



**ATLANTIC POLICY CONGRESS**  
OF FIRST NATIONS CHIEFS SECRETARIAT

# **Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021)**

## **A CASE STUDY: INDIGENOUS FISH AND FISH HABITAT PROGRAM**

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# Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

## Preamble

### *Introduction*

In this case study we present key observations from our analysis of the Canadian Fisheries Act (2019)<sup>1</sup> and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021)<sup>2</sup> (aka UNDRIP). Our analysis revealed seven areas of concern with the implementation of UNDRIP as set out in the Action Plan to implement UNDRIP across all federal legislation in Canada (section 5 of the UNDRIP Act). The Action Plan for implementation (commonly referred to as UNDA) needs to be in place by June 2023 (no later than two years following the Act coming into force)<sup>3</sup>. Governing the Action plan's approach is the federal Principles Respecting the Government of Canada's Relationship with Indigenous Peoples<sup>4</sup>. Accordingly, our analysis used these principles as a guide to highlight where the Fisheries Act falls short and to tease out areas of concern for the implementation of UNDRIP.

The seven areas of concern are as follows:

1. Reforms or amendments may not sufficiently address changes necessary to the Fisheries Act to make it compliant with commitments under the UNDRIP Act.
2. It is unclear how the Fisheries Act can be amended to consider inherent rights, autonomy, and self-government and how the nation-to-nation, government-to-government relationship will be articulated when current language privileges the Minister.
3. FPIC will need to be defined in the Fisheries Act and it will need to be clear how it will be practiced.
4. The Fisheries Act refers to the Canadian Charter of Rights and Freedoms (1982)<sup>5</sup> for definitions and as a result there may be implications for amendments to the Fisheries Act contained in other legislation.
5. Language in the Fisheries Act is inconsistent and conflicts in many instances with UNDRIPs commitment to clear and unambiguous language and a culturally appropriate format.
6. The current Fisheries Act is silent on reconciliation including the opportunity for redress and restitution.
7. The current treatment of “traditional knowledge” in the Fisheries Act is not consistent and does not consider autonomy over or protection of traditional knowledge.

To illustrate these concerns in action, the following case study further examines these seven areas in relation to a specific section of the Fisheries Act, namely the section 34, entitled “Fish and Fish Habitat Protection and Pollution Prevention”. However, our case extends to and involves other aspects of the Fisheries Act where appropriate.

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<sup>1</sup> <https://laws-lois.justice.gc.ca/eng/acts/F-14/>

<sup>2</sup> <https://laws-lois.justice.gc.ca/eng/acts/u-2.2/>

<sup>3</sup> <https://www.justice.gc.ca/eng/declaration/engagement/index.html>

<sup>4</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

<sup>5</sup> <https://laws-lois.justice.gc.ca/eng/const/page-12.html>

## Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

There are three points which should be understood before we present our case:

1. The UNDRIP Act passed into Law in Canada in 2021 and accepted in its entirety the Resolution passed by the General Assembly of the UN on September 13, 2007, entitled the “United Nations Declaration on the Rights of Indigenous Peoples”<sup>6</sup>.
2. Not all Nations in Canada accept the adoption of UNDRIP, for example, the Dene Nation opposes article 46 of UNDRIP due to potential conflicts with Indigenous sovereignty<sup>7</sup>.
3. Article 38 of UNDRIP stipulates that implementation of UNDRIP shall require the *consultation* and *cooperation* of Indigenous Peoples to achieve “the ends” of the declaration including “legislative measures”.

### *The Fisheries Act*

The purpose of the current Fisheries Act is to provide a framework for (1) “the proper management and control of fisheries”; and (b) “the conservation and protection of fish and fish habitat, including by preventing pollution” (see 2.1).

## The Case Study

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### **Concern #1: Reforms and Amendments may not sufficiently address changes necessary to the Fisheries Act to make it compliant with commitments under the UNDRIP Act**

The Minister is the prescribed person to make decisions and determine offences under the Act (see 34.1). The Act also sets out the approved roles and definitions which pertain to fish, fishing and fish habitat (see 2). Those with powers under the Act are designated by the Minister, including “fishery guardians” and fishery officers”. Indigenous Peoples are represented in the Act in accordance with section 35 of the Constitution Act (1982) and this includes a definition of who Indigenous Peoples are and who has the ability to act on their behalf.

