

An underwater scene featuring several large salmon swimming in clear, blue-green water. The fish are captured in various orientations, some swimming towards the viewer and others away. The background shows a bright, sunlit surface with some foliage visible through the water. The overall atmosphere is serene and natural.

COMMUNITY AND INDIGENOUS MARINE PROTECTED AREAS – A  
PUBLIC INTEREST LAW PERSPECTIVE FROM COAST TO COAST

28 May 2018

Georgia Lloyd–Smith, WCEL

Lisa Mitchell, ECELAW



*ECELAW envisions a future where innovative and effective environmental laws, and the fair application of those laws, provide Atlantic Canadians with a clean, healthy environment, which will make a positive contribution to the quality of life of its present and future inhabitants and visitors.*



**WEST COAST**  
Environmental Law

Georgia Lloyd-Smith  
Communities, Conservation, and Livelihood  
May 28, 2018





# INDIGENOUS LAW

VAL NAPOLEON  
2014



# What are MPAs?

- Defined area of the ocean
- Legal Protection
- Long-term Management
- Primary purpose is conservation of nature and associated ecosystem services and cultural values.





# Background

- Convention on Biological Diversity, 1992
- Oceans Act, 1997
- Federal Commitment, 2015
  - From 1% in 2016 to 10% by 2020
- Network of MPAs
  - National Marine Conservation Areas
  - Other Effective Area-based Conservation Measures (Marine Refuge)
  - Oceans Act MPAs



# Oceans Act – Bill C-55

- Will...
  - Interim MPAs by MO
  - Precautionary Principle
- Should...
  - Set Minimum protection standards
  - Prohibit certain activities
  - Make ecological integrity the top priority.

## Government 5 Point Plan

1. Finish What Was Started
2. Protect Pristine Areas
3. Protect Areas Under Pressure
4. Advance Other Effective Area-Based Conservation Measures
5. Establish Marine Protected Areas Faster

# MPA Identification and Consultation Process

Oceans Act MPAs are created in a five-step process:

## 1. Identify Area of Interest

- Advisory committee receives input
- Identifies area appropriate for MPA designation

## 2. Assess Area of Interest

- Ecological, biophysical, social, cultural, economic impacts assessed
- Interested and affected parties to contribute



### 3. Consultation to establish Regulatory Intent

- Best available science
- Traditional and local knowledge
- Community-based monitoring

### 4. Create regulations and designate the MPA

- Legal protection, prohibition
- Ongoing management
- Exceptions

### 5. Manage MPA

- Monitoring
- Enforcement



# MPA Regulation Example

## Basin Head MPA (PEI)

- Sets out specific area for protection
- Lists prohibited activities
  - Do not disturb, destroy or damage marine organisms.
  - Do not undertake activities that disturb, destroy or damage marine organisms.
- Exceptions
  - Despite prohibitions any 'excepted' activity can be carried out.
  - Any scientific or educational activity with approval.



# Consultation Challenges

- **Concerns**

- Displacement of communities
- Lack of access for recreational activities (including ceremonial)
- Compensation for loss of economic opportunity
- Oil and gas exploration and development
- Uncertainty about, and lack of, enforcement

- **Challenges**

- Distrust of government
- Uncertainty due to lack of consistency
- Lack of transparency
- Conflicting statements
- Lack of capacity to participate
- No time for meaningful dialogue



*Photo Credit Timothy Boudreau*

# MPAs are Making Headlines on the East Coast



“Ottawa considers dozens more marine protected areas in Maritimes: Maps sent to CBC reveal areas under consideration that have not been made public” May 10, 2018

“Concern and confusion: Premier slams logic behind marine protected area choices” May 4, 2018

