



OCEANS20: CANADA'S OCEANS ACT WORKSHOP REPORT

13-15 JUNE 2017, OTTAWA



David
Suzuki
Foundation



This workshop was organized and hosted by West Coast Environmental Law Association (WCELA) in partnership with the Canadian Parks and Wilderness Society, the David Suzuki Foundation, and the Ecology Action Centre, with support from Oceans 5 and the Gordon and Betty Moore Foundation. The workshop was held on unceded Algonquin territory. The workshop report was prepared by Mari Galloway, Maryann Watson, Linda Nowlan and Georgia Lloyd-Smith of WCELA.

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Abbreviations and Acronyms

ACMC	Area Co-Management Committee
AOI	Area of Interest
CARC	Canadian Arctic Resources Committee
CBD	Convention on Biological Diversity
CGW	Coastal Guardian Watchmen
CNF	Canadian Nature Federation
CPAWS	Canadian Parks and Wilderness Society
CSN	Coastal Stewardship Network
CWS	Canadian Wildlife Service
DFO	Fisheries and Oceans Canada
DSF	David Suzuki Foundation
EAC	Ecology Action Centre
EEZ	Exclusive Economic Zone
ENGO	Environmental Non-Governmental Organization
FAO	Food and Agriculture Organization of the United Nations
IIBA	Inuit Impact and Benefit Agreement
ILO	International Labour Organization
IMO	International Maritime Organization
IPA	Indigenous Protected Area
IUCN	International Union for Conservation of Nature
LOMA	Large Ocean Management Area
MaPP	Marine Planning Partnership
MBS	Migratory Bird Sanctuary
mNWA	marine National Wildlife Area
MPA	Marine Protected Area
MSP	Marine Spatial Planning
NMCA	National Marine Conservation Area
NRCan	Natural Resources Canada
NWA	National Wildlife Area
OEABCM	Other Effective Area-Based Conservation Measures
PNCIMA	Pacific North Coast Integrated Management Area
TC	Transport Canada
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
WCELA	West Coast Environmental Law Association

Acknowledgements

The Oceans20 workshop took place on the traditional, unceded territories of the Algonquin nation, and we would like to thank Verna McGregor from the Algonquin community of Kitigan Zibi Anishinabeg for opening the workshop and welcoming workshop participants.

Over two and a half days from June 13-15, 2017 more than 80 participants from multiple sectors came together to share their knowledge, experiences, and expertise on Canada's *Oceans Act*, with a focus on marine planning and protection. We extend a heartfelt thank you to all those who participated and contributed to the workshop's success. The panelists, discussions, questions, and breakout groups sparked compelling conversations and helped to identify barriers and opportunities to improve marine protection strategies.

We would also like to thank the Honourable Dominic LeBlanc, Minister of Fisheries, Oceans and the Canadian Coast Guard for opening the workshop, as well as Fisheries and Oceans Canada (DFO) for their support throughout planning and execution of the event. We chose to meet in Ottawa to engage with a full range of federal partners. Coordination is critical for effective marine management and protection and we were delighted to have representatives from DFO, Environment Canada, Indigenous and Northern Affairs Canada, Parks Canada, Natural Resources Canada, and Transport Canada participate throughout the workshop.

This report is a summary of statements and discussions heard throughout the workshop. These comments have been collected and presented not as a unanimous consensus from workshop participants but rather as a summary of the various perspectives and opinions expressed.

The workshop was organized and hosted by West Coast Environmental Law Association in partnership with the Canadian Parks and Wilderness Society, the David Suzuki Foundation, and the Ecology Action Centre.

The workshop was funded in part by Oceans 5 and the Gordon and Betty Moore Foundation.

Executive Summary

On the 20th anniversary of the introduction of Canada's *Oceans Act*, we looked at the path to the future of oceans management in Canada by evaluating where we've been, where we are, and where we need to go. In June 2017, over 80 stakeholders from across the country working in government, academia, industry, and the non-profit sector came together in Ottawa for the Oceans20: Canada's Oceans Act Workshop.

The Oceans20 title was chosen:

- to mark the 20th anniversary of the federal *Oceans Act*;
- to propose a bold transformation of our *Oceans Act* by 2020; and
- to celebrate the government's re-commitment to strong ocean protection targets, including protecting at least 5% of our oceans by the end of 2017, and 10% by 2020.

The aim of this interdisciplinary workshop was to build a shared understanding of the strengths and weaknesses of the *Oceans Act*, to uncover lessons from our own experiences and from other jurisdictions, and to provide a forum to discuss the enabling conditions needed to successfully achieve Canada's ocean goals, for 2020 and beyond. The workshop provided an overview of the Canadian experience to date with the *Oceans Act*. There was a particular focus on marine protected areas (MPAs) created under the Act; key features necessary for effective MPAs, such as developing MPA networks in the context of marine spatial plans; and Indigenous governance in the marine environment. We also gained insights from experiences with MPAs in several other jurisdictions and under other Canadian legislation. Throughout Oceans20, participants and speakers were encouraged to work together to exchange experiences and co-develop solutions for improved marine governance.

Over the two and a half days, participants heard from expert speakers, engaged in panel sessions, and worked in breakout discussions addressing:

- experiences with the *Oceans Act* and marine protection on Canada's three coasts;
- co-governance with Indigenous governments in the marine environment;
- international experiences with MPAs;
- key legal requirements for marine protection, building on best practices; and
- factors for success in achieving Canada's marine conservation goals.

At the time of the workshop in June 2017, Canada's marine protected areas covered about 1.5% of our ocean estate. The workshop participants and the government acknowledged the need to accelerate all our efforts to reach the protection targets and recognize the role of Indigenous nations in marine governance. However, all workshop participants brought optimism and enthusiasm for a more effective *Oceans Act* that would support achieving these goals.

This report summarizes key messages which emerged from these discussions. We hope to build on these and lessons learned from other jurisdictions to create strong legal and policy solutions for effective marine planning and protection.

Key Messages

- **Fulfill the promise of the *Oceans Act* by fully implementing it, and place MPAs as a priority in the Act.**

The *Oceans Act* was internationally recognized as a world-leading law when enacted twenty years ago, but Canada has fallen behind with implementation.
- **Strengthen MPA legal provisions and accelerate MPA designation.**

Completion of MPA networks remains a key gap on all coasts.
- **Recognize Indigenous jurisdictions, laws, and governance authorities.**

Create a healthier relationship between Indigenous nations and Canada by expanding Indigenous governance roles, explicitly endorsing Indigenous co-management arrangements, and recognizing Indigenous Protected Areas.
- **Build a strong legal toolbox.**

Adopt principles and definitions in the *Oceans Act* that align with IUCN guidance. Implement key best practices such as interim protection, minimum protection standards, legislated timelines and adaptive management.
- **Create capacity for meaningful stakeholder participation at all levels.**

The best way to protect our marine environments for current and future generations is by involving them in the process. Strong public participation in decision-making is key for the success and acceptance of MPAs. We need to look at how to engage and incorporate community interests, knowledge, and values throughout the planning process.
- **Use best available science.**

Effective protection for marine ecosystems requires that decisions be based on the best available natural and social science. That means creating no-take and highly protected areas throughout MPA networks.
- **Embed MPAs in Marine Spatial Planning frameworks.**

Effective marine conservation requires a holistic approach to marine spatial planning and MPA network planning that promotes intergovernmental cooperation.

Links to Workshop Background Materials

- [Bill C-98 and the Oceans Act: A Retrospective](#)
- [Brief on Bill C-98 \(The Oceans Act\) Presented to the Standing Committee on Fisheries and Oceans October 24, 1995](#)
- [Linking Science and Law: Minimum Protection Standards for Canada's Marine Protected Areas \[Version française\]](#)
- [Co-governance of Marine Protected Areas in Canada \[Version française\]](#)
- [Evolution of Legal Obligations to Create Marine Protected Areas](#)
- [Marine Protected Area Progress Globally and in Canada](#)
- [Jurisdiction in Coastal BC Infographic](#)
- [Process: Establishing and Managing MPAs under the Oceans Act](#)
- [Comments on the Oceans Act: Translating the Vision into Law. Comments on Bill C-98](#)

More information on the workshop including the full program, list of speakers, and a comprehensive package of background materials is available at:

<https://www.wcel.org/publication/oceans20-oceans-act-workshop-materials>

1.0 Introduction

1.1 Workshop Context

Canada's *Oceans Act* came into force twenty years ago, on January 1, 1997. At the time the legislation was an innovative and progressive approach to oceans management. Years of work had sown the seeds for this success.¹ Leading up to the introduction of the Act into Parliament, a number of resource users, government managers, First Nations and community leaders, conservationists, and scientists across the country were involved in conversations about how to better safeguard our oceans.² These groups commissioned a series of papers and workshops to better understand how to manage Canada's oceans.

As Bill C-98 – the Bill that introduced the *Oceans Act* – made its way through Parliament, a number of key principles and strategies that arose from consultations were presented to Parliamentarians. These proposed amendments included: a greater role for affected Indigenous nations and communities; building decision-making on good science and traditional ecological knowledge; greater cooperation between federal departments for ecosystem management; and elaboration on the purpose of MPAs and establishment process for MPAs.

Twenty years later, experience with implementing marine protection and MPAs under the *Oceans Act* shows that there are still many challenges to MPA designation and that key gaps in the legislation remain. To reach its marine conservation goals, Canada needs to find ways to address these barriers. As we look forward to the next twenty years of oceans management, it is once again important that we come together to discuss and collaboratively develop solutions to ensure healthy oceans for generations to come.

