March 20, 2019

The Honourable Fabian Manning, Senator, and the Honorable Marc Gold, Senator
Senate Standing Committee on Fisheries and Oceans
The Senate, Ottawa

Dear Senator Manning and Senator Gold:

RE: Proposed Amendments to Bill C-55

We are writing to you as Chair and Vice-Chair of the Senate Standing Committee on Fisheries and Oceans, in response to an outstanding amendment to Bill C-55 proposed to the Committee on March 19, 2019, regarding interim protection orders, which we learned of by watching the Committee’s proceedings on SenVu.

Bill C-55 empowers the Minister of Fisheries and Oceans to designate an MPA by interim order until the area’s final designation through Governor in Council regulations occurs, which must happen within five years of the date of the order. The Minister must exercise his or her discretion to issue such orders “in a manner that is not inconsistent with a land claims agreement that has been given effect and has been ratified or approved by an Act of Parliament.”1 As you have heard through testimony, the Minister requires this power to designate marine protected areas more efficiently, without sacrificing science or public input.

The proposed amendment would require the Minister to hold a public comment and consultation period before issuing an interim MPA order. We are concerned that this proposed amendment is redundant and, at worst, risks defeating the purpose of the interim MPA order.

1. Indigenous rights are protected by the government’s constitutional obligations and the Oceans Act.

Aboriginal and treaty rights are protected by section 35 of the Constitution Act, 1982. These protections are strong: Canadian courts require deep consultation and accommodation when an Aboriginal interest is at stake. The Crown has a duty to consult an affected aboriginal community “when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”2 The duty “is grounded in the honour of the Crown” and is “a corollary of the Crown’s obligation to achieve the just settlement of Aboriginal claims through the treaty process.”3

The court has held that where the government wishes to establish a protected area, such as a national park, it must undertake meaningful and good faith consultation with affected Indigenous groups.4

It is presumed that government officials act in accordance with their constitutional obligations and the rule of law. It is a norm of statutory drafting and interpretation to read these obligations into legislation. Further,

1 Bill C-55, s. 35 .1 (2).
3 Rio Tinto, id at para 52.
4 Nunavik Inuit v Canada (Minister of Canadian Heritage), [1999] 1 FC 38 at para 122.
Since you entered in February, we and many other Canadians support the swift passage of this Bill. The Constitution requires that the Bill should be passed by 5/5 of the members of each House. The Bill contains provisions that would allow the Government to continue to make steady progress towards its ultimate goals. Within an area in the event of an environmental emergency, the Bill provides for the inclusion of any and all activities within the area in the event of an environmental emergency. The proposed interim MPA under power represents a balanced approach between environmental protection and economic interests of stakeholders.

3. The purpose of the interim MPA order is to balance the need for environmental protection with the economic needs of the area. The Act allows for the Minister to exercise the duties and functions assigned to him for the Act's implementation and incorporation of an integrated management plan. The Act requires the Minister to cooperate with those same governments and bodies must occur for the development and implementation of a national ocean strategy. The Act also requires that bodies, including those bodies established under the Act, would be necessary and appropriate to the development and implementation of a national ocean strategy.