

# CLOCK IS TICKING

**A Mid-Term Report Card on the Federal Government  
and its Work on the Environment**



**May 2018**

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# INTRODUCTION

When the new federal government took office in 2015, it arrived with a great deal of optimism and promise. Their campaign language had raised the expectations of many sectors, including the one fostering sustainability in Canada.

The Liberal Party election campaign platform, “Real Change,” included a 12-page “New Plan for Canada’s Environment and Economy,” detailing commitments interlaced with facts and evidence about the environmental conditions across the country.

The platform was followed by post-election mandate letters that the Prime Minister issued to his Cabinet members – released publicly for the first time in federal politics. The mandate letters outlined an ambitious environmental agenda that included increasing protected areas to meet international commitments, reforming key environmental laws, addressing climate change, and reforming the charitable rules under which many environmental groups operate.

Without a doubt, the new federal government made meaningful and welcome commitments. But how has this government kept these commitments and performed on environmental issues? How much has been accomplished and how much remains to be done?

This report will answer those questions using a framework that looks at the actions taken to date and compares them to the promises made. In other words, our assessment is not against what actions we think are needed, or what the science tells us is needed, but on the promises made by the current government.

Using seven issue areas, we define the issue, recount the commitments made, and provide an update on progress achieved, or not. We do this by analyzing the new or proposed laws, regulations and policies (draft and final versions), as well as reviewing financial commitments that invest in sustainability. In addition, we solicit the opinions of experts, review media coverage where warranted, and provide high-level commentary on the issue at hand.

**We then score progress on each issue, on a scale of 1-5, using the following benchmarks:**

**Score of 5: Done** – commitment met, outcome meets expectations

**Score of 4: Significant Progress** – some outstanding substantive policy issues or implementation matters to be addressed

**Score of 3: Some Progress** – serious gaps remain in either policy development or implementation details

**Score of 2: Needs Significant Improvement** – little meaningful movement to meet commitment

**Score of 1: Failure** – nothing has been done to meet commitment



# EXECUTIVE SUMMARY AND SCORES



## Overall

In many areas, the Government kept its electoral and mandate letter promises in principle. Their execution, however, has been mixed. We are concerned that:

- the Paris Agreement targets for carbon emission reductions are quickly becoming out of reach and Canada is unlikely to meet its insufficiently ambitious climate targets;
- in spite of renewed efforts, Canada is not on track to meet land and freshwater protection targets, and concerns remain about standards of protection for marine and terrestrial areas;
- species at risk are not being protected, especially umbrella species like the Woodland Caribou and the Orca;
- the environmental/impact assessment legislation needs further work; and that
- the legal reform for charities is stalled.

We are pleased with the federal government on its:

- financial investments in climate and conservation;
- reform of the *Fisheries Act*;
- renewed leadership and funding for land and freshwater protection;
- support for Indigenous-led conservation initiatives;
- meeting the 2015 marine protection target; and for
- suspending the politically-motivated audits on charities.

We look forward to continuing our work with the federal government in its remaining mandate to improve the environmental conditions in the country, to meet our international commitments, and to invest tax dollars wisely in climate and conservation projects.

# Issue 1. Climate Change

## **The Paris Agreement and National Emission Reduction Targets**

Canada was an early signatory to the Paris Agreement.

**Score: 4** - significant progress; increase ambition to meet existing target and then develop a new target

## **The Pan Canadian Framework on Clean Growth and Climate Change**

The Framework meets the government's election commitments and mandate letter instructions, but achieving the 2030 national emissions reduction target is not yet mapped out, execution is lagging behind, and intergovernmental coordination must be strengthened to ensure success.

**Score: 3** - some progress made but serious gaps remain

## **Carbon Pricing**

The government introduced draft legislation for carbon pricing in the House of Commons with the proposed *Greenhouse Gas Pollution Pricing Act*. We remain optimistic that the federal government will ensure that all provinces and territories will have programs in place that meet the carbon pricing requirements.

**Score: 3** - some progress made, but serious gaps remain in policy development and implementation details

## **Methane Regulations**

The Government of Canada has committed to regulations that would limit damaging and wasteful methane emissions from both new and existing oil and gas facilities nationwide. We look forward to working with the federal government to ensure that they are implemented with the greatest rigour, and that provincial methane regulations are as strong or stronger.

**Score: 4** - significant progress

## **Clean Fuel Standard**

The Clean Fuel Standard regulatory framework indicates good progress. However, given its importance, the timelines and ambitions must not slip, and its associated emission reductions must be credible.

**Score: 3** - some progress made, but serious gaps remain in policy design and implementation details

## **Canada-wide Zero Emission Vehicles Strategy**

We are looking forward to the completion of the government's strategy for implementing the ZEV goals and resisting any residual opposition by industry to ambitious ZEV sale targets.

**Score:** too early to assign a score

## **Regulations to phase-out of coal-fired electricity generation**

Given the overwhelming evidence that coal needs to be phased-out rapidly, the federal government needs to maintain its vigilance, phase out coal for electricity production, and not negotiate any equivalency agreements that weaken the federal regulation.

**Score: 4** - significant progress made; the final regulation will be a strong result if substantially similar to the draft version

### **Pipelines**

The federal government has been supportive of building several new oil sand pipelines, granting federal approvals to Kinder Morgan and Line 3, while denying the approval of the Northern Gateway pipeline. It has failed to demonstrate how the new pipelines align with its climate targets, as they will result in some 23 to 28 megatonnes of additional carbon pollution.

**Score: 2** - needs significant improvement

### **Regulations of Hydrofluorocarbons**

Canada ratified the Kigali Amendment to the Montreal Protocol and published its final domestic regulations to phase out hydrofluorocarbons.

**Score: 5** - commitment met

### **Fossil fuels subsidies phase-out**

The federal government eliminated two small fossil fuel subsidies in Budget 2017, while renewing the Mineral Exploration tax credit. The government has not yet identified its remaining fossil fuel subsidies nor published a road map to show how it intends to meet its commitment to phase-out fossil fuel subsidies completely by 2025.

**Score: 2** - needs significant improvement

### **Financial Commitments in Federal Budgets related to Climate Change**

The federal Budgets of 2016, 2017 and 2018 made significant investments in clean energy, clean technologies, public transit, green infrastructure and the implementation of the PCF. We are concerned over some delays in program funding and note that Canada has yet to increase its contribution to global climate financing.

**Score: 4** - significant progress

## **Issue 2. Biodiversity and Habitat Conservation**

### **Endangered Species**

While we are pleased with signs of an increase in the speed by which species are assessed, it is still not nearly fast enough, as the *Act* has not yet led to meaningful shifts in the welfare of species at risk in Canada. Despite best intentions, the federal government can and must do better to protect Canada's species at risk.

**Score: 3** - some progress made but serious gaps remain in implementation

### **Land and Freshwater Protected Areas**

The new intergovernmental *Pathway to 2020* is promising, yet concerns remain that governments will attempt to achieve a significant portion of the 17% target by counting more existing conservation measures rather than by protecting new areas.

**Score: 3** - some progress made with significant implementation gaps remaining



### **National Park Management**

Nearly half of national park ecosystems are in 'fair' or 'poor' condition, so Ministerial direction and funding to re-focus Parks Canada on their conservation mandate is urgently needed.

**Score: 2** – needs significant improvement; little meaningful movement to meet commitment, however Minister's response to Round Table on Parks Canada could improve mark

### **Marine Protected Areas**

The federal government has exceeded their promise of 5% marine protection by 2017 by reaching 7.7%. However, conservation groups have cautioned that stronger protection measures are needed to effectively protect Canada's marine ecosystems and species.

**Score: 4** – significant progress; 2017 commitment was met; however, work still needed on quality of protection

### **The 2018 Budget**

The scope of the investment at \$1.3 billion and the support for Indigenous-led conservation initiatives are good. As well, provincial and territorial government action and other conservation partnerships are excellent. Few details have been released on how this funding will be allocated, which will be key to ensure strong conservation outcomes.

**Score: 5** – done and commitment was met; Funding allocation and work plan will determine impact

## **Issue 3. Environmental Assessment**

Bill C-69 meets the commitment to introduce new EA processes, but falls short of the mark of restoring public trust and ensuring decisions are based on science and Indigenous knowledge. Serious flaws need to be corrected before Bill C-69 becomes law, and we look forward to the parliamentary process as an opportunity to fix those flaws.

**Score: 2** – needs significant improvement; with little meaningful movement to meet commitment, but with the potential to improve the law at Committee

## **Issue 4. Water**

### ***Fisheries Act***

On the whole, Bill C-68 restores the lost protections found in previous versions of the *Fisheries Act*.

**Score: 4** – significant progress with some outstanding policy issues that can be addressed at Committee

### ***Canadian Navigable Waters Act***

In taking an approach which focuses narrowly on navigation, and by allowing developers or the Minister (depending on the circumstances) to bypass the requirements for a transparent approval process, the *Canadian Navigable Waters Act* fails to deliver on the commitment made.

**Score: 2** – needs significant improvement with little meaningful movement to meet commitment, with the potential to improve the law at Committee



### **The Great Lakes**

So far, the federal government has announced a relatively small financial investment for the Great Lakes and a weak and voluntary *Lake Erie Action Plan*.

**Score: 2** - needs significant improvement; with little meaningful movement to meet commitment: we are unsure how these actions “renew the commitments to protect the Great Lakes”

### **The Cohen Commission on Salmon in the Fraser River**

Many of the recommendations by the Cohen Commission have deadlines attached to them which have lapsed. In many cases, where the federal government reports to have “acted on” the recommendations, it has fallen short of actually completing them.

**Score: 2** - needs significant improvement as there has been little meaningful movement to meet the commitment

## **Issue 5. CEPA Reform**

We are looking to the Government to introduce a bill and modernize CEPA this spring, and changes should be in line with the recommendations of the Standing Committee’s report, with passage of the new CEPA before the next election.

**Score:** too early to assign a score; score will depend on converting the promising work of the Committee into a Bill, introducing it in June and passing it promptly

## **Issue 6. Reforming the Charitable Regulatory Framework**

There is a perplexing level of disconnect between political enthusiasm for charities legal reform and action taken to date. We look to results on this file in the next year.

**Score: 2** - needs significant improvement

## **Issue 7. Civil Society Participating in Public Policy**

The federal government has established a culture of opening up participation opportunities, using experts, and creating multi-stakeholder panels and committees.

