Torngat Mountains National Park

While the proposed marine IPCA adjacent to Torngat Mountains National Park shares many similarities with both the Edézhíe and Gwaii Haanas, this marine IPCA may reflect an evolution in the eyes of Canada of the IPCA concept. Like the examples above, the Torngat Mountains National Park is managed through a cooperative management board, which strives to make consensus recommendations to multiple decision-making bodies. Interestingly, while the management board consists of members from each of the decision-making parties, all appointees were Inuit at the time the management plan was published (2010).

The Torngat marine area of interest (Torngat AOI) was identified in the Imappivut Marine Plan and the advancement of a marine IPCA is centered on safeguarding the marine environment and Inuit interests, rights, and priorities. The recently announced (2022) feasibility assessment is considering the establishment of an Indigenous Protected Area under *Canada's National Marine Conservation Areas Act*, which will enable the Government of Canada and Labrador Inuit to work in partnership to protect the natural and cultural values of the Labrador Shelf Marine Region (Government of Canada 2021b). It will fill a gap in Parks Canada national systems plan, which aims to protect sites representative of 29 marine regions in Canada. While further details will be clarified through the completion of the feasibility assessment, it seems likely that this IPCA, if established, will be largely Indigenous-led and centered on ensuring a healthy marine ecosystem that supports Labrador Inuit language, culture, and way of life. In addition, the feasibility study may answer some important questions about how existing legislations can more directly support IPCA establishment.

2.3.4 SGaan Kinghlas –Bowie Seamount MPA

Sgaan Kinghlas -Bowie Seamount MPA (SK-B MPA) is located 180 km off Haida Gwaii and is one of the shallowest seamounts in the North Pacific (CHN 2019). Consistent with the *Oceans Act*, the MPA's primary purpose is ecological: "to conserve and protect the unique biodiversity and biological productivity of the area's marine ecosystem". As a Haida Marine Protected Area and an MPA under the *Oceans Act*, however,



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SK-B is co-managed by the Council of the Haida Nation (CHN) and DFO, and the management plan incorporates Haida management principles and the spiritual and cultural importance of the site to the Haida people. Signed in 2007, a memorandum of understanding (MOU) confirms a commitment to a relationship based on mutual respect and understanding and facilitates the cooperative planning and management of the SK-B MPA. A management board consists of two CHN representatives and two DFO representatives, who work through consensus and make recommendations to their respective decision-makers.

The management plan was delayed by efforts to understand the impact of an existing sablefish trap fishery on sensitive benthic habitat including corals and sponges. This was supported by a DFO risk assessment for the seamount ecosystem. The management principle *yahgudang*, which means respect and also translates into a precautionary approach to management, eventually led to a decision for closure of bottom contact fisheries at the seamount. Key information to support the closure was collected through collaborative monitoring the bottom condition and bycatch using cameras placed on traps by fishermen. This process reflected the Haida principle of "seeking wise counsel", which is parallel to the EBM principle of knowledge-based decisions.

3. Federal constraints to supporting IPCA establishment

The next two sections of the report are informed primarily by interviews with individuals that were experts on the topic of establishing IPCAs. Semi-structured interviews were conducted with past and current Government of Canada staff from Fisheries and Oceans Canada, Environment and Climate Change Canada, and Parks Canada; First Nations' staff directly involved in IPCA establishment; and non-governmental organizations who support the development of IPCAs.

Interviewees identified multiple constraints on the ability of federal agencies and officials to support the establishment of IPCAs. These are summarized below under the categories of operational, policy and legislative, and funding and cap constraints. In addition, many interviewees also noted opportunities to work around or within these constraints, which informed the Recommendations in Section 4.

3.1. Operational constraints

3.1.1 Competing mandates within DFO

Perhaps the most significant operational constraint noted by respondents is the different and competing mandates implemented by the Department's separate branches of DFO Oceans and DFO Fisheries Management. This constraint is not specific to IPCAs but impacts all MPAs where fisheries restrictions are proposed. Multiple interviewees noted that while DFO Oceans has the mandate for establishing MPAs to prevent negative marine impacts, DFO Fisheries Management manages all fisheries to enable benefits. DFO Fisheries Management focuses on providing access to aquatic resources, manages at different scales



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depending on each fishery, and works under long-established and rigid frameworks, it can be reluctant and even suspicious of MPAs and spatial planning. As one interviewee noted:

"Leadership within DFO always seems to be drawn from within DFO Fisheries Management, meaning that DFO Fisheries Management assumes all the power and DFO Oceans has a difficult time advancing meaningful conservation"
(Interviewee 4)

This tendency can also lead to commercial fishery interests having an outsized impact on the department's decisions. The Cohen Commission (Cohen 2012) cited this issue as being harmful to wild salmon, noting that the department regulates salmon aquaculture, while also having a responsibility to protect wild salmon. Similarly, conflicting mandates have been suggested as a hinderance on DFO's efforts to protect threatened and endangered aquatic species (Hutchings et al. 2012).

A couple of interviewees noted that this can lead to significant push-back when commercial fishers are concerned about the negative impact an MPA could have on their livelihood and community but can also drive conservation when: *"fishermen could see potential benefits and codify what they were already doing"* (Interviewee 2).

These issues can be addressed with a thorough advisory and consultative process as was done for Gwaii Haanas. Despite this, other MPAs and planning processes (e.g., Pacific Offshore AOI, Marine Protected Areas Network for the Northern Shelf Bioregion) are struggling to get DFO to incorporate fisheries management into the MPA process. This is in part due to the department's challenges with respect to collaborative governance structures that some within the department see as fettering the Minister's authority (see sec 3.2.4).

One of the interviewees noted that, despite these competing mandates, resolution is still possible. However, *"it requires demonstrating how each of these mandates is addressed through a proposed MPA, including all affected parties in the planning work, and addressing commercial fisheries concerns to the degree possible"* (Interviewee 8).

3.1.2 Lack of policy direction to support IPCAs

The second operational constraint identified by interviewees reflects the lack of policy direction around IPCAs and DFO's role in supporting their establishment.¹¹ Many interviewees noted that DFO has a risk averse management approach and is reluctant to change policies and approaches when they are unfamiliar, and the outcomes are unknown. Others commented that DFO staff are effective when implementing specific policies (e.g., Sustainable Fisheries Framework) but seem unable to operationalize broad

¹¹ Provincial governments often also lack policy direction on the issues of IPCAs. While coordination between Provincial, Federal, and Indigenous governments will often be required, this report focuses on the leadership role DFO should take in supporting marine IPCAs.



