



December 18, 2020

RE: Parks Canada’s document “What We Heard: National Marine Conservation Areas Policy and Regulations.”

This document provides advice from SeaBlue Canada, a coalition of environmental non-government organizations with extensive experience in marine protected area (MPA) establishment and management. SeaBlue Canada submitted joint feedback during Parks Canada’s National Marine Conservation Areas (NMCA) policy consultation last year and would like to take this opportunity to respond to the “What We Heard” report back from the consultation.

We recognize that the purpose of the report is to summarise a broad spectrum of comments received from a wide range of stakeholders and that further consultations on the scope and content of potential regulations will occur through the regulatory development process in 2021. However, there is no mention of whether there will be a consultation process on an updated NMCA policy and we know that it is more difficult to influence processes once regulations are drafted.

NMCAs will play an important role in meeting Canada’s commitment to protect 25 percent of its marine and coastal waters by 2025, and 30 percent by 2030, and are subject to the commitment to implementing minimum standards for federal MPAs. As such, we feel it is important to provide prompt feedback in order to help guide NMCA policy and regulation development to ensure NMCAs are effectively protecting biodiversity.

We reiterate our strong support for the inclusion of the following principles in the proposed NMCA policy:

- The incorporation of principles of ecosystem-based management, and the precautionary principle;
- The use of science, Indigenous knowledge systems, and local knowledge;
- Acceptance of the science demonstrating that fully protected areas yield better biodiversity outcomes;
- Policies regarding collaborative management with local rights holders and stakeholders; and,
- Support for the social, cultural and economic well-being of Indigenous peoples and coastal communities adjacent to NMCAs.

In our previous submission we recommended that NMCA policy and regulations recognize Indigenous rights and title and the role of Indigenous nations as decision-makers in nation-to-nation governance arrangements. We were pleased to see that other commentators noted this as well and agree that Parks Canada should follow the recommendations made in *We Rise Together* by the Indigenous Circle of Experts, and that models of co-management or collaborative decision making be used whenever possible. We also urge Parks Canada and other relevant departments to address the remaining recommendations of the National MPA Standards Committee regarding Indigenous protected areas to further clarify Indigenous

Protected and Conserved Areas (IPCA) governance, monitoring and management in the marine and coastal environment.

We also echo the concerns of a large number of stakeholders that the climate crisis was inadequately addressed in the consultation materials and reiterate that it is crucial to factor climate change adaptation and mitigation into the planning, decision making and research and monitoring activities of NMCAs. It is our view that potential NMCAs should be assessed for their effectiveness in adding to nature-based solutions to climate change.

Below we provide a reaction to the “What We Heard” document, noting areas where we are in alignment, and highlight areas we feel need additional attention.

A. Overall policy objectives for NMCAs

Overall, we agree with the identified policy objectives for NMCAs and recognize that sites have the potential to meet multiple objectives. However, we concur with recommendations of others about the need to rank objectives in order to avoid conflicting priorities and that biodiversity conservation must be the primary objective for all NMCAs to ensure that they align with international guidance for MPAs. Where there are conflicting interests or objectives, nature conservation must be primary. As per the *Canada National Marine Conservation Areas Act*, “NMCAs are established and managed to protect and conserve representative marine areas for the benefit, education and enjoyment of the people of Canada and the world.” All other NMCA objectives are ancillary to the objective to protect and conserve.

In addition, we recommend that the overall policy objectives include recognition of Indigenous nations’ inherent jurisdiction over their marine territories and the role of Indigenous nations as decision-makers in nation-to-nation governance arrangements. We also agree that planning and management of activities within NMCAs must be undertaken collaboratively with partners, including Indigenous peoples and local communities, and other relevant regulators.

B. A revised NMCA zoning framework

We strongly agree that full protection zones should comprise the largest percentage of every NMCA. Industrial activities should be prohibited throughout NMCAs, in line with international standards. As per the Government of Canada’s commitment to minimum standards for MPAs, oil and gas activities, mining, bottom trawling and dumping will be prohibited from all federal MPAs, including NMCAs. We are aware that a federal task force is currently looking at options for operationalizing the minimum standards. We expect that any updates to NMCA policy come after the task force has completed its work and incorporate the recommendations and guidance of the task force.