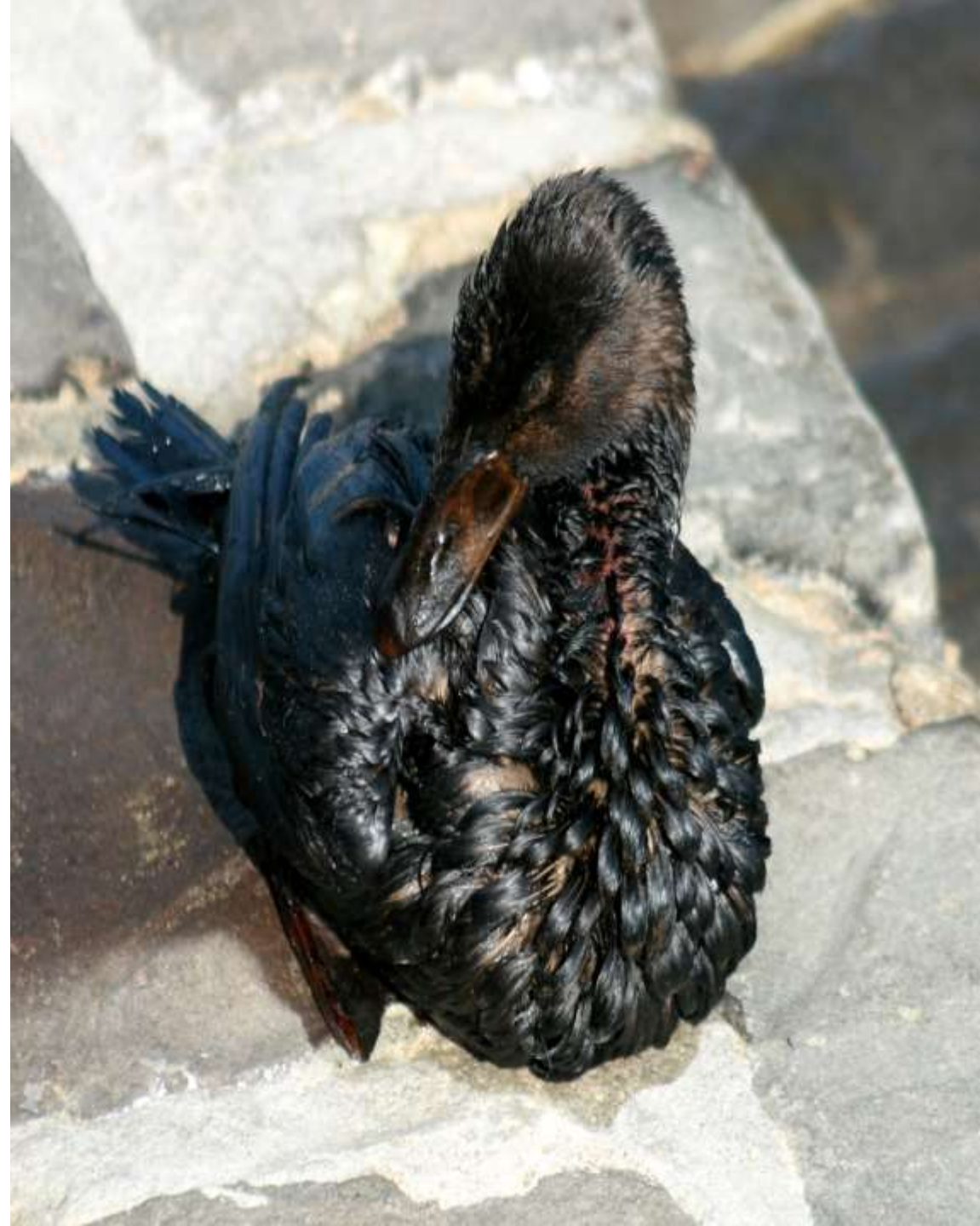
“Premier wants Ottawa to permit drilling in restricted marine areas” May 3, 2018

“Uncertainty surrounding marine protected areas concerns N.S. seaweed company” April 25, 2018