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commitments such as reconciliation. As one interviewee noted, this is especially true if the broad commitment does not align with existing operational policies. They noted:

"DFO has not gained experience around IPCA development and is less willing to try something and learn from their mistakes. There is [sic] a lot of lessons learned within ECCC and PC that could help DFO navigate, but they don't seem to see the parallels with their work" (Interviewee 7)

By contrast, ECCC and Parks Canada have used mandates and broad federal commitments to work with Indigenous partners and advance IPCAs:

We're getting direction from the Prime Minister, through the mandate letters that marine conservation work needs to be built on science, Indigenous knowledge, and local perspective. That we need to work with Indigenous governments on co-management. It is clear that the Prime Minister is pointing the path forward – we view IPCAs as part of reconciliation – addressing past injustices and trying to chart a path forward. (Interviewee 10)

Aversion to risk may extend beyond DFO into other areas of government that influence DFO's decision making, including the Department of Justice (DOJ). Some interviewees noted that reviews of DFO decisions by DOJ can lead to more cautious recommendations and outcomes. However, they noted that federal departments should be careful to emphasize the importance of reconciliation when seeking legal review by the DOJ.

3.1.3 Trust and cooperation

The final operational constraint identified by the interviewees is the issue of trust and cooperation. As one respondent commented, DFO has been slow to adjust from a colonial top-down management approach to collaboration with First Nations. Similar to the dark history of park establishment in Canada, the history of fisheries management under the Fisheries Act in Canada involves restricting and outlawing the fishing practices, laws, and economies of Indigenous Peoples (McMillan and Prosper 2016). The long and tumultuous relationship between First Nations and DFO continues to this day. The lack of trust can manifest in a reluctance to engage in meaningful collaborative governance relationships, openly share data, and make decisions transparently. Because of this slow and ongoing shift, many Nations are reluctant to engage meaningfully with DFO:



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"For me there is a reluctance because of past experience, but we know that [engaging with DFO] is necessary. We just need to be upfront and clear about our expectations." (Interviewee 9)

"Where the flexibility comes in is at the policy and mandate level – this is the direction of government – there are so many things you can point to, for example UNDRIP – use this as the starting point at the operational and planning level. This is a choice that DFO is making. It is a bureaucrats' job to find the policies that can support the direction they want to go, and DFO seems unwilling to do this." (Interviewee 11)

It is apparent from the interviews that the lack of trust stems in part from a lack of understanding and support for IPCAs, as well as competing mandates between DFO Fisheries Management and DFO Oceans, which creates significant operational challenges.

3.2. Policy and legislative constraints

3.2.1 Jurisdictional complexity

In Canada, effective MPAs require multiple jurisdictions working together to achieve a conservation goal. While ECCC, PC and DFO Oceans provide tools for the conservation of nature, Transport Canada, DFO Fisheries Management, and the provinces and territories, bring specific jurisdictional authorities over resource use that could impact conservation outcomes. To crown governments, IPCAs seemingly add to that layered complexity with the assertion of Indigenous jurisdiction and title, particularly when many marine areas include overlapping territorial claims.

This is seen from the lack of a clear understanding by multiple interviewees about what IPCAs are, or how they could be established:

"All IPCAs are not created equal – interest of the Nations needs to be considered. Where are they created? What is the nature of the other uses of the space? How do we establish them? What are the range of tools? How do we finance them? Who finances them? What's the framework for determining resourcing? There is a whole range of legal questions. All this together adds a lot of complexity." (Interviewee 2)



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Other interviewees noted that much of this complexity is reduced in northern Canada because of modern treaties or Comprehensive Land Claim Agreements. The certainty provided under these agreements with respect to governance, process and finance clarifies much of the complexity – it is important to note that most of the progress on IPCAs has been realized in areas where modern treaties exist. Nonetheless, many IPCAs and other collaborative conservation arrangements in the North were established prior to modern treaties being completed (e.g., Thaidene Nene), or during the final agreement stage, as well as once agreements have been completed. In addition, there are examples of Nations with overlapping territorial claims working together to collectively advance conservation interests (e.g., Edézhíe IPCA, Central Coast National Marine Conservation Area Reserve feasibility assessment).

3.2.2 Role of IPCAs toward Marine Conservation Targets

This lack of clarity also makes it difficult for interviewees to see how IPCAs can support the Government of Canada's marine conservation targets (MCTs), which are the primary driver for federally established MPAs. MPAs and OECMs established under policy and legislation count towards Canada's MCTs, but there is no clear mechanism for IPCAs to do so, unless they are established in parallel with a federal MPA or OECM.

As noted, some of this complexity can be reduced if the Government of Canada and a First Nation establish marine conservation under parallel tools (e.g., NMCA and Haida Heritage Site used for Gwaii Haanas). As many interviewees commented, federal tools often have a narrow scope focused on a specific species or ecosystem health and biodiversity without clear opportunities for collaborative governance. Specific assessments and frameworks are used to link the purpose of the MPA to the proposed restrictions, which are too narrowly focused and rigid to address a First Nation's broader interests for protecting an area. As one interview noted:

"What is the Nation's interest in establishing an IPCA and having it implemented? If they want support for closures etc. through federal legislation then it also has to be assessed through a broader Canadian lens." (Interviewee 8)

3.2.3 Purpose of Oceans Act MPAs

There was some disagreement among interviewees about whether Parks Canada and ECCC's legislation gives them more flexibility to support a First Nation's interests around conservation and governance than OECMs or MPAs created under the Fisheries Act or Oceans Act respectively. Many interviewees noted that Parks Canada and ECCC have been more successful in supporting IPCAs through existing legislation than DFO has. A cursory review of the relevant legislation reveals that each of these legislative tools allows for the establishment of co-management bodies or advisory committees, whose mandate could be further defined through a collaborative governance agreement and Terms of Reference (Table 3). However, only the NMCA Act mentions 'cultural marine heritage' in addition to an ecological purpose. Despite a specific mandate, ECCC has been successful in supporting Indigenous Nations' cultural IPCA interests through National Wildlife Areas (NWAs). As interviewees noted:



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"Our legislative tools are a better match for collaboration with Indigenous Nations because of how Parks Canada conducts itself in the use and application of the National Parks and NMCA acts. Parks Canada has been willing to work innovatively with our partners to find ways to apply legislation, regulation and policy in a way that enhances reconciliation." (Interviewee 10)

"Ultimately it comes down to people, by working with rather than against individuals. How departments interpret their tools, mandates etc. are choices that they make and they have more flexibility than they like to acknowledge. For example, many of the old school approaches to fisheries are contrary to the Oceans Act." (Interviewee 11)

The *Oceans Act* and *Fisheries Act* enable the Minister to develop collaborative relationships, incorporate traditional knowledge and laws, and require the Minister to consider the adverse effects of any decision on the rights of Indigenous nations (Table 3). In particular, the recent changes to the *Fisheries Act* (e.g., ss 4.1 and 4.2) may provide enough direction to establish collaborative governance structures that support and promote IPCA establishment. These clauses are also consistent with Principle 4 of Canada's Ten principles, which recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism.

