REDUCING IMPACTS FROM SHIPPING IN MARINE PROTECTED AREAS: A TOOLKIT FOR CANADA

SHIPPING IN MARINE PROTECTED AREAS TOOLKIT WORKSHOP SUMMARY REPORT

February 2020

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INTRODUCTION

WWF-Canada, East Coast Environmental Law and West Coast Environmental Law hosted a joint workshop on February 25, 2020, with representatives from the federal government, shipping industry experts and ENGOs. The purpose of the workshop was to:

• Share information about the Reducing Impacts from Shipping in MPAs: A Toolkit for Canada project (the Toolkit);

• Solicit feedback on the draft legal and regulatory framework reports; and

• Facilitate discussion about future Toolkit outputs and applications.

Please see *Appendix A* for the complete agenda, and *Appendix B* for a list of participants.

The workshop featured three major components:

1. Marine Shipping Legal Review and Framework: Overview and Feedback

2. Discussion: challenges with respect to Marine Shipping

3. Discussion: where to go next and how to advance the conversation on Marine Shipping

This report provides a summary of the highlights of each of these items.

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MARINE SHIPPING LEGAL REVIEW AND FRAMEWORK: OVERVIEW AND FEEDBACK

Mike Kofahl (East Coast Environmental Law) and **Stephanie Hewson** (West Coast Environmental Law) shared a draft of their jointly authored legal review *Navigating the Law: Reducing Shipping Impacts in Marine Protected Areas*. The document is a comprehensive overview of the legal framework governing Marine Protected Areas (MPAs) in Canada, and a key part of the Toolkit. Designed to help an array of practitioners, *Navigating the Law* spells out key definitions, jurisdictional issues and numerous Canadian and international statutes governing shipping and marine conservation that have a bearing on MPAs. The document also includes an extensive appendix with a summary of shipping-related impacts on marine conservation (such as acoustic disturbance, ballast water discharge and more) and the relevant

legal tools – under a host of legal instruments – available to help manage those impacts. These stand in addition to many voluntary measures available to governments and industry.

The purpose of this review was to validate the overall approach and findings, seek comments on the clarity and completeness of the review and discuss any other measures that should be reflected. The workshop provided an introduction to the report, with the expectation that interested participants could provide more detailed feedback by email after the workshop. Highlights from the discussion follow; note that these highlights do not reflect consensus among participants on the topics discussed.

DRAFT LEGAL FRAMEWORK DISCUSSION HIGHLIGHTS

- **Scope of the review**: the document focuses on international law and Canadian law but does not include provincial or Indigenous law, nor an overview of all federal laws that apply to shipping generally (the focus is on impacts to MPAs). If there are important measures from management plans, for example, or other examples of how legal tools intersect with and interact with non-regulatory tools, that would be useful feedback. Suggestion: Saguenay-St. Lawrence Marine Park.

- **Exclusion and Exceptions**: A DFO representative reports that for new MPAs, exceptions for shipping need to be built in; if we want shipping allowed in the MPA, acceptable activities will be determined via a risk assessment, for which we now have standards. It is important to consider the impact on communities – for example, unintentionally cutting off Arctic communities from vital shipping – and to recognize that emergency operational requirements may necessitate ships' entering waters for which they do not have a permit.

- **Notice to Mariners**: These are an example of a non-regulatory tool that can be very effective in addressing impacts. The Toolkit could be expanded to include non-regulatory measures that are effective. Participants noted that the best tool to solve a problem is best irrespective of its regulatory or non-regulatory status.

- **Voluntary measures**: In BC the Western Marine Community Coalition came together to develop voluntary guidelines for pilots. This process included a broad group to develop guidelines, and local pilotage authorities to regulate compliance with the guidelines. This is a further example of non-regulatory tools that can be effective in meeting conservation goals and complement legal instruments.

- **Understanding fines**: On paper, seemingly small value fines might appear to be a mere cost of doing business. However, fines can be impactful as they have broader effects on insurance costs, for example, and a fine can trigger other cost-increases and has a greater effect than just the monetary value of the fine itself.