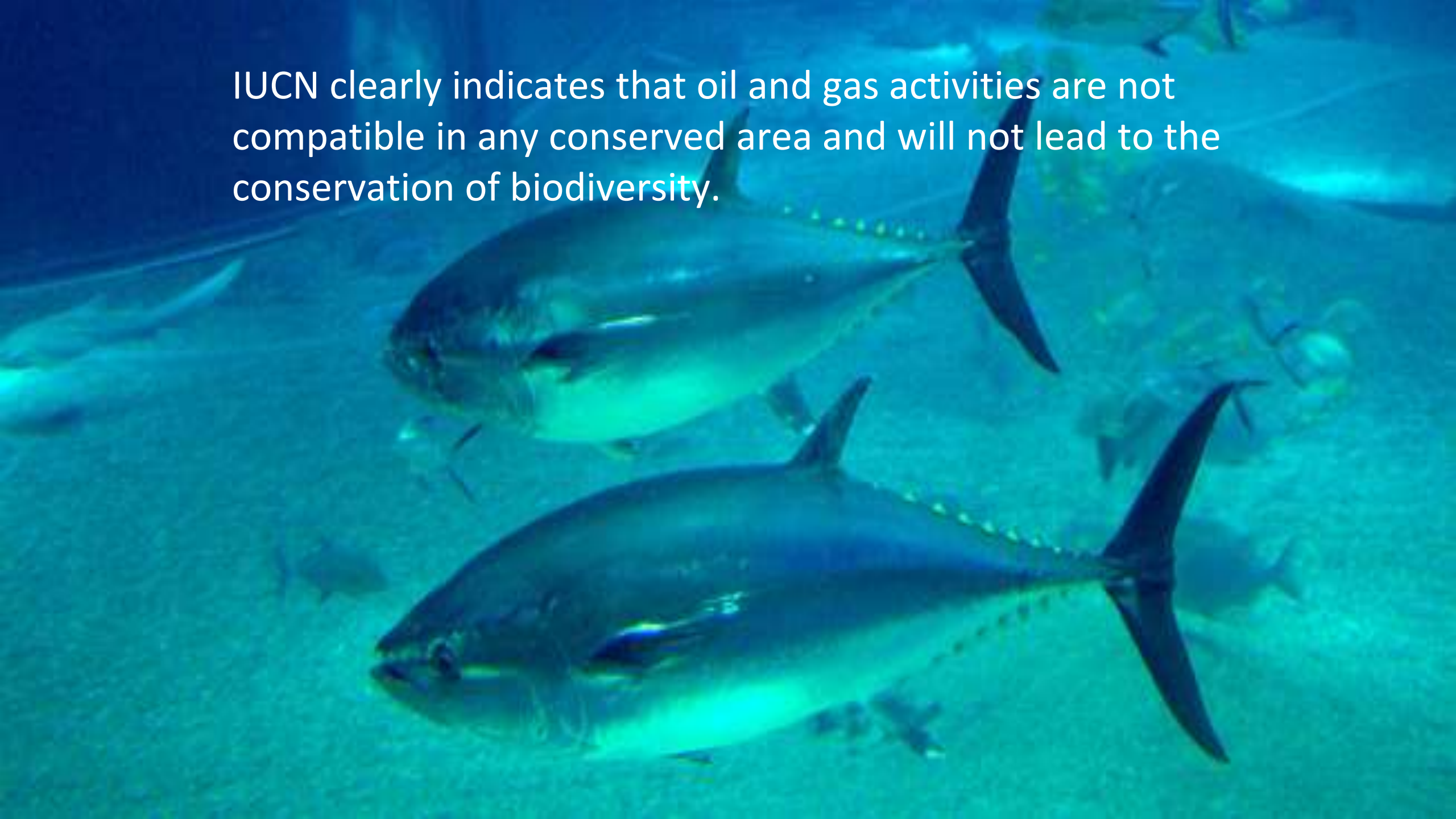
“Proposed no-fish zones in Eastern Shore could mean job losses, minister fears” April 19, 2018

# Offshore Oil & Gas Exploration

- Laurentian Channel draft MPA Regulations in June 2017 allowed oil and gas activity in 80%
  - Government appoints National Advisory Panel on marine protection standards, April 2018
- CNSOPB Call for Bids in April overlaps with Western Emerald Banks Conservation Area (the Haddock Box)
  - Set aside by federal and provincial Ministers May 23, 2018.
- CNLOPB Call for Bids in the Northeast Newfoundland Slope Marine Refuge
  - 'Perfectly reasonable' to drill for oil in area closed to fishery, Liberal MP says



IUCN clearly indicates that oil and gas activities are not compatible in any conserved area and will not lead to the conservation of biodiversity.





# Addressing the Challenges

More transparency, better access to information, earlier and more open engagement, enhancing capacity, enabling community leadership and setting legal criteria will facilitate understanding and certainty for communities, industries and citizens; diffusing anger, resentment and resistance.



A photograph of a sunset over the ocean. The sun is a bright, glowing orb in the center of the frame, partially obscured by a thin layer of clouds. The sky is a mix of warm orange and yellow tones. In the foreground, the ocean waves are dark and textured, with some white foam visible. The overall mood is serene and contemplative.

# Improving the Process

- Restorative Consultation
  - Mutually respectful, fair and equitable.
- Dispute Resolution
  - Peaceful, open mediation
- Legally-based community management
  - Legal tools to facilitate community led processes
- Capacity Building
  - Noted difference between east and west coast
- Recognition of Indigenous rights

# Minimum Protection Standards

- No oil and gas activity
- No bottom trawling
- No commercial-scale benthic disturbing activities
- No open-net pen aquaculture
- No undersea mining.