Table 3: Summary of Oceans Act and Fisheries Act clauses supporting collaborative planning and management (Bissonnette 2022).

Constraint	Act	Section
Collaborative planning and management	<i>Oceans Act</i>	S32: for the purposes of implementing marine plans, the Minister may create advisory or management bodies or recognize established advisory or management bodies
	<i>Oceans Act</i>	ss.31, 33(1)(a): Minister of DFO required to "lead and facilitate the development and implementation of plans for the integrated management of all activities or measures affecting marine areas in collaboration with other orders of government", including Indigenous Nations
	<i>Fisheries Act</i>	s.4.01(1): empowers the Minister of DFO to establish advisory panels for the purposes of the Act
	<i>Fisheries Act</i>	s. 4.1(1): empowers the Minister of DFO to enter into an agreement with a province or an Indigenous governing body to facilitate cooperation between the parties, facilitate joint action, and facilitate enhanced communication, including the exchange of scientific information, and to reduce overlap between programs and harmonize programs



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Constraint	Act	Section
Incorporation of Nations' interests	<i>Fisheries Act</i>	s.2.4: When making any decision under the Fisheries Act, the Minister must consider the adverse effects of the decision on the rights of Indigenous nations
Inclusion of Indigenous laws	<i>Fisheries Act</i>	s.4.2 creates an opportunity for equivalent Indigenous laws to replace DFO regulations

While each of the legislative tools has similar constraints, DFO has been slower to support IPCAs. Many interviewees identified that corresponding DFO policy, such as the *Sustainable Fisheries Framework*, creates many constraints to advancing IPCAs. Specifically, the rigidity and narrow focus of the risk assessment framework was mentioned as particularly limiting in supporting the advance of IPCAs.¹²

3.2.4 Fettering of Minister's authority

There are two primary legal concerns identified by the interviewees. The first is the issue of fettering a Minister's authority. Ministers are prohibited from delegating most authorities and, where authority can be delegated to another individual (for example, to the Superintendent of a National Park) that individual may not delegate it further (*delegatus non potest delegare*). As one interviewee noted:

"A Minister can enter [sic] agreements that give some discretion to collaborative governance boards on management and permitting, and there is some Court direction on how far these agreements can go, especially if there are specific authorizations" (Interviewee 7)

3.2.5 Uncertainty about operationalizing Indigenous laws

The second legal constraint is the uncertainty around how to support and/or enforce Indigenous laws, such as those that would be used to establish and manage an IPCA. Interviewees expressed foreseeable challenges particularly in situations where Indigenous laws do not align with Canadian laws and policies.

In the case of each of these legal constraints, the uncertainty of achieving a First Nation's goals and objectives is magnified in scenarios where IPCA establishment is not supported through co-designation and/or the development of a collaborative governance board. However, even when parallel designation and collaborative governance are achieved, important questions remain.

¹² Examples include, (1) the requirement for risk assessments to be undertaken by DFO fisheries managers, rather than collaboratively or by DFO Oceans staff, (2) the focus on ecological values only (as opposed to cultural values), and (3) the reductionist and narrow application to single species, habitats or features, rather than ecological systems, overall biodiversity, or ecosystem resilience.



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3.3. Funding and capacity constraints

Many interviewees noted that funding and capacity constraints were limiting the First Nations' and the Crown government's ability to advance IPCAs in a meaningful way:

"The Crown government has so many new agreements and expectations around reconciliation and the marine conservation targets yet has no new capacity or clear policy to engage on each of these issues" (Interviewee 6)

First Nation interviewees noted similar constraints in capacity and funding and one stated that the Nature Fund Target 1 Challenge provided the first real opportunity to engage in the question of IPCAs in a meaningful way.

Most interviewees noted that, if the Crown does not recognize and support marine IPCAs through a process of co-designation, more innovative funding opportunities such as trusts and third-party funding, will be required.

4. Recommendations to enable a more supportive and active Federal role in marine IPCA establishment

Due to the numerous constraints identified above, it is difficult to recommend a single path for federal agencies to actively support marine IPCA establishment. However, several useful recommendations came from the interview findings. The recommendations are categorized similarly to section 3 but are further divided into short-term and long-term recommendations. The short-term recommendations call on DFO to adopt many of the lessons learned by ECCC and Parks Canada for advancing IPCAs using parallel Crown designations. The long-term recommendations provide some direction to DFO, ECCC, and Parks Canada on how to support marine IPCAs in a manner that honours commitments under UNDRIP and Canada's Ten Principles, in line with the vision provided in the ICE report.

It should be noted that multiple interviewees felt that, given DFO's inaction on the recommendations by the National Advisory Panel, a clear and specific directive must come from the Prime Minister's Office on marine Indigenous Protected and Conserved Areas. The AFN is seeking an overall commitment from DFO to the short-term recommendations, to signal the Government of Canada's support for marine IPCAs.

Recommendation 1: Commit DFO to the short-term recommendations in this report and provides the mandate and direction required to ensure the meaningful advancement of marine IPCAs.

The adoption of these short-term recommendations can also benefit other related processes underway. Interviewees and report reviewers noted that similar constraints apply to DFO processes such as the Marine Protected Areas Network process for the Northern Shelf Bioregion and the Eastern Scotian Shelf



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Integrated Management (ESSIM) Initiative. Similarly, governance agreements like reconciliation framework agreements on the Pacific coast and rights and reconciliation agreements on the Atlantic coast provide important structures and processes to advance IPCAs with First Nations in a manner that align with Nations' interests and inherent and treaty rights. Finally, these short-term recommendations can illuminate a pathway to collaboration with the many First Nations that have already declared IPCAs, who have indicated a willingness and eagerness to work with the Crown.

4.1. Short term recommendations

Many of the short-term recommendations adapt practices from other federal agencies (i.e. ECCC and Parks Canada) to address the constraints to marine IPCAs advancement. These thirteen short-term recommendations reflect the valuable lessons learned that have been successfully advanced by other federal agencies. Considered together, these small steps provide a pathway forward for DFO to support marine IPCAs.