For further information, please refer to the two briefs that present the history and background on the *Oceans Act* from an ENGO perspective in our workshop background materials, summarized below:

¹ Sabine Jessen, "A Review of Canada's Implementation of the *Oceans Act* since 1997 – From Leader to Follower" *Coastal Management* 39,1 (2011): 20-56.

² Leslie Beckmann and Nigel Bankes, "Bill C-98 and the *Oceans Act*: a retrospective" commissioned by West Coast Environmental Law for the "Oceans 20" Workshop at p 3. (2017)

[Brief on Bill C-98 \(The Oceans Act\) Presented to the Standing Committee on Fisheries and Oceans October 24, 1995](#)

This brief was presented to the Standing Committee on Fisheries and Oceans by the Canadian Arctic Resources Committee (CARC) and the Canadian Nature Federation (CNF). The brief focuses on three themes: (1) the central importance of healthy marine ecosystems, (2) the need to foster and promote the long-run sustainability of communities dependent upon marine ecosystems, and (3) the need for appropriate procedures for monitoring and accountability in implementing the Bill. The brief outlines thirteen recommendations for the Bill, and challenges the Committee to ensure that the Bill results in a fundamental shift from fisheries management to ocean ecosystem management.

[Bill C-98 and the Oceans Act: A Retrospective, 2017](#)

This background paper documents the efforts of a coalition of environmental groups to expand the scope of the Act and strengthen its provisions between the time it was introduced and the time it was passed, particularly with respect to the establishment of marine protected areas (MPAs). The coalition's efforts led to the 1995 brief referred to above.

The paper suggests that while the coalition was successful in lobbying for stronger MPA provisions, it was unable to establish a clearer focus on ecosystem management and ecosystem health, a commitment to research on the marine environment, or to provide strong guidance on implementation.

1.2 Marine Protected Areas

The ocean covers approximately 70% of the Earth's surface, but we often take the significant influences of the marine environment on our lives for granted. Around the world, marine ecosystems are threatened by converging pressures, which include land use change, habitat loss, industrial activities, and overfishing, as well as climate change and associated effects. With the world's longest coastline and one of the largest marine territories, Canada has a critical role to play in protecting the world's ocean from these threats. The creation of marine protected areas (MPAs) are well-recognized as a key tool for the conservation and management of marine biodiversity.

The International Union for Conservation of Nature (IUCN) defines an MPA as:
*A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means to achieve the long-term conservation of nature with associated ecosystem services and cultural values.*³

Challenges for MPAs include identifying, designating and managing areas in an effective manner. Many challenges are also linked to the inherent complexity of marine ecosystems:

- **Multi-dimensionality:** MPAs must be able to address all dimensions of the ocean and the activities and process which occur in them; the airspace above the sea surface, the water's surface, the water column, and the seabed.
- **Large-scale connectivity:** Marine areas are intricately connected to each other and to coastal and terrestrial systems. To effectively manage these areas we need to move away from the traditional land-sea divide and identify and address ecological connections between geographically distinct areas through MPA network planning. A marine protected area network is defined by the IUCN as *"a collection of individual marine protected areas that operates cooperatively and synergistically, at various spatial scales, and with a range of protection levels, in order to fulfill ecological aims more effectively and comprehensively than individual sites could alone."*
- **Trans-boundary nature of the ocean and ocean activities:** As a shared resource with multiple uses and pressures, actors must work together across sectors and across jurisdictional boundaries to regulate use.
- **Data availability:** High cost, special equipment needs, and logistical difficulties create challenges for marine data collection.

³ Day J., N. Dudley M. Hockings, G. Holmes, D. Laffoley, S. Stolton, and S. Wells, "Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas," Gland, Switzerland: IUCN. (2012) 36pp.

- **Monitoring and enforcement:** Multiple access points and large, often remote, areas make it difficult to detect prohibited activities occurring in MPAs.
- **Less management experience:** Experience protecting marine environments is much less developed than for terrestrial environments. There still exists a double standard where we allow activities in MPAs that would not be accepted on land in protected areas such as national parks.
- **Scientific uncertainties:** Incorporating uncertainty into marine protected area design and management is key, as our understanding of many marine processes will evolve over time. These factors include connections between marine populations, their resilience to environmental stressors such as climate change, and how conditions may be altered in future marine environments. Where scientific uncertainties exist, a precautionary approach must be taken. Adaptive management strategies will also allow for incorporation of new information and additional protection measures as needed.

Marine ecosystem management and MPA designation must incorporate the best available science to achieve biodiversity and conservation goals, and to adapt to challenges and changes as they arise. Scientists from multiple specialties can contribute their expertise to planning and managing MPAs and MPA networks. Scientific experts can provide input to MPA and MPA network design guidelines, and can assess marine spatial plans to ensure that designations achieve their intended benefits. Collaboratively developing scientific guidelines will also produce greater transparency in management decisions and outcomes.

Many studies have shown that to preserve global ocean health, protection of greater than 30% of the global ocean is necessary, including a significant area within no-take zones.⁴ In 2016, the IUCN adopted a motion calling on its member states to protect 30% of marine areas by 2030. In 2010, Parties to the Convention on Biological Diversity (CBD) finalized the 2011-2020 Strategic Plan for Biodiversity, which includes the Aichi Biodiversity Targets. Target 11 states:

⁴ O'Leary, B.C., M. Winther-Janson, J.M. Bainbridge, J. Aitken, J.P. Hawkins, and C.M. Roberts. "Effective coverage targets for ocean protection" *Conservation Letters*, 9,6 (2016): 398-404.

“By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.”

Canada’s commitment to reach its domestic and international marine conservation targets, by protecting 5% of its ocean by 2017 and 10% by 2020, is an important first step to achieving meaningful protection.



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2.0 Session Summaries

2.1 Opening Remarks

The **Honourable Minister Dominic LeBlanc, Minister of Fisheries, Oceans and the Canadian Coast Guard**, opened the workshop by emphasizing the critical role of the ocean and reiterating the federal government's commitments to marine conservation targets. He highlighted progress on each of Canada's coasts through the government's five-point action plan, including the designation of the following MPAs: Anguniaqvia niqiqyuaq in the Northwest Territories; the Hecate Strait Queen Charlotte Sound Glass Sponge Reefs in British Columbia; and St. Anns Bank off Cape Breton Island, Nova Scotia. Ongoing work to complete additional MPAs includes the proposed Scott Islands marine National Wildlife Area in British Columbia, the proposed Laurentian Channel MPA in Newfoundland and Labrador, and the proposed Banc des Américains Marine Protected Area in Québec. MPA networks are also under development at bioregional scales. The Minister also discussed amendments to the *Oceans Act* that would give the federal government the authority to implement faster protection of important areas.

Linda Nowlan, Staff Counsel for West Coast Environmental Law Association,

introduced the workshop goals of:

- celebrating the 20th anniversary of the *Oceans Act*;
- sharing experiences from across the country and beyond; and
- creating an agenda for reform to help Canada reach its 2020 targets.

Following on Minister LeBlanc's speech, Linda noted that the five-point action plan to reach Canada's marine conservation targets, announced on June 8, 2016 includes the objective: "Establish 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."⁵

In addition to legislating the jurisdictional boundaries and obligations established through UNCLOS, the passing of Canada's *Oceans Act* created three programs on integrated management; marine protected areas; and marine environmental quality. It

⁵ DFO. Meeting Canada's Marine Conservation Targets. (2017) Available at <<http://www.dfo-mpo.gc.ca/oceans/conservation/plan-eng.html>>

mandated the Minister to develop a national oceans strategy and a national system of MPAs. However, despite such promising features, this skeletal law provided wide discretion to the Minister with little guidance on process and substance for MPAs and marine planning. Many issues that were identified with the *Oceans Act* 20 years ago remain today, and are ripe for legislative reform. For instance, the *Oceans Act* has no timelines for MPA designation or for the completion of management plans, does not incorporate the globally-used IUCN protected area categories, has no requirement to legally designate conservation objectives, and includes no processes or procedures for evaluating the success of MPAs.

The slow pace of MPA designation in Canada to date is illustrated in a [comparative chart](#) prepared by West Coast Environmental Law. It takes an average of seven years to designate an MPA in Canada, though designation of many sites has taken much longer. Standards of protection afforded to these designated areas vary from site to site and can be difficult to determine. Often, regulations allow activities with potentially harmful impacts to continue within MPAs.⁶

Law was identified as a critical factor for MPA establishment and management to guide decision-makers and processes, and create obligations, standards, and accountabilities. Another of the workshop background documents shows a [timeline](#) of key developments in marine protection law and targets in Canada and around the globe, highlighting the background body of legislation and policy that has led to the current targets.

Jurisdiction in the ocean is particularly complex and calls for a more integrated approach to management, involving all levels of government – federal, provincial, Indigenous and municipal. The [Jurisdiction Infographic](#) provided in the workshop background materials focuses on the province of British Columbia, however this jurisdictional complexity is similar across Canada.

⁶ See CPAWS, "Oceans Report 2015. Dare to be Deep: Are Canada's Marine Protected Areas Really 'Protected'?" Ottawa: Canadian Parks and Wilderness Society (2015), 49pp.
CPAWS, "How deep did Canada dare? Assessing national progress toward marine protection to December 2012," Ottawa: Canadian Parks and Wilderness Society (2013): 33pp.

Two central themes of the workshop were introduced through the briefs produced by West Coast Environmental Law on [minimum protection standards](#) and [co-governance with Indigenous nations in the marine environment](#).

