

West Coast Environmental Law Association  
Submission to Parks Canada Regarding its Development of General Regulations under the  
*Canada National Marine Conservation Areas Act*

July 7, 2023

## Introduction

West Coast Environmental Law Association is dedicated to safeguarding the environment through law. Since 1974, our staff lawyers have successfully worked to develop proactive legal solutions to protect and sustain the environment. Our marine program seeks to strengthen Canada's legal framework for ocean conservation.

We are grateful for the opportunity to contribute to Parks Canada's development of national marine conservation area (NMCA) general regulations under the *Canada National Marine Conservation Areas Act* (CNMCA Act).<sup>1</sup> While NMCAs are a strong marine protection tool, there remain several gaps in NMCA law and policy, including lack of formal recognition of Indigenous law, lack of interim protection, and incomplete legal implementation of the federal Marine Protected Area (MPA) Protection Standard. In this submission, we focus our recommendations on fully implementing the MPA Protection Standard through the general regulations.

### *The Marine Protected Area (MPA) Protection Standard in NMCAs*

In February 2023, Canada released new minimum protection standards for new MPAs in Canada, including NMCAs.<sup>2</sup> The MPA Protection Standard prohibits bottom trawl fishing, dumping, oil and gas activities and mining within new federal MPAs.

Section 13 of the CNMCA Act already bans mining and oil and gas activities in NMCAs. However, neither the Act nor its regulations explicitly include legal prohibitions on bottom trawl fishing and dumping, including enhanced restrictions on vessel discharges. We were therefore encouraged to learn, during our stakeholder engagement session, of Parks Canada's commitment to enshrining the federal MPA Protection Standard in law through the CNMCA Act and its regulations. In order to fully implement the standard, Parks Canada should ensure the following recommendations are met.

#### **1. The NMCA general regulations should prohibit bottom trawl fishing and restrict vessel discharges.**

Under section 16 of the CNMCA Act, regulations under the Act can address fisheries management and marine navigation if they are recommended by the Minister of Fisheries and Oceans (DFO) and the Minister of Transport, respectively.<sup>3</sup> These regulations would then prevail over regulations made under the *Fisheries Act*,

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<sup>1</sup> SC 2002, c 18 [CNMCA Act]. Throughout this submission, we use NMCA to refer to both NMCAs and NMCA reserves under the CNMCA Act.

<sup>2</sup> Fisheries and Oceans Canada, "Marine Protected Area (MPA) Protection Standard" (15 Mar 2023), online: <https://www.dfo-mpo.gc.ca/oceans/mpa-zpm/protection-standard-norme-protection-eng.html>.

<sup>3</sup> CNMCA Act, *supra* note 1, s 16(2),(3). Section 16(1)(3) also allows the Governor in Council to make regulations "restricting or prohibiting activities... in marine conservation areas or in any zones."

the *Canada Shipping Act, 2001* and other relevant statutes.<sup>4</sup> However, we understand that it is also possible that DFO and Transport Canada may seek to implement the MPA Protection Standard under their own regulations.

We encourage Parks Canada and the Minister of Environment and Climate Change to seek the recommendations required from DFO and Transport Canada, in order to implement prohibitions on bottom trawl fishing and vessel discharges within the NMCA general regulations themselves. This would ensure that an NMCA would be automatically protected from these activities, without requiring DFO or Transport's participation in the future. This would provide greater clarity and certainty for partners and stakeholders and would give Parks Canada greater control over the NMCA development process. By addressing this now, the Minister can ensure a baseline of quality protection for all NMCAs going forward.

## **2. The NMCA regulations should specify restricted substances for which a disposal at sea permit may not be issued.**

The MPA Protection Standard also prohibits the issuance of a permit for the disposal of the following substances within all new federal MPAs:

- Dredged material,
- Fish waste and other organic matter from industrial fish-processing operations,
- Ships, aircraft, platforms or other structures,
- Inert, inorganic geological matter of natural origin,
- Bulky substances primarily composed of iron, steel, concrete or similar matter,
- Uncontaminated organic matter of natural origin, and
- Fill.<sup>5</sup>

Additionally, the MPA Protection Standard prohibits the deposit of deleterious drugs and pesticides within both new and existing MPAs.<sup>6</sup>

These prohibitions on dumping have not yet been legally implemented in NMCAs. Currently, disposal at sea is prohibited within NMCAs other than in accordance with a permit under the CNMCA Act or the *Canadian Environmental Protection Act, 1999* (CEPA).<sup>7</sup> This is consistent with general requirements under CEPA, which require a permit for the disposal of waste in all areas of Canada's territorial sea, internal waters, and exclusive economic zone.<sup>8</sup> But neither the CNMCA Act, its regulations, nor the CEPA, specify that a permit cannot be issued for the dumping of the substances listed in the MPA Protection Standard, nor do they prohibit the deposit of deleterious drugs and pesticides.

Parks Canada must detail these additional prohibitions within the NMCA general regulations to ensure that permits are not issued under CEPA or the CNMCA Act for these substances in the future, and that harmful substances are not deposited contrary to the MPA Protection Standard. Without these prohibitions, the current regulatory framework will not provide a baseline of protection against dumping within NMCAs.

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<sup>4</sup> *Ibid*, s 16(5).

<sup>5</sup> Fisheries and Oceans Canada, *supra* note 2, at 7.

<sup>6</sup> *Ibid* at 8.

<sup>7</sup> CNMCA Act, *supra* note 1, s 14; *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 [CEPA].

<sup>8</sup> CEPA, *supra* note 7, ss 122(2), 125.

## Conclusion

West Coast Environmental Law Association thanks Parks Canada for the opportunity to present our suggestions. We look forward to the establishment of strong NMCA general regulations under the CNMCA Act, that fully legally implement the MPA Protection Standard.