4.1.1 Operational

The separate mandates of DFO Oceans and DFO Fisheries Management were raised as a significant constraint by multiple interviewees. They noted that DFO Fisheries Management does not view advancing marine protected areas as its role, and sometimes appears to be actively undermining marine protection where fisheries may be impacted. However, the mandate letter to the DFO Minister does not distinguish which sectors within DFO should be supporting the marine conservation targets, UNDRIP, traditional knowledge, and collaborative governance. Rather, these are collective mandates of the entire department.

It was also observed that whereas support within ECCC and Parks Canada for advancing IPCAs comes from the top and is reflected broadly within the departments, leadership on IPCAs within DFO is lacking:

"Parks Canada have learned the hard way that the decisions we've made on the land and with other levels of government have an impact on Indigenous communities. It's taken a long time to create a culture shift in the agency to come to grips with how we've historically established parks. The willingness of the agency from senior management to recognize that things weren't done well in the past and we need to change... We're here to work collaboratively toward a common vision so Indigenous leadership comes to the fore." (Interviewee 10)

Stronger leadership for supporting marine IPCAs needs to be established within DFO, and it should be clear that this mandate applies to both DFO Fisheries Management and DFO Oceans. Creating a new senior management position whose mandate is to provide this leadership across DFO sectors and implement Recommendation 1 would improve accountability and implementation of all of the report recommendations.



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The second operational constraint raised was the lack of policy directing DFO's role in supporting and establishing IPCA development. Interviewees expressed concerns about potential fettering of the Minister's authority, lack of clear policy for establishing collaborative governance, uncertainty about the role of Indigenous cultural priorities in marine conservation, and lack of clarity in funding envelopes. These were all expressed as issues requiring policy guidance to support marine IPCAs. However, many interviewees noted that this policy guidance does not exist within ECCC and Parks Canada, and yet leadership has made clear the priority of advancing IPCAs as a tool to achieve multiple components of their mandate.

Interviewees expressed that ECCC and Parks Canada did so by focusing in on existing guidance that supported advancement on reconciliation (e.g., Canada's Ten Principles, mandate letters), establishing IPCAs with willing partners, and learning by doing. Through this process, existing collaborative governance agreements for IPCAs were developed, which can help to address many of DFO's concerns directly. These agreements often align with Principle 4 of Canada's Ten Principles, recognizing the need for different orders of government to work together under a cooperative federalism model to make decisions that are mutually beneficial to the partners. Based on these insights, we recommend the following:

Recommendation 2: 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.

Recommendation 3: Use secondments from ECCC and Parks Canada to build the experience needed within DFO to advance marine IPCA support and development.

Recommendation 4: 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.

Recommendation 5: Require both DFO Oceans and DFO Fisheries Management to participate directly in collaborative governance initiatives with First Nations partners from coast to coast to coast to support the planning, establishment, and



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management of marine IPCAs that recognize First Nations' rights and interests under a Nation-to-Nation, government-to-government relationship with Indigenous Peoples.

Recommendation 6: 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 federalism¹³ approach and clarify roles with respect to governance relationships, fettering of a Minister's authority, conservation objectives, and funding.

The final operational issue identified by the interviewees is that of trust. This arises both from unsatisfactory relationships between DFO and First Nations in the past, and from the perceived discord between First Nation engagement with DFO Oceans vs. DFO Fisheries Management. There is an opportunity for DFO to learn from its federal colleagues, such as Parks Canada, as well as First Nations that are experienced in building collaborative relationships.

Finally, the idea of Ethical Space outlined in the ICE report provides a framework for identifying ways to acknowledge and give life to different world views and legal systems. With the proper intent, Ethical Space can become "a refuge of possibility in cross-cultural relations and the legal order of society, for the effect of shifting the status quo of an asymmetrical social order to a partnership model between world communities" (Ermine 2007). As a framework for engagement on IPCAs, Ethical Space could create opportunities to build the relationships necessary for reconciliation and legal pluralism to grow and provide a useful tool for DFO to reset its relationship with Indigenous communities to a more inclusive, respectful, and meaningful one. To that end, we recommend the following:

Recommendation 7: 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:

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.

¹³ Co-operative federalism is a concept of federalism based on governments with shared powers working together to achieve mutual goals. While initially applied to provincial-federal relationships, Canada's Ten Principles (Government of Canada 2018c) commits to expanding this relationship to Indigenous governments.



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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.

Recommendation 8: 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.

4.1.2 Policy and legislative

The focus on the *Oceans Act* and *Fisheries Act* on species, habitat and biodiversity protection, and the rigidity of policy guidance such as the risk assessment framework were raised as constraints to DFO's support of IPCAs, which have a significant cultural lens. In both cases, many interviewees feel that DFO has taken a very restrictive view of the tools at their disposal and their ability to consider First Nations' interests. Leadership within DFO should encourage DFO staff to find creative solutions enabled through existing policies and legislation, and where those tools do not allow for such innovation, to adopt new tools.

Moreover, as the Prime Minister set out in Minister Murray's mandate letter, policies should be informed and developed through an intersectional lens, including applying frameworks such as Gender-Based Analysis (GBA Plus). A feasibility assessment approach has more flexibility than DFO's risk assessment approach to include a GBA Plus approach that is grounded in First Nations worldviews, to better consider the different ways in which creating a marine IPCA can impact First Nations men, women, gender-diverse individuals, Knowledge Keepers, and youth.

As such, we recommend the following:

Recommendation 9: 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.



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Recommendation 10: Adopt a feasibility assessment approach similar to ECCC and Parks Canada for establishing Marine Protected Areas and OECMs, which allows for the consideration of broader First Nations interests, in place of the current risk assessment approach.

Issues of fettering the Minister's authority and concerns about the lack of specificity around Indigenous laws were both raised during the interviews. Fettering of the Minister's authority was considered and addressed in the development of all existing IPCA collaborative governance agreements. The Gwaii Haanas Agreement was tested through a judicial review (Moresby Explorers 2020), and agreements like the Edézhíe, which was Canada's first IPCA under the Target 1 Challenge underwent significant review by the Department of Justice. In the short-term, working with existing collaborative governance templates (Recommendation 5) should address these concerns.

Similarly, while concerns about the extent of and enforceability of the Indigenous laws that inform IPCA development is often raised, these can be addressed through collaborative governance agreements and management plans. There are existing examples of these agreements under co-designated MPAs and collaborative governance agreements of IPCAs. Section 4.2 of the *Fisheries Act*, which creates an opportunity for the Crown to recognize Indigenous laws as equivalent and to replace DFO regulations, may also provide some guidance on this issue. Careful planning and consideration are required to ensure the recognition and implementation of Indigenous legal orders through existing Canadian legislative and policy tools, and to develop a collaborative governance system that facilitates a meaningful Nation-to-Nation partnership.

