



## Securing protection standards for Canada's marine protected areas

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### ABSTRACT

In 2015, the Government of Canada committed to protecting 5% of marine and coastal areas by 2017, and 10% by 2020. While admirable progress towards this target has been made, less attention has been given to improving the quality of protection afforded to marine areas. Extensive scientific study supports that several factors are critical to the success of Marine Protected Areas (MPAs) for marine biodiversity conservation and management objectives, including no-take areas and prohibitions on extractive and industrial activities. However, the majority of Canada's MPAs allow extractive uses within their boundaries. As Canada works toward international and national commitments to marine protection targets, it is critical to consider the degree of protection afforded by the legal designations used to create these areas. This paper reviews the current inconsistent standards of protection across marine protected areas (MPAs) designated under the *Oceans Act*, Canada's flagship legislation for marine protection. Recommended amendments to the law include standards of protection that would exclude all extractive industrial activities from MPAs in order to better guide the designation and decision-making processes for marine protection.

### 1. Introduction

Marine protected areas (MPAs) are a powerful tool for the conservation and management of marine biodiversity [1]. MPAs can conserve biodiversity, improve fisheries, mitigate climate change, reduce disaster risk, and restore ecosystems, among other benefits [2]. Based on the evidence of these benefits, the Conference of the Parties to the *Convention on Biological Diversity* (CBD) established marine conservation targets in 2011 aimed at protecting ten percent of state marine and coastal waters. In 2015, Canada's federal government made a public commitment to reach the CBD's Aichi Target 11 by protecting 5% of Canada's marine and coastal areas by 2017, and 10% by 2020 [3]. The Canadian federal government has made great progress in achieving this quantity target for MPAs over the past two years. This article examines how a uniform legal prohibition against damaging human activities in MPAs through amended federal marine laws would more effectively protect marine biodiversity in Canada by focusing on both quantity and quality of protection.

For MPAs to provide the benefits listed above, they require effective protection from human influence [4]. Currently, the levels of protection afforded to MPAs varies greatly, from full protection, often 'no-take' or

even 'no-entry' areas, to strong protection, where all commercial activity is prohibited but some recreational and subsistence fishing is allowed, and finally to light or partial protection, which may include certain prohibitions, but permit significant extractive activities [5].

The effectiveness of implementing full protection to MPAs is well-established. Though several factors may influence the trajectory and speed at which protection benefits accrue [6,7],<sup>1</sup> fully-protected, and well-enforced areas have been shown to achieve significant ecological gains, including increased biomass, abundance and species biodiversity than unprotected areas [8–10]. Fully protected MPAs have also been shown to provide support to coastal communities and local fisheries, by improving fish populations, creating new jobs, and supporting ecotourism [11].

Despite the clear benefits of designating strongly protected MPAs, only a fraction of the oceans globally receive such protection. The World Database on Protected Areas quantifies global coverage of MPAs at 7.26% from government reports. However, a recent initiative of the MPAtlas found that, as of February 2018, 3.7% of the world's oceans are strongly protected,<sup>2</sup> only 2% of which are protected as no-take marine reserves [11]. The reason for this discrepancy appears to arise from the stricter standards used by the MPAtlas analysis. MPAtlas

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<sup>1</sup> These factors include the size of the MPA, life histories of protected species, time since designation, historical level of exploitation prior to establishment, management and enforcement resources, and availability of monitoring resources etc.).

<sup>2</sup> In MPAtlas, 'strong' protection includes no-take MPAs as well as large, isolated MPAs.

**Table 1**  
Canada's *Oceans Act* Marine Protected Areas (as of January 2018).

Marine Protected Area	Region – Province/Territory	Year Designated	Size (km <sup>2</sup> )
Anguniaqvia niqiqyuam	Arctic - NWT	2016	2361
Basin Head	Atlantic - PEI	2005	9.23
Eastport	Atlantic - NL	2005	2.1
Endeavour Hydrothermal Vents	Pacific - BC	2003	98.5
Gilbert Bay	Atlantic - NL	2005	60
Gully	Atlantic - NS	2004	2364
Hecate Strait and Queen Charlotte Sound Glass Sponge Reefs	Pacific - BC	2017	2410
Musquash Estuary	Atlantic - NB	2006	7.4
S <sub>G</sub> aan K <sub>i</sub> ngh <sub>l</sub> as-Bowie Seamount	Pacific - BC	2008	6000
St. Anns Bank	Atlantic - NS	2017	4364
Tarium Niryutait	Arctic - NWT	2010	1800

excludes the following: MPAs that are proposed but not yet designated; MPAs that are designated but whose management measures are not yet implemented; MPAs that allow damaging activities such as certain times of fishing and oil and gas development; and temporary spatial protections such as fisheries closures.<sup>3</sup> This discrepancy between reports of global protection highlights the gap between conservation goals and implementation of meaningful protection measures.