SeaBlue Canada has provided guidance to the task force on the definition and implementation of minimum protection standards. In brief, our recommendations include:

- A comprehensive definition of dumping and disposal which requires that a strict zero discharge regime be mandatory within an NMCA. This includes, but is not limited to, discharges of: sewage (treated or untreated); grey water (treated or untreated); ballast water (exchange or treatment); garbage; hazardous waste; scrubber effluent; bilge flushing; oily mixtures of any kind; and aquaculture waste of any kind. We recommend that new regulations provide a comprehensive definition that addresses the discharge of pollutants from all industrial activities, including ship operations and aquaculture.
- A total prohibition on all forms of bottom trawling, including trawling for scientific purposes. Other bottom fishing activities and other fishing methods known to potentially

impact the bottom (including midwater trawling) should also be prohibited unless it can be demonstrated that they do not impact the conservation objectives or the ecological integrity of the site.

- An outright prohibition on oil and gas activities, and the rescinding of any existing oil and gas licenses within all existing federal MPAs (including NMCA).
- An outright prohibition on all mining, including sand and gravel extraction.

We would like to clearly and loudly reiterate that open-net pen finfish aquaculture should be prohibited in all MPAs, including NMCA. We strongly disagree with the view that aquaculture is not an extractive use activity and therefore has a lesser impact. Scientific studies demonstrate the negative impacts of finfish aquaculture on local water quality, benthic nearshore food webs and wild salmon population on the east and west coasts. Furthermore, entanglement risks of all aquaculture operations, including shellfish aquaculture, should be carefully considered during risk assessments for protected areas that include important habitat for marine mammals, including migratory routes.

We again stress that NMCA must adequately address the many potential impacts of commercial vessel traffic, including:

- Underwater noise;
- Air emissions (especially black carbon and its contribution to local warming and ice melt);
- Physical impacts (including whale strike, anchor damage, scouring, wake, and breaking ice);
- Light disturbance;
- Discharge and dumping; and,
- The spread of invasive species.

In addition to these direct impacts from vessel traffic, risk of collision between vessels and the risk of spills, lost cargo (including hazardous cargo), and wreckage must also be recognized and understood. These impacts are generally inadequately considered and mitigated in MPAs throughout Canada, but many regulatory tools are available to remedy this, including but not limited to the *Canada National Marine Conservation Areas Act*. The new regulatory framework should address and mitigate the impacts of commercial shipping by adopting a clear framework for collaborating with Transport Canada and developing regulatory measures such as compulsory routing and areas to be avoided, speed restrictions, no-discharge zones, and anchorage restrictions.

We would also like to re-emphasize that vertical zoning should not be applied within MPAs, in line with international guidance and standards. While it is important to protect sensitive bottom habitats, it is not advised that other extractive or industrial activities occur in the water column above. The IUCN has made clear that vertical zoning should not be used for MPAs, as the linkages between the benthic and pelagic environments are not well known and enforcement is extremely challenging. While non-extractive uses may be permissible in some areas depending on conservation objectives, commercial extractive uses should be prohibited throughout the entire water column in the core protection zones. Parks Canada will need to work closely with Fisheries and Oceans Canada, Transport Canada and other agencies during the establishment phase of NMCA to ensure appropriate management measures are put in place for fisheries and other commercial activities.

3. Enhanced protection of marine biodiversity and ecosystems within NMCAs

While we agree that very clear conservation objectives need to be set for NMCAs, it is important that “clear” is not conflated with “narrow”. Conservation objectives must be sufficiently broad to protect ecosystem function and ecological integrity. The concept of “ecological integrity” included in the *Canada National Parks Act* has recently been added to the *Oceans Act*. NMCAs should be managed to a standard comparable to National Parks and *Oceans Act* MPAs, and as such the concept and definition of ecological integrity should be encompassed in the conservation objectives with appropriate regulations.