Thus, our recommendation is:

Recommendation 11: 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.

4.1.3 Funding and capacity

Capacity issues within federal and First Nation governments to advance IPCAs were noted by most interviewees. Within DFO there is a need for additional capacity both within DFO Oceans and DFO Fisheries Management to advance IPCAs. At the same time, many interviewees noted that DFO is a massive department relative to ECCC and Parks Canada, with significant funding to achieve the 25% by 2025 and 30% by 2030 targets, and often has many staff at meetings where smaller agencies and First Nations have only one or two. For this reason, reprioritization of workload within DFO to create capacity should be considered prior to hiring additional staff. Either way, it is critical that this reprioritization is undertaken in conjunction with both DFO Oceans and DFO Fisheries Management to ensure collaboration between the two sectors.



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Interviewees commented on the success of the Target 1 Challenge fund in both building Indigenous capacity and advancing IPCAs. As this fund was focused on terrestrial IPCA advancement a similar fund should be considered for marine IPCAs. Such a fund has the added advantage of allowing the Government of Canada to scope the number and complexity of proposed IPCAs to advance in an initial phase of marine IPCA establishment. Funds like these are also important to provide First Nations with the resources they need to work through areas of territorial overlap with neighbouring Nations.

As such, we recommend:

Recommendation 12: 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.

Recommendation 13: 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 capacity development, regional diversity and individualization, collaboration among different orders of government, and support innovative ideas and approaches.

4.2. Long-term recommendations

Presently, IPCAs in Canada have mostly applied a co-designation and consensus-based collaborative governance approach. As outlined in the ICE report, many Indigenous nations wish for IPCAs to evolve into something more reflective of an Indigenous-led IPCA, recognized and supported by Crown governments, but not reliant on co-designation. All the interviewees noted that the operational, legislative, legal, and funding constraints to implementing such a model are formidable and that new outlooks and tools are required to pursue this goal. However, there is also consensus that IPCA evolution should be seen as a continuum, and that work toward a co-designation model should be pursued as other tools are advanced to allow for primarily Indigenous-led IPCAs. Under this approach, it will be important to ensure that collaborative governance agreements established today allow for this evolution over time.

The ICE report and many of the interviewees for this report noted that IPCAs will look different depending on the First Nation. As a result, the long-term recommendations below touch on some of the key elements that could enable a path to Indigenous-led IPCAs without developing a prescriptive approach that may limit individual Indigenous Nations' vision for marine IPCAs. These long-term recommendations apply to all federal agencies that support marine IPCA establishment (DFO, ECCC, and Parks Canada). While the report recognizes that some of these recommendations could take years to achieve, it is important that work starts on them now, and that the government looks for opportunities to make incremental advances in the shorter-term.



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4.2.1 Operational

Establishing Indigenous-led, and Crown recognized and supported IPCAs will require a cultural shift within all federal departments. As Interviewee 2 noted, within some departments, there has been a cultural shift from an *"old colonial approach of a department knowing best about where the marine environment needs conservation – now shifting toward a relationship of collaboration, recognizing that Nations bring important knowledge and interests"*. This evolution is happening at different rates and to different degrees within various departments, with ECCC and Parks Canada leading this work. However, interviewees saw DFO as being reticent to adopt change, noting that the way DFO Fisheries Management operates is antithetical to reconciliation. They felt that structural change, including how DFO is organized and makes decisions, is required to support the implementation of UNDRIP and a commitment to Indigenous-led marine IPCAs.

Regardless of department, new mandates and legislative tools for IPCAs and cultural shifts are needed to support an approach that allows First Nations to lead conservation design, establishment, and management in their territories. To create this level of cultural awareness and evolution, federal departments need to create more meaningful partnerships with Indigenous groups, hire Indigenous people and individuals with interdisciplinary backgrounds, and examine all aspects of their operations.

Lastly, the idea of Ethical Space introduced in Recommendation 7 can provide both short-term and long-term benefits to the relationship between the Government of Canada and its First Nation partners, and can lead to more lasting and meaningful change if practiced over the long-term. Critical to the long-term success of IPCAs is the acknowledgement and respect for First Nations' legal systems. Ethical Space could provide a vehicle for reconciling the historical combativeness of the Crown's legal systems in the conservation sphere and create a complimentary legal pluralism for conservation in Canada (Napolean 2019).

Thus, we recommend the following:

Recommendation 14: 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.

Recommendation 15: 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.



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Recommendation 16: 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.

4.2.2 Policy and legislative

To date, Parks Canada and ECCC have used existing policies and mandates to support the advancement of IPCAs without supporting legislation. However, as Banks (2016) notes, "the importance of the goal of reconciliation surely requires recognition at the statutory level rather than simply at the level of policy and practices". Similarly, IPCAs evolve towards the vision articulated in the ICE report, enabling legislation and policies will be required. BC's Park Act, the Northwest Territories Protected Areas Act, Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA), and BC's *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), all provide useful tools to advance Indigenous-led IPCAs.

In the early 2000s BC's Parks Act was amended to create a new conservancy designation. The purpose of a conservancy includes "the preservation and maintenance of social, ceremonial and cultural uses of First Nations". Creating this type of designation enables the BC government to support IPCAs that reflect an individual Nation's interests through co-designation and were used throughout BC including Haida Gwaii and the Great Bear Rainforest.

Similarly, the *Northwest Territories Protected Areas Act* includes cultural continuity in its purpose and requires the territorial government to enter into an establishment agreement for a protected area with one or more Indigenous governments. Further, the Act allows for permitting and other activities within the protected area to be governed through "laws made by an Indigenous government". Finally, the Act requires the territorial government to initiate a process when Indigenous nations propose protecting an area. These provisions strengthen opportunities for co-designation and flexibility around IPCAs and were used in the co-designation of a section of the Thaidene Nene.

BC's DRIPA legislation enables BC to work with Indigenous governments to establish and exercise joint-decision making bodies with statutory powers. The enabling of similar joint-decision making bodies under Canada's conservation legislation could empower Indigenous-led IPCAs. On the national level, the Government of Canada is required under UNDRIPA to take all measures necessary to ensure that the laws of Canada are consistent with the Declaration" in consultation and cooperation with Indigenous Peoples. As such, a conservation legislation working group with Indigenous Peoples would be beneficial. Such a working group could review all conservation legislation and policies and identify ways to support IPCAs and joint decision-making through legislation. The working group could consider including new clauses into existing legislation, including, but not limited to, enabling clauses similar to those found in BC's *Parks Act*, BC's DRIPA, and the *Northwest Territories Protected Areas Act*.