Minimum legal standards for MPAs could include requirements to designate a significant percentage of the MPA as no-take with smaller buffer zones, and to prohibit all large-scale habitat disturbances from industrial activity and commercial resource extraction. The disparity between terrestrial and marine protected area laws on minimum protection standards was noted. Law should require the maintenance of ecological integrity of MPAs. The *Canada National Parks Act* states that “[m]aintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks” (s.8(2)). There is no equivalent obligation in the *Oceans Act*.

Co-governance with Indigenous nations is one way of meeting legal duties that arguably arise from the Constitution of Canada, and the *United Nations Declaration on the Rights of Indigenous Peoples*, among other sources.⁷

The workshop was also guided by key opportunities to assist the government in meeting important mandate letter commitments of reaching the marine conservation targets and strengthening oceans co-management. Nationally, the Parliamentary Standing Committee on Fisheries and Oceans is in the midst of a [review of Oceans Act MPAs](#), and the Parliamentary Standing Committee on Environment and Sustainable Development recently completed a report titled [Taking Action Today: A Review of Federal Protected Areas and Conservation Objectives](#), which included important recommendations for federal MPAs.

⁷ The *Oceans Act* requires collaboration with affected aboriginal organizations and bodies established under land claims agreements in relation to the development and implementation of a national oceans strategy and the development and implementation of plans for the integrated management, but otherwise has no formal requirements for ocean co-management or co-governance with Indigenous nations. The Act has a nonderogation clause related to Aboriginal law but does not acknowledge Indigenous law. Aboriginal law is generally considered to be the law of the state, and comes from legislation and the common law through the courts and the Constitution; whereas, Indigenous law refers to Indigenous peoples' own law that has existed since time immemorial, and has many sources, including songs, stories, language and ceremonies. These issues require more legislative attention

Internationally, in June 2017, the United Nations devoted a week to explore Sustainable Development Goal 14, the Oceans Goal, which calls on states to “Conserve and sustainably use the oceans, seas and marine resources for sustainable development.” Negotiations for a new treaty to protect biodiversity for the high seas are also underway. This global spotlight on oceans provides the opportunity to strengthen Canada’s flagship ocean law, the *Oceans Act*.

2.2 Experiences with *Oceans Act* MPAs

We posed three key questions to our opening panel of MPA experts from across the country: In your experience, what are the benefits of and challenges for MPAs? What are the lessons learned? Is there a need for change?

Maxine Westhead, Section Head for the Maritimes Marine Protected Areas Program at Fisheries and Oceans Canada, began the discussion with an overview of MPA site selection and designation. Her advice, “always expect the unexpected,” means taking an integrated and adaptive management approach that focuses on conservation. Her presentation highlighted jurisdictional challenges that arise in MPA designation. For example, the Musquash Estuary MPA located south of Saint John, New Brunswick, faced complex jurisdictional challenges over tidal boundaries. As an MPA under the *Oceans Act*, federal jurisdiction over protected areas only applied up to the estuary’s low water mark and left important areas of the river mouth and intertidal areas feeding the estuary outside of the protected area. Provincial involvement and cooperation were necessary to add additional mechanisms to support management of the MPA. This was solved through the transfer of administration and control of the provincial area from the Province of New Brunswick to the federal government.

To achieve conservation goals, we also need to speed up the process of designating MPAs. This was one of the main messages from **Sabine Jessen, National Oceans Program Director at CPAWS**, and was also a recurring recommendation throughout the workshop. Sabine identified a number of factors that are necessary to create an effective national MPA network in Canada. These include political will, funding, network planning and marine spatial planning, Indigenous co-management, minimum protection standards, independent science advice, an open and transparent process, aggressive timelines, and better coordination across the federal government. She

noted that while Canada may now have the necessary political will to achieve the current target of 10% by 2020, the international and scientific community is now looking beyond that to 2030. In addition to needing sustained political will for the long term, sustained and significant funding will also be required. The Marine Planning Partnership (MaPP) marine spatial planning process in British Columbia was supported by an investment of \$8 million from the Gordon and Betty Moore Foundation over the planning process, and plan implementation is budgeted at \$25 million over the next five years.

On average it takes seven years to establish an MPA in Canada, and in many cases it can take much longer. It took 17 years to establish the Hecate Strait and Queen Charlotte Sound Glass Sponge Reef MPA. Other marine areas are still awaiting designation, such as the Scott Islands marine National Wildlife Area (mNWA) and the Race Rocks marine protected area, which have been under discussion and development for 17 and 20 years respectively. Sabine noted that MPA network planning may offer a more streamlined and efficient approach to MPA planning than the existing site-by-site approach, in terms of both logistics and resources. At present in BC, the federal, provincial and First Nations governments are now engaged in an MPA network planning process in northern British Columbia. Co-governance with First Nations and Indigenous communities is critical to the federal government's commitment to reconciliation and to the establishment of effective and equitably managed MPAs. Meaningful co-governance will require support and funding for First Nations and Indigenous communities. There are examples where this has been successful in the Arctic and Pacific regions, including Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site.

According to Sabine, the MPA process should be streamlined by introducing legislated timelines for MPA designation and implementation with strong interim protections throughout the process. There is a growing body of science that identifies the key characteristics of effective MPAs and shows that more strongly protected no-take areas produce much greater benefits in terms of biodiversity and fisheries. Polling conducted by Environics for the World Wildlife Fund shows that Canadians across the country support strongly protected MPAs and minimum protection standards.⁸ However, all too often the available science has been overlooked in MPA designation processes, at

⁸ WWF-Canada, "Public Opinion on Marine Protected Areas," (2016): 18pp.

times due to pressure from industry. Open and transparent stakeholder processes and independent science advice are critical to ensure that decisions are made on the best available information and that Canada's MPAs are well protected. The lack of clarity and great variability around protection standards in Canada's MPAs is not helped by the complex web of jurisdiction, with four federal departments engaged in managing marine resources. Sabine left the workshop participants to contemplate whether a single coordinating body for MPAs would be a better approach.

Russ Jones, Manager of the Marine Planning Council of the Haida Nation, discussed the Haida Nation's experience with MPA planning and the Marine Planning Partnership (MaPP). Co-led by 17 First Nations and the Government of British Columbia, MaPP is an example of a sub-regional program working to establish MPAs that are based on best available science, embody Indigenous laws and values, and are supported by local stakeholders. SGaan Kinghlas – Bowie Seamount MPA off the northwest coast of Haida Gwaii provides an example of cooperative establishment and management of an MPA through a memorandum of understanding between DFO and the Council of the Haida Nation. Throughout his presentation, Russ emphasized the need to amend the *Oceans Act* to expand Indigenous governance roles, explicitly endorse Indigenous co-management arrangements, and recognize Aboriginal rights and title in British Columbia. There is a federal obligation to consult with First Nations in establishing MPAs. Principles that should guide MPA planning processes include respect for the rights of autonomy of individual First Nations, promotion of the government-to-government relationships that exist between First Nations and Canada and protect the long-term interests of First Nations through informed consent and interim measures agreements.

When it comes to protecting the ocean north of 60°, "more, better, faster," is how **Paul Crowley from World Wildlife Fund Canada** described the need to deliver on the promise of marine conservation in the Arctic. Land claim agreements between the governments of Nunavut, Northwest Territories and the Government of Canada create a different context for the creation of protected areas than in other regions. Communities here want better tools to protect their way of life. They are asking for more conservation, minimum protection standards, and control over development to ensure sustainability. Minimum standards are key to developing effective MPAs and can provide certainty to stakeholders, including Indigenous communities, and speed up the

consultation process. Communities are also asking for more conservation and control over development to ensure they maintain opportunities for sustainable harvesting through the Nunavut Land Use Plan, and in Lancaster Sound National Marine Conservation Area, DFO-led Areas of Interests (AOIs) being identified in Nunavut, and Pikialasorsuaq, the North Water Polynya in Baffin Bay shared by Nunavut and Greenland.

The *Oceans Act* should also be modernized to recognize Indigenous Protected Areas (IPAs), as recognized by Mary Simon, Ministerial Special Representative for Arctic, in the holistic roadmap she developed for a new, shared leadership model for the Arctic. As part of [this work](#) Ms. Simon recommended designating Pikialasorsuaq as an IPA. Pikialasorsuaq, from the Greenlandic word meaning a physical or mental upwelling, is one of the most biologically productive regions in the Arctic, and is vital to productivity in Lancaster Sound, Baffin Bay, Melville Bay and further south into Davis Strait.

Implementing IPAs offers the chance to create a marine conservation economy in which Indigenous peoples create and manage their own protected areas. The Government of Canada should implement efficient mechanisms to assist communities in protecting and managing their marine areas, and allow for continued harvesting and community use. The Inuit regularly fish and hunt for personal consumption and to maintain connection to the land, wildlife and to each other. It is through these connections that the Inuit have survived for centuries. In addition, monitoring, research and enforcement would provide Inuit employment. The Pikialasorsuaq Commission has already heard the Inuit in Canada and Greenland's strong desire for increased cooperation and shared resources across the Inuit-led and managed protected Pikialasorsuaq. The Inuit are in the best position to steward this incredibly rich and productive region and should be given the tools to do so.



Photo: Tavish Campbell

2.3 Collaboration and Regulation in the *Oceans Act* and MPAs

This session addressed collaboration across different levels to improve MPA designation and implementation under the *Oceans Act*. More specifically we asked: What are the barriers and enabling conditions for collaboration? How could the process of MPA designation and implementation be improved? How can all levels of government work better together?

Christie Chute, National Manager of Marine Conservation Programs at Fisheries and Oceans Canada outlined [the process for creating Oceans Act MPAs](#), highlighting how the government's public commitment to increase the proportion of Canada's protected marine and coastal areas and to achieve the CBD's Aichi Target 11 has galvanized support both within and outside the government.