Article 3 states that Indigenous Peoples have the right to *self-determination*. Self-determination is a legal right to decide one’s own destiny. It is a core principle of international law and enshrined in the United Nation’s Charter as a right of all people. Article 20 of UNDRIP stipulates that Indigenous Peoples have the right to maintain and develop their political, economic, and social systems or institutions. These rights extend to the opportunity to engage freely in traditional and other economic activity (though neither *traditional* nor *other* are defined). Article 21 states that Indigenous Peoples have the right to improve their economic and social conditions and take effective and even *special measures* to ensure continuing improvement. Article 32 states that Indigenous Peoples have the right to develop priorities and strategies for the use of their lands or territories and other resources. Cooperation in “good faith” including “free and informed prior consent” (aka FPIC) is essential, especially with the “development, utilization or exploitation of mineral, water or other resources” (i.e., fish, fisheries, and fish habitat).

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<sup>6</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

<sup>7</sup> <https://www.nsl.com/news/dene-nation-opposes-undrip-clause-that-threatens-indigenous-sovereignty/>

# Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

## Example: **Fish and Fish Habitat Protection**

**Concern #1: Reforms and Amendments may not sufficiently address changes necessary to the Fisheries Act to make it compliant with commitments under the UNDRIP Act**  
**FISHERIES ACT: FISH AND FISH HABITAT PROTECTION**



### **Marginal note: Modification, repair and maintenance**

- (3) On the Minister's order, the owner or person referred to in subsection (2) shall
- (a) make any provision that the Minister considers necessary for the free passage of fish or the protection of fish or fish habitat during the carrying on of any activity mentioned in that subsection;
  - (b) operate and maintain anything referred to in that subsection in a good and effective condition and in accordance with any specifications of the Minister; and
  - (c) modify or repair it in accordance with any specifications of the Minister.

There is no application of commitments of autonomy and self-determination in this language. The person **SHALL** comply with the Minister's Order.

**Concern #2: It is unclear how the Fisheries Act can be amended to consider inherent rights, autonomy, and self-government and how the nation-to-nation, government-to-government relationship will be articulated when current language privileges the Minister.**

The Minister is responsible for making decisions under the Act and considering any adverse effects such decisions may have on the rights of Indigenous Peoples (see 2.4). The Minister's powers extend to offering opinions on the loss or degradation of fish habitat and stock decline and what management measures are necessary for restoring fish habitat (see 6.2 [5]). Further, the Governor in Council may make regulations prescribing treatments (e.g., substances including concentrations) which may be used in the management or restoration of fish habitat (see 34 [1] and [2]).

These unique rights of self-determination and self-governance are substantial in UNDRIP and currently are counter to the current Fisheries Act in which the Minister holds decision-making authority over traditional, social, and economic activities, in which fish, fisheries and fish habitat are a central concern. The Minister also holds authority over the rights of Indigenous Peoples (per above). Amendments and reforms would have to change the power relationship currently underpinning the Act and enable Indigenous Peoples to their own political, legal, and

*These unique rights of self-determination and self-governance are substantial in UNDRIP and currently are counter to the current Fisheries Act in which the Minister holds decision-making authority over traditional, social, and economic activities, in which fish, fisheries and fish habitat are a central concern.*

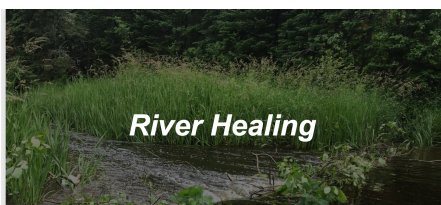
## Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

administrative protocols (per Article 13). Therefore, even substantive amendments and reforms may not adequately address the autonomy of Indigenous Peoples set out in UNDRIP and redress the power imbalance (see Articles 20, 21 and 32).

Example: **Fish and Fish Habitat Protection**

Concern #2: It is unclear how the Fisheries Act can be amended to consider inherent rights, autonomy, and self-government and how the nation-to-nation, government-to-government relationship will be articulated when current language privileges the Minister.