*Apply to all sites counting towards Canada's marine protection targets.*



# Summary

## **Community Engagement and Legally-based Standards**

- Increase certainty & reduce confusion.
- Improve governance.
- Reduce regulatory reviews and legal challenges.
- Build trust between stakeholders and upholds public trust.
- Allows Canada to show leadership and compare its efforts to others.





# Co-governance of MPAs

- Equal power sharing
- Indigenous laws and governance upheld
- 2-eyed seeing
- Adequate funding



# Gwaii Haanas



- Haida Protected Area
- Equal representation on board
- Application of Haida law
- Agree to disagree on ownership

# Haida Laws



Yahguudang or Yakguudang - Respect

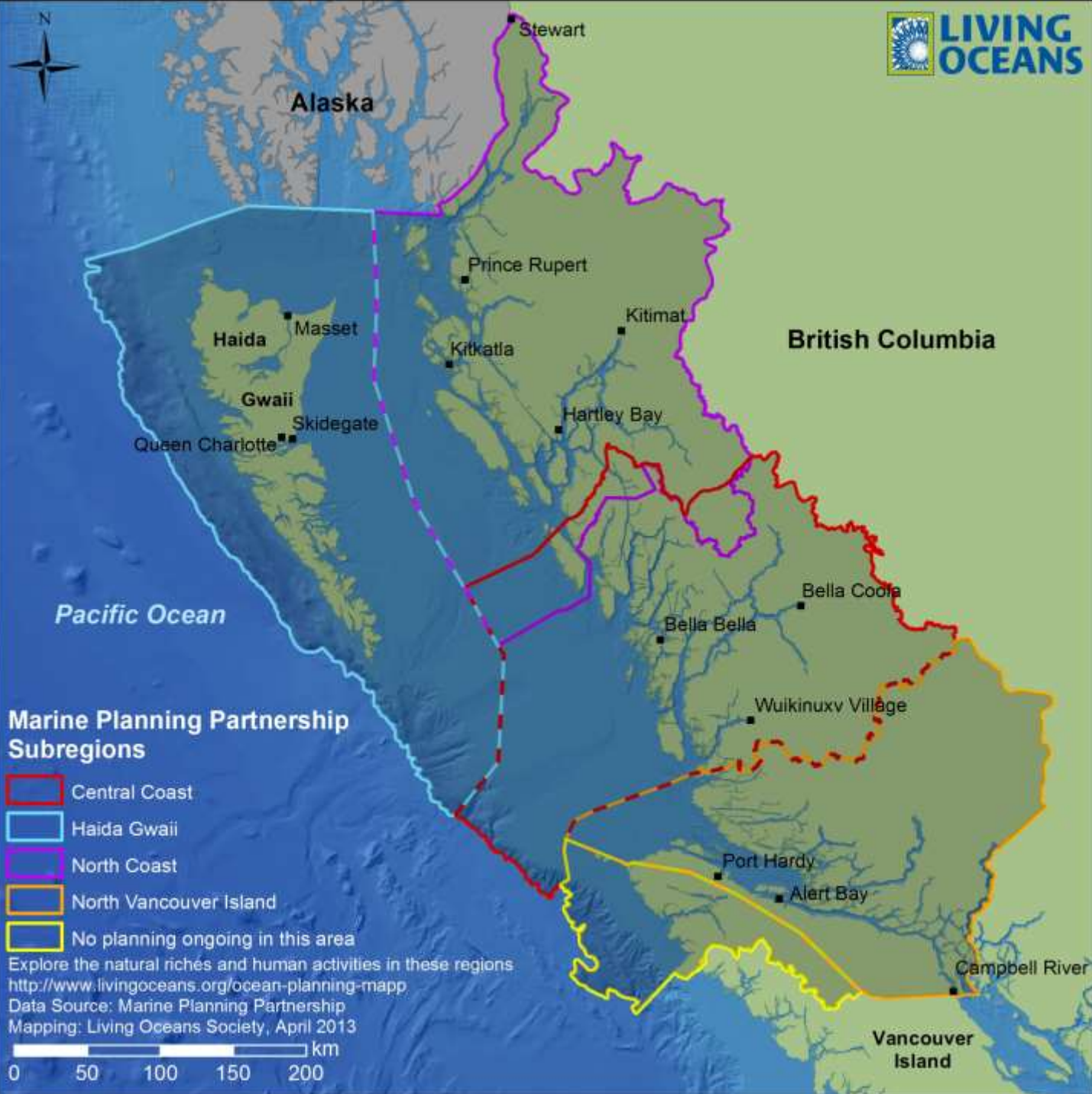
'Laa guu ga kanhlns - Responsibility

Gina 'waadluxan gud ad kwaagiida - Interconnectedness:  
Everything depends on everything else