**Score: 5** – done and commitment was met

# ISSUE 1.

## CLIMATE CHANGE

**Not a day goes by when climate change is not a headline story in Canada or worldwide. After many years of obfuscation, even large industrial interests now recognize its scientific basis and understand the need for urgent action.**

**With some of the largest known oil and gas reserves in the world, Canada faces unique challenges both as a consumer of fossil fuels and also as a significant producer of oil and gas. To meet our international climate commitments, we need to transform into a low-carbon economy and pursue the many economic advantages of that change.**

**This section looks at how and to what degree the federal government has kept its promises as they relate to climate change action.**



## 1.1. The Paris Agreement and National Emission Reduction Target

### **Mandate letter for the Minister of Environment and Climate Change**

"In partnership with provinces and territories, establish national emissions-reduction targets (...) These targets will recognize the economic cost and catastrophic impact that a greater-than-two-degree increase in average global temperatures would represent, as well as the need for Canada to do its part to prevent that from happening."<sup>1</sup>

The federal government deserves significant credit for making Canada an early signatory to the Paris Agreement. Since then, the government has undertaken a great deal of policy development trying to meet our national GHG emissions reduction target. We note however, that the federal government simply adopted the target by the previous government, including keeping the baseline emissions at the 2005 levels, rather than the much lower 1990 emissions that many other countries, including Canada, had initially agreed to.

The Paris Agreement on climate change includes a mechanism for nations to 'ratchet up' their emission reduction commitments. This mechanism is needed in main part because the sum of existing across-all-countries GHG reduction commitments does not achieve the Agreement's goal of keeping warming below 2 degrees and as close to 1.5 degrees as possible.<sup>2</sup>

Canada has signaled it will increase its 2030 reduction commitment with Minister McKenna stating in a recent Globe and Mail interview that "We all know we have to be more ambitious. The first thing you have to do is have a plan; you have to implement your plan, and then you have to ratchet up ambition. That's part of the Paris Agreement, and that's what we're absolutely committed to doing."<sup>3</sup>

We welcome Minister McKenna's intention and look forward to assisting her with setting a new target and establishing policies to meet those targets.

**Score: 4** – significant progress; increase ambition to meet existing target and then develop a new target

## 1.2. The Pan Canadian Framework on Clean Growth and Climate Change

### **The Campaign Promise**

"...We will work together to establish national emissions-reduction targets, and ensure that the provinces and territories have targeted federal funding and the flexibility to design their own policies to meet these commitments, including their own carbon pricing policies." <sup>4</sup>

### **Mandate Letter for the Minister of Environment and Climate Change**

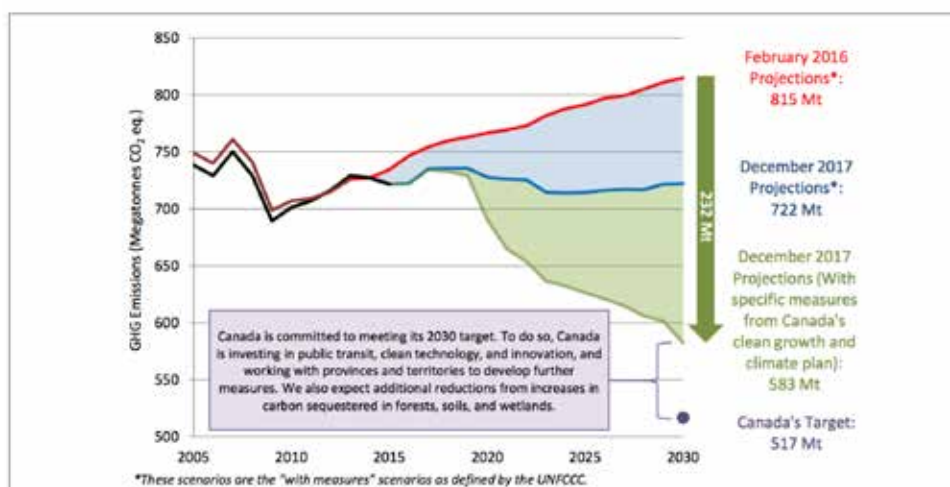
"In partnership with provinces and territories develop a plan to combat climate change and reduce greenhouse gas emissions...and we will...develop a pan-Canadian framework for addressing climate change" and to "...establish national emissions-reduction targets..." <sup>5</sup>

## Our Assessment

The federal government's signature effort to reduce carbon pollution, the Pan Canadian Framework (PCF), was signed in December of 2016 and contains more than 50 new climate and clean growth measures for federal, provincial and territorial governments to reduce emissions from key carbon-emitting sectors.<sup>6</sup> The Framework (and its provincially-led components) now provide the principal policy architecture for combatting climate change in this country. All in, the Pan Canadian Framework aims to cut some 139 megatonnes of carbon pollution by 2030.<sup>7</sup>

The Pembina Institute published a detailed analysis of the Framework in late 2017.<sup>8</sup> They found that the PCF contains commitments which "...demonstrated that climate action was a central policy priority for Canada's national and sub-national governments."<sup>9</sup>

However, Pembina also found that "...the implementation timelines are at risk."<sup>10</sup> Indeed, that assessment is shared by others, as Environmental Defence has observed "...some key policies within the Framework are behind and that should not delay our international commitment to the Paris agreement."<sup>11</sup> Moreover, the federal government itself notes it will not actually achieve the reductions committed to under the Paris Agreement with the current slate of actions: there is a 66 megatonne gap to meet our current emissions reduction, as the following graph illustrates:<sup>12</sup>



**Figure 4: Scenarios of Canadian Emissions to 2020 and 2030 (Mt CO2 eq) (Excluding Land Use, Land-Use Change and Forestry)**

The federal government has its work cut out in reducing Canada's greenhouse gas emissions to 517 Mt by 2030. We find that the Framework meets the government's election commitments and mandate letter instructions, but achieving our national emission reduction target is not yet fully mapped out, execution is lagging behind, and intergovernmental coordination must be strengthened to ensure success.

**Score: 3** - some progress made but serious gaps remain



## Carbon Pricing

Perhaps the most controversial part of the Framework is carbon pricing. Yet for years, economists have advocated for pricing as an efficient way to reduce carbon emissions, major corporate players have supported a price on carbon pollution, and the provincial economies with carbon pricing in place have outperformed those of other provinces.<sup>13</sup>

The Prime Minister used a speech in the House of Commons to announce the carbon tax in late 2016. The Official Opposition in Ottawa has since then opposed this tax,<sup>14</sup> and provincial leaders from Saskatchewan<sup>15</sup> to Ontario's new Opposition Leader<sup>16</sup> are opposing the idea.

### The Campaign Promise

"We will provide national leadership and ... put a price on carbon"<sup>17</sup>

### Mandate Letter for the Minister of Environment and Climate Change

"In partnership with provinces and territories, establish national emissions-reduction targets, ensuring that the provinces and territories have targeted federal funding and the flexibility to design their own policies to meet these commitments, including their own carbon pricing policies."<sup>18</sup>

## Our Assessment

The commitment is being kept. The price on carbon will start at \$20 per tonne of carbon dioxide equivalent (CO<sub>2</sub>e) on January 1, 2019, increasing by \$10 per year until it reaches \$50 per tonne of CO<sub>2</sub>e by 2022.<sup>19</sup> Each province and territory will be required to implement carbon pricing in its jurisdiction in 2019. This timeline is a delay of close to a year from the original plan, but does maintain the same price schedule.

Provinces and territories can comply by implementing a cap-and-trade system in line with Canada's 2030 target, or by adopting carbon pricing that is equivalent to the federal benchmark. Beyond Ottawa, several provinces have made significant new announcements on carbon pricing in the past year, with Saskatchewan being the only province officially refusing to do so.<sup>20</sup>

The federal government's backstop combines a carbon levy and an output-based pricing system (OBPS). We support the use of the OBPS as a mechanism to provide relief from the full carbon price to emissions-intensive and trade-exposed (EITE) sectors and avoid carbon leakage in competing jurisdictions with a lower or non-existent carbon price. However, as the Ecofiscal Commission has suggested, such measures need to be targeted, temporary, and transparent<sup>21</sup>. ECCC has yet to provide an analysis on the level of competitiveness pressures to justify a relief from the full price for the sectors included in the OBPS.

ECCC's inclusion of electricity generation in the OPBS is especially concerning as this sector fails both tests. It is not of necessity "emissions intensive", as low or non-emitting alternatives exist and are now cost competitive with fossil alternatives. And it is not "trade exposed," as many jurisdictions have already implemented either explicit carbon taxes on electricity generation, or implicit carbon taxes

via policies such as renewable portfolio standards. Further, electricity as a sector represents a unique opportunity in terms of innovation and mitigation potential, including via electrification of transport and buildings. We cannot put Canada on a credible path to meet or exceed our national target for reducing GHG emissions without creating a strong signal to enable the transition to renewable energy.

The government must produce a framework for assessing and addressing competitiveness pressures to ensure the program targets only those sectors that can demonstrate material competitiveness pressures through both emissions intensity and trade exposure. We also expect to see output-based standards that maintain the incentive to reduce emissions and increase in stringency annually at a rate consistent with that necessary to reach Canada's climate targets.

Earlier this year, Environment and Climate Change Canada introduced draft legislation for carbon pricing with the proposed *Greenhouse Gas Pollution Pricing Act*. Once enacted, there will likely be a showdown given that (a) Saskatchewan has refused to implement carbon pricing, (b) by 2019, Manitoba's price will likely be lower than the one required, and (c) Nova Scotia's cap-and-trade system may not meet the equivalency requirement.<sup>22</sup> However, most constitutional experts assert that the federal government has the power to impose a backstop price on carbon pollution.

Regardless, we remain optimistic that the federal government will continue its work to ensure all provinces and territories have programs in place that meet the carbon pricing requirements clearly outlined in the national benchmark.

**Score: 3** - some progress made, but serious gaps remain in policy development and implementation details

## Methane Regulations

Neither the Campaign Platform nor the Minister's Mandate Letters contain any commitments to reducing methane emissions. Nevertheless, decreasing methane pollution is imperative, as it is powerful greenhouse gas: over a 100-year period, it traps 28 times more heat than carbon dioxide. The oil and gas and pipeline sectors emit about half of the country's methane pollution, the remainder coming primarily from the agriculture and waste sectors.

Recognizing this importance, the Pan Canadian Framework (PCF) contains significant commitments to reduce methane:

"The federal government will work with provinces and territories to achieve the objective of reducing methane emissions from the oil and gas sector, including offshore activities, by 40-45% by 2025, including through equivalency agreements."<sup>23</sup>

## Our Assessment

The oil and gas sector is Canada's single largest source of GHG emissions, representing more than a quarter of all carbon pollution in Canada, including much of the methane pollution. Methane regulations

are the one measure in the PCF targeted at the oil and gas sector. While the targets for methane reductions are laudable, leaked documents show that the oil and gas lobby has been pushing hard for a weaker approach.<sup>24</sup> The federal government has acquiesced such that the methane regulatory framework will not come into force until 2020, with full implementation by 2023.

Canada became the first country to commit to regulations that would limit damaging and wasteful methane emissions from both new and existing oil and gas facilities nationwide. However, even with these regulations, the federal government has yet to sufficiently address the oil and gas sector's overall GHG emissions in a way that would be consistent with meeting Canada's climate commitments. Concessions have already been made to the oil and gas industry in the development of the federal methane regulations, and the provincial ambition to address methane must match the federal model – there is no more room for compromise. We look forward to working with the federal government to ensure that provinces such as Alberta, B.C., and Saskatchewan pass equivalent regulations if they want their own provincial rules in place.