### FISHERIES ACT: FISH AND FISH HABITAT PROTECTION



Inherent Rights, autonomy, nation-to-nation needs to be included in the language. An example of a positive practice in Indigenous culture speaks to the healing of the river building on a foundation of Indigenous Knowledge.

- **Marginal note: Consultation**

(3) Before establishing any standards and codes of practice, **the Minister may consult with** any provincial government, **any Indigenous governing body**, any government department or agency or any persons interested in the protection of fish or fish habitat and the prevention of pollution.

- **Marginal note: Publication**

(4) The Minister **shall** publish any standards and codes of practice established under this section, or give notice of them, in the *Canada Gazette* and he or she may also do so in any other manner that he or she considers appropriate.

- [2019, c. 14, s. 21](#)

The Minister is not obliged to consult Indigenous communities based on the use of “MAY” in comparison to the use of “SHALL” in the not on publication.

### Concern #3: FPIC will need to be defined in the Fisheries Act and it will need to be clear how it will be practiced.

The Fisheries Act discusses consent in terms of the disclosure of Indigenous knowledge (see Regulations, 43 [j.1] as well as 61.2 [1]). Such consent requires written permission. However, exceptions are possible and exist if regulations stipulate (i.e., enforcement requires it). Consultation is also outlined in the Act with respect to Indigenous knowledge (see Consultation 2.1). However, the Minister may impose conditions with respect to the disclosure of Indigenous knowledge (Further Disclosure 3) if the Minister deems it necessary for the purposes of procedural fairness and natural justice. Natural justice is not defined. Procedural fairness is the purview of the Minister under the Act or their designate. Additionally, the Minister *may* consult any Indigenous governing body on the protection of fish or fish habitat but is not required to do so (see Consultation 3).



## **Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY**

One of the principles for respecting the Government's relationships with Indigenous Peoples is to secure free, prior, and informed consent (FPIC)<sup>8</sup> when actions are proposed that impact Indigenous rights, lands and/or resources. Definitions consistently describe FPIC as meaning the following:

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**Free:** refers to the consent given voluntarily and without coercion or intimidation or manipulation.

**Prior:** means that consent is sought sufficiently in advance of the authorization or activity.

**Informed:** refers to the nature of engagement (ongoing) and type of information (culturally appropriate format)

**Consent:** refers to the collection decision by the rights holders.

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Article 13 states that such processes require communication in a manner that can be understood. Articles 19 and 32 state that Indigenous Peoples have the right to their own representation in order to obtain FPIC before adopting and implementing legislation and this would include reforms to the Fisheries Act or any new legislation with implications for Indigenous Peoples. In Article 20, UNDRIP recognizes the equal nation-to-nation political position of Indigenous Peoples and Article 21 makes room for special measures for Indigenous Persons.

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<sup>8</sup> The UN Department of Economic and Social Affairs has released a manual for practitioners to incorporate FPIC. See <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>

# Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

Example: **Fish and Fish Habitat Protection**

**Concern #3: FPIC will need to be defined in the Fisheries Act and it will need to be clear how it will be practiced.**

**FISHERIES ACT: FISH AND FISH HABITAT PROTECTION**

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<p><b>Free:</b> refers to the consent given voluntarily and without coercion or intimidation or manipulation.</p> <p><b>Prior:</b> means that consent is sought sufficiently in advance of the authorization or activity.</p> <p><b>Informed:</b> refers to the nature of engagement (ongoing) and type of information (culturally appropriate format)</p> <p><b>Consent:</b> refers to the collection decision by the rights holders.</p>	<ul style="list-style-type: none"><li>• <b>Marginal note: Powers of Minister</b> <b>(7)</b> If the Minister is satisfied, after having reviewed any document and other information provided under subsection (3) or (4), that avoidance and mitigation measures may be implemented to achieve the prescribed objectives for the conservation and protection of fish and fish habitat, he or she may authorize, subject to the regulations made under subsection (10), the carrying on of the work, undertaking or activity referred to in subsection (1) in an ecologically significant area, on any conditions that he or she considers appropriate.</li><li>• <b>Marginal note: Amendment, suspension or cancellation — authorization</b> <b>(8)</b> The Minister may amend, suspend or cancel an authorization issued under subsection (7).</li></ul>
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Section 34 (1) Fish and Fish Habitat Protection does not contain Free, Prior, Informed, and Consent Language. .

