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Deep Geological Repository for Canada's Used Nuclear Fuel Project
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February 4, 2026

RE: Peskotomuhkati Nation Response to NWMO's Initial Project Description – Deep Geological Repository (IAAC Reference No. 88774)

The Passamaquoddy Recognition Group Inc. ("PRGI"), on behalf of the Peskotomuhkati Nation in Canada, provide these comments in response to the Impact Assessment Agency of Canada's ("Agency") call for feedback on the Nuclear Waste Management Organization's ("NWMO") Initial Project Description ("IPD") for the Deep Geological Repository ("DGR").[1] We represent the interests of Rights holders and the Peskotomuhkatik ecosystem. Our duty is to protect our lands, waters, and environment for all present and future generations.

We have a direct and compelling interest in the impact assessment ("IA") of the DGR because the project intersects with Passamaquoddy territory, rights, and long-term environmental stewardship. Point Lepreau Nuclear Generating Station is located within Passamaquoddy traditional and unceded territory, and it is a key source for used nuclear fuel that would be transported to Ontario for long-term disposal.

It is imperative that the Integrated Review Team tasked with this project's review, composed of the Agency and the Canadian Nuclear Safety Commission ("CNSC"), is committed to upholding the Honour of

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[1] Impact Assessment Agency of Canada, *Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project*, Project No 88774; Nuclear Waste Management Organization, Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project and Initial Project Description Plain Language Summary - English (December 2025) [**IPD**].

the Crown. The Crown's ultimate purpose is reconciliation,[2] and this process, a test of NWMO's commitment to truly moving ahead in a way that upholds Treaty obligations with regard to nuclear projects proposed and occurring in our territory. Our consent is not an afterthought, nor a procedural checkbox; it is a constitutional and Treaty requirement, central to Peskotomuhkati identity and our responsibilities to future generations.

While Treaty rights have been recognized and affirmed by the Constitution in Canada, the forever lasting consequences of Canada's failure to honour the Treaty relationship, which has resulted in profound and lasting impacts to the health of the Bay of Fundy, means this IA must work to restore the nation-to-nation dialogue that the Treaties were built upon.

We are deeply concerned that if this project does not proceed for an IA, and the significant gaps and mischaracterizations in the IPD remain unaddressed, our longstanding concerns will be effectively silenced. In providing these comments, we also recognize the substantial record that already exists - both from our Nation and many others - who continue to speak out about nuclear energy and radioactive waste.[3] We urge the Agency to consider this history and the thousands of allies from across Canada who have supported our call to seek justice for our communities now and generations to come.[4]

In closing, we ask to be engaged in this matter and our free, prior and informed consent respected. We hold lived and intergenerational knowledge —particularly related to environmental justice, and long-term stewardship— that must not be overlooked or minimized. As an Indigenous Nation that has been and will continue to be affected by the activities inherent to this project, we remind the Agency the IA must move ahead in an honourable way and no decision about us is to be made without us.

Please ensure to copy <contact information removed> on any related correspondence.

All My Relations,

<Original signed by>

Hugh M. Akagi

Chief of Passamaquoddy Peoples

cc.

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[2] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 66.
[3] Abby Bartlett, Robbie Atwin & Susan O'Donnell, *Indigenous Views on Nuclear Energy and Radioactive Waste* (PRGI & CEDAR Project, St. Thomas University, Fredericton, NB, November 2024)
[4] *Ibid*, p 16; Legal Advocates for Nature's Defence, "Take Action - Say Yes to Protecting Communities & Nature for Generations to Come" 14 Jan 2026.

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1 - About Peskotomuhatikuk and its people

The Passamaquoddy People (Peskotomuhkati Nation) are an Indigenous Nation whose unceded territory includes lands and waters of much of the Bay of Fundy, including the coastal and marine environment surrounding the Point Lepreau Nuclear Generating Station in present-day New Brunswick. The Nation has lived in and governed this coastal homeland since time immemorial, relying on the Bay of Fundy for food, travel, cultural practices, and intergenerational continuity. These lands were never surrendered; rather, the relationship between the Passamaquoddy and the Crown is grounded in the Peace and Friendship Treaties, which affirmed coexistence without extinguishing Indigenous rights or jurisdiction.

Point Lepreau began operating in the early 1980s, introducing nuclear generation — and the long-lived radioactive waste it produces — into the heart of the Passamaquoddy homeland. As set out repeatedly in Passamaquoddy submissions to the Canadian Nuclear Safety Commission (CNSC),[5] the nuclear facility was sited and brought into operation without consultation or consent from the Passamaquoddy Nation, despite the profound and enduring implications for their lands and waters. The Passamaquoddy are the people indigenous to the territory on which the 'Lepreau' Nuclear Power Station resides.

PRGI has consistently maintained that continued operation, refurbishment, relicensing, and the ongoing generation and storage of radioactive waste constitute present-day decisions that perpetuate and deepen the original infringement. We have asserted that each day the plant operates, without the Nation's consent, compounds the intergenerational burden borne by the Nation.

The Bay of Fundy is a living marine system that sustains cultural practices, and relationships that extend across generations and species. Nuclear operations at Lepreau — including routine emissions, waste storage, and the potential movement of radioactive materials — directly intersect with these responsibilities. Anything that touches the activities at the site, triggers the Nation's Constitutional right to know, to be informed, and provide consent.

2 - Preliminary Issues and Procedural Fairness Concerns

PRGI raises serious procedural concerns with the current approach to early engagement and planning for this project. While IAAC has emphasized that "early engagement" is essential to an effective and efficient assessment—particularly under compressed timelines—PRGI's experience to date is that notice, resourcing, and scoping practices are not aligned with meaningful participation or reconciliation in practice. The result is that the Peskotomuhkati Nation is placed in a reactive position, expected to respond within tight windows to complex materials without the basic conditions required for informed engagement.

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[5] Hugh M Akagi, Chief of the Passamaquoddy People, "Written Submission to the Canadian Nuclear Safety Commission" Point Lepreau Nuclear Generating Station Relicensing, Nov 14 2010; Hugh M Akagi, Chief of the Passamaquoddy People, Letter to CNSC Re: "Clarification of Consultation and Position on the Refurbishment of the Point Lepreau Reactor" Dec 17, 2010

First, PRGI was not provided advance notice that the IPD would be posted, nor of the timing of the associated short comment period. For a project that is inherently interprovincial and linked to the nuclear fuel cycle, upholding our rights to participate and procedural fairness requires proactive, early, and direct outreach to Indigenous Nations whose rights and interests may be adversely affected—well before a formal Registry posting triggers a deadline. "Early engagement" cannot be satisfied by inviting Nations to participate only after a formal clock has started. As an integrated impact assessment by the IAAC together with the CNSC, we implore both federal agencies to ensure predictable communications and adequate lead time before announcing time-limited comment periods.