Giid tl'juus - Balance: The world is as sharp as the edge of a knife

Gina k'aadang.nga gii uu tl' k'anguudang - Seeking wise counsel





# Indigenous Protected and Conserved Areas



## We Rise Together

Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation

THE INDIGENOUS CIRCLE OF EXPERTS'  
REPORT AND RECOMMENDATIONS  
MARCH 2018

“In effect, because of their attachment to, and dependence on the land, Indigenous peoples have been establishing their own protected areas for millennia.”

- Steven Nitah, Lultsel K'e Dene, Indigenous Leadership Initiative



# Indigenous Guardians



# Why does law matter?

- Law as our foundation
- Rising tide floats all boats
- Reconciliation?







**WEST COAST**  
Environmental Law

Georgia Lloyd-Smith  
[www.wcel.org](http://www.wcel.org)  
[facebook.com/WCELaw](https://facebook.com/WCELaw)  
[@WCELaw](https://twitter.com/WCELaw)

# Questions?

- What kind of process do you see as viable for community and indigenous led MPAs?
- What are methods or ways that trust can be re-built or created?
- How are the relationships between stakeholders strengthened and improved?
- What kind of tools are needed by communities for creation and management of MPAs?
- What capacity is needed by communities – Money, information, technology, etc?
- What are the community concerns?
- How can we get more/better community support?
- What do you see as successful elements of a community-led or Indigenous led MPA?
- What is NOT working?



# Conclusions

- Co-governance in MPAs required by law
- Opportunity for Canada to learn from Indigenous



# Miscellaneous

- Opportunity –
- Real concerns on all three coasts – don't suggest to minimize them
  - I.e. oil and gas in Atlantic
  - I.e. overfishing on all three coasts; problems with licenses and quotas
- Circle back to re-storying – taking Indigenous nations seriously as governments establishes a different foundation for all of us; no need to fear it; embrace; diversity makes us stronger.

# The RELAW Project

REVITALIZING INDIGENOUS LAW  
FOR LAND, AIR & WATER



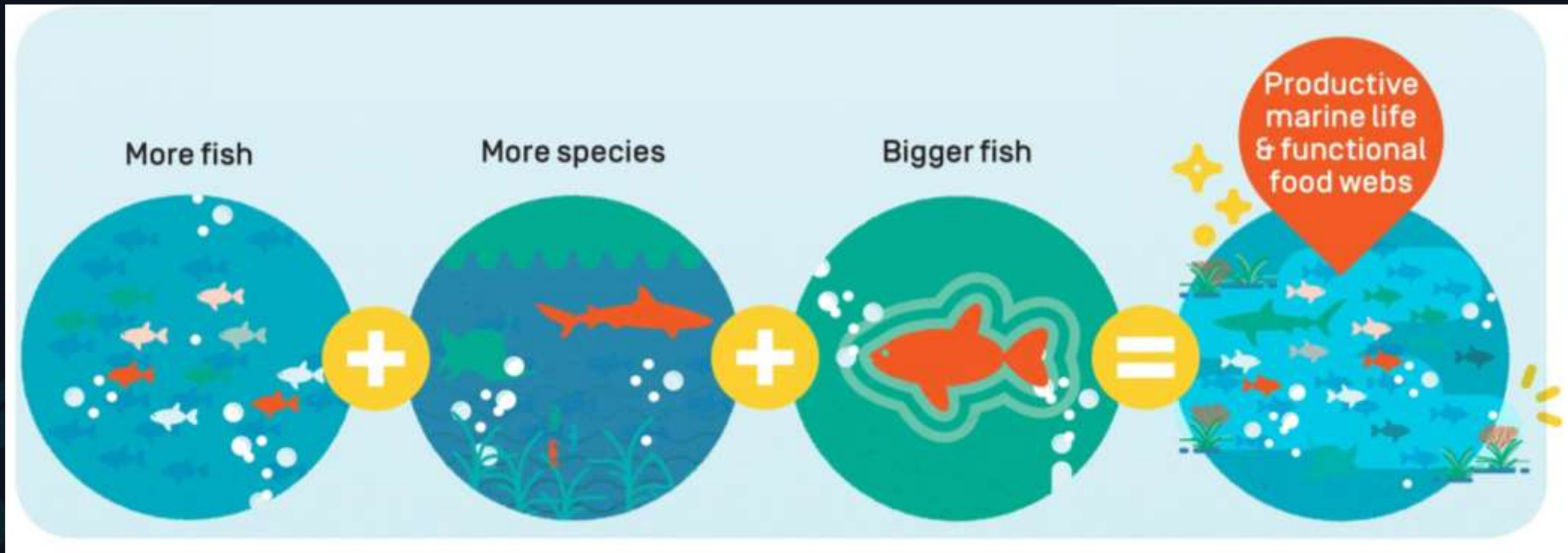
Deepening community-based capacity to articulate, revitalize, and apply Indigenous law to environmental decision-making