## Concern #4: The Fisheries Act refers to the Canadian Charter of Rights and Freedoms (1982)<sup>9</sup> for definitions and as a result there may be implications for amendments to the Fisheries Act contained in other legislation.

In several instances, the Fisheries Act refers to the Constitution Act (1982) for definitions of Indigenous Peoples and Indigenous governing bodies (see Definitions 2). The constitutional relationship between the Crown and Indigenous Peoples are recognized and affirmed in the Constitution Act and section 35 contains the “full rights” of Indigenous Peoples. This section of the Act (section 35) is taken as a starting point for the federal principles for respecting Indigenous Peoples. The Government has asserted that Reconciliation is fundamental to section 35 of the Constitution Act (1982) (Principle #2<sup>10</sup>), though the Act does not cite Reconciliation directly.

UNDRIP recognizes the importance of Reconciliation (see Preamble). The Government has also indicated their federal principles a commitment to *decolonization* to “hasten the end of its legacy wherever it remains in our laws and policies”<sup>11</sup>. Decolonization is multifaceted and can be

<sup>9</sup> <https://laws-lois.justice.gc.ca/eng/const/page-12.html>

<sup>10</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

<sup>11</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

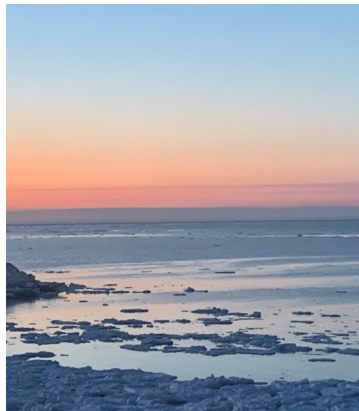
## Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

defined as the process of dismantling one nation's domination and control over another's<sup>12</sup>. The legacy of the Indian Act<sup>1314</sup> perpetuates a relationship with Indigenous Peoples in which they are marginalized, regulated, and administrated over, instead of being a self-determining and self-governing Nation or set of Nations. If the Constitution Act is not also brought into alignment with UNDRIP, then any legislation which refers to it shall remain colonial.

Example: **Fish and Fish Habitat Protection**

**Concern #4: The Fisheries Act refers to the Canadian Charter of Rights and Freedoms (1982) for definitions and as a result there may be implications for amendments to the Fisheries Act contained in other legislation.**

**FISHERIES ACT: FISH AND FISH HABITAT PROTECTION**



This concern is not present in the Fish and Fish Habitat Section 34 (1) of the Fish and Fish Habitat Protection.

**Concern # 5: Language in the Fisheries Act is inconsistent and conflicts in many instances with UNDRIPs commitment to clear and unambiguous language and a culturally appropriate format.**

The Fisheries Act contains several sections which refer to other sections in the same Act. This makes the Act difficult to follow and difficult to understand. For example, see this section on Factors:

<sup>12</sup> <https://bchumanrights.ca/key-issues/decolonization/>

<sup>13</sup> <https://laws-lois.justice.gc.ca/eng/acts/i-5/>

<sup>14</sup> <https://www.thecanadianencyclopedia.ca/en/timeline/the-indian-act>



## Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

### Factors

**34.1 (1)** Before recommending to the Governor in Council that a regulation be made in respect of section 34.4, 35 or 35.1 or under subsection 35.2(10), 36(5) or (5.1), paragraph 43(1)(b.2) or subsection 43(5) or before exercising any power under subsection 34.3(2), (3) or (7), paragraph 34.4(2)(b) or (c), subsection 34.4(4), paragraph 35(2)(b) or (c) or subsection 35(4), 35.1(3), 35.2(7) or 36(5.2), or under subsection 37(2) with regard to an offence under subsection 40(1), the Minister, prescribed person or prescribed entity, as the case may be, shall consider the following factors:

Another example appears under Applications:

### Application – Designated project

**(3)** Any provision of this Act that applies to works, undertakings or activities also applies to the works, undertakings or activities of a designated project, except paragraphs 34.4(2)(a) to (c) and (e) and 35(2)(a) to (c) and (e).

R.S., 1985, c. F-14, s. 34; 2012, c. 19, s. 141; 2019, c. 14, s. 20.