**Score: 4** - significant progress

## Clean Fuel Standard

In November 2016, the federal government announced that it would develop a performance-based clean fuel standard (CFS).<sup>26</sup> An important element of the CFS is its application to many types of fuels in several different sectors, including transportation, buildings and industrial use. Through the CFS, which will require carbon intensity reductions over the lifecycle of fuels used in Canada, the government wants to support the use of a broad range of low-carbon fuels, energy sources and technologies. The objective of the CFS is to achieve 30 Mt of annual reductions in GHG emissions, which makes this policy the single largest contributor under the PCF towards Canada's 2030 climate commitment.<sup>28</sup>

Late last year, the government released its proposed regulatory framework for the Standard, which outlines several key design elements for the CFS regulation, including its scope, regulated parties, carbon intensity approach, timing, and potential compliance options such as credit trading. Draft CFS regulations are expected in late 2018.

The CFS represents a major change to the federal regulatory environment for Canadian fuels, and we applaud the shift to regulate on the basis of lifecycle carbon intensity. The CFS is a promising and ambitious policy, but timelines for its implementation must not slip.

**Score: 3** - some progress made, but serious gaps remain in policy development and implementation details

## Canada-wide Zero Emission Vehicles Strategy

The federal, provincial, and territorial governments committed to implementing a Canada-wide zero-emission vehicles strategy in 2018. Sales of electric vehicles (ZEV) have steadily accelerated in this country: last year sales increased 68% nationally and 120% in Ontario. While those are large percentage increases, they are starting from a very low base and the pace needs to accelerate to meet current federal and provincial targets.

Last year, the federal Minister of Natural Resources signed onto a global campaign promising that EVs comprise 30% of total new vehicle sales by 2030,<sup>29</sup> and we are awaiting its official adoption domestically. Comparatively, the most ambitious EV target belongs to Quebec who wants to see at least 10% of new vehicle sales be EVs by 2025, and Ontario with 5% of sales by 2020.<sup>30</sup>

In terms of meeting the PCF commitment, the federal government established a national advisory group who completed its work to address key barriers to EV adoption.<sup>31</sup> We are looking forward to the government's strategy for implementing the ZEV goals and having the fortitude to resist any residual opposition by industry to ambitious ZEV sale targets for Canada.

**Score:** too early to assign a score

## Regulations to phase-out of coal-fired electricity generation

Coal is the dirtiest of the carbon fuels: coal-fired power plants release more greenhouse gases per unit of energy produced than any other major electricity source, contributing some 70 percent of carbon emissions from Canada's electricity sector. In addition, pollution from burning coal causes a myriad of health problems including asthma, chronic heart disease, poor lung and brain development in children, and it shortens lifespans. Add the fuel's contribution to acid precipitation, and phasing out coal is a necessary imperative.

The federal government recently published new draft regulations that would phase out the use of coal in power plants by 2030.<sup>32</sup> This followed Canada's co-founding (along with the United Kingdom) of the international Powering Past Coal Alliance (PPCA), which has attracted over 30 governments and business members. The goal of the Alliance is to accelerate the rapid phase-out of traditional coal power, especially in OECD countries. The PPCA also includes businesses committing to powering their operations without coal, and aims to restrict financing for traditional coal power stations.

Environment and Climate Change Canada estimates that accelerating the phase-out of traditional coal-fired electricity will cut carbon pollution by 16 million tonnes in 2030.<sup>33</sup> Ontario's leadership in phasing out all coal for electricity production has helped in shaping the federal policy.

However, Saskatchewan has an interest in entering into an Equivalency Agreement<sup>34</sup> with the federal government to allow the burning of coal past 2030. Nova Scotia has entered into an agreement-in-principle with the federal government to develop a new Equivalency Agreement that could exempt the Province from phasing out coal or reducing emissions in the electricity sector beyond what is already planned for in the 2030 timeframe. Nova Scotia already has an existing Equivalency Agreement with the federal government on coal regulations, signed in 2015.

Given the overwhelming evidence that coal must be rapidly eliminated as a fuel for electricity, the federal government needs to maintain its vigilance, phase out coal for power production completely, and not negotiate any equivalency agreements that could weaken a federal regulation.

**Score: 4** - significant progress made; the final regulation will be a strong result if substantially similar to the draft version

## Pipelines

Neither the election platform nor the mandate letters make commitments to approve or deny specific pipelines, but rather commitments were made concerning the regulatory infrastructure for consultation and decision-making.

Pipelines pose serious environmental risks - there are spills that will invariably occur, causing significant and perhaps irreversible ecological impacts. Most importantly however, pipelines have a long life span and constructing new ones allows for increased oil production with significant downstream and upstream carbon emissions.<sup>35</sup>

Pipelines last 40 to 50 years and once built, companies have an incentive to use them and recoup their investment. This so-called “carbon lock-in” can only be prevented if pipelines are not approved. New pipelines increase production of oil and gas, and associated carbon emissions, at a time when reductions are needed to meet our international commitments. The federal government has had decision-making authority and regulatory oversight over major new pipelines and each is briefly discussed below.

### **Enbridge Northern Gateway**

The federal Court of Appeal overturned former Prime Minister Harper’s approval of this pipeline, ruling that the federal government failed to adequately consult Indigenous groups. The current government had the option of rectifying consultations with First Nations and Indigenous groups and reopening the environmental review and approval process.

Instead, it denied the approval of Northern Gateway in November 2016 to significant relief and support by environmental groups. What is more, in May of 2017 the federal government tabled Bill C-48, which would prohibit oil tankers from stopping, loading or unloading crude or persistent oil products on the north coast of British Columbia or Vancouver Island. Bill C-48 is still working itself through the House of Commons.

### **Kinder Morgan Trans Mountain Expansion**

During the 2015 election campaign, candidate Trudeau promised to re-do the review of the Kinder Morgan pipeline expansion.<sup>36</sup> Once elected, the federal government announced a Ministerial Panel to undertake additional consultations with B.C. and Alberta communities, as well as Indigenous groups.

It is noteworthy that the B.C. participants on the Panel were overwhelmingly opposed to the expansion.<sup>37</sup> Indeed, the report by the Ministerial Panel identified notable gaps in the NEB’s approval related to alignment with climate targets, Indigenous consultation, and oil spills.

Unfortunately, the federal government approved the Kinder Morgan proposal in November 2016 and has been promoting and facilitating the pipeline ever since.<sup>38</sup> With this approval, the federal government has tacitly increased the risk of an oil spill due to a significant increase in tanker traffic at a time when it acknowledged an information and capacity gap to clean up a dilbit <sup>39</sup> spill in saltwater.



One of the biggest questions with this approval is that the expanded oil capacity will increase carbon emissions by millions of tons. The Department of Environment and Climate Change itself estimates an additional 13-15 megatonnes per year of CO<sub>2</sub>e in upstream emissions.<sup>40</sup> Given that the country is already facing a growing gap in its Paris emission reduction commitments, it is incumbent on the federal government to show how increases in Alberta can fit the overall national carbon emission reduction goals.

### **Enbridge Line 3**

This pipeline expansion largely flew under the radar and has not received the same level of scrutiny and media attention as other proposed pipelines. The federal government approved the Canadian portion of Line 3 in November of 2016 and Enbridge began its construction in mid-2017. While the pipeline still faces a series of regulatory, legal and political obstacles in Minnesota, the federal government has supported the project.

Yet once again, the expanded pipeline will increase upstream carbon emissions by 10-13 megatonnes of CO<sub>2</sub>e.<sup>41</sup> Together with the Kinder Morgan pipeline expansion, these additional emissions amount to 23-28 megatonnes of CO<sub>2</sub>e, or some 10% of the overall emission reduction targets under the Paris Agreement. Again, how does building this infrastructure help meet our international obligations under the Agreement?

### **In Sum**

The federal government has been broadly supportive of building new oil sand pipelines, granting federal approvals to Kinder Morgan and Line 3, while continuing to support Keystone XL. Yes, it denied the approval of the Northern Gateway pipeline, but it has failed to demonstrate how the new pipelines align with its climate targets.

After all, approving the new pipeline expansions will result in some 23 to 28 megatonnes of CO<sub>2</sub>e upstream emissions. This questions how the federal government will meet its international commitments, as the country is already 66 megatonnes short of the Paris target. Adding the anticipated upstream emissions leads to a 89 to 94 megatonne gap, or more than half of the PCF target. This is a substantial shortfall.

**Score: 2** - needs significant improvement

## **Regulations of Hydrofluorocarbons**

Canada was among the first countries to ratify the Kigali Amendment to the Montreal Protocol, which will phase down ozone-depleting substances that are also powerful greenhouse gases. Found in air conditioners and aerosols, hydrofluorocarbons—or HFCs—are thousands of times more powerful drivers of climate change than carbon dioxide. In 2017, the federal government introduced domestic regulations to phase-out the production and imports of HFCs and to prohibit the manufacture and imports of products containing HFCs.

**Score: 5** - done, commitment met

## Fossil fuel subsidies phase-out

### Minister of Finance and Minister of Environment and Climate Change Mandate Letters:

"Work (...) to fulfill our G20 commitment and phase out subsidies for the fossil fuel industry over the medium-term." <sup>42</sup>

Preferential tax treatment of oil, gas and coal companies is inconsistent with climate action. Fossil fuel subsidies undermine carbon pricing, work against the achievement of Canada's climate targets, and encourage investments in more fossil fuel exploration and production.

Budget 2016 maintained a new fossil fuel subsidy introduced by the previous federal government, providing an accelerated capital cost allowance for liquified natural gas facilities until 2025.

Budget 2017, however, acknowledged Canada's international commitment to phase out fossil fuel subsidies and made some initial progress to that effect. Budget 2017 changed the classification of the Canadian Exploration Expenses (CEE) so that fewer projects will be able to claim a full tax deduction in the year exploration expenses are incurred. However, those projects are still eligible for the Canadian Development Expense, which provides a similar deduction over a longer timeline. Budget 2017 also limited the ability of small oil and gas companies to claim CEE as flow through shares. Nevertheless, Budget 2017 extended the Mineral Exploration Tax Credit for another year. Although the cost is only \$30 million, this tax break directly subsidizes the expansion of the oil sands and other fossil fuel projects.

The federal government has not yet defined, reviewed or publicly released a list or assessment of its remaining fossil fuel subsidies, nor does it have a plan to achieve its commitment to the G20 to phase-out fossil fuel subsidies by 2025. Moreover, the federal government refused to release information on this issue that would have allowed the Auditor General of Canada to complete an audit of this commitment in 2017.