Acknowledging that meeting these goals will be challenging, Christie focused on how the public mandate has created new opportunities for marine conservation. In the last seven months, DFO has designated three MPAs and is engaged in ongoing

collaboration with provinces and territories through the Canadian Council of Fisheries and Aquaculture Ministers and its Oceans Task Group, and at the regional/bioregional level. The Department is committed to renewing relationships with Indigenous peoples and working with industry, environmental groups and other stakeholders to meet its targets.

Christie outlined the steps in the MPA regulatory process. The Act provides a MPA definition in s. 35 (1): *“ A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section for special protection.”* The Act sets out five grounds for MPA establishment, which prioritize the conservation and protection of: commercial and non-commercial fishery resources including marine mammals and their habitats, endangered/threatened marine species and their habitats, unique habitats, areas of high biodiversity or biological productivity, and any other marine resource or habitat as is necessary to fulfill the mandate of the Minister. The Act allows the federal government to pass regulations establishing and zoning marine protected areas, and prohibiting certain activities.

She noted the critical steps in the process that extend the timelines for MPA designation, including requirements for consultation with the community and affected stakeholders, with other federal government departments, with Indigenous governments and communities, with the provinces and territories. It was also noted that the drafting and approval of federal regulations can be a lengthy process.

Collaboration is key; as **Jamie Alley of the University Centre of the Westfjords and the University of Victoria** stated, *“Canada’s Oceans Act belongs to everyone.”* Jamie drew on his experiences with the provincial government of British Columbia and collaboration with the federal government to implement ocean and coastal governance strategies. He emphasized opportunities to harness the collective energies of the public, private and voluntary sectors by employing inclusive, non-hierarchical governance mechanisms to facilitate coordination and accommodate different approaches to MPAs across Canada’s diverse marine environments. Key opportunities highlighted for this inclusive ocean governance were: the completion and endorsement of the Pacific North Coast Integrated Management Area (PNCIMA) Large Ocean Management Area (LOMA), the ongoing implementation of the four MaPP Marine

Spatial Plans, and the recommitment of the federal and provincial governments to implementing the MPA network on the coast of BC.

Jennifer Janes from the Oceans Program at Fisheries and Oceans Canada discussed how collaboration worked in the community-driven marine protected area in Eastport, Newfoundland and Labrador. Designated in 2005, the Eastport MPA was initiated by lobster fishers working to protect local lobster populations. The early and continued community support of the plan, local involvement in the science monitoring program, as well as early and continued compliance monitoring were key factors in the MPA's success.

Designation of the MPA has led to a stable catch per unit effort and increased size of lobsters in the surrounding lobster fishing management area. The area has also served as a model for other closed areas across the province. Key factors contributing to success included regular feedback from an MPA Advisory Committee, and annual meetings for science feedback and public information that helped to build trust and improve working relationships between stakeholders. Early and continual engagement of the fishing community was critical to the ongoing monitoring program for the MPA. The process was not without its challenges. One of the most striking challenges was that despite community support from the start, the MPA took almost seven years to designate.

Valentyna Galadaza, Saguenay-St. Lawrence Marine Park External Relations Manager for Parks Canada, talked about the creation of the Saguenay-St. Lawrence Marine Park, and how community efforts led to successful conservation strategies. The path towards park status began around 1977 when members of the public began to mobilize and organize for its designation. It took over twenty years, but in 1998 the area was officially designated as a protected area with participatory management as a key part of its regulations. 'Mirror legislation' for this MPA was passed by both the federal and Quebec provincial governments. The Park is counted as a National Marine Conservation Area (NMCA) though it was not created under the *NMCA Act*. As the park crosses over federal and provincial territories it is co-managed by Parcs Québec and Parks Canada. Both agencies work together, co-directing water patrols and collaborating on conservation, outreach and education efforts.

In 2002, in response to the need to address activities within the mixed-use marine conservation area, the *Marine Activities in the Saguenay-St. Lawrence Marine Park Regulations* (MAR) were adopted. These regulations specifically address human interactions with marine mammals. Consultations with local business owners, the whale watching industry, fishing industry, pleasure boaters, captains, and pilots helped to draft the specifications on how and when whales can be observed. Valentyna noted that while enforcement of these regulations is still a challenge, community acceptance has been greater because of the use of participatory management.

A coordination committee made up of representatives from six municipalities, the scientific community, education sector, and First Nations meet regularly to discuss management of the park. Reflecting on the park's experience, Valentyna noted that a participatory management model can create high expectations and complex decision-making processes. But it also results in strong alliances, optimizes use of public funds, aligns objectives and activities, and most importantly results in sustainable success.



Photo: April Bencze

2.4 Marine Planning and MPA Nuts and Bolts

There is no single factor that creates effective MPA legislation, but there are key legal considerations that should be included in law for stronger marine protection. Good laws are critical for MPA establishment and management; they guide decision-makers, lead to better standards and greater accountability. What are the essential elements in MPA law? How does Canada's *Oceans Act* measure up to best practice? What changes can be made?

Barbara Lausche, Director of the Marine Policy Institute at the Mote Marine Laboratory and Aquarium (and a co-author of the [IUCN's Guidelines for Protected Areas Legislation](#)), emphasized the importance of tying MPA design to international standards and clear objectives. The CBD, for example, is the foundational document for global marine and terrestrial conservation. The CBD's provisions and subsequent decisions adopted at the CBD's Conferences of the Parties have created and elaborated on definitions, objectives, categories and criteria to help states meet their international commitments. These should be taken into account in national legislation. Barbara also pointed out that according to the IUCN, and to be recognized in the World Database on Protected Areas, an MPA must have conservation as its primary objective.

In addition, any management objective should be specific enough to allow for proper monitoring, accountability and adaptive management. Institutional provisions should cover who makes decisions and how decisions are made, and should identify the relevant MPA authorities, processes for appointing and designating the authorities, powers and responsibilities, reporting and accountability requirements, as well as co-management possibilities.

A challenge in marine conservation science is understanding the complex interactions and linkages which drive connectivity between environments and populations. The IUCN encourages maximizing and enhancing the linkages among individual MPAs and groups of MPAs within networks. This requires that MPA siting and design take connectivity needs of the network into account, and management plans should be incorporated into an overall MPA network.

Legislation should incorporate an ecosystem-based management approach, which inherently incorporates broader ocean processes, connectivity, and land-sea interactions into management decisions. Tools to achieve ecosystem-based management and support connectivity include:

- **Defining large marine ecosystems (LMEs)**

LMEs are areas of ocean space approximately 200,000 km² or larger adjacent to coastal waters, where productivity is generally higher than in open ocean areas. These areas can be used to develop collaborative approaches to management of trans-national ecosystems.

- **Marine spatial planning (MSP)**

MSP takes a comprehensive approach to marine planning by incorporating spatially specific ecological, economic, and social factors and developing corresponding marine use plans and maps of existing and potential uses. MSP requires a high degree of cooperation, but it does not necessarily require new regulations. The Marine Planning Partnership (MaPP) for the Pacific North Coast (discussed in more detail below) is an example of cutting-edge marine spatial planning.

- **Ocean zoning**

Ocean Zoning uses MSP maps and creates zones for single or mixed uses as well as existing and future uses and needs.

- **Integrated coastal ocean zone management**

Integrated coastal ocean zone management should incorporate the unique nature of coastal areas and protect their productivity and biodiversity, while taking social and economic factors into account. It should be based in law, incorporate MPAs, and make connectivity an inherent consideration. The Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO) offers extensive guidance on best practices.

Professor David VanderZwaag, from the Faculty of Law at Dalhousie University, compared these best practices to the Canadian context by outlining the *Oceans Act's* "progressions and depressions," and reviewed how the *Oceans Act* has fared in

promoting the two main governance tools mandated in the Act: development of integrated ocean management plans, and establishment of MPAs.

He discussed future law and policy directions:

- **Oceans Act amendments**

David recommended rethinking several aspects of the law, and highlighted the need for specific sections on sustainability principles, such as ecosystem and precautionary approaches, and requiring these principles to be followed in administrative practice. The *Act* should refer to the need for Canada to meet its international ocean responsibilities and advance reconciliation with First Nations and Indigenous communities. The other recommendations David proposed to strengthen the MPA legal regime included authorizing the establishment of MPAs on Canada's extended continental shelf; specifying clear procedures, timelines, and MPA categories; creating minimum protection standards; requiring MPA management plans; and authorizing buffer zones. The *Oceans Act* could open the door for "dynamic ocean management" through periodic reviews of MPA boundaries and zones in light of changing ocean conditions, particularly climate change and ocean acidification.

Another set of recommendations was aimed at giving "legal teeth" to integrated management plans, for example, by including a regulatory power to put plans into practice, and setting approval requirements for proposed activities within plan areas. Completed LOMA plans stand out for their aspirational generality and setting of overall goals, objectives and management strategies. However, major offshore areas have remained outside the integrated planning process (e.g. the central and eastern Arctic, the Bay of Fundy, and the Gulf of Maine) and the four sub-regional MaPP marine plans for the North Pacific Coast do not address management of uses under federal jurisdiction. Updating the *Act's* integrated planning provisions could give legal force to plans by establishing regions and sub-regions for planning purposes, setting clear procedures, content, and timelines, and providing specific authority to pass regulations which give effect to zoning and permitted activities.

- **Enhancing integrated planning cooperation with the provinces**

David identified a lack of incentives to encourage provincial cooperation as a gap to collaborative planning. Encouraging provincial integrated management could be achieved through *Oceans Act* amendments, and providing federal financial support and endorsement of provincial plans.