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Further, Banks (2016) recommends that modified legislation include a joint nomination of candidate sites, naming and language considerations, and principles such as reconciliation, joint stewardship, responsibility to future generations, integration of Indigenous knowledge, and stewardship practices. Canada could also modify legislation and policy to clarify governance authorities, and allow existing parks established under an older colonial system to evolve into a joint-decision making model. As such, we recommend the following:

Recommendation 17: 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.

Recommendation 18: 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.

Recommendation 19: 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.

4.2.3 Funding and capacity

While in the short-term, funding for marine IPCA development could be supported through a similar fund to the Target 1 Challenge Fund, long-term funding will require more innovative approaches. Fortunately, Canadian examples exist. Coast Funds, which was developed to support the establishment of conservancies in BC, is a permanent endowment fund of approximately \$56 million, which includes private donations and federal and provincial funding. The income generated from the fund provides ongoing funding to First Nation governments in the Great Bear Rainforest to support conservation science, resource planning, capacity development, and related conservation management activities (Coast Funds 2022a). A similar model was developed for the Thaidene Nene IPCA, where \$15 million was raised through private donation and was matched by the Government of Canada. Discussions to fund the implementation of marine IPCAs and other collaboratively governed marine protected areas are being advanced to establish a \$150 million trust fund under the Project Finance for Permanence.



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Trust funds have proven crucial to advancing conservation in Canada and globally, enabling Nations to build conservation economies and collect user and permitting fees (Coast Funds 2022b). A similar model could be readily used for IPCA planning and implementation. Alternatively, IPAs in Australia are not legislated but the government provides funding for establishment, management, and monitoring, subject to a management plan with an appropriate conservation focus (Gould 2021).

Thus, we recommend:

Recommendation 20: Establish and contribute to a Project Finance for Permanence fund that supports long-term marine IPCA implementation.

Recommendation 21: 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.

5. Conclusion

We hope that this report articulates the opportunities that marine IPCAs provide. The recommendations in this report were produced from interviews with key experts as well as discussions with the Assembly of First Nations (AFN) sub-committee on marine IPCAs, and the AFN's Advisory Committee on Climate Action and the Environment. All of these individuals share a passion in protecting marine and coastal waters for future generations and we are thankful for their contributions.

The AFN is calling upon the Government of Canada to take meaningful action and to implement these short and long-term recommendations concurrently. In February 2023, as Indigenous leaders, state leaders, and marine experts gather to attend the 5th International Marine Protected Area Congress (IMPAC5) in Vancouver, the AFN looks forward to a strong announcement from the Government of Canada to commit to a Nation-to-Nation approach to marine conservation and support for IPCA establishment in marine and coastal waters.



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References

Askew, H., C. Snelgrove, K. R. Wrightson, D. Couturier, A. Koebel, L. Nowlan, K. Bakker. 2017. "Between Law and Action: Assessing the State of Knowledge on Indigenous Law, UNDRIP and Free, Prior and Informed Consent with Reference to Fresh Water Resources". *West Coast Environmental Law*. <https://www.wcel.org/publication/between-law-and-action-assessing-state-knowledge-indigenous-law-undrip-and-free-prior>

Assembly of First Nations. 2020. "Progress on Realizing the Truth and Reconciliation Commission's Calls to Action". https://www.afn.ca/wp-content/uploads/2020/12/2020_TRC-Report-Card_ENG.pdf

Banks, Nigel. 2016. "Marine Indigenous Protected Areas". *Department of Indian Affairs and Northern Development Canada*.

Bissonnette, M. 2022. Draft section on legislative backing for co-management in interests and considerations paper – DFO MPS South. *West Coast Environmental Law*.

Bujold, R., M. Simon, D. Anderson, D. Dobell, T. Hayes, M. Léger, M. Thomas. 2018. "Final Report of the National Advisory Panel on Marine Protected Area Standards". *Fisheries and Oceans Canada*. <https://waves-vagues.dfo-mpo.gc.ca/Library/40727191.pdf>

Coast Funds. 2022a. "Structure of the Funds". <https://coastfunds.ca/about/structure-of-the-funds/>

Coast Funds. 2022b. "Project Finance for Permanence". <https://coastfunds.ca/wp-content/uploads/2018/03/2011-07-13-Project-Finance-for-Permanence-Report.pdf>

Cohen, B.I. 2012. "Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River - final report". *Government of Canada*. <https://publications.gc.ca/site/eng/432516/publication.html>

Council of the Haida Nation and Her Majesty the Queen in Right of Canada, represented by the Minister of Fisheries and Oceans Canada. 2019. "SGaan Kinghlas–Bowie Seamount Gin siigee tl'a damaan kinggangs gin k'aalaagangs Marine Protected Area Management Plan 2019". https://haidamarineplanning.com/wp-content/uploads/2019/07/CHN_DFO_SK-BS_Plan_EN_WEB.pdf

David Suzuki Foundation. 2018. "Tribal Parks and Indigenous Protected and Conserved Areas: Lessons Learned from BC examples". <https://davidssuzuki.org/wp-content/uploads/2018/08/tribal-parks-indigenous-protected-conserved-areas-lessons-b-c-examples.pdf>

Edgar GJ., R.D. Stuart-Smith, T.J. Willis, S. Kininmonth, S.C. Baker, S. Banks, N.S. Barrett, M.A. Becerro, A.T.F. Bernard, J. Berkhout, C.D. Buxton, S.J. Campbell, A.T. Cooper, M. Davey, S.C. Edgar, G. Försterra, D.E. Galván, A.J. Irigoyen, D.J. Kushner, R. Moura, P.E. Parnell, N.T. Shears, G. Soler, E.M.A. Strain, R.J. Thomson. 2014. "Global conservation outcomes depend on marine protected areas with five key features". *Nature* 506: 216–220.



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Ermine, W. 2007. "The Ethical Space of Engagement". <http://indigenousslanguagelearning.ca/wp-content/uploads/2017/11/Ermine-2007.pdf>

Frid A, Atlas W. 2020. "Fisheries framework obscures the long-term picture of declining populations. Policy Options September". Policy Options. <https://policyoptions.irpp.org/magazines/september-2020/fisheries-framework-obscures-the-long-term-picture-of-declining-populations/>.