**Score: 2** - needs significant improvements

## Financial commitments in federal budgets related to climate change

### Mandate Letter for the Minister of Natural Resources

"Work closely with provinces and territories to: develop a Canadian Energy Strategy to protect Canada's energy security; encourage energy conservation; and bring cleaner, renewable energy onto a smarter electricity grid." <sup>43</sup>

"...to invest in clean technology producers, so that they can tackle Canada's most pressing environmental challenges and create more opportunities for Canadian workers." <sup>44</sup>

"...enhance existing tax measures to generate more clean technology investments, and engage with provinces and territories to make Canada the world's most competitive tax jurisdiction for investments in the research, development, and manufacturing of clean technology." <sup>45</sup>

## Our Assessment

In Budget 2016, the federal government announced more than \$1 billion over four years to support clean technology, including in the forestry, fisheries, mining, energy and agriculture sectors. Budget 2017 announced an additional \$1.4 billion for cleantech financing, plus additional funds to support research and development. It established cleantech as a priority area for major funding as a “supercluster” and created Innovation Canada, a new platform to coordinate and simplify public support programs for innovators. Budgets 2016 and 2017 also extended tax support to electric vehicle charging and electrical energy storage, as well as geothermal energy equipment.

Mandate letters also committed to providing “targeted federal funding” to meet our climate commitments. As such, Budget 2017 committed \$650 million in new funding for the implementation of the PCF, on top of Budget 2016 funding (such as the \$2 billion Low Carbon Economy Fund). Funding agreements with the provinces under the Low Carbon Leadership Fund have been established and focus on particular areas, such as moving Canadian communities off diesel, funding energy efficiency in commercial and residential buildings, and addressing carbon sequestration from agriculture and forestry. The remaining funding under the Low Carbon Economy Challenge has yet to be issued, but applications for proposed projects under this Fund are currently being solicited.

The Investing in Canada Infrastructure Plan announced in Budget 2017 included a federal investment of \$20.1 billion over 11 years through bilateral agreements with provinces and territories for public transit infrastructure, as well as at least \$5 billion from the Canada Infrastructure Bank towards public transit.

The Green Infrastructure-Climate Change Mitigation sub-stream of the Investing in Canada Infrastructure Plan (ICIP) will invest at least \$3.8 billion in projects that will increase generation of clean energy, increase capacity to manage more renewable energy, improve the energy efficiency of eligible public buildings, and increase access to clean energy transportation. Some ICIP projects will be subject to a ‘climate lens,’ which will require assessment of GHG emissions and/or resilience to climate impacts.

Budget 2018 provided an additional \$109 million over five years to support the development and implementation of the federal carbon pollution pricing system and \$20 million over five years to support the assessment and reporting of the PCF’s effectiveness.

We are pleased with the financial investments to reduce carbon pollution domestically and look forward to new funding in future budgets for global climate financing as required by the Paris Agreement. We note however, the importance of subjecting new infrastructure projects to the climate lens test as a funding criterion in order to maximize GHG emission reductions.

Moreover, infrastructure funding agreements and implementation for all new projects to reduce GHG emissions must be implemented swiftly. Time is of the essence since government is relying partly on the GHG emission reductions generated by clean energy investments, as well as on public transit and green infrastructure investments, to close the gap to our national emissions reduction target in 2030.

**Score: 4** – significant progress made

## ISSUE 2. BIODIVERSITY AND HABITAT CONSERVATION



## 2.1. Endangered Species

Protecting endangered species in Canada is a shared responsibility between the provincial, territorial and federal governments. Recognizing this shared responsibility, in 2002 Parliament adopted the *Species at Risk Act* (SARA) amid great hopes to reverse extinctions in Canada. The purposes of the *Species at Risk Act* are:

- to prevent wildlife species in Canada from disappearing,
- to provide for the recovery of wildlife species that are extirpated (no longer exist in the wild in Canada), endangered, or threatened as a result of human activity, and
- to manage species of special concern to prevent them from becoming endangered or threatened.

Once a species is listed under the *Species at Risk Act*, the federal government is required to produce recovery plans in a timely fashion, to protect critical habitat on federal lands, to publicly track protection on provincial and territorial lands, and to create action plans. SARA is designed to meet one of Canada's key commitments under the *International Convention on Biological Diversity*.

The federal authority for protecting critical habitat under SARA applies to areas under federal jurisdiction, and the Act gives the federal government the power to compel provinces and territories to protect critical habitat if deemed unprotected. At the same time, the provinces and territories have a substantial role in implementing protection and recovery measures for species at risk with their own laws and measures.<sup>46</sup> This makes close cooperation and agreement between federal, provincial and territorial governments important.

### **The Campaign Promise**

"We will also work to better protect Canada's endangered species. This means responding faster to scientific advice on listing species, meeting mandatory timelines for responding to Committee on the Status of Endangered Wildlife in Canada (COSEWIC) recommendations, and completing robust species at risk recovery plans."<sup>47</sup>

### **Mandate Letter for Minister of Environment and Climate Change**

"Enhance protection of Canada's endangered species by responding quickly to the advice of scientists and completing robust species-at-risk recovery plans in a timely way."<sup>48</sup>



## Our Assessment

While the federal government has made progress in completing recovery strategies and addressing the backlog of species listings, species protection continues to lag and the number of species at risk continues to grow. The Living Planet Report Canada by WWF-Canada indicates the extent of species decline in Canada including Species at Risk between 1965 and 2014. The research only includes data up to 2014 and so does not reflect the impact of the current federal government, but it does lay out the scope and urgency of the problem that needs to be addressed. The report points to:

- “government delays to listing on SARA;
- government failures to meet SARA’s timelines for recovery strategies and in identifying and protecting critical habitat;
- government’s deference to socioeconomic considerations when deciding whether to list a species under SARA; and
- a lack of adequate funding to support recovery plans and stewardship requirements to recover species and make wildlife populations viable again.”<sup>49</sup>

It is no wonder then, that a recent University of Ottawa study found 85 per cent of over 350 species tracked under the *Species at Risk Act* have seen no improvement or have deteriorated.<sup>50</sup> As a result, the current federal government needs to take greater leadership on the species file.

Wildlife Conservation Society Canada points to the threatened Boreal Woodland Caribou as an example.<sup>51</sup> The deadline for provinces to produce full range management plans to protect caribou habitat has recently passed without a single province meeting the deadline. Caribou were first listed as threatened in 2004. It took eight years and litigation to get the federal government to come up with a recovery strategy but that has pushed the responsibility back to the provinces.<sup>52</sup>

A lawyer with Ecojustice commented that “...13 years after this species was listed as threatened. There’s been 13 years of decline of caribou, 13 years of deterioration of their habitat.”<sup>53</sup> Similarly, Greenpeace commented that the federal government is “...failing to lead on this country’s key indicator species of forest health, woodland caribou, with grave national implications both for the fate of this species and the health of Canada’s boreal...”<sup>54</sup>

The federal government’s failure to set enforceable deadlines for finalizing action plans for caribou with provincial governments is lamentable, especially since there has been backsliding by provincial governments. For example, the Ontario government failed to deliver an action plan on caribou in 2017, and then went on to propose a two-year industry exemption under the provincial *Endangered Species Act* in 2018.<sup>55</sup> Quebec similarly failed to deliver an action plan in 2017, and earlier this year announced that it would instead let a small caribou herd die off.<sup>56</sup> Clearly, the animal featured so prominently on our 25 cent coin is in deep trouble.

More recently, the federal government indicated that it would examine whether provinces and territories are serious about meeting their range planning obligations.<sup>57</sup> The government has given itself a pathway under SARA to potentially step in: this is a major stride given the rather conflicted views of many provincial governments.

CPAWS highlighted a lack of full attention paid to the need for all levels of government to take action to protect critical habitat. To draw attention to this gap, CPAWS has launched a court challenge of the federal government's failure to produce legally required reports every 180 days on the status of critical caribou habitat protection across the country, and what steps are being taken by all governments to fill the gap. Their staff noted that even industry complains about the lack of certainty that results when habitat protection measures are delayed.

It has been a similar story with British Columbia's iconic and endangered orca, listed under SARA in 2003 and for which the federal government took five years to develop a recovery strategy. And even then critical habitat protections have not occurred, and to make matters worse, the Kinder Morgan Trans Mountain pipeline will create a seven-fold increase in the number of oil tankers travelling through the critical habitat for the endangered orca. As a result, last October environmental groups took the federal government to court over its decision to grant permits for the oil pipeline.<sup>58</sup> After all, there are just 76 southern resident orcas remaining.

Perhaps Nature Canada summed it up best, "...SARA requires a variety of steps for species to get protected, and in every step the governments are failing the species. Moreover, governments have not figured out how to protect at an ecological level. Look at grasslands, for example, with some 15 species at risk there's no strategy for protecting the whole landscape and therefore every species."<sup>59</sup>

Despite these long-standing concerns, some are seeing an improvement with this federal government: "There's been quite a delay in the recovery-plan processes. There's more now. They're coming out. There's been a noticeable change. They're trying to deal with the backlog."<sup>60</sup> Indeed, Nature Canada notes that the federal government made clear progress in clearing the backlog of COSEWIC-recommended species that had not been legally listed.<sup>61</sup>

While we are pleased with the increase in the speed by which species are being assessed, it is not nearly fast enough, as the *Act* has not yet led to meaningful shifts in the welfare of species at risk in Canada. Despite best intentions, the federal government can and must do more to protect Canada's species at risk. According to Wildlife Conservation Society Canada, the federal government needs to become tougher on the provinces who have a major role to play in protecting species. SARA contains safety net provisions, allowing the federal government to issue an order to protect critical habitat when a province fails to do so. The federal government has issued only a handful of these emergency orders.<sup>62</sup>

**Score: 3** - some progress made but serious gaps remain in implementation

## 2.2. Protected Areas: Ocean and Land

Canada is famous around the world for our wild and stunning land and seascapes. We are known as a people of land and sea, and each year millions travel to Canada to visit our famous parks, from Gros Morne to Gwaii Haanas. As Canadians, we love our national parks: they are one of our top symbols of national identity. Indeed, no other category received more votes from Canadians than natural areas in a CBC competition of Canada's seven wonders.<sup>63</sup> Our systems of national, provincial and territorial parks also have significant economic value for Canada, contributing in the range of \$5 billion to the Canadian economy annually, and supporting 64,000 jobs nationwide.

While protected areas — encompassing marine, freshwater and terrestrial areas — provide economic, health and other social benefits for people, their greatest value is in conserving healthy ecosystems that are needed to sustain wildlife and people alike.<sup>64</sup> Protecting significantly more area from development and exploitation is critical to reverse the declining health of the planet.

What did the federal government promise on protected areas?

### **The Campaign Promise**

"We will rapidly develop a road map to meet Canada's international commitment to protect 17 percent of our land and inland waters by 2020...

We will increase science spending in our National Parks by \$25 million per year to allow for early identification of ecological stresses and avoid permanent degradation.

We will protect our National Parks by restricting development inside the parks...