We acknowledge the potential need for additional temporary management measures within areas of NMCAs for specific conservation purposes, such as to protect at-risk migratory species when they are within the boundaries of the site. However, the NMCA must provide adequate long-term protection to the ecosystem functions, habitats and spaces that support migratory species. Temporary impacts can have long-term consequences.

Finally, while we agree that evidence-based decision-making is a key component of effective conservation, the precautionary approach must be applied in the absence of scientific certainty. Protected area management should be risk averse in order to protect important conservation features. Ecosystem-based management principles should also be applied in the decision-making process.

4. Ecologically sustainable land use in NMCAs

In principle we agree that ecologically sustainable uses **could** be permitted in portions of NMCAs **if** they are compatible with and support the biodiversity conservation goals and objectives of a given NMCA. However, the current definitions of “ecological sustainability” and “ecologically sustainable use” that have been presented are too vague and leave room for interpretation. These concepts need to be clearly defined before we can support the application of this principle. These terms should be measurable and have scientifically accepted reference points that will lead to the long-term conservation of biodiversity. We are deeply concerned by the idea that aquaculture operations, renewable energy and other commercial activities may be permitted within NMCAs.

Furthermore, we want to reiterate our previous comments that the science clearly shows that strongly protected areas produce significant ecological and thus economic benefits. In contrast, partially or weakly protected areas at best may only slow biodiversity decline.

5. Protection of cultural resources in NMCAs

While we agree that there should be regulations in place to protect cultural resources, Parks Canada needs to make sure that decisions around management of cultural resources are made with those to whom the resources belong. As noted previously, models of co-management or collaborative decision making should be used whenever possible.

6. Promotion and management of marine tourism and recreation in NMCAs

It will be important to manage tourism and recreation activities in NMCAs so that they do not have negative impacts on the conservation objectives of the site or on coastal communities nearby. Parks Canada will need to work in collaboration with rights holders and stakeholders to plan for and manage tourism activities, and management should be based on the best available information, including current science, Indigenous and traditional local knowledge. Parks Canada will also need to work with other relevant government departments and agencies (i.e. Transport Canada, Fisheries and Oceans Canada) to ensure that any visitors, particularly those

arriving by water to an NMCA, have the tools available to understand any prohibitions or ecological and cultural objectives of the NMCA, and to support enforcement.

One of the most common tools for managing tourism impacts in MPAs is zoning. While Parks Canada has already set out a zoning scheme in this plan to protect particularly sensitive areas from tourism and recreation impacts, there may be a need to create sub-zones for different types of tourism and recreation activities to reduce conflicts between competing uses (such as motorized water sports and snorkeling and scuba diving). Management decisions should be in line with the conservation objectives of the site.

We agree that education is important and suggest that Parks Canada link permitted tourism activities with educational programming and information to help improve the public's knowledge about marine protection, and particularly the rules in place to protect important species and habitats in the area.

7. Management of research and collection activities in NMCAs

One of the policy objectives for the management of NMCAs is to advance knowledge and understanding of marine environments. We agree it is important to conduct research and monitoring to ensure NMCAs are properly managed in a sustainable manner. As per our previous comments, monitoring methods should be low impact and non-extractive where possible. We agree that permits should be required to conduct research and monitoring activities, and that all activities - especially collection activities - should only be approved if they are in line with the conservation objectives of the site. All research and collection activities should be required to go through relevant and associated approvals processes and protocols with all relevant Indigenous governments and associations. This is especially important where there is a co-governance or co-management agreement or an IPCA designation, but is not limited to these situations.

We strongly recommend the development of a clear definition of "collection" as this term is too vague and could be interpreted to include a very broad range of harvesting or gathering activities for cultural, recreational, scientific, and even commercial purposes. The permitting process needs to provide clear guidance about the methods of collection and the disposal or return of collected specimens and samples.

We look forward to the opportunity of working with you on National Marine Conservation Areas moving forward.

Sincerely,

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