- **Managing safe navigation**: There can be a temptation to simply close areas and push ships farther out from the coast. However, this can have unintended consequences, as ships that encounter difficulties are therefore farther from aid, with potentially catastrophic consequences. Example of Spain pushing a stricken tanker out and it broke in half. The lesson is that it can be more effective to manage shipping and not just push it out of sight.

- **Role of Pilotage**: The preeminent role of pilotage is the assurance of public and environmental safety. These are the duties of a pilot, who is not answerable for commercial considerations. Therefore, mandatory pilotage is a potential threat mitigation tool and a strength for marine shipping in Canada.

- **West and east coast differences**: The Great Lakes and St. Lawrence areas have a different context in comparison to the west coast, with a great reliance on ships' masters and different conditions in domestic waters. Pilotage rules and solutions can be effective where they make sense, but the eastern and Great Lakes contexts are different. The scope of the *Navigating the Law* report is salt-water, and we recognize that there are limitations and differences between the coasts.

- **International context**: establishing a Particularly Sensitive Sea Area (PSSA), as opposed to an MPA, can be effective if only because PSSAs are incorporated into navigational charts used by foreign ships.

- **Understanding gaps**: the review gives us a good sense of what is out there; it would be useful to also have a sense of the gaps so that those working in the field can have a better idea of where they should focus.

- **Annex B as a tool**: it would be great to see the table in Annex B of the *Navigating the Law* report (protection options reference table)[1] brought out as a quick-reference tool that would allow us to see the various tools at a glance.

- **Maritime zones**: we would like to see a table showing what we can and cannot do in the context of the different maritime zones.

- **GIS potential**: Mapping this information in an interactive format would help us to see what zones potential new areas fall into, and what tools are available. Using layers to understand the different jurisdictional impacts would be helpful.
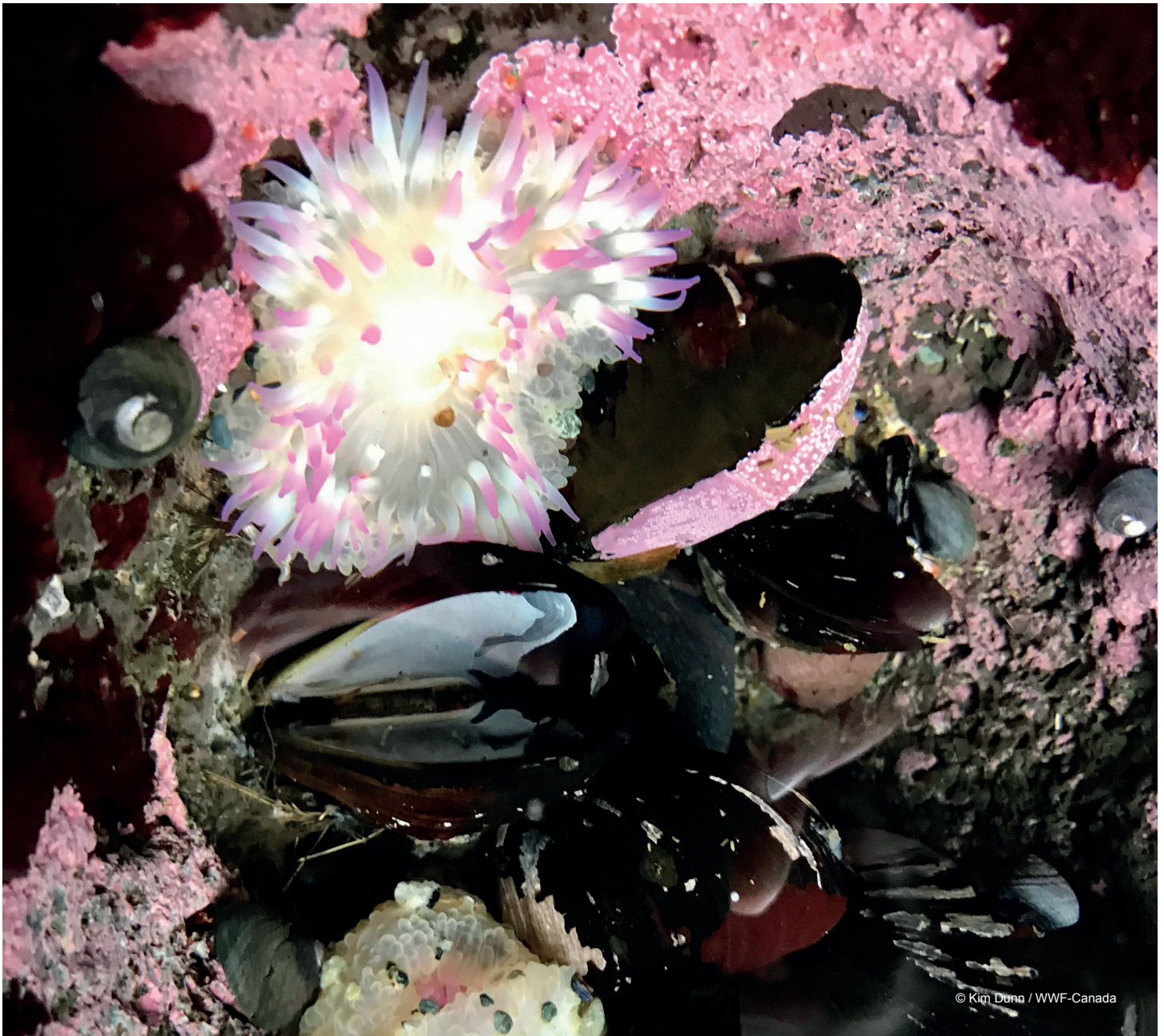
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1 In the final Toolkit, this table is now Appendix A of *Navigating the Law: Reducing Shipping Impacts in Marine Protected Areas*, and is also found in the *Quick Reference Guide*.