We will finalize the creation of the country's first urban National Park – Rouge National Park."<sup>65</sup>

"We will increase the amount of Canada's marine and coastal areas that are protected from 1.3 percent to 5 percent by 2017, and 10 percent by 2020."<sup>66</sup>

### **Mandate letter for Minister of Environment and Climate Change**

"Develop Canada's National Parks system, as well as manage and expand National Wildlife Areas and Migratory Bird Sanctuaries...

Protect our National Parks by limiting development within them, and where possible, work with nearby communities to help grow local eco-tourism industries and create jobs...

Make admission for all visitors to National Parks free in 2017, the 150th anniversary of Confederation. Beginning in 2018, ensure that admission for children under 18 is free, and provide any adult who has become a Canadian citizen in the previous 12 months one year's free admission. Work with the Ontario government to enhance the country's first urban National Park – Rouge National Urban Park...

Work with the Minister of Fisheries, Oceans and the Canadian Coast Guard to increase the proportion of Canada's marine and coastal areas that are protected – to five percent by 2017, and ten percent by 2020 – supported by new investments in community consultation and science."<sup>67</sup>

### **Mandate Letter for the Minister of Fisheries, Oceans and the Canadian Coast Guard**

"Work with the Minister of Environment and Climate Change to increase the proportion of Canada's marine and coastal areas that are protected – to five percent by 2017, and ten percent by 2020 – supported by new investments in community consultation and science."<sup>68</sup>

## Our Assessment

Canada is a signatory to the United Nations *Convention on Biological Diversity*, which is the most important international legal instrument addressing protected areas, with the ultimate purpose of protecting biodiversity. Following decisions made at the meetings of the treaty signatories, Canada has agreed to protect at least 17% of its land and inland waters and 10% of its marine environment by 2020, and to improve the effectiveness of protected area systems in conserving nature.

While we are making significant progress on marine protection, we are nowhere near the terrestrial target – in fact, Canada ranks last among G7 countries in the percentage of land and freshwater protected for nature, and fourth last among the 35 OECD member countries.<sup>69</sup> We have protected just 1% more land in the last decade.<sup>70</sup> What's more, as CPAWS has stated, "...with only 10.6% of its landscape currently protected, Canada lags behind the global average of 15%, and also trails other large countries such as China, Brazil, and Australia."<sup>71</sup> Some have noted that the previous federal government failed to come up with any plan to deliver on the targets.<sup>72</sup> In other words, we lost much of a decade, and the current federal government is forced to play catch-up.

There are signs that Canadian governments are finally starting to take our international commitment seriously. In March 2016, the Prime Minister re-committed to achieving at least 17% protection of land and 10% of oceans by 2020, and "to substantially surpass these goals in the coming years."<sup>73</sup> A year later, the House of Commons Standing Committee on Environment and Sustainable Development released a comprehensive report with 36 recommendations for how Canada could achieve and go beyond these targets.<sup>74</sup>

### 2.2.1. Land and Freshwater Protected Areas

In February 2017, federal, provincial and territorial Ministers responsible for parks and protected areas announced their commitment to work together and with Indigenous governments and other partners to develop a “pathway” to achieve the 2020 target for land and freshwater, and to set the stage for longer term work to complete an effective network of protected areas. This led to an intergovernmental *Pathway to 2020* process, which includes an Indigenous Circle of Experts and National Advisory Panel appointed to advise Ministers on this work.<sup>75</sup>

To help this process along, CPAWS has identified “... places across Canada where a considerable amount of work has already been done on proposed protected areas. By acting now to permanently protect these sites, while also planning for what’s needed to conserve nature in the long term, Canada has a chance to move from laggard to leader.”<sup>76</sup>

Concerns remain, however, that governments will attempt to achieve the 17% target by counting more existing conservation measures rather than protecting new areas. Protecting significantly more habitat for wildlife is what’s needed to reverse Canada’s biodiversity crisis, not a “creative accounting” exercise.

In good news, the new Pathway process has engaged Indigenous peoples, civil society and other partners, and CPAWS gives them “thumbs up” for this more participatory approach, although they flag that how well their advice is integrated into the final plan remains to be seen.”<sup>77</sup>

The federal government also committed to expanding our systems of national parks, wildlife areas and migratory bird sanctuaries. No new areas have been designated since 2015, however, Parks Canada, the BC government and the Syilx/Okanagan Nation announced a renewed engagement and commitment to create a national park in the South Okanagan region in 2017. They also continue to work with Lutsel Ké Dene First Nation towards a national park reserve around the east arm of Great Slave Lake. Completing these and other proposed national parks and national wildlife areas by 2020 would make an important federal contribution towards the 2020 target.

**Score: 3** – some progress made with significant implementation gaps remaining

### 2.2.2. National Park Management

Along with protecting new areas, one cannot forget about the state of existing national parks. In response to growing public concern about inappropriate development and massive budget cuts in 2012 to Parks Canada’s conservation programs,<sup>78</sup> the federal government promised to take steps to limit development in national parks and restore funding for science and monitoring.

CPAWS’ 2016 parks report<sup>79</sup> documented a significant shift in Parks Canada’s approach to managing national parks: away from their legislative first priority of protecting nature, towards a more tourism and marketing-focused agenda, leaving wildlife and wilderness at risk in parks.



In response to this, in January 2017, the Minister responsible for Parks Canada, Catherine McKenna, launched the largest roundtable on Parks Canada in our country's history, asking Canadians to weigh in on how the Agency is doing at managing our most spectacular places. Thousands of Canadians took part in this public consultation, the majority of whom called for limiting development in national parks and renewing commitment to the protection of nature. The Minister was expected to provide her response to Canadians in July of 2017 (a formal response is required by law within six months); however, we are still waiting. We hope her response will signal a new direction for Parks Canada – back to the champion of conservation and defender of Canada's nature that the Agency once was.

We also hope that the \$1.3 billion conservation investment in Budget 2018 includes the promised \$25M per year for science and ecological monitoring in national parks; however, this has not yet been confirmed.

With Parks Canada itself reporting that "Nearly half of national park ecosystems are in 'fair' or 'poor' condition...",<sup>80</sup> Ministerial direction and funding to re-focus Parks Canada on their conservation mandate is urgently needed.

On a positive note, the federal government held up its promise to strengthen protection for the Rouge National Urban Park, clarifying in law that nature conservation will be the first priority in managing this important conservation area in the greater Toronto region. The government also followed through on its promise of free access to all national parks in 2017 as part of Canada150, and to continued free access for youth and for new Canadian citizens.

**Score: 2** – needs significant improvement; little meaningful movement to meet commitment, however, Minister's response to Round Table on Parks Canada could improve mark

### 2.2.3. Marine Protected Areas

There is good news to report here. The Minister of Fisheries, Oceans and the Canadian Coast Guard has been a "fantastic driver" of the process for meeting our international obligations of 10% marine protection by 2020, and has also taken steps to improve the protection of new marine protected areas (MPAs) including the Hecate Strait and Queen Charlotte Sound Glass Sponge Reefs MPA in BC.<sup>81</sup> Parks Canada is also contributing, having signed an agreement with the Government of Nunavut and Qikiqtani Inuit Association to create a national marine conservation area in Tallurutiup Imanga/ Lancaster Sound. At over 100,000 square kilometres, this will be the largest protected area ever established in Canada when designated. According to Fisheries and Oceans Canada, the federal government has exceeded their promise of 5% marine protection by 2017 by reaching 7.7%. However, conservation groups have questioned the use of the "Other Effective Area Based Conservation" measures to meet the target and have cautioned that stronger protection measures are needed to effectively protect Canada's marine ecosystems and species.

Close to 4.5% of the areas counted by DFO towards the 10% target are designated as fisheries closures under the *Fisheries Act*, which can regulate only fishing activities, so additional actions are needed to ensure that all potentially harmful activities, such as oil and gas and infrastructure development, are controlled in these areas.

More work is needed to ensure that we have both quantity and quality in MPAs. Allowing oil and gas drilling and industrial fishing in MPAs reduces their ability to protect species and habitats and is inconsistent with international (IUCN) standards.<sup>82</sup> Yet, most of Canada's MPAs allow commercial fishing to continue, and only a few expressly prohibit oil and gas activities. Unusual interactions between DFO officials and oil industry lobbyists, including suggestions for deleting email conversations among them, as the proposed Laurentian Channel Marine Protected Area was developed, are not helpful.<sup>83</sup>

Currently, each Oceans Act MPA is governed by individual regulation, which can prohibit or allow certain activities, resulting in inconsistent standards. That is why the proposed Laurentian Channel Marine Area of Interest includes two zones where oil and gas drilling could occur, while the nearby St. Anns Bank Marine Protected Area, established in 2017 under the *Oceans Act* prohibits oil and gas.

According to West Coast Environmental Law, an easy solution would be to amend the Oceans Act to prohibit all extractive activities in Marine Protected Areas. "Right now, we spend years negotiating which resource extraction activities can and cannot take place in an MPA – which is unsettling and frustrating given that the primary purpose of MPAs is protection. We don't have these discussions for national parks on land, so why are they so common in the ocean arena?"<sup>84</sup>

As recommended by the Parliamentary Committee on Environment and Sustainable Development, in its 2016 report, many are calling for the *Oceans Act* to specify minimum protection standards for MPAs. Legally enshrining these standards can provide certainty, help Canada meet accepted international standards, and ultimately result in healthier oceans. In response, the Minister has committed to establish an Expert Panel to make recommendations on minimum standards, the outcome of which is eagerly anticipated.<sup>85</sup>

The federal government has recognized that it takes too much time to establish a Marine Protected Area under the *Oceans Act*, and has proposed legislative amendments to address these shortcomings.<sup>86</sup> The government is to be commended for these proposed amendments which will create a new option and process under the *Oceans Act* to designate an Interim Marine Protected Area by Ministerial Order, a far faster process than the way MPAs are currently created. Related amendments to the *Canada Petroleum Resources Act*, will create a new legal authority that can be used to prohibit new oil and gas activities in MPAs and cancel existing oil and gas interests in MPAs in some circumstances.<sup>87</sup> These are positive steps to help Canada protect ocean areas more quickly and effectively.

**Score: 4** – significant progress; 2017 commitment was met; however, work still needed on quality of protection

## 2.3. The 2018 Budget

The recent federal budget contained a \$1.3 billion investment over five years for nature conservation.