- **“Meshing” the *Oceans Act* with related legislation**

Any amendments to the *Oceans Act* should consider interactions with other key laws for ocean management, including the *Species at Risk Act*, *Canada Shipping Act, 2001* and *Fisheries Act*. Other legislative approaches to achieving oceans management goals are to modernize the *Fisheries Act*, adopt federal aquaculture legislation, and clearly outline a legal structure for offshore renewable energy developments. 2.5 *Oceans Act* MPA Study by Fisheries and Oceans Standing Committee

2.5 *Oceans Act* MPA Study by Fisheries and Oceans Standing Committee

In his presentation, **MP and Vice-Chair of the Standing Committee on Fisheries and Oceans, Fin Donnelly**, introduced the House of Commons Standing Committee study on *Oceans Act* MPAs. Initiated in December 2016, the study is examining the process and criteria used to identify and establish MPAs. He described the process employed by the Committee, and encouraged experts to testify and provide guidance. The key role that legislative definitions play in oceans protection was emphasized. It is important to use the most widely accepted definitions, as they are the “drivers of action.” Definitions in legislative drafting give meaning to core terms, provide clarity for implementation and are the focus in cases of judicial review. MPA legislation often contains a section dedicated to definitions and interpretation of key terms. He gave the example of the differing definitions of an MPA that witnesses were asking the Committee to adopt: the IUCN definition and the FAO definition in the sustainable fisheries context.

2.6 Key Features of MPAs: Science and Compliance Monitoring

MPAs with higher levels of protection lead to conservation of biodiversity, increased biomass, and improved ecosystem health, leading to more resilient marine ecosystems. This session focused on the importance of science-based planning processes, adaptive management and compliance monitoring for achieving effective marine protection: How can Canada's MPAs incorporate best available science? Are there fundamental rules that should be developed for use in MPA design and implementation? What lessons can we learn from enforcement and monitoring results? What are the roles of different groups in scientific and compliance monitoring?

As **Rodolphe Devillers, Professor of Geography at Memorial University of Newfoundland** pointed out, not all MPAs are created equal. In addition to increasing the quantity of MPAs, we also need to work on their quality. To guide effective MPA designation and management, he laid out five key reasons why some MPAs are not effective:

- **Location**
MPAs are designated where it is easiest (areas where human activity and use are low) and therefore fail to protect important places, or “residual reserves”.⁹
- **Inadequate levels of protection**
Protection levels should be linked to international best practices such as IUCN classifications.
- **Too small**
MPAs need to be big enough that they protect critical species and habitat. The conservation impacts of changes and reductions in MPA size from initial proposal to implementation need to be quantified to confirm that the final decisions still provide the intended protection measures.
- **Lack of adaptive management**
MPA management should be reviewed and improved as new scientific data

⁹ Devillers R., R.L Pressey, A. Grech, J.N. Kittinger, G.J. Edgar, T. Ward, and R. Watson, “Reinventing residual reserves in the sea: are we favouring ease of establishment over need for protection?” *Aquatic Conservation: Marine and Freshwater Ecosystems*, 25, 4 (2014): 480-504.

is available. To date, no *Oceans Act* MPA has been modified based on new information.

- **Not properly enforced**

There must be formal mechanisms to report on MPA effectiveness and enforce provisions.

Site-by-site protection can be slow and ineffective, making it difficult to recognize social and ecological connections between MPAs, address cumulative impacts, and situate the protected areas in the broader ocean space. Throughout the workshop many participants reiterated the need to move towards network planning.

Mark Carr, Professor of Marine Ecology at the University of California at Santa Cruz, discussed the use of “rules of thumb” for designing MPA networks.¹⁰ These include encompassing ecological processes by both representing and replicating ecosystems within protected areas. Proper representation is achieved through including habitats at a range of depths and across ecosystems within biogeographic regions. Replicating these sites within a network reduces the risk of losing conservation efforts from local disturbances, enhances representation of ecosystem features, and provides comparative data for adaptive management.

MPA networks must incorporate marine connectivity to reach conservation objectives. Connectivity between populations occurs through larval dispersal, movement of mature marine life between sites, and with the transport of nutrients between habitats. In this way, marine populations in one area can contribute to and replenish those in other areas. These interactions are complex and although our understanding of these linkages is still progressing, currently available science can be used to establish guidelines for the spacing and size of MPAs in a network such that connectivity between these areas is utilized.

To be effective, marine protection laws need to be monitored and enforced. **Jana Kotaska, Program Manager for the Coastal Stewardship Network (CSN)**, described the work of the Coastal Guardian Watchmen (CGW) and the CSN in implementing marine plans and stewardship of MPAs. The CSN is a regional Indigenous enforcement authority that brings together nine different nations along the Central and North Coast

¹⁰ Carr M.H., E. Saarman, and M. Caldwell, “‘Rules of thumb’ in science-based environmental policy: California’s Marine Life Protection Act as a case study,” *Stanford Journal of Law Science and Policy* (2010).

of British Columbia to patrol, monitor, and protect their territories. Each nation has the responsibility and authority to safeguard their territory, and conducts monitoring and enforcement programs. The joint Coastal First Nations – Great Bear Initiative supports First Nation stewardship offices to work together in a coordinated way, to strengthen capacity and increase their stewardship authority. Nations come together and meet to discuss experiences, support each other and build relationships. For Crown governments and others, the CGW help to build nation-to-nation relationships, upholding Indigenous title, rights and knowledge. Where other governments do not have the capacity, CGW programs cost less and provide more benefits.

As part of the network, the Coastal Guardian Watchmen:

- patrol territories,
- collect data both scientific and observational,
- undertake assessments,
- monitor compliance and report suspicious activities,
- educate the public and resource users, and
- respond to emergencies.

Jana presented a video to the workshop about the CGW and the Coastal Stewardship Network. The video, entitled *Eyes and Ears on the Land and Sea*, can be found at:

<http://coastalguardianwatchmen.ca/>



Photo: Nick Hawkins

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2.7 Indigenous Governance in the Marine Environment

A key step to improving the *Oceans Act* is to explicitly include a section that recognizes the role of Indigenous nations in governing MPAs and allows for co-governance.¹¹ Currently, nothing in the Act prevents the establishment of co-governance arrangements, but there is little guidance about how to do so. Co-governance arrangements in MPAs are one way that the government can fulfill its constitutional obligations to uphold Aboriginal rights and title, and work with Indigenous nations by respecting Indigenous laws and legal orders. Co-governance can come in many shapes and sizes. This workshop brought together academics and experts working in this field to discuss: How does co-governance in the marine environment and MPAs work in their experience? How has Indigenous law been incorporated into those co-governance arrangements? How can the Crown government appropriately recognize Indigenous Protected Areas?

¹¹ The *Oceans Act* does not explicitly recognize any of these provisions but it does have a standard non-derogation clause. *Oceans Act*, s. 2(1). There is nothing in the *Oceans Act* preventing the creation of co-governance arrangements.

Benjamin Ralston, Assistant Law Professor at the University of Saskatchewan, outlined co-governance arrangements in New Zealand, which provide important lessons for Canada. Canada and New Zealand have comparable backgrounds of British colonialism, Westminster-style parliamentary democracy and a common law system modeled on that of the UK. Both countries have complex jurisdictional issues internal to governments and relevant when implementing marine protection. However, key differences are that in Canada Indigenous rights are constitutionally entrenched, and Māori have proportionate representation in New Zealand's Parliament (~15%).

Relationships between the Crown and Māori are largely governed by the Treaty of Waitangi/Te Tiriti o Waitangi, the application of which is overseen by the Waitangi Tribunal, a permanent commission tasked with interpreting and making recommendations on practical application of its principles in response to claims. Various legislation in New Zealand, such as the *Resource Management Act (1991)*, requires regard to Treaty principles and also requires decision-makers to consider the relationship between Maori iwi (tribes) and their culture, traditions, ancestral lands, water, sites and sacred sites and other taonga (treasures). Some New Zealand legislation recognizes Māori fishing title, and rights claims within its statutory regime alongside modern treaty frameworks.

This legislative framework has given rise to unique co-governance arrangements. For example, the *Te Urewera Act (2014)* declares Te Urewera – a National park since 1954 – a legal entity with the rights, powers, duties and liabilities of legal person. The Te Urewera Board, which acts on behalf of the Te Urewera to make management decisions, is directed to reflect Māori values and laws and has increasing membership of Tūhoe Māori.

More recently, the *Te Awa Tupua (Whanganui River Claims Settlement) Act (2017)* declared the Whanganui River a legal person, vesting Crown title in the river itself. Two Te Pou Tupua, human faces of the river, are appointed – one by iwi and one by the Crown.

Other co-governance arrangements include taiāpure, local fisheries through which fishery management authority over coastal waters are delegated to iwi or hapū (a subtribe or clan) where they can demonstrate customary reliance on these areas for

food, spiritual or cultural purposes. Fisheries regulations can also create mātaítai reserves in which kaitiaki, or guardians, manage and authorize customary food gathering within the marine territory.

Karla Letto, Habitat Specialist with the Canadian Wildlife Service at Environment and Climate Change Canada and Samuel Palituq, Chairperson of the Ninginganiq Area Co-Management Committee, presented on their experience with co-management committees for protected areas in the north. The marine environment is a significant component within many types of protected areas in Nunavut. Currently, there are eight Migratory Bird Sanctuaries (MBS) and five National Wildlife Areas (NWA) in the Nunavut Settlement Area. Each of these 13 protected areas has both a terrestrial and marine portion. For some areas, the marine portion makes up the vast majority of the protected area. For example, 84% of the Ninginganiq NWA is marine, and 79% and 97% of Prince Leopold Island MBS and Seymour Island MBS, respectively, are marine.