Second, PRGI is concerned that the IAAC and CNSC are scoping "who is impacted" through a geographic-radius lens rather than through rights-based analysis and Indigenous self-determination. In PRGI's experience, the CNSC has relied on inappropriate proximity or geographic-based screening to determine who is owed a duty to consult or engage, which risks excluding Nations with direct interests in the project. The DGR proposal is not a local project with only local effects: it is a national waste management undertaking inherently tied to ongoing operations across the country, including facilities whose wastes are intended for the repository. The IA for this project should explicitly reject rigid geography and distance-based assumptions and instead adopt a rights-based, effects-based approach that takes seriously Indigenous assertions of impact, including impacts arising from the continued nuclear operations in our territory.

Third, capacity barriers are an immediate and determinative procedural and justice barrier. For instance, PRGI is concerned by the lack of adequate participant funding made available in advance of soliciting our comments. Where engagement is expected early, capacity must be available early, with timelines and funding decisions that allow Nations to retain expertise, review documents, convene knowledge holders, and develop key issues submissions before deadlines expire. Retroactive or uncertain funding approval forces Nations to assume financial risk simply to participate, which undermines equitable participation and predictably reduces the quality and completeness of the record.

Lastly, while PRGI submits these comments to the Integrated Review Team, we request greater transparency about the integration roles and responsibilities. Due to existing distrust of the CNSC and their lack of environmental assessment expertise (which we expand on more in Part III below),[6] where IAAC and the CNSC are operating in an integrated manner, Indigenous Nations need clear disclosure—at the outset—of who is responsible for notice, engagement, Registry postings, scoping decisions, and participant funding communications. PRGI also requests that IAAC put in place a predictable engagement practice for the DGR file, including: (a) advance notice of upcoming postings and deadlines; (b) a clear pathway for Nations to enter the process based on rights assertions and self-determined interest; and (c) timely, adequate capacity supports to enable meaningful participation. These procedural steps are essential to ensure the DGR planning phase is not merely a formal exercise, but a fair and workable foundation for the assessment that follows.

[6] *For further information, see a recent letter from PRGI to the CNSC:* "Federal Lands Assessment for Gentilly-1 Waste Facility" Nov 24, 2025.

3 - An Impact Assessment of the Project is Warranted

PRGI submits there is ample basis for the Agency to decide that per section 16(1) of the *Impact Assessment Act,* an impact assessment of the designated project is warranted.[7] In keeping with the factors set out in 16(2) of the *IAA*, there is a substantial and confirmed record from which to find this project out to proceed for an IA before a review panel.

As we detail below, PRGI submits:

1. An IA is best placed to assess this project's adverse effects[8] as other review processes, like nuclear licensing are not a sufficient equivalent to IA and do not provide meaningful consideration of our rights and interests;
2. The project does pose adverse effects within federal jurisdiction including to lands in multiple provinces, to fish and fish habitat, species at risk and migratory birds;[9] and
3. The project does impact the rights of Indigenous Peoples whose rights are recognized and affirmed by section 35 of the *Constitution Act.*[10]

The rationale we point to for why an IA is so critically needed in this instance, also speaks to the crucial information that must be included within the Tailored Impact Statements Guidelines (TISGs) if the Agency and Review Panel is to fully understand and assess the potential impacts of the project being proposed.

A - An impact assessment is best placed to assess this project's adverse effects

Among the factors the Agency must take into account in deciding whether or not an IA is required for the project is:

> **16(2)(f.1)** whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the designated project;

PRGI submits impact assessment is the best available means (besides an Indigenous-led assessment) we have to ensure a thorough, independent and robust review of the project's adverse effects. While the NWMO's IPD makes repeated reference to other 'specific CNSC licence conditions' and 'licensing'[11] as a means of ensuring environmental protection, for the three interrelated reasons we discuss below, PRGI submits current regulatory licensing processes overseen and conducted by the CNSC are not an equivalent nor sufficient substitute for an IA pursuant to the *IAA*.

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[7] *Impact Assessment Act* (*IAA*), SC 2019, c 28, s 1 at s 16(1) [***IAA***]
[8] IAA, s 16(2)(f.1)
[9] IAA, s 16(2)(b)
[10] IAA, s 16(2)(c)
[11] IPD, p 52, 69

i. Nuclear licensing permits projects to proceed absent meaningful fulfillment of consultation and respect for Peskotomuhkati rights

Forty years ago, the nuclear industry built a nuclear reactor in Peskotomuhkati homeland at Point Lepreau on the Bay of Fundy. They did this without consent despite the reactor creating hundreds of tons of used nuclear fuel – high level nuclear waste – that will remain toxic to all living things for hundreds of thousands of years; this stockpile continues to grow.

While the we have been participating in good faith with the CNSC, in hearings and meetings related to nuclear developments at Point Lepreau - well before the 2008 refurbishment of the Point Lepreau nuclear station[12] - the relationship PRGI currently has with the CNSC regarding PLNGS is inequitable and is not aligned with Crown commitments to the Peace and Friendship Treaties.

We continue to meet with CNSC staff to discuss nuclear issues in our territory such as (but not limited to):

- The federal licence issued by the CNSC for ongoing operations at the Point Lepreau Nuclear Power Generating Station,
- Clarification of our comments and CNSC responses in response to concerns we raised in annual 'regulatory oversight report' proceedings,
- NB Power's application to the CNSC regarding a License to Prepare Site for the ARC-100, the Provincial Environmental Impact Assessment related to the ARC-100, as well as our desire and support of the two requests to Environment Minister Guilbeault for a Federal impact assessment for the ARC-100 and Moltex small modular nuclear reactor (SMNR) projects,
- Reprocessing and the planned Moltex SMNR,
- And a multitude of other nuclear-related topics.

We share this history to underscore that despite our longstanding and rigorous attempts to be involved in nuclear activities happening within our territory and impacting Peskotomuhkati rights, in none of these engagements has the CNSC meaningfully fulfilled the Crown's consultation obligations. We are not experiencing what we consider a reciprocation of our efforts. While the CNSC does meet with us, there is no action which addresses our concerns.