DISCUSSION: MAKING IT WORK

The group broke into small tables to discuss some key questions:

- *What challenges do you face when working with shipping in MPAs? For example, are there jurisdictional or process ambiguities or gaps that need addressing?*

- *Do you face challenges with capacity, knowledge, and resources? What would you need to address these challenges?*

DISCUSSION HIGHLIGHTS

Note that these highlights do not reflect consensus among participants on the topics discussed.

- **Conflicts between regulations:** We can have project-specific conditions that apply to project proponents *within* protected areas. Should we be working within the regulatory framework instead? What if project and regulatory conditions differ or contradict one another?

- **Regulatory vs. voluntary measures**: We could take a broader view of voluntary and regulatory measures; not focus so much on regulatory measures, as voluntary measures are often very successful and may be more appropriate. Importantly, voluntary measures can be developed and adopted very quickly, as they are not subject to the same process requirements as regulatory development. Voluntary measures can be effective with high compliance and without expensive enforcement. Not a cure-all, of course, but a relevant part of the toolbox.

- **Identifying the right tool**: Distill and disseminate information for the communities – is an MPA the right tool? What is the conservation goal? Are there other mechanisms to achieve conservation goals? If a community is really worried about shipping, is an MPA the most effective tool? This is where this information comes in handy – not just in the context of MPA, but to address shipping impacts overall.

- **Understanding the impact of shipping**: we have limited available data on how shipping contributes to conservation impacts.

DISCUSSION: WHERE WE GO NEXT

The group broke into small tables to discuss some key questions:

- *What do you need to have better conversations about shipping in MPAs in the future?*
- *Thinking about the Toolkit, what else could help enhance those conversations?*
- *Do you face challenges with data access or processing to inform discussions about shipping in MPAs?*

DISCUSSION HIGHLIGHTS

Note that these highlights do not reflect consensus among participants on the topics discussed.

- **Do it fast but do it right:** there can be a real push and pull between wanting to have measures in place right away (and satisfy public or political demand for action) and being deliberate in selecting the right measure.
- **Data**: we have a limited understanding of the role shipping plays in the marine conservation puzzle.
- **Understanding root causes**: the negative impacts that we all want to mitigate might have simple causes (ships transiting through an area) or far more complex causes, which can make selecting the right tool challenging.
- **More than shipping**: marine conservation is a busy space, with a web of overlapping pressures and risk factors all acting at once; shipping is only a part of the picture.
- **Capacity**: government capacity to act can ebb and flow with priorities.