Under the Nunavut Agreement, before establishment of any protected area in Nunavut the relevant government agency must negotiate an Inuit Impact and Benefit Agreement (IIBA). One of the key objectives of the IIBA is to promote the social, economic and cultural health of Inuit. It also includes all matters related to the protected area that “would have a detrimental impact on Inuit, or that could reasonably confer a benefit on Inuit.”¹² In 2008, an IIBA for National Wildlife Areas and Migratory Bird Sanctuaries was signed between the government of Canada, Nunavut Tungavik Inc. and the three Regional Inuit Associations. This was recently negotiated with a new version of the IIBA coming into effect in 2016. It allows for co-management of protected areas by Environment and Climate Change Canada and Inuit, and expands economic and employment opportunities for associated communities.

As part of the IIBA, Environment Canada is responsible for establishing Area Co-Management Committees (ACMCs) for protected areas in the Nunavut Settlement Area. ACMCs are advisory bodies that ensure effective management of protected areas, provide planning and management advice to the Minister, review permit applications, develop area-specific management plans and open up two-way communication with the community. Under the IIBA the Minister is responsible for

¹² Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada at s. 8.4.4

seeking the ACMC's advice on all significant policy matters directly affecting NWA and MBSs in Nunavut and must carefully consider Inuit Qaujimajatuqangit, Inuit traditional knowledge, presented by the ACMC. However, the Minister maintains ultimate decision-making power over management of the area.

Currently, nine ACMCs act as advisory bodies responsible for the day-to-day management of these conservation areas. Ninginganiq NWA is the largest NWA in the Nunavut Settlement Area. The area protects one of the largest concentrations of bowhead whales in Canada as well as a variety of marine mammals including seals, narwhals, polar bears and sea birds such as the King Eider, Dovekies and Northern Fulmar. The ACMC has helped to give Inuit a stronger voice in protected area management and improved the relationship between government and communities. The committee also keeps the community informed of management decisions, often using radio announcements to communicate and organize community consultations.

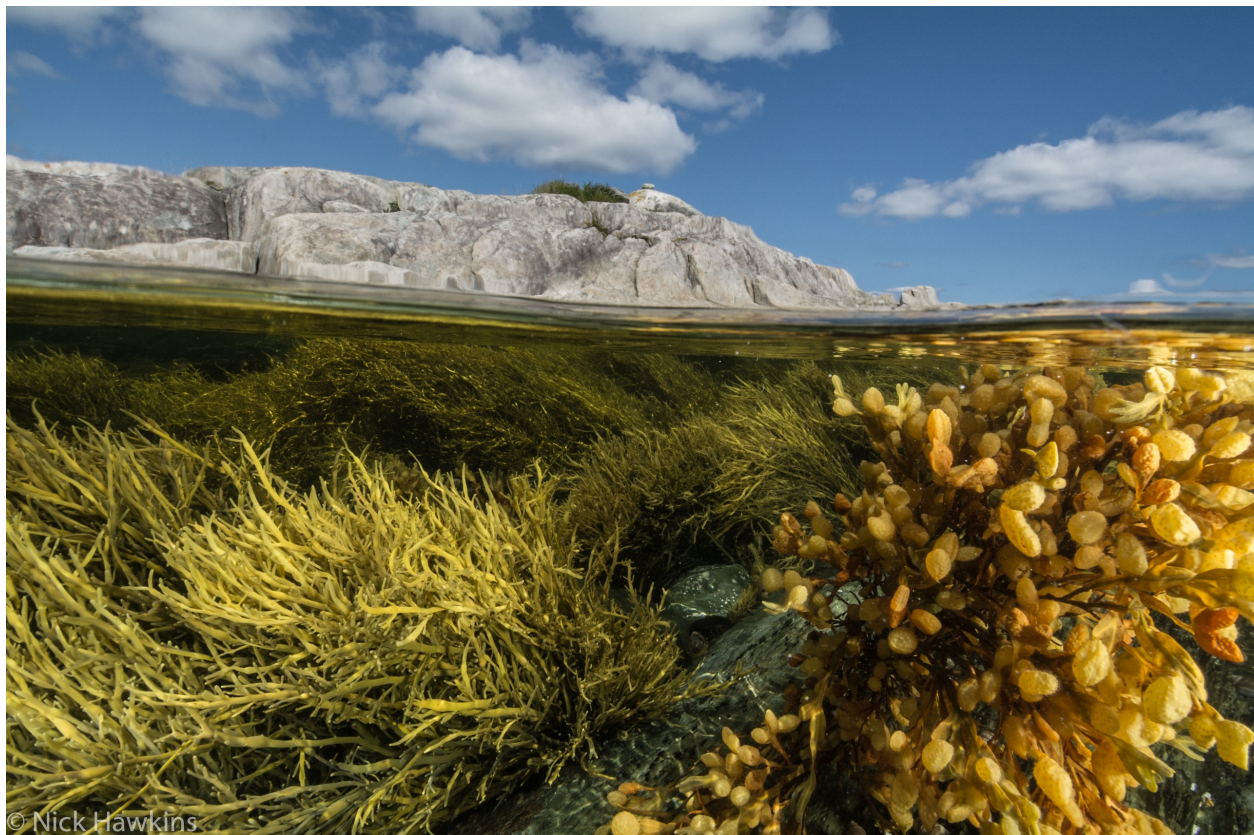
As chairperson for the Ninginganiq ACMC, Samuel Palituq emphasized that one of the most effective ways to deal with complex issues such as marine protection and climate change is to work at the community level and use traditional knowledge and science together to produce management solutions. He hopes to work with hunter and trapper and government representatives to protect the whale population in his area. Challenges remain, and capacity, including high operational costs and a limited budget, are issues for these northern communities.

Mr. Palituq also expressed concerned about tourists and cruise ships and explained that he had received a call that morning from his community in Clyde River about a large tourist ship that had just arrived. He asked Transport Canada (TC) how the community can be informed in advance before allowing a tourist ship into the area as it has the potential to disrupt marine life, how TC can protect marine mammals from increasing ship traffic, and asked for a commitment from TC and DFO to follow-up on this issue with his ACMC.

Steve Diggon, Regional Marine Stewardship and Planning Coordinator, Coastal First Nations – Great Bear Initiative, discussed marine spatial planning in the northern shelf bioregion on the BC coast and the progress made by the Marine Planning Partnership for the North Pacific Coast (MaPP). The MaPP plans have been a successful

integration of bottom-up and top-down planning. The key to this success was the collaboration between First Nations and the provincial government, as well as robust engagement of stakeholders and local governments in developing comprehensive marine plans that included both spatial (e.g. uses and activities) and aspatial (e.g. objectives and values) components. Developing good relationships between groups has also been critical in driving the plans' implementation phase. These plans will provide the foundation for establishing a network of MPAs with co-governance agreements and management plans.

Steve presented a video providing an overview of the MaPP process, which can be found on the MaPP website at: <http://mappocean.org/about-mapp/great-bear-sea-video/>



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2.8 MPAs in Action

The California *Marine Life Protection Act* MPA network

In 2014, California completed its MPA network of 124 MPAs covering approximately 16% of state waters, and nearly half of this area within no-take marine reserves.

According to **Kaitlin Gaffney, Director of the Coast and Oceans Program at the Resources Legacy Fund**, there are a number of lessons that can be drawn from the MPA network's success.

Recommendations from her experience with this network planning initiative were:

- Ensure the presence of key enabling conditions: In California's case, these were the legal mandate from the *Marine Life Protection Act* (MLPA), political support and adequate resources, as well as sufficient coordination.
- A scaled and phased approach: After a failed attempt to establish an MPA network along the entire coast at once, the MLPA network process followed a scaled and phased approach. The coast was split into four sections and MPA networks were designated on a regional-basis over successive years.
- Clear objectives, roles and timelines: As part of the partnership, there were formal Memorandums of Understanding laying out responsibilities and timelines.
- Ensure transparency and participation: A parallel consultation process was set up to ensure all stakeholders could access information. Meetings were also webcast and archived.
- Use the "best readily available science": This included detailed studies of alternative scenarios that were vetted by numerous experts.
- Consider enforceability in design: Thinking about how to enforce an MPA before you draw the lines is an important proactive step.

- Provide for robust implementation: It was necessary to consider the different jurisdictions, and agencies that are responsible for different aspects of the MPAs. Information sharing is critical, as is rigorous scientific monitoring to allow for adaptive management. A strength of the initiative is its focus on obtaining the needed monitoring data and public reporting.

There are a number of resources available that discuss lessons learned from the California MLPA.¹³

Creating Marine Reserves around the Isle of Arran

Local engagement is essential, and taking a public trust approach is vital to the establishment of an MPA. That was the message from **Professor Tom Appleby from the University of West of England**, who works with the Community of Arran Seabed Trust (COAST), a community organization working to protect the marine environment around Arran. COAST's efforts to ban bottom trawling and scallop dredging within three miles of the UK coast led to the establishment of the first community-developed no-take Marine Protected Area in Scotland through the Inshore Fishing (Prohibition on Fishing) (Lamlash Bay) (Scotland) Order in 2008. This small no-take area led to the establishment of the South Arran Marine Protected Area Order in 2014, passed pursuant to the *Marine (Scotland) Act 2010*.