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[12] Passamaquoddy Recognition Group Inc, "Submission to the Canadian Nuclear Safety Commission" (Renewal of the Point Lepreau Nuclear Generating Station Operating Licence, Hearing Ref 2022-H-02, 2022); Canadian Nuclear Safety Commission, *Transcript of Proceedings* (Public Hearing on the Renewal of the Point Lepreau Nuclear Generating Station Operating Licence, May 10, May 11 and May 12, 2022); Passamaquoddy Recognition Group Inc, "Supplemental Submission to the Canadian Nuclear Safety Commission" (CMD 22-H2-244, 27 April 2022); *see also* "Submission by PRGI to CNSC Regarding the 2023 ROR for Nuclear Power Generating Sites" dated Jan 11, 2025 and "Submission by PRGI to CNSC Regarding the 2024 ROR for Nuclear Power Generating Sites" dated Jan 28, 2026 [**ROR 2024**].

ii. CNSC licensing is not a sufficient nor equivalent alternative to a federal IA

The CNSC derives its authority and powers from the *Nuclear Safety and Control Act (NSCA).* This Act has harmed, not helped, the ongoing injustice to the Treaty relationship Canada shares with our Nation, as it permits the use and destruction of our lands and waters absent our free, prior, and informed consent - essentially enshrining a legal framework that undermines our sovereignty.

The CNSC has adopted a licensing process that considers a much narrower range of factors – to the detriment of fully understanding cumulative impacts and impacts to rights and thus, we have not found the *NSCA* conducive to Indigenous-led or rights-based assessments.

Relative to an IA, relying on the CNSC's review process to inform understandings of adverse effects and impacts is a major step backwards. Unlike an IA which takes into account a project's full lifespan, the CNSC's licensing process is narrowly defined by the stage of activity being licensed. For instance, the IA process reviews all activities within the lifespan of the project, from development through to decommissioning, including impacts of projects which are 'direct or incidental' to the project, prior to any decision being made regarding its development.

In comparison, the CNSC has maintained its narrow regulatory focus, adopting an individualized or a stage-specific approach to engagement with licensing narrowly defined by the stage of activity being licensed and the life-cycle, which is divided into five licence categories for: (1) site preparation, (2) construction, (3) operations, (4) decommissioning; and (5) abandonment.

The CNSC's piecemeal licensing approach is not effective in assessing a project's actual adverse effects because it provides no upfront review of all stages of the project's life and means consideration of impacts occur in licensing hearings spaced years if not decades apart.[13] When we raise these concerns about the gaps in how the CNSC approaches licensing, the CNSC seeks to rely on their mandate as a factor *limiting* the inclusion of these more broadly scoped considerations.[14] As a result, the CNSC - acting as the Crown - is insufficiently engaging on these topics that are profoundly significant to our rights and interests.[15]

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[13] M.V. Ramana, Kerrie Blaise, *Regulation vs promotion: Small modular nuclear reactors in Canada*, Energy Policy, Volume 192, 2024, 114228, ISSN 0301-4215, https://doi.org/10.1016/j.enpol.2024.114228

[14] *See for instance,* ROR 2024, *supra* note 12; *see also* remarks made during the 2022 relicensing hearings for the Point Lepreau Nuclear Station where CNSC President Velshi remarked "Many interventions in this hearing discuss possible future developments such as … the transportation of nuclear waste to an offsite waste storage facility. It is important to remind the participants that such activities are not part of this renewal application and authorization for such activities will come before the Commission, be subject to the Commission's hearing process and review in due course," Hearing Transcript dated May 10, 2022 at p 9

[15] *See also,* ROR 2024 *supra note* 12 and our recent remarks to the CNSC provided as part of their annual regulatory oversight report process

iii. The CNSC is a laggard in implementing the United Nations Declaration on the Right of Indigenous Peoples (Declaration) and upholding its rights and principles

The CNSC's approach is contrary to Canada's stated intent to advance reconciliation and nation-to-nation relationships and their current practice, not adequate in meeting standards required to uphold s.35 Constitutional rights.

Consultation by the CNSC is occurring at a markedly deficient standard not in keeping with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration or UNDRIP), the domestic *UN Declaration Act* (UNDA),[16] nor expectations adopted by other energy regulators.[17] The threshold of consent must be met if Peskotomuhkati inherent rights, including rights to self-determination, are to be upheld in light of nuclear projects proposed and occurring in Peskotomuhkati territory. The UN Declaration, UNDA and the Action Plan directly advance our right to self-determination and move us away from the CNSC model, wherein our role is limited to imputing specific concerns into a licensing regime which is neither Indigenous-led nor a nation-nation process.

An IA is thus of critical importance so a review of the project proceeds in a way that has the potential to respect the laws, traditions and values of the Nation and that we equally inform decision-making, including its process and outcomes. This position is in conformity with the UN Declaration and UNDA,[18] which requires Peskotomuhkati's free, prior and informed consent before any storage or disposal of hazardous materials takes place in Peskotomuhkati lands or territories.

From our perspective, the UNDA provisions clearly reflect Parliament's intention to adopt a whole of government approach to ensure Indigenous Peoples' Rights are recognized and protected when impacts to their territories exist. However, because we are yet to see CNSC implement the UN Declaration and UNDA, our hands are effectively tied. For instance, the CNSC abstained from applying the Declaration in its decision for the licensing of a nuclear waste facility at Chalk River, despite it being raised by multiple Indigenous intervenors:

> The Commission recognizes Canada's commitment to UNDRIP and the framework for reconciliation and implementation of UNDRIP set out within UNDA. However, while the jurisprudence on the legal effect of UNDA will surely develop over time, the Commission, as a

[16] UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, A/RES/61/295, 2 October 2007 [**UNDRIP**]; *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [**UNDA**]

[17] What's more, the CNSC is not among the named regulators in Canada's Declaration Action Plan which prescribes measures for implementing the Declaration in Canadian law. While this does not mean that the Declaration does not apply to the CNSC, the Action Plan provides helpful illustrations of expectations for regulators in implementing the Declaration and the type of actions the CNSC could undertake. For instance, the Action Plan behooves the Canada Energy Regulator to enable First Nations to exercise federal regulatory authority in respect of projects they regulate. The Impact Assessment Agency of Canada, likewise, is similarly compelled to recognize Indigenous governing bodies and enter into jurisdictional agreements for the purpose of Impact Assessment functions and decision-making powers.

