



# BRAVE NEW WAVE: A More Effective *Oceans Act* for Canada

On Oceans Day this year, the Hon. Dominic Leblanc announced a five-point plan to achieve our international commitment to conserve at least 10% of our oceans by 2020.

Point 5 is dedicated to “**Establishing Marine Protected Areas Faster**”:

Examine how the *Oceans Act* can be updated to facilitate the designation process for Marine Protected Areas, without sacrificing science, or the public’s opportunity to provide input.

West Coast Environmental Law (WCEL) has ideas on how this point can be achieved:



## Facilitating Marine Protected Area (MPA ) Designation

### Timelines

To facilitate designation, timelines should be used in the *Oceans Act*. The mandate commitment letter is a great start, but legislative deadlines can provide even more impetus to act. In the European Union, setting out milestones in law has accelerated action. EU Member States are required to deliver a well-managed network of marine protection sites by the *Marine Strategy Framework Directive’s* deadline of 2016. By the end of 2012, EU Member States had designated close to 6% of their seas as MPAs.<sup>1</sup> In Canada, legislated timelines for protected area designation have also worked. After the *Canada National Parks Act* created the new category of “wilderness areas” in national parks, more than a decade passed before any such areas were actually designated. Then the Act was amended to impose a statutory deadline,<sup>2</sup> and multiple wilderness areas were finally designated.

### Interim Protection

There is an urgent need for interim protection for proposed MPAs, given the slow rate of MPA designation and the establishment of management plans. The IUCN recommends that MPA laws be used to provide interim protection measures for proposed sites.<sup>3</sup> Currently the *Oceans Act* allows for protection only in emergency situations; this restriction should be removed.

### Designating Broad Areas or Simultaneously Designating Multiple Sites

Another way to more quickly establish MPAs is to designate a broad area for enhanced management and protection where comprehensive ecosystem based management plans have been completed. The *Oceans Act* gives the Minister wide powers to achieve the Act’s purposes, which include the visionary statements in the Preamble, the commitment to adopt integrated management plans, and the creation of a national system of MPAs. Other countries have made faster progress using this type of regional approach or by designating a suite of MPAs at once. For example, the English Marine Conservation Zone (MCZ) Project resulted in the designation of 27 new MCZ sites in November 2013 and 23 new sites in January 2016. The Scottish MPA Process resulted in the designation of 30 MPAs in July 2014.

1. Marine protected areas in Europe’s seas , European Environment Agency , Brussels, Belgium, 2015.

2. *Canada National Parks Act* (S.C. 2000, c. 32) Time limit for declaration, (4) Where a new or amended management plan sets out an area of a park for declaration as a wilderness area, the Minister shall recommend such declaration to the Governor in Council within one year after the plan or amendment is tabled under section 11.

3. Lausche, Barbara J., and Françoise Burhenne-Guilmin, *Guidelines for protected areas legislation*, No. 81. (IUCN, 2011), at 156.

## Without Sacrificing Science ...

Translating science into policy is the basis for healthy oceans. This means that minimum protection standards should be applied to all MPAs in Canada. The IUCN recommends that some activities should always be strictly prohibited throughout the marine and coastal protected areas network, including “large-scale extractive activities like mining and industrial fisheries.”<sup>4</sup> The science is clear that ‘no-take’ areas are one of the five key parameters for effective MPAs. The other parameters are being well enforced, being old (> 10 years), having a certain size (> 100 km<sup>2</sup>), and being isolated (by deep water or sand).<sup>5</sup> Last year’s report from CPAWS examined the erratic level of protection in existing Canadian MPAs.<sup>6</sup> Legislative amendments can rectify this problem, and apply the best science to ocean protection.

## Or the Public’s Opportunity to Provide Input

Strong public participation in environmental decision-making makes for better decisions that are more robust, more widely accepted, and more likely to be implemented. Research shows that including specific provisions for many types of stakeholder involvement in legislation leads to larger protected areas.<sup>7</sup> Public participation rights and opportunities should be more clearly identified and prescribed in the *Oceans Act*.

The Act could also strengthen public participation by preserving the rights of future generations to enjoy healthy oceans. An intriguing idea is New Zealand’s proposal for its new *Marine Protection Act* to contain a “generational review” process for MPAs, “to recognize the Maori view that decisions made by contemporary generations should not tie the hands of future generations.”

Ultimately the public will be best served when all levels of government collaborate in the governance and management of MPAs. A stronger *Oceans Act* can be a vehicle for reconciliation, through express provisions that, for example, recognize Indigenous co-management rights, and Indigenous Community Conserved Areas. The *Oceans Act* allows the Minister to establish regional ocean co-management bodies. Now it’s time for that authority to be used more widely.

## Putting the Concept into Practice in the Great Bear Sea

The Great Bear Sea is the ideal place to test all these proposals. A Great Bear Sea regulation under the *Oceans Act* could designate the entire region as a “marine managed area” to:

- Provide interim protection for the area
- Give effect to the zones established by the Marine Planning Partnership (MaPP) plans
- Create a regional oceans co-governance body to complete the MPA network
- Implement the ecosystem-based framework
- Apply minimum protection standards, and
- Legislate public participation

A regulation for this spectacular biologically diverse 102,000 sq. km. region would add an additional 1.5% of protection of BC’s marine area and help the government reach its marine protection targets faster by emphasizing science and increasing the public’s participation rights. Success in this region will be a legacy for all of Canada.

4. Lausche, Barbara J., and Françoise Burhenne-Guilmin, Guidelines for protected areas legislation, No. 81. (IUCN, 2011), at 259.

5. Edgar, G. J., Stuart-Smith, R. D., Willis, T. J., Kininmonth, S., Baker, S. C., Banks, S., ... Thomson, R. J. (2014). Global conservation outcomes depend on marine protected areas with five key features. *Nature*, 506(7487), 216-220.

6. CPAWS. Dare to be Deep – Are Canada’s Marine Protected Areas really ‘protected’? Annual report on Canada’s progress in protecting our ocean. (Ottawa: Canadian Parks and Wilderness Society, 2015).

7. Leroux, Shawn J., et al. “Legislative correlates of the size and number of protected areas in Canadian jurisdictions.” (2015) *Biological Conservation* 191: 375-382.

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