Professor Appleby discussed the common law in the UK, which gives commercial fishermen the public right to fish. This can then be restricted by granting a limited number of fishing vessel licences and adding quotas, but ultimately it is the public right which allows a fisherman to fish. In England and Wales, these rights have traditionally also been limited by a series of complex bylaws and ministerial orders which result in some areas being highly regulated and others barely at all.¹⁴

Lessons learned from this experience include the need to look carefully at the sea as a public space, and to check claims of 'rights' asserted by different ocean users. In terms of local engagement, there is a need to determine who represents the local

¹³ For example, see the Special Issue on California's Marine Protected Area Network Planning Process, *Ocean & Coastal Management*, Volume 74 (March 2013) Pages 1-102.

¹⁴ Appleby, T. "The public right to fish: Is it fit for purpose?" *Journal of Water Law*, 16, 6 (2005). pp. 201-205. ISSN 1478-5277 Available from: <http://eprints.uwe.ac.uk/19855>

community, and to use simple consultation mechanisms. Finally, it is only the management measures which make the MPA effective. The no-take provision was critical in this regard.

For its efforts, COAST was one of the Goldman Environmental Prize recipients in 2015. The COAST experience highlights the importance of community support to drive conservation initiatives such as MPA creation.

2.9 Marine Industries and Users – Experiences with MPAs

There is a growing intensity and complexity in ocean use, in Canada and around the globe. Integrated management planning requires working together across ocean user sectors to achieve sustainable ocean management goals. Communication was the major theme for this session as the speakers in this sessions discussed: How is/has your industry been involved in the process of MPA designation? What are the challenges and benefits to MPAs that you have had experience with?

In her opening presentation for this session, **Sonia Simard, Director of Legislative and Environmental Affairs for the Shipping Federation of Canada**, described the legal and regulatory framework that shapes shipping operations in Canada and emphasized the need to design MPAs within the scope of integrated management and marine spatial planning.

The International Maritime Organization (IMO) and the International Labour Organization (ILO) are responsible for much of the extensive framework of international conventions that govern the ocean. Canada has a strong record of ratifying and implementing IMO Conventions. As part of these obligations, as a coastal and port state Canada has both the right and responsibility to police foreign ships sailing in Canadian waters to verify compliance with safety, security and environmental standards. Canada's jurisdiction over vessels in its maritime zones is established within the *Oceans Act* and UNCLOS. However, Canada cannot proceed unilaterally where conservation measures may impact freedom of navigation within the Economic Exclusion Zone (EEZ), innocent passage in the Territorial Sea, or transit passage in international straits, and needs to respect international obligations.

Shipping is key to Canada's economy and ability to trade with the rest of the world. It is also highly regulated by international conventions and obligations, national laws, standards, and regulations as well as flag state and port state inspections. Ship owners should be part of the conversation around planning and implementing MPAs and conservation objectives. In the past, the marine industry has taken proactive conservation measures such as adopting voluntary speed reductions and modification of traffic lanes in areas such as the Bay of Fundy to minimize collision with North Atlantic right whales, and applying best practices in ballast water management.

Jean Lanteigne, Chair of the Canadian Council of Professional Fish Harvesters, advocated for a much broader discussion on the future of Canadian fisheries. He discussed his experiences with fisheries management in Canada. Over time, the focus of fisheries management has shifted, with increasing regulatory steps for fish harvesters, decreasing fleet sizes, and increasing focus on area-based closures including sensitive benthic areas and marine protected areas. With various changes in fish populations along Canada's coast, he advocated for broader discussions on the state of Canadian fisheries, including national conferences on fisheries, rather than species-level advisory committees

Kris Vascotto, Executive Director of the Groundfish Enterprise Allocation Council, presented on the opportunities and challenges in working towards collaborative conservation in Canada. His "toolbox" for working toward sustainable ocean management included using a holistic approach to establishing conservation measures, using components from fisheries management, protection for sensitive benthic areas and marine protected area network planning. The role of science to ground decisions on marine protected areas and build confidence of fishers with the decision-making processes was emphasized, while ad-hoc approaches to MPA establishment can lead to undermining support. Maintaining confidence in decision-making and support also means keeping dialogue open and transparent between different stakeholders.

Lucie Robidoux, Program Manager at the Commission for Environmental Cooperation (CEC), closed the session with a discussion of marine eco-region mapping at the continental level. She discussed practices and challenges in building cross-border collaborations, such as the CEC's Pacific Coast Whale-Watching Study examining whale-watching in and around MPAs along the Pacific Coast, from Canada

to Mexico, and the effects of climate change and other non-climate stressors. Key recommendations on collaboration included finding common objectives and being mindful of building strong relationships. Integrating local knowledge, respecting existing relationships and stakeholder involvement all take time and need to be a part of the process from the start of project design.

2.10 Legal Requirements and Interdepartmental Cooperation

Cooperation across federal departments is critical to achieving Canada's marine protection targets. A panel of representatives from the federal departments involved with designating and implementing MPAs came together to discuss interdepartmental cooperation and how legal requirements encourage collaboration. Panelists were asked to discuss the role of their department in MPAs; challenges and benefits of coordination and integrated government activity; and their recommendations.

Jeff MacDonald, Director General, Oceans and Fisheries Policy, Fisheries and Oceans Canada, emphasized that bringing about long-lasting changes in law requires a high degree of buy-in. This can only be achieved through collaboration and consultation, and workshops like Oceans20. DFO and Parks Canada are two of the main departments involved with meeting Canada's protection targets by 2020. These targets gave the necessary push needed to make long-term changes.

Last year, as part of his plan for greater transparency in government, Prime Minister Justin Trudeau publicized all the ministerial mandate letters outlining each Minister's expectations and priorities. Throughout the discussion, many panelists underscored how this newfound openness has led to a better, more cooperative, and re-invigorated oceans agenda.

Director of Parks Establishment for Parks Canada, Kevin McNamee, pointed out that the role of Parks Canada is unique in aiming to provide opportunities for Canadians to enjoy Canada's natural heritage. The marine environment is fundamental to cultural and social identity. That is why Parks Canada is committed to achieving the targets and improving co-management approaches. This means building trust and support throughout the process and reporting back to communities about how their contributions are used in decision-making.

The publication of the departmental mandate letters compelled departments to sit down and discuss an inter-departmental, cohesive approach to working on specific initiatives for meeting the protection targets. For example, when Parks Canada needed more information and tests for Lancaster Sound, they asked for Natural Resources Canada (NRCan)'s assistance and they were able to provide the information in a timely way. Or, when Shell Canada and the Nature Conservancy worked out an approach for Shell to relinquish 30 offshore oil and gas exploration interests to the Nature Conservancy, Michel Chenier from Indigenous and Northern Affairs Canada worked collaboratively on that. The mandate letters made the benefits of collaboration much clearer for the departments.

Candace Newman, Senior Policy Advisor for Natural Resources Canada (NRCan), highlighted that although the mandate letters do not recognize NRCan within the commitment to protect marine resources, the department is heavily involved in providing scientific information used in decisions on marine protection. This advice is being provided on every site that is being put forward for protection. NRCan is also involved in developing a federal geospatial committee of 21 departments and agencies who have identified the need to better manage and coordinate geospatial data so that there is an enhanced ability to map out marine activities and as well as identify alternative future options and scenarios. In answer to a question, Candace described the upcoming proposed amendments to *the Canada Petroleum Resources Act* to complement *Oceans Act* proposed amendments.

Michel Chenier, Director of Petroleum and Mineral Resources Directorate for Indigenous and Northern Affairs Canada, explained the role of the department in marine planning through relationships with Indigenous peoples. In the north, those relationships are grounded in land claims agreements which work as foundational guides for working in marine areas. The land claims have put in place a series of comprehensive institutions of public governance that provide the framework for the management of activities, such as environmental assessment in the offshore environment.

Jennifer Saxe, Director of International Marine Policy for Transport Canada, focused on how her department is taking steps to improve marine safety through the Oceans Protection Plan. The plan focuses on better information sharing regarding marine traffic in Canadian waters and proactive vessel management, which means

working with coastal communities and Indigenous nations to better respond to requests – such as ‘slow areas’ when boats go by a sacred site. The Oceans Protection Plan also aims to preserve and restore ecosystems vulnerable to marine shipping impacts. This will include inter-departmental cooperation to create programs addressing threats to marine mammals.

Ian Parnell, Manager of Protected Areas with the Canadian Wildlife Service (CWS) of Environment and Climate Change Canada, discussed how CWS collaborated across departments with DFO, Transport Canada, and NRCan on the proposed Scott Islands marine National Wildlife Area under the *Canada Wildlife Act*. The Scott Islands and surrounding marine area are significant habitat for seabirds, and protecting this area requires collaboration with authorities that manage the suite of activities which currently occur in the area such as commercial and recreational fishing and shipping. Key lessons from this experience are that coordination takes time, organization, capacity, and resources to implement, and that sustained commitment of resources is important to ensure progress.



Photo: Tavish Campbell

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3.0 Future Directions and Next Steps

The *Oceans Act* provides the foundation for integrated marine plans, MPAs and MPA networks, as well as consultation and coordination on oceans management and governance. It is the legal tool that takes the idea of an MPA and turns it into reality. When first passed in 1997, the *Oceans Act* was internationally recognized as a progressive approach to ecosystem based oceans management. Now, after two decades of experience implementing marine plans and MPAs under the Act, it is clear that there are areas where we can strengthen MPA and MSP governance mechanisms to better achieve conservation goals.

"We need all hands on deck if we are to meet our conservation goals."

- **Susanna Fuller, Marine Conservation Coordinator at Ecology Action Centre (EAC)**

Communities carry the stewardship of the oceans and need to be part of any strategy to protect our oceans. For MPAs to reach their potential, governments need to work with local communities and Indigenous nations to build support, develop management plans and enforce effective protection. There need to be clearly legislated rules and responsibilities, as well as adaptive management guidance with which to monitor and respond to evolution in both the marine environment and communities. In line with the federal government's reconciliation mandate, there is an opportunity to amend the *Oceans Act* to expand Indigenous governance roles, explicitly endorse Indigenous co-management arrangements, and recognize Indigenous Protected Areas.