CPAWS celebrated this historic investment, saying “Budget 2018 recognizes the scale of the biodiversity crisis we face and the importance of supporting the efforts of all levels of government, civil society, and other partners in conservation efforts moving forward.”<sup>88</sup>

The David Suzuki Foundation called the 2018 budget a “...landmark investments for Canada’s wilderness and wildlife,” and a “game changer.”<sup>89</sup>

Nature Canada was similarly positive: “Nature lovers – rejoice: Nature’s protection is taking flight and the 2018 federal budget is an amazing first step! We think that Canada’s wildlife would also applaud.” The group further noted that “Nature conservation is no longer something that is nice to have, it is something Canada needs to have.”<sup>90</sup>

The Yellowstone to Yukon Conservation Initiative observed that it “...signals a change in tide. This type of vision shows the government is serious about protecting nature on the scale it needs to thrive.”<sup>91</sup> And “Now the hard work lies ahead since we need different conservation approaches in different parts of Canada. This includes carefully planning where the new protected areas should be, based on intact wilderness, connectivity, species at risk and more.”<sup>92</sup>

Even actor Leonardo DiCaprio tweeted his congratulations on the “...historic investment in nature.”<sup>93</sup>

The scope of the investment and the support for Indigenous led conservation initiatives, as well as provincial and territorial government action and other conservation partnerships are excellent. Moving forward, the funding should be allocated primarily to support partnerships that create new protected areas, and support conservation planning for what nature needs based on science and Indigenous knowledge.<sup>94</sup>

**Score: 5** – done and commitment was met; funding allocation will determine impact

## ISSUE 3. ENVIRONMENTAL ASSESSMENT

**A “look before you leap” law, environmental assessment (EA) legislation can be a critical tool for avoiding ecological harm, enhancing benefits, engaging the knowledge and values of communities in environmental decision-making, and ensuring that resource development aligns with climate and other policy objectives, like with regional planning. Proponents also benefit from good EA processes through decreased conflict, better project planning, and early identification of issues that could result in significant costs, delays, or even barriers to development.**

**On the other hand, weak EAs can increase conflict at the community and national levels, be perceived as a ‘rubber stamp’ rather than planning tool, overly burden participating governments, Indigenous peoples and the public, be reactive versus proactive, and focus on ‘making bad things less bad,’ rather than encouraging social, environmental and economic well-being.**



### 3.1. The Campaign Promise

"We will launch an immediate, public review of Canada's environmental assessment processes. .... with a new, comprehensive, timely, and fair process that:

- restores robust oversight and thorough environmental assessments of areas under federal jurisdiction, while also working with provinces and territories to avoid duplication;
- ensures decisions are based on science, facts, and evidence, and serve the public's interest;
- provides ways for Canadians to express their views and opportunities for experts to meaningfully participate; and
- requires project advocates to choose the best technologies available to reduce environmental impacts.

As part of this review, we will modernize and rebuild trust in the National Energy Board. We will ensure it has broad regional representation and sufficient expertise in fields such as environmental science, community development, and Indigenous traditional knowledge."<sup>95</sup>

### 3.2. Mandate Letters

#### **Mandate letter for Minister of Environment and Climate Change**

"Supported by the Ministers of Fisheries, Oceans and the Canadian Coast Guard, and Natural Resources, immediately review Canada's environmental assessment processes to regain public trust and help get resources to market and introduce new, fair processes that will:

- restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while also working with provinces and territories to avoid duplication;
- ensure that decisions are based on science, facts, and evidence, and serve the public's interest;
- provide ways for Canadians to express their views and opportunities for experts to meaningfully participate; and
- require project advocates to choose the best technologies available to reduce environmental impacts."<sup>96</sup>

This reference to improving environmental assessment was also mentioned in the Mandate Letters for the Minister of Natural Resources, and for the Minister of Fisheries, Oceans and the Canadian Coast Guard.<sup>97 98</sup> In addition, the Minister of Natural Resources was mandated to: "Modernize the National Energy Board to ensure that its composition reflects regional views and has sufficient expertise in fields such as environmental science, community development, and Indigenous traditional knowledge."<sup>99</sup>

### 3.3. Our Assessment

The commitment to review Canada's EA processes was kept. However, the commitment to introduce new, fair EA processes to achieve the specified objectives was only partially met. Much work remains to be done in order to uphold the government's promise.

In mid-February, Minister McKenna introduced Bill C-69, which would enact a new *Impact Assessment Act* (replacing the *Canadian Environmental Assessment Act, 2012*), enact a new *Canadian Energy Regulator Act* (replacing the *National Energy Board Act*), and amend the *Navigation Protection Act* (renaming it the *Canadian Navigable Waters Act*).

The Bill followed the work of an expert panel appointed to review federal EA processes,<sup>100</sup> which was generally well received by environmental groups. A second expert panel reviewed the National Energy Board (NEB), and a parliamentary committee reviewed the *Navigation Protection Act* (NPA).<sup>101</sup>

Overall, the IAA passes, but with a low grade. The legislation contains a number of quite positive elements, such as:

- considering broader positive and negative social, health, gender and economic impacts alongside environmental ones,
- considering Canada's commitments to international and climate agreements,
- consolidating assessments in one agency,
- creating a new energy regulator to replace the industry-captured NEB,
- mandatory consideration of Indigenous knowledge,
- greater transparency,
- removing the "standing test" that limited participation in pipeline reviews to only those deemed "directly affected,"
- greater emphasis on regional and strategic assessment, and
- earlier opportunities for the public to participate in review processes.<sup>102</sup>

Renaming "Environmental Assessment" to "Impact Assessment" is not just a small semantic change. As the Expert Panel noted, Canadians are seeking for EA processes to "... move beyond the bio-physical environment to encompass all impacts, both positive and negative, likely to result from a project... social issues, economic opportunities, health impacts and cultural concerns should be considered."<sup>103</sup>

WCELA's response was somewhat muted, observing that "[t]his new bill contains important measures to help fulfill that commitment" to fix Canada's broken environmental laws, but that "improvements are undermined by concerning flaws" and amendments are needed to address key concerns and restore public trust.<sup>104</sup>

We note that Bill C-69 falls short on a number of key issues, including:

- missing 'legal bottom-lines' that prevent decision-makers from approving projects with clearly unacceptable impacts;<sup>105</sup>

- failing to establish legal requirements for regional and strategic assessments (discretionary under the IAA);<sup>106</sup>
- lacking a requirement for decisions to include an explicit, public justification of any trade-offs;
- lacking an ability of the public to appeal a decision;<sup>107</sup>
- failing to ensure that economic interests don't trump other considerations in a broad "public interest" determination;<sup>108</sup>
- missing the need to show a net contribution to sustainability;<sup>109</sup>
- maintaining the current focus on "major projects," while bypassing the vast majority of federally-regulated undertakings that contribute to cumulative effects;<sup>110</sup>
- silent on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Indigenous consent;<sup>111</sup>
- containing too much discretionary language rather than obligatory provisions;<sup>112</sup>
- weak on the information that is required to be made publicly available on the internet database;
- failing to implement all of the recommendations of the NEB modernization panel to separate oil and state;<sup>113</sup>
- failing to recognize that national parks and other federal protected areas warrant a higher standard of assessment for proposed developments;
- allowing decisions to merely consider science and Indigenous knowledge, rather than be based on them;<sup>114</sup>
- increasing the authority of industry-dominated offshore petroleum boards by allowing their appointment to impact assessment review panels for offshore drilling projects;<sup>115</sup> and
- failing to establish a new energy information agency (which is needed to align Canada's oil and gas demand and supply projections with the country's climate commitments under the Paris Agreement).<sup>116</sup>

We are pleased that the government kept its election and mandate letter promises in bringing forth a new Bill to replace CEAA 2012. "There's a lot of good stuff in there," West Coast Environmental Law said. "They're making some important changes to some of the things that were most badly broken in the old laws."<sup>117</sup>

At the same time, the discretionary nature of the Bill means that in reality, it is possible that assessment processes and decisions can largely follow the *status quo*. Moreover, while the review was an opportunity for transformative change, Bill C-69 largely fits the existing mold. Bill C-69 "... offers little for those hoping for a bold and creative next-generation assessment regime."<sup>118</sup> Similarly, University of Waterloo professor Robert Gibson has observed that, "[t]here are some aspects of this bill that are better than I expected, some that are worrisome, and some aspects that are in desperate need of clarification. This is certainly better than the current law. That's what we'd call a low hurdle in sports."<sup>119</sup>

In sum, the Bill meets the commitment to introduce new EA processes, but falls short of the mark of restoring public trust and ensuring decisions are based on science and Indigenous knowledge. Serious flaws need to be corrected before Bill C-69 becomes law, and we look forward to the parliamentary process as an opportunity to fix those flaws.

**Score: 2** - needs significant improvement with little meaningful movement to meet commitment but with the potential to improve the law at Committee



## ISSUE 4. WATER

**Canada is a freshwater-rich country: Canadian rivers discharge almost 9% of the world's renewable water supply every year.<sup>120</sup> No other country on the planet has as much of its surface area covered by freshwater as does Canada. Of particular note are the Great Lakes, which form the largest source of available surface freshwater in the world, and the spectacular Fraser River. These enormous treasures require a diligent regulatory regime that protects and nourishes such a vital resource.**





## 4.1. The Campaign Promise

"We will renew our commitment to the protection of the Great Lakes, the St. Lawrence River Basin, and the Lake Winnipeg Basin.

We will work with the provinces of Quebec, Ontario, and Manitoba – as well as our American partners – to prevent the spread of invasive species, undertake science-based initiatives to better understand and manage water levels, and clean-up of coastal contamination.

We will deepen our commitment to work with other governments to protect Canada's freshwater .... This will include acting on the recommendations of the Cohen Commission on restoring sockeye salmon stocks in the Fraser River." <sup>121</sup>

## 4.2. Mandate Letters

### **Mandate letter for Minister of Environment and Climate Change**

"Treat our freshwater as a precious resource that deserves protection and careful stewardship, including by working with other orders of government to protect Canada's freshwater using education, geo-mapping, watershed protection, and investments in the best wastewater treatment technologies.

Work with the Minister of Finance to fulfill our G20 commitment and phase out subsidies for the fossil fuel industry over the medium-term.

Act on recommendations of the Cohen Commission on restoring sockeye salmon stocks in the Fraser River.

Working in collaboration with the Minister of Fisheries, Oceans and the Canadian Coast Guard, renew our commitment to protect the Great Lakes, the St. Lawrence River Basin and the Lake Winnipeg Basin." <sup>122</sup>

### **Mandate Letter from Minister of Fisheries, Oceans and the Canadian Coast Guard**

"Act on recommendations of the Cohen Commission on restoring sockeye salmon stocks in the Fraser River.

Support the Minister of Environment and Climate Change to renew our commitment to protect the Great Lakes, the St. Lawrence River Basin, and the Lake Winnipeg Basin.

Work with the Minister of Transport to review the previous government's changes to the Fisheries and Navigable Waters Protection Acts, restore lost protections, and incorporate modern safeguards." <sup>123</sup>

## 4.3. Our Assessment

### 4.3.1. Fisheries Act

Earlier this year, the Minister of Fisheries, Oceans and the Canadian Coast Guard, Dominic LeBlanc, introduced a new *Fisheries Act*, known as Bill C-68. The law was significantly weakened in 2012 by the previous federal government.<sup>124</sup>

The Bill has been received positively by many groups.<sup>125</sup> West Coast Environmental Law stated: “They’ve not only restored lost protections, especially for fish habitat, but they’ve also introduced a number of modernizations that were long overdue.”<sup>126</sup> Scientists also welcomed the new law: “This is like Christmas Day for fishery policy nerds.”<sup>127</sup>

Perhaps the most significant change is restoring legal protection for fish habitat. Once again, the law will prohibit the harmful alteration, disruption or destruction of fish habitat, informally called the HADD prohibition. The Minister will again be required to authorize any activities that harm fish habitat. That critical requirement was removed in 2012 and replaced with weaker and unenforceable provisions. Scientists agree that you cannot protect fish without protecting their habitat.