**2017-2018 Call-out open now!**

Apply by March 17: [wcel.org/relaw](http://wcel.org/relaw)



# Strong Protection most effective



- Benefits of fully-protected areas (marine reserves) greater than in areas with only partial protection

(E.g. Edgar et al. 2014, Sala et al. 2017, Lester & Halpern 2008)

# Protection Standards for MPAs

“[a]ny environmentally damaging industrial activities and infrastructural developments, with the associated ecological impacts and effects, are not compatible with MPAs”

(IUCN World Commission on Protected Areas, 2018)

“prohibit environmentally damaging industrial activities and infrastructure development in all IUCN categories of protected area”

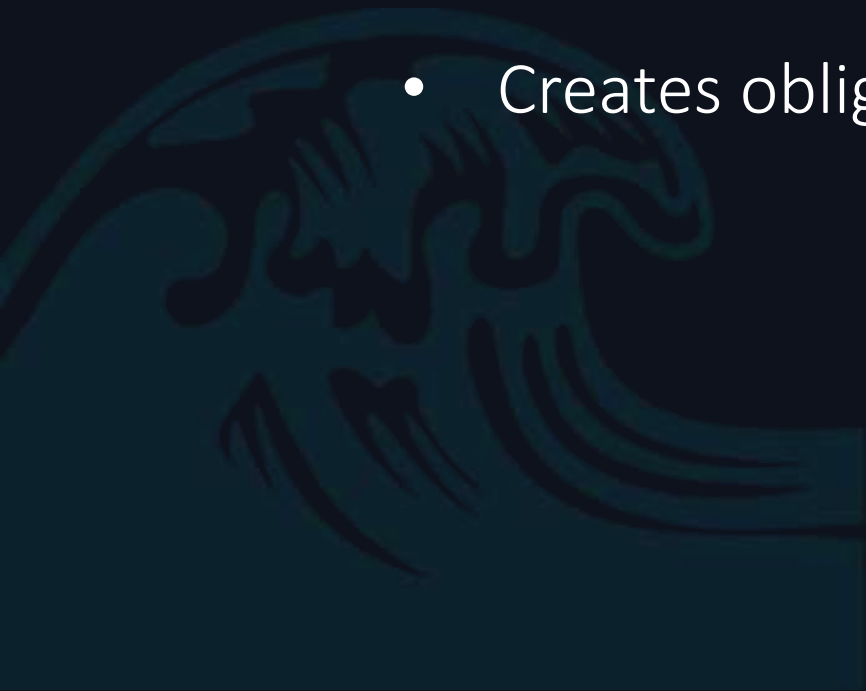
(IUCN World Conservation Congress Motion 026, 2016)



# Legal Obligations

Law is critical factor for MPA establishment and management.

- Guides decision-makers and processes.
- Creates obligations, standards, and accountabilities.



# Recommendations for *Oceans Act*

- The *Oceans Act* should be amended to include a prohibition on all industrial activities within MPAs

## MINIMUM PROTECTION STANDARDS FOR CANADA'S MPAs

Canada's legal regime for marine protection is inconsistent and the *Oceans Act* lacks express prohibitions on several damaging industrial activities. The majority of Canada's marine protected areas allow extractive uses within their boundaries.

