Honorable Fabian Manning  
Chair, Standing Committee on Fisheries and Oceans  
Senate of Canada  
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November 27, 2018

RE: Government of Nunavut Submission regarding Bill C-55

Dear: Senator Manning

Purpose

- To present the Government of Nunavut’s concerns with Bill C-55.
- To recommend an amendment to the Bill.

Background

The Government of Nunavut (GN) has expressed concerns about Bill C-55 (the Bill) to the Government of Canada (GOC) since spring 2017. The main issues for our government are the provisions in the Bill that would give the GOC the right to:

a) Designate areas for marine protection without our consent in waters within or adjacent to Nunavut that we may consider for other purposes.
b) Remove geographical areas from development that are currently subject to discussion at the devolution negotiation table; and 
c) Prohibit access to petroleum resources without a provision for compensation for loss in opportunity for Nunavummiut.

We are particularly concerned with clause 5 of the Bill which empowers the Minister of Fisheries and Oceans to designate an MPA by order until the area’s final designation through Governor in Council regulations is in place (new sections 35.1(2) and 35.3(1)). The creation of such interim protection for an MPA is at the discretion of the minister and has no requirement for the consent, or for consultation with, the territorial or provincial government that may border the MPA.
This interim order can last for up to five years and appears to be not subject to the requirement under section 31 of the Oceans Act which states that the Minister "shall cooperate with ... provincial and territorial governments" in exercising his or her powers under the Act.

The GN is concerned that the amendments proposed in the Bill run counter to the objectives of cooperative federalism that your government has publicly committed to and undermines ongoing devolution negotiations. The proposed changes ignore Nunavut's role in the territory's economic development, environmental stewardship and governance. The changes threaten to compromise the improving government to government relationship Canada is trying to build.

Furthermore, the GN is concerned with amendments proposed in the Bill regarding the Canada Petroleum Resources Act which could prohibit interest owners from commencing or continuing work in federal waters subject to an MPA. Again, we believe the GN must be part of the decision-making process to prohibit exploration or other activity in an MPA, and we disagree with the proposed amendments that allow the GOC to make unilateral decisions that could impact Nunavummiut with respect to mineral and petroleum development, tourism, commercial fisheries, and shipping in Nunavut waters.

The GN reviewed the Committee report "Healthy Oceans, Vibrant Coastal Communities: Strengthening the Oceans Act Marine Protected Areas' Establishment Process" as well as the Government of Canada's response to the report, including recommendations inclined with our position. We have included specific comments and further recommendations in Appendix B with regards to those documents.

The GN has strategies both for future development, and for the designation of future conservation areas, therefore it is critical that the GN be involved as a co-decision maker in the MPA establishment process – both interim and permanent. Finally, the Bill removes important procedural requirements such as conducting a Mineral and Energy Resources Assessment and proper public consultations for the designation of MPAs. The process seems designed to limit the ability of stakeholders to raise legitimate concerns they would face should an MPA be created in a place that affects them. Nunavut, having the longest ocean coast in Canada, is going to be affected disproportionally compared to the rest of Canada.

Indeed, the effects of the Bill's approach are already clearly evident. We have expressed our concerns with the general failure of the GOC to involve the GN in its decision making process with respect to MPAs on a number of specific occasions. These are outlined in the attached Appendix A.
Accordingly, we would request that an amendment to the Bill be advanced by the Committee that would require the written consent of affected or bordering territorial or provincial governments be obtained prior to the designation of an interim or permanent MPA or to prohibit oil and gas activity within an MPA.

The GN highly values marine wildlife and believes that conservation and economic development are both important and have a role to play for the benefit of future generations. The GN is insisting that it be part of the process from the start and that the appropriate way to do so is to have a decision-making role for the GN identified in the Bill.

We look forward to your response and to start working collaboratively with Canada after the Bill is modified to allow us a decision-making role for the designation of potential MPAs in Nunavut.

Qujannamiik,

Joe Savikataaq  
Premier of Nunavut

Cc: Senator Dennis Patterson  
Honourable Catherine McKenna, Minister of Environment  
Honourable Dominic LeBlanc, Minister of Intergovernmental and Northern Affairs and Internal Trade  
Honourable David Akeeagok, Minister of Economic Development & Transportation  
Ms Aluki Kotierk, President Nunavut Tunngavik Inc  
Mr. Nathan Obed, President Inuit Tapariit Kanatami
Appendix A: Past Communications to the Federal Government

The GOC has acknowledged the receipt of our concerns, but has not yet provided the GN opportunities to discuss the specific issues raised. The following extracts from official communication will assist in providing background on our position.

Letter sent to Prime Minister Trudeau on July 25, 2017 by previous Premier of Nunavut, Premier Peter Taptuna:

"Since we are not being actively involved in the consultation process I would like to highlight some of our concerns to you. We believe the following topics should be discussed between our governments.

Marine Protected Areas:
- Co-management of protected areas;
- Co-management of offshore oil and gas activities;
- The MPA designation process;
- Designation of interim MPAs;
- Research to inform the final MPAs; and
- Compensation to the Government of Nunavut for the removal of subsurface mineral and hydrocarbon rights prior to the conclusion of a devolution agreement.