Moreover, the proposed *Fisheries Act* also includes some important modernizations. Those include:<sup>128</sup>

- new powers to issue short-term restrictions on fisheries in the case of emergencies (such as the recent right whale die-off);
- eliminating the capture of whales to be kept in captivity, unless the whale is injured, in stress or in need of care;
- requiring the Minister to consider the rebuilding of fish stocks in some circumstances;
- explicit requirements concerning the rights of Indigenous peoples and Indigenous knowledge systems;
- allowing for Canada to enter into management agreements with Indigenous governing bodies; and
- creating a new online public registry to increase transparency.

The government also pledged \$284 million over five years to improve enforcement of the new laws, perhaps the single largest investment in *Fisheries Act* enforcement in our country’s history.

Some areas for improvement remain. Minor projects that affect fish and their habitat will be controlled by Codes of Practices and standards rather than by regulations. Records of these projects are not required to be posted on the public registry, so it will be difficult to track their cumulative effects on habitat (though the Act does require, for the first time ever, consideration of the cumulative effects of a proposed project).

The Act is filled with discretionary language meaning that the Minister decides whether or not an action to protect fish and fish habitat is needed. The current wording could mean that a Minister can simply “not believe” that fish stocks have declined, or take it into account and decide not to act.<sup>129</sup> As well, the obligations to rebuild depleted fish stocks could be stronger.

As fish habitat continues to be lost across Canada, and as more fish species become endangered, the Act needs to be stronger and set objective criteria to protect fish and their habitat for which the government can be held accountable. As fisheries law expert Professor Martin Olszynski noted, “An overarching concern is the continued discretionary nature of the Minister’s various powers. Simply put, Bill C-68’s implementation could look very different depending on which of the current federal parties held government, with little legal recourse available to Canadians seeking a basic level of protection for fish and fish habitat.”<sup>130</sup>

And finally, there is no requirement for the government to prepare periodic systematic country-wide assessments of the state of fish habitat as many had requested, a need highlighted by WWF-Canada’s national freshwater health and threats assessments.<sup>131</sup>

On the whole, Bill C-68 does restore the lost protections of previous versions of the *Fisheries Act*. As WCEL notes, “Canada’s fisheries law really needs to do a better job of protecting fish and their habitat, and these amendments look like they’re going to take a big step in that direction.”<sup>132</sup>

**Score: 4** - significant progress with some outstanding policy issues that can be addressed at Committee

### 4.3.2. Canadian Navigable Waters Act

While most attention on Bill C-69 focused on changes to environmental assessment, the Bill also includes major amendments to the *Navigation Protection Act* – to be renamed the *Canadian Navigable Waters Act*.

In designing a law to protect our rivers and lakes, the fundamental question is: are Canada’s lakes and rivers highways for transportation, or are they the “foundation of life ... essential for socio-economic systems and healthy ecosystems...” (as Canada’s current Science Minister Kirsty Duncan put it in 2012).<sup>133</sup> In other words, should the Canadian Navigable Waters Act only protect human navigation, or should it protect broader environmental, social and cultural values associated with navigable waters?<sup>134</sup>

Prior to 2012, Canada’s environmental laws required environmental impacts to be considered before the federal government would approve a development on navigable waters. The previous federal government changed the laws and limited the approval requirements to require consideration of impacts on navigation only, and then just for 159 rivers and lakes (plus three oceans). This was a loss of key legal protections for the vast majority of Canada’s estimated 2.5 million navigable rivers and lakes.

Unfortunately, Bill C-69 does not restore the lost legal protections. The proposed new law includes legal protections that are only narrowly focused, exclude environmental values, and in many cases are substantially weaker than the pre-2012 version of the law. While some legal protection for navigation will be extended to most navigable waters, some of our concerns are:

- Bill C-69 comes down solidly on the side of protecting what Transport Canada staff have called “aqueous highways,” rather than broader values;
- Bill C-69 does not restore the requirement to consider environmental impacts resulting from

- works in navigable waters (except in relation to truly huge projects);
- Bill C-69 contains narrow definitions, meaning that a significant number of lakes and rivers that had legal protection before 2012 will not get it back in 2018; and
- Bill C-69 will, in many cases, leave it up to the public, not government, to complain to a private developer when a project threatens navigation.

One note of hope: the Act does require decision-makers to consider the impact of a decision on “the protection provided for the rights of the Indigenous peoples of Canada...” Consequently, in some cases where an Indigenous nation’s rights require consideration of the broader environmental, social and cultural values of a water body, the government may end up having to abandon its narrow “aqueous highway” approach.

In sum, the federal government promised Canadians that the lost protections for navigable waters would be restored. In taking an approach which focuses narrowly on navigation, and by allowing developers or the Minister (depending on the circumstances) to bypass the requirements for a transparent approval process, the *Canadian Navigable Waters Act* fails to deliver on this promise.

**Score: 2** - needs significant improvement with little meaningful movement to meet commitment, with the potential to improve the law at Committee

### 4.3.3. The Great Lakes

The Great Lakes have long been subject to significant environmental concerns: from Lake Erie being declared dead in the 1970s, toxic chemical pollution from pulp mills in the 1980s, invasive species like the Zebra Mussel in the 1990s, water levels in the 2000s, and again Lake Erie as it has been experiencing significant toxic algae blooms in the last decade.

As an internationally-shared resource, the Canadian Government is signatory to the *Great Lakes Water Quality Agreement* with the United States and thus is subject to specific commitments to restore the ecological health of the Great Lakes.

## Our Assessment

The commitments by the federal government were quite generic: “...renew our commitment to protect the Great Lakes...” As a result, we can comment only on what has been announced or implemented on Great Lakes pollution outside the mandate letters.

In late 2017, Minister McKenna announced a budget initiative of \$45 million over five years for the Great Lakes Protection Initiative.<sup>135</sup> The funds will be used for “...reducing toxic and nuisance algae and strengthening the resilience of Great Lakes coastal wetlands.”<sup>136</sup> While we appreciate the new funds, spending \$9 million a year of new money on the world’s largest freshwater system is clearly not enough especially considering the state of Lake Erie.<sup>137</sup>

In early 2018, the Province of Ontario and the federal government announced a joint venture to address Lake Erie algae blooms: the *Canada-Ontario Lake Erie Action Plan*. The Plan includes 128 commitments made by governments, conservation authorities, and agricultural organizations.

While environmental groups called the Plan a “good first step,”<sup>138</sup> its major flaw is the complete lack of enforceable requirements. The Plan is simply a collection of voluntary actions. Freshwater Future Canada said it best when they commented that “It’s great to see agricultural groups voicing their commitment to the health of Lake Erie, but lessons learned in Michigan and Ohio suggest that voluntary programs are not enough. We need common sense regulations that ensure all farmers take precautions to reduce runoff pollution entering the lake.”

The low budgetary commitments and the weak Lake Erie Action Plan are particularly concerning when the economic costs of algal blooms in Lakes Erie are calculated. The federal government sponsored a study that found over \$270 million of damage per year.<sup>139</sup> As the researchers stated: “... we find that [algal blooms] are likely to impose very substantial costs on the Lake Erie basin economy over 30 years under business-as-usual assumptions. We further find that a sizeable share of these costs can be avoided if policy actions are taken to control phosphorus loadings to the lake.”<sup>140</sup>

**Score: 2** - needs significant improvement with little meaningful movement to meet commitment: we are unsure how these actions “renew the commitments to protect the Great Lakes”

#### 4.3.4. The Cohen Commission on Salmon in the Fraser River

The steady decline of the sockeye salmon in the Fraser River over the past several decades has put enormous pressure on Indigenous and non-Indigenous communities that depend on the fish, whether for food, social, and ceremonial purposes, recreational pursuits, or livelihood. The low numbers resulted in the closure of the sockeye fisheries for many years.

The previous federal government created the *Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River*, headed by Justice Bruce Cohen, to investigate the causes of the decline and to recommend solutions to reverse it. The Commission took more than two years to complete and in 2012 released in a three-volume report with 75 recommendations. The entire inquiry cost some \$37 million.

The recommendations are pragmatic and wide-ranging, covering habitat protection, salmon farming, hatchery management, fisheries management, government accountability and more.

## Our Assessment

The federal government provided an annual implementation report in 2017, and while this progress report, like the one in 2016, is an important demonstration of transparency, many particulars in the report are disappointing. The pace of implementing the recommendations has slowed since the last update in 2016. The 2017 update reports on 64 out of 75 recommendations that have been “acted upon.”

While this is a good start, the recommendations were intended to be fully completed, not just “acted upon.” Many of the recommendations have deadlines attached to them, which have long since lapsed.

In many cases, where DFO report they have “acted on” recommendations, they have fallen far short of actually completing them.

**Score: 2** - needs significant improvement as there has been little meaningful movement to meet the commitment

## ISSUE 5. CEPA REFORM



## 5.0. CEPA Reform

CEPA is the *Canadian Environmental Protection Act*, a Mulroney era law where five different environmental laws were combined into one. CEPA is now recognized as the principal federal law to protect Canadians and their environment from toxic pollution. Environmental experts have frequently criticized the Act as too slow, lacking accountability and being ineffective in reducing toxic chemical pollution to safeguard Canadians and the environment.<sup>141</sup> Their concerns are valid: according to the Conference Board of Canada, our country ranks 14th among 16 peer countries in environmental performance.<sup>142</sup>

### The Campaign Promise

There was no formal promise on CEPA in the election platform. However, this government is required to review the law because CEPA contains an automatic review provision requiring the government of the day to conduct a public review after five years.

### Mandate letter for Minister of Environment and Climate Change

While CEPA is not specifically mentioned in the Mandate Letter, the Minister of Environment and Climate Change agreed "...that changes are needed to modernize and improve CEPA" and "...to publishing a detailed report that explains its overall approach to improving the implementation of the Act..."<sup>143</sup>

## Our Assessment

The CEPA Review began with the *House of Commons Standing Committee on Environment and Sustainable Development*. The Committee was tasked with reviewing the law, in particular as it regards air and water quality, pollution prevention planning, precautionary thresholds for persistence and bioaccumulation in toxicity assessments, chemicals management, risk management strategies, and re-assessment of substances.<sup>144</sup>

The Committee held hearings, inviting over 55 witnesses from industry, environmental groups and academia, and received hundreds of written submissions. The Committee released its CEPA Review Report in June of 2017,<sup>145</sup> with the Conservative Party members of the Committee issuing a dissenting report,<sup>146</sup> and NDP Committee members issuing a supplementary report.<sup>147</sup> Both opposition parties agreed that CEPA needs to be amended and improved.