### OIL & GAS

There is no universal protection from oil and gas exploitation in *Oceans Act* MPAs. Seismic testing, exploratory drilling, oil and gas production, and pipelines are all allowed activities within the Tasiuyutait MPA (Northwest Territories) and in the proposed Lauren Channel MPA (Newfoundland and Labrador). The lack of outright prohibitions leaves open the possibility of oil and gas exploitation in other MPAs.



### BOTTOM TRAWLING



Bottom trawling is not expressly prohibited within the majority of *Oceans Act* MPAs and is permitted to occur within many MPAs. Bottom trawling equipment, which refers to many types of fishing gear that are towed along the seafloor to catch fish, crustaceans and shellfish, are particularly threatening to seabed habitats. Prohibiting bottom trawling would safeguard *Oceans Act* MPAs from damaging industrial fishing activities. This type of ban is found in MPAs internationally, including MPAs in Scotland, Australia, and New Zealand.

### OPEN NET-PEN AQUACULTURE

No *Oceans Act* MPAs expressly allow or prohibit open net-pen aquaculture. The extent to which aquaculture is permissible in *Oceans Act* MPAs depends on whether it falls within the definition of "commercial fishing". An outright prohibition on open net-pen aquaculture would protect *Oceans Act* MPAs from the damage and destruction caused by disease, parasite transfer, and other risks associated with fish farms.



### SEABED MINING



There are currently no mining leases in Canada's offshore area; however, as the technology for this type of extraction develops, the environmental effects of seabed mining will pose a threat to Canada's MPAs. The majority of *Oceans Act* MPAs only protect seabed habitats to depths from 2m to 20m and do not expressly prohibit the damage or removal of the seabed within the MPA.

Read our full detailed brief at [bit.ly/BeUerMPAs](https://bit.ly/BeUerMPAs)



# Protection Standards for MPAs

- *National Marine Conservation Areas Act:*

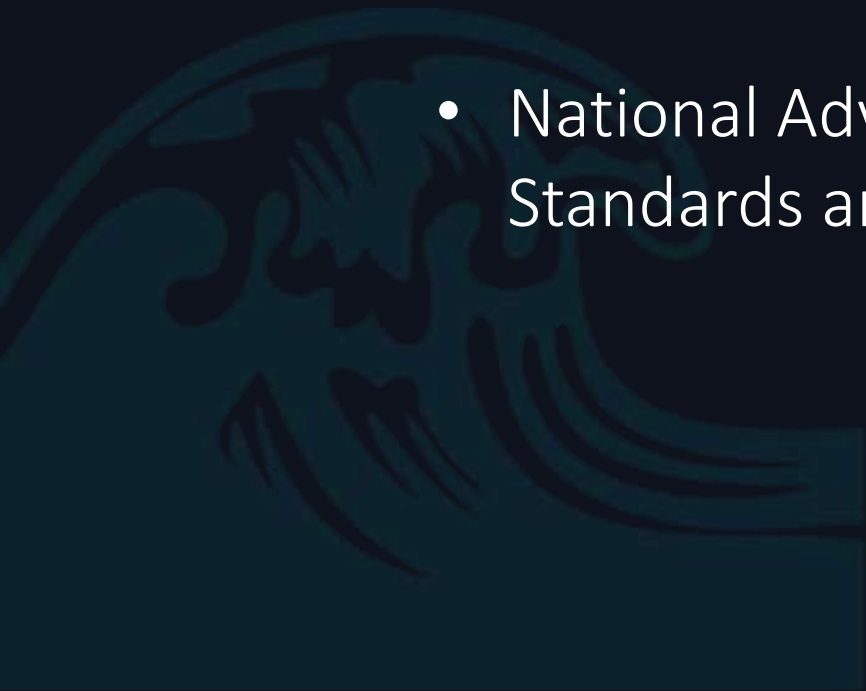
13. No persons shall explore for or exploit hydrocarbons, minerals, aggregates or any other inorganic matter within a marine conservation area.

- Standing Committee on Environment and Sustainable Development unanimously recommended “minimum conservation standards of protection for each category of federal protected area to meet accepted international standards”



# Movement in Canada on Protection Standards

- *Oceans Act* amendments
- Federal government intends to establish “a floor of basic protections” to apply to all MPAs
- National Advisory Panel on Marine Protected Area Standards and accepting public submissions.



# Laurentian Channel MPA

- Public input makes a difference
- >40,000 letters



(Hakai Magazine, 2017)