Gould, J., D. Smyth, W. Rassip, P. Rist, K. Oxenham. 2021. "Recognizing the contribution of Indigenous Protected Areas to marine protected area management in Australia". *Maritime Studies*. <https://link.springer.com/article/10.1007/s40152-020-00212-z>

Government of BC. 2022. "BC Parks Act". https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96344_01#section12

Government of Canada. 2010. "Gwaii Haanas Marine Agreement, 2010". <https://www.pc.gc.ca/en/pn-np/bc/gwaiihaanas/info/coop/~media/662F1B36258E462DA46C2E8372B62E3A.ashx>

Government of Canada. 2018a. "Gwaii Haanas Management Plan 2018". <https://www.pc.gc.ca/en/pn-np/bc/gwaiihaanas/info/consultations/gestion-management-2018>

Government of Canada. 2018b. "One with Nature: A Renewed Approach to Land and Freshwater Conservation in Canada". <https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5c9cd18671c10bc304619547/1553781159734/Pathway-Report-Final-EN.pdf>

Government of Canada. 2018c. "Principles Respecting the Government of Canada's Relationship with Indigenous Peoples". <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

Government of Canada. 2019. "Protection Standards to better conserve our oceans". <https://www.dfo-mpo.gc.ca/oceans/mpa-zpm/standards-normes-eng.html>

Government of Canada. 2021a. "Canada's marine conservation goals". <https://www.canada.ca/en/fisheries-oceans/news/2021/07/canadas-2025-marine-conservation-targets.html>

Government of Canada. 2021b. "Feasibility Assessment for a proposed Indigenous protected area adjacent to Torngat Mountains National Park". <https://www.pc.gc.ca/en/amnc-nmca/cnamnc-cnmca/torngat>

Government of Canada. 2021c. "Minister of Fisheries, Oceans and the Canadian Coast Guard Mandate Letter, December 16, 2021". <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>



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Government of Canada. 2021d. "Minister of Environment and Climate Change Canada Mandate Letter. December 16, 2021". <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter>

Government of Canada. 2022a. "Achievements". <https://www.dfo-mpo.gc.ca/oceans/conservation/achievement-realizations/index-eng.html>

Government of Canada. 2022b. "Edézhíe National Wildlife Area and Dehcho Protected Area". <https://www.canada.ca/en/environment-climate-change/services/national-wildlife-areas/locations/edehzhie.html>

Government of the Northwest Territories. 2019. "Northwest Territories Protected Areas Act". <https://www.canlii.org/en/nt/laws/stat/snwt-2019-c-11/latest/snwt-2019-c-11.html>

Goyes, D.R. & South, N. 2019. "Between 'conservation' and 'development': the construction of 'protected nature' and the environmental disenfranchisement of Indigenous communities". *International Journal for Crime, Justice and Social Democracy*, 8(3), 89-104.

Hutchings, J.A., I.M. Cote, J.J. Dodson, I.A. Fleming, S. Jennings, N.J. Mantua, R.m. Peterman, B. E. Riddell, A.J. Weaver, D.L. Vanderzwaag. 2012. "Is Canada fulfilling its obligations to sustain marine biodiversity? A summary review, conclusions, and recommendations". *Environ Rev.* 20: 353-361. <http://www2.bio.ulaval.ca/labdodson/Papers%20Julian/174.Hutchings%20et%20al.%202012%20EnvRev%20B.pdf>

Indigenous Circle of Experts. 2018. "We Rise Together". https://publications.gc.ca/collections/collection_2018/pc/R62-548-2018-eng.pdf

Indigenous Leadership Initiative. 2022. "Good for the Land, Good for the People, Good for the Economy". *West Coast Environmental Law*. https://www.wcel.org/sites/default/files/publications/2022-01-20-ipc-as-indigenous-guardians-discussion-paper_final_web-min.pdf

Jones, R., N. Doubleday, M. Bailey, K. Paul, F. Taylor and P. Pulsifer. 2021. "Chapter 2 Reconciliation and Indigenous Ocean Management in Canada". Current Status Accepted for publication October 2021. In: Sumaila U, Armitage D, Bailey M, Cheung W (eds). *Canada's Oceans: Pathways to Sustainability in a Sea of Change*. UBC Press, Vancouver.

McMillan, L. J., and K. Prosper. 2016. Remobilizing netukulimk: indigenous cultural and spiritual connections with resource stewardship and fisheries management in Atlantic Canada. *Reviews in Fish Biology and Fisheries* 26:629–647

Moresby Explorers Ltd. v. Canada (Attorney General) (T.D.). 2000. https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/384192/620327/2982078/3004001/A78122-3_Moresby_Explorers_Ltd._v._Canada_%28Attorney_General%29%2C_%5B2001%5D_4_FCR_591_-_A5D3X2.pdf?nodeid=3004426&vernum=-2



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Napolean, V. 2019. "Ngā ture o ngā iwi taketake – Indigenous law Legal pluralism and reconciliation". *Maori Law Review*. <https://adric.ca/wp-content/uploads/2020/10/Napoleon-Legal-Pluralism-published-version-2019-11.pdf>

Papadopoulos, A. 2021. "Exploring governance mechanisms and Mi'kmaw values and aspirations for indigenous protected and conserved areas (IPCAs) in Nova Scotia". *Dalhousie University*. <https://dalspace.library.dal.ca/handle/10222/80568>

Roberts CM et al. 2017. "Marine reserves can mitigate and promote adaptation to climate change". *Proceedings of the National Academy of Sciences* 114:6167 LP – 6175. <http://www.pnas.org/content/114/24/6167.abstract>.

Schuster, R., Germain, R., Bennet, J., Reo, N., P. Arcese. 2019. "Vertebrate Biodiversity on indigenous-managed lands in Australia, Brazil, and Canada equals that in protected areas". *Environmental Science and Policy* Volume 101.

Tran, T.C., N.C. Ban, J. Bhattacharyya. 2022. "A review of successes, challenges, and lessons from Indigenous protected and conserved areas". *Biological Conservation*. In press.

The Ocean Conservancy. 2020. "Climate Smart MPAs brief". https://oceanconservancy.org/wp-content/uploads/2020/07/Climate-Smart-MPAs-Brief_FINAL_7_1_update.pdf

Truth and Reconciliation Commission of Canada. 2015. "Truth and Reconciliation Commission of Canada: Calls to Action". https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf

United Nations Special Rapporteur on the rights of Indigenous Peoples. 2022. Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay. Protected areas and Indigenous Peoples' rights: the obligations of States and international organizations. UN General Assembly, 77th Sess, UN Doc A/77/238 (19 July 2022)

United Nations. 2007. "United Nations Declaration on the Rights of Indigenous Peoples". <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>



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Appendix 1: IPCAs as an approach to advance First Nations interests and values

While the focus of the report is federal, there is a growing body of literature that outlines the benefits of IPCA for Indigenous communities. This includes the Indigenous Circle of Experts Report *We Rise Together*, Indigenous Leadership Initiative's *Good for the Land, Good for the People, Good for the Economy*, and Westcoast Environmental Law's *Recognizing Indigenous Protected and Conserved Areas in Crown Law*.