[18] *UNDRIP*, Article 29.2

> creature of statute, is not empowered to determine how to implement UNDRIP in Canadian law and must be guided by the current law on the duty to consult (emphasis added).[19]

This decision has since been overturned by the courts, where Justice Blackhawk found:

> [T]the Commission incorrectly determined that it did not have the jurisdiction to consider the UNDRIP and the UNDA and that they were not applicable to the DTCA analysis. I agree that the Commission's failure to address the applicability of the UNDRIP and the UNDA in its analysis of the fulfillment of the DTCA was an error of law.[20]

Despite the clear direction given by the courts,[21] the CNSC is yet to reach out to PRGI indicating they are reviewing licences in light of historic injustices and their legal error wherein they excluded the UN Declaration from their decision-making, nor announce they will be reforming the *NSCA* to ensure its compliance with the UN Declaration. It is this history and experience that informs our recommendation to the Agency that it *not* rely on nuclear licensing as a stand-in for IA, and also, our misgivings that the CNSC be part of this project's 'Integrated Review Team.'

B. The Project Poses Adverse Effects within Federal Jurisdiction

PRGI submits there are a number of adverse effects posed to areas of federal jurisdiction that make it imperative that this project be properly subject to an IA.[22]

i. A change to the environment in another province

As we expand on in more detail below in Part 4 - Gaps in NWMO's Initial Project Description that must be remedied below, there is a dearth of publicly available information about the transportation routes, including information about the volume, nature, characteristics and potential additional hazards associated with the wastes, and emergency response plans being reviewed and investigated by the NWMO.

The onus should not be on PRGI to seek out information about the potential for releases of radioactivity and other contaminants during transportation, handling, processing and emplacement of used nuclear fuel in the DGR. Instead, the interprovincial effects which will be borne by New Brunswick, Quebec, Ontario and Manitoba ought to undergo IA review.

ii. Impacts to fish and fish habitat

Among the directly related and activities that are incidental to the DGR, is the handling, repackaging and loading of the approximate 250,000+ bundles of used fuel waste currently disposed of at Point Lepreau.[23]

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[19] CNSC, "Record of Decision In the Matter of Canadian Nuclear Laboratories," Jan 8 2024, para 432
[20] *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319, para 57
[21] *Ibid*
[22] IAA, s 16(2((b) and 2
[23] NWMO, "Nuclear Fuel Waste Projections in Canada – 2024 Update," November 2024, p 7 [**Waste Inventory**]

Each of these activities poses the risk of radiological release into the environment and by virtue of Point Lepreau nuclear generating station being located on the shores of the Bay of Fundy, to the aquatic environment as well. It is critical there be an IA so that there is an opportunity to study impacts to fish and fish habitat.[24]

The fish, fish habitat and aquatic species in freshwater and marine ecosystems at and near Point Lepreau have been impacted by the operations of the Lepreau nuclear plant for over 40 years. The Bay of Fundy is a living marine system that sustains cultural practices, and relationships that extend across generations and species. Nuclear operations at Lepreau — including routine emissions, waste storage, and the potential movement of radioactive materials — directly intersect with these responsibilities. Anything that touches the activities at the site, triggers the Constitutional right to know, to be informed, and provide consent.

The existing radiological contaminants from the Lepreau nuclear site include emissions of tritium, carbon-14, iodine-131, noble gasses, and gross beta. In samples from ponds, lakes, streams and puddles on the Point Lepreau site, tritium appears in surface freshwater and sediments as the most abundant radionuclide at 15,200 Bequerels per Litre (Bq/L). This is more than twice the drinking water limit of 7,000 Bq/L.[25] Heavy metals such as cadmium and chromium, and the toxin arsenic, were similarly measurable in surface freshwater and sediments.[26]

The Bay of Fundy is also experiencing ongoing impacts such as pollution, habitat loss, overfishing, and fishing gear entanglements. These are augmented by warming waters, ocean acidification, sea level rise and increasing frequency and severity of storms, all caused by climate disruption. Given the existing radiological and non-radiological contaminants to fish and fish habitat from the existing activities at the Point Lepreau site, it is critical that this project, its cumulative and interrelated effects, be assessed as part of the IA process, taking into account existing pressures on the marine environment.

iii. Impacts to Species at Risk

In recognition of the Bay of Fundy's unique geological formations and ecological significance, a section of the Bay further along the coast from Point Lepreau was designated a UNESCO Biosphere Reserve in 2007.[27] The Bay of Fundy is home to several federally protected aquatic species under the Species at Risk Act, including the North Atlantic right whale, the blue whale, and the fin whale.[28]

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[24] IAA, s 16(2)(b) and 2(a)(i)
[25] New Brunswick Power. (2021). Point Lepreau Nuclear Generating Station Environmental Risk Assessment Update. ENA-07005-7005 Rev. 2. Table 4.9 On-Site Surface Water Concentrations for Radiological COPCs, p 158-159.
[26] *Ibid*
[27] United Nations Educational, Scientific and Cultural Organization, "Biosphere Reserves – Fundy" (2022) online: https://www.fundy-biosphere.ca/en/
[28] Species at Risk Public Registry, "North Atlantic Right Whale" (2022); Species at Risk Public Registry, "Blue Whale Pacific" (2022); Species at Risk Public Registry, "Blue Whale Pacific" (2022)

It is critical an IA be conducted to provide an opportunity to review any change or impact to aquatic species protected under the *Species at Risk Act,* precipitated by the handling or movement of high level radioactive materials at the Point Lepreau site.[29]

iv. Impacts to Migratory Bird

In addition to the marine mammals like whales, porpoises, dolphins and seals that frequent the Bay of Fundy, thousands of shore and colonial waterbirds also use the area during seasonal migrations, for foraging and nesting.[30] A critical part of the IA process is to identify priority migratory species and comprehensively review seasonal migratory bird data, both on land and at-sea. Migratory pathways should be charted against plume exposure, in the event of an accident, and the capacity for marine response and migratory bird monitoring assessed.

It is critical there be an IA to assess the effects on migratory birds,[31] and that the NWMO be required to demonstrate concrete, measurable steps to minimize and offset effects to migratory birds caused light, radiological and non-radiological emissions, and accidents resulting from the handling, packaging and movement of high level radioactive waste at the Point Lepreau site.

C. The Project Poses Adverse Impacts to Peskotomuhkati Rights

The proposed project has direct implications in the territory of the Peskotomuhkati Nation, with the potential to negatively impact section 35 *Constitutional* rights[32] by virtue of the fuel rod inventory currently located at Point Lepreau,[33] and its necessary handling and transport to get to the DGR in Ontario. Because of the risk of radiological emissions and accidental releases resulting from the handling, packaging and movement of high level radioactive waste at the Point Lepreau site and subsequent impacts to Peskotomuhkatirights, an IA ought to be required.