- **Engaging Canadians**: it is important for us to engage people, and we need information that is more readily digestible and presented in an accessible way.
- **Conflict**: there can be conflict between regulations, which makes it difficult for industry to know what action to take and what makes enforcement action more difficult to take and defend.
- **Process**: different processes and reviews happening concurrently make it challenging to get the right people at the table and ensure that everyone knows what is happening in the space.
- **Informing MPA creation**: it would be useful to have a better understanding of the possible measures to protect marine areas, as well as their relation to the risk analysis in question; this would let us get a broader group involved with less friction.
- **Understanding issues**: it is important for us to define the problems we want to solve in terms of conservation objectives, and then pick the right tools based on our goals.

CONCLUSION

Kim Dunn (WWF-Canada) thanked all participants for their helpful feedback and engagement and solicited further comment on the draft legal review and the MPA Toolkit in general. The deadline for submission of comments was pushed back by the COVID-19 situation to April 30, 2020.

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APPENDIX A: AGENDA

Shipping in Marine Protected Areas Toolkit Workshop

February 25, 2020, Ottawa – AGENDA

Hosted by WWF-Canada, East Coast Environmental Law Association and West Coast Environmental Law

Invitees: representatives from federal government, shipping industry experts, and ENGOs

Objectives

- Share information about the Reducing Impacts from Shipping in MPAs: A Toolkit for Canada project;
- Solicit feedback on the draft legal and regulatory framework report;
- Facilitate discussion about future Toolkit outputs and applications.

8:30	BREAKFAST/REGISTRATION	

9:00	**1. WELCOME**
	
	  - Check in, expectations for the meeting, etc.
	
	  - Introduce participants and their roles and interests
		Facilitator

9:15	**2. TOOLKIT OVERVIEW**
	
	  - Presentation: context and overview of the project, where we are now, where we're going
	
	  - Roundtable discussion: questions of clarification, details on the process
		Kim Dunn

10:00	**3. BREAK**	

10:15	**4. REVIEW AND FEEDBACK: MARINE SHIPPING LEGAL REVIEW AND FRAMEWORK**
	
	Section-by-section review of the legal framework, led by the authors Roundtable discussion of each section: questions, comments, feedback Participants will be able to submit additional feedback after the workshop
	
	  - Introduction to MPAs and the legal context
	
	  - Review of the legislative tools identified in the report: is this list complete? Is there important context from a regulatory/industry/ENGO perspective for understanding these tools?
	
	  - Are there voluntary measures – at the program level – that should be part of the discussion?
		Mike Kofahl and Stephanie Hewson

12:00	**5. LUNCH**	
1:00	**6. MAKING IT WORK…** Discussion: What challenges do you face when working with shipping in MPAs? For example, are there jurisdictional or process ambiguities or gaps that need addressing? Do you face challenges with capacity, knowledge and resources? What would you need to address these challenges?	Facilitator, All

14:00	**7. BREAK**	
14:15	**8. WHERE WE GO NEXT** Discussion: What do you need to have better conversations about shipping in MPAs in the future? Thinking about the Toolkit, what else could help enhance those conversations? Do you face challenges with data access/processing to inform discussions about shipping in MPAs?	Facilitator, All
15:00	**9. FINAL THOUGHTS** - Insights and perspectives - Next steps	Facilitator, Kim Dunn
15:30	**10. ADJOURN**	

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APPENDIX B: LIST OF PARTICIPANTS

BC Coast Pilots: Paul Devries, Roy Haakonson, Robin Stewart

Chamber of Marine Commerce Canada: Paul Topping

Clear Seas: Meghan Mathieson

Counsel, Department of Justice, Fisheries and Oceans legal section: Jerrid Tremaine

East Coast Environmental Law: Mike Kofahl

Fisheries and Oceans Canada: Coralie Tournois

Green Marine: David Bolduc

Oceans North: Colleen Turlo

Parks Canada: Jason Boire, Ryan Eagleson

Transport Canada: Sarah Burton, Michel Charron, Ouafae Lakhal, Josee Lessard

West Coast Environmental Law: Stephanie Hewson

Wilderness Conservation Society: Martin Von Mirbach

WWF-Canada: Sam Davin, Kim Dunn, Martine Giangioppi, Elissama Menezes, Gayle McClelland, Sarah Saunders, Miako Ushio

For more information about this report or
other components of the Toolkit, please contact
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wildlife, where nature and
people thrive.

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