In previous work undertaken by the Assembly of First Nations (AFN), AFN identified a suite of best practices for marine IPCA establishment. These best practices were used in this report to compare different short-term options for advancing marine IPCAs (see Table A1). Three potential models for short-term IPCA development in Canada are compared: IPCAs declared by First Nations but not supported through Crown policy or legislation (e.g., Tribal Parks and ICCAs); IPCAs supported through co-designation by Canada and First Nation(s) and Indigenous-led IPCAs supported through Crown policy and/or legislation (e.g., IPAs in Australia and Aotearoa/New Zealand).

The co-designation model was assessed as best at meeting these best practices and for this reason it is the short-term model recommended in the report. As the analysis in Table A1 notes, the ability of any of the models to achieve the best practices is dependent on the parties' willingness to work together to advance everyone's interests, and the recommendations in the body of this report seek to ensure that this is the case.

In addition to the co-designation model best meeting Nations' interests and values, it also provides the clearest opportunity for the Government of Canada to honour its marine conservation target (MCT) commitments and develop collaborative relationships that support reconciliation.

Table A1: Assessment of three models for short-term IPCA establishment in Canada

IPCA best practices adapted from AFN discussion paper	Models #1 IPCA not recognized nor supported through Crown policy/legislation	Model #2 IPCA supported through co-designation	Model #3 IPCA supported through Crown policy
National and international examples	Nexwagwez?an – Dasiqox IPCA, BC; Pikialasorsuaq, Arctic	Gwaii Haanas, BC; Edhezie, NWT	Uunguu IPA, Australia
Affirms Indigenous rights and title	No	Partial – typically without prejudice to treaty negotiations	Partial - depends on Crown policy
Incorporation of traditional knowledge and law	Partial – limited to what IPCA can regulate	Partial – would need to be consistent with Crown designation	Partial – would need to be consistent with Crown policy
Location and values identified and determined by the community	Full	Partial – would depend on negotiation	Full – if agreement on policy support can be achieved



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IPCA best practices adapted from AFN discussion paper	Models #1 IPCA not recognized nor supported through Crown policy/legislation	Model #2 IPCA supported through co-designation	Model #3 IPCA supported through Crown policy
Conservation aligned with cultural practices and values	Limited – unlikely that IPCA can regulate key activities without policy or legislative support	Full – dependent on negotiation	Full – if agreement on policy support can be achieved
Funding to establish and implement IPCAs	Uncertain – would need to be internal or acquired from non-government sources	Full – able to rely on Crown funding which is triggered with MPA establishment	Partial – in Australia funding support is a key component of IPAs but may not cover all conservation activities
Adequate First Nation capacity for management, monitoring and enforcement e.g., planning, guardian programs	Uncertain – would need to be internal or acquired from non-government sources	Partial – depends on legislative tool	Partial – IPA funding typically covers some management and monitoring such as guardian programs
Internal and external communication about purpose and benefits of IPCA	Uncertain – would depend on Nation	Full – included in funding package for establishment	Partial – IPAs require public consultation and are subject to a management plan.
Provides local employment and economic benefits for participating Nations	Partial – may raise awareness of area that creates increased tourism or brings in funding for monitoring and management	Partial – would likely raise awareness of area that creates increased tourism or brings in funding for monitoring and management	Partial – benefits provided through an IPA agreement; may raise awareness of area that creates increased tourism or brings in funding for monitoring and management
Opportunities for co-governance including co-designation of IPCA*	No	Full*	Partial – some collaboration through policy development



Marine Indigenous Protected and Conserved Areas

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*Note: Jones et al. (2022) provide a useful analysis of the criteria for reconciliation based on UNDRIP, many of which should be considered and incorporated into co-governance agreements for IPCAs. These include:

Type of injustice and reconciliation criteria	UNDRIP Articles
Political Domination	
Effective Indigenous organizations in place at appropriate scales	18
Self government or management agreements in place	4
Mechanisms and resources to implement agreements and treaties	29, 37, 39
Development of joint policies and plans	5, 29
Processes and practices in place to secure Indigenous consent	10, 19, 28, 32
Meaningful engagement in development of relevant legislation, regulations and/or designations/listings	19, 38
Incorporation of Indigenous laws into decision-making	27
Incorporation of indigenous priorities and strategies into decision-making	32
Resorting to courts to resolve disputes	32, 37, 40
Indigenous capacity to govern or manage including financial autonomy	39
Loss of Territory (and benefits thereof)	
Consent for allocations, licences, tenures or plans in a territory related to an activity	19
Agreements on share or proportion of a resource or activity; or jointly approved plans in place	17, 19
Allocation policies or plans or targets account for Indigenous title and rights to specific territories	19, 26
Compensation for loss	10, 20, 28, 32
Revenue sharing or management funding for new or existing activities or uses	26, 32
Joint assessments of activities to account for environmental, social, cultural and economic impacts	23, 32
Sustainable use and/or species recovery over the long term as determined through assessments	25, 29, 32
Cultural Imposition	
Ability to practice rights and culture	8, 15
Incorporation of traditional knowledge into policies and plans	31
Uses Indigenous language in negotiation and decision-making	13
Contributes to an equal standard of living e.g., income, benefits, traditional food	21, 24
Activity occurs consistent with community values	23, 25
Policies and plans incorporate Indigenous worldview	25



Marine Indigenous Protected and Conserved Areas

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Appendix 2: key milestones and timelines for advancing report recommendations

For the report recommendations to support a public announcement by the Government of Canada and the Assembly of First Nations at the 5th International Marine Protected Areas Congress (IMPAC5) in February 2023, key actions will have to be taken between October 2022 and the announcement date. Those actions are summarized below and provide a starting point for more detailed work planning.

	2022				2023		2024	2025
	Sept	Oct	Nov	Dec	Jan	Feb	Dec	Dec
1. Establish joint DFO-AFN working group on IPCAs		→						
2. Review and refine report's short-term recommendations		→	→					
3. Determine and secure budget requirements for increased capacity and IPCA funding		→	→					
4. Develop and refine language with AFN working-group			→	→				
5. Develop communications materials for joint-announcement				→	→			
6. Confirm announcement logistics for IMPAC5 (e.g., venue, attendees etc.)					→			
7. Make public announcement at IMPAC5						★		
8. Continue work with DFO-AFN working group to advance report recommendations						→		
9. Establish co-designated marine IPCA						→	→	→
10. Develop collaborative structures to advance long-term report recommendations						→		
11. Develop longer term policy and legislative approaches for Indigenous-led IPCAs						→	→	→