The Peskotomuhkati were never consulted when nuclear developments began in our homeland, at the site of NB Power's Point Lepreau Nuclear Generating Station. The nuclear operations at the Point Lepreau site continue without Peskotomuhkati free, prior and informed consent. This situation is a pressing concern as high-level nuclear waste stockpiles grow, despite our best efforts to bring this to the attention of all levels of government and engage in good faith.

Plans to now remove and move the waste that have been stockpiled, must be subject to our full, fair and equitable involvement if Canada, as a Treaty partner, is to begin to remedy the Nation's exclusion from project decision-making directly impacted the Nation's rights and interest. Since the 1980s, nuclear operations have occurred in the homeland, Peskotomuhkatihkuk, absent Peskotomuhkati consent. As we

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[29] IAA, s 16(2)(b) and 2(a)(ii)
[30] Saint John Naturalists' Club Inc. "Point Lepreau / Maces Bay Important Bird Area, New Brunswick" (Oct 2020), online: https://www.ibacanada.org/documents/conservationplans/nbpointlepreau.pdf; P. Hicklin, "The Migration of Shorebirds in the Bay of Fundy," 1987, Wilson Bulletin 99(4), p 540 – 570
[31] IAA, s 16(2)(b) and 2(a)(iii)
[32] IAA, s 16(2)(c)
[33] Waste Inventory, *supra* note 23

have communicated with all levels of government on numerous occasions, nuclear projects must always be subject to impact assessment underscored by consultation processes recognizing the importance of the Nation's free, prior, and informed consent.[34]

Currently for nuclear licensing, the Crown relies on the CNSC to fulfill constitutional obligations to Indigenous Peoples when a decision is being made that may adversely impact rights. Our associated Treaty rights and interests must be at the forefront of these discussions, as they are the basis of Section 35, and this section of the Constitution is only a reaffirmation of Treaty Rights, which existed long before Canada was a country.

Concerningly, as a direct result of the CNSC's failure to meaningfully consult and enable Indigenous jurisdiction for decision-making in relation to nuclear projects, these projects and licensing decisions are proceeding without fulfilling the Crown's obligations. This approach - that concentrates decision-making authority in a federal regulator, while treating Indigenous Nations as parties to be consulted only after priorities, processes, and timelines have already been set - cannot continue for the DGR and thus our insistence that an IA is warranted.

The power of the Treaties was supposed to mean 'no impact' to Indigenous peoples - this is explained traditionally in the Two-Row wampum belt. The Supreme Court of Canada has also reiterated that Canada must honour the Treaties.[35] Current and proposed nuclear projects create potential infringements to our Indigenous and Treaty rights and underscore the critical need for consultation that meaningfully considers the cumulative environmental, socio-economic and health effects of these nuclear projects.

The direct, indirect and cumulative effects of currently proposed and operational nuclear activities on Peskotomuhkati rights, interests and lands are significant, particularly since all the above-noted projects are proposed within Peskotomuhkati traditional territory.

As we've attempted to describe throughout this comment, choosing licensing over IA would create a two-tier standard that weakens the protection of Peskotomuhkati rights; this would be simply unacceptable. The legitimacy of any assessment process in our territory requires consistency with the UN Declaration. As the Declaration is hardwired into the IAA, and we cannot accept reliance on another law where the federal body had to be compelled by court order to oblige with the UN Declaration standard.

4 - Gaps in NWMO's Initial Project Description that must be remedied

There are two significant issues in the NWMO's framing of the project that must not be accepted by the Integrated Review Team, namely, issues of transportation activities and commitments regarding

[34] Letter from PRGI, Comments on the "Draft Cooperation Agreement Between New Brunswick and Canada" the "One Project, One Review" Discussion Paper, 7 Nov 2025; *see also* footnotes 5 and 12

[35] *R v Badger,* [1996] 1 SCR 771 at para 41-42; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 SCR 388 at paras 4, 51 - 58

reconciliation.

PRGI respectfully urges the Agency to ensure the concerns and gaps we discuss below, be remedied in subsequent stages of the IA, including the Tailored Impact Statement Guidelines (TISGs). It is crucial the guidelines require the inclusion of this crucial information, if the Peskotomuhkati Nation, the public and the Review Panel is to fully understand and assess the potential impacts of the project being proposed.

A - Transportation Activities

PRGI opposes the NWMO's vision and rationale that transportation related activities be excluded from the IA. As they set out in their IPD:

> [T]ransportation activities along the new access roads, site roads, and rail spur constructed for the Project, and activities related to the Project within broader transportation networks remain outside the Project's scope.[36]

PRGI submits transportation activities, which includes the handling, packaging and preparation of the high level waste, is necessary to the DGR and supported by legislated requirements set out in the *Nuclear Fuel Waste Act,* the *IAA* and its regulations. Failing to include transportation activities with the IA would mean increased secrecy, reduced transparency and less information that can be shared, making it even more difficult for the Nation to make informed decisions about impacts to Peskotomuhkatikuk.

This IA must be robust, independently verified and publicly justified with information to properly assess and accommodate project impacts. As drafted, NWMO's vision of the project which aims to exclude transportation, would preclude us from understanding the full range of potential and cumulative impacts on Peskotomuhkati rights. And, as we have detailed above in Part 3A - An IA is best placed to assess this project's adverse effects, nuclear licensing for transport - as proposed by the NWMO - is not an equivalent nor sufficient substitute for an IA that includes these project components that are directly linked, inherent and necessarily incidental to the project.[37]

i. The 'Nuclear Fuel Waste Act' requires the inclusion of handling and transportation activities

The legislative scheme developed for the management of used nuclear fuel waste, as set out in the *Nuclear Fuel Waste Act* (NFWA)*,* supports our call for the inclusion of transportation and related activities within the scope of the IA.[38]

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[36] IPD, p 26

[37] IAA, s 2 defines "direct or incidental adverse effects" as "non-negligible adverse effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity or designated project, or to a federal authority's provision of financial assistance to a person for the purpose of enabling that activity or project to be carried out, in whole or in part."