"We have a long history of being takers, and now we need to become better caretakers."

- **Bill Wareham, the David Suzuki Foundation (DSF)**

This starts with explicitly incorporating specific objectives and minimum protection standards to maintain ecological integrity and ecosystem function into the *Oceans Act*. These could include requiring a significant percentage of an area to be designated as no-take and buffer zones, ensuring connectivity between protected areas, and prohibiting all large-scale habitat disturbances by industrial activity and commercial resource extraction.

“This is a once-in-a-generation opportunity to advance ocean protection and management.” - **Kevin Stringer, Associate Deputy Minister, Fisheries and Oceans Canada (DFO)**

Events like this workshop are needed to hold government's feet to the fire. Canada is late to the game in setting up protected areas that will count under its CBD treaty commitments. But it is the only country that has set a target for 2017.

The proposed *Oceans Act* amendments are surgical amendments to speed the designation process and achieve CBD targets by 2020. There are also tools in the *Oceans Act* that have not been fully utilized, such as Marine Environmental Quality operational objectives which could be used to address minimum standards.

The government has heard comments that the current agenda is too focused on MPAs and conservation targets, and concern that biodiversity outcomes could be compromised by the timelines for achieving targets. The targets in the public Mandate Letter have changed perspectives, and there have been significant investments to achieve these targets, including establishing new support for fisheries management and hiring new scientists in DFO. New funding has allowed the department to grow and build new partnerships with academics. The Minister is committed to collaboration to achieve these targets while not compromising biodiversity objectives.

Other Effective Area-Based Conservation Measures (OEABCMs) will need to be included in order to meet these targets for 2020. Guidelines developed by DFO for identifying OEABCMs are being used to evaluate and identify marine conservation measures, such as fisheries area closures or sensitive benthic habitat protections, which contribute to these targets. These guidelines will also be used to continually review identified OEABCMs to ensure that management continues to uphold conservation goals. The government will also be looking to other countries' leadership and guidance on OEABCMs.

The new legislative amendments to the *Oceans Act* announced in Bill C-55 will ensure greater accountability. The focus on the targets is also leading to action in other areas and broader engagement and cooperation across governments, with Indigenous nations and with industry.

Appendix A: Recommendations and Discussions

Throughout the workshop, participants were asked to post their ideas, breakout session solutions, and thoughts on how to improve our oceans protection. These ideas have been summarized below.

- Recognize Indigenous principles and governance of Indigenous conserved and protected areas, including authority and monitoring by Indigenous guardians.
- Define minimum standards for protection and explicitly require that MPAs set objectives for maintaining ecological integrity and ecosystem function.
- Change the discourse to emphasize conservation as an investment in restoring and maintaining productivity of our shared marine heritage. All of the ocean should be sustainably managed, not only areas within MPAs.
- Use definitions that align with international best practices in the *Oceans Act*, including adoption of the IUCN Protected Areas definitions and categories.
- Require inclusion of Indigenous governments at the table as decision-makers from the very start of management discussions.
- Clearly define responsibility and accountability, and include a mandate for collaboration. Remove interdepartmental impediments to achieving outcomes collaboratively.
- Require maintenance of species and ecosystem connectivity.
- The *Oceans Act* should explicitly define procedures for review and amendments to MPAs and integrated management plans to accommodate adaptive management.
- Clarify requirements for integrated management in legislation, conduct integrated management and MPA network planning together to use resources efficiently.

- Implement timelines for designation of MPAs and apply restrictions on activity permits until regulatory and management plans are in place.
- Strengthen the *Oceans Act* preamble by outlining key guiding principles such as co-governance, precautionary approach, environmental assessment, minimum standards, and connectivity.
- Provide adequate capacity for meaningful participation at all levels, including long-term commitments, with sustained funding, from all key players.
- Mandate marine spatial planning by region under the *Oceans Act*.
- Develop legislation that looks past Canada to the global and connected nature of the oceans.
- *Oceans Act* and regulations should create flexible tools under management plans that give authority to make changes, including addressing fisheries management within and around MPAs.
- Bring the *Oceans Act*, and all federal laws, into alignment with the Constitution.
- Create a legal framework for the identification of areas where implementing MPAs would be most effective.
- Include key elements within *Oceans Act* legislation rather than in policy.
- Include mechanisms that allow for compensation, to incentivize proactive conservation measures.

Appendix B: Oceans20 Canada's Oceans Act Workshop Agenda

Tuesday, June 13th	
8:30 AM	Registration & Light Breakfast
9:00 AM	Opening Remarks
	Verna McGregor
	Linda Nowlan West Coast Environmental Law
9:30 AM	Experiences with Oceans Act MPAs
	Maxine Westhead Fisheries and Oceans Canada On the Water: Experiences Using Canada's Oceans Act: Perspectives from DFO's Maritimes Region
	Russ Jones Council of the Haida Nation Challenges with MPA establishment on the west coast - a First Nations perspective
	Paul Crowley World Wildlife Fund Canada Conservation desires: can government deliver the marine conservation Arctic communities want?
	Sabine Jessen Canadian Parks and Wilderness Society A national perspective on Canada's MPAs
11:15 AM	Break
11:35 AM	Honourable Dominic LeBlanc Minister of Fisheries, Oceans and the Canadian Coast Guard
12:00 PM	Lunch
1:00 PM	Collaboration and Regulation in the Oceans Act and MPAs
	Christie Chute Fisheries and Oceans Canada Meeting Canada's Marine Conservation Targets
	Jamie Alley University Centre of the Westfjords, University of Victoria, Jamie Alley and Associates Collaboration in Delivering the Oceans Act in Pacific Canada; Lessons For Creating New Governance Models
	Valentyna Galadza-Park Saguenay–St. Lawrence Field Unit, Parks Canada Saguenay–St. Lawrence Marine Park: a participatory management success story
	Jennifer Janes Fisheries and Oceans Canada Decades of Protection: Lessons Learned from a Community Driven Marine Protected Area in Newfoundland
2:20 PM	Break
2:40 PM	MPAs in Action - California
	Kaitilin Gaffney Resources Legacy Fund Lessons Learned from California's Marine Life Protection Act
3:20 PM	Discussion Groups
4:00 PM	Fin Donnelly, MP Standing Committee on Fisheries and Oceans Oceans Act MPA Study by Fisheries and Oceans Standing Committee
6:30 PM (Doors at 6PM)	PUBLIC EVENT with Cristina Mittermeier Canadian Museum of Nature

Wednesday, June 14th		
8:30 AM	Registration & Light Breakfast	
9:00 AM	Marine Planning and MPA Nuts and Bolts – Law and Science	
	Barbara Lausche Mote Marine Laboratory, Florida	Global guidance on key elements for modern MPA legislation
	David VanderZwaag Dalhousie University	Getting Canada's Oceans Act Together: Progressions, Depressions, Questions
10:00 AM	Discussion Groups	
10:45 AM	Break	
11:00 AM	Key Features of MPAs – Science and Compliance Monitoring	
	Rodolphe Devillers Memorial University of Newfoundland	All MPAs don't work: the importance of science advice, location and level of protection on MPA effectiveness
	Mark H. Carr University of California, Santa Cruz	Science-based rules of thumb for the design and management of marine protected area networks
	Jana Kotaska Coastal First Nations – Great Bear Initiative	Coastal Guardian Watchmen: Key to Protecting Oceans
12:00 PM	Lunch	
1:00 PM	Co-Governance in the Marine Environment	
	Benjamin Ralston University of Saskatchewan, College of Law	Mana moana: lessons from Aotearoa New Zealand on Indigenous-Crown marine co-governance
	Karla Letto Environment and Climate Change Canada & Sam Palitug Ninginganiq Area Co-Management Committee	Area Co-management Committees: An example of protected area co-management in the north
	Steve Diggon Coastal First Nations - Great Bear Initiative	Marine Planning and Implementation in the Northern Shelf Bioregion, British Columbia
2:15 PM	Break	
2:30 PM	Marine Industries and Users and MPAs	
	Sonia Simard Shipping Federation of Canada	Shipping - How We Navigate Marine Protected Areas
	Jean Lanteigne Canadian Council of Professional Fish Harvesters	<i>TBD</i>
	Michelle Boudreau Fisheries Council of Canada & Kris Vascotto Groundfish Enterprise Allocation Council	Opportunities and Challenges: Working towards collaborative conservation in Canada
	Lucie Robidoux Commission for Environmental Cooperation	MPA users and cross-border MPA collaborations
3:50 PM	MPAs in Action - Scotland	
	Tom Appleby University of the West of England, Bristol	Creating marine reserves around the Isle of Arran – The Scottish Experience

Thursday, June 15th	
8:30 AM	Registration & Light Breakfast
9:00 AM	<p>Panel: Legal Requirements and Interdepartmental Cooperation- Getting the Federal House in Order</p> <p>Jeff MacDonald (Moderator) Fisheries and Oceans Canada</p> <p>Candace Newman Natural Resources Canada</p> <p>Kevin McNamee Parks Canada</p> <p>Michel Chenier Indigenous and Northern Affairs Canada</p> <p>Jennifer Saxe Transport Canada</p> <p>Ian Parnell Environment Canada</p>
10:00 AM	<p>Conclusion: Where to go from here with the Oceans Act?</p> <p>Kevin Stringer Fisheries and Oceans Canada</p>
10:20 AM	Discussion & Recommendations
11:30 AM	Coffee & snacks available