Additionally, some sections are simply incoherent. This example appears under Definitions, under **Fish and Fish Habitat Protection**:

**designated project** means a project that is designated by regulations made under paragraph 43(1)(i.5) or that belongs to a class of projects that is designated by those regulations and that consists of works, undertakings or activities, including any works, undertakings or activities that the Minister designates to be associated with the project; (*projet désigné*)

As part of FPIC, “informed” means that information must be understandable and even provided in a culturally appropriate format. Such communication (constituting *public information*) is addressed in Article 15 as a measure to avoid prejudice and discrimination and promote good relations. FPIC is raised numerous times in UNDRIP (see Article 10, 11, 19, 28, 29 and 32).

# Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

## Example: Fish and Fish Habitat Protection

**Concern # 5: Language in the Fisheries Act is inconsistent and conflicts in many instances with UNDRIP's commitment to clear and unambiguous language and a culturally appropriate format.**  
**FISHERIES ACT: FISH AND FISH HABITAT PROTECTION**



### Marginal note: Factors

- **34.1 (1)** Before recommending to the Governor in Council that a regulation be made in respect of section 34.4, 35 or 35.1 or under subsection 35.2(10), 36(5) or (5.1), paragraph 43(10b-2) or subsection 43(5) or before exercising any power under subsection 34.3(2), (3) or (7), paragraph 34.4(2)(b) or (c), subsection 34.4(4), paragraph 35(2)(b) or (c) or subsection 35(4), 35.1(3), 35.2(7) or 36(5.2), or under subsection 37(2) with respect to an offence under subsection 40(1), the Minister, prescribed person or prescribed entity, as the case may be:
  - (a) the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected;
  - (b) fisheries management objectives;
  - (c) whether there are measures and standards
  - (d) to avoid the death of fish or to mitigate the extent of their death or offset their death, or
  - (e) to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;
  - (f) the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;
  - (g) any fish habitat banks, as defined in section 42.01, that may be affected;
  - (h) whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;
  - (i) **Indigenous knowledge of the particular location of a work that has been proposed in the relevant**
  - (h) any other factor that the Minister considers relevant.

While there is wording to consider Indigenous Knowledge for Fish and Fish Habitat Protection, the wording is ambiguous and confusing.

## Concern 6: The current Fisheries Act is silent on reconciliation including the opportunity for redress and restitution.

The Government of Canada has published principles<sup>15</sup> which summarize its commitment to “Respecting the Government of Canada’s Relationship with Indigenous Peoples”. These principles encompass commitments to achieving Reconciliation through a “renewed, nation-to-nation, government-to-government” relationships which is based on the “recognition of rights, respect, co-operation, and partnership as the foundation of transformative change”.

These principles also recognize the constitutional relationship between Indigenous Peoples and the Crown as set out and affirmed in the Constitution Act (1982) (Section 35)<sup>16</sup>.

Though the Fisheries Act is silence on Reconciliation, UNDRIP affirms that the Articles constitute a minimum standard for survival, dignity, and well-being. The Government of Canada is also committed under UNDRIP to implement the Articles as a framework for Reconciliation (see Preamble of the UNDRIP Act).

<sup>15</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

<sup>16</sup> <https://laws-lois.justice.gc.ca/eng/const/page-12.html>

## Examining the Canadian Fisheries Act (2019) and the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) – A CASE STUDY

### *DFO-Coast Guard Reconciliation Strategy*

Fisheries and Oceans Canada has released a Reconciliation Strategy<sup>17</sup> which sets out to “recognize and implement Indigenous and treaty rights related to fisheries, oceans, aquatic habitat, and marine waterways”. This strategy adopts the same federal principles we use in this case study, namely the principles that guided our initial analysis<sup>18</sup>. This Reconciliation Strategy has set out to accomplish the following goals over time: (1) *enhance* the relationships between DFO, the Coast Guard and Indigenous Peoples, (2) ensure Indigenous Peoples have jurisdiction over their own affairs and *share* in decision making, (3) social-economic benefits are *increased* for Indigenous Peoples. The language of these commitments remains problematic and counter to the rights of self-determination and self-government (Article 4), recognition for Indigenous laws and adjudication rights (Article 27) and the opportunity for equal benefits (even special measures, e.g., Article 21, 28) and effective mechanisms for fair redress (Article 28, 32).