[38] *Nuclear Fuel Waste Act*, SC 2002, c 23 [**NFWA**]

The *NFWA* mandated the NWMO develop a plan for the management of nuclear fuel waste and, over a three-year period, review the following management options: (i) deep geological repository (DGR) in the Canadian Shield; (ii) storage at nuclear reactor sites, and (iii) either above or below ground centralized storage.[39] Accordingly, the purpose of *NFWA* is to:

> provide a framework to enable the Governor in Council to make, from the proposals of the waste management organization, a decision on the management of nuclear fuel waste that is based on a comprehensive, integrated and economically sound approach for Canada.[40]

And, the *NFWA* defines "management" as:

> management, in relation to nuclear fuel waste, means long-term management by means of storage or disposal, including handling, treatment, conditioning or transport for the purpose of storage or disposal (emphasis added)[41]

The *NFWA* also sets out a rather step wise plan, which is worth recalling to understand how we got to the stage we are presently at:

- The establishment of the NWMO (s 6(1)) to implement an approach for the "management of nuclear fuel waste"
- The creation of an Advisory Council to study the "management of nuclear fuel waste" (s 8(1))
- Within 3 years of the Act coming into force - which occurred in 2022 - the NWMO was required to submit a study to the Minister with a recommendation on proposed approach and implementation plan (s 12(1) and 12(6))
- Consult with the public on the proposed approaches (s 12(7))
- Submission of annual reports (s 16) and that any study or report within the Act be publicly available (s 24)

As the *NFWA* required, a final study was published and within it, the phases to implement the preferred management approach.[42] Accordingly, we now find ourselves at "Phase 1: Preparing for Central Used Fuel Management" which among the activities, necessarily includes "an environmental assessment for the … deep geological repository at the central site, and to transport used fuel from the reactor site."[43]

As a creature of statute, the NWMO cannot invent nor import its aspirations for the management of nuclear waste in Canada. Instead, the Agency and this project's Integrated Review Team must ensure its review and understanding of the project aligns with the statutory mandate of the NWMO, which is

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[39] NFWA, s 12
[40] NFWA, s 3
[41] NFWA, s 3
[42] Nuclear Waste Management Organization, "Final Study: Choosing a Way Forward — The Future Management of Canada's Used Nuclear Fuel" November 2005, Table 1-1
[43] *Ibid*.

government created, for the express purpose of finding a storage solution to Canada's nuclear fuel waste.

PRGI submits the approach of this IA must be harmonious with the overall legislative scheme which the *NFWA* clearly sets out and adopt a way forward that also, creates the most just way forward, which is consistent with the meaning that has so plainly been used through the development of the legislation, studies, and planning that led to the stage the Agency is now tasked with overseeing.[44] Given that transportation is inherent to the management of nuclear fuel waste, its exclusion from the IA would be incongruous with the intent and statutory framework of the *NFWA*, including its purposes, definitions, and processes that reflect Parliament's intention.

ii. Impact Assessment Act regulations require the inclusion of all project phases and associated activities

On a related note, we do not accept the NWMO's contention that transport is excluded by virtue of not being independently listed in the Physical Activities Regulations.[45] As the NWMO states in their IPD:

> This NWMO Project is not part of a larger project listed on the IAA's project list. Its scope includes lifecycle phases associated with the construction and operation of the DGR, while site characterization, decommissioning, closure, and post-closure monitoring phases will remain under the regulatory oversight of the CNSC pursuant to the NSCA. These phases do not independently trigger the IAA, as they are not listed in the Physical Activities Regulations (emphasis added).[46]

This statement is incongruent with the *IAA* and not supported by the language used in it nor its regulations. The Physical Activities Regulation exists by virtue of the regulation making power set out in section 109 of the *IAA*. Per s 2 of the *IAA*, a *designated project* means one or more physical activities that

> **(a)** are carried out in Canada or on federal lands; and
> **(b)** are designated by regulations made under paragraph 109(b) or designated in an order made by the Minister under subsection 9(1). It includes any physical activity that is incidental to those physical activities (emphasis added)

This project accordingly requires an IA by virtue of s 28(b) listing this project as a physical activity:

> 28 The construction and operation of either of the following:
> (b) a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste.[47]

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[44] *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42; *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, 2006 SCC 4
[45] Physical Activities Regulation, SOR/2019-285 [**Project List**]
[46] IPD, p 19
[47] Project List, s 28(b)

The requirements, including activities that must then be set out in the Initial Project Description is then prescribed in the Information and Management of Time Limits Regulations*,* which requires the NWMO to:

- List of all activities, infrastructure, permanent or temporary structures and physical works to be included in and associated with the construction, operation and decommissioning of the project;[48]
- Include site maps produced at an appropriate scale in order to determine the project's proposed general location and the spatial relationship of the project components;[49]

Therefore, PRGI submits the NWMO's vision for the project, as set out in the IPD, cannot override statutory requirements as set out in the *IAA* and its regulations.

iv. Advancing environmental justice requires the inclusion of all handling and transportation activities

The transportation of used nuclear fuel from Peskotomuhkati lands, across Indigenous lands, to be buried on Indigenous lands, is environmental racism. The Integrated Review Team for this proposed project, as part of the federal government, has a legal duty to prevent and address environmental racism, and advance environmental justice under the *National Strategy Respecting Environmental Racism and Environmental Justice Act (Environmental Justice Act).*[50]

The *Environmental Justice Act* recognizes that "a disproportionate number of people who live in environmentally hazardous areas are members of an Indigenous, racialized or other marginalized community" and a failure to meaningfully involve members of those communities in the development of environmental policy constitutes environmental racism.[51] As environmental racism is a form of racial discrimination, it follows that the protection against racial discrimination guaranteed by s 15(1) of the *Charter of Rights and Freedoms* includes protection against environmental racism.[52] Decisions regarding the DGR constitute Crown conduct that engage the *Charter,* and the Agency must therefore act in a manner that upholds the right to substantive equality and advances environmental justice; this requires there be an IA and the inclusion of handling and transport activities within its ambit which requires an IA.

While there is no definitive definition of environmental racism, as a concept, it acknowledges that marginalized communities in Canada, including Indigenous communities, often bear a disproportionate

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[48] Information and Management of Time Limits Regulations, SOR/2019-283, Schedule 1 Information Required in Initial Description of Designated Project, Part A General Information, s 9 [**Information Regulations**]
[49] *Ibid*, s 13(b)
[50] *National Strategy Respecting Environmental Racism and Environmental Justice Act*, SC 2024, c 11 [**Environmental Justice Act**]
[51] *Environmental Justice Act*, preamble
[52] Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

burden of human health, social, cultural, ecological and other adverse impacts of environmental harm while being denied benefits.[53] These inequitable burdens undermine human dignity, equality and non-discrimination.[54]

Environmental racism faced by Indigenous people is a product of colonialism, as the Crown's history of broken Treaty promises, discriminatory acts and policies aimed at assimilation, and appropriation of land and resources to the exclusion of Indigenous people continues to shape environmental policies and practices today.[55] Assessing environmental racism requires consideration of how environmental risk, harm and benefits are distributed among different members of society (i.e. distributional justice), how different members of society access and influence environmental decision-making (i.e. procedural justice) and how underlying systemic injustices and differing values and identities are recognized and represented (i.e. recognitional justice).[56]

We therefore urge the Agency to consider the testimony of PRGI[57], that demonstrates how Crown conduct in the nuclear context has perpetuated environmental racism in his homeland:

1) **Recognitional justice:** The Crown's decision-making does not recognize or seek to change the ongoing patterns of systemic racism and colonization that have resulted in the dispossession of lands and waters and disenfranchisement of rights holders who have a different worldview.