Discussions related to the review of the CPRA:
- power to prohibit oil and gas activities in an interim MPA;
- power to cancel a right in a final MPA;
- abeyance of existing rights;
- expiration of rights;
- compensation to the government if Nunavut for surrendered rights

Further, while Devolution negotiations are underway, decisions announced that restrict permitting of petroleum exploration and access to off shore resources rights in Arctic waters, should not be unilaterally made. This practice amounts to negotiation in bad faith when the status quo is changed and parcels of our land and waters are taken off the negotiation table. The Government of Nunavut is steadfast on ensuring that beneficiaries and all Nunavummiut are respected and included in how our land and resources are managed. Additionally, Nunavut subsurface rights have been secured under the Nunavut Land Claim Agreement and potential future development of those resources involves an ability to make future decisions. In this vein, I fully expect to see compensation proposals as part of any protection actions that restrict future development opportunities.
The current approach the federal government is taking does not reflect the interests of Nunavummiut and does not fully appreciate the economic realities in Nunavut for building healthy self-reliant communities. In the spirit of collaboration and consultation, I ask that the Government of Nunavut be fully consulted and involved in the review of the CPRA, the creations of Marine Protected Areas and be compensated for lands and waters removed prior to the conclusion of Devolution negotiations.”

Extract from a letter sent on October 1, 2018 from Premier Joe Savikataaq to Prime Minister Trudeau and President P.J. Akeeagok:

“I want to remind the GOC of the specific concerns regarding the proposed amendments to the Ocean Act and the Canada Petroleum Resources Act (Bill C-55). We do not support the creation of Interim Marine Protected Area without the GN playing a decision-making role in the process. To reiterate, this type of unilateral decision will potentially affect future economic opportunity for Nunavut, and undermines the ongoing devolution negotiations.
Appendix B: Comments on The recommendations from the Committee Report and comments on the Government of Canada response to the report.

RE: Committee report: “Healthy Oceans, Vibrant Coastal Communities: Strengthening the Oceans Act Marine Protected Areas’ Establishment Process”

The GN reviewed the committee recommendations and would like to offer our strong support for the following recommendations in the report and provide some additional comments:

Recommendation 1
That, when identifying new areas of interest for marine protected areas, the Government of Canada evaluate net economic and social values and responsibilities, including the cost of patrol and enforcement in Canada, particularly for remote marine areas.

Recommendation 4
That the Minister of Fisheries, Oceans and the Canadian Coast Guard table an annual report to Parliament that includes the following:
  o a list of Oceans Act marine protected areas designated during that year;
  o information on whether or not each established marine protected area is meeting its conservation objectives; and
  o measures required if conservation objectives were not met.

Recommendation 7:
That Fisheries and Oceans Canada undertake and prioritize work to clarify what individual marine protected areas are and are not, and ensure that the specific conservation goals of each marine protected area are clearly known to the local community.

Here, we would like to recommend that the communities and local governments be in agreement with the specific conservation goals of the area in question.

Recommendation 8:
That Fisheries and Oceans Canada publicize on its website, for each Oceans Act marine protected area process, the time frame, the decisions made at each step, the science and other considerations that went into decision making.
Recommendation 10:
That, in addition to science-based decision-making, Fisheries and Oceans Canada takes into consideration the strong importance of having community and stakeholder support throughout the process of establishing a marine protected area.

The GN has expertise in conservation and knowledge of the ecosystems and species existing in the territory that may need protection measures, therefore, our contribution as a decision maker is necessary for the successful creation of MPAs in our territory. MPAs may also create performance obligation on the GN where co-jurisdiction applies, such as management of marine infrastructure. The GN supports direct involvement of community members into designation and overall establishment process for MPAs. Any decisions on the Bill should not prejudice the future decision making role that devolution may alter and improve, nor prejudice the ongoing negotiations.

Recommendation 11:
That consultations leading to the creation of a marine protected area be as inclusive as possible for community stakeholders, with efforts made to schedule consultations at times when the maximum number of community members and Indigenous communities can participate, backstopped by an initiative to proactively reach out to those who haven’t participated in scheduled consultation events. These consultations should be a part of an ongoing dialogue.

Recommendation 12:
That Fisheries and Oceans Canada, Environment and Climate Change Canada and Parks Canada Agency collaborate on best community relations/consultation practices and examine alternative process models (e.g., ‘consensus’ versus ‘democratic’ (majority rule) decision-making; ‘incentive’ versus ‘regulatory’ management; goal setting targeting ‘abundance’ versus ‘sustainability’).

The GN supports and operates in a consensus-driven decision-making process and expects Fisheries and Oceans Canada to obtain consent from the GN before proceeding with the establishment process for MPAs.

Recommendation 13:
That, in order for marine protected areas to be truly sustainable, the process used to create them undertakes meaningful consultation with all persons holding a direct stake in the marine protected areas' resources early in the process of establishing them.
Recommendation 14:
That consultation related to the establishment of marine protected areas give primary consideration to local stakeholders whose support and contribution are essential to the establishment and sustainability of a marine protected area.

As the representative of Nunavummiut, the GN’s support as a decision-maker is essential to the establishment and sustainability of future MPAs in Nunavut.

**RE: Government of Canada Response to the report: “Healthy Oceans, Vibrant Coastal Communities: Strengthening the Oceans Act Marine Protected Areas’ Establishment Process”**

We are glad to read the response from the GOC to the committee report, especially that the GOC supports all the recommendations. Under the section “Theme 1: Engagement, consultation, and collaborative decision making” (addressing recommendations 9-14), the GOC states that “these recommendations will inform ongoing work”.

The GOC also discussed the existence of the advisory committees as examples of collaborative decision-making in the MPA establishment process. The response further provides: “The Government of Canada acknowledges that it is always important to work toward consensus, wherever possible, and commits to further study and consideration of how the Committee’s recommendations could be implemented in the Oceans Act MPA establishment”. 