In releasing the report, Committee Chair Deborah Schulte MP for King-Vaughan said, "The Act has now been in place for almost three decades. It is time to bring it into the 21st century by taking into account new scientific knowledge and evolving concepts in environmental law."

The Report was well received by environmental groups<sup>148</sup> and Environmental Defence observed that "Canada's laws are now significantly weaker than those in Europe and the U.S. when it comes to regulating toxic chemicals. The report's recommendations provide a strong foundation to finally ensure strong protections of human health and ecosystems."<sup>149</sup>



The Report calls for a ban on “substances of very high concern” unless industry can prove they can be used or emitted safely, and that there are no feasible substitutes. This ‘reverse-burden’ provision would address concerns raised by public health advocates, who say the current CEPA is not sufficiently precautionary and underestimates risks.

Among others, further recommendations include:

- adding legislative amendments aimed directly at addressing endocrine disruptors and vulnerable populations;
- requiring chemical risk assessments to include substances’ aggregate, cumulative and synergistic effects;
- imposing mandatory labelling of all consumer products containing chemicals known or suspected of causing certain adverse health effects;
- integrating a human rights approach through legal recognition of the right to a healthy environment, protections for vulnerable populations and improved opportunities for public participation;
- changing the review and approval process for new chemicals; and
- mandating reassessment of a substance within a prescribed timeline, when another OECD country places new restrictions on it, when its use significantly expands, or when new information on it comes to light.

The federal government had to respond within 120 days of the Report’s publication. Minister McKenna responded with a letter to Committee Chair Schulte. In it, the Minister notes that “...the Government agrees with the Committee that changes are needed to modernize and improve CEPA.”<sup>150</sup>

This statutory review took place under this government’s watch and they have a duty to respond to the Committee Report. As such, we are pleased that Minister McKenna committed to responding to each of the Report’s recommendation by June 2018 and also noted that some of the recommendations will not need statutory changes, but rather can be achieved “...through improved program delivery.”<sup>151</sup>

While we understand that modernizing CEPA was not in the Minister’s mandate letter, nor an election promise, and that the government’s environmental law reform agenda is a busy one, CEPA has been neglected for almost two decades and is in urgent need of improvement. The Standing Committee has made a number of scientifically relevant and timely recommendations that are supported broadly by public health and environmental experts. In sum, we are looking to the Government to introduce a bill and modernize CEPA this spring, in line with the recommendations of the Committee’s report, and facilitate its passage before the next election.

**Score:** too early to assign a score; score will depend on converting the promising work of the Committee into a Bill, introducing it in June and passing it promptly

## ISSUE 6. REFORMING THE CHARITABLE REGULATORY FRAMEWORK



Charities have long played a critical role in Canadian society. Charities bring expertise to public policy development, create innovative solutions to issues, provide much-needed services, and engage diverse stakeholders. Indeed, much of the innovation in modern policy-making originates in charities.

Over the years, charities have accomplished a great deal: ending acid rain, reducing drinking and driving, ending smoking in the workplace, and introducing cancer-screening standards. All these were the result of organizations bringing public and government attention to issues that required changes in policy.

At the same time, charities have a difficult existence. They are expected to deliver programs and improve the social, health and environmental conditions of the country. They are also consistently underfunded and require the volunteer labour of thousands.

Yet with all those challenges, the sector is governed by a legal framework little changed since the 19th century. This is like regulating the aviation industry with horse-and-buggy rules. This occurs despite the tremendous economic impact the non-profit and charitable sector has on the country: it employs over 2 million people and accounts for 8% of the GDP. We would never accept an outdated regulatory framework for any industrial sector of that size.

On top of that, the former federal government launched public attacks when they pursued politically motivated audits. Ministers of the former federal government made outlandish accusations against environmental charities, claiming they were “foreign funded special interest groups,” had a “radical ideological agenda” and insinuated ties to terrorist organizations. In total, over 50 organizations were targeted by the politically motivated audit program.

The organizations represented a wide range of sectors including international development, poverty alleviation and environmental protection. The media, public, opposition leaders and many MPs, including now Prime Minister Trudeau, decried these attacks and committed to end the audits and to reform Canadian law to ensure charities could speak out.

## 6.1. The Campaign Promise

### **The Liberal Party committed to the following during the election:**

“We will introduce a significant overhaul of CRA operating practices to develop a client relationship rather than that of simply a taxpayer. Elements include: ending the CRA political harassment of charities, as well as clarifying the existing rules to clearly affirm and support the important role that charities can and should play in developing and advocating for public policy in Canada.”<sup>152</sup>

## 6.2. Mandate Letters

### **From the mandate letter for the Minister of National Revenue**

“Allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and not-for-profit sectors, working with the Minister

of Finance. This will include clarifying the rules governing “political activity,” with an understanding that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process. This should also include work with the Minister of Families, Children and Social Development to develop a Social Finance and Social Enterprise strategy.”<sup>153</sup>

#### **From the mandate letter for the Minister of Finance**

“Work with the Minister of National Revenue to allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and non-for-profit sectors. This will include clarifying the rules governing “political activity,” with an understanding that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process.”<sup>154</sup>

#### **2018 Budget**

The recent Budget contained similar language to re-inforce the government’s commitments: “The Government has pledged to allow charities to do their work on behalf of Canadians free from political harassment, and promised to clarify the rules governing political activity, with an understanding that charities make an important contribution to public policy. An expert panel was created to study the issue of political activities by charities, and in 2017 this panel provided a series of recommendations to the Government based on consultations held with charities. The Government will provide a response to this report in the coming months.”<sup>155</sup>

## **6.3. Our Assessment**

The federal government ordered a stop to any new politically motivated CRA audits on charities. They also suspended the existing audits launched by the previous government. These were important steps as the audits diverted tremendous resources away from charitable activities and the threat of additional audits was sending a chill effect through the sector.

In late 2016, Minister of National Revenue Diane LeBouthillier conducted a two-month, Canada-wide consultation with charities and the public on the rules under which charities should be allowed to speak out in Canadian society. Minister LeBouthillier remarked on “the critical role charities play in Canadian society” and committed to “working in collaboration with charities to maintain a fair system that respects and encourages their essential contribution.”<sup>156</sup>

Equally promising, in September of 2016, the Minister of National Revenue appointed the *Consultation Panel on the Political Activities of Charities*. The Panel was comprised of well-respected leaders from all areas in the charitable world, and sought to clarify and broaden the ability of registered charities to engage in public policy work in support of their charitable purposes, while maintaining an absolute prohibition on partisan political activities. Their Report called for changes to the current administrative and legislative framework governing charities. The report specifically recommended that legislative changes be made in Budget 2018 to what is currently termed “political activities” of charities.<sup>157</sup>

Since the release of the Panel Report almost a year ago, the government has been quiet – except to restate the mandate letter promises in the 2018 Budget.<sup>158</sup> There is a perplexing level of disconnect between political enthusiasm for charities legal reform and action taken to date. We look to progress on this file before the 2019 election.

**Score: 2** - needs significant improvement



## ISSUE 7.

# CIVIL SOCIETY PARTICIPATING IN PUBLIC POLICY

**Civil society comprises non-governmental organizations, businesses and their associations, unions, and engaged citizens that actively participate in our democracy. Each member contributes in their own way by providing policy ideas, public education and dialogue, research, and convening.**

**In this section we look at the culture of participation in setting public policy: to what degree have citizens, NGOs and others been part of the process during the time of this federal government.**



## 7.1. The Campaign Promise and Mandate Letters

While there are no specific commitments in the Mandate Letters and campaign platform, there was a general promise to “Giving Canadians a Voice in Ottawa” in setting government policy.<sup>159</sup>

## 7.2. Our Assessment

There has been a sea of change in Ottawa when it comes to seeking and listening to voices concerning the protection of the environment. The government has asked independent experts to serve on panels, commissions and advisory committees in developing new environmental policy. This has occurred for virtually all issues discussed in this report. As Nature Canada has noted, “...there has been a markedly different approach to engaging the public.”<sup>160</sup>

Two initiatives to enhance engagement with civil society are particularly positive and noteworthy. First, the federal government relaunched the *Species at Risk Advisory Committee*, a multi-stakeholder body composed of representatives from nature groups, industry, and Indigenous groups to advise on species at risk regulation and policy. Second, the government has also established the so-called *Multi-Interest Advisory Committee* on environmental assessment with multi-stakeholder representation.

The federal government is also to be commended for its openness to meetings with environmental groups and experts. Dialogue with senior and elected officials is an important element in moving towards progress on environmental issues. Moreover, the government has returned to its role of convener: bringing multiple interests together for mature and evidence-based conversations to develop solutions.

At the same time, we sometimes look to our leaders to lead: to know when enough evidence is at hand and action is needed. For example, reforming the laws governing the charitable sector, or acting on commitments to reduce fossil fuel subsidies, can be acted upon now.

Bandwidth is an issue that needs to be acknowledged. The Mandate Letter for the Minister of the Environment and Climate Change is by far the longest for any Department, containing no less than 17 specific commitments. Given the numerous and ambitious targets for environmental action, resources and staff capacity may be insufficient and will need to be augmented for the balance of the mandate.

Resource constraints and lack of attention to necessary details may also be behind lax enforcement of existing laws as demonstrated by the lack of action on the Volkswagen diesel emission scandal and the ongoing leakage of oil sands tailings ponds into the Athabasca River.

**Score: 5** – done and commitment was met



# CONCLUSIONS





## 8. Conclusions

The federal government is making significant improvements to the legal and policy structures that govern the environmental health of the country. They laid out an ambitious agenda for their mandate and reversed many previous cuts to environmental laws, policies and finances.

In many areas, the Government kept its electoral and mandate letter promises in principal. Their execution, however, falls short on some occasions. **We are concerned that:**

- the Paris Agreement targets for carbon emission reductions are quickly becoming out of reach and Canada is unlikely to meet its insufficiently ambitious climate targets;
- in spite of renewed efforts, Canada is not on track to meet land and freshwater protection targets, and concerns remain about standards of protection for marine and terrestrial areas.
- species at risk are not being protected, especially umbrella species like the Woodland Caribou and the Orca;
- the environmental/impact assessment legislation needs further work; and that
- the legal reform for charities is stalled.

We are pleased with the federal government on its:

- financial investments in climate and conservation;
- reform of the Fisheries Act;
- renewed leadership and funding for land and freshwater protection;
- support for Indigenous-led conservation initiatives
- meeting the 2015 marine protection target; and
- suspending the politically-motivated audits on charities.

We look forward to continuing our work with the federal government in its remaining mandate to improve the environmental conditions in the country, to meet our international commitments, and to invest tax dollars wisely in climate and conservation projects.

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This assessment was conducted by a group of leading environmental organizations across Canada. Member organizations only contributed to those sections that fall within their mandates.