   As stated by Chief Akagi: "The nuclear story is no different from numerous other stories told throughout our territory since Europeans first arrived on our shores. The temptation to use what was never theirs, creating their own rules, laws and regulations to justify that use were all designed to dispossess the original peoples of their home, their livelihood, and what others consider their resources."

   "When we first welcomed them into our home we were talking about sharing, as described in our treaties. Only to find out that they were never worth the paper they were written on. We soon learned the lessons of ownership, exclusion and, yes, racism in its darkest form."

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[53] Larissa Parker, "Not in Anyone's Backyard: Exploring Environmental Inequality under Section 15 of the Charter and Flexibility after Fraser v Canada" (2022) 27 Appeal 19 at 21-22.
[54] Maia Dombey, "Environmental Racism: How Governments are Systematically Poisoning Indigenous Communities & the UN's Role" (2020) 27 U Miami Int'l & Comp L Rev 131 at 145.
[55] Maya Venkataraman et al, "Environmental racism in Canada" (2022) 68:8 Can Fam Physician 567 at 567.
[56] Rebecca L Gruby, "Opening the black box of conservation philanthropy: A co-produced research agenda on private foundations in marine conservation" (2021) 132 Elsevier Marine Policy at 8. Distributional, procedural and recognitional justice are the three key dimensions of environmental equity and justice (European Environment Agency, "Delivering Justice in Sustainability Transitions", February 28, 2024).
[57] May 10, 2022 transcript (during the Canadian Nuclear Safety Commission's public hearing regarding New Brunswick Power's license renewal application)

2) **Distributional justice:** The storage of nuclear waste continues to disproportionately impact PRGI, which constitutes environmental racism.[58]

   As stated by Chief Akagi: "The pattern is always the same. Determine the use for the territory, which is convenient for today's society, as a major source of profit for individuals and/or entities tasked with finding such a location which is often controversial. Basically, unwanted in areas which have either enough political or financial influence to prevent such location. And if the industry itself is controversial, it is necessary to occupy an area of low population density to lessen the discovery of harmful impacts."

   As stated by Jamie Simpson, Legal Counsel to PRGI: "The probability of a nuclear accident may be small, but the impacts of an accident would be monumental."

3) **Procedural justice:** PGRI, as an impacted community and rights holders, has the right to be meaningfully involved in decisions regarding their lands, waters and resources, and their ongoing exclusion is environmental racism.

   As stated by Chief Akagi: "We have never been consulted. Our voice has been left out, in the case of hearings ignored. To ask to be part of any decisions moving forward would require a quantum leap of faith after reviewing the previous track record of this country with Indigenous peoples."

   "...the colonial model is alive and well, for I feel the objective was never to listen to us, but to convince us that you still know what is best for us."

   "This is not our process, I understand, but we're saying inclusion means that we're not left out, that we do have a voice and that we will be part of those discussions. And yet here I am hearing, once again, about this without us."

The Agency has an opportunity to take a small step in advancing environmental justice, by requiring a full IA for the DGR that includes transport routes and risks and upholds the Nation's rights to be informed and have a say.

B - Advancing Reconciliation

i. Advancing Reconciliation is Fundamental to Upholding s. 35 Constitutional Rights

While the NWMO states it is on a "Reconciliation learning journey" and that it "acknowledges, respects and honours the rights that First Nation …peoples of Canada have unique status and rights as

[58] The *Environmental Justice Act* states: "Whereas the establishing of environmentally hazardous sites, including landfills and polluting industries, in areas inhabited primarily by members of those communities could be considered a form of racial discrimination".

recognized and affirmed in Section 35 of the *Constitutional Act,*"[59] the NWMO's failure to recognize the Peskotomuhkati as a directly impacted Nation with whom to engage[60] indicates they have adopted an impoverished vision of reconciliation.

The process of reconciliation is mandated by s 35 of the Constitution, as the Honour of the Crown's ultimate purpose is reconciliation.[61] The Truth and Reconciliation Commission's ("TRC") Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice ("National Inquiry") both recognize the UN Declaration as the appropriate framework for reconciliation, and call for the full participation of Indigenous people in a way that respects and makes space for their free, prior, and informed consent.[62]

According to the TRC, the "reconciliation vision that lies behind Section 35 should not be seen as a means to subjugate Aboriginal peoples to an absolute sovereign Crown."[63] This implies that Indigenous peoples - including the Peslotomukati - should not have to prove their rights, in respect of their Indigenous laws and traditions, despite the reticence by Crown governments to recognize these traditions as the basis for law.

As a result, it is critical that the Agency and Integrated Review Team review the IPD in light of its ability to advance reconciliation and ensure the inclusion of the Peskotomuhakati through PRGI. Insulating IA decision-making from such review would erode the very idea that reconciliation has a meaningful role in shaping outcomes and project-specific decisions.[64]

Respectful reconciliation cannot be achieved within a narrow paradigm - wherein NWMO has failed to consult PRGI. We ask to be engaged in this matter and our free, prior and informed consent respected. We hold lived and intergenerational knowledge —particularly related to environmental justice, and long-term stewardship—that must not be overlooked or minimized. As an Indigenous Nation that has been and will continue to be affected by the activities inherent to this project, PRGI reminds the Agency the IA must move ahead in an honourable way and regarding the Peskotomuhkati Nation, as Chief Akagi reminds, "no decision about us, made without us".

ii. Information and Management of Time Limits Regulations Require PRGI's Inclusion

The requirements for the Initial Project Description as prescribed in the Information and Management of Time Limits Regulations requires the NWMO to develop:

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[59] IPD, p i
[60] IPD, p 9
[61] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 66.
[62] Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: TRC, 2015) at 4, Call to Action 43; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Vancouver: Privy Council Office, 2019) at 72
[63] Truth and Reconciliation Commission of Canada, *Canada's residential schools: Reconciliation - The Final Report of the Truth and Reconciliation Commission of Canada*, vol 6 (Montreal-Kingston: TRC, 2015) at 49.
[64] *Ontario (Attorney General) v Restoule*, 2024 SCC 27

> A list of the Indigenous groups that may be affected by the carrying out of the project, a summary of any engagement undertaken with the Indigenous peoples of Canada, including a summary of key issues raised and the results of the engagement, and a brief description of any plan for future engagement.[65]

PRGI submits the NWMO has inappropriately defined affected Indigenous groups and has adopted an impoverished view of who will be impacted.