Example: **Fish and Fish Habitat Protection**

**Concern 6: The current Fisheries Act is silent on reconciliation including the opportunity for redress and restitution.**

**FISHERIES ACT: FISH AND FISH HABITAT PROTECTION**



There is no language in the Fisheries Act: Section 34.(1) Fish and Fish Habitat Protection that references reconciliation.

No reference to reconciliation in the Fish and Fish Habitat Protection Section 34 (1) of the Fisheries Act.

**Concern 7: The current treatment of “traditional knowledge” in the Fisheries Act is not consistent and does not consider autonomy over or protection of traditional knowledge.**

There are several mentions of “Indigenous knowledge” in the Fisheries Act. It is generally referred to in connection to such knowledge being provided to the Minister or through the Minister. Under the Regulations (43 (1) [j.1]) the Minister may disclose Indigenous knowledge

<sup>17</sup> <https://www.dfo-mpo.gc.ca/fisheries-peches/aboriginal-autochtones/reconciliation-eng.html>

<sup>18</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

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conveyed in confidence to him or her without prior written consent. So, though the Minister may not require any Indigenous knowledge to be provided to him or her (see 61.1 ([2]) and is required to keep such knowledge if shared in confidence, confidential, there are exceptions in the Act that allow the Minister to disclose without consent.

UNDRIP raises the treatment of Indigenous knowledge as a significant aspect of demonstrating respect to Indigenous Peoples (see Preamble) and suggests that the Declaration takes as a starting point recognition and respect for Indigenous knowledge as cultural expression. The right to maintain, control, protect and develop traditional knowledge is outlined in Article 31.

### Example: **Fish and Fish Habitat Protection**

**Concern 7: The current treatment of “traditional knowledge” in the Fisheries Act is not consistent and does not consider autonomy over or protection of traditional knowledge.**

#### **FISHERIES ACT: FISH AND FISH HABITAT PROTECTION**



##### • Marginal note: Minister's order

**(2)** If the Minister considers that doing so is necessary to ensure the free passage of fish or the protection of fish or fish habitat, the owner or person who has the charge, management or control of an obstruction or any other thing that is detrimental to fish or fish habitat shall, on the Minister's order, within the period specified by him or her and in accordance with any of his or her specifications,

- **(a)** remove the obstruction or thing;
- **(b)** construct a fishway;
- **(c)** implement a system of catching fish before the obstruction or thing, transporting them beyond it and releasing them back into the water;
- **(d)** install a fish stop or a diverter;
- **(e)** install a fish guard, a screen, a covering, netting or any other device to prevent the passage of fish into any water intake, ditch, channel or canal;
- **(f)** maintain the flow of water necessary to permit the free passage of fish; or
- **(g)** maintain at all times the characteristics of the water and the water flow downstream of the obstruction or thing that are sufficient for the conservation and protection of the fish and fish habitat.

There is no consideration of Indigenous Knowledge in the minister's order to ensure free passage of fish or the protection of fish habitat

### *Conclusion*

In this case study, we have presented seven concerns arising from our reading and analysis of the Fisheries Act and the Canadian UNDRIP Act. Of central concern in our case is the need to ensure that the unique rights are affirmed for Indigenous Peoples, that any amendments, reforms, or any new legislation employs FPIC, and how autonomy, self-government and self-determination will be enacted in any legislation that involves Indigenous Persons. Also, given that Indigenous Persons are defined under the Constitution Act, and if this “taken-for-granted” definition carries over to new legislation, what are the implications for Indigenous Person and who does such legislation apply to?

### *Assembly of First Nations, Special Chiefs Assembly on UNDRIP National Action Plan*

We concur with the Assembly of First Nations who have raised concerns over data sovereignty, the enactment of FPIC (particularly in decision making and legislative change and

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implementation), as well as how collaboration will be achieved across provinces, territories and industries and recognition of Indigenous leadership in conservation. We also share AFNs call for a shared approach to monitoring, measuring, and assessing progress on implementation.

### *Disclaimer*

Ideas expressed in this case study reflect those of the authors and do not constitute a legal opinion.