Similar inconsistencies between conservation objectives and actual protection exist for MPAs in Canada. Canada's legal regime for marine protection lacks consistent binding standards to protect MPAs from harmful human activities. The vast majority of Canada's MPAs allow extractive uses within their boundaries, including oil and gas and fishing activities [12–14].

One way to establish strong protections within all of Canada's MPAs is to create and enforce a baseline prohibition on all industrial activities within MPAs. We refer to this baseline as protection standards. While some activities may be found, with scientific study, to be consistent with ecosystem protection goals for an MPA, there are a number of industrial and commercial human activities which are known to consistently negatively impact and pose serious risks to marine ecological integrity, including commercial bottom trawl fishing, and oil and gas exploration and development. Consistent with the best available science on this issue, prohibitions on extractive activities should be included within MPA legislation as protection standards, thus creating a baseline for protection across all MPAs.

## 2. Inconsistent protections in Canada's MPAs

Canada's flagship legal tool for creating federal MPAs is the *Oceans Act*, administered by Fisheries and Oceans Canada (DFO).<sup>4</sup> DFO has designated eleven MPAs under the *Act* since its introduction in 1997 (Table 1). However, the *Oceans Act* has been referred to as 'skeletal' because it lacks specific statutory requirements for selecting new MPAs and for determining appropriate restrictions within a protected area [15]. This is problematic because, by itself, designation of an MPA does not prohibit specific activities within the boundaries of the area.

Instead, the level of protection varies and is laid out in each MPA's specific regulation. There are common features in all of these

<sup>3</sup> For more information, see MPAtlas, "Our Data," available online: <http://www.mpatlas.org/about/data/>.

<sup>4</sup> *Oceans Act*, SC 1996, c 31. Three different federal bodies can create MPAs in Canada. The *Oceans Act* gives authority to Fisheries and Oceans Canada (DFO) to designate marine areas as MPAs; the *Canada National Marine Conservation Areas Act* and the *Canada National Parks Act* gives Parks Canada responsibility for creating National Marine Conservation Areas and national parks, respectively; and the *Canada Wildlife Act* and the *Migratory Birds Sanctuary Act* allows the Environment and Climate Change Canada to protect habitat for a variety of wildlife, including migratory birds and species at risk. Provincial and Indigenous governments also have authority to create MPAs.

regulations: each defines the geographical boundaries of the MPA and prohibits activities which disturb, damage or destroy living marine organisms, any habitat, and the seabed. Each regulation then lists exceptions for activities that would otherwise be prohibited, such as fishing. Exceptions are determined at the Minister's discretion on a case-by-case basis. Common exceptions include commercial fishing and recreational fishing, if they are carried out in accordance with relevant federal legislation.

This process of determining prohibited and allowable activities in an MPA on a site-by-site basis has failed to provide a baseline level of protection across Canadian MPAs [16]. In theory, by allowing regulatory prohibitions to be created for each individual MPA, the *Oceans Act* allows for the creation of unique regulatory regimes to match the specific conservation objectives of each area. In practice, however, the current process entails lengthy negotiations with representatives from extractive industries and other stakeholders. This can result in DFO granting weaker protection by allowing extractive industrial activities within MPAs, and contributes to the time it takes to establish an MPA, which is on average 7 years [17]. The current designation process also creates uncertainty over the level of protection that will be provided in an MPA, which negatively affects all stakeholders, including coastal communities, First Nations, commercial fishermen, and the general public.

## 3. Two examples of insufficient MPA standards

Two *Oceans Act* MPAs in Canada from the west and east coasts of the country, S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as-Bowie Seamount and the proposed Laurentian Channel MPA, highlight the diverse and inconsistent protections that arise from the lack of statutory standards.

### 3.1. S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as-Bowie Seamount

S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as-Bowie Seamount is an MPA located in the Pacific Ocean, off the coast of British Columbia. In 1997, the Council of the Haida Nation designated the offshore seamount near Haida Gwaii known as S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as as a Haida marine protected area. A year later, DFO followed suit by proposing to create an MPA around the seamount. S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as-Bowie Seamount was officially designated as an MPA in 2008. Since 2007, the Council of the Haida Nation and Canada have worked together on a management board tasked with finalizing a management plan for S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as by 2010. This management plan is still in progress and is now expected to be completed in 2018 [18].

The northern seamount sablefish trap-fishery, which uses weighted traps dropped onto the seafloor, was the only active commercial fishery within the boundaries of S<sub>G</sub>aan K<sub>i</sub>ngh<sub>l</sub>as-Bowie Seamount at the time of designation. Following negotiations with the sablefish industry, DFO controversially allowed this activity to continue after MPA designation, and made it the subject of further scientific research [19].

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