We trust our comments, set out in 1 - About Us and C. The Project Poses Adverse Impacts to Our Rights more than adequately justify why the Peskotomuhkati is not solely an impacted Nation, but one which ought to have been deeply engaged and consulted from outset of this project's earlier of planning phases. To date, no such consultation from the NWMO has occurred.

iii. Conducting an impact assessment is a prerequisite to being 'informed'

PRGI does not support NWMO's repeated use of the phrase 'informed host' throughout the IPD. As the IA has not yet been completed, PRGI submits it is not possible for the NWMO to assert any host, member of the public, or Nation can be 'informed.' Instead, only after meaningful consultation, thoughtful input, equitable engagement and an IA whose scope is comprehensive enough to ensure a full understanding of impacts, can we then weigh in on whether being 'informed' is an appropriate representation.

Further, as the United Nations Office of the High Commissioner for Human Rights advises, *informed* implies that information has been provided that covers a range of aspects, including the "nature, size, pace, reversibility and scope of any proposed project or activity" and that there was been a "preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks."[66] In this instance, this critical step remains outstanding.

iv. The NWMO must recognize and respect the UN Declaration

PRGI is dismayed by the lack of explicit commitment by the NWMO within the IPD to recognize, uphold, and act in conformity with the standards set out in the UN Declaration. The UN Declaration establishes the minimum standards for the survival, dignity, and well-being of Indigenous Peoples. Through *UNDA*, Canada has affirmed the Declaration as a universal international human rights instrument with application in Canadian law and committed to its implementation without delay. Canadian courts have also affirmed that the UN Declaration forms part of Canada's domestic legal framework and the Declaration carries the weight of a binding international instrument when section 35 rights are engaged.

Under section 5 of the UNDA, Canada is legally required to take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. This obligation necessarily extends to the

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[65] Information Regulations, Part A General Information, s 4

[66] Office of the United Nations High Commissioner for Human Rights, *Free, Prior and Informed Consent of Indigenous Peoples* (2020)

Crown's conduct in regulatory processes and to ensuring that proponents operate in a manner that respects, upholds, and gives effect to the UN Declaration's standards, including the pursuit of free, prior, and informed consent.

As this project inherently engages Indigenous rights, including Peskotomuhkatis, it is critical that the Declaration and its principles be recognized, if NWMO truly commits to the full participation of impacted Indigenous peoples in a way that respects and makes space for Peskotomuhkati's free, prior and informed consent.

This is request is further supported by UNDA Action Plan Commitment #34, which affirms the federal government's obligation to support Indigenous participation in decision-making and to enable Indigenous Peoples to exercise federal regulatory authority.[67] The Crown must therefore ensure concrete opportunities for this commitment to be realized by working collaboratively with PRGI, in accordance with Peskotomuhkati laws, governance structures, and protocols.

PRGI emphasizes that meaningful consultation and engagement with its community are essential. The Crown, in collaboration with the proponent, must address both potential and actual impacts of the project on PRGI's communities, lands, waters, and environment in a manner consistent with the Declaration's standards.

5 - Impact Assessment is the Appropriate Forum for Remedying Gaps in IPD

In closing, PRGI reiterates that contrary to the NWMO's assertions that the project components its seeks to unilaterally exclude from the IA will be dealt with by way of CNSC licensing, including for the transport of the high level radioactive material, it is critical and necessary that this project - including all incidental activities - be subject to an IA.

An IA provides an upfront public review of the ecological, socioeconomic and cultural impacts of a proposed project; it provides impacted Nations like the Peskotomuhkati the opportunity to be meaningfully informed and consulted before a thorough investigative decision is rendered.

As we have demonstrated throughout this comment, the CNSC's licensing process cannot be relied upon. The scope of the CNSC process is too narrow. It does not encompass a comprehensive review of cumulative social, cultural, Indigenous and human rights impacts. While PRGI has explicitly argued before the CNSC that ongoing production, storage, and movement of nuclear waste constitutes a new infringement of Indigenous rights, engaging the duty to consult - and yet, this remains unresponded to by the CNSC. As they have noted in their licensing decisions:

> CNSC staff reported that NB Power's PROL renewal for the PLNGS does not include any new activities that could cause new impacts on the environment or changes in the ongoing licensed

[67] Department of Justice Canada. (2023). *United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan*

> activities at the PLNGS site, and therefore, will not cause any new adverse impacts to any potential or established Indigenous and/or treaty rights.[68]

In our experience, the CNSC attempts to resolve issues regarding risk, displacement of lands and water, emergency response capacity or consent of affected Indigenous communities as matters of regulatory compliance. Even when we expressly request that a licence not be granted until certain plans, such as emergency response plans be made public, there is an absence or explicit discussion of it in decisions from the CNSC - indicating the issue was not substantively resolved, despite being squarely raised.[69]

As the first of its kind project, impacting our lands - where stewardship of these wastes has been thrust upon us absent our consent - and now, these burdens are proposed for current and future generations, the project ought to attract the most rigorous form of review and inclusion of the Peskotomuhkati Nation, and an IA pursuant to the *IAA* be required and done in a way that requires the inclusion of all transportation related activities and act its core, strengthens respectful reconciliation.

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[68] CNSC, "Record of Decision In the Matter of New Brunswick Power Corporation" Oct 5 2022, para 151

[69] Passamaquoddy Nation, "Written Submission to the Canadian Nuclear Safety Commission" (CMD 11-H12.32, 2011); Passamaquoddy Recognition Group Inc, "Submission to the Canadian Nuclear Safety Commission" (Renewal of the Point Lepreau Nuclear Generating Station Operating Licence, Hearing Ref 2022-H-02, 2022); Canadian Nuclear Safety Commission, *Transcript of Proceedings* (Public Hearing on the Renewal of the Point Lepreau Nuclear Generating Station Operating Licence, 12 May 2022); Passamaquoddy Recognition Group Inc, "Supplemental Submission to the Canadian Nuclear Safety Commission" (CMD 22-H2-244, 27 April 2022)